

EXHIBIT EE

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(609) 376-3300

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

JACQUELINE ROSA, :

Plaintiff, :

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

Civil Action

NOTICE OF MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT

STATE OF NEW JERSEY :
DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

v. :

BOROUGH OF LEONIA, NEW :
JERSEY, :

Defendant. :

To: Motion's Clerk and All Counsel of Record

TAKE NOTICE that the undersigned will apply to the above named court located at the Hudson County Administration Building, 595 Newark Avenue, Jersey City, NJ 07306, on October 12, 2018, at 9:00 a.m., on behalf of the plaintiff-intervenor State of New Jersey Department of Transportation ("DOT") for an order for leave to file an amended complaint.

The DOT will rely on the attached letter brief and exhibits, which contain the grounds for the relief sought.

Pursuant to Rule 1:6-2(d), the undersigned respectfully requests oral argument.

A proposed form of order is attached.

No pre-trial conference, arbitration proceeding, calendar call or trial date has been set.

Discovery in this case is scheduled to be completed on May 24, 2019.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 

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

Dated: September 21, 2018

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

JACQUELINE ROSA, :

Plaintiff, :

Civil Action

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

**ORDER GRANTING LEAVE TO
FILE AMENDED COMPLAINT**

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 leave to file an amended complaint 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 ("DOT"), and the court having considered this matter, and for good cause having been shown;

IT IS on this day of , 2018, ORDERED:

1. The DOT within seven days of the entry of this order may file an amended complaint in the form annexed to the DOT's motion for leave to file an amended complaint.

2. The DOT's filing of its amended complaint on eCourts shall act as service of process upon the parties in this case.

3. The parties to this action shall have 20 days from the date of the entry of this order in which to serve an answer or otherwise plead with respect to the amended complaint of the DOT.

____ Opposed

____ Unopposed



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
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GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

September 21, 2018

Via eCourts and Overnight Delivery

Honorable Peter F. Bariso, Jr., A.J.S.C.
Hudson County Administration Building
9th 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 Leave to File an Amended Complaint
Return Date: October 12, 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 support of the DOT's motion for leave to file an amended complaint against the Borough of Leonia ("Leonia").

PRELIMINARY STATEMENT

This court has properly determined that Leonia's traffic



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ordinances at issue in this case were legally invalid because, although the ordinances placed an impact on a State roadway, Leonia failed to submit the ordinances to the DOT Commissioner for approval, pursuant to N.J.S.A. 39:4-8(a). Accordingly, this court entered an order for summary judgment in favor of the DOT on August 31, 2018.

In rendering this decision, this court did not address certain additional legal arguments raised by the DOT, including, but not limited to, the DOT's arguments that Leonia did not have legal authority to establish "no through" streets or to deny access to motorists traveling on Leonia's streets based on a residency classification. And this court did not need to address the DOT's additional legal arguments for the purpose of this decision. Despite this, Leonia has misinterpreted this court's decision and on September 17, 2018, adopted two new ordinances which, on their face, are legally invalid, as this brief discusses more fully below. In addition, if municipalities across the State were deemed to have legal authority to adopt such ordinances, we could reasonably anticipate the potential traffic problems that could ensue, particularly in the more densely populated regions of the State. As such, the DOT by the amended complaint seeks an order declaring that the new ordinances are legally invalid and enjoining and permanently restraining Leonia from the further enforcement of the new ordinances.

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STATEMENT OF FACTS

By order dated August 31, 2018, this court granted the DOT's motion for summary judgment regarding Leonia's traffic ordinance numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the old ordinances"). (DOT Exhibit A.) In rendering this decision, this court properly determined that the old ordinances were legally invalid because, although the ordinances placed an impact on a State roadway, Leonia had failed to submit the old ordinances to the DOT Commissioner for approval, pursuant to N.J.S.A. 39:4-8(a). (DOT Exhibit B, Transcript of Oral Argument and the Court's Decision of August 30, 2018.) Accordingly, this court entered an order declaring that the old ordinances were null and void, and legally invalid as a matter of law. (DOT Exhibit A.) In addition, this court ordered that Leonia was enjoined and permanently restrained from the further enforcement of the old ordinances, including but not limited to the use of signage, police officials notifying motorists about the old ordinances, and the issuance of traffic citations. (DOT Exhibit A.)

