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Attorneys for Plaintiffs

**Theodora Lacey, Reshma Khan, Jeremy
Lentz, Teji Vega, and Loretta Weinberg,**

Plaintiffs,

v.

**Doug Ruccione, in his official capacity
as the Acting Township Clerk for the
Township of Teaneck, and John Hogan,
in his official capacity as the County
Clerk for the County of Bergen,**

Defendants.

Superior Court of New Jersey
Law Division, County of Bergen

Docket No: BER-L-_____-21

Verified Complaint

PRELIMINARY STATEMENT

1. The Committee of the Petitioners bring this action in lieu of a prerogative writ against Doug Ruccione, the Acting Clerk for the Township of Teaneck (“Teaneck”), because of his attempt to deny the citizens of Teaneck their right to participate in the democratic process.

2. The Committee is seeking to add a question to the November 2, 2021 ballot through the direct petition process. The question, if passed, will amend the Teaneck municipal charter to move its non-partisan elections from May to November.

3. The Committee seeks three results: (i) a declaration that Ruccione’s rejection of the Committee’s Direct Petition violates N.J.S.A. 40:69A-25.1; (ii) an order in lieu of prerogative writ directing Ruccione to certify as sufficient the Committee’s Direct Petition and that same be put on the November 2, 2021 ballot; and (iii) a declaration that Ruccione’s failure to process the Committee’s Direct Petition constitutes a deprivation of the Committee’s rights to substantive and procedural due process as well as its statutory right of initiative, thus violating the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

THE PARTIES

4. Plaintiff, Theodora Lacey, is a resident of the Township of Teaneck and a registered voter thereof. She is a member of the Committee of Petitioners and a signer of the Direct Petition that is the subject of this action.

5. Plaintiff, Reshma Khan, is a resident of the Township of Teaneck and a registered voter thereof. She is a member of the Committee of Petitioners and a signer of the Direct Petition that is the subject of this action.

6. Plaintiff, Jeremy Lentz, is a resident of the Township of Teaneck and a registered voter thereof. He is a member of the Committee of Petitioners and a signer of the Direct Petition that is the subject of this action.

7. Plaintiff, Teji Vega, is a resident of the Township of Teaneck and a registered voter thereof. He is a member of the Committee of Petitioners and a signer of the Direct Petition that is the subject of this action.

8. Plaintiff, Loretta Weinberg, is a resident of the Township of Teaneck and a registered voter thereof. She is a member of the Committee of Petitioners and a signer of the Direct Petition that is the subject of this action.

9. Defendant, Doug Ruccione, is named in his official capacity as Acting Clerk for the Township of Teaneck, a position that he has held since 2019. His principal place of business is the Teaneck Township Municipal Building, located at 818 Teaneck Road, Teaneck, NJ 07666.

10. Defendant, John Hogan, is named in his official capacity as County Clerk for the County of Bergen, a position that he has held since 2012. His principal place of business is 1 Bergen County Plaza, Hackensack, NJ 07601. Defendant Hogan is named herein as a nominal defendant due to the nature of the relief sought by Plaintiffs, as he is responsible for the printing of ballots at issue.

FACTUAL BACKGROUND

11. After a series of meetings starting on or about April 29, 2021, a group of grassroots organizers coalesced to form a joint effort to consolidate the Township of Teaneck's elections through a public question to be placed on the ballot.

12. Currently, Teaneck holds its non-partisan municipal elections in May every two years, and simultaneously holds annual primary elections in June and the general election in November.

13. On May 18, 2021, One Town One Vote ("OTOV") was formally organized and announced to the Teaneck community. OTOV consists of the Committee of Petitioners as well as other local organizers and activists.

14. On May 26, 2021, Ron Schwartz, an organizer with OTOV, reached out to Ruccione in his capacity as Township Clerk to schedule a meeting. Schwartz was seeking to get Ruccione's input on a draft copy of the petition as well as obtain information about the process for collecting signatures, the number of signatures required, and the details for submitting the signatures and petitions.

15. Notably, Schwartz included a copy of the draft petition in his e-mail to Ruccione and asked that Ruccione review it in advance.

16. On May 27, 2021, Ruccione responded and told Schwartz that the Township Attorney, John L. Shahdanian II, was reviewing the draft petition and suggested that he and Shahdanian meet the representatives of OTOV via Zoom to discuss.

