

discretion; (b) an order in lieu of prerogative writ or otherwise directing the New Brunswick City Clerk to certify the Plaintiffs' petition, entitled PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE, and to thereafter process it, as required by statute, in order to ensure placement of the appropriate question on the ballot for the November 3, 2009, General Election; (c) a declaration that 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" could not be relied upon by the City Clerk as a basis for refusing to certify Plaintiffs' petition as it was enacted in violation of state statute and thus was precluded from appearing on the November 2008 General Election ballot by court Order dated September 2, 2008 in Empower Our Neighborhoods, et al v. Torrisi et al, Docket No. MID-L-6408-08. (hereinafter "EON I") and was also void and impossible of performance by its own terms as of the time that Plaintiffs' petition was filed with the City Clerk; and (d) a prohibition on both the City of New Brunswick from proceeding further to process said Charter Study Commission Ordinance, and on the County Clerk from placing such Ordinance on the ballot for the November 3, 2009 election for a referendum vote.

2. 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, 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. The voter initiated petition 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.

3. This action also seeks to prohibit any further action by the City of New Brunswick with respect to ordinance (O-060807) entitled “Ordinance to Provide for an Election in the City of New Brunswick on the Question of the Establishment of a Charter Study Commission” or any similar ordinance until such time as Plaintiffs’ petitioned-for referendum has been placed on the ballot and voted upon. The City Council enacted an ordinance to place a charter study referendum question on the November 2008 general ballot after Plaintiffs had filed a previous petition thus violating N.J.S.A. 40:69A-17. The ordinance was not permitted to be placed on the November 2008 ballot pursuant to an Order dated September 2, 2008 in EON I. In a second Order in that case, dated October 29, 2008, the court affirmed that the City of New Brunswick could not proceed with its Study Commission Ordinance. Both the City Council and the County Clerk must be prohibited from processing this Ordinance. Due to the passage of time, the Ordinance has also become void and impossible of performance by its own terms.

PARTIES

4. Plaintiff, EMPOWER OUR NEIGHBORHOODS (“EON”), is an unincorporated, non-partisan political committee consisting of more than seven (7) New Brunswick residents. This organization is dedicated to the promotion of open, accountable and transparent municipal government; active participation of New Brunswick residents in municipal affairs; increased citizen access, campaign finance reform, increased minority representation free of slating, and fair candidate recruitment

for council representation; and general principles of community empowerment via democratic decision making. Empower Our Neighborhoods has a specific interest in increased citizen access to local government, and thus supports the certification of Plaintiffs' petition seeking to submit to the voters the question of adopting an alternative form of government under the Mayor-Council plan on the November 3, 2009, general election ballot . Its mailing address is P.O. Box 3115, New Brunswick, N.J. 08901- 3115.

5. Plaintiff, MARGARITA BONDARENKO resides at 95 Easton Avenue, New Brunswick, New Jersey, and is interested in increased citizen access to local government. She is a member of the Committee of Petitioners and a signer of the Initiative Petition implicated in this action. Ms. Bondarenko's right to initiate a referendum question guaranteed under the Faulkner Act has been unlawfully interfered with by defendant Daniel Torrissi's rejection of the petition on the basis that it does not present the questions on both sides of the petition page and is pre-empted by the City Council's Study Commission Ordinance.

6. Plaintiff, AMY BRAUNSTEIN resides at 80 Harvey Street, New Brunswick, New Jersey, and is interested in increased citizen access to local government. She is a member of the Committee of Petitioners and a signer of the Initiative Petition implicated in this action. Ms. Braunstein's right to initiate a referendum question guaranteed under the Faulkner Act has been unlawfully interfered with by defendant Daniel Torrissi's rejection of the petition on the basis that it does not present the questions on both sides of the petition page and is pre-empted by the City Council's Study Commission Ordinance.

7. Plaintiff, DOMINIC BOMBACE resides at 22 Harvey Street, New

Brunswick, New Jersey, and is interested in increased citizen access to local government. He is a member of the Committee of Petitioners and a signer of the Initiative Petition implicated in this action. Mr. Bombace's right to initiate a referendum question guaranteed under the Faulkner Act has been unlawfully interfered with by defendant Daniel Torrisi's rejection of the petition on the basis that it does not present the questions on both sides of the petition page and is pre-empted by the City Council's Study Commission Ordinance.

8. Plaintiff, ADRIEL BERNAL resides at 80 Harvey Street, New Brunswick, New Jersey, and is interested in increased citizen access to local government. He is a member of the Committee of Petitioners and a signer of the Initiative Petition implicated in this action. Mr. Bernal's right to initiate a referendum question guaranteed under the Faulkner Act has been unlawfully interfered with by defendant Daniel Torrisi's rejection of the petition on the basis that it does not present the questions on both sides of the petition page and is pre-empted by the City Council's Study Commission Ordinance.

