

No. 220156, Original

IN THE
Supreme Court of the United States

STATE OF NEW YORK,

Plaintiff

v.

STATE OF NEW JERSEY

ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE AND BRIEF OF THE WATERFRONT
COMMISSION OF NEW YORK HARBOR AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFF**

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**MOTION FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE**

Pursuant to Supreme Court Rule 37.4, the Waterfront Commission of New York Harbor submits the accompanying brief as *amicus curiae* by right pursuant to Rule 37.4. As a bistate entity created by a congressionally approved interstate compact, the Commission is “similar” to the governmental entities listed in Supreme Court Rule 37.4. Further, the brief is submitted “by its authorized law officer,” Phoebe S. Sorial, General Counsel.

In an abundance of caution, pursuant to Supreme Court Rule 37.3(b), the Commission respectfully moves for leave to file the accompanying brief as *amicus curiae*. New York has consented to the filing of this brief. New Jersey “decline[d] to consent to this brief,” explaining that the State believes “the Commission lacks the authority to retain your firm and to file this brief,” and as a result, New Jersey “take[s] no position on this brief.”

1. The Commission's participation in this action is authorized. Although the Commission may "act only by unanimous vote of both members," Waterfront Commission Compact, Act of Aug. 12, 1953, Pub. L. No. 83-252, Art. III, ¶ 3, 67 Stat. 541, 543, and New Jersey does not currently have a confirmed Commissioner, the Compact empowers the Commission "[t]o sue and be sued," and specifies that, "except [for] the power to make rules and regulations," "[t]he powers and duties of the commission may be exercised by officers, employees and agents designated by them," Art. IV, 67 Stat. at 544-545. The Commission's duly adopted by-laws place the Commission's executive director "generally in administrative charge of all Commission ... operations," and authorize the executive director to "delegate to staff members of the Commission such of his duties as may be appropriately delegated." App. 1a-2a (Bylaws III.A & III.A.1). The Bylaws also state that the Commission counsel "shall ... handle ... legal matters and perform such other duties as may be assigned to [her] by ... the Executive Director." App. 1a-3a (Bylaws III.A & III.B.6). And the executive director delegated to the Commission counsel the power to bring legal actions. The Commission's Employee Handbook, which was issued by the executive director, also provides that "[t]he General Counsel, under the general supervision of the Executive Director, shall ... conduct litigation involving the Commission."

Exercising these authorities, Commission counsel retained undersigned counsel to participate in this action. Across its seven decades, the Commission's executive director and counsel have participated in dozens of lawsuits without ever having been required to obtain the specific authorization of the commissioners. Therefore, the Commission's participation in this suit has

been authorized. *See Waterfront Comm'n of New York Harbor v. Murphy*, 429 F. Supp. 3d 1, 6 (D.N.J. 2019) (“find[ing] that [Commission counsel] had the capacity to commence the ... action” against New Jersey to challenge validity of Chapter 324).

2. The Commission has a significant interest in this case. New York has filed this original action to prevent New Jersey from unilaterally withdrawing from the Waterfront Commission Compact and dissolving the Commission. In the accompanying brief, the Commission seeks to highlight its accomplishments over decades of fighting crime and corruption at the Port, and the important work that remains to be done.

Accordingly, the Commission respectfully requests that the Court grant this motion for leave to file a brief as *amicus curiae*.

Respectfully submitted.

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**BRIEF OF THE WATERFRONT COMMISSION OF
NEW YORK HARBOR AS AMICUS CURIAE IN
SUPPORT OF PLAINTIFF**

INTEREST OF AMICUS CURIAE¹

The Waterfront Commission of New York Harbor was created in 1953 by a compact between New York and New Jersey. The compact was presented to Con-

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. As explained in the accompanying motion, the Commission may file this brief by right. In any event, New York consents to the filing of this brief. New Jersey “decline[s] to consent to this brief” and “take[s] no position on this brief,” so the Commission has filed a motion for leave to file this *amicus curiae* brief.

gress for approval pursuant to the Compact Clause of the United States Constitution, art. I, §10, cl. 3, and Congress in turn consented. Waterfront Commission Compact, Act of Aug. 12, 1953, Pub. L. No. 83-252, 67 Stat. 541. The two States formed the Commission to extirpate rampant corruption and racketeering at the Port of New York-New Jersey—a problem that had resisted many previous efforts—and to ensure fair hiring and employment practices so that the Port and region could grow and prosper. The Commission now has a formidable record of investigating and rooting out illicit activities at the Port.

The Commission’s interest in this case is existential. If New Jersey prevails in its effort to unilaterally withdraw from the Waterfront Commission Compact, with the intent to “assume all of the powers, rights, assets, and duties of the commission” within New Jersey, the Commission will dissolve. 2017 N.J. Law Ch. 324 §§ 4(b)(1), 31 (2018). The important work that the Commission has done over the last seven decades to ensure the fair, lawful, and effective operation of the Port will come to an end, to the detriment of the Port’s users and the region that it serves.

SUMMARY OF THE ARGUMENT

New York, New Jersey, and Congress created the Waterfront Commission of New York Harbor because they understood that a bistate agency was essential to combating the corruption, organized crime, and discrimination that had infiltrated the port shared by those two States—the largest port on the East Coast and one of the most important ports in the country. For many years, the Commission made great strides in overcoming criminality at the Port, just as it was created to do. But then for a time, the Commission was it-

self compromised, allowing criminal and corrupt influences to continue to operate at the Port, often through the International Longshoremen’s Association (“ILA”), the union representing waterfront workers.

Nearly fifteen years ago, however, the Commission was reformed thoroughly, and since then has redoubled its efforts to extirpate crime, corruption, and discrimination on the waterfront. The Commission works hand-in-glove with federal and state law enforcement to eliminate labor racketeering and the victimization of legitimate union members and Port businesses. To that end, it vigorously enforces a unique provision of its charter compact to ensure fair and nondiscriminatory hiring by waterfront employers.

