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**Senate President Stephen M. Sweeney**  
**and Assembly Speaker Craig J. Coughlin**

**In re Complaint Filed by the  
Franklin Township Board of  
Education Regarding P.L. 2020,  
Chapter 44.**

**In re Complaint Filed by the  
Gloucester City Board of  
Education Regarding P.L. 2020,  
Chapter 44.**

**In re Complaint Filed by the  
Lower Township Elementary  
Board of Education Regarding  
P.L. 2020, Chapter 44.**

**STATE OF NEW JERSEY  
COUNCIL ON LOCAL MANDATES  
COLM-0001-21**

**Consolidated Action**

**RESPONDENTS**  
**SENATE PRESIDENT STEPHEN M. SWEENEY'S**  
**AND ASSEMBLY SPEAKER CRAIG J. COUGHLIN'S**  
**ANSWER TO THE THREE AMENDED**  
**COMPLAINTS FILED ON JULY 30, 2021**

Respondents, Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”), by way of Answer to the Amended Complaints dated July 30, 2021 filed by Claimants Franklin Township Board of Education, Gloucester City Board of Education and Lower Township Elementary Board of Education (hereafter collectively “Claimants”)<sup>1</sup>, say as follows:

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<sup>1</sup> By Order dated April 5, 2021, the Council has consolidated the three Complaints. Because this matter has been consolidated, the Presiding Officers’ Answer to the three Complaints is addressed in this single document.

## **I. The Presiding Officers' Answer to the Amended Complaint of the Franklin Township Board of Education**

1. The Preamble of the Franklin Township Amended Complaint (titled "Section 3 – Basis for the Complaint) is a legal assertion for which no answer is required.

2. Paragraph 1 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

3. Paragraph 2 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

4. Paragraph 3 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

5. Paragraph 4 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

6. Paragraph 5 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

7. Paragraph 6 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required.

8. The first sentence of Paragraph 7 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required. With regard to the second sentence of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

9. A substantial portion of Paragraph 8 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 8

wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

10. A substantial portion of Paragraph 9 of the Franklin Township Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

11. With regard to Paragraph 10 of the Franklin Township Amended Complaint, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

12. With regard to the multiple paragraphs contained in the portion of the of the Franklin Township Amended Complaint titled “Section 4 – Additional Direct Expenditures” to the extent the sentences contained therein are factual assertions regarding Claimants’ insurance expenses, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimant to its proofs. To the to the extent the sentences contained therein are legal assertions, no answer is required.

## **II. The Presiding Officers’ Answer to the Amended Complaint of the Gloucester City Board of Education**

1. The Preamble of the Gloucester City Amended Complaint (titled “Section 3 – Basis for the Complaint) is a legal assertion for which no answer is required.

2. Paragraph 1 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

3. Paragraph 2 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

4. Paragraph 3 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

5. Paragraph 4 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

6. Paragraph 5 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

7. Paragraph 6 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required.

8. The first sentence of Paragraph 7 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required. With regard to the second sentence of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

9. A substantial portion of Paragraph 8 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 8 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

10. A substantial portion of Paragraph 9 of the Gloucester City Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

11. With regard to Paragraph 10 of the Gloucester City Amended Complaint, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

12. With regard to the multiple paragraphs contained in the portion of the of the Gloucester City Amended Complaint titled “Section 4 – Additional Direct Expenditures” to the extent the sentences contained therein are factual assertions regarding Claimants’ insurance expenses, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimant to its proofs. To the to the extent the sentences contained therein are legal assertions, no answer is required.

### **III. The Presiding Officers’ Answer to the Amended Complaint of the Lower Township Board of Education**

1. The Preamble of the Lower Township Amended Complaint (titled “Section 3 – Basis for the Complaint) is a legal assertion for which no answer is required.

2. Paragraph 1 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

3. Paragraph 2 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

4. Paragraph 3 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

5. Paragraph 4 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

6. Paragraph 5 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

7. Paragraph 6 of the Lower Township Amended Complaint is a legal assertion for which no answer is required.

8. The first sentence of Paragraph 7 of the Lower Township Amended Complaint is a legal assertion for which no answer is required. With regard to the second sentence of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

9. A substantial portion of Paragraph 8 of the Lower Township Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 8 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

10. A substantial portion of Paragraph 9 of the Lower Township Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 9 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

11. A substantial portion of Paragraph 10 of the Lower Township Amended Complaint is a legal assertion for which no answer is required. With regard to the remainder of Paragraph 10 wherein certain facts are alleged, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

12. With regard to the multiple paragraphs contained in the portion of the of the Lower Township Amended Complaint titled “Section 4 – Additional Direct Expenditures” to the extent the sentences contained therein are factual assertions regarding Claimants’ insurance expenses, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimant to its proofs. To the to the extent the sentences contained therein are legal assertions, no answer is required.

