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NEW JERSEY REPUBLICAN STATE : SUPREME COURT OF NEW JERSEY  
COMMITTEE a/k/a the NJGOP; : DOCKET NO.: M-1291  
DECLAN O'SCANLON; HAL : September Term, 2019  
WIRTHS; LISA NATALE- : 084731  
CONTESSA; and ILEANA : CIVIL ACTION  
SCHIRMER, :  
 :  
 :  
 Plaintiffs, : On Certification from:  
 :  
 v. : SUPERIOR COURT OF NEW JERSEY  
 : MERCER COUNTY, LAW DIVISION  
 : DOCKET NO. MER-L-1263-20  
 PHILIP D. MURPHY, in his :  
 official capacity as the :  
 GOVERNOR of the STATE OF :  
 NEW JERSEY, :  
 :  
 Defendant.

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DEFENDANT'S APPENDIX

VOLUME 6 OF 6

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1       5. The bonds authorized under this act shall be serial bonds,  
2 term bonds, notes, or a combination thereof. The bonds authorized  
3 under subsections a., b., and c. of section 4 of this act shall be  
4 known as "New Jersey COVID-19 General Obligation Emergency  
5 Bonds." The bonds authorized under subsections b. and c. of  
6 section 4 of this act shall bear such additional designation as may be  
7 required by the federal government pursuant to the applicable  
8 federal stimulus laws. The bonds authorized under subsection d. of  
9 section 4 of this act shall be known as "New Jersey COVID-19  
10 General Obligation Emergency Liquidity Notes." The bonds  
11 authorized under subsection e. of section 4 of this act shall be  
12 known as "New Jersey COVID-19 General Obligation Emergency  
13 Refunding Bonds." All bonds shall be issued from time to time as  
14 the issuing officials shall determine, shall be issued in  
15 fully-registered form and may be certificated or in book-entry form.  
16 The bonds may be subject to redemption prior to maturity and shall  
17 mature and be paid not later than 35 years from the respective dates  
18 of their issuance. Bonds issued under this Act are authorized by and  
19 shall be issued under and in compliance with Article VIII, Section  
20 II, paragraph 3, subparagraph e. of the Constitution of the State  
21

22       6. The Governor, the State Treasurer, and the Director of the  
23 Division of Budget and Accounting in the Department of the  
24 Treasury, or any two of these officials, herein referred to as the  
25 "issuing officials," are authorized to carry out the provisions of this  
26 act relating to the issuance of bonds, and shall determine all matters  
27 in connection therewith, subject to the provisions of this act. If an  
28 issuing official is absent from the State or incapable of acting for  
29 any reason, the powers and duties of that issuing official shall be  
30 exercised and performed by the person authorized by law to act in  
31 an official capacity in the place of that issuing official.  
32

33       7. Bonds issued in accordance with the provisions of this act  
34 shall be a direct obligation of the State, and the faith and credit of  
35 the State are pledged for the payment of the interest and redemption  
36 premium, if any, thereon when due, and for the payment of the  
37 principal thereof at maturity or earlier redemption date. The  
38 principal of and interest on the bonds shall be exempt from taxation  
39 by the State or by any county, municipality, or other taxing district  
40 of the State.  
41

42       8. The bonds shall be signed in the name of the State by means  
43 of the manual or facsimile signature of the Governor, and attested  
44 by the manual or facsimile signature of the Secretary of State or an  
45 Assistant Secretary of State, and shall be countersigned by the  
46 facsimile signature of the Director of the Division of Budget and  
47 Accounting in the Department of the Treasury and may be manually  
48 authenticated by an authenticating agent or bond registrar, as the

issuing officials shall determine. The bonds may be issued notwithstanding that an official signing them or whose manual or facsimile signature appears on the bonds has ceased to hold office at the time of issuance, or at the time of the delivery of the bonds to the purchasers thereof. The bonds may also be executed, authenticated, and delivered by electronic means.

9. a. The bonds shall recite that they are issued for the purposes set forth in section 4 of this act, and that they are issued pursuant to this act. This recital shall be conclusive evidence of the authority of the State to issue the bonds and their validity. Any bonds containing this recital shall, in any suit, action, or proceeding involving their validity, be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed, and delivered in conformity herewith and with all other provisions of laws applicable hereto, and shall be incontestable for any cause.

b. The bonds shall be issued in those denominations and in fully-registered form, and may be certificated or in book-entry form, and with or without provisions for interchangeability thereof, as may be determined by the issuing officials.

10. When the bonds are issued from time to time, the bonds of each issue shall constitute a separate series to be designated by the issuing officials. Each series of bonds shall bear such rate or rates of interest as may be determined by the issuing officials, which interest shall be payable semiannually, except that the first and last interest periods may be longer or shorter, in order that intervening semiannual payments may be at convenient dates, or as otherwise may be required by the applicable federal stimulus law.

11. a. The issuing officials may sell the bonds at a private sale without advertisement, at such price or prices and under such terms and conditions as the issuing officials may prescribe. The issuing officials may also sell all or part of the bonds of any series to the federal government at a private sale, without advertisement. The bonds may also be issued and sold at public sale at the price or prices and under the terms, conditions and regulations as the issuing officials may prescribe, after notice of the sale, published at least once in at least three newspapers published in this State, the first notice to appear at least two days prior to the day of bidding. The notice of sale may contain a provision to the effect that any bid in pursuance thereof may be rejected.

b. In the event of any private sale of the bonds, the issuing officials are further authorized to enter into such loan agreements or similar documents as the purchaser may require. To the extent specified in any such loan or similar agreements, the terms and provisions thereof shall constitute additional provisions of the bonds and shall be entitled to the benefits of this act.

1 12. Until permanent bonds are prepared, the issuing officials  
2 may issue temporary bonds in the form and with those privileges as  
3 to their registration and exchange for permanent bonds as may be  
4 determined by the issuing officials.

5  
6 13. The proceeds from the sale of bonds as set forth in  
7 subsection a. of section 4 of this act shall be paid to the State  
8 Treasurer, shall be held by the State Treasurer in a separate fund,  
9 which fund shall be known as the "New Jersey COVID-19 State  
10 Emergency Fund;" and shall be deposited in such depositories as  
11 may be selected by the State Treasurer to the credit of the fund.

12 The proceeds of any loan by the federal government pursuant to  
13 a federal stimulus law as set forth in subsection b. of section 4 of  
14 this act shall be paid to the State Treasurer, shall be held by the  
15 State Treasurer in a separate fund, which fund shall be known as the  
16 "New Jersey COVID-19 State Stimulus Fund," and shall be  
17 deposited in such depositories as may be selected by the State  
18 Treasurer to the credit of the fund.

19 The proceeds from the sale of emergency liquidity notes as set  
20 forth in subsection d. of section 4 of this act shall be paid to the  
21 State Treasurer, shall be held by the State Treasurer in a separate  
22 fund, which fund shall be known as the "New Jersey COVID-19  
23 State Emergency Liquidity Fund," and shall be deposited in such  
24 depositories as may be selected by the State Treasurer to the credit  
25 of the fund.

26 The proceeds of any loan by the federal government pursuant to  
27 a federal stimulus law to provide financial assistance to the State for  
28 the benefit of local government units as set forth in subsection c. of  
29 section 4 of this act shall be paid to the State Treasurer, shall be  
30 held by the State Treasurer in a separate fund, which fund shall be  
31 known as the "New Jersey COVID-19 Local Government Unit  
32 Emergency Fund," and shall be deposited in such depositories as  
33 may be selected by the State Treasurer to the credit of the fund.

34  
35 **14.** Amounts on deposit in the New Jersey COVID-19 State  
36 Emergency Fund and in the New Jersey COVID-19 State Stimulus  
37 Fund shall be withdrawn by the State Treasurer from time to time  
38 and are appropriated for deposit into the General Fund of the State.  
39 Amounts on deposit in the New Jersey COVID-19 State Emergency  
40 Liquidity Fund shall be withdrawn by the State Treasurer from time  
41 to time for deposit into the General Fund or the Property Tax Relief  
42 Fund of the State. However, no moneys in the New Jersey COVID-  
43 19 State Emergency Fund, the New Jersey COVID-19 State  
44 Stimulus Fund or the New Jersey COVID-19 State Emergency  
45 Liquidity Fund shall be expended from the New Jersey COVID-19  
46 State Emergency Fund, the New Jersey COVID-19 State Stimulus  
47 Fund or the New Jersey COVID-19 State Emergency Liquidity  
48 Fund except as otherwise authorized by this act.

15. Amounts on deposit in the New Jersey COVID-19 Local Government Unit Emergency Fund shall be withdrawn by the State Treasurer from time to time and are appropriated, and shall be applied to the provision of financial assistance to local government units as set forth in subsection c. of section 4 of this act. However, no moneys in the New Jersey COVID-19 Local Government Unit Emergency Fund shall be expended from the New Jersey COVID-19 Local Government Unit Emergency Fund except as authorized by this act.

16. a. At any time prior to the issuance and sale of bonds under this act, or borrowings from the federal government under this act, the State Treasurer is authorized to transfer from any available moneys in any fund of the treasury of the State to the credit of the New Jersey COVID-19 State Emergency Fund, the New Jersey COVID-19 State Stimulus Fund, the New Jersey COVID-19 State Emergency Liquidity Fund or the New Jersey COVID-19 Local Government Unit Emergency Fund those sums as the State Treasurer may deem necessary. The sums so transferred shall be returned to the same fund of the treasury of the State by the State Treasurer from the proceeds of the sale of bonds, a loan or loans by the federal government pursuant to a federal stimulus law as set forth in subsections b. and c. of section 4 of this act, or the sale of emergency liquidity notes, as the case may be.

b. Pending their application to the purposes provided in this act, the moneys in the New Jersey COVID-19 State Emergency Fund, the New Jersey COVID-19 State Stimulus Fund, the New Jersey COVID-19 State Emergency Liquidity Fund, and the New Jersey COVID-19 Local Government Unit Emergency Fund may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law and may be invested or reinvested in local government securities. Net earnings received from the investment, reinvestment, or deposit of moneys in the New Jersey COVID-19 State Emergency Fund, the New Jersey COVID-19 State Stimulus Fund, the New Jersey COVID-19 State Emergency Liquidity Fund, and the New Jersey COVID-19 Local Government Unit Emergency Fund shall be paid into the General Fund.

17. If any bond is lost, mutilated, or destroyed, a new bond shall be executed and delivered of like tenor, in substitution for the lost, mutilated, or destroyed bond, upon the owner furnishing to the issuing officials evidence satisfactory to them of the loss, mutilation, or destruction of the bond, the ownership thereof and security, indemnity, and reimbursement for expenses connected therewith, as the issuing officials may require.

18. The accrued interest, if any, received upon the sale of the  
2 bonds shall be applied to the discharge of a like amount of interest  
3 upon the bonds when due. Any expense incurred by the issuing  
4 officials for advertising, engraving, printing, clerical,  
5 authenticating, registering, legal or other services necessary to  
6 carry out the duties imposed upon them by the provisions of this act  
7 shall be paid from the proceeds of the sale of the bonds by the State  
8 Treasurer, upon the warrant of the Director of the Division of  
9 Budget and Accounting in the Department of the Treasury, in the  
10 same manner as other obligations of the State are paid.

19. Bonds of each series issued hereunder shall mature,  
13 including any sinking fund redemptions, not later than the 35th year  
14 from the date of issue of that series, and in amounts as shall be  
15 determined by the issuing officials. The issuing officials may  
16 reserve to the State by appropriate provision in the bonds of any  
17 series the power to redeem any of the bonds prior to maturity at the  
18 price or prices and upon the terms and conditions as may be  
19 provided in the bonds.

20  
21 20. a. Proceeds derived from the sale of each series of refunding  
22 bonds shall be applied, together with any other moneys legally  
23 available therefor to the payment of the expenses authorized by this  
24 act and to the immediate payment of the principal of, redemption  
25 premium, if any, and interest due on any outstanding bonds to be  
26 refunded by the refunding bonds, or, to the extent not required for  
27 that immediate payment, shall be deposited, together with any other  
28 moneys legally available therefor, in trust with the State Treasurer,  
29 to be held separate and apart from all other funds of the State, or, at  
30 the direction of the issuing officials, in trust with one or more  
31 trustees or escrow agents, which trustees or escrow agents shall be  
32 trust companies or national or state banks having powers of a trust  
33 company, located either within or without the State. Proceeds or  
34 moneys deposited in trust with the State Treasurer or with one or  
35 more trustees or escrow agents shall be applied solely to the  
36 payment when due of the principal of, redemption premium, if any,  
37 and interest due and to become due on those outstanding bonds to  
38 be refunded on or prior to the redemption date or maturity date of  
39 the outstanding bonds, as the case may be. Proceeds **Or** moneys so  
40 held by the State Treasurer or deposited with trustees or escrow  
41 agents may be invested in government securities (including  
42 government securities: issued or held in book-entry form on the  
43 books of the Department of the Treasury of the United States);  
44 except that those government securities shall not be subject to  
45 redemption prior to their maturity other than at the option of the  
46 holder thereof. Except as provided in subsection b. of this section  
47 20, neither government securities nor moneys so deposited with the  
48 State Treasurer or with trustees or escrow agents shall be withdrawn

1 act or with bonds or refunding general obligation bonds issued  
2 pursuant to any other act for purposes of sale.

3

4 23. To provide funds to meet the interest and principal payment  
5 requirements for the bonds, including refunding bonds, issued under  
6 this act and outstanding, there is appropriated in the order  
7 following:

8 a. Revenue derived from the collection of taxes under the  
9 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:328-1 et seq.), or so  
10 much thereof as may be required; and

11 b. If, at any time, funds necessary to meet the interest,  
12 redemption premium, if any, and principal payments on outstanding  
13 bonds issued under this act are insufficient or not available, there  
14 shall be assessed, levied and collected annually in each of the  
15 municipalities of the counties of this State, a tax on the real and  
16 personal property upon which municipal taxes are or shall be  
17 assessed, levied, and collected, sufficient to meet the interest on all  
18 outstanding bonds issued hereunder and on the bonds proposed to  
19 be issued under this act in the calendar year in which the tax is to be  
20 raised and for the payment of bonds falling due in the year  
21 following the year for which the tax is levied. The tax shall be  
22 assessed, levied, and collected in the same manner and at the same  
23 time as are other taxes upon real and personal property. The  
24 governing body of each municipality shall cause to be paid to the  
25 county treasurer of the county in which the municipality is located,  
26 on or before December 15 in each year, the amount of tax herein  
27 directed to be assessed and levied, and the county treasurer shall  
28 pay the amount of the tax to the State Treasurer on or before  
29 December 20 in each year.

30 If on or before December 31 in any year, the issuing officials, by  
31 resolution, determine that there are moneys in the General Fund  
32 beyond the needs of the State, sufficient to pay the principal of  
33 bonds falling due and all interest and redemption premium, if any,  
34 payable in the ensuing calendar year, the issuing officials shall file  
35 the resolution in the office of the State Treasurer, whereupon the  
36 State Treasurer shall transfer the moneys to a separate fund to be  
37 designated by the State Treasurer, and shall pay the principal,  
38 redemption premium, if any, and interest out of that fund as the  
39 same shall become due and payable, and the other sources of  
40 payment of the principal, redemption premium, if any, and interest  
41 provided for in this section shall not then be available, and the  
42 receipts for the year from the tax specified in subsection a. of this  
43 section shall be considered and treated as part of the General Fund  
44 available for general purposes.

45

46 24. Should the State Treasurer, by December 31 of any year,  
47 deem it necessary, because of the insufficiency of funds collected  
48 from the sources of revenues as provided in this act, to meet the

revenues, and sales tax revenues due to required business shutdowns, motor fuels taxes due to mandated "stay-at home" orders, casino-related taxes due to casino closures, and lottery sales which have already started to decline;

(2) The State expects that it will need to significantly revise the estimated revenues and projected appropriations for Fiscal Years 2020 and 2021 contained in the Governor's Budget Message for Fiscal Year 2021 on February 25, 2020, which was delivered before the outbreak of COVID-19 within the State; and

(3) The State may encounter future increases in the State's actuarially recommended contributions to the State's pension plans to the extent that the valuation of pension plans is affected by the deterioration in value in the investment markets.

Events surrounding COVID-19 have caused and will continue to cause severe and negative impacts on the economy and financial condition of the State's local government units and has increased and will continue to increase volatility in long-term and short-term capital markets on which local government units rely to meet operating expenses.

It is necessary for the State to take action to ensure the continued viability of the State's and local government units' financial condition and to assist the State's population in dealing with the financial and economic problems resulting from the COVID-19 Pandemic through the issuance of general obligations bonds, and borrowings from the federal government pursuant to this act to provide financial resources for the State budget and for local government units' budgets.

This act authorizes the issuance of bonds, and borrowing from the federal government in accordance with Article VIII, Section II, paragraph 3, subparagraph e. of the Constitution of the State to respond to the fiscal exigencies caused by the COVID-19 Pandemic and to maintain and preserve the fiscal integrity of the State and its local government units.

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**ASSEMBLYWOMAN ELIANA PINTOR MARIN (Chair):**

Good morning, everyone.

We're going to get started . I know that the Treasu rer has to go over to the Senate side for 1 p.m., so we want to make sure that we have enough time with her and that she's also prepared to move on to the Senate.

Scott, if we could do roll call'?

MR. BRODSKY ( Committee Aide): Good morning; roll call.  
Assemblyman Wirths.

ASSEMBLYMAN WIRTHS: Present.

MR. BRODSKY: Assemblywoman Munoz.

ASSEMBLYWOMAN MUNOZ: Here.

MR. BRODSKY: Assemblywoman DiMaso.

ASSEMBLYWOMAN DiMASO: Here.

MR. BRODSKY: Assemblyman Clifton.

ASSEMBLYMAN CLIFTON: Here.

MR. BRODSKY: Assemblyman Wimberly. (no response)

Assemblyman Spearman. ( no response)

Assemblywoman Reynolds-Jackson.

ASSEMBLYWOMAN REYNOLDS-JACKSON: Present.

MR. BRODSKY: Assemblywoman Murphy.

ASSEMBLYWOMAN MURPHY: Here.

MR. BRODSKY: Assemblyman McKeon. (no response)

Assemblyman Johnson. (no response)

Assemblyman Benson.

ASSEMBLYMAN BENSON: Present.

MR. BRODSKY: Vice Chairman Burzichelli.

**ASSEMBLYMAN JOHN J. BURZICHELLI (Vice Chair):**

Here.

MR. BRODSKY: Mad am Chair.

**ASSEMBLYWOMAN PINTOR MARIN:** Present.

Good morning, everyone.

Like I said, we're going to have the Treasurer start off first. For all the other participants who are on -- we'll probably take about an hour, or a little over an hour. So if you would like to stay on and listen to the hearing, please feel free to. If you would like to come back in about an hour or so, feel free to do so as well.

Treasurer, it's nice to see you again.

**ELIZABETH MAHER MUOIO, Esq.:** Good to see you again, Chairwoman.

**ASSEMBLYWOMAN PINTOR MARIN:** And Treasurer, we want to be cognizant of your time, so I did have a conversation with some of our colleagues. I want to make sure that we get to you in time so that you are prepared for the Senate; and that you have your time to grab yourself a little time, and your staff as well.

So Treasurer, if you would like to start today.

**STATE TREASURER MUOIO:** I appreciate that, Chairwoman; thank you.

And good morning to you, and to Vice Chair Burzichelli, and Budget Officer Wirths, and the rest of the members of the Committee.

And it's good to see you all again so soon.

I am joined here today by Assistant Treasurer Dini Ajmani; and our Director of the Office of Public Finance, Michael Kanef.

Since we provided our revenue and budget numbers in depth to you last Thursday, I am going to focus my brief opening remarks on the proposed Bond Act, A-4175.

As the global pandemic has unfolded, one thing it has made clear is that the need for essential government services increases exponentially in times of crisis. Demand for and reliance on public health professionals, law enforcement, first responders, financial assistance, and Medicaid, just to name a few, have all increased significantly.

Meanwhile, as you know, our fiscal resources have followed the opposite trajectory. We are expecting significant budgetary challenges because of steep declines in nearly all of our major revenue sources due to COVID-19 -- the COVID-19-related shutdowns and stay-at-home orders.

According to the revenue projections we recently shared with you, the State is facing a \$2.7 billion shortfall through June 30; and we're looking at an additional \$7 billion shortfall through the end of Fiscal Year 2021 next June, for a combined shortfall of roughly \$10 billion.

As we all saw during the hearing before this Committee on Thursday, OLS is largely in agreement with our projections as well. They were also in equal agreement on the volatility of the forecasting situation.

While the impact on New Jersey's budget and finances is both rapidly changing and unpredictable, what is clear is that revenues and cash flow will be significantly affected to such an extent that bonding authority will be necessary to help address New Jersey's unprecedented budgetary challenges in the coming months. But, as we discussed with you last week, this is just one of several solutions we are pursuing.

As you have seen from our proposed budgets through September 30 of this year, savings measures will be another important tool in addressing this challenge. As a reminder, we have proposed \$1.3 billion in de-appropriations, \$3.2 billion in reduced or delayed first quarter appropriations, and we have withdrawn approximately \$850 million of the Governor's proposed priorities.

None of these decisions were reached lightly and, regrettably, we understand the pain that will stem from many of them. But this only serves to underscore the need for additional options, including additional Federal assistance and legislative authorization to borrow in order to help ensure our ability to meet the needs of our residents to the best extent possible. Otherwise, the type of cuts that would be necessary to balance the entire projected shortfall through FY 2021 would be devastating at both the State and local level.

Keep in mind that 70 to 80 percent of the State budget goes out the door in the form of State aid and grants-in-aid, which largely support schools, local governments, higher education, property tax relief, seniors, and health insurance for those most in need.

The proposed legislation before you is crucial for many reasons, primarily because it will provide both the State and local governments -- that do not otherwise have the opportunity to access the Federal Municipal Liquidity Facility -- with a valuable tool to address the unprecedented budget challenges we face together in a balanced way in conjunction with savings measures.

Our intention is to borrow only as much as absolutely necessary.

We understand borrowing is not free, but it is one of several crucial options we need at our disposal.

Right now, the market is stable because there is a buyer in the form of the Federal Reserve. But we don't know what will happen when that buyer goes away at the end of December.

In the interest of protecting taxpayers as much as possible, it is urgent that we take advantage of the favorable rate offered through the Federal lending facility, and the stabilizing effect it is having on the public and private markets, while we can. This facility was created by the Federal government with the explicit intent of assisting State and municipal governments across the country with their budgetary challenges, recognizing the severe financial difficulties created by the COVID-19 pandemic. This proves that New Jersey is not alone.

It's not a question of whether we will need to borrow to help meet our obligations, but when.

The tough decisions we have made, and proposed so far, will only get us to a \$344 million fund balance as of June 30, and a \$494 million fund balance ending as of September 30. In volatile economic times such as this, that type of surplus is the equivalent of a *rounding error* and could disappear in a flash.

Keep in mind our analysts predict that should we see a second surge of the virus -- in the fall, for example -- we could be looking at an additional revenue shortfall of \$1 billion; meaning, even more difficult budget adjustments will need to be made.

The only certainty right now is that the forecasting situation is extremely uncertain. There is near universal agreement -- from Treasury,

from OLS, and from economists across the country -- that revenue projections are subject to extreme volatility. The \$2.4 billion from the Federal Coronavirus Relief Fund that we have received to date will certainly help weather this storm. But without more robust and flexible Federal aid, as well as the ability to borrow, the cuts that will be necessary to produce a balanced FY 2021 budget will be devastating to New Jerseyans and to our economy.

Chairwoman, I want to thank you for recognizing how crucial it is that we have this option, and for your sponsorship of this important legislation.

Thank you all for your time, and we are happy to take any questions.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Treasurer.

Treasurer, I know you set out in your testimony really the outlook of what we're facing; and this really also adds on to what we heard you say last Thursday.

If you could walk us a little bit through this Bill and just, in layman's terms, explain the flexibility that you are looking for with regards to being able to go out and borrow money.

STATE TREASURER MUOIO: Well -- and I'll bring in Dini and Michael to kind of go through the details on the legislation -- but the flexibility is because we have such severe shortfalls facing us; and the volatility in determining what those shortfalls could ultimately be. In order to, sort of, have a balanced approach to meeting these shortfalls, we need this tool. Because without it, we cannot borrow in order to -- we can't utilize any of these funds that could be available funds that were set up for this purpose.

And neither can local governments, that did not receive direct funding from the Federal government -- or direct access to the MLF in order to borrow for their own needs. This also gives them -- the legislation gives them the ability to take advantage of that market through the State; we would apply on their behalf. But it gives them access to those markets.

Michael or Dini, do you want to, sort of, walk through how this will work from an Office of Public Finance point of view?

**MICHAEL KANE:** Absolutely.

Thank you very much, Treasurer.

I'll start; and Dini, please jump in if you've got a correction or an amplification.

The draft legislation essentially provides for five different types of borrowing. Each of the pieces is, in fact, a GO, or *general obligation* borrowing for the State. So the different types of borrowings don't relate to the type of State obligation. The State obligation in each instance would be the general obligation of the State. And that means that it is the first payment for any debt of any type issued by the State; and it is, in fact, a payment that essentially requires the full faith and credit of the State to back the debt obligation.

So we do have other types of State obligations. We have State contract bonds; we have certain types of short-term debt that are not general obligation bonds; and we also have moral obligation bonds that the State makes payment on. Those types of bonds are not general obligation bonds of the State, and those have a lower payment priority from a State perspective.

The first type of general obligation authorization that's provided by the draft bond is, in fact, an authorization to provide for issuance into the public and private capital markets. That is the normal course of operation for the State. Normally, when the State issues its debt, it issues its debt into the public or private capital markets. Today, those markets are quite volatile, largely because of COVID. There have been elevated overall interest rates for borrowers in those markets. And the availability of funding for different types of borrowers is somewhat reduced, compared to where borrowing availability was prior to the crisis. However, the State does believe that it can access those markets today at relatively attractive rates; and that we do expect that those markets will continue to normalize over the coming weeks and months, and we would expect that the rates that the State would pay for borrowing in those markets will continue to decline over the coming months back into a more normalized range.

The second type of borrowing that's authorized is borrowing from the Federal Reserve's Municipal Liquidity Facility, sometimes referred to as the *MLF*. That's a facility that was set up as authorized by the CARES Act. It is provided by the Federal government. The total funding for that facility is about \$500 billion. That is made available to states and other large municipal entities. So it's also made available to municipalities, including large cities and also large counties, in both cases, that meet certain population requirements.

The allocation that is available to the State of New Jersey is approximately \$9 billion in size. That's not something that's set by the draft statute; that is set by the terms of the Federal Reserve facility itself. It's not anticipated that the State would borrow that full amount. But the nice thing

about the Federal Reserve facility is that it has acted as a stabilizing component for the public capital markets, and it also has provided price certainty for the State. So right now, it is anticipated that if the State was to borrow from the Federal Reserve MLF, the cost to the State would be about 280 basis points; that means about 2.8 percent. There is a limiting factor, and that is the State can only borrow for a term of three years from the MLF; and at the end of three years, the State would need to either repay that debt in full; or to the extent it doesn't repay some or all of that debt, would need to refinance that debt into the public or private capital markets for a longer term.

The pricing of that facility and the term of that facility are currently being reconsidered in Washington D.C. There is some discussion about decreasing the pricing of that facility for borrowers, and also about extending the term, potentially to as long as five years. It's not clear whether those changes will be implemented, but there is discussion in Washington today about making the facility more borrower-friendly.

The third type of borrowing that is authorized is the authorization for the State to borrow on behalf of those local municipalities that don't otherwise have access to the facilities. So those cities and counties that don't have the population required to borrow directly from the facility, the State has the capability to borrow from the facility on behalf of those issuers for COVID-related lost revenues and COVID-related expenses.

The need to borrow for locals would need to be managed by the Administration and the Legislature together to determine what sort of borrowing would be appropriate to pass on to the locals.

Just one point that's important to understand -- the Federal Reserve has stated that when the State borrows on behalf of those local entities, the Federal Reserve will consider those borrowings to be State borrowings; it will not look through to the local municipalities. So the State will be responsible for repaying those amounts. I would anticipate that, to the extent the State was to forward amounts onto the local municipalities, there would need to be agreements with the local municipalities to repay the State, so that the State would in turn be able to repay the Federal Reserve.

The fourth authorization is the authorization that permits the State to refinance any debt issued pursuant to the Bond Act. And refinancing is done in the normal course by the State to take advantage of lower interest rates, so that if when we issue these bonds and the future interest rates were lower, we would be able to refinance to take advantage of those rates.

We also, as I mentioned, will need to refinance any borrowings from the Federal Reserve MLF at the termination of that facility and the maturity of that paper, which currently is three years.

Finally, the Bond Act does permit for *GO TRAN*, or *Tax and Revenues Anticipation Note* borrowing. In the normal course, the State does issue a TRAN; that TRAN is generally authorized by the budget. And TRANs are short-term borrowings that permit the State to balance out cash flow needs when its spending occurs prior to its receipt of tax revenue. So as you might imagine, we receive our tax revenue in a *lumpy* manner, normally on a quarterly basis. But we spend on a weekly and monthly basis across the entire course of the year. So the use of a TRAN is generally for us to fund the early monthly and weekly payments that we make during the course of the fiscal year, and then the TRAN is normally repaid when we receive our April tax

payments. Again, it's usually an intra-year borrowing, and it is only to manage our cash flow needs. The TRAN that is authorized, pursuant to the Act, would serve a similar purpose; but it would permit us to issue a GO TRAN, which we believe would, because it's a GO or general obligation, price at a less expensive level than a normal TRAN. And the authorization there is only for the issuance of a TRAN either in Fiscal Year 2020 or in Fiscal Year 2021.

I apologize if I've taken quite a bit of time. I tried to cover what I think are the most important points. I'm happy to answer any additional questions relating to the way the draft Bond Act is structured.

ASSEMBLYWOMAN PINTOR MARIN: I appreciate you actually going through this, Mr. Kanef, because I think that there's some clarity as to the different options. I think that some of the points that you've raised, with regards to what the interest rate would, more or less, be if we were going to go through the MLF -- because we did have some questions with regards to that. And I do have a better understanding -- and I think everyone else does -- of some of the timelines, because we did have discussions whether it was going to be a two-year, a three-year, and now, possibly, a five-year, which makes it a little bit more flexible as well.

And I don't want to take up all the time myself. So if Assemblyman Burzichelli -- Vice Chair, if you would like to go next; and then I can kind of see what other questions haven't been raised from our discussions, and then we can move on that way.

Assemblyman.

ASSEMBLYMAN BURZICHELLI: Thank you, Chairwoman.

Good morning, again, to the Treasurer and to staff. Thank you for being with us to help explain what this Bill is. Because frankly, this is this is an Administration Bill and an Administration strategy that we're now working through.

So a couple of questions come to mind, and I don't want to go too long. There's been some commentary made that the reasons for working at this pace is that this is a first-come, first-served Federal program to get into that Federal loan pool. Treasurer, is that the case? Is this first come, first served?

STATE TREASURER MUOIO: In terms of the MLF, the State has been, basically, I would not call it *set aside*. But the money that is available to the State -- I don't think is on a first-come, first-served basis. It's more an issue -- and I'll let Michael and Dini speak to this more -- a question of what sort of flexibility we have the later we enter into the market.

Michael or Dini, do you want to discuss that -- what the challenges would be?

D I N I A J A M A N I: Sure, Treasurer, I can address that.

The facility size is significant: \$500 billion for just 300 or so issuers is a large amount of money. And many of the states won't--

STATE TREASURER MUOIO: For the MLF.

MS. AJ MANI: For the MLF; exactly, exactly. For the MLF. And New Jersey itself, including the State, will probably have around 13 or 14 borrowers. Two of the cities qualify; nine of the counties qualify. Of course, the State qualifies.

The way the Federal Reserve has structured this facility -- they kind of want to be the lender of the last resort, not the lender of the first

resort. Which means that many of the issuers, like Texas and North Dakota, that have a decent rating, will probably go to the public market to borrow, not to the MLF. So we don't think the size is going to be an issue -- that if you're not the first one in line ready to borrow, that you will miss your turn. We don't think that's going to be an issue -- if that answers your question.

ASSEMBLYMAN BURZICHELLI: Yes, it answers the question completely. And it's very important because, early on that was one of the reasons for the move for expediting; at least, that was the word that had reached the legislative process -- that this was a first come, first served structure. But it's clear that is not the case now.

So at what point, Treasurer, will you borrow, both in the case of the \$5 billion being requested in general obligation bonds, and also the Federal program? At what point will the Administration move to borrow, once this legislation -- in whatever form it finally reaches -- finds its way to the Governor's desk for a signature? Do you borrow right away, as soon as the Bill is signed?

STATE TREASURER MUOIO: No, we would need a significant lead time, which is-- And I just want to clarify something. The guidance on the MLF has changed over the past couple months from when it was announced. So the issue of the first come, first served has kind of changed as we've understood more about the Bill. There is a flexibility challenge in waiting longer, but that's more how many people have gotten into the market, if things are changing, in terms of the private-public rates.

But we would need -- Office of Public Finance would need at least about five to six weeks to get everything in place to allow us to present our program to the Federal government, to the Fed Reserve. Then we would have

approximately a two-week approval process, and then we would be able to go into the market.

Michael, is that correct? Is that how you would, pretty much sum it up, in terms of time constraints?

MR. KANEF: I think there are really two components to this. The first is, I think, as the Treasurer stated, it would take us several weeks, at a minimum, to be in a position to access either the public capital markets or the Federal Reserve facility. We are working, to the extent we can, to prepare in advance to do those things internally to expedite the process. But it would still take the State several weeks to be prepared to either go into the public markets or private market -- the Federal Reserve facility. And then we do expect, again, that you'd need to give the Federal Reserve facility or the public markets a couple of weeks before you'd actually be able to access the cash.

I do think -- and this is something that I'm not an expert in -- but there have, in the press, been reports of potential for litigation to be filed as well. That would potentially result in an additional substantial delay. If such litigation were to be filed, that would further delay. You'd need to have a court review and then determine an appropriate step forward. And that could add anywhere between a month to, potentially, three months of additional delay. And right now, from our finances, we are forecasting that we will have substantial need early in September or, potentially, late in August to have some additional cash.

ASSEMBLYMAN BURZICHELLI: All right. You sort of answered half my question, there, Michael; and Treasurer, maybe you can elaborate a little better. But I guess, maybe, there isn't an answer.

So your access -- receiving cash from either of these processes is uncertain. I mean, you don't have a date specific that if everything went well and the Bill was on the Governor's desk in three weeks and he signed, that on a certain date you would have benefited proceeds from one of these options here. There are really two options, the private market and the Federal.

STATE TREASURER MUOIO: Right; there's not a date certain, but we just walked you through what we would need on our end, in terms of lead time. We can't promise how long it would take the Federal Reserve to approve. We're assuming, since they have their process now, you know, that they're getting up and running. So we're assuming there would be some time in the approval process, and then we would be able to go. So we cannot give you a date certain, but we can give you our best estimate, based on prior -- what it has taken us in order to get other offerings out to the market.

MR. KANEF: And if I could just add one thing. I apologize; just one thing I'd like to add.

In order to apply to the Federal Reserve facility, you have to state affirmatively that you have authorization to issue bonds to the Federal Reserve. So that's a prerequisite for us to move forward.

ASSEMBLYMAN BURZICHELLI: So I don't have a calendar spread out in front of me. So Treasurer, do you expect that if everything goes well -- and I would feel there are going to be lawsuits of some kind, whether or not they find a way to the court or are set aside by the court absent a full hearing -- there's going to be a challenge, to some level, to some of this. So do you anticipate having funds at your availability before September 30?

STATE TREASURER MUOIO: Well, that's the question, Assemblyman. I mean, we've been asking about this legislation for a while now, because of the need. And, you know, we've now presented a budget, that we reviewed with you last Thursday, that gets us through September 30 with small fund balances, as I said, in a very volatile economic sort of forecasting situation.

But we 've put something together with the blend of cuts and deferred payments; and then we get to October 1, and we're looking at the whole of -- if we want to have some sort of decent fund balance at close of FY 2021 on June 30, 2021, we're looking at about \$8 billion that we're going to need to somehow figure out an answer for.

ASSEMBLYMAN BURZICHELLI: And in fairness, you 're not going to need \$8 billion on October 1. So in the traditional sense of a new budget year starting, will you use the TRANs advantage that we use every year at the beginning of a new budget year to begin the new budget year on October 1? Or will things grind to a halt if either the \$5 billion isn't successfully secured, or the municipal loan isn't arranged for'?

So we're not going to have an \$8 billion shortage, aside from on paper, from a cash flow standpoint on October 1. So will you be doing short-term traditional borrowing on October 1, as you get into the beginning of that nine-month budget'?

STATE TREASURER MUOIO: Well, from a cash-flow perspective, starting October 1, if we pay the items that we are deferring to October -- the school funding payment, the pension payment -- we will have a cash-flow problem in October. So that will be an issue.

And I don't know, Michael or Dini, if you want to add anything to that.

ASSEMBLYMAN BURZICHELLI: But Treasurer--

STATE TREASURER MUOIO: The unique thing about the TRAN is that that has to be paid off within the same fiscal year that we apply for it. So we've got -- whatever we borrow in TRAN has to be paid for by the end of that fiscal year. So we need to know that we're going to have enough revenue coming in to pay that off.

Is there anything you want to add to that, Michael or Dini'?

ASSEMBLYWOMAN PINTOR MARIN: Treasurer, before you--

STATE TREASURER MUOIO: I'm sorry.

ASSEMBLYWOMAN PINTOR MARIN: I think what Vice Chair Burzichelli is just, really, trying to get at is -- and John, I'm sorry, you let me know if I'm wrong -- as soon as October hits, are you saying that we will no longer be able to -- we have exhausted our short-term borrowing'? Is that what we're hearing?

STATE TREASURER MUOIO: You mean-- Well, we have exhausted-- Well, we will have a plan in place through the temporary budget, because we extended --

ASSEMBLYWOMAN PINTOR MARIN: Okay.

STATE TREASURER MUOIO: That sunsets -- I think it's September 25.

ASSEMBLYWOMAN PINTOR MARIN: I think that that's what we wanted a little bit more clarity on, Treasurer.

STATE TREASURER MUOIO: Okay, okay.

ASSEMBLYWOMAN PINTOR MARIN: Am I correct, Vice Chair?

STATE TREASURER MUOIO: Is that what you 're--

ASSEMBLYMAN BURZICHELLI: Well, Chairwoman, you're never incorrect, and you 're absolutely correct on this.

And I raise the question because it's all about timing. And I say this to everyone--

ASSEMBLYWOMAN PINTOR MARIN: Yes.

ASSEMBLYMAN BURZICHELLI: Listen, clearly, we're going to have to borrow something. The question is always about timing, and how do we get through this. And then I'd like to start to wind down on this, so others can jump in.

There was talk last Friday among some that the interest rate on the Federal side could exceed or be close to 10 percent. Now it sounds like it 's going to be closer to 5 percent. Is that correct, based on the 2.8 percent *prime*, or whatever the term is, with the basis points factored in?

STATE TREASURER MUOIO: Go ahead, Michael.

MR. KANEF: The 2.8 percent is the expected all-in cost for the Federal borrowing under the facility. So we would anticipate that for a three-year borrowing we would be charged 2.8 percent.

Again, in the public capital markets, right now, I would expect the pricing would be -- depending upon the day, because those markets are quite volatile -- slightly more or slightly less than that amount. Again, I do expect over the coming weeks and months that the public market interest rate would be lower than that.

ASSEMBLYMAN BURZICHELLI: All right.

And Chairwoman, let me work to a close on a couple points here for just a couple quick questions.

One, it's been mentioned that the Municipal Loan Fund is 36 months; maybe going to five years. That, of course, will span a couple of different budgets. I'm just curious; what's the final five years, if this economy continues to drag? Do you anticipate they'll make other provisions?

STATE TREASURER MUOIO: Right; and I think Michael laid that out in his answer earlier. But to the extent we can't, we would be refinancing that within that window.

ASSEMBLYMAN BURZICHELLI: All right. And you have a number of de-appropriations as you worked to get this thing balanced to September 30. If this bonding authorization comes to fruition, the Administration can't spend unless we appropriate, obviously, in a given budget year. Is it the Administration's intention to try and to put these cuts back into play if borrowing is achieved in advance of close-out on September 30? Because we would not necessarily have a say in something already appropriated. We will have a big voice in what happens in the nine-month budget; we don't have a big voice in in this present environment we're in.

So if you successfully borrow at a more-rapid pace, is the Administration's position that you're going to re-appropriate or reinstate the cuts that you have made to get us to a balance on September 30?

STATE TREASURER MUOIO: You were blinking out a little bit on that, Assemblyman.

Were you saying would we re-appropriate what we have proposed to de-appropriate on June 30 in order to -- if we had the bonding authority available?

ASSEMBLYMAN BURZICHELLI: I am. I'm just wondering what the mindset is in the Administration. If the bonding comes to fruition at a pace a little ahead of schedule, and you find yourself with funds available, would you move immediately to spend the money that the Administration has chosen to cut, to help get the budget into balance to close us out on September 30?

STATE TREASURER MUOIO: You know, we haven't had those discussions, so I can't give you an answer on that right now.

ASSEMBLYMAN BURZICHELLI: All right; thank you.

Treasurer, thank you; thank you, Michael, as well.

Thank you, Chairwoman. I may have something for round two, but that's it for the moment.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Vice Chair.

Assemblyman Wirths.

ASSEMBLYMAN WIRTHS: Thank you, Chairwoman. And thank you, Treasurer, for coming in today. I really appreciate it, and I know that we're up against the time clock so I'll try to be as quick as possible.

This should be the last option after all else is exhausted, and I don't feel that we've exhausted all other options. I mean, the bonding -- whether it's a Whitman or a McGreevey bonding -- has got us into this mess and has caused us to be the most indebted state in the nation. As many of us recall, the Whitman bonding was \$2.8 billion, and it has cost the taxpayers -- I don't know, \$12 billion to date. We're still paying \$500 million a year for bonds from 1997.

But the question I have, Treasurer -- and I'm going to go quickly, because I respect -- I really appreciate you being here, and the time -- what makes you think that this is constitutional, the borrowing for revenue? What is your answer on how this is a constitutional, going around the voters and being done -- trying to be done by the Legislature. What is the Administration's argument for that?

Thank you.

STATE TREASURER MUOIO: Well, I just want to point out -- you brought up Whitman bonds. And since the Governor came into office in January of 2018, we have really worked to, sort of, limit our debt service obligations.

But the Whitman bonds were unique. And you're right; we are paying several hundred million dollars a year regularly on those bonds because of the way they were structured.

I don't know if-- Dini, do you want to just talk about the CABs, and why those are unique and should not be equated to what we're doing now? I'm not going to get into the legal arguments; I'll leave that to the lawyers to--

ASSEMBLYMAN WIRTHS: Sure.

STATE TREASURER MUOIO: We've proposed a Bill that we believe is constitutional; so I'll leave it at that.

ASSEMBLYMAN WIRTHS: I'm sorry, Treasurer; you don't have to-- I was giving it more as a point. You're welcome to answer it, but I was just pointing out -- and under McGreevey too -- how bonding has been disastrous for a state -- one of the worst financial conditions in the nation, and the most indebted state. I didn't want to take up any more of your time;

I was just pointing it out -- on what the destruction that bonding in the past has caused this great State of New Jersey and put us in this financial condition that we're in. And, obviously, I get the COVID additional.

But if you won't answer the legal, then maybe, through the Chair, maybe the Chair could -- The concerns that came up today are-- You know, they must be authorized, and we're worried about additional lawsuits. And I think the question has to be, then, why not put this in front of the voters. The Governor has changed elections, has moved dates, has used executive orders. Why, if there's any doubt, if you want to have a clean Bill that can stand up to the constitutional muster -- when we can put this out to the voters? Why are we afraid to ask the voters? Our voters are very aware of the very turbulent times our nation is going through: the COVID and the horrific actions that have been taking place. So Americans are smart, New Jerseyans are smart -- why can't we put this up to the voters and have them approve this? And then we take all the other things off the table -- all the uncertainty comes off the table if this goes on the ballot. And the Governor has the authority to move this, the legislators have the authority to move this to a November ballot; and maybe even with the great legal minds in Trenton, maybe even sooner.

But why can't we ask the voters for approval on this, and make sure it's done properly?

STATE TREASURER MUOIO: I mean, I think you hit the nail on the head, Assemblyman. These are extraordinary times. We are in a fiscal crisis, like states across the country. We are looking at a severe budget crisis; and if we accept all of the cuts that the Administration is proposing getting through September 30, we still have very small fund balances for both June

30 and September 30. And then come October 1, we're looking at pension payments that have to be made, school funding payments that need to be made; you know, billions in payments that we are going to be needing to make quickly.

So you know, I think it's a question of, this is a crisis, it's a disaster, and we need to act accordingly and get access to this funding -- which the Federal government has established and set up only because we are all faced -- we're all in the same boat and facing these enormous COVID-19-related crises -- to give governments the opportunity to try and help get through the crises as well as possible.

ASSEMBLYMAN WIRTHS: And Treasurer, I appreciate that, and there is nobody on this call today who doesn't have the best interest of New Jersey and know that we're in difficult times, and want to make sure our state can continue, and our all of our workers and our essential workers. But I just don't see the need to jeopardize and break the Constitution when, as you said earlier in testimony, this has been going on for months. We've had months and months, and you didn't have to be an economist to know that we were headed into dire straits. And we procrastinated along; we could have had this definitely in time for the voters, and had done it the proper way and the legal way. And I'm worried now. And Assemblyman Burzichelli, when he was asked, it sounds to me like we're not even taking off of the table the modest cuts -- the roughly \$1 billion in cuts from the budget. And I think it's important to point out to the taxpayers that those aren't really cuts. We're taking the senior freeze away, and the Homestead rebate. These are tax cuts that are going to help stimulate the economy and help the most vulnerable. So really we're taking away revenue from our citizens in that

billion-dollar number. And I still -- I don't see any logical reason why we can't ask the voters and the Administration to prepare a good case and tell them the times and get it on the ballot. Even if you have a special election, or do it-- But to have this thing tied up in courts, and when it loses, I think they're going to regret if this gets pushed through today.

And I think it's also important -- we all blow the devastation that COVID has done, and the loss of life, and the illness, and the cost to all of the State of New Jersey. But I think it's important to point out that billions and billions of dollars have come in from the Federal government on the COVID -- you know, with the hospitals, and the transit, and all across the board. I think the number is somewhere around \$8 billion or \$9 billion that is coming in.

But I'm not convinced today that we're not going to draw this down and get into another 35-year bond payment and just devastate the State on our bond ratings. I think this is just going to be moved on, if it goes through today, to our kids and our grandchildren. I don't even have grandchildren yet, but maybe my great-grandchildren. I don't know when and if this will ever be paid off, but I think it's very destructive having an open checkbook. And I'm worried that it's going to stop us from finding any inefficiencies -- which we all know there are, and can be cut back in government.

So I appreciate your time. And I don't know if you have anything to add, but I think the only way to properly move this forward is to put it on a ballot; and the Governor sure has the power to try to put it on the ballot and obey the law and the Constitution, which we all swore to uphold.

So thank you.

STATE TREASURER MU OIO: And the only thing, Assemblyman--

ASSEMBLYMAN WIRTHS: Sure.

STATE TREASURER MUOIO: --I would add , is to call it an *open checkbook* is a misnomer. Because you guys control the checkbook; you are the appropriators by law. So we certify revenues, you have the checkbook.

So I'll just leave it at that.

ASSEMBLYMAN WIRTHS: Okay; I wish it was that easy.

ASSEMBLYWOMAN PINTOR MARIN: Assemblyman, before I move on.

I respect you tremendously, and I think you know that. But I also just wanted to clarify one or two points.

ASSEMBLYMAN WIRTHS: Sure.

ASSEMBLYWOMAN PINTOR MARIN: Number one, we've had 11 downgrades under a Republican Administration. For eight years the TTF was run solely -- and you know this; you were the Commissioner of Labor -- that for eight years the TTF was run solely on bonding and debt. So I think that we would be remiss if we're going to point fingers at which Administration did what-- But this is -- unfortunately, this is due to years of just, kind of, plugging in the holes.

Unfortunately, with regards to the timeline, I think we have waited this long because we wanted to make sure that the Administration was in real need to be able to go out for money. We know what this will obviously do to our bond rating. But I think that -- I'm glad that the Treasurer clarified that the most important point of all of this is just the fact that if the

Administration seeks any further funding than what they initially requested for, they have to come back to the Legislature.

And with that, I just want to go on to Assemblyman McKeon.

ASSEMBLYMAN WIRTHS: Thank you, Chair.

ASSEMBLYMAN McKEON: Thank you, Madam Chairperson.

And I join Assemblyman Burzichelli in indicating you could never be wrong.

You know, frankly I was going to seek to clarify several of the points made. And I think that my questions, frankly, are not directed at the Treasurer who stepped back saying, "I'll leave it to the lawyers to discuss the appropriateness of this," and maybe just change it to remarks when we vote. I just note that it's just astonishing, as in 1947 the founders of the New Jersey Constitution were such to put into that document precisely the circumstances, in response to the Great Depression, that sit there today, that have this, in my legal opinion, meet constitutional muster.

The second piece -- if I can ask one question to the Treasurer, to make clear; because this was, I think, maybe where John was getting at a little bit, and yourself stepped in, Chairperson.

As it relates to waiting until October 1 -- we could never get to that point and start to spend. You know, once you're in that nine-month period, you would have to immediately stop spending, in any way shape or form, to be in a position to not expend the \$5 billion that we're looking to supplement that fiscal year through this loan. You'd have to stop immediately; which is, frankly, the answer to, I believe, Assemblyman Wirths' question, "Why can't you wait until November?"

Of course you can. We have a nine-month consolidated period where this money has to be ready to be primed into the system, or else that would be the day of reckoning. So that's why it's so important to move in the way that we are, and why it's impractical if it was required under the law -- which I would argue it wasn't -- to bring this to the voters.

So with that, I'm going to just hold my comments; and maybe, Madam Treasurer, you could comment on the cash flow, if you will, from that perspective that I'm trying to raise.

STATE TREASURER MUOIO: Yes; if we didn't have this in place and October 1 arrived, we'd be in an immediate reserve situation. We'd be in the situation where we find ourselves currently, with a billion dollars, approximately, in reserve. Because we do not -- we are obligated to have a balanced budget; we'll need to have the resources in place. So that would be -- we'd be on an immediate spending freeze, and money would be in reserve for the nine-month budget starting October 1.

ASSEMBLYMAN McKEON: And through the Chair, if I can-- And the kind of things would have to get cut, because so much of it -- between pension payments-- We're obligated under the Constitution to pay it right? -- \$4 billion. For school funding, the school funding formula obligation to pay it, \$10 billion. We're still a country of laws; we owe \$4 billion a year just in debt service. So all those things would continue to have to be paid.

So where would we be, on October 1 -- what kind of position would we be in? Basically, we would cut out State government; that would be the only amount of money that would be left that we would have any discretion over.

STATE TREASURER MUOIO: Correct. And our piece of that budget-- As I mentioned ] 70 to 80 percent is going out into school districts and local governments. So our piece of that is relatively small compared to the rest of the budget.

So you're correct.

ASSEMBLYMAN McKEON: Thank you; thank you, Madam Chair.

ASSEMBLYWOMAN PINTOR **MARIN**: Before I move on to Assemblyman Benson Madam Treasurer] if you can just -- we keep talking about how low the cash flow will be in the interim period between late August and September. Have you drilled down, and can you tell us, more or less, how low our cash flow will really be towards the end of August into September?

STATE TREASURER MUOIO: Yes; you know, I don't have the September number in front of me. But because we needed to propose a June 30 close-out and a September 30 budget, we will have-- We are really going to face our problem come October 1, because that's when-- To get to October 1, we had to make the cuts, we deferred payments, we had to take all the actions we did to end up with some type of fund balance to get through the year. We will also have the Coronavirus Relief Fund monies; at least some of it is in the accounts.

So in terms of cash flow, we have gotten ourselves, with this proposed budget, through September 30. But, you know, the wheels come off the bus October 1.

ASSEMBLYWOMAN PINTOR MARIN: Okay, thank you.  
Assemblyman Benson.

ASSEMBLYMAN BENSON: Thank you, Madam.  
Chairwoman.

Madam Treasurer, I just want to get a clarification.

You mentioned about the MLF -- when we borrow on behalf of the smaller counties and towns that aren't eligible to borrow directly, I think you had mentioned that there would need to be additional legislation from the Legislature and signed by the Governor in order to direct how that money is going to be doled out. Or is that something that's going to be done by virtue of this legislation here?

STATE TREASURER MUOIO: This legislation -- and Dini and Michael, you can correct me if I'm wrong -- but this legislation was drafted to enable us to borrow on behalf of those government -- those locals that did not receive direct funding through the MLF.

Correct, Michael and Dini?

MS. AJMANI: That's correct.

ASSEMBLYMAN BENSON: So I'm going to ask that question again.

So this allows you to borrow the money, but how it gets approved by local government services, how much municipalities and counties are allowed to ask for -- all of that kind of programmatic piece of implementing that, where's that coming from? Is that purely going to be administrative, or are you going to be coming back to the Legislature to seek approval on how that happens?

STATE TREASURER MUOIO: Dini, are you aware of--

MS. AJMANI: Yes, sure. Sure, I'll try to answer that.

So the discussions on that are still fairly preliminary. The Act-- The MLF does allow us to borrow on behalf of local and state governments, and all we're seeking right now is the authority to do that. How those funds then get spent in helping locals, and counties, and school boards is something that I think will have to go through the a legislative body, in terms of -- For example, if the State aid is increased , or grant aid is increased , or school aid is increased , I think all of that would be part of the budget process.

ASSEMBLYMAN BENSON: Okay.

MS. AJMANI: At least, that's what my understanding is.

ASSEMBLYMAN BENSON: So that's my second question. You have five to six weeks lead time of putting together the application, but we don't know the municipal aid figures, based on whether we get this money. And so there's kind of a chicken-or-egg question of how much are we going to seek on behalf of those municipalities, when they may not know what their needs are yet, depending on how much the budget reduces aid.

So I'm just questioning what's going to happen.

MS. AJMANI: So there are many options available to locals away from tapping MLF through the State. For example, many counties can tap MLF directly, and many of those counties actually have a better credit rating than the State does, so their cost of funding would be cheaper than what the State's cost of funding would be.

So I am not part of the discussions, but my understanding from speaking with the Governor's Office is that there are many other options that are being reviewed right now to help locals and counties, away from using the State as a proxy to borrow on their behalf.

ASSEMBLYMAN BENSON: Okay; maybe through you, Mad am Chair, we can get more information on that. Because I know that's a lot of the questions that I'm hearing from both mayors and county executives, from those places that can't go to the MLF directly, and currently have not received the authority to go borrowing beyond TRANs.

My other question is related to those independent authorities, and other things that aren't municipalities or counties, but also are facing revenue shortfalls. Is there anything in the MLF for them, or is there other support in this Bill from the State to cover those shortfalls?

STATE TREASURER MUOIO: Go ahead, Michael; do you want to speak to that, or Dini?

MR. KANEF: Sure.

So there are a number of different entities that are permitted to receive funding pursuant to the terms of the Federal Reserve MLF. But as we said earlier, only a small minority of them are sizable enough to borrow on their own behalf. In addition, the rules of the facility only permit one borrower at the State level; so that to the extent that the other entities, that are permitted to borrow pursuant to the terms of facility -- besides, for example, local governments -- do need money, and there is a determination made that those folks would best be served by having money provided to them pursuant to borrowing from the Federal facility, the State would have to borrow on their behalf and then provide them with funds. And that's a determination, that as Dini suggested, is in its very preliminary discussions. So I don't think I've got a final answer for you, other than to state that those entities would need to have the State borrow on their behalf and pass funds through, to the extent there's a determination to do so.

ASSEMBLYMAN BENSON: And this legislation, I know, does that for the MLF. Does it also allow the State to do that in the private sector and public sector as well?

MR. KANEF: I would say I believe that, pursuant to the terms of the draft legislation, the State could borrow at the GO level and make a determination to pass those funds through to the localities. But I'd have to get a confirmation on that from the Attorney General's Office, and we can do that for you.

ASSEMBLYMAN BENSON: Okay, thank you.

STATE TREASURER MUOIO: And some would already have their own ability. I was just saying, and some already have their own ability to go take advantage of those markets. Correct, Michael'?

MR. KANEF: Absolutely. Many of those entities have the capability to enter the public and private markets on their own behalf. And in fact, many of those entities actually have ratings from the credit rating agencies that are equal to or superior to the State's rating.

