Exhibit H

Township of Teaneck

PAUL A. VOLCKER MUNICIPAL GREEN

818 TEANECK ROAD
TEANECK,
NEW JERSEY 07666

201-837-1600

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E-MAIL:
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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

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 29th 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 29th 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 29th 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 statue 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 statue, 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

Exhibit I

BY THE COURT

EMPOWER OUR NEIGHBORHOODS, MARGARITA BONDARENKO, AMY BRAUNSTEIN, DOMINIC BOMBACE, ADRIEL BERNAL, and ANTHONY SHULL,	**:SUPERIOR COURT OF NEW JERSEY :LAW DIVISION :MIDDLESEX COUNTY**
PLAINTIFFS,	
v.	**DOCKET NO. MID-L-10613-08**
DANIEL A. TORRISI, in his capacity as New Brunswick City Clerk; ELAINE FLYNN, in her capacity as County Clerk; and the NEW BRUNSWICK CITY COUNCIL,	**DECISION & FINAL JUDGMENT**
DEFENDANTS	

Introduction

Empower our Neighborhoods ("EON"), Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal, and Anthony Shull (the latter five plaintiffs collectively, "Committee of Petitioners" and all plaintiffs collectively "Plaintiffs") bring this complaint in lieu of a prerogative writs to compel Daniel A. Torrisi, in his capacity as New Brunswick City Clerk; Elaine Flynn, in her capacity as County Clerk; and the New Brunswick City Council (collectively "Defendants") to place a referendum on the ballot for the November 2009 election.

Presently, both Plaintiffs and Defendants bring motions for summary judgment; in addition, Defendants bring a motion to dismiss Plaintiffs' complaint for failure to respond

to the first request to produce documents and to compel more specific responses to Defendants' initial interrogatories. There are no material questions of fact; this matter can be resolved by summary judgment as a matter of law.

Facts

EON is an unincorporated, non-partisan political committee consisting of New Brunswick residents. The five named individual plaintiffs in this case are persons associated with EON. During the city council meeting held on May 7, 2008, members of the EON announced their intention to urge voters to initiate a petition to amend New Brunswick's charter to adopt a ward form of government.

On June 18, 2008, the New Brunswick city council introduced on first reading Ordinance, O-060807, entitled "An Ordinance to Provide for an Election in the City of New Brunswick on the Question of the Establishment of a Charter Study Commission" (the "Charter Study Ordinance"). The Charter Study Ordinance calls for a referendum question pursuant to *N.J.S.A.* 40:69A-1, the Optional Municipal Charter Law (the "Act")[1], on whether a charter study commission should be elected to study the charter of New Brunswick and consider a changed form of government or another alternative of the existing form of government.

On June 30, 2008, EON filed a petition with the city clerk, after obtaining 1116 signatures, that set forth two proposed questions to be submitted to the electorate for a vote in accordance with *N.J.S.A.* 40:69A-25.1. The two questions were written as follows:

> One. Shall the charter of the City of New Brunswick governed by the mayor, council plan of the Optional Municipal Charter Law be amended as permitted under the plan to provide for the division of the

[1] Also interchangeably referred to herein as the Faulkner Act.

> municipality into six wards with three council members to be elected at large and one from each ward?
>
> Two. Shall the charter of the City of New Brunswick governed by the mayor, council plan of the Optional Municipal Charter Law be amended as permitted under that plan to provide for a municipal council to consist of nine members?

On July 2, 2008, the New Brunswick City Council formally passed and approved the Charter Study Ordinance. In a letter dated July 18, 2008, Mr. Torrisi communicated to EON that he had completed his examination of EON's petition and found a number of deficiencies based in part by observations from William Hamilton, Jr., Esq., New Brunswick's attorney. The deficiencies were (i) the failure to include the full text of the proposed ordinance, (ii) the failure to place the questions posed or an ordinance on both sides of each signature page, (iii) the failure to pose only one question or one alternative, and (iv) the timing of the petition.

On or about August 8, 2008, EON filed an order to show cause and verified complaint in the matter entitled *Empower Our Neighborhoods, et al. v. Daniel Torrisi et al.*, Docket No. MID-L-6408-08 (the "EON I" lawsuit) alleging that Defendants had improperly denied their request that the two questions be placed on the November 2008 general election ballot.

On September 2, 2008, the Honorable Heidi Currier, J.S.C. placed her decision concerning EON I on the record. Judge Currier rejected the reasoning of the New Brunswick city clerk and city attorney, finding that the wording of the petition did not render it defective, that the failure to print the two proposed questions on the back of each petition page did not render it defective, and that the petition was not rendered defective because of two proposed alternative questions, which is specifically provided for in

N.J.S.A. 49:69A-25.1(d). Lastly, Judge Currier concluded that the petition was filed before the charter study commission ordinance was passed, and therefore pursuant to *N.J.S.A.* 40:69A-17 is valid. Because of the proximity of the decision to the election, EON I concluded with the withdrawal of EON's. The complaint was dismissed as moot.

