No. _____

In the Supreme Court of the United States

BOROUGH OF MONTVALE, ET AL.,
Applicants,

v.

MATTHEW J. PLATKIN,
IN HIS CAPACITY AS THE
ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,[1] ET AL.,
Respondents.

APPLICATION FOR EMERGENCY RELIEF SEEKING INJUNCTION PENDING APPEAL

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[1] As of January 20, 2026, Matthew J. Platkin is no longer the Attorney General of the State of New Jersey. Applicants anticipate substituting his successor, Acting Attorney General Jennifer Davenport, as a party in future proceedings below.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants are Michael Ghassali, individually and in his official capacity as Mayor of Montvale, Ben Stoller, individually and in his official capacity as Township Committee Member of The Township of Millburn, Frank Saccomandi, IV, individually and in his official capacity as Township Committee Member of the Township of Millburn, Lou D'Angelo, individually and in his official capacity as Council President of the Borough of Totowa, Rudolph E. Boonstra, individually and in his official capacity as Mayor and Township Committee Member of the Township of Wyckoff, James P. Barsa individually and in his capacity as Mayor of the Borough of Norwood, Charles J.X. Kahwaty, individually and in his official capacity as Mayor of the Borough of Franklin Lakes, Brian Foster, individually and in his official capacity as Mayor and Township Committee Member of the Township of Holmdel, John Lane, individually and in his official capacity as Mayor of The Borough of Hawthorne, and Timothy J. Clayton, individually and in his official capacity as Mayor of The Township of Wall.

Non-Applicant Plaintiffs below are Borough of Montvale, Township of Denville, Borough of Hillsdale, Township of Mannington, Township of Millburn, Township of Montville, Borough of Totowa, Borough of Allendale, Borough of Westwood, Township of Hanover, Township of Wyckoff, Borough of Wharton, Borough of Mendham, Township of West Amwell, Borough of Norwood, Borough of Franklin Lakes, Township of Cedar Grove, Township of East Hanover, Township of Holmdel, Township of Wall, Township of Warren, Township of Little Falls, City of Englewood,

Township of Montgomery, Borough of New Milford, Township of Washington, Borough of Hawthorne,

Defendants below are Matthew J. Platkin in his official capacity as Attorney General of The State of New Jersey, Michael J. Blee in his official capacity as Acting Administrative Director of The Courts, Thomas C. Miller in his official capacity as Chair of The Affordable Housing Dispute Resolution Program ("Program"), Ronald E. Bookbinder in his official capacity as Member of The Program, Thomas F. Brogan in his official capacity as Member of The Program, Stephan C. Hansbury in his official capacity as Member of The Program, Mary C. Jacobson in her official capacity as Member of The Program, Julio L. Mendez in his official capacity as Member of The Program, and Paulette M. Sapp-Peterson in her official capacity as Member of The Program.

As of January 20, 2026, Matthew J. Platkin is no longer the Attorney General of the State of New Jersey. Applicants anticipate substituting his successor, Acting Attorney General Jennifer Davenport, as a party in future proceedings below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants each represent that they do not have any parent entities and do not issue stock.

/s/ Jason Torchinsky
Jason Torchinsky

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To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit.

New Jersey's *Mount Laurel* Doctrine requires each municipality to provide for the provision of affordable housing. But the Legislature exempted some of the state's fastest-growing cities from any new unit obligations by codifying a 40-year-old formula created when those municipalities were losing population. This shifted those cities' "fair share" of affordable housing to small towns. The result, in some cases, has been that small towns must provide for *quadruple* their pro rata share. This makes no sense, particularly considering this Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). Accordingly, nine town officials ("Applicants") challenged the law in federal court under the Equal Protection Clause. The district court dismissed the challenge on standing grounds, failing to heed – or even cite – this Court's recent decision in *Bost v. Illinois State Board of Elections*, 607 U.S. ___ (2026). Applicants appealed. That appeal is pending before the Third Circuit.

Applicants moved for an injunction pending appeal before the district court and the Third Circuit. Both courts denied the motion, forcing Applicants to proceed with rezoning *now* to meet a March 15, 2026 statutory deadline. Should Applicants refuse to vote to rezone by March 15, their municipalities will permanently lose immunity from suit under New Jersey law. In either instance, construction begins. For these reasons, Applicants now urgently seek an injunction pending appeal from this Court.

An injunction pending appeal would effectuate a short-term pause in what is otherwise a 10-year planning cycle. Such pauses are permitted when plans are not

complete or for minor reasons such as the weather. Granting an injunction here would pose no meaningful prejudice to the state's zoning process.

OPINIONS BELOW

On January 20, 2026, the District Court entered an order and opinion dismissing Plaintiffs' complaint for lack of standing and denying Applicants' application for a preliminary injunction as moot. App. 399a-417a.

On January 30, 2026, the Third Circuit entered an order denying Applicants' emergency application for an injunction pending appeal without explanation. App. 420a.

JURISDICTION AND REQUESTED RELIEF

This Court has jurisdiction over this application for an injunction pending appeal. 28 U.S.C. §§ 1254(1), 1651(a). The District Court denied as moot Applicants' motion for a preliminary injunction on January 20, 2026. Applicants appealed to the Third Circuit on January 22, 2026. Applicants thereafter moved before the Third Circuit for an injunction pending appeal on January 25, 2026, which was denied on January 30, 2026. This Court will have jurisdiction over that appeal, § 1254(1), and an injunction pending appeal is in aid of this Court's future jurisdiction given the ongoing irreparable harm, § 1651(a). *See, e.g., Chrysafis v. Marks*, 141 S. Ct. 2482, 2482 (2021).

Applicants specifically request that this Court grant an injunction pending appeal upon the following terms. Preserving the *status quo* zoning and immunity from builder's remedy litigation in their communities, consistent with their proposed order below:

1. Defendants Michael Blee, Administrative Director of the Courts, and Defendants Thomas C. Miller, Ronald E. Bookbinder, Thomas F. Brogan, Stephan C. Hansbury, Mary C. Jacobson, Julio L. Mendez, and Paulette M. Sapp-Peterson of the Affordable Housing Dispute Resolution Program (collectively, "Defendants") are enjoined from terminating the exclusionary zoning litigation belonging to the Borough of Montvale, Township of Millburn, Borough of Totowa, Township of Wyckoff, Borough of Norwood, Borough of Franklin Lakes, Township of Holmdel, Township of Wall, and Borough of Hawthorne (together, the "Applicant-Represented Municipalities); and

2. Defendants are enjoined from requiring or accepting for filing ordinances or resolutions as prescribed by N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c), relative to the Applicant-Represented Municipalities; and

3. Defendants are enjoined from enforcing or effectuating the provisions of N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) regarding a failure of any of the Applicant-Represented Municipalities to meet the March 15, 2026 deadline.

STATEMENT OF THE CASE

On March 20, 2024, former New Jersey Governor Phil Murphy signed into law amendments to New Jersey's Fair Housing Act ("2024 FHA")[2], which require non-urban aid municipalities to re-zone to satisfy new unit affordable housing obligations (termed "prospective need") for the 2025-2034 "Fourth Round" period and each successive decade into perpetuity. Plaintiffs challenge the urban aid classification ("UAC"), the 2024 FHA's unconstitutional distinction between urban aid and non-urban aid municipalities. Only non-urban aid municipalities have a prospective need obligation. Urban aid municipalities are entirely exempt from any prospective need

[2] P.L. 2024, c. 2 (N.J. 2024).

obligation and are not even required to satisfy the need generated by their own population growth. Instead, the prospective need they generated is redistributed upon non-urban aid municipalities. App. 10a.

