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LLC

REPLY TO: PHILLIPSBURG OFFICE

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September 10, 2012

Clerk, Superior Court of New Jersey  
Hudson County Courthouse  
583 Newark Avenue, Room G9  
Jersey City, New Jersey 07306

RE: JAMES FARINA, RMC, CLERK OF THE CITY OF HOBOKEN V.  
ANNE-MARIE PELLETIER, MARY ALEXANDRA VAUGHAN,  
JULIA MacDERMOTT, CONNIE CAPPOLA, AND JOSEPH E.  
MURRAY

Dear Sir/Madam:

Enclosed herewith please find an original and two (2) copies of the following documents:

1. Order to Show Cause;
2. Letter Brief;
3. Verified Complaint; and
4. Certification of Service

Please charge our firm's Superior Court Account No.: 141889 the filing fees associated with same.

Thank you.

Very truly yours,  
FLORIO PERRUCCI STEINHARDT & FADER

Mark Peck

MJP/sim  
Encl.

cc: Honorable Peter J. Bariso, J.S.C.  
Charles Gormally, Esq. via facsimile and Federal Express  
Flavio Komuves, Esq. via facsimile and Federal Express

RECEIVED  
CUSTOMER SERVICE TEAM

SEP 10 2012

SUPERIOR COURT OF NEW JERSEY  
COUNTY OF HUDSON  
CIVIL DIVISION #3

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Mark R. Peck, Esq.  
Attorneys for Plaintiff, James J. Farina,  
Clerk of the City of Hoboken

JAMES J. FARINA, RMC, CLERK :  
OF THE CITY OF HOBOKEN, :

Plaintiff, :

v. :

ANNE-MARIE PELLETIER, :  
MARY ALEXANDRA VAUGHAN :  
JULIA MacDERMOTT, CONNIE :  
CAPPOLA and JOSEPH E. :  
MURRAY :

Defendants. :

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUDSON COUNTY  
DOCKET NO.

Civil Action

**ORDER TO SHOW CAUSE**

This matter having been initiated by the filing of a Verified Complaint in Lieu of Prerogative Writ by James J. Farina, RMC, Clerk of the City of Hoboken ("Clerk") seeking a determination that he be authorized to formulate a public question based upon a petition submitted by the Defendants, Anne-Marie Pelletier, Mary Alexandra Vaughan, Julia MacDermott, Connie Cappola and Joseph E. Murray ("Petitioners"); and

**IT FURTHER APPEARING**, that the Clerk must present the Hudson County Clerk with the form of the public question not later than September 17, 2012, and accordingly the Clerk seeks an injunction staying the printing of ballots by the Hudson County Clerk, until such time as this matter is decided by the Court; and

**IT FURTHER APPEARING** that this matter involves issues of public policy and public importance and that the matter before this Court is primarily a matter of legal interpretation where the facts are not in dispute, and which does not require further discovery and is therefore ready for hearing by the Court and that it is in the best interests of the parties and the public that this matter be heard and resolved in a timely manner; and

For other good reasons shown, it is on this \_\_\_\_ day of September, 2012,

**ORDERED**, that Defendants/Petitioners show cause before this Court on the \_\_\_\_ day of September, 2012, at 9:00 a.m. or as soon thereafter as the parties may be heard, why Plaintiff's demand that he be authorized to formulate the language of the proposed public question, as well as the language of an interpretive statement to accompany said public question, should not be granted; and

It is further **ORDERED**, that a STAY is issued against the printing of ballots by the Hudson County Clerk until such time as this matter is resolved by the Court; and

It is further **ORDERED**, that Defendants/Petitioners serve upon the Plaintiff's  
counsel, whose name and address appears above, an answer to the annexed verified  
complaint within \_\_\_\_ days after service of the verified complaint exclusive of the date of  
service. If Defendants/Petitioners fail to answer or appear in accordance with R. 4:4-6,  
judgment by default may be rendered for the relief demanded in the complaint.  
Defendants/Petitioners shall file an appearance or answer and proof of service thereof in  
duplicate with the Clerk of the Civil Part of Hudson County, New Jersey, in accordance  
with the Rules of Court; and it is further

**ORDERED**, that Defendants/Petitioners shall file with the Court and serve on Plaintiff, through its counsel, a brief on the merits and other supporting papers, the relief requested by September \_\_\_, 2012. Plaintiff shall have \_\_\_ days after receiving Defendants/Petitioners papers to file any further responses, and thereafter the matter shall be heard for oral argument on the date and time set forth above; and

It is further **ORDERED** that a copy of this Order and Verified Complaint be served upon Defendants/Petitioners personally or by certified mail, return receipt requested, within \_\_\_ days thereof and that same shall constitute proper process under the Rules of Court; and

It is further **ORDERED** that a copy of this Order and Verified Complaint be served upon the Hudson County Clerk personally or by certified mail, return receipt requested, within \_\_\_ days thereof and that same shall constitute proper process under the Rules of Court.

