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Jordan Strauss, Brian Krisch, and Katherine Rivera;
additional counsel listed on signature page*

IN THE SUPREME COURT OF PENNSYLVANIA

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

Petitioners,

v.

Docket No. _____

The Honorable Sheila A. Woods-Skipper,
in her official capacity as President Judge
of the Court of Common Pleas of
Philadelphia,

Respondent.

APPLICATION FOR LEAVE TO FILE ORIGINAL PROCESS

Pursuant to Pennsylvania Rule of Appellate Procedure 3307, and for the
reasons set forth below, Petitioners Committee of Seventy, Philadelphia 3.0,

Jordan Strauss, Brian Krisch, and Katherine Rivera hereby file this Application for Leave to File Original Process.

Nature of Action

1. This is an action in mandamus to compel Respondent, President Judge Sheila A. Woods-Skipper of the Court of Common Pleas of Philadelphia, to appoint judges or electors of the county to serve in the stead of the Philadelphia City Commissioners for the primary election scheduled for May 16, 2017, as mandated by Section 301(c) of the Pennsylvania Election Code, 25 P.S. § 2641(c).

2. The City Commissioners are a three-member board of elected officials responsible for administering voter registration and conducting elections in Philadelphia. *See* Phila. Code § 2-112.

3. The organizational Petitioners in this matter are Committee of Seventy, a non-profit, non-partisan 501(c)(3) organization; and Philadelphia 3.0, a non-profit, non-partisan 501(c)(4) organization. Central to the mission of these entities is protecting the integrity of elections and advocating for a fair, effective, and modern election system in Philadelphia.

4. The individual Petitioners in this matter are Jordan Strauss, Brian Krisch, and Katherine Rivera, each of whom is a Philadelphia voter who has qualified to appear as a candidate on the May 16, 2017 primary ballot within

Philadelphia. These individuals have a strong, personal interest in the fair and lawful conduct of the May 2017 primary election.

5. The Pennsylvania Election Code, 25 P.S. § 2641(c), mandates 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.” The President Judge and her predecessors have routinely complied with this provision by entering orders of the Court of Common Pleas of Philadelphia on a date in January or February preceding a May primary. *See* Exhibit A (court orders from 2015, 2011, and 2007).

6. In the very next sentence, the Pennsylvania Election Code goes on to mandate 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).

7. Since at least 2002, the President Judge and her predecessors have failed to carry out this mandatory duty for elections when questions relating to the adoption of amendments to the Philadelphia Home Rule Charter have been placed on the ballot.

Proposed Amendment to the Philadelphia Home Rule Charter

8. Now that the window for candidate nominations has closed, no City Commissioner can be a candidate for nomination or election to any public office on the May 16, 2017 ballot.

9. However, a proposed amendment to the Philadelphia Home Rule Charter will appear on the May 16, 2017 ballot in Philadelphia. *See* Council of the City of Philadelphia, Resolution No. 160981 (Dec. 8, 2016), attached as Exhibit B.

10. Petitioners Committee of Seventy and Philadelphia 3.0 are founding members of the Better Philadelphia Elections Coalition (BPEC), a diverse coalition of community organizations and civic groups advocating for the replacement of the Office of the City Commissioners with appointed and experienced professionals to oversee, administer, and modernize Philadelphia's elections.

11. On January 18, 2017, BPEC submitted a written request to the President Judge asking that she exercise her mandatory duty under 25 P.S. § 2641(c) to appoint judges or electors to serve in the stead of the Philadelphia City Commissioners for the May 16, 2017 primary election.

12. In an email dated March 6, 2017 the President Judge (through counsel) stated that she was "unable to respond to [BPEC's] letter."

13. On March 21, all five Petitioners in this action submitted a letter (through counsel) requesting that the President Judge carry out the mandate of 25 P.S. § 2641(c) in connection with the May 16, 2017 primary election.

14. In a reply to this March 21 letter, the President Judge (through counsel) referred Petitioners' counsel to her March 6 reply to BPEC in which she reported that she was "unable to respond to [BPEC's] letter."

Jurisdiction

15. This Court has original jurisdiction over this matter. Under 42 Pa.C.S. § 721(2), "[t]he Supreme Court shall have original but not exclusive jurisdiction of all cases of . . . Mandamus or prohibition to courts of inferior jurisdiction."

16. The President Judge is a "court of inferior jurisdiction" within the meaning of 42 Pa.C.S. § 721(2). *See id.* § 102 ("court": "Includes any one or more of the judges of the court who are authorized by general rule or rule of court, or by law or usage, to exercise the powers of the court in the name of the court").

