

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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April 18, 2019

By overnight mail and email

Honorable John A. Sweeney, Chair
NJ Council on Local Mandates
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PO Box 627
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**RE: IN THE MATTER OF A COMPLAINT FILED BY THE NEW JERSEY ASSOCIATION OF COUNTIES
COMPLAINT NO. 1-19**

Dear Judge Sweeney:

Please accept this letter brief on behalf of the New Jersey Association of Counties (NJAC) in opposition to the State of New Jersey's Motion to Dismiss NJAC's Complaint challenging the 2018 Amendment to the Vote-By-Mail Law, N.J.S.A. 19:68-1 to 28 (hereinafter referred to as the "2018 Amendment") as imposing an unfunded mandate upon counties and county clerks.

I. PLEADING SUMMARY

NJAC's primary purpose is to advocate for the best interests of New Jersey's twenty-one (21) counties, and by extension, for the well-being of the county taxpayers. The biggest challenges currently facing NJAC's membership stem from the counties' ongoing struggle to reduce and streamline costs so that they can effectively fulfill their duties and obligations while maintaining compliance with various spending caps imposed by the New Jersey Legislature.

In accordance with the standard to be applied on a motion to dismiss, such as that which has been filed by the State of New Jersey in this matter, NJAC is not required to prove the content of its Complaint at this time, and it is respectfully submitted that the Council must view all evidence in the record in a light most favorable to NJAC. In NJAC's Complaint, and the proofs submitted in support of its application for relief, NJAC set forth a valid cause of action and presented facts establishing the cost associated with implementing` of the 2018 Amendment and the unfunded financial hardship that it has imposed on counties. The facts, as presented, support a denial of the motion for summary disposition at the initial pleading stage and require a plenary hearing. Moreover, the State has offered only conjecture and unsubstantiated arguments regarding the purported positive fiscal outcome of the 2018 Amendment. The Counties have been experiencing actual increased costs while implementing of the 2018 Amendment and anticipate that these costs will carry into the future.

Due to the magnitude of the actual and potential costs imposed on county taxpayers by the 2018 Amendment, and the rules of constitutional and statutory construction, the Act cannot be deemed to implement the New Jersey Constitution within the meaning of the exemption set forth in N.J. Const., Art. VIII, § 2, ¶ 5(c)(5) and N.J.S.A. 52:13H-3(e). The broad application of the exemption to the legal definition of an "unfunded mandate" being urged by the State would undermine the general constitutional prohibition and public policy against unfunded State mandates.

For these reasons, and given the significant factual allegations contained in the record, it is respectfully submitted that the Council should deny the State's Motion to

Dismiss NJAC's Complaint; and, permit the matter to proceed to a plenary hearing to afford NJAC the right to prove that the 2018 Amendment constitutes an unfunded mandate.

II. FACTUAL BACKGROUND

The 2018 Amendment to the Vote-By-Mail Law did not appropriate monies to county governing bodies for the capital and operating costs necessary to implement the Amendment.

The proofs submitted in support of NJAC's application for relief in this matter constitute substantial evidence of the actual costs imposed by the 2018 Amendment. While the State is attempting to argue that the 2018 Amendment was intended to reduce time and costs to the county clerks, the reality is that the law now actually imposes new duties and oversight responsibilities on county clerks and county boards of elections and creates confusion among the public. The imposition of the new obligations on the part of those offices and their respective staff is creating additional, mandatory financial expenditures at the county level.

