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EMPOWER OUR NEIGHBORHOODS, MARGARITA BONDARENKO, AMY BRAUNSTEIN, DOMINIC BOMBACE, ADRIEL BERNAL, and ANTHONY SHULL,	:	X
	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MIDDLESEX CTY
	:	
	:	
	:	Docket No. L-
	:	
	:	
Plaintiffs,	:	
	:	
-vs.-	:	Action in Lieu of Prerogative Writ
	:	
DANIEL A. TORRISI, in his capacity as New Brunswick City Clerk, ELAINE FLYNN, in her capacity as County Clerk, the NEW BRUNSWICK CITY COUNCIL, and BENJAMIN S. BUCCA, WILLIAM L. DUNBAR, REBECCA H. ESCOBAR, GLENN J. FLEMING, and EZRA M. RUFINO (the "Committee of Petitioners"),	:	VERIFIED COMPLAINT and Rule 4:69-4 Certification
	:	
	:	
	:	
Defendants.	:	

The Plaintiffs, EMPOWER OUR NEIGHBORHOODS, MARGARITA BONDARENKO, AMY BRAUNSTEIN, DOMINIC BOMBACE, ADRIEL BERNAL, and ANTHONY SHULL, by way of their Verified Complaint, state as follows:

PRELIMINARY STATEMENT

1. This action in lieu of prerogative writ follows on the heels of the Superior

Court's Decision and Final Judgment in Empower Our Neighborhoods et al. v. Torrissi, Docket No. MID-L-10613 (hereinafter "EON II") entered on August 10, 2009.

Somewhat akin in purpose to an application to enforce litigants' rights pursuant to R. 1:10-3, this action (hereinafter "EON III") seeks (a) a declaration that the Municipal Clerk of the City of New Brunswick's certification of a petition for the submission of a "Ballot Question on Expanding New Brunswick's At-Large City Council to Seven Members" as sufficient, and approval thereof, was arbitrary and in violation of state statute; (b) an order in lieu of prerogative writ or otherwise directing the New Brunswick City Clerk to decertify such change of government petition because it was "filed while proceedings are pending pursuant to another such petition," N.J.S.A 40:69A-21, and (c) a prohibition on both the City of New Brunswick from proceeding further to process said change of government petition designed as an initiated ordinance, and on the County Clerk from placing the question presented in such petition on the ballot for the November 3, 2009 election for a referendum vote.

PARTIES

2. 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

protecting the integrity and careful consideration by the voters of Plaintiffs' petition, without interference from competing petitions placed on the same November 3, 2009, general election ballot. Its mailing address is P.O. Box 3115, New Brunswick, N.J. 08901- 3115.

3. 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 Torrisi's acceptance of a competing change of government petition filed while the processing of her petition was pending.

4. 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 Torrisi's acceptance of a competing change of government petition filed while the processing of her petition was pending.

5. 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 Torrasi's acceptance of a competing change of government petition filed while the processing of his petition was pending.

6. 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 Torrasi's acceptance of a competing change of government petition filed while the processing of his petition was pending

7. 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 Torrasi's acceptance of a competing change of government petition filed while the processing of her petition was pending.

8. 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. Torrasi 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 Torrasi's responsibilities with respect to that petition are ministerial in nature.

9. 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.

10. 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.

11. Defendant BENJAMIN S. BUCCA is a member of the Committee of Petitioners that filed a “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members.” On information and belief, he is currently serving as the attorney for the New Brunswick Rent Control Board and New Brunswick Board of Adjustment. He resides at 78 Jefferson Avenue, New Brunswick, New Jersey 08901.

12. Defendant WILLIAM L. DUNBAR is a member of the Committee of Petitioners that filed a “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members.” On information and belief, he is currently employed by the New Brunswick Board of Education. He resides at 142 Commercial Avenue, New Brunswick, New Jersey 08901.

13. Defendant REBECCA H. ESCOBAR is a member of the Committee of

Petitioners that filed a “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members.” On information and belief, she is currently serving as Chair of the New Brunswick Housing Authority. She resides at 16 Edgeworth Place, New Brunswick, New Jersey 08901.

14. Defendant GLENN J. FLEMING is a member of the Committee of Petitioners that filed a “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members.” He resides at 21 North Pennington Road, New Brunswick, NJ 08901.

15. Defendant EZRA M. RUFINO is a member of the Committee of Petitioners that filed a “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members.” He resides at 62 ½ Guilden Street, New Brunswick, NJ 08901.

CLAIMS FOR RELIEF

COUNT ONE

16. 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”).

17. 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.

