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<p>MOSHE ROZENBLIT and QWON KYU RIM,</p> <p>Plaintiffs/Appellants/ Cross-Respondents,</p> <p>v.</p> <p>MARCIA V. LYLES, in her official capacity as Superintendent of the Jersey City Board of Education, et al.,</p> <p>Defendants/Respondents,</p> <p>and</p> <p>JERSEY CITY EDUCATION ASSOCIATION,</p> <p>Defendant/Respondent/Cross-Appellant.</p>	<p>SUPREME COURT OF NEW JERSEY</p> <p>CIVIL ACTION</p> <p>DOCKET NO. 083434</p> <p>On Cross-Petition for Certification of the Final Order of the Superior Court, Appellate Division Docket No. A-1611-17T1</p> <p>Sat below: Hon. Jose L. Fuentes Hon. Francis J. Vernioia Hon. Scott J. Moynihan</p>
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**BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION
AND AMERICANS FOR PROSPERITY-NEW JERSEY IN SUPPORT OF
PLAINTIFFS/APPELLANTS/CROSS-RESPONDENTS ROZENBLIT, ET AL.,
AND AFFIRMING THE JUDGMENT OF THE APPELLATE DIVISION**

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IDENTITY AND INTEREST OF AMICI CURIAE

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. PLF has supporters across the country, including in the State of New Jersey. Among other matters affecting the public interest, PLF frequently litigates to defend constitutional limitations on government action, including a state constitution's Gift Clause. *Cheatham v. DiCiccio*, 379 P.3d 211 (Ariz. 2016). PLF has also participated as amicus curiae on a variety of public policy issues in New Jersey state courts, including in the court below. *See, e.g., Rozenblit v. Lyles*, 461 N.J. Super. 20 (N.J. App. Div. 2019); *Morgan v. Sanford Brown Inst.*, 225 N.J. 289 (2016); *Gripenburg v. Twp. of Ocean*, 220 N.J. 239 (2015); *Atalese v. U.S. Legal Services Group, L.P.*, 219 N.J. 430 (2014); *Klumpp v. Borough of Avalon*, 202 N.J. 390 (2010); *Sinclair v. Merck & Co., Inc.*, 195 N.J. 51 (2008).

Americans for Prosperity-New Jersey (AFP-NJ) is a broad-based grassroots outreach organization dedicated to driving long-term solutions to the country's biggest problems. AFP-NJ activists, numbering more than 89,000, engage friends and neighbors on key issues and encourage them to take an active role in building a culture of mutual benefit, where people succeed by helping one another. AFP-NJ recruits and unites New Jerseyans behind a common goal of advancing policies that will help people improve their lives. It is committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.

As part of its mission, AFP-NJ is committed to ensuring the proper expenditure of public funds. The transfer of taxpayer dollars to private enterprises is a major driver of high taxes and spending, and they are unfair as they benefit only a few special interests at taxpayers' expense.

AFP-NJ works to eliminate all forms of corporate welfare so that states may lower tax rates for all, create a more level playing field, and free up tax dollars for essential services.

PLF and AFP-NJ are particularly interested in this case because taxpayer money should be used exclusively for public purposes; it should not be used to fund private activities that only provide—at best—incidental benefits to the public, especially where the government cannot control the way the money is spent.

INTRODUCTION AND SUMMARY OF ARGUMENT

In case below, the New Jersey Court of Appeals held that the release of two teachers to work full-time for the local teachers' union pursuant to the terms of the collective bargaining agreement at issue was not authorized by statute, was against public policy, and that public funds could no longer be used to pay those teachers' salaries. *Rozenblit*, 461 N.J. Super. 20.

That decision is well-reasoned, fully supported, and should be upheld for the reasons stated therein. That decision also must be upheld because it comports with and is compelled by the Gift Clause of the New Jersey Constitution.

The question of whether a government expenditure amounts to an unconstitutional gift begins and ends with the answer to another question: was there a grant of public property or money to a private organization or individual that amounts to a “gift?” In this case, two New Jersey taxpayers challenge a contract between the private Jersey City Education Association (JCEA) and the public Jersey City School District (District). The contract contains a provision requiring the District to give full classroom teacher's salaries and benefits to the private union's president and vice-president, despite the fact that neither the union's president nor its vice-president perform any classroom teacher duties whatsoever for the District. *See Rozenblit*, 461 N.J. Super. at 23 (the “CBA . . . requires the Board to pay the salaries and benefits of two teachers selected by [the

JCEA] to serve as ‘president . . . and his/her designee, and to allow them to devote all of their work-time to the business and affairs of the JCEA.’”) (first ellipses added, second in original). All parties concede that neither the president nor the vice-president have led a classroom in years. They get paid a teacher’s salary, but they don’t teach. Under New Jersey constitutional law, that amounts to a gift to the union.

