PREPARED BY THE COURT

BOROUGH OF MONTVALE, et al., Plaintiff, v. STATE OF NEW JERSEY, AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM, and GLENN A. GRANT, in his official capacity as ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS, Defendants, and FAIR SHARE HOUSING CENTER, Defendant / Intervenor.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MERCER COUNTY DOCKET NO. L-1778-24 CIVIL ACTION **ORDER DENYING PLAINTIFFS' REQUESTS FOR INJUNCTIVE RELIEF**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the return date of the order to show cause filed by Plaintiffs

Borough of Montvale, et al., represented by Michael L. Collins, Esq., seeking preliminary injunctive relief as stated in their order to show cause; and Defendants State of New Jersey, Affordable Housing Dispute Resolution Program, and Glenn A. Grant, in his official capacity as Acting Administrative Director of the Courts (collectively, "the State Defendants"), represented by Deputy Attorney General Levi Klinger-Christiansen, having filed opposition; and Defendant Intervenor Fair Share Housing Center, represented by Adam Gordon, Esq., and Joshua D. Bauers, Esq., having also filed opposition; and Plaintiffs having filed a reply; and for the reasons as stated herein; and for good cause shown;

IT IS on this 2nd day of January 2025 **ORDERED** that:

1. The Court **DENIES** Plaintiffs' application for an order staying L. 2024, c. 2 pending final judgment of the Court in this matter.
2. The Court **DENIES** Plaintiffs' application for an order staying the Mount Laurel doctrine pending final judgment of the Court in this matter.
3. The Court **DENIES** Plaintiffs' application for an order staying the obligations of Plaintiffs and all other New Jersey municipalities relative to the requirements of L. 2024, c. 2 and / or the Fourth Round under the Mount Laurel doctrine pending final judgment of the Court in this matter.

4. The Court **DENIES** Plaintiffs' application for an order enjoining Defendants from taking any action pursuant to L. 2024, c. 2 and / or the Fourth Round under the Mount Laurel doctrine pending final judgment of the Court in this matter.

5. **Oral argument on Defendants' pending motions to dismiss**: Unless ordered otherwise, the Court will hear oral argument on Defendants' pending motions to dismiss Plaintiffs' complaint on **JANUARY 31, 2025**, at 10:00 a.m. Argument shall be remote via ZOOM. The Court will livestream oral argument.

6. The Supreme Court Guidelines on Media Access and Electronic Devices in the New Jersey Courts apply to the proceeding. Any person seeking to record the event (photo, video, audio) must comply with the Guidelines. The Trial Court Administrator's office, 609-571-4200, xt. 74910, handles all requests concerning recording the proceeding.

7. This Order shall be deemed filed and served upon uploading to eCourts.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

THE COURT PROVIDES THE FOLLOWING STATEMENT OF REASONS IN SUPPORT OF THE ABOVE RULINGS.

This matter comes before the Court on Plaintiffs' request for an order preliminarily enjoining the administration and enforcement of duly enacted legislation addressing a constitutional obligation of the State's municipalities. They also seek a stay of the constitutional obligation itself.

The Court denies Plaintiffs the relief they seek on numerous grounds. First, they fail to establish irreparable harm, an essential and necessary component of an application for injunctive relief. Second, they face the highest burden in challenging the validity of a legislative enactment, and they fail to overcome the burden of demonstrating a reasonable likelihood of success on the merits. Third, the public interest and balancing of the equities overwhelmingly favor Defendants.

Plaintiffs seek to enjoin the administration and enforcement of legislation that assigns certain responsibilities to the Executive and Judicial branches of State government and to the municipalities of this State. At its core, the legislation represents the Legislature's stated intention to transform the framework and processes by which municipalities meet their constitutional Mount Laurel obligation to provide realistic opportunities for low- and moderate-income housing. This obligation shapes the legislation, Plaintiffs' claims and arguments, Defendants' opposition, and this Court's conclusions.

A. FACTUAL AND PROCEDURAL HISTORIES

The Court starts with the factual and procedural histories. Because the legislation, and this Court's consideration of Plaintiffs' challenge to it, cannot be understood outside of its historical context, the Court briefly recounts the historical context for the Act, highlighting the Supreme Court's decades-long invitation to the political branches of government to address the Mount Laurel obligation through legislative and executive action and the deferential review given to the Legislature's actions in this area.

1. Factual history

i. Judicial, legislative, and executive enforcement and administration of the Mount Laurel doctrine

The history of this legislation begins almost fifty years ago when the Supreme Court found that each municipality had a constitutional duty to "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." S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 67 N.J. 151, 187 (1975). As Justice Pashman explained in his concurring opinion, this landmark decision announced the Supreme Court's engagement with "the dark side of municipal land use regulation-the use of the zoning power to advance the parochial interests of the municipality at the expense of the surrounding region and to establish and

perpetuate social and economic segregation." Id. at 193 (Pashman, J., concurring). In powerful, unequivocal language that has shaped affordable housing policy in this State for the past fifty years, the Court explained:

> It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation. Further the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality. It has to follow that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity.
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> [Id. at 179-80.]

In the intervening decades, satisfying this constitutional guarantee has been an iterative exercise for all branches of State government and the municipalities.

To enforce its order, the Court created a judicial remedy that allowed developers to sue municipalities for the opportunity to build higher-density housing than would otherwise be allowed. S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 92 N.J. 158, 199, 279-81, 287-93 (1983). Chief

Justice Wilentz, writing for a unanimous Court, stated the obvious: "The doctrine has become famous." Id. at 198. The Court reaffirmed the doctrine and the Judiciary's commitment to it:

> This Court is more firmly committed to the original Mount Laurel doctrine than ever, and we are determined, within appropriate judicial bounds, to make it work. The obligation is to provide a realistic opportunity for housing, not litigation. We have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals. We intend by this decision to strengthen it, clarify it, and make it easier for public officials, including judges, to apply it.
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> [Id. at 199.]

At the same time, the 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.
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> [Id. at 212-13.]

Time and time again, the Court would echo Mount Laurel II and invite the Governor and the Legislature to join it in ensuring the satisfaction of the constitutional obligation, giving due deference to their efforts to do so.

In 1985, the political branches answered the call and enacted the Fair Housing Act, L. 1985, c. 222. The Supreme Court considered the Act's constitutionality in Hills Development Co. v. Township of Bernards, 103 N.J. 1 (1986). Chief Justice Wilentz, again writing for a unanimous Court, observed that the Act:

> represents a substantial effort by the other branches of government to vindicate the Mount Laurel constitutional obligation. This is not ordinary legislation. It deals with one of the most difficult constitutional, legal and social issues of our day—that of providing suitable and affordable housing for citizens of low and moderate income.
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> [Id. at 21.]

See also id. at 23 ("This Act represents an unprecedented willingness by the Governor and the Legislature to face the Mount Laurel issue after unprecedented decisions by this Court."); id. at 65 ("The constitutional obligation has not changed; the judiciary's ultimate duty to enforce it has not changed; our determination to perform that duty has not changed. What has changed is that we

are no longer alone in this field. The other branches of government have fashioned a comprehensive statewide response to the Mount Laurel obligation.").

The Court rejected constitutional challenges to the administrative and adjudicative authorities granted the Council on Affordable Housing (COAH), an Executive Branch agency. The Court presumed that COAH "will pursue the vindication of the Mount Laurel obligation with determination and skill" and opining that "[i]f it does, that vindication should be far preferable to vindication by the courts, and may be far more effective." Ibid. Echoing Mount Laurel II and noting that opinion's "strongest possible entreaty to the Legislature, seeking legislation on this subject," id. at 41, the Court noted "[t]he particularly strong deference owed to the Legislature relative to this extraordinary legislation," id. at 24.

The Supreme Court has never wavered in its deference to the Fair Housing Act, notwithstanding the intensive and extensive litigation over COAH's rules, procedures, and effectiveness. While the Appellate Division criticized COAH for the delay in enacting Third Round rules, see In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 95-96 (App. Div. 2004) (describing COAH's delays in promulgating Third Round Rules as "dramatic and inexplicable" *eleven* years before Mount Laurel IV), and ultimately rejected their adequacy, In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J.

Super. 462 (App. Div. 2010), the Court resisted for many years the relief that Defendant FSHC, the New Jersey Builders Association, and several developers ultimately achieved: the dissolution of the FHA's exhaustion-of-administrative-remedies, which allowed "resort to the courts, in the first instance, to resolve municipalities' constitutional obligations under Mount Laurel." In re Adoption of N.J.A.C. 5:96 and 5:97 (Mount Laurel IV), 221 N.J. 1, 6 (2015).

In Mount Laurel IV, the Court explained that it was not abandoning the FHA's processes, ibid. (noting that Court's remedy "reflect[s] as closely as possible the FHA's processes"), nor stripping COAH of its responsibility and "mission to adopt constitutional rules" to govern the Third Round, ibid.; rather, it was confronting a situation where "the administrative process has become nonfunctioning, rendering futile the FHA's administrative remedy," id. at 5. As Justice LaVecchia observed: "The FHA's exhaustion-of-administrative-remedies requirement, which staves off civil actions, is premised on the existence of a functioning agency, not a moribund one." Ibid.

Because no effective or actual administrative remedy was available, the Court concluded that "the courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations" and adopted an orderly procedural mechanism for towns to obtain the

equivalent of substantive certification for their fair share housing plans and avoid exclusionary zoning lawsuits. 221 N.J. at 5-6, 19-20.

The Court reiterated its preferences that the political branches resume their appropriate role in enforcing the Mount Laurel obligation. It emphasized that its ruling did not impede the Legislature from considering alternatives to the FHA. Id. at 6; see also In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 612 (2013) (reminding that "Mount Laurel II is not a straightjacket to legislative innovation for satisfaction of the constitutional obligation."). Nor did the ruling restrict COAH from "performing its responsibilities should it eventually determine to do so," even after fifteen years of noncompliance with its statutory mandate and numerous orders of the Appellate Division and the Supreme Court. Mount Laurel IV, 221 N.J. at 17. Indeed, the Court ended its decision by reiterating that "the action taken herein 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.

ii. P.L. 2024, c. 2 ("the Act").

The legislation challenged by Plaintiffs here is the Legislature's response, informed by the deficiencies and delays of the COAH process, as well as the costs and uncertainties of administration and enforcement solely

through the courts. The legislation transforms the administration and enforcement of affordable housing policy in the State, seeking to produce affordable housing both more quickly and more cheaply by establishing appropriate Statewide policies, "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." N.J.S.A. 52:27D-302(n). The legislation aims to establish a more effective, transparent, and enforceable system for determining and ensuring compliance with municipal obligations under Mount Laurel. Ibid.

The Act modifies the calculation of municipal and regional obligation. It abolishes COAH. Id. at -304.1(a). In its place, the Legislature imposes various obligations on the Department of Community Affairs ("DCA"), the Judiciary ("Administrative Office of the Courts," "AOC"), and the municipalities. It charges DCA with providing non-binding calculations of regional and municipal need statewide, id. at -304(d), based on the provisions of N.J.S.A. 52:27D-304.2 and -304.3.

Once DCA issues its report, significant responsibilities shift to the municipalities that choose to participate in the process. The Legislature

established a clear and detailed timeline by which participating municipalities must fulfill their affordable housing obligations. By January 31, 2025, participating municipalities must adopt and file resolutions calculating their housing obligations. Id. at -304.1(f)(1)(b). By June 30, 2025, participating municipalities must submit their housing elements and fair share plans. Id. at -304.1(f)(2)(a). By March 15, 2026, participating municipalities must adopt implementing ordinances and resolutions. Id. at -304.1(f)(2)(c).

A municipality that complies with these deadlines retains immunity from exclusionary zoning lawsuits, id. at -304(u), maintains control over its own planning processes, id. at -304.1(f)(1)(a), and can manage its own housing obligations. See generally id. at -304.1(a), -313.2. These protections – immunity and a presumption of validity – are like the protections afforded to municipalities that participated in the COAH process. Additionally, the statute establishes compliance certifications that protect municipalities from exclusionary zoning litigation during the certification period, much like the judgments of repose entered after Mount Laurel IV. Id. at -304(q).

A municipality that declines to participate in the voluntary process or fails to comply with the statute's deadlines and processes moves into the Fourth Round in a different posture. It lacks statutory immunity from exclusionary zoning lawsuits and court-imposed zoning changes but may seek

a judgment of repose by filing for a declaratory judgment. Id. at -304(f)(1)(b) ("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."), -313(a). It cannot avail itself of either the exhaustion-of-remedies protection afforded by the Affordable Housing Dispute Resolution Program or DCA's technical expertise. Alternatively, just as some municipalities chose to do under the COAH regime, a municipality can sit back and defend itself against lawsuits from developers or advocates, when and if any such litigation ensues.[1] Id. at -304(f)(1)(b). While a municipal determination of its fair share obligation established through the new procedures has a presumption of validity in any challenge initiated through the program, the same determination established through a declaratory judgment action or exclusionary zoning litigation does not. Ibid. While litigation may be slower and more expensive than proceeding through the mediation processes, it remains an available option. Thus, although non-

[1] Defendant FSHC asserts, and Plaintiffs do not dispute, that Plaintiff Mannington Township has historically pursued this strategy. FSHCb65. Per FSHC, Mannington did not participate in the COAH process, did not file a declaratory judgment action, and has never faced such litigation, despite no judgment of repose granting it immunity. Ibid.

participation opens the municipalities up to a set of risks, the Act does not require municipalities to participate.

Having abolished COAH, the Legislature created the Affordable Housing Dispute Resolution Program within the Judiciary with the "purpose of efficiently resolving disputes involving the 'Fair Housing Act.'" N.J.S.A. 52:27D-313.2; id. at -304.1(f)(1)(c) (explaining that AOC responsible for "establishing procedures for the program to consider a challenge and resolve a dispute" initiated by interested person). The Program shall "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." N.J.S.A. 52:27D-313.2(a). "The Administrative Director of the Courts [ADC] shall update the assignment of designated Mount Laurel judges to indicate which current or retired and on-recall judges of the Superior Court shall serve as members." Ibid. Like the Mount Laurel judges in each vicinage, the Program may avail itself of additional support, including special adjudicators, for assistance with dispute resolution and administration. Id. at -313.2(c).

The Program has several identified responsibilities and roles. First, the Program resolves disputes involving the FHA, id. at -313.2(a), applying an objective assessment standard to determine municipal compliance, id. at -304.1(f)(1)(c). The Program may summarily dismiss any challenge that fails to specifically identify how the municipality's calculation of its obligation fails to

comply with the statute. Ibid. Second, the Program provides an administrative forum to facilitate communication between the municipality and interested parties to resolve disputes efficiently. See generally id. at -304.1(f). Third, the Program works in conjunction with, and is subject to review by, the county-level housing judges as designated by the Chief Justice.[2] Id. at -304.1.

The county-level judges are responsible for resolving disputes regarding a fair share plan and housing element if (a) the Program does not resolve a dispute within the statutory timeframe, (b) when the dispute over compliance with the FHA or the Mount Laurel doctrine remains unresolved by the Program, or (c) where a party's challenge to a municipality's compliance certification remains unresolved by the Program. Additionally, the county-level housing judges continue to have a role if a dispute arises during implementation of the fair share plans and housing elements. Id. at -304.1(f). (As discussed earlier, and similar to the role played since Mount Laurel IV, the county-level judges would likely also handle any declaratory judgment actions brought by municipalities that do not

[2] The Chief Justice first designated a small number of Law or Chancery Division judges as Mount Laurel judges based upon their expertise and concentration in Mount Laurel II. 92 N.J. at 253. In Mount Laurel II, the Chief designated three judges, "the number to be changed if necessary," each of whom were "exclusively responsible for a particular area of the state." Ibid. To ensure consistency within the region and throughout the State, "[t]he determination of region and regional need by any of these judges shall be presumptively valid as to all municipalities included in the region unless the judge hearing the matter indicates otherwise for reasons stated in his or her decision." Id. at 254.

participate in or do not comply with the procedures established in the statute, as well as any exclusionary zoning litigation.)

The Governor approved the legislation on March 20, 2024. It took effect immediately. L. 2024, c. 2, § 39.

2. Procedural History

Six months later, Plaintiffs filed their initial complaint. They quickly filed second, third, and fourth amended verified complaints as of October 29, 2024, adding more municipalities as plaintiffs. The complaint seeks numerous claims for relief: (a) declaratory judgment that the Act exceeds the Mount Laurel constitutional obligation; (b) declaratory judgment that the act imposes unfunded local mandates on the municipalities in violation of Article VII, Section 2, Paragraph 5 of the New Jersey Constitution; (c) declaratory judgment that the Act violates the municipalities' equal protection rights; (d) declaratory judgment that the Act violates the General Welfare clause of the New Jersey Constitution; (e) declaratory judgment that the Act constitutes special legislation; (f) declaratory judgment that the Act violates constitutional separation of powers and the judicial article; (g) declaratory judgment that the Act establishes an unconstitutional appointment structure; (h) declaratory judgment that the administrative Director of the Courts violated the Act by appointing some individuals who are not active judges or on recall to the Affordable Housing Dispute Resolution Program; and (i) declaratory

judgment that the Act unconstitutionally infringes upon the Supreme Court's exclusive role over rule-making by granting the Administrative Director of the Courts specified responsibilities.

On October 29, 2024, more than six months after the Act's effective date and upon the filing of the fourth amended complaint, Plaintiffs filed an order to show cause seeking preliminary restraints. Their order to show cause seeks the following injunctive relief pending disposition of this litigation: (a) an order staying the Act; (b) an order staying the Fourth Round under Mount Laurel; (c) an order staying any obligations upon municipalities flowing from the Act and/or the Fourth Round; and (d) an order restraining Defendants from taking any actions per the Act and/or the Fourth Round.

On October 30, 2024, the Court executed Plaintiffs' order to show cause and established a schedule for briefing and oral argument. On November 4, 2024, the Court entered a revised schedule over Plaintiffs' objection that established the governing written and oral argument schedule. Because Defendants submitted omnibus briefs in support of their respective motions to dismiss and in opposition to injunctive relief, the Court subsequently allowed all parties to file overlength briefs.

The Court heard oral argument on December 20, 2024.[3]

B. LEGAL ANALYSIS

Plaintiffs ask this Court to enjoin the operation of the Act and, almost as an aside, stay the enforcement of the Mount Laurel doctrine pending completion of this litigation. To secure such extraordinary relief, Plaintiffs must demonstrate that "(1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the 'relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.'" Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (quoting McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)). "Each of these factors must be clearly and convincingly demonstrated," Waste Mgmt. of N.J., Inc. v. Union County Utils., 399 N.J. Super. 508, 520 (App. Div. 2008) (citations omitted). "Although it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo." Ibid. (citing Gen. Elec. Co. v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 236-37 (App. Div. 1955)). Further, a court must "exercise sound judicial

[3] The Court reiterates its gratitude to all counsel for the quality and completeness of written and oral argument.

discretion . . . which—when limited to preserving the status quo during the suit's pendency—may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy." Ibid. (citations omitted).

"When a case presents an issue of 'significant public importance,' a court must consider the public interest in addition to the traditional Crowe factors." Garden State Equality, 216 N.J. at 321 (quoting McNeil, 176 N.J. at 486 (LaVecchia, J., dissenting)).

1. Plaintiffs fail to establish irreparable harm by clear and convincing evidence.

Plaintiffs must first prove by clear and convincing evidence that they have no adequate remedy at law, that they will be irreparably harmed in the absence of an injunction, and that the harm is imminent, concrete, and non-speculative. Subcarrier Commc'ns., Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). The likelihood that adequate compensatory or other corrective relief will remain available, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. Delaware River & Bay Auth. v. York Hunter Constr., 344 N.J. Super. 361, 365 (Ch. Div. 2001) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "The availability of adequate monetary damages belies a claim of irreparable injury." Id. at 364-65. "In other words, plaintiff must have no adequate remedy at law." Subcarrier Commc'ns. Inc., 299 N.J. Super. at 638.

Plaintiffs argue that the Act imposes immediate and significant burdens on municipalities, resulting in irreparable harm. First, they highlight the Act's accelerated deadlines for calculating affordable housing obligations, adopting binding resolutions by January 31, 2025, and implementing housing plans, and the serious risks of losing zoning authority and defending exclusionary zoning litigation for those municipalities that do not comply. Plaintiffs assert that these short deadlines create undue pressure on municipalities, forcing them to comply with complex requirements at significant taxpayer expense. Second, they highlight the need to engage legal, planning, and engineering professionals to meet the Act's requirements, placing substantial financial burden on municipal governments and their residents. Third, they contend that requiring them to participate in a process that they assert is unconstitutional compounds the harm, as it undermines their legal rights and autonomy.

The State Defendants reject any assertion of irreparable harm proffered by Plaintiffs. First, they contend that, as a matter of law, Plaintiffs cannot establish standing to challenge a statutory framework in which they are free to not participate, much less establish irreparable harm. Second, they argue that Plaintiffs fail to establish immediate injury from the Act because, regardless of the Act, the municipalities would still have to satisfy their underlying Mount Laurel constitutional obligation. Even if the Court invalidated those components of the

Act that Plaintiffs attack, Plaintiffs' Mount Laurel obligations would continue, and Third Round judgments of repose will expire. Plaintiffs would still have to employ lawyers, planner, and engineers; they would still face builder remedy lawsuits; they would still risk judicial enforcement of Mount Laurel in actions brought by advocates.

FSHC makes similar arguments. First, it emphasizes as well that Plaintiffs can simply opt out of the Program. Municipalities can forego the exhaustion-of-administrative-remedies protections afforded by the Act and the cost savings of the dispute resolution mechanisms by (a) filing a declaratory judgment action or (b) defending any exclusionary zoning litigation brought against it. Second, Plaintiffs' financial and administrative claims do not rise to irreparable harm. Legal fees, planning costs, and other professional services are routine obligations under the Mount Laurel doctrine and, indeed, are necessary costs incident to the very planning autonomy that Plaintiffs wish to maintain. Third, FSHC discounts Plaintiffs' complaints about compliance deadlines, pointing out that Plaintiffs waited more than six months from the Act's passage before seeking injunctive relief.

In reply, Plaintiffs emphasize that, for all intents and purposes, the Act requires participation. First, they argue that the consequences of not participating in the new administrative process – loss of immunity, exposure to litigation, risk of

losing planning autonomy – are so coercive as to remove all meaningful choice. Second, they assert that participation itself is wrought with risk of irreparable harm as the legislation compels them to participate in a process still lacking clear procedural safeguards, including evidentiary standards and appellate procedures. Third, they argue that they face irreparable harm because they are forced to participate right now in a program where DCA's data is flawed and imperfect. Fourth, and finally, they argue that the Act imposes irreparable harm by forcing them to participate in a program that so offends the judicial function and independence by allowing appointed members to make binding decisions.

This Court finds that Plaintiffs fail to establish irreparable harm by clear and convincing evidence. The Court rejects Plaintiffs' argument that the Act mandates their participation in the administrative and dispute resolution programs that Legislature has established, agreeing with Defendants that the statute does not compel municipalities to participate in the Program.[4] The Court incorporates the above discussion of the statute's provisions here.

It is a question of legislative interpretation. The primary goal of a court reviewing the interpretation of a statute is to discern the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492-93 (2005) (citing Frugis v. Bracigliano, 177

[4] The voluntary nature of the mechanisms established in the Act matters to both irreparable harm and to the likelihood of success on the merits. The Court could, but need not, find a lack of irreparable harm based on standing, as well.

N.J. 250, 280 (2003)). "[G]enerally, the best indicator of that intent is the statutory language." Ibid. Accordingly, the analysis "begins with the plain language of the statute." Ibid. (citing Miah v. Ahmed, 179 N.J. 511, 520 (2004)).

The Legislature did not foreclose or eliminate the ability of a municipality that declined or failed to meet the Act's deadlines to (a) affirmatively initiate a declaratory judgment action to seek a judgment of repose or (b) respond defensively to exclusionary zoning litigation. N.J.S.A. 52:27D-304.1(f)(2)(a). The Legislature did not eliminate the ability of any municipality to take affirmative action, outside the Program, to establish its Fourth Round obligation: "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." Id. at -313(a). The Legislature explained that such a declaratory judgment filing does not prevent any exclusionary zoning litigation already filed from proceeding. Id. at -304(f)(3)(b).

Municipalities that decline to participate in or fail to comply with the Act's processes and deadlines are no worse than if the political branches had done nothing. They would face the same choice of affirmative or defensive litigation because Third Round judgments of repose will expire in six months and the Executive Branch did nothing to resuscitate COAH, see generally In re

Appointment of Council on Affordable Hous., 477 N.J. Super. 576 (App. Div. 2024), or until the Legislature abolished COAH and assigned DCA different responsibilities through this legislation, otherwise define Fourth Round regional and municipal obligations. As FSHC points out, the legislative history of the Act explains that "if a municipality misses certain deadlines required by the program, existing protections from exclusionary zoning litigation would not be impacted immediately but may only be impacted at the end of the third round of affordable housing obligations." Assy. Approps. Cmte. Statement to A. 4 8 (Feb. 8, 2024).

A municipality that does not participate is situated similarly to a municipality that fails to comply with the statute's deadlines. It can file a declaratory judgment action seeking a judicial declaration that it has complied with its Mount Laurel obligation. It can do nothing and await and defend an exclusionary zoning lawsuit that may not come. The county-level housing judge would likely preside over either option. N.J.S.A. 52:27D-313.2(f). Granted, those consequences are significant, but a municipality would have faced similar options of affirmatively seeking declaratory relief or defending a lawsuit under the Fourth Round if the Legislature had not created the Program. In other words, the consequences flow not from the legislation but from the continuing constitutional command of Mount Laurel. Third Round immunity will end as of June 30, 2025, and, had the Legislature not redefined the landscape, municipalities would have to

confront next steps absent any continuing guidance from Mount Laurel IV, any ameliorative or curative intervening Executive Branch action, and any alternative administrative forum to a court-led system.[5]

[5] For this reason, the Court finds Plaintiffs' arguments based on maintaining the status quo to be of little persuasive value. While Waste Management allows the Court to be "less rigid" in considering the Crowe factors where a party seeks an injunction that is "merely designed to preserve the status quo," 399 N.J. Super. at 520, Plaintiffs seek reliefs dissimilar to the status quo. For many municipalities, the status quo is that their Third Round protections, if any, expire as of June 30, 2025. FSHCb76 ("The Third Round ends in June 2025, and the Fourth Round begins in July 2025 either way."). Additionally, that serious concern aside, Plaintiffs want the status quo as of the time of the Legislature's enactment, along with a pause in the Mount Laurel obligation. They waited five months before seeking injunctive relief. In the intervening seven months since the Act's enactment, the State Defendants have complied with and fulfilled their statutory obligations. DCA has published the non-binding calculations of municipalities' present and prospective need for affordable housing for the Fourth Round. Similarly, the Judiciary has established the Affordable Housing Dispute Resolution Program, appointed members to it, issued directives promulgating rules and procedures implementing the Program, established a filing system and website for efficiency and transparency, issued orders relaxing relevant Court rules, and revised guidance on the practice of law by retired judges to permit retired judges to accept the fee-generating appointment to serve as members of the Program. Additionally, although not formally part of this record, the Court presumes that most municipalities that are not participating in this litigation have undertaken significant efforts and expenses to meet the deadlines and obligations of the Act. Finally, the Court finds it incongruous with all principles of equity to leave the State's low- and moderate-income households in worse shape than before the Legislature's comprehensive reshaping of the field. The Legislature found that "the court-led system that has developed since 2015 has resulted in a significant number of settlement agreements and increased production of affordable housing." N.J.S.A. 52:27D-302(n). The Act changes the mechanisms for both defining and enforcing the Mount Laurel obligation. To stay the Act's processes and leave Mount Laurel determination and enforcement mechanisms undefined would certainly not be in the interests of the State's low- and moderate-income households and would not reflect the status quo before the legislation.

Certainly, the Constitution does not compel the Legislature to extend the compliance certification protection or the dispute resolution process to non-participating municipalities. The Legislature prefers that municipalities resolve exclusionary zoning disputes through the mediation and review process set forth in the Act, N.J.S.A. 52:27D-303, and the Legislature may provide benefits and incentives to municipalities consistent with that preference. That the Legislature reserved such rewards for municipalities that comply with the Act's accelerated schedule to establish, confirm, and adopt their affordable housing obligations consistent with DCA's calculations of regional and municipal need does not render the risks assumed by non-participating municipalities as irreparable harm.

The voluntary nature of the Act's compliance and dispute resolution provisions substantially defeat Plaintiffs' irreparable harm arguments. If Plaintiffs have accuracy or completeness concerns with DCA's data, an argument that likely echoes in Defendant FSHC's ears, they may opt to not participate and seek their own determination of municipal obligation or, more constructively, attempt to address these concerns with any interested parties through the dispute resolution process.

The costs associated with determining, establishing, and defending a municipalities' affordable housing obligations existed before and independent of the Act. Whether municipalities choose to participate in the Act's administrative

and dispute resolution processes or whether they seek to establish or defend their Mount Laurel compliance in court, they will need to employ the services of legal, planning, and engineering professionals. Those costs are inherent in exercising the very planning autonomy that Plaintiffs seeks to preserve. Whether a municipality spends public monies on professional services in the complying with the Act's compliance and dispute resolution processes or in establishing or defending its Mount Laurel obligation in court is a choice for the municipality. It does not constitute irreparable harm.

Regarding Plaintiffs' assertions concerning lack of procedural protection, the Legislature is not obligated to detail every procedural component of an administrative process. This Court does not rely upon the substance of the guidance from the AOC issued after Plaintiffs filed their reply brief, see Admin Dir. 14-24, Affordable Housing Dispute Resolution Program – Implementation of L. 2024, c. 2 (Dec. 13, 2024), available at https://www.njcourts.gov/sites/default/files/administrative-directives/2024/12/dir_14_24.pdf, because it did not allow Plaintiffs' most competent counsel to voice all of Plaintiffs' concerns with that guidance as they were not part of their briefing. Rather, the Court refers to that guidance only to demonstrate that, consistent with its statutory obligation, see N.J.S.A. 52:27D-304.1(f)(1)(c), the AOC is defining the dispute resolution process to provide the clarity and details that Plaintiffs (and other municipalities,

developers, and advocates) seek. The Court does not find that the lack of legislative clarity or details about that process constitutes irreparable harm to Plaintiffs.

Finally, for reasons as set forth more fully below, because Plaintiffs are unlikely to establish constitutional violation of separation of powers and the judicial function, including the appointment provisions of the Act, the Court finds that they fail to establish irreparable harm on those issues by clear and convincing evidence.

2. Plaintiffs fail to establish that their claims rest on settled law and have a reasonable probability of succeeding on the merits.

The Court finds that Plaintiffs fail to establish a reasonable likelihood of success on the merits of the claims advanced in their order to show cause. Preliminary injunctive relief such as a temporary restraint should only be granted when the issues raised present a legally settled right. Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304-05 (E. & A. 1878)). Despite this general rule, an exception exists "where the subject matter of the litigation would be destroyed or substantially impaired if a preliminary injunction did not issue." Gen. Elec. Co., 36 N.J. Super. at 236. The Court does not review the claims for their ultimate merit but instead asks whether Plaintiffs have established a reasonable probability of success on the merit of the claims. Waste Mgmt., 399 N.J. Super. at 520-21.

The Court evaluates constitutional challenges to legislative enactments informed by the "seemly respect for the act of a co-equal branch of government." N.J. Ass'n on Correction v. Lan, 80 N.J. 199, 218 (1979). Our Court has emphasized the fundamental values informing judicial review of legislative enactments: "the strong presumption of validity that attaches to every legislative enactment, [] and the Court's obligation to act with 'extreme self restraint' before it overrides the Legislature and pronounces a law unconstitutional." State v. Buckner, 223 N.J. 1, 38 (2015) (internal citations omitted). "When the Legislature exercises its constitutional authority to make laws, its actions are afforded highly deferential judicial review." Commc'ns Workers of Am., AFL-CIO v. N.J. Civil Svc. Comm'n, 234 N.J. 483, 514 (2018). "Every possible presumption favors the validity of an act of the Legislature." New Jersey Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972). To that end, the statute's presumptive validity "can be rebutted only upon a showing that the statute's repugnancy to the Constitution is clear beyond a reasonable doubt." Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 285 (1998); see also, Lewis v. Harris, 188 N.J. 415, 459 (2006) (emphasizing that courts defer to any legislative enactment unless it is "unmistakably shown to run afoul of the Constitution."). Where a statute's constitutionality is "fairly debatable, courts will uphold" the law. Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 227 (1985).

In the Mount Laurel context, Chief Justice Wilentz's words in both Mount Laurel II and Hills, reverberate through this Court's consideration of Plaintiffs' claims. In Mount Laurel II, writing for a unanimous Court, he emphasized that the Supreme Court's deference to some legislative and executive action relevant to Mount Laurel compliance "can be regarded as a clear signal of our readiness to defer further to more substantial actions." 92 N.J. at 213. In Hills, the Court explained that the substantial occupation of the Mount Laurel field of determinations, adjudications, and enforcements by the Governor and the Legislature through a significant piece of legislation is "more than sufficient to trigger 'our readiness to defer.'" 103 N.J. at 25. The Court has continued to invite legislative action and different approaches. Mount Laurel IV, 221 N.J. at 6; In re Adoption of N.J.A.C. 5:96, 215 N.J. at 612.

Against this formidable headwind Plaintiffs argue that they establish a reasonable likelihood of success on both their substantive and procedural claims.[6] They argue that the legislative determination to continue the "urban aid exception," which exempts certain municipalities from *prospective* but not present need calculations, is arbitrary and capricious, as the economic and demographic

[6] For ease of reference and consistency with the parties' positions, the Court adopts the categorical distinction between Plaintiffs' claims as substantive and procedural. The Court assigns no analytical weight to this categorization and recognizes that Plaintiffs arguments concerning the separation of powers have substantive as well as procedural components and implications.

conditions that justified its creation in Mount Laurel II and continuation to the present day no longer exist. They rely on an expert report in support of that argument. They argue that the exception lacks any continuing rational basis and violates federal and State constitutional equal protection guarantees. They further argue that the exception constitutes special legislation. Procedurally, they argue that the Act infringes on separation of powers by transferring the adjudicatory function from COAH in the Executive Branch to the Affordable Housing Dispute Resolution Program in the Judiciary, and in doing so, vests policymaking authority in the Administrative Director of the Courts in derogation of the Supreme Court's exclusive authorities. Additionally, they challenge the Act's appointment process, asserting that it allows the Administrative Director to appoint program members contrary to the constitutional requirements for judicial appointments.

The State Defendants argue that Plaintiffs fail to establish a reasonable likelihood of success. First, they argue that Plaintiffs lack standing to challenge the Act because (a) they cannot demonstrate a cognizable and redressable injury, and (b) municipalities cannot assert equal protection arguments against the State. Second, and relatedly, they argue that Plaintiff municipalities are not persons within the meaning of either the federal or State constitutions and, thus, cannot assert rights granted to "persons" and not legislative creations of the State. Third, even if the Court subjects the urban aid exception to constitutional scrutiny,

Defendants maintain that the classification easily satisfies rational basis and special legislation review. Fourth, Defendants reject Plaintiffs' separation of powers argument, asserting that the Act does not infringe upon judicial integrity but, rather, assigns the adjudicatory and dispute resolution functions to the Judiciary consistent with the interbranch collaboration that Mount Laurel jurisprudence has championed. Fifth, and finally, Defendants dispute that the appointment process is constitutionally infirm, characterizing the Program as a dispute resolution process, not a court, constrained by none of the appointment requirements that apply to judges.

Defendant FSHC raises similar arguments. First, it argues that municipalities cannot advance equal protection claims against the State. Second, even if the Court were to consider Plaintiffs' constitutional challenges, FSHC maintains that urban aid exception survives constitutional scrutiny because it rationally balances affordable housing obligations across diverse regions. Third, FSHC rejects Plaintiffs' special legislation argument, responding that the classification serves the legitimate purpose of avoiding the overconcentration of affordable housing in urban areas. Fourth, and finally, FSHC defends the constitutionality of the legislative allocation of responsibility to the Judiciary, arguing that it is consistent with Mount Laurel jurisprudence and entitled to substantial deference by the courts.

In reply, Plaintiffs reiterate their substantive objections, asking the Court to ignore the "procedural frustrations" advanced by Defendants and find, consistent with the uncontroverted expert report, that the urban aid exception is irrational, outdated, and constitutionally infirm. Plaintiffs dispute Defendants' efforts to characterize the Program as an alternative dispute resolution program when the statute establishes it as a *de facto* judicial body exercising powers previously reserved for the Superior Court. Additionally, Plaintiffs argue that Defendants' efforts to defend the appointment process and delegation of authorities to the Administrative Director of the Court fail. They argue that the Act delegates judicial power to the Administrative Director, who is an unelected official with no constitutional authority to make appointments. They point to the Act's provision allowing the Administrative Director to appoint "qualified experts" as adjudicators as further evidence of its unconstitutionality.

i. Plaintiffs fail to demonstrate a likelihood of success on their equal protection and special legislation claims.

Plaintiffs fail to demonstrate a likelihood of success on their equal protection and special legislation claims. First, as municipalities, they lack standing to assert such claims against the State. That defense is not a "procedural frustration," but instead goes to the core of the relationship between the municipalities and the Legislature that created them as legal entities. Second, Plaintiffs lack standing because the Act imposes no mandatory provisions on them

and does not place them in greater legal jeopardy than they would be if the Legislature did nothing. And third, were the Court to consider the claims on the merits, Plaintiffs cannot establish that an exception that has been a component part of this landscape since Mount Laurel II offends, beyond a reasonable doubt, the most deferential of constitutional standards of review that governs the Court's inquiry.

Plaintiffs can muster no substantive response to Defendants' argument that, as a matter of federal and State constitutional law, municipalities cannot assert equal protection claims against the State. Stubaus v. Whitman, 339 N.J. Super. 38, 48 (App. Div. 2001) ("With respect to plaintiffs' equal protection claims, courts generally recognize that political subdivisions of the State, including municipalities and local boards of education, lack the legal capacity to challenge State action based on equal protection grounds.") (citing Newark v. New Jersey, 262 U.S. 192 (1923); McKenney v. Byrne, 82 N.J. 304, 315 n.4 (1980)). Similarly, the United States Supreme Court held more than one hundred years ago that "is not a 'person' entitled to the equal protection benefit of the Equal Protection Clause of the Fourteenth Amendment." McKenney, 82 N.J. at 315 n.4 (citing Williams v. Mayor of Baltimore, 289 U.S. 36 (1933)); see also, Newark, 262 U.S. at 196 ("The regulation of municipalities is a matter peculiarly within the

domain of the state. [] The city cannot invoke the protection of the Fourteenth Amendment against the state.").

Plaintiffs argue that the Court should overlook such hurdles when considering their order to show cause. They point to New Jersey precedent that has rejected the "procedural frustrations" of federal standing jurisprudence "in favor of 'just and expeditious determinations of the ultimate merits,'" because New Jersey State courts are not bound by the constraints of Article III of the federal Constitution. Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 108 (1971); see also In re Cong. Dists. By N.J. Redistricting Comm'n, 249 N.J. 561, 570 (2022) ("We also give weight to the public's interest in the resolution of a matter and favor a just ruling on the merits over 'procedural frustrations.'").

The Court rejects Plaintiffs' "procedural frustrations" argument regarding their federal equal protection claims and finds that they cannot establish a reasonable likelihood of success on those grounds because they lack the ability to assert them. As noted above, the United States Supreme Court decided a century ago that municipalities are not persons within the meaning of the Fourteenth Amendment and that they enjoy no federal constitutional protection against the actions of the State. This Court cannot ignore that limitation. The declaration of the United States Supreme Court in Newark v. New Jersey, among others, has

nothing to do with debate in the federal courts about the appropriate test for associational standing, see Crescent Park Tenants Ass'n, 58 N.J. at 106-108 (reviewing federal decisions discussing benefits of "'aggrieved-in-fact criterion' of standing"). Rather, it is a binding interpretation of our country's highest court of the Fourteenth Amendment, which only protects "any person … the equal protection of the laws." U.S. Const. amend. XIV, § 1. In another matter decided the same day as Newark, the Court explained the relationship between the State and its municipalities, both as a matter of federal and state law:

> In New Jersey it has been held that within the limits prescribed by the state Constitution, the Legislature may delegate to municipalities such portion of political power as they may deem expedient, withholding other powers, and may withdraw any part of that which has been delegated.
>
> In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state. A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state exercising and holding powers and privileges subject to the sovereign will.
>
> …
>
> This court has never held that these subdivisions may invoke [the restraints of the Contract Clause or the Fourteenth Amendment] upon the power of the state.
>
> [City of Trenton v. New Jersey, 292 U.S. 182, 187-88 (1923) (internal citations and footnotes omitted).]

Additionally, as noted above, Stubaus – wherein the Appellate Division acknowledged that State courts "interpret the issue of standing broadly," 339 N.J. Super. at 48 – nonetheless easily disposed of those plaintiff school boards federal equal protection claims against the State on these grounds.

Plaintiff Municipalities likely lack standing to assert their claims on another basis, as well. As the above discussion on irreparable harm explains, any municipality that does not wish to comply with the Act's deadlines and processes can decline to do so. Any given municipality must determine whether it wants to participate in the optional administrative process. This discretion retained by the municipalities not only defeats their claims of irreparable harm; it also defeats their ability to demonstrate that an adverse decision in this litigation will harm them. If they do not like the Act's administrative processes, they can decline to participate in them.

To challenge the Act, Plaintiffs must first establish standing, which refers to a litigant's "'ability or entitlement to maintain an action before the court.'" Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (quoting N.J. Citizen Action v. Riveria Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). Standing is a threshold determination. Petro v. Platkin, 472 N.J. Super. 536, 558 (App. Div. 2022) (multiple citations omitted). Defendants acknowledges that New Jersey has a much more liberal standing doctrine than federal case law, see People

for Open Gov't v. Roberts, 397 N.J. Super. 502, 509 (App. Div. 2008), but argue that Plaintiffs fail to meet even this low threshold. Under this state's general principles of standing, a party "must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden Cnty., 170 N.J. 439, 449 (2002). As the Appellate Division explained:

> The "essential purpose" of the standing doctrine in New Jersey is to "assure that the invocation and exercise of judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication."
>
> [Triffin, 343 N.J. Super. at 80 (quoting State Chamber of Commerce v. Election Law Enf't Comm'n, 82 N.J. 57, 69 (1980)).]

The "standing rules serve to preclude actions initiated by persons whose relation to the dispute may be described as 'total strangers or casual interlopers,' a threshold we have described as 'fairly low.'" People For Open Gov't, 397 N.J. Super. at 509 (quoting Triffin, 343 N.J. Super. at 81). Generally, "[a] financial interest in the outcome ordinarily is sufficient to confer standing." Strulowitz v. Provident Life & Cas. Ins. Co., 357 N.J. Super. 454, 459 (App. Div. 2003) (citing In re Camden Cnty., 170 N.J. at 448). "'[I]n cases of great public interest, any 'slight additional

private interest' will be sufficient to afford standing.'" Id. at 510 (quoting Salorio v. Glaser, 82 N.J. 482, 491 (1980)).

Here, Plaintiffs lack standing because they can show no harm from an unfavorable decision. If the Legislature had done nothing, or if Plaintiffs opt out of the Act's processes and procedures, or if the Court enjoins the Act, Plaintiffs and every other municipality in the State will have the same options: seek a judgment of repose through a declaratory judgment action (leaving aside, for the sake of discussion, all the procedural complexities and open issues that proceeding into the Fourth Round in a court-led system, outside the scope of relief specified in Mount Laurel IV, would entail) or defend any exclusionary zoning litigation. Regardless of whether the Act survives constitutional scrutiny, Plaintiffs must comply with their Mount Laurel obligation. They can do so within or outside of the processes and procedures established in the Act. Accordingly, the Court finds that Defendants will likely prevail on their arguments that Plaintiffs lack standing to challenge a voluntary program.

Regarding Plaintiffs' equal protection claims grounded in State constitutional equal protection claims, the Court will assume, for purposes of considering their likelihood of success, that they have standing, without prejudice to a contrary conclusion in adjudicating Defendants' pending motions to dismiss. The Court does so not based upon Plaintiffs' "procedural frustrations" argument,

which unsuccessfully seeks to minimize, with only tangential supporting authority, a century's worth of federal and state caselaw prohibiting them from raising the very claims they seek to advance.[7] Rather, the Court considers the merits of their State equal protection argument because, ultimately, they fail to establish a reasonable likelihood on the merits. This Court could be wrong on Defendants' standing argument and engaging in the constitutional analysis does not change the outcome.

Because their challenge implicates no fundamental rights, Plaintiffs need to establish a reasonable likelihood of success that the Act does not survive rational basis review. Barone v. Dep't of Human Servs., 107 N.J. 335, 364-65 (1987). Under New Jersey equal protection analysis, courts use a balancing test to determine "whether there is an appropriate governmental interest suitably furthered by the differential treatment involved." Barone, 107 N.J. at 368 (internal citations omitted). The state constitutional equal protection analysis balances (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. Ibid. (quoting Greenberg v.

[7] The Court intentionally included the first observation from Trenton. The courts of this State have long recognized the broad authority of the Legislature under our State Constitutions to grant, limit, and withdraw political power to and from municipalities. Van Cleve v. Passaic Valley Sewerage Comm'rs, 71 N.J.L. 183, 198 (Sup. Ct. 1904).

Kimmelman, 99 N.J. 552, 567 (1985)). Although the federal and State tests are different, they often yield the same result. Id. at 368.

The rational basis standard is extremely deferential. There is a "strong presumption in favor of constitutionality" and courts are reluctant "to declare a statute void." Id. at 367. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Ibid. "As long as the classification chosen by the Legislature rationally advances a legitimate governmental objective, it need not be the wisest, the fairest, or the one we would choose." Id. at 370. "[A] legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data." Federal Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993). Additionally, the choices that the Legislature makes in a statute "need not be the best or only method of achieving the legislative purpose." In re C.V.S. Pharm. Wayne, 116 N.J. 490, 498 (1989). A statute will only be invalidated under the rational basis test if the classification is "wholly unrelated to the legislative objective" or "arbitrary." Secure Heritage, Inc. v. City of Cape May, 361 N.J. Super. 281, 300 (App. Div. 2003).

As Plaintiffs explain, the urban aid exception is forty years old, dating back to Judge Serpentelli's decision in AMG Realty Co. v. Warren Township, 207 N.J. Super. 388 (Law Div. 1984). COAH adopted and continued it. Pb20. Judge

Jacobson applied it in calculating the Third Round obligation. Ibid. (citing In re Application of Municipality of Princeton, ___ N.J. Super. ___, ___ (Law Div. 2018) (slip op. at 93-94), available at https://www.njcourts.gov/system/files/court-opinions/2024/L-1550-15L-1561-15.pdf) (last visited Dec. 31, 2024).

The Legislature defined a qualified urban aid municipality as municipality designated to receive State aid per L. 1978, c. 14, that meets at least one of the following criteria: (a) "[t]he 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) "[t]he municipality has a population density greater than 10,000 persons per square mile of land area;" or (c) "[t]he 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 calculated by the statutory formula. N.J.S.A. 52:27D-304.3(c)(1).

Defendants advance numerous legitimate and rational objectives that the urban aid exception advances. First, the exception – which is limited to prospective need, not present need – intends to balance the need to provide housing in urban centers with the need to provide housing throughout the State. SDb42 (citing N.J.S.A. 52:27D-302(g), Mount Laurel II, 92 N.J. at 209). State Defendants

argue that "it cannot be irrational to exempt qualifying urban aid municipalities from prospective obligations, when the Legislature concludes that these particular municipalities are not the source of the constitutional problem in need of redress." SDb43. Second, the Legislature maintained the urban aid exemption to "avoid overburdening qualified urban aid municipalities with a prospective need obligation, as these municipalities are already prescribed increasingly great present need obligations by the plain language of the methodology section of the statute." FSHCb47. Third, the Legislature aimed to "simplify formula for calculating fair share and move away from endless litigation and delays based on disputes over the formula, which the findings show was a major focus of the litigation." Ibid.

Because the urban aid exception rationally advances numerous legitimate objectives, it passes constitutional muster. It serves an important public need, as it assists Mount Laurel compliance in municipalities with the characteristics of an urban aid municipalities and municipalities with different profiles. And here, Plaintiffs fail to establish, by clear and convincing evidence, that they will succeed on their equal protection arguments, even were they to cure the overarching problem that they are precluded, as a matter of both federal and State law, from asserting them.

Predictably, the same conclusion results from New Jersey's equal protection analysis. The nature of the right at stake is Plaintiff's ability to

zone, which exists only within the context of legislative grants of authority, as constrained by the Mount Laurel constitutional obligation. The Act does not restrict that right; rather, it defines and refines ways that municipalities can seek to establish Mount Laurel compliance. And the public need for the legislation is clear, as it offers municipalities a viable path towards establishing Mount Laurel compliance in a timely, efficient, and cost-effective manner.

Plaintiffs' special legislation claim fares no better. The New Jersey Constitution, provides, in pertinent part, that "[n]o general law shall embrace any provision of a private, special or local character." N.J. Const. art. IV, § VII, ¶ 7. To establish that a measure runs afoul of this prohibition, the party challenging the legislation must do more than show that the benefits of the statute apply only to a specific or limited class. Newark Superior Officers Ass'n, 98 N.J. at 223. A law is deemed "general" rather than "special" where it "affects equally all of a group who, bearing in mind the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class themselves." Ibid.

"[T]he determining factor is what is excluded and not what is included" in the classification, and "if no one is excluded who should be included, the law is general" and passes constitutional muster. Id. at 223 (citation omitted);

see also Vreeland v. Byrne, 72 N.J. 292, 299 (1977) ("The test, of course, is whether the classification is reasonable, not arbitrary, and can be said to rest upon some rational basis justifying the distinction.") (citation omitted); Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 20 (App. Div. 2012) ("The test is not what the classification includes, but whether the classification excludes some that should be included.").

"A statute must clearly and irremediably violate[] the ban on special legislation to be invalidated." City of Jersey City v. Farmer, 329 N.J. Super. 27, 38 (App. Div. 2000) (citation omitted). Our Supreme Court has established a three-factor analysis to determine whether a law is special legislation:

> In considering whether legislation is general or special, the Court must make three determinations: (1) the purpose and subject matter of the statute; (2) whether any persons are excluded who should be included; and (3) whether the classification is reasonable, given the purpose of the statute.
>
> [Jordan v. Horsemen's Benevolent & Protective Ass'n, 90 N.J. 422, 432-33 (1982) (citing Vreeland, 72 N.J. at 298-301).]

Under this analysis, "the judicial task is to decide 'whether there is any conceivable state of facts bearing a reasonable relation to the object of the act which affords a basis for the classification.'" Id. at 433 (quoting Robson v. Rodriquez, 26 N.J. 517, 524 (1958)). "The question boils down to whether the court can perceive any rational basis for the legislative classification whose impact,

whether positive or negative, falls on a single person or entity." Id. at 39. "If no one is excluded who should be encompassed, the law is general." Harvey v. Essex Cnty. Bd. of Freeholders, 38 N.J. 381, 389 (1959).

It is difficult to formulate a more forgiving standard of review than the Jordan special legislation test and Plaintiffs fail to overcome the substantial challenge of demonstrating a likelihood of success on the merits of their claim by the appropriate burden of proof. That the Court accepted the three asserted rational bases justifying the legislative distinction between urban aid and other municipalities on equal protection grounds substantially answers the question. The Legislature established specific criteria for a qualified urban aid municipality, and it is possible that additional municipalities could qualify for the classification, or alternatively, lose qualification based upon, for example, a cessation of State aid. Camden City Bd. Of Educ. v. McGreevey, 369 N.J. Super. 592 (App. Div. 2005).

That the Act treats urban aid municipalities differently regarding prospective need is a distinction, but it does not render the Act special legislation. As the State Defendants explain, the Legislature could rationally conclude that urban aid municipalities that are already economically challenged and facing a high burden of dilapidated housing or high housing density, and thus responsible for a large present need, should be exempt from a prospective need calculation. See In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. at 502. Considering these

cities' economic situation and high present fair share, the Legislature could rationally conclude that the classification advances the legitimate interests of providing affordable housing to urban residents while providing "housing throughout the State for the free mobility of citizens." N.J.S.A. 52:27D-302(g).

The Court declines to follow Plaintiffs' conjectural path about what the Legislature believed or thought or felt constrained to conclude when the Act's plain language and the history of Mount Laurel litigation provide ample and adequate support for the classification to withstand Plaintiffs' special legislation claims. Accordingly, the Court finds that Plaintiffs fail to demonstrate a reasonable probability of success on the merits of their federal and State equal protection and special legislation claims.

ii. Plaintiffs fail to establish a reasonable likelihood of success on their procedural claims.

The Court turns to Plaintiffs' "procedural" claims, many of which sound in the premise that the Legislature trespassed upon the Judiciary's constitutional role and the judicial function in establishing the Affordable Housing Dispute Resolution Program and defining its membership.

Plaintiffs argue that the Act unconstitutionally infringes upon the separation of powers by reassigning the adjudication of affordable housing disputes from the Executive Branch to the Judiciary. They argue that the Legislature trespasses upon the Judiciary's exclusive authority when it transfers COAH's authority to the

Affordable Housing Dispute Resolution Program. They challenge the Act's appointment process, which they argue grants the Administrative Director of the Courts the authority to appoint program members contrary to the constitutional mechanisms and requirements for judicial appointments. Finally, they argue that the Act infringes upon the Supreme Court's exclusive and plenary policymaking authority by vesting policymaking authority in the Administrative Director of the Court.

The State Defendants dismiss Plaintiffs' separation of powers arguments, arguing that they mischaracterize and misunderstand the nature of the dispute resolution program that the Legislature established. They argue that the legislation comports in every way with the principles of interbranch collaboration and cooperation that define the State's separation of powers jurisprudence and particularly characterize the Supreme Court's invitation to and deference to legislative enactments in the Mount Laurel context. They dispute that the Legislature trespassed upon the Supreme Court's exclusive policymaking authority. Finally, they maintain that the delegation of authority is constitutionally sound, with the appointment of retired judges complying with all governing rules and concepts, ensuring expertise without exceeding any constitutional limits.

FSHC similarly disputes Plaintiffs' procedural arguments and conclusions. FSHC argues that the Act appropriately houses the Mount Laurel adjudicatory and

dispute resolution functions within the Judiciary, with the Program operating within and among the Judiciary's dispute resolution offerings. It argues that this is consistent with the Court's deference to the Legislature on creation of alternative dispute resolution programs and it is consistent with Mount Laurel jurisprudence. Finally, FSHC argues that Plaintiffs' arguments concerning the Administrative Director of the Courts are without support in the plain language of the Constitution and inconsistent with the authorities and discretion that the Constitution determined to leave with the Legislature.

In reply, Plaintiffs emphasize that the Program's structure and composition undermine judicial independence. The Act authorizes an entity within the Judiciary to exercise judicial powers, even though the Program's members need not be judicial officers constitutionally nominated, confirmed, and authorized to make binding judicial decisions. They argue that the structure offends separation of powers by allowing the political branches to escape political accountability for determinations of municipalities' affordable housing obligations.

Separation of powers is a "bedrock principle of our federal and state constitutional forms of government," In re P.L. 2001, Chapter 362, 186 N.J. 368, 378 (2006), and is fundamental to our State government, Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 150 (1998). Our Constitution divides the State's power into three distinct branches of government:

> The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.
>
> [N.J. Const. art. III, ¶ 1.]

This allocation of power across the branches "expresses a profound belief that the concentration of governmental power increases the potential for oppression, and that fragmentation of power helps ensure its temperate use." Gen. Assembly v. Byrne, 90 N.J. 376, 381 (1982).

The doctrine "safeguard[s] the 'essential integrity' of each branch of government," Gilbert v. Gladden, 87 N.J. 275, 281 (1981), and "is intended to prevent the concentration of power in one branch at the expense of the other two co-equal branches," Buckner, 223 N.J. at 37. As the Court has explained:

> It is a constitutional axiom that each branch of government is distinct and is the repository of the powers which are unique to it; the members or representatives of one branch cannot arrogate powers of another branch. The constitutional spirit inherent in the separation of governmental powers contemplates that each branch of government will exercise fully its own powers without transgressing upon powers rightfully belonging to a cognate branch. Each branch of government is counseled and restrained by the constitution not to seek dominance or hegemony over the other branches.
>
> [Knight v. Margate, 86 N.J. 374, 388 (1981).]

The doctrine does not "require complete insulation of the branches from each other. Such a complete 'hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively.'" Gen. Assy., 90 N.J. at 382 (quoting Buckley v. Valeo, 424 U.S. 1, 121 (1976)); see also In re: Salaries for Prob. Officers of Bergen Cnty., 58 N.J. 422, 425 (1971) ("The compartmentalization of governmental powers among the executive, legislative and judicial branches has never been watertight.").

When evaluating separation of powers claims, the Court evaluates whether the Legislature has impaired the "essential integrity" of the other branches of State Government. Massett Bldg. Co. v. Bennett, 4.N.J. 53, 57 (1950). In re P.L. 2001 explored legislative overreach into the judicial function. The Supreme Court first explained the Constitution's grant of exclusive and plenary control of judicial administration to the Supreme Court. The Court noted that two provisions of Article VI "give the Chief Justice and the Supreme Court sweeping authority to govern their own house." Id. at 379. The Court's authority over the "administration of all courts" is "'far-reaching' and 'encompasses the entire judicial structure [as well as] all aspects and incidents related to the justice system.'" Id. at 380-81 (quoting Knight v. City of Margate, 86 N.J. at 387). "Because their administrative rulemaking authority cannot be circumscribed by legislation, the

Supreme Court and the Chief Justice exercise exclusive and plenary power over the governance of the judiciary." Id. at 381-82. The Court pronounces its administrative policies through Court opinions, orders, rules, and directives. Id. at 381 (citing State v. J.M., 182 N.J. 402, 415-16 (2005)).

The Supreme Court has acknowledged that effective governance requires interdependence and cooperation between the branches of government. Its policy is "to defer to legislation that touches on court administration 'unless it interferes with the effective functioning of the courts." CWA Local 1044 v. Chief Justice, 118 N.J. 495, 501 (1990) (per curiam). As Justice Albin explained:

> In view of the interdependence of governmental powers, we have allowed for the exercise of legislative authority that serves a "legitimate governmental purpose" and "does not interfere with judicial prerogatives." Stated differently, "the Supreme Court's ultimate power to accept or reject [legislative] action[] turn[s] upon the legitimacy of the governmental purpose of that action and the nature and extent of its encroachment upon judicial prerogatives and interests."
>
> [In re P.L. 2001, 186 N.J. at 383-84 (quoting Knight v. City of Margate, 118 N.J. at 388-89, 391).]

The Court acknowledged that "[i]n the spirit of comity, we have accommodated legislative enactments touching on court administration, provided those enactments are not antithetical to the judiciary's core goals." Id. at 373. In contrast, the Court has invalidated legislative attempts to countermand both Executive and Judicial policy decisions that amount to "unconstitutional 'micromanagement' and

'regulat[ion of] the internal administration of a coordinate branch' of government." Id. at 389-90 (quoting Commc'ns Workers of Am., AFL-CIO v. Florio, 130 N.J. 439, 461, 463 (1992)). The Legislature goes too far when it "takes judiciary employees and places them under the sway of the executive branch in violation of the separation of powers and the Supreme Court's constitutional authority to govern its own house." Id. at 390.

The Court considers Plaintiffs' requests for injunctive relief based upon their procedural claims within this analytical framework. Plaintiffs first claim that the Act violates the separation of powers by granting an entity housed in the Judiciary functions previously assigned to COAH. They argue that the Act improperly assigns executive functions to the Judiciary.

Plaintiffs fail to establish a reasonable likelihood of success on this claim for relief. In Hills, the Court rejected the argument that COAH's role unconstitutionally interfered with the Judiciary's exclusive control over actions in lieu of prerogative writ, 103 N.J. at 44, and that the moratorium on builder's remedies constituted impermissible interference with judicial remedies, id. at 46. The Court concluded that "the vindication of the Mount Laurel obligation is best left to the Legislature. Legislative action was the 'relief' we asked for, and today we have it." Id. at 46-47. The Court noted that "[a]s a matter of comity, we would

yield to the Legislature in this field even if theoretically its exercise of power was in an area reserved to the judiciary." Id. at 47.

The same conclusions pertain here. The Court has at least twice invited the Legislature to devise different ways to enforce the Mount Laurel obligation since Hills. Mount Laurel IV, 221 N.J. at 6 ("Nor should the action taken by this Court, in the face of COAH's failure to fulfill its statutory mission, be regarded as impeding the Legislature from considering alternative statutory remedies to the present FHA."); In re Adoption of N.J.A.C. 5:96, 215 N.J. at 612 ("Mount Laurel II is not a straightjacket to legislative innovation for satisfaction of the constitutional obligation."). This Court presumes that the Supreme Court does not make such invitations absent the same readiness to defer to legislative formulations of alternative enforcement and compliance mechanisms as it afforded the Legislature in Hills.

In implementing these reforms, the Legislature explained that COAH did not fulfill the role as envisioned in the FHA. N.J.S.A. 52:27D-302(k). It acknowledged that Mount Laurel IV temporarily dissolved the exhaustion of administrative remedies requirement. Id. at -302(l). It further recognized that COAH's dysfunction "frustrated the intent of the Legislature and compliance with constitutional and statutory obligations," id. at -302(m), while the post-Mount Laurel IV judicial system "resulted in a significant number of settlement

agreements and increased production of affordable housing," notwithstanding some "lengthy and costly processes," id. at -302(n).

Nothing in Article III or Mount Laurel jurisprudence constrains the Legislature from changing its mind or devising a different path as to how best accomplish Mount Laurel compliance. Quite the contrary: faced with Executive Branch delay, inaction, and futility, the Court invited the Legislature to do so. The Constitution does not forbid the Legislature from assigning certain functions to the Judiciary when doing so does not impair the essential integrity of the Executive or Judicial branches of government. Similarly, the Legislature may authorize entities within the Executive Branch to perform adjudicatory functions – for instance, the Office of Administrative Law – but that does not render those functions exclusively executive. Here, the Legislature fashioned a cooperative arrangement – with DCA providing guidance and technical support to municipalities as they determine their own housing obligations and the Judiciary determining whether to approve a municipality's proposed affordable housing obligation after providing advocates with an opportunity to be heard – that does not so intrude the domain of either branch of government.

Whether out of comity, Hills, 103 N.J. at 47, or consistent with the Supreme Court's particularly strong deference to legislative action in enforcing compliance with Mount Laurel, id. at 24, this Court cannot find that Plaintiffs establish a

reasonable likelihood in challenging the assignment of certain adjudicative and dispute resolution authorities to the Judiciary. Rather, the Act's delegation of responsibilities recognizes the judicial functions after Mount Laurel II until the passage of the FHA and since Mount Laurel IV. Nothing in the reallocation of responsibility offends the essential functions of Judicial branch, much less the Executive.[8]

Plaintiffs next argue that the Legislature violated the judicial article by establishing the Affordable Housing Dispute Resolution Program within the Judiciary in a manner not consistent with the language of Article VI, section 1. They argue that the Legislature improperly established the Program in the judicial branch as something other than a "court of limited jurisdiction." They then argue, from that premise, that the appointment provisions of the Act are unconstitutional.

[8] To the extent that Plaintiffs rely upon In re P.L. 2001, the decision provides them no assistance. While it illustrates how legislative enactments can violate the separation of powers, the legislation at issue in that matter compelled the Judiciary to manage its own house in a way contrary to its express court rules and directive, rather than, as here, aid in the enforcement of a constitutional obligation consistent with how it did so in the absence of a viable legislatively created administrative remedy since 2015. Arming Judiciary employees and functionally making them law enforcement officers is far different than assigning the Judiciary a function in the establishment of and compliance with a constitutional obligation. If Plaintiffs seek to make a mountain out of the like requirements of annual or periodic reporting of the kind required by the Act, the Court finds no support in the decision to conclude that such a requirement can, without more, violate the separation of powers doctrine.

Defendants dispute the claim, arguing that the Program is analogous to a dispute resolution mechanism. They dispute any constitutional infirmity with the appointments process.[9]

The Court concludes, based upon the Act's plain language and overall structure, that the Legislature did not intend to establish or in fact establish the Program as a court or a court of limited jurisdiction but, rather, it created a dispute resolution program. Such dispute resolutions programs "constitute an integral part of the judicial process, intended to enhance its quality and efficacy." R. 1:40-1. First, as Defendants point out, the Legislature named the program a dispute resolution program. While a title is not dispositive as to substance or function, it certainly indicates legislative intent. Second, the Program contributes by reviewing the fair share obligations of municipalities that choose to participate in the program, with an opportunity for advocates and others to be heard. Third, the Legislature directed the Administrative Director to consider the members' "experience in the employment of alternative dispute resolution (ADR) methods,"

[9] Plaintiffs overstate their case by suggesting that the State Defendants concede the unconstitutionality of the appointments provisions by discussing judicial surgery as a judicial remedy to constitutionally infirm legislation. Prb27-28. The State Defendants raise that possibility after explaining why, for a cascade of reasons, (a) the Program is not a court, and (b) the appointments provisions do not offend the Constitution. It is an ultimately unnecessary fallback argument, not a concession.

N.J.S.A. 52:27D-313.2(a), and to consider integrating such methods in performing its functions, id. at -313.2(c).

As the Legislature explained, while the post-Mount Laurel IV framework led to significant resolutions of litigation and increased production of affordable housing, it was also lengthy and costly. Id. at -302(n). The Legislature established the Affordable Housing Dispute Resolution Program to provide a cheaper and quicker alternative route other than litigation with aggressive timelines and proven dispute resolution mechanisms. The Legislature assigned functions and responsibilities of the Program consistent with that objective. Dispute resolution happens within the Program; where it fails, the Program refers the matter to the county-level housing judge.

The Program's distinct responsibilities arise where the municipality's fair share plan and housing element is timely challenged:

> 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.
>
> [Id. at -304.1(f)(2)(b).]

If a participating municipality and any interested parties cannot reach a resolution within the Program's framework, the matter is transferred to Superior Court for resolution through a summary proceeding. Id. at -304.1(f)(2)(d). The participating municipality retains immunity through that proceeding if the Program or the county-level housing judge finds that the municipality is "determined to come into constitutional compliance." Ibid. Implicit in that provision is that, if the municipality is operating in something akin to bad faith, the county level housing judge could terminate immunity.

This Court concludes that Plaintiffs are unlikely to prevail on their Judicial article claims. By its terms, the Program is a dispute resolution forum, not a court. It does not enter a binding judgment in a disputed matter. Id. at -304.1(f)(2)(b). It serves numerous important roles: (a) in uncontested matters, it determines whether an adopted housing element and fair share plan comports with the objective standard; (b) in matters where an interested party objects or files a meritorious

challenge, it facilitates communication between municipality and challenger, seeking complete or partial resolution; (c) issuing certificates of compliance in disputed matters where the dispute resolution process resolves the disputes; and (d) referring any unresolved disputes to the Superior Court for resolution. As the Legislature described the Program's responsibilities, it "render[s] determinations, resolv[es] disputes, and facilitate[es] communication." Id. at -313.2(c). Each of those responsibilities are solidly within the province of alternative dispute resolution programs such as the Affordable Housing Dispute Resolution Program. See, e.g., R. 1:40-2(a) (defining settlement proceedings as "[a] process by which the parties appear before a neutral third party or neutral panel, who assists them in attempting to resolve their dispute by voluntary agreement.").

Because the Dispute Resolution Program is not a court, Plaintiffs various appointment arguments fail. The Legislature left the individual appointments of the Program members to the discretion of the Administrative Director of the Court, to include "current or retired and on-recall judges of the Superior Court" and "other qualified experts as members if sufficient current and retired judges are unavailable." Id. at -313.2(a). The Legislature could have required that all members be current or retired and on-recall judges, but it did not. Rather, it left to

the Administrative Director's discretion to appoint "other qualified members" as necessary, based on availability.[10]

The Court has reviewed the Program's current roster. Some of the members are on-recall; of those who are not, all are retired judges, many of whom served as Mount Laurel judges after Mount Laurel IV. Plaintiffs advance no colorable argument that these members are not qualified to serve in the Program – other than that they are not current judges or retired and on recall – and do not argue that the Administrative Director abused his discretion in making any specific appointment.

[10] The Court finds unpersuasive Plaintiffs various arguments that the Legislature violated the Constitution by authorizing and directing the Administrative Director of the Courts to undertake various responsibilities. First, because the Constitution does not circumscribe or specify the authorities given the Administrative Director of the Courts, the Legislature is free, within constitutional bounds enunciated in In re P.L. 2021, to assign the position additional responsibilities. See In re Ringwood Fact Finding Comm'n, 65 N.J. 512, 518 (1974) (explaining that Legislature's law-making powers encompass assigning duties to constitutional officers whose duties not otherwise constitutionally undefined). Second, no legislative delegation of duties to the Administrative Director can countermand or compromise the constitutional administrative supremacy given to the Chief Justice. N.J. Const. art. VI, § 7, ¶ 1. Nothing in this Act purports to do so, and the Legislature is presumed to act consistent with, not in conflict to, the Constitution. See In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch., 164 N.J. 316, 329 (2000) ("The Legislature is presumed to have full knowledge of, and to act consistently with, the constitution's requirements."). Rather than burden the Chief Justice with additional appointment responsibilities, see, e.g., N.J. Const. art. IV, § 3, ¶ 2, the Legislature assigned it to his subordinate. The Administrative Director's appointment authority is more akin to "certain housekeeping chores which are prerequisite to the exercise of legislative and judicial power." In re Salaries, 58 N.J. at 426. Nothing in that assignment interferes with the Judiciary's ability to manage its own house.

And Plaintiffs point to no constitutional or statutory requirement that persons assisting parties with alternative dispute resolution must be judges. See R. 1:40-12(a) (establishing qualifications for mediators and arbitrators).

Accordingly, because the Program is not a court, does not function as a court, and need not be staffed as if it were a court, Plaintiffs fail to establish a reasonable likelihood of success on the merits.

3. Plaintiffs fail to establish that a balancing of the equities and hardships favor injunctive relief.

Crowe requires a balancing of the relative hardships to the parties in granting or denying relief. 90 N.J. at 134 (citing Isolantite Inc. v. United Elec. Radio & Mach. Workers of Am., 130 N.J. Eq. 506, 515 (Ch. 1941), modified on other grounds 132 N.J. Eq. 613 (E. & A. 1942)). The party moving for a temporary restraint or preliminary injunction must demonstrate that "the public interest will not be harmed." See Waste Mgmt., 399 N.J. Super. at 520. In some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Ibid.

Plaintiffs assert that the equities and hardships are in their favor, as the harm of complying with an unconstitutional statute far outweighs any inconvenience or delay to Defendants. They argue that statute requires municipalities to spend significant taxpayer funds on a compliance with an unconstitutional statue and unclear procedural guidelines. They further urge the Court to halt the Program to

avoid any long-term injury to judicial integrity. They ask the Court to stay the statute and the Fourth Round Mount Laurel obligations pending final disposition of these claims.

The State Defendants argue that Plaintiffs fail to establish this factor. They argue that a stay would minimally benefit Plaintiffs because they cannot operate in violation of the Constitution under any circumstance, and they would continue to be obligated to comply with their Mount Laurel obligation. Staying the Act's provisions would only eliminate for Plaintiffs – and other non-party municipalities – the optional administrative processes and mechanisms that the Legislature established, and the Judiciary has already stood up, in the interests of timeliness and cost-savings. Finally, given the lack of irreparable harm and unlikelihood to succeed on the merits, the State Defendants argue that a stay would improperly frustrate legislative intent and, more importantly, hinder the production of affordable housing.

Defendant FSHC makes many of the same arguments. It emphasizes that Plaintiffs are free to pursue alternative paths to constitutional compliance while not participating in the Program. It argues that a stay would delay critical affordable housing initiatives and undermine the Legislature's efforts to streamline compliance with Mount Laurel. It emphasizes that staying the Act does not

suspend the Constitution and municipalities would face uncertainty and risk if the Court enjoins the Act and existing judgments of repose expire.

The Court concludes that Plaintiffs fail to establish that the balancing of equities and hardship weigh in favor of injunctive relief. First, as discussed throughout, the administrative dispute resolution procedures established by the Act are optional. Plaintiffs are free to opt out. The decision to do so is not without consequence but those consequences do not abate if the Court enjoins the Act; rather, the consequences flow from the underlying Mount Laurel obligations and the expiration of any Third Round protections afforded to the State's municipalities. Second, where the Court concludes that Plaintiffs fail to establish irreparable harm and a likelihood of success on the merits, it contravenes this Court's obligation to act with "extreme self-restraint" in respecting the "strong presumption of validity that attaches to every legislative enactment." Buckner, 223 N.J. at 38. The Court cannot lightly enjoin a legislative enactment where Plaintiffs fail to meet their burden. Third, enjoining the statute would do Plaintiffs no good, as their underlying obligation to comply with Mount Laurel would continue. At best, Plaintiffs such as Mannington would continue to fortuitously avoid any exclusionary zoning litigation. At worst, Plaintiffs and other municipalities would have to scramble over uncertain legal terrain in seeking an extension of immunity, initiate affirmative litigation seeking declaratory judgment, or defending

exclusionary zoning litigation. Where the Legislature has established programs to avoid such uncertainty, delays, and costs, the Court finds that the equities hardly favor a stay.

4. This matter presents issues of public importance and the public interest weighs against a stay.

All legislation is important and reflects the Legislature's consideration of the public interest, but the Act is "not ordinary legislation. It deals with one of the most difficult constitutional, legal and social issues of our day—that of providing suitable and affordable housing for citizens of low and moderate income." Hills, 103 N.J. at 21. Because the development of affordable housing and ensuring Mount Laurel compliance are matters of public importance, the Court is compelled to consider the public interest. Garden State Equality, 216 N.J. at 321.

The Court finds that this factor weighs overwhelmingly against a stay. If Plaintiffs do not want to participate in the Act's programs and processes, they do not have to. The Legislature did not restrain the political leaders of Plaintiff municipalities, and all other municipalities, from making the local decision of (a) participating in the administrative processes established by the Act, (b) seeking declaratory judgment through the courts, or (c) doing nothing unless called upon to defend exclusionary zoning litigation. There are consequences to each of those options, but those options and consequences are not new; rather they flow from the Mount Laurel obligation itself. But Plaintiffs have no entitlement to deprive other

municipalities of those same choices, and the Court notes that Plaintiffs are just a small fraction of this State's municipalities.

Like in Hills, the Act reflects the Legislature's evolved and continuing response to the Mount Laurel obligation. The Supreme Court has emphasized, at every relevant opportunity, that the Legislature remained free to establish mechanisms other than COAH to achieve compliance, and this Act reflects the Legislature's informed response after decades of COAH action and inaction, as well as the plusses and minuses of a court-led system.

Additionally, any consideration of the public interest must consider the low- and moderate-income households that the constitutional obligation serves. The mechanisms and procedures established by the Legislature reflect that branch's considered judgment on what will effectively and timely produce affordable housing. It is hardly in the public interest to delay those processes to the detriment of the State's low- and moderate-income households.

The Act reflects the Legislature's statements of the best ways to ensure Mount Laurel compliance. The public interest demands that the Court allow those responses to proceed.

Accordingly, because Plaintiffs fail to prevail on any of the Crowe factors, the Court denies their request to enjoin the Act, its administration, or its enforcement.

5. Plaintiffs fail to establish any basis to stay the Mount Laurel doctrine pending disposition of this matter.

Plaintiffs ask this Court to stay not only the statute but the underlying constitutional obligation. Their order to show cause asks the Court to stay the Fourth Round. This Court finds no basis to do so. First, a continuing obligation to comply with the Mount Laurel obligation cannot constitute irreparable harm, as the obligation has been extant for decades. Second, Plaintiffs can hardly claim irreparable harm from complying with a constitutional obligation absent any legislative guidance when it is their application to stay the Act. In other words, Plaintiffs cannot simultaneously seek to enjoin the Act's administrative and executive processes and then claim that the absence of any structure to comply with Fourth Round obligations constitutes irreparable harm. Third, given the Court's conclusion that Plaintiffs fail to establish a basis to enjoin the Act, they can establish no basis to enjoin the Constitution.

Accordingly, the Court denies Plaintiffs' application to stay the Act, Defendants' implementation and enforcement of the Act, and the Fourth Round Mount Laurel obligations. Plaintiffs' order to show cause is denied in its entirety.