



April 14, 2020

Via email and express mail

Governor Philip D. Murphy
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Dear Governor Murphy, Secretary Way and Attorney General Grewal:

I am writing to you on behalf of Food & Water Watch, a national nonprofit advocacy organization with a very active local office and membership, to request that you further expand the reach of the Governor's March 19, 2020, Executive Order No. 105 ("Ex. Or. 105") and April 8, 2020 Executive Order 120 ("Ex. Or. 120"), permitting the electronic submission and signing of all candidate petitions, to include county and municipal referendum petitions authorized under the Optional County Charter Law, N.J.S.A. 40:41A-104 et seq., the Walsh Act, N.J.S.A. 40:74-10 et seq., the Faulkner Act, N.J.S.A. 40:69A-184, certain special municipal charters, and numerous statutory

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provisions found throughout New Jersey's Statutory Code. See Ex. Or. 105, attachment A; Ex. Or. 120, attachment B.

For the past several months, Food & Water Watch has worked with local residents in a campaign to initiate community energy aggregation programs with alternatives for 100% renewable electricity by 2030 in approximately 15 municipalities throughout New Jersey. Its activities, however, came to an abrupt halt over three weeks ago, when it became apparent that approaching people to sign petitions posed a serious health risk.

As a direct result, Food & Water Watch, on behalf of its 68,000 New Jersey members, supporters and volunteers, is now asking you to order the modification and/or relaxation of certain statutory provisions in a similar manner as was effected by Ex. Or. 105 and Ex. Or. 120, in order to permit the organization and local residents to continue their campaign; and, to ensure that it is able to submit petitions in a timely manner so the proposed questions and interpretative statements, which are included in its petitions, will appear on the November General Election ballot.

As you know, New Jersey's referendum laws--which grant citizens the right to initiate ordinances, to repeal ordinances and/or to approve or disapprove ordinances proposed by local government were the product of a larger reform movement during the Progressive Era of the late Nineteenth and early Twentieth Centuries that promoted direct democracy "as an antidote against special-interest control of the legislative process." Tumpson v. Farina, 218 N.J. 450, 454 (2014). It is through the petition processes provided in the various acts referenced above that a majority of New Jersey residents are now able to engage in the referendum process, allowing them "the right to test a challenged ordinance in the crucible of the democratic process." In re Petition to Repeal Ordinance 04-75, 192 N.J. 446, 450 (2007) ("Ordinance 04-75"). Because the petition process plays an integral and important role in the democratic life of many New Jersey municipalities, it is our position that this critical electoral process must go on despite the current public health crisis.

At this time, New Jersey Appleseed is involved in at least one other significant initiative petition drive, which was about to be launched just when the pandemic hit. Signature requirements in that large urban municipality are significant, and social distancing mandates must be respected. We are

confident that other citizen-generated efforts have been planned or are underway throughout the State, but are now truncated due to the public health crisis.¹ We thus believe, as a matter of public-health policy and democratic electoral rights, that a further extension of the two above-mentioned executive orders is necessary to accommodate such important political activity, which is especially vital to the success of our municipalities.

The Initiated Ordinance At Issue Herein

In August 2018, the New Brunswick City Council passed an ordinance, proposed by an initiative petition organized by Food & Water Watch, that committed the city to a 100% renewable energy supply by 2035. The ordinance was "believed to be the first municipality in the state to commit to a total green energy goal," <https://www.nj.com/news/2018/08/new-brunswick-is-leading-the-charge-for-clean-ener.html>; and it clearly met with the Governor's approval. Specifically, the Governor praised the ordinance in a tweet following the vote by the Council:

Thrilled that the New Brunswick City Council approved a measure that would put the city on the path to 100% clean energy by 2035. Cities like New Brunswick are helping New Jersey lead the way in the clean energy economy. Id.

In 2019, Food & Water Watch successfully placed a similar ordinance on the November general election ballot in Piscataway, and voters overwhelmingly approved the measure by a 63-37 margin. This year, the organization seeks to replicate their

¹ Food & Water Watch acknowledges that Executive Order No. 107, dated March 21, 2020, which directed residents to "remain home or at their place of residence" created several exceptions including "7) leaving the home for an educational, religious, or political reason." Circulating an initiative or referendum petition constitutes political activity, although as a matter of health policy such activity is currently not advisable, as Ex. Or. 105 and Ex. Or. 120 explicitly acknowledge. It is because petitioning is permitted under the Governor's March 21, 2020 order that we believe that all petitioning activity should be similarly modified in order to protect the public health.

success in 15 additional municipalities including Edison, East Brunswick, Fair Lawn, Teaneck, Ridgewood, Hoboken, North Brunswick, South Brunswick, Perth Amboy, Long Branch, Asbury Park, Cherry Hill, Mt. Laurel, Burlington Township and Collingswood. A list of these municipalities with contact information is attached hereto as Attachment C. The Faulkner Act governs all but one of these municipalities; and the Walsh Act governs the remaining municipality, Collingswood. As of the middle of March, Food & Water Watch's petition drive had been completed in two of these municipalities; and was underway in an additional two. A copy of the Edison petition, which is one of the two completed, is attached hereto as Attachment D.

