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NEW JERSEY STATE FEDERATION  
OF WOMEN'S CLUBS, SCENIC  
HUDSON, INC., MARGO MOSS,  
JAKOB FRANKE, JOHN DOES 1-  
10, AND ABC ENTITIES 1-10,

Plaintiffs-Appellants,

v.

BOARD OF ADJUSTMENT OF THE  
BOROUGH OF ENGLEWOOD CLIFFS  
AND LG ELECTRONICS USA,  
INC.,

Defendants.

SUPERIOR COURT OF  
NEW JERSEY  
APPELLATE DIVISION

DOCKET NO: A-000007-13T1

SAT BELOW:  
ALEXANDER H. CARVER, III,  
J.S.C.

DOCKET NOS. BER-L-2301-12  
BER-L-2373-12

Civil Action

BRIEF OF NEW YORK STATE  
SENATOR JEFFREY D. KLEIN,  
UNITED STATES REPRESENTATIVE  
ELIOT L. ENGEL, NEW YORK  
STATE SENATOR ADRIANO  
ESPAILLAT, NEW YORK STATE  
ASSEMBLYMAN JEFFREY  
DINOWITZ, AND NEW YORK CITY  
COUNCILMAN ANDREW COHEN AS  
AMICI CURIAE

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## PRELIMINARY STATEMENT

This appeal and those in companion cases present a decision by one New Jersey municipal board to defeat over a century of collaborative work and investment by New York and New Jersey citizens, legislators, and courts, as well as by the federal government, to preserve the pristine viewshed of the historic Hudson River Palisades north of the George Washington Bridge. The court below upheld the grant of a variance by the Borough of Englewood Cliffs Board of Adjustment (the "Board") that more than quadrupled the otherwise applicable height restriction. This would allow the first corporate tower -- a new headquarters for LG Electronics USA, Inc. ("LG") -- to pierce the treeline of the Palisades escarpment there, despite the lack of any indication in the record that the Board gave due consideration to the magnitude and interstate nature of the historic and aesthetic values and resources at stake.

*Amici* submit that once the potential for adverse impacts to the Palisades resource was identified in the record, as it was in this case, it was arbitrary and capricious for the Board, and an abuse of discretion for the court below, not to take a "hard look" at those impacts

when evaluating the application for the four-fold height variance before it. There are three independent and compelling bases for this conclusion.

First, New Jersey's Municipal Land Use Law (MLUL) imposes the statutory requirement in that a variance only be granted upon a showing that "special reasons" for the variance exist and that it is "without substantial detriment to the public good." N.J.S. 40:55D-70(d). This standard cannot be satisfied where, as here, a universally recognized and regionally and nationally protected receives only cursory review in the Board's process and no mention in the Board's resolution.

Second, the New Jersey Supreme Court has made clear that a "hard look" is required by the sheer magnitude of the variance allowed here, authorizing a tower four times the otherwise permissible height. This standard required the Board and the court below to find specific and compelling proofs satisfying the MLUL - i.e. proofs that will bear a hard look. Such proofs were lacking.

Finally, as legislators representing the State of New York, *Amici* submit that the MLUL's required showing of "special reasons" for a variance (the "positive criteria"

under N.J.S.A. 40:55D-70(d)), and the required showing of "no substantial detriment to the public good" and no impairment "to the zone plan and zoning ordinance" (the "negative criteria" under N.J.S.A. 40:55D-70(d)), must as a matter of New Jersey law be applied with reference to New Jersey's trust obligations to the Palisades scenic resources, to the citizens of both states that enjoy those resources, and to the State of New York as a fellow sovereign and partner in the Compact.

