



210 Park Avenue, Suite 301
Florham Park, NJ 07932
Tel: 973.635.6300 | Fax: 973.635.6363
marc.law

JOHN L. SHAHDANIAN II
Partner
Direct: 973.457.0257
Fax: 862.579.2366
Jshahdanian@marc.law

August 23, 2021

Via Electronic Filing

Hon. Gregg A. Padovano, J.S.C.
Bergen County Justice Center
10 Main Street, Room 331
Hackensack, NJ 07601

Re: Lacey, et al. V. Ruccione, et al.
Docket No. BER-L-5526-21
Our File No. T1210-001

Dear Judge Padovano:

Our Firm serves as Township Attorney for the Township of Teaneck and represents Douglas Ruccione, the Clerk of the Township of Teaneck in the above-captioned matter. Clerk Ruccione submits this letter brief in opposition to the application for an Order to Show Cause with Temporary Restraints filed by the plaintiffs, who are a Committee of Petitioners including, Theodora Lacey, Reshma Khan, Jeremy Lentz, Teji Vega and Loretta Weinberg (hereinafter the “Committee”).

Clerk Ruccione, a licensed civil servant who works arduously at his profession, has rejected the Committee’s improperly filed petitions. The Committee is seeking to file what the Committee purports to be a “2021 Direct Petition to Move the Date of Municipal Elections in the Township of Teaneck” (hereinafter referred to as “Petition”). The Committee has contorted the factual history of this matter to fit its misguided narrative. In fact, what has actually occurred, is

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 2

that the Committee has repeatedly submitted a deficient Petition which led to Clerk Ruccione's findings that the Petition is statutorily insufficient.

Despite the unsupported complaints of the Committee, Clerk Ruccione has done nothing but his duty, which has included the herculean task of reviewing thousands of petitions for accuracy, probably the most difficult job for any municipal clerk. Far from abusing his power he has corresponded with, met with and responded in a timely fashion to the Committee, and many of the individual signatories, at every turn. That the Committee is unhappy that Clerk Ruccione has denied their misguided attempt to create a right to file a so-called "direct petition" where none exists, is not a reason to abuse Mr. Ruccione personally or professionally.

The Committee's attempts to continually fit a square peg into a round hole by utilizing incorrect statutes is patently clear. Once this Court has the opportunity to fully review the Committee's legal arguments and review the applicable statutes and caselaw, it will be left with the same inescapable conclusion that Clerk Ruccione reached, *i.e.*, that the Committee utilized the incorrect statute in a misguided attempt to change the date of the nonpartisan Township elections from May to November.

TEANECK'S STATEMENT OF FACTS

1. The Township of Teaneck ("Teaneck") currently operates under a Council-Manager form of government under the Optional Municipal Charter Law ("Faulkner Act") and is also a municipality governed by the Uniform Nonpartisan Elections Law.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 3

2. Teaneck currently holds its nonpartisan regular municipal elections in May, every two years, and simultaneously holds its annual primary elections in June. Teaneck holds its partisan general election in November.

3. Doug Ruccione (“Clerk Ruccione”) is the official Township Clerk for the Township of Teaneck.

4. On May 26, 2021, Clerk Ruccione received an email from Ron Schwartz (“Schwartz”) explaining his role within One Town, One Vote (“OTOV”) and the groups purpose in “beginning an initiative to get a referendum on the ballot this November to change the date of the Teaneck municipal election from May to November.” Schwartz further explained that pursuant to the statute which OTOV was relying upon, **the group prepared a petition and proposed ordinance** for registered voters of Teaneck to sign. Schwartz further requested a meeting with Clerk Ruccione to review the proposed petition and ordinance and sought guidance on language and form of the petition along with the appropriate number of signatures needed. (Emphasis Added).
See Teaneck Exhibit 1.

5. As part of his May 26, 2021, email to Clerk Ruccione, Schwartz attached the original petition and proposed ordinance. *See Teaneck Exhibit 2.* It is clear from the email and attached documents that the Committee was aware from its outset that an ordinance was required with the petition to move the date of the election. *See Teaneck Exhibit 2*

6. On May 27, 2021, Clerk Ruccione responded and confirmed receipt of the materials and relayed to Schwartz that the Township Attorney, John L. Shahdanian II, Esq. (“Mr. Shahdanian”), was reviewing the draft petition. Ruccione suggested that a Zoom call be held

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 4

with the Township Attorney and the representatives of OTOV to further discuss the petition. *See Teaneck Exhibit 1.*

7. On May 28, 2021, Schwartz responded to Clerk Ruccione confirming a Zoom call and asked for Ruccione to provide him with the number of signatures needed for the petition. Schwartz further explained that OTOV calculated that the amount needed was 791 based on 10% from the 2019 General Assembly elections. Clerk Ruccione confirmed to Mr. Schwartz that 10% of the votes from the 2019 General Assembly elections was 791, however, he made clear that he was not sure that 10% was the correct minimum number of signatures needed according to the statute. When initially reviewing the Petition, Clerk Ruccione was utilizing the statute cited by the Committee, *i.e.*, *N.J.S.A. 40:69A-25.1*. Clerk Ruccione was not commenting on the correct legal standard for the Petition, but merely the mechanics of the 10% requirement found in certain election laws. *See Teaneck Exhibit 1.*

8. Although Clerk Ruccione's email from May 28, 2021, confirmed that 10% from the 2019 General Assembly Election was 791, his confirmation was purely factual based on a calculation, and did not constitute an admission that 10% from the 2019 General Assembly election represented the appropriate number of signatures needed. In fact, Ruccione expressed doubt to the Committee regarding the minimum number of signatures required by the statute (*N.J.S.A. 40:69A-25.1*) which they were using. Further, at the June 16, 2021, meeting, the Committee was specifically told that Ruccione was not able to provide legal advice or guidance. *See Teaneck Exhibit 1. See also Certification of Scott D. Salmon submitted in support of Plaintiffs' Order to Show Cause (Hereinafter "Salmon") at Exhibit A.*

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 5

9. On June 1, 2021, Schwartz wrote to Clerk Ruccione and indicated that the Committee had consulted with an attorney and that they “redid the petition.” Schwartz enclosed a copy of the newly drafted petition, which intentionally omitted the original ordinance, but still stated that it relied upon *N.J.S.A. 40:69A-25.1*. *See Teaneck Exhibit 3*.

