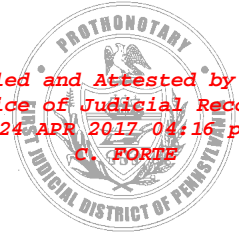


FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA

Filed and Attested by the
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24 APR 2017 04:16 pm
C. FORTE



Committee of Seventy, Philadelphia 3.0, Jordan Strauss, Brian Krisch,
and Katherine Rivera,

Petitioners,

v.

Anthony Clark, in his official capacity as City Commissioner, Al
Schmidt, in his official capacity as City Commissioner, and Lisa M.
Deeley, in her official capacity as City Commissioner,

Respondents.

April Term, 2017

No. _____

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
TRIAL DIVISION

ELECTION MATTER

**THIS IS NOT AN ARBITRATION
CASE**

**AN ASSESSMENT OF DAMAGES
HEARING IS NOT REQUIRED**

April Term, 2017

No. _____

Philadelphia, PA 19130
brianrichardkrisch@gmail.com,

and

Katherine Rivera
2102 E. York Street
Philadelphia, PA 19125
katelangriversa@gmail.com,

Petitioners,

v.

Anthony Clark, in his official
capacity as City Commissioner
City Hall, Room 130
Philadelphia, PA 19107,

Al Schmidt, in his official
capacity as City Commissioner
City Hall, Room 134
Philadelphia, PA 19107
Al.Schmidt@phila.gov,

and

Lisa M. Deeley, in her official
capacity as City Commissioner
City Hall, Room 132
Philadelphia, PA 19107
Lisa.Deeley@phila.gov,

Respondents.

**PETITION
ACTION FOR DECLARATORY JUDGMENT—ELECTION MATTER
(ELECTION MATTERS—8E)**

Petitioners, by their undersigned counsel, file this Petition against Respondents, and in support thereof aver as follows:

Preliminary Statement

1. This is a matter arising under the Pennsylvania Election Code.

Petitioners request that this Court resolve this matter on an expedited basis because the requested relief would affect the administration of the May 16, 2017 primary election. Accordingly, Petitioners respectfully ask that the Court set a schedule for briefing and argument that will permit final resolution of the case before May 16.

2. Among the largest cities and counties in the United States, only Philadelphia has multiple elected officials whose sole job is to run elections. Under the watch of these obscure elected officials—the City Commissioners—Philadelphia has accumulated a long and unfortunate history of problematic election administration. Well-documented troubles have included time-sensitive voter registration forms that were processed incorrectly or not at all, absentee ballots mailed to voters too late or never, and numerous polling places that have been inaccessible to voters with disabilities or with limited English proficiency. These inaccuracies, delays, and barriers interfere with the basic constitutional right of Philadelphians to participate in our democracy.

3. Section 301(c) of the Pennsylvania Election Code, 25 P.S. § 2641(c), makes the City Commissioners ineligible to oversee elections whenever an

amendment to the Philadelphia Home Rule Charter is on the ballot. In the Philadelphia primary election scheduled for May 16, 2017, two proposed amendments to the Philadelphia Home Rule Charter will be on the ballot, one of which concerns procurement practices for local government (including the City Commissioners' office itself).

4. This is an action for a declaratory judgment. It seeks a declaration that Respondents are statutorily ineligible to carry out the functions of their offices as City Commissioners whenever there appears on the ballot a question relating to amendments to the Philadelphia Home Rule Charter, including the primary election scheduled for May 16, 2017.

5. Petitioners include Committee of Seventy, a long-established independent election watchdog in Philadelphia, and Philadelphia 3.0, a leading advocate for election reform in Philadelphia. Joining these organizational Petitioners are three candidates who are running for local posts of Judge of Election and Inspector of Election: Jordan Strauss, Brian Krisch, and Katherine Rivera. These three individual Petitioners are also voters within Philadelphia. All five Petitioners have a vested interest in ensuring that the upcoming primary election complies with the requirements of the state Election Code and is overseen and properly administered by appropriate election officials under state law.

6. The two organizational Petitioners have an additional interest in enforcing this provision of the Election Code. If the City Commissioners are declared ineligible under the Election Code, it will render them unable to do their job and oversee elections nearly three-quarters of the time, given the recent frequency of ballot questions concerning Home Rule Charter amendments plus the undisputed need for the quadrennial appointment of interim replacements. The fact that the City Commissioners must be replaced in far more elections than not highlights the obsolescence of Philadelphia's current model of elected City Commissioners, and it supports the organizational Petitioners' efforts to replace that body with appointed and experienced professionals to oversee, administer, and modernize Philadelphia's elections.

7. In accordance with Pennsylvania Rule of Civil Procedure 206.6 and Philadelphia Civil Rule *206.4(c), Petitioners have attached to this Petition a proposed order for a rule to show cause.

Jurisdiction and Venue

8. The Court has jurisdiction under 42 Pa.C.S. § 931 and the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541.

9. The Court has personal jurisdiction over the Respondents, all of whom are residents of Philadelphia County.

10. Venue is proper under Pa. R. Civ. P. 1006(a)(1), as all of the Respondents may be served in Philadelphia County.

Prior Proceedings

11. On March 27, 2017, Petitioners initiated an original-jurisdiction action in the Supreme Court of Pennsylvania (case number 36 EM 2017) seeking extraordinary relief in the nature of a writ of mandamus to compel the President Judge to carry out the second sentence of 25 P.S. § 2641(c). The Petition for Review in that case did not seek a declaratory judgment, nor did it name as respondents the City Commissioners.

12. On April 5, 2017, the President Judge filed an Answer to the Petition for Review in case number 36 EM 2017, in which she stated that “[a]n adequate remedy other than mandamus exists in President Judge Woods-Skipper’s Court” and that “[a] Petition filed in the Common Pleas Court would provide an opportunity for all parties impacted to be heard prior to a Court decision as to the interpretation of the Election Code.” Answer, attached as Exhibit A.

13. Also on April 5, 2017, the City Commissioners filed in the Supreme Court an Application for Leave to Intervene, accompanied by Preliminary Objections and brief in support thereof. In that brief, the City Commissioners likewise asserted that Petitioners should have petitioned the Court of Common Pleas. (Brief at 7 n.6.)

14. On April 19, 2017, the Supreme Court issued an order denying the Petition for Review. Order, attached as Exhibit B. The Supreme Court did not issue an opinion in the case.

15. The Supreme Court's Order granted the City Commissioners' Application for Leave to Intervene but dismissed their Preliminary Objections. The Order did not address the merits of the Petition for Review or the Preliminary Objections in case number 36 EM 2017, nor did it dismiss the case with prejudice.

16. "It is axiomatic that in order for either collateral estoppel or res judicata to apply, the issue or issues must have been actually litigated and determined by a valid and final judgment. . . . [W]here this court has issued an order without opinion denying extraordinary relief, that order alone is insufficient to establish that there has been a full and final adjudication of the claims raised." *Cnty. of Berks ex rel. Baldwin v. Pa. Labor Relations Bd.*, 678 A.2d 355, 359 (Pa. 1996).

The Parties

17. Petitioner the Committee of Seventy ("Seventy") is a non-profit, non-partisan 501(c)(3) organization working for better government. Established in 1904, Seventy works to ensure fair and well-run elections in Philadelphia and advocates for efficiency, transparency, and ethical behavior from public officials and all branches of government.

18. For 113 years Seventy, as the non-partisan advocate for voter access and election integrity in Philadelphia elections, has expended substantial time, money, and resources on its core mission to inform and engage voters, monitor and improve elections, and ensure system accountability.

19. Since last year, when Seventy identified the provision in the Pennsylvania Election Code at issue in this case, Seventy has had to commit resources, including staff time, to researching the City Commissioners' history of noncompliance and to attempting to secure compliance with the Election Code provision without resorting to litigation.