New Jersey’s enactment of Chapter 324 is a direct response *not* to the Commission’s prior corruption and ineffectiveness, but to its renewed vigor, competence, and integrity—which is why, when New Jersey tells the story of the Commission, it ignores the past almost-fifteen years. Chapter 324 is the fruit of a concerted and sustained campaign—entailing litigation, lobbying, and protests—by the entities with the most to lose by the Commission’s effective enforcement of the law: the corrupt and criminal, acting primarily through the ILA and the associations of waterfront employers, the New York Shipping Association, Inc. (“NYSA”) and the Metropolitan Marine Maintenance Contractor’s Association, Inc. (“MMMCA”). Relying on inflammatory rhetoric, they complained that the Commission “over-regulates” and “interferes” with their employment decisions and impedes job growth. New Jersey parroted those complaints when it enacted Chapter 324.

The record shows, however, that the Commission does not impede legitimate job growth, and intervenes

only in those employment decisions that are criminal, corrupt, or discriminatory—just as both States and Congress originally intended when they created the Commission. The principal consequence of Chapter 324 will be to disrupt important ongoing law-enforcement operations, roll back successful antidiscrimination efforts, and give myriad bad actors a wider berth on the waterfront.

Fortunately, when New York, New Jersey, and Congress enacted the Compact, they did not provide for one State to unilaterally withdraw; the Compact may be amended or rescinded only by the mutual consent of both States or of Congress. That system protects the Commission from exactly the kind of “capture” that occurred in New Jersey. The Court should hold that Chapter 324 is void.

ARGUMENT

I. THE COMMISSION PLAYS A VITAL ROLE IN COMBATING CRIME, CORRUPTION, AND DISCRIMINATION IN PORT EMPLOYMENT

A. Congress And The States Saw That A Bistate Commission Was Essential To Effective Policing Of Port Employment

“For years the New York waterfront presented a notoriously serious situation. Urgent need for drastic reform was generally recognized.” *De Veau v. Braisted*, 363 U.S. 144, 147 (1960). After “thorough going investigations of the mounting abuses” at the waterfront, the two States concluded in 1953 that the “waterfront labor” market was characterized by “corrupt hiring practices,” which caused “waterfront laborers [to] suffer from irregularity of employment, fear and insecurity

ty, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, [and] exploitation and extortion as the price of securing employment.” *Id.* at 147-148 (quoting Waterfront Commission Compact, Act of Aug. 12, 1953 (“Waterfront Commission Act”), Pub. L. No. 83-252, 67 Stat. 541-542). The Port’s hiring system was also “an instrument of racial discrimination.” *New York Shipping Ass’n Inc. v. Waterfront Comm’n of N.Y. Harbor*, 835 F.3d 344, 354 (3d Cir. 2016).

The investigation found that “the skulduggeries on the waterfront were largely due to the domination over waterfront employment gained by the” ILA, the labor union representing waterfront workers, *De Veau*, 363 U.S. at 147, and the union’s association with organized-crime families, Hearing Before House Subcommittee No. 3 of the Committee on the Judiciary, 83rd Cong. on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383, on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383, Bills Granting the Consent of Congress to a Compact Between the State of New Jersey and the State of New York, Known as the Waterfront Commission Compact, and for Other Purposes, 18-49 (1953) (testimony Alfred E. Driscoll, Gov. of N.J. (“Driscoll Testimony”)).

As the New Jersey Supreme Court has put it, “New York Harbor is an organic whole,” and the States faced “joint problems [that] could not be adequately dealt with except through the coordinated efforts of the two States and the United States. The situation called for unified action.” *Application of Waterfront Comm’n of New York Harbor*, 39 N.J. 436, 456 (1963), *aff’d in part, vacated in part on other grounds sub nom. Murphy v. Waterfront Comm’n of New York Harbor*, 378 U.S. 52 (1964). Accordingly, in 1953 each State passed an identical Waterfront Commission Act creating an

interstate “compact,” N.Y. Unconsol. Law § 9873; N.J. Stat. Ann. § 32:23-7, as a “concerted drive against organized crime,” Driscoll Testimony at 19; *see also id.* (stating that because States were “dealing with a single shipping industry operating in a single harbor” and “organized crime does not respect ... State Boundaries,” “the only real solution” was to create “a single bistate agency.”); *Application of Waterfront Comm’n*, 39 N.J. at 456-457; *De Veau*, 363 U.S. at 149. Thus, the Compact is “an endeavor by New York and New Jersey to cope with long-standing evils on their joint waterfront in the Port of New York.” *De Veau*, 363 U.S. at 147.

Given its essential role under the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3, Congress “independently investigated the evils that gave rise to the Waterfront Commission Acts,” and both the House and Senate “concluded that the extensive evidence of crime, corruption, and racketeering on the waterfront of the port of New York ... made it clear beyond all question that the plan proposed by the States of New York and New Jersey to eradicate those public evils is urgently needed.” *De Veau*, 363 U.S. at 149-150 (quotation cleaned). Accordingly, Congress consented to the Compact by enacting it, as embodied in the state Waterfront Commission Acts, into federal law. Pub. L. No. 83-252, 67 Stat. 541.

The “heart” of the Compact is the Commission, *De Veau*, 363 U.S. at 149, which has law-enforcement jurisdiction over the entire Port, irrespective of state boundaries, *e.g.*, art. II, 67 Stat. at 542; art. IV, ¶¶ 9, 11, 67 Stat. at 544. The Compact specifies that “the commission shall consist of two members”—the commissioners—with one appointed by the governor of each compacting State. Art. III, ¶¶ 1-2, 67 Stat. at 543.

The Compact grants the Commission “the power to license, register and regulate the waterfront employment” of stevedores, pier superintendents, hiring agents, longshoremen, and port watchmen, with “one of the main aims [being] to keep criminals away from the waterfront.” *De Veau*, 363 U.S. at 149; *see* art. IV, ¶ 6, 67 Stat. at 544; art. V, ¶ 1, 67 Stat. at 545; art. VI, ¶ 1, 67 Stat. at 547; art. VIII, ¶ 1, 67 Stat. at 550; art. X, ¶ 1, 67 Stat. at 552. The Commission may conduct background screenings of those seeking employment on the waterfront, to prevent individuals who pose a danger to the public peace or safety, who lack good character and integrity, or who are associated with members of an organized-crime or terrorist group from infiltrating the Port. N.J. Stat. Ann. § 32:23-86(2), (6)-(8); N.Y. Unconsol. Law § 9906(2), (6)-(8).

