IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 611 CD 2017

COMMITTEE OF SEVENTY, PHILADELPHIA 3.0, JORDAN STRAUSS, BRIAN KRISCH, and KATHERINE RIVERA,
Appellants.

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,
Appellees,

BRIEF FOR APPELLEES

Appeal from the Order of the Court of Common Pleas of Philadelphia County, April Term, 2017, Case No. 3418

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COUNTERSTATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to 42 Pa. C.S. § 762(a)(4) & (7) and Pa. R. App. P. 341.

COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Although the trial court interposed its Opinion as mooting appellees' Preliminary Objections, the standard remains de novo, just as if the trial court granted the Preliminary Objections. This Court's standard of review for a question of law is de novo, and its scope of review for a question of law is plenary. Buffalo Township v. Jones, 571 Pa. 637, 644 n.4, 813 A.2d 659, 664 n.4 (2002). Where appellants challenge the trial court's grant of preliminary objections on demurrer, the reviewing court must accept all well pleaded material facts set forth in the complaint and the documents and exhibits attached thereto, as well as all inferences reasonably deducible therefrom as admitted and true and decide whether, based on the facts averred, recovery is impossible as a matter of law. MacElree v. Philadelphia Newspapers, 544 Pa. 117, 674 A.2d 1050, 1053-54 (1996); Brosovic v. Nationwide Mut. Ins. Co., 841 A.2d 1071, 1073 (Pa. Super. 2004). The court, however, need not consider the pleader's conclusions of law, unwarranted inferences from facts, opinions, or argumentative allegations. Buoncuore v. Pa. Game Comm'n, 830 A.2d 660, 661 (Pa. Cmwlth. 2003); Pennsylvania State Lodge, FOP v. Commonwealth, 692 A.2d 609, 613 (Pa. Cmwlth. 1997), aff'd w/o opin., 550 Pa. 549, 707 A.2d 1129 (1998).

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Did the court below correctly hold that a substitute Board of Elections does not need to be appointed in Philadelphia every time there is an amendment to the City of Philadelphia's Home Rule Charter on the ballot?

   Suggested answer: Yes.

2. In reaching this decision, was the court below correct in determining that the City of Philadelphia's Home Rule Charter is not a "county charter" and therefore an amendment to Philadelphia's Home Rule Charter is not an amendment to an "existing county Home Rule Charter" as stated in 25 P.S. § 2641(c)?

   Suggested answer: Yes.

3. Did the trial court err in distinguishing between the Philadelphia City Commissioners and other county commissioners throughout the Commonwealth?

   Suggested answer: No.

COUNTERSTATEMENT OF THE CASE

The Committee of Seventy, Philadelphia 3.0, Jordan Strauss, Brian Krisch, and Katherine Rivera ("Appellants") have appealed the May 15, 2017 Memorandum Order and Opinion of the Court of Common Pleas of Philadelphia County ("Opinion", Exhibit A to Appellants' Brief). This appeal is just one more attempt by Appellants to eliminate the Philadelphia City Commissioners' positions. The history of these efforts, including failed attempts to petition City Council to take legislative action and, subsequent to those failures, an *ex parte* request to the President Judge and two separate litigations regarding this issue, has been chronicled by the Court and Appellees. See Opinion at 2-3; Brief in Support of Preliminary Objection at 1-5 (R. 84a – 88a).

With this appeal, Appellants continue to seek to achieve through litigation what they have failed to achieve through other means: they seek to force the City of Philadelphia to eliminate the City Commissioners. And they are unabashed in their reason for doing this. Despite the fact that the structure of the City Commissioners' roles in Philadelphia was voted on by the electorate as part of the City of Philadelphia's Home Rule Charter and the City Commissioners are themselves elected every four years, Appellants believe they know a better way for

elections to be run[1] and seek to replace the will of the electorate with their preferred structure.

This case poses a single straightforward question: Does the Pennsylvania Election Code require the appointment of judges or electors to serve in the stead of the City Commissioners whenever there appears on the ballot an amendment to the City of Philadelphia's Home Rule Charter? The facts relevant to this Court's consideration are also straightforward and not in dispute. There have been and will be such amendments on the ballot (ballot questions) and it has never been the practice of the President Judge in Philadelphia to appoint such substitute judges or electors.

