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January 20, 2017

VIA E-MAIL AND HAND DELIVERY

Honorable John A. Sweeney, Chair
State of New Jersey
Council on Local Mandates
20 West State Street 4th fl.
PO Box 627
Trenton, NJ 08625-0627

**Re: In The Matter of a Complaint Filed by The New Jersey
Association of Counties (Criminal Justice Reform Act)
Docket No. COLM-0004-16**

Dear Judge Sweeney:

This firm represents the New Jersey Association of Counties (“NJAC”) in the above-referenced matter. Please accept this letter brief on behalf of NJAC in opposition to the State of New Jersey’s Motion to Dismiss NJAC’s Complaint challenging the Criminal Justice Reform Act as an unfunded mandate. For the reasons set forth below, the State’s Motion to Dismiss should be denied, and NJAC should be afforded a plenary hearing in this matter.

PLEADING SUMMARY

For decades, local governments were burdened by State laws that, while well-intentioned, were adopted by State legislators and officials in Trenton without due regard to funding sources. Without adequate funding for State mandates, this practice resulted in a rise in local property taxes which increasingly burdened New Jersey’s property owners. The

Hon. John A. Sweeney, Chair
January 20, 2017
Page 2

practice became so prevalent that the public responded by amending New Jersey's Constitution in 1995 to reverse the ongoing trend of unsustainable property taxes. This constitutional amendment created the Council on Local Mandates ("Council") to provide an essential check and balance on State government. The Council has the power to invalidate new State legislation and regulations that impose mandates upon local governments without providing funding beyond the local property tax.

The Criminal Justice Reform Act, N.J.S.A. 2A:162-15 et seq., (the "Act" or "Criminal Justice Reform") is precisely such a law. Specifically, N.J.S.A. 2A:162-16(b)(1), the Act's forty-eight (48) hour risk assessment period¹, and N.J.S.A. 2A:162-22, the Act's speedy trial requirements, are unfunded State mandates because they will force counties to spend large sums of money without a reciprocal funding source. That is, these provisions of the law do not authorize resources, other than the local property tax, to offset the direct county expenditures required for their implementation. Ironically, while the State argues that Criminal Justice Reform does not impose required expenditures on counties, the new law provides substantial additional funding for the judiciary. Moreover, recent legislation provides for the appointment of twenty (20) new judges to meet the increased demands on the criminal justice system created by the Act. It is incredible that despite these indisputable facts, the State maintains that there is no financial burden on counties, which serve a crucial role in the

¹ N.J.S.A. 2A:162-17 reiterates this forty-eight (48) risk assessment period, and NJAC submits that both sections should be considered in tandem for purposes of its claims herein.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 3

criminal justice system through their funding of county prosecutors, sheriffs, wardens and court facilities.

NJAC's primary purpose is to advocate the best interests of New Jersey's twenty-one (21) counties, and by extension, the well-being of 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 while maintaining compliance with various spending caps imposed by the New Jersey Legislature. NJAC supports fiscal reform efforts that ensure efficient administration of county government and reduce the financial burdens on county taxpayers.

NJAC also supports criminal justice reform as sound public policy. NJAC fully appreciates the need to continually develop a more equitable system of criminal justice in New Jersey. However, when considering the need for criminal justice reform alongside the clear need and public policy of reducing New Jersey's skyrocketing property taxes, the Act goes well beyond what was presented to New Jersey voters and taxpayers when the constitutional amendment eliminating the right to bail was submitted for public approval. That is, the Act imposes potentially limitless new costs upon county governments and taxpayers at a time when the public is desperately seeking solutions to the problem of ever-increasing property taxes.

Considering the standard to be applied on a motion to dismiss, NJAC is not required to prove the content of its Complaint at this time, and the Council must view all evidence in the record in a light most favorable to NJAC. In NJAC's Complaint and the affidavits submitted in

Hon. John A. Sweeney, Chair
January 20, 2017
Page 4

support of its application for preliminary injunctive relief, NJAC set forth a valid cause of action and presented facts establishing the immense cost of Criminal Justice Reform. These facts, which the State disputes, clearly militate against summary disposition at the initial pleading stage and require a plenary hearing. The State, on the other hand, has only offered conjecture and argument regarding the purported positive fiscal outcome of Criminal Justice Reform.

Furthermore, due to the magnitude of the actual and potential costs that will be imposed on county taxpayers by Criminal Justice Reform 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). To the contrary, given the significance of this matter, the broad application of the exemption to the legal definition of an “unfunded mandate” urged by the State would eviscerate the general constitutional prohibition and public policy against unfunded State mandates. The Council would thereby limit its ability to address matters of such size and scope in the future, depriving county taxpayers of an essential check and balance on immense, forced local spending.

For these reasons, and given the significant factual allegations contained in the record, the Council should deny the State's Motion to Dismiss NJAC's Complaint, and permit the matter to proceed so that NJAC is afforded the right to prove that the Act constitutes an unfunded mandate through a plenary hearing.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 5

FACTUAL BACKGROUND²

The Constitutional Amendment Addressing Pre-Trial Detention

An Amendment to Article I, paragraph 11 of the New Jersey Constitution (“the Amendment”), eliminating a criminal defendant’s right to bail, was proposed to voters in the November 2014 general election. The ballot question for the proposed Amendment provided, as follows:

CONSTITUTIONAL AMENDMENT TO ALLOW A COURT TO ORDER PRETRIAL DETENTION OF A PERSON IN A CRIMINAL CASE

1. Do you approve amending the Constitution to allow a court to order pretrial detention of a person in a criminal case? This would change the current constitutional right to bail.
2. The change to the Constitution would mean that a court could order that a person remain in jail prior to trial, even without a chance for the person to post bail, in some situations.
3. The amendment also removes language in the Constitution about bail eligibility for death penalty cases. The death penalty no longer exists in New Jersey.

² The factual background set forth herein was previously provided to the Council as part of NJAC’s application for preliminary injunctive relief. For the Council’s convenience, NJAC reiterates those facts here and incorporates by reference the affidavits of county officials underlying these facts.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 6

INTERPRETIVE STATEMENT

4. The Constitution currently requires a court to grant bail to a jailed person in a criminal case before trial. If the person posts bail, the person is released from jail pending trial.

5. The amendment would give a court the option of ordering a person to remain in jail in some situations. The court could order such detention based upon concerns that the person, if released: will not return to court; is a threat to the safety of another person or the community; or will obstruct or attempt to obstruct the criminal justice process.

6. The amendment authorizes the Legislature to pass laws concerning pretrial release and pretrial detention. The amendment would take effect on January 1, 2017 to allow any new laws to be enacted and their requirements to be established.

7. The amendment would also remove language in the Constitution about bail eligibility for death penalty cases. The death penalty no longer exists in New Jersey.

The ballot question was approved in the November 2014 general election. The resulting Amendment, which takes effect on January 1, 2017, provides, in relevant part:

11. . . . All persons shall, before conviction be [bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great] eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedure, terms,

Hon. John A. Sweeney, Chair
January 20, 2017
Page 7

and conditions applicable to pretrial release and the denial thereof
authorized under this provision.

(bracketed text deleted and underlined text added)

The Criminal Justice Reform Act

On August 11, 2014, the Governor signed the Criminal Justice Reform Act into law on the condition that it would take effect on January 1, 2017. The primary purpose of the Act is to rely upon non-monetary factors to govern pretrial release of criminal defendants unless those factors will not ensure the appearance of the defendant, protect the safety of the public, or preserve the integrity of the judicial process. N.J.S.A. 2A:162-15. If non-monetary factors cannot meet these goals, then pretrial detention or the imposition of monetary bail is permitted. Ibid.

To that end, the Act requires the courts to establish and maintain a statewide Pretrial Services Program (“PSP”). N.J.S.A. 2A:162-25. The PSP will conduct a “risk assessment” on each defendant and make recommendations to the courts regarding pretrial release. Under the Act, a defendant is temporarily detained in jail while the PSP conducts the risk assessment and prepares recommendations for the court. N.J.S.A. 2A:162-16.

Unless a prosecutor files a motion for pretrial detention, the Act requires the courts to consider the PSP’s risk assessment and recommendations and any other relevant information, and then, make a pretrial release decision without unnecessary delay, but no later than forty-eight (48) hours after a defendant is committed to jail. See N.J.S.A. 2A:162-16(b)(1);

Hon. John A. Sweeney, Chair
January 20, 2017
Page 8

N.J.S.A. 2A:162-17. This 48-hour timeframe to complete the risk assessment is referred to herein as the “risk assessment timeframe”.

