MIRZA M. BULUR, in his official capacity as the Acting Public Safety Director for the City of Paterson and Appropriate Authority, City of Paterson Police Department, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department,

Plaintiffs-Appellants,

v.

THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHER J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey, JOHN DOES 1-10, MARY DOES 1-10, and XYZ CORPORATIONS 1-10,

Defendants-Respondents.

ANDRE SAYEGH, in his official capacity as the Mayor of the City of Paterson, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department,

Plaintiffs-Appellants,

v.

ISA M. ABBASSI, in his official capacity as Officer-in-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, and MATTHER J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey.

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY

Docket No. 090126

Civil Action

DOCUMENT FILED ELECTRONICALLY

COMBINED BRIEF IN OPPOSITION OF PETITION FOR CERTIFICATION AND MOTION FOR STAY PENDING FINAL JUDGMENT

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PRELIMINARY STATEMENT

The underlying matter arises from the consolidated lawsuits pursuant to which PLAINTIFFS MIRZA M. BULUR, the duly-appointed Acting Public Safety Director of the City of Paterson, ENGELBERT RIBEIRO, the duly-appointed chief of the City of Paterson Police Department who took the oath of office on March 3, 2023, and ANDRE SAYEGH, Mayor of the City of Paterson ("Bulur," "Chief Ribeiro," and "Mayor Sayegh" respectively, and "Plaintiffs" or "Respondents" collectively), sought and obtained injunctive relief to remedy the ultra vires supersession and takeover of the operations of the City of Paterson Police Department by DEFENDANTS and Movants THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN, in his official capacity as the Attorney General of New Jersey, and ISA M. ABBASSI, in his official capacity as the Officer-in-Charge of the Paterson Police Department ("OAG," "AG Platkin," and "Abbassi" respectively, and "Defendants" or "Movants" collectively). (The decision of the Appellate Division is challenged by Defendants via Emergent Application for an Order staying the Appellate Division's decision pending this Court's resolution on the matter as well as Defendant's petition for Certification and Stay).

Movants' unprecedented actions have unnecessarily infringed upon the constitutional and statutory rights of Plaintiffs and the City of Paterson. The

ultra vires takeover of the daily operations of an entire municipal police department unlawfully usurps the longstanding authority granted to municipalities by the New Jersey Legislature and State Constitution. Furthermore, Movants cannot point to any existing statutory authority to support such a takeover, and instead rely only on a self-serving, unilateral, revised directive executed mere months before their takeover. Additionally, the Appellate Division conducted a sound analysis of the facts and relevant law before deciding in favor of Plaintiffs and ordering the immediate termination of Movants' command and control of the Paterson Police Department. As this Court will discover, Movants cannot point to any valid basis for Certification or Stay in this matter. Specifically, there have been no egregious errors in the lower court's decision and neither the interest of justice, the balancing of equities nor public importance support the Movant's argument in favor of Certification and Stay.

Plaintiffs respectfully request that this Court deny the Movant's petition for Certification, vacate the current Stay and deny Movant's application for further Stay, and allow the Appellate Division's judgment, in which full operational command and control of the City of Paterson Police Department is properly restored to Plaintiffs, to take effect.

LEGAL ARGUMENTS

I. NEITHER RULE 2:12-4 NOR A BALANCING OF THE EQUITIES PROVIDE A BASIS FOR CERTIFICATION OF THE PRESENT MATTER

Grounds for Certification to the Supreme Court of New Jersey are governed by Rule 2:12-4, which states that "Certification will not be allowed on final judgments of the Appellate Division except for special reasons." See also New Jersey Division of Youth and Family Services v. E.P., 196 N.J. 88, 115 (2008) (Rivera-Soto J. dissenting) ("Rule 2:12-4 lays out clearly the very high hurdle a petition for certification must vault in order to justify review by this Court"). Among those reasons contemplated by the rule are: (1) "if the appeal presents a question of general public importance"; and (2) "matters where the interest of justice requires." R. 2:12-4. The Court, through its reasoned jurisprudence, has described clear perimeters for each of those reasons. In the present matter, Defendants have failed to argue sufficient cause to meet the requirements of those special reasons as contemplated by R. 2:12-4. Furthermore, the judgment below is consistent with the balance of equities, as discussed *infra*. Consequently, certification of the present matter by this Court should not be allowed.

A. Defendants Fail to Present a Question of General Public Importance, as Contemplated by Rule 2:12-4.

This Court has consistently held that grounds do not exist under the

"general public importance" theory of certification when the final judgment of the Appellate Division is essentially an application of settled legal principles. See In re Contract for Route 280, Section 7U Exit Project, 89 N.J. 1, 1 (1982) ("the final judgment of the Appellate Division is essentially an application of the principles enunciated by this Court ... to the facts of this case and does not therefore present an unsettled question of general public importance"); Fox v. Woodbridge Tp. Bd. Of Educ., 98 N.J. 513, 516 (1985) ("the final judgment of the Appellate Division is essentially an application of settled principles to the facts of this case and does not therefore present a question of general public importance"); Bandel v. Friedrich, 122 N.J. 235, 237 (1991) (finding that where the judgment below reflects the application of established principles, "an unsettled question of general public importance" was in no way implicated); Kimmel v. Dayrit, 154 N.J. 337, 341 (1998) (finding that where disposition of the issue does not require reexamination, clarification, modification, or extension of settled principles of law, or formulation of new principles of law, the issue "does not present a question of public importance").

Here, Defendants devote less than half a page of their combined brief to arguing this threshold issue and spend that scant space making broad and unsubstantiated claims regarding separation-of-powers, public safety, and public trust. (Sc30). At no point do Defendants claim that the below judgment

reflects anything other than the application of settled principles of law to a novel fact pattern. Defendants' mere dissatisfaction with the outcome of such application does not render the principles of law unsettled, and while the facts of the present matter are sensational, the legal principles involved are anything but. The below judgment relies exclusively on the well-trodden doctrine of statutory interpretation, a settled legal principle opined upon at length by this Court. See e.g. State v. Federanko, 26 N.J. 119, 129 (1958); DiProspero v. Penn, 183 N.J. 477, 492 (2005); Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009); McGovern v. Rutgers, 211 N.J. 94, 108 (2012); Paff v. Galloway Twp., 229 N.J. 340, 353 (2017); State v. Twiggs, 233 N.J. 513, 532 (2018).