On October 1, 2008, the Committee of Petitioners submitted a petition entitled "Petition for a Referendum on a Ward Based Alternative" (the "Petition") to the New Brunswick city clerk in accordance with *N.J.S.A.* 40:69A-25.1. The question proposed the division of the city into six wards, with three council members to be elected at large and one from each ward.

The form and language of the Petition is found below:

Page 1. (front)

PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE

To the Municipal Clerk of the City of New Brunswick:

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey, desire for city voters to decide whether or not to change the number and manner in which our city council members are elected in order to give each city ward its own voice on the city council; and

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey seek specifically to give city voters the opportunity to decide whether or not to amend the municipal charter of the City of New Brunswick to provide for the division of the municipality into six wards, to expand the number of city council members from five members to nine members, and to provide that six members of the council be elected by the voters of those wards (with one from each ward) and three members be elected at large by all the voters in the city; and

WHEREAS, we the undersigned, registered voters of the City of New Brunswick understand that we have the right to initiate a referendum question pursuant to N.J.S.A. 40:69A-25.1 in order to give city voters an opportunity to change to a ward-based alternative under the current Mayor-Council plan;

WE HEREBY REQUEST that the following question to change the municipal charter of the City of New Brunswick be submitted to the city electorate for a vote, pursuant to N.J.S.A. 40:69A-192, at the election which next follows the submission and certification of this petition:

> Shall the charter of the City of New Brunswick, governed by the Mayor-Council Plan of the Optional Municipal Charter Law, be amended, as permitted under that plan, to provide for the division of the municipality into six wards with three council members to be elected at large and one from each ward?

(all entries must be made in ink)

SIGNATURE PRINTED NAME RESIDENCE ADDRESS

1. _____
2. _____
3. _____
4. _____
5. _____

COMMITTEE OF PETITIONERS pursuant to N.J.S.A. 40:69A-186

Margarita Bondarenko, 95 Easton Avenue, New Brunswick, NJ 08901
Amy Braunstein, 80 Harvey Street, New Brunswick, NJ 08901
Dominic Bombace, 22 Harvey Street, New Brunswick, NJ 08901
Adriel Bernal, 80 Harvey Street, New Brunswick, NJ 08901
Anthony Shull, 233 Hamilton Street, New Brunswick, NJ 08901

Page 2. (back)

PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE
PLEASE READ PREFACE AND PROPOSED QUESTION ON REVERSE SIDE OF THIS SHEET

SIGNATURE PRINTED NAME RESIDENCE ADDRESS

6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____

COMMITTEE OF PETITIONERS pursuant to N.J.S.A. 40:69A-186

Margarita Bondarenko, 95 Easton Avenue, New Brunswick, NJ 08901
Amy Braunstein, 80 Harvey Street, New Brunswick, NJ 08901
Dominic Bombace, 22 Harvey Street, New Brunswick, NJ 08901
Adriel Bernal, 80 Harvey Street, New Brunswick, NJ 08901
Anthony Shull, 233 Hamilton Street, New Brunswick, NJ 08901

AFFIDAVIT OF CIRCULATOR pursuant to N.J.S.A. 40:69A-186

STATE OF NEW JERSEY :
: ss.
COUNTY OF MIDDLESEX :

_____(name) certifies that: (1) s/he and only s/he personally circulated the foregoing paper; (2) all the signatures appended thereto were made in his/her presence; and (3) s/he believes them to be the genuine signatures of the persons whose names they purport to be.

_____
(circulator's signature)

Sworn to and subscribed before me this
____ day of _____, 2008

_____
NOTARY PUBLIC

By letter dated October 22, 2008, Mr. Torrisi advised Plaintiffs that further proceedings of the Petition were "barred" based on his examination and the recommendation of the city attorney. These bases were two fold:

1. [T]he New Brunswick City Council has previously adopted Ordinance titled "An Ordinance to Provide for an Election in the City of New Brunswick on the Question of the Establishment of a Charter Study Commission," on July 2, 2008. The adoption of this Ordinance prevents the validation of any charter change petition.

2. It is noted also that the petition fails to provide a properly constructed initiative ordinance on every petition paper, as required [by] the Initiative and Referendum statutes.

(Hamilton Letter of October 22, 2008).

Challenging the rejection of the Petition, Plaintiffs bring this complaint in lieu of a prerogative writs.

