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September 12, 2017

Honorable Chief Justice and
Associate Justices of the
Supreme Court of New Jersey
25 Market Street
P.O. Box 970
Trenton, N.J. 08625

RE: KEAN FEDERATION OF TEACHERS, JAMES CASTIGLIONE and VALERA HASCUP v. ADA MORELL, BOARD OF TRUSTEES OF KEAN UNIVERSITY, and KEAN UNIVERSITY, a body corporate and politic
Supreme Court Docket No. A-84-16 (078926)

Honorable Chief Justice and Associate Justices:

Please accept this letter in lieu of a more formal submission from *Amicus Curiae* the American Civil Liberties Union of New Jersey (ACLU-NJ) in the above-captioned matter.

TABLE OF CONTENTS

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

For purposes of this brief, *Amicus* ACLU-NJ adopts the Statement of Facts and Procedural History set forth by the Appellate Division in its published decision below at Kean Fed'n of Teachers v. Morell, 448 N.J. Super. 520 (App. Div.), certif. granted, __ N.J. __ (2017)(slip op.)("Kean"), providing only the following for clarity.

Plaintiff-Respondents filed an action in lieu of prerogative writs before the Superior Court, alleging: (1) Defendant-Petitioners (collectively, "the Board") violated the Open Public Meetings Act ("OPMA") when they failed to make the Board's minutes from September 15, 2014 and December 6, 2014 "promptly available" as required by N.J.S.A. 10:4-14; and (2) the Board violated OPMA in voting to terminate Plaintiff-Respondent Valera Hascup's employment without first sending proper advance notice pursuant to N.J.S.A. 10:4-12(b)(8) and Rice v. Union County Reg'l High School Bd. of Educ., 155 N.J. Super. 64, 73 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978). The parties filed cross-motions for summary judgment.

The trial court held that the Board did not violate N.J.S.A. 10:4-12(b) when it failed to send Hascup advance written notice under Rice, but that the Board did violate N.J.S.A. 10:4-14 when it took ninety-four (94) and fifty-eight (58) days, respectively, to release its September and December minutes. The trial court entered a permanent

[1] For clarity and for the convenience of the Court, the statement of facts and procedural history have been combined here.

injunction, requiring the Board to make the minutes of all future meetings available to the public within forty-five (45) days, absent exceptional circumstances. Notably, the injunction was based, at least in part, on the fact that the trial court had previously afforded the Board the opportunity to satisfy the "promptly available" requirement by strongly suggesting a forty-five day timeframe for public release of minutes absent extraordinary circumstances, without imposing sanctions. Kean, 448 N.J. Super. at 545. However, the trial court's suggestion "proved ineffective" in bringing the Board into compliance with the statute. Ibid.

The parties filed cross-appeals, and the Appellate Division considered the matter *de novo*. Id. at 526. The Panel vacated the injunction, finding that:

> a permanent injunction requiring the Board to prospectively make their meeting minutes available within forty-five days of the conclusion of the meeting, regardless of the circumstances, undermines the Board's autonomy by usurping a quintessential managerial prerogative. This approach is also facially inconsistent with the fact-sensitive standard the Legislature adopted in N.J.S.A. 10:4-14. The imposition of a judicially crafted deadline to make the minutes of Board meetings available to the public invites enforcement by motion practice under Rule 1:10-3.
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> [Id. at 535.]

The Panel further noted that courts "are ill suited to micromanage the internal affairs of a Board entrusted by the Legislature with the 'government, control, conduct, management and administration' of our State's public colleges and universities." Ibid. (citing N.J.S.A.

18A:64-2). The Panel explained that Board "members are appointed by the Governor, with the advice and consent of the Senate," and that they "serve without compensation." Ibid. (citing N.J.S.A. 18A:64-3 and N.J.S.A. 18A:64-5). The Panel further noted that the Board also has an obligation to comply with OPMA, concluding: "The Board is now on notice that five meetings per year will not allow it to make its meeting minutes 'promptly available' to the public. We agree with the trial judge that waiting two or three months to release the minutes does not comply with the mandate of the statute." Ibid. Therefore, the Panel "urge[d] the Board to seriously consider increasing the number of times it meets annually," as it was "clear that the continuation of its present meeting schedule is legally untenable." Ibid.

The Appellate Division affirmed the trial court's holding that the Board violated OPMA's "promptly available" requirement when it took ninety-four (94) and fifty-eight (58) days, respectively, to release its September and December minutes, and reversed the trial court's holding with regard to Rice. The Panel found that the Board further "violated the OPMA by failing to send Rice notice to all employees whose employment was affected by the action the Board took at its December 6, 2014 meeting." Id. at 526-27. With regard to a remedy under N.J.S.A. 10:4-16, the Panel ordered the Board "to adopt a meeting schedule for academic year 2017-2018 that will enable them to make its meetings 'promptly available' under N.J.S.A. 10:14-4" and "declare[d] the actions taken by the Board at the December 6, 2014 meeting regarding personnel

matters null and void." Id. at 545-46. The Panel noted that it crafted such sanctions to "promote the public policy of OPMA without unduly interfering with the Board's managerial prerogatives." Id. at 545.

This Court granted the Board's petition for certification on June 29, 2017. On September 12, 2017, ACLU-NJ filed a Motion for Leave to Appear as *Amicus Curiae* simultaneously with this brief, pursuant to Rule 1:13-9.

ARGUMENT

The Board contends that the Appellate Division's decision has radically reshaped its obligations under OPMA, to the detriment of public bodies throughout the state. However, the Panel properly upheld the law in: (1) crafting a generous and fact-specific outermost time limit under which the Board might satisfy OPMA's requirement that its meeting minutes be made "promptly available"; and (2) requiring that the Board send proper advance notice to affected employees prior to voting on matters that impact such employees' relevant terms of employment. Therefore, *Amicus* respectfully suggests that the Panel's decision should be affirmed.

The Open Public Meetings Act or "Sunshine Law," N.J.S.A. 10:4-6 to -21, governs all public bodies organized by law, which can spend public funds or perform public governmental functions that affect people's rights, obligations, or benefits. See N.J.S.A. 10:4-8a. "New Jersey adopted OPMA in 1975" and it "reflects New Jersey's long 'history of commitment to public participation in government and to the

corresponding need for an informed citizenry.'" McGovern v. Rutgers, 211 N.J. 94, 99 (2012) (quoting S. Jersey Pub. Co. v. N.J. Expressway, 124 N.J. 478, 486-87 (1991)). "The Legislature included in OPMA a clear statement of New Jersey's public policy 'to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way.'" McGovern, 211 N.J. at 99 (quoting N.J.S.A. 10:4-7). Our courts have held that the Sunshine Law serves to promote "the democratic value of transparency in governmental affairs and protect[] the public's right 'to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decisionmaking.'" Kean, 448 N.J. Super. at 524(quoting Opderbeck v. Midland Park Bd. Of Educ., 442 N.J. Super. 40, 55 (App. Div.), certif. denied, 223 N.J. 555 (2015)).

In this case, the Appellate Division properly applied the law in finding that the Board violated OPMA when it failed to make its minutes promptly available and failed to send proper notice of a scheduled Board decision to affected employees as required under Rice.

I. The Board Violated OPMA in Failing to Make the Minutes of Two Meetings "Promptly Available" to the Public.

As the Appellate Division rightly noted, "[t]he expeditious release of meeting minutes is a vital part of OPMA's promise to bring public affairs from obscurity to the light of day." Kean, 448 N.J. Super. at 531. In interpreting the context-specific timeframe under which this Board should make its minutes available in order to comply with OPMA,

the Appellate Division adopted the generous guideline of not more than forty-five days after the date of the meeting, absent exceptional circumstances. In so doing, the Panel explicitly considered the Board's managerial independence and left room for Board discretion in how to effectuate its obligation. Accordingly, the Panel's decision should be affirmed.

"'A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.'" Polillo v. Deane, 74 N.J. 562, 571 (1977) (quoting Letter to W.T. Barry, Aug. 4, 1822, in 9 Writings of James Madison 103 (G. Hunt ed. 1910)). OPMA is a touchstone of the "strong tradition both in this State and in the nation favoring public involvement in almost every aspect of government." Polillo, 74 N.J. at 569.

Pursuant to our tradition of democratic transparency, the Legislature provided that: "Each public body shall keep reasonably comprehensible minutes of all its meetings . . . which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act." N.J.S.A. 10:4-14. This Court has long held that the "promptly available" requirement applies to the minutes of public meetings and executive sessions alike. S. Jersey Pub. Co., 124 N.J. at 591, 593-96. "[I]f a public body legitimately conducts a meeting in closed session," the public body

"nevertheless must make the minutes of that meeting 'promptly available to the public' unless full disclosure would subvert the purpose of the particular exception." Payton v. N.J. Tpk. Auth., 148 N.J. 524, 556 (1997). It may occasionally be necessary for a public body to redact portions of an executive session's minutes, but the public body must limit its redaction to only that information over which confidentiality is truly necessary, and once confidentially is no longer required, such minutes should be released in full. Id. at 556-57. "[G]iven the Legislature's strongly stated intent to effectuate broad public participation in the affairs of governmental bodies, few cases will require even partial nondisclosure." Id. at 557.

OPMA does not temporally define the term "promptly available," so our courts must interpret whether a public body has violated its promptness obligation on a case-by-case basis. For example, a public school board was ordered to make meeting minutes available within two weeks or sooner if necessary to make public such minutes in advance of the next meeting. Matawan Reg'l Teachers Asso. v. Matawan-Aberdeen Reg'l Bd. of Educ., 212 N.J. Super. 328, 334 (Law Div. 1986)("Matawan"). In the most general sense, "[t]he [legal] meaning of the word [promptly] depends largely on the facts in each case, for what is 'prompt' in one situation may not be considered such under other circumstances or conditions. To do something 'promptly' is to do it without delay and with reasonable speed." Black's Law Dictionary 1214 (6th ed. 1990), (citing Application of Beattie, 180 A.2d 741, 744 (1962)); see also,

Oxford English Dictionary Online, https://en.oxforddictionaries.com/definition/promptly ("promptly" means "[w]ith little or no delay; immediately" or "[a]t exactly a specified time; punctually.") (last visited Sept. 11, 2017).[2] While newer editions of Black's Law Dictionary omit the adjective and adverb forms of "prompt," the verb "prompt" is defined as "[t]o incite, esp. to immediate action." Black's Law Dictionary (9th ed. 2009) (defining "immediate" as "occurring without delay; instant[.]").

Here, the Board contends the Appellate Division erred in declining to apply the same fact-specific factors considered regarding the school board in Matawan, 212 N.J. Super. at 333. However, Matawan does not

[2] Indeed, courts have struggled with determining whether an action has been "prompt" in a variety of legal contexts, the inherent ambiguity of the term often proving little more than an invitation for unending litigation. See, e.g., Cty. of Riverside v. McLaughlin, 500 U.S. 44, 55-56 (1991) ("[I]t is not enough to say that probable cause determinations must be 'prompt.' This vague standard simply has not provided sufficient guidance [and] has led to a flurry of systemic challenges to city and county practices, putting federal judges in the role of making legislative judgments and overseeing local jailhouse operations."); Kenneth A. Adams, Plain Language: Know Your Enemy: Sources of Uncertain Meaning in Contracts, 95 MICH. BAR J. 40, 44 (Oct. 2016) ("It follows that with vagueness comes the possibility of dispute. A contract party under an obligation to do something promptly might act fast enough that no one could reasonably say that they hadn't acted promptly. But the longer they take, the greater the likelihood of the other party's deciding that they hadn't acted promptly."; cf. Restatement (Second) of Contracts, § 33 "Certainty" (1981) ("promise[s] that certain performances shall be mutually rendered . . . 'immediately' or 'at once,' or 'promptly,' or 'as soon as possible,' or 'in about one month' . . . are sufficiently definite to form contracts.").

contemplate that the same factors be employed in every determination of whether a public body complied with OPMA's "promptly available" requirements. In particular, the Board plainly hoped to rely on one of the factors applied by the trial court in Matawan: "The intervals at which regular meetings were scheduled." Id. at 333. This is because the Board suggests that "promptly" should mean whatever amount of time elapses between two of its meetings, plus several days thereafter.[3] Clearly, the Board's convenience drives its position; in Matawan, when the school board made a similar argument, the trial court noted:

> The board urged the court to consider its convenience and its need to allocate tasks among its employees as one factor in setting a standard. This misconceives the board's position under the mandate of the act. The board's obligation is to adapt to the standard required by the act and to plan its employees' assignments accordingly. The court does not consider the mere convenience of the board to be a relevant factor.
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> [Id. at 333 (emphasis added).]

The Board cannot prevail on the theory that, in light of its managerial independence, OPMA must either hew to the Board's historical practice or else be abandoned as inconvenient. Indeed, this theory would demand the absurd result of favoring public bodies that have historically failed to comply with OPMA, leaving OPMA to demand only that public

[3] In a prior decision by the trial court, where the forty-five day period was only strongly suggested going forward, the Board did not approve its December 7, 2013 meeting minutes until March 3, 2014, and did not release them until six (6) days thereafter. Kean, 448 N.J. Super. at 528. Here, the Board did not approve its two-page executive session minutes of December 6, 2014 until March 2, 2015, and did not release them until two days thereafter. Ibid.

bodies maintain the *status quo*, regardless of how past or current practices may hinder democratic transparency.

While the adverb "promptly" depends largely on context, it would be absurd to say that the Legislature's intent was for "promptly" to be defined so vaguely as to mean whatever a public body prefers it to mean, or simply what a public body may have done in the past. Such a holding would render the "promptly available" requirement effectively meaningless. See also Matawan, 212 N.J. Super. at 332 (noting that the Legislature chose "promptly" and not "reasonable time" or equivalent terms). Moreover, such an interpretation would run counter to the very spirit of OPMA, effectively favoring public bodies that have historically been the least transparent and publicly accessible.

Here, the Appellate Division relied on the hallmarks of statutory interpretation to determine, in light of the factual circumstances of this case and with regard this this public body only, what the outermost limits of "promptly," absent extraordinary circumstances, should mean under OPMA. Kean, 448 N.J. Super. at 531. OPMA explicitly demands its liberal construction "in order to accomplish its purpose and the public policy of this State." N.J.S.A. 10:4-21. Therefore, the Appellate Division was compelled by first principles of statutory interpretation to conclude that "words 'promptly available' in N.J.S.A. 10:4-14 require public bodies to approve and make their meeting minutes available to the public in a manner that fulfills the Legislature's commitment to transparency in public affairs." Kean, 448 N.J. Super. at 531. To that

end, and in accordance with the timeframe also adopted by the trial court, the Panel understood this Board's obligation to be, as a general rule, to make its minutes available within a generous forty-five-day period.

The Board claims that because it was ordered "to adopt a meeting schedule that would permit it to issue minutes, including executive session minutes, within 30 to 45 days after each meeting," the Panel has forced it to either discontinue its practice of approving minutes or "double the number of meetings it holds each year for no purpose other than to approve meeting minutes more expeditiously." Def. Pet. at 2.[4]

Notably, the Appellate Division vacated the trial court's injunction, which had required the Board to make minutes publically available within forty-five days absent exceptional circumstances going forward, noting the need to balance of the Board's managerial independence against the public interest in transparency and accountability. Kean, 448 N.J. Super. at 533-35. The Panel held only that the Board had violated the "promptly available" requirement of OPMA when it failed to release minutes for ninety-four (94) and fifty-eight (58) days, respectively, and "urge[d] the Board to seriously consider increasing the number of times it meets annually," as it was "clear that the continuation of its present meeting schedule is legally untenable."

[4] "Def. Pet." refers to Defendant-Petitioners' February 27, 2017 Petition for Certification before this Court.

Id. at 535. Because the Board had failed to heed such judicially-suggested timeframes in the past, however, the Appellate Division further ordered that the Board "adopt a meeting schedule for academic year 2017-2018 that will enable them to make its meeting minutes 'promptly available' under N.J.S.A. 10:4-14," pursuant a proper exercise of the Panel's power to craft a remedy under N.J.S.A. 10:4-16. Id. at 545-46.

The Board and *amici* in support of the Board's petition for certification claim the holding here will result in all but the absolute collapse of public bodies, and that it will "negatively impact not only Kean, but every public body in New Jersey subject to the Act," Def. Pet. at 7. Those *amici* claim that, "every public body in New Jersey must [now] meet at least nine times a year so that it can approve and release meeting minutes within 45 days after each meeting." Brief of *Amicus Curiae*, Rutgers the State University of New Jersey at 14. But even the Board acknowledges its managerial discretion in determining how it will effectuate the Panel's order, see Def. Pet. at 4, even if the Board's imagining of the options available to it is unduly narrow.[5] Therefore, under the Panel's order, the Board is "afforded discretion in determining the most advantageous and efficacious manner of proceeding." McGovern, 211 N.J. at 155. The managerial autonomy of the Board was

[5] The Board contends that it has only two options, to meet more often or to cease its approval practice, but Plaintiff-Respondents and *Amicus* Libertarians for Transparent Government have each pointed out additional options available to the Board.

plainly part of the Panel's calculus here, but rightly and as our law demands, it was not the exclusive or primary consideration in the Appellate Division's application of OPMA.

Contrary to the position taken by the Board, *Amicus* ACLU-NJ respectfully suggests that the Appellate Division's 45-day outermost time limit under these circumstances strains most understandings of the word "promptly" and is largely insufficient to satisfy the Legislature's transparency goals in drafting our Sunshine Law. ACLU-NJ contends that a far narrower publication timeframe would better comport with OPMA's plain intent. However, at minimum, this Court should not reverse the Appellate Division's generous, fact-specific definition of "promptness" as applied to this Board as being too narrow; to do so would do a harm far worse to democratic transparency than upholding it.

II. The Board Violated OPMA in Failing to Send Advance Notice Under Rice or Otherwise Provide for Transparency in its Reappointment Determination.

The Appellate Division held that the Board violated OPMA when it failed to send Rice notice to affected employees regarding the Board's December 6, 2014 vote on faculty reappointments. The Board contended it had no obligation to send Rice notice, because it never intended to discuss the particular employment of Plaintiff-Respondent Valera Hascup, in closed or public session, prior to its public vote not to reappoint her. However, the Appellate Division rightly rejected this argument, noting: "When a public body acts on a personnel matter without prior discussion of any kind, the silent unexplained vote cast by the Board

member reduces the event to a perfunctory exercise, devoid of both substance and meaning," which is "the antithesis of what the Legislature intended when it adopted the OPMA." Kean, 448 N.J. Super. at 540 (citing N.J.S.A. 10:4-7). The Panel therefore concluded that the Board could not avoid its obligations under OPMA by claiming that it undertook no deliberations regarding the vote not to reappoint, either in executive or public session, in order to claim it was not bound by Rice. Id. at 540-45. The thrust of the Panel's holding was that the Board's process, as revealed by its arguments under Rice, violated the very spirit of OPMA.

The Board contends the Panel's decision imposed a "directive that [it] must issue Rice notices to every employee who may be the subject of a personnel action at every public meeting, without regard to whether the Board intends to discuss the matter in executive session and without regard to whether the employee's rights could be adversely affected." Def. Pet. at 7. However, here: (1) the Board's relevant reappointment vote amounted to a termination of Valera Hascup and other affected faculty's employment with Kean University; (2) and the Board apparently sought to avoid sending Rice notice by delegating the deliberative process to a subcommittee and then alleging it had no obligation to itself deliberate on such employment decisions, either in public or private session, and therefore had no cause to send Rice notice.

The Appellate Division rightly found that the Board cannot "act[] on a personnel matter without prior discussion of any kind," as a basis

for alleging that its lack of closed or public deliberation excused its obligations under OPMA and Rice. Kean, 448 N.J. Super. at 540 (citing N.J.S.A. 10:4-7). Therefore, the Panel was constrained to hold that "a public body is required to send out a Rice notice any time it has placed on its agenda any matters 'involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body'" to avoid similar attempts at circumventing OPMA obligations going forward. Kean, 448 N.J. Super. at 543 (emphasis in original) (quoting N.J.S.A. 10:4-l 2(b)(8)). In sum, the Panel's requirement of notice under Rice was intended to foreclose upon similar future attempts by any public body to dodge OPMA's most fundamental transparency objectives by claiming not to deliberate on significant personnel decisions at all.

Since 1977, our courts have interpreted the public meeting exemption now-codified at N.J.S.A. 10:4-12(b)(8)[6] to require public

[6] N.J.S.A. 10:4-12(b)(8), commonly known as the "personnel exemption," provides that:

> A public body may exclude the public only from that portion of a meeting at which the public body discusses any . . . matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific . . . employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting.

bodies to give employees notice when they will be the subject of a closed session discussion, in order to allow such employees the opportunity to "make a decision on whether they desire a public discussion and . . . prepare and present an appropriate request in writing." Rice, 155 N.J. Super. at 73.

In Rice, the Appellate Division held that the personnel exemption may be waived "if all employees whose rights could be adversely affected decide to request a public hearing." 155 N.J. Super. at 73. In order to avail this right of waiver to such affected employees, public bodies must provide the affected employees with reasonable advance notice, so that they might decide whether a public discussion is desired and, if so, to prepare to present a request for public hearing in writing. Ibid. "[T]he exemption is designed to enable the public body to determine the appropriate action to be taken, not to withhold from the public either the public body's determination or the reasons on which its determination was based." Id. at 494 (emphasis added). "[I]t would be anomalous to interpret the Open Public Meetings Act, enacted by the Legislature to enhance the public's access to and understanding of the proceedings of governmental bodies, in a manner that foreclosed the public's right to obtain material and information vital to its ability to evaluate the wisdom of governmental action." Ibid. This Court has further held that even when decisions affecting individual employment are deliberated in an executive session, "the minutes of [the] closed session regarding personnel decisions may be altered appropriately to

protect confidentiality and in some very unusual cases, the minutes may be suppressed entirely," but such minutes must otherwise, as a rule, be made public under OPMA. Payton v. N.J. Tpk. Auth., 148 N.J. 524, 557 (1997).

As described in the Panel's decision, the Board's process for reappointing faculty members with expiring terms of employment centers on a recommendation by Kean's President as to each faculty member. Kean, 448 N.J. Super. at 536. Apparently, the Board's deliberative process – if any – occurs prior to its public meeting at which a reappointment resolution is presented for a public vote through one of its subcommittees. Id. at 537. Before the trial court, counsel for the Board made clear its position that it was not required to send notice under Rice because the full Board did not intend to engage in any deliberations or discussions regarding the reappointment resolution, and instead intended to serve only as a rubberstamp. Id. at 539.

The Board's plan to avoid discussion of reappointments at its meetings is plainly an attempt to dodge its obligations under OPMA. The Panel noted that "the Board [clearly] uses this approach to avoid sending Rice notice," that the "decision not to send Rice notices in which personnel matters are listed as an agenda item implies the Board has decided in advance of the meeting that executive session discussion is not warranted," and that the "silent unexplained vote to approve a list of preapproved candidates in public session gives the impression that the Board colluded to circumvent the OPMA's requirements." Id. at 540,

544. It therefore concluded that the adoption of such a process could not possibly be reconciled with the spirit of OPMA. Id. at 544-45.

Both the public and employees have an interest in forbidding any public body from circumventing its obligations under OPMA by claiming it has delegated its full decisionmaking process to the extent that its vote is nothing more than a *pro forma* exercise. Effectively, the Panel held that no public body is entitled to obfuscate its transparency obligations so fully as to render public witness of its deliberations or engagement in its process impossible, and that to permit such attempts would be to undermine all that our Sunshine Law stands for. The Panel did not modify the personnel exemption at N.J.S.A. 10:4-12(b)(8); this Board and any other public body may still seek to make personnel decisions in closed session as the statute provides. Instead, the Panel merely held that no public body might avoid its obligations under OPMA, an Act so clearly designed by our Legislature to provide for public witness of and participation in the decisionmaking of public bodies, by claiming scheduled decisions amount to nothing more than a rubber stamp. To that end, the Panel sought to avoid similar attempts at obfuscation going forward by extending the Rice notice requirements to any personnel decision slated for a vote by a public body, to ensure that both the public and affected employees be apprised of such decisions in advance, whether the decision is slated for deliberation in closed or public session.

Amicus therefore respectfully recommends, that either under Rice or by some other exercise of this Court's remedy power under N.J.S.A. 10:4-16, this Court uphold the purpose behind the Panel's holding regarding the personnel exemption at N.J.S.A. 10:4-12(b)(8).

CONCLUSION

Per the Board's view, this case has an enormous impact on the responsibilities of public bodies throughout the state, but the opposite is likely true. The Appellate Division does not create or expand upon the current obligations of a public body under OPMA, but a reversal of this decision on the ground that it was too rigid an application of OPMA could have far-reaching consequences for all New Jerseyans. If the Board is permitted to take as long as three months to provide its minutes without violating the statute, the "promptly available" requirement would be rendered meaningless. Similarly, permitting the Board to transparency by engaging in no deliberation or discussion when voting on personnel matters would OPMA's spirit of democratic transparency.

Accordingly, the Appellate Division's decision should be affirmed.

Respectfully submitted,

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