

TOWNSHIP OF MONTCLAIR
COMMITTEE OF PETITIONERS, and
MONTCLAIR PROPERTY OWNERS
ASSOCIATION

Plaintiffs,

vs.

TOWNSHIP OF MONTCLAIR; MAYOR
AND COUNCIL OF THE TOWNSHIP
OF MONTCLAIR and STATE OF NEW
JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO.:

Civil Action

BRIEF IN SUPPORT OF TEMPORARY INJUNCTIVE RELIEF

BRACH EICHLER, LLC
101 Eisenhower Parkway
Roseland, New Jersey 07068-1067
(973) 228-5700

Attorneys for Plaintiffs

Of Counsel: CHARLES X. GORMALLY, ESQ.

On the Brief: CHARLES X. GORMALLY, ESQ.
PAUL M. BISHOP, ESQ.

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PRELIMINARY STATEMENT

Plaintiffs, Township of Montclair Committee of Petitioners and the Montclair Property Owners Association, (collectively “Plaintiffs”), seek to protect its statutory right of referendum in the midst of a global pandemic. This right is jeopardized by the practical impediments imposed by the State in response to the global pandemic and the refusal of the Township of Montclair to defer non-emergency legislation in deference to the power of the public to engage in referendum activity. Instead the Township was hell bent to adopt a non-emergency rent control ordinance (“Ordinance”) merely because it is an exploitable and hot issue in a pending Mayoral election race. The Township’s refusal to delay its consideration, and the determination of its governing body to pander to politics rather than respect to importance of public participation requires this court’s intervention. The Plaintiffs seek to protect the public interest by this application for temporary and permanent injunction and an equitable tolling of statutory time periods to engage in a referendum.

Montclair’s adoption of this Ordinance is subject to the well-settled right of the electorate to reject it through the statutory power of referendum under N.J.S.A. 40:69A-185. But now, since Montclair determined to act in the midst of a global pandemic, normal checks and balances on the power of the municipality are impossible to implement without this court’s intervention. Indeed, because the current health crisis and State of Emergency require that New Jersey residents remain at home by executive order, Plaintiffs statutory power to petition the government for referendum on the Ordinance has been rendered impossible. Specifically, Plaintiffs cannot canvass the Montclair community, circulate and discuss a petition, and gather signatures necessary to support a petition of referendum within the statute’s twenty (20) day limit. Accordingly, as a result of Montclair’s short-sighted action during the unprecedented

global pandemic, Plaintiffs face an immediate and irreparable injury – the loss of their right to challenge Montclair’s adoption of the Ordinance – unless the status quo is preserved.

Therefore, Plaintiffs respectfully requests that this Court preserve the *status quo* and equitably toll the effective date of the Ordinance and commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 until the current State of Emergency and executive orders are lifted. Such relief will safeguard Plaintiffs’ and the public’s established statutory right to challenge government action until referendum activity can commence.

This well supported application is premised upon Plaintiff’s established statutory rights, undeniable and irreparable injury, the impossibility of conducting referendum petition activity during a state of emergency, the likelihood of success on the merits of the claim, and the overwhelming balance in favor of protecting the public interest when compared to the lack of any hardship on the Township or its rent control advocates.

STATEMENT OF FACTS

The following facts are established by the Verified Complaint along with the supporting certifications of counsel and the Committee of Petitioners relevant to the request for the issuance of immediate equitable relief before ultimate return date of the Order to Show Cause.

1. A state of emergency exists in New Jersey due to the covid-19 pandemic;
2. Montclair adopted a rent control ordinance on April 7, 2020;
3. When Montclair adopted the Ordinance, the governing body was aware that the statutory right of the public to protest through referendum would not be possible because of the state of emergency;
4. The Committee seeks to engage in protest through referendum but cannot engage in the activity necessary to conduct referendum activity;
5. The power to protest through referendum will expire on April 27, 2020 unless the Court grants the requested equitable tolling.

