September 16, 2004

Hon. Maurice J. Gallipoli
Assignment Judge
Brennan Courthouse
583 Newark Avenue
Jersey City, New Jersey 07306

Re: People for Open Government, et. al. v. Javier Inclán, et al.
Docket No. HUD-L_____(Action in Lieu of Prerogative Writ)

Dear Judge Gallapoli:

We represent plaintiffs People for Open Government and the individuals constituting the Committee of Petitioners (collectively, the "Plaintiffs") in this matter. Please accept this letter brief in support of Plaintiffss' application for an Order to Show Cause why the Court should not entered an order in favor of Plaintiffs that (i) enjoins the County Clerk from printing upon the official ballot for use at the November 2, 2004, General Election, a certain campaign finance ordinance submitted by the Council of the City of Hoboken ("Hoboken City Council), DR-157, for approval by the voters; and (ii) declare that the submission of DR-157 to the voters is not authorized by statute under the circumstances where a competing and more restrictive campaign finance ordinance that has been initiated by the Plaintiffs, DR-153, will also be submitted to the voters this November.

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PRELIMINARY STATEMENT

This is a case about municipal abuse of power. Four months ago, a group of concerned citizens known as People for Open Government ("POG"), a plaintiff in this case, banded together with the statewide civic group New Jersey Common Cause to press the Hoboken City Council to pass meaningful "pay-to-play" campaign finance reform. Although POG and New Jersey Common Cause were summarily rebuffed by the Hoboken City Council, they remained committed to limiting individual and business contributions to municipal candidates and incumbents; and, through a Committee of Petitioners (the individual plaintiffs in this matter) obtained over 1,000 signatures to have their ordinance placed on the official ballot for voter approval at the next General

Election, on November 2, 2004. Unfortunately, the Plaintiffs were unprepared for the lengths to which the Hoboken City Council intended go in order to thwart their efforts and undermine their statutory right of initiative.

On the same evening as the Committee of Petitioners' initiated ordinance, DR-153 , entitled Public Contracting Reform Ordinance, (hereinafter "Petitioners' Initiated Ordinance") was rejected by the Hoboken City Council, two councilmen proposed their own ordinance, DR-157 (hereinafter "Council's Ordinance"). This proposed ordinance is a much weaker version of municipal campaign finance reform than that proposed by the Petitioners, and by its own terms cannot be effective unless approved by the voters. Indeed, a careful reading of the City Council's proposed ordinance demonstrates that it is riddled with loopholes and provides "reform" in name only.

Therefore, instead of simply adopting its own reform ordinance pursuant to its statutory authority to enact ordinances, the Hoboken City Council chose to take the highly unusual route of submitting its ordinance for approval to the voters on the November 2, 2004, ballot without specific authority to do so and *in direct competition with* the Petitioner's Initiated Ordinance. When the Plaintiffs and other citizens learned of this maneuver, they were outraged and challenged the City Council to cite the specific provisions that enabled the City Council to activate a binding referendum on contracting or campaign finance issues. In response, the Hoboken City Council's attorney fumbled, citing only an irrelevant section of the New Jersey Faulkner Act.

Faced with no specific authority permitting its action, the Plaintiffs asserted that the Council's action was *ultra vires* under the circumstances and an abdication of its duty

to pass campaign finance legislation without requiring voter approval. In addition, the Plaintiffs contended that placing the Council's Ordinance next to Petitioners' Initiated Ordinance on the ballot was deliberately designed to (1) confuse the voter by having two ordinances on the exact same topic with similar terms, (2) thwart the citizens' statutory right to initiative without undue interference, and (3) maintain the *status quo* of unlimited campaign contributions that the City Council has enjoyed from professional business entities to date. Even though *no one* from the public or press present at the hearing supported the substance of the Council's Ordinance or its placement on the ballot as a referendum, the Council adopted DR-157.

Having been unable to prevail upon the Hoboken City Council, Plaintiffs, POG and the five Petitions who promoted the citizens' ordinance, come before this Court seeking a restraining order and other equitable relief. Because the County Clerk must have ready for the printer a copy of the contents of the official ballots to be used at the next General Election on September 20, 2004 (N.J.S.A. 19:14-1) and absentee ballots should be mailed to approve applicants as soon as practicable after September 23, 2004 (N.J.S.A. 19:57-11), Plaintiffs seek temporary and permanent restraints to prevent the Hudson County Clerk from placing the City Council's competing ordinance on the official ballot.