Additionally, “the eradication of racial discrimination in hiring was one of the original purposes of the Compact,” *New York Shipping Ass’n*, 835 F.3d at 357, and Section 5-p of the Compact is essential to that goal. Under that provision, the Commission may open and close the register of longshore workers to curtail abusive hiring and extortive labor practices. This power includes the ability to require waterfront employers to certify that new employees were selected in a fair and non-discriminatory manner consistent with state and federal law. N.J. Stat. Ann. § 32:23-114; N.Y. Unconsol. Law § 9920. Section 5-p has become “the Commission’s primary tool for ensuring fair and non-discriminatory hiring practices, and for preventing extortion of Port workers.” PI App. 21a (Arsenault Decl. ¶ 60).

Today, the Commission carries out its important mission with a full-time staff of 66 at no cost to either New York or New Jersey. “Although the States could designate funding for the Commission (and the Com-

mission may receive financial support from ‘federal grants or otherwise’), the Compact contemplates that the bulk of the budget would come from employer assessments.” *Waterfront Comm’n of New York Harbor v. Governor of New Jersey*, 961 F.3d 234, 236 n.2 (3d Cir. 2020) (quoting art. XIII, ¶ 3, 67 Stat. at 555), *cert. denied sub nom. Waterfront Comm’n of New York Harbor v. Murphy*, 142 S. Ct. 561 (2021). Since its inception, the Commission’s operations have been funded entirely through assessments levied on Port employers. PI App. 18a (Arsenault Decl. ¶ 50). Beginning in 2015, the Commission annually reduced its assessment rate and now operates at the lowest rate in nearly 35 years. Waterfront Commission of New York Harbor Annual Report 2015-2016, at 10;² Waterfront Commission of New York Harbor Annual Report 2019-2020 (“2020 Report”) at 11.³ The Commission’s operating budget is approximately \$14.2 million. PI App. 18a (Arsenault Decl. ¶ 50).

B. For Nearly Fifteen Years, The Revitalized Commission Has Played An Important Role in Fighting Crime and Corruption on the Waterfront

The Compact provides the Commission with the authority to “make investigations ... upon all matters relating to the accomplishment of the objectives of th[e] compact.” Art. IV, ¶ 11, 67 Stat. at 544. The Commission has used that power to vigorously and successfully fight corrupt practices on the waterfront. Since 2008,

² https://www.wcnyh.gov/docs/2015-2016_WCNYH_Annual_Report.pdf.

³ https://www.wcnyh.gov/docs/2019-2020_WCNYH_Annual_Report.pdf.

the Commission's efforts have led to the conviction of more than 100 organized-crime members and associates for murder, extortion, drug trafficking, theft, racketeering, illegal gambling, and loansharking, among other crimes, and "[t]oday ... is the central repository of intelligence pertaining to criminality and organized crime influence in the Port." PI App. 4a-5a (Arsenault Decl. ¶¶ 8a-9).

Law enforcement agencies have acclaimed the critical role the Commission plays in investigating and assisting in the prosecution of the unique forms of crime that prevail at the Port. The United States Attorney for the Southern District of New York recently noted its "successful partnership with the Waterfront Commission," which has provided "invaluable support" in obtaining "convictions over the past decade" of members of organized-crime families and "several labor unions." PI App. 27a-28a (Weinstein Decl. ¶ 8). The Federal Bureau of Investigation similarly reported recently that the Commission plays an "effective and unique role in reducing the influence of organized crime at the Port," and provides the Bureau with "invaluable intelligence, evidence and investigative assistance" for the Bureau's efforts to combat "the continued influence" of organized-crime families "over the International Longshoremen's Association and waterfront businesses." PI App. 28a-29a (Weinstein Decl. ¶ 9). And the United States Department of Labor stated that the Commission "has been a key investigative partner" in federal prosecutions and "has worked independently to break the cycle of corruption at the waterfront harbors ... by putting an end to the [ILA's] stronghold on who gets hired and what jobs and training employees can receive." PI App. 26a-27a (Weinstein Decl. ¶ 7). Since 2008, Commission investigations led to the conviction of

more than two dozen members and officials of the ILA and organized crime affiliates for conspiring to extort millions of dollars from dockworkers and funneling that money to the Genovese crime family. PI App. 4a (Arsenault Decl. ¶ 8b); *see also Genovese Organized Crime Family Soldier And Two Crime Family Associates Admit Racketeering*, U.S. Attorney’s Office, E.D.N.Y (Dec. 19, 2014).⁴

The New Jersey Attorney General’s Office, too, has regularly acknowledged that the Commission has worked “steadfastly to rid the waterfront of criminal influence,” and that its investigations have “led to prosecutions of union officials and members of the Genovese crime family, which has been found to control or exert significant influence over the ILA and commercial activity on the waterfront.” *Division of Criminal Justice & Waterfront Commission Arrest Top Union Official in Alleged Shake-Down of Dock Workers*, N.J. Attorney General’s Office (Apr. 22, 2010);⁵ *see also Racketeering Indictment Charges 10 Alleged Members And Associates of Genovese Crime Family With Reaping Millions of Dollars From Loansharking, Illegal Check Cashing, Gambling & Money Laundering – Charges Stem From “Operation Fistful” By Division of Criminal Justice & Waterfront Commission*, N.J. Attorney General’s Office (Apr. 27, 2016) (noting that “traditional organized crime remains a corrosive presence wherever it can turn a big profit,” including at the Port).⁶

⁴ <https://www.justice.gov/usao-edny/pr/genovese-organized-crime-family-soldier-and-two-crime-family-associates-admit>.

⁵ <https://www.nj.gov/oag/newsreleases10/pr20100422c.html>.

