No. 25A898

In the Supreme Court of the United States

BOROUGH OF MONTVALE, *et al.*,

Applicants,

v.

ATTORNEY GENERAL OF NEW JERSEY, *et al.*,

Respondents.

RESPONSE IN OPPOSITION TO THE APPLICATION FOR AN INJUNCTION PENDING APPEAL

JENNIFER DAVENPORT
Acting Attorney General of New Jersey
JEREMY M. FEIGENBAUM*
Solicitor General
MICHAEL L. ZUCKERMAN
Deputy Solicitor General
TIM SHEEHAN
Assistant Attorney General
SEPTEMBER R. MCCARTHY
LEVI KLINGER-CHRISTIANSEN
GORDON ESTES
CHARLES SHADLE
Deputy Attorneys General
OFFICE OF THE NEW JERSEY
ATTORNEY GENERAL
25 Market Street, Box 080
Trenton, NJ 08625
(862) 350-5800
jeremy.feigenbaum@njoag.gov

* *Counsel of Record*

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PARTIES TO THE PROCEEDING

Applicants (Plaintiffs-Appellants below) are Michael Ghassali, individually and in his official capacity as Mayor of Montvale; Ben Stoller and Frank Saccomandi, IV, individually and in their official capacities as township committee members of Millburn; Lou D'Angelo, individually and in his official capacity as council president of Totowa; Rudolph E. Boonstra, individually and in his official capacity as Mayor and township committee member of Wyckoff; James P. Barsa, individually and in his official capacity as Mayor of Norwood; Charles J.X. Kahwaty, individually and in his official capacity as Mayor of Franklin Lakes; Brian Foster, individually and in his official capacity as Mayor and township committee member of Holmdel; John Lane, individually and in his official capacity as Mayor of Hawthorne; and Timothy J. Clayton, individually and in his official capacity as Mayor of Wall.

Respondents (Defendants-Appellees below) are the Acting Attorney General of New Jersey; Michael J. Blee, Acting Administrative Director of the Courts; Thomas C. Miller; Ronald E. Bookbinder; Thomas F. Brogan; Stephen C. Hansbury; Mary C. Jacobson; Julio Mendez; and Paulette Sapp-Peterson.

RELATED PROCEEDINGS

United States District Court (D.N.J.):

Borough of Montvale, et al. v. Platkin, et al., No. 25-cv-3220 (Jan. 20, 2026).

United States Court of Appeals (CA3):

Borough of Montvale, et al. v. Attorney General of New Jersey, et al., No. 26-1143 (Jan. 30, 2026).

INTRODUCTION

The instant application, by a group of municipal elected officials seeking relief from a state housing law enacted in March 2024, falls well outside the bounds of this Court's emergency practice. Almost two years ago, New Jersey enacted an affordable-housing law to implement a specific and unique state constitutional right. That law distinguishes the affordable-housing obligations that poorer urban municipalities bear from the obligations of other municipalities. Applicants' underlying challenge in federal District Court was that this statute somehow violated federal equal-protection law, claiming it flunked rational-basis to make this distinction. They brought their challenge only after their coalition unsuccessfully challenged this same statute in state court on the same grounds. But their federal-court lawsuit fared no better: the District Court dismissed their claims for lack of standing and the Third Circuit denied a motion for an injunction pending appeal. This Court should likewise decline to enjoin on an emergency basis a statute enacted nearly two years ago.

To start, Applicants' action suffers from three independent legal defects, which underscores that Applicants' contentions are neither certworthy nor meritorious. First, as the District Court found in dismissing their complaint, Applicants lack standing to advance their theory that New Jersey violated the Equal Protection Clause by distinguishing urban municipalities from other political subdivisions for the purposes of prospective housing obligations. Binding and unchallenged precedent establishes that municipalities cannot pursue equal-protection claims against their creator States in federal court. So Applicants seek instead to establish standing as

the towns' officials, claiming they suffer reputational injuries from complying with the law and that they have taxpayer standing. Neither argument is certworthy: they are not recurring, implicate no split, and arise in a one-off state housing dispute. And these arguments lack merit: the idea that Applicants suffer Article III injury because local constituents might blame them for the results of a state law is both speculative and limitless, and Applicants' theory of taxpayer standing similarly contravenes this Court's precedents and Article III alike.

Even if they had standing, Applicants' claims would be barred by state preclusion principles—another issue on which their submission falls short as to both certworthiness and merit. The same coalition of towns already sought preliminary relief under the same equal-protection theory in state court, with all three levels of the New Jersey courts ruling against them, and a state trial court expressly finding that the towns lacked any likelihood of success on this equal-protection theory. They then dismissed the claim from the state-court lawsuit, only to refile in federal court—the kind of textbook claim-splitting New Jersey procedural rules prohibit. That state-law preclusion problem, which would bind the federal District Court in this second-filed action anyway, independently forecloses any chance that this Court would grant certiorari, much less rule for Applicants.

Beyond those threshold problems, Applicants' novel equal-protection theories are groundless. Applicants complain that this state law's affordable-housing formula improperly relieves certain cities of an obligation to provide for construction of affordable housing for future residents. But Applicants admit their challenge to the statute

is subject only to rational-basis review, and there is no basis to argue that a Legislature acts *irrationally* in distinguishing poorer urban subdivisions from other municipal subdivisions for affordable-housing purposes. Especially so here, where the state statute implements an unchallenged and New Jersey-specific state constitutional doctrine that requires access to affordable housing throughout the State, and which could never be satisfied by a surfeit of affordable housing in urban centers alone. That backdrop makes this case New Jersey-specific and uncertworthy, and the fact this factbound challenge is subject only to rational-basis review makes the flaws in Applicants' position especially clear.

In any event, equitable factors alone equally justify disposing of this emergency application. Much as these Applicants failed to plead any cognizable Article III injury from the speculative threats to their reputations, they cannot show the kind of irreparable harm that justifies the extraordinary remedy they seek. All the more so where they not only waited until November 2025 to seek preliminary relief in federal court against a March 2024 state law, but did so only after a large subset of their coalition had already lost motions for preliminary relief based on identical claims at all three levels of the state courts in January 2025. This Court should deny this application.

STATEMENT

A. New Jersey Legal Backdrop.

In *Southern Burlington County N.A.A.C.P. v. Mount Laurel*, 336 A.2d 713 (N.J. 1975) (*Mount Laurel I*), the New Jersey Supreme Court held, as a matter of state

constitutional law, that each New Jersey municipality must "make realistically possible the opportunity" for housing for people of "low and moderate income." *Id.*, at 731-732. Eight years later, acknowledging "widespread non-compliance with" that state-constitutional mandate (known in New Jersey as "the *Mount Laurel* doctrine"), the state high court fashioned a judicial remedy to enforce it, emphasizing the need to avoid having low-income families "zoned out of substantial areas of the state" and forced to live only in struggling urban areas. *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel*, 456 A.2d 390, 410, 415 (N.J. 1983) (*Mount Laurel II*). That ruling allowed developers to enforce the doctrine through so-called "builder's remedy" suits, in which developers could sue to obtain a right to construct higher-density housing than the municipality's zoning regulations would otherwise allow. *Id.*, at 452-453, 456-459.

In 1985, the New Jersey Legislature responded by enacting the N.J. Fair Housing Act (NJ FHA). 1985 N.J. Laws c. 222. The NJ FHA established an administrative Council on Affordable Housing (COAH) that set rules for calculating municipalities' affordable-housing obligations and provided a forum in which New Jersey municipalities could obtain a period of immunity and then (if certified as compliant) a presumption of validity against developers' lawsuits. N.J. Stat. Ann. §§ 52:27D-305, -307, -309, -317 (2023) (repealed by 2024 N.J. Laws c. 2). Immunity came to be dispensed typically in cycles known as "rounds," with the most recent rounds lasting ten years. So, in recent decades, a fully compliant municipality had a means essentially to guarantee it would not face builder's-remedy lawsuits for up to ten years.

COAH initially functioned as intended, but ultimately fell into disrepair. See *In re Adoption of N.J.A.C. 5:96 & 5:97*, 110 A.3d 31, 35-37 (N.J. 2015) (*In re Adoption*). Finding that the combination of COAH's persistent "inaction" and the NJ FHA's exhaustion requirement undermined the underlying state constitutional *Mount Laurel* doctrine, the New Jersey Supreme Court held that participating in COAH no longer entitled municipalities to immunity, and allowed litigation "to resolve municipalities' constitutional obligations under *Mount Laurel*" to proceed in the courts "in the first instance." *Id.*, at 34-35. But the court welcomed legislative action, and "hope[d] that an administrative remedy [would] again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied." *Id.*, at 51.

Meanwhile, having channeled *Mount Laurel* enforcement back to the New Jersey courts, the New Jersey Supreme Court instructed judges to "follow certain guidelines 'gleaned from the past,'" including rules previously issued by COAH. *In re Declaratory Judgment Actions*, 152 A.3d 915, 919 (N.J. 2017) (*Mount Laurel V*). In an influential trial-court ruling in 2018, a judge issued a 220-page opinion establishing a methodology for calculating affordable housing allocations, which guided much of the court-administered Third Round of *Mount Laurel* compliance. See *In re Princeton*, 327 A.3d 505, 517-18, 553-54 (N.J. Super. Ct. Law Div. 2018). That decision applied the long-standing constitutional exemption for certain so-called "qualified urban aid municipalities" (QUAMs) from prospective affordable-housing obligations—*i.e.*, "a

projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality." *Id.*, at 530, 553.

B. The 2024 Law.

In March 2024, heeding the state court's call to develop a new option for "pro-active municipalities," *In re Adoption*, 110 A.3d, at 51, the New Jersey Legislature enacted significant amendments to the NJ FHA. See 2024 N.J. Laws c.2 (the Act). The Act abolished COAH and created an Affordable Housing Dispute Resolution Program (the Program) to take over some of COAH's functions—*i.e.*, to be a forum where municipalities could obtain immunity from litigation for the remainder of a ten-year round of *Mount Laurel* compliance. See N.J. Stat. Ann. §§ 52:27D-304.1(b), (f). Thus, while municipalities that had obtained immunity during the preceding Third Round of compliance would lose that immunity automatically when that cycle ended on June 30, 2025, municipalities could obtain new immunity when the Fourth Round began the next day by participating in the Program. See ECF 16-3, at 24-25.[1] Participation in the Program, however, is voluntary; municipalities are (and have always been) free to instead simply defend against future lawsuits filed or to file their own affirmative declaratory-judgment actions to establish state constitutional compliance. N.J. Stat. Ann. §§ 52:27D-304.1(f)(1)(b) & (3)(b), -313(a); ECF 16-3, at 13-15; App. 412a, n.5.

The Act also implements the *Mount Laurel* doctrine by codifying a new formula for calculating municipalities' affordable-housing obligations. The formula recognizes both "present need" and "prospective need" obligations. N.J. Stat. Ann. § 52:27D-

[1] All ECF cites refer to the District Court docket in this case, No. 25-cv-3220 (D.N.J.).

304.3. Present need reflects the number of "deficient housing units currently occupied by low- and moderate-income households within the municipality"—in other words, substandard units that require substantial improvements. *Id.* § 52:27D-304.3(b). Prospective need reflects projected demand "based on development and growth"—the need for units that do not yet exist. *Id.* §§ 52:27D-304(j), -304.3. As relevant here, the Act codified an exemption for certain poorer cities—QUAMs—from prospective-need obligations, but not present-need obligations. *Id.* §§ 52:27D-304.3(c)(1), -304.3(b).

The Act defines which municipalities qualify as QUAMs. A municipality is considered a QUAM if, "as of July 1 of the year prior to the beginning of a new" ten-year round, the municipality is designated to received state aid and meets at least one of three criteria measuring the prevalence of substandard housing or a particularly high population density. *Id.* § 52:27D-304.3(c)(1). Whether a given municipality is designated as a QUAM is subject to change at the beginning of each new ten-year round, based on each municipality's circumstances from the year prior. *Id.* And while the Act imposes high present-need obligations on QUAMs—reflecting that these are, by definition, entities that tend to have a high prevalence of dilapidated housing in need of improvement[2]—it treats these poorer cities differently from other municipalities for

[2] See Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background, N.J. Dep't of Cmty. Affairs, at 20-41, https://tinyurl.com/4rjmynak (Fourth Round Guidance). The present-need obligation of Newark, for example, is 4,630 units—more than four times the highest possible prospective-need obligation for any municipality. See *id.*, at 28; N.J. Stat. Ann. § 52:27D-304.1(f)(2)(a) (providing a cap on prospective need obligations to be the lower of either 1,000 units or 20 percent of the total number of households in the municipality). By comparison, Millburn (a suburban town from the same region) maintains a present-need obligation of zero. See Fourth Round Guidance, at 28.

purposes of prospective need, reflecting that they are not the municipalities in which poor and moderate-income families struggle to find affordable housing.

As to the Program, municipalities that choose to participate in it do so through a multistep process that, for the Fourth Round, has largely already occurred. A town first adopts a resolution that will presumptively bind the municipality to enact plans to meet its obligations as it has calculated them—a step that had to be completed by January 31, 2025. See N.J. Stat. Ann. § 52:27D-304.1(f)(1). Participating municipalities must then submit their plans (and draft ordinances) to the Program—for the Fourth Round, by June 30, 2025. *Id.* § 52:27D-304.1(f)(2)(a). Both steps are subject to challenge at the Program, which can (and often does) facilitate settlements, but can also issue appealable decisions. See *id.* § 52:27D-304.1(f).

The final step for the municipalities that choose to participate in the Program is adopting final resolutions and ordinances, whereby the municipality implements its approved plan. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c). For the Fourth Round, that deadline is March 15, 2026. *Id.* The consequence for not meeting that deadline is the same as if a municipality never chose to enter the Program in the first place: the town can alternatively seek declaratory relief in state court to establish compliance with *Mount Laurel*, or just wait and defend against any builder's-remedy suits alleging *Mount Laurel* violations that are subsequently filed. See *supra* at 6.

C. State Court Challenge.

In September 2024—nearly six months after the Act came into effect—a group of municipalities challenged the Act in state trial court. *Montvale v. State*, No. MER-

L-1778-24 (*Montvale I*). They asserted, *inter alia*, federal and state equal-protection claims against the QUAM exemption. See ECF 16-3, at 17, 31-32. Through various amendments to their complaint, they added as plaintiffs most of the municipalities and five of the officials who are now plaintiffs in this federal case. ECF 16-4.

In October 2024, these plaintiffs moved in state court to preliminarily enjoin the Act, including under the instant equal-protection theory. ECF 16-3, at 2-3, 31-32. On January 2, 2025, the state court denied that motion in a 68-page opinion. ECF 16-3. The court held that the challenged statutory provision "rationally advances numerous legitimate objectives," including "to balance the need to provide housing in urban centers with the need to provide housing throughout the State"; "avoid overburdening [QUAMs] with a prospective need obligation, as these municipalities are already prescribed increasingly great present need obligations"; and "simplify [the] formula for calculating fair share and move away from endless litigation and delays." *Id.*, at 43-44. The court noted the plaintiffs' delay in seeking relief, and the "significant efforts and expenses" undertaken by the vast majority of New Jersey municipalities in "the intervening seven months since the Act's enactment." *Id.*, at 26 n.5. The towns sought emergency relief from the state intermediate appellate court and state high court that same month, both of which denied their requests. See ECF 16-5, 16-6.

Following those denials, plaintiffs voluntarily dismissed their federal and state equal-protection claims from their complaint. ECF 16-7. In September 2025, the state trial court dismissed the remaining complaint in its entirety. ECF 16-8; see *id.*, at 47-

48 (dismissing related state claim, premised on same expert report as the equal-protection claims, as "fundamentally misapprehend[ing] … rational basis review").

D. Federal Court Challenge.

After voluntarily dismissing their equal-protection claims from the state-court action in the wake of these preliminary-injunction denials, the coalition, represented by the same counsel, sued in federal court in April 2025. ECF 1. Motions to dismiss and various amendments followed. ECF 9, 12, 15, 16. On November 21, the coalition (including Applicants here) moved for a preliminary injunction. ECF 19.

On January 20, 2026, the District Court dismissed the complaint without prejudice and denied their preliminary-injunction motion as moot. App. 399a. The court began by explaining why the municipalities' claims failed. It reasoned that municipalities (1) lacked the authority to bring equal-protection claims against their creator State pursuant to binding precedent, and (2) "would be in the same position" even if the court "invalidated the 2024 FHA" since the QUAM exception exists independently under the unchallenged *Mount Laurel* doctrine. App. 408a-411a.

The court then turned to the elected officials' lack of standing. Although Applicants argued their reputations would suffer because they would have to vote for some kind of housing plan and might not be able "to persuade their constituents that" the Legislature bore the blame, the court noted the officials had not alleged reputational injuries in the complaint, App. 412a, and their theory was speculative in any event, App. 413a. The court also rejected Applicants' claim to taxpayer standing, emphasizing that they "would still need to expend taxpayer dollars to comply with their *Mount*

Laurel obligations" regardless of the statute. App. 413a-414a. The District Court subsequently denied a motion for an injunction pending appeal. App. 418a.

On January 25, Applicants filed a motion for an injunction pending appeal with Third Circuit. The Third Circuit denied the motion on January 30. App. 420a. Applicants filed this Application on February 4.

ARGUMENT

Applicants cannot justify the "extraordinary remedy" of an injunction from this Court. *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). And on this posture, Applicants must further show that this Court would grant certiorari on these questions. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring); *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) ("[O]therwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument."). Here, three independently dispositive defects make clear that Applicants can show no likelihood of certiorari or of success on the merits. The equitable factors, including Applicants' lack of "reasonable diligence," *Benisek*, 585 U.S., at 159, also foreclose this demand for emergency relief.

I. APPLICANTS ARE NOT LIKELY TO OBTAIN CERTIORARI MUCH LESS SUCCEED ON THE MERITS ON THREE BASES.

Applicants are unlikely to succeed on the merits for at least three independent reasons: they cannot satisfy Article III; state-law preclusion principles foreclose this relitigation; and the Act easily survives rational-basis scrutiny under the Equal Protection Clause. Nor do these three flaws implicate any split or recurring issue, making this state-law-inscribed, factbound dispute exceedingly uncertworthy too.

A. This Court Is Unlikely To Grant Certiorari Or Rule For Applicants On Article III Standing.

Applicants are unlikely to persuade this Court to grant certiorari or reverse on the reputational-harm or municipal-taxpayer-standing theories rejected below.

A brief background helps to explain Applicants' unusual standing arguments. The state law they are challenging does not actually govern them—these officials bear no affordable-housing or municipal zoning obligations. Instead, all such statutory obligations are borne by the municipalities. *E.g.*, N.J. Stat. Ann. §§ 52:27D-304.1(a), -304.3(a). That is why, in both state court and federal District Court, the challengers to this municipal land-use law included a group of municipalities, not just their elected officials. App. 1a. The municipalities, however, have a separate problem: a municipality "has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator," *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009), and thus cannot press federal equal-protection claims against its creator State, see, *e.g.*, *id.*; *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933); App. 408a-410a (District Court rejecting plaintiff-municipalities' claims on

this basis). So to seek relief for these same municipalities, see Appl. 2-3, Applicants at this Court are the towns' elected officials, not the towns themselves, *id.*, at i.

This workaround fails because the elected officials cannot demonstrate Article III injury on either their reputational or taxpayer-standing theories. Begin with the former—an argument that the towns' officials will suffer Article III injury because their constituents will blame them for this state law's results. See, *e.g.*, Appl. 12 (asserting that municipal compliance with the statute "will be attributed to [the officials] personally, and not to the Legislature that codified the UAC"). Initially, there is no serious possibility this Court will grant certiorari to consider this unprecedented argument: Applicants cite neither a split on local officials' standing based on reputational injury from complying with state laws, nor any recurrence of this question. And even were certiorari somehow warranted, it would not be this case, where Applicants never even pled this injury in the operative complaint. See App. 412a.

In any event, this theory of standing is astounding. On Applicants' view, anytime voters disapprove of an official complying with a state (or federal) law, or might think the official responsible for a law's effects, the official could challenge that statute in federal court. Mayors could challenge 18 U.S.C. § 922(g)(1) on the theory that felons or other prohibited persons will blame them for denying firearms licenses. Local zoning board members could challenge the federal Fair Housing Act on the theory that residents will resent them for the increased density. Planning board members could challenge the Endangered Species Act on the theory that the voters will blame them for protecting animals at the expense of development. Cf. *Lujan v. Defenders of*

Wildlife, 504 U.S. 555, 558-59 (1992). Or after this court ruled that a State lacked standing to challenge the Indian Child Welfare Act (ICWA), see *Haaland v. Brackeen*, 599 U.S. 255, 294-95 (2023), an elected state judge could have simply sued by alleging that voters would blame her for child-welfare decisions made subject to the ICWA. No decision supports this reputational-harm-through-constituent-disapproval theory, which could transform almost *any* policy disagreement into an Article III dispute, notwithstanding that Article III specifically "screen[s] out plaintiffs" with "only [] general legal, moral, ideological, or policy objection[s]." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381-382 (2024).

That Article III theory is particularly untenable here, as this purported reputational injury is itself highly "conjectural" and "hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016); see *Clapper v. Amnesty Int'l*, 568 U.S. 398, 410 (2013) (rejecting injury that "relies on a highly attenuated chain of possibilities"). Applicants' theory hinges on a chain of inferences needed to believe these local elected officials will suffer Article III reputational harm from the state law:

(1) the municipality will either face and lose subsequent exclusionary-zoning lawsuits, or else draw an unfavorable result within the Program;

(2) the municipality will be unable to successfully appeal those losses, including based on any non-waived federal claims;

(3) harmful development will ensue in the Applicant's town, which local constituents will resent; and

(4) those local constituents will mistakenly believe that the Applicant is "responsible for the ultimate outcome."

See App. 413a; Appl. 19-20 & n.9. None of those inferences is obvious, and the fourth is especially speculative, since it requires assuming residents will blame local officials for state laws they never voted for and indeed publicly (and vigorously) opposed.

The sole case Applicants cite—*Bost v. Illinois State Board of Elections*, 146 S. Ct. 513 (2026)—is inapposite. *Bost* held that candidates for elected office have standing to challenge rules "that govern the counting of votes in their elections," since rules that taint vote-counting could call into question whether that candidate was duly elected. *Id.*, at 519-20; see also *id.*, at 520 (noting "[d]epartures from the preordained rules cause [the candidate] particularized and concrete harm"). *Bost* thus found standing based on alleged illegality in the vote-counting process and its personal impact on the candidates competing in that election. That harm is absent here, where Applicants assert a reputational harm to local officials based on constituents' disagreement with a state housing law the Legislature enacted. That the District Court did not "even cite" *Bost*, see Appl. 1, is thus unremarkable—and even more so given that Applicants never raised it in a supplemental-authority letter or in their injunction-pending-appeal motion (or even in a reconsideration motion) to the District Court, notwithstanding that *Bost* issued days before the District Court's decision.

Applicants get no further claiming standing as municipal taxpayers. Their theory appears to be that the Act requires municipalities to make land-use decisions that allow denser and more affordable housing, eventually increasing residents' taxes. But "standing cannot be based on a plaintiff's mere status as a taxpayer." *Az. Christian School Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011); see *DaimlerChrysler Corp. v.*

Cuno, 547 U.S. 332, 346 (2006) ("taxpayers have no standing under Article III to challenge state tax or spending decisions simply by virtue of their status as taxpayers"). While a narrow carveout to this strict rule exists for challenges to certain municipal expenditures, *DaimlerChrysler*, 547 U.S., at 349, Applicants challenge a *state* statute. That is decisive, because courts uniformly find this carveout inapplicable if the "plaintiffs' challenge is ... to the state law and state decision, not those of their municipality." *Id.*, at 349-50 & n.4 (citing *Bd. of Educ. v. N.Y. State Teachers Ret. Sys.*, 60 F.3d 106 (CA2 1995), which likewise rejected standing "where a municipal taxpayer challenges an expenditure of municipal funds mandated by state law," *id.* at 111). Nor is Applicants' assault on precedent certworthy: while they briefly claim a "circuit split on this issue" based on two 1980s circuit rulings, Appl. 25, n.12, those decisions long predate this Court's 2006 *DaimlerChrysler* decision, see 547 U.S. at 346 & n.4, and Applicants cannot cite a split since.[3] Applicants' theory of municipal taxpayer standing to challenge a state statute is thus both uncertworthy and unmeritorious.

Moreover, Applicants have a second significant taxpayer-standing hurdle, another reason this Court is unlikely to grant certiorari to consider municipal-taxpayer-standing here, and even more unlikely to ultimately rule for them. While Applicants

[3] Nor would any pre-2006 split be implicated here, as neither the Sixth nor D.C. Circuit decisions Applicants cite supports their theory in this lawsuit. See *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 8-9 (CADC 1988) (challenge to "specific expenditure" by D.C. local government); *Gwinn Area Community Schools v. Michigan*, 741 F.2d 840, 842, 844-45 (CA6 1984) (challenge to state school-aid formula that directly reduced amount of aid flowing to the municipal fisc). So nothing about those 40-year-old circuit decisions suggests this Court is likely to grant certiorari or ultimately rule for Applicants on this factbound application of law.

protest the taxes towns' taxpayers will purportedly bear from the NJ FHA, Applicants do not challenge the municipal-zoning obligations the New Jersey Constitution independently imposes under the *Mount Laurel* doctrine, including the QUAM exemption the Act codifies. See App. 410-411a, 414a; *In re Princeton*, 327 A.3d, at 553. That raises serious injury, traceability, and redressability problems, because "municipalities would still need to expend taxpayer dollars to comply with their *Mount Laurel* obligations," subject to the QUAM exception, even were the 2024 Act struck down. App. 414a. What is more, it is speculative that Applicants' taxes will increase at all: it is equally plausible that more local taxpayers plus fees and concessions towns may receive from builders eager to develop housing would lower rather than increase each Applicant's tax bills. See N.J. Stat. Ann. §§ 52:27D-329.2(a), (b), (c)(1), (c)(5). So the inferences Applicants' theories require alone show that they fail to meet their burden to show standing on their taxpayer-standing challenge to a state law. See *Clapper*, 568 U.S., at 410; *Lujan*, 504 U.S., at 561. That is yet another reason this Court would not take up, let alone rule for Applicants on, this taxpayer-standing theory.

B. This Court Is Unlikely To Grant Certiorari Or Rule For Applicants On Their Independent State-Law Preclusion Problem.

Applicants' claims also run headlong into a state-law procedural rule that forbids claim-splitting and forum-shopping alike. To ensure that "the adjudication of a legal controversy ... occur[s] in one litigation in only one court," New Jersey's entire-controversy doctrine bars a subsequent suit "when there was a previous state-court action involving the same transaction," *Ricketti v. Barry*, 775 F.3d 611, 613 (CA3 2015) (quoting *Cogdell v. Hosp. Ctr. at Orange*, 560 A.2d 1169, 1172 (N.J. 1989))—

even if the claim from the first suit has not reached final judgment, *Archbrook Laguna, LLC v. Marsh*, 997 A.2d 1035, 1039-41 (N.J. Super. Ct. App. Div. 2010).[4] Because this federal challenge is the second-filed case, the federal courts are bound by the preclusion rules of the first-filed forum—in this case, New Jersey state court. See *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984).

That Applicants' federal action is clearly barred by state-law procedural rules such that no federal court could properly reach the merits is another obvious reason they can neither justify certiorari nor likelihood of success. As to certiorari, this Court does not sit to review disputes over questions of state law—even when they arise in federal court. Particularly so where the state-law question is a factbound application of New Jersey's strong preclusion doctrines, a "specific, and idiosyncratic, application of traditional res judicata principles." See *Ricketti*, 775 F.3d, at 613. And as to the merits, Applicants' challenge patently violates New Jersey's entire-controversy doctrine. Some of these Applicants already pursued identical equal-protection claims before all three levels of the state judiciary through preliminary-injunction filings, only to voluntarily dismiss them and refile in federal court after receiving adverse rulings. *Supra* at 9-10. That is not just textbook claim-splitting, but claim-splitting to achieve a second bite at the apple—exactly what preclusion doctrines like New Jersey's guard

[4] While *Rycoline Products v. C & W Unlimited*, 109 F.3d 883 (CA3 1997) (cited at Appl. 35), misunderstood this doctrine to have a finality component, state courts have since explicitly rejected that understanding, see *J-M Mfg. Co. v. Phillips & Cohen, LLP*, 129 A.3d 342, 349-50 (N.J. Super. Ct. App. Div. 2015) (rejecting reading of prior case on which *Rycoline Products* relied, and limiting that case to scenarios where the doctrine would preclude plaintiff's claims from being heard in *any* court).

against. See, *e.g.*, *Bank Leumi USA v. Kloss*, 233 A.3d 536, 541 (N.J. 2020); *J-M Mfg.*, 129 A.3d, at 350.

Applicants' responses are unpersuasive. All agree that this Court does not "owe any deference to [a] state court's interpretation of federal law," Appl. 35, but the State is not looking for deference to the state trial court rulings on federal equal-protection principles at all. Instead, because many Applicants elected to first bring their claims to the state court, a choice entirely of their own making, they are bound by the procedural rules of the road from that first-filed forum. And as explained above, those procedural rules require all claims to be raised and addressed in a single proceeding, rather than strategically split off into piecemeal litigation. See *supra* at 17-19. Applicants in no way are being denied a *de novo* federal forum; they merely have no right to a second-filed federal forum after receiving adverse opinions in state court.

Moreover, though Applicants (represented by the same counsel) added a smattering of other towns and officials who were not parties to the state-court proceedings, that gambit cannot overcome a state-law equitable doctrine that ensures "objectives of conclusive determinations, party fairness, and judicial economy and efficiency." *Bank Leumi*, 233 A.3d, at 541. Rather, just as "a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy," *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008), a coalition of municipalities and officials acting via common counsel cannot evade preclusion and joinder rules by tacking on extra plaintiffs, cf., *e.g.*, *Baatz v. Columbia Gas Transmission*, 814 F.3d 785, 790 (CA6 2016) ("first-to-file rule applies when the parties in the two actions 'substantially overlap,' even if they are not

perfectly identical"); *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 951 (CA5 1997) ("Complete identity of parties is not required for dismissal or transfer of a case filed subsequently to a substantially related action."); *Guess v. Bd. of Med. Examiners of State of N.C.*, 967 F.2d 998, 1005 (CA4 1992) (patient plaintiffs seeking same relief as doctor were his "litigating agent" for preclusion purposes).

This independent state-law preclusion problem makes both certiorari and success on the merits for Applicants particularly unlikely. This provides an independent and straightforward basis to deny this Application in its entirety.

C. This Court Is Unlikely To Grant Certiorari Or Ultimately Rule For Applicants On Their Equal-Protection Challenge.

Applicants also can show no likelihood of certiorari or success on their equal-protection claim, which they recognize is subject only to rational-basis review, Appl. 25. As the state court found, ECF 16-3, at 40-45, there is nothing irrational in distinguishing between poorer urban cities and other municipalities when implementing an unchallenged state constitutional rule that ensures poorer residents are not "zoned out of substantial areas of the state" and "forced to live in urban slums." *Mount Laurel II*, 456 A.2d, at 415. There is no possibility that this Court will grant certiorari to consider this issue, not only because of the standing-related and preclusion-related vehicle problems, but also the lack of any split: Applicants identify no decision from any court suggesting a state land-use regulation that treats poorer urban centers differently from other subdivisions violates equal-protection doctrine because it is *irrational*. Nor does the question implicate recurring or nationwide concerns; it arises from a unique and unchallenged New Jersey constitutional doctrine.

Applicants also have no likelihood of prevailing at this Court on their rational-basis equal-protection claim. In seeking to enjoin a statute under rational-basis scrutiny, Applicants must overcome "a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). Rational-basis review assesses only whether "there is any reasonably conceivable state of facts," *FCC v. Beach Cmmc'ns*, 508 U.S. 307, 313 (1993), to show "a rational relationship between the disparity of treatment and some legitimate governmental purpose," *Armour v. City of Indianapolis*, 566 U.S. 673, 680 (2012). It is "not a license for courts to judge the wisdom, fairness, or logic of legislative choices," *Heller*, 509 U.S., at 319; "[i]t is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it," *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 488 (1955). That is dispositive. No party disputes that the New Jersey Legislature has a duty to comply with the State Constitution, and no party challenges the underlying *Mount Laurel* doctrine. But that underlying state constitutional doctrine itself calls for distinguishing poorer cities from other municipalities, see App. 411a ("Given that Plaintiffs are not challenging the *Mount Laurel* doctrine or [the related cases imposing the QUAM exception], … the QUAM exemption would still exist"), meaning that it would not satisfy *Mount Laurel* if the Legislature generally provided for sufficient units for low- and moderate-income households but crammed them all into a

few large cities. Given the unchallenged state constitutional backdrop, the Legislature did not act *irrationally* in employing the same exemption in the 2024 NJ FHA.[5]

Regardless, it is entirely rational for the Legislature to treat these poorer cities differently for purposes of how many new affordable units they must enable via land-use decisions. QUAMs are definitionally less wealthy (based on the state financial aid they receive) and are either especially densely populated or contain a disproportionate number of dilapidated units. See N.J. Stat. Ann. § 52:27D-304.3(c)(1); *supra* at 7. So it is reasonable that while such localities must address a general lack of affordable housing in New Jersey by improving the substandard units that exist (the "present need" requirement), there is no need for them to provide the same quantum of *new* units as other localities. See *In re Adoption of N.J.A.C. 5:96 & 5:97*, 6 A.3d 445, 470 (N.J. Super. Ct. App. Div. 2010) (noting "substantial doubt" that it makes sense to "assign any share of the responsibility for prospective need" to urban municipalities given sizable present-need obligations). The Legislature's decision to use a formula

[5] Applicants' responses fail. First, Applicants suggest this challenge could be construed to extend to the QUAM exception within the *Mount Laurel* jurisprudence, not just in the 2024 NJ FHA, because their complaint generically asks for "such other relief as the Court may deem proper and just." See Appl. 25, n.13. But Applicants cite no precedent suggesting that a party's failure to challenge an entirely separate body of law can be rectified with a catchall phrase, much less one asking a federal court to enjoin a state constitutional doctrine. Second, Applicants suggest *In re Adoption of N.J.A.C. 5:96*, 74 A.3d 893 (N.J. 2013), shows the Act deviates from the underlying constitutional doctrine. Appl. 28-29. But that case found a judicial remedy was not the only mechanism to "presently … secure satisfaction of the constitutional obligation to curb exclusionary zoning and promote the development of affordable housing in the housing regions of this state." 74 A.3d, at 913. It in no way suggests Applicants' towns would be entitled to be treated identically to QUAMs absent the Act, much less that a statute incorporating a distinction for QUAMs is somehow irrational.

that generally results in higher *present* need for QUAMs to improve the current housing stock while exempting those same municipalities from prospective need, so as to avoid overburdening them, is a classic policy choice. And whatever the competing views over that choice, it is a rational way to ensure broad-based access to housing—counterbalancing the pre-existing density and dilapidated units already in the QUAMs, see *id.*; implementing a preexisting doctrine that requires access to affordable housing "throughout the State," ECF 16-3 at 43-44; and achieving greater "clarity" in calculating housing obligations and "eliminat[ing] the lengthy and costly" delays that predated the Act, N.J. Stat. Ann. § 52:27D-302(n), via a pre-set formula.

Applicants' counterarguments fail to "negative every conceivable basis which might support" the exemption. See *Armour*, 566 U.S., at 681. Applicants primarily argue that demographic trends in New Jersey have changed since the QUAM exception was first recognized, and there is more growth in urban areas than before. See Appl. 31-34. But leaving aside that this is the kind of fine-grained policy debate rational-basis review forecloses, see *Beach Cmmc'ns*, 508 U.S., at 315, Applicants miss the point: the justification for the QUAM exemption is to address a lack of affordable housing in *non*-QUAMs, so that low- and middle-income families have a fair opportunity to find affordable housing in a range of New Jersey communities, not just in densely-populated urban centers. See *Mount Laurel II*, 456 A.2d, at 415-16. Nor does the fact that some suburban municipalities have a higher prospective need obligation than if the Legislature had chosen a "pro rata" formula render the exemption irra-

tional, see Appl.32; rather, in addition to promoting clear and effective implementation of the *Mount Laurel* doctrine, it advances the core principle of that doctrine: to expand access to affordable housing in areas *beyond* the State's poorest cities.

Applicants get no further by invoking *Shelby County v. Holder*, 570 U.S. 529 (2013). For one, nothing in *Shelby County* suggests the Fifteenth Amendment's limits on Congress's power to regulate States also limit *state* legislative authority vis-à-vis its own municipalities, least of all under rational-basis review. See *id.*, at 544-45 (relying on "'principle of equal sovereignty' among the States" to invalidate federal preclearance requirement as an "extraordinary departure from the traditional course of relations between the States and the Federal Government"). Indeed, that would be an especially odd result, as this Court said equal sovereignty *preserves* States' ability to "implement laws that they would otherwise have the right to enact and execute on their own." *Id.*, at 544. In any event, the QUAM exemption is not a "formula based on 40-year-old facts having no logical relation to the present day." *Contra* Appl. 34 (quoting *Shelby Cnty.*, 570 U.S., at 554). Far from a formula "based on decades-old data and eradicated practices" from the 1960s or 1970s, compare 570 U.S., at 551, the list of QUAMs is dynamic: a locality must qualify for state aid and meet one of three criteria tied to existing substandard housing or density "as of July 1 of the year prior to the beginning of a new round" of statutory obligations, see N.J. Stat. Ann. § 52:27D-304.3(c)(1). So whether a municipality is a QUAM at any given time turns on recent data that itself changes, such that the "exempt municipalities change over time" too, as Applicants' own putative expert conceded. App. 80a, n.2. Finally, not only is the

formula dynamic and accommodative of new conditions, but the Legislature has changed the formula over time: the 2024 Act codified updates that left urban municipalities with higher present-need obligations than they had borne in the FHA's earlier decades. See *In re N.J.A.C. 5:96 & 5:97*, 6 A.3d, at 470 (adopting higher present-need obligations by COAH in Third Round of compliance); *supra* at 7, 16-17 (discussing codification). So the fact this is a state formula that dynamically responds to changing facts—and indeed one that the Legislature has itself amended—easily distinguishes *Shelby County*.

In short, Applicants' policy objections are for the New Jersey Legislature (or, if they challenge the *Mount Laurel* doctrine, the New Jersey Supreme Court) to assess—not for the federal courts under rational-basis equal-protection review. And the factbound nature of this dispute regarding a New Jersey-specific state-law doctrine only underscores that Applicants merit no relief from this Court.

II. THE EQUITABLE FACTORS ALSO FORECLOSE APPLICANTS' DEMAND FOR EMERGENCY RELIEF.

Even if Applicants could overcome the three independent defects in their case, they still cannot justify emergency relief from this Court. Most glaringly, Applicants cannot justify an injunction given their lack of "reasonable diligence." *Benisek*, 585 U.S., at 159; see *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) (noting "strong equitable presumption against" granting stay if claim "could have been brought at such a time as to allow consideration of the merits" absent a stay); 11A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 2948.1 (3d ed. 2013) ("[A] party may

not satisfy the irreparable harm requirement if the harm complained of is self-inflicted."). As noted, the statute Applicants claim violates equal-protection on its face was enacted in March *2024*. Indeed, when the state court rejected a motion for preliminary relief in January 2025, the court even then emphasized their seven-month delay as a basis to deny that motion. ECF 16-3, at 26 n.5. Yet Applicants waited ten *more* months to seek a preliminary injunction before the federal District Court, ECF 19, a dilatory approach that undermines any claims of urgency now.

That delay is particularly damning because it reflected, in significant part, Applicants' efforts to press their equal-protection claims in two different fora. See *Gomez v. U.S. Dist. Court for N. Dist. Of Cal.*, 503 U.S. 653, 654 (1992) (denying a stay based on the "last-minute nature of [the] application" and the applicant's "attempts to manipulate the judicial process"). Applicants did not merely delay here—they delayed in an effort to first seek relief from state court. See *supra* at 9-10. This case arrived to federal court only after the state trial court, state appellate court, and state high court rejected their motion for preliminary relief—and because the towns reacted to those adverse rulings by selectively dismissing their state-court equal-protection challenge and seeking relief in a second-filed forum. The urgency in seeking relief thus reflects strategic delay and a second bite at the apple, not a true emergency.

Applicants resist these conclusions by arguing that they could not seek injunctive relief before knowing which local sites would be rezoned, see Appl. 37-38, but this makes little sense. To start, many of the same municipalities in this case, represented by the same counsel, actually did seek emergency relief in the state court in late 2024,

long before zoning decisions were finalized. And the state trial court's comprehensive opinion did not deny relief based on any lack of imminence or ripeness, see ECF 16-3, nor did the State oppose or seek dismissal on that basis.[6] In any event, Applicants never explain why their equal-protection theory, based on distinctions between municipalities on the face of the statute, could not have been asserted after the law's enactment in March 2024. So applicants plainly could have brought this challenge "at such a time as to allow consideration of the merits" without any injunctive relief, see *Nelson*, 541 U.S., at 650—seeking redress then for alleged reputational or taxpayer injuries. Applicants' justification that they had to wait to "reach their current predicament" to seek extraordinary, eleventh-hour relief, Appl. 37, is thus difficult to square with doctrine and their own towns' and counsel's prior litigation choices, Appl. 20. Any emergency is self-created. See, *e.g.*, *Gomez*, 503 U.S., at 654.[7]

Injunctive relief is also unwarranted because of the belated disruption it would impose. See *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (purpose of preliminary relief

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[6] Applicants cite a snippet of dialogue from the federal District Court's hearing to suggest otherwise, but the exchange they cite shows *their counsel* speculating that "if we filed for a preliminary injunction at that time," the State "would have been raising, 'Well, it's speculative.'" App. 366a. As noted, however, many of the towns, represented by the same counsel, did file for a preliminary injunction on this basis (among a smorgasbord of others) in late 2024, and the State opposed not by claiming that the alleged harms were unripe, but rather by relying on the municipalities' special lack of standing to sue the State and on the merits. Those same defects still apply here.

[7] Applicants also overstate the degree to which March 15, 2026, offers a red line. *E.g.*, Appl. 19-20. Before the state courts, the municipalities treated January 31, 2025, as the deadline. See ECF 16-3, at 21; see also Appl. 35. Before the federal District Court and the Third Circuit, Applicants said February 1, 2026. See App. 370a; CA3 Doc. 6-2, at 13 n. 18. Even now, they concede that extensions are available from the Program, see Appl. 36 (citing N.J. Stat. Ann. § 52:27D-304.1(f)(2)(d)-(f)(3)(a))—and lead plaintiff Montvale has already sought a three-month extension before the Program.

is to "preserve the relative positions of the parties"). Since enactment of the NJ FHA in March 2024, the vast majority of New Jersey's 564 municipalities (not to mention the State's judicial and executive branches) have been operating under the Act, most through the voluntary dispute-resolution Program. Applicants now ask this Court to upend that regime by freeing towns from the statute's requirements, yet permitting them to keep the statute's reward: legislatively granted immunity from exclusionary-zoning lawsuits during the current ten-year housing compliance period. But New Jersey towns enjoy no freestanding immunity from such suits, and *every* town's immunity from the preceding ten-year cycle ended when that cycle ended. See *supra* at 6. The statute simply gives municipalities a means of reestablishing their immunity for the current cycle by entering the Program and complying with its requirements—the very thing Applicants want to be absolved of having to do. Equity does not favor such a have-their-cake-and-eat-it-too request, especially to the detriment of numerous other parties' good-faith efforts since this law's March 2024 enactment. See ECF 16-3 at 26 n.5 (state court, facing identical claims, discussing this disruption in January 2025 as a further reason not to grant towns preliminary relief).

Even apart from delay, repeat filing, and disruption, Applicants have no *irreparable* injury sufficient for emergency relief for many of the same reasons they cannot show Article III injury. The primary injury Applicants cite is a harm to their reputations with their municipal constituents, who will allegedly hold them accountable for the results of a law they oppose. Even if that chain of inferences were not too speculative for Article III standing, but see *supra* at 14-15, it would be far too speculative

for purposes of irreparable harm. See *Winter*, 555 U.S., at 22; *Nken v. Holder*, 556 U.S. 418, 434-35 (2009). Applicants remain free to communicate with their constituents regarding their view of this state law (and their lack of responsibility for it)—a position amply communicated by filing multiple suits challenging it. Cf. *United States v. Alvarez*, 567 U.S. 709, 727 (2012) ("The remedy for speech that is false is speech that is true."). So it cannot be that any alleged reputational injury is truly irreparable.

Further undermining Applicants' irreparable injury, Applicants' towns—the municipalities on whose behalf they seek relief—also have multiple means of seeking to avoid injury. Just as such towns could have continued prosecuting their state-court case, they could (1) enter the Program and appeal any adverse decisions up through the state courts, with this Court's review available for federal questions; (2) instead sue in New Jersey state court for declaratory relief that they are in compliance with *Mount Laurel*; or (3) act however they feel is appropriate and defend against any suits that they draw. See ECF 16-3, at 13-15 (state trial court acknowledging each of these options and noting different towns exercised the third in the past); N.J. Stat. Ann. § 52:27D-304.1(f)(1)(b), -313(a); App. 412a n.5; accord Appl. 19-20 & n.9. Said differently, because Applicants fail to establish that meeting the March 15 deadline is the only way for their towns to redress alleged injuries, they cannot colorably argue that their own *derivative* harms are irreparable. This too suffices to deny this Application.

Finally, the balance of the equities and the public interest—which merge here, see *Nken*, 556 U.S., at 435—further undermine the Application. "Any time a State is

enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA*, 606 U.S. 831, 861 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)) (cleaned up). That is especially true here: New Jersey's statute seeks to better effectuate and ultimately comply with a state constitutional doctrine that Applicants do not challenge. The State's interest in a statute that complies with, and provides greater clarity to, a binding state constitutional right ensuring meaningful access to affordable housing across the State, see *Mount Laurel II*, 456 A.2d, at 415, is thus compelling, whereas Applicants' interests in resisting this 2024 statute are especially limited, since they do not challenge the underlying state-constitutional mandate. So while no one disputes the "strong public interest in protecting constitutional rights," Appl. 37, that hardly assists Applicants, particularly given the three independently dispositive legal defects in their federal challenge.

CONCLUSION

This Court should deny the Application.

Respectfully submitted,

JENNIFER DAVENPORT
Acting Attorney General of New Jersey
JEREMY M. FEIGENBAUM*
Solicitor General
MICHAEL L. ZUCKERMAN
Deputy Solicitor General
TIM SHEEHAN
Assistant Attorney General
SEPTEMBER R. MCCARTHY
LEVI KLINGER-CHRISTIANSEN
GORDON ESTES
CHARLES SHADLE
Deputy Attorneys General
OFFICE OF THE NEW JERSEY
ATTORNEY GENERAL
25 Market Street, Box 080
Trenton, NJ 08625
(862) 350-5800
jeremy.feigenbaum@njoag.gov

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