BOROUGH OF ENGLEWOOD CLIFFS, Plaintiff-Petitioner, v. THOMAS J. TRAUTNER, ALBERT WUNSCH, JEFFREY R. SURENIAN, JOSEPH MARINIELLO, JR 800 SYLVAN AVENUE, LLC, CHIESA SHAHINIAN & GIANTOMASI PC, JEFFREY R. SURENIAN AND ASSOCIATES, LLC, MARINIELLO & MARINIELLO PC, AND UNNAMED CO-CONSPIRATORS, Defendants-Respondents.	SUPREME COURT OF NEW JERSEY DOCKET NO.: 098406 Civil Action ON SOUGHT CERTIFICATION FROM SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-002765-21 SAT BELOW: Hon. Thomas W. Sumners, Jr., C.J.A.D. Hon. Lisa Rose, J.A.D. Hon. Morris G. Smith, J.A.D.

DEFENDANTS-RESPONDENTS THOMAS J. TRAUTNER AND CHIESA SHAHINIAN & GIANTOMASI PC'S BRIEF IN OPPOSITION TO PLAINTIFF-PETITIONER'S PETITION FOR CERTIFICATION

On the brief:

A. Matthew Boxer (025331995)
Peter Slocum (037762010)
Julie A. Minicozzi (340702021)
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
973.597.2500
mboxer@lowenstein.com
pslocum@lowenstein.com
jminicozzi@lowenstein.com

Attorneys for Defendants-Respondents Thomas J. Trautner and Chiesa Shahinian & Giantomasi PC

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Defendants-Respondents Thomas J. Trautner ("Trautner") and Chiesa Shahinian & Giantomasi PC ("CSG", collectively with Trautner, the "CSG Defendants") respectfully submit this brief in opposition to the Petition for Certification filed by Plaintiff-Petitioner the Borough of Englewood Cliffs (the "Borough").

PRELIMINARY STATEMENT

The Borough pursued a frivolous lawsuit against its former attorneys based on unfounded allegations of malpractice and conspiracy that were contradicted by the Borough's own undisputed public statements and documents. The CSG Defendants promptly warned the Borough that its claims were baseless and demanded their immediate withdrawal. The Borough nonetheless continued to litigate this matter at the CSG Defendants' significant expense, which ultimately resulted in a dismissal with prejudice for substantially the same reasons explained in the CSG Defendants' frivolous litigation notice. Finding ample evidence that the Borough acted in bad faith in pursuing its claims, the Law Division awarded partial attorneys' fees to the CSG Defendants (and other defendants) upon consideration of their motions for sanctions under the Frivolous Litigation Statute, N.J.S.A. 2A:15-59.1 (the "FLS") and Rule 1:4-8.

The Borough appealed the trial court's decision to grant sanctions and argued the court erred in granting the fee awards on several grounds, each of which the Appellate Division panel found had no support in the law or the record.

The Borough has now submitted a Petition for Certification on the discrete issue of whether the FLS grants public entities immunity from sanctions liability. The Borough's arguments again find no support in the law or the record. The Appellate Division made a sound determination that the FLS's plain language and purpose demonstrate that public entities are not immune from sanctions for vexatious pleadings.

For all the reasons that follow, respectfully, this Court should deny the Petition for Certification.

FACTS AND PROCEDURAL HISTORY[1]

A. Underlying Affordable Housing Litigation

This matter originally arises from a June 30, 2015 declaratory judgment action, In the Matter of the Borough of Englewood Cliffs, Docket No. BER-L-6119-15, in which the Borough requested that the trial court declare its Housing Element and Fair Share Plan to be constitutionally compliant with the Mount

[1] The CSG Defendants present the intertwined facts and procedural history relevant to this appeal together for ease of reference.

Laurel doctrine (the "Affordable Housing Litigation"). (See Pa057; Pca04.)[2] CSG and the other retained counsel (the "Attorney Defendants") strongly advised the Borough to settle the litigation prior to trial due to the weakness of the Borough's position. (See CSGa65, CSGa176–213.) The Borough declined to follow CSG's advice, and the matter proceeded to trial; the Borough did not prevail. (See ibid.) The Borough thereafter publicly praised the CSG for having properly advised and represented the Borough in the litigation and entered into a settlement on terms the Council deemed fair and reasonable. (See CSGa238–42.)

Two of the six Council seats were on the ballot during the November 2020 General Election. That intervening election changed the makeup of the Borough's Council effective January 1, 2021. (See CSGa66, CSGa136–70.) Shortly after that change in political power, the newly constituted Council voted to terminate the Borough's lawyers. (CSGa66.) The new regime then began pursuing litigation against the Attorney Defendants.

[2] "Pa" denotes the Borough's appellate appendix filed on August 1, 2022. "1T" denotes the March 18, 2022 transcript on the oral argument of Defendants' motions for sanctions. "CSGa" denotes the CSG Defendants' appellate appendix filed on September 1, 2022. "Pca" denotes the appendix to the Borough's May 29, 2024 Amended Petition for Certification. "Pcb" denotes the Borough's memorandum of law in support of its May 29, 2024 Amended Petition for Certification.

B. Subsequent Malpractice Litigation

On September 1, 2021, the Borough filed a Complaint against the Attorney Defendants and 800 Sylvan, asserting claims of professional malpractice, breach of contract, unjust enrichment, civil conspiracy, and aiding and abetting. (Pa0001–45; Pca18.) The Borough amended its Complaint on October 18, 2021 (the "First Amended Complaint"). (Pa046–92; Pca05.)

On November 4, 2021, the CSG Defendants sent a frivolous litigation letter to Stone & Magnanini LLP ("SM"), the law firm representing itself as the Borough's counsel, and Cadwalader, Wickersham & Taft LLC ("Cadwalader").[3] (CSGa95–98.) The letter stated that it was sent pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59.1, and demanded that the Borough withdraw its pleading. (Ibid.) The Borough declined to withdraw the First Amended Complaint.

On November 22, 2021, the CSG Defendants moved to dismiss the First Amended Complaint for failure to state a claim upon which relief could be granted. (CSGa99–100.)

On January 21, 2022, the Honorable Christine A. Farrington, J.S.C. entered an Order dismissing the First Amended Complaint against the CSG

[3] Two attorneys from Cadwalader sought admission *pro hac vice*, but the trial court denied their applications on November 19, 2021. (CSGa1–16.) SM thereafter continued the representation without Cadwalader.

Defendants with prejudice. (Pa102; Pca19.) The Borough did not appeal the January 21, 2022 Order dismissing the First Amended Complaint.

On February 23, 2022, the CSG Defendants filed a motion for attorneys' fees and costs against SM under Rule 1:4-8 and against the Borough under the FLS. (CSGa312–13.) Defendants Wunsch, Surenian, and 800 Sylvan also moved for fee awards on the ground that the Borough's claims against them were frivolous. (Pa101; Pca18.) SM and the Borough opposed each Defendant's motion.

On March 18, 2022, the trial court heard oral argument on Defendants' motions, (1T), and entered orders authorizing a partial award of attorneys' fees for the CSG Defendants, 800 Sylvan, and Surenian, as well as costs for Wunsch, (Pa93–118; Pca18–35).

On April 5, 2022, shortly before the Law Division entered final judgments for each successful Defendant, the Borough sought interlocutory review of the March 18, 2022 orders. The Appellate Division denied interlocutory review on April 25, 2022. (CSGa77–78.)

Altogether, the court ordered the Borough to pay $216,484.45 to Defendants for having engaged in frivolous litigation. (See Pa176–83; Pca06.) The Borough filed a new notice of appeal on May 12, 2022. (CSGa79–87.)