\_\_\_\_\_  
Hon. Peter F. Bariso, Jr., A.J.S.C.

**FPSF** FLORIO PERRUCCI  
STEINHARDT & FADER

Attorneys at Law

LLC

September 10, 2012

**Via Hand Delivery**

Hon. Peter F. Bariso, Jr., A.J.S.C.  
Superior Court of New Jersey - Hudson County  
Hudson County Administration Building  
595 Newark Avenue  
Jersey City, New Jersey 07306

**Re: James J. Farina, RMC, Clerk of the City of Hoboken v. Anne-Marie Pelletier, Mary Alexandra Vaughan, Julia MacDermott, Connie Cappola, and Joseph E. Murray.**

Honorable Judge:

This law firm represents the Clerk of the City of Hoboken ("Clerk") in the above-referenced matter. Kindly accept this letter in lieu of a more formal brief supporting the relief requested by the Clerk in the Order to Show Cause filed on even date.

Briefly, the Defendants Anne-Marie Pelletier, Mary Alexandra Vaughan, Julia MacDermott, Connie Cappola, and Joseph E. Murray ("Petitioners") presented the Clerk with a petition requesting that a public question be placed on the ballot for the voters' consideration at the upcoming general election. Said public question, as presented, reads:

Shall the City of Hoboken continue annual rental increase protections for current residents of rent controlled properties but allow property owners to negotiate rents for vacant apartments and exempt buildings with one-to-four units and condominium units from the rent leveling ordinance by adopting the proposed amendment to Chapter 155 of the Code of the City of Hoboken?

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(212) 792-9070 phone

The Clerk believes that said statement is unclear and misleading, and accordingly wishes to substitute the following language to the voters in lieu of that proposed by the Petitioners:

Shall Chapter 155 of Hoboken's Municipal Code relating to rent control be amended to provide that upon vacancy, buildings containing 4 or fewer units that are now covered by rent control become exempt from the City's Rent Control laws, and that buildings containing more than 4 units that are now covered by Rent Control, upon vacancy, be permitted to charge the new tenant a market rate rent, while continuing to be covered by the other provisions of the City's Rent Control Laws such as the limitations on annual rent increases and other tenant protections?

The Clerk firmly believes that the only true way to ensure the public question is both clear and fair to the voters, is to revise the language of the public question and not to merely add an interpretive statement to a confusing question. The Clerk believes that the only way to protect the rights of the voters would be for the ballot question to be framed in a simple and fair manner as proposed.

If the Court does not permit the Clerk to formulate the public question to provide clarity on the question to better aid the voters, then the Clerk wishes to prepare an interpretive statement to accompany the public question on the ballot in order to clarify the deficiencies in the question.

As the Clerk must submit the form of the public question and interpretive statement to the Hudson County Clerk not later than September 17, 2012, he accordingly seeks an injunction staying the printing of ballots until such time as this matter is decided by the Court.

## LEGAL ARGUMENT

It is the legislative policy of this State that public questions shall be "presented in simple language that can be easily understood by the voter" and that phrasing of the question "shall clearly set forth the true purpose of the matter being voted upon." N.J.S.A. 19:3-6; Bd. of Ed. of City of Hackensack v. City of Hackensack, 63 N.J. Super. 560, 570-71 (App. Div. 1960). Here, the public question as proposed by the Petitioners is confusing and would have the tendency to confuse the voters who will decide the question. Therefore the Clerk seeks to formulate the public question so that the same reflects the intent of the Petitioners while presenting to the voters a question that can be easily understood by the voters.

In the interest of promoting clarity, and in accordance with the public policy of the State, the general election laws also specifically authorize the inclusion of an interpretive statement if a public question to be included on the ballot is not clearly set forth. N.J.S.A. 19:3-6. The general election law provides that:

Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon ... In event that in any statute the public question to be voted upon is so stated as not clearly to set forth the true purpose of the matter being voted upon and no provision is made in said statute for presenting the same in simple language or printing upon the ballots a brief statement interpreting the same, there may be added on the ballots to be used in voting upon the question, a brief statement interpreting the same and setting forth the true purpose of the matter being voted upon in addition to the statement of the public question required by the statute itself.

N.J.S.A. 19:3-6. Accordingly, should the Court not permit the Clerk to formulate the public question, the Clerk seeks to prepare an interpretive statement to accompany the public question.