ASSEMBLYMAN BENSON: Would they be able to do that, though, for lost revenue, or only for -- or property expenses'? I would assume they could not, without further direction from the Legislature and the State government.

If I'm wrong, please let me know. That's a question we're getting from mayors.

STATE TREASURER MUOIO: I think that would be-- I mean, they would know better what-- They don't have any -- the same restrictions that we have, in terms of borrowing, that would require this legislation -- I don't believe. So I don't think they would have the same restrictions.

But Michael, go ahead and weigh in if you want.

MR. KANEF: I would just say that-- Again, I do believe that the legislation explicitly permits the State to borrow on behalf of those locals so that they can -- and then pass that cash on to the locals for revenue replacement as well. And I think that they do have the capability to borrow in the public capital markets directly for those purposes; again, subject to appropriate oversight.

But I think that this is an important tool, in any event, for the locals. And the way the legislation is crafted explicitly permits it, would be useful for many of those municipalities that might not have the ability to access the public capital markets on their own.

ASSEMBLYMAN BENSON: Okay; no, that's all I have.

Thank you, Madam Chair; thank you, Madam Treasurer; thank you Michael and Dini.

STATE TREASURER MUOIO: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assembled woman Mufloz, please.

ASSEMBLYWOMAN MUNOZ: Thank you; thank you, Madam Chair.

You know, I have just two questions.

Treasurer, when you began, you said that we're doing this in the interest of protecting taxpayers. And it, in my view, when we look at this, are we really protecting the taxpayers? Because as we go out through this borrowing, the way we're going to have to pay this back is, it's going to be regressive taxes. It's going to hurt those who have the least ability to pay it

back: the middle class, the working class. It's going to be through the increase in your sales tax, increase in the property tax.

So my question is a pretty broad question. But I don't know -- are we doing enough in every way we possibly can to protect the taxpayers? If we could look at ways to not have so much borrowing, so that-- Because we are going to have to pay this back. This is not a grant, this is a loan. And again, it's going to hurt our middle class in New Jersey, and that's who we're looking out for.

And I just have the questions: Are we doing enough to protect the taxpayers? Can we look for further cuts, can we look for other ways so that we don't have to have the borrowing that will hurt the taxpayers?

STATE TREASURER MUOIO: Thank you, Assemblywoman.

And I just want to point out -- and this is a follow-up on an earlier discussion we had on cash flow -- this is more a concern about having a budget that allows us to operate in the State. If we do not have this borrowing, and some additional Federal funding potentially, we are going to have to have \$7-plus billion in cuts in order to have a budget. The Governor won't be able to certify if we don't have those cuts in place. We would shut down, essentially.

So this is an extraordinary crisis we're faced with, extraordinary numbers we're faced with. And, you know, as I mentioned also in my opening remarks, this is a time when the people of New Jersey are needing services more than ever. I mean, they're looking to the State to provide services more than ever. And we would essentially be faced with shutting down October 1 if we don't have -- if we can't find \$7-plus billion in cuts or revenue in order to begin the next fiscal year.

So that's the challenge we're facing. And this, we feel, gives us the balanced approach we need to allow us to meet the needs of our residents. It clearly will also include belt-tightening; we've made that clear, and I made that clear in our remarks on Thursday. You can see from the budget we've proposed and the cuts the Governor's made in his priorities for this year.

But unless we find, you know, \$7-plus billion in cuts going into the next year, we will not be able to operate as a State. So that's the challenge we're facing, and this is our proposed way of addressing it in a balanced way.

ASSEMBLYWOMAN MUNOZ: But you just said that you may need borrowing and cuts. So maybe we could take a closer look to see if we can, sort of, move that borrowing number down and increase the cuts.

My second question I have for you is, when we were talking about the MLF, and the costs, and the percentage of interest rates, and to pay it out over three years. And then, at the end of three years -- or five years, if possible -- that we would, then, have to perhaps refinance.

You know, what strikes me is that we keep talking about the remarkably low interest rates. What assurances, or even projections, do you have that our interest rates are-- Because everyone keeps talking about the interest rates may be lower. Well, how do we get lower than we are now? And there's a great chance that those interest rates could be much higher in three to five years. So have you factored in that increase in interest rates? I mean, we just can't keep going down lower and lower. So that has to be a part of the process when you're looking at borrowing.

STATE TREASURER MUOIO: Yes. Michael, did you--

MS. AJMANI: If I may answer that, Treasurer?

STATE TREASURER MUOIO: Oh, Dini; okay.

MS. AJ MANI: If I may just address that.

STATE TREASURER MUOIO: Go ahead, Dini.

MS. AJ MANI: So if we were to borrow in the public market, one of our goals would be to borrow for a longer term than just three years. So what we're finding is that, as there is a buyer of last resort in the Fed, the public market has really stabilized and the banks have come to us offering us longer-term debt at terms that are very similar, if not better, than what the Fed is offering.

And therefore, what this Bill does is give us a choice. At the time that we're ready to borrow, which market is better for *us*? And obviously, our preference would be to borrow at a lower rate for longer, versus using MLF, in case the rates that are available in the public market are better for longer-term debt.

So that's one thing I wanted to address.

I also wanted to say that we are well aware of the cost of borrowing. This is not a choice we're making; this is an option we need to have. Many of you are small business owners, and you understand that when there is no visibility into where the revenues are going to come from and how much those revenues will be, and you know that you have a power structure that is inflexible, you want to have all the options available to you, especially if a banker approaches you with a loan at a very reasonable rate. And all we're asking for here is to have that option available to us. But we are well aware -- and rating agencies remind us every time in their report -- we are well aware that this borrowing does not come with zero cost; that our fixed costs will go up, our debt service costs will go up, rating agencies will see that the

same amount of revenue, or even a smaller amount of revenue, is now supporting a larger debt.

So cuts and structural changes to reduce the cost would definitely be a place we will go, not just the borrowing.

I hope that helps.

MR. KANEF: Can I just add one additional thing?

ASSEMBLYWOMAN MUNOZ: Thank you.

And just as--

Yes; sorry.

MR. KANEF: I'm sorry for cutting you off.

I just wanted to add one additional factual point.

The borrowing that the State would do under the Federal MLF is callable at any time by the State. Which means that at any time during the three-year term of that loan, if the rates in the public markets are more advantageous for the State, we would have the capability to refinance at that point in time. So we're not going to be stuck waiting for the three-year term to determine whether the rates at that point in time are better for the State. We will have the opportunity, over the entire period of the three years, to monitor the public and private capital markets and refinance longer-term at an earlier point, if it is beneficial for the State.

And again, I apologize for cutting you off.

ASSEMBLYWOMAN MUNOZ: And it certainly is a possibility that we could have another credit downgrade from the credit rating agencies, which would also increase our rates as we go out those three to five years. Is that not correct, is that not a possibility?

STATE TREASURER MUOIO: Rating agencies--

MS. AJMANI: That is always a possibility.

STATE TREASURER MUOIO: Okay. Yes, the rating agencies would like to see us approach this in a balanced way, so that is what we are trying to do here. They want to see that we're making the tough decisions we need to on the spend side, and they understand the need for a balanced approach in terms of needing Federal direct funding and the need to borrow. As we said, this MLF was specifically set up to give every state and many local governments the ability to have access to funding because of this COVID-related crisis that we're facing.

So we're in regular contact with the credit rating agencies, you know, and we'll see how it proceeds going forward.

But this is part of a balanced approach that I think all of us recognize that we need to take to address the challenges.

ASSEMBLYWOMAN MUNOZ: Thank you.

And just as a final statement -- just to do everything we can to protect the taxpayer. Because again, it's going to be those who can least afford it who are going to be hurt the most by this -- meaning, when we have to pay it back.

So that's it for me; thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Assemblywoman.

Assemblyman Gordon Johnson.

ASSEMBLYMAN JOHNSON: Thank you, Madam Chair.

I just need some clarification real quick, recognizing the situation we're in and what can we do to get the State out of this mess.

In the Bill it-- And I need a definition from the Treasurer on this. It talks about *refunding bonds* and *emergency liquidity notes*. I've not heard these two terms being used during this discussion. So just give me a definition on those two terms, please: *refunding bonds* and *emergency liquidity notes*.

STATE TREASURER MUOIO: The one is the TRAN-- Michael, do you want to just give-- Michael walked through some of these definitions earlier in our remarks.

ASSEMBLYMAN JOHNSON: Okay.

STATE TREASURER MUOIO: But why don't you just reiterate some of them?

MR. KANEF: Yes; so absolutely.

So the Treasurer is correct. The *emergency liquidity notes* would be the equivalent of our nonnal TRAN, and the authorization to (indiscernible) GO TRANs here.

ASSEMBLYMAN JOHNSON: Okay, it's a TRAN; okay.

MR. KANEF: And I'm sorry; the other defined term you were looking for?

ASSEMBLYMAN JOHNSON: *Emergency liquidity notes*.

MR. KANEF: Okay, so the emergency liquidity notes are the equivalent of the TRAN.

ASSEMBLYMAN JOHNSON: I'm sorry -- *refunding bonds*, refunding bonds.

MR. KANEF: Yes, I'm sorry.

The *refunding bonds* is the way we're describing, in the draft legislation, the authorization to refinance bonds that have already been issued pursuant to the Act.

ASSEMBLYMAN JOHNSON: Okay, okay; got it.

Okay, thanks for the clarification for me. I had a problem getting on the Zoom call at first.

In this Bill it does not have a threshold or a cap for these two entities here, the bonds and the liquidity notes. I guess that's because the Legislature will determine the appropriations for this. Is that correct'?

STATE TREASURER MUOIO: Yes, the Legislature will determine--

MR. KANEF: That is correct. The Legislature--

STATE TREASURER MUOIO: Go ahead , Michael; go ahead.

ASSEMBLYMAN JOHNSON: I got two "yesses."

MR. KANEF: That 's right; the Legislature determines any spend. This only provides the authority to borrow.

ASSEMBLYMAN JOHNSON: Right, right; okay.

All right, Mad am Chair, that 's all I had in my concerns. And thank you for allowing me to ask these two questions.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Assemblywoman Di Maso.

ASSEMBLYWOMAN DiMASO: Yes.

So I'm just curious if the Treasurer, or anybody in the group, actually looked into what former Republican Budget Chair Assemblyman John DiMaio put forward as an alternative to bonding our children's future. You know, it seems to be a good plan. We're always complaining about not

getting enough money back from the Federal government, and it seems to work for the middle class where the middle class-- It would be a reciprocal agreement to, like, how we have in Pennsylvania, where we reciprocate the tax -- what you pay from one to the other, except this time with the Federal government.

He has taken the opportunity to write to all our Congressional delegates, as well as the President, and senatorial delegates, and the Speaker, and the Majority Leader in the Senate.

So I'm just curious if you've even given that any thought. I mean, I hate to be the-- I'm not the kind of person who says, "No, no, no," and then doesn't give you an opportunity or give you an idea to do something else. Neither is -- most of us are not that way. So I'm just curious what your thoughts are on Assemblyman DiMaio's proposal.

STATE TREASURER MUOIO: And I apologize, Assemblywoman. I have not seen the proposal or had a chance to really review it. So I'm not really--

ASSEMBLYWOMAN DiMASO: Okay. Basically it's -- so for every dollar we get federally-- So it would be similar to the reciprocal tax agreement in Pennsylvania, where you don't have to file Federal income tax returns. New Jersey would just raise the rates to Federal rates, and then New Jersey would -- it would be like creating a new form, but for this year only; and it would really only apply to the middle class, basically, because with gross income and all that stuff-- But this is really-- It seems to me like it would be a better plan, so that we can offer real savings. We discussed this last week. We're all talking about tax cuts; we're all saying we don't want to raise taxes. But we know that, in the end, this may just do that.

So if it's okay, through the Chair, we'll send it over to you, and would be interested in your opinion on it. Because in my personal opinion-- This is only my first year on Budget; I lead a household, lead a business. It sounds like a better thing. If you don't have to borrow, then you shouldn't borrow. And so this, to me, sounds like a better program. The Federal government is getting its money; they're not printing extra. But if they're printing extra money anyway, why not just give it back to what we've already given them? We're all complaining about giving too much to the Federal government and not getting enough back. This seems to me to be the answer to both issues.

So, through the Chair, we'll send it over to you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Assemblywoman; thank you for sharing.

Assemblyman Spearman.

ASSEMBLYMAN SPEARMAN: Thank you, Madam Chair.

I just need a couple of points of clarification.

First, it's my understanding that the Federal guidelines for the MLF will allow -- I'm making sure I wrote this down correctly -- will allow the State of New Jersey to borrow up to \$9 billion. Is that correct, Madam Treasurer or Michael?

STATE TREASURER MUOIO: Yes, that's the cap on the Federal borrowing for New Jersey, as a State.

ASSEMBLYMAN SPEARMAN: Fantastic.

I also understand that the State is considering borrowing on behalf of counties and municipalities that do not have the ability to tap into the MLF. My question is, if the State does borrow -- and one final point of

clarification -- and it's my understanding that any borrowing that's done on behalf of the municipalities and the counties will also be considered an obligation of the State. Is that correct?

STATE TREASURER MUOIO: Correct.

ASSEMBLYMAN SPEARMAN: Okay, great.

So will the borrowing on behalf of the counties and the municipalities be considered a part of that \$9 billion limit -- MLF limit?

STATE TREASURER MUOIO: Right. Under this legislation, the municipalities and counties that did not get direct funding-- Those that did , that amount is on top of the \$9 billion. For those that did not, that would fall currently within the \$9 billion limit.

ASSEMBLYMAN SPEARMAN: Okay, okay.

But you said , or Michael said earlier that any borrowing that's done by municipalities or counties would be considered an obligation of the State because the State-- You can only have one borrower per state; did I hear that right? Maybe I didn't get that right.

STATE TREASURER MUOIO: And I'll have Michael or Dini follow upon this.

But when the MLF was first announced , the State was the only official borrower on behalf of any counties, municipalities -- anything within the state. Remember I had said earlier that-- So the guidance changed , kind of morphed after the announcement.

ASSEMBLYMAN SPEARMAN: Right, right.

STATE TREASURER MUOIO: It was changed , at one point, to both-- It used to be we were going to have to -- it was going to close out by the end of September; they extended it to December for close-out. It went

from a two-year to three-year plan. It also allowed certain counties and larger municipalities to be able to borrow directly; many counties and cities in New Jersey cannot. Those would come under us, but some are able to go directly to the MLF.

ASSEMBLYMAN SPEARMAN: Okay, okay.

So what I'm trying to get at-- Let me explain what I'm trying to get at. I'm trying to get at the total amount of borrowing that's going to be done from the MLF by the State or municipalities in the state.

So I'm hearing that there's a \$9 billion limit. So it sounds to me like the most that the State can borrow, period, will be \$9 billion. That's for the State directly and municipalities and counties that the State is borrowing on behalf of. Is that correct?

STATE TREASURER MUOIO: That is for the MLF; that is correct.

ASSEMBLYMAN SPEARMAN: Okay.

STATE TREASURER MUOIO: The GO -- the other piece of it, the GO bonding -- that would be-- There's a \$5 billion cap currently in the Bill on that.

ASSEMBLYMAN SPEARMAN: Got it.

And then if additional municipalities and counties that are eligible to borrow directly from the MLF, borrow additional funds, that will not be a State obligation. Am I hearing that?

STATE TREASURER MUOIO: Correct. If they were allowed to directly borrow, from the Federal government through the MLF, that would be separate and apart from the State borrow.

And again , Dini and Michael, step in if you think I'm getting this-  
- (laughter)

MS. AJ MANI: If I could just clarify one thing.

The \$9 billion number the State can borrow for itself. The State can also borrow on behalf of those counties and locals that directly cannot tap MLF.

Now, the MLF facility does permit that if you want to go beyond \$9 billion in order to help the locals that cannot tap the MLF directly, you can apply for raising that cap. You can apply for additional borrowing you can do on behalf of those locals and counties. But it's not automatic like the \$9 billion is; you have to seek permission.

ASSEMBLYMAN SPEARMAN: Okay; those are my questions.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assemblyman, essentially it will be the State still borrowing from the MLF. But it's really the municipalities that are going to then have to pay the State.

ASSEMBLYMAN SPEARMAN: Okay, thank you.

ASSEMBLYWOMAN PINTOR MARIN: Assemblyman Clifton.

ASSEMBLYMAN CLIFTON: Thank you, Madam Chair.

Hello, Madam Treasurer; how are you ?

STATE TREASURER MUOIO: Good; how are you doing, Assemblyman'?

ASSEMBLYMAN CLIFTON: Good.

Just a quick question.

If this passes, and is challenged in the courts like it was in 2004 -- now it's different; it's been 16 years -- but if it is -- but if the challenge -- and this is denied, and it's found unconstitutional, has the Administration gamed out a scenario to cover that \$7 billion that you say needs to be cut? I mean, have they been looking at those items to cut to deal with this? I know it will be massive cuts, as you mentioned. But has it been, sort of, gamed out how to deal with this, if the courts rule like they ruled back in 2004?

STATE TREASURER MUOIO: Right. Well, as you said, we would be looking at trying to solve for a massive hole for Fiscal Year 2021.

So it would be drastic cuts; and we would have to come up with a budget in agreement with the Legislature, and it would be a brutal budget.

ASSEMBLYMAN CLIFTON: I just didn't know if the Administration has started to, sort of, game this out and say, "Okay, back in 2004, something similar was tried; it failed. Let's start looking at 2021 now," or the next budget, 2021, and say, "We're going to have to cut X amount percent across the board," or, "We're going to look at certain programs."

Has anything like that been, sort of, strategized in case this goes south?

STATE TREASURER MUOIO: Well, you know we are aware of what the potential hole would be. So we would need to look at State operations and what goes out into the communities, in terms of school assistance and everything else that the State assists our local governments with. And it would all have to be on the table. You know, our piece, our operating piece is very limited from the State perspective. So it would be a massive shutdown in what most people have come to depend on the State for. It's just a massive hole that we would need to work together to address.

ASSEMBLYMAN CLIFTON: Thank you, Mad am Treasurer.  
Thank you, Madam Chair.

STATE TREASURER MUOIO: I'll just add that at a time when most people are turning to their local and state governments to try and help them meet the challenges they're facing--

I'm sorry, Madam Chair.

ASSEMBLYWOMAN PINTOR MARIN: No; I think if Assemblywoman Verlina -- I was going to call you. And I think the rest, I have gotten in contact with you. If anyone else has a question, then that would conclude round one and we can go for round two.

Assemblywoman Verlina Reynolds-Jackson.

ASSEMBLYWOMAN REYNOLDS-JACKSON: I just had a quick question about ref unding bonds.

Are we talking about bonds that are currently on the books and we 're looking to reduce those rates in terms of making more funding available? Or are we talking about these particular -- the MLF bonds, being able to refinance them?

STATE TREASURER MUOIO: It's a blend of-- Go ahead, Michael or Dini, if you have--

Go ahead.

MR. KANEF: I was just going to say the authorization within the draft emergency GO Bond Act only speaks to refinancing of bonds issued pursuant to the Act. So it doesn't impact bonds that have been authorized by other acts.

ASSEMBLYWOMAN REYNOLDS-JACKSON: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you .

I think that that would conclude round one.

Assemblyman Burzichelli, do you have a round two question?

ASSEMBLYMAN BURZICHELLI: I do; I do, Chairwoman.  
Thank you.

Treasurer, so based on all the back-and-forth -- and I suspect, at this point, there's no indication what municipalities would have an interest in the State borrowing money on their behalf -- so is it the Administration's intention to access the full \$9.2 billion, or \$9 billion-plus that you're able to under the MLF program, and have it sit in reserve? And then does that program allow the State to decide how it moves it out to the municipalities? Or when that money is borrowed, you have to declare to the Feds how much is going to municipalities, counties, and State?

STATE TREASURER MUOIO: Well, logistically, I'm not sure. Maybe Michael can speak to how that would work on behalf of the locals -- how we would, sort of, separate out that request from ours.

As Dini mentioned earlier, we understand that there are costs associated with borrowing. We have been very judicious, during the past two years, to make sure that we try and limit our borrowing, and that we keep our payments level. So we plan to be extremely judicious when we look at what we would borrow from the MLF. We do not want to borrow more than is necessary.

But again, we have a huge hole to fill, and this is just part of that balanced approach to fill it.

ASSEMBLYMAN BURZICHELLI: Well, and through the Chair, since this program -- the MLF is supposed to run to December, if I understand correctly. So if, in your initial request to them, the economy goes

further south and you don't borrow enough, do you get to go back if the program is still operating and ask to borrow up to the full limit that they're allowing to the State'? Or do you have to grab it all at once, put it in your pocket, and just be judicious in how it is spent or how you ask the Legislature to appropriate it'? What is the strategy'?

STATE TREASURER MUOIO: I believe -- and Dini, maybe you or Michael could speak to this -- I think-- I mean, other states have had that question -- whether it's all upfront or whether it can be-- Originally the window, as I mentioned, had been very short when we could take advantage. It was sunsetted in September. Now that they've extended, I think they're trying to give states the ability to tweak their numbers as they see-- Because in states like New Jersey, we're all seeing late income payments due to the extended tax payment deadline. We'll get a better feel for what our sales tax numbers are going to look like, and it will give states the flexibility to adjust their numbers, if need be, over the longer period.

But Dini, I don't know -- you or Michael -- if you have anything to add to that.

MS. AJMANI: The only thing I would add, Treasurer, to what you said, is the presence of the MLF has stabilized the market. Right before MLF was announced, through the CARES Act, the municipal market was very volatile. It is not a market where there are a ton of buyers and sellers. There are very few buyers and, therefore, any change in news or fears move this market quite a bit.

The Federal Reserve stepped in and announced that it was going to be the buyer of last resort, and the market has stabilized.

What we don't know is what happens to the market post-December, when the Federal Reserve is no longer buying these bonds. So what we don't want to do is try to do incremental issuances of smaller size over a period of three years or something. Because what we don't know is once the Federal Reserve steps away, will the market still be stable for us to issue.

So I think our preference would be to get a good understanding of what our needs are through the budget process, and then borrow that money in one chunk.

ASSEMBLYMAN BURZICHELLI: Well, that gets me to my point, through the Chair, because there really is not-- You're going to make a borrowing decision in advance of our budget process to try and work out -- into the nine months. So is there no prepayment penalty on the MLF? I recall that being mentioned. Is there no prepayment penalty?

STATE TREASURER MUOIO: Correct; there is no prepayment penalty.

ASSEMBLYMAN BURZICHELLI: So why would n't you simply borrow as much as you can possibly borrow and sit on it until we get through the appropriation process, through the nine months. Wait and see if the markets stabilize. And I ask that question because Assemblyman Spearman asked: An honest question of this Committee: is how much money will you borrow in this round? We know there's a \$5 billion base, and you have \$9 billion and change available to you, based on a credit line that the Federal government has said New Jersey's credit is worth.

So is the Administration, as we sit here today, not certain how much of the \$9 billion it's going to ask for in this first round? I mean, not first round; how much of the \$9 billion are you going to try and access?

STATE TREASURER MUOIO: As I said before, we're going to try and be as judicious as possible in determining what the amount will be. But we allow what size hole we need to fill, then when we allow it's going to be filled with a balance of -- our hope is borrowing, Federal assistance, and cuts to spending. So we'll work with -- we'll have a better idea come July what our numbers may be looking like. But again, we know there's a cost to borrowing, and we're going to be as careful as possible to determine what that final amount would be.

ASSEMBLYMAN BURZICHELLI: Through the Chair, not to belabor the point, but just to try to get a more direct answer. Not that anyone would ever try and be evasive in answering Committee questions; I'm not suggesting anyone is. We seem to be collectively feeling our way through this.

So if you're looking to July, and the July 15 deadline, to get a sense of what the cash flow is coming in, how many more extensions may be requested, at what point does this borrowing application go in? So when do you anticipate making the request to borrow -- the formal request?

STATE TREASURER MUOIO: Well, I believe the current guidance is that we would put in the notice of intent, essentially, that Michael I think mentioned earlier in one of his remarks. We would not be able to do that until we knew we had the authority to borrow, which we would receive from passage of this legislation.

So that would be the earliest point that we would put a request to paper. But we've been informed -- and I know Dini and Michael have been in pretty regular contact with the Federal Reserve -- that the number can be adjusted through the process in order to help us kind of fine-tune what our need is going forward.

ASSEMBLYMAN BURZI CHELLI: I think that's very helpful.

Chairwoman, I'll close out on this. Any other states, at this point -- have any other states granted authorization to access the municipal program?

STATE TREASURER MUOIO: Now, I don't think-- You know, we are in this unique situation requiring the legislation in order to be able to take advantage of the MLF. I don't know to the extent other states have that requirement. I believe -- Michael and Dini, I think Illinois has put in a request; have there been other states? I mean, the MLF -- I don't know if it's actually-- Today was the day we thought it might be officially rolled out, and that states could begin the process. I don't know if we've received notice about whether it has been officially opened yet.

Have you guys heard yet?

MR. KANEF: Yes. So in fact the MLF is officially open and accepting applications at this point in time. There has been no confirmation by any specific state that they have applied to the MLF to date.

ASSEMBLYMAN BURZICHELLI: Very good.

Treasurer, thank you; and thank you to both Dini and Michael for the answers and the information provided.

It's always good to see all of you; hopefully, next time we're in person. And if you can bring us better numbers next time that also would be greatly appreciated as well.

Thank you; thank you, Chairwoman.

ASSEMBLYWOMAN PINTOR MARIN: I echo that sentiment, Assemblyman.

Are there any other second-round questions? I know that the Treasurer needs to go over to the Senate.

Any questions, second round ?

ASSEMBLYMAN WIRTHS: Chairwoman?

ASSEMBLYWOMAN PINTOR MARIN: Yes; Assemblyman Wirths, yes.

ASSEMBLYMAN WIRTHS: Just one quick one, Treasurer, and I appreciate the time.

Just so I'm clear, if the borrowing was successful, are you saying that the Governor is going to go back to the original proposed \$6 billion, increasing since the last Administration? Is anything -- is it going to be fully restored and not look for any additional efficiencies or even something as simple as the NJEA plan that has passed the Senate and is waiting to come to our house to save money, where both the NJEA and, it seems obviously, the Senate supports it. Are those things coming off the table if this money is approved and passes the constitutional muster, or are you saying we'll go back to the full spending plan?

STATE TREASURER MUOIO: No, I never said that; I never said that.

ASSEMBLYMAN WIRTHS: No, that's what I'm asking you; excuse me. I was asking you.

STATE TREASURER MUOIO: No, I'll be more clear.

I've been saying that we -- this Administration is advising a balanced approach, which would include belt-tightening, expenditure cuts. The Governor is constantly working with the D.C. delegation for more robust and flexible Federal funding, and this bonding request is part of that balanced approach.

ASSEMBLYMAN WIRTHS: Okay. I would just like to add that the taxpayers -- I know they do need us more than normal, and they're also very, very concerned about keeping their own money and being able to pay their bills, as we all know is important to them.

So thank you very much, Treasurer, for your time.

And Chairwoman, thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Just anyone else before we allow the Treasurer to go over to our colleagues in the Senate? (no response) I know that they're just as eager to start as we are.

Treasurer, in between the time that you have, the 20 minutes, can you make the numbers, as Assemblyman Burzichelli stated, look a little better? We would appreciate that.

STATE TREASURER MUOIO: Okay.

ASSEMBLYWOMAN PINTOR MARIN: I don't hear anybody else.

Okay; great.

Treasurer, thank you very much. Thank you to you , your team -- Michael, Dini, and everyone who is on here today -- thank you.

STATE TREASURER MUOIO: Thank you.

ASSEMBLYWOMAN PINTOR MARIN: I just want to remind that we're going to start the testimony portion, and continue the public hearing.

Before we do that, I just want to go over a few things.

Number one, I want to make sure that everybody understands that there is a three-minute time limit; and I think that that was stated when everyone had the opportunity to sign up.

Number two, I'm going to read off a list of those who have no need to testify and are in favor of the Bill.

Ernest Lucarini, State Troopers Fraternal Association, in favor, no need to testify; Renee Koubiadis, Anti-Poverty Network of New Jersey, in favor, no need to testify; Doug O'Malley, Environment New Jersey, in favor, no need to testify; Christian Estevez, Latino Action Network; Barry Kushnir, Hudson County Central Labor Council; Barry Kushnir, I FPTE Local 194; Karen Kominsky, CBL Partners; Daniel Mitzner, Teach Coalition; Peter Guzzo, Rutgers Council of AAUP Chapter; Reva Foster, New Jersey Black Issues Convention; Jeremy Farrell, LeFrak; Eric Shuffler, American Dream/Triple 5; Julie Larrea Borst, Save Our Schools New Jersey Organizing Community; Eric Richard, New Jersey AFL-CIO .

