



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 24, 2021

Via Electronic Filing

Hon. Robert C. Wilson, J.S.C.
Bergen County Justice Center
10 Main Street, Room 215
Hackensack, NJ 07601

Re: Food & Water Watch v. Ruccione, *et al.*
Docket No. BER-L-5566-21
Our File No. T1210-001

Dear Judge Wilson:

Our Firm serves as Township attorney for the Township of Teaneck and represents the Township of Teaneck ("Teaneck") and Douglas Ruccione ("Clerk Ruccione"), the Clerk of the Township of Teaneck, in the above-captioned matter. We submit this letter brief in opposition to the application for an Order to Show Cause with Temporary Restraints filed by the plaintiff's who are a Committee of Petitioners including, Elissa Schwartz, Bettina Hempel, Paula Rogovin, Lisa Rose, and Laurie Ludmer (hereinafter referred to as the "Committee").

Clerk Ruccione, a licensed civil servant who works arduously at his profession, has rejected the Committee's deficient petition. The Committee is seeking to file with what the Committee purports to be their Community Energy Aggregation Initiative Petition (hereinafter referred to as the "Petition"). The Petition submitted by the Committee was deficient in that it contained electronic signatures and was submitted after July 4, 2021, in contravention of the

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 2

expiration of the Public Health Emergency via Governor Murphy's Executive Order (hereinafter referred to as "EO") 244 and subsequent passing of P.L. 2021, Ch. 103.

Despite the unsupported complaints of the Committee, Clerk Ruccione has done nothing but his duty, which has included the herculean task of reviewing hundreds of petitions for accuracy, probably the most difficult job for any municipal clerk. Far from abusing his power he has corresponded with and responded in a timely fashion to the Committee, at every turn. That the Committee is unhappy that Clerk Ruccione has denied their misguided attempt to submit electronic signatures after the appropriate deadline, is not a reason to abuse Clerk Ruccione personally or professionally.

The Committee's attempt to interpret Governor Murphy's EO's deliberately and incorrectly and subsequent legislation in order to further their cause is patently clear. Once this Court has the opportunity to fully review the Committee's legal arguments and review the applicable statutes, case law and EO's, it will be left with the same inescapable conclusion that Clerk Ruccione reached, *i.e.*, that the Committee's submission of electronic signatures post July 4, 2021, is improper thus making their Petition defective.

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. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 3

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

3. Beginning on or about March 1, 2021, Clerk Ruccione was in communication with Samantha DiFalco (“DiFalco”), regarding the Petition that Food & Water Watch (“FWW”) intended to submit to Teaneck. *See Exhibits submitted in support of Plaintiff’s Order to Show Cause (Hereinafter “FWW”)* at Exhibit D.

4. As a municipal clerk, Clerk Ruccione, is under no duty to provide legal advice or guidance to the Committee in regard to the Petition. As such, although Clerk Ruccione expressed that the model petition provided to him seemed acceptable, he was unable to provide any information regarding the timeframe in which electronic signatures were to be accepted. Additionally, he was under no obligation to notify FWW or any other committee of petitioners that Teaneck would not accept electronic signatures submitted after July 4, 2021. *See FWW* at Exhibit D.

5. Clerk Ruccione also expressed to DiFalco that deadlines and number of signatures are not dictated by Teaneck but by State statute, thus making it clear that he was unable to provide legal advice or guidance regarding same. *See FWW* at Exhibit D.

6. On July 15, 2021, Clerk Ruccione received the Committee’s Initiative Petition with 877 signatures. 614 of those signatures were electronic signatures that were circulated prior to July 4, 2021. 263 signatures were handwritten signatures. *See FWW* at Exhibit J.

7. On August 4, 2021, Clerk Ruccione issued a Notice of Insufficiency to the Committee explaining his determination that the electronic signatures submitted by the Committee were

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 4

all invalid pursuant to Governor Murphy's Executive Order 244 and P.L. 2021, C.103, which ended the Public Health Emergency as of July 4, 2021. Thus, he was unable to accept electronic signatures post July 4, 2021. *See FWW* at Exhibit K.

8. On August 5, 2021, Clerk Ruccione received an Amended Petition with an additional 276 signatures. *See FWW* at Exhibit L.

9. On August 12, 2021, Clerk Ruccione notified the Committee of his determination that the total number of valid signatures between the Initial and Amended petitions was 375 and the required number was 791 in order to initiate an ordinance pursuant to *N.J.S.A. 40:69A-184*. *See FWW* at Exhibit O.

10. Clerk Ruccione's determinations were based upon plain language interpretations of Governor Murphy's Executive Orders, specifically EO 244 and P.L. 2021, Ch. 103. *See Doug Ruccione's Certification submitted in support of Teaneck's Opposition (hereinafter "Ruccione Cert.")*.

