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September 27, 2011

Rose Marie Saracino
Township of Old Bridge
One Old Bridge Plaza
Old Bridge, NJ 08857

Re: Petition protesting amending Chapter 351 of the Code of Old Bridge and requesting repeal or submission to voters of the Township of Old Bridge.

Dear Ms. Saracino,

I write because it has come to my attention that the Township of Old Bridge has, once again, received improper advice from its attorney as to the interpretation of a statute. Specifically, I am referring to the memo circulated by Carol A. Berlen, Esq., wherein she demands that the above-captioned petition be rejected due to what she wrongly perceives to be procedural deficiencies. I will address the points raised in Ms. Berlen's misguided memo in turn.

First, Ms. Berlen cites N.J.S.A. 40:69A-185 for the proposition that the petition in question had to be turned in within 20 days of the passage of the bill that it seeks to repeal. A simple reading of that statute demonstrates that she is plainly wrong. All that getting the petitions in by that 20 day deadline does is suspend the ordinance from taking effect until the time of the vote on the referendum. (See the very last line of the statute: "If within 20 days after such final passage... a petition against the passage of such ordinance shall be filed... **the ordinance shall be suspended** from taking effect until proceedings are had as provided herein ."). Ms. Greenberg's petition, however, does not seek the suspension of the ordinance pending the referendum, only that the issue be placed on the ballot. As such, the timing of the filing is governed by N.J.S.A. 40:69A-192, which provides that the necessary petition be filed 40 days prior to the election. Clearly, Ms. Greenberg has done so.

Second, Ms. Berlen indicates that N.J.S.A. 40:69A-186 requires the entire text of an initiative to appear on the petition. She's right, but this is not an "initiative." This is a referendum, as defined by N.J.S.A. 40:68A-185, which reads "The voters shall also have **the power of referendum which is the power to approve or reject at the polls** any ordinance submitted by the council to the voters **or any ordinance passed by the council**, against which a referendum petition has been filed as herein provided." Clearly, that's what this petition seeks to do. The next statute, the one cited by Ms. Berlen, N.J.S.A. 40:69A-186, distinguishes between initiatives and referendums, and provides that only initiatives need to have the full text of the subject being voted on:

"All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. **Initiative petition papers shall contain the full text of the proposed ordinance.** The signatures to initiative or referendum petitions

need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section."

N.J.S.A. 40:69A-186. So, she's correct that initiatives need to contain the full text, but this is a referendum, and the statute says nothing about the referendum containing the full text. As such, Ms. Greenberg used the uniform Westlaw template, a copy of which I have attached hereto, demonstrating that for a referendum on an already passed ordinance, all that needs to be cited is the name and statute citation.

Finally, Ms. Berlen makes some vague allusion to N.J.S.A. 40:69A-187, stating that it is within the clerk's discretion as to whether the petitions submitted meet the requirements. Ms. Berlen says the requirements are not met "for the reasons stated above." Because, however, as I have demonstrated, her reasons are entirely misguided, your office has no authority to deny the validity of the petitions. Also, to the extent there are any deficiencies, N.J.S.A. 40:69A-188 allows for the petitioning party to amend the deficiencies within 10 days of being put on notice of any such deficiency.¹

I thank you for your kind consideration of this matter. Please do not hesitate to contact me if you wish to discuss this matter or if you require any guidance.

Sincerely,

s/Jordan B. Rickards

Attorney for Anita Greenberg

¹ N.J.S.A. 40:69A-188: "An initiative or referendum petition may be amended at any time within ten days after the notification of insufficiency has been served by the municipal clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition."