

No. _____, Original

IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

**MOTION TO EXPEDITE, MOTION FOR
PRELIMINARY RELIEF, AND APPENDIX**

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
GRACE X. ZHOU
Assistant Solicitor General
HELENA LYNCH
Assistant Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8020
barbara.underwood@ag.ny.gov
**Counsel of Record*

CONTENTS

Motion for Expedited Consideration of Motion for
Preliminary Relief

Motion for Preliminary Relief

Appendices

IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

**MOTION FOR EXPEDITED CONSIDERATION OF
MOTION FOR PRELIMINARY RELIEF**

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Motion	1
Statement	2
A. Waterfront Commission Compact.....	2
B. New Jersey’s Imminent and Unlawful Attempt to Withdraw Unliterally from the Compact and Dissolve the Waterfront Commission	5
C. New Jersey’s Imminent Attempt to Forcibly Terminate the Commission’s Operations on March 28, 2022.....	7
Argument	9
Conclusion.....	12

TABLE OF AUTHORITIES

Cases	Page(s)
<i>De Veau v. Braisted</i> , 363 U.S. 144 (1960)	2
<i>West Virginia ex rel. Dyer v. Sims</i> , 341 U.S. 22 (1951)	9
<i>Hess v. Port Auth. Trans-Hudson Corp.</i> , 513 U.S. 30 (1994)	9
<i>Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Sys.</i> , 472 U.S. 159 (1985)	9
<i>Port Auth. Trans-Hudson Corp. v. Feeney</i> , 495 U.S. 299 (1990)	9
<i>Waterfront Comm’n of N.Y. Harbor v. Governor of N.J.</i> , 961 F.3d 234 (3d Cir. 2020)	7
<i>Waterfront Comm’n of N.Y. Harbor v. Murphy</i> , 142 S. Ct. 561 (2021)	7
<i>Waterfront Comm’n of N.Y. Harbor v. Murphy</i> , 429 F. Supp. 3d 1 (D.N.J. 2019).....	6
<i>Waterfront Comm’n of N.Y. Harbor v. Murphy</i> , No. 18-650, 2018 WL 2455927 (D.N.J. 2018)	6
 Constitutional Provisions	
U.S. Const. art. I, § 10, cl. 3	3
 Laws	
Waterfront Commission Compact, ch. 407, 67 Stat. 541 (1953)	1,3,4
Ch. 202, 1953 N.J. Laws 1511.....	2
Ch. 324, 2017 N.J. Laws 2102 (2018)	3,5,6
N.J. Stat. Ann. § 32:23-86(3)-(5) (2003).....	4
Ch. 882, 1953 N.Y. Laws 2417	3

Laws	Page(s)
N.Y. Unconsol. Law (McKinney)	
§§ 9801-9873.....	3
§ 9906 (2003)	4

MOTION FOR EXPEDITED CONSIDERATION OF MOTION FOR PRELIMINARY RELIEF

New York hereby moves, pursuant to Supreme Court Rule 21, for expedited consideration of its Motion for Preliminary Relief, filed herewith, in an original action challenging the State of New Jersey's unlawful attempts to withdraw unilaterally from the Waterfront Commission Compact, ch. 407, 67 Stat. 541 (1953), and dissolve the bistate commission created by the Compact. New Jersey recently announced that it intends to withdraw from the Compact on March 28, 2022. To effectuate its withdrawal, New Jersey intends to seize the Commission's files, assets, and regulatory and law enforcement-authority over portions of the Port of New York and New Jersey located in New Jersey.

Expedited consideration of the Motion for Preliminary Relief is needed to enable the Court to resolve New York's request for interim relief before March 28, the date on which New Jersey will withdraw from the Compact and seek to terminate the Commission. As explained in New York's Motion for Preliminary Relief (at 12-17), New York will suffer substantial and irreparable harms absent an injunction preserving the status quo at the Port while this Court is considering the Motion for Leave to File Bill of Complaint and, if that motion is granted, pending disposition of this case. New Jersey has stated that it will seek to transfer to its Division of State Police the Commission's assets and regulatory and law-enforcement powers—sovereign authorities that, under the Compact, belong jointly to New York and New Jersey. Such actions will not only irreparably harm New York's sovereign interests but will also likely upend

security and stability at the East Coast’s largest port—which has operated as a unified whole for over six decades. Indeed, the exercise of conflicting authority by the New Jersey Division of State Police and the Commission sets the stage for chaos, labor strife, and disruptions to shipping operations.

New York therefore requests that the Court order New Jersey to respond to the Motion for Preliminary Relief by March 21, to enable this Court to consider that motion before or at its March 25 conference.

STATEMENT

A. Waterfront Commission Compact

In 1951, the New York State Crime Commission, assisted by the Law Enforcement Council of New Jersey, began investigating the rampant corruption, extortion, racketeering, and organized crime that pervaded Port operations. *See De Veau v. Braisted*, 363 U.S. 144, 147 (1960). New York and New Jersey found that labor at the Port was controlled by “criminals and persons notoriously lacking in moral character and integrity,” resulting in “depressing and degrading” conditions for workers. Compl. App. 1a-2a (art. I, § 1). The “encouragement of crime” also imposed “a levy of greatly increased costs on food, fuel and other necessities” channeled through the Port. Compl. App. 2a (art. I, § 1).

The state line between New York and New Jersey runs through the Port. To address the corruption that pervaded both the New York and New Jersey sides of the Port, the two States entered the Compact by enacting concurring legislation. *See* Ch. 202, 1953 N.J. Laws 1511, 1511-42 (codified at N.J. Stat. Ann.

§§ 32:23-1 to -73) (repealed 2018);¹ Ch. 882, § 1, 1953 N.Y. Laws 2417, 2417-36 (N.Y. Unconsol. Laws §§ 9801-9873 (McKinney)). The Compact created the Waterfront Commission, a bistate agency with jurisdiction over the entire Port, and conferred on the Commission powers subject to joint control by the two States. *See* Compl. App. 6a (art. III, § 1), 8a (art. IV, § 9). As required by the Compact Clause of the United States Constitution (Compl. App. 147a (U.S. Const. art. I, § 10, cl. 3)), New York and New Jersey presented the Compact to Congress for approval, which was granted by an Act of Congress on August 12, 1953, Compl. App. 1a-35a (Waterfront Commission Compact Act, ch. 407, 67 Stat. 541 (1953)). The Compact thereby became federal law.

The Commission, “a body corporate and politic, an instrumentality of the States of New York and New Jersey,” Compl. App. 6a (art. III, § 1), consists of two Commissioners, one appointed by each of the two member States, Compl. App. 6a (art. III, § 2). The Compact grants the Commission law-enforcement and regulatory authority over the Port. For example, the Compact authorizes the Commission to oversee the licensing and registration of the waterfront workforce, including by conducting background checks to screen applicants for criminal histories or ties to organized crime. *See* Compl. App. 9a-26a (arts. V-X). To ensure compliance with its rules and regulations, the Commission is empowered to maintain a police force, conduct investigations and hearings, and take appropriate administrative action against violators. Compl. App.

¹ As explained below, Chapter 324 unlawfully purports to repeal this legislation and other New Jersey statutes that are part of amendments to the Compact. *See* Compl App. 36a.

8a (art. IV, § 11); *see also* Compl. App. 110a-111a (N.J. Stat. Ann. § 32:23-86(3)-(5) (2003)); Compl. App. 114a (N.Y. Unconsol. Law § 9906(3)-(5) (McKinney 2003)). To fund its budget, the Commission is authorized to levy assessments on waterfront employers on the wages paid to waterfront workers. Compl. App. 31a-32a (art. XIII, § 3).

Of particular relevance here, the Compact does not permit either New York or New Jersey to withdraw from the Compact or dissolve the Commission unilaterally. Instead, article XVI, § 1 of the Compact requires that any changes to the Compact be bilateral—i.e., changes may be made only by legislation enacted by one compacting State and “concurred in by the Legislature of the other.” Compl. App. 34a-35a (art. XVI, § 3). Congress also “expressly reserved” for itself the power to repeal the authorizing Act unilaterally. Compl. App. 35a (Ch. 407, § 2).

Pursuant to its powers granted by the Compact, the Commission has worked to combat corruption and criminal activity at the Port. The Commission has conducted hundreds of investigations, often in partnership with state or federal law-enforcement agencies, that have successfully led to convictions of individuals for drug trafficking, racketeering, and murder. Prelim Inj. (PI) App. 4a-5a (Arsenault Decl. ¶ 8), 25a-29a (Weinstein Decl. ¶¶ 6-11). The Commission also conducts background checks on potential port employees, using its intelligence capabilities and unique expertise to detect criminal ties and prevent members of organized crime families from infiltrating the Port. PI App. 5a (Arsenault Decl. ¶ 9). In recent years, the Commission has also worked to prevent discrimination and other unfair hiring practices. PI App. 7a, 21a-22a (Arsenault Decl. ¶¶ 15, 60-61).

Although the Commission has achieved many successes, its work is not finished. The Commission's continued operation is essential because corruption, racketeering, and unfair employment practices are still found at the Port. *See* PI App. 3a, 5a-7a (Arsenault Decl. ¶¶ 7, 10-14), 29a (Weinstein Decl. ¶ 11).

B. New Jersey's Imminent and Unlawful Attempt to Withdraw Unliterally from the Compact and Dissolve the Waterfront Commission

After six decades of honoring its obligations under the interstate Compact, New Jersey now seeks to withdraw unilaterally from the Compact, terminate the Commission, and seize its assets and powers. New Jersey enacted state law Chapter 324, purporting to authorize its withdrawal from the Compact—without New York's consent. *See* Compl. App. 36a-109a (Ch. 324, 2017 N.J. Laws 2102 (2018)). Chapter 324 repealed the New Jersey legislation that had contributed to the formation of the Compact and set forth additional steps to further the State's unilateral withdrawal. Specifically, Chapter 324 required the New Jersey Governor to notify the Congress of the United States, the Governor of the State of New York, and the waterfront commission of New York harbor, of the State of New Jersey's "intention to withdraw." Compl. App. 38a (§ 2(a)). The law further provides that, ninety days after that notification, the Compact and the Commission would be "dissolved," Compl. App. 45a, 103a-104a (§§ 3, 31), even though New York never enacted concurring legislation.

Chapter 324 also authorizes New Jersey to appropriate for itself the Commission's powers and

assets. For example, the law declares that when the Commission is purportedly “dissolved,” the New Jersey Division of State Police “shall assume all of the powers, rights, assets, and duties of the commission within [New Jersey].” Compl. App. 46a (§ 4(b)(1)). The law provides that New Jersey may seize Commission funds purportedly “applicable to [New Jersey]” and transfer those funds to the New Jersey treasury. Compl. App. 47a (§ 4(b)(2)). The law also grants the New Jersey Division of State Police many of the powers that the bistate Compact confers to the Commission. And pursuant to Chapter 324, assessments currently payable to the Commission under the Compact for work performed in New Jersey would be paid instead to the New Jersey Division of State Police. Compl. App. 91a-97a (§§ 25-26).

The day after Chapter 324 was enacted, the Commission filed suit in the U.S. District Court for the District of New Jersey, seeking an order enjoining Chapter 324’s enforcement and declaring the statute unlawful. As a result of that suit, enforcement of Chapter 324 was stopped for more than three and half years. The district court issued a preliminary injunction, which enjoined New Jersey from enforcing the law, kept the Commission operating as usual, and maintained the long-standing status quo. *See Waterfront Comm’n of N.Y. Harbor v. Murphy*, No. 18-650, 2018 WL 2455927, at *12 (D.N.J. June 1, 2018). The court later granted summary judgment in favor of the Commission. *Waterfront Comm’n of N.Y. Harbor v. Murphy*, 429 F. Supp. 3d 1, 12 (D.N.J. 2019).

New Jersey appealed the district court’s decision to the U.S. Court of Appeals for the Third Circuit, which declined to reach the merits and instead held that the Commission’s lawsuit was barred by state

sovereign immunity. See *Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234, 242 (3d Cir. 2020). The court stayed its mandate, however, pending this Court's resolution of the Commission's petition for a writ of certiorari. Order, *Waterfront Comm'n*, No. 19-2458 (3d Cir. July 20, 2020), ECF No. 106. Accordingly, enforcement of the law remained enjoined. On November 21, 2021, this Court denied certiorari. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561 (2021). The Third Circuit subsequently issued its mandate, which the district implemented on December 3, 2021. Order, *Waterfront Comm'n*, No. 18-cv-650 (D.N.J. Dec. 3, 2021), ECF No. 76.

**C. New Jersey's Imminent Attempt to
Forcibly Terminate the Commission's
Operations on March 28, 2022**

After the Commission's litigation ended, New Jersey commenced its efforts to withdraw unilaterally from the Compact, dissolve the Commission, and appropriate for itself the Commission's powers and assets. On December 27, 2021, Sheila Y. Oliver, then-Acting Governor of New Jersey, sent letters to Kathy Hochul, who had become Governor of New York on August 24, 2021, and others announcing New Jersey's intention to "withdraw from the interstate compact that established the Waterfront Commission of New York Harbor." PI App. 32a-37a (letters from S. Oliver, 12/27/2021). In response, New York sought to address New Jersey's concerns through dialogue and cooperation. By letter dated February 9, 2022, New York offered to work "hand in hand with the State of New Jersey to promote further economic growth and prosperity in the Port," and proposed conducting a

joint inquiry into the “ongoing needs of our shared Port” and “what aspects of the Commission’s work can be improved.” PI App. 42a (letter from E. Fine, 2/9/2022). That offer was promptly rebuffed. *See* PI App. 56a-58a (letter from P. Garg, 2/11/2022). At the same time, New Jersey served the Commission with sweeping demands for documents, including staff personnel files, police work assignments, information detailing the Commission’s ongoing criminal investigations, and the Commission’s confidential intelligence database. PI App. 43a-55a (letter from P. Murphy, 2/9/2021).

After the Commission refused New Jersey’s unlawful demands, PI App. 59a-60a (letter from W. Arsenault, 2/22/2022), New Jersey escalated its threats. On March 1, 2022, New Jersey Governor Murphy’s Chief Counsel notified the Commission, copying New York Governor Hochul, that “[d]espite the Commission’s apparent refusal” to comply with New Jersey’s demands, “New Jersey’s withdrawal will take effect on March 28, 2022.” PI App. 62a (letter from P. Garg, 3/1/2022). He further threatened that New Jersey will unilaterally withdraw its Commissioner on that day. PI App. 62a (letter from P. Garg, 3/1/2022). He stated that if the Commission did not cede its authority to the New Jersey Division of State Police, the result will “endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region.” PI App. 63a (letter from P. Garg, 3/1/2022).

Meanwhile, the Commission’s ability to retain its employees and its funding is being imperiled. In early March, the New Jersey Division of State Police sent a letter to almost all Commission employees encouraging them to apply for jobs with the New Jersey

Division of State Police. PI App. 67a-68a (letter from P. Callahan, 3/4/2022). Around the same time, the New York Shipping Association announced to the Commission that its member employers will pay “no assessments” from January 1, 2022 onward. PI App. 66a (letter from J. Nardi, 3/4/2022).

ARGUMENT

Interstate compacts have long served an important role in our federalism. *See West Virginia ex rel. Dyer v. Sims (Dyer)*, 341 U.S. 22, 32 (1951) (“the compact . . . adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations”). The core purpose of a compact is to enable States to forge stable solutions to problems that transcend their borders. Accordingly, a bedrock principle is that no compacting party may unilaterally terminate or alter the agreement, unless expressly authorized to do so by the compact. *See Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985) (among “the classic indicia of a compact” is the signatory States’ inability to unilaterally modify or repeal the agreement).²

² *See also Dyer*, 341 U.S. at 28 (rejecting suggestion that a compact “can be unilaterally nullified, or given final meaning by an organ of one of the contracting States”); *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994) (emphasizing that “bistate entities created by compact . . . are not subject to the unilateral control of any one of the States that compose the federal system”); *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and concurring in judgment) (“While a State has plenary power to create and destroy its political subdivisions, a State enjoys no such hegemony over an interstate agency.”).

Here, the Compact does not expressly authorize unilateral termination; to the contrary, it expressly *requires* that any changes to the Compact be effectuated by action of the Legislature of either State *concurring in* by the Legislature of the other. Compl. App. 35a (art. XVI, § 1) (emphasis added). New York and New Jersey understood this when entering into the Compact and have abided by the concurrency requirement for over six decades. *See* Mot. for Prelim. Inj. at 23-33. New Jersey now has changed its course, and, over New York's strong objection, seeks to terminate the Compact unilaterally and appropriate for itself the Commission's assets and powers.

Expedited consideration of the Motion for Preliminary Relief is warranted because New Jersey has announced that it will effectuate its unlawful withdrawal from the Compact and seek to terminate the Commission on March 28, 2022. New Jersey intends to seize the Commission's sovereign authorities that belong jointly to New York and New Jersey and transfer them wholesale to the New Jersey Division of State Police. *See* Mot. Prelim. Inj. at 13-14. New Jersey further intends to take the Commission's files and assets and begin imposing its own conflicting regulatory and law-enforcement authority over portions of the Port that are located geographically in New Jersey. If New Jersey is not restrained from taking these actions, New York will suffer substantial and irreparable harm. As further explained in New York's Motion for Preliminary Relief, New Jersey's effort to dismantle the Commission and seize its powers will result in chaos, confusion, and public safety concerns at the Port. *See* Mot. Prelim. Inj. at 14-17. Indeed, New Jersey has acknowledged that having both the Commission and the New Jersey Division of

State Police claiming conflicting authority over the Port will “endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce” in the region. PI App. 63a (letter from P. Garg, 03/01/22).

The ordinary response period prescribed by Rule 21.4—ten (10) days—may not allow the Motion for Preliminary Relief to be decided before March 28, 2022. Accordingly, New York proposes the following briefing schedule for New York’s Motion for Preliminary Relief:

- | | |
|----------------|---|
| March 21, 2022 | New Jersey’s brief in opposition to Motion for Preliminary Relief |
| March 21, 2022 | Distribution |
| March 25, 2022 | Consideration before or at conference |

CONCLUSION

New York respectfully requests that the Court expedite consideration of the Motion for Preliminary Relief in accordance with the proposed schedule.

Respectfully submitted,

LETITIA JAMES

Attorney General

State of New York

BARBARA D. UNDERWOOD*

Solicitor General

JUDITH N. VALE

Deputy Solicitor General

GRACE X. ZHOU

Assistant Solicitor General

HELENA LYNCH

Assistant Attorney General

barbara.underwood@ag.ny.gov

March 2022

* *Counsel of Record*

IN THE
Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

MOTION FOR PRELIMINARY RELIEF

TABLE OF CONTENTS

	Page
Table of Authorities	vi
Preliminary Statement	1
Statement of the Case	2
A. The Waterfront Commission Compact.....	2
B. Powers and Duties of the Waterfront Commission.....	4
C. The Commission’s Ongoing Efforts to Ensure Safe and Efficient Operations at the Port.....	6
D. New Jersey’s Current Attempt to Withdraw Unilaterally from the Compact...	7
E. New Jersey’s Imminent Attempts to Forcibly Terminate the Commission’s Operations on March 28, 2022	9
Reasons for Granting Preliminary Relief.....	11
I. The Balance of Equities and Public Interest Weigh Decisively in Favor of a Preliminary Injunction to Prevent New Jersey from Imminently Dismantling the Bistate Commission.	12
A. New Jersey’s Unilateral Dismantling of the Commission Will Irreparably Seize Sovereign Authority That Belongs to the State of New York and Imperil Public Safety and Operations at the Port.	12

(Table continues on next page.)

