A 5454-10T4

DANIEL TUMPSON, RUSSELL HOOVER, ERIC VOLPE, CHERYL FALLICK, and JOEL HORWITZ ("COMMITTEE OF PETITIONERS"),

Plaintiffs-Respondents/Cross-Appellants

v.

JAMES FARINA, in his capacity as Hoboken City Clerk, and the CITY OF HOBOKEN,

Defendants-Appellants/Cross-Respondents

and

MILE SQUARE TAXPAYER ASSOCIATION 2009, INC., GINA DeNARDO, individually and on behalf of all similarly situated and 611-613 LLC, individually and on behalf of all similarly situated,

Intervenors-Appellants/Cross-Respondents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-5454-10

On appeal from the Superior Court of New Jersey, Law Division, Hudson County (No. HUD-L-2375-11)

Sat below:
Hon. Bernadette DeCastro, J.S.C. and
Hon. Lourdes Santiago, J.S.C.

REPLY BRIEF AND APPENDIX OF RESPONDENTS/CROSS-APPELLANTS

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INTRODUCTION

Plaintiffs-Respondents ("Plaintiffs") respectfully submit this reply brief in further support of their cross-appeal herein. We write to briefly address three points.

First, the City Defendants' brief misunderstands what the "arbitrary and capricious" standard of judicial review means. Whatever this standard may mean about deference to local officials' factual determinations, there is no basis (as the City Defendants claim) for turning this standard into one that mandates deference to such officials' legal conclusions.

Second, the City Defendants' and Intervenors' briefs demonstrate these parties' continued efforts to incorrectly rewrite the initiative and referendum laws which are liberally construed in the voters' favor. Whatever imperfections may exist in these laws, the City Defendants and Intervenors go well beyond an argument for strict construction of these laws. While their crabbed interpretation would alone violate controlling case law, these parties go further and actually rewrite the relevant statutory provisions in a way that diminishes voters' statutory rights.

Third, Plaintiffs demonstrate through another recently-decided case involving the Faulkner Act referendum law, how trial courts can and have flexibly exercised equitable powers to

protect voters, which is precisely what was done here and which this Court should affirm.

I. THE CITY DEFENDANTS' INTERPRETATION OF STATE STATUTES IS NOT ENTITLED TO ANY SPECIAL DEFERENCE, AND SHOULD BE REVIEWED DE NOVO.

The City Defendants argue (Db 6-8) that the City Clerk's legal determinations about the meaning and interpretation of State law should be reviewed for abuse of discretion. The City Defendants are mistaken. A trial court reviewing municipal action owes no special deference to interpretations of law rendered by municipal decision-makers. On the contrary, a municipal actor's determination on a question of law is reviewed de novo, not for abuse of discretion. See, e.g., Fallone Props., LLC v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 561 (App. Div. 2004). A local official's (or a local board's) interpretation is law "is entitled to no deference" because such officials or boards have "'no peculiar skill superior to the courts' regarding purely legal matters." TWC Realty P'ship v. Zoning Board of Edison, 315 N.J. Super. 205, 211 (Law Div. 1998), aff'd, 321 N.J. Super. 219 (App. Div. 1999)

Here, the City argues that the legal issues raised by the Plaintiffs' petition were issues of "first impression" (Db6) and that none of the prior case law which has developed in this area sheds sufficient light on the Clerk's decision on how to interpret the statute. As such, the Clerk says that as long as

he made a "good faith" (Db7) attempt to interpret the statute, his decision should be affirmed because that is not an abuse of discretion.

This argument is mistaken in two fundamental ways. First, the City is not entitled to any special deference on questions of law, and that holds true whether or not statute has been interpreted through case law. As such, a decision that is legally wrong, or that flows from a mistake or misunderstanding of law, can and should be overturned by the reviewing court. Whether or not that decision was plausible, or reached in good faith, is not relevant in the final analysis to whether the decision was correct or not, and there is no protection for a legally-incorrect decision.

