



August 5, 2021

Via E-mail and hand delivery

Doug Ruccione
Township Clerk
Teaneck Township Municipal Bldg.
818 Teaneck Rd.
Teaneck, NJ 07666
druccione@teanecknj.gov

Re: Petition Initiating an Ordinance Authorizing the Establishment of a
Community Energy Aggregation Program that Creates an Option for 100%
Regionally Sourced Renewables.

Dear Mr. Ruccione:

We are writing to you on behalf of Food & Water Watch, the sponsor of the aforementioned ordinance, and the Committee of Petitioners, in response to your letter on August 4, 2021, refusing to accept 614 electronically collected petitions, because they were submitted on July 15, 2021, after the expiration of the Governor's Public Health Emergency. As detailed below, this refusal is contrary to the law, the Governor's two executive orders establishing the right of citizens to electronically collect signatures and submit petitions during the COVID-19 public emergency, and the practice of several municipal clerks throughout the State. Accordingly, we respectfully request that you accept these signatures as both lawfully collected and submitted.

We take as our starting point that the political power of New Jersey voters to initiative and referendum is a statutory right. Wright v. South Orange, 79 N.J. Super. 96 (App. 1963) (stating that non-Faulkner community had no right of referendum, and there was no constitutional violation).¹ The New Jersey Supreme Court has acknowledged the importance of

¹ As you know, New Jersey's referendum laws--which grant citizens the right to initiate ordinances, to repeal ordinances and/or to approve or disapprove ordinances proposed by local government were the product of a larger reform movement during the Progressive Era of the late Nineteenth and early Twentieth Centuries that promoted direct democracy "as an antidote against

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such statutory right by consistently directing courts to liberally construe the statutes that provide such rights in a manner that promotes their “beneficial effects.” D’Ercole v. Mayor and Council of Norwood, 198 N.J. Super. 531 (App. Div. 1984) (quoting Retz v. Mayor & Council Tp. of Saddle Brook, 69 N.J. 563 (1976)); see also Redd v. Bowman, 223 N.J. 87 (2015) (applying a liberal construction and flexibility to promote purpose); In re Petition for Referendum on Trenton Ordinance 09-02, 201 N.J. 349 (2010) (same); Ordinance 04-75, *supra*, 192 N.J. at 446 (same). The right of referendum is direct democracy in its purest sense, allowing citizens to take an appeal above the heads of their elected officials and directly to the voters who can then approve or reject the ordinance at the polls. See In re Trenton Ordinance 09-02, *supra*, 201 N.J. at 353 (stating that referendum power is an exercise in democracy that profoundly affects the relationship between the citizens and their government by affording the people the last word).

These principles of participatory democracy and liberal construction of initiative and referendum laws informed the Governor’s executive orders during the emergency and must govern your interpretation thereof.

In order to permit the petitioning process to continue safely, the Governor issued Executive Order 132 (“EO 132”) on April 29, 2020. He issued that EO after declaring that the COVID-19 pandemic was not just an un-precedented threat to the lives and health of New Jersey citizens, but also presented “the reality that exercising their statutory right to engage in direct democracy through collecting or filling out petitions may endanger their health and safety.” In order to facilitate the signature process and “help limit unnecessary person to-person contact[,]” the EO allowed voters to fill out and submit initiative and referendum petitions electronically, employing a template form suggested by the state. EO 132 at ¶¶ 1-2. The EO also suspended all other Faulkner Act requirements for the collection, verification, and notarization of signatures submitted during the pendency of the emergency. *Id.* ¶ 4.

On January 25, 2021, the Legislature codified EO 132, but it also made some important changes. It expressly extended EO 132 so that it would “be implemented to include any pending petition . . . for any other election taking place thereafter for the duration of the COVID-19 Public Health Emergency and State of Emergency declared by the Governor under Executive Order No. 103 (2020).” P.L. 2020, Ch. 55 §1.a. Likewise, instead of simply suspending the Faulkner Act’s requirements for the collection, verification, and notarization of signatures submitted during the Public Health Emergency, as EO 132 ¶ 4 had, the law imposed a duty upon clerks to develop “electronic procedures for signature verification, petition notarization, and submission of oaths to meet the requirements of current law.” *Id.* at § 1.c. It should be noted that pursuant to § 1.b.3, clerks were also directed to accept, either electronically or in person, handwritten signatures that were collected prior to the effective date of EO 132.

special-interest control of the legislative process.” Tumpson v. Farina, 218 N.J. 450, 454 (2014). It is through the petition processes provided in the various acts, including the Faulkner Act, that a majority of New Jersey residents can now engage in the referendum process, allowing them “the right to [initiate] or test a challenged ordinance in the crucible of the democratic process.” In re Petition to Repeal Ordinance 04-75, 192 N.J. 446, 450 (2007) (“Ordinance 04-75”).

The Governor followed suit on the passage of this law by extending and expanding upon EO 132 with Executive Order 216 (“EO 216”). It pointedly directed clerks, in no uncertain terms, that they must still allow electronic petition submissions and “shall accept petitions . . . collected via an online form created by the Secretary of State.” EO 216 ¶ 2. It also imposed a duty upon clerks to develop electronic procedures for signature verification, petition notarization, and submission of oaths, in accord with P.L. 2020, Ch. 55. *Id.* at § 1.c. Finally, it declared that the order “shall take effect immediately and shall apply to any petition that is due or may be submitted during the Public Health Emergency, first declared in Executive Order No. 103 (2020).” What was important about EO 216 is that it permitted petitions to be circulated in person with handwritten signatures that could be submitted in person—something explicitly prohibited by EO 132.

On June 4, 2021, the Governor signed P.L. 2021, Ch. 103 (C. 26:13-22 et. seq.) and then signed Executive Order 244 (“EO 244”) that terminated the Public Health Emergency but maintained the State of Emergency. Pursuant to P.L. 2021, Ch. 103, all previous executive orders, with few exceptions, were set to “expire 30 days from the effective date of this act.” As a result, EO 216 remained in effect until July 4, 2021. That is, petitioners could collect electronic signatures and could submit petitions to the clerk electronically until that date. After July 4, 2021, petitioners could no longer collect electronic signatures and clerks could no longer accept petitions electronically; in this way, electronic signatures collected prior to and on July 4 were deemed valid, though after that date, they could no longer be submitted electronically to the petition’s respective filing officer.

In your August 4, 2020, letter, your office indicates that it rejected more than 614 electronically collected signatures because Executive Order 244 and P.L. 2021, Ch. 103 terminated “as of July 4, 2021, the relaxation of petition requirements, which permitted my office to accept electronic signatures...” But, as indicated above, neither EO 244 nor P.L. 2021, Ch. 103 terminated the “relaxation of petition requirements” so as to prevent your office from accepting electronic signatures. It just said that collection of electronic signatures would no longer be valid and clerks would no longer have the authority to accept any petition electronically after 30 days from June 4.

Indeed, we are aware of electronically collected petitions that were submitted after July 4 in Piscataway, New Brunswick, North Brunswick, Long Branch and Woodbridge, where clerks have accepted paper printouts of electronic petitions, so long as the audit trail indicated that they were signed on or before July 4.

Emphatically, EO 216, remained in full force and effect until July 4, allowing the electronic collection of signatures until that date. Nothing in EO 216 indicates that electronic signatures had to be submitted during the Public Health Emergency in order to be deemed valid, nor does EO 216 have any cut-off date for the clerk’s acceptance of such signatures. It merely stated in ¶ 2 that electronically collected signatures and handwritten petitions must be accepted by all clerks.

The clerk’s interpretation of the relevant executive orders and laws to the contrary makes little sense. It allows the valid collection of electronic signatures before July 4, only to have

them become invalid immediately upon submission at a later date. This undermines the Faulkner Act, which itself has no due date for petition signatures collected pursuant to an initiative effort, as courts have allowed the submission as late as 18 months after the collection “in the absence of an express legislative direction and in view of the liberality to be accorded” the Falkner Act. D’Ascensio v. Benjamin, 137 N.J. Super. 155 (Ch. Div. 1975), *aff’d*, 142 N.J. Super. 52 (App. Div. 1976). Accordingly, it makes no sense why P.L. 2020, Ch. 55 and EO 216 would require clerks to establish procedures for signature verification, petition notarization, and submission of oaths for electronic signatures, only to immediately render such procedures invalid, *sub silencio*, by lifting the Public Health Emergency. Simply put, the signatures are not “stale”, and their validity did not expire when EO 216 expired. They are valid signatures that must be counted; and, if submitted after July 4, they must be printed out and hand delivered to the clerk.

There is little doubt that your interpretation creates an obstacle out of whole cloth to prevent the collection and submission of signatures under the Faulkner Act. This undermines the spirit and intent of EO 216 ¶ 8 that declared that “no municipality... shall enact or enforce any order, rule, regulation, ordinance, or resolution that will or might in any way conflict with any of the provisions of this Order, or that will or might in any way interfere with or impede its achievement.” As noted above, statutes and executive orders that govern the statutory right of initiative must be liberally construed to facilitate the petition process and encourage voter participation in local government. See e.g., Redd v. Bowman, *supra*, 223 N.J. at 87 (liberal construction and flexibility to promote public purpose); D’Ercole v. Mayor and Council of Norwood, *supra*, 198 N.J. Super. at 531(construed to promote “beneficial effects”).

Because this obstacle to FWW’s and the COP’s initiative petition is not permitted under the law, we respectfully request that you count the 614 electronically collected signatures previously submitted, and that the petition may be found sufficient, ready for Township Council review and consideration. In order to ensure that our proposed question is submitted to a referendum vote this November, we note that this matter must be dealt with expeditiously.

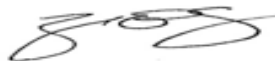
Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC
INTEREST LAW CENTER

/s/Renée Steinhagen
Renée Steinhagen, Ex. Dir.

-and

FOOD & WATER WATCH



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