Those trust obligations, and requirement that the Board and the court below take a hard look at the record to determine if those obligations have been satisfied, are not just matters of historical note, are not matters of mere comity between the two states, and are not matters of judicial or administrative discretion under the MLUL. Rather, those obligations are hard and fast legal obligations that New Jersey assumed in the Compact and that the New Jersey Legislature has codified by statute in its domestic law. Those obligations must be enforced in

applying the MLUL, which both the Board and the court below failed to do.<sup>1</sup>

#### DECISIONS BELOW

The decisions below are captioned and docketed as follows. Jacoby v. Zoning Board of Adjustment of Englewood Cliffs, et al., Docket No. Ber. L-2301-12 (N.J. Super. Aug. 9, 2013); Davis, et al. v. Board of Adjustment of the Borough of Englewood Cliffs, Docket No. Ber. L-2372-12 (N.J. Super. Aug. 9, 2013).

#### INTERESTS OF THE AMICI

Senator Jeffrey D. Klein is a New York State Senator representing the 34<sup>th</sup> Senatorial District. This district includes parts of Riverdale, in the Borough of the Bronx, New York, which faces parts of the Palisades Interstate Park. Senator Klein is also Temporary President and

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<sup>1</sup> The doctrine requiring agencies to take a "hard look" at the record to identify adverse environmental impacts has a long history in case law under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h, under which courts, at a minimum "ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious." Nevada v. Department of Energy, 457 F.3d 78, 93 (D.C. Cir. 2006) (quoting Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 97-98 (1983)). In contrast to NEPA, which is merely procedural, Citizens v. Burlington, Inc., v. Busey, 938 F.2d 190, 193-34 (D.C. Cir. 1991). In contrast to NEPA, which is merely procedural, New Jersey's MLUL imposes substantive standards, making the case for a "hard look" when impacts to unique, state-protected resources are at issue even more compelling.

Majority Coalition Leader of the New York State Senate. Senator Klein's interest in filing this brief as *amicus curiae* is both as a legislator, conscious of the historic role the New York Legislature has played in protecting the Palisades, and as a representative of his constituents, who will be irreparably harmed if LG's proposed corporate headquarters divests them of their long-protected view of the Palisades escarpment. Klein Cert. ¶¶ 4-7 (March 31, 2014)(*appended to Amici's Br. in Support of Motion for Leave to Appear as Amici Curiae* (April 7, 2014)).

United States Representative Eliot L. Engel of New York's 16<sup>th</sup> Congressional District, New York State Senator Adriano Espaillat, of New York's 31<sup>st</sup> Senate District, New York State Assemblyman Jeffrey Dinowitz, of New York's 81<sup>st</sup> Assembly District, and New York City Councilman Andrew Cohen, of the City's 11<sup>th</sup> Council District, join in this brief as *amici* because each elected official also represents portions of the Bronx directly across the Hudson River from the LG project and approximately one mile from that part of the protected Palisades Interstate Park located in the State of New Jersey. *Amici* have a long history of supporting the preservation of parklands and the

protection of the environment. Their constituents, like those of Senator Klein, make regular use of the Palisades Interstate Park, and they regularly enjoy uninterrupted views of the Palisades escarpment north of the George Washington Bridge. These *Amici* likewise file this brief on behalf of themselves and their constituents, who will be irreparably harmed by the construction of the LG corporate headquarters. Engel Cert. ¶¶ 4-7 (March 27, 2014); Espaillat Cert. ¶¶ 4-7 (April 4, 2014), Dinowitz Cert. ¶¶ 4-7 (March 27, 2014), Cohen Cert. ¶¶ 4-7 (*all appended to Amici's Br. in Support of Motion for Leave to Appear as Amici Curiae* (April 7, 2014)). *Amici* urge this court to reverse the lower court's decision and grant relief in favor of the appellants.

This Court should consider *Amici's* views in this appeal because New York is New Jersey's partner in protecting the Palisades viewshed. For over a century, protection of the Palisades has been a bi-state effort, long codified in New Jersey law and evident today in the governance of the Palisades Interstate Park by the Palisades Interstate Park Commission ("Commission" or "PIPC"), comprised of five members who are residents of New

York and five who are residents of New Jersey. The Governor of New York appoints the five members from New York with the advice and consent of the New York State Senate. N.Y. CONST. Art. V, § 4. Given that the New York State Senate has an interest in the appointment of commissioners to administer the Palisades Interstate Park, the Temporary President of the Senate has an especially important interest in the continued adherence of both New York and New Jersey to the spirit and purpose of the Palisades Interstate Park Compact.

