

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

Plaintiffs

v.

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

Defendants

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

SUPREME COURT OF NEW JERSEY

Docket No.

Motion No.

On appeal from a stay
ordered issued entered by
the Superior Court of New
Jersey, Appellate Division

Sat Below:

Hon. Clarkson Fisher, J.A.D.

Hon. Linda Baxter, J.A.D.

**BRIEF AND APPENDIX IN SUPPORT OF PLAINTIFF'S MOTION TO
VACATE OR MODIFY STAY**

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PRELIMINARY STATEMENT

This is a case about the enforcement of voters' referendum rights under the Faulkner Act.

Nine years ago, in New Jersey Democratic Party, Inc. v. Sampson, 175 N.J. 178, 190 (2002), this Court reaffirmed the principle that this State's election law "will be interpreted to allow the greatest scope for public participation in the electoral process . . . and most importantly to allow the voters a choice on Election Day."

Prior to this past Monday, September 26, the trial judge who heard this referendum case and the five appellate judges who have heard various motions and applications in it were vigorously enforcing that principle.

Specifically, on August 12, 2011 an appellate panel other than the motion panel whose order gives rise to this motion directed the trial judge to enforce her prior rulings upholding the statutory referendum rights of the Committee of Petitioners. (Pa29-32). These rights included the voters' expansive rights to challenge municipal enactments by petition, and to have those enactments suspended while the petition process unfolds. That panel also noted the importance of permitting this referendum to appear on the general election ballot. In this way, the voters' rights to referendum are no different than their rights to choose candidates.

On September 26, 2011, a two-judge panel of the Appellate Division filed a stay-pending-appeal order (Pa38) that could be interpreted as depriving Hoboken's voters of the right to vote on an ordinance of pressing public importance about rent control in that City. By the time plaintiffs' counsel received that Order, the ballots - at least those destined for absentee and provisional voters - had been printed.

Besides potentially disenfranchising voters, and conflicting with a prior panel order, the stay order, issued without explanation or comment, conflicts with well-established law limiting stays to instances where an applicant shows, by clear and convincing evidence, that there is irreparable harm, a likelihood of success on the merits, clearly established law, and that equitable factors favor the party seeking the stay.

For the reasons that follow, this Court should vacate or modify the Appellate Division's stay order and reinstate the trial court's August 25, 2011 order enforcing litigants' rights (Pa34-36), which confirms that (1) the scope of rent control in the City of Hoboken is and should be left in the hands of its voters during the November 8, 2011 general election; and (2) that the ordinance should be suspended from taking effect until the voters decide that question.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiffs filed their Verified Complaint ("Complaint") and an accompanying Order to Show Cause ("OTSC") on May 5, 2011. The trial judge, in a June 14, 2011 opinion that substantially granted the OTSC, (Pa1-13) ably laid out the history of the case through that date and will only be repeated briefly here. Basically, Defendants passed an ordinance (No. Z-88) that radically rolled back tenants' protections under the Hoboken rent control laws. (Pa1). Plaintiffs responded to it by circulating and filing petitions seeking a public vote on the matter under the applicable initiative and referendum laws. N.J.S.A. 40:69A-184 et seq. (Pa1-2).

As described by the trial judge, Defendants first accepted the petition, then "unfiled" it (Pa2,6), then failed to conduct the statutory examination of the signatures, and later refused to accept a timely supplementary petition (Id.) Defendants and other government actors also gave Plaintiffs incorrect information about the number of signatures they needed to file to have the referendum vote.

The trial judge, on June 14, issued a 13-page Opinion overturning the City's actions finding, among other things, that the Clerk "did not follow the procedure set forth in N.J.S.A. 40:69A-185 through 187" respecting the filing and processing of referendum petitions, and the legal effect of same (Pa12). She

further found that "based upon a reading of the statutes . . . Mr. Farina's actions were arbitrary and capricious." (Id.)

As a remedy, the Court, in its Orders dated June 14, 2011, directed the City Clerk to "process the plaintiffs' filed petition as provided by law and review the petition and amended petition timely submitted consistent with the statute." (Id.)

