PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

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Via Overnight Mail and Email
Hon. John A. Sweeney, A.J.S.C. (Ret.), Chairman
New Jersey Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, New Jersey 08625
filings-clmand@treas.state.nj.us

Re: In the Matter of the Complaints filed by the Franklin Township Board of Education, Lower Township Elementary Board of Education and Gloucester City Board of Education
Docket Nos. COLM-0001-21, COLM-0001-21-A, COLM-0001-21-B

Dear Judge Sweeney:

Please accept this letter brief in lieu of a more formal brief on behalf of Respondent, the Executive Branch of the State of New Jersey ("Respondent"), in opposition to Complainants' request for a preliminary injunction in the above-referenced matters.

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PRELIMINARY STATEMENT

Respondent, the Executive Branch of the State of New Jersey, submits this letter brief in opposition to the request by Complainants, the Franklin Township Board of Education ("Franklin Township"), the Gloucester City Board of Education ("Gloucester City"), and the Lower Township Elementary Board of Education ("Lower Township"), for an order enjoining the enforcement of L. 2020, c. 44 ("Chapter 44") pending the outcome of this consolidated matter. This matter arises from the Legislature's update to a long-existing health insurance plan for New Jersey's educators. All three Complainants have filed nearly identical complaints seeking to strike Chapter 44, and also requesting a stay of the legislation. Complainants' request for a stay must be denied

because: (1) they have failed to establish they will suffer substantial or significant financial hardship as a result of the legislation; (2) they have not demonstrated a likelihood of success on the merits of the case; and (3) the public interest weighs heavily against granting a stay in this instance.

Chapter 44 addresses the administration and management of health care benefit plans for State school employees whose employers participate in the School Employees' Health Benefits Program ("SEHBP"), and for certain eligible employees whose employers do not participate in the SEHBP. Under Chapter 44, beginning on January 1, 2021, the SEHBP shall offer three plans that provide medical and prescription drug benefits, thus terminating all other plans offered prior. The three plans to be offered under Chapter 44 include the New Jersey Educators Health Plan ("NJEHP"), the SEHBP NJ Direct 10 plan, and the SEHBP NJ Direct 15 plan.

From the outset, Respondent denies that Chapter 44 constitutes an unfunded mandate. Local school districts have been sharing the cost of health insurance with their employees for decades, in accordance with changing legislation and collective negotiations agreements between employers and employees. To the extent there are costs associated with a district's offering of health insurance in accordance with Chapter 44, this is not a new phenomenon. Healthcare costs are constantly in flux, and depend

on a number of unpredictable factors from one plan year to the next. This has been the norm for decades — Chapter 44 is nothing more than an update to a model that has existed since 1961. Moreover, Chapter 44 includes an important safety valve for employers and employees — it requires employers to engage in collective negotiations to offset the net cost of the new plans. Complainants have not engaged in that mandatory process.

Complainants have also failed to show that they will suffer imminent, substantial, and significant financial harm if a stay is not granted. Instead, they rely on purely speculative figures to allege a net cost if they implement the requirements of Chapter 44. And not only do these alleged costs amount to conjecture, but even if they were actual or imminent they would not be significant or substantial enough to warrant a stay under the law. Furthermore, Complainants' purported harm is self-created: as noted above, they have refused to engage in the collective negotiations process to offset those costs; and they also waited until at least seven months after Chapter 44 was enacted to file this action. Thus, on balance, and when considering the many public policy interests militating against a stay, injunctive relief should not be granted.

Therefore, for the reasons set forth more fully below, Complainants' request for preliminary injunctive relief must be denied.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The New Jersey Legislature enacted Chapter 44 on July 1, 2020, as a modification of the SEHBP that has been in place since the 1960s. In 1961, the Legislature enacted the New Jersey State Health Benefits Program Act (the "SHBP Act") to create the New Jersey State Health Benefits Program ("SHBP") to provide health coverage to qualified employees and retirees of the State and participating local employers. N.J.S.A. 52:14-17.25 to -17.46a; see also L. 2020, c. 44; L. 2011, c. 78; L. 2007, c. 103; L. 1979, c. 391; L. 1961, c. 49.[1] In 2007, the Legislature enacted the School Employees' Health Benefits Program Act (the "SEHBP Act"), which created the SEHBP to provide health coverage to qualified employees and retirees of participating local education employers. See N.J.S.A. 52:14-17.46.1 to -46.16.