In lieu of argument regarding the principles undergirding the below judgment, Defendants instead rely on the fact that this Court has prior granted review over supposed challenges to the Attorney General's supervisory authority. See In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 246 N.J. 462 (2021); Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75 (2020). Both cases are significantly distinguishable from the present matter. In In re 2020 Directives, the Directives under review marked a fundamental reversal of the established practice of the preceding twenty years, such that they created a class of officers with potential promissory estoppel claims. 246 N.J. at 473. The Court otherwise affirmed the

below judgment and particularly complimented the reasoning of "Judge Accurso's thoughtful opinion." Id. at 506. The creation of the class described *supra*, in stark contrast to the straightforward nature of the present matter, represented a departure from the straightforward application of established legal principles. Consequently, In re 2020 Directives stands as an endorsement of the grounds described by R. 2:12-4 and in no way establishes a precedent that all challenges to the Attorney General's supervisory authority are subject to review by this Court. In FOP, the municipal ordinance under review sought to establish a civilian oversight board, a goal acknowledged by the Court to be in the interests of "public trust, police accountability, and transparency," but conflicted with multiple legislative enactments. 244 N.J. at 83. The novelty of the board enabling ordinance, the complexity of the legislative entanglements, and the desire by the courts to preserve what portions of the beneficial purpose were practicable combined to justify certification in that matter, as evidenced by the incremental modification of the subject ordinance at each stage of adjudication. Id. at 113. The Attorney General's supervisory powers were only tangentially related to the subject under review therein and it is unclear why Defendants raise FOP in support of this theory of certification.

This Court has clearly and consistently enunciated the principles of statutory interpretation. The Appellate Division thoughtfully applied those well-

settled principles to the facts of the present matter in arriving at the judgment below. Defendants' argument that any challenge to the Attorney General's supervisory authority is definitionally a matter of general public importance subject to review by this Court is unavailing, as it finds support in neither the relevant court rule nor the case law raised. Consequently, the present matter does not present a question of general public importance as contemplated by R. 2:12-4 and the Court should deny certification under that theory.

B. Defendants Fail to Demonstrate that the Present Matter Calls for Exercise of the Supreme Court's Supervision in the Interest of Justice, as Contemplated by Rule 2:12-4.

This Court has similarly held that grounds do not exist under an "interest of justice" theory of certification where the judgment below is not "palpably wrong, unfair or unjust." See Mahony v. Danis, 95 N.J. 50, 52 (1983) (finding no basis for certification in the interest of justice where "the result reached by the trial court, regardless of the legal doctrine employed, is not palpably wrong, unfair or unjust" and there "has been no showing of an egregious miscarriage of justice"); Bandel, 122 N.J. at 237 (finding that an "issue does not satisfy the standards of Rule 2:12-4" in the interest of justice "because the result reached below is not palpably wrong, unfair or unjust").

Here, Defendants have failed to show that the decision of the Appellate Division is palpably wrong, unfair or unjust in any regard. Defendants aver that

the Appellate Division made three core errors in arriving at the below judgment: (1) disregarding statutes relevant to the Attorney General's supervisory powers; (2) failing to credit multiple state laws purported to bolster supersession authority; and (3) discounting historical practice. (Sc18). Plaintiffs vehemently disagree. Defendants have utterly failed to demonstrate the errors alleged and subsequently must fail in their attempt to impeach the reasoned judgment below. The Appellate Division's thorough analysis of the facts in this case along with their accurate application of settled law resulted in a finding that is right, fair and just.

1. Defendants Fail to Demonstrate that the Panel Erred in Interpreting the Attorney General's Supervisory Powers

Defendants first argue that the panel erred in failing to find that the Attorney General's responsibility for "general supervision of criminal justice," pursuant to N.J.S.A. 52:17B-98, and law enforcement officers' obligation to "cooperate with and aid the Attorney General," pursuant to N.J.S.A. 52:17B-112(b), combine to justify nonconsensual suppression of any municipal law enforcement agency as a "tool available to the Attorney General." (Sc19). In much the same way that supervision and supersession are distinct, the panel's rejection of Defendants' argument is not the same as a "failure to grapple" with the subject. (Sc20). The Appellate Division provided a thorough review and treatment of the statutory bases for the Attorney General's power to supersede

(Pca21-32), and meticulously "grappled" with Defendants' arguments regarding the existence of an implied authority to supersede. (Pca32-38). Defendants' contention, that a failure to cite to each and every statute and shred of case law even tangentially touching on same amounts to error, is unavailing to the point of absurdity. The panel's findings in this regard are functionally similar to statements made by this Court on the subject, as explicated in Yurick v. State:

> The general supervision power permits the Attorney General, in the best interests of the State, to participate in, initiate, or supersede a county prosecutor in respect of any investigation, criminal action or proceeding. Thus, the Attorney General's supersedure power appears to have been bestowed with the understanding that it was intended to ensure the proper and efficient handling of the county prosecutors' criminal business.

184 N.J. 70, 79 (2005) (internal citations/quotations omitted). Defendants' desire to unilaterally expand the Attorney General's supervision power without legislative or constitutional grant does not render the judgment below erroneous, and certainly not palpably so.

2. *Defendants Fail to Demonstrate that the Panel Gave Insufficient Credit to Relevant Statutes*

Defendants next argue that the panel erred in failing to give credit to statutes purportedly confirming the Attorney General's power to supersede the PPD. (Sc20). In advancing this argument, Defendants first contend that the panel's rejection of L. 2023, c. 94 ("Chapter 94") as a grant of supersession

power renders that "entire law surplusage." (Sc21). This position fundamentally misunderstands the question before the panel and the subsequent judgment below. The question before the panel was "whether the Attorney General has the authority to directly supersede all operations of a municipal police department without the consent of the municipality." (Pca3). A finding in the negative to this question simply does not render Chapter 94 surplusage. The judgment below preserves multiple potential avenues for the Attorney General to supersede a local law enforcement agency, thereby activating Chapter 94's grant of procedural expediency. Consent by the municipality represents one such avenue, working with the relevant County Prosecutor's Office potentially represents another[1], and as stated plainly in the below judgment, the uncontested proposition that the Attorney General can supersede Internal Affairs Divisions represents a third. (Pca39). The zero-sum approach to statutory interpretation required to justify Defendants' position here is simply incorrect – the panel's decision can limit what the Attorney General believed Chapter 94 granted and

