

To: New Jersey Law Revision Commission
From: Christopher Camaj, Esq.¹
Carol Disla-Roa, Legislative Fellow
Re: New Jersey First Act: Residency Requirement
Date: November 6, 2023

MEMORANDUM

Project Summary

The New Jersey First Act (NJFA) establishes a state residency requirement for every person holding an office, employment, or position within state or local government.² The NJFA also authorizes New Jersey citizens to seek the ouster of individuals covered by the residency requirement who fail to reside in New Jersey after a 365-day grace period.³

In *Kratovil v. Angelson*, an action brought by the editor and co-founder of a New Brunswick-based newspaper, the Superior Court considered the question of whether unpaid volunteers — in this case, members of the Rutgers University Board of Governors — are subject to the residency requirement of the NJFA.⁴ After noting ambiguity in the statute and evaluating the relevant statutory provisions and their history, the Court concluded that the NJFA residency requirement should not apply to unpaid volunteers such as the Rutgers Board of Governors.⁵

Kratovil also addressed a second ambiguity in NJFA. Specifically, whether the NJFA allows a complaint to seek ouster within one year of *any* 365-day period in which an individual fails to meet the residency requirement, or whether ouster can only be sought within one year of a single 365-day period.⁶ Ultimately, the Court found that the legislative use of the word “any” means that ouster can be sought for any 365-day period, even if that leaves certain individuals vulnerable to residency challenges for many years.⁷

Statutes Considered

N.J.S.A. 52:14-7(a) provides in relevant part that:

Every person holding an office, employment, or position

(1) in the Executive, Legislative, or Judicial Branch of this State, or

¹ Preliminary research and drafting for this memorandum was conducted by Christopher Camaj, Esq., as a pro bono volunteer with the N.J. Law Revision Comm’n during the Summer and Fall of 2023. Mr. Camaj’s work was updated and supplemented by Carol Disla-Roa.

² N.J. Stat. Ann. § 52:14-7(a).

³ N.J. Stat. Ann. § 52:14-7(d).

⁴ *Kratovil v. Angelson*, 473 N.J. Super. 484, 494 (Law Div. 2020).

⁵ *Id.* at 520.

⁶ *Id.* at 498.

⁷ *Id.* at 501 – 502.

(2) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or

(3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or

(4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district,

shall have his or her principal residence in this State and shall execute such office, employment, or position.⁸

N.J.S.A. 52:14-7(d) provides that:

Any person holding or attempting to hold an office, employment, or position in violation of this section shall be considered as illegally holding or attempting to hold the same; provided that a person holding an office, employment, or position in this State shall have one year from the time of taking the office, employment, or position to satisfy the requirement of principal residency, and if thereafter such person fails to satisfy the requirement of principal residency as defined herein with respect to any 365-day period, that person shall be deemed unqualified for holding the office, employment, or position. The Superior Court shall, in a civil action in lieu of prerogative writ, give judgment of ouster against such person, upon the complaint of any officer or citizen of the State, provided that any such complaint shall be brought within one year of the alleged 365-day period of failure to have his or her principal residence in this State.⁹

Background

The law that is now the NJFA was significantly expanded in 2011 in apparent response to New Jersey's slow recovery from the 2008 recession, and in hopes of boosting employment in the State.¹⁰ New Jersey's residency requirement originally applied to "every person holding office in this state" but this language "proved imprecise and difficult to apply over time."¹¹ The revisions that took effect in 2011 applied the residency requirement to "[e]very person holding an office, employment, or position" in state or local government, including school districts.¹²

⁸ N.J. STAT. ANN. § 52:14-7(a) (emphasis added).

⁹ N.J. STAT. ANN. § 52:14-7(d) (emphasis added).

¹⁰ *Kratovil* at 495.

¹¹ *Id.* at 496.

¹² *Id.*

Charles J. Kratovil, editor and co-founder of New Brunswick Today, filed a pro se complaint on June 11, 2018, against members of the Rutgers Board of Governors, seeking their ouster for violation of the NJFA's residency requirement.¹³ He contended that, for at least a year before filing the complaint, the members of the Board failed to maintain a principal residence in New Jersey.¹⁴

The defendants filed a motion to dismiss, which was denied.¹⁵ Thereafter, Rutgers filed a motion to intervene, which was granted.¹⁶ The parties then filed cross-motions for summary judgment.¹⁷ After considering this issue of first impression, the Court ultimately granted the motion in favor of the defendants.¹⁸

The Court found that the statute of limitations allowed Kratovil to seek the ouster within one-year of *any* 365-day period when those covered by the statute failed to meet the residency requirement.¹⁹ It also determined, however, that the residency requirement does not apply to unpaid volunteers such as members of the Rutgers Board of Governors.²⁰

Analysis

A brief summary of the Court's consideration of the applicability of the residency requirement to volunteers and the timing of relief pursuant to the statute follows.

A. *Applicability to Volunteers*

With respect to the residency requirement, the *Kratovil* Court found that the text of the statute, specifically the meaning of "office, employment, or position," did not compel a clear and unambiguous result.²¹

After noting its "delicate task of divining legislative intent without overt assurance that the Legislature contemplated application of the NJFA to unpaid volunteers"²², the Court explained that while the words chosen by the Legislature are expansive, "the fact that the [NJFA] expressly covers employees of boards and State universities does not help answer the question of whether ... [it] covers unpaid volunteer roles."²³ Boards may employ members or other administrative staff; therefore, the Court could not infer that the inclusion of "board[s] ... of the State" is intended to cover unpaid volunteers.²⁴ The Court also noted that the members of the Rutgers Board of Governors are statutorily prevented from "receiving remuneration for [their] services" under

¹³ *Id.* at 494.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 502

²⁰ *Id.* at 520.

²¹ *Id.* at 504.

²² *Id.* at 500.

²³ *Id.* at 510.

²⁴ *Id.*

N.J.S.A. 18A:65-17, and that they shall not be compensated for their services except for reimbursement of reasonable expenses incurred in rendering their services under N.J.S.A. 18A:65-20.²⁵

The Court explained that the words “employment” and “office” (although perhaps less clearly than “employment”) exclude unpaid volunteers and that these terms refer to paid positions.²⁶ The word “position” is broader and could plausibly include unpaid positions, but the more plausible interpretation is that “position” also means paid positions unless otherwise stated.²⁷ Other sections of the NJFA define “any person holding public office, position or employment” as “employees” who are paid.²⁸ And many provisions of civil service statutes use the word “position” as synonymous with “job,” regulating “position” holders as employees.²⁹

The Court also noted that then-Governor Christie and the State Senate appointed and confirmed three of the four Board member-defendants shortly after adopting the NJFA with the knowledge that these individuals resided outside of New Jersey and had no intent to change their principal residences.³⁰ Thus, “it reasonably can be presumed that the Senators and Governor never intended” for the residency requirement to reach unpaid volunteers like the Rutgers Board of Governors' members.³¹

The Court cited case law indicating that these terms had raised interpretive challenges in other contexts and supporting the conclusion that “office, employment or position” does not include unpaid volunteers.³² The court in *Pastore v. Cnty. of Essex* concluded that the words “office, position or employment,” in N.J.S. 2C:51-2, were used interchangeably to refer to all public employees.³³ In *Mastrobattista v. Essex Cnty Park Comm’n*, the court indicated that the statutory language extending to persons who hold an “office, position or employment” was “included out of an excess of caution” and rejected any distinction between the three terms.³⁴ Finally, the case of *Sahli v. Woodbine Bd. of Educ.* demonstrated that the words “office, position or employment” could be subject to varying interpretations and the court in that case found the word “position” synonymous with “employee.”³⁵

After noting that the Legislature did not define the terms “office, employment, or position” and that the meanings of these terms were ambiguous, the Court considered evidence of legislative intent and determined that various sources supported the conclusion that the Legislature intended

²⁵ *Id.* at 504; N.J. STAT. ANN. § 18A:65-17 to –20; *see also Id.* at 518 (noting that some board members are paid “such as the State Parole Board, the Board of Public Utilities, and the New Jersey Board of Directors of Horizon Blue Cross and Blue Shield,” and that the act also covers employees hired by any board to assist them in exercising their duties).

²⁶ *Id.*

²⁷ *Id.* at 511.

²⁸ *Id.* at 512.

²⁹ *Id.* at 507.

³⁰ *Id.* at 517.

³¹ *Id.* at 517 – 18.

³² *Id.* at 512.

³³ *Id.* at 512 – 13, *citing Pastore v. Cnty. of Essex*, 237 N.J. Super. 371, 376 (App. Div. 1989); *see also Id.* at 518 (stating that *noscitur a sociis* applies here “to associated words that are given similar meaning”).

³⁴ *Id.* at 513, *citing Mastrobattista v. Essex Cnty Park Comm’n*, 46 N.J. 138, 146-47 (1965).

³⁵ *Id.* at 513 *citing Sahli v. Woodbine Bd. of Educ.*, 193 N.J. 309, 323 (2008).

for the NJFA to improve economic conditions in the State.³⁶ The Court referred to then-Senator Norcross’s statement that “[i]f you want a paycheck from New Jersey taxpayers, you should live here and pay your taxes here”³⁷ and to the statement by then-Governor Christie that “[t]his legislation would require that public employees obtain a principal residence in New Jersey within one year of beginning their public service.”³⁸

The Court referenced the reasoning in a detailed journal article that “the primary legislative rationale ... was to better ensure that the funds [New Jersey]’s state and local governments paid in salaries to public employees stayed in [New Jersey] and contributed to the state’s own economy.”³⁹ The Court further noted that the Legislature’s intent was “underscored by the timing of the Act’s passage, which followed the financial meltdown of 2008 when the Legislature...[was] interested in adopting measures to boost the state’s economic recovery from the recession....[with] a desire to increase employment opportunities for New Jersey residents.”⁴⁰

The Court also reviewed the legislative history of the statute just before it became the NJFA.⁴¹ There the Court found comments from different legislative committees in 2010, which indicated an intent to cover employees and not unpaid volunteers.⁴² In addition to this history, the Court noted that the committee created by the Act to review exemptions refers to itself as the “Employee Residency Review Committee.”⁴³

The Court ultimately concluded that the NJFA should not reach unpaid volunteers, including the Rutgers Board of Governors who reside outside of New Jersey.⁴⁴

B. *Timing*

The *Kratovil* case also addressed a second ambiguity in the NJFA. Specifically, that the NJFA allows for a 365-day period for a person living out of state to comply with the residency requirement, and then permits any state resident to file a claim for ouster “within one year of the alleged 365-day period of [noncompliance].”⁴⁵ *Kratovil* and *Angelson*’s dispute concerned that

³⁶ *Id.* at 514.

³⁷ *Id.* citing Jason Rindosh, Comment, *Continuing Residency Requirements: Questioning Burdens on Public Employment in New Jersey*, 42 Seton Hall L. Rev. 1635, 1661 n. 172 (2012).

³⁸ *Governor’s Veto Statement to S. 1730* (2010) (emphasis added).

³⁹ *Kratovil* at 515, citing Rindosh, 42 Seton Hall L. Rev. at 1661.

⁴⁰ *Id.* at 496, citing *Governor’s Veto Message to S. 1730* (2010).

⁴¹ *Id.* at 516.

⁴² *Id.* citing *Statement to S. Comm. Substitute for S. 1730* (May 13, 2010); *Statement of A. State Gov’t Comm. to A. 2478* (Dec. 9, 2010) (stating in reference to proposed amendments that “a person employed on the effective date of this bill who does not have his or her principal residence in this State on that effective date will not be subject to the residency requirement while the person continues to hold office, employment, or position without a break in public service of greater than seven days”)(emphasis added).

⁴³ *Id.*

⁴⁴ *Id.* at 520; *but see Id.* at 535 (here the court addresses the Contracts Clause issue in this case finding that, “[even] if the NJFA cover[ed] unpaid volunteers, it must nevertheless not be applied to the Rutgers Board of Governors because such application would run afoul of the Contract Clause and the Rutgers Charter”).

⁴⁵ N.J. STAT. ANN. § 52:14-7(d).

one-year ouster window and whether it closed or remained open following every 365-day period of continued noncompliance, under the phrase “any 365-day period”.⁴⁶

Angelson argued that *Kratovil*’s interpretation of N.J.S. 52:14-7(d) allowing for rolling/successive 365-day periods, rather than a single 365-day period, would leave noncomplying individuals vulnerable to multiple residency attacks, “[in contrast to] general notions of repose.”⁴⁷ In its interpretation of the words “any 365-day period,” the Court agreed with *Kratovil*, explaining that “a cause of action for ouster.... arises if a person covered by the statute moves out of New Jersey for any 365-day period, just as it arises for individuals who remain outside the state after not having taken advantage of the grace period for any 365-day period.”⁴⁸ Notwithstanding this interpretation, the Court did note an ambiguity in statutory drafting because the second use of the phrase “365-day period” in section (d) of the statute could indicate a “more definitive statute of limitations....maximum.”⁴⁹ Despite this ambiguity, the Court reasoned that *Kratovil*’s interpretation is more in line with the policy goal of requiring New Jersey residency for most public officers and employees.⁵⁰

Pending Bills

There are three bills pending that involve N.J.S.A. 52:14-7(a). Only one of the pending bills specifically addresses the issue in *Kratovil* concerning the class of persons that the statute should cover.⁵¹ That bill seeks to narrow the class covered to include only “[t]he Governor,the Legislature, the head of each principal department of the Executive Branch of State government, and every Justice of the Supreme Court, judge of the Superior Court, and judge of any inferior court established under the laws of this State.” There are no bills pending that pertain to the timing issue in *Kratovil*, under N.J.S.A. 52:14-7(d).

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether the New Jersey First Act would benefit from clarification to address the issues identified above that were discussed by the Court in *Kratovil v. Angelson*.

⁴⁶ *Kratovil* at 498; N.J. STAT. ANN. § 52:14-7(d).

⁴⁷ *Id.* at 498 – 501.

⁴⁸ *Id.* at 500.

⁴⁹ *Id.*; N.J. STAT. ANN. § 52:14-7(d).

⁵⁰ *Id.*

⁵¹ Statements to A. 148, 2022 Leg., 220th Sess. (Jan. 11, 2023) (“[t]his bill eliminates the requirement that all public officers and employees, with certain exceptions, have their principal residence in this State”); *but see Id.* at 495-6 (referencing the 1986 expansion of the previous NJFA where it first began to cover the same class of persons intended by bill A. 148, following a public pledge to reside in state from then-Chief Justice Robert N. Wilentz); *see also* Statements to A. 2229, 2022 Leg., 220th Sess. (Feb. 7, 2022) (“[t]his bill provides for a three-year period during which a person hired by a school district, charter school, or renaissance school project will not be required to comply with the State residency requirement under R.S.52:14-7”); Statements to S. 3055, 2022 Leg., 220th Sess. (Sept. 29, 2022) (“[t]his bill eliminates the requirement that employees of a school district have their principal residence in this State”).