ASSEMBLY BILL NO. 4652
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 4652 (First Reprint) with my recommendations for reconsideration.

Assembly Bill No. 4652 (First Reprint) creates the new offense of inciting a public brawl and upgrades the penalty for engaging in disorderly conduct from a petty disorderly persons offense to a disorderly persons offense under certain circumstances. Under the bill, a person is guilty of inciting a public brawl if they act "with purpose to organize or promote a group of four or more other persons to engage in a course of disorderly conduct." Inciting a public brawl is a disorderly persons offense, except that it is a fourth-degree crime if a person acts with purpose to disrupt or cause a disturbance at a public gathering or event, or engages in behavior knowing that it will likely disrupt or cause a disturbance at a public gathering or event. The bill also provides that a person who attempts to or does conceal their identity while engaging in disorderly conduct, with the purpose to hinder prosecution or avoid apprehension, is guilty of a disorderly persons offense.

I applaud the sponsors of this bill who rightly recognize the need to deter incidents of group violence, particularly at public gatherings and events. Our communities should feel safe and supported whenever they gather, whether it is to conduct public business or to celebrate important occasions. I am concerned, however, that the bill as currently written raises several First Amendment concerns that could have the unintended effect of chilling free speech and peaceful protests and, if improperly applied, penalizing people for the otherwise lawful activity of wearing a mask.

My proposed changes recommend modest revisions that preserve the intent and integrity of the bill, while ensuring that First Amendment rights are not inadvertently hindered. My recommendations include language that tracks the standard for incitement articulated by the United States Supreme Court in Brandenburg v. Ohio, 395 U.S. 444 (1969), which allows prohibitions on speech that incites unlawful action only if that speech is directed at inciting or producing imminent lawless action and is likely to incite or produce that action. I am also proposing language clarifying that individuals wearing masks solely for medical, religious, or expressive purposes at public events will not be considered to have acted with a purpose to instill fear or evade prosecution or apprehension. Finally, my recommendations include revisions intended to protect against the risk of the statute inadvertently operating to punish the encouragement of nonviolent action more harshly than the incitement of violent action.

Therefore, I herewith return Assembly Bill No. 4652 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 28:	After "if" insert ": (1)"
Page 2, Section 1, Line 29:	Delete "organize or promote" and insert "incite"
Page 2, Section 1, Line 30:	After "persons" insert "imminently"
Page 2, Section 1, Line 31:	After "N.J.S.2C:33-2" insert "or acts with purpose to produce such imminent course of disorderly conduct by a group of four or more persons; and (2) the person's actions are likely to incite or produce such imminent course of disorderly conduct by a group of four or more persons"
Page 2, Section 1, Lines 33-35:	Delete "disrupt or cause a disturbance at a public gathering or event or knowing that a disruption or disturbance is likely to occur" and insert "incite or produce the course of disorderly conduct defined in

subsection a. of N.J.S.2C:33-2”

Page 2, Section 1, Line 39: Delete “subsection a.” and insert “subsections a. or d.”

Page 3, Section 2, Line 16: After “identity” insert “by wearing a mask or disguise”

Page 3, Section 2, Line 18: After “to” insert “instill fear,”

Page 3, Section 2, Line 18: After “prosecution” insert “,”

Page 3, Section 2, Line 19: After “offense.” insert “For purposes of this subsection, a person who wears a mask or disguise solely for medical, religious, or expressive purposes shall not be deemed to have acted with purpose to instill fear, hinder prosecution, or avoid apprehension.”

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate E. McDonnell

Chief Counsel to the Governor