[1]While Defendants materially misrepresent the judgment below in claiming that the panel believed that "county prosecutors might have 'statutory' suppression authority the Attorney General lack[s]" (Sc9), the relevant portion of the judgment below actually states that "the AG directly superseded the municipal police department, rather than exercising its powers through the county prosecutor, where the powers of supersession are statutory." (Pca36). The panel here stated merely that the Attorney General's power to supersede the county prosecutor is undisputed and statutory, pursuant to N.J.S.A. 52:17B-107. The panel in no way implied that the county prosecutor has a statutory power of supersession beyond that of the Attorney General and, in fact, specifically reserved the question of nonconsensual supersession of a municipal police department by the Attorney General via the County Prosecutor's Office as beyond the scope of review. (Pca36 n. 20).

not render it surplusage. Furthermore, Defendants' brief contains contradictory arguments on Chapter 94. Defendants first argue that Chapter 94 did not grant any authority to the Attorney General's Office but instead "reflects the Legislature's belief that the Attorney General already enjoys the authority from the Criminal Justice Act and other statutes." (Sc21). Defendants then subsequently argue that the panel's views "leave Chapter 94 with no practical force." (Sc22). Defendants cannot simultaneously argue both that: (1) Chapter 94 does not grant supersession authority because it merely reflects authority already established; and (2) that the Appellate Division's finding that Chapter 94 does not grant supersession authority leaves the statute with no practical force. In fact, Chapter 94 is simply a grant of procedural expediency for those instances where the legal supersession of a local law enforcement agency might occur, as plainly and properly acknowledged by the judgment below. (Pca29-30).

Defendants also contend that the panel's rejection of the Attorney General's purported ability to unilaterally grant himself essentially whatever power he wants without need for legislative authorization by way of the Internal Affairs Policies and Procedures Manual ("IAPP") contributes to their error. (Sc23). Defendants proffered interpretation is a genuinely disturbing proposition that is openly at variance with separation-of-powers doctrine, but

also one that is easily debunked. While this Court has consistently upheld the Attorney General's authority to adopt guidelines, directives, and policies that bind police departments; See e.g. North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541, 565 (2017); it has also summarily decried any situation that "would allow the Attorney General to make the law rather than enforce it." Town Tobacconist v. Kimmelman, 94 N.J. 85, 122 n. 18 (1983). Defendants' interest in granting unfettered legislative power to the Attorney General was rightly rejected by the panel.

Defendants finally contend that the panel misapprehended Sections 106 and 107 of the Criminal Justice Act ("CJA"). (Sc24). In advancing this argument, Defendants themselves misrepresent N.J.S.A. 52:17B-107(a)(1) by claiming that it confirms "that supersession is not limited to oversight over county prosecutors and can operate down to the level of an individual case." (Sc13). N.J.S.A. 52:17B-107(a)(1) states, in pertinent part, that the Attorney General may:

> (a) supersede a county prosecutor in any investigation, criminal action or proceeding, (b) participate in any investigation, criminal action or proceeding, or (c) initiate any investigation, criminal action or proceeding.

Under hornbook principles of construction, the statute's discussion of supersession is limited to section (a) and is neither extended nor redefined by

sections (b) and (c). In stark contrast to Defendants claim, N.J.S.A. 52:17B-107 exclusively contemplates supersession by the Attorney General and of a county prosecutor. Sections (b) and (c) elucidate powers of the Attorney General, distinct from supersession, for participation in and initiation of criminal matters, and in no way expand the statutory power of supersession beyond county prosecutors as stated by section (a). Defendants repeat an even more erroneous version of this argument in stating that the panel misunderstands "subsections (1)(a)(2-3)" in failing to note that "county prosecutors were mentioned in just one of its three subsections, and not the other two." (Sc25 n.5)[2]. This contention is fallacious on its face: first in that Section 107(1)(a)(3) does not exist, and second in that every subsection of the subject statute does in fact refer to county prosecutors.[3]

Neither the panel's rejection of Defendants' specious interpretations of the canon against surplusage and Chapter 94, nor their rejection of Defendants' concerning notions regarding separation-of-powers doctrine, as represented by their arguments regarding the IAPP, nor their reliance on a reasonable interpretation of the words that actually appear in Section 107 represent error or

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[2] If Defendants are attempting reference to N.J.S.A. 52:17B-107(a)(1)(b-c), their point is inapposite as described *supra*.

[3] See (emphasis added) NJSA 52:17B-107(a)(1) ("the Attorney General may (a) supersede a *county prosecutor*"); 52:17B-107 (a)(2) ("the Attorney General shall supersede the *county prosecutor*"); 52:17B-107 (b) ("The Attorney General may in his discretion act for any *county prosecutor*").

palpable wrong.

3. Defendants Fail to Demonstrate a Pattern of Historical Practice

Defendants finally argue that the panel erred in failing to give sufficient credit to what they refer to variously as "extraordinary historical practice" (Sc11) and "longstanding practice" (Sc15 and 17). The purported 26 instances of supersession compiled by Defendants hardly represent the "long settled and established practice" acknowledged to inform statutory interpretation. NLRB v. Noel Canning, 573 U.S. 513, 525 (2014).

First, this Court has consistently acknowledged the limitations of administrative interpretation in determining legislative intent. See Kingsley v. Hawthorne Fabrics Inc., 41 N.J. 521, 528, (1964) (an "administrative agency may not under the guise of interpretation extend a statute to include persons not intended, nor may it give the statute any greater effect than its language allows."); Mayflower Sec. Co., Inc. v. Bureau of Sec., 64 N.J. 85, 93 (1973) (a court is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue"); Service Armament Co. v. Hyland, 70 N.J. 550, 563 (1976) ("an administrative interpretation which attempts to add to a statute something which is not there can furnish no sustenance to the enactment"); Airwork Serv. Div. v. Director, Div. of Taxation, 97 N.J. 290, 296 (1984) (when the court can identify a particular legislative intent, that intent

cannot be "outweighed or overcome simply by a countervailing administrative practice").

