

Renée Steinhagen, Esq.
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.
744 Broad Street, 1600
Newark, New Jersey 07102
(973)735-0523

JOSHUA BERRY, TOM CRONE,
ELIZABETH HOLZMAN, DON CHOYCE, and
ROBBIE TRAYLOR (“COMMITTEE OF
PETITIONERS”),
Plaintiffs,
-vs.-
ROSEMARY DiJOSIE, in her capacity as the
Township Clerk of the Township of Gloucester,
Defendant.

X
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: CAMDEN COUNTY
:
: Docket No. L-
:
: Action in Lieu of Prerogative Writ
:
: VERIFIED COMPLAINT
: and R. 4:69-4 Certification
:
:
X

The Plaintiffs, JOSHUA BERRY, TOM CRONE, ELIZABETH HOLZMAN, DON CHOYCE, and ROBBIE TRAYLOR (the “Committee of Petitioners”), by way of their Verified Complaint, state as follows:

PRELIMINARY STATEMENT

1. This action lieu of prerogative writ involves Gloucester Township’s attempt to deny its citizens’ right to have a role in the legislative process through their statutory right of initiative. It seeks (a) a declaration that the Township Clerk of the Township of Gloucester’s rejection of Plaintiffs’ Initiative Referendum seeking enactment of a Public Contracting Reform Ordinance (“Public Contracting Reform Ordinance Petition”) submitted to the Township Clerk on February, 13, 2012 violates N.J.S.A. 40:69A-184 to 190; (b) an order in lieu of prerogative writ (mandamus) or otherwise directing the Gloucester Township Municipal Clerk to certify as

sufficient Plaintiffs' Public Contracting Reform Ordinance Petition, filed February 13, 2012, and corrected by their supplemental petition, filed March 9, 2012, and to submit the Public Contracting Reform Ordinance Petition "to the municipal council without delay," N.J.S.A. 40:69A-190; and (c) a declaration that the Township Clerk's failure to process the Public Contracting Reform Ordinance Petition in accordance with N.J.S.A. 40:69A-184 to 191 constitutes a deprivation of their substantive statutory right of initiative, and thus violates the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

PARTIES

2. Plaintiff JOSHUA BERRY resides at 2033 Broadacres Drive, Clementon, New Jersey, and is interested in ensuring that the citizens of the Township of Gloucester have the opportunity to vote at the polls as to whether to adopt the proposed Public Contracting Reform Ordinance attached the Initiative Petition that is the subject of this case. He is a member of the Committee of Petitioners, a member of South Jersey Citizens, a local government watch-dog group, and a signer of the Initiative Petition that he is sponsoring.

3. Plaintiff TOM CRONE resides at 63 Vance Avenue, Erial, New Jersey, and is interested in ensuring that the citizens of the Township of Gloucester have the opportunity to vote at the polls as to whether to adopt the proposed Public Contracting Reform Ordinance attached the Initiative Petition that is the subject of this case. He is a member of the Committee of Petitioners, a member of South Jersey Citizens, a local government watch-dog group, and a signer of the Initiative Petition that he is sponsoring.

4. Plaintiff ELIZABETH HOLZMAN resides at 2033 Broadacres Drive, Clementon, New Jersey, and is interested in ensuring that the citizens of the Township of Gloucester have the opportunity to vote at the polls as to whether to adopt the proposed Public Contracting Reform

Ordinance attached the Initiative Petition that is the subject of this case. She is a member of the Committee of Petitioners, a member of South Jersey Citizens, a local government watch-dog group, and a signer of the Initiative Petition that she is sponsoring.

5. Plaintiff DON CHOYCE resides at 10 Felicia Court, Erial, New Jersey, and is interested in ensuring that the citizens of the Township of Gloucester have the opportunity to vote at the polls as to whether to adopt the proposed Public Contracting Reform Ordinance attached the Initiative Petition that is the subject of this case. He is a member of the Committee of Petitioners, a member of South Jersey Citizens, a local government watch-dog group, and a signer of the Initiative Petition that he is sponsoring.