An interpretive statement "is designed to help voters understand the matter to be voted." See Gormley v. Lan, 88 N.J. 26, 37 (1981) (citing Great Northern R. Co. v. Flaten, 225 N.W.2d 75, 78 (N.D. Sup. Ct. 1974)) (stating that when a public question does not indicate to the voter what is involved, an interpretive statement is appropriate because the voter must be informed as to the choice he or she is voting upon). The inclusion of an interpretive statement is particularly appropriate where the proposed public question is vague or unclear. City of N. Wildwood v. N. Wildwood Taxpayers' Ass'n, 338 N.J. Super. 155, 163 (Ch. Div. 2000). Any such statement "should be brief and written in a manner that aids the voter in making his or her decision." Board Chosen Freeholders v. State, 159 N.J. 565, 582 (1999). It should also be "informative and fair" and "get to the heart of the matter as understood by those who are knowledgeable about it." Gormley, *supra*, 88 N.J. at 37.

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~~If a proposed public question and/or interpretive statement suffer from an~~ ambiguity so fundamental that a voter could not intelligently understand their effect, a court in an appropriate proceeding in advance of the election should grant relief. Kimmelman v. Burgio, 204 N.J. Super. 44, 52 (App. Div. 1985).

The appropriate standard requires the Court to focus on "the basic intent of an interpretive statement – to put the question in simple language that can be easily understood by the voter – and not whether advocates on one side of the issue might prefer that the . . . description be phrased differently to better enhance their political position."

Gormley, supra, 88 N.J. at 37 (internal citations and quotations omitted). In short, the courts "may intervene in such a circumstance only when the interpretive statement is so unclear as to preclude the voters' understanding of the true purpose of the question or so substantially unbalanced as to be biased." Ibid. The Gormley Court elaborated that, under N.J.S.A. 19:3-6:

[T]he statement should serve the function of "interpreting" the public question and "setting forth the true purpose" of same. Obviously there can be substantial dispute as to what the true purpose of an amendment is; indeed there may be many "true purposes." As for the standard to test the adequacy of the "brief statement" in "interpreting" the question, the statute provides no specific guidance, nor are we capable of devising any. The spirit of the statute, however, is simple and clear: the brief statement is to be added to help the voter understand more about the amendment than the public question tells him, for the purpose of aiding him in his decision. To the extent possible within the limits of "a brief statement," it should try to get to the heart of the matter as understood by those who are knowledgeable about it. In some cases . . . the statement of "true purpose" may best be achieved by attempting to state the consequences of both adoption and rejection of the proposed amendment. In other cases some other formulation or standard may better achieve the legislative purpose, namely, supplying the voter with additional important information to help him cast his vote. In some cases it may be simply impossible to get to the heart of the matter with a brief statement.

88 N.J. at 37-38.

In sum, the Court must simply decide "if the language proposed in the interpretive statement is fair and fulfills its explanatory purpose; in other words, will it aid the voters in understanding the question." City of N. Wildwood, supra, 338 N.J. Super. at 164. If so, such a statement is generally appropriate. An interpretive statement is generally inappropriate where it seeks to sway the voters in a particular direction, or where it is

prejudicial or misleading. See Guernsey v. Allan, 63 N.J. Super. 270, 275 (App.Div.1960) (striking interpretative statement from ballot because language used “exceeded the limits of propriety” by “advising the voter on the face of the ballot to cast an affirmative vote”); City of N. Wildwood, *supra*, 338 N.J. Super. at 165.

In City of N. Wildwood, the petitioners had petitioned the City to schedule an election for the voters to consider changing the City of North Wildwood government from a mayor-council form of government to a commission form of government. *Id.* at 158. The proposed interpretive statement, drafted by the City, read:

Passage of this question will change the form of government under which North Wildwood has operated for 90 years, to the commission form of government, a form under which only 32 municipalities (down from over 60 in 1920) of the 566 throughout the state are governed. Our existing governing body and all other boards and bodies existing in the City, except the Board of Education and the Municipal Court, shall be abolished. The terms of the Mayor, all Councilmen and all other Officers, whether elected or appointed, shall immediately be terminated. All powers and duties of such boards shall pass to a new three member Board of Commissioners, to be elected, at large, at a special election to be held within 5 weeks.

*Id.* at 165.

The court found that the statement, as written, “exceeds the bounds of being merely explanatory by including language that is prejudicial and misleading, and places the proposed form of government in an unfavorable light.” *Ibid.* Specifically, the court noted, “[t]he language, when read sentence by sentence or as a whole, will not aid the voters; it not only fails to make the question more clear, but it raises certain improper inferences.” *Ibid.* Specifically:

One could infer that if the form of government is changed the City would be without a government for some period of

time. It could also be inferred that the duties of the board of education and the municipal courts would pass to the new board of commissioners. The language will not aid the voters in understanding the question. It is neither informative, nor fair.

Id. at 165-66.

