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Attorneys for Committee of Petitioners

CHILTON TOWERS, LLC; LINDEN ARMS, LLC; ELRON GARDENS NJ, LP; HAYES HOUSE, LLC; RITA GARDENS NJ, LP; STILES ARMS NJ, LP; STILES MANOR GARDENS NJ, LP; TURTLE VILLAGE GARDENS NJ, LP; WATSON GARDENS NJ, LP; NORTH SALEM TERRACE, LLC; ASSOCIATES 64 LLC; LOPADI REALTY ASSOCIATES, LLC; RUTGERS COURT ASSOCIATES, LLC,

Plaintiffs,

-vs-

YOLANDA M. ROBERTS, in her Capacity as Municipal Clerk, THE CITY OF ELIZABETH, JORDY HERNANDEZ, RICKY CASTANEDA, SERGIO ABREU, MARIEANNEZA STEINIGER, and ANTHONY STEINIGER,

Defendants.

JORDY HERNANDEZ, RICKY CASTANEDA, SERGIO ABREU, MARIEANNEZA STEINIGER, and ANTHONY STEINIGER (the "COMMITTEE OF PETITIONERS"),

Cross-claim Plaintiffs,

-vs-

YOLANDA M. ROBERTS, in her capacity as

SUPERIOR COURT OF NEW JERSEY, LAW DIVISION – UNION COUNTY

DOCKET NO.: UNN-L-2894-25

CIVIL ACTION

ORDER

Municipal Clerk,
Cross-claim Defendant.

THIS MATTER, having been brought before the Court by Renée Steinhagen of New Jersey Appleseed Public Interest Law Center, counsel for Defendant/Cross-claim Plaintiff Committee of Petitioners, seeking relief by way of Motion for Dismissal of Count I of the Amended Complaint, Motion for Summary Judgment on Cross-claim II, and Motion for Partial Summary Judgment on Cross-claim I, and the Court having considered the papers and arguments submitted by all parties, and for good cause shown,

IT IS on this 21 day of November, 2025

hereby **ORDERED** as follows:

1. Dismissal of Count I of the Amended Complaint is hereby granted because the Faulkner Act Initiative and Referendum provisions do not require the circulator to be a member of the Committee of Petitioners and/or a registered voter in the municipality in which the petition is circulated;
2. Summary judgment with respect to Cross-claim II is hereby entered in favor of Defendants Committee of Petitioners and against Defendants Yolanda Roberts, in her Official Capacity as City Clerk of Elizabeth, and the City of Elizabeth because inactive voters who affirm an Elizabeth address on the petition are registered and eligible to vote in an Elizabeth municipal election; and Granted in Part / Denied in Part
3. Partial Summary judgment with respect to Cross-claim I is hereby entered in favor of Defendants Committee of Petitioners and against Defendants Yolanda Roberts, in her Official Capacity as City Clerk of Elizabeth, and the City of Elizabeth because

registered Elizabeth voters who affirm their new Elizabeth address on the petition are registered and eligible to vote in an Elizabeth municipal election.

Granted in Part

Denied in Part

Dated: November 21, 2025

Hon. John M. Deitch, J.S.C.

See Statement of Reasons

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, UNION COUNTY

CHILTON TOWERS, LLC, ET AL.	:	
Plaintiff(s)	:	CIVIL ACTION
v.	:	DOCKET NO.: UNN-L-2894-25
YOLANDA ROBERTS, ET AL.	:	**STATEMENT OF REASONS**
Defendant(s)	:	
	:	

The parties have filed their respective motions for summary judgment and oppositions. Oral argument was held on November 21, 2025. The issues to be addressed are: 1) Who can circulate the petitions at issue; 2) Was proper notice given and publication performed; 3) What is the effect of a registered, but temporarily ineligible voter signing a petition; and 4) With regard to seven voters, what is the effect of the COP's database listing them as a registered voter upon the Clerk's rejection of the signature.

CIRCULATION OF THE PETITION

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

> [t]here 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.

