

# EXHIBIT X



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August 24, 2018

**Via eCourts and Overnight Delivery**

Honorable Peter F. Bariso, Jr., A.J.S.C.  
Hudson County Administration Building  
9<sup>th</sup> Floor - Chambers 906  
595 Newark Avenue  
Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al.  
Docket No.: HUD-L-607-18  
***Motion for Summary Judgment***  
***Return Date: August 31, 2018***  
***Oral Argument Requested***

Dear Judge Bariso:

On behalf of the State of New Jersey Department of Transportation (DOT), we respectfully request that Your Honor accept this letter brief, in lieu of a more formal brief, in opposition to the cross-motion to dismiss filed by the Borough of Leonia (Leonia).

**PRELIMINARY STATEMENT**

Based on an analysis of the plain language of the



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applicable statutes within Title 39, and the language of the ordinances at issue, the ordinances are legally invalid. In addition, Leonia failed to submit the ordinances at issue to the Commissioner of the New Jersey Department of Transportation (DOT) for approval. Further, if municipalities across the State were deemed to have legal authority to adopt no through street ordinances such those at issue, we could reasonably anticipate the potential traffic problems that could ensue, particularly in the more densely populated regions of the State. This is not to be insensitive to the concerns of Leonia. But municipalities across the State, including Leonia, should address traffic concerns within the rule of law. As such, as a matter of law, the DOT's motion for summary judgment should be granted and Leonia's cross-motion to dismiss should be denied.

#### **STATEMENT OF FACTS**

The DOT respectfully incorporates by reference the Statement of Facts included in the DOT's brief in support of its motion for summary judgment.

In addition, Leonia has failed, in substance, to refute the DOT's Statement of Material Facts. In this regard, Leonia relies upon the certifications of Thomas Rowe (Mr. Rowe) and Judah Zeigler (Mr. Zeigler). These certifications, overall, provide information leading to Leonia's decision to adopt the ordinances at issue and Leonia's perspective regarding its communications

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with the DOT. However, these certifications do not raise any issues as to any material facts regarding the DOT's motion for summary judgment.

At this point, the following material facts, in substance, remain undisputed:

1. Leonia admits that it has adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances") (a copy of the Ordinances were filed as DOT Exhibits B, C and D to the DOT's motion for summary judgment). (Leonia's response to the DOT's Statement of Material Facts, page 1, paragraph 1.)

2. Leonia does not deny that, by the Ordinances, which restrict traffic on most of Leonia's streets during certain hours unless a person (a) is a resident of a listed street needing access to the person's home or can demonstrate a documented need to access a residence on the street or parts of streets as described, or (b) is traveling to and/or from a Leonia destination, Leonia has prohibited through traffic regarding the streets included within the Ordinances during the applicable hours. (DOT Certification of Mark A. Hiestand, pages 2-3, paragraph 4, filed with the DOT's motion for summary judgment.) (Leonia's Response to the DOT's Statement of Material Facts, page 1, paragraph 2.) However, although Leonia denies that it has prohibited "through" traffic by

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the Ordinances, the plain language of the traffic prohibitions included within the Ordinances speak for themselves.

3. Leonia is located within close proximity to the George Washington Bridge and to several State and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80. (DOT Certification of Mark A. Hiestand, page 3, paragraph 5, filed with the DOT's motion for summary judgment.) Leonia objects to this fact as vague since the term "close proximity" is not defined (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 3). However, Leonia admits that it is situated approximately a half mile from the George Washington Bridge (Mr. Rowe's Certification, page 2, paragraph 6). Moreover, the DOT respectfully submits that, pursuant to N.J.R.E. 201(b), by reference to a map, the court can take judicial notice of Leonia's close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80.

4. Leonia admits that a portion of State Route 93, also known as Grand Avenue, is located within the municipal boundaries of Leonia (DOT Certification of Mark A. Hiestand, page 3, paragraph 6, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 4.)

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5. Leonia admits that it is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgfield Park, Palisades Park, and Teaneck (DOT Certification of Mark A. Hiestand, page 3, paragraph 7, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 5.)

6. Leonia admits that a portion of Bergen County Route 56 III (3), also known as Degraw Avenue and Fort Lee Road, is located within Leonia (DOT Certification of Mark A. Hiestand, page 3, paragraph 8). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 6.)

7. The Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, because the Ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11, filed with the DOT's motion for summary judgment.) Leonia has improperly denied these facts

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because Leonia has failed to specifically dispute these facts by citation conforming to the requirements of R. 4:46-2(a) and (b).

8. Leonia admits that it did not submit the Ordinances to the DOT Commissioner for approval (DOT Certification of Mark A. Hiestand, page 5, paragraph 12, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 8.)

### LEGAL ARGUMENT

#### POINT I

THE DOT HAS STANDING UNDER THE DECLARATORY JUDGMENT ACT,  
N.J.S.A. 2A:16-50 TO -62, TO SEEK DECLARATORY RELIEF.

New Jersey's Declaratory Judgment Act, N.J.S.A. 2A:16-50 (the DJA), entitles litigants "whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise" to have a court determine the validity of those instruments and to declare rights, status, or other legal relations so as to afford the litigants relief from uncertainty and insecurity. See N.J.S.A. 2A:16-50. The DJA "expressly confers standing on a person whose legal rights have been affected by a municipal ordinance," and affords litigants expeditious relief when there is a judicable controversy. Bell v. Stafford, 110 N.J. 384, 390 (1988) (citations omitted). Moreover, New Jersey's courts have recognized that the DJA should be liberally construed to carry out its intended purpose. Ibid.

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Contrary to Leonia's arguments, New Jersey's courts have addressed the issue of whether the State may maintain suit under the DJA. See, Abbott v. Beth Israel Cemetery Ass'n, 13 N.J. 528, 541 (1953). In Abbott, the New Jersey Supreme Court reasoned that public officials "stand in a fiduciary relationship to the people whom they have been elected or appointed to serve," and the right to resort to the DJA has been afforded to fiduciaries generally. Id. at 541-42 (citations omitted). Moreover, the Court recognized that public officers are entitled to have their legal duties determined judicially by action for declaratory judgment, and that "the state itself and its political subdivisions and bureaus are proper parties plaintiff" in declaratory actions. Id. at 541. The Court thus held that the State Highway Commissioner, the predecessor to the DOT Commissioner, had proper status to maintain an action for declaratory relief under the DJA. See also New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 240 (1949) (holding that the New Jersey Turnpike Authority could maintain a declaratory action concerning the validity of the New Jersey Turnpike Authority Act, N.J.S.A. 27:23-1 to -60); Unsatisfied Claim & Judgement Fund Board v. Concord Ins. Co., 110 N.J. Super. 191, 196-200 (Law Div. 1970) (finding that the Board had the right to seek declaratory relief); Middlesex County Sewerage Authority v. Middlesex, 74 N.J. Super. 591 (Law Div. 1962) (declaratory judgment action brought by a public sewerage authority against a municipality).



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Here, the DOT has an interest in the validity of the Ordinances, which exceed Leonia's statutory authority and ignore the DOT's statutory authority to review and, if appropriate, to approve measures concerning, regulating, or governing traffic or traffic conditions. N.J.S.A. 39:4-8(a). By adopting the Ordinances, Leonia has also ignored the DOT's broad statutory authority to develop and promote efficient transportation services and coordinate its activities with other public agencies and municipalities. N.J.S.A. 27:1A-5. In addition, the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, as discussed more fully in Point IV of this brief. Accordingly, the DOT has standing to maintain this action against Leonia under the DJA as a matter of law.

## POINT II

### **THE DOT IS ENTITLED TO MAINTAIN AN ACTION IN LIEU OF PREROGATIVE WRIT AS A MATTER OF LAW.**

Actions in lieu of prerogative writ vest a court with authority "to review the actions of municipal agencies to ensure that such agencies are acting within their jurisdiction and 'according to law.'" Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998) (quoting Wyzykowski v. Rizas, 132 N.J. 509, 522 (1993)). In this regard, when the New Jersey Constitution of 1947 consolidated the old prerogative writs once available in the pre-1947 Supreme Court, it did not change the substance of prerogative

writ appeals. In re Livolsi, 85 N.J. 576, 593 (1981).

The intent of the prerogative writ clause of the 1947 Constitution, N.J. Const. art. VI, § 5, ¶ 4, was to strengthen and streamline the prerogative writ mechanism by consolidating the traditional prerogative writs (*certiorari*, *quo warranto*, *prohibitions*, and *mandamus*) into one action. In re Livolsi, 85 N.J. at 593. To this end, the clause eliminates confusion about which writ is appropriate to file in a given case by providing for a single proceeding in lieu thereof. Ward v. Keenan, 3 N.J. 298, 304 (1949). Moreover, while prerogative writ actions were traditionally used by citizens to challenge decisions or actions by government agencies, the 1947 New Jersey Constitution affords an action in lieu of prerogative writ "as of right," except in criminal cases. Alexander's Dep't Stores v. Paramus, 125 N.J. 100, 107 (1991); N.J. Const. art. VI, § 5, ¶ 4; see also Sartoga v. Borough of West Paterson, 346 N.J. Super. 569 (App. Div. 2002) (action in lieu of prerogative writ brought by city and two of its residents challenging the validity of a zoning ordinance).

Here, Leonia exceeded its legal authority in enacting the Ordinances because the Legislature has not granted municipalities authority under Title 39, or any other provision of our statutes, to restrict access to certain streets in such a manner proscribed by the Ordinances, as discussed in Point IV of this brief. Whether *mandamus* is appropriate to compel Leonia to

perform the ministerial function of following the laws governing the passage of municipal traffic ordinances, see, e.g., N.J.S.A. 39:4-8; N.J.S.A. 39:4-138; and N.J.S.A. 39:4-197, or *certiorari* to afford judicial review of Leonia's failure to follow the same in passing the Ordinances, see Alexander's Dep't Stores, 125 N.J. at 107-08, the result is the same: An action in lieu of prerogative writ is appropriate to address Leonia's violation of New Jersey law in adopting and enforcing the Ordinances. Paruszewski v. Twp. of Elsinboro, 154 N.J. at 58. Accordingly, the DOT has a right to maintain this action in lieu of prerogative writ against Leonia as a matter of law.

### POINT III

#### THE MORE SPECIFIC APPLICABLE LIMITATIONS OF TITLE 39 CONTROL OVER LEONIA'S MORE GENERAL AUTHORITY TO ENACT ORDINANCES PURSUANT TO N.J.S.A. 40:48-2.

When interpreting a statute, the best indicator of the Legislature's intent is the statutory language. DiProspero v. Penn, 183 N.J. 477, 492 (2005). In this regard, a statute's terms should be afforded their ordinary meaning and significance, and should be read in context to give sense to the legislation as whole. Ibid. (citations omitted); see also N.J.S.A. 1:1-1 (instructing that the words and phrases within New Jersey statutes to be read and construed in context). If the plain language of the statute leads to a clear and unambiguous result, there is no need for further interpretive analysis. Richardson v. Bd. of Trs.,

Police & Fireman's Ret. Sys., 192 N.J. 189, 195 (2007) (citing DiProspero v. Penn, 183 N.J. at 492). Moreover, when there are two statutes in conflict with one another, the more specific controls over the more general. N.J. Transit Corp. v. Borough of Somerville, 139 N.J. 582, 591 (1995).

Although N.J.S.A. 40:48-2 provides municipalities with authority to make, amend, repeal and enforce certain ordinances, regulations, rules, and by-laws not otherwise provided by the Legislature, that authority is not absolute. In this regard, the plain language of the statute dictates that such ordinances may only be enacted when they are "not contrary to the laws of this state or of the United States." N.J.S.A. 40:48-2. As discussed more fully in Point IV of this brief, Title 39 restricts a municipality's ability to enact and enforce ordinances which concern, regulate, or govern traffic or traffic conditions, and requires approval of the same by the DOT Commissioner, except as provided within the applicable statutes within Title 39.

Because Leonia adopted the Ordinances without authority under the provisions of Title 39, including but not limited to N.J.S.A. 39:4-8, N.J.S.A. 39:4-138 and N.J.S.A. 39:4-197, the Ordinances are legally invalid based upon the plain language of N.J.S.A. 40:48-2. Moreover, because the more general language of N.J.S.A. 40:48-2 must yield to the more specific statutes within Title 39, the Ordinances are null and void as a matter of law.

POINT IV

**LEONIA'S ORDINANCES SHOULD BE DECLARED NULL AND VOID AS  
A MATTER OF LAW.**

The DOT respectfully incorporates by reference the Legal Argument within Point I of the DOT's brief in support of its motion for summary judgment.

In addition, in interpreting a statute, the overriding goal is to give effect to the Legislature's intent. DiProspero v. Penn, 183 N.J. at 492. "[T]he best indicator of that intent is the statutory language"; therefore, it is the first place to look. Ibid. (citation omitted). If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources. Ibid. (citations omitted).

Leonía's arguments ignore the plain language of the applicable sections of Title 39. In this regard, pursuant to N.J.S.A. 39:4-8(a), except as otherwise provided in this section, no ordinance regulating or governing traffic or traffic conditions adopted by a body having jurisdiction over highways shall be of any force or effect unless the same is approved by the DOT Commissioner. In addition, pursuant to N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, a municipality may approve a list of traffic regulations without the DOT's Commissioner's approval and the Ordinances on their face do not fall within the statutorily approved list within N.J.S.A 39:4-

8(c).

Also, pursuant to N.J.S.A. 39:4-8(b)(1), a municipality may, without the DOT Commissioner's approval, establish by ordinance, resolution or regulation any of the provisions contained in N.J.S.A. 39:4-197. Pursuant to N.J.S.A. 39:4-197, a municipality may adopt a traffic ordinance within the limitations of N.J.S.A. 39:4-197, which provides:

Except as otherwise provided in R.S.39:4-8, no municipality shall pass an ordinance or resolution on a matter covered by or which alters or in any way nullifies the provisions of this chapter or any supplement to this chapter; except that a municipality may pass, without the approval of the commissioner, and consistent with the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, ordinances or resolutions, or by ordinances or resolutions may authorize the adoption of regulations by the board, body, or official having control of traffic in the public streets, regulating special conditions existent in the municipality ***on the subjects and within the limitations following . . . .***

[N.J.S.A. 39:4-197; emphasis added.]

Following this language, N.J.S.A. 39:4-197 lists the potential traffic subject matters that fall within the limitations.

As such, based on the plain language of N.J.S.A. 39:4-8 and N.J.S.A. 39:4-197, a municipality may pass an ordinance without the DOT Commissioner's approval only pursuant to N.J.S.A. 39:4-8(c) and within the list included within N.J.S.A. 39:4-197. And N.J.S.A. 39:4-8 and N.J.S.A. 39:4-197 do not provide Leonia with

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the authority to have adopted the Ordinances, as discussed within Point I of the DOT's brief in support of its motion for summary judgment.

Moreover, contrary to Leonia's argument, N.J.S.A. 39:4-197(1)(e) does not provide legal authority for the Ordinances. In this regard, N.J.S.A. 39:4-197(1)(e) permits a municipality by ordinance to regulate "the passage or stopping of traffic at certain congested street corners and designated points, including the establishment of multi-way stop controls." Instead, by the Ordinances, Leonia has (1) established no through streets on most of Leonia's streets for impacted persons during specified hours; and (2) regulated traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a destination in Leonia. These traffic regulations contained in the Ordinances on their face do not fall within N.J.S.A. 39:4-197(1)(e).

In addition, even assuming, for the sake of argument only, that Leonia had authority under Title 39 to adopt the Ordinances, N.J.S.A. 39:4-8(a) provides that "Notwithstanding any other provision of this section to the contrary, any municipal . . . ordinance, resolution, or regulation which places *any impact* on a State roadway shall require the approval of the commissioner." N.J.S.A. 39:4-8(a) (emphasis added). The DOT, through its regulatory authority, defined "impact on a State highway" within



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N.J.A.C. 16:27-2.1. In this regard, the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1 because the Ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11, filed with the DOT's motion for summary judgment.) Although the Ordinances have an impact on a State highway, as defined by N.J.A.C. 16:27-2.1, Leonia failed to submit the Ordinances to the DOT Commissioner for approval. (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.) As such, pursuant to N.J.S.A. 39:4-8(a), the Ordinances are legally invalid.

Additionally, despite the plain language of N.J.S.A. 39:4-8(a), Leonia conflates the "undue traffic burden or impact" language of N.J.S.A. 39:4-8(b) with the "any impact" language of N.J.S.A. 39:4-8(a). Contrary to Leonia's argument, the plain language of N.J.S.A. 39:4-8(a) provides that, "Notwithstanding any other provision of this section to the contrary, any municipal .



. . ordinance, resolution, or regulation which places **any impact** on a State roadway shall require the approval of the commissioner." N.J.S.A. 39:4-8(a) (emphasis added). Leonia is simply misconstruing N.J.S.A. 39:4-8.

POINT V

THE ATTORNEY GENERAL'S OPINION STATING THAT MUNICIPALITIES LACK LEGAL AUTHORITY TO ADOPT "NO THROUGH STREET" ORDINANCES CONTINUES TO PROVIDE PERSUASIVE AUTHORITY APPLICABLE TO THIS CASE.

In interpreting the meaning of a statute, the New Jersey Supreme Court has placed great weight on the interpretation of legislation by the administrative agency to whom its enforcement is entrusted. Peper v. Princeton University Board of Trustees, 77 N.J. 55, 70 (1978). Where an agency has based its statutory interpretation on an opinion by the Attorney General, our Supreme Court has held that a court should attach weight to the Attorney General's opinion. Ibid.

Applying these principles to our case, the Attorney General of New Jersey opined in 1955 that the power to designate so-called "no through" streets is not among the powers granted to a municipality by N.J.S.A. 39:4-197, nor is such power granted by any other provision of our statutes. Formal Opinion No. 5, N.J. Attorney General (1955) (DOT Exhibit A). As the Attorney General explained, "[t]here is no inherent power vested in a municipality by which it may legally restrict the right of the public to the

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free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none." Ibid. (DOT Exhibit A.) Contrary to Leonia's argument, this Attorney General opinion remains legally valid and provides persuasive authority because, while the Legislature has amended Title 39 several times, most recently in 2008, to extend certain additional traffic regulation powers to municipalities and counties, it has never been amended to extend to municipalities the authority to adopt "no through" street ordinances, such as Leonia has done by adopting the Ordinances.

In addition, contrary to Leonia's argument, N.J.S.A. 39:4-8(c)(6), which allows a municipality to adopt an ordinance, resolution or regulation approving "street closings for periods up to 48 continuous hours," is not applicable here. As a threshold matter, based on the plain language of N.J.S.A. 39:4-8(c)(6), the statute does not apply here because Leonia has (1) established permanent no through streets on most of Leonia's streets for impacted persons during specified hours; and (2) has regulated traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a destination in Leonia. In fact, Leonia has asserted that temporary road closures with temporary signage would not address the traffic impact on Leonia. (Leonia's Certification of Thomas Rowe, page 3, paragraph 9.)

Therefore, N.J.S.A. 39:4-8(c)(6) is not applicable to this case.

POINT VI

**LEONIA DOES NOT HAVE LEGAL AUTHORITY TO RESTRICT ACCESS  
TO CERTAIN STREETS BASED UPON A RESIDENCY CLASSIFICATION  
OR BASED UPON THE TRAVELER'S DESTINATION.**

Although a municipality enjoys a considerable degree of discretion in the exercise of its authority under N.J.S.A. 40:48-2, that discretion is only afforded "so long as it operates within its delegated authority." Viera v. Town Council of Parsippany-Troy Hills, 156 N.J. Super. 19, 22 (App. Div. 1997). To this end, a municipality's authority to control and regulate its streets is subject to the provisions of Title 39. Id. at 21; see also Samuel Braen, Inc. v. Waldwick, 28 N.J. 476 (1958) (finding an ordinance restricting commercial vehicles from municipal streets to be valid when enacted in accordance with N.J.S.A. 39:8-197(b)); Formal Opinion No. 5, N.J. Attorney General (1955) (DOT Exhibit A) (stating that a municipality's power to restrict the right of the public to the free use of its streets must arise by way of legislative grant).

Contrary to Leonia's arguments, the DOT's current motion for summary judgment does not challenge the constitutionality of the residency classification. In this regard, Leonia's reliance on County Bd. of Arlington County v. Richards, 434 U.S. 5 (1977) and Martell's Tiki Bar, Inc. v. Governing Body of Point Pleasant Beach, 2015 WL 132559 (Leonia Exhibit 2), which discuss the validity of

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residential parking ordinances in light of the Equal Protection Clause of the Fourteenth Amendment, and its reliance on Lutz v York, 899 F.2d 255 (3d Cir. 1990), which discuss whether an ordinance outlawing "cruising" violated the plaintiffs' right to travel, is misplaced. Similarly, by way of its motion, the DOT does not attempt to argue that Leonia is not entitled to exercise certain discretionary powers under N.J.S.A. 40:48-2, such as those ordinances at issue in Quick Check Food Stores v. Springfield, 83 N.J. 438 (1980), which established mandatory closing hours for businesses in certain parts of the municipality.

Rather, the Legislature has specifically limited Leonia's power to enact ordinances concerning, regulating, or governing applicable traffic or traffic conditions through the provisions of Title 39. To this end, while the Legislature has amended Title 39 several times to extend these powers, most recently in 2008, it has never been amended to extend to municipalities the authority to limit access to municipal streets in such a way as the Ordinances provide. Moreover, the Legislature has not established any explicit authority for Leonia, through the Ordinances, to restrict access to certain streets depending on a residency classification or based on whether a person is seeking to travel to and/or from a Leonia destination.

As discussed in Point III of this brief, because Leonia adopted the Ordinances without authority under Title 39, including

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but not limited to N.J.S.A. 39:4-8, N.J.S.A. 39:4-138 and N.J.S.A. 39:4-197, the Ordinances are legally invalid based upon the plain language of N.J.S.A. 40:48-2. Moreover, because the more general language of N.J.S.A. 40:48-2 must yield to the more specific statutes within Title 39, the Ordinances are null and void as a matter of law.

#### POINT VII

BECAUSE LEONIA FAILED TO PROVIDE NOTICE OF THE ORDINANCES TO THE ADJOINING MUNICIPALITIES PRIOR TO THE ADOPTION OF THE ORDINANCES, THE ORDINANCES ARE LEGALLY INVALID.

Regarding notice of applicable traffic ordinances to adjoining municipalities, N.J.S.A. 39:4-8(a) provides:

Prior to the adoption of any municipal . . . ordinance . . . which places **any impact** on roadways in an adjoining municipality . . . , the governing board or body of the municipality . . . shall provide appropriate notice to the adjoining municipality . . . .

[N.J.S.A. 39:4-8(a); emphasis added.]

In applying this statute to this case, Leonia admits that it is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck (DOT Certification of Mark A. Hiestand, page 3, paragraph 7, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 5.) And Leonia cannot reasonably argue that the

Ordinances do not have any impact on the adjoining municipalities. Despite this, Leonia ignored the plain language of N.J.S.A. 39:4-8(a), and failed to provide notice to the adjoining municipalities prior to adopting the Ordinances. As such, the Ordinances are null and void as a matter of law. N.J.S.A. 39:4-8(a).

POINT VIII

BASED ON THE PLAIN LANGUAGE OF THE APPLICABLE STATUTES WITHIN TITLE 39, AND THE LANGUAGE OF THE ORDINANCES, AND GIVEN THE UNDISPUTED MATERIAL FACTS, NO DISCOVERY IS NEEDED AND THE COURT CAN GRANT THE DOT'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW.

This case is ripe for summary judgment, pursuant to R. 4-46-2. In this regard, actions in lieu of prerogative writ vest courts with jurisdiction to review the actions of municipal agencies to ensure that they are acting within their jurisdiction and according to law. Paruszewski v. Twp. of Elsinboro, 154 N.J. at 58. And it is well established that the interpretation of an ordinance is purely a legal matter as to which an administrative agency has no peculiar skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987). The Superior Court applies a de novo standard of judicial review when interpreting a local ordinance. Id. at 76 n.5; see also, Mayflower Securities v. Bureau of Securities, 64 N.J. 85, 93 (1973) (the interpretation of legislative enactments is a judicial function and not a matter of administrative expertise).

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In this case, as discussed above and in the DOT's brief in support of its motion for summary judgment, based on an analysis of the plain language of the applicable statutes within Title 39, and the language of the Ordinances, the court can determine that the ordinances are legally invalid. This does not require any discovery.

In addition, regarding the DOT's additional legal arguments, as discussed within the Statement of Facts above, Leonia has failed, in substance, to refute the DOT's Statement of Material Facts. Leonia relies upon the certifications of Mr. Rowe and Mr. Zeigler. These certifications overall provide information regarding the Leonia's decision to adopt the Ordinances, events following the adoption of the Ordinances, and Leonia's perspective and opinions regarding communications with the DOT. However, these certifications do not raise any issues as to any material facts regarding the pending motions. In addition, contrary to Leonia's argument, the determination of the DOT's legal authority to regulate the traffic on the municipal roads in Leonia is a matter of law for the court to determine. Mayflower Securities v. Bureau of Securities, 64 N.J. at 93.

