

STATE OF NEW JERSEY



NEW JERSEY SENATE
Republican Office
State House
P.O. 099
Trenton, NJ 08625
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December 26, 2008

Via Hand-Delivery and Regular Mail

Honorable Jon S. Corzine
Governor, State of New Jersey
State House, P.O. Box One
Trenton, New Jersey 08625

Dear Governor Corzine:

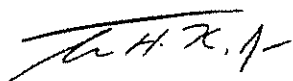
We intend to file the attached complaint with the Superior Court next Wednesday unless you immediately provide documents showing what funds you have placed in reserve to address a planned \$600 million budget surplus that has become at least a \$600 million deficit due to a \$1.2 billion decline in revenue.

We have repeatedly asked for these documents because we want assurances that you are adequately preparing for revenue losses and the more than \$100 million in new spending legislation you signed in the last several weeks. We intend to scrutinize the list of funds you have placed in reserve, and work with you to build upon the list where appropriate and offer alternatives as needed. Your lack of transparency has resulted in what we had hoped to be a cooperative process become unnecessarily confrontational.

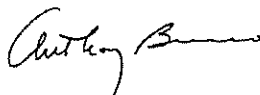
We first asked for these documents almost a month ago. Every day that goes by, State funds continue to be spent and the options we have of preventing deficit spending disappear. Every day that goes by without disclosure, the public has less time to prepare for the impact of your unilateral actions and a chance to suggest meaningful alternatives.

Please understand, we do not take legal action lightly, especially in the midst of the holiday season. But we have been left no choice but to follow through on this course of action unless you finally release what are obviously public documents.

Respectfully,



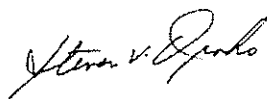
Senator Tom Kean, Jr.



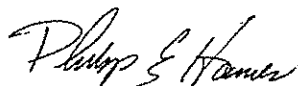
Senator Tony Bucco



Senator Kevin O'Toole



Senator Steve Oroho



Senator Phil Haines

SENATE REPUBLICAN OFFICE
 A Division of the State Legislature
 Post Office Box 099
 Trenton, New Jersey 08625-0099
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 Attorney for Plaintiffs
 Thomas Kean, Jr., Kevin O'Toole, Steven V. Oroho,

THOMAS KEAN, Jr, ANTHONY BUCCO,	:	SUPERIOR COURT OF NEW JERSEY
KEVIN J. O'TOOLE, STEVEN V. OROHO AND	:	LAW DIVISION:
PHILIP E. HAINES as members of the New Jersey	:	MERCER COUNTY
State Senate,	:	
	:	DOCKET NO. _____
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	
	:	VERIFIED COMPLAINT
JON S. CORZINE, in his official capacity as	:	
Governor of the State of New Jersey, AND	:	
BARBARA O'HARE, in her official capacity as	:	
Government Records Custodian for the New Jersey	:	
Department of the Treasury,	:	
	:	
Defendants.	:	

Plaintiffs Thomas Kean, Jr., Anthony R. Bucco, Kevin J. O'Toole, Steven V. Oroho, and Philip E. Haines ("Plaintiffs"), citizens of the State of New Jersey and members of the New Jersey State Senate, by way of Verified Complaint against Defendants Jon S. Corzine, in his official capacity as Governor of the State of New Jersey, and Barbara O'Hare, in her official capacity as Government Records Custodian for the New Jersey Department of the Treasury ("Defendant"), say the following:

NATURE OF THE CASE

1. Plaintiffs seek relief against Defendants by way of a summary action pursuant to Rule 4:67-1(a) for Defendant's violation of Plaintiffs' rights under the New Jersey Right to Know Law, as amended by the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq. and Plaintiffs' common law right of access to public records.

THE PARTIES

2. Plaintiffs are citizens of the State of New Jersey, and duly elected members of the New Jersey State Senate with a business address of State House, P.O. Box 099, Trenton, New Jersey 08625-0099.