At the inception of the Palisades Interstate Park Commission, the two states' Joint Legislative Committee on Interstate Cooperation declared: "... New York State has a vital interest in the future of the whole Palisades Park region." MEMORANDUM FROM THE JOINT LEGIS. COMM. ON INTERSTATE COOPERATION, Bill Jacket, L. 1937, ch. 170 (1937) ("JOINT LEG. MEM.") 27. The two states are equal partners in the Palisades, and the courts of one state, let alone a single municipality in one state, should not determine the fate of the Palisades viewed without hearing the views of legislators from the other. For these reasons, New York State Senator, Temporary President and Majority Coalition

Leader of the New York State Senate Jeffrey D. Klein, United States Representative Eliot L. Engel, New York State Senator Adriano Espaillat, New York State Assemblyman Jeffrey Dinowitz, and New York City Councilman Andrew Cohen (collectively, the "New York Legislators") urge the court to give significant weight to their arguments as *amici*, and in so doing, reverse the decision below and grant relief in favor of the appellants.

#### **LEGAL ARGUMENT**

##### **Point I**

#### **NEW YORK, NEW JERSEY, AND THE UNITED STATES HAVE LONG ESTABLISHED IN LAW THAT THE PALISADES ESCARPMENT IS AN EXCEPTIONAL "PUBLIC GOOD" DESERVING SPECIAL PROTECTION**

The Palisades are a geological formation on the western edge of the Hudson River, created over 200 million years ago from volcanic rock and the receding glaciers of the last Ice Age. What remained after the ice receded is the escarpment that is visible from New Jersey and New York today. *See generally*, BARBARA H. GOTTLOCK & WESLEY, IMAGES OF AMERICA: NEW YORK'S PALISADES INTERSTATE PARK 10 (2007) ("GOTTLOCK & WESLEY").

In the early sixteenth century, many decades before Henry Hudson explored what would become his namesake river, French settlers had dubbed the Palisades area "La Terre d'Anormee Berge" – the Land of the Grand Escarpment.

ARTHUR JAMES WEISE, *THE DISCOVERY OF AMERICA TO THE YEAR 1525* (LONDON 1884). The Palisades remained virtually intact from the time of the first French settlements in the region until the nineteenth century.

In the early nineteenth century, lumbering and quarrying began on the cliffs of the Palisades. Following the Civil War, quarrying intensified as demand for concrete increased in New York City. The blasting for rock was so intense during this period that it continued day and night, unabated. GOTTLOCK & WESLEY 7-8. As a result of the blasting, the natural state of the escarpment was in jeopardy of being lost to quarrying.

The structure produced by 175,000,000 years of volcanic upheaval, glacial sculpturing, and slow erosion, man was about to destroy in one lifetime.

JOHN A. GARRATY, *RIGHT HAND MAN: THE LIFE OF GEORGE W. PERKINS* 83 (NEW YORK, 1960).<sup>2</sup>

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<sup>2</sup> See National Register of Historic Places Inventory – Nomination Form and Certification 3 (Feb 17, 1984).

In 1890, groups of concerned citizens from both New Jersey and New York began to register their objections to the ongoing defacement of the Palisades. The New York Times, even then a paper of national and regional circulation, took up the cause of the Palisades and ran a series of articles in 1895 to promote protection of the escarpment's beauty. *E.g.* "Save the Palisades from Ruin: Quarries Are Robbing the Hudson River of one of its Most Remarkable Beauties," N.Y. TIMES (SEP. 28, 1895); GOTTLOCK & WESLEY 7-8.

