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Attorneys for Plaintiffs

SECONDARY PARENT COUNCIL and
LAURA BAKER,

Plaintiffs,

v.

CITY OF NEWARK and ROBERT
MARASCO, in his official
capacity as City Clerk and
Custodian of Records for the
City of Newark,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ESSEX COUNTY
DOCKET NO.

Civil Action

COMPLAINT IN LIEU OF
PREROGATIVE WRIT

Plaintiffs, by way of complaint against defendants, hereby
aver:

1. The Secondary Parent Council is a voluntary
association of parents and grandparents of students in Newark's

public schools. The SPC maintains offices at [REDACTED]
[REDACTED], Newark, New Jersey.

2. For nearly 30 years, the SPC has sought to ensure that Newark's public school students receive a high-quality education, and that the city's education funds are wisely and productively spent. During its existence, the SPC has addressed various educational issues affecting Newark's schools, including its academic programming, student test scores, promotion requirements, classroom sizes and graduation rates. The SPC holds school conferences and student recognition nights throughout the school year. One current goal is to ensure that Newark's public school students maintain educational parity with those in private and charter schools.

3. Laura Baker is an adult individual who resides in Newark. She is the grandparent of a Newark public school student. Ms. Baker is a member of the SPC and serves as its president emeritus and secretary. In those capacities, she acts as an agent of the SPC.

4. The City of Newark is a municipal corporation, formed under the laws of the State of New Jersey, with offices located at 920 Broad Street, Newark, New Jersey. Newark is a public agency that "ma[kes], maintain[s] or ke[eps] on file" government

records, and is therefore subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

5. Robert Marasco is the city clerk and custodian of records for the City of Newark. He maintains an office at 920 Broad Street, Newark, New Jersey. He is sued in his official capacity.

6. On September 24, 2010, Newark's Mayor Cory Booker, along with Governor Chris Christie and Facebook Chief Executive Mark Zuckerberg, announced that Zuckerberg would donate \$100 million to "transform [Newark's] public schools so that all [Newark's] children have access to a high quality education and so that other cities can use Newark as a model to reform their own schools." See attached Exhibit A.

7. Contemporaneously, Booker launched the Newark Education and Youth Development Fund, a non-profit organization whose goal was to secure \$100 million to match Zuckerberg's gift, as well as an additional \$50 million to serve Newark's disaffected youth.

8. Christie and Booker also pledged to work together to create a new plan for Newark schools, which have been state-controlled since 1995.

9. Specifically, under an agreement between Booker and Christie, the state will maintain legal control over the Newark

Public School District, but Mayor Booker is "authorized [] to work with the local community to develop and implement a comprehensive education plan for the future of the Newark Public School District, based on clear standards and metrics that reward excellence in teaching, school leadership and student achievement." Id.

10. On April 1, 2011, Baker - acting on behalf of SPC - sent an OPRA request to Newark, in which she sought copies of the following:

1. correspondence, including email, to and/or from Mayor Cory Booker, his staff, and/or any employee of the City of Newark related to the grant, donation, contribution, gift and/or pledge of \$100 million made by Facebook CEO Mark Zuckerberg to support the Newark Public Schools;

2. correspondence, including email, to and/or from Mayor Cory Booker, his staff, and/or any employee of the City of Newark regarding the solicitation and/or receipt of matching funds for the Zuckerberg grant, donation, contribution, gift and/or pledge, from June 1, 2010 until present;

3. memoranda and or other documentation regarding the grant, donation, contribution, gift and/or pledge of \$100 million made by Facebook CEO Mark Zuckerberg to support the Newark Public Schools;

4. correspondence, including email, between Mayor Booker, his staff, and any employee of the City of Newark, and the following persons:

