	:	SUPERIOR COURT OF NEW JERSEY
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	:	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	:	

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

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 proposed Ordinance would establish a public financing system for city elections whereby candidates who voluntarily choose to abide by spending limits could become eligible to receive a limited amount of public funds to run their campaign by collecting a required number of $5 "qualifying contributions." This type of reform is designed to safeguard the integrity of City government by reducing or eliminating corruption or the appearance of corruption that large financial contributions from private interests have on the political process.

The issue in this case is whether the City possesses authority under New Jersey law to enact the proposed Ordinance—an ordinance that clearly serves the public's interests in good government and preservation of the welfare of the municipality and its inhabitants.

Plaintiffs have very important City interests at stake as they attempt to protect the integrity of their local elections—interests that members of the City Council have indicated a shared interest in protecting.

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. Neither the record below nor this brief address or seek to address the merits of the proposed Ordinance. The merits of the proposed Ordinance are to be determined at the appropriate time by the City. 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.

As residents and taxpayers of the City, and for the reasons which 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

On September 6, 2006, plaintiffs filed a Complaint for declaratory relief against defendant City, see Pa1, containing as an exhibit the proposed Ordinance at issue in this case, see Pa11.

On October 5, 2006, plaintiffs filed an Amended Complaint for declaratory relief against the City. See Pa26.

On November 10, 2006, the City filed its Answer to plaintiffs' Amended Complaint, as well as a Third-party Complaint against the defendant State of New Jersey, Department of Community Affairs (hereinafter "State"). See Pa34-40.

On February 9, 2007, the State filed its Answer to the Third-party complaint. See Pa41-45.

On April 13, 2007, plaintiffs filed a Notice of Motion for Summary Declaratory Judgment, Statement of Material Facts and supporting brief. See Pa46-54.

On May 10, 2007, the State filed a Notice of Cross-motion for Summary Judgment and supporting brief. See Pa67-69.

On May 15, 2007, the City filed a Notice of Cross-motion for Summary Judgment with certifications, Reply to plaintiff's Statement of Undisputed Facts and supporting brief. See Pa55-66.

On May 18, 2007, plaintiffs filed a reply brief in support of their Motion for Summary Judgment and in opposition to the

Cross-motions for Summary Judgment filed by the City and the State.

On June 7, 2007, Judge Joseph C. Visalli issued a memorandum decision, see Pa72, and Order, see Pa70, denying plaintiffs' Motion for Summary Judgment and granting the City's and State's cross-motions for summary judgment.

On July 17, 2007, plaintiffs filed a timely Notice of Appeal with this Court. See Pa77.

STATEMENT OF FACTS

On June 15, 2006, the City Council of the City had before it for consideration on first reading a proposed Ordinance entitled, "An Ordinance Adding a New part IX to Chapter II of the Revised General Ordinance of the City of Ocean City: The Fair and Clean Public Financing of Elections Ordinance of 2006." Pa12-25. The Ordinance was designed to establish a system of public financing for purposes and goals made clear in the "whereas" clauses of the Ordinance itself, which state:

> **WHEREAS**, the enactment of a system of public financing of election campaigns is an essential means to protect the integrity of the electoral process and ensure the maintenance of free government by reducing any appearance of corruption; and
>
> **WHEREAS**, it is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the municipality, and to enable candidates to have an equal opportunity to present their programs to the voters; and
>
> **WHEREAS**, our democratic system of government can be maintained only if the electorate is informed; and
>
> **WHEREAS**, a publicly funded system of financing election campaigns in this municipality will encourage full discussion of issues, provide a fair and equal opportunity for all candidates to participate in the election process, and reduce the influence of special interests in election campaigns and the daily affairs of government; and
>
> **WHEREAS**, public financing provides a neutral source of revenue to assist candidates in raising sufficient money to communicate their views and positions adequately to the voters. Public financing assists in leveling the playing field to facilitate competitive campaigns and promote public discussion of

> the issues. By providing public financing to candidates, candidates can reduce their reliance on special interest sources of funding. Public financing allows all participating candidates to devote less time to fundraising and more time to discussion of the issues. Once a participating candidate raises the requisite number of qualifying contributions, the candidate ceases fundraising all together; and
>
> **WHEREAS**, public financing of election campaigns permits the municipality to diminish the escalating amount of expenditures on political campaigns, while providing an equal opportunity for candidates to present their views and to provide for a better informed electorate.

Pa12 (bold typeface in original) (underline emphasis added).

The municipal attorney advised the Council at its June 15, 2006 meeting that the proposed Ordinance would be illegal and unenforceable since it would be beyond the legislative power and authority possessed by a municipality under the Faulkner Act and because the substance of the proposed Ordinance was not authorized by existing law. See Pa28. The City, by a vote of 3 to 3 of its council members, declined to introduce the proposed Ordinance on first reading. See Pa30.

On October 5, 2006, plaintiffs, residents and taxpayers of the City, filed an Amended Complaint seeking a "declaratory judgment that the proposed Ordinance would not be legally barred or unenforceable under the Constitution of the State of New Jersey or any statute of the State of New Jersey." Pa29. The Amended Complaint alleged, in relevant part, that the Constitution of the State of New Jersey, specifically Article

IV, Section VII, ¶ 11, see Pa30, expressly provided that both the State Constitution and any law concerning municipal corporations should be liberally construed in their favor and that the power of municipalities is not limited to those expressly granted but also includes those powers necessary or of fair implication or incident to express powers not otherwise inconsistent with or prohibited by the Constitution or any law.

