REPUBLICAN NATIONAL COMMITTEE, INC., NEW JERSEY REPUBLICAN STATE COMMITTEE, INC., and MICHAEL McGUIRE, Plaintiffs, v. STATE OF NEW JERSEY, DEPARTMENT OF STATE, DIVISION OF ELECTIONS; DALE G. CALDWELL, in his official capacity as Secretary of State of New Jersey; and WALKER M. WORTHY, JR., in his official capacity as Mercer County Superintendent of Elections, Defendants.	SUPERIOR COURT OF NEW JERSEY MERCER COUNTY LAW DIVISION DOCKET NO. MER-L-001637-26 Civil Action

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BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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PRELIMINARY STATEMENT

It is axiomatic that the right to vote is a fundamental civil right. The New Jersey Constitution thus ensures: "Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people." N.J. Const. art. II § 1 ¶ 3(a). Although that provision makes clear that all persons meeting such qualifications have a guaranteed constitutional right to vote in this State, nothing in that language limits enfranchisement only to this class of persons or prevents our Legislature from enfranchising additional classes of people by statute.

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Like the majority of States across the country, our Legislature therefore chose to extend a statutory right to vote in federal elections to U.S. citizens who were born outside of the United States and have never previously registered to vote anywhere in the United States, but have a parent, legal guardian, spouse, partner in civil union, or domestic partner whose last place of voter registration eligibility was New Jersey. N.J.S.A. 19:59-2(f), -3. So long as those U.S. citizens—referred to as "overseas federal election voters"—meet all other voter

qualifications, the Legislature determined that they would have a statutory right to vote in federal elections in New Jersey.

Plaintiffs, the Republican National Committee, Inc.; New Jersey Republican State Committee, Inc.; and Michael McGuire, seek a declaration that the provisions of N.J.S.A. 19:59-2(f) and 19:59-3 granting overseas federal election voters the right to vote in federal elections violate the New Jersey Constitution, art. II § 1 ¶ 3(a), and a permanent injunction against these provisions to disenfranchise this narrow band of overseas federal election voters.

Plaintiffs' claim misinterprets this provision of the New Jersey Constitution, which precedent establishes must be construed as extending the constitutional minimum right to vote to U.S. citizens who meet its age and residency requirements, but not as limiting our Legislature from extending statutory voting rights to additional classes of U.S. citizens. Indeed, our courts have long recognized and upheld the Legislature's inexorable path towards liberalization of the right to vote in New Jersey. Because affirming the right to vote of these overseas citizens who would otherwise be unable to vote in federal elections anywhere in the United States extends this journey, Plaintiffs are unlikely to prevail in their challenge. And even setting aside the merits, Plaintiffs are not entitled to a permanent injunction because it is the overseas federal election voters—and not Plaintiffs—who would be irreparably harmed

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because they would be completely disenfranchised. Accordingly, Plaintiffs cannot demonstrate the elements required for an injunction and the Verified Complaint should be dismissed with prejudice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Since 1947, the New Jersey Constitution has ensured that: "Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people." N.J. Const. art. II § 1 ¶ 3(a).

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Against the backdrop of this minimum constitutional guarantee, for over fifty years, the New Jersey Legislature has also extended the statutory right to vote to certain classes of individuals who do not reside in New Jersey but who nevertheless have a connection to New Jersey. On May 7, 1976, the New Jersey Overseas Residents Federal Election Absentee Voting Law ("ORFEAVL"), P.L. 1976, c. 23, was signed into law to implement the requirements of the federal Overseas Citizens Voting Rights Act of 1975 ("OCVRA"), the predecessor to the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301-

[1] The Procedural History and Statement of Facts are inextricably intertwined and have been presented together for clarity and for the Court's convenience.