The Office of Legislative Services (OLS) predicted the 2018 Amendment would impose an increase in costs to counties in its Legislative Fiscal Estimate dated February 28, 2018. While the OLS found that the increase in costs was not able to be determined at the time of its Fiscal Estimate report, it predicted that there would be an increase in the number of mail-in ballots sent for all future elections, including general elections, pursuant to the provisions of the bill that would increase costs to counties, but acknowledged there would also be a reduction in the number of sample ballots

produced, mailed and returned as undeliverable. OLS estimated that the associated costs or savings would most likely depend on the number of ballots needed or not needed, and the cost for each ballot in each county. OLS estimated that the bill could potentially increase the number of mail-in ballots that would be requested, thus adding to the costs of the county clerks and the county boards of elections for the ballot's production, mailing, and processing upon return. OLS further predicted that administrative changes resulting from the new law, could have fiscal consequences. Those changes included the reformatting of the text of the required public advertisement (OLS acknowledged this could result in a cost savings), updating the Statewide Voter Registration System to allow the postal tracking of mail-in ballots using Intelligent Mail barcodes which would likely incur additional expense to the Secretary of State, and the new requirement that county clerks inform each voter who voted by mail-in ballot in the 2016 general election that he or she will automatically receive a mail-in ballot for all future elections (which would increase costs to county clerk offices).

As predicted by OLS, the 2018 Amendment imposed an obligation on county clerks to mail informational letters to individuals who opted to vote by mail for the 2016 Election, explaining what the new law meant, and offering those individuals an option to opt out of the Law's requirement that they be forever converted to "mail in ballot only" voters. These letters had to be created and mailed manually, since the Statewide Voter Registration System (SVRS) was not functional to assist the counties. This was an unplanned and unfunded expense for the county clerks. The county clerks were thereafter required to mail ballots to all voters who opted to receive a mail in ballot for

the 2016 General Election (except those who understood and opted out of the new law pursuant to the guidance provided in the informational letter from the Clerks). This amendment includes an obligation to continue to mail in ballots to “unaffiliated” voters for primary elections, most of whom do not generally vote in primaries. This is another unanticipated and unfunded expense to the counties. In Hunterdon County alone, mail in ballots for unaffiliated voters in the upcoming primary election went from 122 ballots in 2015 to 2,800 ballots in 2019. In 2018, Hunterdon County was required to send approximately 5,000 total mail in ballots to voters who did request a ballot due solely to the enactment of the 2018 Amendment.

An additional impact of the 2018 Amendment that had costly financial consequences on the counties was the great deal of voter confusion experienced by individuals who either did not read or did not understand the explanatory letters that were sent pursuant to the 2018 Amendment. Those voters then showed up at the polls in large numbers attempting to vote, which necessitated that they be provided provisional ballots. Statewide, provisional ballots cast in 2018 totaled approximately 56,000 as opposed to the 14,000 provisional ballots cast in 2014 (the most recent non-presidential and non-gubernatorial election). There were additional, unfunded, expenditures related to unaffiliated voters as well. While ballot costs vary among the counties, the cost is approximately \$3.00 per ballot in Hunterdon County. The increase in costs directly related to Hunterdon County unaffiliated voters receiving primary election vote-by-mail ballots is anticipated to be approximately \$15,000. These costs will continue to be incurred, and are anticipated to increase in the future, as the act of

voting provisionally in one election does not exempt a voter from receiving mail in ballots for all future elections.

County clerk budgets are on the rise for the 2019 budget year as a result of the 2018 Amendment. Table 1 below identifies the statewide increase to county clerk budgets directly related to the increase in costs necessitated by the 2018 Amendment. The Table also summarizes the number of 2016 voters who were automatically converted to vote by mail voters without their consent.

TABLE 1: 2019 VOTE-BY-MAIL BUDGET INCREASE REQUESTS

COUNTY	2019 COUNTY CLERK BUDGET INCREASE	VOTERS CONVERTED WITHOUT CONSENT
Atlantic	\$25,000.00	4,600
Bergen	\$612,000.00	27,000
Burlington	\$28,000.00	6,700
Camden	\$26,000.00	8,000
Cape May	\$24,000.00	2,100
Cumberland	\$37,000.00	1,000
Essex	TBD	TBD
Gloucester	\$48,000.00	4,000
Hudson	\$45,000.00	4,300
Hunterdon	\$40,000.00	5,000
Mercer	\$162,650.00	6,000
Middlesex	TBD	TBD
Monmouth	\$175,000.00	17,000
Morris	\$170,000.00	14,000
Ocean	\$100,000.00	15,000
Passaic	TBD	TBD
Salem	TBD	TBD
Somerset	\$40,000.00	6,600
Sussex	TBD	TBD
Union	\$38,000.00	10,000
Warren	\$28,000.00	3,000
<i>Total</i>	<i>\$1,571,000.00</i>	<i>127,600</i>