The required re-zonings in non-urban aid municipalities are to be completed by local elected officials including Applicants and result in high-density development in areas where it would otherwise not be allowed, under the guise of "affordable housing." The 2024 FHA is New Jersey's latest foray into the *Mount Laurel* Doctrine, which is an unusual and isolated affordable housing framework when compared to other states because the New Jersey Supreme Court went further than "any state or federal court had done prior to 1975 or has done since." Robert C. Holmes, The Clash of Home Rule and Affordable Housing: The Mount Laurel Story Continues, Conn. Pub. Int. L.J. 325, 325–26 (2013). Its provisions have produced few meaningful results, leaving New Jersey with an approach many see as impractical, burdensome, and ineffective. *See* Robin Leone, Promoting the General Welfare: After Nearly Thirty Years of Influence, Has The Mount Laurel Doctrine Changed the Way New Jersey Citizens Live?, 3 Geo. J.L. & Pub. Pol'y 295 (2005). Thus, the doctrine "has not traveled well beyond New Jersey . . . ." John M. Payne, Lawyers, Judges, and the Public Interest, 96 Mich. L. Rev. 1685, 1686 (1998).

I. THE *MOUNT LAUREL* DOCTRINE.

In *South Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975) ("*Mount Laurel I*"), the New Jersey Supreme Court held that the General Welfare Clause of the New Jersey Constitution "mandated that developing municipalities … affirmatively act to make housing available to their *fair share* of the

region's present and *prospective need* for low- and moderate-income housing." *In re Adoption of N.J.A.C. 5:96*, 74 A.3d 893, 898 (N.J. 2013) (emphasis added) (citing *Mount Laurel I*, 336 A.2d at 732).

Later, in *Mount Laurel II*, the New Jersey Supreme Court held municipalities can satisfy their obligation by "affirmatively affording a realistic opportunity for the construction of [their] *fair share* of the present and *prospective regional need* for low and moderate income housing.'" *Id.* at 898 (emphasis added) (quoting *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.,* 456 A.2d 390, 413 (N.J. 1983) ("*Mount Laurel II*")). *Mount Laurel II* therefore imposed a "judicial remedy" intended to satisfy *Mount Laurel I* based on specific circumstances that existed at that time. *Id.* at 896. That remedy required state trial court judges to adopt methodologies to "determine need and to allocate the need on a regional basis." *Ibid.*

The seminal opinion on the judicial remedy is *AMG Realty Co. v. Warren Township*, 504 A.2d 692 (N.J. Super. Ct. Law Div. 1984) ("*AMG*"), authored by New Jersey Superior Court Judge Eugene Serpentelli. The judge established a methodology that excluded urban aid municipalities from any prospective need obligation. He reasoned that they had no obligation to handle "more than the regional average of substandard housing" because "their [*then*-] *present circumstances* render[ed] it impossible for them to absorb more than the regional average."[3] *Id.* at

[3] The urban aid exception adopted by Judge Serpentelli in 1984 based upon "[then-] present circumstances" was continued through regulations promulgated by the Council on Affordable Housing, a state agency established pursuant to the subsequently adopted FHA, for both the First Round (1987-1993) and Second Round (1993-1999), and then by a New Jersey Superior Court trial judge in an opinion

720-21 (emphasis added). Thus, the court excluded "urban towns from the growth area calculation because they are the traditional core areas or similar towns not likely to attract *Mount Laurel* type housing." *Id.* (emphasis added).

Nearly three decades later, in 2013, the New Jersey Supreme Court issued a landmark decision holding that the *Mount Laurel II* judicial remedy, as implemented through *AMG*, was distinct from the *Mount Laurel I* constitutional obligation. The Court explained as follows:

> The exceptional circumstances leading this Court to create a judicial remedy thirty years ago, which required a specific approach to the identification and fulfillment of present and prospective need for affordable housing in accordance with housing regions in our state, should not foreclose efforts to assess whether alternative approaches are better suited to modern planning, development, and economic conditions in the Garden State. The policymaking branches may arrive at another approach to fulfill the constitutional obligation to promote ample affordable housing to address the needs of the people of this state and, at the same time, deter exclusionary zoning practices. We hold that our remedy, imposed thirty years ago, should not now be viewed as a constitutional straightjacket to legislative innovation.

In re Adoption of N.J.A.C. 5:96, 74 A.3d at 897. Accordingly, a municipality's method of satisfying its constitutional obligation was a separate inquiry from the obligation itself, and one that could be "adequately addressed in different ways." *Id.* at 911. The court recognized that the passage of time bears on the manner of compliance, explaining that compliance could be "tailored to today's circumstances." *Id.*

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commonly referenced for the Third Round (1999-2025). *See In re Mun. of Princeton,* 327 A.3d 505, 553 (N.J. Super. Ct. Law Div. 2018). But it was never of statutory dimension until adoption of the Law. And it remains not of state constitutional dimension. *In re Adoption of N.J.A.C. 5:96*, 74 A.3d at 911-12.

II. THE UAC AND THE LAW'S YEARS-LONG COMPLIANCE AND IMPLEMENTATION PROCESS.

The 2024 FHA utilizes a formula to determine "municipal . . . prospective need … based on a determination of the . . . prospective regional need for low- and moderate-income housing. . . ." N.J. Stat. Ann. § 52:27D-304.3(a). "Prospective need" is defined as a "projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality[.]" N.J. Stat. Ann. § 52:27D-304(j). The 2024 FHA calculates the overall prospective need to be 40% of each region's population growth between the past two censuses. For the Fourth Round commencing in 2025, prospective need statewide was established as 84,698 units. *See* App. 79a-90a.

The 2024 FHA then relies on the UAC to apportion that prospective need. As discussed above, the UAC is a crude classification born from the abrogated 1983 *Mount Laurel II* / 1984 *AMG* judicial remedy that takes into account only a municipality's status as an "urban aid" or "non-urban aid" municipality. N.J. Stat. Ann. § 52:27D-304.3(c). The State's total prospective need obligation, calculated based on statewide growth that occurs in all municipalities, is distributed solely to non-urban aid municipalities, which are required to implement zoning to account for it. *Id.* Urban aid municipalities are entirely exempted from that obligation and, accordingly, are not required to zone for prospective need growth generated by them or any other municipality. N.J. Stat. Ann. § 52:27D-304.3(c)(5).

The 2024 FHA implements the UAC by coercing municipalities to follow an administrative process before the Affordable Housing Dispute Resolution Program

(the "Program"), leading to the implementation of zoning for high-density housing in accordance with the classification's dictates. N.J. Stat. Ann. §§ 52:27D-304.1, -304.3(c). It first required municipalities to submit to the Affordable Housing Dispute Resolution Program by January 31, 2025. Those that did commenced an ongoing compliance process that lasts more than one year, during which they retained immunity from builder's remedy litigation. Builder's remedy litigation permits developers – private entities driven by financial considerations – to sue and obtain high-density zoning mandated by the UAC over the objection of a municipality. *See In re Twp. of Bordentown*, 272 A.3d 413, 427 (N.J. Sup. Ct. App. Div. 2022). Applicants' respective municipalities submitted to the Program by this deadline. Municipalities that did not comply immediately lost immunity from builder's remedy litigation. N.J. Stat. Ann. § 52:27D-304.1(b), (f).[4]

The Program's compliance process has three stages. The first stage was an adversarial process to determine a municipality's prospective need in accordance with the UAC, which concluded in mid-2025. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b). The second stage required municipalities to submit proposed housing elements, fair share plans, and draft ordinances to change the municipality's existing zoning to allow high-density development that would satisfy the prospective need obligation mandated by the UAC. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(a). The Program is

[4] The 2024 FHA semantically termed builder's remedy litigation as exclusionary zoning litigation.

responsible for determining if the proposed zoning changes satisfy the 2024 FHA. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(b). That process is ongoing.

