New Jersey
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October 28, 2020

Michelle M. Smith, Clerk
New Jersey Superior Court
Veterans Courthouse
50 W. Market Street, Room 31
Newark, New Jersey 07102

Hon. Bahir Kamil
465 Martin Luther King Blvd, Courtroom 301

Newark, New Jersey 07102

Re: Homes for All Newark, et al. vs. Kenneth Louis, et al.
Docket No. ESX-L-007289-19
Request for Entry of Summary Judgment

Dear Judge Kamil:

I am submitting this letter brief in lieu of a more formal brief on behalf of the Committee of Petitioners, Hellane Freeman, Victor Monterrosa, Avi-Ann Richardson, Daniel J. Wiley, and John Goldstein (the "COP" or "Committee"), with respect to the Rent Control Ordinance that the Committee initiated by petition, which was adopted by the City Council at its September 5, 2017 Special Council meeting. Despite being forewarned by the COP that it would be unlawful to amend Newark's Rent Control chapter, which was the subject of the Committee's initiative

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petition in its entirety, without first submitting that amendment to the voters, the Newark Municipal Council nonetheless proceeded.

Simply put, it is the COP's position that adoption by the Municipal Council of amendments to the Rent Control chapter, on September 3, 2019 without first submitting them to the voters for their approval violated the Faulkner Act, specifically N.J.S.A. 40:69A-196; and therefore, those changes must be declared null and void. The Municipal Council now has two choices: it can put the amendments to the voters as requested in Plaintiffs' Verified Complaint or it can re-enact the amendments since the three-year time period during which the Municipal Council is restricted from legislating without voter approval has run its course. Whatever choice the Municipal Council makes, it is clear that the Defendants violated Plaintiffs' statutory right of initiative and referendum and thus, Plaintiffs are entitled to injunctive relief and attorneys' fees under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

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STATEMENT OF FACTS

This action in lieu of prerogative writ involves the City of Newark's denial/deprivation of the Committee of Petitioners' right to have a role in the legislative process through their statutory right of initiative and referendum, which includes the right to approve an amendment to an ordinance that the voters initiated. Steinhagen Cert., ¶1.

Ordinance No. 6PSF-G(S), entitled "An Ordinance to Amend 6PSF-a(s) Adopted on September 5, 1017, Title XIX, Rent Control of the Revised General Ordinance of the City Newark, New Jersey, 2000, as amended and supplemented, to Eliminate Appeals to the Municipal Council," was adopted by the Municipal Council on August 20, 2019, and signed by the Mayor and returned and certified by the Municipal Clerk on August 22, 2019. Id., Ex. E to Complaint, (which is Ex. A to Certification). It became law twenty days later.

However, in and during the summer months of 2017, the Committee of Petitioners, with the assistance of Homes for All Newark, circulated an Initiative Petition proposing to readopt in full, with amendments, Chapter 2 of the City of Newark Municipal Code concerning Rent Control (the "2017 Initiated Ordinance"). The amendments specified in the Initiated Ordinance included, but were not limited to, a provision permitting an aggrieved landlord or tenant to appeal an adverse

decision of the Rent Control Board to the Municipal Council rather than only having the right to appeal such decision to the Superior Court of New Jersey, Law Division, which was then the status quo. Such petition was filed with the Newark Municipal Clerk pursuant to N.J.S.A. 40:69A-184. Id., Ex. A to Complaint, (which is Ex. A to Certification).

On September 5, 2017, the Municipal Clerk presented to the Municipal Council Ordinance No. 6PSF-a(s) entitled, "Ordinance to Amend and Replace Title 19 Rent Control, Chapter 2: Rent Control Regulations; Rent Control Board *by Public Initiative Ordinance*" (emphasis added). On the face of the Ordinance, the Committee of Petitioners was noted as presenting the Ordinance and it was further indicated that the "Initiated Ordinance" was deemed to have had its first reading pursuant to N.J.S.A. 40:69A-190. Id., Exhibit B to Complaint (which is Ex. A to Certification).

