New Jersey
Appleseed

September 22, 2017

Via Electronic Mail and UPS Next-day Delivery

Stephen Edelstein, Esq.
SCHWARTZ SIMON EDELSTEIN & CELSO LLC
100 South Jefferson Road, Suite 200
Whippany, New Jersey 07981

RULE 1-4:8 NOTICE AND DEMAND TO WITHDRAW COMPLAINT

Re: City of Orange Township Board of Education v. City of Orange Township, et al. ESX-L-6652-17

Dear Mr. Edelstein:

As you are aware, New Jersey Appleseed Public Interest Law Center ("N.J. Appleseed") represents defendant Committee For An Elected School Board (the "Committee of Petitioners" or "COP") whom you sued, among others, on behalf of the City of Orange Township Board of Education ("BOE"), in the above-captioned matter. The Verified Complaint sets forth one count seeking injunctive and declaratory relief on the alleged basis that the Frequency Restriction contained in N.J.S.A. 18A:9-4, 9-5, and 9-6 prohibits the COP's proposed reclassification question from appearing on the November 7, 2017 ballot.

For all the reasons set forth herein, the Verified Complaint violates New Jersey Court Rule 1:4-8 and N.J.S.A. 2A:15-59.1. We thus demand that the Verified Complaint and Order to Show Cause requesting preliminary injunctive relief be withdrawn immediately. If the Complaint is not withdrawn within

New Jersey Appleseed
Public Interest Law Center of New Jersey
50 Park Place, Suite 1025
Newark, New Jersey 07102

Phone: 973.735.0523; Fax: 973-710-4653
Email: steinhagen_pilc@yahoo.com
Website: www.njappleseed.org

28 days of service of this written demand against your firm and client, an application for sanctions will be made, including but not limited to costs and attorney's fees.

First, the Verified Complaint violates R. 1:4-8(a)(1) and N.J.S.A. 2A:15-59.1(b)(1), because it was brought in bad faith for the improper purpose of interfering with the COP's statutory right of referendum. The BOE has clearly sought to interfere with the COP's substantive right by preventing the reclassification question from appearing on the ballot and depriving Orange voters of the opportunity to choose an elected school board rather than maintaining an appointed board. Pursuant to Tumpson v. Farina, 218 N.J. 450 (2014), New Jersey voters' statutory right of referendum is deemed a civil right, the deprivation of which constitutes a violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 ("CRA"). And, although attempts to interfere with civil rights must be accompanied by threats of violence to be actionable under that Act, remedies for conduct that threatens the deprivation of civil rights may be assessed under frameworks other than the CRA. Consequently, it is our assertion that the filing of a lawsuit solely to protect the political status quo and prevent voters from exercising their civil rights clearly constitutes an improper motive warranting sanctions. Cf. LoBiondo v. Schwartz 199 N.J. 62 (2009) (approving the use of the frivolous litigation statute and rule, together with their attorney's fee sanctions, as an appropriate means to combat Strategic Lawsuits Against Public Participation -- SLAPP -- suits); Maximus Real Estate Fund, LLC v. Marotta, No. A-5501-07T1, 2009 N.J. Super. Unpub. LEXIS 2228 (App. Div. Aug. 13, 2009)(granting sanctions in response to a SLAPP action).

The BOE's improper purpose of interference is not only evidenced by the BOE's actions prior to Judge Vena's decision in April of this year (which set aside and vacated the results of the November 2016 reclassification referendum election), but more importantly, by several statements made by BOE members since that decision. For instance, after being informed by an attorney from the State School Boards Association that a vacated election does not trigger the Frequency Restriction in Title 18A's referendum provision, several BOE members explicitly stated that they did not want an elected school board and instead wanted the BOE to remain appointed. BOE members may hold such opinions, may express them in an election campaign, but such sentiments cannot justify initiating a lawsuit in order to prevent Orange voters from exercising their civil rights.

Second, the Verified Complaint violates R. 1:4-8(a)(2) and N.J.S.A. 2A:15-59.1(b)(2), because the BOE's claim is not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law. In the Verified Complaint, the BOE asserts that "[t]o place the referendum question on the ballot would violate the clear proscriptions of N.J.S.A. 18A:9-4 and N.J.S.A. 18A:9-5." Ver. Compl. ¶29. It supports its position simply on the basis that an "election was held" on the very same reclassification question. Ver. Compl. ¶14. This extremely narrow and literal interpretation of the statute is at best opportunistic, and more likely indicates improper purpose and malicious intent.

