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DONALD WHITEMAN, PATRICIA A. DOLOBACS, JUDITH A. ERDMAN and 282 other PETITION SIGNERS OF SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION,

Plaintiffs,

VS.

TOWNSHIP COUNCIL OF BERKELEY TOWNSHIP, TOWNSHIP OF BERKELEY, JOHN DOES 1-10, ABC CORPS. 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

DOCKET NO.: OCN-L-2667-20

CIVIL ACTION

PLAINTIFFS' REPLY BRIEF

Attorneys for Plaintiffs
Joseph Michelini, Esq.
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On the Brief

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FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Background and Procedural History set forth in Plaintiffs' Trial Brief, filed with this Court on October 8, 2021, is hereby incorporated in its entirety as the full and accurate statement of the facts and procedural history of this matter.

STANDARD OF REVIEW

It is well established that municipal actions are to be given the presumption of validity. Ward v. Montgomery Tp., 28 N.J. 529, 539 (1959); Quick Chek Food Stores v. Springfield Tp., 83 N.J. 438, 447 (1980). The law presumes that municipal governing bodies will act fairly, with proper motives and for valid reasons. Kramer v. Sea Girt Bd. Of Adj., 45 N.J. 268, 296 (1965). This presumption extends to all municipal enactments, but may be overcome by a showing of arbitrariness or unreasonableness. Dock Watch Hollow Quarry Pit v. Warren Tp., 142 N.J. Super. 103, 116 (App. Div. 1976), *aff'd*, 74 N.J. 312, 377 (1977); Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 564 (1975); Riggs v. Long Beach Tp., 109 N.J. 601, 611 (1988).

A decision by a New Jersey township to deny a petition for deannexation is one such municipal action subject to judicial review for arbitrariness, capriciousness, or unreasonableness. "In giving or withholding consent to deannexation, governing bodies have traditionally been afforded discretion, but discretion nonetheless subject to judicial review." Avalon Manor Improvement Ass'n., Inc. v. Township Comm. Of Dover Tp., 54 N.J. 339, 347-48 (1969). A Township's exercise of discretion in denying a deannexation petition is "subject to review under the standard principles of arbitrariness or unreasonableness." Russell v. Stafford Tp., 261 N.J. Super. 43, 48 (Law Div. 1992). Similarly, actions by local municipal bodies should be reversed if they are "arbitrary, capricious or unreasonable. 'Arbitrary and capricious' is typically understood to mean 'willful and unreasoning action, without consideration and in disregard of

circumstances.'" Avalon Manor Improvement Ass'n, Inc. v. Township of Middle, 370 N.J. Super. 73, 91 (App. Div. 2004).

The New Jersey statutory scheme governing petitions for deannexation explicitly provides standards for judicial review of a denial of a deannexation petition and sets forth the burden of proof for the petitioners to overturn a denial:

> In any judicial review of the refusal of the governing body of the municipality in which the land is located or the governing body of the municipality to which annexation is sought to consent to the annexation, the petitioners have the burden of establishing that the refusal to consent to the petition was arbitrary or unreasonable, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land, and that the annexation will not cause a significant injury to the well-being of the municipality in which the land is located.
>
> [N.J.S.A. 40A:7-12.1.]

Here, then, there are three questions for the Court to decide. First and foremost, the Court must determine whether Plaintiffs have shown that Berkeley Township's denial of their deannexation petition was arbitrary, capricious, unreasonable, or willfully lacking in due consideration and in disregard of circumstances. (For clarity, Plaintiffs will refer to this as "Prong 1" of the Court's analysis). Second, the Court must determine whether Petitioners have shown that the denial of their petition is detrimental to the economic and social well-being of a majority of South Seaside Park residents (Prong 2). Finally, the Court must determine whether Plaintiffs have shown that deannexation will not cause significant injury to the well-being of Berkeley Township as a whole (Prong 3). Plaintiffs have more than met their burden to show that all three Prongs support overturning Defendants' denial of Plaintiffs' Deannexation Petition.

ARGUMENT

I. THE RECORD CONCLUSIVELY SHOWS THAT THE BERKELEY TOWNSHIP PLANNING BOARD'S DENIAL OF PLAINTIFFS' DEANNEXATION PETITION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE, AND THAT DEFENDANTS FAIL TO OFFER ANY EVIDENCE OR ARGUMENT TO THE CONTRARY.

As noted in Plaintiffs' Trial Brief, a decision by a municipal body (such as the Planning Board in this matter) is to be given deference by courts, ***unless that decision is shown to be arbitrary, capricious, or unreasonable***. See, e.g., Russell, 261 N.J. at 48; Kramer v. Board of Adj. of Sea Girt, 45 N.J. 268, 296 (1965). New Jersey's Deannexation Statute itself explicity states that

> In any judicial review of the refusal of the governing body of the municipality in which the land is located or the governing body of the municipality to which annexation is sought to consent to the annexation, the petitioners have the burden of establishing that ***the refusal to consent to the petition was arbitrary or unreasonable***, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land, and that the annexation will not cause a significant injury to the well-being of the municipality in which the land is located.
>
> [N.J.S.A. 40A:7-12.1 (emphasis added)].

Thus, evidence showing that a deannexation petition was denied for arbitrary or unreasonable reasons is statutorily one of the three (3) factors courts must consider in reviewing a municipal body's action. New Jersey courts have defined "arbitrary and capricious" as "willful and unreasoning action, without consideration and in disregard of circumstances." Avalon Manor Improvement Ass'n, Inc. v. Township of Middle, 370 N.J. Super. 73, 91 (App. Div. 2004).

New Jersey courts have further addressed specific factors that justify the overturning of municipal decisions for being "arbitrary, capricious, or unreasonable." For example, a municipal decision should be overturned if there is evidence of bias, prejudice, or collusion by the municipal body. In re the Township of East Brunswick, Hidden Oaks Woods, LLC, v. Township

of East Brunswick, No. A-3115-19, A-3125-19 (App. Div. July 30, 2021) In Hidden Oaks Woods, the Township Mayor participated in supposedly neutral and impartial planning board hearings, yet made numerous public comments against the petitioners. Ibid. The court found that the Mayor's biased comments demonstrated prejudice and a failure by the board to reasonably consider the merits of the petitioners' application. Ibid. Courts have similarly overturned municipal actions because members of the municipal body acted personally as advocates for the municipality against petitioners, rather than as independent and impartial decision makers. Lackland And Lackland v. Readington Tp., No. A-2190-05 (App. Div. February 26, 2008). In Lackland, the court went so far as to permanently ban a member of a municipal Board of Health member from participating in any hearings involving the petitioners, because of that Board member's lack of objectivity and impartiality during hearings. Ibid.

