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Hon. Julio L. Mendez, A.J.S.C.
Superior Court of New Jersey
Atlantic County Civil Courthouse
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Re: Atlantic City Democratic Committee v. Atlantic City Residents for Good Government, Inc., Unnamed Petition Committees 1-2 being fictitious names, Clerk of City of Atlantic City in her official capacity, and John Does 1-25, individuals who were circulators or others being fictitious, Docket No. ATL- tba -20 PW

Dear Judge Mendez:

Please accept this letter in lieu of a more formal brief in the above matter on behalf of the Plaintiff Atlantic City Democratic Committee. This matter is being brought as an Order to Show Cause on a Prerogative Writ to restrain the election for a change of government initiated by Petition submitted to the Atlantic City Clerk on or about December 11, 2019.

Plaintiff argues that the Petition is defective, was fraudulently obtained and is unconstitutional among other things and requests entry of a restraining order staying the election until the matter can be heard.

Statement of Facts and Procedural History

The City of Atlantic City operates under a Faulkner Act Mayor Council form of government pursuant to N.J.S.A. 40:69A-1 et seq. This form of government includes a Mayor and 3 council members elected at large and 6 council members elected from each of the City's 6 wards.

The City of Atlantic City is also now subject to the Municipal Recovery and Stabilization Act, N.J.S.A. 52:27BBBB-1 et seq. and was at all relevant times.

On or about December 11, 2019 a Petition pursuant to N.J.S.A. 40:79-1 was filed to change the form of government to a Council Manager type of government with 5 at large council members who would select a mayor from among themselves after election and hire a City

Manager to run the City.. The signatures appear to have been gathered from July to December 2019 and some may have been turned in after December 11th 2019.

On January 9, 2020 the City Clerk rejected the Petition as deficient with 699 signatures allowed out of over 3000 submitted.

On January 16, 2020 the Clerk then accepted the Petition.

According to one receipt the sponsor of the Petition was Atlantic City Residents for Good Government (without "Inc."), hereafter ACRGG. However to be clear the petition pages do not list any sponsor or committee. Further there are two types of petition pages, Type A with 5 signatures and a certification and Type B with multiple pages, the question on the first page and certification on the last page which allows for up to 50 signatures. Because there are two different forms, no committee names or sponsors on the petition it is actually unknown which entity is the sponsor.

Nevertheless, ACRGG is registered with NJ Election Law Enforcement Commission (ELEC) and filed quarterly reports indicating payments to various individuals and companies which worked on the petitions and gathered signatures as circulators or in other capacities.

Plaintiff ACDC alleges the Petition is invalid because it is legally defective, failed to have proper notarizations, failed to identify the sponsor/committee, failed to submit uniform petitions, has numerous crossouts and deletions and for many other problems identified in the Complaint.

Plaintiff ACDC also alleges the Petition was obtained by fraud in that the circulators actually did not obtain the signatures on the petitions, there are forgeries or false names included, the circulators misrepresented the contents or their connection to the sponsor, they paid circulators for each signature they obtained instead of by the hour or for their work irrespective of success in obtaining signature and other reasons.

Plaintiff finally objects to the at large election which would negatively affect representation of minority groups in Atlantic City as a violation the U.S. Constitution.

In regard to the facts and the complaint, Plaintiff has not been able to fully investigate the Petition because it has not had access to the records in the City of Atlantic City Clerk's Office and does not know the basis for the approval of an additional 236 signatures between January 9th and 16th. However ACDC has been able to obtain information about many of the circulators, their methods of collecting signatures and the signatures themselves and submits that the Petition does not contain validly collected signatures and should be thrown out and the election cancelled.

Legal Argument

Point 1. The Petition is defective.

Unlike regular elections, there is no standard law covering petitions in New Jersey. The Council Manager plan, N.J.S.A. is not even clear about the wording of the question which is set out indirectly in N.J.S.A. 40:80-3 for the clerk to place on the ballot:

“Shall subtitle 5 of the title Municipalities and Counties of the Revised Statutes (§ 40:79-1 et seq.), providing for municipal manager form of government, be adopted in (here insert name of municipality)?”

N.J.S.A. 30:80-1 states:

The legal voters of any municipality may adopt this subtitle at a special election to be held in such municipality, to be called by the municipal clerk upon request or petition in writing of the legal voters of the municipality not less in number than fifteen per centum (15%) of the number of persons who voted at the last preceding general election held for the purpose of electing all of the members of the general assembly as shown by the official canvass.

Basically the Council Manager form was established around 1923 and still calls for paper ballots, N.J.S.A. 40:80-3 “The municipal clerk shall provide double the number of ballots as there were voters registered for the last preceding general election in such municipality, to be printed upon plain, substantial white paper.”

In comparison the Faulkner Act, the form of government Atlantic City currently operates under is mostly self contained and provides initiative and referendum for almost any issue, N.J.S.A. 40:69A-185 et seq. This includes the need for a committee and verification of the circulators. However it is admitted that the committee need not be named in all circumstances such as in the event of reversion. Nevertheless the circulator portion is mandatory.

Because the format is silent in the Council Manager form we urge the Court to impose the requirement of the Committee for this petition.

In addition it is clear the petitions are not uniform in style either required under N.J.S.A. 40:69A-186. That might not matter if there was a committee of sponsors identified but in this case because there are two types of petitions we do not know how they were submitted or if more than one committee submitted two different sets. The situation here focuses on the lack of detail in the statute concerning the format of the petition being further taken advantage of by the unnamed sponsors.

While the Walsh Act, N.J.S.A. 40:74-10 also allows initiative and referenda on a local basis the Council Manager form does not and the citizens of Atlantic City would be losing a valuable right if the Council Manager plan is adopted. Therefore it is mostly silent about the

format of the petitions. Both the Faulkner and Walsh Acts permit corrective amendments but again the Council Manager form is silent on that. While it was determined that a reversion to prior form of government from the Faulkner Act does not require a committee to be named, Pappas v. Malone, 36 N.J. 1 (1961), the situation here is different in that Atlantic City would be leaving the Faulkner Act and furthermore the prior form of government was a Walsh Act Commission form.

Clearly the Council Manager form is outmoded to the present day and has not taken into account standard forms of petitions and therefore this petition should be rejected on that basis alone. As a note, Title 19 is silent on the form of petitions except to state that it applies to public questions, N.J.S.A. 19:1-4. N.J.S.A. 1:5-3 is not much help either because it only provides that the signature areas on petitions need to be double spaced.

However there are other reasons for rejection including the fact that Atlantic City is operating under the Municipal Recovery and Stabilization Act N.J.S.A. 52:27BBBB-1, and any question is advisory only. Title 19 does cover that eventuality in providing that nonbinding referenda should be submitted to the public at the general election, N.J.S.A. 19:37-1.

The petitions have many other numerous deficiencies as indicated by the City Clerk's original rejection letter, Exhibit D to Complaint, including a number of petitions notarized by one notary were improperly executed in that she stated she was circulator and then notarized her own petition if correct. Further, reason 3, individuals on petitions were unregistered and illegible. See also Certification for redacted petitions containing examples of the Rhashonna Cosby issues not filed on eCourts.

Upon information and belief several minors circulated petitions which is grounds for rejecting those signatures. Minors are not of full age nor voters and cannot affirm to the necessary circulator's oaths and affidavits.

See also Certification of Samuel Lashman for redacted petitions containing additional examples of problems found by investigation not being filed on eCourts.

In light of the above reasons Plaintiff urges the Court to reject the Petition or at least stay the election pending a hearing on the evidence produced and allow Plaintiff discovery on the reasons for the Clerk's rejections along with granting the Plaintiff access to the petition materials.

Point 2. The Petition signatures were obtained fraudulently.

Many of the same points above concerning physical deficiencies relate to fraud. The facts that minors were circulators, that the notary improperly certified she was the circulator and similar facts given.

In addition the reasons that the committee was not named in this case is another grounds of fraud. Specifically, the Petition is rife with bad signatures.

The Circulators were often not the persons signing the affidavits;

One supposed signatory was in Florida not Atlantic City;

The Circulators were paid on a per signature basis;

We have been advised that additional pages were submitted after December 11, 2019 improperly;

Red Cloud Strategies, LLC included a “Nondisclosure Agreement” as part of its management of the circulators. Paying workers to obtain mail in ballots or registrations per person is usually not allowed and neither should paying circulators to obtain signatures per signature be allowed. See Complaint exhibits “F,” “G,” and “H.” The circulators also wore badges identifying them not from ACRGG but from Roselle or Linden Democratic Committees, see Exhibit I to Complaint. Again neither of those entities was listed as a in-kind vendor or contributor on the ELEC reports.

N.J.S.A. 19:44A-8 Contributions, expenditures, reports, requirements.

a. (1) Each political committee shall make a full cumulative report, upon a form prescribed by the Election Law Enforcement Commission, of all contributions in the form of moneys, loans, paid personal services, or other things of value made to it and all expenditures made, incurred, or authorized by it in furtherance of the nomination, election, or defeat of any candidate, or in aid of the passage or defeat of any public question,

Intentional failure to report work by the Roselle or Linden Committees, constitutes a violation of campaign finance law in a regular election sufficient to invalidate the entire petition not just one or two pages of signatures, see N.J.S.A. 19:29-1 et seq.

The numerous other situations discovered here are more than sufficient grounds to cause rejection of the Petition and under the current circumstances a stay is the only logical course of action.

Point 3. At large districts have been held to be discriminatory.

Again the form of government proposed is almost an antique. It calls for at-large voting in the entire City of Atlantic City which now has 6 district council members and 3 at-large members giving almost every group representation.

The New Jersey Law Against Discrimination, N.J.S.A. 10:6-1 et seq. preserves individuals rights to representation and vote. See *Tumpson v. Farina*, 218 N.J. 450, 473-480 (2014) addressing the New Jersey Civil Rights Act in context of a citizen’s referendum in Hoboken.

At-large district voting schemes have been routinely disallowed under the Voting Rights Act 52 U.S.C. 10101 (formerly 42 U.S.C. 1973) because they disenfranchise numerous groups,

see e.g. *Maldef v. City of Pasadena* (Texas); *Reynolds v. Sims*, 377 U.S. 533 (1964) re voting dilution; *United States v. Euclid City School District Board of Education* (N.D. Ohio 2008); *United States v. The School Board of Osceola County* (M.D. Fla. 2008); *United States v. Village of Port Chester* (S.D.N.Y. 2006) [full citations unavailable at this time].

The scheme here is even more suspect in that it was promulgated by private interests. The present City council contains 1 Hispanic Member, 2 South Asians, 2 Caucasians and 4 African Americans. As of the 2010 United States Census, the racial makeup of the city was about 27% White; 38% Black or African American; 16% Asian; 14% from other races, and 5% from two or more races. Hispanic or Latino of any race were 30%.

Based on the at large plan it is unlikely that several council members would be viable, see certifications attached.

Point 4. Plaintiff is entitled to entry of a preliminary injunction.

The standards for granting a preliminary injunction were set forth in *Crowe v. DeGoia*, 90 N.J. 126, 132-133 (1982). The requirements are (1) showing of irreparable harm; (2) showing that legal right is not unsettled; (3) showing that material facts are not controverted; and (4) testing the relative hardship of the parties, *id.*

Allowing this Petition to go forward at this time is simply wrong. Even a few month delay would allow proper discovery for a hearing. An analogy is the situation of Mail in votes. Challengers are not permitted to inspect the materials until after the Board of Elections counts and processes them.

The facts shown on the few exhibits and this brief demonstrate the rights of the citizens are about to be violated by conducting an election in these circumstances. Moreover an extension would actually allow both sides more time to campaign while the State of New Jersey does not even have to accept the result making an election a possible exercise in futility.

The purpose of a preliminary injunction is to maintain the parties in substantially the same condition when it is entered as they were when the litigation began, *Crowe* at 134, therefore an injunction should be entered now.

Conclusion.

For the reasons given, a temporary injunction should immediately be entered and the matter set down for an expedited hearing and management conference.

Respectfully,

Samuel Lashman, Esq.