

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN CURLEY,

Plaintiff,

-vs-

MONMOUTH COUNTY BOARD OF CHOSEN
FREEHOLDERS; SERENA DIMASO, in her
individual and official capacity
as Monmouth County Chosen
Freeholder; THOMAS A. ARNONE, in
his individual and official
capacity as Monmouth County Chosen
Freeholder; GARY J. RICH, in his
individual and official capacity
as Monmouth County Chosen
Freeholder; LILLIAN G. BURRY, in
her individual and official
capacity as Monmouth County Chosen
Freeholder; MICHAEL FITZGERALD, in
his individual and official
capacity as County Counsel, and
TERI O'CONNOR, in her individual
and official capacity as County
Administrator,

Defendant(s).

CIVIL ACTION NO. :
3:17-cv-12300 (BRM) (TJB)

RETURN DATE: FEB. 20, 2018

COUNTY DEFENDANTS' LEGAL BRIEF IN OPPOSITION TO
PLAINTIFF JOHN CURLEY'S MOTION FOR CONTEMPT AND FOR SANCTIONS

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PRELIMINARY STATEMENT

Contrary to Plaintiff John Curley's (hereinafter "Plaintiff" or "Freeholder Curley") contentions, Plaintiff and his attorneys are the true culprits of revealing the subject-matter of the investigation;

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Point of fact, the illegal relief Freeholder Curley requests is but one of many issues this Honorable Court and the public should view cynically. Undoubtedly, Freeholder Curley dubiously chose to file this lawsuit mere moments before demeaning the purported motivations of his fellow Freeholders. (See Statement Issued by Plaintiff's attorney, dated December 1, 2017 annexed hereto at Exhibit "E").

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Unfortunately, this Honorable Court need look no further

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Freeholder Curley and his attorneys' conduct cannot be characterized as anything less than intentional acts of harassment, retaliation, and victim shaming. Justice may be blind, but it is not dumb.

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STANDARD OF REVIEW

"Proof of contempt requires a movant to demonstrate: (1) that a valid order of the court existed; (2) that defendant[s] had knowledge of the order; and (3) that defendant[s] disobeyed the order." F.T.C. v. Lane Labs-USA, Inc., 624 F.3d 575, 582 (3d Cir. 2010)(internal citations omitted). The movant must prove each of the above elements by "'clear and convincing' evidence, and ambiguities must be resolved in favor of the party charged with contempt." John T. v. Del Cnty. Intermediate Unit, 318 F.3d 545, 552 (3d Cir. 2003)(Concerning stipulated final order and permanent injunction).

To be enforceable by contempt, the provisions of the order claimed to be violated must be "*specific and definite*." Harris v. City, of Phila., 47 F.3d 1342, 1350 (3d Cir. 1995)(emphasis added). "An order may be so vague or indefinite that, even though the alleged contemnor is chargeable with knowledge of such order, he cannot be punished for doing what he did in view of lack of certainty as to what it prohibited or directed." In re Rubin, 378 F.2d 104, 108 (3d Cir. 1967) (internal quotation marks and citations omitted).

"[A] contempt citation should not be granted where there is grounds to doubt the wrongfulness of the respondent's conduct." Littlejohn v. Bic Corp., 851 F.2d 673, 683-84 (3d Cir. 1988)(internal quotation marks and citations omitted).

Regarding applications for contempt and/or sanctions, "[d]istrict courts enjoy wide discretion to fashion an **equitable** remedy for [civil] contempt that is appropriate to the circumstances." United States v. City of Miami, 195 F.3d 1292, 1298 (11th Cir. 1999) (internal quotation marks and citations omitted) (alteration in original) (emphasis added), cert. denied sub. nom., F.O.P., Lodge No. 20 v. U.S., 531 U.S. 815 (2000) (; see also McComb v. Jacksonville Paper Co., 336 U.S. 187, 193-194 (1949) (explaining contempt is remedial relief); (see also equitable analysis infra Point IV pp.23-24).

LEGAL ARGUMENT

POINT I

THE COUNTY DEFENDANTS HAVE ABSOLUTE IMMUNITY UNDER THE SPEECH OR DEBATE CLAUSE, AND PLAINTIFF'S UNSUPPORTED INTERPRETATION OF THE MINUTE ENTRY OTHERWISE VIOLATES THE CONSTITUTIONAL RIGHTS OF THE COUNTY FREEHOLDERS.

In this case, Freeholder Curley's sole argument for contempt and sanctions is that the Freeholder's Resolution of Censure, dated December 8, 2017 allegedly violates a one-line provision of the Court's "Minute Entry" of December 4, 2017. (see ECF No. 5). Plaintiff's basis for the instant motion is founded upon counsel's strained interpretation that the Minute Entry is to apply as broadly as possible to the County Defendants.

In essence, Plaintiff asks this Honorable Court to find that the "Minute Entry" amounted to a temporary restraining order and/or a preliminary/permanent injunction against the County Defendants. Yet, at the same time Freeholder Curley and his attorneys are free to continually disclose [REDACTED]

[REDACTED] on the public docket and elsewhere; and spread false information to the public that the County's independent investigation was an ill-intended "hatchet job." [REDACTED]

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(see
also Courthouse News Article, dated Dec. 5, 2017 at Exhibit
"D").

In so doing, Freeholder Curley and his attorneys ignore that Plaintiff's Order to Show Cause was never litigated, and a restraining order or preliminary/permanent injunction has never been entered or agreed to. Likewise, Plaintiff's one-sided interpretation of the "Minute Entry" disregards significant discussions between counsel during the conference on December 4, 2017.

For example, during the December 4th conference, the County Defendants made clear that if Plaintiff did not withdraw their Order to Show Cause application, the County Defendants would vigorously oppose same. Defense Counsel clearly explained that the County Defendants had every intention of filing legal opposition to the Order to Show Cause by the close of the day on December 4th.

In fact, Defense counsel provided Freeholder Curley's attorneys with a draft opposition to the application, which set forth that Freeholder Curley's requested relief amounted to an illegal restraint on the County Defendants' rights under the Speech or Debate Clause, as well as the First Amendment.

This prompted Plaintiff to withdraw the Order to Show Cause. And before the conference ended on December 4th, all parties understood that County Defendants' would consider and vote on the Resolution of Censure within the week.

Accordingly, as previously explained to Plaintiff's counsel, Plaintiff's contempt motion, and coincidentally this entire case, falls on Freeholder Curley's misunderstanding of fundamental constitutional powers and rights concerning judicial restraint; absolute immunity for legislative speech and debate in creating, changing, and re-affirming social and County policy; and public discussion on matters of public concern.

A. Defendants Have Absolute Immunity for Speech and Debate

Pointedly, the County Defendants are entitled to absolute immunity from civil suit for the investigation and the adoption of Resolution of Censure pursuant to the Speech or Debate Clause of Article 1 Section 6 of the United States Constitution. See Doe v. McMillan, 412 U.S. 306 (1973) (holding elected officials and their staff absolutely immune from liability under the Speech or Debate Clause for speaking about investigations,

compiling a confidential investigation report, and publishing disparaging information and the names of minors listed in confidential investigation report).

"The idea of legislative immunity arises from the Speech or Debate Clause of Article 1 of the Constitution, which states members of the legislative branch, "for any Speech or Debate in either House, they shall not be questioned in any other Place." Reeder v. Madigan, 780 F.3d 799, 802 (7th Cir. 2015) (internal quotation marks omitted).