3. Jon Corzine is Governor of the State of New Jersey with a business address of State House, P.O. Box One, Trenton, New Jersey 08625-0001

4. Barbara O'Hare is the Government Records Custodian of the New Jersey Department of the Treasury with a business address of 50 West State Street, PO Box 215, Trenton, New Jersey 08625.

FACTS

5. The Legislature and Plaintiffs have an integral role in the State's finances through the constitutional obligation and responsibility to approve an annual appropriations act, with supplements thereto, that has appropriations not exceeding revenues.

6. The Governor has an integral role in the State's finances through the constitutional obligation to enact an annual appropriations act, with supplements thereto, that has appropriations not exceeding revenues.

7. The Legislature approved, and the Governor enacted with a line item veto, Assembly Bill No.2800 which set forth the State's Fiscal Year 2009 Budget with \$33,468,471,000 of revenue projected to be collected throughout the year in furtherance of \$32,868,471,000 of appropriations, leaving a projected surplus of \$600 million. (P.L. 2008, c.35, the "2009 Appropriations Act")

8. On November 12, 2008, the Governor issued a statement to prospective purchasers of bonds that officially revised projections of revenue that would be collected in support of the 2009 Appropriations Act, noting that collections would be \$1.2 billion less than projected at the time the 2009 Appropriations Act was enacted. (See Attachment A, "Supplement Dated November 12, 2008 to Appendix I dated July 17, 2008").

9. On various dates in December of 2008, the Governor enacted legislation authorizing funds to be expended on newly created or expanded programs, including, but not limited to, Assembly Bill No. 3374, Assembly Bill No. 3377, and Assembly Bill No. 3459 ("New Spending Legislation").

10. The \$1.2 billion reduction in revenues, even without the enactment of New Spending Legislation, will result in a deficit in the 2009 Appropriations Act absent corrective action being taken by the Governor and/or Legislature.

11. The Governor has broad statutory powers to impound funds in order to address revenue losses and otherwise ensure that the State's budget is balanced.

12. The Governor's power to impound funds is implemented by officials in the Department of the Treasury through the placement of appropriated funds in "reserve" through the State's Consolidated Financial System.

13. Appropriated funds placed in "reserve" may not be obligated or expended by agencies that have been entrusted with such funds.

14. Placement of funds in "reserve" and any order or approval to do so by the Governor or Treasurer is a substantive act of the Executive Branch which impacts the

State's finances, alters the intended expenditure of funds as set forth in the appropriations act, and has impacts on residents of the State.

15. The Governor publicly stated that he would to use the impoundment power in response to declining revenues. (See statement to prospective bond purchasers in Attachment A.)

16. The Legislature has the fundamental responsibility to understand the operations of its government and, in the context of revenues declining by more than surplus planned in its 2009 Appropriations Act, to understand the extent to which the Governor has exercised the impoundment power.

17. The Legislature has the constitutional power to revise the 2009 Appropriations Act and to reduce appropriations for any reason, including providing that appropriations do not exceed revenues.

18. In order to understand the extent to which the Governor exercised his broad power to impound funds and to determine the extent to which the Legislature may need to exercise its constitutional power to revise the 2009 Appropriations Act, Plaintiffs directed staff to request documents on their behalf that would show what funds the Governor impounded (the "Requested Documents").

19. On December 2, 2008, staff with the Senate Republican Office, a division of the State Legislature, acting at the direction of, and as agents of, Plaintiffs, filed a request for public documents through the State's central government records request web site that sought "(1) a list of all FY 2009 State budget accounts placed in reserve status since August 1, 2008; and (2) a copy of any and all directives, or approvals or authorizations from the Treasurer or anyone in the Governor's Office to the Director of

the Office of Management and Budget or any of her employees, to place accounts in reserve status.” (the “OPRA Request”, Attachment B)

20. On December 10, 2008, Senator Tomas Kean, Jr. sent a letter to Governor Jon Corzine requesting that Governor Corzine provide a copy of the Requested Documents and putting Governor Corzine on notice that legal remedies may be sought if documents were not produced. (Attachment C)