The Act also establishes limits on the amount of time a criminal defendant subject to pretrial detention must remain in jail pending trial. These limits are referred to herein as the “speedy trial” requirements of the Act because they will force prosecutors to move cases faster for detained defendants. In this regard, the Act generally provides that a defendant must not remain in jail for more than ninety (90) days, not counting excludable time for reasonable delays, prior to the return of an indictment. N.J.S.A. 2A:162-22(a). The Act further provides that a defendant who has been indicted must not remain in jail for more than one-hundred and eighty (180) days following the return or unsealing of the indictment, whichever is later, not counting excludable time for reasonable delays, before commencement of the trial. N.J.S.A. 2A:162-22(b).

The Act also provides that if the defendant is not indicted or the trial does not commence within these timeframes, the defendant must be released from jail. However, further detention may still be permissible if, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community, or the obstruction of the criminal justice process would result from the defendant’s release such that no appropriate conditions for release could reasonably address that risk. N.J.S.A. 2A:162-22(a) and (b). Finally, the Act generally requires that a criminal defendant must be released from jail if two (2) years after the issuance of the pretrial detention order, excluding any delays

Hon. John A. Sweeney, Chair
January 20, 2017
Page 9

attributable to the defendant, the prosecutor is not ready to proceed to trial. N.J.S.A. 2A:162-22(c).

As a source of funding for the Act's mandates, the Supreme Court is permitted to "revise or supplement filing fees and other statutory fees payable to the court" by Court Rule. N.J.S.A. 2B:1-7. The new law anticipates that this fee increase will generate at least \$42.1 million in revenue. N.J.S.A. 2B:1-10. The Act establishes a new dedicated, non-lapsing fund -- known as the "21st Century Justice Improvement Fund" -- in the General Fund to be administered by the State Treasurer. N.J.S.A. 2B:1-9. Each year, a sum equal to the revenue from the incremental fee increase is to be credited to this new fund, and is to be appropriated as follows: \$22 million to the Judiciary for the development, maintenance and administration of the PSP; \$10 million to the Judiciary for a digital e-court information system; and \$10.1 million to the Department of Treasury for distribution to Legal Services of New Jersey. N.J.S.A. 2B:1-9; N.J.S.A. 2B:1-10. Any amount remaining in the fund after the appropriation will be retained by the Judiciary for the PSP and court information technology. N.J.S.A. 2B:1-9. The Act did not appropriate monies to county governing bodies for capital and operating costs necessary to implement the new law.

The Fiscal Impact on New Jersey Counties of the Risk Assessment Timeframe and Speedy Trial Requirements of the Act

NJAC's Complaint alleges that implementing the risk assessment timeframe and speedy trial requirements of the Act will cost county governments across the State an estimated \$1.0 million to \$2.0 million per county for the implementation of the Act's requirements because

Hon. John A. Sweeney, Chair
January 20, 2017
Page 10

they must, among other things, hire new staff and make significant improvements to county facilities. The costs associated with salaries and benefits for new hires will be ongoing.

As set forth above, the Act requires the courts to complete a risk assessment within forty-eight (48) hours after a criminal defendant's commitment to jail. NJAC's Complaint alleges that this new procedure will force counties to provide security at county court facilities on weekends, and county sheriffs must therefore hire new officers and pay overtime to current officers. The Complaint further alleges that counties will be forced to operate and maintain county court facilities on weekends, and will therefore incur additional maintenance and utility expenses. To accommodate the additional court staff required to support the risk assessment procedure, counties must make costly improvements to existing court facilities. Finally, NJAC's Complaint alleges that to effectively process the intake of criminal defendants under the new system, county prosecutors, sheriffs and jail wardens must hire additional staff to effectively manage the increased workload.

Moreover, the Act establishes three (3) separate trial time standards, and generally requires county prosecutors to be ready for trial within two (2) years of a defendant's initial commitment to the county jail. NJAC's Complaint alleges that this new process will also produce significant and continuing expenses for which there is no funding provided for under the Act. Namely, to prosecute detained defendants under these newly established trial timeframes, county prosecutors must hire new assistant prosecutors, investigators and

Hon. John A. Sweeney, Chair
January 20, 2017
Page 11

administrative staff. To accommodate additional prosecutorial staff, county governing bodies must make expensive improvements to county buildings and grounds.

Although the State is responsible for paying the salaries of the PSP employees with monies deposited in the 21st Century Justice Improvement Fund established pursuant to the Act, county freeholder boards must pay for the operation, maintenance and capital improvements of the county court facilities. County governing bodies are also mandated by State law to fund county sheriffs, county prosecutors, and county jails. The 21st Century Justice Improvement Fund does not allocate monies to county governing bodies for the costs associated with implementing and administering the Act. As alleged in NJAC's Complaint, while county governments across the State continue to struggle with a restrictive property tax cap, a declining ratable base and mounting State mandates, the requirements of the Act place a considerable financial strain on counties that will stretch their budgets to the limit.

The affidavits submitted in support of NJAC's application for preliminary injunctive relief in this matter constitute substantial evidence of the costs imposed by Criminal Justice Reform. While the Council found that these affidavits were insufficient to support the extraordinary remedy of preliminary injunctive relief, the affidavits still create, at the very least, a genuine factual dispute requiring a hearing in this matter. The affidavits provide, as follows³:

³ All facts set forth below are derived from the affidavits of county officials from the affected counties that were submitted with NJAC's application for preliminary injunctive relief.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 12

Atlantic County

The Atlantic County Prosecutor's office originally presented the County with a request to hire fourteen (14) additional persons. Following numerous discussions with the Prosecutor, the County agreed to fund seven (7) additional positions. Those positions will cost the County approximately \$577,325. Of these positions, five (5) have been hired by the Prosecutor while the other two (2) have not yet been filled. The two (2) slots remain unfilled, in part, because the Prosecutor must make budgetary adjustments for the proposed 2017 calendar year budget insofar as the Prosecutor's budget is now subject to a 2% cap limitation over and above the expenditures allocated to County taxes in the previous year. This limitation is imposed by N.J.S.A. 2A:158-1a, which became effective in January 2016 and is applied to the 2017 budget. The Prosecutor is in the process of cutting the 2017 proposed budget to meet the 2% levy tax increase.

The County will also be required to perform retrofitting of the current office space to accommodate the additional personnel. The estimated cost for the additional furniture, iPads, laptops, and Microsoft Office is budgeted at \$73,190.00. To date, five iPads and five laptops have been purchased for a total of \$15,229. \$10,525 in furniture has been acquired. The County performed some minor renovations using their own staff.

The County was also approached by the Atlantic County Sheriff, who requested additional personnel to implement Criminal Justice Reform. The Sheriff initially requested seven (7) Officers and one (1) Clerk. After budget discussions, it was agreed that the County

Hon. John A. Sweeney, Chair
January 20, 2017
Page 13

would fund one (1) additional Sheriff's Officer in 2016 and two (2) officers in the 2017 budget at an approximate cost of \$148,707.00. As of the current date, no officer has been hired and the actual hiring of three (3) employees could be stalled by the limitations imposed by the cap law which affects the Sheriff's budget. This limitation is imposed by N.J.S.A. 22A:4-8.2. The person originally hired in 2016 dropped out of the academy after the first week. The Sheriff will have to make cuts in his proposed 2017 budget to meet the 2% limit.

In addition to these two agencies, the County was forced to pay additional expenditures on new equipment to accommodate video conferencing at the County Jail. The equipment consists of Polycomm HDX, Camera shelf, Quad BRI, TV 32", annual maintenance and installation. Purchasing these items resulted in additional expenditures of \$13,455.

The expenditures which are detailed above have all involved the expenditure of County tax dollars, and there has been no corresponding financial assistance from the State of New Jersey to implement the required Criminal Justice Reform procedures at issue here.

Bergen County

To implement Criminal Justice Reform, based upon preliminary evaluation, the Bergen County Prosecutor must hire twenty (20) additional staff at the estimated cost to local property taxpayers of \$1,369,165.00. The estimated twenty (20) additional staff would consist of five (5) assistant prosecutors, ten (10) investigators and five (5) support personnel who would be required to process the potential additional caseload within the required time frames. The

Hon. John A. Sweeney, Chair
January 20, 2017
Page 14

County Prosecutor has also requested that the County purchase IT system upgrades in the amount of \$258,000.00.