Under Chapter 44, New Jersey's school districts shall offer three plans that provide medical and prescription drug benefits: the NJEHP; the SEHBP NJ Direct 10 plan; and the SEHBP NJ Direct 15 plan. See Assembly Appropriations Comm. Statement to S. 2273 (June 26, 2020). The two SEHBP plans were adopted pursuant to Chapter 78 in 2011, and were implemented by the School Employees' Health Benefits Commission. Ibid.; L. 2011, c. 78. The NJEHP was

[1] See also L. 2020, c. 137 (cleanup legislation effective December 18, 2020, that made health insurance plans available on the private market).

developed by the SEHBP Design Committee ("PDC") as a revision to Chapter 78, and in accordance with the plan design set forth by the Legislature in Chapter 44. L. 2020, c. 44, § 1. A fourth plan, the Garden State Health Plan, will be offered beginning July 1, 2021. Ibid.; Assembly Appropriations Comm. Statement to S. 2273 (June 26, 2020). Like the NJEHP, it will be developed by the PDC, but the benefits under the Garden State Health Plan will only be available from providers located in New Jersey. Ibid.

Prior to the new legislation, school district employee contribution rates toward health insurance benefits were based on a percentage of premium model, whereas Chapter 44's addition of the NJEHP changes contribution rates to a percentage of salary model. L. 2020, c. 44; Franklin Twp. Complaint Addendum, §§ 1-2.[2] Employees who commenced employment prior to July 1, 2020, are required to select one of the three plans during open enrollment, and would automatically be enrolled in the NJEHP if they did not affirmatively elect a plan at that time. L. 2020, c. 44, § 1. Employees who commence employment after July 1, 2020, and do not waive coverage, would automatically be enrolled by the employer in the NJEHP or the Garden State Health Plan, if selected by the employee. Ibid. Importantly, Chapter 44 provides employers with an important safety valve to allay any potential cost to employers,

[2] The truth of Complainants' factual allegations is assumed for purposes of the application for injunctive relief only.

namely, the ability and requirement to enter into collective negotiations with its employees when the implementation of the NJEHP will cost more than the health insurance coverage previously offered. L. 2020, c. 44, § 8.[3]

Due to Franklin Township's refusal to create and implement an NJEHP equivalent plan, the Franklin Township Education Association ("FTEA") and the Franklin Township School Support Association ("Association") filed an action before the Public Employment Relations Commission and petitions before the Commissioner of Education seeking compliance with Chapter 44. See Unfair Practice Charge, annexed hereto as Exhibit A (PERC Dkt. No. CO-2021-139), at p. 5-6; Petitions of Appeal, annexed hereto as Exhibits B and C (OAL Dkt. No. EDU 01448-2021/Agency Ref. No. 3-1/21; OAL Dkt. No. EDU 01442-2021/Agency Ref. No. 1-1/21)[4]; Franklin Twp. Complaint Addendum, § 5. Those matters are presently pending.

Not until February 18, 2021 — over seven months after Chapter 44 was enacted, and three months after the PERC and OAL matters

[3] The law states: "With regard to employers that have collective negotiation agreements in effect on the effective date of this act, [L. 2020, c. 44], that include health benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference." L. 2020, c. 44, § 8 (emphasis added).

[4] Due to their volume, the Exhibits attached to the Petitions have been omitted, but can be provided at the Council's request.

were initiated — did Franklin Township file a complaint with the Council on Local Mandates (the "Council"), alleging that Chapter 44 constituted an unfunded mandate. In particular, Franklin Township asserts that with the addition of the NJEHP, employee contribution rates have decreased, and school district employers are being "forced" to absorb the difference because there is no mechanism to offset these costs. Franklin Twp. Complaint Addendum, §§ 3-4; see also Lower Twp. Complaint Addendum, §§ 3-4 (same allegations); Gloucester City Complaint Addendum, §§ 3-4 (same allegations). Although Franklin Township claims it has suffered increased health care costs as a result of Chapter 44's addition of the NJEHP, it admittedly has not implemented the plan for its employees. Franklin Twp. Complaint Addendum, §§ 3-4. Franklin Township also requests that "the Council enjoin the enforcement of [Chapter 44] while the instant matter is pending before it[,]" arguing that it "will be forced to incur exorbitant costs in order to comply" with the new legislation. Franklin Twp. Complaint Addendum, § 5.

