
MIRZA M. BULUR, et al.,	)	<u>SUPREME COURT OF NEW JERSEY</u>
)	
Plaintiffs/Appellants,	)	Docket No. 090126
)	
v.	)	On Petition for Certification of the Final
	)	Judgment of the Superior Court of New
THE NEW JERSEY OFFICE OF	)	Jersey, Appellate Division
THE ATTORNEY GENERAL, et al.,)	
	)	Docket Nos. Below: A-0629-23
Defendants/Respondents.	)	A-1209-23
)	
ANDRE SAYEGH, et al.,	)	Sat Below:
	)	Hon. Morris G. Smith, JAD
Plaintiffs/Appellants,	)	Hon. Mark K. Case, JAD
	)	Hon. Christine M. Vanek, JAD
v.)	
	)	<u>CIVIL ACTION</u>
ISA M. ABBASSI, et al.,)	
)	
Defendants/Respondents.)	

BRIEF ON BEHALF OF *AMICUS CURIAE* NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

Date submitted: January 10, 2025

Trishka Waterbury Cecil (022531996)
MASON, GRIFFIN & PIERSON, P.C.

101 Poor Farm Road
Princeton, New Jersey 08540

(609) 436-1211 (office)
(908) 528-4747 (mobile)

trishka@mgplaw.com

Attorneys for Amicus Curiae New Jersey State League of Municipalities

Of counsel and on the brief: Trishka Waterbury Cecil, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY AND STATEMENT OF FACTS 3

LEGAL ARGUMENT 4

 POINT I: THE COURT SHOULD DENY DEFENDANTS’ PETITION FOR
 CERTIFICATION 4

 POINT II: IF CERTIFICATION IS GRANTED, THE COURT SHOULD
 AFFIRM THE APPELLATE DIVISION’S DECISION 5

 A. This Court should hold, as did the Appellate Division, that there is no express
 authority for an attorney general to unilaterally supersede and assume total
 control over the operations of a municipal police
 department. 5

 B. This Court should hold, as did the Appellate Division, that there is no implied
 authority for an attorney general to unilaterally supersede and assume total
 control over the operations of a municipal police department. 7

 C. This Court should affirm the Appellate Division’s decision because the
 Attorney General’s interpretation of the law and arrogation of authority
 violates fundamental principles of home rule. 13

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 100-101 (2020).....9
In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 246 N.J. 462, 483 (2021)..... 9, 12, 13
In Re Carrol, 339 N.J. Super. 429, 439 (App. Div. 2001).....7
New Jersey Court Rule 2:12-4.....4
Paff v. Ocean Cty. Prosecutor’s Off., 235 N.J. 1, 19 (2018).....13
Petition of Hackensack Water Co., 197 N.J. Super. 162 (App. Div. 1984)16
State v. Henderson, 397 N.J. Super. 398 (2008).....8

Constitutional Provisions

NJ Const. Art. 4, § 7, ¶ 11.....14

Statutes

N.J.S.A. 40A:14-118..... 15, 16
N.J.S.A. 40A:14-118.2.....16
N.J.S.A. 52:17B-1076
N.J.S.A. 52:17B-107(a)(1)(a)9
N.J.S.A. 52:17B-107(a)(1)(b)-(c)9
N.J.S.A. 52:17B-112a8
N.J.S.A. 52:17B-112b.....9
N.J.S.A. 52:17B-4(d)14
N.J.S.A. 52:17B-97, *et seq.*.....5
N.J.S.A. 52:17B-987
P.L. 1996, c. 11511
P.L. 2015, c. 5211
P.L. 2023, c. 9412
P.L.1996, c.11511

Other Authorities

1991 Internal Affairs Policy and Procedures9
Internal Affairs Policy and Procedures.....9
Law Enforcement Directive 2022-14..... 9, 10, 11

PRELIMINARY STATEMENT

Amicus curiae the New Jersey State League of Municipalities (League) reiterates its preliminary statement from the *amicus* brief it filed in the Appellate Division, and further adopts by reference the preliminary statements set forth in the *amicus* briefs submitted by the New Jersey Institute of Local Government Attorneys and the New Jersey State Policemen’s Benevolent Association, but adds the below for emphasis.