On June 24, 2011, trial judge denied a stay pending appeal of that order, also clarifying that in the event that review of the petition and amended petition described in the June 14 Order resulted in a finding of insufficiency, Plaintiffs were entitled to file additional signatures to cure the insufficiency:

In addition, to clarify, at the conclusion of the 20 days [for review of the previously-submitted signatures], if the City determines the filings are insufficient, the Plaintiff may amend pursuant to the law. N.J.S.A. 40:69A-188.

(Pa20).

Consistent with their past pattern of obstructionism, on July 7, 2011, the City Defendants found the 2,314 signatures theretofore submitted to be insufficient. (Pa21-23). Nevertheless, pursuant to Judge DeCastro's Order, Plaintiffs then diligently collected an additional 844 signatures, and submitted them on July 18, 2011, in the manner and within the time fixed by her June 24, 2011 Order (Pa24,25,27).

On July 25, 2011, Defendants replied to this submission by letter, and announced that the filing was untimely, despite

Judge DeCastro's ruling expressly authorizing the filing. (Pa26-28). However, the letter also specifically found that the valid signatures submitted were numerically sufficient under the law (Pa27).

Plaintiffs then applied to Judge DeCastro by Order to Show Cause to enforce her Orders. On August 1, 2011, Judge DeCastro held that in her view of R. 2:9-1, she did not have jurisdiction to hear the enforcement motion. (See Pa30).

Plaintiffs immediately sought emergent relief with the Appellate Division, and after briefing wherein Intervenor continued to protest the validity of the underlying rulings, the Appellate Division upheld Plaintiffs' rights. (Pa29-32).

On August 12, 2011, the appellate panel (Judges Miniman and Sabatino) ruled that the Orders of the Court were valid, enforceable rulings that Defendants had to obey:

The June 24, 2011, order clearly granted plaintiffs leave to supplement their petition and amended petition "within ten days after the notification of insufficiency has been served by the municipal clerk." N.J.S.A. 40:69A-188. The clerk rejected their supplementary petition as not timely filed. If it was timely filed, plaintiffs were entitled to the relief sought in their order to show cause.

(Pa31-32). The appeals panel also commented on the desirability of having the issue decided by the voters at the November 8, 2011 general election:

That leaves only the issue of whether we should issue a mandate with respect to the time within which the

judge is to decide the issues. Defendant and the intervenors urge that it is not because a referendum may be scheduled at any time and voted on in a special election. Although we recognize that to be true, we also recognize that voter turnout is much greater at a general election than it is at a special election. We suggest that the trial court give due consideration to this concern on the plaintiffs' part . . .

(Pa32).

On August 25, 2011, the trial court ruled that Defendants in fact had violated Plaintiffs' rights and ordered the City Clerk to "certify the [petition] as proper, valid, and sufficient in all respects" (Pa35) and that, as contemplated by law, that the petition signed by at least 2,224 qualified Hoboken voters suspended operation of the ordinance. (Id.) The Defendants ultimately complied with this Order.¹

The trial judge denied a stay pending appeal. (Pa36). Intervenors, without the support of the municipal Defendants, then sought emergent treatment for their stay motion. Judge Simonelli - by then the fifth appellate judge² to look at this

¹ The County of Hudson, which is responsible for printing the ballots, was not a party to this action. Nor did this order contain any directives that specifically spoke to the printing of ballots. It is therefore unclear whether the stay of this Order was intended by the Appellate panel to foreclose a public vote on the matter. As argued below, the Court should not interpret the stay order in that manner.

² In addition to Judges Miniman and Sabatino, who issued the August 12 remand order, yet another panel, in Motion No. M-7434-10, granted Plaintiffs' remand motion to allow the trial court to hear and determine Plaintiffs' motion for summary judgment against Defendants under the New Jersey Civil Rights Act and for an award of counsel fees. (Pa33). That motion is returnable

case and not interfere with the enforcement of Plaintiffs' referendum rights - denied Intervenor's application for emergent treatment of this motion (Pa37).

Nevertheless, Intervenor filed a motion for a stay of the August 25, 2011 ruling pending appeal. On September 26, 2011, another panel (comprised of Judges Fisher and Baxter) granted the stay pending appeal without comment or explanation. (Pa38).

The lack of comment or explanation is particularly perplexing here. Clearly, the panel's stay order impacts the fourth decretal paragraph of the trial court's August 25, 2011 order (which suspended operation of Ordinance Z-88). This alone is error, as it deprived the over 3,000 signers of the referendum petition of their statutory suspension rights while the referendum process unfolds. N.J.S.A. 40:69A-185 and -189.