20. Seventy was thus compelled to divert a substantial portion of its limited staff time and resources from other projects and programs central to Seventy's mission and the upcoming May 16, 2017 primary election. These other programs and projects include, in particular, the Election Ambassador Corps and Election Innovation Challenge, youth civics programs designed to increase students' understanding of and participation in the electoral process. Seventy's recurring work to inform and engage citizens, including its 2017 Voter Rights and Responsibilities project and Civics 101 training, has also been disrupted.

21. Petitioner Philadelphia 3.0 is a 501(c)(4) organization whose mission is to advocate for more competitive city elections and a local government that works more professionally and efficiently for the residents of Philadelphia. Created

just two years ago, Philadelphia 3.0 is already at the forefront of efforts to reform and modernize Philadelphia municipal government, including the administration of elections.

22. To support its reform mission, Philadelphia 3.0 expends time, money, and resources backing candidates for City Council and recruiting hundreds of citizens to run for local election-board and party office—Democrats and Republicans, incumbents and challengers—producing research on policy and governance issues, and advocating for a 21st-Century election system in Philadelphia. Because increased civic and voting participation is a core mission, Philadelphia 3.0 is also devoting resources to supporting first-time candidates to local election-board positions in the upcoming May 16, 2017 primary election.

23. The City Commissioners' failure to comply with the mandatory Election Code provision at issue here injures organizational Petitioner Philadelphia 3.0. Their noncompliance forces Philadelphia 3.0 to divert resources from its core mission, including from its efforts to train first-time candidates for and influence the outcome of the upcoming primary. Instead, Philadelphia 3.0 has been forced to use its resources to press officials to comply with the Pennsylvania Election Code.

24. Accordingly, organizational Petitioners Seventy and Philadelphia 3.0 have standing to file this petition. *See, e.g., Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 Pa. Commw. Unpub. LEXIS 756, at *21 (Pa. Commw. Ct. Jan.

17, 2014) (“Organizational Petitioners diverted valuable resources as a consequence of Respondents’ inconsistent evolving unchecked decisions expanding and contracting the criteria for compliant photo IDs under the Voter ID Law. This loss of resources is a direct harm sufficient for standing.” (citations omitted)).

25. Petitioner Jordan Strauss will be a candidate for nomination to the office of Judge of Election for Ward 1, Division 4 of Philadelphia on the May 16, 2017 primary ballot. Mr. Strauss is a first-time candidate for public office. As a candidate, Mr. Strauss has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

26. Petitioner Strauss is, in addition, a qualified, registered Philadelphia elector who plans to vote on May 16, 2017. He plans to vote for himself as candidate for Judge of Election, as well as to vote in other races, including statewide primaries for judicial offices and Philadelphia-wide primaries for District Attorney and City Controller. He also plans to vote on the proposed amendments to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot questions, Mr. Strauss has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

27. Petitioner Brian Krisch will be a candidate for nomination to the office of Judge of Election for Ward 15, Division 3 of Philadelphia on the May 16, 2017 primary ballot. Mr. Krisch is a first-time candidate for public office. As a candidate, Mr. Krisch has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

28. Petitioner Krisch is, in addition, a qualified, registered Philadelphia elector who plans to vote on May 16, 2017. He plans to vote for himself as candidate for Judge of Election, as well as to vote in other races, including statewide primaries for judicial offices and Philadelphia-wide primaries for District Attorney and City Controller. He also plans to vote on the proposed amendments to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot questions, Mr. Krisch has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

29. Petitioner Katherine Rivera will be a candidate for nomination to the office of Inspector of Election for Ward 31, Division 3 of Philadelphia on the May 16, 2017 primary ballot. Ms. Rivera is a first-time candidate for public office. As a candidate, Ms. Rivera has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

30. Petitioner Rivera is, in addition, a qualified, registered Philadelphia elector who plans to vote on May 16, 2017. She plans to vote for herself as candidate for Inspector of Election, as well as to vote in other races, including statewide primaries for judicial offices and Philadelphia-wide primaries for District Attorney and City Controller. She also plans to vote on the proposed amendments to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot questions, Ms. Rivera has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

31. Respondents are Philadelphia's three City Commissioners, who together compose a board of elected officials responsible for administering voter registration and conducting elections in Philadelphia. *See* Phila. Code § 2-112.

32. The City Commissioners—or those serving in their stead pursuant to an order of the President Judge—fulfill a number of roles in administering and overseeing elections. These roles include “issu[ing] certificates of appointment to watchers at primaries and elections,” “instruct[ing] election officers in their duties,” “investigat[ing] election frauds, irregularities and violations of this act,” and certifying election results to the Secretary of the Commonwealth. 25 P.S. § 2642. In addition, the City Commissioners (or their interim replacements) control many aspects of the absentee voting process, such as approving or rejecting

applications for absentee ballots, *id.* § 3146.2b, and they bear responsibility for such tasks as delivering ballots and supplies to judges of election, *id.* § 3044.

33. These powers and responsibilities give the City Commissioners considerable influence over the conduct—and thus, potentially, the outcome—of elections.

The City Commissioners Are Statutorily Ineligible to Oversee Elections Featuring Proposed Amendments to the Philadelphia Home Rule Charter

34. Petitioners Seventy and Philadelphia 3.0 have received frequent reports over the years indicating mismanagement in Philadelphia during federal, state, and local elections. Reported problems have included slow and error-prone processing of voter registrations, belated mailing of absentee ballots, improper training of poll workers, inconsistent procedures at different polling places, and accessibility problems for voters with disabilities or with limited English proficiency. These reported problems have directly impacted Philadelphians' constitutional right to vote.¹

¹ The November 2016 election illustrates this problematic history. For that election cycle, reports indicate the City Commissioners' office failed to timely process as many as several thousand voter registration forms submitted shortly before the registration deadline, resulting in confusion at the polls and forcing many voters to resort to provisional ballots. In addition, numerous Philadelphia voters reported having timely applied for absentee ballots for the November 2016 election but never receiving them, or receiving them too late to return them in time for them to be counted. The November 2012 election was also rife with problems, ranging from thousands of properly registered voters left off the official voter lists at polling places, to poorly communicated polling place changes, to unanswered phones at the City Commissioners' election hotline on Election Day. *See* Election Day Fact-Finding Report (June 18, 2013), *available at* <http://www.phila.gov/Newsletters/ElectionDayFactFindingReport2013.pdf>.

35. Operating largely out of public view with little accountability as elected officials, the three City Commissioners take home salaries totaling nearly \$400,000 per year, almost \$100,000 more in salaries than New York City's ten Commissioners of Elections, who oversee a system more than four times as large as Philadelphia's system.

36. The first sentence of 25 P.S. § 2641(c), a provision of the Pennsylvania Election Code, states that "Whenever a member of the board of county commissioners is a candidate for nomination or election to any public office, the President Judge of the Court of Common Pleas shall appoint a judge or an elector of the county to serve in his stead."

37. When this first sentence is triggered, Philadelphia's City Commissioners must cease any involvement in the day-to-day operations of Philadelphia's election administration. They have done so, pursuant to orders of the President Judge, including in 2015, 2011, and 2007.

38. The second sentence of 25 P.S. § 2641(c) states that "Whenever there appears on the ballot a question relating to the adoption of a Home Rule Charter for the county or amendments to an existing county Home Rule Charter, the President Judge of the Court of Common Pleas shall appoint judges or electors of the county to serve in the stead of the county commissioners." 25 P.S. § 2641(c).

39. Since at least 2002, Respondents and their predecessors have continued to carry out the functions of their office when questions relating to the adoption of amendments to the Philadelphia Home Rule Charter have appeared on the ballot.