Likewise, the County Sheriff must hire eight (8) additional sheriff's officers with an estimated cost of \$528,436.00. These eight (8) additional staff members would be required to accommodate the additional transport, first appearances and detention hearings required by the Act. The County Sheriff has also requested that the County purchase additional equipment and uniform needs associated with the additional sheriff's officers with an estimated cost of \$25,000.00.

Finally, Bergen County must make capital improvements to its facilities with an estimated cost of \$500,000.00, which represents approximately 1,000 – 1,500 square feet of space alteration required at the courthouse to accommodate Criminal Justice Reform activities.

Cape May County

To implement Criminal Justice Reform, the Cape May County Prosecutor has reported to the Cape May County Board of Chosen Freeholders that he must hire six (6) additional staff, which includes three (3) Assistant Prosecutors, two (2) Investigators/Detectives, and one (1) clerical staff at the estimated cost of \$464,000 to county taxpayers. These positions have not been hired yet. Due to the seasonal nature of Cape May County, where the population grows significantly in the late spring and summer months which can quadruple the number of police calls and arrests, it is anticipated that these hires will be needed at that time. In the interim, the Freeholder Board has directed that other personnel practices such as flex time or

Hon. John A. Sweeney, Chair
January 20, 2017
Page 15

comp time be investigated to determine if Criminal Justice Reform can be implemented with the reallocation of current staff rather than the addition of new staff prior to voting on new hires.

The Cape May County Prosecutor has also requested that the County renovate, refurbish, reconstruct, or construct prosecutorial facilities at the estimated cost of \$100,000 to county taxpayers. This includes office renovations, vehicles, computers, and constructing work stations. At this time, only the requested office renovations are underway. The dollar amount is based on square footage estimates, bids and state contracts. The renovations include the third floor of the courthouse and expanding the Prosecutor's office. The Cape May County Prosecutor has already purchased or has requested that the County purchase additional computers, associated software and other support equipment for the new additional staff at the estimated cost of \$100,000 in the first year (and an additional annual appropriation of \$40,000 for software maintenance licenses) to county taxpayers.

To implement the Act, the Cape May County Sheriff has reported to the Cape May County Board of Chosen Freeholders that he must hire six (6) Sheriff's Officers at the estimated cost of \$534,087 to county taxpayers. These hires are not anticipated until spring/summer of 2017 based on the aforementioned increase in criminal activity in Cape May County in those months. For the time being, Cape May County will have its Sheriff's Office use existing staff to handle the increased workload due to Criminal Justice Reform.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 16

The Cape May County Sheriff has also requested that the County renovate, refurbish, reconstruct, or construct, certain facilities for the implementation of the Act at the estimated cost of \$448,392 to county taxpayers. A portion of space in the courthouse will be allocated to the Sheriff's officers as it will allow for more holding cells, interview rooms and administrative spaces. This amount is a portion of the budgeted amount for the renovation attributable to the increased needs due to the Criminal Justice Reform.

The Warden of the Cape May County Correctional Facility has indicated that he has sufficient staff to meet the requirements of the Act, but will require additional overtime funds for existing staff at an estimated cost of \$18,000 to county taxpayers. This overtime relates to weekend transports from the courts to the county jails. The Warden has requested that the County purchase new or additional video conferencing equipment and associated equipment at the estimated cost of \$150,000 to county taxpayers.

Cape May County states that it is also necessary to renovate, refurbish, reconstruct, or construct, court and/or ancillary court facilities to implement these reform measures at the estimated cost of \$322,728 to county taxpayers. This amount is based on the square footage associated with two (2) more Judges' chambers, a courtroom, and associated support spaces.

All of the staff added to implement Criminal Justice Reform will yield additional costs on an annual basis as salaries and the cost of benefits incrementally increase over time. Moreover, to the extent any facilities construction or renovation is covered by issued bonds,

Hon. John A. Sweeney, Chair
January 20, 2017
Page 17

the County will have additional interest obligations in subsequent years to fund these improvements until such bonds are satisfied and retired.

Cumberland County

To implement Criminal Justice Reform, the Cumberland County Prosecutor must hire six (6) new staff at the estimated cost to county taxpayers of \$408,000.00. Two (2) attorneys were hired, and the County will be hiring one (1) Key Boarding Clerk, one (1) Legal Secretary and two (2) new Investigators in the near future.

The County Sheriff must hire three (3) to four (4) new officers at the estimated cost to county taxpayers of \$210,000.00. These Officers have not been hired yet as the County is waiting on a new list from the Civil Service Commission. The County Sheriff also has requested the County to purchase one (1) new live scan fingerprint unit that will meet the new requirements of the Act. The new live scan has been purchased and installed at the price of \$29,975.00.

The County Jail Warden has requested that the County purchase one (1) new live scan fingerprint unit to meet the requirements of the Act. The new live scan has been purchased and installed at the price of \$29,975.00.

The County Assignment Judge has requested that the County renovate court facilities, and construct an additional courtroom at the cost to county taxpayers of \$1.2 million. The reason for this request is that the Assignment Judge has requested an additional criminal judge to help administer the Act. If that request is granted, this new courtroom will house the

Hon. John A. Sweeney, Chair
January 20, 2017
Page 18

additional criminal judge. Funding for this project will be in the 2017 or 2018 capital budget. The cost to build out the additional courtroom is based on the County's previous experience in building a new courtroom. If the request for the new Judge is denied, there would be no need for the additional courtroom.

Further, the Assignment Judge has indicated that the State will be hiring six (6) to nine (9) new employees. Since the Cumberland County courthouse is presently at full capacity, the County's only option is to relocate the County Clerk's Office outside of the courthouse. The cost to acquire/renovate new office space is estimated at \$1,275,000.00. The new County Clerk's Office is in the negotiations stage. A planned public/private partnership is underway. Draft drawings are being reviewed and it now appears that the cost estimate is closer to \$1.7 million rather than the previous \$1.3 million which was originally stated. Cumberland County has funded approximately \$1.3 million in the County's 2016 capital budget with another \$400,000 planned for 2017 budget.

According to the County, county taxpayer funds are the only resource from which to fund Criminal Justice Reform expenditures. There will be financing through bonding capabilities, but ultimately, the revenue will come from the county taxpayer. Over the last several years, Cumberland County has been forced to reduce its workforce by approximately ten percent (10%) due to fiscal conditions.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 19

Hudson County

Hudson County has estimated it will cost \$2,126,040.50, initially, to implement the requirements of the Act. In the Prosecutor's Office, the County is purchasing ten (10) new laptops at a cost of \$15,629.80.

In the County's Adult Correctional Center, the County is anticipating hiring two (2) Social Rehabilitation Therapists and five (5) Graduate Nurses at a total cost, including salary and benefits of \$817,422.96. The County will also need to install Wi-Fi connectivity at a cost of \$6,414.40 in the facility and construction to enable video conferencing at a cost of \$232,407.17

Significant expenditures will be required in the Sheriff's Office as well to comply with the Act. First, it is anticipated that in 2017, eight (8) rank and file Sheriff's Officers will be hired at a cost, inclusive of salary and fringe benefits, of \$786,956.60. To comply with the demands of additional prisoner transport created by the Act, the County must purchase three (3) vans at a total cost of \$77,041.95, lights and equipment for the vans at \$28,946.31 and prisoner transport inserts at a cost of \$28,286.25.

Finally, capital improvements are also required of Hudson County facilities to accommodate the demands of the Act. One of the rooms in the courthouse is being renovated for this purpose at a cost of \$128,379.44. Construction materials and supplies for the project will cost the County \$4,555.61. Renovations are also occurring in the Prosecutor's office at costs of \$102,840.18 and \$21,304.49.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 20

Hunterdon County

To implement Criminal Justice Reform, Hunterdon County has undergone courthouse renovations related to accommodating additional staff with an estimated cost of \$145,000. In addition, installation of a new system for video conferencing installed at County courthouse with a cost of \$165,577.90.

Middlesex County

To implement the Act, the Middlesex County Prosecutor must hire the following staff at the estimated costs to county taxpayers: two (2) Assistant Prosecutors (salary and benefits) for a total of \$228,000; four (4) Detectives (salary, benefits, overtime) for a total cost of \$410,000, and promote a Detective to Sergeant salary for a salary differential of \$15,000. The County Prosecutor has also requested that the County purchase the uniforms and firearms for appropriate personnel listed above at a cost of \$4,000.