The Amended Complaint also alleged that the Faulkner Act (N.J.S.A. 40:69A-30) gives municipalities great power of local self government consistent with the Constitution. See Pa31. The Act also provides, in essence, that any specific enumeration of municipal powers contained in the Faulkner Act or any other law would not be construed in such way as to limit the general description of power contained in the Faulkner Act. See Pa31. The Act also provides that municipal powers are to be liberally construed as required by the Constitution of the State of New Jersey in favor of the municipality. See Pa31.

The Amended Complaint contended that under the State Constitution and the Faulkner Act, the Council of the City has the power and authority to introduce the proposed Ordinance and, thereafter, consider the same for final adoption. See Pa31. The contention of the Amended Complaint was that there was no provision in either the Constitution or any law of New Jersey

that would render the proposed Ordinance illegal or unenforceable. See Pa31.

As part of its Answer to the Amended Complaint, the City named the State, the Department of Community Affairs, as a third-party defendant. See Pa34. The Third-party Complaint alleged that the Proposed Ordinance would violate, inter alia, provisions of the New Jersey Local Budget Law, N.J.S.A. 40A:4-1 et seq. (Such an assertion is also contained in the fourth separate defense set forth in the answer filed by the City.) See Pa36-39.

On February 9, 2007, the State filed its Answer to the City's Third-party Complaint. See Pa41. In ¶ 10 of its Answer, the State expressly denied that it had rendered an "opinion" as to the legal validity of the proposed Ordinance. See Pa43. In three affirmative defenses included with its Answer, the State alleged that the Third-party compliant failed to set forth a cause of action upon which relief against the State of New Jersey could be granted; that the Court lacked jurisdiction over the subject matter of the Complaint with regard to the relief that it sought against the State of New Jersey; and that the Court was without jurisdiction over the State of New Jersey with respect to the nature of the relief sought by the Third-party Plaintiff. See Pa44.

On April 13, 2007, plaintiffs filed a Notice of Motion for Summary Declaratory Judgment, Statement of Material Facts and supporting brief with the court below, wherein the plaintiffs sought a court order declaring the proposed Ordinance was within the power of the City to enact. See Pa46-47.

On May 10, 2007, the State filed a Notice of Cross-motion for Summary Judgment wherein the State sought a court order declaring that the City does not posses the statutory authority to adopt the proposed Ordinance. See Pa68.

On May 15, 2007, the City filed a Notice of Cross-motion for Summary Judgment in which it claimed that the proposed Ordinance "creat[ing] a Fair and Clean Election Campaign Trust Fund would not be authorized." Pa57.

On May 18, 2007, plaintiffs filed a reply brief in the court below, responding to arguments raised by the City and the State in their respective briefs, and once again urging the court to grant the plaintiffs' Motion for Summary Declaratory Judgment and to deny the Cross-motions for Summary Judgment filed by the City and the State.

On June 7, 2007, Judge Joseph C. Visalli held that the plaintiffs "have not demonstrated that the proposed Ordinance is expressly authorized or that the proposed Ordinance is authorized by necessary and fair implication, or incident to the powers expressly conferred or essential thereto[,]" and that it

is “therefore impossible to construe, in any fashion, the total absence of authority as support for Plaintiffs’ position.” Pa76. Judge Visalli further held that the “City does not have the authority to create the fund required by the proposed ordinance[,]” and that the “City cannot accept conditional donations which are earmarked for an unauthorized purpose.” Pa76. On these grounds, Judge Visalli denied plaintiffs’ Motion for Summary Judgment and granted the City’s and State’s cross-Motions for Summary Judgment. See Pa70-71.

STANDARD OF REVIEW

This is an appeal from an Order both granting and denying summary judgment motions. This Court "employ[s] the same standard that governs trial courts in reviewing summary judgment orders." Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998), cert. denied, 154 N.J. 608 (1998). Summary judgment must be granted 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), certif. denied, 149 N.J. 409 (1997)) and McClelland v. Tucker, 273 N.J. Super. 410, 415 (App. Div. 1994).

In this case there was no discovery in the court below, with all parties agreeing that none was required. The sole issue in this case is one of law, to wit, whether the proposed Ordinance is illegal and unenforceable or whether it is permitted by the Constitution of New Jersey, the Faulkner Act and other home rule provisions of State law.

This Court's interpretation and application of law in this case is de novo. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not

entitled to any special deference." Manalapan Realty v. Manalapan Tp. Comm., 140 N.J. 366, 378 (1995).

ARGUMENT

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

A. New Jersey Constitution Permits the City's enactment of the proposed Ordinance and requires that any State laws concerning municipal home rule be liberally construed in favor of the existence of the City's home rule authority.

An inquiry into the extent of municipal legislative power appropriately begins with the New Jersey Constitution of 1947, which provides:

> The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations 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. Although the foregoing provision in the Constitution does not contain an express reference to "home rule," there can be little question that the language of the provision assures the preservation and enhancement of the concept of home rule by virtue of the words mandating that laws concerning municipal corporations shall be liberally construed in their favor and that municipal

corporations have not only express powers, but also those necessary or incident to the express powers granted.

The New Jersey Election Law Enforcement Commission (hereinafter "ELEC"), the State agency responsible for administering and enforcing State campaign finance laws, has explicitly recognized the State's "very strong tradition of home rule[,]" and that "[t]hose familiar with New Jersey understand the distinct role played by municipalities in the lifeblood of its politics and government." ELEC, White Paper No. 18, Local Campaign Financing: An Analysis of Trends in Communities Large and Small 5 (2005), available at http://www.elec.state.nj.us/pdffiles/White_Papers/White18.pdf. According to ELEC, "[d]espite the ultimate authority for governing vested in the State, municipalities retain much power and responsibility for governing." Id. at 6. Further, ELEC believes:

> Government at the level closest to the people should play a critical role in determining the direction undertaken by communities. Indeed, throughout New Jersey's colorful history municipalities, large and small, have often been at the forefront of progress; and, in turn, have provided local citizens with a quality of life not easily surpassed.

Id. at 8. ELEC goes on in this report to explain in detail that corruption of municipal officials in New Jersey is a serious problem that warrants scrutiny, explaining:

> There is much decision making; serious property tax issues, often large scale funding; municipal budgets; school budgets; development; opportunities for

> substantial community progress; and, yes, opportunities for corruption. Moreover, politics at the municipal level can be colorful, hard hitting, and intense. For these reasons, municipal government and politics should bear scrutiny.

Id. at 10 (emphasis added).

Yet, in the face of this recognized threat of corruption in municipal politics, ELEC further admits that "campaigns at the level closest to the people had been overlooked despite the fact that financial activity among candidates for local offices was growing steadily." Id. at 11. Although the threat of corruption in municipal politics may be overlooked by the State, plaintiffs, taxpayers and residents of the City of Ocean City, are keenly aware of the threat and have proposed the Ordinance at issue in this case precisely to address the problems recognized by ELEC. See also Pa12 (WHEREAS clauses of proposed Ordinance).

As a general matter, the plain text of this constitutional provision and the Supreme Court's long-standing interpretation of it make clear that courts are "required to construe constitutional and statutory provisions liberally in favor of municipal corporations formed for local government." Monmouth Lumber Co. v. Ocean Tp., 9 N.J. 64, 71 (1952) (*citing* N.J. Const. art. 4, § 7, ¶ 11). "In considering whether the City's ordinance is a valid exercise 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)). Furthermore, in determining whether the City's ordinance is authorized by statute, a court is not to pass on the wisdom of the ordinance but, instead, "need decide only whether the ordinance represents a reasonable exercise of the Legislature's delegation of authority to municipalities" under the relevant statute. Id. at 591 (*citing* Riggs v. Township of Long Beach, 109 N.J. 601, 610-11 (1988)). Furthermore, a court is to "interpret those delegated powers broadly." Id. (*citing* N.J. Const. art. 4, § 7, ¶ 11).

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 Court gave examples of subjects that need uniformity of regulation – "the principles of the construction and enforcement of contracts, the rules of intestate distribution and the definitions of crimes"[1] –

[1] See also, e.g., Summer v. Teaneck, 53 N.J. 548, 553 (1969) ("So, for example, a municipality cannot legislate upon the

and made clear that in "such areas the State Legislature may not delegate authority to local governments." Id. If there is no "need for uniformity of regulation throughout the State," id., and the Legislature is therefore constitutionally permitted to delegate authority in the area, "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)). 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." Id.

A municipal ordinance fails part one of the three-part test only where "the State Constitution prohibits delegation of municipal power on a particular subject because of the need for uniformity of regulation throughout the State." Id. at 225. However, even the fact that a particular problem addressed by a proposed municipal ordinance "may be endemic throughout . . . New Jersey does not foreclose local initiative." Id. at 226. The Supreme Court explained in Dome Realty that "[a] problem may

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subject of wills or title to real property. The needs with respect to those matters do not vary locally in their nature or intensity. Municipal action would not be useful, and indeed diverse local decisions could be mischievous and even intolerable. Hence the municipality may not legislate upon an aspect of a subject 'inherently in need of uniform treatment.'" Citing In re Public Service Electric and Gas Co., 35 N.J. 358, 371 (1961).)

exist in some municipalities and be trivial or nonexistent in others. And if the evil is of statewide concern, still practical considerations may warrant different or more detailed local treatment to meet varying conditions or to achieve the ultimate goal more effectively." The Court explained that the "presence of '[v]arying conditions' . . . clearly allows diversity of treatment." Id. (*quoting* N.J. Builders Ass'n v. East Brunswick Tp.,60 N.J. 222, 227 (1972)). "This potential diversity does not present a constitutional obstacle to local home rule. It rather highlights the virtue of permitting local solutions to the varying public problems which confront municipalities." Id. (emphasis added). The Court in Dome Realty explained: "[Where t]here is no inevitable need for a single statewide solution or for a single statewide enforcing authority . . . it may be useful to permit municipalities to act, for, being nearer the scene, they are more likely to detect the practice and may be better situated to devise an approach to their special problems." Id. at 227 (alteration and omission in original) (*quoting* Summer v. Teaneck, 53 N.J. 548, 553 (1969)).

