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Rev. Thomas Murphy, Rev. Gary)	SUPERIOR COURT OF NEW JERSEY
Commins, Ashraf Eisa, Rev. William)	HUDSON COUNTY
Henkel, Rev. Frances Teabout, Rev.)	LAW DIVISION
Elaine Ellis Thomas, and Rev. Laurie)	
Jean Wurm,)	Docket No.
)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	
)	
Hudson County Board of Chosen)	COMPLAINT
Freeholders,)	IN LIEU OF PREROGATIVE WRIT
)	
Defendant.)	

Plaintiffs Rev. Thomas Murphy, Rev. Gary Commins, Ashraf Eisa, Rev. William Henkel, Rev. Frances Teabout, Rev. Elaine Ellis Thomas, and Rev. Laurie Jean Wurm, through their undersigned attorneys, state their Complaint against Defendant Hudson County Board of Chosen Freeholders as follows:

PRELIMINARY STATEMENT

1. This action is brought by seven religious leaders of Hudson County to vindicate the public’s interest in government transparency and accountability. They seek to ensure that important public policy decisions are made after thoughtful public deliberation and that governments do not shield themselves from public scrutiny through subterfuge.

2. New Jersey’s Sunshine Law requires that public bodies perform their deliberation, policy formulation, and decision making through open public meetings. It declares the public’s right to be present at these meetings “vital to the enhancement and proper function of the democratic process. . . .” Open Public Meetings Act, N.J.S.A. 10:4-7. Defendant the Hudson County Board of Chosen Freeholders has flouted its obligations under the Sunshine Law by voting to renew a contract with U.S. Immigration and Customs Enforcement in a process that reeked of secrecy and deception.

JURISDICTION AND VENUE

3. Plaintiffs bring this proceeding in lieu of prerogative writ pursuant to the Open Public Meetings Act, commonly referred to as the Sunshine Law, N.J.S.A. 10:4-15. This Court has jurisdiction over this action pursuant to R. 4:69-1.

4. Venue is proper in Hudson County pursuant to R. 4:3-2(a) because Defendant is located in Hudson County.

PARTIES

5. Plaintiffs are seven religious leaders of Hudson County who have been active in immigrants’ rights and other issues of social justice and, as part of a group of fifty-six signatories, published a statement condemning Defendant’s July 12, 2018 action to renew Hudson County’s contract with U.S. Immigration and Customs Enforcement (“ICE”). Plaintiffs bring this suit in their individual capacities as people of conscience and not as formal representatives of their congregations.

6. The Rev. Thomas Murphy is an individual who resides in Jersey City, Hudson County, New Jersey. He serves as Rector of St. Paul’s Episcopal Church in Jersey City. He is “any person” who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

7. The Rev. Gary Commins is an individual who resides in Bayonne, Hudson County, New Jersey. He serves as Associate Priest at St. Paul's Episcopal Church and Church of the Incarnation in Jersey City. He is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

8. Ashraf Eisa is an individual who resides in Jersey City, Hudson County, New Jersey. He serves as Board Member of the Islamic Center of Jersey City. He is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

9. The Rev. William Henkel is an individual who resides in Secaucus, Hudson County, New Jersey. He served as Pastor at the First Reformed Church of Secaucus and is a member of the Reformed Church of America. He is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

10. The Rev. Frances Teabout is an individual who resides in Roselle, Union County, New Jersey. She serves as Pastor at the Open Door Worship Center in Jersey City. She is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

11. The Rev. Elaine Ellis Thomas is an individual who resides in Hoboken, Hudson County, New Jersey. She serves as Rector at the All Saints Episcopal Parish in Hoboken. She is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

12. The Rev. Laurie Jean Wurm is an individual who resides in Maplewood, Essex County, New Jersey. She serves as Rector at Grace Church Van Vorst in Jersey City. She is "any person" who is authorized to bring this action in accordance with N.J.S.A. 10:4-15.

13. Defendant Hudson County Board of Chosen Freeholders ("the Board") is a public body as that term is defined by N.J.S.A. 10:4-8(a). The Board serves as the legislative body for

Hudson County, New Jersey. It is comprised of nine elected Freeholder members, including Freeholder Chairman Anthony P. Vainieri, Jr.

