

FILED

MAR 11 2020

PREPARED BY THE COURT**ATLANTIC COUNTY
LAW DIVISION**

Atlantic City Democratic Committee,

Plaintiff,

v.

Atlantic City Residents for Good
Government, Inc., Unnamed Petition
Committees 1-2 being fictitious names, Clerk
of City of Atlantic City in her official
capacity, and John Does 1-25, individuals
who were circulators or other being fictitious
names,

Defendants.

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION

DOCKET NO. ATL-L-496-20

Order

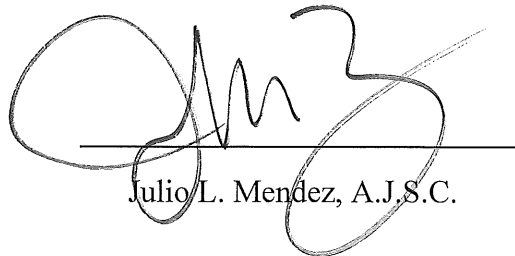
DATED: March 11, 2020

COURT ORDER

The court having read the papers filed and the record created in this matter, and the court having conducted oral argument on Plaintiff's Order to Show Cause with request for preliminary injunction on March 9, 2020, and having considered the arguments of Plaintiff Atlantic City Democratic Committee, and Defendant Atlantic City Residents for Good Government, and Defendant the Clerk of Atlantic City, and the court granting New Jersey Appleseed's Motion to submit an amicus brief; the court sets forth its finding of fact and conclusions of law upon the record, which are incorporated herein and upon other good cause shown;

IT IS on this Wednesday, March 11, 2020, **ORDERED** as follows:

1. Plaintiff's Order to Show Cause for preliminary injunction is denied.
2. The court shall conduct a case management conference call with all parties on April 14, 2020, at 10am.

Date: 3/11/20
Julio L. Mendez, A.J.S.C.

FILED

MAR 11 2020

ATLANTIC COUNTY
LAW DIVISION**NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS**

Atlantic City Democratic Committee,

Plaintiff,

v.

Atlantic City Residents for Good Government,
Inc., Unnamed Petition Committees 1-2 being
fictitious names, Clerk of City of Atlantic City
in her official capacity, and John Does 1-25,
individuals who were circulators or other being
fictitious names,

Defendants.

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION

DOCKET NO. ATL-L-496-20

Memorandum of Decision

DATED: March 11, 2020

Decided: March 11, 2020

Samuel D. Lashman, Esquire for Plaintiff Atlantic City Democratic Committee

Michael A. Iannucci, Esquire, Blair Gerold, Esquire for Defendant Atlantic City Residents for
Good Government, Inc.

Joseph A. Garcia, Esquire for Defendant the Clerk of Atlantic City

Mendez, A.J.S.C.

This matter comes before the court by way of a Complaint in Lieu of Prerogative Writ filed by the Atlantic City Democratic Committee (“Plaintiff” or “ACDC”) on February 11, 2020, in the Superior Court of New Jersey. This case involves a petition to change the form of the City of Atlantic City’s government from a “Mayor-Counsel” form (N.J.S.A. 40:69A-31 *et seq.*) to a “Municipal Manager” form (N.J.S.A. 40:79-1 *et seq.*). The Petition was submitted by Defendant Atlantic City Residents for Good Government (“ACRGG”) and accepted the Clerk of Atlantic City on January 16, 2020 (the “Petition”).

The Petition seeks to place on the ballot before the voters of Atlantic City a question of whether to change the form of government of Atlantic City. As a result of the Clerk’s acceptance

of the Petition, the Clerk scheduled a Special Election to be held on March 31, 2020, in the City of Atlantic City. Plaintiff filed a Complaint and Order to Show Cause including three specific Counts on February 11, 2020. This court denied the temporary restraints requested within Plaintiff's Order to Show Cause and scheduled a hearing on this matter on March 9, 2020.

Defendant Atlantic City Residents for Good Government is a 501(c)(4) social welfare organization formed to coordinate a petition drive to change Atlantic City's government from its current "Mayor-Counsel" form (N.J.S.A. 40:69A-31) to the "Municipal Manager" form (N.J.S.A. 40:79-1). Defendants respond and argue that the Petition was valid, that no fraud occurred in the process of attaining the required signatures, that no civil rights violations would occur, and that the Election should continue as scheduled.

In coming to the court's determination, this Court is guided by the principles espoused by the Supreme Court in N.J. Democratic Party, Inc. v. Samson, quoting in part Chief Justice Vanderbilt:

Election laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons. . . . The Concept is simple. At its center is the voter, whose fundamental right to exercise the franchise infuses our election statutes with purpose and meaning.