On April 22, 2024, the Appellate Division issued a published opinion, discussed infra, in which it affirmed the trial court's March 18, 2022 orders. Borough of Englewood Cliffs v. Trautner, ___ N.J. Super. ___, No. A-2765-21, 2024 N.J. Super. LEXIS 37, at *28–29 (App. Div. Apr. 22, 2024).[4]

On May 23, 2024, the Borough filed a Petition for Certification, and subsequently filed the instant Amended Petition for Certification on May 29, 2024.[5]

C. Appellate Division's Decision

In a published decision the Appellate Division panel examined and rejected the Borough's contentions that "the sanction applications were procedurally deficient; as a public entity, [the Borough] is immune from paying sanctions under the FLS; and the trial court abused its discretion in finding the Borough's lawsuit was frivolous." Englewood Cliffs, 2024 N.J. Super. LEXIS 37, at *3.

The panel first analyzed whether the Borough is immune from FLS sanctions and discussed the Chancery Division opinions that previously

[4] For continuity, this brief cites the same version of the to-be-published Appellate Division opinion that the Borough cited in its Petition and included in its Petition Appendix. (See Pca 03–17.)

[5] The Borough also filed a Motion for Leave to File its Petition for Certification as Within Time due to a miscalculation of the filing deadline. CSG does not oppose the Motion for Leave to File its Petition for Certification as Within Time.

addressed State agency immunity—In Matter of K.L.F., issued in 1993, and Division of Youth and Family Services v. P.M., issued in 1997. Englewood Cliffs, 2024 N.J. Super. LEXIS 37, at *6–15 (citing K.L.F., 275 N.J. Super. 507 (Ch. Div. 1993); P.M., 301 N.J. Super. 80 (Ch. Div. 1997)). The panel held the analysis in K.L.F. was the more accurate—specifically the finding that the plain language of the statute is unambiguous, and the unqualified term "party" does not exclude public entities. Id. at *14–15.

The panel punctuated its finding by confirming that even if the language were ambiguous as to the definition of party, the legislative history shows the Legislature's purpose: to deter frivolous litigation by imposing attorney's fees sanctions on any party that files such a claim. Id. at*15–16. After K.L.F., the panel noted, the Legislature did not amend the FLS to grant public entity immunity, but rather amended the statute in 1995 to allow a public entity to seek attorney's fees in cases in which it is required to defend a present or former employee, but is not necessarily a party to the suit. Id. at *16.

After determining the Borough was not immune to FLS sanctions, the panel affirmed the trial court's finding that Defendants followed proper procedure, and concluded the trial court did not abuse its discretion by sanctioning the Borough for engaging in frivolous litigation—a sanction "supported by credible evidence in the record and consistent with law." Id. at

*17–25. The panel emphasized that while "a trial court should only award sanctions for frivolous litigation in exceptional cases," this matter "is one such case." Id. at *28–29.

ARGUMENT

THE SUPREME COURT SHOULD DENY CERTIFICATION

A. The appeal does not present a question of general public importance which has not been but should be settled by the Supreme Court.

The Borough's Petition focuses solely on the issue of whether "public entities are immune from liability under [the FLS]," (Pcb 1), an issue that has rarely manifested in New Jersey since the Legislature enacted the FLS. While the Borough seeks to elevate the issue's importance, it is unable to present published examples of municipalities paying sanctions for bad-faith court filings. In fact, this issue is of such limited occurrence that the Borough has based its arguments regarding general-public importance on two decades-old, trial court opinions that addressed the topic as it relates to State agencies. Because it is a rare day that a municipality acts in such bad faith that sanctions are appropriate, and because the panel cogently and effectively addressed the issue, the question presented is not one of general public importance that requires review by this Court.

B. The decision under review is not in conflict with any other decision of the same or higher court.

The decision under review does not present a conflict with any appellate precedent, and thus does not present justification for granting certification. In an attempt to manufacture conflict and significance, the Borough's Petition stresses that this Court should grant certification "because this issue has bedeviled our judicial system for 30 years, and is highly likely to recur in the future"—a contention without support. The Appellate Division's opinion fully analyzed the only two published trial court opinions to address the issue in a more than thirty-year period, and definitively addressed the issue in a well-reasoned published opinion. The panel's precedential holding based on plain-language interpretation will effectively guide lower courts going forward.