Specifically, the ordinance initiated by Food & Water Watch establishes a Government Energy Aggregation Program, the "Community Energy Aggregation" ("CEA") in accordance with state law. Under the ordinance, the CEA will solicit requests for proposals for electric generation services and energy aggregation services on behalf of the relevant municipality's residents and businesses. The CEA must be fully implemented within one year of the passage of this ordinance and provide an option where energy is sourced from 100% renewable sources by 2030. Public notice will allow non-residential energy consumers to opt into the program and residential customers to opt out. In addition to taking advantage of discounted rates through bulk purchasing, the program will help improve New Jersey's air quality and public health, while reducing harmful climate pollution and decreasing its reliance on fossil fuels. The renewable electricity will be sourced from within the area serviced by the current regional transmission organization to the maximum extent possible. The actual text of the ordinance constitutes 4 of the 6 pages of the petition.

Both the Faulkner and Walsh Acts require initiative petitions to contain at least 10% of the number of voters in the municipality who voted in the 2019 General Assembly election to be deemed sufficient. This is a significant number of signatures in many of the listed municipalities, meaning a significant number of person-to-person contacts would be necessary if certain statutory requirements were not relaxed. Typically, Food & Water Watch and local residents conduct petition outreach efforts during February through June, with the intent of filing the petition in mid-June, and no later than the first week in July. (The processing of the petition, including any litigation challenges, must be completed 50 days prior to the November election, at which time mail-in ballots must be printed and ready for distribution). The spring months often

offer circulators numerous out-door events, such as school athletic events, Memorial Day picnics, and other park-related activities, at which time they can efficiently gather signatures. This year, such opportunities are obviously gone because such gatherings are no longer permitted.

The importance of this initiative petition drive cannot be understated. It is political activity of a legislative nature that must go on if New Jersey is going to address climate warming in a responsible, coordinated manner. Accordingly, we are submitting this letter to request that the Governor issue a new executive order, which would extend, as follows, several of the directives found in Ex. Or. 105 and Ex. Or. 120 to reach all initiative and referendum petitions submitted from now until all social distancing measures warranted by the current pandemic crisis are ended.

Facilitating the Signature Gathering Requirement

We take as our starting point that the political power of New Jersey voters to initiative and referendum is a statutory right. Wright v. South Orange, 79 N.J. Super. 96 (App. 1963) (Non-Faulkner community had no right of referendum; no constitutional violation). The New Jersey Supreme Court has acknowledged the importance of such statutory right by consistently directing courts to liberally construe the statutes that provide such rights in a manner that promotes their "beneficial effects." D'Ercole v. Mayor and Council of Norwood, 198 N.J. Super. 531 (App. Div. 1984) quoting Retz v. Mayor & Council Tp. of Saddle Brook, 69 N.J. 563 (1976); see also Redd v. Bowman, 223 N.J. 87 (2015) (liberal construction and flexibility to promote purpose); In re Petition for Referendum on Trenton Ordinance 09-02, 201 N.J. 349 (2010) (same); and Ordinance 04-75, supra, 192 N.J. at 446 (same). The right of referendum is direct democracy in its purest sense, allowing citizens to take an appeal above the heads of their elected officials and directly to the voters who can then approve or reject an ordinance at the polls. See In re Trenton Ordinance 09-02, supra, 201 N.J. at 353 (stating that referendum power is an exercise in democracy that profoundly affects the relationship between the citizens and their government by affording the people the last word)

Secondly, the N.J. Supreme Court's directive to interpret referendum and initiative laws liberally and flexibly to promote robust voter participation in the affairs of local government is consistent with the letter and policy of Ex. Or. 105 and Ex. Or.

120; both of which are similarly motivated. Both Orders find that "temporary modifications of certain election requirements to permit electronic submission of petitions "are needed to keep voters engaged during this unprecedented [public health] crisis"; and that specific measures are mandated to "limit unnecessary person-person contact" by "allowing voters to fill out and submit petitions electronically, so that . . . campaigns need not physically gather petitions by going to individual voters in person." Both Orders seek to protect the rights of "voters to exercise their constitutional franchise, without jeopardizing their health and safety." See WHEREAS clauses set forth in Ex. Or. 105 and Ex. Or. 120, attachments A & B.