The third stage, with a deadline of March 15, 2026, is the subject of the instant petition for emergency relief. The 2024 FHA requires municipalities to implement the zoning changes established from the prior stages by that date. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c); App. 122a ¶ 23. That implementation can only occur through the affirmative votes of the elected officials in each municipality – including Applicants. App. 123a ¶ 24. Once elected officials vote to adopt the required zoning changes, builders may apply for land use approvals in accordance with the new zoning, thereby permitting them to impose high-density development – mandated by the UAC – over the objection of a municipality's elected officials and residents. App. 123a ¶ 25.

III. APPLICANTS' GOOD FAITH OPPOSITION TO HIGH-DENSITY DEVELOPMENT MANDATED BY THE UAC.

Applicants[5] are nine elected officials, residents, and taxpayers of non-urban aid municipalities. Applicants' respective municipalities complied with each of the past three *Mount Laurel* rounds and thus far have complied with the Fourth Round by submitting to the Program. Applicants' municipalities are therefore presently immune from builder's remedy litigation. App. 87a:8-11; App. 93a ¶ 2-3[6]; App. 244a:1-

[5] Applicants are a subset of the Plaintiffs below, which also include New Jersey municipalities, which were not movants to the underlying motion for a preliminary injunction that precipitates this application.

[6] Citations to paragraphs within App. 91a-103a refer to the Certification of Applicant Charles Kahwaty. These citations incorporate each of the other eight Applicants'

4, 10-12; App. 292a:22-24; App. 305a:12-15. Applicants do not want to vote in favor of the re-zoning required by the March 15 deadline, as is required to maintain the *status quo* of immunity, because such zoning authorizes high-density development that will negatively impact their communities and is therefore disfavored by Applicants and their constituents. App. 100a ¶ 27.

At the preliminary injunction hearing, Applicants Michael Ghassali of Montvale,[7] Timothy Clayton of Wall, and Brian Foster of Holmdel, testified in support of their application for a preliminary injunction relative to the March 15, 2026 deadline. They – and all Applicants – have thus far complied with the 2024 FHA's Fourth Round compliance process, including good faith examination of whether the UAC could be implemented in a manner satisfactory to them and their constituents. Montvale, for example, worked throughout 2025 to develop a plan that would enable it to satisfy the UAC without resorting to high-density development. That plan consisted entirely of single-family homes and senior housing, and no high-density development. App. 251a:2-4. But Montvale faced opposition from developers, who have standing to oppose a municipality's plan under the 2024 FHA. N.J. Stat. Ann. § 52:27D-304.1(d)(2)(b). As stated by Ghassali, these objections came down to developer profitability: the builders "flat out said they don't make enough money, and

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certifications, which contain corresponding allegations in the same numbered paragraphs in each, which are located from App. 104a-206a.

[7] The transcript incorrectly states that Ghassali lives in Montville. App. 241a:12-14. Ghassali lives and serves as Mayor in the Borough of Montvale, a four-square mile municipality in the County of Bergen that is home to approximately 10,000 people who are natives of 57 countries and speak 27 languages. App. 243a:3-8.

it's not very profitable for them. They make more profit with higher-density, three-stories and four-stories [sic] buildings." App. 250a:25-45:10. Because the 2024 FHA requires approved re-zonings to contain a "realistic opportunity for the provision of" affordable housing, N.J. Stat. Ann. § 52:27D-311(a), and this "real[ism]" turns on developers' willingness to build the project, the UAC's dictates necessarily result in the high-density housing that developers insist upon.

Applicants support an outcome consistent with sound planning and that, therefore, does not impose high-density development in areas in which it is not appropriate. App. 255a:1-7, 15-16, App. 303a:190-25, App. 323a:4-6. Applicants have a good faith concern that the UAC – implemented through the 2024 FHA's process – mandates development in "places where people shouldn't live at all." App. 302a:3-4. Such development results in poor quality of life for the residents who will live there, App. 302a:6-13, while simultaneously overwhelming the municipality's infrastructure and lessening the quality of life for all, *see* App. 293a:22-App. 294a:2; App. 317a:1-5, App. 323a:12-17.

Clayton's testimony illustrates why the zoning mandated by the UAC offends notions of sound planning. Wall Township possesses the highest prospective need obligation in Monmouth County. App. 291a:20-292a:11. To accommodate this substantial amount of development in America's most densely populated state, the UAC inevitably requires development in areas that raise traffic and environmental concerns. For example, one proposed development is close to the largest private-owned airport in New Jersey and the Wall Speedway, a stock-car track. App. 292a:2-

9. If that site is developed, residents will be so close to the track they "will have to put headphones on to watch TV on Saturday nights . . . ." App. 292a:6-8. Clayton opposes re-zoning such sites for residential use because, as an elected official, he has an obligation to care for the well-being and safety of Wall's current *and* future residents. App. 302a:6-13. The zoning mandated by the UAC does not account for the fact that some places are simply not suited for residential housing. *Ibid.*

The UAC imposes a Hobson's choice on Applicants: vote in favor of high-density development and suffer the wrath of their constituents, or vote against it, and subject their municipalities to builder's remedy litigation that will impose high density development, perhaps in a worse manner. App. 292a:16-21. In either instance, Applicants will suffer real, irreparable harm to their personal and political reputations. *See* App. 254a:14-255a:7; App. 303a:19-24; App. 323a:4-18. That is because Applicants' action or inaction with respect to the implementing ordinances will be attributed to them personally, and not to the Legislature that codified the UAC. *See* App. 101a ¶ 33; App. 327a:4-6.

If Applicants vote in favor of the implementing ordinances, they will be voting against the will of their constituents. Ghassali frequently attends community events where he engages with his constituents. In all of those interactions, "not one person said we want high-density housing." App. 254a:1-7. If and when Ghassali votes on the new zoning, his reputation would suffer and his prospects for re-election will dim. He "would not be voted back in." App. 254a:14-20. That is because his constituents, residents, and council colleagues want sound planning. App. 254a:21-25. Foster's

reluctant support of high-density development has already caused reputational harm. During the 2025 local election, Foster's opponent ran a single-issue campaign against him. That campaign was a "bloodbath." App. 318a:13. Foster was "lambasted" with signs posted feet from his office, along with postings and social media, urging his constituents to "Reject Foster and his low-income housing." App. 318a:16-20. Ghassali and Clayton corroborated Foster's experience, expressing certitude that voting for re-zoning as mandated by the 2024 FHA would cause their reputations to suffer. App. 254a:17-20. Ghassali has served as an elected official in Montvale since 2015. Despite over ten years of service, he does not believe he will be re-elected if he votes as required by the 2024 FHA. *Id.* That is because his constituents want "sound planning," not high-density development. App. 254a:23-25. Clayton's residents implore him to stop high-density development and suggest that he betrayed them by failing to protect the community. App. 304a:12-15.

If Applicants instead vote as their own consciences and constituents demand, they will be held politically accountable for the ensuing builder's remedy litigation that will still result in high-density development. App. 101a ¶ 34; App. 255a:23-256a:10. Such applications are imminent. Developers have shown municipalities such as Montvale their plans for high-density housing and said they would be submitted once the municipality lost immunity. App. 253a:2-6; Therefore, a vote against the implementing ordinances puts Applicants' municipalities in jeopardy of even higher density development, App. 256a:6-7, in worse locations and with worse financial implications, App. 303a:3-4, and will therefore have an even more harmful impact on

Applicants' reputations, App. 255a:23-25:4. As summarized by Ghassali, at that point, the damage to his reputation will be so severe that his only option may be to resign. App. 256a:3-4.