Accordingly, no discovery is needed in order for the court to grant the DOT's motion for summary judgment and deny Leonia's motion to dismiss, as a matter of law.

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CONCLUSION

For the foregoing reasons, and the reasons that the DOT has asserted in its motion for summary judgment brief, the DOT respectfully submits that the DOT's motion for summary judgment should be granted and Leonia's cross-motion to dismiss should be denied as a matter of law.

Respectfully submitted,

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ATTORNEY GENERAL OF NEW JERSEY

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(Attorney ID No. 169002015)

Encl.

cc via eCourts and email:

Jacqueline M. Rosa, Esq.  
Brian M. Chewcaskie, Esq.  
Ruby Kumar-Thompson, Esq.



GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for the State of New Jersey  
Department of Transportation  
By: Philip J. Espinosa (Attorney ID No. 030311988)  
Deputy Attorney General  
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO.: HUD-L-607-18

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|                            |   |                     |
|----------------------------|---|---------------------|
| JACQUELINE ROSA,           | : |                     |
|                            | : |                     |
| Plaintiff,                 | : | <u>Civil Action</u> |
|                            | : |                     |
| v.                         | : |                     |
|                            | : |                     |
| BOROUGH OF LEONIA, ET AL., | : |                     |
|                            | : |                     |
| Defendants.                | : |                     |

---

|                               |   |                            |
|-------------------------------|---|----------------------------|
| STATE OF NEW JERSEY           | : |                            |
| DEPARTMENT OF TRANSPORTATION, | : |                            |
|                               | : |                            |
| Plaintiff-Intervenor,         | : |                            |
|                               | : |                            |
| v.                            | : | STATEMENT ON BEHALF OF THE |
|                               | : | NEW JERSEY DEPARTMENT OF   |
|                               | : | TRANSPORTATION IN RESPONSE |
| BOROUGH OF LEONIA, NEW        | : | TO THE BOROUGH OF LEONIA'S |
| JERSEY,                       | : | COUNTER STATEMENT OF       |
|                               | : | MATERIAL FACTS             |
| Defendant.                    | : |                            |

---

The State of New Jersey Department of Transportation (DOT) provides the following response to the Borough of Leonia's Counter Statement of Material Facts, which relies upon and incorporates by reference the Certifications of Thomas Rowe and Judah Ziegler:

Certification of Thomas Rowe

1 through 13. The DOT admits the factual allegations of paragraphs 1 through 13 of the Certification of Thomas Rowe (Mr. Rowe) only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

14. The DOT denies the allegations of paragraph 14 of the Certification of Mr. Rowe because the Borough of Leonia (Leonia) does not provide a timeframe, dates, details or documents in support of these allegations. In addition, these allegations are not material to the pending motions.

15 through 23. The DOT admits the factual allegations of paragraphs 15 through 23 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

24 and 25. The DOT denies the allegations of paragraphs 24 and 25 of the Certification of Mr. Rowe as

inadmissible hearsay. In addition, these allegations are not material to the pending motions.

26. The DOT denies the allegations of paragraph 26 of the Certification of Mr. Rowe as Mr. Rowe's opinion and not facts. In addition, these allegations are not material to the pending motions.

27. The DOT admits the factual allegations of paragraph 27 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

28. The DOT admits the factual allegations of paragraph 28 of the Certification of Mr. Rowe only for the purpose of the currently pending motions, except that the DOT denies the allegations regarding the DOT's knowledge of navigational apps and the impact of same (DOT Certification of Kevin Israel, page 2, paragraph 3). However, these allegations are not material to the pending motions.

29 through 31. The DOT admits the factual allegations of paragraphs 29 through 31 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

32. The DOT denies the allegations of paragraph 32 of the Certification of Mr. Rowe as a statement of Mr. Rowe's opinion, and not a fact. In addition, these allegations are not material to the pending motions.

33. The DOT admits the factual allegations of paragraph 33 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

34. The DOT denies the allegation of paragraph 34 of the Certification of Mr. Rowe regarding the DOT's knowledge of navigational applications (DOT Certification of Kevin Israel, page 2, paragraph 3). The DOT denies the remaining portion of these allegations as inadmissible hearsay. In addition, these allegations are not material to the pending motions.

35. The DOT denies the allegation of paragraph 35 of the Certification of Mr. Rowe regarding the characterization of the DOT as an opinion, rather than a fact, and Leonia's exercise of its police powers as an opinion or a legal conclusion, rather than a fact. The DOT admits the remaining factual allegations of paragraph 35 only for the purpose of the currently pending motions. However, these factual allegations are not material to the pending motions.

36 and 37. The DOT admits the factual allegations of paragraphs 36 and 37 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

Certification of Judah Zeigler

1 through 5. The DOT admits the factual allegations of paragraphs 1 through 5 of the Certification of Judah Zeigler (Mr. Zeigler) only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

6 and 7. The DOT denies the factual allegations of paragraphs 6 and 7 of the Certification of Mr. Ziegler because Leonia does not provide a timeframe, dates, details or documents in support of these allegations. In addition, these allegations are not material to the pending motions.

8 through 11. The DOT admits the factual allegations of paragraphs 8 through 11 of the Certification of Mr. Zeigler only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

12. The DOT denies the factual allegations of paragraph 12 of the Certification of Mr. Zeigler as a mischaracterization of what the DOT indicated at that meeting.

In fact, the DOT indicated that it would attempt to work with Leonia officials in an effort to address the applicable traffic conditions in accordance with the law (DOT Certification of Kevin Israel, page 2, paragraph 4). In addition, these allegations are not material to the pending motions.

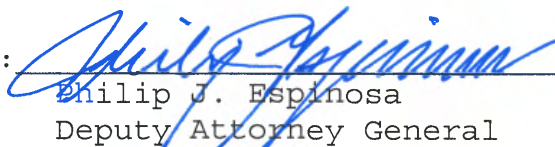
13 through 17. The DOT admits the factual allegations of paragraphs 13 through 17 of the Certification of Mr. Zeigler only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

18. The DOT denies the allegations of paragraph 18 of the Certification of Mr. Zeigler as primarily Mr. Zeigler's opinions rather than facts. In addition, these allegations are not material to the pending motions.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
Philip J. Espinosa  
Deputy Attorney General  
(Attorney ID No.: 030311988)

Dated: August 24, 2018

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for the State of New Jersey,  
Department of Transportation  
By: Philip J. Espinosa (ID No.: 030311988)  
Deputy Attorney General  
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO.: HUD-L-607-18

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| JACQUELINE ROSA,              | : |                               |
|                               | : |                               |
| Plaintiff,                    | : | <u>Civil Action</u>           |
|                               | : |                               |
| v.                            | : |                               |
|                               | : |                               |
| BOROUGH OF LEONIA, ET AL.,    | : |                               |
|                               | : |                               |
| Defendants.                   | : |                               |
| <hr/>                         |   |                               |
| STATE OF NEW JERSEY           | : |                               |
| DEPARTMENT OF TRANSPORTATION, | : |                               |
|                               | : |                               |
| Plaintiff-Intervenor,         | : |                               |
|                               | : | <b>CERTIFICATION OF KEVIN</b> |
|                               | : | <b>E. ISRAEL</b>              |
| BOROUGH OF LEONIA, NEW        | : |                               |
| JERSEY,                       | : |                               |
|                               | : |                               |
| Defendant.                    | : |                               |
| <hr/>                         |   |                               |

Kevin E. Israel certifies unto law and says:

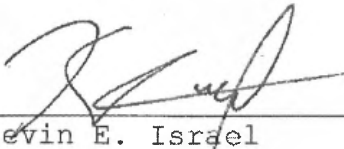
1. Since November 2014, I have been employed by the State of New Jersey Department of Transportation (DOT). Since March 2017, I have served as the DOT's Director of the Office of Community Relations. As such, I am familiar with this matter.

2. I have prepared this certification in support of the DOT's motion for summary judgment in this case.

3. The DOT has employees who are familiar with navigational applications (apps).

4. At the meeting with Leonia officials on March 26, 2018, the DOT indicated that it would attempt to work with Leonia officials in an effort to address the applicable traffic conditions in accordance with the law.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Kevin E. Israel

Dated: August 22, 2018



# EXHIBIT Y

Jan K. Seigel  
Jonas K. Seigel†  
Barry M. Packin  
Mark McBratney◊  
James P. Kimball◊  
Jacqueline M. Rosa◊

**Seigel Law**  
**PROTECTING THE INJURED**

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Ridgewood, New Jersey 07450  
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With Offices in  
Manhattan | Paterson | Red Bank | West New York

Michelle E. Radin\*  
Of Counsel  
Douglas S. Grossbart, M.D.  
Bennett A. Robbins  
Christopher J. Metcalfe  
† LLM in Trial Advocacy  
◊ Certified by The Supreme Court of  
New Jersey as a Civil Trial Attorney  
\* NJ and NY Bars

August 27, 2018

**VIA E-Courts & Lawyer's Service**

Honorable Peter F. Bariso  
Superior Court of New Jersey  
Hudson County Superior Court  
583 Newark Avenue  
Jersey City, NJ 07306

**Re: Rosa v. Leonia, et al.**  
**HUD-L-0607-18**

Dear Judge Bariso:

As Your Honor already knows, I am the Plaintiff in the above captioned matter. Defendants have a filed a Motion to Dismiss, returnable Thursday, August 30, 2018. Kindly accept this letter brief in lieu of more formal reply in opposition to Defendants' Motion.

Plaintiff will rely mainly on the Opposition submitted by the DOT in regards to the legality of Defendants' Ordinance, as to not be repetitive and waste the Court's time.

Plaintiff only wishes to make a few oppositional points. Defendant argues that Plaintiff does not have standing and that the Original complaint was filed out of time. At the initial Case Management Conference, defendant waived any standing and time limitation arguments. Counsel, who has just be retained, cannot come in and try to ressurect those arguments. Additionally, "there is broad standing to challenge both quasi-judicial and quasilegisative agency and municipal actions. An action in lieu of prerogative writs may be brought by a person who was a direct party

to proceedings before an administrative agency, as well as by any other person whose interests have been affected by the action sought to be challenged. All that is required for standing is a substantial likelihood that the plaintiff will suffer some harm in the event of an adverse decision. In re Camden County, 170 N.J. 439, 790 A.2d 158 (2002).” If the case involves a substantial public interest, a person has standing to bring an action in lieu of prerogative writs if he or she has merely a slight private interest. Elizabeth Fed. Sav. & Loan Ass’n v. Howell, 24 N.J. 488, 132 A.2d 779 (1957). Clearly, Plaintiff has standing as she is a citizen who’s interest has been affected and who uses the roads that are restricted.

As to being time barred, Defendant submitted no proof that the Ordinance was actually published in a newspaper. Her date of December 4, 2018, has not even happened yet. Defendant cannot show any proof that notice to the public was given at any time before January of 2018. Even if Defendant can produce such documentation, Plaintiff had no notice of the Ordinance until it was made public in January of 2018. Further, the court may enlarge the time for bringing an action in lieu of prerogative writs whenever it is required by the interests of justice. Adams v. DelMonte, 309 N.J. Super. 572, 580 - 582, 707 A.2d 1061 (App. Div. 1998). The court may enlarge the time limit for bringing an action in lieu of prerogative writs if “the interest of justice so requires.” N.J. Ct. R. 4:69-6(c). “An enlargement of time may also be justified if the challenged action could result in a continuing violation of public rights.” Borough of Princeton v. Bd. of Chosen Freeholders of Mercer County, 169 N.J. 135. “In considering whether to grant an enlargement of time, the court may also consider whether the defendant has suffered any prejudice by reason of the delay in bringing the action.” Cohen v. Thoft, 368 N.J. Super. 338, 845 A.2d 1281 (App. Div. 2004). Clearly, in the interest of justice, the Court should find the Plaintiff was well within the prescribed time period and if not, should enlarge the time period. Finally, the

Defendants did not suffer any prejudice whether or not the Court finds the challenge was brought a few days too late.

As for the part of Defendants' motion that focuses on Plaintiff's Constitutional rights being violated, Plaintiff will rely on her motion for her opposition support. Plaintiff does not need to reiterate all the arguments already laid out in her motion papers. The only additional arguments Plaintiff need submit are in response to Defendant saying Plaintiff can still freely engage in travel. This is obviously wrong. Plaintiff travels through Leonia on a daily basis. The roads used every day during her commute are now blocked. Just because Leonia kept 4 streets open that are county roads, does not mean that Plaintiff's right to travel is not being violated. Plaintiff should, and will use any public street she chooses to in order to get to and from her home.

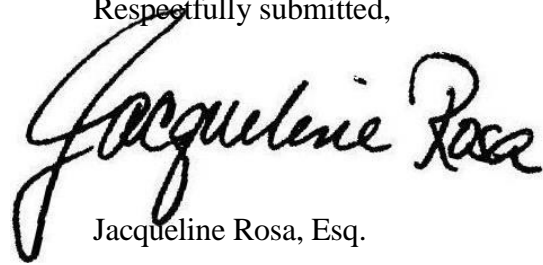
Further, for legal support, defendant keeps trying to rely on the County of Arlington case which is not even remotely on point. That case deals with parking restrictions. Clearly that is not the subject of this case.

Defendant states that there is not "deliberate indifference," so Plaintiff is not entitled to an award of punitive damages. Defendants passed an Ordinance before even looking in to the legal ramifications of it. It was not until the law was challenged that they offered bogus legal support for it. The defendants then pushed their Ordinance even further to state that anyone doing business in their town could use the roads. In essence the Borough was saying that since you are supporting their businesses, i.e. paying them, you can use their roads. This is even more egregious than the first Ordinance. Finally, when the DOT, the same people the Borough needs approval from, told them their Ordinance is invalid, they still refused to take down their signs. Clearly, this is deliberate indifference to any citizens besides the residents of Leonia. The Mayor and Borough have been pushing a private agenda and did not care who was harmed in the process. Any

reasonable person could see that the decisions made by the Mayor and Borough were not legal. Even citizens of the Borough are against the Ordinance as it harms their businesses. The Mayor disregarded not only his own residents wishes, but violated the rights of all other citizens attempting to use those streets in the process. The Court must find that this indifference not only violated Plaintiff's Constitutional right to travel freely, but also entitles her to punitive damages.

For all of the above mentioned reasons, plaintiff requests that the Motion to Dismiss should be denied in its entirety.

Respectfully submitted,

A handwritten signature in black ink, reading "Jacqueline Rosa". The signature is written in a cursive, flowing style. The first name "Jacqueline" is larger and more prominent, with the last name "Rosa" written to its right. The signature is positioned above the printed name "Jacqueline Rosa, Esq.".

Jacqueline Rosa, Esq.

# EXHIBIT Z

SEIGEL LAW FIRM LLC  
Jacqueline Rosa – 009372010  
505 Goffle Road  
Ridgewood, NJ 07450  
(201) 444-4000

JACQUELINE ROSA,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY

Plaintiff,

DOCKET NO. HUD-L-0607-18

v.

BOROUGH OF LEONIA, et al,

Defendants.

**ORDER DENYING SUMMARY  
JUDGMENT AND PUNITIVE  
DAMAGES**

STATE OF NEW JERSEY DEPARTMENT  
OF TRANSPORTATION

v.

BOROUGH OF LEONIA, et al.

Defendants.

JACQUELINE ROSA,

**THIS MATTER** coming before the Court on an Order to Show Cause by Jacqueline Rosa,

Esq., pro se attorney:

It is on this 30<sup>th</sup> day of August, 2018,

**DENIED** for the reasons placed on the record on August 30, 2018.

Uploaded on eCourts.



Honorable Peter F. Bariso, J.S.C.

Opposed.



# EXHIBIT AA

Cleary Giacobbe Alfieri Jacobs, LLC  
Ruby Kumar-Thompson, Esq. (Attorney ID No. 044951999)  
169 Ramapo Valley Road  
Upper Level – Suite 105  
Oakland, New Jersey 07436  
(973)845-6700

Gittleman Muhlstock & Chewcaskie  
Brian M. Chewcaskie, Esq. (Attorney ID No. 021201984)  
2200 Fletcher Avenue  
Fort Lee, New Jersey 07024  
(201)944-2300  
Attorneys for Defendants

|   |  |
|---|--|
| <p>JACQUELINE ROSA,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, BOROUGH OF<br/>LEONIA COUNCIL, TOM ROWE in his<br/>capacity as acting Borough Clerk of the<br/>Borough of Leonia, JUDAH ZEIGLER, in his<br/>official capacity as Mayor of the Borough of<br/>Leonia, JOHN DOE MAINTENANCE<br/>COMPANIES 1-5,</p> <p style="text-align: right;">Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY<br/>LAW DIVISION – HUDSON COUNTY</p> <p>DOCKET NO.: HUD-L-607-18</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;"><b>ORDER DENYING CROSS-MOTION<br/>FOR SUMMARY JUDGMENT</b></p> |
| <p>STATE OF NEW JERSEY DEPARTMENT<br/>OF TRANSPORTATION,</p> <p style="text-align: right;">Plaintiff/Intervenor,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, NEW JERSEY,</p> <p style="text-align: right;">Defendant.</p>   |  |

This matter being brought before the Court by Brian M. Chewcaskie, Esq. of the firm of Gittleman, Muhlstock & Chewcaskie, and Ruby Kumar-Thompson, Esq. of the firm of Cleary Giacobbe Alfieri Jacobs, LLC attorneys for Defendants, the Borough of Leonia, Borough of Leonia Council, Tom Rowe, and Judah Zeigler (“Defendants”), on Cross-Motion to Dismiss

Plaintiff's Complaint pursuant to R. 4:6-2(e), and the Court having considered the papers and arguments submitted in support of and in opposition to this motion, and argument of counsel,

It is on this 30<sup>th</sup> day of August, 2018:

**ORDERED** that Cross-motion for Summary Judgment is denied for the reasons placed on the record on August 30, 2018.

Uploaded on eCourts.

A handwritten signature in black ink, appearing to read "Peter F. Bariso, Jr.", enclosed within a thin black rectangular border.

---

Hon. Peter F. Bariso, Jr., A.J.S.C.

☒ OPPOSED

☐ UNOPPOSED

# EXHIBIT BB

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for the State of New Jersey  
Department of Transportation  
By: Philip J. Espinosa (Attorney ID No.: 030311988)  
Deputy Attorney General  
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO.: HUD-L-607-18

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|                            |   |                                   |
|----------------------------|---|-----------------------------------|
| JACQUELINE ROSA,           | : |                                   |
| Plaintiff,                 | : | Civil Action                      |
| v.                         | : |                                   |
| BOROUGH OF LEONIA, ET AL., | : |                                   |
| Defendants.                | : | <b>ORDER FOR SUMMARY JUDGMENT</b> |

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|                               |   |  |
|-------------------------------|---|--|
| STATE OF NEW JERSEY           | : |  |
| DEPARTMENT OF TRANSPORTATION, | : |  |
| Plaintiff-Intervenor,         | : |  |
| v.                            | : |  |
| BOROUGH OF LEONIA, NEW        | : |  |
| JERSEY,                       | : |  |
| Defendant.                    | : |  |

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This matter having been opened to the court by a motion for summary judgment by Gurbir S. Grewal, Attorney General of New Jersey, by Philip J. Espinosa, Deputy Attorney General, attorney for the plaintiff-intervenor State of New Jersey Department of Transportation, and the court having considered this matter, and for good cause having been shown;

IT IS on this 30<sup>th</sup> day of August, 2018, ORDERED:

1. Traffic ordinances numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances") of the Borough of Leonia ("Leonia"), are hereby declared to be null and void, and legally invalid as a matter of law.

2. Leonia is hereby enjoined and permanently restrained from the further enforcement of the Ordinances, including but not limited to the use of signage regarding the Ordinances, police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances.

3. Reasons placed on the record on August 30, 2018.

4. Uploaded in eCourts.



---

Hon. Peter F. Bariso, Jr., A.J.S.C.

  X   Opposed

       Unopposed

# EXHIBIT CC



Cleary Giacobbe Alfieri Jacobs, LLC  
Ruby Kumar-Thompson, Esq. (Attorney ID No. 044951999)  
169 Ramapo Valley Road  
Upper Level – Suite 105  
Oakland, New Jersey 07436  
(973)845-6700

Gittleman Muhlstock & Chewcaskie  
Brian M. Chewcaskie, Esq. (Attorney ID No. 021201984)  
2200 Fletcher Avenue  
Fort Lee, New Jersey 07024  
(201)944-2300  
Attorneys for Defendant, Borough of Leonia

|   |  |
|---|--|
| <p>JACQUELINE ROSA,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, BOROUGH OF<br/>LEONIA COUNCIL, TOM ROWE in his<br/>capacity as acting Borough Clerk of the<br/>Borough of Leonia, JUDAH ZEIGLER, in his<br/>official capacity as Mayor of the Borough of<br/>Leonia, JOHN DOE MAINTENANCE<br/>COMPANIES 1-5,</p> <p style="text-align: right;">Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY<br/>LAW DIVISION – HUDSON COUNTY</p> <p>DOCKET NO.: HUD-L-607-18</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;"><b>ORDER DENYING CROSS-MOTION<br/>FOR SUMMARY JUDGMENT</b></p> |
| <p>STATE OF NEW JERSEY DEPARTMENT<br/>OF TRANSPORTATION,</p> <p style="text-align: right;">Plaintiff/Intervenor,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, NEW JERSEY,</p> <p style="text-align: right;">Defendant.</p>   |  |

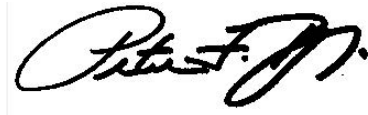
This matter being brought before the Court by Brian M. Chewcaskie, Esq. of the firm of Gittleman, Muhlstock & Chewcaskie, and Ruby Kumar-Thompson, Esq. of the firm of Cleary Giacobbe Alfieri Jacobs, LLC as attorneys for Defendant, Borough of Leonia (“Defendant”), on a Cross-Motion to dismiss Plaintiff/Intervenor’s Complaint pursuant to R. 4:6-2(e), and the Court

having considered the papers and arguments submitted in support of and in opposition to this motion, and argument of counsel:

It is on this 30<sup>th</sup> day of August, 2018:

**ORDERED** that Defendant's motion to dismiss is denied for the reasons placed on the record on August 30, 2018.

Uploaded in eCourts.

A handwritten signature in black ink, appearing to read "Peter F. Bariso, Jr.", enclosed within a thin black rectangular border.

---

Hon. Peter F. Bariso, Jr., A.J.S.C.

☒ OPPOSED

☐ UNOPPOSED

# EXHIBIT DD

Cleary Giacobbe Alfieri Jacobs, LLC  
Ruby Kumar-Thompson, Esq. (Attorney ID No. 044951999)  
169 Ramapo Valley Road  
Upper Level – Suite 105  
Oakland, New Jersey 07436  
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Gittleman Muhlstrock & Chewcaskie  
Brian M. Chewcaskie, Esq. (Attorney ID No. 021201984)  
2200 Fletcher Avenue  
Fort Lee, New Jersey 07024  
(201)944-2300  
Attorneys for Defendants

|  |  |
|--|--|
| <p>JACQUELINE ROSA,<br/><br/> <div style="text-align: right;">Plaintiff,</div><br/> v.<br/><br/> BOROUGH OF LEONIA, et al.,<br/><div style="text-align: right;">Defendants.</div></p>                              | <p>SUPERIOR COURT OF NEW JERSEY<br/> LAW DIVISION – HUDSON COUNTY</p> <p>DOCKET NO.: HUD-L-607-18</p> <p>Civil Action</p> <p><b>NOTICE OF MOTION FOR<br/> RECONSIDERATION OF ORDER<br/> DATED AUGUST 30, 2018 GRANTING<br/> PLAINTIFF/INTERVENOR’S MOTION<br/> FOR SUMMARY JUDGMENT</b></p> <p>Before: Peter F. Bariso, Jr., A.J.S.C.<br/> Motion Date: October 12, 2018</p> |
| <p>STATE OF N.J. DEP’T OF<br/> TRANSPORTATION,<br/><div style="text-align: right;">Plaintiff/Intervenor,</div><br/> v.<br/><br/> BOROUGH OF LEONIA, N.J.,<br/><div style="text-align: right;">Defendant.</div></p> |  |

**To:** Philip J. Espinosa, Esq.  
Deputy Attorney General of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for Plaintiff/Intervenor State of New Jersey  
Department of Transportation

**On Notice To:**

Jacqueline Rosa, Esq., Plaintiff  
Seigel Law Firm LLC  
505 Goffle Road  
Ridgewood, New Jersey 07450

**PLEASE TAKE NOTICE** that on October 12, 2018 at 9:00 a.m. or as soon thereafter as counsel may be heard, Defendant Borough of Leonia (“the Borough”) will move for reconsideration of the Order dated August 30, 2018 granting summary judgment to Plaintiff/Intervenor State of New Jersey Department of Transportation.