Certain general principles will apply to the interpretation of a statute. The primary objective of the court is to ascertain the intent of the Legislature; we have emphasized that the best indicators of that intent are the plain words of the statute. DiProspero v. Penn, 183 N.J. 477, 492 (2005). In reviewing the statutory language, courts should "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." Ibid. (citation omitted). We have cautioned against "'rewrit[ing] a plainly-written enactment of the Legislature or presum[ing] that the Legislature intended something other than that expressed by way of the plain language.'" Ibid. (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). However, if there is ambiguity in the statutory language, the court may "utiliz[e] extrinsic evidence" for assistance in determining the correct interpretation. Lozano v. Frank DeLuca Constr., 178 N.J. 513, 522 (2004). Moreover, extrinsic evidence may be considered when "a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language." DiProspero, supra, 183 N.J. at 493.

Plaintiffs advance the unremarkable argument that the COP is responsible for the circulation and filing of the petition and for its possible withdrawal. Plaintiffs then seek to platform that uncontested proposition into a requirement that the COP also be the ones who circulate the petition. Plaintiffs' argument serves to read-out the express language "who shall be regarded as responsible for the circulation and filing of the petition . . . ." in the statute. Not only is the language plain and unambiguous, it must be read as a whole.

Indeed, had the Legislature wanted to, it could have written, as follows:

> [t]here shall appear on each petition paper the names and addresses of five voters, designated as the Committee of the Petitioners, who shall *circulate and file the petition and be*

responsible for its possible withdrawal as hereinafter provided. (emphasis added)

However, that was not done and the words "responsible for the circulation and filing of the petition . . . ." must be given their ordinary meaning. It cannot be disputed that one can be responsible for some act, without having to perform the act itself. Given the plain meaning of the words chosen by the Legislature, the COP may have others gather signatures on their behalf.

Plaintiffs cite several cases in support of their position. While the cases confirm that the COP is responsible for the petitions, none of the cases directly address the ability of the COP to have assistance in circulating the petitions. See Lindquist v. Lee, 34 N.J. Super. 576 (Law Div. Jan. 28, 1955)(COP are representatives of the signatories); Hamilton Township Taxpayers' Assoc. v. Warwick, 180 N.J. Super. 243, 247 (App. Div. 1981)(It was "the responsibility of the Committee of the Petitioners to circulate, file and possibly withdraw a referendum petition as agents for the signers." Signatories must be advised of the COP so they may have an avenue of redress if necessary); Pappas v. Malone, 36 N.J. 1, 5 (1961) (the designation of the Committee of the Petitioners is not simply a matter of form, but one of substance).

Plaintiffs also argue that allowing others to act as circulators would mean that "there is absolutely no restrictions on who can circulate an initiative petition, even if they are convicted felons, reside out of state, are under 18, are foreign nationals, are non-residents, and so on." That a "parade of horribles" may be concocted based upon the language chosen by the Legislature, it does not give the court the power to disregard the plain language of the statute. The law requires that each circulator must sign a required affidavit that only he or she circulated the petition, that all the signatures thereto were made in his/her presence and the signatures are believed to

be genuine. N.J.S.A. 40:69A-186. That requirement provides information regarding the circulator that may be explored in the event of a challenge.

Plaintiffs' motion for summary judgment on this point is denied.

NOTICE AND PUBLICATION

Plaintiffs also seek summary judgment invalidating Ordinance 6160 based upon a lack of notice by the City under N.J.S.A. 40:49-2.

There is no question that we are dealing with the vailidity of an ordinance here. Plaintiffs argue that certain of the notice requirements of N.J.S.A. 40:49-2 apply, and the COP says they do not. The City argues that N.J.S.A. 40:49-2 applies, and, if something was not done, it was *de minimus* and excusable.

The parties all agree that, outside of the Initiative and Referendum process (I&R), the passage of an ordinance will require a writing, reading at more than one meeting and publication. N.J.S.A. 40:49-1 (defining ordinance) and N.J.S.A. 40:49-2 (defining procedure for passage of an ordinance).