	Page
B. New Jersey Will Not Suffer Any Irreparable Harm from Abiding by the Compact It Voluntarily Entered into and Has Complied With for Over Six Decades.	17
II. New York Is Likely to Succeed on the Merits of Its Claims.	21
A. This Court Is Likely to Exercise Its Original and Exclusive Jurisdiction over New York’s Claims.....	21
B. New York Is Likely to Succeed in Establishing That New Jersey’s Attempt to Withdraw Unilaterally from the Compact Is Unlawful.	23
1. The express terms of the Compact unambiguously prohibit unilateral termination by one compacting State...	23
2. Other tools of compact interpretation further confirm that New York and New Jersey intended to require mutual agreement to terminate the Compact.	28
3. New Jersey’s statute purporting to authorize unilateral termination of the Compact and Commission is preempted by the Compact and violates the Contract Clause of the U.S. Constitution.....	33
Conclusion.....	35

Appendix A – Declaration of Walter M. Arsenault,
Executive Commissioner of Waterfront
Commission of New York Harbor (Mar. 10,
2022)

Appendix B – Declaration of Paul Weinstein, New
York Commissioner of Waterfront Commission
of New York Harbor (March 10, 2022)

Appendix C – Letters from Sheila Y. Oliver,
Acting N.J. Governor, to Paul T. Weinstein,
N.Y. Commissioner, Waterfront Commission of
N.Y. Harbor, et al. (Dec. 27, 2021)

Appendix D – Letter from Elizabeth R. Fine,
Counsel to N.Y. Governor Kathy Hochul, to
Parimal Garg, Chief Counsel to N.J. Governor
Philip D. Murphy (Feb. 9, 2022)

Appendix E – Letter from Philip D. Murphy, N.J.
Governor, to Walter M. Arsenault, Executive
Commissioner of Waterfront Commission of
New York Harbor (Feb. 9, 2022)

Appendix F – Letter from Parimal Garg, Chief
Counsel to N.J. Governor Philip D. Murphy, to
Elizabeth R. Fine, Chief Counsel to N.Y.
Governor Kathy Hochul (Feb. 11, 2022)

Appendix G – Letter from Walter M. Arsenault,
Executive Commissioner of Waterfront
Commission of New York Harbor, to N.J.
Governor Philip D. Murphy (Feb. 22, 2022)

Appendix H – Letter from Parimal Garg, Chief
Counsel to N.J. Governor Philip D. Murphy, to
Walter M. Arsenault, Executive Commissioner
of Waterfront Commission of New York
Harbor (Mar. 1, 2022)

Appendix I – Letter from John J. Nardi, President of New York Shipping Association, Inc., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 4, 2022)

Appendix J – Letter from Patrick J. Callahan, Superintendent of N.J. Division of State Police, to Waterfront Commission Employees (Mar. 4, 2022)

Appendix K – Letter from Nicholas P. Scutari, N.J. Senate President, et al., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 9, 2022)

Appendix L – Letter from Michael C. Mikulka, Assistant Inspector General, U.S. Department of Labor, Office of Inspector General, to Patty Stemler, Section Chief, U.S. Department of Justice (June 15, 2021)

Appendix M – Letter from Audrey Straus, United States Attorney for the Southern District of New York, to Patty Stemler, Section Chief, U.S. Department of Justice (June 16, 2021)

Appendix N – Letter from George M. Crouch, Jr., Special Agent in Charge, FBI Newark Field Office, and Jaqueline Maguire, Special Agent in Charge, FBI New York Field Office, to Patty Stemler, Section Chief, U.S. Department of Justice (June 17, 2021)

Appendix O – Conditional Veto, Senate Bill No. 2277 (Second Reprint), 2014-2015 Session (N.J. May 7, 2015)

Appendix P – Memorandum from John Kingston
to Philip M. Mersinger, N.J. Office of
Legislative Services (Oct. 23, 2014)

Appendix Q – Letter from Chris Christie, N.J.
Governor, to Walter M. Arsenault, Executive
Commissioner of Waterfront Commission of
New York Harbor (Aug. 7, 2017)

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alabama v. North Carolina</i> , 560 U.S. 330 (2010)	passim
<i>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez</i> , 458 U.S. 592 (1982).....	12
<i>Arizona v. New Mexico</i> , 425 U.S. 794 (1976)	20
<i>California v. Texas</i> , 437 U.S. 601 (1978)	20
<i>California v. Texas</i> , 459 U.S. 1083 (1982)	11
<i>De Veau v. Braisted</i> , 363 U.S. 144 (1960)	2,3,26
<i>West Virginia ex rel. Dyer v. Sims</i> , 341 U.S. 22 (1951)	22,27
<i>Hess v. Port Auth. Trans-Hudson Corp.</i> , 513 U.S. 30 (1994)	12,27,28
<i>Hollingsworth v. Perry</i> , 558 U.S. 183 (2010)	11,21
<i>Kansas City Area Transp. Auth. v. Missouri</i> , 640 F.2d 173 (8th Cir. 1981)	27
<i>Kansas v. Colorado</i> , 514 U.S. 673 (1995).....	22
<i>Kansas v. Nebraska</i> , 574 U.S. 445 (2015).....	22,33
<i>Kentucky v. Indiana</i> , 281 U.S. 163 (1930)	22
<i>Louisiana v. Mississippi</i> , 488 U.S. 990 (1988)	20
<i>Mississippi v. Louisiana</i> , 506 U.S. 73 (1992)	21,22
<i>Montana v. Wyoming</i> , 563 U.S. 368 (2011)	22
<i>New Jersey v. New York</i> , 523 U.S. 767 (1998)	22
<i>Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System</i> , 472 U.S. 159 (1985)	27
<i>Oklahoma v. New Mexico</i> , 501 U.S. 221 (1991).....	29

Cases	Page(s)
<i>Pennsylvania v. West Virginia</i> , 39 S. Ct. 491 (1919) .	11
<i>Petty v. Tennessee-Missouri Bridge Comm'n</i> , 359 U.S. 275 (1959)	25
<i>Port Auth. Trans-Hudson Corp. v. Feeney</i> , 495 U.S. 299 (1990)	13,27,28
<i>Seattle Master Builders Ass'n v. Pacific N.W. Elec. Power & Conservation Planning Council</i> , 786 F.2d 1359 (9th Cir. 1986)	27
<i>Sveen v. Melin</i> , 138 S. Ct. 1815 (2018)	33,34
<i>Tarrant Reg'l Water Dist. v. Hermann</i> , 569 U.S. 613 (2013)	passim
<i>Texas v. New Mexico</i> , 462 U.S. 554 (1983).....	22,26
<i>Texas v. New Mexico</i> , 482 U.S. 124 (1987).....	24
<i>United States v. Louisiana</i> , 351 U.S. 978 (1956) ..	11,12
<i>University of Texas v. Camenisch</i> , 451 U.S. 390 (1981)	12
<i>Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.</i> , 961 F.3d 234 (3d Cir. 2020)	9
<i>Waterfront Comm'n of N.Y. Harbor v. Murphy</i> , 142 S. Ct. 561 (2021)	9
<i>Waterfront Comm'n of N.Y. Harbor v. Murphy</i> , 429 F. Supp. 3d 1 (D.N.J. 2019).....	9,24,30
<i>Waterfront Comm'n of N.Y. Harbor v. Murphy</i> , No. 18-650, 2018 WL 2455927 (D.N.J. 2018).....	9
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	11,12

Constitutional Provisions	Page(s)
U.S. Const.	
art. I, § 10, cl. 1.....	33
art. I, § 10, cl. 3.....	3
art. III, § 2, cl. 2.....	21
 Laws	
Waterfront Commission Compact Act, ch. 407, 67 Stat. 541 (1953)	3
28 U.S.C. § 1251(a)	21,23
Ch. 202, 1953 N.J. Laws 1511.....	2
Ch. 324, 2017 N.J. Laws 2102 (2018)	passim
N.J. Stat. Ann.	
§ 32:23-86 (2003)	5,13
§ 32:23-114 (1999)	4
Ch. 882, 1953 N.Y. Laws 2417	3
N.Y. Unconsol. Law (McKinney)	
§§ 9801-9873.....	3
§ 9906 (2003)	5,13
§ 9920 (1999)	4
 Rules	
Sup. Ct. R. 17.2.....	1,11
Sup. Ct. R. 21.....	1
 Miscellaneous Authorities	
Frederick L. Zimmerman & Mitchell Wendell, <i>The Law and Use of Interstate Compacts</i> (1976)	28

Miscellaneous Authorities	Page(s)
N.J. Att’y Gen., Press Release, <i>Racketeering Indictment Charges 10 Alleged Members and Associates of Genovese Crime Family with Reaping Millions of Dollars from Loansharking, Illegal Check Cashing, Gambling & Money Laundering</i> (Apr. 27, 2016), https://www.njoag.gov/racketeering-indictment-charges-10-alleged-members-and-associates-of-genovese-crime-family-with-reaping-millions-of-dollars-from-loansharking-illegal-check-cashing-gambling-money-laundering/	18
N.J. Att’y Gen., Press Release, <i>Six Men Sentenced for Roles in Illegal Loansharking, Check Cashing, Gambling & Money Laundering Schemes Linked to Genovese Crime Family</i> (Sept. 20, 2019), https://www.nj.gov/oag/newsreleases19/pr20190920b.html	18
<i>New Jersey-New York Waterfront Commission Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary, 83d Cong. (1953)</i>	passim
S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015) 7,30	
Stephen M. Shapiro et al., <i>Supreme Court Practice</i> (11th ed. 2019).....	11

(Table continues on next page.)

Miscellaneous Authorities	Page(s)
U.S. Att’y’s Office for the E. Dist. of N.Y., <i>Gambino Crime Family Captain Sentenced to 37 Months in Prison and Ordered to Pay \$1 Million in Restitution for Racketeering Conspiracy</i> (Feb. 10, 2022), https://www.justice.gov/usao- edny/pr/gambino-crime-family-captain- sentenced-37-months-prison-and-ordered-pay- 1-million	18

PRELIMINARY STATEMENT

Pursuant to Supreme Court Rules 21 and 17.2 and Federal Rule of Civil Procedure 65, New York moves this Court for a preliminary injunction enjoining New Jersey from enforcing Chapter 324 (2018) of the Laws of New Jersey and from taking any further action to withdraw unilaterally from the Waterfront Commission Compact pending disposition of the Motion for Leave to File Bill of Complaint and, if that Motion is granted, disposition of this case. If the Court does not adjudicate this Motion for Preliminary Relief before March 28, 2022—the date New Jersey has announced it will withdraw from the Compact—New York requests that the Court issue interim relief enjoining New Jersey from enforcing Chapter 324 pending resolution of this Motion.

New York brings this original action against New Jersey to address New Jersey’s unlawful attempt to withdraw unilaterally from the Compact and to dissolve the bistate Commission the Compact creates. Chapter 324 purports to authorize New Jersey to terminate the Compact, and to transfer the Commission’s assets and powers to the New Jersey Division of State Police. *See* Compl. App. 36a-109a. New Jersey recently announced that it will effectuate its withdrawal on March 28, 2022.

A preliminary injunction is necessary to avoid the substantial and irreparable harms that will befall New York and its residents if New Jersey undertakes its threatened actions. New Jersey seeks to transfer to its Division of State Police the Commission’s assets and regulatory and law-enforcement powers—sovereign authorities that, under the Compact, belong jointly to New York and New Jersey. Such actions will

not only irreparably harm New York's sovereign interests but will also likely upend security and stability at the New York–New Jersey Port—the East Coast's largest port. Indeed, the exercise of conflicting authority by the New Jersey Division of State Police and the Commission will set the stage for chaos, labor strife, and disruptions to shipping operations. New Jersey will not suffer any irreparable harm from maintaining the status quo that has governed the Port for more than sixty years.

New York is also likely to succeed on the merits of its claims. New Jersey's actions plainly violate the Compact's express terms, which unambiguously require the States to enact *concurrent* legislation to alter the Compact. And to the extent there is any ambiguity, the treatment of the same issues in other interstate compacts, New Jersey's course of conduct under the Compact, and the legislative history confirm that the drafters did not intend to confer on either State a unilateral right of termination. Any enforcement of Chapter 324 is thus a breach of the Compact and a violation of federal law.

STATEMENT OF THE CASE

A. The Waterfront Commission Compact

In 1951, New York and New Jersey investigated extensive criminal activities at the Port, including corruption, extortion, racketeering, and organized crime. *See De Veau v. Braisted*, 363 U.S. 144, 147 (1960); Compl. App. 1a-2a (Compact art. I, § 1). To address these pressing issues, New York and New Jersey each enacted concurring legislation in 1953, to enter into the Compact. *See* Ch. 202, 1953 N.J. Laws 1511, 1511-42 (codified at N.J. Stat. Ann. §§ 32:23-1 to

-73);¹ Ch. 882, § 1, 1953 N.Y. Laws 2417, 2417-36 (N.Y. Unconsol. Laws §§ 9801-9873 (McKinney)). The Compact established the Commission to combat crime and corruption at the Port. *See* Compl. App. 6a (art. III, § 1).

As required by the Compact Clause of the United States Constitution (Compl. App. 147a (U.S. Const. art. I, § 10, cl. 3)), New York and New Jersey presented the Compact to Congress for approval. As the States explained, their compact was necessary because they were “dealing with a single shipping industry operating in a single harbor.” *New Jersey-New York Waterfront Commission Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary*, 83d Cong. 19 (1953) (“*Commission Compact Hearing*”) (statement of Hon. Alfred E. Driscoll, Governor of N.J.). Thus, “the only real solution” to rooting out crime and corruption from the Port was to create “a single bistate agency” over which each State bore “equal responsibility”—regardless of the number of employees on either side of the Port. *Id.* After independently investigating the conditions at the Port, *see De Veau*, 363 U.S. at 149, Congress approved the Compact and the President signed it into federal law. Compl. App. 1a-35a (Waterfront Commission Compact Act, ch. 407, 67 Stat. 541 (1953)).

¹ As explained below (at 7-8), Chapter 324 unlawfully purports to repeal this legislation and other New Jersey statutes that are part of amendments to the Compact. *See* Compl App. 36a.

B. Powers and Duties of the Waterfront Commission

Under the interstate Compact, the Commission “shall be a body corporate and politic, an instrumentality of the States of New York and New Jersey.” Compl. App. 6a (art. III, § 1). The Commission consists of two commissioners, one appointed by each of the two member States. Compl. App. 6a (art. III, § 2). Through the Compact, New York and New Jersey jointly conferred on the Commission broad regulatory and law-enforcement authority to oversee labor and hiring at the Port and to root out crime at the waterfront.

For instance, the Commission has extensive powers to license, register, and regulate the employment of various waterfront workers. *See* Compl. App. 9a-26a (arts. V-X). The Compact provides that no one in those professions may work in the Port without first being licensed and registered by the Commission. Compl. App. 9a (art. V, § 1), 14a (art. VI, § 1), 20a (art. VIII, § 1), 24a (art. X, § 1). And the Commission is empowered to remove from the Port workers who create dangers at the Port by engaging in criminal activity. *See* Compl. App. 17a-18a (art. VI, § 6 (stevedores)), 21a-22a (art. VIII, § 5 (longshoremen)), 26a (art. X, § 6 (port watchmen)). The Compact, as amended, gives the Commission expanded powers to conduct background screenings of individuals seeking employment at the Port, prevent individuals with criminal ties from being hired at the Port, and ensure that workers who are hired are selected in a fair and nondiscriminatory manner. Compl. App. 119a-125a (N.J. Stat. Ann. § 32:23-114 (1999)), 120a-126a (N.Y. Unconsol. Laws § 9920 (McKinney 1999)).

The Compact further provides the Commission with broad investigatory power, including the power to investigate crimes. To ensure compliance with the Compact and the Commission's rules and regulations, the Compact broadly authorizes the Commission to "make investigations . . . upon all matters relating to the accomplishment of the objectives of [the] compact" (Compl. App. 8a (art. IV, § 11)), and to issue subpoenas (Compl. App. 7a-8a (art. IV, § 8)). And, as amended, the Compact expressly empowers the Commission to maintain a police force, conduct criminal investigations, and take appropriate administrative action against violators. *See* Compl. App. 110a-111a (N.J. Stat. Ann. § 32:23-86(3)-(5) (2003)), 114a-115a (N.Y. Unconsol. Law § 9906(3)-(5) (McKinney 2003)). The Commission is authorized to designate investigators "who shall be vested with all the powers of a peace or police officer of the State of New York in that State, and of the State of New Jersey in that State." Compl. 110a (N.J. Stat. Ann. § 32:23-86(4) (2003)), 114a (N.Y. Unconsol. Law § 9906(4) (McKinney 2003)). To fund its budget, the Commission is authorized to levy assessments on waterfront employers on the wages paid to their employees. Compl. App. 31a-32a (art. XIII, § 3).

Finally, and of particular relevance here, the Compact does not permit either New York or New Jersey to withdraw unilaterally from the Compact or dissolve the Commission. Instead, article XVI, § 1 of the Compact requires that any changes to the Compact must be made by legislation enacted by one compacting State and "concurring in by the Legislature of the other." Compl. App. 34a-35a. Congress also "expressly reserved" for itself the power to repeal the authorizing Act. Compl. App. 35a (Ch. 407, § 2).

C. The Commission's Ongoing Efforts to Ensure Safe and Efficient Operations at the Port

The bistate Commission has operated for the past sixty-eight years, taking myriad actions to combat corruption at the Port. For example, the Commission has conducted hundreds of investigations that have successfully led to convictions of individuals for drug trafficking, racketeering, and murder. PI App. 4a (Arsenault Decl. ¶ 8). And it also has performed background checks on potential port employees to prevent members of organized crime families from infiltrating the Port workforce. PI App. 4a (Arsenault Decl. ¶¶ 8d, 9). In recent years, the Commission has also worked to prevent discrimination in hiring by requiring local unions to certify that each new hire is selected in a fair and nondiscriminatory manner. PI App. 7a, 21a-22a (Arsenault Decl. ¶¶ 15, 60-61).

Despite achieving many successes, the Commission's work is not done. Corruption, racketeering, and unfair employment practices remain serious issues at the Port. *See* PI App. 3a, 5a-7a (Arsenault Decl. ¶¶ 7, 10-14), 29a (Weinstein Decl. ¶ 11). For example, organized crime families and other corrupt individuals continue to seek to infiltrate the Port, exert influence over hiring and employment, and use the Port to conduct criminal activities. PI App. 3a (Arsenault Decl. ¶ 7). The Commission continues to conduct its own investigations and regulatory work, and continues to serve as an instrumental partner to other state and federal law-enforcement authorities.² As a United

² *See, e.g.*, PI App. 29a-30a (Weinstein Decl. ¶¶ 10-11), 78a-83a (letters from U.S. Department of Labor, Federal Bureau of

(continues on next page)

States Attorney for the Southern District of New York recognized, the Waterfront Commission often provides “invaluable intelligence, evidence, and investigative assistance” that “is essential” to prosecutions of organized crime and labor racketeering. PI App. 80a-81a (letter from then-U.S. Attorney A. Strauss).

**D. New Jersey’s Current Attempt
to Withdraw Unilaterally from
the Compact**

After six decades of honoring its obligations under the Compact, New Jersey changed course. In 2015, the New Jersey Legislature passed Senate Bill No. 2277, which directed then-Governor Christie to withdraw New Jersey from the Compact. S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015). Governor Christie vetoed the bill, explaining that “federal law does not permit one state to withdraw unilaterally from a bi-state compact approved by Congress.” PI App. 85a. He expressly acknowledged that “it is premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation.” PI App. 85a.

However, Governor Christie signed into law a nearly identical bill on his last day in office in January 2018. This law, Chapter 324, 2017 N.J. Laws 2102 (2018), immediately repealed the New Jersey legislation that had contributed to the formation of the Compact, and set forth additional steps to further the State’s unilateral withdrawal from the Compact. Chapter 324 requires the New Jersey Governor to notify Congress, the New York Governor, and the

Commission of New Jersey's intention to withdraw. Compl. App. 38a (§ 2(a)). And the law provides that, ninety days after that notification, the Compact and the Commission would be "dissolved" (Compl. App. 45a (Ch. 324, § 3), 103a-104a (Ch. 324, § 31)), even though New York never enacted concurring legislation.

Chapter 324 also purportedly authorizes New Jersey to appropriate for itself the Commission's powers and assets. The law declares that when the Commission is "dissolved," the New Jersey Division of State Police "shall assume all of the powers, rights, assets, and duties of the commission within" New Jersey. Compl. App. 46a (§ 4(b)(1)). The law provides that New Jersey may seize Commission funds "applicable to" New Jersey and transfer those funds to the New Jersey treasury. Compl. App. 47a (§ 4(b)(2)). Finally, the law grants the New Jersey Division of State Police many of the powers that the bistate Compact confers on the Commission, including the power to adopt rules and regulations governing employment; to issue and revoke licenses to pier superintendents and stevedores; and to establish a registry for longshoremen in the portions of the Port located geographically in New Jersey. Compl. App. 49a-72a (§§ 5-11). Pursuant to Chapter 324, assessments currently payable to the Commission under the Compact would be paid instead to New Jersey's Division of State Police. Compl. App. 91a-97a (§§ 25-26).

The day after Chapter 324 was enacted, the Commission filed suit in the U.S. District Court for the District of New Jersey, seeking an order enjoining Chapter 324's enforcement and declaring the statute unlawful. The district court issued a preliminary injunction, which enjoined New Jersey from enforcing the law, kept the Commission operating, and main-

tained the status quo that had governed the Port for more than sixty years. *See Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-650, 2018 WL 2455927, at *12 (D.N.J. June 1, 2018). The court later granted summary judgment in favor of the Commission. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 429 F. Supp. 3d 1, 12 (D.N.J. 2019).

New Jersey appealed the district court's decision to the U.S. Court of Appeals for the Third Circuit. The Third Circuit declined to reach the merits of the case and instead held that the Commission's lawsuit was barred by state sovereign immunity. *See Waterfront Comm'n of N.Y. Harbor v. Governor of N.J.*, 961 F.3d 234, 242 (3d Cir. 2020). But the court stayed its mandate pending this Court's resolution of the Commission's petition for a writ of certiorari. Order, *Waterfront Comm'n*, No. 19-2458 (3d Cir. July 20, 2020), ECF No. 106. Accordingly, the injunction barring enforcement of Chapter 324 remained in effect. On November 21, 2022, this Court denied certiorari. *Waterfront Comm'n of N.Y. Harbor v. Murphy*, 142 S. Ct. 561 (2021). The Third Circuit subsequently issued its mandate, which the district court implemented on December 3, 2021. Order, *Waterfront Comm'n v. Murphy*, No. 18-cv-650 (D.N.J. Dec. 3, 2021), ECF No. 76.

**E. New Jersey's Imminent Attempts to
Forcibly Terminate the Commission's
Operations on March 28, 2022**

After the Commission's litigation ended, New Jersey doubled down on its efforts to enforce Chapter 324. On December 27, 2021, Sheila Y. Oliver, then-Acting Governor of New Jersey, sent letters to New York Governor Kathy Hochul, the Commission, the

New Jersey Legislature, and Congress, announcing New Jersey's intention to withdraw from the Compact. PI App. 32a-39a. In response, New York sought to address New Jersey's concerns through further dialogue and cooperation. For example, in a letter dated February 9, 2022, New York offered to work "with the State of New Jersey to promote further economic growth and prosperity in the Port," and proposed conducting a joint inquiry into the "ongoing needs of our shared Port" and "what aspects of the Commission's work can be improved." PI App. 42a. That offer was promptly rebuffed. *See* PI App. 56a-58a. At the same time, New Jersey sent the Commission sweeping demands for documents, including staff personnel files, police work assignments, information detailing the Commission's ongoing criminal investigations, and the Commission's confidential intelligence database. PI App. 43a-55a.

After the Commission refused New Jersey's unlawful demands (PI App. 59a-60a), New Jersey escalated its threats. On March 1, 2022, Chief Counsel to New Jersey Governor Murphy notified the Commission, copying New York Governor Hochul, that "[d]espite the Commission's apparent refusal" to comply with New Jersey's demands, "New Jersey's withdrawal will take effect on March 28, 2022." PI App. 62a. He indicated that New Jersey will be unilaterally withdrawing its Commissioner on that day. PI App. 62a. And he stated that if the Commission did not cede its authority to the New Jersey Division of State Police, the result will "endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region." PI App. 63a.

**REASONS FOR GRANTING
PRELIMINARY RELIEF**

The Court should grant a preliminary injunction barring New Jersey from enforcing any provision of Chapter 324 or taking any further action to withdraw unilaterally from the Compact or terminate the Commission pending disposition of New York’s Motion for Leave to File Bill of Complaint and, if that Motion is granted, disposition of the merits of this case. If the Court does not rule on this Motion for a Preliminary Injunction before March 28, 2022, New York requests interim relief enjoining New Jersey from enforcing any provision of Chapter 324 or taking any further action to withdraw unilaterally from the Compact or terminate the Commission pending disposition of this Motion.

The Federal Rules of Civil Procedure generally apply to original actions in this Court. *See* Sup. Ct. R. 17.2; Stephen M. Shapiro et al., *Supreme Court Practice* ch. 10.7, at 10-27 (11th ed. 2019). This Court has previously granted preliminary injunctions in such proceedings. *See California v. Texas*, 459 U.S. 1083 (1982); *United States v. Louisiana*, 351 U.S. 978 (1956); *Pennsylvania v. West Virginia*, 39 S. Ct. 491 (1919).

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, “[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *cf. Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (applying similar

standard to stay applications). New York amply satisfies these requirements here.

I. The Balance of Equities and Public Interest Weigh Decisively in Favor of a Preliminary Injunction to Prevent New Jersey from Imminently Dismantling the Bistate Commission.

“[T]he balance of equities and consideration of the overall public interest in this case,” *Winter*, 555 U.S. at 26, tip decisively in favor of a preliminary injunction to maintain the status quo that has governed the Port for sixty-eight years. *See University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (preliminary injunction preserves “relative positions of the parties until a trial on the merits can be held”); *see also United States v. Louisiana*, 351 U.S. at 978 (preliminarily enjoining parties from drilling new wells in disputed area).