The County Sheriff must hire the following staff at the estimated cost to county taxpayers: five (5) officers (salary, benefits, overtime) for a total cost of \$375,000. In addition, the County Sheriff has requested the County to purchase uniforms, firearms, academy costs, and perform psychological tests, etc. for these officers at a cost of \$15,475.

The County Jail Warden must hire the following staff at the estimated cost to county taxpayers: one (1) clerical weekend records processor at \$60,000 as well as estimated overtime for current officers to staff new posts for a total of \$861,120.

In addition to the above-stated expenditures, the County must incur other consolidated

Hon. John A. Sweeney, Chair
January 20, 2017
Page 21

costs at the estimated cost to local property taxpayers: (1) building improvements and security upgrades at an approximate cost of \$50,000; (2) equipment (laptops, phones, etc.) at \$150,000; and (3) vehicles at \$180,000. Further, all costs are based on entry-level salaries which are subject to an increase each subsequent year based on the cost of living and contractual raises. Middlesex County estimates the total cost to implement Criminal Justice Reform is \$2,348,595.

Monmouth County

To implement Criminal Justice Reform, the Monmouth County Prosecutor is likely to hire the following staff at the estimated cost to local property taxpayers:

Three (3) Assistant Prosecutors at \$90,000 each = \$270,000
Three (3) Sworn County Investigators at \$90,000 each = \$270,000
One (1) Paralegal at \$37,080 = \$37,080
Three (3) Clerical employees at \$25,500 each = \$76,500
Two (2) Legal Interns at \$50,000 each = \$100,000
TOTAL ESTIMATED SALARY COSTS: \$753,580

Additional costs are anticipated to include:

Overtime = \$50,000
Transcription services = \$75,000
Investigative/Victim Witness services = \$32,760
TOTAL ESTIMATED ADDITIONAL COSTS: \$157,760

The County Prosecutor has requested that the County purchase computer/information technology connectivity equipment at a cost of \$5,000. Recurring costs to update the InfoShare module will cost \$12,000.

In addition, it is anticipated that numerous additional County Corrections Officers must be hired to provide security at the Monmouth County Correctional Institution. Starting salary

Hon. John A. Sweeney, Chair
January 20, 2017
Page 22

for that position is \$36,000, plus benefits and other ancillary costs.

Further cost includes various renovations to information technology and support services facilities at a cost of \$93,850.

Ocean County

To implement Criminal Justice Reform, the Ocean County Prosecutor must hire the following staff at the estimated cost to county taxpayers: two (2) clerical at a total cost of \$59,054; four (4) Assistant Prosecutors at a total cost of \$221,604; four (4) Investigators at a total cost of \$170,044. The subtotal for these positions equals \$450,702 in addition to fringe benefits of \$314,535 for a total of \$765,237. As of December 15, 2016, one (1) clerical, two (2) Assistant Prosecutors and one (1) investigator have been hired. Other hires are anticipated in 2017. To provide space for addition staff, the County rented a 2,500 square foot office space for \$55,000. The County entered into this contract on July 1, 2016. Currently, court personnel are in temporary spaces until Justice Complex renovations are completed. The County Prosecutor also requested the County to purchase equipment. This equipment includes:

Desk outfit for computers \$2,500 x 10 = \$25,000; 4 vehicles, investigator outfitted \$25,000 each, for a total of \$100,000. A total estimated equipment cost of \$125,000 is anticipated to be expended in 2017.

The County Sheriff must hire the following staff at the estimated cost to county taxpayers: five (5) Sheriff's Officers at \$190,000; plus, fringe benefits in the amount of \$148,226.00 for a total of \$338,266. Two (2) of the five (5) officers were hired in 2016. The other three (3) positions are anticipated to be hired in 2017. The County Sheriff has also

Hon. John A. Sweeney, Chair
January 20, 2017
Page 23

requested that the County purchase the following equipment at the estimated cost to local property taxpayers:

Desk outfit with computers $\$2,500 \times 5 = \$25,000$; 5 vehicles $\$25,000 \times 5 = \$125,000$; live scan machines $\$106,500$. The total estimated equipment cost is $\$256,500$. Live Scan machines have been purchased in 2016; vehicles and computers will be purchased in 2017.

The County Jail Warden must hire the following staff at the estimated cost to county taxpayers: two (2) Classification Officers were hired at $\$73,000$ plus fringe benefits $\$56,950$ for a total of $\$129,950$. Renovations at the correctional facility have also been required. Outfitting six (6) video arraignment rooms will cost $\$180,000$. Four (4) of the six (6) video arraignment rooms have been completed, the other two (2) will be completed in January of 2017. It cost the County an additional $\$20,000$ to equip the video and audio equipment for these arraignment rooms.

An additional County expense due to Criminal Justice Reform includes additional office space for projected court staff for an estimate of $\$500,000$ at a minimum. Based on current construction costs from the Ocean County Justice Complex Project, the final number is in negotiations. Project completion is scheduled for first quarter of 2017.

Ocean County anticipates that a combination of property tax increases for county taxpayers limited to the budget cap, decreases in other expenses in non-law enforcement areas, and reduction of personnel in non-law enforcement departments due to attrition will be required to fund the above-stated expenditures required to implement Criminal Justice Reform.

Hon. John A. Sweeney, Chair
 January 20, 2017
 Page 24

Salem County

Salem County must hire additional staff within its Prosecutor’s office to comply with the requirements of Criminal Justice Reform. Two (2) Assistant Prosecutors must be hired at an annual cost of \$182,000. Two (2) Investigators must be hired at an estimated cost of \$86,000. Finally, Salem County must hire two (2) Victim Witness Counselors at an estimated cost of \$143,000.

Somerset County

To implement Criminal Justice Reform, the Somerset County Prosecutor requested to hire the following staff at the estimated cost to local property taxpayers:

Position	Salary	Fringe	Cost
(2) Assistant Prosecutor	\$130,000	46 Percent	\$189,800
(2) Legal Secretary	\$ 64,000	45 Percent	\$ 93,440
(3) Detective	\$337,380	59 Percent	\$536,434
TOTAL			\$819,674

The County Sheriff has requested to hire the following staff at the estimated cost to local property taxpayers:

Position	Salary	Fringe	Cost
(6) Sheriff Officer	\$285,858	59 Percent	\$494,514
TOTAL			\$494,514

Hon. John A. Sweeney, Chair
January 20, 2017
Page 25

The County Jail Warden has requested to hire the following staff at the estimated cost to local property taxpayers:

Position	Salary	Fringe	Cost
(5) Correction Officer	\$198,265	59 Percent	\$315,241
TOTAL			\$315,241

The following renovations to County facilities are required:

Facility	Cost
Construction of six (6) Tele-Conference Rooms and Other Court Offices	\$190,000
Computer Equipment, Laptops, Wiring, Surveillance Equipment, Tele-Conference Equipment, and Other	\$260,000
TOTAL	\$450,000

Union County

In Union County, the Prosecutor must hire the following staff at the estimated cost to county taxpayers: Five (5) Assistant Prosecutor's, three (3) Investigators, and three (3) Keyboarding Clerks, for a total estimated cost of \$750,000.00. Most the staff have been hired except for two (2) clerks, so a large majority of the \$750,000 will be expended in 2017.

The County Sheriff must hire the following staff at the estimated cost to local property taxpayers: Sixteen (16) Sheriff Officers and two (2) Sergeants, for a total estimated cost of \$731,862.00. All of these employees have been hired, and therefore, the entire amount will be expended in 2017. The County estimates a cost of \$40,000 to renovate their facilities for Sheriff's personnel. In addition, to implement the Act, the County Sheriff has expended \$260,000.00 for transport vans, service weapons, radios and two live scan machines.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 26

The County Jail Warden must hire the following staff at the estimated cost to local property taxpayers: two (2) Lieutenants, two (2) Sergeants, two (2) part time bail clerks, for a total estimated cost of \$454,562.00. Currently, only the bail clerks have been hired. The rest are anticipated to be hired in 2017. The County Jail Warden has further requested that the County purchase live scan and a new video conference booth at a cost of \$45,000.

The County further has determined that it will expend approximately \$30,000 in overtime costs due to extended court hours. All of the above amounts will be funded through county taxpayer dollars within the budget levy cap.