17. On May 28, 2021, Schwartz responded to Ruccione and asked for confirmation that the required number of signatures was 791, which Schwartz had calculated from 10% of the voter turnout in 2019 for the General Assembly elections. Ruccione responded shortly thereafter and confirmed that he calculated the same number of signatures required as Schwartz but noted that it was not clear whether 10% of 2019 turnout was the correct number. He indicated that the Shahdanian was going to be looking into the issue.

18. On June 16, 2021, representatives of OTOV, as well as its counsel, met with Ruccione, Shahdanian, and William F. Rupp of Shahdanian's law office at the Teaneck Municipal Building to discuss the petition efforts.

19. On June 26 and 28, 2021, Schwartz sent Ruccione two e-mails summarizing the meeting, stating, in pertinent part:

1-You agreed that the 10% figure under the statute for the amount of signatures needed to put the initiative on the ballot was 791;

2-Although the meeting had been called initially for you to give comments and suggestions regarding the live and electronic petitions being used by our group, the town attorney indicated that you could not give us any legal advice in this regard;

3-You advised that the latest date to get the petitions to the county clerk for placement on the ballot would be the end of August;

4-We advised you that we were obtaining both electronic and live signatures on our petitions in accordance with the Governor's executive order;

5-We agreed that the last date to obtain electronic signatures would be July 4, 2021. We indicated we would close down our electronic voting link on July 3;

6-You asked a question regarding how electronics signatures could be verified since you had never done this before. Our response was that the executive order did not require a verification of the signatures, only verification that there is a registered voter by that name at the address provided. We indicated also that we verified by requiring the signer to provide a valid email address;

7- Bill Rupp asked if the 25% requirement contained in assembly bill 5404, passed in 2019, applied to this petition rather than the 10-15% of NJSA40:69A-184. We responded that that amendatory statute only pertained to a change in the whole form of government from non-partisan to partisan and not to a mere change in the date for election of the council. Scott Salmon indicated that that statute had not even been raised by any of the parties in the litigation that had followed a similar successful initiative in Ridgewood last year.

8-You requested that we file our petitions as early as possible as you anticipated that your office would have a lot of work to do with the CCA petition coming in as well. We responded that we planned on filing shortly after the July 4th holiday.

See Exhibit A.

20. Ruccione responded to the e-mails on June 28, 2021, by confirming receipt of the e-mail and thanking Schwartz for sending the summary.

21. Despite a discussion regarding: (1) OTOV's use of electronically signed petitions; (2) a request by OTOV that Ruccione provides any policies related to those electronically signed petitions; (3) the fact that it had already been announced that Governor Phil Murphy was ending the Public Health Emergency caused by the COVID-19 pandemic as of July 4, 2021; and (4) confirmation that OTOV did not plan to submit its petition until **after** July 4, 2021, Ruccione failed to inform OTOV that he was planning on refusing to accept any electronic signatures signed prior to July 4, 2021, but submitted after that date.

22. As such, OTOV continued collecting electronic signatures via HelloSign.com, a website that provides an audit trail to ensure electronic signature verification and authenticity. Alongside these efforts, OTOV collected handwritten signatures by pen and ink, which is the "traditional" way of collecting signatures.

23. On July 9, 2021, the Committee submitted its petition to Ruccione, which included 1,350 signatures, including 1,125 handwritten signatures and 225 electronic signatures (the "Initial Petition"). See Exhibit B.

24. Prior to the submission of the petition, OTOV reviewed every signature and matched the names to the most recently available database of voter records. The Committee provided an Excel spreadsheet to Ruccione along with the Initial Petition for ease of reference, so there would be no guesswork involved as to which registered voter a signature was coming from, as the list came with the submission.

25. Included in this spreadsheet was each individual's full name, voter identification number, and address, for each registered voter that had signed the corresponding petition sheet.

26. On July 29, 2021, Ruccione issued a Notice of Insufficiency to the Committee (the "Initial Notice"), which stated that the Initial Petition was rejected as it: (1) had an insufficient number of signatures, as the relevant statute required 25% of the total votes cast in the 2019 General Assembly election, not the 10% that had been previously discussed; and (2) did not contain a proposed ordinance alongside the petition, which Ruccione stated was required. See Exhibit C.

27. Ruccione stated, for the first time, that the number of signatures required was 1,977, not 791, as he alleged that a different standard applied.

28. Moreover, Ruccione stated that all 225 electronic signatures were invalid, as they had been submitted after the expiration of Governor Murphy's Public Health Emergency even though all had been signed prior to that date. He further stated that of the 1,125 handwritten signatures, only 953 were valid, with the remainder having been rejected as they allegedly came from either non-registered voters; registered voters who are not residents of Teaneck; "contained information that did not correspond with the voter's registration information;" were not fully completed; contained illegible information; or were duplicate signatures.