Second, there was ample guidance from the statutory text about the Clerk's obligations to properly process a referendum petition. There was also substantial precedent about the Clerk's obligations to construe the Faulkner Act initiative and referendum laws liberally and in the voters' favor. By ignoring his obligations to correctly process filed petitions, the trial court correctly found that the City Clerk violated the voters' rights to proper and timely treatment of the petition instruments they had submitted to his office.

In addition, the trial judge's ruling about when Ordinance Z-88 became suspended involved a de novo review of the City

Clerk's action, and that de novo review should be applied again in this Court. As argued in the Plaintiff-Appellants' principal brief, state law is unambiguous on the point that when a referendum petition is filed, the ordinance being questioned is to be suspended upon that filing, not on some later date when the Clerk determines the petition to be sufficient.

Applying this de novo standard to each of the questions of law under review, the Court should hold that Ordinance Z-88 was suspended effective March 30, 2011, the date on which the petition challenging it was in fact filed.

II. APPELLANTS ERRONEOUSLY ASSERT THAT TIMELINESS AND A REQUISITE NUMBER OF SIGNATURES OF QUALIFIED VOTERS ARE "CONDITIONS PRECEDENT" FOR THE FILING OF A REFERENDUM PETITION.

In their respective Reply Briefs, the City Defendants and the Intervenors concede that Plaintiffs "correctly" discuss the procedures set forth in the Faulkner Act. (Drb2)(Plaintiffs "correctly parrot the procedures set forth in the Faulkner Act"); (Irb2) (Plaintiffs' brief "correctly discusses the Faulkner Act"). Hoboken, however, asserts that those procedures apply only to "valid petition[s] of referendum" (Drb5),[1] while the Landlords claim that they apply only to petitions that satisfy certain "conditions precedent." (Irb5) (timeliness and a

[1] According to the City, a valid referendum petition is a "document" that "need[s] at the very least, on its face, to protest the passage of the ordinance and to contain the requisite number of signatures." (Dbr3)

certain number of signatures are "conditions precedent before a document is considered a referendum petition"). See also (Irb2)(timeliness and a certain number of signatures are "conditions precedent for the filing of a referendum petition.")

Each claims that its respective interpretation of the Faulkner Act derives from the plain language of the statute, but neither argument asserts - or could assert - that the words "facial requirements" (Ibr6) or "on its face" (Drb3,7) appear anywhere in the statute. Furthermore, if one were to strictly construe N.J.S.A. 40:69A-185, as desired by Intervenors (contrary to numerous New Jersey precedents), suspension of an ordinance would be triggered only when it was determined that a petition was signed by a sufficient number of qualified voters, not at the time of filing, as required by the explicit language of N.J.S.A. 40:69A-189.[2] Such a determination, however, can be made only after a clerk accepts the petition and reviews it. Requisite signatures of qualified voters cannot, therefore, be a condition precedent for filing. See also Hudson City. Ch. of Commerce v. Jersey City, 310 N.J. Super. 208, 213 (App. Div.

[2] This is the position taken by Judge DeCastro; however, unlike Appellants, she did not view a sufficient number of signatures of qualified voters as a prerequisite for filing and processing the referendum petition in accordance with N.J.S.A. 40:69A-187 and 188. She required the City Clerk to review the filed petitions, certify the sufficiency or insufficiency of that petition, and to suspend the ordinance upon a certification that the petitions were sufficient.

1997), aff'd, 153 N.J. 254 (1998) (citing N.J.S.A. 40:69A-189 that the "Legislature intended that even an insufficient [referendum] petition suspends the ordinance until the petitioners have an opportunity to cure the deficiency").