C. Petitioner's arguments contort statutory interpretation and misinterpret the Appellate Division panel's decision.

The Appellate Division panel arrived at its decision after it appropriately analyzed the plain language of the FLS and considered the importance of the Legislature's 1995 amendments to the FLS, the interplay between the FLS and a previously enacted general statute, N.J.S.A. 2A:15-60, and the Legislature's declination to provide for public entity immunity. The Borough's Petition attacks the panel's logical conclusions by putting forth contorted and tangential

arguments that amount to linguistic gymnastics performed to achieve a desired result. There is, however, no justification for the exercise.

1. The Appellate Division's decision adhered to and properly applied canons of statutory construction and interpretation.

The panel correctly performed a de novo review of the FLS. See Englewood Cliffs, 2024 N.J. Super. LEXIS 37, at *1–20; see also Brunt v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 357, 362–63 (App. Div. 2018) (citation omitted). "Questions pertaining to statutory interpretation are legal in nature," and thus compel de novo review. State v. Fuqua, 234 N.J. 583, 591 (2018) (citation omitted); Talmadge Vill. LLC v. Wilson, 468 N.J. Super. 514, 517 (App. Div. 2021) ("[W]e review a statute de novo, owing no deference to the trial court's interpretation." (citation omitted)). A court's "overriding goal" in interpreting a statute is "to determine the Legislature's intent," Young v. Schering Corp., 141 N.J. 16, 25 (1995) (citation omitted), which is best drawn from the plain statutory language, Fuqua, 234 N.J. at 591. The reviewing court refers to "extrinsic evidence, such as legislative history and committee reports," only when the statutory language at issue is ambiguous. Fuqua, 234 N.J. at 591.

The FLS's plain language demonstrates the Legislature's intent to authorize sanctions against *any* non-prevailing party who pursues frivolous civil litigation. The FLS provides, in relevant part, that:

> [a] party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the nonprevailing person was frivolous.
>
> [N.J.S.A. 2A:15-59.1(a)(1) (emphases added).]

Despite this unambiguous language, the Borough continues to insist that N.J.S.A. 2A:15-59.1 must be interpreted categorically to exclude municipalities from frivolous litigation sanctions by arguing a municipality is not a "person" under the statute.[6] (See Pcb 6–13.) The panel appropriately rejected the Borough's erroneous interpretation.

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[6] The Borough argues that explanation of the phrase "nonprevailing person" is required, and contends that "a 'person' must be given the meaning identified in N.J.S.A. 1:1-2, ..." (Pcb 8 (emphasis added).) The Borough is correct that the definitions in N.J.S.A. 1:1-2 apply here, but it conveniently ignores the fact that the definition of person includes, inter alia, "corporations." N.J.S.A. 1:1-2 defines municipalities as municipal corporations, which "include cities, towns, townships, villages and boroughs, ..." (emphasis added). Because N.J.S.A. 1:1-2 explicitly provides that a corporation *is* a person, and, importantly, provides that a municipality (borough) *is* a corporation, explanation of the phrase "nonprevailing person" is unnecessary in this context because its application here is patently evident from the definitions. See J.H. v. Mercer Cnty. Youth Det. Ctr., 396 N.J. Super. 1, 11 (App. Div. 2007) (confirming that "a county, as a municipal corporation, is a corporation included within the definition of person in N.J.S.A. 1:1-2 and thus constitutes 'a person' . . . ."). Consequently, the panel was not obliged to expend ink exploring these plainly stated definitions, the significance of which the Borough continues to selectively and conveniently disregard in its arguments. Compare (Pcb 7) (the Borough argues that N.J.S.A. 2A:15-60, a general statute granting immunity specifically to the State, is in conflict with the FLS), with (Pcb 16–17) (the Borough selectively embraces the fact that it is a municipal corporation (and not the State)

