STEVEN FENICHEL, GEORGINA SHANLEY, MARIE TOMLINSON, BRIAN H. ARNETT, ALLEN LOVEKIN, JANE MCCARTHY, JAMES F. MCCARTHY, PETER J.GUINOSSO and JOSEPH A. SOMMERVILLE, in their capacities as taxpayers and residents of the City of Ocean City, New Jersey, Plaintiffs/Appellants	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CAPE MAY COUNTY Docket No. A -005933-06T1 On Appeal From: Superior Court of New Jersey Law Division: Cape May County Docket No. CPM-L-000548-06
--vs.-- THE CITY OF OCEAN CITY, a municipal corporation of the State of New Jersey and THE CITY COUNCIL of the CITY OCEAN CITY, Defendant-third party Plaintiff	:	Sat Below: Hon. Joseph C. Visalli, J.S.C.
--vs.-- STATE OF NEW JERSEY, DEPARTMENT OF COMMUNITY AFFAIRS Third party defendant	:	

REPLY BRIEF FOR PLAINTIFFS/APPELLANTS STEVEN FENICHEL, GEORGINA SHANLEY, MARIE TOMLINSON, BRIAN H. ARNETT, ALLEN LOVEKIN, JANE MCCARTHY, JAMES F. MCCARTHY, PETER J. GUINOSSO and JOSEPH A. SOMERVILLE

Ira Karasick, Esq.*
460 Bloomfield Avenue
Montclair, NJ 07042
(973) 509-1800
**Counsel of Record*

Paul S. Ryan**
THE CAMPAIGN LEGAL CENTER
1640 Rhode Island Avenue NW
Suite 650
Washington, DC 20036
(202) 736-2200
*** Admitted Pro Hac Vice*

Attorneys for Plaintiffs/Appellants

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PRELIMINARY STATEMENT

Plaintiffs-appellants (hereinafter "plaintiffs"), in their capacities as taxpayers and residents of the City of Ocean City, New Jersey, sought a declaratory judgment from the court below that the City of Ocean City (hereinafter "City") has the legal authority to adopt the proposed public campaign financing ordinance at issue in this case, entitled: "The Fair and Clean Public Financing of Elections Ordinance of 2006" (hereinafter "proposed Ordinance").

The issue in this case is whether the City possesses authority under New Jersey law to enact the proposed Ordinance and, in the presence of such authority, whether the ordinance is preempted by State law.

The specific judicial determination sought by the plaintiffs is that the Constitution and statutes of the State of New Jersey permit and authorize the City to adopt the proposed Ordinance and that the proposed Ordinance is not preempted by State law. Plaintiffs submit, however, that the court below plainly erred in determining that the City did not have the authority to enact the proposed campaign finance Ordinance, and thus its decision must be reversed.

The City argues both that it lacks the authority to enact and implement the proposed Ordinance and that the proposed Ordinance is preempted by State law (despite the fact that the

City conceded below that preemption is not an issue in this case).

Remarkably, as explained herein, the City fails to so much as mention in its brief the principal source of the City's authority to enact and implement the proposed Ordinance—let alone explain why the statutory authority relied upon by plaintiffs does not in fact authorize the proposed Ordinance. Further, the City argues that a certain "dedication by rider" provision of the State's Local Budget Law preempts the "field" of local public financing—despite the fact that the City fails to cite a single provision in the proposed Ordinance that invokes the State law "dedication by rider" provision. In its Answer to the Third-Party Complaint, the State denied rendering an opinion that the proposed Ordinance is contrary to the Local Budget Law (Pa43); and to date, it has not submitted a brief in this court to state otherwise.

As residents and taxpayers of the City, and for the reasons that follow, plaintiffs urge this Court to declare that there is no legal impediment to the introduction on first reading of the aforesaid Ordinance.

PROCEDURAL HISTORY

Plaintiffs rely on the procedural history included in BRIEF FOR PLAINTIFFS/APPELLANTS filed October 24, 2007 (hereinafter "PLAINTIFFS' OPENING BRIEF").

STATEMENT OF FACTS

Plaintiffs rely on the statement of facts included in PLAINTIFFS' OPENING BRIEF.

ARGUMENT

I. CITY OF OCEAN CITY POSSESSES THE HOME RULE AUTHORITY TO ENACT AND IMPLEMENT THE PROPOSED ORDINANCE.

The Supreme Court of New Jersey has "established a three-part analysis for determining the propriety of an exercise of legislative authority by a municipality" under the State Constitution. Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 225 (1980). According to the Court, "the first question is whether the State Constitution prohibits delegation of municipal power on a particular subject because of the need for uniformity of regulation throughout the State." Id. The City has not argued that the Constitution prohibits the State's delegation of power to the City to enact the proposed Ordinance at issue in this case. Plaintiffs contend that the Constitution in fact does not prohibit the State's delegation of this power to the

City and incorporate by reference the argument to this effect in Part I(A) of PLAINTIFFS' OPENING BRIEF.

If the Legislature is constitutionally permitted to delegate authority in the area—as is the case here and the City does not contest this—"the second question is whether the Legislature has in fact done so." Id. at 226 (*citing* Inganamort v. Borough of Fort Lee, 62 N.J. 521, 527 (1973)).[1] The Constitution's guidance with respect to interpretation of legislative delegation of municipal home rule is incisive. The City's home rule authority "shall be liberally construed" in its favor and "shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law." N.J. Const. art. IV, § VII, ¶ 11 (emphasis added); see also Monmouth Lumber Co. v. Ocean Tp., 9 N.J. 64, 71 (1952) (Courts are "required to construe constitutional and statutory provisions liberally in favor of municipal corporations formed for local government.") (*citing* N.J. Const. art. 4, § 7, ¶ 11). "In considering whether the City's ordinance is a valid exercise

[1] The third and final part of the test for home rule authority under the New Jersey Constitution is "whether any delegation of power to municipalities has been preempted by other State statutes dealing with the same subject matter." Dome Realty, 83 N.J. at 226. This issue is addressed in Argument Part II, below.

of authority granted by the State, . . . municipal ordinances enjoy a presumption of validity." Fanelli v. City of Trenton, 135 N.J. 582, 589 (1994) (*citing* Brown v. City of Newark, 113 N.J. 565, 571 (1989)).

The City gives perfunctory notice of the Constitution's requirement of liberal, broad construction of the municipal authority, BRIEF OF DEFENDANT-RESPONDENT, CITY OF OCEAN CITY AND CITY COUNCIL OF THE CITY OF OCEAN CITY (hereinafter "CITY BRIEF") at 4, but quickly moves on to urge this Court to construe N.J.S.A. 40:48-2 narrowly to preclude the City's adoption of the proposed Ordinance at issue in this case. Further, the City fails to so much as even mention N.J.S.A. 40:69A-29 and 40:69A-30, provisions of New Jersey's Faulkner Act that further authorize the City's enactment of the proposed Ordinance.

A. N.J.S.A. 40:48-2 authorizes the proposed Ordinance at issue in this case.

Contrary to the City's assertion, the State statute granting municipalities broad police power to enact ordinances necessary and proper for the good government and protection of the municipality and its inhabitants authorizes the proposed Ordinance in this case. See N.J.S.A. 40:48-2. The Supreme Court of New Jersey has made clear that this provision accomplishes "a broad grant of police power in addition, rather

than merely ancillary, to the sundry detailed authorizations for municipal action contained in our statutes." Summer v. Teaneck, 53 N.J. 548, 552 (1969) (*citing* Fred v. Mayor and Council of Borough of Old Tappan, 10 N.J. 515, 519-21 (1952)). The City ignores this guidance from the Supreme Court and, instead, lists the "sundry detailed authorizations for municipal action" contained in state law and incorrectly concludes that, because the Legislature has not explicitly authorized municipalities to enact public campaign financing ordinances of the sort at issue in this case, the City lacks the legislative authority to do so. CITY BRIEF at 5-6.

This Court has explicitly rejected the City's position, holding that N.J.S.A. 40:48-2 constitutes "an express grant of broad governmental and police powers to all municipalities" and "is not to be read as providing only authorization to enact ordinances to carry into effect other specifically enumerated powers." Kligman v. Lautman, 98 N.J. Super. 344, 356 (App. Div. 1967) (*citing* Fred v. Mayor and Council of Borough of Old Tappan, 10 N.J. 515, 519-20 (1952)). This Court went on to explain in Kligman that "[o]nly where it is manifest that the Legislature has intended to confine the power of the municipality to act with respect to particular subject matter to action in a particular manner, or of delimited scope or with specified concomitants and conditions, is the municipality so

restricted insofar as the general scope of R.S. 40:48-2, N.J.S.A. is concerned." Id. at 356-57.