17. Although the Commonwealth Court generally has original jurisdiction over actions "[a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity," 42 Pa.C.S. § 761(a)(1), it does not have jurisdiction over the present request. Rather, the Commonwealth Court has "original jurisdiction in cases of mandamus and prohibition to courts of inferior jurisdiction and other government units" **only** "where such relief is ancillary to

matters within its appellate jurisdiction.” *Id.* § 761(c). Accordingly, “[e]xclusive jurisdiction over non-ancillary mandamus to courts of inferior jurisdiction lies in the Pennsylvania Supreme Court.” *Commonwealth ex rel. Stedman v. Duncan*, 147 A.3d 57, 62 (Pa. Commw. Ct. 2016) (en banc) (alteration in original) (quoting *Kneller v. Stewart*, 112 A.3d 1269, 1271 (Pa. Commw. Ct. 2015)). This matter is not ancillary to any matter within the Commonwealth Court’s appellate jurisdiction

Relief Sought

18. For the above-stated reasons, Petitioners move this Court to exercise original jurisdiction over this matter and to accept for filing the Application to Expedite the Case Schedule and the Petition for Review attached to this Application for Leave to File Original Process.

Respectfully submitted,

/s/ Benjamin D. Geffen

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Larryotter@hotmail.com

*Counsel for Petitioner
Philadelphia 3.0*

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

Dated: March 27, 2017

Exhibit A
to Application

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this 20th day of January, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed to serve in place of Commissioner Al Schmidt:

1. Honorable Paula Patrick

BY THE COURT:


SHEILA WOODS-SKIPPER, P.J.

CERTIFIED FROM THE RECORD OF 1-20-15
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY

BY 

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this ^{30th} day of January, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed:

The Honorable Maria McLaughlin

RECEIVED
JAN 30 2015
OFFICE OF JUDICIAL
RECORDS

BY THE COURT:

Sheila Woods Skipper
SHEILA WOODS-SKIPPER, PJ.

CERTIFIED FROM THE RECORD OF 1-30-15
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY
Eric Feder

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this *23rd* day of February, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed:

The Honorable Lori Dumas - Chair

BY THE COURT:

Sheila Woods-Skipper

SHEILA WOODS-SKIPPER
PRESIDENT JUDGE

CERTIFIED FROM THE RECORD OF _____
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY

BY *Lori Kelly*

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

NO. ____ of 2011

ORDER

AND NOW, this 4th day of February, 2011, pursuant to 25 P.S. §2641(c), which provides in pertinent part 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,” it appearing that the three County Commissioners are candidates for public office, it is hereby **ORDERED** and **DECREED** that the following Judges of the County are appointed in their stead:

1. Honorable Pamela Pryor Dembe
2. Honorable Charles J. Cunningham, III
3. Honorable Leon Tucker

BY THE COURT:

/s/ Honorable Pamela Pryor Dembe
PAMELA PRYOR DEMBE
PRESIDENT JUDGE

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this 15th day of February, 2007, pursuant to 25 P.S. § 2641 which in pertinent part reads:

“[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.”¹

The following electors of the County are appointed:

1. Honorable Nelson A. Diaz (retired).
2. Honorable Paul L. Jaffe (retired).
3. Honorable Gene D. Cohen (retired).

BY THE COURT:

C. DARNELL JONES, II, J.
PRESIDENT JUDGE

¹By tradition the President Judge of the Court of Common Pleas of Philadelphia has appointed sitting Judges to act as Commissioners. Since the President Judge is a candidate for the Supreme Court of Pennsylvania in the election over which the appointees shall preside, retired Judges not in any way subject to the supervision of the President Judge who are qualified as electors of the county are hereby appointed.

Exhibit B
to Application

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

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additional counsel listed on signature page*

IN THE SUPREME COURT OF PENNSYLVANIA

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

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v.

The Honorable Sheila A. Woods-Skipper,
in her official capacity as President Judge
of the Court of Common Pleas of
Philadelphia,

Respondent.

Docket No. _____

APPLICATION TO EXPEDITE THE CASE SCHEDULE

Pursuant to Pennsylvania Rule of Appellate Procedure 105(a), and for the
reasons set forth below, Petitioners Committee of Seventy, Philadelphia 3.0,

Jordan Strauss, Brian Krisch, and Katherine Rivera hereby file this Application to Expedite the Case Schedule.