LEGAL ARGUMENT

I. DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF STANDARD

The standard governing a request for emergent declaratory and injunctive relief is well-settled. Pursuant to R. 4:52-1 and R. 4:67-2, a court should grant such relief if the moving party demonstrates that: (1) the moving party's right to relief is settled; (2) the moving party has demonstrated a reasonable probability of ultimate success on the merits; (3) the moving party will suffer irreparable harm if the requested relief is not granted; (4) the moving party will suffer greater hardship if the requested relief is not granted than the non-moving party will if the relief is granted; and (5) the preliminary injunction will not impair the public interest. Crowe v. DeGioia, 98 N.J. 126, 132-34 (1982); Dolan v. DeCaprio, 16 N.J. 599, 614 (1954); Zoning Board of Adjustment v. Service Electric Cable T.V., 198 N.J. Super. 370, 379 (App. Div. 1985).

Additionally, a *temporary restraining order* should be granted where the threatened harm may have immediate consequences that cannot be averted prior to the ultimate disposition of a legal action. The purpose of such relief is to maintain the *status quo* and preserve the rights between the parties pending final disposition of their dispute. Magna Manufacturing Company, Inc., v. Aetna Casualty & Surety Company, 129 N.J. Eq. 142, 152 (Ch. Div. 1941); Peters v. Public Service Corp. of New Jersey, 132 N.J. Eq. 500, 511 (Ch. Div. 1942), aff'd 133 N.J. Eq. 283 (1943); News Printing Company v. Totowa, 211 N.J. Super 121 (1986) (holding that *status quo* injunction is appropriate in prerogative writ action); see also Two Guys from Harrison Inc. v. Furman, 59 N.J. Super 135 (Law Div. 1959).

II. THIS COURT SHOULD ENTER AN INJUNCTION TO TOLL THE EFFECTIVE DATE OF MONTCLAIR'S RENT CONTROL ORDINANCE AND COMMENCEMENT OF THE TIME PERIOD TO PROTEST THE ORDINANCE BY PETITION FOR REFERENDUM PURSUANT TO N.J.S.A. 40:69A-185 UNTIL THE END OF THE STATEWIDE STATE OF EMERGENCY

Tolling of the effective date of the Ordinance and tolling the commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 to prepare a referendum petition protesting the Ordinance is warranted here because Plaintiffs' well-settled statutory power to protest through a referendum will be obliterated unless this Court intervenes and applies the well settled remedy of equitable tolling. Each of the elements to secure an injunction are well established in this application.

A. The Plaintiffs' Right to Relief is Well Settled

Plaintiff's right to protest an ordinance by referendum is a well-established statutory power given to the public to guard against governmental action and provides a powerful method to protest such actions by exposing them to a vote of the public. When implemented the governmental action is suspended until such vote occurs. Thus there can be no doubt that the Plaintiffs application is premised on an unassailable, well-settled legal foundation, designed to protect both the Plaintiffs expressed interest and the public's interest as well.

Further, recent state and federal government action to extend and equitably toll certain hard deadlines in the midst of the Covid-19 pandemic establishes that the remedy requested by the Plaintiffs is well grounded. Thus, this application is premised on settled law and the remedy sought--- equitably tolling the effective date of the ordinance and the commencement of the time period prescribed by N.J.S.A. 40:69A-185 ----is entirely merited here.

Under the Faulkner Act, an ordinance is suspended from taking effect until the referendum process had been completed. N.J.S.A. 40:69A-184, -185. See Smith v. Livingston Tp., 106 N.J. Super. 444 (Ch. Div. 1969). The protest referendum is a fundamental element of

the covenant that the Faulkner Act establishes between the government and the people. In re Petition for Referendum on City of Trenton Ordinance 09-02, 201 N.J. 349, 359–60, 1116 (2010). It operates as “a check on the exercise of local legislative power [and] foster[s] citizen involvement in the political affairs of the community.” In re Ordinance 04–75, 192 N.J. 446, 459 (2007). In particular, the Act confers on the citizens “the right to test a challenged ordinance in the crucible of the democratic process.” Id. at 450 (quoting N.J.S.A. 40:69A–185).