In support of its argument that the 2018 Amendment was intended to be a cost saving mechanism, the State further alleges that counties are no longer required to send sample ballots to voters that are being sent "vote by mail" ballots. However, the State offered no evidence to support this argument and, in fact, there has been no such demonstrable savings realized by the counties. This is due, in large part, to the fact that the Statewide Voter Registration System does not have a coordinated mechanism to differentiate "vote by mail" individuals from traditional poll voters in order to identify voters who would not require sample ballots. The State anticipated unrolling a new computer system which would address this issue. However, that endeavor failed, and a new vendor has yet to be identified. Therefore, counties must continue to use the Statewide Voter Registration System (SVRS) with its existing limitations, including the requirement for counties to manually review, identify and separately enter modifications to each voter profile who no longer receives a sample ballot. This is both incredibly time consuming and will require counties to incur additional expenses for staff time in excess of the additional expense of mailing both sample ballots and vote by mail ballots to affected individuals.

III. LEGAL ARGUMENT

A. NJAC'S COMPLAINT STATES A VALID CAUSE OF ACTION THAT THE 2018 AMENDMENT IS AN UNFUNDED MANDATE

The New Jersey Constitution forbids 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(b). Specifically, Article VIII, Section II, Paragraph 5 of the New Jersey Constitution prohibits the enactment of laws that serve

as an “unfunded mandate” to New Jersey’s counties. As stated in subsection (a) of that paragraph:

With respect to any provision of 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 otherwise 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 the 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. § 2, ¶ 5(a); see, also, N.J.S.A. 52:13H-2.

The Council is empowered to resolve any dispute regarding whether a law, or rule or regulation issued pursuant to a law, imposes an unfunded mandate on counties. N.J. Const., Art. VIII. § 2, ¶ 5(b). To that end, the Council must “review, and issue rulings upon, complaints filed with the council by 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 requires for the implementation of the statute or the rule or regulation.” N.J.S.A. 52:13H-12(a).

The Council has not adopted formal procedural rules or standards governing summary disposition of complaints challenging unfunded mandates. See In Re Highland Park Board of Education and the Borough of Highland Park, Council on Local Mandates (August 5, 1999). However, in considering motions to dismiss for a failure to state a claim and motions for summary judgement, the Council has applied similar standards to

those of the New Jersey Courts. Ibid. Generally, New Jersey Courts do not require a claimant to prove a case through initial pleadings; instead, the test for deciding a motion to dismiss is whether the alleged facts “suggest” a cause of action. See Craig v. Suburban Cablevision, 140 N.J. 623, 626 (1995). Accordingly, motions to dismiss are granted “in only the rarest of instances, “NCP Litig. Trust v. KPMG LLP, 187 N.J. 353, 365 (2006) (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989)), and only after an “examination of a complaint’s allegations of fact ... that is at once painstaking and undertaken with a generous and hospitable approach.” Printing Mart-Morristown, 116 N.J. at 746.