1. Through the Better Philadelphia Elections Coalition (BPEC), of which they are founding members, Petitioners Committee of Seventy and Philadelphia 3.0 submitted a letter to Respondent, President Judge Sheila A. Woods-Skipper of the Court of Common Pleas of Philadelphia, on January 18, 2017. This letter requested that the President Judge exercise her mandatory duty under 25 P.S. § 2641(c) to appoint judges or electors to serve in the stead of the Philadelphia City Commissioners for the May 16, 2017 primary election. On March 6, 2017 the President Judge sent a reply, through counsel, stating that she “is unable to respond to your letter.”

2. To be placed on the May 16, 2017 primary ballot for Philadelphia municipal offices, Petitioners Jordan Strauss, Brian Krisch, and Katherine Rivera were required to file their nomination petitions by March 7, 2017. No timely challenges to these Petitioners’ nomination petitions were filed by the deadline of March 15. The deadline for withdrawal of candidacies was March 22. Thus, the individual Petitioners’ appearances on the May 16 primary ballot are now secure and their claims have become ripe for adjudication.

3. This case will impact the administration of an important election in Pennsylvania’s largest county. If the Court grants the requested writ of mandamus,

it will be necessary for the President Judge to make appointments of interim election officials in advance of the May 16, 2017 primary election.

4. To allow time for proper implementation of a writ of mandamus and the corresponding appointment of interim election officials in time for the May 16, 2017 primary, it will be important for this matter to reach a speedier resolution than would be possible under the applicable rules of appellate procedure governing the deadlines in this request, *see* Pa. R.A.P. 1516(b), 3307(b).

5. Accordingly, Petitioners request that the Court establish an expedited schedule for this case. *See* Pa. R.A.P. 105(a) (“In the interest of expediting decision, or for other good cause shown, an appellate court may . . . disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.”).

6. Petitioners propose the following expedited schedule:

- Friday, March 31: Respondent’s Answer to the Application for Leave to File Original Process
- Friday, April 7: Respondent’s Answer to the Petition for Review
- Tuesday, April 11: Petitioners’ Reply

7. Petitioners have contacted Respondent's counsel regarding this Application. Respondent's counsel stated: "We take no position on the request for an expedited schedule, but will leave that issue to the Court's discretion."

Respectfully submitted,

/s/ Benjamin D. Geffen

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Dated: March 27, 2017

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IN THE SUPREME COURT OF PENNSYLVANIA

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Docket No. _____

The Honorable Sheila A. Woods-Skipper,
in her official capacity as President Judge
of the Court of Common Pleas of
Philadelphia,

Respondent.

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

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

/s/ Benjamin D. Geffen
Benjamin D. Geffen

Date: March 27, 2017

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IN THE SUPREME COURT OF PENNSYLVANIA

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Docket No. _____

The Honorable Sheila A. Woods-Skipper,
in her official capacity as President Judge
of the Court of Common Pleas of
Philadelphia,

Respondent.

PETITION FOR REVIEW IN THE NATURE OF MANDAMUS

Preliminary Statement

1. 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.

2. Section 301(c) of the Pennsylvania Election Code, 25 P.S. § 2641(c), requires the President Judge of the Court of Common Pleas to replace the City Commissioners with interim election officials whenever an amendment to the Philadelphia Home Rule Charter is on the ballot. In the Philadelphia primary election scheduled for May 16, 2017, a proposed amendment to the Philadelphia Home Rule Charter concerning procurement practices for local government (including the City Commissioners' office itself) will be on the ballot.

3. This is a Petition for Review in the Nature of Mandamus, to compel Respondent, President Judge Sheila A. Woods-Skipper of the Court of Common Pleas of Philadelphia, to comply with this clear mandate in the Pennsylvania Election Code and appoint replacements for the Philadelphia City Commissioners for the May 16, 2017 primary election.

4. 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.

5. The two organizational Petitioners have an additional interest in enforcing this provision of the Election Code. If the City Commissioners are required to comply with State law, it will render them unable to do their job and oversee elections nearly three-quarters of the time, given the frequency of ballot questions concerning Home Rule Charter amendments and 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.

I. JURISDICTION

6. The Court has original jurisdiction over this Petition for Review pursuant to 42 Pa.C.S. § 721(2).

II. PERSONS SEEKING RELIEF

7. 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.

8. 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.