Applying the foregoing principles to the matter at hand, it becomes clear that the proposed referendum question, as submitted, is ambiguous, confusing, and requires clarification by the Clerk before it can be placed on the November ballot. Accordingly, the Clerk seeks an advanced ruling from this Court approving placement on the November ballot of the Clerk's revised version of the referendum question. In addition, should the Court not permit the Clerk to formulate the public question, the Clerk seeks an advanced ruling approving placement on the ballot of the Clerk's interpretive statement in conjunction with Petitioners' proposed question. Finally, as the Clerk must provide the contents of the local ballot to the Hudson County Clerk by Monday, September 17, 2012, the Clerk seeks an injunction staying the printing of ballots until such time as this matter is resolved.

**I. THE COURT SHOULD PERMIT THE CLERK TO REVISE THE PROPOSED REFERENDUM QUESTION FOR CLARITY**

As set forth above, it is the legislative policy of this State that public questions shall be "presented in simple language that can be easily understood by the voter" and that phrasing of the question "shall clearly set forth the true purpose of the matter being voted upon." N.J.S.A. 19:3-6; City of Hackensack, supra, 63 N.J. Super. at 570-71.

Here, the referendum question as proposed by Petitioners reads as follows:

Shall the City of Hoboken continue annual rental increase protections for current residents of rent controlled properties but allow property owners to negotiate rents for

vacant apartments and exempt buildings with one-to-four units and condominium units from the rent leveling ordinance by adopting the proposed amendment to Chapter 155 of the Code of the City of Hoboken?

The question, as written, is not presented in simple language nor may it be easily understood by the voter. It consists of a lengthy run-on sentence that is difficult to follow, even for an attorney who is intimately familiar with the City's Code. Furthermore, it refers to "Chapter 155 of the Code of the City of Hoboken[.]" a reference with which the average voter will not be acquainted. Statutory references – or, in this case, municipal code references – generally "make little sense to someone not versed in the law." City of North Wildwood, supra, 338 N.J. Super. at 164. Nor does the question explain to the voter the consequences of a "yes" or "no" vote. Ibid. Accordingly, the Clerk proposes to revise the question for clarity, without altering the substance of the referendum.

Specifically, the Clerk proposes that Petitioners' public question be revised to read as follows:

Shall Hoboken's Rent Control law be amended to provide that upon vacancy, buildings containing 4 or fewer units that are now covered by rent control become exempt from the City's Rent Control laws, and that buildings containing more than 4 units that are now covered by Rent Control, upon vacancy, be permitted to charge the new tenant a market rate rent, while continuing to be covered by the other provisions of the City's Rent Control Laws such as the limitations on annual rent increases and other tenant protections?

The question, worded in this way, does not change the basic thing that the voters are being asked; nor does it skew or bias the question the Petitioners seek to place on the

ballot. It merely simplifies and clarifies the issues to the benefit of the electorate to allow for a better informed vote.

Moreover, revision by the Clerk is appropriate here, where the Clerk has the primary responsibility for ensuring that the referendum question complies with the law. Pursuant to the general initiative and referendum provisions of the Faulkner Act, the municipal clerk is given the primary responsibility for processing citizen petitions. See N.J.S.A. 40:69A-184 through 196. Although the provisions of the Faulkner Act do not explicitly require the Clerk to formulate referendum questions, the statute does require the Clerk to accept the filing of a petition (40:69A-187); to review within a certain period of time and determine the sufficiency of the petition (40:69A-187 and 188); to submit a certified petition the City Council "without delay"(40:69A-190); to "submit the ordinance to the voters" if not enacted by the City Council nor withdrawn by the committee of petitioners (40:69A-191); and to "cause the ordinance to be published in at least two" newspapers. N.J.S.A. 40:69A-194. Pursuant to the Clerk's obligation to "submit the ordinance to the voters," the Clerk has in the past often formulated suggested referendum questions. The Clerk seeks to do the same in the instant matter so as to insure compliance with the Faulkner Act and the general election laws.

If this Court disapproves of the referendum question as proposed by the Clerk, the Clerk invites the Court to assist in crafting the appropriate language. However, it is clear in any case that the question as submitted by Petitioners cannot be placed on the ballot because it will result in confusion among the electorate.

**II. IF THE COURT DOES NOT PERMIT THE CLERK TO FORMULATE THE PUBLIC QUESTION, THE COURT SHOULD APPROVE THE USE OF AN INTERPRETIVE STATEMENT DRAFTED BY THE CLERK**

Should the Court deny the Clerk the ability to formulate the public question, the Clerk seeks an advanced ruling approving placement on the ballot of an interpretive statement drafted by the Clerk. N.J.S.A. 19:3-6 authorizes the inclusion of an interpretive statement if a public question is not clearly set forth. City of North Wildwood, supra, 338 N.J. Super. at 160. Should the Petitioners' proposed public question appear on the ballot as submitted by the Petitioners, an interpretive statement is necessary to permit the voters to make an informed decision in this case, as a consequence of the confusing nature of the question.

