

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

Plaintiffs,

vs.

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 others similarly situated,

Defendants.

SUPREME COURT OF NEW JERSEY  
C-498 September Term 2024  
090060

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**SUPPLEMENTAL BRIEF OF PLAINTIFFS IN SUPPORT OF  
GRANTED PETITION FOR CERTIFICATION**

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**LOMURRO, MUNSON, COMER, BROWN &  
SCHOTTLAND, L.L.C.**

Richard Galex, Esquire Appearing/On the Brief  
Monmouth Executive Center  
4 Paragon Way, Suite 100  
Freehold, NJ 07728  
Telephone No.: 732-414-0300  
Telecopier No.: 732-431-4043  
Email: [Rgalex@lomurrolaw.com](mailto:Rgalex@lomurrolaw.com)  
Co-Counsel for Plaintiffs-Petitioners  
Rebecca J. Reed and Amanda Curry

**POLINO and PINTO, P.C.**

Joseph M. Pinto, Esquire Appearing/On the Brief  
Moorestown Times Square  
720 East Main Street, Suite 1C  
Moorestown, NJ 08057  
Telephone No.: 856-727-1777  
Telecopier No.: 856-727-1546  
Email: [jfpolino@prodigy.net](mailto:jfpolino@prodigy.net)  
Co-Counsel for Plaintiffs-Petitioners  
Rebecca J. Reed and Amanda Curry

## TABLE OF CONTENTS

### Table of Citations

|                                                                                   | <u>Page</u> |
|-----------------------------------------------------------------------------------|-------------|
| <u>Avant v. Clifford</u> , 67 N.J. 496, 517 (1975) .....                          | 5           |
| <u>Barry v. Arrow Pontiac, Inc.</u> , 100 N.J. 57, 70 (1985) .....                | 6           |
| <u>Bd. Chosen Freeholder v. State</u> , 159 N.J. 565, 575-576 (1999) .....        | 1           |
| <u>Comm. Workers of Am. v. Florio</u> , 130 N.J. 439, 463 (1992) .....            | 6           |
| <u>Comm. Workers of Am. v. NJ Civil Serv. Comm.</u> , 234 N.J. 483, 506 (2018) .. | 1, 2        |
| <u>Gallenthin Realty v. Paulsboro</u> , 191 N.J. 344, 358 (2007) .....            | 5           |
| <u>Grand Union Co. v. Sills</u> , 43 N.J. 390, 403 (1964) .....                   | 5           |
| <u>James v. Bd. Trustees</u> , 164 N.J. 396, 404-05 (2000) .....                  | 6           |
| <u>NJ Guild Hearing and Disp.</u> , 75 N.J. 544, 562 (1978) .....                 | 6           |

### Statutes and Constitutional References

|                                |   |
|--------------------------------|---|
| N.J.S.A. 39:4-50 .....         | 5 |
| N.J.S.A. 39:4-50(i) .....      | 7 |
| N.J.S.A. 40A:14-118 .....      | 8 |
| N.J.S.A. 40A:14-118.1 .....    | 7 |
| N.J.S.A. 52:13H-1 et seq. .... | 3 |
| N.J.S.A. 52:13H-5 .....        | 3 |

|                                                                                                                                                                                                                                                                                                                                                    | <u>Page</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| N.J.S.A. 52:13H-10 .....                                                                                                                                                                                                                                                                                                                           | 3           |
| N.J.S.A. 52:13H-12 .....                                                                                                                                                                                                                                                                                                                           | 1, 3, 7     |
| N.J.S.A. 52:13H-12(a) .....                                                                                                                                                                                                                                                                                                                        | 7           |
| N.J.S.A. 52:13H-18 .....                                                                                                                                                                                                                                                                                                                           | 2, 5        |
| N.J. Const., Art. I, ¶2(b) .....                                                                                                                                                                                                                                                                                                                   | 2           |
| N.J. Const. Art. 3, Par. 1 .....                                                                                                                                                                                                                                                                                                                   | 1           |
| N.J. Const. Art. V, Sec. 4, Par. 6 .....                                                                                                                                                                                                                                                                                                           | 2           |
| N.J. Const. Article VIII, Section 2, Paragraph 5 .....                                                                                                                                                                                                                                                                                             | 4           |
| N.J. Const., Art. 8, Sec. 2, Par. 5(a) .....                                                                                                                                                                                                                                                                                                       | 4           |
| N.J. Const. Art. VIII, Sec. 2, Par. 5(b) .....                                                                                                                                                                                                                                                                                                     | 1, 2, 3     |
| <br>LEGAL ARGUMENT                                                                                                                                                                                                                                                                                                                                 |             |
| I. The Power of the Council on Local Mandates to Negate the \$25.00<br>Drunk Driving Surcharge for the Purchase of Police Car Dashboard<br>Cameras is Derived from the Legislative Grant of Authority Found<br>Under N.J.S.A. 52:13H-12 Which Emanates from the Constitutional<br>Mandate for the Legislature to, By Law, Create the Council ..... | 1           |

## **LEGAL ARGUMENT**

### **I. The Power of the Council on Local Mandates to Negate the \$25.00 Drunk Driving Surcharge for the Purchase of Police Car Dashboard Cameras is Derived from the Legislative Grant of Authority Found Under N.J.S.A. 52:13H-12 Which Emanates from the Constitutional Mandate for the Legislature to, By Law, Create the Council**

The Council on Local Mandates considers itself independent of the Executive, Legislative and Judicial Branches (Website: NJ.GOV/LOCALMANDATES/) and while not a government branch (as defined by N.J. Const. Art. 3, Par. 1), it is a constitutionally created entity deriving its power directly from the people. Its authority, mission and function, which are clearly delineated, are inviolable.

