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NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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**IN THE MATTER OF A COMPLAINT FILED BY
THE NEW JERSEY ASSOCIATION OF COUNTIES**

NJ COUNCIL ON LOCAL MANDATES
COMPLAINT

The New Jersey Association of Counties (NJAC), by way of Complaint filed with the New Jersey Council on Local Mandates (Council) pursuant to N.J.S.A. 52:13H-12 and Council Rule 5 says:

I. STATEMENT OF THE CASE

As set forth below, NJAC submits that P.L. 2018, Chapter 72 constitutes an unfunded mandate in violation of Article VIII, Section II, Paragraph 5 of the New Jersey Constitution. Specifically, N.J.S.A. 19:63-3.a.(1) and N.J.S.A. 19:63-3.a.(2), which requires county clerks to furnish mail-in ballots to all qualified voters in future elections without further request; N.J.S.A. 19:63-3.1.a., which requires county clerks to add to the list of registered voters receiving mail-in ballots in all future elections: all voters who requested and received mail-in ballots for the 2016 general election; and, N.J.S.A. 19:63-3.1.b., which requires county clerks to provide written notice to voters who vote-by-mail that they will automatically receive mail-in ballots for all future elections and until a voter informs a clerk that the voter no longer chooses to vote-by-mail, have forced county governments to expend monies in which a reciprocal source of funding is not provided under the new law. Moreover, P.L. 2018, Chapter 72 does not

authorize resources, other than the use of property taxpayer dollars, to offset the additional direct expenditures required for implementation of the new law.

II. JURISDICTION

1. The New Jersey Constitution prohibits State government from requiring units of local government to implement additional or expanded activities without providing funding for those activities. See N.J.S.A. 52:13H-1(1)(b).

2. Specifically, Article VIII, Section II, Paragraph 5 of the New Jersey Constitution prohibits laws that impose an “unfunded mandate” on county governments as follows:

With respect to any provision of a law enacted on and after January 17, 1996, and with respect to any rule or regulation issued pursuant to a law originally adopted after July 1, 1996, and except as other provided herein, any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon ... counties ... because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire.

N.J. Const., Art. VIII Section 2, Paragraph 2(5)(a); see also N.J.S.A. 52:13H-2.

3. The Council is empowered to resolve any dispute concerning whether a law, rule, or regulation issued pursuant to a law constitutes an unfunded mandate. N.J. Const., Art. VIII Section 2, Paragraph 2 Section 5(a).

4. As such, the Council must “review, and issue rulings upon, complaints filed with the Council by or on behalf of a county ... that any provision of a statute enacted on or after January 17, 1996 and any part of a rule or regulation originally adopted after July 1, 1996 pursuant to a law regardless of when that law was enacted constitutes an unfunded mandate upon the county ... because it does not authorize

resources to offset the additional direct expenditures required for the implementation of the state or the rule or regulation.” N.J.S.A. 52:13H-12(a).

5. The Council also has the authority to enjoin enforcement of a law, rule, or regulation pending consideration of whether such law, rule, or regulation constitutes an unfunded mandate whenever a complaint “demonstrate, to the satisfaction of the Council, that significant financial hardship ... would result from compliance and there is no substantial likelihood that the statute or the rule or the regulation is, in fact, an impermissible, unfunded State mandate.” N.J.S.A. 52:13H-16.

6. A complaint filed with the Council by NJAC “shall be on behalf of at least two constituent members of the organization, which constituent members shall be identified in the complaint.” N.J.S.A. 52:13H-12.

7. NJAC files this complaint pursuant to N.J.S.A. 52:13H-12 and 52:13H-16 on behalf of its constituent members. Specifically, Atlantic, Cape May, Hudson, Hunterdon, Monmouth, Morris, and Somerset counties have adopted resolutions and are attached to this complaint accordingly.

III. FACTUAL BACKGROUND

A. SUMMARY OF LAW

8. On August 10, 2018 Governor Phil Murphy signed into law P.L. 2018, C.72 (the Act), which took effect immediately if an election were to occur more than 60 days prior to the day the Act took effect; except that if the Act would become effective less than 60 days before the day of an election, the act would instead take effect

immediately but remain inoperative until the day following that election, except as otherwise provided in section 15 of the Act.

9. The Act requires that a qualified voter shall be entitled to vote using a mail-in ballot in all future elections, including general elections, held in this State, in which the voter is eligible to vote; or, in a single election held in this State. N.J.S.A. 19:63-3.a.(1)(2).

10. The Act requires that the qualified voter who chooses the option to vote using a mail-in ballot in all future elections shall be furnished with such a ballot by the county clerk without further request on the part of the voter and until the voter requests in writing that the voter no longer be sent a mail-in ballot. N.J.S.A. 19:63-3.a.(2)

11. The Act requires that the county clerk shall not transmit a mail-in ballot for any election to any person who: is deemed by a county commissioner of registration to be an inactive voter; or notifies the clerk in writing that the person no longer wishes to receive such a ballot for any election; or is no longer eligible to vote and whose registration file has been transferred to the deleted file pursuant to R.S. 19:31-19. N.J.S.A. 19:63-3.f.

