New Jersey
Appleseed

April 9, 2009

Hon. XXXX
Middlesex County Courthouse
56 Paterson Street
P.O. Box 964
New Brunswick, New Jersey, 08903-0964

Re: Empower Our Neighborhoods, et al. v. Daniel T. Torrisi, et al.
Docket No. MID-L- 101613-08 (Action in Lieu of Prerogative Writ)

Dear Judge XXXXXs:

We represent plaintiffs Empower Our Neighborhoods and the individuals constituting the Committee of Petitioners (collectively, the "Plaintiffs") in this matter. Please accept this letter brief in support of Plaintiffs' Motion for Summary Judgment seeking declaratory relief and an Order (i) setting aside the Municipal Clerk of the City of New Brunswick's ("City Clerk") rejection of Plaintiffs' petition for change of government and compelling submission of the question therein to the voters at the next general election; (ii) enjoining the County Clerk from printing upon the official ballot for use at next general election a certain public question concerning the establishment of a charter study commission submitted by the Council of the City of New Brunswick ("New Brunswick City Council"), O-060807; and (iii) dismissing defendants Torri's and New Brunswick City Council's counterclaim.

TABLE OF CONTENTS

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PRELIMINARY STATEMENT

This is a case about municipal abuse of power; an attempt by City government to thwart the efforts of a highly motivated group of community activists who are determined to hold the New Brunswick City Council accountable. On June 30, 2008, and again on October 1, 2008, several New Brunswick citizens performed an extraordinary civic duty. On both those days, city residents exercised one of their most valued political rights: the ability to petition government for redress of grievances. In employing their political right to propose an amendment to their City

Charter, under the state's Faulkner Act, two petitions bearing their signatures were filed respectively with the City Clerk, defendant Daniel Torrisi. The latter petition, the subject of this litigation, requested that a question "to change the municipal charter" 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 filing of the petition. Twenty-one days later, however, the New Brunswick City Clerk rejected the petition as insufficient, stating that it was deficient in form and was precluded by the City Council's Charter Study Commission Ordinance (that had been enacted earlier in July, and was intended to place a question specifically on the November 4, 2008 General Election ballot, which was prevented from proceeding by judicial order).

At this juncture, Torrisi has chosen, for the second time with respect to a change of government petitionn, to stand in the way of Plaintiffs' petition, and instead to open the doors through which the City's invalid Charter Study Commission Ordinance may pass. Overlooking explicit language in the two statutes implicated herein and the September 2, 2008 holding of Judge Heidi Willis Currier in a related matter (Civil Action MID-L-6408-08), Torrisi, relying on the opinion of William J. Hamilton, Jr., City Attorney, claims that the petition is defective because it does not contain "a properly constructed initiative ordinance on every petition paper" (implying that the ordinance must appear on both sides of each petition sheet)-- a requirement that does not exist in N.J.S.A. 40:69A-186; and is precluded by the enactment of the City Council's Charter Study Commission Ordinance, which was adopted contrary to N.J.S.A.40:69A-17, and by its own language has expired.

Torrisi's position is wrong and lacks any basis in law and practice. Plaintiffs' petition is proper, valid and sufficient in all respects, and, pursuant to N.J.S.A.40:69A-192(c) must ultimately be submitted to the County Clerk for the purpose of placing the appropriate questions

on the ballot at the next general municipal election. In addition, it is clear that the City Council's ordinance, adopted after a citizens' petition had been filed, is contrary to the explicit language set forth in N.J.S.A. 40:69A-17 (governing voter initiated "change in government" petitions and municipal ordinances requiring the election of a charter commission) and thus is *ultra vires;* and even if valid, has by its own terms, expired. New Jersey Supreme Court precedent makes clear that while the City Council has the authority to enact an ordinance calling for the establishment of a charter study commission (that must be submitted to the voters for approval), it does not have the authority to derail a "popular movement toward a referendum election on a specific statutory charter." Chasis v. Tumulty, 3 N.J. 147, 155 (1951). Because Plaintiffs' first petition was filed prior to the passage of the City Council's ordinance, the latter is *ultra vires* and, therefore, cannot preclude Plaintiffs' second petition from proceeding to referendum.

STATEMENT OF FACTS

On October 1, 2008, the Committee of Petitioners (hereinafter, "Plaintiffs") submitted a petition to the Brunswick City Clerk in accordance with N.J.S.A 40:69A-25.1., a 1981 amendment to the Optional Municipal Charter Law (N.J.S.A. 40:69A-1 *et seq*), and the "pertinent provisions" of N.J.S.A. 40:69A-184 through N.J.S.A. 40:69A-196, governing the right of initiative and referendum on local ordinances available to residents of Faulkner and Walsh Act municipalities generally. (SUMF, ¶1). Plaintiffs' initiated petition seeks to pose for referendum a "change of form of government" question, for the November 3, 2009 General Election which next follows the submission of the petition. Specifically, it offers the voters of New Brunswick an alternative permitted under the Mayor-Council plan: for the division of the municipality into six wards with three council members to be elected at large and one from each ward, for a total of nine council representatives. (SUMF, ¶2).

In a letter dated October 22, 2008, the New Brunswick City Clerk communicated to Plaintiffs that he had completed his examination of their petition and had determined that the petition contained a sufficient number of valid signatures to proceed to the ballot, but declined to do so based on the advice of the City Attorney. (SUMF, Torrisi Letter). On November XX, 2008, the City Clerk communicated his refusal to process further the petition to the New Brunswick City Council. (SUMF, Admitted by City; not the County)

The City Clerk's stated basis for refusing to process the voter initiated petition is twofold: First, that "the petition fails to provide a properly constructed initiative ordinance on every petition paper, as required the Initiative and Referendum statutes," and the initiated petition is precluded by the enactment of City Council Ordinance O-060807" (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") (hereinafter Charter Study Ordinance). (SUMF, Letter and City Attorney's Opinion). On June 18, 2008 the New Brunswick City Council had introduced a Charter Study Ordinance that was not adopted until July 2, 2008, stating, in part:

> Section II: An election shall be held in accordance with the provisions of N.J.S.A. 40:69A- 1 et seq. In the City of New Brunswick at the next General Election in November 2008 upon the question: Shall a Commission. . .
> (SUMF, Ordinance)

On September 2, 2008, Judge Heidi Willis Currier issued an Order prohibiting the New Brunswick City Council from proceeding with the placement of its Charter Study Commission question on the November 2008 general election ballot. At that time, Judge Willis Currier had issued an oral decision finding that Plaintiffs' change of government petition that it had submitted to the City Clerk on June 30, 2008 was legally sufficient and ordered the City Clerk to proceed with processing that petition pursuant to N.J.S.A. 40:69A-184 et. seq. Specifically, the

Court stated:

> using a liberal and common-sensical interpretation of the statute, this court does not find that the ordinance, or in this case the proposed questions, needed to be rewritten again on the back of each page,

and further justified its decision by noting:

> language referring to the language of N.J.S.A 40:69A-17 (whereby "no ordinance may be passed for the election of a Charter Commission while proceedings are pending under any other petition filed . . .")(SUMF, Transcript)

Plaintiffs' June 30, 2008, petition that was the subject of the Court's September 2, 2008, Order consisted of two proposed questions giving citizens a choice of two alternative forms of government under the Mayor-Council Plan. (SUMF, Initial Ordinance). On September X, 2008, defendant City Council made a motion for reconsideration based on the alleged confusion of (ten) signatories to the change of government petition subject to the Court's September 2, 2008, Order. (SUMF, ¶). In an Order dated October 29, 2008, the Court stayed the processing of Plaintiffs' June 30, 2008 petition, set forth that "defendants shall take no action with respect to the City Study Ordinance pending further Order of this Court," and stated that the Court would schedule a plenary hearing with respect to defendants' motion for reconsideration. (SUMF, Order dated October 29, 2008). Such hearing never occurred.

Because all ballots for the November 2008 general election had to be ready by September X, 2008 (SUMF, ¶), Plaintiffs withdrew, on October 1, 2008, their first petition dated June 30, 2008. (SUMF, ¶). Contemporaneously, however, Plaintiffs submitted a new change of government petition, which is the subject of this litigation. (SUMF, Certification). Unlike the first petition, however, only one question is presented giving citizens a choice of only one alternative form of government under the Mayor-Council Plan; and additionally,

WHEREAS clauses appear on each petition page explaining Petitioners' intentions in proposing the one question. (SUMF. Petition). In an second Order dated October 29, 2008, the Superior Court issued an Order declaring Civil Action MID-L-6408-08 "moot" as the Committee of Petitioners "has withdrawn the petition subject that is the subject of this action," and denied defendants' request that "the Orders previously entered by the court in this action are vacated." (SUMF, ¶).

LEGAL ARGUMENT

I. SUMMARY JUDGMENT IS APPROPRIATE FOR RESOLUTION OF PLAINTIFFS' CLAIMS AS A MATTER OF LAW.

A party may move for summary judgment under R. 4:46-2, which states, in pertinent part, that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. On a summary judgment motion, the Court must inquire "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Brill v. The Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995). As the New Jersey Supreme Court emphasized in Brill, "a court should deny summary judgment only where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" 142 N.J. at 529. Where a party opposing the motion only points to disputed issues that are of an insubstantial nature, the proper disposition of the motion is to grant summary judgment. Id. Disputes concerning irrelevant or immaterial facts should not serve to bar summary judgment relief. Johnson v. City of Hackensack, 200 N.J. Super. 185, 189 (App. Div. 1985); and the purpose of the summary judgment procedure is to avoid trials that would serve no useful purpose

and to afford deserving litigants immediate relief. Warthen v. Toms River Community Memorial Hospital, 199 N.J. Super. 18, 23 (App. Div. 1985), cert. denied, 101 N.J. 255 (1985).

Given the fact that Plaintiffs' claims may be resolved on the basis of all the documents presented in the pleadings, and there are no material facts in dispute, this action is appropriate for resolution on a motion for summary judgment.

II. THE CITY CLERK HAS ABUSED HIS DISCRETION AND HAS ACTED ARBITRARILY BY REFUSING TO APPROVE PLAINTIFFS' PETITION ON ERRONEOUS AND FRIVOLOUS GROUNDS.

Pursuant to N.J.S.A. 40:69A-25.1(a), "[t]he *question* of adopting an alternative" permitted under New Brunswick's Mayor-Council plan of government "may be initiated by the voters pursuant to and subject to the *pertinent* provisions of [N.J.S.A. 40:69A-184 et seq.]" 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 [N.J.S.A. 40:69A-191 through 196]." (emphasis added) The statute clearly authorizes the voters of Faulkner municipalities to place the question of whether to adopt a certain alternative plan of government on the ballot for a referendum vote, and not to initiate an ordinance to do so. Mere incorporation of the "pertinent" provisions of the general initiative and referendum statute does not transform the right to submit a question to the voters into a right to initiate an ordinance, especially in this context where such an ordinance would, by its own terms, also have to be placed before the voters in the form of a public question (even if adopted by the City Council).

The text of the question is the heart of the citizens' petition and not a request to the governing body to agree, by ordinance, to place such questions on the ballot. Accordingly, defendant Torrisi's conclusion that Plaintiffs' petition is defective primarily because it does not "provide a properly constructed initiative ordinance on every petition paper, as required the

Initiative and Referendum statutes," is mistaken and is not supported by the explicit language of the governing provision and the statutory scheme in which it is embedded.

As a matter of statutory interpretation, under New Jersey law "[t]he initiative and referendum processes. . . comprise two useful instruments of plebiscite power and provide a means of arousing public interest" in an age of normal apathy and lethargy' among voters. As a result, such provisions should be liberally construed." Sparta Tp. v. Spillane, 125 N.J. Super 519, 523(App. Div. 1973), cert. denied, 64 N.J. 493 (1974); Tumpson v. Farina, 240 N.J. Super. 346, 350 (App. Div.), aff'd, 120 N.J. 55 (1990)("The legislative grant of the referendum power should be liberally construed in order to encourage public participation in municipal affairs in the face of normal apathy in such matters.")(quoting Narciso v. Worrick, 176 N.J. Super. 315, 319 (App. Div. 1980)).

Mindful that the initiative and referendum provisions of the Faulkner Act are specifically aimed at increasing public participation in public affairs, New Jersey courts consistently understand that such liberally construction is appropriate and often necessary to secure the beneficial effects of voter participation.[1] A municipality, such as New Brunswick, is therefore prohibited from attempting to evade the effect of a citizen's initiative or referendum petition by imposing technical, and in this case meaningless, requirements upon that petition that have no basis in law. All Peoples Congress of Jersey City and Council of the City of Jersey City, 195 N.J. Super. 532 (Law Div. 1984)

A. Plaintiffs' Petition Complies With All Substantive Requirements

[1] See, e.g., In re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. 446, 458-459 (2007) (Referendum statute in Faulkner Act should be liberally construed to promote the "beneficial effects" of voter participation) (citing Retz v. Mayor & Council of Saddle Brook, 69 N.J. 563, 571 (1976)); Borough of Eatontown v. Danskin, 121 N.J. Super 68 (Law Div. 1972)(statutory scheme is specifically aimed at increasing public participation in public affairs).

In N.J.S.A.69A-25.1 and Accords With the Form
Requirements Set Forth In N.J.S.A. 40:69A-184 *et seq*.. . . . . .

As noted above, N.J.S.A. 40:69A-25.1 governs a citizen initiated petition in which "[t]he *question* of adopting an alternative" permitted under New Brunswick's Mayor-Council plan of government is "submitted to the voters." This statute sets forth the form and content of the question to be presented, but sets forth no other substantive requirement. The relevant portions of N.J.S.A. 40:69A-25.1(b) provide as follows:

> 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 governed by (insert name of municipality) be amended as permitted under that (insert plan of government) plan, to provide for (insert appropriate language from below for the "alternative to be voted upon) . . .
>
> If more than one alternative is to be submitted to the voters at the same time, each alternative shall be separately stated on the ballot in the form of a question as set forth above. If the provision of two or more alternatives adopted at the same election conflict then that receiving the greatest affirmative vote controls.

Based on the explicit language of the statute, Plaintiffs' submission of one question that apes the specified question format by inserting appropriate language from an alternative found under Group B meets the statute's substantive requirements.

In addition to this requirement, a citizen initiated petition to present a change of government question to the voters must meet the "pertinent" provisions of N.J.S.A. 40:69A-184 *et seq*. Specifically, in order for an initiative petition to be valid, there are six formal requirements that must be satisfied under N.J.S.A. 40:69A-184 through 186. These requirements are the following:

a. The "petition" must be signed by voters between 10% and 15% of the turnout in the last legislative election in order to appear at the next general election. A petition must have

at least 15% of the turnout in the last legislative election to warrant a special election. In this case, the relevant figure is between **XXX and 352.** Since the petition is signed by **XXX** persons, it meets the statutory requirement of the statute. See Angelo Saverino v. Zboyan, 239 N.J. Super. 330, 336-337 (App. Div. 1990), certif. denied 121 N.J. 657 (1990) (requiring less signatures for a petition calling for the adoption of an "alternative" under one of the four optional plans of government under N.J.S.A. 40:69A-184 (*i.e.*, more than 10% of the total votes cast in the last General Assembly election) than a petition calling for the adoption of one of those plans governed by N.J.S.A.40:69A-19 (which requires a petition of at least 20% of all registered voters);

b. "All petition papers" must be uniform in size and style. The petition here complies in that all sheets comprising each petition paper are on 8 ½ x 11 paper, are of uniform color and all text on the petition is in Times New Roman font, see (SUMF, Petition);

c. The "petition papers" must contain the full text of the proposed ordinance, or as Plaintiffs assert herein and as accepted by Judge Heidi Willis Currier in Civil Action MID-L-6408-08 relating to Plaintiffs' first petition, in the case of an initiative petition filed pursuant to N.J.S.A. 40:69A-25.1(a), the papers must contain the full text of each of the proposed questions, if more than one. The petition here complies in that all sheets comprising each petition paper contain a copy of the one question to be submitted to the voters for a referendum vote, id.;

d. "Each separate petition paper" must have attached thereto an affidavit and statement of the circulator in the manner and form prescribed by N.J.S.A 40:69A-186. The petition here complies with this requirement insofar as each individual petition paper has the circulator's affidavit contained therein, id.;

e. "Each signer" of the petition must sign in ink or indelible pencil and list his place of

residence by street and number or other description sufficient to identify the place. There is no question that Plaintiffs' petition satisfies this requirement, id.; and

f. "Each petition paper" must contain the name and addresses of five voters listed as the Committee of Petitioners. The petition here also complies with this requirement in that both sides of each separate petition paper include the names and addresses of each of the Committee of Petitioners. Id.; See Hamilton Township Taxpayers' Ass'n v. Warwick, 180 N.J. Super 243, 247 (App. Div. 1981) certif. denied 88 N.J 490 (1981) (denying the sufficiency of the petition because the names and addresses of the five-member Committee of Petitioners were omitted at the time the voters affixed their signatures to the petition, although were added on each separate sheet at the time of filing with the Township Clerk).

1. The Full Text of the Proposed Question Appears on Each Petition Page.

The Clerk's rejection of Plaintiff's petition appears to be based, in part, on the statutory requirement that the "[i]nitiative petition papers shall contain the full text of the proposed ordinance." That is, defendant Torrisi asserts that Plaintiffs must propose "a properly constructed initiated ordinance" when filing their change of government petition pursuant to N.J.S.A. 40:69A-184 *et seq*., (SUMF, Torrisi rejection letter). This position ignores the explicit language of N.J.S.A.40:69A-25.1(a), and the Legislature's intent in 1981 (when it added such provision to the "change of government" petition statutory scheme) to facilitate, not complicate, the filing of such petitions. This was the same position that defendants took with respect to Plaintiffs' first petition, and this was the same position rejected by Judge Heidi Willis Currier in Civil Action MID-L-6908-08.

In order to understand just how mistaken Torrisi was the first time around and continues to be, it is necessary to fully analyze the statutes involved and the one decision on which Torrisi

relied in his previous rejection of Plaintiffs' first petition, Thomas v. Torrisi, Docket No. L-7677 (Law Div. 2002)(Zurofsky Certification, unpublished letter opinion).

The full texts of N.J.S.A. 40:69A-25.1(a) and N.J.S.A. 40:69A-186 provide as follows:

N.J.S.A. 40:69A-25.1(a) states:

> Any municipality governed by a plan of government adopted pursuant to [the Faulkner 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 sections 17-35 through 17-47 (C. 40:69A-184 through C. 40:59A-196) or may be submitted to the voters by an ordinance adopted by the governing body, in which case the question and ordinance shall be subject to the *pertinent* provisions of sections 17-35 through 17-47 (C. 40:69A-191 through C. 40:59A-196) , except that no petition of the voters shall be necessary in order to submit the question.

The full text of N.J.S.A. 40:69A-186 states:

> All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five voters, designated as the Committee of the Petitioner, who shall be regarded as responsible for the circulation and filing of the petition and for its possible withdrawal as hereinafter provided. Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that all the signatures appended thereto were made in his presence, and that he believe them to be the genuine signatures of the persons whose names they purport to be.

These two provisions must be read *in pari materia* to effectuate the purpose of the referendum statutes. Cf. City of North Wildwood, v. North Wildwood Taxpayers' Ass'n et al., 338 N.J. Super. 155 (Law Div. 2000) (requiring election law statutes and provisions of the Faulkner Act and Walsh Act to be read *in pari materil* to permit interpretative statement to be included on the ballot with change of government question); Application of Cucci, 92 N.J. Super.

223 (Law Div. 1966)(legislative purpose is to be ascertained by consideration of all provisions of the election law *in pari material*).

With respect to N.J.S.A. 40:69A-25.1(a), Torrisi ignores the specific language of the provision that permits voters to initiate a "question" pursuant to the "pertinent provisions" of N.J.S.A. 40:69A-184 *et seq*., and instead reads into the statute a requirement that they must initiate an ordinance. In specific, he stated in his rejection of Plaintiffs' first petition that they "have confused and intertwined the two types of petitions, *i.e*., direct petition and initiative petition" and have thus failed to propose an ordinance as allegedly required by N.J.SA.40:69A-184. (Zurofsky Certification, Hamilton Opinion at p.2). This conclusion ignores the Legislature's intent to permit citizens seeking to adopt an alternative form of government without changing an existing plan of government to enjoy only the "pertinent provisions" of N.J.S.A. 40:69A-184 *et seq*., --- not all --- such as a lower signature threshold, without requiring them to initiate literally an ordinance.

N.J.S.A. 40:69A-25.1(a) is quite clear: voters have the right to initiate "[t]he question of adopting an alternative" permitted under New Brunswick's Mayor-Council plan of government" whereas the governing body has the authority to submit such question solely "by ordinance." Use of the "pertinent" provisions of the general initiative and referendum statute (*i.e*., those that are relevant to the placement of the public question(s) authorized under N.J.S.A. 40:69A-25.1) does not change such reality. To conclude that the Legislature intended the voters to initiate an ordinance that would by its own terms require the municipality to place the question of adopting an alternative form of government on the ballot would elevate form over substance and, in some cases, would thwart the voters intent to place the questions on the ballot at the election immediately following the filing of their petition. For if the governing body rejected the voters'

initiated ordinance, only the ordinance would appear on the ballot (though it would include the questions), and the actual questions would not be subject to a referendum vote until a subsequent election held after the voters had approved such an ordinance. Such an outcome is not only redundant but is so complicated and convoluted so as to defy common sense and the meaning of the statutory scheme.

Under traditional methods of statutory interpretation, the court should give the language of N.J.S.A. 40:69A-25.1(a) its plain meaning. Levin v. Township of Parsippany-Troy Hills, 82 N.J. 174, 182 (1980); DiProspero v Penn, 183 N.J. 477, 492 (2005)(the "ordinary meaning and significance" of a statute's terms is the best indicator of legislative intent). In order to do so, one must look to the language of a specific provision, but also one must review the entire legislative scheme of which it is part. Kimmelman v. Henkels & McCoy, Inc. 108 N.J. 123, 129 (1987). Emphatically, it is the role of the court "to construe the statute, not to impose policy preferences, particularly when to do so inhibits voter participation." In re Referendum Petition to Repeal Ordinance 04-75 , 192 N.J. at 467-68.

Review of the specific language used in N.J.S.A. 40:69A-25.1(a) leads one to conclude that "question" means "question", and does not imply "ordinance." Indeed, the Legislature was very clear that only the governing body is authorized to submit the question of adopting an alternative plan of government to a referendum vote by ordinance, not the voters themselves. And in that situation, and only that situation, "the question and the ordinance' will be subject to the "pertinent provisions" of the general initiative and referendum statute.

Support for such interpretation is found within several of the preceeding sections of the Optional Municipal Charter Law, N.J.S.A. 40:69A-1 *et seq*.. Pursuant to Sections 69A-1 (election on question whether charter commission shall be elected), 69A-19 (petition for election

upon adoption of optional plan of government) and 69A-25 (petition for reversion to form of government under which municipality was governed immediately prior thereto), the voters of a municipality are permitted only to submit a public question for referendum vote, not initiate an ordinance. See Pappas v. Malone, 36 N.J.1, 4-5 (1961)(noting absence of an ordinance when considering requirements of form to be applied to citizen initiated petitions for charter study or for adoption of or reversion to a form of government); N.J.S.A. 40:69A-1(b)(explicit language requiring petitions for charter study to "conform to the requirements of form for petitions under [N.J.S.A. 40:69A-186 through 188] (except that there shall be no reference therein to any ordinance)". There is nothing in the language of N.J.S.A. 40:69A-25.1 that would lead one to conclude that the Legislature intended to change such pattern. To the contrary, the language indicates more of the same.

Furthermore, nothing in Judge Ciccone's letter decision in Thomas v. Torrisi, Docket No. L-7677-02 (Law Div., September 9, 2002) states otherwise. First and foremost, Thomas v. Torrisi involved the filing of a petition, through initiative and referendum, seeking adoption of an ordinance entitled "New Brunswick Tenants Rights Act of 2002" dealing with the subject of rent control. Obviously, the petition sought to initiate an ordinance and thus the decision provides no support for Torrisi's baseless position that N.J.S.A. 40:69A-25.1(a) requires voters to initiate an ordinance concerning adoption of an alternative form of government when they file that petition pursuant to N.J.S.A. 40:69A-184 *et seq*..

From the above, it is clear that Plaintiffs' inclusion of the full text of the proposed question on each petition paper is sufficient to meet the statutory requirements of N.J.S.A. 40:69A-25.1. Moreover, the fact that Petitioners decided to set forth several WHEREAS clauses expressing their intent in submitting such question to the voters --- a typical characteristic of a

municipal ordinance --- undermines defendants' argument (though does not create an additional statutory requirement).

2. A Petition Page Includes the Front and Back Side of Each Sheet.

In his rejection letter, defendant Torrisi states that Plaintiffs have failed to "provide . . . [an] ordinance on every petition page." It is unclear from this language whether Mr. Torrisi has rejected Plaintiffs' petition because it fails to include a proposed ordinance on both sides of each petition page as he did with respect to Plaintiffs' first petition. If so, he would be creating out of whole cloth a requirement (unbeknownst to potential petitioners in any Faulkner municipality throughout the State) that a copy of the full text of a proposed ordinance or questions must appear on both sides of each sheet of a petition. Such requirement was rejected by Judge Heidi Willis Currier and should be similarly rejected by this Court.

Unlike the situation above, the decision in Thomas v. Torrisi, Docket No. L-7677-02 (Law Div., September 9, 2002) is able to assist this Court in determining the merit or lack thereof of defendant Torrisi's (presumed) second ground for rejecting Plaintiffs' petition; namely, Plaintiffs' alleged failure to include a statement of the "questions posed or an ordinance" on both the front and back sides of each petition paper. Pursuant to N.J.S.A. 40:69A-186, "[i]nitiative petition papers shall contain the full text of the proposed ordinance," whereas there must be a statement of the circulator attached to "each separate petition" or "each separate petition paper," and the names of the Committee of Petitioners must appear "on each petition paper." As the Pappas Court admitted, the six-justice majority was confused about these various statutory requirements,[2] and the exact meaning of these different phrases continues to escape New Jersey

[2] The Court in the majority opinion stated:

We cannot be certain that the Legislature in its reference in section 186 to

courts, including the trial court in Thomas.

The court in Thomas, however, did not have to explore the exact meaning of the phrase "petition papers," let alone whether each side of a separate petition page constituted a petition paper for purposes of the statute, because the petitioner simply did not include or attach the full text of the proposed ordinance to any of the petition papers. As the Court noted:

> The petition submitted by circulators consisted of first pages containing an identification of the proposed ordinance only by its title followed by eleven lines for signatures. Additional signature pages contained only lines for signatures with no statement or references to the proposed ordinance. . . Provision 40:69A-186 requires that "[i]nitiative petition papers shall contain the full text of the proposed ordinance." While the statute does not elaborate on this requirement, plaintiff failed to include any statement on each petition paper informing the voters as to what they were signing.

The facts in Thomas are clearly not comparable to the facts herein; moreover, the Court's holding does not support the City Clerk's determination that all petitioners must include the proposed questions or ordinance on both sides of each petition paper or sheet. (Zurofsky Certification, Hamilton Opinion at pp.5-6). In Thomas, additional signature pages were separate pieces of paper, physically independent from the first signature page that included the full text of the proposed ordinance, not the back side of the signature page that included such text.

It is clear that the City Clerk's conclusion distorts the explicit language used in the statute and, in practice, would, in most instances, be impossible to satisfy. Although the question posed by the Plaintiffs herein is relatively compact, the texts of most ordinances initiated by voters constitute more than one page. Accordingly, it is typical and appropriate for petitioners to attach

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> 'each separate petition paper' means each separate sheet rather than each of the several petitions containing more than one page which would ultimately be assembled and filed as a single instrument pursuant to Section 187.

Pappas v. Malone, 36 N.J. at 6.

a full copy of the proposed ordinance to each separate petition paper --- a paper that includes signatures and the names of all the Committee of Petitioners on both sides, a reference to the ordinance on the front side of the paper and the circulator's affidavit on the back. To require petitioners to attach the full text of an ordinance (or as in this case the proposed public question) to both sides of a petition paper, or to include that text on both sides, is often impossible, certainly impractical, serves no public purpose and is not based in law. Accordingly, Plaintiffs' decision to include the full text of the proposed question on the front side of each petition page with a reference thereto on the back side (and a reminder to read the question on the front)is no defect at all, and cannot sustain Torrisi' rejection of Plaintiffs' petition.

B. Defendants are Collaterally Estopped from Arguing that Plaintiffs' Petition is Insufficient As a Matter of Form.

In her September X, 2008, decision involving the same parties, related claims and some of the identical questions of law, Jude Heidi Willis Currier determined, *inter alia*. that (1) change of government petitions that are initiated by voters must contain the full text of the question(s) to be posed, and need not propose an ordinance; and (2) the question(s) to be submitted to the voters need not appear on both sides of each petition paper/page/sheet.[3] Pursuant to the common law estoppel doctrine, defendants cannot relitigate these same legal issues herein; appeal of Judge Currier's decision would have been defendants only recourse if they believed her decision was wrong as a matter of law. Furthermore, although Judge Currier scheduled a reconsideration hearing after rendering her final decision (based on the certifications

[3] With respect to Plaintiffs' first petition, Judge Currier also held that (3) N.J.S.A.40: 69A-25.1 permitted citizens to pose two questions presenting alternative forms of government even if conflicting; and (4) Defendants' Charter Study Commission Ordinance could not proceed since it was enacted after Plaintiffs' petition was filed. In the earlier action, Defendants did not assert that the Charter Study Commission Ordinance precluded the filing of Plaintiffs' petition as they assert herein. Conversely, Plaintiffs are not arguing in this case that the statute permits two or more questions to be included on each petition.

of ten (10) petition signers who said that they were not told by the petitioners and/or did not understand that two alternative form of government questions were to appear on the ballot) such hearing was not held. Indeed, when deciding not to hold such hearing and dismissing the previous action as moot, the court specifically decided not to vacate its previous decision and orders thus rendering its September decision final.

Purusant to the doctrine of collateral estoppel, "[o]nce a court has decided an issue of fact or law necessary to its judgment, that decision. . . preclude[s] relitigation of the issue in a suit on a different cause of action involving a party in the first case." San Remo Hotel v. San Francisco, 545 U.S. 323 n.16 (2005). See also Wayne Tarus v. Borough of Pine Hill, 189 N.J. 497, 520 (2007)(quoting from previous New Jersey Supreme Court cases[4] that collateral estoppel represents the "branch of the broader law of resjudicata" which bars relitigation of "any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action."). Over the years, many New Jersey courts have affirmed that they follow the doctrine of collateral estoppel or rule of issue preclusion as set forth in the *Restatement of Judgments*. E.g., Olivieri v. YMF Carpet, Inc., 186 N.J. 511, 519-23 (2006); Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 659 (1996); In Re Dawson, 136 N.J. 1, 20-21 (1994); Pivncik v. Beck, 326 N.J.Super. 474, 485-486 (App. Div. 1999), aff'd 165 N.J. 670 (2000); Mocci v. Car Engineering Assoc., 306 N.J. Super. 302, 309 (App. Div. 1997); Ensslin v. Township of N. Bergen, 275 N.J. 352, 370 (App. Div. 1994); Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 94 (App. Div.), cert. denied, 107 N.J. 32 (1986). The *Restatement* provides:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whetehr on the same or a different

[4] Sacharow v. Sacharow, 177 N.J. 62 (2003) quoting State v. Gonzalez, 75 N. J.181, 186 (1977)

claim.

Restatement (Second) of Judgments §27 at 250 (1982). In order for collateral estoppel to apply, five factors – all of which exist in this case-- must be satisfied.

First, the issue to be precluded must be identical to the issue decided in the prior adjudication. Olivieri v. YMF Carpet, Inc., 186 N.J. At 521 (quoting In re Estate of Dawson, 136 N.J. at 20-21) Here, two legal issues that are presented herein-- that is, whether plaintiffs' petition needs to include the full text of the proposed question or an ordinance on each petition paper and whether that text has to appear on each side of each petition paper,--- are identical to those that were raised in the previous Superior Court action. Second, the issues to be precluded were actually litigated in the the prior proceeding. Id. There is little doubt that the two issues were fully briefed and argued before Judge Currier in the earlier action. Third, the court in the prior proceeding issued a final judgment on the merits. Id. Here also the requirment is met insofar as when the case was dismissed as moot, Judge Currier declined to vacate her previous decision and orders rendering her decision a final judgment on the merits. Fourth, the determination of the issues were essential to the prior judgment, and fifth, the party against whom the doctrine is asserted was a party to or in privity with the party in the earlier proceeding. Id. Again, it is clear that the court's finding that plaintiffs' petition was sufficient insofar as it then, as now, recited the full text of the question(s) it sought to place on the ballot on the front side of each petition paper was central to the court's order compelling the County Clerk to permit the petition to proceed to the ballot. And finally, because the parties to the two actions are identical, privity is not an issue.

> It is clear from the factual circumstances surrounding both the previous action decided by Judge Currier and this case as well as the "sameness" of the legal issues involved in both cases that application of collateral estoppel will result in all the benefits associated with the doctrine: finality of a decision,

prevention of needless litigation, avoidance of duplication, reduction or unnecessary expenses associated with relitigation of the same issues between the same parties, elimination of conflicts and uncertainty, and basic fairness. Hennessey v. Winslow Township, 183 N.J. 593, 599-600 (2005). Indeed, because plaintiffs relied on Judge Currier's first decision when designing their second petition, and none of the exceptions to the general rule of issue preclusion apply,[5] it would offend basic fairness if the court were not to apply the doctrine herein.

C. N.J.S.A. 40:69A-21 Does Not Apply Because the City's Ordinance Is Ultra Vires and/or Has Expired.

In his rejection letter dated October 22, 2008, the New Brunswick City Clerk communicated to Plaintiffs that their "initiated petition is precluded by the enactment of City Council Ordinance O-060807." (SUMF, Torrisi letter). **The letter states that because the Ordinance was allegedly enacted prior to the filing of the petition it takes priority and warrants rejection of Plaintiffs' petition. No case law is cited therein. IS THIS ACCURATE—I NEVER SAW THE LETTER OR ATTACHED ATTORNEY OPINION IF THERE IS ONE. IF NOT ACCURATE, SENTENCE MUST BE CHANGED.**

Pursuant to N.J.S.A. 40:69A-21:

[5] Pursuant to Section 28 of the *Restatement (Second) of Judgments*, there are five situations where a court should not apply the doctrine of collateral estoppel. These are: where a party could not as a matter of law have obtained review of the initial judgment; where the two actions involve claims that are substantially unrelated or a new determination is warranted in order to take into account an intervening change in the applicable legal context; where the two actions involved proceedings that have substantial differences in their quality or extensiveness; where burdens have shifted or are different in weight; and where there is a "clear and convincing need" for a new determination because of adverse effects on the public interest, one could not anticipate that the same legal issue would arise in a new context, or the party did not have adequate opportunity or incentive to obtain a full and fair adjudication. Olivieir v. YMF Carpet, Inc., 186 N.J. at 523. A review of these factors indicates that none apply. To the contrary, because the legal issues are exactly the same, and at the time decided by Judge Currier were likelyto arise repeatedly in the same legal context – the sufficiency of a change of government petition initated by the voters, --- the fact that the petition involved in the first case was withdrawn did not, as a matter of law, prevent defendants from seeking review of Judge Currier's decision in the Appellate Division. The public interest requires that her decision prevail in Middlesex County unless and until reversed by an appellate court.

> No petition for submission of the question of adopting an optional plan of government . . . may be filed while proceedings are pending pursuant to another such petition, or under an ordinance passed or petition filed pursuant to section 1-1 of this act [concerning the establishment of a charter study commission] . . .

It is Plaintiffs' contention that this statute does not apply because at the time Plaintiffs filed their second petition on October 1, 2008, there were no proceedings pending pursuant to a validly enacted ordinance. This is the case because on July 2, 2008, the day the New Brunswick City Council adopted Ordinance O-060807, the City Council had no authority to do so. Review of the explicit language of N.J.S.A. 40:69A-17[6] (i.e., "No ordinance may be passed. . . ") indicates that once Plaintiffs' petition was filed on June 20, 2008, and ensuing "proceedings [were] pending," the City Council was not authorized to enact an ordinance for the election of a charter commission.[7]

It is a fundamental principle of New Jersey law that municipalities may not legislate in direct conflict with state statutes. See Summer v. Teaneck, 53 N.J. 548 (1969)(stating that a municipal ordinance may not permit what a statute forbids nor forbid what a statute authorizes);Paramus v. Martin Paint Stores, Inc., 121 N.J. Super. 295, 297 (Law Div. 1972)(*quoting* Chief Justice Weintraub in Kennedy v. Newark, 29 N.J. 178, 186-187(1959) to the effect that municipalities may not exercise their delegated powers to legislate in conflict with state statutes). Furthermore, it is a long-standing principle that statutes must be interpreted in

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[6] N.J.S.A. 40:69A-17 states in relevant part:

> *No ordinance may be passed* and no petition may be filed for the election of a charter commission . . . while proceedings are pending under any other petition or ordinance filed or passed . . . providing for the adoption of any other charter or form of government available to the municipality. (emphasis added)

[7] Iironicaly, this contention is supported by defendants' legal position in this case: Defendants have rejected Plaintiffs' petition outright rather than accepting it while merely suspending the processing thereof because the City's Ordinance allegedly takes priority. Similarly, Plaintiffs contend that the City Ordinance was invalid rather than valid and merely suspended until that time when there was no citizen petition pending.

such a way as to give the "full force and effect . . .to every sentence, clause and word thereof." Bogert v. Hackensack Water Co., 101 N.J.L. 518 (E & A 1925).

Applying these two principles to the construction of N.J.S.A. 40: 69A-17, it therefore follows that the New Brunswick City Council did not have the authority to enact its Charter Study Commission Ordinance on July 2, 2008 when it attempted to do so--- an authority that it otherwise had. See Chasis v. Tumulty, 8 N.J. 147, 155 (1951)(noting that a municipality generally has the authority "to initiate a movement looking toward an applied [charter commission] study," but cannot do so once a citizen initiated petititon has been filed). Deprived of its authority at the time the Council "passed" its Ordinance, the Ordinance is thus *ultra vires*. Cf. Rockhill v. Township of Chesterfield, 23 N.J. 117 (1956)(ordinance found *ultra vires* because it overrode concept of use zoning found in state statutory principles and policy); Indyk v. Klink, 121 N.J. Super. 314 (App. Div. 1972).(holding that because the mayor rather than council had power to appoint municipal attorney and engineer pursuant to state law, sections of the administrative code giving such power to the council were *ultra vires*).

Such conclusion is consistent with and furthers the public interest. Permitting a municipality to enact a study commission ordinance while a competing citizen initiative is pending creates a situation where the City has an incentive to treat and process the citizens' petition unfairly. To avoid a conflict of interest and to ensure that the City Clerk and Council act appropriately, the Legislature has wisely withdrawn such authority once the citizen petition has been filed. Accordingly, it was only after Plaintiffs had withdrawn their initial petition on October 1, 2008, that the City Council was legally authorized to pass its Charter Study Commission Ordinance, which had its first reading on June 18, 2008. It did not do so; and once again, Plaintiffs filed their second petition prior to such action thus triggering the

preclusion/deprivation effects of N.J.S.A. 40: 69A-17.

In the alternative, even if this Court were to determine that Ordinance O-060807 was valid, by its own terms the Ordinance has expired. On June 18, 2008, the New Brunswick City Council introduced a Charter Study Ordinance stating, in part:

> Section II: An election shall be held in accordance with the provisions of N.J.S.A. 40:69A- 1 et seq. in the City of New Brunswick at the next General Election in November 2008 upon the question: Shall a Commission. . .

(SUMF, Ordinance). The Ordinance specifically calls for a charter study commission referendum to be placed on the ballot "at the next General election in November 2008," not simply the next General election following the processing of the ordinance. Accordingly, once September X, 2008 passed--- the date on which the County Clerk was required to submit the proposed November 2008 ballot to the printer,--- the New Brunswick City Council was required to enact a new ordinance or amend its previous ordinance to specify the next General Election in November 2009 as the appropriate election ballot on which the proposed referendum would appear. It did not do so; and once again (like noted above), Plaintiffs filed their second petition prior to such action thus triggering the preclusion/deprivation effects of N.J.S.A. 40: 69A-17.

For the foregoing reasons, Plaintiffs' petition is sufficient and the City Clerk must be compelled to accept and process it pursuant to the relevant statute scheme.

III. DEFENDANTS' COUNTERCLAIM MUST BE DISMISSED AND THE COURT SHOULD ENJOIN THE COUNTY CLERK FROM PLACING THE CITY COUNCIL'S CHARTER STUDY COMMISSION ORDINANCE ON THE BALLOT FOR VOTER APPROVAL . . . . . .

Although defendant City Council has yet to submit its Ordinance entitled, "Ordinance to Provide for an Election in the City of New Brunswick on the Question of the Establishment of a

Charter Study Commission," (hereinafter "Charter Study Commission Ordinance") at the date of the filing of this action, it is anticipated that the City Council will submit such Ordinance for a referendum vote to the County Clerk in the future insofar as Torrisi has stated that such Ordinance precludes the acceptance of Plaintiffs' second petition and defendants have asked this Court for a declaration permitting them to proceed with the placement of such Ordinance on the November, 2009 General Election ballot. (Counterclaim, Relief).

It is Plaintiffs' contention that their first petition, filed on June 30, 2008, not only precluded defendants' Ordinance from appearing on the ballot, as Judge Currier held in accordance with Chasis v. Tumulty, 8 N.J. 147 (1951), but also, as shown supra. Point IIC, rendered defendants' Ordinance invalid (by depriving defendants of the authority to pass such Ordinance). In order for the City Council to place a charter study commission ordinance on the next General Election ballot in November 2009, the City Council would need to pass a second ordinance (that specifies the November 2009). However, such ordinance would be subject to the same fate as the first insofar as it would be enacted after Plaintiffs withdrew their first petition but only after Plaintiffs filed their second petition.

As established supra Point II, at the time Plaintiffs filed their second petition at issue in this case, there was no valid Charter Study Commission Ordinance pending. Furthermore, when the previous court case was dismissed, the court deliberately decided not vacate its previous orders prohibiting defendants from proceeding with its Ordinance (without further court action). The Court did so knowing that Plaintiffs not only withdrew their first petition, but also had filed a second related change of government petition. Judge Currier's decision thus affirms and vindicates the Legislature's policy in prohibiting the enactment of a charter study commission ordinance after a citizen petition has been filed and proceedings reviewing and processing such

petition are still pending.

As an eye witness to defendants' strategy to drag out the first litigation past the ballot submission date (to the printer) so as to effectively defeat Plaintiffs' change of government initiative politically (*i.e*., outside the courtroom), Judge Currier was not going to permit defendants to derail EON's efforts more generally. That is, Judge Currier when dismissing the previous action as moot and refusing to vacate her previous orders deliberately prevented defendants from defeating Plaintiffs' attempt to get its change of government question on the next general election ballot simply by resurrecting an ordinance that was passed in violation of state law.

Given Plaintiffs' assertion explained supra. that its petition is indeed sufficient and defendants' Ordinance is invalid, Plaintiffs' request that this Court dismiss defendants' counterclaims and instead, declare that Plaintiffs' change of government petition that was filed with the City Clerk on October 1, 2009, precludes the submission of the City Council's Charter Study Commission Ordinance that was allegedly enacted three days after the filing of Plaintiffs' initial petition, pursuant to N.J.S.A. 40:69A-17 and N.J.S.A. 40:69A-21. Because defendants' Ordinance is *ultra vires* and the question submitted to the voters as a result of Plaintiffs' change of government petition may not appear on the same ballot as questions submitted as a result of the City Council's Ordinance, it is appropriate and necessary for this Court to restrain defendant Flynn from printing upon any ballot for use at the November **X,** 2009, General Election the City Council's Public Question regarding the establishment of a Charter Study Commission and the names of any candidates for membership on such Commission required to be elected pursuant to N.J. S.A. 40:69A-2 and 69A-3.

In accordance with N.J.S.A. 40:69A-17and N.J.S.A. 40:69-21, questions submitted to the

voters as a result of Plaintiffs' change of government petition may not be processed at the same time, and thus may not appear on the same ballot as questions submitted as a result of the City Council's Charter Study Commission Ordinance. Furthermore, in accordance with the explicit language of these two statutes, which ever petition or ordinance is filed or passed first prevails rendering the other invalid (not merely suspended). See Chasis v. Tumulty, 8 N.J. 147 (1951) (under Optional Municipal Charter Law providing that no petition for submission of plan of adopting optional plan of government may be filed while proceedings are pending pursuant to an ordinance passed for adoption of any other charter or form of government, petition filed on January 22 was permitted to proceed since ordinance was passed on January 23). See also "New Brunswick voters clear victors of ballot battle," Home Tribune News, dated July 16, 2008, (spokesman for the state Attorney General's Office, David Wald, was quoted as saying, "The citizens' petition superseded the council's action because it came first.")(Zurofsky Certification, Exhibit X).

The New Jersey Supreme Court in Chasis v. Tumulty, 8 N.J.at 155 strongly stated the policy behind its reasoning, which is particularly applicable to the case at hand. It wrote:

> It could be that a governing body, wishing to maintain the existing status and observing a popular effort making toward a new charter, would endeavor to stifle that movement by the hurried passage of a resolution for charter study which might lead somewhere or no where. It is plainly an objective of the statute that a ready response shall be made to a popular impulse for change. The wisdom of that fluid condition of municipal government is for the Legislature to determine. The Legislature has determined; and while it has clothed the governing body with authority to initiate a movement looking toward an applied study it has, in our opinion, given, in section [N.J.S.A. 40:69A-21], assurance that such authority shall not vitiate a popular movement toward a referendum election on a specific statutory charter.

In this case it is clear that once Plaintiffs filed their second petition on October 1, 2009, the City Council could take no further action regarding its Charter Study Commission Ordinance

that had its first reading in June 2008 in accordance with N.J.S.A. 40:69A-17 (not section 21 as stated by the Chasis court.). That is, it could not enact a new study commission ordinance that would be valid or amend the first (that, even if valid, had expired). Therefore, if the City Council submits such Ordinance to the County Clerk for placement on the ballot such action would, like the Ordinance itself, be *ultra vires*.

Under New Jersey law, a municipality is prohibited from attempting to evade the effect of an initiative or referendum petition. All Peoples Congress of Jersey City and Council of the City of Jersey City, 195 N.J. Super. at 532. Accordingly, it is the duty of the courts to promote the objectives of citizens in securing a plebiscite, Margate Tavern Owners' Ass'n v. Brown, 144 N.J. Super. at 435. The courts are further mandated to restrain municipal action where such action constitutes a misuse of power. Gamrin v. Mayor and Council of the City of Englewood, 76 N.J. Super. 55 (Law Div. 1962). Where a City Council seeks to subvert the citizenry's right to initiate a referenda vote on a change of government question, the courts should find a misuse of power or abuse of authority. The Middlesex County Clerk must thus be prohibited, enjoined or restrained from printing the City's invalid Ordinance, O-060807 on the official ballot to be used in the November election.

CONCLUSION

For the foregoing reasons, Plaintiffs request this Court to declare the New Brunswick City Clerk's rejection of Plaintiffs' petition an abuse of discretion and the New Brunswick City Council's enactment of an Ordinance establishing a charter study commission *ultra vires*; compel the New Brunswick City Clerk to certify Plaintiffs' petition, entitled WARD-BASED SYSTEM, as proper, valid and sufficient in all respects, and submit (via the City Council or directly) such petition to the Middlesex County Clerk for the purpose of placing the appropriate

questions on the official ballot; dismiss Defendants' Counterclaims and enjoin the Middlesex County Clerk from publishing the City Council's competing Ordinance and question concerning the establishment of a charter study commission on that same ballot.

Respectfully submitted,

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