Furthermore, compliance comes at real financial cost. Many of these costs correlate with the number of properties that must be analyzed for re-zoning to satisfy the UAC, and therefore the UAC's over-imposition results in higher costs. *See* App. 96a ¶ 18. Montvale has thus far spent over $100,000 in professional fees to address the Borough's obligations under the 2024 FHA. App. 247a:22-248a:10. Those "very expensive" costs, App. 248a:10-12, are paid for by taxpayer dollars, App. 247a:22-248a:2. Those costs will continue to mount when the UAC's sanctioned high-density development ensues (either by re-zoning or builder's remedy lawsuit), which will result in additional infrastructure and services costs linked to the approved projects. App. 11a-12a ¶ 62. To satisfy those needs, Montvale will raise taxes. App. 248a:1-2.

In sum, absent relief, Applicants will suffer reputational, electoral and financial harm whether they comply with the 2024 FHA or not. App. 102a ¶ 35; App. 256a:2-7.

REASONS FOR GRANTING THE INJUNCTION PENDING APPEAL

This Court has issued injunctions pending appeal when applicants show: (1) they are likely to prevail on the merits, (2) denying relief would lead to irreparable injury, and (3) granting relief would not harm the public interest. *See, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam). An injunction may issue "based on all the circumstances of the case," without the Court's order "be[ing] construed as an expression of the Court's views on the merits" for the ongoing

appeal. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171, 1172 (2014). Here, the requested injunction simply preserves the *status quo,* allowing Applicants' municipalities to maintain their current zoning and immunity from builder's remedy litigation pending appeal. *See, e.g., Chrysafis*, 141 S. Ct. at 2482.

I. THE LAW AFFORDS DEVELOPERS AN IRREVERSIBLE RIGHT TO HIGH-DENSITY DEVELOPMENT BY MARCH 15, 2026, THEREBY CAUSING IRREPERABLE HARM TO APPLICANTS WHILE THEIR APPEAL IS PENDING.

An injunction pending appeal is the only way to maintain the *status quo* and protect Applicants from the irreparable harm each will suffer if the 2024 FHA's March 15, 2026 implementation deadline is not stayed. Whether Applicants comply with the 2024 FHA's deadline or not, that result will be the same: the imposition of irreversible high-density development on their communities, which they and their constituents do not support, all while their appeal remains pending.

Under the compliance approach that Applicants have, to date, followed in good faith, their respective municipalities are required by March 15, 2026 to amend their zoning ordinances to implement the housing mandated by the UAC. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c).[8] Importantly, immediately upon a municipality's enactment of these zoning ordinances, a developer may make a land use board application and

[8] To meet the March 15, 2026 deadline, Applicants must immediately commence the following re-zoning process: (1) introduce a re-zoning ordinance at a public meeting; (2) allow the municipalities' land use board to complete a review, which must be done within 35 days of referral; and (3) legally notice and hold a public meeting with a public hearing on the zoning ordinance. Only after those steps are complete may the municipality vote to finally adopt the re-zoning ordinances. N.J. Stat. Ann. § 40:49-2; N.J. Stat. Ann. § 40:55D-26.

acquire a legally vested right to construct the high-density housing permitted by the zoning ordinance under New Jersey's time of application rule. App. 99a-100a ¶ 25; N.J. Stat. Ann. § 40:55D-10.4. Thus, once Applicants and their respective municipalities enact the zoning ordinances required by the March 15, 2026 deadline, a developer could then immediately apply for development, and there is nothing Applicants could do to reverse the zoning even if they are ultimately successful in their appeal. An injunction pending appeal is the only means of protecting the *status quo* while the Third Circuit considers Applicants' application.

Applicants will likewise suffer irreparable harm if they decline to enact the zoning ordinances. That is because if Applicants do not comply with the March 15, 2026 deadline, their respective municipalities will immediately lose immunity from builder's remedy litigation. App. 99a ¶ 24; N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c). A developer may then immediately file a lawsuit in state court seeking to construct high-density development that Applicants and their constituents oppose, App. 99a-100a ¶ 25, based upon alleged noncompliance with the 2024 FHA and the UAC. *See In re Bordentown*, 272 A.3d at 427. It is clear that developers will file such lawsuits against Applicants' municipalities, because developers have already challenged them in the compliance process and shown plans they intend to file if immunity lapses. App. 99a ¶ 21; App. 252a:23-253a:11; *see also In re Adoption of N.J.A.C. 5:96 & 5:97*, 110 A.3d 31, 52 (N.J. 2015) (New Jersey Supreme Court recognized imminence of builder's remedy actions by providing municipalities with 30-day period to extend immunity before it expired during the Third Round). And similar to the time of

application rule, New Jersey courts have held that a developer is entitled to a builder's remedy if the municipality is out of compliance as of the date the lawsuit is filed. *Cranford Dev. Assocs., LLC v. Twp. of Cranford*, 137 A.3d 543, 548 (N.J. Sup. Ct. App. Div. 2016). As such, if an Applicant does not implement the zoning ordinances by March 15, 2026, their municipality will be out of compliance and subject to builder's remedy lawsuits that entitle a developer to high-density zoning.

For these reasons, Applicants stand to be irreparably harmed by the 2024 FHA's requirement mandating disfavored high-density housing in their communities, that they themselves oppose, and which cannot be legally undone even if they are ultimately successful in this litigation.

Applicants stand to suffer attendant irreparable harm to their reputations and electoral prospects. Applicants' compliance will cause their constituents to lose confidence in their ability to make the right decisions for their communities. As Foster testified, compliance allows political adversaries to exploit Applicants' actions for their own gain, thereby decreasing Applicants' electoral margins and jeopardizing re-election. *See* App. 318a:16-20; App. 318a:16-20; App. 254a:17-20. In the noncompliance scenario, Applicants will be held personally responsible for exposing their municipality to builder's remedy lawsuits that may result in likely worse impacts than compliance would yield. App. 101a ¶ 34; App. 255a:23-256a:10. Whether Applicants support compliance or noncompliance, responsibility for the resultant zoning changes will be placed squarely upon their shoulders, negatively affecting their reputations as elected officials and prospects for re-election. As taxpayers in

those municipalities, Applicants also stand to suffer financial harm because they must bear increased municipal costs required to satisfy the development prescribed by the UAC that they oppose. *See* App. 248a:1-2.

II. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS.

A. Applicants Have Article III Standing

Applicants have Article III standing to bring their claims on two distinct bases: reputational injury and municipal taxpayer injury. The District Court erroneously dismissed upon standing grounds, App. 411a-414a, in a decision that did not grapple with an uncontroverted preliminary injunction record or this Court's recent decision in *Bost*, 607 U.S. ___ (2026). Because the lower court's dismissal was improper and likely to be reversed by the Third Circuit, Applicants have the standing needed to obtain the requested injunction pending appeal.

1. Reputational Injury

Applicants asserted that they suffer harms relative to their constituents' opinions of them – plainly a reputational and electoral injury. The Complaint specifically alleged that Applicants are "forced to make decisions as elected officials adverse to their interests and desires *as well as those of their constituents,"* App. 10a-11a (emphasis added); and to "take actions inconsistent with their desires as elected officials to carry out the will of their constituents . . . ." App. 11a.