40. No City Commissioner will be a candidate for nomination or election to any public office on the May 16, 2017 ballot.

41. However, two proposed amendments to the Philadelphia Home Rule Charter will appear on the May 16, 2017 ballot in Philadelphia. *See* Council of the City of Philadelphia, Resolutions Nos. 160981 (Dec. 8, 2016) and 170190 (Mar. 9, 2017), attached as Exhibit C. If adopted, Resolution No. 160981 would impact Philadelphia’s procurement practices and modify the “lowest responsible bidder” provision of the Home Rule Charter to allow for “best value” contracting in certain situations. Resolution No. 170190 pertains to the creation of a “Philadelphia Community Reinvestment Commission.”

**As Used in the Election Code, the Term “County Home Rule Charter”
Includes the Philadelphia Home Rule Charter**

42. Petitioners anticipate that Respondents will argue, as they did in their preliminary objections to the Pennsylvania Supreme Court, that the second sentence of 25 P.S. § 2641(c) does not apply to Philadelphia because in their belief the Philadelphia Home Rule Charter is not a “county” Home Rule Charter. Such an

argument cannot be sustained, as it is inconsistent with the plain language of the Election Code.

43. First, such an interpretation cannot be squared with 25 P.S. § 2641(b). That subsection provides, in relevant part (emphasis added): “**Except in counties of the first class**, in counties which have adopted home rule charters or optional plans the board of elections shall consist of the members of the county body which performs legislative functions unless the county charter or optional plan provides for the appointment of the board of elections.” This provision gives Philadelphia unique treatment, as Philadelphia is Pennsylvania’s only county of the first class. *See* 16 P.S. § 210(1); *Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 624 (Pa. 2010).² Having expressly singled out Philadelphia in subsection (b), the statute cannot be read as implicitly singling out Philadelphia in subsection (c). *See generally Popowsky v. Pa. Pub. Util. Comm’n*, 706 A.2d 1197, 1203 (Pa. 1997) (“[W]hen the legislature includes specific language in one section of a statute and

² The General Assembly knows well how to create an exception for Philadelphia, and has done so on scores of occasions, in a wide range of contexts. *E.g.*, 3 P.S. § 459-1002 (“Any county except counties of the first class, two or more counties which form a joint dog control agency or any humane society or association for the prevention of cruelty to animals”); 3 P.S. § 914.1(h) (“By March 1 of each year, the State board shall make an annual allocation among counties, except counties of the first class, for the purchase of agricultural conservation easements.”); 10 P.S. § 308 (“If the district attorney finds probable cause to believe that a violation [of the Bingo Law] has occurred, he may file a complaint against the alleged violator in the court of common pleas in the court of said county, except in counties of the first class where the complaint may be filed in the municipal court.”); 16 P.S. § 12005(a) (“In all counties, except counties of the first class, single-county departments of health or joint-county departments of health may be authorized by resolution or by referendum, or by a combination of these methods, as provided in this section.”).

excludes it from another, it should not be implied where excluded.” (internal quotation marks and citation omitted)).

44. Second, and crucially, § 2641(b) refers to the Philadelphia Home Rule Charter as a **county** home rule charter. The key sentence from § 2641(b) reads: “Except in counties of the first class, in counties which have adopted home rule charters or optional plans the board of elections shall consist of the members of the county body which performs legislative functions unless the county charter or optional plan provides for the appointment of the board of elections.” If the General Assembly had omitted the words “Except in counties of the first class” from that sentence, under the City Commissioners’ anticipated theory that omission would have worked no change at all in the meaning of the statute. In other words, the City Commissioners regard those seven words as surplusage. If, on the other hand, those seven words are construed so as to give them effect, as required by the Statutory Construction Act, 1 Pa.C.S. § 1921(a), then Philadelphia must be among the “counties which have adopted home rule charters or optional plans” (and no one argues that Philadelphia has adopted an optional plan).

45. Since the General Assembly refers to the Philadelphia Home Rule Charter as a “home rule charter” adopted by a “count[y]” in § 2641(b), then the Philadelphia Home Rule Charter must also be a “county Home Rule Charter” under § 2641(c). *See Housing Auth. v. Pa. State Civ. Serv. Comm’n*, 730 A.2d 935,

946 (Pa. 1999) (“When the meaning of a word or phrase is clear when used in one section, it will be construed to mean the same thing in another section of the same statute.”).

Even if the Election Code Were Set Aside, the Philadelphia Home Rule Charter is Still a “County Home Rule Charter”

46. The Election Code’s term “county Home Rule Charter” is not free-floating and context-less: it is situated within a statute and should be interpreted within the context of that statute. As such, this case can be resolved purely as a matter of statutory interpretation, and the full text of 25 P.S. § 2641 shows that the statute conclusively embraces Philadelphia in its use of the term “county Home Rule Charter.”

47. Because the text of the Election Code is plain, there is no need to speculate about the General Assembly’s intent. 1 Pa.C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”); *accord Commonwealth, Office of the Governor v. Donahue*, 98 A.3d 1223, 1237 (Pa. 2014). Nor is there any need to dive into the metaphysics of the constitutional consolidation of the City of Philadelphia and the County of Philadelphia. *See generally Housing Auth. v. Pa. State Civ. Serv. Comm’n*, 730 A.2d 935, 948 (Pa. 1999) (courts “strive to interpret statutes in a manner which avoids constitutional questions”).

48. Nonetheless, Petitioners anticipate that the City Commissioners will urge this Court, as it did the Supreme Court, to ignore 25 P.S. § 2641(b) and to instead consider whether, **in the abstract**, the Philadelphia Home Rule Charter is a county home rule charter. Even if this were the appropriate approach, it would still be clear that the Philadelphia Home Rule Charter is a “county” home rule charter.

49. A timeline summarizes the history of City-County consolidation:

- a. 1949: The General Assembly enacted the First Class City Home Rule Act, 53 P.S. §§ 13101-13157. This Act provided that “Any city of the first class may frame and adopt a charter for its own government and may amend its charter whether the same has been originally adopted under the provisions of this act or provided by local, special or general law.” *Id.* § 13101. The City of Philadelphia was and is the only city of the first class. *See* 53 P.S. § 101.
- b. April 17, 1951: “Philadelphia adopted its home rule charter under the terms of the First Class City Home Rule Act on April 17, 1951; it went into effect on January 7, 1952.” *City of Phila. v. Schweiker*, 858 A.2d 75, 81 n.9 (Pa. 2004). At the time of the adoption of the Philadelphia Home Rule Charter, the City of Philadelphia and the County of Philadelphia were separate entities within the same geographic area. *E.g., Cornman v. City of Phila.*, 111 A.2d 121, 123 (Pa. 1955).
- c. November 6, 1951: A state constitutional amendment abolished all Philadelphia county offices and provided that “the city shall henceforth perform all functions of county government within its area.” *See generally Lennox v. Clark*, 93 A.2d 834, 838-39 (Pa. 1953). These provisions are repeated verbatim in the current state constitution. Pa. Const. Art. IX, § 13 (1968).
- d. 1953 and 1963: The General Assembly amended the 1949 Home Rule Act to “complet[e] consolidation of City and County government.” *Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 623 (Pa. 2010). These amendments gave “Philadelphia City Council . . . unqualified

authority over the local offices of Sheriff, City Commissioner, and Registration Commission, including the power to abolish them.” *Id.* (citing 53 P.S. § 13132(c)).

- e. 1976: Twenty-five years after the city-county consolidation, the General Assembly added subsection (c) to 25 P.S. § 2641. Act of Dec. 2, 1976, P.L. 1221, No. 269, § 1.

50. The effect of the constitutional consolidation of Philadelphia City and Philadelphia County was to empower the unified government of Philadelphia—uniquely within Pennsylvania—to function as both a city and a county, beginning on November 6, 1951. *See generally* Pa. Const. Art. IX, § 13(a) (“In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.”). Consolidation having long ago reached completion, the City of Philadelphia and the County of Philadelphia are now a hair that cannot be split. As affirmed by the 1953 and 1963 amendments to the Home Rule Act, the Philadelphia Home Rule Charter serves as the organic law of both the City and the County.