⁶ <https://www.njoag.gov/racketeering-indictment-charges-10-alleged-members-and-associates-of-genovese-crime-family-with>

The Commission also plays an important role in investigating other types of criminal activity in and around the Port. Just this August, the United States Attorney's Office for the Eastern District of New York highlighted the Commission's assistance in charging nine members and associates of the Genovese and Bonanno organized crime families with racketeering and illegal gambling offenses. *Nine Members and Associates of Genovese and Bonanno Organized Crime Families Charged with Racketeering and Illegal Gambling Offenses*, U.S. Attorney's Office E.D.N.Y. (Aug. 16, 2022).⁷ Last year, the Waterfront Commission assisted a federal investigation that resulted in the indictment of 14 defendants, including the entire administration of the Colombo organized crime family and a member of the Bonanno organized crime family, for offenses including labor racketeering, extortion, and money laundering conspiracy. *14 Defendants Indicted, Including the Entire Administration of the Colombo Organized Crime Family*, U.S. Attorney's Office E.D.N.Y. (Sept. 14, 2021).⁸ In 2020, the Commission assisted with an investigation by the United States Attorney's Office for the Southern District of New York relating to a \$19 million fraudulent invoicing scheme. *Four Individuals Charged With \$19 Million Fraudulent Invoicing Scheme Targeting Amazon's Vendor System*, U.S. At-

reaping-millions-of-dollars-from-loansharking-illegal-check-cashing-gambling-money-laundering/.

⁷ <https://www.justice.gov/usao-edny/pr/nine-members-and-associated-genovese-and-bonanno-organized-crime-families-charged>.

⁸ <https://www.justice.gov/usao-edny/pr/14-defendants-indicted-including-entire-administration-colombo-organized-crime-family>.

torney's Office S.D.N.Y. (Aug. 19, 2020).⁹ And a few years ago, the United States Attorney's Office for the District of New Jersey recognized the Commission for its assistance in an investigation that led to the indictment of ten members and associates of the Decavalcante organized crime family on charges relating to plots to murder, distribute drugs, and run a prostitution business. *Ten Members and Associates of Decavalcante Organized Crime Family Arrested*, U.S. Attorney's Office D.N.J. (Mar. 12, 2015).¹⁰

In addition, Commission investigations have led to the exclusion or removal from the Port workforce of hundreds of individuals who have been convicted of serious crimes or were associated with organized crime. The Commission is also working to break the cycle of corruption by preventing individuals with prohibited organized crime ties from infiltrating the workforce in the first place. In screening prospective workers, the Commission uses sophisticated intelligence techniques to detect prior criminality and root out fraudulently concealed organized crime ties. These preventive measures are essential because organized crime figures continue to attempt to exert influence in the Port primarily through their control of the workforce.

The Commission's annual reports over the past decade are replete with examples of individuals whom the Commission barred from waterfront employment because of their prohibited ties to organized crime fig-

⁹ <https://www.justice.gov/usao-sdny/pr/four-individuals-charged-19-million-fraudulent-invoicing-scheme-targeting-amazon-s>.

¹⁰ <https://www.justice.gov/usao-nj/pr/ten-members-and-associates-decavalcante-organized-crime-family-arrested>.

ures or career criminals. All those individuals were referred by the union and waterfront employers. In 2020, 18% of the deep-sea longshore candidates referred for employment by the ILA were identified by the Commission as having prohibited ties to organized crime. And this year, there was a marked increase in the percentage of referrals with ties to organized crime—surely in anticipation of the Commission’s dissolution as a result of Chapter 324.

Further underscoring the importance of the Commission’s efforts to ensure fair and transparent hiring at the Port is the Commission’s multiyear investigation that culminated in a 2012 Special Report finding that the industry’s hiring practices “had created within the Port no/low-work, no/low-show positions generally characterized by outsized salaries,” with the recipients of such privileged positions “overwhelmingly connected to organized crime figures or union leadership.” Special Report of the Waterfront Commission of New York Harbor to the Governors and Legislatures of the States of New York and New Jersey (“Special Report”) (Mar. 2012), at 1.¹¹ These corrupt special compensation packages paid millions of dollars, which in turn “directly impact[s] the competitiveness of the Port and ultimately lead[s] to more expensive goods for consumers in both New York and New Jersey,” PI App. 5a-6a (Arsenault Decl. ¶ 11).

Following the issuance of the Special Report, the NYSA acknowledged that these “legacy work practices” do not exist in other ports, “creating inefficiencies and costs higher than the acceptable norm,” that need-

¹¹ <https://www.wcnyc.gov/news/Waterfront%20Commission%20of%20New%20York%20Harbor%20Special%20Report.pdf>.

ed to be “eliminated or changed.” NYSA 2012 Annual Report at 2.¹² The industry unfortunately did not take the Special Report to heart. Rather than eliminate or cap these special compensation packages, the ILA and the NYSA instead memorialized them in a new agreement. 2020 Report, at 20. The only reform was the modest requirement that workers be physically present at the Port for 40 hours each week, despite the fact that a number of workers continue to be paid as if they were working 24 hours a day, 7 days a week, and 365 days a year, making annual salaries of up to \$610,000. *Id.*; see also Guse, *Mob-linked N.Y. Longshoremen Get Big Money in Special Labor Deals as N.J. Seeks to Shutter Crimefighting Port Agency*, N.Y. Daily News (Mar. 13, 2022).¹³ Today, every terminal within the Port still has special compensation packages given to certain ILA longshore workers, the majority of whom are connected to organized crime figures or union leadership. See 2020 Report at 2. In 2020, the Commission identified 590 individuals who received over \$147 million in out-sized salaries not required by the industry’s collective bargaining agreement and for hours they did not even have to be at the Port. *Id.* at 20. The Commission continues to draw attention to this serious issue. The Commission’s investigations in this area continue, even as New Jersey officials pressured the Commission for years not to make its statutorily mandated annual reports on Port corruption public. Sherman, *Mob Influ-*

¹² https://nysanet.org/wp-content/uploads/NYSA_2012%20annual_report.pdf.

