

**THE GROWTH SHARE APPROACH TO *MOUNT LAUREL*
HOUSING OBLIGATIONS: ORIGINS, HIJACKING, AND FUTURE**

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Calculating and fairly allocating housing needs are two critical and contentious tasks in implementing New Jersey's *Mount Laurel* doctrine, which requires all municipalities, as well as state agencies with land use responsibilities, to create a "realistic opportunity" for construction of their "fair share" of the regional need for low- and moderate-income housing.¹ The formulaic fair share methodology developed by academic researchers, planners, lawyers, trial courts and a state agency to implement the 1983 *Mount Laurel II* decision of the New Jersey Supreme Court contributed mightily to unprecedented affordable housing construction in New Jersey in the 1980s and 1990s. This approach also remained difficult to explain quickly—heavily reliant on inherently speculative population, household, and housing market projections, constrained by policy choices and the availability of data, susceptible to manipulation, and not perceived as intuitively fair by the public and municipalities.

In a seminal 1997 commentary, Professor John Payne repudiated the formulaic remedy and advanced an alternative technique called "growth share" as a better way of solving the problem of exclusionary zoning.² Under this concept, a community's fair share housing obligation would be a share of whatever growth, residential and nonresidential, actually occurred in the community, rather a number derived from a formula. This Article reviews the

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1. S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel (*Mount Laurel I*), 336 A.2d 713 (N.J. 1975); S. Burlington Cnty. NAACP v. Twp. of Mt. Laurel (*Mount Laurel II*), 456 A.2d 390, 490 (N.J. 1983).

2. John Payne, *Remedies for Affordable Housing: From Fair Share to Growth Share*, LAND USE L. & ZONING DIG., June 1997, at 3-9. A decade earlier in an earlier and prescient critique of the formulaic approach, Payne had advanced the growth share concept without the name, calling the alternate approach to fair share "self-defining" and "self-executing." John M. Payne, *Rethinking Fair Share: Judicial Enforcement of Affordable Housing Policies*, 16 REAL EST. L.J. 20, 20-44 (1987).

origins of the growth share approach, explains how it was hijacked and perverted, and speculates on its future.

To appreciate the growth share debate, it is important to understand the fair share housing obligation articulated in *Mount Laurel II*,³ as well as the first two decades of implementation of the formulaic methodology. Under *Mount Laurel II*, the constitutional housing obligation has two basic components: (a) present need, a measure of the existing low- and moderate-income households in a municipality living in substandard housing, typically addressed by a local housing rehabilitation program, and (b) prospective need, an allocation to a municipality of a fair share of the regional need in the future for low- and moderate-income housing, typically addressed by zoning for inclusionary developments of eighty percent market-rate housing and twenty percent income-restricted affordable housing. Proposed initially by researchers at Rutgers—Center for Urban Policy Research in 1983, planners refined and agreed upon a “consensus” formulaic methodology in 1984 that, after a full trial, Judge Serpentelli carefully explained and generally approved in 1984 in *AMG v. Warren*.³

Enactment of the state Fair Housing Act in 1985 created a new agency, the New Jersey Council on Affordable Housing (“COAH”), charged with defining housing regions and estimating present need and regional prospective need, as well as establishing standards for, reviewing and certifying municipal housing elements and fair share plans to satisfy the allocated municipal fair share housing obligations. Participating in the COAH process and obtaining “substantive certification” from COAH immunized municipalities from builder-plaintiff litigation seeking higher density residential zoning in exchange for providing a twenty percent set-aside of housing affordable to low- and moderate-income households. Municipal fear of a court-ordered builder’s remedy was and remains the principal enforcement mechanism of the *Mount Laurel* doctrine.

COAH used the formulaic approach to calculate regional housing needs and allocate to municipalities their fair share of present need and prospective need in two six-year rounds or cycles: First Round (1987-1993) and Second Round (1993-1999), as follows:

3. *AMG Realty Co. v. Warren*, 504 A.2d 692 (N.J. Super. Ct. Law Div. 1984).

Table 1: New Jersey Fair Share Housing Needs Calculations by COAH, 1986 and 1994			
	Present Need (Rehabilitation Obligation)	Prospective Need (New Construction Obligation)	
	(Total affordable units)	(Total affordable units)	(Affordable units/year)
COAH: First Round, 1987-1993	80,614	65,063	10,849
COAH, Second Round, 1993-1999	40,623	77,580	6,465
Notes: <ul style="list-style-type: none"> •New Jersey had 2.7 million housing units in 1980 and 3.1 million units in 1990, according to the U.S. Census Bureau •The Second Round Prospective Need was cumulative back to 1987 and covered the 12 year period 1987-1999 Sources: N.J. ADMIN. CODE § 5:92, app. A; N.J. ADMIN. CODE § 5:93, app. A.			

