

**BRACH EICHLER L.L.C.**

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Attorneys for Plaintiffs

TOWNSHIP OF MONTCLAIR  
COMMITTEE OF PETITIONERS and  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION

Plaintiff,

v.

TOWNSHIP OF MONTCLAIR,  
MAYOR AND COUNCIL OF THE  
TOWNSHIP OF MONTCLAIR, THE  
CLERK OF THE TOWNSHIP OF  
MONTCLAIR and STATE OF NEW  
JERSEY

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO.: ESX-L-2724-20

Civil Action

**THIRD SUPPLEMENTAL VERIFIED  
COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF  
AND IN LIEU OF PREROGATIVE WRIT**

Plaintiff, the Montclair Property Owners Association (the “Association”) by way of Third Supplemental Verified Complaint against the Township of Montclair (“Township”), Mayor and Council of the Township of Montclair (“Township Council”) and the Clerk of the Township of Montclair (“Clerk”) (collectively “Montclair”) say:

**PRELIMINARY STATMENT**

On November 30, 2021, the Appellate Division determined in a published decision that the Clerk acted unreasonably, arbitrarily and capriciously in rejecting the Township of Montclair Committee of Petitioners’ referendum petition challenging the Township and Township Council’s adoption of a rent control ordinance adopted at the beginning of the COVID-19 Public Health Emergency. In so doing, the Appellate Division confirmed that the Plaintiffs’ were exercising

their constitutionally protected right of referendum. This decision was the culmination of more than eighteen (18) months of litigation wherein the Plaintiffs sought to vindicate their rights to referendum.

Now, in direct response to this decision and in retaliation of the Plaintiff's exercise of this protected activity, the Defendants have extended and threaten to continue to extend a complete ban on rent increases that is not supported by any legitimate government purpose or law. In fact, Township Council members confirmed that the continuation of the rent freeze was predicated and motivated by the fact that the Plaintiffs have been successful in restraining the Defendants' adoption of rent control through their exercise of a protected activity. This impermissible governmental action retaliates directly against the Plaintiffs' inviolable right to challenge government action through the referendum process and has (and will continue to) resulted in an improper taking. It also violates this Court's previous Order restraining the implementation of the rent control ordinance that is the subject of the referendum petition.

Through this Supplemental Verified Complaint, the Association seeks entry of (1) a temporary, preliminary and permanent injunction enjoining the further extension and enforcement of Defendants' Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 ("Rent Increase Prohibition Legislation"); (2) declaring that Defendants' Rent Increase Prohibition Legislation enactments are improper exercises of Defendants' police powers and authority, are ultra vires, unconstitutional, amount to impermissible taking without just compensation and invalid; and (3) awarding damages and attorneys' fees to Plaintiffs as appropriate under the New Jersey Civil Rights Act.

#### **ADDITIONAL STATEMENT OF FACTS**

1. The Association's members own and operate multi-family rental properties within

the Township of Montclair.

2. The Association's members have vested contractual rights to charge and collect rents that are subject to their lease agreements and in compliance with New Jersey's landlord tenant laws.

3. The Association and its members have reasonable contractual expectations that so long as they comply with applicable law that they can increase those rents that amounts to a protectable contractual and property right of the Association's members.

4. After the worldwide COVID-19 pandemic commenced, on March 9, 2020, Governor Phil Murphy issued Executive Order 103, wherein he declared a State of Emergency and a Public Health Emergency in New Jersey to contain the spread of COVID-19. **Exhibit "K"**.

5. Since that Executive Order, Governor Murphy issued several additional executive orders that addressed landlord tenant relations, including an order that restricted a landlord's right to seek eviction to recover possession from a tenant for failure to pay rent. ***Importantly, none of the executive orders issued by Governor Murphy or the legislation adopted during the COVID-19 pandemic granted municipalities the power to adopt ordinances that restricted or froze rental increases.***

6. On April 7, 2020, in the midst of the COVID-19 pandemic, the Township Council adopted a rent control ordinance.

7. On April 16, 2020, the Plaintiffs filed the Verified Complaint for Temporary and Permanent Injunctive relief and in Lieu of Prerogative Write in this action seeking to enjoin the adoption of the rent control ordinance and protect its right to exercise and engage in protected activity after the Defendant Clerk had acted in a manner that was arbitrary and capricious. **Exhibit "A"**.

8. On April 17, 2020, this Court entered an Order to Show Cause that enjoined and restrained the Defendants from taking any actions to implement or enforce the rent control ordinance. **Exhibit “B”**. The Order to Show Cause scheduled the return date for argument on June 3, 2020. **Id.**

9. While the rent control ordinance was stayed and without any legal authority, the Township Council, on May 19, 2020, adopted Ordinance O-20-08 an “Ordinance Imposing Temporary Moratorium on Rent Increases During COVID-19 Pandemic State of Emergency.” **Exhibit “C”**. (the “Rent Increase Prohibition Ordinance”) Although there were no overt statements made by council at the time of its adoption, the Rent Increase Prohibition Ordinance was adopted in direct response to the April 17, 2020 Order to Show Cause and the Plaintiffs’ Verified Complaint which stayed the adoption of the rent control ordinance.

10. The Rent Increase Prohibition Ordinance was adopted “to prevent any increase in the amount paid in rent or any additional charges whatsoever by residential tenants rental units in all residential rental units in the Township of Montclair with the exception of: (1) Rental units in properties that are owner-occupied with no more than one additional rental unit; (2) Rental units in properties exempt from local rent regulation by state or federal law; (3) Rental units in which the rent is determined as function of household income; and (4) Rental units in hotels.” **Exhibit “C”**.

11. The Rent Increase Prohibition Ordinance further provided that, “no rent shall be increased as to any property covered by this ordinance” and “no other charge associated with the rental of a property covered by this ordinance....shall be increased during this time.” **Exhibit “C”**.

12. Pursuant to Ordinance O-20-08, the rent freeze was made retroactive to May 1, 2020 and was to remain in effect through August 1, 2020. **Exhibit “C”**. Accordingly, notices of

rents increases timely sent to tenants for increases effective on May 1, 2020 were frozen.

13. At this time the principle focus of this lawsuit was to secure the rights of the Plaintiff to get its petition to challenge the flawed Rent Control Ordinance certified and force the issue to be determined by the voters. Since many of the Plaintiff members were not intending at that time to raise rent amounts as the pandemic spread, there was no immediate consequence from the Rent Increase Prohibition Ordinance. However the actions of the Defendant thereafter in extending the Rent Increase Prohibition Ordinance, without proper notice and authority, and in retaliation of the Plaintiffs exercise of their constitutional rights, continues to this day and has become intolerable.

14. Again, while the rent control ordinance was stayed and without any legal authority, on August 4, 2020, the Township Council adopted Ordinance O-20-20 which amended Ordinance O-20-08 and extended the Rent Increase Prohibition Ordinance's moratorium through December 31, 2020. **Exhibit "D"**.

15. Again, while the rent control ordinance was stayed and without any legal authority, on January 5, 2021, the Township Council adopted Ordinance O-20-24 which amended O-20-08, as amended by O-20-20, and extended the rent freeze through March 31, 2021. **Exhibit "E"**. This Ordinance also contained a provision that expanded the Township Council's powers and authorized the Township Counsel to further extend the rent freeze "for one or more periods not to exceed three months each, by resolution of a majority of the governing body." **Id.** There is no basis in law to permit this expansion of the Township Council's legislative powers.

16. On March 16, 2021, this Court also ruled in favor of Plaintiffs' Verified Complaint and concluded that the Defendant Clerk acted arbitrary and capricious and directed that Plaintiffs'

amended petition be certified.<sup>1</sup>

17. On the same evening as this Court's ruling and without any legal authority, the Township Council issued and adopted Resolution R-21-046 which extended the rent freeze through June 30, 2021. **Exhibit "F"**.

18. On June 4, 2021, Governor Murphy issued Executive Order No. 244 where he terminated the Public Health Emergency in New Jersey caused by COVID-19. Despite the termination of the Public Health Emergency, the Township Council undertook no action to rescind R-21-046. **Exhibit "L"**.

19. Rather, on June 22, 2021, the Township Council issued and adopted Resolution R-21-124 which extended rent freezes through September 30, 2021. **Exhibit "G"**.

20. On September 29, 2021, the Township Council issued and adopted Resolution R-21-189 which extended rent freezes through December 31, 2021. **Exhibit "H"**.

21. On November 30, 2021, the Appellate Division issued its decision in the underlying appeal. In its ruling, the Appellate Division affirmed this Court's declaration that the Defendant Clerk acted in a manner that was arbitrary and capricious. **Exhibit "I"**. This ruling confirmed that the Plaintiffs were engaged in the protected right of referendum.

22. In direct response to this ruling, on December 7, 2021, the Township Council issued and adopted Resolution R-21-228 which extended rent freezes through March 31, 2022. **Exhibit "J"**.

23. During public comment relating to this Resolution, a member of the Township Council confirmed that the continuation of the Rent Increase Prohibition Ordinance was predicated

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<sup>1</sup> The Appellate Division granted the Defendants' Motion for Leave to appeal and stayed this Court's March 16, 2021 Order. During this period, the rent control ordinance implementation remained stayed.

on the fact that the Plaintiffs were exercising their right of protest through referendum. He stated, "you stopped us from having rent control." This statement confirmed what had long been suspected – the improper Rent Increase Prohibition Legislation was in direct retaliation to the Plaintiffs' exercise of protected activity. See N.J.S.A. 40:69A-184.

### **COUNT IX**

#### **TEMPORARY AND PERMANENT INJUNCTIVE RELIEF RELATED TO THE RENT INCREASE PROHIBITION**

24. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

25. Plaintiff's members have vested, enforceable contractual rights and reasonable contractual expectations to obtain rents from its tenants and to request to increase those rents pursuant to the requirements of local rent control ordinances. This relationship is a protectable contractual interest and property right held by Plaintiff and its members.

26. The Rent Increase Prohibition Legislation has and will continue to impair Plaintiff's pre-existing contractual rights with its tenants and its reasonable contractual expectancy.

27. The Rent Increase Prohibition Legislation has and will continue to interfere with and eliminate these substantial contractual rights as the Association's tenancies come up for annual rent increase anniversaries in the next 90 days and the continuation of the Rent Increase Prohibition Legislation deprives the Plaintiff of these rights.

28. The Rent Increase Prohibition Legislation eliminates the Association's ability to collect authorized rent increases and wrongfully imposes substantial losses on the Association and its members including, but not limited to, the loss of income, loss of property value, and the inability to realize their reasonable expectations from operating the properties. This loss causes an irreparable harm and risks the potential destruction to the Association's members' business.

29. The Rent Increase Prohibition Legislation is not and has never been rationally

related to the general public interest, rather it was adopted in direct retaliation to the Plaintiffs' exercise of their protected activity.