In a vote of 7 ayes and 2 absences on September 5, 2017, the Municipal Council passed Plaintiffs' Initiated Ordinance "in substantially the form requested" by the voters signing the petition, pursuant to N.J.S.A. 40:69A-191. The ordinance was returned from the Mayor's office and certified by the Municipal Clerk on September 6, 2017. Id., Ex. B to Complaint (which is Ex. A to Certification).

Approximately two years later, in a letter dated August 15, 2019, Plaintiff John Goldstein, on behalf of himself and Homes for All Newark, wrote to the Municipal Council urging them not to move forward with any amendments to their Initiated Ordinance. Id., Ex. C to Complaint (which is Ex. A to Certification). Furthermore, in a letter also dated August 15, 2019, an attorney for the Committee of Petitioners wrote to the Municipal Clerk urging him to submit, on behalf of the Municipal Council, any amendments to the Initiated Ordinance which were then being considered and seemingly were to be adopted by the Municipal Council, to the voters at the next general election in November of this year. Id., Ex. D to Complaint (which is Ex. A to Certification).

Notwithstanding Plaintiffs' advocacy, the Municipal Council adopted Ordinance No. GPSF-G(S), specifically repealing previously initiated provisions permitting appeals of Rent Control Board decisions to the Municipal Council. And it is because the Clerk and Municipal Court refused to submit these amendments to the voters for their approval that this action was filed.

PROCEDURAL HISTORY

On October 8, 2019, I personally handed three copies of the Complaint, dated October 4, 2019, and Summons to the

receptionist in the Clerk's Office in City Hall at 920 Broad Street, Newark, NJ 07102. Steinhagen Cert. ¶2. On October 15, 2019, counsel filed proof of service against all three defendants in this matter. Counsel for the Municipal Council filed an Answer in a timely manner in November, 2019. Id., at ¶3.

In a letter dated January 30, 2020, COP counsel requested a case management conference with Judge Bahir Kamil, since counsel for the Clerk and Mayor expressed an interest in settling this matter but was not taking any action to engage in active settlement talks. The case management conference was held on February 13, 2020. Id., ¶4. At that meeting, Judge Kamil directed counsel appearing for the Mayor and City Clerk to file an Answer on their behalf, or a stipulation of dismissal, as was discussed with respect to the Mayor. The parties were to agree on when to hold a summary hearing, if the matter could not be resolved. Id., ¶5.

The following week, it is my understanding that the associate handling the matter on behalf of "the City" at the Lite DePalma firm, and who appeared at the case management conference left the employment of the firm. Id., ¶6 On February 18, 2020, Judge Kamil issued a mediation order. Id., ¶7. One week later, counsel for the COP signed a stipulation dismissing Mayor Ras Baraka from the case, which was prepared by a third

law firm and was submitted to the court on February 25, 2020. Id., ¶8.

On April 1, 2020, a mediation session was held by zoom under the supervision of Marguerite T. Simon. Francis Kenny, of the Lite DePalma firm represented the remaining defendants. The Covid lockdown had already commenced, and everyone was adjusting to the new normal. Id., ¶9. Since that time, no further mediations sessions have been held. Nonetheless, counsel for the COP was in communication with the Lite DePalma firm. E-mails requesting a time to meet to discuss settlement were exchanged on May 8, May 12, June 10, June 17, June 29, July 8, and, July 29, 2020. Id., ¶10.

On August 11, 2020, the COP made a motion to enter default against the City Clerk pursuant to R. 4:43-1. That motion was granted and an Order for default was entered the following day. Id., ¶11. Conversations continued between counsel for plaintiffs and the Municipal Council, as well as counsel for plaintiffs and the City Clerk. Counsel for the COP agreed to consent to the Clerk filing an Answer and vacating the default order. No such Answer has been filed. Id., ¶12. However, six months has not yet expired, so the COP is simply moving for summary judgment against the Clerk and the Municipal Council, and is not requesting Final Judgment by Default against the Clerk, pursuant to R. 4:43-2.

