

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.

APPENDIX FOR 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.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as

DOCKET NO.: 3:25-cv-03220

Civil Action

**SECOND AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

(1a)

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, and 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,

Plaintiffs,

v.

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,

Defendants.

Plaintiffs (hereafter the “Plaintiffs”) hereby state by way of Complaint, as follows:

PARTIES

1. Plaintiff Borough of Montvale is a municipal corporation of the State of New Jersey with principal offices at 12 Depiero Drive, Montvale, New Jersey 07645.
2. Plaintiff Township of Denville is a municipal corporation of the State of New Jersey with principal offices at 1 Saint Mary's Place, Denville, NJ 07834.
3. Plaintiff Borough of Hillsdale is a municipal corporation of the State of New Jersey with principal offices at 380 Hillsdale Avenue, Hillsdale, New Jersey 07642.
4. Plaintiff Township of Mannington is a municipal corporation of the State of New Jersey with principal offices at 491 Route 45, Mannington, New Jersey 08079.
5. Plaintiff Township of Millburn is a municipal corporation of the State of New Jersey with principal offices at 375 Millburn Avenue, Millburn, New Jersey 07041.
6. Plaintiff Borough of Montville is a municipal corporation of the State of New Jersey with principal offices at 195 Changebridge Road, Montville, New Jersey 07045.
7. Plaintiff Borough of Totowa is a municipal corporation of the State of New Jersey with principal offices at 537 Totowa Road, Totowa, New Jersey, 07512.

8. Plaintiff Borough of Allendale is a municipal corporation of the State of New Jersey with principal offices at 500 W Crescent Avenue, Allendale, New Jersey 07401.

9. Plaintiff Borough of Westwood is a municipal corporation of the State of New Jersey with principal offices at 101 Washington Avenue, Westwood, New Jersey 07675.

10. Plaintiff Township of Hanover is a municipal corporation of the State of New Jersey with principal offices at 1000 Route 10, Whippany, New Jersey 07981.

11. Plaintiff Township of Wyckoff is a municipal corporation of the State of New Jersey with principal offices at 340 Franklin Avenue, Wyckoff, New Jersey 07481.

12. Plaintiff Borough of Wharton is a municipal corporation of the State of New Jersey with principal offices at 10 Robert Street, Wharton, New Jersey 07885.

13. Plaintiff Borough of Mendham is a municipal corporation of the State of New Jersey with principal offices at 2 West Main Street, Mendham, New Jersey 07945.

14. Plaintiff Township of West Amwell is a municipal corporation of the State of New Jersey with principal offices at 150 Rocktown Lambertville Road, Lambertville, New Jersey 08530.

15. Plaintiff Borough of Norwood is a municipal corporation of the State of New Jersey with principal offices at 455 Broadway, Norwood, New Jersey 07648.

16. Plaintiff Borough of Franklin Lakes is a municipal corporation of the State of New Jersey with principal offices at 480 DeKorte Drive, Franklin Lakes, New Jersey 07417.

17. Plaintiff Township of Cedar Grove is a municipal corporation of the State of New Jersey with principal offices at 525 Pompton Avenue, Cedar Grove, NJ 07009.

18. Plaintiff Township of East Hanover is a municipal corporation of the State of New Jersey with principal offices at 411 Ridgedale Avenue, East Hanover, NJ 07936.

19. Plaintiff Township of Holmdel is a municipal corporation of the State of New Jersey with principal offices at 4 Crawfords Corner Road, Holmdel, NJ 07733.

20. Plaintiff Township of Wall is a municipal corporation of the State of New Jersey with principal offices at 2700 Allaire Road, Wall, NJ 07719.

21. Plaintiff Township of Warren is a municipal corporation of the State of New Jersey with principal offices located at 46 Mountain Boulevard, Warren, NJ 07059.

22. Plaintiff Township of Little Falls is a municipal corporation of the State of New Jersey with principal offices located at 225 Main Street, Little Falls, NJ 07424.

23. Plaintiff City of Englewood is a municipal corporation of the State of New Jersey with principal offices located at 2-10 North Van Brunt Street, Englewood, New Jersey 07631.

24. Plaintiff Township of Montgomery is a municipal corporation of the State of New Jersey with principal offices located at 100 Community Drive, Skillman, New Jersey 08558.

25. Plaintiff Borough of New Milford is a municipal corporation of the State of New Jersey with principal offices located at 930 River Road, New Milford, New Jersey 07646.

26. Plaintiff Township of Washington is a municipal corporation of the State of New Jersey with principal offices located at 350 Hudson Avenue, Township of Washington, New Jersey 07676.

27. Plaintiff Borough of Hawthorne is a municipal corporation of the State of New Jersey with principal offices located at 445 Lafayette Avenue, Hawthorne, New Jersey 07506. (The foregoing plaintiffs are hereafter referred to as the "Plaintiff Municipalities" or "Municipalities").

28. Plaintiff Michael Ghassali is an individual with an address of 20 Serrell Drive, Montvale, New Jersey 07645. He is a resident, citizen, and taxpayer in the State of New Jersey.

He resides in and is the elected Mayor of the Borough of Montvale, which is classified as a non-urban aid municipality under the Law.

29. Plaintiff Annette Romano is an individual with an address of 15 Cypress Street, Millburn, New Jersey 07041. She is a resident, citizen, and taxpayer in the State of New Jersey. She resides in and is the elected Mayor and Township Committee Member of the Township of Millburn, which is classified as a non-urban aid municipality under the Law.

30. Plaintiff Ben Stoller is an individual with an address of 422 Wyoming Avenue, Millburn, New Jersey 07041. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is an elected Township Committee Member of the Township of Millburn, which is classified as a non-urban aid municipality under the Law.

31. Plaintiff Frank Saccomandi, IV is an individual with an address of 17 Lee Terrace, Short Hills, New Jersey. He is a resident, citizen, and taxpayer in the State of New Jersey. He is an elected Township Committee Member of the Township of Millburn, which is classified as a non-urban aid municipality under the Law.

32. Plaintiff Lou D'Angelo is an individual with an address of 89 Columbus Avenue, Totowa, New Jersey 07512. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Council President of the Borough of Totowa, which is classified as a non-urban aid municipality under the Law.

33. Plaintiff Rudolph E. Boonstra is an individual with an address of 633 Lawlins Road, Wyckoff, New Jersey 07481. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor and Township Committee Member of the Township of Wyckoff, which is classified as a non-urban aid municipality under the Law.

34. Plaintiff James P. Barsa is an individual with an address of 95 Glen Avenue, Norwood, New Jersey 07648. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor of the Borough of Norwood, which is classified as a non-urban aid municipality under the Law.

35. Plaintiff Charles J.X. Kahwaty is an individual with an address of 636 Navaho Trail Drive, Franklin Lakes, New Jersey 07417. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor of the Borough of Franklin Lakes, which is classified as a non-urban aid municipality under the Law.

36. Plaintiff Brian Foster is an individual with an address of 4 Iron Hill Drive, Holmdel, New Jersey 07733. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor and Township Committee Member of the Township of Holmdel, which is classified as a non-urban aid municipality under the Law.

37. Plaintiff John Lane is an individual with an address of 30 Watchung Drive, Hawthorne, New Jersey 07506. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor of the Borough of Hawthorne, which is classified as a non-urban aid municipality under the Law.

38. Plaintiff Timothy J. Clayton is an individual with an address of 2809 Garfield Street, Wall, New Jersey 07719. He is a resident, citizen, and taxpayer in the State of New Jersey. He resides in and is the elected Mayor and Township Committee member of the Township of Wall, which is classified as a non-urban aid municipality under the Law. (The foregoing Plaintiffs enumerated in Paragraphs No. 28 to No. 38. are hereafter referred to as the “Individual Plaintiffs”, and collectively, the Plaintiff Municipalities and Individual Plaintiffs all constitute “Plaintiffs.”).

39. Defendant Matthew J. Platkin is the Attorney General of the State of New Jersey, who serves as the chief law enforcement officer of the State of New Jersey. Attorney General Platkin is named in his official capacity because the constitutionality of New Jersey's statutes is at issue. Accordingly, no further notices are required under Fed. R. Civ. P. 5.1(a) or 28 U.S.C. § 2403(b).

40. Defendant Michael J. Blee is the Acting Administrative Director of the Courts, whose position is established pursuant to N.J. CONST. art. VI, § 7, ¶ 1. He is vested with certain statutory duties and obligations relating to both New Jersey's affordable housing mandates and the Affordable Housing Dispute Resolution Program as provided in the Law (as defined hereafter).

41. Defendant Thomas C. Miller is the chair of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

42. Defendant Ronald E. Bookbinder is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

43. Defendant Thomas F. Brogan is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

44. Defendant Stephan C. Hansbury is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

45. Defendant Mary C. Jacobson is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

46. Defendant Julio L. Mendez is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law.

47. Defendant Paulette M. Sapp-Peterson is a member of the Affordable Housing Dispute Resolution Program whose position was established pursuant to the Law. (The foregoing

Defendants enumerated in Paragraphs No. 41 to No. 47 are hereafter referred to as the “Program Member Defendants”).

48. Defendants Miller, Bookbinder, Brogan, Hansbury, Jacobson, Mendez, and Sapp-Peterson are vested with certain statutory duties and obligations relating to both New Jersey’s affordable housing mandates as members of the Affordable Housing Dispute Resolution Program as provided in the Law, including but not limited to adjudicating disputes regarding a New Jersey municipality’s so-called fair share obligation, requiring application of the Law’s urban aid classification. See, e.g., N.J.S.A. 52:27D-304.1(f)(1)(c). As such, these Defendants are statutorily responsible for the implementation of the urban aid exception upon the Plaintiff Municipalities as well as the New Jersey municipalities that are harmed causing injury to the Individual Plaintiffs, and in fact these Defendants have rendered “decisions” relative to same.”

JURISDICTION AND VENUE

49. This Court has federal question jurisdiction over the subject matter of this case in Count I pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the subject matter of this case in Count II pursuant to 28 U.S.C. § 1337(a).

50. Venue properly lies in this District pursuant to 28 U.S.C. § 1331(b)(2) in that a substantial part of the events giving rise to the claims occurred within the District of New Jersey.

NATURE OF THE ACTION

51. This lawsuit seeks judicial relief addressing equal protection issues with New Jersey Public Law 2024, Chapter 2 (the “Law”), which the Legislature adopted in 2024, imposing affordable housing obligations upon New Jersey municipalities for the 2025-2034 “Fourth Round” period and for each successive decade into perpetuity. A true copy of the Law is attached as **Exhibit A.**

52. The Law establishes a classification that imposes a “prospective need” affordable housing obligation upon non-urban aid municipalities, while exempting urban aid municipalities from having any prospective need obligation (the “Urban Aid Classification”).

53. This is an action for declaratory judgment by Plaintiffs challenging the validity, enforceability and constitutionality of the Urban Aid Classification that was adopted by the New Jersey Legislature because it violates the equal protection clause to the United States Constitution and its analogue in the New Jersey Constitution.

STANDING

54. Plaintiffs’ rights, status, and other relations as municipal corporations, elected officials, and residents of non-urban aid municipalities are adversely affected by the Law.

55. The Municipalities are directly and negatively impacted by the Law as they suffer adverse financial consequences as a result of the mandates set forth in the Urban Aid Classification, including the need to bear compliance costs, the costs to develop mandated affordable housing, as well as the infrastructure costs and ongoing operational costs relating to the same, all while sister urban aid municipalities and their citizens are absolved of any such obligation.

56. The Individual Plaintiffs are directly and negatively impacted by the Law, as it imposes affirmative obligations, to which they object, upon the municipalities that they are elected to represent, including but not limited to affirmatively requiring them and their fellow members of their municipal bodies to take actions relative to the Law’s Fourth Round prospective need obligations all while elected officials and residents of urban aid municipalities remain in communities that are exempt from such effects.

57. The Individual Plaintiffs are directly and negatively impacted by the Law, as they are forced to make decisions as elected officials adverse to their interests and desires as well as

those of their constituents, all while elected officials and residents of urban aid municipalities remain in communities that are exempt from such effects.

58. The Individual Plaintiffs are harmed because the Law requires them to affirmatively vote and/or act to file an “action” with the Affordable Housing Dispute Resolution Program, and to suffer the consequences of said process or else they stand to be deprived of the ability to exercise the municipality’s zoning powers that are delegated to them by the New Jersey Legislature in accordance with the New Jersey Constitution, all while elected officials and residents of urban aid municipalities remain in communities that are exempt from such effects.

59. The Law requires the Individual Plaintiffs to make decisions and take actions inconsistent with their desires as elected officials to carry out the will of their constituents, including having to support expending costs at taxpayer expense for initiatives that they do not support and for effectuating the re-zoning of properties inconsistent with their vision for their communities. These requirements apply whether a Plaintiff and their municipality files an “action” with the Affordable Housing Dispute Resolution Program or not.

60. Each of the Individual Plaintiffs are also residents and taxpayers of municipalities that are classified as non-urban aid municipalities.

61. As residents of non-urban aid municipalities, the Individual Plaintiffs are harmed by living in municipalities that are subject to the prospective need obligations under the Law’s Urban Aid Classification, unlike the residents of urban aid municipalities, whose communities are exempt from any such compliance or obligation under the Urban Aid Classification.

62. As residents of non-urban aid municipalities, the Individual Plaintiffs are harmed by having to pay increased costs that will need to be borne by them as taxpayers to address the prospective need obligation imposed by the Urban Aid Classification, including but not limited to

the need to fund infrastructure, services, and affordable housing development costs to satisfy the requirements of the Law and ensuing impacts of the high-density housing that it fosters, all imposed upon their communities against the will of themselves and the community at large, all while residents of urban aid municipalities remain in communities that are exempt from such effects.

63. The Municipalities, acting through the required votes and/or actions of their elected officials including the Individual Plaintiffs, have already incurred such costs to comply with the Law's requirements and in the near term will need to pay more costs to comply with the Law's remaining process.

64. The Municipalities and Individual Plaintiffs have already suffered harm insofar as they have had to take actions and/or votes to institute "actions" with the Affordable Housing Dispute Resolution Program adopting a prospective need affordable housing obligation in accordance with the Urban Aid Classification against their wishes. These actions have been filed in the New Jersey Courts under the following dockets: Montvale (BER-L-750-25); Denville (MRS-L-183-25); Hillsdale (BER-L-717-25); Mannington (SLM-L-23-25); Millburn (ESX-L-587-25); Montville (MRS-L-197-25); Totowa (PAS-L-396-25); Allendale (BER-L-594-25); Westwood (BER-L-663-25); Hanover (MRS-L-228-25); Wyckoff (BER-L-756-25); Wharton (MRS-L-168-25); Borough of Mendham (MRS-L-254-25); West Amwell (HNT-L-79-25); Norwood (BER-L-543-25); Franklin Lakes (BER-L-503-25); Cedar Grove (ESX-L-797-25); East Hanover (MRS-L-251-25); Holmdel (MON-L-445-25); Wall (MON-L-441-25); Warren (SOM-L-180-25); Little Falls (PAS-L-370-25); Englewood City (BER-L-535-25); Montgomery (SOM-L-153-25); New Milford (BER-L-668-25); Washington (BER-L-669-25); and Hawthorne (PAS-L-398-25).

65. The Municipalities and Individual Plaintiffs have already suffered harm insofar as they have had to submit and file so-called housing elements and fair share plans (“HEFSPs”) with the Affordable Housing Dispute Resolution Program including under those filed in the New Jersey courts under the foregoing dockets, containing provisions for high-density housing development that they oppose.

66. The Municipalities and Individual Plaintiffs have already suffered harm insofar as they have had to take actions and/or votes to expend public funds to pay for professionals such as attorneys, engineers, and professional planners to comply with the Law, including the process to implement the requirements imposed by the Urban Aid Classification. The Municipalities and Individual Plaintiffs stand to suffer further harm in the near term as they are required to continue efforts to comply with the Law.

67. As required by the Law, the filed HEFSPs make provision for the re-zoning of properties to allow for high-density housing, against the wishes of the Municipalities and Individual Plaintiffs.

68. As required by the Law, the Municipalities and Individual Plaintiffs will be required to take actions and/or votes to adopt ordinances that implement the re-zoning of properties to allow for high-density housing against their wishes. The Law at N.J.S.A. 52:27D-304.1(f)(2)(c) requires these actions to be taken by March 15, 2026.

69. Such re-zoning will result in high-density housing that directly and negatively impacts the aesthetic of and opportunity for recreation within the jurisdiction of the Municipalities.

70. If the Municipalities and Individual Plaintiffs fail to take the actions and/or votes necessary to comply with the March 15, 2026 deadline, the Law provides that the subject municipality shall lose immunity from exclusionary zoning litigation. This involves depriving the

municipality and its elected officials of the legislative delegated zoning powers afforded to it by the New Jersey Constitution.

71. As residents of non-urban aid municipalities, the Individual Plaintiffs are harmed by living in a community whose population density will increase as a result of the Law, resulting in negative externalities including increased traffic and/or diminution in property values, while residents of urban aid municipalities remain in communities that are exempt from such effects imposed by the Law.

RELEVANT FACTS COMMON TO ALL COUNTS

72. Under the Law and its Urban Aid Classification, a non-urban aid municipality is subject to a “prospective need” affordable housing obligation and is required to zone for the inclusion of new affordable housing units prescribed by a formula established in the Law, all while an urban aid municipality is entirely exempt from any such obligation.

73. The Law and its Urban Aid Classification exact compliance from non-urban aid municipalities by obligating them to enter into the Affordable Housing Dispute Resolution Program and follow a process leading to a required re-zoning of the municipality to accommodate the mandated affordable housing units prescribed by the prospective need formula established in the Law, or else the non-urban aid municipality stands to suffer the loss of its legislatively-delegated municipal zoning powers through so-called exclusionary zoning litigation, which pierces a non-urban aid municipality’s zoning powers delegated to it by the New Jersey Legislature in accordance with the New Jersey Constitution.

74. The Law established the Urban Aid Classification of statutory dimension for the first time in New Jersey.

75. The Law “declares” that it is “intended to implement the Mount Laurel doctrine,” a reference to a series of cases of the New Jersey Supreme Court. A closer review of this case law reveals that the Urban Aid Classification is not of state constitutional dimension, and even if it were, it would still need to comport with the requirements of the federal constitution, which it does not.

76. In 1975, the New Jersey Supreme Court entered its Mount Laurel I decision that interpreted the General Welfare Clause of the New Jersey Constitution to recognize a constitutional obligation that municipalities, “in the exercise of their delegated power to zone, ‘afford[] a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing.’” In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 584 (2013) (citations omitted) (alteration in original).

77. In 1983, the New Jersey Supreme Court entered its Mount Laurel II decision and “fashion[ed]” an “extraordinarily detailed remedy” that was “designed to curb exclusionary zoning practices and to foster development of affordable housing for low- and moderate-income individuals” at that time. Ibid.

78. To effectuate the Mount Laurel II judicial remedy after the Court’s 1983 opinion, designated Mount Laurel New Jersey Superior Court judges “adopted methodologies to determine need and to allocate the need on a regional basis.” In re Adoption of N.J.A.C. 5:94 & 5:95 By N.J. Council On Affordable Hous., 390 N.J. Super. 1, 17 (App. Div. 2007).

79. In 1984, New Jersey Superior Court Judge Eugene Serpentelli wrote the seminal opinion on this issue, AMG Realty Co. v. Warren Twp., 207 N.J. Super. 388, 442-43 (Law Div. 1984), setting forth such a methodology, which among other things, established an exclusion for urban aid municipalities. In relevant part, he wrote:

[S]elected urban aid municipalities do not have an obligation to handle more than the regional average of substandard housing and, therefore, they have no regional obligation, because realism requires a recognition that **their present circumstances** render it impossible for them to absorb more than the regional average.

....

This formula excludes selected 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 and because they generally lack significant vacant land. Non-growth municipalities obviously cannot contribute to a count of growth acreage.

Ibid. [(Emphasis added)].

80. In direct response, the Legislature adopted the Fair Housing Act (“FHA”), N.J.S.A. 52:27D-302 et seq., which “codified the core constitutional holding undergirding the Mount Laurel obligation and included particularized means by which municipalities could satisfy their obligation, mirroring the judicially crafted remedy.” In re Adoption of N.J.A.C. 5:96, 215 N.J. at 584.

81. The urban aid exception, which was judicially adopted by Judge Serpentelli in 1983 based upon the “[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 and Second Round, and then by the New Jersey Superior Court in the Third Round. *See In re Mun. of Princeton*, 480 N.J. Super. 70 (Law Div. 2018).

82. Notably, in 2013, the New Jersey Supreme Court held that its “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, 215 N.J. at 586, further writing as follows:

Having had three decades of experience with the current affordable housing remedy, we cannot say that there may not be other remedies that may be successful at producing significant numbers of low- and moderate-income housing—remedies that are consistent with statewide planning principles, present space availability, and

economic conditions. New Jersey in 2013, quite simply, is not the same New Jersey that it was in 1983. Changed 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. That assessment, however, is best made by the policymakers of the Legislature who can evaluate the social science and public policy data presented to this Court. Indeed, at oral argument, the many parties to this litigation were questioned as to whether their arguments were better suited for legislative hearings on the subject.

That said, our response to the overarching question previously identified is that **the constitutional obligation and the judicial remedy ordered by this Court in Mount Laurel II, and in place today through the FHA, are distinct and severable.** 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.

[*Id.* at 585-86 (emphasis added)].

83. The New Jersey Supreme Court further wrote that while “deterring exclusionary municipal zoning practices and concomitantly encouraging development of affordable housing in housing regions where it is needed were the goals of the obligation recognized under the General Welfare Clause of the New Jersey Constitution[,]” at the same time “[h]ow to respond to the constitutional obligation imposed on municipalities in the exercise of their delegated power to zone is a separate question, and one that might be adequately addressed in different ways tailored to today’s circumstances.” *Id.* at 610.

84. Accordingly, the New Jersey Supreme Court concluded: “We therefore recognize, and hold, that the constitutional obligation identified in Mount Laurel I and refined and made applicable to all municipalities in Mount Laurel II is distinct from the judicial remedy that this Court embraced.” Ibid.

85. The New Jersey Supreme Court also noted the following dicta from Mount Laurel II (the “Mount Laurel II Precepts”):

- (a) “Development merely for development's sake is not the constitutional goal.”
- (b) The Constitution “does not require bad planning.”
- (c) The Constitution “does not require suburban spread.”
- (d) The Constitution “does not require rural municipalities to encourage large scale housing developments.”

Ibid. (citing S. Burlington Cty. NAACP v. Mount Laurel, 92 N.J. 158, 238 (1983)).

86. The New Jersey Supreme Court specifically explained that the Mount Laurel II remedy’s “utilization of a pre-fixed allocation of municipal obligations based on forecasted projected growth has been criticized for the crudeness inherent whenever one presumes to anticipate development cycles[,]” and that alternative approaches may be constitutionally viable.

In re Adoption of N.J.A.C. 5:96, 215 N.J. at 611.

87. The Court then concluded that the “Mount Laurel II” judicial remedy was “fashioned based on a record created thirty years ago” and therefore “should not be viewed as the only one that presently can secure satisfaction of the constitutional obligation to curb exclusionary zoning and promote the development of affordable housing in the housing regions of this state.”

Id. at 612.

88. Despite the New Jersey Supreme Court’s invitation, the Legislature adopted the Law, which parallels the same approach that has been followed over three decades under the FHA,

administered through COAH and then the courts, arbitrarily and capriciously failing to account for changes to the State over the past three decades leading to today's circumstances.

89. Plaintiffs have obtained an expert report from E-Consult Solutions, Inc., titled "Trends in Household Change and the Urban Aid Exemption, 1970-2020" (the "Memorandum"). A true copy of the Memorandum is attached as **Exhibit B**.

90. The Memorandum is co-authored by Dr. Peter Angelides, who previously qualified as an expert before the New Jersey Superior Court in past litigation involving affordable housing. *See In re Mun. of Princeton, 480 N.J. Super. at 70.*

91. In the 1980s, when the Urban Aid Classification was first established, many exempt municipalities were in decline as evinced by large losses in population and households that began in the mid-twentieth century and carried through to the 1990s.

92. Today, nearly 40 years later, while some of the underlying conditions that affected many of these exempt municipalities persist, several exempt municipalities are growing, overall, and exempt municipalities now comprise half of the state's growth in households.

93. Specifically, in the 1970s, New Jersey experienced 102% of its growth in households in non-urban aid municipalities and -2% in urban aid municipalities.

94. In the 2010s (which is the decade used for currently applicable "Fourth Round" calculations under the Law), the State experienced 50% of its change in households in urban aid municipalities and 50% in non-urban aid municipalities.

95. In the 1990s, the Low-Income Housing Tax Credit ("LIHTC") program funded the development of 2,710 units in urban aid municipalities (comprising 3% of the prospective need) and 4,602 units in non-urban aid municipalities (comprising 4% of the prospective need).

96. During the 2010s, the LIHTC program funded the development of 6,635 units in urban aid municipalities (comprising 8% of the prospective need) and 8,188 units in non-urban aid municipalities (comprising 10% of the prospective need).

97. The economic conditions that supported the judicial establishment of an urban aid exception in 1983 no longer exist.

98. When the Mount Laurel doctrine and its corresponding remedy were established, the urban aid municipalities were experiencing population declines, and the State's entire net population growth was contained in the non-urban aid municipalities. It followed that the urban aid municipalities lacked the same economic ability to produce affordable housing units as non-urban aid municipalities, leading to the urban aid exemption in 1983.

99. Four decades later, the State's population growth is exactly even (50%/50%) between the urban aid and non-urban aid municipalities.

100. There is an upward trajectory in the number of LIHTC housing units developed in the urban aid municipalities, all as part of a trend that outpaces the growth in such units developed in non-urban aid municipalities.

101. The population and LIHTC data establish that the urban aid municipalities no longer possess economic conditions that prevent them from developing affordable housing units and there is no longer any justification for them to be exempt from a prospective need housing obligation.

102. For these reasons, the statutory establishment of an Urban Aid Classification based upon the present conditions in 2024 was arbitrary, capricious, and unreasonable.

103. Furthermore, the Urban Aid Classification is itself statistically flawed as it imposes prospective need strictly upon non-urban aid municipalities – approximately half of which is

generated by growth in neighboring urban aid municipalities – all while failing to adjust for affordable housing that is already being created in urban aid municipalities and thus satisfying the purported “prospective need” in the region.

104. Urban aid municipalities are developing a significant number of affordable housing units that are not being counted in the fair share formula under the Law.

105. This results in a statistical over-imposition of fair share upon the non-urban aid municipalities – including the municipalities to which Plaintiffs represent and reside in.

106. Over the past decade, 6,635 LIHTC affordable housing units were developed in urban-aid municipalities, along with 8,118 LIHTC affordable housing units in non-urban aid municipalities.

107. This means that 45% of the State’s LIHTC affordable housing development occurred in urban aid municipalities over the past decade, based on publicly available information.

108. The fixed number of LIHTC units is underinclusive of the total number of affordable housing units that have been developed in urban aid municipalities, as many affordable housing units are created outside of the LIHTC program, so the amount of affordable housing development in the urban aid municipalities and in the aggregate is higher.

109. The Law requires that prospective need be calculated as 40% of the region’s population growth between the past two censuses, which has been calculated at 84,697 units.

110. This calculation includes the significant population growth that is being experienced today in the urban-aid municipalities.

111. The Law’s calculated prospective need is then spread among the non-urban aid municipalities only to allocate them each their supposed “fair share,” while each of the urban aid municipalities are exempt and do not count towards same.

112. Under the Law, neither the overall calculated prospective need – nor each non-urban aid municipality’s obligation – is adjusted in any way for the significant development of affordable housing that is occurring in the urban aid municipalities.

113. The result is that the non-urban aid municipalities are being subjected to a “fair share” prospective need calculation that is an overestimation because it does not account for affordable housing development that is occurring and contributing towards satisfying the need in the region.

114. Over the past decade, 8% of the prospective need was satisfied through LIHTC development in urban aid municipalities.

115. This means that the LIHTC calculation alone bears out that the Law’s formula overestimates each non-urban aid municipality’s fair share by 8%.

116. The actual overestimation is higher, as that percentage does not take into account a) the overall trend of an increase in affordable housing development in the urban aid municipalities that is likely to continue in the Fourth Round, as well as b) the non-LIHTC affordable housing development occurring in the urban aid municipalities. The prospective need calculation being imposed upon the non-urban aid municipalities is not a “fair share” at all.

117. In sum, the Urban Aid Classification arbitrarily requires non-urban aid municipalities to assume the entire prospective need affordable housing obligation under the Law, even though the urban aid municipalities are responsible today for 50% of the State’s population growth and trigger a corresponding amount in supposed “prospective need” in affordable housing.

118. At the same time, the Urban Aid Classification imposes “prospective need” solely upon non-urban aid municipalities, half of which is generated by neighboring urban-aid

municipalities, while failing to mathematically account for the affordable housing development occurring in urban-aid municipalities that satisfies the purported prospective need in the region.

119. Considering the New Jersey Legislature expressed that it adopted the Law and the Urban Aid Classification to “implement” the Mount Laurel doctrine, the Legislature has represented that it included the Urban Aid Classification because it felt it was obligated to do so under New Jersey’s unclear state judicial case law.

120. This exact scenario was envisioned by former New Jersey Supreme Court Justice Helen Hoens and current New Jersey Supreme Court Justice Anne Patterson in 2013 when they dissented from a 3-2 opinion of the Court that struck down COAH’s third round regulations. In re Adoption of N.J.A.C. 5:96, 215 N.J. at 621. Their dissent said that the Court’s majority opinion, which confirms that the Urban Aid Classification is not of state constitutional dimension, “le[ft] the Legislature with no guidance concerning what alternate statutory approach might comply with the majority’s interpretation of the Constitution. That lack of guidance, perhaps unintentionally, will greatly diminish the likelihood that the Legislature will attempt a future change of course.” Id. at 622 (Hoens, J., dissenting). The dissent further contended that the majority’s opinion “risks subjecting us to an endless cycle of repeating that which has not worked in the past.” Id. at 632 (Hoens, J., dissenting).

121. The Law’s adoption of the Urban Aid Classification demonstrates this precise scenario—an endless cycle of repeating that which has not worked, and more importantly, based upon present circumstances, presents federal constitutional infirmity.

CLAIMS FOR RELIEF

COUNT I

U.S. CONST. amend. XIV, 42 U.S.C. § 1983

**VIOLATION OF PLAINTIFFS' RIGHTS UNDER THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION (EQUAL PROTECTION)**

122. Plaintiffs incorporate the foregoing paragraphs of the Complaint as if fully set forth herein.

123. The Equal Protection Clause of the United States Constitution applies to the Law and the actions taken by Defendants relating to same.

124. State actors including but not limited to Defendants deny the equal protection guaranteed under the United States Constitution when they treat persons similarly situated differently under the law.

125. The Urban Aid Classification treats Plaintiffs and New Jersey citizens differently depending upon the New Jersey municipality in which they live.

126. A valid reason must exist for differentiating among members of the same class.

127. The Supreme Court of the United States has determined that the traditional test for finding a denial of equal protection under State law is whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid State objective.

128. A classification must rest on some ground that is fairly and substantially related to the object for which it is proposed.

129. Equal protection under the Constitution guarantees that the Legislature does not act arbitrarily or capriciously.

130. The Urban Aid Classification bears no rational relation to the governmental objective to be achieved.

131. The Urban Aid Classification contains a flawed formula resulting in overcounting “prospective need” and is therefore arbitrary, capricious, and unreasonable.

132. The Law, through its Urban Aid Classification, fails judicial review under an equal protection analysis under the Fourteenth Amendment to the United States Constitution, even if a rational basis review is applied.

WHEREFORE, Plaintiffs seek a declaratory judgment that the Law and its Urban Aid Classification violate the Fourteenth Amendment to the United States Constitution, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT II

N.J. CONST. art. I, § I; 28 U.S.C. § 1367

VIOLATION OF PLAINTIFFS' EQUAL PROTECTION RIGHTS UNDER THE NEW JERSEY CONSTITUTION

133. Plaintiffs incorporate the foregoing paragraphs of the Complaint as if fully set forth herein.

134. The New Jersey Constitution's General Welfare Clause has been interpreted as providing an equal protection right, N.J. State Bar Ass'n v. State, 387 N.J. Super. 24, 40 (App. Div. 2006), which is an analogue to the Fourteenth Amendment to the United States Constitution.

135. The New Jersey Supreme Court has rejected the federal two-tier approach and instead apply "a more flexible balancing test." Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 107 N.J. 355, 368 (1987). "The court must balance: (1) the nature of the affected right; (2) the extent to which the governmental restriction intrudes upon it; and (3) the public need for the restriction." Garden State Equality v. Dow, 434 N.J. Super. 163, 207 (Law Div. 2013) (citing Lewis v. Harris, 188 N.J. 415, 443 (2006)). "Where a statute is challenged because it 'does not apply evenhandedly to similarly situated people,' the means selected by the Legislature

must “bear a substantial relationship to a legitimate government purpose.” Ibid. (quoting Lewis, 188 N.J. at 443). “A ‘real and substantial relationship between the classification and the governmental purpose which it purportedly serves’ must be shown to sustain the classification.” Ibid. (quoting Barone, 107 N.J. at 355).

136. The Law, through its terms and classifications, fails judicial review under an equal protection analysis under the General Welfare Clause to the New Jersey Constitution.

WHEREFORE, Plaintiffs seek a declaratory judgment that the Law and its Urban Aid Classification violate the New Jersey Constitution, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys’ fees, and such other relief as this Court may deem proper and just.

DATE: October 2, 2025

By: /s/ Michael L. Collins

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EXHIBIT A

CHAPTER 2

AN ACT concerning affordable housing, including administration and municipal obligations, amending, supplementing, and repealing various parts of the statutory law, and making an appropriation.

BE IT ENACTED by the *Senate and General Assembly of the State of New Jersey*:

1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to read as follows:

C.52:27D-302 Findings.

2. The Legislature finds that:

a. The New Jersey Supreme Court, through its rulings in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983), has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low- and moderate-income families.

b. In the second Mount Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action."

c. The interest of all citizens, including low- and moderate-income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.

d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low- and moderate-income housing to replace the federal housing subsidy programs which have been almost completely eliminated.

e. The State can maximize the number of low- and moderate-income units provided in New Jersey by allowing its municipalities to adopt appropriate phasing schedules for meeting their fair share, so long as the municipalities permit a timely achievement of an appropriate fair share of the regional need for low- and moderate-income housing as required by the Mount Laurel I and II opinions and other relevant court decisions.

f. The State can also maximize the number of low- and moderate-income units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State. Because the Legislature has determined, pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in harmony with the Mount Laurel doctrine to permit the transfer of the fair share obligations among municipalities within a housing region, it is necessary and appropriate to create a new program to create new affordable housing and to foster the rehabilitation of existing, but substandard, housing.

g. Since the urban areas are vitally important to the State, construction, conversion, and rehabilitation of housing in our urban centers should be encouraged. However, the provision of housing in urban areas must be balanced with the need to provide housing throughout the State for the free mobility of citizens.

h. The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a realistic opportunity for a variety and

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choice of housing including low- and moderate-cost housing, to meet the needs of people desiring to live there. While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low- and moderate-income housing.

i. (Deleted by amendment, P.L.2024, c.2)

j. The Legislature finds that the use of regional contribution agreements, which permits municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should no longer be utilized as a mechanism for the creation of affordable housing.

k. The Legislature finds that the role of the Council on Affordable Housing, as intended in the original enactment of the "Fair Housing Act," has not developed in practice as was intended in the legislation.

l. The council's inability to function ultimately led the Supreme Court in 2015 to order the temporary dissolution of the requirement that administrative remedies be exhausted prior to resolving affordable housing disputes before the court and allowed the courts to resume their role as the forum of first resort for evaluating municipal compliance with Mount Laurel obligations pursuant to guidelines laid out by the Supreme Court's order.

m. The Legislature finds that the council's inability to function led to a "gap period" that frustrated the intent of the Legislature and compliance with constitutional and statutory obligations and that it is necessary to establish definitive deadlines for municipal action and any challenges to those actions to avoid such a "gap period" from being repeated in the future.

n. The Legislature finds that although the court-led system that has developed since 2015 has resulted in a significant number of settlement agreements and increased production of affordable housing, the system could operate more expeditiously to produce affordable housing, and at a lower cost to all parties, if appropriate standards are established by the Legislature to be applied throughout the State, including more clarity on calculation on fair share affordable housing obligations using transparent and established data sources to eliminate the lengthy and costly processes of determining those obligations that have characterized both the Council on Affordable Housing and court-led system.

o. The Legislature determines that, considering the unique history of the "Fair Housing Act," the Council on Affordable Housing shall be abolished and that, pursuant to the formulas and process established pursuant to sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), a municipality shall be authorized to seek approval of its fair share affordable housing obligation, adopted pursuant to binding resolution and then filed with the court, with the guidance of calculations published by the Department of Community Affairs, but that advocates for the low- and moderate-income households of the State shall be provided with an opportunity to contest the municipal determination.

p. The Legislature declares that the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine, and that municipalities in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) are also in compliance with the Mount Laurel doctrine.

q. The Legislature finds that the population of persons aged 65 years and older in the State has grown from approximately 13 percent in 1990, to 17 percent in 2021, and that such growth, in conjunction with expected future growth, makes it appropriate for the Legislature to allow up to 30 percent of the units towards a municipality's prospective affordable housing obligation to be satisfied through the creation of age-restricted housing.

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r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) were enacted concurrently to address the ruling of the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

s. The Legislature, in amending and supplementing the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to facilitate comprehensive planning in alignment with smart growth principles and the State Development and Redevelopment Plan.

t. The Legislature declares that the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), are made with the intention of furthering consistency with the State Development and Redevelopment Plan.

2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to read as follows:

C.52:27D-304 Definitions.

4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), abolished pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. "Housing region" means a geographic area established pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

c. "Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

d. "Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

e. (Deleted by amendment, P.L.2024, c.2)

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low- and moderate-income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

h. "Development" means any development for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

i. "Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et seq.).

j. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

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k. "Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

l. "Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15).

m. "Very low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

n. "Accessory dwelling unit" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

o. "Builder's remedy" means court-imposed, site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

p. "Commissioner" means the Commissioner of Community Affairs.

q. "Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a "judgment of compliance" or "judgment of repose." The term "compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

r. "County-level housing judge" means a judge appointed pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements, with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

s. "Deficient housing unit" means housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities.

t. "Department" means the Department of Community Affairs.

u. "Exclusionary zoning litigation" means litigation to challenge the fair share plan, housing element, or ordinances or resolutions implementing the fair share plan or housing element of a municipality based on alleged noncompliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

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v. "Fair share plan" means the plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

w. "Highlands-conforming municipality" means a municipality that has adopted a land development ordinance implementing the municipality's plan conformance petition and which land development ordinance has been certified by the Highlands Water Protection and Planning Council as consistent with the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.), the Highlands regional master plan, and the municipality's plan conformance approval. The term "land development ordinance" shall be inclusive of any amendment to the municipality's land development ordinances that is adopted to further the municipality's petition of plan conformance.

x. "Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which shall contain the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1).

y. "Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).

z. "State Development and Redevelopment Plan" or "State Plan" means the plan prepared pursuant to sections 1 through 12 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c.398 (C.52:18A-200).

aa. "Transitional housing" means temporary housing that:

includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements;

provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing;

is licensed by the department; and

allows households to remain for a minimum of six months.

C.52:27D-304.1 Council on Affordable Housing abolished; report to Governor, Legislature, municipalities.

3. a. The Council on Affordable Housing, established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), is abolished. Each municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in sections 6

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and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and may take into consideration the calculations in the report published by the department in accordance with this section.

b. Following the expiration of the third round of affordable housing obligations on July 1, 2025, a municipality shall have immunity from exclusionary zoning litigation if the municipality complies with the deadlines established in P.L.2024, c.2 (C.52:27D-304.1 et al.) for both determining present and prospective obligations and for adopting a housing element and fair share plan to meet those obligations.

(1) Immunity from exclusionary zoning litigation shall not limit the ability of an interested party to challenge a municipality for failure to comply with the terms of its compliance certification. However, a municipality's actions to comply with the terms of its compliance certification shall retain a presumption of validity if challenged for an alleged failure described in this paragraph.

(2) Immunity from exclusionary zoning litigation shall not limit the ability of an interested party to bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. However, the decisions of the program shall retain a presumption of validity if challenged for an alleged violation described in this paragraph.

c. Prior to the beginning of each new 10-year round of housing obligations beginning with the fourth round on July 1, 2025, the Department of Community Affairs shall conduct a calculation of regional need and municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3).

d. For the fourth round of affordable housing obligations, the department shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024. To assist in this calculation, the Highlands Water Protection and Planning Council shall provide a list of Highlands-conforming municipalities to the department no less than five business days following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The department shall provide the report to each municipality in the State at the same time that it submits the report to the Governor and Legislature and shall also publish such report on the department's Internet website. For the fifth round, and each subsequent new round of housing obligations, the department shall prepare and submit a report to each municipality in the State, the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on these calculations on or before August 1 of the year prior to the start of the new round and shall also publish such report on the department's Internet website. For each 10-year round of housing obligations, a municipality may take into consideration the calculations in the report prepared by the department pursuant to this subsection in determining its present and prospective obligations.

e. Nothing in the provisions of subsections c., d., or f. of this section shall be interpreted to render any calculation in a report by the department published pursuant to this section binding on any municipality or other entity, nor to render any failure by the department to timely conduct the calculations or publish a report required by this section to alter the deadlines or process set forth in this section. The ultimate determination of a municipality's present and prospective need shall be through the process as set forth below.

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f. (1) (a) With consideration of the calculations contained in the relevant report published by the department pursuant to this section, for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality's determination and bind the municipality to adopt a housing element and fair share plan pursuant to paragraph (2) of this subsection based on this determination as may be adjusted by the program as set forth in this subsection.

(b) For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the program no later than 48 hours following adoption. The resolution, along with the date of filing with the program, shall be published on the program's publicly accessible Internet website. The municipality shall also publish the resolution on its publicly accessible Internet website, if the municipality maintains one. If the municipality does not meet this deadline, it shall lose immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. A determination of the municipality's present and prospective obligation may be established before a county-level housing judge as part of any resulting declaratory judgment action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended by P.L.2024, c.2 (C.52:27D-304.1 et al.), or through exclusionary zoning litigation. If the municipality meets this January 31 deadline, then the municipality's determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality's obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025. The municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), in any challenge initiated through the program. An interested party may file a challenge with the program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality's determination of its present and prospective obligation does not comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). For the fifth round, and each subsequent new round of housing obligations, the deadlines established in this subparagraph shall be on the last day of January, the last day of February, and the first day of March, respectively, of the year of the start of each new round.

(c) The Administrative Director of the Courts shall establish procedures for the program to consider a challenge and resolve a dispute initiated by an interested party pursuant to subparagraph (b) of this paragraph. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's calculation of its obligation is compliant with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). Any challenge must state with particularity how the municipal calculation fails to comply with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and include the challenger's own calculation of the fair share obligations in compliance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). The program shall establish procedures to summarily dismiss any objection or challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal determination to be consolidated. The program's approach to resolving a dispute may include: (i) a finding that

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the municipality's determination of its present and prospective need obligation did not facially comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and thus the municipality's immunity shall be revoked; (ii) an adjustment of the municipality's determination of its present and prospective need obligation to comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) without revoking immunity; or (iii) a rejection of a challenge and affirm the municipality's determination. The decision shall be provided to the municipality and all parties that have filed challenges no later than March 31 of the year when the current round is expiring and the new round is beginning and concurrently posted on the program's Internet website. The Administrative Director of the Courts shall establish procedures for any further appellate review of such determinations and may establish an expedited process for consolidated review of any such challenges by the Supreme Court, provided that any party seeking appellate review shall not change the deadlines established for municipal filing of a housing element and fair share plan, and implementing ordinances.

(2) (a) A municipality shall adopt a housing element and fair share plan as provided for by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation established in paragraph (1) of this subsection on or before June 30, 2025. After adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions, the municipality shall within 48 hours of adoption or by June 30, 2025, whichever is sooner, file the same with the program as part of the action initiated pursuant to subparagraph (b) of paragraph (1) of this subsection through the program's Internet website. Any municipality that does not do so by June 30, 2025, shall not retain immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and shall be subject to review through the declaratory judgment process as established in paragraph (3) of this subsection. As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's prospective need obligation. In addressing prior round obligations, the municipality shall retain any sites that, in furtherance of the prior round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the housing element and fair share plan are required to be submitted, and shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity, which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources. The municipality shall only plan to replace any sites planned for development as provided by a prior court approval, settlement agreement, or approval by the council, with alternative development plans, if it is determined that the previously planned sites no longer present a realistic opportunity, and the sites in the alternative development plan

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provide at least an equivalent number of affordable units and are otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a municipality proposes to replace a site for which a complete application seeking subdivision or site plan approval has not been filed prior to the date by which the housing element and fair share plan is required to be submitted, there shall be a rebuttable presumption in any challenge filed to the municipality's plan that any site for which a zoning designation was adopted creating a realistic opportunity for the development of a site prior to July 1, 2020, or July 1 of every 10th year thereafter, as applicable, may be replaced with one or more alternative sites that provide a realistic opportunity for at least the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the extent a municipality has credits, including bonus credits, from units created during a prior round that are otherwise permitted to be allocated toward the municipality's unfulfilled prior round obligation or present or prospective need obligation in an upcoming round, the municipality shall be entitled to rely on the rules, including rules for bonus credits, applicable for the round during which those credits were accumulated. If a municipality has credits in excess of its prior round obligations, and such excess credits represent housing that will continue to be deed-restricted and affordable through the current round, the municipality may include such housing, and applicable bonus credits, towards addressing the municipality's new calculation of prospective need. Consistent with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the total number of bonus credits shall in no circumstance exceed 25 percent of the municipality's prospective obligation in any round. The municipality may in its plan lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligation that requires the municipality to provide a realistic opportunity for more than 1,000 housing units, after the application of any excess credits, or to prevent a prospective need obligation that exceeds 20 percent of the total number of households in a municipality according to the most recent federal decennial census, not including any prior round obligation. If a municipality is subject to both a 1,000 unit cap or 20 percent cap, it may apply whichever cap results in a lower prospective need obligation. For the fifth round, and for each subsequent new round of housing obligations, the deadlines in this paragraph shall be June 30 for the adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation, of the year of the start of the new round.

(b) Following the filing, in an action, of an adopted housing element and fair share plan pursuant to subparagraph (a) of this paragraph, an interested party may file a response on or before August 31, 2025 alleging that the municipality's fair share plan and housing element are not in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such allegation shall not include a claim that a site on real property proposed by the interested party is a better site than a site in the plan, but rather shall be based on whether the housing element and fair share plan as proposed is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's housing element and fair share plan is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. Any interested party that files a challenge shall specify with particularity which sites or elements of the municipal fair share plan do not comply with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, and the basis for alleging such non-compliance. The program shall establish procedures to summarily dismiss any objection or

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challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal housing element and fair share plan to be consolidated. If a municipality's fair share plan and housing element is not challenged on or before August 31, 2025, then the program shall apply an objective standard to conduct a limited review of the fair share plan and housing element for consistency and to determine whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. The program shall issue a compliance certification unless these objective standards are not met. The program shall facilitate communication between the municipality and any interested parties for a challenge and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Upon resolution of a challenge, the program shall issue compliance certification, conditioned on the municipality's commitment, as necessary, to revise its fair share plan and housing element in accordance with the resolution of the challenge. The program may also terminate immunity if it finds that the municipality is not determined to come into constitutional compliance at any point in the process. If by December 31, 2025 the municipality and any interested party that filed a response have resolved the issues raised in the response through agreement or withdrawal of the filing, then the program shall review the fair share plan and housing element for consistency and to determine whether it is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and issue a compliance certification unless these objective standards are not met. For the fifth round, and each subsequent new round of housing obligations, the deadline established in this subparagraph for an interested party to file a challenge shall be August 31, and for the municipality to revise its housing element and fair share plan in response, shall be December 31 of the year of the beginning of the new round.

(c) For the fourth round of affordable housing obligations, the implementing ordinances and resolutions, proposed pursuant to subparagraph (a) of this paragraph, and incorporating any changes from the program, shall be adopted on or before March 15, 2026. For the fifth round, and each subsequent new round of housing obligations, the deadline established in this subparagraph for the implementing ordinances and resolutions shall be on March 15 of the year following the beginning of the new round. After adoption of the implementing ordinances and resolutions by the municipality, the municipality shall immediately file the ordinances and resolutions with the program through the program's Internet website. Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation.

(d) The program may permit a municipality that still has a remaining dispute by interested parties to retain immunity from exclusionary zoning litigation into the year following the year in which a new round begins if the program, or county-level housing judge, determines that the municipality has been unable to resolve the issues disputed despite being determined to come into constitutional compliance. The Administrative Director of the Courts shall develop procedures to enable a county-level housing judge to resolve this dispute over the issuance of compliance certification through a summary proceeding in Superior Court following the year in which the new round begins. A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage. The pendency of such a dispute shall not stay the deadline for adoption of implementing ordinances and resolutions pursuant to this

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paragraph. The implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification may adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments to reflect the resolution of the dispute.

(e) Once a municipality has received a compliance certification or otherwise has had its fair share obligation and housing element and fair share plan finally determined via judgment of repose or other judgment, the municipality shall make the municipality's fair share plan and housing element, as well as any subsequently adopted implementing ordinances and resolutions, or amendments thereto, available to the department and the program for publication on the department's and program's respective Internet websites.