20311 ("UOCAVA"). Sponsor's Statement to A. 1757 (L. 1976, c. 23). The New Jersey ORFEAVL extended the right to vote in a federal election to "overseas federal election voters," which included any U.S. citizen residing abroad who (1) was domiciled in New Jersey immediately prior to departure from the United States and had all the qualifications to register and vote in New Jersey aside from age; (2) does not maintain a residence and is not otherwise qualified to vote anywhere in the United States; and (3) holds a valid passport or other identification issued under the authority of the U.S. Secretary of State. L. 1976, c. 23, § 2. Overseas federal election voters were permitted to apply for and vote by absentee ballot in any federal election held in the election district in their former domicile. Id. § 3.

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In 1986, Congress passed UOCAVA, which requires "each State" to "permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52 USC § 20302(a)(1). Among other things, UOCAVA consolidated overseas civilian voting rights with those of military personnel. UOCAVA defines "absent uniformed services voters" to include uniformed service members and merchant marines who, by reason of their duty or service, are absent from their place of residence and who are otherwise qualified to vote, as well as "a spouse or dependent" of such a

voter who, "by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote." 53 USC § 20310(1) (emphasis added). UOCAVA, 52 U.S.C. § 20310(5), defines "overseas voter" as:

> a. an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;
>
> b. a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or
>
> c. a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

In 1993, the New Jersey Legislature amended ORFEAVL to extend the right to vote to conform with federal UOCAVA. Sponsor's Statement to A. 1769 (L. 1993, c. 73). Specifically, the Legislature expanded the definition of "overseas federal election voter" to include any person in military service absent on the date of election from their place of residence due to their military service as well as anyone who, immediately before departing the United States, "was registered to vote, or had all the qualifications to register and vote, in New Jersey," or who "would, but for residence, have the qualifications to register and vote in New Jersey." L. 1993, c. 73, § 2. Additionally, N.J.S.A. 19:59-3 was amended to allow overseas federal election voters to register to vote. Id. § 5.

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On August 12, 2008, the New Jersey Legislature renamed this overseas voter statutory scheme the Overseas Residents Absentee Voting Law ("ORAVL"), broadened the methods of transmitting ballots to include electronic means, and permitted overseas voters to vote in all elections rather than just federal elections. Assemb. State Gov't Comm. Statement to A. 2204 (L. 2008, c. 61). The legislation also changed the name "overseas federal election voter" to "overseas voter" but otherwise kept the same 1993 definition.

In 2017, the Legislature revised the New Jersey ORAVL "to more closely resemble the federal overseas voting laws," including "expand[ing] the definition of 'overseas voter' to expressly include legally recognized partners of military service personnel, voters born outside of the United States, and overseas voters with a residence in New Jersey." Sponsor's Statement to S. 92 (L. 2017, c. 39). However, the final language of the legislation resulted from Governor Christie's conditional veto of the original bill. The Governor was concerned the following classes of voters did not have a sufficient stake in the governance of the State or a locality to justify their participation in State or local elections: (1) voters not returning to New Jersey, and (2) voters born abroad who have never lived in the United States and have no intention of living in the United States. See Governor's Conditional Veto Statement to S. 92 1-2 (Dec. 5, 2016). Nevertheless, Governor Christie "agree[d] with the sponsors that overseas voters

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should continue to be permitted to vote in federal elections if they are United States citizens." Id. at 1.

To this end, the final legislation tightened the definition of "overseas voter" to apply only to those temporarily residing abroad. It also resurrected the term "overseas federal election voter" and defined that voter as: (1) a U.S. citizen residing abroad who does not intend to return to New Jersey or whose intent to return is unknown, but who was domiciled in New Jersey immediately before departure and currently meets all eligibility requirements other than residency and who is not qualified to vote anywhere else in the United States; and (2) a U.S. citizen born outside of the United States who, except for the residency requirement, currently satisfies all other eligibility requirements as long as New Jersey is the last place their parent, guardian, spouse, civil union or domestic partner would have been eligible to vote before departure from the United States and as long as the voter has not been previously registered to vote elsewhere. L. 2017, c. 39, § 1. For overseas federal election voters, the Legislature extended the statutory right to vote only in federal elections in New Jersey. Id. § 2. The Legislature also amended N.J.S.A. 19:59-3 to allow an overseas federal election voter to apply for a mail-in ballot in any federal election. Ibid.

