

DAVID I. FOX  
ARTHUR D. GROSSMAN  
PAUL I. ROSENBERG\*  
KENNETH H. FAST  
MARTIN KESSELHAUT  
ROBERT J. ROHRBERGER\*  
RONNIE ANN POWELL\*  
CRAIG S. GUMPEL\*  
JORDAN S. SOLOMON\*

MARTIN S. FOX\*  
JEFFREY H. FISCH<sup>Δ</sup>  
OF COUNSEL

**FOX AND FOX LLP**  
ATTORNEYS AT LAW  
70 SOUTH ORANGE AVENUE  
SUITE 203  
LIVINGSTON, NEW JERSEY 07039  
TELEPHONE: (973) 597-0777  
FACSIMILE: (973) 597-0884  
www.foxandfoxllp.com

MONTCLAIR OFFICE  
26 PARK STREET  
SUITE 2018  
MONTCLAIR, NEW JERSEY 07042  
TELEPHONE: (973) 746-0600  
FACSIMILE: (973) 597-0884

NEW YORK OFFICE  
1001 AVENUE OF THE AMERICAS  
12TH FLOOR  
NEW YORK, NEW YORK 10018  
TELEPHONE: (212) 880-3763  
FACSIMILE: (212) 790-9594

COUNSEL  
DANIEL J. ZIRRITH<sup>+</sup>  
SUSAN R. FOX  
ANNMARIE P. SMITS\*  
DAVID A. WARD\*  
ROBERT V. FODERA\*  
BRENDAN E. EGAN\*<sup>□</sup>  
JILL ANNE LAZARE\*  
BENJAMIN BENSON\*  
LLOYD N. STEELE<sup>○</sup>  
ERICA J. HIRSCH

\* ALSO ADMITTED IN NY  
+ ALSO ADMITTED IN PA  
Δ ALSO ADMITTED IN FL  
○ NY ONLY  
□ CT

PLEASE RESPOND TO LIVINGSTON OFFICE

March 21, 2005

**Via E-Mail Transmission**

Mr. George P. Christie, President  
Probation Association of New Jersey  
617 Union Avenue  
United Professional Center, Building 2  
Brielle, New Jersey 08730

**RE: State of New Jersey, Probation Association of New Jersey, and  
Probation Association of New Jersey, Professional Supervisors Union vs.  
P.L. 2001 Chapter 362, Richard J. Williams, in his office capacity as  
Administrative Director of the Courts  
Appellate Division Docket Nos. A-003389-03T3 and A-003370-03T3  
Supreme Court Docket No. 57,670  
Our File No. 2640.0021305**

Dear Mr. Christie:

Accompanying this email transmission, please find a copy of the March 21, 2005 cover letter of Emily A. Kaller, Esq., attorney for the State of New Jersey, Certification of Service dated March 21, 2005 from Emily A. Kaller, Esq., and the Petition for Certification and Appendix on Behalf of Defendant/Petitioner State of New Jersey.

Please call me if you have any questions.

Very truly yours,

*Brendan E. Egan*  
BRENDAN E. EGAN

BEE/dl  
Enclosures

# GREENBAUM, ROWE, SMITH & DAVIS LLP

COUNSELORS AT LAW

COUNSEL

ROBERT S. GREENBAUM  
ARTHUR M. GREENBAUM  
PAUL A. ROWE  
WENDELL A. SMITH  
ALAN E. DAVIS  
DAVID L. BRUCK  
MICHAEL A. BACKER  
MARTIN E. DOLLINGER  
DEAN A. GAVER  
ROBERT C. SCHACHTER  
MARTIN L. LEPELSTAT  
DENNIS A. ESTIS  
WILLIAM D. GRAND  
ALAN S. NAAR  
ROBERT M. GOODMAN  
DOUGLAS K. WOLFSON  
MARK H. SOBEL  
HAL W. MANDEL  
BARRY S. GOODMAN  
LAWRENCE P. MAHER  
THOMAS J. DENITZIO, JR.  
ROBERT S. GOLDSMITH  
JOHN D. NORTH  
KENNETH T. BILLS  
THOMAS C. SENTER  
MARGARET GOODZEIT