An 1895 New Jersey law, charging the New Jersey State Board of Riparian Commissioners with protecting the Palisades' "fine natural scenery from defacement" soon proved inadequate to stop destruction of the escarpment and its scenic views. "Destruction of the Palisades," N.Y. TIMES (SEP. 28, 1895). In response to the public demand for stronger protection of the Palisades, the New York Legislature passed a bill in 1900, signed into law by

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National Park Service Archive, U. S. Dept. of the Interior ("REGISTER CERTIFICATION") available at <http://www.wmf.org/downloads/NPS-Historic-Landmark-Palisades.pdf>. See also N.J. R. Evid. 201(a) (permitted judicial notice of law extends to "determinations of all governmental subdivisions and agencies thereof").

Governor Theodore Roosevelt, creating a permanent interstate park commission. New Jersey followed suit the same year. L. 1900, c. 87, p. 163; see N.J.S. 32:14-1 et seq.

When the park opened to the public with much fanfare in 1909, New York Governor (and later Supreme Court Chief Justice) Charles Evans Hughes succinctly captured the two states' objectives in jointly protecting the Palisades.

Gov. Hughes accepted the park on behalf of New York State. In doing so he said: ". . . It is fortunate means have already been taken to protect its escarpment. Two States have joined for that purpose and I hope this is only the beginning of efforts jointly to be made to safeguard these highlands and waters. The entire watershed to the north should be conserved, and a policy of joint control should be adopted. *The highlands of the Hudson and these Palisades must be kept beyond the reach of devastation.*"

Governor Fort, in his speech of acceptance for New Jersey, commended all that Gov. Hughes had said....

"Palisades Park Opened: Two Governors Declaring for Further Preserving the Hudson's Shores," N.Y TIMES (Sep. 28, 1909)(emphasis supplied). The new commissions in the two states operated for 37 years, separately but cooperatively, using shared resources.

In 1937, the states of New York and New Jersey collaborated again to create the current form of the

Commission, developing an interstate compact to administer the parkland that had been acquired by the independent commissions of New York and New Jersey. Of particular concern to both states was the preservation of the escarpment. Upon the recommendation of the Joint Legislative Committee on Interstate Cooperation, both New Jersey and New York passed legislation approving the interstate Compact. 1937 N.Y. Laws ch. 170, JOINT LEG. MEM. AT 27; N.J. Stat. 1937, ch. 148. On August 19, 1937, as required by the United States Constitution, U.S. CONST. ART. I, § 10, CL. 3, Congress approved by resolution the resulting Palisades Interstate Park Compact. H.R.J. RES. 445, 75<sup>TH</sup> CONG. 1<sup>ST</sup> Sess. (1937)(*approving* COMPACT OF JUNE 2, 1937).

In a letter urging Governor Lehman of New York to sign the legislation implementing the Compact, J. Du Pratt White, the President of the New York Commission, made clear that "[t]here is one and only one fundamental purpose behind this compact - the preservation for park purposes of park lands held by the two state commissions and, particularly, the Palisades and Highlands along the Hudson, unmarred by commercial activities. Everything else is secondary to this central idea." LETTER OF J. DU PRATT WHITE,

PRESIDENT OF THE NEW YORK COMM'N OF THE PALISADES INTERSTATE PARK  
(March 29, 1937)("WHITE LETTER"), Bill Jacket, L. 1937, ch.  
170, at 32. White elaborated further: "[w]e know the  
dangers that threaten and that the compact will be a  
protection." Id. The creation of the Interstate Park was  
meant to assure land donors and citizens alike of the  
"permanency of the park and its development as a whole."  
Id.

Based on this assurance and consistent with these  
objectives, the State of New York has through purchase and  
donation acquired 106,351 acres for the park, as compared  
to 2,452 acres in Bergen County, New Jersey. N.J. LEG. MAN.  
Man. 862 (Fitzgerald's 2011). While there are few reported  
cases, at least one New York appellate court has made clear  
that there is an exceptional public interest in Palisades  
protection that must be considered when reviewing variance  
approvals for projects outside the park that may affect  
Palisades resources. Matter of Knight v. Bodkin, 41 A.D.2d  
413, 417, 344 N.Y.S.2d 170, 175 (App. Div. 2d Dep.  
1973)(reversing the grant of a variance based on the  
contention that it would be "a serious blight upon the  
entire area and, more particularly, that it would have a

destructive impact upon the aesthetic values created by the existence of Palisades Interstate Park, one of the Nation's most beautiful scenic resources"). New Jersey courts should do no less.