In short, Appellants continue to re-write New Jersey's referendum statute in order to justify defendant Farina's actions. Fearing reversal at the polls of controversial amendments to Hoboken's rent control law, the City of Hoboken and the Landlord Intervenors sought to prevent the Committee of Petitioners from going forward with their statutory right of referendum, and to deprive them of their right to correct deficiencies in the petition they initially filed. By declaring their petition facially defective or invalid on its face and, on that basis, unfiling it, Defendants sought to change the very nature of New Jersey's Faulkner Act. As written, suspension occurs at the time of filing of the petition, and citizens are able to correct their petitions by submitting additional signatures. The statute does not require the signatures of a requisite number of qualified voters at the time of filing, and suspension is not triggered by a finding of sufficiency.

Accordingly, Plaintiffs cross-appeal must be granted.

III. THE TRIAL COURT'S EXERCISE OF FLEXIBLE EQUITABLE REMEDIES TO REMEDY LEGAL VIOLATIONS COMMITTED BY THE CLERK WAS APPROPRIATE HERE.

Plaintiffs' primary brief argues that once the Court found the Clerk had committed violations of the Faulkner Act initiative and referendum laws, the Court could exercise a wide array of equitable powers to give a full remedy for that violation. (See Pb56-59). Pursuant to R. 2:6-11(d) and R. 1:36-3, Plaintiffs now submit for consideration the recent Law Division opinion in Committee of Petitioners to Repeal Bayonne Ordinance No. O-11-33 v. Sloan, No. HUD-L-6575-11 (Law Div. Feb. 24, 2012), in further support of that principle. In Sloan, a committee of petitioners filed a referendum seeking to roll back Bayonne's rent control laws, just as Plaintiffs did here in relation to Hoboken's rent control laws. The petition in Sloan had the required names and addresses of the committee of petitioners ("COP"), albeit only on the last page of each of the 57 sets of three-page signature sheets circulated. The Clerk, after a thorough examination of the petition papers mandated by law, issued a notice of insufficiency on the basis that the COP information, although within each set of papers, was not on each sheet of paper within each set. See slip op. at 2. The Clerk gave the COP an additional ten days to correct the deficiencies. Id. The COP then brought suit, and overruling the COP's

argument that they had complied with the statute, the Court affirmed the determination of the Clerk. See id. at 6.

Critically, although the Law Division affirmed the Clerk's insufficiency finding, the Court also held that the petitioners would be given 14 days from the date the Court's order was emailed to counsel to attempt to cure these deficiencies. See id. at 7. In short, even though the petitioners were granted a cure period by the Clerk, the Court also found it appropriate to grant another cure period - of 14 days - after its ruling resolving the disputed issues of law about petition sufficiency. In so doing, the Court expressly cited to the "rights of the Bayonne voter[s]" and a desire to not "frustrate[]" the "wishes of the voting public" that had signed the petition objecting to the repeal of rent control. Id.

The approach taken by Judge Velasquez in the Sloan case is consistent with what the trial judge did in this case. In fact, Sloan granted additional time to the COP even though it found the Clerk's actions to be correct. Here, the trial judge granted additional time to the COP after finding that the Clerk's actions were wrongful. Surely, citizens who submit a petition that a court finds flawed are entitled to at least as much protection as citizens who submit a petition which is ordered accepted by a trial judge. Such an approach is consistent with the liberal construction of petition rights

mandated by the existing case law, and was correct here. See In re Ordinance 04-75, 192 N.J. 446, 459 (2007); In re Petition for Referendum on City of Trenton Ordinance 09-02, 201 N.J. 349, 360 (2010).

CONCLUSION

For these reasons and those stated in Plaintiff's principal brief, the Court should affirm the June 14, June 24, and August 25 orders of the court finding that Defendants acted improperly in their handling of Plaintiffs' petition papers and in crafting appropriate remedies for those violations. The Court, however, should reverse the August 25 order in part and hold that ordinance Z-88 was suspended beginning March 31, 2011, not August 25, 2011. The Court should also affirm the October 24 and November 24 orders finding liability under the NJCRA and awarding counsel fees.

Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC INTEREST LAW CENTER, INC.

s/ Renée Steinhagen (FA)
By: Renée Steinhagen, Esq.

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By: Flavio L. Komuves, Esq.

Dated: April 11, 2012

ORIGINAL

NOT FOR PUBLICATION WITHUOT APPROVAL OF THE APPELLATE DIVISION
COMMITTEE ON PUBLICATION

FILED

FEB 24 2012

Committee Petitioners to Repeal Bayonne Ordinance No. O-11-33 et. al.

Plaintiff,

v.

Robert F. Sloan, Municipal Clerk of City of Bayonne

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO. HUD-L-6575-11

AMENDED
OPINION

Decided on February 24, 2012:

Howard Moskowitz, attorney for plaintiff

Ralph J. Lamparello, attorney for defendant

Plaintiffs commenced this action in lieu of prerogative writ seeking to set aside the action of the defendant declaring certain referendum petitions to be insufficient. Defendant filed an answer and subsequently moved to dismiss for failure to state a claim pursuant to R. 4:6-2(e).

For the reasons set forth herein plaintiff's motion to dismiss the complaint in lieu of prerogative writ is granted. However, the plaintiff's are given 10 days to file either a new referendum petition conforming to law or a supplemental petition which will cure the defects or insufficiencies found by the defendant. The rent control ordinance shall remain suspended until the expiration of the additional 14 days.

I. Facts

1. On November 14, 2011, the city of Bayonne adopted the Bayonne Ordinance O-11-33, entitled "An Ordinance Amending and Supplementing the Revisited General Ordinance of the City of Bayonne Chapter 16, Rent Control."
2. The plaintiffs as a designated entity pursuant to N.J.S.A. 40:69A-186 prepared, circulated, and filed a referendum petition protesting the adoption of the Ordinance and demanding its repeal. Subsequent to the filing of the petition and pursuant to N.J.S.A. 40:69A-185, the Ordinance was suspended from taking effect.
3. The referendum petition is comprised of 57 sets of signature sheets. Each set contains three signature sheets which are stapled together. The name and addresses of the Committee of the Petitioners appears only on page three of each set.
4. Plaintiffs contend that the circulators of the petition solicited signatures on this three page set of petition sheets and that the circulators proffered no single isolated petition sheet to any signatory.
5. Defendant Robert F. Sloan is the Municipal Clerk of the City of Bayonne and is the person empowered to review and examine any referendum petition protesting the adoption of a municipal ordinance.
6. Defendant Sloan examined the referendum petition and by letter of December 16, 2011, notified the committee that the petition was substantively defective and insufficient pursuant to N.J.S.A. 40:69A-186.
7. In rejecting the petition, defendant Sloan concluded that "because the petition fails to include the names and addresses of the Committee of the Petitioners on each sheet, the petition is defective on its face." Defendant Sloan also notified the Committee of the Petitioners that "because of the substantive deficiency of the Petition he would not address whether the Petition was signed by a sufficient number of qualified voters."
8. Defendant Sloan gave the Committee 10 days to file a supplementary petition and continued the suspension of the ordinance until the expiration of the ten day period.

9. The Committee of the Petitioners failed to file a supplementary petition within the time provided and instead filed an order to show cause and a verified complaint in lieu of prerogative writs. In its complaint, the plaintiffs seek an order setting aside the Notice of Petition Insufficiency and declaring that the referendum petition conforms to the requirements of N.J.S.A. 40:69A-186.
10. Defendant Sloan filed an answer and has now moved to dismiss the complaint in lieu of prerogative writ, for failure to state a claim pursuant to R. 4:6-2(e).

