

In the Supreme Court of the United States

BOROUGH OF MONTVALE, ET AL.,
Applicants,

v.

JENNIFER DAVENPORT,
ACTING ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, ET AL.,
Respondents.

**APPLICANTS' REPLY IN SUPPORT OF APPLICATION FOR
EMERGENCY RELIEF SEEKING INJUNCTION PENDING APPEAL**

MICHAEL L. COLLINS
MATTHEW C. MOENCH
SUZANNE E. CEVASCO
NICHOLAS D. HESSION
SECILIA FLORES
KING, MOENCH & COLLINS, LLP
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Telephone: (732) 546-3670

JASON TORCHINSKY
Counsel of Record
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste. 643
Washington, DC 20037
Telephone: (202) 737-8808

DANIEL BRUCE
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
15405 John Marshall Highway
Haymarket, Virginia 20169
Telephone: (540) 341-8808

Counsel for Applicants

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INTRODUCTION

The issue before the Court at this time is narrow—Applicants seek a *temporary* injunction, during the pendency of their appeal before the Third Circuit and any subsequent petition for a writ of certiorari. To decide this issue, the Court need not decide whether it would ultimately grant certiorari. Rather, the Court need only decide whether Applicants have “clearly established their entitlement to relief pending appellate review” based on a likelihood of success on the merits, the presence of irreparable harm, and the public interest. *Roman Cath. Diocese v. Cuomo*, 592 U.S. 14, 16 (2020) (granting injunction pending disposition of circuit court appeal and disposition of any petition for a writ of certiorari); *see also Tandon v. Newsom*, 593 U.S. 61 (2021). Applying that standard, this Court last year granted emergency relief to vindicate a constitutional injury suffered by a state legislator, *Libby v. Fecteau*, 605 U.S. ___, ___ (2025) (slip op., at 1), analogous to the instant local elected officials’ claims.

Applicants have met that standard here. The district court dismissed the suit on standing grounds without considering this Court’s most recent decision on standing. While that decision is reviewed on appeal, the municipalities will irreversibly lose immunity from suit on March 15 allowing undesired development to proceed. Meanwhile, a temporary delay of the implementation of instant law will not meaningfully affect New Jersey’s zoning scheme.

Respondents suggest that the timing of this application—nearly two years after the law’s passage—is a reason to deny it. To the contrary, the record shows that

Applicants have been diligent on two separate fronts: following the compliance process outlined in the statute, and challenging the law in state and federal courts, with this appropriate application made when their claims ripened.

Because of judicial entrenchment in New Jersey's *Mount Laurel* doctrine, it may well be that Applicants will need to seek certiorari before this Court to receive due consideration of their Equal Protection claims. This Court is not beyond correcting constitutional errors even where there is no circuit split, and even where the issue is confined to one case or one jurisdiction. *See Flowers v. Mississippi*, 588 U.S. 284, 288 (2019). The *Mount Laurel* Doctrine is such an issue—developed by state courts through inconsistent and ad hoc decisions, based on circumstances that existed over 40 years ago, then thoughtlessly codified by the state legislature without any rational consideration of current circumstances. The instant law – enacted to implement the *Mount Laurel* Doctrine – unconstitutionally denies Applicants and their nearly 10 million fellow New Jerseyans equal protection. A temporary injunction is needed to fully litigate these issues—in the Third Circuit and, if necessary, before this Court, which are the last two judicial fora available to Applicants. Applicants simply seek to complete that process without irreparably subjecting themselves to both reputational harm and legal liability.

ARGUMENT

I. Last Year, This Court Granted an Injunction Pending Appeal to Vindicate a Parallel Constitutional Injury Suffered by a State Lawmaker.

