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Attorneys for Plaintiffs

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UAW, REGION 9 OF THE	:	CHANCERY DIVISION: MERCER COUNTY
UAW, and C.E.A.S.E. N.J.,	:	DOCKET NO.:
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
	:	<u>VERIFIED COMPLAINT</u>
	:	
NEW JERSEY GOVERNOR	:	
PHILIP MURPHY, and ACTING	:	
NEW JERSEY HEALTH	:	
COMMISSIONER DR. KAITLIN	:	
BASTON,	:	
	:	
Defendants.	:	
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Plaintiffs, UAW (International United Automobile Aerospace and Agricultural Implement Workers of America), Region 9 of the UAW, and C.E.A.S.E. N.J. (Casino Employees Against Smoking's (Harmful) Effects), allege the following:

NATURE OF THE ACTION

1. Plaintiffs represent workers in New Jersey casinos exempted from the protections of the Smoke-Free Air Act in violation of the New Jersey Constitution.

PARTIES

2. Plaintiff, UAW (the International United Automobile, Aerospace and Agricultural Implement Workers of America), is one of the largest and most diverse unions in North America, with members in virtually every sector of the economy. The UAW represents workers in the Bally's, Caesars and Tropicana casinos in Atlantic City, New Jersey, many of whom have suffered, and continue to suffer severe health problems as a result of having to work in secondhand smoke.

3. Plaintiff, Region 9 of the UAW, represents workers in New Jersey, including over 3,000 in the Bally's, Caesars and Tropicana casinos in Atlantic City, New Jersey and has fought and continues to fight for their right to be protected by the Smoke-Free Air Act.

4. Plaintiff, C.E.A.S.E. N.J. (Casino Employees Against Smoking's (Harmful) Effects), is a grassroots organization formed in 2021 with over 3000 members representing workers in every one of Atlantic City's casinos. C.E.A.S.E. members have cancer and other diseases related to smoking, although they do not smoke.

5. Defendant Philip Murphy is the governor of New Jersey. Governor Murphy took an oath of office to uphold the Constitution and provide New Jersey residents with their rights to safety and equal protection of the laws. Governor Murphy has failed to protect the safety and equal protection of casino workers and has personally implemented the unconstitutional special law excluding casino workers from the protections of the Smoke-Free Air Act.

6. Defendant Dr. Kaitlan Baston is the Acting Commissioner of the New Jersey Department of Health. Dr. Baston is responsible to promote the safety and health of New

Jersey residents, and for the State's implementation of the Smoke-Free Air Act through the Comprehensive Tobacco Control Program. Commissioner Baston has failed to protect the safety of casino workers and has implemented an unconstitutional special law.

VENUE

7. Venue is properly in Mercer County because the defendants are situated in the City of Trenton in Mercer County.

COUNT I

THE EXCLUSION OF CASINO WORKERS FROM THE SMOKE-FREE AIR ACT IS A VIOLATION OF THE CONSTITUTIONAL RIGHT TO SAFETY

8. In 2006, New Jersey passed the Smoke-Free Air Act (N.J.S.A. 26:D-55, et seq.) N.J.S.A. 26:3D-56 provides the purpose and public interest of the law:

“The Legislature finds and declares that:

a. Tobacco is the leading cause of preventable disease and death in the State and the nation;

b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;

d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system;

f. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces and at all public parks and beaches.”

N.J.S.A. 26:D-55.