Despite this, Appellants spend a significant portion of their brief seeking to argue that this Court must address an alleged error in the Opinion that relates to an issue that was not contested in this litigation. There is no error that requires correction. Nor, once Appellants get to their primary argument is there any reason for this Court to overturn the Opinion. Rather, as argued herein, the Court of

[1]Appellants' Brief repeatedly casts aspersions on the role and actions of Philadelphia City Commissioners in past elections. The City Commissioners do not concede these allegations, and specifically deny Appellants' baseless allegations that cast aspersions on the City Commissioners and the election process in Philadelphia. Because Appellants' allegations other than the basic facts cited above are not required for this Court's determination of the appeal, Appellees will address such allegations herein only to the extent necessary to refute specific arguments.

Common Pleas rightly determined that the City of Philadelphia's Home Rule Charter is not a county charter and, therefore, the City Commissioners do not need to be replaced as the Board of Elections when there is an amendment to the City Charter on the ballot.

SUMMARY OF ARGUMENT

The Election Code, in a clear and unambiguous provision, mandates that when the adoption of a county home rule charter or an amendment to a county home rule charter is on the ballot, the President Judge of the Court of Common Pleas shall appoint alternate judges to oversee the election in the place of the county commissioners. 25 P.S. § 2641(c). Appellants argue that this provision requires that Philadelphia's City Commissioners be replaced whenever there is an amendment to the City of Philadelphia's Home Rule Charter on the ballot. This matter is straightforward and Appellants are wrong. This Court should affirm the Opinion of the Court of Common Pleas in this case.

First, the relevant provision of the Election Code is clear and unambiguous. The City of Philadelphia's Home Rule Charter was enacted pursuant to the First Class Cities Home Rule Act and is not now, nor has it ever been, a county charter. Moreover, several definitions add clarity to this provision, demonstrating that there is no ambiguity requiring any statutory interpretation. "County" is specifically defined, as is "municipality" and the Commonwealth has also made clear that for the purposes of the Election Code, the City Commissioners are included in references to county commissioners. There is, however, no modification indicating that Philadelphia's City Charter is meant to be included in the reference to "county charters." The text of the statute and definitions all yield the same conclusion: the

term county charter does not refer to the City of Philadelphia's Home Rule Charter.

Second, even if one were to look beyond the clear language of 25 P.S. §2641(c), the canons of statutory interpretation require that this Court affirm the Court of Common Pleas' Opinion. Appellants are incorrect that 25 P.S. § 2641(b) requires holding that the City Charter is included in references to county charters. The provision Appellants emphasize is not surplusage, but rather a specific exemption to first class cities and clarity to an issue – the nature of Philadelphia's City Government – which remains confusing to many, as this very litigation illustrates. And beyond the plain text of the Election Code, the interpretation advocated by Appellants would undermine the purpose of the Election Code, frustrate the will of the electorate that approved Philadelphia's governing structure and elects the City Commissioners every four years, and yield an unworkable reading of the Election Code that would require President Judges to evaluate the substance of potential conflicts rather than having a rule to implement as to when substitute judges should be appointed.

And third, despite Appellants' admirable efforts to turn a sidebar discussion in a footnote to the Court of Common Pleas' Opinion into a reason for this Court to overturn the President Judge's holding, the footnote represents at most a harmless error by admission. There is no dispute in this litigation that the City

Commissioners are replaced when they are on the ballot. Appellants did not raise the issue as Petitioners, and the President Judge made this very point as well. However in doing so, the President Judge distinguished the different governance roles played by the City Commissioners as contrasted with county commissioners elsewhere in the Commonwealth. This difference – that the City Commissioners serve no legislative function – supports the Court of Common Pleas' Opinion and it is clear that the discussion was for that purpose. To the extent certain phrasing represents a harmless error, it which need not be addressed by this Court.

This Court should uphold the unambiguous language of the Election Code and affirm the Court of Common Pleas' Opinion.

ARGUMENT

I. This Court Should Affirm the Court of Common Pleas Based on the Unambiguous Statutory Language.

The clear and unambiguous language of the Pennsylvania Election Code demonstrates that the Philadelphia City Commissioners may constitute the Board of Elections and oversee elections which include a ballot question seeking to amend the City of Philadelphia's Home Rule Charter. Appellants are incorrect in their assertion that the President Judge(s) of the Philadelphia Court of Common Pleas repeatedly have erred by failing to appoint a Board of Elections when there is such a question on the ballot in Philadelphia.