**IV. The Presiding Officers' Affirmative Defenses to all three Amended Complaints in this Consolidated Action**

**FIRST AFFIRMATIVE DEFENSE**

Claimants have failed to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate within the meaning of N.J. Const., Art. VIII, § 2, ¶ 5(b) and N.J.S.A. 52:13H-2.

**THIRD AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate because it “repeals, revises or eases an existing requirement or mandate” within the meaning of N.J. Const. Art. VIII, § 2, ¶ 5 (c)(3) and N.J.S.A. 52:13H-3(c).

**FOURTH AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate because the statute was enacted to help school districts in controlling spiraling health care costs through a careful re-design of public employee health insurance plans.

**FIFTH AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate because the Act is projected to provide total claim savings of \$865 million per year for all school districts.

**SIXTH AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate because health insurance costs inherently fluctuate based on a myriad of factors – many of which are outside the control of any governmental entity.

**SEVENTH AFFIRMATIVE DEFENSE**

L. 2020, c. 44 is not an impermissible unfunded mandate because to the extent that some

school districts might encounter transitional costs – rather than transitional savings – the Act requires the school districts to enter into collective bargaining negotiations with their employee organization in order to address the transitional costs. The Claimants’ failure and refusal to comply with this required provision of the Act is sufficient to defeat their application for preliminary injunctive relief.

**EIGHTH AFFIRMATIVE DEFENSE**

All Claimants have failed to enter into good faith collective bargaining negotiations with their employee organization as required by section 8 of L. 2020, c. 44. Having failed to comply with the requirements of the Act, all Claimants do not have a cognizable claim that L. 2020, c. 44 is an impermissible unfunded mandate.

**NINTH AFFIRMATIVE DEFENSE**

All Claimants have failed to enter into good faith collective bargaining negotiations with their employee organization as required by section 8 of L. 2020, c. 44. Because all Claimants have failed to comply with the requirements of the Act, this tribunal is without jurisdiction to hear their alleged claims.

**TENTH AFFIRMATIVE DEFENSE**

On July 7, 2021 the Governor signed into law A5825 -- an act that amended L. 2020, c. 44 and that added significant new language addressing the collective bargaining provision of Chapter 44 (hereafter referred to as Section 8). Assuming, arguendo, that Section 8 of Chapter 44 had raised any ambiguity whatsoever with regard to the obligation of school districts to engage in collective bargaining negotiations with their employee organizations in order to eliminate any net cost to the school district of transitioning to a new health benefits regime, A5825 removes that ambiguity. As such, Chapter 44, as amended by A5825, is not an impermissible unfunded mandate.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Council is without authority to provide retroactive relief to Claimants with respect to alleged “prior financial impacts of Chapter 44” (that arose before the enactment of A5825).

**TWELFTH AFFIRMATIVE DEFENSE**

Claimants’ purported construction of A5825 – as somehow precluding the parties to a collective bargaining negotiation from addressing alleged “prior financial impacts of Chapter 44” (that arose before the enactment of A5825) – is properly rejected as a matter of law as wholly unsupported by the plain meaning of the A5825.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Claimants’ purported construction of A5825 – as somehow precluding the parties to a collective bargaining negotiation from addressing “current and continuing financial impacts” as well as future financial impacts – is properly rejected as a matter of law as wholly unsupported by the plain meaning of the A5825.

**FOURTEENTH AFFIRMATIVE DEFENSE**

All Claimants have failed to mitigate their damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

All Claimants are barred from recovery by the doctrine of unclean hands.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Claimants’ claims are barred by the doctrines of waiver, estoppel, and laches.

Cullen and Dykman LLP  
Attorneys for Respondents Senate President  
Stephen M. Sweeney and Assembly Speaker  
Craig J. Coughlin

By: /s/ Leon J. Sokol  
Leon J. Sokol

Dated: August 11, 2021