FACTUAL ALLEGATIONS

Hudson County's Contract with Immigration and Customs Enforcement

14. Since before the United States even created the agency called ICE, Hudson County, New Jersey has had a contract with the federal government to house immigrant detainees at the Hudson County Correctional Center ("the jail"). Entered into by Hudson County, the U.S. Marshals Service, and the Immigration and Naturalization Service ("INS," the predecessor agency to ICE), the previous contract took effect on January 1, 2003 and expired on January 1, 2018. Over the course of the fifteen-year period, Hudson County has detained thousands of immigrants who are booked into the jail under ICE custody, often in removal proceedings.

15. On January 2, 2018, Hudson County's contract with ICE technically expired according to its terms. Nevertheless, the county continued to house some 800 immigrant detainees on that day and any given day thereafter. Many of these immigrants had been living in the United States, especially New Jersey and New York, for years, contributing to their communities and supporting U.S. citizen children, spouses, and elderly family members. Many had been torn apart from their families by ICE without warning: for example, Pablo Villavicencio, who was taken into ICE custody while delivering pizza to a military base, or Antonio Martinez, who was taken into ICE custody when he and his wife attended an interview with immigration authorities as part of a process that would allow him to obtain a green card. Detained for months in the Hudson County jail, each of them was separated from their U.S. citizen wife and two young children.

16. Under the terms of the ICE contract, Hudson County may not be able to determine the ultimate result of the immigration cases of its detainees, but it does enable ICE to continue its

widespread and indiscriminate detentions. Although Mr. Villavicencio and Mr. Martinez ultimately returned to their families when they were released from Hudson County jail, many immigrant detainees are released from the jail because they are deported, in some cases when they barely know the country of their birth or have fled to the United States out of fear for their lives and now call the United States, or New Jersey, home.

17. Through December 2017, ICE paid Hudson County \$77.00 per detainee per day (the “bed/day rate”). From January 1 through May 31, 2018, the bed/day rate increased to \$110.00.

Public Concern and Opposition to Detention of Immigrants in Hudson County

18. The detention of immigrants at the Hudson County jail has been an issue of significant public concern and opposition. In the last year, local, state, and even national media have reported on the jail. Across New Jersey, religious leaders such as Plaintiffs, as well as immigrants’ rights advocates and others activists, have mobilized in opposition to local governments’ cooperation with ICE and other federal authorities, including in Hudson County.

19. Significant public pressure and media attention first focused on Hudson County’s cooperation with ICE through the controversial federal program known as 287(g), by which Hudson County staff were deputized to assist ICE by determining and flagging the immigration status of people confined at the jail. For years, members of the public attended Defendant’s regular meetings to voice their opposition to the 287(g) participation. At a Board meeting in February 2018, a number of Freeholders publicly stated their opposition to the program, and in early March Hudson County announced its withdrawal from 287(g).

20. Additional public pressure and media attention have focused on the quality of medical care at the jail, including as it affects immigrant detainees housed there. During the period from June 2017 to March 2018, six people died in custody at the jail. The first death was in

immigration detention and, of the five others, four were by suicide. Responding to public outcry, Defendant undertook an investigation into and overhaul of the medical care provided at the jail, arrangements of which are still being finalized.¹

21. More recently, public pressure and media attention have turned to the renewal of the County's contract with ICE. Hudson County, in which 43 percent of the population is foreign born, is one of three counties in New Jersey to receive money from ICE for housing immigrant detainees. From January 2015 to March 2018, ICE's annual payments to Hudson County increased by over 53 percent, as shown by invoices provided to WNYC News.²

22. Responding to the WNYC story on July 11, Jersey City Mayor Steven Fulop made the following statement on Twitter: "Hudson County should come together + walk away from this contract. If our actions on immigration, families, aren't consistent w/what we say it undermines credibility on all issues. As a county we shouldn't be involved in helping to break up families."