II. LEGAL ANALYSIS

In this motion the defendant contends that the plaintiffs' complaint should be dismissed because "the case law governing plaintiffs' claims demonstrate that defendant Sloan acted appropriately and in accordance with well established judicial precedent." Simply stated the defendant contends that the Town Clerk was correct in concluding that the referendum petition filed by the Committee of the Petitioners is insufficient on its face because it fails to include the names and addresses of the committee members on each "sheet" of the petition.

I

A motion to dismiss a complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted must be evaluated in light of the legal sufficiency of the facts alleged in the complaint. Printing Mart v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). The court must view the allegations with great liberality and without concern for the plaintiff's ability to prove the alleged facts. Id. The plaintiff should receive the benefit of every reasonable inference of fact. Id. While the court must view the allegations of the complaint with great liberality it must not hesitate to dismiss the complaint if it has failed to articulate a legal basis entitling the plaintiffs to the relief requested. Camden County Energy Recovery Assocs., L.P. v. New Jersey Dep't of Envtl. Prot., 320 N.J. Super. 59, 64, (App.Div.1999). " Donato v. Moldow, 374 N.J. Super. 475, 482 (App. Div. 2005). With the foregoing legal concepts in mind, this Court must determine whether the facts alleged in the plaintiffs' complaint articulate a legal basis entitling the plaintiffs to the relief requested.

The heart of this case involves the interpretation of N.J.S.A. 40:69A-186. Because the statutory language ordinarily is the best indicator of the Legislature's intent this court must first look to the wording of the statute. DiProspero v. Penn, 183 N.J. 477 (2005).

N.J.S.A. 40:69A-186 reads as follows:

> All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. *There shall appear on each petition paper the names and addresses of five voters, designated as the Committee of the Petitioners, who shall be regarded as responsible for the circulation and filing of the petition and for its possible withdrawal as hereinafter provided.* Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

The argument advanced by the defendant is that when the voters signed the referendum petition the names and addresses of the Committee of the Petitioners should have appeared on each "sheet" of the petition in accordance with the provisions of the above statute. The defendants contend that our courts have interpreted the statutory language, "each separate petition paper" to mean "each separate sheet" rather than each set of petition sheets that may be stapled together and later assembled and filed as a single instrument pursuant to N.J.S.A. 40:69A-187.

In opposing this motion to dismiss, the plaintiffs argue that the statutory term "petition paper" does not refer to "a separate, individual piece of paper" or "sheet." Plaintiffs contend that, consistent with case law and the interpretation given to similar language in other statutes, the term "petition paper" was intended to refer to any set of petitions containing more than one page and which would ultimately be assembled and filed as a single instrument.

In interpreting the phrase "petition paper" this court must "ascribe to the statutory words their ordinary meaning and significance." DiProspero, 183 N.J. at 492. This court role is to "apply the statute as enacted," not to rewrite it "or presume that the Legislature intended something other than that expressed by way of the plain language." Id. It is not this court's function to "write in an additional qualification which the Legislature pointedly omitted" from the statute, or "engage in conjecture or surmise which will circumvent [its] plain meaning." Id. Further, the court must look at the body of case law that has developed interpreting the statutory language in question. In re Ordinance 04-75, 192 N.J. 446 (2007).

There have been three reported decisions construing the provision of N.J.S.A. 40:69A-186 and all of them have concluded that the names and addresses of the Committee of the Petitioners "shall appear on each petition paper" when the registered voter signs the same. Only one case however, specifically found that section 186 required that the names and addresses of the Committee of the petitioners be affixed to each separate petition "sheet" when circulated and signed by voters. See: Hamilton Township Taxpayers' Assoc. v. Warwick, 180 N.J. Super. 243 (App. Div. 1981).

