

March 13, 2015

**VIA Federal Express**

Clerk  
Wilentz Justice Complex—Eighth Floor  
212 Washington Street  
Newark, New Jersey 07102

Dear Clerk:

Please accept this letter brief, submitted for Plaintiff Montclair Kids First (“MKF”), a coalition of Montclair parents, residents, and taxpayers committed to excellence in the local public-school system, in support of MKF’s Order to Show Cause With Temporary Restraints (“OTSC”) under R. 4:52-1(a).

**PRELIMINARY STATEMENT**

New Jersey’s conflict-of-interest laws governing public officials—whether the source is common law, the state Local Government in Ethics Law or municipal ethics codes—are designed to preserve and maintain public confidence in the functioning of government. These principles recognize that public service is a privilege and a trust, and that “whenever the public perceives a conflict between the private interests and the public duties” of a government official, confidence in government is undermined. *See, e.g.,* New Jersey Local Government Ethics Law (“LGEL”), N.J.S.A. 40A:9-22.2 (2015). New Jersey law therefore prohibits public officials from engaging in public actions not only when an actual conflict exists, but even when the public might perceive a conflict. In fact, the state’s emphasis on conflict-free public conduct requires officials to disqualify themselves from action merely when “there is a potential for conflict”; the official need not be actually influenced by the conflict or even be aware of it, *see, e.g., Thompson v. Atlantic City*, 190 N.J. 359, 374 (2007)—the public’s perception that a conflict might undermine independent, impartial public decision-making is sufficient to require a public official to disqualify herself.

Here, Defendant Sean Spiller is a public official serving on the Montclair Board of School Estimate (“BSE”). As a BSE member, Spiller’s responsibility is to vote on the annual school budget, and to participate in deliberations preceding the BSE’s vote so that he can make an informed decision that best serves the interests of Montclair’s

residents. At the same time that Spiller serves on the BSE, however, he is also a paid, senior officer of the New Jersey Education Association ("NJEA"), a statewide labor union that includes among its members 1100 employees of Montclair Public Schools ("MPS") represented by the NJEA's local affiliate, the Montclair Education Association ("MEA"). As a senior NJEA official, Spiller's responsibility is to advance the mission and priorities of the NJEA, which according to the NJEA itself are focused on improving the wages, benefits, and job security of NJEA's members. As part of his responsibility to the NJEA, Spiller must also advance the NJEA's policy priorities on wide-ranging subjects affecting local school budgets, from health and pension benefits, to the role of technology in classrooms and in schools, to the adoption of curricular reforms like Common Core.

Under New Jersey's ethics laws, Spiller cannot serve on the BSE while serving as a paid, senior officer of the NJEA. The large majority of the Montclair school budget concerns personnel expenses associated with the 1100 members of the NJEA's local affiliate, and there is virtually no part of the school budget that is not affected by a NJEA policy position. In addition, the NJEA itself negotiated the current collective-bargaining agreement between Montclair's school employees and the district, further demonstrating the indistinguishability of the NJEA and its Montclair affiliate as it relates to their common interests in fiscal appropriations concerning MPS. New Jersey's ethics laws require—and guarantee the public—disinterested, impartial decision-making that serves the broader public interest. And the test here is not whether Spiller in fact acts based upon partiality to these private interests, nor is it even whether he in fact has such private interests—though he plainly does as the paid, third most-senior official of the NJEA. Instead, the test for disqualification is simply whether the public might perceive a conflict, and here that is plainly so, given Spiller's high-profile, high-visibility role as a senior, employed officer of an organization that has quite specific, private interests concerning the decisions of the BSE.

For these reasons, and because the circumstances here meet the standards for granting a preliminary injunction, this Court must enjoin Spiller from continuing to serve on the BSE. First, MKF, and Montclair residents and taxpayers broadly, will suffer irreparable harm if a preliminary injunction is not granted. The BSE must receive the proposed budget from the Montclair board of education by March 23, and after holding a public hearing on the budget the BSE can vote shortly thereafter, and must vote no later than April 8. Exh. H to Jeffries Cert. Thus, there is insufficient time to address Spiller's legal conflict through the normal course of litigation. Next, the ethics laws at issue here are settled, and MKF is reasonably likely to succeed. Common law, statutory law, and Montclair's ethics code all prohibit officials from participating in actions in which their private personal or financial interests are implicated, and because these rules require disqualification even when an appearance of a conflict exists (although an actual one exists here), Spiller must be disqualified. Finally, the balance of the equities favors the grant of the injunction: the public interest in

impartial government is, according to New Jersey law, paramount, and Spiller has no legally cognizable interest in serving in a public position while subject to a legal conflict.

Accordingly, for these reasons, explained further below, the Court should enter the accompanying Order to Show Cause with Temporary Restraints, removing Spiller from the BSE and enjoining his from further participation in its activities.

### **FACTS**

Defendant Spiller was elected to the Montclair Township council, and subsequently appointed by the town's mayor to the Montclair Board of School Estimate in 2012. Montclair is a "Type I" school district, which means that its mayor appoints school-board members, while most districts in New Jersey are "Type II," where school-board members are elected. *N.J.S.A.* 18A:22.1. In Type I districts, the school-board submits the annual budget to the BSE for adoption, as opposed to voting and adopting the budget itself, as is the case generally in Type II districts. The sole function of the BSE therefore is to approve the budget, and, as public officials representing the people of Montclair, the BSE's members are charged with impartially and independently making decisions about the allocation and expenditure of school funds in a way that best serves the public interest.

In 2013, Spiller began service as Secretary-Treasurer of the NJEA, a labor union that represents virtually all teachers in New Jersey, and a large number of other school officials, including 1100 employees of the Montclair Public Schools represented by the NJEA's local affiliate. Exh. K to Jeffries Cert. As Secretary-Treasurer, Spiller is an officer of the NJEA, and its third most senior official, falling behind only the President and Vice President. The NJEA, moreover, compensates Spiller for his services. *See* Exh. I to Jeffries Cert.

As a compensated senior NJEA executive, Spiller is charged with advancing the NJEA's mission, which the NJEA reports is rooted in "improv[ing] the economic interests, working conditions, and job security" of its members. *See NJEA's Mission Vision and Goals, available at* <http://www.njea.org/about/who-we-are/mission> (last visited March 13, 2015). In this leadership role, Spiller regularly communicates to the public the NJEA's position on wide-ranging topics affecting both statewide and local-school-board matters, ranging from the NJEA's position on budgeting issues affecting local school funding, Exh. C to Jeffries Cert; to the NJEA's position on the kind of wage-and-benefits investments the NJEA seeks for its members, Exh. D to Jeffries Cert.

In Montclair, most if not all school employees are represented by the NJEA's local affiliate, the Montclair Education Association ("MEA"). As the NJEA's local affiliate, the MEA adopts NJEA's standards for affiliation, which among other things requires local affiliates to pursue the NJEA's primary purposes of advancing the terms

and conditions of employment for its members. *See* Exh. A to Jeffries Cert. The standards for affiliation in effect ensure that locals are in fact affiliated with the NJEA and pursue the NJEA's agenda of fighting for the economic interests of members. The MEA by and large pursues locally what the NJEA pursues statewide, and the NJEA supports and facilitates MEA's local activities. Among other services the NJEA provides to the MEA in pursuit of their common cause are core collective-bargaining services. In fact, the current labor agreement between Montclair Public Schools and the MEA was negotiated by NJEA, not MEA, *see* <http://www.northjersey.com/news/montclair-boe-hires-labor-negotiator-management-consultant-1.334972> (last visited March 13, 2015); that agreement expires later this year.

On March 4, 2015, MKF served on the council and Spiller a complaint seeking Spiller's removal from the BSE, arguing that local and state law prevented an official from participating in a public act involving that official's financial or personal interests. MKF's complaint argued that as a senior, paid NJEA officer, with an explicit duty to advocate the specific interests of the NJEA, including the 1100 members of the NJEA's local Montclair affiliate, Spiller could not also legally discharge his duties to Montclair residents as a BSE member to impartially appropriate funds as part of the school-budgeting process. MKF argued both that Spiller had an actual conflict given Spiller's direct financial and personal interests in the NJEA and the seamlessness of the NJEA's and the MEA's interests, and that Spiller at minimum suffered under the appearance of a conflict given the nature of his business and personal relationships with the NJEA and MEA, and that the law prohibited both actual and apparent conflicts. Because both state and township ordinance require disqualification for officials subject to a conflict of interest, MKF asked Spiller to resign, or, in the alternative, for the Council to order his removal. On March 13, 2015, the Council denied MKF's complaint.