"Ordinances require two readings, publication and hearing before passage; resolutions may be introduced and passed at the same meeting. Reuter v. Borough Council of Borough of Ft. Lee, 328 N.J. Super. 547, 553 (App. Div. 2000) (citing N.J.S.A. 40:49-1, -2.). The distinction is important as resolutions may be passed without notice to those not in attendance at a meeting.

The Faulkner Act does not abandon public meeting notice requirements. To the contrary, it specifically sets forth that "[e]xcept as may otherwise be provided in this act… all ordinances shall be adopted and published in the manner required by general law." N.J.S.A. 40:69A-181(a).

The COP seeks to read this requirement out of the law based upon the Faulkner Act's purpose to reflect the will of the people and to promote the beneficial effects of voter participation. COP 11/6/25 br. at p. 9.

Because N.J.S.A. 40:69A-181(a) requires that the process for passing an ordinance set forth in the general law be followed – except as otherwise provided in this act – the general law must be followed absent an express exception in the act. Since the only express exception applicable here deals with the first reading of an ordinance (N.J.S.A. 40:69A-190), the remaining notice provisions for passing an ordinance apply.

N.J.S.A. 40:49-2(a) requires that after having passed a first reading, the ordinance must be published in a newspaper at least seven days before final action. It states:

> Every ordinance after being introduced and having passed a first reading, which first reading may be by title, shall be published in its entirety or by title or by title and summary at least once in a newspaper published and circulated in the municipality, if there be one, and if not, in a newspaper printed in the county and circulating in the municipality, together with a notice of the introduction thereof, the time and place when and where it will be further considered for final passage, a clear and concise statement prepared by the clerk of the governing body setting forth the purpose of the ordinance, and the time and place when and where a copy of the ordinance can be obtained without cost by any member of the general public who wants a copy of the ordinance. If there be only one such publication the same shall be at least one week prior to the time fixed for further consideration for final passage. If there be more than one publication, the first shall be at least one week prior to the time fixed for further consideration for final passage.

Paragraph (b) requires that the final action occurs no less than ten days after the first reading setting the date for final action. It states:

> At the time and place so stated in such publication, or at any time and place to which the meeting for the further consideration of the ordinance shall from time to time be adjourned, all persons interested shall be given an opportunity to be heard concerning the ordinance. The opportunity to be heard shall include the right to pertinent questions concerning the ordinance by any

> resident of the municipality or any other person affected by the ordinance. Final passage thereof shall be at least 10 days after the first reading.
>
> [N.J.S.A. 40:49-2(b)]

Under the normal process, an ordinance is introduced by the governing body at a meeting, and then voted on by the governing body after first reading. A proposed ordinance does not move forward without having gone through a first reading. The Faulkner Act supersedes the requirement that the ordinance be "introduced" by a governing body member and then voted on by the governing body so as to go through that first reading. Essentially, the petition constitutes the initial vote of a governing body for the purposes of a first reading.

However, a sufficient ordinance by initiative submitted to the council "shall be deemed to have had first reading and provision shall be made for a public hearing." N.J.S.A. 40:69A-190. Thus, the Faulkner Act modifies the process for an ordinance having a first reading. The publication requirements of N.J.S.A. 40:49-2(a) remain unaffected by this "deeming" as they are triggered after the first reading.

Here, the first reading occurred on July 22 when the Clerk certified the results of the petition to the Council during an open meeting. The court rejects the argument that the first reading occurred with the Clerk's transmission of the petition to the Council on July 16 finding the petition sufficient under N.J.S.A. 69A:190. Section 190 simply requires the Clerk to submit the petition to the Council "without delay" upon finding that the petition is sufficient. Once sufficient, the ordinance is deemed to have had its first reading. Section 190 does not convert a non-public transmittal of information by the Clerk into public action. This is confirmed by N.J.S.A. 69A:187 which requires the Clerk to certify the results of the Clerk's examination of the petition to the Council at its next regular meeting. This by necessity occurs after the Clerk has completed his / her examination of the petition. The results may be a finding of insufficiency or sufficiency. In either event, the findings must be certified.

