NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

CITY OF ORANGE TOWNSHIP BOARD OF EDUCATION Plaintiff, v. CITY OF ORANGE TOWNSHIP; JOYCE L. LANIER, CITY CLERK FOR THE CITY OF ORANGE TOWNSHIP; ESSEX COUNTY CLERK; and COMMITTEE FOR AN ELECTED SCHOOL BOARD C/O ANTHONY P. JOHNSON Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ESSEX COUNTY DOCKET NO.: L-6652-17 **OPINION**

Decided: October 20, 2017

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By: The Honorable Thomas R. Vena, J.S.C.

Preliminary Statement

This matter is before the Court on the City of Orange Township Board of Education's ("Plaintiff's") Verified Complaint and Order to Show Cause with Temporary Restraints to halt the printing and publishing of a referendum regarding the reclassification of the City of Orange School Board District from a Type I school district, one in which the school board members are appointed by the Mayor of the City of Orange Township, to a Type II district, one in which the school board members are elected by the residents of the City of Orange Township.

The defendants in this matter are the City of Orange Township, Joyce L. Lanier, City Clerk for the City of Orange Township, the Essex County Clerk, and the Committee for an Elected School Board.

Procedural History

On September 15, 2017, Plaintiff submitted an application for an Order to Show Cause with Temporary Restraints. A hearing was held on September 18, 2017, and the Court denied the Plaintiff's request for interim restraints pending the return date of October 20, 2017.

Statement of Facts

For the November 8, 2016 general election for the City of Orange Township, a referendum was placed on the ballot for voters to elect whether to change from a Type I School District to a Type II School District. Residents overwhelmingly approved that referendum, and on March 28, 2017 a special school election was held to elect two new members to the Board of Education. On April 24, 2017, this Court voided the results of the referendum as well as the special school board election. In August 2017, the Defendant Committee for an Elected School Board ("Committee") petitioned the Orange City Clerk ("City Clerk") to place the referendum back on the ballot for the November 7, 2017 General Election. On August 28, 2017, the City Clerk certified Defendant Committee's petition sufficient and valid and forwarded to the County Clerk to include it on the general ballot. Plaintiff's Complaint alleges that it was not notified until a few days before the ballot printing that the referendum would appear. Plaintiff argues that the referendum cannot appear or be voted on for another four years under N.J.S.A. 18A:9-4 and N.J.S.A. 18A:9-5.

Legal Analysis

Plaintiff first argues that the referendum reclassifying the City of Orange Township school district from Type I to Type II violates relevant New Jersey statutes. N.J.S.A. 18A:9-4 provides,

> The question of the acceptance of Section 18A:9-2 of this title, in any local school district governed by section 18A:9-3 of this title, except a consolidated school district, or of the acceptance of section 18A:9-3 of this title in any local school district governed by section 18A:9-2 of this title, shall be submitted to the legal voters of such district whenever the governing body of the municipality constituting such district or the board of education of any type I districts, shall by resolution so direct, or whenever a petition, signed by not less than 15% of the number of legally qualified voters who voted in such district at the last preceding general election held for

> the election of all of the members of the general assembly, shall be filed with the clerk of such municipality. No resolution may be adopted and no petition may be filed for the submission of the question of acceptance of N.J.S. 18A:9-2 or N.J.S. 18A:9-3, as the case may be, within four years after an election shall have been held pursuant to any resolution adopted, or petition filed, pursuant to this section or N.J.S. 18A:9-6.

Plaintiff claims that the language of N.J.S.A. 18A:9-4 is clear in its meaning that since the referendum was submitted on the ballot for the November 8, 2016 general election, it may not be voted on again until 2021.