6. Plaintiff ROBBIE TRAYLOR, 60 Deer Park Circle, Blackwood, New Jersey and is interested in ensuring that the citizens of the Township of Gloucester have the opportunity to vote at the polls as to whether to adopt the proposed Public Contracting Reform Ordinance attached the Initiative Petition that is the subject of this case. He is a member of the Committee of Petitioners, a member of South Jersey Citizens, a local government watch-dog group, and a signer of the Initiative Petition that he is sponsoring.

7. The statutory rights of plaintiffs Berry, Crone, Holzman, Choyce and Traylor to initiate an ordinance, which is guaranteed under the Faulkner Act, have been unlawfully thwarted by defendant DiJosie's refusal to process, in accordance with statute, their Public Contracting Reform Ordinance Petition, filed on February 13, 2012, and supplemented on March 9, 2012.

8. Defendant ROSEMARIE DiJOSIE has been at least since 1973, and was at the times relevant to this complaint, the Clerk of the Township of Gloucester with her principal place of business at 1261 Chews Landing-Clementon Road, at Hider Lane, Blackwood, New Jersey

08012. In her capacity as Township Clerk, Ms. DiJosie has the duty to perform such functions as may be required by law, N.J.S.A. 40:69A-38, including but not limited to her duties with respect to initiative and referendum petitions pursuant to N.J.S.A. 40:69A-187 to 191. Defendant DiJosie's responsibilities with respect to accepting, filing and reviewing the original and supplemental petitions, and with respect to communicating her decisions on the sufficiency or insufficiency of petitions, are ministerial in nature. The method she undertakes to satisfy her mandatory duty to review such petitions is discretionary.

CLAIMS FOR RELIEF

COUNT ONE

(Mandamus)

9. In the Spring of 2011, South Jersey Citizens started a campaign to end the practice of "pay to play" in Gloucester Township, a phrase that refers to the practice of awarding government contracts to campaign donors. In May of that year, members of the organization, including Plaintiffs, proposed an ordinance to the Gloucester Township Council that would limit such practice. The ordinance was a model ordinance propounded by a statewide advocacy group, New Jersey Citizens' Campaign, which has been adopted by approximately 100 New Jersey towns, including Cherry Hill. Despite the prevalence of this type of ordinance, SJC was met by sustained resistance from some persons identified with the political status quo in the Township.

10. As part of ongoing discussions with the Gloucester Township Council, including a workshop, SJC political director Plaintiff Joshua Berry on June 13, 2011, presented an amendment to the Citizens Campaign model ordinance to the Township Council in order to address some of its members' previously expressed concerns that the ordinance had the potential

of unduly hampering shared-service agreements that the Township had with certain smaller townships in the County. Such version of the proposed ordinance became the initiated ordinance that is the subject of this Complaint. A copy of such ordinance is attached hereto as Exhibit A.

11. In summary, the proposed ordinance (Exhibit “A”) includes, among other provisions, (a) limitations on contributions to Camden County and local political parties from firms receiving professional, banking, insurance, and other consultant contracts in the Township of Gloucester; (b) prohibitions on political contributions by firms receiving professional, banking, insurance, and other consultant contracts during the negotiation and performance of such contracts, and (c) limitations on political contributions by partners and certain owners of firms receiving professional, banking, insurance, and other consultant contracts and certain persons affiliated with such firms to \$300 each per year to local candidates, \$500 each per year to local and county political parties, and \$2500 per year in aggregate from a firm and its affiliates. A copy of the full text of this proposed ordinance was attached to each page of Plaintiffs’ petition.

12. Starting in July, 2011, the Committee of Petitioners, with the assistance of five (5) other persons, started circulating an initiative petition while at all times continued to request that the Township Council place the pay-to-play reform on its agenda. A copy of one page of such petition is attached hereto as Exhibit B.

13. The Committee of Petitioners conducted its campaign in a very open and public manner. Plaintiffs and other circulators solicited signatures for their initiative petition at public events, such as a municipal park campaign launching event held in July, 2011, the Blackwood Kiwanis Baseball all-star game, multiple Saturday mornings at the local farmer’s market, and the annual Blackwood Pumpkin Festival held in October, 2011. Plaintiffs and other circulators also

conducted door-to-door solicitations in certain neighborhoods and manned stationary posts at the town library and drug stores located in the municipality. During its campaign, the Committee of Petitioners continued to try to have its ordinance heard by the Township Council and notified council of the progress of the signature drive.

