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December 18, 2018

Via Hand Delivery

City Council
1st Floor, Government Center
One Government Center
Fall River, MA 02772

RE: Recall Petition of Mayor Jasiel F. Correia II

Dear Councilors:

Please be advised that this firm represents Mayor Jasiel F. Correia II in connection with the petition seeking his recall from office under Section 8-5 of the City Charter. We understand that this recall petition is before the City Council tonight.

It is our opinion that, as a matter of law, the City Council does not have authority to take any action whatsoever with regard to the recall petition currently before the council. The recall petition is not valid because of the duly filed objection by Jasiel F. Correia II, Mayor of the City of Fall River. Applicable law clearly specifies that when such an objection has been filed, a petition referred to the City Council cannot be considered as valid until such time as the objection is ruled on by the Board of Election Commission. Specifically, G.L. c. 43, § 38 governs certifications of signatures transmitted by the city clerk to the city council as follows:

“When such certificate has been so transmitted, said petition shall be deemed to be valid unless written objections are made thereto by a registered voter of the

city within forty-eight hours after such certification by filing such objections with the city council or the school committee, and a copy thereof with the registrars of voters or the board or commission having similar duties. Section seven of chapter fifty-five B shall apply to such objections, and the board of registration of voters shall transmit a copy of its decision to the city council or school committee.” G.L. c. 43, § 38.

Therefore, the City Council does not have a valid recall petition before it and it has no authority to take any action on said petition. The recall petition would only be valid at this time if no objection was filed, but the Mayor timely filed such an objection, a copy of which is attached hereto. Once an objection has been filed, the provisions of G.L. c. 55B, § 7 apply and require the Board of Election Commission to issue a decision within fourteen days of the objection. Because of the timely objection and the period given to the Board to issue a decision, there is no valid petition before the City Council on which it may place a vote.

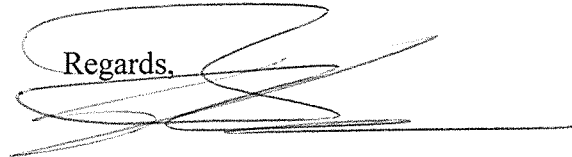
Additionally, the recall petition before you tonight is not valid for one or more of the reasons set forth below:

- We believe the petition blanks issued by the City Clerk failed to comply with Section 8-5(b) of the Charter;
- the City Clerk’s office lacked authority to issue such certification under Section 8-5 of the City Charter because the Board of Election Commissioners did not certify the signatures as required by Section 8-5(b) of the Charter;
- the Board of Election Commissioners failed to issue a certificate conforming with the requirements of G.L. c. 43, § 38, within five days of the filing of the petition;
- if the Board of Election Commissioners took any action, the action was invalid it purported to carry out its duties without a valid quorum under City Charter;
- if the Board of Election Commissioners took any action, the action as invalid as the board fails to comply with the equal political party membership requirements G.L. c. 51, § 16A;
- the petition failed to include valid authentic signatures from five percent (5%) of registered voters as specifically set forth in the attached objection;
- the sponsors of the petition failed to demonstrate authenticity of the signatures;
- the petition process was tainted with fraud and invalidity; or
- as set forth above, the Mayor submitted a timely written objection to the City Clerk, and the Board of Election Commissioners must issue a decision under G.L. c. 55B, § 7, determining the sufficiency of the certification before the City Council may commence the five-day resignation period triggered by notice to the Mayor under Section 8-5(c) of the Charter.

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Accordingly, we hereby request that the City Council does not take any action on the recall petition at its hearing tonight.

Regards,

A handwritten signature in black ink, appearing to be 'William Golden', written over a horizontal line. The signature is somewhat stylized and overlaps the line.

WILLIAM GOLDEN, ESQ.

City Clerk
One Government Center
Room 227
Fall River, MA 02772

Dear Madame City Clerk,

The purpose of this correspondence is to object, pursuant to G.L. c. 55B, § 7 and other relevant state and city law, to the certificate of petition for recall issued on December 12, 2018.

Based on information and belief, a substantial number of petition signatures are not valid signatures of registered voters because, on information and belief, they have been forged, duplicated, signed by someone other than the stated signatory without the requisite legal authority to sign on behalf of the stated voter, have an incorrect address, have an illegible signature or address, do not match voter signatures on the voter's signatory cards on file in Fall River, or there was no such registered voter or resident in Fall River at the time of signing. Moreover, there is evidence indicating that proponents of the recall petition were not the persons gathering the signatures. The act providing for recall elections in the City of Fall River, Chapter 292 of the Acts of 1980, requires the city clerk to deliver the petition blanks to the ten voters who are proponents of the petition, indicating that these ten voters were responsible for gathering the signatures themselves. There is no evidence of authenticity and validity of any of the signatures provided by the petitioners or by any other source. The recall petition must have authentic signatures from five percent (5%) of registered voters. When the affidavit required under St. 1980, c. 292 was filed, the stated registered voter count was 50,207, which would require signatures from 2,510 registered voters. The Board of Election Commissioners has not provided an updated number that includes all voters registered at the time of certification.

As a result of such errors and deficiencies, the recall petition does not have the requisite number of registered voter signatures for the petition to be certified as sufficient. At least three (3) days before an evidentiary hearing before the Board of Election Commissioners, we will provide additional evidence supporting the claims herein, including opinions from a handwriting expert.

At such hearing, the proponents of the petition should be obligated to prove the authenticity of the signatures contained thereon. See Stapleton v. Nyhan, 1995 WL 809921, *5, n.11 (Mass. Sup. Ct. 1995). In Stapleton v. Nyhan, the Superior Court judge noted that a recall election is considerably different from a typical election where the burden is on the challenger to prove that signatures are invalid. In a typical election scenario, a person challenging voter signatures is attempting to change the outcome expressed by the public will in electing an individual. In a recall election, however, the opposite occurs. As here, the elected official who is challenging the signatures is aligned with the will of the people as expressed in the general election. Fall River only requires five percent (5%) of registered voters to sign a petition to establish a recall election, where the voter turnout is likely to be less than in a general election and could represent something other than the overall will of the people. Under a

recall scenario, the judge recognized that the proper burden would be on the proponent of the recall petition to prove the authenticity of the signatures, not on the elected official.

Additionally, I hereby request that the City Clerk or Elections Commission evaluate the authenticity of the signatures by cross referencing the alleged signatures on the petition with the voter's signatory card, driver's license, or other government document produced in the normal course of business that would contain the signature of the voter.

Regards,

Mayor Jasiel Correia, II

Cc: City Council Chambers
1st Floor, Government Center
One Government Center
Fall River, MA 02772

Board of Elections Commission
One Government Center
Fall River, MA 02772