

No. 220156, Original

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IN THE  
**Supreme Court of the United States**

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STATE OF NEW YORK,

*Plaintiff,*

v.

STATE OF NEW JERSEY,

*Defendant.*

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**BRIEF IN OPPOSITION TO MOTION FOR  
PRELIMINARY RELIEF**

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## INTRODUCTION

On January 16, 2018, New Jersey enacted a law to withdraw from the Waterfront Commission Compact. New York, the only other signatory, did not sue New Jersey to enjoin that statute when it was signed into law. New York did not sue when the only other challenge to that statute was rejected in June 2020, or when this Court denied certiorari in that case in November 2021. And New York did not sue when New Jersey announced in December 2021 that withdrawal would be complete on March 28, 2022. Instead, New York chose to wait until the eleventh hour, seeking a preliminary injunction from this Court just two weeks before New Jersey’s scheduled withdrawal—and *four years* after New Jersey enacted its statute. Its belated motion fails on both the merits and the equities.

On the merits, the Compact permits New Jersey’s withdrawal. The Compact established a temporary interstate agency—the Waterfront Commission—in order to combat organized crime at the Port of New York and New Jersey, a commercial port with docks in both States. See *De Veau v. Braisted*, 363 U.S. 144, 149-50 (1960). As part of the agreement, the States delegated to the Commission ongoing authority to engage in regulatory and law-enforcement activities on the New Jersey side of the port (relying on New Jersey’s police powers) and on the New York side (relying on New York’s). In so doing, the drafters did not include any language in the Compact addressing whether either State may withdraw and reclaim its sovereign powers within its borders. That silence proves fatal to New York, because this Court has consistently refused to construe “silence” in an interstate compact to strip the

States of pre-compact authorities. *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 631-32 (2013).

That principle follows from the “background notion that a State does not easily cede its sovereignty.” *Id.*, at 631. One such sovereign right is the power of the legislature, accountable to the people, to decide on an ongoing basis how best to exercise its police powers. As the U.S. Solicitor General previously explained, it follows that when an interstate compact involves the ongoing delegation of the States’ regulatory authority, withdrawal is allowed absent any express limits in the Compact’s text. That result flows from the text and history of the Compact Clause, background principles of contract and treaty law, and the structure of this particular Compact. And that rule fits this Compact hand-in-glove, because the Compact delegates States’ sovereign regulatory and law-enforcement police powers to a Commission.

New York incorrectly responds that the Compact’s prohibition on unilateral *amendments* must foreclose unilateral withdrawal. But dictionary definitions and ordinary usage confirm that an “amendment” to an agreement, whether a compact or a contract, does not include a decision to “withdraw.” And the sovereignty implications of each differ dramatically. A unilateral decision to expand an interstate compact by amendment would allow one State to trample on the rights of another. But any decision withdrawing from a compact simply returns the States to their pre-compact position, in which they maintain full police powers within their borders. Compacts thus regularly distinguish amendments (which typically require concurrence) from withdrawal (which often do not).

New York fares no better on the equities. There is a good reason why New Jersey has been diligently trying to withdraw from the Compact for four years: the Commission has become ineffectual. Given commercial and technological changes, five out of six dockside jobs supervised by the Commission have disappeared. To justify its continued existence, the Commission has overregulated the port, stifling commerce and exacerbating worker shortages. Worse still, scandals have tainted the Commission's work: a 2009 report by the New York Inspector General exposed a "climate of abuse" at the Commission, N.Y. Office of the Inspector Gen., Investigation of the Waterfront Comm'n of N.Y. Harbor (Aug. 2009), <https://tinyurl.com/ydxvbk3m> ("OIG Report"), and problems persist today. In light of New York's delay in filing suit, this Court should not require New Jersey to continue tolerating the Commission's exercise of police powers within its borders.

Nor would an injunction at this late hour even remedy New York's alleged harms. The Compact ensures the Commission cannot function without the consent of both member States. So even were New Jersey required to remain a party to that agreement against its will, the Commission cannot take any actions without support of the Commissioners from each State, and it cannot fund its work if either State vetoes its budget. That structure has caused stalemates and inaction before. And given the States' divergent views on the Commission's role, it would invariably do so now. By contrast, after months of planning, the New Jersey State Police is ready to protect New Jersey's port.

This Court should deny New York's motion.

## STATEMENT OF THE CASE

1. In 1953, New Jersey and New York entered into the Waterfront Commission Compact—an agreement to combat problems of “crime, corruption, and racketeering on the waterfront of the port of New York.” *De Veau*, 363 U.S., at 150. In the Compact, the States established the Waterfront Commission of New York Harbor (Commission), a bi-state agency imbued with the “power to license, register, and regulate ... waterfront employment.” *Id.*, at 149. The Commission is an “instrumentality of the States” endowed with their “police power[s].” Compl. App. 3a (art. I.4), 6a (art. III.1). The States delegated to the Commission authority to engage in both regulatory and law-enforcement activity on the New Jersey side of the port (relying on New Jersey’s police powers) and the New York side (relying on New York’s).

The Compact was established to handle a problem that was then in the headlines: organized crime at the port. Two years before, New York Governor Thomas Dewey created the New York Crime Commission to investigate crime, corruption, and intolerable working conditions at the waterfront. See *New Jersey-New York Waterfront Comm’n Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary*, 83d Cong. 165 (1953) (“*Commission Compact Hearing*”). The Crime Commission found that the mob had infiltrated the docks and was demanding payments from the workers and shippers through extortion and violence. *Record of the Public Hearings Held by Thomas E. Dewey on the Recommendations of the N.Y. State Crime Commission for Remediating Conditions on the Waterfront of the Port of N.Y.* 661-63 (N.Y. 1953)



(“*New York Hearings*”). The Crime Commission thus recommended establishing a “temporary” agency that would register and license companies at the port and would exist only “as long as necessary” to eliminate the then-extant “evils.” *Id.*, at 665-66. Negotiations between New Jersey and New York, and swift approval by Congress, produced the Waterfront Compact and Commission.

Because the Commission was temporary and reliant on delegated police powers from both States, the Compact ensured that the Commission could function only with their continued mutual assent. To that end, the two States agreed that the Commission “shall consist of two members, one to be chosen by the State of New Jersey and one to be chosen by the State of New York,” Compl. App. 6a (art. III.2); that each member “shall be appointed by the Governor of such State with the advice and consent of the Senate thereof,” *id.*; and that the Commission could “act only by unanimous vote of both members thereof,” *id.* (art. III.3). This structure empowered either State to veto any actions by the Commission. Moreover, each State retained authority to veto Commission budgets, Compl. App. 31a (art. XIII.2), which would in turn prevent the agency from raising revenue and therefore operating, *id.* (art. XIII.3) (allowing the Commission to levy assessments only to cover “budgeted expenses”).

The States recognized that they might wish to adjust the terms of their agreement in ways that would bind them both. The Compact therefore acknowledged 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.” Compl. App. 34a-

35a (art. XVI.1). Congress added language to confirm that it “expressly reserved” its “right to alter, amend, or repeal this Act,” Compl. App. 35a (art. XVI.2), reflecting the truism that one Congress cannot bind future Congresses. But the Compact is silent on whether either State could withdraw; its text neither authorizes nor limits their ability to do so.

2. Profound concerns with the Commission—and changed circumstances at the port—led New Jersey to withdraw from the Compact in 2018.

In 2009, the New York Inspector General issued a scathing 63-page report outlining the Commission’s misconduct. See OIG Report, *supra*. The report identified a “climate of abuse” at the Commission, focusing on the “lack of accountability fueled by perceived immunity from oversight by outside entities”; the “abrogation of legal responsibilities undermining the very purposes of the Commission”; and other misconduct from “improper hiring and licensing to ... misuse of Homeland Security grants.” *Id.*, at 1. Despite such concerns, the Commission refused requests, including by New Jersey’s Governor, to modernize and clean up its operations. See Opp. App. 25a-26a (Murphy Decl.) (detailing demands for “proper recording and maintenance of meeting minutes” and to improve its “financial audits, open public meetings and records, confidentiality, conflict of interest,” and procurement procedures); Opp. App. 25a-27a (noting lack of transparency); PI App. 96a (letter from C. Christie, 8/7/17).

Developments in the industry and at the port also reduced the agency’s importance. While the Commission was created to keep criminal elements out of employment at the port, registration records reveal that

five out of six dockside jobs supervised by the Commission have disappeared due to technological advances. See Opp. App. 22a (Murphy Decl.) (citing Commission reports). The labor force decline was accompanied by a contraction in the Commission's core work. During the 1961-1962 year, the agency held 344 hearings and conducted 4,203 investigations. Opp. App. 22a-23a. By the 2012-2013 year, the Commission conducted just 53 application and revocation proceedings. Opp. App. 23a. As of 2020, the Commission reported approximately 40 registration, suspension, and revocation proceedings, and the Commission employed only 36 police officers. Opp. App. 19a. Because its mandate no longer justifies its existence, the Commission instead "has sought to overregulate the Port and insulate itself from the oversight of both of its member States," both "stifl[ing] regulated entities," Opp. App. 20a, and putting port operations at a competitive disadvantage, see Opp. App. 38a-40a (Declaration of John Nardi, President, N.Y. Shippers Ass'n).

In response, New Jersey took action. In 2018, the New Jersey Legislature recognized that the Commission was no longer fulfilling its mission to "investigate, deter, and combat criminal activity and influence in the port." Compl. App. 37a. Instead, because "changes in the industry" had eliminated the Commission's ability to fulfill its mandate, the Commission was "over-regulat[ing] the businesses at the port in an effort to justify its existence as the only waterfront commission in any port in the United States." *Id.* To make matters worse, the Legislature found, the Commission had "become an impediment to future job growth and prosperity at the port" and had "been tainted by corruption in recent years." *Id.* The State

acknowledged the need “to regulate port-located business to ensure fairness and safety” and root out crime, *id.*, but found those goals better served by reclaiming its police powers and exercising them via the New Jersey State Police. See Compl. App. 38a.

The Legislature thus voted to withdraw New Jersey from the Compact by enacting Chapter 324, which was approved by Governor Chris Christie on January 16, 2018. See Compl. App. 36a-109a. The statute explicitly reclaimed New Jersey’s police powers over the portion of the port within its borders, and left to New York the sovereign police powers it had delegated. See Compl. App. 46a (reassuming “powers” and “duties” “of the commission within this State,” and delegating them to State Police); Compl. App. 47a (assuming the assets, property, and funds “applicable to this State”); Compl. App. 47a-48a (assuming all New Jersey-based “debts, liabilities, obligations, and contracts”).

The Legislature aimed to withdraw from the Compact seamlessly. The statutory withdrawal would not take effect for up to 120 days: the Governor would first provide notice, including to New York, within 30 days, and the transfer of police powers would happen 90 days later. See Compl. App. 38a, 45a. Even then, little would change immediately: the law ordered State Police to “continu[e] the functions, contracts, obligations, and duties of the commission within this State,” mandated “all operations of the commission within this State ... continue as operations of [State Police] until altered,” and required “all rules and regulations of the commission [to] continue in effect as the rules and regulations of the division until amended, supplemented, or rescinded by” State Police. Compl. App. 48a.

3. For four years and two months, New York took no action to challenge New Jersey's statute.

While the Commission challenged the withdrawal in district court, the agency's suit was no substitute for action by New York. By November 2018, New Jersey had pointed out the agency's inability to sue and noted "New York, and not the Commission, is the only party with standing." Def.'s Br. in Opp'n to Mot. for Summ. J. at 31, *Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-cv-650 (D.N.J.), ECF No. 61-1. Although a district court enjoined New Jersey from withdrawing, the Third Circuit reversed on June 5, 2020, finding New Jersey's sovereign immunity barred the Commission's lawsuit. *Waterfront Comm'n*, 961 F.3d 234 (CA3 2020). That ruling made clear that if New York harbored any concerns about New Jersey's withdrawal, New York would need to sue. But at no point during the Commission's lawsuit did New York participate, file a separate action, or suggest it intended to challenge the New Jersey statute.

New York delayed even after this Court denied certiorari in the Commission's lawsuit on November 22, 2021. The next day, New Jersey Governor Philip Murphy sent a letter to the Commission and to New York confirming "New Jersey will take steps to withdraw from the Waterfront Commission Compact." Opp. App. 57a (letter from P. Murphy, 11/23/21). On December 3, 2021, the district court lifted its injunction, allowing New Jersey to move forward. See *Waterfront Comm'n*, No. 18-cv-650, ECF No. 76. On December 27, 2021, New Jersey gave formal notice of withdrawal, which triggered a transfer date of March 28, 2022. See PI App. 32a-39a (letter from S. Oliver); Compl. App.

45a (statute setting transfer date as 90 days after notice). On January 20, 2022, New Jersey gave New York advance copies of the informational requests it planned to send the Commission to facilitate withdrawal. Opp. App. 45a (email from P. Garg, 1/20/22).

Absent a challenge by New York, New Jersey took steps to implement withdrawal. State Police expended over 17,000 person-hours, totaling \$2.3 million in salary and benefits, in preparation to assume regulatory and law-enforcement responsibilities at the New Jersey side of the port. See Opp. App. 3a (Declaration of Frederick P. Fife, Major, New Jersey State Police). State Police met with other law-enforcement agencies, including federal, state, and local partners; designed a Port Security Section comprised of the Port Operations & Investigations, Compliance, and Regulatory & Licensing Bureaus; received briefings and intelligence assessments concerning criminal activity at the port; established deconfliction protocols for port-related actions; and allotted 49 slots for troopers, posted available positions, and designed preliminary trainings. See Opp. App. 3a-14a.