There is only one issue before this Court: whether the Legislature, either expressly or implicitly, has conferred the authority on the AG to take over the day-to-day operations of a municipal department, unilaterally and without the acquiescence of the municipality in question. The sole question is whether that authority exists under the current legislative scheme, not whether it should exist or whether the AG did a “good thing” in taking over Paterson’s police department. Whether the AG *should* (as opposed to does) have the authority it has cloaked itself with here is for the Legislature and the Governor to decide, not the Judiciary.

This is the approach the Appellate Division took. It correctly applied well-accepted principles of statutory construction to conclude that the AG has no explicit or implicit authority under the current statutory scheme to take over the operations of a municipal police department without the consent of the municipality. It did not

engage in any policy-making, nor did it apply any value judgment to what the AG did in Paterson. It applied the law, and it applied it correctly.

The League, on behalf of New Jersey's 565 municipalities and in support of their constitutional right to govern themselves, urges this Court to deny defendants' petition for certification, or, if it grants the petition, affirm the decision of the Appellate Division.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

For the sake of brevity, the League continues to rely on those facts and procedural history as are undisputed between the parties in their briefs below and before this Court, and also as set forth in the Appellate Division's opinion.

LEGAL ARGUMENT

POINT I

THE COURT SHOULD DENY DEFENDANTS' PETITION FOR CERTIFICATION

New Jersey Court Rule 2:12-4 states that certification may be granted when an appeal “presents a question of general public importance which has not been but should be settled by the Supreme Court” It would be hard to argue that this appeal does not raise an issue of general public importance. The appeal does not, however, raise a question that needs to be settled by the Supreme Court, for the simple reason that the Appellate Division has already settled it, and settled it well.

The Appellate Division’s decision is clear, thorough and well-reasoned. The Appellate Division did not stray beyond its authority, did not make value judgments about the merits of the AG’s actions, did not impose its view of what would make sense from a policy perspective. It did as it was supposed to do: it analyzed the various applicable statutes, directives and other sources of law using established canons of statutory construction, and reached the only possible conclusion, which is that no matter how much the AG might want to have the authority to take over day-to-day operations of a municipal police department, the Legislature has not conferred that authority on the AG. The League therefore urges the Court to deny the petition for certification.

POINT II

IF CERTIFICATION IS GRANTED, THE COURT SHOULD AFFIRM THE APPELLATE DIVISION'S DECISION

If the Court does decide to grant defendants' petition for certification, it should affirm the Appellate Division's decision.

- A. This Court should hold, as did the Appellate Division, that there is no express authority for an attorney general to unilaterally supersede and assume total control over the operations of a municipal police department.**

The AG claims that its power to take over local law enforcement agencies derives from the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97, *et seq.* (CJA), which the AG asserts grants it “broad authority over criminal justice matters”, including not only the power to “adopt guidelines, directives, and policies that bind law enforcement”, but also “the power to take over any case, function, or law enforcement agency that has fallen far short of the standards to which law enforcement must adhere.” (See the Preliminary Statement in defendants' Combined Brief in Support of Petition for Certification and Motion for Stay Pending Final Judgment submitted December 31, 2024 (Brief or AG Brief) at p. 1). This purported “power to take over any case, function, or law enforcement agency that has fallen far short of the standards to which law enforcement must adhere” cannot be found anywhere in the CJA, or in any other statute, or in any case.

No reasonable argument can be made that there is implied authority granted to the AG to supersede the day-to-day operations of a local law enforcement agency. Nor is it appropriate for such an important policy decision by the Legislature be implied. Such a policy should be reserved for clear and express legislation.

A reading of the Criminal Justice Act of 1970 reveals no express authority for the supersession of a municipal police department by the AG. The Act does provide that whenever “in the opinion of the Attorney General the interest of the State will be furthered by so doing,” the Attorney General may: “(a) *supersede* a county prosecutor in any investigation, criminal action or proceeding, (b) *participate* in any investigation or proceeding, or (c) *initiate* any investigation, criminal action or proceeding.” N.J.S.A. 52:17B-107 (emphasis added). The CJA does not state that the AG may supersede any law enforcement officer or entity other than a county prosecutor, nor does it expressly empower the AG to use the supersession authority to assume control of a local law enforcement agency or any other agency’s day-to-day operations.