[N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 186, 814 A.2d 1028, 1033 (2002)]

This court is also guided by the State of New Jersey's longstanding legal principle that the right to vote is a fundamental constitutional right. Rutgers Univ. Student Assembly v. Middlesex Co. Bd. Of Elections, 454 N.J. Super. 221, 229-30 (App. Div. 2016). The right to referendum is intimately tied to an individual's right to vote. The overall purpose of election law is to allow the people to voice their opinion through the electoral process and allow the greatest scope of public

participation. Courts have been reluctant to allow minor technical deficiencies to stand in the way of people's right to vote or petition.

Against this backdrop, the court has carefully analyzed whether Plaintiff ACDC has met its burden under Crowe v. DeGioia for the granting of preliminary injunction. Here, the Clerk certified that the Petition contained 3,288 signatures. The Clerk determined, after verifying the signatures against the State's Voter Registration System, that 2,568 signatures were valid signatures of Atlantic City registered voters. The Clerk similarly determined after review of the Petition that the number of signatures on the Petition met the statutory requirement of 935 valid signatures to place the question before the voters. The overwhelming number of verified signatures of Atlantic City registered voters on the Petition is a compelling fact in the court's overall analysis of this case.

Plaintiff argues that the Petition is defective as a matter of law and that the Petition failed to follow prerequisites under N.J.S.A. 40A:69A-186, among other election statutes. Plaintiff argues that this court should incorporate certain general election law and Faulkner Act requirements for analyzing petitions submitted under N.J.S.A. 40:80-1. Plaintiff additionally asserts that Defendants engaged in fraud and misconduct in obtaining the signatures required for the Petition. In Count III Plaintiff includes an allegation that the Petition violates the civil rights of the people of Atlantic City. Plaintiff demands that the court set aside the Petition, and grant a preliminary injunction staying or cancelling the election scheduled for March 31, 2020.

As the court will outline in this opinion, Plaintiff failed to clearly and convincingly demonstrate a sufficient basis to establish a likelihood of ultimate success on the merits. The overall allegations of fraud have fallen short of the standard required for preliminary injunction. Without an evidentiary showing of fraud or misconduct on part of the Defendants in circulating

and ascertaining signatures for the Petition, the court will not cancel the Special Election. The court has also considered the allegations that the Petition was deficient and therefore invalid. This court will not impose further requirements on the Special Election Petition under N.J.S.A. 40:80-1 where other courts have similarly refused to do so. The court has also determined that the Constitutional arguments advanced by Plaintiff are premature at this point in time. The voters should have the opportunity to voice their opinion through their vote on March 31, 2020. For all the above-mentioned reasons as outlined in this opinion, the court denies Plaintiff's request for preliminary injunction.

FACTUAL & PROCEDURAL BACKGROUND

Plaintiff is a political organization representing the Democratic Party in the City of Atlantic City, New Jersey. Plaintiff has forty-two members that are elected every two years with a man and woman representing each of Atlantic City's 21 precincts with a membership of 10,000 registered democrats. As stated above, Defendants Atlantic City Residents for Good Government is a 501(c)(4) social welfare organization formed to coordinate a petition drive to change Atlantic City's government from its current "Mayor-Counsel" form (N.J.S.A. 40:69A-31) to the "Municipal Manager" form (N.J.S.A. 40:79-1). Defendant Clerk of the City of Atlantic City ("Clerk") is the official that received the Petition from ACRGG in an effort to place a change of government vote before the voters on whether to change the City's form of government. The Petition included the following language:

PETITION TO ADOPT MUNICIPAL MANAGER FORM OF GOVERNMENT

We, the undersigned, hereby request that an election be held in the City of Atlantic City upon the following question: Shall subtitle 5 of the title Municipalities and Counties of the Revised Statutes (N.J.S.A. 40:79-1 et seq.), providing for the Municipal Manager Form of Government, with five (5) council members all to be elected at-large for concurrent terms at elections held in May, with the mayor elected from among the council members, and a municipal manager appointed by the municipal council, be adopted by the City of Atlantic City?

The Clerk has the responsibility to verify the Petition. The Clerk, in accordance with N.J.S.A. 40:80-1, determined that in order to place the Petition on the ballot that Defendant ACRGG would be required to submit a minimum of 935 valid signatures on the Petition, equaling at least 15% of the number of persons who voted at the last proceeding general election held for the purposes of election the members of the New Jersey General Assembly. After receiving the Petition, and after reviewing and determining that the Petition did have at least 935 valid signatures as required under N.J.S.A. 40:80-1, the Clerk placed the change in form of government question on the ballot for a public vote on Tuesday, March 31, 2020.