The District Court erroneously concluded that the Complaint does not plead reputational injury. App. 412a. As evident in the foregoing paragraphs, reputational harm is properly pled, if not expressly, by implication. The District Court's conclusion failed to afford all reasonable inferences as required on a motion to dismiss. *Phillips*

v. Cnty. of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008). It also barred amendment as futile, which is presumptively improper for an Article III dismissal, *Cottrell v. Alcon Labs.*, 874 F.3d 154, 164 n.7 (3d Cir. 2017), and has forced Applicants to undergo appellate practice rather than amend their complaint.

Second, the District Court held Applicants' injury is not "traceable" to the UAC because they "ostensibly" chose to participate in the Program. App. 412a. It held that "[a]ny potential reputational harm therefore flows from the [Applicants'] voluntary decisions to participate in the Program and reap the benefits the Program provides." App. 412-13a. This is belied by the Complaint, where Applicants specifically alleged that they are "require[d] . . . to make decisions and take actions inconsistent with their desires to carry out the will of their constituents" and that "[t]hese requirements apply whether a Plaintiff and their municipality [submit to] the . . . Program *or not*." App. 11a (emphasis added). As such, Applicants alleged they will experience harm whether *or not* they and their municipalities submitted to the Program.

Refusal to participate in the Program by January 31, 2025, would have resulted in the immediate loss of immunity and exposed the municipalities to builder's remedy lawsuits that would impose high-density housing. N.J. Stat. Ann. § 52:27D-304.1(b), (f)(1)(b). Applicants maintain that this outcome would be worse for their communities and therefore more damaging to their reputations than interim compliance with the Program. App. 255a:19-50-9. To the extent Applicants acquiesced to this compliance, they did so because that was the only lawful way to preserve existing immunity. That decision delayed, rather than caused, the

irreparable harm Applicants now face relative to the extended immunity deadline of March 15, 2026. Application to the Program commenced an ongoing compliance process to see if the UAC could be satisfied in a manner that would be acceptable to Applicants and their constituents. It revealed that the UAC cannot be implemented without undesired changes to Applicants' municipalities and concomitant harm to their reputations as elected officials if they enact the required, permanent zoning changes. *See supra* p. 12 (discussing the Hobson's choice imposed on Applicants by the 2024 FHA). Applicants' compliance with the 2024 FHA thus far is not self-inflicted harm, but an effort to mitigate the "box" the Legislature has placed them in under the 2024 FHA. App. 292a:17-23. The District Court's conclusion that Program participation is a self-inflicted harm and/or itself causes no reputational harm is unsupported.[9]

Third, the District Court held Applicants' reputational injury is not "actual or imminent," contrary to this Court's recent case law on this precise issue. App. 413a. It held that Applicants' injury did not meet that standard because it was based upon a series of "ifs" surrounding an Applicant's decision to support re-zoning, such as whether the zoning passes and whether builder's remedy litigation is filed. *Id.* The

[9] The District Court noted that Plaintiff Mannington appears to have withdrawn from the Program. App. 412a n.5. That fact has no bearing on Applicants, which were the only movants to the preliminary injunction below. While Plaintiff Mannington evidently decided that non-compliance was preferable to compliance, it does not follow that such a course causes no reputational harm to local elected officials – whether the Mannington elected officials, Applicants, or others – and the record provides otherwise. *See supra* pp. 12-14.

District Court then went beyond the four corners of the Complaint and refuted Applicants' uncontroverted testimony on this issue. *Id.*; *see supra* pp. 12-14.

The District Court's holding is inapposite to this Court's recent decision in *Bost*, 607 U.S. ___ (2026).[10] There, a sitting congressman sought to challenge certain state election laws relative to a future election in which he would run. The Court explained that "reputational harms, as a general matter, are classic Article III injuries" that are "*particularly concrete* for those whose very jobs depend on the support of the people." *Bost*, 607 U.S. ___, ___ (slip op., at 5) (cleaned up and emphasis added). The Court reversed the lower courts' finding that standing was unduly speculative because the plaintiff challenged the laws relative to an election that was months away. It further rejected the argument that the congressman lacked standing because he won the last election with 75% of the vote, instead crediting that his concerns could "decrease his vote share and damage his reputation." *Id.* at ___ (slip op., at 4). It also rejected the dissent's argument that a candidate must "show some substantial risk that a rule will cause them to lose the election" to have standing to challenge it. *Id.* at ___ (slip op., at 6). This Court concluded that "[c]ourts sometimes make standing law more complicated than it needs to be" and that it "decline[d] . . . to do so" now. *Id.* at ___ (quoting *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020)) (slip op., at 10). Applicants respectfully contend the District Court did exactly that.

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[10] *Bost* was decided six days prior to the District Court's opinion, so it was binding law at the time the opinion was issued. Applicants did not seek reconsideration below because it would have been futile; the District Court had dismissed on reputational standing based upon other erroneous grounds beyond *Bost* including the pleading issue that requires appellate reversal.

Here, the 2024 FHA necessarily results in two outcomes, both of which will cause reputational harm to Applicants. They may enact the re-zoning that their constituents oppose, or they may decline to act and lose immunity from builder's remedy litigation leading to the same – or worse – result. Contrary to the District Court's findings, there are no *ifs* on whether one of these two undesired outcomes will occur.[11] And there is nothing speculative about whether noncompliance will bring about builder's remedy lawsuits, as reflected in Applicants' unrefuted testimony about interactions with developers poised to file builder's remedy litigation immediately upon the loss of immunity. *See supra* p. 16.

Bost establishes that, for an elected official, a reputational injury is "particularly concrete" and therefore sufficient for Article III purposes. *Bost*, 607 U.S. at ___ (slip op., at 5). Indeed, *Bost* found standing where the plaintiff asserted potential harm based on the legitimacy of a future election held under a contested election law. That injury pales in comparison to the reputational harms suffered by Applicants, who testified that they may lose re-election if they support re-zoning their constituents oppose. *See* App. 304a:12-15. Lastly, *Bost*'s holding that diminished vote

[11] To the extent the District Court insinuates that an Applicant may be able to vote against re-zoning but have such a measure pass on the backs of his colleagues' votes, that does not extinguish federal standing, particularly under *Bost*. It ignores that Applicants then suffer reputational harms relative to their colleagues that they betrayed. Applicants' claim could also be remedied through amendment to add each individual governing body to the lawsuit, but the District Court erroneously barred amendment. Lastly, this argument is inapplicable to certain Applicants, including mayors such as Ghassali, who must unilaterally decide whether to sign re-zoning ordinances into law. App. 245a:2-7; N.J. Stat. Ann. § 40A:60-5(d).

share is a sufficient injury entirely refutes the District Court's determination that Foster's victory belies any assertion of a reputational injury.

For these reasons, the District Court's dismissal on reputational standing grounds was error that stands to be reversed by the Third Circuit.

2. Municipal Taxpayer Standing

The District Court erroneously held that Applicants' well-pled injury of having to pay additional costs associated with the 2024 FHA is not redressable because "the municipalities would still need to expend taxpayer dollars to comply with their *Mount Laurel* obligations" and that "[s]uch expenditures would necessarily include costs for infrastructure, services, and affordable housing developments." App. 414a. It continued that "[i]n other words, these funds would be expended regardless of whether the 2024 FHA was invalidated." App. 414a.