9. Since last year, when Seventy identified the provision in the Pennsylvania Election Code requiring the President Judge to appoint interim replacements for Philadelphia’s City Commissioners “whenever there appears on the ballot a question relating to . . . amendments to an existing county Home Rule Charter,” Seventy has had to commit resources, including staff time, to researching Philadelphia’s history of noncompliance and to attempting to secure compliance with the Election Code provision without resorting to litigation.

10. 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.

11. 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.

12. 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.

13. Respondent's failure to comply with the mandatory Election Code provision at issue here injures organizational Petitioner Philadelphia 3.0.

Respondent's 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.

14. 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)).

15. 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.

16. 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 amendment to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot question, Mr. Strauss has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

17. 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.

18. 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 amendment to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot question, Mr. Krisch has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

19. 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.

20. 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 amendment to the Philadelphia Home Rule Charter. As a voter concerned with the outcomes of these various races and the ballot question, Ms. Rivera has an interest in the fair and lawful administration of the May 16 primary election in accordance with the Pennsylvania Election Code.

III. GOVERNMENT UNIT WHOSE INACTION IS IN ISSUE

21. Respondent is the Honorable Sheila A. Woods-Skipper, President Judge of the Court of Common Pleas of Philadelphia. This action is brought against Respondent in her official capacity.

IV. GENERAL STATEMENT OF MATERIAL FACTS

Philadelphia's City Commissioners

22. The Office of City Commissioners is composed of three elected officials who are charged with election-related duties in Philadelphia, including voter registration, absentee balloting, and in-person voting on Election Day. *See* Phila. Code § 2-112.

23. 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

24. 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.

25. In an effort to reform Philadelphia elections, Petitioners Seventy and Philadelphia 3.0 have formed the Better Philadelphia Elections Coalition (BPEC), a diverse coalition of community organizations and civic groups advocating for the replacement of the City Commissioners with appointed, experienced professionals to oversee, administer, and modernize Philadelphia's elections.

The Pennsylvania Election Code

26. The first sentence of 25 P.S. § 2641(c), a provision of the Pennsylvania Election Code, mandates 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.”

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>.

27. The President Judge and her predecessors have routinely complied with this provision by entering orders of the Court of Common Pleas of Philadelphia on a date in January or February preceding a May primary. *See* Exhibit A (court orders from 2015, 2011, and 2007). When such an order is in effect, the City Commissioners have no involvement in any of the day-to-day operations of Philadelphia’s election administration. *See, e.g.,* Testimony of Deputy City Commissioner Frederick L. Voigt, Esq., before Philadelphia City Council, Committee of the Whole (Apr. 28, 2015) *available at* <http://legislation.phila.gov/transcripts/Public%20Hearings/whole/2015/wh042815.pdf>, attached as Exhibit B, at 147-48.

28. The second sentence of 25 P.S. § 2641(c) further mandates 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.” Since at least 2002, the President Judge and her predecessors have consistently not carried out this mandatory, nondiscretionary duty. Primary and general elections when the President Judge should have appointed interim replacements (when the City Commissioners were not themselves on the ballot, but Home Rule Charter amendments were) include the 2016 primary, 2014 primary and general, 2012

general, 2010 primary and general, 2009 primary, 2008 primary and general, 2006 primary and general, 2005 primary and general, and 2002 general.

29. If both the first and second sentences of § 2641(c) were followed and replacements appointed for all required elections, by the organizational Petitioners' calculations the City Commissioners would be precluded from overseeing elections in Philadelphia nearly 75% of the time.

The May 16, 2017 Primary

30. Now that the window for candidate nominations has closed, no City Commissioner can be a candidate for nomination or election to any public office on the May 16, 2017 ballot.

31. However, there will be a question relating to the adoption of an amendment to the Philadelphia Home Rule Charter on the May 16, 2017 ballot in Philadelphia. If adopted, that amendment 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. *See* Council of the City of Philadelphia, Resolution No. 160981 (Dec. 8, 2016), attached as Exhibit C.

32. On January 18, 2017, BPEC submitted a written request to the President Judge asking that she exercise her mandatory duty under 25 P.S.

§ 2641(c) to appoint judges or electors to serve in the stead of the Philadelphia City Commissioners for the May 16, 2017 primary election.

33. In an email dated March 6, 2017 the President Judge (through counsel) stated that she was “unable to respond to [BPEC’s] letter.”

34. On March 21, all five Petitioners in this action submitted a letter (through counsel) requesting that the President Judge carry out the mandate of 25 P.S. § 2641(c) in connection with the May 16, 2017 primary election.