The United States has reinforced the bi-state preservation effort, not only by approving the Compact but also by establishing a clear federal interest in Palisades historic and aesthetic resources through preservation programs. The Department of the Interior's National Park Service (NPS) designated the Park a National Historic Landmark in 1965, and added the Park to the National Register of Historic Places in 1984. REGISTER CERTIFICATION, *supra* n. 2 at 4. The NPS recognized "preservation of those magnificent cliffs" as the Park's "greatest accomplishment." *Id.* at 8.

The Park is a rarity in that it is both a National Historic Landmark and a National Natural Landmark, the latter distinction conferred in June, 1983 because it "is the best example of a thick diabase sill in the United States." 49 Fed. Reg. 4605 (Feb. 7, 1984). "Columnar jointing, an olivine zone and thermal metamorphic effects are attributes found in rare combination at this site. The

glaciated crest provides impressive evidence of the Pleistocene glacier." *Id.*

New Jersey's MLUL gives particular stature to these bi-state and federal concerns in New Jersey's domestic law, with its express statutory purposes including promotion of "a desirable visual environment," N.J.S. 40:55D-2(i), and "conservation of historic sites, districts, [and] open space." N.J.S. 40:55D-2(j). These provisions of the MLUL are echoed verbatim in the Borough of Englewood Cliffs Master Plan, which likewise promotes "a desirable visual environment" and "conservation of historic sites and districts [and] open space." BOROUGH OF ENGLEWOOD CLIFFS REEXAMINATION REPORT 3 (2009).

In evaluating the impact of the proposed LG corporate headquarters on the historic and visual resources of the Park, the NPS has made the unambiguous -- albeit belated -- determination that the proposed office building would have a "serious negative impact" by "introducing a massive incompatible feature that will be visible for miles along the river and from vantage points along the west side of Manhattan as well as the [George Washington Bridge]." LETTER FROM WILLIAM C. BOLGER, NPS HISTORIC LANDMARK PROGRAM MANGER, TO EDWIN

FEHRE, CHAIRMAN, PLANNING BD. OF THE BOROUGH OF ENGLEWOOD CLIFFS (DEC. 23, 2013).<sup>3</sup> The NPS commented that "[w]hile such a tower might provide some occupants of the building with spectacular views it will be at the expense of everyone else's experience of the Palisades." *Id.*

#### Point II.

**THE "PUBLIC GOOD" PROTECTED BY THE MLUL REQUIRES A HARD LOOK AT VARIANCES THAT AFFECT RESOURCES, LIKE THE SCENIC BEAUTY OF THE PALISADES, THAT THE LEGISLATURE HAS PROTECTED BY STATUTE AND COMPACT**

It is against the historical, statutory, and planning backdrop described above that this Court should consider whether the Board satisfied the requirement "that before a board of adjustment may grant a variance, it must make two critical findings: (1) that 'special reasons' exist for the variance, and (2) that the variance 'can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.'" *Burbridge v. Mine Hill*, 117 N.J. 376, 384-385 (N.J. 1990) (quoting N.J.S. 40:55D-70).

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<sup>3</sup> Available at <http://www.wmf.org/downloads/NPS-Historic-Landmark-Palisades.pdf>; see also N.J. R. Evid. 201(a) (permitted judicial notice of law extends to "determinations of all governmental subdivisions and agencies thereof").

And this court should do so showing no deference to the Board, because at issue here is an interpretation of the law, and the protection it affords to Palisades resources, not an adjudication of facts. See Manalapan Realty v. Township Comm., 140 N.J. 366, 378 (1995); see also Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268 (1967).