As the panel discussed, only two published state court opinions squarely addressed whether the FLS applies to public entities, and the opinions reached conflicting conclusions. The panel analyzed in detail the Chancery Division's well-reasoned decision in K.L.F., and noted that the trial court reviewed the policies underlying the FLS and found that the statute's objective "is 'punitive in nature and seeks the elimination of baseless litigation and pleadings, without express exceptions.'" Englewood Cliffs, 2024 N.J. Super. LEXIS 37, at *9–12. The panel confirmed the K.L.F. court's finding that this objective equally applies to litigation brought by the government because the Legislature did not explicitly limit the government's exposure to attorney-fee sanctions under the statute as it has done elsewhere in state law. Ibid. (citing K.L.F., 275 N.J. Super. at 519–20). The panel cited the K.L.F. court's reasoning that holding otherwise would "sua sponte create[] an exception which would certainly not advance the legislative purpose" to impose sanctions on non-prevailing parties who pursue claims in bad faith or without a reasonable basis in law. Id. at *10 (quoting K.L.F., 275 N.J. Super. at 519).

The panel also analyzed P.M., in which the trial court declined to follow K.L.F., holding instead "that a [S]tate agency was immune from FLS sanctions."

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when it argues that this Court should construe ambiguity in its favor per New Jersey Constitution Article IV, § 7, ¶ 11, which specifically applies to municipal corporations).

Id. at *12–14 (citing P.M., 301 N.J. Super. at 82). The panel discussed the trial court's conclusion that the distinction between "party" and "person" in the FLS's text "is significant" because under N.J.S.A. 1:1-2, "a 'person' includes 'corporations, companies, associations, societies, firms, partnership and joint stock companies as well as individuals,' but does not include the State of New Jersey," except under limited circumstances. Id. at *12 (citing P.M., 301 N.J. Super. at 86–87). The panel also discussed the P.M. court's finding that the use of "public entity" in the 1995 Amendments led to the "obvious" conclusions that "the Legislature's use of the word 'party' was never intended to include the [S]tate or its subdivisions," and the Legislature did not expressly waive the State's immunity. Id. at *12–13 (citing P.M., 301 N.J. Super. at 88, 92).

The panel correctly held that the conclusion in K.L.F.—that a public entity can be sanctioned for pursuing baseless litigation—is most compelling based on the FLS's plain language and underlying policy goals. The panel addressed P.M.'s interpretive focus on the FLS's use of the term "nonprevailing *party*" and "nonprevailing *person*" and found no ambiguity in meaning. Id. at *14–15.

To further punctuate its finding, the panel confirmed that even if the plain language were ambiguous, the Legislature's objective to "deter the filing of frivolous claims" and the legislative history of the statute and amendments do not support a conclusion that public entities should be afforded immunity from

such sanctions. Id. at *15–16. In other words, interpreting the FLS to foreclose frivolous litigation sanctions against the Borough would run contrary to the statute's plain language and the Legislature's policy goals.

Against this backdrop, P.M.'s exclusive focus on the one-time use of the term "person," without attempting to harmonize the FLS's provisions, overlooks the "cardinal rule of statutory construction that the intention of the Legislature is to be derived from a view of the entire statute . . . so that the auxiliary effect of each individual part of a section is made consistent with the whole." See Febbi v. Bd. of Rev., Div. of Emp. Sec., 35 N.J. 601, 606 (1961) (citations omitted). As K.L.F. found, the FLS contains no explicit exception for public entities as some other cost-and-fees statutes do. 275 N.J. Super. at 518 & n.7. Nor does its statutory text or legislative history otherwise suggest that the Legislature intended for such an exception to apply. See, e.g., P.M., 301 N.J. Super. at 88 (noting that Legislature's FLS amendments only clarified "those who may seek such an award" and did not "change . . . those who may be pursued by th[e] [frivolous litigation] vehicle").