51. Thus, by the time § 2641(c) was added to the Election Code in December 1976, Philadelphia had long been operating as a fully consolidated city-county, and the provision applies to Philadelphia just as it applies to other counties with home rule charters.

52. Because the Philadelphia Home Rule Charter is the home rule charter of the County of Philadelphia, the second sentence of 25 P.S. § 2641(c) fully applies whenever there is a ballot question related to the adoption of an amendment to the Philadelphia Home Rule Charter, including the May 16, 2017 primary election.

There is No “Conflict of Interest” Distinction in the Election Code

53. Petitioners further anticipate that the City Commissioners will again argue that 25 P.S. § 2641(c) does not apply unless their oversight of an election would present a conflict of interest, and that Philadelphia’s City Commissioners never have a conflict of interest because City Council, not the City Commissioners, places home rule charter questions on the ballot. No such limitation of § 2641(c) can be found in the Election Code’s text or history.

54. Home rule charter questions in Philadelphia often present conflicts of interest for the City Commissioners, including a question on the May 16, 2017 primary ballot.

55. One of the proposed amendments on the May 16, 2017 ballot would modify Philadelphia’s procurement practices across Philadelphia’s departments and agencies, including the City Commissioners. Notably, the City Commissioners will play a key role in the procurement process for voting machines to replace Philadelphia’s current electronic voting machines. *See generally Banfield v.*

Cortés, 110 A.3d 155, 160 (Pa. 2015) (“A county board of elections may choose among the certified electronic voting systems and independently procure such system for use in its districts.” (citing 25 P.S. § 3031.4)).

56. Likewise, in the 2014 primary election, a ballot question about amending the Philadelphia Home Rule Charter presented a conflict of interest for the City Commissioners. In that election, the ballot featured a proposed amendment that would have eliminated from the Philadelphia Home Rule Charter the “resign to run” rule for elected officeholders, including City Commissioners. *See* Council of the City of Philadelphia, Resolution No. 130715-A (Jan. 30, 2014), attached as Exhibit D. The current rule states that “[n]o officer or employee of the City, except elected officers running for re-election, shall be a candidate for nomination or election to any public office unless he shall have first resigned from his then office or employment.” Philadelphia Home Rule Charter § 10-107(5). Had the proposed amendment been approved by Philadelphia’s voters in May 2014, it would have lifted the “resign to run” rule for elected officeholders. This would have permitted, for instance, a City Commissioner to run for Mayor without first resigning as City Commissioner.

57. These conflicts illustrate the significance for Philadelphia of § 2641(c)’s disqualification of the City Commissioners whenever there appears on

the ballot a question relating to the adoption of an amendment to the Philadelphia Home Rule Charter.³

58. The City Commissioners' anticipated conflict-of-interests distinction would restrict the application of § 2641(c) in counties beyond just Philadelphia. In several counties, the county commissioners fulfill the legislative role of placing county home rule charter amendments on the ballot, while other officials appointed by the county commissioners oversee the administration of elections. *See, e.g.,* Delaware County Home Rule Charter § 421, *available at* <http://ecode360.com/13342064> ("Council shall establish a Board of Elections. The Board shall be responsible for the registration of electors and the conduct of elections as required by law. The Board shall consist of two appointees representing the party with the largest total vote cast for a seat on Council in the most recent municipal election and one appointee representing the party with the second ranking total vote cast in the most recent municipal election. The term of office for the Board of Elections shall be two years."). The conflict-of-interest distinction would mean that § 2641(c) would not apply in such counties.

³ Other recent ballot questions proposing amendments to the Philadelphia Home Rule Charter potentially had a direct impact on the City Commissioners, because the amendments would have affected all City departments. These proposed amendments included Board of Ethics (2006) and Increasing the Number of Deputies Exempt from Civil Service in City Departments, Civil Service Preference for Bona Fide Residents of Philadelphia (2008).

59. More importantly, the conflicts of interest presented in Philadelphia are often at least as stark as those in other counties. On numerous occasions, county home rule charter amendments outside of Philadelphia have posed no apparent conflicts of interest for the county commissioners. A 2000 ballot question in Lehigh County, for example, asked voters whether to “amend[] Section 204(a) of the Lehigh County Home Rule Charter so as to make the elected position of Coroner a full time position.” Lehigh County Ordinance No. 1999-169, available at [http://www.boarddocs.com/pa/lehc/Board.nsf/files/AHW5BF82251C/\\$file/1999-169-ORD.pdf](http://www.boarddocs.com/pa/lehc/Board.nsf/files/AHW5BF82251C/$file/1999-169-ORD.pdf). It would be anomalous to identify no conflict of interest for the Philadelphia City Commissioners to oversee an election affecting their own procurement practices or ability to run without resigning, while finding a disqualifying conflict of interest in the Lehigh coroner matter.

60. At bottom, the City Commissioners’ anticipated distinction would mean that Philadelphia voters would enjoy fewer safeguards against election overseers’ conflicts of interest than would voters of other counties. This is, to say the least, an unlikely account of the General Assembly’s intent, especially in light of repeated scandals involving former City Commissioners.⁴ Indeed, when the

⁴ See, e.g., *Marks v. Stinson*, No. 93-cv-6157, 1994 U.S. Dist. LEXIS 5273, at *11 (E.D. Pa. Apr. 26, 1994) (“The [Philadelphia City Commissioners are] under a statutory duty to strictly enforce the Election Code to avoid any partiality in the conduct of elections.”), *aff’d without opinion*, 37 F.3d 1487 (3d Cir. 1994); *id.* at *55 (“In sum, the [Philadelphia City] Commissioners’ Office generally has not followed the Election Code. Specifically with reference to the 1993 Special Election, Commissioners Talmadge and Tartaglione and other members of the Commissioners’

General Assembly added § 2641(c) to the Election Code in 1976, federal courts had recently found that two longtime Philadelphia City Commissioners had participated in illegal kickback schemes concerning bids for printing ballots and purchasing voting machines. *See United States v. Osser*, 483 F.2d 727 (3d Cir. 1973) (affirming 1972 convictions of Commissioner Maurice Osser); *Estate of McHenry v. Commissioner*, 33 T.C.M. (CCH) 1409 (T.C. Dec. 11, 1974) (United States Tax Court finding that Commissioner Thomas McHenry had received kickback payments from a voting machines company totaling over \$100,000).

Count I—Declaratory Judgment

61. Petitioners incorporate by reference paragraphs 1 through 60 as if set forth fully herein.

62. Section 301(c) of the Pennsylvania Election Code, 25 P.S. § 2641(c), applies to elections Philadelphia whenever there appears on the ballot a question relating to the adoption of amendments to the Philadelphia Home Rule Charter.

Office specifically aided and favored the Democrat candidate. As discussed in the court's prior findings, Commissioners Talmadge and Tartaglione could have prevented much of the illegal activity that occurred even if the Stinson campaign had acted illegally. If the Commissioners would have observed and enforced the Election Code, the Stinson Campaign could not have illegally altered the outcome of the election. Not only did the Commission not correct the known illegal activities, the Commission also facilitated the scheme and then attempted to conceal the conspiracy.”).

WHEREFORE, Petitioners move this Court to enter a declaratory judgment that Respondents are statutorily ineligible to carry out the functions of their offices as City Commissioners whenever there appears on the ballot a question relating to amendments to the Philadelphia Home Rule Charter, including the primary election scheduled for May 16, 2017.

Respectfully submitted,

/s/ Benjamin D. Geffen

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Benjamin D. Geffen
Attorney ID No. 310134
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*Counsel for Petitioner
Philadelphia 3.0*

*Counsel for Petitioners Committee of Seventy,
Jordan Strauss, Brian Krisch, & Katherine Rivera*

Dated: April 24, 2017

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

Committee of Seventy, et al.,

Petitioners,

v.