The Clerk originally received a petition with 3,288 signatures in December (“December petition”). When reviewing the December petition to verify the signatures and voter information through the State’s Voter Registration System (“SVRS”), the Clerk rejected a substantial number of petitions that were notarized by Jayesh K. Sodha. The December petition was found to be insufficient as the Clerk was unable to verify Jayesh K. Sodha as a notary in good standing, leaving the petition lacking the requisite number of valid signatures. Without the petitions notarized by Mr. Sodha, the Clerk determined that only 699 signatures were valid, not meeting the required 935 signatures to place the change of government vote on the ballot. On January 16, 2020, after receiving notice from the Treasury Department that Mr. Sodha was in fact properly registered, and that the Treasury Department simply needed to update the notary registry, the Clerk reviewed and re-counted the signatures. The Clerk determined that 2,568 signatures were valid. On that basis, the Clerk placed ACRGG’s question of change of government on the ballot for the March 31, 2020, special election.

After the Plaintiff filed the Complaint in Lieu of Prerogative Writ, the court signed Plaintiff’s Order to Show Cause on the same day, February 11, 2020, denying any injunction,

denying any temporary restraints, and denying the request to stay or cancel the election pending a preliminary injunction hearing. The court scheduled this matter for a hearing on the Order to Show Cause with a return date of March 9, 2020, at 9:30am. The court received a Motion to appear as Amicus Curiae on short notice from Appleseed New Jersey Public Interest Law Center for leave to file an Amicus Brief. The court considered this Motion on the same return date as the Order to Show Cause and granted Appleseed New Jersey's Motion. The court considers the amicus brief submitted in this matter by Appleseed New Jersey.

Prior to the hearing, the court conducted a conference call with counsel for Plaintiff and Defendants regarding certain discovery requested by the Plaintiff. The court ordered that Plaintiff have full access to review the petition sheets and any relevant documents related to the Petition in the possession of the Clerk of Atlantic City. The court also ordered the Clerk to file a certification regarding the review and verification process used by the Clerk. The Clerk appeared at the preliminary injunction hearing and provided additional testimony expanding on her Certification. All parties submitted briefs on the relevant issues, and the court considers the arguments made in this decision.

INJUNCTIVE RELIEF STANDARD OF REVIEW

New Jersey courts have long looked to Crowe v. DeGioia, for the standard that governs preliminary injunctions. Crowe v. De Gioia, 90 N.J. 126, 132-33 (1982). This court must consider the Crowe v. DeGioia factors when reviewing Plaintiff's request to stay or cancel the Special Election. The court must consider whether Plaintiff has demonstrated (1) a reasonable probability of success on the merits; (2) whether a balancing of the equities and hardships weigh in favor of injunctive relief; (3) whether substantial and irreparable injury was imminent; and (4) whether the entry of injunctive relief was in the public interest. McKenzie v. Corzine, 396 N.J. Super. 405,

413-14 (App. Div. 2007) (citations omitted). Where a court is asked to alter the status quo, such as cancelling or staying an election, the party seeking injunctive relief must show that all of the relevant Crowe factors are satisfied. Id. Each of these factors must be clearly and convincingly demonstrated, and each must weigh in favor of the relief sought. Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); Sherman v. Sherman, 330 N.J. 638 (Ch. Div. 1999).

DISCUSSION AND ANALYSIS

Plaintiff's Complaint includes three Counts; Count I alleges that the Petition is legally and facially defective, Count II alleges that ACRGG fraudulently obtained signatures for their Petition, and Count III alleges that a change of Atlantic City's form of government is a violation of the civil rights of the residents of Atlantic City. While the allegations in the Complaint are broad and expansive, Plaintiff's submissions and arguments fall short of the mark to establish a basis for injunctive relief. The arguments made in support of Plaintiff ACDC's contentions range from accusing ACRGG of engaging in misrepresentations and fraud, to requesting this court incorporate new, judicially created, requirements on N.J.S.A. 40:80-1, the controlling statute regarding special election petitions. N.J.S.A. 40:80-1 states:

The legal voters of any municipality may adopt this subtitle at a special election to be held in such municipality, to be called by the municipal clerk upon request or petition in writing of the legal voters of the municipality not less in number than fifteen per centum (15%) of the number of persons who voted at the last preceding general election held for the purpose of electing all of the members of the general assembly as shown by the official canvass. At this election no other proposition shall be voted upon.

Initially, Plaintiff argues that "The Petition is invalid because it is legally defective, failed to have proper notarizations, failed to identify the sponsor/committee, failed to submit uniform petitions, has numerous crossouts and deletions and for many other problems..." Plaintiff

additionally asserts that the Clerk of Atlantic City exceeded their power, acted without a legal basis, and failed to explain the Clerk's decision regarding the rejection or acceptance of certain signatures on the Petition, and therefore acted arbitrarily and unreasonably. Plaintiff contends in Count II that ACRGG attained signatures fraudulently where circulators did not actually obtain the signatures on the Petition, where there were forgeries and false names included on the Petition, and where the circulators misrepresented who they were and what the Petition was for. Regarding the civil rights claims contained in the Count III, Plaintiff argues that an at large election would negatively affect representation of minority groups in Atlantic City, and, as such, is a violation of the United States Constitution and the New Jersey Constitution.