A. New Jersey’s Unilateral Dismantling of the Commission Will Irreparably Seize Sovereign Authority That Belongs to the State of New York and Imperil Public Safety and Operations at the Port.

A preliminary injunction is needed to prevent New Jersey from misappropriating sovereign powers that belong jointly to New York and New Jersey, and terminating a Commission created by co-equal sovereigns with Congress’s approval—imminent and irreparable harms that warrant this Court’s immediate attention. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (“Bistate entities . . . typically are creations of three discrete sovereigns: two States and the Federal Government.”); *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982).

Under the Compact, New York and New Jersey jointly created the Commission as “a body corporate and politic” and “an instrumentality” of *both* States. Compl. App. 6a (art. III, ¶ 1). The powers of this bistate Commission thus belong indivisibly to *both* New York and New Jersey. As both States understood in entering the Compact, they created “a single bistate agency” for which they each bore “equal responsibility.” See *Commission Compact Hearing, supra*, at 19 (N.J. Governor Driscoll). Indeed, in creating the Commission, New York and New Jersey each agreed to relinquish to each other a part of their sovereignty. See *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and concurring in judgment).

Absent a preliminary injunction, New Jersey will seize from the Commission authority that, under the Compact, belongs jointly to New York and New Jersey, and transfer that power wholesale to the New Jersey Division of State Police. Compl. App. 46a (Ch. 324, § 4(b)(1)). For example, beginning on March 28, New Jersey will purport to abolish the Commission entirely and seize the Commission’s law-enforcement authority over any portion of the Port located in New Jersey, including the Commission’s authority to investigate unlawful activity. Compare Compl. App. 8a (art. IV, § 11), 110a-111a (N.J. Stat. Ann. § 32:23-86(3)-(5) (2003)), and 114a-115a (N.Y. Unconsol. Law § 9906(3)-(5) (McKinney 2003)), with Compl. App. 38a, 49a-53a (Ch. 324, §§ 1(d), 5). New Jersey will also seek to seize for itself the Commission’s authority to license waterfront employees; issue and enforce regulations governing hiring and employment at the Port; and maintain a register of longshore workers eligible for employment. Compare Compl. App. 9a-26a (Compact arts.

V-X), *with* Compl. App. 49a-76a (Ch. 324, §§ 5-13). And New Jersey will transfer to its Division of State Police the Commission's power to levy assessments on the wages paid by Port employers for work performed in New Jersey. Compl. App. 91a-97a (Ch. 324, §§ 25-26). The Court should issue a preliminary injunction to prevent New Jersey from unilaterally and unlawfully stripping New York of these sovereign powers.

New Jersey's improper attempt to abolish the Commission and seize its powers and assets will cause further irreparable harm to New York, and undermine the public interest, by imperiling public safety and operations at the largest shipping port on the East Coast. When New Jersey sends its State Police to shutter the Commission and take its authority, substantial chaos and confusion will likely ensue. Because New Jersey's actions are unlawful, the Commission's staff intend to continue discharging their duties under the Compact to the best of their ability. PI App. 22a (Arsenault Decl. ¶ 62), 30a-31a (Weinstein Decl. ¶ 15). As a result, on March 28, there will be two different sets of government officials, one from New Jersey and one from the bistate Commission, that each claim law-enforcement and regulatory authority over hiring and employment at the port areas in New Jersey. See *supra*, at 8.

The presence of two sets of government officials with conflicting jurisdictional claims over the Port sets the stage for labor strife, conflicts, and disruptions to Port operations. Indeed, in demanding that the Commission acquiesce to its actions, New Jersey has acknowledged that having both the Commission and the New Jersey Division of State Police claiming authority over the Port will "endanger operations at

the Port and risk disruptions to the economy, supply chains, and commerce in our region.” PI App. 63a.

Chaos and confusion will ensue because the New Jersey Division of State Police have stated that they will not recognize the law-enforcement or regulatory authority of Commission police officers or personnel. PI App. 16a (Arsenault Decl. ¶ 41), 67a (letter from P. Callahan, 3/4/2022). Commission officers thus might be blocked from accessing vessels and piers for inspection, even though the Compact authorizes them to access all areas of the Port without interference. *See* Compl. App. 8a (art. IV, § 9). Clashes may occur between waterfront workers and law-enforcement officers because workers may not accept the authority of either Commission officials or New Jersey’s State Police. There will also likely be substantial uncertainty about which set of government officials has authority to issue or revoke licenses for waterfront employment, maintain a register of longshoremen eligible and available to work at the Port, and levy assessments. Such confusion endangers not only public safety but also the smooth operation of the Port—likely causing immediate and irreparable disruptions to supply chains and the flow of commerce into New York and throughout the nation. *See* PI App. 16a (Arsenault Decl. ¶ 44), 63a (letter from P. Garg, 3/1/2022), 76a-77a (letter from N. Scutari, 3/9/2022).

New Jersey’s threatened actions, if allowed to go forward, will also undermine the Commission’s ongoing law-enforcement investigations and risk the safety of Commission officers. New Jersey has already demanded that the Commission turn over the Commission’s files and information, including confidential information about law-enforcement investigations. PI App. 43a-46a. But many of the Commission’s law-

enforcement operations, including undercover operations in both States, are inherently dangerous, and revealing confidential information about those operations jeopardizes officers' security. Moreover, if New Jersey is permitted to seize the Commission's assets and take its authority to levy assessments, the Commission's ability to operate will be diminished and may ultimately cease. As a result, the Commission may need to terminate certain law-enforcement operations abruptly, with the sudden absences of undercover detectives potentially signaling their identities and endangering not only those officers but also cooperating individuals who vouched for them. PI App. 17a (Arsenault Decl. ¶¶ 45-46).

Weakening or eliminating the Commission's ability to conduct its law-enforcement and regulatory work will also irreparably harm New York and its residents by creating more opportunities for organized crime families and other unlawful enterprises to infiltrate the Port and use it for criminal activities. The Commission has specialized experience in overseeing the Port and investigating the activities of organized crime members who seek to operate on both sides of the Port. PI App. 5a, 17a (Arsenault Decl. ¶¶ 9, 47). And the Commission has enhanced capabilities to conduct such investigative and regulatory activities effectively because it has jurisdiction over Port areas in both New York and New Jersey. PI App. 5a, 17a (Arsenault Decl. ¶¶ 9, 47). Indeed, the Commission is a key partner to federal and state law-enforcement agencies. See *supra*, at 6-7. Hobbling or removing the Commission's ability to continue operating thus risks allowing individuals associated with organized crime or other criminal operations to gain employment or other influence over the Port, and use

that access to conduct increased criminal activities—such as the importation and distribution of illegal narcotics or guns. Increased criminal activity at the Port will also likely result in increased prices for goods that flow through the Port into New York and the surrounding region. *See* Compl. App. 2a (Compact art. I, § 1); *see also* PI App. 3a (Arsenault Decl. ¶ 7), 29a (Weinstein Decl. ¶ 11). Even if the Court were to reconstitute the Commission at the end of this litigation, the harms done in the interim would be irreparable.

B. New Jersey Will Not Suffer Any Irreparable Harm from Abiding by the Compact It Voluntarily Entered into and Has Complied With for Over Six Decades.

If the Court issues a preliminary injunction, the Commission will continue to operate, conduct its law-enforcement functions, and regulate hiring and employment at the Port during the disposition of New York's leave motion and, if that motion is granted, the disposition of the merits of this case. Such preservation of the longstanding status quo will not plausibly harm New Jersey given that New Jersey agreed to create the Commission and has benefited from its work for more than sixty years.

New Jersey may assert, as it has in a letter to the Commission (PI App. 63), that the Commission will not be able to continue functioning because New Jersey will withdraw its Commissioner, refuse to appoint a new Commissioner, and otherwise impede the Commission's work. But any such assertion further underscores the urgent need for this Court to issue preliminary relief preventing New Jersey from

implementing Chapter 324, violating the Compact, or otherwise seeking to terminate the Commission while this case is pending. Indeed, the Compact requires New Jersey to appoint and maintain a Commissioner. Compl. App. 6a (art. III, § 2).

The New Jersey Legislature’s self-serving allegation that the Commission is “corrupt[]” or ineffectual (Compl. App. 37a (Ch. 324, § 1(b))) is belied by statements from federal and state law-enforcement agencies lauding the Commission’s investigatory work and partnership. *See* PI App. 80a-81a.³ Indeed, New Jersey law-enforcement authorities have repeatedly recognized the Commission’s successful efforts against organized crime and corruption at the Port. *See* N.J. Att’y Gen., Press Release, *Six Men Sentenced for Roles in Illegal Loansharking, Check Cashing, Gambling & Money Laundering Schemes Linked to Genovese Crime Family* (Sept. 20, 2019).⁴ And as recently as February 2022, the United States Attorney for the Eastern District of New York commended the Commission’s assistance in an investigation that led to the conviction of an organized crime family member. U.S. Att’y’s Office for the E. Dist. of N.Y., *Gambino Crime Family Captain Sentenced to 37 Months in Prison and Ordered to Pay \$1 Million in Restitution for Racketeering Conspiracy* (Feb. 10, 2022).

³ *See also* PI App. 78a (letter from U.S. Department of Labor, Office of Inspector General explaining that Commission “has been a key investigative partner”), 82a (letter from special FBI agents stating the same).

⁴ *See also, e.g.,* N.J. Att’y Gen., Press Release, *Racketeering Indictment Charges 10 Alleged Members and Associates of Genovese Crime Family with Reaping Millions of Dollars from Loansharking, Illegal Check Cashing, Gambling & Money Laundering* (Apr. 27, 2016).

New Jersey's assertion that ninety percent of the Port's commercial activity presently occurs on the New Jersey side of the Port (PI App. 56a-57a) does not change the assessment of the parties' relative harms. For one thing, New Jersey's actions will take sovereign powers that belong jointly to both States regardless of the amount of commercial activity on either side of the Port—indeed, the States entered into the Compact when seventy percent of the shipping employees worked on the New York side of the Port. See *Commission Compact Hearing, supra*, at 19 (N.J. Governor Driscoll). And public safety and operations throughout the entire Port will be jeopardized if two sets of regulators claim conflicting authority over the Port, or if the Commission is significantly weakened or needs to cease operations. See *supra* at 14-15. Many of the same criminal families operate in both States; thus, undermining or eliminating the Commission's operations will likely allow criminal enterprises to infiltrate the Port in *both* New York and New Jersey.

Moreover, New York acted expeditiously after it became clear that filing an original action and seeking preliminary relief from this Court is necessary to prevent New Jersey from terminating the Compact and Commission, and irreparably harming New York as a result. Until December 3, 2021, New York did not need to file an original action or seek relief from this Court because the lawsuit filed by the Commission against New Jersey was ongoing. During that litigation, the district court's orders enjoined New Jersey from enforcing Chapter 324 and preserved the Commission's authority over the Port. See *supra*, at 8-9. The Commission's then-pending lawsuit also rendered filing an original action unnecessary because it provided a viable alternative avenue for the courts to

permanently enjoin New Jersey from unilaterally withdrawing from the Compact or terminating the Commission. Indeed, while the Commission's lawsuit was pending, it was unlikely that this Court would have granted New York leave to file a bill of a complaint. *See Arizona v. New Mexico*, 425 U.S. 794, 797-98 (1976) (denying leave where pending state-court lawsuit provided forum for resolving dispute); *see also California v. Texas*, 437 U.S. 601, 601-02 (1978) (Brennan, J., concurring); *Louisiana v. Mississippi*, 488 U.S. 990, 990 (1988) (White, J., dissenting).

After November 22, 2021, the date on which this Court denied the Commission's petition for certiorari, New York prudently sought to resolve its dispute with New Jersey through means other than litigation. First, it was not until more than a month later, on December 27, 2021, that New Jersey's Governor provided notice under Chapter 324 to Governor Hochul and others that New Jersey was attempting to withdraw from the Compact unilaterally. *See* PI App. 32a-38a. Second, at that point, New York corresponded with New Jersey to seek an amicable resolution of their dispute. For example, New York sent New Jersey a letter seeking to maintain the "cooperative approach" that both States had used to jointly regulate the Port through the Compact and offering to conduct a joint inquiry into ways to improve the Commission's work going forward. PI App. 42a. But New Jersey refused to honor its compact obligations and instead made clear that it will seek to unlawfully abolish the Commission and withdraw from the Compact on March 28. PI App. 57a-58a. New York then filed this original action and moved for a preliminary injunction as soon as practicable thereafter.

New Jersey well understood that New York may need to file an original complaint and seek preliminary relief if the Commission’s lawsuit and New York’s efforts at cooperation failed. As New Jersey acknowledged in its brief opposing the Commission’s petition for certiorari, an original action by one compacting State against the other provides the appropriate means for resolving a State’s violation of a compact if, as the Third Circuit held in the Commission’s lawsuit, sovereign immunity prevents an interstate agency from suing the violator State for breaching the compact. Resp’ts Joint Br. in Opp. to Certiorari at 15, *Waterfront Comm’n of New York Harbor v. Murphy*, No. 20-772 (Mar. 2021).

II. New York Is Likely to Succeed on the Merits of Its Claims.

A. This Court Is Likely to Exercise Its Original and Exclusive Jurisdiction over New York’s Claims.

As a threshold matter, this Court is likely to grant New York leave to file its Bill of Complaint. *Cf. Hollingsworth*, 558 U.S. at 190. New York’s lawsuit against New Jersey for violation of the Compact, among other claims, falls squarely within the Court’s original and exclusive jurisdiction over cases and controversies between States. *See* U.S. Const. art. III, § 2, cl. 2; 28 U.S.C. § 1251(a). And both the “seriousness and dignity” of New York’s claims and the absence of any “alternative forum in which the issue tendered can be resolved” warrant invocation of the Court’s original jurisdiction here. *See Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (quotation marks omitted).

First, New York’s claims against New Jersey fall within the heartland of the Court’s original jurisdiction. As this Court has explained, determining “the nature and scope of obligations as between States,” particularly those arising from interstate compacts, “is the function and duty of the Supreme Court of the Nation.” *West Virginia ex rel. Dyer v. Sims* (“*Dyer*”) 341 U.S. 22, 28 (1951). Thus, the Court often has exercised its original jurisdiction to hear disputes between States arising out of a breach of an interstate compact or contract between States. *See, e.g., Kansas v. Nebraska*, 574 U.S. 445 (2015); *Montana v. Wyoming*, 563 U.S. 368 (2011); *Alabama v. North Carolina*, 560 U.S. 330 (2010); *New Jersey v. New York*, 523 U.S. 767 (1998); *Kansas v. Colorado*, 514 U.S. 673 (1995); *Texas v. New Mexico*, 462 U.S. 554 (1983); *Kentucky v. Indiana*, 281 U.S. 163 (1930).

The Court should likewise do so here given that New York’s claims against New Jersey arise from an ongoing and escalating breach of an interstate compact. And the claims here are particularly serious and dignified, *Mississippi v. Louisiana*, 506 U.S. at 77, because they implicate New York’s core sovereign interests. *See* Mot. for Leave to File Bill of Compl. (“Leave Mot.”) 14-18. New Jersey has not only sought to withdraw unilaterally from the Compact—in violation of its terms—but has also threatened to seize the Commission’s records and assessments and its law-enforcement authorities that, under the Compact, belong jointly to both States. New Jersey’s actions thus directly assail New York’s sovereign rights under the Compact and jeopardize New York’s sovereign interests in maintaining public safety and the orderly flow of goods into the State.

Second, there is no alternative forum from which New York can seek relief. See Leave Mot. 20-23. No pending litigation challenges New Jersey’s unlawful attempt to withdraw unilaterally from the Compact. And it is doubtful that either New York or a private party can raise this issue in another judicial forum because New York and New Jersey are the real parties in interest in this dispute, which implicates the core sovereign interests of both States. See Leave Mot. 14-18. Thus, any lawsuit to enjoin New Jersey’s further breach of the Compact can be brought only in this Court. See 28 U.S.C. § 1251(a) (“The Supreme Court shall have original and *exclusive* jurisdiction of all controversies between two or more States.” (emphasis added)).

B. New York Is Likely to Succeed in Establishing That New Jersey’s Attempt to Withdraw Unilaterally from the Compact Is Unlawful.

New Jersey’s ongoing and escalating efforts to withdraw unilaterally from the Compact plainly violate the Compact. And because the Compact is both federal law and a binding contract, Chapter 324, which purports to authorize these actions, is preempted by the Compact and violates the Contract Clause of the U.S. Constitution.

1. The express terms of the Compact unambiguously prohibit unilateral termination by one compacting State.

Interstate compacts “are construed as contracts under the principles of contract law.” *Tarrant Reg’l Water Dist. v. Hermann*, 569 U.S. 613, 627 (2013); see

Texas v. New Mexico, 482 U.S. 124, 218 (1987). Accordingly, the express terms of the Compact offer “the best indication of the intent of the parties.” *Tarrant Reg’l Water Dist*, 569 U.S. at 627. Here, the Compact’s plain language unambiguously demonstrates that New Jersey may not withdraw unilaterally or abolish the Commission without New York’s agreement. *See Alabama v. North Carolina*, 560 U.S. at 352 (Court will not order relief contrary to express terms of compact).

The Compact’s express concurrency provision precludes New Jersey from unilaterally withdrawing from the Compact, terminating the Commission, or transferring the Commission’s powers and assets to the New Jersey Division of State Police. The concurrency provision states that “[a]mendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State *concurred in* by the Legislature of the other.” *See* Compl. App. 34a-35a (emphasis added)). Changes to the Compact thus require legislation by both New York and New Jersey. But through Chapter 324, New Jersey seeks to radically alter the Compact without New York’s Legislature having promulgated concurring legislation. Indeed, Chapter 324 sets forth a litany of fundamental alterations to the Compact. “Allowing one state to dictate the manner and terms of the Commission’s dissolution, and the subsequent distribution of the agency’s assets” and powers plainly contravenes “the requirement that any change to the Compact occur through concurring legislation.” *Waterfront Comm’n*, 429 F. Supp. 2d at 8 (quotation marks omitted).

The congressional repeal provision of the Compact Act further establishes that New Jersey may not

unilaterally terminate the Compact. In approving the Compact, Congress reserved that right for itself. Compl. App. 35a (Ch. 407, § 2) (“The right to alter, amend, or repeal this Act is hereby expressly reserved.”). When the concurrency provision is properly read in context with this repeal provision, the Compact delineates only two ways in which it can be terminated: (i) by concurring legislation enacted by both New York and New Jersey, or (ii) by legislative act of Congress repealing the Compact Act. New York and New Jersey are bound by the repeal provision imposed by Congress because States, in seeking congressional approval for a compact, “assume the conditions that Congress under the Constitution attached.” *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275, 281-82 (1959). It is undisputed that neither of the two valid avenues for terminating the Compact are available to New Jersey here: New York has not enacted concurring legislation agreeing to Chapter 324, and Congress has not enacted legislation repealing the Compact Act. New Jersey may not engraft into the Compact a third avenue for terminating the Compact—i.e., its own unilateral withdrawal—to which neither New York nor Congress agreed in creating the Compact. *See Alabama v. North Carolina*, 560 U.S. at 352 (just as court may not “add provisions to a federal statute” it also is reluctant to “read absent terms into an interstate compact”).

A third provision of the Compact further demonstrates that the Compact’s express terms do not authorize New Jersey to terminate the Compact and abolish the Commission without either New York’s consent or a legislative act of Congress. Article XVI, § 3 of the Compact requires that the Compact be “liberally construed to eliminate the evils described

therein and to effectuate the purposes thereof.” Compl. App. 35a. Construing the Compact to allow for New Jersey’s unilateral destruction of the Commission would run counter to this express directive. Indeed, the foundational purpose of the Compact is to establish the bistate Commission through which both New York and New Jersey *jointly* regulate employment and combat criminal activity at the Port. *De Veau*, 363 U.S. at 149. See *supra* at 2-3. Allowing New Jersey to dissolve the Commission that forms the “heart” of the Compact and seize its powers, *see De Veau*, 363 U.S. at 149, would fatally undermine the basic purpose of the Compact—in direct contravention of article XVI, § 3. *See Texas v. New Mexico*, 462 U.S. at 564 (Court does not “order relief inconsistent with [the] express terms” of a compact).

There is no merit to New Jersey’s contention that, in the absence of a provision expressly *prohibiting* unilateral withdrawal from the Compact, the Court should read into the Compact an implied right of unilateral termination. This argument runs headlong into the Court’s admonition against “read[ing] absent terms into an interstate compact.” *Alabama v. North Carolina*, 560 U.S. at 352. Indeed, the Court rejected a similar invitation to impose an implied compact term in *Alabama v. North Carolina*. There, several States sued North Carolina for withdrawing from the Southeast Interstate Low-Level Radioactive Waste Management Compact. *Id.* at 334, 338. Although the express terms of the compact in that case permitted unilateral withdrawal, the plaintiff States urged the Court to find that North Carolina had nevertheless violated an implied covenant of good faith and fair dealing. *Id.* at 351-52. The Court squarely rejected this argument, holding that, just as the Court cannot “add

provisions to a federal statute,” it cannot read an implied term into an interstate compact. *Id.* at 352. Likewise, the Court should not read an implied right of unilateral termination into the Compact here.

Moreover, many courts, including this Court, have already made clear that interstate compacts will not be construed to contain implied rights to unilateral alteration or termination by one compacting State. As this Court explained in *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, among “the classic indicia of a compact” is the compacting States’ inability to modify unilaterally or repeal the agreement. 472 U.S. 159, 175 (1985); see *Seattle Master Builders Ass’n v. Pacific N.W. Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1363 (9th Cir. 1986) (compacting State is “not free to modify or repeal its participation unilaterally”). Accordingly, absent a compact provision expressly allowing one compacting State to withdraw or alter the compact without the consent of the other compacting States, the compact cannot “be unilaterally nullified, or given final meaning by an organ of one of the contracting States.” *Dyer*, 341 U.S. at 28; see *Kansas City Area Transp. Auth. v. Missouri*, 640 F.2d 173, 174 (8th Cir. 1981) (“One party to an interstate compact may not enact legislation which would impose burdens upon the compact absent the concurrence of other signatories.”). And “bistate entities created by compact . . . are not subject to the unilateral control of any one of the States that compose the federal system” unless the compacting States expressly agreed in the compact to provide such unilateral control. *Hess*, 513 U.S. at 42; see *Feeney*, 495 U.S. at 314 (Brennan, J., concurring) (“While a State has plenary power to

create and destroy its political subdivisions, a State enjoys no such hegemony over an interstate agency.”).

This rule against implied rights to unilateral termination or alteration of a compact makes sense. Permitting such unilateral rights would undermine the fundamental purpose of interstate compacts—to forge stable and lasting solutions to problems affecting multiple States. *See Hess*, 513 U.S. at 40; *see also* Frederick L. Zimmerman & Mitchell Wendell, *The Law and Use of Interstate Compacts* 40 (1976). Indeed, the creation of an interstate agency, like the Commission, requires the weighty decision of “each State to relinquish to one or more sister States a part of its sovereignty.” *Feeney*, 495 U.S. at 314 (Brennan, J., concurring). Permitting unilateral termination where the compacting States have not expressly agreed to such a power would disincentivize States from entering into compacts for fear that their agreements and interstate agencies may be abruptly terminated without their consent.

