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PHILIP I. BRILLIANT, *Pro Se*

Plaintiff,

v.

TOWNSHIP OF TOMS RIVER,  
COUNCIL PRESIDENT CRAIG COLEMAN,  
COUNCIL VICE PRESIDENT LYNN O'TOOLE,  
COUNCILMAN JUSTIN LAMB,  
COUNCILMAN GEORGE LOBMAN,  
MAYOR DANIEL RODRICK,  
TOMS RIVER ACTING MUNICIPAL CLERK  
STEPHEN HENSEL,  
BUSINESS ADMINISTRATOR JONATHAN  
SALONIS & ATTORNEY, PETER  
PASCARELLA, ESQ.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – OCEAN COUNTY  
DOCKET NO. OCN-L-2111-24

CIVIL ACTION

AMENDED COMPLAINT IN LIEU  
OF PREROGATIVE WRIT

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Plaintiff, Philip I. Brilliant, residing at 79 Holly Tree Lane, Toms River, County of Ocean,  
State of New Jersey, says by way of Amended Complaint against Defendants as follows:

**AMENDED COMPLAINT IN LIEU OF PREROGATIVE WRIT**

1. Plaintiff repeats and reasserts each and every allegation set forth in the original Complaint as to the following parties TOWNSHIP OF TOMS RIVER, COUNCIL PRESIDENT CRAIG COLEMAN, COUNCIL VICE PRESIDENT LYNN O'TOOLE, COUNCILMAN JUSTIN LAMB, COUNCILMAN GEORGE LOBMAN, MAYOR DANIEL RODRICK, TOMS RIVER ACTING MUNICIPAL CLERK STEPHEN HENSEL, BUSINESS ADMINISTRATOR JONATHAN SALONIS and ATTORNEY, PETERPASCARELLA, ESQ.. The Complaint filed by Plaintiff on August 14, 2024,

requested injunctive relief and stay by the Court for the Township of Toms River Resolution No. 7 of the August 7, 2024 Agenda regarding a Shared Service Agreement with the Ocean County Board of Health to re-open the Toms River Animal Shelter under the management and control of Ocean County Board of Health.

2. Whereas N.J.S.A 10:4-15 provides for proceeding in lieu of prerogative writ to void action at nonconforming meeting; parties; limitation; corrective or remedial action when, “any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 days after the action sought to be voided has been made public; provided, however, that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.” *Schroeder v. County of Atlantic* 440 NJ Super 251, it is well-settled law that the final decisions of a county government may be challenged by an action in lieu of prerogative writs. See, e.g., *R. 4:69-1. Warren v. Bd. of Freeholders*, 386 N.J.Super. 194, 899 A.2d 1028, certif. denied, 188 N.J. 354, 907 A.2d 1014 (2006); *Aparin v. County of Gloucester*, 345 N.J.Super. 41, 783 A.2d 271 (Law Div.2000). A prerogative writ action must be filed within forty-five days. R. 4:69-1.
3. Since there was no election to be held within 90 days of June 26, 2024 (about September 26, 2024), the verification by the Toms River Clerk, a special election shall be held “not less than 40 nor more than 60 days from the final date for the withdrawal of the petition as

provided in section 17-42 (C.40:69A-191) of this act.” (NJSA 40:89A-192a) As opposed to preparing a referendum and working with the Board of Elections, on August 7, 2024 the Toms River Council presented a resolution to execute a shared service agreement with Ocean County Board of Health. The resolution as drafted by counsel, passed with affirmative votes of the council members named as Defendants and the ordinance as drafted by counsel, passed first reading with affirmative votes of the council members named as Defendants. These actions completely disregard the rights of the Plaintiff, petitioners committee and citizens of Toms River. These actions violated the requirements of the Act stated above.