Defendants ACRGG and the Clerk of Atlantic City each address the issues raised by Plaintiff and argue that Plaintiff has failed to support a request for injunctive relief under the Crowe standards. Defendant ACRGG specifically responds to Plaintiff's allegations that the Petition is not legally defective and argues that each requirement cited by Plaintiff is inapposite to the Petition under N.J.S.A. 40:80-1. Defendant ACRGG argues that Plaintiff's request for injunctive relief should be denied as they have failed to demonstrate each and every factor under Crowe, with the main focus on Plaintiff's failure to demonstrate a reasonable probability of ultimate success on the merits.

Upon a review of the full record, the applicable law, and statutory criteria the court is of the opinion that Plaintiff Atlantic City Democratic Committee has failed to demonstrate by clear and convincing evidence the basis for injunctive relief under Crowe v. DeGioia. As the court will detail in this opinion, the evidence presented, and arguments made fail to support a determination that Plaintiff has a reasonable probability of success on the merits. The court is also of the opinion that the requested injunction is against the public interest, taking into account the guiding principle

that voters should not be disenfranchised and that technical errors should not stand in the way of allowing the public to vote. For all the reasons included in this opinion, the court denies Plaintiff's request for injunctive relief and will not cancel or postpone the Special Election Scheduled for March 31, 2020.

I. Plaintiff Atlantic City Democratic Committee's Arguments

Next, the court outlines and considers the multitude of allegations and arguments that Plaintiff has made during the hearing and included in the briefs submitted to the court. As introduced above, Plaintiff makes a number of claims that the Petition should be declared null and void due to factual, procedural, and legal deficiencies. Plaintiff initially cites N.J.S.A. 40:80-1 and argues that the statute is unclear. Plaintiff compares the Special Election Petition statute N.J.S.A. 40:80-1 with the Faulkner Act, N.J.S.A. 40:69A-185 *et seq.* Plaintiff urges the court to incorporate the requirements of the Faulkner Act onto the silent N.J.S.A. 40:80-1; Special Election petition statute. Plaintiff also argues that the use of multiple types of petitions invalidates the Petition as the Faulkner Act, N.J.S.A. 40:69A-1 *et seq.* requires a uniform style in the petitions. Plaintiff then points to the Walsh Act, N.J.S.A. 40:74-10 in arguing that there are provisions in the Faulkner and Walsh Act that the "Municipal Manager" type of government lacks. In essence, Plaintiff takes issue with the Municipal Manager form (N.J.S.A. 40:79-1 *et seq.*) as it does not contain certain provisions that the Faulkner Act and the Walsh Act contain.

Plaintiff also contends that the Petition is invalid, as allegedly: there were minors obtaining signatures on the Petitions; ACRGG was not named on the Petitions; the circulators were not the person signing the affidavits; one signatory was in Florida and therefore could not have signed the petition; the circulators were paid on a per-signature basis; additional pages were submitted after December 11, 2019; the Petition was missing pages and were incorrectly numbered; the Clerk did

not explain why certain signatures were rejected and accepted; and that the petitions were tampered with. Touching on some of the specific allegations outlined above, Plaintiff contends that the misassembled petitions are sufficient grounds for invalidating all of the petitions due to susceptibility of fraudulent activity. Plaintiff argues that partial fraud is itself a ground for total invalidation of the petitions submitted by ACRGG.

Finally, Plaintiff argues that if the Municipal Manager form of government were to be implemented in Atlantic City it would be unconstitutional. Plaintiff states that Atlantic City currently contains six wards with council members elected from each ward, with the Mayor and three other council members elected at large. Under the new form of government, all of the council members would be elected at large. Plaintiff argues that since Atlantic City is a diverse and multicultural city, that minority groups would be uniquely disenfranchised. Plaintiff specifically cites 2010 United States Census data from Wikipedia showing that Atlantic City was, “26.65% Caucasian, 38.29% Black or African American, 0.61% Native American, 15.55% Asian, 0.05% Pacific Islander, 14.03% from other races, and 4.82% from two or more races. Hispanic or Latino of any race were 30.45% of the population.” Plaintiff argues that they have met the requirements for the granting of preliminary injunction, and that the court should grant the request to keep the parties in substantially the same condition as when litigation began.