In rendering this decision, this court did not address certain additional legal arguments raised by the DOT in its motion for summary judgment, including but not limited to the DOT's arguments that Leonia did not have legal authority to establish "no through" streets or to deny access to motorists traveling on

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Leonia's streets based on a residency classification. (DOT Exhibit B.) Despite this, Leonia has misinterpreted the court's decision and on September 17, 2018, Leonia adopted two new ordinances, ordinance numbers 2018-14 and 2018-15 (hereinafter collectively referred to as "the new ordinances"). (DOT Exhibits D and E.) By adopting the new ordinances, Leonia "determined to segregate the streets which would be subject to restricted access," according to Leonia's counsel. (DOT Exhibit C.)

Regarding the new ordinances, Ordinance No. 2018-14 provides that:

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.

[DOT Exhibit D.]

Ordinance No. 2018-14 then restricts traffic on a long list of streets or parts of streets to residents and Leonia destinations only between the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m. (DOT Exhibit D.) Ordinance No. 2018-14 also prohibits right and left turns on additional streets. (DOT Exhibit D.)

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Ordinance No. 2018-14 also indicates that it will take effect upon publication as required by law. (DOT Exhibit D.)

Regarding the other of the new ordinances, Ordinance No. 2018-15 provides that:

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.

[DOT Exhibit E.]

Ordinance No. 2018-15 then restricts traffic on a long list of streets or parts of streets to residents and Leonia destinations only between the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m. (DOT Exhibit E.) Ordinance No. 2018-15 also indicates that it will take effect upon publication as required by law and approval from the DOT Commissioner in accordance with N.J.S.A. 39:4-8. (DOT Exhibit E.)

By adopting the new ordinances, Leonia appears to have essentially prohibited traffic from traveling through most of Leonia's streets during the applicable hours, unless the motorist is a Leonia resident or is traveling to and/or from a Leonia

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destination. (DOT Exhibits D and E.) In other words, by the new ordinances, Leonia has established "no through streets" regarding the streets included within the new ordinances unless the motorist is a Leonia resident or is traveling to and/or from a Leonia destination.

By this motion, the DOT has requested leave to file an amended complaint regarding the new ordinances. (DOT Exhibit F.)

LEGAL ARGUMENT

IN THE INTEREST OF JUSTICE, THE DOT'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT SHOULD BE GRANTED.

Pursuant to Rule 4:9-1, a party may amend any pleading after the filing of a responsive pleading by requesting leave of court, which is to be freely given in the interest of justice. While amendment remains within the court's sound discretion, it should be liberally exercised unless undue prejudice would result. Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 457 (1998) (citations omitted). In this regard, a motion for leave to amend "should generally be granted even if the ultimate merits of the amendment are uncertain." G & W, Inc. v. Borough of E. Rutherford, 280 N.J. Super. 507, 516 (App. Div. 1995). Moreover, liberality of amendment is especially appropriate when a matter affects the public interest. Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:9-1 (2017). "So should amendment be

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permitted to avoid the possibility of inconsistent verdicts and duplicative actions, particularly when no undue prejudice to any party is demonstrated." Ibid.

This case arose from Leonia's adoption and enforcement of the old ordinances. The old ordinances created a list of travel restrictions and road closures affecting more than 75 roads and intersections in Leonia during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m., prohibiting impacted motorists from traveling through those streets during the applicable hours. Then, on June 11, 2018, the DOT filed its original complaint, seeking declaratory judgment and injunctive relief against Leonia concerning the old ordinances. Thereafter, on July 11, 2018, the DOT moved for summary judgment, requesting that this court declare the old ordinances null and void and legally invalid, and to enjoin and restrain Leonia from the further enforcement of the same.