21. On December 11, 2008, Plaintiffs’ staff received a written notice from Barbara O’Hare stating that more time was needed to gather and legally review the Requested Documents sought in the OPRA Request and that the Requested Documents would be provided on December 24, 2008. (Attachment D)

22. On December 24, the date on which the Requested Documents were to be provided, Plaintiffs’ staff received a written notice from Barbara O’Hare stating that the OPRA Request was pending legal review and that no Requested Documents would be provided, if at all, until January 12 - more than 40 days after receipt of the OPRA Request. (Attachment E.)

23. On December 24, 2008, Plaintiffs’ staff responded to Barbara O’Hare’s letter received that same day and indicated that the delay in providing the Requested Documents was not acceptable, objecting to the lack of any reason or privilege being provided for the refusal to provide the Requested Documents, and putting Barbara O’Hare on notice that legal action would be taken to obtain the Requested Documents if they were not immediately provided.

24. Neither the December 11 nor December 24 notices provided by Barbara O'Hare in response to the OPRA Request cited any privilege or other reason why the Requested Documents would not be provided.

25. Governor Corzine never responded to the December 10, 2008 letter sent by Senator Thomas H. Kean, Jr. to Governor Jon Corzine requesting that he provide a copy of the Requested Documents.

26. Without the Requested Documents, Plaintiffs have no way of knowing to what extent the Governor has used the impoundment power and what particular funds or constituents are being impacted by his use of the impoundment power.

27. Without the Requested Documents, Plaintiffs have an incomplete understanding of the extent to which they need to prepare legislation to revise the 2009 Appropriations Act in order to reduce appropriations and otherwise ensure that the State's budget is balanced.

28. Without the Requested Documents, Plaintiffs are unable to understand or discuss the impact on constituents of the Governor's use of the impoundment power and to determine if alternatives in the form of amendments to the 2009 Appropriations Act are advisable or necessary.

29. Every day the Defendants continue to not provide the Requested Documents, the State expends additional funds and the Legislature's options to revise the 2009 Appropriations Act are substantially diminished.

30. The failure of the Defendants to provide the Requested Documents causes irreparable harm by impeding the Plaintiffs' ability to perform their constitutional responsibilities and obligations with respect to the 2009 Appropriations Act.

31. N.J.S.A. 47:1A-6 permits a person who is denied access to a government record to institute a proceeding to challenge such denial by filing an action in Superior Court. N.J.S.A. 47:1A-6 further expressly provides that “[a]ny such proceeding shall proceed in a summary or expedited manner.”

32. Plaintiffs therefore respectfully request that this action proceed as a summary action pursuant to Rule 4:67-1(a).

COUNT ONE – VIOLATION OF OPRA

33. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 32 as if set forth at length herein.

34. The Requested Documents sought by Plaintiffs are government records within the meaning of N.J.S.A. 47:1A-1, et seq.

35. Plaintiffs’ OPRA Request is valid and Plaintiffs have a statutory right to access and inspect the Requested Documents pursuant to N.J.S.A. 47:1A-1, et seq.

36. Barbara O’Hare’s letters of December 10, 2008 and December 24, 2008 and continued refusal to provide any of the Requested Documents is a denial of access to the Requested Documents.

37. Barbara O’Hare has improperly denied Plaintiffs’ access to the Requested Documents in violation of Plaintiffs’ rights under N.J.S.A. 47:1A-1, et seq.

38. Barbara O’Hare’s actions were knowing, willful, and unreasonable under the totality of circumstances, justifying the imposition of civil penalties pursuant to N.J.S.A. 47:1A-11.

COUNT TWO – VIOLATION OF COMMON LAW RIGHT OF ACCESS

39. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 38 as if set forth at length herein.

40. The Requested Documents are public records under common law.

41. Plaintiffs have an interest in the subject matter of the Requested Documents sufficient to confer standing to sustain a common law right of access.

42. Plaintiffs' interest in obtaining access to the Requested Documents outweighs Defendants' interest, if any, in preventing disclosure.

43. Plaintiffs thus have a common law right of access to the Requested Documents.

44. Defendants have improperly denied Plaintiffs' access to the Requested Documents in violation of Plaintiffs' common law right of access.

45. Defendants' actions were knowing, willful, and unreasonable under the totality of circumstances.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Declaring that Barbara O'Hare violated Plaintiffs' rights under N.J.S.A. 47:1A-1, et seq. and Plaintiffs' common law right of access to Requested Documents;

B. Declaring that Jon Corzine violated Plaintiffs' rights under common law right of access to Requested Documents.

C. Requiring Defendants to provide Plaintiffs with immediate access to the Requested Documents;

D. Awarding Plaintiffs reasonable attorneys' fees pursuant to N.J.S.A. 47:1A-6 and costs;

- E. Assessing civil penalties against Defendant pursuant to N.J.S.A. 47:1A-11; and
- F. Granting such other relief as the Court deems equitable and just.

Kevin

SENATE REPUBLICAN OFFICE
A Division of the New Jersey State
Legislature
Post Office Box 099
Trenton, New Jersey 08625-0099
Attorneys for Plaintiffs
Thomas Kean, Jr., Anthony R. Bucco,
J. O'Toole, Steven V. Oroho, and Philip E.
Haines

By: _____
Thomas H. Neff

Dated: December 31, 2008

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R. 4:5-1, I hereby certify that, to the best of my knowledge, the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. I further certify that, to the best of my present knowledge, no other parties need be joined in this matter. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements are willfully false, I am subject to punishment.

SRENATE REPUBLICAN OFFICE
A Division of the New Jersey State
Legislature
Post Office Box 099
Trenton, New Jersey 08625-0099
Attorneys for Plaintiffs
Thomas Kean, Jr., Anthony R. Bucco, Kevin
J. O'Toole, Steven V. Oroho, and Philip E.
Haines

By: _____
Thomas H. Neff

Dated: December 31, 2008

VERIFYING CERTIFICATION

I, Thomas Kean, Jr., of full age, certify as follows:

1. I am a citizen of the State of New Jersey and a member of the New Jersey State Senate with a business address of State House, P.O. 099, Trenton, New Jersey 08625-0099.

2. I have read the Verified Complaint to which this Verifying Certification is attached. The factual allegations set forth therein are true to the best of my knowledge unless expressly stated to be based upon information and belief.

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

Thomas Kean, Jr.

Dated: December 31, 2008

VERIFYING CERTIFICATION

I, Anthony R. Bucco, of full age, certify as follows:

1. I am a citizen of the State of New Jersey and a member of the New Jersey State Senate with a business address of State House, P.O. 099, Trenton, New Jersey 08625-0099.

2. I have read the Verified Complaint to which this Verifying Certification is attached. The factual allegations set forth therein are true to the best of my knowledge unless expressly stated to be based upon information and belief.

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

Anthony R. Bucco

Dated: December 31, 2008

VERIFYING CERTIFICATION

I, Kevin J. O'Toole, of full age, certify as follows:

1. I am a citizen of the State of New Jersey and a member of the New Jersey State Senate with a business address of State House, P.O. 099, Trenton, New Jersey 08625-0099.

2. I have read the Verified Complaint to which this Verifying Certification is attached. The factual allegations set forth therein are true to the best of my knowledge unless expressly stated to be based upon information and belief.

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

Kevin J. O'Toole

Dated: December 31, 2008

VERIFYING CERTIFICATION

I, Philip E. Haines, of full age, certify as follows:

1. I am a citizen of the State of New Jersey and a member of the New Jersey State Senate with a business address of State House, P.O. 099, Trenton, New Jersey 08625-0099.

2. I have read the Verified Complaint to which this Verifying Certification is attached. The factual allegations set forth therein are true to the best of my knowledge unless expressly stated to be based upon information and belief.

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

Philip E. Haines

Dated: December 31, 2008