"The protections of this clause have long been held to extend beyond mere discussion or speechmaking on the legislative floor." Id. at 802 (citing Kilbourn v. Thompson, 103 U.S. 168, 204 (1880)). The Clause is construed broadly to apply to legislator's actions that constitute "legitimate legislative activity." Id. at 802 (quoting Tenney v. Brandhove, 341 U.S. 367, 376 (1951)).

"Just as the Speech or Debate Clause extends beyond literal speech and debate, so too does it apply to others besides members of the United States Congress." Id. at 802. "Legislators at the state, regional, and municipal levels are also entitled to absolute immunity for their legislative activities." Id. at 802 (citing Bogan v. Scott-Harris, 523 U.S. 44, 53-54 (1998) (emphasis added)). Moreover, it extends to "actors on the legislative stage who are not elected officials

themselves." Id. at 802 (citing Gravel v. United States, 408 U.S. 606, 625 (1972)).

"The Speech or Debate Clause was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch [;]" "and accountably before a possibly hostile judiciary." Gravel, 408 U.S. 615-16, 17.

In Gravel v. United States, 408 U.S. 606 (1972), the Supreme Court determined that the Speech or Debate Clause affords absolute immunity from suit for the legislative body, a legislator, and the legislator's staff members.

In Gravel, the Senator publicly disclosed the Pentagon's confidential investigation report (famously dubbed the "Pentagon Papers") during a legislative session; and included the entire 47 volumes of the Pentagon Papers as part of the public session record. Id. at 616.

In no uncertain terms, the Court determined the legislator could not be made to answer "-either in terms of questioning or terms of defending himself from prosecution- for the events that occurred at the subcommittee meeting." Id. at 616.

To this point, with regard to censure resolutions, the New Jersey Supreme Court recognizes:

[A] resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business

coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the [government entity].

Inganamort v. Borough of Fort Lee, 72 N.J. 412, 418 371 A.2d 34, 37-38 (1977)[citations omitted]. Fundamentally, for this very reason censure resolutions are protected forms of public legislative opinion speech, which invoke absolute legislative immunity. "The legislative process at the least includes delivering an opinion, uttering a speech, or haranguing in debate; proposing legislation; voting on legislation; making, publishing, presenting, and using legislative reports; authorizing investigations and issuing subpoenas; and holding hearings and introducing material at Committee hearings." Fields v. Office of Eddie Bernice Johnson, 459 F.3d 1, 10-11 (D.C. Cir. 2006) (citations, quotation marks, and footnotes omitted) cert. denied sub nom., Office of Senator Mark Dayton, v. Hanson, 550 U.S. 511 (2007); see also Rangel v. Boehner, 785 F.3d 19, 25 (D.C. Cir. 2015) (resolution censuring Senator is a legislative act in which absolute immunity under the Speech or Debate Clause applies) cert. denied, 136 S.Ct. 218 (2015).

B. Plaintiff's Interpretation Illegally Restricts the County Defendants' First Amendment Rights to Speak on Matters of Policy and Public Concern.

Freeholder Curley's lawsuit centers on allegations that the County was purportedly not permitted to have independent

workplace investigation into Freeholder Curley's alleged conduct, and that the County allegedly had bad intentions in doing so. Thus, Freeholder Curley's sweeping interpretation of the "Minute Entry" and corresponding requested relief fly in the face of the County Defendant's First Amendment Rights.

Concerning internal investigations into government officials and government entities, the law is well-settled. In Baldassare v. State of New Jersey, 250 F.3d 188, 197 (3d Cir. 2001), the Third Circuit announced:

The community's interest in the free exchange of information and ideas relating to matters of public concern is not limited to public declarations. That interest is implicated in [internal] exchanges . . . as well as exchanges between an individual and members of the public. [Internal] dissemination of information and ideas can be as important to effective self-governance as public speeches. Thus, if the content and circumstances of a[n] [internal] communication are such that the message conveyed would be relevant to the process of self-governance if disseminated to the community, that communication is a public concern speech, even though it occurred in a private context.

Id. at 197 (quoting Azzaro v. County of Allegheny, 110 F.3d 968, 977-78 (3d Cir. 1997))

Internal investigations that bring to light [REDACTED]

[REDACTED] "are of the utmost public concern." See Baldassare,

250 F.3d at 197 (quoting O'Donnell v. Yanchulis, 875 F.2d 1059, 1061 (3d Cir. 1989)).

"Speech involving government impropriety occupies the highest rung of First Amendment protection." Swineford v. Snyder County Pa., 15 F.3d 1258, 1274-75 (3d Cir. 1994). "[T]he public's substantial interest in unearthing governmental improprieties requires courts to foster legitimate whistleblowing." Id.

"Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them ... also, so constituents may be represented in governmental debates by the person they have elected to represent them." Bond v. Floyd, 385 U.S. 116, 136-37 (1966).

"Political speech, of course, is 'at the core of what the First Amendment is designed to protect.'" Morse v. Frederick, 551 U.S. 393, 403 (2007) (quoting Virginia v. Black, 538 U.S. 343, 365 (2003) (plurality opinion)). As a result, "[a]dverse action" taken by "peers in the political arena" requires a different analysis than in typical retaliation cases. Blair v. Bethel School Dist., 608 F.3d 540, 544 (9th Cir. 2010).

"A legislative body does not violate the First Amendment when some members cast their votes in opposition to other members out of political spite or for partisan, political, or

ideological reasons." Id. at 546 (quoting Zilich v. Longo, 34 F.3d 359, 361 (6th Cir. 1994); see also Werkheiser v. Pocono Tp., 780 F.3d 172, 182 (3d Cir. 2015) (favorably relying on the Ninth Circuit's opinion in Blair). "Courts are not permitted to restrict speech 'in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.'" McCullen v. Coakley, --- U.S. --- 134 S.Ct. 2518, 2535 (2014). The restriction on speech must also "leave open ample alternative channels for communication of the information." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

The County Freeholders "political speech" rights are particularly important in the present circumstances. Certainly the County Freeholders have a First Amendment right to "vot[e] their conscience on the important issues" Blair, 608 F.3d at 543.

Likewise, in Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997), it was held that when it is alleged that sexual harassment gender discrimination is practiced by those exercising authority in the name of a public official, it is as much a matter of public concern as racial discrimination practiced under similar circumstances. Id. at 978-79. Concerning gender discrimination, "there is a substantial public interest in [an employee's] revelations because they [are]

relevant to an evaluation of the performance of the office of an elected official." Id. at 979.

In as much as Plaintiff spreads misinformation about the independent investigation, and publicly claims it to be a "hatchet job"; the County Defendants' civil rights must remain protected so the County Defendants, in their role as policymakers, may correct or create new County policy; and purge and prevent the spread of any misinformation to the public. See New York Times Co. v. United States, 403 U.S. 713, (1971) (holding the Government had not met its heavy burden of showing justification to enjoin the publication of excerpts from a classified investigation report of the United States' involvement in Vietnam).

In sum, Freeholder Curley's contempt motion is a blatant attempt to side-step the Court's well-settled recognition of absolute immunity and judicial restraint in almost identical situation. In so doing, Plaintiff's invites the Court to ignore the rule of law under Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990); and otherwise resort to balancing the credibility of the parties' attorneys strictly based on unsworn, self-serving factual allegations presented by Plaintiff's counsel.

POINT II

**ALTERNATIVELY, ABSENT COMPLIANCE WITH L.CIV. R. 5.3
AND PANSY, FREEHOLDER CURLEY CANNOT MAINTAIN AN ACTION
FOR CONTEMPT.**

In Littlejohn v. Bic Corp., 851 F.2d 673 (3d Cir. 1988), the Third Circuit undertook a review of the district court's denial of Bic's motion to hold Littlejohn's attorney in contempt for allegedly violating an "umbrella" seal order ("seal order"). Bic specifically claimed that Littlejohn's attorney violated the seal order, when he failed to return/destroy certain discovery materials, and otherwise publicly disclosed same. See Littlejohn, 851 F.2d at 675-76, 683-84.