The Faulkner Act relating to the referendum power states in relevant part:

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. No ordinance passed by the municipal council, except when otherwise required by general law or permitted by the provisions of [N.J.S.A. 40:69A–181], ... *shall* take effect before twenty days from the time of its final passage and its approval by the mayor where such approval is required. If within twenty days after such final passage and approval of such ordinance a petition protesting against the passage of such ordinance shall be filed with the municipal clerk and if the petition shall be signed by a number of the legal voters of the municipality equal in number to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, the ordinance *shall* be suspended from taking effect until proceedings are had as herein provided.

[N.J.S.A 40:69A–185 (emphasis added).]

Accordingly, the referendum power is mandatory and any ordinance “is subject to the [Faulkner Act] referendum process and must be placed on the ballot for voter review” if “there is no applicable statutory exception[.]” In re Ordinance 04-75, 192 N.J. 446, 451 (2007). In fact,

¹ N.J.S.A 40:69-181 creates only two statutory exceptions not applicable here: (1) an exception to process where technical regulations are included; and (2) an exception for a local budget ordinance to take effect within the twenty (20) days if the council adopts a resolution declaring an emergency. See State v. East Shores, Inc., 164 N.J. Super 530 (App. Div. 1979) (referendum right overridden by emergency need to provide unpotable water). The non-emergency rent control ordinance is not subject to a statutory exception.

“the referendum statute in the Faulkner Act should be liberally construed [.]” Id. at 459; see also We the People Comm., Inc. v. City of Elizabeth, 325 N.J. Super. 329, 332 (App. Div. 1999) (finding Faulkner Act should be “liberally construed to promote the salutary objective of popular participation in local government”) (citations omitted).

The power of referendum and its importance to our system of government cannot be overstated. Tumpson v. Farina, 218 N.J. 450 (2014) emphasizes this important governmental interest and provides guidance to this Court about how important it is to protect its use to protest government action and expose it to the will of the electorate. The Supreme Court’s guidance is worthy of the following excerpt:

"In essence, the right of referendum is about enfranchisement, about self-government, and about giving citizens the right to vote on matters of importance to their community. As earlier described, the referendum took root in an era when citizens protested about the outsized influence of special interests in the legislative process. As Governor Wilson said around the time of the enactment of New Jersey's first referendum statute: the referendum is one of "the safeguard[s] of politics," Hendrick, *supra*, at 235; it "enable[s] the people to correct the mistake of their Governors," *Makes Appeal to Lawmakers, supra*.

The referendum is direct democracy in its purest sense, allowing citizens to take an appeal above the heads of their elected officials and directly to the voters who can then approve or reject an ordinance at the polls. See In re Trenton Ordinance 09-02, supra, 201 N.J. at 353, 990 A.2d 1109 (stating that referendum power "is an exercise in democracy that profoundly affects the relationship between the citizens and their government by affording the people the last word if they choose to take a stand against the wisdom of an ordinance that the government has enacted").

In short, we conclude that the Faulkner Act confers a substantive right of referendum protected by the New Jersey Civil Rights Act." supra at 481.