23. All of the above having occurred publicly, Defendant knew that the detention of immigrants at the Hudson County jail was an issue of extraordinary public concern, interest, and opposition.

¹ See, e.g., Monsy Alvarado, "After latest suicide, Hudson County takes steps to terminate jail's medical provider," Northjersey.com (Mar. 26, 2018), <https://www.northjersey.com/story/news/udson/2018/03/26/after-latest-suicide-hudson-county-takes-steps-terminate-jails-medical-provider/458826002> (quoting Board Chairman Vainieri and Freeholder O'Dea). See also Human Rights First, *Ailing Justice—New Jersey: Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention* (Feb. 2018), <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf>. For readability, citations containing web links are included as footnotes.

² Matt Katz, "Under Trump, Democratic New Jersey Counties Cash in on Detaining Immigrants," WNYC News (July 11, 2018), <https://www.wnyc.org/story/under-trump-liberal-new-jersey-counties-cash-in-detaining-immigrants/>.

The Board's July 10 Unanimous Vote to Postpone the ICE Contract Renewal

24. On July 10, 2018, Defendant convened a Caucus meeting, with Board Chairman Vainieri and Freeholders O'Dea, Romano, Torres, and Walker in attendance. At the Caucus meeting, Defendant's practice is to confirm the agenda for the upcoming regular meeting.

25. Approximately halfway through the Caucus meeting, the Freeholder Clerk announced Resolution No. 32, authorizing an Intergovernmental Services Agreement ("the contract") with ICE for the housing of immigrant detainees at the Hudson County jail. Freeholder Romano offered to sponsor the resolution, seconded by Chairman Vainieri.

26. As shown in the below exchange from the transcript of the meeting, Freeholders Torres and O'Dea asked to postpone the item until August, so they could review the contract before voting on it. Chairman Vainieri and the County Administrator Abraham Antun remarked that the resolution was simply a renewal of the old contract. However, on a motion to postpone or "carry" the resolution, the five Freeholders present at the meeting, including Chairman Vainieri, voted unanimously to postpone the item until August:

THE CLERK: Resolution No. 32, a resolution authorizing an Intergovernmental Services Agreement with Immigration and Customs Enforcement, ICE, for the housing of Federal Prisoners at the Hudson County Correctional and Rehabilitation Center.

FREEHOLDER ROMANO: Sponsor.

CHAIRMAN VAINIERI: Second.

FREEHOLDER TORRES: Can we move this to the August meeting so we can look at the contract?

CHAIRMAN VAINIERI: I'm sorry?

FREEHOLDER O'DEA: Freeholder Torres asked whether we can be provided a copy of the contract with ICE.

CHAIRMAN VAINIERI: There's been an [sic] sponsor and a second, so it's on the agenda.

FREEHOLDER O'DEA: The contract falls within that time frame?

CHAIRMAN VAINIERI: If you want to make a motion, it doesn't matter to us. All I'm saying is that contract, we have provided that in the past. It goes back to 2008. All we're doing is continuing that.

FREEHOLDER TORRES: I make a motion to carry this until August.

FREEHOLDER O'DEA: I'll second. Can we get a copy?

MR. ANTUN: I have sent it in the past. Nothing really has changed. [The Clerk takes a vote on the motion to carry, with all five Freeholders, including Chairman Vainieri, voting "yes."]

FREEHOLDER O'DEA: The resolution says the agreement was 2003.

MR. ANTUN: It was a 15-year agreement. I'm sorry. It was a 15-year agreement. I'm sorry. I don't know why 2008 stuck in my head. You're right. It was a 15-year agreement, 2003. That's correct. Thank you, Freeholder.

CHAIRMAN VAINIERI: No. 33 [and the Board moves on to the next agenda item].

[Ex. A, Tr. 30:3-31:25.]

The Board's Notification to the Public of That Postponement, with Reliance Thereon

27. After the agenda has been approved at the Caucus meeting, it is Defendant's practice to post the regular meeting agenda on the Hudson County website. Members of the public are aware of this practice, check the website in advance of the regular meetings, and make decisions about attending the meeting based on these representations by Defendant.