Warren County

To implement Criminal Justice Reform, the Warren County Prosecutor has requested to hire one (1) Assistant Prosecutor, one (1) Investigator, one (1) Clerical staff and one (1) Agent, for a total estimated cost of \$400,000. The County Prosecutor's request for hiring these four (4) new positions will be reviewed by the County Freeholder Board as a matter of course during the January budget hearings. During these hearings, final approvals will be issued and hire dates will be established. The dollar amount and number of positions will not be finalized until the conclusion of those January hearings. The County Prosecutor has requested that the County renovate buildings to accommodate the extra staffing at a cost of \$75,000. The County Prosecutor's requested renovations are contingent upon approval of the new positions discussed above. The renovations will occur in the courthouse annex complex, which houses the Prosecutor's staff. The estimated cost set forth was provided by the County's Public Works

Hon. John A. Sweeney, Chair
January 20, 2017
Page 27

Director after reviewing the project specifications. An additional \$57,000 is estimated for a new vehicle and its usage, and also, laptop computers. The vehicle and laptops set forth above are again contingent upon approval of new staff for the Prosecutor.

Warren County cannot estimate anticipated costs for its Sheriff's Department as the County is transitioning to a new Sheriff at this time. However, the County Jail Warden has requested to three (3) new officers at a total cost of \$220,000, inclusive of salary and benefits. The Warden's request for additional staff will also be determined during January budget hearings mentioned above.

The courts required a video conference set up at a cost of \$75,000, which has been installed. To that end, existing space at the County's correctional center and courthouse had additional cable wire installed, video equipment purchased and computer equipment purchased to provide remote access for prosecutor staff. In addition, repurposing of 1,663 square feet of space by relocating Surrogate from the courthouse to another County facility will provide for additional judicial space. An additional 939 square feet of existing courthouse space was also renovated to support Criminal Justice Reform functions at a cost of \$150,000. The vacated Surrogate space is now assigned to the courts. The actual relocation of the Surrogate occurred in October 2016, and the relocation costs were provided by the County's Public Works Director. Additional maintenance and facility costs have yet to be determined. As the County has not seen any growth in its revenue base, any additional costs approved for implementation of the Act will need to be provided through an increase in the 2017 county tax amount.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 28

The State's Admission of Potential Hidden Costs

In addition to the foregoing costs, there is also the significant potential for hidden costs which cannot be assessed with any degree of certainty. For instance, in many municipalities across the state, municipal police departments temporarily detain arrestees at the police station to provide an opportunity to post bail on complaint-warrants before being transferred to the county jail. Under the Act, this practice will no longer be permitted on complaint-warrants. This could potentially substantially increase the number of new inmates to be processed at county jails. In light of the potential for hidden costs, Executive Order No. 211 instructed the Attorney General to “evaluate the costs, savings, and administrative challenges associated with the reforms to New Jersey’s pretrial system.” To that end, the Criminal Justice Reform Study was recently released by the Attorney General’s Office. While charged with the directive to evaluate costs and savings, *the Study clearly concluded that it could not make such findings*. Set forth below are pertinent sections of the report demonstrating the State’s inability to quantify costs associated with Criminal Justice Reform:

- “It is especially important to note that the Attorney General Directive was designed to afford County Prosecutors and police department flexibility to adapt practices and procedures to address local needs and available resources. In other words, the Directive has not been fashioned as a “one size fits all” approach. Thus, the extent to which new procedures will affect any given agency—and thereby produce costs or savings—depends on the exercise of discretion vested in County Prosecutors. *As a result, it is not possible in this report to project monetary amounts relating to costs or savings associated with implementing Criminal Justice Reform*. Rather, this report identifies the aspects of Criminal Justice Reform that may pose challenges and produce benefits to police departments, Sheriffs’ Offices, Prosecutors’ Offices, and county jails.” Study Commission Report, pg. 6. (Emphasis added)

Hon. John A. Sweeney, Chair
January 20, 2017
Page 29

- “As noted previously, at no point will this report attempt to quantify the estimated monetary costs or savings of Criminal Justice Reform, as the specific implementation of Criminal Justice Reform is dependent upon the discretion of each Prosecutor’s Office and their interaction with each Criminal Justice agency within their jurisdiction. Instead of discussing “savings”, this report will discuss non-monetary benefits afforded to agencies. Though there may be quantifiable monetary savings associated with Criminal Justice Reform, there are equally important and notable non-monetary benefits that agencies will see as the result of these reforms. Rather than use the term “costs”, the word “challenges” will be used. Challenge covers a broad range of possible concerns that may be administrative, financial, personnel based, training based, or related to the availability of other resources.” Id., pg.7. (Emphasis added)
- “While Criminal Justice Reform strives to make the arrest process more uniform throughout the State, there are several points of discretion afforded to Prosecutors’ Offices in regard to the practical implementation of these changes. Because of this wide discretion, which may lead to variation in policies for different law enforcement departments, and the unknown specifics in terms of volume and type of crime and the criminal histories of arrestees, *this report will not (nor could it) provide a specific monetary cost associated with implementing Criminal Justice Reform.* Instead, this report attempts to identify the areas and aspects of Criminal Justice Reform that may result in benefits or challenges for police departments, Sheriff’s Offices, Prosecutors’ Offices, and county jails.” Id., pg. 8. (Emphasis added)
- “The sections below encompass, on a phase-by-phase basis, a comparative analysis of the processes and procedures currently in place and those which will [be] implemented on January 1, 2017, when Criminal Justice Reform takes effect. Where applicable, the anticipated impacts are addressed, highlighting challenges and benefits. Though potential consequences are highlighted, results are obviously not guaranteed. The true impact of Criminal Justice Reform is difficult to assess as there are many unknowable factors involved including the future volume of arrests, the offenses for which individuals will be arrested in the future, the specific circumstances surrounding offenses, the body of evidence supporting criminal allegations, and the criminal histories of future offenders. *While it is possible to extrapolate some of this information from data on arrests and arrestees from prior years, the ability to quantify monetary savings and costs is severely limited, if not practically impossible.*” Id., pg.19. (Emphasis added)

Hon. John A. Sweeney, Chair
January 20, 2017
Page 30

LEGAL ARGUMENT

NJAC'S COMPLAINT STATES A VALID CAUSE OF ACTION THAT CRIMINAL JUSTICE REFORM 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(1)(b). Specifically, Article VIII, Section II, paragraph 5 of the New Jersey Constitution prohibits 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 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 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 or on behalf of a county . . . that any provision of a statute

Hon. John A. Sweeney, Chair
January 20, 2017
Page 31

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 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 failure to state a claim and motions for summary judgment, 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.

Indeed, courts will “search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of

Hon. John A. Sweeney, Chair
January 20, 2017
Page 32

claim, opportunity being given to amend if necessary,”⁴ id. at 746, and “if a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.” Smith v. SBC Communications Inc., 178 N.J. 265, 282 (2004) (quoting F.G. v. MacDonell, 150 N.J. 550, 556 (1997)). Courts therefore accept as true all factual allegations in the complaint, and all legitimate inferences drawn therefrom. See Craig, 140 N.J. at 625; Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987). In sum, at such a preliminary stage in the proceedings, courts are not concerned with a claimant’s ability to prove the allegations contained in a complaint. 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 judgment is inappropriate where “the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient

⁴ At best and at minimum, in the unlikely event that the Council finds NJAC’s Complaint deficient, NJAC should be afforded an opportunity to amend its Complaint prior to dismissal in accordance with New Jersey’s liberal pleading standards. See N.J. Court Rule 4:9-1.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 33

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 or 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 judgment. (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 affidavits submitted in support of its application for preliminary injunctive relief, NJAC set forth a cause of action and facts establishing the immense cost of Criminal Justice Reform as an unfunded mandate. These affidavits, at the very least, create a genuine issue of fact regarding the costs of Criminal Justice Reform for counties, and therefore require a plenary hearing. The State, on the other hand, has only offered conjecture and argument regarding the purported positive fiscal

Hon. John A. Sweeney, Chair
January 20, 2017
Page 34

outcome of Criminal Justice Reform. 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.

A. The Criminal Justice Reform Act Constitutes an Unfunded Mandate Upon Counties.

County governments fulfill an essential role in supporting New Jersey's criminal justice system. In addition to providing suitable courtrooms for criminal cases pursuant to N.J.S.A. 2B:6-1(b), county governments are responsible for funding the operations of both county prosecutors and sheriffs. County prosecutors are constitutional officers with responsibilities defined by statute. N.J. Const. Art. 7, § 2, ¶ 1. "[T]he county prosecutor is constitutionally created and statutorily endowed with powers that arm him or her to perform wide ranging duties." See Yurick v. State, 184 N.J. 70, 78-79 (2005); see also N.J.S.A. 2A:158-1. Along with the Attorney General, county prosecutors have exclusive jurisdiction over criminal matters. N.J.S.A. 2A:158-4; see also Morss v. Forbes, 24 N.J. 341 (1957). To that end, county prosecutors must use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders. N.J.S.A. 2A:158-5. County prosecutors receive the necessary funds to uphold this mandate and execute their duties from county governments, subject to the approval of county freeholders. N.J.S.A. 2A:158-7; N.J.S.A. 2A:158-1a.