Second, close review of the appendices cited to by Defendants as evidence of "26 agency-wide supersessions over the past 25 years" (Sc14), which Defendants argue are persuasive of legislative intent, demonstrates that such can more accurately be characterized as: (1) 2 instances of the Attorney General ordering a County Prosecutor to supersede a police department (Ra1-4 and 5-6); (2) 3 instances of the Attorney General appointing acting county prosecutors (Ra7-8, 9-12, and 20-23); (3) 4 instances of the Attorney General superseding County Prosecutor's Offices at the Governor's request (Ra13-16, 24-31, and 32-34); (4) 12 instances of a County Prosecutor's Office superseding a police department (Ra35-37, 38-39, 40-41, 42-43, 44, 45-46, 47-49, 50-51, 52-55, 56-59, and 60-62); and (5) 1 instance of the Governor nominating a new county prosecutor following the end of the previous prosecutor's term (Ra17-19). Far from evincing the record of unbroken practice that Defendants seek to advance in support of their theory of boundless supersession authority, these appendices are instead an admixture of: (1) the kind of limited supersession contemplated by statute; (2) non-statutory supersessions consented to by the relevant officials; and (3) expedient personnel changes. Accordingly, they are utterly and completely inapposite to the present matter. Those same appendices further refer

to supersession repeatedly as a rare and novel exercise – a far cry from the standard practice Defendants seek to present it as. See e.g. (Ra15) ("Until now, prosecutors had been removed by the governor ... under a different state law"); (Ra27) ("The move marks the third time in state history a county prosecutor has been superseded by the state"); (Ra50) (Supersession "has never been invoked in Mercer, and has been used sparingly in other counties").

Finally, and as further discussed *infra*, Defendants contention that the panel's finding that prior supersessions were consented to "lacks any support in the record" is similarly wrong on its face. (Sc27). Beyond the implied consent evidenced by the dearth of legal challenges to supersession, Defendants' appendices are replete with direct evidence of consent by the subject counties/municipalities to supersession. See e.g. (Ra27) (County Executive and Freeholder President announced support for supersession of County Prosecutor's Office); (Ra36) (Mayor announced support for supersession of the police department by the County Prosecutor's Office); (Ra39) (Mayor announced support for supersession of the police department by the County Prosecutor's Office); (Ra40) (Mayor announced support for supersession of the police department by the County Prosecutor's Office); (Ra45) (Elected officials asked for supersession of the police department by the County Prosecutor's Office); (Ra48) (Mayor/Public Safety Director announced support for

supersession of police department by County Prosecutor's Office); (Ra50-51) (Mayor announced support for supersession of police department by County Prosecutor's Office); (Ra59) (Mayor announced support for supersession of police department by County Prosecutor's Office).

Defendants have failed to show a coherent established practice of supersession in general and specifically unconsented supersession of a municipal police department by the Attorney General without involvement of the County Prosecutor's Office. Defendants have similarly failed to show that consent to supersession was not the norm, especially regarding supersession of municipal police departments by County Prosecutor's Offices. Assuming *arguendo* that Defendants had been able to demonstrate their claims, the case law is clear that such would not be dispositive of legislative intent. Consequently, the panel's rejection of Defendants' unsubstantiated claims of historical practice was neither erroneous nor palpably wrong.

Although relevant case law is silent on what precisely constitutes a "palpably wrong" final judgment of the Appellate Division, it can reasonably be inferred that the term refers to a decision so obviously and apparently incorrect that it can be easily seen, known, and felt. As not one of the three purported errors alleged by Defendants have been demonstrated with anything approaching sufficiency, it is clear that the Appellate Division utilized sound

analysis of the relevant facts and reasoned application of settled principles of law to come to their conclusion that the Attorney General abused his "supervisory authority" in effectuating the *ultra vires* and nonconsensual supersession of the Paterson Police Department. The decision of the Appellate Division further incorporates and embodies the long-standing principles found within the Home Rule Act, which provides municipalities with the authority and regulatory power to promote the public welfare in their communities, and it is consistent with both the balance of the equities and the broader purposes of justice. See N.J.S.A. 40A:14-118. Consequently, the judgment below is not wrong and can in no way be described as palpably so.

Furthermore, the Defendant has failed to demonstrate any manner in which the final judgment of the Appellate Division was "unfair" or "unjust." Mahony, 95 N.J. at 52; Bandel, 122 N.J. at 237. These terms are typically used to describe decisions that shock the conscience to the point of being unconscionable. See e.g. Baxter v. Fairmont Food Co., 74 N.J. 588, 596 (1977) (defining "manifestly unjust" as that which is "shown to shock [the] conscience"). Here, there has been no such unconscionable final judgment by the Appellate Division sufficient to warrant certification by this Court. Defendants only arguments in this regard are that: (1) supersession "provides a crucial backstop" in achieving "administration of criminal justice throughout the

State"; and (2) without the threat of supersession, local officials would lack incentive "to comply with binding policies, internal affairs, and best practices." (Sc31). This is again somewhat concerning reasoning. Beyond the plain fact that there are myriad methods, absent supersession, by which the Attorney General can exercise his supervisory powers, Defendants' contention here evinces a truly bleak view of the elected and appointed officials that comprise municipal and county government. Defendants essentially ask this Court to adopt a position that would codify a belief that brute force is the only way to motivate a local official beyond their inherent self-interest and tendency towards corruption. The argument that it is definitionally unfair or unjust for a court to place even reasonable limits, guided by statute, on the Attorney General's supersession power or that the threat of supersession, unencumbered by such limits, is somehow necessary to coerce local officials into effecting the public policy of this State is itself unconscionable, and offends the notions of civic virtue and public service that are foundational to this State and any polite society. In contrast, far from shocking the conscience, the judgment below instead merely restored rightful authority to municipalities as has been prescribed by the Legislature. There have been no drastic changes or impacts, as to the balance of powers between state and local law enforcement or otherwise, that would justify certification in the interest of justice.

Defendants' arguments in this regard wholly lack merit and they have categorically failed to show palpable wrong, unfairness, or unjustness in the judgment below. Consequently, Defendants fail to demonstrate that the present matter calls for an exercise of this Court's supervision in the interest of justice, as contemplated by R. 2:12-4, and the Court should deny certification under that theory. The two theories of certification raised by Defendants being foreclosed to them, and the remaining bases provided by R. 2:12-4 being inapplicable to the present matter, no cause exists to justify review by this Court.

II. DEFENDANTS FAIL TO CLEARLY AND CONVINCINGLY MEET THEIR BURDEN JUSTIFYING THE ISSUANCE OF A STAY

Pursuant to the Court's Single-Justice Disposition on Application for Emergent Relief dated December 19, 2024, Plaintiffs respectfully request that the Court consider the arguments against the issuance of a stay set forth herein in supplement to Plaintiffs' earlier brief in opposition to Defendants' stay request submitted on December 19, 2024.