The inclusion of specific authority for the AG to supersede the operations of a county prosecutor’s office is telling. If the Legislature intended the AG to have authority to supersede a municipal police department, it could have included such a specific provision in the CJA, as it did for a county prosecutor’s office. The only conclusion to be drawn is that by expressly providing authority for the AG to take

over a county prosecutor's office but nothing similar for a municipal police department, the Legislature did not wish to provide such authority.¹

B. This Court should hold, as did the Appellate Division, that there is no implied authority for an attorney general to unilaterally supersede and assume total control over the operations of a municipal police department.

The declared policy of the Criminal Justice Act of 1970 is instructive on the limits of the authority granted to the AG. Specifically, N.J.S.A. 52:17B-98 provides:

The Legislature recognizes that the existence of organized crime presents a serious threat to our political, social and economic institutions and helps bring about a loss of popular confidence in the agencies of government. Accordingly, it is hereby declared to be the public policy of this State to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. All the provisions of this act shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the above declaration of policy.

[*Id.* (emphasis added)]

The courts have interpreted this policy to authorize the AG to issue guidelines, directives, and policies concerning the appropriate application of the State's criminal laws. *See In Re Carrol*, 339 N.J. Super. 429, 439 (App. Div. 2001). The court has

¹ Similarly, a review of the Law and Public Safety Act of 1948 also reveals no express authority for the supersession of an entire law enforcement agency.

also interpreted this policy to uphold the production of guidelines such as plea offer guidelines, sex offender registration guidelines, drug screening guidelines, and the guidelines assisting prosecutors in rendering uniform decisions concerning drug testing. *Id.* And see, e.g., *State v. Henderson*, 397 N.J. Super. 398 (2008). The court has never gone as far as to interpret this policy to allow for the complete supersession of a municipal police department by the AG.

In lieu of citing to (non-existent) language in the CJA or any other statute, the AG relies instead on various statutory provisions that it contends amount to a grant of supersession authority, beginning with its generalized “broad authority over criminal justice matters” (AG Brief at p. 11), the chain of command established in the CJA whereby the county prosecutors “cooperate with and aid the Attorney General in the performance of his duties,” see N.J.S.A. 52:17B-112a, and the requirement that all municipal police officers and other law enforcement officers “cooperate with and aid the Attorney General and the several county prosecutors.” See N.J.S.A. 52:17B-112b. The AG also points to the authority granted to it by the CJA to supersede any county prosecutor ““in any investigation, criminal action or proceeding”” and to exercise “oversight over ‘any investigation, criminal action or proceeding’ throughout the State[.]” (AG Brief at 13, quoting N.J.S.A. 52:17B-107(a)(1)(a) and N.J.S.A. 52:17B-107(a)(1)(b)-(c), respectively). Presumably, the fact that local law enforcement officers must “cooperate with and aid” the county

prosecutors and the AG, and the fact that the AG can exercise oversight with respect to “any investigation, criminal action or proceeding”—propositions that seem fairly unremarkable—also means the AG can take over the day-to-day operations of an entire municipal police department, any time it wishes to do so, for any reason, and for whatever length of time it wishes to remain in charge. This is a bridge too far, especially in the context of Home Rule (see Point II.C, *infra*).

The AG also relies on the Attorney General’s 1991 Internal Affairs Policy and Procedures (IAPP) as most recently amended by Law Enforcement Directive 2022-14 (the 2022 Directive) to support its contention that it can supersede a municipal police department any time it wishes to do so. This argument is unavailing.

In 1991, Attorney General Robert DeLufo established the first Internal Affairs Policy and Procedures (IAPP) pursuant to his authority under the Law and Public Safety Act of 1948 and the Criminal Justice Act of 1970. *See In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6*, 246 N.J. 462, 483 (2021)(*In re Law 2020 Directives*). In contrast to the 2022 Directive, the 1991 IAPP established uniform procedures for investigating complaints of police misconduct. Also in contrast to the 2022 Directive, it described procedures that must be followed to receive, investigate, and resolve complaints of misconduct. *See Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 244 N.J. 75, 100-101 (2020)(providing a history of the IAPP).

Shortly thereafter, in 1996, legislation was adopted requiring every law enforcement agency across the state to adopt and implement the guidelines consistent with the IAPP. (P.L. 1996, c. 115). As noted by this Court, the adoption of P.L. 1996, c. 115 “effectively made the AG’s IAPP required policy for all municipal law enforcement agencies in New Jersey.” *Id.* at 101. In 2014, the Legislature amended P.L.1996, c.115 to also include any police department of an institution of higher education. P.L. 2015, c. 52.