In short, this Court has the authority – and the duty – to nullify and overturn the Planning Board's denial of Plaintiffs' deannexation petition if there is evidence showing that the Planning Board was biased against Plaintiffs, that it did not fairly consider all relevant evidence, that it operated in opposition to Plaintiffs rather than as a neutral party, or that it took concrete action to help effectuate a predetermined outcome. In their Trial Brief, Defendants highlight the fact that

> Plaintiffs spend the first fifty-two (52) pages of their one hundred and nine (109) page brief discussing the procedure, hearings and process of the deannexation hearing before the Berkeley Township Planning Board. Plaintiffs do not even begin to address the legal standard required for Plaintiffs to overturn the Berkeley Township Council's decision to deny Plaintiffs' petition for deannexation until page 52 of their brief.

Def. Trial Brief at 1.

Defendants' argument here makes sense only if one completely ignores one of the three factors set forth by the Legislature in the Deannexation Statute. Defendants would have this Court take it

upon itself to consider only the economic and social effects of deannexation on South Seaside Park and Berkeley Township, while blindfolding itself to the overwhelming evidence that the denial of Plaintiffs' deannexation petition was the result of gross misconduct, bias, and collusion and, thus, definitively unreasonable. Defendants do not have the authority to rewrite the Deannexation Statute to fit their own feelings of what the legal standard should be in this matter, and the Court should rightfully consider all of Plaintiffs' evidence demonstrating that denial of their petition was arbitrary, capricious, and unreasonable. Fair consideration of said evidence leads to one inescapable conclusion: the entire process by which Defendants held hearings, issued recommendations, and ultimately denied the petition was a sham and must be invalidated.

A. DEFENDANTS HAVE FAILED TO OPPOSE OR RESPOND TO PLAINTIFFS' ALLEGATIONS OF PREJUDICE, BIAS, COLLUSION, AND DUE PROCESS VIOLATION. AS SUCH, THE COURT SHOULD ADMIT PLAINTIFFS' ALLEGATIONS AS TRUE.

New Jersey Court Rule 4:5-5 provides that, "[a]llegations in a pleading which sets forth a claim for relief . . . are admitted if not denied in the answer thereto." As noted above, the first section of Plaintiffs' Trial Brief set forth in great detail the many ways in which Defendants violated their statutory duty to engage in a fair, impartial, and reasonable consideration of Plaintiff's petition.[1] Shockingly, Defendants' Trial Brief ***fails to address a single one of Plaintiffs' allegations***. Instead, Defendants simply rely on the fact that the Planning Board and Council correctly followed the *procedural* rules for responding to a Deannexation Petition, while ignoring the *substance* of their response. Not only is Defendants' argument without merit, it is completely irrelevant to the matter at hand. The specific actions that Defendants cite as

[1] For the sake of accuracy, Plaintiffs discuss Prong 1 (that Defendants' decision was arbitrary, capricious, and unreasonable) on pages 20-52 of their Trial Brief, while pages 1-20 comprise a table of contents, a table of authorities, a preliminary statement, factual background, and standard of review. All further references to Plaintiffs' Prong 1 arguments shall refer to pages 20-52, not "the first fifty-two pages" as Defendants allege.

evidence of their procedural compliance are not disputed by Plaintiffs. Defendants are defending their actions against a straw man, while ignoring the actual misdeeds documented by Plaintiffs.

Defendants note that the Planning Board "relied on the Report of Findings, Petition for Deannexation prepared by the Board's Engineering Firm." Def. Trial Brief at 8. Defendants also note that the Planning Board held many hearings when it did not technically have to do so and that the membership of the Planning Board was properly constituted. Def. Trial Brief at 33-35. This is all true, and Plaintiffs have no issue with the makeup of the Board or the fact that Defendants held hearings and issued reports, recommendations, and Resolutions. However, nowhere do Defendants address Plaintiffs' evidence showing that the Report of Findings was prepared using faulty data, unreasonable conclusions, and biased experts. See, e.g., Plaintiffs' Trial Brief at 14-15; 34; 47-49; 95-96. Neither do Defendants address any of the other acts showing bias, partiality, collusion, and violations of Plaintiffs' right to due process, documented in detail on pages 20-52 of Plaintiffs' Trial Brief.

Instead, Defendants cite to D'Anastasio Corp. v. Township of Pilesgrove, 387 N.J. Super. 247 (Law Div. 2005) to make the argument that a denial of a deannexation petition must be reasonable as long as the Planning Board and municipal body "base[ ] their decision denying the petition in reliance upon" an expert report. D'Anastasio at 253; Def. Trial Brief at 8. However, in D'Anastasio, there were no allegations that the expert report was biased or inaccurate, or that there were any other actions by the Planning Board or municipal body that could be considered arbitrary, capricious, or unreasonable. As such, the D'Anastasio Court's analysis of Prong 1 is not analogous to the present matter, in which – again – more than 30 pages of evidence have been submitted documenting Defendants' bias and unreasonableness.

Defendants further argue that, "in relying on the expert's report and fully outlining its decision in its resolution, it is clear that the Berkeley Township Planning Board gave careful consideration to this matter and considered the circumstances." Def. Trial Brief at 9. In support of their argument, Defendants cite to the Appellate Division's recent decision in Seaview Harbor Realignment Committee v. Township Committee of Egg Harbor Township, _____ N.J._____, _____(2021) (slip op. at 43), in which the Court held that, "plaintiffs received a full and fair opportunity to present their case to Egg Harbor and Egg Harbor's decision to deny consent was fully supported by the record and entitled to deference." However, Defendants ignore the fact that the "evidence" of bias and partiality in Seaview Harbor was not comparable to the evidence submitted by Plaintiffs in this matter. In Seaview Harbor, the allegedly biased individuals recused themselves from the proceedings, which did not happen in the present matter. Id. at 44-45. Further, the record in Seaview Harbor showed that the "biased" individuals testified about important and relevant information and that their testimony helped create a fair and accurate record. Ibid. Here, the copious malfeasance documented in Plaintiffs' Trial Brief did not lead to the admission of relevant evidence and merely worked to Plaintiffs detriment by, for example, excluding relevant evidence Defendants did not like and explicitly coaching witnesses to present testimony harmful to Plaintiffs. Plaintiffs' Trial Brief at 20-52.

Similarly, the Seaview Harbor Court found that "nothing in the record suggested that [a n allegedly biased individual] was motivated by any concern other than to save taxpayers the expense of litigation that he believes was highly unlikely to succeed in light of the facts and applicable standard. Nor is there any evidence that his personal opposition to deannexation influenced voting members so as to taint the proceedings." Seaview Harbor, slip op. at 45. The record in the present matter reveals the precise opposite. Here, Planning Board members

engaged in secret meetings with witnesses and Township officials (including officials who would vote on the final Resolution denying the Deannexation Petition); Defendants' experts prepared and distributed written documents to coach witnesses on how to "refute" Plaintiffs; the Board knowingly heard and considered testimony of an expert (Mr. Ebenau) whose findings had been proven to be inaccurate at prior hearings; Defendants refused to provide relevant data to Plaintiffs while freely providing it to their own experts; a Planning Board member publicly displayed an explicitly anti-deannexation sign in front of his house, a Township Administrator admitted calling Plaintiffs' "elitist" for petitioning for deannexation; and a Councilman made anti-deannexation statements at a public meeting. Plaintiffs' Trial Brief at 20-52. Further, during the very hearing in which the Planning Board voted to recommend denying the Deannexation Petition, Board Member Nick Mackres made numerous statements on the record which removed all doubt that the Board was biased in its decision. Mr. Mackres alleged that Plaintiffs were "shirking their duties as Americans" by petitioning for deannexation, characterized the petition as "a ruse" designed to cheat the citizens of Berkeley Township, and said he was "ashamed and disgusted to have heard this petition for the past five years." T. 1/9/20, 32:21-33-22. No reasonable person could believe that a Board holding such offensive and disdainful views of petitioners (to the point of questioning their patriotism for wanting to better their lives through a lawful petition) could possibly reach a fair and unbiased decision.

There can be no doubt that the above conduct, plus many other examples of bias and partiality cited in Plaintiffs' Trial Brief, reveals that Defendants were motivated solely by a desire to rig these proceeding to ensure a predetermined outcome and that they succeeded in their unlawful plans. The Seaview Harbor Court's finding of no bias could not be less applicable to the facts before the Court here.

Again, Plaintiffs do not dispute that Defendants relied on an expert report, nor do Plaintiffs dispute that Defendants fully outlined their decision in resolutions. Instead, Plaintiffs argue that the hearings, deliberations, analysis, and statistics that produced the expert report and the final resolutions of the Planning Board and Council were biased and irredeemably tainted, and have produced copious evidence to support this argument. Defendants have not offered a single argument or fact to rebut the many allegations of malfeasance set forth in Plaintiffs' Trial Brief. The reason for this is simple: Defendants cannot possibly deny Plaintiffs' evidence, nor can they frame this evidence in a way that makes it innocent. In effect, Defendants attempt to create a safe harbor provision for themselves out of thin air, whereby they must be given the presumption of reasonableness as long as they cite to an expert report and put their decision in writing. The law, however, is clear: there is no such safe harbor. Courts must consider the entire decision-making process and, if it is rife with bias, collusion, and willfully misleading statistics, they must find it arbitrary, capricious, and unreasonable regardless of whether the Defendants followed the technical procedures.

A simple analogy will illustrate the fatal error in Defendants' argument. A State's election law requires poll workers to check a voter's identification and match it with a name on the registered voter list. On Election Day, a prospective voter presents identification. The identification shows the voter's name, which the poll worker matches to a name on the registered voter list. The voter then casts his or her ballot. Technically, the correct procedure was followed. Nonetheless, if it were later proved that the identification was unambiguously fake, the prospective voter would not be able to avoid charges of fraud just because the correct procedure was followed. Here, Plaintiffs have proved – with copious evidence – that the substance of Defendants' resolutions are the equivalent of a fake ID, while Defendants ignore

the evidence and imply that the substance of the resolutions can be as fake and fraudulent as they like as long as they meet the correct procedural standards.

Defendants sum up their Prong 1 arguments by alleging that Plaintiffs fail to "cite any applicable statute or precedent to demonstrate that the process afforded to Plaintiffs was unfair or violative of due process." Def. Trial Brief at 33. Perhaps Defendants failed to read the first 52 pages of Plaintiffs' Trial Brief, but the Deannexation Statute, the case law discussed above and in Plaintiffs' Trial Brief, and the due process provisions of the State and U.S. Constitutions clearly demand that Plaintiffs be given a fair and unbiased hearing in this matter. The record clearly shows that a fair and unbiased hearing was not provided.

It must be noted that Defendants' appeal to procedure – comprising pages 6-10 and 32-36 of their Trial Brief – is the only argument they make regarding Prong 1. Given Defendants' complete failure to deny any of the substantive arguments and evidence set forth proving that Defendants rigged these proceedings to reach a predetermined, biased result, this Court should follow R. 4:5-5 and admit all of Plaintiffs allegations and evidence as fact. Defendants have had an opportunity to rebut these allegations and explain this evidence, but have not even attempted to do so. For this reason, the Court should accept as true everything set forth in pages 20-52 of Plaintiffs' Trial Brief and rule accordingly.[2] Any such ruling cannot but find that Defendants Resolutions were arbitrary, capricious, and unreasonable and must be overturned.

II. DEFENDANTS IGNORE AND MISREPRESENT OVERWHELMING EVIDENCE SHOWING THAT DENIAL OF THE DEANNEXATION PETITION WILL SEVERELY HARM SOUTH SEASIDE PARK RESIDENTS SOCIALLY AND ECONOMICALLY.

[2] For the sake of brevity, this Brief will not recite the details of all allegations and evidence set forth in pages 20-52 of Plaintiffs' Trial Brief. As Defendants have not addressed anything of substance contained within those pages, it is sufficient to let them stand on their own without further discussion. The Court is encouraged to review those pages (and their cited Exhibits) in light of the arguments made in this Brief and to find that they conclusively prove that Defendants' denial of the Deannexation Petition was arbitrary, capricious, and unreasonable.

In their discussion of Prong 2, Defendants argue that "Plaintiffs have not shown a social detriment and have shown, if any, a very minor economic detricment to the Plaintiffs should the Township's decision be affirmed and deannexation denied." Def. Trial Brief at 25. A fair and comprehensive consideration of Plaintiffs' Trial Brief and the record before the Court reveals that Defendants' argument painfully contorts the reality of South Seaside Park residents' experiences and is utterly without merit.[3] As Plaintiffs' Trial Brief has already documented in comprehensive detail the severe social and economic harm South Seaside Park residents will suffer as a result of Defendants' denial of the Deannexation Petition, this Reply Brief will simply address each of Defendants' fallacious assertions in turn and offer a correction.

Defendants assert that "there was absolutely no testimony or evidence provided to show or even suggest that South Seaside Park residents are deprived of the opportunity to participate" in activities and social gatherings. Def. Trial Brief at 11. The legal standard used by Defendants here is simply incorrect, as residents do not have to be completely "deprived" of any and all opportunities to participate in social life in order for social harm to exist. Courts have found that social harm can exist when residents of a petitioning community "naturally look to" a contiguous municipality as the "focus of community interest and activity" yet are forced by illogical boundaries to remain part of a municipality to which they have little or no natural connection. West Point Island Civic Ass'n v. Township Committee of Dover Tp., 54 N.J. 339, 350 (1969). See also Bay Beach Way Realignment Comm., LLC v. Twp. Council of Toms River, No. A-

[3] It must be noted that Defendants incorrectly claim that Plaintiffs' discussion of Prong 2 does not begin until the "middle of page 80" even though said discussion actually begins on page 52. Def. Trial Brief at 10. Defendants' continual (and consistently incorrect – see footnote 1) emphasis on the length of Plaintiffs' Trial Brief is a transparent effort to disparage Plaintiffs' arguments by implying that Plaintiffs are reduced to hiding their substantive arguments behind pages of irrelevant verbiage. Defendants would be better served confronting the fact that their own biased and improper conduct was extensive enough to generate over 30 pages of quite relevant documentation. As noted in Section I, however, Defendants chose to ignore this documentation entirely, as is their right.

5733-07 (App. Div. July 9, 2009) (Court found social harm to petitioning community that was "more closely associated and identified with" adjacent Lavallette than with distant Toms River).

Even in cases in which deannexation was denied, courts have accepted that a petitioning community's strong connection to and participation in a neighboring municipality is a relevant factor in considering whether that community would suffer social harm by being forced to remain part of a more distant community. See, e.g., Avalon Manor Imp. Ass'n, Inc. v. Township of Middle, 370 N.J. Super. 73, 87 (App. Div. 2004) (Court considered that petitioning community's interactions and interests were primarily with a neighboring municipality rather than the community's home municipality); Citizens for Strathmere & Whale Beach v. Township Comm. Of Upper, No. L-0432-09 at *24-25 (App. Div. August 1, 2012) (acknowledging detriment to Strathmere petitioners from denial of deannexation because "its interests and concerns were more aligned with Sea Isle City rather than Upper Township," and because Strathmere residents "identify on a social level much more with Sea Isle City than the Upper Township mainland," "go to Sea Isle City and to Ocean City for churches, doctors, dentists, pharmacies, grocery stores and libraries," and "socialize more" with Sea Isle City due to "much close physical proximity"); Russell v. Stafford Tp., 261 N.J. Super. 43, 57 (Law Div. 1992) (noting that "the Eagleswood residents have a greater nexus with the business and shopping areas of Stafford. Additionally, the proofs demonstrate that access to these areas at the present time, and in the foreseeable future, will have to be through Stafford. Thus, in balance, the geography, logistics and availability of businesses and municipal services seem to favor annexation of the Cedar Run Dock Road section to Stafford Township."). Defendants are thus demonstrably incorrect when they argue that "the mere fact that Plaintiffs engage in social activities outside of South Seaside Park and/or Berkeley Township is not evidence of social detriment to the Plaintiffs." Def. Trial Brief at 13.

Clearly, Plaintiffs have met the standard of showing that they are more closely associated and identified with adjacent Seaside Park than with Berkeley Township, and that they will thus be harmed by being forced to remain part of a distant municipality with which they would not naturally have any relationship but for illogical municipal boundaries. The record shows that South Seaside Park residents use the library in Lavallette, primarily shop in Toms River, Seaside Park and "Ortley Beach for the A&P," eat at restaurants in their own community or in Seaside Park and Lavallette, attend church in Seaside Park and Toms River, use Seaside Park's recycling center, go to parks in Seaside Park, and even hold community meetings in Seaside Park. T. 1/8/15, 119:20-121:21; T. 2/5/15, 12:24-14-2, T.2/5/15, 17:21-24; T. 4/2/15, 44:7-17; T. 5/7/15, 15:22-16:11, 100:18-104:19. Plaintiffs' Trial Brief contains even more testimony and evidence showing the deep connection between South Seaside Park and Seaside Park, and the significant disconnect between South Seaside Park and Berkeley Township, which need not be reproduced here but which the Court is encouraged to review. See Plaintiffs' Trial Brief at 66-69. Notably, Defendants' Trial Brief does not deny that South Seaside Park residents participate in, and are associated with, the social life of Seaside Park to a far greater extent than that of Berkeley Township. Defendants simply ignore this inconvenient reality and focus on the fact that South Seaside Park residents are technically allowed to vote and participate in Berkeley Township activities (even though such participation is logistically difficult and is often purely theoretical, South Seaside Park residents indisputably spending more time participating in Seaside Park social life). Plaintiffs' Trial Brief at 65-67. Defendants further baldly assert that many residents of mainland Berkeley Township "likely leave the Township" to run errands and participate in activities in surrounding municipalities, despite the complete lack of any evidence or testimony supporting this assertion. Def. Trial Brief at 13.

Further, evidence shows that Plaintiffs also meet Defendants' incorrect and excessively strict standard of proving that they are "deprived of the opportunity to participate" in social and political events and gatherings. For example, "Seaside Park people have first choice" for attending events and reserving public spaces, depriving South Seaside Park residents of the opportunity to participate in social events that are nearby and meaningful. T. 5/7/15, 29:21-30:11. Similarly, the record shows that South Seaside Park residents are deprived of the opportunity to vote in and influence the area where they live. T. 4/2/15, 29:9-36:6. Instead, South Seaside Park residents are only allowed to participate in the politics of a distant municipality with which they share little in common, thus alienating their political voice. It is telling that Defendants acknowledge that South Seaside Park residents "participate less in local government than resident would if they lived closer to the mainland," even while arguing that they have not technically been prevented from voting in Berkeley Township elections. Def. Trial Brief at 12.

Most damaging to Defendants' case is the fact that they fail to address in any way the inherent social and economic harm to South Seaside Park residents caused by the vast and unprecedented physical distance between South Seaside Park and Berkeley Township. New Jersey courts certainly place a high premium on physical distance in deannexation cases, and the longer and more difficult it is to travel from a petitioning community to the primary social and political hubs of the home municipality, the less reasonable it becomes to deny deannexation. See, e.g., Ryan v. Demarest, 64 N.J. 593, 603 (1974) (court identified "geography and logistics" as factors for courts to consider when reviewing denial of deannexation).

Plaintiffs submitted evidence showing that South Seaside Park is 16.3 miles away from the Berkeley Township municipal center. Plaintiffs' Trial Brief at 56-61. This distance is a full 4.4 miles further than the second longest distance in reported New Jersey deannexation cases.