10. On June 16, 2021, Ruccione, along with Township Attorneys Mr. Shahdanian, and William F. Rupp, Esq. (“Mr. Rupp”), met in person, with several members of OTOV and their legal counsel at the Teaneck Municipal Building. During that meeting, OTOV was explicitly told that Mr. Ruccione could not provide OTOV with legal advice or legal guidance in regard to the Petition. *See Certification of Scott D. Salmon submitted in support of Plaintiffs’ Order to Show Cause (Hereinafter “Salmon”)* at Exhibit A. *See also Salmon* at Exhibit A.

11. At no time during that meeting did Clerk Ruccione advise the Committee as to how many signatures were required for their Petition. In fact, a question was raised by Mr. Rupp as to the correct number of signatures and no resolution of that question ever occurred. *See Salmon* at Exhibit A.

12. On June 26 and June 28, 2021, Clerk Ruccione received emails from Schwartz regarding Schwartz’s understanding and summary of the June 16, 2021, meeting. *See Salmon* at Exhibit A.

13. On June 28, 2021, Clerk Ruccione simply responded to Schwartz, thanking him for the recap. *See Salmon* at Exhibit A.

14. On July 9, 2021, Clerk Ruccione received the Petition from the Committee (the “Initial Petition”). *See Salmon* at Exhibit B.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 6

15. On July 29, 2021, Clerk Ruccione issued a Notice of Insufficiency regarding the Initial Petition to the Committee explaining that: (1) The number of signatures submitted was insufficient under any potentially applicable statute. Clerk Ruccione indicated that as the Petition states that it was submitted in accordance with *N.J.S.A. 40:69A-25.1*, that pursuant to *N.J.S.A. 40:69A-25.1(a)(2)* the number of signatures needed must be equal in number to at least 25 percent of the total votes cast in the municipality at the last election at which members of the General Assembly were elected; and (2) That the form of the Petition was insufficient, in that an ordinance should have been included if the Committee intended to rely upon the Uniform Nonpartisan Elections Law statutes including *N.J.S.A. 40:45-7.1* and *N.J.S.A. 40:69A-184*. See *Salmon* at Exhibit C.

16. Ruccione's findings in the Notice of Insufficiency were based around the fact that the Committee submitted the Initial Petition in accordance with *N.J.S.A. 40:69A-25*, which was made explicitly clear on the face of the Petition. See *Salmon* at Exhibit B.

17. It is also clear that the Committee knew that the number of signatures on a petition initiated under *N.J.S.A. 40:69A-25* must be equal in number to at least 25 percent of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, since they were made aware of the 2019 change to Assembly Bill 5404 which required 25% and dismissed such change without any explanation. Further, other Teaneck residents had pointed out the 25% requirement to the Committee and advised them of the amendment to the statute in 2019 created by Bill 5404. See *Teaneck* Exhibit 10.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 7

18. Within the Notice of Insufficiency, Clerk Ruccione further stated that the electronic signatures submitted by the Committee were invalid based on Governor Murphy's Executive Order 244, which was supplemented by P.L. 2021, C.103. The Executive Order terminated the Public Health Emergency and the relaxation of petition requirements, which included the use of electronic signatures, as of June 4, 2021, and P.L. 2021, C.103 extended the operating period for certain executive orders (including the EO's relating to electronic petitions for 30 days, to wit: July 4, 2021. Ruccione explained that he received the Petition, with electronic signatures, past the July 4, 2021, deadline, thus they were invalid. *See Salmon* at Exhibit C.

19. Clerk Ruccione further determined that out of the 1,125 handwritten signatures, 653 were valid. Despite repeated claims by petitioners of improper conduct, handwritten signatures were rejected for one or more of the following reasons: 97 signatures came from non-registered voters or registered voters who were not residents of Teaneck; 322 signatures contained information that did not correspond with voter's registration information; 39 signatures were not fully completed; 9 signatures contained illegible information; and there were 5 duplicate signatures. Consequently, Clerk Ruccione advised the Committee that they had not submitted enough signatures with their Petition no matter which statute (25.1, the Uniform Nonpartisan Elections Law or *N.J.S.A. 40:69A-184*) they were utilizing to proceed. *See Salmon* at Exhibit C.

20. On August 4, 2021, Clerk Ruccione received an email from Scott Salmon, counsel for the Committee, asking for confirmation as to the date that a supplemental petition should be submitted to Teaneck. *See Teaneck* Exhibit 4.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 8

21. On August 5, 2021, Mr. Shahdanian responded to Salmon and explained that pursuant to the appropriate New Jersey Court Rule, the requisite timeframe permitted for the Committee to submit an amended petition to Teaneck would expire on August 8, 2021. However, as that date was a Sunday, and as the Clerk's Office was closed that day, the Township would extend the Committee's deadline to respond until Monday August 9, 2021. *See Teaneck* Exhibit 4.