### LEGAL ARGUMENT

This Court has broad power to grant a preliminary injunction to prevent parties and the public from suffering irreparable harm. Under the longstanding *Crowe* factors, a preliminary injunction should be issued if the plaintiff demonstrates the underlying claim is settled; a reasonable likelihood of success on the merits; irreparable harm; and the equities tilt in the plaintiff's favor. *Crowe v. De Gioia*, 90 N.J. at 132-134. As discussed further below, the *Crowe* factors require the Court to grant MKF's preliminary-injunction motion.

**I. Well-Settled Principles Under Common Law, the State Local Ethics Law, and the Montclair Ethics Code Require Spiller's Disqualification Because His Employment by the NJEA Creates a Conflict-of-Interest and, at Minimum, an Appearance of a Conflict.**

Under the common law, the public is entitled to have its public officials perform their duties free from financial or personal conflicts. Conflict-of-interest law is

concerned primarily with ensuring public officials provide impartial, independent-minded service to their communities. *See Thompson*, 190 N.J. at 364. The state Supreme Court has emphasized that the public has a “right to the disinterested service” of public officials, and that public officials owe an obligation of “undivided loyalty” to the public good. *See id.* at 374.

In addition to disinterested service, conflict-of-interest law also seeks to promote public confidence in the integrity of government operations. *See id.; see also* LGEL, N.J.S.A. 40A:9-22.2 (2015) (providing that robust conflict rules are required because the “vitality and stability of representative democracy depends upon the public’s confidence in the integrity” of its officials). Because of the concern with promoting public confidence in government, conflict duties prohibit public officials not only from acting while subject to actual conflicts, but also while subject to conflicts that might potentially be perceived by the public. Public confidence requires that “municipal officials avoid conflicting interests that convey the perception that a personal rather than the public interest” affects decision-making on a public matter. *See Thompson*, 190 N.J. at 374; *see also Randolph v. City of Brigantine Planning Board*, 405 N.J. Super. 215, 226 (App. Div. 2009) (“[I]t is not simply the existence of a conflict that may be cause to overturn an action of a public official, but also the appearance of a conflict.”).

The statutory LGEL as well as Montclair’s Ethics Code reinforce common-law principles, both requiring public officials to be free not only from actual conflicts, but from even the appearance of conflicts. *See* N.J.S.A. 40A:9-22.2(c) (providing that confidence in government is “imperiled” when “the public perceives a conflict between the private interests and the public duties of officials”); *See* Montclair Municipal Code § 3-59 (2015) (providing that the legitimacy of local, democratic government “depend[s] upon the public’s confidence in the integrity” of its representatives, and emphasizing further that even the appearance of a conflict between private interests and public duties “undermines confidence in government”).

These principles thus require officials to refrain from participating in any public action in which the public might reasonably perceive a conflict. It is not necessary that the public official act in fact on the basis of the private interest, nor is it even necessary that a private interest in fact exists—instead it is sufficient if there is a sufficient potential for conflict, as that potential triggers an appearance problem requiring disqualification. *Thompson*, 190 N.J. at 374 (holding “it is the potential for conflict, rather than proof of actual conflict or of actual dishonesty,” that requires disqualification); *Randolph*, 405 N.J. Super. at 226 (providing that an appearance of a conflict requires disqualification even if no actual conflict exists). Here, common law principles plainly require Spiller’s disqualification from the BSE.

First, even though appearances are sufficient for disqualification, Spiller has an actual conflict of interest, because he is a paid, senior official of the NJEA. Virtually all

of Montclair's school employees are members of the NJEA's local affiliate, which has a series of priorities it seeks to realize in the school-budgeting process. In fact, the NJEA itself negotiated the current labor agreement between MPS and the MEA, further establishing its interests in the budgeting process concerning MPS. In addition, as a senior NJEA official, Spiller is responsible for advancing the NJEA's position on a wide host of issues—from health benefits to curricular reforms like Common Core to the role of technology in classrooms—that relate directly to school-budgeting decisions the BSE considers in deciding how to locally allocate funds in these areas. Spiller, in fact, has spoken publicly in various settings in which he articulated the NJEA's position on several policy priorities that relate directly to budget-allocations the BSE makes. Exh. D to Jeffries Cert.