**PLEASE TAKE FURTHER NOTICE** that the Borough will rely on the enclosed Brief, Certification of Ruby Kumar-Thompson, Esq. dated September 12, 2018, and exhibits attached thereto; and that in compliance with Rule 1:6-2, a proposed form of Order is attached and that oral argument is requested only in the event timely opposition is received.

CLEARY GIACOBBE ALFIERI JACOBS, LLC  
Attorneys for Defendant Borough of Leonia

Dated: September 20, 2018

By: s/ Ruby Kumar-Thompson  
RUBY KUMAR-THOMPSON, ESQ.

Discovery End Date: May 24, 2019

Mediation Date: None

Trial date: None

**CERTIFICATION OF FILING AND SERVICE**

The undersigned hereby certifies that on today's date the original of the within Notice of Motion, Brief, Certification of Ruby Kumar-Thompson, Esq. and proposed form of Order were e-filed with the Clerk of the Superior Court, Hudson County; therefore, copies of these papers were simultaneously served via e-courts to all counsel of record; and, in accordance with R. 1:6-4, a courtesy copy of said papers was submitted to the managing judge assigned to hear this matter, namely, the Honorable Peter F. Bariso, Jr., A.J.S.C. via regular mail at the following address:

Hudson County Courthouse  
Administration Building  
595 Newark Avenue  
Jersey City, NJ 07306

CLEARY GIACOBBE ALFIERI JACOBS, LLC  
Attorneys for Defendant Borough of Leonia

By: s/ Ruby Kumar-Thompson  
Ruby Kumar-Thompson, Esq.

Dated: September 20, 2018

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|   |  |
|---|--|
| <p>JACQUELINE ROSA,<br/><br/> Plaintiff,<br/><br/> v.<br/><br/> BOROUGH OF LEONIA, et al.,<br/> Defendants.</p>                               | <p>SUPERIOR COURT OF NEW JERSEY<br/> LAW DIVISION, CIVIL PART<br/> HUDSON COUNTY<br/> DOCKET NO.: HUD-L-607-18<br/><br/> Civil Action</p>                                    |
| <p>STATE OF N.J. DEP'T OF<br/> TRANSPORTATION,<br/> Plaintiff/Intervenor,<br/><br/> v.<br/><br/> BOROUGH OF LEONIA, N.J.,<br/> Defendant.</p> | <p><b>ORDER GRANTING<br/> RECONSIDERATION AND<br/> AMENDING ORDER DATED AUGUST<br/> 30, 2018 GRANTING SUMMARY<br/> JUDGMENT TO THE N.J. DEPT. OF<br/> TRANSPORTATION</b></p> |

**THIS MATTER** having been brought before the Court upon the application of Cleary Giacobbe Alfieri Jacobs, LLC, and Brian Chewcaskie, Esq. as the attorneys for Defendant Borough of Leonia (“the Borough”), for an Order reconsidering and for a partial stay of the Order dated August 30, 2018 granting summary judgment in favor of Plaintiff/Intervenor State of New Jersey Department of Transportation (“the DOT”) and the Court having considered the papers and arguments in support of and in opposition to the motion, and it appearing to the Court in the interests of justice and for good cause shown:

**IT IS** on this \_\_\_\_\_ day of October, 2018,

**ORDERED** that the Borough's Motion for Reconsideration of the Order dated August 30, 2018 is hereby granted; and it is

**FURTHER ORDERED**, that the Paragraph 1 of the Order dated August 30, 2018 is vacated and amended to grant partial summary judgment to the DOT only as to the portions of Ordinance No. 2018-5 which regulate traffic flowing on and off Grand Avenue are stricken as being invalid, and the balance of the Ordinance survives, as reflected on the attached blue-lined copy of Ordinance No. 2018-5; and it is

**FURTHER ORDERED**, that Ordinance No. 2018-2 is hereby reinstated inasmuch as it applies to those streets that do not regulate traffic flow on and off a state highway; and it is

**FURTHER ORDERED**, that Paragraph 2 of the Order dated August 30, 2018 enjoining and permanently restraining the Borough from enforcing Ordinance No. 2018-5 (which superseded Ordinance No. 2017-19), including but not limited to use of signage, police officials notifying motorists, and the issuance of traffic citations, is hereby vacated and amended, due to the enactment of new legislation curing the deficiencies in Ordinance 2018-5, and to permit the Borough to submit newly enacted Ordinance 2018-15 to the DOT for approval and for a stay on the usage of signage on those streets that do not abut a state highway, as contained within newly-enacted Ordinance No. 2018-14.

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Hon. Peter F. Bariso, Jr., A.J.S.C.

\_\_\_\_ Opposed  
\_\_\_\_ Unopposed



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|---|---|
| <p>JACQUELINE ROSA,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, BOROUGH OF<br/>LEONIA COUNCIL, TOM ROWE in his<br/>capacity as acting Borough Clerk of the<br/>Borough of Leonia, JUDAH ZEIGLER, in his<br/>official capacity as Mayor of the Borough of<br/>Leonia, JOHN DOE MAINTENANCE<br/>COMPANIES 1-5,</p> <p style="text-align: right;">Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY<br/>LAW DIVISION, CIVIL PART<br/>HUDSON COUNTY</p> <p>DOCKET NO. HUD-L-607-18</p> <p style="text-align: center;"><u>Civil Action</u></p> <p><b>CERTIFICATION OF RUBY KUMAR-<br/>THOMPSON, ESQ. IN SUPPORT OF<br/>DEFENDANT’S MOTION FOR<br/>RECONSIDERATION AND STAY OF<br/>ORDER DATED AUGUST 30, 2018<br/>GRANTING<br/>PLAINTIFF/INTERVENOR’S MOTION<br/>FOR SUMMARY JUDGMENT</b></p> |
| <p>STATE OF NEW JERSEY DEPARTMENT<br/>OF TRANSPORTATION,</p> <p style="text-align: right;">Plaintiff/Intervenor,</p> <p style="text-align: center;">v.</p> <p>BOROUGH OF LEONIA, NEW JERSEY,</p> <p style="text-align: right;">Defendant.</p>   |   |

I, Ruby Kumar-Thompson, Esq., being duly sworn upon my oath, do hereby certify as follows:

1. I am a member of the Bar of the State of New Jersey, and a Partner of the law firm of Cleary Giacobbe Alfieri Jacobs, LLC, attorneys for Defendant Borough of Leonia (“the Borough). I make this Certification in support of the Borough’s Motion for Reconsideration of

an Order dated August 30, 2018 granting summary judgment to Plaintiff/Intervenor State of New Jersey

2. Attached hereto as Exhibit A is a true and correct copy of the Order dated August 30, 2018 granting Summary Judgment.

3. Attached hereto as Exhibit B is a true and correct copy of the Hearing Transcript, dated August 30, 2018.

4. Attached hereto as Exhibit C is a true and correct copy of Ordinance No. 2017-19.

5. Attached hereto as Exhibit D is a true and correct copy of Ordinance No. 2018-2.

6. Attached hereto as Exhibit E is a true and correct copy of Ordinance No. 2018-5.

7. Attached hereto as Exhibit F is a true and correct copy of Ordinance No. 2018-14, which was adopted on September 17, 2018, which ordinance includes no streets along any state highway.

8. Attached hereto as Exhibit G is a true and correct copy of Ordinance No. 2018-15, which was adopted on September 17, 2018, which addresses only those streets adjacent to a state highway.

9. Attached hereto as Exhibit H is a true and correct copy of a Letter from the Borough Attorney, Brian M. Chewcaskie, Esq., to the Attorney General's office advising of the adoption of Ordinance Nos. 2018-14 and 2018-15 and the Borough's intent to submit Ordinance No. 2018-15 to the DOT for approval, henceforth.

10. Attached hereto as Exhibit I is a blue-lined copy of Ordinance No. 2018-5 for the Court's consideration.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CLEARY GIACOBBE ALFIERI JACOBS, LLC  
Attorneys for Defendant, Borough of Leonia

Dated: September 20, 2018

By: /s/ Ruby Kumar-Thompson  
RUBY KUMAR-THOMPSON, ESQ.

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|--|---|
| JACQUELINE ROSA,<br><br>v.<br><br>BOROUGH OF LEONIA, et al.,<br>Plaintiff,<br>Defendants.                                  | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION, CIVIL PART<br>HUDSON COUNTY<br>DOCKET NO.: HUD-L-607-18<br><br>Civil Action |
| STATE OF N.J. DEP'T OF<br>TRANSPORTATION,<br><br>v.<br><br>BOROUGH OF LEONIA, N.J.,<br>Plaintiff/Intervenor,<br>Defendant. | Before: Peter F. Bariso, Jr., A.J.S.C.<br>Motion Date: October 12, 2018   |

**BRIEF ON BEHALF OF DEFENDANT BOROUGH OF LEONIA IN SUPPORT OF  
MOTION FOR RECONSIDERATION AND STAY OF ORDER DATED AUGUST  
30, 2018 GRANTING PLAINTIFF/INTERVENOR'S MOTION FOR SUMMARY  
JUDGMENT**

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### **PRELIMINARY STATEMENT**

On August 30, 2018, the Court granted a Motion for Summary Judgment by Plaintiff/Intervenor the State of New Jersey Department of Transportation (“DOT”) over the opposition of Defendant Borough of Leonia (“the Borough”) (see “Exhibit A,” Order dated August 30, 2018).<sup>1</sup> The Court stated its reasons on the record and, in particular, stated that its ruling in favor of the DOT was premised on its holdings that (1) the Ordinance impacted State Route 93 a.k.a. Grand Avenue; (2) the Ordinance was, thus, subject to N.J.S.A. 39:4-8(a) requiring approval by the DOT; and (3) the DOT did not approve the Ordinance (see “Exhibit B,” Hearing Transcript).

The Borough argued at the hearing that, based on those rulings, the Court could and should only invalidate the portions that impact Grand Avenue. The Court ruled that it could not and should not do so. The Borough now moves for reconsideration based on the well-settled law that a court should not grant summary judgment prior to giving the litigants an opportunity to conduct discovery, should have engaged in judicial surgery to excise invalid provisions from an otherwise valid ordinance where the ordinance includes a severability clause and the remainder of the ordinance without the invalid provisions can stand on its own. In the alternative, the Borough also moves for a stay of the Summary Judgment Order because the Borough is seeking to cure the procedural infirmities by passing new ordinances and submitting the new ordinance regulating traffic on and off Grand Avenue to the DOT for approval.

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<sup>1</sup> All exhibit references are to the Exhibits attached to the Certification of Counsel in Support of Defendant’s Motion for Reconsideration and Stay of Order Dated August 30, 2018 Granting Plaintiff/Intervenor’s Motion for Summary Judgment



## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

As part of a comprehensive traffic initiative program, in the fall of 2017, the Borough enacted a series of ordinances to address significant traffic issues in the Borough for the health, safety and welfare of its residents. More particularly, on December 4, 2017, the Borough Council adopted Ordinance No. 2017-19, which added §194-25.1 “Closing of Certain Streets” to the Borough Code and also added Section §194-49, Schedule XVII “Streets Closed to Traffic” to the Code (see “Exhibit C,” Ordinance No. 2017-19).

On January 17, 2018, by Ordinance No. 2018-2, the Council added a new section to the Code to establish a \$200 penalty for any person convicted of violating Section §194-25.1, which was first established under Ordinance 2017-19 (see “Exhibit D,” Ordinance No. 2018-2).

On March 5, 2018, the Council effectively repealed Ordinance No. 2017-19 in adopting Ordinance No. 2018-5, by supplanting §194-25.1 and Section §194-49, Schedule XVII to the Code (see “Exhibit E,” Ordinance No. 2018-5). Ordinance No. 2018-5 includes a severability clause with the expressed intention that, if any article, section, sub-section, sentence, clause or phrase of the Ordinance was deemed invalid, the remaining portions shall survive in full force and effect.

Before Ordinance No. 2018-5 was adopted, on January 30, 2018, Plaintiff Jaqueline Rosa (“Rosa”) filed a Complaint in Lieu of Prerogative Writ against the Borough of Leonia, Borough Council of Leonia, Tom Rowe, and Judah Ziegler (“Defendants”) challenging the amendments made to Borough Code §194-25.1 and §194-25.2 through adoption of Ordinance No. 2017-19. On February 12, 2018, Plaintiff then filed an Amended Complaint. On March 27, 2018, Defendants filed an Answer and Affirmative Defenses to the Amended Complaint.

On or about May 4, 2018, Rosa applied for an Order to Show Cause seeking a preliminary injunction against enforcement of Borough Code §194-25.1 and .2 as amended by Ordinance No. 2018-5. The Court scheduled a hearing for May 25, 2018 and, on that date, the Court denied Rosa's application for a preliminary injunction.

On or about June 8, 2018, a Consent Order was entered to allow the DOT to intervene and, on June 11, 2018, the DOT filed a Complaint for Declaratory Judgment and Action in Lieu of Prerogative Writs. On July 2, 2018, an Answer was filed by the Borough to the DOT's Complaint.

The discovery period in this matter is scheduled by the Court to close on May 24, 2019. Before any discovery could take place, and only nine (9) days following the filing of the Borough's Answer, the DOT filed a motion for Summary Judgment on July 11, 2018. On July 16, 2018 Rosa also filed a Motion for Summary Judgment. Defendants opposed both motions and filed a cross-motion to the DOT's motion seeking dismissal of the Complaints based on the pleadings.

On August 30, 2018, after hearing oral argument, the Court denied the Defendants' Cross-Motion, as well as Rosa's Motion for Summary Judgment, and granted the DOT's Motion for Summary Judgment. The Court stated its reasons on the record and, in particular, stated that its ruling in favor of the DOT was premised on its holdings that (1) the Ordinance impacted State Route 93 a.k.a. Grand Avenue; (2) the Ordinance was, thus, subject to N.J.S.A. 39:4-8(a) requiring approval by the DOT; and (3) the DOT did not approve the Ordinance. The Court entered an Order dated August 30, 2018 granting the DOT's Motion for Summary Judgment in its entirety on August 31, 2018 (see "Exhibit A").

Defendants argued, inter alia, at the hearing that based on that ruling, the Court could and should only invalidate the portions that impact Grand Avenue. The Court ruled for some unspecified reason that it could not do so. Subsequent to the Court's ruling, and in accordance with its common law right to reconsider its legislative action so as to cure the procedural deficiency noted to exist by the Court, the Borough introduced two (2) revised Ordinances to regulate street closures, which passed after a second reading on September 17, 2018 (see "Exhibit F," Ordinance No. 2018-14 and "Exhibit G," Ordinance No. 2018-15 respectively). Ordinance No. 2018-14, which pertains to streets other than those along Grand Avenue and Bergen Boulevard, does not require DOT approval. Ordinance No. 2018-15, which pertains to Grand Avenue, does require DOT approval based on this court's rulings in this case. All neighboring municipalities received notice of the Ordinances before adoption. In addition, the Borough will be submitting Ordinance No. 2018-15 to the DOT for approval, henceforth (see "Exhibit H," Letter from Borough Attorney Brian Chewcaskie, Esq. to the Attorney General's office dated September 18, 2018).

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE COURT SHOULD RECONSIDER ITS SUMMARY JUDGMENT ORDER IN FAVOR OF THE DOT**

R. 4:42-2, which governs judgments on multiple claims, provides in relevant part as follows,

any order ... which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision *at any time* before the entry of final judgment in the sound discretion of the court in the interest of justice.

(Emphasis added). See also R. 1:7–4(b), which stipulates that “[m]otions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.” There are no restrictions on the exercise of the power to revise an interlocutory order. Lombardi v. Masso, 207 N.J. 517, 534 (2011). The Supreme Court went onto explain that the “special power afforded to judges over their interlocutory orders derives from the fact that cases continue to develop after orders have been entered and that judges likewise continue to think about them.” Id. at 536. Thus, “the trial court has the inherent power to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders *at any time* prior to the entry of final judgment.” Ibid quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988) (emphasis added). The standard that applies to reconsideration of an interlocutory order, that is one that disposes of fewer than all claims of all parties is “good cause” and “in the interests of justice,” such as where a court recognizes a clear error in the earlier decision. See Ahktar v. JDN Properties at Florham Park, 439 N.J. Super. 391, 399-400 (App. Div.), certif. denied, 221 N.J. 566 (2015).

As set forth more fully, infra, there was clear error in the Court's earlier decision because: 1) discovery had not yet been completed when the order was entered, and 2) the Order invalidating the entirety of the ordinances is overbroad. Moreover, the interests of justice and the interests of the residents of Leonia, in particular, was not served by the Court's refusal to grant the Borough a stay to cure the procedural errors, that is notice to the DOT, that the Court ruled were present in invalidating the Ordinances in their entirety. Thus, the Borough's Motion for Reconsideration should be granted, either in whole or in part, for all of the reasons set forth herein.

## **POINT II**

### **THE COURT'S FINDING OF AN "IMPACT ON A STATE HIGHWAY" WAS PREMATURE AND THEREFORE SUMMARY JUDGMENT WAS IMPROVIDENTLY GRANTED**

In Opposition to Plaintiff/Intervenor's motion for Summary Judgment, Defendants argued that there was a factual dispute as to whether the Ordinances had created an impact on the State Highway for the approval provision contained in N.J.S.A. 39:4-8(a) to have been implicated in the first instance (see "Exhibit B," T23:5-24:7). In invalidating the Ordinances, the Court made a factual finding that "since you cannot turn off a state highway, you are impacting the state roadway." (See "Exhibit B," T25:19-22). In so doing, the Court presumed that the prohibition against turning for non-residents and those persons who are not travelling to a location within Leonia would "back up traffic" on a state highway, thereby triggering the language in the first paragraph of N.J.S.A. 39:4-8(a), which language appears to invalidate any such ordinance absent DOT approval(see "Exhibit B," T62:10-63:3). In other words, the Court

construed the words “impact on a state highway” to be akin to preventing traffic from turning onto Leonia’s side streets from Grand Avenue.

It is well-settled that in deciding motions for summary judgment, a court cannot resolve an issue of fact until and unless the party resisting such a motion has had an opportunity to complete discovery that is relevant and material to defense of the motion. Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189, 193 (1988); and see Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div.), certif. denied, 177 N.J. 493 (2003) (holding that summary judgment is generally “inappropriate prior to the completion of discovery”). Summary judgment is particularly inappropriate where an opposing party cannot file fully responsive supporting papers because critical facts are within the moving party's knowledge and the party has not had an opportunity to complete discovery. Mohamed v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 498-99 (App. Div. 2012). In order to defeat a motion for summary judgment on the basis that it is premature a party must only demonstrate with some specificity the discovery sought and its materiality. Id. at 499; see also Auster v. Kinioian, 153 N.J. Super. 52, 56 (App. Div. 1977).

A related principle is that a trial court should not resolve a factual dispute on a motion for summary judgment if a rational fact-finder, as opposed to an arbiter of the law, could go either way following presentation of the evidence at a trial on the merits. See Gilhooley v. County of Union, 164 N.J. 533, 545-46 (2000).

Legislative intent is a matter for the fact finder to determine. Indeed, when a plain reading of statutory language suggests “more than one plausible interpretation,” or leads to an absurd result, the fact finder may consider extrinsic evidence, such as legislative history, committee reports, and contemporaneous construction in search of the Legislature's intent.

Tumpson v. Farina, 218 N.J. 450 (2014) (emphasis added) (*quoting* DiProspero v. Penn, 183 N.J. 477, 492–93 (2005)). *See also*, Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)). In this matter, the interpretations of “impact” and the reference to “undue impact” when the legislature set forth the standards under which approval of an Ordinance may be denied are susceptible to more than one interpretation.

When an ultimate issue turns on the interpretation of terms that have more than one plausible interpretation, then the Court should leave the doubtful provision to the fact finder to decide after a trial. Driscoll Const. Company, Inc. v. Department of Transportation, 371 N.J. Super., 304, 314 (App. Div. 2004) (citations omitted).<sup>2</sup> Moreover, even if the language being interpreted by a Court may appear to bear plain meaning, evidence of the surrounding circumstances and conditions is nonetheless admissible in aid of interpretation. Id. at 316.

For example, in Driscoll v. Department of Transportation, the Appellate Division held that the trial judge erred in refusing to consider evidence of the surrounding circumstances, the use of permanent road closures in a different DOT construction contract employing identical traffic control language in granting summary judgment on the issue of how language in a contract was to be interpreted, and that summary judgment was, therefore, improvidently granted in favor of the DOT. Id. at 316, 318. In so holding, the Appellate Division reasoned that “it was inconsequential whether the DOT–Driscoll contract was clear or ambiguous, and irrelevant that Driscoll was not a party to the Crisdel contract, that the scope of the Crisdel contract was different (Crisdel performed work on the roadway), and that no reference to the Crisdel contract was made in the DOT–Driscoll contract.” Id. at 317. “Because a reasonable trier of fact might conclude that DOT's prior practices provided objective evidence of what the parties

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<sup>2</sup> A judge who is ultimately charged with both legal interpretation and fact-finding is bound to the same principles as a jury in terms of the fact-finding function, and thus cannot act to grant summary judgment as a matter of law where material facts are in dispute. Id.

intended, Driscoll's reliance upon the prior practice based on identical language in the Crisdel contract should have been considered. Id. Thus, plaintiffs were at a minimum entitled to complete discovery before summary judgment was granted. Id. at 318.

Here, discovery in this matter was not scheduled to close until May 24, 2019 and none had been conducted prior to the entry of the Summary Judgment Order in favor of the DOT on August 30, 2018. Inasmuch as the Court appeared to base its opinion in part on the undocketed and unserved Certification of one Mark Heeston, who is identified as a DOT traffic engineer, the Borough should have been afforded discovery of his opinions.<sup>3</sup> At a minimum, even if the Certification was properly served, the Borough should have been able to depose Mark Heeston with respect to the basis for his opinions that the Ordinances created an “impact on a state highway,” and without any costs for same being shifted to the Borough in this non-fee shifting action in lieu of prerogative writ matter. Certainly, such a deposition may have shed some light on whether the DOT has rendered similar opinions regarding similar traffic restrictions in other municipalities along local streets abutting other state highways, as well as his qualifications and credibility to render such opinions.

Furthermore, as in Driscoll, evidence of the DOT's past practice with respect to other municipal traffic controls along a state highway may be relevant to what the State Legislature intended when it removed DOT oversight from local traffic legislation except for those impacting a state highway, and when the legislature required a finding of “undue impact” as the reason for withholding approval in the fourth paragraph of N.J.S.A. 39:4-8(a). Defendants would be entitled to such discovery at a minimum to defend their opposing position that impact

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<sup>3</sup> Ruby Kumar-Thompson, Esq., who entered a Notice of Appearance in this matter on August 1, 2018, and who prepared the Response to the Statement of Material Facts, was never served via email or otherwise with the Certification of Mark Heeston following the entry of her notice of appearance on behalf of the Borough of Leonia, as required under the Court Rules.



on a state highway alone does not invalidate an ordinance absent approval from the Commissioner when the fourth paragraph of N.J.S.A. 39:4-8(a) requires a finding, after an investigation, by the DOT of “undue impact.” If the evidence obtained during discovery suggests that the DOT has never required submission of other ordinances regulating traffic on streets abutting a state highway or has never withheld approval of a traffic regulation impacting a state highway other than when those regulations have been found to create an “undue impact” that may lead the trier of fact and arbiter of law to interpret the statute differently. In other words, the specific discovery which may shed additional light as to how the statute is to be interpreted is the past practice of the DOT, itself. Defendants have been deprived of obtaining such evidence, and therefore, the Court’s grant of Summary Judgment to the DOT was improvident.

### **POINT III**

**THE COURT’S DECLARATION THAT THREE ORDINANCES ARE  
NULL AND VOID IN TOTO CANNOT BE RECONCILED WITH ITS  
LIMITED HOLDING THAT ONLY THE TRAFFIC REGULATIONS  
WITH AN IMPACT ON GRAND AVENUE REQUIRED DOT APPROVAL  
AND, ABSENT SUCH APPROVAL, SUCH REGULATIONS ARE  
INVALID**

Assuming *arguendo* that DOT approval was required for any traffic regulations on streets located along a state highway pursuant to N.J.S.A. 39:4-8(a), the Court’s Order is nonetheless overbroad because there is only one state highway located in the Borough of Leonia, namely Grand Avenue. Furthermore, the subject Ordinances regulated many streets other than Grand Avenue that have no impact whatsoever on Grand Avenue.