The extent of its power has been challenged by the defendants.

The analysis begins with the explicit language of the constitutional provision construed to give effect to its intent and purpose.

Where the language is unambiguous or unequivocal, the words are given their plain meaning. If unclear or ambiguous, the court can look to other sources to ascertain the fundamental purpose underlying the language. Bd. Chosen Freeholder v. State, 159 N.J. 565, 575-576 (1999); Comm. Workers of Am. v. NJ Civil Serv. Comm., 234 N.J. 483, 506 (2018).

Both the constitutional provision (N.J. Const. Art. VIII, Sec. 2, Par. 5(b))

and the enabling legislation, N.J.S.A. 52:13H-18, make clear that the rulings of Council are political determinations not subject to judicial review.

In Comm. Workers of Am. v. NJ Civil Serv. Comm., 243 N.J. 483 (2018), several members of this court compared its ability to review legislative decisions under the Legislative Review Clause (N.J. Const. Art. V, Sec. 4, Par. 6) with the decisions made by the Council on Local Mandates under N.J. Const. Art. VIII, Sec. 2, Par. 5(b):

The constitutional amendment adding the Legislative Review Clause does not specify a role for the Judiciary. Neither does it insulate disputes over exercises of the Legislature's veto power from judicial review. That amendment stands in contrast to other constitutional provisions that effectively preclude judicial review. Compare N.J. Const., Art. V, §4, ¶6 (silent regarding judicial review), with N.J. Const., Art. I, ¶2(b) (providing that review of sufficiency of statement of reasons for recall of elected official "shall be a political rather than a judicial question"), and N.J. Const., Art. VIII, §2, ¶5(b) (declaring determinations of Council on Local Mandates to be political and not judicial determinations). Id. at 540 (Justice Lavecchia concurring in the outcome but dissenting in part as to the applicable standard of review, in which Justices Albin and Timpone joined.)

As such, the political determination of the Council in this case is attacked by the defendants (by the only avenue available to them) as being beyond its constitutional authority, i.e., did the Council exceed its delegated powers.

Contrary to the holding of the Appellate Division, the answer is no.

The Legislature was commanded to "create by law a Council on Local

Mandates by N.J. Const. Art. 8, Sec. 2, Par. 5(b). That mandate is not circumscribed. No guidelines are provided other than to effectuate the will of the people. The Legislature was painting on a blank canvas.

The statutory scheme established, N.J.S.A. 52:13H-1 et seq., understands that the Council will be performing both quasi-judicial and quasi-legislative functions. The Legislature established qualifications for membership and the knowledge required to be demonstrated to obtain membership on the Council, N.J.S.A. 52:13H-5, set organizational parameters, N.J.S.A. 52:13H-10, and most importantly, set forth the powers and duties to be utilized in considering and deciding whether a law, rule or regulation constitutes an unfunded mandate, N.J.S.A. 52:13H-12.

The Legislature balanced the needs of the Council to effectuate its purpose against the limited subject matter it had to address.

Recognizing that the Council would have to consider complex issues of revenue raising and apportionment of funds to differing governmental entities with different concerns and interests under a multitude of different disciplines and circumstances affecting various legislative enactments, the Legislature restricted the rulings of the Council to the specific provision of law or the specific part of the rule or regulation which constitutes an unfunded mandate while as far as possible

leaving in tact the remainder of the statute, rule or regulation (emphasis added).

Ibid.

This later discretionary provision calls for the Council to weigh many factors such as whether the remainder of the law, rule or regulation can stand independently on its own, and still accomplish what the Legislature intended, whether the Legislature designed and intended the enactment to stand or fall as a unitary whole or whether the void provisions so affect the dominant aim of the statute as to carry it down with it. That in no way extends the power of the Council beyond its constitutional purpose.

That is what the Council did here in determining that the \$25.00 surcharge was a nugatory. It merely performed the function which the Legislature assigned to it.

The conundrum is obvious. Allowing the \$25.00 surcharge to stand when it was to be utilized for a specific purpose, dashboard cameras, which as a result of the Council's decision was no longer in effect and expired (N.J. Const., Art. 8, Sec. 2, Par. 5(a)), would not further the legislative purpose of the law and in effect would permit collection of revenue which could be utilized for no purpose.

