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CHRISTOPHER BURGOS, individually and as President of the STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY; JAMES KIERNAN, individually and as President of STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCIATION OF NEW JERSEY STATE, INC.; STEPHEN STERNIK, individually and as President of STATE TROOPERS SUPERIOR ASSOCIATION OF NEW JERSEY; STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY, on behalf of all its present and retired members; STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCATION OF NEW JERSEY, INC., on behalf of all its present and retired members; STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of all its present and retired members, Plaintiffs, v. STATE OF NEW JERSEY; CHRISTOPHER CHRISTIE, Governor of the State of New Jersey; ANDREW SIDAMON-ERISTOFF, Treasurer of the State of New Jersey,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, MERCER COUNTY Civil Action Docket No.: Mer-L-1267-14 CONSOLIDATED CASES **NOTICE OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED**

(*Caption Continued*)

Defendants,

AND

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; PROFESSIONAL FIREFIGHTERS ASSOCIATION OF NEW JERSEY, IAFF, AFL-CIO; NEW JERSEY FRATERNAL ORDER OF POLICE; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 73; AMERICAN FEDERATION OF TEACHERS NEW JERSEY STATE FEDERATION, AFL-CIO; INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL EMPLOYEES, AFL-CIO, LOCAL 195; HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT, AFL-CIO; NEW JERSEY STATE AFL-CIO; SANDRA P. COHEN; MICHAEL A. JUSTINIANO; DOMINICK MARINO; DONNA CHIERA; DIANE CAMERON; and RUSSELL LEAK,

Plaintiffs,

v.

CHRIS CHRISTIE, as Governor of the State of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; and ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants,

AND

NEW JERSEY EDUCATION ASSOCIATION; NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION, INC.; NEW JERSEY STATE FIREFIGHTERS' MUTUAL BENEVOLENT ASSOCIATION; AMERICAN FEDERATION OF STATE COUNTY, AND

(*Caption Continued*)

MUNICIPAL EMPLOYEES, COUNCIL 1, AFL-CIO; CHRISTINE SAMPSON-CLARK; HEIDI OLSON; PATRICIA PROVNICK; KEITH DUNN; PATRICK COLLIGAN; MARK KOVAR; TIM DEUTSCH; KYLE HUGHES; JOHN E. MURPHY, JR.; LANCE P. LOPEZ, SR.,

Plaintiffs,

v.

STATE OF NEW JERSEY, CHRISTOPHER J. CHRISTIE, as Governor of the State of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants,

AND

PROBATION ASSOCIATION OF NEW JERSEY, PROFESSIONAL CASE-RELATED UNIT; PROBATION ASSOCIATION OF NEW JERSEY, PROFESSIONAL SUPERVISORS UNION; DWIGHT COVALESKIE; GAVIN CUMMINGS; AND ELLEN CRIBBIN,

Plaintiffs,

v.

STATE OF NEW JERSEY; CHRISTOPHER CHRISTIE, as Governor of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants.

PLEASE TAKE NOTICE that pursuant to R. 4:6-2(e), John J. Hoffman, Acting Attorney General of New Jersey (Assistant Attorney General Jean Reilly appearing), attorney for the State Executive Defendants, hereby moves for an Order dismissing the one Complaint and the three Amended Complaints filed in the above-captioned consolidated cases for failure to state a claim upon which relief may be granted. In support of this motion, the State Executive Defendants will rely upon the accompanying brief and appendix.

Sincerely,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Jean P. Reilly
Jean P. Reilly

DATED: September 2, 2014

CHRISTOPHER BURGOS, et al.

Plaintiffs,

v.

STATE OF NEW JERSEY; CHRISTOPHER CHRISTIE, Governor of the State of New Jersey; ANDREW SIDAMON-ERISTOFF, Treasurer of the State of New Jersey; NEW JERSEY STATE SENATE; and NEW JERSEY STATE GENERAL ASSEMBLY,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Civil Action

Docket No.: Mer-L-1267-14

CONSOLIDATED CASES

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STATE EXECUTIVE DEFENDANTS' BRIEF AND APPENDIX IN SUPPORT OF THEIR MOTION TO DISMISS

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(*Caption Continued*)

AND

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; PROFESSIONAL FIREFIGHTERS ASSOCIATION OF NEW JERSEY, IAFF, AFL-CIO; NEW JERSEY FRATERNAL ORDER OF POLICE; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 73; AMERICAN FEDERATION OF TEACHERS NEW JERSEY STATE FEDERATION, AFL-CIO; INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL EMPLOYEES, AFL-CIO, LOCAL 195; HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT, AFL-CIO; NEW JERSEY STATE AFL-CIO; SANDRA P. COHEN; MICHAEL A. JUSTINIANO; DOMINICK MARINO; DONNA CHIERA; DIANE CAMERON; and RUSSELL LEAK,

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HEIDI OLSON; PATRICIA PROVNICK; KEITH DUNN; PATRICK COLLIGAN; MARK KOVAR; TIM DEUTSCH; KYLE HUGHES; JOHN E. MURPHY, JR.; LANCE P. LOPEZ, SR.,

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PRELIMINARY STATEMENT

Plaintiffs ask New Jersey to keep a commitment that the State was constitutionally incapable of making. The Constitution forbids the Legislature from placing an unwilling populace in an eternal fiscal stranglehold. The Legislature may not incur long-term financial obligations that create an enforceable right to an appropriation without first obtaining permission from the citizenry whose budgetary options, preferences, and needs will thereafter be constrained. Further, because the economy ebbs and flows, revealing an ever-shifting landscape of demands upon a limited fisc, the Constitution mandates that the Legislature and Executive annually reassess both what items to appropriate monies for and the amount of each appropriation. Finally, the Constitution protects *all* of the State's citizens and not just special interest groups that seek satisfaction of their own wants at the expense of the common good. The Constitution therefore vests the final word regarding appropriation levels in the Governor, the sole elected representative who is answerable to all the people.

Chapter 78 may not evade, avoid, or eviscerate these Constitutional principles. For the reasons explained more fully below, the Debt Limitation Clause, the Appropriations Clause, and the Veto Clause present insurmountable obstacles and foreclose all legal theories that Plaintiffs proffer. To the extent that Chapter 78 seeks to create an enforceable right to an annual appropriation

of a prescribed amount, the statute is void and unenforceable. The Court should therefore dismiss Plaintiffs' FY15 counts for failing to state a claim upon which relief may be granted.

Plaintiffs' FY14 claims fail for the same reason and additional ones as well. First, these claims are moot because the FY14 appropriation to pay down the unfunded actuarially accrued liability ("UAAL") has expired; the legal authority to remit monies for the 3/7ths UAAL payment no longer exists. Second, no remedy is possible. The Supreme Court has definitively held that the Judiciary may not compel the Legislature to make an appropriation, much less a retroactive one. Third, Plaintiffs have failed to state a cause of action. They do not allege facts sufficient to create even an inference that the reservation of the UAAL lacked a significant and legitimate public purpose or was unrelated to appropriate government objectives. For these and other reasons described below, the Court should dismiss Plaintiffs' FY14 counts for failure to state a claim upon which relief may be granted.

STATEMENT OF FACTS

On April 28, 2014, the State announced that "gross income, sales and corporate tax revenues for April would fall short of budgeted projections." Testimony of Andrew Sidamon-Eristoff, Treasurer, before Assembly Budget Committee (May 21, 2014) ("Treasurer's Assembly Testimony") at 00:36-00:46 (available at http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ABUB&SESSION=2014).[1] The shortfall was attributable to "unanticipated taxpayer behavior in advance of federal tax changes." Executive Order ("EO") 156 (Christie May 20, 2014) at p. 1.

The State was forced to reduce FY14 revenue projections by "just over $1 billion," which was "3.2 percent" lower than the projections in the Governor's Budget Message in February 2014. Treasurer's Assembly Testimony, supra, at 01:26-01:42. The State also reduced FY15 revenue projections by "$1.7 billion or almost 5 percent from the Governor's Budget Message." Id. at 01:32-0205. The Office of Legislative Services "made similar adjustments" for both FY14 and FY15, with the result that OLS' revenue projections

[1] The Plaintiffs cite this testimony in their Amended Complaints. See Burgos Amended Complaint at ¶ 22; CWA Amended Complaint at ¶ 50; NJEA Amended Complaint at ¶ 50; PANJ Complaint at ¶ 50. The Court may therefore consider this testimony when reviewing the State's Motion to Dismiss. See Teamsters Local 97 v. State, 434 N.J. Super. 393, 414 (App. Div. 2014) (recognizing that courts may consider materials referenced in complaint without converting motion to dismiss into one for summary judgment); E. Dickerson & Son, Inc. v. Ernst & Young, LLP, 361 N.J. Super. 362, 365 n.1 (App. Div. 2003) (same), aff'd, 179 N.J. 500 (2004).

were "in virtual alignment" with the Executive Branch's. Id. at 02:27-02:36.

"Everything was on the table" as the State considered how to bridge the FY14 gap. Testimony of Andrew Sidamon-Eristoff, Treasurer, before Senate Budget and Appropriation Committee (May 22, 2014) ("Treasurer's Senate Testimony") at 27:50 (available at http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=SBAB&SESSION=2014).[2] However, "[w]ith only a few weeks to go in the fiscal year," the State "had few practical options." Treasurer's Assembly Testimony, supra, at 03:47-03:57. "[F]inal payments" to "institutions of higher education, hospitals, nursing homes, school districts," and municipalities in "financial distress" were "essential" to "the maintenance of the health, safety, and welfare of the residents of the State" and could not be put into reserve. EO 156, supra, at p. 4, ¶ 2. The failure to make debt service payments would also "result in unacceptable risks and adverse consequences to the public health, safety, and welfare," so these monies likewise could not be put into reserve. Id. at p. 3.

The State lapsed monies "[a]cross multiple departments and agencies," but still fell far short of closing the revenue gap.

[2] In their Amended Complaint, the Burgos Plaintiffs not only reference the Treasurer's testimony before the Senate Committee, but also provide a link. See Burgos Amended Compl. at ¶ 22. The Court may therefore consider this testimony when deciding the State's Motion to Dismiss. See Teamsters Local 97, supra 434 N.J Super. at 414.

Treasurer's Assembly Testimony, supra, at 03:47-03:57. The State also reduced its undesignated opening fund balance to $300 million, an amount "less than optimal." Id. at 07:27-07:32. The decision not to make the UAAL payment into the pension systems was a "least worst" option that the State took as a last resort. Id. at 04:12; see also EO 156, supra, at p. 5 (Director of OMB should reserve UAAL "[i]f, and only if necessary").

As the Treasurer made clear, however, the State "freely acknowledges" that payment of the UAAL "is a long-term obligation of the State." Treasurer's Assembly Testimony at 09:25-09:47. It is "critically important" that people understand that neither "New Jersey [n]or this Administration is, in any way, walking away from its long-term obligations." Id. at 20:37-21:03. Moreover, determined not to "skip making a payment in any fiscal year," the State has made it a "priority" to fund "current benefit accruals" for active employees. Id. at 05:56-06:18. The State therefore made its "full," 7/7ths "employer's normal cost" contribution for FY14. Id. at 04:47-04:54; see also id. 48:44-49:00.

"On February 25, 2014, Governor Christie submitted budget recommendations for FY 2015 to the Legislature that included a total pension contribution of approximately $2.25 billion dollars, equaling 4/7 of the ARC." CWA Br. in Support of Order to Show Cause at 13. The FY15 Appropriations Bill that the Legislature passed reflected the Governor's pension recommendation and

contained the 4/7th annually required contribution. See S-2015 (June 23, 2014). However, as the Treasurer explained, the unprecedented revenue shortfall in April resulted in a "very serious two-year challenge" for the State, and it is "beyond the capacity of our economy right now" to make the UAAL for FY15. Treasurer's Assembly Testimony, supra, at 02:44-02:49; 21:59-22:09. The Governor therefore exercised his constitutional line-item veto power to eliminate the FY15 UAAL payment. See N.J. Const. art. V, § 1, ¶ 15. However, in FY15, the State did once again make a full 7/7ths normal cost contribution. See L. 2014, c. 14 at B-51, B-175, B-188, B-202, B-203; see also Treasurer's Assembly Testimony, supra, at 06:50-07:01.

In his veto message, the Governor explained that the Legislature had "included the proposed revenue" from tax increases "as an essential component of its Fiscal Year 2015 budget bill." FY15 Veto Message at 1.[3] Da1. "Because the foundation of the Legislature's proposal" was "unsound," the Governor had to object. Ibid. Da1. He simply could not accept the "disproven theory that higher taxes will not chase wealth and investment from the State." Id. at 3. Da3. Based on its false premise, the Legislature had included "hundreds of millions of dollars" in spending that was

[3] The Burgos Plaintiffs appended the Governor's Veto Message to their Amended Complaint, but failed to include the attachments to the Veto Message. The State has included the Veto Message and attachments in its appendix. See Da1-17.

"unsupported by revenue on hand or anticipated to be received during the course of Fiscal Year 2015." Id. at 2. Da2.

"[K]eeping faith" with his "commitment to New Jerseyans" and his "constitutional obligation to ensure that the State enters the next fiscal year with a balanced budget," the Governor was "compelled to make numerous modifications" to the appropriations bill. Ibid. Da2. The Governor had to "make[] difficult decisions on competing public interests, while continuing to allocate scarce resources to fund the critical programs protecting the most vulnerable of our citizens." Id. at 3. Da3. As he explained, "current economic reality" "compel[led]" reductions in appropriations for the retirement systems. Id. at attachment two, p. 2 of 3. Da16. The elimination of the UAAL payment "reflect[s] the adjustment necessary to achieve a balanced budget for fiscal year 2015." Ibid. Da16. The Legislature, which may override any or all vetoes with which it disagrees, has not called for an override vote. See N.J. Const. art. V, § 1, ¶ 15.

PROCEDURAL HISTORY

Multiple unions and the employees they represent filed four separate lawsuits seeking declaratory and mandamus relief to compel the State to make its UAAL payment for FY14 and FY15. Several of these unions also filed Orders to Show Cause. The Court consolidated the cases, accelerated the briefing schedule and, on June 25, 2014, heard oral argument on the Orders to Show Cause.

That same day, the Court issued its decision, holding that the Plaintiffs had failed to satisfy two of the DeGioia prongs: likelihood of success on the merits and balancing of the equities. The Court therefore denied Plaintiffs' application for injunctive relief for FY14. Likewise, because the Governor's decision to reserve the UAAL payment was a policy and business judgment, the Court denied mandamus relief for FY14. The Court found the Plaintiffs' FY15 claims to be unripe. Finally, the Court granted the Legislature's motion to dismiss all claims against them.

At the request of the State, the Court issued an Order extending from July 25, 2014 to August 25, 2014 the time by which the State was to serve a response to the four Complaints. Between July 25, 2014 and July 28, 2014, more than three weeks after the Appropriations Act had been signed into law, Plaintiffs in three of the cases filed Amended Complaints.[4] At the request of the State and with consent of all parties, the Court issued an Order extending to September 2, 2014, the time by which the State was to respond to the Complaint and Amended Complaints. In accordance with this schedule, the State submits this brief in support of its

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[4] Plaintiffs in PANJ v. State did not amend their Complaint. On the date it filed its Amended Complaint, CWA also filed a Motion to Proceed Summarily and sought a return date of September 19, 2014 or as soon thereafter as they could be heard. The Court has not set a return date.

motion to dismiss for failure to state a claim upon which relief can be granted.

ARGUMENT

POINT I

THE CONTRACTUAL RIGHT IN CHAPTER 78 TO AN ANNUAL LINE-ITEM APPROPRIATION IS VOID BECAUSE IT VIOLATES THE DEBT LIMITATION CLAUSE.

N.J.S.A. 43:3C-9.5(c)(1) provides that "[t]he amount of the State's annually required contributions" to the pension systems "shall be included in all annual appropriations acts as a dedicated line item." Subsection two provides that employees shall be able to "enforce" this "contractual" right in Superior Court. N.J.S.A. 43:3C-9.5(c)(2). Because -9.5(c) purports to create an enforceable, contractual right to an annual line-item appropriation, the provision violates the Debt Limitation Clause of the State Constitution and is void upon creation.[5] See N.J. Const. art. VIII, § 2, ¶ 3.

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[5] The Attorney General is legal advisor to and represents the State and its officers. See N.J.S.A. 52:17A-3, -4(b), (e). "It may be unusual for the Attorney General to conclude that a statute is unconstitutional, but when a State agency asks for advice he must give it, and his obligation to 'enforce' the law includes the statutory law" only to the "extent that it is constitutional." Mech. Contractors Ass'n of N.J., Inc. v. State, 255 N.J. Super. 488, 499 (App. Div. 1992). "This is so because the Attorney General has an obligation to '[e]nforce the provisions of the Constitution,' which is the fundamental or organic law." Id. at 499-500 (citing N.J.S.A. 52:17A-4(h)); see also N.J.S.A. 41:1-1 (Attorney General and all State officers must swear to uphold "the Constitution of the State of New Jersey"). "The fact that the Judiciary, under our doctrine of separation of powers, is the Branch which must ultimately decide a constitutional issue and is the final arbiter of constitutional disputes, does not mean that the Attorney General either can never interpret a statute as

A. The History of the Debt Limitation Clause Reveals that the Clause was Designed to Prevent the Very Strain Upon the State's Finances that -9.5(c) Creates.