(3) (a) If a municipality fails to materially adhere to any of the deadlines established in paragraphs (1) or (2) of this subsection due to circumstances beyond the control of the municipality, including, but not limited to, an inability to meet a deadline due to an extreme weather event, then the program, or the county level housing judge, in accordance with court rules, may permit a municipality to have a grace period to come into compliance with the timeline, the length of which, and effect of which on later deadlines, shall be determined on a case-by-case basis.

(b) A municipality that has not adopted and published a binding resolution pursuant to paragraph (1) of this subsection or that has not adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection may seek compliance certification by filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), provided that any exclusionary zoning litigation filed by a plaintiff against such a municipality prior to such time may proceed notwithstanding such filing. In a municipality that has adopted and published a binding resolution pursuant to paragraph (1) of this subsection and has adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection, a court shall not consider exclusionary zoning litigation during the timeframe after the timely submission of a binding resolution or fair share plan and housing element of a municipality, or both, and before a challenge is submitted, or during the timeframe of a challenge that is pending resolution with the program pursuant to this subsection. A court may consider exclusionary zoning litigation after such timeframe upon a finding that the municipality: (i) is determined to be constitutionally noncompliant with its responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in the program in bad faith; (ii) has failed to meet the deadlines established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.); or (iii) has, after receiving compliance certification, failed to comply with the terms of that certification by not actually allowing for the development of the affordable housing as provided for in its fair share plan and housing element through actions or omissions, or both, of a municipality or its subordinate boards.

(c) All parties shall bear their own fees and costs in proceedings before the program.

(d) A determination by the program as to the present and prospective need obligation or as to issuance of compliance certification pursuant to this section shall be considered a final decision, subject to appellate review pursuant to the procedures set forth in subparagraph (c) of paragraph (1) of subsection f. of this section.

(e) A municipality shall not be deemed out of compliance with the deadlines of P.L.2024, c.2 (C.52:27D-304.1 et al.), or lose immunity from exclusionary zoning litigation, due to a

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failure by the program to promptly maintain and update its Internet website or other operational failure of the program.

g. A compliance certification, issued pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.), shall be accompanied by a written report that shall set forth the basis of the issuance of the certification and shall be in a format to be developed and approved by the Administrative Director of the Courts.

4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to read as follows:

C.52:27D-313 Petition for substantive certification.

13. a. If a municipality has adopted a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), but has failed to satisfy the June 30 deadline established pursuant to paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), for any round of affordable housing obligations, the municipality may request and be provided with a grace period pursuant to paragraph (3) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), if authorized by the program or county-level housing judge, as determined by the rules of court. If a municipality that has not satisfied this June 30 deadline is not provided with a grace period, the municipality may institute an action for declaratory judgment granting it repose in the Superior Court for the 10-year period constituting the current round of fair share obligations. The municipality shall publish notice of its filing of a declaratory judgment action in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances by submitting such information to the program to be published on the Internet website of the program in accordance with section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. (Deleted by amendment, P.L.2024, c.2)

c. (1) A municipality or other interested party may file an action through the program seeking a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site in the housing element and fair share plan that has not received preliminary site plan approval prior to the midpoint of the 10-year round. If such an action is initiated by a municipality, the municipality may propose one or more alternative sites with an accompanying development plan or plans that provide a realistic opportunity for the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if the facts demonstrate that the municipality or its subordinate boards have prevented the site from receiving site plan approval, then the program shall reject the municipality's challenge.

(2) Any party may file a request for information from the program regarding the progress of development at any inclusionary development site in the housing element and fair share plan of a municipality or at any alternative site proposed by the municipality. The program may respond to a request independently or in coordination with the department.

C.52:27D-313.2 "Affordable Housing Dispute Resolution Program" established.

5. a. There is established an Affordable Housing Dispute Resolution Program that shall have the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number of members, of at least three and no more than seven members who shall lead the administration of the program. The Administrative Director of the Courts shall update the assignment of designated Mount Laurel judges to indicate which current or retired and on-recall judges of the Superior Court shall

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serve as members, within 60 days following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The Administrative Director of the Courts may appoint other qualified experts as members if sufficient current and retired judges are unavailable. The Administrative Director of the Courts shall take into consideration in making such appointments experience in the employment of alternative dispute resolution methods and in relevant subject matter.

b. The Administrative Director of the Courts shall designate a member to serve as chair. The Administrative Director of the Courts shall make new appointments as needs arise for new appointments.

c. The program, in its discretion and in accordance with Rules of Court, may consult or employ the services of one or more special masters or staff to assist it in rendering determinations, resolving disputes, and facilitating communication as required by subparagraph (b) of paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1). In addition, the program may incorporate any existing or newly established court mediation or alternative dispute resolution process to assist the program in resolving disputes and facilitating communication among municipalities and interested parties.

d. The Administrative Director of the Courts shall establish a filing system via an Internet website in which the public is able to access, without cost, filings made pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) and such other related filings as the Administrative Director of the Courts may include on the filing system.

e. The Administrative Director of the Courts may assign additional responsibilities to the program for resolving disputes arising out of or related to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

f. The Administrative Director of the Courts shall establish procedures for the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for circumstances in which the program is unable to address the dispute within the time limitations established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1). As a part of the procedures established pursuant to this section, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the Chief Justice of the Supreme Court shall designate a Superior Court judge who sits within the vicinage, or a retired judge who, during the judge's tenure as a judge, served within the vicinage, to serve as county-level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their designated county or counties, with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise with respect to ongoing compliance or noncompliance with obligations created by fair share plans, housing elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage.

g. The Administrative Director of the Courts shall promulgate, maintain, and apply a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, and may establish additional, more restrictive ethical standards in order to meet the specific needs of the program and of county-level housing judges.

C.52:27D-304.2 Municipal present need, 10-year round, determination of affordable housing obligations.

6. a. Municipal present need for each 10-year round of affordable housing obligations shall be determined by estimating the deficient housing units occupied by low- and moderate-income households in the region, following a methodology similar to the methodology used to determine third round municipal present need, through the use of most recent datasets made

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available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

b. For the purpose of determining regional need for the 10-year round of low- and moderate-income housing obligations, running from July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

- (1) The regions of the State shall be comprised as follows:
 - (a) Region 1 shall consist of the counties of Bergen, Hudson, Passaic, and Sussex;
 - (b) Region 2 shall consist of the counties of Essex, Morris, Union, and Warren;
 - (c) Region 3 shall consist of the counties of Hunterdon, Middlesex, and Somerset;
 - (d) Region 4 shall consist of the counties of Mercer, Monmouth, and Ocean;
 - (e) Region 5 shall consist of the counties of Burlington, Camden, and Gloucester; and
 - (f) Region 6 shall consist of the counties of Atlantic, Cape May, Cumberland, and Salem.

(2) Regional prospective need for a 10-year round of low- and moderate-income housing obligations shall be determined through the calculation provided in this subsection. Projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero.

C.52:27D-304.3 Present, prospective fair share obligation, low- and moderate-income housing, methodologies.

7. a. The present and prospective fair share obligation for low- and moderate-income housing for each municipality in the State shall be determined as described in this section. In addition, the March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, *In re Application of Municipality of Princeton* shall be referenced as to datasets and methodologies that are not explicitly addressed by this section. These determinations of municipal present and prospective need shall be based on a determination of the present and prospective regional need for low- and moderate-income housing, established pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). These calculations of municipal present and prospective need shall use necessary datasets that are updated to the greatest extent practicable.

b. A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

c. A municipality's prospective fair share obligation of the regional prospective need for the upcoming 10-year round shall be determined in accordance with this subsection:

(1) If a municipality is a qualified urban aid municipality, the municipality shall be exempt from responsibility for any fair share prospective need obligation for the upcoming 10-year round. For the purposes of this section, a municipality is a qualified urban aid municipality if the municipality, as of July 1 of the year prior to the beginning of a new round, is designated

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by the department, pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid and the municipality meets at least one of the following criteria:

(a) The ratio of substandard existing deficient housing units currently occupied by low- and moderate-income households within the municipality, compared to all existing housing in the municipality, is greater than the equivalent ratio in the region;

(b) The municipality has a population density greater than 10,000 persons per square mile of land area; or

(c) The municipality has a population density of more than 6,000, but less than 10,000 persons per square mile of land area, and less than five percent vacant parcels not used as farmland, as measured by the average of:

(i) The number of vacant land parcels in the municipality as a percentage of the total number of parcels in the municipality; and

(ii) The valuation of vacant land in the municipality as a percentage of total valuations in the municipality.

(2) A municipality's equalized nonresidential valuation factor shall be determined. To determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor.

(3) A municipality's income capacity factor shall be determined. This factor shall be determined by calculating the average of the following measures:

(a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and

(b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality.

(4) A municipality's land capacity factor shall be determined. This factor shall be determined by estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the "land use / land cover data" most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located, as designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

(a) Planning Area 1 (Metropolitan) shall have a weighting factor of 1.0;

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- (b) Planning Area 2 (Suburban) shall have a weighting factor of 1.0;
- (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;
- (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;
- (e) Planning Area 5 (Environmentally Sensitive) shall have a weighting factor of 0.0;
- (f) Centers in Planning Areas 1 and 2 shall have a weighting factor of 1.0;
- (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting factor of 0.5;
- (h) Pinelands Regional Growth Area shall have a weighting factor of 0.5;
- (i) Pinelands Town shall have a weighting factor of 0.5;
- (j) All other Pinelands shall have a weighting factor of 0.0;
- (k) Meadowlands shall have a weighting factor of 1.0;
- (l) Meadowlands Center shall have a weighting factor of 1.0;
- (m) Highlands Preservation Area shall have a weighting factor of 0.0;
- (n) Highlands Planning Area Existing Community Zone and Highlands Designated Center in a Highlands-conforming municipality, as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0;
- (o) Highlands Planning Area, State-designated sewer service area, Highlands municipality that is not a Highlands-conforming municipality as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0; and
- (p) All other Highlands Planning Areas shall have a weighting factor of 0.0.

(5) The equalized nonresidential valuation factor, income capacity factor, and land capacity factor, determined in paragraphs (2), (3), and (4) of this subsection, shall be averaged to yield the municipality's average allocation factor for distributing gross regional prospective need to the municipality. The regional prospective need shall then be multiplied by the municipality's average allocation factor to determine the municipality's gross prospective need for the 10-year round.

8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give a notice of intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in advance of such action as provided in this section, to the residential mortgage debtor, and, if the mortgage is secured by a residence for which a restriction on affordability was recorded in the county in which the property is located, the clerk of the municipality in which the subject property is located, the municipal housing liaison, if one has been appointed by the municipality. For the purposes of this section, "restriction on affordability" means any conditions recorded with a mortgage or a deed which would limit the sale of such property to income qualified households pursuant to the rules adopted to effectuate the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, provided to the Department of Community Affairs in accordance with subsection a.

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of section 2 of P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

- (1) the particular obligation or real estate security interest;
- (2) the nature of the default claimed;
- (3) the right of the debtor to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57);
- (4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;
- (5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;
- (6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;
- (7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of P.L.1995, c.244 (C.2A:50-57), but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;
- (8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;
- (9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;
- (10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance and, if the property is subject to restrictions on affordability, the address and phone number of the municipal affordable housing liaison and of the New Jersey Housing and Mortgage Finance Agency. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner;
- (11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default;
- (12) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection, the debtor has the option to participate in the Foreclosure Mediation Program following the filing of a mortgage foreclosure complaint by initiating mediation pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64 (C.2A:50-77). Notice of the option to participate in the Foreclosure Mediation Program shall adhere to the requirements of section 3 of

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P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or guidelines adopted by the Supreme Court;

(13) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program;

(14) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver; and

(15) that the lender is either licensed in accordance with the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from licensure under the act in accordance with applicable law.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section and subsection a. of section 2 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

g. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.

h. If the property which is the subject of the notice of intention to foreclose has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver.

9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as follows:

C.5:18-2 Grants to assist low-income families.

2. The New Jersey Council on Physical Fitness and Sports, established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is authorized to provide grants to assist low-income families in purchasing the protective eyewear. As used in this section, a "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

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10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to read as follows:

C.13:20-23 Regional master plan considered in allocation of prospective fair housing share.

25. a. The regional master plan shall be taken into account as part of the determination of obligations pursuant to the method in section 7 of P.L.2024, c.2 (C.52:27D-304.3) regarding the allocation of the prospective fair share of the housing need under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for any fair share period subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) if a municipality is in the Highlands Region.

b. Nothing in P.L.2004, c.120 (C.13:20-1 et al.) shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to August 10, 2004.

11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read as follows:

C.17:11C-55 Inapplicability of act.

5. The requirements of this act shall not apply to:

a. Depository institutions; but subsidiaries and service corporations of these institutions shall not be exempt. A depository institution may register with the department for the purpose of sponsoring individuals, licensed as mortgage loan originators subject to subparagraph (b) of paragraph (1) of subsection c. of section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such registered entity obtains and maintains bond coverage for mortgage loan originators consistent with section 13 of P.L.2009, c.53 (C.17:11C-63). A depository institution registered with the department in accordance with this subsection a. shall otherwise remain exempt from the licensing requirements of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. A registered mortgage loan originator that is registered under the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

c. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

d. A person licensed as a real estate broker or salesperson pursuant to R.S.45:15-1 et seq., and not engaged in the business of a residential mortgage lender or residential mortgage broker. Any person holding a license under this act as a residential mortgage lender or broker shall be exempt from the licensing and other requirements of R.S.45:15-1 et seq. in the performance of those functions authorized by this act.

e. Any employer, other than a residential mortgage lender, who provides residential mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest.

f. The State of New Jersey or a municipality, or any agency or instrumentality thereof, which, in accordance with a housing element that has previously received substantive certification from the Council on Affordable Housing, or a judgment of repose or other court approval, pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or

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advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated.

g. Any individual who offers or negotiates terms of a residential mortgage loan:

- (1) with or on behalf of an immediate family member; or
- (2) secured by a dwelling that serves as the individual's residence.

h. Any person who, during a calendar year takes three or fewer residential mortgage loan applications or offers or negotiates the terms of three or fewer residential mortgage loans or makes three or fewer residential mortgage loans related to manufactured housing structures which are:

- (1) titled by the New Jersey Motor Vehicle Commission;
- (2) located in a mobile home park as defined in subsection e. of section 3 of P.L.1983, c.400 (C.54:4-1.4); and
- (3) exempt from taxation as real property pursuant to subsection b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

i. A bona fide not for profit entity and any individuals directly employed by that entity, so long as the entity maintains its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and otherwise meets the definition of "bona fide not for profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically determined by the department in accordance with rules established by the commissioner.

12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to read as follows:

C.39:4-10.2 Violations, warnings, fines; "Bicycle and Skating Safety Fund."

2. a. A person who violates a requirement of this act shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be fined a maximum of \$25 for the person's first offense and a maximum of \$100 for a subsequent offense if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct. Penalties provided in this section for a failure to wear a helmet may be waived if an offender or his parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred.

b. All money collected as fines under subsection a. of this section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-10.6) shall be deposited in a nonlapsing revolving fund to be known as the "Bicycle and Skating Safety Fund." Interest earned on money deposited in the fund shall accrue to the fund. Money in the fund shall be utilized by the director to provide educational programs devoted to bicycle, roller skating and skateboarding safety. If the director determines that sufficient money is available in the fund, he also may use, in a manner prescribed by rule and regulation, the money to assist low-income families in purchasing approved bicycle helmets. For the purposes of this subsection, "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to read as follows:

C.40:55D-8.2 Findings, declarations relative to Statewide non-residential development fees.

33. The Legislature finds and declares:

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a. The collection of development fees from builders of residential and non-residential properties has been authorized by the court through the powers established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). Due to the Legislature's determination that the role of the Council on Affordable Housing has not developed in practice as intended, the Legislature further determines that authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, given the department's existing roles related to local government finance and the funding and financing of affordable housing throughout the State.

b. New Jersey's land resources are becoming more scarce, while its redevelopment needs are increasing. In order to balance the needs of developing and redeveloping communities, a reasonable method of providing for the housing needs of low-, moderate-, and middle-income households, without mandating the inclusion of housing in every non-residential project, must be established.

c. A Statewide non-residential development fee program, which permits municipalities that have obtained or are in the process of seeking compliance certification to retain these fees for use in the municipality will provide a fair and balanced funding method to address the State's affordable housing needs, while providing an incentive to all municipalities to obtain compliance certification.

d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), organizations are directed to invest in the Casino Reinvestment Development Authority to ensure that the development of housing for families of low and moderate income shall be provided. The Casino Reinvestment Development Authority shall work to effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301 et al.).

e. (Deleted by amendment P.L.2024, c.2)

f. The negative impact of a State policy that over-relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality and halts non-residential and residential development, and these ill effects directly increase the overall costs of housing, and could impede the constitutional obligation to provide for a realistic opportunity for housing for families at all income levels.

14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to read as follows:

C.40:55D-8.3 Definitions relative to Statewide non-residential development fees.

34. As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated,

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as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

"Mixed-use development" means any development which includes both a non-residential development component and a residential development component, and shall include developments for which (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.

"Non-residential development" means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.).

"Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

"Relating to the provision of housing" shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

"Spending plan" means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low- and moderate-income individuals.

"Treasurer" means the Treasurer of the State of New Jersey.

15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to read as follows:

C.40:55D-8.4 Fee imposed on construction resulting in non-residential development; exemptions.

35. a. Beginning on the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting in non-residential development, as follows:

(1) A fee equal to two and one-half percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or

(2) A fee equal to two and one-half percent of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes.

b. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years

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from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:

- (1) parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;
- (2) any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;
- (3) non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
- (4) projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);
- (5) projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and
- (6) projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.

A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development whichever is later.

For purposes of this subsection, "recreational facilities and community center" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity; and "senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.

If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

c. (1) Unless authorized to pay directly to the municipality in which the non-residential construction is occurring in accordance with paragraph (2) of this subsection, developers shall pay non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with subsection g. of this section in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality.

(2) The department shall maintain on its Internet website a list of each municipality that is authorized to use the development fees collected pursuant to this section and that has a confirmed status of compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

(3) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that

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have been collected and expended since the inception of the municipal authorization to collect and retain said fees.

(4) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that have been collected and expended previous year.

d. The payment of non-residential development fees required pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

e. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to a non-residential development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development in accordance with the regulations adopted by the Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential development fee pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the developer of the amount of the non-residential development fee. Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property. Failure of the municipality to comply with the timeframes or procedures set forth in this subsection may subject it to penalties to be imposed by the commissioner; any penalties so imposed shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

A developer of a mixed-use development shall be required to pay the Statewide non-residential development fee relating to the non-residential development component of a mixed-use development subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

Non-residential construction which is connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed under this section to the extent of the increase in equalized assessed valuation in accordance with regulations to be promulgated by the Director of the Division of Taxation, Department of the Treasury.

f. Any municipality that is not in compliance with the requirements established pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of the commissioner adopted thereto, may be subject to forfeiture of any or all

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funds remaining within its municipal development trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

g. The Treasurer shall credit to the "Urban Housing Assistance Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7) annually from the receipts of the fees authorized to be imposed pursuant to this section an amount equal to \$20 million; all receipts in excess of this amount shall be deposited into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.

The Treasurer shall adopt such regulations as necessary to effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to read as follows:

C.40:55D-8.5 Regulations.

36. a. The commissioner shall promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the prompt and effective implementation of the provisions and purposes of section 8 of P.L.2008, c.46 (C.52:27D-329.2), including, but not limited to, provisions for the payment of any necessary administrative costs related to the assessment of properties and collection of any development fees by a municipality.

b. The commissioner shall adopt and promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et al.), including but not limited to, regulations necessary for the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund and spending plan.

17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to read as follows:

C.40:55D-8.7 Certain local ordinances void.

38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.), including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the department, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low- and moderate-income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a development fee which is not prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

b. No affordable housing obligation shall be imposed concerning a mixed-use development that would result in an affordable housing obligation greater than that which would have been imposed if the residential portion of the mixed-use development had been developed independently of the non-residential portion of the mixed-use development.

c. Whenever the developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low- and moderate-income households, the non-residential development fee authorized pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)

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shall be satisfied through the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

18. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to read as follows:

C.40:55D-8.8 Applicability of section.

39. The provisions of this section shall apply only to those developments for which a fee was imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), known as the "Statewide Non-residential Development Fee Act."

a. A developer of a property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50) prior to July 17, 2008 and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and monies paid on or after that date.

b. A developer of a non-residential project that, prior to July 17, 2008, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and moneys paid on or after that date.

c. If moneys are required to be returned under subsection a., b. or d. of this section, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity to whom the funds were paid shall promptly review all requests for returns, and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

d. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to the return of those moneys paid, provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2009, c.90 do not permit the imposition of a fee upon the developer of that non-residential property.

e. (Deleted by amendment, P.L.2024, c.2)

f. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010 but prior to the effective date of P.L.2011, c.122, shall be entitled to the return of those monies paid, provided that said monies have not already been expended by the municipality on affordable housing projects, and provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit the imposition of a fee upon the developer of that non-residential property. If moneys are eligible to be returned under this subsection, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2011, c.122. The entity to whom the funds were paid shall promptly review all requests for returns, to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

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19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to read as follows:

C.40:55D-40.3 Site Improvement Advisory Board.

3. a. There is established in, but not of, the department a Site Improvement Advisory Board, to devise statewide site improvement standards pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4). The board shall consist of the commissioner or the commissioner's designee, who shall be a non-voting member of the board, the Director of the Division of Codes and Standards in the Department of Community Affairs, who shall be a voting member of the board, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, or the executive director's designee, who shall be a voting member of the board, and nine other voting members, to be appointed by the commissioner. The other members shall include two professional planners, one of whom serves as a planner for a governmental entity or whose professional experience is predominantly in the public sector and who has worked in the public sector for at least the previous five years and the other of whom serves as a planner in private practice and has particular expertise in private residential development and has been involved in private sector planning for at least the previous five years, and one representative each from:

- (1) The New Jersey Society of Professional Engineers;
- (2) The New Jersey Society of Municipal Engineers;
- (3) The New Jersey Association of County Engineers;
- (4) The New Jersey Federation of Planning Officials;
- (5) (Deleted by amendment, P.L.2024, c.2);
- (6) The New Jersey Builders' Association;
- (7) The New Jersey Institute of Technology;
- (8) The New Jersey State League of Municipalities.

b. Among the members to be appointed by the commissioner who are first appointed, four shall be appointed for terms of two years each, four shall be appointed for terms of three years each, and two shall be appointed for terms of four years each. Thereafter, each appointee shall serve for a term of four years. Vacancies in the membership shall be filled in the same manner as original appointments are made, for the unexpired term. The board shall select a chair from among its members. Members may be removed by the commissioner for cause.

c. Board members shall serve without compensation, but may be entitled to reimbursement, from moneys appropriated or otherwise made available for the purposes of this act, for expenses incurred in the performance of their duties.

20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read as follows:

C.40A:12A-3 Definitions.

3. As used in P.L.1992, c.79 (C.40A:12A-1 et seq.):

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality, county, redevelopment entity, or housing authority pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.).

"Comparable, affordable replacement housing" means newly-constructed or substantially rehabilitated housing to be offered to a household being displaced as a result of a redevelopment project, that is affordable to that household based on its income under the guidelines established by the New Jersey Housing and Mortgage Finance Agency for maximum affordable sales prices or maximum fair market rents, and that is comparable to the household's dwelling in the redevelopment area with respect to the size and amenities of the

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dwelling unit, the quality of the neighborhood, and the level of public services and facilities offered by the municipality in which the redevelopment area is located.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Electric vehicle charging station" means an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.

"Governing body" means the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality.

"Housing authority" means a housing authority created or continued pursuant to this act.

"Housing project" means a project, or distinct portion of a project, which is designed and intended to provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

"Parking authority" means a public corporation created pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.), and authorized to exercise redevelopment powers within the municipality.

"Persons of low and moderate income" means persons or families who are, in the case of State assisted projects or programs, so defined by the New Jersey Housing and Mortgage Finance Agency, or in the case of federally assisted projects or programs, defined as of "low and very low income" by the United States Department of Housing and Urban Development.

"Public body" means the State or any county, municipality, school district, authority or other political subdivision of the State.

"Public electric vehicle charging station" means an electric vehicle charging station located at a publicly available parking space.

"Public housing" means any housing for persons of low and moderate income owned by a municipality, county, the State or the federal government, or any agency or instrumentality thereof.

"Public hydrogen fueling station" means publicly available equipment to store and dispense hydrogen fuel to vehicles according to industry codes and standards.

"Publicly assisted housing" means privately owned housing which receives public assistance or subsidy, which may be grants or loans for construction, reconstruction, conservation, or rehabilitation of the housing, or receives operational or maintenance subsidies either directly or through rental subsidies to tenants, from a federal, State or local government agency or instrumentality.

"Publicly available parking space" means a parking space that is available to, and accessible by, the public and may include on-street parking spaces and parking spaces in surface lots or parking garages, but shall not include: a parking space that is part of, or associated with, a

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private residence; or a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, residents of a common interest development, or residents of an adjacent building.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by such liens.

"Redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan.

"Redevelopment agency" means a redevelopment agency created pursuant to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or established heretofore pursuant to the "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et al.), repealed by this act, which has been permitted in accordance with the provisions of P.L.1992, c.79 (C.40A:12A-1 et seq.) to continue to exercise its redevelopment functions and powers.

"Redevelopment area" or "area in need of redevelopment" means an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6) or determined heretofore to be a "blighted area" pursuant to P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both determinations as made pursuant to the authority of Article VIII, Section III, paragraph 1 of the Constitution. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.

"Redevelopment entity" means a municipality or an entity authorized by the governing body of a municipality pursuant to subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to implement redevelopment plans and carry out redevelopment projects in an area in need of redevelopment, or in an area in need of rehabilitation, or in both.

"Redevelopment plan" means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or an area in need of rehabilitation, which plan shall be sufficiently complete to indicate its relationship to definite municipal objectives as to appropriate land uses, public transportation and utilities, recreational and municipal facilities, and other public improvements; and to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both.

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health,

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recreational, educational, and welfare facilities, and zero-emission vehicle fueling and charging infrastructure.

"Rehabilitation" means an undertaking, by means of extensive repair, reconstruction or renovation of existing structures, with or without the introduction of new construction or the enlargement of existing structures, in any area that has been determined to be in need of rehabilitation or redevelopment, to eliminate substandard structural or housing conditions and arrest the deterioration of that area.

"Rehabilitation area" or "area in need of rehabilitation" means any area determined to be in need of rehabilitation pursuant to section 14 of P.L.1992, c.79 (C.40A:12A-14).

"Zero-emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, including but not limited to, battery electric-powered vehicles and hydrogen fuel cell vehicles.

"Zero-emission vehicle fueling and charging infrastructure" means infrastructure to charge or fuel zero-emission vehicles, including but not limited to, public electric vehicle charging stations and public hydrogen fueling stations.

21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to read as follows:

C.40A:12A-16 Powers of municipality, county, housing authority.

16. a. In order to carry out the housing purposes of this act, a municipality, county, or housing authority may exercise the following powers, in addition to those set forth in section 22 of P.L.1992, c.79 (C.40A:12A-22):

(1) Plan, construct, own, and operate housing projects; maintain, reconstruct, improve, alter, or repair any housing project or any part thereof; and for these purposes, receive and accept from the State or federal government, or any other source, funds or other financial assistance;

(2) Lease or rent any dwelling house, accommodations, lands, buildings, structures or facilities embraced in any housing project; and pursuant to the provisions of this act, establish and revise the rents and charges therefor;

(3) Acquire property pursuant to subsection i. of section 22 of P.L.1992, c.79 (C.40A:12A-22);

(4) Acquire, by condemnation, any land or building which is necessary for the housing project, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

(5) Issue bonds in accordance with the provisions of section 29 of P.L.1992, c.79 (C.40A:12A-29);

(6) Cooperate with any other municipality, private, county, State or federal entity to provide funds to the municipality or other governmental entity and to homeowners, tenant associations, nonprofit or private developers to acquire, construct, rehabilitate or operate publicly assisted housing, and to provide rent subsidies for persons of low and moderate income, including the elderly, pursuant to applicable State or federal programs;

(7) Encourage the use of demand side subsidy programs such as certificates and vouchers for low-income families and promote the use of project based certificates which provide subsidies for units in newly constructed and substantially rehabilitated structures, and of tenant based certificates which subsidize rent in existing units;

(8) Cooperate with any State or federal entity to secure mortgage assistance for any person of low or moderate income;

(9) Provide technical assistance and support to nonprofit organizations and private developers interested in constructing low- and moderate-income housing;

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(10) If it owns and operates public housing units, provide to the tenants public safety services, including protection against substance use disorder, and social services, including counseling and financial management, in cooperation with other agencies;

(11) Provide emergency shelters, transitional housing and supporting services to homeless families and individuals.

b. All housing projects, programs and actions undertaken pursuant to this act shall accord with the housing element of the master plan of the municipality within which undertaken, and with any fair share housing plan of the municipality, adopted pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to read as follows:

C.52:27D-310 Essential components of municipality's housing element.

10. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing, and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);

f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;

g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);

h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for

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redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to read as follows:

C.52:27D-310.1 Computing municipal adjustment, exclusions.

1. Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so. When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the municipality, in filing a housing element and fair share plan pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall exclude from designating, and the process set forth pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) and section 13 of P.L.1985, c.222 (C.52:27D-313) shall confirm was correctly excluded, as vacant land:

(a) any land that is owned by a local government entity that as of January 1, 1997, has adopted, prior to the institution of a lawsuit seeking a builder's remedy or prior to the filing of a petition for substantive certification of a housing element and fair share plan, a resolution authorizing an execution of agreement that the land be utilized for a public purpose other than housing;

(b) any land listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space and which is owned, leased, licensed, or in any manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education, or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license, or operational control of such land;

(c) any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units based on appropriate standards pertaining to housing density;

(d) historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the date of filing a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or initiation of an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313);

(e) agricultural lands when the development rights to these lands have been purchased or restricted by covenant;

(f) sites designated for active recreation that are designated for recreational purposes in the municipal master plan; and

(g) environmentally sensitive lands where development is prohibited by any State or federal agency, including, but not limited to, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the

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Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities.

No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.

24. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows:

C.52:27D-311 Provision of fair share by municipality.

11. a. In adopting its housing element, the municipality may provide for its fair share of low- and moderate-income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low- and moderate-income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low- and moderate-income housing within the municipality, as well as such other appropriate techniques as have been established through applicable precedent and may be employed by the municipality:

(1) Rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share in accordance with the provisions of subsection h. of this section;

(2) Determination of the total residential zoning necessary to assure that the municipality's fair share is achieved;

(3) Determination of measures that the municipality will take to assure that low- and moderate-income units remain affordable to low- and moderate-income households for an appropriate period of not less than the period required by the regulations adopted by the Department of Community Affairs pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321);

(4) A plan for infrastructure expansion and rehabilitation and conversion or redevelopment of unused or underutilized real property, including existing structures, if necessary to assure the achievement of the municipality's fair share of low- and moderate-income housing;

(5) Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low- and moderate-income housing;

(6) Tax abatements for purposes of providing low- and moderate-income housing;

(7) Utilization of funds obtained from any State or federal subsidy toward the construction of low- and moderate-income housing;

(8) Utilization of municipally generated funds toward the construction of low- and moderate-income housing; and

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property, excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low- and moderate-income housing.

c. (Deleted by amendment, P.L.2008, c.46)

d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low- and moderate-income housing.

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e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, for the mentally ill, or for persons with head injuries, as those terms are defined in section 2 of P.L.1977, c.448 (C.30:11B-2), or in transitional housing, which will be affordable to persons of low- and moderate-income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited towards the fulfillment of the municipality's fair share of low- and moderate-income housing. A municipality shall not credit transitional housing units towards more than 10 percent of the municipality's fair share obligation.

f. It having been determined by the Legislature that the provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is a public purpose, a municipality or municipalities may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low- and moderate-income persons, providing that any private advantage is incidental.

g. A municipality that has received approval of its housing element and fair share plan for the current round, and that has actually effected the construction of the affordable housing units it is obligated to provide, may amend its affordable housing element or zoning ordinances without losing immunity from exclusionary zoning litigation.

h. Whenever affordable housing units are proposed to be provided through an inclusionary development, a municipality shall provide, through its zoning powers, incentives to the developer, which shall include increased densities and reduced costs.

i. A municipality and a developer may request a modification of a compliance certification involving reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development, if any such application demonstrates how any shortfall in meeting the municipal fair share obligation will then be addressed. Such a request may be granted only if the municipality and developer have demonstrated that the project has been impacted by market conditions beyond their reasonable control.

j. A municipality may enter into an agreement with a developer or residential development owner to provide a preference for affordable housing to low- and moderate-income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. Following the initial 120-day marketing period, previously qualified applicants and future qualified applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, shall be placed on a special waiting list as well as the general waiting list. The veterans on the special waiting list shall be given preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage. Any agreement to provide affordable housing preferences for veterans pursuant to this subsection shall not affect a municipality's ability to receive credit for the unit.

k. In the fourth round, and in subsequent rounds of affordable housing obligations, a municipality shall be able to receive one credit against its affordable housing obligation for each unit of low- or moderate-income housing and shall not receive bonus credit for any

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particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided pursuant to this section or other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A municipality shall not receive more than one type of bonus credit for any unit and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation in the fourth round or any subsequent round through the use of bonus credits. This subsection shall not be construed to limit the ability of a municipality to receive a unit of credit for a low- or moderate-income housing unit that is subject to affordability controls that are scheduled to expire, but are extended pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321), to the extent that this affordability control extension would otherwise generate this credit. As a part of a fair share plan and housing element adopted pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), a municipality shall:

- (1) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24);
- (2) receive one unit of credit and one-half bonus credit for each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer;
- (3) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius, or one-mile radius for projects located in a Garden State Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. For the purpose of this subparagraph, the distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property;
- (4) receive one unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations;
- (5) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution. This bonus credit shall be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements. A municipality shall receive the bonus credit pursuant to this paragraph for each unit with at least three bedrooms that are above the minimum number required for the bedroom distribution determined pursuant to the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency;
- (6) receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space;
- (7) receive one unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation;

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(8) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost;

(9) receive one unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). In accordance with section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not be required to provide that a specific percentage of the units in any specific project be reserved as very low-income housing in order to obtain this bonus credit, and the 13 percent level, for the purpose of bonus credits, shall be calculated against the full prospective need obligation provided pursuant to the fair share plan; and

(10) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

l. A municipality may not satisfy more than 30 percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing. A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children. All units referred to in this section shall otherwise be in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).

m. All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.

n. P.L.2024, c.2 (C.52:27D-304.1 et al.) shall not be construed to require a municipality to fund infrastructure improvements for affordable housing projects beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification. A municipality may fund infrastructure improvements for affordable housing projects, through the adoption of a development agreement with the applicant, beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification.

25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to read as follows:

C.52:27D-311b Assurance of adaptability requirements; council measures.

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6. A municipality may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a municipal fair share plan unless the unit complies with the requirements set forth thereunder. If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), any party representing the interests of households with disabilities may seek a modification to the approval of the municipal fair share plan to require the municipality to amend its fair share plan within 90 days of such a finding, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of such a finding, the municipality shall lose immunity to exclusionary zoning litigation for the portion of its obligation that is found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.).

26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to read as follows:

C.52:27D-320 "New Jersey Affordable Housing Trust Fund."

20. There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes, including, but not limited to, the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the Statewide non-residential development fees collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from municipal development trust funds, or other monies as may be dedicated, earmarked, or appropriated by the Legislature for the purposes of the fund. All references in any law, order, rule, regulation, contract, loan, document, or otherwise to the "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." The department shall be permitted to utilize annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

a. Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements have obtained compliance certification pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide

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non-residential development fees, a priority for funding shall be established for projects in municipalities that have received compliance certification.

Programs and projects in any municipality shall be funded only after receipt by the commissioner of a written statement in support of the program or project from the municipal governing body.

b. The commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms, and conditions of each grant or loan.

c. For any period which the commissioner may approve, the commissioner may assist affordable housing programs that are located in municipalities that have a pending request for compliance certification; provided that the affordable housing program will meet all or part of a municipal low- and moderate-income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low- and moderate-income housing need as determined pursuant to the low- and moderate-income household growth over the prior 10 years, as calculated pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

(1) Rehabilitation of substandard housing units occupied or to be occupied by low- and moderate-income households;

(2) Creation of accessory dwelling units to be occupied by low- and moderate-income households;

(3) Conversion of non-residential space to residential purposes; provided a substantial percentage of the resulting housing units are to be occupied by low- and moderate-income households;

(4) Acquisition of real property, demolition and removal of buildings, or construction of new housing that will be occupied by low- and moderate-income households, or any combination thereof;

(5) Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans, and permits; engineering, architectural, and other technical services; costs of land acquisition and any buildings thereon; and costs of site preparation, demolition, and infrastructure development for projects undertaken pursuant to an approved regional contribution agreement;

(6) Assistance to a local housing authority, nonprofit or limited dividend housing corporation, or association or a qualified entity acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for rehabilitation or restoration of housing units which it administers which: (a) are unusable or in a serious state of disrepair; (b) can be restored in an economically feasible and sound manner; and (c) can be retained in a safe, decent, and sanitary manner, upon completion of rehabilitation or restoration; and

(7) Other housing programs for low- and moderate-income housing, including, without limitation, (a) infrastructure projects directly facilitating the construction of low- and moderate-income housing not to exceed a reasonable percentage of the construction costs of the low- and moderate-income housing to be provided and (b) alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas of the premises in which they are located in order to make them accessible to persons with disabilities.

e. Any grant or loan agreement entered into pursuant to this section shall incorporate contractual guarantees and procedures by which the division shall ensure that any unit of housing provided for low- and moderate-income households shall continue to be occupied by low- and moderate-income households for a period that conforms to the requirements of

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subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321) following the award of the loan or grant, except that the division may approve a guarantee for a period of less duration where necessary to ensure project feasibility.

f. Notwithstanding the provisions of any other law, rule, or regulation to the contrary, in making grants or loans under this section, the department shall not require that tenants be certified as low or moderate income or that contractual guarantees or deed restrictions be in place to ensure continued low- and moderate-income occupancy as a condition of providing housing assistance from any program administered by the department, when that assistance is provided for a project of moderate rehabilitation if the project: (1) contains 30 or fewer rental units; and (2) is located in a census tract in which the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three-person household by the department in accordance with the latest federal decennial census. A list of eligible census tracts shall be maintained by the department and shall be adjusted upon publication of median income figures by census tract after each federal decennial census.

g. In addition to other grants or loans awarded pursuant to this section, and without regard to any limitations on such grants or loans for any other purposes herein imposed, the commissioner shall annually allocate such amounts as may be necessary in the commissioner's discretion, and in accordance with section 3 of P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants under the program created pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.). Such rental assistance grants shall be deemed necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in order to meet the housing needs of certain low-income households who may not be eligible to occupy other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

h. The department and the State Treasurer shall submit the "New Jersey Affordable Housing Trust Fund" for an audit annually by the State Auditor or State Comptroller, at the discretion of the Treasurer. In addition, the department shall prepare an annual report for each fiscal year, and submit it by November 30th of each year to the Governor and the Legislature, and the Joint Committee on Housing Affordability, or its successor, and post the information to its Internet website, of all activity of the fund, including details of the grants and loans by number of units, number and income ranges of recipients of grants or loans, location of the housing renovated or constructed using monies from the fund, the number of units upon which affordability controls were placed, and the length of those controls. The report also shall include details pertaining to those monies allocated from the fund for use by the State rental assistance program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

i. The commissioner may award or grant the amount of any appropriation deposited in the "New Jersey Affordable Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to municipalities pursuant to the provisions of section 39 of P.L.2009, c.90 (C.40:55D-8.8).

27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to read as follows:

C.52:27D-321 Affordable housing assistance.

21. The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low- and moderate-income housing.

a. Of the bond authority allocated to it under section 24 of P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less

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than 25 percent to be used in conjunction with housing to be constructed or rehabilitated with assistance under P.L.1985, c.222 (C.52:27D-301 et al.).

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have obtained compliance certification, or which have been subject to a builder's remedy. During any period which the agency may approve, the agency may assist affordable housing programs that have a pending request for compliance certification; provided the affordable housing program will meet all or in part a municipal low- and moderate-income housing obligation.

c. Assistance provided pursuant to this section may take the form of grants or awards to municipalities, prospective home purchasers, housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.), or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing low- and moderate-income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for low- and moderate-income housing, including infrastructure projects directly facilitating the construction of low- and moderate-income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan.

f. The agency, in consultation with the department, shall establish requirements and controls to ensure the maintenance of housing assisted under P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to low- and moderate-income households for a period of not less than 40 years for newly created rental units, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100

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percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing. The agency may update or amend any controls previously adopted by the agency, in consultation with the Council on Affordable Housing, prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), provided that the requirements and controls shall, at a minimum, be consistent with the controls as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), including, but not limited to, any requirements concerning bedroom distributions, affordability averages, and affirmative marketing. The controls may include, among others, requirements for recapture of assistance provided pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or otherwise which promotes the provision or maintenance of low- and moderate-income housing, the agency may waive restrictions on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor. The agency shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). All parties may continue to rely on regulations previously adopted by the agency pursuant to the authority provided by this section as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) until new rules and regulations are adopted by the agency. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation with department, may adopt, immediately, upon filing with the Office of Administrative Law, said regulations, which shall be effective for a period not to exceed one year from the date of the filing. The agency shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

g. The agency may establish affordable housing programs through the use or establishment of subsidiary corporations or development corporations as provided in P.L.1983, c.530 (C.55:14K-1 et seq.). The subsidiary corporations or development corporations shall be eligible to receive funds provided under P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted purpose.

h. The agency shall provide assistance, through its bonding powers or in any other manner within its powers, to the grant and loan program established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

i. (1) The department shall promulgate processes and standards for the certification of administrative agents and municipal housing liaisons in the State, as well as standards for measuring performance of and enforcing compliance by administrative agents and municipal housing liaisons in implementing the affordable housing requirements and controls established pursuant to subsection f. of this section.

(2) Administrative agents shall be responsible for implementing the requirements and controls set by the regulations promulgated pursuant to subsection f. of this section. The department may bring via summary proceeding any findings of violation of the responsibilities set forth in this section before a county-level housing judge to docket the violation and issue corrective orders and levy fines.

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(3) Municipal housing liaisons shall be responsible for monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the requirements and controls set by regulation under subsection f. of this section.

(4) Municipal housing liaisons, the department, and interested parties may bring a challenge before a county-level housing judge to determine whether properties subject to the regulations set forth by this section are out of compliance with the regulations. A finding of deliberate noncompliance may result in the department removing the administrative agent's certification.

(5) A county-level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations under the compliance certification established by section 3 of P.L.2024, c.2 (C.52:27D-304.1).

(6) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the department may adopt, immediately, upon filing with the Office of Administrative Law, regulations to implement the provisions of this subsection, which shall be effective for a period not to exceed one year from the date of the filing. The department shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended to read as follows:

C.52:27D-321.1 Allocation of low-income tax credits.

19. Notwithstanding any rules of the New Jersey Housing and Mortgage Finance Agency to the contrary, the allocation of low-income tax credits shall be made by the agency to the full extent such credits are permitted to be allocated under federal law, including allocations of four percent or nine percent federal low-income tax credits and including allocations allowable for partial credits. The affordable portion of any mixed income or mixed-use development that is part of a fair share housing plan that has obtained compliance certification, including a court-approved judgment of repose or compliance, including, but not limited to, a development that has received a density bonus, shall be permitted to receive allocations of low-income tax credits, provided that the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units, and the affordable units are developed contemporaneously with the commercial or market rate residential units.

29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to read as follows:

C.52:27D-329.1 Coordination, review of housing elements.

7. Housing elements and fair share plans adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) shall ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality's prospective need obligation will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units made available for families with children. The 13 percent shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality's prospective need obligation. Nothing in this section shall require that a specific percentage of the units in any specific project be reserved as very low-income housing; provided, however, that a municipality shall not receive

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bonus credits for the provision of housing units reserved for occupancy by very low-income households unless the 13 percent target has been exceeded within that municipality, and that the agency shall update the regulations adopted pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321) to replace any requirements for very low-income housing inconsistent with the percentages and definitions established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) with the percentage and definition specified in this section.

30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to read as follows:

C.52:27D-329.2 Authorization of municipality to impose, collect development fees.

8. a. (1) A municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. Review of that spending plan for consistency with applicable law and the municipality's housing element and fair share plan shall be part of the process specified in section 3 of P.L.2024, c.2 (C.52:27D-304.1). The department shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) regarding the establishment, administration, reporting, and enforcement of the expenditure of affordable housing development fees by municipalities, which shall include establishing an expedited process for approving spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification and procedures for monitoring the collection and expenditure of trust funds. The department shall develop and publish on the department's Internet website a detailed summary of the municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. As part of the regulations adopted pursuant to this section and section 10 of P.L.2008, c.46 (C.52:27D-

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329.4), the department shall adopt reporting requirements applicable to municipal affordable housing trust funds to facilitate fulfillment of the department's obligations pursuant to this section. Municipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department. The department shall have jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the department may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

b. A municipality shall deposit all fees collected, whether or not such collections were derived from fees imposed upon non-residential or residential construction into a trust fund dedicated to those purposes as required under this section, and such additional purposes as may be approved by the department.

c. (1) A municipality, other than a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), may only spend development fees for an activity approved by the department to address the municipal fair share obligation or approved as part of compliance certification.

(2) Municipal development trust funds shall not be expended unless the municipality has immunity from exclusionary zoning litigation at the time of the expenditure, or said municipality has previously collected such funds while under the protection of presumptive validity or immunity from exclusionary zoning litigation and in accordance with an approved spending plan. However, municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction, regardless of whether this approval occurs prior to or subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). Municipal development fee trust funds shall not be expended:

(a) to reimburse municipalities for activities which occurred prior to the authorization of a municipality to collect development fees; or

(b) (i) on administrative costs, attorney fees or court costs to obtain a judgment of repose; (ii) to contest a determination of the municipality's fair share obligation; or (iii) on costs of any challenger in connection to a challenge to the municipality's obligation, housing element, or fair share plan.

(3) A municipality shall set aside a portion of its development fee trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with rules of the department.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, common maintenance expenses for units located in condominiums, rental assistance, and any other program authorized by the department.

(b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low-income units in a municipal fair share plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall not entitle a municipality to bonus credits except as may otherwise be allowed by applicable precedent.

(4) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or

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any program or activity for which the municipality expends development fee proceeds, in accordance with rules of the department.

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program.

d. The department shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees shall be committed for expenditure within four years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this section shall be required by the council to transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund.

e. Notwithstanding any provision of this section, or regulations of the department, a municipality shall not collect a development fee from a developer whenever that developer is providing for the construction of affordable units, either on-site or elsewhere within the municipality.

This section shall not apply to the collection of a Statewide development fee imposed upon non-residential development pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through 40:55D-8.7) by the State Treasurer, when such collection is not authorized to be retained by a municipality.

31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to read as follows:

C.52:27D-329.4 Maintenance, publication of up-to-date municipal status report.

10. a. The department shall maintain on its Internet website, and also publish on an annual basis, an up-to-date municipal status report based on its collection and publication of information concerning the number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

b. (1) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), each municipality shall provide the department with the information necessary to comply with this section.

(2) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, each municipality shall provide the department with the information necessary to comply with this section.

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c. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the provisions of this section, including rules and regulations to ensure that municipalities and developers report any information as may be necessary for the department to fulfill its obligations pursuant to this section.

32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended to read as follows:

C.52:27D-329.9 Developments, certain, in certain regional planning entities.

18. a. Notwithstanding any rules to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be required to be reserved for occupancy by low- or moderate-income households at least 20 percent of the residential units constructed with affordability controls as required pursuant to the rules and regulations of the agency.

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 percent of the residential units constructed for occupancy by low- or moderate-income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the agency.

c. (Deleted by amendment, P.L.2024, c.2)

d. Notwithstanding the provisions of subsection b. of this section, or any other law or regulation to the contrary, for purposes of mixed-use projects or qualified residential projects in which a business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low- or moderate-income households. For a mixed-use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low- or moderate-income households in accordance with the terms and conditions of such approval.

33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to read as follows:

C.55:14K-56 Definitions.

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

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"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low- or moderate-income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Local enforcement authority" means any officer or agency of local government responsible for the implementation or enforcement of land-use and building regulations established by or pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Program" means the Affordable Home Ownership Opportunities Program created by this act.

"Qualified nonprofit organization" means any corporation or association of persons organized under Title 15A of the New Jersey Statutes, having for its principal purpose, or as a purpose ancillary to its principal purpose, the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), being within the description of section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been determined by the agency to be a bona fide organization not under the effective control of any for-profit organization or governmental entity, and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of this act.

"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes, or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to read as follows:

C.55:14K-60 Eligibility for loans.

7. A project of new construction or substantial rehabilitation by a nonprofit organization shall be eligible for a loan under this act if (1) the homes to be constructed or substantially rehabilitated under the project are located within an identifiable neighborhood in which median family income does not exceed the current standard of "moderate income" pursuant to the contemporaneous standards established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the homes to be constructed or substantially rehabilitated under the

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project are sufficient in number and located on the same or contiguous parcels of land or within such proximity to each other as to render the cost per unit of housing practicable for acquisition by lower-income purchasers; and (3) each home constructed or substantially rehabilitated within the project will conform to all requirements of the State Uniform Construction Code, except as to the waiver of any fee or other requirement pursuant to subsection b. of section 9 of this act.