Enactment and implementation of an ordinance providing public campaign financing to municipal office candidates who voluntarily abide by campaign spending limits — the matter at issue in this case — is a particularly apt matter for local determination. Campaign fundraising and spending varies widely

in municipal elections throughout the State of New Jersey. See, e.g., ELEC, White Paper 18, supra (detailing the differences in candidate fundraising and spending depending on the population size of the municipality). Public financing systems must be closely tailored to the elections in which the systems are implemented to ensure, for example, that the amounts distributed to participating candidates enable such candidates to compete effectively with non-participating opponents without unnecessarily burdening the public fisc. A one-size-fits-all State-designed municipal public financing system would likely result in the distribution of public funds in sums either too great or too small to enable the system to function properly. Further, the proposed Ordinance at issue herein would have absolutely no extra-municipal impact. With respect to the problems that would be addressed by the proposed Ordinance — threats of compromised integrity and corruption of Ocean City governance — there "is no inevitable need for a single statewide solution or for a single statewide enforcing authority[.]" Id. at 227.

Indeed, far from recognizing an "inevitable need for a single statewide solution" to the threat of corruption posed by skyrocketing campaign fundraising and spending, the State Legislature has taken a decidedly piecemeal approach to examining and addressing the problem at the State level by

enacting a public campaign financing "pilot project" that is currently being implemented in the 2007 Senate and General Assembly elections in Districts 14, 24 and 37 — an Act that addresses only State office elections and makes no mention of public financing of municipal elections. See "The 2007 New Jersey Fair and Clean Elections Pilot Project Act," P.L. 2007, Chapter 60, available at http://www.njleg.state.nj.us/2006/Bills/AL07/60_.PDF.

For these reasons, enactment and enforcement of the proposed Ordinance would clearly be permissible under part one of the applicable three-part home rule authority analysis. The State Constitution permits the proposed Ordinance, because the Ordinance does not address a subject requiring "uniformity of regulation throughout the State." Id. at 225. This being the case, it is necessary to analyze the permissibility of the proposed Ordinance under parts two and three of the three-part analysis.

B. N.J.S.A. 40:48-2, 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 at issue in this case.

Having established that the Constitution permits the State's delegation of authority to the City to enact and implement the proposed Ordinance in this case, the second step in the three-part "home rule" analysis entails determining

whether the State has in fact delegated authority to the City to enact the Ordinance. See Dome Realty, 83 N.J. at 226 (*citing* Inganamort v. Borough of Fort Lee, 62 N.J. 521, 527 (1973)).

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. New Jersey law provides:

> Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.

N.J.S.A. 40:48-2 (emphasis added).

The Supreme Court of New Jersey has made clear:

> Construed liberally in favor of local government as our Constitution, Art. IV, s VII, 11, requires to be done, this provision has been held to accomplish 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, 53 N.J. at 552 (emphasis added) (*citing* Fred v. Mayor and Council of Borough of Old Tappan, 10 N.J. 515, 519-21 (1952)). This Court has held that:

> This provision constitutes 'an express grant of broad governmental and police powers to all municipalities.'

> It is not to be read as providing only authorization to enact ordinances to carry into effect other specifically enumerated powers. . . . Only 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. These views comport with the liberal philosophy in favor of municipal legislative power expressed in Article IV, Section VII, paragraph 11 of the New Jersey Constitution (1947).

Kligman v. Lautman, 98 N.J. Super. 344, 356-57 (App. Div. 1967) (emphasis added) (internal citation omitted) (*citing* Fred, 10 N.J. at 519-20).

The New Jersey Supreme Court has made clear the precise breadth of the State Legislature's grant of general police power to municipalities:

> The power to adopt ordinances for the public health, safety and welfare of the municipality and its inhabitants is coterminous with the police power of the State Legislature. Thus municipalities may enact regulatory ordinances on any subject matter of local concern which is reasonably related to a legitimate object of public health, safety or welfare, provided the State has not preempted the field.

Quick Check Food Stores v. Springfield, 83 N.J. 438, 448 (1980) (internal citations omitted) (emphasis added) (*citing* N.J. Builders Ass'n, 60 N.J. at 227; Summer, 53 N.J. at 552-55; Overlook Terrace Management Corp. v. W. New York Rent Control

Bd., 71 N.J. 451, 460-62 (1976); Lehrhaupt v. Flynn, 140 N.J. Super. 250, 259 (App. Div. 1976), aff'd 75 N.J. 459 (1978)).[2]

As noted above, the State Legislature earlier this year 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