30. The Rent Increase Prohibition Legislation is irrational because their retroactive application impairs Plaintiffs' contractual relationship with its tenants by forcing Plaintiffs to forgo properly noticed rental increases.

31. The Rent Increase Prohibition Legislation has and will continue to have a wide confiscatory effect and operate as a regulatory taking of property without the payment of just compensation, and the regulatory taking set forth in the Rent Increase Prohibition Ordinance, its amendments and the resolutions cannot withstand even a lower level of scrutiny required because they bear no rational basis to a legitimate governmental interest.

32. The Rent Increase Prohibition Legislation is impermissible because the retroactive application impairs Plaintiffs' vested rights and is manifestly unjust because it forces Plaintiffs to forgo properly noticed rental increases due and owing since May 1, 2020.

33. Because of the unconstitutional Rent Increase Prohibition Legislation, Plaintiff has and will continue to suffer irreparable harm as a result.

34. Plaintiff lacks an adequate remedy at law and can never recover any rentals that the Rent Increase Prohibition Legislation prevents them from charging and collecting.

### **COUNT X**

#### **SUBSTANTIVE DUE PROCESS**

35. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

36. By adoption of the Rent Increase Prohibition Legislation, the Township has acted in an arbitrary, capricious and unreasonable manner in violation of the United States and New Jersey Constitutions

37. Although the Township is authorized to pass rent control ordinances pursuant to



the general grant of police power under N.J.S.A. 40:48-2 to act in the public interest, this grant of legislative authority must not be exercised in a manner that is arbitrary, capricious or irrational.

38. Pursuant to New Jersey State Law, tenants are protected by law against unscheduled and unreasonable rent increases without rent control or rent freezes being enacted.

39. The Rent Increase Prohibition Legislation imposes a freeze on otherwise compliant rent increases for tenants and interferes with or eliminates Plaintiff's right to increase these rents pursuant to the requirements of applicable law – a right which can never be recovered as the Rent Increase Prohibition Legislation has been in effect since May 1, 2020.

40. There is no legitimate governmental interest or general public interest that warrants providing a freeze to tenants and interfering with and eliminating Plaintiff's right to increase these rents.

41. The enactment, enforcement and continuation of the Rent Increase Prohibition Legislation is arbitrary, capricious and unconstitutional.

42. Plaintiff and its members have wrongfully sustained and continue to sustain substantial losses including loss of rental income, loss of property value and the inability to maximize the value of the subject property, which is subject to the Rent Increase Prohibition Legislation all in violation of the rights guaranteed under law.

43. As a result of these action, Plaintiffs and its members have and will continue to be irreparably harmed and have suffered damage.

## **COUNT XI**

### **IMPAIRMENT OF CONTRACT**

44. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

45. By adoption of the Rent Increase Prohibition Legislation, the Township has impaired Plaintiff's and its members vested contractual rights in violation of the United States and

New Jersey Constitutions.

46. Article I, Section 10 of the United States Constitution provides that “No state ... shall ... pass any ... law impairing the obligation of contracts....”

47. Pursuant to Article IV, Section VII, Paragraph 3 of the Constitution of the State of New Jersey, the Township is prohibited from passing any law that “impair(s) the obligation of contracts, or deprive(s) any remedy for enforcing a contract that existed when the law was made.”

48. Plaintiff has a contractual entitlement and expectancy to payment of reasonable rents and increases from its tenants.

49. Due to the constraints imposed by the Rent Increase Prohibition Legislation, Plaintiff and its members are not permitted to notify or receive scheduled rent increases pursuant to their contracts and applicable state law. Effectively, Plaintiffs will never be permitted to collect any increase that is otherwise permitted due to this government action.

50. The Rent Increase Prohibition Legislation impairs Plaintiff’s contractual right to the receive benefit of its contract with tenants and violates Article I of the United States Constitution and Article IV of the New Jersey Constitution.

51. As a result of these actions, Plaintiff and its members have been irreparably harmed and have suffered damage.

## **COUNT XII**

### **TAKING WITHOUT JUST COMPENSATION**

52. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

53. By adoption of the Rent Increase Prohibition Legislation, Plaintiff and its members have been deprived of their vested contractual and property rights without due process of law or adequate compensation in violation of the United States and New Jersey Constitutions.

54. The Township's action is a taking of property (contract rights, reasonable expectations) through an impermissible regulation without compensation, and the Township must demonstrate that the enactment serves a legitimate state interest in order to be sustained.

55. Plaintiff's contractual right to obtain rents from its tenants and to serve notice of permissible rent increases is a contractual and property right held by Plaintiff and its members.

56. The Rent Increase Prohibition Legislation revokes this right without providing compensation to Plaintiff. The Rent Increase Prohibition Legislation includes no mechanism to compensate the Plaintiff's rent increase revenue lost during its applicability.

57. The Rent Increase Prohibition Legislation improperly impairs the value of the rental properties and interferes with Plaintiff's investment-backed and contractual expectations without providing just compensation. Plaintiff and its members have been substantially deprived of the beneficial use of their property without just compensation.

58. As a result of these action, Plaintiff and its members have been irreparably harmed and have suffered damage.

### **COUNT XIII**

#### **RETROACTIVE APPLICATION**

59. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

60. The Rent Increase Prohibition Legislation were specifically intended to apply retroactively to rents due and owing on May 1, 2020.

61. Pursuant to their leases and state law, Plaintiffs' members properly notified their tenants of appropriate rent increases and for each renewal period thereafter.

62. The retroactive application of the Rent Increase Prohibition Legislation unconstitutionally interferes with Plaintiffs' vested right to rent increases from their tenants and is

manifestly unjust.

63. There is no legitimate governmental interest that warrants retroactively depriving Plaintiff of properly noticed rents due and owing. This is especially so because during the entire period of the Rent Increase Prohibition Legislation and the continuation of same, tenants could not be exposed to eviction proceedings for failure to pay ANY rent let alone the rent increases they were also obliged to pay.

64. As a result of the Rent Increase Prohibition Legislation retroactive application, Plaintiff and its members have been irreparably harmed and have suffered damage.

65. As a direct and proximate result of the Rent Increase Prohibition Legislation's impermissible retroactive effect it is null and void.

#### **COUNT XIV**

#### **VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT**

66. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

67. By adoption of the Rent Increase Prohibition Legislation (and its continuation), the Township has violated the New Jersey Civil Rights Act. N.J.S.A. 10:6-1, et seq. and the Plaintiffs substantive rights under law.

68. By adoption of the Rent Increase Prohibition Legislation in retaliation for the Plaintiffs exercise of their protected activity, the Township has violated the New Jersey Civil Rights Act. N.J.S.A. 10:6-1, et seq. and the Plaintiffs substantive rights under law.

69. Plaintiff has been forced to institute this action to protect and enforce its substantive due process, equal protection, contractual and property rights granted to them under the constitutions of the State of New Jersey and the United States.

70. The New Jersey Civil Rights Act provides that :

- e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.
- f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

71. By adopting the Rent Increase Prohibition Legislation (and its continuation), the Township knew that acting in such a manner would penalize Plaintiff and its members from exercising its substantive rights and violated those substantive rights.

72. Now that the Appellate Division has protected those rights, and declared the actions of the Clerk arbitrary and capricious, the Township Council has enacted extensions of the Rent Prohibition Ordinance in retaliation for the Plaintiff exercising its rights.

73. The Township was acting under color of law, and is liable to Plaintiff and its members for a violation of the New Jersey Civil Rights Act.

74. As a result of the Township's actions, Plaintiff has been and will continue to be damaged.

**WHEREFORE**, Plaintiff and its members demand judgment against Defendants, jointly and severally, for following relief:

1. Temporarily and preliminarily enjoining Township from further implementation, extension and enforcement of Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228;

2. Entering a *status quo* injunction that pending a final determination by the Court, Plaintiff and its members be permitted to provide required notices to tenants and to obtain rent increases permitted by applicable law and that in the event any increased rents are collected they will be segregated from the total rent paid and be held in an interest bearing account pending adjudication of this matter;

3. Entering a *status quo* injunction that pending a final determination by the Court, the Township is restrained and enjoined from applying Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 to properly noticed rent increases due and owing March 1, 2022 and allowing Plaintiff and its members to collect these rent increases;

4. Declaring that Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are not supported by a rational basis, violates equal protection and is unconstitutional;

5. Declaring that Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are void and that the Township's actions are arbitrary, capricious and unreasonable and therefore unconstitutional;

6. Declaring that the adoption and enforcement of Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are an unconstitutional impairment of Plaintiff's and its members' right of contract;

7. Declaring that the adoption and enforcement of the Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are an unconstitutional taking without just compensation;

8. Declaring that the adoption and enforcement of the Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are impermissibly retroactive;

9. Declaring that the adoption and enforcement of the Defendant's Ordinances O-20-08, O-20-20 and O-20-24 as well as the Resolutions R-21-046, R-21-124, R-21-189 and R-21-228 are void ab initio and of no purpose and effect;

10. Awarding compensatory damages pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.;

11. Awarding all reasonable attorneys' fees and costs in accordance with the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; and for

12. Such other relief as the Court deems just and equitable.

**BRACH EICHLER LLC**  
Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.  
Charles X. Gormally, Esq.

Dated: February 28, 2022

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Plaintiff designates Charles X. Gormally, Esq. as trial counsel.

**BRACH EICHLER LLC**  
Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.  
Charles X. Gormally, Esq.

Dated: February 28, 2022

**CERTIFICATION PURSUANT TO R. 4:5-1**

I certify that, pursuant to R. 4:5-1: (1) the within matter in controversy is not the subject of any other action pending in any other court or arbitration; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in the subject litigation is presently known.

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

**BRACH EICHLER LLC**

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.  
Charles X. Gormally, Esq.

Dated: February 28, 2022

**CERTIFICATION PURSUANT TO R. 4:5-1(3)**

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

**BRACH EICHLER LLC**

Attorneys for Plaintiffs

By: s/Charles X. Gormally, Esq.  
Charles X. Gormally, Esq.

Dated: February 28, 2022



**VERIFICATION OF THIRD SUPPLEMENTAL COMPLAINT**

The undersigned, a Director of Montclair Property Owners Association, has read the allegations contained in the Third Supplemental Verified Complaint and certifies that those allegations are true.

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

\_\_\_\_\_  
Ronald Simoncini

DATED:

# **Exhibit “A”**

**BRACH EICHLER LLC**

Charles X. Gormally, Esq. (023581979)

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101 Eisenhower Parkway

Roseland, New Jersey 07068

Phone: 973-228-5700

Attorneys for Plaintiffs

TOWNSHIP OF MONTCLAIR  
COMMITTEE OF PETITIONERS,  
AND MONTCLAIR PROPERTY  
OWNERS ASSOCIATION;

Plaintiffs,

v.