During oral argument, the Borough argued that a ruling that regulation of traffic impacting Grand Avenue absent DOT approval is invalid was not a basis for invalidating the

entirety of the Ordinances. The Court rejected the Borough's argument and, nonetheless, invalidated the entirety of the Ordinances.

In reaching its decision, the Court stated, "we don't get to pick and choose what part of the ordinance is enforceable and which isn't" (see "Exhibit B," T21:15-22:1). The Court then proceeded to rule that the regulation of traffic controls impacting Grand Avenue, a State highway, is governed by N.J.S.A. 39:4-8(a) and because Commissioner approval had not been obtained, the Ordinance Nos. 2017-19, 2008-2 and 2008-5 were null and void and legally invalid as a matter of law. The Court then entered an Order enjoining the Borough from further enforcement of those ordinances, including but not limited to use of signage regarding the ordinances, police officers notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinance (see "Exhibit A"). The Order did not make any distinction between the signs located on those streets along a state highway, here Grand Avenue, and those other streets in the Borough of Leonia contained with the Borough's ordinances (see Exhibit A). In response to Counsel's repeated objections over the scope of the Order, the Court stated that it was not its "role to 'cut and paste' on an ordinance like this that says the ordinance requires approval" (see "Exhibit B," T69:18-70:10).

The Court's ruling ignores the fact that most of the streets listed in Ordinance No. 2018-5 (which superseded Ordinance No. 2017-16) do not impact Grand Avenue. Given that the Court construed "impact" to Grand Avenue to mean "preventing traffic from turning onto Leonia's side streets along" Grand Avenue, at most, the court should have invalidated the streets listed in the Ordinance under the "Grand Avenue" headings.

The court ignored well-established case law that "where the provisions of an ordinance are separable, the invalidity of one on the separable parts will not invalidate the entire

ordinance.” See Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472, 477 (1956), citing Scharf v. Recorder’s Court of Ramsey, 137 N.J.L. 231 (Sup.Ct. 1948), aff’d, 1 N.J. 59 (1948). This is especially true where an ordinance contains a severability clause, such as in the matter at bar, because there is a rebuttable presumption of severability. State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983). In such cases, the invalid part is to be rejected and the remainder allowed to stand as valid and operative. Id. See also Gilman v. City of Newark, 73 N.J. Super. 562, 600-601 (Law Div. 1962) (citations omitted) .

Moreover, “the cardinal principle of statutory construction must be to save and not to destroy, and the duty of the court is to strain if necessary to save an act or ordinance, not to nullify it.” Sea Isle City v. Caterina, 123 N.J. Super. 422, 428 (Law Div. 1973); and see Dome Realty, Inc., v. City of Paterson, 83 N.J. 212, 235 (1980) (holding that an ordinance is entitled to a presumption of validity.) Thus, it is well-settled that the “invalidity of one of the separate parts does not render the entire ordinance invalid, provided the remainder contains the essentials of a complete enactment. United Property Owners Association of Belmar v. Borough of Belmar, 343 N.J. Super. 1, 39 (App. Div. 2001), certif. denied, 170 N.J. 390 (2001). Therefore, if an ordinance includes unconstitutional provisions, it, nonetheless, can survive with the invalid provisions stricken therefrom. News Printing Co. v. Borough of Totowa, 211 N.J. Super. 121, 168 (Law Div. 1986); see also, Levine v. Mayor of the City of Passaic, 233 N.J. Super. 559 (Law Div. 1988). This concept is referred to as “judicial pruning,” or judicial surgery” to narrow construction of a statute or ordinance, so as to free it from constitutional doubt or defect. Washington Twp. v. Central Bergen Community Mental Health Center, Inc., 156 N.J. Super. 388 (Law Div. 1978); and see Cona v. Township of Washington, ---A3d--- WL 2018 WL 4100582,

(App. Div. August 29, 2018) (*citing* United Property Owners Association of Belmar v. Borough of Belmar, *supra*, 343 N.J. Super. at 39)).

The issue of whether severability is reasonable focuses on both legislative intent of the enacting body, *see e.g.* New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm’n, 82 N.J. 57, 75 (1980), and whether the objectionable feature of the ordinance can be excised without substantial impairment of the principal object of the statute. United Property, *supra*, (*citing* Affiliated Distillers Brands Corp. v. Sills, 60 N.J. 342, 345 (1972)).

Here, Ordinance No. 2018-5, which superseded Ordinance No. 2017-16 contains a severability clause. That clause at Section 3 reads as follows:

If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance. (see “Exhibit E”).

Given the Court’s ruling that the provisions impacting Grand Avenue were invalid, only those provisions should have been stricken from the Ordinance. The streets intersecting with Grand Avenue were easily identified under the Grand Avenue headings and could have been easily stricken without reference to a map or other documents. Once stricken, the balance of the Ordinance can stand on its own and is subject to enforcement as no DOT approval is required for any of the other streets listed in the Ordinance because they do not abut a state highway. Therefore, the Court could have and should have blue-penciled the Ordinance to only delete those portions of Section §194-49 that reference Grand Avenue (see “Exhibit I,” blue lined Ordinance No. 2018-5).

Additionally, if upon reconsideration the Court strikes only the portions of Section §194-49 that regulate traffic impacting Grand Avenue, the Court must also reinstate Ordinance 2018-2, which Ordinances merely establishes penalties for violating Section §194-25.1 and Section §194-49, and is non-specific to traffic impacting Grand Avenue. Indeed, with the enactment of new legislation separating the streets in accordance with the Court's ruling into two Ordinances recently enacted by the Borough on August 17, 2018, the penalty provision can and should remain in full force and effect (see "Exhibit F").

Accordingly, it is respectfully requested that the Court grant the Borough's motion for reconsideration to limit the Order to only invalidation of the portion of Ordinance 2018-5 impacting Grand Avenue.

#### **POINT IV**

**IF THE COURT DOES NOT RECONSIDER ITS ENTRY OF SUMMARY  
JUDGMENT IN FAVOR OF THE DOT, THE COURT SHOULD ENTER A  
STAY OF THAT ORDER BASED ON THE ENACTMENT OF TWO NEW  
ORDINANCES ON SEPTEMBER 17, 2018 TO ADDRESS THE COURT'S  
CONCERNS WITH RESPECT TO N.J.S.A. 39:4-8(a) INCLUDING  
OBTAINING APPROVAL BY THE DOT**

If a government entity takes action that is later determined to be procedurally defective, curative measurements may be adopted to validate the prior action retroactively. IMO Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Hudson County Solid Waste Management District, 133 N.J. 206 (1993). As a corollary, a municipality has a right to ratify its actions tainted by procedural irregularities, as such irregularities do not invalidate ordinances. See Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. 129, 158-159 (1977).

Based on the foregoing legal principles, a court may stay the entry of summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action. Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002). Similarly, a stay of a judgment declaring an ordinance invalid based on a procedural defect is appropriate to afford the municipality the opportunity to correct the infirmity. See Levin v. Parsippany-Troy Hills Tp., 82 N.J. 174 (1980); Route 15 Associates v. Jefferson Tp., 187 N.J. Super. 481 (App. Div. 1982); Pop Realty Corp. v. Springfield Bd. of Adjustment of Springfield Tp., 176 N.J. Super. 441 (Law Div. 1980). For example, in Pop Realty, the court entered judgment finding an ordinance invalid, but stayed the judgment to allow the municipality time to adopt a new ordinance that satisfied certain statutory requirements. In Levin, where the Supreme Court reversed the trial court and Appellate Division by finding a partial invalidity of a zoning ordinance, it, nonetheless, entered a 90 day stay of that judgment in order to afford the Township time to adopt a valid zone plan because the Township acted in good faith in accordance with its understanding of the law.

After the ruling in this matter, the Borough introduced two (2) revised Ordinances to regulate street closures, which passed on second reading on September 17, 2018 (see “Exhibit F” and “Exhibit G”). Ordinance No. 2018-14, which pertains to streets other than Grand Avenue and Bergen Boulevard, does not require DOT approval. Ordinance No. 2018-15, which pertains to streets intersecting Grand Avenue and Bergen Boulevard, does require DOT approval based on this court’s rulings in this case. The Borough will be submitting Ordinance No. 2018-15 to the DOT for approval, henceforth (see “Exhibit H”).

If the Court does not reconsider the Order granting summary judgment, it should enter a stay of that Order to afford the Borough the opportunity to cure the prior procedural defects and

submit Ordinance No. 2018-15 to the DOT for approval. If DOT approval is forthcoming, the use of signage enjoined by the Summary Judgment order, would be authorized.

### **CONCLUSION**

For the foregoing reasons, Defendant Borough of Leonia's Motion for Reconsideration should be granted and an Order entered vacating and amending the Court's Order in the proposed form attached to Defendant's motion papers.

Respectfully submitted,

CLEARY GIACOBBE ALFIERI JACOBS, LLC  
Attorneys for Defendant Borough of Leonia

By: /s/ Ruby Kumar-Thompson, Esq  
Ruby Kumar-Thompson, Esq.

Dated: September 20, 2018

# EXHIBIT A



GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for the State of New Jersey  
Department of Transportation  
By: Philip J. Espinosa (Attorney ID No.: 030311988)  
Deputy Attorney General  
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO.: HUD-L-607-18

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|                            |   |                                   |
|----------------------------|---|-----------------------------------|
| JACQUELINE ROSA,           | : |                                   |
| Plaintiff,                 | : | Civil Action                      |
| v.                         | : |                                   |
| BOROUGH OF LEONIA, ET AL., | : |                                   |
| Defendants.                | : | <b>ORDER FOR SUMMARY JUDGMENT</b> |

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|                               |   |  |
|-------------------------------|---|--|
| STATE OF NEW JERSEY           | : |  |
| DEPARTMENT OF TRANSPORTATION, | : |  |
| Plaintiff-Intervenor,         | : |  |
| v.                            | : |  |
| BOROUGH OF LEONIA, NEW        | : |  |
| JERSEY,                       | : |  |
| Defendant.                    | : |  |

---

This matter having been opened to the court by a motion for summary judgment by Gurbir S. Grewal, Attorney General of New Jersey, by Philip J. Espinosa, Deputy Attorney General, attorney for the plaintiff-intervenor State of New Jersey Department of Transportation, and the court having considered this matter, and for good cause having been shown;

IT IS on this 30<sup>th</sup> day of August, 2018, ORDERED:

1. Traffic ordinances numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances") of the Borough of Leonia ("Leonia"), are hereby declared to be null and void, and legally invalid as a matter of law.

2. Leonia is hereby enjoined and permanently restrained from the further enforcement of the Ordinances, including but not limited to the use of signage regarding the Ordinances, police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances.

3. Reasons placed on the record on August 30, 2018.

4. Uploaded in eCourts.



---

Hon. Peter F. Bariso, Jr., A.J.S.C.

  X   Opposed

       Unopposed

# EXHIBIT B

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
HUDSON COUNTY DOCKET NO. HUD-L-000607-18

|                     |   |                  |
|---------------------|---|------------------|
| JACQUELINE ROSA and | ) |                  |
| STATE OF NEW JERSEY | ) |                  |
| DEPARTMENT OF       | ) | TRANSCRIPT       |
| TRANSPORTATION,     | ) |                  |
|                     | ) | OF               |
| Plaintiffs,         | ) |                  |
|                     | ) | MOTIONS FOR      |
| v.                  | ) | SUMMARY JUDGMENT |
|                     | ) |                  |
| BOROUGH OF LEONIA,  | ) |                  |
| et al.,             | ) |                  |
|                     | ) |                  |
| Defendants.         | ) |                  |
|                     | ) |                  |

Place: Hudson County Courthouse  
Administration Building  
595 Newark Avenue  
Jersey City, NJ 07306

Date: August 30, 2018

BEFORE:

THE HONORABLE PETER F. BARISO, JR., A.J.S.C.

TRANSCRIPT ORDERED BY:

BRIAN CHEWCASKIE, ESQ. (Gittleman, Muhlstock &  
Chewcaskie, L.L.P.)

APPEARANCES:

JACQUELINE ROSA, ESQ., PLAINTIFF, PRO SE

PHILIP ESPINOSA, ESQ., DEPUTY ATTORNEY GENERAL  
Attorney for the Defendant, Department of Transportation

BRIAN CHEWCASKIE, ESQ. (Gittleman, Muhlstock &  
Chewcaskie, L.L.P.)  
Attorney for Defendant, Borough of Leonia

RUBY KUMAR-THOMPSON, ESQ., (Cleary, Giacobbe, Alfieri,  
Jacobs, L.L.C.) Attorney for Defendant, Borough of Leonia

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1 THE COURT: All right. This is docket number  
2 L-607-18, Jacqueline Rosa versus Borough of Leonia, et  
3 al. It's a return date for various summary judgment  
4 motions.

5 May I please have counsel's appearances and  
6 would you spell your last name for the record for me?

7 MS. ROSA: Good morning, Judge. Jacqueline  
8 Rosa from Seigel Law, pro se plaintiff. R-O-S-A.

9 THE COURT: Good morning.

10 MR. ESPINOSA: Your Honor, Philip Espinosa,  
11 Deputy Attorney General, E-S-P-I-N-O-S-A, on behalf of  
12 the New Jersey Department of Transportation.

13 THE COURT: Good morning.

14 MR. ESPINOSA: Good morning.

15 MR. CHEWCASKIE: Good morning, Your Honor.  
16 Brian Chewcaskie, Gittleman, Muhlstock & Chewcaskie, on  
17 behalf of the Borough of Leonia. C-H-E-W-C-A-S-K-I-E.

18 THE COURT: Good morning.

19 MR. CHEWCASKIE: Good morning.

20 MS. KUMAR-THOMPSON: Good morning, Your  
21 Honor. Ruby Kumar-Thompson with the law firm of  
22 Cleary, Giacobbe, Alfieri & Jacobs, also here on behalf  
23 of the Borough of Leonia.

24 THE COURT: Good morning. Okay. So, what I  
25 have, and I just want to put on the record so we make

1 sure we're discussing all the submissions. I have a  
2 motion for summary judgment filed by the Attorney  
3 General's office on behalf of the Department of  
4 Transportation. I have a motion for summary judgment  
5 filed by plaintiff Jacqueline Rosa.

6 I have a cross-motion in opposition and for  
7 summary judgment filed by the Borough of Leonia as to  
8 the Department of Transportation and a cross-motion in  
9 opposition and for summary judgment as to plaintiff  
10 Jacqueline Rosa. I have received a reply to the  
11 opposition and cross-motion by the Department of  
12 Transportation by the Deputy Attorney General's Office,  
13 and I have received a reply to the opposition and  
14 cross-motion filed by plaintiff Jacqueline Rosa.

15 Am I missing any submissions?

16 MR. CHEWCASKIE: I think that covers it all,  
17 Your Honor.

18 THE COURT: Okay. All right. So, initially,  
19 let me just say that this matter has been extensively  
20 briefed by the parties. I'm not going to recount all  
21 of the procedural history in the case. We know that  
22 this has started -- it was filed back in January, I  
23 believe. And we had several case management  
24 conferences and hearings in March and May.

25 Now I have these motions filed in front of

1 me. A lot of the briefing -- and we have reviewed the  
2 documents that have been submitted, and obviously, are  
3 part of the record, an extensive record. However, in  
4 terms of my questionings this morning, some of the  
5 facts and discussions in the papers, while certainly  
6 relevant to the parties, the Court does not feel are  
7 necessarily relevant to the decision that I have to  
8 make here today.

9 So, my questions are going to be somewhat  
10 limited. However, at the end I certainly will allow  
11 counsel an opportunity -- although they have expressed  
12 themselves quite extensively in their briefs, if they  
13 felt they wanted to add anything else to the record I  
14 would give them that opportunity at the end. So, I  
15 have a few initial questions I'd like to start with,  
16 and I'm going to direct those to the Borough.

17 Your initial position regarding the  
18 Department of Transportation in your cross-motion lays  
19 out that they're not entitled to bring either a  
20 prerogative writ action or a declaratory judgment  
21 action. Having reviewed the Deputy Attorney General's  
22 response in their letter brief of August 24, 2018, how  
23 does that case law not support their position that  
24 they're entitled to bring this action?

25 MR. CHEWCASKIE: Judge, the one case that was

missed by the DOT regarding declaratory judgment action was Bergen County v. Port of New York Authority. That's at 32 N.J. 303 and that's a 1960 decision. And what that court said is that it distinguishes actual harm from an action merely to vindicate the general public interest upon an allegation that another agency or government is exceeding its statutory powers and disallowed the process of a declaratory judgment in that action.

What's interesting is all the cases that were cited by the Attorney General basically go back to various years roughly between 1955 and 1962. Those cases dealt with actual harm. The initial case, which would involve the highway commissioner was a condemnation action to take land for the purpose of building Route 4 and the Garden State Parkway, which involved the cemetery. And what the interest of the public was to be protected there.

In this instance, if we go to the Port Authority of New York case, this is merely, what's the public interest here? They haven't asserted it.

THE COURT: All right. But --

MR. CHEWCASKIE: This is just an action of an agency that says this -- we need to look at this. And we'll certainly get into that law, but the prefatory is

--

THE COURT: But isn't it -- isn't it more than that? I mean, their position is, you're violating a statute and you're disregarding the powers of the DOT, of the Commissioner of Transportation. If I was to accept your argument, how does the Department of Transportation enforce their position that they must approve this ordinance?

MR. CHEWCASKIE: The question is very -- or, the answer to that question is very simple. There's nothing that precludes the Borough of Leonia from adopting any ordinance to regulate traffic.

THE COURT: All right. Let's not get to the merits of the case.

MR. CHEWCASKIE: But I'm just -- but I'm just -- but I'm just --

THE COURT: Let's get to my question. My question is, if the commissioner feels your ordinance requires his or her approval and you disagree, what do they do to enforce their position or at least have their position explored?

MR. CHEWCASKIE: Right. First, the commissioner has to make a decision.

THE COURT: I think he did. I think the Deputy Attorney General told you that your ordinance is



1 not valid because you didn't get our approval. So,  
2 he's made a decision.

3 MR. CHEWCASKIE: The commissioner has not  
4 made a decision, Judge.

5 THE COURT: As to whether the ordinance is  
6 valid?

7 MR. CHEWCASKIE: Correct.

8 THE COURT: Okay. Have you asked him to make  
9 that decision?

10 MR. CHEWCASKIE: Yes, we have.

11 THE COURT: Well, I don't have any of those  
12 submissions. I asked this question in January. Has a  
13 request been made to the commissioner to approve this  
14 ordinance? And nothing has been submitted to me that  
15 says you made a request and this was the support you  
16 gave. So, if there is something, I don't have it.

17 MR. CHEWCASKIE: And we made that request,  
18 Judge. You have the certification of the mayor that  
19 said, to the extent that we need the approval, that  
20 approval is being requested in response to a letter  
21 that we got from the DOT -- that the Borough received  
22 from the DOT.

23 THE COURT: Okay.

24 MR. CHEWCASKIE: This is not the Attorney  
25 General's decision. This is the commissioner's

1 decision.

2 THE COURT: Okay. I'll --

3 MR. CHEWCASKIE: I have nothing from the  
4 commissioner that this was acted upon, this was acted  
5 in accordance with the statute, and we're even making  
6 the assumption that it is required, because the  
7 language of the statute is quite clear. We have the  
8 right to adopt an ordinance and the commissioner then  
9 makes a decision. Not the Attorney General. It says  
10 the commissioner. The commissioner here is silent or  
11 has been silent for other reasons.

12 THE COURT: Has an action been made by the  
13 Borough, a prerogative writ action to compel the  
14 commissioner to make a decision?

15 MR. CHEWCASKIE: No.

16 THE COURT: Isn't that an appropriate  
17 application when a government does not act properly? I  
18 think it's called mandamus.

19 MR. CHEWCASKIE: Right. It is called  
20 mandamus.

21 THE COURT: Well, was that ever made by  
22 Leonia?

23 MR. CHEWCASKIE: No.

24 THE COURT: Okay.

25 MR. CHEWCASKIE: No. But that's not a

prerequisite for the DOT to take an action, Judge.

THE COURT: No. I'm just asking, because as I said initially, we have a fundamental disagreement over the language of the statute. I said that in January, I said that in March, I believe I said that in May, and I will continue to say that at the end of the hearing today. So, my problem is, no decision has been made by the commissioner. So, I don't know whether the commissioner has approved or disapproved.

MR. CHEWCASKIE: That is correct.

THE COURT: But I do know, and I know you disagree with me, that the statute clearly says they must approve it.

MR. CHEWCASKIE: No. I didn't say that, Judge.

THE COURT: No, no. I'm saying that. I said you and I disagree on that. We disagreed on this since January. I believe the statute is clear. It requires the approval of the commissioner. Now, if your argument is, well, Judge, they're delaying and they haven't approved it, okay, then make your application because you have the right to make that application.

I understand what the mayor's certification says, but it would appear to me that if you were seeking the approval of the commissioner, you would

have sent everything down to them before you erected any signs, before you did anything, and said, here's what we want to do. Will you approve this? I have yet to see that document.

MR. CHEWCASKIE: And we had a meeting with the --

THE COURT: You had a meeting because in March, there was a discussion that there was a meeting with DOT representatives because I believe the Court said, have you sent this to the DOT? And that's when the first meeting was, I believe. In March. There were other meetings, but I have yet to receive anything that says it's been approved.

MR. CHEWCASKIE: And so have we. We haven't received anything.

THE COURT: Well, because I don't know if you asked them to approve it.

MR. CHEWCASKIE: And we did.

THE COURT: I know there's a meeting. I know there's letters attached. I saw what the DOT's position was. They made suggestions to your client that your client rejected. That's all to me almost like settlement negotiations in the case. That's what they were in my opinion. I have yet to see an application to the commissioner setting forth your

1 reasons why you're doing something so that the  
2 commissioner can make an informed decision that I think  
3 you may have the right to challenge. But he -- but I  
4 don't know what's been given.

5 MR. CHEWCASKIE: And the May 10th letter that  
6 was sent by the mayor sets forth exactly -- every and  
7 all reasons why this was done.

8 THE COURT: So, that's what you're going to  
9 rely on is the mayor's May 10 letter.

10 MR. CHEWCASKIE: Take that in conjunction  
11 with the various meetings that you have and also the  
12 certification from the police chief, Thomas Rowe. When  
13 you look at all that and put it together, it's what did  
14 Leonia do? Leonia enacted an ordinance to deal with  
15 the traffic conditions that the Borough of Fort Lee has  
16 been doing with 15 -- for 15 years without an  
17 ordinance. So, when Leonia did it --

18 THE COURT: Where is there evidence to the  
19 Court that Fort Lee passed an ordinance without the  
20 approval of the commissioner? Let's not mix apples and  
21 oranges. You can't come in front of me and say because  
22 the car behind me didn't get a ticket, I shouldn't get  
23 one.

24 MR. CHEWCASKIE: And I will tell you this,  
25 Judge.

1 THE COURT: I have no ordinance in front of  
2 me from Fort Lee.

3 MR. CHEWCASKIE: There is no ordinance in  
4 Fort Lee.

5 THE COURT: Okay. So, we're talking about  
6 apples and oranges.

7 MR. CHEWCASKIE: Okay.

8 THE COURT: In this case, it's simple, in my  
9 opinion. They are saying the following: you have  
10 enacted a motor vehicle ordinance contrary to the  
11 statute because you did not seek approval from the  
12 commissioner. That's what the DAG's motion is. No one  
13 is accusing you of acting -- well, the DAG has not  
14 raised the issue of arbitrary and capricious. The DAG  
15 has, in fact, for purposes of the motion, admitted to  
16 your factual background, has not disputed them, and has  
17 not asked you to prove them.

18 So, the DAG's motion is very limited. You  
19 did not seek the approval -- or, I should say it  
20 better. You have not obtained the approval of the  
21 commissioner of the DOT. That's their position.  
22 They're not disputing everything you've done, the  
23 police certification, the mayor's certification. He  
24 has admitted those for purposes of this motion even  
25 though he doesn't have sufficient knowledge.

1 So, for purposes of this motion as to the  
2 DOT, and as to the statute, what, if anything, is a  
3 material factual dispute?

4 MR. CHEWCASKIE: The statute, 8A --

5 THE COURT: That's not a factual dispute.

6 MR. CHEWCASKIE: No, no.

7 THE COURT: I want to know -- I want my  
8 question answered first, Counsel, because there's a  
9 reason I'm asking this. Is there a material factual  
10 dispute as to the Attorney General's motion for summary  
11 judgment? That's the first question.

12 MR. CHEWCASKIE: The first question -- the  
13 response to that is, were the ordinances supplied to  
14 the DOT for review? The answer is yes, they did  
15 receive it.

