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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-1254-18

CHARLES J. KRATOVIL,

Plaintiff,

v.

MARK A. ANGELSON, GREGORY O. BROWN, SUSAN M. MCCUE, and SANDY J. STEWART,

Defendants,

and

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY,

Defendant-Intervenor.

APPROVED FOR PUBLICATION

August 18, 2022

COMMITTEE ON OPINIONS

Decided: August 3, 2020

Flavio L. Komuves, for plaintiff.

Peter G. Verniero and Michael S. Carucci, for defendants and intervenor (Sills, Cummis & Gross, PC, attorneys).

JACOBSON, A.J.S.C.

Introduction

The question presented by this litigation is whether members of the Rutgers University Board of Governors are subject to the residency requirements of the New Jersey First Act (NJFA or the Act), N.J.S.A. 52:14-7. Plaintiff Charles J. Kratovil is the editor and co-founder of New Brunswick Today, a bilingual, New Brunswick-based newspaper with a focus on community issues. His lawsuit seeks to oust four members of the Rutgers University Board of Governors who do not reside within the State of New Jersey and have not done so at any time within one year of the filing of the complaint. Under the NJFA, any person holding or attempting to hold "an office, employment, or position" with the State or an instrumentality of the State has 365 days from the date of their appointment to comply with the residency requirements of the statute. N.J.S.A. 52:14-7(a). The Act explicitly authorizes New Jersey citizens to seek the ouster of individuals covered by the residency requirement who do not reside in the State of New Jersey. N.J.S.A. 52:14-7(d).

In their opposition to this action, defendants assert that the Act is only intended to apply to public employees who receive salaries financed with public funds. They contend that unpaid volunteer positions, such as membership on Rutgers' Board of Governors, fall outside the scope of the

statute. Defendants also contend that plaintiff's claim is time-barred under both the NJFA and R. 4:69-6 (Limitations on Bringing Certain Actions). Furthermore, defendants argue that if the court reaches the merits and finds that the Act applies to unpaid volunteers, the court should nonetheless deny relief to plaintiff because Rutgers has not given its consent to the application of NJFA to its Board of Governors, consent that they argue is required under the Rutgers Act, N.J.S.A. 18A:65-1 to -103. Absent such consent, defendants contend that the application of NJFA to the Board of Governors violates the corporate Charter of Rutgers and thus also violates the Contracts Clauses of the United States and New Jersey Constitutions.

Procedural History

Plaintiff Charles Kratovil filed a pro se complaint on June 11, 2018, against Mark A. Angelson, Gregory Brown, Susan McCue, Joseph Rigby, and Sandy J. Stewart, contending that they, as members of the Board of Governors of Rutgers University, were illegally acting in that capacity in violation of NJFA. He contended that, at least for the year before the filing of the complaint, defendants had failed to have their principal residences in New Jersey. Pursuant to N.J.S.A. 52:14-7(d), Mr. Kratovil sought to oust each of the defendants from the Rutgers Board of Governors. Following the filing of the complaint, Joseph Rigby resigned from the Board of Governors and has not

participated in this litigation. By order of August 6, 2018, the court dismissed Mr. Rigby as a defendant.

Defendants promptly filed a motion to dismiss the complaint on July 17, 2018, asserting improper service of process, though the court denied that motion on August 3, 2018. Rutgers, The State University of New Jersey, filed a motion to intervene as a defendant on September 9, 2018, which was granted on October 2, 2018. Plaintiff thereafter filed a motion for summary judgment on December 18, 2018, which was opposed by defendants, who also filed a cross-motion for summary judgment on January 25, 2019. In the process of briefing the legal issues raised by the parties, plaintiff retained counsel and has since been represented by Flavio Komuves, Esq. Both motions for summary judgment are decided in this opinion.

The New Jersey First Act and the History of State Residency Requirements in New Jersey

Re-styled the "New Jersey First Act" in 2011, the Act represented a significant expansion of New Jersey's residency requirement for public officials and employees. Apparently responding to a concern about the State's slow recovery from the recession of 2008 and a desire to increase employment opportunities for New Jersey residents, Governor's Veto Message to S. 1730 (2010), the Legislature amended the Act to cover "[e]very person holding an office, employment, or position" in state or local government, including school

districts. N.J.S.A. 52:14-7(a). See also Jason Rindosh, Comment, Continuing Residency Requirements: Questioning Burdens on Public Employment in New Jersey, 42 Seton Hall L. Rev. 1635, 1641-43 (2012).

Originally applied to "every person holding office in this state," this definition in earlier iterations of the residency statute proved imprecise and difficult to apply over time. The first major expansion of the statute came following the 1986 reconfirmation debate over the residency of then-Chief Justice Robert N. Wilentz. See Joseph F. Sullivan, Uncompromising Jersey Chief Justice, N.Y. Times, Aug. 2, 1986. Following the pledge of Chief Justice Wilentz to reside in New Jersey, the State Legislature quickly moved to amend the residency statute so that it explicitly applied to the Governor, members of the Legislature, and the head of each principal department of the Executive Branch, as well as to every Justice of the Supreme Court, every judge of the Superior Court, and every judge of any inferior court established under the laws of this state.

Following the financial recession of 2008, the New Jersey Legislature proposed a comprehensive residency requirement effectively mandating that almost all public employees in New Jersey live in the state as a condition of their employment, unless they were grandfathered or exempted for hardship reasons. See, e.g., A. 2515 (2008) (introduced on March 8, 2008, the bill was

later combined with A. 3808 and adopted on January 4, 2010). After analogous legislation was approved by the Senate in 2010, Governor Christie signed NJFA into law on March 17, 2011, following a conditional veto providing that the committee overseeing applications for hardship exemptions from the residency requirement be expanded from three to five persons, a condition the Legislature then endorsed. The Act took effect on September 1, 2011. L. 2011, c. 70, § 3.

I. Plaintiff's Complaint is Timely under Both the NJFA and R. 4-69-6(a).

Defendants contend that the complaint must be dismissed as untimely filed. They assert that the filing complied neither with the statute of limitations contained in the Act at N.J.S.A. 52:14-7(d), nor with R. 4:69-6(a), which establishes a forty-five day statute of limitations for the filing of actions in lieu of prerogative writ. Determining whether a cause of action is barred by a statute of limitations is a question of law for adjudication by the trial court. Henry v. N.J. Dep't of Hum. Servs., 204 N.J. 320, 330 (2010); Estate of Hainthaler v. Zurich Com. Ins., 387 N.J. Super. 318, 325 (App. Div. 2006). Here, plaintiff has asserted causes of action arising under both N.J.S.A. 52:14-7(d) and R. 4:69-6(c). Satisfaction of the statute of limitations for either claim will allow the case to proceed on the merits. Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 488 (App. Div. 2018).

Considering the statute of limitations under the New Jersey Civil Rights Act, N.J.S.A. 2A:14-2(a), as well as the forty-five day period for filing an action in lieu of prerogative writ, R. 4:69-6(a), the court in Save Camden held that a favorable ruling on either statute of limitations defense would "afford plaintiffs the right to proceed with the merits of their substantive relief." 454 N.J. Super. at 488.

A. Statute of Limitations under N.J.S.A. 52:14-7

To bring a valid complaint against a New Jersey public employee, position holder, or office holder for failure to comply with the State's residency requirements, a claim must comply with the statute of limitations of N.J.S.A. 52:14-7(d):

> Any person holding or attempting to hold an office, employment, or position in violation of this section shall be considered as illegally holding or attempting to hold the same; provided that a person holding an office, employment, or position in this State shall have one year from the time of taking the office, employment, or position to satisfy the requirement of principal residency, and if thereafter such person fails to satisfy the requirement of principal residency as defined herein with respect to any 365-day period, that person shall be deemed unqualified for holding the office, employment, or position. The Superior Court shall, in a civil action in lieu of prerogative writ, give judgment of ouster against such person, upon the complaint of any officer or citizen of the State, provided that any such complaint shall be brought within one year of the alleged 365-day period of failure to have his or her principal residence in this State.

Defendants argue that this statutory language requires that a complaint to oust a person allegedly violating the Act must be brought within one year of the end of the 365-day grace period for establishing New Jersey residence after assuming a position or an office or employment with a New Jersey state or local government entity. Since defendants claim that each member of the Board of Governors with an out-of-state residence completed the grace period more than one year before the complaint was filed, they contend that the lawsuit fails to satisfy this statute of limitations and must be dismissed.

Plaintiff challenges this interpretation, arguing that the statute applies to authorize a cause of action seeking ouster within one year of the conclusion of any 365-day period when the office, position, or employment is held illegally. Although Mr. Kratovil agrees that the statute gives one year of repose to a person who accepts a position while living outside of New Jersey, he asserts that once a nonresident's grace period expires without that person's moving into New Jersey, that individual is deemed unqualified for the position. He further asserts that a cause of action for removal then arises for any 365-day period of noncompliance and is not limited to just the first year after expiration of the grace period. Plaintiff drafted his complaint with this interpretation in mind, alleging that each defendant, during the 365-day period before the filing of the complaint, had been a member of the Rutgers Board of Governors while

continuing to reside outside of New Jersey. Plaintiff thus argues that, regardless of when the alleged illegal officeholding began, it has persisted well beyond the grace period, giving rise to a timely cause of action to oust an unqualified member for each 365-day period that elapses without the violation being corrected.