¹³ <https://www.nydailynews.com/new-york/ny-new-jersey-seeks-to-shutter-crime-fighting-port-agency-20220314-fcfn2l6qmjfh3e3ljj26g34cy4-story.html>.

ence and Corruption Persist at NY/NJ Ports, Claim Long-Hidden Reports, NJ.com (Apr. 5, 2021).¹⁴

Because corrupt employment practices regrettably persist, the Commission remains essential. For example, in 2017, a joint investigation by the Commission, the United States Attorney’s Office for the District of New Jersey, and the United States Department of Labor led to the conviction of a longshoreman closely connected to ILA leadership who had obtained much of his nearly \$500,000 salary through fraud, reporting to the Port for as little as eight hours per week while other longshoremen submitted false daily timesheets on his behalf. PI App. 6a-7a (Arsenault Decl. ¶ 13); 2020 Report at 32; *General Foreman At Port Elizabeth Sentenced To Two Years In Prison For Salary Fraud*, U.S. Attorney’s Office D.N.J. (Mar. 26, 2018).¹⁵ Tellingly, a week after his arrest, the industry sponsored his grandson for employment; a week after his conviction, his wife was offered a newly created, unadvertised job (for which she had not applied) with the NYSA-ILA Employee Benefit Funds. Waterfront Commission of

¹⁴ <https://www.nj.com/politics/2021/03/mob-influence-hiring-abuses-persist-on-the-waterfront-says-watchdog-in-long-hidden-reports.html>. The Commission is required by statute to “make annual and other reports to the Governors and Legislatures of both States” including “the commission’s finding and determination as to whether the public necessity still exists for” the continued regulation of waterfront labor and employers. Art. IV ¶ 13, 67 Stat. at 544-545.

¹⁵ <https://www.justice.gov/usao-nj/pr/general-foreman-port-elizabeth-sentenced-two-years-prison-salary-fraud>.

New York Harbor Annual Report 2017-2018 (“2018 Report”) at 2-3.¹⁶

Finally, in line with its mandate “to rid the docks of ‘corrupt hiring practices,’” *New York Shipping Ass’n*, 835 F.3d at 353 (quoting N.J. Stat. Ann. § 32:23-2), the Commission also continues its work to ensure that the ILA, NYSA, and MMMCA are implementing fair and non-discriminatory hiring practices. Section 5-p of the Compact requires employers of prospective longshore applicants to certify that “the selection of the persons so sponsored was made in a fair and nondiscriminatory basis in accordance with the requirements of the laws of the United States and the States of New York and New Jersey dealing with equal employment opportunities.” N.Y. Unconsol. Laws § 9920(4); N.J. Stat. Ann. § 32:23-114(1) (1999). As the Third Circuit recognized, the Commission’s certification requirements “certainly further the Compact’s purposes of rooting out corrupt hiring practices such as racial discrimination.” *New York Shipping Ass’n*, 835 F.3d at 357. The fair hiring requirements also aim to broaden the pool of eligible employees and loosen the ILA’s stronghold on hiring practices, all toward a common end of rooting out corruption. Yet, employers and the union have made little progress toward fairer hiring. For example, certain ILA locals are extremely segregated: the overwhelming majority of Black deep sea longshore workers are placed in a single predominantly Black local in Newark, New Jersey, while the composition of the local for checkers (which are among the highest paid positions in the Port) remains overwhelmingly white.

¹⁶ https://www.wcnyh.gov/docs/2017-2018_WCNYH_Annual_Report.pdf.

The Commission continues to use its available statutory and regulatory means to counteract the Port's prevalent discriminatory hiring practices so that a diverse group of men and women, unencumbered by organized crime influences, can have once-denied opportunities to work in the Port. 2020 Report at 22.

II. CHAPTER 324'S REAL GOAL IS TO ELIMINATE A BULWARK AGAINST THE CORRUPT, CRIMINAL, AND DISCRIMINATORY PRACTICES FAVORED BY THE PORT'S UNION AND EMPLOYERS

A. New Jersey's Criticisms Of The Commission Are Baseless

In enacting Chapter 324, New Jersey deliberately ignored (N.J. Mot. 7-9) the irrefutable evidence of the Commission's reform and successes, embracing instead the long-outdated findings of a 2009 report and the industry's specious allegations that the Commission is corrupt, ineffective, acting outside its statutory authority, and impeding job growth and prosperity. All of these claims were examined and rejected by the New York legislature after careful consideration. *See, e.g.,* N.Y. State Senate, *The Future Hiring Practices of the Port of New York and New Jersey* (June 6, 2017), at 57:01.¹⁷

First, the New Jersey Legislature declared that "changes in the industry" had weakened "organized crime's influence." Compl. App. 37a. That claim is belied by the Commission's numerous criminal prosecutions and administrative actions in the past decade involving the influence of organized crime on the water-

¹⁷ <https://www.nysenate.gov/calendar/public-hearings/june-06-2017/future-hiring-practices-port-new-york-and-new-jersey>.

front. *See supra* pp.9-12. It also disregards the alarming number of organized crime-connected individuals selected by the ILA and waterfront employers to be employed in the Port.

Second, the Legislature asserted that the Commission had “been tainted by corruption in recent years.” Compl. App. 37a. That view too is divorced from reality. It was based not on any genuine “recent” findings, but instead on a 2009 report by the State of New York Office of the Inspector General that identified a range of misconduct by Commission officers and employees, and deficiencies in Commission processes. *See* State of New York Office of the Inspector General, *Investigation of the Waterfront Commission of New York Harbor 1* (Aug. 2009).¹⁸ In direct response to those findings and before they were even published, the Commission was reformed top to bottom, and the agency’s executive director was replaced by Walter Arsenault. *See* Letter from Walter M. Arsenault to Joseph Fisch (July 13, 2009).¹⁹ By the time the report was published ten months later, the New York State Inspector General found that, “under Arsenault’s leadership, a number of reforms ha[d] already been instituted” (*id.*)—including “virtually every one of the 15 reforms suggested by the IG.” *Waterfront Commission of New York Harbor Annual Report 2008-2009*, at 2.²⁰

¹⁸ https://www.wcnyc.gov/news/IG%20Investigation_8-11-2009.pdf.

¹⁹ https://www.wcnyc.gov/news/WCNYH_IG_Response_7-31-2009.pdf.

²⁰ https://www.wcnyc.gov/docs/WCNYH_2009_Annual_Report.pdf.

So thorough was Arsenault's transformation of the Commission that even the New Jersey Commissioner later appointed by Governor Christie in 2011 testified that, "since [Arsenault's] appointment in late 2008, he has played an integral role in bringing integrity back to the Commission, and in making it the well-respected law enforcement agency that it once was."²¹ Thus, although the Commission suffered through a period of capture by the interests it was supposed to regulate, that period ended almost fifteen years ago.

As detailed above, the reinvigorated Commission got to work quickly, holding public hearings that exposed criminality, corruption, and favoritism in Port hiring; acting as the bistate conduit in joint investigations with state and federal law enforcement agencies to root out criminal activity in and around the Port; ensuring fair and non-discriminatory hiring; removing individuals for prohibited associations with organized crime, and preventing those with such ties from ever entering the workforce.

Third, the Legislature contended that the Commission was no longer fulfilling its mission to "investigate, deter, and combat criminal activity and influence in the port." Compl. App. 37a. That criticism cannot be taken seriously in the face of the clear and sustained record of renewed vigor and integrity at the Commission over the prior decade. *See supra* pp.9-12.

Finally, the Legislature declared that the Commission had "become an impediment to future job growth

²¹ N.J. Senate Labor Committee Meeting (Apr. 28, 2014), <https://www.njleg.state.nj.us/archived-media/2014/SLA-meeting-list/media-player?committee=SLA&agendaDate=2014-04-28-10:00:00&agendaType=M&av=A> (at 15:08).

and prosperity at the port,” Compl. App. 37a, purportedly because it “overregulat[es]” Port businesses, N.J. Mot. 39; *see also* Port Businesses Br. 12. But the evidence shows that business at the Port has never been better. “In 2021, the Port of New York and New Jersey continued to shatter cargo records,” moving “the highest single-year total” of cargo volume “in Port history,” all the while avoiding the “long anchorage delays” experienced by ports in the west and south. Port Authority of N.Y. & N.J., 2021 Annual Report.²² June 2022 cargo volumes were 40.7% higher than pre-pandemic levels, and “June was the second-busiest month of container activity in the Port’s history behind March 2022 volumes.”²³

And the Commission performs its hiring-related duties expeditiously. Statement By Port Authority On This Week’s Meeting On Hiring Issues In the Port of New York and New Jersey (Nov. 7, 2013) (“All parties agree that the Waterfront Commission was and is not delaying hiring, and applicants are actively being referred and processed.”);²⁴ *see also* N.Y. State Senate, *The Future Hiring Practices of the Port of New York and New Jersey*, at 2:54:45.²⁵ Notably, the recent eco-

²² <https://www.panynj.gov/port-authority/en/annual-report.html>.

²³ Port of N.Y. & N.J., State of Port Affairs – July 2022 (July 25, 2022), <https://www.portbreakingwaves.com/state-of-port-affairs/>.

²⁴ https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2013_press_releases/statement_by_portauthorityonthisweeksmeeetingonhiringissuesinthep.html.

²⁵ *Supra* note 20.

conomic impact studies conducted by the NYSA never even suggest that the Commission has impeded job growth. See *The 2020 Report On The Economic Value Of The New York-New Jersey Port Industry*, NYSA (July 2020).²⁶

The Commission has also continued to modernize its operations to promote Port productivity. In 2015, when Governor Christie vetoed New Jersey's first attempt to withdraw from the Compact, he recommended that the Commission promulgate new regulations clarifying its jurisdiction. Dupin, *Christie Vetoes Bill For New Jersey To Withdraw From Waterfront Commission*, American Shipper (May 5, 2015).²⁷ The very next day, the Commission proposed regulations doing just that. Notice of Proposed Regulation Amendments (May 5, 2015).²⁸

Remarkably, one of New Jersey's amici contends that the Commission has a "dysfunction[al]" budgeting process, as evidenced by the fact that "the Commission is currently operating without any budget and is not presently authorized to collect assessments" and that the Commission is amassing a "warchest ... hidden from financial reporting," Port Businesses Br. 14-15. The truth is that the Commission provides frequent public reporting on its budget and finances, and it maintains an operating fund balance directly in line with other bistate authorities. Notably, the Commission's \$14.2 million budget is less than one tenth of the

²⁶ https://nysanet.org/wp-content/uploads/2020_NYSA_Economic_Impact.pdf.

industry's special compensation packages. 2020 Report at 2, 11.

B. Chapter 324 Is The Product Of The Very Entities Responsible For The Unscrupulous Conduct The Commission Targets

That New Jersey invoked outdated, baseless criticisms of the Commission to justify Chapter 324 reflects the true impetus for the legislation. It is the product of a concerted, sustained effort to disable the Commission by the same employers, unions, and influential criminal organizations that embrace the corrupt and discriminatory practices in the Commission's crosshairs.

First, the ILA, NYSA, and individual workers repeatedly filed baseless lawsuits seeking to block or undermine the Commission's activities—all of which failed. *See, e.g., Daggett v. Waterfront Comm'n of N.Y. Harbor*, 774 F. App'x 761 (3d Cir. 2019); *New York Shipping Ass'n Inc. v. Waterfront Comm'n of N.Y. Harbor*, No. 13-7115, 2014 WL 4271630 (D.N.J. Aug. 27, 2014), *aff'd*, 835 F.3d 344 (3d Cir. 2016); *New York Shipping Ass'n, Inc. v. Waterfront Comm'n of N.Y. Harbor*, No. 10-5633, 2011 WL 1042771 (D.N.J. March 18, 2011), *aff'd*, 460 F. App'x 187 (3d Cir. 2012).

Thwarted in the courts, the ILA and NYSA then turned to New Jersey lawmakers, lobbying them to withdraw from the Compact or otherwise limit the Commission's authority. *See, e.g., Morley, ILA gets NJ governor ally amid Waterfront Commission fight*, *Journal of Commerce Online* (Jan. 3, 2018) ("The ILA and NYSA have long pushed legislation that would reduce the commission's power in the port and revoke the commission's power to control the size of the port's

longshore workforce.”)²⁹ In language echoed by the legislation eventually enacted, “the shipping industry and the union representing port workers [said] the [Commission] has outlived its usefulness and is now an impediment to economic growth.” Hutchins, *Christie, Reversing Himself, Signs Bill to Abolish Waterfront Commission*, Politico (Jan. 15, 2018)³⁰. They marked Section 5-p of the Compact, which enforces fair hiring practices, as a special target. Otis, *City Dock Workers Call for Repeal of Provision They Say Gives Waterfront Commission Excessive Hiring Power*, N.Y. Daily News (July 14, 2017) (describing “abolish[ment of] the 5-P provision” as one of “the long-standing wishes of the International Longshoremen Association”).³¹

To promote their efforts, the ILA and the NYSA “showered state lawmakers with political contributions over the years.” Hutchins, *Christie, Reversing Himself*.³² “A POLITICO analysis in 2015 ... found that the union and shippers had contributed more than \$1.8 mil-

²⁹ https://www.joc.com/port-news/us-ports/port-new-york-and-new-jersey/ila-gets-nj-governor-ally-amid-fight-waterfront-commission_20180103.html; see also Hutchins, *Lesniak could face calls for recusal if named to Waterfront Commission*, Politico (Feb. 18, 2020), <https://www.politico.com/states/new-york/city-hall/story/2020/02/18/lesniak-could-face-calls-for-recusal-if-named-to-waterfront-commission-1261567>.