Lower Township and Gloucester City have since filed similar complaints, raising substantially the same allegations as Franklin Township. Lower Twp. Complaint Addendum, §§ 3-4; Gloucester City Complaint Addendum, §§ 3-4. They also request that the Council grant preliminary injunctive relief, enjoining the enforcement of Chapter 44 pending the outcome of this matter. Lower Twp.

Complaint Addendum, § 5; Gloucester City Complaint Addendum, § 5. The Lower Township and Gloucester City complaints mirror the Franklin Township complaint in many key respects. Franklin Township contemplates an increase in its health care costs if the NJEHP plan is implemented; Gloucester City alleges an increase in its health care costs in comparison to the School Health Insurance Fund program in which it participated before; and Lower Township acknowledges an overall decrease in the cost of healthcare in the District, but still asserts a loss. Franklin Twp. Complaint Addendum, §§ 3-4; Gloucester City Complaint Addendum, §§ 3-4; Lower Twp. Complaint Addendum, §§ 3-4. The complaints provide no legal support for their request for preliminary injunctive relief.

On March 9, 2021, a case management conference was held with the Honorable John A. Sweeney, A.J.S.C. (Ret.), at which time it was determined that Respondent would file a responsive pleading, including a response to Franklin's request for injunctive relief on or before April 9, 2021. But after Lower Township and Gloucester City filed related complaints, on or about March 26, 2021, over eight months after Chapter 44 was enacted, the matters were consolidated by order dated April 5, 2021. Respondent's filing deadlines with respect to each of the three complaints were extended until April 23, 2021.

This letter brief opposing Complainants' request for preliminary injunctive relief follows. Respondent has also

simultaneously filed answers to each complaint.

ARGUMENT

PRELIMINARY INJUNCTIVE RELIEF IS NOT WARRANTED BECAUSE COMPLAINANTS HAVE FAILED TO DEMONSTRATE THAT COMPLIANCE WITH CHAPTER 44 WILL RESULT IN SUBSTANTIAL FINANCIAL HARDSHIP, OR THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS OF THIS CASE.

Complainants' request for injunctive relief must be denied because the standard for the issuance of such extraordinary relief has not been met. This is especially so where the financial harm asserted is purely speculative, there is no likelihood of success on the merits of the case, and where the public interest weighs in favor of denying injunctive relief.

By way of background, in 1995, the New Jersey Constitution was amended to define an unfunded mandate as a law, rule, or regulation that "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." N.J. Const. art. VIII, § 2, ¶ 5 (the "Amendment"). The Amendment and its enabling statute, the Local Mandates Act ("LMA"), N.J.S.A. 52:13H-1 to -22, grant the Council the exclusive authority to determine whether any provision of a law enacted on or after January 17, 1996, or any part of a rule or regulation originally adopted after July 1, 1996, is an unfunded State mandate. Any statute or regulation that is deemed to be an unfunded mandate

"shall, upon such determination cease to be mandatory in its effect and expire." N.J. Const. art. VIII, § 2, ¶ 5; see also N.J.S.A. 52:13H-2 and -12(a).

Before making a final determination, the Council is permitted to issue "a preliminary ruling enjoining the enforcement of a statute" only when a complaint "demonstrates, to the satisfaction of the council, that significant financial hardship to the county, municipality or school district would result from compliance and there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded state mandate." N.J.S.A. 52:13H-16 (emphasis added). Council Rule 5(d) states that "[a]ny Complaint requesting injunctive relief must include a statement that describes the nature and extent of imminent irreparable injury that will result to the Claimant in the absence of injunctive relief." The Council has denied injunctive relief where a claimant fails to meet both prongs under N.J.S.A. 52:13H-16. See In re Complaint Filed by the Bd. of Educ. for the City of Clifton, Council on Local Mandates (May 13, 1998) at *2 (denying injunctive relief based on the failure to show a substantial likelihood that the challenged acts impose impermissible, unfunded mandates within the Council's jurisdiction).

