

**ZAZZALI, FAGELLA, NOWAK,
KLEINBAUM & FRIEDMAN**

By: Richard A. Friedman, Esq.
Flavio L. Komuves, Esq
1 Riverfront Plaza, Suite 320
Newark, New Jersey 07102
Attorneys for Plaintiff

NEW JERSEY EDUCATION
ASSOCIATION, a New Jersey nonprofit
corporation

Plaintiff

vs.

CHRIS CHRISTIE, individually and as
Governor of the State of New Jersey and
presiding officer of the New Jersey State
House Commission;
JOSEPH FUENTES, individually and as
Superintendent of the State Police;
CHRISTOPHER PORRINO, individually
and as Attorney General of New Jersey;
THE STATE OF NEW JERSEY;
JOHN DOE INDIVIDUALS, ENTITIES &
GOVERNMENT AGENCIES 1-100,

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – MERCER COUNTY
DOCKET NO.

VERIFIED COMPLAINT

COMES NOW PLAINTIFF, New Jersey Education Association (“NJEA”), with a
business address of 180 West State Street, Trenton, New Jersey, and complains of Defendants as
follows:

COUNT ONE –ILLEGAL EXPENDITURE OF STATE FUNDS AND RESOURCES

1. The State of New Jersey is in the midst a fiscal shutdown, brought about by each
house of the Legislature’s failure to adopt, and the Governor’s failure to sign, a budget for the
fiscal year beginning July 1, 2017.

2. Specifically, neither a majority of the State Senate's members, nor a majority of the State Assembly's members have voted to approve a budget for the current year, nor has the Governor signed such a budget.

3. To ensure that emergencies can continue to be dealt with, and to ensure the continued protection of citizens' life, safety, and property, Defendant Christie signed Executive Order 228 ("EO228") on June 30, 2017.

4. EO228 authorizes expenditures for a number of narrowly-defined activities constituting "essential services" that must be delivered notwithstanding the lack of a state budget.

5. EO228 contains no provisions authorizing state parks and other facilities meant for recreational activities of the State's citizens to be kept open during the fiscal emergency.

6. EO228 contains no provisions authorizing patriotic observances for Independence Day of the United States (Fourth of July) at State facilities to be held during the fiscal emergency.

7. EO228 contains no provisions authorizing expenditures for electioneering, political communications, or for advertising or other materials designed to put a political opponent in a negative light.

8. Notwithstanding the lack of authorization for such political activities, Defendant Christie caused to be printed and erected approximately 500 signs that falsely and maliciously accuse the Assembly Speaker of being the cause of the closure of various state facilities, and suggesting calls be made to the Assembly Speaker's district legislative office. Photographs of the signage, believed to be from Island Beach State Park and Liberty State Park, respectively, are reprinted below.



9. Defendant Christie has confessed to various media sources, as well as to Plaintiff, that in his capacity as Governor, he authorized the printing and the erection of those signs. http://www.nj.com/politics/index.ssf/2017/07/groups_demand_removal_of_wholly_inappropriate_poli.html (last visited Jul. 2, 2017); Exhibit A hereto. It is believed that the cost of the signage and the labor for erecting the signage is drawn from the State Treasury. In addition to paying the costs of the signs and related labor, Defendants Christie, Porrino and Fuentes commanded or authorized that access be given to State facilities by persons erecting the signage so that the signs could actually be posted, and permission for such activity was likewise granted by them or those acting on their behalf and for whom they are responsible.

10. Aside from being posted at state parks and other facilities where Defendant Christie has cancelled recreational access and patriotic observances, as aforesaid, he has also caused the posting of such signs at the New Jersey State House and his temporary Trenton offices:



11. The signs are not informational. They were posted in furtherance of Defendant Christie's efforts to wrest concessions from other branches of government. In fact, as more fully described below, signs were posted on at least two office buildings and one state park that were not literally closed (at least with regard to employees and specific invitees of those employees). The content of the signs is nakedly political. Aside from that, their placement on buildings that are at least "open" to some extent, and not "closed," demonstrates they are not simply informational signs conveying information about a facility. They are instead political advertising – and they are knowingly false to the extent posted on buildings or facilities that are at open or quasi-open. In sum, their purpose is not informational but meant to influence the legislative process.

12. Specifically, signs were and remain posted at two Trenton office facilities which are not "closed," but which in fact are literally open for business (at least with regard to employees and specific invitees):



13. The photograph above is at 225 West State Street, which was being used for government business and which employees and their invitees could access. On information and belief, the same signs were posted at the State House, even though that building was open at least to employees and their invitees. Thus, neither building was literally “closed.”

14. In addition, the signs posted above at Island Beach State Park claiming it was closed were likewise false. Defendant Christie confessed to the New York Times that “he had enjoyed the holiday weekend at a governor’s residence in Island Beach State Park,” even while he ordered or acquiesced in the posting of the sign pictured above falsely saying the park was closed, and closed because of Speaker Prieto. See <https://www.nytimes.com/2017/07/02/nyregion/governor-chris-christie-wages-one-more-fight.html> (last visited Jul. 2, 2017).