Despite Appellants' attempt to argue otherwise, there is no ambiguity in Section 301(c) of the Election Code, 25 PA. STAT. ANN. §2641(c) (West 2016),[2] as it relates to this issue. The relevant part of this provision states that "[w]henever 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." Id. (emphasis added). Because the City of Philadelphia's Home Rule Charter is not a "county Home Rule Charter," the Court of Common Pleas was correct in determining that

[2] This brief will refer to this section as 25 P.S. § 2641, using the subparagraph references where appropriate.

the statute does not require the President Judge to appoint a substitute Board of Elections whenever there is a ballot question regarding an amendment to the City of Philadelphia's Home Rule Charter.

1. The City of Philadelphia's Home Rule Charter Is Not a County Home Rule Charter.

Appellants argue that the City of Philadelphia's Home Rule Charter "is a 'county' home rule charter," and therefore, when the Election Code refers to a "Home Rule Charter for the *county* or amendments to an existing *county* Home Rule Charter" it is referring not only to all the county charters in the Commonwealth, but also to the City of Philadelphia's Charter. (Appellants' Br. at 20-33). But the history of, and statutory authority for, the City of Philadelphia's Home Rule Charter make clear that it is a *city charter*. The First Class City Home Rule Act put in place a clear legal structure for the Home Rule Charter which does not change simply because Appellants believe that "the City of Philadelphia and the County of Philadelphia are now a hair that cannot be split." (Appellants' Br. at 32.)

Prior to 1951, Philadelphia's City and County governments operated independently as separate governmental entities. Petition at ¶ 49b. (R. at 25a); see generally, Carrow v. City of Philadelphia, 89 A.2d 496, 498 (Pa. 1952) (discussing the impact of the "new City Charter under the comprehensive authority granted to the City by the First Class City Home Rule Act" on county employees);

Lennox v. Clark, 93 A.2d 834, 838 (Pa. 1953) (discussing the cessation of county government functions through the City-County Consolidation Amendment). Over the first half of the 1950s, the governmental structure we are now familiar with was established and empowered the City to determine its own form of government, while retaining certain powers and functions for the County.

The first step in this was approval by the electors of Philadelphia of a Home Rule Charter on April 17, 1951, effective January 7, 1952. Clarke v. Meade, 104 A.2d 465 (Pa. 1954). The Philadelphia Home Rule Charter was adopted pursuant to the "First Class City Home Rule Act," 53 P.S. § 13101, *et seq*., which allows "[a]ny *city* of the first class to "adopt a charter for its own government." First Class City Home Rule Act, Act of April 21, 1949, P.L. 665, No. 155, 53 P.S. § 13101 (emphasis added) (the "Home Rule Act").[3] The Philadelphia Home Rule Charter makes clear that it is a *city* charter governing the powers and authority of the City of Philadelphia. See Philadelphia Home Rule Charter Section 1-100, 351 Pa. Code §1.1-100 ("The City's Powers Defined . . . Pursuant to [the First Class City Home Rule Act], the City of Philadelphia (hereinafter in this charter called 'the City') shall have and may exercise all powers and authority of local self-government. . . "). Appellants have not and cannot point to any statutory authority

[3]A separate statute provides the mechanism by which counties and municipalities other than "cities of the first class and counties of the first class" may adopt home rule charters. See 53 PA. CONS. STAT. ANN. § 2901 *et. seq*. (West 2016).

demonstrating that Philadelphia's *city* Charter is a *county* Charter. Instead, they attempt to transform and broaden the Home Rule Charter by arguing that it "operates as the home rule charter for the County of Philadelphia" without any legal authority or citation. (Appellants Br. At 33.) As discussed below, it does no such thing as the County government was abolished.

After the vote on Philadelphia's Home Rule Charter, a constitutional amendment known as the City-County Consolidation Amendment was adopted to address issues presented by the overlap of City and County offices and functions. This abolished County government in Philadelphia. Pa. Const. Art. IX, § 13 (formerly Art. 14, § 8) provides *inter alia*, that "(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"; "(c) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia"; and "(f) Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia * * *." Id. As courts have noted in various circumstances, this abolishment did not destabilize the City of Philadelphia's status as an autonomous entity governed by a *city charter*. See, e.g., Carrow, 89 A.2d at 498 (referring to "the new City Charter [established] under the comprehensive authority granted to the city by the First Class City Home Rule Act"); Lennox, 93 A.2d 834 ("It will be further noted that all the functions of

county government, that is to say, all the activities or duties theretofore performed by the county officers, are *thenceforth* to be performed by the city; the city is to take over *then and there*, as part of its own government, the performance of the functions of the county government.") (italics in original); id. at 840-41 (opining that former county officers performing some duties for the Commonwealth and "to that extent . . . acting in the capacity of an officer, agent or employee of the State" did not "conflict with their general status as *city* officers") (italics in original).