[2] The New Jersey Supreme Court, in Hudson Circle Servicenter, Inc. v. Town of Kearny, 70 N.J. 289, 299 n.6 (1976), provided a list of cases illustrating the broad scope of municipal police power, citing: Collingswood v. Ringgold, 66 N.J. 350, 358 (1975) (ordinance requiring registration of canvassers and solicitors); Sente v. Mayor and Council of Clifton, 66 N.J. 204, 216-17 (1974) (ordinance requiring minimum floor space in residential housing); Inganamort, 62 N.J. 521 (an ordinance regulating rents); N.J. Builders Ass'n, 60 N.J. 222 (ordinance licensing building contractors); State v. Boston Juvenile Shoes, 60 N.J. 249 (1972) (ordinance regulating the size and placement of signs); Summer, 53 N.J. 548 (ordinance designed to prevent "blockbusting"); Mogolefsky v. Schoem, 50 N.J. 588 (1967) (ordinance licensing real estate brokers who make personal solicitations); Moyant v. Paramus, 30 N.J. 528 (1959) (ordinance regulating and licensing solicitors and canvassers); Kennedy v. City of Newark, 29 N.J. 178 (1959) (ordinance requiring city employees to be residents of the city); Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472 (1956), aff'd 354 U.S. 931 (1957) (an ordinance prohibiting nudity in shows and exhibitions); Fred v. Borough of Old Tappan, 10 N.J. 515, 519-520 (1952) (ordinance regulating removal of soil from within the municipality); Garneau v. Eggers, 113 N.J.L. 245 (Sup. Ct. 1934) (ordinance restricting traffic on certain highways to noncommercial vehicles); Apt. House Council v. Mayor & Council, Ridgefield, 123 N.J. Super. 87 (Law Div. 1973), aff'd o.b., 128 N.J. Super. 192 (App. Div. 1975) (an ordinance requiring multiple dwelling owners to post security for emergency repairs); Gold v. Trenton City Council, 121 N.J. Super. 137 (App. Div. 1972) (ordinance requiring certain packaged foods to have transparent packaging); Silco Automatic Vending Co. v. Puma, 108 N.J. Super. 427 (App. Div. 1970) (an ordinance regulating the placement of juke boxes).

Project Act," supra, at § 2(g). This 2007 pilot project is merely the most recent example of the State Legislature employing its police power to strengthen the integrity of state office elections by authorizing public campaign financing. In 1974, the State Legislature created a system of public campaign financing for gubernatorial candidates when it enacted the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1974, Chapter 26; and in 2004, the State Legislature initiated its experimentation with public financing for several legislative offices when it enacted the "New Jersey Fair and Clean Elections Pilot Project," P.L. 2004, Chapter 121—the pilot project enacted this year is a modified reauthorization of this law. The State clearly has the police power to address the threat of corruption in politics by enacting and implementing public campaign financing laws. 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, 83 N.J. at 448, the proposed municipal public financing Ordinance at issue in this case is authorized by state law and is permissible "provided the State has not preempted the field." Id.

In Lehrhaupt v. Flynn, this Court explicitly held that an ordinance enacted for purposes virtually identical to those of the proposed Ordinance in this case was authorized by the home

rule general police power granted to New Jersey municipalities by N.J.S.A. 40:48-2. Plaintiffs in Lehrhaupt challenged a municipal ordinance requiring certain township officials, including members of the township council, to file periodic financial disclosure reports with a Board of Ethics for the purposes of "avoid[ing] conflicts of interest and . . . guard[ing] against potential corruption and abuses of power by public officials." Lehrhaupt, 140 N.J. Super. at 258. Plaintiffs argued that the ordinance exceeded the township's home rule authority under N.J.S.A. 40:48-2.

Importantly, this Court noted in Lehrhaupt: "Preliminarily, it should be observed that although there is no specific statutory authorization for municipal enactment of official financial disclosure ordinances, general power to adopt such local legislation is inherent in the broad delegation of police power contained in N.J.S.A. 40:48-2." Id. at 259 (emphasis added) (*citing* Inganamort, 62 N.J. 521 (1973); N.J. Builders Ass'n, 60 N.J. 222 (1972); Kennedy v. City of Newark, 29 N.J. 178 (1959); Adams Newark, Theatre Co. v. Newark, 22 N.J. 472 (1956), aff'd 354 U.S. 931 (1957)). The Lehrhaupt Court articulated the three-part analysis described above for determining the permissible exercise of municipal home rule authority, id., and concluded: "We perceive no valid bar to the exercise of municipal power to adopt a local ordinance dealing

with financial disclosure by its officers and employees." Id. The Court explained:

> We agree with the trial judge that regulation pertaining to financial disclosure by municipal officials is not a subject matter necessarily pointing to uniform treatment on a statewide basis. It is quite appropriate for a municipality to legislate in the field, depending upon its local conditions and needs. The decision of the governing body of Madison that its local milieu requires such legislation is well within its police power.

Id. at 259-60 (emphasis added). The Court continued:

> The underlying purpose for such disclosure is laudable as a means of maintaining integrity in the democratic process and guarding against conflicts of interest and potentially corrupt practices on the part of public officials. The State, and therefore the municipality, has a substantial interest in seeking such financial data from officeholders, not only for the purpose of disclosure of conflicts of interest but also as a means of monitoring their financial status in order to inhibit and detect corrupt practices.

Id. at 260 (emphasis added).