In accordance with these standards, the Council has held that a motion to dismiss can be granted only if the Council concludes that no further factual information would be relevant to its decision. See. In re Ocean Township (Monmouth County) and Frankford Township, Council on Local Mandates (August 2, 2002). The Council has also recognized the practice of New Jersey Courts to convert a motion to dismiss for failure to state a claim into a motion for summary judgment when a party introduces facts beyond the pleadings. See In Re Highland Park Board of Education et al., supra (citing Jersey City Educ. Ass’n. v. City of Jersey City, 316 N.J. Super. 245, 254 (App. Div. 1998)). In adopting that same procedure, the Council has recognized that summary judgement is inappropriate where “the competent evidential materials presented, when viewed in the light most favorable to the non-moving party... are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Id. (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

Notwithstanding its recognition of the above-referenced standards for summary disposition, the Council is generally reluctant to dispose of complaints in a summary manner considering its unique position within state government. Specifically, the Council has found:

The rulings of the Council are not subject to judicial review. See N.J. Const. art. VIII, § 2, ¶ 5(b); N.J.S.A. 52:13H-18. Given that the parties will have no other forum in which to challenge mandates, we are wary of disposing of matters in a summary manner. Further, where the Council identifies an unfunded mandate, its rulings bind not only the parties before it but all parties who are subject to the challenged rules and regulations. In light of the foregoing considerations, the Council must proceed with great caution when deciding whether to grant motions to dismiss or for summary judgement. (Emphasis supplied). See In Re Highland Park Board of Education et al., supra.

Considering the standard to be applied on this motion to dismiss, NJAC is not required to prove the content of its Complaint, and the Council must view all evidence in the record in a light most favorable to NJAC. In NJAC's Complaint and in the proofs submitted in support of its application for relief, NJAC set forth a cause of action and the facts necessary to establish that the 2018 Amendment is an unfunded mandate. These proofs, at the very least, create a genuine issue of fact regarding the costs imposed by the 2018 Amendment on counties and, therefore, substantiate the need for a plenary hearing. The State, on the other hand, has offered only conjecture and supposition in support of its argument regarding the purported positive fiscal outcome of the 2018 Amendment. Viewing the allegations and facts in the record in a light most favorable to NJAC, the State's motion to dismiss must be denied so that the Council can analyze this important matter after the development of a full record by the parties.

B. THE 2018 AMENDMENT CONSTITUTES AN UNFUNDED MANDATE UPON COUNTIES.

The Council has held that a law constitutes an unconstitutional “unfunded mandate” when: (1) the law imposes a “mandate” on a unit of local 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 In re Monmouth-Ocean Educational Services Comm’n, et al., Council on Local Mandates (August 20, 2004) see, also, In re Mayors of Shiloh Borough, et. al., Council on Local Mandates (December 12, 2008).

The requirements of the 2018 Amendment impose a mandate on counties because the 2018 Amendment, specifically, N.J.S.A. 19:63-3.a.(1) and N.J.S.A. 19:63-3.a.(2), 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.a.(1) 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.a.(2) requires county clerks to provide written notice to voters who vote-by-mail ballots for all future elections and until a voter informs a clerk that the voter no longer chooses to vote-by-mail. Direct expenditures are *required* for the implementation of the 2018 Amendment, which has a significant and unavoidable fiscal impact on counties. County governments across the state spent approximately \$1.5 million to implement and administer the Amendment in 2018; and, will continue to spend additional property taxpayer dollars every year moving forward on personnel, printing, postage, and supplies as a direct result of the new amendment as summarized in Table 2 below. The

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

TABLE 2: 2018 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
<i>Total</i>	<i>\$1,530,603.00</i>

The costs summarized in Table 2 include personnel costs, such as salaries, wages, health and other fringe benefits; contracted costs of outside vendors for printing services; postage and letters; and, additional costs such as supplies and labels.

The 2018 Amendment required county clerks to add all voters who requested and received mail-in ballots for the 2016 general election to the list of registered voters receiving mail-in ballots in all future elections. 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 since the Statewide Voter Registration System does not have the capability to manage the transfers otherwise. In addition, the 2018 Amendment also requires county clerks to automatically furnish mail-in ballots to voters that vote by mail-in 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 office must prepare, deliver, receive, process, and record. As a direct result of increasing the number of mail-in ballots, 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 2018 Amendment moving forward. The new mail-in ballot voting procedure is also forcing county clerks to spend additional county resources on printing, postage, and other supplies.

