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December 6, 2023

Hon. Renée Marie Bumb
Chief Judge
United States District Court for the District of New Jersey
4th & Cooper Streets
Camden, NJ 08101

Dear Chief Judge Bumb:

As Chair of the New York State Senate Judiciary Committee, I am writing to share my concerns about the ability of U.S. District Judge Brian R. Martinotti to fairly and impartially adjudicate two cases currently before the court concerning the New York Central Business District Tolling program: *New Jersey v. U.S. Department of Transportation*, No. 2:23-cv-03885 (D.N.J. July 1, 2023), and *Sokolich v. U.S. Department of Transportation*, No. 2:23-cv-21728 (D.N.J. Nov. 1, 2023). Judge Martinotti should recuse himself from both of these cases.

First, Judge Martinotti should recuse himself based on the close political ties between his spouse, Cliffside Park Councilwoman Dana Martinotti, and Phil Murphy, the Governor of the State of New Jersey, the plaintiff in *New Jersey v. U.S. Department of Transportation*. On April 15, 2021, Governor Murphy appointed Councilwoman Martinotti as a Commissioner of the Port Authority of New York and New Jersey (the "Port Authority").¹ When Councilwoman Martinotti left the Port Authority in 2022, it was speculated that she would "likely to move to a different role in the Murphy administration" and was replaced by Governor Murphy's Chief of Staff George Helmy, demonstrating the extremely close political ties between Governor Murphy and his appointees to the Port Authority, including Councilwoman Martinotti.²

As you know, Canon 2 of the Code of Conduct for United States Judges (the "Code") states that federal judges should "avoid impropriety and the appearance of impropriety in all activities."³ The appearance of impropriety "occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired."⁴ Further, an advisory opinion of the Committee on Codes of Conduct of the Judicial Conference states that "[w]hen a spouse's business relationships with a party, law

¹ "Governor Murphy Announces Nominations for Port Authority of New York and New Jersey Board of Commissioners," nj.gov, April 15, 2021, available at <https://www.nj.gov/governor/news/news/562021/20210415a.shtml> (last accessed December 6, 2023).

² Joey Fox, "Helmy, Kelley, Bollwage Confirmed to Seats on Port Authority Board," *New Jersey Globe*, February 27, 2023, and Sophie Nieto-Munoz, "Murphy Staffers, Elizabeth Mayor Approved to Sit on Port Authority Board," *New Jersey Monitor*, February 28, 2023.

³ "Code of Conduct for United States Judges" (effective March 12, 2019), 3, United States Courts, available at https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf (last accessed November 13, 2023).

⁴ Id. at 4.

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firm, or attorney appearing before the judge cause the judge's impartiality reasonably to be questioned, the judge must recuse, absent remittal."⁵

Councilwoman Martinotti's former role as a Port Authority Commissioner, in addition to her public and political association with Governor Murphy threatens to create an appearance of impropriety on the part of Judge Martinotti in *New Jersey v. USDOT* and thus requires him to recuse himself in this case.

Second, Judge Martinotti should recuse himself as a party to the case *Sokolich v. USDOT* because he and his spouse are members of the alleged class in that case. Judge Martinotti and his spouse Councilwoman Martinotti are both government officials residing in Bergen County, New Jersey. The plaintiffs in *Sokolich* purport to represent all "government officials and residents of Bergen County and the area surrounding the George Washington Bridge,"⁶ making Judge Martinotti and Councilwoman Martinotti parties to this class. According to Canon 3C(1)(d) of the Code, when judges are "a party to the proceeding," their impartiality might reasonably be questioned and therefore they must recuse.⁷

The urgency of Judge Martinotti to recuse himself in these cases is compounded by the judge's troubling history of recusal violations. According to a 2021 investigation into financial conflict disclosures in the federal judiciary, Judge Martinotti oversaw 44 cases involving companies in which he had a financial interest, earning him the dubious distinction of having the third most recusal violations of any federal judge in the country.⁸ This record raises serious questions about Judge Martinotti's willingness to appropriately disqualify himself from these proceedings in accordance with the Code.

When my colleagues and I in the New York State Legislature approved legislation establishing the Central Business District Tolling program in 2019, we did so on the promise that congestion pricing would ease traffic, reduce carbon emissions, improve street safety and bolster mass transit. To protect the integrity of any judicial review of a program so vital to the tri-state region, these cases must be overseen by a fair and impartial judge whose probity is beyond reproach. Unfortunately, for the reasons outlined above, Judge Martinotti is not that jurist. If Judge Martinotti does not recuse himself, I urge you to remove these cases from his purview.

Thank you for your consideration of this request. Please contact me at (212) 633-8052 if you have any questions.

Sincerely yours,



Brad Hoylman-Sigal
NYS Senator - 47th District

cc:

Hon. Brian R. Martinotti
United States District Judge for the District of New Jersey

⁵ Advisory Opinion No. 107: Disqualification Based on Spouse's Business Relationship, Committee on Codes of Conduct of the Judicial Conference, June 2009, available at https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02_0.pdf (last accessed December 6, 2023)

⁶ Complaint, *Sokolich v. U.S. Department of Transportation*, No. 2:23-cv-21728 (D.N.J. Nov. 1, 2023).

⁷ "Code of Conduct for United States Judges" (effective March 12, 2019), United States Courts.

⁸ James V. Grimaldi, Coulter Jones, and Joe Palazzolo, "131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest," *Wall Street Journal*, September 28, 2021.