After the economy collapsed following the Panic of 1837 and the Depression of 1839, many states rushed to adopt constitutional debt limitation clauses to protect against the dangers inherent in unrestrained, long-term financial commitments. See generally Richard Briffault, "The Disfavored Constitution: State Fiscal Limits and State Constitutional Law," 34 Rutgers L.J. 907, 911 (2003). New Jersey was among the states that sought fiscal reform. Delegates to the 1844 Constitutional Convention found the then-present New Jersey Constitution to be "so radically defective that it affords no check upon the legislative power, or any security for the rights and privileges of the people." Proceedings of the Constitutional Convention of 1844, at 601. Delegates were concerned about "burthening the State with a debt which would encumber it from generation to generation" and did not want future New Jerseyans to "find themselves bankrupt and loaded down with debt." Id. at 519-520. The delegates therefore proposed

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unconstitutional or must always commence a declaratory judgment action if he concludes that it is." Mech. Contractors, supra, 255 N.J. Super. at 500; see also Trs. of Rutgers College v. Richman, 41 N.J. Super. 259, 294 (Ch. Div. 1956) ("Attorney-General, as part of the common law duties of his office, participates in litigation to defend or attack the constitutionality of statutes").

a constitutional provision concerning "all laws creating a state debt or liability." Id. at 519.

As adopted, the expansively worded Debt Limitation Clause provided in pertinent part that the "[L]egislature shall not, in any manner, create any debt or debts, liability or liabilities" that individually or cumulatively exceed one hundred thousand dollars, unless the voters in a general election sanctioned the creation of the debt. See N.J. Const. of 1844 art. IV, § 6, ¶ 4. This Debt Limitation Clause has survived to the present day, with the only noteworthy change being that the dollar proscription has been replaced by a percentage amount to reflect current fiscal realities. See N.J. Const. art. VIII, § 2, ¶ 3.

Here, the contractual right in Chapter 78 to an annual appropriation in an actuarially-prescribed amount results in a "significant drag on the growth of our economy and the ability of our economy to meet our collective priorities." Treasurer's Senate Testimony, supra, at 41:04 to 41:18. It is precisely the type of on-going burden on appropriations that the Debt Limitation Clause was designed to prevent. Plaintiffs' theory is based on the legally unsound and unfounded premise that a legislature may, by the expedient of framing a particular benefit as a "contract," evade a constitutional provision that precisely limits the legislature's power to bind its successors with respect to appropriations.

B. The Plain Text of the Debt Limitation Clause Prohibits One Legislature from Creating Any Sort of Fiscal Commitment That Would Irrevocably Bind Future Legislatures To Make Annual Appropriations.

Although popularly referred to as the Debt Limitation Clause, article VIII, section 2, paragraph 3 of the New Jersey Constitution contains restrictions on the creation of both "debts" and "liabilities." "The words debt and liability are not synonymous." Black's Law Dictionary (1st ed. 1891), at 387. A debt is a "sum of money arising upon a contract, express or implied." Ibid.; see also City of Camden v. Allen, 26 N.J.L. 398, 399 (Sup. Ct. 1857) ("debt is a sum of money due by certain and express agreement. It originates in, and is founded upon contract, express or implied."). Here, Chapter 78 purports to create an enforceable contractual right to an annual appropriation of a prescribed amount. See N.J.S.A. 43:3C-9.5(c)(2) (employees have right to "enforce" "contractual" right to annual payment of ARC). As such, the "debt" Chapter 78 purports to create violates the Debt Limitation Clause.

"[L]iability is a term of broader significance than debt." Black's Law Dictionary, supra, at 387. "Liability is responsibility: the state of one who is bound in law and justice to do something which may be enforced by action." Ibid.; see also Behnke v. New Jersey Highway Auth., 13 N.J. 14, 28 (1953) (noting in case involving Debt Limitation Clause: "Liability is a word of

most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent or likely.”). Thus, even had -9.5(c) not created an express “contract,” the statute would still run afoul of the Debt Limitation Clause because it purports to create a liability that legally binds future legislatures with regard to annual appropriations.

In short, the Debt Limitation Clause goes to the issue of contract *formation*, an issue that is antecedent to the question of contract *enforcement*. The Debt Limitation Clause precludes the Legislature from creating in the first instance “any” “debt” or “liability” that would bind future legislatures to make appropriations, unless the matter is first submitted to and approved by the taxpayers.[6] N.J. Const. art. VIII, § 2, ¶ 3. Where, as here, a contract violates this constitutional constraint, it is void upon creation. No contract exists for the Court to enforce.

[6] This referendum provision only applies if the indebtedness that a statute authorizes will, “together with any previous debts or liabilities,” exceed “one percentum of the total amount appropriated for the general appropriations law for that fiscal year.” N.J. Const. art. VIII, § 2, ¶ 3. The “State’s accumulated bonded indebtedness has far exceeded one percent of annual appropriations for many years, so any law authorizing additional indebtedness must now be submitted to a referendum.” In re Petition for Referendum to Repeal Ordinance 2010-27 of the City of Margate City, 424 N.J. Super. 242, 251 n.5 (App. Div. 2012). It is undisputed that N.J.S.A. 43:3C-9.5(c) was enacted without a voter referendum.

C. An Unbroken Line of Supreme Court Precedent Spanning a Century Makes Indisputable the Conclusion that the Legislature May Not Contract Away the Appropriation Power of Future Legislatures.

The "constitutional debt limitation clause prohibits one Legislature from incurring debts which subsequent Legislatures would be obliged to pay, without prior approval by public referendum." Camden v. Byrne, 82 N.J. 133, 152 (1980); see also Wilson v. State Water Supply Comm'n, 84 N.J. Eq. 150, 159 (E. & A. 1915) (Debt Limitation Clause interdicts contracts "payable by legislative appropriation"). The Clause is implicated "when the State is legally required to make payment." Lonegan v. State, 176 N.J. 2, 14 (2003). Thus, statutes have withstood challenge under the Debt Limitation Clause only where the court has been able to construe the financial obligation to be non-binding on future legislatures. For example, the Supreme Court held that the Fair Automobile Insurance Reform Act, see N.J.S.A. 17:30A-8a(9), survived challenge under the Debt Limitation Clause because the payment of monies depended upon a "number of contingencies," including that subsequent legislatures would have to "vote the necessary appropriation." In re Loans of New Jersey Prop. Liab. Ins. Guar. Ass'n, 124 N.J. 69, 77 (1991).

Similarly, in Enourato v. New Jersey Building Authority, the Supreme Court held that the Building Authority Act did not violate the Debt Limitation Clause because, while the Act "not only

contemplates that the State will make the necessary appropriations but also seeks to ensure this result," payments ultimately are "subject to legislative appropriations." 90 N.J. 396, 409 (1982). Likewise, the Supreme Court upheld the County College Bond Act against Debt Limitation challenge precisely because, even though the statute "clearly anticipated" that subsequent legislatures would fund the commitment through appropriation, "nothing in the statute compel[led] the State" to make payments. Holster v. Bd. of Trustees of the Passaic County College, 59 N.J. 60, 66, 73 (1971).

1. City of Passaic Supports the State's Position

City of Passaic v. Consolidated Police and Firemen's Pension Fund Commission, 18 N.J. 137 (1955), is in line with the other Debt Limitation cases that the Supreme Court has decided, and the case supports the State's position. At issue in City of Passaic was a statute that provided in pertinent part that the State "shall contribute annually" into the pension system an actuarially-prescribed amount. See id. at 144 (quoting L. 1952, c. 358). Containing language strikingly similar to Chapter 78, the statute further provided: "All funds necessary to meet the State's share of said annual payments shall be included in the annual State budget and appropriated by the Legislature." Ibid. The Court held: "We [] reject the argument that the statutory provision requiring the State to contribute to the fund constitutes the creation of a state debt contrary to Article VIII, Section II,

paragraph 3 of our Constitution. No debt has been created here, but rather present legislation merely provides that the State shall annually contribute to the fund." Id. at 147.

The Supreme Court has subsequently, repeatedly, and definitively explained this somewhat cryptic holding. Holster, supra, contains the most extended discussion of City of Passaic. The Court observed that in City of Passaic "[o]ne of the constitutional objections made was that the statutory scheme, appearing to require future appropriations, was in violation of the debt limitation clause." Holster, supra, 59 N.J. at 70. Then, quoting the City of Passaic holding, the Court explained: "The point is that a projected or anticipated future legislative appropriation is not a present debt or liability. A future legislature is not bound to make the appropriation." Holster, supra, 59 N.J. at 71. "Elsewhere, and in almost identical context, such language, appearing to mandate a future appropriation, has been described as only an expression of a future intention or expectation which has no legally binding effect." Ibid. (internal quotation and citation omitted).

The Lonegan Court likewise determined that the statute at issue in City of Passaic survived Debt Limitation scrutiny only because future legislatures were not legally bound to appropriate monies. Reviewing In re Loans, Camden v. Byrne, City of Passaic, and other Debt Limitation cases, the Lonegan Court noted that the

"unifying thread" linking all these cases was that "the Debt Limitation Clause applies only when the State is legally obligated to make payments authorized by the Legislature." Lonegan, supra, 176 N.J. at 9; see also Camden v. Byrne, supra, 82 N.J. at 147 (citing City of Passaic in support of proposition that "[s]tatutes similar in nature and purpose to those involved in these appeals have been held to require subsequent legislative appropriations to be effective authorizations of the expenditure of public monies").

Spina v. Consolidated Police and Firemen's Pension Fund Commission, 41 N.J. 391 (1964), is of interest because it involved the same pension fund as City of Passaic and was decided only nine years later. The Spina Court quoted the holding of City of Passaic and noted that the statutes at issue in both cases were not binding but rather were "simply an expression of legislative policy which remained within the control of that and every subsequent Legislature." Spina, supra, 41 N.J. at 399; see also State by McLean v. Lanza, 27 N.J. 516, 525 (1958) (noting that City of Passaic involved "a truly voluntary appropriation").

In short, the statutory provision at issue in City of Passaic survived constitutional scrutiny precisely because it did not bind future legislatures with regard to appropriations. Here, the opposite is true. Chapter 78 purports to create a binding, legally enforceable right to future appropriations. As such, Chapter 78 runs afoul of the Debt Limitation Clause.

D. The Debt Limitation Language in NJEA I is not Mere Dicta, But Rather Binding Precedent.

In New Jersey Education Association v. State, 412 N.J. Super. 192, 196 (App. Div. 2010) ("NJEA I"), the court addressed whether the Teachers' Pension and Annuity Fund Act ("TPAF Act" or "Act") created a constitutionally-protected contract right to an actuarially-prescribed level of pension funding. The TPAF Act contained language similar to that at issue here. The Act declared that the creation and maintenance of reserves to pay benefits were "obligations of the State," the State "shall" make an annual contribution in an actuarially-prescribed amount, and the "Legislature shall make an appropriation sufficient to provide for the obligations of the State." Id. at 199 (citing TPAF Act). Plaintiffs sought "declaratory and other relief against the State" to "compel[] an appropriation of $2.6 billion." Id. at 201.

The court began its analysis by turning for guidance to Spina, supra, and City of Passaic, supra, both of which addressed the question of whether a statute created a binding right to funding of the pension system. The court noted that in both instances the Supreme Court had determined that "the statutory requirement was not a guarantee of future funding equivalent to the creation of a State debt," but rather was "simply an expression of legislative policy which remained within the control of that and every subsequent Legislature." Id. at 208-09 (internal quotation

and citation omitted). The court then noted that, unlike other states, New Jersey has an Appropriations Clause and Debt Limitation Clause in its Constitution that "grant our Legislature sweeping and exclusive powers of appropriation and preclude one Legislature from binding future legislatures with respect to prospective appropriations." Id. at 212 (citing Camden v. Byrne, supra, 82 N.J. at 151-54).

Next, the court turned to the text of the TPAF Act and of N.J.S.A. 43:3C-9.5(c).[7] Id. at 213. The court determined that, under these statutes, plaintiffs' interest in the pension fund does not "extend to future appropriations by the Legislature." Id. at 216. "To argue otherwise - that the pension statutes forever removed legislative power of amendment - would," the court concluded, "run afoul of our State Constitution's Appropriations Clause, requiring that the State's finances be conducted on the basis of a single fiscal year covered by a single balanced budget, see N.J. Const. art. VIII, § 2, P 2; and Debt Limitation Clause, N.J. Const. art. VIII, § 2, P 3, prohibiting one Legislature from incurring debts which subsequent Legislatures would be obliged to

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[7] The reference to N.J.S.A. 43:3C-9.5(c) was prior to its amendment by Chapter 78. At the time of the court's decision in NJEA I, -9.5(c) provided that the State "shall" make an annual appropriation into the pension systems. See NJEA I, supra, 412 N.J. Super. at 213. The NJEA I court's reference to -9.5(c) is significant in light of what the court went on to say about the Debt Limitation Clause. See pp. 20-21, supra.

pay, without prior approval by public referendum." Id. at 216. "Thus, we read the funding provision of N.J.S.A. 43:3C-9.5(c) as not giving rise to an enforceable right in future appropriations." Ibid.

Judge Parrillo, writing for a unanimous court, then summed up the holding:

> In conclusion, we find no constitutionally-protected contract right to systematic funding of the TPAF. Any such right is foreclosed by: (1) our own constitutional jurisprudence, which never recognized such a right and in 1947 rejected a proposal that would have expressly designated public employee pension benefits as contractual; (2) well-settled constitutional principles placing limitations upon any legislature to bind its successors as to appropriations and impliedly suspending prior fiscal enactments by each annual Appropriations Act; (3) Supreme Court precedent in Spina, explicitly rejecting a "contractual" basis for State employee retirement benefits; and (4) current provisions of our pension statutes and their legislative history, which do not clearly and unambiguously evince a legislative intent to extend a nonforfeitable right to pension benefits to future appropriations.
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> [Id. at 217].

The court thus provided four independent reasons why plaintiffs did not possess a statutorily-created right to compel future appropriations to fund the pension system. While Chapter 78's use of the word "contractual" attempted to overcome hurdle number four, hurdle number two remains. The Legislature may not, merely by invoking the word "contract," evade "well-settled constitutional principles placing limitations upon any legislature

to bind its successors as to appropriations." See ibid.; see also General Assembly v. Byrne, 90 N.J. 376, 391 (1982) (noting that it is fundamental that "Legislature cannot pass an act that allows it to violate the Constitution").

Here, in its decision on the Plaintiffs' Order to Show Cause, the Court found that "there is no need for the court to reach the applicability of the debt limitation and appropriations clauses to Chapter 78" because "the Legislature passed and the Governor signed into law an Appropriations Act for FY 2014." See Slip Op. at 69. Now, however, the situation is different and the Court must address the Debt Limitation and Appropriations Clauses because the FY15 Appropriations Act does not provide authority to remit monies for the UAAL into the pension systems. Cf. Berg v. Christie, 436 N.J. Super. 220, 246 (App. Div. 2014) (finding that Debt Limitation Clause was not currently implicated in COLA case because monies for COLAs had already been appropriated, but "lawsuit aimed at requiring such an appropriation would implicate both the Appropriations Clause and the Debt Limitation Clause").

In short, to the extent that it purports to create a binding, legally enforceable right to future appropriations, Chapter 78 runs afoul of the Debt Limitation Clause. The "contractual" right to annual appropriations was constitutionally infirm upon creation and therefore void; no contract exists for the Court to enforce. Conversely, the only way to save Chapter 78 from

constitutional defect is to construe it as a mere declaration of policy that does not bind the State to make future appropriations. If such is the case, no enforceable right exists and the Plaintiffs may not compel an appropriation. Either way, Plaintiffs fail to state a claim upon which relief may be granted, and the Court should dismiss their contract claims.

POINT II

THE CONTRACTUAL RIGHT IN CHAPTER 78 TO AN ANNUAL APPROPRIATION IS VOID BECAUSE IT VIOLATES THE APPROPRIATIONS CLAUSE.

Chapter 78 purports to create a contractual right to an annual appropriation of an actuarially-prescribed amount. If this "right" is binding and legally enforceable, then -9.5(c) is constitutionally infirm because it violates the Appropriations Clause.

The Appropriations Clause, see N.J. Const. art. VIII, § 2, ¶ 2, is "the center beam of the State's fiscal structure." Camden v. Byrne, supra, 82 N.J. at 146. The Clause "cannot in any sense be regarded as merely providing governmental 'housekeeping details,' necessary and important, but not truly vital." Ibid. Rather, the terms of the Clause must "be given full and complete effect in accordance with their clear and obvious intent." Ibid. Here, N.J.S.A. 43:3C-9.5 (c)(1) provides that the "amount of the State's annually required contribution shall be included in all annual appropriations acts." If, as -9.5(c)(2) provides and as

Plaintiffs contend, employees may enforce this provision in court, then the provision contravenes the Appropriations Clause and impermissibly surrenders a vital aspect of State sovereignty.

