REBECCA J. REED and AMANDA CURRY, on behalf of themselves and all other class members similarly situated, Plaintiffs-Appellants, v. ELIZABETH M. MUOIO, CAROLINE BENSON, COLLEEN LAPP, GLENN A. GRANT, J.A.D., B. SUE FULTON, MERARI GUAD, and KATE CHIEFFO, in their official capacities Defendants-Respondents.	Supreme Court Docket No. 090060 CIVIL ACTION On Petition for Certification from a Final Judgement of the Superior Court, Appellate Division Docket No.: A-2319-22 Sat Below: Hon. Patrick DeAlmeida, J.A.D. Hon. Maritza Berdote-Byrne, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

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PRELIMINARY STATEMENT

In situations where power to adjudicate certain disputes has been delegated from courts to another body, courts retain the ability—indeed, the obligation—to determine whether the non-court entity has acted within the scope of that authority. The Appellate Division broke no new ground in holding that the Council on Local Mandates ("the Council") exceeded its authority when it purported to invalidate the funding source for a law that it had properly determined created an unfunded mandate. Were courts precluded from evaluating the scope of nonjusticiability determinations, entities like the Council could usurp broad, unchecked authority and run roughshod over the rights of New Jerseyans. (Point I).

Neither plaintiffs nor defendants challenged the Council's determination that the requirement that municipalities install mobile video recording systems ("MVRS") constituted an unfunded mandate that did not implement a provision of the State Constitution. The lower court assumed that, had the decision been challenged, it was "political" and not subject to judicial review. In reaching the proper determination in this case, the Appellate Division assumed too much. It is true that Article VIII, Section 2, Paragraph 5(b) of the State Constitution deems decisions by the Council "political and not judicial determinations." But while courts generally avoid deciding political questions, such a designation

does not absolutely strip courts of the right of judicial review. Although the Constitution affords the Council great deference in determining what constitutes an unfunded mandate, when the Council exceeds the scope of its authority or violates other constitutional provisions, courts need not, and cannot, look away. The Court need not reach this issue, but should ensure that the language of its opinion does not suggest unnecessary or unfounded limitations on judicial authority. (Point II).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For the purposes of this brief, *amicus* American Civil Liberties Union of New Jersey ("ACLU-NJ") accepts the Statement of Facts and Procedural History contained in the Attorney General's Appellate Division brief, adding that on October 29, 2024, in an unpublished decision, the Appellate Division affirmed the trial court's dismissal of the plaintiffs' complaints. *Reed v. Muoio*, No. A-2319-22, 2024 WL 4599033, at *7 (App. Div. Oct. 29, 2024). Plaintiffs sought certification, which this Court granted on May 30, 2025. *Reed v. Muoio*, 260 N.J. 587 (2025).

ARGUMENT

I. EVEN WHEN COURTS LACK THE ABILITY TO ADJUDICATE CERTAIN DISPUTES, THEY RETAIN THE AUTHORITY TO DETERMINE WHETHER A PARTICULAR DISPUTE IS NONJUSTICIABLE.

The Attorney General provides reasons why the Council did not, and could not, invalidate N.J.S.A. 39:4-50(i) (the statute that imposes a surcharge and directs it to municipal and state coffers) when it struck down N.J.S.A. 40A:14-118.1 (the statute that required municipalities to install MVRS in police cars). DBr at 11-20.[1] First, Defendants explain that N.J.S.A. 39:4-50(i) imposes no "mandate at all, much less an unfunded mandate." *Id.* at 11. The Council can strike unfunded mandates, but not sources of funding. *Id.* at 12. Second, Defendants point out that *if* N.J.S.A. 39:4-50(i) imposed an unfunded mandate, the arguably offending portion that dictates how the surcharge should be applied, can and must be severed from the rest of the statute. *Id.* at 14–17. These arguments are sufficient to sustain the Appellate Division's affirmance of the trial court's dismissal of the complaint.