Notably, the IAPP in effect when the Legislature first required every law enforcement agency to adopt and implement consistent guidelines did not include provisions authorizing or related to the AG’s complete supersession of the operations of a law enforcement agency. Likewise, no such provision was present in the IAPP when the Legislature adopted amendments to P.L.1996, c.115 in 2015, or in any IAPP issued or in effect from 1996 to 2015. Prior to the version issued in November 2022, the IAPP—as it is so aptly titled—, dealt exclusively with the procedures for handling internal affairs investigations. Versions of the IAPP issued prior to November 2022 made no mention or reference to complete supersession of a municipal police department by the AG.

The first instance where the supersession of a municipal police department by the AG appears is in section 1.0.5 of the 2022 Directive issued in November 2022. The relevant portion of this section provides:

The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency.

[2022 Directive, section 1.0.5 (emphasis added)]

The 2022 Directive does not reference statutory authority related to the AG's purported power to supersede control of an entire law enforcement agency or over any and all duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. Quite simply, the reason no authoritative reference is provided is because none exists.

The AG also places great weight on P.L. 2023, c. 94 (Chapter 94), which Governor Murphy signed into law on July 3, 2023, with a retroactive effective date of March 1, 2023. This is the only statute that even mentions the supersession of a law enforcement agency by the AG. It does not, however, authorize the AG to supersede a municipal police department.

The limited purpose of Chapter 94 is to relax the rules governing Officer in Charge (OIC) appointments when the AG supersedes a law enforcement agency in a city of the first class having a population of less than 200,000 according to the 2020 federal decennial census. In short, Chapter 94, in very limited circumstances,

relaxes the rules pertaining to police licensing. It says nothing about providing supersession authority to the AG in the first place.

Chapter 94 does not provide implied supersession authority to the AG. Such an interpretation of Chapter 94 does not render the statutory language as surplusage. Indeed, the authority of the AG to supersede the operation of a local law enforcement agency's internal affairs remains. In other words, when adopting Chapter 94 the Legislature was not giving new authority to the AG to supersede the entire operations of a municipal police department, nor was it ratifying any such implied authority that the AG argues exists. The intent of the legislature, as reflected in the plain language of the bill, was simply to relax the rules related to the appointment of an OIC when an attorney general exercises supersession authority over local law enforcement agency's internal affairs operations – the limited supersession authority the Legislature has given to the AG.

The AG cites multiple times to *In re 2020 Directives* to support its arguments, including its contention that the panel below erred in not giving credence to the various sources cited by the AG that purportedly collectively empower it to do what it did in Paterson. It is true that in *In re 2020 Directives*, the Court examined various sources of law to conclude that they collectively empowered the AG to adopt Directives 2020-5 and 2020-6. *See generally In re 2020 Directives*. In stark contrast to the 2022 Directive, however, the 2020 Directives contained objective criteria and

such a detailed description of the AG’s rationale and justification underlying the Directives it took the Court two pages just to summarize that description. *See id.* At 492-94.

There is no question that the AG has the power “to adopt guidelines, directives, and policies that bind police departments statewide.” *Paff v. Ocean Cty. Prosecutor’s Off.*, 235 N.J. 1, 19 (2018). There is also no question that the Law and Public Safety Act of 1948 charges the AG with formulating and adopting “rules and regulations for the efficient conduct of work and general administration of the department, its officers and employees.” N.J.S.A. 52:17B-4(d). These sources cannot, however, be read as giving the AG the unlimited power it has arrogated to itself to take over any municipal police department of its choosing, at any time, for any reason.²

C. This Court should affirm the Appellate Division’s decision because the Attorney General’s interpretation of the law and arrogation of authority violates fundamental principles of home rule.

New Jersey’s Constitution states that “[t]he provisions of this Constitution and of any law concerning municipal corporations formed for local government . . . shall be liberally construed in their favor. The powers of . . . such municipal corporations

² The AG appears to try to now qualify its authority by saying that it can only be exercised “in extreme circumstances that warrant it.” (AG Brief at p. 30). That is not what is written in the 2022 Directive, however. That Directive contains no standards whatsoever. The question therefore is a simple yes/no proposition: does the AG have the authority to supersede local authority and take over the day-to-day operations of a municipal police department, full stop—not “does the AG have the authority to supersede local authority in extreme circumstances that warrant it”?

shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law. NJ Const. Art. 4, § 7, ¶ 11. This provision is commonly referred to as “home rule,” and it is fundamental to how New Jersey allocates the power to govern.