9. The Centers for Disease Control and Prevention's current guidance regarding secondhand smoke is:

- There is no safe level of exposure to secondhand smoke;
- The effects of secondhand smoke exposure on the body are immediate and exposure can produce harmful inflammatory and respiratory effects within 60 minutes of exposure which can last for at least three hours after exposure;
- In adults who do not smoke, secondhand smoke exposure can cause coronary heart disease, stroke, lung cancer, other diseases and premature death;
- Secondhand smoke can cause reproductive health effects in women, including low birth weight. Additionally, women exposed to secondhand smoke during pregnancy are more likely to have newborns with lower birth weight, increasing the risk of health complications;
- Among adults who do not smoke, secondhand smoke causes nearly 34,000 premature deaths from heart disease each year in the U.S.;
- Adults who do not smoke and are exposed to secondhand smoke increase their risk of developing coronary disease by 25-30%;
- Adults who do not smoke and are exposed to secondhand smoke increase their risk of stroke by 20-30%;
- Exposure to secondhand smoke interferes with the normal functioning of the heart, blood, and vascular systems in ways that increase the risk of having a heart attack;
- Even brief exposure to secondhand smoke can damage the lining of blood vessels and cause blood platelets to become stickier. These changes can cause an increased risk of heart attack;
- Adults who do not smoke and are exposed to secondhand smoke increase their risk of developing lung cancer by 20-30%;
- Secondhand smoke causes more than 7,300 lung cancer deaths each year among U.S. adults who do not smoke;

- People who do not smoke but are exposed to secondhand smoke are inhaling many of the same cancer-causing substances and poisons that are inhaled by people who smoke;
- Even brief exposure to secondhand smoke can damage the body's cells in ways that set the cancer process in motion;
- Since 1964, about 2,500,000 people who did not smoke **died** from health problems caused by secondhand smoke exposure.

(www.cdc.gov/tobacco/secondhand-smoke/health.html).

10. Despite specifically finding in N.J.S.A. 26:D-55(b) that tobacco smoke “constitutes a substantial health hazard to the nonsmoking majority of the public”, Section 26:3D-59(e)(1) and (2) of the Smoke-Free Air Act exempts casino workers from the law’s protection.

11. During Covid, on March 16th 2020, Governor Murphy issued Executive Order No. 104 which closed the casinos.

12. When Governor Murphy allowed casinos to re-open, 105 days later, he stated: “[s]moking in the indoor areas of any retail, recreational, and/or entertainment business, including casinos, is prohibited, even when otherwise permitted by State law.” Executive Order No. 158.

13. On September 1, 2020, the Governor issued another executive order which allowed smoking to resume in casinos. Executive Order 183 stated, in part, “any retail, recreational, and entertainment business that is authorized to open its indoor premises to the public may allow the consumption of food, beverages, or smoking in those indoor premises, when otherwise permitted by State law.” However, due to push back from health and worker

advocates, on September 4, 2020, Murphy again banned smoking in casinos saying: “we’re going to switch a modest gear, that we will take administrative action to prohibit smoking in indoor casinos. We have looked closely at the science and agree with the experts who have concluded that allowing smoking is too big a risk to take.”

14. Governor Murphy’s reliance on science to protect the health and safety of workers and patrons at New Jersey casinos was memorialized on September 4, 2020 in Administrative Order No. 2020-19 which reinstated the smoking ban in casinos.

15. Administrative Order No. 2020-19 described the advice of the then-Commissioner, Judith Persichilli, regarding exposing casino workers to smoke:

“WHEREAS, the Commissioner of DOH advised that smoking on casino floors poses a possible increased risk for the transmission of COVID-19 as smoking can only be done without a mask, involves active exhalation, often results in frequent touching of hands and mouth, and can take place over a prolonged period of time; and

WHEREAS, the Commissioner of the Department of Health further advised that casino workers are at a greater risk for lung and heart disease because of long-term secondhand smoke exposure and casino workers with such underlying diseases are at an increased risk for complications if they become infected with COVID-19; and

WHEREAS, the Commissioner of the Department of Health has determined that a temporary ban on smoking on casino floors is necessary to protect the large number of individuals on casino floors, including casino patrons and casino employees;...” Administrative Order No. 2020-19.

16. Despite the clear findings by then-Commissioner Persichilli of the Department of Health, without any contrary science or health advice, on June 4, 2021, Governor Murphy signed Executive Order No. 244 which allowed smoking to resume in casinos on July 4, 2021.

17. Casino workers have experienced, and continue to experience, life threatening illnesses as a result of exposure to secondhand smoke.

18. The New Jersey Constitution protects the right to safety. “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining **safety** and happiness.” N.J.S.A. Const. Art. 1, ¶ 1.

