
Supreme Court of New Jersey

REBECCA J. REED and AMANDA M. CURRY, on behalf of themselves and all other class members similarly situated,	:	CIVIL ACTION
Plaintiffs,	:	Docket No. 090060
vs.	:	ON PETITION FOR CERTIFICATION FOR REVIEW
	:	OF OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
ELIZABETH M. MUOIO, Treasurer, of the State of New Jersey; Financial Officer/Treasurer of the Borough of Middlesex; CAROLINE BENSON, Acting Chief Financial Officer/Treasurer of the Borough of Middlesex; and 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 others similarly situated, JOHN DOES (1-1000), the name John Doe being fictitious	:	DOCKET NO. Below: A-2319-22 ENTERED: October 29, 2024 Sat Below: Hon. Patrick DeAlmeida, J.A.D. Hon. Maritza Berdote-Byrne, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

PETITION FOR CERTIFICATION ON BEHALF OF PLAINTIFFS-PETITIONERS REBECCA J. REED AND AMANDA M. CURRY

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Introduction¹

The Court should grant certification to review a question of first impression addressing the constitutional separation and balance of powers between this State's Courts, the State Legislature and the constitutionally established and uniquely situated Council on Local Mandates (N.J. Const. art. VIII § 2, ¶ 5), (Council) the latter of which was established to determine whether any law, rule or regulation imposes an unfunded mandate upon any Municipality, County or Board of Education, because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for implementation of the law, rule or regulation. Upon such a determination by the Council, the law, rule or regulation ceases to be mandatory in its effect and expires.

The Appellate Division's opinion, (Psa 2), contrary to the explicit constitutional directive that the decisions of the Council shall be political not judicial determinations, held that the Courts had the power to determine whether a ruling of the Council exceeded its constitutional authority.

The Council decided on April 20, 2016, that N.J.S.A. 40A:14-118.1,

¹ The term "Pa" refers to Plaintiffs' Appellate Division Appendix and the term "Psa" refers to the appendix attached to this petition.

which required municipalities to equip all new or used municipal police vehicles, primarily used for traffic stops, purchased, leased or otherwise acquired after March 15, 2015 with a mobile video recording system (MVRS), was unconstitutional as imposing an unfunded mandate upon municipalities and that the \$25.00 surcharge imposed by N.J.S.A. 39:4-50(i), earmarked specifically for use by municipalities to obtain the MVRS if the summons leading to the DWI conviction was issued by municipal law enforcement, was a nugatory.

The Appellate Division decision of 10/29/2024 (Psa 2) from which Plaintiffs seek certification to this Court, found that Courts, contrary to the constitutional designation as political, still have the power to determine if the Council, in making a ruling, has exceeded its constitutional authority and found the Council was wrong in negating the \$25.00 surcharge for municipalities.

The Legislature, constitutionally directed to enact legislation creating the Council, affirmed that decisions of the Council shall be political determinations and shall not be subject to judicial review. N.J.S.A. 52:13H-18.

The Appellate Division's opinion conflicts with the clear language of the Constitution and the Legislative enactment and usurps the power of the

Legislature to pass amendatory legislation in response to the Council's ruling, if the Legislature deems it necessary.

Despite the Council's ruling in 2016, municipal courts of this State have continued to impose the municipal \$25.00 surcharge and a fund of over two million dollars has accumulated, the location of which the Attorney General refuses to divulge and the disbursements from which he refuses to reveal. Plaintiffs contend the funds should be returned to those Defendants who erroneously paid them.

Statement of the Matter Involved

Plaintiffs Rebecca Reed and Amanda Curry filed separate class action complaints and a joint amended complaint upon consolidation, seeking an order returning to all New Jersey Defendants that had been charged with DWI by municipal law enforcement, a \$25.00 illegally imposed drunk driving surcharge assessed against them, which surcharge had been found a nugatory on April 20, 2016 by the constitutionally established Council on Local Mandates (Council) as part of its decision that an unconstitutional unfunded mandate had been enacted by the legislature under N.J.S.A. 40A:14-118.1 (requiring installation of mobile video recording systems in all new or used, purchased, leased, or acquired municipal police vehicles) to be funded by that

surcharge established pursuant to N.J.S.A. 39:4-50(i) and used only for that purpose. More than two million dollars of these illegal municipal surcharges have been collected, to the best of Plaintiffs' knowledge remain undistributed, and are being held apparently by the State.