A. Defendants' Comparison to the Camden Supersession is Inapposite.

Defendants devote several pages of their brief attempting to justify their illegal takeover of the PPD with self-serving declarations and misleading comparisons to supersession of the Camden Police Department. (Sc31-33). These strained analogies do not cure the illegality of the PPD supersession or

address Defendants' continued and unabated deprivation of Plaintiffs' statutory and constitutional rights. As held by the Appellate Division, Defendants exceeded their limited statutory authority through the hostile and forcible takeover of the PPD, accomplished without the consent of the municipality. (Pca38). It is patently misleading to compare the PPD takeover to the 2013 Camden Police supersession because the City of Camden, Camden County officials and the State *mutually agreed to dissolve the Camden Police in favor of a county police department.*[4] In other words, unlike the matter before the Court, supersession was welcomed by then Mayor Dana Redd and the Camden City Council. Redd v. Bowman, 223 N.J. 87, 94 (2015).

B. The Question of "Results" is Disputed; Nonetheless, It Cannot Cure the Illegality of Supersession.

Second, Defendants submit self-serving, subjective and ultimately irrelevant certifications from interested parties in an attempt to demonstrate what is characterized as "undeniable" results achieved through their illegal supersession. As more fully set forth in the Certifications from Paterson Mayor Andre Sayegh and Paterson Police Chief Engelbert Ribeiro, such results are

[4] See https://www.nj.com/news/2011/08/camden_county_to_form_regional.html. This Court may take notice of facts or propositions of generalized knowledge that are universally known and cannot reasonably be the subject of dispute. N.J.R.E. 201(b). Furthermore, this Court previously recognized the consensual nature of the Camden supersession in Redd v. Bowman, 223 N.J. 87, 94 (2015) (noting appellant's challenge related to the "City of Camden's decision to disband its municipal police department" in favor of a county-wide police department, and that city officials entered into an agreement with the State of New Jersey and Camden County to do so).

plainly disputable and misleadingly attempt to incorporate positive public safety results seen while the PPD was still in City of Paterson control. See (Psa001a-008a). Regardless, the question of who can "police better" is not properly before this Court and is forcefully disputed. Regardless, Defendants' attempt to convince this Court they are better suited to do the job in Paterson misses the point entirely. (Sc31-33). The Court should not take the bait. This case is purely about *executive overreach* that is *ultra vires*, and wholly violative of both statutory and constitutional precedent authorizing municipalities to administer the day-to-day operations of police departments. The deprivation of the well-established rights held by Plaintiffs, as confirmed by the Appellate Division, is where the true interests of justice lie – and why denial of a stay of the Appellate Division's decision is so important.

Attempting to justify a stay in this matter on the generalized basis that "progress" would be upended is wholly subjective and does not satisfy any of the well-established Crowe factors. See Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982). Defendants fail to address, much less demonstrate, how the "public trust" or "cultural change" will be adversely affected by restoring control of the PPD to Plaintiffs. (Sc34). These unsupported claims are pasted from a subjective and self-serving Certification by James Haggerty, an employee of OAG. (Pca044-056). Haggerty offers several colorful misrepresentations and

assumptions to demonstrate the proverbial sky will fall if control is returned to Plaintiffs but provides nothing concrete to support the specious claims. Once control is returned to Plaintiffs and the City of Paterson, Defendants will still maintain general oversight and supervision of criminal justice affairs over law enforcement agencies, including the PPD, as they are statutorily and constitutionally authorized.[5]

C. Defendants' Claims of Chaos Following Return of PPD Control to Plaintiffs are Conjectural and Unfounded.

Arguments that denying a stay would adversely affect the PPD and the chain of command are likewise paradoxical. (Sc34). What truly devastated morale and caused confusion at the PPD was the sudden, forcible removal of its duly appointed police chief, Chief Ribeiro, after serving only 24 days on the job. (Pb6, 36). He now remains assigned, against the will of the City of Paterson and his employing authority, to the Police Training Commission (PTC) across the State in Trenton. (Pb36). While Chief Ribeiro remains a city employee, requests from Paterson Mayor Andre Sayegh to assign Chief Ribeiro to City Hall while this litigation remains pending have been summarily and arbitrarily denied.[6]

[5] Haggerty's Certification threatens that State funding for violent crime suppression initiatives, described as successful, would end upon reversal of Defendants' supersession. (Pca049). This coercive tactic should tell the Court everything it needs to know when it comes to the genuineness of Defendants' "interests of justice" and "public interest arguments."

[6] Consequently, the City of Paterson continues to pay Chief Ribeiro a significant annual salary, compensation and benefits, but the City and its residents obtain no local benefit from his employment, notwithstanding the many roles and responsibilities available for Chief Ribeiro to

(Pa265-271).

Moreover, the conjectural claims of chaos and confusion are wholly undermined by the fact that there are *only two* OAG employees currently working at the 500+ personnel at the PPD, and the currently appointed officer-in-charge (OIC"), Patrick Murray ("Murray"), is a 29-year veteran of the PPD. (Pso3). Prior to his appointment as OIC, Murray served as captain of a division that oversees the Shooting Investigation and Community Stabilization Units. Id. at n.2. Defendants' appointment of Murray as OIC to "solve" the problems at the PPD is curious, insofar as they appointed a career PPD officer who was allegedly part of the problem used to justify supersession in the first place. (Sc4-5; 34-35). What creates confusion and any loss of morale is lack of any justification whatsoever to abruptly relieve the newly-appointed Chief Ribeiro from his chief of police duties after a mere 24 days in office.[7]

D. Defendants' Reforms Can be Accomplished through Traditional Legislatively Authorized Oversight Rather than through Continued Illegal Supersession.

Defendants' balance of equities arguments are similarly unpersuasive.

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serve for the City in substitute of his duties as duly appointed police chief. (Pa265-271). Specifically, Chief Ribiero's annual salary is $225,000. See (Psa006a); see also (Psa002a).

[7] Defendants' explanation that the appointment of Murray as OIC is a "sign" of transitioning control back to longstanding PPD employees to "respect local interests and empower longstanding officers" to ensure ongoing reforms strains credibility. "Respecting local interests" necessarily requires restoration of control to its rightful authority, the City of Paterson, which exercised its Legislatively-granted municipal authority to appoint Chief Ribeiro as the chief of police.