The City relies heavily on this Court's decision in Repair Master, Inc. v. Borough of Paulsboro, 352 N.J. Super. 1 (App. Div. 2002), but its reliance is misguided. In Repair Master, a municipality placed a moratorium on the issuance of licenses for residential rental properties in a purported exercise of its general police powers under N.J.S.A. 40:48-2. Id. at 3. Unlike the present case, where the proposed Ordinance is wholly consistent with the Legislature's vision of the public good, the moratorium at issue in Repair Master was inconsistent with the Legislature's vision of the public good. Here the Legislature has enacted several statutes establishing public financing for certain state offices like that which would be established by the proposed Ordinance for Ocean City offices, see e.g., The 2007 New Jersey Fair and Clean Elections Pilot Project Act," P.L. 2007, Chapter 60, whereas the moratorium at issue in Repair Master was found to be at odds with state law.

The Repair Master Court noted that "[t]he Municipal Land Use Law, *N.J.S.A.* 40:55D-1 to -136, 'allows for municipal regulation of the uses of land only, not regulation of who may own land or what legal form that ownership or other possessory interest may take.'" Repair Master, 352 N.J. Super. at 12 (*citing* Cox, § 34-8.7 at 712 (2002)). The Court further noted

that "municipal moratoria are generally disfavored by our law as a means of either controlling land use or the nature of occupancy." Id. at 13. In light of all of this, the Court reasoned that "[w]here there is a potential or actual conflict, the definition of public interest is best left to the State, as the higher level of government[,]" id. at 8, and concluded:

> [T]he Legislature did not imply the power to municipalities to deny or regulate a property owner's right to rent non-owner occupied residential housing in an effort to alter the community's dynamics and demographics, and control the ratio of owners and tenants. This is a power we simply will not infer in light of the evidence and the history of our land use and occupancy jurisprudence. . . . Specific legislative approval should be a precondition to the exercise of a power we consider a radical regulatory development.

Id. at 14 (emphasis added).

By contrast to the municipal moratorium at issue in Repair Master, which was a "radical regulatory development" at odds with the history of land use jurisprudence and statutory law in New Jersey, the proposed Ordinance at issue in this case is far from "radical." Indeed, there is no history of New Jersey campaign finance jurisprudence or statutory law at odds with the proposed Ordinance.

As detailed in PLAINTIFFS' OPENING BRIEF at 22-23, the State Legislature has enacted several statutes creating systems of public financing for gubernatorial and certain legislative candidates, most recently in 2007 when it exercised its police

power "to improve the unfavorable opinion that many residents of this State have toward the political process and to strengthen the integrity of that process," by enacting the "The 2007 New Jersey Fair and Clean Elections Pilot Project Act," P.L. 2007, Chapter 60 at § 2(g). At that time, it clearly chose to leave local elections to remain withing municipal control.

Just as the City's reliance on Repair Master is misguided, so too is its attempt to distinguish the present case from Lehrhaupt v. Flynn, 140 N.J. Super. 250 (App. Div. 1976), aff'd 75 N.J. 459 (1978). Just as the Court in Lehrhaupt held that "financial disclosure by elected and appointed officials and candidates for public office has become the order of the day in our present society[,]" id. at 260, so too have public financing programs of the sort that would be created by the proposed Ordinance at issue in this case become commonplace throughout the United States, from the municipal level to the office of U.S. President. The U.S. Supreme Court, in its seminal campaign finance law decision in Buckley v. Valeo, 424 U.S. 1 (1976), explicitly recognized that, in creating the federal system of public campaign financing for presidential elections similar to that which would be created by the proposed Ordinance, "Congress was legislating for the 'general welfare' to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the

electorate, and to free candidates from the rigors of fundraising." Id. at 91 (upholding statute creating presidential public financing system against constitutional challenge that the statute exceeded Congress' police power established by U.S. Const. art. I, § 8).

In short, public campaign financing is neither radical nor novel public policy in the State of New Jersey and nationally. Given that the City of Ocean City's police power under N.J.S.A. 40:48-2 "is coterminous with the police power of the State Legislature," Quick Check Food Stores v. Springfield, 83 N.J. 438, 448 (1980), this Court should hold that the proposed municipal public financing Ordinance at issue in this case is authorized by N.J.S.A. 40:48-2.