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, since the 2018 Amendment 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 processing provisional ballots.

Table 3 demonstrates that county clerks prepared, delivered, received, processed, and recorded substantially more mail-in ballots for the 2018 general election than the similar general election conducted in 2014.

TABLE 3: 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%

The 2018 Amendment imposes an unfunded mandate on county governments as it mandates that County Clerks comply with the new provisions enacted therein, the County is incurring direct expenditures to implement the law, and county governing bodies across the State must now 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.

C. THE EXEMPTION SET FORTH IN N.J. CONST., ART. VIII § 2, ¶ 5(c)(5) AND N.J.S.A., 52:13H-3(e) DOES NOT APPLY TO NJAC’S COMPLAINT

The State argues that NJAC’s Complaint should be dismissed because the 2018 Amendment implements the New Jersey Constitution, and thus, the exemption set forth in N.J. Const., Art. VIII § 2, ¶ 5(c)(5) and N.J.S.A., 52:13H-3(e) applies. Under the circumstances present in this matter, application of this exemption to prevent the Council’s consideration of NJAC’s Complaint would effectively undermine the public policy inherent in the constitutional prohibition against unfunded mandates.

The creation of the Council and its mission was prompted by the “long-standing, prior practice of State-imposed, unfunded mandates...” See N.J.S.A. 52:13H-1c. The stated purpose of the Council was “to prevent the Legislative and Executive branches of State government from forcing local governments and boards of education to

implement many new or expanded programs, unless those programs are accompanied by the means to pay for them.” See In Re Highland Park Board of Education et al., *supra* (citing Senate Committee Substitute for Senate Concurrent Resolution No. 87, Interpretive Statement (May 15, 1995)). The popular support necessary to pass the constitutional provision prohibiting unfunded mandates and its enabling legislation evinces a broad remedial purpose for this law. Ibid.

An early version of the law prohibiting unfunded mandates, Senate Concurrent Resolution No. 87, did not contain any exemptions to the definition of an “unfunded mandate”. However, exemptions were later added by the Senate Community Affairs Committee when merging Senate Concurrent Resolution Nos. 87, 26 and Assembly Concurrent Resolutions 1, 77 and 40. In a new committee amendment, the Legislature added six (6) categories of laws, rules and regulations that would be exempt from the definition of an unfunded mandate.

The Legislature ultimately adopted exemptions, including the exemption of statutes and regulations that “implement the provisions of [the New Jersey] Constitution” from the definitions of an unfunded mandate. See N.J. Const., At. VIII, §2, ¶ 5(c)(5) and N.J.S.A., 52:13H-3(e). In light of the clear potential for this broadly-worded exemption to swallow the entire rule against unfunded mandates, the Council has narrowly applied the exemption in pursuing its constitutional mission. In Monmouth-Ocean Educational Service Comm’n, *supra*, the Council rejected the State’s argument that a statute requiring radon testing in schools implemented the Thorough and Efficient Education Clause of the New Jersey Constitution. See also In re Highland Park Bd. Of Educ. &

Highland Park, Council on Local Mandates, supra, (rejecting the argument that any form of education spending implements the Thorough and Efficient Clause); see also In re Allamuchy Township Board of Education, Council on Local Mandates (January 27, 2012).

The Council has held that in order for a law or regulation to be constitutionally exempt from its jurisdiction under Art. VIII, § 2, ¶ 5(c)(5):

[w]hen the Thorough and Efficient Education Clause, N.J. Const. Art. VIII, 4, 1, is invoked to excuse an unfunded mandate, the Legislature either must state explicitly that it is implementing that clause, or the State bears the burden of making a specific, precise, fact based showing that the [alleged] unfunded mandate implements the Thorough and Efficient Education Clause within terms previously defined by the Legislature or the courts. Monmouth-Ocean Educational Services Comm'n, supra.