Accordingly, Plaintiff's power to exercise its referendum right to protest the Ordinance is well settled. Moreover, this Court's ability to support this "salutary objective of popular participation in local government" by tolling the time period for the effective date of the Ordinance and the commencement date of the time period prescribed by N.J.S.A 40:69A-185 is well supported by the similar current state and national action equitably tolling and extending hard, statutory deadlines arising out of the difficulties presented by the Covid-19 pandemic. For example, Governor Murphy has signed several executive orders tolling government action or equitably extending deadlines during the current state of emergency, including:

- Executive Order 106 – staying the execution of judgments of possession and warrants for possession in residential landlord-tenant matters and restraining Sheriffs and court officers from removing individuals from rental property until 2 months after the end of the State of Emergency;
- Executive Order 120 – postponing the New Jersey primary election from June 2 to July 7 and extending all deadlines for candidates to meet statutory requirements to appear on the ballot, *including obtaining necessary signatures and filing candidate petitions*;
- Executive Order 123 – establishing an "emergency grace period" of 60/90 days in all policies of insurance during which insurers cannot cancel an insurance policy for non- payment of premium;

The Legislature even has recognized that time periods in its laws need to be relaxed. Enacted on March 20, 2020, P.L. 2020, c.10 provides that the normal statutory deadlines for a public agency to respond to an Open Public Records Act (OPRA) request(seven days) during a state of emergency, public health emergency, or state of local disaster emergency, do not apply².

² This creates additional practical impediments to the Plaintiffs being able to engage in protest through referendum since obtaining voter lists and information from the Township cannot be compelled in a manner to meet the 20 day deadline to submit the signatures of sufficient registered voters as noted in the moving certification of counsel.

New Jersey Courts have similarly equitably extended hard deadlines to relieve the stress caused by the coronavirus. By Order dated March 17, 2020, the New Jersey Supreme Court extended all statute of limitations deadlines and equitably tolled the time for computation of deadlines under the New Jersey Court Rules by declaring the time periods March 16 through April 26. Significantly, the Federal Government has extended the statutory deadline for the filing of income tax returns until July 15.

Therefore, in this climate of well-settled, equitable extensions of significant statutory deadlines in the interest of justice during the Covid-19 pandemic, this Court is equally justified in equitably tolling the effective date of the Ordinance and the time period of prescribed by N.J.S.A 40:69A-185 in order to preserve the well-established statutory right of referendum during this time. It is a well-settled, rational, and calibrated application of equity to an impossibly difficult situation.

B. Plaintiffs Have A Reasonable Probability of Success on the Merits

Plaintiffs have a reasonable probability of success on the merits here because Montclair's Ordinance, adopted in the midst of a national and state declared emergency, even if otherwise valid, deprives the Plaintiff of its power of protest through referendum. Further, Montclair's rush to pass the Ordinance violates Plaintiff's due process rights and will ultimately be found to have exceeded its police power by passing such a non-emergent Ordinance during a state of emergency – an action timed elegantly to deprive the public its right to participate.

(i) ***The Ordinance Conflicts with the Statutory Right to Referendum***

A municipality may not contradict a policy the Legislature establishes. Brunetti v. Borough of New Milford, 68 N.J. 576, 601-02 (citing Auto-Rite Supply Co. v. Mayor and Township Committeemen of Woodbridge, 25 N.J. 188 (1957)). Hence an ordinance will fall if it permits what a statute expressly forbids or forbids what a statute expressly authorizes. Brunetti,

68 N.J. at 601; Summer v. Teaneck Twp., 53 N.J. 548, 554 (1969). This follows from the basic principle that local government may not act contrary to State law. Brunetti, 68 N.J. at 601-02. “Only the Legislature can make exceptions to the statutory mandate that ‘any ordinance’ is subject to referendum.” In re Petition for Referendum on City of Trenton Ordinance 09-02, 201 N.J. 349, 361, (2010) (quoting In re Ordinance 04-75, 192 N.J. 446, 451) (2007).

Here, Montclair’s short-sighted action in adopting the Ordinance in the midst of global pandemic with its constraints on free movement, contradicts the specific power that the Legislature established, *i.e.*, the right to protest through referendum. By refusing to adjourn the adoption hearing and passing the Ordinance, Montclair activated the twenty (20) day period proscribed by N.J.S.A. 40:69A-185 to prepare and circulate a protest referendum petition. As a result of global pandemic and mandatory stay-at-home orders, Plaintiffs are deprived of their statutory right as they cannot meet the public and collect the necessary signatures required to file a timely referendum petition.