14. There is little doubt that the initiative petition campaign generated political controversy. There is also little doubt that the Committee of Petitioners were the subject of hostile comments on several electronic blogs and were falsely accused of partisanship. For example, in an article dated July 19, 2011, appearing in *The Inquirer*, entitled "Gloucester Township says pay-to-play proposal would end transparency," by James Osborne, Mayor David Mayer, identified as a Democrat and former assemblyman, said that SJC's campaign is "politically motivated." He is quoted as saying "I hope when they're collecting signatures, they explain they have endorsed a Republican candidate." This is not correct. SJC has members of both political parties. During the municipal election of 2011, SJC did not endorse any candidate of any political party for any elected office.

15. Notwithstanding this hostility, Plaintiffs continued to cooperate with the Gloucester Township Council and the Township Clerk. For example, when the election results from the November 2011 election were certified in December, the Committee of Petitioners decided not to proceed with their petition until after the New Year so the Township Clerk would not have to work over the holidays in order to determine whether the signatures collected were those of qualified voters. In addition, the Committee notified the Township Council that it would not submit its petitions until mid-February in order to accommodate a request by the Township Clerk to wait until she had finished processing the Township's dog licenses.

16. On February 13, 2012, Plaintiff Berry and three other members of the Committee of Petitioners, filed an Initiative Petition with defendant DiJosie, as authorized by N.J.S.A. 40:69A-184, initiating a “pay-to-play” reform ordinance, requesting the City Council to adopt that ordinance, and if they fail to do so, calling on the Gloucester Township Clerk to submit the ordinance to the voters, as authorized by N.J.S.A. 40:69A-191. A copy of the cover letter submitted by the Committee of Petitioners to the Township Clerk, dated February 13, 2012, is attached hereto as Exhibit C.

17. Upon the receipt and filing of these papers, Defendant DiJosie was required to conduct an “examination of the petition” as required by N.J.S.A. 40:69A-187 to determine its sufficiency.

18. On February 28, 2012, all five members of the Committee of Petitioners received a certified letter from the office of Defendant DiJosie dated February 28, 2012. In the letter, Defendant DiJosie informed the Plaintiffs that she had reviewed the petitions, and in consultation with the Township Solicitor, David Carlamere, Esq., had determined that the referendum had an insufficient number of qualified signatures. A copy of Defendant DiJosie’s letter dated February 28, 2012 is attached hereto as Exhibit D.

19. In this letter, Defendant Di Josie specifically stated that she had reviewed the Township voter registration rolls and had determined that 262 of the 1,236 signatures she alleged had been submitted were not signatures of qualified Township voters. She disqualified an additional 147 signatures because they appeared on petitions that were affirmed by a person who was not qualified to administer oaths in New Jersey; 250 signatures because they appeared on petition papers circulated by a person other than a member of the Committee of Petitioners; and

38 signatures because they appeared on petition papers where the circulator name was placed on the wrong line.

20. In addition to her letter dated February 28, 2012, Defendant Di Josie provided Plaintiffs with a memorandum prepared for her the Township Solicitor with respect to Plaintiffs' Public Contracting Reform Ordinance Petition. A copy of that memo and covering e-mail is attached hereto as Exhibit E.

21. On February 29, 2012, Plaintiff Joshua Berry wrote to the clerk notifying her of clerical errors in her initial certification. Defendant DiJosie revised her February 28th certification, and stated that 991 signatures of the 1,279 signatures submitted were qualified, thus rendering the petition 56 signatures short of the 10% of qualified voters needed to further process the petition. On March 6, 2012, Plaintiff Joshua Berry wrote to the clerk notifying her of properly registered voters who she had erroneously disqualified. In a letter dated March 7, 2012, she again amended her initial certification. This time, she certified that 1,014 signatures of the 1,279 signatures submitted were qualified. Neither amendment repeated her previous objections based on the Township Solicitor's memorandum. A copy of the February 29 and March 7, 2011, letters are attached as Exhibits F1 and F2.

22. In an e-mail dated March 1, 2012, Defendant DiJosie wrote Plaintiff Tom Crone with respect to the Committee of Petitioners need to correct deficient circulator affidavits. She specifically stated that because she was directed not to release the original petition papers, a public notary would be welcome to come to Clerk's office, where he/she would be able to correct the circulator affidavits that were deficient in form. Ms. DiJosie's offer to accommodate the public notary did not state that preparation of corrected circulator affidavit had to occur in the

presence of the original petitions. A copy of Defendant's March 1, 2012 e-mail is attached hereto as Exhibit G.

23. Relying on Defendant Di Josie's notice of insufficiency dated February 28, 2011, as amended on February 29 and March 7, April 1, 2011, the Committee of Petitioners submitted a supplemental petition to the City Clerk on March 9, 2012, that including 83 additional signatures and 12 corrected circulator affidavits. When the 12 circulator affidavits were notarized, they were done so with copies of the original petition papers present to ensure the affidavit was marked for the corresponding petition paper. A copy of the cover letter submitted with the supplemental filing is attached hereto as Exhibit H.

24. Upon submitting the supplemental filing, Defendant DiJosie in the presence of Plaintiffs Joshua Berry and Tom Crone attached each corrected affidavit to its associated original petition. Each of the corrected circulator affidavits was marked with the number of the petition to which it corresponded. A copy of one corrected circulator affidavit is attached hereto as Exhibit I. On information and belief, Defendant DiJosie knew that Plaintiffs had retained copies of their original petitions.

25. On March 14, 2012, the Committee of Petitioners received a letter, dated on that same date, from Defendant DiJosie certifying its Public Contracting Reform Ordinance Petition as insufficient as a matter of law for two reasons. Ms. DiJosie repeated her legal opinion that N.J.S.A. 40:69A-186 restricts circulators to members of the Committee of Petitioners and additionally opined that the corrected circulator affidavits were improper because they were allegedly notarized without reference to any specific petition. Both opinions made reference to a memorandum dated, March 14, 2012, prepared by the Township Solicitor that was provided to Plaintiffs with her certification of insufficiency. A copy of Defendant DiJosie's March 14, 2012

letter, and the Memorandum prepared by David Carlamere, Esq. dated March 14, 2012 are attached hereto as Exhibits J1 and J2, respectively.

26. Specifically, in her letter dated March 14, 2012, Defendant Di Josie noted that with the supplemental filing, the Committee of Petitioners had submitted 1,091 signatures of qualified Gloucester Township voters, 44 signatures more than the 1,047 needed to be sufficient. Notwithstanding this fact, Defendant DiJosie disqualified 299 signatures because they appeared on petitions circulated by persons who were not members of the Committee of Petitioners, and an additional 205 signatures because she did not accept any of the corrected circulator affidavits. On information and belief, Defendant DiJosie erroneously used the absolute number of signatures appearing on such petitions when declaring 205 additional signatures as invalid, rather than the number of qualified voters appearing on such petitions.

27. Defendant Di Josie has a mandatory duty to process Plaintiffs' Referendum Petition in strict accordance with N.J.S.A. 40:69A-185 to -190.

28. By ignoring the clear language and intent of the Legislature to permit a Committee of Petitioners to employ persons other than themselves to circulate the petitions that it sponsors, and to permit the Committee to correct circulator affidavits that are incorrect as to form, as expressed in N.J.S.A. 40:69A-186 to -188, Defendant Di Josie has abused her authority and has failed to perform her mandatory duty to process Plaintiffs' Initiative Petition in accord with the language of the statute.

WHEREFORE, the Plaintiffs demand relief against Defendant DiJosie (1) adjudging and declaring that her rejection of Plaintiffs' Public Contracting Reform Ordinance Petition submitted to the City Clerk on February 13, 2012, and supplemented on March 9, 2012, by (a) disqualifying signatures collected by persons other than the 5 members of the Committee of

Petitioners and (b) disqualifying signatures associated with corrected affidavits of circulators that were prepared, signed and sworn in accordance with New Jersey law, violates N.J.S.A. 40:69A-184 and 186 to 188; (2) directing her to certify Plaintiffs' Public Contracting Reform Ordinance Petition as proper, valid and sufficient in all respects, and submit to the Township of Gloucester Council for further processing; and (3) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

COUNT TWO

(New Jersey Civil Rights Act, N.J.S.A. 10:6-2)

29. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-28 as set forth herein.

30. Pursuant to N.J.S.A. 40:69A-184, “[t]he voters of any municipality may propose any ordinance and may adopt or reject the same at the polls, such power being known as the initiative.” This right of initiative is the quintessential, substantive “rights-creating” statute that the New Jersey Civil Rights Act is intended to protect.

31. In accord with N.J.S.A. 40:69A-187 and 188, “an initiative petition may be amended at any time within ten days after a notice of insufficiency . . . by filing a supplementary petition upon additional papers,” (N.J.S.A. 40:69A-188) explicitly when the clerk determines that “each paper of the petition [does not] have a proper statement of circulator” and/or the “petition is [not] signed by a sufficient number of qualified voters.” N.J.S.A. 40:69A-187. Plaintiffs properly amended their initiative petition by filing corrected affidavits of circulators that were prepared, signed, and sworn in accordance with New Jersey law and submitting additional petition papers with additional signatures of qualified voters.

32. On April 3, 2012, Plaintiff Berry submitted, on behalf of the Committee of Petitioners, a request to Defendant DiJosie to reconsider her determination that the Public Contracting Reform Ordinance Petition was insufficient. The Committee of Petitioners set forth the basis for its assertion that her decision does not accord with New Jersey law. A copy of Plaintiffs' request to DiJosie is attached hereto as Exhibit K.8. Ms. DiJosie verbally communicated with Plaintiff Berry her refusal to reconsider her previous determination.

33. In the absence of judicial intervention, the Clerk's actions mean that Plaintiffs' Public Contracting Reform Ordinance Petition will not be considered by the City Council and/or the voters.

34. By denying Plaintiffs their statutory right of initiative, Defendant Di Josie has violated N.J.S.A. 10:6-2(c) authorizing "[a]ny person who has been deprived of . . . any substantive rights . . . secured by the . . . laws of this State . . . [to] bring a civil action for damages and other injunctive relief."

35. By denying Plaintiffs their statutory right of initiative, Defendant Di Josie has disenfranchised the 1,091 certified voters of Gloucester Township who signed the petition papers.

WHEREFORE Plaintiffs demand relief against Defendant DiJosie (1) directing her to certify Plaintiffs' Public Contracting Reform Ordinance Petition as proper, valid and sufficient in all respects, and submit to the Township of Gloucester Council for further processing; (2) granting attorneys fees pursuant to N.J.S.A. 10:6-2(f) and (3) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC INTEREST
LAW CENTER, INC.

By: Renée Steinhagen, Esq.

April 25, 2011

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq. is hereby designated as trial counsel for Plaintiffs.

Renée Steinhagen, Esq.

Date: April 25, 2011

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding.

2. I am not aware of any other contemplated Court or arbitration proceeding and;

3. I am not aware at the present time of any other party that should be joined to this litigation.

Date: April 25, 2012

Renée Steinhagen, Esq.

CERTIFICATION PRUSUANT TO RULE 4:69-4

I hereby certify that there were no local agency proceedings relevant to the subject of this Complaint that were or could have been transcribed and that the relevant governmental records consist entirely of documents. Accordingly, no transcripts have been ordered.

Date: April 25, 2012

Renée Steinhagen, Esq.

CERTIFICATION OF COMMITTEE MEMBER JOSHUA BERRY

I, JOSHUA BERRY, being of full age do hereby swear and certify as follows:

1. I am a plaintiff and a member of the Committee of Petitioners in above referenced action, and have personal knowledge of the facts and circumstances giving rise to this action.
2. I have read the annexed Complaint including all the facts alleged therein.
3. All the facts alleged in the Complaint are true and accurate to the best of my personal knowledge and belief.
4. Pursuant to R. 1:4-7, I intend this certification to constitute a verification of the Complaint in this matter.
5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false that I am subject to punishment.

Dated: April 25, 2012

JOSHUA BERRY