28. In advance of its July 12 regular meeting, Defendant posted an agenda that listed item number 32 as follows: "**(CARRIED)** – Corrections – Resolution authorizing an Intergovernmental Services Agreement with Immigration and Customs Enforcement (I.C.E.) for the housing of Federal Prisoners at the Hudson County Correctional and Rehabilitation Center." Defendant, by and through the Freeholder Clerk and other county staff, also confirmed orally to interested members of the public that the matter was postponed until August.

29. In reliance on these representations by Defendant, members of the public understood the ICE contract would not be voted upon and therefore chose not to attend or otherwise mobilize their communities to participate in the July 12 meeting. Some explicitly told colleagues not to join once they learned of the postponement.

30. For example, Declarant Father Eugene Squeo, retired co-pastor of St. Patrick's Church in Jersey City and longtime immigrants' rights advocate, checked the agenda on the Hudson County website at or around 11:00 a.m. on July 12, two hours before the start of the meeting. He saw the annotation "carried" next to the ICE contract agenda item and took that to mean the discussion and vote were deferred. Relying on Defendant's representation, he decided not to attend that month's meeting. Had the item been scheduled, he had planned to attend the meeting to hear the Freeholders' positions and to share his own during the public comment section. Squeo Decl., Ex. B.

31. Declarant Serges Demefack, Project Coordinator in the Immigrant Rights Program at the American Friends Service Committee ("AFSC") in Newark, did attend the meeting. A copy of the agenda was distributed in the meeting room that indicated that the vote on item 32, the ICE contract, was "carried." Immediately upon reading this, Mr. Demefack approached the Freeholder Clerk, Alberto Santos. Mr. Santos told Mr. Demefack that the term "carried" indicated that the contract item had been postponed to the August 9 session. Had Mr. Demefack understood the contract was to be discussed and voted upon that day, he would have mobilized advocates, including colleagues at AFSC, to attend the meeting and express their strong opposition to the contract. Demefack Decl., Ex. C.

32. Declarant Anna Brown, Ph.D., Chair of the Department of Political Science and Director of the Social Justice Program at Saint Peter's University in Jersey City, attended the meeting along with two fellow activists, because she had heard the contract renewal might be voted on at an upcoming meeting. Upon her arrival around 12:45 pm, she received a copy of the agenda distributed in the meeting room. Next to item 32, she read the word "carried." Not knowing what this meant, Ms. Brown sought clarification from a County employee, who was seated at a desk by

the Freeholders' dais and whom Ms. Brown knows from past meetings to be responsible for transcribing the proceedings. The County employee told Ms. Brown that "carried" meant that the item was postponed until a future meeting. In reliance thereon, Ms. Brown and the two other activists left the meeting. At 1:04 pm on July 12, based on the agenda annotation and the County employee's clarification, Ms. Brown emailed a Google group listserv of immigrants' rights advocates the following message: "The discussion of the ICE contract will be carried to the next meeting or the one after. They will not discuss it today." The message was sent to the group's 224 members, including one of the Plaintiffs. It is Ms. Brown's experience that some members of the group come to the meetings late, especially if the meeting is scheduled during the workday. Based on her knowledge of this group and activist community, Ms. Brown expected some members chose not to attend the meeting based on her message. Brown Decl., Ex. D.

33. Accordingly, Defendant's written and oral representations led the public to believe that the ICE contract renewal was not scheduled for the July 12 meeting and that it was therefore unnecessary for them to attend the meeting to express their views and witness Defendant's deliberation and decision making, as contemplated by the Sunshine Law's Legislative Findings and Declaration provision, N.J.S.A. 10:4-7.

The Board's July 12 Surprise Vote to Renew the ICE Contract

34. On July 12, 2018 at 1:00 p.m., Defendant convened its regular meeting before Board Chairman Vainieri and Freeholders Kopacz, O'Dea, Romano, Torres, and Walker, with Freeholder Rodriguez joining via telephone.