Specifically, the statutory petition requirements found in the Faulkner and Walsh Acts (and other referendum petition statutes) that Food & Water Watch seek to relax, are the provisions concerning the certification of the circulator, who, in the case of the Faulkner Act must attest that the he/she believes not only that the attached signatures represent the "genuine signature of the person whose name it purports to be,"² but also that the signatures were made in the circulator's presence.³ Both require such certifications to be made in the

² N.J.S.A. 40:74-11 (Petition; signatures; verification) found in the Walsh Act reads as follows:

The signatures to the petition need not all be appended to one paper but each signer shall add after his signature his place of residence, giving the street and number. One of the signers of each paper shall make an oath before an officer competent to administer the same that the statement therein made is true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

³ N.J.S.A. 40:69A-186 (Petition papers; affidavits, in the Faulkner Act provide as follows:

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

presence of a notary public. In this way, Food & Water Watch is not only requesting the opportunity to submit their petitions electronically and to permit voters to sign those petitions electronically, but it is also seeking to eliminate the circulator affidavit requirement in its entirety as the Governor ordered with respect to candidate petitions. In the alternative, Food & Water Watch limits its request with respect to the circulator requirement to eliminate the notary public requirement, and, in the case of the Faulkner Act, to eliminate the need for the circulator to attest to the fact that the signature was made in his/her "presence."

We are confident that granting our request will not compromise the integrity of the initiative and referendum process. Employing similar "electronic document signing" software as used by candidates pursuant to Ex. Or. 105, Food & Water Watch contemplates undertaking the following process. We will conduct outreach to gather petition signatures through emails, text messages, and phone calls to our Food & Water Watch members and supporters in the 13 towns and cities where petition committees have been formed (but petition signature gathering has not been completed). We will also call our members, supporters and registered voters in these municipalities to educate them about the ordinance and invite them to review and sign the petition pertinent to their municipality. We will also promote the petition on our website and social media channels. All of these communication methods will have a clear and consistent message describing the petition initiative and the energy aggregation ordinance. All materials will indicate that only municipal residents who are registered voters can sign and

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 Petitioners, 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 believes them to be the genuine signatures of the persons whose names they purport to be.

they may do so only once. People who are contacted by phone will be asked to sign immediately and the phone caller will get immediate e-notification of their signature. For those signatures collected via email, the original email sender will receive notice that the recipient signed the petition and will verify that his or her identity matches that of the intended email recipient and the name of a registered municipal voter. All signatories will be provided a receipt confirming that they are the person who signed it, that they can only sign it once, and that they are a municipal resident and registered voter. For those signatures not collected via direct email or phone call, a notification will be sent to a separate individual circulator who will confirm that the signature is that of a valid resident, signed only once, and the name of a registered municipal. The circulator will have copies of all receipts sent to voters.

As one can see from the description above, even if the circulator affidavit requirement were eliminated in its entirety (which we think it should be), Food & Water Watch intends to link each signature with a designated circulator. Furthermore, each circulator will have receipts confirming the genuineness of the signatures submitted, so if a municipal clerk felt it necessary to investigate, the circulator would be able to provide those receipts to the clerk (which would include additional identifying information that is not otherwise required to be submitted to the clerk).

The bottom line is that **all petitions that will be circulated by Food & Water Watch will be uniform in their appearance and signed using electronic document signing software.**

As a result of the foregoing, Food & Water Watch asserts that in light of the Governor's decision to relax the petition requirements set forth in election statutes governing candidate petitions, it would be eminently reasonable and appropriate to extend those same modifications to all types of referendum petitions. The legal considerations, the importance of the electoral rights involved, and the accommodations required to protect the public's health during the pandemic crisis have all been weighed and resolved. The legislative power of New Jersey's municipal and county voters should similarly be facilitated.

Thank-you for your anticipated consideration of our request for immediate relief. If you have any questions, do not hesitate to contact me at 212-254-6996 (which is my home phone

number). We are hoping to receive a response as soon as possible, so Food & Water Watch is able to restart its campaign.

Respectfully,

NEW JERSEY APPLESEED PUBLIC
INTEREST LAW CENTER

Renée Steinhagen, Ex. Dir.

Enclosures:

- Attachment A: Executive Order No. 105, dated March 19, 2020
- Attachment B: Executive Order No. 120, dated April 8, 2020
- Attachment C: List of Municipalities with contact information.
- Attachment D: Food & Water Watch Initiative Petition (Edison Township)

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