Indeed, in a recent Coronavirus briefing relating to election activity, Governor Murphy made it clear that “No one, however, no one should be out gathering signatures physically.” See Transcript, March 19, 2020 Coronavirus Briefing, <https://www.nj.gov/governor/news/news/562020/20200319d.shtml> (last visited April 7, 2020).³ Thus, by passing the Ordinance in the midst of a state of emergency, Montclair’s municipal action runs afoul of the state’s legislative intent and the specific direction of Governor Murphy. Accordingly, the only way to accomplish the preservation of this statutory power possessed by the public is for this court to toll the effective date of the Ordinance and to toll the twenty (20)

³ Governor Murphy’s statement was in reference to electoral candidates obtaining necessary signatures for a petition to appear on the ballot.

day period prescribed by N.J.S.A. 40:69A-185 until the current state of emergency is over and relevant executive orders are lifted.

(ii) ***Adoption of the Ordinance Violated Due Process***

By adopting the Ordinance without appropriate notice and conducting an electronic public meeting that was rife with technical issues preventing an opportunity to be heard Montclair violated the Plaintiff's right of due process. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." O'Connor v. Abraham Altus, 67 N.J. 106, 126 (1975) (quoting Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314, (1950)).

In violation of the Open Public Meetings Act, N.J.S.A. 10:4-8 Montclair's agenda for the March 10, 2020 public meeting did not provide the appropriate notice to the members of the public that it would even be considering the Ordinance on first reading. Instead, this agenda's only mention of rent control was a brief reference that the Ordinance would be discussed at the next council meeting on March 24, 2020. *Verif. Compl. Ex. C* Notwithstanding its lack of appropriate notice to the public in violation of the right of due process – and in fact only a deceptively misleading reference contained in the meeting agenda – Montclair adopted the Ordinance on first reading on March 10, 2020. The Committee, members of MPOA and the public at large were not notified that the matter would even be discussed that day let alone adopted for first reading – a violation of the public's right to adequate notice of what is to occur at a public meeting and its right to notice

Thereafter, on April 7, 2020 Montclair's governing body considered the Ordinance for final adoption. Prior to the meeting, Montclair ignored requests from Plaintiffs and many other

members of the public to postpone the issue of final adoption to allow robust participation and in because proper notice was lacking – **and because it would not be possible to mount a protest referendum in light of the global pandemic.** At the meeting, which was conducted electronically, adoption of the ordinance was handled without a full and fair opportunity for Plaintiffs to be heard on the weighty issues of rent control.

Specifically, due to severe technical issues, Plaintiffs and members of the public were unable to offer public comments while hearing and reacting to other comments because of the wholly inadequate telephone and video feed provided; were repeatedly cut-off from the call-in phone lines; the public could neither hear or see absent members of the governing body who thereafter voted on the Ordinance; and could not hear the comments of Governing body during the hearing. Despite such an inadequate public hearing, the Ordinance was adopted without further consideration of Plaintiff's due process rights. When the Court has an opportunity to see/hear whatever transcript can be produced from this "public hearing" the conclusion will be inescapable – a proper final hearing was not conducted

Accordingly, the manner of notice and hearing that led to adoption for the Ordinance did not meet due process requirement or the requirements of the Open Public Meetings Act.

(iii) *The Ordinance Exceeds Montclair's Police Power*

Finally, by implementing the non-emergency Ordinance in the middle of a worldwide health pandemic and declining to respect Plaintiff's statutory rights to referendum, Montclair has exceeded its police powers. New Jersey courts have long ruled that police power is not infinite and illimitable. In Hasbrouck Heights Hosp. Ass'n. v. Bor. of Hasbrouck Heights, 15 N.J. 447, 455 (1954) the Supreme Court stated "An exercise of delegated power in a manner not within the contemplation of the Legislature must be restrained within proper bounds and be held void." See also Oliva v. Garfield, 1 N.J. 184 (1948), McQuillins Municipal Corporations Section 28.54.

