

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)	
JANUARY 2024	03181
E-Filing Number: 2401061502	

PLAINTIFF'S NAME JEFF BROWN	DEFENDANT'S NAME PHILADELPHIA BOARD OF ETHICS
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PLAINTIFF'S ADDRESS 1717 ARCH STREET 5TH FLOOR PHILADELPHIA PA 19103	DEFENDANT'S ADDRESS 1515 ARCH STREET 18TH FLOOR PHILADELPHIA PA 19102
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PLAINTIFF'S NAME FOR A BETTER PHILADELPHIA PAC	DEFENDANT'S NAME J. SHANE CREAMER, JR.
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PLAINTIFF'S ADDRESS 614 S. 4TH STREET PHILADELPHIA PA 19147	DEFENDANT'S ADDRESS 1515 ARCH STREET 18TH FLOOR PHILADELPHIA PA 19102
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PLAINTIFF'S NAME FOR A BETTER PHILADELPHIA PAC 501(C) (4)	DEFENDANT'S NAME
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PLAINTIFF'S ADDRESS 614 S. 4TH STREET PHILADELPHIA PA 19147	DEFENDANT'S ADDRESS
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TOTAL NUMBER OF PLAINTIFFS 4	TOTAL NUMBER OF DEFENDANTS 2	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions
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AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other: _____
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CASE TYPE AND CODE 2E - WRONGFUL USE OF CIVIL PROCESS
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STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)	FILED PRO PROTHY JAN 29 2024 C. SMITH	IS CASE SUBJECT TO COORDINATION ORDER? YES NO
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TO THE PROTHONOTARY:
 Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: JEFF BROWN , FOR A BETTER PHILADELPHIA PAC , FOR A BETTER PHI
 Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY MATTHEW H. HAVERSTICK	ADDRESS KLEINBARD LLC THREE LOGAN SQ 1717 ARCH ST 5TH FLOOR PHILADELPHIA PA 19103
PHONE NUMBER (215) 568-2000	FAX NUMBER (215) 568-0140

SUPREME COURT IDENTIFICATION NO. 85072	E-MAIL ADDRESS mhaverstick@kleinbard.com
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SIGNATURE OF FILING ATTORNEY OR PARTY MATTHEW HAVERSTICK	DATE SUBMITTED Monday, January 29, 2024, 10:46 am
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COMPLETE LIST OF PLAINTIFFS:

1. JEFF BROWN
1717 ARCH STREET 5TH FLOOR
PHILADELPHIA PA 19103
2. FOR A BETTER PHILADELPHIA PAC
614 S. 4TH STREET
PHILADELPHIA PA 19147
3. FOR A BETTER PHILADELPHIA PAC 501(C) (4)
614 S. 4TH STREET
PHILADELPHIA PA 19147
4. DAVID MASER
1717 ARCH STREET 5TH FLOOR
PHILADELPHIA PA 19103

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Attorneys for Plaintiffs



JEFF BROWN : COURT OF COMMON PLEAS
1717 Arch St., 5th Floor : PHILADELPHIA COUNTY
Philadelphia, PA 19103, :
: _____ TERM, 2024
FOR A BETTER PHILADELPHIA PAC :
614 S. 4th Street : No.
Philadelphia, PA 19147, :
: CIVIL ACTION
FOR A BETTER PHILADELPHIA 501(C)(4) :
614 S. 4th Street : JURY TRIAL DEMANDED
Philadelphia, PA 19147, :
:
and :
:
DAVID MASER :
1717 Arch St., 5th Floor :
Philadelphia, PA 19103 :
:
Plaintiffs, :
v. :
:
PHILADELPHIA BOARD OF ETHICS :
1515 Arch St., 18th Floor :
Philadelphia, PA 19102 :
:
and :
:
J. SHANE CREAMER, JR. :
1515 Arch St., 18th Floor :
Philadelphia, PA 19102 :
:
Defendants. :

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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Lawyer Referral
and Information Service
1101 Market St., 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-6333
AVISO**

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

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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De Filadelfia
Servicio De Referencia E
Informacion Legal
1101 Market St., 11th Piso
Filadelfia, Pennsylvania 19107
(215) 238-6333**

COMPLAINT

Plaintiffs Jeff Brown, For a Better Philadelphia PAC, For a Better Philadelphia 501(c)(4) (collectively, For a Better Philadelphia), and David Maser, by and through their attorneys, Kleinbard LLC, file this Complaint against Defendants Philadelphia Board of Ethics and J. Shane Creamer, Jr., and in support thereof aver as follows:

1. This lawsuit intends to hold the Philadelphia Board of Ethics accountable for its misconduct and to shine light on its corrupt operations. The Board and its Executive Director—Defendant Shane Creamer—have become too comfortable with the lawyers who regularly practice before the Board and the reporters who cover it. This familiarity has Defendants picking winners and losers in the political scene, and (ironically) making unethical disclosures to reporters, while propagating the fiction that Defendants’ misconduct is righteous.

2. This action therefore seeks recovery for wrongful use of civil proceedings, *see* 42 Pa.C.S. § 8351, *et. seq.*, abuse of process, and damage to Plaintiffs’ constitutionally protected fundamental right to reputation, *see* Pa. Const. art. I, § 1. These injuries arise out of Defendants’ prosecution of a civil action against For a Better Philadelphia (the Frivolous Lawsuit), which was prosecuted in a grossly negligent manner and without probable cause, designed solely to damage each Plaintiff’s reputation, and aimed at interfering with Plaintiff Brown’s mayoral campaign in Philadelphia’s 2023 Democratic Primary Election.

I. PARTIES AND VENUE

3. Plaintiff For a Better Philadelphia 501(c)(4) is a Pennsylvania non-profit corporation with an address at 614 S. 4th Street, PO Box 324, Philadelphia, Pennsylvania 19147.

4. Plaintiff For a Better Philadelphia PAC is a political action committee having an address at 614 S. 4th Street, Unit 334, Philadelphia, Pennsylvania 19147.

5. Plaintiff David Maser is a natural person, who resides in Philadelphia, Pennsylvania and, at all times relevant hereto, served as the Chairperson of the For a Better Philadelphia PAC and the Chairperson and Treasure of the 501(c)(4).

6. Plaintiff Jeff Brown is a natural person, who resides in Philadelphia, Pennsylvania, and was a candidate for Mayor of Philadelphia between November 16, 2022 and May 16, 2023.

7. Defendant Philadelphia Board of Ethics is a local governmental agency of the City of Philadelphia—a political subdivision of the Commonwealth of Pennsylvania—having an address at 1515 Arch St., 18th Floor, Philadelphia, Pennsylvania 19102.

8. The Board consists of five members who are appointed by the Mayor and confirmed by City Council for five-year terms.

9. Pursuant to the Philadelphia City Code, the Board is charged with administering and enforcing certain laws within the City of Philadelphia, including the City's campaign finance laws.

10. Defendant J. Shane Creamer, Jr. is a natural person, having an address at 1515 Arch St., 18th Floor, Philadelphia, Pennsylvania 19102 and, at all times relevant hereto, has served as the executive director of Defendant Board.

11. Venue is proper in this Court because a transaction or occurrence out of which the present causes of action arose took place in Philadelphia County. *See* Pa. R.C.P. 1006(a)(1) & 2179(A)(4).

II. FACTUAL BACKGROUND

A. Philadelphia's Campaign Finance Law and the Board's Regulations

12. Pursuant to authority granted by the State Constitution and the General Assembly, the Philadelphia City Council has adopted certain campaign finance laws governing local elections, which have been codified in Chapter 20-1000 of the Philadelphia City Code (the Philadelphia Campaign Finance Law).

13. In turn, the Board has promulgated Philadelphia Board of Ethics Regulation No. 1 Campaign Finance to interpret the Philadelphia Campaign Finance Law, *available at*: <https://www.phila.gov/media/20221004102031/BOE-regulation-1.pdf>.

14. The Board's Regulations, among other things, limit the amount of contributions that a campaign can accept from a political action committee or other person per calendar year. *See* Board Regulations § 1.2-1.3.¹

¹ The annual contribution limits are typically \$3,100 for individuals and \$12,600 for political committees per calendar year. *See id.* On or about December 30, 2022, the annual contribution limits for the 2023 mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees until the November 2023 general election. *See id.* at § 1.5.

15. Importantly, however, the limits established in the pertinent regulations, are *not* applicable to a political committee’s *independent* expenditure—that is, an expenditure made *without* coordination with the campaign.

16. In this regard, the Board’s Regulations explain that “an expenditure is coordinated *with a campaign* if it is made in cooperation, consultation or concert *with the campaign*” and sets out several examples of coordination. *See id.* at § 1.33 (emphasis added).

17. Specifically, as relevant here, Section 1.33(d) provides that an expenditure is “coordinated” if: “The *campaign* has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence.” *Id.* at § 1.33(d) (emphasis added).

18. Thus, by the plain terms of the Board’s Regulations, coordination can occur only with a “campaign,” which is defined as, *inter alia*, a “candidate.”

19. In turn, under the Board’s Regulations, a “candidate” is “an individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.” *Id.* at § 1.1.

20. Neither the City’s campaign finance laws, nor the Board’s Regulations prohibit a political action committee from cooperating—or “coordinating”—with an individual who is not a candidate for office.

B. For a Better Philadelphia PAC and Jeff Brown

21. On November 16, 2022, Jeff Brown publicly announced his candidacy for Mayor of Philadelphia and the Democratic nomination in the May 16, 2023 Primary Election.

22. As he had not filed nomination petitions or publicly announced his candidacy before November 16, 2022, under the Board’s Regulations, Jeff Brown was not a “candidate” for any office at any time before that date.

23. Prior to November 16, 2022—when Jeff Brown was *not* a candidate for Mayor—he participated in some fundraising activities in support of For a Better Philadelphia.

24. Because Jeff Brown was not yet a candidate at that time, the Board’s Regulations concerning “coordination” were not implicated.

25. From November 16, 2022, through the primary election, there was no cooperation or coordination between Jeff Brown and For a Better Philadelphia.

C. The Board and Creamer Initiated and Pursued the Frivolous Lawsuit—Without Probable Cause and in a Grossly Negligent Manner—Against For a Better Philadelphia

26. On April 10, 2023, Defendants initiated a civil action against For a Better Philadelphia under the caption: *Philadelphia Board of Ethics v. For a Better Philadelphia 501(c)(4), et al.*, No. 0795 (C.P. Phila.) (the Frivolous Lawsuit), seeking a declaration that For a Better Philadelphia violated the City’s campaign

contribution limits and demanded an emergency injunction to prohibit For a Better Philadelphia from making any further expenditures in the 2023 mayoral election. A true and correct copy of Defendants' filing, titled *Emergency Petition to Enforce Philadelphia Campaign Finance Law and Enjoin Continuing Violations Thereof*, is attached as Exhibit A.

27. The Frivolous Lawsuit was predicated on a legally and factually baseless claim that For a Better Philadelphia exceeded the Philadelphia Campaign Finance Law's contribution limits because it "coordinated" with Brown.

28. Specifically, the Board's "coordination" theory was premised entirely on the fact that Brown had participated in fundraising activities of For a Better Philadelphia at some juncture prior to November 16, 2022—*i.e.*, *before* he was a candidate for Mayor.

29. Importantly, the Board, led by Defendant Creamer, initiated the Frivolous Lawsuit despite the fact that Jeff Brown had cut all ties with For a Better Philadelphia before officially becoming a candidate for Mayor on November 16, 2022.

30. Upon information and belief, Defendants knew, or reasonably should have known, that Jeff Brown had ceased any interaction with For a Better Philadelphia well before November 16, 2022.

31. Indeed, the Board did not (and could not) allege that Plaintiff Brown had any improper involvement or knowledge of For a Better Philadelphia's fundraising activities at any time after November 16, 2022.

32. Given the absence of any factual or legal basis for pursuing the claim, Defendants had no probable cause for initiating and maintaining the Frivolous Lawsuit.

33. In commencing and continuing the Frivolous Lawsuit, Defendants acted maliciously and with the intent to publicly impugn all Plaintiffs and interfere with Brown's candidacy.

34. Moreover, upon information and belief, lawyers and agents of other campaigns colluded with Defendants and encouraged the filing of the Frivolous Lawsuit.

35. Defendants, upon information and belief, also were desirous of the media attention the Frivolous Lawsuit would generate.

36. Notably, the Board initiated the action via "Petition" and not a "Complaint," based on its (mis)interpretation of Philadelphia's Local Rules.

37. Because of the Board's procedurally defective filing, this Court instructed Defendants to file a complaint and ordered that once the complaint was filed, it would convert the Emergency Petition to a Motion for Permanent Injunction.

38. In keeping with this Court's directive, on April 14, 2023, Defendants filed a Complaint, which was premised on the same baseless legal theory as the Petition. A true and correct copy of the Complaint is attached as Exhibit B.

39. Thereafter, the Court deemed the Emergency Petition a Motion for Preliminary Injunction.

40. For a Better Philadelphia filed Preliminary Objections to the Complaint wherein For A Better Philadelphia highlighted the obvious factual and legal infirmities in Defendants' legal theory.

41. Specifically, For a Better Philadelphia argued that Defendants' Complaint was legally insufficient because it did not make any allegations that For a Better Philadelphia coordinated with a campaign. A true and correct copy of For a Better Philadelphia's Preliminary Objections to the Complaint is attached as Exhibit C.

42. In response, Defendants filed an Amended Complaint, which, just like the Petition and Complaint, was premised on the legally unsupportable theory that For a Better Philadelphia violated the City's Campaign Finance Law by coordinating with Brown when he was a private citizen. A true and correct copy of the Defendants' First Amended Complaint is attached as Exhibit D.

43. For a Better Philadelphia again filed Preliminary Objections, using the same legal theory. A true and correct copy of For a Better Philadelphia's Preliminary Objections to the First Amended Complaint is attached as Exhibit E.

44. The trial court, in a Memorandum Opinion issued on September 11, 2023, sustained For a Better Philadelphia's Preliminary Objections. The Court held the Board's Regulations, by their plain terms, did not regulate conduct between a political committee and a *private citizen*. A true and correct copy of the Memorandum Opinion and Order is attached as Exhibit F.

45. The Court admonished that “the Board of Ethics does not have free rein to interpret and apply [campaign finance laws] in any way it sees fit to do so.” *See id.* at 1.

46. The Court further held the Board’s interpretation was “unsupported” and that “[a] step-by-step analysis of the timeline and regulations at issue leads to the inevitable conclusion that the Board’s enforcement is inconsistent with its own regulations.” *Id.* at 6-7.

47. The Court concluded that based on the clear facts, “it is impossible to conclude that the ‘Jeff Brown campaign’ could have coordinated with the PAC prior to November 16, 2022” because “[t]here was no ‘Jeff Brown campaign’ prior to November 16, 2022.” *Id.* at 7; *see also id.* at 9 (“the Board is now advocating for a broader meaning than what is explicitly stated in the regulations”); *id.* (“The Board chose to put all of its eggs in the Section 1.33(d) basket, *knowing* that there was no ‘Jeff Brown campaign’” as defined by the regulations prior to November 16, 2022).

48. Indeed, the Court further observed that the Board “engage[d] in a bit of sophistry.” *Id.* at 9.

49. The Court’s opinion could not have been clearer: Defendants’ claims were meritless and had no basis in law or fact. *See id.* at 7. (“it is impossible to conclude that the ‘Jeff Brown campaign’ could have coordinated with the PAC prior to November 16, 2022” because “[t]here was no ‘Jeff Brown campaign’ prior to November 16, 2022”).

50. But Defendants were not deterred. They continued to pursue the Frivolous Lawsuit on appeal even though it lacked any basis in law or fact.

51. On December 11, 2023, Defendants withdrew their appeal.

52. As a result, the Frivolous Lawsuit terminated in favor of For a Better Philadelphia and against Defendants.

53. At all times, Defendants initiated and continued to prosecute the Frivolous Lawsuit in a willful, wanton, and grossly negligent manner and without any probable cause.

D. The Defendants’ Initiated and Pursued the Frivolous Lawsuit to Maliciously Interfere with Brown’s Campaign and Damage Plaintiffs’ Reputations

54. Sometime in March 2023, the Defendants began investigating For a Better Philadelphia.

55. Upon information and belief, investigations initiated by the Board typically end in private settlements, and the Board typically does not initiate court proceedings as a result of its investigations.

56. The Philadelphia Inquirer observed that the Board “typically flies under the radar” and noted “[e]thics agencies and law enforcement often try to stay above the fray and avoid playing public roles in campaigns.” A true and correct copy of the May 27, 2023 Philadelphia Inquirer Article “Philly’s ethics board usually flies under the radar. That changed with its lawsuit against a super PAC backing Jeff Brown” is attached as Exhibit G.

57. Upon information and belief, Defendants took the “unusual step to sue” and seek injunctive relief based on their desire to terminate Plaintiff Brown’s

candidacy for Mayor, and in collusion with other campaigns who wanted Brown out of the race. *See id.*

58. The Frivolous Lawsuit was filed the day before the first televised mayoral debate, clearly intended to disrupt it.

59. Upon information and belief, Defendants provided the Frivolous Lawsuit to the Inquirer well before its filing and thus, before Plaintiffs and their counsel knew of it.

60. Worst of all, by the time of filing, For A Better Philadelphia had agreed with Defendants that the PAC would cease operations. The Frivolous Lawsuit thus was completely gratuitous and designed solely to harm Brown with a choreographed media hit right before the first televised debate.

61. Indeed, Defendants' decision to publicly target For A Better Philadelphia "had an obvious effect: It upended the mayor's race and damaged Brown's chances of becoming mayor." *Id.*; *see id.* ("The board's decision to go public with its case reshaped the mayor's race and pulled the agency into the political arena[.]").

62. Upon information and belief, the purpose of Defendants' litigation was to create a public spectacle, engage in self-aggrandizement for the benefit of Defendant Creamer, damage Plaintiffs' reputations, and interfere with Brown's campaign for Mayor. In contrast, the Frivolous Lawsuit was *not* designed to address a genuine belief by Defendants that Plaintiffs had engaged in wrongdoing, as Defendants did not actually believe their own legal theory.

63. And even if Defendants actually believed their theory – and they didn’t – For A Better Philadelphia had addressed Defendants’ stated concerns.

64. On March 3, 2023, Defendants emailed the PAC’s counsel that the Board would file an “Emergency Petition” unless the PAC agreed to stop campaign expenditures and pay a fine.

65. The Board gave the PAC 24 hours to agree.

66. Within minutes, For A Better Philadelphia’s counsel agreed to cease spending to influence the election.

67. Not satisfied, Defendants pressed for an admission of wrongdoing. A week later, well after the PAC stopped doing the one thing that arguably required an expedited filing – spending on the election – to much fanfare Defendants filed their “Emergency Petition.”

68. This petition is singular for several reasons. First, and as described *supra*, the filing was wholly unnecessary, since the PAC a week earlier had stopped campaign spending.

69. Second, it appears to be the only instance in which the Board has sought an *injunction* to remedy a campaign finance violation.

70. Third, the timing and nature of the filing make it seem designed to influence the outcome of an election.

71. Defendants’ malicious intent is apparent by the following three facts: (1) the lack of legal basis to support the Defendants’ claims; (2) Defendant Creamer’s bias against “dark money” PACs; and (3) Defendant Creamer’s efforts

and proclivity, upon information and belief, to leak to the Inquirer information generated from the Board's private investigation.

72. As developed above, Defendants lacked legal authority to pursue any action against For a Better Philadelphia.

73. In order to prove that For a Better Philadelphia violated the City's campaign contribution limits, Defendants were required to prove that For a Better Philadelphia coordinated with a campaign or candidate.

74. But Defendants Petition, Complaint and First Amended Complaint were based entirely on facts about Brown's *pre-candidacy* relationship with For a Better Philadelphia.

75. No reasonable person, let alone Defendants, would have reasonably believed that those facts, and the applicable law, supported the claims in the Frivolous Lawsuit.

76. And the definition of "campaign" and "candidate," as contained in the Board's Regulations, plainly and unambiguously do not apply if a candidate has neither publicly declared nor filed nomination petitions.

77. Defendants' decision to withdraw the appeal of the trial court's order sustaining preliminary objections is further evidence that Defendants *know* and *knew* that the basis for their claim is entirely meritless.

78. A review of the trial court's Memorandum Opinion makes clear that Defendants' reading of the Regulations was entirely unreasonable and without merit. *See* Exhibit F.

79. Defendants therefore could not have reasonably believed that the Board's Regulations supported the Frivolous Lawsuit.

80. Yet, Defendants continued to pursue the Frivolous Lawsuit on appeal in a willful and grossly negligent manner, where no probable cause existed to pursue the appeal.

81. More alarming still, in a December 13, 2022 communication with Inquirer reporter Chris Brennan, Defendant Creamer acknowledged and admitted that the definition of "candidates" in the Board's Regulation "at this point includes publicly declared candidates." *See* Exhibit H (Text messages between Chris Brennan and Shane Creamer).

82. The December 13, 2022 text is a clear indication that Defendant Creamer understood that an individual who had not publicly declared is not a candidate.

83. Despite his understanding that Jeff Brown could not have been a candidate for office prior to November 16, 2022, Defendant Creamer used his authority as executive director of Defendant Board to initiate the Frivolous Lawsuit against For a Better Philadelphia, alleging that it was coordinating with Jeff Brown based *solely* on pre-candidacy conduct.

84. A review of the Defendants' Petition, Complaint, and First Amended Complaint makes clear that Defendants' legal theory was predicated on facts from *before* Brown became a candidate for office.

85. Defendants' complete and utter disregard for the facts and law is clear evidence that it was motivated to pursue litigation against For a Better Philadelphia for ulterior and inappropriate reasons.

86. Rather than stay in the background of the election cycle as it normally does, the Board and Creamer sought to publicly insert themselves into the election to deliberately interfere with Brown's campaign by indirectly placing the campaign under public scrutiny.

87. Indeed, following the Defendants' litigation, Brown's standing in the polls dropped, and he ultimately lost the election.

88. As the Inquirer observed, the Defendants' "high-profile legal saga ... shook up the election and contributed to Brown's fifth-place finish in the Democratic primary." A true and correct copy of the Philadelphia Inquirer's December 11, 2023 article "The Philly ethics board dropped its case against the 'super PAC' that backed mayoral candidate Jeff Brown" is attached as Exhibit I.

89. Upon information and belief, Defendants willfully disregarded the law and pursued the Frivolous Lawsuit to publicly harass and impugn Plaintiffs and harm Brown's campaign, and did so at the behest of other campaigns.

90. Next, upon information and belief, Defendants *targeted* For a Better Philadelphia.

91. Upon information and belief, Defendant Creamer ignored the law and facts to wrongfully, and maliciously, target For a Better Philadelphia because he was personally opposed to "dark money groups." See Email from Shane Creamer to

Sean Collins Walsh dated April 21, 2023, a true and correct copy of which is attached as Exhibit J.

92. In a December 2022 Opinion article in the Inquirer, Defendant Creamer, who co-authored the article, signaled his intent to closely monitor political committees for potential “coordination” violations:

We hope this sends a message to Philadelphia candidates that running for office in this city is not like running for federal office. That message is: Philadelphia has different rules. And they will be enforced.

A true and correct copy of the Philadelphia Inquirer article ‘Campaign finance rules just got a bit stricter in Philly. And they will be enforced’ dated December 28, 2022 is attached as Exhibit K.

93. Upon information and belief, Defendant Creamer’s distrust for “dark money groups”—which are perfectly legal—and his eagerness to enforce Philadelphia’s campaign finance laws resulted in the Frivolous Lawsuit. *See* Exhibit G (Defendant Creamer wanted to “plant[] a flag” with his opinion article); *id.* (Defendant Creamer “said he initiated the investigation into the super PAC on his own accord.”).

94. Defendant Creamer’s personal motive is clear from this email exchange that was reported on by the Inquirer:

“Times up. These are bad people who are not negotiating in good faith,” Creamer wrote in the email, which was acquired by The Inquirer. “[W]e are prepared to go to court to expose the most massive scheme to circumvent the city’s contribution limits in 17 years. I consider negotiations over. I don’t trust you.”

See id.

95. Defendant Creamer’s unfounded animus is clear: he thought of For a Better Philadelphia as “bad people” and expressed his desire to “expose the most massive scheme to circumvent the city’s contribution limits.”

96. But the problem with Defendant Cramer’s theory is, and was then, that For a Better Philadelphia complied with the law at all times—and Defendants knew it.

97. Defendants impermissibly sought to rewrite the City’s Campaign Finance Laws to suit their personal agenda.

98. Upon information and belief, Defendants were also motivated to initiate and continue the Frivolous Lawsuit because they were being pressured by other mayoral campaigns to bring suit.

99. Upon information and belief, Defendants, particularly Defendant Creamer, were motivated to reap the benefits of the media coverage associated with the Frivolous Lawsuit.

100. Upon information and belief, Creamer in particular relished the attention lavished on him by compliant Inquirer reporters.

101. Right To Know Law requests—with which the City of Philadelphia has only partially complied—reveal that Creamer is a prolific texter, especially with the Philadelphia Inquirer reporters who dutifully reported on the Frivolous Lawsuit, Brown, and Maser (and always in an unfavorable light).

102. Indeed, as a result of the Frivolous Lawsuit, Defendants—including Defendant Creamer—received a significant amount of positive press coverage in the *Inquirer*.

103. At that same time, the press, including the *Inquirer*, were reporting negatively about all Plaintiffs, further damaging their reputations.

104. All the while, it was Defendants who were acting unethically and in a willful, wanton, and grossly negligent manner by initiating, procuring and continuing the Frivolous Lawsuit without any reasonable basis to do so.

105. Rather than enforce Philadelphia’s campaign finance laws, Defendants ignored them entirely and pursued the Frivolous Litigation.

106. Upon information and belief, Defendant Creamer was motivated to pursue litigation by his personal desire to enlarge the Defendant Board’s role in elections. *See id.*

107. Finally, upon information and belief Defendant Creamer leaked otherwise private information about the Board’s investigation to reporters at the Philadelphia *Inquirer* (Sean Collins Walsh and Chris Brennan, in particular).

108. Upon information and belief, and in violation of the Philadelphia Code, Defendant Creamer on multiple occasions leaked confidential information about Plaintiffs.

109. Indeed, Defendant Creamer maintains a close relationship with reporters from the *Inquirer*, often exchanging text messages regarding the Board’s business.

110. This symbiosis has resulted in Creamer trading confidential Board information to Inquirer reporters in exchange for flattering and gratuitous news coverage.

111. Once again, Right To Know Law responses confirm Defendant Creamer's modus operandi, revealing that, in at least one other instance, Creamer provided the Inquirer with private Board information before it became public. *See* Exhibit L.

112. Any leak of confidential information the Board obtained during its investigation of For a Better Philadelphia, or any soon-to-be-filed complaint, would violate § 20-606(i) of the Philadelphia Home Rule Charter.

113. Defendants' conduct irreparably harmed Plaintiffs' reputations, by prompting news coverage designed to baselessly and maliciously impugn their integrity.

114. Defendants' conduct also irreparably interfered with Brown's campaign, causing him to lose the election.

115. Upon information and belief—and among the other malicious and improper reasons for pursuing the Frivolous Lawsuit—Defendants used the Board investigation and the Frivolous Lawsuit as a means to obtain confidential information from and about the Brown campaign, and then leak that information to the Inquirer. This was done intentionally, willfully, and maliciously to harm all Plaintiffs.

COUNT I—Wrongful Use of Civil Proceedings
(For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC v.
Defendants)

116. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

117. Defendants procured, initiated and continued civil proceedings against For a Better Philadelphia in violation of the Dragonetti Act, 42 Pa.C.S. § 8351, *et. seq.*

118. Defendants did so in grossly negligent and/or reckless manner.

119. Defendants did so in a willful and wanton manner.

120. Defendants did so without probable cause and for an improper purpose.

121. Defendants did so in bad faith, and primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the Frivolous Lawsuit.

122. Defendants failed to properly investigate the relevant facts and had no probable cause for filing and continuing the Frivolous Suit.

123. Defendants did not, and could not, reasonably believe the facts or law supported their claims.

124. Defendants knew or should have known that the Frivolous Lawsuit was without any basis in law or fact.

125. Indeed, the allegations in the Petition, Complaint, and First Amended Complaint are directly contrary to the plain language in the Board's Regulations.

126. The trial court's Memorandum Opinion makes plain that that Defendants' interpretation was entirely unsupported.

127. Defendants initiated and continued the Frivolous Lawsuit for malicious purposes.

128. More specifically, Defendants initiated and continued the Frivolous Lawsuit solely to impugn the reputation of all Plaintiffs and interfere with Brown's campaign.

129. Because Defendants withdrew their appeal, the suit terminated in favor of For a Better Philadelphia's and against Defendants.

130. Defendants' wrongful conduct was intentional, reckless, wanton, willful and tortious justifying an award for punitive damages against them.

131. For a Better Philadelphia suffered damages as a direct, foreseeable, and consequential result of Defendants' wrongful conduct.

132. For a Better Philadelphia's damages include, but are not limited to, the following:

- a. the harm normally resulting from interference with its business;
- b. harm to reputation;
- c. expenses including attorneys' fees, professional fees and costs incurred in defending itself against the Frivolous Lawsuit.
- d. pecuniary losses resulting from the Frivolous Lawsuit; and
- e. punitive damages,

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in Plaintiff's favor and against Defendants in excess of \$50,000, as well as costs and attorney's fees, punitive damages, and awarding all such other relief as this Court deems just and proper.

COUNT II—ABUSE OF PROCESS
(For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC v. Defendants)

133. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

134. Abuse of process is “the perversion of legal process after it has begun in order to achieve a result for which the process was not intended.” *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. 1994); *see also McGee v. Feege*, 535 A.2d 1020, 1025-26 (Pa. 1987) (“We will not countenance the use of the legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process[.]”).

135. An abuse of process exists where “the defendant used a legal process to accomplish a purpose for which the process was not designed.” *Id.*

136. For example, where a defendant initiates process to coerce something “unrelated to the cause of action sued upon.” *Id.*

137. Here, Defendants pursued injunctive relief against For a Better Philadelphia for the primary purpose of tarnishing Brown's reputation, undermining Brown's campaign, and to obtain favorable media attention—none of which are the legitimate object or authorized goal of an injunction.

138. Upon information and belief, Defendants have rarely—if ever—filed an injunction of this nature.

139. Moreover, an injunction in this particular case was not warranted because prior to filing the injunction, For a Better Philadelphia agreed to stop campaign spending in the 2023 mayoral election.

140. This agreement, which was coerced with the threat of filing the illegitimate injunction, resolved the very issue that Board purportedly sought to resolve via the illegitimate injunction.

141. Stated differently, the Board’s injunction was plainly not designed to halt For a Better Philadelphia’s spending in the 2023 mayoral election.

142. Instead, the injunction was primarily designed to tarnish Brown’s reputation and tank his campaign.

143. In this connection, For a Better Philadelphia suffered harm by having to spend time and money fighting against a sham injunction petition that was intended to harm Brown and his campaign.

144. This intended, and improper, result was so obvious that it was reported on by the Inquirer. *See* Exhibit I. (“The Philadelphia Board of Ethics has dropped its lawsuit against the “super PAC” that supported Jeff Brown’s unsuccessful run for mayor, ending a high-profile legal saga that shook up the election and contributed to Brown’s fifth-place finish in the Democratic primary.”).

145. The unambiguous nature of the Board’s Regulations, the court’s Memorandum Opinion, and Defendant Creamer’s December text all demonstrate

that Defendants knew, or should have known, that the request for injunctive relief lacked any arguable merit.

146. As a direct and proximate result of Defendants' wrongful conduct, For a Better Philadelphia suffered harm to its reputation and damages in the form of attorneys' fees and costs incurred, professional fees, and other expenses for which For a Better Philadelphia has not been compensated.

147. For a Better Philadelphia is entitled to punitive damages resulting from Defendants' wanton, willful, and outrageous conduct, all of which was undertaken by Defendants with a reckless disregard for the rights of Plaintiffs.

WHEREFORE, For a Better Philadelphia requests that this Honorable Court enter judgment in Plaintiff's favor and against Defendants in excess of \$50,000, as well as costs and attorney's fees, punitive damages, and awarding all such other relief as this Court deems just and proper.

**COUNT III—VIOLATION OF ARTICLE I, SECTION 1 OF THE
PENNSYLVANIA CONSTITUTION
(Brown v. Defendants)**

148. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

149. Article I, Section 1 of the Pennsylvania Constitution reads as follows:
“All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, *possessing and protecting property and reputation*, and of pursuing their own happiness.” (Emphasis added.)

150. Under the Pennsylvania Constitution, the right to reputation is “a fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection.” *R. v. Dep’t of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994); *see also* Pa. Const. art. I, § 11 (“All courts shall be open; and *every man for an injury done him in his ... reputation shall have remedy by due course of law ...*” (Emphasis added)).

151. A constitutional cause of action—which seeks to enforce a fundamental constitutional right and does not seek monetary relief—is directly actionable and does not require a cause of action sounding in tort. *See Hunter v. Port Auth. of Allegheny County*, 419 A.2d 631, 636 n.6 (Pa. Super. 1980) (“It may be noted that a cause of action arises directly under the Constitution for the violation of rights guaranteed under Article I, Section 1, and no affirmative legislation is needed for the vindication of those rights in the civil courts.”); *Thomas v. Kane*, Nos. 2236 & 2416 CD 2015, 2016 WL 6081838, at *4 (Pa. Cmwlth. Oct. 17, 2016) (citing *Hunter* and holding: “To the extent Pennsylvania recognizes a cause of action under Article I, Section 1 of the Pennsylvania Constitution for a violation of the right to reputation, there must be both an adverse government action in the form of stigmatizing, false statements and a due process violation.”).

152. The right is also self-executing, and Brown may vindicate a violation of his right to reputation directly in this Court.

153. Defendants' concerted and repeated harassment and disparagement of Brown, detailed above, amounts to a violation of Brown's Article I, Section 1 right to reputation.

154. In continually violating Brown's reputational rights, Defendants have interfered with and violated Brown's due process rights by not affording meaningful notice and a meaningful opportunity to be heard regarding the injury to reputation.

155. The only effective remedy for Brown to combat this harassment campaign is for the Court to order a name clearing hearing to correct the record regarding Brown's reputation and to identify the identity of the individual who leaked information to the media as well as to determine the extent of the leaked information.

WHEREFORE, Brown requests that the Court enter a judgment in his favor: (a) declaring that Defendants have violated Brown's rights under Article I, Section 1 of the Pennsylvania State Constitution; and (b) ordering a name-clearing hearing to clear Brown's name, identify the identity of any individual who leaked information to the media, and the extent of any such leak.

**COUNT IV—VIOLATION OF ARTICLE I, SECTION 1 OF THE
PENNSYLVANIA CONSTITUTION
(Maser v. Defendants)**

156. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

157. Article I, Section 1 of the Pennsylvania Constitution reads as follows:
“All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and

liberty, of acquiring, *possessing and protecting property and reputation*, and of pursuing their own happiness.” (Emphasis added).

158. Under the Pennsylvania Constitution, the right to reputation is “a fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection.” *R. v. Dep’t of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994); *see also* Pa. Const. art. I, § 11 (“All courts shall be open; and *every man for an injury done him in his ... reputation shall have remedy by due course of law*” (Emphasis added)).

159. A constitutional cause of action—which seeks to enforce a fundamental constitutional right and does not seek monetary relief—is directly actionable and does not require a cause of action sounding in tort. *See Hunter v. Port Auth. of Allegheny County*, 419 A.2d 631, 636 n.6 (Pa. Super. 1980) (“It may be noted that a cause of action arises directly under the Constitution for the violation of rights guaranteed under Article I, Section 1, and no affirmative legislation is needed for the vindication of those rights in the civil courts.”); *Thomas v. Kane*, Nos. 2236 & 2416 CD 2015, 2016 WL 6081838, at *4 (Pa. Cmwlth. Oct. 17, 2016) (citing *Hunter* and holding: “To the extent Pennsylvania recognizes a cause of action under Article I, Section 1 of the Pennsylvania Constitution for a violation of the right to reputation, there must be both an adverse government action in the form of stigmatizing, false statements and a due process violation.”).

160. The right is also self-executing, and Maser may vindicate a violation of his right to reputation directly in this Court.

161. Defendants' concerted and repeated harassment and disparagement of Maser, detailed above, amounts to a violation of Maser's Article I, Section 1 right to reputation.

162. In continually violating Maser's reputational rights, Defendants have interfered with and violated Maser's due process rights by not affording meaningful notice and a meaningful opportunity to be heard regarding the injury to reputation.

163. The only effective remedy for Maser to combat this harassment campaign is for the Court to order a name clearing hearing to correct the record regarding Maser's reputation and to identify the identity of the individual who leaked information to the media as well as to determine the extent of the leaked information.

WHEREFORE, Maser requests that the Court enter a judgment in his favor: (a) declaring that Defendants have violated Maser's rights under Article I, Section 1 of the Pennsylvania State Constitution; and (b) ordering a name clearing hearing to clear Maser's name, identify the identity of any individual who leaked information to the media, and the extent of any such leak.

Respectfully submitted,

Dated: January 29, 2024

/s/ Matthew H. Haverstick
Matthew H. Haverstick (No. 85072)
Shohin H. Vance (No. 306853)
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Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: January 29, 2024

/s/ Matthew H. Haverstick

VERIFICATION

I, David Maser, Chairperson of For a Better Philadelphia PAC and the Chairperson and Treasure of For a Better Philadelphia 501(c)(4), verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 1/24/24



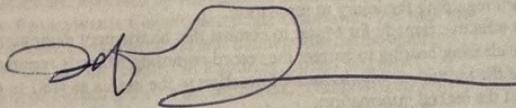
David Maser

VERIFICATION

I, Jeff Brown, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated:

1/24/24

A handwritten signature in blue ink, appearing to read 'Jeff Brown', with a long horizontal line extending to the right.

Jeff Brown

Case ID: 240103181

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION



Philadelphia Board of Ethics

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Attorneys for Petitioner
Philadelphia Board of Ethics

Philadelphia Board of Ethics

One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Petitioner

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Respondents

APRIL TERM, 2023
No. _____

**EMERGENCY PETITION TO ENFORCE PHILADELPHIA’S CAMPAIGN FINANCE
LAW AND ENJOIN CONTINUING VIOLATIONS THEREOF**

The Philadelphia Home Rule Charter charges the Philadelphia Board of Ethics with administering and enforcing the City’s Campaign Finance Law, among the City’s other Public Integrity Laws. The Home Rule Charter authorizes the Board to bring enforcement actions in the Court of Common Pleas. *See* Philadelphia Home Rule Charter Section 4-1100.

The Board brings the instant enforcement action against Respondents For a Better Philadelphia 501(c)(4) (the “501(c)(4)”) and For a Better Philadelphia PAC (the “PAC”), collectively “For a Better Philadelphia,” for their continuing violations of the City’s Campaign Finance Law as described in detail below. The Board seeks emergency injunctive relief because it has a clear right to relief but lacks an adequate remedy at law for Respondents’ continuing violations of the City’s contribution limits under the Campaign Finance Law.

Respondents have made expenditures to influence the outcome of the 2023 Philadelphia Mayoral election totaling in the millions of dollars. Because those expenditures were coordinated with Jeff Brown, a candidate for Mayor, they are subject to the City’s contribution limits. Even with the doubling of the contribution limits in the Mayoral election as of December 30, 2022,¹ all of Respondents’ coordinated expenditures in support of Brown’s campaign above \$25,200 are excess in-kind contributions to Jeff Brown’s designated candidate political committee, Jeff Brown for Mayor. Despite being put on notice by Board Staff that Respondents’ expenditures violated the contribution limits for 2022 and have already violated the contribution limits for 2023, Respondents continue to make coordinated expenditures. Therefore, emergency relief is necessary to prevent these continuing illegal expenditures.

¹ *See* Philadelphia Board of Ethics, *Advisory Alert – Doubling of Campaign Finance Contribution Limits for Mayor’s Race*, Phila.Gov (Jan. 4, 2023), <https://www.phila.gov/2023-01-04-board-of-ethics-advisory-alert-doubling-of-campaign-finance-contribution-limits-for-mayors-race/>.

Philadelphia’s municipal elections, including its Mayoral elections, have been subject to campaign contribution limits since 2005. Contribution limits are designed to prevent corruption or the appearance of corruption – in other words, a financial *quid pro quo* in which dollars are traded for political favors. See *Citizens United v. FEC*, 558 U.S. 310, 359 (2010). These limits protect the integrity of City government by preventing a particular person or group from effectively buying an elected official through unlimited political contributions. As described in greater detail in the instant petition, Respondents have engaged in an extensive and deliberate effort to circumvent the City’s campaign contribution limits, resulting in excess contributions to a candidate for City office on a scale larger than any previously uncovered by the Board of Ethics.

PHILADELPHIA’S CAMPAIGN FINANCE LAW

In Philadelphia, coordinated expenditures are subject to contribution limits under the City’s Campaign Finance Law. Pursuant to Philadelphia Board of Ethics Regulation No. 1,² which governs the administration and enforcement of Philadelphia’s Campaign Finance Law, an expenditure is:

The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election³ . . ., including:

- i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;
- ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a campaign;

² For reference, Board Regulation No. 1 has been filed as an attachment to the instant Petition, “Board of Ethics References – Regulation No. 1 and Board Opinion No. 2018-002.” It is also available at the following: <https://www.phila.gov/media/20221004102031/BOE-regulation-1.pdf>.

³ The term “covered election” includes the Mayoral primary and general elections. Board Regulation No. 1.1(j).

- iii. For an independent expenditure;
- iv. For an electioneering communication; or
- v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

Board Regulation No. 1.1(m)(iii).

Under Board Regulation 1.33 (emphasis added), an expenditure is coordinated with a campaign:⁴

. . .if it is made in cooperation, consultation or concert with the campaign, including the following:

- a. The expenditure is made at the request or suggestion of the campaign;
- b. A person suggests making an expenditure and the campaign assents to the suggestion;
- c. The person making the expenditure communicates with the campaign concerning the expenditure before making the expenditure;
- d. The campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or***
- e. The campaign directs, places, or arranges the expenditure; or
- f. The person making the expenditure uses information obtained from the campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the campaign made to the general public. This subparagraph does not apply to the republication of campaign communications or materials[; or]
- g. The person making the expenditures does so based on instructions received from the campaign

This rule is triggered if the coordination between the person making the expenditure and the campaign occurred at all prior to the expenditure being made. *See* Board Opinion No. 2018-002,

⁴ The term "campaign" includes "[a] candidate, the candidate's candidate political committee and its officers, and agents of any of them." Board Regulation No. 1.1(d), see also Philadelphia Code Section 20-1001(2).

at p. 3.⁵ Therefore, whether the candidate had officially declared their candidacy for office at the time is irrelevant. *Id.*

Coordinated expenditures are in-kind contributions⁶ to a campaign and are subject to the contribution limits. Board Regulation No. 1.1(h)(ii), (p)(iii), Subpart B. The annual contribution limits are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. Board Regulation No. 1.2-1.3; *see also* Philadelphia Code Section 20-1002. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations. Board Regulation No. 1.5; Philadelphia Code Section 20-1002(6); *see also supra* n. 1. Violations of the contribution limits are subject to civil monetary penalties as well as injunctive relief to halt violations. Board Regulation No 1.45; Philadelphia Code Section 20-1005; *see also* Philadelphia Code Section 20-1002(2), 20-1301(1).

INTRODUCTION

Jeff Brown solicited funds for and directed funds to Respondents prior to Respondents' expenditures for the 2023 Mayoral election. Brown's fundraising activity occurred within the twelve months prior to the May 16, 2023 primary. Therefore, all of Respondents' expenditures are in-kind contributions to Jeff Brown for Mayor. Any of Respondents' expenditures above the contribution limits are illegal.

To enforce the Campaign Finance Law and remedy Respondents' continuing violations of the contribution limits, in accordance with Philadelphia Local Rule 206.1 and as authorized by Philadelphia Home Rule Charter Section 4-1100, Philadelphia Code Sections 20-1002, 1005,

⁵ For reference, Board Opinion No. 2018-002 has been filed as an attachment to the instant Petition, "Board of Ethics References – Regulation No. 1 and Board Opinion No. 2018-002." It is also available at the following: <https://www.phila.gov/ethicsboard/Advisory%20Opinions/BD.Op.2018-002.pdf>.

⁶ In-kind contributions are so-called because they are campaign contributions in some form other than money given directly to a campaign.

1301, and Board Regulation No. 1, Subparts B and L, Petitioner brings this action seeking emergency injunctive relief. In support thereof, Petitioner alleges as follows:

I. PARTIES

1. Petitioner Philadelphia Board of Ethics (“Petitioner” or the “Board”) is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law, which is found at Philadelphia Code, Chapter 20-1000, *et seq.* Pursuant to Home Rule Charter Section 4-1100, the Board may seek enforcement of the Campaign Finance Law in the Court of Common Pleas and pursuant to Philadelphia Code Section 20-1005, the Board may seek injunctive relief to enjoin violations of the Campaign Finance Law.

2. For a Better Philadelphia 501(c)(4) is a Pennsylvania non-profit corporation registered with the Internal Revenue Service as a tax-exempt, non-profit, social welfare organization.⁷ An individual named David Maser serves as the Chairperson and Treasurer of the 501(c)(4).

3. For a Better Philadelphia PAC is a political committee that filed a registration statement with the Philadelphia City Commissioners on August 10, 2022. David Maser also serves as the Chairperson of the PAC. *See* Exhibit A.

4. According to the IRS website, the 501(c)(4) maintains a mailing address at 614 S. 4th Street, PO Box 324, Philadelphia, PA 19147. *See* Exhibit AA. Other known addresses for

⁷ Although 501(c)(4) social welfare organizations are permitted to engage in some political activity under IRS rules, “social welfare” activities, by definition, do not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. In addition, political activity may not be a 501(c)(4)’s “primary purpose.” The Board’s investigation discovered that supporting Jeff Brown’s Mayoral campaign appears to be the 501(c)(4)’s primary purpose, if primary purpose is measured by the percentage of its expenditures dedicated to that purpose.

the 501(c)(4) include 614 S. 4th Street, Box 334, Philadelphia, PA 19147 and 614 S. 4th Street #344, Philadelphia, PA 19147.

5. According to the PAC's registration statement, it maintains a mailing address at 614 S. 4th Street, Unit #334, Philadelphia, PA 19147. *See* Exhibit A.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction under Philadelphia Code Section 4-1100 which expressly authorizes the Board to bring an enforcement action in the Court of Common Pleas.

7. Venue is proper in this Court because the 501(c)(4) and the PAC are resident in Philadelphia County and the transactions and occurrences underlying this action occurred in Philadelphia County.

III. STATEMENT OF FACTS

8. David Maser is the Chairperson and Treasurer of the 501(c)(4).

9. David Maser is also the Chairperson of the PAC.

10. Olivia Scanlon is the Deputy Campaign Manager for Jeff Brown for Mayor. Scanlon was previously For a Better Philadelphia's fundraising consultant.⁸

11. Jeff Brown is a candidate in the 2023 Philadelphia Mayoral election. He formally announced his candidacy on November 16, 2022.

12. On September 13, 2022, the 501(c)(4) contributed \$2,475,000.00 to the PAC. *See* Exhibit F, at 3.

13. The PAC's 2022 expenditures totaled \$1,133,830.00. *Id.* at 1.

14. For the period of January 1 - March 27, 2023, the PAC's expenditures totaled \$1,698,044.54. *See* Exhibit AD, at 1.

⁸ *See* Exhibit AC, Invoices for July - September 2022 from Olivia Scanlon. The invoice is billed only to For a Better Philadelphia at PO Box 334, Philadelphia, PA 19147 without distinction between the 501(c)(4) or the PAC.

A. COORDINATED FUNDRAISING DINNERS

i. August 2, 2022 \$100,000 Per Individual Fundraising Dinner

15. The 501(c)(4) planned a dinner to be held on August 2, 2022 featuring a roundtable discussion with Brown as the keynote speaker on “the future of Philadelphia.”

16. As the keynote speaker for the fundraising dinner, as well as participating in its planning, inviting of guests, and solicitation of contributions as detailed below, Brown solicited funds for and directed funds to Respondents.

17. On July 7, 2022, Scanlon emailed draft invitations to Maser and Brown. *See* Exhibit B. At the time, Scanlon was For a Better Philadelphia’s fundraising consultant.

18. The email had two draft invitations attached, one for the August 2, 2022 event and another for a September 19, 2022 event. *Id.* Counsel for Respondents has represented to Petitioner that the September 19, 2022 event did not occur.

19. The draft invitation for the August 2, 2022 event invited guests to “please join Jeff Brown for an intimate dinner and roundtable discussion on the future of Philadelphia” with a cost of \$100,000 per individual, stating that “contributions support For a Better Philadelphia.” *See* Exhibit C.

20. A contribution form for the 501(c)(4) was attached to the dinner invitation, which stated that contributions “may be used for activities of ‘For a Better Philadelphia’ *and its affiliated PACs* at ‘For a Better Philadelphia’s’ discretion.” *Id.* (emphasis added).

21. On July 14, 2022, Scanlon emailed a chart to Maser updating him on the status of invitees to the August 2, 2022 dinner and the pledged contributions to date. *See* Exhibit D.

22. The chart included several references to an individual identified as “Jeff” and that individual’s interactions with potential donors in anticipation of the dinner. *Id.*

23. On July 20, 2022, Scanlon sent another chart, this time to both Maser and Brown with further updates. *See* Exhibit E.

24. This updated chart also referenced “Jeff” as well as an individual identified as “JB” and interactions that “Jeff” and “JB” had with potential donors ahead of the dinner. *Id.*

25. According to the July 20 chart, individuals who had confirmed their attendance at the event by that date had pledged at least \$1 million in total contributions. *Id.* at 2.

26. The chart also indicated that individuals who had confirmed were given the choice of whether to donate to the 501(c)(4) or the PAC. *Id.*

27. Of the individuals who had pledged contributions and had confirmed their attendance at the event, nine individuals chose to donate to the 501(c)(4). *Id.*

28. Three individuals chose to donate to the PAC. *Id.*

29. According to the July 20, 2022 chart, one of the individuals who chose to donate to the PAC, David Haas, pledged \$25,000.00. *Id.* A donation of \$25,000.10 from David Haas was subsequently disclosed in the PAC’s publicly available 2022 Annual Campaign Finance Report (Cycle 7). *See* Exhibit F, at 3. The notes for David Haas on the previous July 14 chart stated that Haas had “asked to see guest list which Jeff promised to send by 7/14.” *See* Exhibit D at 2.

30. The July 20 chart also indicated a commitment from another single individual donor (“Individual Donor #1”) for a matching contribution multiplier of \$336,250.00. *See* Exhibit E at 2.

31. Notes from the July 20 chart state that Individual Donor #1 would be unable to attend the dinner because Individual Donor #1 would be out of the country. *Id.*

32. On July 31, 2022, Scanlon emailed Brown a spreadsheet about the August 2 dinner which she intended to share with Individual Donor #1. *See* Exhibit G.

33. Scanlon wrote to Brown:

JB,

I played with the numbers a little bit here to get the full 400K [Individual Donor #1] match. I included the total giving amount in case [Individual Donor #1 is] feeling generous and wants to contribute 25% of the total giving in the room that night rather than just what's new :)

Let me know if you have any edits and we should probably call [Individual Donor #1] tomorrow to discuss.

Id at 1-2.

34. Maser replied to Scanlon's email later that day to suggest that the spreadsheet not be shared with Individual Donor #1, "as donors are anonymous." *Id.* at 1.

35. Maser continued, "That being said, if [Individual Donor #1] needs to know to make [Individual Donor #1's] 25% match I'd prefer to read [Individual Donor #1] a list over the phone and not email [Individual Donor #1] this kind of detail." *Id.*

36. Brown replied, by directing Scanlon, "Olivia, See if that works with [Individual Donor #1.]" *Id.*

ii. September 13, 2022 "Roundtable Dinner and Discussion with Jeff Brown"

37. Although Individual Donor #1 did not attend the August 2, 2022 dinner, at least one additional fundraising dinner occurred thereafter at a restaurant called Steak 48, which Individual Donor #1 did attend.

38. By participating in the planning of the dinner, inviting of guests, soliciting contributions, attending, and speaking at the dinner as detailed below, Brown solicited funds for and directed funds to Respondents.

39. On August 3, 2022, Scanlon emailed Maser and Brown asking them to review a guest list of those who attended the August 2, 2022 dinner before sending it to Individual Donor #1. *See* Exhibit H.

40. On September 12, 2022, Scanlon emailed Individual Donor #1, copying Brown, and thanking Individual Donor #1 for confirming their attendance at a “Roundtable Dinner & Discussion with Jeff Brown” to be held on September 13, 2022 at 6:00 pm at Steak 48. *See* Exhibit I.

41. Thereafter, on September 13, 2022 at 10:34 pm, Scanlon emailed Individual Donor #1, thanking Individual Donor #1 for their attendance at the dinner and their “generous support of For a Better Philadelphia” and asking at what address Scanlon should pick up a check. *Id.*

42. The September 13, 2022 email included a contribution form for “For a Better Philadelphia” which stated: “Contributions may be used for activities of ‘For a Better Philadelphia’ and its affiliated PACs at ‘For a Better Philadelphia’s’ discretion.” *See* Exhibit J (emphasis added).

43. On September 13, 2022, Steak 48 – Philadelphia emailed Scanlon confirming that a card belonging to Maser was charged for “Event: Fund Raising Dinner on Tue, Sep 13, 2022.” *See* Exhibit K.

B. BROWN REGULARLY FUNDRAISED FOR FOR A BETTER PHILADELPHIA THROUGHOUT 2022

44. On May 18, 2022, Scanlon emailed another individual (“Individual Donor #2”) to thank Individual Donor #2 for letting her join Individual Donor #2 and Brown for dinner on May 16, 2022. Scanlon wrote that Brown had asked her to send the individual a contribution form “to

make another \$50,000 contribution to For a Better Philadelphia.” Both Brown and Maser are copied on the email. *See* Exhibit L.

45. In or around July 2022, a former candidate (“Former Candidate”) for federal elective office earlier in the year joined the fundraising efforts of Brown, Maser, and Scanlon.

46. On July 7, 2022, Scanlon sent Maser a call list of potential donors to be contacted by Former Candidate. *See* Exhibit M.

47. Later on July 7, 2022 Scanlon emailed Brown, Maser, and Former Candidate, writing: “[Former Candidate], Thanks for getting back in the saddle and doing calls with me today.” *See* Exhibit N.

48. In the same email, Scanlon directed Brown and Maser’s attention to a table in the email containing notes recapping the calls. *Id.*

49. One of the notes next to a potential donor reads: “Connected – Not interested in the Philadelphia Mayor’s race.” *Id.*

50. A note about other potential donors reads: “Connected . . . they have not committed much thought to the Mayor’s race yet this cycle.” *Id.*

51. On July 12, 2022, Scanlon emailed Former Candidate to check “how the day went” with another potential donor and “if there’s an opportunity to arrange a meeting between [the potential donor], you and Jeff before September.” *Id.*

52. Former Candidate responded by asking Scanlon for the best number to call her at, to which she replied by providing the number, copying both Brown and Maser. *Id.*

53. On July 19, 2022, Scanlon emailed another potential donor, writing:

Thank you very much for meeting with us this morning. Attached please find the form to contribute to For a Better Philadelphia. Please let us know if you have any questions.

Many thanks again - Jeff is looking forward to continuing our conversation with you in the coming weeks and months.

Both Brown and Maser are copied on the email. *See* Exhibit O.

C. **THE 501(C)(4) AND THE PAC ARE PART OF THE SAME ENTERPRISE**

54. As previously stated, Scanlon was the fundraising consultant for an enterprise referred to generally as “For a Better Philadelphia.”

55. Also, as previously stated, Maser is the Chairperson and Treasurer of the 501(c)(4) and the Chairperson of the PAC.

56. On October 24, 2022, Scanlon emailed a potential donor, stating “Jeff let me know you connected earlier this month and were willing to contribute your \$100,000 pledge into **our publicly reported entity**, the For a Better Philadelphia PAC. I’m attaching the contribution form here and connecting you with David Maser, the chair of For a Better Philadelphia.” *See* Exhibit P, at 2 (emphasis added).

57. Maser continued to follow up with the potential donor through at least January 26, 2023. *Id.*

58. Also on October 24, 2022, Scanlon sent an email introducing Maser to a “close friend and supporter” of Brown (“Friend”). Scanlon wrote that “[Friend] has some strategy insights to discuss with you and Dan. [Friend], David is an attorney and the chair of For a Better Philadelphia, the C4 that you generously supported over the summer.” *See* Exhibit Q, at 2.

59. Replying to Scanlon’s message, Maser confirmed a meeting at Friend’s house for 9:00 am on Friday, October 28, 2022 and copied an individual named Dan Siegel. *Id.*

60. Dan Siegel is the President of Highpoint Campaigns and has been identified in media reports as a spokesperson and consultant for the PAC.

61. Highpoint Campaigns has been paid by both the 501(c)(4) and the PAC. *See* Exhibit R.

62. The 501(c)(4) and the PAC share other common vendors, including an entity called Donohoe Partners, Inc. Both the 501(c)(4) and the PAC have made multiple six-figure expenditures to Donohoe Partners, Inc., sometimes even on the same day as was the case on February 17, 2023. *See* Exhibit S.

i. The 501(c)(4) provided nearly all of the PAC's funds in 2022.

63. The 501(c)(4)'s September 14, 2022 contribution of \$2,475,000.00 to the PAC represents 81% of the total contributions received by the PAC in 2022.

64. On September 23, 2022, the 501(c)(4) sent \$500,000.00 by wire transfer to another IRS tax-exempt organization called MAP USA. *See* Exhibit T.

65. On November 1, 2022, MAP USA contributed \$350,000.00 to the PAC. *See* Exhibit F, at 3.

66. On November 23, 2022, an organization called Patriot Majority USA contributed \$150,000.00 to the PAC. *Id.* at 4.

67. Patriot Majority USA is a 501(c)(4) organization that reports to the IRS that it has the same principal officer as MAP USA. *See* Exhibit U.

68. The 501(c)(4)'s \$2,475,000 contribution to the PAC combined with the additional \$500,000.00 the 501(c)(4) indirectly relayed to the PAC (via MAP USA and its affiliate Patriot Majority USA) total \$2,975,000.00, which is more than 98% of the total monetary contributions received by the PAC in 2022.

D. JEFF BROWN'S AGENTS CONTINUED COLLABORATING WITH FOR A BETTER PHILADELPHIA AFTER BROWN DECLARED HIS CANDIDACY

i. Sports Team Meeting

69. On September 8, 2022, a Philadelphia professional sports team (the “Sports Team”) contributed \$250,000.00 to the 501(c)(4), after an entity controlled by one of the Sports Team’s collaborators had already contributed a total of \$150,000.00 to the 501(c)(4). *See* Exhibit V.

70. On November 16, 2022, Brown formally launched his Mayoral campaign as “Jeff Brown for Mayor.” Scanlon joined the campaign as Deputy Campaign Manager.

71. On November 30, 2022, Maser (on behalf of the Sports Team’s parent company) emailed James “Jimmy” Cauley, campaign manager for Jeff Brown for Mayor to “schedule a briefing with Jeff Brown and his campaign team.” *See* Exhibit W, at 2.

72. On January 3, 2023, Scanlon sent an email on the campaign’s behalf to the scheduled briefing attendees to confirm the meeting was set for January 4, 2023. *Id.* at 1.

ii. Maser refers fundraisers to Jeff Brown for Mayor

73. On December 6, 2022, Scanlon emailed a potential fundraiser:

Hi [potential fundraiser’s name],

I hope this finds you well. I received your contact info from David Maser, who shared that you’re interested in hosting a fundraising event for Jeff in the new year.

Do you have a few minutes to connect by phone this afternoon or tomorrow? I’m available by cell at your convenience or am happy to schedule a time to connect.

Best,

Olivia Scanlon
Jeff Brown for Mayor
[XXX-XXX-XXXX] (cell)

See Exhibit X.

iii. **Scanlon sends Maser fundraising information she retained after joining the Brown campaign**

74. On December 14, 2022, Scanlon emailed Maser an Excel file containing a summary of all fundraising for For a Better Philadelphia to date. *See* Exhibit Y.

iv. **Maser shares policy suggestions with Brown campaign manager**

75. On February 1, 2023, Maser emailed James Cauley with a policy suggestion: “we need something similar for L&I in philadelphia [sic]: <https://www.penncapital-star.com/working-the-economy/shapiro-launches-review-to-mitigate-red-tape-in-pa-professional-licensure-process/>.” *See* Exhibit Z.

E. **BROWN’S SUPER STORES, INC. CONTRIBUTES \$1,000,000.00 TO THE 501(C)(4) IN 2023**

76. Brown was until recently the Chairman and CEO of Brown’s Super Stores, Inc. According to the Pennsylvania Department of State Business Entity Search, Jeff Brown is the President and Treasurer of Brown’s Super Stores, Inc.

77. On January 24, 2023, the 501(c)(4) received a \$500,000.00 wire transfer from Brown’s Super Stores, Inc. *See* Exhibit AB.

78. On February 24, 2023, the 501(c)(4) received another \$500,000.00 wire transfer from Brown’s Super Stores, Inc. *Id.*

79. On March 28, 2023, the 501(c)(4) received an additional \$250,000.00 wire transfer from Brown’s Super Stores, Inc. *Id.*⁹

F. **FOR A BETTER PHILADELPHIA CONTINUES TO MAKE COORDINATED EXPENDITURES IN 2023**

⁹ Under Pennsylvania state law, corporations are prohibited from “making a contribution or expenditure in connection with the election of any candidate for any political purpose whatever” 25 P.S. § 3253.

80. According to the PAC's 2023 6th Tuesday Pre-Primary Campaign Finance Report (Cycle 1), it had made a total of \$1,698,044.54 in expenditures to influence the outcome of the 2023 election from January 1, 2023 to March 27, 2023. *See* Exhibit AD, at 1.

81. The PAC's 2023 expenditures include the following expenditures to Donohoe Partners, Inc.: \$350,000.00 on January 13, 2023; \$250,000.00 on February 17, 2023; and \$100,000.00 on March 17, 2023, each for "Paid Field Canvassing Literature and Yard Signs [sic]." *Id.* at 5.

82. The PAC also made nine expenditures in 2023, for a combined \$672,871.74, with the description "Media Buy" to Fortune Media Inc, an advertising consultant that places television advertisements supporting Brown's candidacy on behalf of For a Better Philadelphia. *Id.* at 6-8.

83. The PAC's 2023 expenditures further include the following expenditures to High Point Campaigns Ltd.: \$10,649.75 on January 31, 2023 for "Direct Mail Billing and Postage"; \$30,132.71 on March 9, 2023 for "Management Consulting Direct Mail Reimbursement for Dropbox Trint and Gsuite [sic]"; and \$35,382.50 on March 27, 2023 for "Direct mail and postage." *Id.* at 8-9.

84. Upon information and belief, field canvassing, distribution of literature, distribution of yard signs, and direct mail to influence the outcome of the election are ongoing as of the date of filing of this Petition.

**IV. ALLEGED VIOLATIONS OF PHILADELPHIA'S
CAMPAIGN FINANCE LAW**

**COUNT I – MULTIPLE AND CONTINUING VIOLATIONS¹⁰ OF
PHILADELPHIA CODE § 20-1002;**

¹⁰ As a threshold matter, because Respondents continue to make expenditures, and required campaign finance filings are not updated in real-time, the precise number of and full scope Respondents' violations have yet to be ascertained.

**BOARD REGULATION NO. 1, SUBPART B
CONTRIBUTION LIMITS**

**RESPONDENTS FOR A BETTER PHILADELPHIA 501(c)(4) and FOR A BETTER
PHILADELPHIA PAC, COLLECTIVELY, FOR A BETTER PHILADELPHIA**

85. Petitioner incorporates paragraphs 1 through 84 above as though the same were set forth fully herein.

86. As evidenced above, Brown solicited money for and directed funds to Respondents within the twelve months prior to the May 16, 2023, including such activity exactly one year prior to the election.

87. Brown's fundraising activity continued throughout 2022 into, at least, Autumn 2022.

88. The 501(c)(4)'s \$2,475,000.00 contribution to the PAC occurred on September 14, 2022 and the PAC did not make its first expenditure until November 30, 2022. *See* Exhibit F, at 3, 7.

89. Therefore, all of Respondents' expenditures to influence the outcome of the 2023 Mayoral election occurred after Brown had already engaged in fundraising activity on Respondents' behalf.

90. Because Brown's fundraising activity occurred prior to any of Respondents' expenditures being made, all of Respondents' past and future expenditures are or will be considered coordinated with Brown's campaign.

91. Accordingly, all the expenditures made or yet to be made by Respondents are in-kind contributions to Brown's campaign and are subject to the contribution limits.

92. Each of Respondents' expenditures that exceeds the contribution limits is illegal.

A. **BOTH THE 501(C)(4) AND THE PAC ARE LIABLE FOR EACH VIOLATION**

93. The Board's Regulations require that Respondents' coordinated expenditures in support of Brown be attributed to both the 501(c)(4) and the PAC.

94. Under Board Regulation 1.4(a)(ii), a contribution is made through another person, such as a political committee like the PAC, when:

A person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/ first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign.

95. Under Board Regulation 1.4(b), "the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made."

96. Since the 501(c)(4) provided more than half of the donations received by the PAC, the entire amount of the contributions the 501(c)(4) made through the PAC count toward the contribution limits for both the 501(c)(4) and the PAC. Thus, both are liable for violations of the limits.

97. Both Respondents are also liable for each violation of the contribution limits because they are part of the same enterprise.

98. It is important to note at the outset that nothing in the law prohibits a 501(c)(4) from having an affiliated PAC nor does the law prohibit such a PAC from spending to influence an election. Here, the fiction that the 501(c)(4) and the PAC are separate entities deserves scrutiny only because of coordinated activity which triggers the campaign contribution limits and the resulting and continuing violations of those limits. That is, because Maser's coordination

with Brown to circumvent the contribution limits represents the very kind of unlawful activity an equitable remedy is meant to prevent.

99. Under “enterprise” liability, “just as a corporation’s owner or owners may be held liable for judgments against the corporation when equity requires, so may affiliated or ‘sister’ corporations—corporations with common ownership, engaged in a unitary commercial endeavor—be held liable for each other’s debts or judgments.” *Mortimer v. McCool*, 255 A.3d 261, 266 (Pa. 2021).

100. The Pennsylvania Supreme Court adopted a two-pronged test for whether enterprise liability should apply:

First, there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and second, adherence to the corporate fiction under the circumstances would sanction fraud or promote injustice. . . .

The second element . . . —that there be some fraud, wrong or injustice—seems to be nothing more than a restatement of the basic starting point that piercing is an equitable remedy used to prevent injustice. . . .

Id. at 286–87.

101. Both prongs are plainly satisfied when applied to For a Better Philadelphia’s constituent entities the 501(c)(4) and the PAC.

102. Regarding unity of interest and ownership, the Chair of both entities is Maser, who exercises complete control. For example, he conducts business on behalf of each using his personal Gmail account. Further, both entities share identical addresses, if not simply different mailboxes in the same building. The unified interest of both entities is to support Brown’s candidacy, with the 501(c)(4) serving as the fundraising arm to supplement the PAC as the political expenditure arm. The fundraising activity of For a Better Philadelphia ran through the

same individual, Scanlon, who also conducted that activity using her personal Gmail account. Finally, Brown himself did not distinguish upon which entity's behalf his own fundraising activities occurred.

103. Furthermore, adherence to the fiction that the 501(c)(4) and the PAC are separate entities would sanction fraud or promote injustice as For a Better Philadelphia's activity facially circumvents the contribution limits in violation of the Campaign Finance Law.

104. In essence, adhering to this fiction enables the 501(c)(4) to raise money in coordination with a campaign for the purpose of making expenditures to influence the outcome of the election, but completely unfettered by contribution limits.

B. INJUNCTIVE RELIEF IS NOT ONLY AUTHORIZED BUT WARRANTED IN THIS MATTER BECAUSE RESPONDENTS CONTINUE TO BREAK THE LAW

105. The City's Campaign Finance Law provides for injunctive relief to "enjoin any violations of, or to compel compliance with" its provisions. Philadelphia Code Section 20-1005.

106. Pennsylvania courts "have the power to prevent or restrain the commission or continuance of acts contrary to law and prejudicial to the interests of the community or the rights of individuals." *Bruhin v. Commonwealth of Pa., et al.*, 320 A.2d 907, 910 (Pa. Commw. Ct. 1974).

107. The Pennsylvania Supreme Court has opined that:

[T]o establish a claim for a permanent injunction, the party must establish his or her clear right to relief. However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.

Buffalo Twp. v. Jones, 813 A.2d 659, 663 (Pa. 2002) (internal quotations and citations omitted).

108. Petitioner has established its claim for a permanent injunction because it has established a clear right to relief.

109. For a Better Philadelphia's coordinated activity with Brown in the form of Brown's solicitation of funds for and direction of funds to For a Better Philadelphia is indisputable based upon the facts and supporting documents.

110. For at least a year prior to the election, Brown was intimately and significantly involved with For a Better Philadelphia's raising of funds from an extensive donor network in the Greater Philadelphia region and beyond.

111. In addition, a permanent injunction is appropriate because there is no adequate redress at law to remedy For a Better Philadelphia's continued expenditures to influence the election and continued violation of the Campaign Finance Law, except an Order from this Court telling Respondents to cease and desist the expenditures.

112. Neither should Respondents be able to benefit from expenditures already made but where goods and services in the form of e.g., advertising, mailers, posters, flyers, letters, canvassing, etc. have yet to be distributed or completed.

113. Moreover, as evidenced by Brown's Super Stores, Inc.'s 2023 wire transfers, an injunction is necessary because For a Better Philadelphia's bank accounts may be replenished with millions of dollars at any time. Because the transfer of money to For a Better Philadelphia, and more specifically to the 501(c)(4), is not in and of itself illegal, this Court should instead halt For a Better Philadelphia's expenditures that would violate the City's contribution limits.

114. An injunction is the only remedy for Respondents' continuing disregard of the law.

115. Alternatively, temporary injunctive relief tailored to prevent imminent and ongoing harm from Respondents' past, current, and future expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia, would also be an appropriate remedy.

116. In Pennsylvania:

[T]o establish a right to preliminary injunctive relief, a petitioner must establish the following prerequisites:

(1) the injunctive relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to the status quo as it existed before the alleged wrongful conduct; (4) the activity that is sought to be restrained is actionable, the petitioner's right to relief is clear, and the wrong is manifest, or, in short, that the petitioner is likely to succeed on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the public interest will not be harmed by granting the injunction.”

J.B. v. Pennsylvania State Police, 288 A.3d 946, 950 (Pa. Commw. Ct. 2023).

117. All factors above are easily satisfied in the instant matter.

118. Respondents' continuing violations of the contribution limits are an immediate and irreparable harm to the citizens of Philadelphia since the fruits of Respondents' expenditures and violations of the law cannot be reversed. Such harm is compounded by the passage of time and proximity to the primary election.

119. Absent immediate injunctive relief, Respondents can continue to illegally influence the Mayoral election and undermine the Campaign Finance Law, posing an increasing threat to the integrity of the City's municipal elections.

120. Injunctive relief will restore the status quo; that is, it will properly make all campaigns and donors subject to the same limit on contributions, including in-kind contributions resulting from coordinated expenditures.

121. Petitioner has established a likelihood of success on the merits as the coordinated activity between For a Better Philadelphia and Brown that lies at the heart of this matter has been well-documented and is clearly subject to longstanding regulation.

122. Enjoining Respondents' activity is reasonably suited to abate its continuing illegal activity, because retrospective relief, for example in the succeeding months after the Mayoral election, would only be moot, as Respondents' expenditures and the benefits from those expenditures will have already been reaped.

123. Finally, it is clear that the public interest will not be harmed by granting the injunction. To the contrary, the public interest will be greatly served by subjecting Respondents to the same contribution limits as any other entity that makes coordinated expenditures to influence the outcome of the election – contribution limits which serve the public interest by preventing political corruption or the appearance of political corruption.

C. IN ADDITION TO INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES SHOULD BE IMPOSED

124. Pursuant to Philadelphia Code Section 20-1301(1) and Board Regulation No. 1.45, a contributor who makes an excess contribution shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

125. While the exact number of Respondents' contributions in excess of the limits, and thus the exact number violations, has not yet been ascertained at this time (*see supra* n. 10), the

Board estimates that, at a minimum, the following violations have occurred and are subject to individual penalties.

126. According to the PAC's 2022 Annual Campaign Finance Report (Cycle 7), the PAC exceeded the undoubled 2022 limit on December 5, 2022, when it made a \$501,737.50 coordinated expenditure to Fortune Media Inc. *See* Exhibit F, at 6.

127. The PAC thereafter reported making six additional expenditures in 2022, each of which constitutes a separate violation of the contribution limits. *Id.*

128. Therefore, for Respondents' 2022 violations, the maximum penalty allowable by law is \$14,000 subject to further expenditures yet to be discovered.

129. In 2023, based on campaign finance filings to date, Respondents have exceeded the contribution limits at least seventy-four times.

130. According to the PAC's 2023 6th Tuesday Pre-Primary Campaign Finance Report (Cycle 1), the PAC exceeded the doubled limit on January 9, 2023 when it made a \$33,350.00 expenditure to Riverside Solutions LLC. *See* Exhibit AD, at 12.

131. The PAC thereafter reported making seventy-three additional expenditures each of which constitutes a separate violation of the contribution limits. *Id.*

132. Therefore Respondents' 2023 violations result in, at a minimum, a civil monetary penalty of \$148,000 subject to further expenditures yet to be discovered.

V. RELIEF REQUESTED

Respondents' extensive and deliberate scheme to circumvent the City's campaign contribution limits denies the electorate key information about the funding of City campaigns and poses a threat to the integrity of Philadelphia's municipal elections. To protect the

democratic process and trust in City government and elections, this Court must act to immediately stop Respondents' continuing coordinated expenditures.

WHEREFORE, Petitioner prays for judgment against Respondents as follows:

- (i) a judgment that Respondents violated Philadelphia Code Section 20-1002(2);
- (ii) an order from the Court directing Respondents to immediately:
 - (a) cease and desist from making any further expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (b) cancel any and all outstanding or unfulfilled orders for goods, services, or other deliverables from third parties, whether placed through intermediaries or otherwise, including, but not limited to all television and other media ad buys with both advertising agents and television stations; and
 - (c) refrain from distributing, disseminating, airing, emailing, or in any other way delivering to the electorate the goods, services, or other deliverables resulting from Respondents' expenditures made to date to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (d) refrain from transferring any money to any other individuals, entities, or persons whether directly or indirectly, which have made or will make expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia;

(iii) a civil monetary penalty of \$2,000.00 for each violation, the final number of which to be determined by the Court;

(iv) any other relief the Court deems just and proper.

ALTERNATIVELY, Petitioner prays for temporary injunctive relief imposing the same restrictions described above in paragraph V(ii) to prevent imminent and ongoing harm from Respondents' past, current, and future expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia.

Respectfully submitted,

BY: */s J. Shane Creamer, Jr.*
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

Richard Barzaga, Esquire
Senior Staff Attorney

Michael Gutierrez, Esquire
Senior Staff Attorney

Attorneys for Petitioner
Philadelphia Board of Ethics

Date: April 10, 2023

VERIFICATION

I, J. Shane Creamer, Jr., Executive Director of the Philadelphia Board of Ethics hereby state that I am the Attorney for Petitioner Philadelphia Board of Ethics in this action; that I am authorized to make this Verification; that I have personal knowledge of the statements made in the foregoing Petition; and that the statements made in the Petition are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

BY: */s J. Shane Creamer, Jr.*
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

Date: April 10, 2023

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Filed and Attested by the
Office of Judicial Records
14 APR 2023 04:10 pm
I. LOWELL



Philadelphia Board of Ethics

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Philadelphia Board of Ethics

One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

NOTICE TO DEFEND

NOTICE	AVISO
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p><i>You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.</i></p> <p style="text-align: center;">Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascntar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.</p> <p><i>Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.</i></p> <p style="text-align: center;">Asociacion De Licenciados De Filadelfia Servicio De Referencia E Informacion Legal One Reading Center Filadelfia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>

**COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS
AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND
FOR A BETTER PHILADELPHIA PAC**

Plaintiff Philadelphia Board of Ethics (“Plaintiff” or the “Board”), by and through its undersigned counsel, respectfully applies to this Court for an Order compelling the above-named Defendants For a Better Philadelphia 501(c)(4) (the “501(c)(4)”) and For a Better Philadelphia PAC (the “PAC”), collectively, “For a Better Philadelphia” or “Defendants”, to cease continuing violations and to halt imminent and future violations of the City of Philadelphia’s Campaign Finance Law and imposing on Defendants civil monetary penalties, as authorized under the Philadelphia Home Rule Charter and Philadelphia Code.¹ In support thereof the Board avers as follows:

PARTIES

1. The Board is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law, which is found at Philadelphia Code, Chapter 20-1000, *et seq.* Pursuant to Home Rule Charter Section 4-1100, the Board may seek enforcement of the Campaign Finance Law in the Court of Common Pleas and pursuant to Philadelphia Code Section 20-1005, the Board may seek injunctive relief to enjoin violations of the Campaign Finance Law.²

¹ The Board incorporates herein by reference its Emergency Petition to Enforce Philadelphia’s Campaign Finance Law and Enjoin Continuing Violations Thereof, as filed in this action on April 10, 2023.

² The Board files this Complaint pursuant to the Court’s Order of April 10, 2023 to ensure that this time-sensitive matter proceeds expeditiously. The Board does not intend to, nor does, waive any arguments regarding the use of a Petition to initiate an enforcement proceeding in the Court of Common Pleas under the Campaign Finance Law or any other provisions of the Philadelphia Code or Philadelphia Home Rule Charter in this or any future proceeding. *See, e.g.,* Local Rule of Civil Procedure 206.1(a)(viii) (providing for “Statutory Petitions”); *Chaney v. Fairmount Park Real Est. Corp.*, No. 2388 C.D. 2011, 2012 WL 8704658, at *3 (Pa. Commw. Ct. June 25, 2012) (finding petition for relief based on statutory rights falls within plain meaning of “statutory petitions” authorized by Phila. Civ. R. 206.1(a)(viii)).

2. The 501(c)(4) is a Pennsylvania non-profit corporation registered with the Internal Revenue Service as a tax-exempt, non-profit, social welfare organization.

3. The PAC is a political committee that filed a registration statement with the Philadelphia City Commissioners on August 10, 2022.

4. The 501(c)(4)'s address is 614 S. 4th Street, PO Box 324, Philadelphia, PA 19147. Other known addresses for the 501(c)(4) include 614 S. 4th Street, Box 334, Philadelphia, PA 19147 and 614 S. 4th Street #344, Philadelphia, PA 19147.

5. The PAC's address is 614 S. 4th Street, Unit #334, Philadelphia, PA 19147.

JURISDICTION AND VENUE

6. This Court has jurisdiction under Philadelphia Code Section 4-1100 which authorizes the Board to bring an enforcement action in the Court of Common Pleas.

7. Venue is proper in this Court because the 501(c)(4) and the PAC are resident in Philadelphia County and the transactions and occurrences underlying this action occurred in Philadelphia County.

STATEMENT OF FACTS

8. David Maser is the Chairperson and Treasurer of the 501(c)(4).

9. David Maser is also the Chairperson of the PAC.

10. Olivia Scanlon is the Deputy Campaign Manager for Jeff Brown for Mayor, who was previously For a Better Philadelphia's fundraising consultant until she joined Jeff Brown for Mayor.

11. Jeff Brown is a candidate in the 2023 Democratic primary election for Mayor of Philadelphia. Brown publicly declared his candidacy on November 16, 2022.

12. Jeff Brown for Mayor is Jeff Brown's candidate political committee.

13. Defendants coordinated with Brown as defined in Board Regulation No. 1 prior to Defendants making expenditures to influence the outcome of the primary election, such that all of Defendants' expenditures are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor.

14. Upon information and belief, Defendants' coordination with Brown includes, but is not limited to, Brown soliciting funds for and/or directing funds to Defendants within the twelve months prior to the May 16, 2023 Democratic primary election for Mayor.

15. Upon information and belief, Brown solicited funds for and/or directed funds to Defendants throughout, but not limited to, 2022.

16. Upon information and belief, Brown's fundraising-related activity for Defendants includes, but is not limited to, the following:

i. **May 16, 2022**: Brown had dinner with a potential donor, after which

Scanlon emailed the potential donor and copied Brown, writing:

Thank for your letting me join you and Jeff for dinner on Monday night. Jeff asked me to send you the contribution form to make another \$50,000 contribution to For a Better Philadelphia.

If interested, we'd love to have you come by our office next month and see some of the materials we've put together as well as our findings from recent focus groups. Let me know if this would be of interest and I'd be happy to set it up.

Thank you again for your support,
Olivia

ii. **July 7, 2022**: Scanlon emailed a draft invitation to Maser and Brown for a fundraising dinner for For a Better Philadelphia's benefit with a cost of attendance of \$100,000 per individual featuring an "intimate dinner and roundtable discussion on the future of Philadelphia" with Brown. Scanlon further wrote: "We can discuss shortly."

iii. **July 7, 2022**: Scanlon emailed Brown, Maser, and a former candidate for federal office (“Former Candidate”) regarding fundraising solicitation phone calls Former Candidate made to potential donors, directing Brown and Maser’s attention to a table in the email chain showing that the phone calls were about the 2023 Philadelphia Mayoral election.

iv. **July 14, 2022**: Scanlon copied Brown and Maser on an email chain, where a previous email from Scanlon to Former Candidate on July 12, 2022 read: “Checking in to see how the day went with [potential donor] on Sunday and if there’s an opportunity to arrange a meeting between him, you and Jeff before September.”

v. **July 14, 2022**: Scanlon sent Maser a chart about the August 2, 2022 dinner which included several references to an individual identified as “Jeff” and that individual’s interactions with potential donors prior to the dinner.

vi. **July 19, 2022**: Scanlon copied Brown and Maser on an email to a potential donor, which read:

Thank you very much for meeting with us this morning. Attached please find the form to contribute to For a Better Philadelphia. Please let us know if you have any questions.

Many thanks again - Jeff is looking forward to continuing our conversation with you in the coming weeks and months.”

vii. **July 20, 2022**: Scanlon sent a chart to Maser and Brown regarding the August 2, 2022 dinner which also referenced “Jeff” as well as an individual identified as “JB” and interactions that “Jeff” and “JB” had with potential donors ahead of the dinner.

viii. **July 31, 2022**: Scanlon emailed Brown a spreadsheet about the upcoming August 2, 2022 dinner which she intended to share with a potential donor, Individual Donor #1, who was out of the country until August 30, 2022. Scanlon wrote to Brown:

JB,

I played with the numbers a little bit here to get the full 400K [Individual Donor #1] match. I included the total giving amount in case [Individual Donor #1 is] feeling generous and wants to contribute 25% of the total giving in the room that night rather than just what's new :)

Let me know if you have any edits and we should probably call [Individual Donor #1] tomorrow to discuss.

Maser replied to Scanlon and suggested that the spreadsheet not be read out loud to Individual Donor #1. Brown replied and directed Scanlon: "Olivia, See if that works with [Individual Donor #1]. Thank you, Jeff Brown." At this time, For a Better Philadelphia was planning a September fundraising dinner that Individual Donor #1 could attend.

ix. **August 2, 2022**: Brown attended the above-referenced fundraising dinner supporting For a Better Philadelphia which featured a roundtable discussion with him speaking on the "future of Philadelphia."

x. **August 3, 2022**: Scanlon emailed Maser and Brown, in advance of the September fundraising dinner, asking them to review a guest list of those who attended the August 2, 2022 dinner before sending it to Individual Donor #1, writing:

Please take a look at the second page – I want to be transparent that we're counting some money from folks that didn't attend but demonstrate that they are new dollars intended for it. Could be overthinking.

Let me know if you want to include or remove before I send to [Individual Donor #1]. Thanks, Olivia.

Maser replied to Scanlon, writing: "I think it's fine, a little transparency is a good thing."

xi. **September 12, 2022**: Scanlon emailed Individual Donor #1, copying Brown, and writing, part:

Thank you for your RSVP to attend tomorrow's roundtable dinner with Jeff Brown in support of For a Better Philadelphia. Please find attached the form with which to make a contribution. If you'd prefer you are welcome to bring a check with you to the dinner.

Roundtable Dinner & Discussion with Jeff Brown
Tuesday, September 13, 2022 | 6:00 PM
Steak 48 | 260 S Broad St, Philadelphia, PA 19102

Please let me know if you have any dietary restrictions that I can share with the restaurant in advance or if you have any questions regarding your contribution. Thank you very much for your generous support and I look forward to seeing you tomorrow.

xii. **September 13, 2022**: Brown attended the above-referenced fundraising dinner supporting For a Better Philadelphia which featured a roundtable discussion with him.

xiii. **September 13, 2022**: Scanlon emailed Individual Donor #1 after the dinner, and copied Brown, writing:

Thank you for your attendance tonight and generous support of For a Better Philadelphia. Please send the address I should pick up the check from tomorrow morning. Additionally please find the contribution form attached to accompany your incredibly generous contribution for our compliance team.

With gratitude,
Olivia

xiv. **October 24, 2022**: On October 24, 2022, Scanlon emailed a potential donor, writing:

Hope you are well. Jeff let me know you connected earlier this month and were willing to contribute your \$100,000 pledge into our publicly reported entity, the For a Better Philadelphia PAC. I'm attaching the contribution form here and connecting you with David Maser, the chair of For a Better Philadelphia.

17. Upon information and belief, the references to “Jeff” and “JB” in the preceding paragraphs are references to Jeff Brown.

18. Based upon published reports, on April 10, 2023, Brown publicly admitted that he solicited donations for For a Better Philadelphia prior to declaring his candidacy.

19. After Brown had solicited funds for and/or directed funds to Defendants, Defendants made expenditures to influence the outcome of the 2023 Democratic primary election for Mayor in both calendar years 2022 and 2023 totaling in the millions of dollars.

20. Defendants’ expenditures exceeded the annual campaign contribution limits for 2022 and have already exceeded the annual contribution limits for 2023, and are thus violations of those limits.

21. Upon information and belief, Defendants’ expenditures to influence the outcome of the 2023 Democratic primary election for Mayor include, but are not limited to, expenditures for electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangars, field canvassing, and voter outreach.

22. Upon information and belief, Defendants’ expenditures to influence the outcome of the 2023 Democratic primary election for Mayor continued at least until this Court’s Order of April 10, 2023, or, alternatively, the goods, services, deliverables, and other things for which Defendants have already made expenditures to influence the outcome of the election continue to be distributed, disseminated, aired, emailed, or in any other way delivered to the electorate as of the date of this filing.

COUNT I
CONTINUING AND FUTURE VIOLATIONS OF THE CAMPAIGN FINANCE LAW,
CAMPAIGN CONTRIBUTION LIMITS

23. The Board hereby incorporates the previous and subsequent paragraphs as if fully set forth herein.

24. Under Philadelphia Code Section 20-1005, the Board may seek injunctive relief in any Court of competent jurisdiction to enjoin any violations of, or to compel compliance with, the provisions of the Campaign Finance Law.

25. Although the Board may seek injunctive relief, it cannot issue an order for injunctive relief and its remedies are limited to civil monetary penalties at a maximum of \$2,000 per violation.

26. Because Defendants have already violated the campaign contribution limits for 2023, any further expenditures to influence the outcome of the 2023 Democratic primary election for Mayor are also further violations of the Campaign Finance Law.

27. Because civil monetary penalties are retrospective and are imposed for past violations of the law, they are not an adequate remedy at law to avoid the legal wrong and injury caused by Defendants' continuing and future expenditures to influence the outcome of the election.

28. Because the injury arises from not only Defendants' continuing and future expenditures but also any goods, services, deliverables, and other things Defendants have ordered or contracted to be delivered to the electorate or are yet to be delivered to the electorate but already paid for, adequate injunctive relief must extend to these items as well.

29. Additionally, to safeguard against Defendants potentially bypassing the Court's Order by transferring money to other persons in order make expenditures to influence the outcome of the election, the Court must enjoin the transfer of money from Defendants to persons who have made or will make expenditures to influence the outcome of the election.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Section 20-1002(2) pertaining to campaign contribution limits;
- (ii) an order from the Court directing Defendants to immediately:
 - (a) cease and desist from making any further expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (b) cancel any and all outstanding or unfulfilled orders for goods, services, or other deliverables from third parties, whether placed through intermediaries or otherwise, including, but not limited to all television and other media ad buys with both advertising agents and television stations; and
 - (c) refrain from distributing, disseminating, airing, emailing, or in any other way delivering to the electorate the goods, services, or other deliverables resulting from Defendants' expenditures made to date to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (d) refrain from transferring any money to any other individuals, entities, or persons whether directly or indirectly, which have made or will make expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (e) any other relief the Court deems just and proper.

COUNT II
MULTIPLE VIOLATIONS OF THE CAMPAIGN FINANCE LAW, CAMPAIGN
CONTRIBUTION LIMITS

30. The Board incorporates the previous paragraphs as if fully set forth herein.

31. As set by the City's Campaign Finance Law, the annual contribution limits are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations.

32. Violations of the campaign contribution limits are subject to a maximum penalty of \$2,000 per violation.

33. Defendants exceeded the undoubled 2022 limit on December 5, 2022, when they made a \$501,737.50 expenditure to Fortune Media, Inc.

34. Thereafter, Defendants made at least six additional expenditures in 2022, each of which constitutes a separate violation of the contribution limits.

35. Therefore, for Defendants' 2022 violations, the maximum civil monetary penalty allowable by law is \$14,000 subject to further expenditures yet to be discovered or disclosed.

36. Defendants exceeded the doubled limit applicable to 2023 on January 9, 2023 when they made a \$33,350.00 expenditure to Riverside Solutions, LLC.

37. Thereafter, Defendants made at least seventy-three additional expenditures, each of which constitutes a separate violation of the contribution limits.

38. Therefore, for Defendants' 2023 violations, the maximum civil monetary penalty allowable by law is \$148,000 subject to further expenditures yet to be discovered or disclosed.

39. Because, upon information and belief, there may be violations that the Board is not aware of at this time, the Board reserves the right to seek civil monetary penalties in addition to the amounts described above.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Section 20-1002(2) pertaining to campaign contribution limits;
- (ii) a civil monetary penalty of \$2,000.00 for each violation, the final number of which to be determined by the Court; and
- (iii) any other relief the Court deems just and proper.

Respectfully submitted,

BY: */s J. Shane Creamer, Jr.*
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

Richard Barzaga, Esquire
Senior Staff Attorney

Michael Gutierrez, Esquire
Senior Staff Attorney

Attorneys for Plaintiff
Philadelphia Board of Ethics

Date: April 14, 2023

VERIFICATION

I, Michael Gutierrez, Senior Staff Attorney, Philadelphia Board of Ethics hereby state that I am the Attorney for Plaintiff Philadelphia Board of Ethics in this action, and I am authorized to make this Verification. I verify that the statement(s) made in the foregoing **COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** have been prepared based upon documents and information obtained through investigation, and based upon said documents and information, are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

BY: /s Michael Gutierrez
Michael Gutierrez, Esquire
Senior Staff Attorney
Philadelphia Board of Ethics

Date: April 14, 2023

Philadelphia Board of Ethics

One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023

No. 795

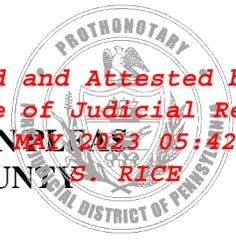
CERTIFICATE OF SERVICE

I hereby certify that on or about April 14, 2023, a true and correct copy of the foregoing
**COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST
DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER
PHILADELPHIA PAC** was served via electronic filing on all parties.

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director
Philadelphia Board of Ethics
Attorney for Plaintiff
Philadelphia Board of Ethics

Case ID: 240103181

EXHIBIT C



Filed and Attested by the
Office of Judicial Records
MAY 2023 05:42 pm

PHILADELPHIA BOARD OF ETHICS,)
)
 Plaintiff,)
)
 v.)
)
 FOR A BETTER PHILADELPHIA 501(C)(4))
)
 and)
)
 FOR A BETTER PHILADELPHIA PAC,)
)
 Defendants.)

COURT OF COMMON PLEAS)
 PHILADELPHIA COUNTY, PA)
)
)
 APRIL TERM, 2023)
)
 NO. 0795)

ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of Defendants Preliminary Objections to Plaintiff Philadelphia Board of Ethics' Complaint, it is hereby **ORDERED** that Defendants' Preliminary Objections are **SUSTAINED**.

AND IT IS FURTHER ORDERED that:

1. Count I (Continuing and Future Violations of the Campaign Finance Law, Campaign Contribution Limits) is dismissed with prejudice.
2. Count II (Multiple Violations of the Campaign Finance Law, Campaign Contribution Limits) is dismissed with prejudice.

BY THE COURT:

, J.

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*Attorneys for For a Better Philadelphia 501(c)(4)
and For a Better Philadelphia PAC*

PHILADELPHIA BOARD OF ETHICS,

Plaintiff,

v.

FOR A BETTER PHILADELPHIA 501(C)(4)

and

FOR A BETTER PHILADELPHIA PAC,

Defendants.

NOTICE TO PLEAD

TO PLAINTIFF: You are hereby notified to file a written response to the enclosed Preliminary Objection within twenty (20) days from the date of service hereof or a judgment may be entered against you.

/s/ Matthew A. White
Matthew A. White

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

APRIL TERM, 2023

NO. 0795

DEFENDANTS' PRELIMINARY OBJECTIONS

Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC (together, "For a Better Philadelphia" or "Defendants"), by and through their undersigned counsel, pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, hereby preliminarily object to the Complaint¹ filed by Plaintiff, the Philadelphia Board of Ethics (the

¹ A copy of the Complaint is attached hereto as Exhibit 1.

“Board”). In support of their Preliminary Objections, Defendants submit and incorporate herein the accompanying Memorandum of Law, and state as follows:

RELEVANT FACTS ALLEGED IN THE COMPLAINT²

1. Plaintiff Philadelphia Board of Ethics is a board established through the Philadelphia Home Rule Charter that “is charged with administering and enforcing Philadelphia’s Campaign Finance Law.” Compl. at ¶ 1.
2. Defendant For a Better Philadelphia 501(c)(4) is a Pennsylvania non-profit social welfare corporation. Compl. at ¶ 2.
3. Defendant For a Better Philadelphia PAC is an independent expenditure-only political action committee (“PAC”). Compl. at ¶ 3.
4. The Complaint alleges that between May 16, 2022 and October 24, 2022, Jeff Brown – who later became a 2023 Democratic primary candidate for Mayor of Philadelphia – engaged in fundraising activities in support of For a Better Philadelphia. Compl. at ¶ 16.
5. Jeff Brown’s fundraising activities included meeting with potential donors, being copied on or responding to e-mails regarding fundraising efforts, and attending and speaking at fundraising dinners. Compl. at ¶ 16.

² Consistent with the applicable standards for Preliminary Objections in the nature of a demurrer, all well-pleaded facts are assumed to be true. And, even accepting these facts as true, Plaintiff’s Complaint fails as a matter of law. Were this case to proceed beyond this stage, For a Better Philadelphia would dispute many of the facts alleged, and any statement in these papers is without admission of the truth or accuracy of such allegation.

6. Jeff Brown publicly declared his candidacy for Mayor of Philadelphia on November 16, 2022. Compl. at ¶ 11.

7. The Complaint alleges that For a Better Philadelphia made expenditures in 2022 and 2023 “to influence the outcome of the 2023 Democratic primary election for Mayor[,] such as “electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangars, field canvassing, and voter outreach.” Compl. at ¶¶ 19, 21.

8. The Complaint fails to identify any allegedly offending communications funded by Defendants.

9. The Complaint makes no allegation that Candidate Brown directed in any way the activities of either Defendant.

10. Nevertheless, the Complaint alleges that Mr. Brown’s fundraising, prior to his candidacy, in support of For a Better Philadelphia constitutes coordinated expenditures under Philadelphia Board of Ethics Regulation No. 1, and therefore For a Better Philadelphia’s expenditures are in-kind contributions that are subject to campaign contribution limits. Compl. at ¶ 13.

11. The Complaint further alleges that For a Better Philadelphia’s expenditures exceeded the annual campaign contribution limits for 2022 and 2023, resulting in a violation of Philadelphia’s Campaign Finance Law. Compl. at ¶ 20.

12. Plaintiff initiated this action by filing an “Emergency” Petition for Injunctive Relief. On April 24, 2023, the parties filed a Stipulation to Resolve Plaintiff’s Request for Emergency Injunctive Relief, which the Court approved also on April 24, 2023.

13. Plaintiff filed their Complaint on April 14, 2023.

14. The Complaint seeks a judgment that Defendants violated Philadelphia's Campaign Finance Law. *See* Counts I and II Wherefore Clauses and Prayer for Relief.

15. Additionally, Plaintiff seeks to enjoin Defendants from "making any further expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia[.]" *See* Count I Wherefore Clauses and Prayer for Relief.

16. Plaintiff seeks a civil penalty of \$2,000.00 for each alleged violation of the Campaign Finance Law. *See* Count II Wherefore Clauses and Prayer for Relief.

PRELIMINARY OBJECTION I

DEMURRER TO COUNTS I-II

17. Counts I-II purport to state a claim for violations of Philadelphia's Campaign Finance Law, but the plain language of the Regulation does not bar any conduct alleged in the complaint.

18. As more fully set forth in the accompanying Memorandum of Law, under Rule 1028(a)(4), Plaintiff does not state a cause of action.

19. A **Campaign** "[i]ncludes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them." Regulation No. 1, Section 1.1(d).

20. A **Candidate** is "[a]n individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office,

including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.” Section 1.1(e).

21. Thus, there is no **Campaign**, until there is a **Candidate**.

22. The gravamen of Plaintiff’s Complaint is that Defendants violated Section 1.33(d) by coordinating activities with a campaign. Under that Regulation, an expenditure is coordinated with a **Campaign**, if “[t]he **campaign** has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence.” Thus, there is no coordination unless and until Jeff Brown became a candidate.

23. Jeff Brown publicly announced his candidacy on November 16, 2022.

24. All the allegedly “coordinated” fundraising occurred prior to November 16, 2022.

25. A plain reading of this Regulation does not prohibit fundraising for an independent expenditure PAC by a person who later becomes a candidate.

WHEREFORE, For a Better Philadelphia respectfully requests that Counts I-II of the Complaint be stricken and dismissed with prejudice under Rule 1028(a)(4) for failure to state a cause of action.

PRELIMINARY OBJECTION II

DEMURRER TO COUNT I –INJUNCTIVE RELIEF IS UNCONSTITUTIONAL

26. Count I seeks an order enjoining For a Better Philadelphia from making further expenditures to influence the outcome of the 2023 elections for Mayor of Philadelphia, including in the general election in November 2023. Even if there were a violation of Philadelphia's Campaign Finance Law, such a violation does not justify an injunction that is tantamount to a prior restraint of political speech.

27. As more fully set forth in the accompanying Memorandum of Law, an injunction on expenditures for political speech in the middle of an election would violate both the Pennsylvania and United States Constitutions. Less constitutionally-infirm remedies are available to the Board to deter allegedly improper misconduct, including levying significant monetary penalties.

WHEREFORE, For a Better Philadelphia respectfully requests that Count I of the Complaint be stricken and dismissed with prejudice under Rule 1028(a)(4) for failure to state a cause of action.

Date: May 4, 2023

Respectfully submitted,

Katherine Belinski (*admitted pro hac vice*)

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/s/ Matthew A. White

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*Attorneys for For a Better Philadelphia 501(c)(4)
and For a Better Philadelphia PAC*

PHILADELPHIA BOARD OF ETHICS,

Plaintiff,

v.

FOR A BETTER PHILADELPHIA 501(C)(4)

and

FOR A BETTER PHILADELPHIA PAC,

Defendants.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

APRIL TERM, 2023

NO. 0795

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS PRELIMINARY OBJECTIONS**

I. MATTER BEFORE THE COURT

Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC (together, “For a Better Philadelphia”) submit this Memorandum of Law in support of their Preliminary Objections to the Complaint filed by Plaintiff Philadelphia Board of Ethics (“Plaintiff” or “the Board”).

II. STATEMENT OF QUESTION INVOLVED

1. Should the Court dismiss Plaintiff's Complaint with prejudice pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), where a plain reading of the operative regulation does not prohibit a private citizen (a non-Candidate) from raising money for an independent expenditure PAC?

Suggested Answer: Yes.

2. Should the Court dismiss Plaintiff's Complaint with prejudice pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), where the requested injunctive relief constitutes an unconstitutional prior restraint on political speech that violates the Pennsylvania and United States' Constitutions?

Suggested Answer: Yes.

III. RELEVANT ALLEGATIONS

Plaintiff alleges that between May 16, 2022 and October 24, 2022, Jeff Brown, at the time a private citizen, engaged in fundraising activities in support of For a Better Philadelphia by meeting with potential donors, being copied on or responding to e-mails regarding fundraising efforts, and attending and speaking at fundraising dinners. Compl. at ¶ 16. The Complaint alleges that on November 16, 2022, Jeff Brown publicly declared his candidacy for mayor. *Id.* at ¶ 11. According to the Complaint, For a Better Philadelphia made expenditures in 2022 and 2023 “to influence the outcome of the 2023 Democratic primary election for Mayor[,]” such as “electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters,

door hangars, field canvassing, and voter outreach.” *Id.* at ¶¶ 19, 21. The Complaint provides no details or examples of any such allegedly offending political speech. Nor does the Complaint allege that Mr. Brown, either before or after becoming a candidate, directed any of the activities of either Defendant.

Ignoring the actual language of the Regulations, Plaintiff asserts that Mr. Brown’s fundraising while he was a private citizen (that is, before he declared his candidacy for Mayor on November 16, 2022) in support of For a Better Philadelphia constitutes coordinated expenditures under Philadelphia Board of Ethics Regulation No. 1, and therefore For a Better Philadelphia’s expenditures are in-kind contributions that are subject to campaign contribution limits. *Id.* at ¶ 13. Plaintiff further alleges that the expenditures exceeded the annual campaign contribution limits for 2022 and 2023, resulting in a violation of the Campaign Finance Law. *Id.* at ¶ 20.

Even accepting these allegations as true, Plaintiff’s Complaint fails as a matter of law. And, further, even if the law did apply as Plaintiff would have it, its remedy cannot be a permanent prior restraint injunction on political speech in the middle of an election. The Board’s remedies are set forth in the Regulation, and include varying degrees of penalties and fines. The Regulation provides for no injunctive relief to bar political speech.

IV. ARGUMENT

Preliminary objections in the nature of a demurrer challenge the legal insufficiency of a pleading. Pa. R.Civ.P. 1028(a)(4); *Kelly v. Kelly*, 887 A.2d 788, 790-91 (Pa. Super. Ct. 2005); *Giordano v. Ridge*, 737 A.2d 350, 352 (Pa. Commw. Ct. 1999). If a claim is legally insufficient on its face such that the law will not permit recovery, dismissal is appropriate. *Kelly*, 887 A.2d at 790-91.

In ruling upon preliminary objections, courts are to accept as true all well-pleaded factual allegations and reasonable inferences—but they should not accept as true unwarranted inferences from facts, conclusions of law, argumentative allegations, or opinions. *Erie Cnty. League of Women Voters v. Dep’t of Env’tl Res.*, 525 A.2d 1290, 1291 (Pa. Commw. Ct. 1987). Further, dismissal with prejudice is appropriate where it is clear that amendment would be futile. *Carlino v. Whitpain Investors*, 453 A.2d 1385, 1388 (1982).

The Court should dismiss Plaintiff’s Complaint in its entirety, and with prejudice, because it pleads no facts that violate the operative Regulation and because a portion of the relief sought—a permanent prior restraint on political speech in the middle of an election—is unconstitutional.

A. The Allegations Do Not State A Violation of the Campaign Finance Law.

The Philadelphia Board of Ethics’ Regulation No. 1 (“Regulation No. 1”) does not prohibit private citizens from fundraising for independent expenditure PACs and get-out-the-vote non-profits. Yet, that is the central thrust of Plaintiff’s Complaint. To find a hook upon which to hang a claim, the Board has to intentionally misread the actual regulations it has passed. This, of course, is improper.

When interpreting local laws, Pennsylvania courts are guided by the Statutory Construction Act of 1972 (the “Act”). *Cozen O’Connor v. City of Phila. Bd. of Ethics*, 105 A.3d 1217, 1230 (Pa. 2014) (“*Cozen II*”); *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 315 (Pa. 1987); 1 Pa.C.S. § 1501 *et seq.* The Act makes clear that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S. § 1921(a). However, “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1

Pa.C.S. § 1921(b). Ambiguity exists when a statute or regulation’s “language is subject to two or more reasonable interpretations.” Courts should therefore resort to statutory construction *only* “[w]hen the words of a statute are not explicit[.]” 1 Pa.C.S. § 1921(c).

When construing a statute, courts must “give effect to all its provisions,” as no provision should be “reduced to mere surplusage.” *Walker v. Eleby*, 842 A.2d 389, 400 (Pa. 2004).

Further, if statutory construction is necessary, courts may consider, in part, “[t]he consequences of a particular interpretation.” 1 Pa.C.S. § 1921(c)(6). It is presumed that lawmakers “do[] not intend a result that is absurd, impossible of execution, or unreasonable.” 1 Pa.C.S. § 1922(1).

Here, the Court need not engage in complex statutory analysis because the language of Regulation No. 1 is explicit and free from ambiguity. We start with the relevant definitions. Section 1.1(d) defines a **campaign** as including “[a] **candidate**, the candidate’s candidate political committee and its officers, and agents of any of them.” Section 1.1(e) defines a **candidate** as “[a]n individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office” Thus, there is no “campaign” until there is a “candidate.” The timing is crucial, and it is in the hands of the candidate to decide. Thus, for example, various candidates in this election cycle were members of City Council. They did not formally become Candidates until they announced or filed papers stating their intent, which had other ramifications, such as when they were required to resign from City Council. A plain reading of these Sections shows that one does not become a candidate until they either file their nomination papers or publicly announce their candidacy. And the Regulation has no “look back” that retroactively includes periods of time before the triggering events.

Section 1.1(p) defines in-kind contributions as including “any expenditure that advocates or influences the nomination or election of a candidate *that is coordinated with that candidate’s campaign[.]*” (emphasis added). Section 1.33, the provision at issue here, states that “[a]n expenditure is coordinated with a campaign *if it is made in cooperation, consultation or concert with the campaign[.]*” (emphasis added). An example of coordination includes:

The **campaign** has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or

Section 1.33(d) (emphasis added). A plain reading of Section 1.33 demonstrates that an expenditure is only coordinated with a campaign if the **campaign** is involved in the making of the expenditure or if the **campaign** solicited or directed funds. The prohibitions of Section 1.33 all relate to activities of a campaign, and under the applicable definitions, there is cannot be a campaign until there is a candidate.

The Board alleges that Jeff Brown’s activities in May through October, 2022 “solicited and/or directed funds to” For a Better Philadelphia as described in Section 1.33(d). Compl. at ¶ 13. Therefore, the Board’s argument goes, Jeff Brown coordinated with For a Better Philadelphia such that **all** of For a Better Philadelphia’s expenditures are in-kind contributions that are subject to campaign contribution limits. *Id.* The fallacy of this position is that it ignores the plain language of the applicable regulations. The Board alleges that this coordination took place between May 16, 2022 and October 24, 2022. *Id.* at ¶ 16. The Board concedes, however, that Jeff Brown did not publicly declare his candidacy until November 16, 2022. *Id.* at ¶ 11. The Board carefully defined the term “candidate” to include only those who file nomination papers or publicly announce their candidacy, and it is bound by its definition. If the Board

wanted the definition of “candidate” to include “any person who becomes a candidate within six months of fundraising for a PAC or 501(c)(4),” then perhaps it could amend the Regulation to say that, but it has not.³ Under the plain text of Regulation No. 1, Jeff Brown did not become a candidate until November 16, 2022. And, there is no campaign or campaign political committee until there is a candidate. Without a campaign, there are no coordinated expenditures. Without coordinated expenditures, For a Better Philadelphia’s expenditures are *not* in-kind contributions subject to campaign contribution limits. Thus, a plain reading of the statute demonstrates that the Board’s Complaint fails on its face.

B. The Board’s Advisory Opinion Is Not Law.

Tacitly acknowledging that the plain language of its own regulation dooms its claims here, the Board fastens its case on the application of a non-binding advisory opinion it published in 2018 on “coordination with a candidate’s campaign.”⁴ But the advisory opinion is not precedent nor does it have force of law. Relying upon the Advisory Opinion, the Board seeks to

³ We do not suggest that such an amendment would be viable. It is illogical that a private citizen can fundraise unlimited amounts for an independent expenditure PAC, commonly called “Super PACs,” but if that citizen subsequently becomes a candidate, their past conduct could be deemed coordination, leading to a potential violation of Campaign Finance Law. *See McCutcheon v. FEC*, 572 U.S. 185, 193 (2014) (citing *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), which held that limits on individuals’ contributions to Super PACs are unconstitutional); *see also* Contributions to Super PACs and Hybrid PACs, FEDERAL ELECTION COMMISSION, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs/>. Indeed, “the First Amendment safeguards an individual’s right to participate in the public debate through political expression and political association.” *McCutcheon*, 572 U.S. at 203. And “[t]hose First Amendment rights are important regardless whether the individual is . . . someone who spends substantial amounts of money in order to communicate his political ideas through sophisticated means.” *Id.* (internal quotation marks and alterations omitted).

⁴ The Board relies on the Advisory Board Opinion 2018-002 in its Emergency Petition for Injunctive Relief, which it incorporated by reference in its Complaint. *See* Compl. at n.1. A copy of Advisory Board Opinion 2018-002 is attached hereto as Exhibit 2.

rewrite Regulation No. 1 to be read as follows: “[w]hether coordination occurs before or after an individual becomes a candidate is immaterial. The key issue is whether coordination between the Entity and the candidate’s campaign, which includes the candidate, occurred at all prior to the expenditures being made by the entity.” Advisory Board Opinion 2018-002 at p. 3.

There are multiple issues here: *First*, the advisory opinion is not a regulation and does not carry the weight of the law. *See, e.g., Cozen O’Connor v. City of Phila. Bd. of Ethics*, 13 A.3d 464 (Pa. 2011) (“*Cozen I*”).⁵ To promulgate or amend a regulation, the Board must, among other requirements, submit it for approval to the City Law Department; file it with the Department of Records, which must give public notice of the proposed regulation and make it available for public inspection; and submit to a public hearing if a person affected by the proposed regulation requests one. *See* Phila. Code § 8-407. On the other hand, these requirements do not apply to advisory opinions, which have no binding effect on parties who did not request them. *See* Phila. Code § 20-606(d); Philadelphia Board of Ethics’ Regulation No. 4 (governing use and effect of advisory opinions). For example, far from needing the City Law Department’s approval, advisory opinions are approved so long as a majority of the Board itself votes in favor of the opinion. Regulation No. 4, Section 4.19. Here, the Board issued the advisory opinion in 2018 and has now had five years to take the steps outlined in Section 8-407, but it has chosen not to do

⁵ The *Cozen* case presented litigation that went before the Supreme Court of Pennsylvania twice, ultimately overturning Board’s determination that post-election forgiveness of a political campaign’s legal debt constitutes a “contribution” subject to the 2007 Code’s contribution limits. In the first iteration of the case, *Cozen I*, the Board issued an advisory opinion concluding that post-election contributions made to retire campaign debt were subject to the Code’s limits on contributions. 13 A.3d. at 466. As part of its argument that the law firm lacked standing to assert a challenge, the Board argued that its advisory opinions are not a final adjudications subject to the court’s review. *Id.* The Pennsylvania Supreme Court found that the law firm had a direct injury from the Board’s advisory opinion and permitted the Firm’s claims to proceed.

so. Compare *Cozen O'Connor v. City of Phila. Bd. of Ethics*, 105 A.3d 1217, 1221-22 (Pa. 2014) (“*Cozen II*”) (discussing the Board’s promulgation of a new Regulation No. 1, following a related amendment to the Philadelphia Code, passed by City Council and signed by Mayor Nutter, to address a topic that had previously only been addressed in an advisory opinion) *with* the Board’s inaction here. The Board well knows the steps to take to make an advisory opinion have the force of regulation.

Second, under Regulation No. 4, the advisory opinion may only be relied upon as a shield for the benefit of the requestor. *See* Section 4.12. For a Better Philadelphia did not request this advisory opinion and it therefore has no effect on For a Better Philadelphia.

Third, the advisory opinion does not even address Section 1.33(d), which discusses soliciting or directing funds – the conduct in which the Board alleges Jeff Brown engaged. Instead, it addresses only whether an entity “can meet with individuals prior to any declaration of candidacy” (i) to discuss the “support the entity would be willing to provide” should the individual decide to run for office, including a specific electioneering communications plan; or (ii) to “discuss the kind of support the entity has provided to endorsed candidates in the past in similar races.”

Finally, in the scenarios discussed in the advisory opinion, whether “coordination” existed hinged upon any discussion of the nature and type of expenditures that were made after the candidate declared their candidacy. The Board does not allege here that Jeff Brown directed the type or nature of For a Better Philadelphia’s expenditures after declaring his candidacy.

The advisory opinion does not carry the force of law and does not even touch upon the alleged conduct here – the solicitation and directing of funds (i.e., fundraising). Fundamentally,

the advisory opinion is a self-published opinion that has no binding effect on For a Better Philadelphia. It should be treated accordingly. In contrast, Regulation No. 1 has the force of law, and a plain reading of the regulation makes clear that pre-candidacy fundraising does not constitute coordination. As such, Plaintiff's claims fail as a matter of law.

C. An Injunction on Expenditures for Political Speech Would Violate the Pennsylvania and United States Constitutions.

To the extent the Complaint seeks to enjoin For a Better Philadelphia's expenditures for political speech, the requested relief is an unconstitutional prior restraint on political speech. As the United States Supreme Court has repeatedly recognized, "[t]he First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." *FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1650 (2022) (internal quotation marks omitted); *Citizens United v. FEC*, 558 U.S. 310, 329 (2010) (noting that "political speech . . . is central to the meaning and purpose of the First Amendment"); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs."). This is because the "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of our system of government." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (internal quotation marks omitted).

And, the right to free speech under the Pennsylvania's Constitution is both older and stronger. As the Pennsylvania Supreme Court has recognized, "Article I, [Section] 7 affords greater protection to speech and conduct [in this Commonwealth] than does the First Amendment." *Pap's A.M. t/d/b/a Kandyland v. City of Erie*, 812 A.2d 591, 596 (Pa. 2002)

(collecting cases).⁶ “The protections afforded by Article I, §7 thus are distinct and firmly rooted in Pennsylvania history and experience. The provision is an ancestor, not a stepchild of the First Amendment.” *Id.* at 605. In particular, this provision was “designed to prohibit the imposition of prior restraints upon the communication of thoughts and opinions.” *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (internal quotation marks omitted).

“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *McCutcheon v. FEC*, 572 U.S. 185, 210 (2014) (internal quotation marks omitted). Because of the special protection it enjoys, the Supreme Court has “recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.” *Cruz*, 142 S. Ct. at 1652. Notably, this is defined very narrowly – a “direct exchange of an official act for money.” *McCutcheon*, 572 U.S. at 192. Government regulations “may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford.” *Id.* In drawing the line between *quid pro quo* corruption and general influence, “the First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it.” *Cruz*, 142 S. Ct. at 1653 (internal quotation marks omitted).