In short, the Philadelphia Home Rule Charter is a City Charter and there has never been a charter for the county of Philadelphia. Embracing Appellants' argument that the Home Rule Charter is also a charter for Philadelphia County would destabilize Philadelphia's clear status as an autonomous entity governed by a city charter.

2. The Court of Common Pleas Rightly Followed the Letter of the Election Code, at 25 P.S. § 2641(c), Which Only Refers to County Home Rule Charters.

Under Pennsylvania law, "[w]hen 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." 1 PA. CONS. STAT. ANN. § 1921(b) (West 2016). As 25 P.S. §2641(c) is not ambiguous, this provision and the plain language of the statute control and no other canon of statutory construction need be applied.

Section 2641(c) of the Pennsylvania Election Code addresses what happens when "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." 25 PA. STAT. ANN. § 2641(c), (emphasis added). "County" is a defined term: "[t]he word "county" shall mean any county of this Commonwealth," 25 PA. STAT. ANN. § 2602(b) (West 2012). The General Assembly also added a specific definition for "municipality" in 1998. Id. § 2602(z.4).[4] As the plain language of the statute makes clear, for the relevant part of 2641(c) to require the President Judge to appoint substitutes to act in place of county commissioners, there must be an amendment to a *county charter*. In this case there is not; the Petition concerns a ballot question related to the City Charter and this Court need look no further to decide this matter and deny Appellants' request.

The mandate that courts may not disregard unambiguous statutory language is clear and oft-stated. See, e.g., Warrantech Cons. Products Svcs, Inc. v. Reliance Ins., 96 A.3d 346, 354 (Pa. 2014) ("Only when the words of the statute are not explicit may a court resort to the rules of statutory construction, including those provided in 1 Pa. C.S. § 1921(c)."); Hunt v. Pennsylvania State Police of Com., 983 A.2d 627, 631–32 (Pa. 2009) (noting that "our Court has found that the best

[4]As discussed below, the use of "county commissioners" in the Election Code is also defined to expressly include the City Commissioners.

indication of the General Assembly's intent is the plain language of the statute," and that when the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning of the statute "under the pretext of pursuing its spirit") (citations omitted). Ambiguity can only be said to exist "when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested." Com. v. Rieck Inv. Corp., 213 A.2d 277, 282 (Pa. 1965); see also New Castle County v. Hartford Accident & Indem. Co., 970 F.2d 1267 (3d Cir.1992). As a matter of statutory interpretation, in addition to focusing on what a statute says, "[o]ne must also listen attentively to what it does not say." Kmonk–Sullivan v. State Farm Mut. Auto. Ins. Co., 788 A.2d 955, 962 (2001). Finally, even where a court agrees that a statute should be read to imply the meaning requested, it may not take such liberties where the statutory language is clear. "If the plain language of the statute provides no such restriction, it is not for the courts to add such a restriction but a matter for legislative action." Rieck, 213 A.2d at 282 (noting that this Court has held "it is not for us to legislate or by interpretation to add to legislation, matters which the legislature saw fit not to include") (citation omitted).

Appellants attempt to avoid the unambiguous language by suggesting that an 'ordinary' meaning warrants the conclusion that Philadelphia's Home Rule Charter is a county charter. (Appellants' Br. at 31-33.) They are wrong as to the

'ordinary' meaning and their attempt to argue for an 'ordinary' meaning ignores the fact that county and municipality are defined terms. The Philadelphia Charter which is the subject of the Amendment at issue is the charter for the government of the *City* of Philadelphia. There is no ambiguity and this Court should not "legislate by interpretation to add to legislation, matters which the legislature saw fit not to include." Id. Had the General Assembly intended to include amendments to the City of Philadelphia's Home Rule Charter in § 2641(c) (or, for that matter, any amendment to any other municipally created Home Rule Charter), it could have so provided. It did not. The text of the Election Code and the choice to refer to a "county" charter and not reference a "city" charter are unambiguous and the plain language controls. Appellants' attempt to achieve through litigation what they have been unable to achieve through legislation should not be indulged by this Court and the decision of the Court of Common Pleas should be affirmed.