But were there any doubt about courts' authority to decide whether the Council exceeded the scope of its delegated power, analogous circumstances

[1] DBr refers to Defendants' Appellate Division brief, dated August 29, 2023; PBr refers to Plaintiffs' Amended Appellate Division brief, dated June 27, 2023; and Op. Cert. refers to Defendants' brief in opposition to certification, dated February 10, 2025.

provide further support. The State Constitution designates the Council, not a court, as the body that decides whether a statute imposes an unfunded mandate. N.J. Const. art. VIII, § 2, ¶ 5(b). But, as in other instances where courts are divested of jurisdiction, decisions about whether the other entity has acted within the scope of its delegated authority are properly left to courts.

Take arbitration, for example. Courts cannot decide matters that have been assigned to arbitrators, but they can resolve disputes over *whether* parties have agreed to submit an issue to arbitration. *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 567–68 (1960); *Standard Motor Freight, Inc. v. Local Union No. 560, International Brotherhood of Teamsters*, 49 N.J. 83, 95–97 (1967). Courts have laid down a sharp "line to determine when an arbitration question under a bargaining agreement is for court decision and when it is not[.]" *Standard Motor Freight*, 49 N.J. at 95–96. On the one hand are questions of procedural arbitrability, which ask "whether procedural conditions to arbitration have been met[.]" *Amalgamated Transit Union, Local 880 v. N.J. Transit Bus Operations, Inc.*, 200 N.J. 105, 113 (2009) (internal quotation marks omitted). Those questions are left to arbitrators. On the other hand, questions of substantive arbitrability—that is, "whether the particular grievance is within the scope of the arbitration clause specifying what the parties have agreed to

arbitrate"—are decided exclusively by courts. *Standard Motor Freight*, 49 N.J. at 96.

In *Standard Motor Freight*, which the Court has described as the "seminal case in New Jersey on arbitrability," *Amalgamated Transit Union*, 200 N.J. at 114, the Court justified the distinction as a "policy matter": "unless the particular agreement most specifically provides otherwise" courts should stay out of concerns about "procedural problems in arbitrations [which] cannot be answered without consideration of the merits of the dispute," 49 N.J. at 97. In contrast, because "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit[,]" courts must be empowered to decide threshold questions of substantive arbitrability. *Id.* at 96. In other words, "parties may be sent to arbitration only after the court so directing them is satisfied that this was their intent and that both parties consented to do so in their contractual agreement." *Bell Atl.-Pa., Inc. v. Communication Workers of America, Local 13000*, 164 F.3d 197, 201 (3d Cir. 1999).

So too with the Council on Local Mandates. Both the State Constitution and the relevant statute vest the Council with authority to decide whether certain mandates contained in laws, rules, or regulations fail to authorize resources to offset the additional direct expenditures required for implementation of the mandate. N.J. Const. art. VIII, § 2, ¶ 5(b); N.J.S.A. 52:13H-2. But that does not

create limitless, unchecked power for the Council. It cannot invalidate statutes that do not impose unfunded mandates; and courts can intervene when the Council exceeds its delegated authority.

Other analogies provide similar support. Congress has passed laws that deprive federal courts of jurisdiction. *See, e.g.*, 8 U.S.C. § 1252(a)(2) (deeming various matters concerning the removal of individual noncitizens not subject to judicial review). Even then, "it is familiar law that a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002). Courts have long been able to issue restraining orders to preserve "existing conditions pending a decision upon its own jurisdiction." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 290 (1947).

Thus, in *Patel v. Garland*, 596 U.S. 328 (2022), although a divided United States Supreme Court ultimately held that courts lacked jurisdiction to review factual findings underlying certain denials of immigration relief, there was no debate that the Court had the authority to decide whether the jurisdiction-stripping statute applied. *Compare id*. at 331 (finding jurisdiction-stripping statute applied, but not addressing whether the Court had authority to decide the case) *with id.* at 365 (Gorsuch, J., dissenting) (contending that the statute did not apply to factual findings). In other words, even when efforts have been made to strip courts of the power to decide certain disputes, *courts* undoubtedly retain

the authority to decide whether a particular dispute falls within the bounds of that which the court cannot consider.