Defendants challenge reliance on the word "any" as supporting a "roving statute of limitations" that would not provide effective repose to members of the Board of Governors. They argue that the word was left over from a prior version of the Act that allowed appointees living outside of New Jersey a choice of two cure periods, either 365 days from the effective date of the statute or 365 days from their oath of office, whichever was later. When the Legislature abandoned this choice for the language quoted above in N.J.S.A. 52:14-7(d), defendants argue that "the word 'any' became a dead letter."

When interpreting a statute, the court's primary goal is to ascertain and apply the intent of the Legislature. Frugis v. Bracigliano, 177 N.J. 250, 280 (2003). Generally, the best indicator of that intent is the statutory language itself. DiProspero v. Penn, 183 N.J. 477, 492 (2005). Each word should be given its ordinary meaning and significance. Lane v. Holderman, 23 N.J. 304, 313 (1957). Nor should words be deemed superfluous. See Green v. Auerbach Chevrolet Corp., 127 N.J. 591, 598 (1992) (quoting Med. Soc'y of

N.J. v. N.J. Dep't of Law & Pub. Safety, 120 N.J. 18, 26 (1990)) ("[A] court should 'try to give effect to every word of the statute, and should not assume that the Legislature used meaningless language.'"). Despite these familiar standards, interpreting and applying statutory language and divining the intent of the Legislature is often far from a simple task, as illustrated vividly in this case.

Here, after mandating that individuals who hold a public office, employment, or position in New Jersey must have their primary residence in this state or be deemed in violation of the Act, the Legislature carved out a grace period for compliance, affording one year for individuals residing out of state who accept a New Jersey position covered by the Act to satisfy the statute. This provision accommodates individuals who live out of state when accepting a state or local government position by affording them a reasonable period of time to move themselves and their families into New Jersey without running afoul of the NJFA. If they do not move within that time frame, they are deemed "unqualified" for their position and may be ousted by the Superior Court if a meritorious cause of action is filed "within one year of the alleged 365-day period of failure to have his or her principal residence in this State." N.J.S.A. 52:14-7(d). A cause of action for ouster also arises if a person covered by the statute moves out of New Jersey for any 365-day period, just as

it arises for individuals who remain outside the state after not having taken advantage of the grace period for any 365-day period.

Since the statute uses the word "any" to modify the first mention of a 365-day period, the court agrees with plaintiff's interpretation. While not a model of legislative draftsmanship because the second mention of a 365-day period could be construed to establish a definitive statute of limitations of a maximum, single period of 365 days, plaintiff's interpretation is more in keeping with the policy of the statute to mandate New Jersey residence for the vast number of state employees and office holders covered by the Act. To limit ouster to just one 365-day period could conceivably condone lengthy noncompliance that would undermine the purposes the statute seeks to achieve. While the court understands defendants' concern that such an open-ended limitations period of perhaps successive 365-day periods contradicts general notions of repose and would continue to leave certain individuals vulnerable to challenge for many years, their proffered interpretation undermines the primary thrust of the statute and is thus disfavored.

Moreover, defendants' construction would enshrine what the Supreme Court has condemned when it commented that, "title to public office cannot be acquired by some sort of prescriptive right . . . ." Jones v. MacDonald, 33 N.J. 132, 138 (1960). Indeed, in relation to a statute of limitations argument raised

in Jones, the Court asserted that, "[t]o put it another way, each purported exercise of the right of office by one without title to it constitutes a fresh wrong." Ibid.; see also Errichetti v. Merlino, 188 N.J. Super. 309, 325 (Law Div. 1982) ("The language provides one means for the members of the legislative house to accomplish the internal result. It was not intended to afford a shield to a wrongdoing legislator against the force of a statute affording relief to the people from continued representation by one unqualified for office.") (emphasis added); In re Fichner, 144 N.J. 459, 470 (1996) (noting that unqualified officers may be removed under the "writ of quo warranto . . . The theory behind that procedure is that the office is created by the public and thus the public has the interest in the proper status of office holders.") (emphasis added).

Finally, defendants' reading of the Act renders the word "any" meaningless, a result to be avoided under long-acknowledged rules of statutory interpretation. See In re Estate of Post, 282 N.J. Super. 59, 72 (App. Div. 1995). Courts should thus give full effect to every word used in a statute when possible and not assume that any word is inoperative or meaningless. Ibid.; Gabin v. Skyline Cabana Club, 54 N.J. 550 (1969). Consequently, the court finds that the complaint was timely filed under N.J.S.A. 52:14-7(d) and will not be dismissed for failure to comply with the statutory limitations period.

B. Rule 4:69 Actions in Lieu of Prerogative Writs

In the alternative, defendants argue that this lawsuit is barred by R. 4:69-6, which establishes a general statute of limitations for actions in lieu of prerogative writ of forty-five days after accrual of the cause of action. Defendants correctly point out that Mr. Kratovil was on notice of the appointment of each of the defendants to the Rutgers Board of Governors because he wrote articles about the appointments in the publication that he edited shortly after each appointment. Notably, however, defendants concede that the issues raised by plaintiff are of substantial constitutional importance and urge the court to decide the issues even though the complaint was filed outside of the forty-five day period. See Wash. Mut., FA v. Wroblewski, 396 N.J. Super. 144, 147 (Ch. Div. 2007).

The limitations period contained in R. 4:69-6 is explicitly subject to enlargement "where it is manifest that the interest of justice so requires." R. 4:69-6(c). That section is intended "to restate in the form of a generalized standard, decisional exceptions which had already been engrafted upon the rule." Schack v. Trimble, 28 N.J. 40, 48 (1958). Those exceptions include: (1) substantial and novel constitutional questions; (2) informal or ex parte determinations made by administrative officials that do not involve "a sufficient crystallization of a dispute along firm lines to call forth the policy of

repose" and where the right to relief depends upon determination of a legal question; and (3) an important public rather than a private interest that requires adjudication or clarification. See In re Ordinance 2354-12 of West Orange, Essex Cnty. v. Twp. of West Orange, 223 N.J. 589, 601 (2015); Borough of Princeton v. Mercer Cnty., 169 N.J. 135, 152-53 (2001), aff'g 333 N.J. Super. 310, 322-24 (App. Div. 2000). However, relaxation is dependent upon all relevant equitable considerations presented by the circumstances of the case before the court. Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., 204 N.J. 569, 583-84 (2011); Harrison Redev. Agency v. DeRose, 398 N.J. Super. 361, 401-02 (App. Div. 2008).

Here, plaintiff has challenged the continued service of four members of the Rutgers Board of Governors. The complaint raises an issue of first impression concerning the interpretation of the NJFA. Defendants have also raised Contract Clause issues arising under the New Jersey and United States Constitutions and the Rutgers Act, N.J.S.A. 18A:65-1 to -103. The complaint thus raises issues of public importance. Indeed, in what perhaps was a reaction to the filing of the complaint, one of the originally named defendants resigned from the Board. The four defendants who remain are serving under the cloud of this litigation. It is consequently in the public interest for the court to decide the issues presented by plaintiff. Moreover, in a case challenging

service on the Rutgers Board of Governors for different reasons than those set forth in plaintiff's complaint here, the Appellate Division relaxed a similar limitations period in the public interest. In re Christie's Appointment of Perez as Pub. Member 7 of Rutgers Univ. Bd. of Governors, 436 N.J. Super. 575, 585 (App. Div. 2014). Numerous other cases have enlarged the time for filing a complaint otherwise barred by a statute of limitations or court rule in the interest of justice. Borough of Princeton, 169 N.J. at 152-53; Hopewell Valley Citizens' Grp., Inc., 204 N.J. at 583-84. The court thus finds that relaxation of the forty-five day limitations period is warranted here and will proceed to address the merits of the case.

II. A Reasonable Interpretation of the Statutory Language, Consistent with the Legislative History of the NJFA, Supports Exempting the Rutgers Board of Governors from the Requirements of the Act.

The NJFA imposes a residency requirement, with several limited exceptions, on nearly all office holders, position holders and employees of state and local governments in New Jersey. As noted in Continuing Residency Requirements: Questioning Burdens on Public Employment in New Jersey, a Comment written by Jason Rindosh, the Act created a comprehensive residency requirement mandating that almost all state and local public employees hired after the law's enactment reside in New Jersey. Rindosh, 42 Seton Hall L. Rev. at 1637. While there is no dispute between the parties that

the Act applies to public employees, the question posed by this case is whether it also applies to members of the Rutgers Board of Governors, who are not employees, but who serve the University without compensation as volunteers. See N.J.S.A. 18A:65-17 (preventing all members of the Board of Governors, other than the President of Rutgers, from "receiving remuneration for services from the corporation or the university"); N.J.S.A. 18A:65-20 (providing that the "governors . . . shall not receive compensation for their services" but may be reimbursed for reasonable expenses incurred in rendering service to the Board). Notably, the statutory language of the NJFA does not explicitly refer to unpaid volunteers and does not define the terms used to ascertain the Act's coverage. As a result, there is no definition of what the Legislature meant by "[e]very person holding an office, employment, or position." N.J.S.A. 52:14-7(a). Consequently, interpreting the residency requirement as applied to the Rutgers Board of Governors has given rise to competing arguments asserted by the parties that cite various rules of statutory construction urging diametrically different results. This case thus presents the court with the delicate task of divining legislative intent without overt assurance that the Legislature contemplated application of the NJFA to unpaid volunteers such as members of the Rutgers Board of Governors. Nor, however, did the Legislature provide any explicit exemption for unpaid volunteers.