But it is unclear whether the appellate panel also meant to deprive Hoboken's voters of the right to vote on the ordinance on November 8. The third decretal paragraph of the August 25, 2011 order obligates the Clerk to submit the referendum petition to the City Council for further processing; and this has been completed weeks ago. The statutes contemplate that after this step is taken, the ordinance will either be repealed or presented to the voters for their decision. If the stay

before the Honorable Patrick Arre, J.S.C. on October 6, 2011, who has been given until October 17, 2011 to render a decision in the matter. (Pa33).

decision is interpreted as foreclosing a public vote, this would be an even more grievous error, because voters would be deprived of their statutory referendum rights under N.J.S.A. 40:69A-185 et seq. as well as their rights under Sampson, supra.

Plaintiffs now bring this motion in the Supreme Court pursuant to R. 2:9-5 and 2:8-1. In order to let the public have its say at the ballot on Hoboken's rent control laws, and to enforce their rights to a suspension of the ordinance, Plaintiffs ask the Court to vacate the stay or, in the alternative, to modify it so that there is no further disruption of Hoboken voters' right to "public participation in the electoral process," Sampson, supra.

LEGAL ARGUMENT

I. THE APPELLATE DIVISION'S STAY ORDER, TO THE EXTENT IT IS INTERPRETED AS BARRING A PUBLIC VOTE ON ORDINANCE Z-88 AT THE NOVEMBER 2011 GENERAL ELECTION VIOLATES VOTERS' RIGHTS OF CHOICE AS ARTICULATED IN SAMPSON.

The outcome in this motion is dictated in substantial part by the Court's ruling in Sampson. In a situation where a court has the option of giving voters a choice or depriving them of a choice, enforcing this "right of choice . . . grounded in the core values of the democratic system established by the [F]ramers" is the preferred option. Id., 175 N.J. at 187. As such, election laws "should not be construed as to as to deprive voters of their franchise or so as to render an election void

for technical reasons.” Id. at 186 (citation omitted). “The concept is simple. At its center is the voters, whose fundamental right to exercise the franchise infuses our election statutes with purpose and meaning.” Id. Thus, “[w]hen this Court has before it a case concerning the New Jersey election laws, we are directed by principle and precedent to construe those laws so as to preserve the paramount right of the voters to exercise the franchise.” Id. at 190.

This right of the voters to exercise the franchise is equally applicable to the voters’ right to challenge a municipal ordinance through the petition process and the ballot. The importance of the voter’s right to participate in government and to express their views at the ballot box infuses this Court’s interpretation of the referendum laws liberally and expansively. See, e.g., In re Petition for Referendum on City of Trenton Ordinance 09-02, 201 N.J. 349, 353 (2010) (reversing lower court rulings to allow citizens to have their say on a referendum about the sale of water works); In re Referendum Petition to Repeal Ordinance, 04-75, 192 N.J. 446 (2007) (reversing lower court rulings to allow citizens to have their say on a referendum about the organization of a municipal police department).

The remand order issued by the Appellate Division on August 12, 2011 (Pa29-32) (as well as the second remand order issued on

August 23, 2011 (Pa33), allowing Plaintiffs to pursue their claims for attorneys' fees under the New Jersey Civil Rights Act) are completely faithful to these precedents. In particular, the August 12 order, issued with knowledge of the Intervenor's complaints about the substance of prior court rulings, emphasized that Plaintiffs had a right to have those rulings enforced. The Court observed that "[i]f [their supplementary petition] was timely filed, plaintiffs were entitled to the relief sought in their order to show cause" (Pa 32). And on August 25, 2011, the trial judge granted that relief, further denying a stay pending appeal. (Pa34-36).

But the September 26 stay order is not faithful to the requirements of Sampson and In re Referendum Petition to Repeal Ordinance 04-75, if it is understood to mean that the voters of Hoboken should be deprived of a choice on whether to affirm or repudiate the rent control laws passed by their City Council at the polls. The order that voting rights should be stayed, and not enforced, ignores Sampson and its progeny and should be vacated on that basis alone. As this Court recently observed,

The referendum power is one of the key provisions of the Faulkner Act. It is an exercise in democracy that profoundly affects the relationship between the citizens and their government by affording the people the last word if they choose to take a stand against the wisdom of an ordinance that the government has enacted.