When a public entity pays someone for work and that person does not actually show up and do the work—in this case, *teach*—that’s colloquially known as a “no show job.” New Jersey officials and courts traditionally label this type of no-show bargain corrupt. *See, e.g., Tiene v. Jersey City*, 13 N.J. 478, 483 (1953) (city freeholders ask for judicial investigation of municipal corruption in part because of municipal expenditures directed towards “‘no-show’ jobs.”).

Here, nobody alleges that the union president and vice-president are “corrupt.” But they are accepting a gift of government monies, a gift that the New Jersey Constitution prohibits the school board from giving. That the gift was the price the union charged for negotiating a labor agreement does not turn the gift into an exchange for services rendered. The salaries in question were intended to pay teachers to teach; the employees in question didn’t teach but instead performed full-time work for a private enterprise. That’s a gift. The JCEA may try to recast payment intended for teaching as payment for something else of value to the District, but that is not what the parties agree the agreement provides. *See Rozenblit*, 461 N.J. Super at 23.

The Gift Clause in the New Jersey Constitution prohibits transfers of government money to private entities, like the union, because it amounts to a gift: “No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation[.]” N.J. Const. art. VIII, § 3, ¶ 2. The underlying principle of the New Jersey Constitution’s Gift Clause is that “public money should be raised and

used only for public purposes.” *Roe v. Kervick*, 42 N.J. 191, 207 (1964). *Roe* sets out a test to determine whether a government transfer of money to a private entity is legitimate. The “teacher salary” payment to union officials fails the test. Critically, there is no quid pro quo, and the District has no authority or control over the JCEA President and Vice-President, despite paying them as if they were “employees” of the District. *See Roe*, 42 N.J. at 207. The lack of control is fatal to the JCEA’s argument that this bargain survives Gift Clause scrutiny.

The Gift Clause exists for the express purpose of protecting taxpayers from subsidizing private organizations, directly—as in this case—or indirectly. But this is not a complicated indirect funding scheme. These payments are mandated explicitly in the contract between the District and the union. *Cf. Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia., J., dissenting) (“Frequently an issue of this sort will come before the Court clad, so to speak, in sheep’s clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf.”). The school board pays a teacher’s salary and benefits for two former teachers who no longer teach or even work for the school board: the JCEA controls the time of the employees and the taxpayer money. The lower court was correct that the District acted *ultra vires* when it agreed to fund the salaries of union officials, but that decision also is correct because the transfer amounted to an unconstitutional gift. For these reasons, the decision below should be affirmed.

ARGUMENT

I

WHETHER AN EXPENDITURE VIOLATES THE GIFT CLAUSE CENTERS ON WHO CONTROLS USE OF THE MONEY

Article VIII, Section 3, paragraph 3 of the state constitution comprises what is commonly known as the Gift Clause in the New Jersey Constitution. It reads as follows:

No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

This Court explained in *Roe* the purpose behind Article VIII, which includes the Gift Clause as well as other restrictions on government largesse, as relevant here: “The strictures of Article VIII . . . established as basic policy a prohibition against . . . giving or donating [state] money or property or that of its subdivisions to or for the use of an individual, association or corporation for private purposes.” *Roe*, 42 N.J. at 207.

When applying the Gift Clause and Article VIII to individualized sets of facts, the New Jersey courts have struck down a variety of transfers of public funds to private enterprise, forgiveness of debts owed to the state, or loans of public money for private purposes. *See, e.g., City of East Orange v. Board of Water Comm’rs*, 79 N.J. Super. 363 (App. Div. 1963) (lease of municipal land to country club with nominal consideration was an unconstitutional gift); *Wilentz v. Hendrickson*, 13 N.J. Eq. 447 (N.J. Ch. 1943), *aff’d*, 135 N.J. Eq. 244 (E & A 1944) (constitution prohibits legislative forgiveness of debt); *In re: Vorhees’ Estate*, 123 N.J. Eq. 142, 150 (N.J. Prerog. Ct. 1938), *aff’d sub nom., Union County Trust Co. v. Martin*, 121 N.J.L. 594 (N.J. Sup. Ct. 1939), *aff’d*, 124 N.J.L. 35 (E & A 1940) (statute allowing for forgiveness of estate debt due and owing to state void as allowing unconstitutional gift); *Strock v. East Orange*, 77 N.J.L. 382 (N.J. Sup. Ct. 1909) (ordinance authoring gift of municipal property for use as park violates gift clause).

