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February 10, 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, New Jersey 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

On Petition for Certification to the Supreme Court from the Judgment of the Superior Court, Appellate Division

Sat Below: Hon. Patrick DeAlmeida, J.A.D.
Hon. Maritza Berdote-Byrne, J.A.D.
Hon. Avis Bishop-Thompson, J.A.D.

Letter Brief on Behalf of Defendants-Respondents, Elizabeth M. Muoio, Glenn A. Grant, and B. Sue Fulton, in Opposition to the Petition for Certification

Dear Ms. Baker:

Please accept this letter brief on behalf of Defendants-Respondents, Elizabeth M. Muoio, Glenn A. Grant, and B. Sue Fulton (collectively "State"), in opposition to the petition for certification filed by Plaintiffs-Petitioners,

Rebecca J. Reed and Amanda Curry. Defendants rely primarily on their Appellate Division merits brief submitted electronically with this letter brief.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Defendants adopt and incorporate by reference the procedural history and facts in their Appellate Division merits brief, supplemented as follows.

Petitioners violated New Jersey's drunk-driving laws and were ordered to pay a $125 surcharge under N.J.S.A. 39:4-50. They sought to certify a class against State Defendants and others,[2] claiming an entitlement to a $25 refund of the surcharge, which was earmarked to fund a mandate in N.J.S.A. 40A:14-118.1 requiring municipalities to install mobile video recording systems (MVRS) in

[1] These sections have been combined for efficiency and the Court's convenience.

[2] Although initially filed as two separate complaints, the complaints of all plaintiffs were consolidated and therefore are referred to here as singular for clarity and economy.

new police vehicles. (Pa74-94).[3] To make their claim, Petitioners relied on a decision that the Council rendered in an unrelated proceeding that Deptford Township brought. There the Council declared the mandate unconstitutional because the funds dedicated to the installation of MVRS was insufficient to offset the added direct expenditures that Deptford Township would have to make to implement the mandate. (Pa7). Accordingly, the Council found that the $25 surcharge was "render[ed] nugatory." (Pa11).

The defendants, including State Defendants, moved to dismiss Plaintiffs' complaint for failure to state a claim upon which relief could be granted, and on August 18, 2023, the trial court granted the motions, dismissing the complaint without prejudice and explaining in relevant part:

> The Council on Local Mandate's authority is limited to deeming unfunded mandates to be unconstitutional. The Council's decision to strike 40A:14-118.1 as unconstitutional did not also deem 39:4-50(i) to be unconstitutional. The Council's decision held the $25 surcharge to be nugatory only in relation to the unfunded mandate.
>
> [Pa48.]

The trial court rejected the contention that dismissal should await additional discovery to determine where the $25 surcharge had been paid and expended,

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[3] "Pa" refers to Plaintiffs' appellate appendix, and "Pp" refers to Plaintiffs' petition for certification.

noting that "[e]ven if Plaintiffs were able to track the collection and disbursement of the surcharges, this does not change the fact that 39:4-50(i) is valid" and that "Plaintiffs should not be permitted to use discovery as a fishing expedition in the hopes of finding a viable claim." Ibid.

Petitioners then amended the complaint naming additional individual defendants, including State employees Judge Glenn A. Grant, as the Acting Director of the Administrative Office of the Courts (AOC) and B. Sue Fulton, Chief Administrator of the New Jersey Motor Vehicle Commission (MVC). (Pa368). The amended complaint did not alter any of the substantive legal claims against the State Defendants. Ibid.

On December 1, 2022, the defendants again moved to dismiss the amended complaint, (Pa283), and the trial court again granted dismissal on February 16, 2023, (Pa53-67). The trial court treated Plaintiffs' arguments against dismissal as a motion for reconsideration of the earlier dismissal order because Plaintiffs' opposition primarily contended that the trial court had erred in ruling previously that the DWI surcharge was constitutional. (Pa66-67). The court rejected their contention that it had failed to address the constitutionality of the surcharge in its prior dismissal ruling, noting that "it is clear from the Court's prior statement—'[t]he Council's decision to strike 40A:14-118.1 as unconstitutional did not also deem 39:4-50(i) to be unconstitutional'—that the

court found the surcharge constitutional." (Pa66). The court then reiterated its conclusions that: (1) the "Council's decision to strike 40A:14-118.11 as unconstitutional did not also deem 39:4-50(i) to be unconstitutional," and (2) the "Council's decision to hold the $25 DWI surcharge to be nugatory was only in relation to the unfunded mandate." (Pa67). Thus, the trial court concluded that dismissal with prejudice was warranted. Ibid.