The Trial Court granted Defendants' joint motions to dismiss for failure to state a claim holding that the authority of the Council on Local Mandates is limited to deeming unfunded mandates unconstitutional and its decision so holding did not negate the surcharge even though the Council found it a nugatory. (Psa 24 and 39).

The Appellate Division affirmed on October 29, 2024 (Psa 2) holding Council's invalidation of the surcharge exceeded its constitutional authority as it failed to comply with its statutory obligation "to preserve, as far as possible, the provisions of a statute under its review that does not contain an unfunded mandate", in disregard of the legislative and constitutional provisions providing the decisions of the Council are political determinations not subject to judicial review. N.J.S.A. 52:13H-18 and N.J. Const. art. VIII § 2, ¶ 5(b) stating the decisions of the Council shall be political and not judicial determinations.

That constitutional provision further provides that any law or regulation,

determined in accordance with this paragraph to be 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, shall upon such determination cease to be mandatory in its effect and expire. (Par. 5(a)).

Paragraph 5(b) thereunder requires the Legislature to create by law a Council on Local Mandates to resolve disputes of whether a law, rule or regulation constitutes an unfunded mandate and provides the decisions of the Council shall be political and not judicial determinations.

The Council on Local Mandates was created by N.J.S.A. 52:13H-1 et seq., to implement this constitutional amendment approved by New Jersey voters in the 1995 election. Under N.J.S.A. 52:13H-18, the Rulings of the Council shall be political determinations and shall not be subject to judicial review.

On September 10, 2014, L. 2014, c. 54 entitled, "An Act concerning municipal police vehicles, supplementing Ch. 14 of Title 40A and amending RS 39.4-50", added new sections to both of those statutes.

First, N.J.S.A. 40A:14-118.1 and 118.2 provided:

40A:14-118.1 Municipal police vehicles to be equipped with mobile video recording system.

1. Every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date of P.L. 2014, c. 54 (C.40A:14-118.1 et al.) which is primarily used for traffic stops shall be equipped with a mobile video recording system.

As used in this section “mobile video recording system” means 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.

40A:14-118.2 Rules, regulations.

3. The Attorney General shall adopt, pursuant to the “Administrative Procedure Act, “P.L. 1968, c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the provisions of this act.

Second, in an attempt to create a fund for acquisition of such equipment the legislature increased DWI surcharges from \$100.00 to \$125.00 by amending N.J.S.A. 39:4-50(i), and inserting the following underlined language:

(i) In addition to any other fine, fee, or other charge imposed pursuant to law, the court shall assess a person convicted of a violation of the provisions of this section a surcharge of \$125, of which amount \$50 shall be payable to the municipality in which the conviction was obtained, \$50 shall be payable to the Treasurer of the

State of New Jersey for deposit into the General Fund, and \$25 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 section 1 of P.L. 2014, c.54 (C.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.

A complaint filed by the Township of Deptford with the Council challenged L. 2014, c.54. (Pa 306) as an unfunded mandate.

On April 20, 2016, the Council in a written opinion, declared N.J.S.A. 40A:14-118.1 to be unconstitutional, which it stated rendered nugatory the municipal video \$25.00 surcharge described in N.J.S.A. 39:4-50(i) and the regulations proposed under N.J.S.A. 40A:14-118.2 (Pa 306, 311).

Thus, under the constitutional provision (Sec. 5a) and N.J.S.A. 52:13H-2, the unfunded mandate ceased to be mandatory in its effect and expired. Once determined, an unfunded mandate can only resume in mandatory effect if, after enactment of the law, rule or regulations, resources are authorized to offset the additional direct expenditures required for the implementation thereof. Id.

Municipal Courts of this State, however, continued to collect this

additional \$25.00 municipal video surcharge and a fund of more than two million dollars has accumulated presumably held by the State which continues to grow each day. The Attorney General's Office would not reveal the exact location of, amount in, or disbursements from this surcharge fund.

Plaintiffs' class action complaints seek to obtain a refund of these illegal surcharges on behalf of a class of all municipal defendants charged by municipal law enforcement who paid them as part of their sentence upon a conviction under N.J.S.A. 39:4-50 and enjoin further collections.