Roe sets out a multifactor test that Judge Hall helpfully boiled down to its essence in his *Roe* concurrence: “The majority opinion, in effect, utilizes three criteria to take a public aid project out of the constitutional prohibitions . . . that the purpose is a public one,” that the project is designed to accomplish that purpose, “and that a sufficient measure of public control is provided to assure effectuation and safeguard the public investment, so to speak.” *Roe*, 42 N.J. at 235

(emphasis added). All of these factors must be met to survive Gift Clause review. *See New Jersey Citizen Action, Inc. v. County of Bergen*, 391 N.J. Super. 596, 608 (App. Div.), *cert. denied*, 192 N.J. 597 (2007) (setting out how all *Roe* factors must be met).

As a matter of New Jersey labor law, the transfer at issue in this case cannot meet the control requirement, and thus the Court’s inquiry should begin and end here: the school board has no control over the money it grants the JCEA pursuant to the agreement to fund the salaries of the “teachers.” New Jersey’s Employer-Employee Relations Act is clear: “Public employers, their representatives or agents are prohibited from: (1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.” N.J.S.A. 34:13A-5.4(a)(1). This means that the school board may not “interfere with” the JCEA President or Vice-President. If it does, it would be guilty of engaging in unfair labor practices.

And what does that mean in practice? First, it means the school board cannot *ever* terminate the JCEA President or Vice-President even though it pays their salary and benefits, because their duties—pursuant to the collective bargaining agreement—are 100% devoted to their union work, and public employers cannot fire an employee for union activities. *See In re Bd. of Fire Comm’rs*, 443 N.J. Super. 158, 173 (App. Div. 2015), *cert. denied*, 226 N.J. 213 (2016). History certainly proves this true. As described in the State of New Jersey’s Commission of Investigation 2012 inquiry into the state’s practice of transferring public monies to private unions, “A Jersey City School District teacher currently on full-time union leave has been a member of the Teachers’ Pension and Annuity fund (TPAF) *for more than 54 years*[.]” *See* State of New Jersey Commission of Investigation, *Union Work, Public Pay: The Taxpayer Cost of Compensation and Benefits for Public-Employee Union Leave* at 22 (May 2012)¹ (study of union contracts from 2006-2011).

¹ www.state.nj.us/sci/pdf/SCIUnionReport.pdf.

Likewise, “[a]nother Jersey City teacher received an extended leave of absence while serving as an officer of the [Jersey City] local teachers’ union. Employed by the district for approximately 40 years, this individual spent nearly half that time on a full-time leave of absence for union business.”

Id.

Short of firing, the court may consider other ways a school board might be able to control an employee. But demotion for engaging in union activities is not allowed, either. *See Matter of Bridgewater Twp.*, 95 N.J. 235, 237 (1984). Indeed, an employer may not take *any* adverse action against a worker for union activity. *Id.* Since the collective bargaining agreement calls for the two teachers working for the union to dedicate “all” of their time to union activity, *Rozenblit*, 461 N.J. Super. at 23, they are, according to the very terms of the agreement, legally immune from any effort of the school board to control them. But the government *must* retain control in order for this government grant to pass *Roe* muster.

The state constitution requires that the District retain control over these union officials for this release time agreement to withstand examination. *See, e.g., N.J. Citizen Action, Inc.*, 391 N.J. Super. at 604 (a loan may be permissible under the state constitution’s Gift Clause if it achieves a public purpose and “the loan’s ‘use [is] confined to the execution of that purpose *through a reasonable measure of control* by a public authority’”) (citation omitted; emphasis added); *Jersey City v. State of N.J. Dep’t of Env’tl. Protection*, 227 N.J. Super. 5, 21 (App. Div. 1988) (no Gift Clause violation where the “State retains *very substantial and close control*”) (emphasis added).