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In 2022, the Legislature again revised the ORAVL to, among other things, modify the definition of "overseas federal election voter" and add a definition for "overseas State and federal voter." L. 2022, c. 72. More specifically, this amendment separated from the definition of "overseas federal election voter" a voter who either does not intend to return to New Jersey or whose intent to return to New Jersey is unknown but who was previously domiciled in New Jersey, reclassified those voters as "overseas State and federal voter," and authorized them to vote in federal and State elections but not local elections. Ibid. This amendment was intended "to more closely mirror the selection categories voters must choose from on the Federal Postcard Application (FPCA)," and thereby conform with the requirements of 52 USC § 20302(a)(1). Sponsor's Statement to A. 3929 (L. 2022, c. 72); see also Sponsor's Statement to S. 92 (L. 2017, c. 39) (noting the Legislature revised the ORAVL "to more closely resemble the federal overseas voting laws"). The amendment, however, did not substantively change the definition of "overseas federal election voter" relating to voters born outside the United States, nor did it amend N.J.S.A. 19:59-3 in any way that affected the ability of an overseas federal election voter to register or vote. The current definition of "overseas federal election voter" is found at N.J.S.A. 19:59-2(f), which provides that an "overseas federal election voter" is "any citizen of the United States who was born outside of the United States" and "the last place

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where a parent, legal guardian, spouse, partner in civil union, or domestic partner of the voter was, or under P.L.1976, c. 23 (C.19:59-1 et seq.) would have been, eligible to register and vote before departure from the United States is within New Jersey and the voter has not previously registered to vote elsewhere in the United States."

On July 9, 2026, Plaintiffs filed their Verified Complaint against the Defendants, seeking: a declaratory judgment that N.J.S.A. 19:59-2(f) and N.J.S.A. 19:59-3's extension of the right to vote in a federal election to persons who have never lived in New Jersey violates the New Jersey Constitution; a permanent injunction prohibiting the registration of individuals who have never resided in New Jersey under these statutes; and a writ of mandamus compelling the Secretary of State "to enforce the terms of the New Jersey Constitution and to establish safeguards ensuring that only eligible voters are able to register to vote." See Verified Complaint ("Comp.") ¶¶ 28-34, 55-74.

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STANDARD OF REVIEW

A complaint may be dismissed where the court lacks subject matter jurisdiction or where the plaintiff has failed to state a claim upon which relief can be granted. R. 4:6-2(a). In reviewing a motion to dismiss for either of these reasons, the court must examine the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart v. Sharp Elecs. Corp., 116 N.J. 739, 746

(1989); see also Arsenis v. Borough of Bernardsville, 476 N.J. Super 195, 205 (App. Div. 2023). Dismissal is appropriate where the plaintiff's complaint fails to articulate a legal basis for relief and further discovery would not provide one. Kieffer v. High Point Ins. Co., 422 N.J. Super. 38, 49 (App. Div. 2011). While courts should afford plaintiffs "every reasonable inference of fact" and should "search[] the Complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim," Printing Mart, 116 N.J. at 746 (citation omitted), a claim must be supported by sufficient facts and not just conclusory allegations, Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012).

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ARGUMENT

POINT I

PLAINTIFFS' FACIAL CHALLENGE SEEKING TO DISENFRANCHISE A CLASS OF U.S. CITIZENS ERRONEOUSLY IMPLIES A CONSTITUTIONAL LIMITATION ON THE LEGISLATURE.