35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to read as follows:

C.55:14K-74 Definitions relative to cooperative housing for certain purchasers.

3. As used in this act:

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project undertaken by a qualified housing sponsor to create housing for shared occupancy by seniors or persons with disability of low or moderate income, whether for home ownership or rental, which meets the standards of eligibility for loans under the program created by section 4 of P.L.1998, c.128 (C.55:14K-75).

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project who fulfills the definition of a senior or person with disability pursuant to this section, is of low or moderate income and to whom a loan may be made under the program pursuant to section 4 of P.L.1998, c.128 (C.55:14K-75).

"Fund" means the Senior and Disabled Cooperative Housing Incentive Fund established by section 6 of P.L.1998, c.128 (C.55:14K-77).

"Housing region" means a housing region as defined in subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Person with disability" means any person who is 18 years of age or older and who fulfills the definition of having a "disability" pursuant to section 3 of the "Americans with Disabilities Act of 1990," 42 U.S.C. s.12102).

"Program" means the New Jersey Senior and Disabled Cooperative Housing Finance Incentive Program created by P.L.1998, c.128 (C.55:14K-72 et seq.).

"Qualified housing sponsor" means any corporation or association of persons organized under the New Jersey Statutes, or any other corporation having for one of its purposes the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-72 et seq.).

"Retrofitting" means renovating or remodeling an existing residential or non-residential structure to allow for cooperative living.

"Senior" means an individual who is 55 years of age or older.

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"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

C.52:27D-313.3 Adoption of transitional rules, regulations, implementation, affordable housing, timeline; Uniform Housing Affordability Controls, update.

36. a. (1) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Community Affairs shall, in consultation with the Administrative Director of the Courts and the Executive Director of the New Jersey Housing and Mortgage Finance Agency, adopt, immediately upon filing with the Office of Administrative Law, no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), such transitional rules and regulations as necessary for the implementation of P.L.2024, c.2 (C.52:27D-304.1 et al.), including for: (a) the identification of any vestigial duties of the Council on Affordable Housing and the transfer of those duties within the Department of Community Affairs to the extent that those duties are not otherwise assumed, pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.), by municipalities or the Affordable Housing Dispute Resolution Program; and (b) the establishment of policies regarding the cost of the assessments and fees of planned real estate developments, as defined in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-income housing units.

(2) The department, in consultation with the agency, shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The Executive Director of the New Jersey Housing and Mortgage Finance Agency, in consultation with the department, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), rules and regulations to update the Uniform Housing Affordability Controls as required pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the Uniform Housing Affordability Controls, the agency shall set rules establishing that, for the purpose of newly created low- and moderate-income rental units, a 40-year minimum deed restriction shall be required. For the purpose of for-sale units, a 30-year minimum deed restriction shall be required. For the purpose of housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction shall be required, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100 percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing.

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37. The following sections are repealed:

Section 5 of P.L.1985 c.222 (C.52:27D-305);
Section 6 of P.L.1985, c.222 (C.52:27D-306);
Section 7 of P.L.1985, c.222 (C.52:27D-307);
Section 1 of P.L.1991, c.479 (C.52:27D-307.1);
Section 2 of P.L.1991, c.479 (C.52:27D-307.2);
Section 3 of P.L.1991, c.479 (C.52:27D-307.3);
Section 4 of P.L.1991, c.479 (C.52:27D-307.4);
Section 5 of P.L.1991, c.479 (C.52:27D-307.5);
Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
Section 8 of P.L.1985, c.222 (C.52:27D-308);
Section 9 of P.L.1985, c.222 (C.52:27D-309);
Section 40 of P.L.2009, c.90 (C.52:27D-311.3);
Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
Section 14 of P.L.1985, c.222 (C.52:27D-314);
Section 15 of P.L.1985, c.222 (C.52:27D-315);
Section 16 of P.L.1985, c.222 (C.52:27D-316);
Section 17 of P.L.1985, c.222 (C.52:27D-317);
Section 18 of P.L.1985, c.222 (C.52:27D-318);
Section 19 of P.L.1985 c.222 (C.52:27D-319);
Section 22 of P.L.1985, c.222 (C.52:27D-322);
Section 26 of P.L.1985, c.222 (C.52:27D-326);
Section 28 of P.L.1985, c.222 (C.52:27D-328); and
Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

38. a. There is appropriated to the Affordable Housing Dispute Resolution Program, established pursuant to subsection a. of section 5 of P.L.2024, c.2 (C.52:27D-313.2), from the General Fund \$12,000,000 for the purposes of carrying out its responsibilities for the fourth round of affordable housing obligations, as established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).

b. There is appropriated to the Department of Community Affairs, from the General Fund, \$4,000,000 for the purposes of carrying out responsibilities allocated to it pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.).

39. This act shall take effect immediately and shall apply to each new round of affordable housing obligations that begins following enactment.

Approved March 20, 2024.

EXHIBIT B

Memorandum

To: Borough of Montvale, New Jersey

From: Econsult Solutions, Inc.

Date: October 29, 2024

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020

Authors: Peter Angelides, Ph.D., AICP – President; David Stanek, Ph.D. – Vice President

1 Introduction

ESI was asked to synthesize data on household growth trends and affordable housing production in New Jersey's urban aid and non-urban aid municipalities from 1970 to 2020. The goal was to evaluate changes in the number of households and the distribution of affordable housing units, particularly in the context of the state's fair share housing obligations and the impact of the urban aid exemption. This analysis aims to inform discussions on the relevance of the exemption policy given the significant shifts in demographic and housing patterns over the past five decades.

1.1 Sources

The analysis uses two primary data sources:

1. **U.S. Decennial Census Data (1970, 1980, 1990, 2000, 2010, and 2020):** Household data from the U.S. Census Bureau's decennial censuses for the years mentioned.¹ This data provides insights into the trends of household growth and decline across both exempt and non-exempt municipalities in New Jersey over a 50-year period.
2. **Low-Income Housing Tax Credit (LIHTC) Program Data from NJHMFA:** Information on newly constructed affordable housing units from the New Jersey Housing and Mortgage Finance Agency (NJHMFA). The data cover affordable housing units built under the LIHTC program between 1990 and 2019. This allows for an assessment of affordable housing production in both exempt and non-exempt municipalities.

By combining these data sources, the analysis offers an evaluation of how household dynamics and affordable housing development have evolved in New Jersey's municipalities, particularly in relation to the urban aid exemption and fair share housing requirements.

¹ Steven Manson, Jonathan Schroeder, David Van Riper, Katherine Knowles, Tracy Kugler, Finn Roberts, and Steven Ruggles. IPUMS National Historical Geographic Information System: Version 18.0. 1970 Census: Count 1 - 100% Data, 1980 Census: STF 1 - 100% Data, 1990 Census: STF 1 - 100% Data, 2000 Census: SF 1a - 100% Data, 2010 Census: SF 1a - P&H Tables, 2020 Census: DHC - P&H Tables. Minneapolis, MN: IPUMS. 2023.
<http://doi.org/10.18128/D050.V18.0>

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Date: October 29, 2024

2 Urban Aid Exemptions

Under the fair share methodology that was first adopted in 1983 and has since been maintained, existing urban aid municipalities that meet specific criteria are exempt from the obligation to provide affordable housing to meet the prospective affordable housing need of the state. In the 2024 Fourth Round calculations, 47 municipalities are exempt.² The remaining 517 municipalities are assigned a fair share obligation.

Throughout this memo, two sets of exempt municipalities are considered:

- The first set are those exempt under the current Fourth Round calculations, which are referred to as 2024 exempt municipalities throughout.³ The remaining municipalities that are required to contribute to the fair share housing requirement are referred to as 2024 non-exempt municipalities. These 2024 exempt municipalities are used to estimate exempt households between 1990 and 2020.
- The second set of exempt municipalities are the 31 municipalities that qualified as urban aid municipalities pursuant to Chapter 64 of Public Law 1971 as of 1978.⁴ The list from 1978 was the closest contemporaneous list of urban aid municipalities available to the Legislature when they drafted the Fair Housing Act. These municipalities are referred to as 1978 urban aid municipalities throughout. The information below treats all of these 1978 municipalities as if they were exempt under the Fair Housing Act. These municipalities are used to estimate exempt households between 1970 and 1990.⁵

3 Prospective Need Requirements

Under the 2024 legislation on affordable housing and earlier affordable housing legislation, the prospective need for affordable housing is calculated across six regions in the state.⁶ The prospective need of low- and moderate-income for each region is determined by finding the change in households between the most recent U.S. Decennial Census and the second most recent U.S. Decennial Census. If

² These exempt municipalities change over time. For example, there were 31 urban aid municipalities in 1978 and 42 in 1983, both dates prior to the establishment of the Fair Housing Act of 1985. More recently, there were 44 “qualifying” urban aid municipalities that were exempt in 2015.

³ New Jersey Department of Community Affairs, 2024. 2025-2035 Affordable Housing Calculations. Fourth Round Calculations Workbook. https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Workbook.xlsx

⁴ State of New Jersey, Department of Treasury, 1979. State Owned Lands in New Jersey, Phase I: Urban Aid Municipalities. <rucore.libraries.rutgers.edu/rutgers-lib/56359/PDF/1/play/>

⁵ A more precise accounting of the numbers below would use actual exempt municipalities for each decade between 1970 and 2020. However, the overall story remains the same as the list of urban aid municipalities since the 1970s has stayed relatively constant. Only four municipalities among the 1978 urban aid municipalities are not among the 2024 exempt municipalities. These four municipalities, Millville, Keansburg, Neptune, and Phillipsburg, comprised just 2 percent of the total households of the combined 1978 urban aid municipalities.

⁶ Region 1: Bergen, Hudson, Passaic and Sussex counties; Region 2: Essex, Morris, Union and Warren counties; Region 3: Hunterdon, Middlesex, and Somerset counties; Region 4: Mercer, Monmouth and Ocean counties; Region 5: Burlington, Camden, and Gloucester counties; Region 6: Atlantic, Cape May, Cumberland, and Salem counties. New Jersey Department of Community Affairs, 2024. 2025-2035 Affordable Housing Calculations. Fourth Round Calculations Workbook. https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Workbook.xlsx

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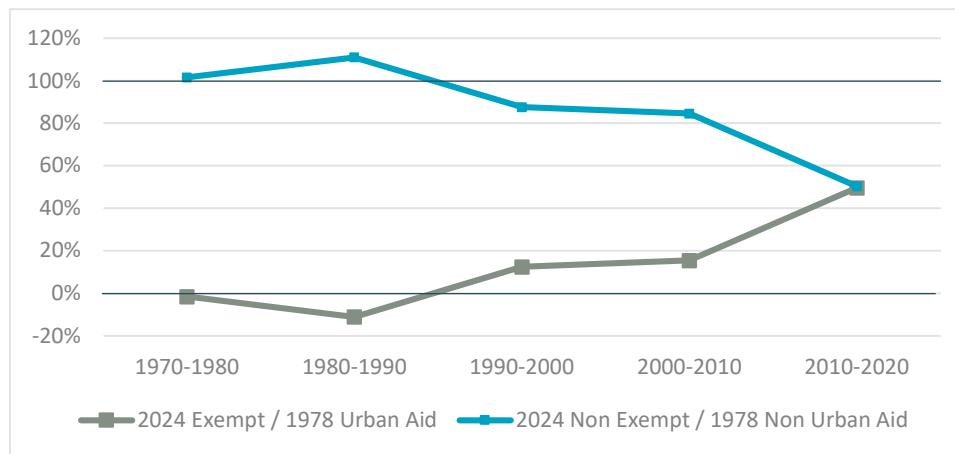
positive, this change in households is then divided by 2.5 to determine the region's prospective need. If negative, this change in households is adjusted to zero. For the Fourth Round calculations, this prospective need is based on the 2010 and 2020 U.S. Decennial Censuses. The prospective need of past decades is calculated below using this same method.

Under the new fair housing legislation, the prospective need for affordable housing generated by exempt municipalities is redistributed among the non-exempt municipalities within the same region. This means that while exempt municipalities contribute to the overall housing need through their household growth, they are not responsible for fulfilling that need under the fair share obligations. Additionally, the construction of new affordable housing in exempt municipalities does not count toward the region's prospective need calculations. As described below, the proportion of statewide household growth in exempt municipalities has increased significantly relative to non-exempt municipalities in recent years.

4 Trends in Changes in the Number of Households, 1970-2020

In the 1980s, when the urban aid exemption was first established, many exempt municipalities were in decline as evidenced by large losses in population and households that began in the mid-twentieth century and carried through to the 1990s. Today, nearly 40 years later, while some of the underlying conditions that affected many of these exempt municipalities persist, several exempt municipalities are growing, overall, and exempt municipalities now comprise half of the state's growth in households (see Figure 1).

Figure 1: Percent Share of Change in Households Statewide by 2024 Exemption / 1978 Urban Aid Status*, 1970-2020



*Percentages for 1970-1990 are based on the 31 Urban Aid municipalities in 1978. Percentages for 1990-2020 are based on the 2024 exempt municipalities in the Fourth Round Calculations workbook from NJ DCA.

Source: State of New Jersey, Department of Treasury (1979); NJ DCA Fourth Round Calculations Workbook (2024); NHGIS; U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1); Calculations by ESI (2024); Calculations by ESI (2024).

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The following section presents data about trends in the growth and decline in the number of households in exempt and non-exempt municipalities in New Jersey between 1970 and 2020.

4.1 1970-1990 Household Change

In the 1970s and 1980s, New Jersey was quickly suburbanizing and urban areas were in decline. Between 1970 and 1980, New Jersey gained a net total of 343,465 households. 2024 non-urban aid municipalities gained 348,820 households (102 percent of the statewide net total), while the 1978 urban aid municipalities lost a net total of 5,355 households. The loss in households was concentrated in Region 1 (4,818 households lost), Region 2 (6,730 households lost) and Region 5 (4,361 households lost) (see Figure 2).

Losses in 1978 urban aid municipalities were more severe in the 1980s, and overall household growth slowed significantly across the state. Between 1980 and 1990, New Jersey gained a net total of 246,117 households, with 273,350 new households in 1978 non-urban aid municipalities and 27,233 households lost in 1978 urban aid municipalities. The loss in households was again concentrated in Region 1 (2,431 households lost), Region 2 (24,255 households lost), and Region 5 (1,578 households lost) (see Figure 3).

Figure 2: Change in Households by 1978 Urban Aid Municipalities, 1970-1990

Region	Urban Aid Status	1970-1980		1980-1990	
		Households	% of State Total	Households	% of State Total
1	Non-Urban Aid	46,622	14%	20,824	8%
	Urban Aid	(4,818)	-1%	(2,431)	-1%
2	Non-Urban Aid	38,976	11%	26,320	11%
	Urban Aid	(6,730)	-2%	(24,255)	-10%
3	Non-Urban Aid	58,411	17%	72,437	29%
	Urban Aid	1,076	0%	57	0%
4	Non-Urban Aid	100,330	29%	78,442	32%
	Urban Aid	6,845	2%	(37)	0%
5	Non-Urban Aid	74,004	22%	53,208	22%
	Urban Aid	(4,361)	-1%	(1,578)	-1%
6	Non-Urban Aid	30,477	9%	22,110	9%
	Urban Aid	2,633	1%	1,011	0%
Statewide	Non-Urban Aid	348,820	102%	273,341	111%
	Urban Aid	(5,355)	-2%	(27,233)	-11%
	Total	343,465	100%	246,108	100%

Source: State of New Jersey, Department of Treasury (1979); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1); Calculations by ESI (2024).

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4.2 1990-2020 Household Change

The declines in New Jersey's urban municipalities reversed in the 1990s. Between 1990 and 2000, 2024 exempt municipalities accounted for 33,652 new households and between 2000 and 2010, they accounted for 23,097 new households. The 1990-2000 and 2000-2010 decades of growth for 2024 exempt municipalities accounted for 12 and 15 percent of the state's growth respectively (see Figure 3).

By the 2010s, the 2024 exempt municipalities were driving a much larger share of the state's growth. Between 2010 and 2020, the 41 2024 exempt municipalities accounted for essentially half of the state's growth. Exempt municipalities grew by 105,145 new households as compared to the 106,597 in 2024 non-exempt municipalities.⁷ Forty percent of the state's households growth occurred in Region 1 (24 percent) and Region 2 (16 percent) 2024 exempt municipalities (see Figure 3).

Figure 3: Change in Households by 2024 Exempt Municipalities, 1990-2020

Region	Exemption Status	1990-2000		2000-2010		2010-2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Not Exempt	32,111	12%	12,242	8%	17,797	8%
	Exempt	26,595	10%	15,412	10%	51,561	24%
2	Not Exempt	34,425	13%	15,121	10%	18,209	9%
	Exempt	2,239	1%	492	0%	33,055	16%
3	Not Exempt	51,164	19%	25,113	17%	23,462	11%
	Exempt	2,228	1%	2,524	2%	5,547	3%
4	Not Exempt	64,637	24%	35,126	23%	24,426	12%
	Exempt	3,150	1%	2,678	2%	10,128	5%
5	Not Exempt	38,516	14%	30,264	20%	20,024	9%
	Exempt	(1,841)	-1%	473	0%	2,811	1%
6	Not Exempt	15,438	6%	8,752	6%	2,679	1%
	Exempt	1,281	0%	1,518	1%	2,043	1%
Statewide	Not Exempt	236,291	88%	126,618	85%	106,597	50%
	Exempt	33,652	12%	23,097	15%	105,145	50%
	Total	269,943	100%	149,715	100%	211,742	100%

Source: NJ DCA Fourth Round Calculations Workbooks (2024); NHGIS (2023), U.S. Decennial Census, 1990 (STF-1), 2000 (SF 1a), 2010 (SF 1a), 2020 (DHC). Calculations by ESI (2024)

5 Affordable Housing Production

The Low-Income Housing Tax Credit (LIHTC) is used to fund a large portion of affordable housing in New Jersey. It incentivizes private developers to build or rehabilitate affordable rental housing by providing them with tax credits. Between 1990 and 2019, according to data from the New Jersey Housing and

⁷ For comparison, between 2010 and 2020, the 1978 urban aid municipalities made up 40 percent of the state's household growth.

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Mortgage Financing Agency, there were 35,036 new affordable housing units built under the Low-Income Housing Tax Credit (LIHTC) program. Of these units, 16,162 were built in 2024 exempt municipalities, and 18,873 were built in 2024 non-exempt municipalities (See Figure 4).

Between 2010 and 2019, exempt municipalities utilized this program to build 6,635 affordable housing units as compared to 8,118 in non-exempt municipalities. These affordable units built in 2024 exempt municipalities comprise about 8 percent of the state's prospective need (see Figure 5). These contributions to the state's prospective need are not counted toward their region's fair share housing obligations.⁸

Figure 4: Prospective Need and New Construction LIHTC Affordable Housing Units

	1990-2000	2000-2010	2010-2020	Total
Prospective Housing Need	107,977	59,886	84,698	-
LIHTC Affordable Units - Exempt	2,710	6,817	6,635	16,162
LIHTC Affordable Units - Non Exempt	4,602	6,154	8,118	18,874
LIHTC Affordable Units - Total	7,312	12,971	14,753	35,036

Source: ESI (2024), New Jersey Home Mortgage and Financing Agency (2024)

Figure 5: New Construction LIHTC Affordable Housing Units by Region as a Percentage of Regional Prospective Need

Region	1990-2000	2000-2010	2010-2020
1	3%	13%	4%
2	7%	32%	11%
3	3%	6%	5%
4	0%	3%	8%
5	1%	11%	11%
6	2%	24%	38%
Statewide	3%	11%	8%

Source: New Jersey Housing Mortgage and Finance Agency (2024); NHGIS (2023); U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC). Calculations by ESI (2024).

⁸ The exclusion of affordable housing units built in exempt municipalities from counting toward regional fair share obligations is grounded in the New Jersey Fair Housing Act and the administrative regulations established by COAH (N.J.A.C. 5:93 and N.J.A.C. 5:94). While defunct, the methodologies used under COAH underpin the current fair housing legislation.

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RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020

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Appendix Figure 1: 2024 Exempt and 1978 Urban Aid Municipalities

County	Municipality	2024 Exempt Urban Aid	1978 Urban Aid
Atlantic	Atlantic City	X	
Atlantic	Pleasantville	X	
Bergen	Bergenfield	X	
Bergen	Cliffside Park	X	
Bergen	Garfield	X	
Bergen	Hackensack	X	
Bergen	Lodi	X	
Camden	Camden	X	X
Camden	Lindenwold	X	
Camden	Pennsauken	X	
Cumberland	Bridgeton	X	X
Cumberland	Millville		X
Cumberland	Vineland	X	X
Essex	Belleville	X	
Essex	Bloomfield	X	X
Essex	City of Orange	X	X
Essex	East Orange	X	X
Essex	Irvington	X	X
Essex	Montclair	X	X
Essex	Newark	X	X
Essex	Nutley	X	
Gloucester	Glassboro	X	
Gloucester	Woodbury	X	
Hudson	Bayonne	X	X
Hudson	Harrison	X	
Hudson	Hoboken	X	X
Hudson	Jersey City	X	X
Hudson	Kearny	X	
Hudson	North Bergen	X	X
Hudson	Union City	X	X
Hudson	Weehawken	X	
Hudson	West New York	X	X
Mercer	Trenton	X	X
Middlesex	Carteret	X	
Middlesex	New Brunswick	X	X
Middlesex	Perth Amboy	X	X
Middlesex	Woodbridge	X	
Monmouth	Asbury Park	X	X
Monmouth	Keansburg		X
Monmouth	Long Branch	X	X
Monmouth	Neptune City		X
Ocean	Lakewood	X	X
Passaic	Clifton	X	
Passaic	Passaic	X	X
Passaic	Paterson	X	X
Union	Elizabeth	X	X
Union	Hillside	X	
Union	Plainfield	X	X
Union	Rahway	X	X
Union	Roselle	X	
Warren	Phillipsburg		X

Source: NJ DCA Fourth Round Calculations Workbook (2024); State of New Jersey, Department of the Treasury (1979)

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Appendix Figure 2a: Total Households by 2024 Exempt Urban Aid Municipalities, 1970-2020

Region	Exemption Status	1970			1980			1990			2000			2010			2020		
		Households	State Total	% of Households	Households	State Total	% of Households	Households	State Total	% of Households	Households	State Total	% of Households	Households	State Total	% of Households	Households	State Total	% of Households
1	Not Exempt	312,909	14%	351,966	14%	372,556	13%	404,667	13%	416,909	13%	434,706	13%	434,706	13%	438,356	13%	438,356	13%
	Exempt	344,238	16%	346,985	14%	344,788	12%	371,383	12%	386,795	12%	400,706	12%	400,706	12%	403,062	12%	403,062	12%
	Total	657,147	30%	698,951	27%	717,344	26%	776,050	25%	803,704	25%	837,762	25%	837,762	25%	873,062	25%	873,062	25%
2	Not Exempt	290,970	13%	327,589	13%	353,503	13%	387,928	13%	403,049	13%	421,258	12%	421,258	12%	423,850	9%	423,850	9%
	Exempt	316,286	14%	311,913	12%	288,064	10%	290,303	9%	290,795	9%	322,906	10%	322,906	10%	322,906	9%	322,906	9%
	Total	607,256	28%	639,502	25%	641,567	23%	678,231	22%	693,844	22%	745,108	22%	745,108	22%	745,108	22%	745,108	22%
3	Not Exempt	173,202	8%	229,514	9%	298,093	11%	349,257	11%	374,370	12%	397,832	12%	397,832	12%	400,706	12%	400,706	12%
	Exempt	59,902	3%	63,077	2%	66,992	2%	69,220	2%	71,744	2%	77,291	2%	77,291	2%	77,291	2%	77,291	2%
	Total	233,104	11%	292,591	11%	365,085	13%	418,477	14%	446,114	14%	475,123	14%	475,123	14%	475,123	14%	475,123	14%
4	Not Exempt	237,215	11%	338,422	13%	417,147	15%	481,784	16%	516,910	16%	541,336	16%	541,336	16%	544,044	16%	544,044	16%
	Exempt	59,863	3%	65,831	3%	65,511	2%	68,661	2%	71,339	2%	81,467	2%	81,467	2%	81,467	2%	81,467	2%
	Total	297,078	13%	404,253	16%	482,658	17%	550,445	18%	588,249	18%	622,803	18%	622,803	18%	622,803	18%	622,803	18%
5	Not Exempt	217,850	10%	286,669	11%	338,009	12%	376,525	12%	406,789	13%	426,813	12%	426,813	12%	428,356	12%	428,356	12%
	Exempt	55,034	2%	55,858	2%	56,148	2%	54,307	2%	54,780	2%	57,591	2%	57,591	2%	57,591	2%	57,591	2%
	Total	272,884	12%	342,527	13%	394,157	14%	430,832	14%	461,569	14%	484,404	14%	484,404	14%	484,404	14%	484,404	14%
6	Not Exempt	93,064	4%	125,298	5%	146,810	5%	162,248	5%	171,000	5%	173,679	5%	173,679	5%	173,679	5%	173,679	5%
	Exempt	44,596	2%	45,472	2%	47,081	2%	48,362	2%	49,380	2%	51,923	2%	51,923	2%	51,923	2%	51,923	2%
	Total	137,660	6%	170,770	7%	193,891	7%	210,610	7%	220,380	7%	225,602	7%	225,602	7%	225,602	7%	225,602	7%
State	Not Exempt	1,325,210	60%	1,659,458	65%	1,926,118	69%	2,162,409	71%	2,289,027	71%	2,395,624	70%	2,395,624	70%	2,404,404	70%	2,404,404	70%
	Exempt	879,919	40%	889,136	35%	868,584	31%	902,236	29%	925,333	29%	1,030,478	30%	1,030,478	30%	1,042,102	30%	1,042,102	30%
	Total	2,205,129	100%	2,548,594	100%	2,794,702	100%	3,064,645	100%	3,214,360	100%	3,426,102	100%	3,426,102	100%	3,426,102	100%	3,426,102	100%

Source: NJ DCA Fourth Round Calculations Workbook (2024); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

Appendix Figure 2b: Total Households by 1978 Urban Aid Municipalities, 1970-2020

Region	Urban Aid Status	1970			1980			1990			2000			2010			2020		
		Households	% of State Total																
1	Non Urban Aid	410,490	19%	457,112	18%	477,936	17%	517,460	17%	529,099	16%	558,101	16%						
	Urban Aid	246,657	11%	241,839	9%	239,408	9%	258,590	8%	274,605	9%	314,961	9%						
	Total	657,147	30%	698,951	27%	717,344	26%	776,050	25%	803,704	25%	873,062	25%						
2	Non Urban Aid	320,726	15%	359,702	14%	386,022	14%	421,180	14%	436,352	14%	456,928	13%						
	Urban Aid	286,530	13%	279,800	11%	255,545	9%	257,051	8%	257,492	8%	288,180	8%						
	Total	607,256	28%	639,502	25%	641,567	23%	678,231	22%	693,844	22%	745,108	22%						
3	Non Urban Aid	207,319	9%	265,730	10%	338,167	12%	390,858	13%	416,576	13%	442,600	13%						
	Urban Aid	25,785	1%	26,861	1%	26,918	1%	27,619	1%	29,538	1%	32,523	1%						
	Total	233,104	11%	292,591	11%	365,085	13%	418,477	14%	446,114	14%	475,123	14%						
4	Non Urban Aid	232,457	11%	332,787	13%	411,229	15%	475,691	16%	510,972	16%	535,419	16%						
	Urban Aid	64,621	3%	71,466	3%	71,429	3%	74,754	2%	77,277	2%	87,384	3%						
	Total	297,078	13%	404,253	16%	482,658	17%	550,445	18%	588,249	18%	622,803	18%						
5	Non Urban Aid	240,319	11%	314,323	12%	367,531	13%	406,655	13%	437,094	14%	460,019	13%						
	Urban Aid	32,565	1%	28,204	1%	26,626	1%	24,177	1%	24,475	1%	24,385	1%						
	Total	272,884	12%	342,527	13%	394,157	14%	430,832	14%	461,569	14%	484,404	14%						
6	Non Urban Aid	90,476	4%	120,953	5%	143,063	5%	158,607	5%	167,013	5%	170,161	5%						
	Urban Aid	47,184	2%	49,817	2%	50,828	2%	52,003	2%	53,867	2%	55,441	2%						
	Total	137,660	6%	170,770	7%	193,891	7%	210,610	7%	220,880	7%	225,602	7%						
State	Non Urban Aid	1,501,787	68%	1,850,607	73%	2,123,948	76%	2,370,451	77%	2,497,106	78%	2,623,228	77%						
	Urban Aid	703,342	32%	697,987	27%	670,754	24%	694,194	23%	717,254	22%	802,874	23%						
	Total	2,205,129	100%	2,548,594	100%	2,794,702	100%	3,064,645	100%	3,214,360	100%	3,426,102	100%						

Source: State of New Jersey, Department of Treasury (1979); NHGIS, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

Appendix Figure 3a: Change in Number of Households by 2024 Exempt Urban Aid Municipalities, 1970-2020

Region	Exemption Status	1970-1980			1980-1990			1990-2000			2000-2010			2010-2020		
		Households	% of State Total													
1	Not Exempt	39,057	11%	20,590	8%	32,111	12%	12,242	8%	17,797	8%					
	Exempt	2,747	1%	(2,197)	-1%	26,595	10%	15,412	10%	51,561	24%					
	Total	41,804	12%	18,393	7%	58,706	22%	27,654	18%	69,358	33%					
2	Not Exempt	36,619	11%	25,914	11%	34,425	13%	15,121	10%	18,209	9%					
	Exempt	(4,373)	-1%	(23,849)	-10%	2,239	1%	492	0%	33,055	16%					
	Total	32,246	9%	2,065	1%	36,664	14%	15,613	10%	51,264	24%					
3	Not Exempt	56,312	16%	68,579	28%	51,164	19%	25,113	17%	23,462	11%					
	Exempt	3,175	1%	3,915	2%	2,228	1%	2,524	2%	5,547	3%					
	Total	59,487	17%	72,494	29%	53,392	20%	27,637	18%	29,009	14%					
4	Not Exempt	101,207	29%	78,725	32%	64,637	24%	35,126	23%	24,426	12%					
	Exempt	5,968	2%	(320)	0%	3,150	1%	2,678	2%	10,128	5%					
	Total	107,175	31%	78,405	32%	67,787	25%	37,804	25%	34,554	16%					
5	Not Exempt	68,819	20%	51,340	21%	38,516	14%	30,264	20%	20,024	9%					
	Exempt	824	0%	290	0%	(1,841)	-1%	473	0%	2,811	1%					
	Total	69,643	20%	51,630	21%	36,675	14%	30,737	21%	22,835	11%					
6	Not Exempt	32,234	9%	21,512	9%	15,438	6%	8,752	6%	2,679	1%					
	Exempt	876	0%	1,609	1%	1,281	0%	1,518	1%	2,043	1%					
	Total	33,110	10%	23,121	9%	16,719	6%	10,270	7%	4,722	2%					
State	Not Exempt	334,248	97%	266,660	108%	236,291	88%	126,618	85%	106,597	50%					
	Exempt	9,217	3%	(20,552)	-8%	33,652	12%	23,097	15%	105,145	50%					
	Total	343,465	100%	246,108	100%	269,943	100%	149,715	100%	211,742	100%					

Source: NI DCA Fourth Round Calculations Workbook (2024); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

Appendix Figure 3b: Change in Number of Households by 1978 Urban Aid Municipalities, 1970-2020

Region	Urban Aid Status	1970-1980			1980-1990			1990-2000			2000-2010			2010-2020		
		Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	
1	Non Urban Aid Urban Aid Total	46,622 (4,818)	14% -1%	20,824 (2,431)	8% -1%	39,524	15%	11,639	8%	29,002	14%					
2	Non Urban Aid Urban Aid Total	38,976 (6,730)	11% -2%	26,320 (24,255)	11% -10%	35,158	13%	15,172	10%	20,576	10%					
3	Non Urban Aid Urban Aid Total	58,411 1,076	17% 0%	72,437 57	29% 0%	52,691	20%	25,718	17%	26,024	12%					
4	Non Urban Aid Urban Aid Total	100,330 6,845	29% 2%	78,442 (37)	32% 0%	64,462	24%	35,281	24%	24,447	12%					
5	Non Urban Aid Urban Aid Total	107,175 (4,361)	31% -1%	78,405 (1,578)	32% -1%	67,787	25%	37,804	25%	10,107	5%					
6	Non Urban Aid Urban Aid Total	74,004 2,633	22% 1%	53,208 51,630	22% 21%	39,124 (2,449)	14% -1%	30,439 298	20% 0%	22,925 (90)	11%					
State	Non Urban Aid Urban Aid Total	30,477 (5,355)	9% -2%	22,110 (27,233)	9% -11%	15,544 23,440	6% 9%	8,406 23,060	6% 15%	3,148 85,620	1%					
		33,110	10%	23,121	9%	16,719	6%	10,270	7%	4,722	2%					
		348,820	102%	273,341	111%	246,503	91%	126,655	85%	126,122	60%					
		(5,355)	100%	246,108	100%	269,943	100%	149,715	100%	211,742	100%					

Source: State of New Jersey, Department of Treasury (1979); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

Appendix Figure 4: New Construction LIHTC Affordable Housing Unit Production by Percentage of Estimated Regional Prospective Need, 1990-2019

Region	Exemption Status	1990-1999			2000-2009			2010-2019		
		Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units
1	Not Exempt	774	3%	227	2%	586	2%	1,001	4%	1,587
	Exempt	672	3%	1,489	13%					
	Total	1,446	6%	1,715	16%					
2	Not Exempt	614	4%	297	5%	386	2%	2,263	11%	2,649
	Exempt	1,080	7%	2,025	32%					
	Total	1,694	12%	2,322	37%					
3	Not Exempt	580	3%	667	6%	1,816	16%	594	5%	2,410
	Exempt	563	3%	618	6%					
	Total	1,143	5%	1,285	12%					
4	Not Exempt	920	3%	1,900	13%	2,657	19%	1,073	8%	3,730
	Exempt	79	0%	400	3%					
	Total	999	4%	2,300	15%					
5	Not Exempt	1,217	8%	1,927	16%	1,949	21%	983	11%	2,932
	Exempt	209	1%	1,310	11%					
	Total	1,426	10%	3,237	26%					
6	Not Exempt	496	7%	1136	28%	724	38%	720.22	38%	1444.22
	Exempt	107	2%	976	24%					
	Total	603	9%	2112	51%					
Statewide	Not Exempt	4,602	4%	6,154	10%	8,118	10%	6,635	8%	14,753
	Exempt	2,710	3%	6,817	11%					
	Total	7,312	7%	12,971	22%					

Source: NJ DCA Fourth Round Calculations Workbook (2024); NHTS; U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); New Jersey Housing Mortgage and Financing Agency (2024). Calculations by ESi (2024).

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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF CHARLES J.X.
KAHWATY IN SUPPORT OF
APPLICATION FOR PRELIMINARY
INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, Charles J.X Kahwaty, of full age, do hereby certify as follows:

- 1) I am the Mayor of Franklin Lakes, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As the Mayor of Franklin Lakes, which operates under the Borough form of government under New Jersey law, N.J. Stat. Ann. § 40A:60-1 et seq., I am the head of the Borough's municipal government. N.J. Stat. Ann. 40A:60-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:60-5(b). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. I also have the responsibility to "see to it that the laws of the State and the ordinances of the borough are faithfully executed." N.J. Stat. Ann. § 40A:60-5(h). This includes the exercise of the Borough's zoning powers. N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident and taxpayer in Franklin Lakes, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Franklin Lakes's municipal government.

4) I have been involved in Franklin Lakes's government since 2011, when I joined the Borough Council and Planning Board. While on the Borough Council, I served two terms as Council President.

5) I was elected mayor in 2022 to a term which commenced on January 1, 2023. My term ends on December 31, 2026.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Franklin Lakes possessed a judgment of repose. This judgment immunized Franklin Lakes from builder's remedy litigation that would pierce the zoning power delegated to Franklin Lakes under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Franklin Lakes and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Franklin Lakes.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Franklin Lakes lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties). In Region 1, approximately 74% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Franklin Lakes, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Franklin Lakes, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Franklin Lakes, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of the purported need attributable to Franklin Lakes.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program ("Program") by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Franklin Lakes's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Franklin Lakes possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Franklin Lakes was required to assert its prospective need affordable housing obligation under the applicable formula that

utilizes the UAC. Franklin Lakes contended that its prospective need affordable housing obligation should have been 463 units. As part of the ensuing statutory process, the New Jersey Builder's Association and Fair Share Housing Center challenged Franklin Lakes's calculations and asserted that the actual prospective need was 497. Pursuant to a settlement agreement executed between the parties, Franklin Lakes's prospective need was ultimately adjudicated under the adversarial process to be 480 units.

16) Under the Law, Franklin Lakes was then required to submit a housing element and fair share plan ("HEFSP") that satisfied its assigned prospective need obligation under the UAC of 480 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Franklin Lakes's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Franklin Lakes possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Franklin Lakes to allow for high-density affordable development as follows (the "HEFSP Properties"):

a) The proposed re-zoning of Block 1513, Lot 1, comprised of 16 acres to permit the development of 12 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.

b) The proposed re-zoning of Block 1418, Lot 1, Block 1518, Lots 2 and 5.01, comprised of 7 acres to permit the development of 14

units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.

- c) The proposed re-zoning of Block 2201.08, Lot 2, comprised of 11 acres to permit the development of 10 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.
- d) The proposed re-zoning of Block 1404, Lots 14, 21.01, 21, 5, 3.01, 11.01, 11.02, and 11.07 as well as Block 1404.01, Lots 20, 19, 18, 15, 4, 4.03, 4.02, 4.01, 3, and 2, making up 28 acres and will permit the development of 13 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.
- e) The proposed re-zoning of Block 1516.01, Lots 1, 1.01, 1.16, 1.15, 1.14, 1.13, 1.12, 1.11, comprised of 14 acres to permit the development of 18 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current

zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.

f) The proposed re-zoning of Block 1517, Lots 1 and 2, comprised of 3 acres to permit the development of 16 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.

g) The proposed re-zoning of Block 1512.01, Lots 15, 15.01, and 17, comprised of 2 acres to permit the development of 20 units, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Franklin Lakes.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Franklin Lakes's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Franklin Lakes could have developed a HEFSP that did not include or require the re-zoning of many if not all of the HEFSP Properties.

21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Franklin Lakes has received objections to the validity of its HEFSP from developers ("the Objectors") that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Franklin Lakes, and to my constituents, as follows:

- a) Trelia Franklin Lakes I, LLC has objected to Franklin Lakes's HEFSP and demands zoning to develop approximately 166 units upon 7.4 acres at Block 1510, Lots 7, 8, and 9 within the borough. The current zoning does not allow for such high-density residential development.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Franklin Lakes's affordable housing prospective need obligation to account for a share that is 74% greater than the pro-rata share of purported need actually attributable to Franklin Lakes, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Borough to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to place zoning ordinances that implement the HEFSP on the Council's agenda, and to vote to adopt that ordinance if there is a tie. Immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Franklin Lakes's potential adoption of the zoning ordinances, a developer for a HEFSP Property may immediately make application to complete

the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development").

26) The only way that Franklin Lakes can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Franklin Lakes does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Franklin Lakes's status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) ("Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation"). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Franklin Lakes lose immunity at any time, I am confident that Franklin Lakes would be immediately subjected to lawsuits from developers, including but not limited to the developer for

the HEFSP Properties, the Objector's property, and potentially other properties within Franklin Lakes upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Franklin Lakes will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Franklin Lakes support modifying the Borough's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Franklin Lakes to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

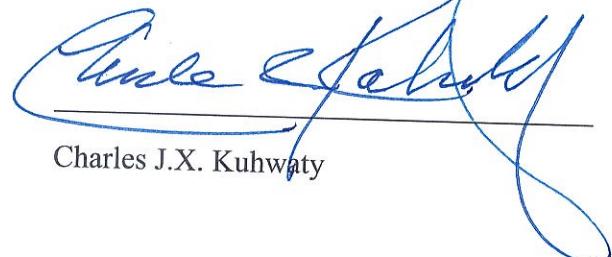
34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Franklin Lakes will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objector Property, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Borough of Franklin Lakes.

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CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



Charles J.X. Kuhwaty

Dated: November 20, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF JOHN V. LANE IN
SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, JOHN V. LANE, of full age, do hereby certify as follows:

1) I am the Mayor of Hawthorne, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.

2) As the Mayor of Hawthorne, which operates under the Mayor-Council form of government under New Jersey law, N.J. Stat. Ann. § 40:69A-1 et seq., I exercise the executive power within the Borough. N.J. Stat. Ann. 40:69A-39. I also have the responsibility to “enforce the charter and ordinances of the municipality and all general laws applicable thereto.” N.J. Stat. Ann. § 40:69A-40(a). This includes the exercise of the Borough’s zoning powers. N.J. Stat. Ann. § 40:55D-62(a). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23.

3) As a resident and taxpayer in Hawthorne, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Hawthorne’s municipal government.

4) I have been involved in Hawthorne’s government since 1990, when I was elected to serve on the Borough Council. I was elected mayor in 2021 to a four-year term which commenced on January 1, 2022. I was recently re-elected by voters in the November 2025 general election to a second four-year term that will commence on January 1, 2026.

5) In addition to operating my own business, I also served on the Hawthorne Chamber of Commerce for 47 years, including three terms as president and three terms as vice president. I have also served as a member of the Hawthorne Fire Department and am licensed as an Emergency Medical Technician.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Hawthorne possessed a judgment of repose. This judgment immunized Hawthorne from builder's remedy litigation that would pierce the zoning power delegated to Hawthorne under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Hawthorne and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Hawthorne.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Hawthorne lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties).

In Region 1, approximately 74% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Hawthorne, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Hawthorne, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Hawthorne, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of the purported need attributable to Hawthorne.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program (“Program”) by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder’s remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Hawthorne’s status quo of possessing immunity from builder’s remedy/exclusionary zoning litigation that would pierce the zoning powers that Hawthorne possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Hawthorne was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Hawthorne contended that its prospective need affordable housing obligation should have been 186 units. As part of the ensuing statutory process, the New Jersey Builder’s Association and Fair

Share Housing Center challenged Hawthorne's calculations and asserted that the actual prospective need was 300. Pursuant to a settlement agreement executed between the parties, Hawthorne's prospective need was ultimately adjudicated under the adversarial process to be 200 units.

16) Under the Law, Hawthorne was then required to submit a housing element and fair share plan ("HEFSP") that satisfied its assigned prospective need obligation under the urban aid classification of 200 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Hawthorne's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Hawthorne possesses and that I exercise, I helped to negotiate the HEFSP, pursuant to N.J.S.A. 40:69A-40(j), which the Council adopted prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Hawthorne to allow for high-density affordable development as follows (the "HEFSP Properties"):

- a) The proposed re-zoning of Block 131, Lot 4 and Block 132, Lot 1, comprised of 2.28 acres to permit the development of 56 units with 12 set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.
- b) The proposed re-zoning of Block 28.01, Lot 1, comprised of 1.047 acres to permit the development of 55 units with 11 set aside for affordable housing. The current zoning does not allow for such high-density residential

development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.

- c) The proposed re-zoning of Block 2201.08, Lot 2, comprised of 11 acres to permit the development of 10 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.
- d) The proposed re-zoning of Block 1404, Lots 14, 21.01, 21, 5, 3.01, 11.01, 11.02, and 11.07 as well as Block 1404.01, Lots 20, 19, 18, 15, 4, 4.03, 4.02, 4.01, 3, and 2, making up 28 acres and will permit the development of 13 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.
- e) The proposed re-zoning of Block 1516.01, Lots 1, 1.01, 1.16, 1.15, 1.14, 1.13, 1.12, 1.11, comprised of 14 acres to permit the development of 18 units per acre, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.
- f) The proposed re-zoning of Block 1517, Lots 1 and 2, comprised of 3 acres to permit the development of 16 units per acre, with 15% of rental units and

20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.

g) The proposed re-zoning of Block 1512.01, Lots 15, 15.01, and 17, comprised of 2 acres to permit the development of 20 units, with 15% of rental units and 20% of units for sale set aside for affordable housing. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Hawthorne.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Hawthorne's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Hawthorne could have developed a HEFSP that did not include or require the re-zoning of many if not all of the HEFSP Properties.

21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Hawthorne has received objections to the validity of its HEFSP from developers ("the Objectors") that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Hawthorne, and to my constituents, as follows:

a) Deugen Development, LLC has objected to Hawthorne's HEFSP and demands zoning to develop 102 units upon 1.407 acres at Block 28.01, Lot

1 (1 Washington Avenue). The current zoning does not allow for such high-density residential development.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Hawthorne's affordable housing prospective need obligation to account for a share that is 74% greater than the pro-rata share of purported need actually attributable to Hawthorne, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Borough to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to sign zoning ordinances that implement the HEFSP passed by the Borough Council. Immediately upon such signature, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Hawthorne's potential adoption of the zoning ordinances, a developer for a HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development").

26) The only way that Hawthorne can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote and sign them, respectively.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Hawthorne does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Hawthorne's status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) ("Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation"). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Hawthorne lose immunity at any time, I am confident that Hawthorne would be immediately subjected to lawsuits from developers, including but not limited to the developer for the HEFSP Properties, the Objector's property, and potentially other properties within Hawthorne upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Hawthorne will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Hawthorne support modifying the Borough's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Hawthorne to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

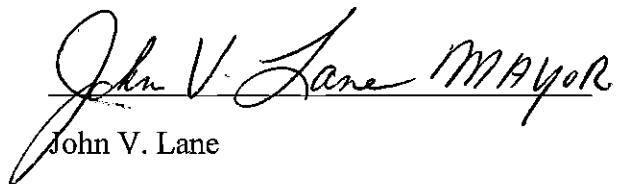
34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Hawthorne will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objector properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Borough of Hawthorne.

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CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



John V. Lane Mayor

John V. Lane

Dated: November 20, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Seicia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF BRIAN FOSTER
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, BRIAN FOSTER, of full age, do hereby certify as follows:

1) I am the Mayor of Holmdel, New Jersey and a plaintiff in the above-captioned litigation.

I make this certification in support of my application for a preliminary injunction in this matter.

2) As the Mayor of Holmdel, which operates under the Township Committee form of government under New Jersey law, N.J. Stat. Ann. § 40A:63-1 et seq., I am the chairman of the township committee and the head of the municipal government. N.J. Stat. Ann. § 40A:63-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:63-5(b). I also “preside at meetings of the committee” N.J. Stat. Ann. § 40A:63-5(c). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. I concurrently serve as a member of the Township Committee. I have “the right to debate and vote on all questions before the committee.” N.J. Stat. Ann. § 40A:63-5. As a voting member of the governing body, I am authorized to vote on the exercise of the Township’s zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).

3) As a resident, taxpayer and homeowner in Holmdel, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Holmdel’s municipal government.

4) I have served on the Township Committee since 2022, having first been appointed to fill a vacancy, and then elected by voters to a full three-year term that commenced on January 1, 2023. I was elected by my colleagues on the Township Committee to serve as Mayor for calendar year 2025. I was recently re-elected by the voters in the November 2025 general election to a three-year term that will commence on January 1, 2026.

5) I have held various public service roles in Holmdel since 2015. I was an elected member of the Holmdel Township Board of Education, appointed member of the Holmdel Township Planning Board, and volunteer member of the Holmdel First Aid Squad.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Holmdel possessed a judgment of repose. This judgment immunized Holmdel from builder's remedy litigation that would pierce the zoning power delegated to Holmdel under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Township Committee and as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Holmdel and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid

municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Holmdel.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Holmdel lies in a three-county region denominated as Region 4 (Monmouth/Ocean/Mercer Counties). In Region 4, 29% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Holmdel, I am required to live in a community that is forced to account for affordable housing obligations that are 29% higher than the pro-rata share of purported need attributable to Holmdel, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Holmdel, I am required to act in an official capacity to address affordable housing obligations that are 29% higher than the pro-rata share of purported need attributable to Holmdel.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program ("Program") by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Holmdel's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Holmdel

possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Holmdel was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Holmdel contended that its prospective need affordable housing obligation should have been 98 units. As part of the ensuing statutory process, the New Jersey Builder's Association and Fair Share Housing Center challenged Holmdel's calculations and asserted that the actual prospective need was 133. Pursuant to a settlement agreement executed between the parties, Holmdel's prospective need was ultimately adjudicated under the adversarial process to be 106 units.

16) Under the Law, Holmdel was then required to submit a housing element and fair share plan ("HEFSP") that satisfied Holmdel's assigned prospective need obligation under the UAC of 106 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Holmdel's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Holmdel possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Holmdel to allow for high-density affordable development as follows (the "HEFSP Property"):

a) The proposed re-zoning of Block 59, Lots 6 & 7, comprised of 7.7 acres, from the current zoning to permitting the development of 80 high-density housing units with a 100% affordable component. This proposed re-zoning is contrary to sound land use planning and the wishes of the residents of Holmdel.

19) I do not support the re-zoning of the HEFSP Property. Among other things, I believe that the use of this property for such high-density housing constitutes poor land use planning, and further, the prescribed development of a 100% affordable housing project will necessarily involve costs that will need to be borne by Holmdel's public fisc.

20) Had Holmdel's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Holmdel could have developed a HEFSP that did not include or require the re-zoning of the HEFSP Property.

21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Holmdel has received objections to the validity of its HEFSP from developers (the "Objectors") that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Holmdel, and to my constituents, as follows:

a) Sterling Properties has objected to Holmdel's HEFSP and demands zoning to develop 118 units upon 10.25 acres at Block 35, Lots 14.01 and 15 (694-696 North Beers Street). The current zoning does not allow for such high-density residential development.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Holmdel's affordable housing prospective need obligation to account for a share that is 29% greater than the pro-rata share of purported need actually attributable to Holmdel, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Township to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to vote for the zoning ordinances that implement the HEFSP, and immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Holmdel's potential adoption of the zoning ordinances, a developer for the HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development").

26) The only way that Holmdel can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Holmdel does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Holmdel's status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) ("Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation"). This means that a developer would immediately

be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g., In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Holmdel lose immunity at any time, I am confident that Holmdel would be immediately subjected to lawsuits from developers, including but not limited to the developer for HEFSP Property, the Objector's property, and potentially other properties within Holmdel upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Holmdel will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Holmdel support modifying the Township's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Holmdel to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Holmdel will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Property, the Objector Property, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Township of Holmdel.

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CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



Brian Foster

Dated: November , 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF
FRANK SACCOMANDI IV
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, FRANK SACCOMANDI IV, of full age, do hereby certify as follows:

- 1) I am a member of Millburn's Township Committee and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As a member of the Millburn Township Committee, which operates under the Township form of government under New Jersey law, N.J. Stat. Ann. § 40A:63-1 et seq., I am part of the legislative body of Millburn. N.J. Stat. Ann. § 40A:63-6(a). The township committee is able to "pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law," subject to general law and other provisions of the Faulkner Act. N.J. Stat. Ann. § 40A:63-6(b)(1). This includes the ability to exercise the Township's zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident and homeowner in Millburn, I am a taxpayer that is obligated to pay real property taxes, which serve as the principal source of revenue for funding Millburn's municipal government.

4) I have served on the Township committee since I was appointed to fill a vacancy on January 2, 2024. On November 4, 2025, I was elected to a three-year term that will commence on January 1, 2026.

5) Prior to my election, I attended Township Committee meetings and regularly spoke about the way Millburn was handling its Third Round affordable housing obligations.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Millburn possessed a judgment of repose. This judgment immunized Millburn from builder's remedy litigation that would pierce the zoning power delegated to Millburn under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Township Committee.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2026, contained in Public Law 2024, Chapter 2.

8) Among other things, this law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the Urban Aid Classification, Millburn and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring UACs such as Millburn.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Millburn lies in a four-county region denominated as Region 2 (Essex/Morris/Union/Warren). In Region 2, approximately 64% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Millburn, I am required to live in a community that is forced to account for affordable housing obligations that are 64% higher than the pro-rata share of purported need attributable to Millburn, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As a member of the Millburn Township Committee, I am required to act in an official capacity to address affordable housing obligations that are 64% higher than the pro-rata share of purported need attributable to Millburn.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Millburn's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Millburn possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025, statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Millburn was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC.

Millburn contended that its prospective need affordable housing obligation should have been 522 units. As part of the ensuing statutory process, the New Jersey Builder's Association challenged Millburn's calculations and asserted that the actual prospective need was 555. Millburn's prospective need was ultimately adjudicated under the adversarial process to be 533 units.

16) Under the Law, Millburn was then required to submit a housing element and fair share plan ("HEFSP") that satisfied Millburn's assigned prospective need obligation under the urban aid classification of 533 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Millburn's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Millburn possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Millburn to allow for high-density affordable development as follows (the "HEFSP Properties"):

- a) The proposed re-zoning of 356-358 Millburn Avenue, comprised of 0.52 acres, to permit the development of 17 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Millburn.
- b) The proposed re-zoning of 55-59 Main Street, comprised of 0.39 acres, to permit the development of 115 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Millburn.
- c) The proposed re-zoning of 150 JFK Parkway to permit the development of 13 high-density housing units. The current zoning does not allow for such high-density

residential development because that is contrary to sound land use planning and the wishes of the residents of Millburn.

- d) The proposed re-zoning of 51-55 JFK Parkway, comprised of 22.04 acres, to permit the development of 330 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Millburn.
- e) The proposed re-zoning of 16 Bleeker Street to permit the development of 137 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Millburn.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Millburn's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the Urban Aid Classification, I believe that Millburn could have developed a HEFSP that did not include or require the re-zoning of the above-referenced properties.

21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Millburn has received objections to the validity of its HEFSP from developers ("the Objectors") that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Millburn, and to my constituents, as follows:

- a) RPM Development Group has objected to Millburn's HEFSP and demands zoning to develop 75 units at 9 Main Street. The current zoning does not allow for such high-density residential development.
- b) Fair Share Housing Center has objected to Millburn's HEFSP for not including information about its third round obligations, recorded deed restrictions for the proposed sites, sufficient information about meeting the statutory requirements for low and very low income units, and an ordinance requiring that 13 percent of affordable units in each bedroom distribution are affordable to very-low-income households.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the Urban Aid Classification to increase Millburn's affordable housing prospective need obligation to account for a share that is 64% greater than the pro-rata share of purported need actually attributable to Millburn, while non-urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Township to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to vote for the zoning ordinances that implement the HEFSP, and immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Millburn's postential adoption of the zoning ordinances, a developer for the property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possesses an inviolable right to

complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 (“Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development.”).

26) The only way that Millburn can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Millburn does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Millburn’s status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) (“Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation.”) This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Millburn lose immunity at any time, I am confident that Millburn would be immediately subjected to lawsuits from developers, including but not limited to the developer for the property

included within the HEFSP, the Objector's property, and potentially other properties within Millburn upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Millburn will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Millburn support modifying the Township's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Millburn to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I chose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Millburn will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objector properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Township of Millburn.

[This space intentionally left blank.]

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.

/S/ Frank Saccomandi IV
Frank Saccomandi IV

Dated: November 21, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF BEN STOLLER IN
SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, BEN STOLLER, of full age, do hereby certify as follows:

- 1) I am a member of Millburn's Township Committee and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As a member of the Millburn Township Committee, which operates under the Township form of government under New Jersey law, N.J. Stat. Ann. § 40A:63-1 et seq., I am part of the legislative body of Millburn. N.J. Stat. Ann. § 40A:63-6(a). The township committee is able to "pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law," subject to general law and other provisions of the Faulkner Act. N.J. Stat. Ann. § 40A:63-6(b)(1). This includes the ability to exercise the Township's zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident and homeowner in Millburn, I am a taxpayer that is obligated to pay real property taxes, which serve as the principal source of revenue for funding Millburn's municipal government.
- 4) I have served on the Township committee since I was elected in 2023 to a three-year term which commenced on January 1, 2024. My current term ends on December 31, 2026.

5) Prior to my election, I founded the group Concerned Millburn Residents (CMR), a non-partisan political group in the Township. I formed CMR in January of 2023 to advocate for the citizens of Millburn because I did not believe that the Township Committee was acting in the best interests of the town.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Millburn possessed a judgment of repose. This judgment immunized Millburn from builder's remedy litigation that would pierce the zoning power delegated to Millburn under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Township Committee.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2026, contained in Public Law 2024, Chapter 2.

8) Among other things, this law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the Urban Aid Classification, Millburn and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring UACs such as Millburn.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Millburn lies in a four-county region denominated as Region 2 (Essex/Morris/Union/Warren). In Region 2,

approximately 64% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

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13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Millburn's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Millburn possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025, statutory deadline. A true copy is attached as **Exhibit A**.

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Millburn's calculations and asserted that the actual prospective need was 555. Millburn's prospective need was ultimately adjudicated under the adversarial process to be 533 units.

16) Under the Law, Millburn was then required to submit a housing element and fair share plan ("HEFSP") that satisfied Millburn's assigned prospective need obligation under the urban aid classification of 533 units. N.J. Stat. Ann. § 52:27D-304.1(b).

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21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Millburn has received objections to the validity of its HEFSP from developers ("the Objectors") that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Millburn, and to my constituents, as follows:

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27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

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29) Based upon my experience as an elected official addressing these land use issues, should Millburn lose immunity at any time, I am confident that Millburn would be immediately subjected to lawsuits from developers, including but not limited to the developer for the property included within the HEFSP, the Objector’s property, and potentially other properties within Millburn upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Millburn will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Millburn support modifying the Township's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Millburn to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I chose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Millburn will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objector properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Township of Millburn.

[This space intentionally left blank.]

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.

/S/ Ben Stoller
Ben Stoller

Dated: November 21, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

BOROUGH OF MONTVALE, TOWNSHIP
OF DENVILLE, BOROUGH OF
HILLSDALE, TOWNSHIP OF
MANNINGTON, TOWNSHIP OF
MILLBURN, TOWNSHIP OF MONTVILLE,
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WARREN, TOWNSHIP OF LITTLE FALLS,
CITY OF ENGLEWOOD, TOWNSHIP OF
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MILFORD, TOWNSHIP OF
WASHINGTON, BOROUGH OF
HAWTHORNE, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF MICHAEL
GHASSALI IN SUPPORT OF
APPLICATION FOR PRELIMINARY
INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, MICHAEL GHASSALI, of full age, do hereby certify as follows:

- 1) I am the Mayor of Montvale, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As the Mayor of Montvale, which operates under the Borough form of government under New Jersey law, N.J. Stat. Ann. § 40A:60-1 et seq., I am the head of the Borough's municipal government. N.J. Stat. Ann. 40A:60-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:60-5(b). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. I also have the responsibility to "see to it that the laws of the State and the ordinances of the borough are faithfully executed." N.J. Stat. Ann. § 40A:60-5(h). This includes the exercise of the Borough's zoning powers. N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident and taxpayer in Montvale, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Montvale's municipal government.
- 4) I have been involved in Montvale's government since 2010, when I first ran for and won a seat on the Borough Council. I sat on the Council until I was elected mayor in 2016. I have served

as Mayor since then, and was most recently re-elected in 2023. My current term ends on December 31, 2027.

5) I currently work as a municipal administrator in a different New Jersey municipality. I previously worked in the private sector in supply chain management.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Montvale possessed a judgment of repose. This judgment immunized Montvale from builder's remedy litigation that would pierce the zoning power delegated to Montvale under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Montvale and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Montvale.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Montvale lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties).

In Region 1, approximately 74% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Montvale, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Montvale, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Montvale, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of the purported need attributable to Montvale.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program (“Program”) by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder’s remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Montvale’s status quo of possessing immunity from builder’s remedy/exclusionary zoning litigation that would pierce the zoning powers that Montvale possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Montvale was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Montvale contended that its prospective need affordable housing obligation should have been 176 units. As part of the ensuing statutory process, the New Jersey Builder’s Association, a group of

intervenors led by SHG Montvale MB I, and Fair Share Housing Center challenged Norwood's calculations and asserted that the actual prospective need was 348. Pursuant to a settlement agreement executed between the parties, Montvale's prospective need was ultimately adjudicated under the adversarial process to be 237 units.

16) Under the Law, Montvale was then required to submit a housing element and fair share plan ("HEFSP") that satisfied its assigned prospective need obligation under the UAC of 237 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Montvale's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Montvale possesses and that I exercise, the Borough Council voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Montvale to allow for high-density affordable development as follows (the "HEFSP Property"):

a) The proposed re-zoning of 7 East Grand Avenue, comprised of 0.5453 acres to permit the development of 18 affordable housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Montvale.

19) I do not support the re-zoning of the HEFSP Property. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Montvale’s prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Montvale could have developed a HEFSP that did not include or require the re-zoning of the HEFSP Property.

21) Pursuant to the Law’s statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Montvale has received objections to the validity of its HEFSP from developers (“the Objectors”) that wish to develop alternative high-density affordable housing projects that are objectionable to me as an elected official and resident of Montvale, and to my constituents, as follows:

- a) Over the Hill Holdings, LLC has objected to Montvale’s HEFSP and demands zoning to develop 20 units upon 3.022 acres at Block 1902 Lot 10 within the Borough. The current zoning does not allow for such high-density residential development.
- b) SHG Montvale I, LLC, SHG Montvale MB VI, LLC, SHG Montvale MB, LLC, Montvale Development Associates, LLC c/o S. Hekemian Group, and The Hekemian Group, LLC (collectively “SHG”) have objected to Montvale’s HEFSP and demand zoning to develop a substantial number of units upon the following properties: Block 2702, Lot 1.01; Block 3201, Lot 6; Block 2802, Lot 2; Block 3201, Lot 5. The current zoning does not allow for such high-density residential development at any of these sites.
- c) H&R Montvale, LLC and KPMG LLP have objected to Montvale’s HEFSP and demand zoning to develop high density affordable housing units upon their properties at Block 2701, Lot 2 and Block 3102, Lot 1.01. The current zoning does not allow for such high-density residential development at either of these sites.

d) The Hekemian Group, LLC has objected to Montvale's HEFSP and demanded zoning to develop high density affordable housing units upon its property at Block 3201, Lot 1. The current zoning does not allow for such high-density residential development at this site.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Montvale's affordable housing prospective need obligation to account for a share that is 74% greater than the pro-rata share of purported need actually attributable to Montvale, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Borough to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to place zoning ordinances that implement the HEFSP on the Council's agenda, and to vote to adopt that ordinance if there is a tie. Immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Montvale's potential adoption of the zoning ordinances, a developer for a HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall

govern the review of that application for development and any decision made with regard to that application for development”).

26) The only way that Montvale can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Montvale does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Montvale’s status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) (“Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation”). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Montvale lose immunity at any time, I am confident that Montvale would be immediately subjected to lawsuits from developers, including but not limited to the developer for the HEFSP Properties, the Objectors’ Properties, and potentially other properties within Montvale upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Montvale will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Montvale support modifying the Borough's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Montvale to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Montvale will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objectors' Properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Borough of Montvale.

[This space intentionally left blank.]

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



Michael Ghassali

Dated: November 18__, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF JAMES P. BARSA
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, JAMES P. BARSA, of full age, do hereby certify as follows:

- 1) I am the Mayor of Norwood, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As the Mayor of Norwood, which operates under the Borough form of government under New Jersey law, N.J. Stat. Ann. § 40A:60-1 et seq., I am the head of the Borough's municipal government. N.J. Stat. Ann. 40A:60-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:60-5(b). I also have the responsibility to "see to it that the laws of the State and the ordinances of the borough are faithfully executed." N.J. Stat. Ann. § 40A:60-5(h). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. This includes the exercise of the Borough's zoning powers. N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident and taxpayer in Norwood, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Norwood's municipal government.
- 4) I have been Mayor of Norwood since 2008, and am currently serving in my fifth term as Mayor. I was most recently elected in 2023 to a four-year term which began on January 1, 2024. My current term ends on December 31, 2027.

5) In addition to being an elected official and resident in Norwood, I am a business owner and have been for more than 25 years.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Norwood possessed a judgment of repose. This judgment immunized Norwood from builder's remedy litigation that would pierce the zoning power delegated to Norwood under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Norwood and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Norwood.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Norwood lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties). In Region 1, approximately 74% of the overall population growth was generated by the urban aid

municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Norwood, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Norwood, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Norwood, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of the purported need attributable to Norwood.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program (“Program”) by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder’s remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Norwood’s status quo of possessing immunity from builder’s remedy/exclusionary zoning litigation that would pierce the zoning powers that Norwood possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Norwood was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Norwood contended that its prospective need affordable housing obligation should have been 130 units. As part of the ensuing statutory process, the New Jersey Builder’s Association challenged Norwood’s calculations and asserted that the actual prospective need was 161. Pursuant to a

settlement agreement executed between the parties, Norwood's prospective need was ultimately adjudicated under the adversarial process to be 162 units.

16) Under the Law, Norwood was then required to submit a housing element and fair share plan ("HEFSP") that satisfied its assigned prospective need obligation under the UAC of 162 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Norwood's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Norwood possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Norwood to allow for high-density affordable development as follows (the "HEFSP Properties"):

- a) The proposed re-zoning of Block 183, Lot 1.01, comprised of 2.196 acres, to permit the development of 24 units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Norwood.
- b) The proposed re-zoning of the following lots: Block 184, Lot 1; Block 185, Lot 1; Block 186, Lot 1. These lots together make up 3.176 acres upon which 24 units may be built. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Norwood.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Norwood's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Norwood could have developed a HEFSP that did not include or require the re-zoning of either or both the HEFSP Properties.

21) Reserved.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Norwood's affordable housing prospective need obligation to account for a share that is 74% greater than the pro-rata share of purported need actually attributable to Norwood, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Borough to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to place zoning ordinances that implement the HEFSP on the Council's agenda, and to vote to adopt that ordinance if there is a tie. Immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Norwood's potential adoption of the zoning ordinances, a developer for a HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall

govern the review of that application for development and any decision made with regard to that application for development”).

26) The only way that Norwood can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Norwood does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Norwood’s status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) (“Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation”). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Norwood lose immunity at any time, I am confident that Norwood would be immediately subjected to lawsuits from developers, including but not limited to the developer for the HEFSP Properties and potentially other properties within Norwood upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Norwood will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Norwood support modifying the Borough's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

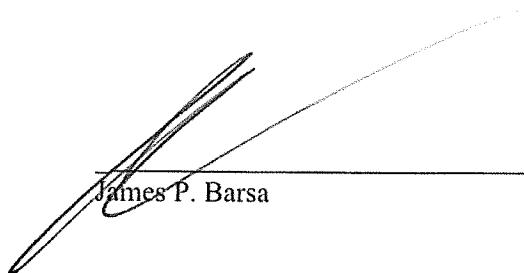
33) My potential vote in favor of implementing the zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Norwood to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Norwood will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objector's Property, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Borough of Norwood.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



James P. Barsa

Dated: November 20, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF LOU D'ANGELO
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, LOU D'ANGELO, of full age, do hereby certify as follows:

- 1) I am the President of the Borough Council of Totowa, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As the Borough Council President of Totowa, which operates under the Borough form of government under New Jersey law, N.J. Stat. Ann. § 40A:60-1 et seq., I lead the legislative body of the municipality. N.J. Stat. Ann. 40A:60-5(a). The Borough Council is able to “pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law,” subject to general law and other provisions of the law. N.J. Stat. Ann. § 40A:60-6(b)(1). This includes the ability to exercise the Borough’s zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident, taxpayer and homeowner in Totowa, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Totowa’s municipal government.
- 4) I have been on Totowa’s Borough Council since I was appointed in September 2005. I was elected to my first term in November 2005, which commenced on January 1, 2006. My fellow Council members most recently re-elected me president in January 2024.

5) In addition to being a resident and elected official in Totowa, I am a business owner in the Borough.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Totowa possessed a judgment of repose. This judgment immunized Totowa from builder's remedy litigation that would pierce the zoning power delegated to Totowa under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Borough Council.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2026, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Totowa and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Totowa.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Totowa lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties). In Region 1, approximately 74% of the overall population growth was generated by the urban aid

municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Totowa, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Totowa, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the President of the Borough Council, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of the purported need attributable to Totowa.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program (“Program”) by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder’s remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Totowa’s status quo of possessing immunity from builder’s remedy/exclusionary zoning litigation that would pierce the zoning powers that Totowa possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Totowa was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Totowa contended that its prospective need affordable housing obligation should have been 89 units. As part of the ensuing statutory process, the New Jersey Builder’s Association challenged Totowa’s calculations and asserted that the actual prospective need was 528. Pursuant to a

settlement agreement executed between the parties, Totowa's prospective need was ultimately adjudicated under the adversarial process to be 390 units.

16) Under the Law, Totowa was then required to submit a housing element and fair share plan ("HEFSP") that satisfied its assigned prospective need obligation under the UAC of 390 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Totowa's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Totowa possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Totowa to allow for high-density affordable development as follows (the "HEFSP Properties"):

- a) The proposed re-zoning of Block 177, Lot 2.01, comprised of 3.31 acres to permit the development of 64 affordable housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Totowa.
- b) The proposed re-zoning of Block 106, Lots 2, 2.01, 17, and 18 to permit the development of six affordable housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Totowa.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Totowa's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Totowa could have developed a HEFSP that did not include or require the re-zoning of either or both the HEFSP Properties.

21) Reserved.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Totowa's affordable housing prospective need obligation to account for a share that is 74% greater than the pro-rata share of purported need actually attributable to Totowa, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Borough to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to place zoning ordinances that implement the HEFSP on the Council's agenda, and to vote to adopt that ordinance if there is a tie. Immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Totowa's potential adoption of the zoning ordinances, a developer for a HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall

govern the review of that application for development and any decision made with regard to that application for development”).

26) The only way that Totowa can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Totowa does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Totowa’s status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) (“Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation”). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g. In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Totowa lose immunity at any time, I am confident that Totowa would be immediately subjected to lawsuits from developers, including but not limited to the developer for the HEFSP Properties and potentially other properties within Totowa upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Totowa will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Totowa support modifying the Borough's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objector.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Totowa to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Totowa will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objectors' Properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Borough of Totowa.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



Lou D'Angelo

Dated: November 19, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Secilia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the TOWNSHIP
OF MILLBURN, BEN STOLLER,
individually and in his official capacity as
TOWNSHIP COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, FRANK

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF
TIMOTHY J. CLAYTON
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,
v.

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,

Defendants.

I, Timothy J. Clayton, of full age, do hereby certify as follows:

- 1) I am a member of the Township Committee and the Mayor of Wall Township, New Jersey and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.
- 2) As the Mayor of Wall, which operates under the Township Committee form of government under New Jersey law, N.J. Stat. Ann. § 40A:63-1 et seq., I am the chairman of the Township Committee and the head of the municipal government. N.J. Stat. Ann. § 40A:63-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:63-5(b). I also “preside at meetings of the committee” N.J. Stat. Ann. § 40A:63-5(c). In that role, I have constant interactions and interface with the Township Committee’s Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. In my role as Mayor and Township Committee Member, I have “the right to debate and vote on all questions before the committee.” N.J. Stat. Ann. § 40A:63-5. As a voting member of the governing body, I am authorized to vote on the exercise of the Township’s zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).
- 3) As a resident, taxpayer and homeowner in Wall, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Wall’s municipal government.

4) I was elected to Wall's Township Committee in 2022, to a term which commenced on January 1, 2023. My fellow Township Committee members elected me mayor effective January 1, 2025. I was recently re-elected by voters in the November 2025 general election to a three-year term that will commence on January 1, 2026.

5) Prior to being elected to the Township Committee, I was a Wall Township Police Officer for 25 years. I retired from the Police Department in 2011 as a Captain. I also served as the police liaison WHIP and as a member of Wall's planning board.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Wall possessed a judgment of repose. This judgment immunized Wall from builder's remedy litigation that would pierce the zoning power delegated to Wall under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Township Committee and as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this Law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Wall and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth

whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Wall.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Wall lies in a three-county region denominated as Region 4 (Monmouth/Ocean/Mercer Counties). In Region 4, 29% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Wall, I am required to live in a community that is forced to account for affordable housing obligations that are 29% higher than the pro-rata share of purported need attributable to Wall, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Wall, I am required to act in an official capacity to address affordable housing obligations that are 29% higher than the pro-rata share of purported need attributable to Wall.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program ("Program") by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Wall's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Wall possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Wall was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Wall contended that its prospective need affordable housing obligation should have been 492 units. As part of the ensuing statutory process, the New Jersey Builder's Association and Fair Share Housing Center challenged Wall's calculations and asserted that the actual prospective need was 744. Pursuant to a settlement agreement executed between the parties, Wall's prospective need was ultimately adjudicated to be 650.

16) Under the Law, Wall was then required to submit a housing element and fair share plan ("HEFSP") that satisfied Wall's assigned prospective need obligation under the UAC of 650 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) Due to various issues, including the truncated schedule imposed on the Township, Wall filed an application seeking additional time to prepare its HEFSP. The Superior Court of New Jersey granted a sixty (60) day extension, amending deadline for Wall to adopt its HEFSP from June 30, 2025 to August 29, 2025. As the only means of maintaining Wall's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Wall possesses and that I exercise, I voted to adopt a HEFSP prior to the August 29, 2025 extended deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Wall to allow for high-density affordable development as follows (the "HEFSP Property"):

- a) The proposed re-zoning of Block 810, Lots 1 & 3, comprised of 21.6 acres, to permit the development of a maximum of 217 high-density housing units. The current zoning does not allow for such high-

density residential development because that is contrary to sound land use planning and the wishes of the residents of Wall.

- b) The proposed re-zoning of Block 922, Lot 5, comprised of 263 acres, to permit the development of a maximum of 856 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wall.
- c) The proposed re-zoning of Block 952, Lot 1, comprised of 386 acres, to permit the development of up to 615 high-density housing units and an additional 143 affordable family rental units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wall.

19) I do not support the re-zoning of the HEFSP Property. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Wall's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Wall could have developed a HEFSP that did not include or require the re-zoning of some if not all of the HEFSP Property.

21) Pursuant to the Law's statutory framework at N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), Wall has received objections to the validity of its HEFSP from the following parties (the

“Objectors”) that are objectionable to me as an elected official and resident of Wall, and to my constituents, as follows:

- a) JSM at Schoolhouse Road, LLC has objected to Wall’s HEFSP and demands zoning to develop an unspecified number of units upon its 466.7-acre property at Block 930.D1, Lot 1. The current zoning does not allow for such high-density residential development.
- b) Genesis, Inc. has objected to Wall’s HEFSP and demands zoning to develop 120 units upon its property at Block 799, Lot 41.01. The current zoning does not allow for such high-density residential development.
- c) American Properties Development Group, LLC has objected to Wall’s HEFSP and demands zoning to develop 318 units upon 35 acres of its property at Block 774, Lot 5 and 97 units upon 16 acres of its property at Block 733, lots 6 & 8. The current zoning does not allow for such high-density residential development.
- d) Woodlands Properties LLC and Bloomfield Ventures LLC have objected to Wall’s HEFSP and demand zoning to develop an unspecified number of residential healthcare units upon its property at Block 909, Lots 1 and 6. The current zoning does not allow for such high-density residential development.
- e) Toll Brothers, Inc. has objected to Wall’s HEFSP and demanded zoning to develop 120 units upon its 23.5-acre property at Block

772, Lots 4 and 5. The current zoning does not allow for such high-density residential development.

g) Somerset Development, LLC has objected to Wall's HEFSP and demanded zoning to develop 138 units upon 22.4 acres on its property at Block 801, Lot 7. The current zoning does not allow for such high-density residential development.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Wall's affordable housing prospective need obligation to account for a share that is 29% greater than the pro-rata share of purported need actually attributable to Wall, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Township to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to vote for the zoning ordinances that implement the HEFSP, and immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Wall's potential adoption of the zoning ordinances, a developer for the HEFSP Property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for

development shall govern the review of that application for development and any decision made with regard to that application for development”).

26) The only way that Wall can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Wall does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Wall’s status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) (“Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation”). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g., In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Wall lose immunity at any time, I am confident that Wall would be immediately subjected to lawsuits from developers, including but not limited to the developers for HEFSP Property, the Objector’s property, and potentially other properties within Wall upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Wall will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Wall support modifying the Township's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Wall to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents' demand, the voters of Wall will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Property, the Objector Property, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Township of Wall.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

Timothy J. Clayton

Dated: November 20, 2025

KING, MOENCH & COLLINS LLP

Michael L. Collins, Esq.
Suzanne E. Cevasco, Esq.
Seelia Flores, Esq.
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON**

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, MICHAEL GHASSALI,
individually and in his official capacity as
MAYOR OF MONTVALE, ANNETTE
ROMANO, individually in her official
capacity as MAYOR AND TOWNSHIP
COMMITTEE MEMBER of the
TOWNSHIP OF MILLBURN, BEN
STOLLER, individually and in his official
capacity as TOWNSHIP COMMITTEE

Civil Action

Hon. Zahid N. Quraishi, U.S.D.J.

Civil Action No. 3:25-cv-03220-ZNQ-JBD

**CERTIFICATION OF
RUDOLPH E. BOONSTRA
IN SUPPORT OF APPLICATION FOR
PRELIMINARY INJUNCTION**

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, and 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,

Plaintiffs,

v.

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,

Defendants.

I, RUDOLPH E. BOONSTRA, of full age, do hereby certify as follows:

1) I am the Mayor of the Township of Wyckoff and a plaintiff in the above-captioned litigation. I make this certification in support of my application for a preliminary injunction in this matter.

2) As the Mayor of Wyckoff, which operates under the Township Committee form of government under New Jersey law, N.J. Stat. Ann. § 40A:63-1 et seq., I am the Chairman of the Township Committee and the head of the municipal government. N.J. Stat. Ann. § 40A:63-5(a). I possess all the powers placed in the mayor by general New Jersey law. N.J. Stat. Ann. § 40A:63-5(b). I also “preside at meetings of the committee” N.J. Stat. Ann. § 40A:63-5(c). In that role, I am also a Class I member of the Planning Board, which reviews zoning ordinances for consistency with a master plan. *See* N.J. Stat. Ann. § 40:55D-23. I concurrently serve as a member of the Township Committee. I have “the right to debate and vote on all questions before the committee.” N.J. Stat. Ann. § 40A:63-5. As a voting member of the governing body, I am authorized to vote on the exercise of the Township’s zoning powers pursuant to N.J. Stat. Ann. § 40:55D-62(a).

3) As a resident, taxpayer and homeowner in Wyckoff, I am obligated to pay real property taxes, which serve as the principal source of revenue for funding Wyckoff's municipal government.

4) I have served on the township committee since 2007, and am currently serving my fifth term as Mayor. I was recently re-elected by voters in the November 2025 general election to a three-year term that will commence on January 1, 2026.

5) Prior to being elected to the Township Committee, I served as a volunteer fire fighter. I also served on the Wyckoff K-8 Board of Education and the Ramapo/Indian Hills Board of Education for a combined 22 years, as well as on the Wyckoff Zoning Board for 19 years.

6) For the so-called Third Round period of New Jersey's affordable housing mandates, 2015-2025, Wyckoff possessed a judgment of repose. This judgment immunized Wyckoff from builder's remedy litigation that would pierce the zoning power delegated to Wyckoff under the New Jersey Constitution, N.J. Const. Art. 4, § 6, ¶ 2, and State law, N.J. Stat. Ann. § 40:55D-1 et seq., and which I have the opportunity to exercise as a member of the Township Committee and as Mayor.

7) New Jersey enacted a statutory overhaul to address the so-called Fourth Round period of New Jersey's affordable housing mandates from 2025-2035, contained in Public Law 2024, Chapter 2 ("Law").

8) Among other things, this law codified the Urban Aid Classification ("UAC") for the first time.

9) Under the UAC, Wyckoff and its non-urban aid peer municipalities are required to zone for affordable housing to accommodate the purported need generated by the population growth experienced by them – in addition to the purported need generated by the population

growth experienced by neighboring urban aid municipalities within their region. These urban aid municipalities do not have any prospective need obligation associated with their population growth whatsoever. Instead, that obligation is borne by the neighboring non-urban aid municipalities such as Wyckoff.

10) As provided in Plaintiffs' expert report appended to the instant complaint, Wyckoff lies in a four-county region denominated as Region 1 (Bergen/Hudson/Passaic/Sussex Counties). In Region 1, approximately 74% of the overall population growth was generated by the urban aid municipalities. As a result of the UAC, those municipalities are not responsible whatsoever for addressing the purported affordable housing need that their growth has generated.

11) As a resident of Wyckoff, I am required to live in a community that is forced to account for affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Wyckoff, and to bear the costs associated with same, including but not limited to infrastructure, police, and schooling.

12) As the Mayor of Wyckoff, I am required to act in an official capacity to address affordable housing obligations that are 74% higher than the pro-rata share of purported need attributable to Wyckoff.

13) In this regard, the Law required municipalities to file a binding resolution with the Affordable Housing Dispute Resolution Program ("Program") by January 31, 2025; if a municipality did not comply, it would immediately stand to lose its zoning powers through the automatic loss of immunity from exclusionary zoning (formerly builder's remedy) litigation. N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b).

14) As the only means of maintaining Wyckoff's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that

Wyckoff possesses and that I exercise, I voted to adopt a binding resolution prior to the January 31, 2025 statutory deadline. A true copy is attached as **Exhibit A**.

15) Under the statutory scheme, as part of this filing, Wyckoff was required to assert its prospective need affordable housing obligation under the applicable formula that utilizes the UAC. Wyckoff contended that its prospective need affordable housing obligation should have been 277 units. As part of the ensuing statutory process, the New Jersey Builder's Association challenged Wyckoff's calculations and asserted that the actual prospective need was 387. Pursuant to a settlement agreement executed between the parties, Wyckoff's prospective need was ultimately adjudicated under the adversarial process to be 334 units.

16) Under the Law, Wyckoff was then required to submit a housing element and fair share plan ("HEFSP") that satisfied Wyckoff's assigned prospective need obligation under the UAC of 334 units. N.J. Stat. Ann. § 52:27D-304.1(b).

17) As the only means of maintaining Wyckoff's status quo of possessing immunity from builder's remedy/exclusionary zoning litigation that would pierce the zoning powers that Wyckoff possesses and that I exercise, I voted to adopt a HEFSP prior to the June 30, 2025 statutory deadline. A true copy is attached as **Exhibit B**.

18) The HEFSP suggests the re-zoning of property in Wyckoff to allow for high-density affordable development as follows (the "HEFSP Properties"):

a) The proposed re-zoning of Block 437, Lots 18, 19, and 20.02, comprised of approximately 6 acres, to permit the development of 18 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.

- b) The proposed re-zoning of 168 and 174 Franklin Avenue, comprised of approximately 2.5 acres, to permit the development of 11 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- c) The proposed re-zoning of the B-1 district along Godwin and Franklin Avenues, comprised of approximately 7.2 acres, to permit the development of 72 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- d) The proposed re-zoning of the B-2 district along Godwin and Crescent Avenues, comprised of approximately 4.64 acres, to permit the development of 46 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- e) The proposed re-zoning of 825 Wyndham Court, comprised of approximately 4 acres, to permit the development of 40 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- f) The proposed re-zoning of 139 Franklin Avenue, comprised of approximately 6.55 acres, to permit the development of 52 high-density housing units. The current zoning does not allow for such high-density

residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.

- g) The proposed re-zoning of the area along Goffle Road, comprised of approximately 4.27 acres, to permit the development of 42 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- h) The proposed re-zoning of 500 West Main Street, comprised of approximately 13.7 acres, to permit the development of 137 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.
- i) The proposed re-zoning of 475 Lafayette Avenue, comprised of approximately 6.23 acres, to permit the development of 49 high-density housing units. The current zoning does not allow for such high-density residential development because that is contrary to sound land use planning and the wishes of the residents of Wyckoff.

19) I do not support the re-zoning of the HEFSP Properties. Among other things, I believe that the required density is inconsistent with the neighboring community and constitutes poor land use planning.

20) Had Wyckoff's prospective need affordable housing obligation not included the units imputed to it from the urban aid municipalities under the UAC, I believe that Wyckoff could

have developed a HEFSP that did not include or require the re-zoning of some if not all of the HEFSP Properties.

21) Reserved.

22) Absent judicial relief from this Court, the Law's process results in an adjudication that applies the UAC to increase Wyckoff's affordable housing prospective need obligation to account for a share that is 64% greater than the pro-rata share of purported need actually attributable to Wyckoff, while urban aid municipalities bear no equivalent burden.

23) The Law tasks the Program with reviewing the HEFSP for compliance with the Law. The Law then requires the Township to adopt zoning ordinances that implement the HEFSP as may be modified by the Program to comport with the Law, all by a March 15, 2026 deadline.

24) The March 15, 2026 deadline presents irreparable harm to me because it requires me to vote for the zoning ordinances that implement the HEFSP, and immediately upon such adoption, a developer will have rights to develop the high-density housing project that I oppose in an irreversible manner under State law.

25) In this regard, following Wyckoff's potential adoption of the zoning ordinances, a developer for the property may immediately make application to complete the development. Under New Jersey's time of application rule, the developer would then possess an inviolable right to complete the high-density housing legalized by the zoning ordinance. See N.J. Stat. Ann. § 40:55D-10.4 ("Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development").

26) The only way that Wyckoff can enact the required zoning ordinances is if my colleagues and I, comprising the members of the governing body, vote for them.

27) I do not want to vote in favor of such zoning ordinances, which will permit high-density development that is inconsistent with the character of the surrounding community under the guise of providing affordable housing. My constituents do not support these zoning ordinances, and therefore, do not want me to vote in their favor.

28) If Wyckoff does not adopt the zoning ordinance to implement the HEFSP by March 15, 2026, the Law alters Wyckoff's status quo by immediately and automatically rescinding the immunity from exclusionary zoning litigation that it currently possesses. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c) ("Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation"). This means that a developer would immediately be able to file an exclusionary zoning lawsuit to obtain the foregoing zoning, based upon alleged noncompliance with the prospective need obligations set forth under the UAC. See, e.g., In re Bordentown, 272 A.3d 413, 427-28 (N.J. App. Div. 2022).

29) Based upon my experience as an elected official addressing these land use issues, should Wyckoff lose immunity at any time, I am confident that Wyckoff would be immediately subjected to lawsuits from developers, including but not limited to the developer for the HEFSP Properties and potentially other properties within Wyckoff upon which I do not believe high density housing is appropriate.

30) Thus, if I do not obtain the instant preliminary injunction while the constitutionality of the UAC is evaluated by this Court prior to the March 15, 2026 deadline, I and Wyckoff will immediately suffer the consequences of high-density housing that cannot be legally undone.

31) Based upon the operation of the Law, the Law strips me of my right, as an elected official, to make the choice that I believe is best for my constituents. Instead, I will be forced to take actions or inactions that I believe are detrimental to my constituents.

32) Based on my experience as an elected and appointed official, I do not believe that the people of Wyckoff support modifying the Township's land use laws to implement the ordinances and resolutions required by the Law or alternatively to zone properties as demanded by the Objectors.

33) My potential vote in favor of the implementing zoning ordinances will be attributed to me personally, and not to the members of the New Jersey Legislature who have codified the UAC and required Wyckoff to bear more than a pro-rata share of the Region's prospective affordable housing obligation or face the loss of local zoning control, whether through ordinance adoption or exclusionary zoning/builders' remedy litigation.

34) Conversely, if I choose to not implement the zoning ordinances, and instead vote as my own conscience and my constituents demand, the voters of Wyckoff will hold me politically accountable for the ensuing exclusionary zoning litigation that would allow for high-density development at the HEFSP Properties, the Objectors' Properties, or potentially other properties.

35) Therefore, my required actions or inactions will cause great harm to my reputation and the likelihood that I am re-elected to my current position, or any other position in the Township of Wyckoff.

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CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.



Rudolph E. Boonstra

Rudolph E. Boonstra

Dated: November 20, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

3 BOROUGH OF MONTVALE, et al., CIVIL ACTION NUMBER:
4 Plaintiffs,
4 v.
5 MATTHEW J. PLATKIN, et al., PRELIMINARY INJUNCTION
6 Defendants. HEARING

Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
January 7, 2026
Commencing at 10:00 a.m.

10 B E F O R E: THE HONORABLE ZAHID N. QURAISHI
11 UNITED STATES DISTRICT JUDGE

12 | A P P E A R A N C E S:

13 KING, MOENCH & COLLINS
14 BY: MICHAEL L. COLLINS, ESQUIRE
SUSAN CEVASCO, ESQUIRE
15 200 Schulz Drive, Suite 402
Red Bank, NJ 07701
For the Plaintiffs

17 NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY
18 BY: LEVI KLINGER-CHRISTIANSEN, ESQUIRE
19 SUSAN SCOTT
20 25 Market Street
21 Trenton, NJ 08625
22 For the Defendants

20 FAIR SHARE HOUSING CENTER
21 BY: ADAM M. GORDON, ESQUIRE
22 510 Park Boulevard
Cherry Hill, NJ 08002
23 For the Defendant Fair Share Housing Center

25 Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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1 (PROCEEDINGS held in open court before The Honorable
2 Zahid N. Quraishi, United States District Judge, on
3 January 7, 2026, at 10:00 a.m.)

4 THE DEPUTY COURT CLERK: All rise.

5 THE COURT: All right. We're on the record in
6 Borough of Montvale vs. Platkin, et al. The docket number is
7 25-3220, for a hearing on plaintiffs' motion for preliminary
8 injunction.

9 Before we address some housekeeping, why don't we just
10 get appearances from counsel, beginning with plaintiffs.

11 MR. COLLINS: Certainly. Good morning, Your Honor.
12 May it please the Court, Michael L. Collins of King, Moench &
13 Collins on behalf of plaintiffs. I'm joined at counsel table
14 by my colleague, Suzanne Cevasco. Also plaintiff Mayor
15 Ghassali.

16 THE COURT: Good morning to you all.

17 And from the State?

18 MR. KLINGER-CHRISTIANSEN: Good morning, Your Honor.
19 Deputy Attorney General Levi Klinger-Christiansen on behalf of
20 defendants, and I'm joined at counsel table with Assistant
21 Attorney General Susan Scott.

22 THE COURT: All right. Good morning to you all.

23 Why don't we address just some housekeeping. First of
24 all, the witnesses that you have, Mr. Collins, none of them
25 need to be sequestered. They're parties to the case, right,

1 other than the expert?

2 MR. COLLINS: That would be correct, Your Honor.

3 THE COURT: All right. So there's no need to
4 sequester. You agree with that, folks?

5 MR. KLINGER-CHRISTIANSEN: I would agree, Your Honor.

6 THE COURT: All right. And then I've got your
7 schedule, so it looks like about four hours.

8 MR. COLLINS: That's correct, Your Honor.

9 THE COURT: And you all met and conferred on that;
10 fair enough?

11 MR. KLINGER-CHRISTIANSEN: We sent emails.

12 THE COURT: All right. But you all agree you're
13 going to have four hours. I guess what I'm trying to tell
14 you, when you tell me it's four hours, we're ending in four
15 hours.

16 So from the plaintiffs' side, use your time wisely
17 because that's the time you're going to be allotted. This
18 isn't going to be some marathon hearing for nine hours. I've
19 done one of those. We're not doing that today.

20 MR. COLLINS: We're aware of that, Your Honor. We
21 absolutely agree.

22 THE COURT: So it's going to be about four hours.
23 I'll have a little bit of flexibility because that's a long
24 stretch without a break. So I'm going to give a 30-minute
25 break, and add that time back in so that we can break for some

1 type of lunch.

2 So if you guys have brought something, wonderful. If
3 not, you can go across the street to the cafeteria at the DEP,
4 but a 30-minute break is all you're going to get because I do
5 want to get the witnesses to testify, and I know that you guys
6 want to at least make some statements to the Court, and I'm
7 happy to hear from you.

8 So with that, do we need to address anything else
9 before we kind of get into the meat of all of this?

10 MR. COLLINS: The only other housekeeping item I'd
11 like to mention, Your Honor, is that I know Mr. Gordon is at
12 counsel table. I just want to confirm the Court's
13 understanding from the text order that was entered earlier
14 this week that I believe his client, Fair Share Housing
15 Center, remains a nonparty to this case, but the Court was
16 permitting Mr. Gordon to provide ten minutes of argument as
17 allotted in the schedule.

18 THE COURT: Yes. Mr. Gordon -- I got you.

19 Mr. Gordon, let me just address one thing. So it's a
20 little unusual to get an opposition to filing amicus. I will
21 tell you that. But there is an opposition, and I barely
22 reviewed it. I did a cursory review this morning.

23 Do you intend to reply? I strongly suggest you do.

24 MR. GORDON: Yes, I do intend to reply.

25 THE COURT: Okay. I think you should --

1 MR. GORDON: I only got a cursory chance to review
2 it.

3 THE COURT: All right. I strongly suggest you
4 respond to that opposition. That being said, I'm going to
5 hear from you today, and you've got your ten minutes, and do
6 what you will with it.

7 But if I determine later that I ended up denying your
8 request, I will disregard everything that Mr. Gordon has said.
9 So the ten minutes will just go right out the window, all
10 right?

11 But I strongly suggest that you respond to the
12 opposition. Again, I didn't have more than a cursory review
13 of it, but I did at least see what issues were raised. There
14 are some concerns there about your posture and position in the
15 case and whether it's appropriate for you to file amicus.

16 With that, I'll hear from you. And I guess that's
17 going to be more in the closing statement section of today?

18 MR. GORDON: Yes, Your Honor.

19 MR. COLLINS: The parties consent, Your Honor, that
20 Mr. Gordon would follow defendants in the second round of
21 argument after the witnesses.

22 THE COURT: Fair enough. I'll hear from you then.

23 Is there anything further on that issue, Mr. Collins?

24 MR. COLLINS: Nothing, Your Honor.

25 THE COURT: Mr. Gordon?

1 MR. GORDON: No, Your Honor. Thank you.

2 THE COURT: What's next? Are we ready to start? Do
3 you want to start with your, kind of, opening remarks?

4 MR. COLLINS: Yes, Your Honor. I think the parties
5 agreed to 15 minutes apiece for opening remarks, if that
6 pleases the Court.

7 THE COURT: All right. I'm happy to hear from you.

8 MR. COLLINS: Okay.

9 Thank you, Your Honor. May it please the Court, in
10 2024, the New Jersey Legislature adopted a law containing a
11 crude classification that divides New Jersey into two
12 different New Jerseys.

13 One New Jersey has an affordable housing obligation
14 imposed upon its residents while other municipalities with
15 residents similarly situated are exempt from any such
16 requirement, and the need for affordable housing that is
17 statistically generated from their borders is redistributed on
18 the former residents, as I will get into in a moment.

19 Plaintiffs challenge that formula under the Equal
20 Protection Clause to the 14th Amendment here in federal court.

21 Movants filed a motion for a preliminary injunction
22 because the only way for this Court to have an opportunity to
23 rule on the constitutional issue that's been raised in this
24 complaint is to have a preliminary injunction issued.

25 The reason for that is that plaintiffs -- and movants

1 specifically -- will suffer irreparable harm in the form of
2 required zoning --

3 THE COURT: Let me ask you this, Mr. Collins. I'm
4 going to hear from you, but I may have some questions, too, so
5 be prepared. If I do, I'm going to ask it.

6 Why now? The legislation was passed in -- look, we can
7 get to the merits, but before we get there procedurally, the
8 legislation passes in 2024. There is state litigation
9 challenging the legislation. There's litigation that's filed
10 in 2024, right?

11 There's an opinion issued by Judge Lougy, right, in
12 2025? Why are you coming to the federal court in 2025 for
13 injunctive relief when you've had over a year to do it?

14 MR. COLLINS: Certainly, Your Honor. The law sets
15 forth a process that commenced in the beginning of 2025 and is
16 ongoing at this point in time. The municipalities and the
17 individual plaintiffs are still parties to proceedings before
18 the state Affordable Housing Dispute Resolution Program, which
19 is ongoing, to determine where specifically rezoning is
20 required to occur.

21 And now we are reaching the implementation stage with
22 this March 15th deadline in which the rubber meets the road.
23 The municipalities are actually required to rezone.
24 Plaintiffs and movants submit --

25 THE COURT: Wasn't the deadline -- wasn't that known

1 back in 2024 also? The March deadline that is in -- I think
2 is in your moving papers, wasn't that deadline part of the
3 legislation?

4 MR. COLLINS: It was, Your Honor, but the issue
5 presented is that movants have certified -- and you'll hear
6 today from their testimony -- that through the process -- they
7 had to go through the process to determine what properties in
8 their communities may be suitable for the rezoning that the
9 legislature was imposing upon them.

10 They've also had to field objections from objecting
11 developers, some of whom may have come out of the woodwork to
12 say that they want zoning on their property.

13 And through that process, they determined that now that
14 this deadline is approaching, they are going to be forced,
15 based upon the facts that have become presented to them over
16 time, to rezone these properties, or alternatively, not rezone
17 the properties and suffer the loss of immunity, which could
18 lead to builder's remedy and lead to development on
19 properties, some of which they just oppose for reasons that
20 you will hear today. Or, alternatively, properties that they
21 don't even know today but know that developers, realizing that
22 the municipality lacks immunity, may apply on March 15th for
23 that -- for that exact relief.

24 So we would submit that under the standard that's
25 applicable for a preliminary injunction, movants did not have

1 standing -- when the Compliant was filed, Your Honor, back in
2 April, the June 30th deadline had not even passed at that
3 time.

4 The June 30th deadline was the requirement for each
5 municipality to come up with a compliant housing --

6 THE COURT: You're saying that you don't think the
7 plaintiffs had standing at that time to bring the litigation
8 to federal court anyway?

9 MR. COLLINS: No, Your Honor, I don't. I don't
10 believe that they had the irreparable harm presented by the
11 March 15th deadline at that point in time.

12 THE COURT: All right.

13 MR. COLLINS: At that point in time the
14 municipality --

15 THE COURT: Standing is being challenged now too,
16 though, right --

17 MR. COLLINS: Absolutely.

18 THE COURT: -- by your adversaries?

19 So walk me through that. How do you have standing to
20 bring the case?

21 MR. COLLINS: Certainly. The principal --

22 THE COURT: And you have two separate real
23 plaintiffs, right? You have municipalities, and then you have
24 your individual plaintiffs, right?

25 MR. COLLINS: For purposes of today, Your Honor, I

1 think we would focus on the individual plaintiffs because
2 they're the sole movants in this motion practice for the
3 preliminary injunction.

4 THE COURT: You may have to explain that, too, right?
5 I've never seen that before, right? So usually when you're
6 seeking injunctive relief, it's the same parties.

7 Here I feel like we are missing some plaintiffs for
8 injunctive relief, and we're missing some defendants. Like is
9 the Attorney General a defendant in the injunctive request,
10 the request or the motion for preliminary injunction?

11 MR. COLLINS: Your Honor, plaintiffs have sought the
12 injunction relative to the statutory officers that they
13 contend are the ones that implement and act upon the March
14 15th deadline.

15 The statute does not specifically identify the Attorney
16 General as having a role specific to the March 15th deadline,
17 which is why they were left off the motion papers. If I could
18 circle back to the basis of the individual plaintiffs serving
19 as the movants.

20 THE COURT: Just so I'm clear, then. So the Attorney
21 General is a defendant in the case, but he's not a defendant
22 for purposes of your motion for preliminary injunction.

23 MR. COLLINS: That's correct, Your Honor.

24 THE COURT: Okay. Yep. Let's go back to the
25 plaintiffs.

1 MR. COLLINS: Sure.

2 On the plaintiff issue, Your Honor, on the standing
3 issue, the harm that is suffered and that is omnipresent --
4 and you'll hear today through the testimony relative to the
5 March 15th deadline -- is reputational standing.

6 The individual plaintiffs will suffer harms to their
7 reputation because they're forced to do one of two things.

8 One, they're forced to affirmatively act in their
9 official capacities to rezone properties against their wishes
10 and their judgment as elected officials and against the wishes
11 of their constituents to their belief. Or, alternatively,
12 they have to deliberately engage in inaction, and as a result
13 of that, open up their municipality to potential builder's
14 remedy litigation.

15 THE COURT: All right. But they're not forced, then,
16 right? Look, is it voluntary or not, right? Because it's my
17 understanding that the municipalities can opt out, right?
18 They don't have to go for -- in fact, there's at least one
19 municipality that has opted out, no?

20 MR. COLLINS: Your Honor, the movant -- the
21 individual plaintiffs all represent municipalities that have
22 complied with New Jersey's affordable housing obligations over
23 the years, and the reason why there's irreparable harm is
24 because those municipalities currently possess immunity.

25 They, under state law, cannot suffer the loss of their

1 zoning powers because of noncompliance with the affordable
2 housing law.

3 Under the law, unless they now engage in rezoning that
4 carries for the next ten years by this arbitrary March 15th
5 deadline, they suffer the loss of that immunity, and a
6 developer can file a lawsuit the next day --

7 THE COURT: I understand that, but isn't that still a
8 choice?

9 MR. COLLINS: Your Honor --

10 THE COURT: I mean, what is it? Is it
11 Mannaington Township; is that the township?

12 MR. COLLINS: There is --

13 THE COURT: They opted out, so they've exercised that
14 right to say, We'll deal with litigation.

15 MR. COLLINS: Your Honor, in terms of the
16 voluntariness, I don't believe -- if the question was
17 originally back to the standing issue, the reputational harm
18 exists regardless of the outcome of whether a municipality
19 follows through and complies with the edicts of the March 15th
20 deadline or alternatively --

21 THE COURT: Then walk me through that again. Sorry.

22 MR. COLLINS: Sure.

23 THE COURT: Let's go back to reputational damage and
24 explain that to me. I presume this is reputational damage to
25 the elected officials?

1 MR. COLLINS: To the elected officials --

2 THE COURT: To the mayors or -- are they all mayors?

3 No. There's different positions, correct?

4 MR. COLLINS: The movants, Your Honor, are
5 principally mayors. Some of them form -- served on the
6 township committee form of government. You'll hear from two
7 today, who were actually mayors for calendar year 2025.

8 They are not serving as mayor this year, but they
9 remain members of the township committee, and so they -- in
10 their form of government it's one of five, and they all have
11 equal voting power. So in terms of their role in the local
12 decision-making, it honestly is a distinction without a
13 difference.

14 THE COURT: Got it.

15 MR. COLLINS: So everyone is a local elected official
16 that under state law is forced to act upon the municipalities.

17 THE COURT: And the reputational damage is what? If
18 they go along with this program, they won't be reelected?

19 MR. COLLINS: Absolutely, Your Honor. You're going
20 to hear from --

21 THE COURT: Are we going to hear from voters?

22 MR. COLLINS: Your Honor, you're going to hear
23 from --

24 THE COURT: Is that who's out there? Are those folks
25 that are voting that are going to say, We are not going to

1 vote for these folks if they go forward with the law?

2 MR. COLLINS: Your Honor, I believe that plaintiffs
3 do have in the audience fellow elected officials and residents
4 who are concerned about the reputational issue. You'll hear
5 testimony from Mayor Brian Foster of Holmdel, who just won
6 reelection this past year, but had a single-issue campaign run
7 against his reelection based upon an affordable housing
8 project that he voted to support in order to attempt to comply
9 with this law. And instead banners were posted up around the
10 community talking about how he was voting for low-income
11 housing, and he maintains that that affected not only his
12 political reputation but also his professional reputation
13 around town, which I'll get into.

14 So the reputational harm, plaintiffs submit, and
15 through the testimony today will be very plain, that these
16 elected officials suffer and that our courts have been clear
17 establishes Article III standing.

18 THE COURT: All right.

19 MR. COLLINS: So, Your Honor, on the purported
20 voluntariness issue, I think the real inquiry for the Court is
21 where do we stand right now, and the status quo is that the
22 plaintiff -- the individual plaintiffs represent
23 municipalities that possess immunity from builder's remedy
24 litigation, and they have current zoning.

25 So the status quo to be protected -- that they asked to

1 be protected and that the preliminary injunction standard is
2 concerned with is what are the conditions right now?

3 Those are the conditions. All plaintiffs are asking
4 for -- all movants are asking for is to maintain that status
5 quo --

6 THE COURT: Hit pause.

7 MR. COLLINS: Hit pause until this Court has an
8 opportunity to consider the constitutional issue, render a
9 decision.

10 If movants lose on the merits in a few months, then the
11 law can be allowed to follow through, and they have their day
12 in court. But if --

13 THE COURT: A few months. I mean, you're in federal
14 court. I don't know -- I don't have a single case on my
15 docket, and that's almost 500, that moves in three months.

16 MR. COLLINS: I respect that, Your Honor.

17 THE COURT: But I understand your point. I
18 understand your point.

19 MR. COLLINS: And my point being that -- my point too
20 being, Your Honor, that a decision on the merits, even if
21 we're talking about a year, we're talking about a ten-year
22 planning process.

23 The statute was written to enable zoning changes that
24 can carry from 2025 to 2034. This is not an emergency where
25 zoning needs to be changed tomorrow to affect where someone is

1 living the day --

2 THE COURT: And what's the crux of the merits? The
3 crux of the merits from the plaintiffs is what? That the
4 legislatures relied upon outdated data with respect to
5 population and that it's not relevant to 2025, that if you
6 look at the data today, it doesn't show that non-urban
7 municipalities are at a negative percentage increase and --
8 I'm sorry. Non-urban is increasing over 150 percent.

9 It's almost an even split, right, that the population
10 is increasing almost at the same rate in both urban and
11 non-urban municipalities?

12 MR. COLLINS: Your Honor --

13 THE COURT: And that's not the data that they relied
14 upon. They relied upon data that's 50 years old, or I don't
15 even know how old that is.

16 MR. COLLINS: In essence, Your Honor, yes, and I
17 would take it one step further. If the legislature
18 affirmatively was saying, Oh, we're going to rely upon 50-year
19 data, I think that would be giving them more credit than they
20 deserve.

21 The legislature in the law simply said, We're follow --
22 we're adhering to the Mount Laurel Doctrine, which is a line
23 of New Jersey state court cases that goes back 50 years. The
24 1975 --

25 THE COURT: I know. We were born the same year.

1 MR. COLLINS: Yeah, I mean, it was issued
2 when General Ford was president.

3 THE COURT: I got it.

4 MR. COLLINS: And the issue presented on that -- and
5 I guess I'll move to the merits -- is that on the merits, the
6 urban aid classification that plaintiffs challenge is this
7 classification, as I mentioned in my opening, that there are
8 two different New Jerseys. One in which they have new unit
9 obligations and need to rezone, and another that is entirely
10 exempt from it, and their population growth is instead
11 redistributed on the first group.

12 That formula was established in a 1984 state trial
13 court opinion called AMG in response to the Mount Laurel II
14 decision. So we're talking about a state court opinion from
15 40 years ago where a state trial court judge said that based
16 upon the then-present circumstances, there needs to be an
17 urban aid exception. 1984, that's what he did.

18 Fast forward to today, you'll hear from the expert
19 testimony that there's been a sea change in New Jersey and
20 that we've gone from negative 2% population growth in the
21 urban aid municipalities, such as Trenton and some of the
22 other cities, to literally 50/50 growth.

23 So not only have they gone from negative growth to
24 positive growth, but they literally have the same exact growth
25 as the non-urban aid peers.

1 So there's no comparability, and for the legislature to
2 have simply filed a court doctrine -- and if you look at the
3 court doctrine, the only base -- the only reasonable basis to
4 interpret the classification is to follow the reasoning that
5 was set forth in the AMG opinion.

6 It's 40 years -- it's 40 years old. It's entirely
7 outdated, and the legislature's reliance upon it is
8 irrational. And so there's the empirical issue of the
9 irrationality. And also, from a jurisprudential standpoint,
10 if the legislature wants to cite to the doctrine, further
11 illustrating the irrationality.

12 In 2013, the New Jersey Supreme Court issued a decision
13 that held that the Mount Laurel II remedy, which the AMG
14 decision was, was no longer of state constitutional dimension.

15 So the New Jersey Supreme Court itself took a step back
16 from Mount Laurel II and AMG and said, Yeah -- and it said in
17 the opinion -- that was based upon the conditions then. An
18 entirely different approach today would pass state
19 constitutional muster.

20 The notable thing from that decision is that two
21 Supreme Court justices on the New Jersey Supreme Court
22 concurred with the constitutional holding. It was labeled the
23 dissent because they disagreed with the statutory issue that
24 really is not relevant to our argument.

25 And they said that the lack of guidance from the

1 majority opinion is going to diminish the likelihood that the
2 legislature will attempt to change in course, and it, quote,
3 "risks subjecting us to an endless cycle of repeat that which
4 has not worked in the past."

5 So two New Jersey Supreme Court justices foretold that
6 the complicated jurisprudence of the New Jersey Supreme Court
7 was going to constrain the legislature to adopt a law based
8 upon formulas from 40 and 50 years ago.

9 And the legislature went ahead and did that in 2024,
10 and the plaintiffs and movants, who are residents and
11 municipalities that are on the poor end of this
12 classification, are contending that lacks a rational basis.
13 You cannot adopt a state law regulating parties, treating
14 individuals differently based upon where they live, all based
15 upon notions of something that was decided 40 years ago based
16 upon the circumstances at that time.

17 I believe you'll hear from defendants who have raised
18 arguments that rely upon the dicta in those decisions, but
19 once again, the thesis -- the gravamen of plaintiffs' argument
20 is that a legislature cannot just cite Alitus court cases,
21 which if you look at say that a formula existed 40 years ago,
22 you don't need to rely upon that formula anymore and
23 acknowledge the criticism of the entire line of cases and then
24 doing the same thing over and over again because they lack
25 guidance from the state's highest court.

1 To the extent there's a dysfunction between
2 New Jersey's branches of government, which plaintiff would
3 submit is entirely the case, that does not immunize or
4 insulate a state statute from federal constitutionality.

5 The Equal Protection Clause of the 14th Amendment
6 requires that there be a rational basis and that the
7 government action be -- serve a legitimate government purpose.

8 The legislature adopted this classification, and the
9 reasoning that they provided for it -- it's self-evident that
10 they used a system that was based 40 years ago. The court
11 subsequently said it doesn't need to be followed. Why would
12 you do that? Because it's dysfunction, but this dysfunction
13 is exactly why, even on a low basis of the rational basis
14 review standard, plaintiffs maintain that they have a
15 reasonable basis of demonstrating they satisfy.

16 Your Honor, I just want to -- I think that was a good
17 summation overall of the overall. I think we'll get into the
18 law, obviously, after the witnesses.

19 I just want to provide the Court with an overview of
20 who you'll be hearing from today, and I thank the Court for
21 providing us this opportunity under Rule 65.

22 THE COURT: I have the schedule. I mean, are there
23 any changes to that schedule?

24 MR. COLLINS: No. Your Honor, if you're good with
25 the schedule, kind of --

1 THE COURT: I'm good with it.

2 MR. COLLINS: I'm happy to yield to
3 Mr. Klinger-Christiansen, unless you have any questions, Your
4 Honor.

5 THE COURT: I do not. I will tell you, I want to
6 hear from the witnesses. I may have some additional questions
7 either during the testimony or after, so just be prepared for
8 that.

9 But I'm focused on the merits, but I'm also focused on
10 irreparable harm specifically and standing. I'm still focused
11 in those areas, so I'm hoping that some of the evidence that's
12 presented is going to shed some additional light.

13 But for now, I appreciate your time, Mr. Collins.

14 MR. COLLINS: Thank you.

15 THE COURT: From the State?

16 I'm sorry, is it Klinger-Christensen?

17 MR. KLINGER-CHRISTIANSEN: Yes, Your Honor.

18 Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. KLINGER-CHRISTIANSEN: And may it please the
21 Court, movants are seeking to enjoin a statute that has been
22 on the books for almost two years by pushing a rational basis
23 challenge to a law that logically distinguishes between
24 crowded urban municipalities and suburban municipalities, a
25 claim that the state courts have already told them was

1 unlikely to succeed on the merits when it denied a
2 functionally identical preliminary injunction attempt
3 raised over --

4 THE COURT: I'm not bound -- I'm not bound by that
5 decision.

6 MR. KLINGER-CHRISTIANSEN: Of course, Your Honor.

7 THE COURT: I mean, I've read it, and I know who the
8 judge is, and he's a good judge, but we're not bound by the
9 federal court, so -- but continue.

10 MR. KLINGER-CHRISTIANSEN: Of course, Your Honor.

11 And on top of -- and on top of that, they claim an
12 irreparable injury based on an almost-unheard-of theory that
13 municipal elected officials will be -- will take reputational
14 harm based on the state government's legislative choices.

15 That fails to justify the extraordinary remedy that
16 they are seeking here of enjoining a statute that again has
17 been on books for almost two years. And it -- and they fail
18 for at least four independent reasons.

19 First of all, the law passes constitutional basis --
20 rational basis for purposes of constitutional review.

21 And second, the equitable principles enshrined in
22 New Jersey's Entire Controversy Doctrine really militate
23 against --

24 THE COURT: How do you explain the data, though? I
25 mean, the State is not presenting any evidence today, correct?

1 MR. KLINGER-CHRISTIANSEN: Correct, Your Honor.

2 THE COURT: So do you have any -- so then the State's
3 not presenting any evidence to refute that the data that's
4 been relied upon by the legislature in formulating -- in
5 exempting urban municipalities, right, from this obligation?

6 There's nothing from the State to refute that that
7 evidence is outdated and not applicable in 2025, right?

8 I presume Mr. Collins is going to present evidence that
9 the data is different today than it was 50 years ago. So how
10 do you address that, that particular issue and concern?

11 MR. KLINGER-CHRISTIANSEN: Absolutely, Your Honor.
12 And that goes to the standard of review, rational basis. We
13 are talking about a standard that it asks for -- you know, it
14 permits rational speculation.

15 The legislature's choice is not subject to courtroom
16 fact-finding, and it's not subject to some type of
17 mathematical exactitude.

18 As soon as we start going into data or trying to guess
19 what the legislature was thinking, we are already so far
20 afield from what rational basis is.

21 The very fact that another judge found that rational
22 basis exists is quite strong evidence that the test is met,
23 given that all that -- all that test really requires is some
24 conceivable set of facts to support the --

25 THE COURT: What are those facts? What are those set

1 of facts?

2 MR. KLINGER-CHRISTIANSEN: Yes, absolutely,
3 Your Honor. The set of facts is that qualified urban aid
4 municipalities have exceedingly high present need obligations,
5 which pertains -- under the methodology which pertains to
6 existing affordable -- existing housing occupied by
7 affordable -- occupied by low-income households and requiring
8 rehabilitation.

9 So that's an exceedingly high present need obligation
10 as compared to their -- as compared to the suburban
11 municipalities.

12 So essentially the point is they have a huge present
13 need burden, right? They already have a high concentration of
14 housing in need of rehabilitation, and it's reasonable for the
15 legislature to offset that burden by not giving them a
16 prospective need obligation requirement to, you know, expected
17 housing obligations that are going to be needed in the future.

18 That's a rational basis, and I would also submit
19 another rational basis -- I know defendants disagree with
20 this -- but enforcing the Mount Laurel Doctrine. This is a
21 state constitutional doctrine that the -- the basic principle
22 of it is to provide --

23 THE COURT: Well, it's the plaintiffs, right, that
24 would probably disagree with you?

25 MR. KLINGER-CHRISTIANSEN: I'm sorry?

1 THE COURT: The plaintiffs aren't challenging the
2 Mount Laurel Doctrine, right? They're challenging the
3 legislation, unless I'm mistaken, because that's the case
4 before this Court, right, Mr. Collins?

5 You're challenging the legislation, not the doctrine?

6 MR. COLLINS: Your Honor, that's correct.

7 THE COURT: All right.

8 MR. COLLINS: You placed the law under review.

9 But I would caveat that to the extent defendants argue,
10 which I think is an entirely incorrect position, that somehow
11 if the law were enjoined or found to be unconstitutional, that
12 the Mount Laurel Doctrine automatically requires the
13 calculation under review, which they argue as to
14 redressability.

15 I don't believe that the case law in New Jersey courts
16 provide for that whatsoever.

17 THE COURT: I got it. I read that. Go ahead. I'm
18 sorry.

19 MR. KLINGER-CHRISTIANSEN: Understood.

20 So -- at the end of the day, though, it is a rational
21 decision for the legislature to say, We want to provide for
22 affordable housing options and to support the mobility of
23 citizens across the state and not just to have affordable
24 housing concentrated in our urban municipalities.

25 That's a rational reason to support this exemption, and

1 that is enough under the standard of review here. If we go
2 any further -- if we start going into data and trying to guess
3 what the legislature is thinking, like, that is really so far
4 outside that test.

5 And that test exists on a deferential standard for a
6 reason. It's to protect the democratically elected
7 legislature's choices. This is the choice of -- of the people
8 as --

9 THE COURT: No, I get the State's position.

10 Let me just ask you this, and maybe you don't know the
11 answer to this, and I'm not even saying you think this is
12 wrong. Do you know if the legislature considered any other
13 alternative approaches to identify and fulfill the prospective
14 need obligations? Do you know that or do you not know whether
15 they --

16 MR. KLINGER-CHRISTIANSEN: I don't know that off
17 the --

18 THE COURT: All right. Anything further?

19 MR. KLINGER-CHRISTIANSEN: Absolutely, Your Honor.

20 So I wanted to just circle back, and I do think it is
21 really notable that this same group of plaintiffs had already
22 sought an injunction of this law -- of this, and it was denied
23 after a finding was made that they were unlikely to succeed on
24 the merits of these claims.

25 And then they proceeded to drop those claims, file them

1 in federal court, and seek another injunction seven months
2 later.

3 THE COURT: Mr. Collins will answer for that. I am
4 going to ask you about that, Mr. Collins, but we'll deal with
5 that later today.

6 MR. KLINGER-CHRISTIANSEN: And I would just note, the
7 equitable principles that the New Jersey Entire Controversy
8 Doctrine exists to protect, right: judicial efficiency,
9 protecting against gamesmanship or forum shopping, all of
10 those -- all of those equitable -- all of those equitable
11 considerations are implicated by -- by this action.

12 And so, you know, and it really seems problematic
13 because plaintiffs essentially are suggesting that they can
14 continuously preliminary injunction after preliminary
15 injunction -- all they have to do is dismiss their own claims
16 after -- you know, after getting denied on the preliminary
17 injunction, before a final judgment on the merits is made, add
18 one new plaintiff, and they can just go back and forth filing
19 between state and federal court. I mean, that can't be
20 permitted, and that's what the doctrine exists to prevent.

21 To go to irreparable harm. Plaintiffs can't show
22 irreparable harm for -- there's a very key reason, and that is
23 that these individual movants, who are actually requesting
24 this injunction, are not regulated by the Mount Laurel
25 Doctrine or the statute.

1 The statute governs municipalities. These are
2 individuals who do not have Mount Laurel obligations. So to
3 the extent they are alleging any injuries regarding --

4 THE COURT: Who can -- I mean, you can't have your
5 cake and eat it too, right? If we have the wrong plaintiffs,
6 and we got the wrong defendants, who is allowed to challenge
7 the statute? Who would be the right plaintiffs, like
8 according to the State?

9 If you're saying like these elected officials can't
10 sue, municipalities can't sue the state because they're
11 barred, who can challenge this statute? Because you can't
12 tell me that it's protected in perpetuity, like nobody can
13 challenge the constitutionality of this statute.

14 MR. KLINGER-CHRISTIANSEN: Certainly, and there could
15 very well be other -- you know, there could very well be other
16 challengers to this. For one side --

17 THE COURT: But that's what I'm asking, right? If
18 these elected officials don't -- can't challenge, and if
19 municipalities can't challenge it, then I don't know who is
20 left.

21 You need somebody who is living in a town, some
22 resident of New Jersey has to sue, and that's the only
23 appropriate plaintiff for the State to challenge the
24 constitutionality of the statute?

25 MR. KLINGER-CHRISTIANSEN: I mean, yeah, it could be

1 an individual. It could be groups that are advocating on
2 behalf of low-income-household families that, you know, are
3 arguing that this is -- this violates their equal protection
4 rights.

5 I mean, there -- but the point here, though, is -- we
6 have to, like, look at the merits, that this is an Equal
7 Protection Clause claim, and the individual movants here are
8 not actually classified by the statute one way or the other.

9 So it just -- there seems to be a mismatch of -- to
10 claim an equal protection violation when you are not actually
11 the entity being categorized by the statute.

12 THE COURT: Because they're not municipalities.

13 MR. KLINGER-CHRISTIANSEN: Because they're not
14 municipalities. I understand that it does put them -- it does
15 put plaintiffs --

16 THE COURT: But isn't the State's argument also that
17 the municipalities can't challenge the statute?

18 MR. KLINGER-CHRISTIANSEN: I mean, that is --

19 THE COURT: But that's my point. I mean, if you're
20 going to tell me that the elected officials can't because
21 they're not municipalities, you can't also tell me in your
22 submissions that the municipalities can't challenge the
23 statute because they can't challenge the state, their
24 creators, right? Their creator -- I don't know if I'm using
25 the right terminology.

1 So again it goes back to like, Well, who can challenge
2 the statute because you can't tell me nobody can challenge the
3 statute. That doesn't make any sense under the law or even
4 just by common sense, right? There has to be somebody or some
5 entity that can challenge this constitutionality of this
6 statute, right?

7 MR. KLINGER-CHRISTIANSEN: Yes. And, however, I
8 mean, even if -- even if we accept then that, you know -- that
9 even though they're not regulated by the statute, I would just
10 also note: To the extent that they are elected -- to the
11 extent that the harms, you know, imposed on the municipalities
12 are -- you know, do reach these individuals, the primary
13 harm -- one of the harms they allege is the loss of immunity.

14 And what they leave out in arguing that is that the
15 immunity that they are talking about is granted by the statute
16 that they are simultaneously asking to invalidate.

17 So they are asking this Court to maintain the statutory
18 immunity while also asking this Court to ultimately invalidate
19 the statute entirely, which is what provides them their
20 immunity that they want to keep.

21 So there also seems to be something wrong from an
22 irreparable harm standpoint for them to ask for continued
23 immunity while also asking to strike the statute that gives
24 them that immunity.

25 And then going to the alternative theory of injury,

1 which is the reputational harm. I submit that that really is
2 -- that's really getting speculative. I mean, that relies on
3 so many speculative leaps of, you know -- just based only on
4 these individual movants' own beliefs, that for one their
5 constituency as model list disagrees with the statute.

6 Their belief that their constituents will blame them as
7 opposed to the state that actually enacted the statute that
8 they are complaining about.

9 And also it leaves out the fact that these individuals
10 could also just choose to abstain or not vote for any of
11 the -- for any of the zoning changes that they are concerned
12 about and then remove any individual association they have
13 with the law.

14 So it really is a speculative theory, and it just -- it
15 would create -- it would create a lot of issues to the extent
16 that anybody -- that a person that enforces a statute can
17 claim some type of reputational injury from that statute.

18 So I would submit that it's not just not a cognizable
19 injury, and at the very least, even if it could be, as it's
20 presented here, it's entirely speculative.

21 And then finally, the last thing to note there on the
22 irreparable harm piece is even if we accept that that is a
23 harm, we are really pushing credulity if we were to say that
24 the reputations -- the political reputations of ten individual
25 elected officials would outweigh the harm caused by delaying

1 affordable housing production, the delay -- the pressing pause
2 or completely upending a statute that's been ongoing for over
3 a year, the efforts of hundreds of other municipalities whose,
4 you know, efforts would now be potentially disrupted or
5 destabilized by a ruling by this Court.

6 So it's really difficult to see how the reputations of
7 ten elected officials could outweigh those harms even if we
8 accepted that that is even a cognizable harm.

9 THE COURT: Well, I'm sure those ten will disagree
10 with that, but I understand your point.

11 MR. KLINGER-CHRISTIANSEN: I'm happy to answer any
12 other questions, but otherwise we will --

13 THE COURT: What was the status in 2023 and '22 and
14 '21 and '20, right? This legislation didn't exist then, and
15 the state didn't burn to the ground.

16 MR. KLINGER-CHRISTIANSEN: So this legislation was
17 enacted to implement the affordable housing obligations which
18 started in July of this year, so in 2022, 2023 --

19 THE COURT: It wasn't necessary at that time. It was
20 building up to this deadline.

21 MR. KLINGER-CHRISTIANSEN: We were in the third
22 round, which was being administered by the courts after the
23 New Jersey Supreme Court's Mount Laurel IV ruling.

24 So in many ways, this -- this Act was based on a lot of
25 the lessons that were learned from that because that was an

1 extremely costly process. It was -- you know, there was --
2 there was a lot of issues that led to that Mount Laurel IV
3 decision including, you know, an administrative agency that
4 had difficulty passing regulations, which is what sent it back
5 to the courts.

6 And then, you know, it was then going through
7 litigation, and the entire reason for this -- this Act was to
8 streamline the statutory formulas and to streamline the
9 compliance process through a voluntary alternative dispute
10 resolution program.

11 THE COURT: All right. We're good? Time to hear
12 some evidence?

13 MR. KLINGER-CHRISTIANSEN: Yes.

14 THE COURT: All right. I appreciate your time.

15 Mr. Collins?

16 MR. COLLINS: Thank you, Your Honor.

17 THE COURT: You may call your first witness.

18 MR. COLLINS: I would like to call Michael Ghassali
19 to the stand.

20 THE COURT: Yeah, you might as well come up.

21 Mr. Ghassali, my courtroom deputy is just going to
22 swear you in before you testify, all right?

23 (**MICHAEL GHASSALI**, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED
24 AS FOLLOWS:)

25 THE DEPUTY COURT CLERK: Please state your name and

1 the spelling of your last name.

2 THE WITNESS: Michael Ghassali, G-H-A-S-S-A-L-I.

3 THE COURT: All right. Thank you, sir. You may be
4 seated.

5 And, Mr. Collins, whenever you're ready to proceed, you
6 may.

7 MR. COLLINS: Thank you, Your Honor.

8 (DIRECT EXAMINATION BY MR. COLLINS:)

9 Q. Good morning, Mr. Ghassali. How are you?

10 A. Good morning, Mr. Collins.

11 Q. All right.

12 I'd like to start by asking if you could share with the
13 Court where you live?

14 A. In Montville.

15 Q. Okay.

16 How long have you lived there?

17 A. 22 years.

18 Q. Do you hold any elected positions in Montvale?

19 A. I'm the mayor of the Borough of Montvale.

20 Q. How long have you been in that position?

21 A. Ten years.

22 Q. And prior to that position, did you hold elected office?

23 A. I was a two-term councilman from 2010 to 2015.

24 Q. Okay.

25 So it's fair to say that you've been an elected

1 official for over a decade in Montvale?

2 A. 16 years.

3 Q. Approaching two decades. Okay.

4 Mr. Ghassali, can you share with the Court your
5 background, your personal and professional background, just a
6 quick overview?

7 A. Sure.

8 I was -- I was born in Syria. I came to the
9 United States in 1980. I had my own business for a while, and
10 then after 9/11, I was inspired -- knowing, you know, the
11 language and the culture of the terrorists, I was inspired to
12 join the FBI, and I did. And I was a language analyst with
13 the FBI.

14 Q. Okay.

15 How long did you serve in that role?

16 A. About 15 years in different capacities.

17 Q. And thank you for your service to the country.

18 What -- what have you done subsequent to that, and what
19 do you do now for work?

20 A. I am now the business administrator in the Borough of
21 Hillsdale in Bergen County.

22 Q. So you work in local government, and you're also a mayor
23 of local government?

24 A. Correct.

25 Q. I'd like to jump into kind of the reason we're here

1 today, Mr. Ghassali, and that is, you know, the affordable
2 housing issues.

3 Can you describe for me the Borough of Montvale?

4 A. So we are the last exit off the Parkway. We are four
5 square miles. We have about 10,000 people that sleep in
6 Montvale. We have natives of 57 countries. We speak 27
7 languages. It's a small town, a very diverse town.

8 Q. Okay.

9 And as mayor of Montvale, are you familiar with the
10 State's affordable housing obligations contained in the state
11 law?

12 A. Yes, sir.

13 Q. Okay.

14 How have you become familiar with these obligations?

15 A. I was involved at the beginning of the third round in
16 2015 and all the way through.

17 Q. Okay.

18 And can you describe for me what Montvale did during
19 the third round and what the status of its third round is?

20 A. So we had submissions to build for almost 350 units, so
21 we build -- we -- we met our obligation. We even had a
22 surplus of 44 units from the third round, and we're still
23 building. As we speak now, we're still building to finish up
24 the third round.

25 Q. Okay.

1 So the third round which ran from 2015 to 2016 -- 2015
2 to 2024, Montvale complied with that round; is that correct?

3 A. We did, and we had 3,000 more residents move to town as a
4 result of the buildings.

5 Q. Okay.

6 And you mentioned construction. So construction from
7 that prior decade is still ongoing?

8 A. To finish up our obligation, yes, sir.

9 Q. Okay. All right.

10 Because Montvale was compliant with the third round,
11 what legal status does Montvale have?

12 A. We have immunity now from builder's remedy.

13 Q. And can you explain for us what the significance of that
14 immunity is?

15 A. If we lose immunity, we lose full control of our zoning.
16 The developers can come in and just build where they want. We
17 have environmentally constrained areas. We have, you know,
18 flood-prone areas, and those will all be wide open for
19 buildings.

20 Q. Okay.

21 And so as the mayor right now, you have a vote and an
22 opportunity to regulate the local zoning in Montvale; is that
23 right?

24 A. So I break the tie. I set the agenda, but I am the
25 spokesperson of the town, and I set the vision of the town, so

1 in a way, yes.

2 Q. And if an ordinance receives final adoption, do you have
3 a role in that?

4 A. I sign the ordinance.

5 Q. Okay. So as mayor, when it comes to zoning, you sign
6 into law the zoning ordinances --

7 A. Correct.

8 Q. -- those regulations. Okay.

9 So are you familiar -- we talked about the third round.
10 Are you familiar with the fourth round that is imposed upon --

11 A. Yes, I am.

12 Q. And are you familiar with the Urban Aid Classification or
13 what I may refer to as the UAC contained in the fourth round
14 law?

15 A. Yes, I am.

16 Q. Can you explain your general understanding of the UAC and
17 its impact upon Montvale?

18 A. So -- so Montvale is a non-urban aid municipality. We
19 have to build more to fulfill the growth in Montvale, not only
20 in Montvale but also in the whole region, which includes
21 Bergen, Passaic, Hudson, and Union, which includes
22 Jersey City, Hoboken, and about 60,000 throughout the state.

23 So we have to build to accommodate for their growth in
24 towns like Montvale.

25 Q. Okay.

1 So can you kind of explain to me your understanding of
2 how Montvale is impacted by growth in a city such as
3 Jersey City which is an exempt urban aid municipality?

4 A. For every 10 people that move into Jersey City, my town
5 and the other towns in the region have to build for four
6 people, so we have to build more to accommodate for their
7 growth.

8 Q. And your understanding is that -- and does Jersey City,
9 to your understanding, need to do anything to satisfy that
10 growth?

11 A. No.

12 Q. Okay.

13 So given that dynamic, what is the practical effect of
14 the Urban Aid Classification and the number that's generated
15 by it on Montvale?

16 A. It -- it affects how many we have to build to
17 accommodate. The number is somewhere in the 74 percent that
18 the towns in our region have to build more to accommodate for
19 the growth in the towns that are in the Urban Aid
20 Classification.

21 Q. Okay.

22 So -- so if Montvale needs to build 74 percent more
23 units than its own pro rata share, what does that look like
24 for the fourth round for Montvale?

25 A. Our number was the 348 affordable units, multiply that by

1 5. That's 1,700 units we would have had to build, so we did
2 our own analysis of the vacant land adjustment where we took
3 out buildings from on top of railroad tracks, under power
4 lines, in the middle of a reservoir.

5 And we're down to about 250 now. With all the surplus
6 and everything else in terms of the credits, we have to build
7 109 units, affordables. So multiply that by 5, it's 650
8 units.

9 Q. And can you explain for us why you say multiply by 5?

10 A. It has to be inclusionary, so 20 percent of the
11 building -- of the development has to be affordable housing.
12 15 to 20 percent is -- is the number.

13 Q. So essentially, in order for a developer to construct the
14 affordable housing, you need to provide zoning that allows for
15 five times the number of allotted units in order for that site
16 to be feasible?

17 A. Developers don't make money on affordable -- they make
18 some money from the credits, but they want to build more so
19 they can make profit and make it more viable for them to
20 build.

21 Q. Okay.

22 In terms of Montvale as a municipality, can you speak
23 to me about the fiscal impact that the fourth round is having
24 on the municipality?

25 A. So far we spent over a hundred thousand dollars of

1 taxpayers' money. We actually have to raise taxes to cover
2 the cost for the fourth round.

3 Q. Okay.

4 And do you expect there to be further costs,
5 particularly if the Court does not pause the March 15th
6 deadline?

7 A. Sure. For the developers, the planners, the attorneys,
8 the staff time, we will have more cost.

9 Q. Okay.

10 And your role as a taxpayer, how do you view these
11 fiscal impacts?

12 A. Very expensive. I'd rather spend the money on building
13 affordable housing rather than spending it on professionals
14 and time and staff. It's a waste of taxpayers' money and my
15 money.

16 Q. Okay. All right.

17 So let's talk about what steps Montvale has taken under
18 the law, and I believe we talked earlier with the Court about
19 the first deadline, perhaps we didn't, but the first deadline
20 being the January 31st deadline under the law.

21 Can you speak to us about that?

22 A. So we had to submit -- there was several deadlines that
23 we had to meet, and they keep saying it's voluntary. There's
24 absolutely nothing voluntary. If we don't meet the deadline,
25 we lose immunity.

1 The first one was January 31st. We had to submit a
2 resolution that we would look into this, and we will start to
3 accept plans from building owners and from developers.

4 Q. So that --

5 A. That was the first line.

6 Q. So that deadline was an initial step in this -- in this
7 fourth round process?

8 A. Correct.

9 Q. And Montvale complied with that fourth step?

10 A. Yes, sir.

11 Q. Okay.

12 Can you take us through the next step, which I believe
13 is the June 30th deadline?

14 A. So between January 31st and June 30th, we were looking at
15 plans from developers. About 25 percent of our town is
16 corporate offices, so all the corporate buildings were
17 submitting plans that we had to review.

18 Some of them had environmentally constrained areas with
19 brooks going through the land, so we spent the time with the
20 professionals reviewing all the plans from all these
21 buildings.

22 Q. And so this was an ongoing iterative process during that
23 period?

24 A. If I -- if I tell you daily, maybe two, three times a
25 week, we would sit, and we review plans.

1 Q. Okay.

2 So what did Montvale have to do to meet the June 30th
3 deadline?

4 A. We had to submit a plan that meets our obligation by then
5 and saying that we will -- we will look further into more --
6 more plans.

7 Q. Okay.

8 And Montvale complied with that deadline?

9 A. Yes, sir.

10 Q. Okay.

11 After that deadline, did Montvale receive any
12 objections to the June 30th plan?

13 A. We did.

14 Q. Okay.

15 And who filed the objections?

16 A. Fair Share Housing, and we had four interveners that
17 objected to our plan.

18 Q. Okay.

19 And can you explain the nature of the site-specific
20 developers who objected? What exactly are they asking for?

21 A. They're -- they were asking for high density. We had
22 plans -- if we were to combine all the plans that we'd
23 received, we're somewhere around 3,000 units in a town that
24 has 3,000 homes, so we would double the size of our town.

25 So we had to review each plan, and we even hired our

1 own professionals to submit our own plan. We weren't -- it's
2 a small town. We're single-family homes. We submit -- we
3 submitted a plan -- our own plan of what we would like to see:
4 small lots, single family homes, ranch, and senior living.

5 Q. Okay.

6 How did the developers respond to your suggestion about
7 the borough possibly supporting single family development?

8 A. Flat out said they don't make enough money, and it's not
9 very profitable for them. They make more profit with higher
10 density, three-stories and four-stories buildings.

11 They said no.

12 Q. So essentially Montvale was working towards housing --
13 permitting housing that you would find acceptable in your
14 capacity as mayor, but the developers wouldn't agree to that?

15 A. We want sound planning. We want to plan our town the way
16 we want to live it -- you know, the way we want to live in it,
17 and single family homes and 55-plus is what we would like to
18 see there.

19 Q. Okay.

20 So I guess after the June 30th deadline, is it fair to
21 say that you've been in ongoing conversations with the
22 objectors and the developers and the people that are in the
23 plan to determine if something could be worked out?

24 A. Yes.

25 Q. And during that period, did you reach a determination

1 that you thought it made sense to come to this federal court
2 for a preliminary injunction?

3 A. Yes. So the number that we have to provide is 109 units,
4 which translates to 650 total units. And there's a developer
5 who has three buildings who would satisfy that, and we were
6 working with them to present their plan to the courts.

7 Q. Now, if the -- if the borough complies with the
8 March 15th deadline, what steps do you need to take as a
9 borough and as a mayor in order to comply over the next couple
10 months?

11 A. We still don't have the plan approved by the program.
12 They -- they promised by mid-January. If it comes in
13 mid-January, we have to rezone those properties, which entails
14 introducing an ordinance, having public hearings, sending it
15 to the planning board.

16 They have their public hearings, have a second reading,
17 and just the time itself with the announcements of the
18 meetings, it will be very, very tight to reach the 15th.

19 Q. And alternatively, if you as mayor chose -- and the
20 governing body for that matter chose not to rezone the
21 properties, what would happen on March 15th?

22 A. We lose our immunity.

23 Q. And what do you expect to happen if you lose your
24 immunity?

25 A. The day after developers -- they'll submit plans for

1 high-density housing.

2 Q. What makes you believe that developers would submit plans
3 so quickly?

4 A. They told us so. They're there. They're ready. We've
5 seen the plans, and once we lose immunity, those plans will be
6 submitted.

7 Q. If the plans were submitted, what is your understanding
8 from a legal standpoint about whether the developer has an
9 entitlement to the zoning?

10 A. They have a 100 percent entitlement to zoning. We lose
11 full control of our zoning.

12 Q. So based upon those two scenarios, can you explain what
13 led to you believe it made sense to come to this Court for a
14 pause of the March 15th deadline?

15 A. We need a pause for several reasons. One of them is the
16 timing doesn't work. Two, we're still building for the third
17 round. Our sewer system is over 50 years old. We have school
18 issues. We have to widen some roads just to accommodate for
19 the third round.

20 So we just need a pause, you know, want to catch up
21 with the timeline but also to see if there's anything else
22 resource-wise we have to do to accommodate the next round, the
23 fourth round.

24 Q. And the fourth round would be subject to potential
25 modification under the Urban Aid Classification if that were

1 invalidated?

2 A. Yes.

3 Q. Okay.

4 I want to talk a little bit about some of the comments
5 we heard earlier in the opening from the State, talking about
6 the potential -- it sounds like if the borough wants to comply
7 like it has in all the years past, it has to do the rezoning
8 over the next couple months; is that fair to say?

9 A. That is correct. One thing.

10 Q. Hold on.

11 A. I'm sorry. Go ahead.

12 Q. So on that, the State suggested that the potential
13 reputational impact upon you is speculative.

14 Can you provide your response to whether it is actually
15 speculative that you would suffer reputational harm by doing
16 this rezoning?

17 A. I am 100 percent confident if I have to vote for it --
18 and I would have to vote for it. To abstain or to stay out of
19 it is not what we were voted in to do, so I would have to make
20 a call. I would suffer. I would not be voted back in.

21 Q. And why do you believe that to be the case?

22 A. Because our -- my constituents, my residents, my council,
23 they want sound planning. We want to plan it the way we want
24 to plan it, and if we do okay, what they want to build, we
25 lose -- I lose -- there's -- there's nothing else to do there.

1 Q. And can you provide an example of your constituents
2 expressing such concerns?

3 A. So I have regular Coffee with the Mayor meetings. I
4 visit. I go to funerals. I go to weddings. A hundred
5 percent, not one person on -- on both sides of the aisle, not
6 one person said we want high-density housing.

7 Q. Okay.

8 Let's take us through the scenario of you abstaining.
9 So if you and all of your colleagues on the governing body
10 abstained, would the -- is there any way for the zoning to be
11 adopted?

12 A. No. Someone has to vote on it. We have to vote on it,
13 yeah.

14 Q. So someone has to vote on it?

15 A. Yes.

16 Q. And if no one votes on it, the zoning doesn't pass,
17 right?

18 A. Correct.

19 Q. And if the zoning doesn't pass and the March 15th
20 deadline passes, the borough would be subject to builder's
21 remedy?

22 A. Yes.

23 Q. And if you follow that scenario through, how do you think
24 the borough being subject to builder's remedy would impact
25 your reputation?

1 A. That's even worse. It will impact it, yes.

2 Q. How so?

3 A. I may just resign, to be honest. I would not be voted
4 back in.

5 Q. And why do you believe that to be the case?

6 A. Because now we -- we put the town in jeopardy of even
7 higher density housing.

8 Q. And that is obviously not something you're looking to do
9 looking out for the borough?

10 A. No.

11 Q. Thank you, Mr. Ghassali.

12 MR. COLLINS: Thank you, Your Honor.

13 THE COURT: Thank you. Cross?

14 MR. KLINGER-CHRISTIANSEN: Very briefly, Your Honor.

15 (CROSS-EXAMINATION BY KLINGER-CHRISTIANSEN:)

16 Q. Good morning, Mr. Ghassali.

17 A. Good morning, sir.

18 Q. Mr. Ghassali, you've been involved in Montvale's
19 government since 2010 when you ran for a seat on Borough
20 Council, correct?

21 A. Correct.

22 Q. And you were first elected mayor in 2016?

23 A. Yes.

24 Q. And the borough, along with a group of other
25 municipalities, filed a state court complaint on

1 September 9th, 2024, challenging the law that we've been
2 talking about today; is that correct?

3 A. Correct.

4 Q. And the law we're talking about was enacted in March of
5 2024; is that right?

6 A. Yes.

7 Q. And the borough, along with the other municipalities that
8 were involved in that action, filed for a preliminary
9 injunction of the law on October 29th, 2024; is that correct?

10 A. Yes.

11 Q. And that injunction motion asked for a pause of all
12 obligations under -- under the Act as well as the Mount Laurel
13 Doctrine; is that right?

14 A. Yes.

15 Q. And as a basis for that injunction motion, the borough
16 raised a federal Equal Protection Clause challenge to the
17 urban municipality exemption?

18 A. Yes.

19 Q. And the state court denied that injunction on
20 January 2nd, 2025, correct?

21 A. Correct.

22 Q. And it was denied in part on grounds --

23 MR. COLLINS: Objection, Your Honor. I think this
24 line of questioning is outside of the scope of the direct, and
25 it's asking for essentially legal conclusions on a document

1 that's in the record.

2 THE COURT: I mean, he's asking what the mayor knows,
3 if he's aware that this occurred.

4 MR. COLLINS: Okay. If that's the context, I --

5 THE COURT: That's the context I took it in.

6 So you tell me, Counsel, is that what you're asking?

7 Like, is he aware of that state decision denying the
8 injunction, which is the very relief they're seeking now
9 before me?

10 MR. KLINGER-CHRISTIANSEN: Precisely, Your Honor.

11 THE COURT: I'll allow it.

12 MR. KLINGER-CHRISTIANSEN: Okay.

13 BY MR. KLINGER-CHRISTIANSEN:

14 Q. And, Mr. Ghassali, in that -- in that state court's
15 decision, which was issued on January 2nd, so a few weeks
16 before the January 31st deadline to enter the program; is that
17 correct?

18 A. Yes.

19 Q. And in that decision in which Montvale was a party, the
20 state court judge held that participation in the program is
21 voluntary; is that correct?

22 A. Yes.

23 MR. COLLINS: Objection, Your Honor. I disagree with
24 the characterization of the state court decision.

25 THE COURT: Sustained.

1 BY MR. KLINGER-CHRISTIANSEN:

2 Q. And, Mr. Ghassali, in that state court decision, do you
3 recall that the state court judge also indicated that third
4 round immunity ended on -- would end on June 30th, 2025; is
5 that correct?

6 MR. COLLINS: Again objection, Your Honor, it's a --

7 THE COURT: By the way, I can read the state court
8 decision, so it really doesn't matter what this witness says
9 about it. I have the opinion. I've read it, and I'll
10 probably read it another ten times.

11 So if you have another line of questioning, but it
12 won't matter if he tells me what's in that opinion because his
13 interpretation is irrelevant. It will be my interpretation
14 that matters too.

15 Just to be clear, that decision is not binding on this
16 Court. You can argue its persuasive authority. I'm not
17 saying you can't, but you've cited to that decision in your
18 moving papers. But having a witness talk about it isn't going
19 to do much for me.

20 MR. KLINGER-CHRISTIANSEN: Understood, Your Honor.
21 Thank you.

22 THE COURT: All right.

23 BY MR. KLINGER-CHRISTIANSEN:

24 Q. Mr. Ghassali, can you remind us -- remind us what the
25 fourth round obligations for prospective need for -- that you

1 testified to as for Montvale?

2 A. We were given 348, and we presented 2- -- 248.

3 Q. So the number is 248 is -- is your testimony?

4 A. Yes.

5 Q. In your certification, you indicated that the number was
6 237. Which one is it?

7 A. I don't know exactly. It -- it's in the 240s. It's been
8 up and down.

9 Q. And was that from -- and was that -- that was through a
10 program's recommendation, the program -- the Affordable
11 Housing Dispute Resolution Program's recommendation?

12 A. That's what we submitted, and that's what they agreed on,
13 yes.

14 Q. But that decision then went to a Mount Laurel judge;
15 isn't that correct?

16 MR. COLLINS: Same objection, Your Honor --

17 THE COURT: Sustained.

18 MR. COLLINS: -- as prior.

19 THE COURT: Sustained.

20 MR. KLINGER-CHRISTIANSEN: I mean, this -- this
21 question was just about what the actual number is that -- that
22 they have. The number is different.

23 THE COURT: What's the question?

24 MR. KLINGER-CHRISTIANSEN: This question is just
25 getting to what the actual number of -- the number of --

1 THE COURT: No, no. I mean give me the question.

2 What is the question?

3 MR. KLINGER-CHRISTIANSEN: Oh. The question was just
4 that, isn't it -- didn't the Mount Laurel judge that actually
5 issued an order here issue 205 units for Montvale?

6 THE COURT: Again, I can read the opinion.

7 MR. KLINGER-CHRISTIANSEN: Okay.

8 THE COURT: So I'll sustain the objection.

9 MR. KLINGER-CHRISTIANSEN: Okay.

10 THE COURT: By the way, Mr. Ghassali, I know you said
11 you spoke with your residents, and you don't know of anybody
12 that wants this -- are we calling it low-income or
13 high-density housing? What's the terminology?

14 THE WITNESS: It's high-density housing.

15 THE COURT: High-density housing.

16 Do you know of any non-urban aid municipalities like
17 yours where the residents want this type of housing? And
18 which towns are those?

19 Doesn't every non-urban aid municipality want this to
20 go somewhere else, right? They don't want it in their towns,
21 correct?

22 THE WITNESS: Right.

23 THE COURT: All right. So it's not a shock that you
24 talked to some residents.

25 THE WITNESS: No.

1 THE COURT: I'm not saying you've talked to everybody
2 in your community, but it's not surprising that you've talked
3 to some folks who don't desire this housing in their town.
4 That's every town.

5 THE WITNESS: Correct. I agree with that, yes. Yes.

6 THE COURT: All right. I'm sorry. Go ahead, sir.

7 MR. KLINGER-CHRISTIANSEN: Absolutely.

8 BY MR. KLINGER-CHRISTIANSEN:

9 Q. Mr. Ghassali, do you -- you indicated that you
10 communicate with your constituents regularly?

11 A. I do.

12 Q. And do you have social media presence, or are you able to
13 express your views and opinions through -- through social
14 media as well?

15 A. Yes. I have my own web page.

16 Q. And at borough meetings, are you able to express your
17 opinions, you know, before you take a vote on something, for
18 instance?

19 A. Yes.

20 Q. And are your borough meetings live streamed?

21 A. No. They're taped.

22 Q. Oh, and -- and of course you would also provide notice
23 under the Open Public Meetings Act?

24 A. Yes.

25 Q. And you can indicate your views at those meetings. And

1 you indicated that you also, you know, express your views on
2 votes you take, you know, through press releases, for
3 instance; is that correct?

4 A. Yes.

5 MR. COLLINS: Objection, Your Honor. Compound
6 question. I'm not quite sure what -- what he's being asked to
7 address. I heard a statement about the law and the Open
8 Public Meetings Act.

9 THE COURT: Well, just give me the objection. I
10 don't want the whole -- we don't have a jury in front of us,
11 but I got the objection.