Two witnesses put the magnitude of the resource at stake in piercing the Palisades treeline squarely before the Board. Daniel D. Chazin, secretary and former chairperson of the Palisades Park Commission's Citizen's Advisory Council, called the Board's attention to the fact that "these cliffs were preserved in large part to preserve the views of the cliffs from the river and New York," and objected that the LG tower "would infringe on that in that 30 feet or so at the top of the building would be visible from the other side of the river." TRANSCRIPT (Tr.) 6T AT 156-57. Kevin Tremble, the Advisory Council's current chairperson, reminded the Commission of the Park's 114-year history and the park's stature as a resource that is "national in scope," and entreated the Board to "consider the visual impact upon the park and the region as a resource." TR. AT 6T 163-63.

The Chazin and Tremble testimony gave eloquent voice to Governor Hughes' demand over a century earlier that "the highlands of the Hudson and these Palisades must be kept beyond the reach of devastation," and to J. Du Pratt White's expectation that "the Palisades and Highlands along the Hudson" would forever remain "unmarred by commercial activities." WHITE LETTER AT 32. At the very least, the testimony of these two witnesses identified a "substantial detriment to the public good" that the Board was obliged to address explicitly in its resolution, and established the Board's burden to articulate especially compelling "special reasons" in that same resolution before allowing the variance. N.J.S. 40:55D-70

*Amici* urge this Court to remand to the Board with instructions that the Board and any reviewing court must, as a matter of law, give a "hard look" at potential impacts on the Palisades' scenic resources before allowing the LG tower to blemish a vista that two states and the federal government have protected for over a century. The record in this case makes it abundantly clear that the Board and the court below gave these impacts no look at all: the Palisades are never mentioned in the Board's discussion, Tr.

AT 6T 173-99, nor are they mentioned in the ensuing resolution. P.J.A. AT 701-28. Nor are the Palisades mentioned in Judge Carver's decision below.

*Amici* believe that a hard look at the impacts of the LG tower as proposed on the aesthetic and natural resources of the Palisades inevitably would have been fatal to the variance under the MLUL's requirement of no "substantial detriment to the public good" and no impairment to "the intent and purpose of the zone plan and zoning ordinance." N.J.S. 40:55D-70. But before this court, we narrowly ask for enforcement of what the MLUL requires: a record and a resulting resolution sufficient to persuade a reviewing court that impacts to the Palisades were given consideration commensurate with the value of the resource at risk, sufficient to support the conclusion that the "special reasons" presented were adequate to justify those impacts; and sufficient to convey a discernible rationale for the Board's implicit conclusion that piercing the Palisades skyline would not be a "substantial detriment to the public good" or an impairment to "the intent and purpose of the zone plan and zoning ordinance." N.J.S.

40:55D-70. *Amici* submit that standard cannot be met on any remand.

**Point III.**

**DISPROPORTIONATE HEIGHT VARIANCES  
LIKE THAT GIVEN TO LG ALWAYS REQUIRE A HARD LOOK BY  
ZONING BOARDS AND BY REVIEWING COURTS**

The Board's obligation to give a "hard look" at impacts to the Palisades under the language of the MLUL is dictated not merely by the statutory language, read in light of the New Jersey's statutes and the record of preservation efforts by New York, New Jersey, and the federal government, but also by the particular requirements that the New Jersey Supreme Court has established for variances to height restrictions that allow construction significantly greater than the otherwise applicable zoning. As the Court has made clear:

. . . it is self-evident that the greater the disparity between the variance granted and the ordinance's restriction the more compelling and specific the proofs must be that the variance "will not substantially impair the intent and purpose of the zone plan and zoning ordinance."

North Bergen Action Group. v. North Bergen Twp. Planning Bd., 122 N.J. 567, 578, 585 A.2d 939, 944 (1991) (quoting N.J.S.A. 40:55D-70).

In this case, where the proposed variance allows a tower *four times* the limit established by ordinance, it is surely "self evident" that the proofs justifying the impact of the variance on the Palisades must be "compelling and specific." But no such "compelling and specific proofs" appear in the record, and none is mentioned in the Board's resolution.