In re Trenton Ordinance 09-02, supra, 201 N.J. at 353.

II. INTERVENORS FAILED TO DEMONSTRATE THEIR ENTITLEMENT TO A STAY PENDING APPEAL.

Despite their losses before the trial court and in their application for emergent treatment, the Intervenorors nevertheless pursued their stay application. To obtain that stay, they were required to show (1) immediate and irreparable harm was likely if the relief were denied; (2) the applicable underlying law was well-settled; (3) the material facts were not substantially disputed and there exists a reasonable probability of ultimate success on the merits; and (4) the balance of the hardship to the parties favors the issuance of the requested relief. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Matter of Comm'r of Ins. Deferring Certain Claim Payments By N.J. Auto. Full Ins. Underwriting Ass'n, 256 N.J. Super. 553, 560 (App. Div. 1992) (applying Crowe standards to applications for a stay). The proofs required by Crowe must be established by clear and convincing evidence. Id., 90 N.J. at 135-36.

In their application for a stay of the trial courts' final August 25, 2011 Order Enforcing Litigants' Rights, Intervenorors have failed to meet their burden, and the Appellate Division erred in crediting any or all of their arguments to the contrary.

A. Intervenor Failed to Demonstrate Irreparable Harm.

Intervenors utterly failed to prove to the appeals court how exactly they would suffer irreparable harm if the people of Hoboken are allowed to vote on this ordinance in the November general election. Nor have they proven how irreparable harm will result from the suspension of the ordinance, something that the 3,000 signatories of the referendum petition have earned through their efforts. N.J.S.A. 40:69A-185 and -189.

It is black-letter law that harm that can "be redressed adequately by monetary damages" is not "irreparable" harm. Crowe, 90 N.J. at 132-33. The ordinance underlying this case is about economic relations: what amount tenants should pay for the right to occupy a residence. Thus, if the Intervenor prevail on appeal, any harm to them in the form of reduced rents brought about by either the suspension of the ordinance, or the repeal of the ordinance at the ballot box, can be easily reduced to a monetary sum. By definition, therefore, neither the suspension of the ordinance or, more importantly, letting the people of Hoboken vote on the ordinance, is capable of causing irreparable harm.

Moreover, Intervenor protested that they have enjoyed new and greater protections under Z-88 for over five months, and that they will be irreparably harmed if these protections are repealed. However, since this ordinance has been questioned

(through the referendum petition) from the first day it was in effect, any reliance on the continued existence of the ordinance was palpably unreasonable.

B. Intervenor's Challenge to The Trial Court's Final Order Is Not Grounded in Well-Settled Law.

The second prong of Crowe requires the underlying law of the applicant's claim to be well-settled. Id., 90 N.J. at 133. *A fortiori*, temporary relief should not be granted when the legal theories underlying Intervenor's challenge to Plaintiffs' statutory right to referendum are unsettled. Id. As shown infra, Point II(C), the relevant provisions of the Faulkner Act do not contain a notion of "facially defective" or "defective on its face," but do set forth clear directives to the City Clerk to (1) accept for filing a submission purporting to be a referendum petition; (2) review that petition for sufficiency; (3) notify the City Council and Committee of Petitioners of his sufficiency determination; and (4) permit the Committee to correct by submitting additional signatures if the insufficiency is due to an insufficient number of valid signatures - each of which justified the Court's Decision and Orders in this matter.

Therefore, because Intervenor's claim on appeal is based neither on "clear and unambiguous language" in the statute, as they asserted, nor well-settled law, their legal right to

prevent Ordinance Z-88 from being suspended and going to the ballot is uncertain.

C. Intervenors Are Not Likely to Succeed on the Merits of Their Appeal.

In order for Intervenors to convince a court that they were likely to succeed on the merits of the appeal, they would have had to convince the appeals court that their interpretation of the Faulkner Act referendum laws, N.J.S.A. 40:69A-184 through 196, was more persuasive than what any of the other courts that have examined this case have found. This they failed to do.