I do have a question mark under Susan Haspel, President of Boys and Girls Clubs of New Jersey.

Okay, next we will start the three minutes.

We will have Connor Shaw; is Connor Shaw on?

**JOSEPH GAUTIER:** Chairwoman, Connor Shaw is not on.

My name is Joseph Gautier; I am the President of Local 755. I am here to testify.

ASSEMBLYWOMAN PINTOR MARIN: Go ahead.

MR. GAUTIER: Thank you, Chairwoman.

Chairwoman Pintor Marin, Vice Chair Burzichelli, and esteemed members of the Assembly Budget Committee, my name is Joseph Gautier. I am a proud lifelong resident of New Jersey, and I reside in Bergen County where I work in the Department of Health Services as a principal Registered Environmental Health Specialist.

I am also a River Edge Councilman, and the president of the USWU Local 755, representing Bergen County's white-collar workers.

I am here to testify my support for A-4175, New Jersey COVID-19 Emergency Bond Act.

As both a public employee and an elected official, I am very aware of both the critical work that our public employees do for this state, as well as the unprecedented burden being put on our local communities' budgets.

Public employees have stepped up during this crisis, doing everything possible to hold our communities together. The funding that comes from the State level down to the counties and municipalities fund programs that are essential not only to the individuals who they directly serve, but also to society as a whole.

Our members work to put an end to opium addiction and domestic violence. They serve seniors, the disabled, children, including

disabled children and their families. It would be a great disservice to abandon these people when they need these services the most.

In my Local alone, we represent nurses, public health officials, social workers, and so many other fine New Jerseyans who are stepping up in ways unimaginable to serve New Jersey, and Bergen County in particular.

Every day I hear from many of our almost 700 members that USWU Local 755 represents. I hear their fears of catching COVID, but I also hear their fears of being laid off.

We cannot wait for the Federal government to take action. That is why I'm urging you to pass A-4175 to provide more financial options so no public employee will need to be laid off as a result of this current crisis, particularly the front-line heroes, in my Local and across the state, whose work is literally life-saving. Not doing so will have a catastrophic effect on the residents who depend on these essential services, as well as perpetuate the negative economic impact of this pandemic.

Thank you for your time.

ASSEMBLYWOMAN PINTOR MARIN: Perfect; thank you, and thank you for participating.

MR. GAUTIER: Thank you, Chairwoman.

ASSEMBLYWOMAN PINTOR MARIN: Next we have Dena Mottola Jaborska, New Jersey Citizen Action.

**DENA MOTTOLA JABORSKA:** I thank you so much.

Thank you, Chairwoman Pintor Marin, Vice Chair Burzichelli, and the rest of the Committee.

I'm from New Jersey Citizen Action, and we speak today in strong support of A-4175. And we urge all the members of the Assembly Budget Committee to support this life-saving legislation.

We need this Bill, and by voting for it you would be supporting working and middle-income families here in New Jersey.

The Bill is needed to shore up government services that working families and middle-income families really need. It would stem the job losses that, again, would hurt hardest the working and middle-class families of New Jersey. It would also help us to be able to expand services and programs for these same families, many who are still struggling, whether it's because they were left behind, cannot access unemployment, or did not receive the stimulus funding. It will also help working and middle-income families that may not see their job come back, and who may continue to struggle even after some of us do go back to work and begin to recover ourselves.

The Federal funding that New Jersey got, and that other states got, was not enough for New Jersey's low- and middle-income families. There were gaps in the support that that Federal response money left behind, and the State was just too financially strapped to do anything about it -- and that was a shame. We need our State to be able to meet these needs and fill in the gaps.

And of course, also our small businesses are in the same situation. Many are still struggling, and were not helped by the Federal funding.

New Jersey's working families and small businesses simply can't recover without this Bill.

I want to, also, quickly say that in order to prepare for the future -- which, hopefully, we won't have to meet another public health crisis, but

we likely will, or some other kind of crisis -- the State really should have learned its lesson in the way that we experience -- the problems that we experience during this pandemic, by adopting State-sustainable revenue sources so that we can be better prepared for the next time.

I want to quickly go through three things that I think New Jersey still needs to do to help small businesses and families to recover from the pandemic.

The first is that we need a better public health infrastructure here in New Jersey. We need funding from this Bond Act to make sure that we can achieve something close to universal testing so that people are not going back to work without having been tested and knowing whether they're positive or negative for the virus. Also to do more for contact tracing, and to get an infrastructure in place that we can use to get the vaccine administered all around the state when it's available.

We also need a better public health infrastructure to oversee our nursing homes. As we all know, the Department of Health has been financially strapped and hasn't had the resources to oversee this private industry that has not done a very good job, as we're all well aware. And so that is one use of this funding that we think is hugely important.

Number two--

ASSEMBLYWOMAN PINTOR MARIN: I'm sorry, Dena.

MS. JABORSKA: Yes.

ASSEMBLYWOMAN PINTOR MARIN: Can you just wrap it up? It's been three minutes already.

MS. JABORSKA: Yes, yes.

Number two is just to cover everybody with coverage through health insurance so that no one is facing living in a pandemic without access to the medical profession.

And number three is financial assistance for the families that I mentioned were left out, or whose job is not going to come back.

And then, in closing, we just urge your support of this Bill to ensure that the State can help and not hurt working and middle-income families with program cuts and job losses.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

MS. JABORSKA: Thank you so much.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Theresa Berger, Ocean Health Initiatives.

**THERESA BERGER:** Good morning; or actually good afternoon. I don't even realize the time flew.

Thank you so much, Chairwoman Pintor Marin.

I wanted to talk a little bit-- Thank you so much for the opportunity to speak with you all today. And I'm a little shaky; I'm sorry, I'm a little nervous.

My name is Theresa Berger. I'm President and CEO of Ocean Health Initiatives, and I also am Mayor in my town of Howell, New Jersey.

OHI is one of 22 Federally Qualified Health Centers which compose the New Jersey Primary Care Association.

Before pandemic, there were 23 FQHCs; but one has closed its doors as an FQHC, and now is just going to remain as a primary care facility, and that's for the Newark community area.

Thank you for sponsoring this Bill, A-41 75. As you know, the State has faced many significant declines in revenue in 2020, and then again in 2021, due to the pandemic. And the FQHCs are not an exception. In New Jersey, the FQHCs have 131 satellite sites; we service over 580,000 patients and we account for over 2.1 million visits annually. We provide full services to our populations, and that's including comprehensive primary care and ambulatory care, ranging from newborns to seniors.

We are all open, and we provide services regardless of the ability to pay.

Ninety-five percent of our patients are considered *low income*; and 85 percent are uninsured or underinsured, and they have Medicaid or Medicare.

During the pandemic, the FQHCs realized over a 40 to 74 percent reduction in the number of regular daily patient visits during the crisis. This resulted in a significant financial loss. This loss is in addition to the tens of thousands of dollars that these health centers have expended with all of our protective equipment and all the things that we need to do to now become COVID-ready.

The State will realize significant declines in revenue from gross income tax, corporate tax, and sales tax. And in addition, many of the revenues that have helped to flatten the curve have also caused many issues for us.

So this Bill does protect the essential workers and the frontline workers, which we have. And so we are so pleased to say that we join you and we approve this Bill, A-4175.

And thank you so much for allowing me to speak.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much, Mayor.

Wayne Blanchard , State Troopers Fraternal Association. (no response)

Okay, we'll move on; we'll come back to Wayne.

Francine Pfeffer, NJEA.

**FRANCINE L. PFEFFER:** Hi, good afternoon.

Thank you, Chairwoman, Vice Chair, and members of the Committee.

NJEA supports A-4175. We have raised concerns -- especially in Assemblyman Burzichelli's Committee -- about school districts being made whole if municipalities do not pay the district its full levy share. And we understand the pandemic has caused great damage to the State's economy, and we support this Bill as a way of making sure that everything can continue to work.

While borrowing is not anyone's first choice, we know there will be really significant additional costs to schools if they reopen in the fall, or if they reopen at any point during the pandemic -- which we do hope happens.

We have community colleges that are questioning their ability to keep their doors open in the fall. So ensuring that the State has the funds to make aid payments to schools to pay for the additional money needed to reopen during the pandemic, to give operating aid to community colleges -- making sure we have the funds for that is essential.

At the same time, Assemblyman Wirths mentioned our Chapter 78 Relief Bill that passed in the Senate, which would provide healthcare

savings to school districts, taxpayers, and public education employees. So we do hope that will move as well, as a way of helping the State meet its needs.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much.

Next, Sheila Reynertson, New Jersey Police Perspective.

**SHEILA REYNERTSON:** Good afternoon, Chairwoman Pintor Marin and Committee members.

Thank you for this opportunity to speak with you today.

New Jersey Policy Perspective is in support of this legislation, and urges Assembly members to move it forward.

A vital lesson from the Great Recession is that an over-reliance on cutting services and laying off workers in the face of falling revenue led to a prolonged and painful recovery. Facing another massive economic fallout, New Jersey cannot afford to make the same mistakes again. We know now that those deep cuts to public services worsened the economic fall, further fueled deep inequalities for millions of New Jerseyans, and ultimately slowed the State's recovery.

These cuts have also hampered the State's response to the current health and economic crisis, as the departments on the forefront of the COVID response have significantly fewer staff and resources than prior to the Great Recession. And so to advance an equitable recovery, the State must make bold choices so that no community is left behind, especially black New Jerseyans and other people of color who have been historically excluded from opportunity and economic security.

Without a full range of intentional policy changes at the State level, this pandemic will drastically exacerbate the economic and health inequities that COVID-19 has put on full display. And those most at risk of another recession have not fully recovered from the last one; yet they continue to show up for work to do essential jobs during the global pandemic, putting their own families' health at risk.

So in this context, NJPP supports the proposed legislation to allow borrowing through the Federal Reserve.

We understand the State's history of borrowing is a checkered one. All of us taxpayers are making debt payments now on the sins of irresponsible budget practices of the past. And it seems counterintuitive to consider putting a similar burden on future taxpayers, but it's because of those choices made by past lawmakers that New Jersey is now in a severely compromised position to handle both a ferocious virus and a wholesale economic shutdown.

And a decade of budget gimmicks and raids that intentionally emptied rainy day funds, and massive tax breaks for corporations and wealthy families, cannot be fixed quickly. Progress was beginning to take root when the pandemic knocked the state back on its heels.

The critics will say we can't borrow our way out of this economic calamity, just as they have said we can't tax our way out of our oversized obligations. And they claim the State should just take it on the chin by slashing the State budget until New Jersey businesses have reopened and revenues have stabilized. But we've seen this wishful thinking before, and we know it did more harm than good.

Austerity is not an abstract accounting solution; it is an abdication of responsibility toward New Jersey families, small businesses, and communities most at risk of missing a paycheck, going to bed hungry, not making rent, dropping out of school, or shutting down a Main Street store. To meet the challenges of the next two years, New Jersey needs to rise to the occasion and start with taking full advantage of all available tools, including short-term bonding.

And finally, it would be wise for the State to pursue a plan completely (indiscernible) payments within a shorter period of time. Thirty-five years is not ideal; 5 to 10 years would be even better. This prudent goal can be met by implementing tax raises that target the wealthy and large corporations.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Ms. Reynertson; thank you.

Next, we have a David Rousseau from AICUNJ.

**R. DAVID ROUSSEAU:** Good morning, Committee members.

I've submitted written testimony on behalf of Independent Colleges.

And the two main points there are that -- recognizing that the borrowing is needed as part of an overall solution to help protect student aid as we move forward, and also to help both independent and public colleges with the added costs that will come in the fall for testing that will need to be out there. And the State has made it clear already that the State will not provide that testing.

So that closes my remarks. Like I said, you have written testimony on behalf of ICUNJ.

I also wanted to provide a few remarks to you, based on my prior experience.

When I left in January of 2010, as the State Treasurer, I would have never thought that some group of legislators and the State Treasurer would be dealing with an issue like this so quickly. I would have thought it would have been a generation again before we had to deal with this.

Just some words of observation to you and the Administration is that borrowing, yes, needs to be part of the solution, as well as the increased Federal funds, as well as cuts that have been made, as well as potential tax increases. But we also need to remember that both borrowing and Federal funds are both short-term solutions. And my advice to you, as a Legislature, would be to work with the Administration to ensure that there is a glide path over the next two years or so, so that we don't just push off the cliff. If, all of a sudden, two years from now we don't have the Federal money and we don't have the borrowing anymore, we're going to have the same cliff; and all these groups are going to be back here again saying, "We need other options to protect us against cuts down the road."

So you should ensure that there is some way to use this money, over a period of time, to get to a glide path of where economic recovery has begun. Because there's no amount of economic recovery that will be out there to make up these one-shot revenues that will be there. But they still need to be part of the solution. This can't be done all on the backs of cuts that will have a devastating impact on the economy.

I would have you look at some things that are out there. Things that have been looked at over the last 20 years and then pushed aside should be re-looked at. I know there's been an idea floated out there about doing a

better job of allocating our employees to Federal funds in order to maximize the amount of money we get for their health benefits and also their pensions. I would also urge you to look at -- New Jersey should be getting a windfall of tax revenue right now from people who used to work in New York who are now spending all of their time in New Jersey. We have to make sure -- whatever we have to do legislatively, or negotiations with New York, is to make sure those people who were splitting 50 percent of their time in New York and 50 percent in New Jersey, which meant we were only getting 50 percent of their income tax revenue-- Well, for the last 11 weeks, they've been, 100 percent of their time, in New Jersey. We need to make sure that we maximize -- that we get the revenue from the sources we already have out there.

So that would just be my-- A glide path; making sure that we don't just push this problem off to two or three years from now; maximizing our revenues that we are currently due, either from the Federal government or taxpayers; maximizing the use of the Federal funds. And yes, there will have to be cuts, but we have to make sure that those cuts don't do more harm than they do good overall.

And thank you very much.

ASSEMBLYWOMAN PINTOR MARIN: Thank you; thank you very much.

Wayne Blanchard, State Troopers Fraternal Association.

**WAYNE BLANCHARD:** Good afternoon, Assemblywoman.

Thank you, and good afternoon to the members of the Committee.

I'll be brief, because I submitted written testimony. And if anybody didn't receive it, just contact me offline and I'll get it to the respective members.

I just want to underscore the importance of -- when you look at law enforcement over the last 20 years, we had 9/11 and now this unprecedented COVID pandemic. Our missions are constantly changing and forcing us to -- we're increasing expenditures for our respective agencies. So I think the importance of us supporting this Bill is there, coupled with the fact, we can't forget our everyday obligations. So within the State Police and law enforcement agencies in general, we need to continue to recruit qualified people to enter into the ranks of law enforcement. Within the State Police we generally have large classes that go in, which means large groups are retiring at a certain point. So we have a tremendous burden of attrition at certain points during the calendar year. So we need to continue having funding available for future State Police classes.

The final point is, we also are committed to several infrastructure and capital projects that we were working with the Governor's Office on, and the Superintendent's Office. So without getting into detail on them, I ask the members to keep in mind the importance of public safety, and those projects that we've been discussing for the next fiscal year. And if there are questions on that, I can certainly answer them offline to the respective members.

Thank you, Madam Chair and members of the Committee. And we strongly support A-4175.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much, Wayne; thank you.

Next, we have Mr. Steinhardt.

**DOUGLAS J. STEINHARDT, Esq.:** Yes.

ASSEMBLYWOMAN PINTOR MARIN: Go ahead.

MR. STEINHARDT: Good morning, members of the Assembly, Madam Chairwoman.

Thank you for the opportunity to speak today.

My name is Doug Steinhardt; I'm Chairman of the New Jersey Republican State Committee. I'm also a lifelong New Jersey resident.

So thank you for the opportunity to join you today.

I'm here today because the COVID lockdown and the time it afforded me with my family reminded me, more than ever, that family is worth fighting for.

As we've had to adapt from physical face time to FaceTime the app, I realized I don't want to be one of those parents or grandparents who has to visit his children or grandchildren on Skype or Zoom because my family can't afford to buy a house here, find a job here, or start a life here. Excess spending and Governor Murphy's multi-billion-dollar borrowing scheme -- that you contemplate today -- combine to make that more likely, and New Jersey less affordable.

No budget that doesn't cut taxes, reduce spending, revamp COAH, rewrite the school funding formula, improve education, embrace seniors, and include meaningful pension reforms will ever make New Jersey affordable again or restore New Jerseyans' faith in their Governor or government.

The Governor's proposed borrowing scheme continues a pattern fashioned during this crisis of government overreach and blatant disregard for

New Jersey Supreme Court precedent, and our State and Federal Constitutions. I would encourage this body not to be complicit in the Governor's lawlessness; in fact, reject it. Don't just be led, be leaders yourselves. Don't tell us you're listening; show us. Don't confirm what many of us already suspect.

And as a result of this coronavirus, we're no longer a government of three branches, but merely a government of one.

There are reasonable alternatives that put New Jersey on a better path. Tax cuts put more money in people's pockets; tax increases take it. Borrowing schemes buy the appearance of stability; but they make us less stable. Use this opportunity to improve our worst-in-the-nation tax climate by implementing tax-cutting policies that embrace small business and put New Jerseyans back to work.

I think the hardest part of leadership isn't having the courage to do what's right; it's resisting the temptation to do what's easy. Thinking that we can borrow and tax our way out of a recession sounds easy; but in reality, it isn't.

I'd ask this Committee not to fall back into the same bad habits that brought us here. Reject the Governor's scheme; don't own it yourselves. We can avoid our otherwise inevitable economic collapse by adopting fiscally responsible policies that help New Jerseyans get back on their feet without burying them deeper in debt.

Chairwoman, thank you; members of the Committee, thank you for your time today. And I wish you all stay safe and good health.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Christopher from NJ BIA; Christopher Emigholz.

**CHRISTOPHER EMIGHOLZ:** Thank you, Chairman.

Good afternoon. Chairwoman Pintor Marin; good afternoon, Vice Chair Burzichelli and members of this Committee.

On behalf of the thousands of businesses that are members of BIA and the one million people they employ throughout our state, we wanted to share our perspective on borrowing in this Bill.

There are times where borrowing is appropriate. Borrowing to spread the impact of something over many years, such as paving new roads, building a new bridge, a once-in-a-lifetime pandemic -- hopefully, once-in-a-lifetime -- may be appropriate to borrow something. Borrowing is appropriate for cash flow management. It's appropriate to smooth out cash that comes in throughout the year, not necessarily in the same consistent manner throughout the year. Borrowing may be appropriate to avoid painful actions that might be necessary outside of borrowing, such as a tax increase, such as spending cuts that might hurt the economy.

But there's also a lot of concern to borrowing. Borrowing must be done right, borrowing must not be excessive. And I think the first concern is, is this premature -- what we have in front of us? I think the cash-flow borrowing, the using the Municipal Liquidity Facility is certainly appropriate. But is this borrowing premature when we don't know what the level of Federal assistance is coming in, and we hope it might be great enough to avoid the need for borrowing. We don't know what the July 15 CBT and income tax revenues are going to be, and maybe they are better than we are hoping and maybe this might lessen the need for borrowing.

And I understand that these numbers in this Bill in front of you is an authorization, not necessarily an exact amount. But I hope that exact

amount of borrowing is limited as much as possible, so the authorization may not be as high as it's currently being contemplated in this Bill.

We also worry about borrowing before we've done all that's necessary to help our -- putting our taxpayers first. We need to put spending cuts and structural reforms first, pension and health reforms, the salaries of our public workers. If everyone around the state is sacrificing, there's no reason why that sacrifice shouldn't be shared in the public sector. And structural reforms should be part of the considerations we have before we go to borrowing.

We also want to make sure that the length of the borrowing, 35 years -- Is that appropriate for balancing a budget? Is the amount contemplated appropriate? Is this Bill in front of us today appropriate in terms of making sure the payments are consistent? We wouldn't want to see anything-- Past borrowing attempts -- we've seen balloon payments at the back end to avoid the pain today. That's not appropriate for the fiscal stability of the State, and we hope that could be avoided.

We also know that there is some legal questions here. And certainly, BIA is not going to weigh in on if this is legal or not. But knowing that they're out there, is it appropriate to have a back-up plan? Because the worst-case scenario could be if this is struck down when the State's depending upon it, and then we might have to resort to worse scenarios.

The last thing I wanted to put out there is that, when you're in a hole, do we want to be digging deeper? And to some extent, the very businesses that create tax revenues for the State that have created the hole--

ASSEMBLYWOMAN PINTOR MARIN: I'm sorry, Chris. Can you just wrap it up'?

MR. EMIGHOLZ: Thank you; I'm doing that. Sorry, Chairwoman.

The very businesses that create tax revenues are the ones that have been shuttered for the past few months. And if we push our State to have a safe and CDC-appropriate reopening, but having a plan with metrics and guidance, will help us get out of the revenue hole that we're in, because those revenues come from the businesses that, right now, can't operate the way they want.

So thank you, Chairwoman; thank you, Committee. We look forward to working with you through this crisis.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Matthew Hersh, Housing and Community Development.

**MATTHEW HERSH:** Thank you, Chairwoman Pintor Marin, and Vice Chairman Burzichelli; and members of the Committee.

We really appreciate the time today.

I'm going to hit "start" on my timer so I don't go over.

The Housing and Community Development Network of New Jersey is the statewide association of more than 250 community development corporations, individuals, and other organizations that support the creation of affordable homes, economic opportunities, and strong communities.

We appreciate the opportunity to testify today in support of this important legislation, and we hope it passes.

My testimony is actually interesting, because it's going to contrast a little bit with previous testimony. We think that this Bill will ultimately provide a solid foundation -- an economic foundation for the State, and ideally make it more affordable.

This pandemic has shown us that issues of public health and housing are deeply interconnected . No one can stay home to protect their own health and the health of others if they do not have a safe, affordable place to live. And now, more than ever, we need to create a solid foundation for New Jersey renters and homeowners to make sure that they can keep a roof over their heads and stay safe throughout this health crisis.

We started by keeping families in their homes; Governor Murphy assured that through Executive Order I 06. And under this Bill, A-4175, it addresses that Executive Order when it states that "no lessee, tenant, homeowner, or any other person shall be removed from a residential property by foreclosure or eviction ...while Executive Order No. I06 is in effect."

This is a critical starting point because, before the pandemic, New Jersey was already one of the most expensive places to rent an apartment. Here, a family needs an annual household income of \$60,000 to afford a two-bedroom market-rate rental. Now our unemployment rate has surged to 15 percent, up from record lows just a month before. And we're grateful that -- we know that your legislative staffs have spent an enormous amount of time helping residents and constituents navigate the unemployment benefit system, because so many New Jerseyans are one month away from economic catastrophe.

Thousands of New Jerseyans were close to a housing crisis before the coronavirus. So if New Jersey is going to forestall a greater crisis and keep people in their homes during and after the pandemic, then the State's fiscal house must have the proper tools to provide critical social services for New Jerseyans impacted by coronavirus, such as housing counseling and the right to counsel for residents who need assistance. This is why it's so important

that you 've restored programs like the Affordable Housing Trust Fund and increased the cap on the Neighborhood Revitalization Tax Credit. These service bedrocks (indiscernible) crisis, because they ensure that families can afford to live here and send their children to school here. And during this pandemic -- and whatever the future brings -- these investments provide a strong found ation for communities by keeping residents safe and in their home. They also mitigate the economic and social strain that results from housing instability.

But for all this work, we need our government to operate fully and efficiently. And at a time when New Jersey and its municipalities have to rethink estimated revenues and appropriations, and when local governments are going to be hard-pressed to operate at existing levels, let alone provide additional services, the Network believes that this emergency Bond Act is critical to keeping our state and its residents above water.

Thank you so much.

ASSEMBLYWOMAN PINTOR MARI N: Thank you.

Can I please have Luis De La Hoz, Statewide Hispanic Chamber of Commerce? (no response)

Okay, we'll come back.

Patricia Campos from LUPE.

**P A T R I C I A C A M P O S - M E D I N A:** Yes, I'm here; thank you, thank you very much, Chairwoman Pinto Marin, for the opportunity to speak.

My name is Patricia Campos-Medina; I'm the President of Latinas United for Political Empowerment, a statewide group advocating for

the economic and social well-being of Latina women in our families in New Jersey.

I am here to express our organization's support for A-41 75, which would allow the State of New Jersey to balance the budget mandate; and , at the same time, meet COVID- 19 pandemic-related expenditures.

The COVID-19 crisis in New Jersey, and across the United States, has revealed the deep inequalities in our society created by more than 40 years of economic policies that prioritize tax breaks to billionaires and corporations, and forced governments to live within austerity budgets that reduce savings and reserves across all programs and government agencies. Those policies reduced revenue and left New Jersey with limited resources to meet the needs of all working families impacted today by COVID-19.

While all communities across New Jersey have been negatively impacted, one way or another, by this crisis, data released in the last two months reveal that communities of color are the ones bearing the brunt of the pandemic, both in terms of who is working as a frontline worker, who is getting sick, and whose jobs are being eliminated or closed down. Many members of our community cannot afford to work from home. They are out there trying to figure out how to make a living, and getting **ill**.

According to New Jersey EDA's own data, 44 percent of Hispanics and 34 percent of African Americans were working in jobs vulnerable or impacted by this pandemic. This racial disparity mirrors the same data that we already knew: Blacks and Latinos were living in economic precarity, and this crisis will drive them further into poverty.

Data from the New Jersey Policy Perspective revealed that 60 percent of New Jersey's Hispanic don't have enough savings to withstand a

health emergency. Now those same families are unemployed , they are sick or taking care of their elder parents who are ill, or taking care of children who are out of school. Without adequate assistance from the government, more Latino families in New Jersey will fall into economic despair and be farther driven into poverty.

Let 's remember that 20 percent of the New Jersey population is Latino, and our economic prosperity is essential to the prosperity for everyone in New Jersey.

Let's also remember that New Jersey is the third largest receiver of immigrants in the United States, in that almost 400,000 undocumented immigrants live, work, go to school, and pay taxes in New Jersey. They are frontline workers in critical structure supply chain jobs, in warehouses, in logistics, in our farms, in our restaurants, in our healthcare industries, and in our restaurants and farms. They pay taxes through ID numbers, and yet were left out of any Federal relief and programs.

ASSEMBLYWOMAN PINTOR MARIN: Patricia, if you could just wrap up.

MS. CAMPOS-MEDINA: New Jersey families, Latino families--

ASSEMBLYWOMAN PINTOR MARIN: Patricia, if you could just wrap up.

MS. CAMPOS-MEDI NA: Yes, yes; thank you.

ASSEMBLYWOMAN PINTOR MARIN: You're welcome.

MS. CAMPOS-MEDI NA: New Jersey families, Latino families need these programs, they need support, and they need the New Jersey Legislature to step up and help fund some of these essential services. And it

is because of that reason that we, LUPE, support A-4175, and we urge everyone in the Assembly to support it.

Thank you.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much; thank you.

Amir Khan.

**PASTOR AMIR KHAN:** Yes, good afternoon.

This is Pastor Amir Khan, New Beginnings Camden, New Jersey; and also the Concerned Black Clergy.

We wanted to give our undying support, our strong support in reference to the proposed Bond Act. Obviously, after hearing the great going back and forth earlier today, \$7 billion is absolutely needed by October 1.

You know, New Jersey, I personally feel, set a great example, a great standard for the rest of the country with how we handle things here in New Jersey. And you know what? Now we're paying for it; there are a lot of expenses that have to be taken care of. And this Bill is going to go to help offset this, and keep us back on the right track.

I just want to make sure we understand we cannot afford to lose out on primary foundational, fundamental services. These cuts, that would be obvious, would be to the bone. We need this tool to borrow; we have to be able to borrow funding. We can't shut down local, we can't shut down State. Massive cuts in schooling and pension; massive cuts in local -- there's no choice. What that will do will be devastating.

You know, we have to remember the other peripheral costs that will arise when we cut these certain services. When we cut social services, we're going to increase prison. Because when we cut things like dealing with

the addicted , it's going to increase the health care, you know? I can imagine -- we personally -- one of our ministries is to the formerly incarcerated , to those who are addicted, those who are homeless. We have a big 38-foot motorhome; we took out the beds in the back, and we have three showers and a washer/dryer. We go around serving hund reds and hundreds in the Camden area every single week. But to see those services cut, and other services like it, we can't even imagine-- Every week, getting many, many off the streets and into detox and into residential programs, all these services -- they cannot be cut; we can't afford to cut out on State and local.