9. Plaintiff, ANTHONY SHULL resides at 233 Hamilton Street, New Brunswick, New Jersey, and is interested in increased citizen access to local government. He is a member of the Committee of Petitioners and a signer of the Initiative Petition implicated in this action. Mr. Shull's right to initiate a referendum question guaranteed under the Faulkner Act has been unlawfully interfered with by defendant Daniel Torrisi's rejection of the petition on the basis that it does not present the questions on both sides of the petition page and is pre-empted by the City Council's Study Commission Ordinance.

10. Defendant DANIEL TORRISI is, and was at the time relevant to this complaint, the Clerk of the City of New Brunswick with his principal place of business at

78 Bayard Street, New Brunswick, New Jersey. In his capacity as City Clerk, Mr. Torrissi 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 his duties with respect to initiative and referendum petitions pursuant to N.J.S.A. 40:69A-187. Once a petition is deemed sufficient, defendant Torrissi's responsibilities with respect to that petition are ministerial in nature.

11. Defendant ELAINE FLYNN is, and was at the time relevant to this complaint, the Clerk of the Middlesex County with her principal place of business at John F. Kennedy Square, New Brunswick, New Jersey. In her capacity as County Clerk, Ms. Flynn has the duty to have ready for the printer on or before the 43rd day prior to a general election – in this instance, September 24, 2009 – a copy of the contents of the official ballot that will be used in the November 3, 2009 General Election, as required to be printed for use at such election. N.J.S.A. 19:4-1.

12. Defendant COUNCIL FOR THE CITY OF NEW BRUNSWICK (“New Brunswick City Council”) is, and was at all relevant time, the legislative body of the City of New Brunswick authorized to enact ordinances and resolutions and conduct council meetings in accordance with N.J.S.A. 40:49-1 et seq. and N.J.S.A. 40:69A-179-183.

CLAIMS FOR RELIEF

COUNT ONE

13. Exercising their right to initiate a public question regarding change of government pursuant to N.J.S.A. 40:69A-25.1, five (5) of persons associated with EON, the individual plaintiffs in this action, established a committee to collect signatures on a petition to have one question placed on the ballot in November 2009 (hereinafter and above the “Committee of Petitioners” or the “Plaintiffs”). Over a period of several days,

the Plaintiffs obtained 346 signatures – a number sufficient to meet the requirements of the Initiative and Referendum statutes. N.J.S.A. 40:69A-184.

14. On October 1, 2008, Plaintiffs submitted to the City Clerk a voter initiated petition to place on the ballot for referendum a question concerning the adoption of a ward-based system with nine council members. This petition was submitted at the same time that Plaintiffs withdrew a similar, but not identical, petition that they had submitted in July 2008 for placement on the November 2008 General Election ballot. The new petition includes 346 signatures and is intended to increase citizen access to local government. (hereinafter, “Plaintiffs’ Initiated Petition”).

15. Specifically, Plaintiffs’ Initiated Petition seeks to present to the voters of New Brunswick an alternative under the existing Mayor-Council form of government to expand from five (5) at-large seats, to a hybrid ward-based system with six (6) ward-based seats and three (3) at-large seats.

16. Plaintiffs’ Initiated Petition seeks to pose the question for a referendum vote on the November 3, 2009, General Election ballot, pursuant to N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-192(c).

17. Plaintiffs’ Initiated Petition, including the question presented therein, is consistent with, and conforms to, this court’s decision and Order dated September 2, 2008 in EON I.

18. In a letter dated October 22, 2008, defendant Torrisi communicated to Plaintiffs that he had completed his examination of their petition and “agree[s] with the City Attorney’s findings” based on an opinion he had received from the City Attorney, William Hamilton, Jr. that it must be rejected. While the City Attorney found that the

number of valid petition signatures was sufficient to meet the requirements of the statutes, he nonetheless noted that the petition “cannot be declared valid due to 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 and above “Charter Study Ordinance”). The City Attorney further opined that “the petition fails to provide a properly constructed initiative ordinance on every petition paper, as required the Initiative and Referendum statutes.”

19. As a result of his determination, defendant Torrisi stated that he would report to the City Council at its next regularly scheduled meeting that he does not intend to certify the petition as sufficient and submit it to the municipal council for a public hearing pursuant to N.J.S.A. 40:69A-190, a provision explicitly applicable to citizen petitions that initiate an ordinance (not a question), or to the County Clerk for the purpose of placing the appropriate question on the ballot at the next general election.

20. At its next scheduled meeting, November 5, 2008, defendant Torrisi reported to the New Brunswick City Council that he was not certifying the petition as sufficient, and thus not proceeding to process it in the manner otherwise set forth in N.J.S.A. 40:69A-186 et seq.

21. Each of Defendant Torrisi’s claims lack merit: In accordance with N.J.S.A. 40:69A-25.1, Plaintiffs have the right to initiate “the question of adopting any alternative permitted under [the Mayor-Council] plan of government,” not the right to initiate an ordinance; and the right to initiate a change of government referendum pursuant to the “pertinent provisions” of N.J.S.A. 40:69A-184 et seq., including N.J.S.A. 40:69A-186, which requires the full text of the proposed ordinance (or as is relevant

herein the proposed question) to appear on “each petition paper,” but not on each side of each petition sheet as implied by Torrissi’s rejection of the petition at issue herein.