STATEMENT OF FACTS

On May 5, 2004, the People for Open Government ("POG"), a grassroots citizens' group dedicated to promoting good government, proposed to the Hoboken City Council an ordinance to curb the undue influence of money in politics. (Verified Complaint, ¶¶3,9)(hereinafter, "Comp., ¶¶__") This ordinance, entitled "Public Contracting Reform," was intended to severely limit local "pay-to-play," *i.e.*, the practice of a business entity making campaign contributions to a public official with the hope of gaining a lucrative no-bid government contract. (Comp. ¶¶ 1,9; Ex. A).

In particular, the Petitioners' Initiated Ordinance sought to cap individual and business entity contributions to candidates and incumbents at $400 and contributions to Hoboken or Hudson County committees at $500 per election. Most importantly, the ordinance provided an aggregate limit of $2500 on contributions to the candidate, county, and municipal party combined. (Comp. ¶ 10). The ordinance was based in large part on legislation developed by the Legal Task Force of New Jersey Common Cause, which included several legal scholars such as Professor Frank Askin of the Rutgers University School of Law, local government expert Michael Pane, Sr., (deceased), the Brennan Center for Justice at New York University, and former New Jersey Supreme Court Justice Gary Stein. Indeed, fifteen municipalities in New Jersey had already approved this legislation.[1] (Comp. ¶11).

When POG introduced the ordinance, it was confidant that Hoboken City Council would seize the opportunity to reduce the appearance of corruption in city politics and alleviate the public cynicism associated with the corrosive practice of pay to play by

passing the ordinance. (Comp. ¶12). Much to POG's dismay, its proposed ordinance was ignored by the Hoboken City Council for several weeks. After repeated requests to meet with the Council, the Council's Administrative Committee finally invited members of POG to discuss its proposed ordinance (among other issues) with them at City Hall. (Comp. ¶13).

On June 1, 2004, members of POG met with the Administrative Committee. After resolving a few preliminary issues, the Committee refused to discuss any subjects related to the pay-to-play ordinance because the city attorney, Joseph Sherman, was unable to attend the meeting due to an alleged back injury. (Comp. ¶14). Somewhat skeptical of this last-minute claim, many POG members left the meeting feeling as though their time had been wasted. Later attempts to reschedule a meeting at which Mr. Sherman would be present were again frustrated by his vacation plans. By the end of June, POG had lost faith that the Hoboken City Council intended to consider its proposed ordinance. (Comp. ¶15).

POG, however, would not be deterred. Five of the persons associated with POG, the individual plaintiffs in this action, established a committee to collect signatures on a petition to have their ordinance placed on the public ballot in November (hereinafter the "Committee of Petitioners" or the "Petitioners"). Following three weeks of tireless campaigning in the heat of summer, the Petitioners obtained over 1,000 signatures -- nearly twice the required number for an initiative under N.J.S.A. 40:69A-184, et. seq. (Comp. ¶16).

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[1] Those communities that have passed the model ordinance include Marlboro, Old Bridge, Franklin,

In mid-July, 2004, the Petitioners submitted the signatures to James Farina, the Hoboken City Clerk. Mr. Farina then certified the Petitioners' Initiated Ordinance on July 30, 2004, and sent it for a final vote to the Hoboken City Council on August 11, 2004. (Comp. ¶17). Little did Plaintiffs know that the City Council had plans to thwart and interfere with their efforts by submitting to the voters for approval or rejection a competing ordinance that was substantially weaker than that proposed by POG and the Petitioners.

On August 11, 2004, the Hoboken City Council's plans began to unfold. After a contentious debate between members of the public and Councilmen Chris Campos and Ruben Ramos, the two most vociferous opponents of the citizens' pay-to-play reform on City Council, the Petitioners' Initiated Ordinance was narrowly defeated by a 5-4 vote. (Comp. ¶20). Pursuant to the Faulkner Act, however, the ordinance was required to be sent to the Hudson County Clerk to appear on the ballot for the upcoming General Election, because the City Council declined to pass an ordinance in "substantially the form requested." N.J.S.A. 40:69A-191.