W. RAYMOND FELTON  
CHRISTINE F. LI  
MERYL A.G. GONCHAR  
MICHAEL K. FEINBERG  
STEVEN S. GOLDENBERG  
CARLTON T. SPILLER  
JOSEPH M. ORIOLO  
LLOYD H. TUBMAN  
ARON M. SCHWARTZ  
THOMAS DANIEL MCCLOSKEY  
SABRINA A. KOGEL  
ALAIN LEIBMAN  
JACQUELINE M. PRINTZ  
STEVEN C. DELINKO  
GARY K. WOLINETZ  
KEVIN T. MCNAMARA  
DANIEL M. MURPHY  
RICHARD L. HERTZBERG  
ELLEN A. SILVER  
ANDREA J. SULLIVAN  
MARC D. POLICASTRO  
MARC J. GROSS  
LUKE J. KEALY  
C. BRIAN KORNBREK  
CIPORA S. WINTERS

METRO CORPORATE CAMPUS ONE  
P.O. BOX 5600  
WOODBIDGE, N. J. 07095-0988  
(732) 549-5600  
FAX (732) 549-1881

DELIVERY ADDRESS:

99 WOOD AVE. SOUTH  
ISELIN, NEW JERSEY 08830-2712

6 BECKER FARM RD.  
ROSELAND, NEW JERSEY 07068-1735  
(973) 535-1600  
FAX (973) 535-1698

EMAIL: INFO@GREENBAUMLAW.COM  
WWW.GREENBAUMLAW.COM

CHRISTINE F. MARKS  
ROBERT S. UNDERHILL  
STEVEN FIRKSER

ALLEN V. BROWN  
HOWARD B. HANDER  
LORA L. FONG

MICHELE GIBSON  
JODI L. ROSENBERG  
ROSEMARY CULCASI  
EMILY A. KALLER  
GALIT KJERKUT  
G. DANIEL NIDER  
CHARLES A. BRUDER  
ARREN S. GOLDMAN  
DARREN C. BARREIRO  
OLIVIER SALVAGNO  
STEVEN NUDELMAN  
DINA M. VANIDES  
BRIAN R. SELVIN  
PETER D. CRAWFORD, JR.  
HANY A. MAWLA  
ERIC H. MELZER  
GINA M. PONTORIERO  
ROBERT E. SCHIAPPACASSE  
MELISSA E. LIEBERMANN  
ROBERT BECKELMAN

MAJA M. OBRADOVIC  
JANE J. FELTON  
MICHAEL A. KLEIN  
STEFANIE R. MCNAMARA  
SARAH H. BENHABIB  
KELLIE A. LAVERY  
JENNIFER J. MCDERMOTT  
DAVID S. SCHECHTER  
ADAM B. KAPLAN  
AIMEE L. CREED  
JEMI M. GOULIAN  
JOHN B. NANCE  
MICHELLE M. SEKOWSKI  
JEFFREY A. SIROT  
JOHN WHITING ROESER  
MICHAEL A. GOROKHOVICH  
LISA B. DIPASQUA  
KELLY R. CAMAMIS  
RICHARD S. DENNISON, JR.  
MEGHAN O. MURRAY

WM. L. GREENBAUM (1914-1983)  
ALLEN RAVIN (1957-1997)

REPLY TO: Woodbridge

March 21, 2005

**VIA HAND DELIVERY**

Stephen W. Townsend, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 West Market Street  
P.O. Box 970  
Trenton, NJ 08625-0970

**Re: In the Matter of P.L. 2001, Chapter 362  
Richard J. Williams v. The State of New Jersey  
Docket No. 57,670**

Dear Mr. Townsend:

On behalf of Defendant/Petitioner, State of New Jersey, enclosed for filing please find an original and ten copies of the following documents:

1. Petition for Certification and Appendix; and
2. Certification of Service.

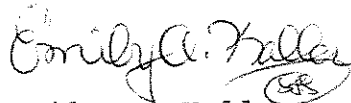
Kindly stamp these papers "filed" and return a stamped "filed" copy in the enclosed envelope. The State of New Jersey is exempt from the payment of fees under N.J.S.A. 22A:2-22 and costs pursuant to Rule 2:5-2. Also enclosed are two copies of State of New Jersey's Brief and Appendix (Volumes I-V) filed in the Superior Court of New Jersey - Appellate Division.

March 21, 2005

Page 2

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Emily A. Kaller". The signature is written in dark ink and includes a small circular mark or flourish at the end.