The Council's test for injunctive relief is not dissimilar from the one applied in the judicial context. When dealing with applications for preliminary injunctive relief, New Jersey courts

are guided by Rule 4:52-1 to -7, and the well-settled standard promulgated in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). That standard is highly instructive here. See In re Complaint Filed by The New Jersey Assoc. of Counties, Council on Local Mandates (Apr. 26, 2017), at *5 ("the Council has generally been guided by the New Jersey Rules of Court and New Jersey Court decisions") (citing In re Complaints Filed by the Highland Park Bd. of Educ. & the Borough of Highland Park, Council on Local Mandates (Aug. 5, 1999), at *12-13). A party seeking preliminary injunctive relief in a court of law must demonstrate: (1) irreparable harm if the relief is not granted; (2) the matter rests on settled law and there is a likelihood of success on the merits; and (3) a balance of the hardships to the parties weighs in favor of granting injunctive relief. Crowe, 90 N.J. at 132-34; Waste Mgmt. of N.J., Inc. v. Union Cty. Utils., 399 N.J. Super. 508, 519-20 (App. Div. 2008); see also Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (applying the Crowe factors to request for stay of court order). When the issue presented concerns a matter of significant public importance, as it does here, the public interest must be given considerable weight. Waste Mgmt. of N.J., 399 N.J. Super. at 520-21; Garden State Equal., 216 N.J. at 321. Each of the four factors must be clearly and convincingly demonstrated. Id. at 520; Garden State Equal., 216 N.J. at 320.

Importantly, injunctive relief is an exceptional remedy that

must be exercised sparingly, with great care, and only to prevent damage of an "urgent necessity." Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (1878); see also Mays v. Penza, 179 N.J. Super. 175, 179-80 (Law Div. 1980). Indeed, "[t]he power to issue injunctions is the strongest weapon at the command of the court . . . and its use, therefore, requires the exercise of great caution, deliberation and sound discretion." Light v. Nat'l Dyeing & Printing Co., 140 N.J. Eq. 506, 510 (Ch. 1947); accord Waste Mgmt. of N.J., 399 N.J. Super. at 538. Importantly, courts are admonished to act with great caution when public interests are triggered and an injunction would "embarrass the accomplishment of important governmental ends[.]" Samaritan Ctr., Inc. v. Borough of Englishtown, 294 N.J. Super. 437, 457 n. 9 (Law Div. 1996) (quotations and internal citation omitted); see also Waste Mgmt. of N.J., 399 N.J. Super. at 520-21.

Here, Complainants cannot show that they will experience a significant hardship if the challenged provisions are enacted, or that they have a substantial likelihood of prevailing on the merits. And the public interest weighs heavily in favor of the State. As such, the request to enjoin the enforcement of Chapter 44 while the instant matter is pending must be denied.

A. COMPLAINANTS HAVE FAILED TO DEMONSTRATE THAT COMPLIANCE WITH CHAPTER 44 WILL RESULT IN FINANCIAL HARDSHIP OR IRREPERABLE HARM.

Complainants cannot satisfy the first prong of the Council's

modified Crowe test set forth in N.J.S.A. 52:13H-16. Specifically, not only is their purported harm purely speculative and otherwise insubstantial, but there are remedies at their disposal which they have refused to take advantage of. A stay is therefore inappropriate.

It is axiomatic that preliminary injunctive relief "should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997); see also N.J.S.A. 52:13H-16 (requiring "significant financial hardship"). In other words, by definition irreparable harm must inherently be imminent, concrete, non-speculative, and must occur in the near and not distant future. See ibid.; Waste Mgmt. of N.J., 399 N.J. Super. at 519-20.

Complainants' assertion of financial hardship is wholly unsupported and relies on pure speculation, falling far short of establishing any imminent or concrete harm. To begin with, Franklin Township has admittedly disobeyed the statute and refused to offer enrollment in the NJEHP at all. See Exhibits A, B, & C; Franklin Twp. Complaint Addendum, § 5. Certainly, if Franklin Township is refusing to comply with Chapter 44, it cannot claim that it is being financially harmed by Chapter 44.[5] Moreover,

[5] Franklin Township's complaint references litigation instituted by the FTEA and the Association in the Office of Administrative

Franklin has submitted various "scenarios" to show "what would occur if" a certain percentage of employees enroll in one of the three plans offered under Chapter 44. Franklin Twp. Complaint Addendum, § 4. And Lower Township Elementary "anticipate[s] that more employees will switch to the NJEHP plan during the next open enrollment period." Lower Twp. Complaint Addendum, § 4. But "ifs" and "maybes" cannot amount to imminent, concrete harm — mere speculation is simply insufficient to warrant preliminary injunctive relief. Although Complainants have attached spreadsheets and partial survey results in support of their claim, those exhibits were not collected on sworn affidavits or certifications, and thus cannot be accepted as proof that the districts involved will or will not incur the expenses asserted. See In re Complaints Filed by the Special Servs. Sch. Dists., Council on Local Mandates (July 26, 2007) at *19-20 ("NJSBA's survey data were not collected on sworn affidavits or certifications, and the results are reported anonymously and in conclusory terms. As such, they cannot be accepted as proof that the districts involved will or will not incur the expenses