First, "[w]hen a state's contract is involved, the initial inquiry is whether the state had the power to create an irrevocable contract right in the first place, since a state cannot surrender an essential attribute of its sovereignty." Fid. Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 287 (1981); cf. Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 435 (1934) ("reservation of essential attributes of sovereign power is [] read into contracts as a postulate of the legal order"). The Appropriations Clause mandates that "[a]ll moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year." N.J. Const. art. VIII, § 2, ¶ 2. The Legislature and Governor must thus reassess the State's fiscal needs each year and annually re-set appropriation levels based on economic realities, ever-shifting priorities, and policy judgments. Because Chapter 78 purports to bind the State to appropriate annually an actuarially-prescribed amount to fund the pension systems, the statute runs afoul of this constitutional mandate. The statute impermissibly strips from the State the sovereign responsibility and prerogative to reassess each year the State's fiscal needs and priorities.

Second, the Appropriations Clause "mandates that withdrawals of all monies from the State treasury can be accomplished only through legislative appropriation." Camden v. Byrne, supra, 82 N.J. at 145. "There cannot be the slightest doubt" that this provision "firmly interdicts the expenditure of state monies through separate statutes not otherwise related to or integrated with the general appropriation act." Id. at 146. Statutes that purport to "'dedicate' state revenues for a particular purpose" are therefore not "self-executing as current appropriations," but rather "require subsequent legislative appropriations." Id. at 147. "Attempts to characterize" the statute at issue as creating "'substantive' rights'" does not shift the "constitutional fulcrum." Id. at 148. Even if a statute did create "'substantive rights,'" this would "in no way diminish[]" the State's "constitutional control over the state fisc. " Ibid. Here, Chapter 78 contravenes the constitutional principles that Camden v. Byrne articulates, because the statute purports to strip the State of its "constitutional control" over the fisc and compel annual appropriations in amounts that an actuary determines.

Third, the Appellate Division has already decided the precise issue in dispute here. In NJEA I, supra, the Appellate Division concluded that, even where a statute creates a contractual right, the statute does "not giv[e] rise to an enforceable right to future appropriations." 412 N.J. Super. at 216. To hold otherwise

would "run afoul" of the Appropriations Clause. Id. at 212, 216-17; see also N.J.S.A. 43:3C-9.6(a) (upon "termination" or "complete discontinuance" of retirement systems, rights of all members "to benefits accrued to the date of such termination or discontinuance, *to the extent then funded*, are non-forfeitable") (emphasis added); N.J.S.A. 43:15A-70 ("Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of pensions or other benefits . . . for which reserves have not been previously created from funds, contributed by [the] employer or its employees for such benefits").

In short, the Legislature cannot, by statute, override the strictures and mandates of the Appropriations Clause and thereby surrender an essential attribute of sovereign power. Because Chapter 78 purports to create a binding right to compel annual appropriations of a prescribed amount, the statute is constitutionally infirm and unenforceable. The Court should therefore dismiss Plaintiffs' contract claims for failing to state a claim upon which relief may be granted.

POINT III

THE CONTRACTUAL RIGHT IN CHAPTER 78 TO AN ANNUAL APPROPRIATION IS VOID BECAUSE IT DEROGATES THE GOVERNOR'S CONSTITUTIONAL VETO POWER.

If the contractual right in N.J.S.A. 43:3C-9.5(c) to a line-item in the annual appropriations act is binding and legally enforceable, then the statutory provision is constitutionally

infirm because it derogates the Governor's constitutional veto power.

A. The Governor, the Sole State Official Elected to Represent the Best Interests of the State as a Whole, Exercised His Veto Power in Accord with Constitutional Design.

The New Jersey Constitution of 1776 did not provide for a gubernatorial veto of legislation. "Elected annually by the Legislative Council and Assembly, whatever influence" the Governor had "over legislation was by virtue of his presiding over the Council and having cast a vote in its proceedings." Sidney Goldmann and Bertram C. Bland, "The Governor's Veto Power" (Monograph), II Proceedings of the New Jersey Constitutional Convention of 1947 1418, 1419 (citing N.J. Const. of 1776, art. XIV). By 1790, "the omnipotence of the Legislature awakened the people to the fact that the Governor's executive power had to all intents and purposes been annihilated." "The Governor's Veto Power," supra, at 1419. The demand for constitutional revision was, "if not chronic, at least periodic." Ibid. (internal quotation and citation omitted).

During the 1844 Constitutional Convention, the delegates fiercely debated whether the Governor should be given a veto power that a simple majority of the Legislature could override or a veto power that required a two-thirds vote to override. Id. at 1419-20. The proponents of the two-thirds vote argued that the "veto was a

weapon by means of which the governor, the sole representative of the whole State, might prevent laws against the interests of the whole from being passed under the influence of corruption or the combined weight of sectional interests." Id. at 1420. The delegates eventually deadlocked 27 to 27. Ibid. The Convention chairperson broke the tie, and the provision, as adopted and eventually ratified by the people, provided that a simple majority of each house could override the Governor's veto. Ibid. See N.J. Const. of 1844, art. V, ¶ 7. In 1875, the Constitution was amended to allow the Governor to veto individual items of appropriation contained in bills the Legislature presented. "The Governor's Veto Power," supra, at 1420-21. Again, a simple majority of both houses could override the Governor's line-item veto. Id. at 1421.

At the 1947 Constitutional Convention, the Committee on the Executive was "unanimously of the opinion that the Governor's veto power should be strengthened." I Proceedings of the New Jersey Constitutional Convention of 1947, at 214. Likewise, a "remarkable procession," including "the Taxpayers' Association, both large labor unions," "many businessmen," and "civic organizations" came forward "to say that they approved of this veto power." Id. at 215. "[E]veryone of them invariably recommended that we put a two-thirds provision in the Constitution before the Governor's veto could be overridden." Id. at 218. Former-Governor Moore explained the rationale for strengthening the veto power: "The Governor, as

the sole [S]tate official elected by all of the people of the State, should be armed, on their behalf, with an effective instrument to impede the enactment of unwise, hastily prepared, ill-considered or, indeed, unconstitutional legislation maneuvered through an unsuspecting Legislature by special groups or interests." V Proceedings of the New Jersey Constitutional Convention of 1947, at 66. One prescient person who testified before the Committee on the Executive at the 1947 Convention noted that the gubernatorial veto power "puts a rather heavy responsibility on the Governor in the sense that it permits the Legislature to put on the Governor the responsibility for a great many questionable items."[8] Id. at 387.

As adopted by the delegates to the 1947 Convention and ratified by the people, Article V, section I, paragraph 15 of the Constitution provides: "If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving the other portions of the bill." This means that, "[i]n appropriations bills, if the Governor considers the budget" to be "too high," he

[8] For example, a Legislature could, unwittingly or to appease constituents, propose a budget with appropriations that, because they were premised on unrealistic revenue estimates, were economically unsustainable. The Governor, in order to fulfill his constitutional duty to ensure that the budget is balanced, not just on paper, but in reality, would then face the hard task of slashing items of appropriation for popular programs or initiatives and reducing revenue estimates. See N.J. Const. art. VIII, § 2, ¶ 2.

can "reduce, as well as eliminate," any item of appropriation by veto. Summary and Address to the People of New Jersey by the Constitutional Convention of 1947, "What the Proposed New State Constitution Means to You," II Proceedings of the New Jersey Constitutional Convention of 1947 at 1320. The Governor "shall append to the bill, at the time of signing it, a statement of each item or part thereof to which he objects, and each item or part so objected to shall not take effect." N.J. Const. art. V, § 1, ¶ 15. If, "on or after the third day following" the Governor's transmittal of his veto message to the Legislature, "two-thirds of all the members of each house" vote to override the veto of any item of appropriation, "the same shall become a part of the law, notwithstanding the objections of the Governor." Ibid.

Here, as discussed more fully above, see pp. 6-7, supra, the Governor exercised his line-item veto power in accord with constitutional design. He reduced or eliminated line-item appropriations, submitted to the Legislature detailed reasons for so doing, and ensured that sufficient revenues were on hand or anticipated to meet all authorized expenditures. See N.J. Const. art. V, § 1, ¶ 15; art. VIII, § 2, ¶ 2. The Legislature has not called for an override any of the Governor's line-item vetoes. See N.J. Const. art. V, § 1, ¶ 15.

B. The Judiciary Lacks Authority to Constrain the Governor's Exercise of His Constitutional Veto Power.

The Supreme Court has long recognized that the Judiciary lacks authority to reverse, override, or constrain the Governor's exercise of his constitutional line-item veto power.

Camden v. Byrne, supra, is directly on point. In that case, municipalities sought to enforce, among other things, the bus franchise replacement tax, N.J.S.A. 48:4-14.2, "which provides that the State make annual payments to municipalities." Camden v. Byrne, supra, 82 N.J. at 143. "Although the Governor had recommended an appropriation for this purpose in his budget message for" FY76 "and such appropriation was included in the General Appropriations Act for that fiscal year as initially passed by the Legislature, it was effectively excluded from the final state appropriation when the Governor exercised a line item veto of this specific appropriation and the Legislature subsequently failed to override this veto." Ibid. The municipalities "made several demands for relief, including a court order directing the Legislature to make the requested appropriations and the Governor to approve them." Ibid.

Additionally, several counties claimed that "state appropriations under the Transfer Inheritance Tax Act, N.J.S.A. 54:33-1 et seq., had been wrongfully withheld." Id. at 144. "Although the Governor originally proposed this funding in his

budget message and it was included in the initially passed appropriation act, the Governor exercised his line item veto power to exclude it from the final appropriation act." Ibid. The counties sought a "court order that various State officials pay over the monies they believed should have been apportioned to the counties or, in the alternative, to enjoin the appropriation of such funds for any purpose other than for county use." Ibid. One county also sought "a court order directing the State Treasurer and Comptroller to remit the funds in question to the county." Id. at 145.

The Court determined that these "challenges present major questions concerning the appropriate constitutional framework governing the state budgetary process, the responsibilities of the Legislature and Governor with respect to state expenditures, and the proper role of the courts." Id. at 141. The Court reiterated the long-held principle that "the judiciary is unable to compel a requested appropriation even where a statutorily-defined substantive right to the monies is established." Id. at 148. Simply put, "[t]here can be no redress in the courts to overcome either the Legislature's action or refusal to take action pursuant to its constitutional power over appropriations." Id. at 149.

Several plaintiffs, conceding "the inability of the courts to compel such legislative action," argued that the "courts stand in a different posture *vis-à-vis* the Governor with respect to

his constitutional and statutory responsibilities over State expenditures." Ibid. The Court explicitly rejected this contention. The Court recognized that the Governor's "statutory authority to propose the State budget and his constitutional power to exercise a selective veto over legislative appropriations reflects his significant responsibilities over the State's fiscal affairs and are an important aspect of the centralization of state finances essential to efficient modern government operations." Id. at 150. The Court held: "Since these executive responsibilities are so clearly involved in the budget process, and since the ultimate constitutional responsibility for appropriation rests with the Legislature, the judiciary is without authority to compel either the Legislature to make a specific appropriation or the Governor to recommend or approve one." Ibid. The Court thus held in unmistakable terms that the Judiciary is without power to reverse, override, or constrain the Governor's exercise of his line-item veto power, even where substantive rights are at stake. This precedent both binds the Court here and precludes the relief that Plaintiffs seek.

Four years after writing for a unanimous Court in Camden v. Byrne, Justice Handler again took up the issue of the Governor's line-item veto power in Karcher v. Kean, 97 N.J. 483 (1984). At issue was Governor Kean's use of his line-item veto to delete or reduce certain items of appropriation in the FY83 Appropriations

Act. Id. at 487. In his veto statement, the Governor noted that his vetoes were predicated on the need to "have an adequate surplus" and the inappropriateness of funding new programs "in a budget that doesn't provide adequately for essential State services." Id. at 492 (quoting Governor Kean's Veto Message). Two of plaintiffs' challenges concerned the "propriety of the Governor's veto of the appropriation of monies for specific governmental purposes," while two other challenges concerned his deletion of language from general language provisions. Id. at 493.

Justice Handler, again writing for a unanimous Court, noted that although the "power to appropriate and expend state monies is reserved exclusively to the Legislature, the Governor nonetheless plays a vital constitutional role in the budget process." Id. at 489. The "ultimate legislative authority over appropriations is subject to checks and balances from the executive." Ibid. The "Governor is constitutionally empowered to object to any item or items included in an appropriation bill through the exercise of a selective veto." This Constitutional power is "critical" and "essential" to an efficient, modern system of government." Ibid. The "judiciary has accepted its own absence of authority to compel either the Legislature to make a specific appropriation or the Governor to recommend or approve one." Id. at 490.

Where, as here, a Governor reduces an item of appropriation, he is using his veto power "in the most traditional and long-sanctioned sense." See id. at 497. The Court may not "permit the Legislature to circumvent the Governor's line-item veto power and upset the system of checks and balances that must operate in the budget-making arena." Id. at 500. The Court may not sanction any outcome that "would effect a legislative evasion of the Governor's authority to veto distinct items." Id. at 501.

Here, Chapter 78 impermissibly derogates from the Governor's constitutional veto power by purporting to remove forever his authority to reduce appropriations for pension funding lower than the actuarially-prescribed amount. Neither the Legislature nor the unions on whose behalf the Legislature enacted Chapter 78 may neutralize, nullify, or negate the Governor's constitutional line-item veto power in this way. The statute is therefore constitutionally infirm and unenforceable, and the Court should dismiss Plaintiffs' contract claims.

In short, the Debt Limitation Clause, the Appropriations Clause, and the Veto Clause, singly and cumulatively, present insurmountable constitutional obstacles both to Plaintiffs' claims and the relief they seek.

POINT IV

THE FY15 APPROPRIATIONS ACT TEMPORARILY SUSPENDED CHAPTER 78'S CONTRACTUAL RIGHT TO FUNDING.

The Legislature's failure to override the Governor's vetoes has resulted in the suspension of the UAAL funding provisions of Chapter 78 during this fiscal year.

Interestingly, even though it was the Governor who "exercised his line-item veto power to excise" appropriations that the Legislature had included in its Appropriations Bill, the Court in Camden v. Byrne characterized the case as involving a "*legislative* failure to appropriate funds to effectuate these several statutes." Camden v. Byrne, supra, 82 N.J. at 154 (emphasis added). The Court's description was premised on the Legislature's decision not to "reenact these itemized appropriations by overriding the Governor's vetoes." Ibid. This failure to override was "an intentional and advertent act" and "cannot be ascribed to indifference, coincidence, or accident." Ibid. "It follows that such a definitive legislative intent as reflected in the general appropriation laws necessarily supersedes any previously expressed legislative desires at least for the duration of the particular appropriation act." Ibid. The "earlier statutes" mandating the appropriation and allocation of funds "cannot coexist with the enacted appropriation and, consequently, must be deemed to be suspended by adoption of the later

appropriation acts." Ibid. The Court thus concluded that, in addition to the Debt Limitation Clause, the Appropriations Clause, and the Veto Clause, which the Court termed "insurmountable constitutional obstacles which prevent appellants from securing funds under the several statutes, the Legislature itself has expressed its intent with sufficient clarity to render it singularly inappropriate for this Court to give any legal effect whatsoever to the earlier statutory enactments." Id. at 155.

Here, likewise, the Legislature's failure to override the Governor's vetoes has resulted in the suspension of the pension funding provisions of Chapter 78 during this fiscal year, and the Court may not "give any legal effect whatsoever" to N.J.S.A. 43:3C-9.5(c). See ibid. Plaintiffs have thus failed to state a claim upon which relief may be granted.

POINT V

PLAINTIFFS' "FAILURE TO RECOMMEND" IMPAIRMENT CLAIMS FAIL BECAUSE A RECOMMENDATION DOES NOT HAVE THE FORCE OF LAW.

Plaintiffs allege that the Governor failed to recommend that the UAAL portion of the pension payment be included in the FY15 budget and that this failure constitutes an impairment of Plaintiffs' contractual rights. See NJEA's Amended Complaint at ¶¶ 70, 72; State Troopers' Amended Complaint at ¶ 20; PANJ's Complaint at ¶¶ 68-72. Factually, this claim fails because the Governor's Budget Message did contain such a recommendation. See

p. 5, supra. The claim also fails legally, however, because the Court may not order the Governor to make a budget recommendation, see Camden v. Byrne, supra, 82 N.J.. at 150, and, in any event, a budget recommendation does not have the force of law. See N.J.S.A. 52:27B-20.

Both the federal and State Contract Clauses provide that a State shall not *pass any laws* that impair the obligation of contract. See U.S. Const. art. 1, § 10; N.J. Const. art. IV, § 7, ¶ 3. A budget recommendation is just that - a recommendation - and does not have the force of law. Plaintiffs concede as much when they note in their Amended Complaints that the Legislature disregarded the Governor's recommendation. See State Troopers Amended Complaint at Preamble, p. 6; NJEA Amended Complaint at ¶¶ 52, 53.

Failure to make a budget recommendation is not a legally cognizable impairment of contract, and the Court should therefore dismiss Plaintiffs' impairment claims to the extent these counts are premised on a failure to recommend.

POINT VI

PLAINTIFFS' FY14 CLAIMS ARE MOOT BECAUSE THE APPROPRIATION HAS LAPSED AND THE COURT MAY NOT ORDER A NEW APPROPRIATION.

