

WILENTZ GOLDMAN & SPITZER P.A.

ATTORNEYS AT LAW

90 Woodbridge Center Drive
Suite 900 Box 10
Woodbridge, NJ 07095-0958
(732) 636-8000
Fax (732) 855-6117

Meridian Center I
Two Industrial Way West
Eatontown, NJ 07724-2265
(732) 542-4500
Fax (732) 493-8387

110 William Street
26th Floor
New York, NY 10038-3901
(212) 267-3091
Fax (212) 267-3828

Two Penn Center Plaza
Suite 910
Philadelphia, PA 19102
(215) 940-4000
Fax (215) 636-3999

Park Building
355 Fifth Avenue
Suite 400
Pittsburgh, PA 15222
(412) 232-0808
Fax (412) 232-0773

website: www.wilentz.com

DAVID T. WILENTZ (1919-1988)
G. GEORGE GOLDMAN (1922-1959)
HENRY M. SPITZER (1928-1988)

WARREN W. WILENTZ
MORRIS BROWN
FREDERIC K. BECKER²
NICHOLAS L. SANTOWASSO
RICHARD F. LERT²
JOHN A. HOFFMAN
STEPHEN E. BARCAN
FRANCIS V. BONELLO
BARRY M. EPSTEIN^{2,10}
VINCENT P. MALTESE
DAVID M. WILDSTEIN
GORDON J. GOLUM
MARVIN J. BRAUTH²
STUART A. HOBERMAN^{2,13}
STEPHEN A. SPITZER
ANNE S. BABINEAU²
CHRISTINE D. PETRUZZELL
BRIAN J. MOLLOY
RANDALL J. RICHARDS
JOSEPH J. JANKOWSKI
DAVID S. GORDON
FREDERICK J. DENNEHY
ROY H. TANZMAN²
STEVEN J. TRIPP²
JAY J. ZIZNEWSKI
ALAN WASSERMAN²
JAMES E. TRABILSY
MAUREEN S. BINETTI²
ANTHONY J. PANNELLA, JR.
MICHAEL J. BARRETT²
MICHAEL F. SCHAFF^{2,13}
ANGELO JOHN CIFALDI
KEVIN M. BERRY²
JOHN T. KELLY²
C. KENNETH SHANK²
EDWIN LEAVITT-GRUBERGER²
BRUCE M. KLEINMAN^{2,13}
BARRY A. COOKE²
JON G. KUPILIK
PETER R. HERMAN²
EDWARD T. KOLE

HESSER G. McBRIDE, JR.
ERIC JOHN MARCY
ROBERT C. KAUTZ^{2,5}
VIOLA S. LORDI²
LYNNE M. KIZIS
KEVIN P. RODDY^{2,13}
DANIEL S. BERNHEIM^{3d,13}
DAVID H. STEIN
DOMINICK J. BRATTI
DOUGLAS WATSON LUBIC²
LISA A. GORAB²
LAWRENCE F. JACOBS²
BETH HINSDALE-PILLER
FRED HOPKE¹
DONALD E. TAYLOR³
BARRY R. SUGARMAN²
BRETT R. HARRIS^{2,5}
JEFFREY W. CAPPOLA
ALFRED M. ANTHONY²
DARREN M. GELBER²⁰
MATTHEW M. WEISSMAN²
WILLIAM J. LINTON
DONNA M. JENNINGS
GIOVANNI ANZALONE
PETER A. GREENBAUM²
WILLARD C. SHIH¹
BLAIR R. ZWILLMAN²
LAWRENCE C. WEINER²
LAURIE E. MEYERS^{2,4}
JOHN M. CANTALUPO²
BARBARA G. QUACKENBOS²
DAVID P. PEPE
JOHN E. HOGAN²

OF COUNSEL
ROBERT A. PETITO
HAROLD G. SMITH
ALAN B. HANDLER⁵
MYRON ROSNER²
R. BENJAMIN COHEN

COUNSEL
RUTH D. MARCUS¹²
RICHARD J. BYRNES
JAMES P. LUNDY^{2,13}
JAMES E. TONREY, JR.²

DEIRDRE WOULFE PACHECO²
ROBERTO BENITES
JONATHAN J. BART^{2,13}
YVONNE MARCUSE
ABBY RESNICK-PARIGIAN^{2,13}
BRIAN KALVER²
ELLEN TORREGROSSA-O'CONNOR
AMANDA F. SHECHTER²
BARBARA J. KOONZ²
TODD E. LEHDER²⁷
PHILIP A. TORTORETI^{11,12}

ASSOCIATES
LINDA LASHBROOK
LORETTA KIRSCH PRIVES²
ELIZABETH C. DELI²
KELLY A. ERHARDT-WOJIE³
JEFFREY J. BROOKNER
DAWN E. MAGUIRE^{2,45}
FRANCINE E. TAJFEL²
ALBERTINA WEBB²
JOHN P. MURDOCH II
MARY H. SMITH
EDWARD J. ALBOWICZ²
ANNA I. MONFORTH
STEPHANIE D. GIRONDA
EVERETT M. JOHNSON²
ALEX LYUBARSKY²
KEVEN H. FRIEDMAN²⁹
GREGORY D. SHAFFER^{2,2}
JESSICA S. PYATT
LOUIS J. SEMINSKI, JR.
DANIEL R. LAPINSKI²
LAUREN BERSCHLER KARL³
MICHAEL F. FRIED²
MICHAEL C. LEFKOWITZ²
DASHIKA R. WELLINGTON³
ROBERT L. SELVERS²
ERIK C. ACOSTA²
PAMELA R. GOLD-ZAFRA²
ALYSON M. LEONE²
VINCENT CHENG²
MICHAEL J. WEISSLITZ

