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UDI OFER
Executive Director

DEBRA E. GUSTON
President

May 24, 2016

Dear Senator/Assembly Member,

We commend the recent efforts to compromise in finding a solution to the urgent fiscal problems facing Atlantic City, and we particularly support the recognition in S1711/A2569 of the importance of local determination in returning the city to fiscal health. We remain hopeful that Atlantic City will successfully avoid takeover and put in place a plan for fiscal stability. We write, however, to express concern about the State takeover of the city if no solution is reached after the 150-day period that S1711/A2569 contemplates, or if the State determines, in its sole discretion, that takeover is necessary in the five-year period following the 150-day period.

First, troublingly, the State itself exercises total discretion in determining whether to take over Atlantic City, and that discretion is not bound by concrete guidance; instead, the bills provide for takeover if the Commissioner of Community Affairs determines, in his “sole and exclusive discretion, [that] the recovery plan is...not likely to achieve financial stability for the municipality.”

Second, the power of the State over local affairs is exceedingly broad and unchecked, and therefore raises several constitutional and civil rights concerns. We urge you to reach a resolution that preserves an adequate degree of local accountability and control. Though State aid may be necessary to alleviate Atlantic City’s financial distress, that aid must not take a form that unduly impacts the voting rights of Atlantic City residents in relation to local government functions.

I. The takeover measures described in S1711/A2569 would strip Atlantic City of any local power.

The proposed compromise appears to lay out a timeframe for Atlantic City to reduce its operating budget, and if the city fails to do so, it would enable the State to take over the functions of municipal government. S1711 § 4(b)–(c). In the event of takeover, S1711/A2569 empowers the State to strip the city’s elected representatives of any formal power the State could not override. S1711 § 5. With respect to the mayor, S1711/A2569 allows the state to take over any function, power, privilege and immunity related to the fiscal condition of Atlantic City. S1711 § 5(a)(1). Though that language appears to limit the State’s intervention, in fact, it could extend as widely as the State wishes. For example, S1711/A2569 envision that the power would extend to any action that, in the exclusive discretion of the Director of the Division of Local Government Services in the Department of Community Affairs, could help stabilize finances, restructure debt or assist in financial rehabilitation. S1711 § 5(a)(3).

With respect to other local government bodies, S1711/A2569 allows the State to dissolve any municipal authority, board, commission, or department; to abolish any non-elected positions in the

municipality; and to fire any city employees. S1711 § 5(a)(3)(b); § 5(a)(3)(j)–(k). The State would also take over all legal functions of the city as well as the ability to sell city-owned property or assets. S1711 § 5(a)(3)(d)–(e). Takeover would allow the State to veto the minutes of the local city council and void any action taken by it. S1711 § 5(a)(3)(c). Nothing the city council votes on can take effect without approval of State. *Id.* The State would also be able to issue, amend, or repeal any ordinance or resolution of the city. S1711 § 5(b)(1).

City governments engage in all manner of activity – from deciding to institute gender-neutral bathrooms to creating volunteer civilian oversight bodies for police departments to regulating the size of residential lawn signs – that do not contribute to fiscal insolvency. However, S1711/A2569 would seemingly allow the State to control all municipal government functions, including those ordinances and actions that are not designed to impact the financial affairs of the city. This would be a sweeping and unprecedented grant of power previously held by the city’s elected officials to an unelected State appointee.

II. Dissolving local government is a direct attack on the fundamental right to vote.

Depriving elected officials of all authority renders local voting meaningless. The right to choose representatives democratically to govern our communities is fundamental. As the United States Supreme Court has recognized, “no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live,” *Westberry v. Sanders*, 376 U.S. 1, 17 (1964), and so “every citizen has an inalienable right to full and effective participation in the political processes of his State’s legislative bodies.” *Reynolds v. Simms*, 377 U.S. 533, 562 (1964). Because local governments exercise power delegated them by the State, they are “State legislative bodies,” and so dissolving them directly infringes on the fundamental right to vote.

This burden on the fundamental right to vote is subject to scrutiny under the Fourteenth Amendment, which it can only survive if it is narrowly tailored to serve a compelling government interest. Saving a city from bankruptcy is a compelling government interest, but narrow tailoring requires that a statute “eliminate[] no more than the exact source of the evil it seeks to remedy.” *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). Eviscerating all local government functions is the antithesis of narrow tailoring.

III. The state takeover would disparately impact low-income New Jerseyans of color.

Stripping the right of people in Atlantic City to elect their representatives also has a disparate impact based on race and income, which raises moral and legal concerns. Because S1711/A2569 uses “total assessed property values” and “outstanding debt” as of the end of 2015 as the sole factors that trigger State involvement, it results in disparate impact on the basis of a community’s wealth. There is rightfully “a deep distrust of policies that specially burden the access of disadvantaged persons to the governmental institutions and processes that offer members of our society an opportunity to improve their status and better their lives.” *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 468–69 (1988) (Marshall, J., dissenting).

State takeover of Atlantic City would also have a disparate impact based on race – 84% of Atlantic

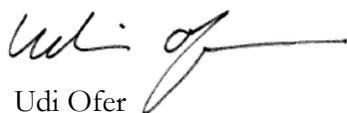
City residents are people of color, compared with 41% statewide. Around the country, communities of color have borne the brunt of state takeovers – in Michigan, for example, 52% of Black residents live in towns under emergency management, compared with 2% of White residents. Curtailing local control with such a dramatically disparate impact on racial groups raises moral concern as well as Equal Protection concerns.

In Michigan, the State's use of its takeover law in majority-minority communities led to a lawsuit based not only on Equal Protection principles, but also on Section 2 of the Voting Rights Act ("VRA"), 42 U.S.C. § 1973(b). Section 2 of the VRA prohibits any election process that is not equally open to members of all racial groups because members of one racial group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). The disparate impact or implementation of S1711/A2569 on racial minorities would therefore potentially expose New Jersey to liability under the Act.

Improving Atlantic City's fiscal outlook is necessary to provide residents with services that ensure a productive, safe, and stable community, but this stability must not come at the expense of residents' rights. Officials accountable to residents through local democratic processes must maintain a role in making the difficult choices involved in returning the city to prosperity. We urge you to ensure that any bill that provides a pathway out of economic distress also maintains local oversight. The constitution demands it, and Atlantic City's residents deserve it.

Thank you for your consideration of this important matter.

Sincerely,



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