That conclusion is utterly flawed. First, many (if not most) of the challenged costs are variable, not fixed, and would be reduced if the obligation imposed by the UAC is deemed unconstitutional. The gravamen of Plaintiffs' claim is that the UAC unconstitutionally over-imposes prospective need obligation upon the non-urban aid municipalities, and that the costs of that over-imposition are borne by their taxpayers. App. 24a-25a ¶¶ 102-05. If the UAC were invalidated and judicially modified to only allow for a pro-rata imposition, it would result in a reduction in the number of required new affordable housing units, and thus a corresponding reduction in costs to "fund infrastructure, services, and affordable housing development costs." App. 11a-12a ¶ 62; App. 247a:22-248a:15. The District Court's baseless reasoning

that "these funds would be expended regardless" is therefore faulty, particularly on a motion to dismiss.

Second, the District Court apparently asserts that invalidation of the UAC will not redress Applicants' injuries as municipal taxpayers because it "would still exist under New Jersey judicial precedent, and Plaintiffs would be in the same position they were in before the Court invalidated the 2024 FHA." App. 411a. The District Court relied on *In re Princeton,* 327 A.3d at 515, where municipalities sought to establish their Third Round affordable housing obligations. App. 411a. This decision merely established a methodology for the Third Round of affordable housing from 2016-2025. *In re Princeton*, 327 A.3d at 515. It had no legal role in the instant Fourth Round extending from 2026-2035 until it was codified into the 2024 FHA. N.J. Stat. Ann. § 52:27D-304.3(a). Therefore, if the 2024 FHA were invalidated, the UAC is not automatically "baked in" to a municipality's *Mount Laurel* obligation such that it would continue to apply as the District Court concluded. At most, absent the 2024 FHA, the New Jersey courts may have been tasked with rendering a new decision akin to *In re Princeton* addressing the Fourth Round period. Such a court would have needed to account for the demographic sea change that occurred since the last round (and the *In re Princeton* decision). In that scenario, Applicants could have brought their current contentions about changed circumstances before a court and therefore would have been in a more favorable position prior to the 2024 FHA's adoption.

For these reasons, the District Court erred in concluding that Plaintiffs' municipal taxpayer injuries were not redressable.[12] [13]

B. The Constitution Prohibits Irrational Classifications Based Upon Decades-Old Conditions.

Under the Fourteenth Amendment, "no State shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Where a legislative determination "neither burdens a suspect group or a fundamental interest . . . it is subject to rational basis review." *Mech. Contractors Ass'n of N.J., Inc. v. New Jersey*, 541 F. Supp. 3d 477, 484-85 (D.N.J. 2021) (citations and internal quotations omitted).

A classification passes rational review only if the distinction between classes is "rationally related to a legitimate governmental purpose." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). Rational basis review requires there

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[12] Before the Third Circuit, Respondents argued that municipal taxpayer standing does not exist to challenge expenditures mandated by state law, citing *Board of Education v. New York State Teachers Retirement System,* 60 F.3d 106, 111 (2d Cir. 1995). But Respondents failed identify the circuit split on this issue. *See Gwinn Area Cmty. Sch. v. Michigan*, 741 F.2d 840, 844 (6th Cir. 1984), *abrogated on other grounds*, *Lapides v. Bd. of Regents*, 535 U.S. 613 (2002); *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 2 (D.C. Cir. 1988) . Given the circuit split and lack of Third Circuit authority, this argument was certainly not grounds for dismissal on a pre-complaint basis.

[13] Plaintiffs below raised an alternative argument that the federal court may invalidate the UAC and further invalidate the state common law to the extent necessary to redress their UAC-based challenge. The District Court rejected this argument as an improper expansion of the Complaint. App. 411a n. 4. Plaintiffs maintain this argument is supported by the Complaint, which seeks invalidation of the UAC and "such other relief as the Court may deem proper and just." App. 25a-26a. Even if this argument is rejected, Plaintiffs should have been afforded the opportunity to amend the Complaint, which the District Court erroneously barred. App. 414a.

to be "a *plausible policy reason* for the classification" and "the relationship of the classification to its goal is not so *attenuated* as to render the distinction *arbitrary or irrational*." *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 107 (2003) (emphases added and citation omitted). As to the latter factor, "[a] classification must be reasonable, not arbitrary, and must rest upon some ground of difference *having a fair and substantial relation* to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Schumacher v. Nix*, 965 F.2d 1262, 1269 (3d Cir. 1992) (emphasis added and citation omitted). As such, on rational basis review, a classification must be based upon a "plausible policy reason," bear a "fair and substantial relation to the object of the legislation," and not operate in an arbitrary or irrational manner.

In 2013, this Court held that Congress's re-codification of the Voting Rights Act's (VRA) preclearance requirement imposed upon states utilizing a forty-year-old formula had no "logical relation" and was "irrational." *Shelby Cnty.*, 570 U.S. at 554.[14] At issue was Congress's re-adoption of the VRA's coverage formula that divided states into two groups: those that had a recent history of voting tests and low voter registration and turnout, and those that did not. *Id.* at 551. The former were required to obtain pre-clearance from the federal government before enacting laws relating to

[14] Applicants acknowledge that *Shelby County* involved an interpretation of the Fifteenth Amendment enforcement clause. However, its constitutional holding that a statute is "irrational" and lacks "logical relation" is entirely consistent with the rational basis review standard applicable here under the Fourteenth Amendment's Equal Protection Clause. The facts in *Shelby County* also mirror those in this case rendering it highly persuasive to Applicants' claims.

voting, while the latter had no such restrictions. *Id.* at 534. This Court observed that "the Nation is no longer divided along those lines, yet the [VRA] continues to treat it as if it were." *Id.* at 551.

This Court held that Congress cannot adopt a formula that relied on outdated conditions. *Id.* To satisfy the Constitution, classifications must be drawn "on a basis that makes sense in light of current conditions. [Congress] cannot rely simply on the past." *Id.* at 553. Congress had not relied on its record to "shape a coverage formula grounded in current conditions. It instead reenacted a formula *based on 40–year–old facts* having no *logical* relation to the present day." *Id.* at 554 (emphasis added). This Court concluded:

> There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been *irrational* for Congress to distinguish between States in such a fundamental way based on 40–year–old data, when today's statistics tell an entirely different story. And it would have been *irrational* to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

Id. at 556 (emphasis added). Based upon the foregoing, this Court found the VRA's preclearance formula to be "irrational" and thus unconstitutional. *Id.* at 557.

C. The Legislature's Codification of the UAC for the Stated Purpose of Implementing the *Mount Laurel* Doctrine Fails Constitutional Review.

The Legislature adopted the UAC with the stated purpose of implementing the *Mount Laurel* Doctrine. N.J. Stat. Ann. § 52:27D-302(p). It fails constitutional review because the cited case law does not support its codification and in fact establishes

that the classification is irrationally based upon four-decade-old conditions. Applicants have also established that the economic conditions leading to the classification's use four decades ago no longer exist today.

1. The *Mount Laurel* Line of Cases Demonstrates That the Legislature's 2024 Codification of the UAC Lacks a Rational Policy Basis.

The Legislature codified the UAC for the express purpose of implementing the *Mount Laurel* Doctrine. N.J. Stat. Ann. § 52:27D-302(p). An examination of the cited *Mount Laurel* jurisprudence, however, reveals that the line of cases provides no rational reason for the UAC's codification.

In relevant part, the UAC is a statutory continuation of the *Mount Laurel II* judicial remedy effectuated in 1984 by a state trial court judge in *AMG*. *See* App. 269a:1-17. *AMG* specifically utilized an urban aid exception in light of the "[then]-present circumstances." 504 A.2d at 720-21. That court established the UAC to address the economic circumstances of that time, specifically, that it was "impossible" for urban aid municipalities to "absorb more than the regional average" given their economic circumstances. *Id.* Recognizing this, the court excluded "urban towns from the growth area calculation because they are the traditional core areas or similar towns not likely to attract *Mount Laurel* type housing." *Id.* at 721 (emphasis added).