A. Summary of Arguments of the Parties

The court turns first to the statutory argument based on the language of the NJFA because the alternate ground advanced by Rutgers to remove its Board members from application of the Act has constitutional implications. The doctrine of constitutional avoidance requires consideration of statutory arguments before deciding whether constitutional questions should be reached. O'Keefe v. Passaic Valley Water Comm'n, 132 N.J. 234, 240 (1993); Donadio v. Cunningham, 58 N.J. 309, 325-26 (1971).

The NJFA provides that:

> Every person holding an office, employment, or position
>
> (1) in the Executive, Legislative, or Judicial Branch of this State, or
>
> (2) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or
>
> (3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or
>
> (4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district,
>
> shall have his or her principal residence in this State . . .

[N.J.S.A 52:14-7(a) (emphasis added).]

Plaintiff relies on the expansive language of the statute to assert that it applies to the members of the Rutgers Board of Governors. Indeed, the Act explicitly reaches any person holding an office, employment, or position with every board of any state university. Moreover, plaintiff claims that the terms "office" and/or "position" should be given their common meanings, which he asserts encompass members of the Board of Governors. In fact, plaintiff notes that the Appellate Division referred to a member of the Board of Governors as an office holder in In re Christie, 436 N.J. Super. at 580, thus supporting plaintiff's construction of the statute. Plaintiff also relies on the interpretation of the statute by the Division of Local Government Services in the Department of Community Affairs in Local Finance Notice 2011-30, which asserted that, "[t]he use of the phrase 'office, employment, or position' is interpreted to include individuals serving on boards or commissions as volunteers." If plaintiff is correct, all four individual defendants are subject to ouster for violating the Act since they admit that they reside outside of the State of New Jersey and apparently have no plan to move into the state. The record shows that they have maintained residences outside of New Jersey for the entire duration of their appointments, well beyond the one-year grace period provided in the statute.

Defendants assert, however, that the Act does not apply to these Board members because they are not paid for their service on the Board, but rather are volunteers. In support of this argument, defendants contend that N.J.S.A. 52:14-7 does not explicitly cover non-salaried volunteers, and that the structure of the Act supports the interpretation that unpaid volunteers fall outside of its coverage. They point to the fact that the exceptions included in the statute apply only to employees and not to individuals holding unpaid offices or positions. Indeed, the section of the Act specifically creating exceptions applicable to state universities applies to "certain persons employed by a State college, university or other higher educational institution." N.J.S.A. 52:14-7(a) (emphasis added). Defendants extrapolate from this section and similar exceptions applicable exclusively to employees to assert that the Legislature intended only to cover employees in the Act.

Defendants also allege that the plain language of the statute precludes its application to unpaid volunteers. They maintain that the reference to "[e]very person holding an office, employment, or position" necessarily means only salaried individuals because that is the common understanding of the phrase. Ibid. They also urge that the word "position" should be construed narrowly to refer only to the status or role of an employee or officeholder, such as a full or part-time employee or independent contractor. Indeed, N.J.S.A. 52:14-7(a)

exempts certain temporary faculty members at institutions of higher education from the residency requirement of NJFA, referencing their employment in "full or part-time position[s]." Ibid. In that context, the word "position" clearly means only salaried employees. The same section of the Act exempts one "who is employed full-time by the State who serves in an office, employment, or position that requires the person to spend the majority of the person's working hours in a location outside of this State." Ibid. Again, this use of the statutory terms in question refers only to salaried employees. Moreover, one of the dictionary definitions of "position" is "job," as noted in Merriam-Webster Dictionary (online version 2020). "Position" is also used synonymously with "job" in the civil service statutes. See generally N.J.S.A. 11A:6-13 to -16; N.J.S.A. 11A:4-5; N.J.S.A. 11A:4-13.

Defendants also rely heavily on the Governor's appointment, and subsequent Senate confirmation, of several individuals who live outside of New Jersey as members of the Rutgers Board of Governors after adoption of the NJFA. Indeed, one of the members, Gregory Brown, was re-nominated in 2017 after serving an entire term without moving into the State of New Jersey. They assert that the Governor and Senate knew what the statute intended, and never would have nominated three of the defendants if their selection violated

the NJFA. (Note that Defendant Stewart was nominated by the Rutgers Board of Trustees).

Moreover, defendants argue that the Act was adopted to support the New Jersey economy by requiring people holding state or local public positions to live and pay taxes in New Jersey, an intent inconsistent with applying the statute to unpaid volunteers. Finally, defendants point to the fact that the committee created by the Act to review applications for hardship exemptions from the residency requirement has adopted an application form that is for employees only, even though the Act makes the exemption process available to any person affected by the residency requirement. They assert that such a construction of the statute by the entity charged with administering an important aspect of the Act is entitled to deference and represents a further endorsement of their interpretation that NJFA does not apply to volunteers.

B. The Legislative Intent of the NJFA Is to Reach Salaried Employees, Officers, and Position Holders

As the above summary of the parties' positions demonstrates, this case presents a fundamental disagreement regarding the scope of the Act. Notably, each side presents arguments supported by statutory language and canons of statutory construction, making the Act's applicability to members of the Rutgers Board of Governors a particularly difficult issue to decide. When interpreting a statute, however, the court's objective is "to discern and

implement the Legislature's intent." State v. Drury, 190 N.J. 197, 209 (2007); McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001). That is the guiding principle the court must follow in this case.

Courts turn first to the language of the Act, because the best indication of legislative intent is the statutory text itself. DiProspero, 183 N.J. at 492. Indeed, "if the language is plain and its meaning clear, the inquiry ends there." State v. Malik, 365 N.J. Super. 267, 274 (App. Div. 2003); see also State v. Bigham, 119 N.J. 646, 650 (1990) (noting that "[w]hen a statute is clear on its face, a court need not look beyond the statutory terms to determine the legislative intent"). If, however, the statute's text is subject to more than one plausible interpretation, courts may consider extrinsic evidence to discern legislative intent. In re Eastwick Coll. LPN-to-RN Bridge Program, 225 N.J. 533, 542 (2016); Lloyd v. Vermeulen, 22 N.J. 200, 205 (1956).

In examining a statute's text, courts will generally give words their ordinary meaning absent any contrary direction from the Legislature, In re Young, 202 N.J. 50, 63-64 (2010); U.S. Bank NA v. Guillaume, 209 N.J. 449 (2012), and will avoid any construction that renders language useless. See Green, 127 N.J. at 598. Courts may also refer to dictionary definitions, especially where a disputed term is commonly used in broader or narrower ways. See generally Muscarello v. United States, 524 U.S. 125 (1998)

(examining whether the phrase "carries a firearm" means carrying a firearm on one's person, or whether it also encompasses transporting a firearm in one's vehicle).

Furthermore, judicial review of statutory language is not limited to the words in a disputed provision. State v. Twiggs, 233 N.J. 513, 532 (2018). As noted by the United States Supreme Court in Yates v. United States, 574 U.S. 528, 537-38 (2015) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997)):

> Whether a statutory term is unambiguous . . . does not turn solely on dictionary definitions or its component words. Rather, "[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole."

A court may draw inferences from the statute's overall structure and may consider the entire legislative scheme when interpreting particular phrases. Ibid.; Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 13-14 (2019); MasTec Renewables Constr. Co. v. Sun Light Gen. Mercer Solar, LLC, 462 N.J. Super. 297 (App. Div. 2020). Statutory words and phrases should not be viewed in isolation, but rather in the context in which they appear. Courts may also look beyond the statute at issue to common judicial and statutory usage of disputed terms to determine their plain meaning. See W. Va. Univ. Hosps. v. Casey,

499 U.S. 83 (1991) (concluding that "attorney's fees" as used in a fee-shifting statute did not include expert fees, because other statutes provide for attorney's fees and expert fees separately).

Where an examination of the statute's text does not compel a clear and unambiguous result, courts should consider extrinsic evidence of legislative intent. Bedford v. Riello, 195 N.J. 210, 222 (2008). Such evidence often includes legislative history, examination of the statutory context, and interpretations endorsed by agencies involved in administering the statute. In re Young, 202 N.J. at 63-64; Nat'l Waste Recycling, Inc. v. Middlesex Cnty. Improvement Auth., 150 N.J. 209, 229 (1997). Under New Jersey precedent, courts may look to conditional veto statements of the governor at the time of enactment, as well as the comments of legislators who sponsored the original bills. See DiProspero, 183 N.J. at 499, 503; N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 374 (2008); Citizens United to Protect the Maurice River and its Tributaries, Inc. v. City of Millville Plan. Bd., 395 N.J. Super. 434, 438 (App. Div. 2007).

Plaintiff asserts that the court need do no more than review the Act's language to conclude that it reaches members of the Rutgers Board of Governors. Indeed, the words chosen by the Legislature are expansive, extending to "[e]very person holding an office, employment, or position" with

a board, including the boards of any State university. N.J.S.A. 52:14-7(a). Had the Legislature failed to specify that State university employees fall within the Act, that omission might have suggested that the residency requirement did not apply to defendants. However, the fact that the Act expressly covers employees of boards and State universities does not help answer the question of whether "office, employment, or position" covers unpaid volunteer roles such as those held by defendants. Many "board[s] . . . of the State" employ paid board members, and a board's paid administrative staff would be considered employees of the board. Ibid. In addition, some office holders of a board, such as an executive director, would also be an employee of the board. See, e.g., N.J.S.A. 48:2-5 (Board of Public Utilities); N.J.S.A. 30:4-123.47(c) (State Parole Board); N.J.S.A. 5:12-53 (Casino Control Commission); N.J.S.A. 5:12-156 (Casino Reinvestment Development Authority). Therefore, the court cannot infer, from the inclusion of "board[s] . . . of the State" in the statute's text, that the Legislature intended the Act to apply to individuals holding unpaid volunteer roles. N.J.S.A. 52:14-7(a).

The question is thus whether "[e]very person holding an office, employment, or position" plainly encompasses unpaid volunteers. N.J.S.A. 52:14-7(a). The word "employment" ordinarily means work for payment, and the dictionary definition of "employee" is "a person who works for another in

exchange for financial compensation." Webster's II New College Dictionary 369 (2001); see also "Employee", Merriam-Webster.com Dictionary, (2020) ("one employed by another usually for wages or salary and in a position below the executive level"). Thus, the plain, ordinary meaning of "employment" does not include unpaid volunteers.

The word "position" is broader, insofar as one might more readily describe a volunteer role as an "unpaid position" than as "unpaid employment." On the other hand, the common usage of the term "unpaid position" suggests that "position" must be modified with "unpaid" to reach volunteer roles, and that "position" alone implies "paid position." Dictionary definitions of "position" support this narrower reading. Indeed, the only relevant definition of "position" in Webster's II New College Dictionary is "[a] post of employment: job." Webster's II New College Dictionary 861 (2001). Because "position" means a "post of employment," and "employment" entails compensation, the word "position" normally would not encompass unpaid volunteer roles. Thus, while "position" is subject to two plausible interpretations, one that encompasses unpaid volunteers and one that does not, the latter interpretation is more plausible.

Whether unpaid volunteers constitute "office" holders within the meaning of the Act is less clear. Notably, the maxim noscitur a sociis, a word

is known by the company it keeps, would suggest that "office" should be read to cover only paid roles, just as "employment" and "position" apparently do. Looking at the NJFA's language in context, however, confirms that these terms at best are ambiguous, if not plainly encompassing only paid employment.

The word "position" is utilized in two sentences of N.J.S.A. 52:14-7(a) to refer only to employed persons, and not to unpaid volunteers. One of these references is to persons employed "in a full or part-time position as a member of the faculty, the research staff, or the administrative staff by any State . . . university" and the other refers to a person "employed full time by the State who serves in an office, employment, or position that requires the person to spend the majority of the person's working hours in a location outside of this State." N.J.S.A. 52:14-7(a). Thus, the language of subsection (a) itself suggests that a narrower reading, at least of the statutory term "position," is not only possible, but also favored. See Perez v. Pantasote, Inc., 95 N.J. 105, 116 (1984) (acknowledging the general rule that an identical word used in different provisions of a statute should generally be given the same meaning in the absence of a clear indication to the contrary).

Moreover, the connected terms of "office, employment, or position" have been used in many other statutes with a more limited meaning than that

advanced by plaintiff here. Notably, in a statute codified within a few provisions of the NJFA, the Legislature references "any person holding public office, position or employment, whose compensation is paid by this State or by any board . . . thereof" shall be referred to as an "employee" and may seek to have their salary paid by direct deposit. N.J.S.A. 52:14-15(a). Many provisions of the civil service statutes, for example, also use the word "position" as synonymous with "job" and regulate position holders as employees. See N.J.S.A. 18A:6-30 (providing that "[a]ny person holding office, position or employment in the public school system of the state" can recover back pay for the period of an improper suspension or dismissal); N.J.S.A. 11A:6-13 to -14; N.J.S.A. 11A:4-5; N.J.S.A. 11A:4-13. The Legislature has thus used the word "position" or the word "office" in several contexts to mean "employee," especially when those words have been included in a list with the term "employment."

Also of note is that these same terms in contexts other than the NJFA have raised interpretative challenges for courts in the past. Although plaintiff asserts that defendants are really arguing that all three terms are synonymous, a result he claims must be rejected by the court because it renders two words superfluous, the court in Pastore v. Cnty. of Essex, 237 N.J. Super. 371, 376 (App. Div. 1989), concluded that the words "office, position or employment"

in N.J.S.A. 2C:51-2 were used interchangeably and should be interpreted in the same way to reach all public employees. Moreover, the Pastore Court noted that while many common law precedents had drawn distinctions between offices, positions, and employment when addressing public servants, especially in terms of their entitlement to back pay following improper terminations, those distinctions were deemed to be "somewhat obscure and rather unfortunate." Ibid. (quoting Miele v. McGuire, 31 N.J. 339, 347 (1960)); State v. Int'l Fed'n of Prof'l and Tech. Eng'rs, Loc. 195, 169 N.J. 505, 535 (2001). In Mastrobattista v. Essex Cnty Park Comm'n, 46 N.J. 138, 146-47 (1965), the Supreme Court noted in regard to statutory language covering persons who hold an "office, position or employment" that this "additional verbiage may fairly be viewed as having been included out of an excess of caution" rejecting artificial distinctions between the terms.

The three opinions of the Supreme Court in Sahli v. Woodbine Bd. of Educ., 193 N.J. 309, 323 (2008), affirming in part and reversing in part the Appellate Division's rulings at 386 N.J. Super. 533 (App. Div. 2006), also demonstrate that the words "office, position or employment" can be subject to varying interpretations, depending on context. The majority opinion found that a school board attorney acting as an independent contractor was not entitled to indemnification as a person holding "any office, position or

employment" with a board of education under N.J.S.A. 18A:16-6 because he was not an employee of the board, but was entitled to indemnification under the board's insurance policy that referenced "all employees and volunteers" when he substituted for the Board Secretary during executive sessions in a matter where the Secretary had a conflict of interest. Id. at 317-21. Justice Albin, in dissent, took the majority to task for defining "position" as synonymous with "employee" in N.J.S.A. 18A:6-6, but his objection did not gain traction with his colleagues. Id. at 324-27. Moreover, it is notable that when the Legislature wanted to reach unpaid public servants for the purposes of applying the New Jersey Conflicts of Interest Law, it created the term "special State officer" to ensure that unpaid public officials were covered. N.J.S.A. 52:13D-13(e); N.J.S.A. 52:13D-17.2. That verbiage was not in the NJFA, suggesting that the Legislature may not have intended to reach that same special category.

Given that the Legislature did not define the terms "office, employment, or position," and that the meanings of these terms are somewhat ambiguous as the above analysis demonstrates, resort to extrinsic evidence is appropriate. Twiggs, 233 N.J. at 532-33; DiProspero, 183 N.J. at 494-504; see also Kocanowski, 237 N.J. at 10 (noting that courts "also consider 'extrinsic evidence if a literal reading of the statute would yield an absurd result,

particularly one at odds with the overall statutory scheme.'"); Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387 (2001) ("[W]hen a 'literal interpretation of individual statutory terms . . .' would lead to results 'inconsistent with the overall purpose of the statute,' that interpretation should be rejected.").

Various sources support the conclusion that, in adopting the statute, the Legislature wanted to improve economic conditions in New Jersey. As then-Senator Norcross, one of the sponsors of the legislation, noted: "If you want a paycheck from New Jersey taxpayers, you should live here and pay your taxes here." Rindosh, 42 Seton Hall L. Rev. at 1661, n.172. Governor Christie placed a similar emphasis on the Act applying only to employees in his conditional veto message when he stated that, "[t]his legislation would require that public employees obtain a principal residence in New Jersey within one year of beginning their public service." Governor's Veto Statement to S. 1730 (2010). The Governor went on to commend the sponsors for their efforts "to increase employment opportunities for New Jersey residents, by ensuring that citizens throughout the State enjoy access to public positions in their communities." Ibid. None of this commentary suggests any reason for the legislation other than to ensure that public moneys paid for salaries to public employees in New Jersey be reserved for New Jersey residents, subject to minor exceptions and the grandfather provision.

Indeed, in his probing examination of the NJFA, Jason Rindosh concludes that the primary legislative rationale, as illustrated by Senator Norcross' statement quoted above, was to better ensure that the funds New Jersey's state and local governments paid in salaries to public employees stayed in this state and contributed to the state's own economy, "thereby passing a tax benefit back to the state." Rindosh, 42 Seton Hall L. Rev. at 1661. That intent is underscored by the timing of the Act's passage, which followed the financial meltdown of 2008 when the Legislature was interested in adopting measures to boost the state's economic recovery from the recession. Notably, economic benefits are frequently cited as one of the main rationales for residency requirements. See Abrahams v. Civ. Serv. Comm'n, 65 N.J. 61, 72-73 (1974); Kennedy v. Newark, 29 N.J. 178, 183-84 (1959) (noting that governments may well conclude that residency requirements will "advance the economy of the locality which yields the tax revenues"). Although plaintiff argues that another rationale for residency requirements is to ensure that individuals with decision-making authority that affects the state budget and important state policies should live in the state, that motivation was never articulated in the legislative history of the NJFA. Moreover, the expansion of the Act to cover all state employees supports the conclusion that the economic rationale is what prompted the legislation and not an intent that

would apply only to a somewhat small subset of the covered individuals. Given the undisputed aim of the Act to improve the New Jersey economy, interpreting the NJFA to apply to unpaid volunteers is illogical and thus disfavored. See San-Lan Builders, Inc. v. Baxendale, 28 N.J. 148, 155-156 (1958) (holding that particular terms should "be made responsive to the essential principle of the law. It is not the words but the internal sense of the act that controls. Reason is the soul of the law."); Kocanowski, 237 N.J. at 10 (quoting Twiggs, 233 N.J. at 533) (rejecting literal readings of statutes if such an interpretation is "at odds with the overall statutory scheme").

As noted above, the NJFA authorizes "any person" to seek an exemption from the Act "on the basis of critical need or hardship . . . ." N.J.S.A. 52:14-7(a). Such an exemption typically means financial hardship, suggesting that "any person" means any salaried employee. In commenting on the exemption procedure, the Statement to S. Comm. Substitute for S. 1730 (May 13, 2010), which became the NJFA, referred to applications from "a person employed or offered employment" by a state college or university, and did not contemplate the process covering unpaid individuals. In a Statement from the same Committee dated December 9, 2010, addressing proposed amendments to the Act, the Senators noted that, "a person employed on the effective date of this bill who does not have his or her principal residence in this State on that

effective date will not be subject to the residency requirement while the person continues to hold office, employment, or position without a break in public service of greater than seven days." That comment supports the conclusion that the statutory language selected by the Legislature covering persons holding an "office, employment, or position" was intended to reach all employees, but not unpaid volunteers. To the same effect is the Statement of A. State Gov't Comm. to A. 2478 (Dec. 9, 2010).

Notably, this interpretation is buttressed by the form promulgated by the five-member committee established under the Act to administer the exemption process, which refers to itself as the "Employee Residency Review Committee." That form requires applicants to provide information about their employer or prospective employer and is written to cover only paid employees, although the Act explicitly provides that "any person" may apply for an exemption. N.J.S.A. 52:14-7(e)(4). Since administrative interpretations of statutes by agencies charged with implementing them are entitled to deference and have been viewed as "persuasive evidence of the Legislatures [sic] understanding of its enactment," Saint Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 15 (2005) (quoting Cedar Cove, Inc. v. Stanzione, 122 N.J. 202, 212 (1991)), the form supports application of the NJFA to public salaried employees and not to unpaid volunteers. That a contrary view has been expressed in Local

Finance Notice 2011-30 issued by the Office of Local Government Services in the Department of Community Affairs is notable, but not definitive, since that entity has no role in the implementation of the Act. Critically, that opinion was issued with no analysis and represented only the bald conclusion that the NJFA applied to unpaid volunteers. See Airwork Serv. Div. v. Dir., Div. of Tax'n, 97 N.J. 290, 296 (1984) (strong indicators of legislative intent such as statutory purpose and language may outweigh countervailing administrative construction).

Defendants also rely on the actions of Governor Christie and the State Senate in appointing and confirming three of the four individual defendants in this case to the Rutgers Board of Governors after adoption of the NJFA, knowing that these three individuals resided outside of New Jersey and likely had no intent to change their principal residences. They highlight the fact that Board of Governors member Gregory Brown was nominated for a second term after residing outside of New Jersey during the entire length of his first term. Notably, three of the defendants in this case were nominated by the Governor and approved by the Senate shortly after adoption of the Act when the same Governor and many of the same Senators involved in its adoption approved the nominations. See 62-64 Main St., LLC v. Mayor of Hackensack, 221 N.J. 129, 145 (2015) (quoting Lloyd, 22 N.J. at 210) (contemporaneous and practical

actions of legislators may assist in ascertaining true sense and meaning of statute); State Dep't of Civ. Serv. v. Clark, 15 N.J. 334, 341 (1954). While the nominations are not interpretive statements per se, actions often speak louder than words, and these actions demonstrate that the Governor and legislators seemingly did not view the NJFA as disqualifying individuals from the Rutgers Board of Governors who likely intended to remain out-of-state residents during their entire service on the Board. The court thus agrees with defendants that it reasonably can be presumed that the Senators and Governor never intended to run afoul of recently enacted legislation in selecting three of the defendants as members of the Rutgers Board of Governors. Notably, the short time frame between the adoption of the NJFA and the appointments of the defendants stands in contrast to the situation where courts will not rely on the views expressed by legislators about statutes adopted by previous legislatures of which they were not members. J.R. Christ Constr. Co. v. Willete Assocs, 47 N.J. 473, 480 (1966); see also Hapag-Lloyd A.G. v. Dir., Div. of Tax'n, 7 N.J. Tax 108, 115 (1984) (quoting J.R. Christ Constr. Co., 47 N.J. at 480) ("In ascertaining legislative intent with respect to the original version of a statute that has since been amended, the New Jersey Supreme Court has cautioned that, 'the opinions of legislators in [the year of statute

amendment] are not instructive in determining the intent of the Legislature which enacted the original law many years earlier.'").

While plaintiff argues that interpreting the NJFA to apply only to paid employees would render some of the language of the statute meaningless, that is not necessarily so for—as noted above—the Act reaches boards whose members are salaried, such as the State Parole Board, the Board of Public Utilities, and the New Jersey Board of Directors of Horizon Blue Cross and Blue Shield. See N.J.S.A. 17:48E-3; N.J.S.A. 48:2-5; N.J.S.A. 30:4-123.47(c). The Act would also reach employees of any state or local board of unpaid volunteers that hires and pays personnel to serve board members. On the local level, for example, a school board may hire a secretary or other staff to assist the unpaid volunteers in exercising their responsibilities, and those employees would be covered by the statute.

Further, words frequently used together, such as "office, employment, or position," may be given an analogous connotation, as was done in the Pastore case. 237 N.J. Super. at 376. Indeed, the maxim noscitur a sociis applies to associated words that are given similar meaning. This canon of statutory construction can be helpful in ascertaining the intended scope of associated words or phrases and has been employed to limit the breadth of general words

that "logic, reason and the subject matter of the statute do not show was clearly intended." Germann v. Matriss, 55 N.J. 193, 221-22 (1970).

Finally, Rutgers has raised several policy concerns about the importance of being able to recruit members of its Board of Governors from around the country in order to have well-qualified individuals with broad national experience involved in university governance. While courts generally do not get involved in policy issues, and the Supreme Court has even cautioned in regard to residency requirements that judicial involvement in the "broad policy debate [on] whether restrictive residential ordinances" would "do more harm than good" is inadvisable, Abrahams, 65 N.J. at 73, the Legislature did express concern in the Act itself that universities not be harmed by its provisions. Notably, the NJFA provided an exemption for faculty members, research staff, or administrative staff,

> requiring special expertise or extraordinary qualifications in an academic, scientific, technical, professional, or medical field or in administration, that, if not exempt from the residency requirement, would seriously impede the ability of the . . . university . . . to compete successfully with similar . . . universities . . . in other states.
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> [N.J.S.A. 52:14-7(a).]

That legislative concern supports the somewhat analogous desire of Rutgers to continue recruiting individuals from around the country to serve on

its Board of Governors to promote its position as a first-rate, nationally respected, public research institution. Indeed, by authorizing an education-specific exemption, the Legislature balanced the goals of benefitting the state economically, while assuring that critical university needs not be constrained by the residency requirement. That balance would be undermined to some extent if the NJFA is applied to the unpaid volunteer members of the Rutgers Board of Governors whose service is challenged in this lawsuit.

After closely examining the statutory language, purpose, and legislative history of the NJFA, the court concludes that the Act should not be interpreted to reach unpaid volunteers, including members of the Rutgers University Board of Governors who reside outside of New Jersey. While this result would allow the court not to address the constitutional Contract Clause claim raised by Rutgers in defense against plaintiff's complaint, the court nonetheless has determined that it should analyze that issue as well in the interest of judicial efficiency, economy, and completeness. Since the Contract Clause dispute was fully briefed and argued, it would be expedient to address it now rather than postpone consideration for some time in the future in the event of a remand. Accordingly, the court will proceed to review the separate legal basis advanced by Rutgers to prevent application of the NJFA to its Board of Governors.

III. If interpreted to apply to the Rutgers Board of Governors, the NJFA would violate the Rutgers Act under the Contract Clauses of the United States Constitution and the New Jersey Constitution.

Defendants also challenge application of the NJFA as interpreted by plaintiff to the Rutgers Board of Governors by contending that the Contract Clauses of the United States and New Jersey Constitutions preclude restructuring the University's governing body unless such action is authorized under the corporate Charter between Rutgers and the State. Defendants thus seek to show that the Rutgers Charter requires consent of the University in order to make any change to membership requirements for its Board of Governors. They argue that because Rutgers did not consent to excluding all out-of-state residents from its Board of its Governors, the NJFA may not impose residency restrictions on the Board, even if the Act is interpreted as plaintiff contends to cover unpaid volunteers.

Conversely, plaintiff argues that Rutgers is indeed bound by the NJFA because it is a law of general application that applies to the University since Rutgers is a public entity whose staff and public officials, including members of the Board of Governors, fall within the scope of the enactment. Plaintiff further alleges that such laws of general application are not typically affected by the Contract Clauses of the United States and New Jersey Constitutions. In addition, plaintiff questions the standing of defendants to rely on the Rutgers

Charter and Contract Clause precedents because only the Board of Trustees and not the Board of Governors or any other representatives of the University signed the Rutgers Charter in 1956. Finally, plaintiff argues that even if the NJFA affects the rights of a contracting party to the Charter, such an effect does not prevent application of the statute to the Board of Governors because the State Legislature had a legitimate interest in adopting the NJFA that does not substantially impair the rights of the Board of Governors or the University.

A. Standard of Review

Defendants argue that if the NJFA is interpreted as urged by plaintiff, application of the Act to the Rutgers Board of Governors would unconstitutionally interfere with the Rutgers Charter. This as-applied challenge does not seek a broad declaration of invalidity preventing the statute from applying to other public agencies and officials. Nor does Rutgers seek to prevent application of the Act to other parts of the University, as defendants have already conceded that the NJFA applies to its employees, including professors. Despite the narrow argument raised here by Rutgers, claims of constitutional infirmity must be analyzed under well accepted standards.

Generally, courts shall not "declare void legislation 'unless its repugnancy to the Constitution is clear beyond a reasonable doubt.'" In re P.L. 2001, Chapter 362, 186 N.J. 368, 392 (2006) (quoting Harvey v. Bd. of Chosen

Freeholders, 30 N.J. 381, 388 (1959)). The party challenging the legislation bears the burden of clearly demonstrating that the law violates a constitutional provision. Lewis v. Harris, 188 N.J. 415, 459 (2006) (citing Caviglia v. Royal Tours of Am., 178 N.J. 460, 477 (2004)). Further, there is a strong presumption of validity afforded to enactments of the Legislature. N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972); Behnke v. N.J. Highway Auth., 13 N.J. 14, 25 (1953). Courts aim to effectuate legislative intent and uphold legislation unless a constitutional infirmity is clear. Behnke, 13 N.J. at 25. Consequently, in order to prevail on the alternative argument set forth in their cross-motion for summary judgment, which is based on Contract Clause grounds, defendants must show that the NJFA "unmistakably . . . run[s] afoul of the Constitution" if it is applied to limit membership on the Board of Governors to New Jersey residents. Lewis, 188 N.J. at 459.

When litigants bring an as-applied challenge to legislation, the challenging party bears a "considerable burden to demonstrate that a facially neutral, non-discriminatory state constitutional mandate nonetheless has deprived [him] of a constitutional right . . . because of [his] unique personal circumstances or characteristics." In re Contest of Nov. 8, 2011 Gen. Election, 427 N.J. Super. 410, 467 (Law Div. 2012) (quoting Lewis v. Guagdagno, 837 F. Supp. 2d 404, 416 (D.N.J. 2011)). Unlike facial challenges, "as-applied

attack[s] . . . do[] not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprive[s] that person of a constitutional right." Lewis, 837 F. Supp. 2d at 413 (citing United States v. Marcavage, 609 F.3d 264, 273 (3d Cir. 2010)). Defendants' reliance on the Contract Clause to prevent application of the NJFA to its Board of Governors requires a review of jurisprudence interpreting and applying the Clause, as well as careful scrutiny of the Rutgers Charter.

B. The Contract Clause Protections

Under Section 10, Article I of the United States Constitution, no state shall pass any law "impairing the Obligation of Contracts . . . ." U.S. Const. art. I, § 10. The New Jersey Constitution includes near identical language to provide the same protections against ex post facto modifications. N.J. Const. art. IV, § 7, ¶ 3. See also Burgos v. State, 222 N.J. 175, 237 n.3 (2015) (Albin, J., dissenting) ("The New Jersey Constitution's Contract Clause mirrors the Federal Contracts Clause.").

Although the language of these provisions suggests an absolute prohibition, the Contract Clause has generally been interpreted to accommodate the police powers used by states to protect their citizens. Energy Reserves Grp., Inc. v. Kan. Power & Light Co., 459 U.S. 400, 410 (1983). Accordingly, rather than an absolute bar, the Contract Clause instead

imposes "some limits upon the power of a State to abridge existing contractual relationships." Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978). Those limits on a state's otherwise valid exercise of its police power are determined by a three-part test that examines (1) whether the contractual impairment is in fact substantial; if so, (2) whether the law serves a significant public purpose, such as remedying a general social or economic problem; and, if such a public purpose is demonstrated, (3) whether the means chosen to accomplish this purpose are reasonable and appropriate. Energy Reserves, 459 U.S. at 411-13; Allied Structural Steel, 438 U.S. at 242-44; Burgos, 222 N.J. at 193.

The first step in the analysis is to determine "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." Allied Structural Steel, 438 U.S. at 244. The more severe the impairment, the greater the level of scrutiny given to it. Energy Reserves, 459 U.S. at 411. The primary consideration in determining whether the impairment is substantial is the extent to which reasonable expectations under the contract have been disrupted. Ibid. "Impairment is greatest where the challenged . . . legislation was wholly unexpected." Sanitation & Recycling Indus. v. City of New York, 107 F.3d 985, 993 (2d Cir. 1997).

Assuming that a contractual relationship has been substantially impaired, the next step is to examine the state's justification for its action. Energy Reserves, 459 U.S. at 411. The law must have a "legitimate public purpose." Ibid. It should be aimed at remedying an important "general social or economic problem" rather than "providing a benefit to special interests." Id. at 412. If the legislative purpose is valid, the final inquiry is to determine whether the means chosen to achieve that goal are reasonable. U.S. Tr. Co. v. N.J., 431 U.S. 1, 22-23 (1977). To survive a Contract Clause challenge, a law that is alleged to substantially impair contractual relations must be specifically tailored to address the societal ill it is designed to ameliorate. Allied Structural Steel, 438 U.S. at 242-43.

When previous disputes have invoked both federal and state Contract Clause protections, New Jersey courts have recognized the similarity between the clauses and have applied them in the same manner. See In re Recycling & Salvage Corp., 246 N.J. Super. 79, 100 (App. Div. 1991) (stating that the federal and state constitutional Contract Clauses "are construed and applied in the same way to provide the same protection"); Edgewater Inv. Assocs. v. Borough of Edgewater, 201 N.J. Super. 267, 277, n.4 (App. Div. 1985), (finding there was "nothing to indicate that New Jersey applies a different or narrower construction of the contract clause than that utilized by the United

States Supreme Court"). Accordingly, the court considers the protections of both the federal and New Jersey Contract Clauses in tandem, using the singular "Contract Clause" nomenclature to encompass protections provided by both clauses.

C. Rutgers' Contract with New Jersey and Comparable Colonial Charters

Before engaging in the substantive legal analysis of the Contract Clause as applied to this dispute, the court will first examine the history and nature of the contract that Rutgers claims to have been impaired by the NJFA if it is applied to limit the qualifications for membership on the Board of Governors. As explained in Trs. of Rutgers Coll. v. Richman, 41 N.J. Super. 259, 266 (Ch. Div. 1956), the colonial charter that Rutgers received as a private corporation in 1766 specifically vested the "Trustees of Queen's-College in New Jersey" with "appropriate corporate powers." Later, in 1825 and in honor of distinguished donor Colonel Henry Rutgers, the "Trustees of Queen's-College in New Jersey" were renamed "The Trustees of Rutgers College in New Jersey." Id. at 266-67. Over 100 years later, the Rutgers Act of 1956 fashioned a new, formal contract between the State and the Trustees of Rutgers College, creating the present entity and renaming it "Rutgers, The State University." See id. at 281; Rutgers, State Univ. v. Piluso, 60 N.J. 142, 152-56 (1972); N.J.S.A. 18A:65-1 to -27. At all times before the 1956 Act, the sole

governing body of the corporation was its Board of Trustees. The 1956 Act, however, created a new governing body for the corporation, the present Board of Governors, while preserving the Board of Trustees with specified powers and duties. Richman, 41 N.J. at 281. As described in Richman:

> The fundamental change brought about by the use of the additional governing body to be known as a Board of Governors is the granting of a greater voice in management to the State as a quid pro quo for greater financial support. Since the majority of voting members of the Board of Governors are appointed by the Governor of the State of New Jersey with the advice and consent of the Senate, the public is granted major control over the policies and administration of the university. Nevertheless, we note the strong statement of "public policy" that the University shall continue to be given a high degree of self-government, free of the partisanship which may be present in State Government. Thus we find here created a hybrid institution -- at one and the same time private and public, with the State being granted a major voice in management, and the designation "State University"; and the institution being granted private autonomy and control of physical properties and assets.
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> [Id. at 289-90 (emphasis added).]

An example of how this hybrid approach has been used to change University governance is illustrated in the New Jersey Medical and Health Sciences Education Restructuring Act (Medical and Health Sciences Act), adopted in June 2012, one year after the passage of the NJFA. That act made governance changes to Rutgers University that altered the number of Governors and their appointment process. N.J.S.A. 18A:64M-2(q); N.J.S.A.

18A:65-14; see also In re Christie, 436 N.J. Super. at 579 (whereas the Board of Governors had previously been composed of eleven voting members, five of whom were appointed by the Board of Trustees and the other six appointed by the Governor with the advice and consent of the State Senate, the Medical and Health Sciences Act increased the number of voting members to fifteen, eight now appointed by the Governor and seven appointed by the Board of Trustees, with two of the Governor's nominees and two of the Board of Trustees' nominees now restricted by residency, as the Medical Health Sciences Act stipulated that one of the Governor's nominees must reside in Camden County, one of the Board of Trustee's nominees must reside in Middlesex County, and that the Governor and the Board of Trustees must each propose one nominee that resides in Essex County).

In adopting these revisions to Rutgers' governance, the Legislature expressly provided that it had "consulted with and sought and obtained active participation of Rutgers in establishing the elements of this educational restructuring . . . [and the] Legislature has determined that the slight governance changes to Rutgers in this act are necessary to promote essential opportunities for higher education in the State and to improve the standing of Rutgers University as a whole . . . ." N.J.S.A. 18A:64M-2(q). Obtaining this consent from Rutgers is consistent with N.J.S.A. 18A:65-27, which states that

it is the "public policy of the State . . . that[] the corporation and the university shall be . . . given a high degree of self-government" that cannot be changed without the consent of the Rutgers Board of Trustees. Notably, when the Appellate Division reviewed the State's alteration of the number and residency of members of the Board of Governors in In re Christie, 436 N.J. Super at 588-93, it conducted an in-depth review of gubernatorial and senatorial powers in appointing Governors to the Board, but made no mention of the in-state residency requirement of the NJFA. Instead, the Appellate Division focused on the new residency requirements for certain Board of Governors members, specifically the Governors now required to reside in Essex and Camden Counties, each of which is home to a campus of Rutgers University. Ibid. The Medical and Health Sciences Act, which demonstrated the importance of obtaining the consent of Rutgers to changes in its governance structure consistent with N.J.S.A. 18A:65-27(II)(b), contrasts with the NJFA, which makes no mention of University approval yet would somewhat similarly restrict the residency of certain Governors, yet without the consent of Rutgers. Piluso, 60 N.J. at 158. The court thus must consider the unique historical and judicial history of the Rutgers Charter when reviewing it in the context of defendants' Contract Clause defense.

D. Contract Clause Analysis

The court now turns to the substantive legal analysis of defendants' Contract Clause argument, beginning with a brief review of plaintiff's objection to defendants' standing to raise the Contract Clause as a defense to application of the NJFA. Plaintiff argues that none of the defendants are parties to the Charter and are therefore unable to raise a Contract Clause defense. Put simply, plaintiff argues that the Contract Clause defense is unavailable to the present defendants as it was only the Board of Trustees that was and is party to the contract and the Trustees are not defendants in this case. This argument, however, is misplaced. While reliance on a contract is generally reserved for those who are parties to it or intended third party beneficiaries of the agreement, Aronsohn v. Mandara, 98 N.J. 92, 101 (1984) (internal citation omitted); N.J.S.A. 2A:15-2, Rutgers University itself and its Board of Governors satisfy this requirement, contrary to plaintiff's assertion, because they are part of the corporation that is the State University. See N.J.S.A. 18A:65-2; N.J.S.A. 18A:65-25 to -27. To suggest that they cannot raise a Contracts Clause challenge to a change in University governance that affects these entities directly elevates form over substance and ignores the structure of Rutgers and the history of its Charter.

As noted above, the original 1766 Charter vested the Trustees of Queen's-College in New Jersey with appropriate corporate powers as Trustees of the College, although that body was later renamed the Trustees of Rutgers College in New Jersey in 1825. Richman, 41 N.J. at 266-67. Then in 1956 the Trustees agreed to changes in the Charter that re-named the institution "Rutgers, the State University," which is the present intervenor-defendant. The 1956 Act created the Board of Governors with full authority and control over all aspects of the operation of the University, subject to collaboration with the State over budget issues, while retaining some responsibilities for the Trustees, N.J.S.A. 18A:65-12 to -14, and creating the newly named and reorganized institution as the State University of New Jersey, an autonomous public university with a high degree of self-government. N.J.S.A. 18A:65-27(II); Piluso, 60 N.J. at 156-57. Despite the changes in nomenclature over more than two hundred years, the history of the Charter makes clear that the present Board of Trustees and the State are not the only parties to the Rutgers Charter. Piluso, 60 N.J. at 156-57. The intervenor-defendant Rutgers, the State University of New Jersey, though renamed twice since 1766, remains a real party in interest to the contract and therefore entitled to assert the Contract Clause defense on behalf of defendants. At the very least, in fact, the

University and the Board of Governors are beneficiaries of the Charter changes and could raise the defense on that basis as well.

Turning to the merits of defendants' defense, they rely on Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518 (1819), to support their Contract Clause argument. In Dartmouth, the Supreme Court held that the corporate charter of a private college during colonial times was a contract between the sovereign and the college and that the State of New Hampshire, as successor to the crown, was thus a party to the contract. Id. at 643-44. When the state passed legislation altering the governance of the college without the college's consent, the Supreme Court ruled that the state had subverted its contract with the college in violation of the Contracts Clause. Id. at 652. Likewise, defendants here assert that the New Jersey Legislature cannot impose new restrictions on appointments to the Board of Governors without the explicit consent of Rutgers University.

In Dartmouth the New Hampshire Legislature adopted an amendment to the college's charter in 1816 to convert Dartmouth into a state university and transfer control of all trustee appointments to the Governor. Id. at 626. The ousted trustees filed suit to regain their authority over the resources of the college. Id. at 626-27. Upon review, the Supreme Court found the Legislature's amendment unconstitutional, noting that "[t]he whole power of

governing the college [was] transferred from trustees appointed according to the will of the founder, expressed in the charter, to the executive of New[] Hampshire," and that the "[t]he will of the State [was] substituted for the will of the donors, in every essential operation of the college. This [was] not an immaterial change." Id. at 652-54. The Court found this hostile action to be "repugnant to the constitution" and reversed the amendment. Id. at 654.

Unlike the New Hampshire Legislature's attempt to take over Dartmouth in violation of the college's charter, New Jersey's amendment of the Rutgers Charter to create the State University of New Jersey was accomplished without running afoul of the Contracts Clause because the Board of Trustees had in fact consented to the reorganization and agreed to the proposed amendments to the Charter. As noted by the court in Richman, 41 N.J. Super. at 290, "[t]he Board of Trustees, by appropriate resolution, has . . . accepted the amendments to the charter . . . so that the constitutional hurdles evoked by the Dartmouth College case are not applicable." The amended Charter, however, retained a high degree of autonomy and self-governance for Rutgers, thus requiring consent of the University prior to a change in governance. Id. at 289-91. That the Legislature sought the approval of Rutgers before increasing the number of Governors and establishing residency requirements for four Governors in the Medical and Health Sciences Act is telling. N.J.S.A. 18A:64M-2; N.J.S.A.

18A:65-14 to -15. Given the precedent in Dartmouth, statutory changes in governance for which the Legislature sought approval from the University, and New Jersey case law acknowledging the need for consent to change the University's governance, the court finds that the NJFA, if interpreted to apply to the Board of Governors, would violate the Rutgers Charter because the statute would alter the requirements for serving on the Board of Governors without the consent of Rutgers. Compare Dartmouth College with Pa. College Cases, 80 U.S. 190, 214 (1871), where the Supreme Court upheld the action of the Pennsylvania Assembly in consolidating Washington College and Jefferson College into a single institution because both colleges had originally been incorporated by the Assembly and each of the respective charters had reserved to the Assembly "the power to alter, modify, or amend the charters without any prescribed limitation." This difference in charter provisions distinguished the case from Dartmouth and led the Court to reject the challenge to the merger.

That the special characteristics of the Rutgers Charter require consent to changes in governance by the University is also supported by Piluso, 60 N.J. at 158-59. While holding that Rutgers was not subject to municipal zoning ordinances, the Court also stressed that "[Rutgers'] governmentally autonomous powers are directed to be exercised 'without recourse or reference to any department or agency of the state, except as otherwise expressly

provided by this chapter or other applicable statutes.'" Id. at 158 (quoting N.J.S.A. 18A:65-28). Although express consent of the University was obtained for the changes in governance brought about by the Medical and Health Sciences Act addressed in In re Christie, 436 N.J. Super at 579, no such consent was obtained in the legislative process leading to the adoption of the NJFA, supporting defendants' contention that a change in governance that would exclude out-of-state residents from membership on the Board of Governors runs afoul of the Contract Clause. The court now turns to traditional Contract Clause analysis for further consideration of defendants' claim.

i. Substantial Impairment of the Contractual Relationship

Since the NJFA, if applied as plaintiff contends, would limit the ability of the Governor and the Board of Trustees to select outstanding individuals from out-of-state to the Board of Governors, and would require termination of the service of defendant Board members who have brought their unique and impressive backgrounds to their Board membership, the court finds that application of the NJFA to the Board of Governors would substantially impair the Rutgers' Charter under the first step in Contract Clause analysis. The contractual relationship between Rutgers and the State is unique as is made clear through its distinctive history. As noted above, any legislative changes

made to the governance of the University are subject to University approval. N.J.S.A. 18A:65-27(II)(b). Moreover, by restricting nominees solely to New Jersey residents, the Board of Trustees and the Governor would be precluded from selecting distinguished Rutgers alumni or others with close ties to the University to serve on the Board of Governors simply because they chose to pursue their career elsewhere. Limiting the pool of candidates in this manner would exclude prominent individuals working in New York City, successful entrepreneurs based in Silicon Valley, dedicated public servants in the nation's capital, and countless others with significant experience that could benefit the University. Consequently, the court finds that plaintiff's interpretation of the NJFA would constitute a substantial impairment of the contractual relationship between Rutgers and the State.

ii. State Justifications for Impairment

Moving now to the second prong of the Contract Clause analysis, the court considers the State's justification for passing the NJFA to determine if it is supported by a "legitimate public purpose." See Energy Reserves, 459 U.S. at 411 (offering as examples "the remedying of a broad and general social or economic problem" as valid purposes). Having already discussed the apparent legislative intent above in Section II, the court is satisfied that the NJFA was passed to further the legitimate public purpose of facilitating an economic

recovery in the wake of the State's slow rebound from the 2008 financial crisis. Accordingly, the court need not delve further into whether economic recovery efforts satisfy the valid purpose of remedying a broad economic problem as there "can be little doubt about the legitimate public purpose" behind the NJFA. See id. at 417 (borrowing the Supreme Court's language in reference to Congress' price regulation of natural gas).

iii. Reasonableness of the Means

Having now determined that the NJFA does substantially impair the Rutgers contract if applied as contended by plaintiff, but that there was a legitimate public purpose for the legislation, the court's focus turns to whether the means used to effectuate the goal of the statute are reasonable if applied to affect the governance of Rutgers. U.S. Tr. Co., 431 U.S. at 22-23.

> Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. As is customary in reviewing economic and social regulation, however, courts properly defer to the legislative judgment as to the necessity and reasonableness of a particular measure.
>
> [Id. at 23-24 (citing East N.Y. Sav. Bank v. Hahn, 326 U.S. 230 (1945)) (internal citations omitted).]

The NJFA implements a protectionist policy to provide New Jersey citizens with greater access to government positions and to retain taxes from the income of those positions in the state. While the in-state residency

requirement applies to all state higher-education institutions, including Rutgers, with certain exceptions, its limiting impact on membership of the Board of Governors in light of the Rutgers Charter distinguishes it from the other state colleges and universities in New Jersey. Notably, every time the State sought to alter the Rutgers Charter, the Legislature conferred some additional benefit on Rutgers in return for changes in governance. Richman, 41 N.J. at 267-72. In particular, the 1956 Act creating the Board of Governors involved a substantial increase in state financial support, id. at 281-82, and the Medical and Health Sciences Act involved the merger into Rutgers of the medical, dental, and nursing schools operated by the former University of Medicine and Dentistry of New Jersey. At every step, Rutgers agreed to changes in its operations and governance in return for benefits provided by the state. In the Medical and Health Sciences Act, Rutgers accepted specific local residency requirements for four members of the Board of Governors, which left the remaining eleven seats seemingly unrestricted by residence, all with University consent. Given this history, any unilateral changes to Rutgers' governance such as application of the NJFA as plaintiff urges to impose restrictions on Board membership would be wholly unexpected and a stark deviation from accepted practice.

Since 1875, New Jersey's Constitution has prohibited special grants of corporate charters and reserved to the State the power to revise corporate governance in charters issued under general corporation laws. N.J. Const. art. IV, § 7, ¶ 9; N.J. Const. (1844) art. IV, §7, ¶ 11. However, Rutgers has never been chartered under any general corporation law. Instead, its colonial charter and the rights vested under it have been expressly preserved since 1766, most recently by N.J.S.A. 18A:65-2 and -4. The wording of the Rutgers' 1956 Charter, N.J.S.A. 18A:65-27(l)(b), and the precedential weight of the Dartmouth case support defendants' contention that the Legislature may not unilaterally revise governance of the University without Rutgers' consent.

Due to the specificity and history of Rutgers' contract with the State, the court finds under traditional Contract Clause analysis that applying the NJFA to limit the selection of members on the Board of Governors to in-state residents runs afoul of the Contract Clause as an unreasonable and completely unanticipated limitation of Rutgers' self-governance. As noted by the Supreme Court of the United States, "[u]ndoubtedly, there are cases in which a State may, as it were, lay aside its sovereignty and contract like an individual, and be bound accordingly." Newton v. Comm'rs, 100 U.S. 548, 556 (1880). Therefore, since the Legislature of the State, on the one hand, and Rutgers University on the other, had the power and authority to impose the condition of

mutual assent to any alterations to the governance of the University, that agreement constitutes a contract that should be recognized and protected by the court.

This conclusion follows the logic of Steve v. Thames, 204 Ala. 487, 488-490 (1920), an Alabama Supreme Court case that determined the Contract Clause rights of the Mobile Medical College after it was incorporated into the University of Alabama in 1907. There, Chief Justice Anderson's decision conceded that the Mobile Medical College had a binding contract with the state under its charter act of 1860, which could not be altered or abrogated by the state without the assent of two-thirds of the Medical College's Board of Trustees. Id. at 488. However, the court found that this contractual obligation had been extinguished once the Medical College incorporated itself into the University of Alabama, dissolving the separate corporation. Id. Thus, while the Alabama Supreme Court had held that the Mobile College was not under the absolute control of the state by virtue of the United States Supreme Court's ruling in Dartmouth, see State ex rel. Med. Coll. v. Sowell, 143 Ala. 494, 499 (1904), and the fact that the interested parties seemed to have acted under that premise in all succeeding acts of the Legislature and dealings with each other from 1905-1920, this contractual right had been surrendered by the dissolution of the corporation in 1907 when the College conveyed all of its property to the

University of Alabama. Thames, 204 Ala. at 488. Here, as Rutgers and the New Jersey Legislature have consistently interacted under the premise that alterations to the University's governance must come with the University's consent, and that agreement has not been nullified in any manner, as was the case in Thames, the court finds that the NJFA cannot be applied to limit membership on the Board of Governors to in-state residents without the express consent of the University. To interpret the NJFA as plaintiff contends thus would violate the Contracts Clause as well as the Rutgers Charter.

As noted above, the New Jersey Supreme Court in Piluso, 60 N.J. at 158, recognized that Rutgers' "governmentally autonomous powers are directed to be exercised 'without recourse or reference to any department or agency of the state, except as otherwise expressly provided by this chapter or other applicable statutes.'" There is no such express provision in the NJFA. Moreover, both before and after adoption of the NJFA, the Executive, the Legislature and the University have acted under the premise that state residency requirements did not apply to the Board of Governors of Rutgers University. Out-of-state members were nominated, approved by the Senate, and in one case, re-confirmed by the Senate after adoption of the NJFA. Nor did the Appellate Division, which conducted an in-depth analysis of the Board of Governor's appointment process in 2014, even mention the requirements of

the NJFA. In re Christie, 436 N.J. Super. at 588-93. Furthermore, when the Legislature enacted the Medical and Health Sciences Act in June of 2012, approximately one year after the passage of the NJFA, it confirmed that it had obtained the University's consent to the alterations to the University's operations and governance. Accordingly, the court finds that the NJFA, if applied to limit the selection of members of the Board of Governors to New Jersey residents, did not utilize sufficiently reasonable means to accomplish that goal because it failed to adequately account for the unique autonomy enjoyed by Rutgers through its original Charter and 1956 contract. Consequently, the court holds that if the NJFA covers unpaid volunteers, it must nevertheless not be applied to the Rutgers Board of Governors because such application would run afoul of the Contract Clause and the Rutgers Charter.

IV.

Defendants raised additional constitutional claims in a footnote in their brief but did not provide any argument to support those contentions. If an issue is not briefed, it is deemed waived. See Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 4 on R. 2:6-2 (2020); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001). Consequently, the court will not address those additional claims, which

are unnecessary to analyze in any event given the court's findings that the NJFA does not apply to unpaid volunteers such as the Rutgers Board of Governors and, if so applied, would nonetheless violate the Rutgers Charter and the Contract Clauses of the United States Constitution and New Jersey.

CONCLUSION

For the reasons set forth above, Rutgers University and its Board of Governors are not subject to the residency requirements of the New Jersey First Act. Consequently, the court denies plaintiff's motion for summary judgment, grants defendants' cross-motion for summary judgment, and will enter an order dismissing the complaint with prejudice.