Applicants seek to prevent imminent harm to their reputations as elected officials. This Court granted this precise relief to a state lawmaker in *Libby v.*

Fecteau, 605 U.S. ____ (2025). There, a Maine state representative who was an “outspoken critic of Maine’s state policy allowing boys who identify as transgender to compete in girls’ sports” was prohibited from speaking or voting on the floor of the Maine House of Representatives. *Libby v. Fecteau*, 784 F. Supp. 3d 272, 274 (D. Me. 2025). The representative sought a preliminary injunction to prevent unconstitutional sanctions. *Id.* The District Court denied a preliminary injunction, *id.*, and the First Circuit denied an injunction pending appeal. *Libby v. Fecteau*, No. 25-1385, 2025 WL 1210679 (1st Cir. Apr. 25, 2025). This Court reversed and granted the application for an injunction pending appeal. *Libby*, 605 U.S. at ____ (slip op., at 1). The instant application contains parallel irreparable harms and therefore supports an injunction pending appeal. Applicants bring before this Court constitutional claim against state action that infringes upon their actions as local legislators and will actively cause them reputational harm relative to a March 15 deadline. This Court sanctioned such relief last year in *Libby* and should do so again here.

Further, Applicants meet any heightened standard requiring a showing that Applicants meet this Court’s traditional certiorari factors. *See, e.g., Libby*, 605 U.S. at ____ (Jackson, J., dissenting) (slip op., at 2–3). First, the District Court erroneously dismissed Applicants’ complaint for lack of reputational standing, in a decision entirely contrary to this Court’s recent decision in *Bost*, which itself supports certiorari and summary reversal. *Wearry v. Cain*, 577 U.S. 385, 395 (2016) (summary reversal appropriate in fact-sensitive cases where lower cases have egregiously

applied settled law). Second, the District Court erroneously denied (for lack of standing) Plaintiffs’ challenge to a New Jersey law that uses a forty-year-old formula to classify its 10 million residents that was re-adopted without consideration of the current circumstances. This presents a unique matter of public importance that warrants extension of *Shelby County v. Holder*, 570 U.S. 529 (2013) – which held Congress’s re-adoption of a forty-year-old classification to be “irrational” under the Fifteenth Amendment – to state action under the Fourteenth Amendment’s equal protection clause.

II. Applicants’ Irreparable Harm is Uncontroverted Because Respondents Fail to Demonstrate that Construction Begins after March 15.

Respondents do not rebut the irreparable harm Applicants will suffer absent injunction of the March 15 deadline implementing high-density housing in their communities.¹ Application (“Appl.”) 15–17. Such development, disfavored by both Applicants and their constituents as unsound planning, will result from either re-zoning required by the 2024 FHA or builder’s remedy litigation. Upon March 15, developers may immediately file land use board applications or lawsuits, respectively, and thereby obtain vested rights to high-density zoning, presently prohibited, that

¹ Applicants are currently between the proverbial rock and a hard place. They are taking steps to introduce re-zoning ordinances, despite attendant harm, while actively seeking an injunction from this Court and recognizing the time to adjudicate same. They must imminently complete a required public hearing and final adoption that would be the apex of irreparable harm and legalize the zoning they oppose, devastating their legal challenge. For these reasons, Applicants respectfully request a decision from this Court **by February 24, 2026**, to prevent the further irreparable harm presented by public hearings and final adoptions.

cannot be reversed even if Applicants prevail below. Appl. 16–17. Thus, absent an injunction pending appeal, *construction will begin*, stripping this Court of any meaningful opportunity to review the constitutionality of the 2024 FHA and causing irreparable harm to Applicants’ reputations as public servants. Those undisputed contentions, without more, establish Applicants’ irreparable injury under the preliminary injunction standard.

Respondents attempt to obscure the harm undisputably caused by “shovels in the ground” by falsely conflating the irreparable injury necessary for a preliminary injunction to the Article III injury standard, even though the two are distinguishable. Opposition (“Opp.”) 28–30. They argue Applicants’ reputational injury is too speculative to constitute irreparable harm because they are free to communicate their opinions about the 2024 FHA to constituents. Opp. 29. But this argument fails against an uncontroverted motion record in which Applicants certified and testified that their constituents will hold them accountable for implementing the UAC despite the fact that it was enacted by state legislators, and that they stand to lose re-election as a result. Appl. 13–14.

Current events in New Jersey corroborate Applicant’s testimony and demonstrate that harm is not speculative. On February 11, 2026, the governing body of Ridgewood held a public hearing² on the required re-zoning by March 15, at which

² New Jersey law requires that notice of public hearings on re-zonings be sent to every single property owner in the affected zone and those that live within 200 feet in all directions of that re-zoning. N.J. Stat. § 40:55D-62.1. So Applicants’ municipalities are forced to personally advise and invite residents to attend a public hearing on re-zonings that they themselves oppose, forcing them to suffer reputational injury.

elected officials “continued to receive objections from residents . . . ranging from accusations against local leaders of conspiracies, accepting campaign donations and personally benefiting from the rezoning.”³ In response, the mayor remarked, “If you think we did something wrong, speak to an attorney . . . Ask if we had any choice. We had no choice.”⁴ That is exactly the argument that Applicants raised before the district court. Considering real-world events support the truth of Applicants’ testimony, the reputational harms faced here are not speculative or overblown.

Respondents further argue, without base, that Applicants’ reputational harms are not derivative of the March 15 deadline. Opp. 29. First, they contend Applicants could appeal the Program’s determinations. However, an appeal does not shield a municipality from the loss of immunity from builder’s remedy litigation upon the March 15 deadline. N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c). Second, Respondents argue that a town could file a declaratory judgment action. However, that purported process relies upon the same March 15 deadline. N.J. Stat. Ann. § 52:27D-313 (citing N.J. Stat. Ann. § 52:27D-304.1(f)(2)(c)). Third, Respondents argue the towns can defend against builder’s remedy litigation, but the record makes clear that such a result is even more harmful to Applicants’ reputations than compliance. Appl. 13–14. Contrary to Respondents’ arguments, none of the cited avenues provide Applicants with a “means of seeking to avoid injury.” Opp. 29

³ Marsha A. Stoltz, *Ridgewood Moves Ahead With Next Round of Affordable Housing. See Where*, NorthJersey.com (Feb. 17, 2026), <https://www.northjersey.com/story/news/bergen/ridgewood/2026/02/17/ridgewood-nj-approves-next-affordable-housing-where/88701999007/>.

⁴ *Id.*

III. Applicants Amply Demonstrate Article III Standing

A. Reputational Injury

Applicants' reputational injury as elected officials is confirmed by this Court's decision last month in *Bost v. Illinois State Board of Elections*, 607 U.S. ____ (2026). Respondents attempt to distinguish *Bost* by arguing that it is limited to illegality in the vote-counting process. Opp. 15. To the contrary, *Bost* broadly interpreted the "classic" Article III injury of reputational harm to include damage to an elected official's reputation resultant from a diminution in vote share. 607 U.S. at ____ (slip op., at 5). Moreover, this Court's prior decisions confirm that Applicants' reputational injury is sufficient for Article III standing. In *Meese v. Keene*, this Court held that a plaintiff has standing to challenge a law that "threaten[s]" a "cognizable injury" by causing his personal, professional, or political reputation to suffer, thereby impairing his ability to obtain re-election and practice his profession. 481 U.S. 465, 473 (1987). Applicants have established parallel injuries in this case.

Because Applicants' reputational injury is irrefutable, Respondents assert a parade of horrors which would follow this Court's conclusion that Applicants have standing based on reputational harm. See Opp. 13–14. Respondents' hyperbole ignores that their hypotheticals would be properly addressed through the requirement that reputational injury be "cognizable." In this case, the injury is exactly that, because local elected officials are forced to exercise their zoning powers contrary to their own desires and those of their constituents.

A recent public meeting to comply with the March 15 deadline illustrates that harm. Ramsey’s governing body introduced a re-zoning to accommodate 350 residential units, seventy of which are affordable.⁵ They received “24 letters objecting to the ordinance, many repeating the same charge that ‘it establishes a zoning framework that invites speculative and predatory development, encouraging aggressive acquisition tactics that destabilize intact residential blocks.’”⁶ Additionally, “more than a dozen residents spoke out against it during the public comment period.”⁷ These residents “warned that the plan could hurt property values, increase traffic and alter the character of the neighborhood.”⁸ As recognized by the mayor, such a lawsuit will mean that “the borough will be unable to stop the builder from building in its desired location, whether or not the location is zoned for multi-family housing[.]”⁹ The mayor’s response echoes testimony put before the District Court in this case: that the 2024 FHA leaves local elected officials with no practical choice, leaving them to suffer reputational harm as they address a Hobson’s choice.

Respondents continued claim that Applicants’ Article III injury remains speculative, Opp. 14, fails under the motion record and is further, corroborated by recent developments in towns demonstrating how local elected officials are suffering reputational harm *now* by attempting to comply with the March 15 deadline.

⁵ *See supra* n. 3.

⁶ *Id.*

⁷ Allison Pries, *N.J. Town Faces Backlash from Residents for Affordable Housing Plan*, NJ.com (Feb. 15, 2026), <https://www.yahoo.com/news/articles/n-j-town-faces-backlash-130055736.html>.

⁸ *Id.*

⁹ *Id.*

B. Municipal Taxpayer Injury

Applicants have standing as municipal taxpayers who challenge the expenditure of municipal funds required by the 2024 FHA. To date, Applicants have paid the costs necessary to comply with the rezoning required by the challenged State law. *See Doremus v. Bd. of Educ.*, 342 U.S. 429, 424 (1952). Respondents' reliance on *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), is misplaced because, unlike here, the plaintiffs in that case did not challenge a state law that mandated a municipal expenditure. *DaimlerChrysler* is therefore not persuasive authority on this issue and does not extinguish the circuit split identified in Applicant's moving brief. Appl. 25.

IV. Respondents' Arguments Fail to Support the Legislature's Blind Re-Adoption of a 40-Year-Old Formula.

In this Court's landmark *Shelby County* opinion, it held that Congress' blind re-adoption of a forty-year-old voting rights coverage formula that did not account for "current conditions" was "irrational" and therefore unconstitutional. 570 U.S. at 553–54. In the instant case, *Shelby County's* reasoning must extend to New Jersey's impermissible classification of its nearly 10 million residents based on a four-decade-old formula that entirely ignores changed economic conditions.

Tellingly, Respondents' opposition fails to even cite *AMG Realty Co. v. Warren Twp.*, 504 A.2d 692 (N.J. Super. Ct. Law Div. 1984), and addresses *In re Adoption of N.J.A.C. 5:96*, 74 A.3d 893 (N.J. 2013) only in a footnote. These decisions are the gravamen of Applicants' claims. Respondents' failure to tackle the two seminal cases speaks volumes.

By overlooking these cases, Respondents ignore how the UAC was enacted to address the economic conditions in 1984 that prevented urban aid municipalities from shouldering their part of the State’s prospective need obligation. They similarly ignore the state supreme court’s own acknowledgment, in 2013, that New Jersey’s economic conditions had changed in those 30 years, thereby rendering abrogation of its past approach appropriate. Taken together, *AMG* and *In Re Adoption of N.J.A.C. 5:96* demonstrate that today’s conditions “tell an entirely different story” and that the 2024 codification of the UAC does not pass federal constitutional muster. *See Shelby Cnty.*, 570 U.S. at 556. Because *AMG* and *In re Adoption of N.J.A.C. 5:96* are inviolable, Respondents raise alternative arguments to ascribe rationality to the UAC that are each unavailing.

First, Respondents contend the UAC satisfies purported state constitutional goals articulated in dicta of *Mount Laurel II* (that *AMG* abrogated), such as avoiding exclusionary zoning. Opp. 20. But Respondents overlook dicta that is more relevant to the instant case and undermines their claims: the New Jersey Constitution does not require bad planning, suburban spread, or large-scale housing developments – all of which the UAC undisputably causes. *S. Burlington Cnty. N.A.A.C.P. v. Twp. of Mount Laurel (Mount Laurel II)*, 456 A.2d 390, 430–31 (N.J. 1983).

Second, Respondents argue that the UAC is rational because the *Mount Laurel* doctrine (without citation) “calls for distinguishing poorer cities from other

municipalities.”¹⁰ Opp. 21. They later claim the UAC is justified to address a lack of housing in non-urban aid municipalities and “not just in densely-populated urban centers,” citing *Mount Laurel II*, 456 A.2d at 415–16. Opp. 23. Respondents do not explain how the UAC remains relevant despite the sea change resulting in growth in housing that does not require leaving the cities for new units anymore. They also do not confront the fact that adherence to *Mount Laurel II*’s judicial remedy is not constitutionally required, has not been since at least 2013, and in fact the Legislature was invited to “arrive at another approach” other than the UAC. *See In re Adoption of N.J.A.C. 5:96*, 74 A.3d at 896–98. Against this backdrop, Respondents’ reflexive citation to the 1983 *Mount Laurel II* decision underscores Applicants’ argument that there was no rational basis for the 2024 codification of the UAC.

Third, Respondents claim it is reasonable for the Legislature to “treat . . . poorer cities differently” by referencing the UAC’s mechanics. Opp. 22. As above, this argument fails to reconcile economic changes that occurred between 1984 and the present day. Four decades ago, urban aid municipalities were losing population and were unable to sustain residential development. Appl. 31–32. Thus, they were exempt. Today, those municipalities prosper and together account for one-half of New Jersey’s population growth and 45% of New Jersey’s affordable housing

¹⁰ Respondents also claim *Mount Laurel* would not be satisfied by “cramm[ing]” units “all into a few large cities.” Opp. 22–23. This is yet another straw man argument inferring that invalidation of the UAC to redress unconstitutional impacts upon non-urban aid municipalities means the State’s entire prospective need affordable housing obligation would instead be placed upon urban aid municipalities. Applicants have not advocated for that result.

development using tax credits over the last decade. Appl. 31–33. Respondents’ argument ignores those conditions and continues to rely on conditions that existed four decades ago. *Shelby County* demonstrates that that is not a rational reason for a classification.

Fourth, Respondents claim (without any citation) that the UAC is a “classic policy choice,” which intends to avoid “overburdening” urban aid municipalities that purportedly bear high present need obligation. Opp. 23. But the Legislature never asserted this policy choice. To the contrary, it enacted the UAC with the stated purpose of implementing the *Mount Laurel* Doctrine. N.J. Stat. Ann. § 52:27D-302(p). Considering that clear proclamation, Respondents cannot now proffer alternative justifications, outside of the *Mount Laurel* Doctrine, to justify the UAC.

Finally, Respondents’ claim that *Shelby County* is inapplicable because the UAC is based upon “data that itself changes,” N.J. Stat. Ann. § 52:27D-304.3(c)(1), is equally unpersuasive. Specifically, Respondents allege that the UAC contains a re-evaluation provision, which, in theory, could allow an urban aid municipality’s classification to change from decade to decade. But that distinction does not render *Shelby County* inapposite. That is because Applicants’ uncontroverted expert report establishes that, regardless of the technical opportunity for change, the list of urban aid municipalities “has stayed relatively constant” from the 1970s to today, and that any such changes in the past half-century affect only two percent of New Jersey households. App. 80a. Thus, while the statute might allow for variability, in practice the classification is rinsed-and-repeated, with the same municipalities classified as

urban aid municipalities for over five decades. In that context, the continued exemption of the now-robustly growing urban aid municipalities lacks any relation to the reason that *AMG* exempted those them from a prospective need obligation.

This is exactly the scenario addressed by *Shelby County*. The UAC is not justified by “current needs” or “sufficiently related to the problem it targets,” and therefore does not pass federal constitutional muster. *Shelby Cnty.*, 570 U.S. at 551.

V. Respondents Cite Inapposite Case Law in a Failed Attempt to Argue Applicants’ Injunction Request is Untimely.

Respondents’ argument that the instant application is too late fails. In support of that claim, Respondents proffer three cases which are factually and procedurally distinct from the instant case. Nothing in the cited authority supports Respondents’ argument that Applicants were “dilatory” and engaged in “strategic delay.” Opp. 26. To the contrary, the statutory framework of the 2024 FHA makes clear that the instant application was timely because Applicants’ harms resultant from the March 15, 2026, deadline had not previously ripened. The 2024 FHA prescribes a compliance process, stretching more than a year, that culminates on March 15, 2026, when Applicants must approve re-zonings to be enacted within the next three months. Thus, unlike the claims at issue in *Nelson v. Campbell*, 541 U.S. 637 (2004), *Gomez v. U.S. Dist. Court*, 503 U.S. 653 (1992) (per curiam), and *Benisek v. Lamone*, 585 U.S. 155 (2018) (per curiam), which involved capital punishment claims that ripened decades ago or redistricting claims based upon a six-year-old map, the instant application is only recently ripe. The instant application is therefore timely.

VI. Respondents' Citation to an Inapplicable State Court Preclusion Doctrine is Unpersuasive.

Respondents argue that New Jersey's Entire Controversy doctrine ("ECD") bars the instant claims. Respondents appear to raise this argument to create a spurious illusion that Applicants seek two bites at the apple. But Respondents' preclusion argument suffers from two fatal flaws: first, Applicants were not party to the referenced state court proceedings; second, those proceedings never resulted in a final judgment. Applicants are entitled to their day in federal court.

Respondents wrongly assert that "[s]ome of these Applicants" already pursued a preliminary injunction through the state courts. Opp. 18. That is not true. Applicants here are nine individual local elected officials. None were parties to the referenced state court complaint.¹¹ Because the equal protection doctrine does not involve or require the mandatory joinder of parties, *Ken Motor Cars, Inc. v. Reynolds & Reynolds Co.*, 25 A.3d 1027, 1036 (N.J. 2011), Respondents' argument fails.

Recognizing this reality, Respondents argue that Plaintiffs "cannot evade preclusion and joinder rules by tacking on extra plaintiffs" and "relitigating through a proxy." Opp. 19. But they fail to cite any ECD case law to support this proposition,

¹¹ The referenced state court complaint was brought by certain municipalities, some of which are also plaintiffs (the "non-applicant Plaintiffs") in the merits filing below. That those municipalities were involved in another proceeding has no preclusive effect on the individual plaintiffs who brought that complaint and bring the instant application. The resultant decision lacks any persuasive value for multiple reasons. See Appl. 35. No court ruled on the equal protection claim brought by the non-applicant Plaintiffs in the State action, because those parties voluntarily dismissed the equal protection count that complaint pursuant to N.J. Ct. R. 4:37, which allows such dismissals unilaterally and "without prejudice."

because none exists. Instead, they reference federal case law involving res judicata,¹² which lacks any applicability because the doctrine precludes claims after a final decision, which was never made in this case, or the first-to-file prudential doctrine¹³ involving multiple district courts facing the same claims, which is also inapplicable.

Respondents also claim the Third Circuit in 1997 “misunderstood” the doctrine to have a finality component and look to certain state court cases from 2010 and 2015 for support. Opp. 18. But in 2020, the New Jersey District Court held that *Erie* principles prevent application of the ECD in federal court; even if applied, the ECD does not apply to dismissals without prejudice because they are not adjudications on the merits. *Acad. Hill, Inc. v. City of Lambertville*, No. 19-426, 2020 WL 3642694, at *5 (D.N.J. July 6, 2020). Here, no adjudication on the merits occurred in this case. Therefore, regardless of its applicability before this Court generally, the ECD is inapplicable to the instant case.

CONCLUSION

For the foregoing reasons, the Court should grant Applicant’s request for an injunction pending appeal.

Dated: February 18, 2026

¹² *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008); *Guess v. Bd. of Med. Exam’rs*, 967 F.2d 998, 1005 (4th Cir. 1992).

¹³ *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785 (6th Cir. 2016); *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 951 (5th Cir. 1997).

Respectfully submitted,

MICHAEL L. COLLINS
MATTHEW C. MOENCH
SUZANNE E. CEVASCO
NICHOLAS D. HESSION
SECILIA FLORES
KING, MOENCH & COLLINS, LLP
200 Schulz Drive, Suite 402
Red Bank, New Jersey 07701
Telephone: (732) 546-3670

/s/ Jason B. Torchinsky
JASON TORCHINSKY
Counsel of Record
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste. 643
Washington, DC 20037
Telephone: (202) 737-8808

DANIEL BRUCE
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
15405 John Marshall Highway
Haymarket, Virginia 20169
Telephone: (540) 341-8808