The Council has rejected arguments by the State that attempt to place immense financial burdens on local governments under the guise of implementing *any* constitutional requirement. For instance, in Shiloh Borough and Borough of Rocky Hill, et. al., supra, the Council reiterated its narrow application of the exemption for laws implementing the constitution in the context of shared law enforcement expenditures. In that case, rural municipalities were forced to enter cost-sharing agreements with the State in order to receive continued State Police protection pursuant to the Fiscal Year 2009 Appropriations Act. The Council rejected the State's argument that the Appropriations Act implemented provisions of the new Constitution. The Council found that although the Constitution requires that appropriations for State government be provided by law, all such laws do not automatically "implement" the Constitution. If so, the constitutional principal of "State mandate/State pay" could be avoided simply by placing a mandate within the Appropriations Act.

In Shiloh Borough, *supra*, the Council noted that when construing constitutional provisions, one constitutional provision should not be read as thus negating another; rather, the competing constitutional directives should be harmonized so as to give effect to both. See, N.J. Const. Art. 1, ¶ 1; cf. Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151, 174-175 (1975-, appeal dismissed, certiorari denied 423 U.S. 808, 96 S.Ct. 18, 46 L. Ed. 2d 28 (1975). In other words, State mandates passed pursuant to a constitutional provision must always be considered in tandem with the overarching constitutional prohibition and public policy against unfunded mandates.

The State has failed to demonstrate that the 2018 Amendment is exempt from the Council's consideration of NJAC's complaint. The constitutional provision regarding state imposed, unfunded mandates was enacted with the principal intention of preventing the State from enacting legislation such as the 2018 Amendment without providing a means for which to pay for the mandated obligations. As set forth in the case law cited above, the Council has a longstanding practice of holding that State may not shield itself from funding simply by citing a constitutional exemption. The 2018 Amendment must be analyzed in tandem with the constitutional prohibition and public policy against unfunded mandates. As identified above, the 2018 Amendment is creating significant increases in the budgets for New Jersey County Clerks, constituting a clear unfunded mandate subject to the Council's review.

The 2018 Amendment does not implement a provision of the New Jersey Constitution. Rather, it modifies ministerial procedures embodied in the NJ Election

law, it doesn't provide greater access to the voting process or further any constitutionally protected rights.

The State claims that the 2018 Amendment implements the Constitutional provision that “[i]n time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.” This is not the case.

The State acknowledges this right to vote without appearing at a polling location on Election Day has existed in New Jersey for over 60 years and offers no justification for why this 2018 Amendment provides for any meaningful implementation of that provision. Rather, it provides a procedural modification to an existing process concerning absentee ballots. It does not offer any further support for the armed forces to access voting during wartime, it has no connection whatsoever with providing ballots or access to absentee ballots to those serving our country at a time of war and in no way implements any Constitutional provision related to the fundamental right to vote. In fact, the State offers no factual support whatsoever for the argument that the 2018 Amendment provides any individual with greater access to vote or protects the right to vote or vote by absentee ballot. Rather the 2018 Amendment pushes people from the polling locations, whether they like it or not, and attempts to coerce them to vote by

mail. NJAC has shown that to the contrary of the State's argument, the 2018 Amendment created a substantial disruption and high levels of confusion among the general voting public which has caused many individuals to be forced to vote by provisional ballots when they sought to exercise their right to vote at their polling. For this, the counties have been required to expend substantial additional funds of their budgets with no additional financial support from the State.

IV. CONCLUSION

NJAC's Complaint states a claim upon which relief can be granted, and material fact disputes preclude summary judgement against NJAC. Moreover, considering the scope and magnitude of the cost of the 2018 Amendment alongside the general constitutional prohibition against unfunded mandates, NJAC's Complaint and the affidavits it has submitted create, at the very least, a genuine factual dispute as to whether the Act implements the New Jersey Constitution. For the reasons set forth in this letter brief, the State's motion to dismiss should be denied, and this matter should proceed to a plenary hearing.

Submitted By:



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Dated: April 18, 2019