JONATHAN M. BUSCH⁶
JAMIE M. BENNETT²
MARCELLO DE PERALTA^{1,12}
KEITH L. HOVEY²
JOSEPH J. RUSSELL, JR.²
JON S. POLEVOY
EMILY D. VAIL^{2,4}
CHERYL E. CONNORS
CHAD B. SIMON²
ANTHONY WILKINSON²
DENIZA G. GERTSBERG²
DESHA L. JACKSON
JAY B. FELDMAN²
LOUIS A. GREENFIELD²
JULIA A. LOPEZ²
AMY HERBOLD
ERIC I. BUEIDE
DARRON E. BERQUIST^{1,12}
DOUGLAS M. SILVESTRO
DANIEL J. KLUSKA
MICHAEL L. GALVIN
SATISH V. POONDI
ERICA A. RODRIGUEZ

< Certified Civil Trial Attorney
□ Certified Criminal Trial Attorney
‡ Certified Matrimonial Attorney
† Certified Workers Compensation Attorney
* National Certified Civil Trial Specialist
Approved by the ABA
1 Not admitted NJ
2 Admitted NY
3 Admitted PA
4 Admitted CT
5 Admitted DC
6 Admitted MA
7 Admitted MD
8 Admitted VA
9 Admitted CA
10 Admitted FL
11 Admitted PR
12 Admitted VI

Please reply to:
Woodbridge
Direct Dial: (732) 726-7482
Direct Fax: (732) 726-4711

September 16, 2009

VIA HAND DELIVERY

Clerk, Superior Court of New Jersey
Middlesex County Courthouse
56 Patterson Street
New Brunswick, NJ 08903-0964

Re: **Empower Our Neighborhoods, et al. v. Daniel A. Torrissi, et al.**
Docket No. MID-L-7460-09

Dear Sir/Madam:

This firm represents Defendants Daniel A. Torrissi and the New Brunswick City Council (collectively "Defendants"). Enclosed, on behalf of Defendants, please find an original and two (2) copies of:

1. Defendants' Answer to Plaintiffs' Verified Complaint;
2. Defendants' Memorandum of Law in Opposition to Plaintiffs' Order to Show Cause;
3. Certification of Marvin J. Brauth; and
4. Proposed form of Order

Kindly file the originals and return copies stamped "filed" to our waiting messenger. Please charge any applicable fees to our firm's Superior Court Account No. 0109700.

Very truly yours,

WILENTZ, GOLDMAN & SPITZER, P.A.

By: 
MICHAEL J. WESSLITZ

Enclosures

cc: The Honorable James P. Hurley, P.J.Cv. (via hand delivery)
Renée Steinhagen, Esq. (via e-mail and overnight mail)
Bennet D. Zurofsky, Esq. (via e-mail and hand delivery)
Eric Aronowitz, Esq. (via overnight mail)
William Hamilton, Esq. (via overnight mail)

WILENTZ, GOLDMAN & SPITZER P.A.
Attorneys at Law
90 Woodbridge Center Drive
Post Office Box 10
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Defendants Daniel A. Torrasi and the
New Brunswick City Council

-----X		
EMPOWER OUR NEIGHBORHOODS,	:	SUPERIOR COURT OF NEW JERSEY
MARGARITA BONDARENKO, AMY	:	LAW DIVISION
BRAUNSTEIN, DOMINIC BOMBACE,	:	MIDDLESEX COUNTY
ADRIEL BERNAL and ANTHONY	:	DOCKET NO. MID-L-7460-09
SHULL,	:	
	:	Civil Action
Plaintiffs,	:	
	:	
v.	:	
	:	
DANIEL A. TORRISI, in his capacity as	:	DEFENDANTS
New Brunswick City Clerk, ELAINE	:	DANIEL A. TORRISI AND THE
FLYNN, in her capacity as County Clerk	:	NEW BRUNSWICK CITY
and the NEW BRUNSWICK CITY	:	COUNCIL'S ANSWER TO
COUNCIL, and BENJAMIN S. BUCCA,	:	PLAINTIFFS' VERIFIED
WILLIAM L. DUNBAR, REBECCA H.	:	COMPLAINT
ESCOBAR, GLENN J. FLEMING, and	:	
EZRA M. RUFINO (the "Committee of	:	
Petitioners"),	:	
Defendants.	:	
-----X		

Defendants Daniel A. Torrasi, the New Brunswick City Clerk (the "City Clerk" or "Torrasi"), with a business office located at City Hall, 78 Bayard Street, New Brunswick, New Jersey, and the New Brunswick City Council (the "City Council"), the legislative body of the City of New Brunswick's municipal government, with a business office located at City Hall, 78 Bayard Street, New Brunswick, New Jersey (collectively "Defendants"), by way of Answer to

#3208533

the Verified Complaint of Plaintiffs, Empower our Neighborhoods (“EON”), Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal and Anthony Shull (collectively “Plaintiffs”), state as follows:

PRELIMINARY STATEMENT

1. Defendants deny the allegations of Paragraph 1 of the Verified Complaint.

PARTIES

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein.

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein, including the allegation that Ms. Bondarenko’s rights under N.J.S.A. 40:69A-1, et. seq. (the “Faulkner Act”) were unlawfully interfered with.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein, including the allegation that Ms. Braunstein’s rights under the Faulkner Act were unlawfully interfered with.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein, including the allegation that Mr. Bombace’s rights under the Faulkner Act were unlawfully interfered with.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein, including the allegation that Mr. Bernal's rights under the Faulkner Act were unlawfully interfered with.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Verified Complaint and, on that ground, deny each and every of the allegations contained therein, including the allegation that Mr. Shull's rights under the Faulkner Act were unlawfully interfered with.

8. Defendants admit the allegations of Paragraph 8 of the Verified Complaint regarding Defendant Torrisi's status as the City Clerk, and deny the remainder of the allegations contained therein regarding Defendant Torrisi's purported duties and responsibilities.

9. Defendants admit the allegations of Paragraph 9 of the Verified Complaint regarding Defendant Flynn's status as the County Clerk, and deny the remainder of the allegations contained therein regarding Defendant Flynn's purported duties and responsibilities.

10. Defendants admit the allegations of Paragraph 10 of the Verified Complaint.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Verified Complaint and, on that ground, deny each and every allegation contained therein.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Verified Complaint and, on that ground, deny each and every allegation contained therein.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Verified Complaint and, on that ground, deny each and every allegation contained therein.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Verified Complaint and, on that ground, deny each and every allegation contained therein.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Verified Complaint and, on that ground, deny each and every allegation contained therein.