18. On August 10, 2009, Judge James P. Hurley, in EON II, entered a Decision and Final Judgment in which he ordered Defendants Torrissi and Flynn, respectively, to further process Plaintiffs' Initiated Petition. Specifically,

3. The Defendant, Daniel A. Torrissi is hereby directed to forthwith certify the Plaintiffs' Petition to the Defendant Elaine Flynn, Middlesex County Clerk.
4. The Defendant Elaine Flynn, is hereby directed to place the Question, posed in the Petition, on the November 2009 Ballot.

19. Despite the pending processing of Plaintiffs' Initiated Petition as directed by Judge Hurley, Defendants Bucca, Dunbar, Escobar, Fleming and Rufino, collectively the "Committee of Petitioners," submitted a petition, on August 24, 2009, to the Municipal Clerk requesting that an alternative change in government question also be placed on the November 3, 2009 General Election ballot.

20. Defendants' Petition, filed pursuant to N.J.S.A. 40:69A-25.1, "desire[s] to propose an Ordinance to be adopted by the City Council" "to provide for the submission to the voters of the City of New Brunswick the question of a change in the City's Charter." The question to be presented reads:

Shall the charter of the City of New Brunswick governed by the Mayor-Council Plan of the Optional Municipal Charter Law be amended, as permitted under that plan, to provide for a municipal council to consist of seven members?"

A copy of one page of this petition is attached hereto as Exhibit "A."

21. After examining Defendants' Petition, Defendant Torrissi determined that it contained a proper statement of the circulators and contained a sufficient number of signatures. With the approval of the City Attorney, who determined that the petition was

in proper form, Defendant Torrisi certified the petition, on or about September 1, 2009, and informed the City Council of his determination.

22. Pursuant to N.J.S.A. 40:69A-21, “No petition for submission of the question of adopting an optional plan of government pursuant to section 1-18 et seq. of this act may be filed while proceedings are pending pursuant to another such petition. . .” Defendants’ Petition, submitted in accordance with N.J.S.A. 40:69A-25.1 of the Optional Municipal Charter Law, while the processing of Plaintiffs’ Initiated Petition is ongoing is thus invalid.

23. By ignoring the language, clear mandate and intent of the Legislature to prohibit multiple change of government proposals from appearing on the ballot at the same time, as expressed in N.J.S.A. 40:69A-21 and 17, Defendant Torrisi has abused his authority and has acted arbitrarily and in bad faith by certifying Defendants’ Petition as sufficient and thereafter, by submitting that petition to the City Council for adoption as an ordinance.

WHEREFORE, the Plaintiffs demand relief against Defendant Torrisi (1) adjudging and declaring, pursuant to N. J.S.A. 2A: 6-50 et seq. and R. 4:42-3, that his certification as sufficient and approval of Defendant Committee of Petitioners’ petition for change of government was based upon an erroneous interpretation of the requirements law and was therefore an abuse of discretion ; (2) directing him, as the New Brunswick City Clerk, to decertify and reject the petition, entitled PETITION FOR A BALLOT QUESTION ON EXPANDING NEW BRUNSWICK’S AT-LARGE CITY COUNCIL TO SEVEN MEMBERS, as improper and invalid; and (3) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

COUNT TWO

24. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-23 as set forth herein.

25. On September 2, 2009, Defendant New Brunswick City Council deemed the Ordinance initiated in Defendants' Petition to have been given its first reading, and resolved to schedule a public hearing on such Ordinance for September 16, 2009, at 5:00 p.m. at the City Council Chambers. An unsigned copy of such resolution is attached hereto as Exhibit "B".

26. 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.

WHEREFORE, the Plaintiffs demand relief against government Defendants, their agents, officers and employees, (1) restraining and enjoining the New Brunswick City Council from further proceeding to process Defendants' Petition; (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 public question set forth in Defendants' Petition; 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: September 8, 2009

DESIGNATION OF TRIAL COUNSEL

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

Dated: September 8, 2008

Renée Steinhagen, Esq.

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STIENHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding. However, the change of government petition that is the subject of this litigation, EONIII< is directly related to and has an impact on the change of the government petition that was the subject of EON II that was decided on August 10, 2009.

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: September 8, 2009

Renée Steinhagen, Esq.

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: September 8, 2009

Renée Steinhagen, Esq.

CERTIFICATION OF EON MEMBER CHARLES KRAVIL

I, CHARLES KRAVIL, being of full age do hereby swear and certify as follows:

1. I am a member of Plaintiff EON in the 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 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; September 8, 2009

CHARLES KRAVIL