

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 090060**

REBECCA J. REED and AMANDA
M. CURRY, on behalf of themselves
and all other class members similarly
situated,

Plaintiffs-Petitioners,

v.

ELIZABETH M. MUOIO, Treasurer
of the State of New Jersey;
CAROLINE BENSON, Acting Chief
Financial Officer/Treasurer of the
Borough of Middlesex; COLLEEN
LAPP, Director/Chief Financial
Officer of Middletown Township, on
behalf of themselves, and all other
defendant class members similarly
situated; GLENN A. GRANT, J.A.D.,
Administrative Director of the Courts;
N.J. Administrative Office of the
Courts; B. SUE FULTON, Chief
Administrator, New Jersey Motor
Vehicle Commission, a body corporate
and politic and an instrumentality of
the State of New Jersey; MERARI
GAUD, Court Administrator, Borough
of Middlesex; and KATE CHIEFFO,
Court Administrator, Middletown
Township, on behalf of themselves
and all other similarly situated,

Defendants-Respondents.

On Petition for Certification from the
Superior Court of New Jersey,
Appellate Division

Docket No. A-2319-22

Civil Action

Sat Below:

Judges DeAlmeida, Berdote-Byrne,
and Bishop-Thompson

**BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS
CAROLINE BENSON, MERARI GAUD, AND THE BOROUGH OF
MIDDLESEX**

**Savo, Schalk, Corsini, Warner,
Gillespie, O'Grodnick & Fisher, P.A.**
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Defendants' Brief and Appendix from the Appellate Division are submitted under separate cover. No additional material is submitted or relied upon apart from plaintiffs' certification appendix already submitted.

PRELIMINARY STATEMENT

This matter concerns the scope of authority given to the New Jersey Council on Local Mandates and whether a decision of the Council gives private citizens a cause of action against the very municipalities the Council was designed to protect. In this matter, the legislature used a \$25.00 DWI surcharge under N.J.S.A. 39:4-50(i) as a funding mechanism to allow municipalities to comply with N.J.S.A. 40A:14-118.1, which required municipalities to equip all new police vehicles with dashboard cameras. The Council on Local Mandates determined that N.J.S.A. 40A:14-118.1 was an unfunded mandate but then, in dicta, purportedly "render[ed] nugatory" the \$25.00 surcharge.

Plaintiffs took the opportunity to use the Council's decision as a mistaken path to a private cause of action to certify a class and sue the State and various municipalities for a refund of the \$25.00 surcharge they paid when pleading guilty to DWI. The trial court dismissed the complaint with prejudice for failure to state a claim upon which relief could be granted because the court correctly determined that the Council's authority was limited to deeming unfunded mandates to be unconstitutional and thus had no authority to invalidate the \$25.00 surcharge. The Appellate Division agreed in a well-reasoned opinion, noting that the surcharge could still be a viable funding source for municipalities who elect to purchase dashboard cameras, rather than a funding source for a statutorily required mandate.

STATEMENT OF MATTER INVOLVED

In 2014, the Legislature enacted N.J.S.A. 40A:14-118.1, which required that "[e]very new or used municipal vehicle purchased, leased, or otherwise acquired on or after [March 1, 2015,] which is primarily used for traffic stops shall be equipped with a mobile video recording system." In the same time period, the Legislature also amended the DWI statute, adding a \$25.00 surcharge under N.J.S.A. 39:4-50(i), which:

shall be 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 mobile video recording systems pursuant to the provisions of [N.J.S.A. 40A:14-118.1]; 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.

In response to the new legislation requiring the \$25.00 surcharge be used to defray the mandatory cost of equipping new police vehicles with dashboard cameras, Deptford Township filed a complaint with the Council on Local Mandates. In a written opinion dated April 20, 2016, the Council invalidated and found N.J.S.A. 40A:14-118.1 to be unconstitutional, reasoning that the gap between the actual costs of equipping law enforcement vehicles with the required cameras and the revenue generated from N.J.S.A. 39:4-50(i)'s surcharge was vast enough as to make N.J.S.A.

40A:14-118.1 an unfunded mandate. The decision goes on to state "[t]hat determination renders nugatory the \$25 surcharge described in N.J.S.A. 39:4-50(i)."

Plaintiffs Rebecca Reed and Amanda Curry are two individuals who pleaded guilty to DWI and paid the \$25.00 surcharge purportedly "rendered nugatory" by the Council. Plaintiffs filed suit in the Law Division, where the cases were later consolidated, naming various State and municipal defendants, seeking a class certification, and demanding a refund of the surcharge to the DWI defendants who paid the surcharge in connection with their sentencing.

All defendants moved to dismiss the complaint for failure to state a claim under Rule 4:6-2(e), arguing that the Council had no authority to strike the surcharge, that any references to N.J.S.A. 40A:14-118.1 can be severed from the statute, and that if the unconstitutionality of N.J.S.A. 40:14-118.1 also rendered the municipal surcharge invalid, DWI defendants charged by county and State law enforcement officers would pay the surcharge, where defendants charged by municipal law enforcement would not, violating equal protection principles. Plaintiffs argued in opposition that the two statutes must be read together and are thus not severable, and further argued that decisions of the Council are political determinations not subject to judicial review.

