



3. Defendant Honorable Bradley I. Abelow is Treasurer of the State of New Jersey with an office located in Trenton, Mercer County, New Jersey.

### **JURISDICTION AND VENUE**

4. Jurisdiction is conferred upon this Court by R. 4:3-1(a)(1), as the primary relief sought is equitable in nature.

5. Venue is proper within this County pursuant to R. 4:3-2(a)(2) because the causes of action against the public agencies or officials arose in this County.

### **BACKGROUND**

6. Plaintiff repeats and reiterates each and every allegation contained in Paragraphs 1-5 of the Plaintiff's Complaint as though fully set forth at length herein.

7. The New Jersey State Constitution provides in Article III, "Distribution of the Powers of Government" that: "The powers of government shall be divided equally among three distinct branches, the legislative, executive and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution." N.J. CONST. ART. III, ¶1.

8. The Legislative Branch of the government of the State of New Jersey is vested with the power and responsibility under the New Jersey State Constitution to pass legislation establishing the budget of the State of New Jersey for each fiscal year. See generally, N.J. CONST. ART. IV.

9. The Legislative Branch of the government of the State of New Jersey passed legislation (Senate Bill No. 2005 of the 2004-2005 legislative session) establishing the budget of the State of New Jersey for Fiscal Year 2005.

10. The Legislative Branch of the government of the State of New Jersey passed legislation (Senate Bill No. 3000 of the 2004-2005 legislative session) establishing the budget of the State of New Jersey for Fiscal Year 2006.

11. The Executive Branch of the government of the State of New Jersey is vested the power and responsibility under the New Jersey State Constitution to approve, subject to the exercise of a line item veto power, legislation establishing the budget of the State of New Jersey for each fiscal year. See generally, N.J. CONST. ART. V.

12. The Executive approved, with certain line item exceptions, Senate Bill No. 2005, which enacted legislation was codified as P.L. 2004, c.71 (the “2005 Appropriations Act”).

13. The Executive approved, with certain line item exceptions, Senate Bill No. 3000, which enacted legislation was codified as P.L. 2005, c.132 (the “2006 Appropriations Act”).

14. The Executive Branch has the constitutional power and responsibility to administer funds appropriated in the annual budgets of the State of New Jersey. See generally, N.J. CONST. ART. V.

15. The Legislative Branch is not permitted under the New Jersey State Constitution to defer to the Executive Branch the Legislative Branch’s constitutionally established power and responsibility to appropriate funds in the annual budgets of the State of New Jersey. See N.J. CONST. ART. III.

16. The Executive Branch is not permitted under the New Jersey State Constitution to defer to the Legislative Branch the Executive Branch's constitutionally established power and responsibilities. See N.J. CONST. ART. III.

17. The Legislative Branch is not permitted under the New Jersey State Constitution to exercise control over the manner in which the Executive Branch carries out its constitutionally established power and responsibilities. See N.J. CONST. ART. III.

18. The Executive Branch is constitutionally required to reasonably administer, and not arbitrarily or capriciously administer, funds appropriated in the annual budgets of the State of New Jersey. See generally, N.J. CONST. ART. V.

19. The 2005 Appropriations Act contained, among other items of appropriations, \$88 million for "Property Tax Assistance and Community Development Block Grants" to be administered by the Treasurer.

20. The Fiscal Year 2006 Appropriations Act contained, among other items of appropriations, \$40 million for "Property Tax Assistance and Community Development Block Grants" to be administered by the Treasurer. Additionally, the 2006 Appropriations Act carried forward unexpended funds from prior year appropriations for the "Property Tax Assistance and Community Development Block Grants."

21. The relevant text concerning the "Property Tax Assistance and Community Development Block Grants" appearing in both the FY 2005 and FY 2006 Appropriation Acts provides:

From the amount appropriated herein above for Property Tax Assistance and Community Development Block Grants, the State Treasurer shall provide State assistance to municipalities, school districts and counties for their local purposes as the State Treasurer shall determine, for the payment of Grants-In-Aid awards to non-governmental entities for health, welfare, educational, or other purposes as the State Treasurer shall determine, and

for assistance to departments or agencies of state government or state authority, commissions or public institutions of higher education as the State Treasurer shall determine, subject to the approval of the Director of the Division of Budget and Accounting and review and approval by the Joint Budget Oversight Committee. The committee shall be provided periodically with a list of grantees approved by the director to review and shall approve or disapprove the list as provided within 10 working days or the list of grantees shall be deemed approved by the committee. No recipient of State assistance or a grant shall receive more than \$5 million from this appropriation. The amount distributed to a municipality, school district or county from this appropriation may be expended by the recipient notwithstanding any law to the contrary.

See FY 2006 Appropriations Act (emphasis added).

22. The Department of the Treasury failed to provide public notice or allow for an open and competitive application process, and otherwise failed to provide for any meaningful administration with respect to the “Property Tax Assistance and Community Development Block Grants.”

23. In lieu of exercising any meaningful administration of the “Property Tax Assistance and Community Development Block Grants,” the Treasurer instead deferred to the Legislative Branch all meaningful control over the selection of grantees by allowing the Legislature to identify the recipients of grant awards from discretionary grant funds appropriated to the Department of Treasury.

24. Then Treasurer John E. McCormac indicated in testimony before the Assembly Budget Committee on May 24, 2005 that, in lieu of any competitive application process, he received lists from legislative leadership identifying which organizations were to receive grants from the \$88 million appropriated in the FY 2005 Appropriations Act for “Property Tax Assistance and Community Development Block

Grants” and the amount that each organization would receive. The following testimony was taken during the May 24, 2005 Assembly Budget Committee hearings:

Assemblyman O’Toole: *The Property Tax Assistance and Community Development grants...I am trying to understand the mechanics of the grant program. How is it set up? Was this what used to be in years past the line item legislative priorities that have now been grouped together, lumped together in one grant project...?*

Treasurer McCormac: *Certainly it is exactly as you described, its an 88 million dollar pot that in prior years it would have been delineated specifically in the budget. For whatever reason late last June the money was not specifically earmarked and it was put into a pool to be decided upon by the leadership of both houses. Treasury merely acts as the processor of the paper work. We receive a list from the Assembly and we receive a list from the Senate as to what grants will be included. That’s then forwarded to the Joint Budget Oversight Committee...We [Treasury] are not involved at all in the approval process of those grants, those come to us pre-approved by the leadership of the Assembly and the Leadership of the Senate...*

See Testimony of John McCormac before Assembly Budget Committee on May 24, 2005; [http://www.njleg.state.nj.us/media/archive\\_audio2.asp?KEY=ABUB&SESSION=2004](http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ABUB&SESSION=2004) starting at 2:02:08.

25. Later in Assemblyman O’Toole’s questioning of Treasurer McCormac, the following testimony was elicited:

Assemblyman O’Toole: *It just strikes me somewhat odd that this 88 million dollar allocation is in your department but yet you have no say as to the review, the selection or the follow-up in terms of auditing these grant monies.*

Treasurer McCormac: *We can audit – we can – but... somebody has to be in charge of it. The legislature can’t spend money only the Executive Branch can spend the money so somebody had to be in charge of overseeing it and making sure the paper work was right – that was selected to be Treasury...*

See Testimony of John McCormac before Assembly Budget Committee on May 24, 2005; [http://www.njleg.state.nj.us/media/archive\\_audio2.asp?KEY=ABUB&SESSION=2004](http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ABUB&SESSION=2004) starting at 2:02:08.

26. The following exchange concluded that portion of the Treasurer’s testimony on the administration of the grant program:

Assemblyman O’Toole: *Okay, in terms of selection review, that’s not your prerogative?*

Treasurer McCormac: *Not at all.*

Assemblyman O'Toole: *In terms of the actual applications, where are those applications? Are they in your Department?*

Treasurer McCormac: *No, no we don't handle any applications. Again, it comes to us pre-approved, they go [singly inaudible word] out. If there is an application process it would be done from the legislature.*

See Testimony of John McCormac before Assembly Budget Committee on May 24, 2005; [http://www.njleg.state.nj.us/media/archive\\_audio2.asp?KEY=ABUB&SESSION=2004](http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ABUB&SESSION=2004) starting at 2:02:08.

27. The sponsor of the 2006 Appropriations Act testified that the allocation of funds from the \$40 million appropriated in the FY 2006 Appropriations Act for "Property Tax Assistance and Community Development Block Grants" and the amount that each organization would receive would occur substantially in the same manner as prior year meaning that decisions as to grant recipients and award amounts would be made by legislators and conveyed to the Treasurer. See Assembly Debate on FY 2006 Appropriations Act [http://www.njleg.state.nj.us/media/archive\\_audio2.asp?KEY=A&SESSION=2004](http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=A&SESSION=2004) beginning at 6:46:00.