**FACTUAL AND LEGAL STATEMENTS FOR AMENDED COMPLAINT**

4. Since there was no election to be held within 90 days of June 26, 2024 (about September 26, 2024), the verification by the Toms River Clerk, a special election shall be held “not less than 40 nor more than 60 days from the final date for the withdrawal of the petition as provided in section 17-42 (C.40:69A-191) of this act.” (NJSA 40:89A-192a) As opposed to preparing a referendum and working with the Board of Elections, on August 7, 2024 the Toms River Council presented a resolution to execute a shared service agreement with Ocean County Board of Health and an ordinance to repeal ordinance No. 4802-24, the original ordinance that the petitioners successfully protested. The resolution as drafted by counsel, passed with affirmative votes of the council members named as Defendants and the ordinance as drafted by counsel, passed first reading with affirmative votes of the council members named as Defendants. These actions completely disregard the rights of the Plaintiff, petitioners committee and citizens of Toms River. These actions violated the requirements of the Act stated above.

5. In accordance with N.J.S.A 19:37-1, the Deadline for Submission of Non-binding County and Municipal Public Questions to the County Clerks for Printing on the General Election Ballot, of 88 days prior to election, was August 9, 2024. Even though the Defendants did not abide by the Law of 20 days as stated above, if they sent the referendum to the County Clerk by August 9, 2024, rather than introducing the resolution, no special election would have been required and no additional costs to taxpayers.
6. In addition, the actions taken by Council on the ordinance to repeal and the resolution to bypass the protest of the petition with a new instrument to complete the same action, the resolution, should have never been considered by Council. The Defendants have engaged in conduct to interfere with the referendum process via intimidating emails - specifically by Mayor Rodrick, misinformation by Council and Rodrick, lack of transparency at council meetings and in failing to provide timely agendas as well as scheduling meetings via Zoom and afternoon sessions to dissuade voters from participating in the referendum process.
7. The Defendants violated the Plaintiff's and voters rights by failing to place the vote on the ballot in violation of law. The Defendants' conduct includes intimidating emails - specifically by Mayor Rodrick, misinformation by Council and Rodrick, lack of transparency at council meetings and in failing to provide timely agendas as well as scheduling meetings via Zoom and afternoon sessions to dissuade voters from participating in the referendum process. These actions clearly seek to put a chilling effect on Plaintiff's, Petitioners Committee's and voters' right to engage in the referendum process. The Defendants further seek to intimidate Plaintiff, Petitioners Committee and voters by closing the animal shelter depriving the residents of essential services and seeking to blame the petition and referendum process for the closure.
8. The Defendants further exacerbated these violations by: 1. failing to act within the 20 day

statutory period to repeal the Ordinance; and 2. seeking to circumvent the law by introducing a new resolution to transfer the Animal Shelter by a different vehicle, a shared services agreement, to Ocean County. The act of introducing a resolution that functions the same as the ordinance is impermissible as it only seeks to subvert the referendum process. Additionally, the Township is estopped from using a resolution to transfer the ordinance as plaintiff relied on their prior conduct in introducing an ordinance. The Defendants conspired to disenfranchise the voters and subvert the referendum process by their willful actions.

9. The Defendants improperly enacted a resolution for a shared services agreement to subvert the Plaintiff's right to referendum. The resolution was not enacted in good faith and was not in compliance with the Uniform Shared Services Act. Moreover, the Defendants are estopped from utilizing a resolution to contravene the referendum process where the Defendants previously used an Ordinance in an effort to transfer the Animal Shelter to the County.

10. The Uniform Shared Services Act governs the use of shared services agreement. N.J.

Stat. Ann. § 40A:65-5 sets forth

a. A local unit authorized to enter into an agreement under section 4 of P.L.2007, c. 63 (C.40A:65-4) may do so by the adoption of a resolution. In the case of a shared service agreement between pilot municipalities, no agreement shall be adopted until copies of the agreement shall be provided to all affected employees of the local units that are party to the agreement at least two weeks before adoption of the resolution, and a public hearing has been held on the agreement, so that all persons having an interest in the agreement shall have been given an opportunity to present comments or objections concerning the content of the agreement, or the effect of the agreement. **During the public hearing, the local unit shall provide an overview of the terms of the agreement and an estimate of the cost savings anticipated to be achieved by the local units that are the parties to the agreement.** A resolution adopted pursuant to this section or subsection b. of that section shall clearly identify the agreement by reference and need not set forth the terms of the agreement in full.