2. Other tools of compact interpretation further confirm that New York and New Jersey intended to require mutual agreement to terminate the Compact.

Even if the Court were to conclude that the Compact’s express terms are ambiguous as to unilateral termination by one compacting State, other tools of compact interpretation further confirm that the drafters did not intend to confer onto either compacting State a unilateral right to withdraw from the Compact or abolish the Commission. *See Tarrant Reg’l Water Dist.*, 569 U.S. at 627, 633-37 (examining treatment of same issue in other compacts and parties’

course of dealing where terms were ambiguous); *Oklahoma v. New Mexico*, 501 U.S. 221, 234-35 n.5 (1991) (relying on negotiation history and legislative history of compact).

First, the treatment of similar issues in other interstate compacts, *see Tarrant Reg'l Water Dist.*, 569 U.S. at 636-37, demonstrates that the Compact does not allow unilateral termination by New Jersey. Where compacting States intend to permit unilateral termination or withdrawal, they include express provisions to that effect.⁵ Here, by contrast, the drafters conspicuously omitted a unilateral withdrawal provision in the Compact. The absence of any express language thus “counts heavily against” New Jersey’s reading of the Compact to embrace a unilateral right to withdraw from the agreement and to terminate the Commission. *See id.* at 633-34 (declining to read in right to cross-border water diversion where other interstate water compacts included express language conferring such a right but the compact at issue did not); *Alabama v. North Carolina*, 560 U.S. at 353 (declining to read in good-faith limitation to withdrawal provision where “several other compacts” contained express language cabining withdrawal but the compact at issue did not).

Second, New York’s and New Jersey’s course of conduct regarding the Compact further confirms that the parties understood the concurrency requirement to apply to *all* changes to the Compact, including termination. *See Tarrant Reg'l Water Dist.*, 569 U.S. at 614 (a party’s “course of performance under the Compact is highly significant” evidence of its

⁵ See Leave Mot. 19 n.3 (collecting compacts).

understanding of the compact’s terms”) (quoting *Alabama v. North Carolina*, 560 U.S. at 346). For example, New York and New Jersey have successfully amended the Compact on multiple occasions by enacting concurrent legislation. See *Waterfront Comm’n*, 429 F. Supp. 3d at 10 n.15 (listing amendments). Neither State asserted that it could have accomplished these amendments to the Compact without the consent of the other State.

And where New Jersey did not have the consent of New York, it expressly acknowledged that its law seeking to amend or terminate the Compact could not take effect without concurring legislation from New York. See PI App. 95a. Indeed, in 2015, then-New Jersey Governor Christie vetoed a bill nearly identical to Chapter 324, which purported to authorize New Jersey’s unilateral withdrawal from the Compact because New York had not enacted concurring legislation. See S.B. 2277, 2014-2015 Sess. (N.J. 2015). As he explained, “federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress.” PI App. 85a; see also PI App. 85a (acknowledging it was “premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation”). The New Jersey Office of Legislative Services also maintained that view, concluding that “state action unilaterally nullifying a congressionally approved interstate compact raises issues regarding both the Supremacy Clause and Contract Clause of the United States Constitution.” PI App. 93a (footnotes omitted). The parties’ longstanding course of performance under the Compact, including New Jersey officials’ own prior understanding of the Compact, thus further establishes that the Compact

does not contemplate unilateral amendments or withdrawal by one State.

Finally, the legislative history of the Compact also supports the conclusion that the drafters did not intend one State to be able to dissolve the bistate Commission unilaterally. When presenting the Compact to Congress for approval, then-New Jersey Governor Driscoll emphasized the bistate nature of the problems at the Port and the need for the Compact and Commission to address those problems:

It was apparent that we were dealing with a single shipping industry operating in a single harbor bisected artificially by the accident of a historical boundary line between two States. It was plain from the beginning that the only real solution would depend upon the creation of a single bistate agency to deal with this indivisible problem.

Commission Compact Hearing, supra, at 19. He further emphasized that the Commission was to be the “equal responsibility of both States.” *Id.* These statements, among others, underscore the drafters’ intent to maintain a single law-enforcement and regulatory agency over the Port. *See, e.g., id.* (“organized crime does not respect either State boundaries or economic statistics”); *id.* at 24 (“two separate agencies . . . will never be a complete answer to this interstate problem” because “regulations for the area ought to be the same”). Given this shared responsibility and control over the Commission, it is implausible that the drafters would have intended one compacting State to be able to terminate the Commission and to seize its

assets and powers for itself, without the consent of the other compacting State.

For one thing, even if the drafters did not intend the Commission to be a permanent institution, they plainly did not intend to authorize dissolution of the Commission by one State, rather than to require—as they did for all other changes to the Compact—both States to reach the *joint* conclusion that the Commission should come to an end. No such joint conclusion has been reached here. To the contrary, New York and the Commission’s federal law-enforcement partners all recognize that the Commission’s ongoing work continues to be essential to rooting out criminal activity and corrupt hiring practices at the Port. *See* PI App. 78a-83a.

Also unavailing is New Jersey’s contention (PI App. 56a-57a) that the current distribution of commercial activity across the Port—with ninety percent occurring in portions located in New Jersey—allows its breach of the Compact. The Compact does not allow for unilateral withdrawal or termination at all, let alone based on which locations of the Port happen to have more commerce at any given time. To the contrary, both States entered the Compact with the full understanding that the bistate Commission remains necessary when the commercial activity occurs disproportionately on one side of the Port. Indeed, when the parties submitted the Compact to Congress, seventy percent of the shipping business at the Port was conducted in port areas located in New York. *Commission Compact Hearing, supra*, at 19. New Jersey thus agreed that the Commission is an “equal responsibility of both States” regardless of how much commercial activity occurs on one side of the Port. *Id.* It cannot repudiate its clear intention to

provide for joint and equal responsibility over the Port now that the balance of commercial activity tips in its direction.

3. New Jersey’s statute purporting to authorize unilateral termination of the Compact and Commission is preempted by the Compact and violates the Contract Clause of the U.S. Constitution.

New York is also likely to prevail on its claims that Chapter 324 is preempted by federal law and violates the Contract Clause of the U.S. Constitution. *First*, Chapter 324 is preempted by federal law because it purports to authorize New Jersey to withdraw unilaterally from the Compact—in direct violation of its terms. Given that the Compact is not only a binding contract but also a federal law, Chapter 324 conflicts with federal law and is thus preempted. *See Kansas v. Nebraska*, 574 U.S. at 472; *Tarrant Reg’l Water Dist.*, 569 U.S. at 627 n.8.

Second, Chapter 324 violates the Contract Clause, which expressly provides that “[n]o State . . . shall pass any . . . law impairing the Obligation of Contracts.” Compl. 146a (U.S. Const. art. I, § 10, cl. 1). This Court has “long applied a two-step test” to determine when a state law violates the Contract Clause. *Sveen v. Melin*, 138 S. Ct. 1815, 1821 (2018). As a threshold matter, the Court examines whether the state law operates as a “substantial impairment of a contractual relationship,” taking into account “the extent to which the law undermines the contractual bargain, interferes with a party’s reasonable expectations, and prevents the party from safeguarding or reinstating his rights.” *Id.* at 1821-22 (quotation marks omitted). If a substan-

tial impairment is shown, the Court then considers “whether the state law is drawn in an appropriate and reasonable way.” *Id.* at 1822 (quotation marks omitted).

Chapter 324 plainly meets both prongs of the test. The law not only impairs but entirely repudiates New Jersey’s contractual obligations under the Compact, while seizing rights under the Compact that belong jointly to New York and New Jersey. And the law is not drawn in any reasonable way. To the contrary, Chapter 324 terminates a bistate Commission that has successfully operated for over sixty years. Unless New Jersey is restrained from implementing this law, the core purpose of the States’ contractual bargain—the creation of a bistate agency to jointly manage the Port—will be frustrated, inflicting immediate and substantial harm to public safety at the Port and the flow of goods in interstate commerce.

CONCLUSION

This Court should grant a preliminary injunction restraining New Jersey from enforcing Chapter 324 or taking any action to withdraw unilaterally from the Compact or terminate the Commission, pending disposition of this case. If the Court is unable to adjudicate this Motion before March 28, 2022, the Court should issue interim relief prohibiting New Jersey from taking any such action pending resolution of this Motion.

Respectfully submitted,

LETITIA JAMES

Attorney General

State of New York

BARBARA D. UNDERWOOD*

Solicitor General

JUDITH N. VALE

Deputy Solicitor General

GRACE X. ZHOU

Assistant Solicitor General

HELENA LYNCH

Assistant Attorney General

barbara.underwood@ag.ny.gov

March 2022

* *Counsel of Record*

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Appendix A – Declaration of Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 10, 2022).....	1a
Appendix B – Declaration of Paul Weinstein, New York Commissioner of Waterfront Commission of New York Harbor (March 10, 2022).....	24a
Appendix C – Letters from Sheila Y. Oliver, Acting N.J. Governor, to Paul T. Weinstein, N.Y. Commissioner, Waterfront Commission of N.Y. Harbor, et al. (Dec. 27, 2021)	32a
Appendix D – Letter from Elizabeth R. Fine, Counsel to N.Y. Governor Kathy Hochul, to Parimal Garg, Chief Counsel to N.J. Governor Philip D. Murphy (Feb. 9, 2022)	40a
Appendix E – Letter from Philip D. Murphy, N.J. Governor, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Feb. 9, 2022)	43a
Appendix F – Letter from Parimal Garg, Chief Counsel to N.J. Governor Philip D. Murphy, to Elizabeth R. Fine, Chief Counsel to N.Y. Governor Kathy Hochul (Feb. 11, 2022)	56a

APPENDIX TABLE OF CONTENTS

	Page
Appendix G – Letter from Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor, to N.J. Governor Philip D. Murphy (Feb. 22, 2022)	59a
Appendix H – Letter from Parimal Garg, Chief Counsel to N.J. Governor Philip D. Murphy, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 1, 2022).....	61a
Appendix I – Letter from John J. Nardi, President of New York Shipping Association, Inc., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 4, 2022).....	65a
Appendix J – Letter from Patrick J. Callahan, Superintendent of N.J. Division of State Police, to Waterfront Commission Employees (Mar. 4, 2022)	67a
Appendix K – Letter from Nicholas P. Scutari, N.J. Senate President, et al., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 9, 2022)	75a

APPENDIX TABLE OF CONTENTS

	Page
Appendix L – Letter from Michael C. Mikulka, Assistant Inspector General, U.S. Department of Labor, Office of Inspector General, to Patty Stemler, Section Chief, U.S. Department of Justice (June 15, 2021)	78a
Appendix M – Letter from Audrey Straus, United States Attorney for the Southern District of New York, to Patty Stemler, Section Chief, U.S. Department of Justice (June 16, 2021)	80a
Appendix N – Letter from George M. Crouch, Jr., Special Agent in Charge, FBI Newark Field Office, and Jaqueline Maguire, Special Agent in Charge, FBI New York Field Office, to Patty Stemler, Section Chief, U.S. Department of Justice (June 17, 2021).....	82a
Appendix O – Conditional Veto, Senate Bill No. 2277 (Second Reprint), 2014-2015 Session (N.J. May 7, 2015)	84a
Appendix P – Memorandum from John Kingston to Philip M. Mersinger, N.J. Office of Legislative Services (Oct. 23, 2014).....	91a

APPENDIX TABLE OF CONTENTS

	Page
Appendix Q – Letter from Chris Christie, N.J. Governor, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Aug. 7, 2017).....	95a

APPENDIX A

DECLARATION OF WALTER M. ARSENAULT

1. I am the Executive Director of the Waterfront Commission of New York Harbor (“Commission”). I am familiar with the matters set forth in this declaration from my personal knowledge and, if called upon as a witness, I could and would competently testify to the statements made herein.

2. I submit this Declaration in support of the State of New York’s Motion for Preliminary Relief.

3. I have dedicated my entire career to public service and law enforcement. From 1978 to 1984, I served as an Assistant Prosecutor in Bergen County, New Jersey and was Chief of the Trial and Grand Jury Sections. From 1984 to 2003, I worked in the New York County District Attorney’s Office and for most of that time served as Chief of the Homicide Investigation Unit. I then served as a Senior Investigative Counsel in the Office of the Special Narcotics Prosecutor investigating and prosecuting international narcotics smuggling. In 2003, I was appointed First Deputy Commissioner of the New York City Department of Investigation and oversaw the office’s daily operations as well as led high profile political corruption and organized crime investigations. I was appointed as the Commission’s Executive Director in September 2008.

4. When I was first appointed as Executive Director, I took an oath to support the Constitution of the United States and the Constitutions of the States of New York and New Jersey, and to faithfully discharge my duties for the Commission according to the best of my ability.

**THE CRITICAL WORK OF THE
COMMISSION**

**A. The Commission is Essential in Combating
Organized Crime and Criminality in the
Port**

5. The Commission was created in 1953 after federal and state recognition that organized crime does not respect state boundaries. In urging for congressional approval, then New Jersey Governor Alfred E. Driscoll described the Waterfront Commission Compact ("Compact") as a "concerted drive against organized crime in the North Jersey-New York metropolitan area." He stated:

It was apparent that we were dealing with a single shipping industry operating in a single harbor bisected artificially by the accident of a historical boundary line between the two States. It was plain from the beginning that the only real solution would depend upon the creation of a single bistate agency to deal with this indivisible problem . . . While roughly 70% of the longshoremen are employed along the waterfronts of the State of New York, the compact views the program as the equal responsibility of both states. It recognizes that organized crime does not respect State boundaries or economic statistics.

Hearing on Bills Granting the Consent of Congress to a Compact Between the State of New Jersey and the State of New York, Known as the Waterfront Commission Compact, and for Other Purposes, H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383, Before House

Subcommittee No. 3 of the Committee on the Judiciary, 83rd Cong. 18-47 (1953) (testimony Alfred E. Driscoll, Gov. of N.J.)

6. The Commission's mandate is to investigate, deter, combat, and remedy criminal activity and influence in the Port of New York and New Jersey (the "Port"), and to ensure fair hiring and employment practices so that the Port and region can grow and prosper.¹ As detailed below, during my tenure as Executive Director, the Commission has faithfully executed its responsibilities under the Compact.

7. Despite the Commission's notable successes, organized crime still very much continues to exist on the waterfront. The criminal organizations that continue to operate and seek to exert influence do so on both sides of the Port. Testimony in numerous racketeering cases and civil Racketeer Influenced and Corrupt Organizations Act (RICO) proceedings describes the longstanding agreement which divides the Port between the Gambino and Genovese Organized Crime Families. The Genovese family exerts strong influence over the Manhattan and New Jersey piers, and the Gambino family exerts strong influence over the Brooklyn and Staten Island piers. While there are several Genovese crews operating in New Jersey, they are all controlled by, and report to, the family hierarchy in New York. In addition, the Bonanno Crime Family has influence on the Staten Island and Bayonne piers, while the Colombo Crime Family has influence on the Brooklyn piers. The Bruno Scarfo and

¹ The Commission's statutory jurisdiction is the "port of New York district," which generally encompasses the region within approximately a 25-mile radius of the Statue of Liberty. (N.J.S.A. 32:23-6; N.Y. UNCONSOL. 9806)

Decavalcante Crime Families also exert influence over the New Jersey piers, and the Lucchese Crime Family has influence in New Jersey through a crew controlled by the hierarchy in New York.

8. The Commission has worked to effectuate a dramatic change in the culture of an industry which has been chronically plagued, historically and currently, by organized crime and labor racketeering. As a result of the Commission's efforts over the past 13 years:

- a. Over 100 members and associates of organized crime were convicted for conducting illicit activities, including murder, extortion, drug trafficking, theft, racketeering, illegal gambling and loansharking.
- b. Over two dozen members and officials of the International Longshoremen's Association (ILA)² and members of organized crime pled guilty to conspiring to extort millions from dockworkers, then funneling the money to the Genovese Crime Family, and another ILA official pled guilty to embezzling union funds.
- c. Over 25 members and associates of the Genovese Crime Family were convicted for reaping millions from loansharking, unlicensed check cashing, gambling, and money laundering in the Port district.
- d. Over 300 individuals associated with organized crime were removed/prevented from infiltrating the Port workforce.

² The ILA is the collective bargaining representative of longshoremen and other waterfront workers.

- e. Over 250 Port workers who were convicted of serious crimes, violations of the Compact, or found to be associated with organized crime were removed from the Port workforce.

9. Today, the Commission is the central repository of intelligence pertaining to criminality and organized crime influence in the Port. In screening prospective workers, the Commission employs sophisticated intelligence techniques not only to detect prior criminality, but also to root out prohibited associations between prospective longshore candidates and organized crime figures and career criminals.

B. The Commission is Essential to Enhancing Efficiency and Productivity in the Port, Exposing the Industry's Collectively Bargained Extortive Practices and Eradicating Corrupt and Discriminatory Hiring

10. The Commission has utilized its powers under Section 5-p of the Compact to protect the industry against an overabundance of labor. While it is critical for Port employers to have an adequate supply of labor in order to conduct Port operations without delay, organized crime is deeply involved in the manipulation of labor and management to promote and exploit a labor surplus. An overabundance of labor means competition for waterfront jobs, which lends itself to kickbacks, bribery and extortion. It promotes the very environment in which organized crime thrives. The Commission vigilantly works to protect the industry from this continuing threat.

11. In 2010, the Commission's public hearings revealed that the absolute control of the ILA over hiring in the Port not only led to a lack of diversity in waterfront employment, but also to the perpetuation

of operational inefficiencies, criminality and corruption. For far too long, deserving residents of the Port's surrounding communities were systematically denied the opportunity to work on the waterfront. Meanwhile, union leadership and organized crime figures have used their influence to secure high-paying special compensation packages for their families, friends and associates. These arrangements directly impact the competitiveness of the Port and ultimately lead to more expensive goods for consumers in both New York and New Jersey.

12. In response to the Commission's efforts to expose and do away with such extortive practices, the New York Shipping Association, Inc. (NYSA)³ and ILA criticized the Commission's "interference," and codified these special compensation packages in their collective bargaining agreement. Under these special compensation packages, so long as workers clock at least 40 hours per week, they are compensated up to 24 hours per day, 7 days per week, 365 days per year. Today, hundreds of workers continue to be paid in excess of the hours they actually work. The economic impact of these special compensation packages on the Port and on the New York metropolitan area is staggering. Last year, over 590 individuals received over \$147 million in outsized salaries.

13. In 2017, working with the United States Attorney's Office for the District of New Jersey and the United States Department of Labor, Office of Inspector General, the Commission's joint investigation led to

³ NYSA is an industry association that represents marine terminal operators, stevedoring companies and vessel operators in the Port. The Commission is charged with regulating and policing the NYSA's Port employer members.

the prosecution and conviction of Paul Moe, Sr., who was the Port's fourth-highest paid special compensation package longshoreman, for collecting much of his almost \$500,000 salary through fraud. Moe – a general foreman closely connected to ILA leadership – was paid for 24 hours a day, 7 days a week, 365 days a year as long as he was at the terminal 40 hours a week. However, with the help of other longshore co-conspirators who submitted false timesheets each day on his behalf, he reported to work as little as 8 hours each week while still collecting a \$9,300/week paycheck until his arrest. He was convicted of defrauding an NYSA marine terminal operator member out of hundreds of thousands of dollars.

14. These cases continue to underscore the paramount importance of fair and transparent recruitment, referral and hiring methods for incoming Port workers. The Commission is working to break the cycle of corruption and to ensure diversity in the Port by putting an end to the ILA's stronghold on hiring.

15. Pursuant to its statutory authority under Section 5-p of the Compact, the Commission required the ILA and NYSA to implement fair and nondiscriminatory hiring methods, and sought to work with the industry to ensure open access to employment. Those efforts were met with industry opposition. Over the last decade, the NYSA and ILA have repeatedly and unsuccessfully challenged the Commission's law enforcement measures. *See, e.g., Daggett v. Waterfront Comm'n of N.Y. Harbor*, 774 F. App'x. 761 (3d Cir. 2019); *New York Shipping Ass'n. Inc. v. Waterfront Comm'n of N.Y. Harbor*, 2014 WL 4271630 (D.N.J. Aug. 27, 2014), *aff'd*, 835 F.3d 344 (3d Cir. 2016); *New York Shipping Ass'n, Inc. v. Waterfront Comm'n of N.Y. Harbor*, No. 10-5633, 2011 LEXIS 28115 (D.N.J.

March 18, 2011), *aff'd*, 2012 U.S. App. LEXIS 2416 (3d Cir. 2012).

16. Left without any further legal recourse, the NYSA and ILA vigorously lobbied in support of legislation to abolish the Commission altogether.

**NEW JERSEY'S ACKNOWLEDGMENT
THAT UNILATERAL WITHDRAWAL FROM
THE COMPACT VIOLATES FEDERAL LAW,
AND THE COMMISSION'S EFFORTS
TO CHALLENGE NEW JERSEY'S
UNILATERAL WITHDRAWAL**

17. New Jersey officials have openly acknowledged that, absent agreement between the states, changes to the Compact made by one state are without effect.

18. Indeed, in August 2017, when advising me of newly enacted legislation that would allow gubernatorial veto over actions taken by the Commission, Governor Christie wrote: “the measure I signed into law today will take effect upon the enactment of a similar law by the State of New York.” (Letter from Chris Christie, N.J. Governor, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Aug. 7, 2017)). To date, New York has not passed any corresponding legislation as required to modify the Compact, so that New Jersey law has not gone into effect.

19. In 2015, both houses of the New Jersey legislature passed Senate Bill 2277, a bill virtually identical to 2017 N.J. Law ch. 324 (2018) (“Chapter 324”), which provided for New Jersey’s unilateral withdrawal from the Compact and dissolution of the Commission. (N.J. Senate Bill No. 2277 (Second Reprint)).

20. While that bill was being considered, the New Jersey Office of Legislative Services concluded that

“United States Supreme Court and lower federal court opinions appear to suggest that state action unilaterally nullifying a congressionally approved interstate compact raises issues regarding both the Supremacy Clause and the Contract Clause of the United States Constitution.” (Memorandum by N.J. Office of Legislative Services Regarding Unilateral Withdrawal from Interstate Compacts (Oct. 23, 2014))

21. On May 4, 2015, Governor Christie vetoed Senate Bill 2277 and, citing a “concrete constitutional hurdle,” indicated, “I am advised that federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress. As a result, it is premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation.” (N.J. Gov. Chris Christie Veto of Senate Bill No. 2277 (Second Reprint)).