Like the "The 2007 New Jersey Fair and Clean Elections Pilot Project Act" and the ordinance at issue in Lehrhaupt, the proposed Ordinance at issue herein is intended "to protect the integrity of the electoral process and ensure the maintenance of free government by reducing any appearance of corruption . . . ." Pa12. This Court has made clear—and the Supreme Court has affirmed this Court's determination—that municipalities in New Jersey have a "substantial interest" in "maintaining integrity in the democratic process" and "guarding against . . . corrupt

practices," Lehrhaupt, 140 N.J. Super. at 260, and that municipal ordinances advancing these "laudable" purposes are "well within [a municipality's] police power" established by N.J.S.A. 40:48-2. Lehrhaupt, 140 N.J. Super. at 260. Furthermore, the Supreme Court has made clear that the breadth of the City's general police power "is coterminous with the police power of the State Legislature," Quick Check Food Stores, 83 N.J. at 448, and the State Legislature has employed its police power to enact "The 2007 New Jersey Fair and Clean Elections Pilot Project Act" — a statute nearly identical to the proposed Ordinance — in order to protect the integrity of the democratic process.

Finally, the U.S. Supreme Court has 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 fee candidates from the rigors of fundraising." Buckley v. Valeo, 424 U.S. 1, 91 (1976) (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).

N.J.S.A. 40:48-2's empowerment of the City to enact ordinances for the good government and welfare of the municipality and its inhabitants, as interpreted by this Court and the New Jersey Supreme Court, clearly authorizes the City to enact the proposed Ordinance. The court below plainly erred in holding that the Ordinance is not expressly authorized, or authorized by fair implication, or incident to, or essential to the powers expressly conferred on the City by N.J.S.A. 40:48-2. See Pa76.

C. Specific Faulkner Act provisions, N.J.S.A. 40:69A-29 and 40:69A-30, authorize the City to make and enforce the proposed Ordinance for the good government and protection of the welfare of the City.

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 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 provides:

> Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:
> (a) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers

> and duties thereof and fix their terms, tenure and compensation;
> (b) Adopt and enforce local police ordinances of all kinds . . . [and] exercise all powers of local government in such manner as its governing body may determine;
> (c) . . . [A]ppropriate 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:

> The general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

N.J.S.A. 40:69A-30 (emphasis added).

This Court opined last year that the Faulkner Act:

> [W]as intended to confer upon municipalities the greatest possible powers of self-government and home rule. The Faulkner Act specifically authorizes municipalities, subject to the provisions of this act or other general laws[,] to organize and regulate its internal affairs, and to establish, alter, and abolish . . . employments . . . and fix their terms[.]

DeSoto v. Smith, 383 N.J. Super. 384, 392 (App. Div. 2006) (internal quotation marks omitted) (internal citations omitted)

(omissions in original) (*citing* Keuerleber v. Twp. of Pemberton, 260 N.J. Super. 541, 544 (App.Div.1992) and N.J.S.A. 40:69A-29).

Section 40:69A-29 of the Faulkner Act "gives wide powers to a municipality coming within its provisions," though "there must nevertheless be a reasonable connection between the ordinance adopted pursuant to the act and the municipal objective." City Council of the City of Elizabeth v. Naturile 136 N.J. Super. 213, 229-30 (1975).

The proposed Ordinance in this case is directly connected to important municipal objectives. Just as "The 2007 New Jersey Fair and Clean Elections Pilot Project Act" is directly connected to the State's objectives of "improv[ing] the unfavorable opinion that many residents of this State have toward the political process and . . . strengthen[ing] the integrity of that process," supra, at § 2(g), so too is the proposed Ordinance directly connected to the municipal objectives of "protect[ing] the integrity of the electoral process and ensur[ing] the maintenance of free government by reducing any appearance of corruption . . . ." Pa12. Specifically:

> [A] publicly funded system of financing election campaigns in this municipality will encourage full discussion of issues, provide a fair and equal opportunity for all candidates to participate in the election process, and reduce the influence of special interests in election campaigns and the daily affairs of government[.]

Pa12. It is difficult to imagine a tighter nexus between important municipal objectives and a given ordinance.

The Supreme Court, in State v. Boston Juvenile Shoes, 60 N.J. 249 (1972), made clear that N.J.S.A. 40:69A-29 exists as a source of Faulkner Act municipality authority independent from, in addition to, and broader than that which is established by N.J.S.A. 40:48-2 (a provision applicable to both Faulkner Act and non-Faulkner Act municipalities). Considering the validity of a municipal ordinance regulating signage, the Supreme Court stated:

> Clearly, N.J.S.A. 40:48-2 grants the requisite power for a provision regulating signs, and the Faulkner Act applies that power to municipalities which, like Willingboro, have been organized under its terms.
>
> Because the Appellate Division decision, at the very least, implies a narrow interpretation of N.J.S.A. 40:69A-29, the 'General Powers' provision of the Faulkner Act, we deem it advisable to deal with that measure additionally. It contains a comprehensive grant of power to municipalities which utilize a Faulkner governmental structure. N.J.S.A. 40:69A-30 indicates that '(t)he general grant of municipal power contained in (sections 26 through 30) is intended to confer the greatest power of local self-government consistent with the Constitution of this State.' We are directed to construe liberally all grants of power to Faulkner municipalities. (See also N.J. Const., Art. IV, s VII, par. 11.) Powers specifically enumerated shall be treated as additional and supplementary to those bestowed in general terms. This expression of legislative intent makes our course clear. We hold that the Faulkner Act, with or without reference to N.J.S.A. 40:48-2, grants ample authority to support an ordinance regulating signs.