And I'll close by saying this. You know, I'm 63 years old, New Jersey all my life, have three beautiful children, six beautiful grandchildren. And there have been multiple times in my life that we were debt-free as a family; and it felt absolutely great to be debt-free or have our finances under control. But when catastrophe hit our family numerous times, we had to go in debt. We knew we had to come up with a plan to get out of it, but it was an absolute necessity to do that.

I'm telling you, we understand COVID- 19 -- coronavirus has been a catastrophe. And the same way I got ourselves out of debt, going through those cycles, New Jersey will do the same thing.

And I encourage you, again, strongly, strongly -- we strongly support this proposed Bond Act.

Thank you very much, Madam Chair and members of the Committee.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Pastor Khan.

Pastor Raul Ruiz.

**REVEREND RAUL RUIZ:** Yes; thank you for the opportunity to speak.

Again, my name is Reverend Raul Ruiz. I have been the Pastor of the Spanish American Baptist Church in Union City for the past 33 years. We operate the daycare, serve the community; and I am present here today in my capacity as the President of the New Jersey Coalition of Latino Pastors and Ministers.

As the gospel of Matthew commands us to remember those in need in our society, for me the poor are the face of Christ. As any Pastor knows, the impact of an economic downturn or healthcare crisis hits the poor the hardest. I am concerned as to how this pandemic economic downturn and State financial situation will impact the poor, the marginalized, the single Latino mother, the addicted son in need of treatment, the child struggling in pre-K school, the Latino child returning from school, and generally most Latino families.

The State must grapple with challenges, including the necessity for \$9 billion for educational funding, COVID health care, New Jersey Family Medicaid for Needy Families, re-entry, and New Jersey Transit repairs -- to name just a few demands which impact the day-to-day lives of New Jersey families, including Latino families.

The banks are necessary to ensure that these worthy and important causes will be funded.

Given the challenges of the budget, together with the unanticipated expenses due to COVID-19, the bonds are the mechanism to ensure that worthy programs continue to protect, serve, and support the poor and marginalized in our Latino communities. A member of our church -- of

our Coalition, at one of the churches in Elizabeth -- the name is Cristo Te Llam a -- houses men who have been released from prison with no adequate housing. These are the needs that must be addressed.

The reason we support these bonds is to ensure that needed programs are sustained to serve those in the most need . These programs must continue into the future. That's why we are grateful for the mayors we work with -- mayors like Mayor Bollwage in Elizabeth, Mayor Baraka in Newark, Mayor Sayegh in Paterson, and my own Mayor Stack in Union City -- for helping to assist tenants and the homeless. It has particularly difficult for those being released from prison or jail with no identification, no benefits, and no Medicaid . For the immigrant community, legal and healthcare services are even more difficult to come by. And for our Latino and African American youth, they need access to health care, a physician, a drug treatment program , and employment services.

These are the re-entry services which are essential to stop the violence and chaos in the lives of many of our youth.

ASSEMBLYWOMAN PINTOR MARIN: Thank you, Reverend Ruiz. If you could just close up.

REVEREND RUIZ: Sure.

As a Pastor and as a Christian, I ask you, of course, please do not abandon the poorest. The Latino community is the fastest-growing community segment of the population in New Jersey. And I ask you to remember the broken, the addicted , the imprisoned; and to remember the commandment that whatever you did for the least of these, you did for me.

So thank you very much for your consideration.

ASSEMBLYWOMAN PINTOR MARIN: Thank you.

Henry Gajda, New Jersey League of Conservation Voters.

**HENRY GAJDA:** Hi, everyone.

Henry Gajda, Policy Director, with the New Jersey League of Conservation Voters.

Thank you, Chairwoman Pintor Marin and the Committee, for the opportunity to speak today.

The New Jersey League of Conservation Voters strongly supports A-4175, the New Jersey COVID-19 Emergency Bond Act.

We thank the Legislature, Governor Murphy, and the Administration for their work to manage an unprecedented crisis, and providing a science-based, rational approach to addressing it and informing the public.

As we know, and as we are here today discussing, COVID-19 has sent major disruptions through the very fabric of our great state.

COVID threatens our ability to continue to build a better and more prosperous future for all New Jerseyans, especially those who have been left behind and are most vulnerable in our community. We have a long road to recovery; a road that intersects with the continued burdens posed by COVID, increasing risks of climate change, deteriorating infrastructure, and pre-existing financial obligations.

But this road also has opportunity. It's accompanied by the opportunities of our burgeoning clean energy economy and the good local jobs that come with it -- jobs that can't be exported. It provides an opportunity to make the direct investments our communities and infrastructures need, like upgraded water infrastructures that protect our clean drinking water; and also helps get people back to work.

It allows us to re-envision how we want to rebuild a state that is stronger, fairer, and more equitable, and meets the climate infrastructure and social challenges of both today and tomorrow.

But more importantly, our road to recovery is one that begins with voting "yes" on A-4175, to provide the platform for a strong recovery and promise to continue the State's essential services so that no New Jerseyan gets left behind.

Thank you for your time.

ASSEMBLYWOMAN PINTOR MARIN: Thank you very much.

Sarah Lilja, Lutherans Engaging in Advocacy Ministry. (no response)

I didn't see her on.

Luis De La Hoz. (no response)

I know that I saw him on earlier as well, but I don't see him on right now.

Okay; those were the only two left, so this concludes our portion of public comment.

We now close public comment, and we will move on to the bills.

**(HEARING CONCLUDED)**

## APPENDIX

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**ASSEMBLY BUDGET COMMITTEE HEARING  
New Jersey COVID-19 Emergency Bond Act (A-4175)**

**June 1, 2020**

**State Treasurer Elizabeth Maher Muoio  
(Testimony as prepared for delivery)**

Good morning once again, Chairwoman Pintor Marin, Vice Chair Burzichelli, Budget Officer Wirths, and members of the committee.

It's good to see you all again so soon. I am joined here today by Assistant Treasurer Dini Ajmani, and our Director of the Office of Public Finance, Michael Kanef.

Since we provided our revenue and budget numbers in depth with you last Thursday, I am going to focus my brief opening remarks on the proposed Bond Act, A. 4175.

As the global pandemic has unfolded, one thing it has made clear is that the need for essential government services increases exponentially in times of crisis.

Demand for and reliance on public health professionals, law enforcement, first responders, financial assistance, and Medicaid, just to name a few, have all increased significantly.

Meanwhile, as you know, our fiscal resources have followed the opposite trajectory.

We are expecting significant budgetary challenges because of steep declines in nearly all of our major revenue sources due to COVID-19 related shutdowns and stay-at-home orders.

According to the revenue projections we recently shared with you, the state is facing a \$2.7 billion shortfall through June 30<sup>th</sup> ...

And we're looking at an additional \$7 billion shortfall through the end of Fiscal Year 2021 next June...

...for a combined shortfall of roughly \$10 billion.

As we all saw during the hearing before this committee on Thursday, OLS is largely in agreement with our projections as well.

They were also in equal agreement on the volatility of the forecasting situation.

While the impact on New Jersey's budget and finances is both rapidly changing and unpredictable ...

...what is clear is that revenues and cash flow will be significantly affected to such an extent that bonding authority will be necessary to help address New Jersey's unprecedented budgetary challenges in the coming months.

But, as we discussed with you last week, this is just one of several solutions we are pursuing.

As you have seen from our proposed budgets through September 30 of this year, savings measures will be another important tool in addressing this challenge.

As a reminder, we have proposed \$1.3 billion in de-appropriations, \$3.2 billion in reduced or delayed first quarter appropriations, and we have withdrawn approximately \$850 million of the Governor's proposed priorities.

None of these decisions were reached lightly and, regrettably, we understand the pain that will stem from many of them.

But this only serves to underscore the need for additional options, including additional federal assistance and legislative authorization to borrow in order to help ensure our ability to meet the needs of our residents to the best extent possible.

Otherwise, the type of cuts that would be necessary to balance the entire projected shortfall through FY 2021 would be devastating at both the state and local level.

Keep in mind that 70 to 80 percent of the state budget goes out the door in the form of state aid and grants-in-aid, which largely support schools, local governments, higher education, property tax relief, seniors, and health insurance for those most in need.

The proposed legislation before you is crucial for many reasons, primarily because it will provide both the state...

...and local governments that do not otherwise have the opportunity to access the federal Municipal Liquidity Facility...

...with a valuable tool to address the unprecedented budget challenges we face together in a balanced way in conjunction with savings measures.

Our intention is to borrow only as much as absolutely necessary.

We understand borrowing is not free, but it is one of several crucial options we need at our disposal.

Right now the market is stable because there is a buyer in the form of the Federal Reserve.

But we don't know what will happen when that buyer goes away at the end of December.

In the interest of protecting taxpayers as much as possible, it is urgent that we take advantage of the favorable rate offered through the federal lending facility, and the stabilizing effect it is having on the public and private markets, while we can.

This facility was created by the federal government with the explicit intent of assisting state and municipal governments across the country with their budgetary challenges ...recognizing the severe financial difficulties created by the COVID-19 pandemic.

This proves that New Jersey is clearly not alone.

It's not a question of whether we will need to borrow to help meet our obligations, but when.

The tough decisions we have made and proposed so far will only get us to a \$344 million fund balance as of June 30th and a \$494 million ending fund balance as of September 30th.

In volatile economic times such as this, that type of surplus is the equivalent of a "rounding error" and could disappear in a flash.

Keep in mind, our analysts predict that should we see a second surge of the virus, in the fall for example, we could be looking at an additional revenue shortfall of \$1 billion...meaning even more difficult budget adjustments will need to be made.

The only certainty right now is that the forecasting situation is extremely uncertain.

There is near universal agreement –from Treasury, from OLS, and from economists across the country –that revenue projections are subject to extreme volatility.

The \$2.4 billion from the federal Coronavirus Relief Fund that we have received to date will certainly help weather this storm...

...but without more robust AND flexible federal aid, as well as the ability to borrow...

...the cuts that will be necessary to produce a balanced FY 2021 budget will be devastating to New Jerseyans and to our economy.

Chairwoman, I want to thank you for recognizing how crucial it is that we have this option and for your sponsorship of this important legislation.

Thank you all for your time and we are happy to take any questions now.

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## POSITION STATEMENT

**BILL:** **A4175 (Intor tlarin)**

**NJEA POSITION:** **SUPPORT**

**SYNOPSIS:** "New Jersey COVID-19 Emergency Bond Act authorizes issuance of State bonds totaling \$5 billion and authorizes borrowing from federal government.

**COMMENTS:** New Jersey faces an unprecedented dire economic situation due to the COVID-19 crisis. While borrowing is not anyone's first choice, state priorities in education, infrastructure, and the health and safety of New Jersey residents face severe consequences without immediate action. NJEA supports the Speaker's initiative as an immediate and necessary measure to preserve our state priorities and the health of our schools, communities, and students. However, the Legislature can and should move forward immediately with S-2273, a comprehensive Chapter 78 relief bill passed unanimously in the Senate, which would provide essential health care savings for local school districts, taxpayers, and public education employees as an equally necessary measure in this time of grave need.

NJEA urges you to support A4175.

# NEW JERSEY POLICY PERSPECTIVE

## TESTIMONY OF SHEILA REYNERTSON, SENIOR POLICY ANALYST, NEW JERSEY POLICY PERSPECTIVE ON ASSEMBLY BILL A4175 BEFORE THE ASSEMBLY BUDGET COMMITTEE, JUNE 1, 2020

Good morning, Chairwoman Pinter and committee members. Thank you for this opportunity to speak before you today. My name is Sheila Reynertson and I am a senior policy analyst at New Jersey Policy Perspective (NJPP).

A vital lesson from the Great Recession is that an overreliance on cutting services and laying off workers in the face of falling revenue led to a prolonged and painful recovery. Facing another massive economic fallout, New Jersey cannot afford to make the same mistakes again.

We know now that deep cuts to public services made then worsened the economy's fall, further fueled deep inequities for millions of New Jerseyans, and ultimately slowed the state's recovery. These cuts have also hampered the state's response to the current health and economic crisis, as the departments at the forefront of New Jersey's COVID-19 response have significantly fewer staff and resources than prior to the Great Recession. To keep the current crisis from becoming even more severe, a more balanced approach must be taken to both help families facing deep economic insecurity and address the unexpected revenue shortfalls.

To advance an equitable recovery, the state must make bold choices so no community is left behind, especially Black New Jerseyans and other people of color who have been historically excluded from opportunity and economic security. Without a full-range of intentional policy changes at the state-level, this pandemic will drastically exacerbate the economic and health inequities that COVID-19 has put on full display. Those most at risk of another recession have not fully recovered from the last one, yet they continue to show up for work and do essential jobs during a pandemic, putting their own families' health and well-being at a great risk.

In this context, NJPP supports the proposed legislation to allow the borrowing of \$5 billion through the Federal Reserve. We understand the state's history of borrowing is a checkered one. All of us as taxpayers are making debt payments on the sins of irresponsible budgeting practices of the past. It seems counterintuitive to consider putting a similar burden on future taxpayers. But it's because of those choices made by past lawmakers that New Jersey is now in a severely compromised position to handle both a ferocious virus and a wholesale economic shutdown.

A decade of gimmicks and raids, an intentionally empty rainy day fund, and massive tax breaks for corporations and wealthy families cannot be fixed quickly. Progress was slowly beginning to take root when the pandemic\_ knocked the state back on its heels.

Critics will say we can't borrow our way out of this economic calamity just as they have said we can't tax our way out of our oversized obligations. They claim the state should take it on the chin by slashing the state budget until New Jersey businesses have reopened and revenue sources have stabilized. But we've seen this wishful thinking before and we know it did more harm than good.

Austerity is not an abstract accounting solution. It is the abdication of responsibility toward New Jersey families, small businesses, and communities most at risk of missing a paycheck, going to bed hungry, not making rent, dropping out of school, or shutting down a main street store.

To meet the challenges of the next two years, New Jersey needs to rise to the occasion. And it starts with taking full advantage of all the available tools, including short-term bonding. It would be wise for the state to pursue a plan of paying off whatever it borrows in a shorter period of time than 35 years, ideally no more than 5 to 10 years. This prudent goal can be met by implementing a fairer tax code that once and for all ensures the rich and wealthy pay their fair share in taxes. Many have claimed concern and expressed solidarity with Black and brown communities at this moment, and they can put those values into action by passing a budget that's supported by a fairer tax code this year.

Thank you.



# Independent Colleges and Universities for New Jersey

PRIVATE COLLEGES. PUBLIC PURPOSE.

Association of Independent Colleges and Universities in New Jersey

142 West State Street  
Trenton, New Jersey 08608  
P : 609-218-5026  
F: 609- 498-0 055  
W : n i c o l l e g e s . o r g

## Association of Independent Colleges and Universities in NJ Statement of Support for A. 4175 -- (Pintor Marin) - "New Jersey COVID-19 Emergency Bond Act"

The Association of Independent Colleges and Universities in New Jersey (AICU NJ) supports the release of A. 4175 (Pintor Marin), the New Jersey COVID-19 Emergency Bond Act. This bill would authorize the State to issue bonds as one of the options to navigate the unprecedented economic crisis resulting from the COVID-19 health crisis.

The issuance of these bonds along with other actions such as added federal assistance will avert the need for even more drastic budget reductions that would certainly have a negative impact on the operations of our independent colleges and universities as well as our students, families and employees.

The proceeds from these bonds and other actions could also provide the financial assistance that our members, and all of higher education, will need to deal with the purchase of PPE, cleaning supplies, physical office and dormitory renovations, and, most importantly, testing needs that will be pivotal to our return of students to campuses this fall.

These proceeds will also enable the Administration and Legislature to protect our state financial aid programs such as Tuition Aid Grants and the Educational Opportunity Fund that are necessary to support low income students in attending the college that best fits their educational needs.

AICUNJ represents the fourteen non-profit independent colleges and universities in New Jersey. Over 65,000 students attend these institutions, and as you all know these students represent the diversity of the state's population. Our institutions also provide an economic impact of over \$4 billion and employ over 20,000 residents.

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### INDEPENDENT COLLEGES AND UNIVERSITIES

Bloomfield College + Caldwell University • Centenary University + College of Saint Elizabeth + Drew University  
Fairleigh Dickinson University • Felician University + Georgian Court University + Monmouth University  
Princeton University + Rider University + Saint Peter's University + Seton Hall University • Stevens Institute of Technology



# State Troopers Fraternal Association of New Jersey, Inc.

Wayne Blanchard  
President

Steven Kulm  
First Vice President

William Legg  
Second Vice President

Ernest Lucarini  
Vice President for  
Legislation &  
Grievances

Michael Colicchio  
Treasurer

Adam Kaplan  
Secretary for  
Resolutions

Daniel Vecchio  
Corresponding  
Secretary

Charles  
Lewandowski  
Recording Secretary

James Duff  
Sergeant-at-Arms

Zsolt Baka  
Sergeant-at-Arms

Robert Canm,  
Esq.  
Association Counsel

TO: The Honorable Eiana Pintor Marin, Chairwoman, Assembly Budget Committee  
Members of the Assembly Budget Committee

FROM: Wayne Blanchard, President, State Troopers Fraternal Association

DATE: June 1, 2020

RE: Testimony Regarding the State Troopers Fraternal Association in Support of A4175  
"New Jersey COVID-19 Emergency Bond Act"

The State Troopers Fraternal Association (STFA) is the exclusive bargaining unit for over 1600 rank and file New Jersey state troopers. STFA members along with other first responders and healthcare workers have served the people of the State of New Jersey with tremendous honor, pride, and dedication during this unprecedented COVID-19 pandemic. The response to the COVID-19 pandemic has placed tremendous strain on governmental entities across the board in many areas, but especially in fiscal and budgetary areas due to the immediate and necessary reallocation of funds to combat this pandemic coupled with lost revenues and a downtrend on investments directly linked to the pandemic. The reality that law enforcement agencies will face in the coming months and years is that we must continue to provide service and crime prevention, detection, and apprehension to maintain public safety and law and order. The strain the COVID-19 crisis has placed on public budgets will make our everyday service more difficult until the economy improves and state, county, and local governments' budgets can become balanced. The COVID-19 effects include the potential of not being able to recruit, hire, and train outstanding men and women into law enforcement. Moreover, there is a significant threat that the viability of hiring troopers in the near future may be in jeopardy if funding is not available. A shortage of troopers due to a moratorium on future recruit classes would significantly handcuff the New Jersey State Police in being able to fulfill their over 120 public safety missions. Beyond that, the procurement of equipment and various capital projects which provide the tools to the men and women of the STFA to provide excellent public service the people of the State of New Jersey could be eliminated.

Last week, the STFA endorsed the SMART Act, sponsored by our United States Senator, Senator Robert Menendez, which roughly \$500 billion dollars in federal funds would be distributed to state, county, and local governments, in order to provide flexibility to governmental officials in backfilling lost revenues and specifically fund public safety agencies needs in the wake of the COVID-19 pandemic. Therefore, the STFA leadership feels compelled to strongly support the "New Jersey COVID-19 Emergency Bond Act". We must give our leaders in government the ability to have the resources, specifically monetary resources, to bounce back from revenue shortfalls and economic downturns due to the COVID-19 pandemic. This act provides a transparent and safeguarded mechanism for government bodies to secure funding and allocate that funding to specific needs within that venue. As previously stated, the response to COVID-19 as well as the daily missions of the men and women of the STFA require significant resources. This act will ensure public safety needs and missions will have all the funding support needed by respective governing bodies.

## NJBIA's ABU Testimony on Borrowing Bill - A-4175

Chris Emigholz <CEmigholz@njbias.org>

Mon 6/1/2020 10:30 AM

To: OLSaidcABU <OLSaidcABU@njleg.org>; Pintor Marin, Asm. D.O. <AswPintorMarin@njleg.org>; Burzichelli, Asm. D.O. <AsmBurzichelli@njleg.org>; Benson, Asm. D.O. <AsmBenson@leg.state.nj.us>; Clifton, Asm. D.O. <AsmClifton@njleg.org>; DiMaso, Asm. D.O. <AswDiMaso@njleg.org>; Johnson, Asm. D.O. <AsmJohnson@njleg.org>; McKean, Asm. D.O. <AsmMcKean@njleg.org>; Munoz, Asm. D.O. <AswMunoz@njleg.org>; Murphy, Asm. D.O. <AswMurphy@leg.state.nj.us>; Reynolds Jackson, Asm. D.O. <AswReynoldsJackson@leg.state.nj.us>; Spearman, Asm. D.O. <AsmSpearman@njleg.org>; Wimberly, Asm. D.O. <AswWimberly@njleg.org>; Wirths, Asm. D.O. <AsmWirths@njleg.org>;

cc: Chrissy Butera <CButera@njbias.org>; Marcy DePula <MDePula@njbias.org>;

1 attachment (401 KB)

NJBIA Testimony A-4175.pdf;

Dear Members of the Assembly Budget Committee,

Attached is NJBIA's testimony on A-4175 that I will deliver to your committee shortly.

NJBIA appreciates your consideration of our perspective on borrowing, and we look forward to working with you to support our businesses and taxpayers through the fiscal crisis that our State is facing.

Thank you, and please let me know if you have any questions!

Christopher Emigholz, Vice President - Government Affairs

New Jersey Business & Industry Association

10 West Lafayette Street, Trenton, NJ 08608

O: 609-858-9512 | E: 609-751-2957

[cemigholz@njbias.org](mailto:cemigholz@njbias.org) | [www.njbias.org](http://www.njbias.org)



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Trenton, NJ 08608-2002

609-393-7707  
www.njbja.org

Michael N. Sitked, Jr.,  
President and CEO

Christine Butcas  
Chief Government  
Affairs Officer

Ronald Cantor  
Vice President

Christopher Emigholz  
Vice President

Nicole Santolucito  
Director of Economic  
Policy Research

To: Chairman Eliami Pintor and Members of the Assembly Budget Committee

From: Christopher Emigholz, Vice President Government Affairs

Date: June 1, 2020

RE: NJBIA Testimony on A-4175 - New Jersey COVID-19 Emergency Bond Act

Good morning! My name is Christopher Emigholz, and I am the Vice President of Government Affairs for the New Jersey Business & Industry Association (NJBIA) covering economic development, tax and budget issues. On behalf of our member companies that provide 1 million jobs in our state and make NJ BIA the largest statewide business association in the nation, I thank you for the opportunity to speak with you regarding A-4175 - the New Jersey COVID-19 Emergency Bond Act. ***NJBIA believes that borrowing can be a useful and important fiscal tool in a crisis like we are in, but we believe concerns that it be done the right way to protect taxpayers now and into the future.***

Positives of Borrowing:

Borrowing can be a useful and even necessary tool to address some of the fiscal uncertainties in a crisis such as the one we are in now. Borrowing may be appropriate because it can allow for:

- *Spreading the costs* of a crisis over many years instead of having it absorbed by one or two years of extreme pain
  - o It can be reasonable to expect future taxpayers to help cover the costs of an extreme once-in-a-generation event like this.
- *Maintaining cash flow*
  - o With uneven revenues due to the pandemic's impact on the economy and the unique adjustments to the state fiscal year, short-term borrowing can be helpful to smooth out revenue collection.
- *Avoiding immediate and painful tax increases* to balance the State Budget when New Jersey already has one of the highest tax burdens in the nation and the business community was just locked down for months
  - o The natural growth of the economy after this crisis passes may be enough to cover some of the future costs of borrowing, while spending cuts alone may not be enough to immediately balance the State Budget.
- *Preventing a further contraction* of government programs that may do more harm to an already devastated economy
  - o Creating additional unemployment and deinvesting in the economy may slow an economic recovery.

### Concerns of Borrowing:

Borrowing definitely has a place in government fiscal policy, but NJBIA and taxpayers have many concerns about its improper and/or excessive use. NJBIA's *recommendations for responsible borrowing* to ensure a more rapid economic recovery from this crisis include:

↳ *Waiting to borrow* anything beyond short-term notes for cash flow and the Federal Reserve's municipal Liquidity Facility until we better know the full scope of our State's needs.

↳ It is premature to issue \$5 billion of General Obligation bonds with a 35-year maturity until we fully know how much budget support may come from the federal government and what the annual tax revenues coming July 15 look like.

#### *Limiting Use of Borrowing*

o It may be more appropriate to rely on the Federal Reserve's municipal Liquidity Facility program's shorter-term bonds instead of the 35-year bonds contemplated in A-4175.

#### *Limiting Amount Borrowed*

o A \$5 billion bond like what is considered in A-4175 will cost New Jersey--taxpayers at least many hundreds of millions of dollars in additional debt service costs for the next 35 years. New Jersey already is already one of the most indebted states in the nation) and this will just mean more of our budget will go towards paying debt instead of programs that benefit our residents.

• *Pursuing real spending cuts and structural reforms* before relying on more borrowing than necessary

o Borrowing should never be a first option but pursued only after serious and permanent spending cuts are found that include structural reforms. This should include health and pension benefit reforms such as the NJEA-supported health savings bill (S-227\_3) that has already passed the State Senate.

o It also appears possible to find even more significant savings when the FY18 appropriation level equaled only \$34.7 billion, yet even after the just announced cuts to the adjusted FY20 appropriation, it has increased \$4.8 billion (14%) to \$39.5 billion just two and a half years later.

\* *Limiting borrowing for operational uses to only short-term borrowing and only pursue long-term bonding for capital costs*

o Investing in the economy through capital programs that may require long-term bonding may be a great stimulus after a down economy, but bonding for operational expenses is bad fiscal policy and probably illegal.

• *Delaying a "Jack-up plan" if this borrowing plan is ruled unconstitutional so immediate tax increases are not necessary because of a court decision*

o NJBIA understands that there is a constitutional exception to bonding in an **emergency without voter approval, but does that include bonding for operating expenses** that the courts have warned about in the past? That uncertainty may mean that a back-up plan is prudent if a court strikes down this borrowing. A worst-case scenario would be to get backed into painful tax increases. What other options remained after borrowing became impossible and it became too late for other options.

- *Eliminating consistent debt service payments* and avoiding any balloon payments
  - It is irresponsible fiscal policy to delay increased debt service payments and tough budget decisions today by loading up the debt service with balloon payments on future tax payers long after current policymakers may be out of office.
- *Focusing on a safe re-opening and recovery plan* for New Jersey businesses that generate the tax revenue so less borrowing is needed
  - State revenues will continue to decline as long as businesses are closed by state government, **SO** businesses need clear re-opening metrics and guidelines to allow them to generate the tax revenues we so desperately need to avoid unnecessary cuts and borrowing. This borrowing is not for COVID-19 related expenditures but to fill a revenue hole - a hole that would not be so deep if we were not one of the last states to have an orderly re-opening plan.

Thank you for considering our perspective on the New Jersey COVID-19 Emergency Bond Act, and we look forward to continuing to work with you all to help all New Jersey businesses and taxpayers through this fiscal crisis caused by the COVID-19 pandemic.

# A4175

Sharon Levine <slevine@arcnj.org >

Mon 6/1/2020 10:29 AM

To: OLSaideA8U <OLSaiceABU@rtjleg.org>;

cc.: Thomas Baffuto <tba ffuto@arcnj.org >;

Good Morning,

I would like to submit a slip of support for A4175 with no need to testify, being heard this morning by the . Assembly Budget Committee, on behalf of The Arc of NJ's Executive Director Tom Baffuto. We apologize for missing the 5/29 deadline for registering but we ask you to please read our organization's support into the record for the members.

Thank you and please let me know if you need any further information.

**Sharon Levine**

Director of Governmental Affairs &. Communications

732-246-6861

The Arc of NJ

Follow The Arc of NJ on Twitter

## A-4175 support statement from Advocates for Children of NJ



Peter Chen <pchen@acnj.org >

Yesterday, 8:50 PM

**OLSaideABU**

· Reply all l v

InbO{

Hello:

ACNJ would like to register its support for A-4175 being heard\_ in Assembly Budget on Monday with the following statement:

Advocates for Children of New Jersey (ACNJ) supports A-41751 which would authorize new bonding and borrowing by the State to cover revenue shortfalls stemming from COVID-19. The pandemic's effect on families and children has been devastating, and anticipated revenue shortfalls would make it difficult for the State to maintain the programs that families and children rely on. ACNJ has historically not taken positions on revenue issues. However, the unprecedented nature of the revenue projections for FY20 and FY21 place children's programs at serious risk. Investment in New Jersey's children must be preserved when they need it most.

Thank you!