On that same evening, Councilmen Campos and Ramos introduced their own version of pay-to-play reform (the "Campos-Ramos Proposal" or the"Council's Ordinance"), which simply paralleled the weaker and much criticized state legislation that was passed earlier this summer. (Comp. ¶¶21, Ex. B). The Campos-Ramos Proposal differs greatly from the Petitioners' Initiated Ordinance and provides no meaningful reform. To name only a few of its many loopholes, the Campos-Ramos Proposal fails to

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Holmdel, Hopewell Township, West Windsor, Bradley Beach, Freehold, Ramsey, Spring Lake Heights, and Ocean Township among others.

(1) provide any contribution limit to candidates for municipal office as it applies only to incumbents, (2) include any contribution limit to county parties, and (3) provide any aggregate limit.[2] (Comp. ¶22).

What is most striking about the Campos-Ramos Proposal is not that it does absolutely nothing to reduce the practice of pay to play; rather, it is more striking that the Hoboken City Council introduced this legislation with a provision that stated that the ordinance will not become effective until approved by the voters. Section 12, Ex. It is clear that the City Council has the authority to draft and enact campaign finance law without submitting a referendum to the voters. In fact, there is no specific statutory provision permitting the Hoboken City Council to send such ordinances to a referendum vote. (Comp. ¶24).

Typically, referenda come when a group of citizens seek to repeal an ordinance already passed by the Council or particular statutes authorize specific binding referenda on various areas of municipal and county government. (Id.) Here, the people have

[2] The differences between the Petitioners' Initiated Ordinance and the Campos-Ramos proposal are critical to understand how pernicious the City Council's efforts are by placing a competing ordinance on the ballot. A hypothetical may prove instructive. Imagine that a four partner law firm wanted to support a Hoboken City Council candidate and expected to obtain a public contract from the city. According to the Petitioners' Initiated Ordinance, the firm and its individual members would be limited to contributing a total of $2500 to the candidate's campaign. This is because the ordinance includes a maximum $2500 aggregate limit on contributions to the candidate, county and political party combined. In contrast, under the Campos-Ramos Proposal, each partner of the firm and firm as a business entity could contribute up to $300 annually to both the candidate and his or her municipal party. But the kicker is that each member of the firm, as well as the firm as a business entity, could contribute up to $37,000 to the county party – a limit provided by the New Jersey Election Law Enforcement Commission as the Campos-Ramos ordinance contains no aggregate limit and no limit on contributions to county parties. Further, the law provides no limit on the amount of money that county parties can funnel to candidates for local office. Consequently, the members of the firm would be limited not to $2500 in total, but to a whopping $188,710, if they chose to give the maximum amount. The Campos-Ramos Proposal therefore provides no real limitation on pay to play practices at all. It is simply a way to make certain city council members appear to be voting in favor of reform while at the same time frustrating the efforts of those citizen's who fought to place their ordinance on the ballot. (Compare Ex. A with Ex. B.)

spoken – they want strong reform and have proposed it. The City Council, however, is following a route deliberately taken to obfuscate the issues, confuse the voters and deter them from casting a ballot in favor of the Petitioners' Initiated Ordinance. (Comp. ¶25). Despite public opposition, the Campos-Ramos Proposal passed its first reading and was included on the September 1, 2004 agenda for public hearing and final vote. (Comp. ¶26).

On the following day, on August 12, 2004, Mr. Farina sent copies of the Council's Ordinance and the Petitioners' Initiated Ordinance to defendant Javier Inclán, the County Clerk, instructing him to place both measures on ballot. (Comp. ¶¶27, Ex. C). Although the Proposal was not scheduled for a second reading and public debate until September 1, Mr. Farina nonetheless forwarded the Council's Ordinance to the County Clerk. Mr. Farina cited Section 12 of the ordinance itself as the sole authority enabling the Hoboken City Council to submit its ordinance to a binding referendum vote. (Comp. ¶¶28).