Plaintiffs' FY14 claims are moot because the FY14 appropriation to pay down the UAAL has expired; the legal authority to remit monies for the 3/7ths UAAL payment no longer exists. See

L. 2013, c. 77, p. 19 at General Language Provision 1; see also City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999) (holding in FY00 that challenge to FY99 Appropriations Act was "moot" because "time for the effective supervision of the 1998-99 fiscal year long passed").

Moreover, it is axiomatic that the Court may not order an appropriation. See Camden v. Byrne, supra, 82 N.J. at 150. (holding in case where plaintiffs claimed statutory right to funds that "judiciary is without authority to compel either the Legislature to make a specific appropriation or the Governor to recommend or approve one"); Fitzgerald v. Palmer, 47 N.J. 106, 108 (1966) (refusing to get involved in policy questions of how State spends its money, because "judiciary could not order the Legislature to appropriate money, or the Governor to approve an appropriation if one were made"); Gallena v. Scott, 11 N.J. 231, 238-39 (1953) (refusing to issue mandamus to redress State worker's salary claim because "judicial authority cannot compel an appropriation," and issuing such a writ would "would constitute judicial intrusion upon the legislative and executive authorities"); Amantia v. Cantwell, 89 N.J. Super. 7, 13 (App. Div. 1965) (refusing to issue mandamus ordering State to pay Guardsmen, because "[w]hether or not petitioners receive the money to which they are clearly entitled rests exclusively with the Legislature").

Plaintiffs themselves have conceded both that the appropriation has lapsed and that no remedy exists. See Burgos v. State, Slip Op. (June 25, 2014), at 38 (noting that Plaintiffs "claim that, absent immediate injunctive relief ordering the Governor to make the statutory unfunded liability pension payments, plaintiffs will be deprived of any remedy whatsoever for FY 2014 because the appropriation has already been approved for this fiscal year and will lapse if the court does not act to compel enforcement of it"). Plaintiffs are estopped from adopting a contrary position now.

Finally, even though the Court rendered a decision from the bench on June 25, 2014 and issued a *103*-page written opinion that same day in order to facilitate appeal, Plaintiffs took no action to preserve their FY14 claims. Rather, they sat by passively and allowed the FY14 fiscal clock to tick down, with full knowledge that the appropriation would lapse and the Court would be powerless to order relief. See Slip Op., supra, at p. 38.

For the foregoing reasons, Plaintiffs' FY14 claims are not ones upon which relief may be granted and the Court should therefore dismiss the claims under R. 4:6-2(e).

POINT VII

PLAINTIFFS' FY14 CONTRACTS CLAIMS FAIL BECAUSE THEY DO NOT ALLEGE FACTS SUFFICIENT TO PERMIT EVEN AN INFERENCE THAT THE STATE'S DECISION NOT TO REMIT THE UAAL PAYMENT WAS UNREASONABLE OR UNNECESSARY.

"Our courts ordinarily take a liberal view in determining whether a complaint states a cause of action." Nostrame v. Santiago, 420 N.J. Super. 427, 436 (App. Div. 2011) (citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). "However, New Jersey is a 'fact' rather than a 'notice' pleading jurisdiction, which means that a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." Nostrame, supra, 420 N.J. Super. at 436. "A plaintiff cannot simply assert that any essential facts that the court may find lacking can be dredged up in discovery." Ibid. Here, Plaintiffs fail to allege facts sufficient to generate even an inference that the State's decision not to remit the entirety of the pension payment in FY14 was unreasonable or unnecessary. Plaintiffs thus fail to state a valid cause of action for impairment of contract, and the Court should dismiss their contract claims.

The Contracts Clauses of the United States and New Jersey Constitutions "provide parallel guarantees." Fid. Union, supra, 85 N.J. at 299. Interpreting the federal constitution, the United States Supreme Court has held that even a significant impairment of

contract is constitutional "if it is reasonable and necessary to serve an important public purpose." U.S. Trust Co. v. New Jersey, 431 U.S. 1, 25 (1977). The New Jersey Supreme Court has construed this reasonable and necessary prong of a Contracts Clause claim to mean that a significant impairment of contract is not unconstitutional unless the State's action "lack[s] a significant and legitimate public purpose," is "unrelated to appropriate government objectives," and is "based upon unreasonable conditions." State Farm Mut. Auto Ins. Co. v. State, 124 N.J. 32, 64 (1991).

Here, neither the existence of the eleventh hour revenue shortfall nor its magnitude are in dispute. Similarly, it is beyond cavil that the Governor has a constitutional responsibility to balance the budget. See N.J. Const. art. VIII, § 2, ¶ 2. Plaintiffs therefore do not (and cannot) allege a single fact from which the Court could infer that the State's action in FY14 "lack[s] a significant and legitimate public purpose" or is "unrelated to appropriate government objectives." See State Farm, supra, 124 N.J. at 64. To the contrary, the public purpose is manifest. Cf. United Auto., Aero., Agric. Implement Wkrs. of Am. Internat'l Union v. Fortuno, 633 F.3d 37, 46-47 (1st Cir. 2011) (finding in impairment case "basic societal interest" in "eliminating" budget "deficit"); Baltimore Teachers Union v. Mayor & City Council of Baltimore, 6 F.3d 1012, 1014, 1018-19 (4th Cir.

1993) (recognizing in impairment case that "ensuring the financial integrity of the City is a significant public purpose").

Further, the very testimony of the Treasurer that the Plaintiffs cite in their Amended Complaints, see n. 1, p. 3, supra, speaks to the reasonableness of the State's actions. On May 21, 2014, the Treasurer testified that the State had "a major revenue shortfall" and that the State had a "constitutional responsibility to deal with it." Treasurer's Assembly Testimony, supra at 1:25:40. Moreover, the "size of the revenue shortfall did not become apparent in scope until the very last few days of April." Treasurer's Senate Testimony, supra, at 1:19:01. "Everything was on the table" as the State considered options for ensuring that expenditures did not exceed revenues. Id. at 27:50. However, given the lateness in the fiscal year, the State was left "with an extremely unpalatable set of choices." Id. at 17:02. The State lapsed monies "[a]cross multiple departments and agencies," but still fell well short of closing the revenue gap. Treasurer's Assembly Testimony, supra, at 3:47. The State had "few practical options that would not involve extremely painful reductions to education, health care, or our social safety net." Id. at 03:57.

The decision to reserve the UAAL was a last resort, "least worst" option.[9] Id. at 04:12.

Moreover, the State paid into the pension funds the full 7/7th payment for the employers' normal cost, which represents "the present value of the additional benefits earned by active employees during the current year." Id. at 04:37-05:08.

Multiple courts have found the government's actions to be reasonable under circumstances similar to those here. See, e.g., Buffalo Teachers Fed. v. Tobe, 464 F.3d 363, 368, 371 (2d Cir. 2006) (finding wage freeze to be reasonable in impairment case because city "considered and tried" other measures before resorting to freeze); Baltimore Teachers, supra, 6 F.3d at 1020 (upholding City's furlough plan as reasonable in impairment case because City did not "consider impairing the obligations of [its] own contract on a par with other policy alternatives'" and did not "impose a drastic impairment when an evident and more moderate course would serve its purposes equally well").

In short, because the Plaintiffs have not alleged facts sufficient to generate even an inference that the State's actions

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[9] The fact that the State's "investment returns" on the pension funds have been "quite strong" in "recent Years," see Treasurer's Assembly Testimony, supra, at 1:58:06-2:00:40, also demonstrates that the decision not to remit the UAAL was reasonable under the circumstances. While the "assumed rate of return" was 7.90%, the rate of return for FY14 was, as of May, "north of 12%." Ibid. These increased investment returns serve to pay down the UAAL.

in FY14 "lack[ed] a significant and legitimate public purpose" or were "unrelated to appropriate government objectives," Plaintiffs have failed to state a cause of action under the State or federal Contracts Clause. See State Farm, supra, 124 N.J. at 64. Their contract claims also fail because Plaintiffs have not alleged facts sufficient to demonstrate that the State's actions were "based upon unreasonable conditions." Ibid. For either or both of these reasons, the Court should dismiss Plaintiffs' FY14 contract claims.

POINT VIII

PLAINTIFFS' COMPLAINTS RAISE NON-JUSTICIABLE POLITICAL QUESTIONS THAT MANDATE DISMISSAL AND FORECLOSE RELIEF.

Plaintiffs' claims for both FY14 and FY15 raise non-justiciable political questions that mandate dismissal and foreclose relief.

"Deciding whether a matter presents a non-justiciable political question is a delicate exercise in constitutional interpretation." Gilbert v. Gladden, 87 N.J. 275, 282 (1981). As the Supreme Court explained:

> Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or [4] the impossibility of a court's undertaking

> independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
>
> [Id. at 282.]

"To justify a dismissal based on non-justiciability, only one of these criteria need be inextricable from the facts and circumstances presented before the court." Loigman v. Trombadore, 228 N.J. Super. 437, 442 (App. Div. 1988).

Here, application of the six criteria that the Supreme Court identified leads to the inescapable conclusion that the Complaint and Amended Complaints raise non-justiciable political questions that mandate dismissal and bar relief.

A. Plaintiffs' FY14 Claims Raise Non-Justiciable Political Issues That Mandate Dismissal and Foreclose Relief.

First, the Constitution explicitly and indisputably commits to the Executive the duty of ensuring that expenditures do not exceed revenues. See N.J. Const. art. VIII, § 2, ¶ 2. Second, no judicially discoverable and manageable standards exist for resolving the issues Plaintiffs raise. The questions of how much revenue was on hand or was anticipated in the last quarter of FY14 and the necessity of reserving funds require an analysis of fiscal data and predictions on economic activity that the Judiciary is not equipped to answer. By entering the field of revenue

forecasting and budget balancing, the Judiciary would be usurping the role of the Executive Branch and would soon find itself embroiled in the political process of crafting solutions to the State's annual fiscal debates.

Third, the question of which funds to exempt from reservation so as not to endanger the public health, safety, and welfare requires policy determinations that the Judiciary is ill-suited to evaluate. Cf. In re Veto by the Governor of the Minutes of the New Jersey Racing Comm'n, 429 N.J. Super. 277, 293 (App. Div. 2012) (noting that "any effort by the court to" resolve "intricate and somewhat competing policy decisions" would "be an exercise in policy determination of a kind clearly for nonjudicial discretion"), certif. denied, 214 N.J. 116 (2013).

Fourth, the Court's interference in this area would demonstrate a lack of respect for the Governor's constitutionally-mandated duty to maintain a balanced budget, his emergency powers under the Disaster Control Act, and his authority to administer the State's fiscal affairs.

Fifth, with FY14 over and all spending authority for that fiscal year having expired, see L. 2013, c. 77, p. 19 at General Language Provision 1, a particularly "unusual need" exists for the Court to adhere to the decisions already made.

Finally, if, after FY14 drew to a close, the Court declared the State's fiscal solution unconstitutional or directed

relief when spending authority no longer existed, the Court would disrupt the smooth operation of government and potentially trigger a negative reaction from bond markets and rating agencies alike.

For each of the foregoing reasons, Plaintiffs' FY14 challenges present non-justiciable political questions that both mandate dismissal and foreclose relief.

B. Plaintiffs' FY15 Claims Raise Non-Justiciable Political Questions That Mandate Dismissal and Foreclose Relief.

Plaintiffs' FY15 claims likewise raise non-justiciable political questions that mandate dismissal and militate against relief.

First, the Constitution explicitly and indisputably commits to the Legislature the duty of passing an annual Appropriations Act and to the Executive the power to exercise a line-item veto over items of appropriation. See N.J. Const., art. IV, § 1, ¶ 1; art. V, § 1, ¶ 15; art. VIII, § 2, ¶ 2. Moreover, the Supreme Court has explicitly held that the Judiciary is without power either to compel the Legislature to make an appropriation or the Executive to approve one. See Camden v. Byrne, supra, 82 N.J. at 50.

Second, no judicially discoverable and manageable standards exist for resolving the issues Plaintiffs' FY15 claims raise. The Court is ill-equipped to engage in revenue modelling or to enter the policy debate of whether increasing the millionaire's

tax will result in a revenue gain for the State or a revenue loss if high earners take up domicile elsewhere. Cf. In re Veto, supra, 429 N.J. Super. at 293 (holding that whether Governor's "reasons for exercising his veto were supported by substantial evidence, or whether his conclusions were reasonably reached based upon that evidence" were questions that "present a non-justiciable political question").

Third, the question of whether other items of appropriation should have been reduced instead of the pension payments requires policy determinations that the Judiciary is ill-suited to evaluate. Moreover, the Appropriations Act is the product of give-and-take, compromise, and horse-trading both within and between parties and between the elected branches of government, and the Court cannot pull out one thread now without unravelling everything.

Fourth, the Court's interference in a budget that has been passed in accordance with constitutional design would demonstrate a lack of respect for both the Governor and the Legislature. See Ivy Hill Park Apartments v. N.J. Property Liab. Ins. Guar. Ass'n, 221 N.J. Super. 131, 140 (App. Div. 1987) (rejecting mandamus claim because "relief sought requires the exercise of political and business judgments which this court may not usurp from the elected representatives of the people").

Fifth, a particularly "unusual need" exists for the Court to adhere to the budget decisions already made. Plaintiffs' Amended Complaints in these consolidated cases were filed on July 25, 2014, and the last of the Amended Complaints was served on the State July 29, 2014. In Lance v. McGreevey, 180 N.J. 590 (2004), another case involving the constitutionality of budget decisions, the Supreme Court heard oral argument on July 22nd of 2004 and issued its decision on July 26th of that year. The Court gave "prospective effect only" to its holding, because requiring "significant revisions to, if not a complete overhaul of, the current fiscal year's budget" would result in a "great" "disruption to the State." Id. at 599. The same rationale applies with even greater force here.

Finally, the Court's issuance of mandamus relief would not only wreak havoc on the State itself, as the Lance Court noted, but also throw into disarray municipalities, institutions, school districts, non-profits, and other recipients of State aid, grants, and appropriations. If the State were forced to claw back monies from these entities, their own budgets would have to be re-drawn, affecting operations, personnel, and citizens who benefit from the services they provide.

Likewise, the issuance of declaratory relief would have deleterious effects. Under the Declaratory Judgment Act, the Court may "refuse to render or enter declaratory judgment when, if

rendered, it would not terminate the uncertainty or controversy giving rise to the proceeding." N.J.S.A. 2A:16-61. Here, because the Court lacks power either to order the Legislature to appropriate funds or to compel the Governor to approve an appropriation, see Camden v. Byrne, supra, 82 N.J. at 150, a declaratory judgment would serve only to foment controversy and generate uncertainty. Any such judgment would pit the Judiciary against the other two branches of government, engender uncertainty in the bond markets, and potentially trigger credit rating downgrades.

The Supreme Court, when faced with analogous situations, has refused to issue a declaratory judgment. For example, in Fitzgerald, supra, 47 N.J. at 106, a case that pre-dated the Tort Claims Act, plaintiff asked the Court to issue a declaratory judgment concerning the State's liability even though the Court could not bring about practical relief. The Court noted that "the question is whether a judge or jury could review the policy or political decisions involved without in effect taking over the responsibility and power of th[e] other branches" of government. Id. at 109. The Court ultimately refused to grant declaratory relief or otherwise weigh in on the issue because "there is a political discretion as to what ought to be done, as to priorities, and as to how much should be raised by taxes." Id. at 110. "[S]uch matters involve discretion and revenue and are committed to

the judgment of the legislative and executive branches." Ibid.; see also Proprietary Ass'n v. Board of Pharmacy, 16 N.J. 62, 71 (1954) (refusing to grant declaratory relief in case involving definition of medicine because "[v]ital social interests are involved).

For each of the foregoing reasons, Plaintiffs' FY14 and FY15 challenges present non-justiciable political questions that mandate dismissal and foreclose the Court from granting the relief sought.

POINT IX

THE DOCTRINE OF SOVEREIGN IMMUNITY BARS PLAINTIFFS' FEDERAL CONSTITUTIONAL CLAIMS.

The doctrine of sovereign immunity bars Plaintiffs' federal claims. As explained below, the State is immune on Eleventh Amendment grounds from suit in federal court seeking to compel specific performance of a contract. Courts have repeatedly held that if a State is immune from federal claims in federal court, the State is immune from these same claims in State court. The Court should therefore dismiss on grounds of sovereign immunity the federal claims Plaintiffs raise. Chapter 78 does not preclude this result. The mandate in N.J.S.A. 43:3C-9.5(c)(2) that the State not assert sovereign immunity is merely a consent to submit to the jurisdiction of the Superior Court and does not constitute a waiver of immunity from liability.

A. The State Has Immunity In Both Federal and State Court from Federal Claims Seeking to Compel Specific Performance of a Contract.

Chapter 78 has been the subject of numerous challenges, both in federal and State court, and every court that has considered the issue has held that the State is immune from federal claims seeking to compel specific performance of a contract.