[The 2020 Census is coming! Find out more.](#)

Peter Chen

Policy Counsel

Advocates for Children of New Jersey

cell: 630-544-4936



William Sullivan  
President -

609.396.8688  
Fax 609.396.2182

**New Jersey State Policemen's Benevolent Association**  
NJ State Correctional Police Officers & NJ State Parole  
**UNJTHD**

**PBA 105 Supports COVID-19 Budget Recovery Bond Act**

Trenton-New Jersey faces an unimaginable loss of revenue because of the impact of the global pandemic. Decisive action must be taken to address the economic impacts now faced by the State. If government does not act, the fiscal pain of budget cuts will be felt in every corner of our state.

The members of PBA 105 are Corrections Officers and Parole Officers who serve throughout the State. We have continued to answer the call every day and have served heroically throughout this crisis. We can not afford cuts to our livelihood as we continue to sacrifice during this unprecedented public health emergency.

The solution to the fiscal crisis is the COVID-19 Budget Recovery Bond Act proposed by Governor Murphy and the Legislature. We endorse the bond act because it will eliminate the need for budget cuts that would hurt our members and their families, as well as working families around the State. We must provide the State with the ability to borrow funds so we can move towards a more stable financial future.

"We want to thank Governor Murphy and Legislature for recognizing the very real struggle that many of our officers are facing," said William Sullivan, President of the New Jersey State Policemen's Benevolent Association Local 105. The union represents all 6,000 of the state's correctional and parole officers. "During a time when we are being challenged the most, it is a relief to see our elected officials looking out for us. Through our endorsement, we also support the financial future of every resident of New Jersey."

## Support for A4175

Barry Kushnir <barry.c.kushnir@gmail.com>

Sat 5/30/2020 11:17 AM

To: OLSaideABU <OLSaideABU@njleg.org>;

cc: ABinder@rtjleg.irc <ABinder@njleg.irc >;

The Hudson County Central Labor Council, a labor organization representing nearly 15,000 working men and women in Hudson County, overwhelmingly supports A4175. New Jersey needs this critical legislation to replace revenue lost during the coronavirus pandemic.

President Barry Kushnir  
Hudson County Central Labor Council  
37 Edward Hart Drive

Jersey City, New Jersey 07305

## Support for A4175

Barry Kushnir <barry.c.kushnir@gmail.com>

Sat 5/30/2020 11:21 AM

To:OLSaideABU <OLSaideABU@njleg.org>;

Cc:ABinder@njleg.org <ABinder@njleg.org>;

IFPTE Local 194, a statewide labor organization representing nearly 1,100 working men and women on the New Jersey Turnpike, overwhelmingly supports A4175. New Jersey needs this critical legislation to replace revenue lost during the coronavirus pandemic.

President Barry Kushnir  
IFPTE Local 194  
5 Jcker Avenue

East Brunswick, New Jersey 08816  
201-344-7353

## Testimony for A -4132

Carl Gunhouse <gunhousec@rmail.montclair.edu>

Tue 5/12/2020 9:58 AM

To: OLSaideMP <OLSaideAAP@njleg.org >;

Please pass A-4132 I am an adjunct and almost every semester I have taught at Montclair State University for the last decade as an adjunct they have never been able to give me a summer class and I've been told that if there is the enrollment they will like to have me back in the fall and list my name on the website so over the summer I have not been able to claim unemployment leaving four months out of my year were there isn't a paycheck coming in. On the occasion if there wasn't a class available in the fall it means I am out of pay for seven months and can only receive unemployment for three of those months which wrecks havoc on my family and makes long term economic planning very difficult.

Carl Gunhouse  
Adjunct Faculty at Montclair State University

## A4175

Reva Foster <rfoster@willingboronj.gov>

Mon 6/1/2020 6:34 AM

To: OLSaideABU <OLSaideABU@njleg.org>;

Ccabinder@1.gov <abinder@rtj.gov>;

This email ts-written in support of the Bond Bill A417.5.

Reva Foster

Chair

New Jersey Black Issues Convention

Sent from my iPhone



# Professional Firefighters Association of New Jersey

International Association of Firefighters AFL-CIO-CLC

Steve McConlogue, President

Anthony Terrantino, 1st Vice President  
Matthew Cliente, Treasurer

John Murphy, 2nd Vice President  
John "Jack" Doll, Secretary



May-29, 2020

Members of the New Jersey Assembly Budget Committee:

On behalf of the Professional Firefighters Association of New Jersey, we ask for your **SUPPORT** of **Assembly Bill 4175** "New Jersey COVID-19 Emergency Bond Act," authorizes issuance of State bonds totaling \$5,000,000,000 and authorizes borrowing from federal government.

The Professional Firefighters Association of New Jersey, AFL-CIO, is the chartered New Jersey state organization of the 320,000 member International Association of Fire Fighters, representing approximately 4,000 active and retired career professional firefighters, Emergency Medical Technicians, Paramedics and related emergency service employees serving throughout the State of New Jersey.

The Professional Firefighters Association of New Jersey **FULLY SUPPORTS** A4175, and we ask for your support in favor of this important legislation.

Respectfully,

Steve McConlogue  
President

IAFF State Association - Local 1929

21 W. Lafayette Street, Trenton, NJ 08608 • Office (609) 396-9766 • Fax (609) 396-0891 • Email PFANJ1@aol.com  
Visit our website at [www.newjerseyfirefighters.org](http://www.newjerseyfirefighters.org) • Facebook: 1.CPFANJ.IAFF • Twitter: @PfJ/NJ\_J,WF • IG: !:Pf-AN.IIAFF

Da824  
20X

May 31, 2020

Re: A. 4175 "New Jersey COVID-19 Emergency Bond Act," authorizes issuance of State bonds totaling \$5 billion and authorizes borrowing from federal government.

Dear Honorable Members:

On behalf of Teach NJ's 26-member institutions we write in support of A. 4175 (New Jersey COVID-19 Emergency Bond Act) sponsored by Chairperson Efiana Pintor Marin, which authorizes issuance of State bonds totaling \$5 billion and authorizes borrowing from federal government.

Non-public schools in New Jersey, like our colleagues throughout the educational community in the state, have been devastated by the impacts of the Covid-19 virus.

You may have already read numerous reports of non-public schools closing permanently throughout New Jersey and it is a list we anticipate will continue to grow.

Non-public schools are facing the same significant financial hurdles seen elsewhere to adjust to remote learning, providing meals to our students in need, and preparing both within the school building and at our students' and teachers' homes for what the future of education will look like after this health emergency.

Teach NJ realizes that the state is still dealing with this crisis and needs all available options to continue funding necessary programs. To the extent that this bill will allow for the flexibility to do so and ensure that the proper investments are able to be made for our state's children in the non-public school community, we support this legislation.

We hope this legislation will allow for the state to maintain its educational investments and that its use will be used in a prudent manner.

Sincerely,

*Dan Mitzner*

Dan Mitzner  
Director of State Political Affairs  
Teach Coalition



# Rutgers Council of AAUP Chapters

American Association of University Professors • American Federation of Teachers

**Rutgers AAUP-AFT**

11 Stone Street  
New Brunswick, NJ 08901-1113

Phone: 732-964-1000  
Fax: 732-964-1032

E-mail: [aaup@rutgersaaup.org](mailto:aaup@rutgersaaup.org)  
Web: [www.rutgersaaup.org](http://www.rutgersaaup.org)

June 1, 2020

Chair Pintor Marin, Vice Chair Burzichelli, and Distinguished Members of the Assembly Budget Committee:

On behalf of the Rutgers AAUP-AFT, we are writing in support of Assembly Bill No. 4175, sponsored by Chair Pintor in January. Bill 4175 authorizes both the issuance of State bonds and borrowing from the federal government. We encourage its passage.

Thank you for the opportunity to provide testimony today. My name is Patrice Marcschal and I am an Associate Professor of Public Policy at Rutgers Camden, and President of Rutgers AAUP-AFT Camden Chapter. My colleague Michael Hayes is an Assistant Professor of Public Policy at Rutgers Camden, and a Rutgers AAUP-AFT member.

In addressing the challenges of the COVID-19 crisis, we can draw lessons from the Great Depression. In that time, our leaders understood that fiscal austerity was a bad policy option in a depressed economy.

Why is austerity in a depressed economy a bad policy option? Because the state economy is not like an individual household, where income and spending are separate things. In the state economy as a whole, my spending is my neighbor's income and my neighbor's spending is my income.

Fiscal stimulus programs can speed up an economic recovery. Macroeconomists argue that there is a fiscal multiplier effect on economic output from an increase in government spending, especially during an economic downturn.

In fact, one recent study estimates that a 1% increase in government spending corresponds to a 2.5% increase in economic output during recessions (Auerbach and Gorodnichenko, 2012). In other words, a \$1 billion increase in government spending would increase economic output by \$2.5 billion, which suggests there is a large return on investment from fiscal stimulus programs during recessions.

However, this fiscal multiplier effect works both ways. While a fiscal stimulus program can increase economic output to speed up economic recovery, an austerity program that reduces government spending to balance budgets is expected to reduce economic output more than the size of the spending cut. In other words, a \$1 billion decrease in government spending is expected to decrease economic output by \$2.5 billion, which will likely prolong an economic downturn.

A prolonged economic downturn will have large negative impacts on households and society. Here we can draw lessons from the Great Recession. In this case, debt fears were used as an excuse to cut spending on social programs, forcing the country and states into years of spending cuts that slowed economic recovery.

The costs of our government's failure to expeditiously stimulate the economy were devastating on multiple levels. For example, the Great Recession was associated with worse health outcomes for individuals, an increase in the use of opioids, an increase in domestic abuse a decrease in household formation, an increase in divorce rates, a decrease in the likelihood of homeownership, a decrease in student achievement, and more.

These negative effects were not distributed equally. We know the less affluent members of society faced a larger share of both the short- and long-term impacts of the Great Recession. The negative outcomes will impact both current and future residents of the state.

Issuing a government debt to pay for a fiscal stimulus program has merit. Debt financing is usually a method to raise money to pay for a capital project, which will be utilized by both current and future residents of the state. Debt financing allows the payment of this project to be spread over time to allow both current and future beneficiaries of the project to pay a portion of the cost of the project over time.

The current proposal to issue government debt to prevent fiscal austerity is an investment in *human* capital, which will benefit both current and future residents of the state. Therefore, it is both fair and efficient to use government debt to do so.

We applaud Budget Committee Chair and bill sponsor, Assemblywoman Pintor-Tvarin, for this legislation. We urge you to the Committee Members to approve it today.

Thank you for your consideration.

Patrice Ivlar Schafl, Ph. D.  
Associate Professor  
Department of Public Policy & Administration  
Rutgers University

Michael Hayes, Ph. D.  
Assistant Professor  
Department of Public Policy & Administration  
Rutgers University



Robert W. Fox  
President

## Fraternal Order of Police New Jersey State Lodge

108 West Stat Street  
Trenton, NJ 08608  
[www.nifop.org](http://www.nifop.org)

Honorable Assemblywoman Elia na Pintor Marin  
Honorable Members of the New Jersey Assembly Budget Committee  
State House Annex  
P.O. Box 068  
Trenton, NJ 08625-0068  
Re: Support of Bill A4175

Mada m Cha ir and Honora ble Mem bers,

I am writing on behalf of the Fraternal Order of Police to indicate its support for Assembly Bill A4175. As you assuredly know, the Fraternal Order of Police – New Jersey State Lodge represents over thirteen thousand (13,000) active and retired New Jersey Law Enforcement Officers who have served at the Federal, State, County, and Local levels. Our members have served the citizens of New Jersey faithfully, with courage, professionalism, compassion, dedication, honor and integrity. We have done so and will continue to display this commitment to our communities, our oaths and to ourselves whether it is during wars, pandemics, terror attacks, natural disasters, or civil unrest. In doing so we have paid the ultimate fight, to date twelve of our brothers and sisters have succumbed to this pandemic, but all stayed the course and continued to serve knowing it could and for these brave souls, did cost them their lives. Please do not allow these brave sacrifices to go to waste—rather let us acknowledge their dedication and courage and continue the fight and support our first responders with the resources they need to ensure the safety of our communities, our neighborhoods, our schools and our families.

It is with this courage and commitment that we must strongly support Assembly Bill 4175. In these trying and unprecedented times, we must not allow our determination and courage to falter or waiver. We must continue to provide the services to the citizens of New Jersey to ensure we will endure and persevere beyond this current crisis and reemerge a stronger, safer community and people. Now is not the time to consider reducing our first responders on the front line of this global crisis, but a time to forge ahead and continue the fight and ensure we provide the level of response and protection the people of this state need and deserve.

Da8  
28/1x



Robert W. Fox  
President

## Fraternal Order of Police New Jersey State Lodge

108 West Stat Street  
Trenton, NJ 08608  
[www.njfop.org](http://www.njfop.org)

In closing I hope this committee **will** vote to approve this legislation and ensure the level of services needed to help battle this pandernic and serve the people of this great state. I thank you for your time a nd consideration and pray you and your families remain sa fe and healthy during these unprecedented times.

Respectfully,

Sean C. Lavin  
NJ State FOP  
Legislative Committee Chair

Cc: Robert W. Fox - President NJ State Lodge



# Amalgamated Transit Union New Jersey State Joint Council

AFFILIATED NJ LOCALS  
540 Trenton  
819 Newark  
820 Meadowlands  
821 Greenville  
822 Paterson  
823 Ironbound  
824 Howell  
825 Oradell  
880 Camden

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525 BOULEVARD, KENILWORTH, NJ 07031 • PHONE: 908-276-4667 • FAX: 908-276-4225  
ORLANDO L. RILEY      PA BLO GONZA LEZ      COREY GALLI-1 AN  
*Chairman/State Business Council*      *Vice Chairman*      *Secretary*

May 31, 2020

My name is Orlando Riley and I am the Chairman of the Amalgamated Transit Union > NJ State Council. The ATU represents over 5000 NJ Transit employees. We make up the dedicated men and women who drive, repair and clean NJ Transit buses and Light Rail trains. During this Corona Virus pandemic, we have been on the front lines transporting essential workers, while losing many of our brothers and sisters to this deadly virus.

New Jersey is fortunate to have Governor Murphy leading the state during these unprecedented times. Great leadership often requires tough decisions. Although we have lost 80 many NJ residents to the Corona Virus Governor Murphy's decisions to close non-essential businesses and implement social distancing restrictions amongst other things, has without a doubt saved thousands of lives. Those tough decisions to save NJ residents have come at a financial cost.

As a result of the pandemic, NJ Transit's ridership has plummeted almost 90%. While ridership has decreased, the members of the ATU along with other NJ Transit employees, continued to provide public transportation, which is an integral part of our state economy. As the state of New Jersey resumes its reopening process > NJ Transit will need the proper funding to provide the services needed to keep NJ Transit moving, while our residents return to work. Without this funding, the state could be faced with the possibility of laying off thousands of state workers. This would contribute to an already strained unemployment system. Let us keep NJ moving in the right direction. The ATU asks the NJ State Legislature support Governor Murphy and New Jersey COVID-19 Emergency Bond Act A-4175. The residents of New Jersey deserve this.

Respectfully,  
Orlando L. Riley  
**Orlando L. Riley**

Chairman/ATU NJ State Council



RIDE WITH US \_\_\_\_\_

AFFILIATED WITH THE NEW JERSEY STATE AFL-CIO

Da 830



# NEW JERSEY STATE AFL-CIO

106 West State Street  
 Trenton, New Jersey 08608  
 (609) 989-8730  
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 www.njaficio.org

CHARLES WOVKMECH      LAUREL BRENNAN  
 CHARLES H. MARCIANTE



JOYCE A. SIO:1  
 THOMAS (SHH)  
 WEL (IMNES)  
 CHIA, W LE/LS  
 CHE: J, rfi  
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 PH Dfr, NIK. JL  
 ELJIP  
 P.FOX

THOMAS GIBUS:  
 RAY L. XIL GRE, WLS  
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 C. HOUER L. OE/ff  
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GER. T. D O, WINS  
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JOHN SHANN  
 JOSEPH S(BES/  
 CH, MID SV:HEEY  
 BULLEY H-0, LFN  
 RICHARD TCLSCI  
 SU: 8/14. U: L:  
 HJNEY V. L11IE

June 1 > 2020

Dear Members of the Assembly Budget Committee:

RE: Please Support A-4175 (Pin to 1. Mnl'in): COVID-19 Emergency Bond Act

The New Jersey State AFL-CIO supports A-4175 and thanks Assemblywoman Pintor for her leadership on this urgent matter.

In addition to the massive human toll the pandemic has taken on our members, particularly essential workers on the front lines hauling the virus, attention is now turning to the financial toll on state and local governments. At the federal level, little has been done to provide assistance directly to these local governments. For this reason, the State of New Jersey must act

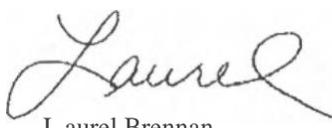
This legislation authorizes bond purchasing up to \$5 Billion and authorizes borrowing from the federal government. This is the right step to take during these unprecedented times.

Public workers in particular will be hard hit financially with layoffs if they do not begin to take steps now to address the financial stress on local governments caused by the pandemic. The Murphy Administration has issued stark warnings about mass layoffs in the public sector, and if this occurs, our local economy will suffer even more.

We thank you for your attention to this matter and respectfully ask for your support.

Sincerely,

  
 Charles Wovkmech  
 President

  
 Laurel Brennan  
 Secretary

CW:LB:jd  
 OPEIU:15."



703 McCarter Highway, Newark, NJ 07102 • P: 973.735.6464 • Twitter: @seunj\_council • www.seunj.org

### NJ SEIU State Council Supports Assembly Bill 4175

The Service Employees International Union (SEIU) represents more than 20,000 essential employees in the public and private sectors, and we strongly support A-4175. We urge the Assembly Budget Committee to approve and release the bill. SEIU members know only too well the intensity of the battle against the COVID-19 and the cost it has had on our state and its residents.

As health care, warehouse, commercial laundry and public sector employees, our members have gallantly served their communities, while in many cases, paying a heavy price to themselves and their families. As we look to rebuild our state's economy and public life, our government must continue to lead the way back and A-4175 provides a critically important weapon in this fight.

The COVID 19 Emergency Bond Act authorizes the issuance of \$5,000,000,000 in State bonds to help finance emergency and public services as New Jersey rebuilds and recovers. This approach to generating the fiscal resources our state needs, along with borrowing from the federal government, can sustain us going forward.

Now more than ever, the Executive and Legislative branches of state government must come together, with a common purpose, and carry out a plan of action to restore the economic promise of New Jersey. We are Jersey tough and we will make it back!

**Milly Silva - President**  
Executive Vice President, 1199SEIU  
United Healthcare Workers East  
New Jersey Region

**Megan Chambers - Vice President**  
Co-manager of the Laundry, Distribution and  
Food Service Joint Board  
Workers United, SEIU

**Jed Tyrpak - Secretary-Treasurer**  
NY/NJ Regional Director, Committee of  
Interns and Residents, SEIU

1199SEIU United Health Care Workers East • P.O. Box 1320, AVI • Committee of Interns & Residents/SEIU  
The Laundry, Distribution, and Food Service Joint Board of Workers United, SEIU • SEIU Local 617 • SEIU Local 3

ROBERTS, C. J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 19A1044

SOUTH BAY UNITED PENTECOSTAL CHURCH, ET AL.  
*v.* GAVIN NEWSOM, GOVERNOR OF  
CALIFORNIA, ET AL.

ON APPLICATION FOR INJUNCTIVE RELIEF

[May 29, 2020]

The application for injunctive relief presented to JUSTICE KAGAN and by her referred to the Court is denied.

JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application.

CHIEF JUSTICE ROBERTS, concurring in denial of application for injunctive relief.

The Governor of California’s Executive Order aims to limit the spread of COVID–19, a novel severe acute respiratory illness that has killed thousands of people in California and more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others. The Order places temporary numerical restrictions on public gatherings to address this extraordinary health emergency. State guidelines currently limit attendance at places of worship to 25% of building capacity or a maximum of 100 attendees.

Applicants seek to enjoin enforcement of the Order. “Such a request demands a significantly higher justification than a request for a stay because, unlike a stay, an injunction does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.” *Respect Maine PAC v. McKee*, 562 U. S. 996 (2010) (internal quotation marks omitted). This

ROBERTS, C. J., concurring

power is used where “the legal rights at issue are indisputably clear” and, even then, “sparingly and only in the most critical and exigent circumstances.” S. Shapiro, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, *Supreme Court Practice* §17.4, p. 17-9 (11th ed. 2019) (internal quotation marks omitted) (collecting cases).

Although California’s guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials “undertake[ ] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985).

That is especially true where, as here, a party seeks

ROBERTS, C. J., concurring

emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground. The notion that it is “indisputably clear” that the Government’s limitations are unconstitutional seems quite improbable.

KAVANAUGH, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 19A1044

**SOUTH BAY UNITED PENTECOSTAL CHURCH, ET AL.  
v. GAVIN NEWSOM, GOVERNOR OF  
CALIFORNIA, ET AL.**

ON APPLICATION FOR INJUNCTIVE RELIEF

[May 29, 2020]

JUSTICE KAVANAUGH, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting from denial of application for injunctive relief.

I would grant the Church’s requested temporary injunction because California’s latest safety guidelines discriminate against places of worship and in favor of comparable secular businesses. Such discrimination violates the First Amendment.

In response to the COVID–19 health crisis, California has now limited attendance at religious worship services to 25% of building capacity or 100 attendees, whichever is lower. The basic constitutional problem is that comparable secular businesses are not subject to a 25% occupancy cap, including factories, offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries.

South Bay United Pentecostal Church has applied for temporary injunctive relief from California’s 25% occupancy cap on religious worship services. Importantly, the Church is willing to abide by the State’s rules that apply to comparable secular businesses, including the rules regarding social distancing and hygiene. But the Church objects to a 25% occupancy cap that is imposed on religious worship services but not imposed on those comparable secular businesses.

KAVANAUGH, J., dissenting

In my view, California’s discrimination against religious worship services contravenes the Constitution. As a general matter, the “government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits.” *McDaniel v. Paty*, 435 U. S. 618, 639 (1978) (Brennan, J., concurring in judgment). This Court has stated that discrimination against religion is “odious to our Constitution.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. \_\_\_, \_\_\_ (2017) (slip op., at 15); see also, e.g., *Good News Club v. Milford Central School*, 533 U. S. 98 (2001); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520 (1993); *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993); *McDaniel*, 435 U. S. 618.

To justify its discriminatory treatment of religious worship services, California must show that its rules are “justified by a compelling governmental interest” and “narrowly tailored to advance that interest.” *Lukumi*, 508 U. S., at 531–532. California undoubtedly has a compelling interest in combating the spread of COVID–19 and protecting the health of its citizens. But “restrictions inexplicably applied to one group and exempted from another do little to further these goals and do much to burden religious freedom.” *Roberts v. Neace*, 958 F. 3d 409, 414 (CA6 2020) (*per curiam*). What California needs is a compelling justification for distinguishing between (i) religious worship services and (ii) the litany of other secular businesses that are not subject to an occupancy cap.

California has not shown such a justification. The Church has agreed to abide by the State’s rules that apply to comparable secular businesses. That raises important questions: “Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister?” *Ibid.*

KAVANAUGH, J., dissenting

The Church and its congregants simply want to be treated equally to comparable secular businesses. California already trusts its residents and any number of businesses to adhere to proper social distancing and hygiene practices. The State cannot “assume the worst when people go to worship but assume the best when people go to work or go about the rest of their daily lives in permitted social settings.” *Ibid.*

California has ample options that would allow it to combat the spread of COVID–19 without discriminating against religion. The State could “insist that the congregants adhere to social-distancing and other health requirements and leave it at that—just as the Governor has done for comparable secular activities.” *Id.*, at 415. Or alternatively, the State could impose reasonable occupancy caps across the board. But absent a compelling justification (which the State has not offered), the State may not take a looser approach with, say, supermarkets, restaurants, factories, and offices while imposing stricter requirements on places of worship.

The State also has substantial room to draw lines, especially in an emergency. But as relevant here, the Constitution imposes one key restriction on that line-drawing: The State may not discriminate against religion.

In sum, California’s 25% occupancy cap on religious worship services indisputably discriminates against religion, and such discrimination violates the First Amendment. See *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U. S. 1312 (1986) (Scalia, J., in chambers). The Church would suffer irreparable harm from not being able to hold services on Pentecost Sunday in a way that comparable secular businesses and persons can conduct their activities. I would therefore grant the Church’s request for a temporary injunction. I respectfully dissent.

2020 WL 2621186

United States Bankruptcy Court, E.D. Wisconsin.

Robert L. SCHUESSLER, Audra Schuessler,  
and Landl Farms, LLC, Plaintiffs,

v.

The UNITED STATES SMALL BUSINESS  
ADMINISTRATION and Jovita Carranza,  
Solely as Administrator of the U.S. Small  
Business Administration, Defendants.

Arthur G. Steffen and Genart  
Hillcrest Farms, LLC, Plaintiffs,

v.

The United States Small Business Administration  
and Jovita Carranza, Solely as Administrator of the  
U.S. Small Business Administration, Defendants.

Thull Farms, LLC, Plaintiff,

v.

The United States Small Business Administration  
and Jovita Carranza, Solely as Administrator of the  
U.S. Small Business Administration, Defendants.

Adversary No. 20-02065-bhl

|

Adv. Proc. No. 20-02068-bhl,

Adv. Proc. No. 20-02069-bhl

|

05/22/2020

**Attorneys and Law Firms**

Paul G. Swanson, Steinhilber Swanson LLP, Oshkosh, WI,  
for Plaintiffs.

Carter Bryan Stewart, US Attorney's Office, Milwaukee, WI,  
for Defendants.

**DECISION ON CORE CLAIMS AND REPORT AND  
RECOMMENDATION ON NON-CORE CLAIMS**

Brett H. Ludwig, United States Bankruptcy Judge

**INTRODUCTION**

\*1 These adversary proceedings concern efforts by the plaintiffs, debtors in pending Chapter 12 bankruptcy proceedings, to obtain benefits from the Small Business

Administration (SBA) under the Paycheck Protection Program (PPP). Plaintiffs are family farmers whose PPP loan applications were denied because of their pending bankruptcy cases. Plaintiffs then filed adversary proceedings against the SBA and its Administrator (collectively the "SBA"), contending that the SBA's denial of their applications runs afoul of Bankruptcy Code section 525(a) and the Administrative Procedure Act. Plaintiffs seek declaratory and injunctive relief and a writ of mandamus, requiring the SBA to consider their applications without regard to their pending bankruptcy cases.

After a May 15 expedited preliminary hearing in *Schuessler, et al. v. SBA, et al.*, Adv. No. 20-2065, the plaintiffs in that case filed a motion for injunctive relief and a supporting declaration. In the motion, plaintiffs ask the court to declare that the SBA's rule disqualifying bankruptcy debtors from receiving PPP loans is beyond the agency's statutory and regulatory authority, is arbitrary and capricious, and violates section 525(a) of the Bankruptcy Code. They also ask the court to enter various forms of injunctive relief against the SBA, including enjoining the agency from denying the plaintiffs a PPP loan based on their status as debtors in bankruptcy, requiring that the SBA set aside funds sufficient to satisfy the plaintiffs' PPP requests, and compelling the SBA to instruct plaintiffs' lender not to exclude them from the PPP based on their bankruptcies. The court set a final hearing on the motion for May 19, 2020.

Shortly before the May 19 hearing, the *Schuessler* plaintiffs, along with the plaintiffs in two other adversary cases, *Steffen, et al. v. SBA, et al.*, Adv. No. 20-2068-beh, and *Thull Farms, LLC v. SBA, et al.*, Adv. No. 20-2069-kmp, filed a joint motion with the defendants, asking the court to consolidate its consideration of all three adversary proceedings because the proceedings involve the same issues, the parties are represented by the same counsel, and consolidation would avoid unnecessary costs and delay. After the parties confirmed that all three cases were ripe for final resolution, the court granted the motion and continued the hearing to May 21, 2020, allowing time for the *Steffen* and *Thull Farms* plaintiffs to file similar motions for injunctive relief. The court then entered an Order directing the clerk to reassign the *Steffen* and *Thull Farms* proceedings and consolidating all three adversaries for resolution.

At the consolidated May 21, 2020 final hearing, the court issued an oral ruling, rejecting the merits of the plaintiffs'

claims and denying their requests for relief. This decision documents and supplements the oral ruling.