12. The Act requires that any mail-in ballot that is sent to a qualified voter and that is returned to the county clerk for any reason shall be forwarded to the commissioner of registration, who shall so note the return in the voter record of that voter. N.J.S.A. 19:63-3.g.

13. The act requires that ... If you are a qualified and registered voter of the State who wants to vote by mail in the..... (school, municipal, primary, general, or other) election to be held on..... (date of election), the following applies: You must complete the application form below and send it to the county clerk where you reside or write or apply in person to the county clerk where you reside to request a mail-in ballot. The name, address, and signature of any person who has assisted you to complete the mail-in ballot application must be provided on the application, and you must sign and date the application. No person may serve as an authorized messenger or bearer for more than three qualified voters in an election. No person who is a candidate in the election for which the voter requests a mail-in ballot may provide any assistance in the completion of the ballot or serve as an authorized messenger or bearer. A person who applies for a mail-in ballot must submit his or her application at least seven days before the election, but such person may request an application in person from the county clerk up to 3 p.m. of the day before the election. Voters who want to vote by mail in all future elections will, after their initial request and without further action on their part, be provided with a mail-in ballot until the voter requests otherwise in writing. Application forms may be obtained by applying to the undersigned either in writing or by telephone, or the application form provided below may be completed and forwarded to the undersigned. N.J.S.A. 19:63-6.a.

14. The Act requires that the Secretary of State shall cause to be prepared and shall provide to each county commissioner of registration forms of size and weight

suitable for mailing, which shall require the information required by R.S. 19:31-3 in substantially the following form ... and in part: I wish to receive a Mail-in Ballot for all future elections, until I request otherwise in writing. N.J.S.A. 19:31-6.4(13).

15. The Act requires that the clerk of each county shall be permitted to print on or affix to the margin of the flap on the inner envelope of the mail-in ballot transmitted thereby to a mail-in ballot voter an alternative certificate, substantially similar to the certificate provided for by subsection a. or b. of this section, that permits the voter to certify the correctness of the voter's name, street, mailing address or R.D. number, and municipality as it appears on the label of the mail-in ballot received by the voter N.J.S.A. 19:63-13.c.

16. The Act requires that any person who ... (3) has applied for and received a mail-in ballot and has not transmitted it to the county board of elections or given it to the bearer for delivery to the county board, but appears at the polling place without the ballot and wishes to vote, shall be permitted to vote in person by provisional ballot at the polling place in the voter's election district on the day of the election. N.J.S.A. 19:63-20.b.

17. The Act requires that ... every mail-in ballot that bears a postmark date of the day of the election and that is received by the county board within 48 hours after the time of the closing of the polls for the election that the ballot was prepared shall be considered valid and shall be canvassed.... N.J.S.A. 19:63-22.

18. The Act requires that a county clerk shall not be required to send a sample ballot for any election to a voter who has been sent a mail-in ballot for that election,

pursuant to section 3 of P.L.2009, c.79 (C.19:63-3), and whose voted ballot has been received by the county board of elections prior to the transmission of sample ballots to voters required by R.S. 19:14-25. A county may send an acknowledgment to a voter when his or her mail-in ballot has been received by the board. N.J.S.A. 19:14-25.1.

19. The Act requires that the clerk of each county shall add to the list of registered voters receiving a mail-in ballot for all future elections without further request each voter in the county who requested and received a mail-in ballot for the 2016 general election. Each voter so added to the list shall have the option to inform the clerk in writing that the voter does not wish to receive a mail-in ballot automatically for all future elections. N.J.S.A. 19:63-3.1.a.

20. The Act requires that the county clerks shall transmit to each voter who will automatically receive such a ballot for all future elections pursuant to subsection a. of this section a notice informing the voter that he or she will automatically receive a mail-in ballot for all future elections unless the voter informs the clerk in writing that he or she does not wish to receive a mail-in ballot for all future elections. N.J.S.A. 19:63-3.1.b.

B. FISCAL IMPACT ON COUNTIES

21. Due to the Act's unfunded mandate, county governments across the State spent approximately \$1.51 million to implement and administer in 2018 and will continue to spend additional property taxpayer dollars every year thereafter on personnel, printing, postage, and supplies as a direct result of the new law and as summarized in Table 1.

TABLE 1: VOTE-BY-MAIL COSTS

COUNTY	2018 Costs
Atlantic	\$35,000.00
Bergen	\$75,108.00
Burlington	\$46,466.00
Camden	\$45,361.00
Cape May	\$23,187.00
Cumberland	\$37,055.00
Essex	\$53,000.00
Gloucester	\$55,856.00
Hudson	\$103,357.00
Hunterdon	\$39,770.00
Mercer	\$126,876.00
Middlesex	\$74,155.00
Monmouth	\$280,000.00
Morris	\$100,796.00
Ocean	\$115,717.00
Passaic	\$30,850.00
Salem	TBD
Somerset	\$55,836.00
Sussex	\$21,585.00
Union	\$144,200.00
Warren	\$16,428.00
Total	\$1,530,603.00

22. The costs summarized in Table 1 include: personnel costs, such as salaries, wages, health and other fringe benefits; contracted costs with outside vendors for printing services; postage and letters; and, additional costs such as supplies and labels.