In its June 24, 2011 opinion, the trial court held, correctly applying the accepted principle that the referendum statute in the Faulkner Act should be liberally construed to promote the "beneficial effects" of voter participation, (In re Ordinance 04-75, 192 N.J. at 459 (citing Retz v. Mayor & Council of Saddle Brook, 69 N.J. 563, 571 (1976))), that the City Clerk "did not follow the procedure set forth in N.J.S.A. 40:69A-185 through 187" (Pa12), and did not adhere to other provisions of the statute. Such provisions:

- grant the substantive right to referendum "as provided" in the statute, N.J.S.A. 40:69A-185;
- provide for the filing of initial referendum papers, N.J.S.A. 40:69A-185;
- provide for the suspension of an ordinance against which a referendum petition has been filed, beginning with the filing of the referendum papers, N.J.S.A. 40:69A-189;

- mandate a plenary examination of referendum papers by the municipal clerk, N.J.S.A. 40:69A-187;
- mandate that the clerk certify to the city council the results of the examination, N.J.S.A. 40:69A-187;
- mandate prompt notification to the committee of petitioners of the particulars of the outcome of the examination, N.J.S.A. 40:69A-187; and
- allow the petitioners to collect additional signatures to cure any insufficiencies in the number of valid Hoboken voters found in the initial petition in the manner provided by law, N.J.S.A. 40:69A-188.

As a remedy, the trial court in its Order dated June 14, 2011 directed that the City Clerk "process the plaintiffs' filed petition as provided by law and review the petition and amended petition timely submitted consistent with the statute." (Pa12).

For the Intervenors to prevail on appeal, they will have to convince a court of nothing less than that the statute should be judicially rewritten.

For example, the trial court carefully considered and rejected the City Clerk's argument that he had the discretion to refuse to file or "unfile" a document purporting to be a referendum properly lodged with his office after a cursory review. (See Pa10-11). If Appellants are to prevail on an application for a stay motion, they will need to identify some authority that rewrites statutory law and judicial precedent on this point. In light of the clear authorities identified by the

trial judge holding otherwise, it is unclear where such verbal gymnastics will be found.

The Intervenors also would have had to demonstrate that somehow N.J.S.A. 40:69A-188, which allows petitioners the right to cure certain deficiencies in the initial filing by submitting additional signatures really means that Plaintiffs don't have such rights, a proposition decisively rejected by the trial judge. (Pa11-12).

Moreover, for Intervenors to prevail, they would have to rewrite literally centuries of equity jurisprudence. At the request of both parties, the trial court clarified its June 14, 2011 Order ruling that in the event the review of the petition papers previously submitted by the Committee of Petitioners to the City Clerk (who neither accepted them as filed nor reviewed them for sufficiency) resulted in a finding of insufficiency, Plaintiffs were entitled to file additional signatures to replace the signatures of unqualified voters (Pa20).

This determination was clearly justified by general equitable principles. "Equity regards that as done which ought to be done," see William Drier & Paul Rowe, GUIDEBOOK TO CHANCERY PRACTICE IN NEW JERSEY, at p. 5, especially where, as here, the Plaintiffs had not delayed the enforcement of their rights, acted in the public interest by adhering to their obligations under the initiative and referendum laws (including time

restrictions), and Defendants acted in precisely the contrary manner (by refusing to accept and review Plaintiffs' submissions). Specifically, because the City Clerk stopped the statutory process improperly by (i) "unfiling" the referendum petition (ii) failing to process it in accordance with the statute and (iii) failing to notify the Committee of Petition of the number of invalid signatures it had submitted, it was reasonable for the trial court to correct the situation by going back to the place where the Clerk initially erred and restart the process from there.

Hitting the "restart" button is exactly what the trial court did when it ordered Defendant Farina to accept the referendum petition as filed and to review both the initial and supplementary petitions within 20 days.³ Like the June 14, 2011

³ The trial court would also have been justified if it had ordered only the initial petition to be reviewed within 20 days, thus rendering the supplemental petition that the Committee filed in order to preserve its rights under the statute an orphan; one that would have only come into the picture once the Clerk determined that the initial petition was insufficient. That is, because under New Jersey law, the signatures contained in the supplemental petition, which was improperly rejected by the Clerk as untimely are not stale, D'Ascensio v. Benjamin, 137 N.J. Super. 155, 164 (Ch. Div. 1975), aff'd, 142 N.J. Super. 52 (App. Div. 1976), those petition papers would have counted toward sufficiency in addition to any new supplemental petitions Plaintiffs would file only after being given proper notice of the exact nature of the defects in the initial petition papers (including the exact number of signatures of legal voters that were lacking) and the 10-day corrective period required by statute. The fact that the trial court instead ordered the amended petition to be reviewed with the initial petition is

Order, this Order is not likely to be reversed. (See Pa29-32) (remanding this case to the trial court for a hearing to determine whether Plaintiffs filed their supplementary petition within 10 days of service of the City Clerk's notice of insufficiency, and if so, holding that "plaintiffs were entitled to the relief sought in their order to show cause"))).