22. On August 9, 2021, Clerk Ruccione received an amended petition (the "Amended Petition") from the Committee responding to the Initial Notice of Insufficiency. *See Salmon* at Exhibits F and G.

23. In support of the Amended Petition, on August 9, 2021, Clerk Ruccione also received a letter from Salmon requesting that he accept the electronic signatures and addressing all of the issues raised in the initial Notice of Insufficiency. Specifically, the Committee addressed the electronic signature issue, the signature verification process, that the Petition was being submitted as a "direct voter initiative" and insisted the need for an ordinance was obviated by the committee proceeding under *N.J.S.A. 40:69A-25.1* instead of *N.J.S.A. 40:69A-184*, which would require such an ordinance. *See Salmon* at Exhibit G.

24. On August 10, 2021, Clerk Ruccione received an OPRA request from Salmon for scanned copies of both the Initial and Amended Petition, in which Clerk Ruccione confirmed receipt of on that same day. Clerk Ruccione received an additional email from Salmon on August 17, 2021, at 8:02 p.m., stating his belief that Clerk Ruccione's response to the OPRA request was late and that if he did not receive the response the following morning, he would promptly file suit. Clerk Ruccione responded back to Salmon that same night and explained that his response

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 9

was not late pursuant to statute and that he would send the requested documents to Salmon the following morning, which he did. *See Teaneck* Exhibit 5.

25. On August 13, 2021, Mr. Shahdanian contacted Salmon and requested an additionally two days, until August 18, 2021, for Clerk Ruccione to review the Amended Petition and additional 2,000 signatures. Salmon responded to Mr. Shahdanian and advised that the Committee would only agree to permit Clerk Ruccione until August 17, 2021, to complete his review of the over 2,000 new signatures submitted with the Amended Petition. *See Teaneck* Exhibit 6.

26. On August 16, 2021, Clerk Ruccione advised Mr. Shahdanian that he would not be able to complete his review of the over 2000 new signatures by August 17th. Thus, on August 16th Mr. Shahdanian again contacted Salmon and requested an extension until the close of business on August 18, 2021. However, Mr. Shahdanian was advised by Salmon that unless Clerk Ruccione agreed to waive all other objections to the sufficiency of the Amended Petition aside from the number of signatures submitted, no further extension would be granted. Clerk Ruccione would not agree to said ultimatum. *See Teaneck* Exhibit 6.

27. While further review of the Amended Petition was still underway, but with no further extensions granted, Clerk Ruccione sent a second letter to the Committee explaining that as of 3:00 p.m. on Tuesday, August 17, 2021, he had completed the review of 655 of the newly submitted signatures that accompanied the Amended Petition. Of those signatures reviewed, it was determined that 482 were valid. While combining that number with the number of valid

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 10

signatures in the initial submission, the total number of valid signatures was 1,135. *See Salmon* at Exhibit H.

28. Despite the Committee's failure to recognize that the amendment review period of five days pursuant to *N.J.S.A. 40:69A-188* did not contemplate a municipal clerk reviewing 2000 signatures, Clerk Ruccione did not stop his count and advised the Committee that when the entire review was complete, he would provide the Committee with an updated correspondence reflecting the final signature count. The Committee *See Salmon* at Exhibit H.

29. Further within the same letter, Clerk Ruccione explained that the Committee had conflated *N.J.S.A. 40:69A-25.1* and *N.J.S.A. 40:45-7.1*, with the Committees continued reliance on *N.J.S.A. 40:69A-25.1* as the basis of the Petition. *See Salmon* at Exhibit H.

30. Clerk Ruccione explained that the applicable statute to change the municipal election date is *N.J.S.A. 40:45-7.1*, which requires an ordinance and further that *N.J.S.A. 40:69A-25.1* only applies to changes from non-partisan to partisan or vice versa. *See Salmon* at Exhibit H.

31. Clerk Ruccione further explained that any reasonable person reviewing the Petition would have been confused by the conflation of the two laws, and that the Petition was miswritten and confusing. *See Salmon* at Exhibit H.

32. As such, Clerk Ruccione was unable to certify the Amended Petition. *See Salmon* at Exhibit H.

33. Clerk Ruccione has received numerous emails from the Committee and Teaneck residents, regarding the Petition, and has responded to all such emails in a timely fashion.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 11

34. Further, simultaneous with the Committee's attempt to place their question on the ballot through direct initiative, another Committee of Petitioners ("Food & Water Watch"), who are represented by the same attorneys as the Committee, have also attempted to certify a petition and place a question on the ballot for the November 2, 2021, election. Interestingly, however, despite having the same legal counsel who was present at the meeting with Clerk Ruccione as aforementioned in Paragraph 16, Food & Water Watch did not proceed with a direct initiative, but rather, submitted an ordinance as required by *N.J.S.A. 40:69A-184*. Therefore, it is clear that the Committee, having the same legal counsel as Food & Water Watch, was well aware of the proper method to submit a petition for a ballot initiative and deliberately chose a different, and incorrect, procedure.

35. On August 20, 2021, Clerk Ruccione completed his review of the Amended Petition count and advised the Committee that of the newly submitted 2080 signatures, 1486 were deemed valid and the total number of valid signatures submitted by the Committee was 2139. *See Teaneck Exhibit 11.*

LEGAL ARGUMENT

I. A PRELIMINARY INJUNCTION IS AN EXTRAORDINARY REMEDY AND THE MOVING PARTY MUST MAKE THE REQUIRED SHOWING BY CLEAR AND CONVINCING EVIDENCE.