1. The State has immunity in federal court from federal claims seeking to compel specific performance of a contract.

Cases seeking to compel the State to perform its obligation under a contract have a unique pedigree. The "doctrine of sovereign immunity was a matter of importance in the early days of independence." Nevada v. Hall, 440 U.S. 410, 418 (1979). "Many of the States were heavily indebted as a result of the Revolutionary War," and they "were vitally interested in the question whether the creation of a new federal sovereign, with courts of its own, would automatically subject them, like lower English lords, to suits in the courts of the 'higher' sovereign." Ibid. When concerns reached a fever pitch during the Constitutional Convention, Alexander Hamilton assured the people that the federal judiciary would not be able to compel the States to pay their contractual debt. He argued that contracts between a sovereign and individuals "are only binding on the conscience of the sovereign" and "have no pretensions to a compulsive force." Federalist No. 81. "They confer no right of action independent of

the sovereign [w]ill." Ibid. "To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State." Ibid.

When, in 1793, the United States Supreme Court issued a decision enforcing a contract against a State, see Chisholm v. Georgia, 2 U.S. 419 (1793), the States rapidly ratified the Eleventh Amendment. Ever since, courts have consistently interpreted the Amendment to protect State governments from federal claims seeking specific performance of a contract.

This interpretation had its genesis in the aftermath of the Civil War, when States were again heavily burdened with contract debt. See, e.g., Hagood v. Southern, 117 U.S. 52, 70 (1886) (dismissing contact claim on immunity grounds because claims sought "performance of an obligation which belongs to the State in its political capacity"); In Re Ayers, 123 U.S. 443, 504 (1887) (holding that "where the contract is between the individual and the State, no action will lie against the State," and any action against "officers of the State, the object of which is to enforce its [i.e. the contract's] specific performance" are "equally within the prohibition of the Constitution"). Courts have continued until the present day to apply the principle that the Eleventh Amendment bars suit in federal court seeking to enforce a contract against a

State. The Supreme Court recently explained the rationale behind this principle:

> Today, as at the time of the founding, the allocation of scarce resources among competing needs and interests lies at the heart of the political process. While the judgment creditor of the State may have a legitimate claim for compensation, other important needs and worthwhile ends compete for access to the public fisc. Since all cannot be satisfied in full, it is inevitable that difficult decisions involving the most sensitive and political of judgments must be made. If the principle of representative government is to be preserved to the States, the balance between competing interests must be reached after deliberation by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government and invoked by the private citizen.
>
> [Alden v. Maine, 527 U.S. 726, 751 (1999).]

Recently, relying on In re Ayers and its progeny, a federal district court dismissed on grounds of sovereign immunity a challenge to Chapter 78 that sought specific performance of an alleged contract. See New Jersey Educ. Ass'n v. New Jersey, 2012 U.S. Dist. LEXIS 28683 (D.N.J. 2012) ("NJEA II"). The Court held that plaintiffs' "request for relief that seeks either immediate full funding of the state public-employee pension system or monetary damages" are "clearly barred by the Eleventh Amendment." Id. at *16. "Both requests seek to obtain funds withheld in the past." Ibid. "Even if the [d]efendants' withholding of funds was unlawful, any attempt to rectify this past withholding of funds would be retroactive in nature" and "is exactly the type of relief"

the Eleventh Amendment bars. Ibid. (citing Edelman v. Jordan, 415 U.S. 651, 668 (1974)).

Here, likewise, Plaintiffs seek to recoup FY14 and FY15 funds that the State withheld in the past. Under well-established Supreme Court precedent, sovereign immunity bars Plaintiffs from obtaining relief for these past actions.

The NJEA II Court also held that, to the extent plaintiffs sought "annual payments on a forward going basis," they were seeking "to compel specific performance of a contract existing between the State and the [p]laintiffs," and the Eleventh Amendment therefore barred their claim. See NJEA II, supra, 2012 U.S. Dist. LEXIS 28683, at *16-17. The Court also dismissed plaintiffs' claims for declaratory judgment and injunctive relief. Id. at *17. The Court reasoned that this relief, "both in substance and in practical effect," seeks "specific performance of the alleged pre-Chapter 78 contract existing between [p]laintiffs and the State of New Jersey." Ibid. "Under controlling Supreme Court precedent, such relief is not permitted." Ibid. Here, likewise, Plaintiffs request funding "on a forward going basis," a declaratory judgment that they are entitled to the funding, and a Court Order enforcing the provisions of Chapter 78. Sovereign immunity bars both their federal claims and the relief Plaintiffs seek.

2. The State has immunity in State court from federal claims seeking to compel specific performance of a contract.

Under well-settled precedent, a state may not "be forced to entertain in its own courts suits from which it was immune in federal court." Howlett v. Rose, 496 U.S. 356, 365 (1990); see also Alden, supra, 527 U.S. at 747 (holding "sovereign immunity bars relief against States and their officers in both state and federal courts"); Allen v. Fauver, 167 N.J. 69, 74 (2001) (barring federal claims where State did not consent to suit in federal court).

This principle of dual immunity applies not only to claimed violation of federal statutes, but also to constitutionally-based claims. First, as the Supreme Court in Alden explained, "it is difficult to conceive that the Constitution would have been adopted if it had been understood to strip the States of immunity from suit in their own courts." Alden, supra, 527 U.S. at 743. "[N]othing in Article III or in any other part of the Constitution suggested the States could not assert immunity from private suit in their own courts." Ibid.; see also id. at 717 (quoting Alexander Hamilton's argument in Federalist No. 81 that Constitution did not divest states of immunity in contract cases).

Second, any attempt to limit sovereign immunity by excluding cases arising under the federal Constitution would run afoul of Howlett, supra. In Howlett, the Supreme Court reaffirmed

the long-held principle that the "State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not subject to suits under § 1983, in either federal court or state court." Howlett, supra, 496 U.S. at 365. Section 1983 concerns not only alleged violations of federal legislation, but also alleged deprivation of "any rights . . . secured by the [United States] Constitution." 42 U.S.C. § 1983. Howlett therefore bars Plaintiffs' federal constitutional claims, all of which were brought under § 1983.

Third, courts at every level have recognized that sovereign immunity bars federal constitutional claims in state court. In Louisiana ex rel. The New York Guaranty & Indemnity Company v. Steele, 134 U.S. 230, 232 (1890), the Supreme Court affirmed a decision of the Louisiana Supreme Court, holding that sovereign immunity barred an impairment of contract suit against a state official in state court. See also Alden, supra, 527 U.S. at 745-46 (citing Steele with approval). Similarly, the New Mexico Supreme Court held that "Alden makes clear that [a] Contracts Clause claim is barred by sovereign immunity." Manning v. Mining and Minerals Div. of the N.M. Energy Dep't, 144 P.3d 87, 98 (N. M.), cert. denied, 549 U.S. 1051 (2006); see also Duffy v. Armstrong, 2010 N.J. Super. Unpub. LEXIS 734, at *18, *41-42 (App. Div. 2010) (rejecting First, Thirteenth, and Fourteenth Amendment claims because "[i]f a state agency or official enjoys Eleventh

Amendment immunity a court, either state or federal, does not have jurisdiction over the case") (Ra 278); Embry v. State, 2009 N.J. Super. Unpub. LEXIS 2097, at *28, *34-35 (App. Div. 2009) (rejecting Fourteenth Amendment claim because, under Alden, "federal claims may not be brought against it [i.e., the State] in either federal or state court").[10]

In New Jersey Education Association v. State, 2013 N.J. Super. Unpub. LEXIS 1459, at *20-*32 (Law Div. 2013) ("NJEA III"), another case involving Chapter 78, this Court likewise dismissed on grounds of sovereign immunity plaintiffs' federal claims seeking specific performance of an alleged contract right. In Berg v. Christie, yet another Chapter 78 case, the Appellate Division cited with approval the Court's reasoning in NJEA III, supra. See Berg, supra, 436 N.J. Super. at 247. The Appellate Division, citing Howlett, Alden, and Allen, supra, then held that "the State has sovereign immunity with respect to plaintiffs' federal causes of action." Berg, supra, 436 N.J. Super. at 247.

B. The State Did Not Waive its Sovereign Immunity From Liability.

Any "waiver of sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign." Sossamon v. Texas, 131 S. Ct. 1651, 1658 (2011). Such a waiver

[10] The State is unaware of any unpublished decision contrary to those the State cites in its brief.

"may not be enlarged beyond the explicit language of the statute." Jacobson v. United States, 422 N.J. Super. 561, 568 (App. Div. 2011). Two types of sovereign immunity exist: 1) immunity from suit, which means that the sovereign does not have to submit to the jurisdiction of a court, state or federal, to stand trial; and 2) immunity from liability, which is a defense to specific claims brought in the suit. See Lombardo v. Pennsylvania, 540 F.3d 190, 193 (3rd Cir. 2008). A sovereign "may waive one without waiving the other." Meyers v. Texas, 410 F.3d 236, 252-53 (5th Cir. 2005); see also Lombardo, supra, 540 F.3d at 198-99 (same); cf. Sossamon, supra, 131 S. Ct. at 1658 ("So, for example, a State's consent to suit in its own courts is not a waiver of its immunity from suit in federal court.").

Here, N.J.S.A. 43:3C-9.5(c)(2) provides that "[t]he State and other public employers shall submit to the jurisdiction of the Superior Court, Law Division and shall not assert sovereign immunity in such an action." This consent to suit in the Law Division does not consist of either a consent to suit in federal court or a waiver of immunity from liability from federal claims.

For all of the foregoing reasons, Chapter 78 presents no bar to the State's assertion of sovereign immunity from Plaintiffs' federal claims, and the Court should dismiss these claims.

POINT X

PLAINTIFFS' TAKINGS CLAIMS FAIL BECAUSE AN ALLEGED TAKING OF MONEY IS NOT ACTIONABLE UNDER THE TAKINGS CLAUSE.

First, Plaintiffs do not have a protectable property interest in remittance of monies into the pension system. Plaintiffs' "interest in the fund does not include oversight of its administration or extend to future appropriations by the Legislature." NJEA I, supra, 412 N.J. Super. at 216. To "argue otherwise" would "run afoul of our State Constitution's Appropriations Clause, requiring that the State's finances be conducted on the basis of a single fiscal year covered by a single balanced budget, N.J. Const. art. VIII, § 2, ¶ 2; and Debt Limitation Clause, N.J. Const. art. VIII, § 2, ¶ 3, prohibiting one Legislature from incurring debts which subsequent Legislatures would be obliged to pay, without prior approval by public referendum." Ibid.

Second, even if a contractual right to the State's remittance of payment into the pension systems did exist, the takings claim still fails. "[W]hen a contract between a private party and the Government creates the property right subject to a Fifth Amendment claim, the proper remedy for infringement lies in contract, not taking." Tamerlane, Ltd. v. United States, 80 Fed. Cl. 724, 738 (Fed. Cl. 2008); see also NJEA I, supra, 412 N.J. Super. at 201 (noting in case challenging lack of pension funding

that Law Division merged takings claim into contract claim). While a few exceptions to this general rule exist, the exceptions involve physical or real property, not money. See, e.g., United States v. Gen. Motors Corp., 323 U.S. 373 (1945) (tenant's leasehold); Balow & Haun, Inc. v. United States, 87 Fed. Cl. 428 (Ct. Fed. Cl. 2009) (lease); Integrated Logistics Support Sys. Int'l v. United States, 42 Fed. Cl. 30, 34 (Ct. Fed. Cl. 1998) ("materials"); Sun Oil v. United States, 572 F.2d 786, 792 (Ct. Cl. 1978) (lease).

The Court of Federal Claims and the Federal Circuit have uniformly held that the taking of money simply is not actionable under the takings clause.[11] See Branch v. United States, 69 F.3d 1571, 1574-76 (Fed. Cir. 1995) (rejecting takings claim because to hold otherwise would lead to "curious conclusion that the government may take money . . . as long as it pays the money back"); Commonwealth Edison Co. v. United States, 46 Fed. Cl. 29, 40-42 (Fed. Cl. 2000) (reviewing host of cases holding that alleged deprivation of money is "not susceptible to a taking analysis").

Third, the withholding of funds allegedly due and payable is not compensable under the federal takings clause. See United

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[11] These courts both have special expertise in takings cases. See 28 U.S.C. §§ 1346(a)(2), 1491(a)(1) (Court of Federal Claims has exclusive jurisdiction over virtually all takings claim against United States); Robert Meltz, "Takings Law Today: A Primer for the Perplexed," 34 Ecology L.Q. 307, 312 (2007) (by virtue of large number of takings claims that Court of Federal Claims and Federal Circuit handle, "their takings jurisprudence is more fully evolved than in other courts" and has "nationwide influence").

States v. Sperry Corp., 493 U.S. 52, 62 n.9 (1989) (rejecting takings claim premised on failure to pay money because to hold otherwise would result in "extravagant expansion" of takings law); Adams v. United States, 2003 U.S. Claims LEXIS 238, at *29-30 (Fed. Cl. 2003) (finding no takings violation where "proceeds were simply not paid"), aff'd o.b., 391 F.3d 1212 (Fed. Cir. 2004), cert. denied, 546 U.S. 811 (2005).

For all of the foregoing reasons, Plaintiffs' takings claims fail as a matter of law, and the Court should dismiss them.

POINT XI

PLAINTIFFS' DUE PROCESS CLAIMS FAIL BECAUSE THE GOVERNOR'S EXERCISE OF BOTH HIS POWERS UNDER THE RESERVE ACT AND HIS CONSTITUTIONAL VETO POWER ARE RATIONALLY BASED.

Plaintiffs' procedural due process claim fails because they do not have a protectable property interest in the State's remittance of the UAAL payment. See Point X, supra. Plaintiffs' substantive due process claim fails for like reason and for the additional reason that the decision not to remit the entirety of the pension payment is rationally based.

First, "substantive due process is reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience" or "are offensive to human dignity." Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 367 (1996) (internal citation and quotation omitted); accord

Chainey v. Street, 523 F.3d 200, 219 (3d Cir. 2008) ("To establish a substantive due process claim, a plaintiff must prove the particular interest at issue is protected by the substantive due process clause and the government's deprivation of that protected interest shocks the conscience.").[12] See also Figueiras v. Newark Pub. Schools, 426 N.J. Super. 449, 469 (App. Div. 2012) (applying Rivkin standard to substantive due process claim in employment context).

Here, far from acting unconscionably, the Governor, in furtherance of his constitutional duty to ensure a balanced budget, addressed an unprecedented revenue shortfall by making a partial payment into the pension system in FY14 while preserving essential State services. Similarly, in exercising his constitutional veto power in FY15, the Governor had to "make[] difficult decisions on competing public interests, while continuing to allocate scarce resources to fund the critical programs protecting the most vulnerable of our citizens." FY15 Veto Message, supra, at 3.

Second, the State does not violate substantive due process if its action "reasonably relates to a legitimate legislative purpose." In re "Plan for Orderly Withdrawal from N.J." of Twin City Fire Ins. Co., 129 N.J. 389, 406 (1992). It is enough

[12] See Roman Check Cashing v. N.J. Dep't of Banking & Ins., 169 N.J. 105, 110 (2001) (reiterating that New Jersey courts apply to both federal and State substantive due process claims standards that United States Supreme Court developed).

that there is "any conceivable state of facts" justifying the State's action. FCC v. Beach Commc'ns, 508 U.S. 307, 314 (1993). The "burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis" for the State action. Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 367 (2001). Here, Plaintiffs do not dispute that the State discovered in the eleventh hour that both FY14 and FY15 revenues were going to be significantly less than anticipated. Similarly, Plaintiffs do not dispute that the State's decision not to make the entirety of the pension payment addresses this broad economic problem. Plaintiffs have thus effectively conceded that the Governor's action passes rational basis scrutiny.

Third, a "court engaging in rational basis review is not entitled to second guess" the State "on the factual assumptions or policy considerations" undergirding the State's actions. Sammon v. New Jersey Bd. of Med. Exam'rs, 66 F.3d 639, 645 (3d Cir. 1995). The Court precisely "is not at liberty to appraise the information available" or to "weigh the evidence for or against" the challenged action. State in re J.G., 289 N.J. Super. 575, 583 (App. Div. 1996). The Court "may not test in the balances of judicial review the weight and sufficiency of facts to sustain the conclusion" of the State. Reingold v. Harper, 6 N.J. 182, 195 (1951); see also Vance v. Bradley, 440 U.S. 93, 97 (1979) ("judicial intervention is generally unwarranted no matter how unwisely we may think a

political branch has acted"; even "improvident decisions will eventually be rectified by the democratic process"). Here, as a matter both of fact and policy, the Governor determined that the budget the Legislature presented him contained spending "unsupported by revenue on hand or anticipated to be received during the course of Fiscal Year 2015." FY15 Veto Message, supra, at 2. The Court may not second guess the Governor's factual assumptions or his policy determinations. See Sammon, supra, 66 F.3d at 645.

For all of the foregoing reasons, the Court should dismiss Plaintiffs' due process claims.

POINT XII

PLAINTIFFS' ESTOPPEL CLAIM FAILS BECAUSE ESTOPPEL WOULD INTEREFERE WITH ESSENTIAL GOVERNMENTAL FUNCTIONS.

Plaintiffs' estoppel claims would require the Court to take the remarkable and impermissible step of interfering with the Governor's constitutional role in the budget process and overriding the Appropriations Act.