3. 25 P.S. § 2641(b) Does Not Transform the City of Philadelphia's Home Rule Charter Into a County Charter.

Faced with the clear and unambiguous language of 25 P.S. § 2641(c), Appellants argue that a separate section, 25 P.S. § 2641(b), requires that this Court hold that when the Election Code refers to a "county charter," it is also referring to the City of Philadelphia's Home Rule Charter. This is incorrect for two reasons. First, Appellants attempt to portray their interpretive act as merely discerning the "plain" text of the Election Code. Although the plain text – "county charter" – is

clear on its face, and "county" is defined by the Code, Appellants' entire argument hinges on their claim that that very term is ambiguous. Second, Section 2641(b) does not require this Court to expand the reference to "county charter" to include Philadelphia's City Charter.

Section 2641(b) states, in relevant part, "[e]xcept 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." 25 PA. STAT. ANN. § 2641(b). Appellants argue that the inclusion of "counties of the first class" in this provision mandates that Philadelphia's City Home Rule Charter be impliedly included in the reference to "county Home Rule Charter" in § 2641(c) because the reference in (b) singles out Philadelphia, and because the Court should read (b) to define Philadelphia as a county that has a home rule charter. (Appellants' Br. at 22-24.) They are wrong on both accounts.

First, despite Appellants' claim that Philadelphia is singled out by Section 2641(b), any mention of Philadelphia is strikingly absent from the text. Rather, the provision refers to "counties of the first class" in the plural. That Philadelphia is currently the only county of the first class in Pennsylvania does not mean that the General Assembly, in choosing to refer to *counties* of the first class, was targeting

Philadelphia. Rather, as the choice to use the plural reflects, it was including a reference that would exempt any county of the first class in Pennsylvania from the subsequent provisions and expressly acknowledging that the provision would apply to counties other than Philadelphia should their population increase beyond 1,500,000. Appellants cite to Bd. of Revision of Taxes v. City of Philadelphia, 4 A.3d 610, 624 (Pa. 2010), to demonstrate that Philadelphia is the only county of the first class in Pennsylvania. But that case adds that Philadelphia is "the only county of the first class ***presently.***" Id. at 624 (emphasis added). This reflects the logical conclusion that statutory provisions relating to counties of the first class would apply to counties other than Philadelphia should their populations increase beyond 1,500,000.

Second, Appellants are mistaken that this language is surplusage if their preferred meaning is not adopted. The clause stands for exactly what it says: counties of the first class that choose to adopt charters or optional plans will not be subject to the requirement that members of the board of elections consist of legislators unless otherwise provided. That clause provides clarity to an important point – that the clause at issue in § 2641(b) should in no circumstances be applied to counties of the first class. Given the history of litigations regarding the City/County relationship in Philadelphia and the nature of Philadelphia's government in light of the City/County Consolidation Act (including this

litigation), it is utterly unremarkable that the General Assembly would choose to articulate a clear exemption for counties of the first class to avoid confusion.[5] The clause simply means that the entire sentence has no applicability to Philadelphia because Philadelphia is not a *county* which has adopted a home rule charter. Appellants seek to imply meanings into the statute that simply are not present in the text.

Were Appellants correct, the legislature still has had ample opportunity to correct the alleged error or ambiguity in 25 P.S. § 2641(c). For instance, in 1979, Section 2641(c) was amended but no change was made to the reference to "county charter." See Act of July 21, 1979, P.L. 189, No. 63. Nor did the legislature address the issue of Philadelphia's City Charter when it amended the definition of "municipality" in 1998. See 25 PA. STAT. ANN. §2602(z-4). Indeed, rather than clarify the Election Code to impart the meaning Appellants advocate, the General Assembly will be considering legislation that clarifies that the provision at issue in this litigation does not apply to counties of the first class, obviating the need for

[5]In 1978 when this clause was adopted, See Act of June 1, 1978, P.L. 458, No. 135, the 1965 City Ordinance establishing Philadelphia's election board was in place and known to the General Assembly. As a result, there was no need for the newly adopted language to address counties of the first class and they were specifically exempted from the adopted language for clarity.

further legislation and ensuring there is no further confusion. See S.B. 709, Printer's No. 837, 201st Gen. Assemb., Reg. Sess. (Pa. 2017).[6]

II. Even if 25 P.S. § 2641(c) Were Ambiguous and Required that This Court Engage in Statutory Interpretation, The Opinion of the Court of Common Pleas Should Be Affirmed.