Plaintiff further submits that N.J.S.A 18A:9-5 also bars the vote on the referendum in the November 7, 2017 election. The statute provides,

> The clerk of the municipality shall in either case cause said question to be submitted at the next municipal or general election which will be held in the municipality following the expiration of 35 days from the date of the adoption of the resolution or the filing of the petition, whichever shall first occur, except that the clerk shall not cause the question to be submitted if a similar question was submitted at an election within the previous four years. N.J.S.A 18A:9-5

Plaintiff argues that the referendum appeared on the ballot during the November 8, 2016 general election, meaning it was "submitted at an election," falling under N.J.S.A. 18A9-5, and therefore cannot appear again until 2021. Plaintiff acknowledges that the election results were deemed void by the Court, but claims that the four-year time limitation is triggered by the referendum's appearance on an election ballot, not whether the election is ultimately certified.

Defendant Committee's Opposition Brief argues against such a literal and strict interpretation of the statute. Defendant Committee claims that "if a plain reading of the statutory language is ambiguous, suggesting more than one plausible interpretation, or leads to an absurd result, then we may look to extrinsic evidence, such as legislative history, committee reports, and contemporaneous construction in search of the Legislature's intent." Tumpson v. Farina, 218 N.J.

450, 468 (2014). Defendant Committee argues that, specifically in election matters, statutes must be liberally construed for the purpose of promoting the "beneficial effects of voter participation." In re Ordinance 04-75, 192 N.J. 446, 459 (2007). Ultimately, election statutes should be construed to "allow the voters a choice." New Jersey Democratic Party, Inc. v. Sampson, 164 N.J. 178, 190 (2002).

In this case, applying the strict construction proffered by Plaintiff would read too narrowly the purpose of N.J.S.A. 18A:9-4 and 9-5, as well as misconstrue the Court's holding in City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 2017 N.J. Super. LEXIS 119. On its face, N.J.S.A. 18A:9-4 and 9-5 prohibit a referendum for reclassification from appearing on an election year after year. Instead, once a vote on reclassification occurs, another vote cannot take place for another four years. Plaintiff argues that a referendum vote appearing on a ballot is enough to trigger N.J.S.A. 18A:9-4, but the language of the statute is not as clear. The statute in relevant part states, "No resolution may be adopted and no petition may be filed for the submission of the question of acceptance [...] within four years *after an election shall have been held* pursuant to any resolution adopted ..." N.J.S.A. 18A:9-4 (emphasis added). Both Plaintiff and Defendants acknowledge the November 8, 2016 referendum result was vacated and consequently the referendum itself had no effect and Plaintiff was granted injunctive relief, contrary to Plaintiff's strained construction that a referendum simply appearing on the ballot initiates the four year waiting period. The statute, however, indicates that the four-year requirement begins after an election was held, and since the previous election was rendered meaningless, it was not actually held. The inherent irreconcilable inconsistency of seeking to void an election that overwhelmingly approved the conversion to an elected school board and

then seeking to bar the repeat of the referendum that presumably supplies what the plaintiff claimed (and the court agreed) was missing is obvious.

Additionally, when granting injunctive relief to Plaintiff, this Court noted "once the necessary measures are implemented to bring the referendum within legal compliance, the obligation to inform the citizens of the consequences of their vote will be satisfied." City of Orange, 2017 N.J. Super. LEXIS 119. The Court's holding was predicated on the referendum appearing on the ballot again once it was deemed legally sufficient. Although Plaintiff claims N.J.S.A. 18A:9-4 and 9-5 is clear in forbidding a referendum from being voted on again for the November 7, 2017 general election, the statute does not specifically contemplate an effectively vacated election. And, in any event, it is arguable that the intent is to prevent repeated referenda unsupported by the voters. Here, the Court has found that it is impossible to determine the intent of the voters since they were fatally uninformed. Based on statutory construction and this Court's holding in City of Orange Twp. Bd. of Ed., the referendum on reclassification need not be delayed four years before appearing on the ballot.

Conclusion

For all of the foregoing reasons and on the basis of the authority cited, Defendant Committees'' motion to dismiss the complaint is **GRANTED** and the relief requested in the Order to Show Cause returnable today is **DENIED**.

Very Truly Yours,

Thomas R Vena

The Honorable Thomas R. Vena, J.S.C.