

JARDIM, MEISNER & SUSSER, P.C.
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Attorneys for Plaintiff, Tiffanie Fisher

Tiffanie Fisher,

Plaintiff,

v.

City of Hoboken,

Defendant.

Superior Court of New Jersey
Law Division, County of Hudson

Docket No: HUD-L-_____-22

Verified Complaint in Lieu of Prerogative Writs

Plaintiff, Tiffanie Fisher, residing at 1500 Hudson Street, Hoboken, NJ 07030, states as follows:

PRELIMINARY STATEMENT

1. This action seeks to nullify and void Hoboken City Ordinance B-420 (the “Ordinance”), an ordinance that seeks to modify the City Code for the City of Hoboken (“Defendant” or the “City”), which was passed into law by the City Council for the City on December 15, 2021.

2. Specifically, the Ordinance seeks to modify Sec. 20D-1, et seq., which proscribes restrictions on political contributions to elected officials in the City, by narrowing its scope to permit certain contributions from public or private unions and exclude such unions not subject to the limitations previously contained in the relevant portion of the City Code.

3. However, the City Council made substantive changes to the text of the Ordinance between its first and second readings and failed to provide the public with additional notice, by way of providing an additional first reading of the amendment, which was required by law.

4. As such, the Ordinance should be stricken by this Court as it was passed into law through illegitimate means and therefore violated the public's right to procedural due process.

THE PARTIES

5. Tiffanie Fisher is a citizen of the State of New Jersey and a resident of the City of Hoboken, Hudson County, New Jersey. She is an elected member of the Hoboken City Council but has brought this action in her personal capacity as a resident of Hoboken.

6. The City of Hoboken, which has its principal place of business located at 94 Washington Street, Hoboken, New Jersey, 07030, is a body politic and corporate, organized and existing by virtue of the law of the State of New Jersey.

7. The City Council is the governing body of the City and is a "public body" as that term is defined in N.J.S.A. 10:4-8 and is required to conduct its meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., commonly known as the "Sunshine Law."

FACTS COMMON TO ALL COUNTS

8. Title 40 of the New Jersey Revised Statutes set forth the proper procedure for the passage of an ordinance by a municipality.

9. "Every ordinance" must be introduced and passed by first reading, which may be by title only, and is then published for public review before the final vote at second reading is to occur, which may not be fewer than 10 days from the first reading. N.J.S.A. 40:49-2.

10. At the second reading, ordinances must be given a public hearing and thereafter may be passed, with or without amendments, or rejected. Id. However, if an amendment that "substantially alters" the ordinance is adopted, such an amended ordinance may not be adopted "until at least one week thereafter," in effect, serving as a reintroduction of the ordinance on first reading. Id.

11. On December 1, 2021, the Hoboken City Council held their regularly scheduled public meeting, during which Ordinance B-420 was introduced for first reading by the City Council. It was introduced by Councilpersons Phil Cohen and Emily Jabbour as co-sponsors.

12. The Ordinance primarily sought to modify Sec. 20D-1, et seq. of the City Code, which proscribes restrictions on political contributions to elected officials in the City, by narrowing its scope to permit certain contributions from public or private unions and exclude such unions not subject to the limitations previously contained in the relevant portion of the City Code.

13. Specifically, Sec. 20D-3 previously limited such restrictions to “[a]ny political committee, continuing political committee, political party committee, candidate committee, joint candidate committee[,] or legislative leadership committee, as the terms are defined in N.J.S.A. 19:44A, et seq., and any PAC organized under § 527 of the Internal Revenue Code.”

14. However, the Ordinance, as initially constructed, appended a sentence at the end of this sentence that limited the definition to “not include any public or private unions organized as political committees under § 527 of the Internal Revenue Code.” See Exhibit A.

15. The City Council was scheduled to introduce the Ordinance for second reading on December 15, 2021, and its text was placed on the City’s website and advertised as required by law.

16. However, approximately 45 minutes before the meeting was set to begin, the members of the City Council received an e-mail from Jerry Lore, Deputy City Clerk, attached to which was an amended version of the Ordinance (the “Amended Ordinance”). See Exhibit B.

17. The Amended Ordinance completely changed the previous version that had already passed on first reading, instead amending the definition of to whom it applied to say:

This definition shall be amended in the following enumerated manner if the following occurs; if the trial court in the matter of Farina v. DeFusco, Complaint

Number SC 2019 100347, renders a final decision regarding the enforcement and general enforceability of Sections 20D-6 and -7 of this chapter, and that Court determines that Section 20D of this chapter is unconstitutional or otherwise suffers an infirmity rendering it unenforceable. If that condition precedent occurs, then the definition of Committee, as set forth in this Section of this chapter, shall be amended to add the following sentence at the end of the definition; “The definition of “committee” shall not include any public or private union organized as political committee under section 527 of the Internal Revenue Code.”

18. In other words, the Amended Ordinance made the entire change contingent on the outcome of a specific lawsuit, which may never occur (whether by settlement or other decision).

19. Prior to this amendment, the Ordinance would have gone into effect immediately if passed.

20. At the meeting, Councilman Phil Cohen, one of the Ordinance’s co-sponsors, announced that the version the City Council would be voting on in the second reading would be amended from the version introduced on December 1, 2021, despite the significant change, i.e., a change that could prevent the Ordinance from ever going into effect.