TOWNSHIP OF MONTCLAIR;  
MAYOR AND COUNCIL OF THE  
TOWNSHIP OF MONTCLAIR and  
STATE OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO.: ESX-L-

Civil Action

**ORDER TO SHOW CAUSE WITH  
TEMPORARY RESTRAINTS**

**THIS MATTER**, having been opened to the court by Brach Eichler, L.L.C., attorneys for Plaintiffs, Township of Montclair Committee of Petitioners and the Montclair Property Owners Association (collectively, "Plaintiffs"), by way of Order to Show Cause seeking temporary and permanent injunctive relief pursuant to R. 4:52; and the Court having reviewed Plaintiffs' Verified Complaint and Brief in Support of Order to Show Cause; and the Court having found that immediate, irreparable and substantial harm may occur before the return date of this Order to Show Cause; and for good cause shown;

**IT IS** on this \_\_\_\_\_ day of April 2020;

**HEREBY ORDERED** that Defendant, the Township of Montclair ("Defendant"), shall appear and show cause before the above named court at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon or as soon thereafter as counsel can be heard, on the \_\_\_\_\_ day of \_\_\_\_\_ 2020, why a preliminary

injunction order should not be issued:

1. Tolling the commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a referendum petition and submission of the requisite number of voter signatures to protest through referendum the Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation (“Ordinance”) until the New Jersey State of Emergency and Executive Orders 103 and 107 are lifted;
2. Tolling the effective date of the Ordinance and staying same until Executive Orders 103 and 107 are lifted and the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 has expired thereafter;
3. Enjoining the Defendant from enforcing or implementing the provisions of the Ordinance until further Order of this Court;
4. Declaring that the Defendant’s enactment and enforcement of the Ordinance is in violation of the Defendant’s police powers and is therefore invalid, void and of no purpose and effect; and
5. Declaring that the Ordinance is in violation of Executive Order 108 and is therefore invalid, void and of no purpose and effect.

And it is further **ORDERED** that pending the return date of this application the Court is hereby **TEMPORARILY RESTRAINING AND ENJOINING**:

1. The commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a petition protesting the Ordinance and for the collection of the requisite number of voter signatures;
2. Enjoining and restraining the Defendant from taking any actions to implement or enforce the Ordinance.

And it is further **ORDERED** that:

1. Defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to Plaintiffs' counsel.

2. A copy of this Order to Show Cause, Verified Complaint, and Brief submitted in support of this application, shall be served upon Defendant personally within \_\_\_\_ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this Order being the original process.

3. Plaintiff must file with the Court its proof of service of the pleadings and this Order on the Defendant no later than three (3) days before the return date of this Order to Show Cause.

4. Defendant shall file and serve a written response to this Order to Show Cause and proof of service by \_\_\_\_\_. 2020. The original document must be filed with the Clerk of the Superior Court in Essex County, Law Division. Defendant must also send a copy of its opposition papers directly to the Honorable \_\_\_\_\_, whose chambers are located at the Essex County Superior Court in Newark, New Jersey. Defendant must also send a copy of its opposition papers to the Plaintiffs' attorney whose name and address appear above. A telephone call will not protect Defendant's rights. Defendant must file its opposition and pay the required fee of \$\_\_\_\_\_ and serve its opposition on Plaintiffs' counsel if it wants the Court to hear opposition to the injunctive relief the Plaintiffs are seeking.

5. Plaintiffs must file and serve any written reply to Defendant's Order to Show Cause opposition by \_\_\_\_\_. 2020. The reply papers must be filed with the Clerk of the Superior Court, Essex County, Chancery Division and a copy of the reply papers must be sent directly to the chambers of the Honorable \_\_\_\_\_.

6. If the Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default,

provided that the Plaintiffs file a proof of service and a proposed form of order at least three (3) days prior to the return date.

7. If the Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date of this Order to Show Cause.

8. Defendant take notice that the Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court, Essex County, Law Division in the county listed above. Include a \$ \_\_\_\_\_ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory

with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://njcourts.gov/forms/10153_deptyclerklawref.pdf). 10.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than days before the return date.

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HON.

# **Exhibit “B”**



**FILED**

**BRACH EICHLER LLC**

Charles X. Gormally, Esq. (023581979)  
Paul M. Bishop (024462005)  
101 Eisenhower Parkway  
Roseland, New Jersey 07068  
Phone: 973-228-5700  
Attorneys for Plaintiffs

APRIL 17, 2020

Hon. Jeffrey B. Beacham, J.S.C.

TOWNSHIP OF MONTCLAIR  
COMMITTEE OF PETITIONERS,  
AND MONTCLAIR PROPERTY  
OWNERS ASSOCIATION;

Plaintiffs,

v.

TOWNSHIP OF MONTCLAIR;  
MAYOR AND COUNCIL OF THE  
TOWNSHIP OF MONTCLAIR and  
STATE OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO.: ESX-L-

Civil Action

**ORDER TO SHOW CAUSE WITH  
TEMPORARY RESTRAINTS**

**THIS MATTER**, having been opened to the court by Brach Eichler, L.L.C., attorneys for Plaintiffs, Township of Montclair Committee of Petitioners and the Montclair Property Owners Association (collectively, "Plaintiffs"), by way of Order to Show Cause seeking temporary and permanent injunctive relief pursuant to R. 4:52; and the Court having reviewed Plaintiffs' Verified Complaint and Brief in Support of Order to Show Cause; and the Court having found that immediate, irreparable and substantial harm may occur before the return date of this Order to Show Cause; and for good cause shown;

**IT IS** on this 17th day of April 2020;

**HEREBY ORDERED** that Defendant, the Township of Montclair ("Defendant"), shall appear and show cause before the above named court at 9 o'clock in the am noon or as soon thereafter as counsel can be heard, on the 3rd day of June 2020, why a preliminary

injunction order should not be issued:

1. Tolling the commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a referendum petition and submission of the requisite number of voter signatures to protest through referendum the Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation ("Ordinance") until the New Jersey State of Emergency and Executive Orders 103 and 107 are lifted;

2. Tolling the effective date of the Ordinance and staying same until Executive Orders 103 and 107 are lifted and the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 has expired thereafter;

3. Enjoining the Defendant from enforcing or implementing the provisions of the Ordinance until further Order of this Court;

4. Declaring that the Defendant's enactment and enforcement of the Ordinance is in violation of the Defendant's police powers and is therefore invalid, void and of no purpose and effect; and

5. Declaring that the Ordinance is in violation of Executive Order 108 and is therefore invalid, void and of no purpose and effect.

And it is further **ORDERED** that pending the return date of this application the Court is hereby **TEMPORARILY RESTRAINING AND ENJOINING**:

1. The commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a petition protesting the Ordinance and for the collection of the requisite number of voter signatures;

2. Enjoining and restraining the Defendant from taking any actions to implement or enforce the Ordinance.

And it is further **ORDERED** that:

1. Defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to Plaintiffs' counsel.
2. A copy of this Order to Show Cause, Verified Complaint, and Brief submitted in support of this application, shall be served upon Defendant personally within 7 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this Order being the original process.
3. Plaintiff must file with the Court its proof of service of the pleadings and this Order on the Defendant no later than three (3) days before the return date of this Order to Show Cause.
4. Defendant shall file and serve a written response to this Order to Show Cause and proof of service by May 8, 2020. The original document must be filed with the Clerk of the Superior Court in Essex County, Law Division. Defendant must also send a copy of its opposition papers directly to the Honorable JEFFREY B. BEACHAM, whose chambers are located at the Essex County Superior Court in Newark, New Jersey. Defendant must also send a copy of its opposition papers to the Plaintiffs' attorney whose name and address appear above. A telephone call will not protect Defendant's rights. Defendant must file its opposition and pay the required fee of \$       and serve its opposition on Plaintiffs' counsel if it wants the Court to hear opposition to the injunctive relief the Plaintiffs are seeking.
5. Plaintiffs must file and serve any written reply to Defendant's Order to Show Cause opposition by May 26, 2020. The reply papers must be filed with the Clerk of the Superior Court, Essex County, Chancery Division and a copy of the reply papers must be sent directly to the chambers of the Honorable JEFFREY B. BEACHAM.
6. If the Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default,

provided that the Plaintiffs file a proof of service and a proposed form of order at least three (3) days prior to the return date.

7. If the Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date of this Order to Show Cause.

8. Defendant take notice that the Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court, Essex County, Law Division in the county listed above. Include a \$\_\_\_\_\_ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory

with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://njcourts.gov/forms/10153_deptyclerklawref.pdf). 10.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than days before the return date.



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HON. JEFFREY B. BEACHAM, J.S.C.

# **Exhibit “C”**

O-20-08

## TOWNSHIP OF MONTCLAIR

**ORDINANCE IMPOSING TEMPORARY MORATORIUM ON RENT INCREASES  
DURING COVID-19 PANDEMIC STATE OF EMERGENCY**

May 5, 2020 (date of introduction)

May 19, 2020 (date of public hearing)

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, a municipality may adopt ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**WHEREAS**, the Governor of the State of New Jersey declared a Public Health Emergency and State of Emergency in the State of New Jersey on March 9, 2020 due to the spread of COVID-19; and

**WHEREAS**, the Office of Emergency Management of the Township of Montclair declared a State of Emergency in the Township on March 15, 2020; and

**WHEREAS**, many citizens of New Jersey and the Township are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and

**WHEREAS**, housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and

**WHEREAS**, in recognition of this danger, the U.S. Department of Housing and Urban Development, Fannie Mae, and Freddie Mac announced the suspension of all evictions and foreclosures for 60 days; and

**WHEREAS**, on March 19, 2020, Governor Murphy signed the residential eviction and foreclosure moratorium legislation into law to protect New Jersey residents in this critical time; and

**WHEREAS**, the adverse economic impacts of COVID-19 are significant, and pose a growing threat to the housing security of many New Jersey residents; and

**WHEREAS**, in light of the ongoing financial hardships, the severe disruption to the economy at all levels, and in the spirit of the moratorium on the execution of warrants of eviction, the Township has determined that the immediate stability of rents is necessary in the public interest and is best served by placing an immediate, temporary moratorium on all rent increases.

**NOW, THEREFORE**, the Township Council of the Township of Montclair hereby ordains as follows:

- A. A moratorium is hereby declared to prevent any increase in the amount paid in rent or any additional charges whatsoever by residential tenants in all residential rental units in the Township of Montclair with the exception of:
  - 1. Rental units in properties that are owner-occupied with no more than one additional rental unit;
  - 2. Rental units in properties exempt from local rent regulation by state or federal law;
  - 3. Rental units in which the rent is determined as function of household income; and
  - 4. Rental units in hotels.
- B. During the period the moratorium is in effect, no rent shall be increased as to any property covered by this ordinance, where "rent" is defined for purposes of this ordinance as any price for the use of a residential rental space, no matter how set forth, including amounts paid by the tenant for the use of any service in connection with a tenancy.
- C. Additionally, no other charge associated with the rental of a property covered by this ordinance, including but not limited to charges for parking, pets, or the use of furniture, shall be increased during this time.
- D. The moratorium shall be made retroactive to May 1, 2020 and shall remain in effect until August 1, 2020.