Reasons for Granting Certification

The Petitioners believe this case presents questions of public importance and of first impression concerning the interpretation of a constitutional provision addressing and affecting the separation of powers between the Legislature, the Courts and the Council.

The Appellate Division opinion conflicts with the plain language of the Constitution and legislative provisions characterizing the Council's decisions as political and opens the door to future incursions into decisions of the Council not intended by the Constitution or Legislature.

The Supreme Court needs to definitively address this issue as it affects every decision of the Council, every municipality, county and Board of

Education and competes with the Legislature in addressing issues of fiscal appropriations, a strictly legislative function. The Supreme Court needs to state Council's decisions as not justiciable.

Questions Presented

I. The Determination of the Council on Local Mandates is a Political Decision, not subject to Judicial Review and neither the Trial nor Appellate Court had power to review that part of the Council's decision finding the municipal \$25 surcharge and regulations nugatory.

II. That part of N.J.S.A. 52:13H-12a. providing, "A ruling of the Council 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", is a directive to the Council only and does not give the Courts the power to determine the Council exceeded its constitutional authority or provide any other basis to review Council's decision. Modifying or overruling any part of the Council's decision can only be accomplished through Legislative Enactment.

III. Since the Council on Local Mandates found N.J.S.A. 40A:14-118.1 to be unconstitutional as to Municipalities, then a fortiori, that part of the funding statute, N.J.S.A. 39:4-50(i) for municipal video recording systems is also invalid as it is without purpose and the Appellate Division was in error in holding otherwise.

Errors Complained Of

The language of the constitutional provision in question is clear, plain and unambiguous, leaving no room for interpretation: "5(b)... The Legislature shall create by law, a Council on Local Mandates ... The decisions of the

Council shall be political and not judicial determinations ...”

The Legislature interpreted that language as such by providing in the enabling legislation, N.J.S.A. 52:13H-18 that: “Pursuant to Article VIII, Sections II, paragraph 5(b) of the New Jersey Constitution, rulings of the Council shall be political determinations and shall not be subject to judicial review.”

Even the Council sees and describes itself as “independent of the Executive, Legislative and Judicial branches of State government”.

(<http://www.nj.gov/localmandates/> - last accessed 11/21/2024).

The Legislature in order to give some guidance to the Council in performance of its function and in interpreting its legislation, set forth in N.J.S.A. 52:13H-12a the following directive: “A ruling of the Council shall be restricted to the specific provision of the 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 ...”

This directive, only for the guidance of and application by the Council, (since both the Constitutional provision and said statute stated the Council’s decisions were political and not subject to judicial review), did not create an opening, avenue or license for courts to review the decisions of the Council

and decide what part should or should not be held to constitute a political determination or when the Council has exceeded its constitutional authority.

If that were the case it would have been simple to explicitly so state and bestow those powers on the Courts both in the Constitutional provision or possibly the enabling legislation.

If the Council's decision is unacceptable to the legislature, it is the legislature's prerogative to pass those laws it deems appropriate to remedy any Council faux pas.

The Appellate Division believed however that despite the rather plain language characterizing Council's decision as political, the Courts have the power to nullify any part of the decision the court believes exceeds the constitutional authority of the Council. According to the Appellate Division, "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". (Psa 17). However, that avenue belongs solely to the legislature.

While Courts decide for themselves whether statutes are constitutional, in the context of quasi-adjudicatory decisions by actors other than Courts, the textual commitment factor (relied upon by the Appellate Division) in

identification of political questions considers quasi-adjudicatory authority, not ordinary legislative or executive power. See John Harrison, The Political Question Doctrine, 67 Am. Univ. L. Rev. 457, 500 (2017). Determination of what constitutes a political question is not one of jurisdiction but of justiciability. Id. at 490 citing Baker v. Carr, 369 U.S. 186, 196, 208-09 (1962).

The Appellate Division's interpretation of the quotation from Baker v. Carr, supra, in our Supreme Court's decision in Gilbert v. Gladden, 87 N.J. 275, 282 (1981) (Psa 18) was erroneous and led it to focus on the wrong issue.

The part of the Baker v. Carr quotation cited by the Appellate Division from Gilbert, supra was incomplete. The complete part of the quotation stated: "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department"...