Anthony Clark, in his official capacity
as City Commissioner, et al.,

Respondents.

April Term, 2017

No. _____

Petition

Action for Declaratory Judgment

RULE TO SHOW CAUSE

ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of the foregoing Petition, it is hereby ordered that:

- (1) a Rule is issued upon the Respondents to show cause the Petitioners are not entitled to the relief requested;
- (2) the Respondents shall file an answer to the Petition within _____ days;
- (3) A Hearing or Argument shall be scheduled at the discretion of the Assigned Judge; and
- (4) notice of the entry of this order shall be provided immediately to all parties by the Petitioners.

BY THE COURT:

J.

VERIFICATION

I, David Thornburgh, hereby state:

1. I am the President and CEO of Committee of Seventy, which is a petitioner in this action;
2. I am authorized to make this verification on behalf of Committee of Seventy in the foregoing action;
3. I have personal knowledge of the statements made in the foregoing Petition;
4. The statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief; and
5. I understand that the statements in said Petition and this Verification are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



**David Thornburgh, on behalf of
Petitioner Committee of Seventy**

Dated: _____

4/24/17

VERIFICATION

I, Alison Perelman, hereby state:

1. I am the Executive Director of Philadelphia 3.0, which is a petitioner in this action;
2. I am authorized to make this verification on behalf of Philadelphia 3.0 in the foregoing action;
3. I have personal knowledge of the statements made in the foregoing Petition;
4. The statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief; and
5. I understand that the statements in said Petition and this Verification are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



**Alison Perelman, on behalf of
Petitioner Philadelphia 3.0**

Dated: April 24, 2017

VERIFICATION

I, Jordan Strauss, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Jordan Strauss

Dated: _____04/24/17_____

VERIFICATION

I, Brian Krisch, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


Brian Krisch _____
Brian Krisch

Dated: 4/24/2017

VERIFICATION

I, Katherine Rivera, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Katherine Rivera

Dated: 04/24/2017

Exhibit A

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMITTEE OF SEVENTY, PHILADELPHIA 3.0,	:	NO. 36 EM 2017
JORDAN STRAUSS, BRIAN KRISCH, AND	:	
KATHERINE RIVERA,	:	
	:	
Petitioners,	:	
	:	
vs	:	
	:	
	:	
	:	
THE HONORABLE SHELIA A. WOODS-SKIPPER,	:	
IN HER OFFICIAL CAPACITY AS PRESIDENT JUDGE	:	
OF THE COURT OF COMMON PLEAS, PHILADELPHIA	:	
	:	
	:	
Respondent.	:	

**ANSWER TO PETITION FOR REVIEW IN THE NATURE
OF MANDAMUS FILED ON BEHALF OF RESPONDENT,
THE HONORABLE SHELIA A. WOODS-SKIPPER, PRESIDENT JUDGE**

I. INTRODUCTION

Petitioners seek to mandamus Philadelphia Court of Common Pleas President Judge Shelia A. Woods-Skipper to appoint judges or electors to serve in place of the Philadelphia City Commissioners for the May 16, 2017 primary election. Petitioners cite Section 301 (c) of the Pennsylvania Election Code, 25 P.S. §2641 (c), arguing that the cited Section mandates the President Judge to appoint substitute electors for the upcoming May primary election where an amendment to the Home Rule Charter is on the ballot (Petition for Review, ¶2).

Instead of approaching President Judge Woods-Skipper in a judicial posture for a decision, Petitioners demanded, by *ex parte* letter (*Id.*, ¶32), that the President Judge take independent action, despite their knowledge of differing views on the interpretation of the Election Code. (*Id.*, ¶52) Petitioners repeatedly reference their letter to President Judge Woods-Skipper, sent through “Better Philadelphia Elections Coalition” (BPEC), (*Id.*, ¶25), with which Petitioners are affiliated; however, Petitioners attach neither a copy of the BPEC letter nor the

Common Pleas Court's response.¹ BPEC sent the referenced letter without copying or including the City, the City Commissioners, or any other appropriate defending party that might contest or be impacted by the BPEC reading of the election statute. The referenced letter and the President Judge's full response are attached hereto as Respondent's Exhibit 1A (BPEC letter), and 1B (President Judge's response).

II. DISCUSSION

A. President Judge Woods-Skipper and her Court Lack an Advocacy Interest in Enforcement of the Election Code.

The advocacy interest in arguing the interpretation of the Election Code lies with the City and the Commissioners and not with President Judge Woods-Skipper's Court,² which is properly approached judicially in this instance. A Petition filed in the Common Pleas Court would provide an opportunity for all parties impacted to be heard prior to a Court decision as to the interpretation of the Election Code.

The President Judge and her Court are not appropriate advocates to advance arguments regarding the administration of Pennsylvania's Election Code or to defend any institutional interests at stake in this case. To the contrary, the duty of the Court is to decide whether the statute is triggered after hearing the arguments on both sides and interpreting the

¹ The Common Pleas Court's response to BPEC's letter is referenced at ¶¶ 12 and 14 of their Application for Leave to File Original Process, again at ¶ 1 of their Application to Expedite Case Schedule, and at ¶¶ 33 and 35 of the Petition for Review. Petitioners do not append the response as an exhibit. Instead, Petitioners claim only, in each reference, that the response indicated that the President Judge "was unable to respond to [BPEC's] letter." The representation in these paragraphs is incomplete; the President Judge clearly articulated the reason for her response and why the response was made through counsel.

² The President Judge is named in her official capacity. When a public official is named in an official capacity, the real party in interest in an official capacity suit is the governmental entity and not the named official, here, the Court of Common Pleas of Philadelphia, and the official-capacity suit is treated as a suit against the state. Verrichia v. Department of Revenue, 162 Pa. Commw. 610, 621, 639 A.2d 957, 967 (Pa. Commw. Ct. 1994).

statute in an adjudicatory posture.³ In coming to this Court seeking mandamus, Petitioners have bypassed this key adjudicatory step.

B. The Legal Requirements for Mandamus are Not Met.

Mandamus relief is an extraordinary remedy and proper only where the petitioner demonstrates a clear legal right in the petitioner; a corresponding duty in the respondent; and the absence of any other appropriate or adequate remedy. Phila. Firefighters' Union, Local 22 v. City of Phila., 632 Pa. 243, 249, 119 A.3d 296, 300 (2015). Petitioners do not meet the required legal standard for the requested extraordinary relief.

An adequate remedy other than mandamus exists in President Judge Woods-Skipper's Court. As set forth above, raising the issue in the Respondent Court is the appropriate mechanism for seeking interpretation of the subject statute and to clarify any statutory duty. Concomitantly, the President Judge does not have a mandatory duty to act until the statute at issue is interpreted judicially, with consideration given to the arguments on each side of the issue. Presently, therefore, any mandatory duty or corresponding right is unclear, and President Judge Woods-Skipper should not be subject to mandamus.

³ The President Judge's response to Petitioners' letter suggested that Petitioners bring a case before her Court (See attached Exhibit 1B).

III. CONCLUSION

Respondent, President Judge Woods-Skipper and her Court have no advocacy interest in this case. Respondent's Court is the appropriate adjudicatory agency to determine initially the statutory issue raised by Petitioners, and Petitioners have not met the legal standard for mandamus.