STATUTORY FRAMEWORK

A. THE SUBSTANTIVE RIGHTS OF CITIZENS UNDER THE REFERENDUM PROCESS

By way of background, Newark is governed by the Optional Municipal Charter Law, N.J.S.A. 40:69A-1 et seq., commonly known as the Faulkner Act. Registered voters in such a municipality enjoy broad rights to propose ordinances (a right known as the "initiative") and to oppose ordinances passed by the council (a right that is denominated the "referendum." N.J.S.A. 40:69A-185; In re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. 446, 459 (2007). The "'power of referendum' is a check on the exercise of local legislative power, fostering citizen involvement in the political affairs of the community." Id. at 459. As such, the Supreme Court announced in this recent case that "the referendum statute should be liberally construed . . . to promote the 'beneficial effects' of voter participation." Id.; see also id. at 468 ("the Legislature determined that the referendum right – the right of participatory democracy – is of inestimable value in these circumstances as a check on local governing bodies").

The Supreme Court, in the Ordinance 04-75 case, recognized that virtually every kind of municipal ordinance is subject to the initiative and referendum right unless the Legislature has specifically excluded that kind of ordinance. Id. at 466-67

(listing exceptions to the referendum power). In so doing, the Court noted that the Legislature had used the term "any ordinance" in defining which matters were the proper subject of a referendum. Unless such an exception exists, "any ordinance" is subject to initiative. Defendants do not appear to contend that ordinary economic legislation like that at issue here, which adjusts the rights and remedies of city landlords and tenants, is somehow exempted from the initiative power.

B. THE PROCEDURAL STEPS THAT GOVERN THE REFERENDUM PROCESS HAVE BEEN CAREFULLY SET FORTH IN THE STATUTES

The mechanics of citizens' initiative and referendum efforts in Faulkner Act municipalities such as Newark are carefully laid out in the applicable statutes, which also clearly define the role that the municipal clerk and the municipal council plays in these efforts.

In 2017, both the Newark Municipal Clerk and Municipal Council satisfied their respective duties. Mr. Louis processed the COP's initiative petition and submitted that petition to the Newark Municipal Council for consideration as required by N.J.S.A. 40:69A-190 ("Upon a finding by the municipal clerk that any petition . . . is sufficient, the clerk shall submit the same to the municipal council without delay"). The Municipal Council properly deemed the initiative ordinance to have had its first hearing; and in accordance with N.J.S.A. 40:69A-191,

passed the "ordinance requested by initiative petition in substantially the form requested." That is, the Municipal Council in this case chose to adopt the initiative ordinance itself, rather than submit it to the voters.

Approximately two years later, in September 2019, neither the Clerk nor the Municipal Council submitted an amendment of the initiated ordinance to the voters at any succeeding general election or regular municipal election, as Plaintiffs posit N.J.S.A. 40:69A-196 requires. N.J.S.A. 40:69A-196 provides that

> No such [initiative] ordinance shall be amended or repealed within 3 years immediately following the date of its adoption by the voters, except by a vote of the people. The council may, within 3 years immediately following the date of adoption of the ordinance, submit a proposition for the repeal or amendment of that ordinance to the voters at any succeeding general election or regular municipal election.

Whether this requirement applies only to initiated ordinances that are approved by the voters or also includes ordinances that are initiated by the voters but adopted by the municipal council pursuant to N.J.S.A. 40:69A-191 is the heart of this dispute. Plaintiffs will show, infra, that the legislative history of the provision, and the New Jersey Supreme Court's interpretation of New Jersey citizens' right of initiative under the Faulkner Act extend that right to include the 3-year prohibition on amendments to any ordinance they

initiate, regardless of whether the Municipal Council or the voters adopt that ordinance.