However, county prosecutors' law enforcement functions are not supervised by county governments because law enforcement is a basic State function. See Lavezzi v. State, 219 N.J. 163, 175-76 (2014)(citing Wright v. State, 169 N.J. 422, 451-452 (2001)). Rather, county

Hon. John A. Sweeney, Chair
January 20, 2017
Page 35

prosecutors are subject at all times to the Attorney General's statutory power to supervise and supersede them. Id. Moreover, the assignment judges for each county possess the final and conclusive authority to require the county freeholders, on application by a county prosecutor, to meet the stated funding needs of the prosecutor not provided for by the county in its regular or emergency appropriations for the prosecutor's operations. In re Application of Bigley, 55 N.J. 53 (1969); In re Taylor, 196 N.J. 162, 167 (2008).

Likewise, county sheriffs are constitutional officers funded by county government with duties established by statute. N.J. Const. Art. 7, § 2, ¶ 2; N.J.S.A. 22A:4-8.2; see also Burlington Cty. Bd. of Chosen Freeholders, 99 N.J. 90, 100 (1985). County sheriffs have a statutory duty to provide courthouse security subject to the direction of the county assignment judge. N.J.S.A. 2B:6-1. County sheriffs also have primary responsibility over county jails. N.J.S.A. 30:8-17; see also State v. Hughes, 230 N.J. Super. 223, 229 (App. Div. 1989). However, county governments can assume responsibility for county jails, and appoint a warden to operate the jail. N.J.S.A. 30:8-19 et seq. If a county elects to do so, then county government is directly responsible for the care, custody and control of the county jail, including the conduct of any warden or keeper appointed by it. Id. Either way, sheriffs and county jailers are both required to receive all persons apprehended for offenses against the State, and can be personally charged with an offense for refusing to receive an inmate. N.J.S.A. 30:8-1. These are therefore core government functions directed by statute that counties and their officers cannot abdicate. See, e.g., Essex County Corrections Officers PBA

Hon. John A. Sweeney, Chair
January 20, 2017
Page 36

Local No. 382 v. County of Essex 439 N.J. Super. 107, 125 (2014). Notwithstanding the constitutional and statutory roles of county prosecutors, sheriffs and wardens, their ability to obtain annual funds from counties is still constrained by state law, including the 2% property tax cap. See N.J.S.A. 40A:4-45.44 to -45.47; N.J.S.A. 2A:158-1a; N.J.S.A. 2A:158-7; N.J.S.A. 22A:4-8.2.

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 risk assessment timeframe and speedy trial requirements of the Criminal Justice Reform Act impose a mandate on counties because the county officers described above serve essential roles within New Jersey’s criminal justice system. That is, given the constitutional and statutory responsibilities of county prosecutors, sheriffs and wardens, they are required to comply with the Act’s risk assessment timeframe and speedy trial requirements. Moreover, direct expenditures are *required* for implementation of the Act’s provisions because counties must fund these county officers’ operations. Although county freeholder boards exercise some discretion in funding the operations of county prosecutors, sheriffs and wardens, their operations are still mandated by

Hon. John A. Sweeney, Chair
January 20, 2017
Page 37

statute. In other words, county governments cannot simply reject their good faith requests to fund expenditures related to Criminal Justice Reform.

As NJAC's Complaint and related affidavits establish, counties must now pay overtime to existing staff, hire new staff, and provide, furnish and maintain new facilities for the new staff required to sustain meaningful compliance with the Act. For the risk assessment timeframe, the requested expenditures include, but are not limited to, upgrading court facilities, staffing courts on weekends, hiring more sheriff's officers and court personnel, and increased maintenance and utility costs for keeping buildings open. For the speedy trial requirements, the requested expenditures include, but are not limited to, hiring and training new assistant prosecutors, investigators, and administrative personnel, along with providing facilities for this new staff.

The Atlantic County Prosecutor and Sheriff struggle to secure the resources necessary to comply with the unfunded mandate of Criminal Justice Reform because of the 2% cap limitation and the need to budget for other essential functions. Ocean County anticipates that a combination of (1) tax increases to taxpayers, (2) decreases in other expenses in non-law enforcement areas, and (3) reductions of personnel in non-law enforcement departments due to attrition will all be required to fund the above-stated expenditures for Criminal Justice Reform. On the other hand, Cumberland County has already been forced to reduce its workforce by approximately ten percent (10%), and cannot look to further reduce the workforce to make room in its budget for the costs of Criminal Justice Reform. The burden will therefore fall on

Hon. John A. Sweeney, Chair
January 20, 2017
Page 38

Cumberland County taxpayers within the property tax cap. Likewise, in Union and Warren Counties, all of the required expenditures will be funded through county taxpayer dollars within the budget cap. Indeed, Warren County has not seen any growth in its revenue base, which necessitates an increase in taxes. Notwithstanding the foregoing, there is also the significant potential for hidden costs that the State has explicitly acknowledged cannot be quantified.

Despite NJAC's submission of evidence demonstrating actual costs to counties, the State contends that NJAC is relying on speculative estimates. Thus, the State claims that NJAC has not demonstrated the required expenditures necessary to establish an unfunded mandate. (See State's brief, pgs. 37-39). Not only does the State's argument completely ignore the evidence submitted by NJAC in this matter, and the liberal standard for pleadings, the State also ignores Council precedent. For instance, in IMO Deptford Township, Council on Local Mandates (February 17, 2016), the Council found that the municipality did not have to allege an immediate need to purchase new police cars to establish that the State's requirement for installation of dash cameras in new police cars constituted an unfunded mandate. The Council found that, eventually, the municipal police department would need to purchase new cars, and then be subject to the unfunded mandate. Thus, the Council rejected the State's argument that the costs were speculative or hypothetical

Moreover, in In Re Counties of Morris, Warren, Monmouth and Middlesex, Council on Local Mandates (September 26, 2006), the Council took an expansive view of what

Hon. John A. Sweeney, Chair
January 20, 2017
Page 39

constitutes a State mandate requiring direct expenditures by local governments. There, several counties argued that a change in State policy governing its pick-up and disposal of roadside deer carcasses constituted an unfunded mandate. The State responded by arguing that there was no express legal requirement that local governments perform deer removal services in its place, and denied that its past practice rose to the level of a statutory mandate for local governments. The Council rejected this argument, finding that the State's practice of clearing dead deer from the roads for many years demonstrated a governmental duty to do so, and that this duty now fell on the local governments without any source of funding other than property taxes. That is, local governments could not just simply let deer rot on the side of the road.

Here, NJAC has offered affidavits from county officials confirming requests for funding related directly to Criminal Justice Reform, which must be viewed in a light favorable to NJAC on this motion. The State, on the other hand, has offered nothing but argument and conjecture that the Act will not increase costs for counties and that it will save them money. Indeed, *it is the State's argument that is speculative*. The State effectively admitted in its recent report on the costs of Criminal Justice Reform that it cannot quantify the costs for counties. Ironically, while the State argues that Criminal Justice Reform does not impose required expenditures on counties, the new law provides substantial additional funding for the judiciary. Moreover, recent legislation provides for the appointment of several new judges to meet the increased demand on the criminal justice system created by the Act. It is incredible that despite these indisputable facts, the State maintains that there is no financial burden on counties, which

Hon. John A. Sweeney, Chair
January 20, 2017
Page 40

serve a crucial role in the criminal justice system through funding county prosecutors, sheriffs, wardens and court facilities.

The State highlights the discretion reposed in county prosecutors, sheriffs and wardens, and argues that through the exercise of this discretion, they can avoid any increased costs associated with the Act by adjusting their priorities. (See State's brief, pgs. 31-33). This argument simply proves too much. Following the State's logic to the extreme, county prosecutors, sheriffs and wardens could be forced to ignore other essential law enforcement responsibilities in service of the Act's requirements. The matrix of legal requirements underlying the roles of these constitutional officers in New Jersey's criminal justice system clearly does not contemplate such a result. The State's argument is also undercut by the affidavits submitted by NJAC in this matter. Those affidavits demonstrate that county prosecutors, sheriffs and wardens have made direct requests for funding from counties to meet the requirements of the Act. These county officers actually deal with the caseloads in their respective counties. They know what they need, and they have asked for it. The State is in no position to question the wisdom of their requests.