N.J.S.A. 40A:14-118 expressly authorizes “[t]he governing body of any municipality, by ordinance, . . . [to] create and establish, as an executive and enforcement function of municipal government, a police force, . . . and provide for the maintenance, regulation and control thereof.” *Id.* (emphasis added). The statute further provides *inter alia* that “[a]ny such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority³ for the efficiency and routine day to day operations thereof.” *Id.* (emphasis added). N.J.S.A. 40A:14-118.2. in turn mandates that “[t]he Attorney General shall adopt, pursuant to the “Administrative Procedure Act,” rules and regulations to effectuate the provisions of this act.” *Id.* (emphasis added)(citation omitted).

³ “Appropriate authority” means “the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time director of public safety, or the governing body or any designated committee or member thereof, or any municipal board or commission established by ordinance for such purposes, as shall be provided by ordinance in a manner consistent with the degree of separation of executive and administrative powers from the legislative powers provided for in the charter or form of government either adopted by the municipality or under which the governing body operates.” *Id.*

The power the AG is attempting to arrogate to itself here—the extraordinary power to usurp municipalities’ legislatively-granted power to establish, oversee and maintain their own police forces as a function of their governmental executive and enforcement functions—flies in the face of home rule and is contrary to the legislative will as expressed in N.J.S.A. 40A:14-118. Worse yet, the AG attempts to wield this power in the absence of any regulations or standards, let alone regulations or standards that would “effectuate the provisions of [N.J.S.A. 40A:14-118],” as required by N.J.S.A. 40A:14-118.2, instead of completely undermining them.

The AG has advanced a series of arguments why it should have the ability to take over day-to-day operations. Whether it “should” be able to do so is not a question for the Court to decide; it’s a significant policy question that only the Legislature and the Governor can answer. The AG’s arguments for why it *should* be able to take over a municipal police department may be compelling, but those arguments should be addressed to the Legislature, not this Court.

This case is not about whether the AG “ought” to have complete supersession powers. This case is about whether the AG “does” have those powers. As the Appellate Division correctly held, the various applicable statutes nowhere expressly authorize the AG to assume day-to-day control of a municipal police department. The only question, then, is whether the statutory scheme confers implicit authority to do so. The AG claims this implicit authority exists because (a) the AG is the chief

law enforcement officer for the entire State, which boiled down to its essence appears to mean that *ipso facto* the AG can do whatever it wants; (b) the AG has broad supervisory power over county prosecutors, who in turn have broad supervisory power over municipal police departments, therefore *ipso facto* the AG can do whatever it wants; (c) the AG IAPP and law enforcement directives have the force of law, therefore the AG's 2022 Directive anointing itself with blanket and unconstrained authorization to take over municipal police departments gives it express authority to take over local police departments whenever it feels like it (a circular argument if ever there was one); and (d) the passage of P.L. 2023, c. 94 regarding OIC training requirements somehow means the Legislature approved of the AG's takeover of Paterson's police department, thereby implicitly if not explicitly conferring authority on the AG to take over the day-to-day operations of any local police department at any time, anywhere.

There are certainly ample examples in the law of where courts have found implicit authority to act. Here, however, the power the AG has granted to itself is too awesome, in the true sense of the word, to rest on "implied" authority, especially in the context of home rule⁴ and in the absence of any standards to guide the exercise of that authority.


⁴ See, e.g., *Petition of Hackensack Water Co.*, 197 N.J. Super. 162 (App. Div. 1984)(legislative intent to supersede local powers must be clearly present.).

CONCLUSION

For all of the foregoing reasons, *amicus curiae* New Jersey State League of Municipalities respectfully requests the Court deny the petition for certification or, if the petition is granted, affirm the decision of the Appellate Division.

Respectfully submitted,
MASON, GRIFFIN & PIERSON, P.C.

By :



Trishka Waterbury Cecil, Esq.

Attorneys for amicus curiae

New Jersey State League of Municipalities

Date: January 10, 2025