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September 12, 2021

Via ecourts

Hon. Jeffrey Jablonski, A.J.S.C.
Hudson County Superior Court

**Re: Motion to Finalize the Certification List of Candidates for the
Hoboken Non-Partisan Municipal Election
Docket No. HUD-L-3565-21
Telephonic hearing 10:00am, September 13, 2021**

Dear Judge Jablonski:

This Firm represents Emily Jabbour, Jim Doyle, and Joe Quintero, three Hoboken residents who are running as a slate for the positions of Councilmember At Large of the Hoboken City Council in the November 2021 election. The three candidates each submitted timely and valid nominating petitions signed by Hoboken residents in numbers well in excess of the 431 signature minimum required of all candidates running for that office. The sufficiency of their petitions, and hence their eligibility to be candidates, were never contested by the City Clerk, who conducted an initial review of all submitted petitions. In addition, the sufficiency of their own petitions was never challenged in any way or at any time – not in the administrative challenge process before the City Clerk, or in this Court.

Voters will find no shortage of choice among the candidates running for Council. Another slate, consisting of Cheryl Fallick, Sheila Brennan, and Paul Presinzano, also submitted petitions. Their petitions, like those of our clients, were also initially found sufficient by the City Clerk and were not challenged in any forum. As such, they will all be on the ballot. A seventh independent candidate, Patricia Waiters, also submitted timely and sufficient petitions to qualify for the ballot, and her submissions were likewise not challenged.

Three other candidates, however, submitted petitions that were deficient as a matter of fact and as a matter of law. Cindy Wiegand, Ian Rintel, and Manuel Rivera, each filed timely petitions, but each fell short of the 431 minimum. These deficiencies were identified through the Clerk's review of their submissions and when Vijay Chaudhuri, the campaign manager for the slate including our clients, Jabbour, Doyle, and Quintero, called to the Clerk's attention several petitions signed by people who had signed an excess number of petitions.

For the reasons that follow, the Clerk's determination that the petitions of Wiegand, Rintel, and Rivera, were deficient, is amply supported by the record, and should not be disturbed.

FACTS

A brief overview of the applicable law governing petitions for nonpartisan municipal elections is appropriate at the outset of this factual recitation. The Division of Elections, in the New Jersey State Department, annually prepares a Chronological Election Timeline ("Timeline") describing important deadlines applicable to each election. The Timeline applicable to the 2021 general election was submitted as Exhibit A to Jerry Lore's certification, dated September 10, 2021 ("Lore Cert."), already on file with the Court. The Timeline is also available at <https://nj.gov/state/elections/assets/pdf/chrons/2021-chron-general-election-0623.pdf>. The Timeline version submitted by Lore is dated February 24, 2021, and the version on the website is dated June 23, 2021. But the relevant dates at issue in this case are the same in both versions, and thus, all candidates and officials knew of them, and were charged with knowing them, over six months ago.

The State-prepared Timeline illustrates that as applied to nonpartisan municipal elections, there are two statutory frameworks to observe: those in N.J.S.A. 40:45-5 et seq. and those in N.J.S.A. 19:13-1 et seq. The provisions in Title 40, called the Uniform Nonpartisan Election Law, are designed specifically to regulate nonpartisan elections in municipalities that conduct them, whereas the provisions in Title 19 comprise the rules of general application for to nominating petitions for all public offices. The more specific provisions in Title 40 control over the more general ones in Title 19. "It is a well established precept of statutory construction that when two statutes conflict, the more specific controls over the more general." New Jersey Transit Corp. v. Borough of Somerville, 139 N.J. 582, 591 (1995). This same rule is applied in election statutes governing the rights of candidates and voters. Save Camden Pub. Sch. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 494 (App. Div. 2018) (applying Somerville rule to alleged conflicts in statutes governing board of education composition and elections).

As reflected in the Timeline and in the concededly applicable statutes, the deadline for submitting petitions was August 30, 2021. While there is a minimum number of signatures, a candidate is not limited in the number of petition signatures he or she submits. Nor is the candidate obligated to wait until the last possible date to submit a petition, but can submit as

early as he or she wishes. After that date, the submission of petitions from any new signers is prohibited. N.J.S.A. 40:45-9(d) (“After the last day for the filing of the original petition, no amendment may be made for the purpose of adding the name of any person who did not sign the original petition”).