Defendants' Motions to Compel More Specific Answers or to Dismiss

This Court is able to dispose of this matter fully by deciding the competing motions for summary judgment, which forecloses the necessity of deciding Defendants' motion to dismiss and/or compel more specific answers to interrogatories. This complaint in lieu of a prerogative writs focuses on Plaintiffs' Petition and Mr. Torrisi's finding that the Petition was barred from appearing on the November 2009 ballot. The discovery sought by Defendants seeks, inter alia, information regarding the origin and circulation of the Petition in order to clarify alleged ambiguities permeating the Petition. By deciding the questions of law embodied by these alleged ambiguities in the Petition further discovery is rendered unnecessary. Furthermore, pursuant to *R.* 4:69-4 this motion lacks foundation without an order directing Plaintiffs to provide the discovery

sought by Defendant, as such this motion was properly denied at colloquy on July 21, 2009.

EON I

As a preliminary concern approaching the issues presented in this complaint in lieu of a prerogative writs, this court recognizes the need to address the history between the parties, the past ruling and orders of the Honorable Heidi Currier, J.S.C. and the withdrawal of the initial petition, as each movant has asserted arguments referencing the dismissal of EON I as moot. For ease of reference Judge Currier's two October 29, 2008 Orders will be labeled Order staying proceedings as the first and the Order of dismissal as the second.

Defendants assert that the withdrawal of Plaintiffs' initial petition and the "voluntary" dismissal of EON I as moot render Judge Currier's prior rulings of no effect and that the finding of Mr. Torrisi, invaliding the initial petition, stands. Defendants further extend this line of reasoning stating that the September 2, 2008 Ruling and Order entered in EON I, regarding the Charter Study Ordinance, became a nullity upon the entrance of the second October 29, 2008 Order and does not serve to invalidate or bar proceedings with respect to that Ordinance. Therefore, Defendants contend that the Charter Study Ordinance, pursuant to *N.J.S.A.* 40:69A-17, precludes the filing of the present Petition and decides the instant matter in favor of Defendants.

Conversely, Plaintiffs contend that Judge Currier's previous rulings, which were expressly not vacated in the second October 29, 2008 Order, control, and Defendants are collaterally estopped from relying on the grounds stated in the Mr. Torrisi's letter of October 22, 2008 refusing to place the referendum on the November 2009 Ballot.

Plaintiffs further state that the initial petition was valid, per Judge Currier's ruling in EON I, which precludes the final passage of the Charter Study Ordinance, by virtue of the same statutory authority cited by Defendant above, as such the Charter Study Ordinance is no bar to the Petition instantly at issue. In addition, bound by Judge Currier's ruling, this Court must find the Petition compliant with the requirements of *N.J.S.A.* 40:69A-25.1 and order it placed on the November 2009 Ballot.

Arguments regarding the validity of Plaintiffs' initial petition and the preclusive effect of the Charter Study Ordinance were heard by Judge Currier, and she issued her decision on September 2, 2008. However, this ruling did not dispose of all of the parties' claims, as further proceedings were stayed by the first October 29, 2008 Order with respect to the September 2, 2008 Order, pending a further order. Also, a plenary hearing was to be scheduled with respect to a motion for reconsideration filed by the Defendants, Daniel A. Torrisi and the New Brunswick City Council. There was neither a further order lifting the stay nor a plenary hearing following the first October 29, 2008 Order, as the second October 29, 2008 Order dismissed EON I as moot after Plaintiffs' withdrawal of their initial petition. This Court, prompted by parties' arguments, is left with deciding what role, if any, does EON I play in deciding EON II.

In *Transamerica Insurance Co. v. National Roofing, Inc.*, 108 *N.J.* 59 (1987), the court faced a similar procedural issue upholding the trial court's finding that a declaratory judgment action seeking coverage was moot due to the settlement of the underlying liability case and did not render the insured a "successful claimant." The Court determining the effect of a prior dismissal started its procedural analysis with *F.R.C.P* 41(b) that provides a dismissal other than for lack of jurisdiction is on the merits, yet

deviated from a strict adherence to the Federal Rules of Civil Procedure, as New Jersey courts did not face the same jurisdictional restrictions as their federal counterpart. Article III, section 2 of the United States Constitution limits the jurisdiction of federal courts to actual cases or controversies, thereby a matter dismissed for mootness is considered dismissed for lack of jurisdiction and not on the merits. *Id.* at 63.

The Court continued its analysis stating that New Jersey courts may retain jurisdiction even if a matter is technically moot "if to do so is in the public interest, *In re Boardwalk Regency Corp. Casino License*, 90 *N.J.* 361, 368 (1982), or if 'the litigants' concern with the subject matter evidence[s] a sufficient stake and real adverseness[,]' *Crescent Park Tenants Ass'n v. Realty Equities Corp.*, 58 *N.J.* 98, 107 (1971)," or "if the matter is cable of repetition, yet evading review," *Gilbert v. Gladden*, 87 *N.J.* 275, 295-96 (1975). Therefore as a preliminary tenet, the Court accepted that in New Jersey courts a dismissal for mootness is not always for lack of jurisdiction. *Transamerica,* 108 *N.J.* at 64 (1987).

Continuing its analysis of the effect of a dismissal for mootness the Court stated:

> [A] literal reading of Rule 4:37-2(d) could lead, as it led the Appellate Division, to the conclusion that a dismissal for mootness, not being one for lack of jurisdiction, was an adjudication on the merits. A rule of court, like a statute, however, should not be read literally when such a reading defies logic and leads to a result that is contrary to its purposes. *See Piscataway Township Bd. of Educ. v. Caffiero*, 86 *N.J.* 308, 317 (1981); *see also Westinghouse Elec. Corp. v. Board of Review*, 25 *N.J.* 221, 227 (1957) (courts not limited to reading statute literally). *A dismissal for mootness by definition is not an adjudication on the merits*. Because there has been no actual adjudication, such a dismissal is more like one for lack of jurisdiction than one after a trial on the merits.

Id. (emphasis added).

Plaintiffs' assertion that collateral estoppel applies is misplaced as the prior September 2, 2008 decision, which this argument is hinged upon, was never fully adjudicated on the merits. Generally, application of the doctrine of collateral estoppel requires a determination that (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. *First Union Nat'l Bank v. Penn Salem Marina, Inc.,* 190 *N.J.* 342, 352-53 (2007). The court in *Transamerica* did not foreclose the notion that a dismissal for mootness could be an adjudication on the merits. However, courts must exercise sensitivity to the facts of a case in applying court rules and statutory constructions.

In EON I, the September 2, 2008 decision and order were interlocutory, as illustrated by the pendency of the ordered plenary hearing with respect to Defendants' motion for reconsideration and the stay issued. Any ruling by a court that does not adjudicate all of the claims of all of the parties is by negative implication interlocutory in nature. These outstanding matters were never pursued due to the dismissal for mootness after Plaintiffs withdrew their petition. As the court stated in *Transamerica*, "A dismissal for mootness by definition is not an adjudication on the merits. Because there has been no actual adjudication, such a dismissal is more like one for lack of jurisdiction than one after a trial on the merits." *Transamerica, supra*, 108 *N.J.* at 64. Defendants' motion for reconsideration was never heard, denying them the opportunity to fully and fairly be heard. Furthermore, the issues found in Defendants' motion for reconsideration were

never litigated. Because of the incomplete nature of the proceedings in EON I, Plaintiff cannot utilize collateral estoppel as a sword foreclosing Defendants' opportunity to be heard defending EON II. Therefore, Judge Currier's thoughtful decision in EON I is not a binding final judgment on the merits capable of collaterally estopping Defendants in the instant matter.

Complaint in Lieu of a Prerogative Writs

Actions in lieu or prerogative writs are afforded a particular set of procedural rules governing what is to be considered by a reviewing court. *See*, *R.* 4:69-1 *et seq.* If the complaint demands the performance of a ministerial act or duty, as is asserted here, the plaintiff may, at any time after the filing of the complaint, by motion supported by affidavit and with briefs, apply for summary judgment. *R.* 4:69-2

The extent of the material to be considered is that which is asserted in defense of the ministerial act or duty, as it is this ministerial act which is reviewed by the court. *See, Mitchell v. City of Somers Point*, 281 *N.J. Super.* 492 (App. Div. 1994) (making clear the applicability of the summary judgment rule where there is no municipal agency record and the facts on which the complaint is based are uncontested).

In addition, as stated by our Supreme Court:

> Mandamus issues "*to compel the performance, in a specified manner, of ministerial duties so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of their performance*, but as to all acts or duties depending upon a jurisdiction to decide questions of law or to ascertain matters of fact, on the part of the officer or body at whose hands their performance is required, mandamus will not lie." *Citing Mooney v. Edwards*, 51 *N.J.L.* 479 (Sup. Ct. 1889).
>
> Mandamus is a legal remedy for the protection of purely civil rights. Time has worked changes in the early commonlaw concept of mandamus as a prerogative writ. The modern tendency is not to treat it

> as a prerogative writ *save when invoked in matters of direct concern to the public*, but as an ordinary writ of right to remedy official inaction. In New Jersey, prior to the adoption of the 1947 Constitution, the issuance of the writ ordinarily involved the exercise of a sound discretion; but in the enforcement of private rights the lawful exercise of discretion excluded mere caprice or arbitrary action and required that the rights of the parties in the particular case be declared and enforced according to law.

Switz v. Middletown, 23 *N.J.* 580, 588 (1957) (emphasis added). This Court in considering matters of direct concern to the public, such as a proposed voter initiated petition for referendum, will review the ministerial action and applicable law in deciding what performance is required.

The Petition was brought pursuant to *N.J.S.A.* 40:69A-25.1. Mr. Torrisi, acting in his official capacity as New Brunswick's city clerk, found the Petition to be defective in two ways. One, pursuant to *N.J.S.A.* 40:69A-17, the Petition was precluded from being filed, as the Ordinance for the election of a charter study commission had previously been adopted. And two, pursuant to *N.J.S.A.* 40:69A-186, the Petition failed to provide a properly constructed initiative ordinance on every petition paper. This Court will address the deficiencies as posited by Mr. Torrisi.

Effect of the Charter Study Ordinance

N.J.S.A. 40:69A-17 provides that:

> No ordinance may be passed and no petition may be filed for the election of a charter commission pursuant to section 1-1 of this act while proceedings are pending under any other petition or ordinance filed or passed under article 1 of this act, or while proceedings are pending pursuant to section 1-18 hereof or any other statute providing for the adoption of any other charter or form of government available to the municipality, nor within four years after an election shall have been held pursuant to any such ordinance or petition passed or filed pursuant to section 1-1 hereof.

The court in *Chasis v. Tumulty*, 8 *N.J.* 147, 153 (1951) interpreted the language of this statute stating that "[t]he contention that an ordinance is "passed" within the meaning of the statute when it has passed first reading or when it has passed second reading lacks substance. The language used in the statute plainly refers to an ordinance that has become effective through final passage."

Applying *N.J.S.A.* 40:69A-17, as interpreted in *Chasis*, this Court concludes that Mr. Torrisi was mistaken when he found the Charter Study Ordinance, adopted on July 2, 2008 two days *after* Petitioners had filed their initial petition, prevented the Petitioners' second filing. The language of the statute is clear. No ordinance may be passed for the election of a charter commission while proceedings are pending under any other petition filed or pursuant to any other statute providing for the adoption of any other charter or form of government available to the municipality. *N.J.S.A.* 40:69A-17. The Charter Study Ordinance, relied upon by Mr. Torrisi in rejecting Plaintiffs' Petition, was not lawfully adopted pursuant to *N.J.S.A.* 40:69A-17 because of the pending initial petition, and therefore under the same provision, no bar to Plaintiffs' second filing. To allow an ordinance never lawfully adopted to be pulled forward by the withdrawal of a petitioner's filing abrogates the force and effect of *N.J.S.A.* 40:69A-17.

N.J.S.A. 40:69A-17 specifically states no ordinance shall be passed, not that the adoption of an ordinance is suspended, until proceedings pending under any other petition are resolved, nor does it provide that an ordinance adopted during that pendency is suspended from taking effect until those proceedings are resolved. The use of a suspension of an ordinance as a tool of municipal legislative regulation is utilized in the Act when a municipal ordinance is challenged. *N.J.S.A.* 40:69A-185. The Legislature

explicitly used a suspension during the pendency of proceedings challenging a formally passed ordinance and explicitly stated that no ordinance shall be passed during the pendency of proceedings providing for the adoption of any other charter or form of government. The courts' function is "to enforce the legislative will as expressed by the clear language of the statute." *Howell Twp. v. Manasquan River Regional Sewerage Auth.*, 215 *N.J. Super.* 173, 181 (App.Div. 1987). Comparing *N.J.S.A.* 40:69A-17 to *N.J.S.A.* 40:60A-185 leads this court to conclude that had the Legislature intended the passage of an ordinance suspended under *N.J.S.A.* 40:69A-17 it would have written it that way. Therefore, the Charter Study Ordinance adopted two days after the filing of Plaintiffs' initial petition is of no effect.

The Defendants offer another argument that only a valid petition is an effective bar to an ordinance under *N.J.S.A.* 40:69A-17 and that a finding of deficiency by Mr. Torrisi precludes Plaintiffs' initial petition from triggering *N.J.S.A.* 40:69A-17. This argument is unpersuasive for three reasons. One, the qualifier "valid" neither appears in *N.J.S.A.* 40:69A-17 nor in an extremely similar provision, *N.J.S.A.* 40:69A-21. If it was intended to be in either, this Court is confident that our Legislature would have placed it accordingly. *See Howell Twp., supra,* at 181.

Two, an initiative or referendum petition may be amended at any time within ten days after the notification of insufficiency has been served by the municipal clerk; the clerk, after receiving an amended petition, has five days to examine the amended petition and determine the sufficiency. *N.J.S.A.* 40:69A-188. The Charter Study Ordinance was passed two days after the Plaintiffs' first petition was filed, within the statutory period for remedying any deficiency. Without addressing the validity of that filing, in theory,

Plaintiffs still could have remedied that petition thereby complying with all applicable criteria, which would have negated the adoption of the Study Commission Ordinance. At the very least the adoption of the Charter Study Ordinance cannot be formalized, under Defendants' interpretation of *N.J.S.A.* 40:69A-17, until after a petitioner has been afforded the ten day remedial period after the notification of insufficiency and the question of validity satisfied, a requirement not met in this case.

Three, "[t]he finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose." *N.J.S.A.* 40:69A-188. The first petition need not be valid to invoke the protections of *N.J.S.A.* 4:69A-17. If an insufficient petition was filed between the first reading of an ordinance for a charter study commission and its formal adoption and that petition was later held to be invalid, a new petition filed for the same purpose would be prejudiced at filing, if the charter study ordinance was deemed properly adopted due to the first petition's insufficiency. *N.J.S.A.* 40:69A-188 specifically provides that this scenario cannot occur, rendering the issue of the validity of the first petition of no moment.

Method of Adopting an Amendment Pursuant to *N.J.S.A.* 40:69A-25.1

The second defect found in Plaintiffs' Petition was a failure to provide a properly constructed initiative ordinance on every petition paper pursuant to *N.J.S.A* 40:69A-186. *See also N.J.S.A.* 40:69A-25.1. Plaintiffs' contend that the inclusion of an ordinance is not necessary under *N.J.S.A.* 40:69A-25.1 or that the absence of such an ordinance is not a terminal defect to their Petition. Defendants' argue that without the statutorily required ordinance Plaintiffs' Petition is incurably defective. The most complete manner of

resolving the parties' opposing interpretations of *N.J.S.A.* 40:69A-25.1 *et seq.* is to delineate the applicable requirements for Plaintiffs' ultimate goal, to place a referendum question on the November 2009 Ballot for the adoption of an amendment to the charter of the City of New Brunswick.

In municipalities organized under the Act, citizens are provided the right and encouraged to actively participate in municipal affairs. *See Twp. of Sparta v. Spillane*, 125 *N.J. Super.* 519 (App.Div. 1973) *cert. denied* 64 *N.J.* 493 (1974). The Act provides various options for form of governance but has several common features; two of these features are common methods of adoption and abandonment of form per *N.J.S.A.* 40:60A-1 to 40:60A-25.5 and the voters powers of initiative and referendum per *N.J.S.A.* 40:69A-184 to *N.J.S.A.* 40:69A-196.

The Act provides two basic methods of adopting an optional or an alternative form. *N.J.S.A.* 40:60A-1 *et seq.* The first involves holding a referendum on whether a Charter Study Commission should be elected and electing Charter Study Commissioners. *Id.* The second method of adoption, the so-called "direct petition" method, involves placing a referendum question on the ballot as to the adoption of a form without a charter study. *N.J.S.A.* 40:60A-18 *et seq.*

N.J.S.A. 40:69A-25.1 permits a municipality governed by a plan of government adopted pursuant to the Act to amend its charter to adopt one of the alternative forms authorized under the current plan of government. The full text of this provision, section a, reads:

> a. Any municipality governed by a plan of government adopted pursuant to [the Act] may, by referendum, amend its charter to include any alternative permitted under that plan of government. The question of adopting an alternative may be initiated by the voters pursuant to,

> and subject to the pertinent provisions of, [*N.J.S.A.* 40:69A-184 through 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 [*N.J.S.A.* 40:69A-191 through 196], except that no petition of the voters shall be necessary in order to submit the question.

N.J.S.A. 40:69A-25.1. The five alternatives, A through E[2], are listed in the second provision of this section. This provision also provides the necessary language to present the alternatives to the electorate, which reads:

> 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)

The point of contention regarding the necessity of an ordinance revolves around the structure of *N.J.S.A.* 40:69A-25.1, specifically the first two sentences. The first sentence states that any municipality may, by referendum, amend its charter to include any alternative permitted plan of government. The second sentence addresses how the question of adopting an alternative plan of government can be effected by the voters or the governing body, and delineates the pertinent provisions controlling each respective process. Defendants argue that the controlling pertinent provisions, specifically *N.J.S.A.* 40:69-186, require a voter petition initiating a question of amendment to include an ordinance. Reading the applicable sections *in materia* leads this Court to a different conclusion.

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[2] Plaintiffs wish to utilize alternative Group B, which changes the election of council members at large to a plan utilizing six wards with council members elected from each ward and three elected at large.

N.J.S.A. 40:69A-18 provides for the adoption of an optional plan without a charter commission; similarly, *N.J.S.A.* 40:69A-25.1 provides for the adoption of an alternative plan without a charter commission. "The legally qualified voters of any municipality may adopt any of the optional plans provided in this act upon petition and referendum, without a charter commission, hereinafter provided." *N.J.S.A.* 40:69A-18. *N.J.S.A.* 40:69-19 sets forth the requirements for a petition calling for a referendum to adopt an optional plan without a charter commission.

Voters, utilizing *N.J.S.A.* 40:69A-25.1, are called upon to submit a *question* for a referendum vote regarding the amendment of a charter to adopt an alternative. Furthermore, the question may be initiated by voters pursuant to, and subject to, the *pertinent* provisions of, *N.J.S.A.* 40:69A-184 through 40:69A-196. The pertinent provisions encompass, inter alia, the requirements for an initiative and a referendum. These requirements set forth the number of voters' signatures necessary to successfully petition for a referendum, i.e. 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected. *N.J.S.A.* 40:60A-185. Notably, the percent necessary to place a voter initiated ordinance on a ballot is at least 10% but less than 15%, less than required to place a referendum on a ballot. *N.J.S.A.* 40:69A-186 sets forth the size and style requirements for petition papers circulated for the purposes of an initiative *or* a referendum, yet only specifies that initiative papers shall require the full text of the proposed ordinance.

It is clear that the Legislature did not contemplate a petition for a *referendum* brought pursuant to *N.J.S.A.* 40:69A-25.1 to include an ordinance. Most pointedly, *N.J.S.A.* 40:60A-186 only states that an initiative petition requires an ordinance, not a

referendum petition. In addition, *N.J.S.A.* 40:69A-25.1 explicitly allows any Faulkner Act municipality, *by referendum*, to amend its charted to include any alternative permitted under that plan of government. The Legislature qualified the referendum petition requirements with the language "subject to the pertinent provisions of, *N.J.S.A.* 40:69A-184 through 40:69A-196." Using a liberal and commonsensical interpretation of these sections does not support applying every requirement found between *N.J.S.A.* 40:69A-184 through 196. Such an application is impossible as the petition in question would be held to a double standard regarding the percentage of voter signatures required.

The direct petition method found in *N.J.S.A.* 40:69A-25.1 is also seen in *N.J.S.A.* 40:60A-19, which does not require an ordinance. The Appellate Division in *Saverino v. Zboyan*, 239 *N.J. Super.* 330, 336-37 (App.Div. 1990) noting the effect of adopting an "optional" plan of government pursuant to N.J.S.A. 40:60A-19, verses adopting an "alternative" under an existing plan of government, pursuant to N.J.S.A. 40:69A-25.1, highlights the fundamental similarity therein:

> To us, this statutory scheme makes clear that the Legislature carefully distinguished between *adoption* of one of the four plans of government, and *adoption* of an "alternative" under an existing plan of government. The distinction is best underscored by the significant difference between the number of voters necessary *to adopt an optional plan* of government, in contrast to the number required *to adopt an "alternative."*

Both *N.J.S.A.* 40:69A-19 and *N.J.S.A.* 40:69A-25.1 reflect the direct petition method, utilizing referenda to submit questions to voters, to wit, whether or not to adopt the proposed changes or amendments. Initiative and ordinance are not part of this method.

In barring Plaintiffs' Petition, Mr. Torrisi found that Plaintiffs failed to attach a properly constructed initiative ordinance on every petition paper pursuant to *N.J.S.A.* 40:69A-186, which this Court finds to be incorrect since an ordinance is not necessary. Plaintiffs' petition adequately informed the voters as to what they may or may not support. *See Hamilton Twp. Taxpayers Ass'n v. Warwick*, 180 *N.J. Super.* 243 (App.Div. 1981) (expressing the legislative intent behind petition requirement is to sufficiently inform voters.).

The provisions of the initiative and referendum law provided for in the Act are to be liberally construed to promote their beneficial effects. *Millenium Towers Urban Renewal v. Mun. Council of Jersey City,* 342 *N.J. Super.* 367 (LawDiv. 2001). Further guidance as to the interpretations of these provisions is found in *D'Ascensio v. Benjamin, 137 N.J. Super.* 155, 163-164 (Ch.Div. 1975), wherein the court provides two polestar statements, emphasized by succession:

> Any consideration of the issues here involved must be undertaken in full recognition of the principle that provisions for initiative and referendum elections must be liberally construed in order to effectuate their purposes and to facilitate and not to hamper the exercise by the voters of the rights thereby granted to them. *42 Am. Jur. 2d, Initiative and Referendum, § 5 at 645.*

The court continues by quoting from *Twp. of Sparta, supra,* 125 *N.J. Super.* at 523:

> The Faulkner Act was adopted in order to encourage public participation in municipal affairs in the face of normal apathy and lethargy in such matters. The initiative and referendum processes authorized by the act comprise two useful instruments of plebiscite power and provide a means of arousing public interest. Ordinary rules of construction would, of course, dictate that such provisions should be liberally construed.

With the aforementioned in mind, the proposed text contained in Plaintiffs' Petition needs to be examined to determine if it provides potential signatories the

requisite information about the action they are being asked to sponsor and to effectuate the purpose of *N.J.S.A.* 40:69A-1 *et seq.*

The text of Plaintiffs' petition should not be subjected to a hypercritical and tortuous scrutiny, which may ultimately preclude active participation in local government, for ensnaring motivated and concerned citizens in legal jargon was not the aim of the Faulkner Act. *See D'Ascensio v. Benjamin, 137 N.J. Super.* 155 (Ch.Div. 1975). However, 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 Hamilton Twp. Taxpayers Ass'n v. Warwick*, 180 *N.J. Super.* 243 (App.Div. 1981). The Faulkner Act, as a comprehensive piece of legislation, provides for this determination.

The text of the Plaintiffs' Petition is found below:

PETITION FOR A REFERNDUM ON A WARD-BASED ALTERNATIVE

To the Municipal Clerk of the City of New Brunswick:

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey, desire for city voters to decide whether or not to change the number and manner in which our city council members are elected in order to give each city ward its own voice on the city council; and

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey seek specifically to give city voters the opportunity to decide whether or not to amend the municipal charter of the City of New Brunswick to provide for the division of the municipality into six wards, to expand the number of city council members from five members to nine members, and to provide that six members of the council be elected by the voters of those wards (with one from each ward) and three members be elected at large by all the voters in the city; and

> WHEREAS, we the undersigned, registered voters of the City of New Brunswick understand that we have the right to initiate a referendum question pursuant to *N.J.S.A.* 40:69A-25.1 in order to give city voters an opportunity to change to a ward-based alternative under the current Mayor-Council plan;
>
> WE HEREBY REQUEST that the following question to change the municipal charter of the City of New Brunswick be submitted to the city electorate for a vote, pursuant to *N.J.S.A.* 40:69A-192, at the election which next follows the submission and certification of this petition:
>
> Shall the charter of the City of New Brunswick, governed by the Mayor-Council Plan of the Optional Municipal Charter Law, be amended, as permitted under that plan, to provide for the division of the municipality into six wards with three council members to be elected at large and one from each ward?

Plaintiffs' Petition incorporates into its body the form of the question to be submitted to the voters pursuant to *N.J.S.A.* 40:69A-25.1(b). The Legislature deemed this statutorily constructed phrase a statement complete enough to inform voters as to what they were exercising their franchise for. This language informs more voters by appearing on a ballot than by appearing on a petition, which indicates the statutory phrasing selected by the Legislature to inform *all* the voters as to their choice of adopting an alternative is therefore sufficient to inform *some* of the voters if they wish to endorse a petition putting the question on the ballot.

The remaining language and format of the petition is easily understood, and the sentences are structured in a straightforward and direct manner. The paragraphs appearing before the question provide the requisite information to the voters, so they know and understand what they are signing and its implications. In addition, the penultimate body paragraph introducing the question to be submitted clearly indicates that the question is to be submitted to the *electorate*, meaning the voting public and not to

the governing body, as Defendants had argued.[3] This paragraph also informs the potential signer when he or she can expect this question to appear on the ballot, as timing may influence a voter's decision.

The Defendants contend that each page must contain the text of the ordinance or the question on the back and front of the petition page citing *N.J.S.A.* 40:69A-186. The Appellate Division ruled in 1981 under *Hamilton Twp. Taxpayer's Assoc. v. Warwick*, 180 *N.J. Super.* 243 (App.Div. 1981) *cert. denied* 88 *N.J.* 490 (1981), that the phrase petition papers refers to each sheet of paper on which signatures are secured.

This Court, adopting Judge Currier's reasoning, does not find a requirement that the ordinance, or in this case the proposed question, needs to be written again on the back of each page. The second page, which is merely the back of the first page, is a continuation of the front page containing the requisite language.

After reading the body of Plaintiffs' petition and examining the front and back pages, this Court cannot find a deficiency sufficient to invalidate the Petition. Also, in light of the Act's legislative intent to combat voter apathy and encourage participation, holding Plaintiffs' petition invalid for technical flaws when it conforms on a practical level defeats the benefits legislated by the right of initiative and referendum.

For the foregoing reasons, it is

ORDERED and ADJUDGED on this 10th day of August, 2009 as follows:

1. The Defendants motion for summary judgment to dismiss the complaint be and is hereby denied with prejudice;
2. The Plaintiffs motion for summary judgment is hereby granted;

[3] Electorate as defined by Merriam Webster means, "a body of people entitled to vote."

3. The Defendant, Daniel A. Torrisi, is hereby directed to forthwith certify the Plaintiff's Petition to the Defendant, Elaine Flynn, Middlesex County Clerk;
4. The Defendant, Elaine Flynn, Middlesex County Clerk, is hereby directed to place the question, posed in the Petition, on the November 2009 ballot.
5. The Defendants motion for more specific answers to interrogatories is denied.

James P. Hurley, P.J.S.C.