R-20-091

TOWNSHIP OF MONTCLAIR

**RESOLUTION DECLARING AN EMERGENCY AND DIRECTING THAT  
ORDINANCE O-20-08 TAKE EFFECT IMMEDIATELY**

May 19, 2020

**WHEREAS**, on May 19, 2020 the Township Council adopted Ordinance O-20-08 instituting a rent increase moratorium in connection with the COVID-19 epidemic; and

**WHEREAS**, N.J.S.A. 40:69-181(b) provides that the governing body of a municipality may adopt a resolution declaring an emergency and providing for any duly adopted ordinance to take effect less than twenty days after final passage, and

**WHEREAS**, in view of the COVID-19 epidemic, and the State of Emergency in effect in the Township of Montclair and the State of New Jersey, the Mayor and Council of the Township deem immediate declaration of rent control moratorium a necessary measure to be taken in order to mitigate hardship and risk of displacement to the Township tenant residents; now therefore

**BE IT RESOLVED** by the Mayor and Council of Montclair, in the County of Essex, that pursuant to N.J.S.A. 40:69-181(b), Ordinance O-20-08 adopted May 19, 2020 shall take effect immediately upon adoption of this Resolution.

| RECORD OF COUNCIL VOTE   |     |    |     |      |    |                    |     |    |     |      |    |
|--|-----|----|-----|------|----|--------------------|-----|----|-----|------|----|
|  | YES | NO | ABS | N.V. | AB |                    | YES | NO | ABS | N.V. | AB |
| Councilor Baskerville  | ✓   |    |     |      |    | Councilor Schlager | ✓   |    |     |      |    |
| Councilor Hurlock  | ✓   |    |     |      |    | Councilor Spiller  | ✓   |    |     |      |    |
| Deputy Mayor McMahon   |     |    | ✓   |      |    | Mayor Jackson      | ✓   |    |     |      |    |
| Councilor Russo  | ✓   |    |     |      |    |                    |     |    |     |      |    |
| X - Indicate Vote    ABS - Abstain    N.V. - Not Voting    AB - Absent |     |    |     |      |    |                    |     |    |     |      |    |

I HEREBY CERTIFY the foregoing to be a true copy of a Resolution adopted by the Council of the Township of Montclair, in the County of Essex, at its meeting held on May 19, 2020.

  
Juliet G. Lee

Deputy Clerk of the Township of Montclair, N.J.

# **Exhibit “D”**

**O-20-20****TOWNSHIP OF MONTCLAIR****ORDINANCE AMENDING ORDINANCE O-20-08 TO EXTEND THE TEMPORARY MORATORIUM ON RENT INCREASES DUE TO THE COVID-19 PANDEMIC**

July 21, 2020 (date of introduction)

August 4, 2020 (date of public hearing)

**WHEREAS**, due to the widespread hardships suffered by Township residents resulting from the COVID-19 pandemic including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020; and

**WHEREAS**, the health crisis and the associated hardships are ongoing, and are likely to continue to cause economic harm to Montclair's residents for an indefinite period; and

**WHEREAS**, Governor Murphy's Executive Order 162 issued July 2, 2020, has continued the COVID-19 State of Emergency for the entire State of New Jersey; now, therefore, be it

**ORDAINED**, by the Township Council of the Township of Montclair that Ordinance O-20-08 is amended to delete the end date of August 1, 2020 and to substitute "The moratorium shall remain in effect until December 31, 2020;" and be it further

**ORDAINED**, that this amendatory Ordinance shall take effect immediately if accompanied by a resolution adopted pursuant to N.J.S.A. 40:69A-181(b), or otherwise as provided by law, and shall be retroactive to August 1, 2020.

# **Exhibit “E”**

**O-20-24**  
**TOWNSHIP OF MONTCLAIR**

**ORDINANCE AMENDING ORDINANCE O-20-08 AND O-20-20 TO EXTEND THE  
TEMPORARY MORATORIUM ON RENT INCREASE DUE TO THE COVID-19  
PANDEMIC**

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December 1, 2020 (date of introduction)

January 5, 2021 (date of public hearing)

**WHEREAS**, due to the widespread hardships suffered by the Township residents resulting from the COVID-19 pandemic, including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020, and

**WHEREAS**, the Township Council on August 4, 2020 by Ordinance O-20-20 amended O-20-08 to extend the temporary moratorium until December 31, 2020; and

**WHEREAS**, the health crisis and the associated hardships are ongoing, and are likely to continue to cause economic harm to Montclair's residents for an indefinite period; and

**WHEREAS**, the Governor Murphy's Executive Order 191 issued October 24, 2020 has continued the COVID-19 State of Emergency for the entire State of New Jersey.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Township of Montclair that Ordinance O-20-08, as amended by O-20-20, is further amended to extend the temporary moratorium until March 31, 2021, and

**BE IT FURTHER ORDAINED**, that in the event that the State of Emergency declared by Governor Murphy in connection with the COVID-19 pandemic remains in effect after that date, the Township Council is authorized to further extend the temporary moratorium for one or more periods not to exceed three months each, by resolution of a majority of the members of the governing body, and

**BE IT FURTHER ORDAINED**, that this amendatory Ordinance shall take effect immediately if accompanied by a resolution adopted pursuant to N.J.S.A. 40:69A-181(b), or otherwise as provided by law, and shall be retroactive to January 1, 2021 if it becomes effective after that date.

# **Exhibit “F”**

## TOWNSHIP OF MONTCLAIR

**RESOLUTION EXTENDING RENT INCREASE MORATORIUM UNTIL JUNE 30, 2021**

March 16, 2021

**WHEREAS**, due to the widespread hardships suffered by the Township residents resulting from the COVID-19 pandemic, including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020, and

**WHEREAS**, the Township Council on August 4, 2020 by Ordinance O-20-20 amended O-20-08 to extend the temporary moratorium until December 31, 2020, AND BY Ordinance O-20-24 extended the temporary moratorium until March 31, 2021; and


**WHEREAS**, Ordinance O-20-24 provided that in the event that the State of Emergency declared by Governor Murphy in connection with the COVID-19 pandemic remains in effect after March 31, 2021, the Township Council is authorized to further extend the temporary moratorium for one or more periods not to exceed three months each, by resolution of a majority of the members of the governing body; and

**WHEREAS**, by Executive Order 222, promulgated on February 17, 2021, Governor Murphy declared that the state of health emergency continues to exist throughout the State of New Jersey.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Montclair that pursuant to Ordinance O-20-08, as amended by O-20-24, the temporary rent increase moratorium previously established by O-20-08 is extended and shall remain in full force and effect through and until June 30, 2021.

| ROLL CALL VOTE                |        |        |     |    |         |        |
|-------------------------------|--------|--------|-----|----|---------|--------|
| COUNCIL MEMBER                | MOVANT | SECOND | YES | NO | ABSTAIN | ABSENT |
| <b>Councilor Cummings</b>     |        |        | ✓   |    |         |        |
| <b>Deputy Mayor Hurlock</b>   |        |        | ✓   |    |         |        |
| <b>Councilor Price Abrams</b> |        |        | ✓   |    |         |        |
| <b>Councilor Russo</b>        |        | ✓      | ✓   |    |         |        |
| <b>Councilor Schlager</b>     |        |        | ✓   |    |         |        |
| <b>Councilor Yacobellis</b>   |        |        | ✓   |    |         |        |
| <b>Mayor Spiller</b>          | ✓      |        | ✓   |    |         |        |

**I HEREBY CERTIFY** the foregoing to be a true copy of Resolution R-21-046 adopted by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on March 16, 2021.



Angelese Bermúdez Nieves, Township Clerk

# **Exhibit “G”**



**R-21-124**  
**TOWNSHIP OF MONTCLAIR**

**RESOLUTION EXTENDING RENT INCREASE MORATORIUM UNTIL SEPTEMBER 30, 2021**

June 22, 2021

**WHEREAS**, due to the widespread hardships suffered by the Township residents resulting from the COVID-19 pandemic, including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020, and

**WHEREAS**, the Township Council on August 4, 2020 by Ordinance O-20-20 amended O-20-08 to extend the temporary moratorium until December 31, 2020, and by Ordinance O-20-24 extended the temporary moratorium until March 31, 2021; and by Resolution R-21-046 extended the temporary moratorium until June 30, 2021, and

**WHEREAS**, Ordinance O-20-24 provided that in the event that the State of Emergency declared by Governor Murphy in connection with the COVID-19 pandemic remains in effect after June 30, 2021, the Township Council is authorized to further extend the temporary moratorium for one or more periods not to exceed three months each, by resolution of a majority of the members of the governing body; and

**WHEREAS**, by Executive Order 235, promulgated on April 15, 2021, Governor Murphy declared that the state of health emergency continues to exist throughout the State of New Jersey.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Montclair that pursuant to Ordinance O-20-08, as amended by O-20-24, the temporary rent increase moratorium previously established by O-20-08 is extended and shall remain in full force and effect through and until September 30, 2021.

| ROLL CALL VOTE         |        |        |     |    |         |        |
|------------------------|--------|--------|-----|----|---------|--------|
| COUNCIL MEMBER         | MOVANT | SECOND | YES | NO | ABSTAIN | ABSENT |
| Councilor Cummings     |        |        | ✓   |    |         |        |
| Deputy Mayor Hurlock   |        | ✓      | ✓   |    |         |        |
| Councilor Price Abrams |        |        | ✓   |    |         |        |
| Councilor Russo        |        |        | ✓   |    |         |        |
| Councilor Schlager     |        |        | ✓   |    |         |        |
| Councilor Yacobellis   |        |        | ✓   |    |         |        |
| Mayor Spiller          | ✓      |        | ✓   |    |         |        |

**I HEREBY CERTIFY** the foregoing to be a true copy of Resolution R-21-124 adopted by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on June 22, 2021.