The Supreme Court's dictate makes it especially clear that the Board's decision, as captured in the resolution, would have failed to meet the requirements of the MLUL even if the Board had no notice of impacts to the Palisades resource. Once the testimony of Chazin and Tremble put the Board on notice of those impacts, it should have been inescapable to the Board and apparent to the court below that there were no "compelling and specific" proofs to establish the "positive criteria" ("special reasons") supporting the variance, nor were there "compelling and specific proofs" adequate to dismiss the "negative criteria" (the potential "detriment to the public good" and impairment of the "intent and purpose of the zone plan and zoning ordinance"). N.J.S. 40:55D-70.

*Amici* submit that as applied in this case, the requirement of "compelling and specific proofs" imposed a burden on the applicant in the first instance, and on the Board in framing its resolution, to squarely address the impacts to Palisades resources with explicit evidence and testimony documenting that both the positive and negative criteria in the MLUL had been satisfied. The reviewing court below, at a minimum, was obliged to remand the matter in the absence of explicit findings by the Board on these issues supported by substantial evidence in the record.

In light of the history of Palisades preservation and its legal protection by New Jersey as well as New York, *Amici* submit that such "specific and compelling proofs" could be made only if LG had no feasible alternative to the four-fold height variance, a contention LG would no doubt dispute. LG can only attempt to make those proofs, and the Board will only hear that debate, if this Court reverses and remands for the Board to hear the evidence and make the findings it ought to have made under the MLUL prior to approving the variance.

#### Point IV.

**THE "HIGH TRUST" FOR THE PALISADES THAT NEW JERSEY ASSUMED  
WITH NEW YORK IN THE COMPACT AND BY DOMESTIC LAW REQUIRES A  
"HARD LOOK" WHENEVER A PROPOSED VARIANCE MAY AFFECT THE  
PALISADES' SCENIC RESOURCES**

In entering the Compact of June 2, 1937, New York and New Jersey undertook a mutual pledge that cannot be ignored when considering whether the Board was arbitrary and capricious in approving LG's four-fold height variance, and determining whether the court below properly held the Board to the standard of "compelling and specific" proofs needed to support the variance. Article I of the Compact provides:

The parties hereto do hereby agree to and pledge, each to the other, faithful co-operation in the future planning, improvement, development, maintenance, government and management of the park, holding in high trust for the benefit of the public the special blessings and natural advantages thereof.

COMPACT OF JUNE 2, 1937 (codified at N.J.S. 32:17-3).

Forty-three years after the Compact was approved by the two states and the United States, New Jersey's Legislature again declared by statute that the park "constitutes a natural and historic resource of immeasurable value," N.J.S. 32:14-1.1, making clear that "one of the intentions" of the Legislature "is to provide, in conjunction with the

State of New York, for the establishment of a park along *the entire front of the Palisades*, from Fort Lee in this State to the termination thereof in New York, thereby preserving the *scenic beauty of the Palisades*." N.J.S. 32:14-15 (emphasis supplied).

To be sure, the proposed LG Tower lies outside the current bounds of the Park itself. But the language of these New Jersey laws is too sweeping and aspirational to be cabined to the confines of the Park boundary. Just as surely, the two states' "high trust for the benefit of the public" cannot be honored, the "special blessings and natural advantages" of the park cannot be protected, and the park's "scenic beauty" cannot be maintained, if the Borough of Englewood Cliffs and other municipalities surrounding the park apply the MLUL in utter disregard of the sweep and aspiration of these state laws. The Board's record, which should have included "compelling and specific proofs" that there is no "detriment to the public good" from the variance at issue, N.J.S. 40:55D-70, was compiled as if these broader policies established by statute and compact did not exist. The lower court's review was similarly devoid of deference to these concepts of "public good" embedded in state law.