As discussed above, there is no need to engage in statutory interpretation to resolve this litigation. But even if there were, the Opinion should be affirmed. Were there ambiguity, this Court would be required to consider the factors set forth in 1 PA. CONS. STAT. ANN. § 1921(c), including "(1) [t]he occasion and necessity for the statute; . . . (3) The mischief to be remedied; (4) The object to be attained; and (6) The consequences of a particular interpretation." Id. Analysis of these considerations demonstrates that the Opinion should be affirmed.

The "occasion and necessity" for the provision at issue in this litigation is clear: it prevents commissioners from overseeing the voting process and the vote when they would have a clear conflict of interest because they either were involved in drafting the legislation or because they are appointed by (and could be fired by)

[6]The May 9, 2017 Memorandum announcing this legislation makes clear that "the Legislature now, and has always" been of the opinion that "[b]ecause the Philadelphia City Commissioners are not the general legislative branch for Philadelphia, the provisions of 2641(c) [at issue in this litigation] do not apply." See May 9, 2017 Memorandum from Senator Sharif Street, available at http://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20170&cosponId=23873 (last visited Aug. 7, 2017).

the legislators who drafted the legislation.[7] The limitation of this provision to an amendment of a "county charter" makes perfect sense because in counties, commissioners are generally tasked with the legislative function. And generally in counties that have separate charter provisions, the commissioners are appointed by or otherwise responsive to the legislators. In those cases, permitting the commissioners to oversee the election poses a direct conflict because they would have either drafted the legislation under consideration or could be fired by the individuals who drafted the legislation. The Election Code reflects the determination of the General Assembly that this poses a direct conflict of interest that should be addressed.

In the case of Philadelphia, however, the City Commissioners are elected officials who serve no legislative role.[8] As such, they are insulated from pressure by legislators because they are not appointed but, instead, are chosen by the electorate every four years. The City Commissioners have nothing to do with the drafting of changes to the City's Charter which are proposed by and approved by City Council before being put to a vote. See Home Rule Act, § 13106.

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[7]This is the same type of direct-interest conflict that commissioners would have overseeing an election in which they appeared on the ballot, the point addressed by the first portion of 25 P.S. § 2641(c).

[8] Section 1-101 of the City's Home Rule Charter makes clear that "[t]he legislative power of the City. . . shall be exclusively vested in and exercised by a Council," to be elected, organized and function as provided in the Charter. That Council is Philadelphia's City Council, not the City Commissioners.

The unique structure in Philadelphia was provided for by the General Assembly through the City-County Consolidation Law. Act of August 26, 1953, P.L. 1476, No. 433, § 2, 53 PA. STAT. ANN. § 13132(c) (commonly known as the "City-County Consolidation Law") (West 2016) (providing that, subject to the provisions of the City's Home Rule Charter, City Council has "full power to legislate with respect to the election, appointment, compensation, organization, abolition, merger, consolidation, powers, functions and duties of the. . . City Commissioners [and the] Registration Commission"). That Act further requires that the Philadelphia electorate approve such legislation for it to be effective. Id.; § 13132(d). Phila. Code § 2-112(4) provides that "[a]ll the powers, duties and functions of the City Commissioners in their capacity as the County Board of Elections relating to the conduct of primaries and elections shall continue to be exercised by the City Commissioners." Id. Council duly submitted this proposal to the electorate (see Ordinance approved March 12, 1965, 1965 Ordinances p. 212), and the voters approved the proposal at the primary election held on May 18, 1965. In other words, both the legislative body in Philadelphia and its voters affirmed the intent that the City Commissioners remain a wholly independent body of elected officials who are not involved in the legislative process.