What the defendants seek from this court is a declaration that the Legislature was constitutionally prohibited from permitting the Council to make

this discretionary call. There is no constitutional basis supporting that position. If there were, then the judiciary would be the final arbiter of what is or is not constitutional. Gallenthin Realty v. Paulsboro, 191 N.J. 344, 358 (2007). The function of the court in a proceeding challenging the constitutionality of a statute is to determine whether the Legislature has gone beyond the outer limits of its constitutional power. The court is not a super legislature and does not concern itself with the wisdom of the legislative enactment. Grand Union Co. v. Sills, 43 N.J. 390, 403 (1964); Avant v. Clifford, 67 N.J. 496, 517 (1975) - the court's authority is narrow; it determines only whether the statute so plainly exceeds the constitutional power of the Legislature that it is invalid.

The plaintiffs have never taken the position that a decision of the Council which is plainly unconstitutional would be shielded from this court's review merely by its political nature as the Appellate Division intimated in its Opinion:

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. Plaintiffs urge this literal interpretation, arguing the voters who adopted Article VIII, Section 2, Paragraph 5 intended the Council to operate free from judicial oversight, even when the Council exceeds its constitutional authority. Under plaintiffs' interpretation of Article VIII, Section 2, Paragraph 5 and N.J.S.A. 52:13H-18, if instead of declaring the surcharge "nugatory" the Council had invalidated N.J.S.A. 39:4-50 in its entirety, including the offense of DWI, the Council's decision would not be subject to judicial review. The same would be true, according to plaintiffs, if the Council issued a decision invalidating a statute entirely unrelated to the

MVRS installation mandate and the surcharge when it issued its decision. We do not agree the relevant provisions of the constitution and statute are intended to be applied in so broad a fashion (See App. Div. Op., Petitioner's Appendix PSA 17-18).

Neither do the plaintiffs. Such a scenario is not before this court and probably never would be given the vetting necessary to be a member of the Council.

The role and duty of the court is to interpret the New Jersey Constitution and apply it to the situation before it. The court in doing so does not attempt to lay down general guidelines covering other situations not involved in the issues in the case and attempts to confine the Opinion only to the very questions necessary to decide the case. Comm. Workers of Am. v. Florio, 130 N.J. 439, 463 (1992).

The statutory grant of power to the Council can be express or implied in the same manner as a grant of power to an agency. James v. Bd. Trustees, 164 N.J. 396, 404-05 (2000). Courts should readily imply such incidental powers as are necessary to effectuate the legislative intent. NJ Guild Hearing and Disp., 75 N.J. 544, 562 (1978).

Just as a court will almost always liberally construe the grant of authority by the Legislature to enable an agency to perform its statutory mission and the legislative goals, Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 70 (1985), so too

should the same latitude be afforded the Council.

To interfere with the ability of the Council to perform its constitutional and statutory duty is to negate the intent of the people as expressed in the constitutional amendment as implemented by the Legislature.

The Legislature made policy decisions in its creation of the Council on Local Mandates. Neither the Legislature nor the Council violated the subject constitutional Amendment in negating the surcharge. That was Council's prerogative under its statutory power.

The Appellate Division ignored the statutory grant of power to the Council. In doing so, it did exactly what it was forbidden to do, reviewed the political decision of the Council.

The courts are not permitted to make the discretionary decision reserved for the Council under N.J.S.A. 52:13H-12. This, however, is exactly what the Appellate Division did when it stated:

In addition, the Council is required to "restrict[]" its decisions "to the specific provision of a law. . . which constitutes an unfunded mandate and shall, as far as possible, leave intact the remainder of a statute. . . " N.J.S.A. 52:13H-12(a). The Council must, therefore, sever the unconstitutional mandate from the remaining elements of the statute, if possible. . . 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. The legislative intent of the surcharge is to punish those convicted of DWI, raise funds for the installation of MVRs in municipal police vehicles, and provide revenue

for county and State law enforcement agencies. Those objectives can be accomplished independent of the MVRS installation mandate in N.J.S.A. 40A:14-118. (See App. Div. Op. Petitioner's Appendix PSA 18-19).

In stating that the Council "must sever" and municipalities remain free to elect to install dashboard cameras in police vehicles from the preserved surcharge as a funding source, the court substituted its judgment for that of the Legislature as expressed in the Council's decision.

Since the Attorney General took the position below that the municipalities could use these funds for any purpose they desired and has refused to advise what happened to the surcharges collected or where they are on deposit, the Appellate Division cannot possibly know that these funds are available to the municipalities to purchase dashboard cameras if they desire.

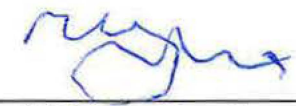
For all these reasons, the decision of the Appellate Division and Trial Court should be reversed and the matter remanded to the Trial Court. The defendants

should file an Answer to plaintiffs' Complaint and proceed with discovery.



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Joseph M. Pinto, Esquire  
Co-Counsel for Plaintiffs



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Richard Gale, Esquire  
Co-Counsel for Plaintiffs

Date: September 11, 2025