The DOT's motion for summary judgment asserted that the old ordinances were legally invalid because: (1) Leonia had no legal authority to create "no through streets"; (2) Leonia had no legal authority to regulate traffic based on a residency classification or based on whether a person was travelling to and/or from a Leonia destination; and (3) although the old ordinances created an impact on a State highway, Leonia failed to submit the old ordinances to the DOT Commissioner for approval. This court granted the DOT's motion for summary judgment on August

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31, 2018, declaring the old ordinances legally invalid. (DOT Exhibits A and B.) The order for summary judgment also enjoined and permanently restrained Leonia from the further enforcement of the old ordinances. (DOT Exhibit A.)

While this court granted the DOT's summary judgment motion on the basis that the old ordinances, on their face, were legally invalid because they were not submitted to the DOT Commissioner for approval in accordance with N.J.S.A. 39:4-8(a), this court did not reach the merits of certain of the DOT's other arguments, nor did it need to. In this regard, this court indicated that its decision was limited to whether Leonia's adoption of the old ordinances violated the provisions of N.J.S.A. 39:4-8(a), and that the other arguments presented were part of the record in this case. (DOT Exhibit B, T59:24-60:9.) Thereafter, Leonia adopted the new ordinances, by which Leonia purportedly "determined to segregate the streets which would be subject to restricted access" and to divide one of the old ordinances, Ordinance No. 2018-5, into two separate ordinances, with one "address[ing] those streets which are adjacent to a State highway," and another addressing the remaining streets listed in the old ordinances. (DOT Exhibit C.)

The new ordinances are essentially a bifurcation of the old ordinances and are based upon Leonia's misinterpretation of this court's decision granting the DOT's motion for summary judgment. (DOT Exhibits A and B.) There is no meaningful

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difference between the old ordinances and the new ordinances. In this regard, the new ordinances on their face, without legal authority, still bar motorists from traveling though most of Leonia's streets during the designated times unless the motorists are Leonia residents or are traveling to and/or from a Leonia destination. And since the new ordinances are legally invalid on their face, and the DOT Commissioner does not have the authority to approve legally invalid ordinances, Leonia's submission of one of the new ordinances to the DOT Commissioner because it has an impact on a State roadway is a legally meaningless gesture.

Moreover, Leonia would not suffer undue prejudice if this court grants the DOT's motion for leave to amend its complaint. Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. at 457. By contrast, the public interest necessitates amendment because the new ordinances are legally invalid. In addition, if municipalities across the State were deemed to have legal authority to adopt ordinances such the new ordinances, we could reasonably anticipate the potential traffic problems that could ensue, particularly in the more densely populated regions of the State. Accordingly, the DOT respectfully requests that, in the interest of justice, leave be granted to file the proposed amended complaint in order to assert claims regarding the new ordinances.

R. 4:9-1.

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CONCLUSION

For the foregoing reasons, the DOT respectfully submits that the DOT's motion for leave to file an amended complaint should be granted.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

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

Ryne A. Spengler
Deputy Attorney General
(Attorney ID No. 169002015)

Encl.

cc via eCourts and email:

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

CERTIFICATION OF SERVICE

I certify that on September 21, 2018, I filed the DOT's notice of motion for leave to file an amended complaint and supporting papers on eCourts, and emailed a copy of said papers to the following parties:


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GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____


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

Dated: September 21, 2018

DOT EXHIBIT A

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 25 Market Street
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 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

JACQUELINE ROSA,	:	
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	
	:	
BOROUGH OF LEONIA, ET AL.,	:	
	:	
Defendants.	:	ORDER FOR SUMMARY JUDGMENT

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 30th 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

DOT 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:

RYNE A. SPENGLER, ESQ., DEPUTY ATTORNEY GENERAL

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, Jacobbe, 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

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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

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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

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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

9

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

10

1 prerequisite for the DOT to take an action, Judge.

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

10 MR. CHEWCASKIE: That is correct.

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

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

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

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

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

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

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

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

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

18 MR. CHEWCASKIE: And we did.

19 THE COURT: I know there's a meeting. I know
20 there's letters attached. I saw what the DOT's
21 position was. They made suggestions to your client
22 that your client rejected. That's all to me almost
23 like settlement negotiations in the case. That's what
24 they were in my opinion. I have yet to see an
25 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.

14

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

15

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

16

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 --

17

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

18

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."