35. Defendant moved quickly through the routine meeting process: roll call, Pledge of Allegiance, recitation of annual notice of meeting schedule, and approval of previous meeting minutes. In the section devoted to the agenda discussion, Administrator Antun suggested the

addition of a “professional service contract for the medical health care management and fiscal management at Hudson County Correctional Rehabilitation Center for year one in the amount of \$7,675,073.60.” That matter was moved onto the agenda: “THE CLERK: That will be No. 50. Do Freeholders have additional comments? MR. ANTUN: That is just the same. This is 32, Mr. Chairman. I have nothing further.” Ex. E, Tr. 5:25-6:11.

36. A minute or two later, the Clerk asked the Chairman’s permission to move on to the two hearings on the agenda. The Chairman stopped him as follows:

THE CLERK: May I proceed?

CHAIRMAN VAINIERI: I’m going to make a motion to put 32 back on the agenda today. I’ll sponsor. I need a second, please. Second by Freeholder Romano. It’s back on the agenda.

THE CLERK: On the motion to vote 32 back for this meeting, Freeholder Kopacz.

FREEHOLDER KOPACZ: Yes.

THE CLERK: O’Dea.

FREEHOLDER O’DEA: With respect to my colleague, I ask that this be held so we can study it.

THE CLERK: Freeholder Rodriguez.

FREEHOLDER RODRIGUEZ: Yes.

THE CLERK: Romano.

FREEHOLDER ROMANO: Yes.

THE CLERK: Torres.

FREEHOLDER TORRES: Let me make this clear and put on the record, it’s nothing against the County, the County’s stance or the Administration’s stance, or the work that’s done at the facility, but I do think that we should take the time to look at the situation, especially with the current status of our country, and I know on a federal level, we can’t do much about that. We do need to have a voice in that, so I’m going to say no.

THE CLERK: Freeholder Walker.

FREEHOLDER WALKER: Yes.

THE CLERK: Chairman Vainieri.

CHAIRMAN VAINIERI: Yes.

THE CLERK. No. 32 is back on the agenda.

[Ex. E, Tr. 6:20-8:1.]

37. As the Clerk summarized later during the meeting, “32 was removed, carried and put back on today’s agenda. . . .” Ex. E, Tr. 58:9-10.

38. As is Defendant’s practice, by and through its Freeholder Clerk, toward the end of the meeting, the Clerk sought a “[m]otion to approve the items on the consent agenda” via roll call vote, rather than discussing and voting on each item individually. Id. at 69:5-6. Freeholder Kopacz voted yes on all. Freeholder O’Dea voted no on 32, abstained on another item, and voted yes on the rest. Freeholders Rodriguez and Romano voted yes on all. Id. at 69:13-22.

39. When Freeholder Torres was called, he noted, “This is the second time I asked for a courtesy, just knowing that it’s not an emergency . . . but we approved it at the Caucus meeting, and suddenly we’re doing it at the regular meeting. . . . Before calling for a vote for, what is the legal services amount for individuals who are detained in the facility?” Donato J. Battista, Hudson County Counsel, Administrator Antun, and the Director of the jail each provided an answer. Id. at 69:25-70:15

40. Freeholder Torres began to respond, “My concern—” but Chairman Vainieri interrupted him, “We are in the middle [of] a vote.” Freeholder Torres continued, “No. I mean this is the kind of the reason I was asking to carry it over, so I can get some insight.... We’re just talking about having that conversation before going to a vote. I don’t understand why we have to rush toward voting. . . . I vote no on Item No. 32. . . .” Chairman Vainieri then instructed the Clerk, “Continue, please” and the remaining three Freeholders, including the Chairman, voting yes on all. Id. at 71:16-72:16

41. The ICE contract renewal thus passed by a 5-2 vote, with two additional Freeholders not present. Ex. F, Resolution at 4. The renewal retroactively took effect beginning January 2, 2018 and is for the “longest period of duration allowed by law.” By its terms, “[a]s of

June 1, 2018 the bed/day rate will be \$120.00 per detainee.” Id. at 1. With approximately 800 immigrant detainees each day, that could amount to some \$35 million paid by ICE to Hudson County per year.