To be sure, the JCEA may insist that the gift is not in fact a gift because that was not the intent behind the collective bargaining agreement, but this Court must reject that entreaty as an improper evasion of the true nature of the transaction. “The insistence that the appropriation of the public funds to a private enterprise is contractual rather than donative has long been the fashionable

plea.” *Wilentz*, 133 N.J. Eq. at 474 (disallowing legislative forgiveness of private debt as improper gift, even though that was not the intent). Regardless of what motivated this portion of the collective bargaining agreement, that motivation does not change the fact that the provision is a transfer of public funds to benefit a private enterprise and thus that it is a gift that does not survive *Roe* scrutiny.

The JCEA President and Vice-President are dedicated 100% to union activity and any attempt to control them would amount to improper discipline for engaging in protected activities. Since *any* effort by the School Board to control these employees would lead to an inevitable employment law retaliation case against the school board for punishing those union officials for labor activity, *see, e.g., In re Bd. of Fire Comm’rs, and Matter of Bridgewater Twp.*, as a matter of law this arrangement constitutes an improper gift under the Gift Clause.

II

THE CONSTITUTIONAL GIFT CLAUSE DEMANDS ACCOUNTABILITY AND PRUDENT EXPENDITURE OF TAXPAYER FUNDS AND FORBIDS SWEETHEART DEALS

In 2012, the New Jersey Commission of Investigation researched arrangements like the one at the center of this case, and published findings and recommendations that demonstrated the concerns that animated the drafting of the Gift Clause remained valid concerns today. A look at the history of what has come to be known as the Gift Clause, coupled with a review of the Commission’s findings specifically as they relate to the JCEA, demonstrates why this Court should strike down the release-time arrangement at issue here as a Gift Clause violation.

A. The Gift Clause Reflects Public Concern with Taxpayer Money Lining Private Pockets

The *Roe* Court explained that a key motivation for adding the Gift Clause to the New Jersey Constitution was the abuse inherent in the direct transfer of public money to private interests:

During the nineteenth century states and their political subdivisions frequently undertook to encourage the development of railroads by furnishing financial aid. Such assistance was in the form of direct loans or gifts of public money or property, or by bond issues, or subscription to stock of the companies. *Many abuses followed in the wake of such practices to the serious detriment of the taxpayer.*

Roe, 42 N.J. at 206 (emphasis added) (citations omitted).

G. Alan Tarr, Director of the Center for State Constitutional Studies and Distinguished Professor of Political Science at Rutgers University at Camden, elaborates on the 19th Century rationale behind state constitutional gift clauses:

Constitutional efforts to reconcile the release of economic energies *with the avoidance of special privilege* began early in the nineteenth century . . . The main impetus for constitutional change came from the economic collapse of 1837, when nine states defaulted on their debts. In its aftermath, state constitutions were revised or amended to curtail legislative promotion of economic development and remove public authority from allocation decisions.

G. Alan Tarr, *Understanding State Constitutions* at 112 (1998). And indeed, the first portion of the New Jersey Constitution’s prohibitions on government gifts to private enterprise, what is now Article VIII, Section 2, Paragraph 1 (“The credit of the State shall not be directly or indirectly loaned in any case.”), was added to the state constitution in 1844, on the heels of the 1837 economic crisis. *See* former Article IV, Section VI, paragraph 3.²

Likewise, the other relevant provisions of Article VIII— Section III, paragraphs 2 and 3— were added in 1875, *see Roe*, 42 N.J. at 206, following the “economic crisis of 1873.” They evinced, as similar state constitutional provisions adopted at the time also evinced, “a determined attempt to restrict government forays into economic boosterism and favoritism.” *Understanding State Constitutions, supra* at 113. Simply put, the taxpayers were tired of seeing their money

² <https://www.state.nj.us/state/archives/docconst44.html#art8>.

wasted on private activities, and they elected legislators who amended the Constitution to put a stop to it.

B. State Investigation Documents Reveal That Adoption of Gift Clause Was Animated by the Same Concerns that Arise in Payments to Union Employees for No-Show State Teaching Jobs

In 1968, the Legislature created the State Commission of Investigation. N.J.S.A 52:9M, M-1. The statutory duties of this four-person commission are to conduct investigations in connection with:

- a. The faithful execution and effective enforcement of the laws of the State, with particular reference but not limited to organized crime and racketeering;
- b. *The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;*
- c. Any matter concerning the public peace, public safety and public justice.

