



August 9, 2021

Hon. Maia Sundar, P.J.T.C.
Robert Hughes Justice Complex,
25 Market Street, 7th Fl.
Trenton, New Jersey 08625

Re: Joseph. et al. v. Philip Murphy and State of New
Jersey, Docket No. MER-L- 00738-21

Dear Judge Sundar:

New Jersey Citizen Action, Maura Collinsgru, American Federation of Teachers, Donna Chiera, Mark Smith, and Katherine Smith make this application to intervene as plaintiffs in the aforementioned matter pursuant to R. 4:33-1 and R. 4:33-2 (hereinafter the "Plaintiff-Intervenors"). All organizational applicants have a special interest in this matter insofar as many of their members own homes in counties in which nonprofit hospitals are located, as do all the individual applicants, and their respective organizational missions include advocacy regarding tax equity, access to affordable and quality health care and educational parity especially for low- and moderate-income children. Their interest in this litigation is not adequately protected by the Municipal Plaintiffs, because Count

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IV in their proposed complaint has not been raised by those plaintiffs; and this application is timely because both plaintiffs and defendants have adequate time to respond to applicants' claims prior to the hearing on this matter, which is scheduled for October 4, 2021.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff-Intervenors repeat and incorporate the facts set forth in ¶¶19-42 of their Verified Complaint in Support of Declaratory and Injunctive Relief as if they are set forth herein. Municipal Plaintiffs filed an Order to Show Cause, with a Verified Complaint on April 8, 2021; a briefing schedule was entered and Municipal Plaintiffs are required to submit their Reply Brief on August 9, 2021, however, oral argument is not scheduled to be heard until October 4, 2021. Steinhagen Cert., ¶18.

LEGAL ARGUMENT

A. Applicants are Entitled to Intervene in This
Matter As of Right.

Plaintiff-Intervenors are entitled to intervention as of right because the facts of this matter satisfy each prong of the four-part test set forth in Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998), *quoted in* Am. Civil Liberties Union of N.J., Inc. v. Cty. of Hudson, 352 N.J. Super. 44, 67, (App. Div. 2002) (appellant's motion to intervene as appellant had satisfied each of the four requirements and was entitled to intervention as of right).

Pursuant to R. 4:33-1, intervention must be granted if an applicant 1) claims "an interest relating to the property or transaction which is the subject of the action," (2) shows [that the movant] is "so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest," (3) demonstrates that the "[movant's] interest" is not "adequately represented by existing parties," and (4) makes a timely application. Meehan v. K.D. Partners, L.P., *supra*, 317 N.J. Super. at 568; see Sutter v. Horizon Blue Cross Blue Shield of N.J., 406 N.J. Super. 86, 107 (App. Div. 2009) (noting that "the rule is not discretionary and requires a court to approve an application for intervention if criteria are satisfied"). Furthermore, it is an established rule of

construction that courts are to liberally treat applications to intervene. State v. Lanza, 39 N.J. 595, 600 (1963).

Special Interest

As delineated in the Certification of Renée Steinhagen ("Steinhagen Cert., ¶__") at ¶¶3-17, Plaintiff-Intervenors indisputably have an interest in the subject of the litigation with regard to the negative impact the expanded property tax exemption for nonprofit hospitals will, or is likely to have on all homeowners residing in counties in which such hospitals are located, consumers who receive healthcare services at those hospitals, and school children and education workers who will experience less property tax going to school boards throughout the State. Working New Jerseyans should not be responsible for shouldering the burden of funding public education while large profitable institutions, such as hospitals, use their political power to secure legislation, such as P.L. 2021, Chapter 17 (the "Statute"), which sanctions their failure to contribute their fair share of local taxes. Steinhagen Cert., ¶12.