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Law and the Public Employment Relations Commission, in connection with Franklin's failure to comply with Chapter 44. If the pending litigation causes any emergency or possibility of financial hardship here at all, it is self-created. Franklin chose not to implement the healthcare plan, and so the litigation expenses and exposure by the lawsuits are not the result of compliance with Chapter 44, and therefore not a proper basis for an injunction.

asserted."). A stay would be inappropriate at this juncture, as discovery is required to determine if there actually are any direct expenditures, as alleged by the Complainants.

Along those same lines, in terms of speculated losses, Gloucester City claims that enrollment in the NJEHP will result in an annualized loss of $259,611.84 as of January 1, 2021. But in comparison to Gloucester's 2020-21 total general fund budget of nearly $44 million,[6] such a "loss" does not amount to a substantial or significant hardship. N.J.S.A. 52:13H-16. Similarly, Lower Township Elementary Board of Education alleges an annualized loss of $43,628 for the balance of the 20-21 school year in order to comply with the new health insurance offerings under Chapter 44. But in consideration of its 2020-21 total general fund budget of over $27 million,[7] the "loss" cannot be said to amount to "significant financial hardship[.]" N.J.S.A. 52:13H-16 (emphasis added).

Further, all three Complainants' arguments are undercut by

[6] New Jersey school district 2020-21 budgets are maintained in a publicly available database on the Department of Education's website at https://www.nj.gov/education/finance/fp/ufb/ (last visited April 19, 2021), and also at https://www.nj.gov/education/finance/fp/ufb/2020/07.html (last visited Apr. 19, 2021). Gloucester City's budget is located at https://www.nj.gov/education/finance/fp/ufb/2020/reports/07/1770/UFB21_1770.pdf (last visited Apr. 19, 2021).

[7] Lower Township's budget is also publicly available at https://www.nj.gov/education/finance/fp/ufb/2020/reports/09/2840/UFB21_2840.pdf (last visited Apr. 23, 2021).

the fact that none of them have engaged in collective negotiations, as encouraged and required by Chapter 44. Chapter 44 expressly requires the unions to seek redress through collective negotiations where the employer is paying more under the NJEHP plan than it would have under its old plan. L. 2020, c. 44, § 8.

The School Employees Contract Resolution and Equity Act, N.J.S.A. 34:13A-31 to -49, provides significant guidance in this context. See N.J.S.A. 34:13A-32 and -33. Importantly, the Act contains a comprehensive and rigorous mandatory mediation process when school employers and majority representatives reach an impasse in negotiations. N.J.S.A. 34:13A-34 to -36; N.J.A.C. 19:12-4.1 to -4.4. The multi-stage process includes fact-finding and investigatory stages, and a super-conciliation phase that can include, among other requirements, 24-hour-per-day negotiations until an agreement is reached. Ibid.; N.J.A.C. 19:12-4.1 to -4.4. There is no indication that any of the Complainants have engaged in that process. Instead, Complainants have attempted to circumvent those obligations by seeking relief in this forum. And in Franklin Township's case, it has elected to forum-shop the issue, having spread its challenge to Chapter 44 across three different forums, all while refusing to collectively negotiate or avail itself of its rights under the School Employees Contract Resolution and Equity Act.

Finally, it is worth noting that parties whose delay creates

an emergency cannot avail themselves of injunctive relief. McKenzie v. Corzine, 396 N.J. Super. 405, 414-15 (App. Div. 2007). A party is barred from seeking the protection of the law when the party itself creates the need for that protection. See, e.g., Ibid.; Jock v. Zoning Bd. of Adjustment, 184 N.J. 562, 590-92 (2005); Maudsley v. State, 357 N.J. Super. 560, 580-82 (App. Div. 2003). Here, Chapter 44 was enacted in on July 1, 2020. L. 2020, c. 44. Yet Complainants did not file the instant application until at least seven months later, in the middle of a school year. There is also no indication that Complainants even attempted to engage in collective negotiations of any kind prior to the filing of this consolidated action. Thus, any "harm" or "exigency" requiring injunctive relief claimed by Complainants now is self-created. Such delay should not, and cannot, be countenanced. McKenzie, 396 N.J. Super. at 414-15.