42. Members of the public, including those present at the meeting, were taken by surprise that the vote was performed without notice and so suddenly. See Demefack Decl., Brown Decl. Declarant Anna Brown, who had left the meeting after learning the item was postponed and had notified the group of 224 activists similarly, received text and Facebook messages from others who were at the meeting, telling her that the contract had been added back to the agenda and would be voted on immediately. Ms. Brown rushed back to the meeting and arrived in time to express her opposition, along with Declarant Demefack. But for those messages, she would have missed the entire public comment section.

43. After the vote, Freeholder O’Dea noted, “I was not in a rush to vote on 32, and I saw no need to rush it.” Id. at 72:19-20. Freeholder Torres added, “I’ll state it for the second time I tried to see if we could get advisory, and we agreed on something at caucus that was approved at the regular meeting, and I don’t understand why the rush.” Id. at 77:2-6.

44. Freeholder O’Dea had a further conversation with the jail director, which Chairman Vainieri cut off:

FREEHOLDER O’DEA: Today, how many detainees are at the Correctional facility?

DIRECTOR EDWARDS: Approximately 800.

FREEHOLDER O’DEA: And how [many] non-detainees?

DIRECTOR EDWARDS: Approximately 400.

FREEHOLDER O’DEA: That speaks volumes, I guess.

CHAIRMAN VAINIERI: Continue with the meeting, Mr. Clerk.

[Id. at 75:4-13.]

45. According to County Counsel, the contract approved on July 12 gives Hudson County a sixty-day right to terminate. Id. at 75:1-2.

Board Chairman’s Subsequent Statement to the Public: “You Don’t Have to Come to the Meeting; Just Let Us Do Our Work”

46. Plaintiffs and other members of the public were misled and deceived by Defendant’s representations that the ICE contract renewal would not be decided at the July 12 meeting. The public outcry was loud.

47. Public figures, city councils, and community leaders immediately condemned the surprise vote. For example, on the morning of July 13, Hoboken Mayor Ravinder Bhalla tweeted the following message: “It is disheartening that @HudCoTweet approved a new contract with @ICEgov. This is a disgrace & an affront to our values as Americans. It does not reflect the will of the residents of #Hoboken or the County & I urge the Freeholder Board to initiate the 60 Day Opt-Out Clause NOW!”

48. On August 1, the Hoboken City Council unanimously passed a resolution urging Defendant to terminate the contract, noting that “Hudson County did not provide the public with any meaningful open dialogue about the contract before it was voted on” and that “the vote on the contract was placed on the agenda at the last minute. . . .” On August 15, the Jersey City Council unanimously passed a similar resolution urging termination of the contract and condemning the process by which the vote occurred.

49. On August 7, a group of fifty-six local religious leaders published a statement in opposition to the contract renewal. Plaintiffs were among the signatories. The statement called Defendant’s actions “entirely undemocratic. Perhaps expecting that there would be a public outcry in response to their vote, a majority of the Freeholder Board voted to hold a vote on contract renewal, having already announced that they would postpone the vote to allow for public input

and further consideration. The county has also refused to release the contract to the public.” The statement concluded, “We will be at the next Freeholder Meeting, on August 9th at 1 PM. We encourage all people of conscience to be there with us to hold our elected representatives accountable. We live in the shadow of the Statue of Liberty. Our common history and our current political moment demand nothing less.”

50. Plaintiffs shared the statement with Hudson County community members and brought copies to the August 9 meeting. Each Freeholder received a copy.

51. The public turned out in enormous numbers to Defendant’s August 9 meeting, which lasted four hours. Activists demonstrated outside the building and then filled the meeting room to capacity, with standing room only. According to accounts, it may have been the largest attendance of a meeting of the Hudson County Board of Chosen Freeholders in recent history. See Demefack Decl., Ex. C.

52. Indeed, the public attendance in response to the surprise ICE contract vote was so extensive that there was an oral motion to move the September 13 meeting to a larger venue at a local school. Chairman Vainieri and five other Freeholders voted no; three Freeholders voted yes.