22. Indeed, in its decision in EON I, the court held that:

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.

23. Furthermore, because defendant New Brunswick City Council enacted the Charter Study Ordinance in violation of N.J.S.A. 40:69A-17 (see infra. Count II), it is not a proper basis on which defendant Torrissi may ground his rejection of plaintiffs’ petition.

24. Pursuant to N.J.S.A. 19:14-1, on or before September 24, 2009, defendant Flynn shall have ready for the printer a copy of the contents of the official ballots to be used at the November 2009 General Election.

25. Due to his reliance on the erroneous interpretations of N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-17 set forth in the City Attorney’s Opinion, defendant Torrissi has abused his authority and has acted arbitrarily and in bad faith by refusing to certify Plaintiffs’ petition as sufficient; and, by thereafter refusing to perform the ministerial acts required by statute, of submitting the question stated therein either to the City Council for adoption as an ordinance that by its own terms would require the same question presented by Plaintiffs to go to the voters for approval, or directly to the County Clerk for placement on the ballot.

WHEREFORE, the Plaintiffs demand relief against Defendants, their agents, officers and employees, (1) adjudging and declaring, pursuant to N. J.S.A. 2A: 6-50 et seq. and R. 4:42-3, that the Municipal Clerk of the City of New Brunswick’s certification as insufficient and rejection of Plaintiffs’ petition for change of government was based

upon an erroneous interpretation of the requirements law and was therefore an abuse of discretion ; (2) directing the New Brunswick City Clerk to certify the petition, entitled PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE, as proper, valid and sufficient in all respects, and submit the petition to either the City Council to hold a public hearing or directly to the County Clerk for the purpose of placing the appropriate question on the ballot of the November 2009 general election; and (3) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

COUNT TWO

26. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-25 as set forth herein.

27. On October 1, 2008, Plaintiffs submitted to the City Clerk a voter initiated petition to place on the ballot for referendum a question concerning the adoption of a ward-based system with nine council members.

28. This petition was submitted simultaneously with Plaintiffs' withdrawal of its previous petition that sought a similar referenda question to be placed on the November 2008 General Election ballot. Due to printing and statutory deadlines, as well as determinations of the court in EON I, it was no longer possible for Plaintiffs' initial referendum questions to appear on the 2008 General Election ballot.

29. In a letter dated October 22, 2008, City Clerk Torrisi communicated agreement with City Attorney's findings that the previous adoption of Charter Study Ordinance on June 18, 2008 "prevents the validation of any charter change petition."

30. However, the Charter Study Commission Ordinance that was enacted

specifically requires a referenda question be submitted to the voters at the November 2008 General Election, an election that has now already occurred.

31. In addition, this Court in EON I, referring to the language of N.J.S.A. 40:69A-17 in its decision (whereby “no ordinance may be passed for the election of a Charter Commission while proceedings are pending under any other petition filed . . .”) ordered that:

the Plaintiff’s change of government petition . . . precludes the City Council from submitting its Charter Study Commission Ordinance to a referenda vote.

32. Therefore the City Clerk cannot rely on its Charter Study Ordinance that was enacted in violation of N.J.S.A. 40:69A-17, and which called for such ordinance to be submitted to a referenda vote on the November 2008 General Election ballot, as a basis for rejecting Plaintiffs’ revised petition seeking a referendum vote on its change of government question as part of the General Election on November 3, 2009.

WHEREFORE, the Plaintiffs demand relief against Defendants, their agents, officers and employees, (1) adjudging and declaring, pursuant to N. J.S.A. 2A: 16-50 et seq. and R. 4:42-3, that the Plaintiffs’ change of government petition that was filed with the Municipal Clerk of the City of New Brunswick on October 1, 2008, is not precluded by a Charter Study Commission Ordinance enacted in violation of state law and outdated from appearing on the November 3, 2009, General Election ballot; (2) restraining and enjoining the New Brunswick City Council from proceeding to process its Charter Study Commission Ordinance or any similar ordinance until such time as Plaintiffs’ petitioned-for referendum has been placed on the ballot and voted upon; (3) prohibiting and enjoining the Clerk of Middlesex County from printing upon any sample, regular, absentee, provisional, emergency or any kind of ballot for use at the November 3, 2009

General Election, the City Council's Public Question, entitled "Ordinance to Provide for an Election in the City of New Brunswick on the Question of the Establishment of a Charter Study Commission;" and (4) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

BENNET D. ZUROFSKY, Esq.

-and--

Renée Steinhagen, Esq.
NEW JERSEY APPLESEED PILC

Dated: December 3, 2008

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq. and Bennet D. Zurofsky, Esq. are hereby designated as trial counsel for the Plaintiffs.

Dated: December 3, 2008

Bennet D. Zurofsky

CERTIFICATION PURSUANT TO RULE 4:5-1

I, BENNET D. ZUROFSKY, 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 in this litigation.

Dated: December 3, 2008

Bennet D. Zurofsky

CERTIFICATION PURSUANT TO R. 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.

Dated: December 3, 2008

Bennet D. Zurofsky