The Board's duty to apply the MLUL with deference to the New Jersey laws bearing on the Palisades escarpment is reinforced by the State of New Jersey's concomitant obligation to the State of New York under the Compact. That obligation arises not from jurisprudential doctrines of comity between states, nor from doctrines that lie within the scope of administrative or judicial discretion. To the contrary, New Jersey assumed the obligation to honor its "high trust" to protect the "scenic beauty" of the park by its own legislative enactment, the exercise of its sovereign power as a state. That power is diminished if this Board, or any other, can be cavalier in approving variances under the MLUL that compromise a resource that New Jersey clearly intended to protect, and pledged to New York by law that it would protect.

#### **CONCLUSION**

For the foregoing reasons, this court should reverse the judgment of the district court and annul the Board's grant of a height variance to LG.

Respectfully submitted,

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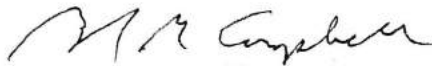
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NEW JERSEY STATE FEDERATION  
OF  
WOMEN'S CLUBS, SCENIC  
HUDSON, INC., MARGO MOSS,  
JAKOB FRANKE,  
JOHN DOES 1-10, AND ABC  
ENTITIES 1-10,

Plaintiffs-Appellants,

v.

BOARD OF ADJUSTMENT OF THE  
BOROUGH OF ENGLEWOOD CLIFFS  
AND LG ELECTRONICS USA,  
INC.,

Defendants.

SUPERIOR COURT OF  
NEW JERSEY  
APPELLATE DIVISION

**DOCKET NO: A-000007-13T1**

SAT BELOW:  
ALEXANDER H. CARVER, III,  
J.S.C.

DOCKET NOS. BER-L-2301-12  
BER-L-2373-12

Civil Action

**CERTIFICATION OF BRADLEY M.  
CAMPBELL, COUNSEL TO THE NEW  
YORK LEGISLATORS AS PROPOSED  
AMICI CURIAE**

I, Bradley M. Campbell, of full age, hereby certify as  
follows:

1. I am the president of the law firm of Bradley M.

Campbell, LLC, counsel to New York State Senator Jeffrey D. Klein, United States Congressman Eliot L. Engel of New York's 16<sup>th</sup> Congressional District, New York State Senator Adriano Espaillat, of New York's 31<sup>st</sup> Senate District, New York State Assemblyman Jeffrey Dinowitz, of New York's 81<sup>st</sup> Assembly District, and New York City Councilman Andrew Cohen, of the City's 11<sup>th</sup> Council District (collectively, the New York Legislators"), proposed *Amici Curiae* in the above-captioned appeal.

2. On April 7, 2014, I caused to be hand-delivered to the Appellate Division Clerk, an original and four copies of the documents listed in Exhibit A hereto.

3. On April 6, 2014, I sent to the attorneys and other parties listed below, by first class mail, two copies of the documents listed in Exhibit A hereto.

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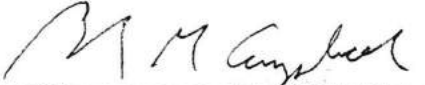
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I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 7, 2014

  
\_\_\_\_\_  
Bradley M. Campbell

## EXHIBIT A TO CERTIFICATION OF SERVICE

The following documents were included in the packages sent to the Appellate Clerk, the attorneys and other parties listed in the Certification of Service:

Motion of New York State Senator Jeffrey D. Klein, United States Representative Eliot L. Engel, New York State Senator Adriano Espaillat, New York State Assemblyman Jeffrey Dinowitz, and New York City Councilman Andrew Cohen (collectively, the New York Legislators) to Appear as *Amici Curiae* in these appeals.

Brief in Support of the Motion by the New York Legislators for Leave to Participate as *Amici Curiae*, appending certifications by New York State Senator Jeffrey D. Klein, United States Representative Eliot L. Engel, New York State Senator Adriano Espaillat, New York State Assemblyman Jeffrey Dinowitz, and New York City Councilman Andrew Cohen.

Brief of New York State Senator Jeffrey D. Klein, United States Representative Eliot L. Engel, New York State Senator Adriano Espaillat, New York State Assemblyman Jeffrey Dinowitz, and New York City Councilman Andrew Cohen as *Amici Curiae*