The Clerk's interpretive statement must be formulated to aid the voters to understand the public question. It must explain the consequences of an affirmative or negative vote on the referendum question. Most importantly, an interpretive statement may not be biased, nor seek to influence the voter to cast a vote one way or the other. It must be "informative and fair" and simply get "to the heart of the matter as understood by those who are knowledgeable about it" by describing the purpose of the public question and the consequences of its approval. Gormley, supra, 88 N.J. at 37. Accordingly, if the Petitioners public question is placed on the ballot, the Clerk submits that an interpretive statement must be included, following the principles set forth above, so as to give the voters a clear understanding of what they are called upon to vote.

**III. THIS COURT SHOULD STAY THE PRINTING OF THE  
GENERAL ELECTION BALLOT PENDING THE RESOLUTION  
OF THIS MATTER**

Pursuant to N.J.S.A. 19:14-1:

Every county clerk shall have ready for the printer on or before the 50th day prior to the general election a copy of

the contents of official ballots as hereinafter required to be printed for use at such election.<sup>1</sup>

The 50<sup>th</sup> day prior to the 2012 general election, which takes place on November 6, 2012, is Monday, September 17, 2012. In anticipation that the within Order to Show Cause will not be resolved before that time, the Clerk hereby seeks a stay of the printing of the general election ballots until such time as the Court renders its decision in this matter.

It is well settled that “[t]he granting of a stay is discretionary with the trial court, limited only by special equities showing abuse of discretion in that injustice would be perpetrated on the one seeking the stay, and no hardship, prejudice or inconvenience would result to the one against whom it is sought.” Avila v. Retailers & Manufacturers Distribution, 355 N.J. Super. 350, 354 (App. Div. 2002) (quoting Gosschalk v. Gosschalk, 48 N.J. Super. 566, 579 (App. Div.), aff’d, 28 N.J. 73 (1958)). The courts “measure the equities by the standard utilized in the granting of a preliminary injunction[.]” Id. (citing Crowe v. DeGioia, 90 N.J. 126, 133 (1982)).

New Jersey has long recognized the power of courts to grant injunctive relief (or a stay) to prevent impending irreparable harm which should be averted so as to preserve the subject matter and the status quo until an opportunity is afforded for a full and deliberate investigation of the case. Crowe, supra, 90 N.J. at 132 (quoting Thompson v. City of Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854)). A preliminary injunction is appropriate where the court is satisfied that there is a probable right and a probable danger that the right may be defeated unless an injunction is issued. United States v. Pavenick, 197 F. Supp. 257, 260 (D.N.J. 1961).

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<sup>1</sup> This provision of the General Election Law applies to in kind to regular municipal elections occurring on the day of the general election in November pursuant to N.J.S.A. § 40:45-15, which states that, in such cases, “ballots shall be printed and delivered as otherwise provided by law.”

Stated differently, the purpose of a preliminary injunction is to prevent immediate and irreparable harm occurring prior to a full and deliberate determination of the merits of a case. Sunbeam Corp. v. Windsor-Fifth Ave., 14 N.J. 222, 233 (1953); Outdoor Sports Corp. v. American Federation of Labor, Local 23132, 6 N.J. 217, 230 (1951). It is designed to allow the court to fully deliberate and investigate the merits of the case while maintaining the status quo. Peters v. Public Service Corp., 132 N.J. Eq. 500, 511 (Ch. 1942), aff'd 133 N.J. Eq. 283 (E. & A. 1943) See e.g., Kontes Glass Co. v. Lab Glass, Inc., 373 F. 2d 319, 320 (3d Cir. 1967); Benton v. Kernan, *supra*, at 345; Camden Horse R. Co. v. Citizens' Coach Co., 29 N.J. Eq. 229, 303 (E & A. 1878).

Thus, a preliminary injunction should issue when:

- (1) The injunction is necessary to prevent irreparable harm;
- (2) The plaintiff has made a preliminary showing of a reasonable probability of ultimate success on the merits; and
- (3) The relative hardships to the parties have been considered by the Court and favor and the granting of temporary relief to maintain the status quo "pending the final outcome."

Crowe, *supra*, 90 N.J. at 132-134; Zoning Board of Adjustment of Sparta Tp. v. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

The Clerk submits that he has made a preliminary showing of a reasonable probability of ultimate success on the merits of this case for the substantive reasons set forth in Points I and II above. Moreover, the irreparable harm that will occur if a stay does not issue cannot be overstated here. If the general election ballots are sent to the printer with the proposed referendum question submitted as written, it will undoubtedly lead to voter confusion on Election Day and an irreversibly skewed result with regard to the referendum question. The question calls for a change to the City's rent control laws,

a matter of critical import to many City residents, which is entitled to full and fair consideration by the electorate. Generally, harm is considered irreparable in equity if it cannot be redressed adequately by monetary damages. Crowe, supra, 90 N.J. at 134. Certainly, no monetary damages can redress the harm to the general public if the City's laws are subject to change based upon a public question that was misunderstood by the voters. Plaintiff submits that the right of the public to vote, a fundamental principle of our representative democracy, see Powell v. McCormack, 395 U.S. 486, 547, 89 S. Ct. 1944, 1977, 23 L. Ed. 2d 491, 531 (1969), is empty if the public does not understand the question upon which it is voting.

