

STATEHOUSE

Court needs to set limits on flawed \$10B borrowing plan



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When this pandemic crushed New Jersey's economy, it seemed obvious that the state would need to borrow money to survive it, and reasonable to spread the pain across at least the next few years as we pay it back. If I lost my job, I might do the same.

So, it struck me as nuts, at first, when Republicans filed suit to block Gov. Phil Murphy's plan to borrow up to \$10 billion. They don't have a better plan, so I dismissed it as a spitball from the cheap seats in the run-up to next year's election.

But now I'm scared. Because the state Supreme Court just ripped the mask off this thing, asking a series of shrewd questions at a hearing on Wednesday that revealed the beast underneath.

This is not just about coping with the pandemic. Murphy is using the pandemic to claim new authority to spend borrowed

money on anything he wants, leaving the bill to his successors. The design of this thing is badly flawed, and our best hope now is that the court rides to the rescue by putting up some boundaries.

My moment of clarity came 1 hour and 58 minutes into the hearing when Chief Justice Stuart Rabner pressed Murphy's attorney to describe what type of spending might be justified, on an emergency basis, with the borrowed funds.

"Could the money be used to subsidize a sports arena to the tune of \$1 billion?" Rabner asked.

"Yes, your honor," said the state's lawyer, Jane Reilly. "If the Legislature, who has a wider view than I do of the economic needs of the state and the best means to remediate that, if they were able to come up with an explanation of why the sports arena was necessary to meet the fiscal emergency the pandemic caused, then

yes, that would be acceptable."

Uh-oh. If you can use the pandemic to justify spending money on a shiny new sports stadium, then where's the limit?

The court case is focused mostly on the use of emergency powers to justify borrowing without the traditional public referendum, and without specifying exactly what the borrowed money would be used for. The constitution has one clause saying a vote is needed, and another saying that an emergency might justify skipping the vote, as was done during the Depression and Civil War.

They also spent some time asking what constitutes an emergency. Yes, we all agree COVID-19 qualifies, but what about Hurricane Sandy? What about the Great Recession? No clear answers emerged on that, not even close.

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That's scary, too. Could this back door to borrowing without public approval be opened again soon? What if the next storm is worse than Sandy? Where does it end?

One last reason to worry: Remember Gov. Christie Whitman's infamous bond scam of 1997, when she borrowed \$2.8 billion to shore up the pension fund. People often forget the really dastardly part of that stunt — she backloaded the repayment schedule so that the burden ballooned on her successors. We are paying more than \$450 million a year now, and we still owe \$2 billion of the principal.

"Every time we make that payment, you have no idea how angry I get," says state Senate President Steve Sweeney, D-Gloucester. "The \$2.8 we borrowed in 1997 will cost us about \$11 billion in the end. Think about that."

The challenge, really, is to find a way to survive the pandemic intact without deepening the state's fiscal crisis too much in the long run. That's going to be tough, no matter what the rules are.

Republicans, and some bipartisan experts, say we can do it without borrowing. First, they say the gap is much smaller than \$10 billion, a point that Murphy's people privately concede. They asked for this authority to leave some elbow room, but revenues have picked up a bit, and most observers guess the number is more likely to be \$5 billion to \$6 billion.

Republicans have not identified the painful spending cuts that would close a gap of that size, but they are nibbling at the edges. GOP Sen. Steve Oroho, R-Sussex, wants Murphy to impose a pay freeze on state workers, along with furloughs. Sen. Declan O'Scanlon, R-Monmouth, says the governor should consider deferring next year's \$4.9 billion pension payment.

Rich Keevey, a budget guru who worked for governors of both parties and

now lectures at Rutgers and Princeton universities, has an innovative idea that Oroho has latched onto: Start capturing taxes paid by New Jersey residents who normally commute to Manhattan but now work at home in New Jersey — money that goes mostly to New York today.

Some conservatives concede the need for tax hikes, as long as they are accompanied by tough austerity measures. "We've got to spread the pain widely," says Tom Healey, a senior official in Ronald Reagan's Treasury Department who co-chaired a task force on the state's fiscal crisis with Democrat Tom Byrne.

No one, it seems, is giving Murphy much credit for the tough steps he's already taken. He killed all the new progressive programs he had proposed in this year's budget, worth \$850 million, which must have pained him. He imposed a hiring freeze, with an exception for pandemic needs. He cut grants to nonprofit groups and ordered his department heads to find budget cuts of 15 percent in preparation for September's budget talks. We'll see what he proposes in September, but these steps match the austerity in other states, including those run by Republicans.

My own hope is that the Supreme Court allows some borrowing, but with guardrails on how the money can be spent, which would limit the total. Add in some tax hikes, spending cuts, and some old fashioned kicking the can down the road, and we just may survive this.

If we're really lucky, this pressure will convince Murphy that he has to finally get serious about the fiscal crisis and agree to the pension and health reforms that Sweeney is pushing, with support from a potent bipartisan coalition in the Legislature. The governor can't borrow a dime without the approval of a special committee of legislators, who now have potent leverage to force the governor's hand.

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