Emily A. Kaller

EAK:sas

Enclosures

cc: James M. Flynn, Clerk of the Superior Court of New Jersey  
(w/encs., via hand delivery)  
Hon. Paulette M. Sapp-Peterson, P.J.Cv. (w/encs.,  
via regular mail)  
Cynthia Jacob, Esq. (w/encs., via hand delivery)  
David I. Fox (w/encs., via hand delivery) ✓

GREENBAUM, ROWE, SMITH & DAVIS LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, NJ 07095  
(732) 549-5600  
Attorneys for Defendant/Petitioner  
State of New Jersey

In the Matter of P.L.  
2001, Chapter 362

Richard J. Williams, in  
his official capacity as  
Administrative Director of  
the Courts,

Plaintiff/Respondent,

v.

The State of New Jersey,  
Defendant/Petitioner.

Probation Association of  
New Jersey, Probation  
Association of New Jersey  
Professional Supervisors  
Union,

Intervenors.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 57,670

**CIVIL ACTION**

APPELLATE DOCKET NO: A-3370-03T3

On Appeal from the  
Superior Court of New Jersey  
Appellate Division

Sat Below:  
Hon. Dorothea O'C. Wefing, J.A.D.  
Hon. Robert A. Fall, J.A.D.  
Hon. Edith K. Payne, J.A.D.

Docket No. Below:  
MER-L-1344-02

Sat Below:  
Hon. Paulette Sapp-Peterson, P.J.S.C.

**CERTIFICATION OF SERVICE**

Emily A. Kaller, of full age hereby certifies as follows:

1. I am an attorney admitted to practice law in the State of New Jersey and an associate with the law firm of Greenbaum, Rowe, Smith & Davis LLP, attorneys for defendant/petitioner, State of New Jersey in the captioned matter.

2. On March 21, 2005, I caused an original and ten copies of defendant/petitioner's Petition for Certification and Appendix to be filed via hand delivery with Stephen W. Townsend, Clerk of the Supreme Court, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625-0970.

3. On March 21, 2005, I caused a copy of defendant/petitioner's Petition for Certification and Appendix to be filed via hand delivery with James M. Flynn, Clerk of the Superior Court of New Jersey, Appellate Division, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625.

4. Also, on March 21, 2005, I caused one copy of the above document to be mailed to:

Honorable Paulette M. Sapp-Peterson, P.J.Cv.  
Superior Court of New Jersey  
Mercer County Civil Courts Building  
175 South Broad Street  
Trenton, New Jersey 08650

5. Also, on March 21, 2005, I caused two copies of the above document to be hand delivered to:

Cynthia M. Jacob, Esq.  
Collier, Jacob & Mills, P.C.  
Corporate Park III  
580 Howard Avenue  
Somerset, NJ 08873  
Attorneys for Plaintiff/Respondent

and

David I. Fox, Esq.  
Fox and Fox LLP  
70 South Orange Avenue  
Livingston, NJ 07039  
Attorneys for Intervenors

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
EMILY A. KALLER

Dated: March 21, 2005

In the Matter of P.L.  
2001, Chapter 362

Richard J. Williams, in  
his official capacity as  
Administrative Director of  
the Courts,

Plaintiff/Respondent,

v.

The State of New Jersey,

Defendant/Petitioner.

Probation Association of  
New Jersey, Probation  
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Professional Supervisors  
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Intervenors.

SUPREME COURT OF NEW JERSEY  
DOCKET NO.: 57,670

**CIVIL ACTION**

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Sat Below:

Hon. Dorothea O'C. Wefing, J.A.D.  
Hon. Robert A. Fall, J.A.D.  
Hon. Edith K. Payne, J.A.D.

Docket No. Below:  
MER-L-1344-02

Sat Below:

Hon. Paulette Sapp-Peterson, P.J.S.C.

---

**PETITION FOR CERTIFICATION AND APPENDIX ON BEHALF OF  
DEFENDANT/PETITIONER STATE OF NEW JERSEY**

---

GREENBAUM, ROWE, SMITH & DAVIS LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095  
(732) 549-5600  
Attorneys for Defendant/Petitioner  
State of New Jersey

Of Counsel:

Paul A. Rowe, Esq.

On the Brief:

Paul A. Rowe, Esq.

Andrea J. Sullivan, Esq.

Emily A. Kaller, Esq.

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### PRELIMINARY STATEMENT

In response to the risk to the public safety caused by the increasing number of violent and recidivist criminals serving probation and the thousands of outstanding warrants for probation violators, the Legislature of the State of New Jersey enacted Public Law 2001, Chapter 362, now codified as N.J.S.A. 2B:10A-1, et seq. (the "Act"), pursuant to its police powers.