53. Freeholder O’Dea called the refusal to move the meeting to enable full public attendance a demonstration that his colleagues “lack courage. Why do you lack courage? Because last month we sat here on a Tuesday afternoon and we stated we were going to delay consideration of a ten-year extension or renewal of an ICE contract to this meeting. I now wonder what the motives were after unanimously it was agreed to carry that meeting . . . to have a full discussion, to gather all the info we need. But what happened two days later? Despite having agreed to carry

an item of this magnitude of importance where there is need for input from committees, review, public etc., it was ramrodded through this Board and approved at the July meeting.”³

54. Chairman Vainieri suggested that those Freeholders who voted to move the September meeting could have an “open forum yourself at the school, with some Freeholders, not five – don’t make it a public Freeholder meeting – invite Edwards and any other personnel . . . so you don’t have an Open Public Meeting, you can have an open forum with the public. . . . So why don’t you three [who voted yes on moving the meeting to a larger venue] just get together, make a date, get the advocates together, work with the people in the audience. . . . You can do it on your own.” In other words, Chairman Vainieri suggested that a non-majority of the Freeholders meet with the public instead, so that they would not have to comply with the Sunshine Law.⁴

55. Before the public comment section of the August meeting, Chairman Vainieri addressed the crowd in attendance: “So I don’t know what you’re barking at. You’re barking up the wrong tree. . . . We’re not going to change it overnight. We can sit here until 9 o’clock and listen to everything. It’s not going to change anything right now.”

56. In an interview with the Hudson County View, a local television station, the following week, Chairman Vainieri responded to the public’s interest in the Board’s decision making. He told the public, “You don’t have to come to the meeting. Just let us do our work.”

57. Of course, the Sunshine Law mandates that this very work be done through public meetings.

³ As of August 24, 2018, by confirmation of the Freeholder Clerk Alberto Santos, the transcript for the August 9 meeting was not yet available from the County. Accordingly, citations in this Complaint to the August meeting are transcribed verbatim from video or audio clips of the meeting, some of which have been posted on YouTube or Facebook, as recorded by members of the press and public pursuant to the Open Public Meetings Act.

⁴ The Open Public Meetings Act defines “meeting” to exclude gatherings attended by less than an effective majority of the members of a public body. N.J.S.A. 10:4-8.

COUNT ONE

**Violation of the New Jersey Open Public Meetings Act
(brought under N.J.S.A. 10:4-15)**

58. Plaintiffs incorporate and adopt Paragraphs 1 through 57 of this Complaint.

59. The actions of Defendant described herein violate the right of the public, including Plaintiffs, under New Jersey’s Sunshine Law “to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies” which “is vital to the enhancement and proper function of the democratic process. . . .” Open Public Meetings Act, N.J.S.A. 10:4-7.

60. The actions of Defendant described herein violate the right of New Jerseyans, including Plaintiffs, “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. . . .” Id.

61. Defendant knew that Hudson County’s contract with ICE was a matter of extraordinary public interest and concern. With such knowledge, Defendant called for a surprise vote on the matter, thereby acting in secret on a matter affecting the public. Such “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society. . . .” Id.

62. Defendant’s decisions to agree unanimously to postpone the ICE contract renewal until August, to affirmatively notify the public of the postponement, and then to re-introduce and vote upon the contract in July were intentional and calculated to mislead. The publication of the July 12 agenda with an annotation that the ICE contract renewal was postponed was an intentional omission of a planned agenda item and was designed to deceive the public, thereby giving rise to a statutory violation.

63. Accordingly, Defendant's July 12, 2018 action renewing Hudson County's contract with ICE violates New Jersey's Sunshine Law and is voidable pursuant to N.J.S.A. 10:4-15.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the Defendant:

- a. Voiding the July 12, 2018 decision by Defendant the Hudson County Board of Chosen Freeholders to renew the County's contract with ICE to house immigrant detainees, as a violation of the Open Public Meetings Act.
- b. For fees and costs of suit.
- c. Any further relief this Court deems just and equitable and any other relief as allowed by law.

NO JURY DEMAND

Plaintiffs do not demand trial by jury in this action.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs designate Tess Borden as trial counsel.

Dated: August 27, 2018



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