Defendants speculate that "tremendous and irreparable harm" to the people of Paterson and the public interest will result if a stay is not granted but offer no appropriate legal justification sufficient to satisfy this Crowe factor. (Sc33). While a "number of initiatives" aspired by Defendants may allegedly remain, Defendants ask the Court to ignore the myriad goals and public safety initiatives undertaken by Plaintiffs and the City of Paterson that were shelved while the illegal supersession continues? See (Psa004a-005a).

Defendants cite to reforms such as the relocation of the internal affairs (IA) bureau to a separate site from PPD headquarters. However, this effort was underway before Defendants superseded and constitutes the finalization of an initiative put in motion by Plaintiffs and the City of Paterson. See (Psa007a). Similarly, changes to the civilian IA complaint process can be accomplished through Defendants' statutorily established general supervision over criminal justice matters, and their ability to implement statewide guidelines for internal affairs policies and procedures. (Sc34); N.J.S.A. 52:17B-98 and 40A:14-181. Defendants cannot rely on outstanding changes to the IA complaint system to justify its illegal takeover in contravention of State law and rights of Plaintiffs.

Nor can Defendants rely on the claimed need to institute additional crisis-intervention training in support of a stay. (Sc34). The Criminal Justice Act ("CJA") provides the Attorney General with general supervisory authority over

criminal justice matters, which includes the ability to issue statewide guidelines and policies. This authority has historically included the institution of statewide training mandates. N.J.S.A. 52:17B-97, *et seq.* Similarly, Defendants fail to demonstrate how restoration of control back to Plaintiffs will interfere with the chief law enforcement officer in the State's ability to continue to "address public sentiment." (Sc34).

Vague conclusory statements aside, nothing in the plain language of the CJA provides Defendants authority to supersede and assume full control of an entire operations of the PPD, in contravention of police powers specifically afforded to the City of Paterson by the Legislature. (Pca034-039); N.J.S.A. 40:69A-30; N.J.S.A. 40:48-2 (the "police powers" statute); N.J.S.A. 40:41A-28 (municipalities "are and shall remain the broad repository of local police power"); N.J.S.A. 52:17B-102 (the powers of the Attorney General are those provided by the Constitution or by the common or statutory law of the State); Quick Check Food Stores v. Springfield Twp., 83 N.J. 438, 447 (1980). Defendants want the Court to believe the CJA gives them unfettered, kinglike authority. It does not. Consistent with the State Constitution, Defendants' scope of authority remains constrained by the Legislature. In re Veto by Governor Chris Christie of Minutes of N.J. Racing Comm'n, 429 N.J. Super. 277, 290

(App. Div. 2012).[8] The Appellate Division agreed, finding the CJA limited Defendants to supersession of County Prosecutors, but not municipal police departments. (Pca25) (finding an expansive reading of N.J.S.A. 40A:14-181 provides implied legislative authority for Defendants to enforce their internal affairs guidelines with all law enforcement agencies).

Defendants also rest their flawed claims in support of a stay on the premise they invested funds in their supersession of the PPD with funds remaining for FY 2025. (Sc34). Such arguments have no bearing in the context of a deprivation of rights claim, particularly when Plaintiffs were forced to prosecute for restoration of rights and Defendants' investment pales in comparison to the $50 million annually the City of Paterson pays towards the PPD budget. (Pso8). Yet Plaintiffs and the City of Paterson continue to have no control, as legislatively authorized, over the PPD and its statutorily selected police chief – Ribeiro – remains assigned far from his place of employment.[9] Id.

[8] Though Plaintiffs assert Defendants disregarded both Constitutional and statutory limitations in the takeover of the PPD, even in the absence of constitutional limitations, the Attorney General's functions are "subject to increase, alteration or abridgment by *legislative enactment*." In re Veto by Governor Chris Christie, 429 N.J. Super. at 290 (emphasis added).

[9] Defendants' claim that they made extensive efforts to identify a "temporary" assignment for Chief Ribeiro is absurd. (Sc37). Setting aside the fact that "temporary" is now nearly 2 years of reassignment, Defendants refused to allow Chief Ribeiro to be detailed to City Hall, as directed by Mayor Sayegh. (Pb10-11). Though the Attorney General indicated publicly that Chief Ribeiro's assignment was a "City decision," Defendants privately executed a unilateral MOU assigning Chief Ribeiro to the PTC. Id. In November 2023, after being directed to report to City Hall by Mayor Sayegh, Chief Ribeiro was summoned to a meeting with the then OIC Abbassi and threatened with discipline if he failed to report to the PTC. (Pb13-15).

E. Defendants' Improperly Shift the Burden to Plaintiffs in Support of the Issuance of a Stay.

The remainder of Defendants' brief in support of a stay attempts to improperly shift the burden to Plaintiffs "on their side of the ledger," inviting the Court to ignore the obvious harm to Plaintiffs and the City of Paterson. (Sc36); (Pso7-8). For instance, Defendants exaggerate Plaintiffs' brief delay in seeking relief in an unconvincing attempt to challenge Defendants' claims of harm. The harm, however, is apparent. Chief Ribeiro has been relieved of his duties for nearly 2 years to date, working hours away from his appointed place of employment. The Paterson public continues to be deprived of its duly elected Mayor's authority and appointment decisions over the PPD, as well as control of their own police department.

Any brief delay in seeking redress is understandable, in the immediate aftermath of the Attorney General's surprising, unprecedented and public pronouncement of supersession, without any advance notice. Following the sudden and unannounced takeover of the PPD, against the will of Plaintiffs, Plaintiffs were contractually prohibited from filing an immediate lawsuit against Defendants. See (Psa003a). As a transitional aid recipient, the City of Paterson has been a party to a memorandum of understanding (MOU) with the Division of Local Government Services (DLGS), Department of Community Affairs, since 2002 as extended through 2024. The MOU states, in pertinent part, that

the municipality is explicitly prohibited from filing litigation contesting actions by the State of New Jersey or any of its agencies or authorities. Id. A violation of the MOU would risk the City's receipt of approximately $25 million annually in transitional state aid. Id. Presented with this Hobson's choice, Plaintiffs struggled to immediately raise funds to retain counsel to seek legal recourse and restoration of their rights. Id. Considering these unique circumstances, any modest delay by Plaintiffs in being able to seek injunctive relief is far eclipsed by the nearly 2 years they have been forced to endure this illegal supersession.

