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February 21, 2025

Via Ecourts Supreme

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, NJ 08625

RE: Rebecca J. Reed and Amanda Curry v. Elizabeth M. Muoio, Caroline Benson, Colleen Lapp, Glenn A Grant, J.A.D., B. Sue Fulton, Merari Guad, and Kate Chieffo
Supreme Court Docket No.: 090060
Appellate Division Docket No.: A-2319-22

**Letter Brief of Plaintiffs, Rebecca Reed and Amanda Curry,
in Reply to Defendants' Opposition Briefs**

Dear Ms. Baker:

Please accept this letter brief of Plaintiffs in reply to the Defendants' opposition briefs to Plaintiffs' Petition for Certification. The brief in opposition to Plaintiffs' Petition for Certification filed by the New Jersey Attorney General underscores the need to grant certification in this matter.

LEGAL ARGUMENT

I. The Legislature is Empowered to Delegate Discretion to the Council on Local Mandates to Determine What Part of the Law Creating the Unfunded Mandate Remains in Effect

Contrary to the Attorney General's suggestion (AG Opp. Brief, pg. 7), this is not a simple case of application of settled principles to the facts of this case to determine whether the Council on Local Mandates exceeded its constitutional authority.

Rather, deciding whether a matter presents a non-justiciable political question is a delicate exercise in constitutional interpretation for which this court is responsible as the ultimate arbiter of the Constitution of this state. Gilbert v. Gladden, 87 N.J. 275, 282 (1981).

The Attorney General admits there is a non-justiciable political question, i.e., a textually demonstrable constitutional commitment of the issue to a coordinate political department. Id. at 282. In this case, that is NJ Constitution Art. 8, Sec. 2, Par. 5.

Section 5(b) directs the Legislature to create by law a Council on Local Mandates which "shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. . . The decisions of which shall be political and not judicial determinations." The

question is what does this mean?

The Legislature's interpretation is based on the plain meaning of the words: . . . rulings of the counsel shall be political determinations and shall not be subject to judicial review. N.J.S.A. 52:13H-18.

In setting the parameters under which the Council could consider legislative action, the Legislature advised the Council that its rulings shall be restricted to the specific provision of law or the specific part of a rule or regulation which constitute an unfunded mandate and shall, as far as possible (emphasis added) leave in tact the remainder of a statute, rule or regulation. N.J.S.A. 52:13H-12a. Therefore, in creating the Council, the Legislature gave the Council discretion to make a determination as to what part of the legislation to leave in tact.

That is the Legislature's prerogative in creating the Council. If the Legislature is dissatisfied with the discretion exercised by the Council, the Legislature can change it. The exercise of that discretion does not mean that the Council exceeded its constitutional authority. The Legislature is well within its authority to bestow such power on the Council.

The Attorney General points to the Appellate observation that to accept the plaintiffs' interpretation would permit the Council to invalidate the entirety of N.J.S.A. 39:4-50 including the offense of DWI or even invalidate other statutes

unrelated to the subject of the installation mandate without the possibility of judicial review which would exceed the power the Legislature had vested in the Council (AG Opp. Br., Pg. 6).

These, however, are not the facts presented here. There is no reason to suppose the Legislature intended that the power delegated to the Council may be used in such an arbitrary and capricious manner. Shelton College v. State Bd. of Ed., 48 N.J. 501, 518 (1967). “On the contrary, it is elementary in our State that delegated power must be exercised reasonably in its substantive aspects and that the procedural demands of due process must be honored whenever they apply. The statutory provision for rules and regulations plainly imports that the Legislature had these fundamental values in mind.” Id.

The generality of a legislative delegation does not necessarily entail unbridled official discretion. Dome Realty v. Paterson, 83 N.J. 212, 238-239 (1980). The presence of such simple standards as public convenience and necessity and “just and reasonable” does not constitute an excessive delegation of legislative power. Legislative guidelines need only be as specific as their subject matter will permit. Id.

Here, the Legislature has recognized that determining whether a law is an unfunded mandate will almost of necessity directly affect what appropriation the

Legislature has prescribed to fund the mandate, albeit inadequate.

The Legislature in the first instance permits the Council on Local Mandates, once it deems a mandate unfunded, to determine as far as possible what part of the appropriation to leave in tact.

The two are not mutually exclusive. The Council is expected to have the expertise to make these determinations or the Legislature in its wisdom would not have delegated that decision to it by statute.

The Legislature is the body chosen by the Constitution to deal with the results of the Council's decision if it disagrees.

The Attorney General's brief in effect takes the position that the Legislature cannot delegate this power to the Council because only the courts are permitted to determine the constitutionality of the Council's action.

But these are two different questions.

The invalidation of the surcharge by the Council is not outside its constitutional authority but rather is a valid exercise of the delegated discretion which the Legislature is empowered to bestow upon it in creating the Council under the constitutional provision at hand.

The Court should therefore accept certification on these important public policy issues. The courts should be hesitant to hold the Legislature's delegation in

this instance is unconstitutional.

This is not a case where the Legislature has surrendered at least some control over policy to a regulatory agency of the executive branch or the judiciary as a legislative agent. Rather, the delegation is to a constitutionally created authority pursuant to a constitutional provision which directed the Legislature to craft the law under which the Council on Local Mandates operates.

The Legislature had determined that the Council is capable of and will carry out its intent in deciding what part of the law creating the unfunded mandate should be left in tact.

That confidence is reflected by the fact that the Legislature did not take any action to overturn the Council's decision that the \$25.00 surcharge was a nugatory.

The fact that millions of dollars has accumulated in the Treasury as a result of the Court's continued wrongful collection of this surcharge should play no role in determining the issues in this case.

That it was not the Legislature's intent as the Appellate Division and Attorney General suggest to create a general fund for use by municipal police departments in utilizing obsolete equipment was recognized when the Legislature amended the statute to provide for a different mechanism to appropriate funds for

more recent technology. N.J.S.A. 40A:118-3, et seq. (see Plaintiffs' original petition, pg. 14).

This case of first impression regarding this important public policy question should be addressed by the Court to give the Legislature and Council on Local Mandates guidance in rectifying the current problem and rendering future decisions.

Respectfully submitted,

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