  
Angelese Bermúdez Nieves, Township Clerk

# **Exhibit “H”**

**R-21-189**  
**TOWNSHIP OF MONTCLAIR**

**RESOLUTION EXTENDING THE RENT INCREASE MORATORIUM UNTIL  
DECEMBER 31, 2021**

September 29, 2021

**WHEREAS**, due to the widespread hardships suffered by the Township residents resulting from the COVID-19 pandemic, including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020, and

**WHEREAS**, the Township Council on August 4, 2020 by Ordinance O-20-20 amended O-20-08 to extend the temporary moratorium until December 31, 2020, and by Ordinance O-20-24 extended the temporary moratorium until March 31, 2021; and by Resolution R-21-046 extended the temporary moratorium until June 30, 2021; and by Resolution R-21-124 extended the temporary moratorium until September 30, 2021; and

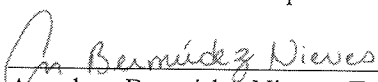
**WHEREAS**, Ordinance O-20-24 provided that in the event that the State of Emergency declared by Governor Murphy in connection with the COVID-19 pandemic remains in effect after June 30, 2021, the Township Council is authorized to further extend the temporary moratorium for one or more periods not to exceed three months each, by resolution of a majority of the members of the governing body; and

**WHEREAS**, by Executive Order 235, promulgated on April 15, 2021, Governor Murphy declared that the state of emergency continues to exist throughout the State of New Jersey.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Montclair that pursuant to Ordinance O-20-08, as amended by O-20-24, the temporary rent increase moratorium previously established by O-20-08 is extended and shall remain in full force and effect through and until December 31, 2021.

| RECORD OF ROLL CALL VOTE |        |        |     |    |         |        |
|--------------------------|--------|--------|-----|----|---------|--------|
| COUNCIL MEMBERS          | MOVANT | SECOND | YES | NO | ABSTAIN | ABSENT |
| Councilor Cummings       |        |        | ✓   |    |         |        |
| Deputy Mayor Hurlock     |        | ✓      | ✓   |    |         |        |
| Councilor Price Abrams   |        |        | ✓   |    |         |        |
| Councilor Russo          |        |        | ✓   |    |         |        |
| Councilor Schlager       |        |        | ✓   |    |         |        |
| Councilor Yacobellis     |        |        | ✓   |    |         |        |
| Mayor Spiller            | ✓      |        | ✓   |    |         |        |

**I HEREBY CERTIFY** the foregoing to be a true copy of Resolution R-21-189 adopted by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on September 29, 2021.

  
Angelese Bermúdez Nieves, Township Clerk

# **Exhibit “I”**

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2315-20

TOWNSHIP OF MONTCLAIR  
COMMITTEE OF PETITIONERS  
and MONTCLAIR PROPERTY  
OWNERS ASSOCIATION,

Plaintiffs-Respondents,

v.

TOWNSHIP OF MONTCLAIR,  
MAYOR AND COUNCIL OF THE  
TOWNSHIP OF MONTCLAIR,  
THE CLERK OF THE TOWNSHIP  
OF MONTCLAIR, and STATE OF  
NEW JERSEY,

Defendants-Appellants.

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APPROVED FOR PUBLICATION

November 30, 2021

APPELLATE DIVISION

Argued September 21, 2021 – Decided November 30, 2021

Before Judges Fisher, Currier and DeAlmeida.

On appeal from an interlocutory order of the Superior  
Court of New Jersey, Law Division, Essex County,  
Docket No. L-2724-20.

Ira Karasick argued the cause for appellants.

Charles X. Gormally argued the cause for respondents  
(Brach Eichler LLC, attorneys; Charles X. Gormally  
and Paul M. Bishop, of counsel and on the brief).

The opinion of the court was delivered by

FISHER, P.J.A.D.

In this appeal, we consider a municipal clerk's determination that plaintiffs' petition for a referendum on a rent-regulation ordinance lacked sufficient signatures; the clerk's decision resulted from her discerning of differences between some of the petition's e-signatures and the corresponding voters' pen-and-ink signatures on the voter rolls. We affirm the trial judge's determination that the clerk acted arbitrarily and capriciously. Among other things, we conclude it was unreasonable, because of the limiting circumstance of the COVID-19 pandemic, and the Governor's emergency order precluding door-to-door solicitations, for the clerk not to reach out and provide voters with an opportunity to cure the alleged uncertain signatures before attempting to disenfranchise them from the referendum process.

On April 7, 2020 – mere weeks after the COVID-19 pandemic fully hit our shores – the Township of Montclair enacted an ordinance adopting rent regulation provisions. Desirous of challenging the ordinance in the following election, plaintiffs sought and obtained a trial court order tolling the ordinance's effective date until the lifting of the state of emergency caused by the pandemic, which impacted plaintiffs' ability to petition for signatures in favor of a

referendum to repeal the ordinance. Adhering to the Governor's Executive Order 132, which banned door-to-door signature gathering, plaintiffs created a website. The website provided visitors with the opportunity to read the ordinance and the petition before navigating to the signature page, which required that the voter: fill information fields consistent with the requirements of N.J.S.A. 40:69A-186; electronically sign; and affirm their desire to have their signature counted.

N.J.S.A. 40:69A-184 requires the signatures of fifteen percent of the registered voter population to effectuate a petition for referendum. Based on Montclair's total registered voter population, plaintiffs needed 1,020 registered-voter signatures. Plaintiffs collected 1,528 electronic signatures, and electronically filed their petition with the township clerk on September 24, 2020.

Three weeks later, the township clerk served plaintiffs with a "notice of insufficiency," revealing that she had rejected 614 signatures. 446 were rejected for reasons not contested here. Another 168 signatures were rejected because – in the clerk's view – the voter's e-signature did not match the signatures on record with the State of New Jersey Registration Voter System (hereafter "the voter system"). Based on the clerk's personal assessment, the petition was short 106 valid signatures.

Because of the pandemic's continuing impact, the trial judge allowed plaintiffs additional time to cure the alleged defects cited by the clerk. On December 7, 2020, plaintiffs filed an amended petition, which included an additional 136 e-signatures, some of which were intended to cure earlier rejected signatures. A week later, the clerk rejected many of the 136 new signatures, finding their e-signatures did not match the pen-and-ink signatures in the voter system. Ultimately, after examining both the petition and amended petition, the clerk decided there were only 1,002 signatures in support, eighteen less than the amount required to place the issue on the ballot.

A few weeks later, plaintiffs amended their verified complaint to assert the arbitrariness of the clerk's decision about the additional signatures. The trial judge entered an order that, among other things, permitted additional briefing and scheduled a return date of the original order to show cause. On January 15, 2021, the judge rendered an oral decision, concluding the clerk's actions were neither arbitrary nor capricious.

Plaintiffs timely moved for reconsideration. Plaintiffs argued the clerk's position was arbitrary and capricious if for no other reason than twenty voters signed both the petition and amended petition and had their e-signatures rejected both times. Plaintiffs also provided the trial judge with three certifications of



voters, as well as other information from other voters, protesting the rejection of their signatures and confirming their intent to support the referendum petition. In moving for reconsideration, plaintiffs also demonstrated that despite the clerk's possession of contact information for all these rejected voters, she failed to reach out to confirm whether or not they intended to sign the petition.

On March 16, 2021, the judge ruled in plaintiffs' favor, vacated his former decision, and concluded that the clerk's rejection of 168 e-signatures in the initial petition and the additional twenty-seven e-signatures in the amended petition – because, in the clerk's view, they did not match the pen-and-ink signatures in the voter system – was arbitrary and capricious. For the reasons given, the judge declared that the petition and its amendment satisfied the applicable statutory requirements; he ordered the clerk to certify the amended petition and direct the town council to consider it pursuant to N.J.S.A. 40:69A-191. The judge's order also declared that if the town council failed to repeal the ordinance, then the clerk was required to submit the question to the voters and the town council was to provide for a special election. We granted the town's motion for leave to appeal, and stayed the March 16, 2021 order pending our disposition of this appeal.

In appealing, defendants argue that: the clerk "followed the law and exercised her discretion reasonably in all respects"; the judge "erroneously interpreted and incorrectly applied governing law"; and "the only factual findings in the record confirm the clerk's determination that [rejected] signatures . . . did not resemble the signatures" in the voter system. We disagree.

The situation was governed by N.J.S.A. 40:69A-187, which requires that the clerk "determine . . . whether the petition is signed by a sufficient number of qualified voters." As we held long ago, "[t]here is no statutory directive as to the method or means to be utilized by the clerk in order to arrive" at such a determination, but we recognized a clerk has "the discretionary power to adopt any rational means of performing [this] duty, subject to judicial review to determine whether [the clerk] . . . abused [this] discretion and acted in an arbitrary manner." D'Ascensio v. Benjamin, 142 N.J. Super. 52, 55 (App. Div. 1976).

In this case, the clerk believed her discretion permitted a signature comparison and allowed her to disregard e-signatures that did not, in her view, compare favorably to pen-and-ink signatures in the voter system. This approach was inconsistent with Stone v. Wyckoff, 102 N.J. Super. 26, 34 (App. Div. 1968), where we held that N.J.S.A. 40:69A-169 "merely requires that the signers

be 'qualified voters,' . . . not that their signature be in the form identical with that appearing on the registration records." We admonished municipal clerks to consider and act with the understanding that "[m]any people have more than one 'signature'" and many have signatures "which to others are illegible." Ibid. While we recognized that a clerk may at times "have some difficulty in identifying some voters where the form of signature on the petition varies from that in the registration book," thereby allowing the clerk some "administrative" discretion to "require some proof of identity or reject the name," we emphasized that absent a "significant variance" between the signature in question and the signature in the voter registry, "the presumption of genuineness of the signatures as those of qualified voters" will not be overcome. Id. at 34-35. Even though written in a less complicated pen-and-ink world, Judge Conford's Stone opinion presents principles still utile in a society well advanced into an electronic age.

Indeed, despite the problems caused by the prohibition on plaintiffs' ability to seek pen-and-ink signatures, and the obvious fact that an e-signature will likely differ in some or many respects from an inked signature, there is nothing in the record to explain how the clerk considered these limitations,<sup>1</sup>

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<sup>1</sup> In her certification, the clerk stated that she "recognized that signing on a screen with a mouse or finger might look somewhat different than the signature

provided the signer with the presumption of validity, or applied the "significant variance" approach announced in Stone more than fifty years ago.

What is arbitrary is often governed by the circumstances surrounding the undertaking. If the clerk had the discretion to engage in a rigorous comparison of signatures, she was required to exercise that discretion reasonably. As Chief Justice Weintraub said in Richardson v. Caputo, 46 N.J. 3, 9 (1965), discretion "is never the plaything of office"; it instead "imports responsibility, a duty to act with reason." And, while "it is not for a court to choose one of several reasonable courses . . . if it clearly appears the course taken is not rooted in reason, the bounds of the delegated authority have been exceeded and it is the duty of the court to say so." Ibid. If we assume the statute authorized the clerk to engage in a painstaking comparison of e-signatures with pen-and-ink signatures, the circumstances alone warranted the clerk to do more than simply rely on the results of her own subjective analysis.