Plaintiffs' application treats preliminary injunctive relief as if it is granted as a matter of course. However, in reality, a preliminary injunction "is an extraordinary equitable remedy utilized primarily to forbid and prevent irreparable injury, and it must be administered with sound discretion and always upon consideration of justice, equity, and morality in a given case."

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 12

Coskey's Television & Radio Sales & Serv., Inc. v. Foti, 253 N.J. Super. 626, 639 (App. Div. 1992) (quoting *Zoning Bd. of Adj. of Sparta Tp. v. Service Elec. Cable Television of New Jersey, Inc.*, 198 N.J. Super. 370, 379 (App. Div. 1985)). "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case, than the issuing of an injunction." *Moore v. Bridgewater Twp.*, 69 N.J. Super. 1, 26 (App. Div. 1961). "Not only should the right be clear, but the facts giving rise to the claim of right should be clear as well." *Id.*

Accordingly, New Jersey law requires a party seeking a preliminary injunction to demonstrate each of four separate prongs. The movant must demonstrate that: (1) injunctive relief "is necessary to prevent irreparable harm;" (2) the movant "asserts a settled legal right;" (3) the "material facts are uncontroverted" and the movant therefore has a reasonable probability of success on the merits; and (4) that the relative hardship of the parties in granting or denying the requested injunction weighs in favor of the movant. *Subcarrier Commc'ns, Inc. v. Day*, 299 N.J. Super. 634, 639 (App. Div. 1997) (citing *Crowe v. De Gioia*, 90 N.J. 126, 132 (1982)); *Ispahani v. Allied Domecq Retailing USA*, 320 N.J. Super. 494 (App. Div. 1999) (affirming the trial court's denial of preliminary injunction on the basis that movant failed to demonstrate a likelihood of prevailing on the merits). Further, the movant must establish each and every element by "**clear and convincing proof**" in order to grant an injunction." *Subcarrier Commc'ns, Inc.*, 299 N.J. Super. at 639 (emphasis added); *Crowe*, 90 N.J. at 132-33.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 13

In the matter at bar, as will be demonstrated herein, the Committee fails on all four of the Crowe prongs. Consequently, this Court should dismiss their Order to Show Cause, deny the injunctive relief sought and, at best, set this matter down for a full plenary hearing at a later date.

II. THE COMMITTEE CONFLATED *N.J.S.A.* 40:69A-25.1 AND *N.J.S.A.* 40:45-7.1, THEREFORE, THEIR PETITION IS INCURABLY DEFECTIVE AND CANNOT BE SUBMITTED TO THE VOTERS OF TEANECK.

A. The Petition was initiated under *N.J.S.A.* 40:69A-25.1 *et seq.*, which only permits a municipality to change the form of its elections from nonpartisan municipal elections to partisan municipal elections.

The language of the Petition filed by the Committee makes clear that they intended to initiate a change to the municipal charter for the Township of Teaneck under *N.J.S.A.* 40:69A-25.1 (hereinafter “25.1”) The Petition states,

To the Municipal Clerk of the Township of Teaneck:

I, the undersigned, registered voter of the Township of Teaneck, Bergen County, New Jersey, hereby request that the following question to change the municipal charter of the Township of Teaneck, be submitted to the electorate for a vote in accordance with *N.J.S.A.* 40:69A-25.1, at the general election which next follows the submission of this petition:

Shall the charter of the Township of Teaneck, governed by the Council-Manager Plan of the Optional Municipal Charter Law, be amended, as permitted under that plan, to provide for the holding of nonpartisan general elections in November pursuant to the *Uniform Nonpartisan Elections Law*?

I, the undersigned, registered voter of the Township of Teaneck, Bergen County, New Jersey, further recommend that the following interpretive statement be submitted to the voters along with the question:

Interpretive Statement: The Township of Teaneck currently holds its *nonpartisan* municipal elections in May. This ballot question asks the voters whether they want to adopt

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 14

nonpartisan elections that would be held in November instead of May. If the voters say “Yes,” candidates for Township Council will appear on the November election ballot *without any political affiliation* and there will be no primary election for candidates for Township Council. In additions, *there will be clear separation on the general election ballot in November between the nonpartisan candidates for Township Council and the partisan candidates nominated by a political party for any other public office.* A “No” vote will result in the continuation of *nonpartisan elections* to be held in May. *(Emphasis added).*

As exemplified in the highlighted language of the Petition *supra*, the Committee advised the voters of the Teaneck that its goal was to maintain the nonpartisan nature of the elections. Unfortunately, because Committee, as stated on the face of the Petition, relied upon 25.1, the Petition is defective and deficient. 25.1 *only* permits a change from nonpartisan to partisan election or a partisan to a nonpartisan election, which is made clear by a simple review of the statute and its legislative history.

Under 25.1, a municipality that is governed by the Optional Municipal Charter Law (“Faulkner Act”) may, by referendum, amend its charter to include any alternative permitted under that plan of government. *See N.J.S.A. 40:69A-25.1(a).* The question of adopting an alternative may be initiated by the voters through a direct petition, which is subject to the pertinent provisions of *N.J.S.A. 40:69A-184 through 196*, the process followed by the Committee in the instant matter or may be submitted to the voters by ordinance adopted by the governing body. *Id.* Pursuant to the law, “any election at which the question of adopting an alternative is to be submitted to the voters pursuant to this section, the question shall be submitted in *substantially* the following form” *(Emphasis added)*. The form is as follows:

Shall the charter of _____ (insert name of municipality) governed by _____ (insert plan of government) be amended, as permitted

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 15

under that plan, to provide for _____ (insert appropriate language from below for the “alternative to be voted upon”). See *N.J.S.A. 40:69A-25.1(b)*.

Although 25.1 contains 5 separate potential alternatives for charter changes, the only alternative applicable in the instant matter is Group A which specifically contains only the following options:

- (1) “the holding of regular municipal elections in May;”
- (2) “the holding of general elections in November.” *Id.*

It is clear from the language of the statute cited by and relied upon by Committee, that the purpose of 25.1 is to amend a municipal charter. Indeed, the very section of that statute is entitled “Abandonment of an Optional Plan and Reversion to A Prior Form.” Had the Committee properly attempted to initiate a change to the municipal charter under 25.1, it would have resulted in changing the municipal elections from nonpartisan to partisan as the language from the “Group A” question of 25.1(b), would have read:

Shall the charter of the Township of Teaneck governed by the
Council-Manager Plan be amended, as permitted under that plan,
to provide for the holding of general elections in November.”¹

In their moving papers, the Committee makes repeated mistaken references *N.J.S.A. 40:69A-34.1*, which is Article 3 of the Faulkner Act, entitled “Mayor-Council Plan.” In fact,

¹ It is important to note that, both in the Petition itself and in all of their correspondence, Petitioners state that they do not intend to change Teaneck’s municipal elections from nonpartisan to partisan. However, since they initiated the Petition under *N.J.S.A. 40:69A-25.1* they would be required to follow the form set forth in the statute, which they utterly failed to do.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 16

Teaneck is governed by Article 9 of the Faulkner Act, *N.J.S.A.* 40:69A-81, which is entitled “Council-Manager Plan.” On July 12, 1988, pursuant to *N.J.S.A.* 40:69A-83.1, Teaneck adopted Ordinance 3158 which created its Charter and Administrative code, and which set forth that Teaneck would hold regular non-partisan May elections. Thus, pursuant to 25.1, the only Group A question permissible under the statute, would permit a change in the municipal election from a non-partisan “regular” May election to a partisan “general” in November. The question on the Petition, as submitted by Committee is defective in that it does not conform to the language provided for in *N.J.S.A.* 40:69A-25.1(b), which must be *substantially* followed. Since, the Committee clearly intended to change the municipal charter in accordance with 25.1, they are limited in choosing one of the two Group A alternatives stated *supra*. The Committee’s question added impermissible verbiage, specifically the word “nonpartisan” and the phrase “pursuant to the Uniform Nonpartisan Elections Law,” which clearly vitiates the intent of that particular statute which only provides for regular (nonpartisan) to general (partisan) election switches or vice-versa.

B. The Statutory History of *N.J.S.A.* 40:69A-25.1 Makes Clear That It Only Applies to changes from Nonpartisan to Partisan Elections or Vice Versa.

1. 2000 Senate Bill 1547/Assembly Bill 2819

Although the words partisan and nonpartisan do not appear in the language of *N.J.S.A.* 25.1, a brief review of the legislative history of the statute makes clear that the terms general election or regular election refer to a partisan (general) election or a nonpartisan (regular) election. By way of example, in 2000 Senate Bill 1547 and Assembly Bill 2819 were introduced,

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 17

which bills specifically would have permitted municipalities governed under the Optional Municipal Charter Law (Faulkner Act) to hold nonpartisan elections in November at the same time that general elections were held. Those bills expressly contained amendments to the Group A questions contained in *N.J.S.A. 69A-25.1(b)*, to include a third question, specifically “*the holding of regular municipal elections in November.*” (Emphasis Added) See Senate Bill 1547 and Assembly Bill 2819, State of New Jersey, 209th Legislature, Introduced September 21, 2000. Further, the statement attached to those bills reads as follows:

This bill would permit municipalities governed pursuant to the “Optional Municipal Charter Law,” P.L.1950, c.210 (C.40:69A-1 et seq.) to hold *nonpartisan elections in November at the same time that general elections are held.*

Under current law, municipalities operating under the “Optional Municipal Charter Law” may choose to hold *general (partisan) elections in November or regular municipal (nonpartisan) elections in May.* (Emphasis added).

Id. at Statement.

The proposed amendments from 2000 reveal that the New Jersey legislature understood, as far back as twenty years ago that *N.J.S.A. 69A-25.1* did not permit a municipality to, by direct voter initiative, change the date of its municipal elections and maintain either a partisan or nonpartisan form. What the 2000 bills importantly demonstrate, is the understanding of the legislature in drafting 25.1, and that the term “general election” as used in Section 25.1 refers to partisan elections and the term “regular elections” refers to nonpartisan elections. True and accurate copies of Senate Bill 1547 and Assembly Bill 2819 are attached hereto as *Exhibit 7*.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 18

The Committee cites to the unpublished decision of *Jersey City Civic Comm. V. Netchert*, in its moving papers and argues that in that case the court found that there was no distinction between “general” and “regular” elections. The court in the *Jersey City* decision was obviously not presented with the language of the proposed 2000 amendments to 25.1 as it stated that it could not find anything which defined a general election as being a partisan election. More importantly, that case is no longer controlling law because it pre-dated the 2019 amendments to 25.1, which amendments dealt directly with the general/partisan and regular/nonpartisan election issues.

2. 2019 Amendment to N.J.S.A. 40:69A-25.1.

Until 2019, no further amendments, of material significance, were made to N.J.S.A.40:69A-25.1. In 2019, however, 25.1 was modified by Chapter 161 (“Bill 5404”), which was approved on July 12, 2019. That amendment altered the provisions of the Optional Municipal Charter Law, specifically at 40:69A-25.1, to enhance the participation requirements necessary to change the manner of holding municipal elections. Importantly, in the explanatory statement which accompanies Bill 5404, the terms partisan and nonpartisan are used instead of the terms general and regular elections which are in the language of the statute. The language of the Comment where the Legislature chooses to use those terms interchangeably is telling:

This bill would modify the provisions of the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.), concerning the amendment of a municipal charter in order to enhance the participation requirements necessary to change the manner of holding municipal elections. It is the sponsor's belief that the process to propose a change to the manner of holding municipal elections should require a higher threshold than that required to make other types of changes to a municipal charter.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 19

Under current law, a proposed amendment to a municipal charter to change from partisan to nonpartisan elections, or nonpartisan to partisan elections, may be adopted by voter referendum. The public question may be either initiated by the voters by petition signed by at least 10 percent of the votes cast in the municipality at the last General Assembly election or submitted by the voters by ordinance approved by a simple majority of the municipal governing body.

The bill would require a proposed change to the manner of election to be either initiated by voter petition signed by at least 25 percent of the votes cast in the municipality at the last General Assembly election or submitted to the voters by ordinance approved by an affirmative vote of at least two-thirds of the fully constituted membership of the municipal council. (*Emphasis added*).

See P.L. 2019, Chapter 161, Statement 21-33. A true and accurate copy of Bill 5404 is attached hereto as *Exhibit 8*. As shown *supra*, it is beyond dispute that the drafters of Bill 5404, explicitly referred to the election changes as partisan and nonpartisan. Thus, as recently as two years ago the Legislature made clear its use of the terms “general elections” and “regular elections” are interchangeable with “partisan and “nonpartisan.”

Further, adopting an alternative under *N.J.S.A. 40:69A-25.1* could only logically refer to amending a municipal charter to change from partisan to nonpartisan elections or nonpartisan to partisan elections given the significant increase in votes required in the initiated voter petition through the passing of Bill 5404. The sponsors of Bill 5404 clearly understood, and articulated that it was their belief, that to change the core form of government should take a higher number of petitioners. Changing 25.1 in that manner makes clear that it does not apply to a simple change of the municipal election date. To further elucidate this point, one only need to look at the comments from Governor Murphy when signing Bill 5404. In signing Bill 5404, the Governor said, “People need to realize that when they want to change a form of government, they cannot

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 20

just do it at a whim. It needs to be thought out, and it has to be what is right for each community”

See Franklin, Chris, *The state just made it harder for citizen’s to change their town’s form of government*, NJ Advance Media for NJ.com, (July 28, 2019)

<https://www.nj.com/atlantic/2019/07/the-state-just-made-it-harder-for-citizens-to-change-their-towns-form-of-government.html>. Thus, the only rational conclusion to be drawn from the legislative history is that *N.J.S.A. 40:69A-25.1* refers to changing the form of government from partisan to nonpartisan or nonpartisan to partisan. Such a change is of a serious magnitude and should not done on a “whim.”

Based on the legislative history of *N.J.S.A. 40:69A-25.1* and the language utilized by the Legislature, it is clearly only applicable to a change from a nonpartisan to a partisan election. As a result, in the instant matter, the Petition is incurably defective. The Committee’s attempt to improperly comingle the language of the correct and applicable statute, *N.J.S.A. 40:45-5, et seq.*, with that of *N.J.S.A. 40:69A-25.1* must be denied by this court

C. Any reasonable voter who reviewed the Petition would have been confused by the Committee’s improper and illegal attempt to mesh *N.J.S.A. 69A-25.1* and the Uniform Nonpartisan Elections Law

The court in *City of Orange Tp. Bd. of Educ. v. City of Orange Tp.*, concluded that the law requires that the true purpose of the public question be expressed when voting at a public election. See *City of Orange Tp. Bd. of Educ. v. City of Orange Tp.*, 451 N.J. Super. 310, 324 (Ch. Div. 2017). In making this conclusion, the court relied on Title 19, which governs elections in New Jersey. Pursuant to *N.J.S.A. 19:3-6*, the form of a question shall be presented as follows:

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 21

Any public question voted upon at an election shall be presented in simple language that can be *easily understood* by the voter. The printed phrasing of said questions on the ballots shall *clearly* set forth the *true purpose* of the matter being voted upon. (*Emphasis added*).

See *N.J.S.A. 19:3-6*. Further, in *Empower Our Neighborhoods v. Torrasi*, which was relied upon by Committee in their letter dated, August 9, 2021, the court made clear that “the need for genuine and clear communication cannot be understated; voters must be sufficiently informed as to the material aspects of what they are being asked to endorse.” See *Empower Our Neighborhoods v. Torrasi*, Docket No. MID-L-10613-08 (Law Div. 2009), *aff’d on emergent appeal* (Sept. 23, 2009).

The instant Petition is unclear and does not allow for voters to be sufficiently informed as to the matter being voted upon. Although Committee has clearly and repeatedly stated that its intent is not to make Teaneck elections partisan, the Petition would do just that. That the Petition is unclear, and confusing is apparent from its very wording. First, the petition was initiated under 25.1, which as discussed *supra* is only an available mode of initiation when seeking to change from nonpartisan to partisan or vice versa. Then, within the question presented on the Petition, voters are told, without any citation, that the change is being made pursuant to the Uniform Nonpartisan Elections Law and it is made clear the Petition seeks to maintain a nonpartisan form of government. As such, voters would be undeniably confused as to what they were endorsing. Query whether voters were endorsing a change to the form of Teaneck’s municipal elections to create partisan elections? Or were they endorsing the change in date under the Uniform Nonpartisan Elections Law? It was impossible for voters to endorse both as suggested in the current form of the Petition.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 22

It is important to point out to the Court that the Committee overtly told the voters of Teaneck that it did not intend to make Teaneck elections partisan. The Committee's public Facebook postings on "OneTown OneVote" and on their website demonstrate the common theme that the Committee was supporting a nonpartisan movement. Website Screenshots and true and accurate copies of such Facebook posts are attached herein as *Exhibit 9*. The Committee's improper attempt to entangle 25.1 and the Uniform Nonpartisan Elections Law within the Petition only lead to confusion in interpretation amongst the voters of Teaneck and as the Petition is incurable defective the within Order to Show Cause should be dismissed.

D. The correct statute which the Committee should have used to change the municipal elections date is the Uniform Nonpartisan Elections Law, N.J.S.A. 40:45-7.1(a).

As described in detail *supra*, the Committee incorrectly initiated the Petition through N.J.S.A. 25.1. Unfortunately, for the Committee, the only permissible, legal mechanism to move the date of a nonpartisan election from May to November via voter initiative is found in the Uniform Nonpartisan Elections Law. That statute, states at N.J.S.A. 40:45-6 that it "shall govern all municipalities having adopted a plan or form of government, or a charter, which provides for the election of municipal officers at regular municipal elections held on the second Tuesday in May ... including municipalities holding regular municipal elections under the "Option Municipal Charter Law."

At N.J.S.A. 40:45-7.1, the statute states:

1.a. Any municipality governed by the "Uniform Nonpartisan Elections Law," P.L. 1981, c.379 (C.40:45-5 *et seq.*) may *by ordinance*, choose to hold regular municipal elections on

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 23

the day of the general election, the Tuesday after the first Monday in November.
(Emphasis added).

See *N.J.S.A.* 40:45-7.1. Therefore, despite the fact that Committee incorrectly argues that a “direct initiative” is appropriate under 25.1, it is clear from the aforementioned statute that they cannot initiate a change in the date of a nonpartisan election from May to November without an ordinance. Such an ordinance is, by statute, required to conform to the Optional Municipal Charter Law, *N.J.S.A.* 40:69A-184, *et. seq.* Pursuant to that law,

Voters of any municipality may propose any ordinance and may adopt or reject the same at the polls, such power being known as the initiative. *Any initiated ordinance may be submitted to the municipal council by a petition signed by a number of the legal voters of the municipality equal in number to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected.* An initiated ordinance may be submitted to the municipal council by a number of legal voters of the municipality equal in number to at least 10% but not less than 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, subject to the restrictions set forth in section 17-43 (C. 40:69A-192) of this act.
(Emphasis added).

See *N.J.S.A.* 40:69A-184. As further explained,

The voters shall also have the power of referendum which is the power to approve or reject at the polls any ordinance submitted by the council to the voters or any ordinance passed by the council, against which a referendum petition has been filed as herein provided. No ordinance passed by the council, except when otherwise required by general law or permitted by the provisions of section 17-32(b) of this act, shall take effect between twenty days from the time of its final passage and its approval by the mayor where such approval is required. . . *(Emphasis added).*

See *N.J.S.A.* 40:69A-185. The court in *Empower Our Neighborhoods v. Torrissi*, one of the seminal cases relied upon by the Committee, also reached the same conclusion when it determined that under *N.J.S.A.* 40:60A-186, an initiative petition requires an ordinance. See *Empower Our Neighborhoods v. Torrissi*, Docket No. MID-L-10613-08 (Law Div. 2009), *aff'd on emergent appeal*

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 24

(Sept. 23, 2009). There can be no dispute that an initiative petition along with an ordinance is one that is required under *N.J.S.A.* 40:45-7.1. Moreover, in *Empower our Neighborhoods*, the court further determined that an ordinance is only not required when the direct petition method is used, which methodology is *only* permissible under 25.1. *Id.* Since *N.J.S.A.* 40:69A-25.1 is the not applicable to changing a nonpartisan municipal election date, an ordinance was required to initiate the changes sought by the Committee.

Further, if *N.J.S.A.* 40:69A-25.1 were to permit the change of a nonpartisan municipal election date, then the Uniform Nonpartisan Elections Law would be irrelevant, and the legislative intent of the Uniform Nonpartisan Elections Law would be frustrated. Indeed, even the question submitted by Committee acknowledged that a change in a nonpartisan municipal election date must be done in accordance with the Uniform Nonpartisan Elections Law, when they stated in the Petition, "... holding of nonpartisan general elections in November *pursuant to the Uniform Nonpartisan Elections Law.*" (*Emphasis added*). For unknown reasons, the Committee seeks to initiate the change in election date under *N.J.S.A.* 40:69A-25.1, which is not the mode for change of an election date, but the mode to adopt a partisan form of government. The fact that Committee added into their question that they were seeking change pursuant to the Uniform Nonpartisan Elections Law, cannot cure the mistake that they made when they removed the ordinance included in their initial submission for review and proceeded by initiating under *N.J.S.A.* 40:69A-25.1.

The Uniform Nonpartisan Elections Law is the only law that would permit Committee to change the municipal election date to November and still maintain a nonpartisan government

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 25

election. According to *N.J.S.A. 40:45-7.1(a)*, a municipality governed by the Uniform Nonpartisan Elections Law may, by ordinance, choose to hold regular municipal elections on the date of the general election. *See N.J.S.A. 40:45-7.1(a)*. It is undisputed that Teaneck is governed by the Uniform Nonpartisan Elections Law since Teaneck has adopted a form of government which currently provides for the election of municipal officers at regular municipal elections held on the second Tuesday in May and currently holds regular municipal elections under the Optional Municipal Charter Law. *See N.J.S.A. 40:45-6*. The Optional Municipal Charter Law also requires at *N.J.S.A. 40:69A-150* that:

Regular municipal elections shall be held in each municipality on the second Tuesday in May, or on the day of the general election in November if chosen by the municipality pursuant to subsection a. of section 1 of P.L. 2009, c. 196 (**C. 40:45-7.1**), in the years in which municipal officers are to be elected, where the election of such officers is not provided to be at the general election. Regular municipal elections shall be conducted pursuant to the "Uniform Nonpartisan Elections Law," P.L. 1981, c.379 (C. 40:45-5 et seq.).

It would be not only inconsistent, but illogical for the Uniform Nonpartisan Elections Law to have a specific carve-out for nonpartisan municipalities to change their regular municipal elections date if such change were also able to be made through *N.J.S.A. 40:69A-25.1*.

E. The actions of Clerk Ruccione did not deprive Plaintiffs of a substantive right and were not arbitrary and capricious.

The Committee attempts to argue that the actions by Clerk Ruccione deprived the Committee of its substantive rights. In doing so, the Committee relies on the court's decisions in *Tumpson v. Farina* and *Fuhrman v. Mailander*. Although those cases accurately determine what constitutes

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 26

a substantive right and what it means for a clerk to act in an arbitrary and capricious, manner, the facts are entirely distinguishable from those in the instant matter. In *Tumpson*, the clerk *refused* to accept the filing of the referendum petition, thus requiring an order from the court for the clerk to process both the petition and amended petition to determine their sufficiency. *See Tumpson v. Farina*, 218, N.J. 450, 459 (2014). The court further determined that, “it is clear the municipal clerk does not have the discretion to *prevent the filing of a petition.*” (*Emphasis added*). *Id.* at 472. The court in *Tumpson* based their determination that plaintiffs were deprived of their substantive rights *solely* on the clerk’s *refusal* to accept the petition for filing. *Id.* In the instant matter, Clerk Ruccione did not refuse to accept the Committee’s petition. He accepted not only the Initial, but also the Amended petition to, “determine their sufficiency in accordance with the applicable statutes.” *Id.* at 459.

The court in *Fuhrman v. Mailander* reached a similar conclusion when it determined that “nothing in the statute suggests that the [municipal] clerk can *refuse to accept the petition for filing.*” (*Emphasis added.*). *See Fuhrman v. Mailander*, 466 N.J. Super. 572, 588 (App. Div. 2021). However, once the petition is filed, the municipal clerk must determine its sufficiency. “The filing of the petition with the Clerk triggers an inquiry into the adequacy of the petition.” *Id.* at 599. In absence of such a statutory direction, “a clerk has the discretionary power to adopt any rational means of performing his [or her] duty. *Id.* *See also D’Ascencio v. Benjamin*, 142 N.J. Super 52 (App. Div. 1976). Further, the *Fuhrman* court was tasked with making a determination of the facts after the election had already concluded. The court stated: “in the absence of malconduct or fraud, we cannot *overturn a concluded election* for an irregularity on the ballot unless in all human

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 27

likelihood the irregularity has interfered with the full and free expression of the popular will and has thus influenced the result of the election.” (*Emphasis added*). *Id.* at 589. In the instant matter, the election has not yet occurred, thus this Court is not tasked with overturning a completed election.

As previously discussed *supra*, Clerk Ruccione did not refuse to accept the filing of the Committee’s Initial or Amended Petition. Once it was filed, he spent days reviewing the submitted petitions which contained thousands of signatures. As the aforementioned cases universally state, the manner in which he reviewed the petitions is within the clerk’s sound discretion. Plaintiffs have been provided detailed letters of insufficiency from Clerk Ruccione which more than adequately demonstrated his rationale for not certifying the improperly constituted petitions.

Clerk Ruccione’s actions did not deprive plaintiffs of a substantive right, thus giving rise to their cause of action. In fact, the Committee deprived themselves of their substantive rights when they continued to rely upon *N.J.S.A. 40:69A-25.1*, which is the incorrect statute to utilize when seeking to change the date of a municipal election without interfering with the election’s nonpartisan nature. Thus, as Clerk Ruccione’s decisions were neither arbitrary nor capricious, plaintiffs request for summary judgement on their purported civil rights claims must be denied.

Hon. Gregg A. Padovano, J.S.C.
Docket No. BER-L-5526-21
August 23, 2021
Page 28

CONCLUSION

As discussed within the aforementioned sections of Teaneck's opposition and argument, there is no statute, New Jersey judicial opinion, or logical reason that would allow for the plaintiffs to prevail on their Order to Show Cause. Further, plaintiffs cannot prove, based on the undisputed facts, that their substantive rights were violated by Clerk Ruccione under the New Jersey Civil Rights Act, *N.J.S.A. 10:6-2 et seq.* As such, the Committee is not entitled to summary judgement on their civil rights claims.

Respectfully submitted,

/s/ John L. Shahdanian II

John L. Shahdanian II

JLS/bak

cc: Scott D. Salmon, Esq. (*via eCourts*)
Renée Steinhagen, Esq. (*via eCourts*)
Jaime Placek, Esq. (*via eCourts*)