The Act called for, *inter alia*, the establishment of a Probation Officer Community Safety Unit within the Probation Department which would consist of specially trained probation officers authorized to carry firearms to aid in the detention of probation violators. The Act was to be implemented subject to the Supreme Court's constitutional rule-making authority.

The Judiciary did not implement the provisions of the Act, and instead instituted suit asserting that the Act was constitutionally infirm, both as a violation of the separation of powers provision of the New Jersey Constitution and a violation of the Supreme Court's exclusive authority over the Judiciary. Second Amended Complaint, Da127.

In fact, the Act is a valid exercise of the Legislature's police power. New Jersey statutory law reveals that the Probation Department as it exists today was not established by organic law, but rather by Legislative enactment of N.J.S.A. 2A:168-5, et seq. and its predecessor statutes. The same grant

of power which enabled the Legislature to establish the structure of the Probation Department, supports its authority to reorganize its structure as set forth in the Act.

Further, the Act is not an improper incursion into the administration of the courts. It is a valid enactment with respect to the practice and procedure in the courts, an area in which the Judiciary's rule-making authority is constitutionally constrained by the proviso that it is subject to substantive law.

Nor is the Act a violation of the separation of powers article of the New Jersey Constitution. There is no duty or function which is peculiar to only one branch of government, the performance of which is prohibited by members of the other branches.

Most significantly, the separation of powers article has existed in the New Jersey Constitution in almost identical form since 1844. Yet, the statute creating the Probation Department in 1929, now codified at N.J.S.A. 2A:168-5 et seq., has never been challenged as a violation of the separation of powers.

Even if the Act were an incursion into the Judiciary's exclusive control over the administration of the courts, the Judiciary is constrained by its own mandate to attempt to accommodate its terms in the interest of comity. In the event some portion of the Act were deemed unconstitutional, it is

incumbent upon the Court to enforce those portions of the law which are not constitutionally infirm.

For the reasons set forth more fully below, the Court should reverse the holding of the Appellate Division and declare that the Act is constitutional.

#### QUESTIONS PRESENTED

1) Whether the Act is a proper exercise of the Legislature's police power over the practice and procedure of the Probation Department as opposed to an unconstitutional incursion into the Judiciary's exclusive authority to administer the courts;

2) Whether the Act violates the separation of powers provision of the Constitution; and

3) Whether, if the Act is an incursion into the Judiciary's authority to administer the courts, the Judiciary can nonetheless accommodate the Act in the interests of comity.

#### POINT I

**CERTIFICATION SHOULD BE GRANTED TO REVIEW  
THE DETERMINATION THAT THE ACT IS  
UNCONSTITUTIONAL.**

Pursuant to the New Jersey Court Rules, a petition may be granted:

If the appeal presents a question of general public importance which has not but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decisional law under review is in conflict with any other decision of the same or higher court or calls for an exercise of

the Supreme Court's supervision in other matters if the interest of justice requires. [R. 2:12-4].

This case is precisely the type of case for which a petition should be granted. The constitutional validity of the Act, a law duly enacted by the New Jersey Legislature pursuant to its police power to address a threat to the health and safety of the citizens of New Jersey, is clearly a matter of general public importance.

Further, even if the Court were to determine that the Act deals with an area which falls within the exclusive authority of the Judiciary to administer the Courts, this matter calls for an exercise of comity by the Court in the interest of justice.

A notice of appeal (as of right has been simultaneously filed due to the substantial constitutional implications raised by this appeal. The declaration that the Act is unconstitutional is an attack on the very essence of the interaction between co-equal branches of government. This dispute can only be fully and finally determined by the New Jersey Supreme Court.

Accordingly, this matter is ripe for consideration by the Supreme Court and certification should be granted.



POINT II

**THE COURT BELOW MISTAKENLY CONCLUDED THAT  
THE ACT WAS AN UNCONSTITUTIONAL INCURSION  
INTO THE JUDICIARY'S EXCLUSIVE AUTHORITY TO  
ADMINISTER THE COURTS.**

The Appellate Division erred in finding the Act unconstitutional.