22. On January 15, 2018, his last day in office, Governor Christie signed Chapter 324. The next day, the Commission filed suit against New Jersey Governor Philip Murphy in his official capacity, seeking a declaration that Chapter 324 violates the Compact and the Supremacy Clause of the U.S. Constitution, and an injunction against its enforcement.

23. On June 1, 2018, the district court granted a preliminary injunction to “preserve the status quo of a sixty-five-year-old Compact that embodies a concerted effort between New Jersey, New York, and Congress during the pendency of [that] matter.” In granting the injunction, the court found that the Commission established a likelihood of success on the merits and indicated, “[t]his Court will not construe the Compact in a manner that rewrites the agreement to include the right to unilateral withdrawal.” The court further found that Chapter 324 posed an “imminent harm to

the Commission’s functions and operations,” and that “it is in the public interest for the Commission to continue its investigatory and regulatory work.”

24. The district court ultimately granted summary judgment in favor of the Commission on May 29, 2019, and held that “[a]llowing one state to dictate the manner and terms of the Commission’s dissolution, and the subsequent distribution of the agency’s assets, runs counter to the requirement that any change to the Compact occur through concurring legislation.” The district court declared Chapter 324 null and void and issued a permanent injunction against its enforcement.

25. The Governor of New Jersey appealed. The court of appeals did not reach the merits of the dispute; instead, it concluded that the Commission’s suit was barred by state sovereign immunity and directed dismissal of the Commission’s complaint. The Commission successfully sought a stay of the Third Circuit’s mandate pending the filing of its petition for certiorari, and filed its petition on December 4, 2020.

26. On April 5, 2021, the Court called for the view of the Solicitor General, and the United States filed its amicus brief on October 19, 2021. While the United States acknowledged that the Third Circuit’s decision was likely incorrect and conflicts with other circuits’ decisions, it indicated that this “tension” can be resolved by Third Circuit en banc review.⁴ The United States pointed out that denying certiorari would not prevent New York from suing New Jersey in this Court.

⁴ The Third Circuit, however, had already denied the Commission’s request for rehearing en banc to resolve the circuit conflict created by the panel below.

27. The Commission's petition for certiorari was denied on November 22, 2021. Thereafter, the Third Circuit issued its mandate remanding the case to the district court for dismissal. On December 3, 2021, the district court implemented the mandate and the Commission's case was dismissed.

**NEW JERSEY'S IMPLEMENTATION
OF CHAPTER 324**

28. On December 27, 2021, I was copied on letters from Acting New Jersey Governor Sheila Oliver notifying the Commission, New York, and Congress of New Jersey's intention to withdraw from the Compact. Chapter 324 provides that the Commission is dissolved 90 days later. (Letters from Sheila Y. Oliver, Acting Governor of N.J., to Paul T. Weinstein, N.Y. Comm'r, Waterfront Comm'n of N.Y. Harbor, et al. (Dec. 27, 2021)).

29. On February 9, 2022, the Commission was copied on a letter from Chief Counsel Elizabeth Fine on behalf of New York Governor Kathy Hochul to Governor Murphy's Chief Counsel, Parimal Garg. That letter advised that, "[i]n order to effectuate a dissolution of the Commission, the terms of the Compact would require New York to adopt concurrent legislation. New York has not done so, and therefore the Act is without effect." (Letter from Elizabeth R. Fine, Chief Counsel to N.Y. Governor Kathy Hochul, to Parimal Garg, Chief Counsel to N.J. Governor Philip D. Murphy (Feb. 9, 2022)).

30. About two hours later, I received a letter from Governor Murphy directing me to comply with New Jersey's demand for document and information requests pursuant to Chapter 324 and further advising that "the Commission's authority over the New Jersey

ports ceases effective March 28, 2022.” (Letter from Philip D. Murphy, N.J. Governor, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Feb. 9, 2022)). Among the materials requested were staff personnel files, police work assignments, information detailing the Commission’s ongoing criminal investigations, and the Commission’s confidential intelligence database.

31. As discussed above, Chapter 324 is unconstitutional and in violation of federal law. Compliance with its provisions would cause me to violate the oath that I took upon my appointment as Executive Director to uphold the Constitution of the United States and to faithfully discharge my duties for the Commission.

32. On February 22, 2022, I advised Governor Murphy that, given that Chapter 324 is without effect absent the consent of both compacting states, I am unable to comply with any request served for the purpose of facilitating New Jersey’s unilateral withdrawal from the Compact. (Letter from Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor, to N.J. Governor Philip D. Murphy (Feb. 22, 2022)).

33. By letter dated March 1, 2022, Governor Murphy’s Chief Counsel informed me that New Jersey’s withdrawal would purportedly take effect on March 28, 2022.⁵ (Letter from Parimal Garg, Chief

⁵ That letter advises, “Your claims have been fairly heard and dismissed by our nation’s judiciary, going all the way up to our nation’s highest Court. That litigation has concluded and your efforts have failed.” Contrary to that statement, the only court that actually considered the Commission’s substantive claim ruled *against* New Jersey, and declared that Chapter 324 was unconstitutional. The court of appeals did not reach the merits

Counsel to N.J. Governor Philip D. Murphy, to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 1, 2022)). He advised that “[o]n that day, Governor Murphy will withdraw the current New Jersey Commissioner from the Commission, and he will not appoint a replacement.” He further advised that, “[a]s of March 28, 2022, the Commission will lack the legal authority to operate, a quorum of commissioners to function; and access to funding.” That letter warned that if I did not cooperate with New Jersey’s withdrawal, I would “endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region.”

34. Under the Compact, New Jersey cannot simply withdraw its member from the Commission in order to unilaterally stop it from acting. The Compact provides that “[t]he commission *shall* consist of two members, one to be chosen by the State of New Jersey and one to be chosen by the State of New York . . . [t]he term of office of each member *shall* be for three years . . . each member *shall* hold office until his successor has been appointed and qualified.” (Emphasis added). The current New Jersey Waterfront Commissioner, Joseph M. Sanzari, was appointed on December 20, 2021; pursuant to the Compact, his three-year term expires on December 20, 2024.

35. By letter dated March 4, 2022, NYSA President John Nardi advised me that, based on the representations made in Chief Counsel Garg’s letter, NYSA

of the dispute, and the Commission’s petition for certiorari was denied.

employer members would not be paying their assessments for the first calendar quarter of 2022.⁶ (Letter from John J. Nardi, President of New York Shipping Association, Inc., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 4, 2022)).

36. On March 4, 2022, almost the entire Commission staff received a letter from Colonial Patrick J. Callahan of the New Jersey State Police advising them that on March 28, 2022, the Division of State Police would purportedly be assuming the Commission's roles and functions. (Letter from Patrick J. Callahan, Superintendent of N.J. State Police, to Waterfront Commission Employees (Mar. 4, 2022)). That letter asked individuals if they were interested in transitioning from their Commission employment to the New Jersey State Police, and requested a detailed description of each employee's work duties.

37. On March 9, 2022, I received a letter from the leaders of the New Jersey Legislature advising that they "will fully support Governor Murphy's efforts to implement New Jersey's withdrawal from the Compact." (Letter from Nicholas P. Scutari, N.J. Senate President, et al., to Walter M. Arsenault, Executive Commissioner of Waterfront Commission of New York Harbor (Mar. 9, 2022)).

38. That letter indicated that "[a]fter the Governor withdraws the current Commissioner from New Jersey, the New Jersey Senate will not confirm any nominee for the position of Commissioner to the Waterfront Commission in the future, depriving [the Commission]

⁶ The estimated first-quarter assessments for FY2022 are \$3,854,000.

of a quorum. As such, absent a quorum, the commission cannot legally proceed with any activities.” That letter warned that my decision not to cooperate with New Jersey’s withdrawal “endangers operations at the Port and risks disruptions to the economy, supply chains and commerce in our region.”⁷

**CHAPTER 324 WILL CAUSE SEVERE,
IRREPARABLE HARM TO THE COMMISSION,
NEW YORK, NEW JERSEY, AND THE
GENERAL PUBLIC, AND WILL RISK
DISRUPTIONS TO THE ECONOMY,
SUPPLY CHAINS AND COMMERCE IN
THE NEW YORK METROPOLITAN AREA**

39. The declared purpose of Chapter 324 is to dissolve the bi-state Commission. It purports to divest the Commission of its powers, rights, assets, and duties. Most of the Commission’s functions would be transferred to the New Jersey State Police, and New Jersey would repudiate responsibility for all debts, liabilities, and contracts of the Commission except those New Jersey deems to relate solely to the State.

40. The Commission, the persons and professions it was created to protect and regulate, the States of New York and New Jersey, the Port, and the general public will be severely and irreparably harmed if New Jersey is allowed to unilaterally withdraw from the Compact.

⁷ The Legislature also advised that it “will not appropriate any funds which would be used to support the Waterfront Commission.” The Commission’s budget is derived entirely from the assessments that it collects from Port employers, not from any state treasury appropriations.

A. Chapter 324 Will Cause Chaos and Confusion on March 28, 2022

41. As detailed above, the two compacting states have taken contrary positions on the efficacy of Chapter 324. New Jersey has indicated that the Commission will cease to exist on March 28, 2022; New York has declared that the law is without effect. On that date, the New Jersey State Police and the Waterfront Commission Police will each exercise its authority over the same New Jersey waterfront.

42. On March 28, 2022, the NYSA's employer members and the ILA's rank-and-file members will also be given conflicting directives by New Jersey and the Commission regarding Port operations. There will be two sets of hiring procedures by two different agencies over the same Port workforce, with each agency asserting its perceived jurisdiction.

43. I am concerned for the safety of those Commission employees whose responsibilities require direct contact with the rank-and-file members of the ILA, some of whom have harbored a longstanding animosity towards the Commission as a result of its criminal prosecutions and administrative actions against ILA members and officials.

44. The ensuing chaos and confusion will, as Governor Murphy's Chief Counsel has himself acknowledged, "endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region."

B. Chapter 324 Will Compromise the Safety of the Commission's Undercover Police Officers and Irreparably Impact Ongoing Criminal Investigations

45. As detailed above, Governor Murphy has demanded that I disclose confidential information pertaining to the Commission's ongoing criminal investigations. Currently, there are multiple undercover detectives involved in covert operations in both New York and New Jersey. These operations are inherently dangerous, and disclosure of their identities would directly endanger their safety.

46. I am also concerned for the safety of our undercover detectives if, due to Chapter 324, they are forced to suddenly abandon their assignments without a properly laid exit strategy, especially because of their continued contact with targets of criminal investigations. This would endanger not only their lives, but also those cooperating individuals who vouched for them.

47. As discussed above, the Port is a unified whole, with workers, companies, and freight operating in, and moving through, both states. It is a single shipping industry operating in a single harbor. Many of the criminal organizations that continue to operate and seek to exert influence do so on both sides of the Port. During my tenure as Executive Director, the vast majority of our joint criminal prosecutions have required cross-jurisdictional investigation. Because Commission detectives have police powers in both New York and New Jersey, they are able to seamlessly conduct surveillance and employ other investigative techniques to continuously track criminality in both states.

48. Currently, the Commission is involved in numerous ongoing criminal investigations which require continuous cross-jurisdictional investigation. Unless immediate injunctive relief is granted, Chapter 324 will obstruct the Commission's investigative ability, and will irreparably compromise its ongoing criminal investigations.

C. Chapter 324 Seeks to Eliminate the Commission's Funding, Which Would Impede the Commission's Execution of Critical Law Enforcement Responsibilities

49. Chapter 324 purports to authorize New Jersey to divert New Jersey-based funds from the Commission to the State Treasury. It also purports to remove the Commission's authority to assess fees on New Jersey employers after March 28, 2022. The resulting decrease in funding would cripple the Commission's capacity to operate, and its functioning will be immediately and severely disrupted. Retrospective monetary damages will be inadequate to avoid the harm to the Commission and the public it serves, as the severe decrease in funding will irreparably disrupt ongoing proceedings and will make it impossible to reconstitute investigations and investigatory teams that are disbanded or disrupted by the cessation in funding.

50. The Commission is not funded with tax dollars, and its budget is derived entirely from the assessments that it collects from Port employers. Assessments from employers based in New Jersey constitute more than 90% of the funding for the Commission's operating budget, which for FY2022 is approximately \$14.2 million. New Jersey's enforcement of Chapter 324 to seize those assessments would therefore eliminate nearly all of the Commission's budget.

51. That process has already begun. As discussed above, the NYSA advised me last week that its employer members will not be paying their assessments to the Commission for the first calendar quarter of 2022. Those assessments are otherwise due by April 15, 2022.

52. Without necessary funding, nearly all of the Commission's 75 full-time employees will have to be laid off. These employees conduct important and necessary work to protect the Port, the hardworking and decent Port workers, and the New York metropolitan area from crime and corruption. Significantly, the Commission will be prevented from undertaking the important investigations and background checks that it is statutorily required to perform.

53. Additionally, Chapter 324 will likely cause current and former employees of the Commission, many of whom are New York residents, to lose their health insurance benefits; it will also adversely affect their pensions.

54. Not only would enforcement of Chapter 324 eliminate the funds needed by the Commission to pay its employees' salaries, but it would also render the Commission incapable of meeting its other financial obligations, and force the Commission to default on countless contractual agreements. For example, the Commission is obligated under its ten-year commercial lease agreement for its headquarters in Manhattan, New York until November 26, 2026. If Chapter 324 is permitted to take effect and the Commission's assets are diverted to the State Treasury, the Commission

will be forced to default on its obligations under the lease.⁸

55. Chapter 324 also purports to authorize New Jersey to poach Commission employees and to rescind regulations promulgated by the Commission. As discussed above, New Jersey has already started trying to poach Commission employees. Absent injunctive relief, many of the Commission's assets, employees, powers, and duties would be wrested from it. That harm is irreparable.

D. Chapter 324 Will Lead to Conflicting Regulatory and Enforcement Authority Over the Same Workers and the Same Entities Operating in a Single, Indivisible Port

56. As discussed above, Chapter 324 would result in two separate entities attempting to oversee the same activity in a single Port that is artificially bisected by a state boundary line. Although certain industries may fall under different regulatory frameworks in different states, this would be unworkable here. The division of oversight in the Port will lead to conflicting regulation and enforcement that would harm the citizens of both New York and New Jersey.

57. As I note above, certain terminal operators and incidental service providers conduct business on both sides of the Port. Longshore workers who are backgrounded are then registered to work Port-wide, and at times can move back and forth between the two states according to the industry's needs, with

⁸ Notably, that lease was expressly approved by Governor Christie's office in February 2016. Now, if Chapter 324 takes effect, the Commission will be forced to default on the very same agreement which New Jersey itself approved.

allocation occurring through a centralized hiring system. It is a fluid, comprehensive process which is overseen and approved by the Commission every day. That hiring process continues until either all waterfront employers' work requests have been filled, or the available labor pool (again, from both sides of the river) has been exhausted. This would be completely severed under Chapter 324.

58. In addition to this, under Chapter 324 two agencies would have to perform two sets of background checks on the same individual or company. And what one agency considers acceptable, the other may not. Establishing two separate regulatory frameworks for the same entities operating in the same harbor would be completely ineffectual.

E. Chapter 324 Eliminates the Compact's Fair and Non-discriminatory Hiring Requirement

59. Chapter 324 does not include the fair hiring and anti-discrimination measures currently set forth in Section 5-p of the Compact, which empowers the Commission to balance the labor pool and to carry out the Compact's core purposes of ending racial discrimination in employment and combatting organized crime and corruption. *See* N.Y. Unconsol. Law § 9920 (codifying section 5-p of the Waterfront Commission Act); *see also* 2017 N.J. Law Ch. 324 (omitting section 5-p of the Waterfront Commission Act).

60. Section 5-p is the Commission's primary tool for ensuring fair and non-discriminatory hiring practices, and for preventing extortion of Port workers. *New York Shipping Ass'n Inc. v. Waterfront Comm'n of N.Y. Harbor*, 835 F.3d 344, 357 (3d Cir. 2016) ("[A]s we previously determined, the eradication of racial

discrimination in hiring was one of the original purposes of the Compact. The Commission's actions in requiring certification that prospective employees were selected in a nondiscriminatory manner certainly further the Compact's purposes of rooting out corrupt hiring practices such as racial discrimination.”).

61. Currently, the industry is in the process of adding 492 workers to the longshore workforce; this hiring round is expected be completed by the end of the year. The Commission is vigilantly monitoring the industry's referral and hiring practices, so that a diverse group of workers who are uncompromised by organized crime influence are given the once-denied opportunity to work in the Port. Under Chapter 324, employer fair hiring certifications would no longer be required and the New Jersey State Police would not be tasked with the statutory authority to ensure fair hiring. This would irreparably interfere with one of the Commission's core missions.

62. Chapter 324 conflicts with the Compact's requirement in article XVI, ¶ 1, that any action to withdraw from the Compact and dissolve the Commission requires concurrent legislation by both New York and New Jersey. Because New York has not adopted concurrent legislation, neither I nor the Commission's staff can abide by the provisions of Chapter 324. As set forth above, however, New Jersey has indicated that it intends to proceed with the Commission's dissolution on March 28, 2022. While the Commission's staff and I intend to continue discharging our duties to the best of our ability in accordance with our oath of office, our capacity to do so will be jeopardized if New Jersey is not enjoined from taking its threatened actions.

23a

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

Executed: March 10, 2022, in New York, New York

/s/ Walter M. Aresenault
Walter M. Aresenault

APPENDIX B

DECLARATION OF PAUL WEINSTEIN

1. I am the New York Commissioner for the Waterfront Commission of New York Harbor (“Commission”). I am familiar with the matters set forth in this declaration from my personal knowledge and, if called upon as a witness, I could and would competently testify to the statements made herein.

2. I submit this Declaration in support of the State of New York’s Motion for Preliminary Relief.

3. I was appointed as the New York Commissioner on June 20, 2018 by then Governor Andrew Cuomo. After I was appointed, I swore to support the constitution of the United States and the constitution of the State of New York, and to faithfully discharge my duties for the Commission to the best of my ability.

4. I served as an Assistant United States Attorney with the United States Attorney's Office for the Eastern District of New York between 1989 and 2007, serving in both the Criminal and Civil Divisions. During that time, I prosecuted and commenced civil racketeering proceedings against numerous members of criminal enterprises and the enterprises themselves. The matters I led and supervised included the prosecution of leaders of New York/New Jersey-based organized crime families operating in international shipping and commerce in the United States, including in the Port of New York-New Jersey (the “Port”). I also served in a number of supervisory capacities in the Eastern District, including as the Deputy Chief of the Criminal Division, with the responsibility for the operation of that Division, encompassing supervision of the Organized Crime, Public Integrity, Business

and Securities Fraud and Narcotics and Money Laundering Sections of the Office.

5. I have reviewed the purported finding of 2017 N.J. Law ch. 324 (2018) (“Chapter 324”) that “the commission, despite changes in the industry to drive out organized crime’s influence, has over-regulated the businesses at the port in an effort to justify its existence as the only waterfront commission in any port in the United States.” This assertion has been soundly rejected by the federal law enforcement community, and is directly belied by the Commission’s prosecutions and current joint investigations.¹ As explained below, the industry – which has had a long and intractable history of corruption and racketeering – has not made significant changes to drive out the influence of organized crime.

6. I have reviewed the various letters submitted by the Commission’s federal law enforcement partners to the United States Department of Justice, Appellate Section in connection with previous litigation brought by the Commission to stop New Jersey from unilaterally dissolving the Commission. Those letters were

¹ The Commission’s ongoing efforts to combat organized crime have been extensively reported on throughout the years by the Office of the New Jersey Attorney General. E.g., Office of the New Jersey Attorney General (“ONJAG”), Six Men Sentenced for Roles in Illegal Loansharking, Check Cashing, Gambling & Money Laundering Schemes Linked to Genovese Crime Family (Sept. 20, 2019), <https://tinyurl.com/y2rc7puf>; ONJAG, Racketeering Indictment Charges 10 Alleged Members and Associates of Genovese Crime Family With Reaping Millions of Dollars From Loansharking, Illegal Check Cashing, Gambling & Money Laundering (Apr. 27, 2016), <https://tinyurl.com/epwhee4v>; ONJAG, Former Top Union Official Sentenced to State Prison for Conspiring In Scheme To Extort Money From Dock Workers (Apr. 17, 2015), <https://tinyurl.com/rx9uxsya>.

submitted after the Court called for the views of the Solicitor General in response to the Commission's petition for writ of certiorari to review the Third Circuit's dismissal of its case based on sovereign immunity.

7. By letter dated June 12, 2021, the U.S. Department of Labor, Office of Inspector General (DOL-OIG) detailed the continued influence of organized crime in the Port, and the important work of the Commission:

The investigative work conducted by the DOL-OIG, the Waterfront Commission, and the Federal Bureau of Investigation has shown that the waterfront harbors of New York and New Jersey, as well as the International Longshoremen's Association (ILA), have long been plagued by extortion, thievery and fraud schemes. The ILA has exerted their power and influence over labor markets for criminal purposes, most often at the direction of an organized crime group. We have had numerous successful prosecutions involving the ILA and organized crime in the Eastern District of New York, Southern District of New York, and the District of New Jersey. In most of these matters, the Waterfront Commission has been a key investigative partner and has provided valued insight and intelligence.

In addition to being a valued criminal investigative partner, the Waterfront Commission has worked independently to break the cycle of corruption at the waterfront harbors of New York and New Jersey by putting an end to the ILA's stronghold on who gets hired and

what jobs and training employees can receive once employed. The Waterfront Commission has been successful in making daily hiring and training fairer by requiring seniority and equal access. This has stymied organized crime's control over the waterfront harbors of New York and New Jersey, allowing their criminal enterprise less access and influence over key employment positions.

(Letter from Michael C. Mikulka, Assistant Inspector General, U.S. Department of Labor, to Patty Stemler, Section Chief, U.S. Department of Justice (June 15, 2021)).

8. By letter dated June 16, 2021, the United States Attorney's Office for the Southern District of New York further detailed the Commission's essential role in combating the continued influence of organized crime in the Port:

The United States Attorney's Office for the Southern District of New York's long and successful partnership with the Waterfront Commission and resulting prosecutions and convictions over the past decade highlight the continued influence of organized crime and corruption in the Port of New York-New Jersey. The Waterfront Commission has provided invaluable support to this Office in criminal prosecutions of traditional La Cosa Nostra families and in civil RICO litigation brought against several labor unions, part of our ongoing effort to rid organized crime influence from those organizations.

We remain committed to the vigorous prosecution of organized crime to eliminate

labor racketeering and the victimization of legitimate union members and Port businesses. Our continued partnership with the Waterfront Commission, which provides us with invaluable intelligence, evidence, and investigative assistance, is essential.

(Letter from Audrey Straus, United States Attorney for the Southern District of New York, to Patty Stemler, Section Chief, U.S. Department of Justice (June 16, 2021)).