II. Defendant Atlantic City Residents for Good Government and Defendant City of Atlantic City Clerk’s Arguments

Confronted with the various allegations made by Plaintiff, Defendant ACRGG and Defendant Clerk of Atlantic City respond and address each issue, specifically arguing that Plaintiff has failed to meet a single factor required for the court to grant a preliminary injunction and stay or cancel the Special Election. Defendants predominantly argue that Plaintiff cannot ultimately prevail on the merits based on the argument that Plaintiff ignores contrary and binding New Jersey

precedent, reads requirements into N.J.S.A. 40:80-1 that do not exist, and retrospectively seek to apply new, judicially created rules to justify postponing the Special Election. The Clerk argues that she has acted according with the law and carefully reviewed the 3,288 signatures submitted with the Petition. The Clerk determined that 2,568 signatures of registered Atlantic City voters were valid. The Clerk points out that she approved placing the question on the ballot only after determining that Defendant ACRGG met the required number of valid signatures under the law.

Defendant ACRGG argues that the Petition is not legally deficient, and that Plaintiff places multiple “legal requirements” on the Petition that are not based on statute or regulation. ACRGG accentuates that the only legal requirements that ACRGG must meet in order to call a special election to adopt the Municipal Manager form of government is to comply with N.J.S.A. 40:80-1, cited at length above. ACRGG cites New Jersey case law and New Jersey Supreme Court decisions outlining that courts have repeatedly declined to read additional legal requirements into the provisions of N.J.S.A. 40:80-1.

ACRGG addresses Plaintiff’s various claims that the Petition was invalid by asserting that Plaintiff failed to cite any legal authority in support of the fraud allegations and that the allegations lack any consistency in application. ACRGG argues that regardless of whether a circulator signed another petition that they did not collect, or a notary signed on the wrong line, the Petition is valid. ACRGG notes that even if Plaintiff were to present substantive evidence to support the conclusory accusations against ACRGG, that such a showing would not require the entire Petition be invalidated, but rather specific portions where the alleged technical mistakes were made.

ACRGG argues that the Voting Rights Act and New Jersey Law Against Discrimination claims fail as the claims are entirely contingent on the special election being held and a sufficient number of Atlantic City citizens voting in support of the Municipal Manager form of government.

ACRGG notes that Plaintiff has not cited a single case where a court has enjoined an election from taking place where an at-large election scheme was to be voted on. ACRGG asserts that even on the merits Plaintiff's claims fail as Plaintiff has failed to satisfy that the at-large election scheme "deprived [minority] voters of an equal opportunity to participate in the political process and to elect representatives of their choice," quoting Jenkins v. Red Clay Consol. Sch. Dist. Bd. Of Educ., 4 F.3d 1103, 1115-16 (3rd Cir. 1993). ACRGG contends that Plaintiff does not even identify the minority class being deprived of equal opportunity.

Finally, ACRGG argues that if the special election were to occur on the scheduled March 31, 2020, date that the Plaintiff would incur no harm. Rather, the citizens of Atlantic City would simply have the opportunity to vote on the change of government petition. ACRGG points out that Plaintiff has not shown how the Atlantic City Democratic Committee would be harmed in any way from a free and fair special election occurring on March 31, 2020. Regarding the balancing of the equities of the parties, ACRGG posits that no harm would come to the Plaintiff if the injunction were denied while ACRGG and Defendant the Clerk of Atlantic City have spent great expense and time preparing for the special election. ACRGG argues that the public interest prong of Crowe is not met by Plaintiff where the granting of the requested injunction would prevent Atlantic City citizens' right to vote.

III. The Court Holds that Plaintiff has Failed to Establish by Clear and Convincing Evidence the elements of Crowe v. DeGioia; Plaintiff's Request for Preliminary Injunction is Denied

As introduced above, the court is guided by the principles espoused by the Supreme Court in N.J. Democratic Party, Inc. v. Samson, quoting in part Chief Justice Vanderbilt:

Election laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons. . . . The Concept is simple. At its center is the voter, whose

fundamental right to exercise the franchise infuses our election statutes with purpose and meaning.

[N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 186, 814 A.2d 1028, 1033 (2002)]

This court is also guided by the State of New Jersey's longstanding legal principle that the right to vote is a fundamental constitutional right. Rutgers Univ. Student Assembly v. Middlesex Co. Bd. Of Elections, 454 N.J. Super. 221, 229-30 (App. Div. 2016). The right to referendum is intimately tied to an individual's right to vote. The overall purpose is to allow the people to voice their opinion through the electoral process and allow the greatest scope of public participation. Courts have been reluctant to allow minor technical deficiencies to get in the way of people's right to vote or petition.

The court's analysis and decision are also guided by the bedrock principle in New Jersey law that the granting of preliminary injunction is governed by the often-cited Crowe v. DeGioia factors. A party requesting a preliminary injunction must prove every factor of the Crowe test by clear and convincing evidence when requesting the court to alter the status quo, such as when a party seeks the halting of printing ballots in an election. McKenzie, 396 at 414. In addition, the court must also consider the pending special election, and the negative results a stay or cancellation of the election would have on the citizens and voters of Atlantic City. Purcell v. Gonzalez, 549 U.S. 1 (2006).