11. The intent of the Uniform Shared Services Act is “to effectuate agreements between local units for any service or circumstance intended to reduce property taxes through the reduction of local expenses.” N.J.S.A. 40A:65-2 (c) The Plaintiff and voters of Toms River pay property taxes to both Ocean County and Toms River. The Defendants failed to explain at a public hearing an estimate of cost savings to both the town and the County. The Mayor has made spurious inconsistent comments as to the cost of operating the shelter. There was no explanation as to how the shared services agreement would achieve any savings for the County. Additionally, the Mayor has claimed that the shelter will require alleged renovations for the potential transfer to the County. There has been no explanation of how the cost of the renovations would impact the cost analysis. The Uniform Shared Service Agreement also calls for payment to the County for the services pursuant N.J. Stat. Ann. § 40A:65-7 f. which states, “Payment for services performed pursuant to an agreement shall be made by and to the parties, and at such intervals, as shall be provided in the agreement.” There was no explanation of how much this purported Shared Services Agreement would cost.

12. Additionally, the Mayor is seeking to give away a million dollars in donations dedicated to the Toms River Animal Shelter. It is clear that the Defendants are not meeting the requirements or the intent of a shared services agreement under the statute. Moreover, the Defendants are engaging in the agreement purely to subvert the referendum process. N.J. Stat. Ann. § 40A:65-34 states: “Any shared service agreement, joint contract, or municipal consolidation shall be deemed in furtherance of the public good and presumed valid, subject to a rebuttable presumption of good faith on the part of the governing bodies entering into the agreement.” It is clear that this resolution was presented to replace the

challenged Animal Shelter Ordinance in attempt to deprive the Plaintiff and voters of the referendum vote.

13. Pursuant to N.J.S.A. 40:69A-189, the Animal Shelter ordinance is suspended and no action is to be taken on the ordinance pending completion of the referendum process.

The Council's introduction of a substitute shared services resolution to the protested ordinance is not permissible to circumvent the right to referendum:

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, 256 A.2d 85 (Ch.Div.1969). The same provision for suspension is provided by the general statute delegating powers to municipalities. N.J.S.A. 40:49-9. See French v. Ocean City, 136 N.J.L. 57, 54 A.2d 196 (Sup.Ct.1947). **If a municipality repeals a challenged ordinance while the referendum proceedings are pending, it may not reenact the same ordinance, nor may it reenact the same or an ordinance in all essential features the same after referendum proceedings have been abandoned. Such action would plainly operate to nullify and circumvent the liberal and salutary design of the referendum device.** All Peoples Cong. of Jersey City v. Mayor & Council of City of Jersey City, 195 N.J. Super. 532, 538, 480 A.2d 948, 951 (Law. Div. 1984)

14. This is a simple question of form over substance. The shared services resolution is substantially the same as the ordinance to implement the transfer the operation of the shelter from Toms River to the County. It is clear that the Defendants contrived the shared services resolution as an alternate means to transfer the shelter to the County and to circumvent the referendum rights of the plaintiff as well as the voters of Toms River. This is a violation of Plaintiff's right to referendum and the ordinance must be presented to the electorate for approval or disapproval. Consistent with N.J.S.A. 40:69A-189, the Toms River Animal Shelter must be re-opened, operational, staffed, and accepting and sheltering animals as the status quo until approval or disapproval of the ordinance by the voters.
15. By virtue of the Defendants' actions to utilize an ordinance to initially seek to transfer the shelter to the County, they are estopped from now seeking to implement a resolution for

this purpose. Toms River as a municipality is subject to the doctrine of estoppel, as explained by the New Jersey Supreme Court in Vogt:

In respect of matters within the realm of its general power and authority, a municipal corporation is ordinarily subject to the doctrine of estoppel. In order to serve the demands of right reason and justice, at least where the invocation of the rule would not hinder or prejudice essential governmental functions, and especially where the irregularity or deficiency is largely technical or formal and not of the jurisdiction. *Town of Essex v. New England Telegraph Co.*, 239 U.S. 313, 36 S.Ct. 102, 60 L.Ed. 301 (1915). While not applied as freely against the public as in the case of private individuals, **the doctrine of estoppel may be invoked against a municipality to prevent manifest wrong and injustice.** City of Los Angeles v. Los Angeles County, 9 Cal.2d 624, 72 P.2d 138, 113 A.L.R. 370 (Sup.Ct.1937).

Vogt v. Borough of Belmar, 14 N.J. 195, 205, 101 A.2d 849, 854 (1954) Estoppel is mandated in the case at hand to prevent manifest wrong and injustice by the Defendants in seeking to subvert the referendum process. In McLaughlin v. City of Millville, 110 NJ Super 200 (1970), the City of Millville could not be excused from conducting a referendum based upon the passage of a resolution as it would cause an unjust result. Regardless of the fact that a resolution would have sufficed in the first instance, the court held that the town was precluded from using a resolution to subvert the referendum vote on a challenged ordinance. The doctrine of equitable estoppel guards against such machinations by a town. "It is of the essence of equitable estoppel that one is precluded from taking a position inconsistent with that previously assumed and intended to influence the conduct of another, if such repudiation 'would not be responsive to the demands of justice and good conscience,' in that it would effect an unjust result as regards the latter." (*Gitomer v. United States Casualty Co.*, 140 N.J.Eq. 531, 536, 55 A.2d 291, 295 (Ch. 1947)).

Accordingly, Millville was estopped from refusing to conduct a referendum by relying upon the passage of the resolution that implemented the same action as the initial ordinance. The Defendants are now rethinking their scheme to transfer the shelter via a resolution, which is inconsistent with their prior position of using an ordinance. Such actions were clearly intended to influence the conduct of Plaintiff, Petitioners Committee and the voters from engaging in the referendum process. Defendants have acted in the same manner as Millville, by refusing to conduct the referendum and now replacing it with a resolution to affect a transfer of the operation of the shelter from the town to the County. This resolution is a blatant attempt to nullify the referendum process and is void as a matter of law under the doctrine of estoppel.



To hold otherwise would subvert the purpose of N.J.S.A. 40:74—5. Through this statute the Legislature, within defined bounds, granted the electorate the right to review actions taken by municipal governing bodies. Defendants have not challenged the constitutional propriety of this statute. Nor does the court find that such a challenge could be sustained. Courts have in other circumstances permitted the Legislature to authorize local voters to review questions of public concern. Two Guys from Harrison, Inc. v. Furman, 32 N.J. 199, 160 A.2d 265 (1960); Smith v. Middle Tp., 92 N.J.L. 300, 105 A. 877 (Sup.Ct.1919). Similarly, it has been held that, while the Legislature cannot delegate its power to enact laws, it may provide that whether a law shall be operative may be submitted to general referendum. Noonan v. Freeholders of Hudson, 51 N.J.L. 454, 18 A. 117 (Sup.Ct.1889), *aff'd* 52 N.J.L. 398, 20 A. 255 (E. & A. 1890). Indeed, this statute embodies a most proper form of participatory democracy and public policy supports this view. Cf. Wyatt v. Clark, 299 P.2d 799 (Okla.Sup.Ct.1956)

16. The Plaintiff seeks the court to void the resolution, order the Municipal Clerk to hold an election on the Animal Shelter Ordinance and enforce N.J.S.A. 40:69A-189 by ordering the immediate rehiring of the animal shelter staff and re-opening of the shelter until the ordinance is voted upon.

17. The Toms River Municipal Code sets forth provisions for the animal shelter to include the following sections:

§ 165-42 Public donations for construction, maintenance and repair.