Plaintiffs raise a facial challenge to N.J.S.A. 19:59-2(f) and 19:59-3, arguing that those provisions "unconstitutionally purport to extend voting rights to persons who have never been residents of New Jersey" and thus seek to disenfranchise the class of U.S. citizens who do not reside in New Jersey but are nevertheless authorized to vote in federal elections in this State. Comp. ¶¶ 28-31. As such, Plaintiffs bear an "onerous" burden to demonstrate that the

contested statutes "'clearly . . . violate[] a constitutional provision.'" Mack-Cali Realty Corp. v. State, 466 N.J. Super. 402, 424 (App. Div. 2021) (quoting Newark Superior Officers Assoc. v. Newark, 98 N.J. 212, 222 (1985)). Courts "afford every possible presumption in favor of an act of the Legislature." Id. at 423-24 (quoting Town of Secaucus v. Hudson Cnty. Bd. of Tax'n, 133 N.J. 482, 492 (1993)). To prevail on a facial challenge, Plaintiffs must show "that no set of circumstances exists under which the [law] would be valid." Englewood Hosp. & Med. Ctr. v. State, 261 N.J. 195, 211-12, n.1 (2025) (alteration in original) (quoting Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024)). Plaintiffs come nowhere close to meeting their burden to show that N.J.S.A. 19:59-2(f) and 19:59-3 are facially unconstitutional.

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A. Precedent makes clear that our Constitution does not foreclose the Legislature from statutorily enfranchising additional classes, including the overseas federal election voters in N.J.S.A. 19:59-2(f) and 19:59-3.

Plaintiffs' claim that N.J.S.A. 19:59-2(f) and 19:59-3 conflict with the New Jersey Constitution's residency provision violates the presumption of constitutionality, the instruction that election laws be liberally construed, and longstanding precedent construing this constitutional language as a minimum constitutional guarantee that the Legislature can enlarge by statute.

To start, Plaintiffs' claim runs afoul of both the presumption of constitutionality in favor of an act of the Legislature, Mack-Cali Realty Corp.,

466 N.J. Super. 402, 423-24, and this State's well-established canon of construction that requires election laws to "be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of voters," Afran v. County of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990). The maxim in favor of enfranchisement is based upon the recognition that "the exercise of the basic right of suffrage, a civil and political franchise . . . [is] of the very essence of our democratic process." Id. at 231-32 (alterations in original) (quoting Gangemi v. Berry, 25 N.J. 1, 12 (1957)). "This canon of construction is . . . so critical to the preservation of our democratic institutions," our Supreme Court has applied it "to the state constitution itself." Id. at 232 (citing Gangemi, 25 N.J. 1); see also Reynolds v. Sims, 377 U.S. 533, 561-62 (1964) (noting "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights").

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In addition to these well-established principles, our courts have long interpreted provisions of our Constitution extending the right to vote to certain groups as not foreclosing the Legislature from enfranchising additional groups by statute. In Gangemi v. Berry, our Supreme Court held that a statute that extended to civilians the right to vote by absentee ballot was not void under the New Jersey Constitution, which provides: "In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by

reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace." 25 N.J. 1, 7 (1957) (quoting N.J. Const. art II, § 1, ¶ 4). As Gangemi explained, the Legislature has plenary police powers, and the fact that the Constitution provided for absentee voting by the military was not evidence that the Constitution had also stripped the Legislature of extending absentee voting to civilians as well. Id. at 10. After all, "[t]he maxim that the express mention of one thing implies the exclusion of another is purely interpretive in aid of intention, and not a rule of law," and "only those things expressed in such positive affirmative terms as plainly imply the negative of what is not mentioned will be considered as inhibiting the powers of the legislature." Id. at 11. The Court instructed that "[t]he 1947 Constitution does not in terms affirmatively prohibit civilian absentee voting; and the purpose so to do is not revealed as a matter of negative inference." Ibid. Thus, as our Supreme Court has made clear, absent an express constitutional prohibition to the contrary, the Legislature is not prohibited from extending rights to additional classes of people not specifically granted such rights by the Constitution. Ibid.; see also Lacy v. City & Cnty. of San Francisco, 312 Cal. Rptr. 3d 391, 401 (Cal. App. Ct. 2023), as modified on denial of reh'g (Aug. 28, 2023) (interpreting provision of the California Constitution that "[a] United States citizen 18 years of age and resident in this state may vote," Cal. Const., art. II, § 2(a), as

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"not expressly or by necessary implication prohibit the Legislature from expanding the electorate to noncitizens").

The Appellate Division's decision in Afran v. County of Somerset, 244 N.J. Super. 229 (App. Div. 1990), further illustrates this point. There, the plaintiffs moved from Somerset County to Mercer County within 30 days of the general election, and neither county allowed plaintiffs to vote because of the 30-day constitutional residency limitation. Id. at 230-31. Reading the Constitution's durational requirement liberally in favor of enfranchisement, the court held that "imposition of this durational requirement on qualified and registered voters and the consequent disenfranchisement of such persons would constitute a violation of the equal protection guarantees of the fourteenth amendment." Id. at 231. The court also concluded that this provision "need not and should not be read to effect disenfranchisement in this situation," particularly in light of the Legislature's extension of the right to vote in various statutes over time as part of its "undeviating path towards liberalization of the voting right." Id. at 232. The court noted that "the Legislature has expressly protected the franchise rights of qualified and registered voters who move from one residence to another in the same county within the 30-day period prior to the election" through N.J.S.A. 19:31–11(b), which "permits such a voter to vote in the election district from which he has moved upon signing an affidavit setting

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forth the date of the move and the old and new address." Id. at 233. Thus, the court concluded, the express language of our Constitution, which "speaks to enfranchisement, not disenfranchisement," does not foreclose persons who have changed residence within 30 days of the election from voting. Id. at 235.

Even outside the election context, our Supreme Court has interpreted provisions of our Constitution that affirmatively grant rights to specific classes of persons as not foreclosing the Legislature from granting statutory rights to others. For example, our Constitution provides private employees a constitutional right to bargain collectively, but it does not expressly provide public employees that same right. However, our Supreme Court held that "this provision is one of grant to employees rather than of restraint upon them" and "purports only to secure the stated rights of private and public employees from legislative denial." Bd. of Educ. v. N.J. Educ. Ass'n, 53 N.J. 29, 44 (1968). "That the rights thus secured as to the public employee are less than those assured the private employee does not mean the Legislature may not close the gap in whole or in part." Id. at 44-45. In other words, the Court saw "no basis" to view a provision giving certain rights to private workers as one also "intended to deny the Legislature the power to grant public employees rights" too, if the Legislature so chose. Id. at 45.

That same constitutional construction applies equally to Article II, Section I, Paragraph 3(a) as nothing in the text forecloses the Legislature from extending

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the right to vote in federal elections to the overseas federal election voters. Article II, Section I, Paragraph 3(a) provides, in relevant part: "Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote." N.J. Const. art. II, ¶ 1, 3(a). It is a positive conditional statement, conferring a constitutional right onto a class of people who satisfy a set of qualifications. In other words, it sets a constitutionally guaranteed minimum electorate in this State. So it prevents the Legislature from imposing additional qualifications on persons in order to vote—such as requiring a person to be a resident of New Jersey for more than 30 days to be eligible to vote. But it does not "plainly imply the negative of what is not mentioned." Gangemi, 25 N.J. at 11. Nothing in this provision—or any other provision of our Constitution—expressly prohibits the Legislature from extending the right of suffrage to another group of people, and such a limitation is not to be implied. Gangemi, 25 N.J. at 1; see also Afran, 244 N.J. Super. at 230-31. Thus, properly construed, nothing in the residency provision of Article II, Section 1, Paragraph 3(a) forecloses our Legislature from extending the right to vote in a federal election under the ORAVL to "overseas federal election voters," as defined in N.J.S.A. 19:59-2(f).

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B. There is no basis to disenfranchise overseas federal election voters under N.J.S.A. 19:59-2(f) when other voters in the ORAVL do not meet our Constitution's residency provision.

Plaintiffs do not contend that the provisions of New Jersey's ORAVL that mirror federal UOCAVA violate our Constitution, instead alleging only that extending the right to vote in federal elections to "overseas federal election voters" as defined in N.J.S.A. 19:59-2(f) of the ORAVL violates our Constitution because those voters have never resided in New Jersey. Comp. at 16-17. Plaintiffs' selective parsing of the ORAVL presents a logical conundrum that conflicts with the principles recognized in Gangemi and Afran.

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As noted above, New Jersey's ORAVL is intended to mirror federal UOCAVA, which requires "[e]ach State" to "permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absent voter ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C. § 20302(1)(a). But other voters described by New Jersey's ORAVL cannot meet the constitutional residency requirement. Federal UOCAVA defines "overseas voter," in relevant part, as a voter who resides outside the United States and would be qualified to vote in the last place the person was domiciled "but for such residence" overseas, 52 U.S.C. § 20310(5) (emphasis added). New Jersey's OVARL defines "overseas voter" as any U.S. citizen temporarily residing abroad who was domiciled in New Jersey

immediately before departure and "would have been eligible to register and vote in New Jersey except that the citizen had not met the residency requirement." N.J.S.A. 19:59-2(e) (emphasis added). Moreover, New Jersey's OVARL in part defines "overseas state and federal voter" as a U.S. citizen who does not intend to return to the United States or whose intent to return is unknown and who was domiciled in New Jersey immediately before departing the United States and who "would have been eligible to register and vote in New Jersey except that the citizen had not met the residency requirement." N.J.S.A. 19:59-2(l) (emphasis added). Thus, by definition, "overseas voters" and "overseas state and federal voters" under New Jersey's ORAVL do not meet the residency provision in the New Jersey Constitution.[2]

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Article II, Section I, Paragraph 3(a) of the New Jersey Constitution makes no distinction between citizens who previously but no longer reside in New Jersey on the one hand and citizens who have never resided in New Jersey on the other. Yet the Legislature has consistently extended voting rights to both

[2] Plaintiffs suggest in equivocal terms that "UOCAVA may preempt Article II, § 1 ¶ 3(a) of the New Jersey Constitution's residency requirement for New Jersey voters who fall within its scope," but not for voters who have never resided in New Jersey. Comp. ¶ 35. Regardless of whether and to what extent UOCAVA preempts any portion of New Jersey's ORAVL other than N.J.S.A. 19:59-2(f)—a question not addressed in the pleadings—the same principles that authorize the Legislature to provide voting rights to non-residents under the unchallenged portions of the ORAVL authorize the Legislature to provide voting rights to the overseas federal election voters under N.J.S.A. 19:59-2(f).

groups of citizens—despite their non-residence in the State. There is therefore no basis to construe our Constitution's language providing a minimum guarantee of voting rights to persons possessing the constitutional residency requirement as foreclosing the Legislature's authority to extend statutory voting rights to others. To do so would conflict with precedent and the mandate to construe our Constitution liberally "to effectuate the overriding public policy of the enfranchisement of voters." Afran, 244 N.J. Super. at 232. Construing our Constitution liberally in favor of enfranchisement, Article II, Section I, Paragraph 3(a) does not "imply the negative of what is not mentioned," i.e., that the Legislature may not extend the right to vote to the overseas federal election voters. Gangemi, 25 N.J. at 11.

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* * *

Plaintiffs' facial constitutional challenge to N.J.S.A. 19:59-2(f) and 19:59-3 fails, and the Verified Complaint should be dismissed.

POINT II

PLAINTIFFS FAIL TO PLEAD SUFFICIENT GROUNDS FOR PERMANENT INJUNCTIVE RELIEF.

Even setting aside that Plaintiffs' facial challenge fails on the merits, the Complaint should be dismissed because Plaintiffs cannot satisfy the requirements for injunctive relief articulated in Crowe v. Degoia, 90 N.J. 126, 132-34 (1982). The Crowe factors require a plaintiff seeking injunctive relief

must show the following: (1) that the plaintiffs will suffer irreparable injury if the relief is denied; (2) that the plaintiff's claim is based on a settled legal right; (3) that preliminarily there is a reasonable probability of ultimate success on the merits; and (4) that the balance of the equities weighs in favor of granting preliminary relief to maintain the status quo pending outcome of a final hearing. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). As Plaintiffs seek to upset the status quo by disenfranchising U.S. citizens who have been authorized to vote in federal elections under the ORAVL for over nine years, Plaintiffs must establish all four factors "clearly and convincingly." Waste Mgmt. of NJ Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 519 (App. Div. 2008); cf. Crowe, 90 N.J. at 134 (noting the "point of temporary relief is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began").

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Because, as explained above, Plaintiffs cannot demonstrate success on the merits of their claim, Plaintiffs also cannot show a well-settled right to disenfranchise U.S. citizens from voting in federal elections on the basis of non-residence. See Garden State Equality, 216 N.J. at 325 ("To assess the [Plaintiff's] chance to succeed on the merits" the court must "return to the core principles that frame this case."). On the contrary, it is well-settled that the Legislature may extend voting rights on U.S. citizens who do not reside within

the State without offending the New Jersey Constitution. See Gangemi, 25 N.J. at 11; Afran, 244 N.J. Super. at 231; see also N.J.S.A. 19:59-2(e).

But even setting aside the merits, Plaintiffs have failed to establish any of the remaining injunctive factors. With respect to irreparable harm, Plaintiffs fail to identify any tangible or actual harm warranting injunctive relief and therefore cannot clearly and convincingly demonstrate irreparable harm. See Garden State Equality, 216 N.J. at 324. Instead, Plaintiffs argue that, pursuant to Bost v. Ill. State Bd. of Elections, 607 U.S. 71 (2026), the "harm to the integrity of the election process itself" is per se irreparable harm warranting injunctive relief. Pl. Br. at 8. But that argument fails primarily because it presumes a voting irregularity or fraud that is simply not at issue here. Prior to the filing of the Verified Complaint, the overseas federal election voters have voted lawfully in federal elections pursuant to N.J.S.A.19:59-2(f) and 19:59-3 since 2017 without issue. Because the minimum requirements set forth in the New Jersey Constitution do not prohibit the Legislature from conferring the right to vote upon the overseas federal election voters, there is no constitutional violation at issue here. Gangemi, 25 N.J. at 11.

In any event, Bost is inapt because it did not address the issue of irreparable harm. Rather, the Court addressed whether a candidate had standing to challenge a state law that the candidate claimed violates federal law. Bost,

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607 U.S. at 74-75. The Court distinguished between the general interest of the public and the particularized interest of the candidate in ensuring a fair electoral process and in receiving an accurate vote tally, for purposes of determining whether Article III standing exists. Id. at 77-78, 82-83. Ultimately, the Court held that "[r]ules that undermine the 'integrity of the electoral process' also undermine the winner's political legitimacy," such that a candidate challenging such a rule has a particularized harm that may satisfy standing. Id. at 78-79. But the Court did not address injunctive relief, let alone determine that a constitutional challenge to an election law involves irreparable harm warranting injunctive relief.

Plaintiffs' reliance on In re Gray-Sadler is similarly misplaced. Pl. Br. at 8. There, the New Jersey Supreme Court addressed a challenge to the results of a municipal election based upon "irregularities related to the write-in instructions and non-compliant voting machines." In re Gray-Sadler, 64 N.J. 468, 471 (2000). As no such irregularities have been alleged here, In re Gray-Sadler is inapposite to the facial challenge here and does not support irreparable harm in this case.

Additionally, where "a case presents an issue of 'significant public importance,' a court must consider the public interest in addition to the traditional Crowe factors." Garden State Equality, 216 N.J. at 321 (quoting

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McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 484 (2003)). The requested relief here presents an issue of substantial public importance; namely, the right to vote. Plaintiffs seek to disenfranchise from federal elections the overseas federal election voters—a class of U.S. citizens who but for N.J.S.A. 19:59-2(f) and 19:59-3 would not otherwise be able to cast a vote in a federal election. Put another way, it is the overseas federal election voters—not Plaintiffs—who would be irreparably harmed if a preliminary injunction is granted because they will be deprived of a fundamental civil right that is "the very essence of our democratic process." Afran, 244 N.J. Super. at 231-32 (quoting Gangemi, 25 N.J. at 12). For this same reason, the balance of the equities tips heavily in favor of maintaining the status quo for the overseas federal election voters. Thus, even if Plaintiffs had made a showing of Crowe factors, Plaintiffs' request to enjoin the overseas federal election voters from registering and voting in a federal election must be denied in light of the fundamental nature of the right to vote and the judicial mandate to view our Constitution and State Laws liberally in favor of enfranchisement.

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POINT III

PLAINTIFFS REPUBLICAN NATIONAL COMMITTEE, INC., AND NEW JERSEY REPUBLICAN STATE COMMITTEE, INC. LACK STANDING.

As a threshold matter to proceed, a plaintiff must have standing, which requires a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and there must be a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable decision. N.J. State Chamber of Com. v. N.J. Election Law Enf't Com., 82 N.J. 57, 67 (1980); Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 418 (1991). A court may not render an advisory opinion or function in the abstract and may not "entertain proceedings by plaintiffs who are 'mere intermeddlers.'" People for Open Gov't v. Roberts, 397 N.J. Super. 502 (App. Div. 2008) (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971)). Instead, to proceed on the merits of a claim a plaintiff must demonstrate "[a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision." In re Adoption of Baby T, 160 N.J. 332, 340 (1999). "Standing is particularly important in the context of election-law cases, including cases like this one, that challenge the laws, regulations, and guidance issued by elected and appointed state officials through the democratic processes."

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Donald J. Trump for President, Inc. v. Boockvar, 493 F. Supp. 3d 331, 376 (W.D. Pa. 2020).

The RNC and NJGOP allege that they have organizational standing based upon a perceived threat to election integrity, which will allegedly cause them to expend resources, and a generalized allegation of vote dilution, which in turn are based upon their facial challenge to N.J.S.A. 19:59-2(f). Comp. ¶¶ 15-16. Those alleged harms are insufficient to establish standing. While New Jersey employs a "more liberal approach on the issue of standing than have the federal cases," Crescent, 58 N.J. at 101, there is no support in this State for the proposition that the RNC and NJGOP have organizational standing based upon a generalized claim of vote dilution. In fact, other jurisdictions have considered such claims and determined that they are too speculative to show a concrete, particularized harm necessary to establish standing. See Fossella v. Adams, 225 A.D.3d 98, 111-12 (2024) (finding allegations of vote dilution and adjustment of resources were "neither sufficiently concrete nor particularized to establish a cognizable injury" (citation omitted)), aff'd as modified, 44 N.Y.3d 258 (2025); Donald J. Trump for President, Inc. v. Way, 2020 WL 6204477, at *5 (D.N.J. 2020) (rejecting claims of vote dilution and equal protection injuries as a sufficient basis to establish standing). And although the U.S. Supreme Court in Bost held that a candidate has standing to challenge an election law based upon an allegation of a threat to election integrity,

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that reasoning does not extend to support standing for the RNC or NJGOP. Bost, 607 U.S. at 78-79. Accordingly, neither the RNC nor the NJGOP have standing to proceed in this matter.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint with prejudice.

Respectfully Submitted,

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