"Equitable estoppel is rarely invoked against a governmental entity, particularly when estoppel would interfere with essential government functions." O'Malley v. Dep't of Energy, 109 N.J. 309, 316 (1987); Citizens for Equity v. Dep't of Envtl. Protec., 126 N.J. 391, 398 (1991) (holding that "likelihood that an estoppel against [State agency] would interfere with an otherwise

valid and significant governmental objective impel[s] our adherence to the general rule that equitable estoppel is rarely invoked against a governmental entity"); E. Orange Bd. of Educ. v. New Jersey Sch. Constr. Corp., 405 N.J. Super. 132, 145 (App. Div. 2009) (holding that "[a]pplication of equitable estoppel in the context of the allocation of scarce monetary resources . . . would prejudice essential governmental functions").

Here, Plaintiffs ask this Court to estop the Governor from performing his constitutionally-mandated duty to ensure a balanced budget, see N.J. Const. art. VIII, § 2, ¶ 2, and from exercising his constitutional line-item veto power, see N.J. Const. art. V, § 1, ¶ 15. An estoppel of either sort would be unprecedented and would offend bedrock principles of separation of powers. As explained above, see pp. 30-32, Camden v. Byrne precludes the Court from thrusting itself, either beforehand or after the fact, into the constitutionally-ordained budget process.

Further, an "essential element[]" of an equitable estoppel claim is "a knowing and intentional misrepresentation by the party sought to be estopped." O'Malley, supra, 109 N.J. at 317. Here, Plaintiffs have not alleged facts sufficient to demonstrate that the State or any of its officers made any "knowing and intentional misrepresentation."

Finally, to succeed on their estoppel claim, Plaintiffs have to prove that that relied to their detriment upon the alleged

misrepresentation and that the reliance was reasonable. Ibid. Here, however, they cannot, as a matter of law, make this showing. As the First Circuit explained in an impairment context, the "reliance interests of the party's whose contractual rights are impaired" are a "relevant consideration." United Auto., supra, 633 F.3d at 46. "Because public employees by definition serve the public and their expectations are necessarily defined, at least in part, by the public interest, they, like private parties in a highly regulated industry, have a diminished expectation that their contracts will not be impaired by the government." Ibid.; see also Buffalo Teachers, supra, 6 F.3d at 1021 ("It should not be wholly unexpected" that "public servants might well be called upon to sacrifice first when the public interest demands sacrifice"). For the same reasons, the Plaintiffs here have a diminished expectation interest, and any reliance on their part was not reasonable. The union's reliance was also unreasonable because, as sophisticated entities familiar with the laws of the State, they should have known the bedrock principle that one Legislature cannot bind another with respect to future appropriations. See generally Points I and II, supra.

For all of the foregoing reasons, the Court should dismiss Plaintiffs' equitable estoppel claims.

POINT XIII

N.J.S.A. 2C:40A-2 IS A PENAL STATUTE THAT DOES NOT PROVIDE A CIVIL REMEDY AND IS INAPPLICABLE TO THE DECISION NOT TO REMIT A PAYMENT INTO THE PENSION SYSTEMS.

The State Troopers' contention that the Governor and the Treasurer may have engaged in criminal behavior is utterly without merit. N.J.S.A. 2C:40A-2 is inapplicable to a decision not to remit a contribution into a pension fund and, regardless, does not give rise to an express or implied civil cause of action.

First, the history of N.J.S.A. 2C:40A-2 precludes its application to the pension context. L. 1999, c. 90, § 10, which was codified at N.J.S.A. 2C:40A-2, was part of a legislative effort to transfer to and codify in Title 2C (the "New Jersey Code of Criminal Justice") penal statutes scattered throughout other Titles. See Sponsor's Statement to L. 1999, c. 90 (May 3, 1999). The predecessor statute to N.J.S.A. 2C:40A-2 was N.J.S.A. 2A:170-90.2. See L. 1999, c. 90, § 10, line 8. As enacted in 1960 and amended in 1973, N.J.S.A. 2A:170-90.2 provided in pertinent part that it was a disorderly person offense for an employer to fail to make required "contributions for the support of a fund out of which benefits may be paid, including . . . any pension fund." See L. 1966, c. 121; L. 1973, c. 331. Notably, when re-enacting the statute as N.J.S.A. 2C:40A-2, the Legislature deleted all reference both to "pension fund[s]" and to "funds out of which benefits may

be paid." Such purposeful deletion evinces a legislative intent that employer decisions not to remit monies into their employees' pension funds do not violate the statute. See Sponsor's Statement to L. 1999, c. 90, supra (noting the incorporation into Title 2C of "those provisions in Title 2A . . . with continuing validity").

Second, N.J.S.A. 2C:40A-2 does not contain an express provision for a civil remedy.

Third, Plaintiffs have not pled facts sufficient to demonstrate that they meet the 3-prong test that the Supreme Court has adopted to determine whether a penal statue implicitly gives rise to a civil remedy. See R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co., 168 N.J. 255, 272 (2002).

Fourth, neither the Governor nor the Treasurer is the "employer" of the unions. Further, Plaintiffs have not offered any proof that the Legislature meant to include the State within the intendment of the statute.

Fifth, Plaintiffs have not alleged any facts sufficient to demonstrate that the decision not to remit monies in the pension systems has resulted in the State denying any benefits or compensation to any active or retired State employees.

For all of the foregoing reasons, the Court should dismiss Count Four of the State Troopers' Amended Complaint.

POINT XIV

PLAINTIFFS' GOOD FAITH AND FAIR DEALING CLAIM FAILS BECAUSE THEY DO NOT ALLEGE FACTS SUFFICIENT TO DEMONSTRATE THAT THE STATE'S ACTIONS WERE MOTIVATED BY ILL WILL OR LACKED A LEGITIMATE PUBLIC PURPOSE.

The State Troopers' good faith and fair dealing claim fails because they did not allege facts sufficient to prove either that the State's decision not to remit the UAAL portion of the pension payment in FY14 or the Governor's veto of the UAAL in FY15 were motivated by ill will or lacked a legitimate public purpose.

First "[i]n the absence of a contract there can be no breach of an implied covenant of good faith and fair dealing." Noye v. Hoffmann-La Roche Inc., 238 N.J. Super. 430, 434 (App. Div. 1990). Here, as discussed extensively above, see pp. 10-35, the strictures of the Debt Limitation and Appropriations Clauses prevent one legislature from binding another with regard to appropriations. Therefore, N.J.S.A. 43:3C-9.5(c) could not have created a binding contractual right to annual funding of the pension systems.

Second, "[p]roof of bad motive or intention is vital to an action for breach of the covenant" of good faith and fair dealing. Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 225 (2002). Here, Plaintiffs have not alleged facts sufficient to suggest that the State acted in bad

faith or that the challenged decisions lacked "any legitimate purpose." See id. at 226.

To the contrary, the State took the challenged action in FY14 only after an unprecedented and unanticipated fiscal crisis arose and only after taking other remedial measures that proved insufficient. See EO 156 (Christie 2014) at p.1 (discussing "significant, unanticipated revenue shortfall"); id. at p. 5, ¶3 (Director of OMB instructed to reserve UAAL payment "if, and only if, necessary"). Similarly, in his FY15 Veto Message, the Governor explained: "All of my actions in exercising the fiscal powers and responsibilities conferred upon me by the Constitution and laws of the State are made because I conclude they are in the best interests of the State of New Jersey." Governor's FY15 Veto Message at 4. Da4. Simply put, a "fundamental disagreement" exists between "the Legislature's strongly held opinion that constantly raising taxes is best for the State" and the Governor's "conviction that incentivizing already overtaxed individuals and businesses to avoid or flee our State is foolish and counterproductive." Ibid. A policy disagreement is neither justiciable nor evidence of ill will.

In short, the State Troopers fail to allege facts sufficient to make out a prima facie case of breach of the covenant of good faith and fair dealing. The Court should therefore dismiss Count Three of the Troopers' Amended Complaint.

POINT XV

THE STATE TROOPERS' EQUAL PROTECTION CLAIMS FAIL BECAUSE THE TROOPERS DO NOT ALLEGE FACTS SUFFICIENT TO STATE A CAUSE OF ACTION.

To withstand a motion to dismiss, "a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." Nostrame, supra, 420 N.J. Super. at 436. Here, the State Trooper Plaintiffs do not even get as far as reciting the elements of an equal protection claim.

The entirety of the State Troopers' equal protection claim consists of two paragraphs. The first is a formulaic recitation that all preceding paragraphs are "repeat[ed]" "as if set forth herein at length"; the second is a bald assertion that "the Defendants, by their actions and conduct, have been and are in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and of Article I, par[.] 1 of the New Jersey Constitution." See State Troopers' Amended Complaint at ¶¶ 35-36. Nowhere in their Amended Complaint do they allege facts sufficient to generate even an inference that they have been treated differently from others similarly situated. Likewise, the Troopers do not allege any facts sufficient to demonstrate the remaining elements of either a State or federal equal protection claim. "A plaintiff cannot simply assert that any essential facts that the court may find lacking can be dredged up in discovery." Nostrame, supra, 420 N.J. Super. at 436.

The Troopers' equal protection claims therefore fail as a matter of law and the Court should dismiss Count Five of the Troopers' Amended Complaint.

POINT XVI

PLAINTIFFS' CLAIMS UNDER THE NEW JERSEY CIVIL RIGHTS ACT FAIL BECAUSE PLAINTIFFS DO NOT HAVE A SUBSTANTIVE RIGHT TO AN ANNUAL APPROPRIATION THAT PAYS DOWN THE UAAL.

Plaintiffs do not have a substantive right to an annual appropriation that pays down the unfunded liability of the pensions systems, and Plaintiffs' claims under the New Jersey Civil Rights Act ("CRA") therefore fail.

Within the past two months, the New Jersey Supreme Court issued two decisions clarifying the scope and meaning of the CRA, N.J.S.A. 10:6-1 and -2. In Gormley v. Wood-El, ___ N.J. ___, 2014 N.J. LEXIS 650 (June 30, 2014), the Supreme Court explained that the CRA "is a means of vindicating substantive rights and is not a source of rights itself." Id. at *32. The CRA thus does not provide an independent basis of relief; in order to prevail on their CRA claims, Plaintiffs must prove, among other things, that Chapter 78 grants them a substantive right to annual appropriations.

In Tumpson v. Farina, ___ N.J. ___, 2014 N.J. Lexis 802 (July 31, 2014), the Court held that to "establish a violation" of the CRA, plaintiffs "must prove" that (1) the Constitution or laws

of this State "conferred on them a substantive right"; (2) a person "deprived them of that right"; and (3) the person "was acting under color of law." Id. at *36-37. The Court acknowledged that the CRA "does not define substantive right, nor is the term self-explanatory. Id. at *37. The Court therefore adopted the test that the United States Supreme Court used in Blessing v. Freestone, 520 U.S. 329, 340-41 (1997) to determine whether a substantive right exists for purposes of Section 1983.

To demonstrate that a law confers a substantive right, a plaintiff must show that (1) the Legislature intended the statute "to benefit the plaintiff"; (2) "the right assertedly protected by the statute is not so vague and amorphous that its enforcement would strain judicial competence"; and (3) "the statute must unambiguously impose a binding obligation" on the defendant. Tumpson, supra, 2014 N.J. Lexis 802, at *40, 43. Here, the final prong is fatal to Plaintiffs' claims. If -9.5(c) is construed as imposing a binding obligation on the State to appropriate monies annually, then the subsection runs afoul of the Debt Limitation and Appropriations Clauses of the State Constitution. See pp. 10-35, supra. Section -9.5(c) is free from constitutional defect only if it calls for, albeit in the most exhortatory terms possible, a truly voluntary appropriation.

Plaintiffs therefore do not have a substantive right to annual appropriations that pay down the UAAL, and the Court should dismiss Plaintiffs' claims under the CRA.

CONCLUSION

The Court should dismiss the Complaint and the Amended Complaints.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Jean P. Reilly
Jean P. Reilly
Assistant Attorney General

Dated: Sept. 2, 2014

APPENDIX

TABLE OF APPENDIX

GOVERNOR CHRISTIE'S VETO MESSAGE RE: FY15 APPROPRIATIONS ACT Da1

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

June 30, 2014

SENATE BILL No. 2015

To the Senate:

Pursuant to Article V, Section I, Paragraph 15 of the New Jersey Constitution, I am appending to Senate Bill No. 2015, at the time of my signing it, my statement of items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

For the fourth time in five years, the Legislature has passed an income tax increase and this year, in a new twist, has included a 15% corporation business tax ("CBT") surtax as well. The Legislature has included the proposed revenue from these misguided initiatives as an essential component of its Fiscal Year 2015 budget bill. Because the foundation of the Legislature's proposal is unsound, I must object.

As I have said before, I strongly believe that punitively raising taxes on our already overtaxed residents and small business owners is not the answer to the State's short- and long-term fiscal challenges. The Legislature's budget, if enacted, would accomplish nothing more than to repeat the failed, irresponsible, and unsustainable policies that were commonplace in Trenton for years before my administration. Simply stated, I do not accept the premise that we can tax our way to prosperity in this manner. Nor do I accept the notion that either a three-year income tax hike or a one-year CBT surtax is an appropriate tool to resolve a fundamental structural budget imbalance or to address legacy pension and health benefit obligations that reflect decades of underfunding, the irresponsible adoption of unfunded benefit enhancements, and investment under-performance during the first decade of the 2000s.

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Rather than enacting responsible policies that will encourage and allow New Jersey's economy and revenues to grow, the Legislature appears to be intent on inhibiting economic growth with crushing taxes. Imposing vindictive taxes on the businesses and highly productive taxpayers we need here in New Jersey to create jobs and grow our economy will only invite these taxpayers to take rational steps to mitigate their exposure to New Jersey's taxes, diverting jobs and investment activity to other states with lower tax burdens. Instead, we should be appropriately and responsibly lowering taxes for all New Jerseyans to stimulate New Jersey's economy, reduce disincentives to invest and create jobs in New Jersey, and improve our already uncompetitive tax climate. It is this approach, not yet another tax increase, that will allow the State's economy and revenues to grow.

Regrettably, the Legislature has attempted to derail our progress toward making New Jersey more competitive; rather than making hard choices in a responsible manner, it has instead imprudently and inappropriately proposed to raise taxes and included hundreds of millions of dollars in new spending that is unsupported by revenue on hand or anticipated to be received during the course of Fiscal Year 2015. Accordingly, keeping faith with my commitment to New Jerseyans and my constitutional obligation to ensure that the State enters the next fiscal year with a balanced budget, I am compelled to make numerous modifications as reflected herein.

The general appropriations law for Fiscal Year 2015, as modified, that I signed today is consistent with my previous four budgets in that it delivers a balanced State budget while maintaining the fiscal discipline that I promised and delivered during these most difficult and trying economic times. New

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Jersey must have a budget that controls direct State government spending; does not raise taxes on New Jersey families, already among the most heavily taxed citizens in the country; works to improve the State's economic competitiveness; and makes difficult decisions on competing public interests, while continuing to allocate scarce resources to fund the critical programs protecting the most vulnerable of our citizens.

New Jersey has experienced, time and again, the ravages of budgets built on the false premise that, in this competitive national and international economy, any state can increase taxes to support profligate spending with impunity. While others are cutting taxes and fighting to lure both corporations and individuals to their states, the New Jersey Legislature continues to cling to the disproven theory that higher taxes will not chase wealth and investment from the State. I simply do not accept that failed strategy and will not fall victim to the lure of false riches from temporary taxes that will make New Jersey less competitive while increasing the already extreme volatility of our State's revenue base. The Legislature's approach undermines our capacity to engage in rational budget planning that supports the programs and services the citizens of our State need and deserve. Those programs and services protect the State's most vulnerable populations, address needs that cannot wait, and encourage the very growth and prosperity the Legislature is intent on squelching. New Jersey needs permanent, stable solutions to cure its structural fiscal imbalance.

As Governor, I take very seriously my constitutional and statutory responsibilities concerning the State's finances, including: making my annual budget recommendations in February as required by N.J.S.A. 42:27B-20; exercising my line-item,

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conditional, and absolute veto powers over taxing and spending decisions as conferred in Article V, Section 1, Paragraphs 14 and 15 of the New Jersey Constitution; overseeing, through the State Treasurer and the Office of Management and Budget, the fiscal affairs of the State throughout each fiscal year to maintain a balanced budget and ensure expenditures do not exceed revenues; and certifying that total revenues, both on hand and anticipated, will be available to meet appropriations as required by Article VIII, Section 2, Paragraph 2 of the State Constitution. Much deliberation and careful study precede the presentation of my budget recommendations to the Legislature each February.

All of my actions in exercising the fiscal powers and responsibilities conferred upon me by the Constitution and laws of the State are made because I conclude they are in the best interests of the State of New Jersey. I exercise these powers solely in furtherance of the significant responsibilities entrusted to me as Governor of the State of New Jersey, cognizant and respectful of the real effects of my decisions on each and every resident of the State. I likewise respect the broad authority and responsibility of the Legislature to introduce and pass an appropriations law each year reflecting its spending priorities and its absolute ability under the State Constitution to override any or all of the vetoes I have signed today.