16 THE COURT: Okay. So, there is a factual  
17 dispute as to whether they received the --

18 MR. CHEWCASKIE: There's a factual dispute.

19 THE COURT: Okay. Is there a factual dispute  
20 as to whether or not you've obtained approval?

21 MR. CHEWCASKIE: Yes.

22 THE COURT: You're saying you did.

23 MR. CHEWCASKIE: I'm saying we didn't.  
24 There's been no response.

25 THE COURT: I think they're saying you

1 didn't, so where's the dispute?

2 MR. CHEWCASKIE: There's no dispute. We  
3 never had a response, Judge.

4 THE COURT: Okay. That's the question,  
5 Counsel. This is your chance to tell me --

6 MR. CHEWCASKIE: Right.

7 THE COURT: -- there's a material factual  
8 dispute as to the State's motion.

9 MR. CHEWCASKIE: There was no response from  
10 the DOT.

11 THE COURT: Okay.

12 MR. CHEWCASKIE: I don't even know if we get  
13 there.

14 THE COURT: Okay. All right. So, if I  
15 follow your position, what does the DOT do to enforce  
16 their position if they cannot make an application  
17 either for declaratory judgment or prerogative writ.  
18 Tell me what they do.

19 MR. CHEWCASKIE: The first aspect is the DOT  
20 has to act before it can take a position. They have  
21 not acted, Judge.

22 THE COURT: I think they have. So, let's go  
23 on to the next step. Assume they acted and said you  
24 don't have our approval. Tell me what they can do to  
25 enforce their position if they can't do a declaratory

1 judgment or prerogative writ action.

2 MR. CHEWCASKIE: There's nothing under Title  
3 39 that gives the commissioner to take any action.

4 THE COURT: Well, I'm not asking under Title  
5 39. I'm asking you as a Superior Court judge who  
6 resolves conflicts.

7 MR. CHEWCASKIE: I would say --

8 THE COURT: If I follow your position that  
9 the DOT cannot file a DJ action, cannot file a  
10 prerogative writ action, tell me what the commissioner  
11 does to enforce his statutory right.

12 MR. CHEWCASKIE: Issue --

13 THE COURT: Whether you agree with him or  
14 not. He's taking a position I have a statutory right.  
15 I must approve this ordinance. You disagree. What do  
16 they do?

17 MR. CHEWCASKIE: They can issue  
18 administrative orders.

19 THE COURT: And what does that do?

20 MR. CHEWCASKIE: That issues an order from  
21 the agency in charge, Judge.

22 THE COURT: Okay.

23 MR. CHEWCASKIE: As I indicated, I think its  
24 premature. I think there needs to be an action.  
25 You're saying --

1 THE COURT: There is an action. They just  
2 filed it.

3 MR. CHEWCASKIE: Yeah. Borough --

4 THE COURT: And you're saying they're not  
5 allowed to do it.

6 MR. CHEWCASKIE: And you're saying, Borough,  
7 you should have submitted -- you should have filed an  
8 action against the DOT --

9 THE COURT: No, no. I didn't --

10 MR. CHEWCASKIE: -- to get a response.

11 THE COURT: I didn't say that. I said that  
12 after your argument that you didn't get a response.  
13 There's a disagreement whether you've asked for  
14 approval. That's a factual dispute. There is no  
15 factual dispute that you didn't get approval. That's  
16 the basis of their motion. So, one of the cases you  
17 cite, the Sheridan case, Cedar Grove, on page 273,  
18 says:

19 "Cedar Grove has a sufficient stake in the  
20 subject matter to the interest of individual justice,  
21 along with the public interest, always bearing in mind  
22 that throughout our law we have been sweepingly  
23 rejecting procedural frustrations in favor of just and  
24 expeditious determinations on the ultimate merits."

25 So, if -- even if I were to accept your

1 position, which I don't, but even if I were to accept  
2 your position, they're not allowed to file a DJ,  
3 they're not allowed to file a prerogative writ. A case  
4 you cited to me stands for the proposition that I have  
5 to make a decision here, right?

6 MR. CHEWCASKIE: We've asked you to make a  
7 decision, Judge. That's why we cross-moved.

8 THE COURT: Okay. Now, another case that you  
9 rely on, Samuel Brain, (phonetic) which is extensively  
10 cited on page 17 of your brief. That's the case  
11 dealing with the trucks, right? There was an exclusion  
12 of a certain class of vehicles on the municipal  
13 streets.

14 MR. CHEWCASKIE: Yes. I have it in front of  
15 me, Your Honor.

16 THE COURT: Right. And you cited that --

17 MR. CHEWCASKIE: Yes.

18 THE COURT: -- because it says that the  
19 police powers delegated to the municipalities, right?

20 MR. CHEWCASKIE: Correct, Judge.

21 THE COURT: Okay. Right in the beginning of  
22 the opinion is something very interesting that's not  
23 cited by anybody as I read the case on page 477:

24 "The ordinance was approved by the state  
25 director of motor vehicles pursuant to R.S. 39:4-8."

1 Doesn't that distinguish that case?

2 MS. KUMAR-THOMPSON: No, Your Honor.

3 THE COURT: Why not?

4 MS. KUMAR-THOMPSON: That's because this case  
5 was out of 1958 where approval -- pre-approval was  
6 required by the commissioner. I think that's the point  
7 that we were trying to make in our briefs, is that  
8 prior to 2008 it's clear that preapproval and  
9 everything -- every opinion before that -- and that's  
10 what they're relying upon in 39:4-8. And I think I  
11 laid out in my papers, and I think it was clear what  
12 our position is in terms of what the change was and how  
13 they changed three statutes, not just one.

14 THE COURT: Right.

15 MS. KUMAR-THOMPSON: They changed 39:4-8,  
16 they changed 39:4-197, and they've changed 39:4-202.

17 THE COURT: Well, what they didn't change in  
18 4-8 is the third paragraph, right?

19 MS. KUMAR-THOMPSON: The third paragraph  
20 pertaining to approval?

21 THE COURT: Which says, "notwithstanding any  
22 other provision of this section to the contrary, any  
23 municipal or county ordinance, resolution, or  
24 regulation, which places any impact on a state roadway  
25 shall require the approval of the commissioner."

1 What's not clear about that paragraph?

2 MS. KUMAR-THOMPSON: So, the second issue  
3 with that paragraph, and I think we addressed that as  
4 well --

5 THE COURT: You conflate that.

6 MS. KUMAR-THOMPSON: No. I read --

7 THE COURT: It's not undue. It says "any  
8 impact" on this paragraph.

9 MS. KUMAR-THOMPSON: Your Honor, I think we  
10 said the statutes need to be read as a whole and  
11 therefore because of the disapproval -- the statute  
12 also outlines disapproval and the regulations --

13 THE COURT: Yeah. But when --

14 MS. KUMAR-THOMPSON: When they say that you  
15 cannot disapprove it unless there's an undue impact,  
16 that also constrains the DOT's --

17 THE COURT: Yeah, but --

18 MS. KUMAR-THOMPSON: -- ability to just  
19 disapprove ordinances nilly-willy.

20 THE COURT: No. But when a statute starts  
21 off with, or when this provision starts off with,  
22 "Notwithstanding any other provision of this section to  
23 the contrary," that's a pretty powerful initial  
24 statement.

25 MS. KUMAR-THOMPSON: I agree.

1 THE COURT: At least in my interpretations of  
2 statutes. When you start off with language that says,  
3 "Notwithstanding any other provision of this section to  
4 the contrary," that has a plain meaning that if there's  
5 anything in conflict with this, this controls.

6 MS. KUMAR-THOMPSON: And so turning back to  
7 your question as to whether or not there's a factual  
8 dispute, there is a factual dispute with respect to  
9 whether there has even been an impact on adjoining  
10 municipalities.

11 THE COURT: It has nothing to do with joint  
12 municipalities. It's whether it has an impact on a  
13 state roadway.

14 MS. KUMAR-THOMPSON: And state roadways.

15 MR. CHEWCASKIE: And, Judge, just to add to  
16 that one point, there is one state roadway that we are  
17 talking about, and that's Grand Avenue. That's Route  
18 93.

19 THE COURT: Yeah.

20 MR. CHEWCASKIE: That does not include any of  
21 the other roadways within the Borough. As outlined in  
22 Chief Rowe's certification, there were 44 local  
23 roadways that are impacted by this ordinance and --

24 THE COURT: Yeah, but we don't get to pick  
25 and choose what part of the ordinance is enforceable



1 and which one isn't. This is a straightforward  
2 question. Does the ordinance require approval of the  
3 commissioner? Not, does section a, b and c require it,  
4 but not d and e? It's, does the ordinance require the  
5 approval of the commissioner? That's the -- that's the  
6 decision the Court's got to make today.

7 MR. CHEWCASKIE: And if I may, Your Honor, it  
8 requires the approval of the commissioner based upon  
9 the language of the statute, if there is impact on the  
10 state highway. And although there's a regulation cited  
11 by the -- by the DAG, that impact has not been  
12 identified.

13 THE COURT: Well, doesn't it prevent people  
14 from entering the state roadway?

15 MR. CHEWCASKIE: No.

16 THE COURT: No?

17 MR. CHEWCASKIE: No.

18 THE COURT: Then I missed the whole argument  
19 the first time. None of these restrictions prevent  
20 non-residents from getting onto a state roadway?

21 MR. CHEWCASKIE: Not at all. It prevents if  
22 you are on the state highway from making a turn.  
23 There's nothing that says you're not coming down that  
24 local street --

25 THE COURT: So, you can't turn off the state

1 highway into your town. I got it backwards.

2 MR. CHEWCASKIE: You can't --

3 THE COURT: In other words, you can enter,  
4 but you can't get off.

5 MR. CHEWCASKIE: There are -- you can come  
6 onto Grand Avenue. You can turn onto various streets  
7 within Leonia, but one of them, Fort Lee Road, the  
8 other being Hillside, these are controlled  
9 intersections. Those controlled intersections where  
10 there are traffic lights, as we indicated in our  
11 papers, those signs were taken down, and I think they  
12 were taken down at the time we were here on the  
13 preliminary injunction.

14 So, if you're on Route 93, whether you're  
15 heading north or south, and there is a light-controlled  
16 intersection, you can make those turns. And some of  
17 those turns are on local streets. We --

18 THE COURT: All right. So, you're -- all  
19 right. So, you're telling me now that there is a  
20 factual dispute and the factual dispute is that this  
21 ordinance does not impact in any way a state roadway.

22 MR. CHEWCASKIE: Correct. And you have other  
23 aspects of that ordinance, you know, that you have to  
24 look at. The one roadway is the north/south Route 93,  
25 which is Grand Avenue. It comes -- it goes from



1 Englewood into Leonia, then into Palisades Park. Any  
2 controlled intersections in Leonia, you can make right  
3 or left turns. And by controlled, I mean those  
4 controlled by a traffic light. If there is a street  
5 that is not controlled by that traffic light, I submit  
6 the sign is there, which would prohibit making that  
7 left or right turn.

8 THE COURT: Well, then how does that not  
9 impact traffic on a state roadway?

10 MR. CHEWCASKIE: Because you could --

11 THE COURT: I'm confused. You're telling me  
12 there's no impact, but now you're saying there's no  
13 impact where there's a traffic light, but if there's no  
14 traffic light they can't turn on the street.

15 MR. CHEWCASKIE: Then, Judge, you're making  
16 the assumption --

17 THE COURT: I'm not making any assumption.  
18 I'm asking you a question. Is that accurate?

19 MR. CHEWCASKIE: Okay. But --

20 THE COURT: Only where there's traffic  
21 lights, they can turn. If there's no traffic light,  
22 they can't turn. Is that what you're telling me?

23 MR. CHEWCASKIE: Yes.

24 THE COURT: And you're saying that's not an  
25 impact on a state roadway? That's what I'm hearing,

1 Counsel.

2 MR. CHEWCASKIE: I don't -- I don't believe  
3 it is, Judge, because if I can't make a turn two-tenths  
4 of a mile ahead of the time, and I can make a turn two-  
5 tenths of a mile after the time, how is that an impact?

6 THE COURT: Because it's going to back  
7 traffic up until they get to the light.

8 MR. CHEWCASKIE: And you are now making an  
9 assumption that is totally not in the record.

10 THE COURT: I'm not making an assumption.  
11 You asked me a question. You said if they have to go  
12 two-tenths of a mile further, what's the difference?  
13 The difference is, you're backing traffic up two-tenths  
14 of a mile because they can't turn there.

15 MR. CHEWCASKIE: But you're making the  
16 assumption that the mere fact that there is a  
17 restriction to make a turn on the street automatically  
18 backs up traffic.

19 THE COURT: No. I'm making -- I'm making the  
20 factual finding that since you cannot turn off a state  
21 highway, you are impacting the state roadway. That's  
22 what I'm saying.

23 MR. CHEWCASKIE: All right. And I don't  
24 think --

25 THE COURT: But if you're telling me there's

1 no impact, I'll tell you what I'll do. I'll allow them  
2 to resolve the factual dispute by taking a deposition  
3 of the chief of police. And if they demonstrate that  
4 there's an impact on a state roadway, the town can  
5 reimburse them for the cost in resolving what you say  
6 is a material factual dispute. How's that?

7 MR. ESPINOSA: Your Honor, may I address that  
8 first?

9 THE COURT: Yeah. Because I don't -- I mean  
10 --

11 MR. ESPINOSA: I understand. Your Honor, in  
12 the -- in our brief, --

13 THE COURT: Yes.

14 MR. ESPINOSA: -- our original brief and our  
15 reply brief, impact on a state highway is defined by  
16 the regulation. N.J.A.C. 16:27-2.1, and in support of  
17 the DOT's motion for summary judgment, we included a  
18 certification of a traffic engineer, Mark Heeston.  
19 (phonetic) Mark Heeston, in accordance with the  
20 regulation --

21 THE COURT: They're saying they don't have  
22 that.

23 MR. CHEWCASKIE: We don't have that.

24 MR. ESPINOSA: They have that. That was part  
25 of our original motion.

1 MR. CHEWCASKIE: We don't have that.

2 MR. ESPINOSA: And if I may just address  
3 this, Your Honor.

4 THE COURT: Go ahead.

5 MR. ESPINOSA: It's on eCourts. It was filed  
6 properly with our original motion for summary judgment.

7 THE COURT: Well, just tell me where the  
8 certification is because --

9 MR. ESPINOSA: It was with our original  
10 motion for summary judgment, Your Honor.

11 THE COURT: Do you know what exhibit it is?

12 MR. ESPINOSA: Well, it's a separate  
13 certification of Mark Heeston.

14 MR. CHEWCASKIE: Unfortunately, we don't have  
15 that, Your Honor.

16 THE COURT: I don't know if I have that  
17 either. I have not seen it.

18 MR. ESPINOSA: Your Honor, I know it was  
19 filed on eCourts.

20 MS. ROSA: If Your Honor would allow me, I  
21 have eCourts on my phone. I can look it up right now.

22 THE COURT: Yeah. I did not see that,  
23 Counsel.

24 MR. ESPINOSA: Well, in fact --

25 MR. CHEWCASKIE: And neither did we.

1 MR. ESPINOSA: Your Honor, I can address  
2 that.

3 THE COURT: Okay.

4 MR. ESPINOSA: For two different reasons as  
5 articulated by Mr. Heeston, the traffic engineer at the  
6 DOT, in accordance with the applicable regulation, as a  
7 matter of law, there's an impact on a state highway.  
8 In fact, in response to our statement of material  
9 facts, Leonia failed to dispute that fact in accordance  
10 with the applicable court rule. There is no  
11 certification.

12 MR. CHEWCASKIE: We don't have the  
13 certification, Judge.

14 MR. ESPINOSA: Counsel --

15 THE COURT: Wait, wait, wait. That's not  
16 what he's saying, Counsel. What he's saying is, he set  
17 forth in his material facts that it does impact the  
18 state roadway, and you did not deny that.

19 MR. ESPINOSA: In fact, in their response,  
20 they failed to specifically dispute these facts by  
21 citation conforming with the requirements of Rule  
22 446:2-A and B. And the statements of counsel, the  
23 hearsay statements of counsel, are not appropriate in  
24 this context. They have not appropriately refuted  
25 these facts.

1 One other thing, Your Honor, just very  
2 briefly, Leonia, in response to our statement of  
3 material facts, also admitted that Leonia did not  
4 submit the ordinances to the DOT commissioner for  
5 approval. So, that's also admitted.

6 THE COURT: I have to tell you in candidness,  
7 I don't recall seeing this certification.

8 MR. CHEWCASKIE: And, unfortunately, Judge,  
9 neither did we, so now we're put at a disadvantage  
10 because I have a certification that I never had the  
11 opportunity to respond to.

12 MS. ROSA: Judge --

13 MS. KUMAR-THOMPSON: And they're saying that  
14 we didn't --

15 THE COURT: One at a time. Go ahead.

16 MS. ROSA: If I may, regardless of whether  
17 the certification is there, I -- obviously as an  
18 officer of the court, Mr. Espinosa is saying he filed  
19 it, he filed it. I don't even think we need that. I'm  
20 a plaintiff in this case. Out of all the counsel that  
21 are sitting here, I'm the only person that drives that  
22 roadway every single day. I think out of everybody in  
23 this courtroom I'm the only person that goes that way  
24 every day. So, I know personally --

25 MS. KUMAR-THOMPSON: I disagree.

1 MR. CHEWCASKIE: We all disagree.  
2 MS. ROSA: If you would. If you would.  
3 THE COURT: All right. One at a time.  
4 MS. ROSA: I allowed you guys.  
5 THE COURT: Go ahead.  
6 MS. ROSA: I know personally that you cannot  
7 get off of the highway and use Leonia's side roads. I  
8 know that because I try to do it every day. There's a  
9 sign there that tells me I can't go through. I can't  
10 go through, and I can't come back. So, the fact that  
11 counsel says it has no impact and you could only -- you  
12 can turn on a light, but you can't turn on a non-light,  
13 it's ridiculous. Because if you can't use that last  
14 exit in Leonia, you then have to go to the bridge,  
15 which is Lemoyne Ave. And the traffic from Lemoyne  
16 Ave. is backed up all the way past Leonia.  
17 So, the options of any person that commutes  
18 is go to New York City bridge or don't get off at  
19 Leonia. It's as basic as that. So, even if Mr.  
20 Espinosa's certification isn't here, which I'm sure he  
21 can produce, it's just common sense. That's all it is.  
22 MR. ESPINOSA: Your Honor, if I may, I have a  
23 time-stamped copy of the certification filed with  
24 eCourts.  
25 THE COURT: Okay.

1 MR. CHEWCASKIE: Judge, unfortunately, we  
2 don't have it. It wasn't part of the original  
3 submission with eCourts.  
4 THE COURT: Let me -- let me just try to  
5 clarify for the record. It has a time stamp on  
6 eCourts?  
7 MR. ESPINOSA: Yes, Your Honor. May --  
8 THE COURT: Yes. The officer will bring it.  
9 MR. ESPINOSA: Thank you.  
10 THE COURT: It is time-stamped in eCourts,  
11 July 11th. Okay. It's funny because we don't have it  
12 in our system either, but it is -- you do definitely  
13 have an eCourts stamp on top.  
14 MR. CHEWCASKIE: Judge, I'm looking for what  
15 we downloaded from eCourts, and I don't have a  
16 certification.  
17 MR. ESPINOSA: Your Honor, I even sent an e-  
18 mail copy as a courtesy copy to counsel.  
19 MS. ROSA: Yeah. Judge, I actually have that  
20 as well. That was sent on July 11th at 7:41 p.m. to  
21 myself and opposing counsel, a courtesy copy.  
22 MR. ESPINOSA: So, not only did I file it on,  
23 Your Honor --  
24 THE COURT: It was filed at 7:24.  
25 MR. ESPINOSA: I also sent a courtesy copy to

1 counsel. And they actually -- our statement of  
2 material facts was based on this, and they responded to  
3 our statement of material facts, which are based on Mr.  
4 Heeston's certification, Your Honor. And it's  
5 undisputed factually, they -- Leonia did not submit the  
6 ordinance to DOT for approval.

7 THE COURT: Okay. You can look at that.  
8 Okay. All right. It does appear that the facts set  
9 forth in the certification are not disputed and that is  
10 that on any roadway where there's no traffic control  
11 system, you cannot turn off of the state road.

12 MR. CHEWCASKIE: Well, Judge, I would like to  
13 see the certification. But, you made the suggestion  
14 that you wanted --

15 THE COURT: I'm telling you what I'll do.  
16 Now that I've seen the certification --

17 Let him see the certification, Counsel.

18 MR. CHEWCASKIE: And the other -- the other  
19 aspect, Judge, well, I may want the certification  
20 reviewed by my experts, Judge.

21 THE COURT: It's not an expert. I don't need  
22 an expert certification. If he's right --

23 MR. CHEWCASKIE: Well, he's a traffic  
24 engineer. Maybe my traffic engineer --

25 THE COURT: If he's right that you can't turn

1 off the road on all of those streets, I don't need an  
2 expert.

3 MR. ESPINOSA: Your Honor, it addresses the  
4 applicable regulation.

5 THE COURT: Yes.

6 MR. ESPINOSA: And there's a, b and c of the  
7 regulation for two of those subsets, it addresses those  
8 factually. So, that's functionally and factually  
9 undisputed in accordance with the rules of court.

10 MR. CHEWCASKIE: Well, there's a false  
11 statement in this certification, Judge.

12 THE COURT: Which is?

13 MR. CHEWCASKIE: Paragraph 15. "To my  
14 knowledge, the DOT has received no request from Leonia  
15 to act upon any of the potential options included in  
16 the DOT's letter of May 8, 2018."

17 MR. ESPINOSA: Your Honor, he -- Counsel is  
18 referring to the -- after the fact.

19 THE COURT: After the fact.

20 MR. CHEWCASKIE: No, no. This is what --

21 THE COURT: I'm not -- I'm asking you to look  
22 at the streets that he says you cannot turn off of a  
23 state roadway on. Is that accurate? That's all I want  
24 to know. This is fact, not expert.

25 MR. CHEWCASKIE: Judge --

1 THE COURT: I'll make the determination  
2 whether it violates the statute.

3 MR. CHEWCASKIE: And the -- and the answer to  
4 that is, I don't know until I look at my map.  
5 Paragraph 11, he lists, like, about 15 streets. There  
6 may have been signs removed. There may not have. I  
7 don't know if that's accurate.

8 THE COURT: I'm not asking if the signs have  
9 been removed or not. It's the ordinance I care about.

10 MR. CHEWCASKIE: Has the ordinance been  
11 amended? The answer is no. But have signs been  
12 removed and not enforced on certain streets? The  
13 answer is yes. As a matter of fact, the ordinance has  
14 not been enforced.

15 THE COURT: Okay.

16 MR. ESPINOSA: Your Honor, --

17 MR. CHEWCASKIE: I mean, I can't say why we  
18 did not receive this, but we didn't receive it.

19 THE COURT: All right.

20 MR. CHEWCASKIE: And the suggestion that you  
21 made about taking the deposition of the police chief,  
22 maybe all that -- the suggestion that I would make is  
23 that maybe the DOT commissioner should send us a letter  
24 within 30 days setting forth the reasons whether the  
25 ordinance is approved or not.

1 THE COURT: No.

2 MR. CHEWCASKIE: Instead of doing this.

3 THE COURT: Instead of doing what? I have an  
4 application --

5 MR. CHEWCASKIE: I understand.

6 THE COURT: -- that says your ordinance is  
7 invalid. That's what's in front of me. I'm not here  
8 to tell people what they should do and how they should  
9 settle cases and who should do what. It's a simple  
10 question before me. Is the ordinance valid or invalid?  
11 That's all I'm here to decide. I'm not Solomon. I'm  
12 not the governor. I'm not the commissioner. I'm not  
13 the mayor. The simple question is, is the ordinance  
14 valid? That's what's before me today.

15 MR. CHEWCASKIE: And if DOT commissioner  
16 approval is required, then the DOT commissioner needs  
17 to act and set forth the reasons why.

18 THE COURT: Well, maybe the DOT commissioner  
19 needs an application with the actual ordinance and then  
20 maybe you'll get a decision. But I don't know the  
21 answer to that, and quite frankly, for the record, it's  
22 irrelevant. The motion before me is simple. Is it a  
23 valid ordinance or not? That's what's before me.

24 MR. CHEWCASKIE: Because then we're back  
25 here, Judge, in 30 days.

1 THE COURT: I don't know the answer to that.  
2 And hopefully Ms. Rosa won't be in the case and you  
3 won't be back here because the only reason you're in  
4 Hudson County is because of Ms. Rosa.

5 No offense.

6 MS. ROSA: None taken.

7 MR. CHEWCASKIE: There's no other place I'd  
8 rather be, Judge.

9 THE COURT: All right. Let's talk about your  
10 motion as to Ms. Rosa. It appears counsel and Ms. Rosa  
11 -- I'll refer to Ms. Rosa instead of counsel so it's  
12 not confusing, even though you are counsel. Or I'll  
13 refer as Counsel Rosa.