Upon receipt of the petitions, the municipal clerk is obligated to conduct a diligent and comprehensive initial review of all signatures submitted, to determine their validity. N.J.S.A. 40:45-9(c) (“he shall examine [the filed petition papers] and ascertain whether or not it conforms to the provisions of this act and, where applicable, the provisions of the general election laws”).¹ Here, the Municipal Clerk sent electronic and mail correspondence to Wiegand, Rintel, and Rivera advising them of their petitions’ deficiencies on September 3, 2021. (Lore Cert., Exh. C).

For certain signatures disqualified by the Clerk, however, a candidate retains the opportunity to attempt to “cure” the defect. Not all defects are curable. By statute, the cure must be completed by the 61st day before the election, here, September 2, 2021. N.J.S.A. 40:45-9(d); see also Timeline (Lore Cert., Exh. A), September 2 entry. The statute states:

d. Where the nominating petition, or any affidavit or affidavits thereto is found defective, the candidate named therein may file such amendment or amendments as may be necessary to eliminate the defect, whether of matters of substance or form, and when so amended the effect shall be as if the petition had been originally filed in the amended form. After the last day for the filing of the original petition, no amendment may be made for the purpose of adding the name of any person who did not sign the original petition, nor shall any amendment be made at any time for the purpose of changing the name of the candidate or the office for which he was to be nominated. No amendment to a nominating petition shall be made and filed less than 61 days before the election.

[N.J.S.A. 40:45-9(d)].

¹ Candidate Rintel has argued that the “apparent conformity” rule of N.J.S.A. 19:13-10 applies here (see Lore Cert., Exh. E, p. 9), but the contention lacks merit. The city clerk’s review obligations for nonpartisan petitions, set forth in N.J.S.A. 40:45-9(c), is more stringent than what is required by N.J.S.A. 19:13-10. As more specific statutes control more general ones, the Title 40 provisions apply here. Even so, the Clerk’s conducted a review for conformity, and as a product of that process, disqualified dozens of Rintel’s signatures.

The September 2 deadline is the same regardless of when the candidate make his or her filing; thus, for candidates who wait until the last day to file, they are afforded three days to correct their deficiencies.

The “curing” process can manifest itself in many ways. Again, while the addition of new signatures is forbidden, a candidate whose petition is disqualified may, for example, provide the clerk with documentary proof that a signer is actually a registered voter, notwithstanding their omission from the voter rolls used by the clerk (e.g., very recent registrants whose voter registrations has not been processed by the commissioner of registration). Or the candidate may show that a petition signer, usually a woman, recently changed her surname due to marriage or divorce and the change was not recorded in the voter rolls, but that the person at issue is a legitimately registered voter. In another example, if there is illegible handwriting the city clerk couldn’t read, the candidate and/or signer may supplement the record to show the validity of the signature. See generally Chaudhuri Cert., submitted herewith.

In response to the deficiencies identified by the Clerk, Wiegand submitted materials to “correct fourteen petitions” by close of business on September 9, 2021, after the statutory deadline, but within the deadline as misunderstood by the Clerk and communicated to all candidates.

Cumulative to the above-described process of city clerk review and the curing of clerk-identified deficiencies, other statutes provide a means to challenge petitions submitted. N.J.S.A. 19:13-10 allows “objections” to be lodged with the Clerk to nominating petitions or their signatures, and gives candidates an opportunity to respond to them. Clerks must make final decision on the sufficiency of petitions and their signatures by the ninth day after the petitions are due, here, September 8, 2021. N.J.S.A. 19:13-11; see also Timeline (Lore Cert., Exh. A), Sept. 8 entry. The speed of this process is no way unreasonable: further entries in the Timeline itself shows that deadlines for printing the ballot proofs and mailing out mail-in ballots to voters follow quickly on the heels of these deadlines. By way of example, September 13 is the statutory deadline for preparing and exhibiting the printer’s proof for ballot design. And September 18 is the deadline to being mailing out the mail-in ballots. See id.

Here, Mr. Chaudhuri submitted challenges to several signatures. At issue here are his challenges based on the limitation found in N.J.S.A. 40:45-9(b), which provides that no person may sign “more certificates for candidates for that office than there are places to be filled for the office.” As applied here, with only three at-large seats at stake on Election Day, any person who signed four or more petitions must have their signatures disqualified. The Clerk should have noticed these defects, but didn’t, leading to Mr. Chaudhuri’s challenge.