As to the twenty-seven e-signatures on which the focus turned, the clerk had their names, addresses, including email addresses, and other contact

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in the book" and that she "compensated for such discrepancy in exercising [her] judgment." This is merely a conclusion. The clerk's submission to the trial court does not explain or give examples of how or why a discrepancy sufficient – in the clerk's view – to require a rejection of the e-signature was determined.

information. The clerk has certified that many hours were expended in analyzing signatures,<sup>2</sup> but common sense and a rational view of the clerk's statutory role more than persuades that the time spent comparing doubtful signatures would have been more effectively utilized by reaching out to those voters for confirmation before taking the grave step of disenfranchising them from the process. The question, after all, was not whether, when analyzed in a vacuum, an e-signature matched a pen-and-ink signature but whether the voter "intended" that the e-signature be an expression of intent to endorse the petition. See Matthews v. Deane, 201 N.J. Super. 583, 585 (Ch. Div. 1984) (recognizing that the law defines "the term 'signature' to be that which an individual intends to be his [or her] signature"); see also J.D. Loizeaux Lumber Co. v. Davis, 41 N.J. Super. 231, 238 (App. Div. 1956); Weber v. DeCecco, 1 N.J. Super. 353, 358 (Ch. Div. 1948). The clerk could have ascertained the voter's intent by simply reaching out to the voter for confirmation. Indeed, the clerk certified that she consulted New Jersey's "Guide to Signature Verification of Mail-In and Provisional Ballots and Cure of Discrepant or Missing Signatures" (issued on June 22, 2020) in conducting her comparison of signatures but apparently chose

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<sup>2</sup> The clerk certified that she "and [her] assistants spent over 20 hours reviewing the petition forms, searching the voter databases, and rechecking any petitions that were rejected at least 3 times."

not to engage in the "cure" process described in that Guide to directly ascertain whether the voter intended to support the petition.

We, of course, appreciate the circumstances in which the clerk found herself in attempting to execute what she perceived to be her statutory obligation. The COVID-19 pandemic presented challenges for everyone. It left plaintiffs and interested voters in the difficult position of exercising electronically their important right of referendum. See Tumpson v. Farina, 218 N.J. 450, 480 (2014) (holding that "the right of referendum is about enfranchisement, about self-government, and about giving citizens the right to vote on matters of importance to their community"). Considering these difficulties, the clerk's failure to reach out to those voters whose e-signatures were, in the clerk's view, doubtful or at variance with the voter registry was arbitrary and capricious.

We note as well these same difficulties presented challenges for the parties and the trial court; for example, while plaintiffs were able to muster three certifications of voters whose signatures were rejected by the clerk, they were limited to relying on emails received from other voters in attempting to demonstrate the petition was supported by a sufficient number of voters. We deem it advisable now that there is greater physical accessibility to courts and

to the affected voters, that the trial judge schedule an evidentiary hearing and engage in such fact-finding as may be necessary to ensure certainty about the number of voters who, by e-signing, intended to support the petition. In determining the validity of any challenged signature, the judge should adhere to what we said in Stone:

[O]nce the matter reaches a judicial tribunal, . . . a signature consistent with that of the registered voter, of one residing at the recorded address of the registrant, must be deemed prima facie that of the registered voter, and the burden is on any challenger to show the contrary.

[102 N.J. Super. at 34.]

We, thus, remand for further proceedings in conformity with this opinion.

Remanded. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION

2021 WL 5571162

Only the Westlaw citation is currently available.  
Superior Court of New Jersey, Appellate Division.

TOWNSHIP OF MONTCLAIR **COMMITTEE  
OF PETITIONERS** and Montclair Property  
Owners Association, Plaintiffs-Respondents,  
v.

TOWNSHIP OF MONTCLAIR, Mayor and  
Council of the Township of Montclair, the  
Clerk of the Township of Montclair, and  
State of New Jersey, Defendants-Appellants.

DOCKET NO. A-2315-20

|  
Argued September 21, 2021

|  
Decided November 30, 2021

## Synopsis

### Synopsis

**Background:** Homeowners' association and advocacy organization brought action against township's clerk and related parties, alleging that clerk acted arbitrarily and capriciously in determining that plaintiffs' petition for a referendum to repeal rent-regulation ordinance lacked sufficient signatures. The Superior Court, Law Division, Essex County, entered judgment in favor of plaintiffs. Defendants appealed.

**[Holding:]** The Superior Court, Appellate Division, Fisher, P.J.A.D., held that clerk's failure during COVID-19 pandemic to reach out to voters whose e-signatures were, in clerk's view, doubtful or at variance with pen-and-ink signatures in voter registry was arbitrary and capricious.

Affirmed and remanded.

**Procedural Posture(s):** On Appeal; Judgment.

## West Headnotes (3)

### [1] Municipal Corporations

There is no statutory directive as to the method or means to be utilized by the clerk to arrive at determination whether petition for a referendum is signed by a sufficient number of qualified voters. N.J. Stat. Ann. § 40:69A-187.

### [2] Municipal Corporations

Failure during COVID-19 pandemic of township clerk to reach out to 27 voters whose e-signatures in support of petition for a referendum to repeal rent-regulation ordinance were, in clerk's view, doubtful or at variance with pen-and-ink signatures in voter registry was arbitrary and capricious; there was nothing in the record to explain how clerk provided signers with presumption of validity or considered problems caused by prohibition on ability to seek pen-and-ink signatures and obvious fact that an e-signature would likely differ from an inked signature, clerk had voters' names, addresses, and e-mail addresses, and time spent comparing doubtful signatures would have been more effectively utilized by reaching out to those voters for confirmation of intent before disenfranchising them from the process. N.J. Stat. Ann. § 40:69A-187.

### [3] Municipal Corporations

"Discretion" is never the plaything of office; it instead imports responsibility, a duty to act with reason, and, while it is not for a court to choose one of several reasonable courses, if it clearly appears the course taken is not rooted in reason, the bounds of the delegated authority have been exceeded and it is the duty of the court to say so.



On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2724-20.

### Attorneys and Law Firms

Ira Karasick, Montclair, argued the cause for appellants.

Charles X. Gormally, Roseland, argued the cause for respondents (Brach Eichler LLC, attorneys; Charles X. Gormally and Paul M. Bishop, Roseland, of counsel and on the brief).

Before Judges Fisher, Currier and DeAlmeida.

### Opinion

The opinion of the court was delivered by

FISHER, P.J.A.D.

\*1 In this appeal, we consider a municipal clerk's determination that plaintiffs' petition for a referendum on a rent-regulation ordinance lacked sufficient signatures; the clerk's decision resulted from her discerning of differences between some of the petition's e-signatures and the corresponding voters' pen-and-ink signatures on the voter rolls. We affirm the trial judge's determination that the clerk acted arbitrarily and capriciously. Among other things, we conclude it was unreasonable, because of the limiting circumstance of the COVID-19 pandemic, and the Governor's emergency order precluding door-to-door solicitations, for the clerk not to reach out and provide voters with an opportunity to cure the alleged uncertain signatures before attempting to disenfranchise them from the referendum process.

On April 7, 2020 – mere weeks after the COVID-19 pandemic fully hit our shores – the Township of Montclair enacted an ordinance adopting rent regulation provisions. Desirous of challenging the ordinance in the following election, plaintiffs sought and obtained a trial court order tolling the ordinance's effective date until the lifting of the state of emergency caused by the pandemic, which impacted plaintiffs' ability to petition for signatures in favor of a referendum to repeal the ordinance. Adhering to the Governor's Executive Order 132, which banned door-to-door signature gathering, plaintiffs created a website. The website provided visitors with the opportunity to read the ordinance and the petition before navigating to the signature page, which required that the

voter: fill information fields consistent with the requirements of N.J.S.A. 40:69A-186; electronically sign; and affirm their desire to have their signature counted.

N.J.S.A. 40:69A-184 requires the signatures of fifteen percent of the registered voter population to effectuate a petition for referendum. Based on Montclair's total registered voter population, plaintiffs needed 1,020 registered-voter signatures. Plaintiffs collected 1,528 electronic signatures, and electronically filed their petition with the township clerk on September 24, 2020.

Three weeks later, the township clerk served plaintiffs with a "notice of insufficiency," revealing that she had rejected 614 signatures. 446 were rejected for reasons not contested here. Another 168 signatures were rejected because – in the clerk's view – the voter's e-signature did not match the signatures on record with the State of New Jersey Registration Voter System (hereafter "the voter system"). Based on the clerk's personal assessment, the petition was short 106 valid signatures.

Because of the pandemic's continuing impact, the trial judge allowed plaintiffs additional time to cure the alleged defects cited by the clerk. On December 7, 2020, plaintiffs filed an amended petition, which included an additional 136 e-signatures, some of which were intended to cure earlier rejected signatures. A week later, the clerk rejected many of the 136 new signatures, finding their e-signatures did not match the pen-and-ink signatures in the voter system. Ultimately, after examining both the petition and amended petition, the clerk decided there were only 1,002 signatures in support, eighteen less than the amount required to place the issue on the ballot.

\*2 A few weeks later, plaintiffs amended their verified complaint to assert the arbitrariness of the clerk's decision about the additional signatures. The trial judge entered an order that, among other things, permitted additional briefing and scheduled a return date of the original order to show cause. On January 15, 2021, the judge rendered an oral decision, concluding the clerk's actions were neither arbitrary nor capricious.

Plaintiffs timely moved for reconsideration. Plaintiffs argued the clerk's position was arbitrary and capricious if for no other reason than twenty voters signed both the petition and amended petition and had their e-signatures rejected both times. Plaintiffs also provided the trial judge with three certifications of voters, as well as other information from

other voters, protesting the rejection of their signatures and confirming their intent to support the referendum petition. In moving for reconsideration, plaintiffs also demonstrated that despite the clerk's possession of contact information for all these rejected voters, she failed to reach out to confirm whether or not they intended to sign the petition.

On March 16, 2021, the judge ruled in plaintiffs' favor, vacated his former decision, and concluded that the clerk's rejection of 168 e-signatures in the initial petition and the additional twenty-seven e-signatures in the amended petition – because, in the clerk's view, they did not match the pen-and-ink signatures in the voter system – was arbitrary and capricious. For the reasons given, the judge declared that the petition and its amendment satisfied the applicable statutory requirements; he ordered the clerk to certify the amended petition and direct the town council to consider it pursuant to N.J.S.A. 40:69A-191. The judge's order also declared that if the town council failed to repeal the ordinance, then the clerk was required to submit the question to the voters and the town council was to provide for a special election. We granted the town's motion for leave to appeal, and stayed the March 16, 2021 order pending our disposition of this appeal.

In appealing, defendants argue that: the clerk “followed the law and exercised her discretion reasonably in all respects”; the judge “erroneously interpreted and incorrectly applied governing law”; and “the only factual findings in the record confirm the clerk's determination that [rejected] signatures ... did not resemble the signatures” in the voter system. We disagree.

[1] The situation was governed by N.J.S.A. 40:69A-187, which requires that the clerk “determine ... whether the petition is signed by a sufficient number of qualified voters.” As we held long ago, “[t]here is no statutory directive as to the method or means to be utilized by the clerk in order to arrive” at such a determination, but we recognized a clerk has “the discretionary power to adopt any rational means of performing [this] duty, subject to judicial review to determine whether [the clerk] ... abused [this] discretion and acted in an arbitrary manner.” *D'Ascensio v. Benjamin*, 142 N.J. Super. 52, 55, 359 A.2d 885 (App. Div. 1976).