Over the next two weeks, the Plaintiffs mobilized citizens against the Council's Ordinance and flooded the local newspapers with letters to the editor encouraging attendance at the September 1, 2004 Council meeting. (Comp. ¶¶29). On August 20, 2004, the City Clerk caused to have published the Council's Ordinance in *The Jersey* Journal. (Comp. ¶30). On September 1, 2004, several Hoboken residents spoke to have the council defeat the proposed ordinance. Many pointed out the loopholes in the proposed statute while others expressed anger at the Council's attempt to confuse the voters and thwart and undermine the Plaintiffs' right to initiative.(Comp. ¶31).

In fact, during the public hearing, Councilman. Anthony Soares referred to the Council's Ordinance as a "slap in the face" of the people of Hoboken, who had worked tirelessly to secure signatures and used the statutory provisions to place the citizen's ordinance on the ballot only to see the issues obfuscated by the Council. He stated in effect that if the Council thought its ordinance represented better policy, it should have passed it without requiring further action by the voters. (Comp. ¶32).

During the public hearing, Ann Graham, Chair or POG, asked the City Council to cite the specific legal authority on which it was basing its authority to submit the Campos-Ramos Proposal to be place on the public ballot, as a binding referendum. Mr. Joseph Sherman, the City Counsel's attorney, requested the opportunity to review the municipal law. After Ms. Graham approached him with a copy of Title 40 and 40A, he nervously flipped the pages for a couple of minutes and then left the meeting to retrieve his own copy of the statutes. (Comp. ¶¶33).

Upon his return to the meeting, Mr. Sherman asserted that the City Council's authority to place the Proposal on the ballot was based "by analogy" on N.J.S.A. 40:69A-181. This provision entitled "Adoption and Publication of Ordinances; Effective Date" reads:

> (a) Except as may otherwise be provided in this act, all ordinances shall be adopted and published in the manner required by general law; provided, however, that any ordinance may incorporate by reference any standard technical regulations or code, official or unofficial, which need not be so published whenever ten copies of said regulations or code have been placed on file in the office of the municipal clerk and in the office of the body or department charged with

> enforcement of said ordinance for the examination of the public as said ordinance is in effect.
>
> (b) No ordinance other than the local budget ordinance shall take effect less than twenty days after its final passage by council and approval by the mayor where such approval is required, unless the council shall adopt a resolution declaring an emergency and at least two-thirds of all the members of the council vote in favor of such resolution. N.J.S.A. 40:69A-181.

Mr. Sherman's reliance on this provision was misplaced. This statute does not authorize, or give the option to, the Hoboken City Council to send a campaign finance ordinance, or any other ordinance, to the voters for approval or rejection at the polls. Instead, Mr. Sherman offered this statute merely as a means to end Ms. Graham's questioning. Mr. Sherman did not cite to any other statutory authority for the Hoboken City Council's submission of its campaign finance ordinance to the people. Plaintiffs believe that none exists. (Comp. ¶¶35-36).

Even though no one from the public spoke in favor of the Council's Ordinance, the Council voted 5-4 to place it on the ballot in order to directly compete with and distract from the Petitioners' Initiated Ordinance. [3] (Comp. ¶¶37). On September 8, 2004, Mr. Farina sent another copy set of the Petitioners' Initiated Ordinance and the Council's Ordinance to defendant Inclán. (Comp. ¶¶38, *See* Ex.D).

Plaintiffs have now filed this action to prevent the County Clerk from printing the Council's Ordinance on any official ballot for use at the November 2, 2004, General Election. The City Council (1) has acted *ultra vires* by submitting, without specific

[3] In fact, Councilman Campos was the only person at the public hearing to argue in favor of placing the ordinance before the voters. The other members of the Council who voted with Councilman Campos were strangely silent.

statutory authority, its campaign finance ordinance to the voters for approval at the same time that the voters will be considering the stronger Petitioners' Initiated Ordinance; or (2) has abused its authority and has acted in bad faith by submitting its ordinance to the voters for approval solely to thwart the Plaintiffs' statutory right to place measures before the voters without fear of confusion or obfuscation. Plaintiffs also request immediate relief since the County Clerk is required to provide the printer of official ballots with all candidates and public questions by September 20, 2004.