In reviewing the lower court's denial of a contempt motion, the Third Circuit explained that whenever allegations for contempt are predicated on a seal order, courts must first decide whether or not the public has a presumptive right of access to the document(s). Id. at 684-85.

The Third Circuit further explained that in reviewing a contempt motion based on a seal or protective order, the lower court must weigh the presumption right of access and other interests favoring public disclosure against those favoring secrecy before making a decision on sealing a document. Id. at 683-687. If the reviewing court learns that the lower court did not balance the public and private interests, the matter may either be remanded to the lower court for additional findings or

the lower court's order may be overturned for abuse of discretion. Id. at 685-87.

In this case, Freeholder Curley first caused the Report to be filed as an attachment to his Complaint and/or Order to Show Cause filed on December 1, 2017. (See ECF No. 1). Unlike discovery motions, there is a greater presumptive public right of access to materials filed in connection with a motion for a preliminary injunction or an exhibit to a complaint. See Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 165 (3d Cir. 1993). This is due in part to the fact that when a document is inextricably intertwined with the case, public access to that information is necessary in order for the public to be informed about the proceedings and evaluate the legal process. Id. at. 164. See also United States v. Kushner, 349 F. Supp.2d 892, 906 (D.N.J. 2005) (noting the public has a strong interest in this use public officials make of their positions of public trust). Once a document is filed with the court, "the filing of [the] document gives rise to a presumptive right of public access." Pansy v. Borough of Stroudsburg, 23 F.3d 772, 781-82 (3d Cir. 1994) [emphasis in original].

Thus, Freeholder Curley's position that the Report is subject to a blanket seal order is misguided and fundamentally flawed. Before the contempt motion can be considered, this Honorable Court must issue a decision in accordance with

L.Civ.R. 5.3; and the Third Circuit's decisions in Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994); and Littlejohn, 851 F.2d at 684-86.

A. A Pansy Balancing Test Must Be Conducted.

Freeholder Curley is also incorrect in the assertion that the seal order is enforceable purely based on the parties alleged consent. In Pansy, the Third Circuit unequivocally established that parties' wishing to obtain a sweeping seal order by mutual consent do not have *carte blanche* say as to what documents are to be sealed by the court. See Pansy, 23 F.3d at 786 (internal quotations and citations omitted).

Instead, the Third Circuit instructed district courts to independently conduct a balancing test of the public and private interest factors -- even when parties have already agreed to seal certain records. See Pansy, 23 F.3d at 786-87. Pansy also reiterated the Third Circuit's position in Littlejohn, that the lower courts must articulate its analysis of the public and private interest factors, and the court's findings and reasons for the decision in each seal order. Id. at 786-91. If sealing is deemed appropriate, the Court "must both articulate the countervailing interest it seeks to protect and make findings specific enough that a reviewing court can determine whether the closure order was properly entered." Publicker Indus., Inc. v.

Cohen, 733 F.2d 1059, 1070 (3d Cir. 1984) [citations and internal quotation marks omitted].

Accordingly, Plaintiff's position that the Minute Entry is to be construed as a seal over the entire Report is a mistake of law. Under Pansy and L.Civ. R. 5.3(c)(6), "[a]ny order or opinion on any motion to seal or otherwise restrict public access shall include findings on the factors set forth in (c)(3)" This is especially true if the court determines the document should be sealed in its entirety and no less restrictive alternative is available. Id.

B. Plaintiff Cannot Overcome the Publics' Right of Access to Material Portions of the Report.

Both Pansy and L.Civ.R. 5.3 place the burden on the party seeking a seal order to justify the request. Under L.Civ.R. 5.3(c)(1), any request to file materials under seal is to be made by formal motion, and is to include an affidavit or similar document, describing with particularity, the following information listed under L.Civ.R. 5.3(C)(3):

(a) the nature of the materials or proceedings at issue;

(b) the legitimate private or public interest which warrants the relief sought;

(c) the clearly defined and serious injury that would result if the relief sought is not granted;

(d) why a less restrictive alternative to the relief sought is not available;

(e) any prior order sealing the same materials in the pending action; and

(f) the identity of any party or nonparty known to be objecting to the sealing request.

Id.

To overcome the presumption of public access, the party seeking to close a hearing or seal a judicial record "bears the burden of showing that the material is of the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." In re Cendant, 260 F.3d 183, 194 (3d Cir. 2001) (quotation marks and citations omitted); see also Pansy, 23 F.3d at 786 (internal citations omitted).

In the instant matter Plaintiff has yet to file a formal motion to seal the Report as required by L.Civ.R. 5.3(c)(1), setting forth with particularity, Plaintiff's satisfaction of the factors set forth under L.Civ.R.5.3(c)(3).

It is the County Defendants' position that Freeholder Curley has neglected to file this mandated motion because an objective weighing of the above-referenced factors favors public access to substantial portions of the Report.

More particularly, Freeholder Curley's status as an elected official, suing the County Defendants over Freeholder Curley's conduct, falls in favor of public access. To this issue, Third

Circuit precedent dictates: "privacy interests are diminished when the party seeking protection is a public person subject to legitimate public scrutiny." Pansy, 23 F.3d at 787-88.

In fact, a substantial public interest has been found to exist [REDACTED]

[REDACTED]. See Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997)

Plaintiff's alleged harm to reputation that may result from the disclosure of confidential information is insufficient to overcome the common law presumption in favor of public access. Littlejohn, 851 F.2d at 685 (emphasis added) (citing Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983), cert. denied, 465 U.S. 1100 (1984)).

Therefore, Plaintiff's motion for contempt should be denied with prejudice.

POINT III

THE DISTRICT COURT DECISIONS PLAINTIFF RELIES UPON ARE NON-BINDING ON THIS COURT AND ARE OTHERWISE PROCEDURALLY AND FACTUALLY INOPPOSITE.

Freeholder Curley's legal basis for contempt and sanctions is predicated almost entirely on reported and unreported district court decisions. Respectfully, district court decisions do not alter Third Circuit binding precedent in Littlejohn and Pansy.

Equally important, Freeholder Curley's legal argument runs afoul of the Third Circuit's long-held position that district court decisions, whether reported or unreported, are non-binding and otherwise not to be considered in deciding Plaintiff's application. See Threadgill v. Armstrong World Indus., Inc., 928 F.2d 1366 (3d Cir. 1991); see also 3d Cir. L.A.R. 28.3(a) (2008).

In Threadgill the Third Circuit found to be clear:

[T]here is no such thing as "the law of the district." Even where the facts of a prior district court case are, for all practical purposes, the same as those presented to a different district court in the same district, the prior resolution of those claims does not bar reconsideration by this Court of similar contentions. The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another.

Id. at 1371 (internal quotations, citations, and footnotes omitted).

The Supreme Court reconfirmed this judicial policy in Camreta v. Greene, 563 U.S. 692, 709 n. 7 (2011). Therein, the Court acknowledged: "A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same district judge in a different case." Id. at 709 n.7 (internal citation omitted); see also Daubert v. NRA Group, LLC., 861 F.3d 382, 395 (3d Cir. 2017) ("[A] district court's decision, whether published in a reporter or not, binds only the parties in *that*

case and no judge in any other case.”)(internal quotation marks and citations omitted).