35. In a reply to this March 21 letter, the President Judge (through counsel) referred Petitioners’ counsel to her March 6 reply to BPEC in which she reported that she was “unable to respond to [BPEC’s] letter.”

Conflicts of Interest in Election Oversight

36. While there is no legal or factual basis to read a requirement into 25 P.S. § 2641(c) that it applies only when City Commissioners have an actual conflict of interest in overseeing an election, recent Philadelphia elections, including the 2017 primary, show that conflicts of interest are frequently present for the City Commissioners when there is a question on the ballot relating to an amendment to the Philadelphia Home Rule Charter.

37. The proposed amendment that will appear on the May 16, 2017 ballot would modify Philadelphia’s procurement practices. *See* Exhibit B at 136-38. If approved in May, this amendment would affect procurement processes 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)).

38. 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.

39. These conflicts illustrate the significance for Philadelphia of § 2641(c)'s requirement that the President Judge appoint interim replacements to serve in the stead 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.²

Mandamus is the Appropriate Remedy

40. Petitioners seek a writ of mandamus requiring the President Judge to appoint judges or electors of Philadelphia County to serve in the stead of the City Commissioners for the May 16, 2017 primary election.

41. “This Court may issue a writ of mandamus where [1] the petitioners have a clear legal right, [2] the responding public official has a corresponding duty, and [3] no other adequate and appropriate remedy at law exists.” *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012). All three elements are present here, as discussed more fully below.

² 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).

First Element: Petitioners Have a Clear Legal Right

42. Petitioners have a clear legal right to have the May 16, 2017 primary election overseen by qualified appointees of the President Judge in the stead of the City Commissioners.

43. 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.

44. These powers and responsibilities give the City Commissioners considerable influence over the conduct—and thus, potentially, the outcome—of elections. Unless the President Judge appoints replacements, this influence will extend to the May 16 primary. Organizational Petitioners Seventy and Philadelphia 3.0 each have a distinct interest in the May 16 primary, as do individual Petitioners

Strauss, Krisch, and Rivera, who will participate in the primary both as candidates and as voters.

45. The organizational Petitioners have a right to ensure 25 P.S. § 2641(c) is followed. Beginning in 1904 with its first mission statement, Petitioner Seventy has for over a century been devoted to “protect[ing] the ballot through vigorous enforcement of State election laws” and “working to improve the voting and registration process” in Philadelphia and Pennsylvania. *See* Committee of Seventy, *Our History: An Overview*, <https://www.seventy.org/who/our-history>. In the intervening 113 years, Seventy’s express purpose has been to improve the voting process and to fight for fair elections, an honest political culture, and more effective and efficient government. Seventy’s mission and activities give it a distinct interest in the proper conduct and oversight of elections in Philadelphia.

46. Petitioner Philadelphia 3.0 works to promote modernization and integrity in Philadelphia’s government, including Philadelphia’s election process. For the 2017 primary and general elections, Philadelphia 3.0 is engaged in efforts to recruit, train, and elect first-time candidates to local positions within Philadelphia such as Judge of Election. Philadelphia 3.0’s mission and activities give it a distinct interest in the proper conduct and oversight of elections in Philadelphia.

47. As candidates appearing on the May 16, 2017 ballot, Petitioners Strauss, Krisch, and Rivera have a distinct interest in the proper conduct and oversight of the election. As candidates, they have a unique interest in the lawful administration of the upcoming primary election. And should they win seats as Judge of Election or Inspector of Election, these Petitioners would gain the powers of public office as well as financial compensation for carrying out their official duties.

48. Independent of their clear and unique legal right as candidates, the individual Petitioners' status as Philadelphia electors gives them a clear legal right enforceable through this mandamus action. This Court has allowed individual electors to bring a mandamus action to enforce election laws, even though those individuals had no interest in enforcement of the law that was not shared by the public at large. *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012). Here, as electors, Petitioners Strauss, Krisch, and Rivera have enforceable rights under the Election Code as well as under the Pennsylvania Constitution. *See, e.g., In re Mayor of Altoona*, 196 A.2d 371, 374 (Pa. 1964) ("The very purpose of election laws is to secure freedom of choice and to prevent fraud and corruption; to obtain a fair election and an honest election return; to insure fair elections, or an equal chance and opportunity for everyone to express his choice at the polls; and to secure the rights of duly qualified electors and not to defeat them." (internal quotation marks

and citation omitted)). *See generally* Pa. Const. Art. I, § 5 (“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

Second Element: The President Judge Has a Clear Legal Duty

49. The May 16, 2017 ballot will include a question relating to the adoption of an amendment to the Philadelphia Home Rule Charter.