- a. Mark Zuckerberg and/or his staff or any person employed by, or affiliated with, Facebook;
- b. Christopher Cerf, and any person or consultant employed by Mr. Cerf;
- c. Global Education Advisors, and any staff, person or consultant employed by Global Education Advisors
- d. Governor Christopher Christie and/or his staff;
- e. Former Education Commissioner Bret Schundler, former Acting Education Commissioner Rochelle Hendricks, and current Acting Commissioner Christopher Cerf; his/her staff, or any other employee of the NJ Department of Education, including any members of the DOE "transition team" for Newark;
- f. Newark Public Schools, its employees, and/or members of the Newark Public Schools Advisory Board;
- g. All members of Newark City Council and/of council staff;
- h. The Start Up: Education Foundation, Jennifer Holleran, and/or any person employed by, or affiliated with the Foundation;
- i. All members of the New Jersey Legislature and/or legislative staff;
- j. Oprah Winfrey and/or any person employed by and/or affiliated with Ms. Winfrey;
- k. Pershing Square Foundation, the Gates Foundation, Bill and Melinda Gates, Eagle Capital Management, William Ackman, Beth and Ravenel Curry, the Broad Foundation, New Schools Venture Fund, and/or any other

foundation, corporation, limited partnership, other organization or individual concerning the Newark Public Schools;

l. Any staff, employee, trustee, or other person associated with the Partnership for Education in Newark ("PENewark"); and

m. Any staff, employee, trustee, or other person associated with the Newark Charter School Fund.

Baker also sought these documents under the common law right of access to public records. See attached Exhibit B.

11. On April 5, 2011, Marasco acknowledged receipt of Baker's request and asked for an extension of time until April 26 to locate and compile responsive documents. See attached Exhibit C.

12. Newark did not respond by April 26. On June 1, 2011, after a phone call from Baker to the City Clerk's office, Marasco notified Baker that Newark "was continuing to search" for responsive records and asked for an additional extension until June 15. See attached Exhibit D.

13. Again Newark failed to make a timely response. On June 30, 2011, Baker wrote Marasco asking for copies of any responsive documents Newark had located to that point. See attached Exhibit E.

14. On July 12, 2011, having received no reply to her June 30 letter, Baker again wrote Marasco and requested that the documents be produced immediately. See attached Exhibit F.

15. On July 19, Newark denied SPC's records request in its entirety. Specifically, the city claimed:

A. The request was "overbroad and fails to identify with reasonable clarity the specific governmental records sought and ... OPRA does not require custodians to research files to discern which records may be responsive to a request."

B. Any relevant communications between Booker and Zuckerberg or any other persons "were not made in the course of the Mayor's official duties and are therefore exempt from disclosure under OPRA."

C. To the extent Booker was "exercising his official duties as Mayor," the requested records are exempt from disclosure under 1) "the well-established doctrine of executive privilege"; 2) "the official information privilege since the exchange of information between the Mayor" and others "clearly enhances and/or enables the Mayor to fulfill his statutory duties" and 3) "the deliberative privilege analysis" that protects "inter-agency advisory, consultative or deliberative material." See attached Exhibit G.

16. To date, Newark has failed to release any of the requested records; nor has it provided any additional explanation of its refusal to do so.

COUNT ONE
(Violation of OPRA)

17. Plaintiffs incorporate paragraphs 1-16 as if fully set forth.

18. The documents plaintiffs seek are "public records" pursuant to OPRA, and were "made, maintained or kept on file" in the course of Mayor Booker's discharge of his official duties.

19. The scope and specificity of plaintiffs' request for these records fully comports with OPRA's requirements.

20. The records plaintiffs seek are not exempt from disclosure under OPRA under executive privilege, the official information privilege, or the deliberative process privilege.

21. Defendants' refusal to produce the requested records violates OPRA in the following ways:

A. Defendants have failed to produce the records in the time required by OPRA, in violation of N.J.S.A. 47:1A-5(i).

B. Defendants have failed to produce government records that are not exempt from disclosure under OPRA, in violation of N.J.S.A. 47:1A-5(g)

C. Defendants have failed to provide a lawful basis for denial of access to government records, in violation of N.J.S.A. 47:1A-5(g).

D. Defendants have failed to provide an index of all responsive documents they believe exempt in whole or part, with an adequate description of each document. See Paff v. Dep't of Labor, 392 N.J. Super. 334 (App. Div. 2004).

COUNT II
(Violation of the Common Law Right of Access)

22. Plaintiffs incorporate paragraphs 1-21 as if fully set forth.

23. Under New Jersey common law, plaintiffs have a right of access to all records generated or maintained by public entities.

24. Newark generated or maintains the documents plaintiffs seek in the course of its official business, and they are therefore common law public records.

25. The scope and specificity of plaintiffs' request for these records fully comports with any requirements imposed by the common law.

26. Plaintiff SPC's members, all of whom are Newark taxpayers, have a compelling interest in knowing how grant funds donated by Zuckerberg and others will be allocated and used to support Newark's schools; and an equally strong interest in

ensuring fair distribution of those funds so all Newark students benefit from them.

27. Plaintiff SPC's members also have a strong interest in ensuring that the appropriate public officials, rather than private individuals, decide how to allocate the donated funds; or alternatively, an interest in knowing to what extent the private provenance of these funds affects the allocation decisions.

28. Access to the requested records will serve those interests, because it will disclose the priorities of the city and the grantors, and their respective degrees of input into and control over the decisions about how to allocate them. This is particularly important because the state has delegated to Mayor Booker the authority to use these funds to develop and implement a comprehensive education plan for Newark's public schools.

29. Plaintiffs' interest in obtaining access to the requested records outweighs any legitimate countervailing interest defendants can assert in maintaining their confidentiality.

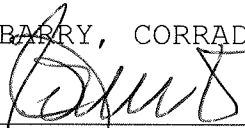
30. Defendants' failure to provide access to these records violates plaintiffs' common law right of access to them.

WHEREFORE, Plaintiffs demand judgment in their favor and against defendants as follows:

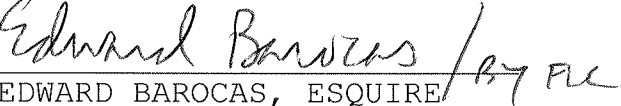
- A. Declaring defendants in violation of the Open Public Records Act and the common law right of access.
- B. Compelling defendants to immediately grant plaintiffs' access to the requested records.
- C. For attorneys' fees and costs of suit.
- D. For all other appropriate relief.

Dated: 8/22/11

BARRY, CORRADO, GRASSI & GIBSON, P.C.



FRANK L. CORRADO, ESQUIRE
 On behalf of the American Civil Liberties Union of NJ Foundation

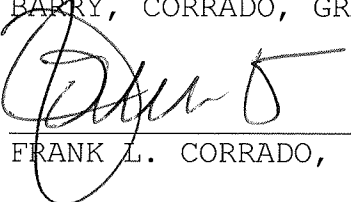
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EDWARD BAROCAS, ESQUIRE
 JEANNE LOCICERO, ESQUIRE
 BOBBY CONNER, ESQUIRE
 American Civil Liberties Union of NJ Foundation

CERTIFICATION

It is hereby certified that there are no other known actions or arbitrations relating to this action and there are no known parties who should be joined with respect to the matter in controversy.

BARRY, CORRADO, GRASSI & GIBSON, P.C.

Dated: 8/22/11 By: 

FRANK L. CORRADO, ESQUIRE

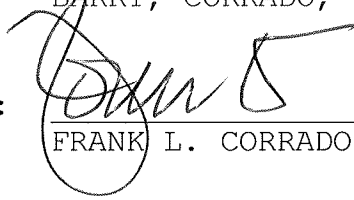
CERTIFICATION PURSUANT TO R. 4:69-4

It is hereby certified that no necessary transcripts exist in this case because the review of administrative actions sought does not involve agency proceedings at which a stenographic record or sound recording was made.

BARRY, CORRADO, GRASSI & GIBSON, P.C.

Dated: 8/22/11

By:



FRANK L. CORRADO, ESQUIRE

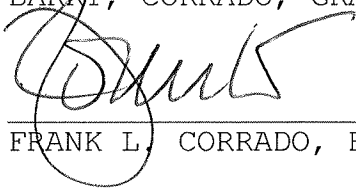
DESIGNATION OF TRIAL COUNSEL

TAKE NOTICE that Frank L. Corrado, Esquire is hereby designated as trial counsel in the above captioned litigation for the firm of Barry & Corrado, pursuant to R. 4:25-1.

BARRY, CORRADO, GRASSI & GIBSON, P.C.

Dated: 8/22/11

By:



FRANK L. CORRADO, ESQUIRE