

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

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

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

I. INTRODUCTION

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

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

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

II. DISCUSSION

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

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

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

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

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

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

B. The Legal Requirements for Mandamus are Not Met.

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

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

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

III. CONCLUSION

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

Respectfully submitted,

s/A. Taylor Williams

A. TAYLOR WILLIAMS, ESQUIRE

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Attorney for Respondent,

President Judge Sheila A. Woods-Skipper

EXHIBIT 1A



**BETTER
PHILADELPHIA
ELECTIONS
COALITION**

Hon. Sheila Woods-Skipper
President Judge

JAN 18 2017

January 18, 2017

VIA HAND DELIVERY

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

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

Dear Judge Woods-Skipper:

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

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

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

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

County boards of elections; membership

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

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

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

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

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

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

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

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

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

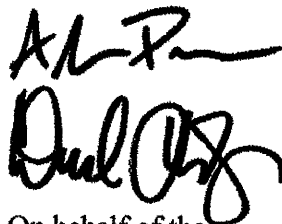
Beyond that, the Commissioners conceivably could argue that the provision simply does not apply to Philadelphia at all, that it only applies to *other* home rule counties. Except that when the General Assembly wants to treat Philadelphia differently it has the ability and language with which to do so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

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

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

Thank you for your consideration.

Sincerely,



On behalf of the
Better Philadelphia Elections Coalition

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

EXHIBIT 1B

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

Better Philadelphia Elections Coalition

c/o Alison Perelman, Executive Director, Philadelphia 3.0

David Thornburgh, Executive Director, Committee of 70

Dear Better Philadelphia Elections Coalition,

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

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

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

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

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

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

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

Dominic J. Rossi, Esquire

Chief Compliance Officer

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	:	
Respondent.	:	

CERTIFICATE OF SERVICE

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

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