The Supreme Court has, in the past, recognized the ability of the courts of this State to stay the printing of the general election ballot in the interests of justice. In New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 172 (2002), the Superior Court, Law Division, Middlesex County, enjoined the printing of all ballots for the general election on October 1, 2002, on the basis of an Order to Show Cause filed by the New Jersey Democratic Party seeking to change the name of the Democratic Party's candidate for the office of United States Senator. Id. at 174. The Supreme Court, upon obtaining jurisdiction over the case, continued the stay of the printing of the ballots pending its final decision. Id. at 175. In its Order permitting the name change, the Court noted the importance of both "the dual interests of full voter choice and the orderly administration of an election[.]" It also reaffirmed that the State's election statutes should be liberally construed "to allow the greatest scope for public participation in the electoral process . . . and most importantly, to allow the voters a choice on Election Day." Ibid. (internal citations and quotations omitted). The Court expressed its belief that "the Court should

invoke its equitable powers in favor of a full and fair ballot choice for the voters of New Jersey.” Id. at 176.

In light of the State’s legislative policy that public questions shall be “presented in simple language that can be easily understood by the voter” and that phrasing of the question “shall clearly set forth the true purpose of the matter being voted upon[.]” N.J.S.A. 19:3-6; Bd. of Ed. of City of Hackensack v. City of Hackensack, 63 N.J. Super. 560, 570-71 (App. Div. 1960), the Clerk submits that a stay is likewise appropriate here. The Court should maintain the status quo and order a stay of the printing of the ballots until it can fully and fairly adjudicate this controversy and decide upon the correct wording of the referendum question and/or interpretive statement to ensure that it can be understood by the voters. To hold otherwise would deprive the voters of a full and fair ballot choice on Election Day.

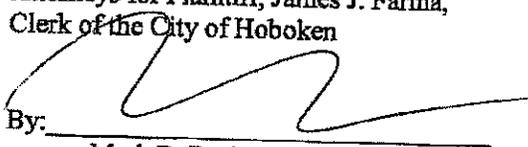
Finally, a balance of equities weighs in favor of granting a stay. Defendants will not suffer any prejudice if the printing of the ballot is stayed pending the outcome of this matter. On the contrary, if no stay is issued and, after the ballots are printed, this Court ~~determines that the referendum question should be revised, a full reprint will be necessary~~ at great cost and inconvenience to the government entities involved at a time when government resources are spread critically thin due to a struggling economy.

For these reasons, the Clerk submits that an injunction should issue, staying the printing of the general election ballots until such time as this matter is resolved by the Court.

**CONCLUSION**

Based on the foregoing, the Clerk believes he has the authority to formulate the public question presented by the Petitioners. Accordingly, the Clerk seeks an advanced ruling from this Court approving placement on the November ballot of the Clerk's revised version of the referendum question. Should this Court deny the Clerk the ability to formulate the public question, the Clerk seeks an advanced ruling approving placement on the ballot of an interpretive statement prepared by the Clerk in conjunction with the proposed ballot question. Finally, this Court should grant an injunction staying printing of the ballots by the Hudson County Clerk until such time as this matter is resolved.

**FLORIO PERRUCCI STEINHARDT &  
FADER, LLC**  
Attorneys for Plaintiff, James J. Farina,  
Clerk of the City of Hoboken

By: 

Mark R. Peck



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for Initial Law Division  
Civil Part pleadings (not motions) under Rule 4:5-1.  
Pleading will be rejected for filing, under Rule 1:5-6(c),  
if information above the black bar is not completed or  
if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY	
PAYMENT TYPE:	<input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA
CHG/CK NO.:	
AMOUNT:	
OVERPAYMENT:	
BATCH NUMBER:	