12 Can you rephrase the question, Counsel.

13 MR. KLINGER-CHRISTIANSEN: Certainly, Your Honor.

14 THE COURT: All right.

15 BY MR. KLINGER-CHRISTIANSEN:

16 Q. Your public meetings would have to be noticed under the
17 Open Public Meetings Act, correct?

18 A. Of course.

19 Q. And you provide notice of those meetings on the borough's
20 website?

21 A. Yes.

22 Q. And on your social media, you're also able to express
23 your views and opinions?

24 A. Yes, sir.

25 MR. KLINGER-CHRISTIANSEN: Nothing further,

1 Your Honor.

2 THE COURT: All right. Thank you, Counsel.

3 Is there any redirect?

4 MR. COLLINS: No, Your Honor.

5 THE COURT: All right. Sir, you may be excused.

6 Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Let's call the next one.

9 MR. COLLINS: Thank you, Your Honor. I'd like to
10 call Peter Angelides.

11 THE COURT: Sir, you can come on into the witness
12 box. My courtroom deputy is going to swear you in, and then
13 you can complete your testimony, okay?

14 (**PETER ANGELIDES**, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED
15 AS FOLLOWS:)

16 THE DEPUTY COURT CLERK: Please state your name and
17 the spelling of your last name.

18 THE WITNESS: Peter Angelides, A-N-G-E-L-I-D-E-S.

19 THE COURT: All right. You may be seated.

20 MR. COLLINS: Thank you, Your Honor.

21 May it please the Court.

22 (DIRECT EXAMINATION BY MR. COLLINS:)

23 Q. Mr. Angelides, if I could ask you to state your current
24 occupation.

25 A. I'm the president of Econult Solutions, an economic real

1 estate consulting firm in Philadelphia.

2 Q. Okay.

3 And did Econult Solutions provide an expert report
4 that was submitted to the Court in this case?

5 A. Yes.

6 Q. Okay.

7 And were you the author of that report?

8 A. Coauthor, yes.

9 MR. COLLINS: Okay. Your Honor, I'd like to just
10 admit this. It's in the motion record, but just in case it's
11 needed to refresh the witness's recollection to have it
12 admitted as a plaintiffs' exhibit.

13 THE COURT: You want to use it -- wait. You're
14 moving to admit it, or you want to use it to refresh the
15 witness' recollection, which are two separate things?

16 MR. COLLINS: Yes. Moving to admit it in case it's
17 needed to refresh the witness's recollection. I can -- I can
18 ask to do so later if necessary, if that's the preference.

19 THE COURT: I mean, I don't even know if the witness
20 needs his recollection refreshed. He hasn't said he doesn't
21 remember something.

22 Let's -- let's do this in steps, although let me ask
23 this, maybe this will save time: Is there any objection to
24 moving to admit this document? I don't even know what it is.

25 MR. KLINGER-CHRISTIANSEN: No, Your Honor. I mean,

1 this document was attached to the --

2 THE COURT: Right. So there's no objection, right?

3 I need to hear you say that.

4 MR. KLINGER-CHRISTIANSEN: Yes. No objection.

5 THE COURT: Okay. All right. Then it's admitted.

6 But let's see what the witness knows before we refresh.

7 MR. COLLINS: I appreciate that, and I'm sorry to
8 undermine you.

9 BY MR. COLLINS:

10 Q. Mr. Angelides, if you could state your -- your
11 qualifications to render this expert report, your background.

12 A. So my educational background is I have a bachelor of arts
13 in urban studies and a master of city planning from the
14 University of Pennsylvania. I have a master of sciences, I
15 think, and Ph.D. in economics from the University of
16 Minnesota.

17 From a professional standpoint, I've been doing
18 economic consulting basically my entire professional career.
19 For the last, oh, I don't know, 17 years, I've been with
20 Econsult Corporation originally and now Econsult Solutions.

21 A lot of my work has involved economic and statistical
22 calculations, often regarding population real estate
23 development and the like.

24 Q. Okay.

25 And I believe you played a specific role in the third

1 round of New Jersey's affordable housing in a litigation
2 before Mercer County Assignment Judge Mary Jacobson; is that
3 correct?

4 A. Yes. I was the plaintiffs' -- or the town's witness.

5 Q. And can you describe your role in that -- in that trial?

6 A. I was the "numbers guy," I think is the phrase for it. I
7 calculated the affordable housing obligations for every
8 municipality in the state.

9 Q. And how long of a trial was that?

10 A. I seem to remember 44 days.

11 Q. Okay. All right.

12 MR. COLLINS: Your Honor, I'd like to ask if the
13 Court would admit Mr. Angelides as an expert.

14 THE COURT: Any objection?

15 MR. KLINGER-CHRISTIANSEN: Your Honor, we only
16 received Mr. Angelides' resume and experience about two days
17 ago, so, you know, it's kind of hard -- you know, we didn't
18 really have the best opportunity to --

19 THE COURT: Is there an objection? I mean, you've
20 got to tell me first if there's an objection. Two days ago is
21 48 hours. I mean, I don't know how much time you need.

22 But are you objecting to him being identified as an
23 expert?

24 MR. KLINGER-CHRISTIANSEN: I would -- I would just
25 say that if this goes beyond a PI hearing or motion to dismiss

1 stage, we would reserve the right to object, you know, down
2 the line if this goes to a trial.

3 THE COURT: That's fair. So there's no objection for
4 purposes of today's preliminary injunction hearing.

5 MR. KLINGER-CHRISTIANSEN: Yes, Your Honor.

6 THE COURT: Well, then I'll accept his testimony as
7 an expert -- in what area again?

8 MR. COLLINS: In, I guess, economics data and the
9 Urban Aid Classification.

10 THE COURT: All right. But I want to make sure that
11 to the extent this case moves beyond today's hearing, the
12 State has preserved their right to object at a later date.

13 MR. COLLINS: I recognize that, Your Honor.

14 THE COURT: Fair enough. Let's proceed.

15 MR. COLLINS: Certainly that's quite all right. All
16 right. I appreciate defendant's conferring on that.

17 BY MR. COLLINS:

18 Q. Okay.

19 Mr. Angelides, so I take it you're familiar with the
20 fourth round affordable housing law?

21 A. Yes.

22 Q. And are you familiar with the Urban Aid Classification or
23 UAC as I referenced earlier?

24 A. Yes.

25 Q. Can you explain for the Court what the UAC is?

1 A. For purposes of what we're talking about here, it's
2 certain municipalities are exempt from providing or having
3 affordable housing obligations.

4 Q. Okay.

5 And what happens to the municipalities that aren't
6 exempt?

7 A. They have to basically provide the housing for everybody
8 who is exempt.

9 Q. Okay. All right.

10 When did this classification originate?

11 A. From the -- basically the dawn of time. It was -- an
12 exemption like this has been part of the calculations of the
13 affordable housing obligations since the earliest cases.

14 Q. When you say "cases" you're referencing the Mount Laurel
15 cases?

16 A. Yes. Mount Laurel, yes.

17 Q. Okay.

18 The early Mount Laurel cases such as the AMG decision
19 that I referenced earlier, what exactly was happening in the
20 1980s that you believe led to the use of this Urban Aid
21 Classification in its early onset that you referenced?

22 MR. KLINGER-CHRISTIANSEN: Object -- Your Honor --

23 THE COURT: What's the relevance of this? I'll

24 object; how about that? I mean, what do I need that
25 background for? I certainly don't need him to be an expert on

1 the law because I'll be the expert.

2 MR. COLLINS: Okay, precisely. I'm happy to move
3 ahead, Your Honor, then.

4 THE COURT: All right.

5 BY MR. COLLINS:

6 Q. So, Mr. Angelides, "prospective need," can you describe
7 what that term means under the law and under the Mount Laurel
8 Doctrine?

9 A. Prospective need is the need for the municipality to
10 provide for growth that is expected to occur.

11 Q. Okay.

12 And what geographical lines are used to calculate that
13 prospective need?

14 A. The state is to provide the six regions, and the
15 prospective need is calculated for each region individually.

16 Q. Okay.

17 So to visualize this, can you think of -- can you
18 provide a visual of how we could depict this calculation being
19 performed?

20 A. Yeah. The -- New Jersey divided -- take a look at the
21 map of New Jersey, and there are lines separating the six
22 regions numbered 1 through 6, and within each region, the
23 prospective need is calculated for that region.

24 Q. Okay.

25 And in terms of the overall prospective need number,

1 how is that calculated?

2 A. For each region, it's calculated based on population
3 growth that is expected to occur which is based on historic
4 population growth, and that's -- and I keep on saying
5 "population," but really it's households, household growth.

6 And then take the household growth and divide by 2.5 or
7 multiply it by .4, so 40 percent of expected household growth,
8 that's the prospective need.

9 Q. Okay.

10 So just to drill down on that formula, it's -- it's --
11 so divide by 2.5, so that's 40 percent of the population
12 growth?

13 A. Household growth.

14 Q. I'm sorry?

15 A. Household growth, yes.

16 Q. Household growth. And what data document is used to
17 calculate that time -- the growth in that time period?

18 A. It's based on the decennial census, so the ones that are
19 taken every ten years, ends in zero.

20 Q. Okay.

21 And what essentially is the assumption by using the
22 past ten years to calculate the forward ten years?

23 A. The assumption is that the next ten years are going to
24 look like the past ten years.

25 Q. Okay.

1 And the law makes that assumption without any
2 adjustment?

3 A. Correct.

4 Q. Okay.

5 So you take that overall need that's calculated. How
6 is that need distributed among the municipalities and the
7 regions that you spoke about?

8 A. Well, the first step is to zero out the qualified urban
9 aid municipalities, the -- the exempt ones, and then it's
10 parsed out according to a formula that -- based on size and
11 population and wealth and whatnot.

12 Q. So if you could kind of help us paint a picture for the
13 Court. What would be a depiction of how the need is generated
14 and then distributed?

15 A. Well, the need is generated based on expected household
16 growth, and then picture a -- you know, each town is sitting
17 at a table, and there are a set of urban aid municipalities
18 that are sitting at one end of the table, and then there's a
19 stack of cards, and each card is a household affordable need
20 generated because of the expected growth.

21 And then the cards are dealt based on a formula to the
22 remaining -- or the people who are close to you. The ones at
23 the end, they don't get any cards.

24 Q. Okay.

25 So let's follow through on that. So who is generating

1 the cards, the obligation in the first place?

2 A. Everybody.

3 Q. Okay. And --

4 A. Urban aid, non-urban aid, everybody.

5 Q. Okay.

6 And how does the formula again require that those cards
7 be distributed?

8 A. To everybody who's not urban aid.

9 Q. Okay.

10 And what are the consequences of that redistribution?

11 A. Well, that means that the urban aid municipalities
12 don't -- don't have to supply prospective need affordable
13 housing, so that the boroughs or towns or communities that are
14 not exempt, they have to provide for their own population
15 growth -- anticipated household growth plus the anticipated
16 household growth of the urban aid municipalities.

17 So they get to provide not just for their own people
18 but for other folks as well.

19 Q. Okay.

20 I'd like to ask if you could speak to -- and I know you
21 discussed this in your report -- the population trends from
22 the 1970s to today.

23 Where did the growth occur in New Jersey during the
24 1970 to 1980 period that informed the AMG decision?

25 A. So in the -- in that era historically, the growth was

1 essentially in the suburbs, the non-urban aid municipalities,
2 in fact a little bit more than all of it, so the urban aid
3 municipalities were shrinking in aggregate, and the non-urban
4 aid municipalities were growing.

5 So the growth, all of it -- more than all of it
6 occurred in the non-urban aid municipalities.

7 Q. Okay.

8 So when the -- when you mentioned the dawn of time
9 earlier, at the dawn of time --

10 A. From the perspective of Mount Laurel, yes.

11 Q. Yes.

12 So from the dawn of time on Mount Laurel, all of -- all
13 of New Jersey's population growth was in the non-urban aid
14 municipalities?

15 A. Correct, yes.

16 Q. And there is a negative population growth in the urban
17 aid municipalities?

18 A. Yes.

19 Q. Okay.

20 Why don't you take us through -- so that was the 1970s
21 to 1980s.

22 How did that trend continue -- or how did that trend --
23 how did that trend follow during the succeeding 1980s decade?

24 A. So for the next decade that trend continued. I think it
25 was even more -- more than all of the growth. So the -- the

1 urban aid municipalities shrank by a little bit more. The
2 non-urban aid suburbs essentially grew by more.

3 So that trend continued in the next decade.

4 Q. Okay.

5 So if we could go back to your cards analogy earlier,
6 were the urban aid municipalities during the 1980s period
7 generating any cards that needed to be distributed on the
8 table?

9 A. Essentially, no.

10 Q. Okay.

11 Why don't you take us through the succeeding 1990s and
12 2000 decades.

13 A. Well, things began to change. In the '90s to 2000s and
14 2000s to '10, there started to be growth in the urban aid
15 municipalities. It wasn't -- in the order of 10 percent of
16 the population, 12 percent, something like that, but
17 household -- sorry, were -- additional households were in
18 those municipalities, in urban aid municipalities.

19 Q. Okay.

20 What about the 2010 decade, 2010 to 2020?

21 A. Well, now we are in a different story, so essentially
22 half of the state's population growth, and that's over all the
23 state, region by region it varies, but half of the household
24 growth has been in urban aid municipalities in that period.

25 Q. How would you describe this change in trend between 2010

1 to the 1980s?

2 A. It's enormous. It's a completely different world.

3 Q. Okay.

4 A. I think you used the phrase "sea change." So, yes, like
5 that.

6 Q. Okay. All right.

7 And so under the -- going back to the deck of cards
8 analogy, if today there's -- you mentioned there's --
9 50 percent of New Jersey's population growth is in the urban
10 aid municipalities.

11 Can you explain how that portends for the cards being
12 created and then distributed?

13 A. Well, it means as a statewide average, non-urban aid
14 municipalities get to plan for their population growth and
15 have exactly -- almost exact same number of units they have to
16 plan for for population growth that's occurring in somebody
17 else -- in another municipality, in an urban aid municipality.

18 Q. So in an urban aid municipality such as Jersey City, if
19 they have population growth, they're generating cards that are
20 on the table?

21 A. Yes, they are.

22 Q. And those cards are then distributed among the non-urban
23 aid municipalities but excluding the urban aid
24 municipalities --

25 A. Correct.

1 Q. -- such as Jersey City?

2 A. That's correct.

3 Q. Okay.

4 Can you explain how this redistribution operates by
5 region?

6 A. Each region is independent. So the redistribution occurs
7 within a region, not across regions.

8 Q. And could you provide some examples of how the
9 distribution impacts particular regions?

10 A. Well, region one -- and this might be where a refresher
11 reference to a document might be handy --

12 MR. COLLINS: Your Honor, may I provide the witness
13 with the document --

14 THE COURT: Yep.

15 MR. COLLINS: -- to refresh his recollection?

16 THE COURT: You may.

17 THE WITNESS: Thank you.

18 So I'm going to refer to --

19 THE COURT: That's a problem.

20 MR. COLLINS: Okay. Can't read from there.

21 BY MR. COLLINS:

22 Q. Let me ask the question.

23 A. Okay. Okay. Fine.

24 Q. So, Mr. Angelides, in region one, can you explain how the
25 cards would be distributed?

1 A. Yes. So in region one over the --

2 THE COURT: Does he still have the document?

3 MR. COLLINS: Okay.

4 THE COURT: All right. Let's do it the way it's
5 supposed to be done.

6 MR. COLLINS: Okay. I'm sorry, Your Honor.

7 THE COURT: You've got to let him review it, collect
8 it, and hope he remembers it. Otherwise, you're going back to
9 him again.

10 MR. COLLINS: In fact, I'll take it back.

11 THE COURT: Otherwise, I'm going to have your expert
12 reading off of something, and that's not testimony. That's
13 reading.

14 MR. COLLINS: May I proceed, Your Honor?

15 THE COURT: I'm sorry. Actually, wait for this just
16 because the court reporter needs to -- all right.

17 Go ahead. Sorry, Mr. Collins.

18 MR. COLLINS: No problem, Your Honor.

19 BY MR. COLLINS:

20 Q. Mr. Angelides, having looked at your report, can you
21 provide us with an explanation of how the distribution of need
22 occurs in a region, for example, region one like you
23 mentioned?

24 A. For region one, approximately three quarters, actually
25 74 percent of the growth, was in urban aid municipalities.

1 Q. Okay.

2 A. So -- and let's extrapolate what that means a little bit.

3 So for every hundred households that grow -- that were
4 projected to grow or projected to come, that generates -- for
5 250 households, that generates a hundred units of affordable
6 housing need.

7 Of that hundred units of need, 74 of them would be in
8 urban aid municipalities, which are exempt, and 26 of them
9 would be in non-urban aid municipalities for nonexempt.

10 But all hundred of those units, all hundred of those
11 cards essentially get dealt to the non-urban aid
12 municipalities --

13 Q. Okay.

14 A. -- in region one.

15 Q. Okay.

16 So in region one under your example, the urban aid
17 municipalities such as the Jersey City generate 74 cards that
18 have to be placed on the table; is that correct?

19 A. Yes.

20 Q. And then how do those 74 cards get distributed?

21 A. They get distributed to the non-urban aid municipalities
22 like Montvale, for example, and the other non-urban aid
23 municipalities.

24 Q. And are any cards distributed to Jersey City and the
25 other urban aid municipalities?

1 A. No.

2 Q. Okay.

3 In terms of the burden of the affordable housing, what
4 have you concluded from the example in region one and to the
5 other regions overall as its impacted?

6 A. The overall conclusion is that the non-urban aid
7 municipalities are bearing their burden, and other
8 municipalities -- urban aid municipalities are burdened from a
9 way that's very different from than it was 50 years ago.

10 Now half of the growth is in urban aid municipalities,
11 and all of that has to be accommodated in the non-urban aid
12 municipalities.

13 Q. So from a statewide perspective -- and you mentioned the
14 50 percent -- can you explain what kind of the statewide
15 import of how this formula works?

16 A. Well, statewide, that's the result. And then region by
17 region in some regions, like a region one, is a 3-to-1 ratio,
18 so for every -- each non-urban aid municipality has to
19 essentially deal with four times what they're generating.

20 Q. Okay.

21 I'd like to move our attention now, Mr. Angelides, to
22 the research that you did regarding affordable housing
23 production, and I believe you looked at data from the
24 Low-Income Housing Tax Credit program, which I'll refer to as
25 the "LIHTC program" because that's how we kind of have it

1 referred.

2 Are you familiar with that?

3 A. Yes.

4 Q. Can you explain the significance of the LIHTC program?

5 A. The LIHTC program provides essentially money to help
6 build affordable housing, and it's a statewide program.

7 Q. Okay.

8 And from your research, what did you find about LIHTC
9 development from its inception from 1989 to present?

10 A. So there's been thousands of units, affordable housing
11 units developed under LIHTC all across the state over the last
12 30 years. And overall about half of it -- a little bit less
13 than half has been built in urban aid municipalities.

14 Q. Okay.

15 So that is growth and affordable housing in the urban
16 aid municipalities that you statistically accounted for?

17 A. Yes.

18 Q. Okay.

19 How do -- how does that development of affordable
20 housing in the urban aid municipalities factor into the urban
21 aid formula?

22 A. It doesn't.

23 Q. Okay.

24 Can you explain that?

25 A. Right. So the -- the prospective need is calculated

1 irrespective of, you know, how much has been provided or will
2 be provided in the urban aid municipalities.

3 Q. Okay.

4 But I want to take you back to the card example. So
5 how does the LIHTC data relate to the distribution of cards in
6 a region with the urban aid municipalities at one end of the
7 table and urban aid at the other?

8 A. The fact that affordable housing -- LIHTC affordable
9 housing is constructed in urban aid municipalities doesn't
10 impact the number of cards. It doesn't impact the
11 distribution of cards.

12 Q. Okay.

13 So -- so it's housing that's created, but those cards
14 are not coming off the table?

15 A. Correct.

16 Q. And --

17 A. They're not coming off the table.

18 Q. And do you see a statistical significance of that
19 reality?

20 A. I mean, that's just the way it works.

21 Q. Okay.

22 And by working that way, how does that impact or -- the
23 overall prospective need calculation?

24 A. It -- it doesn't. It does not shrink the prospective
25 need.

1 Q. And so is there an end result of that statistically?

2 A. Well, the end result is that at -- at some level, these
3 aren't being counted. Like I say, units that are being
4 developed in urban aid municipalities are not impacting the
5 prospective needs. Well, there's not.

6 Q. And so by them not being counted, could that well be
7 additional units that a non-urban aid municipality such as
8 Montvale needs to allow for?

9 A. Yes.

10 Q. Okay.

11 And do you believe that the LIHTC data is accurate or
12 an under-calculation or an over-calculation of the --

13 A. Well, the LIHTC data is really concerned with units that
14 are built under the LIHTC program, but there are other ways of
15 building affordable housing that are not included in the data.

16 So there's other affordable housing that is not
17 quantified that is developed in urban aid municipalities that
18 also is not included in the calculation --

19 Q. Okay.

20 A. -- in the urban aid exemption in the distribution of
21 cards.

22 Q. Okay.

23 And for the last decade under review, about what
24 percentage of the prospective need is addressed by LIHTC
25 affordable housing that was created in the urban aid

1 municipalities?

2 A. Statewide, 8%.

3 Q. So that 8% figure is the statistical amount of the
4 housing that was created but not accounted for in the formula?

5 A. Correct.

6 Q. And based upon what you said about the LIHTC data being
7 specific to housing that received that tax credit, it's
8 possible that there's non-LIHTC affordable housing that's also
9 not being counted into that formula?

10 A. Correct.

11 Q. Okay.

12 How would you compare these circumstances revealed by
13 the LIHTC to the dawn of time when Judge Serpentelli issued
14 the 1984 AMG decision?

15 A. I mean, where the growth is occurring is just different,
16 right?

17 Q. Okay.

18 A. There was no growth in urban aid municipalities in
19 Judge Serpentelli's era, and now half the state is growing in
20 those places.

21 BY MR. COLLINS:

22 Q. Okay.

23 Thank you, Mr. Angelides.

24 MR. COLLINS: I don't have anything further,
25 Your Honor.

1 THE COURT: All right. Thank you, Mr. Collins.

2 Mr. Klinger-Christiansen, whenever you're ready, you
3 may proceed with cross.

4 (CROSS-EXAMINATION BY MR. KLINGER-CHRISTIANSEN:)

5 Q. Mr. Angelides, in your report, you did indicate that some
6 of the underlying conditions that affected the exempt
7 municipalities exist today; is that correct?

8 A. Say that again.

9 Q. In your report, you indicate that some of the conditions
10 from the 80s that impacted exempt municipalities continue --

11 A. Yes.

12 Q. -- to exist today. You indicated that. All right.

13 Have you reviewed the -- you've reviewed the Department
14 of Community Affairs 2024 affordable housing guidelines for
15 the fourth round obligations? Did you review that?

16 A. Yes, I reviewed the model.

17 Q. And you -- and in that model and in those
18 recommendations, you -- you would have seen, you know, that
19 for certain urban municipalities, there's very high present
20 need attributed to them by the department; is that correct?

21 A. Yes.

22 Q. For certain -- for certain municipalities, some of
23 those -- some of those present need obligations attributed
24 by -- under those calculations could be upwards of 1,000?

25 A. I -- I don't recall.

1 Q. Okay.

2 And your expert report does not use the phrase "present
3 need obligations"; is that correct?

4 A. That's correct.

5 MR. KLINGER-CHRISTIANSEN: Okay. That's all,
6 Your Honor.

7 THE COURT: All right. Thank you.

8 Mr. Collins, anything further?

9 MR. COLLINS: No, Your Honor, I don't.

10 THE COURT: Sir, you're excused.

11 THE WITNESS: Thank you.

12 MR. COLLINS: Your Honor, our third witness is
13 Timothy Clayton.

14 THE COURT: Come on up, Mr. Clayton. My courtroom
15 deputy is going to swear you in. You've been sitting here, so
16 you've probably seen this before.

17 (**TIMOTHY CLAYTON**, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED
18 AS FOLLOWS:)

19 THE DEPUTY COURT CLERK: Please state your name and
20 the spelling of your last name.

21 THE WITNESS: Timothy Clayton, C-L-A-Y-T-O-N.

22 THE COURT: Sir, you may be seated.

23 Mr. Collins, whenever you're ready.

24 MR. COLLINS: Thank you, Your Honor.

25 (DIRECT EXAMINATION BY MR. COLLINS:)

1 Q. Good morning, Mr. Clayton. How are you doing?

2 A. Good morning.

3 Q. All right.

4 Could you share with the Court where you live?

5 A. Sure, I live in Wall Township, Monmouth County.

6 Q. Okay.

7 And do you serve in an elected role in Wall Township?

8 A. I do. I'm -- I just started my second term last night on
9 the township committee, and prior to that in 2025, I was the
10 mayor.

11 Q. Okay.

12 You serve in the township committee form of government,
13 so I believe it's a rotating mayor. Can you just explain that
14 for the Court?

15 A. Yeah. So we're five equal bodies, each with 20 percent
16 of the vote, and the mayor is the figurehead kind of contact
17 for the -- for the governing body, but we -- we -- we operate
18 as a body.

19 Q. So essentially you're changing from having the mayorship
20 to not -- does not change your legal authority over --

21 A. No. We still have -- we still maintain the same level of
22 authority.

23 Q. Okay.

24 How long have you lived in Wall?

25 A. My family moved to Wall when I was nine, so 1974.

1 Q. Okay.

2 And tell the Court about your professional career, what
3 you did for work?

4 A. Sure. Currently I'm a school safety coordinator at the
5 Manasquan School District in Monmouth County, responsible for
6 the safety and security of all staff and students.

7 Prior to that, I was a Wall Township police officer
8 from 1986 to 2011 where I retired at the rank of captain in
9 the acting chief capacity.

10 Q. Okay.

11 Thank you for your service.

12 Can you tell us just a little bit about your -- your
13 law enforcement career, what it involved at Wall?

14 A. Sure. I started as a patrolman, and I was responsible
15 for Title 39 and 2C statutes, nuisance complaints. As I
16 continued, I -- Wall Township has seven major highways where
17 our traffic is our -- really was our number one problem, so we
18 handled fatal motor vehicle accidents, serious motor vehicle
19 accidents.

20 So I was selected to be trained through Northwestern
21 University as a traffic accident reconstructionist, where I --
22 where I joined the Monmouth County what we call SCART team,
23 serious crash analysis response team. And we handled fatal
24 motor vehicles throughout Monmouth County. I served on that
25 for seven or eight years.

1 Once I made lieutenant, they kind of took that away
2 from me, but I also went to a traffic master's course through
3 Northwestern University where -- it was three weeks where you
4 come in with traffic calming ideas and like how to set up
5 traffic units for -- you know, to try to reduce injury
6 causation motor vehicle crashes.

7 And then as I became an administrator, I started to go
8 into more of a staffing administrative role where I was
9 trained through the International Association of Chiefs of
10 Police on how to staff -- or do a staffing study of a police
11 agency.

12 Q. Okay.

13 Thank you for sharing that.

14 I'm going to jump into the testimony and inform the
15 Court that we're going to talk with you specifically about
16 site-specific concerns under the affordable housing law.

17 As a committee member, former mayor, resident, are you
18 familiar with Wall's overall affordable housing obligations?

19 A. Yes.

20 Q. Okay.

21 And based upon that experience, can you describe what
22 you believe the effect was of the third round, which occurred
23 in the past, and I guess the effects are now being implemented
24 through new housing?

25 A. Sure. The third round, we currently have a couple

1 high-density locations that were -- that were designed, and
2 what the impact was on the community was -- was increased
3 volume of calls for service for the police department,
4 emergency services as well.

5 But mostly the one I'm thinking of off the top of my
6 head is -- we call Traditions at Wall, it was built by a
7 company called American Properties, and they built the complex
8 to standard for parking, but nobody uses that standard
9 individually to park.

10 So there's -- there's significant parking problems,
11 calls for the police to come. And to the point we just got an
12 e-mail letter last week with a sample resolution from the
13 homeowners association from that property requesting ability
14 to tow residents if they're not compliant. It's gotten to
15 that level, and it's just -- it's only been --

16 Q. So for that site, can you describe kind of in more
17 particularity the impact that it has on public safety and the
18 police department?

19 A. Well, it's increasing our -- our calls for service. The
20 police are responding there almost on a daily basis, if not a
21 daily basis, and dealing with nuisance complaints. You have a
22 lot of people living on top of one another.

23 Q. And are there any impacts upon Wall from a fiscal
24 standpoint by that police department impact?

25 A. Well, sure. What -- so what we're -- what we've

1 committed to do in 2026 is we're going to have to increase the
2 police department to handle the increased volumes of calls for
3 service.

4 So we committed to the -- to the police department to
5 start adding officers to try to catch up to what has been
6 created.

7 Q. And can you describe kind of the length and the
8 complication of the hiring process for a new police officer?

9 A. Yeah. To hire a police officer, it requires time,
10 anywhere from three to five years to get to where the officer
11 can handle the vast majority of complaints without direct
12 supervision.

13 My experience was you have to hire them, the background
14 checks, the psychological exams. Then you have a police
15 academy that lasts 22 weeks, a field program -- field training
16 officer program that can last up to 16, 18 weeks.

17 Then with experience and calls, they require a high
18 level of supervision up until I would say five years, the end
19 of spectrum.

20 Q. Okay.

21 Let's switch from the third round to the fourth round.
22 Can you share with the Court what Wall's affordable housing
23 obligation was in this fourth round?

24 A. Initially we were allowed to -- or instructed to make our
25 own number, and we believe -- I believe it was 492 we came up

1 with. Personally I felt it should have been lower, but it was
2 a concern of balancing it with the state.

3 There was an objection. The state was saying we owed,
4 I believe it was 744, and then there was a negotiation where
5 they said to us, Well, we could give you up to 900, so we
6 could do 650. So we're currently owed -- owe 650 affordable
7 units in Wall.

8 Q. Okay.

9 And how do you believe that 650 compares to your
10 neighboring towns in Monmouth County?

11 A. I believe we have the largest number in Monmouth County.

12 Q. Okay.

13 I want to take us through Wall's steps to comply with
14 the fourth round law, the first being the January 31st
15 deadline.

16 What did Wall do in response to that?

17 A. We met -- we -- we met the deadline. The reason being is
18 if you don't meet the deadline, you don't want to go into a
19 builder's remedy and cause issues for your taxpayer. There's
20 just no -- there's no option. We're in a box. It's either
21 you meet it or you don't meet it and be forced to meet it.

22 Q. And when you reference the builder's remedy litigation,
23 are you speaking about the continued maintenance of immunity?

24 A. Yes.

25 Q. Okay. All right.

1 In terms of implementing the fourth round, can you talk
2 about the process over the past year that remains ongoing at
3 this time, I believe, to determine which sites may be the ones
4 that require rezoning?

5 A. So we have a lot of applicants that came in. We have
6 multiple national builders coming in to buy up our property.
7 But the vast majority of property presented to us really isn't
8 designed for residential, especially high-density residential.

9 So the three sites that we selected --

10 Q. Perhaps I can take you through those, Mr. Clayton.

11 So the first I believe that you're -- that you're able
12 to discuss is the Circle Factory Outlet Peddler's Village
13 property.

14 Are you familiar with that?

15 A. I am very familiar with that.

16 Q. And can you explain what the Wall Housing Element Fair
17 Share Plan proposes for that site?

18 A. Well, right now we're at 217 units at that location.
19 It's a commercial property that has been abandoned for
20 commercial because -- I believe for housing. It would be
21 ideal for commercial.

22 It's really not a location for density housing. It's
23 designed for that. You have a mix match. You have a state
24 highway with a traffic circle and a county roadway that is
25 literally the main corridor to the Jersey Shore of Manasquan,

1 Sea Girt, for the summertime traffic. It's just the traffic
2 is -- is high volume there.

3 Q. So in your role as a member of the township committee, if
4 this law were not in existence, would you vote for this
5 rezoning?

6 A. No. That would be a commercially zoned piece of
7 property.

8 Q. Why don't we talk about the Wall Owner LLC site on Hurley
9 Pond Road. Are you familiar with that?

10 A. I am.

11 Q. Can you describe for the Court what -- what is being
12 proposed there?

13 A. Sure. At this point 800- -- I'm going to estimate 850
14 housing units at that site. It's a site of an old sand mine,
15 and it's deep, and it's got -- it's got deep areas, and it's
16 just -- it's a large -- we have a lot of -- I don't know how,
17 what --

18 THE COURT: Who's choosing these sites? The
19 developers?

20 THE WITNESS: The developers have bought these
21 properties.

22 THE COURT: Got it.

23 THE WITNESS: And they keep coming to us with these
24 sites. These are -- it's the property available that they're
25 purchasing in large tracts because there aren't large tracts

1 like that available, except these old mining sites.

2 And environmentally it's next to a -- the largest
3 private-owned airport in New Jersey, which is the Allaire
4 Airport, and it also is adjacent to Wall Speedway, which is a
5 stock car racing track that's -- if you literally -- if the
6 site is approved and built, our future residents will have to
7 put headphones on to watch TV on Saturday nights because they
8 would be right next to the race track -- the stock car -- the
9 stock car track.

10 BY MR. COLLINS:

11 Q. So in your capacity as a township committee member,
12 Mr. Clayton, would you vote to rezone the property for
13 residential as it's being proposed --

14 A. Absolutely not.

15 Q. Okay.

16 And it's based upon those reasons you just outlined?

17 A. And others, but --

18 Q. Would you like to share?

19 A. -- mostly -- I mean, traffic is obviously -- when you mix
20 and match traffic, you're putting things on state highways and
21 then putting residential -- you're asking children to ride
22 bicycles. You're asking people that are pedestrians. When
23 we're talking low income, my experience is some of these, you
24 know, working folks don't have cars and have to walk, and
25 there's no mass transit or Jersey Transit buses. There's

1 nothing there.

2 The only way you're going to get to the store or get to
3 school is in a car.

4 Q. Okay.

5 And the last property that's in Wall's plan is, I
6 believe, the Brisbane property?

7 A. Yes.

8 Q. Can you share with the Court what's being proposed there?

9 A. Sure. That was -- when I first was a police officer,
10 that was a site of a child treatment center. It was almost
11 like a -- you were sentenced there as a child to be treated.

12 So it's handled almost like a part of the Department of
13 Corrections. And that's been abandoned, and it's a large
14 wooded track that is along Allaire State Park. It actually is
15 adjoining Allaire State Park. That's owned by the state.

16 That's not -- I believe it's Department of Treasury. It's not
17 part of the state park.

18 And they approached us to sell it for -- because they
19 want to sell it for development to make money.

20 Q. Okay.

21 So essentially if that development is given, there's
22 open space adjoining a state park that would become
23 residential development?

24 A. That would be residential development, and it currently
25 doesn't have the sewers or water out to that site. That's

1 something that the infrastructure would have to be put into
2 place.

3 Q. And is that something the township would need to engage
4 with the property and --

5 A. It would have to be the developer that was chosen to do
6 that. That was in -- we were doing that in hopes of working
7 with the state only to, you know, be in conjunction with them,
8 I think.

9 Q. Okay.

10 So those are properties that Wall identified as being
11 options to comply with the statutes --

12 A. Yes.

13 Q. -- over its objections; is that fair to say?

14 A. Yes.

15 Q. Now, there are additionally properties that Wall finds --
16 that objectors have requested to be rezoned for affordable
17 housing as well; is that correct?

18 A. I believe there are eight objectors.

19 Q. Okay.

20 Let's talk about just a couple of those objections, the
21 first being the American Property site.

22 Are you familiar with that?

23 A. I am. American Property is actually the company that
24 built the Traditions at Wall that we're dealing with right now
25 with all the problems.

1 They proposed a site which is a commercially zoned
2 location, fully wooded, at Route 35 and Ocean Road. Route 35
3 is a two-lane, single-lane highway. It's one north, one
4 south, but it's heavily traveled. The traffic there is all
5 day up until the evening hours when it starts to go off.
6 Around 8, 9 o'clock you'll see the traffic low, and then 7:00
7 a.m., it fires -- it picks back up again. It's traffic
8 lights.

9 It's just -- it's a very difficult area to put
10 residential housing.

11 Q. What is it currently zoned?

12 A. Commercial.

13 Q. And what would be your preference in terms of zoning if
14 you had your -- if you didn't have the impact of the state
15 law?

16 A. My preference is open space and recreation, but the
17 preference of the town is commercial.

18 Q. Okay. All right.

19 How about the Genesis Atlantic Club objection?

20 A. Genesis is interesting. It's a -- it's a high-end
21 fitness facility. It also has pickleball courts, swimming --
22 swimming pools on different sites, soccer fields, softball
23 fields. It's -- it's a very popular site, and they came
24 forward and wanted to wrap townhomes around it.

25 Q. And what is your feeling on --

1 A. Well, it's on Atlantic Avenue, which is the same avenue I
2 talked about that is the Peddler's Village, which is the
3 roadway straight to the shore. It's a highly traveled area.
4 It goes to 34, which gets to 195, or the Garden State Parkway.

5 It is all industrial/commercial, not designed for
6 residential.

7 Q. Okay.

8 Last one. The Somerset property on Allenwood Road.
9 Can you describe that?

10 A. Yeah. That's an interesting piece of property. It's
11 another old sand mine that has very deep drop-offs that
12 borders the Garden State Parkway. The only way in and out is
13 off of Allenwood Road, which is between 138 and 34 in Wall, a
14 heavily traveled location, but.

15 It's -- it's in a different location that you literally
16 come up a hill. Then there's a turn. And at that turn is the
17 entrance to that piece of property. It's been abandoned for
18 years, and it hasn't been active.

19 I believe a few years ago there was an application to
20 do some type of -- some project there, and I'm sorry -- and I
21 know the fire prevention was against it because of the ingress
22 and egress of apparatus going in and out. The terrain is too
23 steep.

24 Q. Given your history as a police officer in town, can you
25 explain the significance of that ingress-egress issue?

1 A. Well, also -- so one of the things you do when you
2 investigate fatal motor vehicle accidents or serious injury
3 accidents is you're looking at site location, site views,
4 what's the distance, and it is literally on a hill and a turn.

5 So you have a limited view coming in and out of the
6 there because it's a heavily traveled road. It goes between
7 two state highways. It's something that I wouldn't be
8 comfortable putting residential there for people to pull in
9 and out.

10 Q. Okay.

11 So we talked about whole host of different properties.

12 As member of the township committee, would you vote to
13 rezone for residential as it's being proposed in the absence
14 of this state mandate?

15 A. Absolutely not.

16 Q. And overall in the aggregate, can you describe why you
17 wouldn't?

18 A. Well, just -- it's for public safety. I -- I look at
19 everything, because that was my life, through how does this
20 impact the community, impact the future residents.

21 I said to the one builder, This all sounds great until
22 you leave, and then they become my residents, and I'm
23 responsible for their well-being and safety, and I'm
24 responsible to make sure that -- that they have a quality of
25 life that we think we're giving them.

1 And I don't think any of that is taken into
2 consideration when these mandates are made.

3 Q. Okay.

4 Let's change gears a little bit.

5 THE COURT: Sorry.

6 So, Mr. Clayton, I just want to ask you, it sounds like
7 in a lot of these sites, one of the primary concerns is
8 security and safety of the residents who would ultimately live
9 in these areas.

10 THE WITNESS: It is, Your Honor.

11 THE COURT: So then why vote in support of it? So if
12 you're balancing that, which is the safety of the residents of
13 Wall Township, I mean, if I was balancing that against
14 anything, that would trump it, right?

15 THE WITNESS: Right.

16 THE COURT: So say you don't support this, and you
17 don't vote to make it a residential zone because it's
18 commercialized, then can you explain the consequences of that
19 and how you weigh that against the safety of these residents?

20 THE WITNESS: Sure. The consequences to me -- and,
21 Your Honor, I may be off on your question a little bit. So
22 the -- the sites we selected were the least impactful. So
23 anything with the objectors are more impactful, in my opinion,
24 than what -- the ones we selected, and the ones we selected I
25 wouldn't want to vote for for public safety.

1 THE COURT: Got it.

2 THE WITNESS: My biggest concern is we're putting
3 these houses -- and it's not my decision --

4 THE COURT: In places where people shouldn't live at
5 all.

6 THE WITNESS: You would not want your child to ride
7 their bike to school in these locations. The traffic is not
8 designed for these schools. And these are our residents --
9 these are our future residents. And I'm not against anything.
10 I just -- I think we need -- I think we're -- we're elected to
11 represent our people and our future residents as well. And
12 our representation to them is we try to maintain a certain
13 level of quality of life for them.

14 And I think that's the most important thing for an
15 elected official to do.

16 THE COURT: Just so I'm clear, though, say you don't
17 vote in favor of changing those zones to residential, and you
18 lose immunity, that would be the consequence, right?

19 THE WITNESS: That would be the consequence, and then
20 we --

21 THE COURT: And then what happens?

22 THE WITNESS: Then we'd be forced to negotiate with
23 any of those builders at the expense of the taxpayer, so --

24 THE COURT: You don't think it would change the --
25 you don't think it would change the circumstances at all if

1 you -- in other words, if you didn't support these sites,
2 that's not going to resolve the issue; it could be worse.

3 THE WITNESS: It could be -- it could be worse for
4 financial reasons and locations that are even worse.

5 THE COURT: Worse than the ones that you don't
6 approve of in the first place.

7 THE WITNESS: Right.

8 THE COURT: Okay. I just want to make sure I
9 understand the testimony.

10 MR. COLLINS: Absolutely. Thank you, Your Honor.

11 THE COURT: I don't have any additional questions.

12 MR. COLLINS: Okay. I just have a short conclusory
13 line of questions here for -- for Mr. Clayton.

14 BY MR. COLLINS:

15 Q. So, Mr. Clayton, you described the potential rezoning or
16 just now the -- if you don't rezone, the builder's remedy
17 aspect that you would face as a member of the township
18 committee.

19 How do you believe these impending decisions and your
20 vote to rezone the properties affect your reputation?

21 A. I don't think our residents put -- say, Well, it's the
22 state that did it; we understand you're put in a box. Our
23 residents say to us, What are you doing to our community? Why
24 are you doing this to us? You got to vote no, you know.

25 And what happens is when you come out and say "yes," it

1 doesn't matter if it's recorded or any of those things.

2 The residents, my neighbor, I always -- I always -- it
3 frustrates some of the administrators and stuff because my
4 thing is, How does this impact my neighbor across the street,
5 because that's the guy I have direct communication with, going
6 to my mailbox. How does that impact him?

7 And these are the people that they -- I work in the
8 school with 25 residents of Wall, and every single day when
9 I'm in that building, they talk to me about things going on in
10 our community. And when the housing comes up, it is a
11 continuous conversation.

12 And they say, You have to stop it; please stop it. We
13 can't have this. How -- what's the impact on -- on this? And
14 when you vote "yes," they look at you like, I can't believe
15 you're doing this to us.

16 MR. COLLINS: Thank you. I have nothing further,
17 Your Honor.

18 THE COURT: All right. Thank you.

19 Any cross?

20 MR. KLINGER-CHRISTIANSEN: Yes.

21 (CROSS-EXAMINATION BY MR. KLINGER-CHRISTIANSEN:)

22 Q. Mr. Clayton, how are you?

23 A. Good, sir. How are you?

24 Q. Good.

25 So Wall Township entered the Affordable Housing Dispute

1 Resolution Program; is that correct?

2 A. I believe so.

3 Q. And within that program, did -- Wall proceeded to
4 settlement discussions regarding its affordable housing
5 obligation number?

6 A. It's my understanding.

7 Q. And Wall was able to raise its concerns regarding its
8 obligations through the Affordable Housing Dispute Resolution
9 Program?

10 A. I hope they --

11 MR. COLLINS: Objection, Your Honor. The line of
12 questioning is seeking discussions about what are confidential
13 settlement negotiations under state law for the Affordable
14 Housing Dispute Resolution Program.

15 THE COURT: Is that confidential, what you're
16 addressing there?

17 MR. KLINGER-CHRISTIANSEN: I'm just asking whether
18 they had the opportunity to -- to bring --

19 MR. COLLINS: That's a different question.

20 THE COURT: That's a different question, so I'll
21 sustain the objection, but why don't you ask it that way
22 because --

23 MR. KLINGER-CHRISTIANSEN: Absolutely.

24 THE COURT: -- if they are confidential
25 communications, I don't want him testifying to it even if he

1 does know. Okay?

2 MR. KLINGER-CHRISTIANSEN: Of course.

3 BY MR. KLINGER-CHRISTIANSEN:

4 Q. You were given the opportunity to raise concerns through
5 the Affordable Housing -- Affordable Housing Dispute
6 Resolution Program, correct?

7 A. I believe so. I was not involved in the negotiations, so
8 I don't know exactly how it went. We had another committee
9 member involved, yes.

10 Q. And then for the second phase of the Affordable Housing
11 Dispute Resolution Program, Wall submitted a Housing Element
12 and Fair Share Plan --

13 A. Yes.

14 Q. -- is that correct?

15 And that proceeded to an initial settlement conference;
16 is that correct?

17 A. I believe so.

18 Q. And then it proceeded to a session or a hearing where --
19 after -- it proceeded to a session or a hearing through the
20 program?

21 A. I'm taking your word for it. I believe so. It's --
22 again, I wasn't the -- I wasn't the subcommittee. We do
23 things by subcommittee. I wasn't the subcommittee member in
24 charge of that end of it.

25 Q. Okay.

1 But it would be your understanding that Wall would have
2 the opportunity to raise these concerns through that hearing
3 process in the Affordable Housing Dispute Resolution Program,
4 correct?

5 A. Yes.

6 Q. And you mentioned that, you know, I guess you're faced
7 with a choice with how to, you know, vote on these -- how to
8 implement these zoning changes; is that correct? You have --
9 you have -- you have a choice on that, correct?

10 A. Well, I would have --

11 MR. COLLINS: Objection, Your Honor. Compound
12 question.

13 THE COURT: Hold on. Just wait because I -- can you
14 repeat -- I don't have a live feed in front of me because this
15 isn't a full trial.

16 So what's the question?

17 Don't answer it yet, sir.

18 BY MR. KLINGER-CHRISTIANSEN:

19 Q. You have a choice as to vote to meet the March 15th
20 deadline; is that correct?

21 THE COURT: I'll allow that question.

22 You want to repeat it? Or you can answer it now,
23 Mr. Clayton.

24 THE WITNESS: Do I have a choice to how to vote?
25 Yes, I have a choice.

1 BY MR. KLINGER-CHRISTIANSEN:

2 Q. And do you believe that your constituents are able to
3 understand the -- that choice that you have?

4 A. The choice of either we vote for it or we spend a lot of
5 money in litigation, and they -- they get it. Do I believe
6 they can understand that's their option?

7 Q. Yes.

8 A. I would hope they understand that. I'm not sure they
9 completely understand that.

10 MR. KLINGER-CHRISTIANSEN: Nothing further.

11 THE COURT: All right. Thank you.

12 Any redirect?

13 MR. COLLINS: No, Your Honor.

14 THE COURT: Sir, you're excused. Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You guys are doing well on time.

17 MR. COLLINS: Yes.

18 THE COURT: You want to call -- we only have one
19 witness left?

20 MR. COLLINS: I know Your Honor mentioned a break, so
21 would this be a good time to --

22 THE COURT: I just worry that everybody's been
23 sitting for too long. So do you want to take that break now?

24 MR. COLLINS: That's fine for me.

25 MR. KLINGER-CHRISTIANSEN: I would say the break

1 after this last witness, no? We can finish this up and then
2 do a break?

3 MR. COLLINS: I could use a bathroom break.

4 THE COURT: Well, I'm going to take a break then. If
5 someone needs for a break, I'm going to give it.

6 So why don't -- do you just want to take a 10-minute
7 break?

8 MR. COLLINS: That would be fine.

9 THE COURT: All right. Let's all just take a
10 10-minute break. You can all remain seated.

11 MR. COLLINS: I will note with the Court, the next
12 witness I don't expect to be anywhere near the 40 minutes we
13 allotted. I think it will be brief.

14 THE COURT: So we may not need a half-hour lunch
15 break. We may be able to complete all of this this morning?

16 MR. COLLINS: I don't know about that, Your Honor.

17 THE COURT: Well, let's do this. Let's take a
18 10-minute break, and then we can reassess.

19 MR. KLINGER-CHRISTIANSEN: I would like a break in
20 between the end of testimony and the closing.

21 THE COURT: We'll address that later, Counsel. I'm
22 not so sure I'm going to give you that break, but let's keep
23 things moving. But I'll take that request at that time, but
24 you guys should know what you want to say to me.

25 And this testimony is not new to the State. You guys

1 know what these guys are going to say, right?

2 MR. KLINGER-CHRISTIANSEN: Correct, Your Honor.

3 THE COURT: All right. But I'll take that under
4 advisement. We're in 10-minute recess.

5 THE DEPUTY COURT CLERK: All rise.

6 (A short recess occurred.)

7 THE DEPUTY COURT CLERK: All rise.

8 THE COURT: All right, folks. You may be seated.

9 Do we have anything we need to address, or are we going
10 to go with the fourth witness?

11 MR. COLLINS: I'm ready to go.

12 THE COURT: So what's the plan? You guys want to
13 break after the fourth witness?

14 MR. KLINGER-CHRISTIANSEN: Yes, Your Honor.

15 THE COURT: All right. Let's do this. We'll do the
16 fourth -- is there any objection to that?

17 MR. COLLINS: No.

18 THE COURT: Of course not.

19 We're going to do the fourth witness, break for
20 30 minutes. My staff needs to eat, too. And then we'll deal
21 with any closing remarks when you guys return.