Ibid. Even more telling is the fact that in the two cases where courts overturned a municipality's denial of deannexation, the distances were only 10 miles and 7.5 miles. Ibid. To be sure, the court in West Point Island held that denial of deannexation "was not based on reasonable grounds" because "the geography is so pointedly in favor of allowing" deannexation. West Point Island, 54 N.J. at 349-50. The distance here is more than twice the 7.5 miles in West Point Island; Plaintiffs correspondingly suffer more than twice the harm due to distance. Plaintiffs submitted a significant amount of testimony and evidence illustrating this harm in great detail. Plaintiffs Trial Brief at 56-63. Notably, Defendants did not address any of this distance-related harm, other than to note that Plaintiffs would still have to drive all the way to the Berkeley Township municipal building to get a dog license even if deannexation occurred. Def. Trial Brief at 14. In other words, Defendants tacitly admitted that South Seaside Park residents ***were*** harmed by having to drive over 30 miles round-trip (often taking more than an hour in total) each time they needed to travel to their own town offices. Plaintiffs' Trial Brief at 61. Worse, during the very hearing in which the Planning Board voted to recommend denial of Plaintiffs' petition, Board Member Nick Mackres insultingly stated that Plaintiffs "have a choice to come to a municipal meeting, which many people do not make," whereas "everyone has to pay their taxes." T. 1/9/20, 17:22-18:3. In other words, Defendants view participation in civic life as a mere luxury for Plaintiffs, and unreasonably refused to consider the difficulty Plaintiffs have in reaching the mainland for important events, activities, and errands.

In lieu of addressing the manifold harms to Plaintiffs caused by their vast distance from mainland Berkeley Township, Defendants fall back on two irrelevant arguments. First, Defendants blame Plaintiffs for causing harm to themselves by purchasing property in South Seaside Park in the first place. Def. Trial Brief at 24. Not only is this insulting to Plaintiffs, it

maliciously writes victim-blaming into the Deannexation Statute for Defendants' own benefit. To be clear, neither the Deannexation Statute nor the case law allow municipal bodies to deny deannexation petitions because of petitioners' own actions in choosing to purchase real estate within a particular municipality. The only standard is whether harm will occur, not whether the petitioners somehow brought the harm upon themselves for deigning to buy a home.

Second, Defendants note that because of Berkeley Township's size, residents in various neighborhoods must travel long distances to get from one part of town to another. Def. Trial Brief at 24. The relevance of this assertion to a deannexation proceeding is a mystery. The Deannexation Statute and relevant case law are clear that a petitioning community must demonstrate social and economic harm to itself if deannexation is denied. No authority says a petitioning community must compare its own harms with prospective harms that might be suffered by other communities in the same municipality. It could be true that another neighborhood in Berkeley Township suffers equivalent – or even worse – harm because of its distance from the Township center. This fact would do nothing to lessen the harm suffered by South Seaside Park residents and is thus irrelevant to any of the three Prongs the Court must consider in this matter.

Worse, Defendants cannot even maintain their assertion that other parts of Berkeley Township suffer from physical distance to a similar extent as Plaintiffs. Defendants compare apples to oranges when they claim that it takes "a similar time and distance" to drive ***from the western portion of Berkeley Township to South Seaside Park*** and to drive ***from South Seaside Park to the Berkeley Township center***. Def. Trial Brief at 24. South Seaside Park residents suffer harm because they have to drive to the Township center to participate in civic and political life. If deannexation were granted, South Seaside Park residents would then be able to reach their

new municipal center in Seaside Park in a matter of minutes, rather than half an hour or more. On the other hand, residents of western Berkeley Township do not have a similarly long drive to the municipal center; the comparable distance is from western Berkeley Township to South Seaside Park on the Atlantic shore. Obviously, a community annexing to a different municipality would not change the location or distance of the Atlantic Ocean in the same way it would change the location and distance of the community's municipal offices or Township Center. As such, the long distance from western Berkeley Township to South Seaside Park does not create a similar injury as does the long distance from South Seaside Park to the Berkeley Township center.

Even beyond the matter of physical distance, Defendants continually highlight facts that have little or no relevance to Plaintiffs' deannexation petition, while ignoring or minimizing facts that clearly show that social harm will result from a denial of the petition. For example, Defendants note that "recent updates" to Berkeley Township's website allow South Seaside Park residents to register for recreation programs online and to access important local government and police information. Def. Trial Brief at 14-15. Similarly, Defendants claim that more work has been done to clean and improve South Seaside Park road than mainland Berkeley Township roads in recent years. Def. Trial Brief at 18-19. However, New Jersey courts have made it clear that "[t]he mere providing of adequate municipal services in the past does not earn the right to withhold consent to deannexation." West Point Island, 54 N.J. at 348.

Further, Defendants themselves admit that the aforementioned services were "recent", and testimony from South Seaside residents confirmed that many of the "recent" services touted by Defendants were neglected for years despite many complaints from residents, and were not implemented until after the Deannexation Petition was filed by Plaintiffs. Plaintiffs' Trial Brief at 70-77. Worse, with regard to the highly-touted road-paving in South Seaside Park, said paving

was performed ***in the middle of summer on a barrier island***, causing severe harm to residents' enjoyment of their beachfront community. Plaintiffs' Trial Brief at 76-77. The record thus shows that Berkeley Township made superficial improvements in a small number of services only in a desperate effort to defend itself against Plaintiffs' effort to deannex. Defendants should not get credit for making such small improvements only after forcing Plaintiffs to spend years of time and many thousands of dollars trying to leave Berkeley Township. Under the relevant case law, said improvements do not give Defendants "the right to withhold consent to deannexation."

Defendants also claim that "if the Township received a request from qualified senior citizens in South Seaside Park, the Township would provide bussing in that area" for senior recreational trips. Def. Trial Brief at 15. Unfortunately, Defendants' claim was belied by subsequent testimony confirming that, despite requests, no bus stop has been added to South Seaside Park for such trips. T. 2/7/19, 9:10-11:7; 5/7/15, 28:1-29:2. Notably, Defendants' Trial Brief fails to rebut or even mention this subsequent testimony. In a similar vein, Defendants claim that Berkeley Township busses are available to transport children from South Seaside Park to mainland summer camp, but that no children from South Seaside Park have participated in the camp for the prior two years. Def. Trial Brief at 15. However, Plaintiffs never claimed that they would suffer harm from the lack of summer camp bussing. Worse, the fact that South Seaside Park has had no children even participating in said camps in recent years shows that Defendants are merely trying to point out any remotely positive service they might theoretically provide to Plaintiffs, regardless of whether it has any impact on Plaintiffs' lives one way or the other. Again, case law is clear that Defendants cannot win merely by citing services provided to Plaintiffs; Defendants must instead rebut the actual social and economic harm cited by Plaintiffs which, in most cases, they have failed to even attempt.