The formulaic approach employed extensive data, assumptions, projections, analyses, and number crunching for six housing regions, 21 counties and 566 municipalities. The complex formula required data on: journey-to-work patterns, existing housing quality (year built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer, and water), housing rehabilitation, household income, population projections, headship rates, household formation projections, housing price filtering, residential conversions, housing demolitions, equalized nonresidential property valuation (ratables), and undeveloped land. The resulting municipal housing obligations ranged from zero to a statutory cap of 1,000 affordable units.

Beginning in mid-1991, Professor Payne and other *Mount Laurel* advocates debated internally and proposed the growth share concept informally to COAH staff and Council members. Two considerations prompted this advocacy.

First, the formulaic approach produced confusion and cynicism due to its complexity and opacity, and consequently failed to rally the

political support needed to sustain an unpopular, judicially driven policy that interfered with local land use prerogatives. By contrast, the simplicity of growth share appealed intuitively. The first purpose of growth share then was to simplify fair share calculation and implementation.

Second, while considerable affordable housing production had eventually occurred in the post-*Mount Laurel II* years, housing advocates noted extensive residential and nonresidential development had taken place around New Jersey without commensurate affordable housing development. Increasing affordable housing production was the second motivation for advocating growth share.

COAH decided in 1994, however, to retain the formulaic approach for its Second Round, for several reasons. First, COAH questioned whether growth share would result in quantifiable housing obligations, which COAH believed *Mount Laurel II* and the Fair Housing Act anticipated. Second, COAH believed growth share might reinforce the exclusionary zoning practices that *Mount Laurel II* attempted to cure. Third, COAH was concerned that growth share would require costly, staff-intensive monitoring, to track growth in municipalities and resulting growth shares. Fourth, COAH questioned where and how the required affordable housing would be built under growth share. As its First Round ended in 1993, COAH, and its Rutgers consultants, ultimately merely tinkered with its formula to produce and promulgate Second Round numbers in mid-1994.

In 1997 New Jersey's major statewide affordable housing, environmental, and smart growth organizations, local nonprofit community development corporations, and a handful of engaged individuals, including Professor Payne, joined to found a new advocacy group, the Coalition for Affordable Housing and the Environment ("CAHE").⁴ Its name summed up its mission: a just and sustainable New Jersey, based in part on supporting the original tenets of the *Mount Laurel* doctrine to ensure sound planning, environmental protection and affordable housing opportunities. CAHE became the platform for Professor Payne's further development of and advocacy for growth share.

As COAH's Second Round drew to a close in 1999, without even a public proposal from COAH for a Third Round fair share methodology or allocations for the next six year cycle, CAHE developed, refined and discussed on several occasions during 2000-2001 with COAH leadership a detailed growth share proposal.

4. See COALITION FOR AFFORDABLE HOUSING & THE ENV'T, <http://www.cahenj.org/> (last visited Apr. 1, 2011).

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CAHE's goal was a simpler, fairer, more effective system of achieving constitutional housing obligations throughout New Jersey.

CAHE proposed a three-part municipal low- and moderate-income housing obligation. The first component was the "local need," i.e., the "present need" concept of *Mount Laurel II*, defined as the substandard housing in a municipality occupied by low- and moderate-income households, based on analyses of the decennial census.

The second component was the "growth share," defined as a share of the actual residential and nonresidential development in the municipality over the next six years. The residential share would be one-fifth of new residential development, measured by certificates of occupancy for housing units, and similar to the standard twenty percent set-aside of low- and moderate-income housing in private sector inclusionary development. The nonresidential share would be comparable and calculated by converting actual nonresidential development, measured by certificates of occupancy by square feet, into required affordable units. CAHE offered the example that one affordable unit could be required for every 2,000 square feet of completed nonresidential development.

To be fair to municipalities that had adopted and implemented compliant housing elements and fair share plans to satisfy their First Round and Second Round housing obligations for 1983-1999, CAHE proposed that a "prior regional share" be required of non-compliant municipalities consisting of the "prospective need" as calculated by COAH.