N.J.S.A 52:9M-2 (emphasis added). In 2012, this Commission turned its eyes to the public employees paid with taxpayer money but doing nothing except union work. “The inquiry . . . was an outgrowth of the Commission’s ongoing work to examine the expenditure of tax dollars at all levels of government in New Jersey.” *Union Work Public Pay* at 4.

Although the entire report is well worth reading, there are certain salient points identified in the report that demonstrate that the arrangement here between the school board and the JCEA violates the Gift Clause. First and foremost, the report concludes that the agreement between the school board and the JCEA, like other public/private labor agreements, “burden[s] taxpayers with the cost of activity conducted *on behalf of a private entity.*” *Id.* at 5 (emphasis added). Prohibiting the burdening of taxpayers with the cost of activities conducted on behalf of a private entity is exactly what the Gift Clause was designed by the Legislature to do. N.J. Const. art. VIII, § 3, par.

2 (“No county, city, borough, town, township or village shall hereafter give any money . . . to or in aid of any individual, association or corporation.”).

And, as discussed above, the reason for this *constitutional* prohibition of gifts of public monies to private entities was to prevent public financing with no strings attached to private entities. *See Roe*, 42 N.J. at 206. The statutorily-created Commission of Investigation determined that it was for this very reason that public payoffs to private unions were so galling, “given the current backdrop of severe economic and budgetary pressures that demand scrutiny of all public spending.” *Union Work Public Pay* at 5.

In other words, the school board and JCEA had agreed to pay union officials *not to teach in public schools*, but rather to serve the private interests of the union, despite the fact that the State of New Jersey faced (and continues to face) severe economic hardship as its debt far outpaces its income. *See Truth in Accounting, New Jersey Taxpayer Burden Highest in Nation*, June 2017 (“Repeated decisions by state officials have left the state with a staggering debt burden of \$208.9 billion, according to Truth in Accounting’s (TIA) analysis of the most recent financial filings. That burden equates to \$67,200 for every New Jersey taxpayer.”).³ In New Jersey as governed by its state constitution, using public monies to pay salaries to private association officials is not just a bad public policy choice in a time when the state faces a crushing debt burden; it violates the state constitution’s Gift Clause.

The Commission of Investigation’s report singles out Jersey City for harsh criticism, since the problem is particularly acute there:

A longstanding contractual arrangement has resulted in the grant of full-time leave for union business for certain officers of the Jersey City Education Association (JCEA). Under this arrangement, two individuals had been on such leaves of absence *for approximately*

³ <https://www.truthinaccounting.org/library/doclib/NJ-2016-2pager.pdf>.

20 years as of the end of the 2010-11 school year, when one of them retired and was replaced. Although these individuals report to union-owned offices on a daily basis, the contract requires the district to provide one of them with regular district parking and office space. The full cost of salaries and medical benefits for both union leave positions is borne solely by the district, an arrangement that cost taxpayers *nearly \$1.2 million* during school years 2006-07 through 2010-11.

Union Work Public Pay at 14-15 (emphasis added). The investigators' report continues with more details about the JCEA/school board deal:

A Jersey City School District teacher currently on full-time union leave has been a member of the Teachers' Pension and Annuity Fund (TPAF) for more than 54 years. This individual has been on union leave as a local union official since 1990. As of March 1, 2012, he was entitled to an annual pension of approximately \$112,000, even though he spent nearly half of his public employment service on full-time union leave. Another Jersey City teacher received an extended leave of absence while serving as an officer of the local teachers' union. Employed by the district for approximately 40 years, this individual spent nearly half that time on a full-time leave of absence for union business. He recently retired with an annual state pension of approximately \$67,000.

Union Work Public Pay at 22.

As highlighted by the Investigative Report, "teachers" paid by the school board for teaching had not in fact taught on behalf of the school board for more than two decades, but instead performed duties exclusively for the JCEA. That is what is colloquially called a "no-show job." *See* Wikipedia, "*No show job*," ("A no-show job is a paid position that ostensibly requires the holder to perform duties, but for which no work, or even attendance, is actually expected. The awarding of no-show jobs is a form of political or corporate corruption.").