19

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

22

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

23

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

26

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.

27

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.

30

MR. CHEWCASKIE: We all disagree.

MS. ROSA: If you would. If you would.

THE COURT: All right. One at a time.

MS. ROSA: I allowed you guys.

THE COURT: Go ahead.

MS. ROSA: I know personally that you cannot get off of the highway and use Leonia's side roads. I know that because I try to do it every day. There's a sign there that tells me I can't go through. I can't go through, and I can't come back. So, the fact that counsel says it has no impact and you could only -- you can turn on a light, but you can't turn on a non-light, it's ridiculous. Because if you can't use that last exit in Leonia, you then have to go to the bridge, which is Lemoyne Ave. And the traffic from Lemoyne Ave. is backed up all the way past Leonia.

So, the options of any person that commutes is go to New York City bridge or don't get off at Leonia. It's as basic as that. So, even if Mr. Espinosa's certification isn't here, which I'm sure he can produce, it's just common sense. That's all it is.

MR. ESPINOSA: Your Honor, if I may, I have a time-stamped copy of the certification filed with eCourts.

THE COURT: Okay.

31

MR. CHEWCASKIE: Judge, unfortunately, we don't have it. It wasn't part of the original submission with eCourts.

THE COURT: Let me -- let me just try to clarify for the record. It has a time stamp on eCourts?

MR. ESPINOSA: Yes, Your Honor. May --

THE COURT: Yes. The officer will bring it.

MR. ESPINOSA: Thank you.

THE COURT: It is time-stamped in eCourts, July 11th. Okay. It's funny because we don't have it in our system either, but it is -- you do definitely have an eCourts stamp on top.

MR. CHEWCASKIE: Judge, I'm looking for what we downloaded from eCourts, and I don't have a certification.

MR. ESPINOSA: Your Honor, I even sent an e-mail copy as a courtesy copy to counsel.

MS. ROSA: Yeah. Judge, I actually have that as well. That was sent on July 11th at 7:41 p.m. to myself and opposing counsel, a courtesy copy.

MR. ESPINOSA: So, not only did I file it on, Your Honor --

THE COURT: It was filed at 7:24.

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 --

34

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.

35

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

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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.

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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

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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.

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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 form over 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

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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,

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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

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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 --

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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

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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,

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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

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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

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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

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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.

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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.

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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

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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 5, 2018
DATE

DOT EXHIBIT C

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September 18, 2018

VIA E-MAIL (philip.espinosa@law.njoag.gov)

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Division of Law
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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

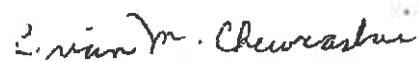
applicable statute. Inasmuch as new ordinances were adopted, the Borough has covered the signs along Grand Avenue and Bergen Boulevard. The locations of the signs being covered are identified in Ordinance 2018-15. The signs on Schor Avenue will be removed in their entirety.

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

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

Christie Heights Street

Destinations Only
Restricted Access -
Residents & Leonia
Destinations Only
Restricted Access -
Residents & Leonia
Destinations Only

Harrison Street

Fort Lee Road – Southbound of Fort Lee Road

Leonia 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

Leonia 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 - Residents & Leonia Destinations Only
Woodland Place	Restricted Access - Residents & Leonia Destinations Only
Allaire 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
Oakdene Avenue	Restricted Access - Residents & Leonia 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



Judah Zeigler, Mayor

**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..

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§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 - Residents & Leonia Destinations Only
Longview Avenue	Restricted Access - Residents & Leonia Destinations Only
Overlook Avenue	Restricted Access - Residents & Leonia Destinations Only
Van Orden Avenue	Restricted Access - Residents & Leonia Destinations Only
Vreeland Avenue	Restricted Access - Residents & Leonia Destinations Only
Harrison Street	Restricted Access - Residents & Leonia Destinations Only
Cottage Place	Restricted Access - Residents & Leonia Destinations Only
Hillside Avenue	Restricted Access - Residents & Leonia Destinations Only
Palisade Avenue	Restricted Access - Residents & Leonia Destinations Only
Prospect Street	Restricted Access - Residents & Leonia Destinations Only
Maple Street	Restricted Access - Residents & Leonia Destinations Only
Christie Street	Restricted Access - Residents & Leonia Destinations Only
Park Avenue	Restricted Access -