Furthermore, the instant matter is procedurally, legally, and factually inapposite to the cases Plaintiff relies upon for imposing contempt sanctions. For instance, procedurally in this case the parties have yet to apply for or agree to any discovery confidentiality and/or protective orders. Likewise, temporary restraining orders and/or preliminary/permanent injunctions have never been issued or violated.

Hence, this case is procedurally different from virtually all of the cases Plaintiff relies upon to impose contempt. (Compare: Apple Corps Ltd, International Collectors Soc., 15 F.Supp.2d 456, 459-460 (1998)(interpreting a preliminary and permanent injunction entered by consent parties); Landmark Legal Foundation v. E.P.A., 272 F.Supp.2d 70(D.C.C. 2003)(interpreting a preliminary injunction); Reed Publ'g (Ned.) B.V. v. Execulink, Inc., No. 98-1049, 2000 WL 1023356, at *1 (D.N.J. June 8, 2000)(interpreting an injunction granted after entry of default judgment); Damiano v. Sony Music Ent., Inc., No. 95-4795, 2000 WL 1689081, at *9-(D.N.J. Nov. 13, 2000)(interpreting a seal order that expressly provided for punishment of contempt, and which was only entered after formal application to seal and the court weighed the Pansy factors); Survivor v. Our Kids of Miami-Dade/Monroe, Inc., No. 11-24511, 2016 WL 950952, at *3-4 (S.D.

Fla. Mar. 7. 2016) (seal order entered for court ordered Guardian ad Litem's Report in order to prevent revictimization of minor victims of sexual abuse); and York Group, Inc. v. Pontone, No. 10-1078, 2014 WL 3811014, at *2-4, *18 (W.D. Pa. Aug. 1, 2014) (interpreting several lengthy protective orders in response to motions to seal, and denying request for blanket seal after applying the Pansy factors).

For this reason alone, Plaintiff's application for contempt and sanctions should be denied as a matter of law.

POINT IV

THE INSTANT APPLICATION FOR SANCTIONS AND CONTEMPT MUST BE DENIED, AS FREEHOLDER CURLEY COMES TO THIS COURT WITH UNCLEAR HANDS.

"[C]ivil contempt sanctions should be tailored so that they do not unduly harm broader public interests." Elkin v. Fauver, 969 F.2d 48, 52 (3d Cir. 1992) (citing Spallone v. United States, 493 U.S. 265, 276 (1990)).

Equally important is that "[o]ne who comes into equity must come with clean hands and keep those hands clean throughout the pendency of the litigation even to the time of ultimate disposition by an appellate court." Gaudiosi v. Mellon, 269 F.2d 873, 881 (3d Cir. 1959) [internal footnotes omitted].

"The clean hands maxim gives wide sweep to the equity court's discretion in refusing to aid the unclear litigant." Ibid. [internal quotation marks and footnotes omitted]. A court

acts out of concern for its own integrity when it refuses to hear a claim because the party seeking relief enters with "unclean hands." Id. at 881-82.

"To prevail on an unclean hands defense, the defendant must show fraud, unconscionability, **or** bad faith on the part of the plaintiff." S&R Corp., v. Jiffy Lube Int'l, Inc., 968 F.2d 371, 377 n.7 (3d Cir. 1992) (emphasis added); see also CardioNet, LLC v. Mednet Healthcare Techs., Inc., 146 F.Supp.3d 671 (E.D. Pa. 2015); Imprisoned Citizens Union v. Shapp, 11 F.Supp. 2d 586, 608 (E.D. Pa. 1998), aff'd sub nom., Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3d Cir. 1999).

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

Accordingly, the instant motion for contempt must be denied on account of Freeholder Curley's unclean hands in repeatedly

disclosing [REDACTED]

[REDACTED] from the Report since the inception of this case.

CONCLUSION

For the reasons set forth herein, the County Defendants respectfully urge Your Honor deny Plaintiff's Motion for Contempt and Sanctions with prejudice, as a matter of law.

Respectfully submitted,
O'DONNELL McCORD, P.C.

/s/ Jonathan Testa
Jonathan Testa, Esq.
Attorneys for Defendants
Monmouth County Board of Chosen
Freeholders, et al.,

Dated: January 29, 2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN CURLEY,

Plaintiff,

-vs-

CIVIL ACTION NO.:
3:17-12300 (BRM-TJB)

CIVIL ACTION

MONMOUTH COUNTY BOARD OF CHOSEN
FREEHOLDERS; SERENA DIMASO, in
her individual and official
capacity as Monmouth County
Chosen Freeholder; THOMAS ARNONE,
in his individual and official
capacity as Monmouth County
Chosen Freeholder; GARY RICH, in
his individual and official
capacity as Monmouth County
Chosen Freeholder; LILLIAN BURY,
in her individual and official
capacity as Monmouth County
Chosen Freeholder; MICHAEL
FITZGERALD, ESQ., in his
individual and official capacity
as County Counsel, and TERI
O'CONNOR, in her individual and
official capacity as County
Administrator,

Defendant(s).

RETURN DATE: February 20, 2018

THE COUNTY DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S
"STATEMENT OF FACTS"

Jonathan Testa, Esq.
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jtesta@omlawpc.com
Attorneys for Defendants
Monmouth County Board of Chosen Freeholders, et, al.

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S STATEMENT OF FACTS

Defendants Monmouth County Board of Chosen Freeholders, et al., (hereinafter collectively the "County Defendants") hereby object to Plaintiff John Curley's ("Freeholder Curley") "Statement of Facts" (see ECF No. 8-1 at pp. 6-12) on the following legal grounds:

1. Freeholder Curley's "Statement of Facts" sets forth purported factual contentions that are not supported by an affidavit, certification, declaration or other document prepared in accordance with L.Civ.R. 7.2(a), otherwise in violation of Fed.R.Civ.P. 6(c)(2) and L.Civ.R. 7.1(d)(1).

2. Alternatively, should Freeholder Curley's "Statement of Facts" be construed as an affidavit, certification, declaration or other document, same must be disregarded and stricken from the record for failure to comply with L.Civ.R. 7.2(a).

3. Moreover, Freeholder Curley's "Statement of Facts", merely reiterates the conclusory allegations of law and fact set forth in the Amended Complaint, is comprised of speculative unsworn assertions of fact that are outside the personal knowledge of the "affiant"; and gratuitous interpretative summations of opinion; and other immaterial and irrelevant information.

Accordingly, Plaintiff's "Statement of Facts" should be disregarded and otherwise ignored by this Honorable Court in accordance with Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990) (instructing courts not to accept conclusory allegations, whether made in the complaint or a sworn statement.)..

RESPONSIVE STATEMENT OF FACTS

The County of Monmouth operates under the laws of the New Jersey Civil Service Act, N.J. Stat. Ann. § 11A:1-1 et seq., and the administrative regulations promulgated pursuant thereto at N.J. Admin. Code § 4A:1-1.1. See Certification of Defendant Michael D. Fitzgerald, Esq., dated January 29, 2018 at p.2:¶3.¹

Defendant Michael Fitzgerald, Esq. ("County Counsel"), began his term as Monmouth County Counsel on January 19, 2017. See Fitzgerald Cert. at p.2:¶2.

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¹ Defendant Monmouth County Counsel Michael D. Fitzgerald, Esq.'s Certification dated January 29, 2018, is filed under Exhibit "A"; and is cited hereinafter as "Fitzgerald Cert."

6. In early June 2017, Freeholder Curley was advised that the work-place complaint had been filed against him. Id. at p.2:¶¶5-8.

7. When Freeholder Curley was advised of the work-place complaint, he sought out the Complainant's identity. Id. at pp.2-3:¶¶5-10.