No-show jobs are not new in New Jersey. In the past, the state of New Jersey prosecuted individuals for corruption when they obtained public compensation for no-show jobs. *See, e.g., State v. Hanly*, 127 N.J. Super. 436, 442 (N.J. App. Div. 1974) (employee of county-owned

hospital who pays “employees” who don’t show up for work at hospital, but instead provide other non-public services, guilty of corruption); *State v. Kropke*, 123 N.J. Super. Ct. Law Div. 413, 415 (1973) (defendants indicted for taking payments for “no-show” jobs for Hudson County Police Department).

The amicus brief filed with this Court by the Public Employment Resource Commission (PERC) in support of this arrangement as a proper form of negotiated “release time” no different than a negotiation between labor and management about sick leave, vacation leave, or bereavement leave, cannot be reconciled with the findings of the state Investigative Commission. The commission report found that school district “employees” had not actually worked for the district for at least 20 years, yet PERC suggests that this is a routine matter to be negotiated as long as those decades of absence are euphemistically labeled “release time.” One wonders how many years of “release time” would be too much for PERC. Thirty years? Forty years? If a “teacher” never actually taught for an entire career, could that “teacher” be said to be simply on a “release time” break if the teacher was representing the union all along? PERC is silent on that question.

In concluding its report, the Commission of Investigation recommends “eliminat[ing] or substantially curtail[ing] taxpayer funded union leave.” *Id.* at page 24 (capitalization standardized). This Court is the right New Jersey institution to do so. It should lift the stay and hold that taxpayer-funded union leave violates the New Jersey Constitution’s Gift Clause, affirming that the appellate court correctly labeled the school board/union release time arrangement as void. A school board paying a teacher not to teach, but instead to work full-time for the union, violates New Jersey law, violates the New Jersey Constitution’s Gift Clause, and must come to an end.

CONCLUSION

New Jersey taxpayers have a responsibility to challenge government expenditures that violate state law, including provisions of the state constitution. *See, e.g., Freedom From Religion Found. v. Morris Cty. Bd. of Chosen Freeholders*, 232 N.J. 543 (2018) (challenge to government program that allocated taxpayer funds to restore churches in violation of state constitution); *Jen Elec., Inc. v. Cty. of Essex*, 197 N.J. 627, 644 (2009) (taxpayers may challenge award of public contracts); *Lance v. McGreevey*, 180 N.J. 590 (2004) (taxpayers' constitutional challenge to appropriations act that relied on borrowed funds from bond sales to fund general expenses.). New Jersey's taxpayers expect public funds to pay for government that serves them, not special interests. The state constitution's Gift Clause safeguards precisely this interest; that's why it was added to the state constitution. This Court should affirm the decision below both because the school board acted *ultra vires* when it agreed to pay union officials not to teach, and because the payment of teacher salaries to two individuals who are not teachers and instead work solely for the union violates the state constitution's Gift Clause.

DATED: April 28, 2020.

Respectfully submitted,

s/ Mark Miller

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I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 28, 2020.

Respectfully submitted,

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ORDER ON MOTION

MOSHE ROZENBLIT AND QWON KYU
RIM
V
MARCIA V LYLES ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001611-17T1
MOTION NO. M-007364-17
BEFORE PART J
JUDGE(S): MARIE P SIMONELLI

MOTION FILED: 06/07/2018

BY: PACIFIC LEGAL FOUNDATION

ANSWER(S)
FILED:

SUBMITTED TO COURT: June 25, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
28th day of June, 2018, HEREBY ORDERED AS FOLLOWS:

MOTION BY AMICUS

MOTION TO APPEAR AS
AMICUS CURIAE

GRANTED AND OTHER

SUPPLEMENTAL:

The granting of this motion extends participation in oral argument,
if requested by appellants or respondents.

FOR THE COURT:



MARIE P SIMONELLI, P.J.A.D.

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<p>MOSHE ROZENBLIT and QWON KYU RIM,</p> <p>Plaintiffs/Appellants/ Cross-Respondents,</p> <p>v.</p> <p>MARCIA V. LYLES, in her official capacity as Superintendent of the Jersey City Board of Education, et al.,</p> <p>Defendants/Respondents,</p> <p>and</p> <p>JERSEY CITY EDUCATION ASSOCIATION,</p> <p>Defendant/Respondent/Cross-Appellant.</p>	<p>SUPREME COURT OF NEW JERSEY</p> <p>CIVIL ACTION</p> <p>DOCKET NO. 083434</p> <p>On Cross-Petition for Certification of the Final Order of the Superior Court, Appellate Division Docket No. A-1611-17T1</p> <p>Sat below: Hon. Jose L. Fuentes Hon. Francis J. Vernoia Hon. Scott J. Moynihan</p>
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**PACIFIC LEGAL FOUNDATION’S MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE ON BEHALF OF BOTH PLF AND PROPOSED
AMICUS AMERICANS FOR PROSPERITY-NEW JERSEY, IN SUPPORT OF
PLAINTIFFS/APPELLANTS/CROSS-RESPONDENTS ROZENBLIT, ET AL.,
AND AFFIRMING JUDGMENT OF THE APPELLATE DIVISION**