On February 9, 2022, New York objected to Chapter 324 for the first time. See PI App. 40a-42a (letter from E. Fine). Immediately, New Jersey replied that a letter disputing the propriety of its 2018 statute, without more, would not bar implementation. See PI App. 56a-58a (letter from P. Garg, 2/11/22) (reiterating plans to withdraw). Absent litigation, New Jersey did proceed, again reiterating that the withdrawal would take effect on March 28, 2022, and explaining that it could no longer appoint a commissioner or approve Commission budgets after that date. PI App. 62a-63a (letter from P. Garg, 3/1/22).

Over a month after New York first objected to the statute, on March 14, 2022, New York filed a motion for leave to file a bill of complaint, complaint, motion for preliminary injunction, and motion to expedite.

### ARGUMENT

A “preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). A movant must prove that both the merits and equitable considerations require emergency intervention. *Id.* New York can show neither.

#### **I. New York Cannot Demonstrate That It Is Likely To Succeed On The Merits.**

The Compact does not prevent New Jersey from reclaiming its sovereign powers within its borders. The text places no limits on withdrawal; the procedure for amendments is inapposite; and the remaining tools of compact construction support New Jersey.

##### **A. The Compact’s Plain Text Does Not Cabin Withdrawal.**

Absent language in the Compact addressing withdrawal, the issue is whether to read silence as allowing or limiting New Jersey’s choice. Rules of compact interpretation, bedrock principles of sovereignty, the text and history of the Compact Clause, and contract and treaty doctrines all support New Jersey’s right to reclaim its sovereign police powers.

1. Under longstanding rules of construction, because the Compact does not put limits on withdrawal, the States retain that option. Most importantly, “[t]he background notion that a State does not easily cede its sovereignty” has consistently “informed” this Court’s “interpretation of interstate compacts.” *Tarrant*, 569

U.S., at 631. After all, “States entered the federal system with their sovereignty intact,” *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991), and they “rarely relinquish their sovereign powers,” *Tarrant*, 569 U.S., at 632. Given that history, courts would “expect a clear indication,” “not inscrutable silence,” before finding that States gave up their authority. *Id.* So where this Court has been “confronted with silence in compacts touching on the States’ authority,” it has repeatedly treated that silence as *preserving* States’ sovereign power. *Id.*; see also *Virginia v. Maryland*, 540 U.S. 56, 67 (2003) (“If any inference at all is to be drawn from [the compact’s] silence ... we think it is that each State was left to regulate the activities of her own citizens.”).

One elemental sovereign right is the power of the legislature, accountable to the people, to decide on an ongoing basis how best to exercise its police powers. As the U.S. Solicitor General explained in a brief to this Court three years before enactment of this Compact, some interstate compacts “require[] a continuing exercise of governmental functions by the signatory States.” Br. for U.S. as Amicus Curiae, *Dyer v. Sims*, No. 147 (Nov. 22, 1950) (“U.S. *Dyer* Br.”), 1950 WL 78371. This Compact is a perfect example—it delegates New Jersey’s and New York’s sovereign regulatory and law-enforcement powers within their borders. See Compl. App. 7a-9a (describing Commission powers). That raises an immediate problem: if the Compact limits the power to withdraw, it undermines the “continuing authority in the legislature to regulate activities bearing on the public welfare as circumstances may require.” U.S. *Dyer* Br. 27. Framed another way, a decision that New Jersey made in 1953



would forever prohibit the Legislature from reevaluating how to optimally balance regulation and economic growth, how to protect public safety, and how to appropriate revenue at a key port. And it would deprive the people of a chance to elect new representatives who will answer those questions differently.

Compacting States *can*, of course, expressly give up their sovereign right to reclaim their police powers. And Congress likewise *can*, as a condition of its consent, circumscribe or eliminate States' power to withdraw. As a matter of interpretation, however, if a compact "is *silent* on the power of the State to terminate its adherence," silence must be "constru[ed] ... as admitting of withdrawal at will." U.S. *Dyer* Br. 26 (emphasis added); *id.*, at 27 (explaining silence in similar compact shows States "did not intend to bind themselves in perpetuity to the continuing exercise of their police powers"). Compacts of this kind are readily distinguishable from agreements that do not involve indefinite transfer of police powers, but resolve disputes over borders or give rise to vested rights. See *id.*, at 30-31. But when, as here, a compact is based upon the ongoing exercise of delegated police power, it will not prevent a State from reclaiming its sovereignty absent express limits on withdrawal.

This result draws support from the text and history of the Compact Clause. Before ratification of the Constitution, each State retained unfettered power to enter into any "treaty, compact, or agreement." *Rhode Island v. Massachusetts*, 37 U.S. 657, 725 (1938). In ratifying the Constitution, the States "surrender[ed]" that unfettered power. *Id.* But the rights they gave up were highly specific: the Compact Clause establishes that "[n]o State shall, without the Consent of Congress

... enter into any Agreement or Compact with another State.” U.S. Const. Art. 1, §10, cl. 3. The Clause thus requires “Consent of Congress” to “enter into” a compact, but does not limit the authority to withdraw. *Id.* After all, in our system States retain “fundamental aspect[s] of the sovereignty which the States enjoyed before ratification ... except as altered by the plan of the Convention or certain constitutional Amendments,” *Alden v. Maine*, 527 U.S. 706, 713 (1999), and in this context, Congressional consent to *forming* a Compact is “the sole limitation imposed” by the Clause, *Rhode Island v. Massachusetts*, 37 U.S., at 725.

The Compact Clause is limited by design. The Framers sought to prevent “the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Withdrawal and termination raise no similar concerns; when interstate combinations dissolve, the parties return to their original positions as separate sovereigns within the union, which imposes no danger of “encroach[ment] upon the supremacy of the United States.” *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 472 (1978); see also *infra* at 16 (discussing original understanding of treaty withdrawal generally). The text and history of the Compact Clause thus confirm New Jersey’s underlying authority to reclaim its police powers without offending U.S. supremacy. More than silence is necessary to cede that right. See *Tarrant*, 569 U.S., at 632; *Virginia v. Maryland*, 540 U.S., at 67.

b. Hornbook principles of contract and treaty law—the sources of law on which compacting relies—con-

firm this Compact's silence allows New Jersey's withdrawal. See *Tarrant*, 569 U.S., at 628 (applying contract law in compact case); *Texas v. New Mexico*, 482 U.S., at 129 (same); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938) (discussing treaty law in interpreting compact); *Rhode Island v. Massachusetts*, 37 U.S., at 725 (same); see also U.S. *Dyer Br.* 25-26.

Contract law is particularly instructive. See, e.g., *Tarrant*, 569 U.S., at 628 (“Interstate compacts are construed as contracts under the principles of contract law.”); PI Br. 23-24. Under blackletter rules, contracts that require indefinite and continuing performance of the parties—like the Waterfront Compact—are “valid for a reasonable time but ... [are] terminable at the will of either party.” 1 Williston on Contracts §4:22 (4th ed.); see also *CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763-64 (2018) (“[C]ontracts that are silent as to their duration will ordinarily be treated ... as ‘operative for a reasonable time.’”) (quoting 3 A. Corbin, *Corbin on Contracts* §553, p. 216 (1960)).

It has thus long been “well settled” that contracts “which contemplate[] continuing performance for an indefinite time” are “terminable at will.” U.S. *Dyer Br.* 23-24. New Jersey and New York follow this rule. See *In re Estate of Miller*, 447 A.2d 549, 554 (N.J. 1982) (“if a contract contains no express terms as to its duration, it is terminable at will or after a reasonable time”); *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, 976 F.3d 239, 245 (CA2 2020) (in New York “contract of indefinite duration is terminable at will”). Because the “better understanding” of a compact’s “silence is that the parties drafted [it] with this legal background in mind,” *Tarrant*, 569 U.S., at 632,

this Compact—which involves indefinite continuing performance—is likewise terminable by either party.

The history and tradition of treaty withdrawal further support this approach. See, e.g., *Dyer*, 341 U.S., at 31 (“[t]he compact ... adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations”). From the Founding, it has been understood that the United States can unilaterally withdraw from a treaty. In 1798, well before the appearance of any treaty expressly authorizing unilateral withdrawal,<sup>1</sup> President Adams signed legislation withdrawing the United States from several treaties with France. See Act of Congress of July 7, 1798, 1 Stat. 578. In the decade before enactment of this Compact, President Roosevelt withdrew from a spate of treaties. See, e.g., Presidential Proclamation of August 9, 1941, 55 Stat. 1660 (declaring International Load Lines Convention of July 5, 1930 “inoperative in [U.S.] ports”). And in the past fifty years, the Nation “terminated dozens of treaties,” Restatement (Fourth) of the Foreign Relations Law of the U.S. §313 n.3 (Mar. 2022 Update), including a treaty that had no provision for unilateral withdrawal, see Opp. App. 61a (letter from C. Rice, 3/7/05) (advising United Nations of U.S. “withdrawal” from treaty due to concerns with “foreign interference in the domestic capital system”).<sup>2</sup>

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<sup>1</sup> See Curtis A. Bradley, Treaty Termination & Historical Gloss, 92 Texas L. Rev. 773, 779 & n.25 (2014) (noting that an 1822 treaty “was the first treaty concluded by the United States containing a unilateral withdrawal clause”).

<sup>2</sup> Customary international law, through the doctrine of *rebus sic stantibus*, also recognizes that “[i]n every treaty ... there is implied a clause which provides that the treaty is to be binding only ‘so long as things stand as they are.’” J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*

Since interstate compacts function like contracts or treaties, that history is instructive.

2. New York’s contrary claim—that the Compact’s silence should be construed to *prevent* unilateral withdrawal, PI Br. 26-28—fails.

First, New York wrongly contends that permitting withdrawal would read an “absent term[]”—“an implied right of unilateral termination”—into the Compact. PI Br. 26 (citing *Alabama v. N. Carolina*, 560 U.S. 330, 352 (2010)). But the plain language of the Compact has no provision addressing withdrawal; it neither authorizes *nor* limits a State’s right to reclaim its police powers. The question is thus whether to interpret silence as permitting withdrawal (as New Jersey argues) or prohibiting it (as New York argues). Indeed, implying a “limit” on withdrawal into the agreement would implicate New York’s same concern.

Nor does the fact that some other interstate compacts expressly authorize unilateral withdrawal, PI Br. 26, support reading this Compact to implicitly prohibit it. New York is right that some compacts explicitly authorize unilateral termination. See *id.* But New York ignores that other compacts, including contemporaneous ones, expressly *limited* withdrawal. See, e.g., Pecos River Compact, Pub. L. No. 81-91, 63 Stat. 159 (1949); Goose Lake Basin Compact, Pub. L. No. 98-334, 98 Stat. 291 (1984). Compacts thus can and do

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335 (Sir Humphrey Waldock ed., Oxford University Press 1963); see also Art. 62, Vienna Convention on the Law of Treaties (May 23, 1969), 1155 U.N.T.S. 331, 347 (recognizing sovereign may terminate or withdraw from a treaty if there is a “fundamental change of circumstances”).

address withdrawal in either direction—expressly authorizing or limiting it. That says little about how to interpret a compact that does neither.

Second, New York’s claim that *Dyer* requires construing silence to prohibit withdrawal, see PI Br. 27, badly misreads that opinion. New York makes much of the line that a compact cannot “be unilaterally nullified, or given final meaning by an organ of one of the contracting States.” *Dyer*, 341 U.S., at 28. But the passage dealt with a different matter: whether this Court must “defer[]” to the “highest court of a State” when construing a compact. *Id.* *Dyer* explicitly recognized that the question whether a compact’s silence is “read as to allow any signatory State to withdraw from its obligations at any time” was separate and distinct, *id.*, at 26; acknowledged the Solicitor General read silence as authorizing withdrawal, *id.*; and did not resolve the issue, see *id.* (refusing to “be tempted by these inviting vistas” because they were not addressed below).<sup>3</sup>

Finally, New York’s policy argument—that its interpretation would better incentivize future compacts, PI Br. 28—is counterintuitive. Telling States that silence will presumptively forfeit sovereignty and bind them “in perpetuity to the continuing exercise of their police powers” by an interstate agency, U.S. *Dyer* Br. 27, is hardly an incentive at all. Instead, the better

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<sup>3</sup> Justice Brennan’s concurrence in *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299 (1990), did not pass on unilateral withdrawal either. See PI Br. 28. His opinion contrasted a State’s “plenary power to create and destroy its political subdivisions” with a State’s power over interstate agencies, which can be limited by whatever compact it signs. *Feeney*, 495 U.S., at 314. But here, the Compact does not impose limits on withdrawal—a separate subject his opinion does not address.

approach is the one consistent with blackletter law—that in compacts of this kind, States can withdraw absent express limits to the contrary.

B. The Compact's Procedures For "Amendments" Do Not Cabin Withdrawal.

1. New York responds that the Compact's requirement of unanimity to adopt any "amendments or supplements to [the] compact to implement the purposes thereof" precludes unilateral withdrawal. See PI Br. 24; Compl. App. 34a-35a (art. XVI). New York's position contradicts the text, the history of interstate compacting, state sovereignty, and contract law.

The first problem is one of English: "amendments" to an agreement and "withdrawal" from that agreement are fundamentally distinct. That is made clear by contemporaneous dictionary definitions. See, *e.g.*, Black's Law Dictionary 124 (4th ed. 1951) (defining "amendment" as "modification or alteration" to a law); *id.*, at 1794 (defining "withdraw" as "to remove"); Webster's Collegiate Dictionary 34 (5th ed. 1945) (defining "amendment" as "alteration or change, esp. for the better"); *id.*, at 1159 (defining "withdraw" as "[t]o retire; retreat; to go away"); cf. *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994) (discussing scope of "modify"). And it is clearer still in ordinary usage. If a Senator recommends changes to a bill, she is offering an "amendment." But if the Senator pulls the bill from consideration entirely, that bill has been "withdrawn"; it has not been "amended" whatsoever.

