



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

May 3, 2019

Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairman
New Jersey Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, New Jersey 08625-0627

Re: In the Matter of Complaint Filed by
the New Jersey Association of Counties
Complaint No. NJAC 0001-19

State's Response to NJAC's Opposition
to Motion to Dismiss Complaint



Dear Judge Sweeney:

Please accept this letter on behalf of Respondent, State of New Jersey ("State"), in response to the New Jersey Association of Counties' ("NJAC") opposition to the State's motion to dismiss the complaint in the above-captioned matter. In its opposition to the State's motion to dismiss, NJAC continues to fall short of its requirement to state a claim that the 2018 Amendment to the Vote By Mail Law, N.J.S.A. 19:63-1 to -28 (the "2018 Amendment") has created an unfunded mandate. NJAC's claim of increased costs associated with the 2018 Amendment is undermined by NJAC's failure to offset such alleged costs with the cost savings the 2018



Amendment provides to each county. In addition, pursuant to the Local Mandates Act ("LMA"), N.J.S.A. 52:13H-1 to -22, NJAC does not provide a credible argument in opposition to the fact that the 2018 Amendment is exempt from being found to be an unfunded mandate based upon its implementation of a State constitutional provision.

NJAC admits in its filing with the Council that the Office of Legislative Services ("OLS"), in reviewing the 2018 Amendment, stated that "increase in costs was not able to be determined at the time of its [OLS] Fiscal Estimate report. . . ." (NJAC Opposition at 3). OLS also "predicted" that while there would be an increase in the number of mail-in ballots sent to voters, "there would also be a reduction in the number of sample ballots produced, mailed and returned as undeliverable." Id. at 3-4. Thus, NJAC's claim that the 2018 Amendment imposes additional costs on counties is not viable when balanced against the cost savings achieved under the statute. In its motion to dismiss, the State notes that counties also achieve savings from the elimination of the expense of sending mail-in ballot applications to voters who automatically receive mail-in ballots under the provisions of the 2018 Amendment, as well as the associated cost savings in staff time. Because the Complaint does not provide a basis for asserting actual increased associated with the 2018 Amendment, the Complaint fails to state a claim of an unfunded mandate.

NJAC also fails to present a meritorious argument disputing that the 2018 Amendment falls within the constitutional exemption applied to a claim of an unfunded mandate. The 2018 Amendment implements the right to vote granted by the New Jersey Constitution. N.J. Const., art. II, §1, ¶3. As noted in the Council's decision IMO of Mayors of Shiloh Borough and Borough of Rocky Hill, et al. (December 12, 2008), when reviewing legislative action and its application to a State constitutional provision, the issue is "whether the Act's provisions. . . implement the provisions of the New Jersey Constitution." Id. at 9; N.J. Const. art. VIII, § 2, ¶ 5(c)(5); N.J.S.A. 52:13H-3(e). Here, the 2018 Amendment implements the fundamental State constitutional right to vote.

As cited in the State's previously filed motion to dismiss, the New Jersey Supreme Court upheld the Legislature's 1953 adoption of the civilian absentee ballot law. In so doing, the Court held the 1947 Constitution's limitation of absentee voting to military personnel "is not in itself a bar to civilian absentee voting by legislative allowance in furtherance of the exercise of the basic right of suffrage, a civil and political franchise--of the very essence of our democratic process--that is to be liberally and not strictly construed to promote and not to defeat or impede the essential design of the organic law." Gangemi v. Berry, 25 N.J. 1,

12 (1957) (emphasis added). The 2018 Amendment continues to carry forth the legislative goal of implementing New Jersey citizens' right to vote by assisting in and easing the ability of voters to exercise this constitutional right.

In addition to implementing the constitutional provision insuring the right to vote, the 2018 Amendment also acts to revise and ease an existing requirement or mandate by providing voters with a greater ability to vote by mail-in ballot. Pursuant to N.J.S.A. 52:13H-3c, such a result of legislative action cannot be found to create an unfunded mandate. The 2018 Amendment eases the previous statutory requirements for obtaining a mail-in ballot. Under the 2018 Amendment, county clerks now automatically provide mail-in ballots to all voters who voted by mail-in ballot in the 2016 General Election, removing both the requirement for such voters to apply for mail-in ballots and the need for county clerks to process those applications. Instead, the 2018 Amendment revises and eases those requirements, resulting in less administrative steps in obtaining mail-in ballots. Further, the 2018 Amendment streamlines and lessens the procedures that county clerks were already performing. In this way, the 2018 Amendment revises an existing statutory requirement and therefore, does not result in an unfunded mandate.

Again, NJAC fails to present a viable argument in opposition to State's assertion that the 2018 Amendment, pursuant to N.J. Const. art. VIII, § 2, ¶ 5(c)(3) and the LMA, is specifically exempt from a finding of an unfunded mandate where the legislative action repeals, revises, or eases an existing requirement. Because the 2018 Amendment revises existing statutory requirements, it is not an unfunded mandate.

CONCLUSION

For the foregoing reasons, and those set forth in the State's previously filed Motion to Dismiss, the Council should grant the State's motion and dismiss NJAC's Complaint with prejudice.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: s/George N. Cohen
George N. Cohen
Deputy Attorney General
Attorney ID# 002941985
George.Cohen@law.njoag.gov

c: John G. Donnadio, Esq.