CLAIMS FOR RELIEF

COUNT ONE

16. Answering Paragraph 16 of the Verified Complaint, Defendants refer to the Petition submitted by Plaintiffs on or about October 1, 2008 (“Plaintiffs’ Initiated Petition”) for the contents thereof, and deny the remaining allegations contained therein.

17. Answering Paragraph 17 of the Verified Complaint, Defendants refer to Plaintiffs’ Initiated Petition for the contents thereof, and deny the remaining allegations contained therein.

18. Answering Paragraph 18 of the Verified Complaint, Defendants refer to the August 10, 2009 Decision and Final Judgment entered by the Honorable James P. Hurley, P.J.Cv. for the contents thereof, and deny the remaining allegations contained therein.

19. Answering Paragraph 19 of the Verified Complaint, Defendants admit that the Committee of Petitioners submitted a “Petition for a Ballot Question on Expanding New

Brunswick's At-Large City Council to Seven Members" (the "Amendment Petition") on or about August 24, 2009, and deny the remaining allegations contained therein.

20. Defendants admit the allegations of Paragraph 20 of the Verified Complaint.

21. Defendants admit the allegations of Paragraph 21 of the Verified Complaint.

22. Defendants deny the allegations of Paragraph 22 of the Verified Complaint.

23. Except to the extent the allegations contained in Paragraph 23 of the Verified Complaint constitute legal argument and/or call for legal conclusions, as to which a response is neither required nor appropriate, Defendants deny each and every allegation contained therein.

24. Except to the extent the allegations contained in Paragraph 24 of the Verified Complaint constitute legal argument and/or call for legal conclusions, as to which a response is neither required nor appropriate, Defendants deny each and every allegation contained therein.

WHEREFORE, Defendants demand that judgment be entered in their favor and against Plaintiffs as follows:

- (a) Dismissing the Verified Complaint in its entirety with prejudice;
- (b) Awarding Defendants their attorneys fees and costs of suit; and
- (c) Awarding such other relief as the Court may deem equitable and just.

COUNT TWO

25. Defendants repeat and reallege each of their responses contained in the foregoing Paragraphs as if fully set forth herein.

26. Defendants admit the allegations of Paragraph 26 of the Verified Complaint.

27. Defendants admit the allegations of Paragraph 27 of the Verified Complaint.

WHEREFORE, Defendants demand that judgment be entered in their favor and against Plaintiffs as follows:

- (a) Dismissing the Verified Complaint in its entirety with prejudice;
- (b) Awarding Defendants their attorneys fees and costs of suit; and
- (c) Awarding such other relief as the Court may deem equitable and just.

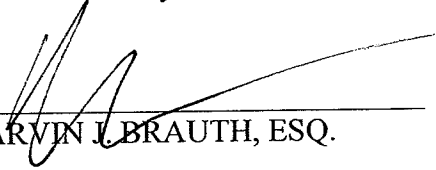
AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.
3. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.
5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.
6. Plaintiffs fail to allege any irreparable injury.
7. Defendants violated no duties owed to the Plaintiffs.
8. Plaintiffs' Verified Complaint is in violation of the frivolous claim statute.
9. Defendants reserve the right to move to dismiss the Verified Complaint for failure to effectuate service.
10. Plaintiffs' claims are barred, in whole or in part, by the relevant provisions of the Faulkner Act.
11. Plaintiffs' action is premature and seeks an unlawful prior restraint on the City Council.
12. Defendants reserve the right prior to or at trial of this matter to interpose any and all additional objections and/or further defenses to the Verified Complaint.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies, upon information and belief, that the within matter is not subject to any other civil or arbitration proceeding nor is any other civil or arbitration proceeding contemplated. I am not aware of any other parties who should be joined in this action at this time.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Defendants Daniel A. Torrasi and the
New Brunswick City Council

BY: 
MARVIN J. BRAUTH, ESQ.

Dated: September 16, 2009

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Marvin J. Brauth, Esq. is hereby designated as trial counsel on behalf of Defendants Daniel A. Torrasi and the New Brunswick City Council.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Defendants Daniel A. Torrasi and the
New Brunswick City Council

BY: 
MARVIN J. BRAUTH, ESQ.

Dated: September 16, 2009

CERTIFICATION OF SERVICE

The undersigned hereby certifies the foregoing Pleadings were filed and served pursuant to the applicable Court Rules.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Defendants Daniel A. Torrisi and the
New Brunswick City Council

BY: 

MARVIN J. BRAUTH, ESQ.

Dated: September 16, 2009

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
LAW DIVISION
DOCKET NO.: MID-L-7460-09

-----X
EMPOWER OUR NEIGHBORHOODS,
MARGARITA BONDARENKO, AMY
BRAUNSTEIN, DOMINIC BOMBACE,
ADRIEL BERNAL and ANTHONY
SHULL,

Plaintiffs,

v.

DANIEL A. TORRISI, in his capacity as
New Brunswick City Clerk, ELAINE
FLYNN, in her capacity as County Clerk
and 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")

Defendants.
-----X

**ACTION IN LIEU OF
PREROGATIVE WRIT**

**DEFENDANTS DANIEL A. TORRISI AND THE NEW BRUNSWICK CITY
COUNCIL'S MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' ORDER TO SHOW CAUSE**

WILENTZ, GOLDMAN & SPITZER P.A.
Attorneys at Law
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Defendants Daniel A. Torrissi and
the New Brunswick City Council

Of Counsel and on the Brief:
Marvin J. Brauth, Esq.

On the Brief:
Michael J. Weisslitz, Esq.