Appellants' attempt to argue that ballot questions may "present stark conflicts of interest for the City Commissioners" misunderstands the nature of

conflicts addressed by this provision of the Election Code. (Appellants Br. at 26.) The provision does not look at the substance of a conflict and does not provide any means for determining whether a particular alleged conflict rises to the level of requiring the commissioners be substituted. Rather, 25 P.S. § 2641(c) is focused on conflicts that result from structure in two instances: first, if a commissioner is overseeing the vote for their own election, and second if a commissioner is overseeing the vote on legislation where they either participated in the legislative process or answer to the people who did. Were the question a President Judge had to consider one of the substance of a conflict (does, for example, an amendment related to the position of Coroner create a substantive and severe conflict that requires substituting the commissioners), he or she would have no means of reaching a conclusion based on the Election Code. Contrary to Appellants' subjective view of the severity of alleged conflicts of interest, Philadelphia's voters enjoy the very protections guaranteed to them by the election code: the integrity of the elections is insured because the City Commissioners are elected and have no part in the legislative process (the conflict addressed by the Election Code).

This structural protection also reflects the occasion and necessity of the Election Code: "[t]he Pennsylvania Election Code was enacted to regulate the electoral process so that it is both orderly and fair." Com. v. Wadzinski, 422 A.2d 124, 127 (Pa. 1980). As discussed above, 25 P.S. § 2641(c) remedies the potential

mischief of officials overseeing a vote in which they have a direct interest. These factors support affirming the Court of Common Pleas' Opinion.

So too does a consideration of the "object" Appellants seek to "attain." 1 PA. CONS. STAT. ANN. § 1921(c)(4). Their goal is not the elimination of a conflict of interest or, for that matter, a reading of the statute that provides a reasoned basis for distinguishing between different conflicts of interest. Rather, Appellants advocate a reading to achieve their goal of eliminating the City Commissioners altogether. Were they to achieve this end, they would be contravening the will of legislatures and voters and undermining the statutorily prescribed election processes in Philadelphia. See 1 PA. CONS. STAT. ANN. § 1921 (c)(6) (setting forth as a factor for consideration the "consequences of a particular interpretation"); Lehigh Valley Co-op. Farmers v. Com., Bureau of Employment Sec. Dep't of Labor & Indus., 447 A.2d 948, 950 (Pa. 1982) ("Another required rule of statutory construction provides that in ascertaining legislative intent, the practical results of a particular interpretation may be considered. Also, the legislature cannot be presumed to intend an absurd or unreasonable result to follow from its enactments.") (internal citations omitted).

III. The Court of Common Pleas Did Not Err in Distinguishing Between the City Commissioners and County Commissioners.

As the procedural history makes clear, this litigation has been about one straightforward question: does 25 P.S. § 2641(c) require the appointment of a

substitute Board of Elections in Philadelphia when there is an amendment to the City of Philadelphia's Home Rule Charter on the ballot. The answer, as argued above, is a clear and unequivocal "no". Appellants, however, seek to expand a footnote in the Court of Common Pleas' Opinion to create the impression that as part of this appeal this Court must also address the question of whether the City Commissioners must be recused when they are running for election. That is not an issue in this appeal.

In footnote 2, the trial Court made the point that Philadelphia's commissioners are "City Commissioners" and are distinguished from "county commissioners" in the Commonwealth's other counties who may have a role in the legislative process. (Opinion at 7, n.2.) The clear purpose of this footnote was to address the distinction between commissioners who have conflicts resulting from their relationship to the legislative process and the City Commissioners who have no such role. Indeed, as the Court of Common Pleas made clear – and as Appellants' exhibits document, whenever a City Commissioner is up for election, judges are appointed to act in their place. The Parties did not dispute that for the purposes of the Election Code, references to "county commissioners" include the City Commissioners. See Brief in Support of Preliminary Objection at 15, n. 6 (R. 98a) (citing Pa. Const. Schedule 1, § 33 ("The words, 'county commissioners, wherever used in this Constitution and in any ordinance accompanying the same,

shall be held to include the commissioners for the city of Philadelphia.")). The Court of Common Pleas' practice reflects this and this issue was not challenged by Appellants in this litigation. To the extent the discussion in footnote 2, which focused on the role of commissioners rather than a statutory definition that includes the City Commissioners, contains any error, it is harmless and requires no correction by this Court.

CONCLUSION

For the foregoing reasons, the City Commissioners respectfully request that this Court affirm the May 15, 2017, Memorandum Order and Opinion of the Court of Common Pleas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eleanor N. Ewing, hereby certify that I caused to be served two true and correct copies of the foregoing Brief upon the person(s) and in the manner indicated below:

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