In short, as a paid, senior, and highly visible leader of the NJEA, the state's largest labor union and which represents the school employees of Montclair through its local affiliate, Spiller plainly has private interests that relate to his service on the BSE that require his disqualification. The NJEA has specific interests and is forceful in communicating and advocating those interests, as is its right. But New Jersey law demands the disinterested service and "undivided loyalty" of its public officials, and Spiller's private service to the NJEA precludes that. Furthermore, even though an actual conflict exists here, New Jersey common law requires much less, merely that a potential conflict might exist from which the public might reasonably perceive a conflict. Spiller's employment as a NJEA officer relates directly to his service on the BSE, and thus—at the absolute minimum—triggers an appearance of a conflict that under common law requires Spiller's disqualification from the BSE.

In addition, for fundamentally the same reasons, both the LGEL and Montclair Ethics Code also require disqualification. The LGEL prohibits local officials from 1) engaging in any business activity that "is in substantial conflict" with public duties; 2) using their position to secure unwarranted advantages for others; 3) acting on matters where the official has a financial or personal interest "that might reasonably be expected to impair his objectivity"; and 4) undertaking any employment or service, paid or not, that might "prejudice his independence of judgment" in performing public duties. *See* N.J.S.A. 40A:9-22.5 (a, c-e). Like common law, the LGEL prohibits actions triggering the appearance of a conflict. *See* N.J.S.A. 40A:9-22.2(c)(2015). Spiller's paid service to the NJEA triggers each of these four provisions of the LGEL, for the reasons discussed extensively above.

Finally, Montclair's Code of Ethics likewise prohibits local officials from engaging in activities "involving" the official's personal or financial interests. *See* Montclair Municipal Code §3-63(a) (2015). As discussed above, Spiller is employed by the NJEA to advocate for the interests of its members, including the 1100 MPS employees represented by the NJEA's Montclair affiliate, and is also employed to generally advance the NJEA's interest on wide-ranging school-policy matters. Because

the interests of Montclair's school employees are inextricably bound up with the work of the BSE, and the Ethics Code too protects against the appearance of a conflict, *see* Montclair Municipal Code § 3-59 (2015), the Code also requires disqualification.

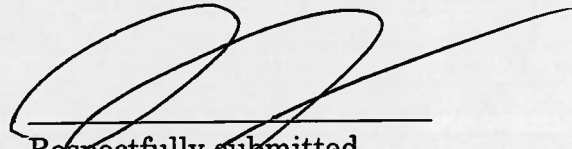
For these reasons, well-settled principles under common law, the LGEL, and the Montclair Ethics Code require Spiller's disqualification. Spiller plainly suffers under an actual conflict of interest given his paid employment as a senior advocate for the interests of the NJEA. And, at the very least, his service to the NJEA generates the potential for a conflict that triggers an appearance problem requiring Spiller's disqualification. The law is settled and clear, and indeed, courts have ordered public officials disqualified for substantially less, requiring disqualification even when the interests of voluntary associations of which an official is a member are implicated. *See, e.g., Marlboro Manor Inc. v. Bd. of Cm'rs of Montclair*, 187 N.J. Super 359, 382 (App. Div. 1982) (disqualifying officials because their church, a voluntary association, had publicly stated a position on the decision at issue); *see also Speroni v. Borough of Point Pleasant Beach*, 2013 N.J. Super. Unpub. LEXIS 1872, at \*70 (Law Div. June 17, 2013) (disqualifying councilman from voting on an ordinance of general application where his private business might benefit), *see* Exh. J to Jeffries Cert.

**II. MKF is Reasonably Likely to Succeed on the Merits, Will Experience Irreparable Harm if an Injunction is Not Granted, and the Equities Favor Granting the Injunction.**

For the reasons discussed above, MKF is reasonably likely to succeed on the merits. In addition, MKF and Montclair residents in general will experience irreparable harm if the BSE is permitted to adopt a school budget later this month (the BSE must adopt a vote by April 8, and can do so as early as March 23) despite the conflict-of-interest relevant to Spiller. In addition, MPS's ability to effectively prepare for the FY 2016 school year will be irreparably harmed if the court waits to adjudicate this matter until after the BSE votes, as that would require nullifying action in which Spiller has taken part, and ordering a re-vote, which would trigger substantial uncertainty as the district prepares for FY 2016. Finally, the balance of equities favors the grant of an injunction, given the public's paramount interest in the integrity of government operations, the clear emphasis in relevant ethics laws prohibiting public action that triggers the appearance of a conflict of interest, and the fact that Spiller has no cognizable interest in participating in public actions that potentially generate conflicts. For these reasons, the Court must grant MKF's preliminary-injunction motion.

**CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully moves the Court to enter the accompany Order to Show Cause and preliminary-injunction motion.



Respectfully submitted,  
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