By the same token, Defendants' claims that Plaintiffs failed to move for a stay pending appeal from the Appellate Division is misleading and factually inaccurate. Plaintiffs sought emergent relief via Orders to Show Cause for Declaratory Judgment and Injunctive Relief filed in two separate lawsuits in the Passaic County Superior Court. (Pb3-4). However, the Appellate Division retained exclusive jurisdiction to review decisions of state administrative agencies and officers and, as such, the case was transferred out of Passaic County.[10] R. 2:2-3(a)(2). On October 29, 2023, Plaintiffs unsuccessfully sought emergent relief from the Appellate Division, and Plaintiffs' request was denied

[10] Defendants filed a motion to change venue to the Appellate Division in the first action (PAS-L-2736-23) with the Passaic County Superior Court, which was granted on October 23, 2023. Pb4. Defendants also filed a motion to change venue in the second action filed by Plaintiffs (PAS-L-390-23), and the Court consolidated the actions and granted Defendants' motion to change venue on January 18, 2024, thereby transferring the consolidated matters to the Appellate Division without reaching the merits of the cases. (Pb4-5).

by the Court on October 30, 2023. (Sc8). Due to its exclusive jurisdiction over the matter, the Appellate Division was the first court to review and determine the merits of Plaintiffs' lawsuits. R. 2:9-5(b) states that a motion for a stay in a civil action prior to the date of oral argument in the appellate court will be made first to the court which entered the judgment, then to the appellate court. The comments to the Rule emphasize that it would be impractical for the appellate court to deal with the merits of the question until all briefs are filed. Id.; In re Jones, No. BER-L-2683-18, 2018 N.J. Super. Unpub. LEXIS 8598 at *6 (Bergen Cty. Sup. Ct. 2018). Here, no court had made any judgment until the Appellate Division issued its opinion. Thus, Plaintiffs were procedurally incapable of seeking an earlier stay on a matter that no court had yet ruled upon. (Pa155-160).

F. Defendants' Attempts to Preserve the "Status Quo" Fails to Acknowledge the Harm of Their Own Making They Now Wish to Maintain.

Defendants speciously attempt to preserve the "status quo" following an illegal action of their own making. Preserving the status quo, as defined by Defendants in application, is not suitable in the context of emergency relief, where it would allow the continuation of a plainly illegal action to remain in effect and be enforced against harmed individuals pending decision on the merits. Labrador v. Poe, 144 S. Ct. 921, 930-31 (2024) (Kavanaugh, B. and

Barrett, A., concurring). The Court should rely on likelihood of success on the merits as the essential factor in determining the need for injunctive relief which, as unambiguously concluded by the Appellate Division, this factor wholly favors Plaintiffs. Id.

Until Defendants' *ultra vires* takeover, the status quo for decades was that Plaintiffs and the City of Paterson administered the operations of its own PPD, fully consistent with State law and legislative intent. A stay is not a matter of right, even if purported injury or harm may otherwise result to the moving party. It is an exercise of judicial discretion, and the propriety of a stay depends on circumstances of an individual case. Nken v. Holder, 556 U.S. 418, 433 (2009); Scripps-Howard Radio v. F.C.C., 316 U.S. 4, 10-11 (1942). Defendants should not be permitted to twist the definition of status quo to prolong the continuation of its patently illegal actions by conveniently claiming their statutory violations are now the defensible status quo.

G. Plaintiffs Sought Judicial Relief Precisely Because Defendants' Illegally and Arbitrarily Superseded the PPD without Legal Basis.

Finally, Defendants' argument that Plaintiffs failed to advance the claim that supersession was arbitrary is farcical. *This entire action* was brought to seek legal redress for this unlawful supersession. *By definition*, the hostile takeover of the PPD without any legal basis is arbitrary because, as argued below, the

entire supersession was without a shred of legal authority. (Pca38) ("we conclude defendants had no authority, either express or implied, to directly supersede the entire PPD"). Constitutional, statutory and judicial authority and precedent all fully support Plaintiffs' authority to control and administer the PPD: (1) Article IV of the New Jersey Constitution;[11] (2) N.J.S.A. 40:69A-30, *et seq.* - The Faulkner Act;[12] (3) N.J.S.A. 40:48-2 - the "police powers" statute;[13] (4) N.J.S.A. 40:41A-28;[14] (5) N.J.S.A. 40A:14-118;[15] (6) Quick Check Food Stores v. Springfield Twp, 83 N.J. at 447;[16] (7) FOP, 244 N.J. at 93;[17] and (8) Inganamort v. Borough of Fort Lee, 62 N.J. 521, 528 (1973).[18]

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[11] Delegating broad and liberally construed constitutional allocation of powers to municipalities, and expressing the fundamental principles of "home rule." N.J. Const. Art. 4, § VII, par. 11.

[12] Conferring the "greatest power of local self-government consistent with the Constitution of this State" which shall be "liberally construed . . . in favor of the municipality;" no other general law "shall be construed in any way to limit the general description of power contained in this article."

[13] "Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules . . . as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants."

[14] "Municipalities are and shall remain the broad repository of local police power in terms of the right and power to legislate for the general health, safety and welfare of their residents."

[15] The governing body of any municipality may "create and establish, as an executive and enforcement function of the municipal government, a police force." The municipality may provide "for the appointment of a chief of police" and the chief "shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the routine and day to day operations thereof . . ."

[16] The well-established police powers granted to municipalities are to be "liberally construed in favor of the municipality."

[17] The concept of home rule is "legislatively stitched into the fabric of New Jersey government" and "finds expression in the legislative choice to invest the police powers of the state in local government.'"

[18] "Home rule is basic in New Jersey government. It embodies the principle that the police power of the state may be invested in local government . . . . Whether the state alone should act or should leave initiative and the solution to local government, rests in legislative discretion."