Interstate compacts thus regularly distinguish between amendments (which commonly require States' agreement) and withdrawal or termination (which of-

ten do not). See Joseph F. Zimmerman, *Interstate Relations* 40 (1996) (contrasting “Compact Amendment and Termination,” and explaining that while amendments require “all party states [to] agree,” compacts often separately allow termination or “withdrawal of a member”). Contemporaneous examples abound. See, e.g., Gulf State Marine Fisheries Compact, Pub. L. No. 81-66, 63 Stat. 70 (1949) (stating “two or more” States can “amend” compact “by acts of their respective legislatures subject to approval of Congress,” but a single State may withdraw “by act of the legislature of such state”); Delaware Valley Urban Area Compact, Pub. L. No. 87-70, 75 Stat. 170 (1961) (providing compact “shall continue in existence until revoked by one of the two party states,” but amendments must “be adopted by concurrent legislation of the party States”). New York itself is party to other compacts that distinguish amendment from withdrawal. See Interstate Compact for Adult Offender Supervision, N.Y. Exec. Law §259-mm (McKinney 2004); Compact for Juveniles, N.Y. Unconsol. Law §§1801-06 (McKinney 2011).<sup>4</sup>

This well-worn distinction between amendments and withdrawal safeguards State sovereignty. When a compact agency exercises multiple States’ delegated powers, the unilateral decision to expand the agency’s powers would allow one State to trample on the sovereignty of another State without the latter’s consent.

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<sup>4</sup> In other words, notwithstanding New York’s claim that the inability of a state to “modify or repeal its law unilaterally” is one of “the classic indicia of a compact,” PI Br. 20 (quoting *Northeast Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985)), binding compacts regularly allow for unilateral withdrawal. And *Northeast Bancorp* in no way suggests that limits on State withdrawal can be implicitly read into a compact that does not expressly include them.



So it is no surprise that compacts usually require concurrency of all parties to effectuate any amendments. See *Interstate Relations*, *supra*, at 40. By contrast, a decision to *withdraw* from such a compact does not undermine the sovereignty of any other State; it returns the sovereigns to their pre-compact position of controlling their respective domains. In other words, “bistate entities created by compact ... are not subject to the unilateral control of any of the States,” *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994), but permitting States to withdraw and reclaim their respective sovereignty is a different matter.

Contract law again disproves New York’s claims. A contract that requires the parties’ indefinite continuing performance permits either contracting party to withdraw from the contract unilaterally. See *supra* at 14-15. But a party’s attempt to *amend* a contract, without acceptance from the remaining parties, is ineffective. See Restatement (Second) of Contracts §3 (1981); 1 Corbin on Contracts §4.13 (2021); 17A C.J.S. Contracts §566 (2022). That is sensible: termination frees every party from the duties that they are otherwise obligated to perform forever, whereas amendments bind parties to new commitments. An express limit on compact *amendments*—like limits on contract amendments—does not bar withdrawal.

2. The congressional repeal provision of the Compact Act does not help New York either. PI Br. 24-25; Compl. App. 35a (art. XVI §2) (Congress reserving its “right to alter, amend, or repeal th[e] Act” consenting to the Compact). There is no conflict between the Congressionally-reserved right to repeal and a provision respecting States’ right to withdraw. That is why compacts frequently have a repeal provision and a distinct

State withdrawal proviso. See, *e.g.*, Northwest Wildland Fire Protection Agreement, Pub. L. No. 105-377, 112 Stat. 3391 (1998); Wabash Valley Compact, Pub. L. No. 86-375, 73 Stat. 694 (1959). New York knows it well: the Port Authority Compact included a standard reservation of Congress’s right to repeal while providing for a (long-elapsd) provision for withdrawal. See New York-New Jersey Port Auth. Compact of 1921, S.J. Res. 88, 67th Cong., 42 Stat. 174 (1921). Because other compacts contemplate Congressional repeal *and* unilateral withdrawal, this Compact’s inclusion of the former in no way forecloses the latter.

Nor does inconsistency exist between the two. The United States reserves the power to repeal its consent to a compact to ensure, among other things, that it can eliminate combinations that “encroach upon or interfere with the just supremacy of the United States,” *U.S. Steel*, 434 U.S., at 471, and to follow the rule that “one Congress cannot bind a later Congress,” *Dorsey v. United States*, 567 U.S. 260, 274 (2012). Withdrawal serves a different function—to protect States’ ability to reclaim their pre-compact sovereignty. That Congress can *also* terminate the Compact does not mean New Jersey has to accept the Commission’s exercise of police powers within its borders forever.

C. Remaining Tools Of Construction Confirm The Compact Does Not Cabin Withdrawal.

The structure and history of this Compact buttress New Jersey’s interpretation of its text.

1. Begin with the Compact’s structure. See *Texas v. New Mexico*, 462 U.S. 554, 564 (1983). The Compact expressly ensures the Commission can function only with the continuing assent of both States. Given the

parties' decision to condition the Commission's operation on each State's continued assent, it strains credulity to find that the Compact nevertheless binds a non-assenting State to remain in the Compact.

Two critical features of the Compact support this conclusion. First, the Commission can only act if both commissioners, representing each State, assent. Initially, Article III states that each of the commissioners will be "appointed by the Governor of such State with the advice and consent of the Senate." Compl. App. 6a (art. III.2). And the agency can "act only by unanimous vote of *both* members thereof." *Id.* (art. III.3) (emphasis added). Thus, either State can prevent the Commission from operating by declining to appoint a commissioner (which prevents a quorum under the Compact) or having the State's commissioner consistently vote the Commission's actions down. See OIG Report, *supra*, at 6 n.4 ("[T]he two commissioner structure has led to stalemates and inaction."). That ensures each State has authority to bring Commission operations to a halt without the concurrence of the other.

Second, either State's commissioner or Governor can unilaterally prevent the Commission from funding its operations. Not only does the commissioners' power to veto include the Commission budget, Compl. App. 6a (art. III.3), but the Compact adds that "either Governor may ... disapprove or reduce any item or items" in the budget, and that the budget "shall be adjusted accordingly." App. 31a (art. XIII.2). That provision effectively gives either Governor authority to reject the entire budget. And without a budget, the Commission cannot levy the assessments it needs to oper-

ate. *Id.* (art. XIII.3) (allowing agency to levy assessments to cover only “the balance of the commission’s budgeted expenses”).

Because the Compact grants *each* State power to stop the Commission from acting, it would be incongruous to find the Compact requires New Jersey to remain without New York’s consent to leave.

2. The history also undermines New York’s arguments in other respects. For one, as explained, “background” principles of contract law known at the time of the Compact reinforced that a State could withdraw absent express textual limits. See *Tarrant*, 569 U.S., at 632; *supra* at 14-15. For another, just three years before the Compact’s passage, the United States advocated that an analogous interstate compact should be read to allow unilateral withdrawal—a position of which New York was well aware given that it participated as amicus in the case too. See Br. of Ohio, et al., *Dyer v. Sims*, No. 147 (Dec. 4, 1950), 1950 WL 78374. Finally, the only reference in the negotiation history on this issue indicates the drafters understood each State retained the right to reclaim its sovereignty. See *New York Hearings, supra*, at 815 (drafters informing New York officials that the terms would give the “Legislature an opportunity to end this legislation”).<sup>5</sup>

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<sup>5</sup> New York’s recourse to the States’ “course of conduct,” PI Br. 29, also misses the mark. It is irrelevant that New Jersey and New York have “amended th[is] Compact on multiple occasions by enacting concurrent legislation,” *id.*, at 30, because the parties agree *amendments* require concurrence, see *supra* at 19-22. And then-Governor Christie’s 2015 veto says nothing about New Jersey’s overall course of conduct given that he subsequently signed the withdrawal statute in 2018, and in light of the Legislature’s overwhelming support for withdrawal in both 2015 and 2018.

New York claims unilateral termination is inconsistent with the “fundamental purpose” of compacts, PI Br. 28, but this Compact’s purpose and history both point the other way. The Compact drafters made clear that the Commission “shall be only temporary.” *New York Hearings, supra*, at 731. New York’s Governor likewise promised that the Commission “need not be permanent.” Letter from Thomas E. Dewey, N.Y. Governor, to N.Y. Legislature (June 20, 1953). And even New York, in its briefing here, cannot dispute “the drafters did not intend the Commission to be a permanent institution.” PI Br. 32. If New York argues that silence prohibits withdrawal when a compact is meant to last, *id.*, at 28, silence should go the opposite way when a compact is meant to be temporary.<sup>6</sup>

## II. The Equities Independently Foreclose Preliminary Relief.

The equities also doom New York’s motion. First, it delayed in filing suit. Second, it cannot establish irreparable harm, let alone an injury that its requested injunction could redress. Third, remaining equitable factors undermine its application. On their own and together, these considerations bar preliminary relief.

### A. New York’s Delay Forecloses Relief.

The last-minute nature of an emergency application is by itself a basis for denying relief, particularly if the exigency results from a movant’s own delay. See *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (“a

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<sup>6</sup> New York’s remaining claims—that New Jersey’s statute “is preempted by federal law and violates the Contract Clause,” PI Br. 33-34—collapse for the same reasons. Because the Compact permits New Jersey to withdraw, there is no violation of federal law and no impairment of any contract.

party requesting a preliminary injunction must generally show reasonable diligence”). This makes sense for three reasons. First, delay undermines the notion that a movant faces irreparable harm. See *Brown v. Gilmore*, 533 U.S. 1301, 1301 (2001) (Rehnquist, C.J., in chambers); *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers). Second, dilatory filing increases the risk of on-the-ground disruption. Cf. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *Gomperts v. Chase*, 404 U.S. 1237, 1241 (1971) (Douglas, J., in chambers). Finally, a last-minute filing reduces this Court’s time to consider the issues presented. See, e.g., *Spencer v. Pugh*, 543 U.S. 1301, 1302 (2004) (Stevens, J., in chambers); *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in the denial of a stay). These principles hold true in original actions as well. See, e.g., *Colorado v. Kansas*, 320 U.S. 383, 394 (1943) (State’s delays “gravely add to the burden [plaintiff] would otherwise bear”).

New York’s delay is fatal here. New Jersey adopted Chapter 324 on January 16, 2018, Compl. App. 109a, and New York then waited four years and two months to sue. Although the Commission itself did previously challenge Chapter 324, New York did not participate. Once this Court denied certiorari in that lawsuit, New York knew that withdrawal would be final by March 28, 2022. See Compl. App. 38a (30 days for Governor to give notice), 45a (90 more days until withdrawal takes effect). But New York delayed filing until there were only 14 days left. That undermines New York’s claims of harm. It increases the risk of on-the-ground disruption. See *infra* at 29, 32-33 (describing steps to prepare for transfer). And it reduces the time this Court has after briefing to consider the merits.

New York's justifications for its self-created emergency are baseless. First, New York says it could not (or need not) have filed suit while the Commission's action was pending. PI Mot. 19-20. But it has been clear for years, especially since the Third Circuit's decision in 2020, that the Commission's lawsuit would be plagued by procedural shortcomings. See *Waterfront Comm'n*, 961 F.3d 234; *supra* at 9. More importantly, New York admits in this very case that the Commission's lawsuit was *never* a substitute for a suit brought by a sovereign. See N.Y. Br. in Supp. of Mot. for Leave to File Bill of Compl. 22-23 (agreeing "any claims brought by a private party would not redress New York's sovereign injuries," and confirming that "no private party can ... bring a lawsuit that would vindicate New York's unique sovereign interests in this dispute"). That undermines its claim that another party's suit justifies four years of delay.

Second, New York's efforts to justify its delay *after* dismissal of the Commission's lawsuit are particularly wanting. As explained, New York declined to litigate from November 22, 2021, when this Court denied certiorari, until March 14, 2022. It now asks this Court to issue an emergency order days before withdrawal takes effect. New York says it lacked "notice" of New Jersey's intent until December 27, 2021, PI Br. 20, but it overlooks a letter on November 23, 2021 confirming New Jersey's plans. Opp. App. 57a-60a (letter from P. Murphy). New York also claims that it sought amicable resolution, PI Br. 20, but never justifies its failure to negotiate while the Commission's suit was pending. Nor does it justify its failure to raise any concerns until February 9, 2022, more than two months after this Court denied certiorari. See PI App. 40a-42a. In any event, New Jersey confirmed by February 11, 2022,

that it would still be withdrawing from the Compact. See PI App. 56a-58a. Yet New York waited over four weeks after that date before filing this action and demanding relief at the last minute. New York's delay forecloses emergency relief.

B. New York Cannot Demonstrate Irreparable Harm, Let Alone Irreparable Harm Its Injunction Would Remedy.

There are two other fatal problems: New York cannot show irreparable harm, and it cannot show its proposed injunction would redress the harms it alleges.

1. New York cannot establish it "is likely to suffer irreparable harm." *Winter*, 555 U.S., at 20. Neither of New York's two alleged injuries supports relief.

First, New York's claim that it will suffer injury to its "sovereign powers" cannot withstand scrutiny. PI Br. 12-14. If New Jersey withdraws from the Compact, New York will retain all its sovereignty: Neither New Jersey nor the Commission will exercise police powers within New York's borders, and New York would be free to police its territory. The only "sovereign powers" Plaintiff will lose, then, are those it exercises *in New Jersey* via the Commission. PI Br. 14. But States have no sovereign interest in policing another State's territory. See *McCulloch v. Maryland*, 17 U.S. 316, 410 (1819) (States "are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other").

Second, New York alleges that it will be injured because the Commission's inability to regulate the New Jersey side of the port will create chaos. See PI Br. 14-16. That is wrong in several respects.



