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ROBERT FUHRMAN, MATTHEW LINDENBERG	SUPERIOR COURT OF NEW JERSEY
CONSTANCE LOSCALZO, DEBORAH	:APPELLATE DIVISION
STEINBAUM, and SIOBHAN CRANN	:DOCKET NO. A-0080-20
WINNOGRAD,	:
	:
Plaintiffs-Respondents,	:On appeal from the
	:Superior Court of New Jersey
-vs.-	:Law Division, Bergen County
	:
HEATHER MAILANDER, In Her Official	:Docket No. L-4906-20
Capacity as the VILLAGE CLERK FOR	:
THE VILLAGE OF RIDGEWOOD,	:
	:
Defendant-Appellant,	:
	:
--and --	:
	:
THE COUNTY CLERK FOR	:
BERGEN COUNTY,	:
	:
Defendant.	;

X

CERTIFICATION OF RENÉE STEINHAGEN IN SUPPORT
OF MOTION FOR LEAVE TO INTERVENE IN ORDER TO REQUEST
CLARIFICATION OF DECISION NUNC PRO TUNC

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and Executive Director of New Jersey Appleseed Public Interest Law Center ("NJ Appleseed") attorney for applicant intervenor NJ Appleseed. I make this certification in support of applicant's motion for leave to intervene in this matter post-judgment under R. 4:33-2; and to submit a motion, *nunc pro tunc* (as permitted by R. 1:1-2(a)), to clarify, amend or correct the Court's opinion in accordance with R. 2:11-6(c). I make these motions, in light of the court's role with respect to protecting voters' civil rights and to ensure that the Court's decision does not inadvertently confuse municipal clerks and potential petitioners in the future.

2. The applicant, a nonprofit legal advocacy organization, has operated a "Facilitating Local Initiative and Referendum Project" for approximately fifteen years, under which it assists voters in drafting their petitions and often defends those petitions if challenged. Specifically, NJ Appleseed was plaintiffs' counsel in Tumpson v. Farina, 218 N.J. 450 (2014) on which this decision, in part, relies. In addition, NJ Appleseed litigated the issue of whether a change in government petition filed under N.J.S.A. 40:69A-25.1 required petitioners to initiate an ordinance or just posit a referendum question in Empower Our Neighborhoods et al. v. Torrissi et. al, Docket No. MID-L-10613-08 (EON II). In a detailed decision dated August 10, 2009, Judge James Hurley found that a question was required, not an ordinance; and

in doing so, he affirmed an earlier decision on the same issue (that had been decided between the same parties) issued by Judge Heidi Currier, dated September 2, 2008 (EON I). Judge Hurley's unpublished decision, which was affirmed on emergent appeal, can be found on NJ Appleseed's website located under Advocacy Areas; Empower Voters; Facilitating Local Initiative and Referendum Project; New Brunswick; Trial Court Decision (EON II). For further details about NJ Appleseed's Facilitating Local Initiative and Referendum Project see generally <https://njappleseed.org/empowering-voters>.

3. In addition, NJ Appleseed has appeared as *amicus* in matters of first impression with respect to public referenda or matters in which it seeks to detail the interplay of various statutory referendum provisions without weighing in on one side or the other. For example, in Redd v. Bowman, 223 N.J. 87 (2015), the New Jersey Supreme Court permitted NJ Appleseed to appear as *amicus* in the matter based on its organizational interest and expertise indicated by its extensive activity pursuant to its Initiative and Referendum project mentioned above. More recently, NJ Appleseed submitted an extensive amicus brief in Atlantic City Democratic Committee v. Atlantic City Residents for Good Government, ATL-L-496-20, to inform the court about various aspects of the petition process under the Municipal Manager Act of 1923, N.J.S.A. 40:79-1 et seq., in a case where the plaintiffs,

not the Committee of Petitioners, were erroneously trying to import requirements found in the Faulkner Act.

4. In the spring of 2020, COVID-19 made it more difficult and dangerous to gather and submit in person the signatures needed for Initiative and Referenda. On behalf of Food & Water Watch, which was seeking to initiate community aggregation programs for renewable energy in more than a dozen NJ municipalities, NJ Appleseed wrote to Governor Murphy on April 14, 2020, asking that he allow the electronic signing and submission of referendum petitions, as he had already done for candidate petitions by way of executive orders. Governor Murphy did so, issuing Executive Order No. 132 on April 29, 2020. In addition to allowing the collection of signatures via an online form and the electronic submission of petitions, it dispensed with the requirement that a petition circulator provide a notarized affidavit attesting to the validity of the signatures on the petition and the process by which they were gathered and allowed use of a signed statement verifying that information instead. The ninth "Whereas" clause of Executive Order No. 132 expressly recognized that it applied to many kinds of noncandidate petitions, naming petitions seeking "change in or replacement of government" and those "proposing local ordinances" in the nonexhaustive list of petitions that would receive the benefits of electronic signature collection and submission.

5. Pursuant to the Executive Order, the Division of Elections ("DOE") issued a one-page, "one-size fits all" local referendum petition form, which dispensed with the circulator requirement in its entirety. Food & Water Watch was concerned that the form went further than authorized by the Executive Order, and so NJ Appleseed, on their behalf, engaged in a correspondence with the Division on the matter. We were assured that petitions without circulator statements would be accepted.