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	3
LEGAL ARGUMENT	5
POINT ONE	5
SINCE N.J.S.A. 40:69A-25.1 SPECIFICALLY PERMITS ALTERNATIVE PROPOSED CHARTER AMENDMENTS TO BE SUBMITTED TO THE VOTERS ON THE SAME BALLOT, DEFENDANTS DID NOT ACT IMPROPERLY IN ACCEPTING AND CERTIFYING THE AMENDMENT PETITION FOR PLACEMENT ON THE NOVEMBER 3, 2009 NEW BRUNSWICK GENERAL ELECTION BALLOT	5
POINT TWO	8
N.J.S.A. 40:69A-25.1 PROVIDES FOR CITIZENS TO INITIATE AN ORDINANCE TO PROVIDE FOR THE SUBMISSION TO THE VOTERS THE QUESTION OF A CHANGE IN A MUNICIPALITY’S CHARTER	8
CONCLUSION	12

TABLE OF AUTHORITIES

PAGE

STATUTES

<u>N.J.S.A. 40:69A-1</u>	1, 4
<u>N.J.S.A. 40:69A-1(b)</u>	10, 11
<u>N.J.S.A. 40:69A-18</u>	passim
<u>N.J.S.A. 40:69A-184</u>	3, 9, 11
<u>N.J.S.A. 40:69A-185</u>	9
<u>N.J.S.A. 40:69A-186</u>	1, 2, 9, 10
<u>N.J.S.A. 40:69A-188</u>	10
<u>N.J.S.A. 40:69A-19</u>	10
<u>N.J.S.A. 40:69A-191</u>	10, 11
<u>N.J.S.A. 40:69A-193</u>	2
<u>N.J.S.A. 40:69A-196</u>	6, 9
<u>N.J.S.A. 40:69A-21</u>	passim
<u>N.J.S.A. 40:69A-25.1</u>	passim
<u>N.J.S.A. 40:69A-25.1(a)</u>	6, 9, 10
<u>N.J.S.A. 40:69A-25.1(b)</u>	7
<u>N.J.S.A. 40:69A-184</u>	6
<u>N.J.S.A. 40:69A-19</u>	6

PRELIMINARY STATEMENT

Defendants Daniel A. Torrisi, the New Brunswick City Clerk (the “City Clerk” or “Torrisi”), and the New Brunswick City Council (the “City Council”) (collectively “Defendants”) submit this Memorandum of Law in opposition to Plaintiffs’ Empower our Neighborhoods (“EON”), Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal and Anthony Shull’s (collectively “Plaintiffs”) Order to Show Cause. In the Order to Show Cause, Plaintiffs seek an Order (a) adjudging and declaring that the City Clerk acted illegally and in bad faith by failing to reject the “Petition for a Ballot Question on Expanding New Brunswick’s At-Large City Council to Seven Members” (the “Amendment Petition”), filed by Defendants Benjamin Bucca, William Dunbar, Rebecca Escobar, Glenn Fleming and Ezra Rufino (the “Committee of Petitioners”) on or about August 24, 2009; (b) directing the City Clerk to decertify and reject the Amendment Petition; (c) restraining the City Council from further processing the Amendment Petition; and (d) restraining and enjoining the Middlesex County Clerk from including the Amendment Petition’s proposed question on the November 3, 2009 New Brunswick General Election ballot.

Contrary to Plaintiffs’ arguments, the City Clerk properly processed and certified the Amendment Petition, which was duly submitted in accordance with N.J.S.A. 40:69A-1, et. seq. (the “Faulkner Act”), and proposed an amendment to New Brunswick’s Charter pursuant to N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-186. Since the relief sought by Plaintiffs is based entirely on an inapplicable section of the Faulkner Act (N.J.S.A. 40:69A-21) which prohibits concurrent petitions proposing the adoption of a new form of government, as opposed to concurrent petitions proposing charter amendments, as is the case here, Plaintiffs’ Order to Show

Cause should be denied. The Faulkner Act in N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-193 specifically allows more than one proposed charter amendment to appear on the same ballot.

Plaintiffs argue that N.J.S.A. 40:69A-21 bars the filing and subsequent processing of the Amendment Petition, given the pendency on the November 3, 2009 New Brunswick General Election ballot of Plaintiffs' "Petition For a Referendum On A Ward Based Alternative" (the "Initiated Petition"), submitted to Defendants on or about October 1, 2008 pursuant to N.J.S.A. 40:69A-25.1.

However, Plaintiffs' position is legally infirm, as N.J.S.A. 40:69A-21 prohibits only the inclusion of multiple petitions on a general election ballot regarding "the question of adopting an optional plan of government," and does not apply to voter initiated petitions under N.J.S.A. 40:69A-25.1 and N.J.S.A. 40:69A-186, seeking to amend an existing municipal charter, such as the Amendment Petition and the Initiated Petition.

Here, a charter amendment is what is proposed in the Amendment Petition, as it asks that the following question be submitted to the City electorate: "[s]hall 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." N.J.S.A. 40:69A-25.1 specifically contemplates and permits the inclusion of multiple proposed charter amendments to be included on the same ballot. Thus, the existence of the Initiated Petition does not preempt the filing of or action on the Amendment Petition.

By contrast, N.J.S.A. 40:69A-21 applies to but only competing, concurrent petitions submitted pursuant to N.J.S.A. 40:69A-18, which deals with petitions for an optional plan of government. Here, neither the Initiated Petition nor the Amendment Petition were filed pursuant to N.J.S.A. 40:69A-18, and neither seeks to propose the adoption of an optional plan of

government. Instead, both seek to amend the existing Charter of the City of New Brunswick and both were submitted pursuant to N.J.S.A. 40:69A-25.1, which permits voters to initiate alternate and multiple questions regarding the amendment of a municipality's charter. Plaintiffs' position is therefore incorrect as a matter of law.

Moreover, Plaintiffs' argument that the Amendment Petition is defective as a result of its inclusion of a proposed ordinance is also contrary to N.J.S.A. 40:69A-25.1, which provides that ballot questions for charter amendments can be proposed by a referendum if introduced by the governing body, and by initiative if introduced by the voters. For initiatives, N.J.S.A. 40:69A-25.1 requires compliance with N.J.S.A. 40:69A-184, the statute that addresses initiated ordinances, and which requires use of an ordinance in the Petition. Since the Court is not to assume that the Legislature made a mistake and simply ignore the legislative language, but rather the Court is charged with giving effect to that language, the conclusion must be reached that an ordinance is appropriate for a citizen initiated petition under N.J.S.A. 40:69A-25.1.