For one, New Jersey has prepared extensively to ensure a seamless transition on March 28. See Opp. App. 2a-16a (Fife Decl.). To minimize disruption during the transition, the Legislature ordered State Police to “continu[e] the functions, contracts, obligations, and duties of the commission,” and provided the Commission’s “rules and regulations ... shall continue in effect” after State Police assumes jurisdiction. Compl. App. 48a. State Police is implementing a “multi-faceted” plan to staff the port and coordinating with law-enforcement partners and industry. Opp. App. 3a (Fife Decl.). It has logged over 17,000 hours—totaling \$2.3 million in salary and benefits—to prepare. Opp. App. 3a. It has transferred nine officers to manage the transition full-time. Opp. App. 8a. It created a Port Security Section, with bureaus for investigations, training, and licensing. Opp. App. 8a-13a. It has entered into purchase agreements for software upgrades to support port operations. Opp. App. 14a. And it has allotted 49 enlisted positions to the port. Opp. App. 11a. Given that planning, the only basis for confusion on the ground would be if New York and the Commission refuse to cooperate. But such self-inflicted injury is not irreparable harm. See 11A Charles Alan Wright et al., Fed. Prac. & Proc. § 2948.1 (“[A] party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted.”). That is particularly true because State Police has tried to cooperate with the Commission. Opp. App. 2a-3a (Fife Decl.).

As for New York’s concerns that withdrawal would harm “public safety” or “the flow of commerce,” PI Br. 14-15, State Police will protect those interests far more effectively than the Commission has. State Police will have roughly 40 percent more officers assigned to the port than the Commission. Compare

Opp. App. 23a (Murphy Decl.) (Commission had 36 police officers as of 2021), with Opp. App. 11a (Fife Decl.) (allotting 49 troopers). The Commission “does not have any overnight security presence on the Port,” but State Police will. Opp. App. 7a, 13a (Fife Decl.). State Police will upgrade the Commission’s technology, which is distressingly outdated. Opp. App. 42a-43a (Nardi Decl.); Opp. App. 15a-16a (Fife Decl.) (Commission lacks basic investigative tools). It will draw on its extensive experience in combating corruption and organized crime. Opp. App. 3a (Fife Decl.). And it will streamline the licensure process, Opp. App. 10a-11a, addressing a cause of “worker shortages” that put the port “at a competitive disadvantage” under the Commission’s watch, Opp. App. 39a-40a (Nardi Decl.).

2. Even if New York could show irreparable harm, its application fails for another, independent reason: The preliminary injunction it proposes cannot remedy the injuries it asserts. Cf. *California v. Texas*, 141 S. Ct. 2104, 2115-16 (2021) (“To determine whether an injury is redressable, a court will consider the relationship between ‘the judicial relief requested’ and the ‘injury’ suffered.”).

Because the interests New York alleges require the Commission to *function*, not just exist, a preliminary injunction that merely orders New Jersey not to withdraw would prove ineffectual. As noted above, *supra* at 22-24, the Compact’s drafters chose a structure in which each State could veto the Commission’s actions. Thus, when there are significant policy disagreements between the States, the disagreements produce “stalemates and inaction.” OIG Report, *supra*, at 6 n.4. And that is, fundamentally, what is happening here. New

York believes the Commission is the best way to regulate the portion of the port within New Jersey's borders, so it would approve further actions and budgets. New Jersey believes the Commission has long outlived its usefulness, so it would not. A preliminary injunction requiring New Jersey to remain in the Compact would thus lead to gridlock and solve none of the problems New York has described in its filing.

New York recognizes the problem but offers no solution. New York acknowledges New Jersey does not wish the Commission "to continue functioning," and it says, vaguely, that this confirms "the urgent need for this Court to issue preliminary relief preventing New Jersey from implementing Chapter 324, violating the Compact, or otherwise seeking to terminate the Commission." PI Br. 17-18. But it is not clear what that means. New York suggests the New Jersey Governor *must* continue "to appoint and maintain a Commissioner." *Id.*, at 18. (And presumably that the New Jersey Senate must vote to confirm.) But it never says if the New Jersey Commissioner must vote for the Commission's actions, or whether the Governor must approve its budget. If New York confirms that it is in fact seeking an injunction of such sweeping scope, that relief would be remarkable and unprecedented: It would compel the State to make sensitive policy and law-enforcement decisions the Compact does not require. See *Alabama*, 560 U.S., at 351-52 (noting "reluctan[ce] to read absent terms into an interstate compact given ... federalism and separation-of-powers concerns"). But if New York is not seeking such relief, the upshot might be a hopelessly deadlocked Commission that serves no sovereign's interests and resolves none of the alleged injuries described in the Complaint. That vitiates the

utility of any preliminary injunction and complicates this eleventh-hour request for relief.

C. The Remaining Equitable Considerations Cut Against Granting Preliminary Relief.

The “balance of the equities” and the “public interest” also counsel strongly against issuing preliminary relief. *Winter*, 555 U.S., at 20.

1. The balance of the equities does not support a preliminary injunction. New York will not be irreparably harmed by New Jersey’s withdrawal. *Supra* at 28-30. New Jersey, however, would suffer irreparable and profound sovereign harms from a preliminary injunction. *See Winter*, 555 U.S., at 24. New Jersey, of course, would be prevented at the last minute from implementing its statute, despite months of preparation. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (“[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State.”). But the harm is graver than that, because the injunction would allow another sovereign to exercise police powers within New Jersey’s borders without the latter’s continued consent. That injury to New Jersey’s sovereignty far outweighs any harm to New York.

New York repeatedly asserts that preliminary relief would preserve “the longstanding status quo” that has existed since 1953. PI Br. 17. But for *four years* of that status quo, New Jersey has been diligently trying to withdraw from the Compact. And particularly since the lifting of the district court order enjoining withdrawal, the status quo has shifted dramatically, while New York stood idly by. State Police has invested substantial resources to prepare for the imminent March 28 transfer, *supra* at 29, and an injunction from this

Court now would disrupt its efforts and create confusion, see Opp. App. 16a-18a (Fife Decl.). Far from preserving the status quo, a preliminary injunction would turn the clock back.

2. The public interest likewise cuts against preliminary relief. As a former Commissioner explains, the Commission has become ineffective and counterproductive. See Opp. App. 20a-24a (Murphy Decl.); OIG Report, *supra*, at 1 (criticizing “climate of abuse and lack of accountability”). The Commission remains shrouded in secrecy. See Opp. App. 25a-26a (Murphy Decl.). It violates Compact limits. Opp. App. 27a-30a. And it hampers port operations, causes economic harm to shippers and the State’s economy, and exacerbates worker shortages. Opp. App. 16a, 19a-20a; see also Opp. App. 38a-39a (Nardi Decl.). Finally, if a significant organized crime presence persists at the port under the Commission’s watch, see PI Br. 16-17, that is hardly a point in the Commission’s favor.

State Police can better protect public safety. *Supra* at 29-30; Opp. App. 42a-43a (Nardi Decl.); Opp. App. 30a-32a (Murphy Decl.). By modernizing, it will help shippers and workers struggling under the Commission’s regime. See Opp. App. 24a (Murphy Decl.); Opp. App. 42a-43a (Nardi Decl.). And because it is prepared to effectuate a smooth transition, *supra* at 29, State Police will exceed the Commission’s capabilities immediately. After four years of delay, and months of planning, New Jersey is ready to proceed. This preliminary injunction would not serve the public interest.

**CONCLUSION**

This Court should deny New York's motion for preliminary relief.

Respectfully submitted,

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March 21, 2022

## **APPENDIX**

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**APPENDIX A**

**DECLARATION OF MAJOR FREDERICK P.  
FIFE**

1. I am a Major in the Division of the New Jersey State Police (State Police), and I am the Deputy Branch Commander of its Investigations Branch. I am currently tasked with leading the State Police's planning efforts concerning the transfer of duties and obligations from the Waterfront Commission of New York Harbor ("Waterfront Commission" or "Commission") to State Police, under Chapter 324 of the 2017 New Jersey Public Laws ("Chapter 324" or "the Act").

2. I am aware that the Port of New York and New Jersey ("the Port") is the third largest port in the United States. Roughly 12% of all international goods arriving to the United States come through the Port. In a given year, up to 85 million metric tons of goods worth up to \$132 billion pass through the Port. The Port is also the largest refined petroleum port in the country, and the U.S. port with the most populous surrounding area.

3. I am aware that the Act directed "the Governor, on behalf of the State of New Jersey, to notify the Congress of the United States, the Governor of the State of New York, and the Waterfront Commission of New York Harbor, of the State of New Jersey's intention to withdraw from the compact."

4. I am aware that by letter dated December 27, 2021, the State of New Jersey notified the Commission of its intention to withdraw from the interstate compact that established the Commission.

5. Thus, I am aware that on the 90th day following that notice, the State Police shall, by law, assume the powers, rights, assets, and duties of the Commission within the State of New Jersey, and that the Commission's authority over the New Jersey side of the Port will transfer to State Police effective March 28, 2022.

**A. State Police's Preparation for the March 28, 2022 Transfer from Commission**

6. The Act provides for a careful and deliberate plan to facilitate the transfer of power at New Jersey's side of the Port. It gives the State Police a leading role in the transition and in the oversight of the Port going forward. There is good reason the New Jersey Legislature transferred that responsibility to the State Police: Our agency's unified command structure and institutional capacity for effective coordination within and across government agencies makes it uniquely well suited to assume the Commission's responsibilities and assets in New Jersey through a seamless transition process.

7. State Police has focused intently on coordinating with the Commission's staff and other agencies—including law enforcement and emergency

personnel—to maintain stability at the Port, avoid duplication of efforts and the needless use of resources, and communicate clearly with regulated entities and the public. Outward-facing efforts to coordinate with other agencies in anticipation of the transition are described in further detail, *infra* ¶¶ 14-25. The Commission, however, has refused to cooperate in this planning effort.

8. Other aspects of the State Police’s multi-faceted plan for ensuring a smooth transition entail establishing a unified command structure for the Port; ensuring appropriate staffing; collecting intelligence; assessing property needs; coordinating with local and federal law enforcement and industry groups; and establishing internal policies and procedures necessary to ensure a smooth transition.

9. In planning for the transfer from the Commission on March 28, 2022, State Police has drawn on its expertise in combating corruption and organized crime. For many decades, State Police has worked closely with other law enforcement agencies to investigate and prevent corruption. Similarly, State Police has worked both independently and collaboratively to disrupt and dismantle organized criminal groups operating in the State. State Police has drawn on its extensive experience in this area when implementing its plans for the March 28 transfer.

10. In total, State Police has expended over 17,000 person-hours — totaling \$2.3 million in salary

and fringe benefits — in preparation for the March 28, 2022 transfer date.

11. At a high level, roughly 100 of those person-hours were spent on interviews with various parties—representatives from law enforcement partners (including the Federal Bureau of Investigation, Department of Homeland Security, and local police departments), former commission employees, as well as industry and labor leaders—to understand and assess Port issues and needs.

12. Hundreds of other person-hours have been devoted to research, including review of sensitive information used by law enforcement, as well as publicly available information such as Commission annual reports, and the Commission’s Tables of Organization. Through those interviews, State Police sought to determine the nature, scope, and capabilities of the current Commission, and to assess the law enforcement, security, and regulatory needs of the Port.

13. In the sections that follow, *infra*, I describe in greater detail the planning the State Police has engaged in, and the resources that it has marshaled or will marshal, in anticipation of its assumption of responsibility for the Port.

**B. State Police’s Planning and  
Coordination with Law  
Enforcement Entities, Trade  
Groups, and Labor**

14. In contrast to the Commission's approach, State Police will serve as the hub for all public safety information relating to the New Jersey side of the Port, coordinating with partner agencies and providing a more complete and comprehensive law enforcement presence than the Commission. That presence will be tailored to meet the unique demands of the port area. Indeed, State Police is already well underway with extensive cooperative planning with outside agencies and entities.

15. In the course of this outreach and coordinated planning effort, State Police has received and reviewed case briefings and intelligence assessments concerning criminal activity at the Port.

16. In particular, State Police has been in close contact with several federal agencies—such as the Federal Bureau of Investigation (“FBI”), various divisions within the United States Department of Homeland Security (“DHS”) (including Customs and Border Patrol and the Coast Guard), and the Drug Enforcement Administration—regarding the coordination of law enforcement functions.

17. State Police has met with FBI New York and FBI Newark regarding intelligence sharing, cooperative detection, and law enforcement efforts against transnational and regional organized crime, cyber-crime, foreign counter-intelligence, major theft, terrorism, and drug trafficking as they relate to the Port.

18. Similarly, State Police has met with DHS agencies regarding intelligence sharing, cooperative detection, immigration issues, law enforcement efforts against intellectual property crimes (including importation of counterfeit goods), the exportation of stolen vehicles, human trafficking, and drug trafficking.

19. Each of the aforementioned agencies recognizes that State Police will be assuming the Commission's duties over the New Jersey side of the Port. Preliminary discussions are underway with some of these agencies regarding Memorandums of Agreement to establish joint taskforces and ensure the interconnectivity of personnel.

20. State Police's commitment to outreach and coordination extends to labor and industry groups, as well. These groups include the union representing the Port's approximately 320 professional security officers, the Metropolitan Marine Maintenance Contractors' Association, the New York Shipping Association, and the International Longshoremen's Association, as well as the United States Department of Labor.

21. Local and regional outreach is another critical component of State Police's preparation and approach to coordination. State Police has held meetings with the mayors and police chiefs of Bayonne, Jersey City, Elizabeth, and Newark, along with other elected officials representing those jurisdictions, and the Superintendent of the Port

Authority Police Department of New York & New Jersey.

22. Furthermore, State Police will implement formalized deconfliction protocols that the Commission lacks. These protocols minimize the risk of duplication of efforts and reduce the likelihood of inter-agency conflicts where two law enforcement agencies simultaneously take conflicting actions.