ATTORNEY/PRO SE NAME <b>Mark R. Peck, Esq.</b>	TELEPHONE NUMBER ( 908 ) 454-8300	COUNTY OF VENUE <b>Hudson County</b>
FIRM NAME (if applicable) <b>Florio, Perrucci, Steinhardt &amp; Fader, LLC</b>	DOCKET NUMBER (when available)	
OFFICE ADDRESS <b>235 Broubalow Way Phillipsburg, NJ 08865</b>	DOCUMENT TYPE <b>Verified Complaint</b>	
NAME OF PARTY (e.g., John Doe, Plaintiff) <b>James Farina, RMC, Clerk of the City of Hoboken</b>		JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CAPTION <b>James Farina, RMC, Clerk of the City of Hoboken v. Anne-Marie Pelletier, Mary Alexandra Vaughn, Julia MacDermott, Connie Cappola and Joseph E. Murray</b>		
CASE TYPE NUMBER (See reverse side for listing) <b>701</b>	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION	
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:	

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ATTORNEY SIGNATURE



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

**Track I — 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (briefly describe nature of action)

**Track II — 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM Claim (includes bodily injury)
- 699 TORT - OTHER

**Track III — 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV — Active Case Management by Individual Judge/450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 ZELNORM
- 285 STRYKER TRIDENT HIP IMPLANTS
- 288 PRUDENTIAL TORT LITIGATION

**Mass Tort (Track IV)**

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX                            |
| 271 ACCUTANE                          | 283 DIGITEK                            |
| 272 BEXTRA/CELEBREX                   | 284 NUVARING                           |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 286 LEVAQUIN                           |
| 275 ORTHO EVRA                        | 287 YAZ/YASMIN/OCELLA                  |
| 277 MAHWAH TOXIC DUMP SITE            | 601 ASBESTOS                           |
| 278 ZOMETHA/AREDDIA                   | 619 VIOXX                              |
| 279 GADOLINIUM                        |  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold

Putative Class Action

Title 59

FLORIO PERRUCCI STEINHARDT & FADER, LLC  
 218 Route 17 North  
 Suite 300  
 Rochelle Park, New Jersey 07662  
 t: (201) 843-5858  
 f: (201) 843-5877  
 Mark R. Peck, Esq.  
 Attorneys for Plaintiff, James J. Farina,  
 Clerk of the City of Hoboken

JAMES J. FARINA, RMC, CLERK :  
 OF THE CITY OF HOBOKEN, :  
 Plaintiff, :

v. :

ANNE-MARIE PELLETIER, :  
 MARY ALEXANDRA VAUGHAN :  
 JULIA MacDERMOTT, CONNIE :  
 CAPPOLA and JOSEPH E. :  
 MURRAY, :  
 Defendants. :

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION  
 HUDSON COUNTY  
 DOCKET NO.

Civil Action

**VERIFIED COMPLAINT**

Plaintiff, James J. Farina, RMC, Clerk of the City of Hoboken, by way of  
 Complaint against Defendants, Anne-Marie Pelletier, Mary Alexandra Vaughan, Julia  
 MacDermott, Connie Cappola and Joseph E. Murray, says:

1. Plaintiff, James. J. Farina, RMC, Clerk of the City of Hoboken, ("Clerk")  
 is a duly appointed official of the City of Hoboken.
2. Defendants, Anne-Marie Pelletier, Mary Alexandra Vaughan, Julia  
 MacDermott, Connie Cappola and Joseph E. Murray ("Petitioners") are a group of  
 Hoboken residents concerned with fiscal and governance issues within the City.

3. On or about June 22, 2012, the Petitioners submitted a petition to the Clerk proposing that a public question concerning an amendment to Chapter 155 of the City's Ordinances be considered at the upcoming November, 2012, general election.

4. The proposed public question, as submitted to the City Clerk, reads as follows:

Shall the City of Hoboken continue annual rental increase protections for current residents of rent controlled properties but allow property owners to negotiate rents for vacant apartments and exempt buildings with one-to-four units and condominium units from the rent leveling ordinance by adopting the proposed amendment to Chapter 155 of the Code of the City of Hoboken?

5. The legislative policy of the State of New Jersey, as set forth in N.J.S.A. 19:3-6, is that public questions shall be presented in simple language that can be easily understood by the voter, and that phrasing of the question shall clearly set forth the true purpose of the matter being voted upon.

6. Public questions may also be accompanied by an interpretive statement that is designed to help voters understand the matter to be voted upon.

7. Pursuant to N.J.S.A. 40:69A-184 through 196 the Clerk has the duty to formulate language for the public question that serves the legislative policies set forth in paragraph 5 above.

8. Pursuant to N.J.S.A. 19:3-6, the Clerk is authorized to prepare an interpretive statement if a public question is not set forth with clarity.

9. The Clerk believes that the proposed ballot question, as presented by the Petitioners, is confusing and misleading.

10. The Clerk does not wish to thwart the attempt of the Petitioners to present a public question on a matter of public import to the voters at the upcoming election. Rather, the Clerk wishes to exercise his duty to present a public question that can be clearly understood by the voters.