9. This was further confirmed by letter dated June 17, 2021 from the Federal Bureau of Investigation:

The FBI's joint investigations with the Waterfront Commission of New York Harbor (WCNYH) over the past decade have highlighted the ongoing influence of organized crime and corruption at the Port of New York-New Jersey, and successful federal prosecutions have revealed the continued influence of the Genovese and Gambino organized crime families over the International Longshoremen's Association and waterfront businesses. The WCNYH has been instrumental in these investigations and prosecutions of criminal conduct in both New York and New Jersey.

Organized crime does not respect state boundaries, and its presence in a central location of interstate and foreign commerce poses a significant security risk. The FBI remains committed to combating organized crime, to include labor racketeering and the victimization of legitimate union members and waterfront businesses. Through its close partnership with the FBI, the WCNYH

provides invaluable intelligence, evidence and investigative assistance in this mission as it continues its effective and unique role in reducing the influence of organized crime at the Port of New York-New Jersey.

(Letter from George M. Crouch, Jr., Special Agent in Charge, FBI Newark Field Office, and Jaqueline Maguire, Special Agent in Charge, FBI New York Field Office, to Patty Stemler, Section Chief, U.S. Department of Justice (June 17, 2021)).

10. The views expressed in these letters are directly in line with my experience as a federal prosecutor and as Waterfront Commissioner that organized crime does not respect state boundaries. For example, the New York-based Genovese Family is the central organized crime family with influence over Port facilities and waterfront businesses in New Jersey. The Commission is an invaluable investigative partner not only because of its unique bi-state investigative authority, but also because of its specialized expertise in organized crime, labor racketeering and Port operations.

11. The removal of the Commission's oversight at the Port would enable organized crime figures to directly control and operate at the critical points of interstate and international shipping. The Commission's presence has a strong deterrent effect, and substantially disincentivizes the placement of organized crime figures directly in the Port, because their presence there exposes those individuals, and their criminal source of employment, to law enforcement investigation. Removing this oversight, primarily through false claims of interference and labor inefficiency, has long been a goal of organized crime.

12. On December 27, 2021, I received letters from New Jersey Acting Governor Sheila Oliver notifying the Commission, New York, and Congress of New Jersey's intention to withdraw from the Waterfront Commission Compact. (Letters from Sheila Y. Oliver, Acting Governor of N.J., to Paul T. Weinstein, N.Y. Comm'r, Waterfront Comm'n of N.Y. Harbor, et al. (Dec. 27, 2021)). Chapter 324 provides that the Commission is purportedly dissolved 90 days later.

13. On February 9, 2022, I was copied on a letter from Chief Counsel Elizabeth Fine on behalf of New York Governor Kathy Hochul to Governor Philip Murphy's Chief Counsel, Parimal Garg. That letter advised that, "[i]n order to effectuate a dissolution of the Commission, the terms of the Compact would require New York to adopt concurrent legislation. New York has not done so, and therefore the Act is without effect." (Letter from Elizabeth R. Fine, Chief Counsel to N.Y. Governor Kathy Hochul, to Parimal Garg, Chief Counsel to N.J. Governor Philip D. Murphy (Feb. 9, 2022)).

14. That letter further underscored the federal law enforcement community's position that the Commission "provides invaluable resources and expertise at the intersection of organized crime and Port operations," and plays an essential role in ensuring fair and nondiscriminatory hiring in waterfront employment.

15. Chapter 324 conflicts with the Compact's requirement in article XVI, ¶ 1, that any action to withdraw from the Compact and dissolve the Commission requires concurrent legislation by both New York and New Jersey. Because New York has not adopted concurrent legislation, neither I nor the Commission's staff can abide by the provisions of Chapter 324. I intend to continue discharging my

31a

duties to the best of my ability, in accordance with my oath of office.

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

Executed: March 10, 2022, in Shreveport, Louisiana

/s/ Paul Weinstein
Paul Weinstein

32a

APPENDIX C

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

December 27, 2021

Via Certified and Electronic Mail

Paul T. Weinstein
New York Commissioner
Waterfront Commission of New York Harbor
39 Broadway – 4th Floor
New York, New York 10006

Joseph M. Sanzari
New Jersey Commissioner
Waterfront Commission of New York Harbor
39 Broadway – 4th Floor
New York, New York 10006

Re: Notice of the State of New Jersey's Intention to
Withdraw Waterfront Commission Compact

Dear Commissioners Weinstein and Sanzari,

I write to inform you, pursuant to N.J.S.A. 32:23-230, of New Jersey's intention to withdraw from the interstate compact that established the Waterfront Commission of New York Harbor. New Jersey intends to withdraw from the compact entered into by the State of New Jersey pursuant to its agreement thereto under P1.1953, c. 202 (C.32:23-1 et seq.) and by the

33a

State of New York pursuant to its agreement thereto under P.L.1953, c. 882 (NY Unconsol. Ch. 307, s.1), as amended and supplemented; and the compact, entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1970, c. 58 (C.32:23-150 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1970, c. 951 (NY Unconsol. Ch.307, s.10), as amended and supplemented.

Sincerely,

/s/ Sheila Y. Oliver

Sheila Y. Oliver
Acting Governor

cc: Walter Arsenault, Executive Director, Waterfront
Commission of New York Harbor Phoebe Soriale,
General Counsel, Waterfront Commission of New
York Harbor

34a

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. Box 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

December 27, 2021

Via Electronic Mail Only

Craig J. Coughlin
Speaker
New Jersey General Assembly
125 W. State Street
Trenton, New Jersey 08608

Stephen M. Sweeney
President
New Jersey Senate
125 W. State Street
Trenton, New Jersey 08608

Re: Notice of the State of New Jersey's Intention to
Withdraw Waterfront Commission Compact

Dear Speaker Coughlin and Senate President Sweeney,

I write to inform you, pursuant to N.J.S.A. 32:23-230, that notice has been given to the Congress of the United States, the Governor of New York, and the Waterfront Commission of New York Harbor of New Jersey's intention to withdraw from the interstate compact that established the Waterfront Commission of New York Harbor. Each of these entities was

35a

notified of New Jersey's intentions via certified mail
on December 27, 2021.

Sincerely,

/s/ Sheila Y. Oliver

Sheila Y. Oliver
Acting Governor

36a

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. Box 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

December 27, 2021

Via Certified and Electronic Mail

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
1236 Longworth H.O.B.
Washington, DC 20515

The Honorable Kamala Harris
President
United States Senate
Washington, DC 20510

Re: Notice of the State of New Jersey's Intention to
Withdraw Waterfront Commission Compact

Dear Speaker Pelosi and President of the Senate
Kamala Harris,

I write to inform you of New Jersey's intention to withdraw from the Waterfront Commission Compact that was entered into by the State of New Jersey and the State of New York and approved by Congress through the Act of August 12, 1953, Pub. L. No. 83-252, 67 Stat. 541, 83 Cong. Ch. 407 (1953), as amended and supplemented. New Jersey has effectuated its

37a

withdrawal through the passage of N.J.S.A. 32:23-229 et al., and this notice is made pursuant to N.J.S.A. 32:23-230.

Sincerely,

/s/ Sheila Y. Oliver

Sheila Y. Oliver
Acting Governor

38a

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

December 27, 2021

Via Certified and Electronic Mail

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

Re: Notice of the State of New Jersey's Intention to
Withdraw Waterfront Commission Compact

Dear Governor Hochul,

I write to inform you, pursuant to N.J.S.A. 32:23-230, of New Jersey's intention to withdraw from the interstate compact that established the Waterfront Commission of New York Harbor. New Jersey intends to withdraw from the compact entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1953, c. 202 (C.32:23-1 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1953, c. 882 (NY Unconsol. Ch. 307, si), as amended and supplemented; and the compact, entered into by the State of New Jersey pursuant to its agreement thereto under P.L.1970, c. 58 (C.32:23-150 et seq.) and by the State of New York pursuant to its agreement thereto under P.L.1970, c. 951 (NY Unconsol. Ch.307, s.10), as amended and supplemented.

39a

Sincerely,

/s/ Sheila Y. Oliver
Sheila Y. Oliver
Acting Governor9

40a

APPENDIX D

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

Kathy Hochul
Governor

Elizabeth R. Fine
Counsel to the Governor

February 9, 2022

Via Certified and Electronic Mail

Parimal Garg
Chief Counsel
Office of Governor Philip D. Murphy
P.O. Box 001
Trenton, New Jersey 08625-0001

Re: Notice of the State of New Jersey's Intention
to Withdraw from the Waterfront Commission
Compact

Dear Parimal,

I am writing on behalf of Governor Kathy Hochul in response to Acting Governor Sheila Oliver's December 27, 2021 letter notifying her of New Jersey's intention to withdraw from the interstate compact that established the Waterfront Commission of New York Harbor (the "Commission"), under P.L. 1953 c. 202 (C.32:23-1 et seq.) (the "Compact").

Since receipt of New Jersey's December 27, 2021 letter, our office has reviewed the history and ongoing work of the Commission. As you know, the Commission was created in 1953 as a result of federal and

state recognition that organized crime does not respect state boundaries and that the New York/New Jersey Port is a unified port. In drafting the Compact, Congress expressly reserved “[t]he right to alter, amend or repeal” the provisions thereof and directed that any “[a]mendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either state *concurrent in the Legislature of the other.*” Compact § 2; *Id.*, art. XVI, ¶ I (emphasis added).

As Acting Governor Oliver noted in her letter, on January 15, 2018, then-Governor Chris Christie signed into law Chapter 324 of the 2017 New Jersey Public Laws (the “Act”), directing New Jersey’s Governor to “notify the Congress of the United States, the Governor of the State of New

York, and the [Commission], of New Jersey’s intention to withdraw from . . . the [Compact]” and declaring that ninety days after such notice is given, the Compact and Commission will be dissolved. 2017 N.J. Sess. Law Serv. Ch. 324, §§ 2, 31 (West 2018) (the “Act”); *see also id.* § 3 (defining “transfer date”). However, the Compact does not contemplate one state’s unilateral withdrawal. In order to effectuate a dissolution of the Commission, the terms of the Compact would require New York to adopt concurrent legislation. New York has not done so, and therefore the Act is without effect.

Moreover, our research has shown that the Commission has been and continues to be a key investigative partner in both state and federal criminal prosecutions in both New York and New Jersey, and despite law enforcement’s successes, there remains the threat of organized crime and corruption in the Port. As the federal law enforcement community has noted,

42a

the Commission provides invaluable resources and expertise at the intersection of organized crime and Port operations. The Commission also plays an essential role in ensuring that hiring throughout the Port is done in a fair and non-discriminatory manner pursuant to state and federal law.

Governor Hochul is committed to working hand in hand with the State of New Jersey to promote further economic growth and prosperity in the Port and, to that end, we are looking forward to our continued cooperative approach to balance the economic success of the Port with the safety of the citizens of New York and New Jersey. A timely – and shared inquiry to examine the ongoing needs of our shared Port will benefit the safety and security of both of our states. We need to examine both what is working and what aspects of the Commission’s work can be improved. We look forward to working with you on this important endeavor.

Sincerely,

/s/ Elizabeth Fine

Elizabeth Fine

Counsel to the Governor

cc (via electronic mail):

Paul Weinstein, New York Commissioner,
Waterfront Commission of New York Harbor

Joseph M. Sanzari, New Jersey Commissioner,
Waterfront Commission of New York Harbor

43a

APPENDIX E

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

February 9, 2022

Via Electronic Mail

Walter Arsenault, Executive Director
Waterfront Commission of New York Harbor
An Instrumentality of the States of
New York and New Jersey
39 Broadway – 4th Floor
New York, New York 10006-3003

Re: Document and Information Demands
Pursuant to N.J.S.A. 53:2-9(a)

Dear Mr. Arsenault:

By letter dated December 27, 2021, and pursuant to N.J.S.A. 32:23-230, New Jersey notified the Waterfront Commission of its intention to withdraw from the interstate compact that established the Waterfront Commission of New York Harbor.

Pursuant to N.J.S.A. 53:2-9(a), enclosed is New Jersey's document and information demand, which responses must be provided to the Division of State Police in the Department of Law and Public Safety ("the Division"). All responses should be directed to the attention of Major Frederick Fife. This statute requires that the Commission cooperate with the Division and that the Commission make available to it

44a

“all information concerning its property and assets, contracts, operations, and finances” to provide for the efficient assumption of all duties conferred upon the Division by N.J.S.A. 32:23-229.

Under N.J.S.A. 53:2-36, the Commission’s authority over the New Jersey ports ceases effective March 28, 2022; therefore, your expedient cooperation is required to effectuate the transfer of duties and assets of the Commission to New Jersey.

Sincerely,

/s/ Philip D. Murphy
Philip D. Murphy
Governor

cc: The Honorable Kathy Hochul, Governor,
State of New York

Elizabeth Fine, Counsel to the Governor,
State of New York

Phoebe Soriale, General Counsel,
Waterfront Commission of New York Harbor

Commissioner Joseph M. Sanzari,
New Jersey Commissioner

Commissioner Paul T. Weinstein,
New York Commissioner

Parietal Garg, Chief Counsel to the
Governor, State of New Jersey

Noreen Giblin, Deputy Chief Counsel,
New Jersey Governor’s Authorities Unit

Major Frederick Fife, New Jersey Slate Police

**2022 New Jersey's Document & Information
Requests to the Waterfront Commission of New
York Harbor Pursuant to N.J.S.A. 53:2-9(a)**

WATERFRONT COMMISSION REQUESTS

**Employment – Compensation & Benefits – Human
Resources**

- Total number of staff, including job titles & descriptions, compensation, and all accrued benefits
- Organizational chart
- Assigned work locations of staff, including any assigned to remote work.
- Retirement/Pension agreements for Commission employees
- Any Union or Collective Bargaining contracts for Commission employees
- Personnel Files, including background checks and investigations pertaining to any employee
- Health Benefits agreements

POLICE DIVISION

- Table of Organization of policing divisions of the Waterfront Commission including the number of personnel assigned to each division including rank and years of service
- Benchmarks and overall responsibilities of each Policing Division
- All MOU's with outside agencies where Task Force Officers from the Waterfront Commission are assigned

46a

- All outside organizations or affiliations in which Waterfront Commission employees regularly attend, participate, or collaborate
- All equipment (vehicles, boats, issued gear, laptops, phones, weapons, etc.) available to or issued to members of the Waterfront Commission
- All Statistical Data including but not limited to all calls for services, investigations, and enforcement by members of the Waterfront Commission for the preceding calendar year
- Intelligence Databases used by the Waterfront Commission including sharing and dissemination
- All Database sets (Records Management Systems, Accident Reports, Operational Dispatch Systems, etc.) including all information stored within these databases
- Area of Responsibility for each Division including the responsibility of the Patrol Boats
- List of offices utilized by the Police Division including size, number of members within each building, security systems, and parking arrangement
- All Standard Operating Procedures related to the Police Division including but not limited to the lesson plans for police training provided to watchmen

IDENTIFICATION AND INFORMATION
TECHNOLOGY SECTION

- Employees and assigned work locations
- A list of hardware, software applications, and databases used by the Commission
- A list of IT facilities, such as data centers, server rooms, network closets, etc.
- Inventory of all IT equipment and where located (including equipment purchased by or reimbursed to staff and used in remote work)
- Current IT related contracts and vendor information
- List of IT related grants
- A breakdown of costs for the monies spent under the payroll subdivision “Information System” under the “Other Operating Expense”
- A breakdown of any other IT related expenditures
- Information on what type of communication medium is used at the Commission, i.e. Voice Over Internet Protocol (VOIP) or traditional phone lines and any contracts for service and equipment
- A comprehensive list of employees that will need access to law enforcement sensitive materials and databases
- Protocols for data storage

LEGAL/ADMINISTRATION

- Standard Operating Procedures for all departments and divisions

48a

- Payroll records for the preceding year
- Fringe Benefits rate
- All active MOUs with federal, state, county, local or private entities
- List of all financial accounts with name of institution, account name and numbers, balances, and statements for each for the preceding year. * see Financial Statements section below
- Procurement policies and procedures
- Active contracts related to the procurement of goods/services
- Rent/lease agreements for all fixed and non-fixed assets and location of each asset
- Deeds/titles to any all owned assets
- Locations and logs of all record storage

FINANCIAL STATEMENTS

- Financial statements for the f/y/e June 30, 2021 through the current calendar year (audited, if available, otherwise provide unaudited) reflecting all assets, liabilities, reserves (general and restricted) and changes in operating fund balance, prepared on an accrual basis in accordance with Generally Accepted Accounting Principles. If accrual basis financial statements are not available, provide cash basis statements and schedules of all receivables and payables as of June 30, 2021.
- Balance sheet reporting all assets, liabilities and reserves at the current date, prepared on

an accrual basis, along with supporting spreadsheets identifying details of assets and liabilities.

- Operating Fund and Forfeiture Fund receipts and disbursements, and change in fund balances, for the period July 1, 2021 to date.

RECEIPTS, RESERVES AND CASH/INVESTMENTS

- Reconciliation of the f/y/e 2021 budget with actual receipts/expenditures.
- All records pertaining to the computation, billing and collection of the employer assessment. Such records shall identify the amount paid by each employer, dates of payment, late payments/fines/penalties, as well as the jurisdiction(s) in which that employer operates (e.g. NJ, NY or both), and any other information that identifies services being rendered in New Jersey.
 - a. Include amounts owed but not collected as of the current date.
 - b. Provide information about any software or reporting portal or other method used by the Commission for the billing, collection and tracking of the employer assessment, and two to three examples of same.
- Most recent monthly/quarterly statements for all cash, bank, money market, brokerage, trading and investment accounts, and amounts held in trust by or administered by third parties, including but not limited to operating accounts, working capital, forfeiture funds and reserves for specific or general contingent liabilities.
- Schedules or worksheets identifying any allocation of “reserves” for contingent or future

liabilities, including but not limited to, Other Postemployment Benefits (OPEB).

- All documentation, including but not limited to, work papers, schedules, memoranda, actuarial reports etc. that support the computation and funding of the OPEB liability (approx. \$14.5 million per the Commission's Annual Report) and projected future payments.
 - a. Provide an analysis of amounts allocable to services performed in New Jersey or attributable to New Jersey employees.

OTHER ASSETS OWNED/LEASED
AND LIABILITIES

- Deeds and mortgages for any real property (land and/or buildings) owned by the Commission, as well as any current or pending contracts for purchase or sale of real property.
- Current and prospective lease/rental agreements, with all schedules and riders thereto, for all offices, warehouses, garages, storage space and any other real property located in New Jersey, including but not limited to, the premises at 1201 Corbin St., Elizabeth NJ 07201 (the Elizabeth Property) and 333 Thornall St, Edison NJ (the Edison Property).
 - Include information regarding any commitment to make leasehold improvements, or to acquire additional space.
- Inventory/spreadsheets identifying all tangible personal property (other than vehicles) owned or leased for use at the Elizabeth Property, the Edison Property and any other location in New Jersey. Such information shall identify whether

51a

such property is owned or leased, and include, but not be limited to, the following:

- Office equipment
- Garage equipment
- Information technology and audio visual equipment, including but not limited to, computers/laptops, servers, laptops/ipads, teleconferencing equipment
- Communications equipment, including but not limited to, radios, cell phones, phone systems, dispatch systems, etc.
- Any other equipment associated with licensing and registration operations
- Police/enforcement/investigation equipment including but not limited to, surveillance equipment, weapons, clothing, tactical gear, etc.
- Spreadsheets or other lists of all vehicles owned by, or leased by the Commission, for use in New Jersey, identifying whether or not the vehicle is owned or leased, make/model, year, purpose, assigned use (e.g. police, investigator, attorney) or unassigned, and the state where the vehicle is registered
 - For vehicles owned by the Commission, provide documentation of any amounts owed or financing agreements.
 - For vehicles leased by the Commission, include copies of lease agreements.
 - Summary of vehicle service performed by the Commission's auto mechanic for f/y/e June 30, 2021.

52a

- Mileage logs for assigned and pool vehicles for the preceding calendar year
- Identify software owned or licensed by the Commission for maintaining the longshoremen rolls, intelligence and investigation databases, background checks, billing/collecting/tracking employer assessments, license and registration applications and renewals, as well as any vendor agreements for licensing, programming, general IT support, servers/maintenance, cybersecurity and back-up.

CONTRACTS/LIABILITIES

- All contracts and vendor agreements (if not produced in response to the items above, including professional services contracts) to which the Commission is a party and which pertain to any property located in New Jersey or to services rendered in or pertaining to New Jersey.
- To the extent not provided in response to any item above, copies of notes, mortgages, loan agreements, lines of credit, outstanding bills and liabilities relating to any activities within New Jersey.
- Insurance policies with all amendments, schedules and riders thereto, for all real and personal property owned, leased or placed in service in New Jersey; such policies should include but not be limited to, general liability/umbrella coverage, property, fire, theft, automobile, workman's compensation, and the like.
- For all current Commission employees, provide:

53a

- a schedule identifying each employee's name, title, role/function, number of years employed by the Commission, salary and benefits; and
- any contracts, memoranda, policies, plans and other documents pertaining to pensions, OPEB, reimbursements for personal use vehicles, meal/clothing allowances and other fringe benefits available to Commission employees that are paid by the Commission, including any schedules, spreadsheets or other payroll records indicating the value/amount of benefits currently available to each.
- For any prior Commission employee for whom there may be any future liability including but not limited to pension, OPEB, settlement payments, etc. because of the individual's employment with the Commission, identify the nature and amount of all such liabilities and any documentation pertaining to same.

OPERATIONS

- Current CBAs for the International Longshoremen's Association and New York Shipping Associates, and the 2013 Memorandum of Settlement of Local Conditions in the Port of New York-New Jersey (referenced in the Annual Report at p. 20).
- Number of applications received during f/y/e 2021 for all class of longshoremen, stevedores, pier superintendents and hiring agents, and the status of review/approval.
- Forms used for registration/licensing applications longshoremen, stevedores, pier super-

intendents and hiring agents; for each category, provide one completed application package, investigation/background check and approvals.

- a. Provide information about any software or reporting portal or other method used by the Commission for processing and tracking of applications and renewals.
- Copy of current Longshoremen's registry and date of most recent update, identifying status of registration, i.e. Permanent, temporary, probationary.
 - Number of telecommunication system controllers and union affiliations for each.
 - All Memoranda of Understanding and Mutual Aid Agreements to which the Commission is a party, including but not limited to the Port Authority of New York and New Jersey, the US Customs and Border Patrol, the FBI, and any other federal or state and local agencies.
 - All commissions, task forces, working groups and other partnerships (Stakeholder Group) in which the Commission participates, identifying those that relate to operations in New Jersey, including schedule/frequency of meetings, the Commission's role, and primary POC for the Stakeholder Group.
 - Number and status of all legal matters pertaining to New Jersey, including but not limited to, pending petitions, hearings, appeals and any other lawsuits to which the Commission is a party; such information shall identify the venue, parties, counsel, and subject matter.

55a

- Number and status of all pending civil and criminal investigations pertaining to New Jersey, identifying subject matter and key partners.