The Borough's Petition largely ignores legislative intent and instead focuses on a red-herring argument centering on the Legislature's 1995 amendments to the FLS. In the 1995 amendments, which were enacted *after*

K.L.F. was published,[7] the Legislature crafted a subsection that "allows a public entity to obtain attorney's fees when the law required it to defend a prevailing present or former employee when the nonprevailing party pursued a frivolous" claim, and a section that separately permits public entities to seek attorney's fees, as other parties do in civil cases. Englewood Cliffs, 2024 N.J. Super. LEXIS 37, at *12–13 (citing N.J.S.A. 2A:15-59.1(a)(2)). The Borough suggests that the mere mention of the term "public entity" in subsection (a)(2) and section (c) means that public entities must have necessarily been excluded from liability in subsection (a)(1), which only applies to a "party." (See Pcb 13–16.) The Borough contends that "[i]f 'party' encompassed 'public entity,' then the language would be duplicative and superfluous, with no substantive consequence." (Pcb 9–10). This argument is akin to reading a book title and surmising the entire plot of the story.

The 1995 amendments added the term "public entity" to achieve the specific goal of the amendments: to enable a public entity that may not be a party to the litigation to recover costs for frivolous litigation in cases in which it is required to represent a party—a present or former employee. In other words,

[7] The Legislature presumably knew about the holding in K.L.F. when enacting the FLS amendments in 1995, but opted not to exempt public entities when crafting the amendments. Cf. Maison v. N.J. Transit Corp., 245 N.J. 270, 290 (2021) (noting that Court presumes that Legislature knows case law when enacting statutes).

if the public entity is not a party but is footing the bill for the litigation, it should be able to recover the costs of the litigation from the non-prevailing frivolous filer.[8]

The necessary enumeration of "public entity" in subsection (a)(2) achieves the specifically stated goal of that particular subsection, and does not magically manufacture immunity for a non-prevailing public entity party in subsection (a)(1). See N.J.S.A. 2A:15-59.1(a)(1) to (a)(2). Further, the addition of "public entity" to section (c) piggybacks off the language and purpose of subsection (a)(2) and allows the public entity footing the bill to submit an application for fees; it does not, however, inject immunity for public entities into subsection (a)(1). See N.J.S.A. 2A:15-59.1(a)(1) to (a)(2), (c). The Borough's red-herring argument demonstrates that the devil is in the details. The "public entity" language in subsection (a)(2) and section (c) is a necessary qualification to ensure that each section includes non-party public entities and is not rendered superfluous by finding that a public entity may in fact be a "party" in subsection (a)(1).

[8] In certain circumstances public entities are required to provide legal representation for employees or former employees without the public entity becoming a party to the litigation. See, e.g., Lavezzi v. State, 219 N.J. 163, 173–74 (2014) (discussing State's duty under certain circumstances to defend public entity employees).

2. The panel's decision correctly adhered to the FLS's policy goals, pursuant to which sanctions are awarded to deter bad faith, baseless litigation by any party.

After the panel concluded that the FLS's plain language "does not exclude a public entity 'party,'" it confirmed that even had the language been ambiguous, it would have reached the same conclusion because the legislative history of the statute, the legislative purpose of the statute, and the fact that the Legislature did not amend the statute to overturn the K.L.M. decision all necessitate the conclusion that "the FLS allows for sanctions against public entities." 2024 N.J. Super. LEXIS 37, at *16–17.

Adopting the Borough's construction of the statutory language would be repugnant to the FLS's policy goals. The FLS serves dual punitive and compensatory purposes: to "deter frivolous litigation" and "to reimburse 'the party that has been victimized by the party bringing the frivolous litigation.'" Toll Bros., Inc. v. Twp. of Windsor, 190 N.J. 61, 67 (2007) (quoting Deutch & Shur, P.C. v. Roth, 284 N.J. Super. 133, 141 (Law Div. 1995)). As K.L.F. concluded, "[t]he clear objective of the statute . . . is punitive in nature and seeks the elimination of baseless litigation and pleadings, *without express exceptions*." 275 N.J. Super. at 517 (emphasis added). There is no reason an offending complaint is less frivolous or improper simply because it has been brought by a public entity.