II. THIS COURT RETAINS THE POWER TO REVIEW THE CONSTITUTIONALITY OF THE COUNCIL'S ACTIONS.

No party challenged the Council's decision invalidating N.J.S.A. 40A:14-118.1 as an unfunded mandate. *Reed*, 2024 WL 4599033, at *6. The Appellate Division and both parties appear to assume that, were the Council to decide improperly that something is an unfunded mandate, it would necessarily lie beyond the reach of the courts. *Reed*, No. A-2319-22, 2024 WL 4599033, at *6 (noting, in *dicta*, that invalidation of installation mandate "is political and not subject to judicial review"); PBr 19–20 (contending the court here had no role in reviewing the Council's decision); Op. Cert. 6 (approving of Appellate Division's suggestion that the Council's invalidation of the installation mandate was insulated from judicial review). That assumption is wrong.[2] The State

[2] The Court need not reach this issue and instead can decide the case by simply holding, as the Appellate Division did, that the Council lacked the authority to strike N.J.S.A. 39:4-50(i) when it invalidated N.J.S.A. 40A:14-118.1. *Reed*, 2024 WL 4599033, at *7. Indeed, mindful of the appropriate role of *amici curiae*, *amicus* ACLU-NJ does not ask the Court to reach this issue. *See Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n*, 91 N.J. 38, 48–49 (1982) (*amici* "must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties"). Instead, it should defer resolution of the question for a case where it is properly raised by parties. But *amicus* ACLU-NJ respectfully asks the Court to avoid *dicta* adopting the parties' concession, which is both unnecessary to resolve the case and, for the reasons discussed below, incorrect.

Constitution provides that "decisions of the Council shall be political and not judicial determinations." N.J. Const. art. VIII, § 2, ¶ 5(b). The framers of that provision, and the voters who approved it, no doubt wanted to avoid judicial meddling with Council decisions. But did they envision, or could they have reasonably expected, that *all* the Council's decisions—including those that usurped authority not provided to the Council—would be unreviewable? Certainly not.

The Constitution vests the Council with the power to decide whether particular laws constitute unfunded mandates, but also constrains the Council's power by declaring that laws, rules, or regulations that implement provisions of the State Constitution "shall not be considered unfunded mandates." N.J. Const. art. VIII, § 2, ¶ 5(c)(5). It is one thing to defer to the Council's determination that the state government failed to allocate sufficient funds for a particular mandate. That is, after all, precisely where it has expertise. It is unprecedented and far more troubling to cede exclusive authority to determine plainly legal questions, like whether a law, rule, or regulation "implement[s] the provisions" of the State Constitution. *Ibid*.

Even when an issue is deemed "political" and nonjusticiable, that determination does not make it immune from review on constitutional grounds. *Baker v. Carr* dictates that where the issue presented is whether an action

violates the constitution, that is not to be considered a political question. 369 U.S. 186 (1962). In *Baker*, the Court held that a claim of malapportionment under the Equal Protection Clause was properly within courts' ambits, because challenges on constitutional grounds are always justiciable. *Id.* at 209–210. Justice Brennan's majority opinion explained that in an instance where "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights." *Id.* (internal quotation marks omitted).

As the *Baker* Court held, courts are "able to discern" when a constitutional provision is being implemented, *id.* at 216, and therefore deciding whether a law does so is a task courts are well-suited to handle. Under the Equal Protection challenge, the Court dismissed the familiar political question categories, noting that the issue presented "no question decided, or to be decided, by a political branch of government coequal with this Court," nor did the issue "risk embarrassment of our government abroad, or grave disturbance at home," nor did it "ask the Court to enter upon policy determinations for which judicially manageable standards are lacking." *Id.* at 226. Instead, the Court held, "the question here is the consistency of state action with the Federal Constitution," specifically under the Equal Protection Clause—a query for which "[j]udicial standards . . . are well developed and familiar[.]" *Id.*

Accordingly, although the New Jersey Constitution delegates primary responsibility for determining whether laws constitute unfunded mandates to the Council, it does not strip courts of the ability to review questions of constitutionality. Instead, the relevant provision makes clear that the Council's purview includes determining whether certain laws create unfunded mandates. N.J. Const. art. VIII, § 2, ¶ 5(b). But it also declares that laws, rules, or regulations that implement provisions of the Constitution "shall not be considered unfunded mandates." N.J. Const. art. VIII, § 2, ¶ 5(c)(5). Therefore, when questions arise about whether mandates implement constitutional provisions, they present the sorts of constitutional inquiries that, under *Baker*, courts always have authority to consider.