As acknowledged by the Appellate Division, review of a statute subject to challenge must begin with the presumption that the statute is constitutional. State Farm Mutual Auto Ins. Co. v. State, 124 N.J. 32 (1991). This presumption may only be overcome when it is demonstrated that the "repugnancy of the legislation to the Constitution is so manifest as to leave no room for reasonable doubt." Smith v. Penta, 81 N.J. 65 (1979). Careful scrutiny of the Act reveals it is not repugnant to the Constitution.

The Appellate Division, in affirming the finding that the Act is constitutionally invalid noted, "the Supreme Court's authority to promulgate rules of practice and procedure is not implicated in this case because the directive prohibiting probation officers from carrying weapons and the Judiciary's policy that probation officers are not law enforcement personnel, clearly fall within the sphere of administration and internal management." Appellate Division Opinion at 38, SCA48. Based on this assertion, the Appellate Division concluded that

or procedural law. If it is substantive law, it will withstand constitutional scrutiny, if it is procedural law, it will not. See, Winberry, 5 N.J. at 248.

In determining that the subject matter of the Act fell within the administration of the courts, as opposed to practice and procedure, the Appellate Division relied upon the definition of procedure from Suchit v. Baxt, 176 N.J. Super. 407, 427 (Law Div. 1980).

If the rule can determine in and of itself the outcome of the proceeding, it is generally substantive. If it is but one step in the ladder to final determination and can effectively aid a court function, it is procedural in nature and within the Supreme Court's power of rule promulgation.

Id. However, the Suchit court offered this definition to illustrate the distinction between substantive and procedural law and not as a description of what constitutes the practice and procedure of the courts. Id.

The definition of what constitutes the "practice and procedure of the courts" is not the same as the definition of the procedural law referred to in the substantive/procedural law dichotomy. If it were the same, no court rule would ever be "subject to law," rendering that phrase mere surplusage. This is so because the subject matter of any law would need to meet the definition of "procedure" in order to be considered "subject

to law," and the law would, in turn, be overruled by virtue of the fact that it was "procedural," rather than substantive.

Thus, the basis for the Appellate Division's conclusion that the Act involves the administration of the courts is faulty. While there is little case law defining this distinction, the case law available mandates a finding that the Act falls within the "practice and procedure" of the courts.

In State v. Leonardis, this Court noted that the Court-created pretrial intervention program was an exercise of the Court's rule-making authority over the practice and procedures of the courts. State v. Leonardis, 73 N.J. 360, 368 (1977). The Court took note of the Legislature's authority to proscribe criminal conduct and fix penalties for such conduct. Id. at 381. Similarly, the enforcement of warrants against probation violators implicates the enforcement of penalties for criminal conduct. It is not an issue central to the internal management of the courts, such as the working hours of the courts, but instead relates to the procedural aspect of how court orders will be enforced. Like pre-trial diversion, this issue falls within the practice and procedure of the courts.

An application to reopen a judgment has also been found to be a matter of practice and procedure subject to the rule-making power of the Supreme Court. Bergen-Eastern Corp. v. Koss, 178

N.J. Super. 42, 44 (App. Div. 1981); New Shrewsbury v. Block 115, Lot 4, 74 N.J. Super. 1, 8 (App. Div. 1962).<sup>1</sup>

Unlike pré-trial intervention or application to reopen a judgment, the installation of sound-recording devices in courtrooms has been held to fall within the administration of the courts. Lichter v. Monmouth County, 114 N.J. Super. 343 (App. Div. 1971)). As such, it falls within the Court's "absolute and unqualified" authority. Id. at 348.

In Passaic County Probation Officers' Ass'n v. Passaic County, 73 N.J. 247, 252-53 (1977), this Court found that the ability to control the working hours of the probation officers fell within the administration of the courts. The critical factor in Passaic County was that the subject matter impacted the Judiciary's ability to control the working hours of the courts, and not the fact that the personnel under consideration were probation officers. This becomes apparent when considering the decision in Knight v. City of Margate, 86 N.J. 374 (1981). In Knight, the Court upheld the operation of the New Jersey Conflicts of Interest Law as it applied to jurists. If probation officers constitute an "arm of the judiciary," clearly, jurists constitute its heart. Yet, the Court upheld

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<sup>1</sup> The court in In the Interest of J.M., 273 N.J. Super. 593 (Law Div. 1994) appears to have combined the administrative/practice and procedure and substantive/procedural steps, limiting its usefulness in this analysis.

legislation as it applied to jurists. Clearly, the distinction does not lie in which personnel the legislation impacts.