[2] In this case, the clerk believed her discretion permitted a signature comparison and allowed her to disregard e-signatures that did not, in her view, compare favorably to pen-and-ink signatures in the voter system. This approach was inconsistent with *Stone v. Wyckoff*, 102 N.J. Super. 26,

34, 245 A.2d 215 (App. Div. 1968), where we held that N.J.S.A. 40:69A-169 “merely requires that the signers be ‘qualified voters,’ ... not that their signature be in the form identical with that appearing on the registration records.” We admonished municipal clerks to consider and act with the understanding that “[m]any people have more than one ‘signature’ ” and many have signatures “which to others are illegible.” *Ibid*. While we recognized that a clerk may at times “have some difficulty in identifying some voters where the form of signature on the petition varies from that in the registration book,” thereby allowing the clerk some “administrative” discretion to “require some proof of identity or reject the name,” we emphasized that absent a “significant variance” between the signature in question and the signature in the voter registry, “the presumption of genuineness of the signatures as those of qualified voters” will not be overcome. *Id.* at 34-35, 245 A.2d 215. Even though written in a less complicated pen-and-ink world, Judge Conford's *Stone* opinion presents principles still utile in a society well advanced into an electronic age.

\*3 Indeed, despite the problems caused by the prohibition on plaintiffs' ability to seek pen-and-ink signatures, and the obvious fact that an e-signature will likely differ in some or many respects from an inked signature, there is nothing in the record to explain how the clerk considered these limitations,<sup>1</sup> provided the signer with the presumption of validity, or applied the “significant variance” approach announced in *Stone* more than fifty years ago.

[3] What is arbitrary is often governed by the circumstances surrounding the undertaking. If the clerk had the discretion to engage in a rigorous comparison of signatures, she was required to exercise that discretion reasonably. As Chief Justice Weintraub said in *Richardson v. Caputo*, 46 N.J. 3, 9, 214 A.2d 385 (1965), discretion “is never the plaything of office”; it instead “imports responsibility, a duty to act with reason.” And, while “it is not for a court to choose one of several reasonable courses ... if it clearly appears the course taken is not rooted in reason, the bounds of the delegated authority have been exceeded and it is the duty of the court to say so.” *Ibid*. If we assume the statute authorized the clerk to engage in a painstaking comparison of e-signatures with pen-and-ink signatures, the circumstances alone warranted the clerk to do more than simply rely on the results of her own subjective analysis.

As to the twenty-seven e-signatures on which the focus turned, the clerk had their names, addresses, including

email addresses, and other contact information. The clerk has certified that many hours were expended in analyzing signatures,<sup>2</sup> but common sense and a rational view of the clerk's statutory role more than persuades that the time spent comparing doubtful signatures would have been more effectively utilized by reaching out to those voters for confirmation before taking the grave step of disenfranchising them from the process. The question, after all, was not whether, when analyzed in a vacuum, an e-signature matched a pen-and-ink signature but whether the voter "intended" that the e-signature be an expression of intent to endorse the petition. See Matthews v. Deane, 201 N.J. Super. 583, 585, 493 A.2d 632 (Ch. Div. 1984) (recognizing that the law defines "the term 'signature' to be that which an individual intends to be his [or her] signature"); see also J.D. Loizeaux Lumber Co. v. Davis, 41 N.J. Super. 231, 238, 124 A.2d 593 (App. Div. 1956); Weber v. De Cecco, 1 N.J. Super. 353, 358, 61 A.2d 651 (Ch. Div. 1948). The clerk could have ascertained the voter's intent by simply reaching out to the voter for confirmation. Indeed, the clerk certified that she consulted New Jersey's "Guide to Signature Verification of Mail-In and Provisional Ballots and Cure of Discrepant or Missing Signatures" (issued on June 22, 2020) in conducting her comparison of signatures but apparently chose not to engage in the "cure" process described in that Guide to directly ascertain whether the voter intended to support the petition.

\*4 We, of course, appreciate the circumstances in which the clerk found herself in attempting to execute what she perceived to be her statutory obligation. The COVID-19 pandemic presented challenges for everyone. It left plaintiffs and interested voters in the difficult position of exercising electronically their important right of referendum. See Tumpson v. Farina, 218 N.J. 450, 480, 95 A.3d 210 (2014) (holding that "the right of referendum is about

enfranchisement, about self-government, and about giving citizens the right to vote on matters of importance to their community"). Considering these difficulties, the clerk's failure to reach out to those voters whose e-signatures were, in the clerk's view, doubtful or at variance with the voter registry was arbitrary and capricious.

We note as well these same difficulties presented challenges for the parties and the trial court; for example, while plaintiffs were able to muster three certifications of voters whose signatures were rejected by the clerk, they were limited to relying on emails received from other voters in attempting to demonstrate the petition was supported by a sufficient number of voters. We deem it advisable now that there is greater physical accessibility to courts and to the affected voters, that the trial judge schedule an evidentiary hearing and engage in such fact-finding as may be necessary to ensure certainty about the number of voters who, by e-signing, intended to support the petition. In determining the validity of any challenged signature, the judge should adhere to what we said in Stone:

[O]nce the matter reaches a judicial tribunal, ... a signature consistent with that of the registered voter, of one residing at the recorded address of the registrant, must be deemed prima facie that of the registered voter, and the burden is on any challenger to show the contrary.

[102 N.J. Super. at 34, 245 A.2d 215.]

We, thus, remand for further proceedings in conformity with this opinion.

Remanded. We do not retain jurisdiction.

#### All Citations

--- A.3d ----, 2021 WL 5571162

#### Footnotes

- 1 In her certification, the clerk stated that she "recognized that signing on a screen with a mouse or finger might look somewhat different than the signature in the book" and that she "compensated for such discrepancy in exercising [her] judgment." This is merely a conclusion. The clerk's submission to the trial court does not explain or give examples of how or why a discrepancy sufficient – in the clerk's view – to require a rejection of the e-signature was determined.

- 2 The clerk certified that she “and [her] assistants spent over 20 hours reviewing the petition forms, searching the voter databases, and rechecking any petitions that were rejected at least 3 times.”

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# **Exhibit “J”**

**R-21-228**  
**TOWNSHIP OF MONTCLAIR**

**RESOLUTION EXTENDING RENT INCREASE MORATORIUM UNTIL MARCH 31, 2022**

December 7, 2021

**WHEREAS**, due to the widespread hardships suffered by the Township residents resulting from the COVID-19 pandemic, including business closures, unemployment, loss of income, illness and additional catastrophes impeding residents' ability to keep current on rent payments, the Township Council enacted Ordinance O-20-08 establishing a temporary moratorium on residential rent increases for the period from May 1, 2020 through July 31, 2020, and

**WHEREAS**, the Township Council on August 4, 2020 by Ordinance O-20-20 amended O-20-08 to extend the temporary moratorium until December 31, 2020, and by Ordinance O-20-24 extended the temporary moratorium until March 31, 2021; and by Resolution R-21-046 extended the temporary moratorium until June 30, 2021; and by Resolution R-21-124 extended the temporary moratorium until September 30, 2021; and by Resolution R-21-189 extended the temporary moratorium until December 31, 2021; and

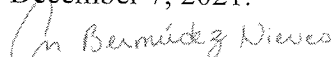
**WHEREAS**, Ordinance O-20-24 provided that in the event that the State of Emergency declared by Governor Murphy in connection with the COVID-19 pandemic remains in effect after June 30, 2021, the Township Council is authorized to further extend the temporary moratorium for one or more periods not to exceed three months each, by resolution of a majority of the members of the governing body; and

**WHEREAS**, by Executive Order 244, promulgated on June 4, 2021, Governor Murphy declared that the state of emergency continues to exist throughout the State of New Jersey.

**NOW THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Township of Montclair that pursuant to Ordinance O-20-08, as amended by O-20-24, the temporary rent increase moratorium previously established by O-20-08 is extended and shall remain in full force and effect through and until March 31, 2022.

| ROLL CALL VOTE         |        |        |     |    |         |        |
|------------------------|--------|--------|-----|----|---------|--------|
| COUNCIL MEMBER         | MOVANT | SECOND | YES | NO | ABSTAIN | ABSENT |
| Councilor Cummings     |        |        | ✓   |    |         |        |
| Deputy Mayor Hurlock   |        | ✓      | ✓   |    |         |        |
| Councilor Price Abrams |        |        | ✓   |    |         |        |
| Councilor Russo        |        |        | ✓   |    |         |        |
| Councilor Schlager     |        |        |     |    | ✓       |        |
| Councilor Yacobellis   |        |        |     | ✓  |         |        |
| Mayor Spiller          | ✓      |        | ✓   |    |         |        |

**I HEREBY CERTIFY** the foregoing to be a true copy of Resolution R-21-228 adopted by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on December 7, 2021.

  
Angelese Bermúdez Nieves, Township Clerk

# **Exhibit “K”**

EXECUTIVE ORDER NO. 103

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 novel coronavirus outbreak, which was first identified in Wuhan, the People's Republic of China in December 2019 and quickly spread to the Hubei Province and multiple other countries; and

WHEREAS, symptoms of the COVID-19 illness include fever, cough, and shortness of breath, which may appear in as few as two or as long as 14 days after exposure, and can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, as of March 9, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 114,000 confirmed cases of COVID-19 worldwide, with over 4,000 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were more than 500 confirmed cases of COVID-19 in the United States, with 22 of those cases having resulted in death; and



WHEREAS, as of March 9, 2020, there were 11 presumed positive cases of COVID-19 in New Jersey, with 24 additional "Persons Under Investigation" spread across the counties of Bergen, Camden, Cumberland, Essex, Hunterdon, Middlesex, Monmouth, Passaic, Union, and Sussex; and

WHEREAS, as of March 9, 2020, there were 142 positive cases of COVID-19 in the State of New York and seven presumptive positive cases in the Commonwealth of Pennsylvania; and

WHEREAS, the CDC expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur; and

WHEREAS, if COVID-19 spreads in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the resources and capabilities of county and municipal governments, including public health agencies, that provide essential services for containing and mitigating the spread of contagious diseases, such as COVID-19, and the situation may become too large in scope to be handled in its entirety by the normal county and municipal operating services in some parts of this State, and this situation may spread to other parts of the State; and

WHEREAS, the spread of COVID-19 may make it difficult or impossible for citizens to obtain consumer goods and other necessities of life due to supply chain disruption and price increases, as well as hamper the delivery of essential services such as police, fire, and first aid; and