The purpose of a stay is "to maintain the parties in substantially the same condition when the final decree is entered as they were in when the litigation began." Crowe, 90 N.J. at 134 (citation and internal quotations omitted). Here, the current status quo is that every school district in New Jersey is in the middle of its school year, and school employees have already elected their health insurance coverage for the plan year. However, the legislation at issue has been effective for more than nine months. Suddenly now, with the open enrollment periods having

already concluded for this year, and employees having settled into their current plans, Complainants claim they are entitled to emergent relief. See L. 2020, c. 44, § 1(b). They miss the point of a stay, which is to ensure the status quo pending the outcome of a case. But the status quo is already in place. Injunctive relief is simply inappropriate.

Accordingly, Complainants have failed to establish that imminent, significant harm will result from the absence of a stay.

B. INJUNCTIVE RELIEF IS NOT WARRANTED BECAUSE COMPLAINANTS HAVE FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS.

Even if the Council found that Complainants would suffer a significant financial hardship if Chapter 44 remains in effect, injunctive relief still must be denied because Complainants cannot show there is a substantial likelihood the Council will find the statute constitutes an unfunded mandate. N.J.S.A. 52:13H-16; cf. Crowe, 90 N.J. at 133; Garden State Equal., 216 N.J. at 320.

To succeed in this matter, Complainants must demonstrate that (1) the Chapter 44 provisions impose a "mandate" on a local unit of government; (2) additional direct expenditures are required for the implementation of those provisions; and (3) the provisions fail to "authorize resources, other than the property tax, to offset the additional direct expenditures." In re Complaints filed by the Monmouth-Ocean Educ. Servs. Comm., Council on Local Mandates (Aug. 20, 2004), at *6. Complainants have not shown there is a

substantial likelihood the Council will find the provisions of Chapter 44 meet this standard.

In each of the rulings where the Council has invalidated a statute, rule, or regulation, "clear and convincing evidence was presented that counties, municipalities or boards of education would incur expenditures in order to implement the challenged provisions." In re a Complaint Filed by the Twp. of Medford, Council on Local Mandates (June 1, 2009), at *12 (concurring opinion) (emphasis added); see also Waste Mgmt. of N.J., 399 N.J. Super. at 520 (requiring each of the four Crowe factors to be clearly and convincingly demonstrated); Garden State Equal., 216 N.J. at 320 (same). It simply cannot be said that Complainants have clearly and convincingly established that they will incur costs by complying with Chapter 44.

The Council looks to the language of the statute or regulation to determine whether a direct expenditure is required. In re Complaint Filed by the Rockaway Twp. Bd. of Educ., Council on Local Mandates (January 3, 2017), at *6. "Broad, generalized terms" of a statute or regulation evidence lack of a direct expenditure. Ibid. "Simply stated, where there is a choice, there is no mandate." In re Complaint Filed by the Twp. of Medford Council on Local Mandates (June 1, 2009) at *12 (concurring opinion).

Here, Chapter 44 is not an unfunded mandate. The Amendment

and LMA expressly provide that laws or rules that are required to comply with federal laws or to meet eligibility standards for federal entitlements are not considered unfunded mandates. N.J. Const. art. VIII, § 2, ¶ 5(c)(1); N.J.S.A. 52:13H-3(a). The provision of health care benefits under Chapter 44 is therefore not an unfunded mandate under the law, as it falls within the federal compliance exception. To the extent that school employers are required to offer coverage, it is the Federal Patient Protection and Affordable Care Act (the "ACA") that imposes this obligation. P.L. 111-148 (2010), as amended by P.L. 111-152 (2010) (codified as amended in scattered sections of 42 U.S.C.). Under the ACA, schools with fifty or more employees must offer health insurance to employees who work more than a certain number of hours. Ibid. So, the ACA and not Chapter 44 is the source of the requirement for school boards to offer insurance and potentially expend funds. Therefore, Chapter 44 is exempt from being deemed an unfunded mandate because school districts are required to offer health insurance to comply with federal law. See N.J. Const. art. VIII, § 2, ¶ 5(c)(1). Chapter 44 simply revises the plan design structure, as detailed below.