8. When Freeholder Curley asked for the Complainant's name, he also listed-off the names of several County Officials and employees he suspected had filed the work-place complaint. Id. at pp.2-3:¶¶6-14.

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10. County Counsel advised Freeholder Curley that an independent investigation was necessary to maintain compliance with Federal and New Jersey laws, and to assure that the investigation remain objective. [REDACTED]

[REDACTED]

11. Freeholder Curley's attorneys never objected during
[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

12. In late November 2017, County Counsel was informed
that [REDACTED], confronted
[REDACTED] about having participated in the investigation. [REDACTED]
[REDACTED]

13. On December 4, 2017, the County Defendants made clear
that if Plaintiff did not withdraw their Order to Show Cause
application, the County Defendants had every intention to
vigorously oppose same on freedom of speech grounds. See Cert.
of Counsel at pp. 2-3:¶¶6-10.

14. During the December 4th meeting, Defense counsel
provided Freeholder Curley's attorneys with a draft opposition
brief to Plaintiff's Order to Show Cause application. See Cert.
of Counsel at pp. 2-3:¶¶6-10.

15. The opposition papers set forth that Freeholder
Curley's requested relief amounted to an illegal restraint on
the County Defendants' rights under the Speech or Debate Clause,
as well as the First Amendment. See Cert. of Counsel at pp. 2-
3:¶¶6-10.

16. After Plaintiff's counsel reviewed the draft
opposition brief, Freeholder Curley withdraw the Order to Show
Cause application. Id.

17. At the close of the conference on December 4, 2017, counsel for all parties agreed understood that within the week, the County Defendants' were to move forward with consideration of, and taking a vote on, the Resolution of Censure. Id.

18. On December 8, 2017, the Board of Chosen Freeholders held duly noticed special Executive and Public Meetings (hereinafter "County Meetings"). See Cert. of Counsel, at p.3:¶11.

19. Freeholder Curley was represented by his legal team during the County Meetings. See Cert. of Counsel at p.3:¶12.

20. The County Defendants' have never restricted Freeholder Curley's office access at the Hall of Records Building, nor have they ever restricted his ability to attend County meetings, and/or lawfully represent the County electorate. See Cert. of Counsel at p.3:¶¶13-15.

21. On December 8, 2017, Freeholder Curley was in his office at the Hall of Records Building, and his ability to personally attend and participate in the County's Executive and Public Meetings was never restricted by the County Defendants. Id.

22. Freeholder Curley voluntarily remained in his office during both County's Meetings. Id.

23. During the Executive Session, Plaintiff's attorneys provided sworn statements purported to be from County employees

 See Cert. of Counsel at p.4:¶¶16,23-24.

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

27. During the Public Meeting, a member of the public in interrupted the orderly reading of the proposed Censure Resolution, shouting claims that the County was revealing the Report. See Cert. of Counsel at p.4:¶18.

28. Aside from wearing an "I stand with Freeholder Curley" badge, the public attendees' relationship to the case is unknown. See Cert. of Counsel at p.4:¶19.

29. The public member also spoke during the designated public comment portion for the Public Meeting. See Cert. of Counsel at p.4:¶20.

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

Based upon the foregoing and the legal arguments set forth within the County Defendants' opposition brief, it is respectfully urged that Your Honor deny Plaintiff's motion be denied with prejudice as a matter of law.

Respectfully submitted,
O'DONNELL McCORD, P.C.

By: s/ Jonathan Testa
Jonathan Testa, Esq.
Attorney(s) for Defendants
Monmouth County Board of Chosen
Freeholders, et, al.,

DATED: JANUARY 29, 2018

O'DONNELL McCORD, P.C.

Jonathan Testa, Esq.

Attorney ID.: 015152009

15 Mount Kemble Avenue

Morristown, New Jersey 07960

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Fax: (973) 538-3301

jtesta@omlawpc.com

Attorneys for Defendants

Monmouth County Board of Chosen Freeholders, et, al.

JOHN CURLEY,

Plaintiff,

-vs-

MONMOUTH COUNTY BOARD OF CHOSEN
FREEHOLDERS; SERENA DIMASO, in her
individual and official capacity as
Monmouth County Chosen Freeholder;
THOMAS ARNONE, in his individual
and official capacity as Monmouth
County Chosen Freeholder; GARY
RICH, in his individual and
official capacity as Monmouth
County Chosen Freeholder; LILLIAN
BURRY, in her individual and
official capacity as Monmouth
County Chosen Freeholder; MICHAEL
FITZGERALD, ESQ., in his individual
and official capacity as County
Counsel, and TERI O'CONNOR, in her
individual and official capacity as
County Administrator,

Defendant(s).

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(Trenton Vicinage)

CIVIL ACTION NO.:
3:17-12300 (BRM-TJB)

CERTIFICATION OF COUNSEL

I, Jonathan Testa, Esq., of full age, do hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey, duly
licensed to practice in the United States District Court for the

District of New Jersey, and am currently employed as an associate attorney with the law firm of O'Donnell McCord, P.C.

2. At all relevant times during this litigation, I have been the attorney of record for Defendants Monmouth County Board of Chosen Freeholders, Serena DiMaso, Esq.; Thomas Arnone; and Gary Rich (hereinafter collectively the "County Defendants") in the instant matter.

3. Consequently, I am fully familiar with the facts, circumstances and procedural history of this case from the files maintained in my office and personal involvement in this matter.

4. I hereby make this Certification in support of the County Defendants' Brief in Opposition to Plaintiff's Motion for Contempt and Sanctions.

5. The County of Monmouth is a local government and body of politic of the State of New Jersey.

6. On December 4, 2017, the County Defendants made clear that if Plaintiff did not withdraw their Order to Show Cause application, the County Defendants had every intention to vigorously oppose same on freedom of speech grounds.

7. During the December 4th meeting, Defense counsel provided Freeholder Curley's attorneys with a draft opposition brief to Plaintiff's Order to Show Cause application.

8. The opposition papers set forth that Freeholder Curley's requested relief amounted to an illegal restraint on the County

Defendants' rights under the Speech or Debate Clause, as well as the First Amendment.

9. After Plaintiff's counsel reviewed the draft opposition brief, Freeholder Curley elected to withdraw the Order to Show Cause application.

10. At the close of the conference on December 4, 2017, counsel for all parties agreed understood that within the week, the County Defendants' were to move forward with consideration of, and taking a vote on, the Resolution of Censure.

11. On December 8, 2017, the Board of Chosen Freeholders held duly noticed special Executive and Public Meetings (hereinafter "County Meetings").

12. Freeholder Curley was represented by his legal team during the County Meetings.

13. The County Defendants have never restricted Freeholder Curley's office access at the Hall of Records Building, ability to attend County meetings, and/or lawfully represent the County electorate.

14. On December 8, 2017, Freeholder Curley was in his office at the Hall of Records Building, and his ability to personally attend and participate in the County's Executive and Public Meetings was never restricted by the County Defendants.

15. Freeholder Curley voluntarily remained in his office during both County Meetings.

16. During the Executive Session, Plaintiff's attorneys provided sworn statements purported to be from County employees

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

17. The statements of [REDACTED] and [REDACTED] reveal information that was only disclosed in the Report.

18. During the Public Meeting, a member of the public in interrupted the orderly reading of the proposed Censure Resolution, shouting claims that the County was revealing the Report.

19. Aside from wearing an "I stand with Freeholder Curley" badge, the public attendees' relationship to the case is unknown.