B. Specific Faulkner Act provisions, N.J.S.A. 40:69A-29 and 40:69A-30, authorize the City to enact and appropriate funds to implement the proposed Ordinance—the City does not contest this.

As detailed in PLAINTIFFS' OPENING BRIEF Part I(C), the proposed Ordinance presented in this case is not only authorized by N.J.S.A. 40:48-2, but is also authorized by two provisions of the Faulkner Act, N.J.S.A. 40:69A-1 et seq. The City does not contest this argument in its brief. The Faulkner Act, enacted in 1950, provides municipal governments with the power to adopt their own charters and grants to such municipalities an increased level of home rule authority. The City has operated

under the Faulkner Act since 1978. The Faulkner Act not only empowers municipalities operating under the Act to "[o]rganize and regulate its internal affairs" and "[a]dopt and enforce local police ordinances of all kinds[,]" but also to "appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof . . . ." N.J.S.A. 40:69A-29 (emphasis added). The Faulkner Act further provides that its general grant of municipal power "is intended to confer the greatest power of local self-government consistent with the Constitution of this State[,]" and is to "be liberally construed, as required by the Constitution of this State, in favor of the municipality." N.J.S.A. 40:69A-30.

The City acknowledges that the Court's role in this case is to "ascertain whether any statutory authority has been delegated to municipalities which would enable them to provide for the establishment of a dedicated fund, and for the appropriation of municipal monies to such a fund, for the purpose of providing public financing for municipal election campaigns." CITY BRIEF at 4-5. Yet the City fails to explain to the Court why the Faulkner Act provision explicitly authorizing the City to "appropriate and expend moneys . . . as may be required for the good government thereof," N.J.S.A. 40:69A-29(c), which this Court is required to construe liberally in favor of the City,

see N.J.S.A. 40:69A-30, is not precisely just such a delegation of authority.

For the reasons set forth in PLAINTIFFS' OPENING BRIEF Part I(C)—uncontested by the City—we urge this Court to hold that N.J.S.A. 40:69A-29 and 40:69A-30 authorize the City to enact and implement the proposed Ordinance at issue in this case.

II. THE PROPOSED ORDINANCE IS NOT PREEMPTED BY STATE LAW.

Having established that the Constitution permits the State's delegation of authority to the City to enact and implement the proposed Ordinance at issue in this case and the State has in fact delegated authority to the City to enact the Ordinance via enactment of N.J.S.A. 40:48-2, 40:69A-29 and 40:69A-30, this Court should hold that enactment of the proposed Ordinance is a permissible exercise of the City's home rule authority so long as this delegation of power to the City has not been "preempted by other State statutes dealing with the same subject matter." Dome Realty, 83 N.J. at 226.

Although in the court below the City and the Department of Community Affairs did not argue that the proposed Ordinance was preempted by any provision of state law and, instead, simply argued that the City lacked the authority to enact and implement it, see T10-12 to T10-15, the City now argues that the field of public campaign finance is preempted by New Jersey's Local

Budget Law. CITY BRIEF at 11-12 (*citing* New Jersey Local Budget Law, N.J.S.A. 40A:4-1 et seq.).[2]

Plaintiffs readily acknowledge that "a municipality may be unable to exercise a power it would otherwise have if the Legislature has preempted the field." Summer v. Teaneck, 53 N.J. 548, 554 (1969).

> But an intent to occupy the field must appear clearly. It is not enough that the Legislature has legislated upon the subject, for the question is whether the Legislature intended its action to preclude the exercise of the delegated police power. . . . The ultimate question is whether, upon a survey of all the interests involved in the subject, it can be said with confidence that the Legislature intended to immobilize the municipalities from dealing with local aspects otherwise within their power to act.

Id. at 554-55 (emphasis added) (internal citations omitted) (*citing* Kennedy v. City of Newark, 29 N.J. 178, 187 (1959) and Masters-Jersey, Inc. v. Mayor and General Council of Borough of Paramus, 32 N.J. 296 (1960)).

The State Legislature has not, however, preempted the field of campaign finance reform, generally, or public campaign financing, in particular. Further, and contrary to the claims of the City, see CITY BRIEF at 11-13, the "dedication by rider"

[2] As explained in PLAINTIFFS' OPENING BRIEF at 33-35, in addition to recognizing "field" preemption, New Jersey courts also recognize "conflict" preemption. The City does not argue that the proposed Ordinance is invalid under the doctrine of "conflict" preemption and, consequently, Plaintiffs limit their argument in this brief to the doctrine of "field" preemption.

provision of the of the New Jersey "Local Budget Law" is in no way implicated by the proposed Ordinance.