Plaintiff alleges legal, factual, and procedural deficiencies in attaining signatures and presenting the Petition to the Clerk of Atlantic City. Plaintiff further alleges that ACRGG engaged in fraud and misconduct in attaining signatures for the Petition. Plaintiff also includes civil rights violation claims in the Complaint and argues that a change in government would discriminate against minority groups, despite Atlantic City not having a majority group.

Plaintiff initially argues that the Petition submitted by Defendant ACRGG to Defendant Clerk of Atlantic City is legally and facially defective. In support of this argument, Plaintiff states that the ACRGG and the Petition were required “as a matter of law to follow some of the prerequisites of N.J.S.A. 40:69A-186 which sets out the requirements for initiates for Faulkner Act municipalities...” Plaintiff additionally cites N.J.S.A. 40:84-12, 40:85-1 and 40A:69A-186 and argues that the requirements of those statutes should be read into and applied to N.J.S.A. 40:80-1. Plaintiff attacks circulator signatures, the lack of a sponsor or committee listed on the Petition, the different form types used in the Petition, the date the Clerk accepted additional pages of signatures, notary signatures, the paying of circulators, and the age of circulators.

All of the alleged deficiencies raised by Plaintiff fall outside of the statutory requirements of N.J.S.A. 40:80-1, the Special Election petition statute that controls in this matter. Plaintiff repeatedly picks a non-controlling statute and imports the requirements of that statute to the Special Election petition statute. As an initial matter, Plaintiff states that ACRGG was obligated to comply with the “Faulkner Act ” statute N.J.S.A. 40:69A-1 *et seq.* This is incorrect. ACRGG’s Petition is governed only under N.J.S.A. 40:80-1, as it is a petition to change the form of government through a special election under that specific statute.

The court is not persuaded by any of Plaintiff’s various requests that the court apply more stringent requirements on a special election petition than the New Jersey Legislature intended. New Jersey case law is clear that election statutes, including those dealing with referendums, are construed “to allow the greatest scope for public participation in the electoral process[.]” N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 190 (2002). Plaintiff’s argument swims upstream against New Jersey Supreme Court precedent and the liberal application of election laws to allow voters the greatest opportunity to express their rights through voting. The right to plebiscite on

matters for which such a vote has been statutorily allowed is intimately tied to that fundamental right to vote. Save Camden Pub. Sch. V. Camden City Bd. Of Educ., 454 N.J. Super. 478, 494 (App. Div. 2018).

Plaintiff also argues that “Circulators were required to be New Jersey registered voters at the time they obtained signatures.” This requirement is necessary for petitions for candidates in a partisan election under N.J.S.A. 19:23-7 to -11 and is one of the most limiting requirements for circulators that the legislature has enacted. This requirement, by nature, requires that the circulator not only be voter-eligible and over the age of eighteen, but also have registered to vote. Reviewing various petition statutes shows that the New Jersey Legislature explicitly chose not to include a requirement that circulators be registered voters of New Jersey in multiple other petition statutes. See N.J.S.A. 19:13-4 to -9; N.J.S.A. 19:27A-5 to -9; N.J.S.A. 40:69A-184 to -188; N.J.S.A. 18A:19-4 and -6. This court is of the opinion that if the legislature chose to require circulators to be registered voters in the State of New Jersey, the Legislature would have included it in the controlling statute, N.J.S.A. 40:80-1. In other words, the Legislature has explicitly enacted detailed and different requirements on each statutory scheme for petitions and referendum.

This court will not rewrite the law and impose a judicial requirement or import a requirement from a different statutory scheme that is not already part of N.J.S.A. 40:80-1. The court is guided by New Jersey Supreme Court precedent that courts should not impose additional requirements on a petition under N.J.S.A. 40:80-1. In Steger v. Schellenger, 33 N.J. 293 (1960), the Court stated:

We cannot find satisfactory evidence that the Legislature intended the verification provision of the general election law to apply to a petition under N.J.S.A. 40:80-1. For one thing, we note that the Legislature dealt differently with the subject of verification in the general election law itself, specifying another mode of verification for nomination in a primary election, R.S. 19:23-11. Moreover, in

the nature of the subject, the manner and scope of the verification must vary with the context, and what is appropriate in one setting may be burdensome or prohibitive in another.

The additional requirements from other statutes that Plaintiff seeks this court to apply to N.J.S.A. 40:80-1 follow the same logic. This court cannot find a requirement that circulators' names must be present on the Petition at the time signatures are collected in any New Jersey statute, let alone the controlling statute. The different forms used by ACRGG are also contested by Plaintiff. The court acknowledges that under the "Faulkner Act" petitions must be uniform, but the court sees no such requirement in N.J.S.A. 40:80-1 and will not incorporate a different petition statute's requirement into the controlling statute. Regarding the payment of circulators, there is no restriction in N.J.S.A. 40:80-1 that does not allow circulators from being paid. The court did not find Plaintiff's allegations that the circulators were paid by signature persuasive, as there was no evidence presented by Plaintiff on this contention and there were circulator certifications submitted by Defendant ACRGG attesting to the fact that circulators were paid hourly. The remaining allegations concerning sponsor names, additional pages accepted after a certain date, the notary's signature requirement, etc., all fall under the same type and style of argument. Many of the alleged errors in the Petition are minor technicalities that do not impact the validity of the signatures on the Petition, keeping mind that the Clerk of Atlantic City carefully reviewed the Petition and verified the signatures twice.