11. Accordingly, the Clerk believes that the following language, which is consistent with the intent of the Petitioners, and which will provide voters with a clear understanding of the matter to be voted upon, should be submitted to the voters as the ballot question to be considered, in lieu of the proposed question submitted by the Petitioners:

Shall Hoboken's Rent Control law be amended to provide that upon vacancy, buildings containing 4 or fewer units that are now covered by rent control become exempt from the City's Rent Control laws, and that buildings containing more than 4 units that are now covered by Rent Control, upon vacancy, be permitted to charge the new tenant a market rate rent, while continuing to be covered by the other provisions of the City's Rent Control laws such as the limitations on annual rent increases and other tenant protections?

~~12. In addition, the Clerk wishes to include an interpretive statement to~~  
accompany the proposed ballot question.

13. The Clerk must submit the form of the public question to the Hudson County Clerk not later than September 17, 2012, and the Clerk accordingly seeks a stay against the printing of ballots by the Hudson County Clerk until such time as this matter is decided by the Court.

**WHEREFORE**, Plaintiff demands judgment in its favor and against Defendants/Petitioners as follows:

1. Authorizing the Clerk to prepare a public question that presents the intent of the Defendants/Petitioners proposed public question with clarity and in a manner readily understandable to the voters.

2. Authorizing the Clerk to prepare an interpretive statement to accompany the public question.

3. In the alternative, for the Court to prepare a public question and interpretive statement to be considered by the voters.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Paul T. Fader, Esq., is designated as trial counsel in this matter.

**RULE 4:5-1 CERTIFICATION**

I hereby certify that the matter in controversy is not the subject of any other action pending in any Court proceeding or of a pending arbitration proceeding, and to the best of my knowledge and belief no other party should be joined at this time, and that no other proceedings are contemplated.

**FLORIO PERRUCCI STEINHARDT &  
FADER, LLC**

By: 

Mark R. Peck

Dated: September 10, 2012



**CERTIFICATION OF ELECTRONIC MAIL SIGNATURE**  
**PURSUANT TO RULE 1:4-4(c)**

I, Mark R. Peck, Esq., hereby acknowledged the genuineness of the emailed signatures on the enclosed document. A copy of the document with an original signature affixed will be filed if requested by the court or a party.

  
\_\_\_\_\_  
Mark R. Peck, Esq.

Dated: September 10, 2012

FLORIO PERRUCCI STEINHARDT & FADER, LLC  
218 Route 17 North  
Suite 300  
Rochelle Park, New Jersey 07662  
t: (201) 843-5858  
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Mark R. Peck, Esq.  
Attorneys for Plaintiff, James J. Farina,  
Clerk of the City of Hoboken

\_\_\_\_\_  
JAMES J. FARINA, RMC, CLERK :  
OF THE CITY OF HOBOKEN, :

Plaintiff, :

v. :

ANNE-MARIE PELLETIER, :  
MARY ALEXANDRA VAUGHAN :  
CAPPOLA and JOSEPH E. :  
MURRAY, :

Defendants. :

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUDSON COUNTY  
DOCKET NO.

Civil Action

CERTIFICATION OF SERVICE

I hereby certify that on this date I caused a copy of Order to Show Cause, Verified  
Complaint and Letter Brief to be served upon counsel in this matter at the addresses listed below:

**Via Facsimile and Federal Express**

Charles Gormally, Esq.  
101 Eisenhower Parkway  
Roseland, NJ 07068

Flavio Komuves, Esq.  
240 W. State Street  
Trenton, NJ 08625

Dated: September 10, 2012



\_\_\_\_\_  
Mark R. Peck, Esq.

## Anna Seguinot

---

**From:** Veronica Hallett <VHallett@fpsflawfirm.com>  
**Sent:** Monday, September 10, 2012 4:20 PM  
**To:** Anna Seguinot  
**Cc:** mlongo@hobokennj.org  
**Subject:** RE: test  
**Attachments:** City of Hoboken-OTSC FINAL FILED VERSION (00095495).PDF

Anna - I did get your email. In case you get this one, I'm attaching the filed OTSC. Please confirm if you receive. Thanks.

Veronica P. Hallett, Esq.  
Florio Perrucci Steinhardt & Fader, LLC  
235 Broubalow Way  
Phillipsburg, New Jersey 08865  
(908) 454-8300 phone  
(908) 454-5390 fax  
email: [vhallett@fpsflawfirm.com](mailto:vhallett@fpsflawfirm.com)

**\*\*Please note for your records this office's new street address\*\***

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---

**From:** Anna Seguinot [<mailto:aseguinot@hobokennj.org>]  
**Sent:** Monday, September 10, 2012 4:17 PM  
**To:** Veronica Hallett  
**Subject:** test

Test

Annastacia Seguinot, Clerk  
Office of Corporation Counsel  
94 Washington Street  
Hoboken, New Jersey 07030  
(201) 420-2058 Office  
(201) 792-1858 Fax

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