A comparison of issues found to fall within the Judiciary's rule-making power over practice and procedure and its power over administration, leads to the inexorable conclusion that the subject matter of the Act falls within the practice and procedure of the courts. The Act addresses the management of the Probation Department, the proper performance of which is critical to the fulfillment of the mission of all three branches of government. If judicial orders with respect to criminals are not properly enforced, it inhibits not only the proper functioning of the Judicial branch, but the Executive and Legislative branches as well.

Rule-making authority with respect to issues which implicate more than one branch of government have been deemed to fall into the ambit of "practice and procedure." For example, rules regarding applications to re-open a judgment or the time to appeal, each of which impact substantive rights, have been considered "practice and procedure." Bergen-Eastern Corp., 178 N.J. Super. at 42; New Shrewsbury v. Block 115, Lot 4, 74 N.J. Super. at 1. In contrast, issues distinctly addressing the internal operation of the courts, such as court reporting in the courtrooms or the hours of work of court personnel, have been deemed to fall within the administration of the courts. See

Passaic County, 73 N.J. at 247; Lichter, 114 N.J. Super. at 343. The enforcement of warrants for probation offenders implicates critical public safety issues which are properly the concern of the Legislative branch and fall within the former category. As such, the Constitution requires that the Judiciary's rule-making authority in this area is subject to law.

### POINT III

**THE ENACTMENT OF THE ACT IS A VALID EXERCISE OF THE LEGISLATURE'S CONSTITUTIONAL GRANT OF POWER, JUST AS THE ENACTMENT OF N.J.S.A. 2A:168-5, ET SEQ., ESTABLISHING THE PROBATION DEPARTMENT, WAS A VALID EXERCISE OF THE LEGISLATURE'S CONSTITUTIONAL GRANT OF POWER.**

The Legislature enacted N.J.S.A. 2A:168-2, et seq. in 1929, which established the Probation Department. This statute was subsequently amended in 1953, 1972 and 1991. It delineates the current structure of the Probation Department. See e.g., N.J.S.A. 2A:168-5 (providing inter alia that Assignment Judge in each county may appoint Chief Probation Officer and, on application of Chief Probation officer, such probation officers as necessary); N.J.S.A. 2A:168-7 (providing inter alia that the Chief Probation Officer shall have general supervision of probation work under the direction of the court); and N.J.S.A. 2A:168-11 (providing that probation officers shall have the powers of constables). Thus, the Legislature exercised its legislative prerogative with respect to the structure and

responsibilities of the Probation Department both before and after the enactment of the New Jersey Constitution of 1947.

The Legislature's authority to establish the structure of the Probation Department by statute has never been called into question by the Judiciary. The separation of powers doctrine was embedded in the 1844 New Jersey Constitution, well before the enactment of the statute creating the Probation Department in 1929. The Legislature's authority to create the Probation Department, delineate its structure and set forth the procedures to be followed by probation officers as set forth in N.J.S.A. 2A:168-5 et seq. has never been the subject of constitutional challenge, under either the separation of powers doctrine, or as a violation of the Judicial Article added to the New Jersey Constitution in 1947.

Indeed, the Court specifically interpreted the provisions of N.J.S.A. 2A:168-5, et seq., and never took note of any constitutional infirmity of this statute. See e.g., Passaic County Probation Officers' Association v. County of Passaic, 73 N.J. 247, 253 (1977). In Passaic County the Court recited the functions of probation officers and specifically cited N.J.S.A. 2A:168-5 et seq., as providing authorization for these functions. Passaic County, 73 N.J. at 253.

The statute establishing the Probation Department and delineating the probation officers' duties, as enacted by the

Legislature in 1929, and relied upon by the Supreme Court, in the face of the separation of powers clause, is recognized as constitutional. How can the subsequent statute modifying those duties in 2001 be unconstitutional, violating both the separation of powers doctrine and the Judicial Article of the New Jersey Constitution? As N.J.S.A. 2A:168-5 demonstrates, the Legislature possesses constitutional authority to legislate with respect to the structure of the Probation Department.