C. DEFENDANTS' NONADHERENCE TO THE STATUTORY PROCEDURES

Mr. Louis has been a municipal clerk for at least two decades and knows – or at least ought to know – what his duties are under the initiative and referendum laws. The Municipal Council similarly has historical knowledge of the initiative process and knows or ought to know what their duty is as well. Based on their actions in this case, both Defendants have obviously failed to take to heart the instructions of the Supreme Court in In re Ordinance 04-75, supra, about the "inestimable value" of participatory democracy, as exercised through initiative and referendum petitions, and of the need to liberally construe referendum laws in favor of the petitioners.

LEGAL ARGUMENT

A. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT

A party may move for summary judgment under R. 4:46-2(c), which states, in pertinent part, that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine dispute as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. On a

summary judgment motion, the Court must inquire "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Brill v. The Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995). The purpose of the summary judgment procedure is, with proper adherence to the rules, to avoid trials that would serve no useful purpose and to afford deserving litigants immediate relief. Warthen v. Toms River Community Memorial Hospital, 199 N.J. Super. 18, 23 (App. Div. 1985), certif. denied, 101 N.J. 255 (1985).

In this case, the material facts are not in dispute; this matter presents solely a question of law. Specifically, Plaintiffs are seeking judicial review of the City Clerk's and Municipal Council's interpretation of their respective duties under the Faulkner Act, which is purely a legal issue. Thus, this court owes no deference to their legal conclusion. Manalapan Realty v. Twp. Comm. Of Manalapan, 140 N.J. 30, 378 (1995) (cited in Tumpson v. Farina, 431 N.J. Super. 164 (App. Div. 2013)).

B. THE CITY CLERK AND THE MUNICIPAL COUNCIL HAVE ACTED ARBITRARILY AND CAPRICIOUSLY BY REFUSING TO SUMBIT TO THE VOTERS AMENDMENTS TO THE RENT CONTROL CHAPTER IN ACCORDANCE WITH THEIR MINISTERIAL DUTIES SET FORTH IN N.J.S.A. 40:69A-196

In its Answer, the Municipal Council denies "that the

Ordinance which the Municipal Council amended was adopted by initiative and referendum," Answer, ¶22, and that N.J.S.A. 40:69A-196(a) applies to this matter, because that "Ordinance was never presented to the voters." Id., ¶21. (No Answer was filed by the Clerk, and instead Default was entered against him.) First, on the face of the Ordinance, it states that it is an "Initiated Ordinance," Steinhagen Cert., Ex. B to the Complaint (which is Exhibit A to Certification). And second, Defendants' interpretation of N.J.S.A. 40:69A-196(a) takes it out of context, subverts the legislative intent of the provision, and ignores New Jersey Supreme Court precedent on the issue.

Defendants' extremely narrow interpretation, and literal application of the terms of the statute is at best opportunistic, and more likely indicates an attempt to "thwart the will of the City's residents," who have already indicated their desire to assert more direct control over the rent control ordinance. A blind obedience to the language of N.J.S.A. 40:69A-196, as Defendants advocate, would subvert the intent of the Legislature to prevent municipal councils generally from sabotaging any ordinance that the voters desire to initiate. For, if adoption by a council can prevent the 3-year legislative restriction from adhering to any initiated ordinance, then a city council would invariably adopt an ordinance it in fact

wanted defeated, and would turn around within weeks or months and repeal or amend as it initially desired. This cannot be the intent of the Legislature, and further perusal of the legislative history indicates that it was not.