For the foregoing reasons, Plaintiffs' Order to Show Cause should be denied.

STATEMENT OF FACTS

On October 1, 2008, Plaintiffs filed the Initiated Petition with the City Clerk. See the September 16, 2009 Certification of Marvin J. Brauth ("Brauth Cert."), Ex. A. Therein, Plaintiffs claimed the "right to initiate a referendum question pursuant to N.J.S.A. 40:69A-25.1 in order to give city voters an opportunity to change to a ward-based alternative under the current Mayor-council plan." Id. Specifically, the Initiated Petition proposed to amend the City of New Brunswick's Charter, and sought to present the following question to city electorate for a vote:

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 the division of the municipality into six wards with three council members to be elected at large and one from each ward?

Id. (emphasis added).

In response, Defendants took the position that the Initiated Petition failed to present an initiated ordinance or referendum in a manner and format consistent with the requirements imposed by the Faulkner Act, and, furthermore, Defendants were precluded from acting on the Petition, given the pendency of New Brunswick's Charter Study Commission Ordinance (Ordinance #O-060807) (the "Charter Study Ordinance"), which called for a referendum question, pursuant to N.J.S.A. 40:69A-1, on whether a charter commission should be elected to study the charter of New Brunswick and consider a changed form of government or another alternative of the existing form of government.

Defendants took the position that, prior to the submission of the Initiated Petition, the City Council had already acted with regard to the very same subject matter addressed in the Initiated Petition, i.e. whether the form of government in New Brunswick should be altered and, under N.J.S.A. 40:69A-21, the amendments proposed by the Initiated Petition and Charter Study Ordinance could not appear on the same ballot.

Thereafter, on December 3, 2008, in the matter entitled Empower Our Neighborhoods, et al. v. Daniel A. Torrasi, et al ("EON II"), Plaintiffs filed a Complaint in lieu of prerogative writs to compel Defendants to place the question presented in the Initiated Petition on the November 3, 2009 New Brunswick General Election ballot.

On August 10, 2009, a Decision and Final Judgment was entered in EON II, wherein, among other things, Defendants were ordered to place the question presented in the Initiated Petition on the November 3, 2009 New Brunswick General Election ballot. Letter Brief, Ex. 1.

On August 24, 2009, the Committee of Petitioners submitted the Amendment Petition to the City Clerk. Verified Complaint, Ex. A. Submitted pursuant to N.J.S.A. 40:69A-25.1, the Amendment Petition asked that the City Council adopt an ordinance authorizing the following question to be placed on the November 3, 2009 New Brunswick General Election ballot:

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?

Id. (emphasis added).

By letter dated September 2, 2009, the City Clerk advised the Committee of Petitioners that he and the Assistant City Attorney agreed that the Amendment Petition complied with all relevant provisions of the Faulkner Act, and should be submitted to the City Council for further action. Verified Complaint, Ex. B. Thereafter, on September 2, 2009, the City Council passed a resolution scheduling a public hearing on the Amendment Petition's proposed ordinance for September 16, 2009. Verified Complaint, Ex. C.

LEGAL ARGUMENT

POINT ONE

SINCE N.J.S.A. 40:69A-25.1 SPECIFICALLY PERMITS ALTERNATIVE PROPOSED CHARTER AMENDMENTS TO BE SUBMITTED TO THE VOTERS ON THE SAME BALLOT, DEFENDANTS DID NOT ACT IMPROPERLY IN ACCEPTING AND CERTIFYING THE AMENDMENT PETITION FOR PLACEMENT ON THE NOVEMBER 3, 2009 NEW BRUNSWICK GENERAL ELECTION BALLOT

Plaintiffs' Order to Show Cause should be denied, as N.J.S.A. 40:69A-25.1 unequivocally permits the simultaneous presentation of alternative charter amendments to a municipality's voters. Here, both the Initiated Petition and the Amendment Petition propose,

pursuant to N.J.S.A. 40:69A-25.1, an amendment to the City of New Brunswick's Charter. Since N.J.S.A. 40:69A-25.1 specifically contemplates and permits the inclusion of multiple proposed charter amendments to be included on the same ballot, Plaintiffs' Order to Show Cause should be denied.

The Initiated Petition and the Amendment Petition both propose an amendment to the City of New Brunswick's Charter, pursuant to N.J.S.A. 40:69A-25.1. N.J.S.A. 40:69A-25.1(a) sets forth that:

Any municipality governed by a plan of government adopted pursuant to [the Faulkner Act] may, by referendum, amend its charter to include any alternative permitted under that plan of government. The question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of [N.J.S.A. 40:69A-184 through 40:69A-196]; or may be submitted to the voters by ordinance adopted by the governing body, in which case the question and ordinance shall be subject to the pertinent provisions of [N.J.S.A. 40:69A-191 through 40:69A-196]; except that no petition of the voters shall be necessary in order to submit the question.

Accordingly, the Amendment Petition asked that the following question be submitted to the City electorate: "[s]hall 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." Verified Complaint, Ex. A.

Similarly, in also seeking an amendment to the City of New Brunswick Charter, the Initiated Petition sought to present the following question to the city electorate for a vote: "[s]hall 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 the division of the municipality into six wards with three council members to be elected at large and one from each ward?"

Thus, both the Initiated Petition and the Amendment Petition proposed, pursuant to N.J.S.A. 40:69A-25.1, amendments to the City of New Brunswick's Charter. N.J.S.A. 40:69A-25.1(b) specifically contemplates and permits the inclusion of multiple proposed amendments seeking alternative changes in the form of government to be included on the same ballot, providing that "[i]f more than one alternative is to be submitted to the voters at the same time, each alternative shall be separately stated on the ballot in the form of a question as set forth above. If the provisions of two or more alternatives adopted at the same election conflict, then that receiving the greatest affirmative vote shall control." (emphasis added).