6. Around that same time, NJ Appleseed was asked to assist a group in Bayonne to prepare a change in government petition pursuant to N.J.S.A. 40:69A-25.1 that would be signed, circulated, and submitted electronically. We advised them to use NJ Appleseed's prototype change in government petition form, which included a question, interpretive statement and 5-member committee of petitions, but now only included one signature per page and had no circulator affidavit. We informed the individuals that the form appearing on the DOE website applied only to petitions that sought to initiate or repeal an ordinance under the Faulkner or Walsh Acts. In hindsight, given the breadth of Executive Order No. 132 and the myriad statutory differences applicable to different petition schemes, the DOE should have offered a second form tailored to other local referendum petitions that did not require an ordinance, since the "one-size fits all" appears to

have been a source of confusion, at least in Ridgewood. I do not know what became of the Bayonne change of government petition.

7. At some point during the summer months, I was contacted by counsel for the plaintiffs in this case. We had a brief discussion about the facts in this case, and I referred Mr. Salmon to NJ Appleseed's website to have access to briefs that we had submitted in various matters. Some weeks later, Mr. Salmon e-mailed me to confirm that he had prevailed in the trial court and that the referendum question(s) would appear on the November ballot. He later informed me that the Ridgewood Clerk had appealed the decision.

8. Upon notification of the appeal, I saw no pressing need for NJ Appleseed to seek amicus status and file a brief in support of the Committee of Petitioners. Their referendum question would be on the ballot, and I was confident that counsel would ardently advocate for the Committee's right to go forward based on equitable estoppel and that once the voters either approved or disapproved of the question, the court would not invalidate the election. Moreover, I had no reason to assume that the municipality would not, at minimum, inform the court of the statutory procedures that were applicable to the two questions involved in this matter. This was part of the information that the Ridgewood clerk had not properly provided to the Committee of Petitioners when they first had submitted their petition.

9. Sometime in the middle of middle of March, Mr. Salmon sent me a copy of the Court's March 9, 2021 opinion. I congratulated him, and soon thereafter read the decision. At the time I read the decision, I had just spent time discussing with a potential petitioner in Howell Township the issue of whether a change in the date and/or nature of elections (partisan/nonpartisan) under the Faulkner Act required the committee of petitioners either to posit a question or initiate an ordinance. He too had seen the DOE's form petition and assumed he needed to initiate an ordinance.

10. It was in this context that I read the Court's opinion. There is little doubt that the decision is groundbreaking insofar as it is the first New Jersey decision of which NJ Appleseed is aware that applies the doctrine of equitable estoppel to permit a statutorily deficient petition to go forward based on a clerk's failure to properly inform the Committee of Petitioners of such form and signature deficiencies. For this reason, NJ Appleseed agrees with the decision to publish the opinion.

11. However, a review of the decision reveals that nowhere in it has the panel set forth the procedure that in fact was required by the relevant statutes. As a practitioner in the area, I am thus deeply concerned that the decision may inadvertently confuse municipal clerks and potential petitioners in the future.

12. In this case, there were two separate specific statutes that governed the respective referendum questions. Neither

required the petitioners to initiate an ordinance. However, in other respects, they differed from one another: each had different signature requirements; each had different form requirements; and each had different processing requirements prior to appearing on the November general election ballot.

13. As noted above, Governor Murphy's Executive Order 132 (now modified pursuant to Ex. Order 216), which will terminate when the pandemic-related emergency declarations end, allowed for the electronic collection and submission of signatures and modified circulator affidavit requirements. However, even while it remains in effect, nothing in the Executive Order changed the statutory requirements regarding the number of signatures needed nor the processes that must be followed after filing the petition.

14. Accordingly, in order to make sure that the Court's opinion is properly understood and does not create unnecessary confusion, NJ Appleseed, in a letter dated March 25, 2021 (sent to all three judges sitting on the panel) requested the Court to revise its opinion to include a footnote or endnote setting forth the appropriate statutes governing a petition seeking to move municipal or school board elections to November.

15. On April 27, 2021, I physically traveled to NJ Appleseed's office in Newark. On my desk was a letter, dated April 13, 2021, from Marie C. Hanley, Chief Counsel for the Appellate Division. Ms. Hanley informed me of the procedure to employ to properly

present NJ Appleseed's request for revision before the court. Such letter is attached hereto as Exhibit A.

16. Prior to preparing this certification, I reached out to Mr. Salmon, counsel for the plaintiffs. He told me that he would not oppose NJ Appleseed's motions to intervene and amend the opinion. My colleague, Flavio Komuves, a trustee of NJ Appleseed, and co-counsel on these motions, similarly reached out to William Northgrave, appellate counsel for the defendants. Mr. Northgrave has yet to respond.

17. As a result of its mission and activities noted above, NJ Appleseed is intimately involved in the subject matter of this litigation and sees intervention as necessary to further its "technical assistance" role in the area of initiative and referendum petitions. Accordingly, NJ Appleseed has a special interest in this litigation, and, respectfully, requests party status post-judgment so it may, through this same submission, formally ask the court to clarify, amend or revise its decision to protect the public's interest in clarity on the law governing the procedure for citizens' petitions relating to changing the form of municipal government or governing the date of board of education elections. Such petitions place questions on the ballot and, unlike other forms of petition, do not initiate either the adoption nor the repeal of municipal ordinances.

18. For the foregoing reasons, I respectfully request that this Court grant applicant's motions, and correct, amend or revise the Court's published opinion in this matter on behalf of the public.

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, I am subject to punishment.

/s/Renée Steinhagen
Renée Steinhagen, Esq.

Dated: May 3, 2021