21. Prior to the vote, Plaintiff asked Corporation Counsel Brian Aloia if the proposed change was substantive enough to warrant going back to the first reading.

22. Aloia said that he was unable to provide any legal guidance because he had only received the changed version about an hour before the meeting and therefore could not opine on it.

23. The City Clerk called for a vote, and the Amended Ordinance initially failed by a vote of four votes in favor, one abstention, three in opposition, and one recusal. Plaintiff was among the votes in opposition to the Amended Ordinance.

24. About five minutes after the vote occurred, Councilwoman Falco asked if she could reconsider her vote; the vote was reopened, and she changed her vote from an abstention to a vote in favor, which caused the Amended Ordinance to pass.

25. Plaintiff thereafter asked Aloia to provide his legal opinion as to whether the change that

had been made was substantial and should have resulted in redoing the first reading.

26. Plaintiff asked that Aloia provide his opinion within two days, but it took fifteen days after the vote, until December 30, 2021, for Aloia to provide a memorandum on the subject, in which he stated that, in his opinion, the change was substantial and should have been sent back for reintroduction. See <https://hudsoncountyview.com/hoboken-corp-counsel-recommends-new-vote-on-raising-union-donation-limit-to-avoid-legal-challenges/>.

FIRST COUNT
(Violation of N.J.S.A. 40:49-2)

27. Plaintiff incorporates all preceding paragraphs as if set forth at length herein.

28. The Ordinance as initially written excluded public and private unions from the limitations previously set forth in Sec. 20D-1, et seq., effective immediately upon passage. However, the Amended Ordinance changed the effective date to only occur if a specific lawsuit was determined as well as be determined in a specific manner (that may never occur).

29. N.J.S.A. 40:49-2 and 40:49-6 outlines specific procedures that must be followed for a municipal governing body to adopt an ordinance.

30. N.J.S.A. 40:49-2(c) specifically requires the municipality to provide additional notice to the citizens and a hearing when there is an amendment to the ordinance “substantially altering the substance of the ordinance.” Id.

31. Between the first and second reading, the Ordinance was substantially altered.

32. Specifically, the Amended Ordinance added a trigger clause that conditions its provisions on a specific final decision in Farina v. DeFusco, Complaint Number SC-2019-100347.

33. Despite the substantive changes to the Ordinance between the first and second readings, Defendant failed to provide any additional public notice or opportunity for the public to weigh in

on the changes as required by law.

34. Consequently, the adoption of the Amended Ordinance was an *ultra vires* act and should be voided by this Court.

35. Failure to abide by these requirements has violated the spirit and text of N.J.S.A. 40:49-2, which was intended solely to ensure that the public is well informed as to the contents of all ordinances considered by their governing body.

36. Unless the relief sought is granted, Plaintiff will have no adequate remedy.

**SECOND COUNT
(Violation of OPMA)**

37. Plaintiff incorporates all preceding paragraphs as if set forth at length herein.

38. Pursuant to the Open Public Meetings Act, the public has the right to attend all meetings of public bodies, as well as to witness “the deliberation[s], policy formation, and decision making of” those chosen to represent them. N.J.S.A. 10:4-7.

39. As defined by the OPMA, the City Council is a public body that must afford the public not only the right to be present “at all meetings . . . and to witness in full detail all phases of the deliberation” but also to witness the “decision making of” the Board. N.J.S.A. 10:4-7.

40. By failing to reintroduce the Amended Ordinance on first reading, Defendant has violated OPMA’s mandate that “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” N.J.S.A. 10:4-7.

41. Such secrecy and lack of transparency in voting is in direct contravention of OPMA.

42. Unless the relief sought is granted, Plaintiff will have no adequate remedy.

WHEREFORE, the Plaintiff seeks relief as follows:

A. An Order declaring that Defendant’s failure to provide notice and an additional hearing for

the Amended Ordinance despite substantial alterations is in violation of N.J.S.A. 40:49-2 and N.J.S.A. 10:4-7;

- B. An Order enjoining Defendant from enforcing the Amended Ordinance;
- C. An Order nullifying and voiding the Amended Ordinance;
- D. An Order awarding Plaintiff attorney's fees and costs of suit; and
- E. An Order awarding Plaintiff any further relief as the Court deems just and proper.

Dated: January 28, 2022

JARDIM, MEISNER & SUSSER, P.C.

/s/ Scott D. Salmon, Esq.
Scott D. Salmon, Esq.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. There is no other action or arbitration proceeding contemplated nor is there any other party who should be joined in this action.

I certify that the foregoing statement is true, and I am aware that if the foregoing statement is willfully false, I am subject to punishment.

Dated: January 28, 2022

JARDIM, MEISNER & SUSSER, P.C.

/s/ Scott D. Salmon, Esq.
Scott D. Salmon, Esq.


VERIFICATION

I, Tiffanie Fisher, hereby certify as follows:

1. I am the Plaintiff in the foregoing matter.

2. I have read the contents of the petition and incorporate same by reference and state that the contents therein are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: Jan 28, 2022


Tiffanie Fisher (Jan 28, 2022 12:08 EST)

Tiffanie Fisher






Verified Complaint

Final Audit Report

2022-01-28

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