Indeed, New Jersey courts have previously approved of a judicial role in deciding whether a regulation implements a constitutional provision. Plaintiffs seek to distinguish the Appellate Division's non-binding but persuasive opinion in *Elizabeth Education Association v. Board of Education of City of Elizabeth*, No. A-5506-09T3, 2011 WL 6260731, at *3 (App. Div. Dec. 16, 2011),[3] by suggesting that courts can determine whether exceptions to the prohibition on unfunded mandates exist, but *only if* the Council has not first rendered a

[3] This unpublished opinion was reproduced in Plaintiffs' Appendix (Vol. II at 360–365).

decision. PBr 18–19. In *Elizabeth Education Association*, a collective bargaining unit filed a complaint with the Commissioner of Education alleging that the school district violated a regulation limiting class size. 2011 WL 6260731, at *1–2. The school district contended that the regulation constituted an unfunded mandate and, therefore, "only the Council ha[d] jurisdiction to determine" the constitutionality of the regulation. *Id.* at *2. The Appellate Division disagreed. *Id.* at *1. It held that the class size limitation implemented the Thorough and Efficient Education Clause of the Constitution, N.J. Const. art. VIII, § 4, ¶ 1, and therefore it was neither an unfunded mandate nor subject to the Council's exclusive jurisdiction, 2011 WL 6260731, at *4.

Plaintiffs' distinction—that courts may decide whether a law, rule, or regulation implements a constitutional provision, but only if the Council has not yet spoken—lacks both support and logic. If courts can make initial determinations on legal questions squarely within their ken, why would they be barred from correcting grievous errors made by other entities?

Plaintiffs' theory would have potentially disastrous effects on countless New Jersey laws, rules, and regulations that protect New Jerseyans' rights by implementing constitutional protections. Criminal justice reform provides an example. Just months before the effective date of "landmark" legislation, N.J.

Judiciary, *Criminal Justice Reform: Frequently Asked Questions* (Apr. 2025),[4] the Association of Counties filed a complaint with the Council seeking to have provisions of the Criminal Justice Reform Act ("CJRA") struck down as unfunded mandates, *In re Complaint Filed by The New Jersey Association of Counties Re: N.J.S.A. 2A:162-16(b)(1) and N.J.S.A. 2A:162-22 Sections of The Criminal Justice Reform Act*, COLM-0004-16 (Apr. 26, 2017). The State moved to dismiss the complaint because the CJRA implemented an amendment to the State Constitution that was approved alongside the legislation and prior to the law's effective date. *Id.* at 7–8 (citing N.J. Const. art. I, § 11). By the slimmest of margins, the Council agreed, voting 4-to-3 that the exemption applied. *Id.* at 8. But had one member of the commission voted differently, the legislation that has been widely hailed a resounding success, *see, e.g.*, N.J. Law Journal Editorial Board, *Bail Reform Is Working* (Nov. 7, 2021),[5] would have stalled at the starting gate.

If Plaintiffs' theory were correct, an adverse decision from the Council would be unreviewable, but courts could have preemptively issued a declaratory judgment indicating that the CJRA implemented constitutional provisions. Such

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[4] Available at https://www.njcourts.gov/sites/default/files/forms/12058_cjr_faq_brochure.pdf.

[5] Available at https://www.njcourts.gov/sites/default/files/courts/criminal/bail-reform-working0.pdf.

a rule would create wild inefficiencies, as supporters of legislation, rules, or regulations would need to seek declaratory judgments approving of every law, rule, or regulation that implements the Constitution rather than seeking judicial intervention only in rare cases where the Council plainly errs in its analysis of the legal question.

CONCLUSION

For the foregoing reasons, *amicus* ACLU-NJ respectfully asks this Court to affirm the Appellate Division opinion and explicitly leave open broad questions about the reviewability of the Council's decisions on whether laws, rules, or regulations implement constitutional provisions that are not raised by this appeal.

Respectfully submitted,

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