**POINT IV**

**THE ACT IS SUBSTANTIVE LAW, VALIDLY ENACTED  
PURSUANT TO THE LEGISLATURE'S  
CONSTITUTIONALLY GRANTED POLICE POWER.**

As noted by the Court, the police power "is an essential element of the social compact, an attribute of sovereignty itself, possessed by the states before the adoption of the Federal Constitution." Roselle v. Wright, 21 N.J. 400 (1956); see also Gangemi v. Berry, 25 N.J. 1, 9 (1957) (Legislature is possessed with plenary power to enact legislation for the general welfare). In Winberry, the Supreme Court held that the phrase "subject to law" referred to "substantive law as distinguished from pleading and practice." Winberry v. Salisbury. 5 N.J. 240, 247-48 (1950).

The Act clearly is substantive law. It is designed to further the public safety by bolstering enforcement of the criminal laws and ensuring that probationers comply with the



terms of their probation. It is designed to protect not only the public, but also the probation officers who are charged with the duty to monitor convicted criminals, often residing in areas which are dangerous. It provides that to protect the public safety, certain probation officers shall be authorized to carry firearms and to arrest and detain probationers who are in violation of the terms of their probation. Thus, the Legislature was seeking to remedy a threat to the public safety. The subject matter of the Act is within the province of the Legislature's constitutional purview.

Cognizant that the Act touches and concerns the Judiciary, the Legislature specifically provided that the Act is to be implemented subject to rules promulgated by the Judiciary. The Act is a proper exercise of the Legislature's constitutionally granted police power.

**POINT V**

**THE DOCTRINE OF SEPARATION OF POWERS DOES NOT REQUIRE THE "WATERTIGHT" COMPARTMENTALIZATION OF THE THREE BRANCHES OF GOVERNMENT.**

The New Jersey Supreme Court has long "recognized that the doctrine [of separation of powers] requires not an absolute division of power but a cooperative accommodation among the three branches of government." Communications Workers of America, AFL-CIO v. Florio, 130 N.J. 439, 449 (1992). "A rigid

and inflexible classification of the branches of government into mutually exclusive, water-tight compartments would 'render government unworkable.'" Id. at 449-50 (quoting Masset Building Co. v. Bennett, 4 N.J. 53, 57 (1950)).

In fact, the Court has noted that "the constitutional doctrine of separation of powers denotes not only independence but also interdependence among the branches of government." Knight v. City of Margate, 86 N.J. 374, 388 (1981) (emphasis added). The separation of powers doctrine must be applied flexibly in order to further the ends of government. See David v. Vesta Co., 45 N.J. 301, 326 (1965); see also, Brown v. Heymann, 62 N.J. 1, 11 (1972).

The statutory provisions of the Act make clear that this legislation was enacted in response to a crucial public need. The Legislature specifically took note of the increasing number of dangerous and repeat offenders serving probation sentences, the fifteen thousand probation violators with outstanding warrants issued for their arrest and the critical need to enforce probation sentences in order to ensure the public safety. See N.J.S.A. 2B:10A-1(a)(b)&(c).

As noted in Knight v. Margate, "although the constitutional authority of the Supreme Court over the judicial branch of government is preeminent, this does not mean that this authority

must invariably foreclose action by the other branches of government." 86 N.J. 374, 389 (1981).

Rather than rejecting the Legislature's statutory attempt to protect the public safety out of hand, it is incumbent on the Judiciary to make an effort to cooperate with the Legislature to achieve the end of ensuring the public safety. Far from being precluded by the separation of powers doctrine, cooperation between two branches of government in order to meet a compelling public need is required by this doctrine.

**A. The Fact That Designated Probation Officers Are Authorized To Carry Firearms Does Not Impermissibly Transform Them Into Police Officers, Nor Does It Transfer The Responsibility For Their Supervision To The Executive Branch.**

The assertion that authorizing designated probation officers to carry firearms or receive self-defense training somehow transforms the probation officers into employees of the Executive Branch is unsupported. There is no function which is the "exclusive" prerogative of one of the three branches of government.

As noted by the Court in Winberry v. Salisbury, confusion has been created as to the nature of the rule-making power due to the "oversimplification" of the doctrine of the separation of powers. Winberry v. Salisbury, 5 N.J. 240, 251 (1950). The interplay between the branches of government are complex. The functions carried out by the members of one branch often overlap

with those of members of another branch. Id. at 251; see also, Mulhearn v. Federal Shipbuilding & Dry Dock Co., 2 N.J. 356, 364-65 (1949) (noting adjudicative functions of the Legislature and the Executive).