56a

APPENDIX F

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Parimal Garg
Chief Counsel

February 11, 2022

Via Electronic Mail

Elizabeth R. Fine, Esq.
Counsel to the Governor
State of New York
Executive Chamber
Albany, New York 12224

Re: New Jersey's Intention to Withdraw from the
Waterfront Commission Compact

Dear Elizabeth,

Thank you for your February 9, 2022 letter. On behalf of Governor Murphy, we welcome the opportunity to work with New York to ensure the economic and operational success of the Port of New York and New Jersey. We agree that the Port must be safe, secure, and staffed and operated fairly. Neither labor nor the industry should be unnecessarily burdened.

The continued existence of the Waterfront Commission of New York Harbor, however, is not the only way to achieve those goals. The Commission has long outlived its useful purpose. It saddles the industry

with excessive assessments and inefficient processes for registering labor. It overreaches constantly on matters that go beyond the Compact. And it ignores the economic reality of today, where 90 percent of Port activity occurs in New Jersey. In short, the needs of the Port that existed in 1953, when the Compact created the Commission, are not the same needs that exist today.

Recognizing those changes, in 2018, the New Jersey Legislature passed, and Governor Chris Christie signed, L. 2017, c. 324 (“Chapter 324”), which requires that New Jersey withdraw from the Compact and allows New Jersey to resume the regulation of its own docks led by one of the nation’s premier law enforcement agencies, the New Jersey State Police. Soon after Chapter 324’s enactment, the Commission sued Governor Murphy to prevent him from withdrawing from the Compact and challenged the validity of Chapter 324. A federal district court granted preliminary relief and stayed the enforcement of the law on January 23, 2018, and later ruled in the Commission’s favor. On appeal, the United States Court of Appeals for the Third Circuit reversed the district court, ruling in Governor Murphy’s favor and dismissing the Commission’s lawsuit. In November 2021, the Supreme Court of the United States denied the Commission’s petition for certiorari. Following the Supreme Court’s denial of certiorari, the federal district court lifted the stay of the law. As a result, contrary to the assertion in your letter, Chapter 324 remains intact and in full effect.

Thus, New Jersey intends to abide by Chapter 324 and withdraw from the Waterfront Compact on March 28, 2022. Nothing in the Compact prohibits New Jersey from withdrawing. And though we hold different views on this point, Governor Murphy is always

58a

open to a productive and meaningful dialogue with New York on the safety and security of the Port that is important for both of our States.

We look forward to working with you during this transition.

Sincerely,

/s/ Parimal Garg

Parimal Garg
Chief Counsel

59a

APPENDIX G

WATERFRONT COMMISSION OF
NEW YORK HARBOR
39 BROADWAY
NEW YORK, N. Y. 10006-3003
P: (212) 905-9201 F: (212) 742-8965

Paul T. Weinstein
Joseph M. Sanzari
Commissioners

Walter M. Arsenault
Executive Director

February 22, 2022

Via Electronic Mail

The Honorable Philip D. Murphy
Governor, State of New Jersey
P.O. Box 001
Trenton, New Jersey 08625-0001

Re: Document and Information Demands Pursuant
to N.J.S.A. 53:2-9(a)

Dear Governor Murphy,

I am in receipt of your February 9, 2022 letter and accompanying document & information requests to the Waterfront Commission of New York Harbor pursuant to N.J.S.A. 53:2-9(a) (the "Act").

I am also in receipt of the attached February 9, 2022 letter from the State of New York, rejecting the validity and effectiveness of the Act. Given that, under the terms of the Waterfront Commission Compact the Act is without effect absent consent of both compacting States, I am unable to comply with any request served

60a

for the purpose of facilitating New Jersey's unilateral withdrawal from the Compact.

Of course, as we have routinely done in the past, we will continue to comply with any request for non-privileged, non-confidential records and information. We welcome the opportunity to meet with your office to discuss this further.

Respectfully,

/s/ Walter Arsenault

Walter Arsenault

Executive Director

cc: The Honorable Kathy Hochul, Governor,
State of New York

Elizabeth Fine, Counsel to the Governor,
State of New York

Commissioner Paul T. Weinstein,
New York Commissioner

Commissioner Joseph M. Sanzari,
New Jersey Commissioner

Phoebe S. Sorial, General Counsel,
Waterfront Commission of New York Harbor

Parimal Garg, Chief Counsel to the
Governor, State of New Jersey

Noreen Giblin, Deputy Chief Counsel,
New Jersey Governor's Authorities Unit

Major Frederick Fife, New Jersey State Police

61a

APPENDIX H

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON, NJ 08625-0001

Philip D. Murphy
Governor

Parimal Garg
Chief Counsel

March 1, 2022

Via Electronic Mail

Walter Arsenault, Executive Director
Waterfront Commission of New York Harbor
An Instrumentality of the States of
New York and New Jersey
39 Broadway – 4th Floor
New York, New York 10006-3003

Re: Document and Information Demands Pursuant
to N.J.S.A. 53:2-9(a)

Dear Mr. Arsenault:

On behalf of Governor Murphy, I write in response to your letter dated February 22, 2022 acknowledging your refusal to comply with New Jersey's requests for Documents and Information to facilitate an orderly transition of authority from the Waterfront Commission to the New Jersey State Police, as required by New Jersey law.

I was especially perplexed by your claim that our statute withdrawing New Jersey from the Waterfront Commission is without effect. The Commission first

made this claim over four years ago when it sued Governor Murphy in January 2018 to block New Jersey's withdrawal. The U.S. Court of Appeals for the Third Circuit dismissed the Waterfront Commission's claim, and the U.S. Supreme Court declined to grant the Waterfront Commission's petition for certiorari, allowing the dismissal to stand. As a result, U.S. District Court Judge Wigenton lifted the stay of N.J.S.A. 53:2-9(a) on December 3, 2021, allowing the law to go into effect.

You and your colleagues have spent four years expending valuable public resources in an attempt to block New Jersey's withdrawal from the Waterfront Commission. Your claims have been fairly heard and dismissed by our nation's judiciary, going all the way up to our nation's highest Court. That litigation has concluded and your efforts have failed.

Despite the Commission's apparent refusal to respect the law, New Jersey's withdrawal will take effect on March 28, 2022. On that day, Governor Murphy will also withdraw the current New Jersey Commissioner from the Commission, and he will not appoint a replacement. As you are aware, the Commission can only operate with two members, one from New York and one from New Jersey, and "shall act only by the unanimous vote of both members thereof." Compact, Art. III, If 3; 67 Stat. 543. And you will be instructed that, if you continue proceeding unlawfully without any quorum, you will be required to consider the New Jersey Commissioner as voting against all future action by the Commission. As a result, no matter your position on New Jersey's withdrawal, the Commission will not be able to continue operating after March 28, 2022.

Importantly, the Commission will also lose access to funding. The Commission is required to “annually adopt a budget of its expenses for each year” and can only assess regulated employers for funds to cover “the balance of the commission’s budgeted expenses” after accounting for the Commission’s reserves. Compact, Art. XIII, ¶ 2-3. As you know, the Commissioners rejected your staffs proposed budget in the fall of 2021 and no budget has been submitted since. As a result, despite the Commission’s brazen decision to operate in the absence of a budget since that time, there are no approved budget expenses against which to issue assessments, and the regulated companies will not be required to pay. Moreover, any sanction that the Commission would attempt to issue against a regulated company for nonpayment would require “the unanimous vote of” the Commissioners, which as noted above, will not be possible after March 28.

As of March 28, 2022, the Commission will lack the legal authority to operate; a quorum of commissioners to function; and access to funding. Your recent actions will change nothing for the Commission but will undermine the important law enforcement responsibilities the New Jersey State Police will be performing. The only responsible approach is for the Commission to start cooperating with the State Police to effectuate a safe transfer of responsibilities at the Port.

Alternatively, if you continue to act in defiance of the law by not cooperating with New Jersey’s withdrawal, you will do nothing except endanger operations at the Port and risk disruptions to the economy, supply chains, and commerce in our region.

64a

Sincerely,

/s/ Parimal Garg

Parimal Garg
Chief Counsel

cc: The Honorable Kathy Hochul, Governor,
State of New York

Elizabeth Fine, Counsel to the Governor,
State of New York

Phoebe Soriale, General Counsel,
Waterfront Commission of New York Harbor

Commissioner Joseph M.Sanzari,
New Jersey Commissioner

Commissioner Paul T. Weinstein,
New York Commissioner

Noreen Giblin, Deputy Chief Counsel for
Authorities, State of New Jersey

Major Frederick Fife, New Jersey State Police

65a

APPENDIX I

NEW YORK SHIPPING ASSOCIATION, INC.
NEW YORK/NEW JERSEY
PORT EMPLOYERS AND OCEAN CARRIERS
www.nysanet.org

Via Electronic Mail

March 4, 2022

Walter Arsenault, Executive Director
Waterfront Commission of New York Harbor
39 Broadway
Fourth Floor
New York, New York 10006-3003

Dear Mr. Arsenault:

We are in receipt of the letter dated March 1, 2022, from Parimal Garg, Chief Counsel to the Honorable Philip D. Murphy, Governor of New Jersey, to your office. In that letter, Mr. Garg advises that effective March 28, 2022, the State of New Jersey will withdraw from the Waterfront Commission of New York Harbor (“Commission”).

As you know, Article XIII of the Waterfront Commission Act (“Compact”) states that the Commission “shall annually adopt a budget of its expenses for each year” and that the Commission may require “employers of persons registered or licensed under this compact” to pay assessments only to the extent necessary to satisfy the Commission’s “budgeted expenses,” that is, an assessment “sufficient to finance the commission’s budget for each year.” Inasmuch as the Commission is operating without a budget, it has no basis on which to impose assessments on the direct-employer members of the New York Shipping Association, Inc.

(“NYSA”). Moreover, as Mr. Garg’s letter makes clear, the Commission will soon lack a quorum of Commissioners capable of passing a budget. See Compact Art. III(3) (“The commission shall act only by unanimous vote of both members thereof.”). Accordingly, and consistent with Mr. Garg’s letter and for the reasons set forth herein, the direct-employer members of NYSA owe no assessments for the first calendar quarter of 2022.

Moreover, we note that at the expense of NYSA’s direct-employer members, the Commission has over time amassed a reserve fund far in excess of that permitted by Article XIII, which allows the Commission’s budget to include a reserve not to exceed “ten percent of the total of all other items of expenditure contained therein,” which further supports the position that the Commission is currently without authority to levy assessments.

Sincerely yours,

/s/ John J. Nardi

John J. Nardi

President

cc: Ms. Joy Johnson, Senior Counsel,
New Jersey Governor’s Office, Authorities Unit
Major Frederick Fife, New Jersey State Police

67a

APPENDIX J

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON, NJ 08628-0068
(609) 882-2000

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

Matthew J. Platkin
Acting Attorney General

Colonel Patrick J. Callahan
Superintendent

March 4, 2022

Dear Waterfront Commission Employee:

As you are aware, the Division of State Police will be assuming the roles and functions of the Waterfront Commission in accordance of P.L.2017, Chapter 324, on March 28, 2022. We look forward to working with existing Waterfront Commission personnel to ensure a smooth and successful transition. I am confident in our abilities to work through any current concerns without wavering in our commitment to our State and to each other. The good work that is getting done at your office each and every day will continue.

As we begin implementing this transition and notifying impacted groups, we anticipate your work and responsibilities around these plans will continue. It is our hope that this transition marks the start of a great opportunity and journey for each of you. Each

68a

one of you can become a valued member of our team and it is our goal to see you grow as State of New Jersey employees, learn from this new structure and contribute to our mission and success.

The next several weeks will be busy, exciting, and challenging and we will implement these plans with the utmost concern for the current employees of the Waterfront Commission. In anticipation of Waterfront Commission responsibilities transitioning within the New Jersey State Police, we want to know if you are interested in transitioning your employment from the current Commission, to the State of New Jersey, Division of State Police. If so, please complete the attached Civil Service DPF-44S form, and send the form, along with a copy of your current resume to the email address below. Your response will be kept as confidential as possible in facilitating your transition to the New Jersey State Police. The Civil Service DPF-44S form is required to be completed by all new State of New Jersey employees. It is important to have this form completed before the transition of the Waterfront Commission to the New Jersey State Police to allow for a better understanding of your current position's role and responsibilities, as well as your interest in transitioning to a State employee within the New Jersey State Police.

Again, if you are interested in moving forward with this transition, please complete the attached DPF-44S form, and return it along with a copy of your resume noting which pension system you are in by Friday, March 11, 2022 to WFC@njsp.org.

Sincerely,
/s/ Colonel Patrick J. Callahan
Colonel Patrick. J. Callahan
Superintendent

STATE POSITION CLASSIFICATION QUESTIONNAIRE

NEW JERSEY CIVIL SERVICE COMMISSION DIVISION OF STATE & LOCAL OPERATIONS

FOR CIVIL SERVICE COMMISSION USE

S&LO
LOG NO.

EMPLOYEE
ID #

CSS
REQUEST NO.

IMPORTANT: Full instructions for completing this form are located on the last page. It is most important that employees and supervisors read them carefully. The form must be signed by the employee, his or her supervisor, the Program Manager or Division Director and the Appointing Authority Representative.

INCOMPLETE REQUESTS WILL BE RETURNED.

1. NAME OF EMPLOYEE (IF ANY)		3. POSITION NO.	4. CODE (Range and Title)
5. OFFICIAL CIVIL SERVICE TITLE		6. WORKING TITLE (if different)	
7. LOCATION OF POSITION (Geographic location, Unit, Section, Division, Institution, or Department)			
7A. EMPLOYEE WORK OR HOME MAILING ADDRESS			
8. REQUESTED TITLE (This is a required field for appeals.)			

9. WORK (DUTIES) PERFORMED - Describe in detail the work required of this position. Make descriptions so clear that persons unfamiliar with the work can understand exactly what is done. **You MUST also explain how the duties at issue are more appropriate to the requested title than your current title.** NOTE: If this is a vacant position or a new position request, the form must be completed by the supervisor of the position and certified for accuracy by the Appointing Authority Representative.

Percent of Time	Work (Duties) Performed	Order of Difficulty

ITEM 9 CONTINUED

Percent of Time	Work (Duties) Performed	Order of Difficulty

10. REGULAR SCHEDULE OF WORK HOURS

DAY	FROM	TO	DAY	FROM	TO
Monday			Friday		
Tuesday			Saturday		
Wednesday			Sunday		
Thursday			Length of Lunch Period		
Total Hours Worked Per Week - - - - -					

10 A. EXPLAIN ROTATION OF SHIFTS, IF ANY

CONTINUED ON FOLLOWING PAGE

QUESTIONNAIRE CONTINUED

11. TYPE OF SUPERVISION RECEIVED (Check One — See definitions on page 5)
 CLOSE LIMITED GENERAL OTHER (Explain) _____

12. Does this position supervise other employees?
 YES (If yes, complete items A thru E) NO

A. Occasionally? [or] Regularly?

B. Responsible for the preparation of performance evaluations?
 YES NO

C. Assign work?
 YES NO

D. Review completed work of employees supervised?
 YES NO

E. List the names and titles of the employees supervised directly.
(If the employees supervised comprise one or more complete units, include the names of the units)

13. **CERTIFICATION OF EMPLOYEE** 

I CERTIFY that I have read the instructions and the entries made above are my own and, to the best of my knowledge, are accurate and complete.

SIGNATURE DATE

14. STATEMENTS OF IMMEDIATE SUPERVISOR

A. Comments on Statements of Employee

B. What do you consider the most important duties of this position?
 Check here if continued on additional sheets.

C. List those knowledges and abilities necessary for standard performance of the job to be done by an incumbent of this position
 Check here if continued on additional sheets.

D. I AGREE DISAGREE with the employee's description of job duties.

E. I AGREE DISAGREE with the employee's cited percentage of time.

F. I AGREE DISAGREE with the title proposed by the employee.

If you disagree with any of the above-stated factors, explain the nature of the disagreement here:

Check here if continued on additional sheets.

OFFICIAL CIVIL SERVICE TITLE (Working title if different) SIGNATURE DATE

15. STATEMENTS OF PROGRAM MANAGER OR DIVISION DIRECTOR

- A. **AGREE** **DISAGREE** with the employee's description of job duties.
- B. **AGREE** **DISAGREE** with the employee's cited percentage of time.
- C. **AGREE** **DISAGREE** with the title proposed by the employee.

If you disagree with any of the above-stated factors, explain the nature of the disagreement here:

* You must forward this form within 15 days of the employee's submission of the appeal to the supervisor, to your agency representative along with a copy of the employee's most recent performance evaluation form.

Check here if continued on additional sheets.

OFFICIAL CIVIL SERVICE TITLE <i>(Working title if different)</i>	SIGNATURE
	DATE

16. STATE APPOINTING AUTHORITY REPRESENTATIVE SIGNATURE



In State service, the agency representative's signature certifies the information in accordance with 4A:3-3.9(c)1 through 3.



A copy of the employee's most recent performance evaluation and an organizational chart are attached.

OPTIONAL

I recommend that this appeal be GRANTED REJECTED

REASON:

Check here if continued on additional sheets.

OFFICIAL CIVIL SERVICE TITLE <i>(Working title if different)</i>	SIGNATURE
	DATE

INSTRUCTIONS FOR COMPLETING STATE POSITION CLASSIFICATION QUESTIONNAIRE (DPF-44S)

NOTE: If this is a vacant position or a new position request, this form must be completed by the supervisor of the position and certified for accuracy by the Appointing Authority.

Please read these instructions carefully before filling out the Position Classification Questionnaire.

This form is used to obtain information about a position. It will be used to determine the classification or to determine a rate of pay. Therefore, be as clear and accurate as possible and fill out the form completely. Be specific and illustrate statements with examples. If more space is needed to answer any of the items, attach an additional sheet and identify each item by its number.

This form must be completed in its entirety. Should any of the fields be left blank, the package will be returned to the appointing authority and the appeal will not be considered received by the Civil Service Commission (i.e. CSC's 180-day review period will not commence). Appeals are considered received by the CSC (and our 180-day review period begins) when a complete package is received.

This form is to be completed by you in your own words. Your supervisor and department head will review your Position Classification Questionnaire to determine the completeness and accuracy of the statements and to clarify or give additional information concerning your duties and responsibilities. Under no circumstances, however, should the supervisor or the department head change the answers as given and certified by you. In the space provided, they may make whatever statements they think are necessary before signing the report. State your name in item 1 and complete items 6 through 13. Items 3 through 5 will be completed by your personnel office. Remember to sign your name in item 13. Give the completed questionnaire to your supervisor.

ITEM 8 - You must indicate the title which you feel is a more appropriate classification of your position. This is a required field. If this field is left blank, the form will be returned.

ITEM 9 - The answer to this item requires an exact account of what you do. Describe your "whole job" or year-round duties, not just those which might be performed during rush or peak periods of activity or when you are substituting for other persons. Start with your most important duties and describe your least important duties last. Use a separate paragraph for each major duty. In the column at left indicate as best you can the percentage of time you devote to each duty. The position's supervisor will complete the information requested in the right hand column.

You MUST also explain how the duties at issue are more appropriate to the requested title than your current title. For example, how does the job specification for your current title significantly differ from the major duties you are assigned to perform? How is the job specification for the requested title a more appropriate description of the major duties you are assigned to perform? What are the reasons you believe your position is erroneously classified? You should reference the specific information listed in the job specification for the requested title that supports your point of view, as well as the specific areas of disagreement you have with the job specification for your current title.

EXAMPLES OF GOOD AND POOR DUTIES STATEMENTS	
Poor Statements	Good Statements
Assist in handling correspondence. ●●●●●●●●●●●●●●●●●●●●	Receive, open, time stamp, and route incoming mail.
Maintain grounds and landscaped areas. ●●●●●●●●●●	Mow lawn with power mower and hand mowers. Trim trees from ground and from ladder, using power saws. Lubricate mowers.
I do finish concrete work. ●●●●●●●●●●●●●●●●●●●●	Place forms; mix, pour and finish concrete walks and curbing.
Keep claim registers. ●●●●●●●●●●●●●●●●●●●●	Prepare registers of all claims showing allocation of budget expenditures and total amount of expenditures for month in which claims are made.
Do general kitchen work. ●●●●●●●●●●●●●●●●●●●●	Clean and cut fruits and vegetables. Make salad dressings. Serve at steam table. Wash pots and dishes and store away utensils and foods. Once or twice a month, bake cookies and tarts.
Our unit is responsible for keeping all purchasing records. ●●	I compare invoices with purchase orders. Review requisitions submitted by the different departments for accuracy, then give them to the Purchasing Agent for his or her OK.

ITEM 11 - Before you complete item 11, the following definitions will be helpful in making your choice of the type of supervision you receive.

- **CLOSE SUPERVISION:** Work is performed according to detailed instructions and supervision is available on short notice.

- **LIMITED SUPERVISION:** Incumbent proceeds on his/her own initiative while complying with policies, practices, and procedures prescribed by the supervisor. The supervisor generally answers questions only on the more important phases of the work.

- **GENERAL SUPERVISION:** Work is performed independently. The incumbent seldom refers matters to supervisor except for clarification of policy.

- **OTHER:** If your work is supervised in a manner different from all of the above, please describe briefly how your work is assigned and supervised.

INSTRUCTIONS FOR SUPERVISORY STAFF

ITEM 14 - If you are a supervisor reviewing this form, you should remember that your certification means you accept responsibility that the statements made constitute a true description of the duties and responsibilities of the position. If the description does not meet with your idea of the position, it is your responsibility to see that statements made are qualified or elaborated upon in your comments. Under no circumstances, however, are the employee's statements to be changed. However, you are asked to determine the order of difficulty of each duty performed. Under item 9 in the column at right, cite the order of difficulty of duties performed by assigning the number one (1) to the most difficult, the number two (2) to the next most difficult, etc. Keep in mind that the most important duty performed by this position may not be the most difficult, nor the one on which the greatest percentage of time is spent.

You should review the completed and signed form for correctness, completeness, and accuracy of statements. You must indicate agreement or disagreement with the employee's description of duties, cited percentage of time and the title proposed by the employee. If you disagree with any of those factors, explain the nature of the disagreement in the space provided. Sign the form, and forward it to the program manager or division director.

ITEM 15 - The program manager or division director MUST indicate his or her agreement or disagreement with the employee's description of duties, cited percentage of time and the title proposed by the employee. If you disagree with any of those factors, explain the nature of the disagreement in the space provided. Additional comments may be written in the space provided. Sign the form, attach a copy of employee's most recent performance evaluation and forward it to your Personnel Office.

APPOINTING AUTHORITY SIGNATURE

ITEM 16-The appointing authority or designated representative must ensure that a copy of the employee's most recent performance evaluation and an organizational chart are included in the package and should then check the box. You may indicate whether you agree or disagree with the appeal and include a reason if desired. Sign the form and forward the completed package to the Civil Service Commission.

This page intentionally left blank.