This provision cannot be interpreted and applied in isolation from other related statutes nor without regard to legislative intent. The COP does not deny that when construing statutes, courts must give words "their ordinary meaning and significance," recognizing that generally the statutory language is "the best indicator of [the Legislature's] intent." DiProspero v. Penn, 183 N.J. 477, 492 (2015)(citations omitted). However, if the plain reading of the statutory language is "ambiguous, suggesting 'more than one plausible interpretation,' or leads to an absurd result as is the case herein, then [courts] may look to extrinsic evidence, such as legislative history, committee reports, and contemporaneous construction in search of the Legislature's intent." Id. at 492-93, quoted in Tumpson v. Farina, 218 N.J. 450, 467-468 (2014)(citations omitted). As the N.J. Supreme Court stated in Wene v. Meyner,13 N.J. 185 (1953):

> A statute is not to be an **arbitrary construction, according to the strict letter**, but one that will advance the sense and meaning fairly deducible from the context. The reason of the **statute prevails over the literal sense of terms;** the manifest policy is an implied limitation on the sense of the general terms,

> and a touchstone for the expansion of narrower terms (citation omitted)(emphasis added).

Id., 13 N.J. at 197. See also Board of Educ. of City of Asbury Park v. Hoek, 38 N.J. 213, 231 (1962)(where court rejected plain meaning of the terms used in bidding statute and construed the provision in light of the "manifest intent of the Legislature" and the statute's "patent . . . purpose"); Beaudoin v. Belmar Tavern Assn., 216 N.J. Super. 177, 184 (1987)(noting that the "internal sense of the law" comes from "a general view of the whole expression rather than from the literal sense of the particular terms"); Application of Moffat, 142 N.J. Super. 217, 229-230 (1976)(refusing to construe an election statute "so narrowly" if the "application of the statute is made to depend literally upon a vacancy" only occurring during a term of office).

Last, in keeping with the N.J. Supreme Court's previous directives, initiative referendum statutes, such as N.J.S.A., 40:69A-184 et seq. and, more generally, election statutes must be liberally construed for the purpose of "promoting the beneficial effects" of "voter participation," In re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. 446 (2007) (quoting Retz v. Mayor & Council of Saddle Brook, 69 N.J. 563 (1976)); "fostering citizen involvement in the affairs of the community," In re Petition for Referendum on Trenton Ordinance 09-02, 201

N.J. 349 (2012); and "allow[ing] the voters a choice." New Jersey Democratic Party, Inc. v. Sampson, 175 N.J. 178, 190 (2002). See also In re Gray-Sadler, 164 N.J. 468, 475 (2000) (duty to construe election laws liberally to protect a citizen's constitutional right to have her vote count). With these principles in mind, the Clerk's and Municipal Council's interpretation of the aforementioned provision is not sustainable

N.J.S.A. 40:69A-196 reads in relevant part:

> If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the municipality and be published as in the case of other ordinances. No such ordinance shall be amended or repealed within 3 years immediately following the date of its adoption by the voters, except by a vote of the people.

Although the statute restricts legislative actions of a governing body and its successors for a period of three years "following the date of adoption by the voters [of the proposed ordinance]", courts have held that the stated purpose of the 1982 Amendments to both this provision and the comparable provision in the Walsh Act[1] was "[T]o establish a uniform [three]

[1] N.J.S.A. 40:74-18 was also amended in 1982 to provide:

> An ordinance proposed by petition, or which shall be adopted by a vote of the people, shall not be repealed or amended within three years of the date of adoption by the voters, except by a vote of the people. Emphasis added.)

year time limit within which a governing body may, solely by submission to the voters, amend or repeal an ordinance adopted by initiative." Bill Sponsor's Statement to S.763 (1982), quoted in, Redd v. Bowman, 433 N.J. Super. 178, 191 (App. Div. 2013), aff'd in part and rev'd in part, 233 N.J. 87 (2015).

Specifically, the legislative history of both amendments in 1982 makes clear that the Legislature sought to make the right of initiative and referendum under the Faulkner and Walsh Acts as similar as possible. In the Senate County and Municipal Government Committee Statement to S.763 (March 1, 1982), the Committee noted:

> This bill begins that process [emerging from the January, 1979 report, *Forms of Municipal Government in New Jersey*] by making uniform the procedures of those municipalities already operating under a form of government requiring initiative and referendum.
>
> . . . Specifically, the bill would:
>
> 8. Establish a uniform 3 year period during which an ordinance adopted by initiative or referendum must be submitted to the voters for amendment or repeal. The "Faulkner Act" has no such requirement currently. The "Walsh Act" requires all ordinances adopted by the initiative or referendum to be submitted to the voters for amendment or repeal, without any time limitation.