23. State Police's review of the Commission's operations revealed that the Commission lacks an Originating Agency Identifier (ORI), which is a standardized identifier assigned by the FBI to validate legal authorization to access Criminal Justice Information. As a result, the Commission lacks basic credentials and technologies to implement formalized deconfliction protocols.

24. State Police has also learned that the Commission does not have any overnight security presence on the Port. This lack of a continuous presence on the Port limits the Commission's law enforcement effectiveness and its ability to detect crimes, and poses significant homeland security risks at the nation's most populous port.

25. In contrast, State Police has expertise in formalized deconfliction protocols and intends to bring those practices to bear in its Port operations.

**C. State Police Is Dedicating Personnel and Specialized Units to Securing and Managing the Port.**

26. Currently, nine State Police enlisted members and one non-enlisted civilian employee have already been transferred from their ordinary duties to manage and prepare for the transition full-time, and other State Police personnel have assisted on an as-needed basis.

27. Further, State Police has proactively organized a Port Security Section, and has already determined and planned for its staffing needs and responsibilities for overseeing operations and activities impacting the Port.

28. Specifically, the Port Security Section has been designed to conduct port-related investigations and intelligence gathering, to ensure timely licensing and regulation of businesses and port workers, and to maintain audit and administrative capabilities to ensure operational efficiency.

29. At this time, the Port Security Section is expected to consist of three bureaus: the Port Operations & Investigations Bureau, the Port Compliance Bureau, and the Port Regulatory & Licensing Bureau.

30. The Port Operations & Investigations Bureau will be charged with enhancing port security



and the disruption of organized crime through multifaceted investigations.

- a. The Port Operations & Investigations Bureau will be divided into the Port Operations Unit and Port Investigations Unit.
- b. The Port Operations Unit will be responsible for the overall security of the Port, while the Port Investigations Unit will be tasked with conducting long-term complex investigations with a nexus to organized criminal activity impacting the Port. Both Units will draw extensively on the State Police's expertise in combating organized crime and corruption, and protecting against homeland security threats.

31. The Port Compliance Bureau will ensure compliance oversight, training for approximately 320 professional security officers and enlisted personnel, and sufficient procurement capability for the Port Security Section.

- a. The Port Compliance Bureau will consist of the Port Audit & Compliance Unit and the Port Procurement & Technology Unit. The former will be responsible for training, ensuring regulatory compliance, and performing periodic audits. The latter will facilitate all Port

Security Section procurements and assess information technology needs.

32. The Port Regulatory & Licensing Bureau has been developed to oversee the licensing, suspension, and revocation of the Port Access Card. Currently known as the “Waterfront Commission Card,” the Port Access Card evidences an active registration or license and is required to be carried while working at the Port.

- a. In addition to Port Access Card oversight, the Port Regulatory & Licensing Bureau will serve to ensure fair and transparent labor practices relative to the daily hiring center.
- b. Within the Port Regulatory & Licensing Bureau will be the Port Licensing & Background Unit and the Port Employment Hiring & Compliance Unit.
- c. The Port Licensing & Background Unit will be tasked with conducting investigations into those applying for work at the Port, as well as for overseeing the renewal process for each Port Access Card.
- d. Regarding this unit, in addition to the previously-discussed plans to automate the licensing process, State Police has been leveraging its institutional

knowledge and experience related to licensing and background checks to ensure a smooth transition.

- e. For example, in a similar context, following the New Jersey Legislature's declaration in P.L. 1983, c. 392, of the need to ensure public confidence and trust in the solid waste industry, and the need to preclude participation in the industry by persons with known criminal records, habits or associations, the State Police were charged with conducting background checks prior to the issuance of solid waste licenses by the New Jersey Department of Environmental Protection. State Police is also responsible for background checks and licensing for such industries as private investigators and security officers.
- f. The Port Employment Hiring & Compliance Unit will ensure transparent and fair daily hiring practices at the Port, and will provide oversight and management to the hiring agents and International Longshoremen's Association dispatchers regarding compliance with collective bargaining agreements.

33. The Port Security Section has been budgeted 49 slots for State Police enlisted members

and 40 slots for civilian employees, for a total Full-time Equivalent count of 89. The 49 enlisted personnel tentatively selected for transfer into the Section have been identified.

34. The aforementioned enlisted personnel are experienced members of the State Police who will be pulled from various units across State Police.

35. This transfer of enlisted personnel has required many hours of preparation in the form of transfer memoranda, reassignment of duties, and discussions with enlisted personnel to ensure an orderly transition to other members of their former units.

36. Further, the former roles of enlisted transferees will need to be backfilled by other members, and State Police has plans in place to assign nearly half of the incoming Trooper Academy class to positions vacated by members transferring to the Port Security Section.

37. In addition to planning for transfer of enlisted members, State Police is posting announcements seeking applicants for 12 non-enlisted civilian roles in its ongoing effort to staff and prepare for assumption of the Commission's duties. State Police has also reached out to current Commission employees seeking their transfer to State Police in accordance with Chapter 324.

38. On the civilian side, the Section's employees will have a range of varied skillsets and backgrounds, and will include investigators, analysts, and administrative professionals.

39. At the supervisory level, chiefs for the Port Security Section's three bureaus have already been reassigned and briefed on their new duties and responsibilities.

40. Due to the sheer scale of Port operations and attendant risks and issues, State Police has designed the aforementioned bureaus with the aim of establishing a unified chain of command to police and regulate the ports while modernizing and improving the current security and investigative capabilities of the Commission.

41. The State Police personnel dedicated to securing the Port will do so more effectively than the Commission. State Police's assessment of the Commission's operations revealed glaring deficiencies. For example, the Commission does not provide for any overnight security presence at the Port. But State Police will—without substantially increasing its staffing needs.

42. In support of the above operational structure and plans, State Police is in the process of assessing and addressing its real property needs, as well as its equipment and supply requirements.

43. Due to the Commission's lack of cooperation, State Police has been unable to conclusively determine its real estate needs, but has prepared to conduct operations from a satellite location beginning on March 28, 2022.

44. Moreover, State Police has already begun developing formalized training courses aimed at ensuring a seamless transfer of operations.

45. Specifically, State Police has designed preliminary lesson plans, certifications and training for employees seeking to transfer from the Commission, troopers newly assigned to the Port Security Section, and Port Security Officers.

46. Trainings include introductions to State Police systems, policies and procedures for new hires, situational awareness training, enhanced ethics training, and education regarding State Police's authority and duties under Chapter 324 for enlisted members transferring to the Section.

**D. State Police Will Deploy Technology to Secure and Manage the Port.**

47. State Police has entered into purchase agreements to improve information systems and enhance the Commission's current outdated technology in order to secure and regulate the Port.

48. Specifically, State Police has already entered into a partnership with an information technology services vendor who, with State Police's

guidance, is currently building out an automated system to provide transparency and efficiency for licensing functions at the Port.

49. Similarly, State Police has partnered with a private industry vendor for use of two community interfaces to be employed at the Port. To date, the aforementioned vendor has spent approximately 100 to 150 hours of personnel time to prepare these systems, with the “demo” versions having already been delivered to State Police.

50. While these vendors have not required State Police to provide any upfront outlay for these products and services, both are operating with the expectation that they will ultimately receive payment. To date, the total cost of the technology being developed for and demonstrated to State Police is over \$585,000.

51. State Police has also made extensive efforts to assess security issues related to the Port, and its initial evaluation revealed a severe lack of technology, including the complete absence of automatic license plate readers.

52. As such, State Police has plans to implement modern technologies to assist in law enforcement, counter-terrorism, and detection and disruption of adversarial nation-state actors, transnational organized criminal groups, narcotics traffickers, and regional organized crime elements on the Port.

53. Similarly, State Police has decided to upgrade, replace, and implement Closed Circuit Television cameras in the Port to ensure fast and effective law enforcement responses within and around the Port.

54. State Police has also developed plans to implement port-wide communications systems to ensure efficient messaging in case of emergency.

55. Additionally, State Police has leveraged the expertise of other law enforcement units to review historical crime and intelligence data to identify weaknesses and inefficiencies in current Port security and identify law enforcement issues impacting the Port.

**E. Effect of an Injunction Preventing  
March 28, 2022 Withdrawal**

56. If State Police is enjoined from assuming the Commission's duties and obligations over the Waterfront as planned, much of the substantial time and resources expended to date will be lost.

57. State Police will have to reverse months of planning and return enlisted members transferred to the Port back to their prior roles. This will result in cascading impacts for their units, as well as for the new Troopers graduating from Academy who will no longer be needed to backfill the units out of which members were transferred.



58. State Police will be forced to rescind publicly posted job opportunities.

59. Enlisted members transferred back to their prior roles will have to be briefed on all developments affecting their prior duties since the time they were reassigned. Each enlisted member who is transferred back to their prior unit will need to expend substantial time and resources to coordinate with their units to ensure smooth reintegration back to those roles, which often involve complex investigatory responsibilities involving high-level criminal matters.

60. Specifically, members may have to be refreshed on policies and procedures and educated on any new developments in law, as well as case-specific developments that they may have missed while preparing for transfer to the Port.

61. In addition, State Police will be forced to reverse course on months of cooperative planning with the FBI, the Department of Homeland Security and other state and local law enforcement partners. The time and energy spent setting the groundwork for joint taskforces, and sharing intelligence assessments and case briefings will be irrevocably lost.

62. Similarly, as noted above, several of State Police's software and technology vendors are in the process of developing information technologies for State Police specifically related to its assumption of Port duties. Those technologies will cost over

\$585,000, yet these vendors have not required any upfront payment based on State Police's prior track-record and good will. Enjoining State Police from assuming the Commission's duties — and thereby obviating the need for State Police to obtain these information technologies for use at the Port now — will invariably hurt those relationships with vendors.

63. If State Police is blocked from assuming power over the Port at this late juncture, State Police's organizational reputation and credibility with industry, labor, law enforcement, and most importantly the public they serve will be irreversibly harmed.

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

Executed: March 20, 2022

/s/ Frederick P. Fife

Frederick P. Fife

**APPENDIX B**

**DECLARATION OF COMMISSIONER**  
**MICHAEL MURPHY**

1. I previously served for seven years as the New Jersey Commissioner for the Waterfront Commission of New York Harbor (“Commission”).

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

3. I was appointed as New Jersey Commissioner by then-Governor Chris Christie and I assumed office on June 24, 2014, on which date I signed an oath of allegiance and an oath of office as a member of the Commission. I then served in that capacity until late 2021.

4. Beyond my role as Commissioner, I served in a number of federal, state, and local law enforcement roles for several decades. Early in my legal career from 1977 to 1980, I served as an Assistant Prosecutor in Morris County where, as Chief of the Morris County Prosecutor’s Office Trial Section, I supervised the division responsible for prosecuting homicides and other major crimes. From 1984 to 1990, I served as Municipal Prosecutor in Morristown and Parsippany. From 1990 to 1995, I served as the Morris County Prosecutor, the Chief Law Enforcement Officer in that jurisdiction. From 1994 to 1995, I served as President of the County Prosecutors Association of New Jersey. I was also an active member of the National District Attorneys Association. During my service in that capacity in

1992, I was designated by then-U.S. Attorney General William Barr as a Special Assistant U.S. Attorney for the specific purpose of prosecuting the defendants in the Sidney Reso Exxon Kidnapping case with then-U.S. Attorney Michael Chertoff. Over the course of my career I have tried over 100 cases, both criminal and civil.

**A. The Commission Is No Longer Effective.**

5. For many years, there has been a widening gap between the original purposes behind the Commission and its real-world impact. In short, the Commission has long since ceased to effectively carry out its functions of eliminating crime and corruption at the Port of New York and New Jersey (“Port”). In light of that decades-long trend, the Commission has sought to overregulate the Port and insulate itself from the oversight of both of its member States, which has stifled regulated entities while failing to deal with serious problems of corruption.

6. Even within the first two decades after the Commission’s establishment, the magnitude and nature of commercial operations and the labor force at the Port was changing dramatically. From the Commission’s creation in 1953 through the late 1960s, commercial demand for the dockside labor of longshoremen remained relatively stable. The maximum number of dockworkers employed per day hovered around 20,000. (1961-1962 Commission Annual Report at 4 [“1962 Annual Report”] (*Waterfront Comm’n of N.Y. Harbor v. Murphy*, No. 18-cv-650 (D.N.J.), ECF No. 61-6 at 68); 1967-1968 Commission Annual Report at 24 [“1968 Annual

Report”] (*Waterfront Comm’n*, No. 18-cv-650 (D.N.J.), ECF No. 61-7 at 25).)

7. By the late 1960s, however, technological and commercial advances ushered in an era of significant change for the shipping industry, and consequently, for the Port. A primary driver of that change was the advent of containerized shipping — that is, of shipping via modular containers that are a now-familiar sight at commercial ports. (1968 Annual Report at 3-4 (*Waterfront Comm’n*, No. 18-cv-650 (D.N.J.), ECF No. 61-7 at 4-5).) In contrast to previous industry practices, containerized shipping required more deepwater berths. Much of the commercial activity at the Port migrated from New York to New Jersey, where there was greater availability for construction of new deepwater container berths. To illustrate, in 1958, approximately 80% of workers at the Port was performed in New York, across three different boroughs, and the balance occurred at three different port areas in New Jersey. (1962 Annual Report at 16 (*Waterfront Comm’n*, No. 18-cv-650 (D.N.J.), ECF No. 61-6 at 80).) But by 1980, more than half of Port workers were employed in New Jersey, spread across six different piers and port areas. (1980-1981 Commission Annual Report at 16 (*Waterfront Comm’n*, No. 18-cv-650 (D.N.J.), ECF No. 61-7 at 70).) In 2012, 79% of the workers were in New Jersey. (2011-2012 Commission Annual Report at 30, <https://tinyurl.com/2v4ttcyn>.)

8. Accordingly, the Port and shipping industry have become a large source of jobs and taxable income in New Jersey, providing more than 150,000 total jobs, nearly \$14.5 billion in personal

income, more than \$20 billion in business income, and approximately \$1.6 billion in State and local taxes. (Compl. App. 36a-37a.)

9. Containerized shipping made theft of cargo much more difficult. Throughout the 1950s and in the early 1960s, cargo would be unloaded onto the piers in nets, which left much cargo relatively unsecured. As a result, theft was commonplace, if not rampant. The emergence of containerized shipping and resultant changes in industry practice rendered obsolete many of the schemes previously used to steal cargo. Theft was reduced further by the progressing sophistication of container technology, such as unique barcodes associated with containers and shippers.

10. The emergence of containerized shipping brought another effect to the Port: a reduction in demand for dockside workers to load and unload cargo. At its apex in 1958, nearly 36,000 longshoremen, hiring agents, pier superintendents, checkers, port watchmen, and stevedores employed at the Port and registered and licensed by the Commission. (1962 Annual Report at 23 (*Waterfront Comm'n*, No. 18-cv-650 (D.N.J.), ECF No. 61-6 at 87).) By 2013 there were fewer than 6,000 registered and licensed workers. (2012-2013 Annual Report of the Commission at 9 [“2013 Annual Report”], <https://tinyurl.com/29yh3rdp>.) In other words, over a 55-year period, five out of every six dockside jobs falling under the Commission’s purview disappeared.

11. Naturally, the diminution in the Port’s labor force was accompanied by a contraction in the originally-assigned work performed by the Commission. To illustrate, during the 1961-1962

fiscal year the Commission processed 1,367 applications requiring review, held 344 hearings, and conducted 4,203 investigations. (1962 Annual Report at 22 (*Waterfront Comm'n*, No. 18-cv-650 (D.N.J.), ECF No. 61-6 at 86).) But 22 years later, the Commission was processing approximately 100 combined applications, revocations, and petitions for reconsideration and the like, and completing less than 100 total investigations. (1983-1984 Commission Annual Report at 14 (*Waterfront Comm'n*, No. 18-cv-650 (D.N.J.), ECF No. 61-7 at 88).) And by the 2012-2013 fiscal year, the Commission conducted just 53 application and revocation proceedings. (2013 Annual Report at 32, <https://tinyurl.com/29yh3rdp>.)

12. As of 2020, in the Commission's most recent annual report, the Commission reported conducting approximately 40 registration, suspension, and revocation proceedings. (2019-2020 Commission Annual Report at 21, <https://tinyurl.com/36vvujb3>.)

13. Even more telling, of the Commission's 82 staff members, a mere 36 are police officers, as shown in Exhibit 1 to this Declaration.<sup>1</sup>

14. The decrease in labor registration, licensing, and oversight activities has also decreased demand for the Commission's public information and outreach functions. The Commission today operates

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<sup>1</sup> Exhibit 1 reproduces a redacted excerpt of a May 14, 2021 letter sent to me by the Commission's Executive Director, Walter Arsenault, in response to a request I had made for a list of all of the Commission's employees and job titles.

two satellite employment information centers (both in New Jersey), down from 14 in 1962.

15. In light of all these developments, which have been decades in the making, I believe that the Commission has exercised needless — and needlessly burdensome — regulatory muscle to entrench its authority and advance its own institutional self-interest, rather than the interests of the States that appoint its members, or the shared public interest of safety and prosperity at the Port.

16. Such regulatory actions, which are in excess of the powers vested in the Commission by the Compact, impede hiring and offer a disincentive to regulated entities to use the Port. As then-Governor Christie recognized in a letter in 2017, “the Commission has continued to expand its jurisdiction,” contrary to New Jersey’s guidance, while at the same time declining to “modernize its practices.” PI. App. 95a (Letter from C. Christie, 8/7/2017).

17. Moreover, the Commission’s procedures can function as a bottleneck that result in protracted hiring periods and hamper flexibility. That has consequences for economic vitality and job growth at the Port.

18. In sum, over the decades the Commission’s activities have produced a troubling paradox. The Commission is no longer effective at fighting crime and has failed to foster commercial prosperity. And at the same time, the Commission actively expands its power in the regulatory sphere.



**B. The Commission's Lack Of Transparency And Accountability.**

19. Beyond its faults in the regulatory sphere, the Commission has grown increasingly unaccountable to both States, as the New Jersey Legislature found. See Compl. App. 37a (Legislature's findings). This concerning trend has manifested in two distinct ways, among others: a lack of transparency in its decision making, and unsound and unlawful budgeting practices.

20. The Commission's disregard for transparency — and preference for operating in the shadows — is reflected in its refusal to make its meetings more open and accessible to the public despite my insistence on doing so. I was not alone in so insisting. Then-Governor Christie wrote to the Commission in 2017 urging the Commission to update its By-Laws — last updated in 1975 — “to provide for the proper recording and maintenance of meeting minutes,” and for the “conduct of regular financial audits, open public meetings and records, confidentiality, conflict of interest, [and procurement],” among other things. PI. App. 96a (Letter of C. Christie, 8/7/2017).

21. Even though the recommended transparency measures and basic audits reflect best practices in public agencies, this call went unheeded.

22. The recalcitrance of Commission staff was a barrier to the adoption of greater transparency during my tenure as Commissioner, despite my requests over the years. In particular, on July 16, 2020, I raised the issue of transparency with the

Executive Director, Walter Arsenault, and Commissioner Paul Weinstein. On that date, I emailed Mr. Arsenault, copying Commissioner Weinstein, requesting that he arrange for future Commission meetings to be recorded and for the recordings to be made publicly available. In response, Mr. Arsenault stated that “the Commission has operated in the present manner since 1953” and suggested there was no need for change or reason to question whether the Commission was making use of recommended practices for a public regulatory authority.

23. I then directed my reply to Commissioner Weinstein, asking whether he “object[ed] to creating a contemporaneous record of our proceedings?” Commissioner Weinstein responded by asking me whether I was aware of any “authority requiring that the Commission meetings be recorded,” like a “statutory or regulatory requirement.” I then explained my view that recording was desirable as a matter of policy to bring the Commission’s practices in line with general best practices in the public sector, and was within our ability to do.

24. At a meeting of the Commission four days later, I proposed that the Commission adopt protocols for recording Commission meetings. Commissioner Weinstein voted against the proposal, thus barring its adoption. That means the public still lacks appropriate knowledge of this Commission’s operations, especially because the minutes the staff produces can be incomplete.

25. A consequence of the Commission's reluctance to let in more sunlight is that there is little to no public visibility of its budgeting processes. That matters because the Commission's irresponsible budgeting practices have fostered an institutional culture that lacks accountability, and have in turn supported overregulation by the Commission.

26. The Commission cannot establish a budget without approval from the Governors of both of its member States. The Compact provides that the Commission "shall annually adopt a budget of its expenses," which "shall be submitted to the Governors of the two States," who possess the power to veto and amend the budget. (Compl. App. 31a (art. XIII, §2).) The budget "shall take effect as submitted" — unless "either Governor . . . within thirty days disapprove[s] or reduce[s] any item or items," in which case "the budget shall be adjusted accordingly." (*Id.*)

27. As for balancing the Commission's budget, the Compact prescribes the following rules: "After taking into account such funds as may be available to it from reserves, Federal grants or otherwise, the balance of the commission's budgeted expenses shall be assessed upon employers of persons registered or licensed under this compact." (*Id.* (art. XIII, §3).)

28. In addition, the Compact permits the budget to "include a reasonable amount for a reserve . . . not [to] exceed ten per cent of the total of all other items of expenditure contained therein," which "shall be used" for a limited number of enumerated purposes: the stabilization of annual assessments, the payment of operating deficits and for the repayment

of advances made by the two States.” (Compl. App. 31a-32a (art. XIII, §3) (emphasis added).) Nowhere does the Compact permit reserves to be spent on private lobbying firms or on outside counsel, let alone on outside counsel for purposes of pursuing litigation against its member States.

29. The Commission retained outside counsel in December 2017, without my signoff — or my knowledge — to prepare for litigation against New Jersey, following the passage of Chapter 324. (Compl. ¶¶73-83 (describing the litigation initiated by the Commission).)<sup>2</sup>

30. After the budget for 2020-2021 took effect, I learned the Commission had incurred, and was incurring, costs on outside counsel that exceeded their line item in that year’s budget, and that the Commission intended to make up the difference by spending reserves — in violation of the Compact, which enumerates the finite permissible purposes for the use of reserve funds.

31. Reserves have also been impermissibly spent on lobbyists, despite the fact that New Jersey

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<sup>2</sup> Commission staff later claimed this was permissible because, in their view, I was recused from involvement. But the New Jersey State Ethics Commission then found that I did not have any personal or financial conflict of interest. That leaves only the staff’s claim that I had a duty of loyalty to the Waterfront Commission that was inconsistent with my duty to New Jersey, requiring a recusal. But the potential benefits to New Jersey from ending that suit recused me no more than the alleged harms to New York recused the New York Commissioner. After all, the point of the Commission’s structure was to ensure the bistate agency would not take actions opposed by either member State.

law prohibits certain agencies like the Commission from hiring lobbyists, and despite my consistent opposition (of which there is unfortunately no record because the Commission does not record its meetings, as explained, *supra*, at ¶¶20-24). This includes funding to lobby the New York Legislature *against* passing companion legislation to New Jersey's Chapter 324. This was done without my approval. It is also an inappropriate use of Commission funds.

32. In June 2021, I voted no on the Commission's proposed budget for two principal reasons. First, the staff's proposed budget provided for a surplus and did not account for reserve funds in excess of the 10% cap set forth in the Compact. Second, it included line items for payment to outside counsel to which I objected, but also did not accurately reflect the actual expenditures for outside counsel or lobbyists, which were being paid for outside of the operating budget from the reserve funds without the consent of the Commissioners.

33. Commission staff responded by removing the line item for outside counsel fees, but continued funding a suit against New Jersey through expenditures of reserves and without my consent as a Commissioner.

34. During the summer of 2021 I voted for two temporary extensions of the budget from the previous fiscal year, to ensure continued function by the Commission, with the expectation that a proposed revised budget would be presented to the Commissioners. The second extension expired on October 28, 2021.

35. I emailed the Executive Director on October 27, 2021 to ask about the status of a new budget proposal. His response indicated that he was not concerned that the Commission was facing imminent expiration of its budget. He replied: “We haven’t been advised by either state of an issue with the budget.”

36. As of October 29, 2021, the Commission has been operating without an approved budget, in violation of the Compact.

**C. State Police Is Better Equipped to Exercise Regulatory and Enforcement Functions in New Jersey.**

37. New Jersey’s State Police is better situated to police the portion of the Port within New Jersey than the Commission, due to its superior resources, capabilities, and relationships with other law enforcement and prosecution agencies.

38. The many years I spent as a prosecutor at the local, State, and federal level in New Jersey provided me with an understanding of, and familiarity with, the relevant characteristics of the State Police.

39. The State Police has strong relationships with local and federal law enforcement entities that have been or will be involved in coordinated efforts of ensuring the safety and security at the Port locations in New Jersey. As for connections to State and local entities, leadership in the State Police maintains a close working relationship with local police departments that are home to some of the Port’s piers

and shipping berths, as well as the County Prosecutor offices in the relevant New Jersey counties, among others. And indeed, the State Police is housed within New Jersey's Department of Law and Public Safety, and is thus directly accountable to the Attorney General of New Jersey, the State's top law enforcement official.

40. On the federal side, the State Police regularly collaborate or cooperate with local offices or personnel from the Federal Bureau of Investigation, Drug Enforcement Administration, Homeland Security Department, and Coast Guard, as well as the office of the U.S. Attorney for the District of New Jersey. The State Police works closely with local and state law enforcement in New York as well.

41. These relationships will benefit the State Police in a variety of ways, including data sharing and the ability to leverage expertise and specialized resources from other agencies, among others.

42. The State Police are also better resourced and equipped than the Commission. In particular, they have superior technological capabilities that can be deployed for a range of functions, including: law enforcement activities, such as investigations and intelligence gathering; security surveillance; administrative and regulatory activities, such as licensing and application processing; and both data and analytics, which has administrative, law enforcement, and investigative applications.

43. Not only are the State Police prepared for the impending transition, but the transition was

designed to be seamless. Chapter 324 mandates that the State Police will “continu[e] the functions, contracts, obligations, and duties of the commission within this State,” commands that “all operations of the commission within this State ... continue as operations of [State Police] until altered,” and provides “all rules and regulations of the commission shall continue in effect as the rules and regulations of the division until amended, supplemented, or rescinded by” the State Police following state administrative procedures. (Compl. App. 48a.) In other words, Chapter 324 set forth a considered plan for a careful transition of power to the NJSP, with an eye toward maintaining stability.

**D. The Commission Cannot Function Without the Support and Participation of Both States.**

44. By design, the Commission can only operate through the unanimous agreement of both Commissioners, who are appointed by, and ultimately accountable to, the member States.

45. The Compact confirms the Commission “shall consist of two members, one to be chosen by the State of New Jersey and one to be chosen by the State of New York” who “shall be appointed by the Governor of such State with the advice and consent of the Senate thereof.” (Compl. App. 6a (art. III.2)). It also states that the agency could “act only by unanimous vote of both members thereof.” (*Id.* (art. III.3)) That means both Commissioners’ approval is necessary to pass a budget, in addition to the approval of both States’ Governors, as I explained above. See *supra* at



¶26. In other words, if New Jersey wished to cast votes against the work of the Commission, it could do so consistent with the plain language of the Compact.