The Appellate Division erred in analyzing the textual commitment requirement in terms of the issue of the unfunded mandate rather than focusing on the entire decision of the Council and constitutional provision itself, clearly stating the decision (not the substantive issue) is political i.e., not justiciable.

The Appellate Division in effect held that although the Constitution

states the Council's decision is a political determination, the Courts can determine it is not, at least in part. Plaintiffs contend it was the intention of the Constitutional provision for only the Legislature to police its own creation and make the decision whether council's determination is in accord with its intentions.

The Court's belief that the 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 (Psa 18) does not permit the Court to sever the decision of the Council since that decision is political.

Comments with Respect to the Appellate Division Opinion

The Appellate Division concluded that over two million dollars that has been and continues to be collected can still be used for purchase of police vehicle on-board cameras if the municipalities voluntarily so request. (Psa 19).

Where the money is located and how that is to be done is unknown. The Attorney General took the position before the Trial Court that the funds could be used for any municipal purpose and Plaintiffs had no right to know the answers to these questions (See Transcript of Oral Argument 10/21/21, Pg. 8, Lines 2-8; Pg. 24, Lines 9-15), although at oral argument before the Appellate Division surmised that the funds were in an account held by the State.

Since the Attorney General never promulgated any regulations pursuant to N.J.S.A. 40A:14-118.2 setting forth for example, a procedure to apply for those funds or standards to qualify to receive them, municipalities are left in limbo.

Such a lack of transparency is both curious and disturbing. Where does a municipality look to apply for the funds, the Motor Vehicle Commission, the Administrative Office of the Courts, the Legislature? Do not the public and the municipalities of this state have a right to know what happened to and who controls these funds?

While the legislature has done nothing to resurrect or modify the unfunded mandate, the Appellate Division ignored and did not consider the legislative response to this funding issue. The Appellate Division was in error in stating that the Legislature was inactive during the years since the surcharge mandate was invalidated. (Psa 19).

In 2020, the Legislature passed L. 2020, c. 128 (N.J.S.A. 40A:118-3 et seq.) (Pa 333) requiring every uniformed state, county and municipal law enforcement officer to wear a body worn camera, subject to the limit of funds appropriated or otherwise made available for this purpose. The statute also provides that in addition to funding provided through the annual appropriations

act, forfeiture funds collected pursuant to N.J.S.A. 2C:64-6 in an amount to be determined by the Attorney General or any other source of funding made available for this purpose, including federal grants, may be utilized for these cameras. N.J.S.A. 40A:14-118.3b. The act was approved November 24, 2020, but was to remain inoperative until June 1, 2021, its effective date. That this law was passed with the decision of the Council of Local Mandates and the problems with funding acquisition of the cameras in mind is apparent from the Legislative Fiscal estimates from each house of the Legislature and the Governor's Return message. (Pa 337 and 340).

Thus, the legislature did provide a funding mechanism for video recording systems for police and stated a preference for body worn cameras rather than cameras only for police vehicles used in traffic stops. (Compare definitions under 40A:14-118.1 and 118.3) and provided for enactment of detailed rules and regulations for their use (N.J.S.A. 40A:14-118.4 and 118.5; State v. Jones, 475 N.J. Super. 520, 532 n.1 (App. Div. 2023) - setting forth a list of Attorney General Directives).

While admitting that, "taken literally N.J.S.A. 52:13H-18 and the constitutional provision from which it derives insulate all decisions of the council from judicial review" (Psa 15), the Appellate Division stated that when

the Council exceeds its constitutional authority, those constitutional and statutory provisions were not intended to be applied in so broad a fashion since Council would be free to operate free from judicial oversight. (Psa 15-16). That intention was not derived from the language of Constitution or any legislative action, but rather the Court's opinion that if the council exceeds its constitutional authority such action is removed from its status as a political question.

Why the legislature should not be the body making that determination was not addressed by the Appellate Division.

The Appellate Division relied on two hypothetical examples to support its conclusion, which can best be described as syllogistic fallacy or eristical reasoning: (1) What if the Council invalidated the entire drunk driving statute or (2) invalidated a statute unrelated to the police vehicle installation mandate and surcharge. (Psa 17-18).

The simple answer is the legislature could correct such eccentricity immediately if it chose, and in a more expeditious manner than the Court.