³⁰ <https://www.politico.com/states/new-jersey/story/2018/01/15/christie-reversing-himself-signs-bill-to-abolish-waterfront-commission-189692>.

³¹ <https://www.nydailynews.com/new-york/city-dock-workers-seek-controversial-waterfront-provision-article-1.3327611>.

³² Hutchins, *Christie, Reversing Himself, Signs Bill to Abolish Waterfront Commission*, *supra* note 24.

lion to political candidates, parties and committees in New Jersey over three decades, with the union accounting for more than \$1 million of that total.” Rivard, *The Waterfront Showdown Between New York and New Jersey*, Politico (May 20, 2022).³³ In January 2016, the union doubled down on its efforts, and ILA workers staged an illegal Port-wide walkout to protest the Commission’s oversight of Port hiring. Santora & Rashbaum, *New York-Area Ports Shut Down As Longshoremen Walk Off The Job*, N.Y. Times (Jan. 29, 2016) (ILA spokesman saying walk-out “was because of ... their disgust with the harassment of the commission”).³⁴ The ILA has historically invoked strikes to exert political pressure on elected officials. *See, e.g., New York Shipping Ass’n v. Int’l Longshoremen’s Ass’n*, 154 N.Y.S.2d 360, 376 (N.Y. Sup. Ct. 1956) (noting that strike’s “calculated purpose was political, not

³³ <https://www.politico.com/news/magazine/2022/05/20/waterfront-commission-murphy-hochul-00033058>; *see also* Hutchins, *Christie, Reversing Himself, Signs Bill to Abolish Waterfront Commission*, *supra* note 24.

³⁴ <https://www.nytimes.com/2016/01/30/nyregion/new-york-area-ports-longshoremen.html>; *see also* Whelan, *Port Of New York And New Jersey Longshoremen To Return To Work*, *The Wall Street Journal* (Jan. 29, 2016), <https://www.wsj.com/articles/port-of-new-york-and-new-jersey-longshoremen-stage-surprise-walkout-1454096236>, (“ILA spokesman Jim McNamara said the walkout was a unified action against the Waterfront Commission of New York Harbor, a bistate body that investigates corruption and regulates hiring practices among dockworkers. Longshoremen said the commission had interfered in hiring and the union’s collective bargaining agreement with the New York Shipping Association, and was ‘jeopardizing the future of the industry with this interference,’ he said.”).

economic: to force government officials to adopt a course of action desired by the union”).

Chapter 324 followed. With no serious deficiencies in the Commission’s performance to blame, the Legislature retreated to demonstrably false and stale criticisms to justify its action. Chapter 324 is a solution in search of a problem, which—given its genesis—will have only negative effects on the Commission and the public it serves.

C. If New Jersey Is Permitted To Withdraw, The Policies Served By The Commission Will Be Severely Undermined

Chapter 324 undoubtedly will severely undermine the important policing work done by the Commission, giving the forces that promote criminal, corrupt, or discriminatory practices on the waterfront more freedom to engage in those practices, to the detriment of the public and the many law-abiding people who do or want to work at the Port.

Chapter 324 purports to “dissolve[]” the Commission. 2017 N.J. Law Ch. 324 § 31. New Jersey will withdraw its commissioner, raising questions about whether the Commission could adopt any new regulations or appropriate new funds in the future. *See supra* 6; Mot. ¶ 1. Moreover, Chapter 324 would gut the Commission’s financial resources by purporting to transfer its “property and assets ... within New Jersey” to the state and directing New Jersey Port employers to pay their assessments to the state rather than to the Commission. 2017 N.J. Law Ch. 324 § 4; *see* PI App. 21a (Arsenault Decl. ¶ 59).

Although Chapter 324 provides that state agencies, such as the state police, will “assume all of the powers,

rights, assets, and duties of the commission” within New Jersey, 2017 N.J. Law Ch. 324 § 4(b)(1), that is not true. In the first place, the Port is a unified whole, with workers, companies, and freight operating in and moving through both States. The vast majority of criminal investigations the Commission has conducted and prosecutions it has aided have required cross-jurisdictional efforts. Because Commission detectives have police powers in both States, they are able to conduct surveillance and otherwise track criminality across state lines—which is essential but which state investigators cannot do. PI App. 17a (Arsenault Decl. ¶ 47). Indeed, the cross-border nature of the Port—and of crime and corruption that thrives there—is precisely why Congress approved the Compact and the Commission in the first place.

Moreover, Chapter 324 conspicuously—and as the ILA and NYSA wished—omits any provision that could substitute for Section 5-p of the Compact. That leaves New Jersey without powers critical to counteracting corrupt and discriminatory hiring practices on the waterfront. *See* PI App. 18a (Arsenault Decl. ¶ 49). As the former New Jersey Commissioner testified in 2014, “repealing Section 5-p would effectively hand the keys to the Port to the organized crime elements that we have been tirelessly working to overcome.”³⁵

Additionally, regulation of Port businesses will be unwieldy and inefficient if split between the two States. The Commission’s Port-wide registration system allows the many businesses and employees that work on both sides of the Port to move easily between the two States

³⁵ N.J. Senate Labor Committee Meeting (Apr. 28, 2014), *supra* note 16 (at 12:24).

in response to market demand. Without the Commission, New York and New Jersey would each have to perform background checks and register the same companies and workers—a burdensome bureaucratic system with potentially divergent or confusing results. PI App. 21a (Arsenault Decl. ¶ 58). This was the exact regulatory dysfunction that the Compact’s framers sought to avoid.