Boston Juvenile Shoes, 60 N.J. at 253-54 (footnote omitted) (internal citations omitted) (emphasis added) (*citing* "Local Self-Government in New Jersey: A Proposed Optional Charter Plan" (Feb. 1949), comments at 43, 45; *also citing* Kennedy v. City of Newark, 29 N.J. 178, 184 (1959) and Wagner v. City of Newark, 24 N.J. 467, 475 (1957)).

N.J.S.A. 40:69A-29 expressly authorizes the City of Ocean City to "[o]rganize and regulate its internal affairs," id. at subsection (a), "[a]dopt and enforce local police ordinances of all kinds," id. at subsection (b), and "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-30 requires this Court to construe these powers liberally in favor of the City.

The proposed Ordinance deals solely with an internal affair of the City, constitutes a valid exercise of police power, see supra Part I(B), and entails the appropriation and expenditure of City moneys to ensure the good government of the City. As such, enactment and implementation of the Ordinance is authorized not only by N.J.S.A. 40:48-2, but also by the broader Faulkner Act provisions at N.J.S.A. 40:69A-29 and N.J.S.A. 40:69A-30 — and is therefore a permissible exercise of the City's home rule authority.

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

As stated previously, the New Jersey Supreme Court 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). Having established that: (1) 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 (2) 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; we turn now to (3) the question of whether this "delegation of power to municipalities has been preempted by other State statutes dealing with the same subject matter." Dome Realty, Inc., 83 N.J. at 226.[3]

[3] 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 but, instead, argued that the City lacked the authority to enact and implement it. In fact, at oral argument, the City's counsel explicitly stated his agreement with plaintiffs'-appellants' counsel that "this is not an issue of preemption. . . . I think this is an issue of authority." T10-12 to T10-15. The State's counsel similarly stated, "from the State's point of view, the fundamental issue is whether the municipality . . . has the requisite statutory authority" to adopt the proposed Ordinance at issue in this case. T16-20 to T17-5. Judge Visalli, in turn, held incorrectly that the City does not have the authority to enact and implement the Ordinance, and did not reach the question of whether such an ordinance would be preempted by state law. See Pa72-76.

As a general matter, a "municipality may not contradict a policy the Legislature establishes." Summer, 53 N.J. at 554 (*citing* Auto-Rite Supply Co. v. Mayor and Township Committeemen of Woodbridge, 25 N.J. 188 (1957)). New Jersey courts recognize two types of preemption—"conflict" preemption and "field" preemption.

The New Jersey Supreme Court has explained the straightforward concept of "conflict" preemption as follows: "[A]n ordinance will fall if it permits what a statute expressly forbids or forbids what a statute expressly authorizes." Id. See also Overlook Terrace Management Corp. v. Rent Control Board of the Town of West New York, 71 N.J. 451, 461 (1976) ("Does the ordinance conflict with state law, . . . that is, does the ordinance forbid what the Legislature has permitted or does the ordinance permit what the Legislature has forbidden . . . ?).

However, the New Jersey Supreme Court has explained, "[e]ven absent such evident conflict, a municipality may be unable to exercise a power it would otherwise have if the Legislature has preempted the field." Summer, 53 N.J. at 554.

> 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)). Neither conflict nor field pre-emption exists herein.

A. The proposed Ordinance does not conflict with any State statute or constitutional provision and, therefore, is not preempted under the conflict preemption doctrine.

Plaintiffs readily acknowledge that the proposed Ordinance would be invalid under the conflict preemption doctrine if it "permit[ed] what a statute expressly forbids or forb[ade] what a statute expressly authorizes." Summer, 53 N.J. at 554. But the proposed Ordinance does neither.

The City and the State did not allege, and the court below did not find, that the proposed Ordinance would permit what a State statute expressly forbids or forbid what a State statute expressly authorizes. In fact, the City explicitly conceded that "this is not an issue for preemption," T10-12 to T10-15, and the court below did not employ any analysis of preemption. Instead, the arguments made by the City and State, as well as the court's Memorandum Decision, rested entirely on the

incorrect notion that the City does not have the authority to enact and implement the Ordinance.[4]

Given that the proposed Ordinance would neither permit something that State law expressly forbids, nor forbid something that State law expressly authorizes, it is not invalid under the doctrine of conflict preemption.

B. New Jersey Legislature has not preempted the field of campaign finance law.

Plaintiffs also acknowledge that, "[e]ven absent such evident conflict, a municipality may be unable to exercise a

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[4] The City and the State did, however, discuss in the court below a provision of the Local Budget Law, N.J.S.A. 40A:4-1 et seq., in a manner that implied a belief that the provision conflicts with and preempts the proposed Ordinance. To be certain, the City and State characterized their Local Budget Law argument as one of "authority," rather than "preemption." See T13-4 to T15-25 and T19-16 to T22-10. Yet plaintiffs have not argued that the Local Budget Law is the source of authority for enactment of the Ordinance. Instead, as detailed in Part I, above, the City's sources of authority to enact and implement the proposed Ordinance are N.J.S.A. 40:48-2, 40:69A-29 and 40:69A-30. As explained above, N.J.S.A. 40:69A-29(c) specifically authorizes the City to "appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof."