Defendants oddly claim that "[r]emaining in a more diverse, lower median income municipality does not cause Plaintiffs social injury," despite the fact that Plaintiffs do not claim they will be harmed by Berkeley Township's diversity or income levels. Def. Trial Brief at 17. Defendants seem to have confused Prongs 2 and 3 in their argument, as they immediately cite the holding of the court in Avalon Manor Imp. Ass'n, Inc. v. Township of Middle, 370 N.J. Super. 73 (App. Div. 2004), that loss of high-income sectors would harm the diversity of the home municipality, ***not*** the deannexing community. In the discussion of Prong 3 below, this brief will show that Defendants vastly overstate the harm to Berkeley Township. Here, in the discussion of Prong 2, it is sufficient to dismiss Defendants' argument as legally-irrelevant and far off point. Similarly, Defendants note that recent redistricting will give Berkeley Township (and, thus, South Seaside Park residents) two representatives rather than one. Def. Trial Brief at 21. However, Plaintiffs have never complained about having too little legislative representation. This is simply another example of Defendants fallaciously pointing to irrelevant ***services and benefits*** provided to Plaintiffs, rather than addressing the ***harms*** Plaintiffs will suffer. See West Point Island, 54 N.J. at 348. The (completely theoretical) benefits of an additional representative do not cancel out the many harms suffered by Plaintiffs, which must be addressed and rebutted on their own. Further, this redistricting was adopted on December 22, 2021, well over a year after the Berkeley Township Council denied the deannexation petition, and ***more than seven years after this matter was first initiated***. It is the height of desperation for Defendants to cling to an act of the State Redistricting Committee – which was enacted after deannexation had already been denied – as a lifesaver for their own failure to prevent harm to Plaintiffs.

Defendants further argue that Plaintiffs have failed to demonstrate harm because Plaintiffs' expert, Mr. Moore, "did not do any calculations to determine the percentage of the

allocation of money" invested by Berkeley Township in South Seaside Park compared to that invested in the rest of the municipality. Def. Trial Brief at 18. However, Defendants admit that Plaintiffs submitted significant testimony and evidence illustrating many recreational "amenities or services that are not provided" to South Seaside Park and do not make any effort to deny this lack of services. Ibid. Amazingly, Defendants seem to argue that a demonstrable lack of amenities and services provided to Plaintiffs by Berkeley Township (especially when compared to the well-documented amenities and services in neighboring Seaside Park) does not suffice to show social harm if not paired with an analysis of spending by the Township. It almost goes without saying, but a failure by Berkeley Township to provide satisfactory bay beaches, parks, picnic areas, sports fields, playgrounds, public bathrooms, and many other amenities and services is inherently harmful to South Seaside Park residents, regardless of the percentage of total money spent on each part of the municipality. Defendants could produce incontrovertible evidence that Berkeley Township spent proportionally more money on South Seaside Park, but if the spending did not result in better amenities and services, it would not negate the harm suffered by Plaintiffs one iota. Tellingly, though, Defendants produced no such evidence.

Defendants also attempt to rebut Plaintiffs' allegations of harm by claiming that the South Seaside Park Bayfront cannot be turned into recreational beach areas because of a lack of space and because private riparian grants leave much of the Bayfront off-limits for municipal development. Def. Trial Brief at 20-21. First and foremost, Defendants' argument does not deny that Plaintiffs suffer harm from a lack of Bayfront beaches as compared to neighboring Seaside Park. Defendants merely excuse this harm because of their own inability to remedy it. As noted above, the legal standard for deannexation cases is that Plaintiffs will be harmed by being forced to remain with their home municipality, regardless of whether the home municipality is unable to

mitigate the harm or whether it simply chooses not to mitigate. Second, Berkeley Township's own Planner, Mr. Slachetka, admitted that Seaside Park maintained excellent bayside beaches despite having ***geography nearly identical to that of the South Seaside Park Bayfront***. T. 11/2/17, 87:4-89:20. As such, Mr. Slachetka said he would encourage Berkeley Township to establish an improved public bayside beach in South Seaside Park. Ibid. Defendants fail to address the inconvenient fact that their own expert refuted their claim that there is "no room to construct a bay beach" in South Seaside Park. Def. Trial Brief at 21. Third, Plaintiffs noted in their Trial Brief that Berkeley Township could have sought a public easement or condemnation over property with riparian grants in order to develop bay beaches, but chose not to do so. Plaintiffs' Trial Brief at 73. As is their habit, Defendants failed to address this point in their Trial Brief, leading to the inescapable conclusion that Berkeley Township simply has no interest in attempting to improve its Bayfront. Clearly, Plaintiffs have shown that they are, and will continue to be, harmed by the lack of bay beaches in South Seaside Park.

Finally, Defendants incorrectly assert that "[t]he fact that Plaintiffs currently pay higher taxes in Berkeley Township does not constitute an economic hardship." Def. Trial Brief at 24. To support their contention, Defendants misread D'Anastasio Corp v. Township of Pilesgrove, 387 N.J. Super. 254, 241 (2006), in which the Court held that reduced property taxes were "clearly an economic benefit to the residents" of a deannexing community. The Court went on to note that denial of deannexation "may not be detrimental to the economic and social well-being of the residents," but only if the residents are still "able to pay the higher property taxes." Ibid. Thus, Plaintiffs' higher taxes in Berkeley Township may very well constitute an economic hardship, as the record here is unclear whether former South Seaside Park residents have previously moved away due to an inability to pay high taxes, or whether current residents may have to do so in the

near future. Moving beyond the D'Anastasio Court's narrowly-tailored analysis of tax impacts, it becomes clear that New Jersey courts consider tax savings a relevant factor in determining economic harm to a petitioning community, as long as the tax savings are not the sole reason for deannexation. See, e.g., Avalon Manor, 370 N.J. Super. at 88-89 (Appellate Division noted that the trial court "acknowledged that Manor residents' having to forego the tax savings resulting from deannexation qualified as a detriment to those residents" and concluded that "[w]e agree with this analysis."); Bay Beach Way, No. A-5733-07 at *3 (ordering township to consent to deannexation when "Plaintiffs testified . . . that the tax consequences were not the sole reason for seeking deannexation.").

During hearings and in their Trial Brief, Plaintiffs documented in great detail how they have been, and would continue to be, harmed by being forced to remain part of Berkeley Township. For all of the reasons described above, Defendants utterly failed to rebut Plaintiffs or to demonstrate that these harms would be mitigated in relevant way. As such, this Court should find that Plaintiffs have more than met their burden under Prong 2.

III. DEFENDANTS IGNORE AND MISREPRESENT OVERWHELMING EVIDENCE SHOWING THAT DEANNEXATION WILL NOT SEVERELY HARM BERKELEY TOWNSHIP SOCIALLY OR ECONOMICALLY.