It is hereby established the creation of a dedicated fund for the purpose of accepting donations from the public, pursuant to N.J.S.A. 40A:4-39 and 40A:5-29 for the construction, maintenance and repair of the Toms River Township Animal shelter located at Block 573, Lot 11, on the official Tax Map of the Township of Toms River and located on oak Avenue, Toms River, New Jersey.

§ 165-43 Public donations for operational costs.

[Added 11-13-2008 by Ord. No. 4165-08]

It is hereby established the creation of a dedicated fund for the purpose of accepting donations from the public, pursuant to N.J.S.A. 40A:4-39 and 40A:5-29 for the operational costs of any Toms River Township Animal Shelter including but not limited to neutering, spaying and rabies shots for animals housed at the shelter. This dedicated fund shall be separate and independent from the dedicated fund to accept donations for the construction, maintenance and repair of the Toms River Animal Shelter to be located on Oak Avenue, Toms River, New Jersey.

165-44 Retail store.

[Added 1-28-2014 by Ord. No. 4423-14]

A. Establishment. The Toms River Animal Shelter is hereby authorized to operate a retail store on the shelter's premises limited to the sale of items related to the ownership and care of dogs and cats.

B. Inventory. The retail store may sell items related to the ownership and care of dogs and cats. Inventory must be purchased from a legitimate distributor of these items in accordance with Township purchasing procedures and, where applicable, the Local Public Contracts Law.[1] Alternatively, as permitted by law, the Animal Shelter may contract with an outside vendor to supply and maintain the inventory in accordance with the procedures established under this section.

C. Pricing. Prices shall range from \$0.01 to \$300. Prices shall be determined by the head of the Department of Human Services and/or the Division Manager of Animal Control, in conjunction with any vendor contracted to supply inventory pursuant to the preceding subsection, and approved periodically by resolution of the Township Council. Price adjustments must be approved by resolution of the Township Council.

[Amended 6-24-2014 by Ord. No. 4446-14; 3-10-2020 by Ord. No. 4661-20]

D. Proceeds. The proceeds from the retail store must be accounted for and deposited into the dedicated fund for operational costs established pursuant to § 165-43. Deposits must be made on a daily basis by the Division Manager of Animal Control, and the records thereof submitted to the Department of Finance.....

§ 165-45 Animal shelter fees.

[Added 6-13-2017 by Ord. No. 4547-17]

The Animal Shelter is hereby authorized to charge the following fees for the services listed:

A. Boarding fee for redemption of dog or other animal: \$35.

[Amended 3-10-2020 by Ord. No. 4664-20]

B. There shall be no fee imposed upon any individual or nonprofit organization to adopt dogs or cats from the Toms River Animal Shelter.

[Amended 3-10-2020 by Ord. No. 4664-20; 2-14-2024 by Ord. No. 4793-24]

C. Removal of an animal, alive or dead, at owner's request: \$50.

D. Retrieval and euthanization: \$50.

E. Euthanization, when delivered to shelter: \$60. This fee is waived for senior citizens and individuals receiving public assistance.

F. Animal trap rental: free for the first 14 days; \$0.50 per day thereafter.

G. Animal trap rental deposit: \$35.

H. Delivery of any animal from shelter to owner's residence: \$5.

§ 46-9 Division of Animal Control.

[Amended 6-13-2017 by Ord. No. 4547-17]

A. There is hereby established within the Department of Human Services the Division of Animal Control, the head of which shall be the Division Manager of Animal Control. The Division of Animal Control is responsible for administering Chapter 165, Animals and Animal Establishments, as well as other duties as directed by the Director of Human Services.

[Amended 3-10-2020 by Ord. No. 4661-20]

B. The following positions, in the numbers authorized, are established within the Division of Animal Control:

- (1) Chief Animal Control Officer: one.
- (2) Assistant Animal Control Officers: three.
- (3) Full-time clerical: one.
- (4) Part-time clerical: one.
- (5) Full-time kennel aide: one.  
[Amended 10-23-2018 by Ord. No. 4608-18]
- (6) Part-time kennel aide: two.  
[Added 10-23-2018 by Ord. No. 4608-18]

The above ordinances are the current local law of Toms River.