It is evident that there exists a fundamental disagreement between the Legislature's strongly held opinion that constantly raising taxes is best for the State and my conviction that incentivizing already overtaxed individuals and businesses to avoid or flee our State is foolish and counterproductive. The framers of the New Jersey Constitution wisely established a

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clear and orderly political process for resolving these sorts of policy disputes concerning the State's finances.

Accordingly, I am appending to Senate Bill No. 2015, at the time of my signing it, my statement of items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

Respectfully,

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ Christopher S. Porrino

Chief Counsel to the Governor

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ATTACHMENT 1 TO VETO MESSAGE

State of New Jersey

Executive Department

Page

16 DEPARTMENT OF CHILDREN AND FAMILIES

50 Economic Planning, Development, and Security
55 Social Services Programs
DIRECT STATE SERVICES

"01-1610 Child Protection and Permanency — $453,518,000."
This item is reduced to $452,318,000.

"(From General Fund — $210,756,000)."
This item is reduced to $209,556,000.

"Total Appropriation, State, Federal and All Other Funds — $557,733,000."
This item is reduced to $556,533,000.

"(From General Fund — $279,395,000)."
This item is reduced to $278,195,000.

Less:

"Total Deductions — $278,338,000."

"Total Direct State Services Appropriation, Social Services Programs — $279,395,000."
This item is reduced to $278,195,000.

Direct State Services:

29 "01 Child Collaborative Mental Health Care Pilot Program — ($2,400,000)."
This item is reduced to $1,200,000.

"Department of Children and Families, Total State Appropriation — $1,097,061,000."
This item is reduced to $1,095,861,000.

22 DEPARTMENT OF COMMUNITY AFFAIRS

50 Economic Planning, Development, and Security
55 Social Services Programs
DIRECT STATE SERVICES

Direct State Services:

36 "Notwithstanding the provisions of any law, rule or regulation to the contrary, every household in the State that is eligible to receive benefits under the Supplemental Nutrition Assistance Program (SNAP) established pursuant to the "Food and Nutrition Act of 2008," Pub.L.110-246 (7 U.S.C. s.2011 et seq.) shall receive a minimum annual energy assistance payment of $21 in order to qualify the household for a heating and cooling standard utility allowance under the SNAP program, in accordance with 7 U.S.C. s.2014(e)(6)(C), unless a standard utility allowance would have been unavailable to the household under the State and federal criteria for SNAP and any applicable energy assistance programs that were in place as of July 1, 2013. This annual payment shall be disbursed in accordance with the provisions of the Low Income Home Energy Assistance Program (LIHEAP), established pursuant to Pub.L. 97-35, Title XXVI (42 U.S.C. s.8621 et seq.) or other energy assistance program for which the household is eligible, as applicable. Any costs associated with increasing LIHEAP payments shall first be charged to the unexpended balance of federal funds available for the LIHEAP program, to the extent permitted by federal law and regulation."

The quoted language is deleted in its entirety.

70 Government Direction, Management, and Control
75 State Subsidies and Financial Aid
STATE AID

State Aid:

41 "Notwithstanding the provisions of any law or regulation to the contrary, the amount hereinabove appropriated for Transitional Aid to Localities is subject to the following condition: a municipality that has not yet applied for Transitional Aid for 2015 as of the effective date of this act may file an application on the appropriate forms prescribed by the Director of the Division of Local Government Services((on or before August 15, 2014)) and such application shall be considered by the Director for a determination of eligibility for Transitional Aid for the current fiscal year."

The language within double parentheses is deleted.

42 "The Commissioner of Community Affairs shall report on a quarterly basis to the Joint Budget Oversight Committee detailing all payments to any private vendors with which it has contracted to manage the Reconstruction, Rehabilitation, Elevation and Mitigation Program or any successor thereto funded by the Community Development Block Grant-Disaster Recovery Grant. The first report submitted shall also detail all such payments made prior to the current fiscal year."

The quoted language is deleted in its entirety.

34 DEPARTMENT OF EDUCATION

30 Educational, Cultural, and Intellectual Development
31 Direct Educational Services and Assistance
STATE AID

"03-5120 Miscellaneous Grants-In-Aid — $52,700,000."
This item is reduced to $49,700,000.
"(From Property Tax Relief Fund — $52,700,000)."
This item is reduced to $49,700,000.

"Total State Aid Appropriation, Direct Educational Services and Assistance — $9,556,906,000."
This item is reduced to $9,553,906,000.

"(From Property Tax Relief Fund — $8,808,114,000)."
This item is reduced to $8,805,114,000.

State Aid:

49 "03 Charter School Adjustment Aid (PTRF) — ($3,000,000)."
This item is deleted in its entirety.

54 "A charter school's allocation of the amount hereinabove appropriated for Charter School Adjustment Aid shall be determined by summing: 1) the product obtained by multiplying $75 by the number of students enrolled in the charter school who reside in a school district in which the amount of adjustment aid that the school district will receive in the 2014-2015 school year accounts for less than 10%, of the sum of equalization aid, special education categorical aid, security categorical aid, school choice aid, transportation aid, under adequacy aid, supplemental enrollment growth aid, educational adequacy aid, PARCC readiness aid, per pupil growth aid, and adjustment aid that the school district will receive in the 2014-2015 school year, and 2) the product obtained by multiplying $115 by the number of students enrolled in the charter school who reside in a school district in which adjustment aid represents 10% or more of the sum of equalization aid, special education categorical aid, security categorical aid, school choice aid, transportation aid, under adequacy aid, supplemental enrollment growth aid, educational adequacy aid, PARCC readiness aid, per pupil growth aid, and adjustment aid that the school district will receive in the 2014-2015 school year."

The quoted language is deleted in its entirety.

30 Educational, Cultural, and Intellectual Development
34 Educational Support Services
STATE AID

"39-5094 Teachers' Pension and Annuity Assistance — $3,349,068,000."
This item is reduced to $2,411,753,000.
"(From Property Tax Relief Fund — $3,349,068,000)."
This item is reduced to $2,411,753,000.

"Total State Aid Appropriation, Educational Support Services — $3,349,068,000."
This item is reduced to $2,411,753,000.

"(From Property Tax Relief Fund — $3,349,068,000)."
This item is reduced to $2,411,753,000.

State Aid:

57 "39 Teachers' Pension and Annuity Fund (PTRF) — ($1,316,529,000)."
This item is reduced to $379,214,000.

"Department of Education, Total State Appropriation — $12,971,275,000."
This item is reduced to $12,030,960,000.

42 DEPARTMENT OF ENVIRONMENTAL PROTECTION

40 Community Development and Environmental Management
42 Natural Resource Management
DIRECT STATE SERVICES

"12-4875 Parks Management — $33,879,000."
This item is reduced to $33,504,000.

"Total Direct State Services Appropriation, Natural Resource Management — $61,921,000."
This item is reduced to $61,546,000.

Page

Direct State Services:

61 "12 Historic New Bridge Landing Park Commission ($375,000)."
This item is deleted in its entirety.

40 Community Development and Environmental Management
43 Science and Technical Programs
DIRECT STATE SERVICES

Direct State Services:

66 "Notwithstanding the provisions of any law or regulation to the contrary, an amount ((not to exceed $2,000,000)), as determined by the Director of the Division of Budget and Accounting, is appropriated from the Clean Energy Fund to support the Office of Sustainability and Green Energy in the Department of Environmental Protection subject to the following condition: The Board of Public Utilities and the Office of Sustainability and Green Energy shall enter into a memorandum of understanding providing for the terms and conditions for the expenditure of the funds, including but not limited to the uses of the funds and program coordination between the two agencies."

The language within double parentheses is deleted.

40 Community Development and Environmental Management
44 Site Remediation and Waste Management
CAPITAL CONSTRUCTION

69 "Except as otherwise provided in this act and notwithstanding the provisions of any other law or regulation to the contrary, the first $50,000,000 ((and one-half of any additional amounts)) in natural resource, cost recoveries and other associated damages recovered by the State, along with such additional amounts as may be determined by the Director of the Division of Budget and Accounting, in consultation with the Attorney General, to be necessary to pay for the costs of legal services related to such recoveries, shall be deposited into the Hazardous Discharge Site Cleanup Fund established pursuant to section 1 of P.L.1985, c.247 (C.58:10-23.34), and are appropriated for: direct and indirect costs of remediation, restoration, and clean up; costs for consulting, expert, and legal services incurred in pursuing claims for damages; and grants to local governments and nonprofit organizations to further implement restoration activities of the Office of Natural Resource Restoration. Recoveries in excess of the amounts appropriated pursuant to this paragraph, consistent with the terms and conditions of applicable settlement agreements or court rulings, shall be deposited in the General Fund as general State revenue."

The language within double parentheses is deleted.

"Department of Environmental Protection, Total State Appropriation $334,460,000."
This item is reduced to $334,085,000.

46 DEPARTMENT OF HEALTH

20 Physical and Mental Health
21 Health Services
GRANTS-IN-AID

"02-4220 Family Health Services $123,620,000."
This item is reduced to $116,120,000.
"(From General Fund $123,091,000)."
This item is reduced to $115,591,000.

"Total Grants-In-Aid Appropriation, Health Services $190,152,000."
This item is reduced to $182,652,000.
"(From General Fund $189,623,000)."
This item is reduced to $182,123,000.

Grants-In-Aid:

80 "02 Family Planning Services ($7,500,000)."
This item is deleted in its entirety.

82 "Of the amounts hereinabove appropriated for Family Planning Services, no monies shall be expended on abortion procedures."

The quoted language is deleted in its entirety.

"Department of Health, Total State Appropriation $369,031,000."
This item is reduced to $361,531,000.

Page

54 DEPARTMENT OF HUMAN SERVICES

20 Physical and Mental Health
24 Special Health Services
7540 Division of Medical Assistance and Health Services
GRANTS-IN-AID

Grants-In-Aid:

104 "Notwithstanding the provisions of any law or regulation to the contrary, there are appropriated such amounts as are necessary to provide health insurance benefits that comply with the Affordable Care Act's requirements to persons previously covered under the FamilyCare Advantage Program. The Commissioner shall take all necessary steps to ensure that persons formerly covered under the FamilyCare Advantage Program are provided health insurance benefits pursuant to this provision."

The quoted language is deleted in its entirety.

30 Educational, Cultural, and Intellectual Development
32 Operation and Support of Educational Institutions
7601 Community Programs
GRANTS-IN-AID

"03-7601 Adult Activities — $323,400,000."
This item is reduced to $320,700,000.

"(From General Fund — $198,826,000)."
This item is reduced to $196,126,000.

"Total Appropriation, State, Federal and All Other Funds — $1,212,491,000."
This item is reduced to $1,209,791,000.

"(From General Fund — $445,873,000)."
This item is reduced to $443,173,000.

Less:

"Total Deductions — $546,440,000."

"Total Grants-In-Aid Appropriation, Community Programs — $666,051,000."
This item is reduced to $663,351,000.

"(From General Fund — $445,873,000)."
This item is reduced to $443,173,000.

Grants-In-Aid:

119 " 03 Red Ribbon Academy - Medical Special Needs Day Program — ($2,700,000)."
This item is deleted in its entirety.

70 Government Direction, Management, and Control
76 Management and Administration
7500 Division of Management and Budget
GRANTS-IN-AID

"99-7500 Administration and Support Services — $12,229,000."
This item is reduced to $8,729,000.

"Total Grants-In-Aid Appropriation, Division of Management and Budget — $12,229,000."
This item is reduced to $8,729,000.

Grants-In-Aid:

127 " 99 Medicaid / NJ Family Care Outreach And Enrollment — ($3,500,000)."
This item is deleted in its entirety.

"Department of Human Services, Total State Appropriation — $6,615,524,000."
This item is reduced to $6,609,324,000.

128 "Notwithstanding the provisions of any law or regulation to the contrary, the amounts hereinabove appropriated from the Medical Day Care Services and the Managed Care Initiative accounts are subject to the following condition: a licensed facility in the adult Medical Day Care program may serve and receive reimbursement for ((more)) participants per day ((than the facility's licensed capacity))provided that the number of participants served ((at any one time))does not exceed the facility's licensed capacity."

The language within double parentheses is deleted.

Page

74 DEPARTMENT OF STATE

30 Educational, Cultural, and Intellectual Development
36 Higher Educational Services
2405 Higher Education Student Assistance Authority
GRANTS-IN-AID

Grants-In-Aid:

156 "Notwithstanding the provisions of any law or regulation to the contrary, a student who is eligible for in-State tuition pursuant P.L.2013, c.170 (C.18A:62-4.4), and is otherwise eligible for a TAG award shall be eligible for TAG."

The quoted language is deleted in its entirety.

2445 Rowan University
GRANTS-IN-AID

Grants-In-Aid:

161 "For the purpose of implementing the appropriations act for the current fiscal year, the number of State-funded positions at Rowan University shall be 1,532((and shall be increased to reflect up to an additional 17 newly filled positions at the School of Osteopathic Medicine during the fiscal year))."

The language within double parentheses is deleted.

Higher Educational Services

165 "Funds appropriated to Rutgers University for purposes of medical education ((at New Jersey Medical School and Rutgers Medical School))are authorized to be used as necessary by the Director of Budget and Accounting and the Division of Medical Assistance and Health Services, consistent with CMS guidelines, solely to maximize federal Medicaid payments to faculty physicians and non-physician professionals who are affiliated with the aforementioned respective medical schools."

The language within double parentheses is deleted.

30 Educational, Cultural, and Intellectual Development
37 Cultural and Intellectual Development Services
2541 Division of State Library
STATE AID

Page	Item		Amount
	"51-2541 Library Services This item is reduced to $7,975,000.		$10,975,000."
	"Total State Aid Appropriation, Division of State Library This item is reduced to $7,975,000.		$10,975,000."
	State Aid:		
166	" 51 Per Capita Library Aid This item is reduced to $3,676,000.	($6,676,000)."	
	"Department of State, Total State Appropriation This item is reduced to $1,271,586,000.		$1,274,586,000."

Page

82 DEPARTMENT OF THE TREASURY

30 Educational, Cultural, and Intellectual Development
36 Higher Educational Services
STATE AID

"48-2155 Aid to County Colleges This item is reduced to $222,704,000.		$222,905,000."
"(From Property Tax Relief Fund This item is reduced to $203,904,000.	$204,105,000)."	
"Total State Aid Appropriation, Higher Educational Services This item is reduced to $222,704,000.		$222,905,000."
"(From Property Tax Relief Fund This item is reduced to $203,904,000.	$204,105,000)."	
Less:		
"Total Income Deductions		$18,800,000."
"Total State Appropriation, Higher Educational Services This item is reduced to $203,904,000.		$204,105,000."
"(From Property Tax Relief Fund This item is reduced to $203,904,000.	$204,105,000)."	

State Aid:

183 "48 Employer Contributions - Teachers' Pension and Annuity Fund (PTRF) ($258,000)."
This item is reduced to $57,000.

70 Government Direction, Management, and Control
72 Governmental Review and Oversight
2066 Office of the State Comptroller
DIRECT STATE SERVICES

Direct State Services:

188 "The appropriations hereinabove for the Office of the State Comptroller are subject to the following condition: notwithstanding the provisions of any law or regulation to the contrary, the State Comptroller shall monitor the execution of grant agreements entered into pursuant to the Building Our Future Bond Act of 2012, P.L.2013, c.41 to ensure that projects are on time, within stated purpose, and within budget, and shall report his findings and conclusions to the Joint Budget Oversight Committee not later than June 1, 2015."

The quoted language is deleted in its entirety.

70 Government Direction, Management, and Control
75 State Subsidies and Financial Aid
GRANTS-IN-AID

Grants-In-Aid:

193 "The amount hereinabove appropriated for the Homestead Benefit Program shall be available to provide homestead benefits only to eligible homeowners pursuant to the provisions of section 3 of P.L.1990, c.61 (C.54:4-8.59) as amended by P.L.2004, c.40 and by P.L.2007, c.62, as may be amended from time to time except that, notwithstanding the provisions of such laws to the contrary: (i) residents who are 65 years of age or older at the close of the tax year, or residents who are allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3-1, with (a) gross income in excess of $150,000 for tax year 2012 are excluded from the program; (b) gross income in excess of $100,000 but not in excess of $150,000 for tax year 2012 are eligible for a benefit in the amount of 5% of the first $10,000 of property taxes paid, and (c) gross income not in excess of $100,000 for tax year 2012 are eligible for a benefit in the amount of 10% of the first $10,000 of property taxes paid; (ii) residents who are not 65 years of age or older at the close of the tax year, or residents who are not allowed to claim a personal deduction as a blind or disabled taxpayer pursuant to subsection b. of N.J.S.54A:3-1, with (a) gross income in excess of $75,000 for tax year 2012 are excluded from the program; (b) gross income in excess of $50,000 but not in excess of $75,000 for tax year 2012 are eligible for a benefit in the amount of 6.67% of the first $10,000 of property taxes paid; and (c) gross income not in excess of $50,000 for tax year 2012 are eligible for a benefit in the amount of 10% of the first $10,000 of property taxes paid. These benefits listed pursuant to this paragraph will be calculated based on the 2006 property tax amounts assessed or as would have been assessed on the October 1, 2012 principal residence of eligible applicants. The total homestead benefit provided to an eligible applicant in a given State fiscal year shall not exceed the homestead rebate amount paid to such eligible applicant for tax year 2006, absent a change in an applicant's filing characteristics. The homestead benefit shall be paid in ((August. If the amount hereinabove appropriated for the Homestead Benefit Program is not sufficient, there is appropriated from the Property Tax Relief Fund such additional sums as)) may ((be required to provide such homestead benefits)), subject to the approval of the Director of the Division of Budget and Accounting."