29. Included among the rejected signatures was Schwartz, previously identified as a lead organizer for OTOV, who met with Ruccione on June 16, 2021, and exchanged e-mails with Ruccione thereafter. Upon review, the information provided by Schwartz in signing the petition is an exact match to the voter records.

30. Additionally, there were other egregious and improper rejections, such as Annekee Brahver-Keely, who is registered solely under her maiden name, Annekee Brahver. Ruccione also rejected individuals who signed their name using hypocorisms, i.e., Micki Shilan, who is registered as Maxine Shilan, even though all other information provided matched to the registered voter. There were additional rejections for individuals who simply had sloppy signatures, even though all other information matched. Ruccione even rejected signatures that contained all the requisite information and a signature that appears to match voter records, apparently for the reason that information was placed in the wrong section on the petition sheet.

31. Additionally, Ruccione appears to have rejected signatures on account of slight differences with the voter rolls, such as the clarity of certain letters and the physical length of signatures. See Exhibits D and E.

32. On August 9, 2021, the Committee submitted an amended petition that contained 2,066 signatures, in addition to the 1,350 that had been previously submitted (the “Amended Petition”), for a total of 3,416 signatures. That amount constitutes nearly 45% of the total number of votes cast in the last election in which members of the General Assembly were elected. See Exhibit F.

33. Alongside the Amended Petition, the Committee also submitted a letter from counsel refuting each of the reasons identified in the Initial Notice and asked that Ruccione reconsider his position, most notably as his incorrect decision to require a draft ordinance. See Exhibit G.

34. On August 13, 2021, Shahdanian contacted counsel for the Committee and requested additional time for Ruccione to complete his review of the Amended Petition, as he did not believe he would be able to finish in the time allotted by law. Shahdanian asked that the Committee provide Ruccione until August 18, 2021, but the Committee was, at that time, only willing to provide until August 17, 2021.

35. After a subsequent request on August 16, 2021, to again extend the time to respond to August 18, 2021, the Committee agreed to allow Ruccione the extra days, even though they were not required to do so.

36. On August 17, 2021, prior to the expiration of the extended period of time to review, Ruccione sent the Committee a second letter rejecting the Amended Petition (the “Second Notice”). See Exhibit H. Ruccione stated that he had only reviewed 655 out of the 2,066 newly submitted signatures and was able to validate 482 of them. Combined with the previously validated 653 signatures, the total number of valid signatures—according to Ruccione—is now 1,135.

37. Ruccione stated that he would continue to review signatures and would provide an updated number in the coming days.

38. However, Ruccione stated that despite the review being incomplete, he was still rejecting the Amended Petition anyway as it relies on the wrong statute, N.J.S.A. 40:69A-25.1—which Ruccione had previously indicated was applicable here—and did not include a draft ordinance.

39. Ruccione further maintained that N.J.S.A. 40:69A-25.1 only applies to changes from non-partisan to a partisan elections and vice versa and that the applicable statute is N.J.S.A. 40:45-7.1, which requires an ordinance to be provided.

40. As such, Ruccione stated that he would be again rejecting the petition and it would not be placed on the ballot for the November 2, 2021 election.

41. The County Clerk has indicated to the Committee that he intends to finalize the ballot by September 1, 2021 and send the ballots to the printer no later than September 8, 2021.

COUNT I WRIT OF MANDAMUS

42. Plaintiffs restate all preceding statements as though fully set forth herein.

43. Defendant Ruccione has a mandatory duty to process Plaintiffs' Direct Petition in accordance with N.J.S.A. 40:69A-25.1.

44. By refusing to certify the Amended Petition, despite the Committee plainly complying with all requirements of N.J.S.A. 40:69A-25.1, Defendant Ruccione has abused his authority and failed to perform his mandatory obligation to process Plaintiffs' Direct Petition.

WHEREFORE, the Plaintiffs demand relief against Defendants: (i) adjudging and declaring that Ruccione's rejection of Plaintiffs' Direct Petition violates N.J.S.A. 40:69A-25.1; (ii) issuing an order in lieu of prerogative writ directing Defendant Ruccione to certify as sufficient Plaintiffs' Direct Petition and that same be put on the November 2, 2021 ballot; and (iii) granting Plaintiffs all other legal and equitable relief as this Court may find just and proper.

