REBECCA J. REED and AMANDA M. 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 OF NEW JERSEY DOCKET NO.: 090060 Civil Action On Petition for Certification from a Final Judgment 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.

SUPPLEMENTAL BRIEF OF RESPONDENTS ELIZABETH M. MUOIO, GLENN A. GRANT, J.A.D., AND B. SUE FULTON

Date Submitted: October 14, 2025

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PRELIMINARY STATEMENT

When a governmental branch or body acts outside its lawful mandate, its actions can carry no legal force. That is no less true here, where the Council on Local Mandates (the "Council") issued an unauthorized ruling. The "State Mandate, State Pay" Amendment to the New Jersey Constitution, ratified in 1995, created the Council for a single purpose: to determine if a new law, rule, or regulation imposes an "unfunded mandate" on local governments. That is the full extent of the Council's authority. Neither the Amendment nor its implementing Act granted the Council general authority to opine on the validity of state laws that do not themselves impose mandates without providing funding. And both the Amendment and the Act set forth a clear procedure before the Council may rule even as to laws within its domain: a "dispute" must be presented via "complaint" challenging a specific provision of law, rule, or regulation, and the Council is limited to deciding that dispute. For either or both reasons—the Council's inability to invalidate provisions that are not themselves "unfunded mandates," as well as its inability to invalidate provisions except when presented via a proper dispute—this Court should affirm.

In 2015, Deptford Township filed a complaint with the Council, challenging the requirement that municipalities install mobile video recording systems ("MVRS") in police vehicles. In 2016, the Council found that the

MVRS installation mandate was unfunded and ceased to have effect. But the Council did not stop there. On its own initiative, and without explanation, the Council declared that a $25 surcharge imposed on those convicted of driving while intoxicated ("DWI") was "render[ed] nugatory," even though the surcharge is not a local mandate and was not challenged by Deptford.

Years later, Appellants filed complaints in New Jersey Superior Court. Relying on the Council's 2016 ruling, they demanded a return of the $25 surcharge levied on them when convicted of DWI. The trial court dismissed the complaints, and the Appellate Division affirmed. Both courts correctly held that the Council lacked authority to invalidate the surcharge and that it remains valid despite the Council's contrary determination. Appellants now insist that the courts are bound by the Council's ruling on the DWI surcharge because the Council's determinations are "political" and therefore beyond judicial review.

But that misunderstands the issue. While Appellants and amicus curiae the ACLU of New Jersey debate whether the Council's determinations are insulated from judicial review when the Council invalidates an actual unfunded mandate, this case can be resolved on simpler grounds. Where, as here, the Council exceeds its authority, a ruling is void. And a void ruling cannot bind the Judiciary when reviewing the same statute. To hold otherwise would contradict both the constitutional framework governing unfunded mandates as well as

foundational principles of law. The Council is a limited-purpose body, not a roving tribunal that can render disfavored statutes "nugatory" at will. So if the Council oversteps its constitutional mandate, courts are not bound by its pronouncements. Because the Council overstepped twice here, by purportedly invalidating a statute beyond its authority and never challenged before it, the courts were not bound. The Appellate Division instead properly engaged in its own severability analysis and correctly found that the DWI surcharge survives.

PROCEDURAL HISTORY & STATEMENT OF FACTS[1]

A. The "State Mandate, State Pay" Amendment.

An "unfunded mandate" exists when higher levels of government impose upon subordinate levels of government the obligation to furnish certain public services without also providing funding. Policymakers at all levels have strived to control these mandates. See, e.g., Edward A. Zelinsky, The Unsolved Problem of the Unfunded Mandate, 23 Ohio N.U. L. Rev. 741, 781 (1997) ("The unfunded mandate was and remains an appealing means by which legislators advancing their own political interests opportunistically dispense public largesse to importuning constituencies while diverting to officeholders at lower levels of government the political costs of taxing to pay for that largesse."); Printz v.

[1] Because the facts and procedural history are closely intertwined, they are presented together for the Court's convenience.

United States, 521 U.S. 898, 930 (1997) (discussing how federal unfunded mandates imposed on the States allow "Members of Congress [to] take credit for 'solving' problems without having to ask their constituents to pay for the solutions with higher federal taxes").

By the mid-1990s, a nationwide effort to "curb the practice of imposing unfunded mandates" on state and local governments had resulted in federal legislation and various state constitutional amendments and statutes. See Robert M. Shaffer, Unfunded State Mandates and Local Governments, 64 U. Cin. L. Rev. 1057 (1996) (detailing federal legislation and "extensive effort" by "states to deal with … unfunded state mandates on local governments"). Although the precise contours of these measures and their enforcement mechanisms differ, they share a common goal: to restrain States from imposing new obligations on local governments in the absence of adequate funding.[2]

New Jersey was no exception. Inspired by the federal Unfunded Mandates Reform Act of 1995 and other States' reforms, New Jersey State Senate

[2] See, e.g., Cal. Gov't Code § 17500 (creating California Commission on State Mandates to "resolv[e] disputes over the existence of state-mandated local programs"); Colo. Rev. Stat. Ann. § 29-1-304.5 (making "optional" any "new state mandate" unaccompanied by "additional moneys to reimburse … local government"); 30 Ill. Comp. Stat. Ann. 805/2 (creating criteria and procedures to "avoid[] the imposition of State standards upon essentially local responsibilities without appropriate reimbursement").

President Donald T. DiFrancesco and more than two dozen co-sponsors introduced Senate Concurrent Resolution No. 87 in December 1994—the proposed "State Mandate, State Pay" Amendment to the New Jersey Constitution—to curb unfunded mandates in New Jersey. See Pub. Hearing Before S. Community Affairs Comm. for S. Con. Res. 87 2-3 (Jan. 30, 1995), https://tinyurl.com/4tnajbn7 (remarks of Senate President DiFrancesco) ("If Washington can experience a revolution, then obviously, New Jersey can too. Several other states have taken steps toward restricting mandates without reimbursements to local governments…. [N]ow it's time for New Jersey to join that list."). The Senate's proposal was the culmination of a series of efforts dating to the late-1980s,[3] and after modification in committee, the proposal was ratified by the voters on November 7, 1995.

Codified at Article VIII, Section II, paragraph 5 of the New Jersey Constitution (the "Unfunded Mandates Clause" or the "Clause"), the Unfunded Mandates Clause creates a novel mechanism for the identification and elimination of unfunded mandates: the Council on Local Mandates. The Clause

[3] See Pub. Hearing Before S. Community Affairs Comm. for S. Con. Res. 87, 26 and A. Con. Res. 1, 77, and 40 Appendix at 8, 13 (May 25, 1995), https://tinyurl.com/4bfr8c6y ("'We have been trying to get a state mandate-state pay amendment on the ballot for ratification since 1988,' said Assembly Speaker Garabed (Chuck) Haytaian.").

sets the composition of the Council, establishes the scope of—and constraints on—its authority, and classifies the nature of its determinations.

Specifically, paragraph 5(b) states that "[t]he Legislature shall create" the Council, and directs that "[t]he Council shall resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b). It then states that the Council's "decisions … shall be political and not judicial determinations." Ibid.

Paragraph 5(a) clarifies the scope of that authority. "With respect to" laws "enacted on and after January 17, 1996, and with respect to" rules or regulations "issued pursuant to a law originally adopted after July 1, 1996," the law, rule, or regulation "shall … cease to be mandatory in … effect and expire" if the Council determines that it is "an unfunded mandate upon boards of education, counties, or municipalities because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation." N.J. Const. art. VIII, § 2, ¶ 5(a).

Finally, paragraph 5(c) clarifies that "[n]otwithstanding anything" in paragraphs 5(a) and 5(b) "to the contrary, the following categories of laws or rules or regulations … shall not be considered unfunded mandates:"

> (1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;

> (2) those which are imposed on both government and non-government entities in the same or substantially similar circumstances;
>
> (3) those which repeal, revise or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities;
>
> (4) those which stem from failure to comply with previously enacted laws or rules or regulations issued pursuant to a law;
>
> (5) those which implement the provisions of this Constitution; and
>
> (6) laws which are enacted after a public hearing, held after public notice that unfunded mandates will be considered, for which a fiscal analysis is available at the time of the public hearing and which, in addition to complying with all other constitutional requirements with regard to the enactment of laws, are passed by 3/4 affirmative vote of the members of each House of the Legislature.
>
> [N.J. Const. art. VIII, § 2, ¶ 5(c).]

B. The Local Mandates Act.

In January 1996, two months after ratification of the Unfunded Mandates Clause, the New Jersey Legislature introduced N.J.S.A. 52:13H-1 to -22 (the "Local Mandates Act" or the "Act"), "to effectuate the will of the people" and "to fulfill the Legislature's responsibility to establish the Council on Local Mandates," N.J.S.A. 52:13H-1(e). The Act outlines the procedures for

appointing Council members, the process for the Council to decide disputes on unfunded mandates, and the scope of the Council's authority.

Like the Clause, the Act states that the Council is empowered to determine whether a law, rule, or regulation constitutes "an unfunded mandate … because it does not authorize resources to offset the additional direct expenditures required for the implementation of the law or the rule or regulation." N.J.S.A. 52:13H-2. And "[i]f the [C]ouncil determines that any provision of a statute or any part of a rule or regulation constitutes an unfunded State mandate …, that provision of the law or that part of the rule or regulation shall cease to be mandatory in its effect and shall expire." N.J.S.A. 52:13H-12(a). The Council's "rulings" on unfunded mandates are classified as "political determinations" that "shall not be subject to judicial review." N.J.S.A. 52:13H-18.

To reach a determination, it is "the duty of the [C]ouncil to review, and issue rulings upon, complaints filed with the [C]ouncil" that allege that a statute, rule, or regulation is "an unfunded mandate." N.J.S.A. 52:13H-12(a). The Act specifies that "[a] complaint filed with the [C]ouncil shall be in the form of or accompanied by a resolution passed by the governing body of … [the] municipality," and the Act sets forth that "[t]he [C]ouncil shall review each complaint and, when necessary, interview witnesses and examine documents." Ibid. The Council, "by majority vote of its membership, shall issue a written

ruling, accompanied by any concurring or dissenting opinions, as to whether or not a statute or a rule or regulation constitutes an unfunded State mandate and an explanation of the reasons for its determination." Ibid.; see also N.J.S.A. 52:13H-15 ("A ruling issued by the [C]ouncil shall be in writing and shall set forth the reasons for the [C]ouncil's determination.").

The Act commands the Council that "[a] ruling … 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 a statute or a rule or regulation." N.J.S.A. 52:13H-12(a). The Act further commands that the Council does "not have the authority to determine whether the funding of any statute or any rule or regulation is adequate." Ibid. Nor does the Council have the authority to "consider complaints concerning pending legislation or proposed rules or regulations," or to "issue advisory rulings or opinions on any matter." N.J.S.A. 52:13H-13. Finally, consistent with paragraph 5(c) of the Unfunded Mandates Clause, the Act specifies that "[n]otwithstanding the provisions of any other law to the contrary," the same six "categories of laws and rules or regulations shall not be unfunded mandates" as a matter of law. N.J.S.A. 52:13H-3(a)-(f) (listing those categories).

C. The 2014 MVRS Installation Mandate And DWI Surcharge.

In 2014, the Legislature required "[e]very new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date" and "which is primarily used for traffic stops" to "be equipped with a mobile video recording system," referred to as an MVRS. See L. 2014, c. 54; N.J.S.A. 40A:14-118.1. An MVRS is defined as "a device or system installed or used in a police vehicle or worn or otherwise used by an officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action." Ibid.

The Legislature also increased the surcharge on those convicted of DWI. The preexisting $100 DWI surcharge was increased to $125, with the extra $25 "payable as follows: in a matter where the summons was issued by a municipality's law enforcement agency, to that municipality to be used for the cost of equipping police vehicles with [MVRS] …; in a matter where the summons was issued by a county's law enforcement agency, to that county; and in a matter where the summons was issued by a State law enforcement agency, to the General Fund." N.J.S.A. 39:4-50(i).

D. Deptford's Complaint And The Council's Decision.

In May 2015, Deptford Township filed a complaint with the Council challenging the MVRS installation mandate at N.J.S.A. 40A:14-118.1 as an

unfunded mandate.[4] (Sa021-030.[5]) The Township's complaint challenged only the MVRS mandate: "Deptford Township seeks a Council on Local Mandates ruling that N.J.S.A. 40A:14-118.1 imposes an unfunded mandate in violation of N.J. Const. art. VIII, Sec. 2, Para. 5(a) and N.J.S.A. 52:13H-2." (Sa011.) The Township's Resolution authorizing the filing of its complaint makes the contours of Deptford's challenge similarly clear: "[T]he Mayor and Council of the Township of Deptford … wish[] to file a complaint with the State of New Jersey Council on Local Mandates that N.J.S.A. 40A:14-118.1 is an unfunded mandate." (Sa017.) In making its case, the Township argued that the $25 increased surcharge for those convicted of DWI was "grossly inadequate" to cover the costs of installing MVRS equipment in new patrol vehicles that the Township acquired. (Sa013.)

On April 20, 2016, the Council issued its written opinion on Deptford's complaint, holding that the MVRS installation mandate at N.J.S.A. 40A:14-118.1 is an unconstitutional unfunded mandate. (Pa213-218.) The Council

[4] The complaint was amended on June 11, 2015, to clarify that it was brought by both the Mayor and Council on behalf of the Township. (Sa010-020.)

[5] "Sa" refers to Defendants-Respondents Muoio, Grant, and Fulton's supplemental appendix. "Psa" refers to Plaintiffs-Appellants' certification appendix. "Pa" refers to Plaintiffs-Appellants' Appellate Division appendix. "Psb" refers to Plaintiffs-Appellants' supplemental brief to this Court. "Pcb" refers to Plaintiffs-Appellants' certification brief. "ACLUb" refers to the amicus curaie brief of the American Civil Liberties Union of New Jersey.

reasoned that the "purported funding" from the increased surcharge was "illusory" because it "would fall far short of funding the inst[a]llation of either a vehicle-mounted or body-worn mobile video recording system." (Pa218.) The Council wrote, toward the end of its opinion, that its determination that the MVRS mandate was unconstitutional supposedly "render[ed] nugatory the $25 surcharge described in N.J.S.A. 39:4-50(i)." (Ibid.) The Council did not explain why. (Ibid.)

E. The Instant Challenge.

Appellants Rebecca J. Reed and Amanda M. Curry pleaded guilty in municipal court to DWI, and as a part of their sentences, the municipal courts levied the extra $25 surcharge enacted in 2014.[6] See N.J.S.A. 39:4-50(i). (Pa163-164.)

In 2021, Appellants each filed a putative class action complaint in the Law Division, relying on the Council's 2016 ruling. (Pa074-094, Pa104-124.) Appellants alleged that the surcharge had been invalidated and sought orders returning the $25 paid by them and others similarly situated. (Ibid.) The complaints were consolidated, and a motion to dismiss granted, without

[6] There is no suggestion that Appellants objected to the imposition of the $25 surcharge as part of their underlying DWI sentences, even though they pleaded guilty after the Council's 2016 ruling.

prejudice, in August 2022. (Psa0038-0039.) The trial court reasoned that "[t]he Council['s] … authority is limited to deeming unfunded mandates to be unconstitutional," and "[t]he Council's decision to strike [N.J.S.A.] 40A:14-118.1 as unconstitutional did not also deem [N.J.S.A.] 39:4-50(i) to be unconstitutional." (Psa0056.) Thus, N.J.S.A. 39:4-50(i) "is valid," and Appellants are not entitled to a return of the increased surcharge paid thereunder. (Ibid.) The trial court subsequently dismissed an (effectively identical) amended complaint with prejudice for the same reasons. (Psa0023-0037.)

The Appellate Division affirmed. Appellants urged reversal on the ground that the Council's ruling on the DWI surcharge was a "political" determination not subject to review by the courts. (Psa0013-0014.) But the Appellate Division explained that "[w]hile the Council had the constitutional authority to invalidate the MVRS installation mandate," N.J.S.A. 40A:14-118.1, the Council did "not have the authority to invalidate a legislatively-approved sanction for a quasi-criminal conviction," N.J.S.A. 39:4-50(i). (Psa0005; see also Psa0021 (noting the Local Mandates Act's command that the Council "preserve as far as possible the provisions of a statute under its review that do not contain an unfunded mandate").) Because the Council had acted beyond its own authority, its action was a nullity: "the surcharge remains a sanction for DWI," and "plaintiffs are not entitled to a refund." (Psa0005.)

The Appellate Division found that the Appellants' contrary position—that any action by the Council is unreviewable, even if it invalidates a provision other than an unfunded mandate—could lead to absurd results. (Psa0017-0018.) As the Appellate Division explained, the upshot of "plaintiffs' interpretation" was that even if "the Council had invalidated … in its entirety … the offense of DWI," not just the surcharge, "the Council's decision would not be subject to judicial review." (Ibid.) The Appellate Division concluded that such an outcome was incompatible with New Jersey's constitutional and statutory framework. (Psa0019 ("Judicial review is a constitutionally appropriate avenue through which to challenge a decision of the Council … outside of its constitutional authority.").)

Finally, the Appellate Division held that to the extent the DWI surcharge and the MVRS mandate were related, they were nevertheless severable. (Psa0020-0021.) It reasoned that the legislative intent animating the surcharge could "be accomplished independent of" the mandate. (Psa0020.)

ARGUMENT

The Judiciary is not bound by rulings of the Council when the Council has overstepped its legal authority. That is dispositive here for two reasons: the Council may not invalidate statutory or regulatory provisions that are not themselves unfunded mandates, and it may not invalidate provisions unless and until

they are disputed via a proper complaint. Because the Council's ruling on the DWI surcharge does not bind the Judiciary, the Appellate Division was right to address and correctly resolved the severability question for itself.

POINT ONE

WHEN THE COUNCIL EXCEEDS ITS AUTHORITY, ITS RULING IS OF NO LEGAL EFFECT AND DOES NOT PRECLUDE JUDICIAL ACTION.

This Court should reject Appellants' arguments that Council rulings are always the final word on the continued vitality of a contested statute or regulation. Traditionally, it is the Judiciary's responsibility to resolve questions of law that affect the rights and obligations of the parties—including, when necessary, to consider the constitutionality of statutes or regulations. Appellants contend that those principles do not apply when Council rulings come into play. Instead, because the Unfunded Mandates Clause and Local Mandates Act say that Council decisions are "political" and therefore not subject to judicial review, courts are bound by whatever the Council decides. (Pcb10-11.) Amicus ACLU of New Jersey gives reason to doubt whether that should ever be true. (See ACLUb3-13.) But this Court need not decide how courts should handle Council rulings within its authority. Because even assuming that the normal principles of judicial review do not apply to Council rulings in some circumstances, a Council

ruling issued outside of its authority is not one of them. That is all this Court needs to hold to resolve this case.

In general, it is the Judiciary's role to resolve questions of law that affect the rights and obligations of the parties. See, e.g., Marbury v. Madison, 5 U.S. 137, 177 (1803) (Marshall, C.J.) ("It is emphatically the province and duty of the judicial department to say what the law is."); Asbury Park Press, Inc. v. Woolley, 33 N.J. 1, 12 (1960) ("[T]he judicial department has … the solemn duty to interpret the laws."). When necessary to a determination, the court construes statutes and regulations, and decides their constitutional validity. See, e.g., In re P.L. 2001, Chapter 362, 186 N.J. 368, 393 (2006) ("Only a court of competent jurisdiction has the … responsibility to strike down a statute that runs afoul of either our Federal or State Constitution."); Mortg. Bankers Ass'n of N.J. v. N.J. Real Est. Comm'n, 102 N.J. 176, 191 (1986) ("[S]tatutory interpretation is ultimately the task of the judiciary."). Our "judiciary is commonly called upon to review the rationality of decisions by other branches of government or agencies with special expertise." State v. Leonardis, 73 N.J. 360, 376 (1977). Yet the judiciary has always sought to "limit a decisional process" from other actors "which might yield ad hoc or arbitrary determinations." Id. at 377. After all, the New Jersey Constitution and the separation-of-powers it endorses are designed to "guarantee a system in which one branch cannot claim or receive an

inordinate power." Commc'ns Workers of Am., AFL-CIO v. N.J. Civ. Serv. Comm'n, 234 N.J. 483, 509 (2018) (citation omitted).

Although Appellants argue that Council rulings are an exception to traditional review because its rulings are "political," that at the very least cannot be true where the Council itself exceeds its circumscribed and narrow constitutional authority. New Jersey law is clear that when a body of limited authority—like the Council here—oversteps, its actions and determinations are a legal nullity not entitled to be given effect in judicial proceedings. See, e.g., McMahon v. City of Newark, 195 N.J. 526, 547 (2008) ("The fundamental proposition is both of long standing and easily stated: 'the judgment of a tribunal lacking jurisdiction to enter such judgment is utterly void.'" (citation omitted)); Nagy v. Ford Motor Co., 6 N.J. 341, 349 (1951) ("The Compensation Bureau is a creature of the statute. Its jurisdiction is special and limited …. Where the Bureau transcends its jurisdiction, the action is a nullity."); Maguire v. Van Meter, 121 N.J.L. 150, 152 (E. & A. 1938) ("[W]ant of jurisdiction over the subject matter subjects the judgment of this [C]ommission to collateral attack. Indeed lack of jurisdiction will subject the judgment of any court to collateral attack for such judgment is wholly nugatory and may be disregarded as it was in the instant case."). Nothing in the Unfunded Mandates Clause suggests that it was creating an exception to this rule—a rule that binds every other

governmental agency, and deprives their actions of force when done without jurisdiction.

That limiting principle—that the Council's acts cannot bind the Judiciary in circumstances where the Council itself acted without authority—is supported by twin constitutional tenets. First, any body's power to resolve an issue "rests solely upon … having been granted such power by the Constitution or by valid legislation." State v. Osborn, 32 N.J. 117, 122 (1960). So if the Council goes beyond its power to adjudicate challenges to unfunded mandates, it has no true power to issue that supposed decision. And second, "[g]overnmental checks and balances are an integrated feature of our fundamental organic law." Knight v. City of Margate, 86 N.J. 374, 387-88 (1981). As this Court has long held, no branch or body may "transcend [its] legal limits, without being effectually checked and restrained by the others." Gen. Assembly of State of N.J. v. Byrne, 90 N.J. 376, 381 (1982) (quoting Thomas Jefferson, Notes on the State of Virginia, 120 (W. Peden ed. 1955)). Ensuring that judicial review exists when the Council exceeds the scope of its constitutional authority protects those basic separation-of-powers principles, and it guarantees that a decision without jurisdiction does not become binding on our courts.

Appellants' reliance on the fact that the Clause and implementing Act treat Council decisions as "political" does not justify carving out ultra vires actions—

that go beyond the Council's authority—from review. The political question doctrine on which Appellants rely has been a tool to prevent judicial intrusion into legitimate exercises of political discretion that are within the exclusive authority of other branches. See, e.g., Baker v. Carr, 369 U.S. 186, 210, 215 (1962) (Brennan, J.). But it has never been used as a shield that enables a governmental body to overstep its authority. See, e.g., id. at 217 ("[The courts] will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power…. The courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority."); Powell v. McCormack, 395 U.S. 486, 520-21, 548-49 (1969) (if determination "require[d] no more than an interpretation of the Constitution," it fell "within the traditional role accorded courts to interpret the law," and did not "involve an 'initial policy determination of a kind clearly for nonjudicial discretion'"). It would be a perversion of political question concepts to permit the Council to exceed its constitutionally and statutorily defined limits while forcing the Judiciary to simply bless this overreach in a collateral proceeding. Baker, 369 U.S. at 215 ("The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder."). That is why this Court has never contemplated use of this doctrine

to protect ultra vires actions by a governmental body. Mulhearn v. Fed. Shipbuilding & Dry Dock Co., 2 N.J. 356, 364 (1949) (Vanderbilt, C.J.).[7]

An illustration proves the point. Although the New Jersey Constitution establishes that the Council may "resolve any dispute regarding whether a law … constitutes an unfunded mandate," N.J. Const. art. VIII, § 2, ¶ 5(b), and that such decisions are "political and not judicial," ibid., the same constitutional provision clarifies that—"[n]otwithstanding anything" in the Unfunded Mandates Clause, including the statement that Council decisions are political—there are six kinds of laws that categorically "shall not be considered unfunded mandates." See id. at ¶ 5(c); see also N.J.S.A. 52:13H-3(a)-(f) (statute confirming the same six categories cannot be unfunded mandates). So if the Council ever purported to invalidate the New Jersey Law Against Discrimination (LAD), that ruling could not possibly bind the courts in future

[7] Indeed, in the administrative context, our courts emphasize that those affected by an agency determination have a right to petition the courts to determine if delegated power has been abused. See, e.g., Elizabeth Fed. Sav. & Loan Ass'n v. Howell, 24 N.J. 488, 499 (1957) (Vanderbilt, C.J.) ("[A]n administrative officer … must act only within the bounds of the authority delegated to him, and … the courts in the exercise of their judicial power are permitted to review the ultimate application of the law which has been entrusted … when necessary for the protection of the rights of persons or property against an abuse of the power delegated."); see also In re Camden Cnty., 170 N.J. 439, 447 (2002) ("The right of judicial review to protect against improper official action is constitutionally secure and available as of right." (citing N.J. Const. art. VI, § 5, ¶ 4)).

litigation—because the Constitution specifies that the Council's power to issue "political" decisions does not extend to invalidating laws like the LAD that bind "both government and non-government entities." N.J. Const. art. VIII, § 2, ¶ 5(c)(2). And if the Council invalidated a state regulation that left the State in violation of its federal-law obligations, that could not possibly bind the courts in subsequent litigation either, as the Constitution puts it beyond the Council's political power to invalidate rules "required to comply with federal laws or rules or to meet eligibility standards for federal entitlements." Id. at ¶ 5(c)(1). Appellants seem to believe that Council rulings striking down the LAD or leaving the State in violation of federal law are unreviewable even though they would expressly contradict the Constitution (because Council decisions are ipso facto the final word on the matter), but the Constitution does not contemplate binding Council rulings that exceed its authority.

In short, the court always has the duty—when adjudicating the rights and obligations of the parties before it—to determine if the Council operated within its bounds before blindly following a Council ruling. See Gen. Assembly of State of N.J., 90 N.J. at 382 ("It has been the constitutional role of the Court to prevent any of the branches from exercising illegitimate power over the others."); see also Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189, 194 (2012) ("[T]he Judiciary has a responsibility to decide cases properly before it,

even those it 'would gladly avoid.'" (citation omitted)). However delicate that judicial task is, a court cannot rubber-stamp a Council ruling it was not authorized to render. And because the Council acted beyond its authority here for the reasons that follow, that is all this Court needs to say regarding the interplay of Council decisions and judicial review.

POINT TWO

THE COUNCIL HAD NO AUTHORITY TO INVALIDATE THE INCREASED DWI SURCHARGE.

The Council was not authorized to declare that the $25 DWI surcharge was "nugatory" under either the Unfunded Mandates Clause or the Local Mandates Act.

"The polestar of constitutional construction is always the intent and purpose of the particular provision." State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 527 (1999) (quoting State v. Apportionment Comm'n, 125 N.J. 375, 382 (1991)). Statutory construction focuses on the Legislature's intent. Wiggins v. Hackensack Meridian Health, 259 N.J. 562, 574 (2025). "In ascertaining the intent of a constitutional [or statutory] provision, a court must first look to the precise language used by the drafters. If the language is clear and unambiguous, the words used must be given their plain meaning…. On the other hand, if the language of the constitutional [or statutory] provision is

unclear or is susceptible to more than one interpretation, courts may consider sources beyond the instrument itself to ascertain its intent and purpose." Trump Hotels & Casino Resorts, Inc., 160 N.J. at 527-28; accord Matter of Proposed Constr. of Compressor Station (CS327), 258 N.J. 312, 325 (2024). And the Constitution is considered "as a whole, and not one part as a separate and independent provision bearing no relation to the remainder." Behnke v. N.J. Highway Auth., 13 N.J. 14, 24 (1953).

The Council is a body of limited authority, and its ruling on the DWI surcharge transgressed its limits in two independent respects. First, the Clause and the Act limit the Council's authority to determining only whether a specific statutory or regulatory provision is an "unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b). That is, the Council can determine whether a provision of law fails to "authorize resources … to offset the additional direct expenditures required for the implementation of the law or rule or regulation." Id. at ¶ 5(a); N.J.S.A. 52:13H-2 (same). But the Council cannot invalidate any other provision of law for any other reason—including its view that a provision of law is inseverable from the unfunded mandate. Second, the Clause and the Act limit the Council to adjudicating a "dispute" over provisions that are challenged as unfunded mandates in complaints filed before it. N.J. Const. art. VIII, § 2, ¶ 5(b); N.J.S.A. 52:13H-12(a). Because the DWI surcharge is not itself an unfunded mandate

(rather, it is a funding mechanism), and because the surcharge was not properly disputed via a complaint before the Council, the Council had no authority to pass on it. And because the Council lacked authority, its ruling cannot bind the courts.

A. The Council Cannot Invalidate A Law For Any Reason Other Than That It Is An "Unfunded Mandate."

The Council's ruling invalidating the $25 DWI surcharge—even though the surcharge itself cannot be an unfunded mandate—exceeds the Council's limited authority under both the Clause and the Act. The Clause makes clear the Council's power is limited to resolving "whether a law or rule or regulation … constitutes an unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b) (emphasis added). Indeed, the Clause repeats "unfunded mandate" five times in just three paragraphs and nowhere contemplates any other subject matter. Id. at ¶ 5(a)-(c). And the Act reiterates that the Council's authority is limited to determining whether a law constitutes "an unfunded mandate … because it does not authorize resources to offset the additional direct expenditures required for the implementation of the law or the rule or regulation." N.J.S.A. 52:13H-2 (emphasis added); N.J.S.A. 52:13H-12(a).

This strict limitation on the Council's authority is grounded in both constitutional text and legislative design. The preamble to the "State Mandate, State Pay" Amendment explains that "[t]he Legislature ha[d] determined that

the appropriate constitutional remedy is one that … establishes a Council on Local Mandates to determine whether an unfunded mandate has been imposed, nullifies any such mandates determined to be unfunded and makes specific limited exceptions." (Sa002 (emphases added).) The voters were told the same thing. The interpretive statement accompanying the 1995 ballot question explained that "[t]he amendment creates a bipartisan Council on Local Mandates that would determine whether a State law, rule or regulation imposes an unfunded mandate on local governments. Any law, rule or regulation which is declared to be an unfunded mandate by the Council would cease to exist and expire." (Sa005 (emphases added).) No materials suggest the Council has powers beyond unfunded mandates.

The materials relating to the Local Mandates Act confirm this point. In enacting the Act, the Legislature declared that "at the November 1995 general election, the people … approved [the] amendment" specifically so that the State "shall not impose unfunded mandates on counties, municipalities, or school districts." N.J.S.A. 52:13H-1(a). And when Governor Christine Todd Whitman signed the Act in May 1996, she issued a public statement underscoring the Council's limited authority. She explained that the Council "will resolve complaints … over whether a new law, rule or regulation constitutes an unfunded mandate." (Sa009.) She reassured voters that the Act otherwise

preserved the role of state officials: "ensur[ing] that none of the constitutional responsibilities of elected state office holders are abridged …. It will be the responsibility of those elected directly by the people to enact laws, determine budgets, and be accountable to [New Jersey] citizens." (Ibid.) As before, the Council's power involved unfunded mandates alone.

The day before the Act's signing, Senate President DiFrancesco, the prime sponsor of the Amendment and the Act, received a preparatory memorandum from his Assistant Executive Director, Victor R. McDonald, now a member of the Council. (Sa006-008.) The memorandum addressed pressure from legislators and interest groups who wanted the Council's authority to encompass not just "unfunded mandates" but also underfunded ones. (Sa007.) But the Senate President's office determined that this was not constitutionally permissible: "The language of the constitutional amendment is … very clear that the Council's powers are limited to determining whether or not a mandate is unfunded. The amendment is actually redundant on this point …. It is absolutely clear that the Council's powers, which are extraordinary and unprecedented, are limited to determining whether or not an unfunded mandate has been imposed." (Ibid.) The memo stated that if the Legislature wanted to "cede" any "power to the Council" other than the power to rule specifically on

"unfunded mandates," the Legislature "w[ould] have to draft a new amendment to the constitution." (Ibid.)

Against this backdrop, Appellants do not claim that the Council was explicitly authorized to invalidate the surcharge. For instance, they do not contend that it qualifies as an "unfunded mandate," under either the Clause or the Act. And it obviously could not. See N.J. Const. art. VIII, § 2, ¶ 5(a) (defining an "unfunded mandate" as a "mandate upon boards of education, counties, or municipalities because it does not authorize resources … to offset the additional direct expenditures required for the implementation of the law or rule or regulation"); N.J.S.A. 52:13H-2 (same). The surcharge is not a mandate at all, let alone an unfunded one. Just the opposite: it is a funding mechanism, with a $25 portion of the statutory assessment for DWI convictions remitted to municipalities, counties, or the State. N.J.S.A. 39:4-50(i).

Instead, Appellants ask this Court to read a single sentence in the Act to grant the Council unreviewable power to weigh various factors and decide which provisions of a law may survive an "unfunded mandate" ruling. (Psb3-4 (citing N.J.S.A. 52:13H-12(a)).) But their reading is strained, contradicts precedent, and would raise serious separation-of-powers concerns.

Start with the text. Appellants rely on one sentence in the Act: "A ruling of the [C]ouncil 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 a statute or a rule or regulation." N.J.S.A. 52:13H-12(a). The first clause is a mandatory limitation, directing that a "ruling of the [C]ouncil" shall be restricted to the specific provision that is an unfunded mandate. Ibid.; see State v. Bolvito, 217 N.J. 221, 230 (2014) ("[T]he Legislature's choice of the word 'shall,' … is ordinarily intended to be mandatory, not permissive." (citation omitted)); State in Int. of M.P., 479 N.J. Super. 492, 498 (App. Div. 2024) (same). This language draws a firm jurisdictional boundary. The Council may only rule on the "specific provision" that imposes "an unfunded mandate"—not on an entire statute, not on its structure, and not on whether some provisions are severable from others.

The second clause reinforces that limitation: the Council "shall, as far as possible, leave intact the remainder of a statute or a rule or regulation." N.J.S.A. 52:13H-12(a). This clause expresses a clear intent to preserve the rest of a statute or statutory scheme (i.e., any provision that is not the "unfunded mandate") to the fullest extent possible. As this Court has explained, "so far as possible" in the statutory context simply indicates a "limitation[] [that] must be given effect and … excused only when it is not possible to apply … [the] limitations and parameters." State v. Hudson, 209 N.J. 513, 518 (2012) (emphases added); accord State v. Bull, 227 N.J. 555, 562 (2017) ("The 'so far

as possible' qualifier is triggered only when compliance cannot be achieved[.]"). Because the Council must not touch any statutory provisions outside the specific provision that is an unfunded mandate, the Council has no power to (as here) invalidate any other non-mandate statutory provisions.

Besides the text, there are profound separation-of-powers reasons for not construing the Council's authority any broader. See Comm. to Recall Menendez v. Wells, 204 N.J. 79, 95 (2010) ("[W]e strive to avoid reaching constitutional questions unless required to do so."). For starters, there is little reason to think the Legislature could constitutionally give the Council any powers beyond what the Constitution specifically authorizes in the Clause. Certainly nothing in the Clause grants the Legislature that power. See, e.g., Citizens Clean Elections Comm'n v. Myers, 1 P.3d 706, 709 (Ariz. 2000) (holding it unconstitutional for the Arizona Legislature to grant added authority to independent commission where "Constitution vest[ed] the Commission" with "but one function"); see also In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly, 488 P.3d 1008, 1020 (Colo. 2021) ("[A]ny power that the General Assembly asserts over a constitutionally created independent commission that was expressly designed to divest the legislature of authority must derive from the amendment that created the commission, not the constitution's general grant

of legislative authority."). And the New Jersey Constitution itself indicates the opposite.

Our Constitution specifies that "[t]he powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial." N.J. Const. art. III. So the Council—effectively operating as a fourth branch "independent of the Executive, Legislative and Judicial branches"[8]—is unquestionably an anomalous exception to the constitutional structure. By amendment, New Jerseyans accepted that anomaly, but only for a Council with the narrow authority to determine if "a law constitutes an unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b). If the Council were to exercise any power beyond that specific authority, it would fall outside the Clause's circumscribed exception to the three-branch constitutional structure.

But even if the Legislature could grant the Council an extra-constitutional power to invalidate provisions other than unfunded mandates themselves, bedrock interpretive principles suggest that the Legislature has not done so here. As this Court has emphasized, the Legislature does not work "a radical change" through "ambiguous" language; it does "so expressly." Perez v. Zagami, LLC, 218 N.J. 202, 216 (2014). Or, as the U.S. Supreme Court has put it, the

[8] See N.J. Council on Local Mandates, General Background, https://www.nj.gov/localmandates/general.shtml.

Legislature "does not … hide elephants in mouseholes." Ibid. (quoting Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001)). And it would be radical indeed to give sometimes delicate or difficult legal questions of statutory severability to a Council whose members need not be attorneys, and who are sometimes chosen from partisan lists.[9] See N.J.S.A. 52:13H-4 to -5. One restrictive sentence in the Act requiring the Council to, "as far as possible," leave a statute "intact" would be a strange mousehole to hide the elephant of an unbounded severability power.

This is especially true because such a reading would be granting the Council a (potentially unreviewable) power to decide severability that the Constitution normally vests in the Judiciary. Since the adoption of the 1947 Constitution,[10] this Court has guarded judicial power against encroachment.

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[9] That sharply contrasts with the Judiciary, where all judges must be lawyers. See, e.g., Mulhearn, 2 N.J. at 360 ("There is … a clearly marked public policy evidenced by both the Constitution and the statutes that all our judges shall be members of the bar."); see also N.J. Const. art. VI, § 6, ¶ 2 ("The justices of the Supreme Court and the judges of the Superior Court shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.").

[10] State v. L., 51 N.J. 494, 514 (1968) ("The delegates who drafted the 1947 Constitution deliberately vested this Court with sweeping judicial power to the end that it would be fully equipped to see that justice is soundly administered."); State v. Culver, 23 N.J. 495, 503 (1957) ("The Constitution of 1947 … vested the judicial power of government in the Supreme Court, the Superior Court, County Courts and inferior courts of limited jurisdiction.").

See, e.g., Winberry v. Salisbury, 5 N.J. 240, 244 (1950) (Vanderbilt, C.J.) ("[T]here was a clear intent to establish a simple but fully integrated system of courts and to give to the judiciary the power and thus to impose on them the responsibility for seeing that the judicial system functioned effectively in the public interest."); Osborn, 32 N.J. at 126 (condemning legislative grants of judicial power to executive officials as "a violation of Article III of the Constitution of 1947" and the "separation of powers"). And determining whether one part of a statute is severable from the rest is generally a judicial inquiry, turning on legislative intent and the workability of the statutory scheme. See, e.g., Chamber of Com. of U.S. v. State, 89 N.J. 131, 151-52 (1982) ("Whether such 'judicial surgery' should be utilized depends upon whether the Legislature would have wanted the statute to survive."). So this Court should not lightly infer that the Legislature gave a severability power to the Council and insulated those determinations from traditional judicial review.[11]

[11] Indeed, giving the broad power to reshape laws and regulations, particularly without judicial oversight, would invite the harms that led the Court to declare unconstitutional the Legislative Oversight Act of 1981. See Gen. Assembly of State of N.J., 90 N.J. at 376. There, the Court warned that allowing the Legislature to review and veto proposed regulations could "gravely impair the functions of agencies charged with enforcing statutes" by breaching both the separation-of-powers doctrine and the Presentment Clause by enabling laws to be altered outside the constitutional process. Id. at 385. The same danger exists here. Allowing nine unelected Council members to nullify any statute or regulation at will, with no check from the courts, regardless of whether that

At minimum, then, even if the Council could engage in severability determinations (and it constitutionally cannot), the courts must retain oversight. The Clause and the Act insulate Council rulings from review on "political" question grounds. N.J. Const. art. VIII, § 2, ¶ 5(b); N.J.S.A. 52:13H-18. But the political question doctrine applies here only where there is "a textually demonstrable constitutional commitment of the issue to [the Council]." Gilbert v. Gladden, 87 N.J. 275, 282 (1981) (citation omitted); see also Powell, 395 U.S. at 521 n.43 ("[Whether] this case presents a political question depends in great measure on the resolution of the textual commitment question.").[12] And the Clause has no textually demonstrable commitment of "severability" to the Council. So any severability determination (including on the surcharge) should be judicially reviewable, ensuring that statutory interpretation and severability remain with the judiciary. See Mortg. Bankers Ass'n of N.J., 102 N.J. at 191 (providing that "statutory interpretation is ultimately the task of the judiciary").

Ultimately, the text and the history of the Clause and the Act specify that the Council's authority is limited to ruling on "unfunded mandates." The DWI

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provision of law actually imposes an unfunded mandate, would concentrate tremendous power in what was intended to be a limited body with a narrow task.

[12] Because severability is certainly within the ken of the Judiciary, the other potential bases for the political question doctrine (such as a lack judicially manageable standards, see Gilbert, 87 N.J. at 282) do not apply, and Appellants have never contended otherwise.

surcharge is not even plausibly an unfunded mandate—and neither the Council nor any party has ever claimed otherwise. So when the Council purported to render the surcharge "nugatory," it acted beyond its constitutional and statutory authority. As a result, that determination carries no legal weight.

B. The Council Cannot Invalidate A Law That Is Not In "Dispute."

The Council also lacked authority to issue a ruling invalidating the $25 DWI surcharge for a second, independent reason: it did so on its own initiative, without ever receiving a complaint seeking such relief. The Clause grants the Council the constitutional authority only to "resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b) (emphasis added). That means a party must challenge a specific provision as an unfunded mandate before the Council can adjudicate its validity; the Council cannot sua sponte decide to invalidate an uncontested statute. See Black's Law Dictionary, "Dispute" (12th ed. 2024) ("A conflict or controversy, esp[ecially] one that has given rise to a particular lawsuit."); see also Cornelius v. CVS Pharmacy Inc., 133 F.4th 240, 246 (3d Cir. 2025) (noting "a 'dispute' requires some aspect of opposition or disagreement"). Without a "dispute," the Council has no authority to rule.

The Act implementing the Clause could hardly have been clearer regarding the governing procedural framework. To ensure the Council only resolves the disputes properly before it, the Act clarifies that the municipality must challenge the statute or regulation as an unfunded mandate via a "complaint filed" with the Council. N.J.S.A. 52:13H-12(a). The Act also clarifies what such a Complaint must entail: a Complaint must be "filed … in the form of or accompanied by a resolution passed by the governing body of … [the] municipality." Ibid. The Council must then review the complaint and, when necessary, examine evidence and hear testimony. Ibid. Otherwise, there is no challenge properly before it. And again, absent a challenge, the Council has no authority to act.

That is a second, independent basis for the Court to disregard the Council's unilateral and sua sponte decision to invalidate the DWI surcharge. In 2015, Deptford Township did not challenge the validity of the surcharge. Deptford's complaint, and the resolution authorizing it, solely contested the MVRS installation mandate at N.J.S.A. 40A:14-118.1. (See Sa010-018 ("Deptford Township seeks a Council on Local Mandates ruling that N.J.S.A. 40A:14-118.1 imposes an unfunded mandate in violation of N.J. Const. Art. VIII, Sec. 2, Para. 5(a) and N.J.S.A. 52:13H-2.").) The sole reason that Deptford even mentioned the surcharge was to show that its projected revenue would be insufficient to fully fund the MVRS installation mandate. (Sa013.) So Deptford

mentioned the surcharge to bolster its argument that the MVRS mandate was unfunded, not to dispute or challenge the surcharge.

And indeed, the Council's own ruling confirms that the sole statutory provision in dispute was the MVRS mandate. The Council's opinion expressly admits that "the challenged mandate" was the "requir[ement] [that] police vehicles or police officers to be equipped with mobile video recording systems." (Pa214; see also ibid. ("Here Deptford Township seeks to invalidate N.J.S.A. 40A:14-118.1 as imposing an unfunded mandate in violation of N.J. Const. Art. VIII, sec. 2, para. 5(a) and N.J.S.A. 52:13H-2.").) Nowhere in the record is there evidence of a challenge to the surcharge—no complaint filed, no resolution authorized, and no controversy presented to the Council. The Council simply acted unilaterally here.

The Council's unilateral expansion of its inquiry from the issue disputed (whether the MVRS mandate was an "unfunded mandate") to an issue not disputed (whether the DWI surcharge was "nugatory") thus went beyond its authority to resolve a "dispute" over an alleged "unfunded mandate." N.J. Const. art. VIII, § 2, ¶ 5(b). There was clearly no "dispute" as to the surcharge to be resolved.

Where a governmental body has not followed the "procedural requirements" established for the exercise of constitutional authority, its action

is a "nullity." Commc'ns Workers of Am., 234 N.J. at 507. For good reason. As this Court explained in the context of the Legislative Review Clause, "procedural requirements serve fundamental goals: to ensure that the executive agency and the public are on notice of the Legislature's objection to the rule or regulation and to grant the agency the opportunity to address that objection by amending or withdrawing the rule or regulation." Ibid.

Those same principles apply perfectly here. The Clause and the Act establish clear procedural requirements for fundamental reasons: to afford notice to the Legislature and the public that a specific provision of law is in dispute, and to allow for development of a factual record—including evidence and testimony—on whether a law is an unfunded mandate. By disregarding those procedures and ruling on the surcharge, the Council denied notice, circumvented process, and foreclosed any meaningful opportunity for argument or rebuttal in defense of the statute. These principles thus establish that the Council's sua sponte attempt to invalidate the DWI surcharge is a legal "nullity." So it cannot bind the courts when the validity of the surcharge is later before them.

Nor is anything about this line of reasoning—in which the Council's unilateral actions lack binding effect—merely formalistic. Instead, the lack of any adjudicatory process can have a meaningful impact on the outcome, as it likely did here. After all, even assuming that the Council had the authority to

invalidate the $25 DWI surcharge based on principles of severability (which it did not for the reasons explained above), the Council would have needed to receive briefing on the issue to ensure it reached the proper conclusion.

For example, when the Legislature raised the DWI surcharge by $25 in 2014, it created a bifurcated funding scheme: if a summons is issued by municipal law enforcement, those funds are to be used to support MVRS installation; but if issued by county or state law enforcement, the funds may be used for other purposes. See N.J.S.A. 39:4-50(i). The Council's ruling entirely failed to address (or even acknowledge) this distinction; failed to address whether its statement that the surcharge would be "nugatory" applied to county or state law enforcement or to municipal agencies alone; and failed to give any reason why the surcharge when imposed by county or state law enforcement could plausibly be invalidated based on its lack of relationship to the MVRS mandate. The Council also failed to explain why the Legislature would not have wanted a DWI surcharge to at least support and fund optional MVRS installation, even if it could not mandate it. These questions, and others, could have been explored had the surcharge actually been in dispute, and parties with notice from the Council could have provided briefing and developed an evidentiary record. But it was not. And that error would be compounded—not

cured—by accepting Appellants' position that the Council's sua sponte action binds the courts in any collateral judicial proceedings.

In sum, the Council's determination on the surcharge violated constitutional and statutory constraints and procedures, and the lower courts were right not to give effect to a ruling that is a nullity.

POINT THREE

THE APPELLATE DIVISION CORRECTLY HELD THAT THE DWI SURCHARGE IS SEVERABLE FROM THE MVRS MANDATE.

Finally, the Appellate Division correctly held that on the merits, "[t]he surcharge provision in N.J.S.A. 39:4-50(i) is amenable to severance from the MVRS installation mandate in N.J.S.A. 40A:14-118.1." (Psa0020.)

Under New Jersey law, if "a portion of a statute" is found "unconstitutional, the Legislature has mandated a presumption of severability." State v. Higginbotham, 257 N.J. 260, 281 (2024) (citing N.J.S.A. 1:1-10). Accordingly, as this Court recently reaffirmed, if part of a statute is "unconstitutional," the rest survives "so long as 'the invalid portion is independent,' and the remainder of the statute, without the invalid provision, can 'form[] a complete act within itself.'" Ibid. (quoting Inganamort v. Borough of Fort Lee, 72 N.J. 412, 423 (1977)). In such cases, our courts are expected to engage in "judicial surgery" to remedy the unconstitutional flaw. See, e.g.,

Town Tobacconist v. Kimmelman, 94 N.J. 85, 104 (1983) ("[A] court has the power to engage in 'judicial surgery' and through appropriate construction restore the statute to health."); Chamber of Com. of U.S., 89 N.J. at 162 (same).

Considering that presumption, the appropriate remedy here is severing the $25 DWI surcharge (and thus leaving it in place) rather than striking it down with the MVRS mandate. As the Appellate Division explained, the surcharge serves distinct legislative objectives—including to "raise funds for the installation of MVRS in municipal police vehicles[] and provide revenue for county and State law enforcement agencies"—that unquestionably still "can be accomplished independent of the MVRS" mandate. (Psa0020.) "[N]othing in the legislative history or the Legislature's inaction in the many years during which the surcharge has been imposed and collected after the Council's [2016] decision indicat[es] a legislative intent for the surcharge to expire." (Psa0021.)

In their supplemental brief to this Court, Appellants largely ignore severability. (See Psb1-8.) But in their petition for certification, they argued that the municipal portion of the surcharge cannot be severed from the now-invalid MVRS mandate because its purpose was to fund that purchase. (Pcb17-19.) Yet that misses the point: the municipal DWI surcharge still advances the statute's core purpose by supporting MVRS installation, which was the evident legislative goal. Even if municipalities are no longer required to install MVRS,

they are free to do so, and the surcharge provides a funding mechanism to help.[13] (Psa0021.)

Beyond that, if the surcharge were invalidated only for defendants convicted on DWI summonses issued by a municipality (as Appellants propose), defendants convicted on DWI summonses issued by counties or the State would remain subject to the surcharge. That would create a disjointed statutory scheme where similar defendants who violated the same statute would be assessed different surcharges based purely on the governmental entity that issued the summons. Such a result would undermine legislative intent, disrupt the uniform application of the surcharge, and create an irrational disparity in its enforcement—all supporting the Appellate Division's conclusion that severance, not invalidation, is the proper remedy here. So to the degree this Court considers the severability question itself (as distinct from considering the effect of the Council's decision), this Court should affirm the Appellate Division here too.

[13] Appellants note that in 2020 the Legislature enacted N.J.S.A. 40A:14-118.3, which requires uniformed law enforcement to wear body cameras. That statute contemplates that there may be multiple sources of funding, which the $25 surcharge may be part of, further supporting a finding that it should be severable from the MVRS installation mandate. See N.J.S.A. 40A:14-118.3(b) ("In addition to funding provided through the annual appropriations act, the body worn cameras required … may be funded by … any other source of funding made available for this purpose." (emphasis added)).

CONCLUSION

This Court should affirm.

Respectfully submitted,

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