As an initial matter, Defendants curiously assert that Plaintiffs "barely" discuss Prong 3 in their Trial Brief. Def. Trial Brief at 25. To be clear, Plaintiffs devoted 24 pages (pp. 86-110) to showing that deannexation will not severely harm Berkeley Township socially or economically. As Defendants spend less than 20 pages discussing each Prong in their Trial Brief, it is obvious

that Defendants cannot refute Plaintiffs' arguments on the merits and are reduced to making hypocritical and superficial attacks on the length of Plaintiffs' Trial Brief.[4]

When Defendants actually confront the merits of Plaintiffs' arguments, they are no more successful in rebutting the clear evidence that deannexation will cause, at worst, *de minimis* harm to Berkeley Township that can be easily mitigated. As in the discussion of Prong 2 above, this Brief will not repeat all of the evidence set forth in Plaintiffs' Trial Brief, but will instead simply correct each of Defendants' fallacious assertions regarding the alleged harms that would be caused by deannexation. Prong 3 must be analyzed with the understanding that deannexation necessarily causes a loss of ratables to the home municipality and, thus, the very existence of the Deannexation Statute implies that deannexation may not be denied simply because ratables will be lost. Instead, courts should weigh the significance of this loss when compared to other deannexation cases and after considering factors that mitigate the impact of the loss. See, e.g., West Point Island, 54 N.J. at 348-49 (Court ordered township to consent to deannexation in part because the township's loss of ratables "would be offset by an equivalent reduction in cost of municipal services" provided to the deannexing neighborhood).

The August 6, 2020 Resolution of the Berkeley Township Planning Board (the "Board Resolution"), which recommended denying Plaintiffs' petition and which was cited by the Council as the basis for its decision to deny deannexation, sets forth the specific "economic harm" it considered when making its recommendations. Regarding the matter of potential economic harm due to tax increases, the Board Resolution cited "annual tax increases of $19.00

[4] It must also be noted that Defendants grossly inflate the size of South Seaside Park in an effort to make the effects of deannexation seem more severe. Defendants state that South Seaside Park is "approximately thirty square miles" when in reality, the community is only one-third of a square mile. Def. Trial Brief at 3. Defendants would like to characterize deannexation as a momentous loss of a significant part of Berkeley Township, when in reality it would only affect a small handful of blocks on a narrow strip of sand.

for a home assessed at $100,000.00, $35.00 for the average home assessed at $183.600.00, and $94.00 for a home assessed at $500,000.00". "). See **Exhibit B** annexed to the Certification of Nicholas R. Carlson ("Carlson Cert.") filed along with Plaintiffs' Trial Brief on October 8, 2021. The Board Resolution cited no other specific dollar amounts to support its conclusion that Berkeley Township would allegedly suffer severe economic harm following deannexation, and the reasonableness of the Council's denial of deannexation should be reviewed solely on the basis of these hard numbers set forth in the Board Resolution. Further, while the Board Resolution repeatedly cites the *percentage* loss of Berkeley Township's tax base and *percentage* increases in taxes, reviewing courts must consider "actual tax consequences" to both petitioners and the home municipality. Seaview Harbor Realignment Committee v. Township Committee of Egg Harbor Township, _____ N.J._____, _____(2021), slip op. at 36. The Seaview Harbor Court further explained that, "nothing in the applicable deannexation statute requires the court or municipality to consider tax consequences in terms of percentages or ratios." Ibid.

The "actual tax consequences" specifically cited by Defendants in denying the Deannexation Petition are insubstantial compared to other deannexation cases. Again, the Board Resolution on which denial was based considered tax increases of $19.00 for a home assessed at $100,000.00, $35.00 for the average home assessed at $183,600.00, and $94.00 for a home assessed at $500,000.00.[5] Carlson Cert., **Exhibit B** at 13-15. Defendants, however, desperately attempt to argue that these minor increases represent a significant economic injury, contrary to established deannexation case law. In other deannexation cases addressed by New Jersey courts, the tax increases considered by the reviewing Courts were significantly larger than what Defendants considered in their Resolutions. See, e.g., Citizens for Strathmere & Whale Beach v.

[5] Defendants again conflate Prongs 2 and 3 when they also make reference to ***Plaintiffs***' potential tax savings in their discussion of the alleged harms that would be suffered by Berkeley Township residents. Def. Trial Brief at 28.

Township Committee of the Township of Upper, No. A-1528-10 at *2 (App. Div. August 1, 2012) (deannexation denied when it would "result in an estimated tax increase to the balance of the residents of the Township of $700.00 to the owner of a home assessed at $350,000.00", or a $200.00 increase for a $100,000.00 property); Avalon Manor, 370 N.J. Super. at 84 (deannexation denied when the deannexation would cause "a $75.00 annual increase on a property assessed at $100,000.00"); West Point Island, 97 N.J. Super. at 558 (deannexation ordered by the Court when "the difference in the tax rate without West Point Island ratables would be four points according to the township auditor," or $40.00 for a property assessed at $100,000.00). The property tax increases reviewed in the above cases are ***between two and nine times*** what was cited in the Board Resolution recommending denial of deannexation.[6]

Defendants also note that deannexation will cause an average school tax increase of $121.18 per year for each Berkeley Township homeowner. Def. Trial Brief at 27-28. However, Defendants have offered no evidence to show that this school tax increase is any greater than - or even as high as - the corresponding school tax increases in the cases cited above. When alleged tax increases are viewed in context, it becomes clear that Berkeley Township will suffer significantly less economic harm from tax increases than homeowners in similar cases - even cases where deannexation was ordered by the Court. Similarly, Defendants put great weight on their assertion that the percentage loss of ratables in this matter (10.68%) is greater than the corresponding percentages in several other deannexation cases. Def. Trial Brief at 30. Even in the cases where this is true, it is irrelevant to the analysis. As noted by the Seaview Harbor

[6] It must be noted that the September 21, 2020 Resolution of the Berkeley Township Council – Resolution #20-402-R – does not cite any hard numbers regarding the economic impact of deannexation and merely notes that it considered and accepted the recommendations set forth in the Board Resolution. As such, this Court should find that the final decision to deny deannexation was based solely on the tax impact numbers cited in the Board Resolution, and review the decision's reasonableness accordingly.

Court, economic harm is not measured in the percentage of ratables being deannexed, it is measured in actual dollars lost by residents of the home municipality. The Planning Board affirmatively stated that its recommendation of denial was based on average tax increases ***of fewer dollars*** than those in similar cases. What, then, does the percentage loss of ratables matter if the raw economic impact is so low?[7] Defendants have no answer.

Defendants also argue that a 2% cap on municipal tax increases would prevent Berkeley Township from being able to recoup the loss of tax revenue caused by deannexation. Def. Trial Brief at 31. As an initial matter, Defendants ignore the inconvenient fact that many cost increases are exempt from the 2% cap on municipal tax increases. For example, this cap does not apply to increases needed for, pension obligations, capital improvements, debt service, recycling taxes, or emergencies, among other exemptions. N.J.S.A. 40A:4-45.45 and -4-45.45a. As such, it is spurious to allege that Berkeley Township would not be able to recoup any alleged loss of tax revenue without knowing whether all non-exempt costs can be covered within the 2% cap.

Further, Defendants fail to rebut Plaintiffs' showing that a modest loss of tax revenue would be mostly or entirely mitigated through a number of mechanisms, not only tax increases potentially subject to a 2% cap. For example, Defendants ignore the fact that Berkeley Township could save $1.68 million by eliminating two police cars primarily patrolling South Seaside Park. Plaintiffs' Trial Brief at 100-102.[8] Similarly, Defendants ignore the fact that senior citizens in Berkeley ownship were eligible to register for a freeze on their real property taxes, which would

[7]It must be noted that Defendants' own expert incorrectly calculated the loss of eatables as 11.27 percent before being corrected by Plaintiffs counsel.

[8] Notably, this savings was calculated by Plaintiffs' expert Mr. Moore using patrol data compiled by petitioner Mr. Whiteman. Defendants had the opportunity to rebut these findings, but refused to make available relevant data that could be used to determine the official cost and potential savings from patrol vehicles. As such, this $1.68 million number should be accepted as the most accurate data on this issue. Further, Defendants ignore the fact that, even if police vehicles are not eliminated, Berkeley Township would still benefit from greater police coverage since the current patrol vehicles would no longer be responsible for patrolling South Seaside Park.

completely negate any potential tax increases for them resulting from deannexation. T. 10/4/18, 29:9-31:11. Defendants also ignore the fact that Berkeley Township would realize savings from no longer having to provide road resurfacing services, waste and recyclable collections, snow removal, police service, animal control, or park maintenance to South Seaside Park, among other savings. Plaintiffs' Trial Brief at 104; Ex. A-41 at 12; T.10/1/15, 18:21-19:7. Further, Defendants ignored the fact that two State Assemblymen, Brian E. Rumpf and Christopher J. Connors, confirmed in writing that "secession" of sections of Berkeley Township would ultimately result in additional State aid to the Township, mitigating further the loss of ratables. During hearings, Defendants failed to rebut the findings of this letter and the testimony of Mr. Fulcomer explaining the import of the letter. Plaintiffs' Trial Brief at 104-105; T. 5/5/16, 59:23-70:8. Finally, Defendants ignored the fact that a review of Berkeley Township's 2008 build-out analysis as well as a 2012 analysis of the Transfer of Development Rights ("TDR") obtained by Berkeley Township shows that a significant amount of residential housing, light industrial, and commercial property will more than make up for the loss of the commercially and industrially insignificant community of South Seaside Park. Plaintiffs' Trial Brief at 106-107.

Worst of all, Defendants ***ignored the conclusion of their own expert***, Mr. Ebenau, who testified that Berkeley Township would completely recover economically from deannexation in "probably less than five years." Plaintiffs' Trial Brief at 105-108. The situation here, then, is easily distinguished from the situation in Seaview Harbor Realignment Committee v. Township Committee of Egg Harbor Township, _____ N.J._____, _____(2021), slip op. at 37, in which, "[t]he Township continues to remain in a state of economic stress as a result of state mandates, the failure of the state to adequate[ly] fund programs including the gross receipts revenue, the economic recession, reductions in property values and the casino crisis in Atlantic

City." Thus, the Seaview Harbor Court was justified in finding economic harm because the home municipality could not absorb even a modest $122.78 in increased taxes to the average resident given the grim economic health of the municipality. Id. at 36-37. Here, there is no dispute that Berkeley Township will easily absorb any tax impacts from deannexation and will have equal, or even better, economic health within a handful of years at most.

Even if one ignores all of the savings and mitigation discussed above, the natural growth in population and natural increases in Berkeley Township's yearly budgets and tax levies vastly exceed whatever loss of population and tax base would result from deannexation of South Seaside Park. Ibid.; Ex. A-93; T. 8/6/15, 60:22-61:11. Plaintiffs and Defendants' experts are in agreement: Berkeley Township residents will suffer minimal economic harm following deannexation, and said harm will completely disappear within, at most, five years. It would be unreasonable to classify such harm as "significant" when compared to other deannexation cases and when compared to the vast benefits that would accrue from deannexation.

Defendants devote less than one full page to a discussion of the "significant" social harms that would allegedly be suffered by Berkeley Township, but even this meager defense contains clear inaccuracies. Defendants characterize South Seaside Park as "unique" and cite to the Avalon Court's holding that "the loss of such a ***disproportionately highly valued sector*** of the municipality would inflict a significant social injury." Def. Trial Brief at 32. To the contrary, the record makes it clear that South Seaside Park does not provide unique benefits to Berkeley Township and is not "disproportionately highly valued." Even if it lost the "unique" beach access in South Seaside Park, Berkeley Township would retain a vastly larger and more developed beachfront in Island Beach State Park, as well as several well-maintained bay beaches that simply do not exist in South Seaside Park. Plaintiffs' Trial Brief at 93-95. Similarly, the record

shows that the demographics and workforce of South Seaside Park are not significantly different from those of Berkeley Township as a whole, and that South Seaside Park is not any more "prestigious" or highly valued than several other similar neighborhoods in Berkeley Township. Plaintiffs' Trial Brief at 86-92. In fact, at least one neighborhood (Pelican Island) has higher home values than South Seaside Park, while another neighborhood (Bayside North) has a significantly higher median household income. Ibid. The Planning Board's own attorney, Mr. Koutsouris, accepted photographs showing that the houses on South Seaside Park are modest and no larger or more prestigious than housing throughout Berkeley Township. T. 11/5/15, 70:13-21. Finally, Plaintiffs produced evidence and testimony showing that South Seaside Park does not have any special historical buildings or districts, or any other unique zoning that would cause Berkeley Township to lose an irreplaceable part of its essence. Plaintiffs' Trial Brief at 92-93. A fair, apples-to-apples comparison of South Seaside Park to similar neighborhoods within Berkeley Township shows that South Seaside Park is not unique in any way and that Berkeley Township residents would retain the same level of social diversity, prestige, and recreational opportunities even if deannexation were successful.

CONCLUSION

For all of the above reasons, this Court should find that Plaintiffs have more than met their burden under Prongs 1, 2, and 3 to show that denial of their Deannexation Petition was unreasonable and based on unjust and unlawful conduct by Defendants. Defendants' efforts to rebut Plaintiffs' evidence, testimony, and arguments do not stand up to scrutiny and, in many places, do not even address the relevant issues in dispute in this matter. Given that more than seven (7) years have already been devoted to this matter, the only just solution would be for Plaintiffs to be allowed to move forward with their decades-long effort to leave Berkeley

Township and join adjacent Seaside Park. This Court is respectfully requested to overturn Defendants' denial of the Deannexation Petition for being arbitrary, capricious, and unreasonable, and to order Berkeley Township to immediately consent to deannexation.

DATE: February 28, 2022

Respectfully submitted,

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