WHEREAS, the State's public bidding act, N.J.S.A. 52:34-6 et seq., provides a public exigency exemption, N.J.S.A. 52:34-10(b), that in the event of a threat to the life, health, or safety to the public, advertised bidding is not required to obtain those

goods and services necessary to address the public exigency where the Division of Purchase of Property provides preapproval in accordance with Treasury Circular 18-14-DPP; and

WHEREAS, in the event of a declared emergency pursuant to Treasury Circular 19-10-DPP, the threshold for delegated purchasing by individual State Departments is raised to \$100,000 such that purchases at or below that amount do not require prior approval or action by DPP; and

WHEREAS, the spread of COVID-19 may disrupt the timely delivery of State contracted goods or services, the immediate delivery and fulfillment of which is necessary for the life, safety, or health of the public; and

WHEREAS, the State of New Jersey has been working closely with the CDC, local health departments, and healthcare facilities to monitor, plan for and mitigate the spread of COVID-19 within the State; and

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by COVID-19; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, the State of New Jersey also acts as an employer with tens of thousands of employees, and the spread of COVID-19 requires preparedness for staffing shortages and flexibility in work rules to ensure that its employees can fully comply with all

medically appropriate measures while also ensuring the continuous delivery of State services performed by Executive branch agencies; and

WHEREAS, the continuous delivery of services at the county and municipal level performed by those governments and their employees is also essential; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State; and

WHEREAS, it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors; and

WHEREAS, the facts as set forth above and consultation with the Commissioner of DOH confirms that there exists a public health emergency in the State; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-107 et seq., prohibits excessive price increases during a declared state of emergency, or for 30 days after the termination of the state of emergency; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, DO DECLARE and PROCLAIM that a Public Health Emergency and State of Emergency exist in the State of New Jersey, and I hereby ORDER and DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any such emergency measures as the State Director may determine necessary, including the implementation of the State Emergency Operations Plan and directing the activation of county and municipal emergency operations plans, in order to fully and adequately protect the health, safety and welfare of the citizens of the State of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, is authorized to coordinate the relief effort from this emergency with all governmental agencies, volunteer organizations, and the private sector.

2. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, shall also supervise and coordinate all activities of all State, regional and local political bodies and agencies in order to ensure the most effective and expeditious implementation of this order, and, to this end, may call upon all such agencies and political subdivisions for any assistance necessary.

3. Given the concurrent invocation of both a State of Emergency pursuant to N.J.S.A. App.A.:9-33 et seq. and a Public Health Emergency as contemplated by N.J.S.A. 26:13-1 et seq., I reserve the right as specifically contemplated by N.J.S.A. 26:13-3 to exercise the authority and powers specific to the Emergency Health Powers Act as I deem necessary and appropriate to ensure the public health for New Jersey's residents.

4. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every

political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.

5. The Coronavirus Task Force established under Executive Order No. 102 is continued with the Commissioner of DOH as the chair, and shall provide assistance on the State's efforts preparing for and responding to the public health hazard posed by COVID-19.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. All State agencies, and specifically the Departments of Banking and Insurance, Health, Human Services, Education, and the Civil Service Commission are authorized to take appropriate steps to address the public health hazard of COVID-19, including increasing access and eliminating barriers to medical care, protecting the health and well-being of students, and protecting the health and well-being of State, county, and municipal employees while ensuring the continuous delivery of State, county, and municipal services.

8. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

9. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to utilize all property, equipment, and facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

10. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

11. In accordance with the N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.

12. In accordance with N.J.S.A. App. A:9-40, no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire, police, emergency medical, or other personnel or equipment into any non-contiguous impacted municipality within this State, nor to any impacted municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management in conjunction with the Commissioner of DOH.

14. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this  
9<sup>th</sup> day of March,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# **Exhibit “L”**



**EXECUTIVE ORDER NO. 244**

WHEREAS, on March 9, 2020, through Executive Order No. 103, the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard created by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, Executive Order No. 103 (2020) described both the symptoms and dangers presented by COVID-19 and the likelihood of community spread across the State, and it recognized the need to use all available statewide authorities to prepare for and respond to COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act ("EHPA"), to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187, Nos. 189-198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223, No. 225, Nos. 228-235, and Nos. 237-243 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, N.J.S.A. 26:13-3(b) establishes that a public health emergency declared by the Governor shall automatically terminate after 30 days, unless renewed for an additional 30 days through a declaration of the Governor; and

WHEREAS, on April 7, 2020, I issued Executive Order No. 119, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on May 6, 2020, I issued Executive Order No. 138, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on June 4, 2020, I issued Executive Order No. 151, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on July 2, 2020, I issued Executive Order No. 162, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on August 1, 2020, I issued Executive Order No. 171, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on August 27, 2020, I issued Executive Order No. 180, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on September 25, 2020, I issued Executive Order No. 186, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on October 24, 2020, I issued Executive Order No. 191, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on November 22, 2020, I issued Executive Order No. 200, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on December 21, 2020, I issued Executive Order No. 210, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on January 19, 2021, I issued Executive Order No. 215, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on February 17, 2021, I issued Executive Order No. 222, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on March 17, 2021, I issued Executive Order No. 231, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on April 15, 2021, I issued Executive Order No. 235, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on May 14, 2021, I issued Executive Order No. 240, which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, and 210 (2020), and Nos. 215, 222, 231, 235, and 240 (2021), I declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, due to the significant emergency measures the State has taken in response to COVID-19, in the summer and fall of 2020 there was a decrease in the rate of reported new cases of COVID-19 in New Jersey, in the total number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections in New Jersey; and

WHEREAS, given the progress the State had made based on these emergency measures and after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan ("Road Back Plan") for the methodical

and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, in line with the Road Back Plan, the State had been able to relax a number of restrictions, each time tailored to the relative risk the activity presents, and additional restrictions on outdoor and indoor businesses were lifted over the past several months; and

WHEREAS, the fact that the spread of COVID-19 had been limited by the State's emergency measures did not previously suggest that the Public Health Emergency had dissipated, because absent certain mitigation measures, public health experts anticipated that the spread of COVID-19 would again significantly increase; and

WHEREAS, in the past year, we have gained critical knowledge regarding COVID-19, including a better understanding of the risks associated with certain activities, the activities that are most conducive to spread of the virus, and the safeguards that can be implemented to mitigate those risks; and

WHEREAS, this information, together with expanded access to testing, personal protective equipment, and other materials necessary to protect individuals from spread of the virus, as well as the ongoing COVID-19 Vaccination Plan ("Plan") discussed below, allowed the State to lift most restrictions, with exceptions for certain settings of higher concern; and

WHEREAS, over the last two months, the number of hospitalized patients has gone from over 2,300 to under 500, the number of patients in intensive care has gone from over 450 to under 100, and the number of ventilators in use has gone from over 230 to under 65; and

WHEREAS, over the two months, the number of individuals testing positive for COVID-19 has gone from approximately 3,500 per day to several hundred per day, and the weekday spot positivity of COVID-19 tests has gone from 7-8 percent to under 2 percent; and

WHEREAS, the rate of transmission in the State has remained significantly below 1 for most of the last two months; and

WHEREAS, the COVID-19 Activity Level Report ("CALI Report") issued by the Communicable Disease Service in the New Jersey DOH calculates COVID-19 activity levels throughout the State using the case rate, percent of COVID-like illness, and percent positivity; and

WHEREAS, the CALI Report for the week ending May 29, 2021, presented an activity level of moderate throughout most of the State, with the southeast region showing low activity level, down from high as recently as mid-April; and

WHEREAS, as part of the State's response to COVID-19, DOH has created a comprehensive Plan to manage the receipt, administration, and tracking of the vaccines developed to inoculate the State's residents and workforce against COVID-19; and

WHEREAS, as part of that Plan, New Jersey set an initial goal of fully vaccinating 70 percent of the eligible adult population in New Jersey by June 30, equating to approximately 4.7 million individuals; and

WHEREAS, the State has thus far administered approximately 9 million doses of COVID-19 vaccines, with over 4.9 million New Jerseyans having received at least one dose of a vaccine and over 4.2 million having been fully vaccinated; and

WHEREAS, vaccine supply was previously constrained, but is now sufficient to permit every eligible individual within the State reasonable access; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") recently issued guidance regarding social distancing and masking measures that reflects the low probability that fully vaccinated individuals will transmit the virus and emphasizes the significant protection against severe illness that the vaccine provides individuals; and

WHEREAS, given the decisive decreases in key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, and the rate of transmission, and the continuation of the State's Plan, the State has now lifted the vast majority of restrictions that were designed to reduce transmission and spread of the virus; and

WHEREAS, despite the extensive progress made in combatting COVID-19, there remains an ongoing threat necessitating that certain actions taken pursuant to the powers granted under the EHPA, including vaccine management, administration and tracking, remain in place; and

WHEREAS, ongoing oversight of the State's vaccination program is particularly important as the rollout continues, as the State prepares for additional groups of New Jerseyans to become eligible for vaccination, and as the State prepares for the potential necessity of booster doses in the future; and

WHEREAS, the CDC continues to highlight certain settings, including schools and health care facilities, as places where mitigation protocols are necessary; and

WHEREAS, the CDC also continues to release updated recommendations regarding mitigation protocols that may require the State to modify current policies and protocols; and

WHEREAS, in light of that ongoing need, I have just signed Assembly Bill No. 5820, which ensures that essential authorities, including the power of State agencies to modify existing emergency Orders and issue new Orders for certain purposes, can continue after the termination of the Public Health Emergency declared in Executive Order No. 103 (2020) to avoid disruption in New Jersey's emergency response; and

WHEREAS, neither the legislation nor this Order diminish the existing authorities of State agencies, separate and apart from any emergency powers; and

WHEREAS, the legislation also extends the effective period for specified Executive Orders issued pursuant to Executive Order No. 103 (2020) authorities, including but not limited to Orders regarding statutory and regulatory deadline extensions that are critical to wind down in a measured and thoughtful manner; and

WHEREAS, in light of this legislation becoming law, the Public Health Emergency declared in Executive Order No. 103 (2020) can be safely and responsibly lifted; and

WHEREAS, while the State has effectively curtailed the immediate public health threat of the virus, the economic and social impacts of the virus will require ongoing management and oversight; and

WHEREAS, the State of Emergency declared in Executive Order No. 103 (2020) pursuant to N.J.S.A. App.A.:9-33 et seq. must remain in effect to allow for the continued management of New Jersey's recovery from and response to the COVID-19 pandemic;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby DECLARE and PROCLAIM:

1. The Public Health Emergency declared in Executive Order No. 103 (2020) pursuant to the EHPA, N.J.S.A. 26:13-1, et seq., is hereby terminated.

2. The State of Emergency declared in Executive Order No. 103 (2020) pursuant to N.J.S.A. App.A.:9-33 et seq. continues to exist in the State of New Jersey.

3. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
4<sup>th</sup> day of June,  
Two Thousand and Twenty-one,  
and of the Independence of  
the United States, the Two  
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy  
Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor