



**STATEMENT IN SUPPORT OF S. 1353 REVISING
PROVISIONS CONCERNING THE PERMISSIBLE LENGTH
OF TIME BETWEEN CHANGE IN GOVERNMENT QUESTIONS
FROM APPEARING ON THE BALLOT IN CERTAIN
MUNICIPALITIES BEFORE THE SENATE COMMUNITY AND
URBAN AFFAIRS COMMITTEE.**

DECEMBER 6, 2010

Chairperson Van Drew, Vice-Chairperson Rice and Committee Members:

Thank you for this opportunity to testify in support of S. 1353. New Jersey Appleseed Public Interest Law Center, a nonprofit legal advocacy organization, hereby gives our support to S.1353, and we urge you to release the bill from Committee without amendments. Over the years, New Jersey Appleseed has represented several local organizations during their efforts to initiate ordinances or referenda petitions, and we support any and all efforts to make that process more transparent, uniform and accessible to members of the public.

In order to underscore the importance of this legislation, legislation which we believe is necessary to rectify a wrong that was inadvertently done at the tail end of the Legislature's last session, we would like to give you some background.

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During 2009-2010, New Jersey Appleseed represented a group of local citizens known as Empower Our Neighborhoods in their efforts to get a change of government Initiative & Referendum ("I & R") on the ballot. Their efforts were met by severe resistance by the New Brunswick City Council; as a result of the ensuing conflict, New Jersey Appleseed on behalf of EON took the matter to court three times, and each time EON's right to have its change of government ordinance appear on the ballot (without a competing measure introduced by the City Council) was affirmed.

The ordinance, however, lost at the polls in November, 2009 by a very small number of votes. Nevertheless, EON and its supporters remained still interested in changing the New Brunswick City Council's configuration to be more responsive to certain neighborhoods. At the time, they thought they would only have to wait four years to circulate another change of government ordinance.

But, within days of the 2009 general election, S.3157/A.4264 was introduced. It was expeditiously enacted by the Legislature without sufficient discussion as to the "policy" reasons for its introduction, and it was signed into law by former Governor Corzine only eleven minutes before his term expired.

Pursuant to S.3157/A.4264 (the "2009 amendment"), N.J.S.A. 40:74-18¹ was changed in a way that has created much confusion and has resulted in a statutory provision that is basically unjust. Prior to the amendment, N.J.S.A. 40:74-18 solely prohibited a municipal council from amending or repealing any ordinance that had successfully been enacted by ballot initiative for a period of at least 3 years after the measure had been adopted by the voters. Now, N.J.S.A. 40:74-18, as a direct result of the 2009 amendment, prohibits much more. Singling out "change in government" initiatives from other ballot initiatives, it limits citizen groups to initiating change of government petitions every 10 years -- win or lose. But why would the Legislature want to inhibit all change of government petitions for such a long period of time?

Well, as a result of the enactment of the 2009 amendment, EON is specifically prevented from presenting to the voters a change in government ordinance in 2013; instead, the process has

¹ **N.J.S.A. 40:74-18 Ordinances; adoption, submission to voters** reads as follows:

If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the municipality. An ordinance proposed by petition, or which shall be adopted by a vote of the people, shall not be repealed or amended within 3 years of the date of adoption by the voters, except by a vote of the people; except that an ordinance proposed by petition to increase or decrease either the term of office of the members of the governing body or the number of members of the governing body, or regarding the division of the municipality into a number of wards, shall not be submitted to the voters of the municipality more than once in any 10-year period.

been dragged out for another 10 years effectively slowing down, if not halting, EON's efforts that are aimed at achieving transparent, responsive and open government in New Brunswick.

Moreover, the changes brought by the enactment of S.3157/A.4264 apply to everyone and not just EON; and they simply do not make sense from either a policy or legal perspective. The new changes to the law wrought by the 2009 amendment severely weaken citizens' rights to utilize I & R in the context of change of government petitions. Before it was hastily enacted, citizens had the right to use the I & R process to change the length of the terms of office for elected officials every 3 years, and could use I & R to petition for a change in government every 2 or 4 years depending on the change proposed. Now, citizens may only use the process ever ten years, even when the effort is unsuccessful.

It only took six weeks for the amendment to be introduced, released from Committee, pass both houses of the Legislature and be signed into law. This haste has also resulting in glaring conflicts among several statutory provisions. For example, N.J.S.A. 40:17-18 was amended, but two more specific key statutes were not. Both N.J.S.A. 40:69A-25.1 (governing voter initiated ordinances seeking to amend a municipal charter to include alternatives under a given plan of government) and

N.J.S.A. 40:69A-1 through 12 (delineating the charter study commission process to achieve a change of government) still allow citizens to bring these change of government petitions once every 2, 3, or 4 years. These provisions were not changed by the 2009 amendment; and accordingly, it is unclear whether these time frames remain valid or whether they have been erased by the new 10-year prohibition located in another act. N.J.S.A. 40:70-18.

The 2009 amendment also has more far-reaching consequences. The amendment represents the first time the Legislature has restricted the citizens' right to self-govern since it broadened such rights in 1982. We must reverse this step backward. It was greatly disappointing to have had Governor Corzine's last act in office be to take away citizens' rights in an effort that appears to have been targeted at disempowering one group in particular. New Jersey Appleseed believes that our democracy works best when it is robust and thriving with local participation. The use of I & R as now reflected in law makes local government less accountable and less responsive to its residents' needs. This Committee must reverse this wrong.

Proposed S.1353 makes a first step in the right direction. It corrects some of the drafting errors in the 2009 amendment and imposes uniformity on the I & R process as it relates to charter change petitions. First, S.1353 reduces the 10-year

moratorium on a citizen's use of I & R in this context to a more reasonable 5-year limit. Furthermore, instead of the haphazard scheme of having different prohibition periods for different change in government petitions (2, 3, or 4 years), S.1353 creates uniformity by instituting an across-the-board limit of 5 years, if initiated ordinances are adopted.

The proposed bill has other desirable features. It erases the current conflict between N.J.S.A. 40:70-18 and N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-1 through 12 by making the time period specifically applicable to these provisions. That is the uniform 5-year restriction applies equally to all efforts to amend a charter, including those resulting from charter commission studies. Most importantly, however, S. 1353 clarifies that unsuccessful citizens' petitions (those that fail to achieve a majority of votes at the ballot), may be brought again in three (3) years, instead of the draconian 10-year ban effected by the 2009 amendment.

In conclusion, in 1982, the New Jersey Legislature took the bold step of amending the Optional Municipal Charter Law (Faulkner Act) after considering several reports and engaging in thoughtful discussion. That law, which generally grants board powers of self-governance on residents of Faulkner Act municipalities specifically made it easier for citizens to undertake certain city charter changes. Proposed S.1353

restores those rights and upholds the tradition of self governance and home rule in New Jersey. At the same time, the bill makes the laws regarding change in government ordinances with respect to the application of certain time limits uniform; thus making the process more fair and equitable.

Thank you for your anticipated consideration of our comments.

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-and-

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