

IN THE MATTER OF THE INCLUSION :  
OF CERTAIN QUESTIONS ON THE :  
BALLOT FOR THE APRIL 2005 : COMMISSIONER OF EDUCATION  
CAMDEN SCHOOL ELECTION, : DECISION  
CAMDEN COUNTY. :

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### SYNOPSIS

Petitioner submitted request to the Camden Board of Education (Board) for inclusion of three referendum questions on the April 2005 school elections ballot in the City of Camden; the referendum questions involved, *inter alia*, school prayer and a Bible-based curriculum. The Board countered that the education laws did not require it to place the proposed referendum on the ballot. Petitioner appealed to the State Board of Education (State Board).

The State Board reviewed the record and determined to dismiss the appeal, as the statutory framework requires that the matter be remanded to the Commissioner pursuant to the original jurisdiction conferred upon her by *N.J.S.A.* 18A:6-9.

Upon a thorough and independent review of the submissions in this matter, the Commissioner determined that there is nothing in petitioner's brief that would provide a basis for her to retain jurisdiction over the petitioner's claims, which appear to rest upon federal constitutional and State civil rights laws rather than school law. Accordingly, the Commissioner dismisses the petition for lack of jurisdiction.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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December 21, 2005

AGENCY DOCKET NO. 303-9/05

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OF CERTAIN QUESTIONS ON THE :  
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Edward D. Torres, Petitioner *Pro Se*

Harvey C. Johnson, Esq. for Respondent

The submissions from the parties in this case have been thoroughly and independently reviewed, and the Commissioner has determined to decide the matter on a summary basis, pursuant to the authority granted her by *N.J.A.C. 6A:3-1.12*.

The controversy began with a February 2005 request from petitioner to respondent for the inclusion of three referendum questions on the April 2005 school elections ballot in the city of Camden. The questions were as follows:

1. Do you as a resident of Camden and a citizen of New Jersey want your Public Schools to open the daily session in prayer in a pledge of allegiance to the god we trust by the children in acknowledgment of God and His son Jesus Christ. The Prayer given to us by His Son Jesus Christ the “Our Father Which art in Heaven hollowed be Thy Name.” **Yes or No**
2. Do you as a resident of Camden and a citizen of New Jersey want a Holy Bible based curriculum in your Public Schools which teaches the truth and the presence of God as creator in alignment with our New Jersey State Constitution where we are Grateful to Almighty God and looking towards Him for a blessing unimpaired in the endeavor to properly educate our children. **Yes or No**
3. Do you as a resident of Camden and citizen of New Jersey want those fellow Camden, NJ residents who are on probation, or parole, or incarcerated for non violent offenses their civil right to

vote in Camden School District Elections as a part of the rehabilitation process. **Yes or No**

Respondent's answer to petitioner apparently came in the form of a copy of a March 15, 2005 letter from respondent's counsel to respondent, outlining the reasons why it would be improper for respondent to place such questions on a school elections ballot. In summary, counsel advised that: respondent had no jurisdiction over the issue articulated in the third question; respondent had no authority under the school laws to place the first and second questions on the ballot; and that the first and second questions were essentially public polls about actions that likely violated federal constitutional rights.

Petitioner submitted to the State Board of Education (State Board) an appeal of respondent's decision not to put the three questions on the April 2005 school elections ballot, and the State Board remanded the matter to the Commissioner.

On November 9, 2005, the Bureau of Controversies and Disputes (Bureau) advised the parties that -- after careful review of the file, including numerous pleadings and documents submitted to the State Board, and a petition submitted to the Commissioner on or about September 19, 2005 -- it appeared that the respondent's action had been neither an abuse of discretion nor a violation of school law. The Bureau further advised that petitioner's claims appeared to rest upon federal constitutional and State civil rights laws over which the Commissioner of Education has no jurisdiction. Accordingly, the Bureau afforded petitioner until December 2, 2005 to submit reasons why the Commissioner should not dismiss the matter, and allowed respondent twenty days to submit a reply. Petitioner submitted his brief on or about November 30 and respondent replied on December 6.

There is nothing in petitioner's brief that would provide a basis for the Commissioner to retain jurisdiction over petitioner's claims. First, the Commissioner agrees

with respondent that its authority to conduct referenda does not include the issues in petitioner's three questions.<sup>1</sup> Second, petitioner's first and second questions raise federal constitutional issues. While the Commissioner is bound to uphold the federal and State constitutions, she is not empowered to adjudicate constitutional issues. *Christian Bros. Inst. v. Northern New Jersey Interscholastic League et al.*, 86 N.J. 409, 416 (1981). "Administrative agencies have power to pass on constitutional issues only where relevant and necessary to the resolution of a question concededly within their jurisdiction." (*Ibid.*) Finally, the issue in petitioner's third question has nothing to do with school law, and is consequently outside the Commissioner's authority.

Accordingly, the Commissioner dismisses the petition for lack of jurisdiction.

IT IS SO ORDERED<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2005

Date of Mailing: December 21, 2005

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<sup>1</sup> Petitioner's citation to *N.J.S.A.* 1:5-3 is not germane to this controversy. That statute simply calls for double spacing between signatures on petitions advocating referenda questions.

<sup>2</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*