The provision of the Faulkner Act relied upon by Plaintiffs in support of their Order to Show Cause, N.J.S.A. 40:69A-21, is inapplicable, since that section prohibits only the submission of multiple petitions regarding the question of adopting an optional plan of government and, by its very terms, does not apply to voter initiated petitions seeking to amend an existing municipal charter, such as the Amendment Petition and the Initiated Petition.

N.J.S.A. 40:69A-21 prevents the filing of a petition to completely change the form of government of a municipality while a similar petition is pending. That statute provides:

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, or under an ordinance passed or petition filed pursuant to section 1-1 of this act, [charter study], or while proceedings are pending pursuant to any other statute for the adoption of any other charter or form of government available to the municipality, nor within four years after an election shall have been held pursuant to any such petition filed pursuant to section 1-18 et seq. of this act.

Thus, N.J.S.A. 40:69A-21 applies only to competing petitions submitted pursuant to N.J.S.A. 40:69A-18, which deals with petitions for an optional plan of government. Here, neither the Initiated Petition nor the Amendment Petition were filed pursuant to N.J.S.A.

40:69A-18, and neither seeks to propose the adoption of an optional plan of government, but instead both seek to amend the existing Charter of the City of New Brunswick.

Accordingly, N.J.S.A. 40:69A-21 is inapplicable. Moreover, as both the Amendment Petition and the Initiated Petition were submitted pursuant to N.J.S.A. 40:69A-25.1, which specifically contemplates and permits the inclusion of multiple proposed charter amendments seeking to be included on the same ballot, Defendants properly processed and certified the Amendment Petition, and Plaintiff's Order to Show Cause should be denied¹

POINT TWO

N.J.S.A. 40:69A-25.1 PROVIDES FOR CITIZENS TO INITIATE AN ORDINANCE TO PROVIDE FOR THE SUBMISSION TO THE VOTERS THE QUESTION OF A CHANGE IN A MUNICIPALITY'S CHARTER

The Amendment Petition is not defective as a result of its inclusion of a proposed ordinance. N.J.S.A. 40:69A-25.1 sets forth that "the question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of [N.J.S.A. 40:69A-

¹ To the extent that Plaintiffs allege that Defendants are judicially estopped from advocating "inconsistent legal positions" with regard to certain arguments previously asserted on behalf of Defendants in prior lawsuits with Plaintiffs, this argument is unavailing, as Defendants have never argued that the Faulkner Act prohibits simultaneous petitions advocating alternative amendments to a municipal charter, and have never argued that N.J.S.A. 40:69A-21 applied to N.J.S.A. 40:69A-25.1. Rather, Defendants previously argued that, by implication and analogy, N.J.S.A. 40:69A-21 prevents the filing of a petition while a charter commission ordinance is pending. Here, Defendants have not advanced an argument that contradicts this previously asserted position, as the argument relied upon by Defendants here involves N.J.S.A. 40:69A-25.1, which specifically contemplates and permits the inclusion of multiple proposed charter amendments on the same ballot, and neither of the two petitions at issue involve a charter study ordinance. Thus, the doctrine of judicial estoppel is inapplicable, as its purpose is to protect "the integrity of the judicial process." Cummings v. Bahr, 295 N.J. Super. 374, 387 (App. Div. 1996). "A threat to the integrity of the judicial system sufficient to invoke the judicial estoppel doctrine only arises when a party advocates a position contrary to a position it successfully asserted in the same or a prior proceeding." Kimball Intern., Inc. v. Northfield Metal Products, 334 N.J. Super. 596, 606 (App. Div. 2000)(citations omitted). Here, Defendants have not maintained inconsistent positions and, even if the positions were inconsistent, judicial estoppel would still be inapplicable since Defendants were not successful in the prior litigation, and "to be estopped [a party must] have convinced the court to accept its position in the earlier litigation. A party is not bound to a position it unsuccessfully maintained." Id. at 606-607 (citing In re Cassidy, 892 F.2d 637, 641 (7th Cir.), cert. denied, 498 U.S. 812 (1990)).

184 through N.J.S.A. 40:69A-196]. Via this reference to N.J.S.A. 40:69A-186, N.J.S.A. 40:69A-25.1 directs the inclusion of a proposed ordinance in the Amendment Petition.

In Faulkner Act municipalities, citizens enjoy the right of initiative and referendum. The initiative power allows citizens to introduce a proposed ordinance for adoption by the voters if not acted upon by the local governing body. The power of referendum allows citizens to approve or reject, at the polls, any ordinance or ballot question submitted by the council to the voters, or any ordinance passed by the City Council, against which a referendum petition has been filed. As defined in N.J.S.A. 40:69A-184:

The voters of any municipality may propose any ordinance and may adopt or reject the same at the polls, such power being known as the initiative.

By contrast, as defined in N.J.S.A. 40:69A-185:

The voters shall also have the power of referendum which is the power to approve or reject at the polls any ordinance submitted by the council to the voters or any ordinance passed by the council, against which a referendum petition has been filed as herein provided.

Thus, N.J.S.A. 40:69A-184 and N.J.S.A. 40:69A-185 illustrate two different types of power and two different types of petitions: petitions seeking an initiated ordinance, and petitions seeking a referendum on an ordinance previously passed by the City Council.

This initiative/ referendum dichotomy is also present in N.J.S.A. 40:69A-25.1, the statute in issue in this case, which addresses the manner in which a municipality may amend its charter to provide for an alternative plan of government. N.J.S.A. 40:69A-25.1(a) provides that:

Any municipality governed by a plan of government adopted pursuant to [the Faulkner Act] may, by referendum, amend its charter to include any alternative permitted under that plan of government. The question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of, [N.J.S.A. 40:69A-184 through N.J.S.A. 40:69A-196]; or may be submitted to the voters by ordinance adopted by the

governing body, in which case the question and ordinance shall be subject to the pertinent provisions of [N.J.S.A. 40:69A-191 though N.J.S.A. 40:69A-196], except that no petition of the voters shall be necessary in order to submit the question.