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


Judah Zeigler, Mayor

ATTEST:



Marc Seemon, Clerk
Borough Clerk

DOT EXHIBIT D

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

Leonia 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

Leonia 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 - Residents & Leonia Destinations Only
Woodland Place	Restricted Access - Residents & Leonia Destinations Only
Allaire 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
Oakdene Avenue	Restricted Access - Residents & Leonia 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

Judah Zeigler, Mayor

DOT EXHIBIT E

**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 - Residents & Leonia Destinations Only
Longview Avenue	Restricted Access - Residents & Leonia Destinations Only
Overlook Avenue	Restricted Access - Residents & Leonia Destinations Only
Van Orden Avenue	Restricted Access - Residents & Leonia Destinations Only
Vreeland Avenue	Restricted Access - Residents & Leonia Destinations Only
Harrison Street	Restricted Access - Residents & Leonia Destinations Only
Cottage Place	Restricted Access - Residents & Leonia Destinations Only
Hillside Avenue	Restricted Access - Residents & Leonia Destinations Only
Palisade Avenue	Restricted Access - Residents & Leonia Destinations Only
Prospect Street	Restricted Access - Residents & Leonia Destinations Only
Maple Street	Restricted Access - Residents & Leonia Destinations Only
Christie Street	Restricted Access - Residents & Leonia Destinations Only
Park Avenue	Restricted Access -

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


Judah Zeigler, Mayor

ATTEST:


Marc Seemon, Clerk
Borough Clerk

DOT EXHIBIT F

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

JACQUELINE ROSA, :

Plaintiff, :

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

STATE OF NEW JERSEY :
DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

v. :

BOROUGH OF LEONIA, NEW :
JERSEY, :

Defendant. :

Civil Action

**AMENDED COMPLAINT FOR A
DECLARATORY JUDGMENT AND FOR AN
ACTION IN LIEU OF PREROGATIVE
WRITS**

The State of New Jersey Department of Transportation ("DOT") brings this action against the Borough of Leonia ("Leonia"), New Jersey, for an order declaring that Leonia's recently adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the ordinances"), and Ordinance Nos. 2018-14 and 2018-15 (hereinafter collectively referred to as "the new ordinances"), are legally invalid as a matter of law and permanently enjoining Leonia from enforcing the ordinances.

THE PARTIES

1. The DOT maintains its headquarters at the David J. Goldberg Transportation Complex, 1035 Parkway Avenue, Trenton, in the County of Mercer, New Jersey. Pursuant to N.J.S.A. 27:1A-1, the DOT is responsible for promoting the "efficient, fully integrated and balanced transportation system" throughout New Jersey, including the review and approval of local traffic ordinances on municipal or county roads.

2. Leonia is incorporated under the borough form of government. N.J.S.A. 40A:60-1 to -8.1. The governing body of Leonia consists of the mayor and six council members, all of whom are elected at-large. N.J.S.A. 40A:60-2. According to

Leonia's website, the borough is comprised of multiple departments, including a police department.

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. In addition, a portion of State Route 93, also known as Grand Avenue, is within the municipal boundaries of Leonia.

4. Leonia is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck. A portion of Bergen County Route 503, also known as Degraw Avenue and Fort Lee Road, is within Leonia.

THE DOT's LEGAL AUTHORITY TO REGULATE TRAFFIC

5. The Legislature's purpose and intent in passing the "Transportation Act of 1966" ("Transportation Act") was:

to establish the means whereby the full resources of the State could be used and applied in a coordinated and integrated matter to solve or assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and implement comprehensive plans and programs for all modes of transportation development in the State; and to coordinate the transportation activities of State agencies, State-created public authorities, and

other public agencies with transportation responsibilities within the State.

[N.J.S.A. 27:1A-1.]

6. The Transportation Act authorizes the Commissioner of Transportation (the "DOT Commissioner") to develop and promote efficient transportation services and coordinate the activities of the DOT with other public agencies and authorities. N.J.S.A. 27:1A-5.