This provision also puts the trigger for the three-year restriction on legislative action as "of the date of adoption by the voters," but does make clear that such limitation applies to an ordinance proposed by petition, whether it was adopted by a vote of the municipal council or the electorate.

In this way, the Walsh Act was amended to simply add a 3-year restriction period (rather than an indefinite period) to a previously existing provision, and the Faulkner Act was amended to insert an entirely new provision. If uniformity was the goal, then it can be assumed that the Legislature intended the Faulkner Act provision, N.J.S.A. 40:69A-196, to have the same scope and effect as the older Walsh Act provision, N.J.S.A. 40:74-18. That is, both provisions were intended to impose the "3-year repeal or amend restriction" to all ordinances adopted by initiative petition or referendum, not just those ordinances that are adopted by or rejected by the voters at the ballot box.

Most recently, the New Jersey Supreme Court has made clear that the three-year restriction applies to any ordinance passed by initiative under the Faulkner Act, whether it is adopted by the council or the voters. With respect to this legal issue, the N.J. Supreme Court specifically held:

> As this Court has observed in applying the referendum provision of the Faulkner Act, "[i]t is the function of the Legislature, not the courts, to determine how much direct democracy through referendum should be conferred on the voters of a municipality." Ordinance 04-75, supra, 192 N.J. at 467. The same principle governs the initiative in this case. The Legislature has authorized the divestment, for a prescribed period, of one aspect of a succeeding governing body's authority, when an ordinance is enacted by initiative in accordance with N.J.S.A. 40:69-184.
>
> By virtue of this short-term constraint created by the Legislature, which would temporarily limit the authority of Camden's current and successor

> legislatures in the event that the Committee's initiated ordinance were adopted, the ordinance would not constitute an improper restraint on future legislative authority.

(Redd v. Bowman, 223 N.J. 87, 108 (2015)(footnote omitted and emphasis added).

As the above quote indicates, the N.J. Supreme Court has made clear that the three-year divestment of legislative authority is triggered either by (a) the municipal council's adoption of an ordinance initiated under Section 184, whether in precisely the form requested, or "in substantially the form requested" by the voters signing the petition pursuant to N.J.S.A. 40:69A-196; or (b) the voters' approval of the ordinance at the ballot box.

To interpret the statute otherwise would not only contradict the holding in Redd, but would directly operate to subvert the liberal and democratic design of the initiative process. This is the case because a municipal council could simply adopt the ordinance initiated by the voters and turn around and either amend the initiated ordinance or repeal it without giving the voters the opportunity to approve either the initiated ordinance or the amendment thereto. Such action, whether taken one month after the adoption of the ordinance by the council or two years later would be considered arbitrary and capricious insofar as it would be a transparent attempt to avoid

the electorate. As the court stated in All Peoples Congress of Jersey City v. Mayor and Council of Jersey City, 195 N.J. Super. 532, 537 (App. Div. 1984), a case involving a referendum petition:

> If a municipality repeals a challenged ordinance while the referendum proceedings are pending, it may not reenact the same ordinance, nor may it reenact the same or an ordinance in all essential features the same after referendum proceedings have been abandoned. Such action would plainly operate to nullify and circumvent the liberal and salutary design of the referendum device.