LEGAL ARGUMENT

ARGUMENT I

THE COURT SHOULD ENJOIN THE COUNTY CLERK FROM PLACING THE CITY COUNCIL'S CAMPAIGN FINANCE ORDINANCE ON THE BALLOT FOR VOTER APPROVAL BECAUSE THE CITY COUNCIL ACTED WITHOUT LEGAL AUTHORITY UNDER THE CIRCUMSTANCES

The City Clerk of Hoboken has submitted two purportedly binding ballot ordinances to the Hudson County Clerk that in name seek to limit the practice of pay-to-play in Hoboken's municipal government. As previously stated, one proposed ordinance resulted from a initiative petition drive organized by the Committee of Petitioners who are the individual plaintiffs in this action. The second ordinance, the validity of which is being challenged herein, was adopted by the City Council itself in direct response to the Plaintiffs' petition.[4] Because there is no specific statutory provision permitting the Hoboken City Council to enact a campaign finance ordinance only with the approval of

[4] It is interesting to note that the Joseph Sherman, the Attorney for the Hoboken City Council, has stated that he did not draft the Council's Ordinance. As of this writing, no one on the Council or elsewhere has claimed authorship of DR-157.

the voters, this Court must enjoin inclusion of the Council's Ordinance on the official ballot as such public question is *ultra vires*.

The proper starting point for analyzing whether a particular act of a municipal government is *ultra vires* is to examine the New Jersey State Constitution. However, it is well-settled that there is no constitutional right to a referendum. Such right is *only* created through state enabling legislation codified in statute. Eatontown v. Danskin 121 N.J. Super. 68 (Law Div. 1972). As a Faulkner Act municipality, citizens of Hoboken have been granted the powers to initiative and referendum by the state. N.J.S.A 40:69A-184 *et seq.* These powers, however, are not absolute. The specific method for initiating a binding referendum must still be expressly permitted by a statute.

A review of the statutory scheme set forth in N.J.S.A 40:69A-184 *et seq.* quickly reveals that there is no provision that affirmatively enables the City of Hoboken to place a campaign finance ordinance to referendum vote, particularly in the event that a citizen initiated petition on the same subject is concurrently pending. Pursuant to N.J.S.A. 40:69A-185, "ordinances which by their own terms or by law cannot become effective in the municipality unless submitted to the voters" are expressly exempt from the provisions of that section; accordingly, such provision cannot be understood as authorizing such ordinances in any particular situation or concerning any specific activity of government. Similarly, N.J.S.A. 40:69A-192(c)(entitled, Timing of election at which submitted to voters) merely sets forth the time for submission of the question to the voters in "any instance where a referendum election is to be held as a result of an ordinance of the council which by its terms or by law cannot become effective in the municipality unless

submitted to the voters." It may be characterized as procedural in nature rather than substantive. Both provisions, separately or together, clearly do not give Hoboken the authority to submit a binding referendum to the voters under the circumstances.

The requirement of express authority to submit an ordinance to popular referendum is also supported by the statutory language governing non-binding referendum. Pursuant to Title 19: "[w]hen the governing body of any municipality … desires to ascertain the sentiment of the legal voters of the municipality … upon any question or policy of the government or internal affairs, thereof, *and there is no other statute by which the sentiment can be ascertained by submission of such question to a vote of the electors of the municipality…",* the municipality may place such question on the ballot in the form of a non-binding referendum. (emphasis added) N.J.S.A. 19:37-1.

Using traditional methods of statutory interpretation, the court should give the language of N.J.S.A. 19:37-1 its plain meaning. Levin v. Township of Parsippany-Troy Hills, 82 N.J. 174, 182 (1980). As a result, the plain meaning of N.J.S.A. 19:37-1 implies that a municipality may only submit its own binding referendum where there is specific statute enabling it do so. In the absence of such enabling legislation permitting a binding referendum, a municipality would have no other means to gauge the public sentiment, and would therefore be permitted to submit a non-binding referendum to the voters.

This interpretation has been consistently adopted by the New Jersey Courts. In Cuprowski v. City of Jersey City, 101 N.J. Super. 15, aff'd 103 N.J. Super 217 (App. Div. 1963), certif. den. 53 N.J. 80 (1968), the court addressed a budgetary ordinance.