Although it is well settled that townships have the power to implement rent control ordinances, the power is not absolute and it certainly cannot be exercised in an arbitrary and capricious manner. See Inganamort v. Bor. of Ft. Lee, 62 N.J. 521 (1973); Leone Management Corp. v. Bd. of Comm'n of the Town of West New York, 130 N.J. Super. 569 (Law Div. 1974). Thus, "despite the fact that a municipal ordinance may be within the permissible objectives of the police power, all police power legislation is subject to constitutional limitation that it not be unreasonable, arbitrary or capricious, and that means selected via such legislation shall have real and substantial relation to the object sought to be attained." Bonito v. Mayor and Council of Twp. of Bloomfield, 197 N.J. Super. 390, 398 (Law Div. 1984) (citations omitted).

In this case, Montclair's refusal to adjourn the adoption hearing and the adoption of the ordinance during the ongoing Covid-19 crisis – knowing that proceeding to adopt would obliterate the power of protest through referendum – is classically arbitrary, capricious and unreasonable. The Montclair governing body knew it could proceed without its decision making being challenged by the Plaintiffs and the public through the statutory power of protest through referendum activities. Even the Township Counsel, advised the governing body, **before a vote was taken**, that the public's right to referendum could not likely ever occur under the current emergency. Did the political aspirations of the candidates for Mayor compel them to proceed even though they knew the public's power would be gutted? We may never know. But what we do know is that the governing body was expressly advised that the power of the public to protest would not be possible if they proceeded to adopt in the middle of the state of emergency.

Rather than defer action, there was a failed attempt to try to declare the rent control ordinance enactment was an "emergency". This failed attempt demonstrates that the governing body knew it was not an emergency to adopt rent control in the midst of the state of emergency

and yet, they went ahead and did it anyway. The only logical explanation is that Montclair is attempting to essentially void the power of the public to protest their actions through referendum.

There is no current emergency in Montclair that requires rent control to be implemented in a manner that moots the public's power to petition for referendum. Indeed, the only reasoning behind adoption of this ordinance at this time appears motivated by a pending mayoral election where both candidates support rent control – not a true public interest. Such arbitrary and capricious law making lacks rational basis, and must be declared void.

Accordingly, as a matter of law and in addition to the likelihood it will prevail on its claim that the public has the power to protest through referendum as detailed earlier, Plaintiffs have a reasonable probability of eventual success on the merits on its overall challenge to the Ordinance itself.

(a) **Plaintiffs Will Suffer Immediate and Irreparable Harm If The Requested Relief is Not Granted**

Without injunctive relief, Plaintiffs will lose their right to challenge the Ordinance through the statutory power of protest and referendum on April 27, 2020 – within twenty (20) days of its enactment – an immediate harm and an irreparable harm to the public and the Plaintiff.

Under New Jersey law, harm is considered “irreparable” if it cannot be adequately addressed by money damages. Coach Company v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E & A. 1878). Ordinarily, the type of harm a movant seeks to avoid by way of injunctive relief is the kind of harm that cannot be compensated with money damages due to the nature of the claimed injury and the right affected. See Outdoor Sports Corp. v. A.F. of L. Local 23131, 6 N.J. 217, 229-230 (1951); Bd. Of Ed. of Union Beach v. N.J. Ed. Ass’n, et al., 96 N.J. Super. 371, 391 (Ch. Div. 1967). However, the general rule for issuing an injunction “is not inflexible,

and ... the power of a court of equity to grant such a remedy depends upon the factual situation involved and the need for that type of remedy in a particular case.” American Assn. of Univ. Professors v. Bloomfield College, 136 N.J. Super. 442, 448 (App. Div. 1975).