75a

APPENDIX K

NEW JERSEY LEGISLATURE

Nicholas P. Scutari
Senate President
P.O. Box 099
Trenton, NJ 08625-0099

Steven V. Oroho
Senate Minority Leader
P.O. Box 099
Trenton, NJ 08625-0099

Craig J. Coughlin
Assembly Speaker
P.O. Box 099
Trenton, NJ 08625-0099

John Dimaio
Assembly Minority Leader
P.O. Box 099
Trenton, NJ 08625-0099

March 9, 2022

Walter Arsenault, Executive Director
Waterfront Commission of New York Harbor
An Instrumentality of the States of
New York and New Jersey
39 Broadway, Fourth Floor
New York, New York 10006-3003

Dear Mr. Arsenault:

We have been informed that you have refused to comply with New Jersey's request for documents and information to facilitate an orderly transition of authority from the Waterfront Commission to the New Jersey State Police, as required by New Jersey law.

We are particularly concerned with your claim that the New Jersey statute authorizing withdrawal from the Waterfront Commission is without effect. You litigated exactly that claim for four years, but the U.S. Court of Appeals for the Third Circuit dismissed your claim and the U.S. Supreme Court's decision to reject the Waterfront Commission's petition for certiorari allowed the Third Circuit's decision to stand.

As the leaders of the New Jersey Legislature from both parties, we advise you that your petulant attitude will not be tolerated, and we will fully support Governor Murphy's efforts to implement New Jersey's withdrawal from the Compact. After the Governor withdraws the current Commissioner from New Jersey, the New Jersey Senate will not confirm any nominee for the position of Commissioner to the Waterfront Commission in the future, depriving you of a quorum. As such, absent a quorum, the Commission cannot legally proceed with any activities.

Furthermore, your expending of Commission funds accumulated in violation of Article XIII of the Compact and without the unanimous approval of the Commissioners is unlawful. And the New Jersey Legislature will not appropriate any funds which would be used to support the Waterfront Commission. Not only will you lack a quorum, but you will not have funds to operate.

As you know, approximately 92% of all of the Port activities now occur in New Jersey, resulting in billions of dollars of economic activity and the creation of thousands of jobs. Your actions are contrary to your legal and fiduciary responsibilities to ensure that the Port operates in an efficient manner, allowing it to effectively compete with other ports. Your decision to not cooperate with New Jersey's withdrawal endangers operations at the Port and risks disruptions to the

77a

economy, supply chains and commerce in our region. There is no justification for this act of defiance, and we urge you to reconsider and immediately commence cooperation for an orderly transition to the New Jersey State Police in order to avoid any disruptions.

Very truly yours,

/s/ Nicholas P. Scutari

Nicholas P. Scutari
Senate President

/s/ Craig J. Coughlin

Craig J. Coughlin
Assembly Speaker

/s/ Steven V. Oroho

Steven V. Oroho
Senate Minority Leader

/s/ John DiMaio

John DiMaio
Assembly Minority Leader

Cc: Governor Philip D. Murphy, Governor,
State of New Jersey
Acting Attorney General Matthew J. Platkin,
State of New Jersey
Elizabeth Fine, Counsel to the Governor,
State of New York
Phoebe Sorial, General Counsel,
Waterfront Commission of New York Harbor
Commissioner Joseph M. Sanzari,
New Jersey Commissioner
Commissioner Paul T. Weinstein,
New York Commissioner
Noreen Giblin, Deputy Chief Counsel for
Authorities, State of New Jersey
Major Frederick Fife, New Jersey State Police

78a

APPENDIX L

U.S. DEPARTMENT OF LABOR
OFFICE OF INSPECTOR GENERAL
200 CONSTITUTION AVENUE N.W.
WASHINGTON DC 20210

June 15, 2021

Patty Stemler
Chief, Appellate Section
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Chief Stemler,

I am writing to you to express the U.S. Department of Labor, Office of Inspector General's (DOL-OIG) appreciation for the efforts of the Waterfront Commission of New York Harbor to combat labor racketeering and organized crime's influence on the waterfront harbors of New York and New Jersey. As you may be aware, the DOL-OIG is unique amongst federal inspectors general in that we have an external programmatic responsibility to combat labor racketeering and organized crime involving our nation's labor unions and employee benefit plans. It is in that area of our jurisdiction that we have worked closely with the Waterfront Commission for many years.

The investigative work conducted by DOL-OIG, the Waterfront Commission, and the Federal Bureau of Investigation has shown that the waterfront harbors of New York and New Jersey, as well as the International Longshoremen's Association (ILA), have long been plagued by extortion, thievery, and fraud schemes. The ILA has exerted their power and influence over labor markets for criminal purposes, most

often at the direction of an organized crime group. We have had numerous successful prosecutions involving the ILA and organized crime in the Eastern District of New York, Southern District of New York, and the District of New Jersey. In most of these matters, the Waterfront Commission has been a key investigative partner and has provided valued insight and intelligence.

In addition to being a valued criminal investigative partner, the Waterfront Commission has worked independently to break the cycle of corruption at the waterfront harbors of New York and New Jersey by putting an end to the ILA's stronghold on who gets hired and what jobs and training employees can receive once employed. The Waterfront Commission has been successful in making daily hiring and training fairer by requiring seniority and equal access. This has stymied organized crime's control over the waterfront harbors of New York and New Jersey, allowing their criminal enterprise less access and influence over key employment positions.

If it would be beneficial, I am happy to provide additional details regarding the numerous federal prosecutions that DOL-OIG has pursued with the Waterfront Commission. I can be reached at mikulka.michael@oig.dol.gov or (202) 693-5229.

Sincerely,

/s/ Michael C. Mikulka
Michael C. Mikulka
Assistant Inspector General
U.S. Department of Labor
Office of Inspector General

80a

APPENDIX M

U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
THE SILVIO J. MOLLO BUILDING
ONE SAINT ANDREWS PLAZA
NEW YORK, NEW YORK 10007

June 16, 2021

Patty Stemler, Section Chief
U.S. Department of Justice
10th and Constitution Ave.
Washington, DC 20530

Re: Waterfront Commission of New York Harbor v.
Governor of New Jersey, et al.

Dear Ms. Stemler:

We write in support of the Waterfront Commission of New York Harbor in the above-referenced matter.

Although law enforcement's efforts against traditional organized crime influence have been tremendously successful, such influence remains a significant threat in the New York metropolitan area, particularly in the ports in New York and New Jersey. The U.S. Attorney's Office for the Southern District of New York's long and successful partnership with the Waterfront Commission and resulting prosecutions and convictions over the past decade highlight the continued influence of organized crime and corruption in the Port of New York-New Jersey. The Waterfront Commission has provided invaluable support to this Office in criminal prosecutions of traditional La Cosa Nostra families and in civil RICO litigation brought

81a

against several labor unions, part of our ongoing effort to rid organized crime influence from those organizations.

We remain committed to the vigorous prosecution of organized crime to eliminate labor racketeering and the victimization of legitimate union members and Port businesses. Our continued partnership with the Waterfront Commission, which provides us with invaluable intelligence, evidence, and investigative assistance, is essential. For these reasons, we respectfully suggest that there is a strong federal interest in supporting the Waterfront Commission's petition for a writ of certiorari seeking review of the Third Circuit's ruling in the above captioned matter.

Thank you.

Very truly yours,

Audrey Straus
United States Attorney

By: /s/ Ilan Graff
Ilan Graff
Deputy U.S. Attorney
Southern District of New York

82a

APPENDIX N

U.S DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

June 17, 2021

Patty M. Stemler
Chief, Appellate Section
Department of Justice
950 Pennsylvania Avenue NW
Washington DC

via electronic mail

Re: Waterfront Commission of New York Harbor v.
Governor of New Jersey. et al.

Chief Stemler,

The Mafia/La Cosa Nostra remain a significant priority threat in the New York and New Jersey metropolitan area. The FBI's joint investigations with the Waterfront Commission of New York Harbor (WCNYH) over the past decade have highlighted the ongoing influence of organized crime and corruption at the Port of New York-New Jersey, and successful federal prosecutions have revealed the continued influence of the Genovese and Gambino organized crime families over the International Longshoremen's Association and waterfront businesses. The WCNYH has been instrumental in these investigations and prosecutions of criminal conduct in both New York and New Jersey.

Organized crime does not respect state boundaries, and its presence in a central location of interstate and foreign commerce poses a significant security risk. The FBI remains committed to combating organized crime, to include labor racketeering and the victimization of

83a

legitimate union members and waterfront businesses. Through its close partnership with the FBI, the WCNYH provides invaluable intelligence, evidence and investigative assistance in this mission as it continues its effective and unique role in reducing the influence of organized crime at the Port of New York-New Jersey.

Sincerely,

/s/ George M. Crouch, Jr.
George Crouch, Jr.
Special Agent in Charge
FBI Newark Field Office

/s/ Jacqueline Maguire
Jacqueline Maguire
Special Agent in Charge
FBI New York Field Office

APPENDIX O

**SENATE BILL NO. 2277
(SECOND REPRINT)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2277 (Second Reprint) with my recommendations for reconsideration.

This bill would direct the Governor to withdraw from the Waterfront Compact and the Waterfront Commission of New York Harbor (“Waterfront Commission”), and transfer the Waterfront Commission’s New Jersey operations to the Division of State Police in the Department of Law and Public Safety (“State Police”). With two notable exceptions, the bill generally establishes in New Jersey statute the same policies and procedures currently contained in the bi-state Waterfront Compact. First, the bill aims to clarify the extent of the jurisdiction of the State Police, as successor to the Waterfront Commission. The bill would limit the regulation of warehouses seemingly distant from the water’s edge and which do not handle waterborne freight. Second, the bill would preclude the State Police from disrupting a lawful and collectively-bargained hiring process. The Waterfront Commission currently exercises this authority under a provision of the Waterfront Compact known as “5-p.” This limitation in the bill is consistent with a law signed by my predecessor, P.L. 2007, c.167, which has not been enacted by the State of New York and therefore, is not binding on the Waterfront Commission.

My administration is committed to enhancing the development of trade in the port region and has encouraged vital investments in the port region's infrastructure including raising the deck of the Bayonne Bridge to permit the ports of Newark and Elizabeth to handle the next generation of larger shipping vessels capable of traversing an expanded Panama Canal. The State and other governmental entities, including the Waterfront Commission, must continue to work hand-in-hand to maintain the port region as an engine of growth for New Jersey's economy.

Like any institution that has survived largely unchanged for over sixty years, there is near unanimous agreement that the Waterfront Commission is in need of modernization. While I am not unsympathetic to the merits of the bill, I am advised that federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress. As a result, it is premature for New Jersey to contemplate withdrawing from the Waterfront Commission until New York considers similar legislation. Given this concrete constitutional hurdle, I am recommending this bill be amended to direct the Waterfront Commission to promulgate regulations substantially similar to the jurisdictional definitions proposed by this bill. Through this regulatory reform, the Waterfront Commission would expeditiously address one of the major goals of the bill, affording companies doing business in the port region increased regulatory clarity and predictability.

Accordingly, I herewith return Senate Bill No. 2277 (Second Reprint) and recommend that it be amended as follows:

Page 2, Title, Lines 1-3:

Delete “the Governor, on behalf of the State of New Jersey, to notify the Congress of the United States, the Governor of the State of New York, and”

Page 2, Title, Line 4:

Delete “, of the State of New Jersey’s intention to” and insert “to adopt regulations clarifying the jurisdiction of the Waterfront Commission.”

Page 2, Title, Lines 5-8:

Delete in their entirety

Page 2, Line 12:

Insert new Section 1 to read: “1. The Waterfront Commission of New York Harbor (commission) shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to clarify that warehouses that are distant from the water’s edge and that do not handle waterborne freight are not subject to the commission’s jurisdiction and shall address other concerns of warehouse operators and representatives of the commercial real estate industry that commission action has had the effect of expanding the scope of the commission’s jurisdiction beyond the applicability of the Waterfront Compact, entered into by the

State of New Jersey pursuant to its agreement thereto under P.L. 1953, c. 202 (C.32:23-1 et seq.).”

<u>Page 2, Section 1, Lines 13-44:</u>	Delete in their entirety
<u>Page 3, Section 1, Lines 1-38:</u>	Delete in their entirety
<u>Page 3, Section 2, Lines 40-45:</u>	Delete in their entirety
<u>Page 4, Section 2, Lines 1-16:</u>	Delete in their entirety
<u>Page 4, Section 3, Lines 18-48:</u>	Delete in their entirety
<u>Page 5, Section 3, Lines 1-47:</u>	Delete in their entirety
<u>Page 6, Section 3, Lines 1-47:</u>	Delete in their entirety
<u>Page 7, Section 3, Lines 1-48:</u>	Delete in their entirety
<u>Page 8, Section 3, Lines 1-21:</u>	Delete in their entirety
<u>Page 8, Section 4, Lines 23-47:</u>	Delete in their entirety
<u>Page 9, Section 4, Lines 1-48:</u>	Delete in their entirety
<u>Page 10, Section 4, Lines 1-24:</u>	Delete in their entirety
<u>Page 10, Section 5, Lines 26-48:</u>	Delete in their entirety
<u>Page 11, Section 5, Lines 1-47:</u>	Delete in their entirety
<u>Page 12, Section 5, Lines 1-48:</u>	Delete in their entirety
<u>Page 13, Section 5, Lines 1-7:</u>	Delete in their entirety
<u>Page 13, Section 6, Lines 9-48:</u>	Delete in their entirety
<u>Page 14, Section 6, Lines 1-46:</u>	Delete in their entirety
<u>Page 15, Section 6, Lines 1-41:</u>	Delete in their entirety
<u>Page 15, Section 7, Lines 43-47:</u>	Delete in their entirety
<u>Page 16, Section 7, Lines 1-48:</u>	Delete in their entirety
<u>Page 17, Section 7, Lines 1-48:</u>	Delete in their entirety
<u>Page 18, Section 7, Lines 1-36:</u>	Delete in their entirety
<u>Page 18, Section 8, Lines 38-47:</u>	Delete in their entirety
<u>Page 19, Section 8, Lines 1-46:</u>	Delete in their entirety

Page 20, Section 8, Lines 1-24: Delete in their entirety
Page 20, Section 9, Lines 26-47: Delete in their entirety
Page 21, Section 9, Lines 1-33: Delete in their entirety
Page 21, Section 10, Lines 35-48: Delete in their entirety
Page 22, Section 10, Lines 1-21: Delete in their entirety
Page 22, Section 11, Lines 23-47: Delete in their entirety
Page 23, Section 11, Lines 1-48: Delete in their entirety
Page 24, Section 11, Lines 1-34: Delete in their entirety
Page 24, Section 12, Lines 36-47: Delete in their entirety
Page 25, Section 13, Lines 1-48: Delete in their entirety
Page 26, Section 13, Lines 1-48: Delete in their entirety
Page 27, Section 13, Lines 1-3: Delete in their entirety
Page 27, Section 14, Lines 5-48: Delete in their entirety
Page 28, Section 14, Lines 1-19: Delete in their entirety
Page 28, Section 15, Lines 21-43: Delete in their entirety
Page 28, Section 16, Lines 45-48: Delete in their entirety
Page 29, Section 16, Lines 1-39: Delete in their entirety
Page 29, Section 17, Lines 41-48: Delete in their entirety
Page 30, Section 17, Lines 1-28: Delete in their entirety
Page 30, Section 18, Lines 30-47: Delete in their entirety
Page 31, Section 18, Lines 1-26: Delete in their entirety
Page 31, Section 19, Lines 28-47: Delete in their entirety
Page 32, Section 19, Lines 1-28: Delete in their entirety
Page 32, Section 20, Lines 30-48: Delete in their entirety
Page 33, Section 20, Lines 1-16: Delete in their entirety
Page 33, Section 21, Lines 18-48: Delete in their entirety
Page 34, Section 21, Lines 1-16: Delete in their entirety
Page 34, Section 22, Lines 18-39: Delete in their entirety

89a

<u>Page 34, Section 23, Lines 41-48:</u>	Delete in their entirety
<u>Page 35, Section 23, Lines 1-14:</u>	Delete in their entirety
<u>Page 35, Section 24, Lines 16-46:</u>	Delete in their entirety
<u>Page 36, Section 25, Lines 1-48:</u>	Delete in their entirety
<u>Page 37, Section 25, Lines 1-4:</u>	Delete in their entirety
<u>Page 37, Section 26, Lines 6-48:</u>	Delete in their entirety
<u>Page 38, Section 26, Lines 1-47:</u>	Delete in their entirety
<u>Page 39, Section 26, Lines 1-35:</u>	Delete in their entirety
<u>Page 39, Section 27, Lines 37-48:</u>	Delete in their entirety
<u>Page 40, Section 27, Lines 1-17:</u>	Delete in their entirety
<u>Page 40, Section 28, Lines 19-48:</u>	Delete in their entirety
<u>Page 41, Section 28, Lines 1-36:</u>	Delete in their entirety
<u>Page 41, Section 29, Lines 38-48:</u>	Delete in their entirety
<u>Page 42, Section 29, Lines 1-36:</u>	Delete in their entirety
<u>Page 42, Section 30, Lines 38-48:</u>	Delete in their entirety
<u>Page 43, Section 30, Lines 1-26:</u>	Delete in their entirety
<u>Page 43, Section 31, Lines 28-38:</u>	Delete in their entirety
<u>Page 43, Section 32, Lines 40-48:</u>	Delete in their entirety
<u>Page 44, Section 32, Lines 1-47:</u>	Delete in their entirety
<u>Page 45, Section 32, Lines 1-48:</u>	Delete in their entirety
<u>Page 46, Section 32, Lines 1-31:</u>	Delete in their entirety
<u>Page 46, Section 33, Lines 33-46:</u>	Delete in their entirety
<u>Page 47, Section 33, Lines 1-5:</u>	Delete in their entirety
<u>Page 47, Section 34, Line 7:</u>	Delete “34.” and insert “2.”
<u>Page 47, Section 34, Line 7:</u>	Delete “, but sections 3” and insert “.”
<u>Page 47, Section 34, Lines 8-10:</u>	Delete in their entirety

90a

Respectfully,

Chris Christie
Governor

Attest:

Christopher S. Porrino
Chief Counsel to the Governor

91a

APPENDIX P

NEW JERSEY STATE LEGISLATURE
OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

Albert Porroni
Executive Director
(609) 847-3901

Legislative Services Commission

Senate

Christopher J. Connors
Nia H. Gill
Robert M. Gordon
Thomas H. Kean, Jr
Joseph M. Kyrillos, Jr
Joseph Pennacchio
Stephen M. Sweeney
Loretta Weinberg

General Assembly

Jon M. Bramnick
Anthony M. Bucco
John J. Burzichelli
Thomas P. Giblin
Louis D. Greenwald
Alison Littell McHose
Vincent Prieto
Scott I. Rumana

92a

Authorities, Utilities, Transportation
and Communications Section

Marvin W. Jiggetts
Director of Central Staff
(609) 847-3880

Charles A Buono, Jr.
Acting Section Chief

MEMORANDUM

TO: John Kingston
FROM: Philip M. Mersinger Associate Counsel
DATE: October 23, 2014
SUBJECT: Unilateral Withdrawal from Interstate
Compacts

This memorandum¹ is in response to your request submitted yesterday for information on whether a state may unilaterally withdraw from a congressionally approved interstate compact in circumstances where the compact is silent concerning the issue of withdrawal,

Interstate compacts are authorized under the Compact Clause of the United States Constitution, which provides that “[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State,”² When an interstate compact receives congressional consent pursuant to the Compact Clause, the consent “transforms an interstate compact . . . into a law of the United

¹ This is not a legal opinion of Legislative Counsel and therefore is not a legal opinion of the Office of Legislative Services.

² Art. I, Sec. 10, cl. 3.

States.”³ Accordingly, the Supreme Court of the United States has “final power to pass upon the meaning and validity of compacts.”⁴

In *West Virginia ex rel. Dyer v. Sims*, the United States Supreme Court overturned a West Virginia court decision that required West Virginia to withdraw from an interstate compact. The Court stated: “[i]t requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.”⁵ The compact at issue appears to have been silent concerning the issue of withdrawal. Subsequent United States Supreme Court and lower federal court opinions⁶ appear to suggest that state action unilaterally nullifying a congressionally approved interstate compact raises issues regarding both the Supremacy Clause⁷ and the Contract Clause⁸ of the United States Constitution.

³ *Cuyler v. Adams*, 449 U.S. 433, 438 (1981).

⁴ *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951).

⁵ *Id.*

⁶ *Alcorn v. Wolfe*, 527 F. Supp. 47 (D.C. 1993). See also *Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (stating that a “Compact is, after all, a contract.”).

⁷ The Supremacy Clause states that the “Constitution, and the laws of the United States . . . shall be the supreme law of the Land . . .” Art. VI, cl. 2.

⁸ The Contract Clause states: “no State shall . . . pass any . . . Law impairing the obligation of Contracts . . .” Art. 1, sec. 10, cl. 1.

94a

I hope that this information is responsive to your request. If you need additional information or would like to discuss this topic, please do not hesitate to contact Inc by telephone at 609-847-3840 or via e-mail at pmersinger@njleg.org.

95a

APPENDIX Q

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
PO BOX 001
TRENTON, NJ 08625-0001

Chris Christie
Governor

August 7, 2017

Walter Arsenault, Esq.
Executive Director
Waterfront Commission of New York Harbor
39 Broadway
New York, New York 10006

Dear Mr. Arsenault,

Today, I signed into law a bill that provides the Governors of New York and New Jersey the authority to veto any action, with limited exceptions, taken by the Commission. This measure ensures the Commission continues to effectively carry out its important investigation and licensing responsibilities with appropriate independence, and is more accountable to the public.

In 2015, I emphasized the imperative that the Commission work hand in hand with the State to improve port commerce and, to that end, called upon the Commission to modernize its practices. Since that time, however, the Commission has continued to expand its jurisdiction and allowed brief but damaging labor shortages in the Port. The Commission must embrace more efficient, transparent and cooperative approaches to its regulatory functions.

The measure I signed into law today will take effect upon the enactment of a similar law by the State of

96a

New York. In the interim, I direct the Commission to review and update, within 90 days, the By-Laws that govern the way substantive decisions are made. The Commission's By-Laws were last updated in 1975 and do not properly delineate the decision-making authority retained by the Commissioners and that which is delegated to the executive staff.

In addition, the By-Laws should be updated to provide for the proper recording and maintenance of meeting minutes, the conduct of regular financial audits, open public meetings and records, confidentiality, conflict of interest, procurement, rulemaking and employment procedures, among other things.

Please contact John Spinello, Director of the Governor's Authorities Unit, if you have any questions.

Sincerely,

/s/ Chris Christie

Chris Christie
Governor

cc: Honorable Andrew Cuomo,
Governor of New York
Michael Murphy, Commissioner
Ronald Goldstock, Commissioner
Phoebe Soriel, General Counsel,
Waterfront Commission
John Spinello, Director,
Governor's Authorities Unit