Thus, in addressing charter amendments such as the one sought in the Amendment Petition, N.J.S.A. 40:69A-25.1(a) contemplates such amendments being presented in one of two ways: (1) by a referendum introduced by the governing body itself; or, alternatively, (2) by petition “initiated by the voters.”

That an ordinance is to be provided in a petition under N.J.S.A. 40:69A-25.1 follows from a comparison of that section with other sections of the Faulkner Act which provide for citizen petitions. Under N.J.S.A. 40:69A-18, “[t]he legally qualified voters of any municipality may adopt any of the optional plans provided in this act upon petition and referendum, without a charter commission, hereinafter provided.” This is commonly known as the Direct Petition provision. However, a petition for such an optional plan is subject to N.J.S.A. 40:69A-19, which provides that:

Upon petition of the registered voters of any municipality, an election shall be held in the municipality upon the question of adopting any of the optional plans of government provided in this act. The petition calling for such election shall be subject to the provisions of section 1-1(b) hereof . . .

(Emphasis added)

Thus, pursuant to N.J.S.A. 40:69A-19 a petition for an optional plan of government must comply with N.J.S.A. 40:69A-1(b), which holds that “[a] petition under this section shall conform to the requirements of form for petitions under sections [N.J.S.A. 40:69A-186 to N.J.S.A. 40:69A-188] (except that there shall be no reference therein to any ordinance) and shall be subject to examination, certification and amendment as therein provided.” (emphasis added).

Moreover, N.J.S.A. 40:69A-1(b) does not provide that petitions under N.J.S.A. 40:69A-18 and N.J.S.A. 40:69A-19 must conform with N.J.S.A. 40:69A-184, the statute that requires an “ordinance” as part of an initiated petition. However, citizen-initiated petitions to amend an existing form of government under N.J.S.A. 40:69A-25.1 do, and the Initiated Petition and the Amendment Petition were both submitted under this section. N.J.S.A. 40:69A-25.1 sets forth that “the question of adopting an alternative may be initiated by the voters pursuant to, and subject to the pertinent provisions of [N.J.S.A. 40:69A-184 through N.J.S.A. 40:69A-196].” Thus, N.J.S.A. 40:69A-25.1 requires compliance with N.J.S.A. 40:69A-184, the statute that addresses initiated ordinances. Since the Court is not to assume that the Legislature made a mistake and simply ignore the legislative language, but rather the Court is charged with giving effect to that language, the conclusion must be reached that in a citizen initiated petition under N.J.S.A. 40:69A-25.1, an ordinance is required.

Under N.J.S.A. 40:69A-25.1, an initiative petition is contemplated, as proposed changes in a municipal charter may be initiated pursuant to the initiative procedures of N.J.S.A. 40:69A-184 through N.J.S.A. 40:69A-196. That procedure affords the public the right to propose an ordinance. Once a proper petition is signed by the required number of voters under N.J.S.A. 40:69A-184, the proposed ordinance is deemed to have received its first reading and the City Council is given 20 days to accept or reject the ordinance. N.J.S.A. 40:69A-191. If the City Council approves the ordinance, the question contained within the ordinance is then placed on the ballot for consideration by the voters. However, if the City Council rejects the ordinance or fails to take action within 20 days, the ordinance nevertheless may be placed on the ballot for consideration by the voters if the Committee of Petitioners does not withdraw it. N.J.S.A. 40:69A-191.

In creating the direct and initiative processes, the rationale of the Legislature was clear. If a petition is submitted with valid signatures of over 20% of registered voters, as in the case of a direct petition under N.J.S.A. 40:69A-18, there is ample support within the community to bypass the City Council and place the proposed change directly on the ballot. Thus, there is no need for an ordinance. By contrast, in an instance when only a small percentage of the registered voters have proposed a change, strong evidence of support for the proposal is absent. Accordingly, the Legislature provided for a mechanism for petitioners to obtain the support of the City Council, and only in the absence thereof, for the voters themselves to determine whether the question should be placed on the ballot. However, the City Council can act only by ordinance.

Based on the statutory language, a proposed ordinance is required under N.J.S.A. 40:69A-25.1. This is logical, as, with respect to initiated petitions, they are submitted to the Council for action or inaction before going to the voters. Accordingly, the Amendment Petition is not defective as a result of its inclusion of a proposed ordinance.

CONCLUSION

For all of the foregoing reasons, Defendants Daniel A. Torrisi and the New Brunswick City Council respectfully request that the Court deny Plaintiffs' Empower our Neighborhoods, Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal and Anthony Shull's Order to Show Cause.

Respectfully submitted,

Wilentz, Goldman & Spitzer, P.A.
Attorneys for Defendants

By: _____

MARVIN J. BRAUTH

Dated: September 16, 2009

WILENTZ, GOLDMAN & SPITZER P.A.
Attorneys at Law
90 Woodbridge Center Drive
Post Office Box 10
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Defendants Daniel A. Torrissi and the
New Brunswick City Council

-----X		
EMPOWER OUR NEIGHBORHOODS,	:	SUPERIOR COURT OF NEW JERSEY
MARGARITA BONDARENKO, AMY	:	LAW DIVISION
BRAUNSTEIN, DOMINIC BOMBACE,	:	MIDDLESEX COUNTY
ADRIEL BERNAL and ANTHONY	:	DOCKET NO. MID-L-7460-09
SHULL,	:	
	:	Civil Action
Plaintiffs,	:	
	:	
v.	:	
	:	CERTIFICATION OF
	:	MARVIN J. BRAUTH
DANIEL A. TORRISI, in his capacity as	:	
New Brunswick City Clerk, ELAINE	:	
FLYNN, in her capacity as County Clerk	:	
and 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"),	:	
Defendants.	:	
-----X		

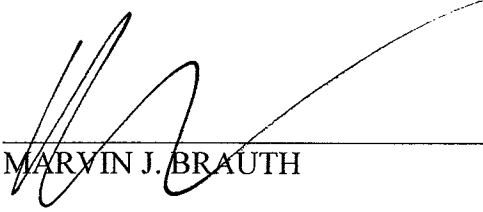
MARVIN J. BRAUTH, of full age, being duly sworn according to law, hereby
certifies to the following:

1. I am an attorney at law of the State of New Jersey and a shareholder in the law
firm of Wilentz, Goldman & Spitzer, P.A., attorneys for Defendants Daniel A. Torrissi and the
New Brunswick City Council (collectively "Defendants").