The trial court granted the motions to dismiss without prejudice, holding that the Council's authority is limited to deeming unfunded mandates to be

unconstitutional and rendered nugatory the surcharge only in relation to the unfunded mandate. Plaintiffs amended their complaint adding additional defendants, but ultimately when met with the same motions to dismiss under Rule 4:6-2(e), the trial court determined further amendments to be futile in that the complaints were not substantively different and dismissed them with prejudice.

Plaintiffs then appealed the trial court's determination to the Appellate Division. In a well-reasoned opinion dated October 29, 2024, the Appellate Division affirmed the trial court's decision to dismiss plaintiffs' complaints for failure to state a claim. The Appellate Division concluded that the Council exceeded its authority in attempting to invalidate the surcharge in addition to the mandate and further held that the Council failed to comply with its statutory obligation to preserve as far as possible the provisions of statutes under its review.

This petition for certification, filed by plaintiffs, follows.

QUESTIONS PRESENTED ON APPEAL

1. Whether the Appellate Division erred in holding that the Council had no authority to render nugatory the \$25.00 surcharge contained in the DWI statute.

LEGAL ARGUMENT

I. THE APPELLATE DIVISION DID NOT ERR IN HOLDING THAT THE COUNCIL EXCEEDED ITS AUTHORITY.

The Council was created via a 1995 amendment to the New Jersey Constitution and is governed and prescribed by N.J.S.A. 52:13H-1 to -22. N.J.S.A. 52:13H-12(a) makes the duty of the Council to review and issue rulings upon complaints that allege a statute constitutes an unfunded mandate on a municipality, and can thus be struck as unconstitutional, if the statute in question does not authorize sufficient resources be directed to the municipality to offset expenditures required to implement the statute. If the Council determines that a provision of a statute constitutes an unfunded mandate, that provision of law shall cease to be mandatory in its effect and shall expire." Ibid. However, a ruling of the Council must be restricted to a specific provision, and the Council must, "as far as possible, leave intact the remainder of a statute" Ibid. It is also the case that rulings of the Council "are political determinations and shall not be subject to judicial review." N.J.S.A. 52:13H-18.

Here, the Appellate Division correctly noted that the Council did not follow its statutory requirement of limiting its ruling to a specific provision when stating that it was rendering nugatory the surcharge contained in N.J.S.A. 39:4-50(i). The Council can invalidate the mandate of equipping the police vehicles with cameras because the revenue from the surcharge was not sufficient to offset the actual costs,

but the Council would be exceeding its authority if invalidating the surcharge altogether. If only the mandate is removed, the surcharge remains a source of funding for municipalities who elect to use the funds for equipping their police vehicles. It would be paradoxical for the Council, designed to protect municipalities from State overreach, to have the power to create a private cause of action against municipalities that would result in the loss of municipal funds in a judgment.

The Appellate Division essentially ended its analysis there, finding that when interpreting the Legislation that governs the council, a reviewing court can determine that the Council exceeded its authority. A court does not have the authority to contradict the Council's decision on the specific mandate, as it is a political determination, but should the Council plainly exceed its authority as it did here, the courts have the power to interpret the enabling statute and correct any overreach of the Council that is contrary to law.

To the extent that any severability analysis is required in how the language and reference to N.J.S.A. 40A:14-118.1 in the DWI statute should be handled, Middlesex Borough defers to the arguments advanced by the Attorney General's Office, who is tasked with defending the veracity of the statute.

II. CERTIFICATION SHOULD NOT BE GRANTED.

This case plainly does not present a question of public importance. The

decision of the Appellate Division used basic statutory interpretation techniques to read the plain language of the enabling statute for the Council, which requires it to limit its decisions to the mandate at hand. Here, the Council went beyond and "rendered nugatory" an independent surcharge in a separate statute. Once the mandate is removed, that surcharge can be voluntarily used by the municipalities. This is not a broad question about the jurisdiction of the Council writ large. Taken to its logical conclusion, plaintiffs' position is that any determination about any statute by the Council is a political determination and not subject to any judicial review. Under plaintiffs' theory, the Council could unwind entire statutory schemes without judicial oversight. Additionally, under plaintiffs' theory, citizens charged with DWI by county or State officials would face a different sentencing scheme than those charged by a municipal official. Both of those positions are obviously without merit.

Finally, this case does not present a question of public importance because it is a fishing expedition seeking to allow plaintiffs' access to funds that were collected to aid municipalities with their expenditures. The Council is designed to protect municipalities, but under plaintiffs' theory, the Council gives a private cause of action to a class of plaintiffs looking to sue municipalities and turn over funds that were collected to serve a municipal purpose. This expedition to plunder the municipal coffers is not an issue of utmost public importance.

CONCLUSION

For the reasons set forth above, the Appellate Division's decision dated October 29, 2024, should be upheld, and plaintiffs' petition for certification should be denied in its entirety.

Savo, Schalk, Corsini, Warner,
Gillespie, O'Grodnick & Fisher, P.A.


Matthew R. Flynn, Esq.

Dated: 1-10-25