50. The references in 25 P.S. § 2641 to the “county board of elections,” “board of county commissioners,” and “county commissioners” all include the Philadelphia City Commissioners. *See, e.g.*, 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.”); 25 P.S. § 2641(a) (“There shall be a county board of elections in and for each county of this Commonwealth”); Phila. Code § 2-112(4) (“All 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.”); Exhibit A (court orders from President Judges premised on treatment of Philadelphia City Commissioners as county commissioners under 25 P.S. § 2641).

51. The second sentence of 25 P.S. § 2641(c)—the clause at issue in this case—imposes the same duty on the President Judge as the first sentence of that

subsection, which President Judges in Philadelphia have routinely fulfilled. All that differs is the triggering language: “Whenever a member of the board of county commissioners is a candidate for nomination or election to any public office . . .” versus “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’s legal duties under the second sentence are no less clear than her duties under the first.

52. Petitioners anticipate that the President Judge may argue that the second sentence of 25 P.S. § 2641(c) does not apply to Philadelphia, on the theory that 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 and ignores the constitutional consolidation of Philadelphia City and Philadelphia County.

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

54. Second, there would be no reason for § 2641(b) to create an exception for Philadelphia County if Philadelphia County had no home rule charter. The interpretation of Philadelphia as lacking a “county Home Rule Charter” would treat the bolded language of § 2641(b) as surplusage. The only way to give effect to the bolded language is to read it as applying to the Philadelphia Home Rule Charter, i.e., as treating the Philadelphia Home Rule Charter as a home rule charter that has been adopted by a county. *See* 1 Pa.C.S. § 1921(a) (“Every statute shall be construed, if possible, to give effect to all its provisions.”). And therefore the second sentence of § 2641(c) must also apply to the Philadelphia Home Rule Charter. *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.”).

55. This issue can be resolved purely as a matter of statutory interpretation, because the full text 25 P.S. § 2641 shows that the statute conclusively embraces Philadelphia in its use of “county.” *See generally Housing Auth. v. Pa. State Civ. Serv. Comm’n*, 730 A.2d 935, 948 (Pa. 1999) (this Court “strive[s] to interpret statutes in a manner which avoids constitutional questions”). But even if it were necessary to look beyond the Election Code to the constitutional question of the effect of the consolidation of Philadelphia City and Philadelphia County, it would still be clear that the Philadelphia Home Rule Charter is a “county” home rule charter.

56. 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.

57. The effect of the constitutional consolidation of Philadelphia City and Philadelphia County was to empower the unified government of Philadelphia—uniquely within the Commonwealth of 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.

58. 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. Had the General Assembly meant to single out Philadelphia as covered by the first but not the second sentence of § 2641(c), it would have known to do so by 1976. Accordingly, 25 P.S. § 2641(c) applies to Philadelphia just as it applies to other counties.

59. Because the Philadelphia Home Rule Charter is the home rule charter of the County of Philadelphia, the President Judge has a clear legal duty to apply the second sentence of 25 P.S. § 2641(c) to Philadelphia's May 16, 2017 primary election by appointing interim election officials.

Third Element: No Other Adequate and Appropriate Remedy at Law

60. Besides a writ of mandamus, there is no other adequate and appropriate remedy at law available to Petitioners to compel the President Judge to comply with 25 P.S. § 2641(c) before the May 16, 2017 primary election.

61. Petitioners' attempts to resolve this matter without litigation have been unsuccessful. *See supra* ¶¶ 32-35.

62. “[M]andamus will lie to compel action by an official where his refusal to act in the requested way stems from his erroneous interpretation of the law.” *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012) (quoting *Volunteer Firemen's Relief Ass'n v. Minehart*, 203 A.2d 476, 479-80 (Pa. 1964)).

V. STATEMENT OF THE RELIEF SOUGHT

63. Petitioners hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 62 of the Petition for Review.

64. Petitioners respectfully request that this Court issue a writ of mandamus that directs the President Judge immediately to appoint judges or electors of the County of Philadelphia to serve in the stead of the Philadelphia City Commissioners for the primary election scheduled for May 16, 2017.