In addition, individual property owners who are not affiliated with any advocacy organization, such as Plaintiff-Intervenors Mark and Katherine Smith, have a direct and personal commitment to the challenge of certain nonprofit hospitals' tax exemption status insofar as the Statute unconstitutionally frees nonprofit hospitals, on which for-profit activity takes place,

from contributing their fair share to the county tax base. Id., ¶14. Individuals, such as the Smiths, will potentially lose the ability to bring such a challenge due to Defendants' intent to bar individual taxpayers, such as themselves, from making such challenges to an entity's tax-exempt status. Id. ¶15.

Furthermore, Plaintiff-Intervenors NJCA and AFTNJ have an organizational interest in this litigation in addition to the standing they derive, respectively, through their members. People for Open Government v. Roberts, 397 N.J. Super. 502 (App. Div. 2008).

NJCA has been a long-time advocate for tax fairness and healthcare equity, among other consumer issues. Id., ¶¶4-5. Of particular relevance to this case, NJCA has had an active role in expanding access to quality, affordable health care and reining in health care costs by holding providers and other health care entities accountable. Id., ¶8. For several years, NJCA, through the work of applicant Maura Collinsgru, has served as the principal coordinator of the New Jersey for Health Care Coalition whose mission is to improve access, affordability and quality of health services in NJ, which includes a focus on holding nonprofit hospitals accountable. Id., ¶10.

NJCA has generally and specifically opposed the conversion of health care from non-profit to for-profit entities through campaigns it has waged including opposing the takeover of NJ

hospitals by Carepoint, Prime, and Meritt, and the restructuring of Horizon Blue Cross Blue Shield as a mutual holding company. Id., ¶8. It also took an active role in opposing earlier versions of this bill introduced and passed by the Legislature prior to the pandemic. Id., ¶9.

AFTNJ, on the other hand, also a nonprofit membership organization, has a special interest in this litigation for similar but not identical policy reasons. It represents over 30,000 PreK through grade 12 and higher education workers who live and work throughout New Jersey. Id., ¶11. AFTNJ workers know firsthand the importance of large profitable institutions, including hospitals, paying their fair share in property taxes. As residents, taxpayers, homeowners and public servants, the union fully understands that the quality of education provided to students in New Jersey is directly tied to the ability of local Boards of Education to fund the programs our students and educators need. As many districts throughout the State struggle to cope with outdated facilities, staff shortages, and the inability to offer wrap-around student and family services, it seeks to prevent healthcare facilities skirt their social responsibilities by failing to pay property taxes despite the increasing level of for-profit activity occurring on their campuses. AFTNJ thus joins this lawsuit to right this wrong and to ensure that hospitals properly contribute to the communities

in which they are located and from which they financially benefit. Id., ¶12.

Disposition Impairs Ability to Protect Such Interest

There is little doubt that absent intervention all the Plaintiff-Intervenors will be unable to protect their interests. An applicant need only show "that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n. 10 (1972). NJCA, AFTNJ and all the individual applicants easily meet this threshold. Without intervention, Plaintiff-Intervenors will not be able to present their challenge from the perspective of individual property owners (in contrast to the challenge presented by the Municipal Plaintiffs), and for sure, even if the latter were to prevail, there would be no relief with respect to Count IV of their complaint.

NJCA and AFTNJ's individual members are harmed by the existence of tax exemptions, such as the one challenged herein, because they reduce public revenues and in so doing, deplete public funds that could otherwise be put to other public policy objectives. Steinhagen Cert., ¶14. In addition, Plaintiff-Intervenors NJCA, AFTNJ and their members as well as Mark and Katherine Smith have suffered and will continue to suffer an injury by the challenged statute's prohibition on third party

assessment and exemption challenges by citizens seeking to set aside unlawful tax exemption schemes that burden the tax base in their community and prejudice their own share of such tax raising. Id., ¶16. It therefore follows that any disposition of this matter, without their involvement, will impair their ability to protect their interests as taxpayers.