On April 5, 2023, Plaintiffs appealed the orders dismissing the amended complaint. (Pa1). On October 29, 2024, the Appellate Division affirmed the dismissal orders. Reed v. Muoio, No. A-2319-22, slip op. at 4 (App. Div. Oct. 29, 2024); (Pa2-Pa22). It found that the Council exceeded its constitutional authority and should have severed, and thereby preserve, the surcharge provision of the statute. (Pa21). Because that provision was not an unfunded mandate subject to Council review, the court concluded that the Council's invalidation of the surcharge was itself invalid and that, as a result, Plaintiffs had no viable claim for a refund of the $25 fee. (Pa20).

The Appellate Division found no merit to Plaintiffs' argument that the Council's decision was a political question not subject to judicial review, rejecting the suggestion that N.J.S.A. 52:13H-18, which provides, "[Rulings] of the [C]ouncil shall be political determinations and shall not be subject to judicial review," should be interpreted literally so as to insulate every decision of the

Council from judicial review, even when the Council exceeds its constitutional authority. (Pa15-Pa17). The Appellate Division noted that such an interpretation would permit the Council to invalidate the entirety of N.J.S.A. 39:4-50, including the offense of DWI, or even to invalidate other statutes unrelated to the subject MVRS-installation mandate, all without the possibility of judicial review, which the Appellate Division found would exceed the power the Legislature had vested in the Council. (Pa17-Pa18). The Appellate Division recognized that N.J.S.A. 52:13H-18 insulated the Council's invalidation of the installation mandate from judicial review. However, it held that invalidation of the surcharge provision was beyond the Council's constitutional authority, because that narrow provision did not impose a mandate on municipalities and was thus not subject to the Council's review. (Pa18-19). The Appellate Division explained, "Judicial review is a constitutionally appropriate avenue through which to challenge a decision of the Council alleged to have been made outside of its constitutional authority." (Pa19). Thus, it held that the Council lacked authority to strike down the surcharge, which posed no burden on municipalities and was rather intended to generate revenue for the municipalities. Ibid.

Additionally, the court found that the Council had failed to sever and preserve the surcharge provision as statutorily required. (Pa20-Pa21). The court

noted that N.J.S.A. 52:13H-12(a) requires the Council to restrict its decisions "to the specific provision of a law . . . which constitutes an unfunded mandate," and, "as far as possible, leave intact the remainder of a statute," the court determined that the Council was obligated to sever the installation mandate, which it deemed to be unfunded, from the remaining elements of the statute. (Pa20-Pa21). The court held that the surcharge provision should have been severed to serve the legislative purposes of punishing those convicted of DWI, raising funds for the installation of MVRS, and providing revenue for county and State law enforcement agencies, which were never subject to the installation mandate. (Pa21). Accordingly, the Appellate Division found the Council's invalidation of the surcharge provision to be invalid and affirmed the trial court's orders dismissing the complaint.

On November 5, 2024, Petitioners filed a notice of petition for certification, seeking review of the Appellate Division's decision.

ARGUMENT

NEITHER THE QUESTIONS PRESENTED NOR THE ALLEGED ERRORS COMPLAINED OF WARRANT CERTIFICATION.

This Court should deny certification under Rule 2:12-4 because the Appellate Division's decision is essentially an application of settled principles to the facts of a case, does not present a conflict among judicial decisions

requiring clarification or calling for supervision by the Supreme Court, or does not raise issues of general importance. Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J. concurring); In re Route 280 Contract, 89 N.J. 1, 2 (1982).

In support of their claims for a refund, Petitioners purport to raise a novel separation of powers issue. (Pp2-3). However, Petitioners' request for this Court's intervention relies on a legal theory that amounts to the following faulty line of reasoning: a) the Council on Local Mandates has unreviewable authority to declare when a statute imposes an unconstitutional mandate; b) a mandate is unconstitutional when it requires localities to do something without authorizing adequate resources to offset added direct expenditures needed to implement the mandate; therefore, c) the Council has unreviewable authority to negate any related provisions that dedicate resources that are ultimately inadequate; and furthermore, d) Petitioners are entitled to a refund of fines they paid because those fines were a revenue source for the unfunded mandate. This theory contravenes both common sense and settled law and the Appellate Division correctly rejected it.

In support of the first conclusion they draw, Petitioners argue that the Council's rulings are never reviewable because N.J.S.A. 52:13H-18 provides that "rulings of the council shall be political determinations and shall not be

subject to judicial review." According to Petitioners, the judiciary is not empowered to review the Council's decisions—even when it exceeds its authority—because the Legislature alone can "correct" the Council when it oversteps its delegated role. (Pp10-Pp13). However, settled law is clear that the final authority to interpret laws rests with the courts. See In re P.L. 2001, Chapter 362, 186 N.J. 368 (2006) ("Only a court of competent jurisdiction has the power of judicial review and the solemn responsibility to strike down a statute that runs afoul of either our Federal or State Constitution."); see also State v. Lunsford, 226 N.J. 129, 153, 141 (2016)(considering the validity of a statute the judiciary "has the obligation and the ultimate responsibility to interpret the meaning of the Constitution[.]"). That is true even when the Legislature's own legal determinations are involved. As this Court has previously held, "when a court reviews the Legislature's [legal] finding[s] . . . no presumption should operate in favor of the position taken by either branch. Instead, the court should simply determine whether the Legislature's finding" is correct. Commc'ns Workers of Am., AFL-CIO v. New Jersey Civ. Serv. Comm'n, 234 N.J. 483, 516 (2018).

Moreover, even if courts cannot alter the Council's factual conclusions that a mandate is unfunded, that would not by extension mean that courts are bound by the legal conclusions that the Council may draw as part of that

exercise. That would be remarkable because the Council's area of expertise is not in interpreting laws. N.J.S.A. 52:13H-5 (describing the qualifications of Council members and requiring "the appointee possesses knowledge of, and familiarity with, the legislative process, the regulatory functions of the Executive Branch, or the procedures and operations of counties, municipalities or school districts.").

It would also contradict the law itself which provides that the Council's determinations "shall be restricted to the specific provision of a law or the specific part of a rule or regulation which constitutes an unfunded mandate and shall, as far as possible, leave intact the remainder of the statute or a rule or regulation." N.J.S.A. 52:13H-12(a) (emphasis added). Indeed, settled New Jersey law empowers courts to engage in "judicial surgery" and narrowly construe a statute to free it from constitutional doubt or defect. N.J. State Chamber of Commerce v. N.J. Election Enf't Comm'n, 82 N.J. 57, 75 (1980). This is in accord with N.J.S.A. 1:1-10, which provides that "a court has the power to declare a portion of a statute unconstitutional, while leaving the remainder of the law intact." L. Feriozzi Concrete Co., Inc. v. Casino Reinvestment Dev. Auth., 342 N.J. Super. 237, 251 (App. Div. 2001) (citing N.J.S.A. 1:1-10). "Whether such judicial surgery should be utilized depends

upon whether the Legislature would have wanted the statute to survive." Ibid. (citing N.J. State Chamber of Commerce, 82 N.J. at 75).

The Appellate Division's resolution of the severance issue properly applied that law. The plain language of N.J.S.A. 52:13H-12(a) provides for severance, when, as here, it is possible to strike the unfunded mandate only. (Pa19). Because the surcharge serves more than one legislative purpose, finding otherwise would mean that the Council could override the Legislature's judgements in other areas that have nothing to do with the mandate that local governments install MVRS. That simply cannot be correct.

For instance, one purpose of this surcharge is to punish those convicted of DWI. And in fact, fines and surcharges are common features of sentences and penalties that may be imposed on those who violate laws. N.J.S.A. 2C:44-2(a) ("The court may sentence a defendant to pay a fine in addition to a sentence of imprisonment[.]"); see N.J.S.A. 2C:35-15 (assessing penalties to be appropriated by the legislature); see also N.J.S.A. 2C:43-3.1(requiring the court to order assessments at sentencing). Petitioners' view would lead to the anomalous and illogical outcome that persons charged with DWI by municipal law enforcement would escape the surcharge, while every other DWI offender in the state pays for it. (Pa20-Pa21).

Because it is also a revenue source, this surcharge is payable when State and county law enforcement agencies secure a DWI conviction. Therefore, the Council's finding that local governments may not be mandated to install MVRS has no other collateral effect on whether that surcharge is collected. The Council's finding also would not mean that Plaintiffs are entitled to a refund of the surcharge because the Legislature has already dedicated those funds which remain available for governmental entities that may opt to use the funds as intended. Burgos v. State, 222 N.J. 175, 206 (2015) ("[T]he power and authority to appropriate funds is vested in the Legislature."). Further, "states have been accorded great latitude" and "possess the greatest freedom" when it comes to revenue-raising legislation. Salorio v. Glaser, 82 N.J. 482, 515 (1980). The power to raise revenue is not only a "sovereign prerogative," Cooper Hosp. v. City of Camden, 68 N.J.L. 691, 695 (1903), it is "one of the most essential" powers of self-government. Weston v. City Council of Charleston, 27 U.S. 449, 466 (1829). For that reason, absent an express constitutional limitation on this power, the judiciary should not "close any doors that the Legislature elected by the citizens may from time to time feel compelled to open." See V Proceedings of the 1947 Constitutional Convention 774 (comments of Governor Driscoll on Tax Clause).

In summary, the courts have the sole authority to interpret laws and declare statutory provisions nugatory. That is a settled principle not subject to reasonable debate. Finally, even if Petitioners are correct on that point, they identify no law to support the premise on which their claims rest; namely, that they personally would be entitled to a refund of fines they paid. The Appellate Division properly exercised its authority and reached a final outcome that is fully consistent with settled law. Nothing about the decision below merits certification.

CONCLUSION

The Court should deny the petition for certification.

Respectfully submitted,

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