Respectfully submitted,

/s/ Benjamin D. Geffen

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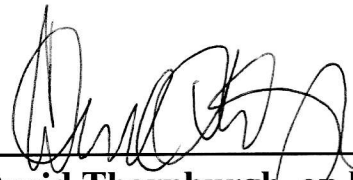
*Counsel for Petitioners Committee of Seventy,
Jordan Strauss, Brian Krisch, & Katherine Rivera*

Dated: March 27, 2017

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



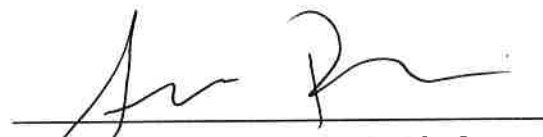
**David Thornburgh, on behalf of
Petitioner Committee of Seventy**

Dated: March 24, 2017

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 verify that the statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review 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: March 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 for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Petitioner

Dated: 3/25/2017

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 for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Petitioner

Dated: 3/24/17

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 for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Petitioner

Dated: 03/24/2017

Exhibit A
to Petition for
Review

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this *20th* day of January, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed to serve in place of Commissioner Al Schmidt:

1. Honorable Paula Patrick

BY THE COURT:


SHEILA WOODS-SKIPPER, P.J.

CERTIFIED FROM THE RECORD OF 1-20-15
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY

BY 

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this ^{30th} day of January, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed:

The Honorable Maria McLaughlin

RECEIVED
JAN 30 2015
OFFICE OF JUDICIAL
RECORDS

BY THE COURT:

Sheila Woods-Skipper
SHEILA WOODS-SKIPPER, PJ.

CERTIFIED FROM THE RECORD OF 1-30-15
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY
Eric Feder

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this *23rd* day of February, 2015, pursuant to 25 P.S. § 2641(c) which provides in pertinent part 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," it is hereby ORDERED and DECREED that the following judge of the County is appointed:

The Honorable Lori Dumas - Chair

BY THE COURT:

Sheila Woods Skipper

SHEILA WOODS-SKIPPER
PRESIDENT JUDGE

CERTIFIED FROM THE RECORD OF _____
ERIC FEDER
DIRECTOR, OFFICE OF JUDICIAL RECORDS
PHILADELPHIA COUNTY

BY *Loraine Kelly*

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

NO. ____ of 2011

ORDER

AND NOW, this 4th day of February, 2011, pursuant to 25 P.S. §2641(c), which provides in pertinent part 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,” it appearing that the three County Commissioners are candidates for public office, it is hereby **ORDERED** and **DECREED** that the following Judges of the County are appointed in their stead:

1. Honorable Pamela Pryor Dembe
2. Honorable Charles J. Cunningham, III
3. Honorable Leon Tucker

BY THE COURT:

/s/ Honorable Pamela Pryor Dembe
PAMELA PRYOR DEMBE
PRESIDENT JUDGE

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

IN RE: COUNTY BOARD OF ELECTIONS

ORDER

AND NOW, this 15th day of February, 2007, pursuant to 25 P.S. § 2641 which in pertinent part reads:

“[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.”¹

The following electors of the County are appointed:

1. Honorable Nelson A. Diaz (retired).
2. Honorable Paul L. Jaffe (retired).
3. Honorable Gene D. Cohen (retired).

BY THE COURT:

C. DARNELL JONES, II, J.
PRESIDENT JUDGE

¹By tradition the President Judge of the Court of Common Pleas of Philadelphia has appointed sitting Judges to act as Commissioners. Since the President Judge is a candidate for the Supreme Court of Pennsylvania in the election over which the appointees shall preside, retired Judges not in any way subject to the supervision of the President Judge who are qualified as electors of the county are hereby appointed.

Exhibit B
to Petition for
Review

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE OF THE WHOLE

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, April 28, 2015
10:30 a.m.

PRESENT:

COUNCIL PRESIDENT DARRELL L. CLARKE
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN WILLIAM K. GREENLEE
COUNCILMAN CURTIS JONES, JR.
COUNCILMAN ED NEILSON
COUNCILMAN DENNIS O'BRIEN
COUNCILMAN DAVID OH
COUNCILMAN BRIAN J. O'NEILL
COUNCILMAN MARK SQUILLA

BILLS 150162, 150163, and 150164
RESOLUTION 150179

- - -

1 4/28/15 - WHOLE - BILL 150162, etc.
2 said, the issue of new voting machines,
3 and since I'm still a ward leader, I'm
4 out there every Election Day, and I guess
5 I haven't seen a big problem with the
6 machines. And obviously as budgets are
7 tight and we're looking for places to
8 save, I'm trying to see kind of the
9 reasoning behind. I've heard the age of
10 them. To me they don't sound that old.
11 I guess I remember the old machines that
12 seemed to be around forever. So could
13 you comment on that a little bit as far
14 as what the need was, as far as you know.