19. It is unsafe for casino workers to work in smoke-filled casinos.

20. Requiring casino workers to work in smoke-filled casinos violates their Constitutional right to safety.

21. By and through their enforcement of the exclusion of casino workers from the Smoke-Free Air Act, Defendants have violated Plaintiff’s constitutional right to safety.

22. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs have suffered, and continue to suffer, damages including death, severe physical illness, severe mental, physical and emotional distress, pain and suffering, anxiety, and stress.

COUNT II

THE EXCLUSION OF CASINO WORKERS FROM THE SMOKE-FREE AIR ACT IS AN UNCONSTITUTIONAL SPECIAL LAW

23. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs of the Complaint as if set forth herein.

24. Casino workers are a rare exception to those excluded from the protections of the Smoke-Free Air Act.¹

¹ The other exceptions for workers are tobacco establishments and medical research facilities. N.J.S.A. 26:3D-59

25. The purpose of the Smoke-Free Air Act is outlined in the law itself:

The Legislature finds and declares that:

a. Tobacco is the leading cause of preventable disease and death in the State and the nation;

b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;

d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system;

f. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces and at all public parks and beaches.

N.J.S.A. 26:D-55.

26. The Constitution provides, "No general law shall embrace any provision of a private, special or local character." N.J.S.A. Const. Art. 4, § 7, ¶ 7.

27. The Constitution also states, "The Legislature shall not pass any private, special or local laws:...(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever." N.J.S.A. Const. Art. 4, § 7, ¶ 9(8).

28. The exclusion of casino workers from the Smoke-Free Air Act is an unconstitutional special law because it:

- rests on a false or deficient classification;
- does not embrace all the class to which it is naturally related;

- creates a preference and establishes inequalities; and
- applies to persons with certain qualities, and excludes from its protections other persons . . . which are not dissimilar in these respects.

29. The exclusion of casinos – rich corporations – from the Smoke-Free Air Act is the unconstitutional “granting to [several] corporation[s] . . . [an] exclusive privilege and immunity.” The favoritism granted the corporate casinos violates a very clear provision of the New Jersey Constitution.

30. By and through their exclusion of casino workers from the protections of the Smoke-Free Air Act, Defendants have violated Plaintiffs’ constitutional rights by enforcing an unconstitutional special law.

31. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs have suffered, and continue to suffer, damages including death, severe physical illness, severe mental, physical and emotional distress, pain and suffering, anxiety, and stress.

COUNT III

THE EXCLUSION OF CASINO WORKERS FROM THE SMOKE-FREE AIR ACT VIOLATES THEIR RIGHT TO EQUAL PROTECTION

32. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs of the Complaint as if set forth herein.

33. A special law violates the equal protection guaranteed by the New Jersey Constitution.

34. Plaintiffs have been deprived of equal protection by being excluded from the Smoke-Free Air Act.

35. By and through their exclusion of casino workers from the protections of the Smoke-Free Air Act, Defendants have violated Plaintiffs' equal protection rights guaranteed by the New Jersey constitution.

36. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs have suffered, and continue to suffer, damages including death, severe physical illness, severe mental, physical and emotional distress, pain and suffering, anxiety, and stress.

WHEREFORE, cause having been shown, Plaintiffs demand judgment against defendants and seek the following relief:

- (A) A declaratory judgment that the exclusion of casino workers from the Smoke-Free Air Act is unconstitutional;
- (B) A temporary and permanent injunction voiding that unconstitutional provision (N.J.S.A. 26:3D-59(e)); and
- (C) Attorneys' fees and costs of suit pursuant to N.J.S.A. 10:6-2(f) of the New Jersey Civil Rights Act.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs

BY: 


NANCY ERIKA SMITH

Dated: April 5, 2024

VERIFICATION

I, Daniel Vicente, am the Director of UAW Region 9, one of the plaintiffs herein. I have read the foregoing Verified Complaint and certify that all of the allegations contained therein are true based on my personal knowledge.

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


DANIEL VICENTE

Dated: April 4, 2024