Based on his review of copies of the petitions in his records and obtained from the City Clerk, Mr. Chaudhuri challenged 11 signatures submitted by Cindy Wiegand, 11 signatures

submitted by Ian Rintel and 15 signatures submitted by Manuel Rivera. Of note, unlike rejected signatures that can be “cured” with additional evidence of a voter registration card or a change of name or legibility, there is no ability, regardless of a candidate’s time or resources, to cure this kind of defect.

Thus at the end of this processes, the candidates stood as follows:

Wiegand submitted 519 petitions. Of those, 421 were initially accepted by the clerk. “Cure” documentation, submitted tardy under the plain language of the statue, but within the Clerk’s wrongly-extended deadline, restored 14 signatures to that latter number. However, the Clerk also realized that of the initial batch of signatures, 11 should be justly stricken because the signers had signed four or more nominating petitions, above the legal limit. Wiegand was left with 424 valid signatures at the end of the process. (Lore Cert., ¶¶15, 20, 24).

Rintel submitted 508 petitions. Of those, 409 were initially accepted by the clerk. Rintel received this information no later than 5:39pm on September 3, 2021, the moment he replied to it. (Lore Cert., Exh. E, p. 1). There is no evidence of Rintel taking any action to cure the petitions for more than five days, when Rintel wrote to the clerk at 7:04pm on September 8, 2021 (Lore Cert., Exh. E, p. 3), complaining about inadequate time to complete a task that the law only gives him three days to complete. He did not submit any cured petitions by the extended deadline he was provided. Adding to this, the Clerk also realized that of these signatures, 11 should be justly stricken because the signers had signed four or more nominating petitions, above the legal limit. Rintel was left with 398 valid signatures at the end of the process. (Lore Cert., ¶¶ 15, 26-28).

Rivera submitted 431 petitions. Of those, 409 were initially accepted by the clerk. There is no evidence suggesting Rivera did not receive the September 3 email communicating the deficiency. Nevertheless, he made no effort to cure any of the signatures, admitting that he was “unable to cure this nominating petition” even within the extended deadline. (Lore Cert., Exh. F, p. 2). Thus, he was left with 409 signatures, and his concession ends the issue. In any event, it appears the Clerk did not consider Mr. Chaudhuri’s challenge based on excessive petition signing, which means that his final number should have been 15 less, or 394. (See Lore Cert., ¶¶ 15, 31-33).

LEGAL ARGUMENT

The jurisdictional basis for the Clerk’s petition is not specifically articulated in the papers on file. Of course, the Court has the power to review municipal decisions as a proceeding in lieu of prerogative writs, and possesses general equity powers. In addition, N.J.S.A. 19:13-12 grants the Court power to review clerk decisions on petitions.

Regardless of the jurisdictional basis for the Court hearing of this case, it is clear that when the Court is reviewing a municipal clerk’s actions regarding legal petitions submitted to

his office, “[t]he judicial role is rather limited to a review of the clerk's actions and to intervene only when those actions appear to be arbitrary and unreasonable, as demonstrated by the evidence and applicable law. Unless arbitrary abuse of power is evident, the discretion of the clerk controls...” D'Ascensio v. Benjamin, 142 N.J. Super. 52, 55 (App. Div.), certif. denied, 71 N.J. 526 (1976).

Based upon that standard – or indeed even a plenary one – the decisions of the Hoboken Municipal Clerk to reject the nominating petitions of Wiegand, Rintel, and Rivera, should be affirmed.

In this case, there were admittedly short-staffing issues that slowed the Clerk’s initial review, and a great deal of wrong information was given out concerning many of the applicable deadlines (Lore Cert., ¶¶ 13, 14, 17, 20). However, there is no dispute that all the candidates received the same information, and there was no favoritism one way or the other among the candidates.

Despite these errors, however, the evidence of record shows that there is no set of facts in which candidates Wiegand, Rintel, or Rivera could be said to have submitted valid nominating petitions with a sufficient number of signatures. To the extent that cure periods did not conform to the statutes, the clerk’s error gave candidates more time – not less – to cure or otherwise argue against signature disqualification. Nor were any of these candidates deprived of the time or ability to lawfully “cure” petitions in some forum, whether before the Clerk or this Court. Of note, as discussed above, a candidate who chooses to file petitions on the deadline date ordinarily has three days to cure defects that are curable (this year, between August 30 and September 2). If anything, the Clerk’s mistakes gave the candidate more time, not less, to cure the defects. Indeed, it was a full seven days longer than the law allows.