14 Counsel, it appears that in your amended  
15 complaint, you have two counts dealing with  
16 constitutional issues. Count 6 is the constitutional  
17 right to travel, a Fifth Amendment violation. Count 7,  
18 an ICC clause violation. Given what we received in  
19 terms of the cross-motion in opposition, how does this  
20 Court make a determination now on a summary judgment  
21 motion, giving all benefits of factual disputes to the  
22 municipality? How can I, on a summary judgment level,  
23 find that they have violated the Fifth Amendment and  
24 the ICC clause based upon the certifications and the  
25 opposition that's been submitted?

1 MS. ROSA: Well, Your Honor, I think one goes  
2 with the other. If Your Honor finds that the ordinance  
3 is invalid, then obviously, Leonia has delayed in  
4 taking down their signs for months now since the DOT  
5 and the AG came out and said this ordinance is invalid.  
6 It needs to come down.

7 So, in that respect every day that I cannot  
8 travel on a public roadway, my constitutional right is  
9 violated. It's in my brief and it says, and I'll just  
10 read it very briefly:

11 "The constitutional right to travel from one  
12 state to another and necessarily use the highways of  
13 interstate commerce occupies a position fundamental to  
14 the concept of our federal union. It is a right that  
15 has been firmly established and repeatedly recognized."

16 It is a basic right to be able to travel  
17 freely. When you block a public roadway and say only  
18 residents that live here can use the roadway, and then  
19 you turn around and say, well, not only residents, but  
20 if you are doing business in our town --

21 THE COURT: At certain times of the day.

22 MS. ROSA: -- at certain times of the day,  
23 then you can use our roadway. So, if Your Honor finds  
24 that the ordinance is invalid, then I'm asking the  
25 Court to also find that they went above and beyond to



1 keep the ordinance in play when they should have taken  
2 it down. They basically are doing something that they  
3 know they can't win, and by doing that every day that  
4 goes by that they keep those signs up, they continue to  
5 purposely violate my right to travel.

6 THE COURT: Well, when we were here last  
7 time, I believe counsel indicated that they were not  
8 enforcing the ordinance, they were not issuing  
9 summonses, and in terms of your claims, you know,  
10 especially in the punitive damage aspect of it, even  
11 the cases you cite, which you put the language in, is  
12 that the official's conduct is malicious, intentional,  
13 recklessly, or callously indifferent to the protected  
14 rights. I think based on what has been submitted by  
15 the certifications of the police chief and the mayor as  
16 well as the legal arguments concerning construction of  
17 the statute, while I may have a disagreement with  
18 counsel, I don't know how that rises on a summary  
19 judgment level for me to make that determination.

20 MS. ROSA: Well, Judge, I want to address the  
21 first thing you said, was -- which was, well, they're  
22 not enforcing it. Well, why aren't they enforcing it?  
23 Do they believe that it's a valid ordinance or not?

24 THE COURT: I thought --

25 MS. ROSA: If they're not enforcing it and

1 they're saying, well, we put these signs up but we're  
2 not giving anyone tickets, so are you just using it as  
3 a scare tactic? Do you not really believe in your own  
4 ordinance? And if that is the case, then that is  
5 reckless.

6 THE COURT: Well, but that's a factual  
7 discovery dispute. I was under the impression that  
8 they made that statement during the application for a  
9 preliminary injunction saying we are not enforcing  
10 anything, we are not issuing summons, and --

11 MS. ROSA: Counsel cited again --

12 THE COURT: -- we are awaiting the decision  
13 of the Court. That's what I thought was said.

14 MS. ROSA: Counsel cited -- he cited again  
15 today. In the long speech he gave, he said it again.

16 THE COURT: Right, but what I'm saying is  
17 that becomes a factual dispute. I don't know why they  
18 didn't take the signs down or why -- they're waiting  
19 for a decision of the Court perhaps. I don't know.  
20 I'm just saying at a summary judgment standard, am I in  
21 a position to say there's no material factual disputes  
22 that would lead me to say there's definitely a  
23 constitutional deprivation that requires the award of  
24 punitive damages.

25 I don't think because I find the statute



1 invalid, if I do find the ordinance invalid because of  
2 a New Jersey statutory requirement that they obtain the  
3 approval of the commissioner, would automatically  
4 equate to a constitutional deprivation. Especially in  
5 light of the case involving Virginia where the Supreme  
6 Court overruled the State of Virginia and said  
7 residents and non-residency is not a suspect  
8 classification and that there could be an occasion when  
9 restrictions are placed on non-residents that would  
10 meet the police power of the municipality. I don't  
11 know the answers to all of those, at least at this  
12 juncture, for either side to get summary judgment on  
13 the constitutional issue.

14 I'm in a position to make a decision as to  
15 the statutory violation, but that's not the type of  
16 statutory violation that I think -- and I haven't seen  
17 a case that says that that automatically rises to a  
18 level of the deprivation of your constitutional rights.  
19 That's a difficulty I have with the motion regarding  
20 constitutional deprivation and punitive damages.

21 MS. ROSA: I understand, Your Honor. My  
22 arguments have been laid out in the papers.

23 THE COURT: Okay. All right.

24 MS. KUMAR-THOMPSON: Your Honor, if I believe  
25 we have a cross motion to dismiss.

1 THE COURT: Sure. Go ahead.

2 MS. KUMAR-THOMPSON: First of all, Your Honor  
3 pointed out something interesting and we also pointed  
4 it out in the footnote. The Fifth Amendment doesn't  
5 apply to local government. It only applies to state  
6 government, and therefore, insofar as there is a claim  
7 for a deprivation of constitutional rights, under the  
8 Fifth Amendment, that claim fails as a matter of law.

9 In addition, the interstate commerce clause  
10 claim also fails because there has been no facts set  
11 forth in the complaint that there has been any impact  
12 to interstate commerce.

13 In addition, there are several other reasons  
14 why Ms. Rosa's complaint fails to state a claim for  
15 constitutional deprivation of rights. We all know that  
16 time, manner, place restrictions on constitutional  
17 rights are appropriate to be placed on any  
18 constitutional right. Just like the First Amendment,  
19 we have a First Amendment right but we cannot scream  
20 fire in a crowded movie theater.

21 There is no violation -- and you're correct,  
22 Your Honor, there's no violation of constitutional  
23 rights based on a claim that it violates a state  
24 statute. Section 1983 is a vehicle to remedy federal  
25 constitutional rights and not state law violations if

1 Your Honor finds that.

2 THE COURT: But let me just ask you this.  
3 One of the -- one of the aspects that was discussed  
4 earlier, or one of the concerns that I'll raise is we  
5 have this yellow tag situation. If you have a yellow  
6 tag, you're not going to be stopped. Okay?

7 While I was told that no summonses were  
8 issued, what I don't have is that no one without a  
9 yellow tag wasn't stopped. And I have a problem that  
10 you can just stop someone and ask them where they're  
11 going. That's what I haven't heard. I have heard that  
12 there were no summonses issued. I have heard that  
13 signs were taken -- some signs were taken down. What I  
14 don't have in front of me -- and this is what I said.  
15 I don't have a factual record for the constitutional  
16 deprivation argument -- is whether or not any drivers  
17 were stopped and questioned because they did not have a  
18 yellow tag.

19 MS. KUMAR-THOMPSON: Your Honor, also,  
20 Section 1983 claims are not to be brought for the  
21 abstract violation of a constitutional right. So long  
22 as Ms. Rosa has never claimed that she's ever been  
23 stopped because she did not have a yellow tag, she  
24 cannot bring a Section 1983 claim.

25 MR. CHEWCASKIE: Judge, and perhaps I can

1 answer your question. The original letter from the  
2 Attorney General's Office I believe was March 6th. And  
3 it was attached to Chief Rowe's certification. There  
4 was a direction from the Attorney General not to  
5 enforce the ordinance. As indicated in Chief Rowe's  
6 certification, it has not been enforced.

7 I can't affirmatively state today has anyone  
8 been stopped, but my belief is no one has been stopped.  
9 The ordinance is not being enforced. I don't believe  
10 any officers are stopping any individual on any local  
11 roadway requesting where they are -- where they are  
12 going, but I cannot affirmatively state that today.

13 THE COURT: Let me -- let me ask this  
14 question, and then I'll give you an opportunity.

15 MS. ROSA: Thank you, Judge.

16 THE COURT: Let me ask this question. That  
17 was all in March. When did the ordinance take effect?

18 MR. CHEWCASKIE: The ordinance took effect in  
19 January, Judge.

20 THE COURT: Okay. So, from January to March,  
21 plaintiff asserts she didn't turn down any of the  
22 streets, didn't avail herself of any other way because  
23 of the potential that she would be issued a summons or  
24 be questioned. Isn't that part of her allegations?  
25 Maybe she hasn't specified that, but...

1 MR. CHEWCASKIE: That may be part of the  
2 allegations in the complaint. But again, Judge, we  
3 don't have a certification or anything else.

4 THE COURT: No. Well, that --

5 MR. CHEWCASKIE: And, you know, that may be  
6 merits on discovery, but I won't say that there was an  
7 education program that was commenced by the police  
8 department after the ordinance was enacted. But since  
9 it was enacted, it's -- no summonses have ever been  
10 issued.

11 THE COURT: Okay.

12 MR. CHEWCASKIE: Even prior to --

13 THE COURT: No, no.

14 MR. CHEWCASKIE: -- and the Attorney General

15 --

16 THE COURT: But again -- and I appreciate  
17 that and I understand that, but remember, even though  
18 no summonses were issued, as I said, if you have a  
19 litigant who says, this is what the sign said, I'm not  
20 going to take a chance and turn down there, how is that  
21 -- again, I don't know, because you're right, I don't  
22 have factual certifications on that issue. I'm just  
23 saying out loud why I don't think I'm going to make a  
24 decision today either way on the constitutional  
25 argument.

1 But you did -- you know, you've put your  
2 statement on the record. Counsel put her statement on  
3 the record.

4 MS. ROSA: Judge, I just want to quickly just  
5 address those two things.

6 THE COURT: Yeah.

7 MS. ROSA: The first, Ms. Kumar said, well,  
8 because I didn't get -- I haven't been stopped for not  
9 having a yellow tag, I don't have a right to make that  
10 complaint. That's like saying, well, you never got a  
11 speeding ticket because you didn't speed. Well, I know  
12 not to speed so that's why I didn't get a speeding  
13 ticket. I know for a fact those first few days after  
14 the ordinance was put in place, there was a line of  
15 traffic being stopped and being asked, where are you  
16 going? People with children in their cars dropping  
17 them to school who live in a different district were  
18 being stopped. Why would I then choose to go there, be  
19 stopped and questioned on my way to work?

20 THE COURT: I agree with that. I'm just  
21 saying that that's one of the disputes here. I don't  
22 have a factual record for the constitutional claims.  
23 That's all. I'm not ruling in anybody's favor today on  
24 the constitutional claims. I think that's what I'm  
25 trying to establish. That I think I need a better

1 factual record on if the parties wish to pursue the  
2 constitutional claim after I make my decision on the  
3 Deputy Attorney General's application.

4 But I don't think at this juncture, I'm in a  
5 position -- I don't think it's ripe for summary  
6 judgment.

7 MS. KUMAR-THOMPSON: Your Honor?

8 THE COURT: Yes.

9 MS. KUMAR-THOMPSON: Can I just make one  
10 point?

11 THE COURT: Sure.

12 MS. KUMAR-THOMPSON: However, this is a  
13 substantive due process claim, not a free speech claim.  
14 It's only free speech claims in which a plaintiff is  
15 entitled to assert this chilling effect, not on the  
16 substantive due process claim. And that's just the  
17 last thing that I did want to point out. There is  
18 distinction between those two constitutional rights and  
19 whether or not you can bring a Section 1983 claim based  
20 on the right to travel, just based on the fact that  
21 you've been chilled in your right to travel.

22 THE COURT: All right. Anything else that  
23 counsel wants to put on the record?

24 MS. ROSA: No, Judge.

25 MR. ESPINOSA: No, Your Honor. Thank you.

1 MR. CHEWCASKIE: Judge, just briefly. And I  
2 think we addressed this when you were asking your  
3 questions. I think you have to look at the  
4 interrelationship of the statute. There is nothing in  
5 the statute that precludes the adoption of a traffic  
6 ordinance.

7 THE COURT: Agreed.

8 MR. CHEWCASKIE: Okay. Then you go to the  
9 next step. What does the traffic ordinance cover? I  
10 will submit to Your Honor that, certainly, this  
11 ordinance covers not -- I should say, covers local  
12 streets, but it also covers local streets within close  
13 proximity of Route 93. I agree with Mr. Espinosa in  
14 that regard.

15 Those controlled intersections, any signage  
16 was, in fact, removed. I think when we were at the  
17 preliminary injunction, I recall that that occurred,  
18 because that's something we said we would do. We  
19 didn't want to have that impact on those controlled  
20 intersections on Route 93.

21 But there are a number of streets as you go  
22 further east from Route 93 which would not meet the  
23 regulatory definition of impact. And I look at this  
24 very simply. It basically says, you cannot enforce an  
25 ordinance in Section 8 of the statute if you need the

1 commissioner's permission and until you get the  
2 commissioner's permission. So, the ordinance is  
3 adopted, but the commissioner hasn't done anything.

4 And there's nothing that I see in the various  
5 responses that we had, and again, not seeing the  
6 certification but looking at what was said, you know,  
7 the traffic engineer for the DOT says, well, we haven't  
8 heard anything since May 8th. That's not accurate.  
9 May 10th, there's a comprehensive response. We're now  
10 here approximately four months later, and there still  
11 is no response.

12 You know, when we were here, we expected,  
13 okay, we have a response. We'll deal with it and  
14 everything else. It's outside the Court's purview. As  
15 you said, it could be a settlement or whatever.  
16 Absolute silence as it's determined here.

17 I mean, the way that we would expect it to  
18 work, and I think the Court would expect it to work is  
19 that the agency that is supposed to have the expertise  
20 would respond. They don't want to respond. I don't  
21 know why, but they don't want to respond. You  
22 suggested that perhaps we have to bring a separate  
23 action. I would rather for them to respond, but in  
24 this case, the decision, if the Court says you needed  
25 the commissioner's approval to put up those signs along

1 Route 93 on those local roadways, then it's a limited  
2 decision and what's the remedy?

3 The remedy is exactly what is occurring  
4 today: is that the ordinance is not enforced. And  
5 that's what the Attorney General suggested on March  
6 6th, and since enactment of the ordinance, it hasn't  
7 been enforced. That's what the plain statutory  
8 language says. It says -- it doesn't say you can't  
9 adopt an ordinance. It says, if you adopt an ordinance  
10 and it has this impact, which we disagree, but if it  
11 has this impact, you need to get the commissioner's  
12 approval.

13 And the ordinance is not to be enforced until  
14 you get that approval. Okay. I have the ordinance.  
15 The Attorney General may disagree and you may disagree,  
16 but the answer is, the remedy is, don't enforce it. It  
17 doesn't say, you can't do this. It says, you can't  
18 enforce it. That's right in Section 8A. So, that's  
19 why I'm trying to say very simply if that's the case  
20 and you disagree with my opinion, then those streets  
21 that adjoin Route 93 that meet the definition that was  
22 set forth in -- I hope I say his name right -- Mr.  
23 Heeston's certification, those are the streets where he  
24 says there's impact, but not the other streets. And,  
25 therefore, we won't enforce the ordinance on those

1 streets if you determine I need the commissioner's  
2 approval. And the adopted ordinance is just that, it  
3 sits there until the commissioner takes an action.  
4 That's our point, Judge. Although I disagree that I  
5 need the commissioner's approval to deal with solely  
6 local traffic concerns, if the sole issue now is that  
7 you have signs along Route 93, fine. We're not  
8 enforcing. The commissioner could act. If they want  
9 me to send something out, we'll send something out, and  
10 the commissioner could act.

11 What's interesting is that the statute  
12 doesn't say when the commissioner should act. The  
13 commissioner has been aware of this since March of  
14 2018, and we have dead silence.

15 THE COURT: I don't think that's fair to say  
16 since March you had dead silence. There were meetings  
17 and there was a letter --

18 MR. CHEWCASKIE: You're right, you're right.  
19 So, I'll give you another --

20 THE COURT: I understand your frustration,  
21 but let's be a little -- let's make the record somewhat  
22 accurate.

23 MR. CHEWCASKIE: I'll give you -- I'll give  
24 you, it was dead silence since May 10th.

25 THE COURT: No. You got a motion.

1 MR. CHEWCASKIE: Yes, I did.

2 THE COURT: We got a motion, I should say.

3 MR. CHEWCASKIE: But in any event, I think  
4 that's what you have to do. You have to look at the  
5 statute. What does the statute say?

6 THE COURT: Okay.

7 MR. CHEWCASKIE: I mean, you know, we're  
8 dealing with formover substance now, because if the  
9 procedure is to say, okay, Mr. Chewcaskie, don't  
10 enforce your ordinance, send it to the commissioner,  
11 the commissioner will act and set forth her reasons as  
12 to the validity of that ordinance. And then the  
13 commissioner has a duty because it talks about undue  
14 impact. So it defines it even further since it's not  
15 just an impact. I think the process is -- you know,  
16 and I'll agree with Mr. Espinosa.

17 The process is, if there's an impact, you go  
18 through this, but the commissioner then has to make  
19 certain determinations, and it has to be more than just  
20 the regulatory definition of impact.

21 THE COURT: Let me ask you this question  
22 since we're talking about 8A. There's also a provision  
23 that says prior to the adoption of any municipal or  
24 county ordinance, resolution or regulation which places  
25 any impact on roadways in an adjoining municipality or

1 county, the governing board or body of the municipality  
2 or county shall provide appropriate notice to the  
3 adjoining municipality or county.

4 What notice was provided?

5 MR. CHEWCASKIE: Chief Rowe took care of the  
6 notice. He was acting as the administrator at that  
7 time. He met with all the adjoining police chiefs as  
8 set forth in the certification. And Judge, before we  
9 even get there, impact on a surrounding community;  
10 there isn't any.

11 THE COURT: No. It says any impact on  
12 roadways.

13 MR. CHEWCASKIE: Right.

14 THE COURT: There isn't any?

15 MR. CHEWCASKIE: No. Fort Lee Road, Broad  
16 Avenue, Grand Avenue, where you traverse between the  
17 various communities, are unrestricted. No community,  
18 when I looked -- and I'm looking around the courtroom.  
19 I don't see Teaneck, Fort Lee, Englewood, or Palisades  
20 Park here. Those are the adjoining communities. In  
21 fact, as set forth by Police Chief Rowe, the traffic  
22 has improved in Fort Lee as a result of this.

23 So, until there is some evidence that there  
24 is impact on the surrounding communities, to me, the  
25 notice issue is moot. But even if that was the case,

1 certainly notice was provided by Chief Rowe in his dual  
2 capacities at that time by meeting with the various  
3 police chiefs of every community as set forth in his  
4 certification. It's not disputed.

5 THE COURT: Okay.

6 MR. CHEWCASKIE: Thank you, Your Honor.  
7 That's all I have.

8 THE COURT: So, the relief that's being  
9 requested is that the ordinance be legally invalid  
10 because there was not approval by the commissioner, and  
11 that they're enjoined and restrained from enforcement  
12 of the ordinances. That's the relief that's being  
13 requested. I'm reading the order. Is that correct?

14 MR. ESPINOSA: Yes, Your Honor.

15 THE COURT: Okay. All right. As I said, the  
16 matter has been extensively briefed --

17 MS. ROSA: Judge, I just want to include that  
18 my order was a supplement to Mr. Espinosa's order.

19 THE COURT: Yes.

20 MS. ROSA: And it does say on my order that  
21 Leonia should take down the signs and issue a notice to  
22 the community. Basically the opposite of what they did  
23 the first time, which was tell everyone you can't use  
24 the streets. Now they should take down the signs and  
25 tell everyone -- if Your Honor finds that it is an



1 invalid ordinance, there should be a release saying to  
2 all the surrounding towns and communities that the  
3 streets are reopened.

4 THE COURT: Why would I order them to do  
5 that? If I order them to take the signs down, doesn't  
6 that tell people that they can turn on the street?

7 MS. ROSA: Well, I think in the beginning of  
8 this, they also -- the reason why people are not using  
9 those streets in addition to there being signs now and  
10 in their original brief was because of Waze and Google  
11 Maps and they actually went to Waze and had Waze put up  
12 blocks on Waze so that people traveling cannot use  
13 those roads. If they look on their phone, it'll be a  
14 big red block that says don't use these.

15 So, there has to be the inverse of that to  
16 know that -- if someone is not watching the news or  
17 listening to this oral argument or following eCourts,  
18 they're not going to know if I'm on Route 4 I can turn  
19 back off the street without getting a ticket. There  
20 has to be some sort of public notice.

21 MR. CHEWCASKIE: And, Judge, we're going  
22 outside the record again. What the statute says is the  
23 remedy is that the ordinance is not enforced. It  
24 doesn't say anything about taking down the signs. It  
25 doesn't say anything about --

1 THE COURT: Well, the remedy being requested  
2 is to take down the signs, because --

3 MR. CHEWCASKIE: Right. But there's no  
4 statutory authority for that, Judge.

5 THE COURT: Well, I just think it would be  
6 common sense if I'm inclined to invalidate an  
7 ordinance, I'm not going to leave the signs up. That's  
8 giving contrary notice to the public.

9 MR. CHEWCASKIE: And Judge, I may do a new  
10 ordinance tomorrow and send it to the DOT, which would  
11 permit me to do so.

12 THE COURT: Well, you may, but that has  
13 nothing to do with the ruling that I'm going to make  
14 whether it's valid or invalid. If the ordinance is  
15 invalid, the signs have to come down.

16 The other issue in terms of what notice has  
17 to be given, I don't -- I'm not aware of what was done  
18 by the Borough. So, anything that was done by the  
19 Borough to enforce the ordinance is going to have to be  
20 undone if I declare an ordinance invalid. I'll make it  
21 that general. I don't know what was done.

22 MR. CHEWCASKIE: But I don't know what that  
23 means, Judge.

24 THE COURT: Well, anything that the Borough  
25 did to enforce the ordinance needs to be undone. I



1 don't know what they did. I don't know what they told  
2 Waze or Google Maps. If they blocked off a road  
3 because of the ordinance, they have to unblock the road  
4 if I declare the ordinance invalid. I mean, let's not  
5 get too crazy here. This is common sense.

6 Let's make a silly example. If I  
7 decriminalize marijuana possession, you don't get  
8 arrested for marijuana possession. I don't get to  
9 arrest somebody and wait and see if they know whether  
10 it's a crime or not. This is not -- let's be fair  
11 here.

12 MR. CHEWCASKIE: And I am being fair, Judge,  
13 because as I said, there were no summonses that have or  
14 will be issued.

15 THE COURT: I know, but Counsel, let's talk  
16 about that. I decide to put signs up on all my streets  
17 that say do not enter unless you live in Jersey City.  
18 I don't -- you know, my ordinance is declared invalid,  
19 or I don't have an ordinance. You don't think someone  
20 can challenge that, that I put those signs up telling  
21 them you can't come down the street unless you live in  
22 Jersey City?

23 MR. CHEWCASKIE: Certainly they can, Judge.

24 THE COURT: And that's what they're doing  
25 here.

1 MR. CHEWCASKIE: And that's...

2 THE COURT: That's what both parties are  
3 doing.

4 MS. KUMAR-THOMPSON: Your Honor, if I may,  
5 Ms. Rosa, I believe her application for some type of  
6 mandamus action on behalf of the Borough of Leonia is  
7 improper, because that action is not pertaining to her.  
8 She doesn't represent the people of the State of New  
9 Jersey and she certainly doesn't represent the public.  
10 And I do believe that in Cedar Grove it says that she  
11 cannot ask for such relief, that citizens of the State  
12 of New Jersey cannot ask municipalities to do certain  
13 things with their traffic organizations in an action in  
14 lieu of prerogative writs.

15 So, just technically speaking, perhaps if  
16 that was a remedy that the AG had asked for, we  
17 wouldn't be so opposed to it, but in this case, it's  
18 not being asked by the Attorney General. It is being  
19 asked by Ms. Rosa.

20 THE COURT: You're saying that Ms. Rosa has  
21 no standing to file a prerogative writ action that this  
22 ordinance has an impact on her?

23 MS. KUMAR-THOMPSON: I do -- yes, because she  
24 hasn't proven that it's been enacted by undue bad  
25 faith, undue influence, or was arbitrary or irrational

1 at this point in time. So, her requested relief should  
2 not be granted.