46. I know this from first hand experience: it grew increasingly difficult during my tenure to reach unanimity. Litigation by the Commission against New Jersey, coupled with the opposition of Commissioner Weinstein and staff leadership to greater transparency, added to the difficulty. New Jersey and New York's views of their interests with respect to the Commission are simply divergent.

47. If New Jersey were forced to remain a part of the Commission, a stalemate could result that would bring the Commission's operations to a grinding halt. Without a budget or an ability to break deadlock, the Commission will not be able to function regardless.

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

Executed: March 20, 2022

/s/ Michael Murphy  
Michael Murphy

**EXHIBIT 1**

|    | <b>Residence</b> | <b>Division</b> | <b>Job Title</b>   |
|----|------------------|-----------------|--|
| 1  | NY               | Admin           | Messenger  |
| 2  | NJ               | Admin           | Director of<br>Audit<br>/Admin                               |
| 3  | NY               | Admin           | Principal<br>Clerk/<br>Transcribing<br>Typist                |
| 4  | NY               | Audit           | Supervising<br>Accountant                                    |
| 5  | NY               | Audit           | Deputy<br>Director of<br>Audit                               |
| 6  | NY               | Audit           | Supervising<br>Accountant                                    |
| 7  | NY               | Audit           | Auditor<br>Accountant  |
| 8  | NJ               | Licensing       | Senior<br>Licensing<br>Examiner                              |
| 9  | NY               | Licensing       | Deputy<br>Director /<br>Prequalificati<br>-on<br>Coordinator |
| 10 | NJ               | Licensing       | Senior<br>Licensing<br>Clerk                                 |
| 11 | NJ               | Licensing       | Manager  |
| 12 | NY               | Licensing       | Intermediat<br>e Clerk                                       |
| 13 | NJ               | Licensing       | Clerk  |
| 14 | NY               | Licensing       | Licensing<br>Examiner  |
| 15 | NY               | Licensing       | Licensing<br>Examiner  |
| 16 | NJ               | THEIC           | Assistant<br>Manager   |
| 17 | NY               | THEIC           | Intermediat<br>e Clerk                                       |
| 18 | NY               | THEIC           | Assistant  |

|    | <b>Residence</b> | <b>Division</b> | <b>Job Title</b>   |
|----|------------------|-----------------|--------------------|
|    |                  |                 | Manager            |
| 19 | NY               | THEIC           | Supervising Clerk  |
| 20 | NY               | Executive       | Executive Director |
| 21 | NY               | Executive       | HBA Administrator  |
| 22 | NY               | Executive       | Comptroller        |
| 23 | NJ               | Executive       | Executive          |
| 24 | NY               | Executive       | Executive          |
| 25 | NJ               | Executive       | Executive          |
| 26 | NJ               | Executive       | Executive          |
| 27 | NY               | Executive       | Executive          |
| 28 | NY               | Intelligence    | Intelligence       |
| 29 | NY               | Intelligence    | Intelligence       |
| 30 | NJ               | Intelligence    | Intelligence       |
| 31 | NY               | Intelligence    | Intelligence       |
| 32 | NY               | IT              | IT                 |
| 33 | NY               | IT              | IT                 |
| 34 | NY               | IT              | IT                 |
| 35 | NY               | Law             | Law                |
| 36 | NJ               | Law             | Law                |
| 37 | NY               | Law             | Law                |
| 38 | NY               | Law             | Law                |
| 39 | NJ               | Law             | Law                |
| 40 | NY               | Law             | Law                |
| 41 | NJ               | Law             | Law                |
| 42 | NJ               | Law             | Senior Counsel     |
| 43 | PA               | Law             | Court Reporter     |
| 44 | NJ               | Police          | Detective          |
| 45 | NY               | Police          | Detective          |
| 46 | NY               | Police          | Captain            |
| 47 | NJ               | Police          | Detective          |
| 48 | NY               | Police          | Detective          |
| 49 | NJ               | Police          | Captain            |
| 50 | NY               | Police          | Sergeant           |
| 51 | NY               | Police          | Detective          |
| 52 | NY               | Police          | Detective          |
| 53 | NY               | Police          | Detective          |
| 54 | NJ               | Police          | Sergeant           |
| 55 | NY               | Police          | Detective          |

|    | <b>Residence</b> | <b>Division</b> | <b>Job Title</b>        |
|----|------------------|-----------------|-------------------------|
| 56 | NY               | Police          | Sergeant                |
| 57 | NY               | Police          | Detective               |
| 58 | NY               | Police          | Detective               |
| 59 | NJ               | Police          | Detective               |
| 60 | NY               | Police          | Detective               |
| 61 | NY               | Police          | Detective               |
| 62 | NY               | Police          | Detective               |
| 63 | NY               | Police          | Detective               |
| 64 | NY               | Police          | Chief of<br>Police      |
| 65 | NJ               | Police          | Detective               |
| 66 | NY               | Police          | Detective               |
| 67 | NY               | Police          | Detective               |
| 68 | NJ               | Police          | Captain                 |
| 69 | NY               | Police          | Detective               |
| 70 | NY               | Police          | Detective               |
| 71 | NJ               | Police          | Detective               |
| 72 | NJ               | Police          | Detective               |
| 73 | NY               | Police          | Detective               |
| 74 | NY               | Police          | Detective               |
| 75 | NY               | Police          | Detective               |
| 76 | NY               | Police          | Detective               |
| 77 | PA               | Police          | Sergeant                |
| 78 | NY               | Police          | Sergeant                |
| 79 | NY               | Police          | Detective               |
| 80 | NY               | Police<br>Admin | Office<br>Manager       |
| 81 | NY               | Police<br>Admin | Auto<br>Mechanic        |
| 82 | NY               | Police<br>Admin | Administrative<br>Clerk |

**APPENDIX C**

**DECLARATION OF JOHN J. NARDI**

1. I am the President of the New York Shipping Association, Inc. (“NYSA”). I am familiar with the matters set forth in this declaration from my personal knowledge.

2. I have served as President of NYSA since 2013 and previously served as NYSA’s Executive Vice President. NYSA is a not-for-profit, tax-exempt trade association located in Edison, New Jersey, and incorporated in New York. NYSA’s members include (1) ocean carriers that transport cargo to and from the Port of New York and New Jersey (the “Port”), (2) stevedoring companies that load and unload the carriers’ vessels, and (3) security companies employing security officers at the Port. NYSA’s stated mission is to represent the interests of its members in maximizing the efficiency, cost-competitiveness, safety, and quality of marine cargo operations at the Port. On behalf of its members, NYSA negotiates and administers collective bargaining agreements establishing the terms and conditions of employment of Port workers and security officers, and facilitates the daily hiring of thousands of workers at the Port.

3. The Waterfront Commission of New York Harbor (the “Commission”) regulates NYSA’s members. For example, the Commission licenses NYSA’s stevedoring-company members. It also registers and licenses the longshore employees of NYSA’s stevedoring-company members and the security officers of NYSA’s security-company members.

4. NYSA and its members have found the Commission to be an outdated and unhelpful entity that is often an impediment to the efficient operation of the Port. Commission staff have imposed ever-changing bureaucratic regulations and hurdles to hiring efficiency. Months and sometimes even years pass with the Commission not processing individuals put forth for Port hiring. The industry also has been forced to delay requests for new workers as individuals put forth would be rejected by the Commission due to constantly changing processing rules. The Commission's overreaching and unnecessary intervention in hiring, carried out seemingly to justify the agency's own existence, has limited the amount of available workers and put significant investments at risk. This bureaucratic activity has caused economic harm to the businesses relying on the efficient assimilation of new employees as productive members of the workforce. In many cases, potential employees have found jobs in other industries before they can be hired because of the needless delays created by the Commission. These labor shortages also have created potential safety hazards and the perception of an inability of the Port to handle growing cargo volumes.

5. For the Commission's first fifty years, it generally adhered to its limited role of vetting candidates for the longshoremen's register and performing its other authorized functions. More recently, however, it has assumed a more intrusive position vis-à-vis Port hiring by imposing arbitrary requirements that make conducting business at the Port more burdensome and inefficient than necessary.

6. For example, when the International Longshoremen's Association ("ILA") refers longshoremen for hiring, what should be a straightforward background check process has become long and protracted because the Commission uses an outdated procedure that takes an extremely long time to approve or reject the candidates. The shortage of workers further risks a collateral effect on the Port because entities responsible for the transportation of cargo destined for inland destinations look for reliability and will pull cargo from a port if they believe it may be delayed due to worker shortages.

7. Moreover, the Commission has been exercising powers never granted to it, such as dictating the terms of collective bargaining agreements. By constantly changing hiring rules and moving the goalposts on requirements for new hires, the Commission has materially interfered with the collective bargaining rights of longshore workers by compelling union and management to deviate from their contractually-agreed-to Hiring Plan, which is part of the NYSA-ILA collective bargaining agreement.

8. Unlike trade associations and stevedoring companies in other ports that can simply negotiate hiring decisions with the workers' unions, NYSA and its member-companies are subject to the burdens of the Commission's regulations. No other port in the country is subject to regulation by such an entity; the Commission is the only entity of its kind in the United States. The very same employers who

operate at the Port operate in other ports as well, but they need not deal with a similar commission at those other locations. The Commission places the Port at a competitive disadvantage and has become a significant impediment to Port and regional prosperity.

9. Recognizing that the Commission's negative impact on the Port could not be fixed, in 2018 the New Jersey Legislature enacted and the New Jersey Governor signed into law Chapter 324, 2017 N.J. Laws 2102, which withdraws New Jersey from the Commission. The Commission immediately sued to enjoin the enforcement of Chapter 324. The United States District Court for the District of New Jersey granted this injunction, but the United States Court of Appeals for the Third Circuit reversed and this Court denied the Commission's petition for a writ of certiorari. As a result, on December 3, 2021, the District Court vacated its injunction.

10. After not hearing from the State of New York in the four years since New Jersey enacted legislation to withdraw from the Compact, NYSA and its members have made plans for the transition of Commission oversight to the New Jersey State Police ("NJSP"). In the nearly four months since the District Court lifted its injunction, NYSA and its members have prepared extensively for the transition of regulation at the Port from the Commission to NJSP. These efforts have included both internal planning and collaboration with NJSP. NYSA, on behalf of its members, has participated in numerous meetings with NJSP, the New Jersey Authorities Unit, and the



Office of the Governor of New Jersey. These meetings resulted in subsequent information exchanges.

11. By way of example, NYSA and its members have met with NJSP to provide information about the operations of NYSA's direct-employer members and the current functions of the Commission regarding the licensing of these companies and the payment of assessments.

12. In these discussions, NYSA, its members, and NJSP also have discussed labor management relations at the Port, including complex union and collective bargaining issues. These issues include the daily hiring of approximately 3,500 Port employees, with subsidiary issues such as seniority, company lists, and bringing new employees into the workforce. These discussions have elucidated the roles of the various craft locals of the ILA, the Port Police and Guards Union, and the Metropolitan Marine Maintenance Contractor's Association, Inc., a management trade association for the employers of maintenance and repair mechanics and lashers at the Port. Granular discussions regarding the method and manner of daily Port hirings through Prior Day Orders, List Positions, and procedures for job postings have occurred. NJSP also has been briefed on the administration of important contractually based programs related to drugs and alcohol, anti-discrimination, anti-harassment, and employee discipline.

13. NYSA and NJSP also have discussed the complexities of the Commission's decasualization process, the industry's response to the COVID-19

pandemic and how employees were kept safe while cargo kept moving, licensing of Port Security Officers, potential changes to Security Officer log books, and direct links of communication between Port Security Officers and NJSP, including the potential for a shared radio frequency directly monitored by NJSP.

14. NYSA, on behalf of its members, has devoted resources to learning about NJSP's modern technical capabilities to be deployed as a Port regulator. For example, NYSA and its information technology staff have consulted with NJSP to formulate integration plans to provide NJSP monitoring access to NYSA's hiring system, which the Commission currently monitors. NYSA and its members are also planning the logistical aspects of registering Port employees with NJSP. This will ensure that all Port workers are vetted by NJSP and subject to revocation of registration if they violate NJSP regulations for employment at the Port.

15. NJSP has briefed NYSA on the size of the force it will dedicate to the Port, its commitment to preventing organized crime influence at the Port, and its plans for modernizing the processing of new hires and adjudicatory procedures for applicants. In contrast, the Commission is a "pen and paper" organization that has done nothing to modernize its systems to keep pace with NYSA's updated hiring system used for the daily dispatch of approximately 3,500 Port workers. It is clear to NYSA that NJSP has vastly superior technical capabilities and is better equipped to help ensure the efficient operation of the Port in the modern shipping industry.

16. Based on my interactions with NJSP and my knowledge of Port operations, it is clear to me that NJSP is well-equipped to take over the Commission's responsibilities as scheduled. We have been particularly impressed with NJSP's technological and law enforcement capabilities, which it appears will, on day one, exceed the capabilities of the Commission. The incorporation of a new regulator into the Port is hardly an anomaly or novel event. A wide variety of federal, state, and local agencies already regulate the Port, including the Federal Bureau of Investigation, Coast Guard, Customs and Border Protection, the Occupational Safety and Health Administration, Department of Agriculture, Environmental Protection Agency, Department of Transportation, Food and Drug Administration, Port Authority Police Department, Newark Police Department, Elizabeth Police Department, Bayonne Police Department, and New York City Police Department. Just as these entities have all been able to cooperate to perform necessary duties without causing chaos or disruption to Port activities, we expect NJSP will be able to do so as well. Such an outcome is consistent with the design of Chapter 324 itself, which contains a detailed plan for a deliberate and careful transition of oversight to NJSP.