For the Council to make such peculiar findings, the members of the Council would have to be acting almost mutinously. Such a conclusion belies the organizational structure of the Council, the qualifications of its members

and those who are designated to appoint the Council members. See N.J.S.A. 52:13H-4 and 5.

In the absence of constitutional or statutory standards, it is not the function of the Court to substitute its judgment for that of the Legislature with respect to the rules it has adopted or the procedures followed in giving effect to the constitutionally declared scheme. Gilbert v. Gladden, 87 N.J. 275, 282 (1981).

Therefore, under the Appellate Division opinion, there is a distinct probability that the fund generated by the surcharge may never be used for the municipal purpose originally prescribed by the Legislature. That does not comport with the intention of the legislature, and to date there is no indication to the contrary supporting the Appellate Division's conclusion.

The Appellate Division states that the Council's decision invalidating the surcharge was not limited to convictions in which the summons was issued by a municipal law enforcement agency even though the surcharge is to be allocated to County or State law enforcement agencies not subject to the mandate. (Psa 6).

That conclusion is antithetical to the express intention of the Council that was only addressing the unfunded municipal mandate. No where does the

Council decision hint at voiding any surcharge usage for the counties or the state, nor could it. If the legislature interpreted the decision in that manner, it was up to that body to correct the Council.

Finally, the Appellate Division stated that, “the punishment of those convicted of DWI through imposition of the surcharge is independent of MVRs installation. The punishment derives from the obligation to pay the surcharge regardless of how that surcharge may be spent. (Psa 19). It concluded therefore that the Council had no power to invalidate a legislative sanction for quasi-criminal convictions. (Psa 4).

How can the surcharge be independent of the MVRs installation when the only reason for its imposition was to fund that purchase? It was not intended to be punitive.

To determine whether an assessment imposes a criminal punishment or is civil in nature a court must first ask whether the legislature indicated either expressly or impliedly a preference for one label or the other. If the legislature has characterized an assessment as civil the Court still must determine whether the statutory scheme is so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty. Auge v. NJ Dept. Correction, 327 N.J. Super. 256, 262-263 (App. Div. 2000).

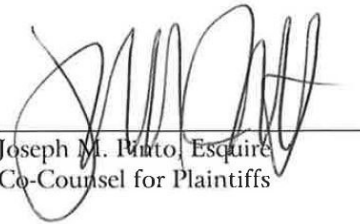
For example, the DWI surcharge of \$100.00 under N.J.S.A. 39:4-50.8 imposed for a specific purpose and usage is not a fine, penalty or forfeiture per the statute itself. In Clark v. NJDMV, 211 N.J. Super. 708, 711, (App. Div. 1986) the Court noted violations of motor vehicle offenses including N.J.S.A. 39:4-50 are not considered crimes but traffic offenses. State v. Hamm, 121 N.J. 109, 129 (1990). Thus, Clark supra, determined insurance surcharges imposed for DWI convictions were not punitive or penal in nature under N.J.S.A. 17:29A-33, et seq. Under N.J.S.A. 17:29A-35 a \$1000.00/year for three years surcharge for a drunk driving offense is not punitive when imposed. Matter of Johnson, 226 N.J. Super. 1, 7-8 (App. Div. 1988) - imposition of insurance surcharges on drunk drivers was designed to impose upon high risk drivers the added costs of insurance generated by poor drivers.

The surcharge imposed under N.J.S.A. 39:4-50(i) does not serve as punishment for the offense. It was imposed as a funding mechanism for a specific purpose. It does not stand on its own.

Conclusion

For these reasons, Petitioner requests the Court grant certification.

Date: November 27, 2024



Joseph M. Pinto, Esquire
Co-Counsel for Plaintiffs

Date: November 27, 2024

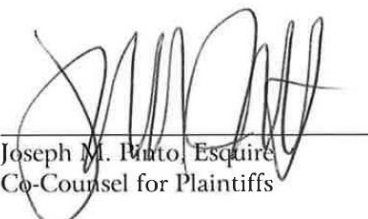


Richard Galex, Esquire
Co-Counsel for Plaintiffs

Certification

We hereby certify that the Petition represents a substantial question and is filed in good faith and not for purposes of delay.

Date: November 27, 2024



Joseph M. Pinto, Esquire
Co-Counsel for Plaintiffs

Date: November 27, 2024



Richard Galex, Esquire
Co-Counsel for Plaintiffs