ERIN KELLY, JAMES BROWN, and RUTGERS COUNCIL OF AAUP CHAPTERS, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS – AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Plaintiffs-Respondents, v. WILLIAM M. TAMBUSSI; HEATHER C. TAYLOR f/k/a Heather C. Mason; and RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-003895-23 Civil Action On Appeal From: Superior Court of New Jersey Law Division, Middlesex County Docket No. MID-L-624-24 Sat Below: Hon. Benjamin S. Bucca, Jr., J.S.C. Date Submitted: October 10, 2024

BRIEF OF DEFENDANTS HEATHER C. TAYLOR AND RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY IN SUPPORT OF THEIR APPEAL

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Defendants Heather C. Taylor (Ms. Taylor) and Rutgers, the State University of New Jersey (Rutgers or the University) appeal an adverse judgment entered in a summary action opened by Plaintiffs Erin Kelly, James Brown and Rutgers Council of AAUP Chapters, American Association of University Professors-American Federation of Teachers, AFL-CIO (Union).

PRELIMINARY STATEMENT

Plaintiffs sought removal of Ms. Taylor from Rutgers' core governing structure, the Board of Governors (BOG), only because she no longer lived in a certain county. The trial court granted that extraordinary relief, ousting Ms. Taylor from BOG, with immediate effect. This appellate court's intervention is necessary to correct the lower court's decision, which essentially treated BOG members as an extension of state government. That flawed understanding allowed the trial court to conclude that Ms. Taylor was a "holder" of an "office" for purposes of removal under the quo warranto statute, N.J.S.A. 2A:66-6, the statute relied on by Plaintiffs. The trial court should have concluded that the statute does not apply because BOG members do not fall within the law's purview. As a long-standing, volunteer BOG member, Ms. Taylor did not hold public office from which ouster is permitted via a quo warranto action.

The trial court's approach, to which no deference is owed by this appellate court, conflicts with Rutgers' unique status as a hybrid public-private entity.

That status derives from a consummated contract between Rutgers and the State, as codified under the Rutgers Act of 1956, N.J.S.A. 18A:65-1 to -103 (the Rutgers Act). Above all, the Rutgers Act—which is protected by the contract clauses of both our federal and state constitutions—envisions a sui-generis, autonomous university, especially as it relates to Rutgers' principal governing board, the BOG. Allowing Plaintiffs to oust BOG members via the quo warranto statute trespasses on that autonomy.

In addition, their pleading should not have survived its other procedural deficiencies. Plaintiffs' action was brought 37 months after their claim for ouster first arose against Ms. Taylor. Their belated filing greatly exceeds the 45-day limitations period, and the interest of justice does not warrant the judiciary's rescue. For all the above reasons, the court below should not have reached the merits.

But even if this case is judged on the merits, the trial court also erred. It construed the residency requirement found under the Rutgers Act as obligating Ms. Taylor to maintain a residency in Middlesex County throughout her term of service rather than at the time of appointment. The court reached that incorrect conclusion by failing to apply the special rules articulated by our state Supreme Court for construing a legislative contract like the Rutgers Act. Had it applied those rules before removing Ms. Taylor, the trial court would have insisted that

the Rutgers Act contain an unmistakable and clearly stated obligation to reside continuously in Middlesex County. Absent that explicit obligation, Plaintiffs' action cannot survive.

Similarly, under general contract principles, the trial court should have deferred to Rutgers' construction because the University is the only entity, other than the State, that is party to the contract codified under the Rutgers Act (and, in this litigation, the State has deferred publicly to Rutgers). Under that circumstance, the judiciary should not gainsay how Rutgers is construing its own statutory contract, especially when the Rutgers Act expressly sets forth the grounds for removing a BOG member, and relocation to another county is not one of those grounds. Moreover, even under more traditional tenets of statutory construction, the court below should have been persuaded by the present-tense syntax of the residency requirement, which is directly connected to the time of appointment.

In sum, this court should reverse the judgment below for any one of three reasons: (1) the quo warranto statute does not apply; (2) Plaintiffs' action was grossly out of time; and (3) when applying the tenets for construing legislative contracts like the one here and other canons of statutory construction, the residency requirement is triggered only at the time a BOG member is appointed or reappointed.

PROCEDURAL HISTORY

On January 30, 2024, Plaintiffs filed a verified complaint and a motion for an order to proceed summarily. (Da1, Da5.[1]) The complaint sought to remove William Tambussi and Heather Taylor from the BOG. (Da11.) Plaintiffs alleged that those members were holding their positions in violation of the Rutgers Act because they resided in a county other than Camden in the case of Mr. Tambussi and Middlesex in the case of Ms. Taylor. (Da5-14.) On February 28, 2024, the court granted the motion to proceed summarily. (Da3-4.)

The court heard oral argument; issued its decision from the bench ejecting Mr. Tambussi and Ms. Taylor from the BOG, with immediate effect; and denied Defendants' motion for a stay—all occurring on June 27, 2024. (1T1-86.[2]) Mr. Tambussi's term on the BOG would have expired three days later on June 30, 2024. (Da77.) (As noted below, if Ms. Taylor's membership on the BOG were restored, her term would expire on June 30, 2025. Da72.)

Rutgers and Ms. Taylor timely opened this appeal by submitting their notice of appeal and case information statement on August 12, 2024. (Da95-110.) With respect to Defendants' subsequent motion, filed on August 23, 2024,

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[1] "Da" refers to Defendants-Appellants' Appendix, filed October 7, 2024.

[2] "1T" refers to the Transcript of Motion Hearing, dated June 27, 2024, which was uploaded to this appellate docket on August 12, 2024.

this court denied a stay of the trial court's judgment pending appeal but granted acceleration of this appeal. (Da118.)

STATEMENT OF FACTS

A. Defendant Rutgers Is Unique In Our Law.

Established in 1766, Rutgers is a leading national public research university. It operates three principal campuses in New Jersey and educates more than 67,000 students from all fifty states and over 120 countries. Over 27,000 individuals are employed by Rutgers as faculty and staff. See RUTGERS, BY THE NUMBERS, https://www.rutgers.edu/about/by-the-numbers (last visited October 8, 2024) (Da122-23.) Rutgers is the flagship state institution of higher education and has footprints globally. See ABOUT RUTGERS, https://www.rutgers.edu/about-rutgers (last visited October 8, 2024) (Da134-47.)

Rutgers is an entity unique in our law. It is more than a statutorily-designated instrumentality of the State. See N.J.S.A. 18A:65-2. Instead, Rutgers is a hybrid of a private corporation and State entity, embodied by a "consummated contract" enacted in 1956. Rutgers, the State University v. Piluso, 60 N.J. 142, 154-56 (1982); see also L. 1956, c. 61; Montclair Univ. v. City of Passaic, 234 N.J. 434, 454 (2018) (recognizing the "broadly autonomous" authority of Rutgers).

Rutgers has two governing bodies, the BOG and the Board of Trustees (Trustees). N.J.S.A. 18A:65-12, -13. The BOG is the governing body with general authority over the University, its funds and its property. N.J.S.A. 18A:65-25. Among other powers, the Trustees control Rutgers' property as of 1956 and certain subsequent donations, appoint almost half the BOG and have the right of consent to the appointment of the Rutgers President. N.J.S.A. 18A:65-26, -31; N.J.S.A. 18A:65-14.

The relevant governing body here, the BOG, consists of sixteen members, namely, the Rutgers President (as ex officio) and fifteen voting members. Those fifteen members serve without compensation and are appointed as follows: seven are appointed by the Governor of New Jersey with the advice and consent of the state Senate, one is appointed by the Governor of New Jersey with the recommendation of the Senate President and Speaker of the General Assembly, and seven are appointed by the Trustees from among its members. N.J.S.A. 18A:65-14(b).

B. Defendant Heather Taylor And Her Distinguished Service.

Ms. Taylor is a distinguished alumna of Rutgers who has deep roots in Middlesex County. (Da71-72.) She is a certified public accountant and is managing director at a prominent accounting firm located in Middlesex County where she currently works. (Da71.) Ms. Taylor lived in Middlesex County for

50 years, beginning in 1970 through October 2020 when she relocated to Monmouth County. (Da72.)

Prior to her most recent service as a member of the BOG, Ms. Taylor served as a Trustee from 2009 through 2016. (Da71.) Her service there concluded when she was appointed by the Trustees to serve as a member of the BOG. (Da71.) On December 14, 2016, Ms. Taylor was first appointed to fill the remainder of another BOG member's unexpired term ending on June 30, 2019. (Da71.) On June 19, 2019, Ms. Taylor was reappointed as a Trustee-member of the BOG for a six-year term ending on June 30, 2025. (Da71-72.) Prior to her removal, she had served on the BOG continuously for over seven years. (Da72.)

ARGUMENT

I. THIS ACTION WAS NOT FILED PROPERLY AND SHOULD BE DISMISSED WITH PREJUDICE. (Da89-90; 1T66:18-73:2).

The trial court should not have reached the merits of Plaintiffs' underlying claims. Their action suffers from at least two fatal deficiencies: Plaintiffs may not use quo warranto to oust volunteer BOG members and their action is grossly out of time. Either one of those defects should have resulted in the termination of this proceeding; together, they present a compelling case for dismissal of the complaint with prejudice.

A. An Action In Lieu Of Prerogative Writ Of Quo Warranto Applies To Officeholders, Not Rutgers' Volunteer Board Members.

As sole authority to bring this suit, Plaintiffs rely on the quo warranto statute found under N.J.S.A. 2A:66-6. Their reliance is misplaced because that statute applies to officeholders, not to Ms. Taylor who was a volunteer BOG member.

The quo warranto statute provides:

> A proceeding in lieu of prerogative writ may also be instituted as of right against any person for usurping, intruding into or unlawfully holding or executing any office or franchise in this state, by any person who, under the former practice, would have the requisite interest to exhibit an information in the nature of a quo warranto with the leave of court.
>
> [N.J.S.A. 2A:66-6.]

Thus, the statute states that an action in lieu of prerogative writ may be instituted against a person who unlawfully holds an "office" in this state. The plain language and meaning of term "office" refer to public officers, not unpaid, volunteer BOG members such as Ms. Taylor.

It is implausible that the Legislature, in enacting the quo warranto statute, ever intended it to bind the Rutgers' BOG. The writ of quo warranto is archaic. Its earlier iterations appeared more than a century ago (see L. 1903, c. 194), with its last iteration being codified in 1951 (L. 1951, c. 344), five years before the Rutgers Act codified the contract between Rutgers and the State in 1956. L.

1956, c. 61. The Legislature, through enactment of or amendment to the Rutgers Act (which could be accomplished only with Rutgers' consent), never has empowered any private person or entity, other than the BOG itself, to remove a member of the BOG. See N.J.S.A. 18A:65-19 (establishing a process for removal of a BOG member, which must be initiated by the BOG).

Caselaw supports the conclusion that "office" refers to public officers, not unpaid, volunteer board members. In a similar case seeking to oust other Rutgers' BOG members, the Law Division determined that such members do not hold "office" (or State employment or position) and cannot be ousted on residency grounds pursuant to the New Jersey First Act, N.J.S.A. 52:14-7. In a published opinion authored by former Assignment Judge Mary Jacobson, the court closely examined the New Jersey First Act's statutory language, purpose and legislative history. The court concluded that volunteer members of the Rutgers BOG do not hold office. Kratovil v. Angelson, 473 N.J. Super. 484, 520 (Law Div. 2020). That holding should apply with equal force here. That is so because, even though the statute in Kratovil is different, both that case and the present one deal with the same concept (removing a BOG member on residency grounds) and contain the same specific reference to "office."

Arguing to the contrary before the trial court, Plaintiffs contended that the holding of Kratovil did not apply, relying instead on dicta contained in In re

Christie's Appointment of Perez, 436 N.J. Super. 575 (App. Div. 2014). Reliance on that dictum is misplaced. Although this court in Perez spoke of the Rutgers BOG member there (Martin Perez) as holding office, those references did not shape the court's holding as to whether Governor Christie lawfully had appointed Mr. Perez to the BOG without the advice and consent of the Senate. Id. at 588-93. Notably, the court declined to rule on whether the case also could have been brought before the Law Division as a prerogative writ challenge, concluding instead that the plaintiff "Senator may maintain a direct appeal under Rule 2:2-3(a)(2) to this court. . . ." Id. at 583-84. Perhaps most importantly, the court did not grapple with the instant officeholding question because the parties there, which did not include Rutgers, had not raised the issue. Here, by contrast, and as in Kratovil, that issue is presented to the court.[3]

New Jersey Supreme Court jurisprudence supplies additional support for Defendants' position. The Court has explained that the theory behind quo warranto and the public interest in ensuring the proper status of officeholders derives from the fact that "the office is created by the public." In re Fichner, 144 N.J. 459, 470 (1996). See also Fredericks v. Bd. of Health, 82 N.J.L. 200

[3] The plaintiff in Kratovil cited the reference to "office" from Perez in arguing, the same as Plaintiffs here, that a BOG member holds public office. Judge Jacobson noted the dicta but, correctly, did not treat it as binding when ruling that BOG members did not hold an "office." Kratovil, 473 N.J. Super. at 503.

(1912) (defining public "office" as "a place in a governmental system created or recognized by the law of the state which either directly or by delegated authority assigns to the incumbent thereof the continuous performance of certain permanent public duties").

Applied here, the BOG and its membership positions were not created by the public, but rather through a contractual agreement between the University and the State. See Perry Dean et al., Saving Rutgers-Camden, 44 Rutgers L. J. 337, 342-48 (2014) (explaining evolution of Rutgers from pre-Revolutionary War institution to autonomous public university as part of a contract codified under Rutgers Act). BOG members are not employed or compensated by the State. N.J.S.A. 18A:65-20. Nor are they elected by the public at large. Instead, they serve as fiduciaries for the University and its interests.

Further, nearly half the BOG members are appointed by the Trustees. (Ms. Taylor is one such member whom the Trustees had appointed.) And it is critical to understanding the sui generis nature of Rutgers to note that the Trustees originally comprised the sole governing board of Rutgers when it was then a private institution. Trustees of Rutgers College in N.J. v. Richman, 41 N.J. Super. 259 (Ch. Div. 1956). That changed when Rutgers entered the contract with the State, now codified under the Rutgers Act, the critical point being that many if not all the powers of the Trustees derived not from legislation

or public referendum but via the University's constitutionally protected charter. Those charter rights today are still protected expressly in the Rutgers Act. See N.J.S.A. 18A:65-4. As a result, BOG members, especially those like Ms. Taylor appointed by the Trustees from among its own members, do not hold public office from which they may be ousted by a member of the public.

The trial court erred by its contrary conclusion. The court stated:

> To this Court, the board of governors is a working board with meaningful responsibilities. It is beyond dispute that the board has a fiduciary obligation to the students of Rutgers, as well as to the employees of Rutgers, but also overall to the State of New Jersey. Furthermore, in this Court's opinion, the legislature in enacting 18A:65-25 delegated authority and – specific authority and responsibility to the board of governors, which includes, amongst others, determining the policies for the organization, the development of the university, study, educational and financial needs of the university, disburse all monies appropriated to the university by the legislature, monies received from tuition and other sources. It goes on to say, purchase all lands, buildings, equipment. It's responsible for employing architects to plan building[s], secure bids for the construction of [building], manage and maintain and provide for payment of all charges. And it goes on to say, [authorize] any new educational department or school consistent with the institution's programmatic [mission or] . . . approved by the [C]ommission [on Higher Education].
>
> So with these responsibilities in mind and with the fiduciar[y] responsibilities a board member has, this Court finds that each board member does hold an office, as contemplated by N.J.S.A. 2A:66-6.

[(1T70:21-71:21.)]

The trial court's analysis is incorrect for two reasons. First, BOG authority was not delegated by the State. As already explained, the specific powers referenced in the court's remarks were possessed by the University via the Trustees before the Rutgers Act. Second, to the extent that the Rutgers Act speaks to those powers, it reflects an agreed-upon reallocation of them to the then newly created BOG, all embodied in the contractual agreement between Rutgers and the State through the Act. Thus, the BOG's responsibilities were not delegated by the State and do not transform BOG members into public officeholders for purposes of the quo warranto statute.

In essence, the court below treated the BOG as a delegated extension of state government, charged with fulfilling legislative commands. That is not the role of the BOG. Prominent academic scholars on the Rutgers Act, including Professor Robert F. Williams, correctly note that Rutgers is an instrumentality of the state, but "it is not part of state government, and thus, is outside of the executive branch altogether." Saving Rutgers-Camden, 44 Rutgers L.J. at 374 (emphasis in original). They further explain, "Rutgers University simply has no role in implementing the laws enacted by the New Jersey Legislature, nor does it have any role in governing the state." Ibid. Those statements are directly at odds with the trial court's analysis.

Other authorities concur that the proper use of a quo warranto action is to remove governmental officials who were ineligible for election. One such authority is Branch v. Pitts, 110 N.E.3d 87 (Ohio. Ct. App. 2018). In that case, the court refused to apply the writ to oust an official appointed as a clerk of a town council, concluding: "The clerk of the Council is not an elected position, nor does it constitute a public position to which a portion of the legislative, executive, or judicial authority attach." Id. at 95.

That is the case here. Members of the BOG are not elected officials, nor do they possess any form of legislative, executive or judicial authority as to the general public. They do not, for example, pass laws that members of the general public must follow, as elected lawmakers do, or perform any other legislative function that could bind the general public. Neither do they hold any authority that resembles executive or judicial authority in the ordinary governmental sense. Thus, the quo warranto statute simply does not apply.

B. This Action Is Time-Barred By The New Jersey Court Rules.

Even if this action could be brought under the quo warranto statute (which it cannot), the trial court should have dismissed the action because it was filed long past its expiration date. All parties agree that Rule 4:69-6(a) provides the relevant limitations period. Through the Rules of Court, the New Jersey Supreme Court prohibits the commencement of an action in lieu of prerogative

writ "later than 45 days after the accrual of the right to the . . . relief claimed. . . ." R. 4:69-6(a).

In this case, Plaintiffs claim that Ms. Taylor has been unlawfully holding her position ever since she "moved out" of Middlesex County. (Da9 ¶¶ 20, 29-30.) Ms. Taylor moved out of Middlesex County in October 2020. (Da72.) Plaintiffs' cause of action accrued on that date when any supposed right to relief, namely ouster, would have been potentially available. Therefore, Plaintiffs were required to bring this action against Ms. Taylor no later than December 2020. Plaintiffs failed to do so. Instead, they filed this action on January 30, 2024, which is 37 months too late.

Plaintiffs nevertheless argued below that their action was timely because it concerns a "continuing violation." Putting aside for the moment that no such violation exists, Plaintiffs mistakenly suggest that the limitations period either had never begun to run or it extended continuously while Ms. Taylor remained on the BOG. In other words, they want a roving statute of limitations. But that position was not adopted by the trial court, nor can it be reconciled with Plaintiffs' own allegations that Ms. Taylor "ceased to be eligible" "when" she relocated her residence. (Da9 ¶¶ 20, 29.)

Plaintiffs' argument also does not comport with the governing legal standard: "The traditional rule is that a cause of action accrues on the date when

'the right to institute and maintain a suit' first arises." Russo Farms v. Vineland Bd. of Educ., 144 N.J. 84, 98 (1996) (quoting Rosenau v. City of New Brunswick, 51 N.J. 130, 137 (1968)) (emphasis added). Even if Plaintiffs are correct that continuous residency is statutorily required to serve on the BOG (they are not, see infra Point II), then the moment Ms. Taylor relocated, she would have become ineligible, and Plaintiffs' claim would have accrued then.

The continuous violation theory is unavailing for other reasons. That doctrine ordinarily is applied in tort and discrimination cases, not a case of the kind here. See Pressler & Verniero, Current N.J. Court Rules, cmt. 36.7 ("Continuous tort" and "Discrimination cases") on R. 4:5-4 (2024). For support before the trial court, Plaintiffs cited Jones v. MacDonald, 33 N.J. 132, 138 (1960). Their reliance on this one phrase in Jones—"each purported exercise of the right of office by one without title to it constitutes a fresh wrong"—is misplaced. Jones was about dual officeholding, specifically whether the defendant in that case could serve as a member of both a county taxation board and the "incompatible" office of borough council. The Supreme Court concluded that holding the first office did not trigger the limitations period, which only would be triggered if the defendant attempted to claim the second office. As the Court observed:

> We gather defendant would measure the time [the action accrued] from the day he assumed office as a member of the county board. But his assumption of that office did not in itself constitute a public wrong. At that juncture, there was nothing to complain about. The public wrong arose from the subsequent claim to the [second] office. . . ."
>
> [Jones, 33 N.J. at 138 (emphasis added).]

Here, assuming their pleading can survive its many infirmities (which it cannot), Plaintiffs had, in the words of Jones, "something to complain about" once Ms. Taylor moved out of Middlesex County. It is that phrase, not the one relied on below by Plaintiffs, that portrays the relevant meaning of Jones. Under a correct reading of Jones, no continuous act would be necessary or warranted for accrual purposes. There would be one act—the relocation as an out-of-county resident—that triggers the 45-day accrual language under Rule 4:69-6.

Moreover, Plaintiffs do not satisfy the interest of justice exception found under Rule 4:69-6(c). While some interests could justify a slight or reasonable enlargement of time, an excessive enlargement like the 37 months here is neither necessary nor appropriate under the circumstances. By virtue of the public records appended to their pleadings, Plaintiffs were on notice that Ms. Taylor had moved her residence once those records became public. In addition to that record notice, Plaintiffs had actual notice of the subject of this litigation as evidenced by the public statement given by their Union's president to Politico.

They failed even to file suit within 45 days of the December 5, 2023, Politico article in which that public statement appeared. (See Da76.)

The trial court erred by ruling otherwise. The court deemed the case to be a matter of public interest because it believed the issue needed clarity in the absence of settled law, and it viewed the BOG appointments to be "extremely important and prestigious" for "the state university." (1T67:18-68:23.) Neither reason warranted an enlargement, much less the excessive one here. This case is more accurately seen as a private grievance by a faculty union against university leadership than a significant public dispute typically characteristic of such enlargements. See Brunetti v. New Milford, 68 N.J. 576, 585-86 (1975) (distinguishing between private and public interests when evaluating expansion of the limitations period).[4]

At a minimum, the trial court should have considered "all relevant equitable considerations under the circumstances" on which "relaxation depends." See Pressler & Verniero, Current N.J. Court Rules, cmt. 7.3 on R. 4:69-6 (2024) (citing cases). As this court has instructed, in determining whether to enlarge the deadline, "courts should . . . consider the length of the

[4] As noted above, the trial court did not adopt Plaintiffs' continuous violation theory; its sole basis for extending the limitations period appears to be relaxation or enlargement under the interest of justice standard.

delay and the reason proffered for that delay." Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 424 (App. Div. 2002). And this court has emphasized, "The longer a party waits to mount its challenge, the less it may be entitled to an enlargement." Ibid. Finally, this court has warned, "courts do not routinely grant an enlargement of time to file an action in lieu of prerogative writs." Id. at 423.

Had the court below followed the Appellate Division's instructions, it would have found that Plaintiffs had more than sufficient notice of their claim before it lapsed but inexplicably filed their action too late. The court's failure is a major departure from caselaw and defeats the very purpose of the limitations period. According to the New Jersey Supreme Court, the "statute of limitations is designed to encourage parties not to rest on their rights." Reilly v. Brice, 109 N.J. 555, 559 (1988). But resting on their rights is exactly what Plaintiffs did, and the court below should have addressed that fact. In this private dispute between a faculty union and Rutgers, in which a longstanding BOG member has been ejected for no reason related to the substance of her service, the trial court should not have averted its eyes to the fact that Plaintiffs proffered no explanation of why their action was excessively out of time. Rutgers respectfully asks this court to correct that error.

II. THE RESIDENCY REQUIREMENTS APPLY ONLY AT THE TIME OF APPOINTMENT AND ARE NOT CONTINUING OBLIGATIONS FOR BOG MEMBERS. (Da89-90; 1T73:3-80:7).

The trial court's most significant error was its departure from the special rules designed by our Supreme Court for examining legislative contracts such as the kind embodied under the Rutgers Act. Apart from those special rules, ordinary tenets of statutory construction support Defendants' position. Those tenets require us to focus on the present-tense syntax of the statutory text. Rutgers and the State are the two parties to the contract found under the Rutgers Act. The conduct of those parties also confirms that there was no intention to restrict the service of BOG members in the way posited by Plaintiffs. Properly construed, the Rutgers Act does not impose continuous residency requirements for the entire duration of a BOG member's term.

A. Special Rules Apply When Construing The Rutgers Act.

The residency requirements as they appear in the Rutgers Act are as follows:

> The membership of the board of governors shall be classified as follows and consist of:
>
> a. the president of the corporation, serving as an ex officio non-voting member; and
>
> b. 15 voting members,
>
> i. seven of whom shall be appointed by the Governor of the State, with the advice and consent of

> the Senate, with one of these members being a resident of Camden County, and one of whom shall be appointed by the Governor upon the recommendation of the President of the Senate and the Speaker of the General Assembly and who shall be a resident of Essex County, and
>
> ii. seven of whom shall be appointed by the board of trustees, from among their members, one of whom shall be a resident of Essex County and one of whom shall be a resident of Middlesex County, elected and serving under the provisions of subsection I.c. or I.d. of 18A:65-15.
>
> [N.J.S.A. 18A:65-14 (emphasis added.)]

As applied to Ms. Taylor, the residency requirement clearly applied at the time of appointment. But nowhere does the statute explicitly extend that requirement for the entire duration of a BOG member's term. That lack of specificity is fatal to Plaintiffs' (and the trial court's) interpretation of the statute under the special principles governing legislative contracts, especially when coupled with N.J.S.A. 18A:65-19, the provision establishing the only process and grounds for removing a BOG member (and those grounds do not include changing residency).

The Medical and Health Sciences Restructuring Act, L. 2012, c. 45 (the Restructuring Act), inserted the residency requirement into the Rutgers Act. Thus, it is the Rutgers Act—not the Restructuring Act—which houses the residency requirement. That fact is significant because once the requirement

became part of the legislative contract codified under the Rutgers Act, it became subject to rules of construction beyond those governing ordinary statutes.[5]

Those rules are set forth in Justice LaVecchia's majority opinion in Berg v. Christie, 225 N.J. 245 (2016). There, the Court considered whether the statutorily-enacted suspension of State pension cost-of-living adjustments "contravened a term of the contract right granted under the earlier enacted 'non-forfeitable right' statute." Id. at 252. According to the Court, special tenets apply when evaluating "disputes involving the terms of a public contract by statute" and "in defining the contours of any contractual obligation." Id. at 262 (emphasis in the original; internal quotations and citation omitted). Such a case falls outside "an ordinary statutory interpretation case." Id. at 273.

When construing a legislative contract of the sort at issue here, courts must "proceed cautiously," ibid., and employ "the clear indication, or unmistakability, standard." Id. at 264. This means evidence of a statutorily created contractual obligation must be "unmistakable" and "clear." Id. at 263-264, 277. As applied here, the competing arguments of Plaintiffs and Defendants demonstrate that the residency requirement is neither unmistakable nor clear.

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[5] It is undisputed that the Rutgers Act embodies a consummated contract protected by like clauses found under our federal and state constitutions.

The Supreme Court further explained that in an ordinary interpretation case, when a statute is ambiguous, then it is appropriate to resort to legislative history for guidance. In contrast, ambiguity in a statute codifying a legislative contract dooms any attempt to enhance a statutory requirement. Said the Court: "[I]f there is any ambiguity requiring resort to legislative history, one is already outside the realm of unmistakable clarity needed to find a statutory contract right . . . in this setting any ambiguity spells failure for claims that the Legislature created a contractual right. . . ." Id. at 273. The overall teaching from Berg is that because the Rutgers Act does not explicitly require Ms. Taylor to reside continuously in Middlesex County, the trial court erred in imposing that requirement, especially as the sole reason for ousting Ms. Taylor from the BOG.

Not only did the court below fail to recognize the teaching of Berg (in its decision, the court made no mention of Berg), but the court also did the opposite of what Berg requires. Rather than demand specificity that is clearly lacking in the Rutgers Act, the trial court relied on its view of the Restructuring Act's legislative history as support for its decision. (See T77:24-79:21.) This is directly contrary to Berg, which, as just noted, explicitly provides that if resort to legislative history is required to justify one's interpretation of a contract embodied in a statute, then that contract is ambiguous. Such ambiguity in this setting means that any asserted obligation—like what Plaintiffs are proposing

here by urging an obligation on the part of Ms. Taylor to reside continuously in Middlesex County rather than at the time of her appointment—cannot stand.

The correctness of Defendants' position is further illuminated when ordinary tenets for construing contracts work in tandem with the special rules regarding legislative contracts. In particular, "the conduct of the parties after execution of the contract is entitled to great weight in determining its meaning." Joseph Hilton and Assoc., Inc. v. Evans, 201 N.J. Super. 156, 171 (App. Div. 1985) (emphasis added). The consummated contract as codified under the Rutgers Act is between two parties—Rutgers and the State. And the State's position on any given issue typically is reflected in statements by the Governor. It is therefore significant that the Governor's office deferred to Rutgers when asked to comment on this very litigation. (See Da77.) That Rutgers is defending Ms. Taylor's continued service, with the Governor deferring to Rutgers as to the issue at hand, carries "great weight" that the residency requirement has not been violated. Evans, 201 N.J. Super. at 171.

In sum, had it properly followed Berg, before removing Ms. Taylor, the trial court would have insisted that the Rutgers Act contain an explicit obligation requiring her to reside continuously in Middlesex County. Absent that explicit obligation, Defendants' construction of the Rutgers Act should govern. The court below also should have considered and placed great weight on the fact

that, in commenting on the topic of this litigation, the State deferred to Rutgers. Because it fails to contain any analysis based on Berg and gives insufficient weight to Rutgers' view of its own contract as embodied in the Rutgers Act, the trial court's decision should be reversed.

B. Even Without Berg, The Ordinary Tenets For Construing Statutes Support Defendants' Construction.

Although Rutgers should prevail solely on a proper Berg analysis, ordinary tenets of statutory construction also warrant rejection of the trial courts' analysis. Those tenets are familiar and can be summarized briefly.

When interpreting a statute, courts seek "to discern and implement the Legislature's intent." State v. Drury, 190 N.J. 197, 209 (2007). In analyzing statutory language, "the words and phrases in the statute must be given their generally accepted and ordinary meaning, and must be examined not only in their own contextual setting, but in relation to surrounding provisions in the statutory scheme." The entirety of the trial court's statutory analysis is subject to de novo review. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1998).

As applied to Ms. Taylor, the operative language of N.J.S.A. 18A:65-14(b)(ii) has three distinct parts:

- The first part is: "seven of [the 15 voting members of the BOG] shall be appointed by the [Trustees]";
- The second part is: "one of whom shall be a resident of Middlesex County"; and
- The third part is: "elected and serving under the provisions of subsection I.c. or I.d. of 18A:65-15."

The proper meaning is derived when reviewing all three parts together: "seven of [the 15 voting members of the BOG] shall be appointed by the [Trustees], . . . one of whom shall be a resident of Middlesex County, elected and serving under the provisions of subsection I.c. or I.f. of 18A:65-15." Viewed in that context, the present tense of the phrase—"shall be a resident of Middlesex County"—means being a resident of Middlesex County at the time of appointment by the Trustees. This is consistent with Section 14's overall context, which focuses on how the Board is to be composed—more precisely, the appointment of members. The chosen language and context serve to shape the appointment process and do not extend beyond it.

If the Legislature had wanted the residency requirement to be a continuing obligation, the statute would have described that obligation explicitly.[6] That is what the drafters of New Jersey statutes and municipal ordinances have done in

[6] Presumably, the Legislature also would have included a change in residency as a ground for removing a BOG member but, as already noted, that ground does not appear.

other instances. See, e.g., N.J.S.A. 18A:12-3 (providing for immediate cessation of membership on local board of education when members "cease to be a bona fide resident of the district"); N.J.S.A. 40:41A-33 and -35 (declaring "the county executive shall be a qualified voter of the county residing in the county" and deeming such office "vacant if the incumbent moves his residence from the county"); City of Newark v. PBA Local 3, 272 N.J. Super. 31, 35 (App. Div. 1994) ("All officers and employees of the city who shall hereafter become employees of the city are hereby required as a condition of their continued employment to have their place of abode in the city and to be bona fide residents therein. . . ."); Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265, 267 (3d Cir. 1994) (all "officers and employees hereinafter to be employed by the City of Salem are hereby required as a condition of their employment to have their place of abode in the City of Salem. . . .").

Lawmakers in other jurisdictions have likewise spoken clearly and definitively when intending a residency requirement to be continuing in nature. See, e.g., Marcellus v. Kern, 10 S.2d 73, 74-75 (Sup. Ct. N.Y. Cty. 1939) (ordinance stating that certain municipal employees "shall reside in the borough in which the district for which he was appointed was situated"); Appeal of Gagliardi, 163 A.2d 418, 420 (Pa. 1960) (ordinance stating that employees "shall reside in and be citizens of"); Civilian Personnel Div. v. Board of Police

Com'rs, 914 S.W.2d 23, 24 (Mo. App. 1995) (rule required "such residency shall continue during tenure of service. The residency requirements herein are expressly made a condition of continued employment."); City and County of Denver v. Industrial Comm'n of State of Colo., 666 P.2d 160, 162 (Co. App. Ct. 1983) (police officers "shall as a condition of their continued employment reside within the corporate boundaries. . . ."); County of Shelby v. Tompkins, 241 S.W.2d 500, 505-10 (Tenn. Ct. App. 2007) ("All employees . . . shall continue to reside in said County as a condition of their employment. . . .").[7]

We acknowledge that there are other statutes in which residency requirements are stated expressly to apply at the "time of appointment." See, e.g., N.J.S.A. 5:5-23 (providing with respect to the Racing Commission, each member "at the time of appointment and qualification, shall . . . be a resident of the State" among other qualifications). The trial court referred to such statutes (see T76:25-77:10), including a statute explicitly requiring that members of a certain body (the Council on Local Mandates) be New Jersey residents both "at the time of appointment and while serving on the council." N.J.S.A. 52:13H-5 (emphasis added).

[7] Importantly, the residency requirement applied in each of these cases pertained only to paid employees, not to volunteers like Rutgers' Board members.

But reliance on those examples is misplaced. They do not negate the examples cited above in which courts have relied on language expressly requiring continuing residency as a condition to remain in a position. Overlooking that caselaw, the trial court mistakenly believed that Defendants were seeking to "add this element" to the statute. If that criticism were merited, then the same is true with respect to Plaintiffs who are seeking to add a "continuous residency" condition to the statute.

Also, the fact that some statutes require residencies at the "time of appointment" does not alter the fact that in this statute—the Rutgers Act—the residency requirement is stated as a present-tense condition, connected directly to the act of appointment. The qualifying condition of residency is complete once the appointment is made and does not extend beyond that point. The specific words "time of appointment"—need not appear in the statute for us to discern the Legislature's intent. That intent is apparent from the statute's overall syntax and architecture as well as its legislative history, a subject to which we now turn.[8]

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[8] Even though legislative history is not relevant under a proper Berg analysis, see supra at 23, we include it in this brief for completeness and because such history is inconsistent with Plaintiffs' (and the trial court's) construction of the Rutgers Act.

C. Legislative History Does Not Support Plaintiffs' Position.

What may have gotten lost in the proceeding below is that the driving force behind the Restructuring Act, at its inception, was not the desire to require residents from specific counties to serve on the BOG. Instead, the intent was to fundamentally restructure health sciences education in New Jersey. To that end, the initial proposal envisioned "that the Camden campus of Rutgers University was to be severed from Rutgers and taken over by Rowan University." Dean, Saving Rutgers-Camden, 44 Rutgers L.J. 337 at 337. Contrary to what Plaintiffs would have us believe—that lawmakers intended to install "protectors" from certain counties to sit continually on the BOG—the true aim of the initial proposal was to "create a South Jersey research university that would rival Rutgers for state support." Id. at 338.

Unsurprisingly, that aim generated significant opposition. Id. at 354-59. Increasing BOG membership became part of the legislative compromise that made the Restructuring Act's passage possible. It is reflected in the allocation of appointing authority—the President of the Senate and Speaker of the Assembly were given a say on who would be appointed to the BOG from Essex (that appointment is not at issue here); the Trustees were to appoint another member from Essex (not at issue here) and one from Middlesex (at issue here); and the Governor was to appoint a member from Camden with the advice and

consent of the Senate (not part of this appeal). It was that allocation of appointing authority that accounts for residency in those counties rather than an attempt to mandate geographic representation as a continuing obligation.

The trial court reached its contrary conclusion by referring to sections in the legislative findings of the Restructuring Act in which the term "communities" is found. (See T78.) The court focused on two particular references. One says: "The stated goal of this legislation is to create vibrant educational institutions and communities that will not only attract students but attract private sector jobs." N.J.S.A. 18A:64M-2 (aa). The other similarly states: "The goal of this legislation is to enhance the critical higher education opportunities for residents of the State and to create vibrant educational institutions and communities that will attract business to the State and will allow the State to retain its residents in terms of college placement and workforce." N.J.S.A. 18A:64M-2 (bb).

The trial court believed that those references "provided compelling evidence" of the supposed intent of lawmakers to impose continuous residency obligations on certain BOG members, specifically those located in Essex, Camden and Middlesex Counties—the three respective locations at which a Rutgers campus is found. (1T79.) The problem with the trial court's analysis is that it omitted any recognition that the initial aim of the bill was to merge

Rutgers-Camden into Rowan University and, at the time those references first appeared as legislative findings, the bill did not include a requirement for a resident of Camden to be appointed to the BOG. See A. 3102 (First Reprint) (2012) at 8:48-9:2, 9:11-15, 68:35-40.

In other words, the references to "communities" in the legislative findings relied on by the trial court could not have reflected a desire on the part of lawmakers to install a permanent resident of Camden on the BOG because, at the time those references were first made, the legislation did not require any BOG member to reside in Camden. Indeed, at the time those references were included in the First Reprint of the bill, Rutgers-Camden was intended to be absorbed into a "Regional University System." Id. at 9:40-46. The First Reprint could not have been clearer that "the assets of the Rutgers Camden campus will no longer be independently necessary or useful for the needs of [Rutgers] University. . . ." Id. at 10:14-16.[9]

It is therefore apparent that the references to "communities" did not signal any legislative intent for a "protector" of Camden (or, for that matter, any other county) to serve on the BOG. Rather, the term "communities" is better viewed

[9] In the Second Reprint of the bill, in the aftermath of enormous opposition to eliminating Rutgers-Camden as it then existed, the bill language regarding transfer of assets and the concept of a new Regional University System all but disappeared. See A. 3102 (Second Reprint) (2012).

as a reference to existing regions of academic research and instruction in which residents, students, faculty and businesses could gather and thrive. The trial court's reliance on the term as "compelling evidence" in support of a continuing residency requirement for the BOG simply is misplaced.

Consistent with the tenet that we view statutory language within the context of the whole enactment, it is relevant to ask: If lawmakers intended the BOG residency requirement to be continual in nature, why is the Rutgers Act silent as to any mechanism for private litigants such as Plaintiffs to enforce that obligation? Why does the provision found under the Rutgers Act, N.J.S.A 18A:65-19, establish the one and only process for removing a member of the BOG and it does not involve failure to continuously reside in any particular county? Why does the Rutgers Act, N.J.S.A. 18A:65-17, list only one action rendering a BOG member immediately ineligible to continue service—and that action is the receipt of remuneration for such service, not a change in residency?

The answer to those questions is that the residency requirement, based on its present-tense syntax and its textual connection to the act of appointment, was intended to direct the appointing authorities, not to serve as a forever obligation on the part of appointees themselves. Similarly, any dispute over whether that direction had been followed would be resolved via a direct appeal

like the one in Perez, not via a quo warranto action. Viewed from that proper perspective, the qualifying condition of residency is satisfied at the time of appointment or reappointment and does not extend beyond those two points in time. That perspective is the only way to give full force and effect to the entirety of the Rutgers Act. Anything less would trespass on the true meaning of Rutgers as a broadly autonomous, sui generis institution.

* * * * *

In sum, as for procedure, the quo warranto statute does not apply because Ms. Taylor was not a holder of public office within the meaning of that statute. Even if she were, Plaintiffs proffered no reason to excuse their excessive delay in filing suit or to justify the resulting disruption to Rutgers' core governing structure caused by their suit. This court should dismiss this suit on the basis of procedure alone.

As for the merits—assuming the court wishes to reach them—the parties sharply disagree about the scope and meaning of the residency requirement. Plaintiffs believe that they can force BOG members to maintain in-county residency to continue their service, while Defendants assert that residency is a condition for appointment or reappointment. The Rutgers Act is silent as to a continuing residency requirement, and the parties propose two vastly different

interpretations of the existing language. Those facts demonstrate that the alleged continuing residency requirement is not "unmistakably clear."

Plaintiffs' action, therefore, cannot survive a proper Berg analysis—an analysis the trial court should have undertaken but did not even mention. Nor can this action survive other more generalized principles related to the interpretation of contracts or the tenets related to an ordinary statutory construction case.

CONCLUSION

For the foregoing reasons, this court should reverse the judgment below and dismiss Plaintiffs' verified complaint with prejudice.

Respectfully submitted,

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Dated: October 10, 2024

ERIN KELLY, JAMES BROWN, and RUTGERS COUNCIL OF AAUP CHAPTERS, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS – AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Plaintiffs-Respondents, v. WILLIAM M. TAMBUSSI; HEATHER C. TAYLOR f/k/a Heather C. Mason; and RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003895-23 Civil Action On Appeal From: Superior Court of New Jersey Law Division, Middlesex County Docket No.: MID-L-624-24 Sat Below: Hon. Benjamin S. Bucca, Jr. J.S.C. Date Submitted: November 14, 2024

BRIEF FOR RESPONDENTS

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INTRODUCTION

At bottom, this is an easy case. The individual plaintiffs, residents of Middlesex and Camden County, respectively (together with the Rutgers faculty union), learned that two members of the Rutgers Board of Governors ("BOG") had ceased to meet the county residency qualifications imposed on them by law. Despite being unqualified and illegally holding their offices, these members would appear and vote at monthly meetings of the BOG to decide on matters relevant to Rutgers as a whole and to the counties from which they were appointed and where the individual Plaintiffs resided.

Plaintiffs' suit was very much in the public interest. Rutgers has an annual budget of $5.3 billion, $1.1 billion of which comes from state appropriations. Billions more are collected from tuition, room, and board paid by state residents, from donations by state residents, and for healthcare services rendered to state residents. The question of who decides how those monies are allocated stand at the apex of matters that are in the public interest. Add to that the fact that these choices are not ancient, stand-alone pronouncements that happen to have current effects, but are instead dynamic ones, made periodically at monthly meetings. For ineligible people to make these decisions is a continuing violation of the residency statute in every sense of the word. For both reasons, the action is timely.

The procedural vehicle Plaintiffs used – a complaint with one count of quo warranto and another count for prerogative writs – was eminently appropriate. The quo warranto statute, for starters, is not limited to public office, but has been applied to unincorporated associations, religious groups, for-profit corporations, state-created professional boards, and indeed, is appropriate for not just public office, but "to test the title to office in a corporation, public or private."

Even so, Rutgers is not some sort of private corporation and is, by statute, "an instrumentality of the state." Accordingly, quo warranto is still the appropriate method to test the validity of Ms. Taylor's ongoing eligibility to her office. The fact that the BOG is an "office" subject to examination in a quo warranto proceeding rings out clearly in precedent, the Rutgers statutes, and common sense.

Lastly, the trial court was thoroughly correct in understanding the legal and policy reasons why the BOG members, who have a county-residency qualification, must maintain that residency throughout that term. If the Legislature wanted to provide that county residency was only required at the beginning of a six-year term, it had the tools and knowledge to provide for that. In the case of Appellant Taylor, the statutory language is especially compelling: aside from the language interpreted by the trial court, another

statute talks about Taylor as "the member of the board of governors of Rutgers, The State University who is appointed by the board of trustees and who is, pursuant to N.J.S. 18A:65-14, required to be a resident of Middlesex County." That language does not sound at all like it's speaking if a a person who needs to be a county resident only on the date of appointment, but rather, indicates an ongoing residency obligation through the term of office. The legislature provided for residential diversity in the BOG. The Law Division's ruling implementing that mandate should therefore be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Rutgers, the State University of New Jersey is the State's leading public research university. (Da126, Da134). It has three main campuses in (1) New Brunswick, Middlesex County; (2) Newark, Essex County; and (3) Camden, Camden County. (Da7 ¶ 7, Da135).[2] It was founded in 1766 as a private institution governed by the Board of Trustees ("BOT"). (Db5). In 1945, Rutgers was declared a public institution, and in 1956, the Rutgers Act transferred a majority of the BOT's management, control, administration, and policy-making functions to the newly established BOG, a majority of whom

[1] The Procedural History and Statement of Facts are presented together for the Court's convenience and to avoid repetition.

[2] In this brief, Da__ refers to Defendants' appendix, Db___ refers to Defendants' brief, Pa___ refers to Plaintiffs' appendix, and 1T refers to the sole transcript in this matter of June 27, 2024.

would be appointed by the Governor with advice and consent of the Senate. (Db5-6 and cases cited therein). This transfer of authority was a result of the bargain between the State and University in exchange for significant financial public support. (Id.) For Fiscal Year 2023-2024, the BOG approved a budget with a revenue of approximately $5.3 billion. (1T70); see also Rutgers, the State University Board of Governors, Resolution Approving Fiscal year 2023-24 Budget, (July 10, 2023) (Pa1-2). Approximately $1.1 billion, or 20%, is from state funds (combining the "NJ State Appropriations" and the "State paid fringe" lines), with billions more received by or on behalf of state residents. (Id.)

The New Jersey Medical and Health and Sciences Restructuring Act ("Restructuring Act") amended the membership structure and eligibility requirements for BOG members. (Advance Law, P.L. 2012, c.45). Prior to the enactment of the Restructuring Act, the BOG was comprised of eleven voting members, six of whom were to be appointed by the Governor, with the advice and consent of the Senate, and five of whom were to be appointed by the BOT from among its members. (Id., § 87). The Restructuring Act increased the total BOG members to fifteen and required select members to reside within certain counties in New Jersey: Camden, Essex, and Middlesex Counties. (Id.) Specifically, of the seven gubernatorial appointees, one must be a Camden

resident and another an Essex County resident. Of the six trustee appointees, one must be a Middlesex County resident and another an Essex County resident. (Id.) In total, only four of the fifteen BOG members are required to maintain residency in a specific county. (Id.) Other BOG members do not even have to reside within New Jersey. Kratovil v. Angelson, 473 N.J. Super. 484 (Law Div. 2020).

Defendant Taylor is a Trustee appointee to the BOG. (Da71, ¶ 3). She was first appointed to the BOG on December 14, 2016 to fill the remainder of an unexpired term ending on June 30, 2019. (Id.). On June 19, 2019, Defendant Taylor was reappointed to the BOG for a full, six-year term expiring on June 30, 2025. (Id.). At the time of her initial and subsequent appointments, she was a resident of Middlesex County. (Da9-10, ¶ 23). In or around January 2022, Defendant Taylor changed her voter registration to an address in Monmouth County, thus declaring her residency and domicile there. (Da10 ¶ 27, Da58, Da65 ¶ 27).

Plaintiff Erin Kelly is an Assistant Teaching Professor at Rutgers and its Director of Graduate Writing Pedagogy. (Da6 ¶ 2, Da62). Professor Kelly maintains offices at Rutgers' New Brunswick-Piscataway campus, and resides in Highland Park, Middlesex County. (Id.).

Plaintiff James Brown is an Associate Professor of English and Director of the Digital Studies Center at Rutgers University – Camden. (Da6 ¶ 3, Da62, ¶ 3). Professor Brown maintains offices at Rutgers' Camden campus, and resides in Haddon Township, Camden County. (Id.).

Plaintiff AAUP-AFT is the certified exclusive majority representative of a negotiations unit that includes all full-time faculty and all teaching assistants and graduate assistants employed by Rutgers. (Da6-7, Da62). The individually named plaintiffs are represented by AAUP-AFT and are covered by the collective negotiations agreement in effect between Rutgers and the AAUP-AFT. (Da6-7).

On January 30, 2024, Plaintiffs filed a verified complaint pursuant to N.J.S.A. 2A:66-6 and a motion for an order to proceed summarily to oust Defendants Tambussi and Taylor from their offices due to their failure to maintain residency within their respective counties. (Da1-2, Da5-58). On February 28, 2024, the court granted the motion to proceed summarily. (Da3-Da4). Plaintiffs and Defendants submitted briefs, and oral arguments were heard on June 27, 2024. (Da89-90). On the same day, the court issued its decision from the bench holding that (1) the case concerns a matter of important public interest requiring the enlargement of the statute of limitations for prerogative writs; (2) BOG members' continuing service is subject to

review under the quo warranto statute; and (3) the Restructuring Act's residency requirements are continuous and must be maintained by the residency-restricted BOG members for the duration of their term, not just on the date of appointment or on the date they take office. (1T64-80). The court thus ordered the immediate ouster of Defendants Taylor and Tambussi from their respective offices. (Da89-90). In addition, Defendants requested a stay from the trial court, which the court denied. (Da90 ¶ 3).

On August 12, 2024, Defendant Rutgers and Defendant Taylor appealed the trial court's decision; that notice was rejected and subsequently corrected on August 20, 2024. (Da95-99) Defendant Tambussi did not appeal. (Da95, Da111-12). On August 23, 2024, Defendants Rutgers and Taylor filed a motion for acceleration and stay pending appeal. (Da118-19). Ultimately, the stay motion was denied and the acceleration motion was granted. (Id.). With their motion papers, Defendants included a certification from the Secretary of Rutgers University, adducing facts about the BOG and its members that were *dehors* the record below and thus not appropriate for use in this merits appeal. (Da91-94).

LEGAL ARGUMENT

I. ENFORCEMENT OF THE RESTRUCTURING ACT'S RESIDENCY REQUIREMENTS INVOLVES A MATTER OF IMPORTANT PUBLIC INTEREST AND CONSTITUTES A CONTINUING VIOLATION, AND IS NOT TIME-BARRED (Da89-90; 1T66-69)

The presumptive statute of limitations in prerogative writ actions is 45 days from the date the cause of action accrues. R. 4:69-6. A court may enlarge the statutory period of limitation "where it is manifest that the interests of justice so requires." R. 4-69-6(c). "[O]ne of the well-recognized exceptions warranting relief from the statute of limitations [for claims in lieu of prerogative writs] is based on consideration of public rather than private interests." Save Camden Pub. Sch. v. Camden City Bd. of Ed., 454 N.J. Super. 478, 489 (App. Div. 2018) (quoting Reilly v. Brice, 109 N.J. 555, 558 (1988)). Courts have granted "even a substantial enlargement of time" when a case involves a matter of special public interest. Cohen v. Thoft, 368 N.J. Super. 338, 346 (App. Div. 2004); Mullen v. Ippolito Corp., 428 N.J. Super. 85, 106 (App. Div. 2012) (allowing an action in lieu of prerogative writs to proceed despite a multi-year delay because the issue involved a matter of "important public interest").

Here, the trial court correctly determined that this is a matter of important public interest because it was necessary to provide clarity to the

public, Rutgers, the Governor, the BOG, and the BOT on the exactitudes of the Restructuring Act's residency requirements. (1T68-69). The trial court also noted that Rutgers "is the most visible symbol of higher education in this state" and appointment to the BOG "is an extremely important and prestigious appointment." (1T67). Defendants do not deny the preeminence of Rutgers as the State University of New Jersey or the prestige associated with appointment to BOG. (Db18). Instead, they attempt to diminish the Restructuring Act's residency requirements. (Db19). Though Defendant Taylor was not ousted for substantive reasons related to her performance, she was not ousted "for no reason." (Db19). She was ousted because she did not maintain her residence within Middlesex County, as required by the Restructuring Act. Defendant Taylor's qualifications, length of service, and ties to Rutgers are simply distractions, having no bearing on the legal implications of her residency.

More importantly, Defendants do not deny that this case involves a matter of important public interest. (Db14-19). Whatever motivations Defendants allege Plaintiffs may have had, it does not transform this case to a private dispute. Plaintiffs Erin Kelly and James Brown exercised their rights as citizens and taxpayers of Middlesex and Camden Counties to ensure that an officeholder meets the statutory requirements of their office. (Da6, ¶¶ 2-4). They have no personal interests in those BOG seats. (Id.) On the contrary, the

public has an interest in (1) ensuring that the representational interests of each Rutgers' campus and their host counties are protected and (2) clarifying the temporal nature of the Restructuring Act's residency requirement so that appointing authorities and members of the BOG are properly apprised of what the statute requires.

What's more, the Appellate Division has previously determined that the issue of appointments to the BOG is a matter of important public interest to "the Senate, the University, the Board, and the public generally." In re Christie's Appointment of Perez as Pub. Member 7 of Rutgers Univ. Bd. of Governors, 436 N.J. Super. 575, 585-86 (App. Div. 2014). The court determined that "even if . . . [the] appeal was untimely, . . . the public interest requires the court to exercise its jurisdiction." Id. (emphasis added). Likewise, the Kratovil court also recognized that the public interest in deciding the BOG residency issues presented by that case justified a R. 4:69-6(c) extension. 473 N.J. Super. at 503.

Additionally, this Court may affirm the trial court's decision that an extension of time under R. 4:69-6(c) was warranted in the "interest of justice," on the separate grounds of the continuing violations theory. In Borough of Princeton v. Bd. of Chosen Freeholders of Cnty. of Mercer, 169 N.J. 135, 152 (2001), the Court expressly noted that among the "factors that will ordinarily

guide courts [about whether the interest of justice exception applies] include whether there will be a continuing violation of public rights." (citing Reilly v. Brice, 109 N.J. 555, 559 (1988) and Jones v. MacDonald, 33 N.J. 132, 138 (1960)). This theory was also reaffirmed in Hopewell Valley Citizens' Grp., Inc. v. Berwind Prop. Grp. Dev. Co., L.P., 204 N.J. 569, 581 (2011) and in Point Pleasant Borough PBA Local No. 158 v. Borough of Point Pleasant, 412 N.J. Super. 328, 334 (App. Div. 2010). As Defendants note, the theory is also used in other domains of law, e.g., Shepherd v. Hunterdon Dev. Ctr., 174 N.J. 1, 18 (2002), but it is a well-established component of a R. 4:69-6 analysis. It is not seriously disputed that the BOG meets regularly – approximately once a month – where its agenda can include financial, governance, bonding, or other policy matters. It is the essence of a continuing violation to have an ineligible person like Ms. Taylor unlawfully participating in these future decisions.

Therefore, whether for the "important public interest" reason cited by the trial judge, or the equally valid continuing violations theory, the Court should affirm the conclusion that this matter is timely.

II. QUO WARRANTO ACTIONS APPLY TO MEMBERS OF THE BOARD OF GOVERNORS (1T69-73)

The common law remedy of quo warranto provides a means of ousting a person for unlawfully holding office. It was eventually codified into statute.

> A proceeding in lieu of prerogative writ may also be instituted as of right against any person for usurping, intruding into or unlawfully holding or executing any office or franchise in this state, by any person who, under the former practice, would have the requisite interest to exhibit an information in the nature of a quo warranto with the leave of court.

N.J.S.A. 2A:66-6. "A proceeding may be brought under this statute if an office holder was not lawfully elected, did not meet residency requirements, or did not possess other qualifications of the office." In re Christie's Appointment of Perez as Pub. Member 7 of Rutgers Univ. Bd. of Governors, 436 N.J. Super. 575, 582 (App. Div. 2014) (citing Pickett v. Harris, 219 N.J. Super. 253, 258 (App. Div. 1987), appeal dismissed, 114 N.J. 471 (1989)) (emphasis added). Defendant Taylor does not meet the residency requirement of her office and Plaintiffs thus brought this quo warranto action. N.J.S.A. 18A:65-14(b)(ii) (requiring Taylor to reside in in Middlesex County).

In addition, while clear that Ms. Taylor holds a public office, the quo warranto statute is not even limited to holders of public office. On the contrary, the statute applies to many other circumstances, including "to test the title to office in a corporation, public or private." Scott v. Cholmondeley, 129

N.J. Eq. 152, 156 (Ch. 1941). To that end, in New Jersey, it has been used in disputes over elections of unincorporated associations, Wolff v. Wolf, 122 N.J. Eq. 243, 244 (Ch. 1937); for-profit corporations, Hankins v. Newell, 75 N.J.L. 26 (Sup. Ct. 1907); religious groups, Smith v. Trustees of Bethel African Methodist Episcopal Church of Jersey City, 89 N.J.L. 397, 398 (Sup. Ct. 1916); and professional associations established by state statute, Wilson v. Thompson, 83 N.J.L. 57, 59 (Sup. Ct. 1912).

A. The holding in Kratovil is limited to the New Jersey First Act

Defendants argue that a quo warranto action may not be maintained against members of the BOG because its application is limited to those holding "office," which cannot include unpaid volunteers. Defendants' reliance on Kratovil, which held that BOG members are unpaid volunteers and are therefore not persons "holding an office, employment, or position" under the New Jersey First Act ("NJFA"), is misplaced. Kratovil, 473 N.J. Super at 520. To apply that limited holding to the quo warranto statute, as Defendants now argue, is without legal support. In concluding that the NJFA did not apply to unpaid volunteers, the Court conducted a thorough review and analysis of the statute and its legislative intent. The trial court correctly determined that the factors that supported that conclusion are not present here. (1T35) ("[T]hat act

is clearly distinguishable from this because . . . that was an act that was motivated on economics.").

The statutory language of the NJFA is notably different from the language in N.J.S.A. 2A:66-6 which applies to "any office or franchise." In Kratovil, the central language at issue was the "connected terms of office, employment or position." Id. at 512. The Court relied on the maxim noscitur a sociis – a word is known by the company it keeps. Id. at 518. The term "employment" is ordinarily understood to mean work for payment. Id. at 510. The term "position," though arguably broader than employment, had a dictionary definition of "a post of employment: job." Id. at 511. The Court reviewed other statutes' usage of the connected terms of "office, employment, or position," which supported a narrow interpretation that precluded the NJFA's application to unpaid volunteers. Id. at 512-14. Here, the quo warranto statute does not mention the term employment, and thus the word "office" cannot be interpreted in the same terms as advanced by Defendants.

Second, the Court's limited holding reflected the NJFA's "undisputed aim . . . to improve the New Jersey economy." Id. at 515 (citing San-Lan Builders, Inc. v. Baxendale, 28 N.J. 148, 155-56 (1958)). The court therefore held it would be "illogical" to apply the NJFA's residency requirements to unpaid volunteers when the primary legislative rationale was "to better ensure

that the funds . . . paid in salaries to public employees stayed in this state and contributed to the state's own economy." Id. Here, Defendants do not point to any economic or financial reason as to why the phrase "any office or franchise," as used in N.J.S.A. 2A:66-6, cannot or should not include unpaid volunteers. Indeed, it cannot because the ancient writ of quo warranto does not have the same economic aims which would render its application to unpaid volunteers illogical. See Burnson v. Evans, 137 N.J.L. 511, 514 (Sup. Ct. 1948) ("The object of prosecuting an information in the nature of a quo warranto is to have the possessor of the office adjudged guilty of usurpation and ousted."); see also State by Info. of Hancock ex rel. Banks v. Elwell, 163 A.2d 342, 344 (Me. 1960) (discussing the history of quo warranto).

The Court's holding in Kratovil is specific to the NJFA and should not be extended to the ancient writ of quo warranto, the purpose of which is to protect the public interest and ensure that an office or franchise is filled in accordance with the law, which here imposes residency requirements for certain members of the BOG and Board of Trustees.[3]

[3] Defendants admit that In re Christie's Appointment of Perez, 436 N.J. Super. 575 (App. Div. 2014) is controlling on the issue, but dismiss the relevant language as dictum. That, however, does not end the inquiry, as statements in a higher court's decision that are germane but not decisive "are not dicta, but binding decisions of the [C]ourt." Marconi v. United Airlines, 460 N.J. Super. 330, 339 (App. Div. 2019).

B. Members of the Board of Governors hold an office

Defendants assert that "the BOG and its membership positions were not created by the public, but rather through a contractual compromise between the University and the State." (Db11). This is not entirely correct. The people of the State, acting through legislative and executive branch representatives, are who created the contract. In doing so, the people and Rutgers determined that control of the State appropriations going to Rutgers – at the time approximately $10.4 million, Trs. of Rutgers Coll. v. Richman, 41 N.J. Super. 259, 266 (Ch. Div. 1956), should be assigned to the a newly-created board, the BOG. State appropriations are annual contributions to Rutgers by the Legislature that have increased a hundred-fold since 1956. It would be illogical to think that annual appropriations, fixed in an amount at the Legislature's discretion, control of which is assigned by contract and law to the BOG, somehow negates the public character of the office of a BOG member.[4] Despite its repeated references to the consummated contract between Rutgers and the State, Defendants do not explain or cite to any authority on how the codification of this contract into law, entered into by the Legislature and approved by the executive branch, and which resulted in significant financial

[4] See also N.J.S.A. 18A:65-16 and -17, each of which unequivocally declares that a BOG member holds an "office."

support from public monies, changes whether quo warranto can be used to question the legitimacy of a board member holding office.

The BOG is a body created and recognized by law. Kratovil, 473 N.J. Super. at 525-26 ("The 1956 Act, however, created a new governing body for the corporation, the present Board of Governors."). It did not exist prior to 1956 and was created as a result of the parties' bargain. As the consummated contract itself has been described, "the fundamental change brought about by the use of the additional governing body to be known as the Board of Governors is the granting of a greater voice in management to the State as a quid pro quo of greater financial support." N.J.S.A. 18A:64M-2(b). Furthermore, it provides: "Upon reorganization in 1956, Rutgers' formerly private governing board–the Board of Trustees–transferred all management, control, administration, and policy-making functions to the publicly controlled Board of Governors." N.J.S.A. 18A:65-12 (emphasis added). The trial court thus found that "the legislature in enacting 18A:65-25 delegated . . . specific authority and responsibility to the Board of Governors." (1T71). Defendants argue that the State cannot delegate authority which it did not create because the BOG's powers were already possessed by the Trustees pursuant to the University's constitutionally protected charter. (Db11-13). Regardless, the Rutgers Act expressly "transferred" the Trustees' powers to the BOG, a body

that the consummated contract itself identifies as "public." N.J.S.A. 18A:65-12. Despite Defendants' effort to note that the Trustee-appointees constitute "nearly half" of the BOG (Db11), "nearly half" is not a majority, and it is the gubernatorial appointees that make up the majority. N.J.S.A. 18A:65-14; see also Richman, 41 N.J. Super. at 266 ("Since the majority of voting members of the Board of Governors are appointed by the Governor 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.")

It has been well understood that Rutgers is a hybrid institution, as the State, in exchange for providing significant financial support to a once private university, was vested with a greater voice in the management of the University; and therefore, was empowered—by both the "consummated contract" and the statutory law itself—to delegate authority previously held by the BOT to the BOG, the majority of whom are appointed by the Governor with the advice and consent of the senate.[5]

Curiously, Defendants acknowledge that Rutgers is an "instrumentality of the State" under N.J.S.A. 18A:65-2, but nevertheless remain resolute in

[5] Defendants' argument that an expedited press inquiry was once deferred to Rutgers by the Governor's Office (see Db24) proves nothing. More tellingly, the Attorney General is absent from this litigation. Neither that absence or the account of the press inquiry can give rise to an inference that the State supports Rutgers' legal positions in this case.

denying its public nature. (Db13). Our Supreme Court has previously defined the term instrumentality as "a thing used to achieve an end or purpose" or as "a means or agency through which a function of another entity is accomplished, such as a branch of a governing body." Fair Share Hous. Ctr., Inc. v. N.J. State League of Municipalities, 207 N.J. 489, 503 (2011). The BOG is a body that is responsible for the performance of certain public duties, which in this case is the "provision of higher education" in the State. N.J.S.A. 18A:64M-2(c); N.J.S.A. 18A:64M-2(k) ("The goals of this legislation are to create and enhance the essential higher education opportunities for the residents of the State and to create vibrant educational institutions and communities[.]"). It is undisputed that "[i]n the United States, public education, indicating that of elementary, high school, or college grade, is universally recognized as a public or governmental function of the state." Thompson v. Bd. of Educ., City of Millville, 20 N.J. Super. 419, 422 (App. Div. 1952), aff'd, 11 N.J. 207 (1953). Moreover, our courts have long determined that Rutgers, by statutory mandate, is . . . entrusted with a vital State function–operating the State University. "The education of youth is a fundamental public policy and is an essential governmental function. The promotion of public higher education is the logical extension of this basic policy." Rutgers State Univ. v. Piluso, 113 N.J. Super. 65, 71 (Law Div. 1971), aff'd, 60 N.J. 142 (1972) (emphasis added).

The term "office" as used by the quo warranto statute is not as limited as Defendants argue. An officeholder need not be elected, have a direct role in the governance of the state, or be part of the State's Executive Branch. Thus, the trial court correctly determined that "[i]t is beyond dispute that the board has fiduciary obligation to the students of Rutgers, as well as to the employees of Rutgers, but also overall to the State of New Jersey" (1T70-71), and that the Rutgers board members discharging that fiduciary obligation are rightly subject to the quo warranto statute.

III. LIMITING THE RESIDENCY REQUIREMENTS AT THE TIME OF APPOINTMENT ONLY CONTRADICTS THE ACT'S PLAIN LANGUAGE AND ITS LEGISLATIVE HISTORY (1T73-80)

The Restructuring Act provides that seven BOG members "shall be appointed by the board of trustees, from among their members, . . . one of whom shall be a resident of Middlesex County[.]" N.J.S.A. 18A:65-14(b)(ii). The trial court conducted a thorough and reasoned analysis of the Act and correctly concluded that the residency requirements for the BOG members are continuous. (1T73-79).

The Legislature's intent is the objective of statutory interpretation. State v. Robinson, 217 N.J. 594, 604 (2014). When the Legislature sets out to define a specific term, "the courts are bound by that definition." Febbi v. Bd. of Rev., 35 N.J. 601, 606 (1961). "Where a specific definition is absent, [it is] presume[d] that the Legislature intended the words it chose and the plain and ordinary meaning ascribed to those words." State v. Twiggs, 233 N.J. 513 (2018) (quoting Paff v. Galloway Township, 229 N.J. 340, 353 (2017)) (internal quotation marks omitted). The words should be read in the context of the statute's overall structure and composition, State v. Hupka, 203 N.J. 222, 231-32 (2010), so as not to frustrate the statute's purpose thereby leading to an absurd result. Gallagher v. Irvington, 190 N.J. Super. 394, 397 (App. Div. 1983). If on its face, the statute is clear and unambiguous, then the

interpretation process ends. Hupka, 203 N.J. at 232. When the plain language is ambiguous, extrinsic interpretive aids such as legislative history, committee reports, and contemporaneous construction may be used. The Legislature's intent is the objective of statutory interpretation. State v. Robinson, 217 N.J. 594, 604 (2014).

Defendants argue that the Restructuring Act's residency requirements apply only at the time of appointment and not at any time thereafter. (Db26). Below, they argued that the N.J.S.A. 18A:65-14 was a result of a legislative compromise to allocate appointing authority. No logical reading of the Restructuring Act could support Defendant's contention. Were this true, the Legislature and Rutgers could have agreed to identify an appointing authority without attaching residency requirements: the statute would simply state that certain individuals or certain bodies be involved in the appointment and confirmation process. Indeed, that is the case for the six remaining gubernatorial appointees. They must be appointed by the Governor and confirmed by the Senate. N.J.S.A. 18A:65-14(b)(i). These members do not even need to be residents of New Jersey. Kratovil, 473 N.J. Super. 484. The parties could have easily removed the clause "with one of these members being a resident of Camden County" to achieve the goal the Defendants here advance, but they did not do so. Just as easily, they could have added the

phrase "at the time of their appointment." Defendants are effectively advocating for the rescission of the Act's residency requirements, by adding or deleting words that just aren't there. Yet, the plain language of the Act is clear: it not only provides for the allocation of appointing authority, but also for the establishment of a residency requirement.

In reviewing the plain language of the Restructuring Act, the trial court was unpersuaded by Defendants' argument that the residency requirement applied only at the time of appointment and not at any time thereafter. (Da129). The court noted that the Act did not include the limiting language advanced by Defendants and that a court will "not imply the existence of an absent term where the legislature has used a specific term in one place but excluded that same language in others." (1T76) (citing Headen v. Jersey City Bd. of Educ., 420 N.J. Super 105 (App. Div. 2011). The trial court evaluated similar statutes setting eligibility requirements for other state boards and commissions and found that the State was specific in limiting residency to the time of appointment. (1T76-77). Thus, the trial court concluded that the legislature will use the terms "at the time of appointment" when it intends to place such a limitation (1T77), which it did not do in the statute under review.

In addition, the court determined that the Restructuring Act – the version ultimately adopted, rather than versions and drafts that Rutgers cites and did

not receive bicameral and gubernatorial support – reasonably requires continuous residency and emphasized that the Act was "very specific as to three counties" that "are the counties Rutgers has a meaningful physical presence." (1T77). Thus, it was plainly clear that "one of the purposes of the Act was to promote Rutgers as a vibrant educational institution intertwined with the communities that is located in" and that the residency requirement was intended for the BOG members to have their "finger on the pulse" of their respective counties to ensure that Rutgers' commitments to the communities it calls home are current, known, and enforced. (1T79).

Defendants further argue that the lack of specificity in the temporal nature of the Restructuring Act's residency requirements favor their limited interpretation because the statutorily created contractual obligation must be "unmistakable" and "clear." (Db22) (citing Berg v. Christie, 225 N.J. 245 (2016)). The unmistakability doctrine applies when "determining whether a contract has been created by statute." Berg, 225 N.J. at 261. This standard "is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state." Robertson v. Kulongoski, 466 F.3d 1114, 1118 (9th Cir. 2006). "To find a contract created by statute means that the Legislature binds itself to a policy of choice and surrenders the power of future elected representatives to

cut back on that choice." Berg, 225 N.J. at 260. Thus, "only the clearest expression of statutory language and evidence of legislative intent for such creation will do." Id.

Here, there is no question that a valid contract exists or that the State intended to bind itself. There is no dispute that the Restructuring Act amended the Rutgers Act to impose residency requirements on four out of fifteen BOG members, and there is no dispute that Rutgers consented to the residency requirements. See Kratovil v. Angelson, 473 N.J. Super. 484, 530 (Law Div. 2020). In Kratovil, the court recounted the history of this bargain. Id. at 532-33.

> 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. In particular, the 1956 Act creating the Board of Governors involved a substantial increase in state financial support, 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 exchange for benefits provided by the state. In the Medical and Health and 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.

Id.

However, the Defendants are ultimately confused about the unmistakability doctrine. It applies simply to determine whether particular

statutory language created an enforceable contract or not, and if so, what the scope of the contract is. Berg, 225 N.J. at 262-63. That's it. Berg does not substitute general laws of statutory construction to determine what a statute means; it only applies to determine the existence of a contract and its scope. The unmistakability doctrine requires courts to "proceed cautiously both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation." Once the existence of a contract is defined, Berg in no way supplants the regular rules of statutory construction, including those that countenance against construing a statute to reach an absurd result. See Berg, 225 N.J. at 262 (quoting Nat'l R.R. Passenger Corp., 470 U.S. 451, 466 (1985). And indeed, absurd results are what Rutgers offers in its interpretation. It would be absurd and antithetical to this bargain to limit the residency requirement to only the time of appointment. What, indeed, would be the purpose of the State reforming health and medical education, and laying out opportunities for the counties where Rutgers operates to be fully heard, and have the residency requirement apply only for a single day? It makes little sense to impose a residency requirement for four out of fifteen members only to permit them to move out of Camden, Essex, or Middlesex County the day after their appointment. Gallagher v. Irvington, 190 N.J. Super 394, 397 (App. Div. 1983) ("An absurd result must be avoided in

interpreting a statue."). Based on Defendants' proposed interpretation, a BOG appointee would meet the statutory requirement even if they moved out of the County before their confirmation so long as they lived within the County on the date of appointment. A BOG member could plausibly complete the entire duration of their term living outside of Camden, Essex, Middlesex County, or even New Jersey. If this was the result intended, the parties might as well have stricken the residency requirement for all BOG members. But they didn't.

Despite Defendants' baseless assertions, the Legislature's inclusion of the residency requirements for Camden, Essex, and Middlesex Counties and Rutgers' subsequent consent, serves important and legitimate purposes, which can only be achieved if the residency requirement is interpreted to be continuous and for the duration of a BOG member's appointment. Given the Act's plain language and legislative intent, it would be absurd to construe that the Restructuring Act's residency requirements are not continuous. In Morrill v. Wollman, the South Dakota Supreme Court discussed whether a statute's residency requirement was limited "merely to the time of selection." 271 N.W.2d 356, 358 (S.D. 1978). The relevant statute regulated membership in the Board of Regents, the governing body overseeing South Dakota's public universities. Id. at 357. The statute provided:

> The regents who are regular members shall be persons of probity and wisdom and selected from among the best known citizens,

> residents of different portions of the state, none of whom shall reside in the county in which any state educational institution is located, all of whom shall not be members of the same political party.

Id. The court held that "if the legislature prescribes qualifications for a particular appointive office, those qualifications must be deemed to be continuing unless the legislature expressly declares otherwise." Id. at 358. Absent the legislature's express declaration to limit the act's residency requirement, limiting the residency requirement at the time of selection "would be totally illogical and render the provisions nugatory." Id. at 358. Though Defendants identify other statutes, which explicitly impose continuous residency, this Court has previously expressed that

> It would make little sense to impose a residency requirement as a qualification for eligibility for appointment or employment and not require the same qualification for continued employment. If such were the case, any applicant, after satisfying the residency requirement for initial employment, could immediately remove from the political subdivision or unit and successfully claim the right to continued governmental employment.

Skolski v. Woodcock, 149 N.J. Super. 340, 345 (App. Div. 1977) (citation omitted). The continuing nature of the Restructuring Act's residency requirements is the fairest and only logical reading of the Act given its plain language and especially in light of the context in which it was enacted.

Defendants now attempt to remove the Restructuring Act's residency requirements out of its historical context by arguing that the Act's initial

references to "communities" referred only to "existing regions of academic research and instruction" and cannot not establish legislative intent to impose continuous residency requirements on select BOG members. (Db30-33). It emphasized that the Act, as initially drafted, intended to merge Rutgers-Camden with Rowan University, and could therefore not have intended to impose a continuous residency requirement for a BOG member. (Db31-32). Importantly and as is well known, the First Reprint did not become law. Today, Rutgers-Camden remains an integral part of the Rutgers system, contrary to the bill's initial goals.

As Defendants correctly acknowledge, the Restructuring Act, as enacted, represents a "legislative compromise that made the Restructuring Act's passage possible." (Db130). Had the Act not included safeguards for geographical representation, it may not have passed. Thus, the bill, as enacted, explicitly identified which areas must be represented in the BOG: Camden County, Essex County, and Middlesex County. N.J.S.A. 18A:65-14(b)(i)-(ii). No other geographical units are mentioned. Id. The identified geographical reasons were not chosen at random. Rutgers has significant ties to these communities because their three campuses call them home. See Kratovil, 473 N.J. Super. at 572 (noting that the Restructuring Act's amendments required certain Governors "to reside in Essex and Camden Counties, each of which is

home to a campus of Rutgers University"). Moreover, the unique struggles of each campus and how they contributed to the many of the changes included in the Restructuring Act is chronicled in a law review article cited by Defendants. See, e.g., Perry Dane, et al., Saving Rutgers-Camden, 44 Rutgers L.J. 337, 341 (2014) (reviewing historical and contemporaneous events that demonstrate the campus-specific concerns of Rutgers-Camden during the pendency of the Restructuring Act). There, the authors discuss Camden's need for a protector on the BOG to ensure that Rutgers-Camden remained an integral part of the Rutgers brand. See id. There are numerous examples within Saving Rutgers-Camden that illustrate the divergence of interests between Rutgers-Camden and the University. Id. (recounting how Camden "Chancellor Wendell Pritchett broke ranks with university administration and condemned the plan as a bad deal").

The context in which the Restructuring Act was amended and enacted supports Assemblymember John Wisniewski's expression of legislative intent that the "[t]he goal was always to make sure there are individuals on the board from those specific counties referenced." (Da76-77). Defendants' emphasis on the Restructuring Act's initial, but ultimately rejected goals, only acts to further support the logical conclusion that one of the main purposes of the

statute, among which includes the preservation of Rutgers-Camden's unique identity within the University system.

There is a separate statutory reason, unique to Ms. Taylor's role as the BOT's Middlesex County representative, that confirms that she (or her successor) must be a Middlesex County representative throughout the duration of their term. As part of the Restructuring Act, Rutgers and the State agreed, at N.J.S.A. 18A:65-14.13, to create a campus advisory board for New Brunswick. One of its members must be "the member of the board of governors of Rutgers, The State University who is appointed by the board of trustees and who is, pursuant to N.J.S. 18A:65-14, required to be a resident of Middlesex County." (emphasis added).

That statute only confirms what's just been said about the absurdity of understanding N.J.S.A. 18A:65-14(b)(ii) to mean that residency is only required on the date of appointment. The campus advisory board could not lawfully operate and conduct its periodic meetings without the presence of the trustee-appointed governor who "is" required to be a Middlesex County resident.

Lastly, the trial court's decision does not trespass on Rutgers' autonomy. It is after all a public university, whose operating budget is significantly funded by taxpayer dollars. (1T70). The Restructuring Act, its legislative

history, and prior cases discussing these amendments establish that Rutgers was indeed involved in applying new residency requirements for certain BOG members:

> 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).

Kratovil, 473 N.J. Super. at 526.

The Restructuring Act is both a statute and consummated contract, and principles of contract and statutory interpretation are similar: the words and phrases must be given a "faithful and logical reading . . . in order to discern and implement the intentions of the parties." Quinn v. Quinn, 225 N.J. 34, 45 (2016). Further, the court may not "rewrite a contract for the parties better than or different from the one they wrote for themselves." Kieffer v. Best Buy, 205 N.J. 213, 222 (2006). Rutgers' high degree of self-governance does not immunize it from State regulation and oversight or from enforcement of a contractual term.

CONCLUSION

Litigation over the validity of a person's service on the BOG, the governing body of the State University of New Jersey, by its nature presents a matter of important public interest. Moreover, since the BOG exercises its authority at monthly meetings, any error in the composition of that board is a continuing violation. The Court should therefore hold that it is in the interest of justice to hear this matter now consistent with R. 4:69-6(c). In addition, the quo warranto statute applies to all members of the BOG because they hold office in a legislatively created body tasked with the important public function of higher education.

The Restructuring Act plainly requires that certain members of the BOG reside within Camden, Essex, and Middlesex Counties. Continued residency is the more compelling, and only logical, interpretation as it is consistent with the Restructuring Act's goal of representing each of its three campuses. This is supported not only by the plain language of the Act, but also the circumstances surrounding the amendment and enactment of the Act, which illustrated enmity between Camden and University administration. Defendant Taylor was appointed to her six-year term on the basis of her residency. It is undisputed that Defendant Taylor is no longer a resident of Middlesex County.

Accordingly, the trial court correctly ousted Defendant Taylor from her office as a BOG member, and its judgment should be affirmed.

Respectfully submitted,

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Dated: November 14, 2024

ERIN KELLY, JAMES BROWN, and RUTGERS COUNCIL OF AAUP CHAPTERS, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS – AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Plaintiffs-Respondents, v. WILLIAM M. TAMBUSSI; HEATHER C. TAYLOR f/k/a Heather C. Mason; and RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-003895-23 Civil Action On Appeal From: Superior Court of New Jersey Law Division, Middlesex County Docket No. MID-L-624-24 Sat Below: Hon. Benjamin S. Bucca, Jr., J.S.C. Date Submitted: November 18, 2024

REPLY BRIEF OF DEFENDANTS HEATHER C. TAYLOR AND RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY IN FURTHER SUPPORT OF THEIR APPEAL

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PRELIMINARY STATEMENT

Plaintiffs' case is fatally flawed, both procedurally and substantively. As for procedure, Plaintiffs cannot properly rely on the archaic writ of quo warranto to oust a member of the Rutgers' Board of Governors (BOG). That is because volunteer BOG members, who are reposed with no authority to implement state law in the traditional governmental sense, do not hold "office" for purposes of the quo warranto statute. Moreover, the Rutgers Act envisions only limited circumstances under which a BOG member may be ousted, namely, by receiving a salary from the State or renumeration from the University, see N.J.S.A. 18A:65-17, or by committing malfeasance. See N.J.S.A. 18A:65-19. Those circumstances do not exist in this case. The general language of the quo warranto statute cannot displace the specific removal provisions of the Rutgers Act.

Nor can Plaintiffs overcome the fact that their quo warranto action, assuming it could be filed at all, is grossly out of time. Plaintiffs have not offered a single word to explain why they waited to file a lawsuit that is 37 months too late. Before ejecting a long-serving BOG member such as Defendant Heather Taylor, who has served without blemish, equity demands more from Plaintiffs beyond the rote incantation that their action is one of public importance. The interest of justice standard was never intended to allow litigants to sit on their rights without so much as offering a single reason for such dilatory conduct.

As for the merits, Plaintiffs confuse the legal import of the Rutgers Act with the Medical and Health Sciences Restructuring Act, L. 2012, c. 45 (the Restructuring Act), going so far as quoting language from the Restructuring Act and labeling it as language from the Rutgers Act. Perhaps it is that misunderstanding that allows Plaintiffs to disregard the dispositive rule from our Supreme Court in Berg v. Christie. That rule instructs that Plaintiffs' interpretation of the Rutgers Act—which would force Ms. Taylor to reside continuously in Middlesex County for the entirety of her volunteer service—can stand only if that purported obligation is clearly stated under the Act.

The Rutgers Act's language, however, is far from clear. Indeed, it is open to rigorous disagreement as evinced by the parties' competing interpretations. Thus, under Berg, this court should reverse the judgment below and immediately restore Ms. Taylor's rightful place on the BOG.

ARGUMENT

I. THIS ACTION WAS NOT PROPERLY FILED AND SHOULD BE DISMISSED.

A. BOG Members Do Not Possess Governmental Authority And Thus Do Not Hold "Office" For Purposes Of Quo Warranto.

Plaintiffs' opposition brief is notable for what it does not contain. It does not specifically rebut the declaration by Professor Robert F. Williams and other scholars who have explained that Rutgers is an instrumentality of the state, but

"it is not part of state government, and thus, is outside of the executive branch altogether." Perry Dean et al., Saving Rutgers-Camden, 44 Rutgers L.J. 337, 374 (2014) (emphasis in original). "Rutgers University simply has no role in implementing the laws enacted by the New Jersey Legislature, nor does it have any role in governing the state." Ibid. The view of these prominent scholars debunks the notion, incorrectly accepted by the trial court, and repeated by Plaintiffs, that BOG members implement state law by possessing delegated powers from Trenton. (See 1T70:21-72:21; Pb19.)

Arguing to the contrary, Plaintiffs confuse the Restructuring Act with the Rutgers Act. They quote language from the Restructuring Act, calling that Act a "consummated contract." (Pb17.) Plaintiffs are mistaken. It is the Rutgers Act, not the Restructuring Act, that embodies a consummated contract. Rutgers, the State University v. Piluso, 60 N.J. 142, 154-56 (1982). The Restructuring Act merely was the vehicle to insert certain provisions into the Rutgers Act. Plaintiffs also mistakenly quote the Rutgers Act in describing the "policy-making functions" of the "publicly controlled" BOG. (Pb17.) In fact, that language is from the Restructuring Act. See N.J.S.A. 18A:64M-2(b). Compounding that error, Plaintiffs state that a majority of the BOG is appointed by the Governor of New Jersey with the advice and consent of the state Senate. (Pb18.) That, too, is incorrect. Fifteen voting members comprise the BOG; seven

of whom—less than a majority—are appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 18A:65-14.[1]

Those are not trivial errors. By misstating language from the Rutgers Act, Plaintiffs attempt to buttress their argument that BOG members possess policy-making or law-making authority that, in turn, transforms them into holders of public office subject to the quo warranto statute. The more accurate view is the one consistent with Professor Williams's view, that BOG members do not implement any laws of New Jersey and are not part of state government. They are non-elected, unpaid fiduciaries of the University. Simply stated, because they hold no authority resembling a legislative, executive or judicial function in the traditional governmental sense, BOG members do not hold "office" from which they may be ousted by private litigants such as Plaintiffs. (See also Db13-14.)[2]

Rather than accept this irrefutable scholarship of Professor Williams, Plaintiffs reach back to over a century ago, to when neither this court nor the Rutgers Act existed, citing decisions like Smith v. Trustees of Bethel African

[1] The Governor appoints an eighth member, but it is not subject to the Senate's consent. Plaintiffs are thus wrong in suggesting that the Senate confirms a majority of the BOG, infusing them with delegated legislative power. The BOG has no such power.

[2] "Db" refers to Defendants-Appellants' opening brief filed October 10, 2024.

Methodist Episcopal Church of Jersey City, 89 N.J.L. 397, 398 (Sup. Ct. 1916). There, the court permitted a writ of quo warranto to allow plaintiffs to challenge the legitimacy of a church's board of trustees. Missing from the court's analysis was any discussion of the modern law regarding a church's First Amendment right of autonomy to manage and organize as it deems appropriate. In light of that omission, the decision's analysis is questionable. The same is true in respect of another case cited by Plaintiffs, Scott v. Cholmondeley, 129 N.J. Eq. 152, 156 (Ch. 1941), which allowed the judiciary to interfere, via a quo warranto action, with the selection of a church's pastor. Again, it is questionable whether such interference would stand under modern jurisprudence. See generally Our Lady of Guadalupe Sch. v. Morrisey-Berru, 140 S. Ct. 2046, 2056 (2020) (outlining church's right to self-government, "free from state interference").

The critical point is this: The antiquated decisions cited by Plaintiffs have little utility here. They should not override the removal provisions of the Rutgers Act, which are quite specific in stating the grounds for ousting a member of the BOG—and changing residences is not such a ground. See N.J. Transit Corp. v. Borough of Somerville, 139 N.J. 582, 591 (1995) (reaffirming the well-established "precept of statutory construction that when two statutes conflict, the more specific controls over the more general"). Nor does it matter that, as noted by Plaintiffs (Pb16, n.4), the word "office" appears in N.J.S.A. 18A:65-

16 and -17. Those fleeting references have no legal import other than as a short-hand way of describing the beginning and ending points of a BOG member's term in the case of section 16 or as a way of describing how a member's position would become vacant should that member receive a salary from the State or renumeration from the University as in the case of section 17.

Plaintiffs also are wrong in discounting Kratovil v. Angelson, 473 N.J. Super. 484, 520 (Law Div. 2020), which held, among under things, that volunteer BOG members do not hold "office" for purposes of removal under the New Jersey First Act, N.J.S.A. 52:14-7 (NJFA). Plaintiffs argue that this court should not exclude unpaid volunteers like BOG members from the meaning of "office," as Judge Jacobson did in Kratovil, because "the ancient writ of quo warranto does not have the same economic aims which would render its application to unpaid volunteers illogical." (Pb15.) Their argument is unpersuasive for at least three reasons.

First, as Plaintiffs acknowledge, the writ of quo warranto is "ancient." There is, of course, nothing inherently wrong with ancient law. In this setting, however, this ancient writ has been completely displaced by the specific removal provisions of the Rutgers Act, which do not envision a private cause of action to oust BOG members. Second, we can foresee an economic aim in a quo warranto action if it results in the removal of a paid governmental official. Third,

assuming for argument's sake only that the NJFA and the quo warranto statute have dissimilar aims, that fact does not lessen the persuasive authority contained in Kratovil. The bigger picture remains that Judge Jacobson carefully examined the exact term (office) and position (Rutgers' BOG membership) at issue here and concluded in a thorough, published decision that BOG members do not hold office.

No other reported case has grappled with that same issue, including In re Christie's Appointment of Perez, 436 N.J. Super. 575 (App. Div. 2014), which Plaintiffs misconstrue. Plaintiffs assert that Defendants "admit" the case is "controlling on the issue." (Pb15, n.3.) Not so. The few instances in Perez in which BOG membership is called an "office" are "[m]ere obiter" and are not "carefully considered statement[s]" of binding authority. Marconi v. United Airlines, 460 N.J. Super. 330, 339 (App. Div. 2019) (internal quotation and citations omitted). And nowhere in their briefs before the trial court or here do Defendants "admit" that Perez is "controlling on the issue."

B. Plaintiffs Fail To Explain Why They Filed Their Action Grossly Out Of Time.

Plaintiffs also are silent on why they commenced this case so late despite having both record and actual notice of their purported claims well in advance of the expiration of the limitations period. A litigant who seeks an enlargement should disclose to the court what they knew about their supposed claims and

when they knew it so the court can be equipped to properly assess "all relevant equitable considerations." Pressler & Verniero, Current N.J. Court Rules, cmt. 7.3 on R. 4:69-6 (2024). Plaintiffs have not done so, and that failure alone should have precluded their enlargement request.

Plaintiffs do not deny having such advance notice. The reality of such notice is significant because the limitations period may be enlarged only if it is "manifest that the interest of justice so requires." R. 4:69-6(c). And justice hardly requires an enlargement when, as here, Plaintiffs knew about their supposed claims, yet slept on their rights. See Washington Twp. Zoning Bd. of Adj. v. Washington Twp. Planning Bd., 217 N.J. Super. 215, 225 (App. Div. 1987) (Rule 4:69-6 "is designed to give an essential measure of repose").

Even if Plaintiffs chose to rebut the point, a case they cited in their trial court brief but now omit, Haack v. Ranieri, 83 N.J. Super. 526 (Law Div. 1964), conclusively supports Defendants' position. In that case, an unsuccessful candidate for a municipal council position sought to oust the winner of the election, alleging he had failed to satisfy the voter registration/residency requirement. Id. at 529. The plaintiff waited nearly six months before filing suit, which the court found was "long after the 45 days allowed" under the predecessor to Rule 4:69-6(a). Id. at 539.

An elective office was at stake in Haack (as compared to a volunteer BOG

position in this case). Presumably, the public interest is at its highest when an elective office is at issue. Nonetheless, the court in Haack found that nothing justified an extension of the filing deadline. As the court explained, the plaintiff "has slept on her rights in a situation where the compelling need for a policy of repose is obvious." Id. at 540. The same is true here.

In support of their continuing violations argument, Plaintiffs cite Borough of Princeton v. Board of Chosen Freeholders of Mercer, 169 N.J. 135 (2000), but that case does not help their cause. There, the Supreme Court extended the forty-five-day limitations period contained in Rule 4:69-6(a) in a case involving waste disposal contracts. The Court held that such contracts were subject to the local bidding law and, because the contracts had not been bid, "the reduction in competition resulting from the extended term . . . constitutes a continuing impairment both of the solid waste management industry's right under the [bidding law] to the regular re-bidding of public contracts, and of the public's right to the protections afforded by an open market." Id. at 153.

The case at bar is very different. Here, there are no public contracts at issue (BOG members are unpaid), and there is no manipulation of any market that could harm consumers. If anything, it is the misapplication of the quo warranto statute that has harmed the Rutgers community and impaired the work of the BOG by causing the sudden ouster of one of its longstanding members.

Simply put, the Borough of Princeton case is inapposite and thus holds no sway in the analysis.

II. THE RESIDENCY REQUIREMENTS APPLY TO APPOINTEES AT THE TIME OF APPOINTMENT AND ARE NOT CONTINUING OBLIGATIONS FOR SITTING BOARD MEMBERS.

The Rutgers Act, including the residency requirement, is subject to special rules of construction under Berg v. Christie, 225 N.J. 245 (2016). Plaintiffs dismiss Berg by arguing that it "does not substitute general laws of statutory construction to determine what a statute means; it only applies to determine the existence of a contract and its scope." (Pb26.) They are incorrect. When Berg applies—as here, in a case involving a legislative contract—it does, indeed, remove the analysis from the framework of "an ordinary statutory interpretation case. . . ." 225 N.J. at 272. That means any ambiguity in the statutory language "spells failure," id. at 273, for the purported claim. Thus, for Plaintiffs to prevail on the more burdensome Middlesex residency requirement that they are advocating, that obligation must be "unmistakable" and "clear." 225 N.J. at 263-264, 277.

The trial court erred by not applying Berg (the court did not even mention Berg). Both sides below accused the other of adding words to the Rutgers Act that do not exist. The trial court focused only on words it believed Rutgers was trying to add—i.e., that the residency requirement applies only "at the time of

appointment"—words that the court said it would not imply. (1T76.) But that was the wrong perspective. Instead, under a proper Berg analysis, the trial court should have concluded that the parties' competing arguments underscored that the scope of the residency requirement is unclear; hence, the more burdensome obligation being advocated by Plaintiffs must fail.

Plaintiffs cite Skolski v. Woodcock, 149 N.J. Super. 340 (App. Div. 1977), but that case is distinguishable. Unlike the Rutgers Act pertaining to volunteer BOG members, the residency statute in Skolski governed "all positions and employments in the classified service, where the service is to be rendered in a particular" locality and when "payment therefor is made from the funds" of that locality. Id. at 344 (quoting N.J.S.A. 11:22-7). That is decidedly not the case at bar, in which BOG members are not paid for any service to be rendered in a particular locality. In addition, the statute in Skolski was not a codification of a consummated contract as is the case of the Rutgers Act, with the special rules of construction attendant to that Act. In short, the language and nature of the Rutgers Act, along with the underlying circumstances in this case, differ significantly from those presented in Skolski.

The South Dakota case cited by Plaintiffs also is of no help. In Morrill v. Wollman, the Court's interpretation of a non-residency requirement was made against the backdrop of clear legislative intent that its Board of Regents'

members not reside in a county having a state educational institution. 271 N.W.2d 356, 358-59 (S.D. 1978) (noting that the legislature had repeatedly rejected bills to eliminate the non-residency requirement as it wanted to guard against Regents' members being subjected to political pressures and becoming involved in the institutions' daily administrative functions). Thus, the Court concluded that it would be illogical to interpret the non-residency requirement to cease after a member is selected. Ibid.

In contrast to the strong evidence of legislative intent in Morrill, the legislative history as outlined in Defendants' opening brief does not support Plaintiffs' argument that N.J.S.A. 18A:65-14 was intended to require continuous residency for the BOG member appointed from Middlesex County. (See Db30-34.) And, in Morrill, the challenge was brought by the state's governor who sought to declare a vacancy so as to appoint a successor; while here, the Governor's office has deferred to Rutgers in respect of the topic of this very litigation. (See Db24; Da77.)

Plaintiffs refer to certain media comments made by one of the sponsors of the Restructuring Act, describing them as an "expression of legislative intent." (Pb30; Da76-77.) That is not an accurate description. An isolated comment by a former legislator, a decade after the fact, is not considered an indication of legislative intent. It is entitled to little, if any, weight. See W. Va. Univ. Hosps.,

Inc. v. Casey, 499 U.S. 83, 98-99 (1991) (observing that "statements of individual legislators" are not generally considered to be a reliable guide to legislative intent); accord Perez, 436 N.J. Super. 575 at 591 (same).

In arguing that the Legislature intended the residency requirement to be a continuing one, Plaintiffs cite the same law review article as Defendants, Saving Rutgers-Camden, but for a different reason. Plaintiffs claim the authors discussed Camden's "need for a protector on the BOG to ensure that Rutgers-Camden remained an integral part of the Rutgers brand." (Pb30) (citing Dean, Saving Rutgers-Camden, 44 Rutgers L.J. 337 at 341.) We cannot, however, locate any specific reference in the article to a Camden resident as "protector" on the BOG. Instead, the article's main thrust is how the initial restructuring plan called for the Camden campus "to be severed from Rutgers and taken over by Rowan University," 44 Rutgers L.J. at 337, and how, in the end, that did not happen. Thus, Rutgers-Camden was "saved" not by a continuing residency obligation (which does not explicitly appear in the Rutgers Act), but rather by the more basic fact that the merger of Rutgers-Camden and Rowan was defeated.

Plaintiffs also claim support in N.J.S.A. 18A:65-14.13, which created a campus advisory board whose members shall include the BOG member "who is appointed by the board of trustees and who is, pursuant to N.J.S. 18A:65-14, required to be a resident of Middlesex County. . . ." Reliance on section 14.13

is misplaced for at least two reasons. First, it does not establish or enlarge the residency requirement of section 14. Rather, it serves only as a way of identifying one of eleven members to be appointed to the advisory board. Thus, Defendants' arguments on how section 14's residency requirement is tied to the time of appointment and does not extend beyond that period (see Db25-29), apply with equal force when construing section 14.13. Second, like section 14, section 14.13 is open to the same differing interpretations, meaning the language is unclear, which under Berg is fatal to Plaintiffs' proffered construction. (See Db20-25.)

Defendants' construction of the residency requirement would not yield an illogical or absurd result. The proper meaning of the residency requirement is derived in context of the full phrase in which it appears: "seven of [the 15 voting members of the BOG] shall be appointed by the [Trustees]. . . one of whom shall be a resident of Middlesex County. . . ." N.J.S.A. 18A:65-14. Based on its present-tense syntax, the requirement is connected to the act of appointment; it is a command to the appointing authorities, not to the persons so appointed.

Once that appointment is made, the selection process has come to an end, and the statutory aim of providing a role for the Trustees (and to the Governor in the case of other appointees) has been fulfilled. A continuous residency requirement throughout a member's six-year term would be irrelevant to those

roles. And creating such roles for appointing authorities, as a stand-alone legislative objective, is not illogical or absurd. Rather, it is part and parcel of the legislative process. It bears repeating that the legislative compromise that led to passage of the Restructuring Act was not fixed geographic representation on the BOG but rather the integration of health sciences education in a manner that kept Rutgers-Camden intact. (Db30-34.) The qualifying condition of residency is satisfied at the time of appointment or reappointment and does not extend beyond those two periods.

CONCLUSION

The quo warranto statute does not apply to volunteer BOG members. Nor can it override the Rutgers Act's removal provisions. Moreover, Plaintiffs have presented no compelling reason on why the limitations period should be extended. If the court disagrees, then the complaint still should be dismissed based on statutory canons, including the special rules governing the consummated contract found under the Rutgers Act. This court should restore Ms. Taylor to the BOG, free from interference from private litigants.

Respectfully submitted,

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