11. Clerk Ruccione did not make any representations to the Committee regarding Teaneck's acceptance of the Petition, as alleged by the Committee. *See Ruccione Cert.*

12. Clerk Ruccione acted in good faith when he attempted to the best of his ability to assist the Committee as shown throughout the various emails, without providing legal advice or guidance in regard to the Petition. *See FWW* at Exhibit D. *See also Ruccione Cert.*

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 5

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." *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));

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 6

Isphani 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.

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. AS TEANECK MUNICIPAL CLERK, CLERK RUCCIONE DOES NOT HAVE THE LEGAL AUTHORITY TO ACCEPT ELECTRONIC SIGNATURE SUBMISSIONS POST JULY 4, 2021, THUS HIS ACTIONS WERE NOT ARBITRARY OR CAPRICIOUS.**
- A. Executive Orders should be treated as the equivalent of a statute enacted by the Legislature, thus they should be given their plain meaning. As such, the Executive Orders at issue, specifically Executive Order 244 and corresponding P.L. 2021, Ch. 103, should be given their plain meaning, which clearly state that electronic signature submissions post July 4, 2021 cannot be accepted by a municipal clerk.**

It has been previously determined that a gubernational executive order is to be treated as the equivalent of a statute enacted by the Legislature. *See Talmadge Vill. LLC., v. Wilson*, 2021 N.J. Super. LEXIS 89 at *3 (App. Div. 2021). While New Jersey courts have constantly indicated that election laws and specifically the right of initiative and referendum, are to be construed liberally, we are always guided by the unaltered legal maxim that statutes should be given their plain meaning. Indeed, our courts have routinely held that in analyzing statutes, a court's "task is to discern and give effect to the Legislatures intent." *See State v. L.D.*, 444 N.J. Super. 45, 59 (App. Div. 2016). The court further stated that "when the language clearly reveals the meaning

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 7

of the statute, the court's sole function is to enforce the statute in accordance with those terms." *Id.* at 59-60. The court in *McCann v. Clerk of Jersey City*, also determined that it is a " 'cardinal rule' of statutory construction that full effect should be given, if possible, to every word of a statute." *See McCann v. Clerk of Jersey City*, 167, N.J. 311, 321 (2001). In *D'Ercole v. Norwood*, the court determined that "liberality in construction is not, however, a substitute for this court's duty to give effect to the intent of the Legislature as we can reasonably discern it." *See D'Ercole v. Norwood*, 198 N.J. Super. 531, 543 (App. Div. 1984).

In the instant matter, the issue is not the petition itself, but the authority to accept electronic signatures submitted in support of same, and the EO's could not be clearer in this regard. On April 29, 2020, Governor Murphy signed EO 132 permitting county and municipal clerks to accept initiative and referendum petitions electronically through an electronically created form approved by the State. EO 132 specifically states that, "temporarily modifying the requirements of statutory provisions, including but not limited to *N.J.S.A. 40:69A-186*, to allow for electronic submission of petitions is needed to ensure voters can safely exercise their democratic rights during the unprecedented public crisis." *See Executive Order No. 132*. EO 132 directed county and municipal clerks to accept hand delivery of initiative and referendum petitions and allow for these petitions to be submitted electronically. County and municipal clerks were also directed to accept petitions with signatures collective via online form. *Id.* The EO also made clear at paragraph 3, that once the online form template was available the clerks "shall require that signatures be gathered via the online template form." *Id.* at paragraph 3. It further states that "[h]and signatures obtained prior to the effective date of this Order shall also be

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 8

accepted.” *Id.* Thus, it is patently obvious that the Governor understood that what he was doing was altering the type of petitions and the manner of signatures that a clerk could accept post April 29, 2020.

On January 25, 2021, Governor Murphy then passed EO 216. EO 216 extended EO 132 and made clear that municipal clerks shall allow for petitions required to be filed prior to an election to be submitted by hand delivery and electronically. *See* Executive Order No. 216. It also notes that any provision that is inconsistent with the Order is suspended for “*the duration of the Public Health Emergency.*” (*Emphasis added*). *Id.*

On June 4, 2021, as vaccination numbers were increasing and New Jersey was emerging from the Public Health Emergency, Governor Murphy declared, by way of EO 244, that the Public Health Emergency was terminated. *See* Executive Order No. 244. In so doing, except in very limited areas as expressed in EO 244 and accompanying legislation, all of the terms of the prior Executive Orders, including EO’s 132 and 216 were revoked. *Id.* In order to remedy the potentially harsh results that the sudden termination of the Public Health Emergency might cause, the New Jersey Legislature then passed P.L. 2021, Ch. 103 which provided for a 30-day extension to the terms of all previous Executive Orders, *i.e.*, all of the terms of said Orders would expire on July 4, 2021. *See* P.L. 2021, Ch. 103.

Based on the plain meaning of EO 244 and the passage of P.L. 2021, Ch. 103, post July 4, 2021, municipal clerks were unable to accept petitions electronically. The Executive Orders which were relied upon during the pandemic to permit the submission of electronic signatures, in particular EO 132, specifically loosened the rules of *N.J.S.A. 40:69A-186*, which requires that

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 9

“[e]ach signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place.” *See N.J.S.A. 40:69A-186*. In other words, EO 132 permitted clerks to accept petition signatures that were not, in fact, signatures at all. After July 4, 2021, however, the only type of signature a clerk can accept and which are legally permissible are physical signatures, typically called “wet pen” signatures. Indeed, post July 4, 2021, the ability of a clerk to accept any other type of signature or petition was extinguished.

The reason petitions cannot be submitted owes to the fact that signing a petition has no force and effect. As aforementioned, *N.J.S.A. 40:69A-186* contains requirements for the signer of a petition. The statute states:

Each signer of any such petition shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five voters, designated as the Committee of Petitioners who shall be regarded as responsible for the circulation and filing of the petition and for its possible withdrawal as herein after provided. Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons.

See N.J.S.A. 40:69A-186. Nowhere in the requirements of *N.J.S.A. 40:69A-186* will one find a time or date requirement. A petition may be signed a day, week or month before petitioners submit the petitions. In fact, “signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section.” *Id.* The requirements, as far as timing, deal with submission, not collection. The Committee could indeed collect petitions today, via electronic means,

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 10

however, they cannot submit them. Collections and submission are two different and distinct requirements.

In the instant matter, it is beyond dispute that the Committee submitted their petition papers and all signatures, including the electronically obtained signatures, on July 15, 2021. This date was 11 days past the deadline imposed by the Governor and legislature for the ability of clerks to accept electronic signatures. Teaneck's position is not that the signatures are stale or outdated, but rather that the clerk has no statutory or other legal authority to accept same post July 4, 2021. Further, as argued by the Committee, Clerk Ruccione did not undermine the spirit of the EO's, nor did he enact or enforce an order, rule, regulation, ordinance, or resolution that conflicts with the provisions thereof. Clerk Ruccione simply interpreted the EO's based on their plain meaning as should be done with an executive order, and should be given full force and effect.

It is seemingly obvious that the Committee also deliberately failed to acknowledge that it is not Clerk Ruccione's duty or obligation to provide legal advice or guidance to the Committee in regard to the Petition. Thus, despite the argument made by the Committee that Clerk Ruccione may have known that the Committee intended to rely primarily on electronic petitions, it was not Clerk Ruccione's duty or obligation to insure that the Committee submitted those electronic signatures in a timely fashion. Additionally, Clerk Ruccione was under no obligation nor did he possess a legal duty to inform plaintiff, Paula Rogovin ("Rogovin"), that Teaneck was not accepting any electronic petitions post July 4, 2021, as suggested by the Committee.

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 11

It is clear that the Committee was aware of the Petition submission deadline through a public Facebook posting on June 9, 2021, by Samantha DiFalco. It is our understanding that Ms. DiFalco was one of the persons who spearheaded the Food & Water Watch Effort regarding the Petition. In her posting she states that, “we’re officially more than halfway towards our petition goal!!! We’ve got 3 more weeks till our first petition delivery deadline on July 1, (we’ve got a few weeks after that to submit additional petitions as well), and still need nearly 500 more.” A true and accurate copy of the Facebook posting from July 9, 2021 is attached hereto as *Exhibit 1*. That posting clearly reflects the understanding of the Committee that the Petition submission deadline was July 4, 2021. Ms. DiFalco also reflects her in-depth knowledge of the petition process when she states that additional petitions can be submitted later. Ms. DiFalco also made clear her knowledge of the Petition submission deadline and the petition process through her Facebook postings on May 17 and June 1, 2021. *See Exhibit 1*. Thus, it is completely disingenuous for the Committee to take the position that they were unaware of the submission deadline.

B. A review of other New Jersey County Clerk’s websites reflects that there is a widespread understanding that acceptance of electronic petitions was dependent upon the continuing of the Public Health Emergency and since its termination through Executive Order 244, electronic petitions are no longer to be accepted post July 4, 2021.

It is clear through review of other New Jersey County Clerk websites, that those clerks are no longer accepting electronic signatures and only traditional “wet pen” paper petitions are legal and acceptable. For example, the Burlington County Clerk’s Website states:

Petition Filing Governor Murphy’s Executive Order providing for the filing of petitions in both traditional paper form and in electronic form, for State, County, Municipal, School Board or Fire Commission offices is no longer in effect with the signing of A-5820 and the

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 12

issue of Executive Order 244 ending the COVID 19 Public Health Emergency. After July 2, 2021 only traditional paper petitions with all applicable notarized signatures may be submitted as hard copies by mail, courier or personal delivery.

See Exhibit 2. The Ocean County Clerk's website and corresponding brochure expresses a similar understanding when it states:

IMPORTANT

Please be advised that ALL of the Dates listed in this brochure are subject to change due to an Executive Order issued by the Governor or an ACT signed into law which could revise the deadline dates as a result of the ongoing COVID-19 Pandemic. We strongly advise everyone to contact our Election Office at (732)929-2153 to confirm any of the dates listed. (Emphasis in original).

See Exhibit 3. Additionally, the Camden County Clerk's website states:

COVID-19 Notice for Filing Petitions

With the Governor's signing of Executive Order 244 ending the Public Health Emergency, the provisions previous Executive Orders and recently enacted legislation allowing electronic collection and transmission of petitions have terminated. To be valid, wet ink signatures on petitions must be collected in person and the physical petitions must be filed directly with the accepting office.

See *Camden County, Voting and Elections, Information for Candidates, COVID-19 Notice for Filing Petitions*, <https://www.camdencounty.com/service/voting-and-elections/candidate-information/>. See also Exhibit 4.

Ultimately, a clerk is a creature of statute and is bound to follow the statutes that govern his actions. With respect to the instant matter, Teaneck's clerk, Mr. Ruccione, is bound by the rules set forth in the EO's signed by Governor Murphy. Those EO's made clear that the Public Health Emergency was completely over by June 4, 2021, with widely publicized provisions extended for 30 days. Other than the extremely limited areas, which are irrelevant to the matter

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 13

at issue, none of the terms of the EO's mentioned in EO 244 and extended by P.L. 2021, C. 103 control after July 4, 2021. Although the Committee argues that other clerks in New Jersey municipalities have accepted similar electronic signatures post July 4, 2021, it is clear through EO 244 and P.L. 2021, Ch. 103 that clerks are not permitted to do so. The mistake of another jurisdiction does not create binding precedent and it does not whatsoever mean that Teaneck's clerk should have mistakenly followed suit and accepted same.

III. 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 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 Initial or

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 14

Amended Petition, in fact, he accepted the petitions 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 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 Initial or Amended Petition’s. Once they were filed, he reviewed them accordingly. 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 letters of insufficiency from Clerk

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 15

Ruccione, which more than adequately demonstrated his rationale for not certifying the improper and deficient Initial and Amended Petitions.

Although Teaneck maintains their position that the plain language of Governor Murphy's EO's, specifically EO 244 and P.L. 2021, Ch. 103, expressly limit Clerk Ruccione's authority to accept electronic signatures post July 4, 2021, and other New Jersey county clerks maintain the same position, it is also clear through the Committee's submissions that there may be multiple interpretations of the EO's. As discussed *supra* in Teaneck's Brief Point II(B), Burlington, Ocean and Camden County clerks have interpreted the EO's in a manner analogous to Clerk Ruccione's and have stopped accepting electronic signatures post July 4, 2021. However, as shown through the Committee's submissions, the clerks in North Brunswick, Long Branch and Woodbridge deemed electronic signatures post July 4, 2021 as sufficient. As such, it is clear that there are, at worst, varying interpretations of the meaning of the language of Governor Murphy's EO's. Thus, it is illogical to conclude that Clerk Ruccione acted in an arbitrary and capricious manner in his plain language interpretation, especially since other county clerks have had the same interpretation. If this Court is not inclined to accept Teaneck's interpretation of the EO's, we respectfully request that instead of finding Clerk Ruccione's actions as arbitrary and capricious, as they were not, that this Court provide clarification as to same .

Clerk Ruccione's actions did not deprive plaintiffs of a substantive right, thus giving rise to their cause of action. Clerk Ruccione accepted the Committee's Initial and Amended Petition's and only deemed it them sufficient when he determined that they did not include the requisite number of signatures since pursuant to EO 244 and P.L. 2021, Ch. 103, electronic signatures are

Hon. Robert C. Wilson, J.S.C.
Docket No. BER-L-5566-21
August 24, 2021
Page 16

not to be accepted post July 4, 2021 . Further, just as explained by the Committee, Clerk Ruccione was forced with making determinations in the midst of an unprecedented time. He should not be penalized and deemed to have acted arbitrary and capricious based on a very logical and plain reading of the EO's, orders of which have yet to be interpreted by the courts. 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.

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: Renée Steinhagen, Esq. (*via eCourts*)
Jaime Placek, Esq. (*via eCourts*)