This provision cannot be viewed in isolation. Though found in Title 18A governing Education, these three related referendum provisions are also governed by Title 19 concerning Elections and must be seen in the context of other public referendum provisions that are littered throughout New Jersey statutes as well. In fact, referendums on public questions, such as the reclassification question at issue herein, can be contested under N.J.S.A. 19:29-1, and can be set aside under N.J.S.A. 19:29-9 (providing that "a certificate of elections" may be "annul[led]" and an election "set side") Indeed, it was your office's draft of the Final Judgment, dated April 24, 2017, which was signed by Judge Thomas R. Vena, that employed the language of the election contest statutes when setting aside the Referendum election that appeared on the November 8, 2016 General Election ballot. Specifically, pursuant to that judgment, the Reclassification Referendum election was "vacated in its entirety" and the election "outcome" was declared "null and void." As a direct result of this Final Judgment, the Referendum election that no doubt occurred as a matter of fact, **was rendered without any legal or binding effect**. And, typically, when courts set aside public question elections, they are held again. See, e.g., In re Contest of the November 6, 2012 Election Results for the City of Hoboken, Public Question No. 2, 2013 N.J. Super. Unpub. LEXIS 2250*; 2013 WL 4821095 (App. Div. 2013). Judge Vena specifically contemplated this election when he noted in his opinion that "the notion that voters will be burdened by a revised referendum being placed on the November 2017 ballot is far-fetched, at best." City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 2017 N.J. Super. LEXIS 119, *29 (Law. Div. 2017).

There is nothing in N.J.S.A. 18A:9-4 and N.J.S.A. 18A:9-5 and its Legislative history that prohibits the rerun of a Reclassification Referendum election that was vacated, and,

thus, as a matter of law, did not occur or effectively, was not held. As you told the Court yourself during oral argument in support of the BOE's Order To Show Cause with Temporary Restraints, statutes should be construed with regard for to the intent of the Legislature seen through its Statements accompanying a bill from Committee to adoption by the full Legislature. As the New Jersey Supreme Court has stated in Board of Education v. Hoek, 38 N.J. 213 (1962):

> The legislative goal is a guiding consideration and accordingly, words in a statute must be interpreted in context to serve the spirit of the law. (citation omitted)

Id., 38 N.J. at 231. In this instance, the relevant Legislative statements are clear in intent: The Legislature desired to conform the frequency that a question of the reclassification of a school district could occur to be the same as the frequency that a question on a municipal charter study commission may appear on the ballot, and wanted to prevent the losers of a reclassification referendum election from putting the question back on the "ballot every year, which becomes a frivolous expense to the taxpayers." Senate Education Committee Statement to Sen. No. 2357 (June 9, 2003). This is not a prohibition from expending any money on a second election if the first was declared null and void, but rather it evidences an intent to grant the voters in a Reclassification Referendum election "the statutory right to have their vote binding for five years." Beaudoin v. Belmar Tavern Assoc., 216 N.J. Super. 177, 188 (1987)(Mandatory frequency restriction seen as grant of right to have the result of referendum election binding for five years). Since the Reclassification Referendum election held in November 2016 was found to be illegal and its outcome was not binding, there is no barrier to the same question appearing on the November 2017 ballot. Moreover, by being combined with the general election ballot, the election generates absolutely no cost whatsoever to taxpayers, beyond the legal fees that the public entities are incurring through this baseless litigation.

As such, the BOE's interpretation is not only meritless, but it is further evidence of the BOE's attempt "to thwart the will of the voters" and ultimately deprive them of their statutory right to referendum as set forth in Title 18A.

I urge you to discuss this matter with your client and to heed this notice demand. If the COP, and its counsel, N.J. Appleseed, is forced to oppose your Order To Show Cause seeking

injunctive relief on October 20, 2017, and if we prevail, we will then make a motion for sanctions.

Sincerely,

Renée Steinhagen, Esq.

Cc: Eric Pennington, Esq.
Joseph Garcia, Esq.
Raj Parikh, Esq.