7. Pursuant to N.J.S.A. 39:4-8(a), the Commissioner is not required to approve any ordinance, resolution, or regulation, unless, after investigation by the Commissioner the same shall appear to be "in the interest of safety and the expedition of traffic on the public highways."

8. The Legislature in N.J.S.A. 39:4-8(b) and (c) permits municipalities to adopt traffic ordinances without the DOT Commissioner's approval only for the traffic measures listed in N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, and N.J.S.A. 39:4-197.

9. For example, the Legislature in N.J.S.A. 39:4-197 permits municipalities to alter speed limitations; limit the use of streets to certain classes of vehicles; designate one way streets; and regulate street parking.

10. Pursuant to N.J.S.A. 39:4-8(a), prior to the adoption of any municipal or county ordinance, resolution, or regulation, which places any impact on roadways in an adjoining municipality or county, the governing board or body of the municipality must provide appropriate notice to the adjoining municipality or county.

11. Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State highway shall require the approval of the DOT Commissioner. Impact on a State highway is defined by N.J.A.C. 16:27-2.1 to mean "any traffic control device on a non-State highway that is proposed for installation: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway" and "any traffic regulation applicable to a non-State highway: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway."

12. The Legislature has not established authority under Title 39, or elsewhere, for a municipality to limit access to certain streets depending on whether a person is classified as a resident or is a person seeking to conduct business within a municipality.

13. The Legislature has not established authority in Title 39, or elsewhere, for a municipality to establish "no through" streets.

14. The Attorney General 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. As the Attorney General opined, "There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the 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." (DOT Exhibit A)

15. This Attorney General opinion remains legally valid 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, the Legislature has never extended to municipalities the authority to adopt "no through" street ordinances, or to limit access to municipal streets based on a residency classification or on whether a person was seeking to access a destination within the municipality.

LEONIA'S INVALID TRAFFIC ORDINANCES

16. The Mayor and Council of Leonia adopted the ordinances between December 4, 2017 and March 5, 2018, and adopted the new ordinances on September 17, 2018.

17. The ordinances restrict traffic on certain municipal streets during certain hours, to its residents, with certain exceptions, including persons who can demonstrate a documented need to access a residence on a Leonia street and persons traveling to destinations within Leonia.

18. On or about December 4, 2017, the Mayor and Council of Leonia adopted Ordinance Number 2017-19, which amended and supplemented Chapter 194 of Leonia's Municipal Code and added two new provisions, Sections 194-25.1 and 194-49.

19. Section 194-25.1 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides: "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."

20. Section 194-49 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides a list of travel restrictions and road closures affecting approximately 70 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

21. On or about January 17, 2018, the Mayor and Council of Leonia adopted Ordinance Number 2018-2, which amended and supplemented Chapter 194 of Leonia's Municipal Code, and added a new provision, Section 194-25.2.

22. Section 194-25.2 of Leonia's Municipal Code, identified as Ordinance Number 2018-2, provides for a \$200 penalty for any person convicted of violating Section 194-25.1 "or imprisonment for a term of not exceeding 15 days, or both."

23. On or about March 5, 2018, Leonia adopted Ordinance Number 2018-5, which amends Sections 194-25.1 and 194-149 of Leonia's Municipal Code.

24. Section 194-25.1 of Leonia's Municipal Code, as amended in its entirety by Ordinance 2018-5, provides: "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) [i]s traveling to and/or from a Leonia destination."

25. Section 194-49 of Leonia's Municipal Code, as amended by Ordinance 2018-5, provides an amended list of travel restrictions and road closures affecting more than 75 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

26. On or about September 18, 2018, the Mayor and Council of Leonia adopted Ordinance Numbers 2018-14 and 2018-15), which amended and supplemented Chapter 194 of Leonia's Municipal Code and amended Sections 194-25.1 and 194-49.

27. The ordinances, and the new ordinances, which "close" or restrict non-residents or those not having business in Leonia from turning onto a long list of streets, have in

29. The ordinances and the new ordinances have an impact on adjoining municipalities and Leonia did not provide notice to the adjoining municipalities as required by N.J.S.A. 39:4-8(a) (second unnumbered paragraph).