22 MR. COLLINS: Sounds great.

23 THE COURT: All right. Let's do it.

24 MR. COLLINS: Thank you.

25 Your Honor, I'd like to call forward Brian Foster, who

1 is an individual plaintiff in the case.

2 THE COURT: Yep. Same routine, Mr. Foster, you'll be
3 sworn in.

4 (BRIAN FOSTER, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED AS
5 FOLLOWS:)

6 THE DEPUTY COURT CLERK: Please state your name and
7 the spelling of your last name.

8 THE WITNESS: Brian Foster, F-O-S-T-E-R.

9 THE COURT: Whenever you're ready.

10 (DIRECT EXAMINATION BY MR. COLLINS:)

11 Q. I guess we'll go with "good afternoon" now, Mr. Foster.

12 A. Good afternoon, Mr. Collins.

13 Q. All right. Could you please share with the Court where
14 you live?

15 A. Holmdel, New Jersey.

16 Q. And how long have you lived in Holmdel?

17 A. Just about 14 and a half years.

18 Q. Okay.

19 And do you currently serve as an elected official?

20 A. I am, yes.

21 Q. Okay.

22 In what capacity do you serve?

23 A. Currently the deputy mayor. I was the mayor in 2025.

24 Q. Okay.

25 And how long have you been on the township committee?

1 A. I began in, I believe it was, September of 2022.

2 Q. Okay.

3 And you were just recently appointed deputy mayor for
4 the 2026 year; is that right?

5 A. Yes, at our reorganization Monday night.

6 Q. And I believe there was testimony you might have heard
7 earlier about the mayor rotating in the township form of
8 government.

9 Is that equally applicable to your case?

10 A. It is, yes.

11 Q. Okay.

12 So you have a 1-5 voting power on the township's
13 business?

14 A. Yes. We vote on everything. We all have the same and
15 equal powers.

16 Q. Okay.

17 Can you explain how those powers are applicable to
18 zoning and compliance with New Jersey's affordable housing
19 mandates?

20 A. Sure. I mean, it's a 20 percent split where we vote in a
21 three -- you know, at least three that vote on it, carries it
22 in the affirmative, and we all choose and decide what's going
23 to happen.

24 Q. Okay.

25 What is your full-time job?

1 A. I own a mortgage company.

2 Q. Okay.

3 And where is that company located?

4 A. I am in Holmdel Township on Holmdel Township.

5 Q. Okay. All right. Very good.

6 In your capacity as deputy mayor, mayor last year, and
7 township committeeman, are you familiar with Holmdel's
8 affordable housing obligations?

9 A. I am, yes.

10 Q. I want to talk specifically about one of the two
11 properties that are in Holmdel's Housing Element and Fair
12 Share Plan, and I believe it's the Vonage property.

13 Are you familiar with that?

14 A. Very well.

15 Q. Can you describe it for the Court?

16 A. Sure. It's sitting on approximately 88 acres between
17 Holmdel Township and Route 520. It has an approximately
18 350,000 square foot commercial building that has not been
19 substantially occupied since COVID.

20 It was sold in October of 2023 for I believe \$17 and a
21 half million. I -- that's --

22 Q. Okay.

23 What is the zoning that's on the property back when it
24 was sold?

25 A. Commercial.

1 Q. Okay.

2 So residential was not allowed at that time?

3 A. Hundred percent correct.

4 Q. Okay.

5 Can you describe for us what action the township
6 committee took in response to that property being sold to a
7 third party that was obviously looking to do something with
8 it?

9 A. Well, we obviously knew what was coming up with the
10 fourth round of the obligations. And seeing as you're a new
11 owner -- which I believe they timed the purchase to coincide
12 with that because it sold, you know, below the assessed market
13 with just, you know, where it was and what the climate is
14 today as far as for a commercial space that large.

15 So we -- we obviously started negotiating with them,
16 knowing full well where we stood with the upcoming
17 obligations.

18 Q. So just to take a step back, you believe, given your
19 background as a mortgage -- as selling mortgages, you believe
20 the property sold in anticipation of the fourth round housing
21 mandates?

22 A. Absolutely.

23 Q. And so did the township engage with the developer?

24 A. The new owner you mean?

25 Q. Yes.

1 A. Yeah. They approached us knowing what was upcoming, and,
2 yeah, we engaged with them. I was not -- originally I was not
3 in leadership at that time, up until 2024 when I became deputy
4 mayor, but, yes, we absolutely engaged them.

5 Q. Okay.

6 And what was -- what was the result of that engagement
7 with the developer?

8 A. It was trying to wrestle with where we were going to be
9 with obligations, which we had no idea, and trying to make
10 sure that we limit the impact as much as possible to our
11 township, especially in that environmentally sensitive area.

12 Q. Okay.

13 Did the township and the developer ultimately come up
14 with an agreed development?

15 A. We did, a redevelopment plan, yes.

16 Q. And can you explain the contours of that?

17 A. Sure.

18 It's going to be a -- a senior housing facility. It's
19 going to be multiphases, four phases. There will be some
20 cottages. They are going to repurpose the building into
21 condominiums. There will be some assisted living as well as
22 some skilled nursing.

23 So it's the four different phases that are going to go
24 in there, approximately 400 units roughly.

25 Q. Okay.

1 And are there affordable housing credits that are
2 generated by the development?

3 A. Yes. We -- we tried to negotiate those as much as we
4 could knowing obviously the obligation was coming up.

5 Q. Okay.

6 And are those units -- are those credits contained
7 within what is ultimately proposed?

8 A. Yes.

9 Q. Okay.

10 Where is the redevelopment? Has it been approved by
11 the township committee?

12 A. Yes, it has.

13 Q. Did you vote for the redevelopment?

14 A. Regrettably, yes. Unfortunately, that's the way we see
15 it is you have to choose the worst of the bad options so, yes,
16 I did.

17 Q. Okay.

18 So when you say "regrettably," if the mandate were not
19 in place, would you have voted differently?

20 A. No.

21 Q. Would you have voted differently?

22 A. Yes. I would have certainly voted no. I'm sorry.

23 That's what I would have vote, unequivocally "no."

24 Q. Could you give us some reasons why you would have voted
25 differently?

1 A. Well, I mentioned it's in an environmentally sensitive
2 area. The swimming river reservoir is down there. South
3 Holmdel is an open space bucolic area. I'll start with those,
4 but obviously infrastructure, schools. I could get into a ton
5 more.

6 Q. Okay.

7 So there are multiple reasons why you would have not
8 voted for it but for this law?

9 A. Absolutely.

10 Q. Okay.

11 I want to talk about kind of your personal political
12 story. So you mentioned you were just sworn into a new
13 three-year term on the township committee; is that correct?

14 A. Yes.

15 Q. Okay.

16 So does that mean that you were up for reelection this
17 past year?

18 A. Yes, I was.

19 Q. Okay.

20 In Holmdel's form of government, when are the elections
21 that you participated in last year?

22 A. We're a partisan form of government, so we have a primary
23 in the spring, and then we have the general election on
24 election day.

25 Q. Okay.

1 Who did you run on the ticket -- on the ballot with?

2 A. Deputy Mayor Kimberly LaMountain.

3 Q. So she was your running mate?

4 A. Yeah.

5 Q. Okay.

6 In the primary, did you have any competition?

7 A. Yes, we did. Former mayor and committee person as well
8 as a former committee person as well.

9 Q. Okay.

10 So they ran against you in the Republican primary?

11 A. That's correct.

12 Q. Can you tell us what happened in that election?

13 A. Sure. It was -- it was a bloodbath. It was nothing
14 short of an abomination, in my opinion. I served the town.
15 Kim served the town. We try to do what we think is right and
16 best, and we were lambasted with signs, postings, social
17 media.

18 My family, my wife, my four kids, everybody had to
19 drive past these signs accusing Kim and I, mostly me because I
20 was the mayor, "Reject Foster and his low-income housing."

21 Q. Okay.

22 And what do you believe was being referenced when they
23 said "low-income housing"?

24 A. It was the Vonage development that we had to vote for the
25 redevelopment.

1 Q. So the redevelopment that you discussed earlier and voted
2 for was the genesis of the signs that were placed around town
3 against you?

4 A. Without question.

5 Q. Was there any other rhetoric exchanged in this campaign
6 regarding this redevelopment against you?

7 A. Yeah. I did -- it was thrown out there that I must have
8 an ownership stake in it or that my personal company was going
9 to benefit from it. I would say those are the two most common
10 ones, but, sure.

11 Q. Were those -- were those accusations untrue?

12 A. 100 percent.

13 Q. Okay.

14 I know you mentioned, but just to clear up for the
15 record, that your office is in proximity to this property.

16 Do you have any ownership interest in where your office
17 is located?

18 A. I do not. I've been renting this space for 12 years.
19 Ironically it's right across from the Vonage site.

20 Q. So again, the accusation against you that was publicly
21 made was untrue?

22 A. Yes.

23 Q. Okay. All right.

24 Can you take us through the general election and how
25 that went?

1 A. So Kim lost in the primary. She lost by 12 votes. I
2 lost -- I came in second by three votes. The primary was a
3 Democrat and then the Republican who won basically teaming up
4 against me with the exact same message about me trying to ruin
5 Holmdel. Signs again, signs on property which is about
6 200 feet -- 200 yards, excuse me, from my office clearly
7 saying "Reject Foster and his low-income housing."

8 Q. Okay.

9 You mentioned Kim. Can you reiterate -- so she lost
10 the primary, and someone else won the primary that wasn't your
11 running mate?

12 A. Correct.

13 Q. And why do you believe she did not win the primary?

14 A. The development. There's zero question.

15 Q. And so she voted affirmatively like you did for the
16 Vonage redevelopment?

17 A. She did. She served the town for over 24 years in
18 various capacities, a coach, religious instructor. I don't
19 know a better person, and she's well liked, but nobody
20 understands what we're here to discuss today. They only know
21 signs and rhetoric and -- and what they hear. Without
22 question that is why she lost.

23 Q. And I know you mentioned a close margin between you and
24 your opponent. Do you believe that would have been the case
25 but for this Vonage project?

1 A. Do I believe there would have been a close margin if the
2 Vonage project didn't exist? No, no. We would have blown
3 them out of the water.

4 Q. Okay. All right.

5 You had mentioned, fast-forwarding to the general
6 election, that these -- that these issues persisted. I guess
7 you're obviously here, but can you speak to the outcome of the
8 general election and kind of how it wrapped up?

9 A. So the general election, I won. I was the top
10 vote getter, I think because -- like I mentioned with Kim, in
11 this community since I moved in. I drove the ambulance for
12 seven years. I served for five years on the planning board.
13 I coached every one of our four children's sports. This is my
14 home.

15 Q. Okay.

16 So between the primary campaign and the general
17 election campaign, can you describe what you believe to be
18 kind of the professional or personal consequences of that?

19 A. There's no question that as far as my personal
20 representation as a business owner, as a mortgage owner that
21 people put out there that I was doing this for selfish reasons
22 and that I was doing it for solely my benefit when the bottom
23 line is we felt -- and this is the five of us.

24 And I don't want to speak for anybody else but myself.
25 We felt like there's kind of a gun to your head that you're

1 trying to decide between the worst-case scenarios that you
2 have in front of you, and -- my reputation has been tarnished.

3 It's been put all over social media, which I am not
4 always on, but I get texts daily throughout the election
5 campaign. I don't know the number of hundreds of calls and
6 texts that I receive, Hey, did you see this? Hey, did you see
7 that? Or they're calling you this now. They're saying that
8 you're doing that now. Daily. Multiple times.

9 Q. Okay.

10 Now, the Vonage property is one of the properties. Is
11 there another property that Holmdel has in its Affordable
12 Housing Dispute Resolution Program?

13 A. Yes.

14 Q. Can you discuss -- share with us where that property is
15 located?

16 A. Sure.

17 It's just east of route -- State Route 35 on the east
18 side of town in Holmdel.

19 Q. Okay.

20 And if the township is to comply with the law, what
21 needs to be done between now and the March 15th deadline?

22 A. Well, we're going to have to change the zoning to comply
23 with, you know, the mandates. That won't go over well at all.
24 We're going to have to buy the property.

25 Q. So does -- is the governing, the township committee,

1 going to need to take various votes in order to complete that
2 approval?

3 A. Yes.

4 Q. Do you anticipate opposition to those actions?

5 A. I -- I expect significant opposition to those actions,
6 yes.

7 Q. Okay.

8 And do you anticipate any reputational injury as a
9 result of those actions?

10 A. Without question.

11 Q. And why is that?

12 A. It's just because it's going to be the narrative again,
13 that I'm voting to ruin our town, to put affordable housing
14 where nobody wants it. That's just the case. It's -- the
15 infrastructure, the traffic, there's no way for people to get
16 around over there. It's -- it -- there's nothing positive
17 about it.

18 Q. Okay.

19 And can you explain why you wish to file this motion to
20 pause the March 15th deadline?

21 A. I -- I guess I'm holding out hope that I think common
22 sense will prevail, and we'll see that we need to improve on
23 this.

24 Q. How has the reputational injury that you discussed over
25 the past year related to where we are today?

1 A. It's all because of it.

2 Q. So can you explain that?

3 A. Yeah. I don't -- I'm not here to pat myself on the back.

4 I -- I hold myself to a high regard, and everything I do as
5 far as when I swore the oath for Holmdel is to do what's right
6 and what's best for Holmdel.

7 I've never asked for any other position except to drive
8 in the ambulance. Everything else I've been asked, and I've
9 been asked to move along in this -- in this -- in these roles,
10 and in every one, I have intended to do what is right and best
11 for Holmdel.

12 And when I look at what's happened to towns around us
13 and across the state by not complying with this, there is no
14 option.

15 Q. So based upon your electoral experience that you
16 discussed earlier, do you -- did you reach the conclusion
17 after that that you'll suffer further reputational harm if you
18 have to follow the March 15th deadline?

19 A. I did, but I took an oath, and I was taught and raised
20 you make a commitment, and you stick with it, and that's what
21 I'm doing.

22 Q. So essentially what you're saying is you're going to have
23 to follow through on rezoning the properties, but if this
24 Court grants this pause, that would obviously relieve you of
25 doing so, which would be your hope?

1 A. Yes.

2 Q. Okay.

3 MR. COLLINS: All right. Thank you, Your Honor.

4 Nothing further.

5 THE COURT: All right.

6 Mr. Klinger-Christiansen, any cross?

7 MR. KLINGER-CHRISTIANSEN: Briefly, Your Honor.

8 (CROSS-EXAMINATION BY MR. KLINGER-CHRISTIANSEN:)

9 Q. Mr. Foster, you have the ability to communicate with your
10 constituents; is that correct?

11 A. Absolutely.

12 Q. And I'm sure you pride yourself on clear communications
13 with your constituents, correct?

14 A. I do.

15 Q. And do you have social media to -- to communicate your
16 views and goals with your constituents?

17 A. I have -- I have pages. I'm not very active on them but,
18 yes, I do.

19 Q. And at public meetings, you're able to express your views
20 and opinions before any -- any vote that you take; is that
21 correct?

22 A. Absolutely.

23 Q. And Holmdel's public meetings are streamed on YouTube.
24 Are those live streamed?

25 A. Yes, they are.

1 Q. That's great. And then any such meetings would also be
2 noticed to the public; is that correct?

3 A. I believe that's the law, yes.

4 Q. And the public can come to those meetings; is that
5 correct?

6 A. Absolutely.

7 Q. And they can voice their concerns to you; is that
8 correct?

9 A. Yes.

10 Q. And you would have an opportunity to respond to them; is
11 that correct?

12 A. Yeah.

13 Q. You'd have an opportunity to explain why -- why you're
14 making a certain decision; is that correct?

15 A. Yes.

16 Q. And you -- I believe you mentioned before, you would
17 agree that the part of the job of an elected official is to
18 take -- is to make tough decisions; is that true?

19 A. I said decisions that are best for Holmdel.

20 Q. Noted.

21 But would you -- would you also agree then that part of
22 the job of an elected official or a mayor is to make difficult
23 decisions as well?

24 A. Sure.

25 Q. Okay.

1 Do you have faith that your constituency understands
2 the pressure that you're under?

3 A. No.

4 Q. You do not believe your constituency would understand the
5 choice you have?

6 A. Absolutely not.

7 MR. KLINGER-CHRISTIANSEN: Okay. Nothing further.

8 THE COURT: Thank you.

9 Any redirect?

10 MR. COLLINS: Nope.

11 THE COURT: Sir, you're excused. Thank you.

12 Anything else, Mr. Collins, at least with respect to
13 evidence being presented?

14 MR. COLLINS: No, Your Honor. That concludes our
15 evidentiary proofs.

16 THE COURT: All right. I know you all want to do
17 closing arguments. I know -- we have the FSHC as well, but do
18 you all want to take that break and then come back in a half
19 hour?

20 MR. KLINGER-CHRISTIANSEN: Yes. Yes, please,
21 Your Honor.

22 THE COURT: I'm not opposed to that. Mr. Collins, is
23 that all right by you?

24 MR. COLLINS: Yes, Your Honor.

25 THE COURT: Mr. Gordon, is that okay by you?

1 MR. GORDON: Yes, Your Honor.

2 THE COURT: All right. Everybody, go put some food
3 in your stomach. Why don't we -- it's pretty much 12:30, so
4 we'll just say 1 o'clock?

5 MR. COLLINS: Certainly, Your Honor.

6 THE COURT: I'll see you all at 1:00. You can remain
7 seated. I'll see you back at 1 o'clock.

8 (Luncheon recess was taken from 12:30 p.m. until 1:00
9 p.m.)

10 THE DEPUTY COURT CLERK: Please remain seated.

11 THE COURT: Thanks.

12 All right. Any kind of housekeeping we need to address
13 now that we're back on the record?

14 MR. COLLINS: Not from me, Your Honor.

15 THE COURT: All right. So I don't know the order.

16 Is it -- are you guys going first, Mr. Collins? Do you guys
17 have a proposed order?

18 MR. COLLINS: I believe, Your Honor, we were going to
19 start defendant's and then Fair Share Housing, and we'd get a
20 short reply at the end.

21 THE COURT: All right.

22 MR. COLLINS: Is that fair?

23 THE COURT: I think that's fine.

24 MR. COLLINS: Okay.

25 THE COURT: So you're going to begin, then they're

1 going to --

2 MR. COLLINS: I realize it's a bit unorthodox. It
3 actually started because initially I had only calendared very
4 short opening statements, and it was going to be that order.

5 But now realizing that we had full allotment at the
6 beginning, I defer to the Court on whether you'd rather hear
7 from defendants and then us at the end with a longer period
8 than originally allotted.

9 THE COURT: Oh, I see. You're not -- you're not
10 speaking first and then going to reply. You're not going to
11 speak twice.

12 MR. COLLINS: Well, that's what's currently
13 calendared, but if the Court is concerned about that approach,
14 I wouldn't object to defendants going, and then we go at the
15 end.

16 THE COURT: That's fine. I think that makes more
17 sense. And then where is Fair Housing going to be?

18 MR. COLLINS: After defendants, between us, I guess,
19 sandwiched.

20 THE COURT: All right. So let me hear from
21 Mr. Klinger-Christiansen first. Then you want to go or you
22 want --

23 MR. COLLINS: Then Mr. Gordon.

24 THE COURT: And then you'll go at the end.

25 MR. COLLINS: Exactly.

1 THE COURT: I think that makes the most sense.

2 MR. COLLINS: Thank you.

3 THE COURT: Yep.

4 MR. KLINGER-CHRISTIANSEN: Good afternoon,
5 Your Honor.

6 THE COURT: Good afternoon.

7 MR. KLINGER-CHRISTIANSEN: May it please the Court,
8 as movants acknowledge, the standard governing their claims is
9 rational basis, and what we have heard today is many different
10 policy disagreements and arguments with the challenged
11 statute. However, policy disagreements do not render a
12 statute irrational.

13 The key -- the key standard is that any reasonably
14 conceivable set of facts not -- the legislature's choice is
15 not subject to courtroom fact-finding, and the proper reason
16 for the legislative choice is not to be questioned, even if
17 it -- even if it wasn't the actual choice. That is what the
18 case law says.

19 And in that regard, that really undercuts plaintiff's
20 argument regarding what, you know, the legislature may or may
21 not have thought they were doing based on, you know, a dissent
22 of Justice Hoens and Justice Patterson.

23 This is the exact type of conjectural path of reasoning
24 that rational basis is designed -- it cuts that out entirely.

25 And in that same regard, the -- the expert report and

1 expert testimony is again -- it's policy disagreements.

2 What the expert provided is that there is a lot of
3 affordable housing in our urban centers. That is what he
4 testified to, and under those facts, it is entirely reasonable
5 for the legislature to say, We are making the choice that we
6 want affordable housing options across the state to provide
7 for the free mobility of citizens, which is exactly stated in
8 the -- in the law's purpose at 52:27D-302.

9 So, again, this is just -- these are policy
10 disagreements, and they haven't pointed to anything that
11 suggests the law lacks a rational basis.

12 And, again, as we have pointed out, not only does this
13 allow for the free mobility of citizens, but it is also -- the
14 QUAM exception is -- it complements the legislature's choice
15 to impose really high present need obligations on urban
16 municipalities, and present need, it's an -- it's an important
17 obligation regarding existing affordable housing that is in
18 need of rehabilitation.

19 And, you know, again their expert report doesn't even
20 address present need. It only focuses on prospective needs.
21 I mean, again, we are really outside of the -- the field of
22 what a rational decision here is.

23 So, you know, again, that's really the key issue.

24 I also wanted to just go to the irreparable harm piece
25 again, and I wanted to clarify a few things.

1 So, number one, the concerns of the municipalities
2 themselves regarding proper zoning placement, honestly policy
3 concerns about their zoning -- about zoning or safety
4 concerns, these are all things that can be -- that are -- can
5 be raised in the program.

6 And not to mention even if they -- even if a
7 municipality does not like what the program determines as
8 determined by a Mount Laurel judge, they can appeal that
9 through the state courts as well.

10 Furthermore, if -- if immunity were to be -- were to be
11 lost, that only means that a municipality would be sued. It
12 doesn't mean -- and it does not mean an immediate loss of
13 zoning powers, as some of the testimony has suggested. It
14 means that a lawsuit could be filed, and it won't just be
15 subject to a motion to dismiss on immunity grounds.

16 The municipalities would be able to make a
17 full-throated defense as to why they believe that their zoning
18 shouldn't be changed or why they disagree with a particular
19 policy. And, you know, a safety concern, that would be a
20 reasonable defense to a builder's remedy suit.

21 So, again, it's -- we're arguing irreparable harm that,
22 you know -- at this stage where, you know, really those types
23 of concerns can be addressed through the processes already in
24 place.

25 Regarding the individual movant's reputational

1 concerns, again, that's speculative. I mean, the testimony
2 here today is that a mayor had a tough time getting
3 re-elected. He still won reelection.

4 I mean, I don't think that, you know, having to win a
5 hard-fought election constitutes irreparable harm. And I
6 understand tough decisions have to be made, you know. Our
7 elected officials, they have to make, you know, these close
8 calls, and they have to follow -- they have to follow the law.

9 But that -- that they disagree with the law or that
10 they're afraid that, you know, folks will disagree with their
11 choice to follow the law, that's not an irreparable harm that
12 can support invalidating a statute that's designed to provide
13 affordable housing for people across the state.

14 And so it really is not even a cognizable injury, let
15 alone -- and even if we consider it to be a harm, it just does
16 not outweigh the public interest against a stay.

17 I would also -- so then I would just note as to the
18 standing piece as well, which is tied to the irreparable harm
19 piece, is that, you know, our point here is that these
20 individual movants, they haven't -- they would need to
21 establish an actual cognizable injury. They haven't done that
22 here. That's -- that's our point.

23 So we're not saying these individual movants could
24 never challenge the Act in some way. What we're saying here
25 is there are claims here -- they haven't met their burden of

1 showing a cognizable injury.

2 As for the municipal plaintiffs, all they said is they
3 can't bring Equal Protection Clause claims --

4 THE COURT: Well, the municipal plaintiffs are not a
5 part of this hearing, right? So let's focus just on the --

6 MR. KLINGER-CHRISTIANSEN: I was just trying to
7 answer your question earlier before about who --

8 THE COURT: Okay. Fair enough.

9 MR. KLINGER-CHRISTIANSEN: Understood.

10 And so what we have here, it's a speculative injury
11 that, you know, it just -- it can't support. And again, we're
12 talking about rational basis and, you know, again, a policy
13 argument, it's just not enough to -- to pass that.

14 And, again, I still just have to note, these arguments
15 were already decided by a state judge, and I -- I understand
16 you're not bound by that decision. I happen to think it's a
17 very good decision.

18 THE COURT: Well, just remind me then since you're
19 saying that, were the individual plaintiffs a part of that
20 litigation?

21 MR. KLINGER-CHRISTIANSEN: They were not.

22 THE COURT: Well, wait. You can't tell me that these
23 issues have all been resolved if there were no individual
24 plaintiffs in that case. They were only municipalities as
25 part of that case; is that fair to say?

1 MR. KLINGER-CHRISTIANSEN: That is fair to say.

2 THE COURT: All right. Well, then you've got to put
3 a caveat or an asterisk on that, right? We have many
4 different plaintiffs here. At least half the case deals with
5 individuals.

6 MR. KLINGER-CHRISTIANSEN: Of course. And I'm
7 happy to put -- I'm happy to provide that caveat as well.

8 What I would note is -- although one of the
9 municipalities that are represented by the movants were
10 parties to that action, so the -- the municipalities that they
11 actually represented were in that.

12 THE COURT: I got that.

13 MR. KLINGER-CHRISTIANSEN: Number two, again, it's
14 just that the equitable principles around the Entire
15 Controversy Doctrine of -- of avoiding, like, forum shopping
16 and gamesmanship. I mean, if you can just keep adding
17 plaintiffs that are extremely closely related to that group of
18 plaintiffs that are all part of the same coalition challenging
19 the same thing with an identity of interest represented by the
20 same counsel, I mean, that does --

21 THE COURT: I mean, look, I get your point. But do
22 you see a difference between just adding some additional
23 municipalities versus a completely different set of plaintiffs
24 who are individuals rather than entities, like townships?

25 It's a little bit different, right? I think your

1 argument is stronger if Mr. Collins comes in and says, Hey, I
2 know this was addressed in the state court, but we added the
3 township of "blank" to our case, and so this is a very
4 different case. I might be, like, putting him on the hot
5 seat.

6 But this is a little bit different. No?

7 MR. KLINGER-CHRISTIANSEN: I mean, I recognize that.
8 But, I mean, look, if it was a completely different set of
9 towns all together that, you know -- it just -- to me it does
10 seem what we have here is the same coalition of towns, adding
11 people on, adding municipalities on, and then, you know, they
12 already received a ruling that said they were unlikely to
13 succeed --

14 THE COURT: Well, Mr. Collins has to answer that in
15 his closing, right?

16 MR. KLINGER-CHRISTIANSEN: Of course.

17 THE COURT: He might have gotten a decision he didn't
18 like, and now he's back and he thinks I'm going to be more --
19 I don't know, maybe I'll be more merciful. I don't know. But
20 I'll ask him about that when he gets up.

21 MR. KLINGER-CHRISTIANSEN: I understand. I just
22 wanted to, you know, reiterate that important point.

23 THE COURT: Fair enough.

24 MR. KLINGER-CHRISTIANSEN: But again, you know, we
25 would just note that it's rational basis. I mean, what we've

1 heard here today was, you know, albeit good faith policy
2 arguments perhaps, but that's not enough to overturn a duly
3 enacted statute.

4 Happy to answer any other questions.

5 THE COURT: No, I appreciate it, and I appreciate
6 your summary.

7 MR. KLINGER-CHRISTIANSEN: All right. Thank you,
8 Your Honor.

9 THE COURT: All right. Thank you, and thank you for
10 your time.

11 Mr. Gordon?

12 MR. GORDON: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. GORDON: Thank you for your accomodation of
15 allowing my brief remarks today. I'm mindful of what
16 Your Honor said at the start. I will provide --

17 THE COURT: Yeah. And by the way, what I meant
18 was -- you know, like I said, there's usually no opposition
19 filed when someone is looking to request amicus. Here we do
20 have one, and when I looked at it, I think there are issues
21 that you're going to have to address before I resolve that.

22 So that doesn't mean I'm not going to grant your
23 request, but there are some concerns that have been raised.

24 So I think, you know, it would be prudent for you to
25 reply. That's all I meant by that, Mr. Gordon. I'm happy to

1 hear from you today.

2 And like I said, if I ultimately grant your request,
3 I'm going to take what you've told me today under advisement.

4 If I ultimately deny it, then it's out the window.

5 MR. GORDON: We have responses, and we will be
6 providing them, Your Honor.

7 THE COURT: I appreciate that.

8 MR. GORDON: Thank you.

9 I will focus mainly on responding to some of the
10 questions Your Honor has raised throughout today.

11 First -- and actually just to reinforce what
12 Mr. Klinger-Christiansen said about standing. I think the
13 issue here is that the individuals' assertions of standing
14 derive from their roles with municipalities.

15 And, you know, I've been -- I've been representing Fair
16 Housing for over 20 years. I've been in federal court on
17 other things. I've never been in federal court in a -- on a
18 case in which municipalities were suing the state over zoning,
19 and there's a reason for that.

20 It's that, you know, the state under -- under
21 U.S. Supreme Court precedent has very broad discretion as to
22 how it arranges these local municipalities. And even in our
23 circuit, in Delaware, as Your Honor probably knows, these
24 arrangements are completely differently handled. The very
25 local municipal officials don't actually have power over

1 zoning in most cases. They're done at the county level.

2 And so I think that there's a fundamental problem here
3 that it's -- it is fundamentally the state's decision about
4 how to apportion these roles. And, you know, maybe if there
5 was the Sierra Club or something like that, but the individual
6 plaintiffs are only coming here because of their roles with
7 the entities in the county and state.

8 And, you know, it's interesting more broadly in terms
9 of the role of this federalism in this. And these issues of
10 affordability obviously have captivated national attention
11 recently, and federal policymakers always talk about how
12 little they can do because of the state law focus of these
13 issues.

14 And one of the broad responses I have, the testimony
15 today, is that there is, of course, a flipside to the
16 preferences for senior housing that Mayor Ghassali testified
17 to where commercial development -- that we heard from both the
18 mayors of Wall and Holmdel is the massive housing undersupply
19 that we have and people who cannot be housed or pay too much
20 for housing.

21 I also wanted to go to Your Honor's mention about
22 Mannington, while not I think either a plaintiff, as a
23 municipality, or as an individual in this. Your Honor
24 correctly did note that they are a plaintiff in the broader
25 case, and they chose not to be in the program, and just to

1 give a broader context.

2 So there's over -- there's all kind of different things
3 going on. Some of those towns have filed state court
4 declaratory judgment actions. Some of those towns have
5 been -- there have been builder's remedies filed. Towns have
6 gone into the program and dropped out.

7 So I just think there's also a threshold question
8 that is not factually true.

9 THE COURT: Multiple towns have dropped out, you
10 said?

11 MR. GORDON: A small number of towns that have filed
12 an issue with Bergen have dropped out, maybe -- maybe four or
13 five.

14 THE COURT: Okay.

15 MR. GORDON: But that's a legally cognizable choice,
16 too. And so I just think there's a -- there's a basic problem
17 here about the voluntariness of this, that there's an under --
18 there is another set of choices here that municipalities have
19 and that one of the plaintiffs in this motion has exercised.

20 And I think that's a basic problem with the case.

21 THE COURT: Can you give me a sense, though, just so
22 I have some better background on the Fair Share Housing Center
23 and your clients and what their role is in all of this?

24 MR. GORDON: Yes.

25 THE COURT: I understand the position that you're

1 taking, and I'm listening to you as you speak, but I need to
2 get a better sense of who is your client, and what's the -- do
3 they have a dog in this fight? I know it's a terrible
4 expression, but that's the one I'm using for today.

5 MR. GORDON: Yeah. Your Honor -- Your Honor, I'm
6 happy to do that. Fair Housing Center was founded by the
7 local NAACP branches and legal services lawyers who brought
8 the Mount Laurel case.

9 We were established in 1975 by the people who brought
10 the case who correctly recognized that just because there was
11 a major Supreme Court decision, the issues were going to
12 persist.

13 And so we're a nonprofit. We have a board primarily
14 made up of local community representatives, and we've been
15 designated as an interested party in these matters by the
16 New Jersey Supreme Court in its Mount Laurel IV decision based
17 on the status, and frankly based on the statute, any party has
18 the ability to participate --

19 THE COURT: Was there a reason why you didn't -- your
20 folks -- you guys didn't move to intervene in this case?

21 MR. GORDON: As opposed to the amicus?

22 THE COURT: Correct.

23 MR. GORDON: You know, I am -- I am mindful of the
24 more limited federal standards for intervention compared to
25 our state court, and I felt that it was preferable, and we

1 wouldn't necessarily have as much of an issue in terms of
2 being amicus.

3 I do think we could have met the state intervention
4 centers with the -- I mean --

5 THE COURT: Were you guys involved in the state
6 litigation?

7 MR. GORDON: We were a party in the state litigation.

8 THE COURT: You were.

9 MR. GORDON: We were granted intervention and --

10 THE COURT: And you thought I would deny it, that
11 we're tougher over here, we don't let you guys come in?

12 MR. GORDON: Well --

13 THE COURT: I guess the fact that I told you to reply
14 to an opposition to your amicus tells you how tough we are.
15 But all right. That's fair.

16 But your reasoning is that you decided that you would
17 take the position of filing your request to submit an amicus
18 brief rather than move to intervene into litigation.

19 MR. GORDON: Yes. And certainly, Your Honor, of
20 course -- I mean, to the degree sort of similarly, like
21 Mr. Klinger-Christiansen said, if this somehow goes further,
22 we certainly would reserve the right to make an application at
23 this time.

24 I mean, frankly, you know, I think for the reason that
25 I'm about to -- to elucidate on further, my hope is that is

1 not the case, but that is the application we have before the
2 Court at this point.

3 THE COURT: All right. Understood.

4 MR. GORDON: But, yes, Judge Lougy did grant us
5 intervention and found in doing so that we had an interest
6 distinct based on that history and that parties -- and that
7 specific status designated by the state Supreme Court.

8 THE COURT: When you moved to intervene in the state
9 litigation, though, you did it at the outset, correct? Did
10 you do it before any injunction was requested?

11 MR. GORDON: I don't remember, Your Honor. And I can
12 provide that.

13 THE COURT: Only because I know you said, like, you
14 reserve your right, but I'm just saying you haven't moved to
15 intervene yet.

16 And so I'm curious to know the timing of when you moved
17 to intervene in the state litigation, because it's not like
18 I'm going to wait a year, and then you guys move to intervene,
19 and I'm going to entertain that, right?

20 I mean, this is -- the litigation has begun.

21 MR. GORDON: Yes.

22 THE COURT: You're physically here at the PI hearing.

23 MR. GORDON: Yes.

24 THE COURT: You guys have not moved to intervene.

25 So -- but, again, I understand you're saying you reserve your

1 right. Those are your words, not mine.

2 MR. GORDON: I understand.

3 THE COURT: Fair enough.

4 MR. GORDON: Thank you.

5 I also wanted to talk about the state court litigation,
6 not necessarily for the -- you know, I get Your Honor's point
7 that it's not necessarily -- it's not binding on you.

8 THE COURT: You can address it. I just want to make
9 sure, because if I -- if this drum gets beaten too much with
10 me, I will remind you, but I'm happy for you to give me your
11 take on the decision that Judge Lougy made.

12 I have the decision. I'll read it myself, but if you
13 want to highlight anything from there that you think would be
14 persuasive to this Court, you're absolutely open to doing
15 that, just like counsel for the State was doing earlier.

16 I just want to be careful that something that happened
17 in state court is not binding on my court. And so --

18 MR. GORDON: Yeah, and I actually -- and I heard you
19 on that, Your Honor, and actually what I was planning on
20 addressing is -- I took out that part of my remarks, and what
21 I plan on addressing instead is just the timing of the state
22 court and federal court proceeding.

23 THE COURT: That's fair.

24 MR. GORDON: I just wanted to be crystal clear. The
25 issue raised about the qualified urban aid municipality was

1 determined through the program in a series of proceedings
2 between January and March 2024.

3 It is not something that is directly being determined
4 as a matter of law at this stage in the process. And so the
5 fact -- the same report that was submitted from Dr. Angelides
6 in the state court proceeding was appropriately submitted at
7 that point. It was submitted prior to the start of the
8 process to determine Fair Share obligations.

9 That process has been over for nearly a year. And so I
10 think that this is really something in which --

11 THE COURT: This is the 11th hour. They're coming
12 now to me saying, Please put a stop on this, even though we've
13 lost in state litigation, and this has been ongoing for some
14 time now.

15 MR. GORDON: Yes, Your Honor. I think it's also
16 apples and oranges and that the thing that they're asking to
17 be stopped -- I mean, they can't ask to stop the process of
18 the program determining the numbers because --

19 THE COURT: They just want to slow down the deadline.

20 MR. GORDON: They want to slow down the deadline, but
21 that deadline doesn't really -- isn't really quite proximate
22 to the issue of the numbers. It's sort of attenuated -- the
23 determination on the numbers already was heard a year ago.

24 And so if they wanted to -- and as Your Honor raised
25 early on, the March 15th deadline is in the statute, so if

1 they wanted to say at any point during the number
2 determination process, This was a federal Equal Protection
3 violation; we want it to be stayed, all of those facts were
4 known here. And so this motion is highly untimely.

5 And, in fact, there's been massive reliance on many
6 parties not in this courtroom -- in fact, there are some
7 parties observing it in the courtroom today -- on the
8 obligations that were determined through that process from
9 January through March.

10 In June 2025, 423 municipalities filed Fair Share plans
11 based on the obligations as determined. There's been over a
12 thousand mediation conferences before the program. There's
13 been over 200 settlements reached in the program.

14 So I think we might be in a very different position if
15 we were at the point, frankly, in the timing that was before
16 Judge Lougy, you know, I think we would be in a very different
17 position, but so much has happened since that point, and
18 there's been tremendous reliance.

19 And the reality is we're talking about -- I think
20 that's probably been the testimony today, you know,
21 stop-and-go projects. And if that's what they wanted to do,
22 they should have done that in -- a year ago.

23 And I would ask for the reputational harm -- if it's
24 even cognizable -- what is the reputational harm for the
25 hundreds of elected officials not at the table today who have

1 taken votes, who have told their constituents, We're complying
2 with these deadlines; we're entering into this, and we're
3 moving forward?

4 And then to hear that some smaller group gets a pass
5 because they haven't been filing their application. I mean,
6 this is a process, that the vast majority of municipalities in
7 New Jersey have participated in in good faith and have spent
8 countless hours.

9 And this would essentially be an out from that process
10 that no doubt would lead to more applications perhaps.

11 THE COURT: Look, I don't think anyone can speak for
12 the folks who didn't file a lawsuit, right? I mean, that's --
13 that's their respective decision whether they file a challenge
14 to the statute or not, but I understand your point.

15 MR. GORDON: I think it goes to the equities,
16 Your Honor.

17 THE COURT: That's fair.

18 MR. GORDON: And before I shift to the substantive
19 issue of urban aid, the last point I'd make, I guess, to
20 another one of Your Honor's question is there are options.
21 It's not that what they call -- you know, and I don't adopt
22 this term myself -- the high-density housing. That is not the
23 only option to comply with the statutes.

24 There are many municipalities not here today that are
25 partnering with Habitat for Humanity. There's -- I mean,

1 there's actually several Habitat for Humanity leaders in the
2 audience, faith-based institutions, preserving existing
3 affordable housing.

4 There are many options municipalities have. And, you
5 know, I don't know if this is relevant at all, but just -- I
6 think it is partly to the -- perhaps to the -- the
7 redressability instead of remedies.

8 There are many, many different ways housing adopt --
9 address their obligations that's in the statute. It's not
10 only this one way. And, yes, and Mr. Klinger-Christiansen
11 correctly said, a builder's remedy immunity is not like
12 automatic win, you get to build tomorrow. It's a court
13 action. There's affirmative defenses to that court action.
14 Those affirmative defenses include physical safety and
15 security. It includes environmental suitability. And they do
16 get denied.

17 And so I think the idea that the harm is that a builder
18 is going to immediately build the next day is just not true
19 under the law.

20 Okay. Now, to the urban aid issue. Your Honor asked
21 if any of this was considered by the legislature. As somebody
22 who is at basically every legislative hearing on this: Yes.

23 The testimony of the mayors today sounded a lot like a
24 lot of testimony from the legislature, but there were a lot of
25 other voices, too. There were urban mayors who testified as

1 to the overconcentration of affordable housing in their
2 municipalities.

3 There were a wide range of advocates. There were even
4 some suburban mayors who supported this as a better way to do
5 this.

6 And so I think that goes to this rational basis
7 standard. This is not some new issue. This is a set of
8 things that was considered by the legislature.

9 THE COURT: Has there been any evidence presented? I
10 mean, look, my only concern, Mr. Gordon, is you're making a
11 lot of arguments where you're addressing facts that you have
12 not presented or I don't think has been presented before this
13 Court. So this is just argument, right? I mean, the fact
14 that I allow you all to speak is a privilege. I don't need
15 any of these arguments because none of it's evidence, but I
16 did want to hear kind of what your take is. Is there any
17 evidence that has been presented by either of the parties in
18 this litigation that supports what you're saying to me?
19 Because otherwise I can't consider that.

20 MR. GORDON: I think there's evidence in terms of the
21 history of the passage of the legislation in the briefing.
22 Exactly -- exactly whether there's evidence as to who
23 testified as to what, Your Honor --

24 THE COURT: Yeah. I just want to be mindful that I
25 can only consider the evidence that's been presented before

1 this Court.

2 MR. GORDON: Yeah.

3 THE COURT: I can't consider anything outside the
4 four corners of that.

5 MR. GORDON: Yep. So, you know, and I think -- I
6 mean, under rational basis review, overturning this balance --
7 that legislature balancing of different views requires more
8 than what we have today.

9 As to Dr. Angelides, I guess I'll go to the deck
10 metaphor. I mean, what's really happening here is that he's
11 talking about one deck, and there's another deck, which is
12 present need. They are both of constitutional magnitude.
13 They are addressed in the same statute, and the legislature
14 assigned very high present need obligations to urban aid
15 municipalities.

16 And they, in fact, chose to assign more of those
17 obligations to urban aid municipalities than they did in the
18 '80s and '90s. And so really that, you know, I think the lack
19 of consideration of the -- that part of the statute -- which
20 it's in the same section of the statute -- is just a key
21 fallacy to their argument. I mean, Jersey City has a present
22 need of 3,700 units. That is 15 times the total aid need
23 asked to address. Is it only an equal production violation if
24 it's 20 times, 30 times?

25 I mean, it really -- what is going on here is a partial

1 presentation of the law and facts. And, in fact, what the
2 legislature did is assigned very substantial burdens of this
3 other need to these municipalities and, in fact, changed the
4 law to assign greater burdens to the municipalities than in
5 the '80s and '90s. And so I just think that's fundamentally
6 the problem with their argument.

7 The other thing as to the discussion about LIHTC, and
8 you asked some questions about the other -- the developments.
9 You know, the fair housing in Mount Laurel is not all housing
10 policies for New Jersey. There are other statutes. There are
11 other programs. The loan taxpayer program is a federally
12 authorized program governed under federal law. You know,
13 there is no principle of law that says that all of housing has
14 to be part of this statute. We go to the deck metaphor,
15 there's a whole other deck over here, which is a set of other
16 housing.

17 The very purpose of this law and the findings of the
18 legislature's credulity of the law is that this law is about
19 balancing provision of housing with urban areas with
20 affordability.

21 There are other laws and other state and federal
22 programs that address other needs, but that's what this law is
23 about. And I think that there's just a fundamental problem
24 with testimony in suggesting that this law is about counting
25 all the housing needs in a certain way. It's about a limited

1 set of objectives. It's about a set of objectives that
2 applies in two categories of need to both urban and suburban
3 municipalities, and that's why I don't think the report
4 proves -- I mean, what it's set out to prove let alone is a
5 basis for invalidating a basis for need.

6 The last point I wanted to make is that another purpose
7 that's in the law at Section 302 N is about making this
8 process operate more expeditiously.

9 And, you know, this was in part in reference -- and by
10 Dr. Angelides' testimony, you know, it was actually a 41-day
11 trial, and I was lead counsel for Fair Housing Center before
12 Judge Jacobson.

13 And what the legislature was saying -- and they say
14 this in that section -- is we want to stop this. We don't
15 want 41-day trials over these methodologies. We want to
16 simplify this. We want to refine this. We want this to
17 operate more expeditiously.

18 That itself is a rational basis, too. There are
19 massive, massive expert disagreements, and the legislature
20 said, We don't want this to become about all of the experts
21 over everything. We're going to basically follow the outcome
22 of a 41-day trial and encode that in statute. And that itself
23 is a rational basis as well.

24 Your Honor, unless you have any questions, it's been a
25 privilege to appear before you today. In sum, these issues

1 put -- when they go well beyond limited scope for a rational
2 basis review and the injunction should be denied.

3 THE COURT: All right. I appreciate it, Mr. Gordon.
4 I appreciate your time.

5 MR. GORDON: Thank you.

6 THE COURT: Mr. Collins, you've got to do me a favor.
7 You've got to give me a minute. I have to address an
8 unrelated matter, and it needs my attention immediately.

9 MR. COLLINS: Understood, Your Honor.

10 THE COURT: So just give me a moment.

11 (Brief pause.)

12 THE COURT: Thanks, Mr. Collins. I appreciate your
13 patience.

14 MR. COLLINS: Certainly, Your Honor.

15 THE COURT: Are you prepared now? By the way, you
16 are going to have to address this. I don't like being in
17 second place at anything.

18 So the arguments have been made that you guys have gone
19 to state court. Now you're trying to get a second bite at the
20 apple with me.

21 I presume you're going to address that in your closing.
22 I haven't --

23 MR. COLLINS: I'm happy to.

24 THE COURT: I haven't hit that issue too much with
25 you at the outset, but I think you should close with at least

1 addressing the elephant in the room, that things didn't go
2 your way, at least that's the argument, and you guys are
3 hoping for a second bite with me.

4 Because, you know, this Court doesn't like -- that's
5 not good news if that's how I end up feeling about it, right?

6 MR. COLLINS: I'm happy to address that head-on,
7 Your Honor, Judge Lougy's decision, who I have a lot of
8 respect for and I actually worked with when I was in the
9 governor's office. He was in the AG's office.

10 On that issue, as a threshold matter as you mentioned
11 earlier, the individual movants in this motion were not party
12 to that litigation, so we're really just talking about the
13 document, in my mind, as an academic exercise with unrelated
14 parties that is nothing more than potentially persuasive
15 authority on this Court.

16 If you look at Judge Lougy's opinion, it becomes clear
17 that with all respect to Judge Lougy, he was bound by not only
18 the federal precedent and interpreting the Equal Protection
19 Clause but also the binding precedent upon his court by the
20 New Jersey Supreme Court, and specifically the Mount Laurel
21 Doctrine, and its complicated -- to put it politely -- nature.

22 And if you read the opinion, Judge Lougy expressly says
23 that there's rationality because the legislature acted in a
24 manner as constrained by the Mount Laurel constitutional
25 obligation.

1 So essentially the state Superior Court affirmed the
2 legislature because it found that the legislature was trying
3 to follow the state Supreme Court that binds Judge Lougy.

4 The movants have availed themselves of federal court
5 because they allege that they are injured under the federal
6 constitution.

7 This Court is not bound by the New Jersey Supreme Court
8 and has an entirely different lens to look at this particular
9 legal issue than Judge Lougy had before him. He was
10 constrained to look at the Mount Laurel Doctrine and to apply
11 it to the best of his abilities because he's bound by it.

12 We, in our complaint, take direct issue with the Mount
13 Laurel Doctrine and its application here. So I think that's
14 really the distinction.

15 THE COURT: So are you -- but let's go back to the
16 beginning, then.

17 MR. COLLINS: Sure.

18 THE COURT: Are you challenging the doctrine, or are
19 you challenging the statute, or are you challenging both
20 because you can't separate the two? The legislation, for
21 better or worse, is derived out of that Mount Laurel Doctrine.

22 MR. COLLINS: Your Honor, I think the allegation in
23 the complaint is that there is irrationality in the law
24 because the law expressly cites the purpose of it being in
25 compliance with the Mount Laurel Doctrine, and that a fair

1 reading of the Mount Laurel Doctrine does not support the
2 action that the legislature took.

3 And we think that's specifically referenced by Justices
4 Hoens and Patterson, who essentially warned that this case law
5 is so complicated that the legislature doesn't know what to
6 do, so they're going to keep doing the same thing over and
7 over again because we're not telling them what would pass
8 state constitutional muster.

9 And as set forth in the complaint, plaintiffs contend
10 that as a result of that, the legislature created a
11 classification that fails federal constitutional muster, and
12 that's why we're in this court, in federal court because,
13 respectfully, our argument is that the state system has failed
14 between the state judiciary, the state legislature, and the
15 executive that signed this law.

16 They've created a federally unconstitutional
17 classification, and my clients submit that they have the right
18 to bring that before this Court and that if the Court puts any
19 review on Judge Lougy's decision, it has to be reviewed in
20 that context and recognizing that this Court is in no way
21 bound by the New Jersey Supreme Court precedent that is so
22 problematic and is really the gravamen of plaintiffs' rational
23 basis claim.

24 Does that address your --

25 THE COURT: It does. It does.

1 MR. COLLIS: Thank you.

2 Your Honor, if I could just take a step back, I think
3 it's important for us to -- you know, we had a day here with
4 four witnesses to kind of look at what's in the motion record.
5 And, again, this is an application for a preliminary
6 injunction. This is not a final decision on the merits. This
7 is simply a request to press pause.

8 And the evidence in the record is essentially
9 uncontested because the State has not provided any proofs
10 of its own. There's -- there's allegations that were made and
11 have been all over the papers by the State about the injury,
12 the irreparable harm being hypothetical or speculative.

13 And I would submit that the witnesses today
14 demonstrated that there's absolutely nothing hypothetical or
15 speculative about the injury that they stand to suffer if they
16 continue and either implement --

17 THE COURT: Remind me, though. What are the two
18 injuries? Well, one is reputational harm, right? You've had
19 witnesses testify that, you know, the constituents and their
20 reputations in the community and as elected officials will be
21 harmed if they are forced to, you know, vote in favor of all
22 this.

23 But remind me, Mr. Collins --

24 MR. COLLINS: Yes.

25 THE COURT: -- there's a second -- there's a second

1 argument that has to deal with the deadline, no? What's the
2 second irreparable harm?

3 MR. COLLINS: Well, Your Honor, I think there's been
4 a juxtaposition of sorts between the Article III standing
5 argument and the irreparable harm argument, which has been
6 made by the parties interchangeably. I probably myself would
7 include myself in that --

8 THE COURT: Focus me just on the irreparable harm.
9 What is the irreparable harm to these individual plaintiffs,
10 whether it's one thing or two things or 12 things? I just
11 want to make sure I can appreciate it.

12 MR. COLLINS: Sure. Absolutely.

13 The essence of it, Your Honor, is that the way
14 New Jersey's statutory scheme and through the case law stands,
15 they have to either rezone properties, that you heard today
16 they believe are not suitable for high-density housing,
17 against their judgment. They have to take a vote on a -- on a
18 dais after hearing public scorn, because it's a bad idea, and
19 vote against their will and their constituents' will in order
20 to comply with this law and maintain the status quo, which is
21 immunity, and allows them to continue to exercise the zoning
22 powers delegated to them by the New Jersey legislature.

23 Or -- and this goes to the purported optionality and
24 why they view it, if anything, at best as a Hobson's choice.
25 If they do nothing, the state law provides that on March 15th,

1 a developer can immediately file a builder's remedy lawsuit in
2 state Superior Court. And under the state superior -- and
3 under the state appellate division's case that we cited,
4 there's a time of application rule analog that applies.

5 If the developer makes that application March 15th,
6 they have the entitlement of making that application with a
7 noncompliant municipality, and that would allow them to get
8 the zoning that the town otherwise wasn't voting for.

9 So essentially the elected officials who you heard from
10 today are constrained to either vote in a way that's against
11 their conscience, against their constituents' interest, or
12 they do nothing and they end up with an even worse outcome
13 that they're going to get blamed for, which is high-density
14 housing potentially in areas they believe are even worse than
15 the ones that they're left to consider right now.

16 And you heard from Mayor Foster. This isn't
17 hypothetical. It's very discrete. His running mate lost
18 reelection over this exact issue. I'm the municipal attorney
19 in that community, and I'm well aware of the facts that were
20 there. And --

21 THE COURT: And there's case law. I haven't examined
22 the cases that you all have cited to, but you're saying
23 there's case law out there that recognizes that this type of
24 harm, you know, from an elected official who believes that
25 this might harm their reelection, that that is a cognizable

1 injury, in fact, for purposes of an injunction. You're saying
2 there is case law to support that.

3 MR. COLLINS: I think, Your Honor --

4 THE COURT: In this context or in some other context?

5 MR. COLLINS: Your Honor, I think there's a very
6 parallel context. There's a case out of California that we
7 cite in our brief, and I think the reputational standing
8 establishes Article III standing, and I think that also
9 dovetails into the irreparable harm that's presented.

10 These folks don't want to sully their reputation. They
11 all are -- go through the trouble of getting elected to their
12 local governing bodies. They want to make decisions that they
13 think are in the best interest of their communities.

14 They're vested with the zoning power by the New Jersey
15 legislature, and they think they're getting on the governing
16 body to exercise that zoning power following their conscience,
17 but essentially they're being told they're not able to.

18 By March 15th, they either have to vote against their
19 conscience, or they suffer a result that could be even worse
20 for them and their community. That's the Hobson's choice that
21 we say is the essence of the irreparable harm.

22 What I want to tab along that is this notion that's
23 been raised, and I think the Court was concerned about it at
24 the open about the timing of this -- of this motion.

25 You've already heard from the State earlier accusing

1 movants of having speculative injury. That injury relative to
2 the March 15th deadline was entirely speculative, and we would
3 concede speculative back when we were before Judge Lougy --
4 the municipalities before Judge Lougy at the January 31st
5 deadline.

6 So at that point in time, the municipalities had the
7 option of either entering into the alternative dispute
8 resolution -- the Affordable Housing Dispute Resolution
9 Program or not. They chose to do so because that was the only
10 legal means of maintaining the status quo.

11 It wasn't the same irreparable harm because they could
12 complete that filing, and it started this over-one-year
13 process that remains ongoing, keeping the status quo, which is
14 immunity.

15 Now we're facing a further deadline in that statute
16 where that status quo is no longer possible. It's either
17 rezoning or loss of immunity and imposed zoning by the state
18 Superior Court.

19 So it's an entirely different posture. And over the
20 course of the last year, as you heard from the witnesses'
21 testimony, they went through an iterative process. They
22 worked with developers as the law prescribed to try and figure
23 out if there was a way they could rezone their communities in
24 a manner that they would be able to, in good conscience,
25 support.

1 They met with developers and told them, We want single
2 family homes in our community. Can we come up with a plan
3 that would allow that? They said, No, we want townhomes. You
4 heard that from Mayor Ghassali.

5 You heard from Mayor Clayton that he wanted to put --
6 he would prefer to put it in certain areas and that the
7 developers all wanted it in areas that he thinks are
8 unsuitable, such as commercial zones.

9 They went through that process over the course of the
10 last year, and Mayor Foster went through a primary election in
11 June and a general election in November, and this motion was
12 filed thereafter.

13 These are folks that went through the process last year
14 and concluded at a certain point that, You know what? It's no
15 longer speculative that I'm going to suffer harm relative to
16 this March 15th deadline. It's now upon me. I realize the
17 contours of what is going to be required based upon the
18 proceedings before this program, which in many instances are
19 actually still ongoing at this point in time.

20 And so it's -- I would argue it's disingenuous for the
21 State to argue that the irreparable harm was speculative in
22 one sense, but that we are too late in filing this motion in
23 another sense.

24 Now, Your Honor, I want to just address a couple other
25 points that were made by my adversaries.

1 With respect to the claim that -- on rational basis
2 review. I think the record is very clear and that this Court
3 on this motion has to realize that Dr. Angelides testified on
4 an expert basis that we are in an entirely different world
5 than we were in back in 1984 when the Urban Aid Classification
6 was first adopted by Judge Serpentelli.

7 And rational basis review, as we cite in the case law,
8 is not toothless, and in fact, it has requirements. If it
9 didn't have requirements, there would be no purpose in the
10 federal courts enforcing it.

11 There needs to be a plausible policy reason, and it
12 can't be arbitrary and capricious. The testimony demonstrates
13 that the plausibility and the policy you hear from my
14 adversaries just isn't there.

15 The legislature did not say, We're adopting the
16 Urban Aid Classification because we think it's a great idea.
17 Quite candidly, I would submit that if they did that, it never
18 would have passed the legislature because the public wouldn't
19 have supported it.

20 Instead, they rinsed and repeated what the New Jersey
21 courts decided 40 years prior when Ronald Reagan was president
22 and used the same exact classification today, even though it
23 is an entirely different world in New Jersey, as the expert
24 testified.

25 That is the essence of rational basis review. When

1 something is arbitrary and capricious, state action, the
2 federal courts are tasked under our constitution to redress
3 the harms that are presented by such a classification.

4 You heard earlier, Your Honor, from my adversaries
5 about the legislature, quote, having a choice to impose
6 different classifications, including present need.

7 And plaintiffs and movants would submit that the
8 legislature didn't articulate that they had a choice, and they
9 made a policy decision to adopt the Urban Aid Classification.

10 Again, they said, We're going to implement the Mount
11 Laurel Doctrine, so it's incumbent upon this Court to do a
12 rational basis review, to look at what the legislature said
13 they were doing.

14 And as we discussed at the open, a fair reading of the
15 court cases doesn't support what the legislature was doing.

16 There's a 1984 classification that was mirrored, and that
17 classification in that state court opinion was based upon the
18 then present circumstances, which the expert testifying today
19 has already dispelled no longer exists today.

20 And in 2013, the state Supreme Court in my mind
21 attempted to distance itself from that opinion by holding it
22 no longer had any state constitutional dimension and advising
23 the legislature it was free to pursue other paths that would
24 be within the bounds of the state constitution.

25 For the legislature to respond to that jurisprudence

1 and to adopt the same classification from 1984 defies
2 rationality.

3 Your Honor, I want to briefly address the Entire
4 Controversy Doctrine issue that was raised. As a threshold
5 matter, the movants in this case were not a party to the state
6 court case. It's not a party preclusion doctrine, so it
7 doesn't apply to them.

8 But even if were considered in the aggregate --

9 THE COURT: There's no final decision, though.

10 MR. COLLINS: Exactly. The federal courts have been
11 very clear that there needs to be a final decision on the
12 merits and that's, you know -- the comedy between two separate
13 courts follows the Full Faith and Credit clause, and that
14 argument is just unavailing on that.

15 Looking at my notes here, Your Honor.

16 So I heard from Mr. Gordon that this -- this is being
17 brought in the 11th hour. Actually, no. The federal court
18 filing was first filed much earlier --

19 THE COURT: I might have said that. I don't even
20 know -- I don't know if Mr. Gordon said it. I might have said
21 the 11th hour, but either way, address it.

22 MR. COLLINS: Yeah. So it bears noting that the
23 federal court filing was filed much earlier in 2025.

24 The essence of things here is that movants were acting
25 judiciously and did not file for a preliminary injunction when

1 it would have been too early. Under the federal case law, to
2 get an injunction, harm must be likely and not just possibly.
3 Injury must be more than possible, speculative, or remote.

4 At the time when they filed the complaint, I am
5 confident that the folks sitting to my left would have been --
6 if we filed for a preliminary injunction at that time would
7 have been raising, Well, it's speculative. There are
8 conditions precedent. The municipality has to submit a
9 compliant plan by June 30th. You have to get through the
10 objections and the ensuing period. The plan then needs to be
11 approved by the Affordable Housing Dispute Resolution Program,
12 which is actually ongoing at this time, and only then are you
13 forced to implement the March 15th --

14 THE COURT: I get it. I understand. It's a
15 Catch-22.

16 MR. COLLINS: Absolutely.

17 THE COURT: You're damned if you do, and you're
18 damned if you don't.

19 MR. COLLINS: Absolutely, Your Honor.

20 THE COURT: I understand and I appreciate the
21 explanation. I will take it under advisement.

22 MR. COLLINS: And the last thing I'll just say on
23 that, Your Honor, is my clients tried to move at the
24 appropriate time to not jam this Court up either. We filed it
25 before Thanksgiving, which gave four months prior to the

1 deadline.

2 But it was at a period where there were enough facts
3 that it became clear that this irreparable harm -- over the
4 course of the program's compliance -- you heard it today --
5 it's been an ongoing iterative process.

6 My clients concluded that they attained those harms,
7 and I would mention that, you know, there are certifications
8 from many other local elected movants here that I would also
9 ask the Court to provide consideration to as well as they are
10 in the motion record.

11 The last thing, Your Honor, I would just mention is
12 that to the extent you heard any comments about alternatives
13 to high density or what have you, the issue presented is that
14 the municipalities are obligated to satisfy a number, and the
15 number is part of a crude classification that doesn't take
16 into account the constraints that they face, whether or not
17 they have the -- the concerns raised by the parties you heard
18 from today are not taken into account as part of all that
19 process.

20 And so that's the crudeness of the classification, and
21 you heard earlier about how you can work with different
22 nonprofit groups to achieve housing. Well, that's fine, but
23 it still goes to an overall -- there is a number that's being
24 imposed, and if this classification isn't valid in Montvale
25 and Bergen County, that community is being subjected to four

1 times the obligation that is pro rata share statistically.

2 We go back to that analogy, the cards at the table, the
3 cards are all being sent down to one end of the table where
4 there's a whole bunch of smaller suburban municipalities.

5 The big municipalities on the right that are developing
6 the -- engaging in the development that leads to the
7 population growth, they're creating the cards, and I think
8 it's a great thing that the cities are doing well. You see a
9 Jersey City or a Hoboken, large apartment buildings going up,
10 very much thriving. That's a wonderful thing for New Jersey.
11 It's a wonderful thing for those communities.

12 What this law does, though, is it has them creating
13 those cards, and then they're all getting sent down to the
14 other end of the table.

15 And when Judge Serpentelli rendered his 1984 AMG
16 decision, that made sense because those urban municipalities
17 weren't growing. They were actually losing population. So
18 there were no cards being created. It's really just a
19 classification issue where Judge Serpentelli could never have
20 anticipated cards being created by the urban aid
21 municipalities because that wasn't the condition present at
22 that point in time.

23 Now that's present, but the legislature just didn't see
24 fit to reconcile the sea change that occurred in New Jersey
25 because of this jurisprudential issue that it faces with the

1 New Jersey Supreme Court.

2 For -- from the perspective of movants and plaintiffs,
3 they're lucky that the federal constitution protects the
4 individuals from a classification that lacks a rational basis.

5 And the last thing I'll leave with you is that, you
6 know, there is case law from the United States Supreme Court
7 that a classification can, in fact, be constitutional at one
8 point in time, and that the passage of time and the change of
9 circumstances could render it unconstitutional at a later
10 time.

11 Admittedly it would be under the 15th Amendment, not
12 the 14th Amendment, but I would cite to *Shelby County*,
13 570 U.S. 529. And we would submit that's the same exact thing
14 that happened here.

15 There was, you know -- if this were litigated in 1984,
16 there was a rational basis for the Urban Aid Classification.
17 There just isn't today.

18 THE COURT: I appreciate that, Mr. Collins.

19 MR. COLLINS: Thank you, Your Honor.

20 THE COURT: Anything further from any counsel? We're
21 not going to go back into sur-responses and all this, but is
22 there anything further before I adjourn for the day?

23 I know it's been a few hours, and I appreciate all your
24 time.

25 Is there anything further from you, Mr. Collins?

1 MR. COLLINS: I don't have anything, Your Honor.

2 THE COURT: From the State?

3 MR. KLINGER-CHRISTIANSEN: No, Your Honor.

4 MR. COLLINS: Actually, Your Honor, I think you noted
5 in our teleconference. I would just note as we set forth in
6 our moving papers, my clients contend the irreparable harm in
7 earnest commences February 1st, which is the --

8 THE COURT: You're basically saying that -- even
9 though I'm not going to rule today, and I need to reserve and
10 review this transcript, but you're asking what, that I need to
11 make a decision no later than February 1st; otherwise it's
12 moot?

13 MR. COLLINS: I wouldn't say it's moot, Your Honor,
14 but I just want to put on the record that we contend that the
15 deadline isn't specifically March 15th because if the parties
16 follow the compliance path, which has always been their
17 desire, they have to introduce ordinances that then need to go
18 to their local planning board and then come back to their
19 governing body for public hearing and final adoption.

20 THE COURT: So February 1 is really the deadline for
21 purposes of what we're addressing here, what you're asking is,
22 Well, Judge, I need the opinion no later than February 1?

23 MR. COLLINS: That's our practical position, yes.

24 THE COURT: All right. I'm going to take that under
25 advisement. I appreciate that.

1 Look, when you seek an injunction, you should at least
2 get a decision before the irreparable harm may be met, right?
3 And so I will take that under advisement.

4 Is there anything further -- do you guys even agree
5 with that timeline? I don't think it's relevant, but is there
6 anything further from the State or from the Housing Center?

7 MR. KLINGER-CHRISTIANSEN: No, Your Honor.

8 THE COURT: No.

9 MR. GORDON: Do you want me to comment?

10 THE COURT: Do you have a comment? You can just
11 comment from there.

12 MR. GORDON: I have a very brief comment. I think
13 that that is correct in terms of if you assume the
14 introduction would be the harm. I mean, if you -- the
15 adoption wouldn't happen until after referral.

16 THE COURT: Understood. All right.

17 MR. GORDON: I just make that technical point,
18 Your Honor.

19 THE COURT: All right. Well, then, let me -- Mr.
20 Collins, anything further?

21 MR. COLLINS: Your Honor, I think the reputational
22 issue is present at introduction. These governing body
23 members don't want to act on these --

24 THE COURT: No, no. I got the argument. I meant
25 anything further outside of this one issue?

1 MR. COLLINS: No.

2 THE COURT: All right. I'm going to take it under
3 advisement. I appreciate the time frame, and I'm sensitive to
4 it. So let me tell you that.

5 Before I adjourn, I don't want to keep you here another
6 minute, but I do want to thank counsel. One, I really
7 appreciate your professionalism and your preparedness today.

8 These are complex issues. They're interesting issues,
9 and I have to take it under advisement, and it was helpful to
10 have all of you in the courtroom today, with the caveat,
11 Mr. Gordon, that I have not yet considered whether I will
12 accept your statements and consider them, but I am going to
13 review that in short time, your request for amicus.

14 But there's a reply that needs to be filed, but absent
15 that, I did want to thank you all for your time, and we're
16 adjourned. Be well.

17 THE DEPUTY COURT CLERK: All rise.

18 (Court concludes at 1:51 p.m.)

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1 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

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4 I certify that the foregoing is a correct transcript from
5 the record of proceedings in the above-entitled matter.

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11 /S/ Megan McKay-Soule, RDR, CRR January 22, 2026

12 Court Reporter Date

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BOROUGH OF MONTVALE, *et al.*,

Plaintiffs,

v.

MATTHEW J. PLATKIN, *et al.*,

Defendants.

Civil Action No. 25-3220 (ZNQ) (JBD)

OPINION

QURAISHI, District Judge

THIS MATTER comes before the Court upon: (1) a Motion to Dismiss filed by the New Jersey Attorney General, the Administrative Director of the Courts, and members of the Affordable Housing Dispute Resolution Program (collectively, “Defendants”) (ECF No. 16); (2) a Motion for a Preliminary Injunction filed by Plaintiffs, various municipalities and their elected representatives (ECF No. 19); and (3) a Motion for Leave to Appear Amicus Curiae by Fair Share Housing Center (ECF No. 33). This matter has been fully briefed (ECF Nos. 27, 29, 36, 37, 45, and 48) and the Court heard oral argument on Plaintiffs’ Motion for a Preliminary Injunction on January 7, 2026 (ECF No. 46). For the reasons set forth below, the Court will **GRANT** Defendants’ Motion to Dismiss and **DENY AS MOOT** Plaintiffs’ Motion for a Preliminary Injunction and FSHC’s Motion for Leave to Appear Amicus Curiae.

I. BACKGROUND AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On April 24, 2025, Plaintiffs filed a complaint in federal court against Defendants alleging a violation of the Equal Protection Clause under the Fourteenth Amendment (Count I) and a violation of the Equal Protection Rights under the New Jersey Constitution (Count II). (ECF No. 1.) Plaintiffs subsequently filed the First Amended Complaint on August 15, 2025, which added additional defendants. (ECF No. 12.) On October 2, 2025, Plaintiffs filed the Second Amended Complaint, which included additional plaintiffs. (“SAC,” ECF No. 15.) Thereafter, Plaintiffs dismissed the state-law equal protection claim against Defendants. (ECF No. 28.)

Defendants filed a Motion to Dismiss the SAC on November 3, 2025. (“MTD Mot.,” ECF No. 16.) On November 21, 2025, Plaintiffs filed a Motion for a Preliminary Injunction. (“PI Mot.,” ECF No. 19.) After these motions had been fully briefed (ECF Nos. 27, 29, 36, 37), the Court held a hearing on Plaintiffs’ Motion for a Preliminary Injunction on January 7, 2026. (ECF No. 46.)

B. BACKGROUND

1. The Mount Laurel Doctrine

Before the Court can discuss the legislation at issue in this litigation, it is necessary to provide a brief history of the *Mount Laurel* doctrine that was established by the New Jersey Supreme Court in *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I)*, 67 N.J. 151 (1975). There, the New Jersey Supreme Court held that in New Jersey a municipality must, “by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income.” *Id.* at 187. As further explained:

[Municipalities] must permit multifamily housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and, in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like, to meet the full panoply of these needs. Certainly when a municipality zones for industry and commerce for local tax benefit purposes, it without question must zone to permit adequate housing within the means of the employees involved in such uses. (If planned unit developments are authorized, one would assume that each must include a reasonable amount of low and moderate income housing in its residential ‘mix,’ unless opportunity for such housing has already been realistically provided for elsewhere in the municipality.) The amount of land removed from residential use by allocation to industrial and commercial purposes must be reasonably related to the present and future potential for such purposes. In other words, such municipalities must zone primarily for the living welfare of people and not for the benefit of the local tax rate.

Id. This decision by the New Jersey Supreme Court came to be known as the *Mount Laurel* doctrine.

Eight years later Mount Laurel returned to the New Jersey Supreme Court. *See S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II)*, 92 N.J. 158 (1983). Despite the New Jersey Supreme Court’s clear mandate, Mount Laurel township “remain[ed] afflicted with a blatantly exclusionary ordinance,” which “at its core is true to nothing but Mount Laurel’s determination to exclude the poor.” *Id.* at 198. But Mount Laurel was not alone in its disregard of the New Jersey Supreme Court’s opinion. *See id.* at 199. To ensure municipal compliance with their *Mount Laurel* obligations, the New Jersey Supreme Court created a judicial remedy that allowed developers to sue municipalities for the opportunity to build higher-density housing than would otherwise be allowed. *See id.* at 279. As explained in *Mount Laurel II*:

We hold that where a developer succeeds in *Mount Laurel* litigation and proposes a project providing a substantial amount of lower income housing, a builder’s remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns, the plaintiff’s proposed project is clearly contrary to sound land use planning. We emphasize that the

builder's remedy should not be denied solely because the municipality prefers some other location for lower income housing, even if it is in fact a better site. Nor is it essential that considerable funds be invested or that the litigation be intensive.

Id. at 279–80.¹

Despite this judicial remedy, the New Jersey Supreme Court invited the Legislature to enter the field:

No one has challenged the *Mount Laurel* doctrine on these appeals. Nevertheless, a brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest, and we agree, that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We recognize the social and economic controversy (and its political consequences) that has resulted in relatively little legislative action in this field. We understand the enormous difficulty of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate better than we can, legislation that might completely remove this Court from those controversies. But enforcement of constitutional rights cannot await a supporting political consensus. So while we have always preferred legislative to judicial action in this field, we shall continue—until the Legislature acts—to do our best to uphold the constitutional obligation that underlies the *Mount Laurel* doctrine. That is our duty. We may not build houses, but we do enforce the Constitution.

Id. at 212–13.

To effectuate the *Mount Laurel II* judicial remedy, designated New Jersey Superior Court judges “adopted methodologies to determine need and to allocate the need on a regional basis.” *In re Adoption of N.J.A.C. 5:94 & 5:95 By N.J. Council on Affordable Hous.*, 390 N.J. Super. 1, 17 (N.J. Super. Ct. App. Div. 2007). In *AMG Realty Co. v. Twp. of Warren*, Judge Serpentelli set

¹ In New Jersey, a builders remedy is a “court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.” N.J. Stat. Ann. 52:27D-304(o).

forth such a methodology, which among other things, established an exclusion for urban aid municipalities. 207 N.J. Super. 388, 442 (N.J. Super. Ct. App. Div. 1984). As he explained:

[S]elected urban aid municipalities do not have an obligation to handle more than the regional average of substandard housing and, therefore, they have no regional obligation, because realism requires a recognition that their present circumstances render it impossible for them to absorb more than the regional average.

* * *

This formula excludes selected 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 and because they generally lack significant vacant land. Non-growth municipalities obviously cannot contribute to a count of growth acreage.

Id. at 442–43.

In response to *Mount Laurel II*, the New Jersey Legislature enacted the Fair Housing Act (“FHA”). As explained in *Hills Development Co. v. Bernards Twp. in Somerset Cnty.*, “[t]he act creates an administrative agency (the Council on Affordable Housing) with power to define housing regions within the state and the regional need for low and moderate income housing, along with the power to promulgate criteria and guidelines to enable municipalities within each region to determine their fair share of that regional need.” 103 N.J. 1, 19–20 (1986). Each municipality may petition the Council on Affordable Housing (“COAH”) for a “substantive certification,” which must contain “an analysis demonstrating that it will provide . . . a realistic opportunity [for its fair share of low and moderate income housing], and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate provisions for low and moderate income housing.” *Id.* at 33 (alterations in original). If there are any objections to the substantive certification, the matter is referred to an Administrative Law Judge (the exhaustion-of-administrative-remedies requirement). *See id.* at 34. Ultimately, if the substantive certification

is granted, a municipality's housing element and ordinances are presumptively valid in any exclusionary zoning litigation for a finite period. *See id.* at 33–35. The COAH is also required to periodically adjust the present and prospective need for low- and moderate-income housing in New Jersey and each region. *See id.* at 33. The urban aid exception was also continued through regulations promulgated by COAH. *See In re Mun. of Princeton*, 480 N.J. Super. 70, 150 (N.J. Super. Ct. Law Div. 2018).

Over the ensuing years, litigation continued over the COAH's rules. *See In re Six Month Extension of N.J.A.C. 5:91-1, et seq.*, 372 N.J. Super. 61 (N.J. Super. Ct. App. Div. 2004). Ultimately, however, COAH failed to adopt updated regulations for calculating housing obligations. *See In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. N.J. Council on Affordable Housing (Mount Laurel IV)*, 221 N.J. 1, 5 (2015). The New Jersey Supreme Court then effectively dissolved the FHA's exhaustion-of-administrative-remedies requirement and allowed, in the first instance, challenges in the courts to resolve municipalities' constitutional obligations under *Mount Laurel*. *See id.* at 20 (“[W]e hold that the courts may resume their role as the forum of first instance for evaluating municipal compliance with *Mount Laurel* obligations, as hereinafter directed.”). Importantly, however, the New Jersey Supreme Court noted that its decision “does not prevent either COAH or the Legislature from taking steps to restore a viable administrative remedy that towns can use in satisfaction of their constitutional obligation.” *Id.* at 34.

2. The March 20, 2024 FHA

On March 20, 2024, the New Jersey Legislature amended the FHA (the “2024 FHA”). *See* N.J. Stat. Ann. T. 52, Subt. 3, Ch. 27D. The 2024 FHA recognized that the court-led system that had developed since *Mount Laurel IV* could be operated more expeditiously through appropriate policies, including ones that provide more clarity on the calculation of municipal housing obligations. *See* N.J. Stat. Ann. 52:27D-302(n). The 2024 FHA modified the calculation of

municipal and regional obligations and abolished COAH. *See id.* at -304.1(a), -304.3. Relevant to this suit, the 2024 FHA also stated that a municipality would have immunity from exclusionary zoning litigation if the municipality complied with various deadlines for determining present and prospective need housing obligations and adopted a housing element and fair share plan to meet those obligations. *See id.* at -304.1(b). By January 31, 2025, participating municipalities had to adopt and file resolutions calculating their housing obligations. *See id.* at -304.1(f)(1)(b). By June 30, 2025, participating municipalities had to adopt a housing element and fair share plan and propose drafts of the appropriate zoning and other ordinances and resolutions to implement their present and prospective housing obligations. *See id.* -304.1(f)(2)(a). By March 15, 2026, the municipalities must adopt the proposed ordinances and resolutions. *See id.* -304.1(f)(2)(c). Interested parties may challenge the municipalities' proposals and housing calculations through the Affordable Housing Dispute Resolution Program (the "Program"). *See id.* at -313.2(a). Municipalities that comply with these deadlines retain immunity from exclusionary zoning litigation, and their ordinances and housing plans are entitled to a presumption of validity. *See id.* at -304.1(b).

A municipality has other options. It may decline to participate in this process and instead choose to seek a judgment of repose by filing for a declaratory judgment. *See id.* at -304(f)(1)(b). Alternatively, a municipality may do nothing and instead wait to defend itself from any potential litigation. *See id.* at -304(f)(1)(b). Of course, a municipality that declines to participate in this new process also forsakes the presumption of validity and immunity from exclusionary zoning litigation.

At issue in this litigation is the qualified urban aid municipality ("QUAM") exception that was first promulgated by Judge Serpentelli in *AMG Realty Co.* and later adopted by the COAH.

In the 2024 FHA, the Legislature codified the QUAM exception, which exempts a QUAM from responsibility for its region's prospective need obligations. *See id.* -304.3(c)(1). According to Plaintiffs, this classification (i.e., QUAM vs. non-QUAM) lacks any rational basis and therefore violates the Equal Protection Clause. (SAC ¶¶ 122–33.) Specifically, Plaintiffs allege that when the QUAM exception was promulgated in *AMG Realty Co.*, “many exempt municipalities were in decline as evinced by large losses in population and households that began in the mid-twentieth century and carried through to the 1990s.” (SAC ¶ 91.) Today, however, Plaintiffs allege that many of these exempt municipalities are growing and comprise half of the state’s growth in New Jersey households. (*Id.* ¶ 92.) In other words, “[t]he economic conditions that supported the judicial establishment of an urban aid exception in 1983 no longer exist.” (*Id.* ¶ 97.) Accordingly, Plaintiffs argue that the 2024 FHA statutory establishment of the QUAM exception was arbitrary, capricious, and unreasonable, in violation of the Equal Protection Clause of the Fourteenth Amendment. (*Id.* ¶ 102.)

II. SUBJECT MATTER JURISDICTION

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

III. LEGAL STANDARD

Under Rule 12(b)(1), a court must dismiss a claim if it lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(b)(1); Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007). Federal courts “have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), and to “raise and decide jurisdictional questions that the parties either overlook or elect not to press.” *Grp. Against Smog & Pollution, Inc. v. Shenango Inc.*, 810 F.3d 116, 122 n.5 (3d Cir. 2016) (quoting *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011)). A Rule

12(b)(1) motion can raise a facial attack or a factual attack, which determines the standard of review. *See Mazo v. Way*, 551 F. Supp. 3d 478, 489 (D.N.J. 2021).

A facial attack “is an argument that considers a claim on its face and asserts that it is insufficient to invoke the subject matter jurisdiction of the court because, for example, it does not present a question of federal law . . . or because some other jurisdictional defect is present.” *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 357 (3d Cir. 2014). In reviewing a facial attack, “the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.” *Id.* at 358. By contrast, “[a] factual attack concerns the actual failure of [a plaintiff’s] claims to comport [factually] with the jurisdictional prerequisites.” *CAN v. United States*, 535 F.3d 132, 139 (3d Cir. 2008); *see id.* (“So, for example, while diversity of citizenship might have been adequately pleaded by the plaintiff, the defendant can submit proof that, in fact, diversity is lacking.”). When considering a factual challenge, “the plaintiff [has] the burden of proof that jurisdiction does in fact exist,” the court “is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case,” and “no presumptive truthfulness attaches to [the] plaintiff’s allegations” *Mortenson v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

IV. DISCUSSION

Defendants argue that the SAC should be dismissed because Plaintiffs lack standing. (MTD Br. at 20.) For the reasons set forth below, the Court agrees.²

For a plaintiff to have Article III standing, he must show that there is: (1) an injury in fact; (2) causation; and (3) redressability. *See Nat’l Shooting Sports Found. v. Att’y Gen. of N.J.*, 80 F.4th 215, 218 (3d Cir. 2023). The injury in fact must be “concrete, particularized, and imminent

² Because the Court decides the Motion to Dismiss on standing grounds and therefore concludes that it lacks subject matter jurisdiction, it does not reach Defendants’ remaining arguments for dismissal.

rather than conjectural or hypothetical.” *Id.* (quoting *Trump v. New York*, 592 U.S. 125, 131 (2020)). An injury is imminent if it is “certainly impending” or if there is “a substantial risk that the harm will occur.” *Id.* (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). The second element, causation, requires the injury to be “fairly...trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation modified). Lastly, the injury must be “legally and judicially cognizable.” *United States v. Texas*, 599 U.S. 670, 676 (2023) (citation omitted). “That requires, among other things, that the dispute is traditionally thought to be capable of resolution through the judicial process—in other words, that the asserted injury is traditionally redressable in federal court.” *Id.* (citation modified). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Lujan*, 504 U.S. at 561; *see also Road-Con, Inc. v. City of Phila.*, 120 F.4th 346, 354 (3d Cir. 2024) (“The plaintiff bears the burden of showing these three elements . . . and likewise must demonstrate standing separately for each form of relief sought.”).

A. MUNICIPAL PLAINTIFFS

Defendants first assert that the various municipalities joined as Plaintiffs (“Municipal Plaintiffs”) lack standing to bring an Equal Protection Clause claim under the political subdivision doctrine.³ (MTD Br. at 20–21.) This doctrine, which dates back centuries, holds that a

³ The Court considers the potential barriers presented by the political subdivision doctrine as a standing issue because the broad language of the Supreme Court’s seminal cases recognizing the doctrine has generally been treated by courts as a matter of standing. *See Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 660–61 (1819); *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907); *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1932). On at least one occasion, however, the Third Circuit has signaled that the political subdivision doctrine might more appropriately be analyzed as a merits issue. *See Amato v. Wilentz*, 952 F.2d 742, 755 (3d Cir. 1991) (“Although we agree . . . that these cases may not be standing cases (in the modern sense of the term) but instead holdings on the merits, we agree . . . that the cases nevertheless reflect the general reluctance of federal courts to meddle in disputes between state governmental units.”) (citing *Rogers v. Brockette*, 588 F.2d 1057, 1067–71 (5th Cir. 1979); *see also Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 370 (D.N.J. 2020) (“[A]t the time those cases were decided, judicial standing was a markedly different concept than what it is today.”) Beyond its observation, the Third Circuit has

municipality, or political subdivision, “has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.” *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40 (1933); *see also Trenton v. New Jersey*, 262 U.S. 182, 187 (1923) (“A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit.”).

Plaintiffs, in opposition, argue that the political subdivision doctrine has been eroded over the years, and that under the unique circumstances of this case, the Municipal Plaintiffs have standing. (“MTD Opp.” ECF No. 29 at 16.) In support of this argument, Plaintiffs cite to *Ocean Cnty. Bd. of Comm’rs v. Att’y Gen. of N.J.*, in which the Third Circuit held that a political subdivision had standing to sue its creator state under the Supremacy Clause. 8 F.4th 176, 181 (3d Cir. 2021). The Third Circuit joined several other circuit courts of appeals and held that the “unique federalism concerns” of the Supremacy Clause “means that a state is not free to enforce within its boundaries laws preempted by federal law.” *Id.* As such, a political subdivision could invoke the Supremacy Clause against its creator state to ensure that does not occur. *See id.*

But, as Defendants point out in their Reply, the rationale for allowing political subdivisions to sue their creator state under the Supremacy Clause is inapplicable to claims brought under the Equal Protection Clause. (“Reply,” ECF No. 36 at 2.) While the Supremacy Clause concerns structural rights under the Constitution, cases brought under the Equal Protection Clause concern individual rights. *See Branson School Dist. RE-82 v. Romer*, 161 F.3d 619, 628 (10th Cir. 1998) (“[The Political Subdivision doctrine] stand[s] only for the limited proposition that a municipality may not bring a constitutional challenge against its creating state when the constitutional provision

offered no further direction. Accordingly, this Court continues to analyze the political subdivision doctrine as a standing issue.

that supplies the basis for the complaint was written to protect individual rights, as opposed to collective or structural rights.”).

Plaintiffs only cite to one case in which it appears a municipality was permitted to bring an Equal Protection claim against its creator state. (MTD Opp. at 17.) In *Romer v. Evans*, individual plaintiffs and the municipalities of Aspen, Boulder, and Denver brought suit to challenge a Colorado constitutional amendment that repealed city ordinances prohibiting discrimination based on sexual orientation. 517 U.S. 620, 624 (1996). The Supreme Court held that the amendment violated the Equal Protection Clause. *Id.* at 632. *Romer*, however, did not discuss Article III standing and was based on the equal protection of individual (not municipal) rights. And since *Romer*, the validity of the political subdivision doctrine has been reaffirmed both by the Supreme Court and the Third Circuit. *See Ysura v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009) (holding that a “political subdivision,” unlike a private corporation, has no “privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator”); *see also Ocean Cnty. Bd. of Comm'r's*, 8 F.4th at 180 (noting that the political subdivision doctrine does not bar claims brought under the Supremacy Clause but does bar claims brought under the Equal Protection Clause). In light of this long-standing precedent, the Court finds no reason to depart from the political subdivision doctrine. As such, the Municipal Plaintiffs have not established that they have an injury-in-fact for standing purposes.

Even if they could establish an injury-in-fact, that injury would not be redressable by the Court. As previously explained, redressability requires that the dispute “be capable of resolution through the judicial process.” *Texas*, 599 U.S. at 676. In other words, if a favorable decision by the Court would only eliminate “one of multiple causes of an injury without actually decreasing the injury at all,” then it is not redressable under Article III. *Fischer v. Governor of N.J.*, 842 F.

App’x 741, 750–51 (3d Cir. 2021). Here, the QUAM exception was first established as part of the constitutional *Mount Laurel II* remedy in *AMG Realty Co.* Given that Plaintiffs are not challenging the *Mount Laurel* doctrine or *AMG Realty Co.*, even if the Court invalidated the 2024 FHA, the QUAM exemption would still exist under New Jersey judicial precedent. Plaintiffs argue that the QUAM exemption is simply a judicial remedy and not a constitutional requirement, and therefore a favorable decision by this Court would redress their supposed injuries. (MTD Opp. at 11.) The Court disagrees, as that distinction is of no consequence because the QUAM exemption 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. *See In re Municipality of Princeton*, 480 N.J. Super. at 150 (utilizing urban aid classification to calculate municipalities housing obligations).⁴ Accordingly, the Court finds that Municipal Plaintiffs lack standing under Article III to bring their Equal Protection Clause claim.

B. INDIVIDUAL PLAINTIFFS

Defendants next argue that the various elected municipal officials joined as Plaintiffs (“Individual Plaintiffs”) lack standing because they “do not have *Mount Laurel* obligations and thus are not governed by the challenged provisions of the Act at all.” (MTD Br. at 24.) Moreover, Defendants assert that Individual Plaintiffs’ claimed injuries are necessarily derivative of the municipalities they represent and therefore lack standing to assert institutional injuries that do not

⁴ Plaintiffs alternatively argue that even if the QUAM exemption is a part of the *Mount Laurel* doctrine, they would still assert a redressable injury because “state constitutional provisions and state common law are akin to a state statute for federal constitutional purposes.” (MTD Opp. at 12.) To that end, Plaintiffs ask the Court *in a footnote* to interpret the SAC as encompassing a parallel request to invalidate *Mount Laurel* as state common law. (*Id.* at 12 n.11.) Plaintiffs ask the Court to read into the SAC unpled allegations and claims for relief. As currently alleged, it is the 2024 FHA’s QUAM exemption that violates the Equal Protection Clause. (SAC ¶¶ 122–32.) No other plausible reading of the SAC changes that, and it would be improper for Plaintiffs or the Court to expand the scope of the allegations or relief sought on a motion to dismiss. *See Greer v. Cumberland Cnty. Prosecutor’s Office*, Civ. No. 14-3032, 2015 WL 3603986, at *4 n.5 (D.N.J. June 8, 2015) (“Plaintiffs may not supplement the claims in their complaint through their opposition to a motion to dismiss.”).

belong to them. (*Id.* at 25.) In response, Plaintiffs argue that Defendants misstate their injury, and that the Individual Plaintiffs will suffer reputational harm if they act and vote contrary to their desires and the interests of their constituents. (MTD Opp. at 12–14.)

It is well-established that reputational harm may constitute an “injury in fact” that is sufficient to confer Article III standing. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021). Nevertheless, a reputational injury must still be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Ellison v. Am. Bd. of Orthopaedic Surgery*, 11 F. 4th 200, 205 (3d Cir. 2021). As such, standing theories may not be premised on speculative injuries. *See Clapper v. Amnesty Int'l. USA*, 568 U.S. 398, 414 (2013).

There is nothing alleged in the SAC with respect to the reputational injury Individual Plaintiffs assert in their briefing. To the extent that Individual Plaintiffs’ raise their unpled reputational injury as a *factual* response to Defendants’ challenge to their standing, the Court finds that injury inadequate because it would not be “fairly traceable” to Defendants’ conduct. As set forth above, the 2024 FHA’s Program is voluntary, and Individual Plaintiffs have the option of voting for or against 2024 FHA-related ordinances. While Individual Plaintiffs have ostensibly chosen to participate in the Program because of the various benefits that the Program provides, nothing in the FHA requires them to participate or to vote a certain way. Indeed, the 2024 FHA specifically contemplates such a scenario and states that a municipality may choose to file a declaratory judgment action or wait to defend itself from any potential litigation. While Individual Plaintiffs may not like these options, they are nonetheless free to pursue them.⁵ Any potential reputational harm therefore flows from Individual Plaintiffs’ voluntary decisions to participate in

⁵ As discussed at the Preliminary Injunction hearing, there appears to be at least one municipality, Mannington Township, that has taken these courses of action. *See Order Denying Pls.’ Req. for Injunctive Relief* at 14 n.1, *Montvale v. State of New Jersey*, Civ. No. L-1778-24 (N.J. Super. Ct. Law Div. Jan. 2, 2025).

the Program and reap the benefits the Program provides. *See Campeau v. Social Sec. Admin.*, 575 F. App'x 35, 38 (3d Cir. 2014) (holding that a plaintiff's voluntary and self-inflicted injury was not fairly traceable to the defendant's conduct).

Moreover, any purported reputational injury to Individual Plaintiffs separately fails because it is not "actual or imminent" as required for Article III standing. Individual Plaintiffs fear their reputations may suffer⁶ if they follow what they believe to be the will of their constituents by either voting against participating in the Program (and if they win that vote because a sufficient number of other officials vote with them) or they decide to do nothing (again, if a sufficient number of other officials join them), and if their respective municipalities lost any resulting suits (either declaratory suits for repose or builder's remedy litigation), and if they are unable to persuade their constituents that they are not responsible for the ultimate outcome. But as the Third Circuit has succinctly explained, "an injury does not meet the imminence requirement if one cannot describe how the [plaintiffs] will be injured without beginning the explanation with the word 'if.'" *Williams v. Gov. of Pa.*, 552 F. App'x 158, 162 (3d Cir. 2014) (citation modified). Individual Plaintiffs have suffered no injury to date and there are at least four "ifs" between them and any hypothetical future reputational injury. This is not sufficiently actual or imminent to grant them Article III standing.

Plaintiffs also assert an alternative standing theory based on the Individual Plaintiffs' status as municipal taxpayers. (MTD Opp. at 15.) To have standing under this theory, "a municipal taxpayer plaintiff must show (1) that he pays taxes to the municipal entity, and (2) that more than

⁶ At the hearing, Brian Foster testified that in his most recent primary election his opponents ran negative campaign ads focusing on his votes in favor of building affordable housing, and that he believes these ads harmed his reputation. Even so, the damage to his reputation is still speculative because it depends on whether his constituents believed the ads, whether he was unable to persuade his constituents that his vote was the correct one given the circumstances, and whether he was responsible for the outcome. More importantly, Mr. Foster won reelection, which substantially undercuts his claim of reputational harm. For these reasons, the Court nevertheless finds that his concerns are too speculative to warrant standing.

a de minimis amount of tax revenue has been expended on the challenged practice itself.” *Nichols v. City of Rehoboth Beach*, 836 F.3d 275, 281 (3d Cir. 2016). Here, Plaintiffs allege that the Individual Plaintiffs are taxpayers and residents of municipalities that are not QUAMs. (SAC ¶ 60.) Plaintiffs further allege that the Individual Plaintiffs, as taxpayers, will have to pay additional costs associated with complying the 2024 FHA, such as expenditures on infrastructure, services, and affordable housing developments. (*Id.* ¶ 62.) Plaintiffs also allege that the municipalities have already incurred costs (that taxpayers must fund) to pay for attorneys, engineers, and professional planners. (*Id.* ¶ 66.)

Even assuming Plaintiffs could demonstrate an injury-in-fact based on municipal taxpayer standing, that injury would still not be redressable by the Court. As explained above, even if the 2024 FHA was invalidated by the Court, the municipalities would still need to expend taxpayer dollars to comply with their *Mount Laurel* obligations. Such expenditures would necessarily include costs for infrastructure, services, and affordable housing developments. In other words, these funds would be expended regardless of whether the 2024 FHA was invalidated. Because the Individual Plaintiffs cannot establish a redressable injury, they lack Article III standing on this basis as well.

V. CONCLUSION

Given the Court’s lack of subject matter jurisdiction, it will **DISMISS WITHOUT PREJUDICE** the Second Amended Complaint without further leave to amend. Insofar as the Court has found, as a factual matter, that Plaintiffs lack standing, the Court also finds that further amendment to the Complaint would be futile. *See Hill v. Nassberg*, 130 F. App’x 615, 616 (3d Cir. 2005) (affirming denial of leave to amend as futile where dismissal was premised on lack of standing). Finally, given the Court’s lack of subject matter jurisdiction, it will also **DENY AS**

MOOT Plaintiffs' Motion for a Preliminary Injunction and FSHC's Motion for Leave to Appear Amicus Curiae. An appropriate Order will follow.

Date: January 20, 2026

s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BOROUGH OF MONTVALE, *et al.*,

Plaintiffs,

v.

MATTHEW J. PLATKIN, *et al.*,

Defendants.

Civil Action No. 25-3220 (ZNQ) (JBD)

ORDER

QURAISHI, District Judge

THIS MATTER comes before the Court upon (1) a Motion to Dismiss filed by the New Jersey Attorney General, the Administrative Director of the Courts, and members of the Affordable Housing Dispute Resolution Program (collectively, “Defendants”) (ECF No. 16); (2) a Motion for a Preliminary Injunction filed by Plaintiffs, various municipalities and their elected representatives (ECF No. 19); and (3) a Motion for Leave to Appear Amicus Curiae filed by Fair Share Housing Center (“FSHC”) (ECF No. 33). For the reasons set forth in the accompanying Opinion,

IT IS on this 20th day of January 2026

ORDERED that Defendants’ Motion to Dismiss (ECF No. 16) is hereby **GRANTED**; it is further

ORDERED that the Second Amended Complaint is **DISMISSED WITHOUT PREJUDICE** and without further leave to amend; it is further

ORDERED that Plaintiffs’ Motion for a Preliminary Injunction (ECF No. 19) is hereby **DENIED AS MOOT**; it is further

ORDERED that FSHC’s Motion for Leave to Appear Amicus Curiae (ECF No. 33) is hereby **DENIED AS MOOT**; and it is further

ORDERED that the Clerk is instructed to mark this matter **CLOSED**.

s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE

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♦ Certified by the Supreme Court of New Jersey
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* Also Member of the New York Bar
+ Also Member of the Arizona Bar
^ Of Counsel

January 23, 2026

VIA ELECTRONIC FILING

The Honorable Zahid N. Quraishi, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, New Jersey 07102

RE: Borough of Montvale, et. al. v. Platkin et. al.
Case No.: 3:25-CV-03220-ZNQ-JBD

Dear Judge Quraishi:

This firm represents all Plaintiffs in the above-referenced case. We are in receipt of Your Honor's January 20, 2026 order granting Defendants' motion to dismiss for lack of standing and in turn dismissing Plaintiff-Movants' motion for a preliminary injunction (the "Motion") as moot. [ECF 50]. On January 22, 2026, Plaintiffs filed an appeal of those decisions, [ECF 51], and the Plaintiff-Movants intend to file for emergency relief seeking an injunction consistent with their past application before Your Honor pending appeal pursuant to *Federal Rule of Appellate Procedure* 8.

In accordance with our obligations under *Federal Rule of Appellate Procedure* 8(a)(1) and based upon guidance received from the Third Circuit Clerk's Office, we write to request that Your Honor grant Plaintiff-Movants' requested injunction pending appeal.

We ask that this letter be considered in lieu of a formal motion or brief, as the relief requested herein has already been placed before the Court by way of the foregoing motion that was denied as moot.

January 23, 2026

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I thank the Court for its attention to this matter.

Respectfully submitted,

KING, MOENCH & COLLINS, LLP
Attorneys for Plaintiffs

s/ Suzanne E. Cevasco
Suzanne E. Cevasco, Esq.

Cc: All Counsel of Record (via ECF)

Request denied.

Dated: January 23, 2026
Newark, New Jersey


Hon. Zahid N. Quraishi, U.S.D.J.
United States District Judge

(419a)

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ECO-027-E

No. 26-1143

BOROUGH OF MONTVALE et al;
Appellants

v.

ATTORNEY GENERAL NEW JERSEY;

MICHAEL J. BLEE, in his official capacity as ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS; THOMAS C. MILLER; RONALD E. BOOKBINDER; THOMAS F. BROGAN; STEPHEN C. HANSBURY; MARY C. JACOBSON; JULIO MENDEZ; PAULETTE SAPP-PETERSON

(D.N.J. No. 3:25-cv-03220)

Present: CHUNG and FISHER, *Circuit Judges*

1. Motion by Appellants for Emergency Relief Seeking Injunction Pending Appeal;
2. Response in opposition filed by Appellees.

Respectfully,
Clerk/pdb/lmr

ORDER

The foregoing motion by Appellants for Emergency Relief Seeking Injunction Pending Appeal is DENIED.

By the Court,

s/ Cindy K. Chung
Circuit Judge

Dated: January 30, 2026

Sb/cc: All Counsel of Record