23. As set forth above, the Act requires county clerks to add to the list of registered voters receiving mail-in ballots in all future elections: all voters who requested and received mail-in ballots for the 2016 general election. This new mail-in ballot voting procedure is forcing county clerks to use valuable staff time, and other resources normally dedicated to regular pre-election duties, as it requires their offices to manually convert such voters to the vote-by-mail system as the Statewide

Voter Registration System does not have the capability to manage the transfers otherwise.

24. As set forth above, the Act also requires county clerks to automatically furnish mail-in ballots to voters that vote-by-mail in all future elections without further request. This new mail-in ballot voting procedure is forcing county clerks to substantially increase the number of mail-in ballots their offices must prepare, deliver, receive, process, and record.

25. As a direct result of increasing the number of mail-in ballots county clerks must prepare, deliver, receive, process, and record, county clerks are struggling to manage the new mail-in ballot voting procedure with existing staff and have hired or are planning to hire temporary, part-time, or full-time staff to comply with the Act. The new mail-in ballot voting procedure is also forcing county clerks to spend additional county resources on printing, postage, and other supplies.

26. Table 2 demonstrates that county clerks prepared, delivered, received, processed, and recorded substantially more mail-ballots for the 2018 general election than the similar general election conducted in 2014.

TABLE 2: GENERAL ELECTION VOTE-BY-MAIL BALLOTS

TOTAL NUMBER OF VOTES CAST 2014	VOTES CAST BY MAIL BALLOTS 2014	% OF VOTES CAST BY MAIL BALLOTS 2014	TOTAL NUMBER OF VOTES CAST 2018	VOTES CAST BY MAIL BALLOTS 2018	% OF VOTES CAST BY MAIL BALLOTS 2018
1,955,042	143,094	7.3%	3,246,642	400,136	12.3%

27. As set forth above, the Act also requires county clerks to provide written notice to voters who vote-by-mail that they will automatically receive mail-in ballots for all

future elections and until a voter informs a clerk that the voter no longer chooses to vote-by-mail accordingly. This new mail-in ballot voting procedure is forcing county clerks to use valuable staff time preparing the notice and additional county resources mailing the notice to qualified voters accordingly. This new mail-in ballot voting procedure is also causing confusion among voters who are mailed ballots but decide to vote at a polling station as the Act requires such voters to vote by provisional ballot if they do not opt out as prescribed under the new law – creating additional operational burdens and expenses in preparing provisional ballots.

C. THE ACT CONTAINS AN UNFUNDED MANDATE

28. The Council has found that a law constitutes an unconstitutional “unfunded mandate” when: (1) the law imposes a “mandate” on a local unit of government; (2) direct expenditures are required for the implementation of the law’s requirements; and, (3) the law fails to authorize resources, other than the property tax, to offset the additional direct expenditures on the unit of local government. See Monmouth-Ocean Education Services Comm’n, et al., Council on Local Mandates (August 20, 2004); see, also, Mayors of Shiloh Borough, et al., Council on Local Mandates (December 12, 2008).

29. Statutes and regulations that “implement the provision of the New Jersey Constitution” are generally exempt from the definition of an unfunded mandate; and thus, immune from consideration by the Council. See N.J. Const., Art. VIII, Section 2, Paragraph 5(c)(5) and N.J.S.A. 52:13H-3(e).

30. As set forth above, P.L. 2018, Chapter 72 imposes an unfunded mandate on county governments as county governing bodies across the State must shoulder the

increased responsibilities to support the Act by spending property taxpayer dollars on direct expenditures such as printing, postage, supplies, and personnel costs without any additional State resources to offset the increased responsibilities and financial burden.

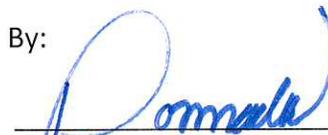
IV. REQUEST OF RELIEF

As set forth above, if county governments are required to continue implementing the Act, they will suffer significant financial hardship. Moreover, the foregoing paragraphs establish that there is a substantial likelihood that the new law, is in fact, an impermissible unfunded mandate. The Act may also force counties to cut services or raise additional property taxes to implement causing irreparable harm. As such, injunctive relief is appropriate in this matter.

WHEREFORE, the New Jersey Association of Counties respectfully request that the Council issue a ruling:

1. Enjoining the State of New Jersey from enforcing P.L. 2018, C.72 in all future elections held in this State;
2. Finding that P.L. 2018, Chapter 72 constitutes an unfunded mandate pursuant to the New Jersey Constitution Article VIII, Section 2, Paragraph 5 and N.J.S.A 52:13H-2, and shall cease to be mandatory in effect and expire; and,
3. Granting further legal or equitable relief that the Council deems just and proper.

By:



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of Counties

Dated: January 23, 2019