On one hand, Plaintiff urges the court to "not treat this election anything near the sanctity that a November General Election or even a May local election enjoys," but on the other hand, Plaintiff urges the court to import the restrictions from the statutes that control petitions in those elections onto this election petition. Simply stated, such an amalgam of requirements taken from other statutes and layered onto N.J.S.A. 40:80-1 is against the clear intent of the New Jersey

Legislature in limiting the requirements of the controlling statute. Doing so would also limit the free expression of citizens of New Jersey in petitioning, and in turn, their right to vote.

The New Jersey Supreme Court was clear in Steger v. Schellenger, 33 N.J. 293 (1960), that the court should not import an additional requirement into N.J.S.A. 40:80-1 when there is not one present. The New Jersey Legislature has the power and opportunity to amend and add requirements within N.J.S.A. 40:80-1, and it has not elected to do so. In conclusion, none of the technical deficiencies outlined by Plaintiff in Count I are sufficient to invalidate the Petition. Consistent with the general principles guiding New Jersey election law, the court will not get in the way of giving people the opportunity to have a voice through the election process and voting. This court holds that Plaintiff has failed to establish by clear and convincing evidence that they would ultimately succeed on the merits.

Plaintiff has also failed to come forward with any convincing evidence regarding the allegations of fraud. Not a single voter who signed the Petition, let alone a sufficient number to invalidate the Petition, has come forward with an affidavit that they have been misled by ACRGG. Many of the arguments relating to fraud are resolved by the court's holding that additional requirements explicitly left out of the controlling statute by the New Jersey Legislature will not be imported from other election and petition related statutes. The court's holding addresses Plaintiff's allegation of fraud concerning minors circulating petitions, the lack of the sponsor on the petitions, the signing of a Non-disclosure agreement, and the payment of circulators.

Plaintiff's remaining claims related to fraud involve unsupported allegations that circulators wore different badges than ACRGG, that the Clerk failed to explain why certain signatures were rejected or accepted, the location of certain signatories and the allegation that they were out of the State when signing the petition, and the overall claim that since the Petition's pages

were “misordered” that they were therefore tampered with and are inherently fraudulent. These failures do not amount to fraud that would invalidate the entire Petition. The court is not persuaded that mere allegations of fraud without any supporting evidence should impede Atlantic City citizens’ the right to vote in a special election. Many of the fraud claims stem from typographical errors where a notary signed the wrong spot in a petition sheet or a circulator failed to sign every sheet. These failures do not amount to the type that would invalidate an entire petition. As an initial matter, fraud must be pled with particularity, such as specifics about persons involved in the fraudulent activities, dates, times, places, and the manner and means of the fraud. Concerning fraud, Plaintiff’s Complaint makes broad allegations against ACRGG without detailed supporting evidence of specific dates, places, or means of engaging in fraud.

Addressing Plaintiff’s fraud allegations on the merits, the court is not persuaded by Plaintiff’s bare assertions that individual signatories were lied to by the circulators regarding the purpose of the Petition or who employed the circulators. Not a single certification was presented by Plaintiff by a voter that signed the Petition supporting any of the allegations. There are two forms used by ACRGG in attaining the required number of signatures to place the Petition on the ballot for a special election, which the court has already held is acceptable under the controlling statute. On both forms, the top portion of each form outlines that the Petition is for a change in government of Atlantic City. The language is clear and uncontradictory, see below:

PETITION TO ADOPT MUNICIPAL MANAGER FORM OF GOVERNMENT

We, the undersigned, hereby request that an election be held in the City of Atlantic City upon the following question: Shall subtitle 5 of the title Municipalities and Counties of the Revised Statutes (N.J.S.A. 40:79-1 et seq.), providing for the Municipal Manager Form of Government, with five (5) council members all to be elected at-large for concurrent terms at elections held in May, with the mayor elected from among the council members, and a municipal manager appointed by the municipal council, be adopted by the City of Atlantic City?

The court is satisfied that the Petition plainly outlines the purpose of the Petition and is not misleading.