Similarly, because Newark in 2019 amended the very ordinance initiated by the Committee of Petitioners in 2017 --within the three-year period since adoption -- it could not avoid the voters. Ordinance No. 6PSF-G(S) was required to be submitted to the voters for approval; and because Defendants refused to do so, it must be declared invalid

C. THE CITY COUNCIL MAY RE-ENACT THE ORDINANCE AND/OR PUT THE QUESTION ON THE BALLOT SUBJECT TO REFERENDUM

The COP anticipates that Defendants will assert that the case is moot because the three-year restriction period has expired. This position, if asserted, would confuse the violation, which is ongoing and continues today, with the remedy. First and foremost, the Municipal Council did not have the authority to adopt Ordinance No. 6PSF-G(S) without first submitting it to the Clerk to submit to the voters for their approval. This wrong renders the Ordinance null and void at its

inception and the City of Newark must be enjoined from continuing to enforce it.

Second, if the Municipal Council seeks to re-enact Ordinance No. 6PSF-G(S) or some version thereof, it has the authority at this time (not at the time the Complaint was filed) to do so without first submitting it to the voters for approval. The COP, however, asserts that the concepts of equity and unclean hands behoove the Municipal Council to submit it to the voters, nonetheless, because it has simply waited out the clock by dangling the possibility of settlement before the Plaintiffs. See Steinhagen Cert., ¶¶4-11.

Furthermore, whether or not the Municipal Council decides to submit Ordinance No. 6PSF-G(S) to the voters (or this Court compels it to submit such readopted ordinance to the voters), the COP stills has the authority to seek to repeal that Ordinance pursuant to N.J.S.A. 40:69A-185. In this way, Defendants cannot avoid the consequences of their original sin: the amendment to the rent control ordinance that the COP initiated in 2017 must come before the voters for a referendum vote one way or another; Defendants submit it to the voters or the voters will do so themselves pursuant to a referendum petition that they would be able to submit within 20 days after the City of Newark re-enacts Ordinance No. 6PSF-G(S) (if it decides to do so). In either case, Defendants cannot continue

to deprive the COP of their statutory right of initiative and referendum any longer.

D. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF AND ATTORNEYS' FEES UNDER THE NEW JERSEY CIVIL RIGHTS ACT

In Tumpson v. Farina, 218 N.J. 450 (2014), the New Jersey Supreme Court stated that the "right to referendum is about enfranchisement, about self-government and about giving citizens the right to vote on matters of importance to their community." Tumpson, 218 N.J. at 480. The Court held that right to be a substantive right of paramount importance; permitting a violation thereof to trigger a remedy under the New Jersey Civil Rights Act.

As the COP has argued throughout this brief, it has been deprived of the 3-year legislative restriction conferred by the Faulkner Act as a result of Defendants' illiberal interpretation of N.J.S.A. 40:69A-196(a); and, as a result, the COP is also entitled to declaratory and injunctive relief under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2. See also DeSanctis v. Borough of Belmar, 455 N.J. Super. 316 (App. Div. 2018)(finding N.J. Civil Rights violation when governing body violated citizens' substantive right of referendum when it sought to alter that right by submitting a manipulative interpretative statement to the electorate). There is little doubt that the COP's right of initiative would be meaningless if the Municipal

Council were able, as a matter of routine, to adopt an ordinance in the same form as presented by the voters, and simply turn around and amend or repeal that ordinance without first receiving voter approval via the ballot. The 3-year restriction against repeal or amendment without voter approval is thus an essential component of the benefit conferred by the Faulkner Act, and deprivation of that benefit by Defendants herein presents a clear violation of the New Jersey Civil Rights Act.

Accordingly, because the COP has been deprived of a benefit conferred under the Faulkner Act's initiative and referendum provisions, it is also entitled to attorneys' fees and costs. Plaintiffs thus request an order entitling them to submit an application for reasonable attorneys' fees at fair market value, as was permitted in Tumpson v. Farina, 218 N.J. 450 (2014).

CONCLUSION

For the foregoing reasons, the COP is entitled to a declaratory judgment invalidating Ordinance No. 6PSF-G(S), an order enjoining the City of Newark from continuing to implement such Ordinance and an order awarding COP attorneys' fees and costs under the New Jersey Civil Rights statute.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

Ss:// Renée Steinhagen
Renée Steinhagen, Esq.