By comparison, Defendants present non-specific and speculative claims of "deep harm to the chain-of-command and to the public that will follow absent a stay." (Sc37). As set forth *supra*, the harm caused to the chain of command arose from Defendants' forcible removal of its statutorily appointed police chief, Chief Ribeiro, in direct contravention of State law. The above-cited authority confirms that Defendants' supersession scope is expressly *constrained* by the Legislature, as indicated by the clear limiting language. Nor do the following statutes relied upon by Defendants provide any legal justification: (1) N.J.S.A. 52:17B-102;[19] (2) N.J.S.A. 52:17B-107(a);[20] (3) N.J.S.A. 52:17B-98, *et seq.* – the CJA;[21] (4) N.J.S.A. 40A:14-181.[22] Courts have held that the CJA permits Defendants to issue statewide directives, guidelines and policies to ensure uniform enforcement of criminal laws. But nothing in the plain language of the CJA statute, or any statute for that matter, provides authority to assume full

[19] "The powers and duties of the Attorney General with respect to the enforcement of the criminal laws of the State shall be the powers and duties now or hereafter conferred upon or required of the Attorney General, either by the Constitution or by the common or statutory law of the State."
[20] "Attorney General may (a) supersede a county prosecutor in any investigation, criminal action or proceeding, (b) participate in any investigation, criminal action or proceeding, or (c) initiate any investigation, criminal action or proceeding."
[21] In response to an organized crime problem, Legislature declared it the policy of the State to "*encourage* cooperation among law enforcement officers and provide for the *general supervision* of criminal justice by the Attorney General as the chief law enforcement officer of the State" (emphasis added). A review of all 25+ sections of the CJA reveals not a single reference to municipal police department supersession or takeover by the Attorney General.
[22] This statute has nothing to do with authority to supersede a municipal police department. Instead, it mandates that all law enforcement agencies adopt and implement guidelines that are consistent with the "Internal Affairs Policy and Procedures" promulgated by Defendants.

control of the entire operations of the PPD in contravention to the police powers specifically provided to the City of Paterson by the Legislature. (Pca38).

Here, Defendants spun from whole cloth professed authority under the November 2022 Internal Affairs Policy and Procedures ("IAPP") Directive 22-14 to supersede a municipal police department. (Pb17). Never once in its 33-year history did the IAPP contain a reference to supersession of a municipal police department and, like all prior versions, the November 2022 IAPP cited to three statutes in support of its claimed authority – N.J.S.A. 52:17B-107, 52:17B-98 and 40A:14-181. (Pa52-53). But as argued above, none of these statutes address, much less mention, supersession of an entire police department. Even the opening language of IAPP Directive 22-14 – titled "Transparency in Internal Affairs Investigations" - recognizes the Directive's scope is limited to internal affairs and police conduct matters. (Pa45) ("[t]his Directive also clarifies and confirms the Attorney General's broad supersession authority over *internal affairs*") (emphasis added).

The Constitution and the Legislature serve as checks on executive authority, and the words chosen by the Legislature for the scope of supersession authority given to municipalities instead of the Attorney General are clear. The Court must presume the Legislature "intended the words that it chose and the plain and ordinary meaning ascribed to those words." Paff, 229 N.J. at 353. If

the Legislature intended Defendants to have such broad and unfettered authority to take over a municipal police department, it would have said so.[23] The Legislature's "express grant of police power is made *impregnable* by continued legislative acquiescence that *obligates* liberal construction of this power to municipalities" (emphasis added). FOP, 244 N.J. at 118; In re Veto by Governor Chris Christie, 429 N.J. Super. at 290. Clearly, the Appellate Division agreed, holding:

> As shown by sections 106 and 107's unambiguous language, the Legislature's grant of express supersession authority to the AG is quite clear, and it encompasses a spectrum of authority including complete supersession, discretionary limited supersession, and mandatory limited supersession. Sections 106 and 107 are silent concerning the AG's direct supersession of a municipal police department.

(Pca23).

In conclusion, Defendants rely on amorphous "multiple collective sources of law" that allegedly confirms their power to supersede but provide not a single statute or case that provides legal authority for their unlawful takeover. (Sc38).

[23] Nor does the Chapter 94 law cited by Defendants provide justification or safe harbor for their illegal supersession. As conceded by Defendants, the law speaks to the Attorney General's appointment power but does not amend or repeal still-controlling legislation that squarely limits Defendants' overall supersession authority to certain statutorily delineated instances. (Pr6-9). As held by the Appellate Division, the law reveals no "grant of express or implied supersession authority from the Legislature to Defendants" and the topic of Defendants' legislative authority to supersede the PPD was never broached. (Pca30-31). "There is simply no legislative authority to support the notion that the Legislature intended Ch. 94 to authorize an expansion of defendants' supersession powers." Id. at 31.

With respect, "multiple collective sources of law" is akin to conceding that they have no specific authority justifying their supersession. The traditional deference afforded to Attorney General agency decisions applies only when the agency exercises a *statutorily delegated responsibility.* City of Newark v. Nat. Res. Council, 82 N.J. 530, 539 (1980) (emphasis added). Such is not the case here. Rather, Defendants clumsily inserted takeover language into the latest IAPP which rests on neither statutory nor Constitutional authority. A close review of the March 27, 2023 letter from the Attorney General to the City of Paterson informing the City of Paterson of Defendants' supersession proves the point, as the citations included within are completely devoid of any specific legal authority that addresses, much less justifies, such supersession. (Pa227); (Pb19-21).

Defendants' takeover of the PPD rests entirely on a whim, the very definition of an arbitrary and capricious action. [24] (Sc38). The purported authority for supersession of municipal police departments was simply made up – manufactured without a shred of legislative authority justifying the disregard of rights reserved for municipalities. Plaintiffs' rights have been and continue to be deprived, and Defendants fail to satisfy their burden by presenting clear

[24] "Caprice" is defined as follows: Whim, arbitrary, seemingly unfounded motivation." Black's Law Dictionary (5 Ed. Rev. 1979) 192.

and convincing evidence to satisfy any of the Crowe factors to support such drastic relief.

When the chief law enforcement officer of the State fails to act with the requisite statutory or constitutional authority, it is incumbent upon the judiciary to afford a mechanism for aggrieved parties to seek relief. Plaintiffs originally sought redress via the courts to protect their municipal rights from illegal executive overreach, and to protect the fundamental tenet that it is the law that holds supreme power, not a monarch. Paine, Thomas, Common Sense: The Call to Independence (1776). For nearly two years, Plaintiffs have been forced to prosecute this matter to restore legal rights that continue to be deprived to this day. The Appellate Division soundly rejected Defendants' unfounded arguments. Plaintiffs should not have to wait any longer. For these reasons, the Court should deny Defendants' request for a stay of the Appellate Division's decision and direct Defendants to comply with the lower court's decision.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that this Court deny certification, vacate the current stay, and allow the judgment below to take effect.

Respectfully submitted,

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