It is this certification "at [the] next regular meeting" that constitutes the public first reading, not the uncertified, non-public physical transmittal of the notice to the Council "without delay" in advance of the meeting.

In this matter, the Council chose to place the second reading upon its meeting of July 28, thereby planning on taking action sooner than ten days after the first reading of July 22.[1]

The first reading occurred on July 22, 2025 and the Ordinance was passed six days later in violation of N.J.S.A. 40:49-2(b)(requiring that final passage occur "at least 10 days after the first reading.").

The Ordinance is void based upon the failure to comply with N.J.S.A. 40:49-2(b).

PUBLICATION

Regardless of the date of the first reading, an ordinance must be published at least seven days in advance of final action. N.J.S.A. 40:49-2(a). It is undisputed that the newspaper publication here was on July 28, 2025 - the same day as the vote on the ordinance.

No reasonable explanation has been provided for the City's failure to properly notice the second reading and vote. Vague references to "summer schedules" are made by the City, but the reality is that there are nine Councilpersons and the Mayor upon the City Council. The City had twenty days from July 22 to take action. The City was aware on July 16 that the Clerk was going to certify the petitions as sufficient at the next public meeting.

The COP argues that notice requirements can be done away with because the initiative under the Faulkner Act represents the will of the people. While the

[1] Although not dispositive, the City Clerk's Notice for Public Hearing (Moench Cert. Exhibit "2") sets forth July 22 as the date of the first reading.

Faulkner Act is laudable in its effect, an ordinance by initiative may only represent the voice of a small number of the populus. That approximately 650 eligible voters signed the petitions in this case does not authorize the City to disregard the statutory notice rights of tens of thousands of other eligible voters. Similarly, the fact that the Plaintiffs were aware of the upcoming vote and participated is largely immaterial. The notice provisions exist to make the general public aware, and that was not done. The failure of the City in this regard is more than a mere technical failure that might be excused. The lack of notice goes to the heart of the public process.

The Ordinance is void based upon the failure in publication under N.J.S.A. 40:49-2(a).

INACTIVE VOTERS, VOTERS WHO CHANGED ADDRESS & 7 SIGNATORIES

There is no question that the term "eligible voter" means persons who are registered to vote. Johnson v. Reichenstein, 50 N.J. Super. 116 (App. Div. 1958). The question here is whether persons who are registered to vote, but who have some defect that would prevent them from voting without taking further action, are to be counted as eligible voters able to have their signatures count on the petition. This does not include unregistered voters. The answer to the question is "yes".

Said differently, if the signatories at issue are registered to vote in Elizabeth and could cure their defect in time to vote, they are an eligible voter for purposes of having their signature counted. An "inactive voter" is an "eligible voter" for purposes of signing the petition.

This court makes this finding keeping in mind the fundamental purpose of our election laws. "Because the right to vote is the bedrock upon which the entire structure of our system of government rests, our jurisprudence is steadfastly committed to the principle that election laws must be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of

voters." Afran v. Cty. of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990). "[O]ur state election laws are designed to deter fraud, safeguard the secrecy of the ballot, and prevent disenfranchisement of qualified voters. In furtherance of those goals, we have held that it is our duty to construe elections laws liberally." In re Gray-Sadler, 164 N.J. 468, 474-75 (2000) (citations omitted). Correa v. Grossi, 458 N.J. Super. 571, 580-581 (App. Div. 2019).

As to any particular voter identified in the papers, questions of fact regarding that particular voter's status and "cure" preclude summary judgment at this time.

VOTER DISCREPANCY

With regard to the seven signatories who the COP say exist in their database (VAN), and whom do not seem to be within SVRS and were rejected by the Clerk. Questions of material fact exist regarding the accuracy of VAN, what Mr. Jiminez did to conduct the searches in VAN, the individual signatories themselves and what the Clerk did or did not do to verify their ability to be counted. The issue of the Seven Signatories is not ripe for adjudication on summary judgment.

JOHN M. DEITCH, J.S.C.

Dated: November 21, 2025