Respectfully submitted,

s/A. Taylor Williams

A. TAYLOR WILLIAMS, ESQUIRE

Attorney I.D. No. 33149

Supreme Court of Pennsylvania

Administrative Office of PA Courts

1515 Market Street, Suite 1414

Philadelphia, PA 19102

(215) 560-6300

Attorney for Respondent,

President Judge Sheila A. Woods-Skipper

EXHIBIT 1A



**BETTER
PHILADELPHIA
ELECTIONS
COALITION**

Hon. Sheila Woods-Skipper
President Judge

JAN 18 2017

January 18, 2017

VIA HAND DELIVERY

The Hon. Sheila Woods-Skipper
Court of Common Pleas of Philadelphia
City Hall Room 386
Philadelphia, PA 19107

re: Appointment of Interim City Commissioners for May 2017 Primary Election

Dear Judge Woods-Skipper:

As members of the Better Philadelphia Elections Coalition,¹ we are writing to alert you to the recent signing into law of Philadelphia City Council Bill 160971, which places on the May 16, 2017 primary ballot an amendment to The Philadelphia Home Rule Charter relating to modifications of the Lowest Responsible Bidder provision to allow for “best value” contracting.

Because this matter places on the primary ballot an amendment to Philadelphia’s Home Rule Charter, this law now requires you to appoint judges or electors of the Philadelphia County to serve in the stead of the City Commissioners for the duration of the primary election.

We recognize that it has not been the past practice of the City Commissioners to recuse themselves when a Charter amendment has been on the ballot, nor has the Office of the President Judge previously so required. But this is in fact what state law compels. We therefore urge you to recognize that the plain language of 25 P.S. § 2641(c) indeed mandates this result, and to take the appropriate action to ensure Philadelphia comes into compliance with state law.

Section 301 of the Pennsylvania Election Code, 25 P.S. § 2641, establishes the authority of county boards of elections and states as follows:

County boards of elections; membership

(a) There shall be a county board of elections in and for each county of this Commonwealth, which shall have jurisdiction over

¹ The Better Philadelphia Elections Coalition includes Philadelphia 3.0, the Committee of Seventy, Americans for Democratic Action, Asian Americans United, Disability Rights Pennsylvania, Economy League, Fifth Square, Influencing Action Movement, Pennsylvania Immigration and Citizenship Coalition, Philly Progressive Caucus, Public Interest Law Center, and SEAMAAC (Southeast Asian Mutual Assistance Associations Coalition).

the conduct of primaries and elections in such county, in accordance with the provisions of this act.

(b) In each county of the Commonwealth, the county board of elections shall consist of the county commissioners of such county ex officio, or any officials or board who are performing or may perform the duties of the county commissioners, who shall serve without additional compensation as such. Except in counties of the first class, in counties which have adopted home rule charters or optional plans the board of elections shall consist of the members of the county body which performs legislative functions unless the county charter or optional plan provides for the appointment of the board of elections. In either case, there shall be minority representation on the board. The county body which performs legislative functions shall in the case where the board does not contain minority representation appoint such representation from a list submitted by the county chairman of the minority party.

(c) Whenever a member of the board of county commissioners is a candidate for nomination or election to any public office, the President Judge of the Court of Common Pleas shall appoint a judge or an elector of the county to serve in his stead. Whenever there appears on the ballot a question relating to the adoption of a Home Rule Charter for the county or amendments to an existing county Home Rule Charter, the President Judge of the Court of Common Pleas shall appoint judges or electors of the county to serve in the stead of the county commissioners. Appointees who are not currently elected office holders shall receive compensation for such service as determined by the salary board plus mileage as specified by the county for expenses incurred when performing election board business.

There has never been any question that the first sentence of subsection (c) applies to the Philadelphia City Commissioners. Every four years, including most recently in 2015, any City Commissioner standing for reelection to office steps down from office no later than when he or she files nomination papers to appear on that year's primary ballot. It is because this subsection applies that the Office of President Judge possesses the grant of authority to appoint interim commissioners in their stead; nowhere else in Commonwealth or City law is this issue addressed.

It is the second sentence which has been unfortunately ignored. Its language plainly applies to this situation: an amendment to Philadelphia's existing Home Rule Charter will be placed on the May 2017 ballot. And according to state law, this places a mandatory duty on the President Judge to appoint persons to serve in their steads.

We anticipate that the City Commissioners will resist this interpretation. It is likely that they will argue that the statute contains an implicit exemption and only mandates recusal when the Charter amendment in question implicates the Commissioners themselves. Such a reading is not supported by the text itself, which contains no such exception, and would raise countless

questions as to which office was empowered to determine whether a particular Charter amendment raised a conflict for the Commissioners in either their official or personal capacities, or who might have standing to seek mandamus to force recusal. Moreover, the proposed Charter amendment that will appear on the May 16 ballot actually does affect the City Commissioners office itself, because it will alter its procurement procedures as it does every other City department or agency.

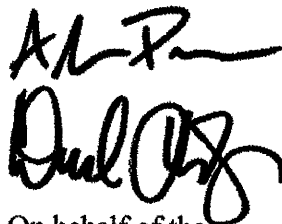
Beyond that, the Commissioners conceivably could argue that the provision simply does not apply to Philadelphia at all, that it only applies to *other* home rule counties. Except that when the General Assembly wants to treat Philadelphia differently it has the ability and language with which to do so – as it does in subsection (b) immediately above the paragraph being discussed here. (“Except in counties of the first class...”) Further, the legislative history of this provision confirms that while it originated in the 1933 Election Code, this very subsection has been amended numerous times since the Commissioners’ office merged into City government with the 1951 City-County consolidation,² including a 1979 amendment which granted the President Judge the power to select judges *or* electors to fill such vacancies, without requiring that the entire pool of judges be exhausted before turning to the public. (Act 63, P.L. 189 of 1979). This is not a vestigial clause, but one which retains its full force now.

Moreover, based on our research, it is indeed the practice of similarly situated home rule counties for commissioners to recuse for all amendments to their home rule charters. In Lackawanna County, for example, a 2013 ordinance amending the Charter led to the Commissioners stepping down, replaced with a panel of common pleas judges. See Pilchesky v. Lackawanna Cnty., 88 A.3d 954, 956-57 (Pa. Commw. 2014).

We believe the statutory obligation is clear. In addition to the City Charter amendment, this spring primary features important and contested primaries for both state and citywide office, in addition to elections for Judge of Elections and Inspector in each of Philadelphia’s 1,686 voting precincts. We urge you to observe state law, and promptly name replacement judges or electors (including retired judges) who are not only highly-qualified and independent, but also able to devote significant time to their elections-related duties during this critical year.

Thank you for your consideration.

Sincerely,



On behalf of the
Better Philadelphia Elections Coalition

² Article IX, Section 13 (1951) of the Pennsylvania Constitution, which includes: “All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.”

EXHIBIT 1B

From: Rossi, Dominic J. <dominic.rossi@courts.phila.gov>
Sent: Monday, March 06, 2017 7:56 AM
To: 'dthornburgh@seventy.org'
Subject: Better Philadelphia Elections Coalition
Attachments: PRIMARY ELECTION - CITY COMMISSIONERS.PDF; CertifiedCopy16097100.pdf; 2641 County boards of elections membership.rtf

Better Philadelphia Elections Coalition

c/o Alison Perelman, Executive Director, Philadelphia 3.0

David Thornburgh, Executive Director, Committee of 70

Dear Better Philadelphia Elections Coalition,

Your letter dated January 18, 2017 addressed to the Honorable Sheila Woods Skipper, President Judge, Court of Common Pleas of Philadelphia, has been forwarded to me for review and response. A copy of the letter is attached.

I am taking the liberty of emailing this letter to your respective email addresses at other organizations since the attached letter does not contain a street address or email address for the Better Philadelphia Elections Coalition, and a search with the Pennsylvania Corporation Bureau revealed no registered entity under the name "Better Philadelphia Elections Coalition." Similarly, I was not able to find a street address or email address for the Coalition through Google, but did find multiple articles which referenced both of you, I hope I have correctly identified you as the signatories to the letter. If I am in error, please let me know.

In your January 18, 2017 letter, you requested that President Judge Woods-Skipper appoint Court of Common Pleas judges or Philadelphia electors to act in place of the duly elected County Board of Elections because of a pending ordinance enacted by City Council regarding a Charter amendment to the procurement process. While you acknowledge that the County Board of Election officials have never been so recused in Philadelphia County, you submit legal argument justifying such recusal.