The court ultimately concluded that in the absence of clear, positive and unambiguous language, the municipality lacked authority to present such an ordinance to voters for a referendum. A similar holding was issued in Board of Education v. City of Hackensack, 63 N.J. Super. 560 (App. Div.1960), where the court stated that the municipality lacked authority to conduct a non-binding school construction bond referendum. The court in Board of Education v. City of Hackensack, however, specifically found that a non-binding referendum was unavailable because there were specific statutes available by which the sentiment of the voters on the school construction bond issue could be ascertained by a binding referendum, if the municipality so opted. The Court conclusively stated:

> The legislative scheme is simply this. Whenever a governing body can by specific enabling statute submit a particular governmental problem to popular referendum, it should do so rather than have recourse to a non-binding referendum. But where no such statute exists for the purpose, and only then, it may have the benefit of an advisory opinion of the voters on the matter.

Board of Education v. City of Hackensack, 63 N.J. Super. at 570.

Most importantly the New Jersey Supreme Court recently reiterated this view in The Great Atlantic and Pacific Tea Co., Inc. v. Borough of Point Pleasant, 137 N.J. 136 (1994). There the Court held that a non-binding referendum on a proposed zoning ordinance amendment was permissible, where there existed no "alternative statutory mechanism for determining voter sentiment." Id. at 151. These decisions are all consistent with the plain language of N.J.S.A. 19:37-1, which provides that a municipality may only conduct a binding referendum where specifically permitted by enabling legislation. When such enabling legislation does not exist, a municipality has

no other means to gauge public sentiment and is therefore permitted to conduct a non-binding referendum.

In this action, when the Hoboken City Council was asked specifically what provision enabled it to place a competing ordinance on the ballot with the Petitioners' Initiated Ordinance, the City's attorney cited N.J.S.A. 40A-181. Reliance on this provision, however, is completely erroneous. This statute merely pertains to publication requirements and in no way provides substantive referendum requirements. Indeed, the statute has no bearing whatsoever on whether a governing body may submit an ordinance to the voters for approval or rejection by placing it on the public ballot as a binding referendum. Without enabling authority under the circumstances, the Hoboken City Council's action was therefore *ultra vires* and should be deemed unlawful and ineffective. The Hudson County Clerk must thus be prohibited, enjoined or restrained from printing the City's Ordinance, DR-157, on the official ballot to be used in the November, General Election.

ARGUMENT II

THE COUNCIL HAS ABUSED ITS AUTHORITY AND ACTED IN BAD FAITH BY SUBMITTING ITS ORDINANCE TO THE VOTERS SOLELY TO THWART PLAINTIFFS' STATUTORY RIGHT TO PLACE MEASURES BEFORE THE VOTERS WITHOUT FEAR OF CONFUSION AND OBFUSCATION.

Assuming arguendo that the Hoboken City Council does not need express authority to make a campaign finance ordinance effective only after approval by the voters, the City Council's submission of its own diluted "pay-to-play" ordinance has unlawfully interfered with Plaintiffs' right of initiative as guaranteed under the Faulkner

Act. The purpose of initiative and referendum provisions is to encourage public participation in municipal affairs in the face of apathy and lethargy in such matters. Sparta Tp. v. Spillane, 125 N.J. Super. 519 (App. Div. 1973), certif. denied. 64 N.J. 493 (1974). It is specifically aimed at increasing public participation in public affairs. Borough of Eatontown v. Danskin, 121 N.J. Super. 68 (Law Div. 1972). A municipality is therefore prohibited from attempting to evade the effect of a citizen's initiative or referendum petition. All Peoples Congress of Jersey City v. Mayor and Council of the City of Jersey City, 195 N.J. Super. 532 (Law Div. 1984).

In the case at hand, the City Council has employed a two-pronged strategy. First, the City Council chose to ignore the demands of its constituents and failed to pass the Petitioners' Initiated Ordinance "in substantially the form requested" When that strategy failed to weaken the resolve of the Plaintiffs, the City Council introduced a competing ordinance on the same issue; but one that lacked any teeth and would only confuse voters in the November General Election.

In early May, POG first proposed the Public Contracting Reform Ordinance to the Council and offered to meet with the Council to answer any questions they might have. After repeated requests to meet with the Council, the Administrative Committee reluctantly agreed. Unfortunately, the meeting proved fruitless – the Committee refused to discuss any issues concerning POG's proposed pay-to-play ordinance because the city attorney was out with a "bad back." Throughout the remainder of June, the Plaintiffs tried in vain to meet with Administrative Committee again only to be told the Hoboken City Council attorney was on vacation. When they finally lost faith in the City Council

to meet with them further or introduce their ordinance, Plaintiffs took to the streets with pen and paper. In the blazing heat of July, they worked tirelessly to obtain over 1,000 signatures – over twice the number required by law – to place their ordinance on the public ballot.

The Council, however, maintained its stalwart opposition to the ordinance by refusing to adopt the measure, or one in substantially the same form, at the August 11, 2004, public meeting. Recognizing that POG , the Petitioners and other citizens were not going away, the Hoboken City Council changed its strategy. On that same day, the City Council proposed its own watered-down ordinance and suggested that it be placed on the same ballot with Petitioners' Initiated Ordinance. The citizens were shocked that the Council would resist pay-to-play reform so vigorously as to introduce a competing ordinance that would serve only to complicate and confuse matters for the voter. Despite significant public opposition, the Hoboken City Council passed its ordinance after its first reading and included it on the September 1, 2004 agenda for public hearing and final vote.

The arrogance of City Hall didn't stop there. The following day, the City Clerk sent the Plaintiffs' Initiated Ordinance and the Council's Ordinance to the County Clerk, even though Council's proposal had not been granted a second hearing, publication, or been adopted by the Council's majority. (*See* Ex. C). On September 1, 2004, the Council had its second hearing where it intended to ram its proposal through the public opposition and onto the public ballot. At the beginning of the meeting, Ann Graham questioned the City Council as to what enabling authority permitted the Council to place

a competing ordinance on the ballot. After nervously searching through certain statutes and leaving the room, the City Attorney provided the public with a misleading answer and cited an irrelevant provision of law.

Puzzled by the City Attorney's explanation, the Plaintiffs then challenged this legal authority and spoke of the many loopholes in the Council's proposed ordinance. Because the Council's Ordinance provides no real "pay-to-play" reform, a competing ordinance sponsored by the City Council would only undermine the petitioners' stronger ordinance and subvert their statutory right to initiative. *No where in the statutory scheme governing initiative and referendum is there* any indication that it is *appropriate for a governing body to respond to a citizen's initiative petition by placing its own ordinance on the same subject on the ballot at the same time as the citizens' initiative.* Either the governing body adopts the petitioners' proposed ordinance, adopts an ordinance substantially in the same form, or permits the citizens' initiated ordinance to go to the voters for a full and fair consideration. Exercising its questionable authority to submit any ordinance to the voters for approval when an initiative petition is pending is an abuse of authority and unconscionable. The statutory scheme sets the rules of the game; and Hoboken City Council either went outside the bounds of those rules or grossly distorted them. Indeed, the Council's action was the equivalent of publishing an interpretive statement of Plaintiffs' Initiated Ordinance that is biased or misleading to the voter. Despite their passionate pleas, Plaintiffs were met with either blank stares or the inappropriate tirades of Councilman Campos.

Under New Jersey law, a municipality is prohibited from attempting to evade the effect of an initiative or referendum petition. All Peoples Congress of Jersey City v. Mayor and Council of the City of Jersey City, 195 N.J. Super. at 532. Accordingly, it is the duty of the courts to promote the objectives of citizens in securing a plebiscite. Margate Tavern Owner's' Ass'n v. Brown. 144 N.J. Super. 435 (App. Div. 1976). The courts are further mandated to restrain municipal action where such action constitutes a misuse of power. Gamrin v. Mayor and Council of the City of Englewood. 76 N.J. Super. 555 (Law Div. 1962). Where a City Council seeks to subvert the citizenry's right to initiative and to confuse the electorate, the courts should find a misuse of power or abuse of authority. The Hudson County Clerk must thus be prohibited, enjoined or restrained from printing the City's invalid Ordinance, DR-157, on the official ballot to be used in the November, General Election.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court enjoin the Hudson County Clerk from publishing the Council's Ordinance on the official ballot, and declare the Hoboken City Council's action *ultra vires* or, under the circumstances, an abuse of its authority.

Respectfully submitted,

Renée Steinhagen, Esq.

NEW JERSEY APPLESEED PUBLIC INTEREST LAW CENTER, INC.
Co-counsel for Plaintiffs

Cc: Counsel for County Clerk

Counsel fof Hoboken City Council