28. Plaintiff has obtained copies of Open Public Records Act requests made by staff from the Assembly Republican Office regarding the award of grants from funds appropriated to "Property Tax Assistance and Community Development Block Grants." As the responses to these requests and other Open Public Records Act requests demonstrate, there was no administration of the grant program by the Executive Branch.

29. Open Public Records Act requests made to the Department of the Treasury seeking all government documents utilized by the Department in identifying grant

recipients for the FY 2005 and FY 2006 "Property Tax Assistance and Community Development Block Grants" was met with the following response:

With regard to your request for any and all communications or spreadsheets identifying specific organizations and contact information for the above described grant programs, all records in the possession of the Department of Treasury that list or name identified grantees are records from the Legislature and, therefore, exempt under OPRA.

See Letter dated March 16, 2006 from Barbara O'Hare, Manager of the Government Records Access Unit to Thomas Neff, attached hereto as Exhibit A.

30. In response to Open Public Records Act requests for documents relating to the existence and administration of the grant programs, the Department of Treasury state:

With regard to your request for any and all public notices announcing the existence of the grant programs; any and all general rules and regulations identifying the class of eligible applicants for funding; any and all documents setting forth the general ranking criteria by which competitive applications would be reviewed and criteria used to determine the amounts of funding ultimately awarded to grantees, the Department of Treasury has no records.

See Id.

31. Plaintiff's request to review communications identifying grant recipients sent to the Department of Treasury from the Legislature and their representatives made pursuant to the Open Public Records Act were met with repeated refusals by the Department of Treasury to make such documents available on the grounds that such documents were confidential.

We have reviewed your Open Public Records Act (OPRA) Request W20154 for all documents provided to the Department of Treasury by any representative of the Legislature indicating support for an award of funds from (i) the Department of Treasury's \$40,000,000 Property Tax Assistance and Community Development Block Grants (FY 2006) or (ii) the Department of Treasury's \$88,000,000 Property Tax Assistance and Community Development Block Grants (FY2005)...Your request for records provided to the Department of Treasury by any representative of

the Legislature seeks access to records which fall explicitly within the following exceptions to OPRA.

See Letter dated March 17, 2006 from Barbara O'Hare, Manager of the Government Records Access Unit to David W. Robinson, attached hereto as Exhibit B.

32. Some of the organizations selected by the Legislative Branch to receive grants from the \$88 million appropriated in the FY 2005 Appropriations Act for "Property Tax Assistance and Community Development Block Grants" included: millions of dollars to municipalities with mayors that also serve in positions of legislative leadership; hundreds of thousands of dollars to corporations whose board members included legislators in positions of legislative leadership; and hundreds of thousands of dollars to corporations whose employees included legislators in positions of legislative leadership.

33. Some of the organizations selected by the Legislative Branch to receive grants from the \$40 million appropriated in the FY 2006 Appropriations Act for "Property Tax Assistance and Community Development Block Grants" included: millions of dollars to municipalities with mayors that also serve in positions of legislative leadership; hundreds of thousands of dollars to corporations whose board members included legislators in positions of legislative leadership; and hundreds of thousands of dollars to corporations whose employees included legislators in positions of legislative leadership. See Memorandum dated December 13, 2005 from the Office of Legislative Services to the Members of the Joint Budget Oversight Committee, a copy of which is attached hereto as Exhibit C ; Memorandum dated December 30, 2005 from the Office of Legislative Services to the Members of the Joint Budget Oversight Committee, a copy of which is attached hereto as Exhibit D; and Memorandum dated January 9, 2006 from the

Office of Legislative Services to the Members of the Joint Budget Oversight Committee, a copy of which is attached hereto as Exhibit E .

34. As the Memorandum dated December 13, 2005 and accompanying letter for Treasurer McCormac makes clear, grants for various projects in West New York, New Jersey, where then Assembly Speaker Albio Sires is Mayor totaled in excess of \$1.95 million. Similarly, grants for various projects in Lawnside where Senator Wayne Bryant's brother is Mayor and where Senator Bryant's law firm is solicitor totaled approximately \$700,000. See Exhibits C and E. These are but a few examples of the manner in which the Legislative Branch has unconstitutionally administered the monies it appropriated to the Executive Branch in the FY 2005 and FY 2006 Appropriations Acts.