In 2013, the New Jersey Supreme Court decided that those assumptions no longer held true, explaining that the "exceptional" economic circumstances of 1983 led the *Mount Laurel II* court to require a "specific approach to the identification and fulfillment of present and prospective need." *In re Adoption of N.J.A.C. 5:96*, 74 A.3d at 897. That approach included the urban aid classification. *Id.* The court observed

that "New Jersey in 2013, quite simply, is not the same New Jersey that it was in 1983" and that "[c]hanged circumstances may merit reassessing how to approach the provision of affordable housing in this state. Assumptions used in devising a remedy in 1983 do not necessarily have the same validity today." *Id.* (emphasis added). The majority held that "alternative approaches" to the UAC could be constitutionally viable and instructed the legislature that the judicial remedy should not be seen as a "constitutional straightjacket to legislative innovation." *Id.* Indeed, the court recognized "there might be reasonable bases for considering alternative approaches to promote the production of affordable housing consistent with *present statewide-planning* and other principles previously identified." *Id.* at 911 (emphasis added).

Thus, the court concluded that the 1983 *Mount Laurel II* judicial remedy lacked state constitutional dimension and was distinct from the 1975 *Mount Laurel I* constitutional obligation. *Id.* at 911-12. Two justices concurred with this constitutional holding. *Id.* at 918 (Hoens, J., dissenting, Patterson, J., joining). They cautioned that the court's opinion offered the Legislature "no guidance concerning what alternate statutory approach might comply with the majority's interpretation of the Constitution." *Id*. That "lack of guidance," they warned, would "greatly diminish the likelihood that the Legislature will attempt a future change of course[,]" and risk an "endless cycle of repeating that which has not worked in the past." *Id.* at 918, 925.

Despite that binding precedent from 2013, the Legislature nevertheless codified the UAC in 2024 under the guise of implementing the *Mount Laurel*

Doctrine.[15] The Legislature's stated purpose provides no justification for its action and ignored the Court's 2013 statement that the decades-old "[a]ssumptions" contained in the 1983 judicial remedy "do not necessarily have the same validity today." *Id.* at 897. Thus, the UAC's disparate treatment of residents in urban aid and non-urban aid municipalities is not justified by its stated purpose, as it is neither compelled by nor encouraged by the most recent *Mount Laurel* decision on that issue.

The Legislature's failure to deviate from the abrogated 1983 *Mount Laurel II* remedy is precisely what Justices Hoens and Patterson feared would happen: the New Jersey Supreme Court failed to adequately inform the Legislature about what measures would pass state constitutional muster, causing the Legislature to try to avoid a state constitutional challenge by blindly adhering to an abrogated judicial remedy created to address specific conditions that existed more than 40 years ago. Because codifying the UAC to "implement the *Mount Laurel* Doctrine" plainly contradicts the New Jersey Supreme Court's own 2013 findings, the Legislature's codification of the UAC ignored the "current conditions" already acknowledged to be different in contemporary jurisprudence and thus violated the Federal Constitution.

[15] Applicants contend that the UAC would not have passed the Legislature but for the 2024 FHA's express attribution to a purported constitutional obligation derived from New Jersey case law. App. 363a:15-24. By attributing the UAC to a vague and overstated judicial doctrine, the Legislature avoided political accountability for the substance of the 2024 FHA. Applicants contend that constitutional limits must prohibit a legislature from enacting legislation premised on a pretextual invocation of judicial decisions that do not, in fact, support the asserted justification.

2. The UAC is Rooted in 1980s Economic Circumstances that No Longer Exist.

The Legislature's 2024 codification of the UAC was a statutory re-adoption of the 1984 judicial remedy in *AMG*. The preliminary injunction record contains uncontroverted expert evidence establishing that the economic and demographic circumstances that supported the use of the UAC in 1984 no longer existed in 2024, and that the UAC as applied today results in unreasonable outcomes including a quadrupling of small towns' obligations compared to their *pro rata* share. This demonstrates that the classification is not based upon "current conditions" and is therefore unconstitutional.

In 1984, *AMG* held that urban aid municipalities should not have a prospective need obligation because "realism requires a recognition that their [*then*-] *present circumstances* render[ed] it impossible for them to absorb more than their regional average." 504 A.2d at 720-21 (emphasis added). Those circumstances included that urban aid municipalities were "traditional core areas or similar towns not likely to attract *Mount Laurel* type housing." *Id.* at 721 (emphasis added). Thus, the urban aid exception was enacted in 1984 to avoid what would have been an unrealistic imposition upon urban aid municipalities based upon circumstances that existed at that time. The record establishes three uncontroverted, empirical reasons that the 2024 codification of this four-decade old classification is arbitrary and capricious.

First, the *AMG* court was informed by 1970's data. During that decade, *all* of New Jersey's population growth occurred in non-urban aid municipalities. They saw a 102% increase in population, while the population in urban aid municipalities

declined by 2%. App. 19a ¶ 93; App. 273a:19-68:6. Today, New Jersey's population growth trends tell "a different story," evidencing a "completely different world," and "sea change." App. 275a:19-70:6. At present, New Jersey's population growth is split almost exactly in half between urban aid and non-urban aid municipalities. *Id.* Because urban aid municipalities are not charged with fulfilling the prospective need generated by their own significant growth, the UAC imposes on non-urban aid municipalities an affordable housing obligation that is 50% higher, statewide, than their *pro rata* share would otherwise be. App. 273a:13-17. In Region 1, it is a 74% over-imposition, meaning that non-urban aid municipalities such as Montvale, represented by Ghassali, have to "essentially deal with *four times* what they're generating." App. 246a:13-20; App. 280a:13-20 (emphasis added). This arbitrary imposition of a *quadrupled* affordable housing obligation alone demonstrates the irrationality in the UAC's application today, such that if the Legislature had "started from scratch" in 2024 as required, *Shelby Cnty.*, 570 U.S. at 556, it never would have enacted the classification.

The robust population growth in the urban aid municipalities reflects that, unlike in 1984, they can now absorb their fair share of prospective need. Urban aid municipalities presently create half of New Jersey's population growth and, therefore, under the 2024 FHA's formula, generate half of the state's prospective need. In this context, Judge Serpentelli's methodology – which did not anticipate the robust growth presently occurring in urban aid municipalities – simply did not account for today's circumstances. Because the considerations informing *AMG* no longer apply, there is

no "logical" basis at present to distinguish between urban aid and non-urban aid municipalities vis-à-vis apportionment of prospective need.

Second, the 2024 FHA's use of the UAC ignores that, today, urban aid municipalities generate significant numbers of affordable housing units, such that their conditions today are not comparable to those credited in *AMG* as requiring an urban aid classification. App. 19-20a; App. 284a:6-20. Specifically, urban aid municipalities created 6,635 affordable housing units using tax credits in the 2010s, which accounted for 45% – nearly half – of the statewide construction of such units. App. 21a; App. 84a; App. 281a:7-17. This data demonstrates that the 1984 findings that urban aid municipalities would not attract *Mount Laurel* housing no longer exists today.