Here, the irreparable harm to the Plaintiffs and the public is overwhelming. Without court action, Plaintiffs ability to challenge the Ordinance through their statutory power of protest through referendum will be obliterated. Because Governor Murphy has ordered that all New Jersey residents remain in their homes, Plaintiffs’ cannot canvass the Montclair community and obtain the signatures for a petition to protest the Ordinance. Alternatively, by venturing into public at this time to exercise this vital statutory power, Plaintiff’s face the Hobson’s Choice of irreparable harm of catching or spreading Covid-19, an illness that has proved deadly, as well as the consequences of violating executive orders. Accordingly, the irreparable harm faced here is a very compelling reason to preserve Plaintiffs’ referendum power by staying through equitable tolling, the effective date of the Ordinance and the 20-day period to submit a protest through referendum, until the end of the state of emergency.

Accordingly, without the entry of the injunctive relief requested and temporary restraints, Plaintiffs will suffer immediate and irreparable harm

(b) **Plaintiffs Will Suffer Greater Hardship If The Requested Relief Is Not Granted Than Montclair Will Suffer If The Relief Is Granted**

The Court also must consider whether, if the relief requested is granted, the harm to defendant is greater than the harm to the plaintiff if the requested relief is denied. Crowe, 90 N.J. at 132. Here, the balancing of the equities undoubtedly favors Plaintiffs.

There is virtually no consequence to staying the effective date of the Ordinance. The Ordinance does not reduce the current rents charged by any landlord in the Township. Its only applicability, with respect to the amount of rent being charged, occurs at the time of lease

renewal, and only after at least a one month advance notice to a tenant. Thus delaying its effectiveness will have virtually no immediate impact – **on the very issue that Montclair was seeking to address.** Compared to the immediate obliteration of the power to protest which will occur on April 27, 2020, the greater hardship analysis clearly tips in favor of the Plaintiff.

If declaratory and injunctive relief is not granted, Plaintiffs will lose their statutory power to protest the ordinance by referendum once the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 expires or be forced risk their health and safety by venturing into public contrary to Governor Murphy’s orders. On the other hand, the Montclair and its residents will suffer no harm if the Ordinance is stayed until the end of the state of emergency

Thus, the equities balance in favor of Plaintiffs and in favor of declaratory and injunctive relief.

C. The Public Interest Will Not Be Impaired If The Requested Relief Is Granted

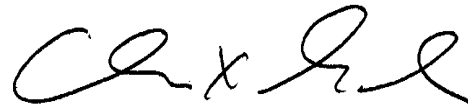
Finally, under Crowe, the court must determine the effect the requested relief would have on the public interest. Id. at 132. Here, significant public interest *will be promoted* if the relief is granted because Plaintiffs’ and public’s power to protest through referendum will be preserved pending the Covid-19 pandemic and unnecessary health and safety risks will be avoided. While the self-interested politicians who used this enactment to pander to tenant voters will likely be disappointed that the Township’s hasty enactment in the midst of a global pandemic has been stayed, this minor inconvenience is dwarfed by the noble purpose of upholding the public’s power to protest through referendum.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court enter the attached Order to Show Cause: (1) declaring that the commencement date of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a petition protesting the

Ordinance and for the collection of the requisite number of voter signatures is tolled until the State of Emergency and Executive Orders 103 and 107 are lifted; (2) declaring the effective date of the Ordinance tolled until the State of Emergency and Executive Orders 103 and 107 are lifted; and (3) temporarily and permanently enjoining and restraining Montclair from enforcing or implementing the provisions of the Ordinance until further order of the Court.

BRACH EICHLER LLC
Attorneys for Plaintiffs

A handwritten signature in black ink, appearing to read 'Charles X. Gormally', written over a horizontal line.

By: _____
Charles X. Gormally, Esq.

Dated: April 14, 2020