Interests of Municipal Plaintiffs Differ From Applicants

Although Plaintiff-Intervenors have raised three of the same claims asserted by Plaintiff Municipalities, Count IV of their proposed Complaint is unique. Plaintiff-Intervenors claim that Defendants' enactment of P.L. 2021 Ch. 17 seeks to eliminate a taxpayer's right to challenge the tax assessment or exemption status of another property owner in violation of the New Jersey Constitution, Art. 1, ¶18 and Art. 6, Sec. 5, ¶4 and the First Amendment of the U.S. Constitution, as enforced against the State through the Fourteenth Amendment. It is not clear whether Plaintiff Municipalities are adverse to this claim. Steinhagen Cert., ¶17. It is thus certain that Plaintiff-Intervenors' interests may not be adequately represented by the Municipal Plaintiffs. As a result, if not permitted to intervene, Plaintiff-Intervenors' ability to protect their interest would be impaired.

The Application is Timely

Finally, Plaintiff-Intervenors seek to participate in this

matter in a timely fashion. They now make this application for party status before any decision has been made or hearing has been held; and, there is sufficient time for Defendants (and Municipal Plaintiffs) to respond to their claims as set forth in Count IV of the complaint.

This matter was filed on April 8, 2021 on an Order to Show Cause. Defendants' response papers were at the end of June, and Plaintiffs' reply brief is due on August 9, 2021; however, oral argument in this matter is not scheduled until October 4, 2021. Id., ¶18. I Accordingly, no party in this matter would be prejudiced if Plaintiff-Intervenors were permitted to intervene and file their complaint and moving papers several weeks prior to the October hearing.

In this way, Plaintiff-Intervenors' participation does not have the capacity to cause either undue delay or prejudice See Chesterbrook Ltd. P'ship v. Planning Bd. of Twp. of Chester, 237 N.J. Super. 118, 125 (App. Div. 1989) (noting centrality of prejudice and delay to timeliness inquiry).

For the foregoing reasons, all the Rule's criteria have been met in this instance. Because the Rule is not discretionary, this Court must approve this application for intervention as of right. Meehan, supra, 317 N.J. Super. at 568.

B. Applicants Satisfy the Standards for Permissive Intervention.

Even in the unlikely event that this Court determines that the Plaintiff-Intervenors are not entitled to intervene as of right, their taxpayer status and policy interests in the present litigation more than satisfy the standards for permissive intervention established by R. 4:33-2. The Rule "is to be liberally construed by trial courts, with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether intervention will eliminate the need for subsequent litigation." Zirger v. Gen'l Accident Ins. Co., 144 N.J. 327, 341 (1996) (internal quotation marks and citations omitted).

As discussed in the previous section, Plaintiff-Intervenors' participation in this litigation will not cause undue delay or prejudice. Several other factors also support intervention. Plaintiff-Intervenors are seeking intervention before any decisions have been issued by the Court; intervention will not introduce new legal issues that do not bear on the existing controversy; and there is a substantial public interest at stake. See Pressler & Verneiro, Current N.J. Court Rules, Comment 1 to R. 4:33-2 (2019) (noting promptness, complication of issues, and public interest as factors). There is little doubt that this constitutional challenge raises significant

legal and policy issues of enormous interest to the public. And similarly, there is little doubt that permitting NJCA and AFTNJ, its members and other individual taxpayers to intervene will benefit both this court and the public. See Evesham Twp. Zoning Bd. v. Evesham Twp. Council, 86 N.J. 295, 299 (1981) (noting relevance of the "important public issue involved" as supporting court's decision to grant permissive intervention.

Although the decision to grant or deny permissive intervention "vests considerable discretion in the trial court[,]" Evesham Township Zoning Board of Adjustment v. Evesham Township Council, supra, 86 N.J. at 299, which is reviewed under an abuse of discretion standard, City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 12 (App. Div.2006), denial of Plaintiff-Intervenors' application at this point in the litigation would be arbitrary and capricious.

CONCLUSION

For all the foregoing reasons, Plaintiff-Intervenors' motion to intervene should be granted.

Respectfully submitted,

NEW JERSEY APPLESEED PILC

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