3 THE COURT: Okay. Anything else?

4 MS. ROSA: No, Judge.

5 MR. CHEWCASKIE: Nothing further, Judge.

6 THE COURT: Okay. All right. As I said,  
7 this application has been brought before the Court  
8 initially by an application by Jacqueline Rosa and then  
9 joined by the State of New Jersey, Department of  
10 Transportation. This involves ordinances passed by the  
11 Borough of Leonia regarding restricting traffic on  
12 their roadways during certain hours of the day,  
13 differentiating between resident and non-resident  
14 drivers. And also, amended regarding whether or not  
15 the driver is going to or coming from a Leonia  
16 destination.

17 Two actions have been filed. As I said, the  
18 initial one by Jacqueline Rosa in which she asserts  
19 claims regarding the validity of the ordinance as well  
20 as constitutional claims under count 6 and 7.

21 The State of New Jersey has filed -- they are  
22 intervened and their position has been that the  
23 ordinance is invalid because it violates N.J.S.A. 39:4-  
24 8, principally paragraph (a) subparagraph (3)  
25 indicating:

1 "Notwithstanding any other provision of this  
2 section to the contrary, any municipal or county  
3 ordinance, resolution or regulation which places any  
4 impact on a state roadway shall require the approval of  
5 the commissioner."

6 And in their papers as well as in our  
7 colloquy, highlighting the terms "notwithstanding any  
8 other provision of this section to the contrary," and  
9 "shall require the approval of the commissioner."

10 The Borough of Leonia takes the position that  
11 that has to be read in conjunction with other statutes  
12 under Title 39, and primarily, the Borough of Leonia  
13 relies on N.J.S.A. 39:4-197(e). And 197 talks about  
14 what ordinances or resolutions that municipalities may  
15 pass without the approval of the commissioner and  
16 consistent with the current standards prescribed by the  
17 Manual on Uniform Traffic Control Devices for Streets  
18 and Highways.

19 Paragraph (e) states:

20 "Regulating the passage or stopping of  
21 traffic at certain congested street corners or other  
22 designated points, including the establishment of  
23 multi-way stop controls."

24 There are other aspects referred to in the  
25 briefs and moving papers, and as I said, many items

1 have been extensively briefed by counsel and are  
2 certainly part of the record, but in terms of the  
3 Court's decision today, the Court does not find them  
4 relevant and is not going to repeat all of the  
5 arguments that are set forth in the briefs, but  
6 certainly, they are part of the record, and the Court  
7 acknowledges that; that they address several issues.

8 The Court's decision today will be limited to  
9 whether or not Leonia, in their ordinance, has violated  
10 the provisions of N.J.S.A. 39:4-8A. Initially, there's  
11 an objection to the State proceeding by way of a  
12 declaratory judgment action or prerogative writ. We  
13 questioned counsel on that, and counsel feels that the  
14 -- neither the prerogative writ rule or the declaratory  
15 judgment action allows the State to proceed in the  
16 manner that it is proceeding.

17 The Court agrees with the reply by the  
18 Attorney General that in Abbott v. Beth Israel, 13 N.J.  
19 528, 541, as well as the New Jersey Turnpike Authority  
20 v. Parsons, 3 N.J. 235, 240, that the DOT has an  
21 interest in the validity of the ordinances that exceed  
22 Leonia statutory authority, and ignores the DOT  
23 statutory authority to review and approve measures  
24 concerning regulating a government -- governing traffic  
25 or traffic conditions under N.J.S.A. 39:4-8A.

1 If I were to follow the argument presented by  
2 counsel for the Borough, the Department of  
3 Transportation would be left powerless as to how to  
4 proceed in enforcing their statutory obligation.

5 Additionally, as I read earlier on the  
6 record, even if I was to accept the argument by  
7 counsel, the Cedar Grove case, which I read the passage  
8 earlier at page 273, talks about that:

9 "In the interest of individual justice along  
10 with the public interest, always bearing in mind that  
11 throughout our law we have been sweepingly rejecting  
12 procedural frustrations in favor of just and  
13 expeditious determinations on the ultimate merits."

14 So, even if I'm wrong and the Borough of  
15 Leonia is right, the Court will exercise its guidance  
16 as set forth in Cedar Grove v. Sheridan that I should  
17 not allow procedural frustrations to avoid a just and  
18 expeditious determination on the ultimate merits.  
19 However, the Court disagrees, and it should be noted  
20 with Leonia's position, that the Department of  
21 Transportation cannot ask for declaratory relief in  
22 this matter.

23 While the Court acknowledges and asserts that  
24 the arguments are not frivolous being presented by the  
25 Borough in the statutory construction, the Court

1 respectfully disagrees with their interpretation of the  
2 statutes. I believe that under the guidance of the  
3 Supreme Court case, and I believe it's the Prospero  
4 matter, which is cited by both parties, when I read the  
5 statute and the language about notwithstanding any  
6 other provision to the contrary, I believe it is clear  
7 and unambiguous and that this ordinance, whether in  
8 part or whole, requires the approval of the  
9 commissioner.

10 While there are some factual disputes  
11 regarding that aspect, they do not rise to the level of  
12 a material factual dispute that would negate the Court  
13 being able to rule on the summary judgment motion. It  
14 is disputed whether or not the ordinance has been  
15 submitted to the commissioner for approval. But one  
16 thing is not disputed, and that is that approval has  
17 not been provided by the commissioner, and that is the  
18 basis of the DAG's motion in this case. That's an  
19 undisputed material fact.

20 While the engineer's certification was filed  
21 properly, and apparently, was e-mailed, there is -- as  
22 counsel for the defendants indicated, they did not see  
23 it, but it is also undisputed that there are several  
24 roadways that are restricted that do either enter or  
25 exit off of the state roadway which is Route 93. So,

1 the Court can find that there are facts that establish  
2 that it impacts a state roadway without saying that we  
3 need an expert opinion.

4 Counsel has indicated that at the controlled  
5 intersections, the signage has been taken down, but on  
6 the uncontrolled intersections, the signage has not  
7 been taken down, so, therefore, there is an impact on a  
8 state roadway.

9 So, for those reasons in regards to the  
10 State's application that the ordinance is not valid,  
11 the Court agrees and will grant the summary judgment  
12 motion filed on behalf of the Department of  
13 Transportation.

14 In regard to Ms. Rosa's motion, Counsel  
15 Rosa's motion, an allegation has been made regarding  
16 her standing of timing. While the Court did discuss  
17 some of the claims, I'm not -- I do not believe that  
18 standing is lacking, because I don't see how, based  
19 upon counsel's representations, that she's not impacted  
20 by this ordinance both in the papers filed with the  
21 order to show cause as well as the application here.  
22 The bigger crux of Counsel Rosa's application deals  
23 with constitutional deprivation as set forth in count 6  
24 and 7.

25 And I think some of the legal arguments

1 presented by the Borough of Leonia are accurate. I'm  
2 not certain and I'm not stating as a matter of law that  
3 there is a constitutional deprivation. What I'm  
4 stating is that the summary judgment stage of this  
5 litigation as I indicated during colloquy, the Court is  
6 not confident enough that there's -- that there are no  
7 material factual disputes. The Court will acknowledge  
8 for the record that the Borough has provided extensive  
9 certifications indicating what went in to the decision-  
10 making process.

11 The Court acknowledges that at least based  
12 upon my review of those certifications, certainly there  
13 is no demonstration that the Borough acted arbitrary or  
14 capricious. There's nothing in the certifications to  
15 indicate that there was malicious intent at this stage,  
16 although as I said, as counsel has also -- both counsel  
17 have pointed out, more so the Borough, there has been  
18 no discovery in the case when these summary judgment  
19 motions were filed.

20 So, based on that aspect of it, if Counsel  
21 Rosa decides to proceed with her constitutional claims  
22 against the Borough, that's something that would  
23 require, I think, additional discovery before this  
24 Court is in a position to rule either on the motion for  
25 summary judgment or the cross-motion for summary

1 judgment on constitutional grounds.

2 As I said earlier when I made the decision at  
3 the preliminary injunction stage, based on the Supreme  
4 Court case involving the State of Virginia, it is not -  
5 - they have not made it clear that the distinction  
6 between residents and non-residents is a suspect  
7 classification. They have allowed states, when it is  
8 done within their proper police power -- and as I said,  
9 based on the certifications from the chief of police  
10 and the mayor, there is certainly factual support for  
11 the decision made by the public officials what is  
12 lacking is the approval of the commissioner.

13 So, for those reasons, the Court will grant  
14 the application for the Attorney General. In terms of  
15 Counsel Rosa's motion, I'm going to deny the  
16 applications for the constitutional relief. And since  
17 I've granted the Department of Transportation's  
18 application that the ordinances are invalid, that moots  
19 the other requested relief. So, the Court will grant -  
20 - the order proposed by the Department of  
21 Transportation states as follows:

22 "Traffic ordinances numbered 2017-19, 2018-2,  
23 and 2018-5, hereafter collectively referred to as The  
24 Ordinance of the Borough of Leonia, are hereby declared  
25 to be null and void and legally invalid as a matter of

1 law."

2 And then, "Leonina is hereby enjoined and  
3 permanently restrained from the further enforcement of  
4 these ordinances including but not limited to the use  
5 of signage regarding the ordinances, police officers  
6 notifying motorists about the ordinances, and the  
7 issuance of traffic citations based on the ordinance."

8 That's the order that will be entered by the  
9 Court with regard to the Attorney General's  
10 application. Let me just review. I think in terms of  
11 the order submitted by Counsel Rosa --

12 MS. ROSA: Mine -- Judge, mine basically says  
13 exactly what you just said.

14 THE COURT: Yeah. So, what I'm going to do,  
15 however, is I'm going to just say the application for  
16 relief under counts 6 and 7 are hereby denied without  
17 prejudice.

18 MS. ROSA: Okay.

19 THE COURT: Okay? Those are the  
20 constitutional claims. And the cross-motions for  
21 summary judgment will be denied as to both plaintiffs.  
22 The application regarding Counsel Rosa will be denied  
23 without prejudice because there may have to -- I think  
24 there would have to be some discovery and a further --  
25 if that's going to continue. I don't know whether

1 Counsel Rosa is going to pursue her constitutional  
2 claims or not. But I'm not in a position to rule for  
3 either side on that.

4 There was one issue that was raised in the  
5 opposition that I wanted to address. You indicated  
6 that 45-day period had passed, and I thought we had  
7 discussed this earlier, but --

8 MR. CHEWCASKIE: Judge, perhaps I can  
9 clarify.

10 THE COURT: Yeah.

11 MR. CHEWCASKIE: We did. When we were at one  
12 of the case management conferences, you asked about  
13 whether the time barred defense would be raised. I  
14 said since there are constitutional claims, I wouldn't  
15 raise the time barred defense, because there was a  
16 constitutional claim.

17 THE COURT: Okay. All right. Okay.

18 MR. CHEWCASKIE: And if I could just be heard  
19 briefly.

20 THE COURT: Sure. Absolutely, Counsel.

21 MR. CHEWCASKIE: Based upon your -- I  
22 apologize. New phone and I don't know how -- I thought  
23 I shut the thing off.

24 THE COURT: That's all right.

25 MR. CHEWCASKIE: Based upon Your Honor's

1 ruling, you invalidated the whole ordinance and didn't  
2 limit it to those that would have the -- what I'll call  
3 the impact on the state highway. That being the case,  
4 in all likelihood, I'll be introducing new ordinances  
5 next week. So, I would ask Your Honor for a stay of  
6 the decision either for the reintroduction of  
7 ordinances, or alternatively, for appeal. I don't know  
8 if you want a formal application for a stay.

9 MR. ESPINOSA: Your Honor, as Your Honor just  
10 ruled, there's no substantial likelihood of success on  
11 the merits because the ordinances are legally invalid.  
12 Counsel has not indicated what immediate and  
13 irreparable harm would occur, and in balancing the  
14 equities and the public interest, a denial is  
15 appropriate because the alternative would be to leave  
16 these legally invalid ordinances on the books  
17 potentially to be enforced. So, for those reasons,  
18 Your Honor, we respectfully object to this stay  
19 request.

20 MR. CHEWCASKIE: And I think the Court needs  
21 a little bit more information with regard to the stay,  
22 because the Court is certainly aware of what is  
23 happening with 495. That is creating an additional  
24 burden on traffic towards the George Washington Bridge.  
25 I don't really want to argue it now --

1 THE COURT: No, but Counsel, I'll address  
2 that. Let me -- let me just state, this Court is not  
3 unsympathetic to the plight of Leonia. The Court is  
4 well aware -- and that's why I put on the record that I  
5 have read the certifications of the chief of police and  
6 the mayor. But what's before me is a purely legal  
7 decision. While I understand and can appreciate and am  
8 sympathetic to the plight of the residents of Leonia,  
9 there's a reason the statute says what it says, and I  
10 understand what's happening to 495, but again, I don't  
11 want to make it sound like it's irrelevant.

12 It's irrelevant to my decision. It's not  
13 irrelevant to the people who live in Leonia, and it's  
14 certainly not going to be irrelevant to yours truly  
15 when I drive into work next week into Jersey City. I  
16 understand that. But I can't use that as a basis to  
17 grant a stay.

18 MR. CHEWCASKIE: And I understand, Judge. I  
19 just wanted to address the harm issue. You know,  
20 because when I read all the papers, there's a  
21 distinction between Grand Avenue and everywhere else.  
22 So, you know, I could, since you didn't invalidate a  
23 portion of the ordinance and invalidated the whole  
24 ordinance, --

25 THE COURT: Well, how do I -- how do I cut



1 and paste? I don't have those facts in front of me to  
2 cut and paste.

3 MR. CHEWCASKIE: Well, we may have been able  
4 to deal with that if we saw that certification, Judge,  
5 but that's -- that's -- we've spoken.

6 THE COURT: But I don't think it's my role to  
7 cut and paste on an ordinance like this that says the  
8 ordinance requires the approval. It doesn't say part  
9 of the ordinance. So, you did it as a whole -- not you  
10 personally -- as a whole.

11 MR. CHEWCASKIE: You can blame me. That's  
12 all right.

13 THE COURT: There's nothing that prevents the  
14 Borough from adopting a new ordinance. And if it  
15 doesn't impact the state roadway, we're not here. And  
16 I don't think the Department of Transportation has ever  
17 taken that position. What they're saying is, this is  
18 why it's invalid. The ordinance impacts a state  
19 roadway. That's the basis of my decision, that I  
20 believe Section (a) that I read trumps 197. And you  
21 disagree, because you think 197 excludes that paragraph  
22 of 4-A. We just have a fundamental disagreement over  
23 statutory construction.

24 MR. CHEWCASKIE: It wouldn't be the first  
25 time.

1 THE COURT: No. And it probably won't be the  
2 last time.

3 MR. CHEWCASKIE: But in any event, Judge, as  
4 I indicated, you know, maybe we'll make a formal  
5 application for a stay then.

6 THE COURT: You're certainly entitled to do  
7 that. I would hope that what I'm saying kind of tells  
8 you --

9 MR. CHEWCASKIE: I understand.

10 THE COURT: But you have the absolute right  
11 to do that.

12 MR. CHEWCASKIE: I need to do that if there's  
13 going to be an appeal. My expectation is based upon  
14 what I've heard from Your Honor, I'll probably have  
15 revised ordinances anyway that I will segregate various  
16 streets out.

17 THE COURT: Okay. And one other question,  
18 Counsel Rosa. Tell me about this Weehawken case that  
19 I'm not familiar with that you reference in your brief;  
20 that there were punitive damages awarded.

21 MS. ROSA: Oh, you have to go back to which  
22 one you're talking about.

23 THE COURT: You told us in your brief -- hold  
24 on a minute. I will find it. Of course, I couldn't  
25 find anything, and I would assume it would be here.



1 MS. ROSA: Tell me which one you're talking  
2 about.  
3 THE COURT: I think it's in your reply.  
4 MS. ROSA: The one that I just did on August  
5 27th?  
6 THE COURT: Let me just see. Let me make  
7 sure, because I have so much paperwork here. Or maybe  
8 it's in the original. Let me just see. It might be in  
9 the -- let me check your original one for punitive  
10 damages. Yeah. I think so, too. I have a -- oh.  
11 There was no cite given. I know I'm not crazy.  
12 Well, in any event, I guess you're not aware  
13 of the case where the Borough of Weehawken was  
14 penalized.  
15 LAW CLERK: I think it's on -- Judge, the  
16 (indiscernible - not on microphone) -- on page 6.  
17 THE COURT: Page 6?  
18 LAW CLERK: Yeah. It's before the --  
19 (indiscernible - not on microphone)  
20 MS. ROSA: Judge, is that from the order to  
21 show cause? Because that's not in my --  
22 LAW CLERK: No. It's from the brief in  
23 support of summary judgment.  
24 MS. ROSA: In my brief?  
25 THE COURT: Page 6?

1 LAW CLERK: Yes.  
2 MS. ROSA: Oh, I see what you're -- it's not  
3 a case, Judge.  
4 THE COURT: Oh.  
5 MS. ROSA: I think the law clerk is confused  
6 --  
7 LAW CLERK: It's right here, Judge.  
8 THE COURT: Yeah. Well, you said the town of  
9 Weehawken attempted to do the same on a smaller scale.  
10 MS. ROSA: Yes, yes. It's ongoing in current  
11 life. It's not a litigation or a case that was cited  
12 in a law book.  
13 THE COURT: Oh.  
14 MS. ROSA: It's right after Leonia put up  
15 their ordinance, --  
16 THE COURT: Oh, okay.  
17 MS. ROSA: -- Weehawken went -- they said,  
18 okay, well, we're going to take what they did. We're  
19 going to use their ordinance and their legal support  
20 and do the same thing.  
21 THE COURT: Oh, all right. Okay. I misread  
22 that. I thought you were telling me that damages were  
23 awarded against Weehawken.  
24 MS. ROSA: That would have made my life very  
25 easy, Judge.

1 MR. CHEWCASKIE: Weehawken adopted an  
2 ordinance, Judge.

3 THE COURT: Okay.

4 MR. CHEWCASKIE: Restricting access to  
5 various streets direct to the tunnel.

6 THE COURT: Okay. All right.

7 So, as I said before, I'm going to enter this  
8 order. Now, the problem is going to be whether or not  
9 -- if Leonia wishes to appeal, how the Appellate  
10 Division is going to interpret the order because the  
11 case is not over. The intervenor's case is technically  
12 over, but I don't know whether they will --

13 MR. CHEWCASKIE: We will need --

14 THE COURT: But I'll leave --

15 MR. CHEWCASKIE: No. We will need a motion  
16 for leave to appeal since the entire case has not been  
17 decided.

18 THE COURT: Right. Okay. Unless Counsel  
19 Rosa decides to abandon her constitutional claims.  
20 Then she can dismiss that and then you'll have a final  
21 judgment. But I need to know that because I'm going to  
22 have to schedule a case management conference on the  
23 constitutional claims in order for discovery because  
24 I'd like to get that more -- as expeditiously as  
25 possible. I don't think it requires a lot of

1 discovery.

2 Okay. Off the record, Cat.  
3 (Proceedings concluded.)

4 \* \* \* \* \*

**C E R T I F I C A T I O N**

I, Karen English, the assigned transcriber,  
do hereby certify the foregoing transcript of  
proceedings on electronic recording dated 8/30/18,  
electronic recording time from 10:30:12 to 11:56:51, is  
prepared in full compliance with the current Transcript  
Format for Judicial Proceedings and is a true and  
accurate compressed transcript of the proceedings as  
recorded.

/S/ Karen English  
SIGNATURE

#421  
AOC NUMBER

**Karen English Trans. Svc.**  
AGENCY

September 10, 2018  
DATE

# EXHIBIT C

**ORDINANCE NO. 2017-19  
BOROUGH OF LEONIA  
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
“VEHICLES AND TRAFFIC” OF THE CODE OF THE BOROUGH OF LEONIA  
BY ADDING TO ARTICLE XI “TEMPORARY CLOSING OF STREETS”  
§194-25.1 “CLOSING OF CERTAIN STREETS” AND  
ARTICLE XIV BY THE ADDITION THEREOF  
OF SCHEDULE XVIII “STREETS CLOSED TO TRAFFIC”**

**WHEREAS**, the Mayor and Council of the Borough of Leonia have determined that it is in the best interests of the Borough of Leonia to revise Chapter 194 of the Borough of Leonia Ordinance concerning Vehicles and Traffic; and

**Section 1.**

**WHEREAS**, the Mayor and Council of the Borough of Leonia desire to amend and supplement §194 “Vehicles and Traffic” of the Code of the Borough of Leonia by adding to Article XI “Temporary Closing of Streets” §194-25.1 “Closing of Certain Streets”:

§194-25.1 Closing of Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made a part of this Chapter during the times of the days indicated in said Schedule unless that person is a resident of the said street needing access to his home or can demonstrate or document a need to access a residence on the street or parts of streets as described.

Article XVIII. Streets Closed to Traffic.

§194-49. Schedule XVIII Streets Closed to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be closed to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

| <b><u>Road Name/Direction of Road</u></b>                          | <b><u>Prohibited Entry</u></b> |
|--|--------------------------------|
| Edgewood Road- Southbound from Ridgeland Ter. to Ridgeland Terrace | Do Not Enter                   |
| <u>Broad Avenue – Eastbound from Broad Avenue</u>                  |                                |
| Vreeland Avenue  | Do Not Enter                   |
| Woodland Place   | Do Not Enter                   |

|                 |              |
|-----------------|--------------|
| Beechwood Place | Do Not Enter |
| Magnolia Place  | Do Not Enter |
| Elm Place       | Do Not Enter |
| Allaire Avenue  | Do Not Enter |
| Westview Avenue | Do Not Enter |
| Summit Avenue   | Do Not Enter |
| Park Avenue     | Do Not Enter |
| Highway Avenue  | Do Not Enter |
| Sylvan Avenue   | Do Not Enter |
| Moore Avenue    | Do Not Enter |
| Oakdene Avenue  | Do Not Enter |

Broad Avenue – Westbound of Broad Avenue

|                         |              |
|-------------------------|--------------|
| Oakdene Avenue          | Do Not Enter |
| Moore Avenue            | Do Not Enter |
| Ames Avenue             | Do Not Enter |
| Sylvan Avenue           | Do Not Enter |
| Highwood Avenue         | Do Not Enter |
| Park Avenue             | Do Not Enter |
| Christie Street         | Do Not Enter |
| High Street             | Do Not Enter |
| Crescent Avenue         | Do Not Enter |
| Harrison Street         | Do Not Enter |
| Overlook Avenue         | Do Not Enter |
| Van Orden Avenue        | Do Not Enter |
| Vreeland Avenue         | Do Not Enter |
| Christie Heights Street | Do Not Enter |
| Harrison Street         | Do Not Enter |

Fort Lee Road – Southbound of Fort Lee Road

|                  |              |
|------------------|--------------|
| Leonida Avenue   | Do Not Enter |
| Gladwin Avenue   | Do Not Enter |
| Oaktree Place    | Do Not Enter |
| Paulin Boulevard | Do Not Enter |
| Irving Street    | Do Not Enter |

Fort Lee Road – Northbound of Fort Lee Road

|                   |              |
|-------------------|--------------|
| Linden Terrace    | Do Not Enter |
| Hawthorne Terrace | Do Not Enter |
| Leonida Avenue    | Do Not Enter |

Grand Avenue – Eastbound of Grand Avenue

|                  |              |
|------------------|--------------|
| Lakeview Avenue  | Do Not Enter |
| Longview Avenue  | Do Not Enter |
| Overlook Avenue  | Do Not Enter |
| Van Orden Avenue | Do Not Enter |

|                 |              |
|-----------------|--------------|
| Vreeland Avenue | Do Not Enter |
| Harrison Street | Do Not Enter |
| Cottage Place   | Do Not Enter |
| Hillside Avenue | Do Not Enter |
| Palisade Avenue | Do Not Enter |
| Prospect Street | Do Not Enter |
| Maple Street    | Do Not Enter |
| Christie Street | Do Not Enter |
| Park Avenue     | Do Not Enter |
| Highwood Avenue | Do Not Enter |
| Sylvan Avenue   | Do Not Enter |
| Ames Avenue     | Do Not Enter |
| Oakdene Avenue  | Do Not Enter |

Grand Avenue – Westbound of Grand Avenue

|              |              |
|--------------|--------------|
| Maple Street | Do Not Enter |
| Schor Avenue | Do Not Enter |

Bergen Boulevard – Westbound of Bergen Boulevard

|                    |              |
|--------------------|--------------|
|                    | Do Not Enter |
| Christie Lane      |              |
| Hazlitt Avenue     | Do Not Enter |
| Washington Terrace | Do Not Enter |
| Lester Street      | Do Not Enter |

Glenwood Avenue – Northbound of Oakdene Avenue

|                 |              |
|-----------------|--------------|
| Glenwood Avenue | Do Not Enter |
|-----------------|--------------|

Glenwood Avenue – Eastbound of Glenwood Avenue

|                 |              |
|-----------------|--------------|
| Hillside Avenue | Do Not Enter |
| Woodland Place  | Do Not Enter |
|                 | Do Not Enter |

Allaire Avenue  
Summit Avenue  
Park Avenue  
Highwood Avenue  
Oakdene Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Intersections with Traffic Control Devices

|   |                        |
|---|------------------------|
| Broad Ave/Hillside Ave: <b>West and Eastbound from Broad Ave</b>  | No Right and Left Turn |
| FLR EB/Glenwood Avenue: <b>North and Southbound from FLR</b>      | No Right and Left Turn |
| FLR EB/Station Parkway: <b>Southbound from FLR</b>                | No Right Turn          |
| Grand Avenue/Christie Heights: <b>Eastbound from Grand Avenue</b> | No Right and Left Turn |
| Grand Avenue/Moore Avenue: <b>Eastbound from Grand Avenue</b>     | No Right and Left Turn |

Section 2.