As you might expect, President Judge Woods-Skipper is unable to take any official act pursuant to your letter. Any requests for the exercise of judicial authority must be raised in an official manner, as provided by law, which provides notice to those who may be impacted as well as an opportunity to object to same. In light of the fact that President Judge Woods-Skipper may be asked to decide the legal question you raise, she is not able to respond to your letter.

I trust the above provides ample explanation as to why President Judge Woods-Skipper is unable to respond to your letter.

As an aside, it appears to me that you are confusing the role of the County Board of Elections and the role of the legislative branch which, in Philadelphia County, is the City Council but in most of the remaining counties, it is the "County Commissioners." As you know, and as Section 2641 states, in most counties the "County Commissioners" also act as the "County Board of Elections." That is not so in Philadelphia; here, the members of the County Board of Elections are known as "County Commissioners" but have no legislative authority.

P.S. Can you please forward this email to Ms. Perelman? I was not able to find an email address for her on the Philadelphia 3.0 website nor on any of the websites of the entities in which she is involved. Thank you.

Dominic J. Rossi, Esquire

Chief Compliance Officer

Deputy Court Administrator, Legal Services

369 City Hall, Philadelphia, PA 19107

Phone: 215-686-3745; Fax: 215-686-3782

Email Address: dominic.rossi@courts.phila.gov<<mailto:dominic.rossi@courts.phila.gov>>

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**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMITTEE OF SEVENTY, PHILADELPHIA 3.0,	:	NO. 36 EM 2017
JORDAN STRAUSS, BRIAN KRISCH, AND	:	
KATHERINE RIVERA,	:	
Petitioners,	:	
vs	:	
	:	
THE HONORABLE SHELIA A. WOODS-SKIPPER,	:	
IN HER OFFICIAL CAPACITY AS PRESIDENT JUDGE	:	
OF THE COURT OF COMMON PLEAS, PHILADELPHIA	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on *April 5, 2017*, she personally caused to be served upon the following a true and correct copy of the foregoing letter by mailing same first class, postage prepaid, U.S. mail (which service satisfies the requirements of Pa.R.A.P. 121) or via the Electronic PACFile System, where applicable to:

Mary M. McKenzie, Esquire
Benjamin D. Geffen, Esquire
Public Interest Law Center
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103

Lawrence M. Otter, Esquire
P.O. Box 575
Silverdale, PA 18962

Benjamin H. Field
Deputy City Solicitor
Affirmative and General Litigation Unit
City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
benjamin.field@phila.gov

s/A. Taylor Williams
A. TAYLOR WILLIAMS, ESQUIRE
Attorney I.D. No. 33149
Supreme Court of Pennsylvania
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
(215) 560-6300
Attorney for Respondent,
President Judge Sheila A. Woods-Skipper

Exhibit B

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMITTEE OF SEVENTY,	:	No. 36 EM 2017
PHILADELPHIA 3.0, JORDAN STRAUSS,	:	
BRIAN KRISCH, AND KATHERINE	:	
RIVERA,	:	
	:	
Petitioners	:	
	:	
v.	:	
	:	
THE HONORABLE SHEILA A. WOODS-	:	
SKIPPER, IN HER OFFICIAL CAPACITY	:	
AS PRESIDENT JUDGE OF THE COURT	:	
OF COMMON PLEAS OF	:	
PHILADELPHIA,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 19th day of April, 2017, the Application for Leave to File Original Process and the Application for Leave to Intervene are **GRANTED**. The Prothonotary is **DIRECTED** to docket the City Commissioners' preliminary objections, as well as Petitioners' answer and supporting brief.

The Petition for Review in the Nature of Mandamus is **DENIED**. The Application to Expedite and the City Commissioners' preliminary objections are **DISMISSED**.

The Prothonotary is **DIRECTED** to strike the name of the jurist from the caption.

Justice Dougherty did not participate in the consideration or decision of this matter.

Exhibit C

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 160981)

RESOLUTION

Proposing an amendment to The Philadelphia Home Rule Charter to provide for the award of certain contracts based on best value to the City, under certain terms and conditions; and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. 13106), an amendment to The Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the following amendment to The Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

ARTICLE VIII PROVISIONS OF GENERAL APPLICATION

* * *

CHAPTER 2 CONTRACTS, PROCUREMENT, PROPERTY AND RECORDS

§ 8-200. Contracts.

(1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, competitive bids shall be secured before any purchase, by contract or other-wise, is made or before any contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the City other than professional services and, *except as provided in subsection (5) below*, the

City of Philadelphia

RESOLUTION NO. 160981 *continued*

purchase shall be made from or the contract shall be awarded to the lowest responsible bidder; provided, however, that City Council may, by ordinance, prescribe bid preferences for businesses located in or doing business in Philadelphia, and provided further that Council may, by ordinance, regulate the process by which purchases and contracts not subject to the lowest responsible bidder requirement of this paragraph are awarded, and may require that contracts with agencies (as that term is defined in subsection 6-400(c) of this Charter) or with other entities include provisions obligating such agencies or entities to comply with any process established by Council under the authority of this subsection, except that such regulations may not require Council authorization of a contract unless Council authorization is required by some other provision of this Charter.

(2) Except as authorized by Section 8-200(4), if any purchase or contract ~~for which competitive bidding is required to be awarded to the lowest responsible bidder~~ involves an expenditure of more than twenty-five thousand (~~\$25,000~~) dollars (\$25,000), which amount shall be adjusted every five (5) fiscal years as rounded to the nearest one thousand (~~\$1,000~~) dollars (\$1,000) to reflect the percentage change in the most recently published Consumer Price Index for All Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics, the following procedure shall be applicable:

* * *

(5) *In lieu of awarding a contract to the lowest responsible bidder, the Procurement Department may award a contract to the responsible bidder whose proposal provides the City with the best value, but only when the Procurement Commissioner has determined in writing that award to the lowest responsible bidder may not yield the best value to the City because the goods, construction, alterations, repairs, maintenance or other services that are the subject of the award have qualitative characteristics that make them better suited to an open, competitive solicitation of proposals. Such characteristics may include the integration of technical or professional service elements, quality differences among proprietary products and services, incorporation of City contracting objectives, including but not limited to, participation in City contracts by disadvantaged business enterprises pursuant to Article 6-109 of this Charter (related to participation goals), or other attributes that make price alone a poor indicator of best value. In such instances, the award of the contract shall be subject to any applicable process established by City Council pursuant to subsection (1), above, applicable generally to contracts not subject to the lowest responsible bidder requirement; and the awarding decision shall be made according to criteria established by the Procurement Department by regulation. For contracts involving an expenditure in excess of the amount set forth in subsection (2), above, as adjusted, the applicable criteria shall be set forth in any solicitation for proposals.*

City of Philadelphia

RESOLUTION NO. 160981 continued

§ 8-201. Concessions.

All concessions granted by any officer, department, board or commission of the City for the sale of products or the rendition of services for a consideration on City property (whether such concession is granted by the execution of a concession contract, a lease, a license, or otherwise) shall be awarded by the Procurement Department only pursuant to the specifications of such officer, department, board or commission after competitive bidding and to the highest responsible bidder *or to the bidder whose proposal provides the City with the best value*, in a manner similar to that required by, *and subject to the criteria set forth in*, the preceding section relating to contracts for procurement involving an expenditure of more than twenty-five thousand dollars (\$25,000), *as adjusted*. No concession with a term of more than one year, as defined in Section 2-309(1), including, but not limited to, any concession granted by the Department of Commerce under Section 4-500(b) or (c), shall be granted without Council authorization by ordinance.

* * *

City of Philadelphia

RESOLUTION NO. 160981 continued

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the eighth of December, 2016.

