



GOV. CHRISTIE NOT ABOVE THE LAW

Appellate Court Invalidates Abolition of Council on Affordable Housing as Illegal Seizure of Power by Governor

March 8, 2012 – Trenton, NJ – The Appellate Division of the Superior Court of New Jersey today invalidated Gov. Christie’s abolition of the Council on Affordable Housing, ruling that New Jersey’s State Constitution and statutes do not allow Gov. Christie to unilaterally abolish independent agencies. The court reversed a reorganization plan adopted by the Governor in 2011, stating that neither New Jersey’s Constitution nor statutes gave him the power to adopt the plan.

“The Governor’s role under the constitution is to enforce the laws, not to make them,” Fair Share Housing Center Associate Director Kevin D. Walsh said. “The Appellate Division properly found, based on a careful reading of the original intent of New Jersey’s statutes and constitution, that Gov. Christie simply does not have the power to unilaterally abolish independent agencies he doesn’t like. In doing so, the Court properly protected the independence of agencies such as the Election Law Enforcement Commission, State Ethics Commission, Public Defender, and dozens of other agencies that would have been subject to gubernatorial abolition if the plan for COAH had been upheld. The Court required the diverse interests represented in independent agencies to have a voice, as the Legislature intended.”

The appellate court, which relied on quotes from Associate Justice Antonin Scalia on the proper separation of powers in the original meaning of the Constitution, rejected Governor Christie’s argument that the constitution gave him unlimited power to change the structure of state government, stating that “While the framers of our Constitution intended to create a strong executive in the office of Governor (perhaps the strongest in the United States), they also recognized the need to insulate functions and agencies from executive control.”

The Court ruled that “[w]ithout clear direction in the Reorganization Act that it should apply to independent agencies, there is no basis from which to infer that the Legislature intended to permit a governor to undo such a balanced representation scheme through a reorganization plan.” It further concluded that “application of the Reorganization Act requires an explicit legislative mandate to warrant the abolition of an independent agency, rather than generic language, in order to subject such agencies to reorganization or, as here, to abolition.”

“As the court properly found in quoting authorities such as Justice Scalia and New Jersey’s constitutional drafters, Governor Christie’s actions are inconsistent with our democratic form of government,” Mr. Walsh said. “The Governor must in all his actions be limited by our statutes and constitution, and not create new powers without basis in law.”

The decision reinstates COAH’s board and authority over municipal fair share obligations. The Court noted that the Legislature sent Gov. Christie a bill to abolish COAH in January 2011, and that if Gov. Christie had wished to abolish COAH he could have signed it. Having chosen not to, he could not then go around the Legislature to abolish COAH himself.

This decision marks Governor Christie's third strike on changing the state's policies for providing housing for working families, people with special needs, and seniors. He first attempted to eliminate COAH through Executive Order 12 in February 2010. The Appellate Division enjoined that order and Governor Christie then rescinded it. In early-2011, the Governor tried, but failed, to persuade the Legislature to adopt his preferred housing policy through legislation after the aforementioned veto. The governor then vetoed legislation that would have abolished COAH because he felt that municipalities should never be required to provide housing opportunities for lower-income families, seniors, and people with special needs.

The COAH reorganization plan was proposed on June 29, 2011 and went into effect 60 days later. The plan was immediately appealed by the Center, and the Appellate Division accelerated its briefing and argument in view of the public interest nature of the matter.

Fair Share Housing Center, founded in 1975 is based in Cherry Hill. It is the only public interest organization devoted entirely to defending the housing rights of New Jersey's poor through implementing the Mount Laurel doctrine, which requires that each municipality provides its fair share of housing affordable to low- and moderate-income people.

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