As a threshold matter, this Court has acknowledged that the question of "[w]hether a given field has been preempted by the Legislature is strictly a question of fact." State v. Pinkos, 117 N.J. Super. 104, 106 (App. Div. 1971). Neither the City's Response to Plaintiff's Statement of Undisputed Facts, nor the City's Statement of Undisputed Facts submitted to the court below asserted as fact that the State had preempted any field of law at issue in this case. See Pa55-58. Summary judgment, the manner in which this case was decided below, may be granted only if "there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). See also Mango v. Pierce-Coombs, 370 N.J. Super. 239, 249 (App. Div. 2004) (*citing* Kopin v. Orange Prods., Inc., 297 N.J. Super. 353, 366 (App. Div. 1997), and McClelland v. Tucker, 273 N.J. Super. 410, 415 (App. Div. 1994)). Given the complete absence in the record of any factual evidence that the State has preempted any field of law at issue in this case, it is appropriate that the court's decision below was not based on a finding of field preemption.

Even were this Court willing to consider the issue of field preemption absent any facts in the record supporting such determination, the City's argument that the proposed Ordinance

is preempted by the Local Budget Law has no merit. The City argues that the "dedication by rider" provision of the Local Budget Law, N.J.S.A. 40A:4-39, requires the City to obtain approval from the Director of the Division of Local Government Services (hereinafter "Director") in order to implement the proposed ordinance—and that the Director could not lawfully approve a "dedication by rider" for such purposes. CITY BRIEF at 11-13. Yet the City has failed to identify a single provision of the proposed Ordinance that would require a "dedication by rider" under the Local Budget Law. The proposed Ordinance, therefore, is not preempted by the "dedication by rider" provision.

The "dedication by rider" provision of the Local Budget Law provides that "dedicated revenues anticipated during the fiscal year" from a source "not subject to reasonably accurate estimate in advance" may be included in the budget of any local unit for such fiscal year only with the Director's approval. N.J.S.A. 40A:4-39.[3] The proposed ordinance, however, contains no

[3] The "dedication by rider" provision of the Local Budget Law reads, in operative part:

> In the budget of any local unit, dedicated revenues anticipated during the fiscal year . . . when the revenue is not subject to reasonably accurate estimate in advance, may be included in said budget by annexing to said budget a statement in substantially the [statutorily-specified] form . . . subject to the approval of the director, who may require such

requirement that "dedicated revenues anticipated during the fiscal year" from a source "not subject to reasonably accurate estimate in advance" be included in the City budget for the fiscal year in which the anticipated revenues are collected. Instead, section 2-26.3(c) of the proposed Ordinance, see Pa14, provides for the appropriation of specified amounts: $150,000 in the first City budget adopted after the proposed ordinance becomes law, and in each year thereafter $150,000 less any amount that would cause the balance in the Fair and Clean Elections Campaign Fund to exceed $300,000.[4] Consequently, the "dedication by rider" provision is inapplicable to the proposed ordinance.

To be clear, the proposed ordinance does allow any person to "make a voluntary donation" up to $5,000 to the Fair and Clean Elections Fund. Such voluntary donations, however, would not constitute "dedicated revenues anticipated during the fiscal year" included in that fiscal year's budget to fund appropriations. Instead, such voluntary donations would be used in the next fiscal year pursuant to proposed Ordinance section

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> explanatory statements or data in connection therewith as the director deems advisable for the information and protection of the public.

N.J.S.A. § 40A:4-39 (emphasis added).

[4] Both the $150,000 figure and the $300,000 figure would be adjusted for changes in the cost of living pursuant to section 2-26.20 of the proposed Ordinance. See Pa24.

2-26.3(c). See Pa14. Proposed ordinance section 2-26.3(c)(1) explicitly provides that "[n]o later than December 1 of each year" the Municipal Clerk shall notify the mayor and council of the amount of funds existing in the Fair and Clean Elections Campaign Fund. Such accounting by the clerk would reflect any voluntary donations received and would serve as the basis of the council's appropriation in the next fiscal year, pursuant to proposed ordinance section 2-26.3(c)(2). As such, the "dedication by rider" provision at N.J.S.A. 40A:4-39 is clearly inapplicable to the "voluntary donations" allowed by the proposed Ordinance.

Furthermore, under field preemption analysis, legislative intent is paramount. Here, the legislative purpose of the "dedication by rider" provision of the Local Budget Law is to prevent a city's careless financial reliance during a particular fiscal year on funds not yet in its possession and "not subject to reasonably accurate estimate in advance." See N.J.S.A. 40A:4-39(a). The statute plainly states that the statutory requirement that the Director approve a city's use of such funds is "for the information and protection of the public." N.J.S.A. 40A:4-39(b). It is precisely for this reason that the "dedication by rider" provision applies only to instances where "revenues anticipated during the fiscal year" are budgeted for appropriation during that same fiscal year.

The statutory requirement that a city obtain approval of the Director before relying on funds not certain to come into the city's possession makes good sense. A municipality's residents would be disserved if a city council were to plan to pay for vital services using revenue that never materialized—and the "Director approval" requirement of N.J.S.A. 40A:4-39 serves to prevent such a situation from materializing. However, the Local Budget Law's "dedication by rider" provision has no application to the proposed Ordinance "voluntary donation" provision, which in no way could induce City reliance on voluntary donations not yet in its possession to pay for the public financing program. Instead, as explained above, the proposed Ordinance provides for annual appropriations in specified amounts that reflect any voluntary donations received in the preceding fiscal year—an appropriation fully permissible under the illustrative, minimum, non-exhaustive list of "separate items of appropriation" at N.J.S.A. 40A:4-32.[5]

[5] The "separate items of appropriation" provision of the Local Budget Law reads, in operative part:

> Separate items shall be included for at least:
>
> a. Administration, operation and maintenance of each office, department, institution or other agency of the local unit.
> b. Contingent expenses in an amount not more than 3% of the total amount stated pursuant to subdivision a of this section.
> c. Interest and debt redemption charges.

Furthermore, the "voluntary donations" people could make under the proposed Ordinance should not be characterized as City "revenue" in any traditional sense of the word, given that the City would have no claim to collection of such funds and would only come into possession of such funds if a donor volunteered to donate them. Put differently, unlike true City "revenue," which the City may deposit into the City's general fund and use for any purpose it sees fit, the "voluntary donations" given in support of the proposed ordinance simply would not be the property of the City for appropriation by the City via the general fund as the City saw fit; the "voluntary donations" under the proposed Ordinance would be given by donors to be used for one purpose only.

The City's argument that a Faulkner Act municipality may only enact ordinances and fund their implementation if the Local Budget Law affirmatively authorizes appropriations for such purposes not only conflicts with the plain language of the Local Budget Law but is also contrary to purpose of the "home rule" provisions of the Constitution and the Faulkner Act. Whereas

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d. Deferred charges and statutory expenditures.
e. The payment of all judgments not for capital purposes and for which notes or bonds cannot be lawfully issued.
f. Such reserves as may be required by this chapter, or deemed advisable by the governing body.
g. Cash deficit of preceding year.

N.J.S.A. § 40A:4-32 (emphasis added).

the Local Budget Law merely sets forth procedures for a municipality's adoption of a budget, specifies a minimum number of appropriations to be included in such budget, see supra n.5 (quoting N.J.S.A. 40A:4-32), and provides for State oversight of a municipality's reliance on revenue "not subject to reasonably accurate estimate in advance," see N.J.S.A. 40A:4-39, the City would have this Court believe that the Local Budget Law establishes an exhaustive list of permissible municipal expenditures. Yet there is no provision of the Local Budget Law with such purpose and effect. In short, there is absolutely no evidence that the State Legislature, in enacting the Local Budget Law, intended to preempt the proposed Ordinance at issue in this case.

CONCLUSION

For the foregoing reasons, the judgment of the court below granting the City's and State's Cross-motions for Summary Judgment and denying plaintiffs' Motion for Summary Judgment should be reversed.

Respectfully submitted.

By:_____

Ira Karasick, Esq.*
460 Bloomfield Avenue,
Montclair, NJ 07042
(973) 509-1800
**Counsel of Record*

Paul S. Ryan**
THE CAMPAIGN LEGAL CENTER
1640 Rhode Island Ave. NW,
Suite 650
Washington, DC 20036
(202) 736-2200
*** Admitted Pro Hac Vice*

Attorneys for Plaintiffs-Appellants

Dated: January 8, 2008