17. In contrast, NYSA and its members are extremely concerned about the continued deterioration of the Commission going forward. Under Article XIII of the Compact, the Commission must adopt a budget each year, and it may levy assessments on NYSA's direct-employer members only in furtherance of that adopted budget. But the Commission has become so dysfunctional that it is

currently operating without any budget at all, and so at this time, no assessments are collectible. Under the Compact, both Commissioners' affirmative support is necessary for the Commission to pass a budget or take any key actions. We believe that the Commission will continue to be incapable of even passing the budget necessary to provide it with funding for continued operations, and may face other hurdles that create inefficiencies and other risks at the Port.

18. In sum, based on my interactions with the Commission and NJSP, it is evident that NJSP stands ready to take over regulation of the Port on day one, that it will be a vast improvement over the ineffective and outdated oversight of the Commission, and that the Port, the workforce, the job market, the economy, and the public all will benefit.

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

Executed: March 20, 2022

/s/ John J. Nardi  
John J. Nardi

**APPENDIX D**

Parimal Garg  
Chief Counsel

January 20, 2022

*Via Electronic Mail*

Hi Liz and Karen,

I hope you are doing well. As the NJ team mentioned in prior calls, we prepared a comprehensive document and information request we intend to submit to the Waterfront Commission executive staff. We hope to deliver that request within the next week. Our legislation under Ch. 324, setting forth New Jersey's withdrawal from the Commission, includes a provision that the Commission staff cooperate with New Jersey during the transition and to provide necessary operational information.

We wanted to provide you and your team an opportunity to review the attached draft list of requests before it is sent and give you the opportunity to join the request or add your own. Much of the requested information will help both States inform decisions in establishing more efficient and effective oversight of the ports within our States and provide information helpful for the transitioning of staff, equipment, property, funds, etc.

We look forward to discussing this with you further during our call on Monday.

46a

Many thanks,  
Parimal

Parimal Garg  
Chief Counsel  
Office of Governor Philip D. Murphy  
Desk: (609)777-2455  
[Parimal.Garg@nj.gov](mailto:Parimal.Garg@nj.gov)

cc: Elizabeth Fine  
Karen P. Keogh  
George Helmy (GOV)  
Noreen Giblin (GOV)  
Joy Johnson (GOV)  
Rahat Babar (GOV)

2022 NJ Document & Information Requests to  
Waterfront Commission - DRAFT  
Advisory, Consultative, & Deliberative  
Privileged & Confidential

WATERFRONT COMMISSION REQUESTS

*Employment – Compensation & Benefits –  
Human Resources*

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

POLICE DIVISION

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

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

#### IDENTIFICATION AND INFORMATION TECHNOLOGY SECTION

- Employees and assigned work locations
- A list of hardware, software applications, and databases used by the Commission
- A list of IT facilities, such as data centers, server rooms, network closets, etc.



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

#### LEGAL/ADMINISTRATION

- Standard Operating Procedures for all departments and divisions
- Payroll records for the preceding year
- Fringe Benefits rate
- All active MOUs with federal, state, county, local or private entities
- List of all financial accounts with name of institution, account name and numbers, balances, and statements for each for the preceding year. \* see Financial Statements section below
- Procurement policies and procedures
- Active contracts related to the procurement of goods/services

- Rent/lease agreements for all fixed and non-fixed assets and location of each asset
- Deeds/titles to any all owned assets
- Locations and logs of all record storage

#### FINANCIAL STATEMENTS

- Financial statements for the f/y/e June 30, 2021 through the current calendar year (audited, if available, otherwise provide unaudited) reflecting all assets, liabilities, reserves (general and restricted) and changes in operating fund balance, prepared on an accrual basis in accordance with Generally Accepted Accounting Principles. If accrual basis financial statements are not available, provide cash basis statements and schedules of all receivables and payables as of June 30, 2021.
- Balance sheet reporting all assets, liabilities and reserves at the current date, prepared on an accrual basis, along with supporting spreadsheets identifying details of assets and liabilities.
- Operating Fund and Forfeiture Fund receipts and disbursements, and change in fund balances, for the period July 1, 2021 to date.

#### RECEIPTS, RESERVES AND CASH/INVESTMENTS

- Reconciliation of the f/y/e 2021 budget with actual receipts/expenditures.
- All records pertaining to the computation, billing and collection of the employer assessment. Such records shall identify the amount paid by each employer, dates of payment, late

payments/fines/penalties, as well as the jurisdiction(s) in which that employer operates (e.g. NJ, NY or both), and any other information that identifies services being rendered in New Jersey.

a. Include amounts owed but not collected as of the current date.

b. Provide information about any software or reporting portal or other method used by the Commission for the billing, collection and tracking of the employer assessment, and two to three examples of same.

- Most recent monthly/quarterly statements for all cash, bank, money market, brokerage, trading and investment accounts, and amounts held in trust by or administered by third parties, including but not limited to operating accounts, working capital, forfeiture funds and reserves for specific or general contingent liabilities.

- Schedules or worksheets identifying any allocation of “reserves” for contingent or future liabilities, including but not limited to, Other Postemployment Benefits (OPEB).

- All documentation, including but not limited to, work papers, schedules, memoranda, actuarial reports etc. that support the computation and funding of the OPEB liability (approx. \$14.5 million per the Commission’s Annual Report) and projected future payments.

- Provide an analysis of amounts allocable to services performed in New Jersey or attributable to New Jersey employees.

## OTHER ASSESTS OWNED/LEASED AND LIABILITIES

- Deeds and mortgages for any real property (land and/or buildings) owned by the Commission, as well as any current or pending contracts for purchase or sale of real property.
- Current and prospective lease/rental agreements, with all schedules and riders thereto, for all offices, warehouses, garages, storage space and any other real property located in New Jersey, including but not limited to, the premises at 1201 Corbin St., Elizabeth NJ 07201 (the Elizabeth Property) and 333 Thornall St, Edison NJ (the Edison Property).
  - Include information regarding any commitment to make leasehold improvements, or to acquire additional space.
- Inventory/spreadsheets identifying all tangible personal property (other than vehicles) owned or leased for use at the Elizabeth Property, the Edison Property and any other location in New Jersey. Such information shall identify whether such property is owned or leased, and include, but not be limited to, the following:
  - Office equipment
  - Garage equipment
  - Information technology and audio visual equipment, including but not limited to, computers/laptops, servers, laptops/ipads, teleconferencing equipment
  - Communications equipment, including but not limited to, radios, cell phones, phone systems, dispatch systems, etc.

- Any other equipment associated with licensing and registration operations
- Police/enforcement/investigation equipment including but not limited to, surveillance equipment, weapons, clothing, tactical gear, etc.
- Spreadsheets or other lists of all vehicles owned by, or leased by the Commission, for use in New Jersey, identifying whether or not the vehicle is owned or leased, make/model, year, purpose, assigned use (e.g. police, investigator, attorney) or unassigned, and the state where the vehicle is registered
  - For vehicles owned by the Commission, provide documentation of any amounts owed or financing agreements.
  - For vehicles leased by the Commission, include copies of lease agreements.
  - Summary of vehicle service performed by the Commission's auto mechanic for f/y/e June 30, 2021.
  - Mileage logs for assigned and pool vehicles for the preceding calendar year
- Identify software owned or licensed by the Commission for maintaining the longshoremen rolls, intelligence and investigation databases, background checks, billing/collecting/tracking employer assessments, license and registration applications and renewals, as well as any vendor agreements for licensing, programming, general IT support, servers/maintenance, cybersecurity and back-up.

#### CONTRACTS/LIABILITIES

- All contracts and vendor agreements (if not produced in response to the items above, including professional services contracts) to which the

Commission is a party and which pertain to any property located in New Jersey or to services rendered in or pertaining to New Jersey.

- To the extent not provided in response to any item above, copies of notes, mortgages, loan agreements, lines of credit, outstanding bills and liabilities relating to any activities within New Jersey.
- Insurance policies with all amendments, schedules and riders thereto, for all real and personal property owned, leased or placed in service in New Jersey; such policies should include but not be limited to, general liability/umbrella coverage, property, fire, theft, automobile, workman's compensation, and the like.
- For all current Commission employees, provide:
  - a schedule identifying each employee's name, title, role/function, number of years employed by the Commission, salary and benefits; and
  - any contracts, memoranda, policies, plans and other documents pertaining to pensions, OPEB, reimbursements for personal use vehicles, meal/clothing allowances and other fringe benefits available to Commission employees that are paid by the Commission, including any schedules, spreadsheets or other payroll records indicating the value/amount of benefits currently available to each.
- For any prior Commission employee for whom there may be any future liability including but not limited to pension, OPEB, settlement payments, etc. because of the individual's employment with the Commission, identify the nature and amount of all such liabilities and any documentation pertaining to same.

## OPERATIONS

- Current CBAs for the International Longshoremen's Association and New York Shipping Associates, and the 2013 Memorandum of Settlement of Local Conditions in the Port of New York-New Jersey (referenced in the Annual Report at p. 20).
- Number of applications received during f/y/e 2021 for all class of longshoremen, stevedores, pier superintendents and hiring agents, and the status of review/approval.
- Forms used for registration/licensing applications longshoremen, stevedores, pier superintendents and hiring agents; for each category, provide one completed application package, investigation/background check and approvals.
  - a. Provide information about any software or reporting portal or other method used by the Commission for processing and tracking of applications and renewals.
- Copy of current Longshoremen's registry and date of most recent update, identifying status of registration, ie. Permanent, temporary, probationary
- Number of telecommunication system controllers and union affiliations for each.
- All Memoranda of Understanding and Mutual Aid Agreements to which the Commission is a party, including but not limited to the Port Authority of New York and New Jersey, the US Customs and Border Patrol, the FBI, and any other federal or state and local agencies.
- All commissions, task forces, working groups and other partnerships (Stakeholder Group) in which the Commission participates, identifying those that relate to operations in New Jersey, including

schedule/frequency of meetings, the Commission's role, and primary POC for the Stakeholder Group.

- Number and status of all legal matters pertaining to New Jersey, including but not limited to, pending petitions, hearings, appeals and any other lawsuits to which the Commission is a party; such information shall identify the venue, parties, counsel, and subject matter.
- Number and status of all pending civil and criminal investigations pertaining to New Jersey, identifying subject matter and key partners.



**APPENDIX E**

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

Philip D. Murphy  
*Governor*

November 23, 2021

*Via: Electronic Mail*

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

Re: Fiscal Year 2020 Budget of the Waterfront  
Commission of New York Harbor

Dear Mr. Arsenault:

Yesterday, the United States Supreme Court denied certiorari in *Waterfront Commission of New York Harbor v. Murphy*. Thus, in due course, New Jersey will take steps to withdraw from the Waterfront Commission Compact pursuant to P.L. 2017, Ch. 324 (“Chapter 324”).

As New Jersey withdraws from the Compact, we fully expect an orderly transfer of duties and assets of the

Commission to New Jersey. Nevertheless, because of the concerns raised in my letter to you on November 8, 2021, I am directing the Commission to cease and desist all expenditures of whatever nature from the Commission's reserve funds and demand that these reserve funds be held in escrow until the transfer is finalized pursuant to chapter 324.

Per my November 8 letter, I remind you that the Commission has continued to operate without an approved budget. The Commission's enabling law requires not only that the Commission annually adopt a budget of its expenses, but also that the budget be submitted to the Governors of New Jersey and New York for approval.<sup>1</sup>

On June 22, 2021, the New Jersey Commissioner rejected the Commission's annual budget. The Commission thereafter approved two resolutions to temporarily extend the budget, without objection from me or the Governor of New York. Both extensions expired, and the commission has not passed a resolution approving any further extension or a new budget.

Despite the limitations that the enabling law imposes on the Commission's ability to build its reserve,<sup>2</sup> the

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<sup>1</sup> See Article XIII: Expenses of Administration in the Waterfront Commission Act, para.2; N.J.S.A. 32:23-57.

<sup>2</sup> See Paragraph 3 of Article XIII ("After taking into account such funds as may be available to it from reserves, Federal grants or otherwise, the balance of the commission's budgeted expenses shall be assessed upon employers or person registered or licensed under this compact.") The act continues, after describing the method for calculating the assessments: "Such budget may

Commission has continued to operate with its reserves far exceeding its stated operational needs. I am also disturbed that it continues to fund its operations through assessments, even to the point of creating a surplus, despite having these extensive reserve funds.

The Commission has no authority to operate until it can adopt a budget that can be submitted to me and the Governor of New York. New Jersey's impending withdrawal from the Compact does not relieve the Commission's staff of its duties to continue to operate in the interim within the enabling law's parameters. To that end, an interim budget must be presented expeditiously to the Commissioners from review within 14 days and, once approved, presented to me and the Governor of New York.

Sincerely,

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

cc:

The Honorable Kathy Hochul, Governor, State of New York

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include a reasonable amount for a reserve but such amount shall no exceed ten per cent of the total of all other items of expenditure contained therein. Such reserve shall be used for the stabilization of annual assessments, the payment of operating deficits and for the repayment of advances made by the two States.”

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

Commissioner Michael Murphy, Waterfront  
Commission of New York Harbor

Parimal Garg, Chief Counsel to the Governor

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

**APPENDIX F**

**THE SECRETARY OF STATE  
WASHINGTON**

Condoleezza Rice  
Secretary of State

March 7, 2005

Dear Mr. Secretary-General

I have the honor on behalf of the Government of the United States of America to refer to the Optional Protocol to the Vienna Convention on Consular Relationships Concerning the Compulsory Settlement of Disputes, done at Vienna April 24, 1963.

This letter constitutes notification by the United States of America that it hereby withdraws from the aforesaid Protocol. As a consequence of this withdrawal, the United States will no longer recognize the jurisdiction of the International Court of Justice reflected in that Protocol.

Sincerely,

/s/ Condoleezza Rice  
Condoleezza Rice

His Excellency Kofi A. Annan,  
Secretary-General of the United Nations,  
New York