Plaintiff's allegations concerning whether a notary signed the correct space, where a circulator signed the wrong space, etc. are all mistakes that do not rise to the level of fraud required for this court to grant a preliminary injunction. Even if there were signatures in the wrong place within the Petition, it is irrelevant considering circulators and notaries were never required to sign the Petition *anywhere* considering the requirements under N.J.S.A. 40:80-1. The claims of fraud against Defendant the Clerk of Atlantic City similarly fail, as the Clerk reevaluated and re-verified the signatures when the Clerk ultimately accepted the Petition as valid on January 16, 2020. The court is impressed by the fact that the Clerk rejected the initial petition submitted on the basis of an invalid notary. In the court's eyes, this gives the Clerk's level of review and verification greater credibility. Overall, the allegations of fraud made by Plaintiff fall short of demonstrating an ultimately success on the merits and therefore the court will not grant preliminary injunction based on the claims of fraud.

Plaintiff argues that the civil rights of citizens of Atlantic City would be violated if this special election were to occur. Plaintiff states that a change of government from a ward-voting to an at-large voting scheme would be unconstitutional, as it would disenfranchise certain minority groups within the City of Atlantic City. Plaintiff argues that the "neighborhoods of the City tend to have one or two groups which do form majorities in their neighborhoods but are not sufficient size that those groups would be able to elect a Council Member on an at large basis and the form of government proposed uniquely disenfranchises numerous groups." While Plaintiff may have a valid claim after the Special Election and in the event that the change of government occurs, Plaintiff's argument fails at this moment in time as it is premature.

The court is unable to ascertain which minority group's civil rights under the VRA and the New Jersey Law Against Discrimination in Atlantic City would be violated if this election were to

proceed, especially when Plaintiff concedes that there is no majority group within Atlantic City. Regardless of whether Plaintiff would ultimately succeed on this argument, Plaintiff cannot bring this claim as it is based on contingencies yet to occur. This court will not grant preliminary injunction where the election has yet to occur, specifically where there is a chance that the voters may reject the public question and elect to retain the current form of government within Atlantic City. Such a future event would render the court's decision advisory.

Plaintiff failed to demonstrate a reasonable probability of ultimate success on the merits of Plaintiff's three main arguments regarding deficiencies within the Petition, fraudulent activity on the part of ACRGG and the Clerk of Atlantic City, and the claims regarding civil rights violations. As the court has already determined that Plaintiff failed to demonstrate a reasonable probability of ultimate success on the merits, it is not necessary for the court to determine whether Plaintiff meets the remaining Crowe factors. Regardless, the court will briefly address each of the remaining factors below.

Plaintiff presents no substantive evidence that the Democratic Committee of Atlantic City would be harmed in any way if the pending Special Election were to occur. Rather, there is ample evidence provided that the citizens of Atlantic City, Defendant ACRGG, and Defendant the Clerk of Atlantic City would be harmed were the election to be stayed or cancelled. There was no evidence presented that the Special Election would impede or render useless the Plaintiff Democratic Committee of Atlantic City. The ACDC has every opportunity to participate in the special election and any other election moving forward. Defendant ACRGG has already spent significant expense in the act of gaining signatures to place the question on the ballot, and Defendant Atlantic City's Clerk has spent a tremendous amount preparing for the Special Election that is to occur less than three weeks from now. These facts support the court's holding that both

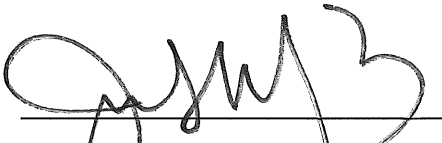
the Plaintiff will not suffer any harm were the election to proceed, and that the balancing of the equities weighs in favor of Defendant ACRGG and Defendant the Clerk of Atlantic City.

While the citizens of Atlantic City are not represented in this litigation, the public would be the party most harmed by the restriction of their right to petition and vote in a special election that directly affects their daily lives. The court is of the opinion that the public and voters of Atlantic City retain their ability to freely decide for themselves the form of government Atlantic City.

CONCLUSION

If this court were to require more stringent requirements on an otherwise silent statute as enacted by the New Jersey Legislature, it would not only impact the public's right to petition and place a question on a ballot, but would also ultimately degrade the great underlying principle in the law that the right to vote is a fundamental constitutional right. Ever present in the court's analysis is the pervading undercurrent that the right to vote is a fundamental constitutional right and that the right to plebiscite on matters for which such a vote has been statutorily allowed is intimately tied to that fundamental right to vote. This court will not impose judicially created restrictions upon a special election petition statute where the New Jersey Legislature clearly intended to not place restrictions upon the statute in order to give the people the broadest and most liberal of opportunities to petition in such a way. Plaintiff has failed to present by clear and convincing evidence the Crowe v. DeGioia factors in support of Plaintiff's request for preliminary injunction. For all the reasons discussed above the court denies Plaintiff's request for preliminary injunction and will not stay or postpone the Special Election scheduled for March 31, 2020.

Date: March 11, 2020


Julio L. Mendez, A.J.S.C.