Darrell L. Clarke
PRESIDENT OF THE COUNCIL

Michael A. Decker
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Henon

Sponsored by: Councilmembers Henon, Green, Squilla, Parker, Jones and Johnson

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 170190)

RESOLUTION

Proposing an amendment to The Philadelphia Home Rule Charter to provide for the creation, appointment, powers and duties of a Philadelphia Community Reinvestment Commission; and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. §13106), an amendment to The Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; and

WHEREAS, As Philadelphia continues to grow, our City needs to be at the cutting edge of innovative ways and means to reinvest in our neighborhoods, grow our economy and create jobs for all of our citizens; and

WHEREAS, In other municipalities across the United States, there are models of innovative public-private-philanthropic partnerships to provide more capital for reinvestment in their communities; and

WHEREAS, City Council believes that the public sector can play an important role in forging multi-sector partnerships and developing new strategies for coordinating investments to benefit Philadelphia's communities; and

WHEREAS, By establishing the Philadelphia Community Reinvestment Commission the City can replicate and build upon successful models by bringing together banks, foundations, anchor institutions and Community Development Financial Institutions to identify opportunities for private, public and philanthropic entities to collaborate and leverage their resources for the public good; and

City of Philadelphia

RESOLUTION NO. 170190 continued

WHEREAS, Council previously considered, and adopted on February 23, 2017 following a public hearing, Resolution No. 160902, and now wishes to make certain technical changes to that Resolution by adopting this Resolution, which provides for the same amendment in substance to the Home Rule Charter; now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the following amendment to The Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

~~Strikethrough~~ indicates matter deleted by these amendments.

Bold italics indicates matter added by these amendments.

ARTICLE III EXECUTIVE AND ADMINISTRATIVE BRANCH – ORGANIZATION

CHAPTER 1 OFFICERS, DEPARTMENTS, BOARDS, COMMISSIONS AND OTHER AGENCIES

§3-100. Executive and Administrative Officers, Departments, Boards, Commissions and Agencies Designated.

The executive and administrative work of the City shall be performed by:

* * *

(f) The following departmental boards and commissions, which are either created or placed, as the case may be, in the respective departments, as follows:

* * *

In the Department of Planning and Development:

City Planning Commission;
Historical Commission;
Art Commission;
Zoning Board of Adjustment;
Housing Advisory ~~Board~~ ***Board***;
Philadelphia Community Reinvestment Commission.

* * *

CHAPTER 9 DEPARTMENTAL BOARDS AND COMMISSIONS

City of Philadelphia

RESOLUTION NO. 170190 continued

* * *

§ 3-920. Philadelphia Community Reinvestment Commission.

(a) Composition. *The Philadelphia Community Reinvestment Commission shall be composed of twenty-one (21) members, selected as follows, provided that Council may from time to time provide by ordinance for a different composition or method of appointment:*

(1) *Twelve (12) members appointed by the Mayor, with the advice and consent of a majority of all the members of the Council. The appointed members shall include at least one representative from each of the following seven categories: Depositories authorized to hold City moneys; community development financial institutions located in Philadelphia; private foundations; educational and/or medical institutions; City-wide community development and/or anti-poverty organizations; City-wide business associations; and labor organizations.*

(2) *Three members appointed by the Council from among its members or their designees;*

(3) *The President of Council or his or her designee; and*

(4) *The Director of Finance, the Director of Commerce, the Director of Planning and Development, the City Treasurer, and an administrative officer, designated by the Mayor, who is charged with oversight of anti-poverty and community development issues, or their designees.*

(b) Terms of Service and Vacancies. *Appointed members on the Commission shall serve at the pleasure of their appointing authorities. Vacancies among the appointed positions shall be filled by the appointing authority who originally appointed the member whose seat has become vacant.*

(c) Compensation. *Members of the Commission shall not be compensated for their service.*

* * *

ARTICLE IV

EXECUTIVE AND ADMINISTRATIVE BRANCH – POWERS AND DUTIES

The Mayor, The City Representative and Departments, Boards and Commissions under the Mayor

City of Philadelphia

RESOLUTION NO. 170190 continued

* * *

CHAPTER 6

DEPARTMENT OF PLANNING AND DEVELOPMENT AND ITS DEPARTMENTAL BOARDS AND COMMISSIONS

* * *

§4-609. Philadelphia Community Reinvestment Commission.

(a) *The Philadelphia Community Reinvestment Commission shall develop and make recommendations to the Mayor and the Council concerning coordinated community reinvestment strategies for the City of Philadelphia. Such strategies shall identify opportunities for private, public, and philanthropic entities to collaborate and leverage their resources for the public good. To that end, the Commission shall regularly review best practices and develop strategies to apply and enhance those practices for the benefit of the City and its residents. To execute its mission, the Commission is authorized to establish committees comprised of members of the Commission and others selected by the Commission because of their expertise.*

(b) *The Commission shall provide an annual report summarizing its activities and accomplishments to the Mayor and the Chief Clerk of Council no later than September 1 of each year, beginning with the year 2018.*

(c) *The Commission shall perform such other duties, consistent with the mission of the Commission, as are conferred upon it by this Charter or by ordinance.*

* * *

APPENDIX

* * *

CHAPTER A-2

§ A-200. Schedule.

* * *

(15) *The amendments to this Charter relating to the Philadelphia Community Reinvestment Commission shall take effect July 1, 2017.*

City of Philadelphia

RESOLUTION NO. 170190 continued

City of Philadelphia

RESOLUTION NO. 170190 continued

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the ninth of March, 2017.

Darrell L. Clarke
PRESIDENT OF THE COUNCIL

Michael A. Decker
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Henon for Council President Clarke

Sponsored by: Councilmember Henon and Council President Clarke

Exhibit D

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 130715-A)

RESOLUTION

Proposing an amendment to the “resign to run” provision of the Philadelphia Home Rule Charter so that City elected officials may become candidates for nomination or election to public office without first resigning from their City office, under certain terms and conditions, and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. §13106), an amendment to the Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; now, therefore,

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA,

That the following amendment to the Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

ARTICLE III

EXECUTIVE AND ADMINISTRATIVE BRANCH – ORGANIZATION

* * *

CHAPTER 4

TERMS OF OFFICE

§3-400. Mayor

City of Philadelphia

RESOLUTION NO. 130715-A continued

The Mayor shall serve for a term of four years beginning on the first Monday of January following his election. He shall not be eligible for election for more than two successive terms; ~~and he shall not during his term of office be a candidate for any other elective office whatsoever. Should he announce his candidacy for any other office, he shall be automatically disqualified to continue to serve as Mayor, and the office shall be deemed vacant.~~

* * *

ARTICLE X

PROHIBITED ACTIVITIES OF COUNCILMEN, CITY OFFICERS, EMPLOYEES AND OTHERS, AND PENALTIES

* * *

§10-107. Political Activities.

(5) No officer or employee of the City, except ~~an~~ *an* elected ~~officers~~ *official* ~~running~~ *for reelection*, shall be a candidate for nomination or election to any public office unless he shall have first resigned from his then office or employment. *No such elected official shall be on a ballot for election to more than one office at any time.*

* * *

APPENDIX

* * *

CHAPTER A-2

§A-200. Schedule.

* * *

(10) The amendment to section 3-400 and subsection 10-107(5), relating to elected officers running for public office, shall take effect January 1, 2016.

* * *

Note:

City of Philadelphia

RESOLUTION NO. 130715-A continued

~~Strikethrough~~ indicates matter deleted by this amendment.
Italics indicates matter added by this amendment.

City of Philadelphia

RESOLUTION NO. 130715-A continued

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the thirtieth day of January, 2014.

Darrell L. Clarke
PRESIDENT OF THE COUNCIL

Michael A. Decker
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Oh

Sponsored by: Councilmembers Oh, Kenney, Henon, Tasco, Quiñones
Sánchez, Bass, Reynolds Brown, Squilla, O'Neill and Johnson