III. NEW JERSEY CANNOT UNILATERALLY WITHDRAW FROM THE COMPACT

Just a decade after the Compact’s enactment, New Jersey’s own highest court observed that “it is doubtful whether a single legislature could unilaterally impair the powers of the Waterfront Commission, even if it so desired.” *Application of Waterfront Comm’n*, 39 N.J. at 457. In fact, careful analysis shows decisively that the States lack the power to unilaterally dissolve the Commission or withdraw from the Compact.

If New Jersey wants to rid itself of the obligations of the Compact, the Compact itself provides two mechanisms by which it can do so; unilateral withdrawal is not among them. As enacted by Congress, the Compact provides that “[a]mendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.” Art. XVI, ¶ 1, 67 Stat. at 557. The Compact further provides that “[t]he right to alter, amend, or repeal this Act is hereby expressly reserved” to Congress. Art. XVI, § 2, 67 Stat. at 557. New Jersey, however, did not pursue those avenues with New York or Congress.

New Jersey argues that because the Compact does not expressly address unilateral withdrawal, it is per-

mitted. That violates the canon of *expressio unius*. It also turns the default rule for interstate compacts on its head. This Court has recognized that one of the “classic indicia of a compact” is that no participating State is “free to modify or repeal its law unilaterally.” *North-east Bancorp, Inc. v. Board of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985); *see also Seattle Master Builders Ass’n v. Pacific Nw. Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1363 (9th Cir. 1986) (noting that in typical interstate compacts, “each state is not free to modify or repeal its participation unilaterally”); *Kansas City Transp. Auth. v. State of Missouri*, 640 F.2d 173, 174 (8th Cir. 1981) (“One party to an interstate compact may not enact legislation which would impose burdens upon the compact absent the concurrence of other signatories.”).

Courts also cannot read a nonexistent unilateral withdrawal term into the Compact just because New Jersey thinks that structure would have made more sense. N.J. Mot. 24-25. “[A]n interstate compact is not just a contract; it is a federal statute enacted by Congress.” *Alabama v. North Carolina*, 560 U.S. 330, 351 (2010). Therefore, just as this Court cannot “add provisions to a federal statute,” it cannot add provisions to the Compact, whatever the Court or one compacting state thinks would be a better arrangement. *See id.* at 252. And whereas New Jersey claims that refusing to allow unilateral withdrawal “is a recipe for deadlock and dysfunction,” N.J. Mot. at 39, the two States’ commissioners successfully worked through their disagreements for decades before New Jersey decided unilaterally to terminate the Commission. The political capture in New Jersey by the ILA and NYSA confirms the wisdom of requiring **both** States to agree (or Con-

gress to decide) to end the Commission's mission of fighting corruption at the waterfront.

CONCLUSION

The Court should grant New York's motion for judgment on the pleadings, and deny New Jersey's motion for judgment on the pleadings.

Respectfully submitted.

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APPENDIX

APPENDIX A

**BYLAWS OF THE WATERFRONT COMMISSION
OF NEW YORK HARBOR**

The Commission adopted the following resolution:

RESOLVED, that the By-Laws of the Waterfront Commission of New York Harbor previously adopted be and they hereby are rescinded effective March 17, 1975, and the following By-Laws of the Waterfront Commission be and they hereby are adopted, effective March 17, 1975:

I SEAL

The official seal of the Waterfront Commission shall be a design bearing a combination of the seals of the State of New York and of the State of New Jersey, superimposed on a panorama of New York Harbor and bearing the words, "Waterfront Commission of New York Harbor."

II OFFICERS

The officers of the Waterfront Commission, who shall be appointed by the Commission, shall be an "Executive Director," a "Commission Counsel," a "Secretary," and such other officers as may be designated by the Commission.

III DUTIES OF THE OFFICERS.

A. The Executive Director, under the general direction of and in accordance with the policies established by the Commission, shall:

(1) be generally in administrative charge of all Commission personnel and operations;

(2) make recommendations to the Commission with respect to the hiring, discharge and changes in compensation of all personnel;

(3) initiate investigations pursuant to the provisions of the Waterfront Commission Act;

(4) order administrative hearings upon application and revocation proceedings pursuant to Article XI of the Waterfront Commission Compact; and

(5) perform such other duties as may be assigned to him by the Commission.

The Executive Director may delegate to staff members of the Commission such of his duties as may be appropriately delegated.

In the absence of the Executive Director, such officer or staff member assigned by the Commission or by the Executive Director shall exercise such authority and/or functions of the Executive Director as may be assigned to him.

B. The Commission Counsel, under the general supervision of the Executive Director, shall:

(1) be legal counsellor and advisor to the Commission;

(2) prepare for the Commissioners a review of each administrative hearing case for sufficiency of evidence and correctness of law;

(3) prepare Commission orders and memoranda of decisions;

(4) review and prepare proposed New Jersey legislation affecting the Commission;

(5) determine questions concerning Commission assessments; and

(6) perform such legal research, handle other legal matters and perform such other duties as may be assigned to him by the Commission or the Executive Director.

C. The Secretary, under the general supervision of the Executive Director, shall:

(1) keep the official records and the seal of the Commission;

(2) certify, when required, copies of records;

(3) act as records access officer of the Commission in accordance with Section 1.24 of Part 1 of the Commission's Rules and Regulations;

(4) administer the labor relations policies and procedures of the Commission;

(5) assign the Administrative Judges to conduct administrative hearings; and

(6) perform such other duties as may be assigned to him by the Commission or the Executive Director.

IV DIVISIONS

There shall be the following divisions: Executive and Administration, each of which shall be headed by the Executive Director; and Legal, Law Enforcement, Licensing, Employment Information Centers, and Litigation and Research, each of which shall be headed by a Director, under the general supervision of the Executive Director.

V MEETINGS

Regular meetings of the Waterfront Commission shall be held on Wednesday of each week unless otherwise ordered by the Commission. Special meetings

may be called at any time by either member of the Commission.

Regular and special meetings shall be held at the general offices of the Commission unless otherwise ordered by the Commission.

VI ORDER OF BUSINESS

The order of business at regular meetings shall be;

- (a) Approval of the minutes of the previous meeting;
- (b) Reports of the Executive Director;
- (c) Reports of the Commission Counsel;
- (d) Unfinished Business;
- (e) New Business.