In making its arguments and assumptions regarding cost savings, the State conveniently ignores the fact that defendants arrested on complaint-warrants who posted bail at the police station and never entered county jails under the old system will now be kept in custody for days until a risk assessment is completed. The daily flow of these defendants through the risk assessment process required by the Act creates a new jail population that could offset any

Hon. John A. Sweeney, Chair
January 20, 2017
Page 41

detainee population reduction achieved through Criminal Justice Reform. This phenomenon could undermine alleged cost savings asserted by the State. The State also assumes that only a small subset of cases will require pre-trial detention, and the pre-trial detention hearing process will not result in a flood of new litigation for the criminal courts. However, in direct contradiction to this assumption, the State has approved legislation to bolster the criminal bench in anticipation of increased litigation related to the Act. Such increased litigation will obviously require more resources to be allocated by counties to county prosecutors and sheriffs and to court facilities.

Remarkably, in arguing that Criminal Justice Reform does not impose required expenditures on counties, the State asserts that county prosecutors are not required to comply with the speedy trial requirements of the Act because failure to do so will not result in dismissal of criminal cases. (See State's brief, pg. 35). In other words, the only downside to failing to comply with the speedy trial requirements is that potentially dangerous individuals could be released, and thus, financial expenditures are not required to ensure compliance. This argument is specious. County prosecutors would be ignoring their duty to the public by simply allowing dangerous individuals to be released due to a lack of resources to investigate and try the cases of detained individuals within the new timeframes of the Act. In other words, if pre-trial detention of a dangerous defendant is requested by a county prosecutor and/or ordered by the court for good cause, then prosecutors are effectively "on the hook" to meet the speedy trial requirements of the Act.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 42

Finally, as suggested throughout this section, the State has not authorized resources, other than the property tax, to offset these additional direct expenditures. The only funding provided by the Act is the 21st Century Justice Improvement Fund. That fund, however, will not offset the counties' costs in any way. Again, the State recently enacted legislation providing funding for more judges to support the judiciary due to the increased demands of the Act. If the State appoints twenty (20) new criminal judges, then County Prosecutors and Sheriffs will be forced to respond accordingly through hiring more assistant prosecutors, sheriff officers and support staff thereby creating an increased financial burden for county taxpayers.

In sum, the State's argument that counties *may* save money in the long run is irrelevant and speculative. It may take years for counties to realize any cost savings, but the upfront costs *are real* and present a significant burden on county taxpayers. Like any worthwhile long-term investment, Criminal Justice Reform should have contained initial capital for counties and it did not. This failure to consider the costs for property taxpayers is exactly what the Council exists to prevent. For these reasons, viewing NJAC's Complaint and affidavits in a light most favorable to NJAC as required on a motion to dismiss or motion for summary judgment, the risk assessment timeframe and speedy trial requirements of the Act meet the definition of an unfunded mandate. Accordingly, the State's motion to dismiss must be denied.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 43

B. 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 Criminal Justice Reform 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. In other words, the State argues that the Criminal Justice Reform Act ("Act") implements the constitutional amendment eliminating the right to bail ("Amendment"), and thus, the Act is exempt from the definition of an "unfunded mandate" under the law. 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.

In assessing the State's argument regarding application of this exemption, it is helpful to reconsider the historical underpinnings of the constitutional referendum that created the Council. 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

Hon. John A. Sweeney, Chair
January 20, 2017
Page 44

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. This decision to add exemptions does not appear to have been discussed formally in committee or in an interpretive statement. Nevertheless, the exemptions received considerable press attention at the time this law was being formulated. In the *Trenton Times* on May 18, 1995, the newspaper’s editorial board noted:

The proposal would allow six exceptions to the state pay requirement: When both houses of the legislature agree to waive the requirement by a three-fourths vote, or when a mandate meets the terms of a federal law, redresses a failure to comply with prior laws, eases or revised an existing mandates, affects government and business in substantially the same fashion . . . or implements provisions of the State Constitution. The latter provision is intended to get the state off the hook if the Supreme Court demands new programs to meet the constitutional guarantee of a ‘thorough and efficient’ education. (Emphasis added).

This sentiment that the exemption for laws implementing the state constitution was added in response to school funding decisions by the Supreme Court is mentioned many times in numerous newspapers. For instance, in a May 19, 1995 article, *The Record* stated,

Hon. John A. Sweeney, Chair
January 20, 2017
Page 45

“Furthermore, there would be several exemptions to the ban on unfunded mandates including any that implement provisions of the state Constitution. For example, the state could force municipalities to increase school funding to provide what the state determines to be a ‘thorough and efficient’ education.”

Moreover, in a public hearing, the Senate Committee accepted a memorandum from the Assistant Executive Director of the New Jersey State League of Municipalities (“League”) that identified unfunded mandates from Trenton. Notably, that list included “Construction of Jail Cells”, “Audio-Visual Monitoring of Cells”, “Juvenile Detention Cells” and “24 Hour Physical Monitoring of Juveniles” as unfunded mandates. These were specifically identified mandates that were priced by the League to provide perspective to the Legislature of the evils to be prevented by a new unfunded mandate law.

The Legislature ultimately adopted the above-described exemptions, including the exemption of statutes and regulations that “implement the provisions of [the New Jersey] Constitution” from the definition of an unfunded mandate. See N.J. Const., Art. 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 Services 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

Hon. John A. Sweeney, Chair
January 20, 2017
Page 46

Local Mandates, supra, (rejecting the argument that any form of educational 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 Jersey 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

Hon. John A. Sweeney, Chair
January 20, 2017
Page 47

Constitution. If so, the constitutional principle 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, e.g., State v. Muhammad, 145 N.J. 23, 44 (1996). The Council clearly recognized that all State laws can be said to “implement” the State constitution, which is the source from which all State legal authority flows. Indeed, the State’s ability to pass laws pursuant to its constitution to protect the safety and welfare of its citizens is expansive. 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. Otherwise, this exemption could easily swallow the rule.

Indeed, “[t]he polestar of constitutional construction is always the intent and purpose of the particular provision.” See State v. Apportionment Comm'n, 125 N.J. 375, 382 (1991). In construing the language of our Constitution, New Jersey Courts “give effect to the intent of the people in adopting it.” Gangemi v. Berry, 25 N.J. 1, 10 (1957). Likewise, prevailing rules of statutory construction mandate that courts attempt to harmonize legislative enactments that address the same subject matter, rather than interpret one statute in a way that negates

Hon. John A. Sweeney, Chair
January 20, 2017
Page 48

numerous other statutes. Accardi v. Mayor and Council of City of North Wildwood, 145 N.J. Super. 532, 544-45 (Law Div. 1976) (harmonizing provisions of both the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.). Furthermore, different statutes in pari materia, “though enacted at different times, relating to the same subject, are called statutes in pari materia, and are construed together.” Cohn v. Colgan, 97 N.J.Eq. 9, 12 (Ch. Div. 1925). The Court’s task is to “harmonize the individual sections and read the statute in the way that is most consistent with the overall legislative intent.” SASCO 1997 NI, LLC v. Zudkewich, 166 N.J. 579, 586 (2001) (quoting Fiore v. Consol. Freightways, 140 N.J. 452, 466 (1995)). When construing such statutory sections, “[a] construction that will render any part of the statute inoperative, superfluous or meaningless, is to be avoided.” Fiscella v. Nulton, 22 N.J. Super. 367, 372 (App. Div. 1952) (citations and internal quotation marks omitted); see also Hoffman v. Hock, 8 N.J. 397, 406 (1952). Statutory interpretations that lead to absurd or unreasonable results are also to be avoided. State v. Gill, 47 N.J. 411, 444 (1966).

A matrix of statutory provisions intended to limit county property tax increases at the county level exists alongside the prohibition against unfunded mandates. See e.g., N.J.S.A. 40:20-1 (granting the Board of Freeholders the power to control the property, finances, and affairs of the County); N.J.S.A. 40A:4-2 and -3 (requiring the Board of Freeholders to operate on a cash basis sufficient to meet all necessary operating costs); N.J.S.A. 40A:4-57 (prohibiting the Board of Freeholders from incurring any expenses or liabilities for which no

Hon. John A. Sweeney, Chair
January 20, 2017
Page 49

appropriation is provided or in excess of any amount appropriated therefor); N.J.S.A. 40A:4-45.45 (the property tax cap law); cf. N.J.S.A. 34:13A-16(g) (the Interest Arbitration Reform Act, which requires arbitrators in interest arbitrations to consider the interests and welfare of the public, the financial impact of any award on the governing unit and its residents, and statutory restrictions imposed on the employer, such as the property tax cap, when making an interest arbitration award); N.J.S.A. 40A:10-21.1 and 52:14-17.28c (requiring county employees to contribute a minimum amount of their base salary toward their health care benefits). Moreover, a number of recent laws enacted by the Legislature reflect a public policy against excessive spending to decrease county property tax burdens.