20. The public member also spoke during the designated public comment portion for the Public Meeting.

[REDACTED]

[REDACTED]

22. A true and accurate Certification of Defendant Michael Fitzgerald, Esq., is annexed hereto at **Exhibit "A"**.

23. Upon information and belief, a true and accurate copy of the "[REDACTED]" is annexed hereto at **Exhibit "B"**.

24. Upon information and belief, a true and accurate copy of the "[REDACTED]" is annexed hereto at **Exhibit "C"**.

25. A true and accurate copy of the article published on Courthouse News website on December 5, 2017 is annexed hereto at **Exhibit "D"**.

26. A true and accurate copy of an article published in the Asbury Park Press on December 1, 2017, is annexed hereto at Exhibit "E".

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

O'DONNELL McCORD, P.C.

By: s/ Jonathan Testa
Jonathan Testa, Esq.
Attorney(s) for Defendants
Monmouth County Board of Chosen
Freeholders, et, al.,

DATED: JANUARY 29, 2018

EXHIBIT “A”

This Exhibit has been filed via ECF in redacted form on the public docket in accordance with Local Civil Rule 5.3, and ECF Policy and Procedure No. 17.

O'DONNELL McCORD, P.C.
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Attorneys for Defendants
Monmouth County Board of Chosen Freeholders, et, al.

JOHN CURLEY,

Plaintiff,

-vs-

MONMOUTH COUNTY BOARD OF CHOSEN
FREEHOLDERS; SERENA DIMASO, in her
individual and official capacity
as Monmouth County Chosen
Freeholder; THOMAS A. ARNONE, in
his individual and official
capacity as Monmouth County Chosen
Freeholder; GARY J. RICH, in his
individual and official capacity
as Monmouth County Chosen
Freeholder; LILLIAN G. BURRY, in
her individual and official
capacity as Monmouth County Chosen
Freeholder; MICHAEL FITZGERALD, in
his individual and official
capacity as County Counsel, and
TERI O'CONNOR, in her individual
and official capacity as County
Administrator,

Defendant(s).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Trenton Vicinage)

CIVIL ACTION NO.:
3:17-cv-12300 (BRM) (TJB)

CERTIFICATION OF DEFENDANT
MICHAEL D. FITZGERALD

I, Defendant Michael Fitzgerald, Esq., do hereby certify as
follows:

1. I am a citizen of the United States and the State of New Jersey, and currently serve as County Counsel for the County of Monmouth.

2. I began my three-year statutory term as Monmouth County Counsel on January 19, 2017.

3. The County of Monmouth is a public civil service jurisdiction, and subject to the New Jersey Civil Service Act, N.J. Stat. Ann. § 11A:1-1 et seq., and the administrative regulations promulgated pursuant thereto at N.J. Admin. Code § 4A:1-1.1.

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

4. In early June 2017, I informed Freeholder Curley that an internal complaint had been filed against him. Ms. O'Connor was present when Freeholder Curley was advised that he was a "target" of an investigation. I specifically informed the Freeholder to not attempt to determine the person that filed the complaint.

5. Freeholder Curley then attempted to obtain the name of the Complainant. The efforts to determine the identity of the complaint were numerous. Freeholder Curley asked me, on at least five separate occasions who had filed the complaint.

6. On every occasion, I reminded Freeholder Curley of my role as County Counsel and explained my legal and ethical obligation not to reveal the identity of the complainant.

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

13. I advised Freeholder Curley that an independent investigation was necessary to assure the County's compliance with applicable Federal and State laws; and to protect the integrity and objectivity of the investigation.

14. Several attorneys represented Freeholder Curley throughout the investigation. I received a call from Bob Honecker, Esq. early in the investigation advising that he was "calling for" Freeholder Curley. Thereafter, I received a call from Michael Pappa, Esq. advising that he had been consulted by Freeholder Curley. Most recently, I was contacted by Angelo Genova, Esq.

15. Freeholder Curley's current attorneys began representing him early in the investigation.

16. Freeholder Curley's attorneys never voiced any objections to me after they were informed that the County retained the Honorable Mary Catherine Cuff, P.J.A.D. (ret.) (the "Investigator") to conduct the investigation.

17. Freeholder Curley's attorneys were present whenever Freeholder Curley was questioned.

18. During the investigation, Freeholder Curley's attorneys never voiced any concerns to me about the Investigator's questioning of Freeholder Curley. In fact, Mr. Genova requested an opportunity to meet with Judge Cuff and attended the meeting with his client.

19. Freeholder Curley's attorney, Angelo Genova, Esq., first voiced displeasure with the investigation after he was informed of some of the salient details of the Investigator's Report ("Report") in November 2017. As a courtesy, I permitted Mr. Genova two opportunities to read the "Cuff Report" before it was distributed to anyone.

20. Other than Judge Cuff and her staff, Mr. Genova and I were the only persons who had an opportunity to read the report as of November 1, 2017.

21. I distributed the "Cuff Report" to the Freeholders (including Freeholder Curley through his attorney) in redacted form during the Executive Session on November 26, 2017).

22. I subsequently received information that an appointed County Official, [REDACTED], confronted [REDACTED] about information [REDACTED] supplied to the Investigator.

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

[[***FILED IN REDACTED FORM IN ACCORDANCE WITH L.CIV.R. 5.3(c)(4)***]]

27. Freeholder Curley has enjoyed full access to the County Hall of Records building throughout the entire time I have served as County Counsel.

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

s/ Michael D. Fitzgerald
DEFENDANT MICHAEL D. FITZGERALD, ESQ.

DATED: JANUARY 29, 2018

EXHIBIT “B”

This Exhibit has been filed via ECF in redacted form on the public docket in accordance with Local Civil Rule 5.3, and ECF Policy and Procedure No. 17.

EXHIBIT “C”

This Exhibit has been filed via ECF in redacted form on the public docket in accordance with Local Civil Rule 5.3, and ECF Policy and Procedure No. 17.

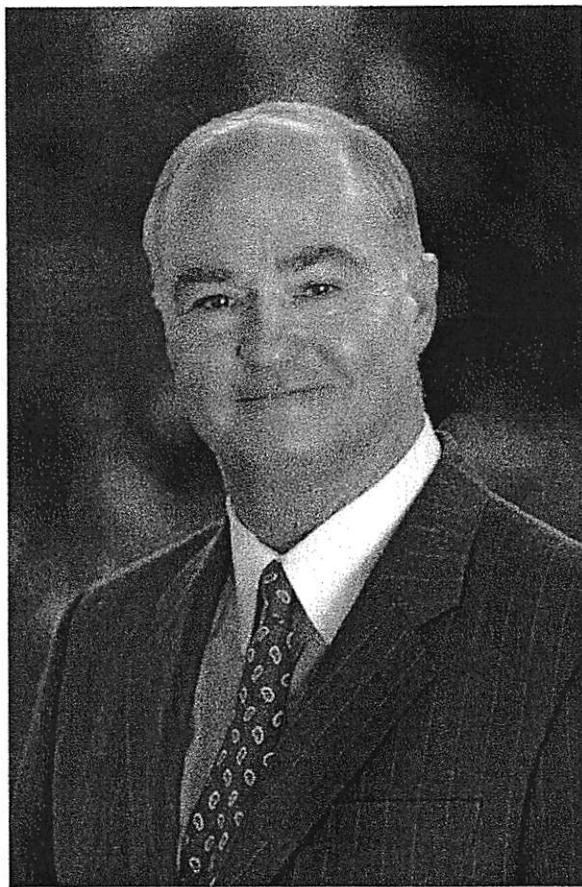
EXHIBIT “D”

‘Hatchet Job’: Outspoken NJ Freeholder Fights Censure Vote

NICK RUMMELL December 5, 2017

FREEHOLD, N.J.
(CN) – A
Monmouth County
freeholder who
made national
headlines for his
unfiltered rebuke of
New Jersey Gov.
Chris Christie
fought in court
Monday to duck
censure on a new
controversy.

Freeholder Deputy
Director John Curley’s court appearance stems from a federal
complaint he filed on Dec. 1, accusing county officials of



CNS Trends



Banker's Lawyers
Swing at Star Witness
in Iran Sanctions Case



Turkish Gold Trader
Confirmed as Witness
in Sanctions Case



Death Penalty Upheld
in Grisly Memphis
Murders



Restaurateurs Sue
Lemonis of 'The Profit'



Disturbing Evidence
Piles Up Against
Accused Murderer Feit



Dentist and Church
Sued Over Infant's
Brutal Death



Prosecutor Irks Judge
in Durst Murder
Hearing



US Sailors Face Grim
Diagnoses After
Fukushima Mission



Turkey Seizes Assets
of Presidential Ally
Who Flipped

CNS Feed

conducting a sexual-harassment investigation that violates his due-process rights.

As the Republican freeholder of eight years explained in his Dec. 1 federal lawsuit, the county counsel and county administrator began investigating him this past June when an anonymous woman complained about comments she said Curley made at an unspecified parade.

Curley said a fellow freeholder who he considers a political rival piled on with separate allegations, and the unsanctioned investigation resulted in a report looking back six years.

That secret report, now under court seal, led the Monmouth County Board of Chosen Freeholders to ban Curley from any contact with county employees or access to the county Hall of Records.

The board was scheduled to vote Monday on censuring Curley, but Curley's lawsuit led to a postponement.

Curley agreed in the Monday conference before U.S. District Court Judge Brian Martinotti to withdraw the portion of the lawsuit seeking injunctive relief. He still could be censured but is allowed back in county offices and to contact county employees.

Angelo Genova, an attorney for Curley with the Newark firm Genova Burns, called the report against his client a "hatchet job."

Curley intends to "defend his reputation for speaking out and prosecute those who, for their own nefarious political



Courthouse Ne...
@CourthouseN...

.@eidelagarza is providing live coverage of the fourth day of the John #FeitTrial.

Feit, a former Catholic priest, is charged with the 1960 murder of Irene Garza, his former parishioner.

Background: bit.ly/2ITEHUK

John Feit...
Three yea...
courthous...

2m



Courthouse Ne...
@CourthouseN...

Texas Student Pleads Guilty to Helping #ISIS
bit.ly/2iXmPbg via @camquarter5

agendas, hope to besmirch that reputation and retaliate against him,” Genova said in a statement.

The attorney declined to comment further on the case, and Curley did not return requests for comment.

Monmouth County meanwhile plans to hold an executive hearing “within a week,” attorney Jonathan Testa aid, during which officials will update the county’s sexual harassment and discrimination policy.

“We are pleased the court has affirmed the ability of the freeholders to conduct the business of the county and to address the pending time-sensitive items,” Testa said after Monday’s conference. “To not address and strengthen sexual harassment policies and expectations for all of our employees would be irresponsible, especially at this time.”

Apart from what Curley hints at in his lawsuit, the report and allegations against him remain a mystery.

He says the county hired an outside investigator to find instances of inappropriate behavior in his past following complaints from an unnamed individual and later by Freeholder Serena DiMaso. DiMaso is a defendant in the suit, alongside fellow freeholders Lillian Burry, Thomas Arnone and Gary Rich Sr.

Martinotti ordered the report sealed at Curley’s request Friday. Curley says it contains “inflammatory and defamatory conclusions,” as well as unsubstantiated statements by witnesses, that would “irreparably harm” his reputation.

A former Democrat, Curley has been both lauded and attacked for his blustery nature, as well as for sometimes taking positions that run contrary to the party's platform, challenging fellow freeholders, and even tangling with the governor.

During the 2016 Bridgegate trial, a former Christie staffer testified that Curley had called Christie a "fat fuck" and criticized the governor for appearing at press conferences after Hurricane Sandy but doing little actual work to help the coastal areas.

The witness said Christie did not take the criticism in stride, asking Curley, "Who the fuck do you think you are? ... I will fucking destroy you!"

Christie also threatened to robocall Republicans in Curley's county to vote him out, according to the staffer's testimony.

During an interview last year, Curley did not dispute that the Christie's handling of the hurricane had left him heated.

"I think I called him a fat motherfucker," Curley told Courthouse News.

"I was frustrated to see people out of their homes," he recalled. "People were coming up to me, saying, 'My kids are hungry. Our home has just been totally destroyed.'"

"I walked to his cabinet and said, 'Where is the fat fuck, running for president?'"

Curley is a three-term freeholder. The next election is at the end of 2018.

In his lawsuit, Curley calls the investigation he faces a politically motivated “hatchet job.”

“This case is a classic illustration of how a stand-up public official can draw the wrath and vindictive retaliation of his adversaries for his fierce independence and integrity,” the 26-page lawsuit states.

Curley alleges that only the board has investigatory functions, and that neither the administrator nor the county counsel — both of whom are listed as defendants — can initiate an investigation.

Neither the investigation of Curley or the vote to bar him from county property was authorized by the board, according to the complaint.

County Administrator Terry O’Connor and other officials “have launched this investigation process with the goal of silencing Freeholder Curley and blemishing his stellar record in the public square,” the lawsuit states.

Curley also alleges that the county’s Office of Professional Standards was improperly created without board approval and lacks the legal authority to investigate freeholders.

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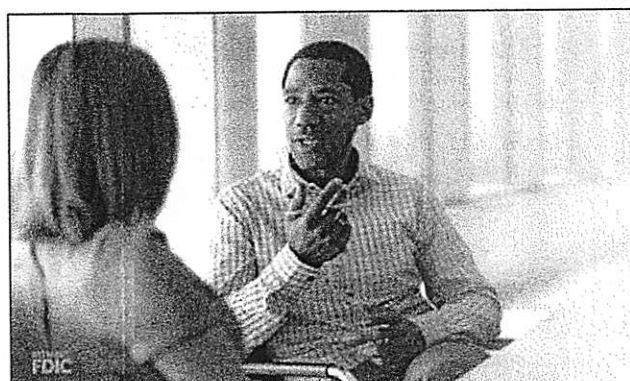
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Sexual harassment allegation sparks Monmouth censure vote against John Curley

Susanne Cervenka, @scervenka

Published 10:03 a.m. ET Dec. 1, 2017 | Updated 10:45 a.m. ET Dec. 12, 2017



(Photo: Frank Galipo/Correspondent)

FREEHOLD - Monmouth County freeholders will consider censuring one of their own, Freeholder John Curley ([/story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/](http://story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/)), after a five-month sexual harassment investigation that his attorney called a "hatchet job."

Curley filed a federal lawsuit Friday morning seeking to block the release of a report detailing the investigation and a court order restoring his access to the Monmouth County Hall of Records, the county's main building where his freeholder office is located.

"The report contains sensitive and confidential information regarding a sexual harassment investigation," according to a footnote in the lawsuit seeking the report be sealed. Read the full legal filing at the bottom of the

page.

Curley claims in the lawsuit that he was banned from the building by Monmouth County Counsel Michael Fitzgerald and County Administrator Teri O'Connor this week after the investigation report was released to the five-member freeholder board. He also was forbidden to talk to county employees.

Latest: Sexual harassment allegations revealed as freeholders censure Curley ([/story/news/politics/monmouth-county/2017/12/08/sexual-harassment-john-curley-censure/926785001/](http://story/news/politics/monmouth-county/2017/12/08/sexual-harassment-john-curley-censure/926785001/))

The lawsuit also claims the county violated Curley's due process and First Amendment rights in the way it's handling the investigation. Curley is up for re-election in November 2018.