31. According to published news reports and Leonia's website, Leonia has been offering residents yellow hang tags in

order to identify their vehicles for purposes of accessing the Leonia roads with restricted access pursuant to the ordinances. John Surico, What Happens When a City Bans Non-Resident Drivers,? CITYLAB (Apr. 18, 2018), <http://www.citylab.com/transportation/2018/04/the-small-town-that-took-on-waze/558215>; see also Leonia Safe Streets, Borough of Leonia, http://www.leonianj.gov/depts/leonia_safe_streets_information.htm (last visited May 15, 2018).

32. According to published news reports, the Mayor of Leonia has indicated that drivers without yellow tags may be stopped and questioned by Leonia's police department. Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.

33. According to one published news report, Leonia's mayor stated, "The first thing the officer is going to say is, 'Do you have business in Leonia?'" Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM),

<http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.

34. According to published news reports, for purposes of enforcing the ordinances, Leonia posted "Do Not Enter" signs with the words "Residents Exempt" printed below. Svetlana Shkolnikova, 'Residents and Leonia Destinations Only' to replace 'Do Not Enter' signs barring commuters, NORTHJERSEY.COM (Feb. 22, 2018 10:23 PM), <http://www.northjersey.com/story/news/bergen/leonia/2018/02/21/1eonia-drafts-new-traffic-signage-help-businesses/359675002>.

35. According to published news reports, Leonia later proposed posting amended signs in order to appeal to Leonia's businesses. Leonia To Get Friendlier Signs Banning GWB Shortcut Seekers, CBS NEW YORK/AP (Feb. 15, 2018), <http://newyork.cbslocal.com/2018/02/15/leonia-new-road-signs>; Svetlana Shkolnikova, Leonia amends controversial road closure ordinance to boost business, NORTHJERSEY.COM (March 5, 2018 11:31 PM), <http://www.northjersey.com/story/news/bergen/leonia/2018/03/05/1eonia-amends-controversial-road-closures-law-boost-business/390951002>.

36. On March 16, 2018, the Attorney General's Office wrote to Leonia's Counsel explaining the applicable Title 39 statutes, the 1955 Attorney General opinion, and that they render the Leonia ordinances invalid. The Attorney General's Office directed Leonia to "immediately refrain from enforcing the above referenced ordinances" and offered to facilitate a meeting between Leonia and the DOT officials to discuss other, appropriate measures to address Leonia's traffic concerns.

37. DOT traffic engineering staff and Leonia met on April 4, 2018 to discuss appropriate traffic controls in Leonia that would not violate Title 39.

38. On information and belief, Leonia continues to enforce the ordinances and/or the new ordinances, through traffic control devices (signage) and municipal police enforcement efforts.

FIRST COUNT
(Declaratory Judgment)

39. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

40. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other

legal relations so as to afford litigants relief from uncertainty and insecurity.

41. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they purport to create "no-through streets," even though pursuant to Title 39, and as further interpreted by the Attorney General's 1955 opinion, Leonia has no such authority, along with awarding to the DOT reasonable attorney's fees and costs.

SECOND COUNT
(Declaratory Judgment)

42. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

43. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

44. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they purport to regulate traffic based on residency classification for which Leonia has no authority, along with awarding to the DOT reasonable attorney's fees and costs.

THIRD COUNT
(Declaratory Judgment)

45. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

46. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

47. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create an impact on a State highway (State Route 93) and Leonia did not submit the ordinances to the DOT Commissioner for approval, along with awarding to the DOT reasonable attorney's fees and costs.

FOURTH COUNT
(Declaratory Judgment)

48. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

49. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

50. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create impact on roadways in one or more adjoining municipalities and Leonia did not provide notice of the ordinance to the adjoining municipalities, along with awarding to the DOT reasonable attorney's fees and costs.

FIFTH COUNT
(Action in Lieu of Prerogative Writs)

51. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

52. Leonia does not have legal authority within one of the enumerated exceptions under Title 39 to restrict traffic as it has done in the ordinances.