**AMENDED COUNT (Count 7)**

18. Plaintiff repeats and reasserts each and every allegation set forth in the original Complaint as to the Defendants. Plaintiff amends the complaint to include the Resolution No. 7 of the August 7, 2024 Agenda regarding a Shared Service Agreement with the Ocean County Board of Health to re-open the Toms River Animal Shelter under the management and control of Ocean County Board of Health. Plaintiff seeks the court void this resolution as it is in violation of Plaintiff's substantive right to referendum. The defendants are seeking to circumvent the referendum vote by substituting substantially the same proposal to transfer the shelter to the county. The right to referendum is a substantive right protected under the New Jersey Civil Rights Act. The Defendants violated this right by substituting a shared services agreement in place of the Ordinance leasing the shelter to the county. The plaintiff has the right to referendum to include an election for the approval or disapproval of the ordinance.

**AMENDED COUNT (Count 8)**

19. Plaintiff seeks declaratory judgment pursuant to N.J.S.A. 2A:16-51 et al that the defendants must abide by the current local law in regard to the Toms River Animal Shelter and enforce the provisions N.J.S.A. 40:69A-189

## **AMENDED COUNT (Count 9)**

20. The Toms River municipal code calls for the operation of the Toms River Animal Shelter. The Mayor closed the shelter in contravention of law. The Mayor and Council have failed to uphold the municipal code regarding the operation of the shelter and animal control as well as their duty to safeguard the donations for funding of the shelter and care of the animals that it is intended to serve. They are breaching the trust of the residents and donors to the shelter by failing to properly maintain donations for the operation of the shelter and care of the animals. A writ of mandamus for the Defendants to re-open the Toms River Animal Shelter and implement Section 165 and 46 of the Toms River Municipal Code in an appropriate remedy given the defendants complete disregard of the law and failure to uphold their sworn public oath and duties to the residents.

**WHEREFORE**, accordingly Plaintiff seeks judgment as follows:

1. Order the Township of Toms River to stay the Resolution No. 7 on the August 7, 2024 Agenda regarding a Shared Service Agreement with the Ocean County Board of Health to re-open the Toms River Animal Shelter under the management and control of the Ocean County Board of Health;
2. Order the Township of Toms River to stay the Ordinance first introduced on August 7, 2024 to repeal Ordinance No. 4802-24 regarding the Toms River Animal Shelter lease Agreement with the Ocean County Board of Health;
3. Order the Township of Toms River to reopen, offer to rehire all staff as of June 6, 2024 and operate the Toms River Animal Shelter;

4. Order the Township of Toms River place Ordinance No. 4802-24 regarding the Toms River Animal Shelter on ballot for referendum vote;
5. Stay the Township of Toms River from introducing any ordinances to transfer the Toms River Animal Shelter out of the operation or control of Toms River until the voters vote on the question.
6. Declaratory relief that the Defendants must follow and execute the local municipal code, including Sections 164 and 46, to operate the Toms River Animal Shelter and Animal Control as a matter of law;
7. Order a writ of mandamus for the Defendants to re-open the Toms River Animal Shelter and implement Section 165 and 46 of the Toms River Municipal Code.
8. Order all Defendants to reimburse any and all Court Fees and each to donate a minimum of \$1,000 to the Toms River Animal Shelter for their violation of the Civil Rights Act; and further appropriate penalties for violations of the New Jersey Civil Rights Act and for such other relief as the Court shall deem fair and just.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to Rule 4:5-1, I hereby certify that the above-captioned matter is not, to my knowledge, the subject of any other action pending in any Court or of a pending arbitration proceeding. At present, I do not contemplate instituting any such action or arbitration.

BY: *Philip Brilliant*  
s/ Philip I. Brilliant

Philip I. Brilliant