The Constitution and the LMA specifically exempt laws, rules, or regulations that "repeal, revise or ease an existing requirement or mandate or [that] reapportion the costs of activities between boards of education, counties, and municipalities" from the

definition of an unfunded mandate. N.J. Const. art. VIII, § 2, ¶ 5(c)(3); N.J.S.A. 52:13H-3(c). In that vein, because Chapter 44 revises, modifies, and otherwise updates the legislative scheme with respect to the provision of insurance coverage for New Jersey educators, it is not an unfunded mandate. When the Legislature enacted L. 2011, c. 78 ("Chapter 78"), it amended certain statutes relating to public employee health benefits, just as Chapter 44 does now. Complainants' characterization of Chapter 44 as a new, sudden enactment and unfunded mandate is flawed — it ignores the living, evolving, and organic system that the Legislature has evaluated and updated on a continuing basis since 1961. See L. 2020, c. 44; L. 2011, c. 78; L. 2007, c. 103; L. 1979, c. 391; L. 1961, c. 49.

The collective negotiations safety valve also assuages any concern that Chapter 44 is an unfunded mandate. In instances where offering the NJEHP results in an increase in net health care costs to the employer, Chapter 44 requires the parties to "engage in collective negotiations over the financial impact of the difference." L. 2022, c. 44, § 8. While Complainants assert that there are no healthcare-related financial aspects remaining to negotiate, there is no reason why the parties could not offset any financial impact by negotiating salary, step guides, or other terms and conditions of employment, or by engaging in the rigorous super-conciliation process set forth in the School Employees

Contract Resolution and Equity Act. Simply because Complainants chose to expend funds without exhausting their right and obligation to collectively negotiate does not equate to a requirement to have done so. Section 8 of Chapter 44 is a critical (and mandatory) safety valve, and because Complainants have not attempted to utilize it or exhaust the remedies at their disposal, this matter is not even ripe for disposition by the Council. See, e.g., Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 302 (App. Div. 2005) (explaining that a claim is not ripe for adjudication if the facts illustrate that the rights of a party are "future, contingent, and uncertain"); Burley v. Prudential Ins. Co., 251 N.J. Super. 493, 499 (App. Div. 1991) (under exhaustion principles "[a]ll available and appropriate administrative remedies [] should be fully explored 'before judicial action is sanctioned.'") (quoting Abbott v. Burke, 100 N.J. 269, 296 (1985)). Thus, preliminary injunctive relief is inappropriate.

In sum and substance, Chapter 44 requires school districts to offer a particular type of health insurance plan, but does not require direct expenditures to be incurred. Rather, any cost will be contingent on collective negotiations between the district and the union. Complainants fail to account for existing procedures, such as collective negotiations, that can be utilized to meet Chapter 44's new requirements and offset the cost, if any, to the

districts.

Thus, because Chapter 44 is not an unfunded mandate, and because it provides an important collective negotiations provision to allow districts to offset any net cost, Complainants are not likely to succeed on the merits of this action. Preliminary injunctive relief must be denied.

C. THE PUBLIC INTEREST MILITATES AGAINST GRANTING PRELIMINARY INJUNCTIVE RELIEF.

The issue presented concerns a matter of significant public importance, and therefore the public interest should also be considered by the Council. Waste Mgmt. of N.J., 399 N.J. Super. at 520-21; Garden State Equal., 216 N.J. at 321. In this instance, there are strong public interest considerations that require the Council to allow Chapter 44 to remain intact during the pendency of this litigation.

Mindful of the Council's unique responsibility and authority, the public interest in ensuring the survival of important legislation weighs against entering a stay here. L. 2020, c. 44; Assembly Appropriations Comm. Statement to S. 2273 (June 26, 2020). The Legislature's efforts to revise the State's health benefits programs on a continuing basis are an expression of longstanding public policy that should not be ignored. See, e.g., In re Ridgefield Park Board of Education, 244 N.J. 1, 21 (2020) (describing Legislature's vision for addressing public employee

health care costs); Teamsters Local 97 v. State, 434 N.J. Super. 393, 423 (App. Div. 2014) (describing State interest in "controlling the cost of health care benefits, ensuring consistency in health benefit coverage, and further ensuring that the programs that make health care coverage available to public employees remain viable for both current and future employees"). Stated differently, because Chapter 44 is a legislative enactment intended to have salutary benefits for educators and school employees, as well as an overall positive impact on New Jersey's economic health, the Council should not effectively invalidate a statute pending the outcome of these proceedings. See Lewis v. Harris, 188 N.J. 415, 459 (2006) (deference should be afforded to legislative enactment unless it is "unmistakably shown to run afoul of the Constitution"); Town of Secaucus v. Hudson Cty. Bd. of Taxation, 133 N.J. 482, 492-93 (1993), cert. denied sub nom., 510 U.S. 1110 (1994) (statute invalid only if "clearly repugnant to the constitution"); Borough of Seaside Park v. Commissioner of New Jersey Dept. of Educ., 432 N.J. Super. 167, 218 (App. Div. 2013) (declining in school funding matter to "second-guess the Legislature's wisdom in allocating tax burdens"). Thus, until such time as this matter is decided on the merits, Chapter 44 should be construed to avoid constitutional defects, and the will of New Jersey's citizens via the Legislature should not be undermined.

Moreover, from a practical perspective, if the Council were to grant injunctive relief, it would effectively halt the insurance plans already in effect for countless employees and their dependents. Complainants seek to dismantle the health insurance coverage for countless people throughout the State of New Jersey. Injunctive relief would create uncertainty with respect to health insurance at the least opportune time — in the middle of the school year. Any harm to Complainants is outweighed by the harm that will be suffered by the employees of the school districts throughout the State, along with their families and dependents. Critically, many New Jersey school districts, including Lower Township Elementary and Gloucester City, have already implemented the new health insurance plans in accordance with Chapter 44.

A stay would also interfere with the collective negotiations process. There is a strong public policy favoring collective negotiation agreements in the public sector, see, e.g., State, Dep't of Corr. v. IFPTE, Local 195, 169 N.J. 505, 537-38 (2001), N.J.S.A. 34:13A-2, and deference must be given to that process. The New Jersey Constitution demands nothing less. N.J. Const. art. I, ¶ 19. By issuing a stay, countless local unions will be foreclosed from representing New Jersey's teachers and educators — a significant portion of New Jersey's public workforce — with respect to a critical term and condition of employment. Such an outcome would be contrary to the spirit, intent, and plain language

of Chapter 44, the ACA, the Employer-Employee Relations Act, and Article I, Section 19 of the New Jersey Constitution. See also N.J.S.A. 52:13H-3 (stating that laws which are required to comply with federal laws or implement the provision of the New Jersey Constitution shall not be unfunded mandates).

Along those same lines, Franklin has freely admitted that it has forum-shopped this issue, asking the Council to grant preliminary injunctive relief in an effort to effectively "stay" parallel litigation before PERC and the OAL. Franklin Twp. Complaint Addendum, § 5. The Council should decline to allow itself to be used in such a manner, or to interfere with the jurisdiction of those forums. Cf. In re Complaints Filed by the Highland Park Bd. of Educ., Council on Local Mandates (Aug. 5, 1999) at *7-8 ("Although its jurisdiction is exclusive, the Council is strictly limited to a single inquiry: whether a law or rule or regulation, or provision thereof, imposes an unfunded mandate. The Council has no jurisdiction to rule on whether the actions of the Commissioner or the State Board of Education exceed their delegated statutory authority. The Council must defer to the judiciary on whether any provision of a rule is unfair or unduly burdens one board or municipality compared to another."); In re Complaints Filed by the Monmouth-Ocean Educ. Servs. Comm., Council on Local Mandates (Aug. 20, 2004) at *8 ("The Council's authority is limited to considering whether a mandate is funded or unfunded,

and if it is unfunded, whether certain enumerated exemptions apply. . . . The purpose of the LMA is to protect units of local government from State-imposed unfunded mandates."); In re Complaints Filed by the Counties of Morris, Warren, Monmouth, and Middlesex, Council on Local Mandates (Oct. 31, 2006) at *14 ("The Council's jurisdiction, however, is limited to the negative power of invalidation[.] . . . Such legal or policy questions as may still remain are properly to be resolved elsewhere within the structure of government established by our Constitution.").

For these reasons, the public interest must be considered, and the Council should deny Complainants' request for a stay.

CONCLUSION

Because Complainants do not meet the requisite standard for emergent relief, their request for a preliminary injunction must be denied.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Jaclyn M. Frey
Jaclyn M. Frey
Deputy Attorney General

cc: William C. Morlok, Esq.
Richard A. Friedman, Esq.
Leon J. Sokol. Esq.