35. Documents that have been obtained relating to the awarding of grants demonstrate that the grantees were not selected by the Treasurer based upon applications or qualifications but rather based upon private determinations made by unknown officers or staff of the Legislative Branch after the money for the grant program was appropriated to the Executive Branch for administration. Indeed, it appears as though grant recipients were designated to receive certain funds by the Legislative Branch prior to the recipient even being aware of the existence of the grant program. Take for example the case of Babyland Family Services in Newark. On December 9, 2004, Babyland was advised by the Treasury Department that "as part of the Fiscal Year 2005 State budget, your organization has been awarded a \$200,000 grant for operational support (\$100,000) and renovations to childcare facilities (\$100,000)." A copy of the December 9, 2004 letter from Treasury to Babyland is attached hereto as Exhibit F. No such grant appears in the FY 2005 Appropriations Act. On December 15, 2004, Babyland passed a resolution

authorizing it to apply for the \$200,000 grant that it had already been awarded. A copy of the Resolution is attached hereto as Exhibit G. Thus, based upon the documentary evidence, Babyland was notified that it had received a grant in the FY 2005 Appropriations Act on December 9, 2004 and six (6) days later on December 15, 2004, it's board of directors passed a resolution authorizing the entity to "apply" for the grant it had already received.

36. Transactions similar to that involving Babyland took place with grants to the Town of West New York, New Jersey. On December 7, 2004, the Treasury Department wrote to advise Carmella Riccie, the Town Clerk of the Town of West New York that as part of the FY 2005 Appropriations Act, the town had been awarded three grants in the amount of \$1,400,000, \$1,350,000 and \$250,000 respectively. Copies of the letters from Treasury to Ms. Riccie are attached hereto as Exhibit H. On January 19, 2005, the Mayor of West New York, Albio Sires, also known at the time as Speaker of the Assembly Albio Sires, executed resolutions authorizing the Town of West New York to apply for the \$3,000,000 in grants that it had already been awarded. A copy of the Resolutions are attached hereto as Exhibit I. On January 25, 2005, the Treasury Department wrote to Mayor/Speaker of the Assembly Sires to provide a copies of the three grant agreements relating to the grants that had been awarded based upon the Town of West New York's "grant application." Copies of the letters from the Treasury Department to Mayor/Speaker of the Assembly Sires are attached hereto as Exhibit J.

37. A similar transaction occurred with grants to Union City. On December 8, 2004, Brian Stack, Mayor of Union City, otherwise known as Assemblyman Brian Stack of the 33<sup>rd</sup> Legislative District, was advised that "as part of the Fiscal Year 2005 State

budget, your organization has been awarded a \$150,000 grant for the master plan.” A copy of the December 8, 2004 letter is attached hereto as Exhibit K. A review of the FY 2005 Appropriations Act reveals no grant award to Union City. On December 21, 2004, the Union City Board of Commissioners resolved to apply for the \$150,000 grant the city had already been awarded. A copy of the Resolution is attached hereto as Exhibit L. On January 12, 2005, the Department of the Treasury forwarded Mayor/Assemblyman Stack, a copy of the grant agreement. A copy of the January 12, 2005 letter is attached hereto as Exhibit M. This same scenario was repeated with two additional grants to Mayor/Assemblyman Stack and Union City comprising an additional \$250,000 in “pre-approved” grants, one for \$150,000 and the other for \$100,000. Copies of these documents are attached hereto as Exhibit ON.

38. As of March 27, 2006, the Department of Treasury had on hand more than \$25 million of funds appropriated for the “Property Tax Assistance and Community Development Block Grants.” These funds are intended to be disbursed to grantees who were awarded funds by legislators in an unconstitutional and noncompetitive manner.

39. On March 16, 2006, Plaintiff wrote to Defendants demanding that they impound the funds to protect them from being disbursed in the unconstitutional manner outlined above. Defendants failed to respond to this request. A copy of the March 16, 2006 letter from Mark D. Sheridan to Governor Corzine and Treasurer Abelow is attached hereto as Exhibit O.

40. In the event the Court does not declare the FY 2006 Appropriations Act unconstitutional and does not enjoin the expenditure/disbursement of the remaining

funds, Plaintiff, the citizens of New Jersey and the State of New Jersey will be irreparably harmed.

