

17 August 2021

Loretta Weinberg, 9 Millay Court, Teaneck, NJ 07666  
Theodora Lacey, 168 Stuyvesant Road, Teaneck, NJ 07666  
Jeremy Lentz, 493 Cumberland Ave, Teaneck, NJ 07666  
Teji Vega, 1118 Falmouth Ave, Teaneck, NJ 07666  
Reshma Kahn, 108 Audubon Road, Teaneck, NJ 07666

RE: 2021 Direct Petition to Move the Date of Municipal Elections in the Township of Teaneck - Amendment

## Township of Teaneck

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JOHN L. SHAHDANIAN II, ESQ.  
TOWNSHIP ATTORNEY

On July 9, 2021, your Committee of Petitioners, which includes Loretta Weinberg, Theodora Lacey, Jeremy Lentz, Teji Vega and Reshma Khan (hereinafter “Committee”) submitted a document to my office entitled “2021 Direct Petition to Move the Date of Municipal Elections in the Township of Teaneck” (hereinafter referred to as “Petition”) The Petition was accompanied by supporting documents including both electronic and handwritten signature pages totaling 1350 signatures.

After conducting a thorough and complete review of the Petition, on July 29, I wrote to the Committee and advised that as a result of my examination of the Petition signatures pursuant to N.J.S.A. 40:69A-187, I had determined that the Petition was insufficient. Specifically, the Petition was insufficient as the total number of valid signatures submitted did not meet the requirement for the statute cited by the Committee. Because of this baseline deficiency, the Petition was deemed insufficient, however, in the interest of full transparency, my office provided further guidance to the Committee based on our complete review. To wit, we alerted the Committee to several other deficiencies including, but not limited to 1) that the Committee relied upon an improper statute as cited in the Petition; 2) the Form of the Petition was defective as it appears as a question and not a required ordinance.

Thereafter, on Monday, August 9, 2021, the Committee filed a supplementary petition with a purported additional 2066 signatures. Pursuant to N.J.S.A. 40:69A-188, my office is permitted only five days to review such supplementary petitions. I note that the supplementary petition filed by the Committee contained 700 more signatures than the original filing for which we were statutorily permitted a twenty-day review period. Since receiving the supplementary petition, I have focused on little else. However, because I knew how long the review of the initial Petition took and because of the size of the supplementary petition, it was clear to me that I would not be able to complete a thorough and fair review within the statutory five-day review period ending on Monday, August 16, 2021.

Once I realized that the review could not be completed in five days, I advised the Township Attorney who contacted your attorney on Friday, August 13, 2021, to request two additional days to review – making the deadline Wednesday, August 18, 2021. At that time, the Committee agreed to provide my office, one additional day, until Tuesday, August 17, 2021, to complete my review of the supplementary petition. On Monday, August 16, 2021, I requested that the Township Attorney again contact your attorney and request additional time for review as I would not be able to conclude the review by close of business on August 17, 2021. The Township asked for one additional day to complete the review, however, your attorney advised that unless I agreed to waive all other

objections to the sufficiency of the Petition, aside from the number of signatures submitted, no further extension would be granted. Unfortunately, such an ultimatum could not be met.

Consequently, while the review continues, as of 3PM on Tuesday, August 17, 2021, my office has completed review of 655 signatures submitted with the supplemental petition. Of those signatures so reviewed, we have determined that 482 are valid. Combining this with the validated 653 signatures with the original submission, this brings the total of valid signatures right now to 1,135. When the entire review is complete, we will provide the Committee with an updated correspondence reflecting the final figures. We hope to have this over the next couple days.

As mentioned previously, in my letter of July 29<sup>th</sup> declaring the Petition as insufficient, I also raised other problematic issues. Unfortunately, the Committee seems to have ignored those warnings and, in the supplementary petition merely added additional signatures. Specifically, the Committee continues to rely upon N.J.S.A. 40:69A-25.1 (hereinafter “25.1”) as the basis for its claim to put a direct question on the ballot. Along with the supplementary petition, the attorney for the Committee submitted a cover letter in which the Committee refers to the Petition as a “direct initiative petition.” As I indicated in my July 29<sup>th</sup> letter, the Committee has conflated two distinct statutes. 25.1, which is entitled “Adoption of Alternative Provisions under Optional Plans-Amending Charter to include permitted alternative; referendum” and N.J.S.A. 40:45-7.1 which is entitled “Municipal elections, certain, change of date permitted.” That latter statute, which is clearly the applicable law and is part of the Uniform Nonpartisan Elections Law, requires that “any municipality may, **by ordinance**, choose to hold regular municipal elections on the day of the general election, the Tuesday after the first Monday in November.”

As noted in my July 29<sup>th</sup> letter, a review of the Petition, reflects this obvious defect. 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 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.

As set forth and highlighted in the language of the Petition above, the Committee has advised the voters of the Township its goal is to maintain the nonpartisan nature of the Teaneck elections. Unfortunately, because the Committee, as stated on the face of the Petition, has relied upon 25.1, the Petition is defective and deficient. 25.1 only permits a change from a non-partisan to a partisan election or a partisan to a non-partisan election. Indeed, the language of the statute makes that clear when it details, in pertinent part:

a.

(1) Any municipality governed by a plan of government adopted pursuant to P.L. 1950, c.210 (C.40:69A-1 et seq.) may, by referendum, amend its charter to include any alternative permitted under that plan of government. Except as provided in paragraph (2) of this subsection, the question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of, sections 17-35 through 17-47 (C.40:69A-184 through 40:69A-196); or may be submitted to the voters by ordinance adopted by the governing body, in which case the question and ordinance shall be subject to the pertinent provisions of sections 17-42 through 17-47 (C.40:69A-191 through 40:69A-196), except that no petition of the voters shall be necessary in order to submit the question.

(2)

**(a) The voters may initiate the question of amending the municipal charter to hold elections according to an alternative set forth in Group A. of subsection b. of this section pursuant to, and subject to the pertinent provisions of, sections 17-35 through 17-47 (C.40:69A-184 through 40:69A-196), however, the petition submitting the ordinance to the municipal council pursuant to section 17-35 of P.L. 1950, c.210 (C.40:69A-184) shall be signed by a number of the legal voters of the municipality 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.

(b) A governing body may submit to the voters a question to amend the municipal charter to hold elections according to an alternative set forth in Group A. of subsection b. of this section, subject to the pertinent provisions of sections 17-42 through 17-47 (C.40:69A-191 through 40:69A-196), however, the ordinance shall receive an affirmative vote of at least two-thirds of the fully constituted membership of the municipal council.

**b.**

At 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:

"Shall the charter of (insert name of municipality) governed by (insert plan of government) be amended, as permitted under that plan, to provide for (insert appropriate language from below for the alternative to be voted upon)?"

GROUP A.

- (1) "the holding of regular municipal elections in May;"
- (2) "the holding of general elections in November;"

25.1 also contains four other questions which voters can request to be placed on the ballot, none of which are relevant to the Petition.

As set forth in the language of the statute cited by and relied upon by the Committee, the purpose of that law is to amend a municipal charter. The pertinent language to the Petition is found at N.J.S.A. 40:69A-25.1 (b) under "Group A" which permits a direct question on a ballot which, if the intent was to change from nonpartisan to partisan, would read in this case "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." Teaneck currently holds regular non-partisan May elections. Thus, that specific question, which is the only one permissible under the statute reflects a choice to change a municipal election from a non-partisan to a partisan "general election" in November.

Although the words partisan and nonpartisan do not appear in the language of 25.1, a brief review of the legislative history of the statute makes clear that such is the meaning of the terms general (partisan) election and regular (nonpartisan) election. In 2000 an amendment to 25.1 was introduced in the Senate and Assembly, which sought to add a third question to Group A, specifically "the holding of regular municipal elections in November." The statement with the proposed bill 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” many choose to hold **general (partisan) elections in November or regular municipal; (nonpartisan) elections in May.**

That statement makes it unequivocally clear that the statutory reference to general elections is for partisan elections and the reference for regular elections is for nonpartisan elections. The fact that legislature sought to add a third question specifically to distinguish between regular municipal elections in November and one for the holding of general elections in November is also telling.

That 25.1 applies only to a switch from nonpartisan to partisan elections was bolstered again during the most recent amendment to 25.1, which occurred in 2019. In the Assembly Comment, the drafters of the amendment to 25.1, which raised the minimum number of signatories from 10% to 25% to change the date of the election from May to November, or vice versa, stated:

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. 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 to 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)

Based on the legislative history of 25.1 and the language of the drafters it is clearly only applicable to a change from a nonpartisan to a partisan election. Indeed, the Committee has improperly comingled the language of the applicable statute, N.J.S.A. 40:45-5, et seq. with that of 25.1. I have thusly determined that a direct voter initiative is not permissible under the applicable law. The correct statute, which the Committee should have used is the Uniform Nonpartisan Elections Law, specifically N.J.S.A. 40:45-7.1(a), which states that a municipality “may, **by ordinance**, choose to hold **regular municipal elections on the day of the general election, the Tuesday after the first Monday in**

**November.**”(emphasis added). In a Faulkner Act municipality such as Teaneck the voters have the right to initiate such an ordinance pursuant to N.J.S.A. 40:69A-184. That is not the statute utilized by the Committee or referenced on the Petition. Therefore, as set forth in my original letter the procedure and process utilized by the Committee is defective, as is the Petition.

Moreover, any reasonable person who reviewed the Petition would have been confused by the Committee’s improper and illegal attempt to mesh 25.1 and the Uniform Nonpartisan Elections Law together. A reasonable reader could easily be confused as to whether the Committee intended to make Teaneck’s elections partisan as that is the only change permitted by 25.1. As the Committee has clearly and repeatedly stated that, it is not their intent to make Teaneck elections partisan, the Petition is miswritten and confusing. For these reasons, following a thorough and complete review of the Committee’s Supplementary Petition, my office is unable to certify the Petition as submitted and will issue a final Certification of insufficiency pursuant to N.J.S.A. 40:69A-188.

Respectfully,  
The Township Clerk’s Office of the Township of Teaneck