Third, the UAC fails to statistically account for the significant amount of affordable housing development that already occurs in urban-aid municipalities. App. 20-21a App. 282a:4-283a:9. Because the 2024 FHA does not empirically reduce the aggregate prospective need obligation downward, to account for actual affordable housing created in urban aid municipalities that satisfies the region's prospective need, non-urban aid municipalities are assigned a statistical over-calculation of the overall prospective affordable housing obligations. App. 22a; App. 281a:24-283a:9. In other words, they are required to re-zone to satisfy a prospective need obligation that is greater than what is actually required to satisfy the region's overall calculated need. This error rate is not insignificant. Applicants' expert calculated that urban aid municipalities developed eight percent of the State's housing using LIHTC credits in

the last decade, which does not even account for the further positive trends this decade or the robust development of affordable housing without tax credits in urban aid municipalities. *See* App. 22a; App. 84a. As such, the over-imposition is likely well in excess of the 8% calculated as a baseline.

These uncontroverted facts demonstrate that Applicants are likely to succeed on the merits of the underlying case, because the UAC is impermissibly a "reenacted . . . formula based upon 40-year-old facts having no relation to the present day[,]" *Shelby Cnty.*, 570 U.S. at 554, which violates the Federal Constitution.

3. Respondents' Arguments Below that the UAC Satisfies Constitutional Review Are Unavailing.

Respondents below argued that the UAC satisfies constitutional review by reciting various authority including dicta from *Mount Laurel I*, *Mount Laurel II*, and the 1985 adoption of N.J. Stat. Ann. § 52:27D-302(g). But these citations are all from over four decades ago, and *Shelby County* establishes that decades-old data cannot support a statute on constitutional review.

Respondents also claimed that the UAC is valid because the 2024 FHA imposes present need obligations upon urban aid municipalities, which justifies exempting them from any prospective need obligation. Under the 2024 FHA, "present need" is an entirely separate calculation also derived from the 1984 *AMG* judicial remedy that was abrogated in 2013. Perhaps, in 1984, when cities faced negative population growth and it was economically impossible to build new units there, it was rational to utilize a present need obligation requiring rehabilitation of existing units in lieu of creating new units. But that reasoning fails today, considering urban aid

municipalities presently account for 50% of the state's population growth and generate robust amounts of new unit affordable housing, including 45% of statewide development using LIHTC tax credits in the last decade. Respondents' present need analogy is a failed attempt at "reverse-engineering" a formula that "does not even attempt to demonstrate the continued relevance of the formula to the problem it targets[,]" *Shelby Cnty.*, 570 U.S. at 552, which the Federal Constitution prohibits.

Respondents below also cited to a state court judge's denial of a preliminary injunction relative to the January 31, 2025 deadline to submit to the Program. That decision lacks any relevance to the present application. It was not decided on the merits, and Applicants were not a party to same. Accordingly, it has no preclusive effect including, as argued by Respondents, under New Jersey's state preclusion doctrine. *See Rycoline Prods. v. C & W Unlimited*, 109 F.3d 883, 889 (3d Cir. 1997). The decision is also unpersuasive because the state court's conclusion relied entirely upon the New Jersey Supreme Court's *Mount Laurel* Doctrine jurisprudence that pre-dated the 2013 decision. The state trial court specifically found rationality because the UAC passed muster under the New Jersey Constitution, but this federal constitutional inquiry should never be informed by the purported bounds of a state constitution. Lastly, while the state court was bound to follow the nebulous *Mount Laurel* line of cases, this Court has no such obligation, nor does it owe any deference to the state court's interpretation of federal law. *Davis v. Benihana, Inc.*, 772 F. Supp. 3d 524, 542 n.6 (D.N.J. 2025). For these reasons, the state trial court's past preliminary injunction decision is irrelevant to the instant application.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF RELIEF.

Applicants' requested injunction would preserve the *status quo* pending the Third Circuit's review. The balance of equities and public interest favor this relief for several reasons.

An injunction pending appeal would merely pause compliance with the Fourth Round in seven of New Jersey's 564 municipalities. The UAC implements re-zonings as part of a ten-year planning round. *See, e.g.* N.J. Stat. Ann. §§ 52:27D-304.1(c)-304.3(c). The requested timeout would last a fraction of that period, so New Jersey's decennial planning process is not meaningfully prejudiced.

This relief is not extraordinary, considering state law already requires Respondents to grant extensions of the March 15, 2026 deadline where disputes over compliance plans remain pending or deadlines cannot be met due to circumstances beyond a municipality's control.[16] The 2024 FHA allows extension for minor reasons, including "weather." N.J. Stat. Ann. § 52:27D-304.1(f)(2)(d)-(3)(a). Such extensions are expected to be granted to many municipalities because the 2024 FHA's compliance process remains ongoing. Accordingly, providing similar relief here to

[16] Respondents' ability to extend the March 15, 2026 deadline, coupled with the requirement that municipalities file adopted re-zonings with them by said deadline, N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c)-(d), underscore that they are subject to federal suit. *NCAA v. Governor of N.J.*, 799 F.3d 259, 263 n.3 (3d Cir. 2015), *rev'd on other grounds*, *Murphy v. NCAA*, 584 U.S. 453 (2018); *see also Nichols v. Sivilli*, No. 2:14-3821, 2014 U.S. Dist. LEXIS 175391, at *8 (D.N.J. Dec. 19, 2014) (Section 1983 immunity does not apply to judges that enforce a particular statute).

allow seven municipalities pending appeal would not meaningfully burden Respondents.

There is also a strong public interest in protecting constitutional rights and federal case law provides that there is no public interest in enforcing an unconstitutional law. *Ireland v. Hegseth*, 772 F. Supp. 3d 560, 567 (D.N.J. 2025); *K.A. v. Pocono Mt. Sch. Dist.,* 710 F.3d 99, 114 (3d Cir. 2013); *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003).

In an equitable argument, Respondents below argued that this application is tardy, noting that the 2024 FHA was enacted nearly two years ago. But Applicants could not have brought this application relative to the March 15, 2026 deadline earlier, as they did not stand to suffer "likely" irreparable harm at that time. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (irreparable harm must be "likely" not "possible"); *Tracey v. Recovco Mortg. Mgmt. LLC*, 451 F. Supp. 3d 337, 344 (D.N.J. 2020) (must be more than "possible," "speculative," or "remote"). The present threat of irreparable harm was not imminent at earlier stages because Applicants had to follow the 2024 FHA's process to reach their current predicament after navigating: (1) the January 31, 2025 deadline to submit a calculated affordable housing obligation to the Program; (2) the June 30, 2025 deadline to submit proposed zoning ordinances; and (3) the August 30, 2025 deadline for objections; only after which they could (4) review and determine that they disagreed with the required re-zonings that will result from the still ongoing process. *See* N.J. Stat. Ann. § 52:27D-304.1(f). Applicants brought their application for a preliminary injunction when the sites that would

likely need to be re-zoned were identified and their harms relative to same had therefore ripened. App. 99a ¶ 21. These sites were not identified upon the 2024 FHA's enactment, and instead were developed over the course of 2025, so Applicants could not have brought this request for an injunction earlier. Respondents' past argument is therefore unreasonable. It is also contradictory, because Respondents argued below that Appellants' harms were unduly speculative at that time. The District Court recognized this paradox as a "Catch-22" that Applicants face. App. 365a:22-366a:21.

In the end, Applicants brought their motion for a preliminary injunction on November 21, 2025, nearly four months before the March 15, 2026 deadline, and Respondents' defense has not been prejudiced in any way.[17]

CONCLUSION

For the foregoing reasons, Applicants' emergency request for an injunction pending appeal should be granted.

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Respectfully submitted,

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[17] Respondents even requested and received a one-cycle adjournment of Applicants' motion for a preliminary injunction from the District Court so that they had more time to prepare their opposition.

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