In Lindquist v. Lee, 34 N.J. Super. 576 (1955), the trial court rejected a challenge to a declaration by the municipal clerk of the insufficiency of a referendum petition under the Faulkner Act N.J.S.A. 40:69A-1 et seq., seeking a change in the form of government. See Id. at 581-82. The facts revealed that the signatures of the voters were obtained on separate "pieces of papers" that were subsequently stapled to a single sheet of paper containing the names and addresses of the Committee of the Petitioners. Id. In granting summary judgment in favor of the City Clerk Judge Mariano concluded that "the clear and unambiguous language of N.J.S.A. 40:69A-186 requires the appearance of the names and addresses of the committee of the petitioners on each petition paper when the registered voter signs the same." Id. at 581. While Judge Mariano used the phrase "petition paper" it seems abundantly clear that the Judge was referencing the individual signature sheets that were proffered to the voters.[1]

In Pappas v. Malone, 36 N.J. 1, (1961), the Supreme Court held that the inclusion of the names and addresses of the committee of petitioners was not required in a petition for referendum under N.J.S.A. 40:69A-25 for approval or rejection of a reversion to a prior form of government. Id. at 3-4. The Supreme Court expressed its disagreement with Lindquist, but on an issue not relevant to the matter before this court. Id. at 5. While the Supreme Court did not specifically address whether the names and addresses of the committee of petitioners was to be included on each "sheet" of a petition for referendum it did comment on the meaning of the phrase "each separate petition paper." Id. at 5-6. In addressing the City Clerk's objection to the circulator's affidavit filed in connection with the referendum petition, the Supreme Court stated "[w]e cannot be certain that the Legislature in its reference in section 186 to "each separate petition paper" meant each separate sheet rather than each of the several petitions containing more than one page which would ultimately be assembled and filed as a single instrument pursuant to section 187." Id. While clearly the Supreme Court questioned the true meaning of the phrase it never settled the issue because the Court ultimately found substantial compliance with the requirements of section 186. It is important to note that this case involved an objection to the circulator's affidavits which the Court found "is a matter of form and must be furnished with a petition filed under section 1(b)." Id.

In Hamilton Township Taxpayers' Assoc. v. Warwick, 180 N.J. Super. 243 (App. Div. 1981) a case that closely mirrors the factual and legal issue in this case, the Appellate Division, I believe, resolved the uncertainty expressed by the Supreme Court in Pappas. In Hamilton, the Supreme Court affirmed the trial courts granting of summary

[1] This was the obvious conclusion of Appellate Division in Hamilton as well. See Hamilton Township Taxpayers' Assoc. v. Warwick, 180 N.J. Super. 243; 246-247(App. Div. 1981).

judgment in favor of the township after plaintiffs sought review of the town clerks rejection of their petition for a referendum on a rent control ordinance. See Id. In affirming the trial court's decision, the Appellate Division concluded that N.J.S.A. § 40:69A-186 requires that the names and addresses of the committee of the petitioners be affixed to each separate petition "sheet" when the petition is circulated and signed by voters. Id. at 247.

In Hamilton, the township clerk determined the referendum petition to be insufficient after discovering that the "separate petition sheets" omitted the names and addresses of the five-member Committee of the Petitioners at the time the voters signed the petition. Hamilton, 180 N.J. Super. at 243. The names and addresses of the Committee of the Petitioners were however added to each "separate sheet" at the time of filing with the township clerk. Id. The Appellate Division found that this circumvented the legislative purpose of the requirement imposed in Lindquist ". . . to inform voters, who are solicited for their signatures, who the sponsors of the petition are and where they live, not only to enable the voters to charge the sponsors with responsibility as agents but to guide the voters [with respect to] whether to sign." See. Id. at 247. In reaching its decision, the court in Hamilton examined both Lindquist and Pappas and concluded that "nothing in the per curium majority opinion nor in Justice Hall's dissenting opinion in Pappas overrules or questions the conclusion of Lindquist that under § 186 the names and addresses of the Committee of the Petitioners must be affixed to each separate petition *sheet* when circulated and signed." Id. at 246-247 (emphasis added). Further, in rejecting the Plaintiff's argument that the legislative purpose of section 186 is solely to assist the municipal clerk, the court stated "[p]laintiffs argue that the legislative purpose is, to the contrary, solely to assist the municipal clerk in carrying out his administrative duties. But, if that were so, one listing of the names and addresses of the Committee of the Petitioners on the referendum petition would be sufficient and the requirement that such listing appear on every separate petition *sheet* would be unnecessary and burdensome." Id. at 247 (emphasis added). Both of these statements by the Appellate Division evidence a clear expression by the court that it interprets the phrase "each petition paper" to mean "each separate petition sheet."

