IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1687

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series, on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Appellant,

v.

THE STATE OF NEW JERSEY, BRENDAN T. BYRNE, Governor of the State of New Jersey, and WILLIAM F. HYLAND, Attorney General of the State of New Jersey,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

NEW YORK ATTORNEY GENERAL'S BRIEF AMICUS FOR THE STATE OF NEW YORK

The Attorney General of the State of New York, pursuant to Rule 42 of the Rules of this Court, files this brief in support of the appellees' position. To avoid repetition, we endorse the essential arguments made by counsel for the appellees urging affirmance of the judgment of the Supreme Court of New Jersey, entered February 25, 1976. New York is concerned as to the disposition of this ap-

peal, particularly by reason of the fact that it has a companion statute (1974 Laws of New York, Ch. 993), to the statute (1974 Laws of New Jersey, Ch. 25) whose constitutionality the appellant challenges.

We oppose the suggestion made by the appellant in its jurisdictional statement and reiterated in its present brief (p. 3, fn. 2) that disposition of this appeal should be deferred pending final disposition of the related action in New York. The fact is that, although the appellant instituted a similar action in New York on June 17, 1974 to which prompt response was made by the New York Attorney General on July 7, 1974, that the appellant has failed since then to take any further steps to prosecute the New York action. Delay of the disposition of this appeal, to allow activation and final disposition of the New York action, would be unconscionable in the light of the appellant's failure until now to achieve any progress in the New York suit.

Moreover, completion of another lawsuit is not necessary, except for the further accumulation of lawyers' fees, to reiterate the principle that a State's police power can not be bargained away by any legislative body so as to preclude necessary action by a subsequent legislature. *Butchers Union Co.* v. *Crescent City Co.*, 111 U.S. 746, 750-751 (1884); *Pennsylvania Hospital* v. *Philadelphia,* 245 U.S. 20, 23 (1917); *Sanitary District* v. *United States,* 266 U.S. 405, 427 (1925). Our New York legislature is and has been governed by the doctrine that its police power is the least limitable of all the powers of government. *Matter of Engelsher* v. *Jacobs,* 5 N Y 2d 370, 373 (1959), cert. den. 360 U.S. 902 (1959); *Nettleton Co.* v. *Diamond,* 27 N Y 2d 182, 192 (1970), app. dism. *sub nom. Reptile Products Assn. Inc.* v. *Diamond,* 401 U.S. 969 (1971). The broad scope of New York's police power could not have been unknown to persons who allegedly depended upon the 1962 "covenant".

CONCLUSION

The judgment of the Supreme Court of the State of New Jersey, entered February 25, 1976, should be affirmed.

Dated: New York, New York
September 10, 1976

Respectfully submitted,

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