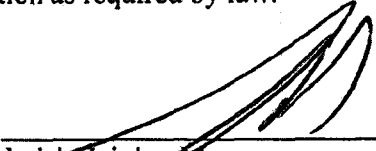
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia are hereby ratified and confirmed.

Section 3. Severability.

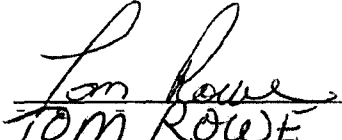
If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4. Effect.

This Ordinance will take effect upon publication as required by law.

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
TOM ROWE  
Borough Clerk

70TING



# EXHIBIT D

**BOROUGH OF LEONIA  
COUNTY OF BERGEN**

*2018-2*  
**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA  
BY ADDING §194-25.2 "VIOLATIONS AND PENALTIES"**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF  
LEONIA** as follows:

**WHEREAS**, the Mayor and Council of the Borough of Leonia adopted §194-25.1  
"Closing of Certain Streets" on December 4, 2017; and

**WHEREAS**, the Mayor and Council have determined to establish a separate penalty  
specifically for the violation of §194-25.1.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of  
Leonia, as follows:

**Section 1.**

Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia, Article XI  
"Temporary Closing of Streets" is hereby amended and supplemented by adding §194-25.2  
"Violations and Penalties", as follows:

**§194-25.2 Violations and Penalties.**

Every person convicted of a violation under §194-25.1 or any supplement thereto shall be  
liable to a penalty of \$200.00 or imprisonment for a term of not exceeding 15 days, or both. No  
points will be assessed for a violation of this section in accordance with the motor vehicle point  
system of the New Jersey Motor Vehicle Commission.

**Section 2. Repealer.**

All other ordinances of the Borough, or parts thereof, which are in conflict with  
this ordinance are hereby repealed to the extent of such conflict.

**Section 3.**


All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of  
Leonia are hereby ratified and confirmed.

Section 4. Severability.

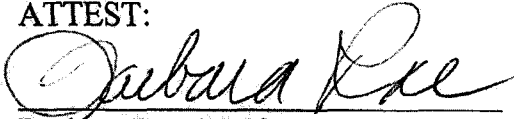
If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 5. Effect.

This Ordinance will take effect upon publication as required by law.

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Rae, RMC, CMC  
Borough Clerk

Introduced: 1/3/18  
Adopted: 1/17/18  
Approved: 1/17/18

# EXHIBIT E

**ORDINANCE NO. 2018-5  
BOROUGH OF LEONIA  
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA  
BY AMENDING ORDINANCE 2017-19, ARTICLE XI "TEMPORARY  
CLOSING OF STREETS" §194-25.1 "CLOSING OF CERTAIN STREETS"  
AND §194-49 SCHEDULE XVIII**

**WHEREAS**, the Mayor and Council of the Borough of Leonia adopted Ordinance No. 2017-19 on December 4, 2017; and

**WHEREAS**, the Mayor and Council have reviewed the impact of the Ordinance and have determined to revise same to provide for access to certain streets for those individuals traveling to Leonia destinations.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Leonia, as follows:

**Section 1.**

§194-25.1 "Closing of Certain Streets" is amended in its entirety as follows:

§194-25.1 Closing of Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or
- (b) Is traveling to and/or from a Leonia destination.

Article XVIII. Streets Closed to Traffic.

§194-49. Schedule XVIII Streets Closed to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be closed to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will be closed:

|                 |   |
|-----------------|---|
| Lakeview Avenue | West to East – Eastview to Broad Avenue                 |
| Palmer Place    | North to South – Highwood Avenue to Oakdene Avenue      |
| Irving Street   | North to South – Fort Lee Road to Christie Lane         |
| Chestnut Street | East to West – Irving Street to Fort Lee Road           |
| Edgewood Road   | South to North – Ridgeland Terrace to Ridgeland Terrace |

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

**Road Name/Direction of Road**

**Prohibited Entry**

**Broad Avenue – Eastbound from Broad Avenue**

|                 |              |
|-----------------|--------------|
| Vreeland Avenue | Do Not Enter |
| Woodland Place  | Do Not Enter |
| Beechwood Place | Do Not Enter |
| Magnolia Place  | Do Not Enter |
| Elm Place       | Do Not Enter |
| Allaire Avenue  | Do Not Enter |
| Westview Avenue | Do Not Enter |
| Summit Avenue   | Do Not Enter |
| Park Avenue     | Do Not Enter |
| Highwood Avenue | Do Not Enter |
| Sylvan Avenue   | Do Not Enter |
| Moore Avenue    | Do Not Enter |
| Oakdene Avenue  | Do Not Enter |

**Broad Avenue – Westbound of Broad Avenue**

|                  |              |
|------------------|--------------|
| Oakdene Avenue   | Do Not Enter |
| Moore Avenue     | Do Not Enter |
| Ames Avenue      | Do Not Enter |
| Sylvan Avenue    | Do Not Enter |
| Highwood Avenue  | Do Not Enter |
| Park Avenue      | Do Not Enter |
| Christie Street  | Do Not Enter |
| High Street      | Do Not Enter |
| Crescent Avenue  | Do Not Enter |
| Overlook Avenue  | Do Not Enter |
| Van Orden Avenue | Do Not Enter |

Vreeland Avenue  
Christie Heights Street  
Harrison Street

Do Not Enter  
Do Not Enter  
Do Not Enter

Fort Lee Road – Southbound of Fort Lee Road

Leonia Avenue  
Gladwin Avenue  
Oaktree Place  
Paulin Boulevard  
Irving Street

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Fort Lee Road – Northbound of Fort Lee Road

Linden Terrace  
Hawthorne Terrace  
Leonia Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter

Grand Avenue – Eastbound of Grand Avenue

Lakeview Avenue  
Longview Avenue  
Overlook Avenue  
Van Orden Avenue  
Vreeland Avenue  
Harrison Street  
Cottage Place  
Hillside Avenue  
Palisade Avenue  
Prospect Street  
Maple Street  
Christie Street  
Park Avenue  
Highwood Avenue  
Sylvan Avenue  
Ames Avenue  
Oakdene Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Grand Avenue – Westbound of Grand Avenue

Maple Street  
Schor Avenue

Do Not Enter  
Do Not Enter

Bergen Boulevard – Westbound of Bergen Boulevard

Christie Lane

Do Not Enter

Hazlitt Avenue  
Washington Terrace  
Lester Street

Do Not Enter  
Do Not Enter  
Do Not Enter

Glenwood Avenue – Northbound of Oakdene Avenue

Glenwood Avenue

Do Not Enter

Glenwood Avenue – Eastbound of Glenwood Avenue

Hillside Avenue  
Woodland Place  
Allaire Avenue  
Summit Avenue  
Park Avenue  
Highwood Avenue  
Oakdene Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Intersections with Traffic Control Devices

|   |                        |
|---|------------------------|
| Broad Ave/Hillside Ave: <b>West and Eastbound from Broad Ave</b>  | No Right and Left Turn |
| FLR EB/Glenwood Avenue: <b>North and Southbound from FLR</b>      | No Right and Left Turn |
| FLR EB/Station Parkway: <b>Southbound from FLR</b>                | No Right Turn          |
| Grand Avenue/Christie Heights: <b>Eastbound from Grand Avenue</b> | No Right and Left Turn |
| Grand Avenue/Moore Avenue: <b>Eastbound from Grand Avenue</b>     | No Right and Left Turn |

**Section 2.**

All other provisions of Chapter 194 “Vehicles and Traffic” of the Code of the Borough of Leonia are hereby ratified and confirmed.

**Section 3. Severability.**

If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.




**Section 4. Effect.**

This Ordinance will take effect upon publication as required by law.

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Rae, RMC, CMC  
Borough Clerk

# EXHIBIT F

**ORDINANCE NO. 2018-14  
BOROUGH OF LEONIA  
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA  
BY AMENDING ORDINANCE 2017-19, ARTICLE XI "TEMPORARY  
CLOSING OF STREETS" §194-25.1 "RESTRICTED ACCESS TO CERTAIN  
STREETS" AND §194-49 SCHEDULE XVIII**

**WHEREAS**, Ordinances No. 2017-19 and 2018-5 were invalidated by the Superior Court of New Jersey; and

**WHEREAS**, the Mayor and Council have reviewed the determination of the Court and have determined to revise same in order to address the decision rendered by the Superior Court.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Leonia, as follows:

**Section 1.**

§194-25.1 "Closing of Certain Streets" is amended in its entirety as follows:

§194-25.1 Restricted Access to Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or
- (b) Is traveling to and/or from a Leonia destination.

**Article XVIII. Streets Closed to Traffic.**

§194-49. Schedule XVIII Streets Restricted to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be restricted to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

**Road Name/Direction of Road**

**Prohibited Entry**

Edgewood Road - Southbound from Ridgeland Terrace

Restricted Access -  
Residents & Leonia  
Destinations Only

**Broad Avenue – Eastbound from Broad Avenue**

Vreeland Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Woodland Place

Restricted Access -  
Residents & Leonia  
Destinations Only

Beechwood Place

Restricted Access -  
Residents & Leonia  
Destinations Only

Magnolia Place

Restricted Access -  
Residents & Leonia  
Destinations Only

Elm Place

Restricted Access -  
Residents & Leonia  
Destinations Only

Allaire Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Westview Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Summit Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Park Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Highwood Avenue

Restricted Access -  
Residents & Leonia  
Destinations Only

Sylvan Avenue

Restricted Access -

|   |   |
|---|---|
| Moore Avenue                                    | Residents & Leonia<br>Destinations Only<br>Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Oakdene Avenue                                  | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| <u>Broad Avenue – Westbound of Broad Avenue</u> |   |
| Oakdene Avenue                                  | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Moore Avenue                                    | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Ames Avenue                                     | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Sylvan Avenue                                   | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Highwood Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Park Avenue                                     | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Christie Street                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| High Street                                     | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Crescent Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Overlook Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Van Orden Avenue                                | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Vreeland Avenue                                 | Restricted Access -<br>Residents & Leonia   |



Christie Heights Street

Destinations Only

Restricted Access -

Residents & Leonia

Destinations Only

Harrison Street

Restricted Access -

Residents & Leonia

Destinations Only

Fort Lee Road – Southbound of Fort Lee Road

Leonía Avenue

Restricted Access -

Residents & Leonia

Destinations Only

Gladwin Avenue

Restricted Access -

Residents & Leonia

Destinations Only

Oaktree Place

Restricted Access -

Residents & Leonia

Destinations Only

Paulin Boulevard

Restricted Access -

Residents & Leonia

Destinations Only

Irving Street

Restricted Access -

Residents & Leonia

Destinations Only

Fort Lee Road – Northbound of Fort Lee Road

Linden Terrace

Restricted Access -

Residents & Leonia

Destinations Only

Hawthorne Terrace

Restricted Access -

Residents & Leonia

Destinations Only

Leonía Avenue

Restricted Access -

Residents & Leonia

Destinations Only

Glenwood Avenue – Northbound of Oakdene Avenue

Glenwood Avenue

Restricted Access -

Residents & Leonia

Destinations Only

Glenwood Avenue – Eastbound of Glenwood Avenue

|                 |  |
|-----------------|--|
| Hillside Avenue | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Woodland Place  | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Allaire Avenue  | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Summit Avenue   | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Park Avenue     | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Highwood Avenue | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Oakdene Avenue  | Restricted Access -<br>Residents & Leonia<br>Destinations Only |

Intersections with Traffic Control Devices

|   |                        |
|---|------------------------|
| Broad Ave/Hillside Ave: West and Eastbound from Broad Ave                 | No Right and Left Turn |
| Fort Lee Road EB/Glenwood Avenue: North and Southbound from Fort Lee Road | No Right and Left Turn |
| Fort Lee Road EB/Station Parkway: Southbound from Fort Lee Road           | No Right Turn          |

Section 2.

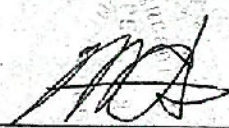
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia including the provisions of Ordinance 2018-15 are hereby ratified and confirmed.

Section 3. Severability.


If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4. Effect.

This Ordinance will take effect upon publication as required by law.

ATTEST: 

Marc Seemon, Clerk  
Borough Clerk

 9/17/18  
Judah Zeigler, Mayor



# EXHIBIT G

**ORDINANCE NO. 2018-15  
BOROUGH OF LEONIA  
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA  
BY AMENDING ORDINANCE 2017-19, ARTICLE XI "TEMPORARY  
CLOSING OF STREETS" §194-25.1 "RESTRICTED ACCESS TO CERTAIN  
STREETS" AND §194-49 SCHEDULE XVIII**

**WHEREAS**, Ordinances No. 2017-19 and 2018-5 were invalidated by the Superior Court of New Jersey; and

**WHEREAS**, the Mayor and Council have reviewed the determination of the Court and have determined to revise same in order to address the decision rendered by the Superior Court.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Leonia, as follows:

**Section 1.**

§194-25.1 "Closing of Certain Streets" is amended in its entirety as follows:

§194-25.1 Restricted Access to Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or
- (b) Is traveling to and/or from a Leonia destination.

**Article XVIII. Streets Closed to Traffic.**

§194-49. Schedule XVIII Streets Restricted to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be restricted to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

| <u>Road Name/Direction of Road</u>              | <u>Prohibited Entry</u>  |
|---|--|
| <u>Grand Avenue – Eastbound of Grand Avenue</u> |  |
| Lakeview Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Longview Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Overlook Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Van Orden Avenue                                | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Vreeland Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Harrison Street                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Cottage Place                                   | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Hillside Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Palisade Avenue                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Prospect Street                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Maple Street                                    | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Christie Street                                 | Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Park Avenue                                     | Restricted Access -  |

|   |   |
|---|---|
| Highwood Avenue   | Residents & Leonia<br>Destinations Only<br>Restricted Access -<br>Residents & Leonia<br>Destinations Only |
| Sylvan Avenue   | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Ames Avenue   | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Oakdene Avenue  | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| <u>Grand Avenue – Westbound of Grand Avenue</u>         |   |
| Maple Street  | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| <u>Bergen Boulevard – Westbound of Bergen Boulevard</u> |   |
| Christie Lane   | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Hazlitt Avenue  | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Washington Terrace                                      | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |
| Lester Street   | Restricted Access -<br>Residents & Leonia<br>Destinations Only  |

## Section 2.

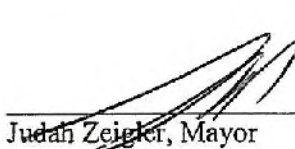
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia including the provisions of Ordinance No. 2018-14 are hereby ratified and confirmed.

## Section 3. Severability.

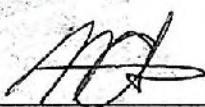
If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**Section 4. Effect.**

This Ordinance will take effect upon publication as required by law and approval from the Commissioner of the New Jersey Department of Transportation, in accordance with N.J.S.A. 39:4-8.

 9/17/18  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Marc Seemon, Clerk  
Borough Clerk

# EXHIBIT H



GITTLEMAN, MUHLSTOCK & CHEWCASKIE, L.L.P.

ATTORNEYS AT LAW  
2200 FLETCHER AVENUE  
9W OFFICE CENTER  
FORT LEE, NEW JERSEY 07024  
(201) 944-2800

MELVIN GITTLEMAN (1930-2013)  
STEVEN MUHLSTOCK  
BRIAN M. CHEWCASKIE  
NYLEMA NABBIE (N.J. & N.Y.)

TELECOPIER  
(201) 944-1497

BRIAN M. CHEWCASKIE  
E-MAIL  
brian@gmclaw.com

September 18, 2018

VIA E-MAIL ([philip.espinosa@law.njoag.gov](mailto:philip.espinosa@law.njoag.gov))

Philip Espinosa, Esq.  
Deputy Attorney General/Section Chief  
Transportation, Construction & Condemnation Section  
State of New Jersey Department of Law and Public Safety  
Division of Law  
Richard J. Hughes Justice Complex  
25 Market Street - P.O. Box 114  
Trenton, New Jersey 08625-0114

RE: Jacqueline Rosa v. Borough of Leonia

Dear Mr. Espinosa:

The following is intended to address the status of this matter in accordance with the telephone conference conducted with the Honorable Peter F. Bariso, Jr., A.J.S.C. on Friday, September 14, 2018. On September 17, 2018, the Borough of Leonia adopted the following Ordinances:

1. 2018-14: An Ordinance Amending and Supplementing Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia by Amending Ordinance 2017-19, Article XI "Temporary Closing of Streets" §194-25.1 "Restricted Access to Certain Streets" and §194-49 Schedule XVIII; and
2. 2018-15: An Ordinance Amending and Supplementing Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia by Amending Ordinance 2017-19, Article XI "Temporary Closing of Streets" §194-25.1 "Restricted Access to Certain Streets" and §194-49 Schedule XVIII.

Based upon Judge Bariso's ruling, the Borough of Leonia determined to segregate the streets which would be subject to restricted access as set forth in the Ordinance. Ordinance 2018-15 addresses those streets which are adjacent to a State highway and will be submitted to the Commissioner of the Department of Transportation for review and approval in accordance with

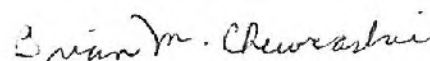
applicable statute. Inasmuch as new ordinances were adopted, the Borough has covered the signs along Grand Avenue and Bergen Boulevard. The locations of the signs being covered are identified in Ordinance 2018-15. The signs on Schor Avenue will be removed in their entirety.

In addition, the Borough will also be amending the above ordinances to include Station Parkway as a roadway, subject to the Commissioner's approval. The signs on Station Parkway have also been covered in anticipation of the amendment.

In addition, the Borough will be filing a Motion for Reconsideration and an Application for Stay, as we discussed on Friday.

I trust the foregoing addresses the current status of the matter. If you have any questions, please feel free to contact me.

Very truly yours,



BRIAN M. CHEWCASKIE

BMC/cj

cc: Jacqueline Rosa, Esq.

Ruby Kumar Thompson, Esq.

Mayor Judah Zeigler

Borough Council

Alex Torpey, Administrator



# EXHIBIT I

**BLUE-LINED VERSION**

**ORDINANCE NO. 2018-5  
BOROUGH OF LEONIA  
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194  
“VEHICLES AND TRAFFIC” OF THE CODE OF THE BOROUGH OF LEONIA  
BY AMENDING ORDINANCE 2017-19, ARTICLE XI “TEMPORARY  
CLOSING OF STREETS” §194-25.1 “CLOSING OF CERTAIN STREETS”  
AND §194-49 SCHEDULE XVIII**

**WHEREAS**, the Mayor and Council of the Borough of Leonia adopted Ordinance No. 2017-19 on December 4, 2017; and

**WHEREAS**, the Mayor and Council have reviewed the impact of the Ordinance and have determined to revise same to provide for access to certain streets for those individuals traveling to Leonia destinations.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Leonia, as follows:

**Section 1.**

§194-25.1 “Closing of Certain Streets” is amended in its entirety as follows:

§194-25.1 Closing of Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or
- (b) Is traveling to and/or from a Leonia destination.

Article XVIII. Streets Closed to Traffic.

§194-49. Schedule XVIII Streets Closed to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be closed to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will be closed:

|                 |   |
|-----------------|---|
| Lakeview Avenue | West to East – Eastview to Broad Avenue                 |
| Palmer Place    | North to South – Highwood Avenue to Oakdene Avenue      |
| Irving Street   | North to South – Fort Lee Road to Christie Lane         |
| Chestnut Street | East to West – Irving Street to Fort Lee Road           |
| Edgewood Road   | South to North – Ridgeland Terrace to Ridgeland Terrace |

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

**Road Name/Direction of Road**

**Prohibited Entry**

**Broad Avenue – Eastbound from Broad Avenue**

|                 |              |
|-----------------|--------------|
| Vreeland Avenue | Do Not Enter |
| Woodland Place  | Do Not Enter |
| Beechwood Place | Do Not Enter |
| Magnolia Place  | Do Not Enter |
| Elm Place       | Do Not Enter |
| Allaire Avenue  | Do Not Enter |
| Westview Avenue | Do Not Enter |
| Summit Avenue   | Do Not Enter |
| Park Avenue     | Do Not Enter |
| Highwood Avenue | Do Not Enter |
| Sylvan Avenue   | Do Not Enter |
| Moore Avenue    | Do Not Enter |
| Oakdene Avenue  | Do Not Enter |

**Broad Avenue – Westbound of Broad Avenue**

|                  |              |
|------------------|--------------|
| Oakdene Avenue   | Do Not Enter |
| Moore Avenue     | Do Not Enter |
| Ames Avenue      | Do Not Enter |
| Sylvan Avenue    | Do Not Enter |
| Highwood Avenue  | Do Not Enter |
| Park Avenue      | Do Not Enter |
| Christie Street  | Do Not Enter |
| High Street      | Do Not Enter |
| Crescent Avenue  | Do Not Enter |
| Overlook Avenue  | Do Not Enter |
| Van Orden Avenue | Do Not Enter |

Vreeland Avenue  
Christie Heights Street  
Harrison Street

Do Not Enter  
Do Not Enter  
Do Not Enter

Fort Lee Road – Southbound of Fort Lee Road

Leonia Avenue  
Gladwin Avenue  
Oaktree Place  
Paulin Boulevard  
Irving Street

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Fort Lee Road – Northbound of Fort Lee Road

Linden Terrace  
Hawthorne Terrace  
Leonia Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter

Grand Avenue – Eastbound of Grand Avenue

~~Lakeview Avenue~~  
~~Longview Avenue~~  
~~Overlook Avenue~~  
~~Van Orden Avenue~~  
~~Vreeland Avenue~~  
~~Harrison Street~~  
~~Cottage Place~~  
~~Hillside Avenue~~  
~~Palisade Avenue~~  
~~Prospect Street~~  
~~Maple Street~~  
~~Christie Street~~  
~~Park Avenue~~  
~~Highwood Avenue~~  
~~Sylvan Avenue~~  
~~Ames Avenue~~  
~~Oakdene Avenue~~

~~Do Not Enter~~  
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~~Do Not Enter~~

Grand Avenue – Westbound of Grand Avenue

~~Maple Street~~  
~~Schor Avenue~~

~~Do Not Enter~~  
~~Do Not Enter~~

Bergen Boulevard – Westbound of Bergen Boulevard

Christie Lane

Do Not Enter

Hazlitt Avenue  
Washington Terrace  
Lester Street

Do Not Enter  
Do Not Enter  
Do Not Enter

Glenwood Avenue – Northbound of Oakdene Avenue

Glenwood Avenue

Do Not Enter

Glenwood Avenue – Eastbound of Glenwood Avenue

Hillside Avenue  
Woodland Place  
Allaire Avenue  
Summit Avenue  
Park Avenue  
Highwood Avenue  
Oakdene Avenue

Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter  
Do Not Enter

Intersections with Traffic Control Devices

|   |                        |
|---|------------------------|
| Broad Ave/Hillside Ave: <b>West and Eastbound from Broad Ave</b>  | No Right and Left Turn |
| FLR EB/Glenwood Avenue: <b>North and Southbound from FLR</b>      | No Right and Left Turn |
| FLR EB/Station Parkway: <b>Southbound from FLR</b>                | No Right Turn          |
| Grand Avenue/Christie Heights: <b>Eastbound from Grand Avenue</b> | No Right and Left Turn |
| Grand Avenue/Moore Avenue: <b>Eastbound from Grand Avenue</b>     | No Right and Left Turn |

**Section 2.**

All other provisions of Chapter 194 “Vehicles and Traffic” of the Code of the Borough of Leonia are hereby ratified and confirmed.

**Section 3. Severability.**

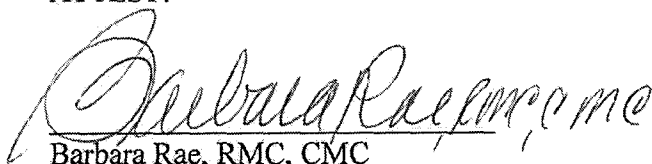
If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**Section 4. Effect.**

This Ordinance will take effect upon publication as required by law.

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Rae, RMC, CMC  
Borough Clerk