### **COUNT I**

41. Plaintiff repeats and reiterates each and every allegation contained in Paragraphs 1 through 40 of the Plaintiff's Verified Complaint as though fully set forth at length herein.

42. The New Jersey State Constitution vests with the Legislative Branch the responsibility and obligation to appropriate funds.

43. The New Jersey State Constitution vests with the Executive Branch the responsibility and obligation to administer funds once they have been appropriated by the Legislative Branch.

44. The FY 2005 and FY 2006 Appropriations Acts grant the Legislative Branch authority to "veto" or disapprove of the Executive Branch's administration and awarding of the "Property Tax Assistance and Community Development Block Grants."

45. To the extent the FY 2005 and FY 2006 Appropriations Acts grant the Legislative Branch the authority to "veto" or disapprove of the Executive Branch's administration and awarding of the "Property Tax Assistance and Community Development Block Grants," the FY 2005 and FY 2006 Appropriations Acts violated Article III of the New Jersey State Constitution.

### **COUNT II**

46. Plaintiff repeats and reiterates each and every allegation contained in Paragraphs 1 through 44 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

47. The New Jersey State Constitution requires the Executive Branch to administer funds appropriated by the Legislature and prohibits the Executive Branch from deferring this power to the Legislature.

48. The Legislative Branch determined where grants from the “Property Tax Assistance and Community Development Block Grants” were given and the amount of those grants.

49. The Executive Branch played no formal role in selecting grant recipients or administering the grant program.

50. To the extent Treasurer and the Executive Branch deferred to the Legislature the administration of “Property Tax Assistance and Community Development Block Grants,” the Treasurer and the Executive Branch violated Article III of the New Jersey State Constitution.

51. Plaintiff is entitled to a declaration that the Executive Branch’s deferral to the Legislative Branch of the administration of the “Property Tax Assistance and Community Development Block Grants” appropriated in the FY 2005 and 2006 Appropriations Act is unconstitutional and for an injunction to be imposed on the further expenditure or obligation of \$20 million of such funds remaining with the Department of Treasury. Plaintiff is further entitled to this declaratory relief on an emergent basis as any delay will allow a constitutionally infirm process of dispensing public funds to continue unabated at a rate that will exhaust all remaining funds and render the issue moot. Failure to address this issue will result in irreparable harm to the State of New Jersey, its residents, and the Plaintiff.

### COUNT III

52. Plaintiff repeats and reiterates each and every allegation contained in Paragraphs 1 through 51 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

53. The New Jersey State Constitution requires the Executive Branch to act reasonably and to refrain from acting in an arbitrary and capricious manner.

54. The Governor and Treasurer had a constitutional and statutory responsibility to establish a reasonable administration of grant programs appropriated by the Legislature.

55. The Governor and Treasurer acted arbitrarily and capriciously when allocating funds appropriated for "Property Tax Assistance and Community Development Block Grants" based upon recommendations of the Legislature which followed no reasonable process of decision-making.

56. Plaintiff is entitled to a declaration that the current arbitrary and capricious administration of "Property Tax Assistance and Community Development Block Grants" is unconstitutional and for an injunction to be imposed on the further expenditure of funds. Plaintiff is further entitled to this declaratory relief on an emergent basis as any delay will allow a constitutionally infirm process of dispensing public funds to continue unabated at a rate that will completely exhaust all remaining funds and render the issue moot. Failure to address this issue will result in irreparable harm to the State of New Jersey, its residents, and Plaintiff.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an Order for the following:

1. Declaring the FY 2005 and FY 2006 Appropriations Acts to be unconstitutional as violative of Article III of the New Jersey State Constitution;
2. Declaring that the power of the Executive Branch to administer appropriated funds may not be deferred to the Legislative Branch;
3. Declaring that the Executive Branch, with respect to the FY 2005 and 2006 Appropriations Acts, deferred to the Legislative Branch its power to administer \$128 million appropriated for "Property Tax Assistance and Community Development Block Grants" intended to be administered by the Treasurer;
4. Enjoining the awarding "Property Tax Assistance and Community Development Block Grants" in a manner inconsistent with the dictates of the New Jersey State Constitution;
5. Compelling the Executive Branch to obtain the return of all grants awarded pursuant to the unconstitutional scheme employed by Defendants and the Legislative Branch;
6. Awarding attorneys fees and costs of suit; and
7. Such other relief as the Court may deem proper and just.



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Dated: March 29, 2006