This Court has made clear, in its referendum jurisprudence, that courts should not interject nonexistent distinctions, such as "administrative/legislative" ordinances or "facially defective" petitions, into the statute. See In re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. at 466-467 (rejecting administrative/legislative distinction historically imposed by the courts by holding that the right of referendum includes "any" ordinance, since that was the term used by the Legislature); see also In re Ordinance 09-02, supra, 201 N.J. at 362 ("only where the Legislature has made clear its intention to carve out of the democratic processes provided in the Faulkner Act a particular type of ordinance, will courts immunize the ordinance from a Faulkner Act challenge").

consistent with her finding that the City Clerk had violated the statute by rejecting the supplementary filing as untimely, her understanding that such filing was made by Plaintiffs without any knowledge as to the exact number of additional signatures of registered voters they needed to satisfy the 15% requirement, and principles of fairness and equity.

Because the trial court heeded the lesson of In re Ordinance 04-75 by adhering to the plain language of the statute and did not rewrite the Faulkner Act in the manner proposed by Intervenor and City Defendants, Intervenor did not show a reasonable likelihood of success on the merits of this case on appeal.

For these reasons, Intervenor's requested stay should have been denied, and this court should vacate that stay and reinstate the trial court's August 25 order.

D. The Intervenor Have Not Proven That Equitable Factors Counsel In Favor of Granting a Stay.

The Intervenor have also failed to show that the balancing of the equities favors the grant of a stay in this case. When the first stay motion was presented to the trial court, the judge didn't just find that Intervenor had failed to prove that the equities favored them - she specifically found that the "[b]alancing [of] the equities favor[ed] plaintiffs." (Pa20).

Nothing in this analysis is different for the present motion. Here, over 3,000 people signed a petition wherein they claimed their right to a vote on these pro-landlord modifications to Hoboken's rent control ordinance. And in so doing, they also claimed their statutory right to a suspension of the ordinance pending the public's vote. The stay entered by the Appellate panel now supersedes this popular expression of

self-government simply because some Hoboken landlords prefer that Ordinance Z-88 should govern the economic relations with their tenants.

In other words, this stay comes at the expense of the voting rights of the people to adopt appropriate legislation on their behalf, while at the same time giving only economic benefits to the Intervenor. In short, a stay would harm plaintiffs more than it would benefit defendants. See Nat'l Reprographics, Inc. v. Strom, 621 F. Supp. 2d 204, 230 (D.N.J. 2009).

Finally, that Plaintiffs have the better argument on the equities is underscored by the facts and procedure in this case. Plaintiffs timely filed referendum petitions to block Ordinance Z-88. They timely commenced this action (in early May 2011), and Plaintiffs followed all the orders of the Court, unlike Defendants who had to be ordered into compliance by way of a proceeding to enforce litigants' rights, heard by both the trial court and an appellate panel. Moreover, both the trial court and that appellate panel provided detailed explanations of why the Plaintiffs' efforts to exercise democratic voting rights was well-founded, and why Defendants' and Intervenor's obstructionism was misplaced. In addition, the ballots are printed. Since this dispute began in March 2011, this case has received the attention of three trial judges and five appellate

judges, all of whom facilitated this public question going to the ballot and being presented to the voters, and the suspension of the ordinance pending the election. The most recent motion panel's decision defies all these earlier efforts to ensure that voters have the right to either approve or reject Ordinance Z-88 at the ballot at the November 8, 2011 general election.

As such, equitable factors counsel that the stay should have been denied, and that the trial court's order should be reinstated.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to vacate the stay issued by the Appellate Division in No. M-47-11 should be granted. Alternatively, the Court should hold that the stay in M-47-11 should be modified or clarified to hold that the voters of Hoboken will be allowed to vote on the rent control referendum during the November 8, 2011 general election.

Respectfully submitted,

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