The language within double parentheses is deleted.

STATE AID

Page	Item		
	"35-2078 Police and Firemen's Retirement System This item is reduced to $129,379,000.		$165,278,000."
	"(From Property Tax Relief Fund This item is reduced to $129,379,000.	$165,278,000)."	
	"Total State Aid Appropriation, State Subsidies and Financial Aid This item is reduced to $233,453,000.		$269,352,000."
	"(From Property Tax Relief Fund This item is reduced to $198,879,000.	$234,778,000)."	
	State Aid:		
195	"35 Police and Firemen's Retirement System (PTRF) This item is reduced to $28,620,000.	($60,060,000)."	
195	"35 Police and Firemen's Retirement System (P.L.1979, c.109) (PTRF) This item is reduced to $37,603,000.	($42,062,000)."	

80 Special Government Services
82 Protection of Citizens' Rights
2048 State Legal Services Office

GRANTS-IN-AID

Page	Item		
	"89-2048 Civil Legal Services for the Poor This item is reduced to $14,900,000.		$19,900,000."
	"Total Grants-In-Aid Appropriation, State Legal Services Office This item is reduced to $14,900,000.		$19,900,000."
	Grants-In-Aid:		
199	"89 Legal Services of New Jersey - Legal Assistance in Civil Matters This item is reduced to $14,900,000.	($19,900,000)."	
	"Department of the Treasury, Total State Appropriation This item is reduced to $1,683,534,000.		$1,724,634,000."

94 INTERDEPARTMENTAL ACCOUNTS

70 Government Direction, Management, and Control
74 General Government Services
9410 Employee Benefits

DIRECT STATE SERVICES

Page	Item		
	"03-9410 Employee Benefits This item is reduced to $2,169,883,000.		$2,697,756,000."
	"Total Direct State Services Appropriation, Employee Benefits This item is reduced to $2,169,883,000.		$2,697,756,000."
	Direct State Services:		
209	"03 Public Employees' Retirement System This item is reduced to $123,586,000.	($527,441,000)."	
209	"03 Police and Firemen's Retirement System This item is reduced to $42,862,000.	($122,082,000)."	
209	"03 State Police Retirement System This item is reduced to $31,491,000.	($62,232,000)."	
209	"03 Judicial Retirement System This item is reduced to $14,118,000.	($25,334,000)."	
209	"03 Teachers' Pension and Annuity Fund This item is reduced to $563,000.	($3,404,000)."	

GRANTS-IN-AID

Page	Item		
	"03-9410 Employee Benefits This item is reduced to $954,220,000.		$1,022,182,000."
	"Total Grants-In-Aid Appropriation, Employee Benefits This item is reduced to $954,220,000.		$1,022,182,000."

Page			
	Grants-In-Aid:		
211	"03 Public Employees' Retirement System This item is reduced to $14,565,000.	($77,220,000)."	
211	"03 Police and Firemen's Retirement System This item is reduced to $4,492,000.	($9,149,000)."	
211	"03 Teachers' Pension and Annuity Fund This item is reduced to $63,000.	($713,000)."	
	"Interdepartmental Accounts, Total State Appropriation This item is reduced to $3,875,508,000.		$4,471,343,000."
	Total State Appropriation, All State Funds This item is reduced to $32,537,765,000.		$34,133,290,000."

Respectfully,

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ Christopher S. Porrino

Chief Counsel to the Governor

Page

GENERAL PROVISIONS

263 "2. All dedicated funds are hereby appropriated for their dedicated purposes. There are appropriated, subject to allotment by the Director of the Division of Budget and Accounting and with the approval of the Legislative Budget and Finance Officer, private contributions, revolving funds and dedicated funds received, receivable or estimated to be received for the use of the State or its agencies in excess of those anticipated, unless otherwise provided herein. The unexpended balances at the end of the preceding fiscal year of such funds, or any portion thereof, are appropriated, subject to the approval of the Director of the Division of Budget and Accounting. In the event a person or entity wishes to make a monetary donation to the State for a particular purpose, the head of the State agency or department to which such monetary donation is made is hereby authorized to accept such monetary donation. ((Within 10 days of the receipt of any such monetary donations, the head of the State agency or department accepting the donation shall notify the Joint Budget Oversight Committee of the donation, including the name of the donor, the amount of the donation, the intended use of the donation and any specific limits or criteria imposed by the donor on the use of the funds. The head of the State agency or department accepting the donation shall notify the Joint Budget Oversight Committee once 50% of the monetary donation is expended or committed as to the specific expenditures or commitments for the donation. The head of the State agency or department accepting the donation shall provide a final accounting to the Joint Budget Oversight Committee within 30 days of the end of the fiscal year.))"

The language within double parentheses is deleted.

277 "87. Notwithstanding any provision of law to the contrary, the Governor shall direct the State Treasurer to pay the amounts appropriated herein for payment to State-administered defined benefits retirement systems in four equal installments not later than July 15, 2014, October 15, 2014, January 15, 2015, and April 15, 2015."

The quoted language is deleted in its entirety.

277 "88. It shall be the duty of the commissioner or the chief executive officer of any State Department or Agency to notify the Presiding Officers of the Legislature in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1) whenever a person provides advising or consulting services on a non-casual basis or discharges the duties or responsibilities of an employee under the commissioner or chief executive officer's direction, but receives compensation directly from a private source not appropriated by this act. The notification shall identify the person by name and title, the advising or consulting services provided or duties and responsibilities assigned to such person, and the private source of funding from which the person was compensated."

The quoted language is deleted in its entirety.

ATTACHMENT 2 TO VETO MESSAGE

State of New Jersey

Executive Department

Page

16 DEPARTMENT OF CHILDREN AND FAMILIES

29 This appropriation of $2,400,000 is reduced. The program intended to be supported by this appropriation is a pilot program with limited scope. The appropriated funding is more than is necessary to operate the Legislature's proposed pilot program and can be reduced.

22 DEPARTMENT OF COMMUNITY AFFAIRS

36 Language related to the coordination of LIHEAP and SNAP benefits is deleted in its entirety. This language is the subject of separate legislation and is unnecessary to effectuate the proposed change. Additionally, it would be inappropriate to restrict prematurely and improperly the Administration's ability to administer the underlying programs in the manner proposed in this language.

41 The language extending the deadline for application for the Transitional Aid program is modified to clarify that all municipalities, regardless of their fiscal year, will have adequate time to submit an application for aid.

42 This language is deleted in its entirety as it would impose burdensome reporting requirements on a program that already is fully transparent. The language also would inappropriately intrude upon the administration of the State's disaster recovery program.

34 DEPARTMENT OF EDUCATION

49 This appropriation of $3,000,000 is eliminated. The Governor's original budget recommendation proposed making sufficient funding available for charter schools. Creating a new category of aid specifically for charter schools is not necessary in order for them to provide a quality education to their students. The associated language on page 54 is also deleted.

57 The appropriation of $1,316,529,000 for Teachers' Pension and Annuity Fund (PTRF) is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

42 DEPARTMENT OF ENVIRONMENTAL PROTECTION

61 This appropriation of $375,000 is eliminated. The Governor's original budget recommendations included funding for parks and historic preservation. It is not appropriate to single out one park commission for enhanced funding at the expense of other similar entities.

66 This language is modified to preserve full funding for the Office of Sustainability and Green Energy as presented in the Governor's budget recommendations.

69 This language is modified to preserve the original intent of the Governor's budget recommendations.

46 DEPARTMENT OF HEALTH

80 The appropriation of $7,500,000 for Family Planning Services is eliminated. Based on the current fiscal realities and available funding, the elimination is necessary in order to ensure that the budget is balanced. The Governor's original budget provided for an appropriate level of funding to ensure that the Administration's efforts to provide a full range of health services for the citizens of New Jersey are achieved. With the elimination of the appropriation, the corresponding language on page 82 also must be deleted.

54 DEPARTMENT OF HUMAN SERVICES

104 This language is deleted as it would misguidedly require the State to establish a program, without any source of funding, that is inconsistent with the principles of federal law.

119 The appropriation of $2,700,000 is eliminated. Based on the current fiscal realities and available funding, the elimination is necessary to ensure that the budget is balanced.

127 This appropriation of $3,500,000 is eliminated because its inclusion would be inconsistent with the Governor's budget recommendations for fiscal year 2015.

128 This language is partially deleted to restore consistency with the intent of the Governor's original budget recommendation. This language is intended to improve quality of care and quality assurance, as well as reduce the opportunity for fraud and abuse in the Medicaid reimbursement system, by ensuring that appropriate adult medical day care services are delivered by licensed providers who satisfy all licensure standards and program requirements, including maximum daily capacity requirements. By allowing facilities to serve participants in excess of their licensed capacity per day, some facilities may be inappropriately incentivized to place reimbursement considerations above the needs of their participants.

Page

74 DEPARTMENT OF STATE

156 This language is deleted in its entirety to promote consistency with the Governor's budget recommendations for fiscal year 2015 and the provisions of P.L.2013, c.170.

161 This language is modified to effectuate the implementation of the Higher Education Restructuring Act of 2013.

165 This language is modified to accomplish the Legislature's goal of assisting two medical schools --- the New Jersey Medical School and the Robert Wood Johnson Medical School, both of Rutgers --- in their efforts to claim Medicaid reimbursement for faculty physicians and other professionals employed by those institutions.

166 Per Capita Library Aid is reduced by $3,000,000 to the level included in the Governor's original budget recommendations. This level of funding is sufficient to support New Jersey's public libraries at an appropriate level.

82 DEPARTMENT OF THE TREASURY

183 The appropriation of $258,000 for Employer Contributions - Teachers' Pension and Annuity Fund (PTRF) is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

188 This language is deleted in its entirety to preserve and protect the independence, discretion, and integrity of the Office of the Comptroller in the exercise of his legal authority.

193 This language is modified to maintain consistency with the Administration's plan to issue the credits in May 2015. Specifying the timing of this payment appropriately recognizes the fiscal realities associated with matching the timing of large one-time annual payments with the timing of the actual receipt of State revenues.

195 The appropriation of $60,060,000 for Police and Firemen's Retirement System (PTRF) is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

195 The appropriation of $42,062,000 for Police and Firemen's Retirement System (P.L.1979, c.109) (PTRF) is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

199 Legal Services is reduced by $5,000,000 to the level included in the Governor's original budget recommendations. This level of funding is appropriate given the current fiscal reality.

94 INTERDEPARTMENTAL ACCOUNTS

209 The appropriation of $527,441,000 for Public Employees' Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

209 The appropriation of $122,082,000 for Police and Firemen's Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

209 The appropriation of $62,232,000 for State Police Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

209 The appropriation of $25,334,000 for Judicial Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

209 The appropriation of $3,404,000 for Teachers' Pension and Annuity Fund is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

211 The appropriation of $77,220,000 for Public Employees' Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

211 The appropriation of $9,149,000 for Police and Firemen's Retirement System is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

211 The appropriation of $713,000 for Teachers' Pension and Annuity Fund is reduced to reflect the adjustments necessary to achieve a balanced budget for fiscal year 2015. For all of the reasons set forth in the other vetoes I have signed today, current economic reality compels this reduction.

Page

GENERAL PROVISIONS

263 This language is deleted to promote the efficient operation of the State government while avoiding an unnecessary and burdensome bureaucratic reporting requirement.

277 This language is deleted to restore the historic, annual payment schedule in a manner consistent with the ordinary process by which payments are made by other units of government. The timing of this payment recognizes the fiscal realities associated with matching the timing of large one-time annual payments with the timing of the actual receipt of State revenues.

277 This language is deleted to promote the efficient operation of the State government while avoiding an unnecessary and burdensome bureaucratic reporting requirement.

Respectfully,

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ Christopher S. Porrino

Chief Counsel to the Governor

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
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SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

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CHRISTOPHER BURGOS, individually and as President of the STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY; JAMES KIERNAN, individually and as President of STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCIATION OF NEW JERSEY STATE, INC.; STEPHEN STERNIK, individually and as President of STATE TROOPERS SUPERIOR ASSOCIATION OF NEW JERSEY; STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY, on behalf of all its present and retired members; STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCATION OF NEW JERSEY, INC., on behalf of all its present and retired members; STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION OF NEW JERSEY, on behalf of all its present and retired members,

Plaintiffs,

v.

STATE OF NEW JERSEY; CHRISTOPHER CHRISTIE, Governor of the State of New Jersey; ANDREW SIDAMON-ERISTOFF, Treasurer of the State of New Jersey,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Civil Action

Docket No.: Mer-L-1267-14

CONSOLIDATED CASES

CERTIFICATION OF SERVICE

(*Caption Continued*)

Defendants,

AND

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; PROFESSIONAL FIREFIGHTERS ASSOCIATION OF NEW JERSEY, IAFF, AFL-CIO; NEW JERSEY FRATERNAL ORDER OF POLICE; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 73; AMERICAN FEDERATION OF TEACHERS NEW JERSEY STATE FEDERATION, AFL-CIO; INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL EMPLOYEES, AFL-CIO, LOCAL 195; HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT, AFL-CIO; NEW JERSEY STATE AFL-CIO; SANDRA P. COHEN; MICHAEL A. JUSTINIANO; DOMINICK MARINO; DONNA CHIERA; DIANE CAMERON; and RUSSELL LEAK,

Plaintiffs,

v.

CHRIS CHRISTIE, as Governor of the State of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; and ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants,

AND

NEW JERSEY EDUCATION ASSOCIATION; NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION, INC.; NEW JERSEY STATE FIREFIGHTERS' MUTUAL BENEVOLENT ASSOCIATION; AMERICAN FEDERATION OF STATE COUNTY, AND

(*Caption Continued*)

MUNICIPAL EMPLOYEES, COUNCIL 1, AFL-CIO; CHRISTINE SAMPSON-CLARK; HEIDI OLSON; PATRICIA PROVNICK; KEITH DUNN; PATRICK COLLIGAN; MARK KOVAR; TIM DEUTSCH; KYLE HUGHES; JOHN E. MURPHY, JR.; LANCE P. LOPEZ, SR.,

Plaintiffs,

v.

STATE OF NEW JERSEY, CHRISTOPHER J. CHRISTIE, as Governor of the State of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants,

AND

PROBATION ASSOCIATION OF NEW JERSEY, PROFESSIONAL CASE-RELATED UNIT; PROBATION ASSOCIATION OF NEW JERSEY, PROFESSIONAL SUPERVISORS UNION; DWIGHT COVALESKIE; GAVIN CUMMINGS; AND ELLEN CRIBBIN,

Plaintiffs,

v.

STATE OF NEW JERSEY; CHRISTOPHER CHRISTIE, as Governor of New Jersey; NEW JERSEY DEPARTMENT OF THE TREASURY; ANDREW P. SIDAMON-ERISTOFF, Treasurer, State of New Jersey,

Defendants.

Ruth Wells, pursuant to R. 1:4-4(b), hereby certifies:

1. I am a Legal Secretary in the Division of Law, Department of Law and Public Safety, State of New Jersey.

2. On September 2, 2014 at the direction of Jean P. Reilly, Assistant Attorney General, I served an original and three copies of the Brief and Appendix of the State Executive Defendants (State Of New Jersey; Attorney for Defendants; State of New Jersey; Christopher Christie, Governor of the State of New Jersey; Andrew Sidamon-Eristoff, Treasurer of the State of New Jersey; and the New Jersey Department of the Treasury) in support of their Motion to Dismiss in the above captioned matter by hand delivery to:

Clerk of the Court
Superior Court of New Jersey
Mercer County Civil Courts Bldg.
175 South Broad Street
P.O. Box 8068
Trenton, NJ 08650-0068

3. On September 2, 2014, at the direction of Jean P. Reilly, Assistant Attorney General, I served three copies of the Brief and Appendix of the State Executive Defendants (State of New Jersey; Attorney for the Defendants State of New Jersey; Christopher Christie, Governor of the State of New Jersey; Andrew Sidamon-Eristoff, Treasurer of the State of New Jersey; and the New Jersey

Department of the Treasury) in support of their Motion to Dismiss in the above captioned matter by e-mail and overnight mail to:

Honorable Mary C. Jacobson, A.J.S.C.
Criminal Courthouse
400 South Warren Street
P.O. Box 8068
Trenton, NJ 08650-0068

4. On September 2, 2014, at the direction of Jean P. Reilly, Assistant Attorney General, I served two copies of the Brief and Appendix of the State Executive Defendants (State of New Jersey; Attorney for the Defendants State of New Jersey; Christopher Christie, Governor of the State of New Jersey; Andrew Sidamon-Eristoff, Treasurer of the State of New Jersey; and the New Jersey Department of the Treasury) in support of their Motion to Dismiss in the above captioned matter by e-mail and overnight mail to:

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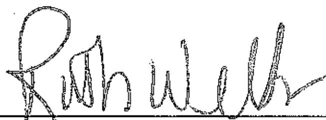
5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Ruth Wells

Dated: September 2, 2014