2. I make this certification in opposition to Plaintiffs' Empower our Neighborhoods, Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal and Anthony Shull's (collectively "Plaintiffs") Order to Show Cause.

3. Attached hereto as Exhibit A is a copy of Plaintiffs' Petition For a Referendum On A Ward Based Alternative.

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.



MARVIN J. BRAUTH

Dated: September 16, 2009

EXHIBIT A

PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE

To the Municipal Clerk of the City of New Brunswick:

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey, desire for city voters to decide whether or not to change the number and manner in which our city council members are elected in order to give each city ward its own voice on the city council; and

WHEREAS, we the undersigned, registered voters of the City of New Brunswick, Middlesex County, New Jersey seek specifically to give city voters the opportunity to decide whether or not to amend the municipal charter of the City of New Brunswick to provide for the division of the municipality into six wards, to expand the number of city council members from five members to nine members, and to provide that six members of the council be elected by the voters of those wards (with one from each ward) and three members be elected at large by all the voters in the city; and

WHEREAS, we the undersigned, registered voters of the City of New Brunswick understand that we have the right to initiate a referendum question pursuant to N.J.S.A. 40:69A-25.1 in order to give city voters an opportunity to change to a ward-based alternative under the current Mayor-Council plan;

WE HEREBY REQUEST that the following question to change the municipal charter of the City of New Brunswick be submitted to the city electorate for a vote, pursuant to N.J.S.A. 40:69A-192, at the election which next follows the submission and certification of this petition:

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 the division of the municipality into six wards with three council members to be elected at large and one from each ward?

(all entries must be made in ink)

SIGNATURE

PRINTED NAME

RESIDENCE ADDRESS

1. _____
2. _____
3. _____
4. _____
5. _____

COMMITTEE OF PETITIONERS pursuant to N.J.S.A. 40:69A-186

Margarita Bondarenko, 95 Easton Avenue, New Brunswick, NJ 08901
Amy Braunstein, 80 Harvey Street, New Brunswick, NJ 08901
Dominic Bombace, 22 Harvey Street, New Brunswick, NJ 08901
Adriel Bernal, 80 Harvey Street, New Brunswick, NJ 08901
Anthony Shull, 233 Hamilton Street, New Brunswick, NJ 08901

PETITION FOR A REFERENDUM ON A WARD-BASED ALTERNATIVE
PLEASE READ PREFACE AND PROPOSED QUESTION ON REVERSE SIDE OF THIS SHEET

SIGNATURE

PRINTED NAME

RESIDENCE ADDRESS

6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____

COMMITTEE OF PETITIONERS pursuant to N.J.S.A. 40:69A-186

Margarita Bondarenko, 95 Easton Avenue, New Brunswick, NJ 08901
Amy Braunstein, 80 Harvey Street, New Brunswick, NJ 08901
Dominic Bombace, 22 Harvey Street, New Brunswick, NJ 08901
Adriel Bernal, 80 Harvey Street, New Brunswick, NJ 08901
Anthony Shull, 233 Hamilton Street, New Brunswick, NJ 08901

AFFIDAVIT OF CIRCULATOR pursuant to N.J.S.A. 40:69A-186

STATE OF NEW JERSEY :

: ss.

COUNTY OF MIDDLESEX :

_____ (name) certifies that: (1) s/he and only s/he personally circulated the foregoing paper; (2) all the signatures appended thereto were made in his/her presence; and (3) s/he believes them to be the genuine signatures of the persons whose names they purport to be.

(circulator's signature)

Sworn to and subscribed before me this
____ day of _____, 2008

NOTARY PUBLIC

WILENTZ, GOLDMAN & SPITZER P.A.
Attorneys at Law
90 Woodbridge Center Drive
Post Office Box 10
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Defendants Daniel A. Torrissi and the
New Brunswick City Council

-----X		
EMPOWER OUR NEIGHBORHOODS,	:	SUPERIOR COURT OF NEW JERSEY
MARGARITA BONDARENKO, AMY	:	LAW DIVISION
BRAUNSTEIN, DOMINIC BOMBACE,	:	MIDDLESEX COUNTY
ADRIEL BERNAL and ANTHONY	:	DOCKET NO. MID-L-7460-09
SHULL,	:	
	:	Civil Action
Plaintiffs,	:	
	:	
v.	:	
	:	ORDER
DANIEL A. TORRISI, in his capacity as	:	
New Brunswick City Clerk, ELAINE	:	
FLYNN, in her capacity as County Clerk	:	
and 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"),	:	
Defendants.	:	
-----X		

THIS MATTER, having been opened to the Court by Renée Steinhagen, Esq., of the New Jersey Appleseed Public Interest Law Center, and Bennett D. Zurofsky, Esq., appearing on behalf of Plaintiffs Empower our Neighborhoods, Margarita Bondarenko, Amy Braunstein, Dominic Bombace, Adriel Bernal and Anthony Shull (collectively "Plaintiffs"), by way of an Order to Show Cause seeking relief by way of preliminary injunction, with Marvin J. Brauth,
#3209561

Esq., of the law firm of Wilentz, Goldman & Spitzer, P.A., appearing on behalf of Defendants Daniel A. Torrisi, the New Brunswick City Clerk, and the New Brunswick City Council (collectively "Defendants"), and the Court having considered the moving papers as well as Defendants' Certification and Brief in opposition to Plaintiffs' Order to Show Cause, and further having entertained oral argument, and for good cause shown,

IT IS on this _____ day of _____, 2009

ORDERED, that Plaintiffs' Order to Show Cause is DENIED; and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record within 7 days of counsel's receipt of same.

Hon. James P. Hurley, P.J.Cv.

___ Opposed
___ Unopposed