COUNT II NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2

45. Plaintiffs restate all preceding statements as though fully set forth herein.

46. Pursuant to N.J.S.A. 40:69A-25.1(a)(1), the question of adopting an alternative plan of government or amending a municipal charter to allow for non-partisan elections to be held in conjunction with the November general election may be initiated by the voters. This language is the quintessential, substantive "rights-creating" statute that the New Jersey Civil Rights Act is intended to protect.

47. In accordance with N.J.S.A. 40:69A-188, a petition "may be amended at any time within ten days after a notice of insufficiency . . . by filing a supplementary petition upon additional papers." Plaintiffs properly amended their Initial Petition on August 9, 2021 in compliance with the statutory scheme listed.

48. On August 17, 2021, Defendant Ruccione rejected the Amended Petition.

49. By ignoring explicit statutory guidance as well as direct legal precedent and by utilizing flawed methodology to review and reject signatures, Defendant Ruccione acted in an arbitrary and capricious manner.

50. Instead of following the guidance of our Legislature and Supreme Court to liberally construe all such petitions to allow the people to participate in our democracy, Defendant Ruccione reviewed the Amended Petition as narrowly as possible and rejected signatures even when there was no basis to do so.

51. Absent judicial intervention, Defendant Ruccione's actions will prevent Plaintiffs' Amended Petition from being considered by the voters of Teaneck.

52. By denying Plaintiffs their statutory right of initiative, Defendant Ruccione has violated N.J.S.A. 10:6-2(c) authorizing "[a]ny person who has been deprived of . . . any substantive rights . . . secured by the . . . laws of this State . . . [to] bring a civil action for damages and other injunctive relief."

53. By denying Plaintiffs their statutory right of initiative, Defendant Ruccione has disenfranchised the 3,416 registered voters of Teaneck who signed the petition.

WHEREFORE, the Plaintiffs demand relief against Defendant: (i) adjudging and declaring that Ruccione's rejection of Plaintiffs' Direct Petition constitutes a violation of Plaintiffs' right to substantive due process as well as its statutory right of initiative, thus violating N.J.S.A. 10:6-2(c); (ii) granting attorney's fees pursuant to N.J.S.A. 10:6-2(f); and (iii) granting Plaintiffs all other legal and equitable relief as this Court may find just and proper.

DESIGNATION OF TRIAL COUNSEL

Scott D. Salmon, Esq. of the law firm of **JARDIM, MEISNER & SUSSER, P.C.**, attorneys for Plaintiffs, is hereby designated as trial counsel under R. 4:25-4.

N.J. RULE 4:5-1 CERTIFICATION

I certify that I am not aware of any other pending action in any court or pending arbitration proceeding or that any other action or arbitration is contemplated.

Dated: August 19, 2021

JARDIM, MEISNER & SUSSER, P.C.

/s/ Scott D. Salmon, Esq.

Scott D. Salmon, Esq.

Attorneys for Plaintiffs

VERIFICATION OF THEODORA LACEY

I, Theodora Lacey, of full age, do hereby certify as follows:

1. I am a plaintiff and a member of the Committee of Petitioners in the above-referenced action and have personal knowledge of the facts and circumstances giving rise to this action.
2. I have read the contents of the annexed Complaint and state that they are true to the best of my knowledge, information, and belief.
3. Pursuant to Rule 1:4-7, I intend this certification to constitute a verification of the Complaint in this matter.
4. I hereby certify that the foregoing statements made by me are true. I am aware that if any such statement is willfully false, I am subject to punishment.

Dated: Aug 19, 2021


Theodora Lacey Aug 19, 2021 10:57 EDT

Theodora Lacey

Verified Complaint - Please Sign

Final Audit Report

2021-08-19

Created:	2021-08-19
By:	Scott Salmon (ssalmon@jmslawyers.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA0eDCoav6YvxK9dL-Ob4WZ-ILCzSbmnWa

"Verified Complaint - Please Sign" History

-  Document created by Scott Salmon (ssalmon@jmslawyers.com)
2021-08-19 - 1:21:40 PM GMT- IP address: 72.79.55.82
-  Document emailed to Theodora Lacey (theolacey11@gmail.com) for signature
2021-08-19 - 1:22:44 PM GMT
-  Email viewed by Theodora Lacey (theolacey11@gmail.com)
2021-08-19 - 1:22:51 PM GMT- IP address: 66.102.8.25
-  Document e-signed by Theodora Lacey (theolacey11@gmail.com)
Signature Date: 2021-08-19 - 2:57:41 PM GMT - Time Source: server- IP address: 69.117.176.201
-  Agreement completed.
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