Pursuant to New Jersey Rule of Court 1:13-9(a) and 1:13-9(d)(4), Pacific Legal Foundation (PLF) respectfully requests permission to file its amicus brief in support of taxpayers Moshe Rozenblit and Qwon Kyu Rim on behalf of both Americans for Prosperity-New Jersey (AFP-NJ), which has *not* yet received permission to participate as amicus, *see* Rule 1:13-9(a), and on behalf of PLF, which *has* already received permission to participate as amicus from the Appellate Division, *see* attached order, and thus is entitled to file this brief without further leave of this Court. *See* Rule 1:13-9(d)(4). The parties previously have informed the Court that they do not oppose participation of amici. *See* Parties' Notice of No Objection to Amicus Curiae Briefs, dated Feb. 20, 2020.

Americans for Prosperity-New Jersey is a broad-based grassroots, outreach organization dedicated to driving long-term solutions to the country's biggest problems. AFP-NJ activists, numbering more than 89,000, engage friends and neighbors on key issues and encourage them to take an active role in building a culture of mutual benefit, where people succeed by helping one another. AFP-NJ recruits and unites New Jerseyans behind a common goal of advancing policies that will help people improve their lives. It is committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.

As part of its mission, AFP-NJ is committed to ensuring the proper expenditure of public funds. The transfer of taxpayer dollars to private enterprises is a major driver of high taxes and spending, and they are unfair as they benefit only a few special interests at taxpayers' expense. AFP-NJ works to eliminate all forms of corporate welfare so that states may lower tax rates for all, create a more level playing field, and free up tax dollars for essential services.

PLF is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. PLF has

supporters across the country, including in the State of New Jersey. Among other matters affecting the public interest, PLF has repeatedly litigated to defend constitutional limitations on government action, including in actions specifically related to taxpayer protection, *Nat'l Fed'n of Indep. Bus. v. Williams*, No. 2015CA2017 (Colo. Ct. App. Mar. 2, 2017), *Cal. Cannabis Coal. v. City of Upland*, 401 P.3d 49 (Cal. 2017), and a state constitution's Gift Clause in *Cheatham v. DiCiccio*, 379 P.3d 211 (Ariz. 2016). PLF has also participated as amicus curiae on a variety of public policy issues in New Jersey state courts. *See, e.g., Morgan v. Sanford Brown Inst.*, 225 N.J. 289 (2016); *Gripenburg v. Twp. of Ocean*, 220 N.J. 239 (2015); *Atalese v. U.S. Legal Servs. Group, L.P.*, 219 N.J. 430 (2014); *Klumpp v. Borough of Avalon*, 202 N.J. 390 (2010); *Sinclair v. Merck & Co., Inc.*, 195 N.J. 51 (2008).

AFP-NJ and PLF are particularly interested in this case because taxpayer money should be used exclusively for public purposes. The public purpose requirement of the Gift Clause reflects the state constitution's overall goals of fairness and accountability. Paying for "release time" means that taxpayers are funding employees whose sole function is to benefit the union. The school district has no effective control over these release time employees, demonstrating that their loyalty and services are devoted to the union, not the taxpayers. This violates the state constitutional prohibition on using public funds to benefit private organizations.

This amicus brief is timely filed. Rule 1:13-9(c); Supreme Court Orders dated March 17, 2020, March 27, 2020, and April 24, 2020. AFP-NJ and PLF's brief satisfies all applicable rules and accompanies this request. As noted above, PLF already has authority to file the brief, thus it is entitled to file this brief per Rule 1:13-9(d)(4), and asks this Court's permission pursuant to Rule 1:13:9(a) to file the brief on behalf of AFP-NJ, as well.

DATED: April 28, 2020.

Respectfully submitted,

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DATED: April 28, 2020.

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