The CAHE rationale for growth share stressed that only fifty-eight percent of New Jersey municipalities were then addressing their *Mount Laurel* obligations either through COAH (269 municipalities) or Superior Court (about 65 municipalities). CAHE observed that significant affordable housing had been built and approved since *Mount Laurel II*: an estimated 25,000 new units built or under construction, 10,000 units rehabilitated, and 6,700 units financed by regional contribution agreements. But CAHE also observed that during the same period tremendous growth had taken place in New Jersey without corresponding affordable housing production: more than 600,000 residential building permits authorized during 1983-2000 and 58 million square feet of office-retail development built in just 1995-2000.

CAHE argued that more affordable housing would be built in the future in more municipalities under growth share by analyzing retrospectively what the growth share would have been had growth share been the mandated fair share methodology. Based on the 150,000 residential certificates of occupancy issued in New Jersey during 1995-2000, the resulting residential growth share would have

been 30,000 new affordable units. Based on the 58 million square feet of office-retail development completed in New Jersey in 1995-2000, the nonresidential growth share would have been 29,000 new affordable units. The combined retrospective theoretical growth share of 59,000 units would have been six times the rate of actual affordable housing production.

The CAHE proposal departed from formulaic share approach by not projecting the future number of new low- and moderate-income households that would be formed by region in New Jersey and need affordable housing, and by not allocating that need to 566 municipalities. Instead, CAHE advocated growth share as a mechanism to begin addressing a hardly addressed, much larger aspect of housing need, the so-called “cost-burdened” households—those with unaffordable housing costs that spend more than thirty percent of their income on housing. “Cost-burdened” households by far exceeded prospective need as calculated by COAH. Indeed, 689,575 (about sixty percent) of New Jersey’s existing low- and moderate-income households in 2000 were “cost-burdened.”⁵

The CAHE membership and other *Mount Laurel* specialists did not unanimously support growth share in 2000-2001. Since early 1997, Professor Payne participated in an informal “diner group,” over monthly breakfasts at the Princetonian Diner on Route 1, that candidly discussed broadly defined *Mount Laurel* issues, including COAH action and inaction and the evolving growth share proposal. Diner group regulars included the lawyers responsible for the original 1971 *Mount Laurel* litigation, planners who also served as *Mount Laurel* special masters as well as experts for municipalities and builder-plaintiffs, nonprofit housing advocates, and an inclusionary land developer and builder-plaintiff. Some of these *Mount Laurel* mavens argued that growth share was patently unconstitutional under *Mount Laurel II* and presciently warned that this approach was susceptible to manipulation by COAH and local governments that would choose to not grow to avoid further housing obligations, thereby undermining the *Mount Laurel* doctrine.

COAH, CAHE, and the New Jersey State League of Municipalities discussed informally and sporadically the growth share alternative for COAH’s Third Round methodology during 2000-2003. COAH indicated that it would be desirable, and perhaps required by the Fair Housing Act, that COAH estimate the statewide housing need and allocate that need to municipalities. Municipalities would then be required to meet as much of the housing need as would be required by the growth share approach. The League did not

5. Compiled from data from N.J. DEPT OF CMTY. AFFAIRS, CONSOLIDATED PLAN FY 2007 ACTION PLAN, HOUSING NEEDS DATA 66 (2007).

support the CAHE proposal, but agreed that a growth share concept should be part of the COAH Third Round methodology, as a municipality could then control, to some extent through its zoning power, the magnitude of growth within the municipality and concomitant housing obligations.⁶ COAH informally inquired of CAHE about a two-pronged approach: a fair share calculation and allocation to municipalities as in its first two rounds and a municipal growth share projection, with a municipal option as to which number to address. CAHE rejected a municipal option to choose a lower number since a major purpose of advocating growth share was to increase affordable housing production.

In the absence of public COAH action on a Third Round methodology, CAHE and some of its members publicly advanced the growth share concept beginning in mid 2001, garnering newspaper editorial support⁷ and judicial notice by the New Jersey Supreme Court,⁸ while COAH continued to delay even proposing formally a methodology.

After unprecedented years of delay, COAH finally, in part in response to a 2002 mandamus action brought by the Fair Share Housing Center,⁹ in October 2003 initiated rule-making proposing its Third Round Substantive Rules, including its new fair share housing methodology, calculations, and allocations for a Third Round extending from 1999 through 2014.¹⁰ COAH embraced some of the concepts and terminology of CAHE's 2000 growth share proposal, but essentially hijacked and expropriated the term "growth share" and advanced a municipal-friendly approach that confused and undermined *Mount Laurel* implementation.

COAH proposed a three-part Third Round definition of "fair

6. Letter from William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities, to Paul Christie, Executive Director, Coalition for Affordable Housing and the Environment (February 28, 2011).

7. Editorial, *Revise Mount Laurel: Don't Toss it Away*, HOME NEWS TRIBUNE (New Brunswick-Woodbridge), June 25, 2001.

8. Professor Payne and Susan J. Kraham, Esq. of the Rutgers Environmental Law Clinic, as counsel to amici Housing and Community Development Network of New Jersey, CAHE, et al., in *Toll Brothers v. West Windsor*, 803 A.2d 53 (N.J. 2002), a challenge to the builder's remedy under *Mount Laurel II*, introduced the growth share alternative in their brief. While not addressed directly by the Supreme Court majority, the opinion of Justice Stein, concurring in part and dissenting in part, praised "[t]he obvious virtue of a fair share calculation based on actual growth is that the municipalities best able to accommodate additional affordable housing units would bear the greatest burden of constructing those units, whereas municipalities not contemplating significant growth would bear a reduced burden." *Id.* at 100.

9. *In re* Failure of N.J. Council on Affordable Hous. to Adopt Third Round Fair Share Methodology and to Allocate Third Round Fair Share Obligations, No. A-5304-01T (N.J. Super. Ct. App. Div. 2004).

10. 35 N.J. REG. 4636 (Oct. 6, 2003).

share”: (a) a “rehabilitation share,” i.e., present need, (b) a “growth share,” defined as “the affordable housing obligation generated in each municipality by both residential and nonresidential development from 2004-2014 and represented by a ratio of one affordable unit of every ten housing units constructed plus one affordable housing unit for every thirty new jobs created within the municipality,” and a “remaining prior round obligation,” defining the “prior round” as the combined First and Second Rounds.¹¹ COAH projected statewide and regional prospective need for 1999-2014, as in its prior rounds, and then backed into its growth share ratios by projecting future housing-supply change and job growth in New Jersey by region for 2004-2014.¹² In effect, COAH calculated prospective need as in the past using the formulaic methodology, but then misleadingly called the result “growth share,” hijacking the term from the very different concept advanced publicly by CAHE. COAH also failed to publish and disclose critical data on which it based its proposed rules and “growth share” calculations.¹³

After extensive public comments, COAH re-proposed its Third Round Rules nearly a year later, in August 2004, and increased the growth share ratios to one affordable unit of every eight housing units constructed plus one affordable housing unit for every twenty-five jobs created in the municipality.¹⁴ In November 2004, after more extensive public comments, COAH finally adopted its Third Round Rules, adopting its proposed growth share definitions.¹⁵ By adding dubious adjustments and using questionable housing market filtering data in its formula, COAH almost magically reduced the prospective need to only 3,515 units per year, compared with 6,465 units per year it had determined to be prospective need only eight years earlier.

CAHE, Fair Share Housing Center, the New Jersey Builders Association, and others appealed the rules to the Appellate Division of Superior Court, some urging their invalidation. CAHE, represented again by Professor Payne and Susan Kraham, challenged COAH’s approach to growth share:

[I]n adopting its Third Round Rules, COAH has co-opted the concept of growth share. In place of a constitutional innovation that simplifies and makes more predictable *Mount Laurel* compliance, COAH has adopted a set of rules based on manipulated data and tortured explanations that unsuccessfully attempt to justify a bold

11. Proposed N.J. ADMIN. CODE 5:94-1.4, -2; 35 N.J. REG. 4639, 4641 (Oct. 6, 2003).

12. Proposed N.J. ADMIN. CODE 5:94, App. A; 35 N.J. REG. 4651-66.

13. Proposed N.J. ADMIN. CODE 5:94, App. A; 35 N.J. REG. 4651-66.

14. Proposed N.J. ADMIN. CODE 5:94-1.4, -2; 36 N.J. REG. 3778, 3780-81 (Aug. 16, 2004).

15. N.J. ADMIN. CODE 5:94; 36 N.J. REG. 5748 (Dec. 20, 2004).

decision to artificially reduce municipal housing obligations.¹⁶

CAHE appealed to maximize needed affordable housing, challenging COAH's decision to not require that twenty percent of all new housing be affordable (COAH required only eleven percent) and COAH's decision to exclude from the definition of growth job growth due to redevelopment. Other parties challenged growth share as unconstitutional. Municipal amici supported COAH's growth share rules.

In an unprecedented decision, the Appellate Division in January 2007 invalidated the core of COAH's Third Round Rules, ruling its approach to growth share as inconsistent with the *Mount Laurel* doctrine as articulated by the Supreme Court and codified in the Fair Housing Act, due to its failure to allocate regional housing needs among a region's municipalities and its lack of sufficient data on vacant developable land to demonstrate that the growth share ratios will generate enough affordable housing to meet the statewide and regional housing need.¹⁷ The court also ruled that "[a]ny growth share approach must place some check on municipal discretion" so as not to permit municipalities with vacant developable land and jobs to allow only modest growth and thereby incur only a modest fair share obligation.¹⁸

The Appellate Division remanded amending the rules to COAH, directing that the process be completed in six months.¹⁹ After delays, extensions, and in effect a re-proposal,²⁰ COAH adopted its second version of Third Round Rules twenty months later, in September 2008.²¹ COAH maintained but recast its concept of growth share, extending the term of its Third Round by four years to an incredible nineteen years, from 1999-2018.²² COAH increased the residential growth share ratio to one affordable unit among five housing units (the equivalent of a twenty percent set-aside) and the nonresidential development ratio to one affordable unit for every sixteen newly

16. Brief for Petitioner at 2, *In re* Adoption of N.J.A.C. 5:94 and 5:95 by the N.J. Council on Affordable Hous., No. A1960-04-T3, (N.J. Super. Ct. App. Div. Nov. 2, 2005).

17. *In re* Adoption of N.J.A.C. 5:94 and 5:95 by the N.J. Council on Affordable Hous., 914 A.2d 348, 382-83 (N.J. Super. Ct. App. Div. 2007).

18. *Id.* at 381.

19. *Id.* at 402.

20. COAH proposed its new version of Third Round Rules in January 2008 at 40 N.J. REG. 237. COAH initially adopted its revised Third Round Rules on May 8, 2008, at 40 N.J. REG. 2690, but proposed extensive amendments only one month later on June 16, 2008, at 40 N.J. REG. 5965.

21. N.J. ADMIN. CODE 5:97; 40 N.J.R. 5965.

22. May 06-08 COAH Adopts New Third Round Rules, STATE OF NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, <http://www.state.nj.us/dca/news/2008/approved/080506.html>.

created jobs.²³ COAH, and its consultants from the University of Pennsylvania and a private economic analysis consulting firm, developed new projections of low- and moderate-income housing need, as well as housing unit and jobs growth for 2004-2018. They then allocated projected housing growth, projected job growth, and resulting “projected growth share” to all 566 municipalities by a complex “black box” model that considered updated vacant land analyses to measure growth capacity and vied with the First and Second Round methodologies in its impenetrability. Despite allocating housing obligations to municipalities, as with its prior rounds’ formulaic approach, COAH persisted in labeling the prospective need “growth share.”

While the revised Third Round Rules and an accompanying COAH publication allocated a nineteen-year statewide prospective need of 103,908 low- and moderate-income units to municipalities, the COAH Rules and pronouncements of the COAH chair conflicted on the critical issue of the extent to which municipalities were responsible for their full COAH-allocated “projected growth share obligation,” i.e., prospective need.²⁴ While the Rules provided elaborate details on counting actual growth share and adjustments and exclusions that had the effect of reducing municipal prospective need obligations, the Rules also provided explicitly that if the actual growth share was less than the COAH-allocated “projected growth share,” the municipality was nevertheless responsible for continuing “to provide a realistic opportunity for affordable housing to address the projected growth share, through inclusionary zoning or any of the [compliance] mechanism permitted by [COAH Rules].”²⁵ But the methodological appendix to rules advised: “[M]unicipalities incur affordable housing obligations when local housing units and jobs increase.”²⁶ Also, the Commissioner of the New Jersey Department of Community Affairs, who also serves as the ex-officio Chair of COAH, repeatedly and publicly made clear that the revised Third Round Rules were to be interpreted in the same unconstitutional manner as the invalidated first version of growth share, COAH style:

[A] municipality is only responsible for building affordable housing when they [sic] have built market rate housing and commercial development.”²⁷

23. *Id.*

24. COAH, REHABILITATION SHARE, PRIOR ROUND OBLIGATION & GROWTH PROJECTIONS EFFECTIVE OCTOBER 20, 2008, <http://www.state.nj.us/dca/affiliates/coah/regulations/thirdroundregs/obligations.pdf> (last visited Apr. 1, 2011).

25. N.J. ADMIN. CODE 5:97-2.5(e) (2011).

26. N.J. ADMIN. CODE 5:97, App. A (2011).

27. Press Release, New Jersey Department of Community Affairs, DCA Commissioner Doria: Setting the Record Straight About COAH (Sept. 30, 2003)

“With regards to affordable housing, you only build it when other types of growth, like non-residential commercial development and market rate housing, have taken place. The COAH process is tied to a growth share method, so if no growth is taking place in your community, and given these difficult times I would imagine limited growth has occurred, then you are not responsible for building affordable housing.²⁸

By misleadingly labeling an allocation of municipal prospective need a “projected growth share,” and then denying any municipal responsibility for the allocated fair share, COAH destroyed any credibility for the pure growth share concept championed by Professor Payne and CAHE, as well as confused and set back compliance with the *Mount Laurel* doctrine.

Not surprisingly, the Fair Share Housing Center and New Jersey Builders Association, as well as the New Jersey State League of Municipalities, several coalitions of municipalities, and other parties again appealed the revised, 2008 Third Round Rules. In October 2010, the Appellate Division once more partially invalidated the COAH Third Round Rules, criticizing again COAH’s approach to growth share on the same grounds as the 2007 invalidation, but this time directing the agency on remand to calculate and allocate to municipalities Third Round prospective need obligations using the prior round methodology with updated data within five months.²⁹ On a motion by COAH, the Supreme Court stayed this recalculation and allocation of prospective need in January 2011.

Meanwhile, widespread dissatisfaction with COAH prompted legislative and gubernatorial responses in 2010-2011, culminating in Governor’s Christie’s January 2011 conditional veto of S-1/A-3447, a self-executing radical amendment to the Fair Housing Act that would abolish COAH and require that ten percent of all housing in most municipalities be affordable to low- and moderate-income households,³⁰ which was then withdrawn by its State Senate sponsor.

The future of the pure growth share concept developed and promoted by Professor Payne is grim. It is a fair share concept whose time and place in the *Mount Laurel* saga has come and gone. The well has been poisoned by COAH’s actions over the lost decade plus

(quoting Commissioner Joseph Doria).

28. Press Release, New Jersey Department of Community Affairs, Commissioner Doria Addresses League of Municipalities (Jan. 14, 2009) (quoting Commissioner Joseph Doria).

29. *In re Adoption of N.J.A.C. 5:94 and 5:95 by the N.J. Council on Affordable Hous.*, 6 A.3d 445 (N.J. Super. Ct. App. Div. 2010), *cert. granted*, 15 A.3d 325 (N.J. 2011).

30. Letter from Chris Christie, Gov. of N.J., to N.J. Senate (Jan. 1, 2011), *available at* http://www.state.nj.us/governor/news/news/552011/pdf/20110124_coah_veto.pdf.

of 1999 to the present. Some housing advocates pragmatically sought to salvage implementation of the *Mount Laurel* doctrine in 2010 by working with legislative leaders to fashion a new affordable housing system establishing different minimum requirements for affordable housing as a percentage of total housing in a municipality, based on different poverty levels, measured objectively by the percentage of school children receiving free and reduced price lunch. But that nuanced approach offended Governor Christie, who campaigned in 2009 promising to “gut COAH.”

Professor Payne himself, in his last writing on *Mount Laurel*, on the occasion of the 25th anniversary of *Mount Laurel II*, spelled out, in his inimitable, clear, fertile, and eloquent manner, a realistic yet likely effective approach for the future:

If we are to have a new beginning, some of the past and its mistakes will have to be let go. In all likelihood, obligations back to 1986 that have not been addressed thus far have a declining likelihood of being addressed in the future, even though excusing these obligations indirectly rewards municipalities for their past recalcitrance. One possible way of improving future compliance without totally ignoring past failures would be to layer a simple fair share obligation based on actual growth (the “true” growth share I have referred to), over a modest threshold requirement for low- and moderate-income housing, such as the 10 percent in Massachusetts’ Chapter 40B, that all municipalities are required to meet. This would address the exclusionary zoning concerns of *Mount Laurel I* and *Mount Laurel II*, capture some of the unmet obligation of prior rounds, and insure that future growth does not leave poor people behind.³¹

31. John M. Payne, *The Unfinished Business of Mount Laurel II*, in *MOUNT LAUREL II AT 25: THE UNFINISHED AGENDA OF FAIR SHARE HOUSING* 5, 16 (Timothy Castano & Dale Sattin eds., 2008).