For this reason, the City's and State's discussion of the Local Budget Law can only be understood as a baseless "conflict preemption" argument disguised as an "authority" argument. This being the case, plaintiffs suspect that the City and the State may re-cast their Local Budget Law argument as one of "preemption" before this Court.

Simply put, the proposed Ordinance would neither permit anything that the Local Budget Law expressly forbids, nor forbid anything the Local Budget Law expressly authorizes. For this reason, the proposed Ordinance is not invalid under the straightforward doctrine of conflict preemption.

power it would otherwise have if the Legislature has preempted the field." Summer, 53 N.J. at 554. The State Legislature has not, however, preempted the field of campaign finance reform, generally, or public campaign financing, in particular. And, again, the City explicitly conceded that "this is not an issue for preemption." T10-12 to T10-15, and the court below did not employ any analysis of preemption.

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, 370 N.J. Super. at 249 (*citing* Kopin, 297 N.J. at 366, and McClelland, 273 N.J. Super. at 415). 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.

In order for a court to find field preemption, the Legislature's "intent to occupy the field must appear clearly." Summer, 53 N.J. at 554. The New Jersey Supreme Court has made clear: "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." Id.

The "ultimate question," with respect to field preemption, "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 555.

No evidence was submitted to the court below supporting the contention that the State Legislature intended its actions in the area of campaign finance regulation generally, and public campaign financing in particular, to preclude the City's exercise of police powers delegated to the City by N.J.S.A. 40:48-2, 40:69A-29 and 40:69A-30. It simply can not be "said with confidence that the Legislature intended to immobilize the [City] from dealing with local aspects [of public campaign financing] otherwise within [its] power to act." Summer, 53 N.J. at 555. Indeed, there is evidence to the contrary.

When considering the doctrine of field preemption, New Jersey courts consider several factors – all of which weigh heavily in favor of finding no field preemption in this case. Courts consider, for example, whether "the subject matter reflects a need for uniformity[.]" Overlook Terrace Management Corp., 71 N.J. at 461. As explained in Part I(A), above, the matter at issue in this case – providing public campaign financing to Ocean City municipal office candidates who voluntarily abide by campaign spending limits – is a matter of purely local concern with absolutely no extra-municipal impact. Indeed, it will only impact such Ocean City candidates as choose voluntarily to participate in the program. With respect to the problems that would be addressed by the proposed Ordinance – threats of compromised integrity and corruption of Ocean City governance – there is absolutely "no inevitable need for a single statewide solution or for a single statewide enforcing authority[.]" Dome Realty, Inc., 83 N.J. at 227. On the contrary, the State Legislature's own piecemeal, experimental approach to public campaign financing of State office elections (without addressing municipal elections), see supra "The 2007 New Jersey Fair and Clean Elections Pilot Project Act," makes clear that the Legislature sees no "inevitable need for a single statewide" law pertaining to public campaign financing.

Also, when considering the doctrine of field preemption, New Jersey courts consider whether the relevant State statutory scheme "is so pervasive or comprehensive that it precludes coexistence of municipal regulation[.] Overlook Terrace Management Corp., 71 N.J. at 461-62. Again, the State Legislature's own piecemeal public financing pilot project makes clear that the State's existing campaign finance laws are by no means comprehensive. Further, the proposed Ordinance at issue in this case would peacefully coexist alongside existing State campaign finance laws. The proposed Ordinance was designed specifically to facilitate such coexistence.

Finally, when considering the doctrine of field preemption, New Jersey courts consider whether the local ordinance "stand[s] 'as an obstacle to the accomplishment and execution of the full purposes and objectives' of the Legislature." Overlook Terrace Management Corp., 71 N.J. at 462 (*quoting* Hines v. Davidowitz, 312 U.S. 52, 67-68 (1941)). Far from being an obstacle to the accomplishment and execution of the full purposes and objectives of the Legislature, the proposed Ordinance is in complete harmony with and directly advances those purposes and objectives. Just as the Legislature enacted "The 2007 New Jersey Fair and Clean Elections Pilot Project Act" "to improve the unfavorable opinion that many residents of this State have toward the political process and to strengthen the integrity of

that process," supra, at § 2(g), so too does the proposed Ordinance have the purpose "protect[ing] the integrity of the electoral process and ensur[ing] the maintenance of free government by reducing any appearance of corruption . . . ." Pa12.

Given that, in order for a court to find field preemption, the Legislature's "intent to occupy the field must appear clearly[,]" Summer, 53 N.J. at 554, combined with the complete absence of evidence in the record of any intent by the Legislature to occupy the field of public campaign financing, combined with the fact that all of the factors New Jersey courts reflect upon when considering field preemption weigh heavily in favor of finding no field preemption in this case—it is appropriate that the court below did not find the proposed Ordinance to be impermissible under the doctrine of field preemption. The Legislature has not occupied the field of campaign finance law, generally, nor the field of public campaign financing, specifically.

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.

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