The danger of public officials using taxpayer funds to further legally frivolous, personal political aims renders application of the FLS especially important in cases like this one. As the Law Division observed:

> As the goal of both R. 1:4-8 and N.J.S.A. 2A:15-59.1 is to curtail frivolous litigation, it appears it would be contrary to the intent of both to permit public entities to use their formidable resources [“]for the purpose of harassment, delay or malicious injury,” or to pursue an action “without any basis in law or equity,” particularly here where the underlying issue at stake is the Borough’s constitutional obligation to provide affordable housing which it has avoided for 40 plus years and about which the Mayor (who is a practicing attorney and an officer of the court) has strongly and repeatedly expressed his resistance both in words: accusing the court, the Special Master, the Special Hearing Officer, the lawyers and 800 Sylvan, among others, of corruption and conspiracies, as well as actions, repeatedly refusing to abide by court orders.
>
> [(Pa112; Pca29.)][9]

Embracing the Borough’s faulty position that municipalities are immune from all sanctions under the FLS would empower—rather than deter—litigious and bad faith

[9] In a published opinion, the Appellate Division made similar observations about the Borough’s repeated efforts to delay compliance with its constitutional affordable housing obligations in the underlying Affordable Housing Litigation. See In the Matter of Borough of Englewood Cliffs, 473 N.J. Super. 189, 204 (App. Div. 2022) (noting the Borough’s “repeated attempts to delay and obfuscate its obligations” to provide affordable housing); id. at 209 (“The Borough may disagree with our ruling affirming the trial court, but it does not have the right to continue to delay complying with its constitutional obligations to allow affordable housing to be built.”).

conduct, at the expense of blameless parties who would have no available recourse for their damages.

In an attempt to support its contention that immunity for municipalities is presumed, the Borough cites Willis v. Department of Conservation & Economic Development, and notes that the Court "waived certain aspects of sovereign immunity in anticipation of what was to become the Tort Claims Act." (Pcb 11 (citing 55 N.J. 534 (1970); see also Pcb 5). Willis, however, does not support the Borough's contention, but rather torpedoes it because the Court specifically stipulated that municipalities *do not* have blanket immunity from liability associated with tort claims, stating: "We have long entertained all types of tort actions against counties and municipalities, and when relief is refused, it is upon the basis of substantive principles of law we think should apply and not upon the proposition that those agencies are immune from suit." 55 N.J. 534, 539 (1970).

Moreover, the Borough makes a strained attempt to argue that immunity for public entities is "inherent within our system of government," because the Tort Claims Act ("TCA"), N.J.S.A. 59:1, et seq., waives sovereign immunity in certain circumstances. (Pcb 11, n.6 (citing Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998)). The Borough, however, does not set forth evidence or support for its contention that public entity immunity is inherent in the context

of court-imposed sanctions. This matter does not pertain to a tort claim, and the legislative policies undergirding the TCA do not mirror those undergirding the FLS. There simply is no cause for affording immunity to a municipality facing sanctions due to engaging in bad-faith litigation, the consequences about which it was well aware and warned to avoid, yet wantonly and purposely pursued to its own peril.

Respectfully, this Court should decline to entertain the Borough's flawed interpretation that the FLS immunizes municipalities from sanctions for frivolous litigation.

CONCLUSION

The panel below issued a well-reasoned, correct decision that is not in conflict with any other controlling decision. Granting certification is not warranted.

Dated: June 13, 2024

Respectfully submitted,

By: s/ A. Matthew Boxer
A. Matthew Boxer
Peter Slocum
Julie A. Minicozzi
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
Telephone: (973) 597-2500
mboxer@lowenstein.com

pslocum@lowenstein.com
jminicozzi@lowenstein.com

Attorneys for Defendants-Respondents Thomas J. Trautner and Chiesa Shahinian & Giantomasi PC