53. Because the ordinances at issue are legally invalid, Leonia should be enjoined from further enforcing the ordinances at issue, including but not limited to the use of signage, traffic stops by police officials notifying motorists about the ordinances at issue, and the issuance of traffic citations.

54. The DOT's claim for relief is based upon an established legal right.

55. This matter involves overriding public interest considerations that call out for judicial intervention by this court through the issuance of an injunction that permanently enjoins Leonia from further enforcing the ordinances, including but not limited to the use of signage regarding the ordinances, municipal police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinances.

WHEREFORE, the DOT demands judgment against Leonia enjoining and restraining Leonia from 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, along with awarding to the DOT reasonable attorney's fees and costs.

SIXTH COUNT
(Declaratory Judgment)

56. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

57. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

58. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they purport to create "no-through streets," even though pursuant to Title 39, and as further interpreted by the Attorney General's 1955 opinion, Leonia has no such authority, along with awarding to the DOT reasonable attorney's fees and costs.

SEVENTH COUNT
(Declaratory Judgment)

59. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

60. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

61. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they purport to regulate traffic based on residency classification for which Leonia has no authority, along with awarding to the DOT reasonable attorney's fees and costs.

EIGHTH COUNT
(Declaratory Judgment)

62. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

63. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

64. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that Ordinance No. 2018-14 is null and void, because said ordinance creates an impact on a State highway (State Route 93) and Leonia did not submit said ordinance to the DOT Commissioner for approval, along with awarding to the DOT reasonable attorney's fees and costs.

NINTH COUNT
(Declaratory Judgment)

65. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

66. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

67. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they create impact on roadways in one or more adjoining municipalities and Leonia did not provide notice of the ordinance to the adjoining municipalities, along with awarding to the DOT reasonable attorney's fees and costs.

TENTH COUNT
(Action in Lieu of Prerogative Writs)

68. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

69. Leonia does not have legal authority within one of the enumerated exceptions under Title 39 to restrict traffic as it has done in the new ordinances.

70. Because the new ordinances at issue are legally invalid, Leonia should be enjoined from further enforcing the new ordinances, including but not limited to the use of signage, traffic stops by police officials notifying motorists about the ordinances at issue, and the issuance of traffic citations.

71. The DOT's claim for relief is based upon an established legal right.

72. This matter involves overriding public interest considerations that call out for judicial intervention by this court through the issuance of an injunction that permanently enjoins Leonia from further enforcing the new ordinances, including but not limited to the use of signage regarding the ordinances, municipal police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the new ordinances.

WHEREFORE, the DOT demands judgment against Leonia enjoining and restraining Leonia from further enforcement of the new ordinances, including but not limited to the use of signage regarding the new ordinances, police officials notifying motorists about the new ordinances, and the issuance of traffic citations based on the new ordinances, along with awarding to the DOT reasonable attorney's fees and costs.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated:

CERTIFICATION PURSUANT TO RULE 4:69-4

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:69-4, that upon information and belief, because the ordinances and the new ordinances are already publicly available on the internet, there are no necessary transcripts of Leonia proceedings that must be ordered in these circumstances.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:

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

Dated:

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:5-1 that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated. In addition, there is no other non-party who should be joined in this action or who is subject to joinder at this time because of potential liability as to any party on the basis of the same transactional facts.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated:

EXHIBIT FF

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

v. :

CIVIL ACTION

BOROUGH OF LEONIA, ET AL., :
Defendants. :

NOTICE OF APPEARANCE

STATE OF NEW JERSEY :
DEPARTMENT OF TRANSPORTATION, :
Plaintiff-Intervenor, :

v. :

BOROUGH OF LEONIA, NEW :
JERSEY, :
Defendant. :

To: The clerk of court and all counsel of record

PLEASE TAKE NOTICE that Ryne A. Spengler, Deputy
Attorney General, hereby enters his appearance as co-counsel for

plaintiff-intervenor State of New Jersey, Department of Transportation in the above-captioned matter, and requests that copies of all notices, correspondence, or other papers be served upon him at the above address.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s Ryne A. Spengler
Ryne A. Spengler
Deputy Attorney General

Dated: October 2, 2018