15 MR. IRVING: Yes. In terms of
16 the technology, the current voting
17 technology is now 13 years old. We have
18 seen an increase in the number of power
19 failures and printer problems. We also
20 have issues in Election Board committee
21 person races with missing write-in tapes,
22 because our machines only produce one
23 record of write-in votes. We use larger
24 paper ballots, which is stored
25 electronically on cartridges. Making

1 4/28/15 - WHOLE - BILL 150162, etc.
2 changes to the ballot after it is already
3 produced is difficult. Printing paper
4 poll books for one million plus voters is
5 time intensive, which means it has to be
6 done weeks prior to the election.

7 In terms of the cost, there was
8 a ten-year warranty associated with the
9 purchase of our current machines. The
10 warranty has expired, which has increased
11 yearly costs to the Department by more
12 than \$500,000 per year. Each year these
13 costs increase. The maximum allowable
14 yearly increase was 5 percent. However,
15 these contracts expire in August of this
16 year. We expect to see further increases
17 in costs because the contracts are held
18 by a sole-source vendor.

19 Our current voting machines are
20 large, which increases the cost for
21 hauling and requires the City to rent a
22 large warehouse where the machines are
23 stored and maintained.

24 COUNCILMAN GREENLEE: Okay. I
25 guess I've been around a long time. I

1 4/28/15 - WHOLE - BILL 150162, etc.
2 remember really large machines. So I
3 guess to me they don't seem that large,
4 but I understand what you're saying. And
5 the machines, I guess you -- what do you
6 anticipate buying, what kind of machines,
7 and how different would they be?

8 MR. IRVING: Well, any machines
9 that we get would have to first be
10 approved by the Department of State, and
11 our Commissioners will be much better at
12 answering that question than I would be,
13 Councilman.

14 COUNCILMAN GREENLEE: Okay.
15 Because, again, as we're looking to try
16 to find money, it's come up a number of
17 times in just our personal discussions
18 about these machines and the need. Like
19 I said, ten years doesn't sound that
20 long. Is that like an unusual long time
21 to have machines?

22 MR. IRVING: I would say so,
23 Commissioner.

24 COUNCILMAN GREENLEE: It is?

25 MR. IRVING: Yes.

1 4/28/15 - WHOLE - BILL 150162, etc.

2 COUNCIL PRESIDENT CLARKE: So

3 let me ask you this question, and I

4 understand why, when the Commissioners

5 are running for reelection, why they

6 don't necessarily play the same role that

7 they traditionally do on other elections,

8 off elections. Why can't they be a part

9 of this budget process? And is there a

10 requirement by law that they can't be a

11 part of the budget process? And I'm only

12 asking that question because there seems

13 to be a lot of the issues relating to

14 this testimony that they are the only

15 ones that can answer.

16 It doesn't matter who. We

17 don't know?

18 MR. IRVING: As far as I know,

19 since they recused their self, they don't

20 have any dealings with the operations,

21 the day-to-day operations.

22 MR. VOIGT: That's correct.

23 COUNCIL PRESIDENT CLARKE: I

24 mean, why? Is that law or Charter

25 prohibition?

1 4/28/15 - WHOLE - BILL 150162, etc.

2 MR. VOIGT: Their involvement
3 is limited by statute. It's not in the
4 Charter. It's in the state statute.

5 COUNCIL PRESIDENT CLARKE:
6 State statute?

7 MR. VOIGT: Yes, in the
8 Election Code.

9 COUNCIL PRESIDENT CLARKE: All
10 right. I just want to know.

11 MR. VOIGT: It's the state
12 Election Code, which requires that they
13 recuse themselves.

14 COUNCIL PRESIDENT CLARKE: From
15 anything?

16 MR. VOIGT: From anything.

17 COUNCIL PRESIDENT CLARKE:
18 Budget testimony or anything?

19 MR. VOIGT: That's correct.

20 COUNCIL PRESIDENT CLARKE:
21 You're sure? Because you know I'm going
22 to check.

23 MR. VOIGT: They're out of it
24 entirely.

25 COUNCIL PRESIDENT CLARKE: All

Exhibit C
to Petition for
Review

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

Exhibit D
to Petition for
Review

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* 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