As to **Wiegand**, the Clerk’s initial review showed that 421 of her 519 signatures were valid (i.e., 98 were disqualified). However, this number was calculated before the Clerk realized that at least 11 of the 421 accepted signatures also suffered from a fatal and noncurable flaw: the signer had signed four or more nominating petitions in the aggregate, contrary to N.J.S.A. 40:45-9(b). As to those signatures, no amount of time or resources can overrule the fact that those signatures are void ab initio. While some disqualified signatures, such as those dealing with missing voter registrations, name changes, or legibility, can be cured with appropriate documentation, there is simply no ability to cure excess signatures that are contrary to N.J.S.A. 40:45-9(b). Because of the Clerk’s deadline mistakes, he inadvertently gave candidates more time than the law allows to cure voided signatures. Indeed, Wiegand did cure 14 of the initial batch of 98 disqualified signatures. However, after the signatures were totaled, Wiegand only had a total of 424 signatures, seven short of the deadline.

Rintel’s situation is equally plain. Rintel submitted 508 petitions. Of those, 409 were initially accepted by the clerk (i.e., 99 were disqualified). Rintel received this message no later

than 5:39pm on September 3, 2021, the moment he replied to it. Rintel apparently took no action to cure the petitions for at least five days, when Rintel wrote to the clerk complaining that a religious holiday, slated to end 12 minutes after he sent his September 8 email, impaired his ability to attempt to cure petitions. He did not submit any cured petitions by the extended deadline he was provided. But like Wiegand, 11 of Rintel's signatures had an additional deficiency: they were void because the signers had signed four or more nominating petitions, above the legal limit. Rintel was left with 398 valid signatures at the end of the process, also short of the statutory minimum.

So too is the situation with **Rivera's** petition. Despite the fact that he had seven days to cure his signatures, Rivera made no effort to cure any of the signatures, and has conceded the point. The fact that the Clerk apparently did not consider Mr. Chaudhuri's challenge based on excessive petition signing, only lowers his number further, and no administrator or court could find otherwise.

Critically, these results could not be changed regardless of whether the Clerk had timely examined the petitions and followed all statutory deadlines and requirements, or whether the Clerk acted as he did, or even if this Court were reviewing the matter in the first instance under N.J.S.A. 19:13-12. For example, in Wiegand's case, the undisputed evidence showed that her initial submission had 98 deficiencies for reasons other than excessive petition signing. Wiegand, with the benefit of more time than the law allows, cured 14 signatures. However, what she did not cure – and could not cure – were the signatures of the 11 excessive petition signers. This left her short of the statutory minimum.

No party before the Court disputes the validity of the Legislature's decisions to impose a minimum-signature requirement of 1% of the registered voters or its decision that a voter can only sign a nominating petition for as many candidates as there are seats to be filled. Indeed, such an argument would be futile. Am. Party of Texas v. White, 415 U.S. 767, 782 (1974). The consequences to every prospective candidate of failing to file nominating petitions with a sufficient number of valid signatures are clear: such a candidate is disqualified and is not on the ballot. Here, the law is that only candidates with 431 or more valid signatures are entitled to appear on the ballot. This Court should enforce that law as written. Regardless of errors before the clerk that operated to give candidates more time than contemplated to cure errors, the point is simple: Wiegand, Rintel, and Rivera each failed to cure a sufficient number of signatures to qualify.

Under the abuse of discretion standard applicable here, the determination of the Clerk to exclude Rivera, Rintel, and Wiegand should therefore be affirmed. Even if this Court were reviewing the matter on a plenary basis, the inescapable commands of the statute set a minimum number of signatures, and a requirement that these signatures be collected from (1) validly registered voters who (2) have not signed more petitions than the law allows. The evidence of record shows that in any scenario, Wiegand, Rintel, and Rivera did not comply

with their legal obligations to qualify for the ballot. The field of candidates for the three open at-large council positions should be limited to the seven that have submitted petitions,² and should exclude Wiegand, Rintel, and Rivera, who did not adhere to the requirements to get on the ballot.

CONCLUSION

For the foregoing reasons, the determination of the Hoboken City Clerk to disqualify the petitions of Rivera, Rintel, and Wiegand, and to exclude them from the November 2021 ballot, should be affirmed.

Respectfully submitted,

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² With seven candidates for three seats, all nonpartisan, the voter-choice-preservation rule articulated in N.J. Democratic Party v. Samson, 175 N.J. 178 (2002), does not apply here.