III CONCLUSION

After a careful review of N.J.S.A. 40:69A-186 as well as the prevailing case law interpreting this statute, this court must concur with the Appellate Division ruling in Hamilton that "nothing in the *per curiam* majority opinion ...in Pappas overrules or questions the conclusion of Lindquist that under § 186 the names and addresses of the Committee of the Petitioners must be affixed to each separate petition sheet" when circulated and signed." Hamilton, 180 N.J. Super. at 246-247. Therefore, under the precedent established by Lindquist and Hamilton this court must conclude that the phrase "petition paper" means each separate petition sheet and not each set of petition sheets that may be stapled together and later assembled and filed as a single instrument pursuant to N.J.S.A. 40:69A-187. Given this interpretation, this court must therefore conclude that the defendant Sloan was correct in rejecting the referendum petition because it was "substantively defective and insufficient." As the Appellate Division in Hamilton stated,

"the evident legislative purpose of the requirement imposed by N.J.S.A. 40:69A-186 "is to inform voters, who are solicited for their signatures, who the sponsors of the petition are and where they live, not only to enable the voters to charge the sponsors with responsibility as agents but to guide the voters whether to sign. The prospective signatories may draw on their own knowledge and make inquiries concerning the sponsors' political affiliations, financial interests, standing in the community and reliability, if they know the sponsors' identities." Hamilton, 180 N.J. Super. at 247. To permit the plaintiffs to proceed on the referendum petition presented to the Town Clerk would circumvent this expressed legislative purpose and create the potential for fraud and misrepresentation in the referendum process that section 186 was intended to prevent.

The plaintiffs contend that there is ambiguity throughout the statute and that the court should perhaps take a more liberal approach in defining the phrase "petition paper." First, even if this court was inclined to adopt a more liberal definition, it cannot do so because it is bound by the findings and rulings of the Hamilton court who addressed the same issues here presented. See Reinauer Realty Corp v. Paramus, 34 N.J. 406, 415 (1961); Caldwell v. Rochelle Park Township 135 N.J. Super 66, 76-77 (1975). Secondly, if there is ambiguity in the language of this statute it would not be proper for this Court to rewrite it or to "presume that the Legislature intended something other than that expressed by way of the plain language" of the statute. DiProspero, 183 N.J. at 492. As Judge Mariano so eloquently stated in Lindquist, the law as written is "binding upon this court as upon every citizen. The remedy does not lie in interpretation but in amendment or repeal." Lindquist, 34 N.J. Super. at 581.

IV ORDER

For the reasons set forth herein, defendants' motion to dismiss the complaint in lieu of prerogative writ is granted.

The plaintiffs have expressed some concern that the wishes of the voter's might be frustrated if the court adopts the defendant's narrow interpretation of section 186. The court does not believe that the wishes of the voting public will be frustrated by its decision today. This court is not aware of any rule, statute or case law that would preclude the filing of a new referendum petition conforming to law or a supplemental petition which would cure the defects or insufficiencies found by the defendant. In order to protect the rights of the Bayonne voter's, the plaintiffs' are hereby given 14 days to file either a new referendum petition conforming to law, or a supplemental petition which will cure the defects or insufficiencies found by the defendant Sloan. The 14 days shall commence to run from the date plaintiffs' attorney receives a copy of this order via e-mail. The rent control ordinance shall remain suspended until the expiration of the additional 14 days.