The freeholders initially were expected to consider censuring Curley at a public meeting Monday, however, that meeting was postponed. At that meeting, the freeholders also had planned to vote on an expanded discrimination and harassment policy, which also was postponed.

Instead, attorneys for Curley and Monmouth County will be in Trenton Monday morning for a meeting with federal District Court Judge Brian R. Martinotti, according to federal court records. Those records also show Martinotti agreed to seal a document during a telephone conference call with attorneys Friday, but it was not clear if that was the investigation report.

More: John Curley censure vote: Sexual harassment or political hit? ([/story/news/politics/monmouth-county/2017/12/08/john-curley-censure-vote-sexual-harassment/931194001/](http://story/news/politics/monmouth-county/2017/12/08/john-curley-censure-vote-sexual-harassment/931194001/))

"Freeholder Curley's long-regarded reputation for the highest standards in ethics and public service is wrongfully under attack by his political adversaries who are bent on destroying his reputation in the mind of the public he serves, based on speculative and uncorroborated claims which he denies," according to the statement released Friday.

"He intends to defend his reputation for speaking out and prosecute those who, for their own nefarious political agendas, hope to besmirch that reputation and retaliate against him with this 'hatchet job' effort to censure him," according to the statement.

Several Monmouth County officials said Friday they would not release additional information beyond what was published in a legal notice advertising Monday's meeting until after it occurred. Others did not return messages seeking comment.

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More: [Equal pay lawsuit: Monmouth County Parks women say they are paid less than men](http://story/news/investigations/watchdog/government/2017/10/27/equal-pay-lawsuit-monmouth-county-parks-workers/802641001/)
([/story/news/investigations/watchdog/government/2017/10/27/equal-pay-lawsuit-monmouth-county-parks-workers/802641001/](http://story/news/investigations/watchdog/government/2017/10/27/equal-pay-lawsuit-monmouth-county-parks-workers/802641001/))

In fact, the vast majority of the public information about the incident comes from Curley's lawsuit.

Curley is suing Fitzgerald, O'Connor, the Monmouth County Freeholder board overall as well as his four colleagues, Freeholders Tom Arnone, Lillian Burry, Serena DiMaso and Gary Rich. All five board members are Republicans.

The issues surrounding Curley began in June based on a complaint about an "off-color" comment Curley made at an unnamed parade and "spiraled into a full inquest into actions (Curley) allegedly took over the past six years," the lawsuit said.

Curley has been known for using, at times, brusque language, including an exchange he had with New Jersey Gov. Chris Christie where the two politicians exchanged expletives after superstorm Sandy ([/story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/](http://story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/)).

More: [Christie to freeholder: 'I will f---ing destroy you'](http://story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/) ([/story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/](http://story/news/politics/new-jersey/chris-christie/2016/10/05/bridgegate-curley-called-christie-fat-f---after-sandy/91614168/))

Curley has not been told who is making the accusations against him, the lawsuit said. He'll be allowed to question an unnamed investigator who prepared the report at a Monday private meeting, but won't be able to question any of the witnesses that were interviewed.

The lawsuit claims Fitzgerald and O'Connor hired an outside investigator and created a county office, the Office of Professional Standards, without authorization.

The lawsuit claims the investigator focused extensively on allegations made by DiMaso, who was described as one of Curley's "political rivals."

While both Curley and DiMaso are Republicans, they have had a strained relationship for years, sometimes trading subtle barbs at freeholder meetings. DiMaso declined to comment on the issue.

"In a lengthy report, the investigator speculated about the significance of incidences without corroborating evidence. Nonetheless, the investigator concluded that there was no legal authority for one elected official to sue another for discrimination, and found that (Curley's) conduct could not be considered actionable," the lawsuit said.

Fitzgerald sent the report to the freeholders Sunday; the board met in a private meeting Wednesday. Curley, however, claimed in the lawsuit Fitzgerald threatened to have him arrested if he did not leave the meeting room.

Curley was eventually allowed to stay but was not allowed to talk about the report.

John Curley federal lawsuit (https://www.scribd.com/document/366054201/John-Curley-federal-lawsuit#from_embed) by asburyweb (https://www.scribd.com/user/253583128/asburyweb#from_embed) on Scribd

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John Curley

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN CURLEY,

Plaintiff,

v.

MONMOUTH COUNTY BOARD OF CHOSEN
FREEHOLDERS, SERENA DINASO, ESQ.,
in her official capacity as
Monmouth County Chosen Freeholder,
THOMAS ARNONE, in his official
capacity as Monmouth County Chosen
Freeholder, GARY RICH, in his
official capacity as Monmouth
County Chosen Freeholder, LILLIAN
BERRY, in her official capacity as
Monmouth County Chosen Freeholder,
MICHAEL FITZGERALD, ESQ., in his
individual and official capacity
as County Counsel, and DEBI
O'CONNOR, in her individual and
official capacity as County
Administrator,

Defendants.

Civil Action No.:

Civil Action

VERIFIED COMPLAINT AND JURY
DEMAND

Plaintiff, John Curley ("Plaintiff"), by his undersigned
counsel, by way of Verified Complaint against Defendants Monmouth
County Board of Chosen Freeholders (the "Board"), Freeholder
Lillian G. Berry, Freeholder Serena Dinaso, Freeholder Gary J.
Rich, Esq., Freeholder, Thomas A. Arnone, Monmouth County Counsel

Susanne Cervenka: @scervenka; 732-643-4229; scervenka@gannettnj.com

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Attorneys for Defendants

Monmouth County Board of Chosen Freeholders, et, al.

JOHN CURLEY,

Plaintiff,

-vs-

MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS; SERENA DIMASO, in her individual and official capacity as Monmouth County Chosen Freeholder; THOMAS A. ARNONE, in his individual and official capacity as Monmouth County Chosen Freeholder; GARY J. RICH, in his individual and official capacity as Monmouth County Chosen Freeholder; LILLIAN G. BURRY, in her individual and official capacity as Monmouth County Chosen Freeholder; MICHAEL FITZGERALD, in his individual and official capacity as County Counsel, and TERI O'CONNOR, in her individual and official capacity as County Administrator,

Defendant(s).

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Trenton Vicinage)**

**CIVIL ACTION NO.:
3:17-cv-12300 (BRM) (TJB)**

**CERTIFICATION OF FILING AND
SERVICE**

I, Jonathan Testa, Esq., of full age, do hereby certify as follows:

1. On behalf of Defendants Monmouth County Board of Chosen Freeholders, Serena DiMaso, Thomas Arnone, Gary Rich, and Lillian

Burry (hereinafter "Freeholder Defendants"), on Monday, January 29, 2018, I, the undersigned, caused to be electronically filed via the Electronic Case Filing System the Freeholder Defendants' legal brief in opposition to Plaintiff John Curley's Motion to Hold Defendants and Defense Counsel in Contempt and For Sanctions, along with, the Freeholder Defendants' Objections to Plaintiff's Statement of Facts and Responsive Statement of Facts; Certification of Counsel; and Exhibits annexed thereto, thereby providing service to:

United States District Court
For the District of New Jersey

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(Attorney for Co-Defendants
Michael D. Fitzgerald, Esq.
and Teri O'Connor)

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

O'DONNELL McCORD, P.C.

By: s/ Jonathan Testa
Jonathan Testa, Esq.
Attorney(s) for Defendants
Monmouth County Board of Chosen
Freeholders, et, al.,

DATED: JANUARY 29, 2018