15. Plaintiff NJEA is a statewide organization representing teachers and school employees, most of whom are also State taxpayers. At about 11am on July 1, 2017, a representative of Plaintiff attempted to place signage, of similar size, but conveying a message with different content and viewpoints about the true cause of the government shutdown, immediately adjacent to the signs ordered posted by Defendant Christie. This was at the state building housing the Governor's temporary office, located at 225 W. State Street, Trenton, New Jersey, a site that was not literally closed for business as advertised in Defendant Christie's signs, but was in fact open at least to employees and invitees. An unknown uniformed State trooper under the command of Defendant Fuentes, and who was carrying a firearm, approached the representative and ordered him not to place any signs that had content and viewpoint that diverged from the message approved by Defendants. The trooper said that while the Governor could affix signs to that building where he approved of the content, the NJEA representative could not. The representative informed the trooper that his content was suppression of free speech and the government giving preference to one type of political speech over another.

16. By their conduct, the Defendants have caused or authorized State resources to be deployed on political messaging, when there is no valid appropriation or executive order in place authorizing the expenditure of state resources on such messaging, contrary to the substantive rights granted to citizens of the State under the state constitution and statutes.

17. By letter dated July 1, 2017, Plaintiff, among others, sent a letter to Defendant Porrino demanding that Defendants cease and desist from their unlawful conduct, remove all signage, and turn the signage over to the State Police for safekeeping as evidence.

18. By letter dated July 2, 2017, Assistant Attorney General John Bender, on behalf of Defendants, refused to comply with any of Plaintiff's demands, thus making this litigation ripe for resolution by the Courts.

COUNT II – UNCONSTITUTIONAL VIEWPOINT DISCRIMINATION

19. The allegations of Paragraphs 1-18 are incorporated into Count II by reference as if fully set forth at length herein.

20. The free speech protections of the State and Federal Constitutions require that government not abridge the freedom of speech and expression, and that where the abridgement of the freedom of speech and expression is based on its content or viewpoint, that such abridgement cannot stand unless the Government pleads and proves that there is a compelling state interest to do so, and that the manner or abridgement is narrowly tailored in furtherance of that interest.

21. The Defendants herein are illegally using State facilities to convey a political message about the cause of the fiscal emergency (by the posting of signage as aforesaid), and yet simultaneously denying access to those facilities to speakers to post signage of similar size that expresses a different content or viewpoint about the cause of the fiscal shutdown.

22. There is no compelling governmental interest for Defendants' conduct nor is it narrowly tailored to achieve any such interest.

23. Defendants' conduct was an interference and continues to be an interference with Plaintiff's free speech and free expression rights, contrary to the First Amendment, article I, section 6 of the State Constitution, 42 U.S.C. s 1983 and N.J.S.A. 10:6-2.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants:

A. Declaring that the printing and posting of the signs described in this Complaint, or similar signage, and the granting of access to State facilities for the purpose of posting the signs described in this Complaint, or similar signage, is ultra vires and without any enabling legislative or other authority.

B. Declaring that the posting of signs as described in the Complaint, coupled with the denial of Plaintiff's rights to post signs of similar appearance but with different content or viewpoint, violates the First Amendment, article I, section 6 of the State Constitution, 42 U.S.C. s 1983 and N.J.S.A. 10:6-2;

C. Preliminarily and permanently enjoining future violations of these laws;

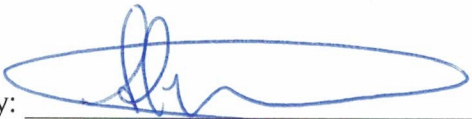
D. Directing all signs that were either paid for with State funds, or the posting of which was paid for with State funds, or erected on State property, to be removed within four (4) hours of the entry of an appropriate order, and further ordering that all such signs be removed and taken into evidence by defendant Fuentes pending further order of the Court;

E. Awarding Plaintiff costs of suit and counsel fees; and

F. Awarding Plaintiff such other and further legal and equitable relief as is just and proper.

Respectfully submitted,

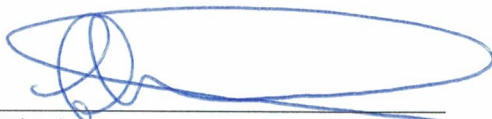
ZAZZALI, FAGELLA, NOWAK,
KLEINBAUM & FRIEDMAN

By: 
Richard A. Friedman
Flavio L. Komuves

Dated: July 3, 2017

DESIGNATION OF TRIAL COUNSEL

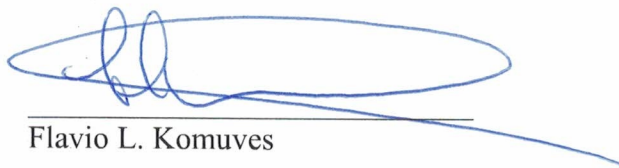
Flavio L. Komuves, Esq. is hereby designated as trial counsel for Plaintiff.


Flavio L. Komuves

Dated: July 3, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Flavio L. Komuves, hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and no such other action or arbitration proceeding is contemplated.

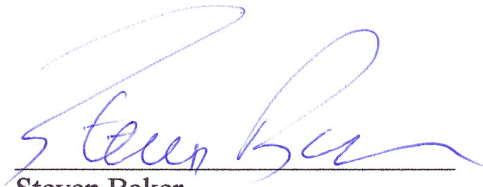


Flavio L. Komuves

Dated: July 3, 2017

VERIFICATION

I, Steven Baker, having been authorized by the Plaintiff in this Complaint, have read the factual allegations therein. I certify that they are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements made by me are knowingly false, that I am subject to punishment.


Steven Baker

Dated: July 2, 2017