## BANKRUPTCY COURT JURISDICTION

Before addressing the parties' arguments, the court must consider its jurisdiction. Under [28 U.S.C. § 1334\(b\)](#) and the district court's order of reference, this court has jurisdiction over all civil proceedings arising under title 11, or arising in or related to cases under title 11. Plaintiffs' claims in this adversary proceeding arise under or relate to their bankruptcy cases and thus fall within the court's broad jurisdiction. Whether the bankruptcy court can finally resolve the parties' disputes requires further analysis.

\*2 Subject to constitutional limitations, a bankruptcy court can enter final orders only on "core" bankruptcy claims.

See [28 U.S.C. § 157](#). For "non-core" proceedings, the bankruptcy court is not authorized to enter final orders unless all parties consent. *Id.* This distinction affects the standard of review. As the Supreme Court has explained,

If a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then, the district court must review the proceeding *de novo* and enter final judgment.

[Executive Benefits Ins. Agency v. Arkison, 573 U.S. 25, 34 \(2014\)](#).

"It is the bankruptcy court's responsibility to determine whether each claim before it is core or non-core." [Id.](#) at 33. "A proceeding is core under [section 157](#) if it invokes a substantive right provided by title 11 or is a proceeding that, by its nature, could arise only in the context of a

bankruptcy case." [Barnett v. Stern, 909 F.2d 973, 981 \(7th Cir. 1990\)](#) (quoting [In re Wood, 825 F.2d 90, 97 \(5th Cir. 1987\)](#)). "Core proceedings are actions ... that arise under the Bankruptcy Code in the strong sense that the Code itself is the source of the claimant's right or remedy, rather than just the procedural vehicle for the assertion of a right conferred by some other body of law." [In re United States Brass Corp., 110 F.3d 1261, 1268 \(7th Cir. 1997\)](#). A "non-core" proceeding, on the other hand, is one in which the plaintiff does "not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy ... it may be *related* to the bankruptcy because of its potential effect, but under [section 157\(c\)\(1\)](#) it is an 'otherwise related' or non-core proceeding." [Barnett v. Stern, 909 F.2d at 981](#) (quoting [In re Wood, 825 F.2d at 97](#)) (emphasis in original).

The complaints in all three adversary proceedings are nearly identical. The only differences relate to each plaintiff's particular farming operation and the timing of each plaintiff's PPP application and denial. The substantive legal portions of each complaint are the same. Defendants concede that Count III in each complaint, in which plaintiffs assert claims under [section 525\(a\) of the Bankruptcy Code](#), is a core claim. Indeed, that cause of action is expressly premised on and arises under the Code, and this court can "hear and determine" and "enter appropriate orders and judgments" on it. See [28 U.S.C. § 157\(b\)\(1\)](#). The remaining three counts are another matter. Counts I, II, and IV allege violations of the APA and seek mandamus relief. These claims do not originate in the Bankruptcy Code and are non-core. Accordingly, the bankruptcy court may hear them, but cannot issue final orders or judgments without the parties' consent, which is absent in this case. See [28 U.S.C. § 157\(c\)\(1\), \(2\)](#).

The court's factual findings (both final on the core claim and recommended on the non-core claims) are set forth in the "Background and Factual Findings" section of this decision. The court's final legal conclusions on Count III are set forth in Part I of the "Legal Conclusions and Analysis" section. The court's recommended conclusions of law on the remaining non-core claims are set forth in Parts II and III of that section.

## BACKGROUND AND FACTUAL FINDINGS

### A. The Plaintiffs

#### 1. *Schuessler, et al. v. SBA, et al., Adv. No. 20-2065*

\*3 On October 30, 2018, Robert L. Schuessler and Audra Schuessler filed a chapter 12 petition. (Case No. 18-30197, ECF No. 1.) On that same day, their wholly-owned limited liability company, Landl Farms, LLC, filed a separate chapter 12 petition. (Case No. 18-30199, ECF No. 1.) Landl Farms is the operating entity that runs the day-to-day farming operations and employs the farm help. The Schuesslers own the real estate and improvements and Robert Schuessler directs the farming operation. (Debtors' Mot. Joint Admin. 4, Case No. 18-30197, ECF No. 8.) The court entered an order directing joint administration of both cases on December 3, 2018. (Order, Case No. 18-30197, ECF No. 23.) The debtors' second amended plan was confirmed on May 8, 2019, and the debtors have been operating under the plan since confirmation. (Order, Case No. 18-30197, ECF No. 84.)

As their primary source of income, plaintiffs rely on revenue from selling milk and from the sale of cows culled from their herd and sold for meat. (Compl. ¶33, Adv. No. 20-2065, ECF No. 1.) Revenue from the sale of milk has declined by over 30% primarily due to the COVID-19 crisis. Since January, plaintiffs' Class I milk price has dropped from nearly \$19.00 to \$12.50 per cwt. The current price is substantially below plaintiffs' cost of production. (Compl. ¶33, Adv. No. 20-2065, ECF No. 1.) Due to the closure of slaughterhouses in Wisconsin and the upper Midwest, plaintiffs have received historically low prices for cows recently culled from the herd. At the same time, plaintiffs have significant mortgage and utility expenses and employ 14 people with an average monthly payroll of \$59,835. (Compl. ¶34, Adv. No. 20-2065, ECF No. 1.) Although they have obtained some temporary concessions from creditors, plaintiffs acknowledge this is not a sustainable near-term strategy until the market recovers. (Decl. Robert Schuessler, Adv. No. 20-2065, ECF No. 22.)

At the announcement of the Paycheck Protection Program through the SBA, plaintiffs took steps to obtain a conditionally forgivable PPP loan. They applied to a financial institution, Fox Communities Credit Union, and supplied requested documentation. (Ex. 1 to Compl., Adv. No. 20-2065, ECF No. 9.) They received notice on or about May 5, 2020, however, that they did not qualify for a PPP

loan because of their currently pending bankruptcy cases. (Ex. 2 to Compl., Adv. No. 20-2065, ECF No. 9.) Plaintiffs otherwise meet the requirements of the loan program: their small business is operated in the United States; the business is not a type ineligible for the Small Business Administration's 7(a) Loan Program, CFR 120.110; and the debtors have demonstrated a need for the desired credit. (Compl. ¶¶43-44, Adv. No. 20-2065, ECF No. 1.) Without a PPP loan, plaintiffs predict that they will be forced to lay off or furlough essential employees, negatively effecting the debtors' bankruptcy estates and potentially driving them out of business. (Compl. ¶58, Adv. No. 20-2065, ECF No. 1.)

On May 12, 2020, plaintiffs filed a Complaint for Declaratory Judgment, Writ of Mandamus and Injunctive Relief against the United States of America Small Business Administration and Jovita Carranza, solely as Administrator of the U.S. Small Business Administration. (Adv. No. 20-2065, ECF No. 1.) The adversary proceeding was filed under the Administrative Procedure Act, [5 U.S.C. §§ 701 et seq.](#), and [section 525 of the Bankruptcy Code](#) seeking (a) a declaratory judgment that the SBA's implementation of the PPP is unlawful, discriminatory against prospective borrowers who are debtors in bankruptcy, and beyond its statutory authority; (b) a writ of mandamus under [28 U.S.C. § 1361](#) to compel the SBA to remove its disqualification of the bankruptcy debtors as viable applicants from all PPP applications, including the PPP official SBA Form 2483 (PPP Borrower Application); and (c) an order enjoining SBA from denying plaintiffs a loan under the PPP based on the plaintiffs' status as chapter 12 debtors.

\*4 On May 12, 2020, plaintiffs also filed a Motion for Emergency Hearing on the Complaint. (Adv. No. 20-2065, ECF No. 5.) On May 14, 2020, the United States, on behalf of the SBA, filed a response to the motion. (Adv. No. 20-2065, ECF No. 12.) On May 15, 2020, the court held a preliminary hearing on plaintiffs' Motion for Emergency Hearing. Counsel for the plaintiffs consented to the final judgment of the bankruptcy court on all proceedings in the case under [28 U.S.C. § 157\(c\)](#) and requested that a final hearing on the merits be set for early the following week. Counsel for the defendants withheld consent to the court's final judgment regarding the plaintiffs' claims under the APA pursuant to [28 U.S.C. § 157\(c\)](#) but agreed that the plaintiffs' claim under [section 525\(a\) of the Bankruptcy Code](#) constituted a core proceeding. The court allowed the parties time to make additional submissions prior to a final

hearing scheduled for May 19, 2020. (Ct. Mins. Order, Adv. No. 20-2065, ECF No. 17.)

## 2. *Steffen, et al. v. SBA, et al., Adv. No. 20-2068*

On January 7, 2020, Arthur G. Steffen filed a chapter 12 petition. (Case No. 20-20108, ECF No. 1.) On that same day, his wholly-owned farming limited liability company, Genart Hillcrest Farms, LLC, filed a separate chapter 12 petition. (Case No. 20-20109, ECF No. 1.) Arthur Steffen is and has been a farmer all his life and lives on his family's intergenerational dairy farm. His mother lives on the farmstead with him and retains a life estate in that particular parcel and is also the holder of a Land Contract which is paid through revenue from the farming operation of Genart Hillcrest Farms, LLC. Genart Hillcrest Farms, LLC is owned 100% by Arthur Steffen and holds one parcel of real estate as well as all the machinery, equipment, animals, and farm personal property. (Debtors' Mot. Joint Admin. ¶¶6-7, Case No. 20-20108, ECF No. 22.) The court entered an order directing joint administration of both cases on March 6, 2020. (Order, Case No. 20-20108, ECF No. 22.) A chapter 12 plan has yet to be filed or confirmed by the court.

The *Steffen* plaintiffs rely on, as their primary source of income, revenue derived from selling milk and the proceeds from cows culled from the herd and sold for meat. Plaintiffs' Class I milk price has dropped from close to \$19.00 per cwt in January 2020 to a current rate of \$12.50 per cwt. (Compl. ¶33, Adv. No. 20-2068, ECF No. 1.) Plaintiffs ship approximately 600,000 pounds of milk per month and due to the decrease from March through May, they estimate having lost \$65,000 to \$80,000 that would otherwise have been paid had the markets been unaffected by the pandemic. (Decl. Arthur Steffen ¶7, Adv. No. 20-2068, ECF No. 12-1.) Furthermore, due to the temporary closure of slaughterhouses, plaintiffs received historically low prices for cows recently culled from the herd. As to the cull cow price, it has dropped at least \$150.00 to \$200.00 per animal compared to what it should have been prior to the pandemic and its effect on meatpackers. (Decl. Arthur Steffen ¶10, Adv. No. 20-2068, ECF No. 12-1.) Plaintiffs have significant mortgage and utility expenses and employ four people with an average monthly payroll of \$16,082.36. Plaintiffs are having a difficult time making that payroll. (Compl. ¶34, Adv. No. 20-2068, ECF No. 1.)

On May 6, 2020, plaintiffs applied to the SBA's Paycheck Protection Program through a financial institution, BMO

Harris Bank, and supplied the necessary documentation. (Attach. to Compl. 17-18, Adv. No. 20-2068, ECF No. 1.) They received notice on or about May 11, 2020 that they did not qualify due to their currently pending bankruptcy cases. (Attach. to Compl. 19, Adv. No. 20-2068, ECF No. 1.) Plaintiffs otherwise meet the requirements of the loan program: their small business is operated in the United States; the business is not a type ineligible for the Small Business Administration's section 7(a) Loan Program, CFR 120.110; and the plaintiffs have demonstrated a need for the desired credit. (Compl. ¶¶43-44, Adv. No. 20-2068, ECF No. 1.) Without a PPP loan, plaintiffs will be forced to lay off or furlough essential employees which will have a detrimental effect on the debtors' bankruptcy estates and may likely drive them out of business. (Decl. Arthur Steffen ¶11, Adv. No. 20-2068, ECF No. 12-1.)

\*5 On May 14, 2020, plaintiffs filed a Complaint for Declaratory Judgment, Writ of Mandamus and Injunctive Relief against the United States of America Small Business Administration and Jovita Carranza, solely as Administrator of the U.S. Small Business Administration. (Adv. No. 20-2068, ECF No. 1.) The adversary proceeding was filed under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* and section 525 of the United States Bankruptcy Code seeking (a) a declaratory judgment that the SBA's implementation of the PPP is unlawful, discriminatory against prospective borrowers who are debtors in bankruptcy, and beyond its statutory authority; (b) a writ of mandamus under 28 U.S.C. § 1361 to compel the SBA to remove its disqualification of the bankruptcy debtors as viable applicants from all PPP applications, including the PPP official SBA Form 2483 (PPP Borrower Application); and (c) an order enjoining SBA from denying plaintiffs a loan under the PPP based on plaintiffs' status as chapter 12 debtors.

On May 14, 2020, plaintiffs also filed a Motion for Emergency Hearing on the Complaint on the grounds that it was urgent that plaintiffs be authorized to apply for and obtain lending under the PPP while the funds were still available. (Adv. No. 20-2068, ECF No. 5). On May 19, 2020, plaintiffs filed a Motion for Temporary Restraining Order and/or Preliminary Injunction. (Adv. No. 20-2068, ECF No. 12).

## 3. *Thull Farms, LLC v. SBA, et al., Adv. No. 20-2069*

On February 26, 2020, Thull Farms, LLC filed a chapter 12 petition. (Case No. 20-21489, ECF No. 1.) On that same day, Ralph D. Thull and Mary Lou Thull, Case No. 20-21491, ECF No. 1, and Randall J. Thull and Ashley Thull, Case No. 20-21492, ECF No. 1, filed separate chapter 12 petitions. Ralph and Mary Lou Thull are the parents of Randy Thull. Ashley Thull is Randy Thull's wife and the daughter-in-law of Ralph and Mary Lou Thull. Thull Farms, LLC is a Wisconsin LLC which is the operating entity for the farming operations of the entire family. Ralph and Mary Lou Thull jointly own substantially all the real estate used by the farm and the LLC owns substantially all of the improvements, equipment and machinery. (Debtors' Mot. Joint Admin. ¶6, Case No. 20-21489, ECF No. 11.) The court entered an order directing joint administration of all three cases on May 19, 2020. (Order, Case No. 20-21489, ECF No. 57.) A chapter 12 plan has yet to be filed or confirmed by the court. Thull Farms, LLC is the only named plaintiff in the adversary proceeding.

Thull Farms, LLC – as the operating entity that employs the individuals who operate the ongoing business of the farm – relies on, as its primary source of income, revenue derived from selling milk and the proceeds from cows culled from the herd and sold for meat. Plaintiff's Class I milk price has dropped from close to \$19.00 per cwt in January 2020 to a current rate of \$12.50 per cwt. (Compl. ¶33, Adv. No. 20-2069, ECF No. 1.) Plaintiff ships approximately two million pounds of milk per month and due to the decrease from March through May, it estimates having lost over \$120,000 that would otherwise have been paid had the markets been unaffected by the pandemic. (Decl. Randall Thull ¶7, Adv. No. 20-2069, ECF No. 14-1.) Furthermore, due to the temporary closure of slaughterhouses, plaintiff received historically low prices for cows recently culled from the herd. As to the cull cow price, it has dropped at least \$150.00 to \$200.00 per animal compared to what it should have been prior to the pandemic and its effect on meatpackers. (Decl. Randall Thull ¶10, Adv. No. 20-2069, ECF No. 14-1.) Plaintiff employs eight people and has an average monthly payroll of \$38,210.00, as well as significant mortgage and utility expenses. (Compl. ¶34, Adv. No. 20-2069, ECF No. 1.)

\*6 On May 6, 2020, plaintiff applied to the SBA's Paycheck Protection Program through a financial institution, Investors Community Bank, and supplied the necessary documentation. (Attach. to Compl. 17-18, Adv. No. 20-2069, ECF No. 1.) Plaintiff received notice on or about May 7, 2020 that it did not qualify due to its currently pending bankruptcy case. (Attach. to Compl. 19, Adv. No. 20-2069, ECF No.

1.) Plaintiff otherwise meets the requirements of the loan program: its small business is operated in the United States; the business is not a type ineligible for the Small Business Administration's 7(a) Loan Program, CFR 120.110; and the plaintiff has demonstrated a need for the desired credit. (Compl. ¶¶43-44, Adv. No. 20-2069, ECF No. 1.) Without a PPP loan, plaintiff will be forced to lay off or furlough essential employees which will have detrimental effect on the debtor's bankruptcy estate and may likely drive it out of business. (Decl. Randall Thull ¶11, Adv. No. 20-2069, ECF No. 14-1.)

On May 14, 2020, plaintiff filed a Complaint for Declaratory Judgment, Writ of Mandamus and Injunctive Relief against the United States of America Small Business Administration and Jovita Carranza, solely as Administrator of the U.S. Small Business Administration. (Adv. No. 20-2068, ECF No. 1.) The adversary proceeding was filed under the Administrative Procedure Act, [5 U.S.C. §§ 701 et seq.](#) and [section 525 of the United States Bankruptcy Code](#) seeking (a) a declaratory judgment that the SBA's implementation of the PPP is unlawful, discriminatory against prospective borrowers who are debtors in bankruptcy, and beyond its statutory authority; (b) a writ of mandamus under [28 U.S.C. § 1361](#) to compel the SBA to remove its disqualification of the bankruptcy debtors as viable applicants from all PPP applications, including the PPP official SBA Form 2483 (PPP Borrower Application); and (c) an order enjoining SBA from denying plaintiff a loan under the PPP based on the plaintiff's status as a chapter 12 debtor.

On May 14, 2020, plaintiff also filed a Motion for Emergency Hearing on the Complaint on the grounds that it was urgent that plaintiff be authorized to apply for and obtain lending under the PPP while the funds were still available. (Adv. No. 20-2069, ECF No. 5.) On May 19, 2020, plaintiff filed a Motion for Temporary Restraining Order and/or Preliminary Injunction. (Adv. No. 20-2069, ECF No. 14.)

### **B. The Small Business Administration, the CARES Acts, and the Paycheck Protection Program**

Congress created the Small Business Administration through the Small Business Act, [15 U.S.C. §§ 631, et seq.](#), to "aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns," in order to preserve the system of free competitive enterprise that is essential to the economic well-being and security of the nation. [15 U.S.C.](#)

§ 631(a). To promote that objective, Congress placed the SBA under the management of a single Administrator, 15 U.S.C. § 633(a), (b)(1), who is given authority under section 7(a) of the Act, 15 U.S.C. § 636(a), to provide a wide variety of technical, managerial, and financial assistance to small-business concerns. In the performance of these authorized functions, the Administrator is further empowered to “make such rules and regulations as [she] deems necessary to carry out the authority vested in [her],” and “take any and all actions ... [that] [she] determines ... are necessary or desirable in making ... loans.” 15 U.S.C. § 634(b)(6), (b)(7).

On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). Under the CARES Act, Congress amended the SBA’s existing “7(a) Loan Program” to create the Paycheck Protection Program. Section 1102(a)(2) of the CARES Act adds a new paragraph (36) to section 7(a) of the Small Business Act, 15 U.S.C. § 636(a)(36), providing for a new program of loans for eligible small businesses to cover certain uses, including “payroll costs,” the “payments of interest on any mortgage obligation,” and “rent,” among other approved uses. CARES Act § 1102(a)(2); 15 U.S.C. § 636(a)(36)(F)(i).

\*7 The CARES Act initially allocated \$349 billion to guarantee PPP loans. CARES Act § 1102(b)(1). On April 16, 2020, the SBA announced that the PPP was closed to new applications. Eight days later, on April 24, 2020, Congress passed the Paycheck Protection Program and Health Care Enhancement Act (“CARES Act II”), adding another \$310 billion to the PPP. Pub. L. No. 116-139, § 101(a)(1), 134 Stat. 620 (2020). The SBA began accepting new PPP applications from participating lenders on Monday, April 27, 2020.

The CARES Act authorizes the Administrator of the SBA to issue emergency regulations to implement the PPP without complying with typical notice and comment requirements. CARES Act § 1114. The SBA posted its First Interim Final Rule implementing the PPP on the agency’s website on April 3, 2020 and published the rule in the Federal Register on April 15, 2020. The First Interim Final Rule does not directly address bankrupt debtors’ inability to participate in the PPP, but it does refer to SBA Form 2483, the Paycheck Protection Program Borrower Application. That form requires an applicant to certify, among other things, that the applicant is not “presently involved in any bankruptcy.”

The SBA later announced further changes to the interim final rule. On April 24, 2020, the SBA posted a Fourth Interim Final Rule. Section III(4) of the SBA’s Fourth Interim Final Rule specifically addresses bankrupt debtors’ ineligibility for PPP loans. This iteration of the Interim Final Rule provides:

**4. Eligibility of Businesses Presently Involved in Bankruptcy Proceedings** Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant’s obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

The Administrator, in consultation with the Secretary, determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy. The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant’s representation concerning the applicant’s or an owner of the applicant’s involvement in a bankruptcy proceeding.

[Business Loan Program Temporary Changes](#), 85 Fed. Reg. 23,451 (April 28, 2020) (to be codified at 13 C.F.R. pts. 120-121).

#### LEGAL CONCLUSIONS AND ANALYSIS

Plaintiffs seek both declaratory and injunctive relief against the SBA. The Declaratory Judgment Act grants wide discretion to a court, acting within its independent jurisdiction in a case of actual controversy, to “declare the rights and other legal relations of any interested party.” 28 U.S.C. § 2201(a); see also [Nationwide Ins. v. Zavalis](#), 52 F.3d

689, 692 (7th Cir. 1995). To obtain injunctive relief, the plaintiff must establish “(1) that [the plaintiff] will suffer irreparable harm absent preliminary injunctive relief during the pendency of [the] action; (2) inadequate remedies at law exist; and (3) [the plaintiff] has a reasonable likelihood of success on the merits.” *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044 (7th Cir. 2017) (citing *Turnell v. CentiMark Corp.*, 796 F.3d 656, 661-62 (7th Cir. 2015)). Upon a successful showing by the plaintiff, the court must then “engage in a balancing analysis, to determine whether the balance of harm favors the moving party or whether the harm to other parties or the public sufficiently outweighs the movant’s interests.” *Id.* (citing *Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1058 (7th Cir. 2016)).

\*8 Federal Rule of Civil Procedure 65(a)(2), made applicable to these adversary proceedings by Bankruptcy Rule 7065, allows the court to advance the trial on the merits and consolidate it with a hearing on a request for a preliminary injunction. Here, the parties do not dispute the material facts and agree that the record is complete. Accordingly, with the parties’ consent, the court will address the merits of the plaintiffs’ claims in full.<sup>1</sup>

### I. Section 525(a) Does Not Preclude the SBA from Denying Bankrupt Debtors PPP Loans.

Plaintiffs’ lead contention is that the SBA’s denial of their PPP applications violates the anti-discrimination provisions in  11 U.S.C. § 525(a). This Bankruptcy Code section bars governmental units from denying, revoking, suspending or refusing to renew “a license, permit, charter, franchise, or other similar grant” based on a person being or having been a debtor in bankruptcy. *Id.*

Plaintiffs push for a broad interpretation of  section 525(a), contending that it precludes the denial of participation in any government program based on an applicant’s status as a bankruptcy debtor. (Pls.’ Br. Supp. Compl. 11, Adv. No. 20-2065, ECF No. 14.) The SBA argues for a narrower construction, insisting that  section 525(a)’s prohibition extends only to negative actions related to a “license, permit, charter, franchise, or other similar grant.” According to the SBA, denying participation in a subsidized loan program, like the PPP, falls outside the scope of  section 525(a). (Defs.’

Resp. to Pls.’ Mot. Emergency Hr’g 12, Adv. No. 20-2065, ECF No. 12.)

The Seventh Circuit has not had occasion to address  section 525(a), but four of its sister circuits have interpreted the provision. Three courts of appeal have adopted a narrow construction based on the statute’s peculiar textual formulation. See *Ayes v. United States Dep’t of Veterans Affairs*, 473 F.3d 104, 110 (4th Cir. 2006);  *Toth v. Michigan State Housing Dev. Auth.*, 136 F.3d 477, 480 (6th Cir. 1998);  *Watts v. Pennsylvania Housing Fin. Co.*, 876 F.2d 1090, 1094 (3rd Cir. 1989). The Second Circuit, in contrast, has embraced a broader reading of the statute, particularly the phrase “other similar grant,” holding that it bars the denial of any “property interests” that are “unobtainable from the private sector and essential to a debtor’s fresh start” based on an applicant’s bankruptcy status. See  *Stoltz v. Brattleboro Housing Auth.*, 315 F.3d 80, 90 (2d Cir. 2002) (footnotes omitted).

The Third Circuit’s *Watts* decision summarizes the origins of  section 525(a). *Watts* involved a Pennsylvania state agency’s denial of bankrupt debtors’ request to participate in a loan program for financially troubled homeowners. The court of appeals explained that  section 525 codifies the holding in  *Perez v. Campbell*, 402 U.S. 637 (1971), a case under the Bankruptcy Act holding that a state could not deny a driver’s license to a discharged debtor based on the debtor’s non-payment of a discharged debt. The Third Circuit observed that in codifying *Perez*, Congress intentionally limited the scope of the anti-discrimination rule, proscribing only those actions involving a “license, permit, charter, franchise, or other similar grant.”  11 U.S.C. § 525(a). The Third Circuit explained that these enumerated items are “in the nature of indicia of authority.” They are permissions or authorizations “from a governmental unit to the authorized person to pursue some endeavor.”  *Watts*, 876 F.2d at 1093. The court of appeals concluded that participation in a loan program was of an entirely different nature. Accordingly, a state agency could deny bankruptcy debtors’ participation in a state loan program without violating  section 525. In *Ayes*, the Fourth Circuit used essentially the same reasoning to conclude that the denial of participation in a Veterans Affairs home-loan guaranty program based on applicants’ bankruptcy histories did not violate  section 525. And, the Sixth Circuit in *Toth*

applied a similar analysis in upholding a state agency's denial of a bankrupt debtor's application for a state-issued home improvement loan.

\*9 Bankruptcy courts around the country are now facing a deluge of [section 525\(a\)](#) challenges to the SBA's PPP rule. Like the courts of appeal, bankruptcy courts have reached differing interpretations and conclusions. The parties here cite bankruptcy court decisions applying [section 525\(a\)](#), including rulings that both enjoined and upheld the SBA's actions.

Plaintiffs highlight an April 25, 2020 temporary restraining order from the bankruptcy court in the Southern District of Texas in *Hidalgo County Emergency Service Foundation v. Carranza*, Adv. No. 20-2006, 2020 WL 2029252 (Bankr. S.D. Tex. Apr. 25, 2020). In that case, the court granted a temporary restraining order after concluding that the PPP was not a traditional loan program, but rather a "support product," denial of which violated [section 525\(a\)](#). Transcript of Hearing at 30, *Hildago v. Carranza*, Adv. No. 20-2006 (Bankr. S.D. Tex. Apr. 24, 2020). In reaching this conclusion, the bankruptcy court observed that the SBA had agreed to forgo traditional creditworthiness tests and required no collateral for the funds. *Id.* at 29. The bankruptcy court also noted that the statute eliminates a recipient's repayment obligations if the funds received are used for designated purposes, including paying payroll. *Id.* Based on these attributes, the *Hidalgo* court distinguished the *Watts*, *Ayers* and *Toth* decisions and concluded that [section 525\(a\)](#) barred the SBA's approach. *Id.* at 31-33.

The SBA cites decisions that reach the opposite conclusion. The agency first relies on a 1989 decision from this court, *In re Elter*, 95 B.R. 618 (Bankr. E.D. Wis. 1989), which held that [section 525\(a\)](#) was not offended by an agency's refusal to extend a government-guaranteed student loan based on a debtor's bankruptcy history. The SBA also cites recent decisions from bankruptcy courts in the District of Delaware, *Cosi, Inc. v. SBA*, Adv. No. 20-50591 (Bankr. D. Del. Apr. 30, 2020), and Western District of Texas, *Trudy's Texas Star, Inc. v. Carranza*, Adv. No. 20-1026 (Bankr. W.D. Tex. May 7, 2020). These bankruptcy courts concluded that the SBA's denial of PPP eligibility to bankrupt debtors did not violate [section 525\(a\)](#) because PPP funds are

distributed through loans, putting them outside [section 525\(a\)](#)'s antidiscrimination provisions.

Given the plain terms of the CARES Act, this court agrees with the approach of the *Cosi* and *Trudy's* courts and will follow *Elter* and the majority interpretation of [section 525\(a\)](#) adopted by the Third, Fourth, and Sixth Circuits. As *Watts*, *Ayers*, and *Toth* explain, Congress limited the scope of [section 525\(a\)](#) to denials of certain types of government authorizations or permissions – denials of a "license, permit, charter, franchise, or other similar grant." The PPP is a heavily subsidized loan guarantee program; it is not a license, permit, charter, franchise or other similar grant. Accordingly, the SBA's denial of PPP participation based on the plaintiffs' bankruptcies does not run afoul of [section 525\(a\)](#).

The court will not adopt the *Hidalgo County* court's approach in recharacterizing the PPP loan payments. The record is clear that Congress created the PPP as an amendment to the SBA's pre-existing *loan* program and both the statute and agency regulations refer to the funds distributed as "loans." The PPP loans are made through private lenders and participants sign promissory notes, subject to SBA guarantees. While it is certainly true that Congress created the program to make the funds readily available, even where market loans would not be, and the SBA has adopted regulations allowing the loans to be made with little-to-no underwriting, these attributes do not alter the fact that the program results in an actual loan. It is also true that Congress provided for loan forgiveness if the funds are used in certain ways, but the loan forgiveness is just that – it is a *loan* forgiveness. Moreover, forgiveness is conditioned on future events; if a recipient fails to use the funds in one of the delineated ways, the recipient must pay back the loan.

\*10 In sum, [section 525\(a\)](#) does not preclude the SBA from denying government-subsidized PPP loans to bankrupt debtors. Plaintiffs' claims under [section 525\(a\)](#) are denied on the merits and plaintiffs are not entitled to injunctive relief on those claims.

## II. The SBA's Fourth Interim Final Rule Does Not Violate the APA.

Plaintiffs also challenge the SBA's actions under the Administrative Procedure Act. They claim that the rule barring bankruptcy debtors from PPP participation exceeds

the agency's authority and is "arbitrary and capricious." The SBA insists it promulgated the rule consistent with its Congressionally-granted authority and that the bar on bankruptcy debtors is rational and consonant with terms and policies governing its section 7(a) loan program on to which the PPP has been added.

**A. The SBA's Rule Is Within its Statutory Authority.**

With respect to the SBA's authority, plaintiffs argue that "no law, regulation or rule of any kind disqualifies, or authorizes the SBA to disqualify, bankruptcy debtors from participating in the PPP." (Pls.' Br. Supp. Compl. 15, Adv. No. 20-2065, ECF No. 14.) They similarly contend that the SBA's authority is limited to the development of regulations that carry out the provisions of the CARES Act, and that "it is clear that Congress did not intend for bankruptcy debtors to be excluded from participation in the PPP." (Pls.' Br. Supp. Compl. 16, Adv. No. 20-2065, ECF No. 14.)

Plaintiffs are correct that the CARES Act does not itself directly provide that bankrupt debtors are ineligible for PPP participation. Indeed, defendants concede the statute is silent on this specific issue. But statutory silence does not mean that the SBA is acting outside its authority. The relevant issue is whether the SBA's promulgation of a rule that bars bankrupt debtors from participating in the PPP exceeds the agency's authority. Nothing in the statutory text suggests that the Congress was intending to limit the SBA's rulemaking authority or that Congress was providing an exhaustive list of eligibility requirements that the SBA could not augment through rulemaking.

The agency has now promulgated a Fourth Interim Final Rule that details and explains the agency's position. Given the Fourth Interim Final Rule, plaintiffs' assertion that there is no regulation or rule that disqualifies bankruptcy debtors from PPP participation is factually wrong. The Fourth Interim Final Rule does so explicitly. Even the First Interim Final Rule included references to the application form, which included the bar on bankrupt debtor participation.

The SBA supports its rulemaking by pointing to the broad authority Congress gave the agency upon its creation, and contends that Congress built upon that authority when it authorized the SBA to set the terms and conditions on which PPP loans are issued. Section 1114 of the CARES Act authorizes the SBA Administrator to promulgate emergency rules to implement the PPP without the normal notice and comment period. Congress also specifically directed the SBA

to act quickly; the Administrator was required to establish regulations within 15 days of March 27, 2020. The SBA complied by announcing its First Interim Final Rule on the SBA's website on April 3, 2020. That rule referenced SBA Form 2483, the Paycheck Protection Program Borrower Application, which includes the exclusion of bankrupt debtors from PPP participation.

\*11 Given this background, including the speed with which Congress adopted the CARES Act and wanted funds to be disbursed in the light of the pandemic, it is understandable that Congress did not spell out in the statute all requirements for PPP participation. Instead, Congress entrusted the details to the SBA, engrafting the PPP on to the SBA's existing section 7(a) lending program, and giving the SBA emergency rulemaking authority. Against this backdrop, the court cannot conclude that the SBA's adoption of a rule excluding bankrupt debtors from the PPP is beyond the agency's delegated authority.

**B. The SBA's Rule Is Not Arbitrary and Capricious.**

Plaintiffs next contend that the SBA violated the APA because the exclusion of bankruptcy debtors from the PPP is "arbitrary and capricious." Plaintiffs insist that the exclusion is contrary to both the CARES Act itself and the SBA's own eligibility requirements. According to the plaintiffs, "[n]o principled distinction can be made between a chapter 12 debtor-in-possession and any other 'struggling small business.'" (Pls.' Br. Supp. Compl. 18, Adv. No. 20-2065, ECF No. 14.)

Just last year, the Seventh Circuit explained the limited review applicable to agency actions under the arbitrary and capricious standard in *Boucher v. United States Dept. of Agriculture*, 934 F.3d 530, 547 (7th Cir. 2019). The Seventh Circuit traced the limited standard of review to Congress's instruction to defer to an agency's expertise. Thus, "an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." *Id.* at 547 (quoting  *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989)). But agencies are not given free rein. The court must consider "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error in judgment." *Id.* (quoting  *Marsh*, 490 U.S. at 378). After reviewing the entire record, the court must uphold the agency's action if the agency "considered" all of the relevant factors and the court "can discern a rational basis

for the agency’s choice.” *Id.* (quoting *Israel v. United States Dep’t of Agriculture*, 282 F.3d 521, 526 (7th Cir. 2002)).

An agency decision will be found “arbitrary and capricious” if the agency, when making the decision,

relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

*Id.* (quoting *Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

The SBA justifies its adoption of the bankruptcy exclusion based on the decision of Congress and the President to enact the PPP, not as an entirely new stand-alone program, but rather by amending the SBA’s preexisting section 7(a) loan program. Through the CARES Act, the political branches provided for a massive package of emergency economic assistance in response to the COVID-19 pandemic. Among this economic assistance is the PPP, under which Congress directed the SBA to extend loans to eligible small businesses for certain covered uses, including payroll costs, mortgage interest, and rent. The statute makes several specific changes to section 7(a) with respect to the new PPP loan program. For example, the CARES Act authorizes the SBA to guarantee loans to some non-profits, independent contractors, self-employed individuals, and small businesses. The statute relaxes size limitations otherwise applicable to section 7(a) loans. But, as the SBA observes, the CARES Act otherwise leaves much of the preexisting 7(a) structure intact, and engrafts the PPP onto and subject to that structure. Among the provisions that Congress left intact is the provision in [15 U.S.C. § 636\(a\)\(6\)](#), in which Congress requires that SBA loans be of “sound value” and of a kind that will “reasonably ... assure repayment.”

\*12 The SBA explains that to achieve the Congressional goal of implementing the PPP expeditiously, it eliminated the assessment of individual applicants’ credit and instead

imposed a much simpler “bright-line” rule excluding those in bankruptcy through the official PPP Borrower Application, SBA Form 2483. SBA thus reconciled the “sound value” instruction in [section 636\(a\)\(6\)](#), with Congress’s instruction to proceed expeditiously with the PPP.

Plaintiffs call this explanation “absurd.” They complain that by flatly precluding any bankruptcy debtor from PPP participation the SBA has drawn an indefensible line. Thus, a business that happens to apply for and receive a PPP loan immediately before filing a bankruptcy petition will be eligible, while a business that applies the day after filing its bankruptcy petition won’t be eligible. (Pls.’ Br. Supp. Compl. 18, Adv. No. 20-2065, ECF No. 14.)<sup>2</sup> Plaintiffs also complain that many distressed businesses that have successfully applied for and received PPP funds share many characteristics in common with the plaintiffs, but only the plaintiffs have been denied PPP loans because they also happen to have filed for bankruptcy. (Pls.’ Br. Supp. Compl. 18, Adv. No. 20-2065, ECF No. 14.)

There can be little doubt that the bankruptcy exclusion is hardly an example of delicate or precise policymaking. The SBA could certainly have adopted other, alternative approaches in balancing the need for a quick disbursement of emergency economic relief against the “reasonably assure repayment” requirement that Congress left intact under [section 636\(a\)\(6\)](#). That the SBA chose to use a broad and blunt instrument – flatly excluding bankrupt debtors from PPP participation – does not make the SBA’s rule arbitrary and capricious. The law does not require precision or perfection, particularly at the expense of other valid and competing Congressional goals.

The record shows that the SBA has considered the relevant factors, including the goals of the CARES Act and those statutory provisions that the CARES Act left intact. The denial of PPP participation to entities that have already resorted to bankruptcy, while reserving PPP loans to those whose financial troubles have not yet gotten to the point (and perhaps never will) is a rational policy choice. The agency’s policy choice is consistent with the CARES Act and the SBA’s preexisting statutory mandate. Had Congress intended to preclude such a rule, it could have excepted the PPP from [section 636\(a\)\(6\)](#), but it did not do so. Using the bankruptcy exclusion question on the PPP application has the obvious benefit of being easy to administer. That is not a small

matter, given the speed with which Congress and the President directed the SBA to implement the CARES Act and PPP.

The SBA's explanation is consistent with the record and the court cannot conclude that it is "implausible." That one could have adopted a different approach or policy – perhaps even a better one – does not make the SBA's policy choice invalid. It is not this court's role to order the SBA to replace its own policy judgment with that of the plaintiffs.

### III. Plaintiffs Are Not Entitled to a Writ of Mandamus.

\*13 Plaintiffs' final request for relief is for a writ of mandamus, instructing the SBA Administrator to remove from all PPP applications, including the plaintiffs' PPP applications and their proposed lenders' Lender Applications, the SBA's disqualification of bankruptcy debtors as viable applicants. Plaintiffs contend that the SBA has a non-discretionary duty to comply with the CARES Act and that the SBA's current application exceeds the agency's statutory authority.

Mandamus is an extraordinary remedy.  *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380 (2004) (citing *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947)). The court may grant a writ of mandamus only where the plaintiff demonstrates: (1) a clear right to the relief sought; (2) a plainly defined, non-discretionary and ministerial duty by the defendant to perform the action requested; and (3) the lack of any other adequate remedy. See  *Center for Dermatology and Skin Cancer, Ltd.*, 770 F.3d 586, 589-90 (7th Cir. 2014). The SBA insists that plaintiffs have not established any of these elements.

Given the court's rulings on the merits of plaintiffs'  section 525(a) and APA claims, the debtors are not clearly entitled to the relief they seek. Their request for a writ of mandamus is denied.

### CONCLUSION

The court is mindful of the difficult financial situation facing the plaintiffs. The farm economy was already heavily distressed before the COVID-19 pandemic. This distress was particularly acute for dairy farmers. Our country's efforts to combat the coronavirus have led to huge economic dislocations across all industries. The already struggling farm and dairy economies have not been an exception; indeed, they have been particularly hard hit.

Congress and the President responded to the overall economic destruction by enacting the CARES Act, including the PPP. In doing so, they chose to entrust the SBA with emergency rulemaking authority to implement the response efforts quickly. The SBA promptly promulgated emergency rules consistent with both the CARES Act and the agency's other preexisting, statutory obligations. In balancing many policy interests, the SBA announced a rule that excludes bankrupt debtors from receiving loans under the Paycheck Protection Program. While the SBA could have implemented a different protocol or set of application criteria, and plaintiffs understandably wish the agency had done so, it is not for this court to second-guess the SBA's judgment or overturn its exercise of its statutory authority. To the extent there is a remedy for the plaintiffs' situation, it lies with the political branches, not this court. Plaintiffs' request for injunctive relief is denied and their complaint is dismissed on the merits. This court's ruling is final as to plaintiffs' core claims and serves as recommended findings of fact and conclusions of law to the district court on the non-core claims.

### All Citations

Slip Copy, 2020 WL 2621186, 68 Bankr.Ct.Dec. 210

### Footnotes

- 1 The SBA contends that Congress has precluded plaintiffs from obtaining injunctive relief against the agency. In the Small Business Act, Congress agreed to waive sovereign immunity to allow suits against the SBA, but the waiver is expressly limited and the statutory waiver provides that "no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against" the SBA or its property. 15 U.S.C. § 634(b)

- (1). Because the court rules against plaintiffs on the merits of their claims, it need not address whether this statutory limitation is a further defense to plaintiffs' request for injunctive relief.
- 2 The Fourth Interim Final Rule now addresses this situation. Applicants who apply for and are granted a PPP loan and then file for bankruptcy before receiving the funds are required to cancel the application or return the funds, or the loan will be considered used for unauthorized purposes.

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enjoyed employment in private industry just as naturally demand big appropriations designed to feather their nests against the threat of adversity.

Such things are understandable, even though fiscally dangerous. But a question arises as to what will happen to John Q. Taxpayer if these special interests with an axe to grind continue uniting for organized assaults on the national exchequer.

**NO EXCUSE FOR NEW BONDS**

From the New Jersey Taxpayers Association comes a vigorous and convincing demand that the Legislature brush aside all thought of a bond issue for relief purposes. Four reasons are cited as to why the relief burden may be reduced during the coming year, thus making an expansion of bonded indebtedness wholly unnecessary:

1. Sharp curtailments of relief costs in several communities where irregularities have been brought to light, pointing to "the probability of similar reductions throughout the State when every possible offender is tracked down."
2. Prospective lightening of the emergency load by means of the legislative probe of administrative conditions within the relief setup.
3. Recent reports by State Relief Director Mudd to the general effect that relief expenditures declined during March because of employment gains, the "purging" of relief chiselers, and unemployment compensation payments.
4. Indications that employment in private industry is on the upcurve, a factor that at least raises legitimate doubt as to the maintenance of relief demands at their present level.

It is noteworthy in this connection that New Jersey, throughout the depression, has been handling relief on a hit-or-miss basis. No one has been in possession of authentic facts concerning the precise amount of unemployment and the probable trends for a year ahead. The State has worked in the dark, being perfectly content to accept the gloomy forecasts of interested individuals and organizations.

Certainly it would be a serious mistake to proceed on this basis with regard to further indebtedness. The matter of bonding for current operating costs is fiscally unsound under any conditions. It becomes doubly objectionable when there is no factual foundation for thus foisting upon future generations an obligation that can and should be met through the adoption of a wise and prudent economy program.

**PROGRESS IN THE FREE STATE**

From the Free State of Maryland comes word that the antiquated coroner system at long last has been abolished. From now on a modern medical examiners' plan will be effective in the counties and municipalities.

A feature of the new arrangement is the establishment of a Maryland Post-Mortem Examiners' Commission, the personnel of which will include the professors of pathology at the Johns Hopkins University and the University of Maryland. All local and county examiners will function under the State commission.

This has all the earmarks of being a progressive step toward the elimination of politics and incompetency in the examination of sudden deaths. Trained medical men will displace untrained officials who, as the Baltimore Sun observes, "neither have nor claim to have any standing in the medical profession."

Broadly speaking, this trend is one that may well be maintained in every branch of government that calls for specialized knowledge. Modern conditions demand the highest standards of performance in all divisions of public regulation and control.

**News Behind the News in Public Affairs**

WASHINGTON, June 5. It is likely that the Mead bill, which provides government insurance for banks, will be passed at this session of Congress. This measure, would extend government activity into a large new sphere. While not sensational, it is of large significance.

In substance, although not in form, it ventures close to providing government capital to private business. Direct proposals for such use of government capital to finance private activity are being discussed among New Dealers, and the need for this was argued before the O'Mahoney temporary National Economic Committee by Adolf Berle, Jr., a few days ago. Definite proposals for legislation are likely to wait until next winter, leaving the field clear at this session for Senator Mead's insured loan bill.

The Mead bill provides simply that RFC may insure loans made by banks to small business. Insurance would not cover the first 10 percent of the loan, that being left on the banker's neck to induce him to observe sound banking judgment.

The government would insure the remaining 90 percent of the loan. An insurance fee of one-fourth of 1 percent up to 1 percent a year would be charged and the bank must not charge more than 4 percent interest in addition to the insurance fee.

Loans could be made for periods of one to ten years and up to \$100,000 in amount. However, the RFC would be given broad discretion in fixing regulations to prevent banks from abusing the government credit facilities by passing over only sour loans.

**Belong to Yourself!**

By George Matthew Adams

A few years ago there was a very popular song in which the line appeared "I belong to you." Sentimentally that was a catchy line, but who wants to mortgage his life to anyone?

Montaigne, that wise old Frenchman, once said: "The greatest thing in the world is to know how to belong to yourself." This doesn't mean that you are to segregate yourself from everyone and live out a selfish, self-centered existence. A man who belongs to himself is in the position to give himself away! He can spread himself out—radiate his influence, and live in a thousand lives, without for a moment surrendering one bit of his God-inherited self.

By belonging to yourself you can go and come at will. You own, not only yourself, but the world as well. That is, the world that you create for yourself!

The essence of freedom is the privilege of thinking as you wish, expressing yourself as you will, and having a free grasp on opportunity wherever it appears. The unhampered mind grows, becomes rich in knowledge, and is forever giving out ripened thoughts.

**Rocking the Baby**

By Angelo Patri

There is just one word to say about rocking the baby. Don't. There is no reason under the sun for rocking him, and there are several good ones for not doing so.

Sleep is natural to the baby. He sleeps most of the time in the beginning, and as he grows older, shortens his sleeping hours. He lies quietly on his back and just closes his eyes and there he is, asleep. That is the natural way for him to go to sleep. Why interfere with it?

Most babies enjoy being held in their mother's arms. They enjoy being rocked there. The more they experience the delight of this sensation the more they want of it. At first a few rocks to and fro, a murmured song, and the child sleeps. Very pleasant for mother and baby. But there is a catch in it.

Each time the baby is rocked he stays awake longer to enjoy it and falls asleep only when sleep has been induced. He becomes expert in dodging sleep, and his mother is chained to him by the hour. No rocking, no sleep. Trying to undo this process is like picking grains of sand out of the sea. Why bring such a burden upon oneself?

There are few cradles and rockers handy these days, but there is the baby carriage. It has springs that bounce and sway, very good substitutes for the rockers on the cradles. When the baby has been fed his mother lays him in the carriage to sleep usually in the open air. Fine. But she thinks, more often than not, that rocking the carriage will bring sleep sooner, so she rocks and bumps and swings the poor infant until his milk is forced out of his stomach and he returns it, a curdled mess.

"The poor child is sick. He can't keep his food in his stomach," says his anxious mother and hastens to call the doctor.

There is no need for this rocking. It does the child harm. It breeds bad habits, disturbs the child's digestion and makes sleep a matter of ritual, elaborated and annoying for the mother. Sleep should come as naturally, as easily, as breathing to the little child, and it will, if he is not trained to have it otherwise.

Some children drop the afternoon nap sooner than others. They refuse to sleep in the afternoon without a battle. I think that a nap is not worth a battle. If the child does not go to sleep until he is worn out with tears and sobs and fights, he does not need the nap. He needs to go to bed for the night early, on time, without any talk about it, and certainly without rocking. He won't need rocking. Making children sleep in the afternoon when they fight against it rarely pays, and when one considers the wear and tear on the mothers who rock, scold, sing, slap and shake the protesting wideawake children, it surely does not pay.

Most of our little children do not get tired enough in the day to feel the need of sleep. Give them plenty of hard exercise in the open air so that they are weary when night comes and they won't need rocking. Anyway, don't rock them.

**As the Royal Party Goes Into the Home Stretch**



**NEW YORK Day and Night**

NEW YORK, June 5.—Broadway is enjoying a renaissance of the girlie show.

That delightful form of entertainment has been in limbo for some years. The lavish, chorine-filled spectacle was in disfavor because it was too expensive and because fresh talent was as scarce as proverbial hen's teeth. Hollywood was gobbling up the stars and lavishing fortunes upon the song and dance films. And Broadway couldn't compete.

But the show worm has turned. Musicals are better adapted to flesh-and-blood than to celluloid—and Hollywood has handed them back to Broadway—with thanks.

A quartet of huge girlie shows is in the Rialto cabaret and a quartette of big musical shows is on Broadway stages. The foremost, of course, is "Hellzapoppin'." The others include "Boys From Syracuse," "Leave It to Me" and "One for the Money."

Ray Noble's band has received the strongest commendation of them all. He has been invited by the King of Waiuku, an island off the Malay coast, to transport his orchestra to that puny isle and play for the wedding of the King's son.

A letter, composed at the King's command by the official trader of the island, was the means of communication. It revealed that the King and Royal Family was just crazy about Noble's music which they play on the only phonograph in the kingdom. And for compensation, the King offers to pay off in a wealth of copra, and beads! Noble isn't going, incidentally.

This was a brawl to end all brawls. It did not occur on the premises, but outside on the pavement. At precisely 2:30 A. M., three combatants had been kayoed and were quite prone.

Mixing it up were three women and three men, all elegantly clothed. The most aggressive of the brawlers was a woman of some prominence and wealth. Dishevelled, she was not a pretty sight.

Now this club has had more than its quota of battles and it was not easy for more. Besides, the reputations of the club had been endangered by all the front page publicity.

**Neighborhood Incident**

By Edgar A. Guest

Tony came selling fresh green things today. And as I went to barter at his cart I felt a sudden gripping round the heart. Beholding red geraniums in a tray.

In little boxes every one has seen Were lovely pansies, yellow and the blue, And flats of fresh young, healthy asters, too. And marigold and zinnia, strong and green.

I looked through flowers his wagon to explore. "Tony," said I, "today it seems to me. The proudest man on earth you ought to be. For you are selling Springtime, door to door!"

"It's May and June upon your cart you keep. And all the glowing splendor of July!"

But Tony, keen for business, made reply: "You want some plant! I sell 'em to you cheap!"

**Letters to the Editor**

AGGRESSOR NATIONS  
To the Editor of the Times:

"Britain fought wars of aggression, but in so doing Britain did not deprive civilized nations of freedom and independence," said a letter writer. Is that true of Ireland? J. R. Green, in his "History of the English People," has this to say: "England did her best to destroy Irish commerce and to ruin Irish agriculture . . . until starvation turned the country into a hell."

During our Civil War England supported the slaveholders of the South. Think of the opium war, of which Gladstone, the Grand Old Man, said: "Of a more unjust war, which brings disgrace to our country, I know not."

British history is a succession of aggressive wars. Richard Price, Englishman, wrote: "Look at India! There the English have, for the sake of plunder and conquest, depopulated whole kingdoms and driven millions of innocent people into slavery. The sudden and uncalled for attack on Copenhagen—the Boer war in South Africa with its concentration camps."

What nation was and is to this day the most aggressive nation?

VERITAS.

DIVINE GUIDANCE  
To the Editor of the Times:

Sir—For a writer to say that an appeal for Divine guidance in government affairs will result in suffering and hardship for the people, is rather difficult to comprehend. If our statements are not to be guided by the Christian principles of honesty, justice and charity, by what other norm would you judge them?

Surely it is apparent that if merely human emotions are to be accepted as the code of moral law, we shall be left in a sorry state of confusion. Those who would reject such Divine assistance might read with profit the preamble to our Constitution where such guidance is definitely requested.

Surely these words of Washington, "Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle," are not incompatible with those contained in the social encyclicals of the Popes, which furnish conclusive proof that the application of Christian principles is both necessary and beneficial to all good modern government. But perhaps some are a bit light-headed, thinking, "God should stay in His Heaven. All's right in the world." If so, his presumption might be taken as mere emotional impertinence.

DON MACKINNON.

ECONOMIC DEMOCRACY  
To the Editor of the Times:

Sir—Speaking of an "economic democracy," by which he doubtless means government-planned economy, Clayton W. Fountain says: "The old order dies hard." Of course, it does, Mr. Fountain; human beings do not give up their hard-won liberty without a struggle.

A government-controlled people consists of slaves having no freedom of speech, thought or action. No flowery phrases can conceal this fact. As for a Fascist war, Mr. Fountain is merely afraid that too many people (in his opinion) are aware of the menace of Communism, and may prefer to die fighting for their liberty to living without it.

GERTRUDE GROVES.

IN NAME ONLY  
To the Editor of the Times:

Sir—It may be correct for a writer to say that the oldest parliament building in all Europe is in Hungary. The thing he neglected to mention, however, was the important fact that the Hungarian people never have been, and are not today, permitted to vote for members of parliament.

**Fair Enough**

By Westbrook Pegler

NEW YORK, June 5.—Now is the time for all good friends of Tom Mooney to organize an international society dedicated to the work of keeping Warren K. Billings in prison as long as Billings remains behind the bars in Folsom, Cal. Mooney will have an excuse to abstain from common toil, but the minute the forgotten man of the historic dynamiting case walks out of prison Mooney will become fair prey for any sinister character who wants to walk up to him and offer him a job.

It might be hard on Billings to stay in Folsom, but it would be worse on Mooney to let him out. Not only would Mooney be exposed to employment—an awful fate for one who had abandoned work in the literal and arduous meaning of the word long before the dynamiting—but he would lose the mission in life which enabled him to appear at public ceremonies and accept ovations. Billings should be willing to make this sacrifice for Mooney.

Moreover, the defense business would go into a tailspin, for with Mooney and Billings both out of jail and working a living there would be no further excuse for the collection of funds for the support of selfless Communist workers for the cause of justice in this particular case.

It was a sad day for the defense business when the State of California and the sometimes erratic dynamite man behind the bars in Folsom, Cal., Mooney were finally ejected from his status of distinguished guest in San Quentin Prison.

Mooney, in his passionate admiration for himself, the non-working friend of the American worker, had centered all the attention and publicity on himself and the public had all but forgotten that Billings was in prison, too, and the victim of an outrage no less vile than the one of which Mooney claimed to be a victim.

In his conversations at San Quentin, where he was allowed to hold press conferences and conduct international propaganda through the Communists, Mooney rarely mentioned Billings, and when he was evicted by the American system of justice he was at a loss for a few minutes. Then, in this desperate situation, Mooney thought fast and decided that it would be quite possible for him to disappear into the obscurity of daily employment as long as Billings remained in prison.

He became suddenly very much aware that there was such a man as Billings working a living for himself to the sacred task of getting out. That is nice work, and Mooney enjoys it thoroughly, not only because it protects him from contact with the time clock and the ordinary routine of working still, but also because it affords him opportunities to accept ovations and other public appearances.

He once wrote that he had received "the highest tribute ever given a human being" when he returned to San Francisco, and the declaration that he regarded the most modest of himself in years. It settled some doubts, but gathered that he thought of himself as a God.

Mooney almost missed an ovation arranged in his honor by Communists on his recent arrival in New York to continue the not to dreary work of agitating for the release of Billings. It appears that he got in a couple of hours too early and found that the ovation was not due to start until the arrival of a later train. But he is not one to deny the Communists a longed-for opportunity to express their admiration for Tom Mooney, so he waited patiently, and then descended to the train level, where he entered a rear car of the later train and emerged to accept the tribute.

This is not entirely new in the ovation line in New York, for pretty good crowds of the moving picture business have staged arrivals in a similar manner and some are even said to have gone no farther than Yonkers to board trains and disembark, smiling for the cameras and the autograph fans.

For Mooney's own sake it is to be earnestly hoped that he will never overdo his campaign to free Billings. For if he should use just a half dozen more such pressure Billings also might be turned out as a further vindication of American justice, and Mooney would be up against a fate which to one so long unacquainted with toil, except by hearsay, would be hardly preferable to death.

So They Said—  
The vast expanse of the Arctics can and will in the future be occupied by millions of white people living in health and comfort.  
—Dr. Victor E. Linnex, United States Bureau of Public Health.

If you make any noise, madam, I'll scream.  
—Sneak thief who entered a Boston apartment and came face to face with the occupant.

Life is too short to make speeches if we are not going to do anything about them.  
—Harry Hopkins, Secretary of Commerce.

Joy in robust fun seems widespread.  
—Remarkable discovery by Der Angriff, Nazi newspaper.

We are losing our flexibility and powers of adjustment.  
—Dr. H. F. Alderfer, Pennsylvania State College.

If a man's life is said to be wicked it actually means it is stale and thin, for wickedness is a panicky escape mechanism for a personality played out on the inside.  
—Dr. Norman Vincent Peale, pastor of New York's Marble Collegiate Church.

The way I figure it now, you either do or you don't, and there's no use worrying.  
—Bob Feller, baseball.

**Side Glances**

By Gailraith