As articulated by Chief Justice Vanderbilt in Winberry, 5 N.J. at 251-52, there is more to the doctrine of separation of powers than a mechanical comparison of the tasks assigned to its employees. There is no basis to conclude that the authorization of probation officers to carry firearms or the provision of law enforcement training to probation officers, alone, will convert probation officers from judicial to executive branch employees.

Thus, the assertion that either arming or training probation officers pursuant to the Act, will violate the separation of powers doctrine is wrong.

#### POINT VI

**THE JUDICIARY MUST MAKE EVERY EFFORT TO ACCOMMODATE THE LEGISLATURE IN ITS ENACTMENT OF P.L. 2001, CHAPTER 362 IN THE INTEREST OF COMITY.**

By its own proclamations, the Judiciary has an obligation to attempt to enforce the terms of the Act in the interest of comity. As noted by the Court in Passaic County Probation Officers' Ass'n v. Passaic County, 73 N.J. 247, 255 (1977):

We repeat that in the absence of any action by this Court--felt to be constitutionally compelled--and as a matter of comity and respect for other branches of government, we

accept and adopt all statutory arrangements touching or concerning the administration of any courts in the State, as well as such legislative enactments as have to do with public employees whose duties are intimately related to the judicial system.

Passaic County Probation Officers' Ass'n, 73 N.J. at 255; see also In re Advisory Committee on Professional Ethics, 162 N.J. 497, 511 (2000) (Justice Stein dissenting).

In Passaic County, the Court determined that the Employer-Employee Relations Act did not give probation officers the right to insist upon prior negotiations before they were compelled to work longer hours. Id. at 254-55. Despite this finding, the Court made efforts to accommodate the constitutional rights of the probation officers. Id. at 256-57.

The Court has acknowledged a continuing obligation to ensure that in exercising its constitutional rule-making authority, it does not diminish or hamper the constitutional rights bestowed on others. Id. at 257. The Act is precisely the type of statutory arrangement deserving of the deference described in Passaic County.

The Court has established a policy that when a statute has an impact on its administration, it will follow that statute unless the statute interferes with the effective functioning of the courts. CWA Local 1044 v. Honorable Chief Justice of the Supreme Court, 118 N.J. 495, 501 (1990). The Court has

elaborated that in each instance, it will "examine the terms of the legislative enactment, its importance, the extent of its interference with sound judicial administration, and the significance of the issue to the judiciary, ultimately striking a balance between the interests served by comity and those served by the administration of justice." CWA Local 1044, 118 N.J. at 501.

The authorization of probation officers to carry guns in order to empower them to carry out the duties with which they are already entrusted, will not impair the essential integrity of the Judicial branch. The Act specifically provides that its strictures are to be implemented, subject to the Judiciary's rule-making authority. This is important legislation which was enacted in the face of a critical need declared by the Legislature. The Judiciary has the ability to minimize or eliminate any interference the Act may cause with sound judicial administration.

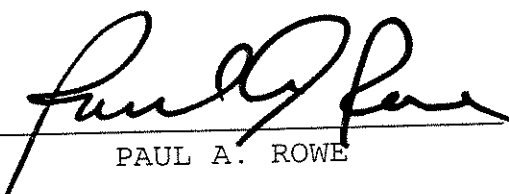
The Act should be implemented, subject to the enactment by the Judiciary of any rules which it deems necessary to render the statute constitutional and prevent undue interference with judicial administration.

CONCLUSION

For all of the reasons set forth above, the Court should reverse the grant of summary judgment in favor of the Judiciary and declare that the Act is constitutional.

Respectfully submitted,

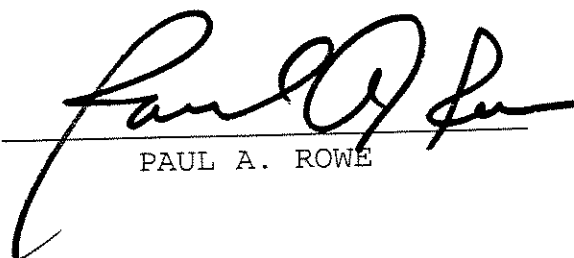
GREENBAUM, ROWE, SMITH & DAVIS LLP  
Attorneys for Defendant/Petitioner  
State of New Jersey

By:   
PAUL A. ROWE

Dated: March 21, 2005

CERTIFICATION PURSUANT TO R. 2:12-7

I certify that this petition presents a substantial question and has been filed in good faith and not for purposes of delay.

  
PAUL A. ROWE

Dated: March 21, 2005