For instance, in 2010, the Legislature enacted P.L. 2010, c.44, which reduced the previous cap on tax levies from 4% of the previous year's tax levy to 2%, and imposed a new formula which restricts the County's ability to raise taxes to fund its budget in the successive year. In general, the tax levy cap law (subject to certain exemptions), P.L. 2010, c.44, requires that the County's overall tax levy not exceed 2% more than the prior year's tax levy. In a similar vein, in 2010, the Legislature passed a law, P.L. 2010, c.2, which requires county employees to contribute a minimum of 1.5% of their base salary toward their health care benefits. The next year, in 2011, the Legislature passed a similar law, P.L. 2011, c.78, which requires county employees to pay a minimum contribution toward the cost of their health care based on a formula determined by the type of coverage, base salary, and cost of coverage, which amount, when applied, cannot be less than the floor of 1.5% of their base salary. See

Hon. John A. Sweeney, Chair
January 20, 2017
Page 50

N.J.S.A. 40A:10-21.1; N.J.S.A. 52:14-17.28c. The percentage required to be contributed increases each year throughout the course of a 4-year phase in period. Id.

When interpreting the general prohibition against unfunded mandates alongside the exemption for provisions implementing the constitution, and considering the clear public policy against massive property tax increases at the local level, the Act's risk assessment timeframe and speedy trial requirements do not implement the New Jersey Constitution. Rather, when considering the immense burden on property taxpayers created by these provisions, the provisions were not contemplated by the Amendment, as interpreted by the ballot question and interpretive statement provided to the public. Moreover, like Monmouth-Ocean Educational Services Comm'n, supra, the Act does not expressly reference or incorporate the Amendment in its introductory section or anywhere else in its text. Compare IMO Township of Medford, Council on Local Mandates (June 1, 2009) (introductory section of Fair Housing Act explicitly references state constitution).

The ballot question and interpretive statement provided to voters during the November 2014 general election stated that through the Amendment, dangerous criminals would lose the right to bail and be subject to pretrial detention. Indeed, the State acknowledges in its report on the costs associated with the Act that "the language of the [ballot] question suggests a harsh stance on arrestees". (See Executive Order No. 211 Study, pg. 9.) The Amendment eliminates the right to bail, and in its place, creates a presumption that all criminal defendants are eligible for pretrial release. This presumption can be overcome if no conditions of pre-trial release will

Hon. John A. Sweeney, Chair
January 20, 2017
Page 51

ensure the defendant's appearance, protect the public and/or preserve the integrity of the judicial process. Under those circumstances, the courts can order pretrial detention of a defendant. Monetary bail is still permitted by the Amendment as a condition of release, but it is no longer set as a matter of right.

Under the right to bail that existed prior to the adoption of Criminal Justice Reform on January 1, 2017, monetary bail was required to be set within twelve (12) hours after an arrest (R. 3:4-1(b)). Any person unable to post bail was required to have his or her bail reviewed by a Superior Court judge no later than the next day, that is not a Saturday, Sunday or legal holiday. R. 3:26-2(c). In addition, a first appearance before a judge for those in custody was required to occur within seventy-two (72) hours, excluding holidays. R. 3:4-2(a). All of these requirements maintained a 72-hour window and exceptions for weekends and/or holidays, thus not requiring courts to be open on weekends.

The Amendment eliminates the right to bail, and replaces it with a presumption of pretrial release of detainees with monetary bail remaining as a possible condition of release. However, nowhere in the Act or the risk assessment timeframe is the Amendment expressly referenced. Also, the ballot question and interpretive statement underlying the Amendment do not address the creation of a new, accelerated court procedure that places a costly burden on the court system (and by extension, county property taxpayers) above and beyond the bail procedures that previously existed, described above. The harsh language of those interpretive materials, which offer guidance on the intention of the Amendment, does not suggest such a

Hon. John A. Sweeney, Chair
January 20, 2017
Page 52

result⁵. For these reasons, the Act's risk assessment timeframe does not implement the New Jersey Constitution.

Similarly, nowhere in the Act's speedy trial requirements is the Amendment expressly referenced. Again, the ballot question and interpretive statement underlying the Amendment only addressed elimination of the right to bail, not an accelerated trial process for detained defendants that places a costly burden on the court system and county taxpayers above and beyond the prior bail procedures. Clearly, the harsh language of those interpretive materials does not suggest such a drastic change in the trial process benefiting criminal defendants and further burdening county taxpayers.

Moreover, the Act's speedy trial requirements do not implement the long-standing speedy trial right set forth in Article I, Paragraph 10 of the New Jersey Constitution and the Sixth Amendment to the United States Constitution. Nowhere in the Act or the speedy trial requirements is the speedy trial right contained in the federal and state constitutions mentioned. Moreover, the Act does not reference or implement the four-factor balancing analysis of Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), which remains the governing standard to evaluate claims of a denial of the federal and state constitutional right to a speedy trial in all criminal and quasi-criminal matters in New Jersey. See State v. Cahill, 213

⁵ Page nine (9) of the proposed *amici curiae's* brief assumes that all voters who approved the Amendment read the Asbury Park Press article or the League of Women Voters' analysis of the ballot question. This assumption is flawed, and does not prove that voters were aware of the potential for a massive increase of costs at the county level caused by the Act. Rather, the ballot question and interpretive statement alone are the only reliable guide for ascertaining the mindset of voters in approving the Amendment. These materials simply do not convey the impression that county property taxpayers would face an increased tax burden to benefit a small subset of criminal defendants.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 53

N.J. 253, 258 (2013). For these reasons, the Act's speedy trial requirements do not implement the New Jersey Constitution.

As set forth above, despite the recent legislative push to lower the property tax burden, county governments across New Jersey are now required to spend tens of millions of dollars to initially comply with the disputed provisions of the Act, and will then incur ongoing increased costs related to the salaries and benefits of new employees required to maintain compliance. This is despite the fact that the counties are still hamstrung by the limitations on raising property taxes to fund the increased expenditures. The known costs are immense, and the hidden costs of the Act are potentially astronomical. Indeed, the State has essentially acknowledged, through recent legislation providing funding for appointment of several new judges, that Criminal Justice Reform will create added strain on the criminal justice system.

Moreover, the State's own study concluded that the costs are impossible to quantify, but sought to minimize this conclusion by highlighting the non-monetary benefits of Criminal Justice Reform. *The conclusion of this study is exactly what the Council exists to prevent.* Like Shiloh Borough, the Council must balance any claim that the Act implements the constitution against its own constitutional mandate to ensure that State government does not effectively bankrupt local governments with unfunded mandates of enormous magnitude and scope, such as Criminal Justice Reform. The Council must also consider the property tax cap, and its effect on the ability of counties to finance compliance with the Act while supporting other essential county government services. Finally, the Council must construe its own enabling legislation

Hon. John A. Sweeney, Chair
January 20, 2017
Page 54

alongside other state laws seeking to prevent skyrocketing property taxes in New Jersey. These limitations force county governments, prosecutors and sheriffs to operate efficiently, but leave little room to absorb the costs of new unfunded mandates such as those required by Criminal Justice Reform. Permissible budget increases can be swallowed up by the unanticipated costs of such mandates. When considering the totality of the circumstances presented by NJAC's Complaint and the affidavits submitted thus far, the Act does not implement the New Jersey Constitution. If this exemption were applied in this case, it would eviscerate the public policy inherent in the general rule against unfunded mandates.

Hon. John A. Sweeney, Chair
January 20, 2017
Page 55

CONCLUSION

NJAC's Complaint states a claim upon which relief can be granted, and material fact disputes preclude summary judgment against NJAC. Moreover, considering the scope and magnitude of the costs of Criminal Justice Reform Act 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 these reasons, the State's motion to dismiss should be denied, and this matter should proceed to a plenary hearing.

Very truly yours,

GENOVA BURNS LLC



ANGELO J. GENOVA

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