⁶ Article 1, Section 7 of the Pennsylvania Constitution states:

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. ...

PA. CONST. ART. I, § 7.

Under Article I, §7 of the Pennsylvania Constitution, “political contributions are a form of non-verbal, protected expression” and “expressive conduct represented by political donations is subject to strict scrutiny.” *DePaul v. Commonwealth*, 969 A.2d 536, 548 (Pa. 2009) (declaring unconstitutional a statute barring certain casino officers, directors, and shareholders from making political contributions). While there is a compelling state interest in preventing the actual or appearance of corruption, any restriction must be narrowly tailored. Where there is an “obvious disconnection between the articulated interest and the means chosen,” a government action is “constitutionally infirm under Article I, Section 7[.]” *Id.* at 600. In particular, this provision was “designed to prohibit the imposition of prior restraints upon the communication of thoughts and opinions.” *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (internal quotation marks omitted).

The Board cannot connect the relief it is seeking – a ban on “any further expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia” – to any corruption rationale. *See* Compl. at ¶ 29. It is not sufficient that the Board might think large contributions are unfair or unwise. In essence, the Board argues that it is necessary to ban expenditures to enforce contribution limits, “which serve the public interest by preventing political corruption or the appearance of political corruption.” Petition ¶ 123. However, the United States Supreme Court has repeatedly rejected attempts to justify other limits on campaign speech by arguing that they “prevent circumvention” of such limits, precisely what the Board argues here. In *Cruz*, for example, the Court found that a limitation on campaign committees using funds raised after election day to repay a candidate’s personal loans could not be justified by an anti-corruption rationale. 142 S. Ct. at 1656. The Court similarly rejected limits on

aggregate giving, which the government attempted to support on the same basis. *McCutcheon*, 572 U.S. at 221.

This is because contribution limits “themselves are a prophylactic measure.” *McCutcheon*, 572 U.S. at 221. That is, “restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements.” *Citizens United*, 558 U.S. at 357. When the government attempts to justify further restrictions “layered on top” by arguing that they “prevent circumvention of the base limits,” see *McCutcheon*, 572 U.S. at 221, this “prophylaxis-upon-prophylaxis approach . . . is a significant indicator that the regulation may not be necessary for the interest it seeks to protect,” *Cruz*, 142 S. Ct. at 1653; accord *McCutcheon*, 572 U.S. at 221.

Here, the requested injunction is at least five layers on top of the anti-corruption rationale the Board cites to attempt to justify it. *First*, as noted above, the contribution limit contained in Regulation No. 1, Sections 1.2-1.3 is itself preventative. *Citizens United*, 558 U.S. at 357. *Second*, Regulation No. 1’s ban on coordinated expenditures is designed to support the contribution limit. *Third*, to support the ban on coordinated expenditures, Regulation No. 1 uses an expansive definition of coordination to include mere solicitation of funds for the person making the expenditure (which is itself likely unconstitutional).⁷ See Section 1.33(d). *Fourth*, to support this definition of solicitation, the Board has adopted an expansive interpretation that

⁷ It is illogical that if a candidate were permitted to raise funds for their own campaign (which the Supreme Court determined was constitutionally protected in *Buckley v. Valeo*, 424 U.S. 1 (1976)), they could be prohibited from raising funds for other political committees, including Independent Expenditure committees. Acknowledging these constitutional protections on fundraising, federal candidates are permitted to fundraise for Independent Expenditure committees that support their candidacy, as well as attend, speak and be featured guests at such fundraising events. See Fundraising for Super PACs by Federal Candidates, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/fundraising-super-pacs-federal-candidates-nonconnected-pac/>.

includes solicitation by private citizens who were not even running for office at the time they aided in collecting funds, and relying upon a self-published advisory opinion that does not even have force of law. *Fifth*, on top of all these other measures, the Board would ban *any* expenditure by For a Better Philadelphia 501(c)(4) (the “C4”), even using funds having nothing to do with any solicitation by the campaign or candidate.

To justify each of these steps, the Board must “demonstrate[e] the need to address a special problem.” *Cruz*, 142 S. Ct. at 1653. It is not enough to point to “mere conjecture.” *See id.*; *Citizens United*, 558 U.S. at 357. The Board has not pointed to a single case of *quid pro quo* corruption in this context, nor does it establish how the extreme relief it seeks even addresses infirmity it seeks to cure. For example, the Board cannot present a serious argument that a contribution solicited by Jeff Brown on May 15, 2022, 366 days before the mayoral primary, would somehow create less of a risk of actual or perceived political corruption than a donation solicited one day later, thereby falling within the Board’s definition of coordination, even though on both May 15 and May 16, Brown was not a candidate for office.

Similarly, it does not explain why it is appropriate to make an organization determine that a person has crossed an invisible line, dividing ordinary citizens from undeclared candidates for office, and refuse that person’s assistance. “The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.” *Citizens United*, 558 U.S. at 324.

The last step, the injunction, is particularly problematic in this regard. Limitations on expenditures are different in kind from limits on contributions. While “both kinds of limitations implicate fundamental First Amendment interests, . . . expenditure limitations impose

significantly more severe restrictions on protected freedoms of political expression and association than do contribution limitations.” *Randall v. Sorrell*, 548 U.S. 230, 241 (2006) (internal quotation marks omitted). This is because expenditure limitations “necessarily reduce the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” *Id.* While courts have recognized that some limitations on actual coordinated expenditures are appropriate, we are not aware of a case in which an ongoing bar on *future* speech was imposed as a remedy for past alleged coordination. Notably, the requested injunction would remain in place throughout the remainder of the mayoral election *even if Jeff Brown loses the primary*, and thus there would be no possibility of any sort of *quid pro quo* arrangement.

Of particular note, the Board’s Regulations list no injunctive remedy for an alleged violation. The Board itself has stated that the injunction is requested because For a Better Philadelphia’s actions “den[y] the electorate key information about the funding of City campaigns” and “pose[] a threat to the integrity of Philadelphia’s municipal elections,” and that an injunction will “protect the democratic process and trust in City government and elections.” Petition at pp. 25-26. Earlier in its Petition, the Board argued that the injunction will “properly make all campaigns and donors subject to the same limit on contributions[.]” Petition at ¶ 120. None of that is directly about corruption or the appearance of corruption. The extreme sanction the Board seeks does not withstand the strict scrutiny applicable to limitations on political speech. *DePaul*, 969 A.2d at 546.

Even if they could otherwise meet their burden, the Board is unable to show that there are no other alternatives that would serve their “anticircumvention interest, while avoiding unnecessary abridgment of First Amendment rights,” as it must. *See McCutcheon*, 572 U.S. at

221. Instead, the Board is seeking a prior restraint. A prior restraint on speech constitutes “one of the most extraordinary remedies known to our jurisprudence” and is universally recognized to be “the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 562 (1976). Every request for a prior restraint thus comes to a court with “a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *see also N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam) (same).

As the Board concedes, monetary penalties are available under its Regulations. Indeed, it expressly seeks, in addition to the injunction, a monetary penalty of \$2,000 for each violation, *see Compl.* at ¶ 39 , and claims at least 73 such expenditures occurred for a total penalty of \$148,000, *id.* ¶ 37-38. Although we disagree as a matter of law that any violation has occurred that would warrant these penalties, it is an available remedy were the Board to prevail on the legal question.

There is simply no justification for the extreme relief of a prior restraint on political speech that the Board seeks here.

V. RELIEF

For all the foregoing reasons, For a Better Philadelphia respectfully requests that this

Court strike and dismiss with prejudice all counts of Plaintiff's Complaint for failure to state a cause of action under Rule 1028(a)(4).

Date: May 4, 2023

Respectfully submitted,

Katherine Belinski (*admitted pro hac vice*)

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*Attorneys for For a Better Philadelphia 501(c)(4)
and For a Better Philadelphia PAC*

CERTIFICATE OF SERVICE

I, Matthew A. White, do hereby certify that on May 4, 2023, I caused a correct copy of the foregoing Preliminary Objections of Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC to be electronically filed and served upon the following counsel of record via the Court's Electronic Filing System:

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Richard Barzaga, Esq.
Michael Gutierrez, Esq.
PHILADELPHIA BOARD OF ETHICS
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
Counsel for Philadelphia Board of Ethics

Dated: May 4, 2023

/s/ Matthew A. White
Matthew A. White

EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Filed and Attested by the
Office of Judicial Records
14 APR 2023 04:10 pm
I. LOWELL



Philadelphia Board of Ethics

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Philadelphia Board of Ethics

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Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

Case ID: 230406795
Control No.: 23051153

NOTICE TO DEFEND

NOTICE	AVISO
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p><i>You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.</i></p> <p style="text-align: center;">Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.</p> <p><i>Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.</i></p> <p style="text-align: center;">Asociacion De Licenciados De Filadelfia Servicio De Referencia E Informacion Legal One Reading Center Filadelfia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>

**COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS
AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND
FOR A BETTER PHILADELPHIA PAC**

Plaintiff Philadelphia Board of Ethics (“Plaintiff” or the “Board”), by and through its undersigned counsel, respectfully applies to this Court for an Order compelling the above-named Defendants For a Better Philadelphia 501(c)(4) (the “501(c)(4)”) and For a Better Philadelphia PAC (the “PAC”), collectively, “For a Better Philadelphia” or “Defendants”, to cease continuing violations and to halt imminent and future violations of the City of Philadelphia’s Campaign Finance Law and imposing on Defendants civil monetary penalties, as authorized under the Philadelphia Home Rule Charter and Philadelphia Code.¹ In support thereof the Board avers as follows:

PARTIES

1. The Board is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law, which is found at Philadelphia Code, Chapter 20-1000, *et seq.* Pursuant to Home Rule Charter Section 4-1100, the Board may seek enforcement of the Campaign Finance Law in the Court of Common Pleas and pursuant to Philadelphia Code Section 20-1005, the Board may seek injunctive relief to enjoin violations of the Campaign Finance Law.²

¹ The Board incorporates herein by reference its Emergency Petition to Enforce Philadelphia’s Campaign Finance Law and Enjoin Continuing Violations Thereof, as filed in this action on April 10, 2023.

² The Board files this Complaint pursuant to the Court’s Order of April 10, 2023 to ensure that this time-sensitive matter proceeds expeditiously. The Board does not intend to, nor does, waive any arguments regarding the use of a Petition to initiate an enforcement proceeding in the Court of Common Pleas under the Campaign Finance Law or any other provisions of the Philadelphia Code or Philadelphia Home Rule Charter in this or any future proceeding. *See, e.g.*, Local Rule of Civil Procedure 206.1(a)(viii) (providing for “Statutory Petitions”); *Chaney v. Fairmount Park Real Est. Corp.*, No. 2388 C.D. 2011, 2012 WL 8704658, at *3 (Pa. Commw. Ct. June 25, 2012) (finding petition for relief based on statutory rights falls within plain meaning of “statutory petitions” authorized by Phila. Civ. R. 206.1(a)(viii)).

2. The 501(c)(4) is a Pennsylvania non-profit corporation registered with the Internal Revenue Service as a tax-exempt, non-profit, social welfare organization.

3. The PAC is a political committee that filed a registration statement with the Philadelphia City Commissioners on August 10, 2022.

4. The 501(c)(4)'s address is 614 S. 4th Street, PO Box 324, Philadelphia, PA 19147. Other known addresses for the 501(c)(4) include 614 S. 4th Street, Box 334, Philadelphia, PA 19147 and 614 S. 4th Street #344, Philadelphia, PA 19147.

5. The PAC's address is 614 S. 4th Street, Unit #334, Philadelphia, PA 19147.

JURISDICTION AND VENUE

6. This Court has jurisdiction under Philadelphia Code Section 4-1100 which authorizes the Board to bring an enforcement action in the Court of Common Pleas.

7. Venue is proper in this Court because the 501(c)(4) and the PAC are resident in Philadelphia County and the transactions and occurrences underlying this action occurred in Philadelphia County.

STATEMENT OF FACTS

8. David Maser is the Chairperson and Treasurer of the 501(c)(4).

9. David Maser is also the Chairperson of the PAC.

10. Olivia Scanlon is the Deputy Campaign Manager for Jeff Brown for Mayor, who was previously For a Better Philadelphia's fundraising consultant until she joined Jeff Brown for Mayor.

11. Jeff Brown is a candidate in the 2023 Democratic primary election for Mayor of Philadelphia. Brown publicly declared his candidacy on November 16, 2022.

12. Jeff Brown for Mayor is Jeff Brown's candidate political committee.

13. Defendants coordinated with Brown as defined in Board Regulation No. 1 prior to Defendants making expenditures to influence the outcome of the primary election, such that all of Defendants' expenditures are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor.

14. Upon information and belief, Defendants' coordination with Brown includes, but is not limited to, Brown soliciting funds for and/or directing funds to Defendants within the twelve months prior to the May 16, 2023 Democratic primary election for Mayor.

15. Upon information and belief, Brown solicited funds for and/or directed funds to Defendants throughout, but not limited to, 2022.

16. Upon information and belief, Brown's fundraising-related activity for Defendants includes, but is not limited to, the following:

i. **May 16, 2022**: Brown had dinner with a potential donor, after which

Scanlon emailed the potential donor and copied Brown, writing:

Thank for your letting me join you and Jeff for dinner on Monday night. Jeff asked me to send you the contribution form to make another \$50,000 contribution to For a Better Philadelphia.

If interested, we'd love to have you come by our office next month and see some of the materials we've put together as well as our findings from recent focus groups. Let me know if this would be of interest and I'd be happy to set it up.

Thank you again for your support,
Olivia

ii. **July 7, 2022**: Scanlon emailed a draft invitation to Maser and Brown for a fundraising dinner for For a Better Philadelphia's benefit with a cost of attendance of \$100,000 per individual featuring an "intimate dinner and roundtable discussion on the future of Philadelphia" with Brown. Scanlon further wrote: "We can discuss shortly."

iii. **July 7, 2022**: Scanlon emailed Brown, Maser, and a former candidate for federal office (“Former Candidate”) regarding fundraising solicitation phone calls Former Candidate made to potential donors, directing Brown and Maser’s attention to a table in the email chain showing that the phone calls were about the 2023 Philadelphia Mayoral election.

iv. **July 14, 2022**: Scanlon copied Brown and Maser on an email chain, where a previous email from Scanlon to Former Candidate on July 12, 2022 read: “Checking in to see how the day went with [potential donor] on Sunday and if there’s an opportunity to arrange a meeting between him, you and Jeff before September.”

v. **July 14, 2022**: Scanlon sent Maser a chart about the August 2, 2022 dinner which included several references to an individual identified as “Jeff” and that individual’s interactions with potential donors prior to the dinner.

vi. **July 19, 2022**: Scanlon copied Brown and Maser on an email to a potential donor, which read:

Thank you very much for meeting with us this morning. Attached please find the form to contribute to For a Better Philadelphia. Please let us know if you have any questions.

Many thanks again - Jeff is looking forward to continuing our conversation with you in the coming weeks and months.”

vii. **July 20, 2022**: Scanlon sent a chart to Maser and Brown regarding the August 2, 2022 dinner which also referenced “Jeff” as well as an individual identified as “JB” and interactions that “Jeff” and “JB” had with potential donors ahead of the dinner.

viii. **July 31, 2022**: Scanlon emailed Brown a spreadsheet about the upcoming August 2, 2022 dinner which she intended to share with a potential donor, Individual Donor #1, who was out of the country until August 30, 2022. Scanlon wrote to Brown:

JB,

I played with the numbers a little bit here to get the full 400K [Individual Donor #1] match. I included the total giving amount in case [Individual Donor #1 is] feeling generous and wants to contribute 25% of the total giving in the room that night rather than just what's new :)

Let me know if you have any edits and we should probably call [Individual Donor #1] tomorrow to discuss.

Maser replied to Scanlon and suggested that the spreadsheet not be read out loud to Individual Donor #1. Brown replied and directed Scanlon: "Olivia, See if that works with [Individual Donor #1]. Thank you, Jeff Brown." At this time, For a Better Philadelphia was planning a September fundraising dinner that Individual Donor #1 could attend.

ix. **August 2, 2022**: Brown attended the above-referenced fundraising dinner supporting For a Better Philadelphia which featured a roundtable discussion with him speaking on the "future of Philadelphia."

x. **August 3, 2022**: Scanlon emailed Maser and Brown, in advance of the September fundraising dinner, asking them to review a guest list of those who attended the August 2, 2022 dinner before sending it to Individual Donor #1, writing:

Please take a look at the second page – I want to be transparent that we're counting some money from folks that didn't attend but demonstrate that they are new dollars intended for it. Could be overthinking.

Let me know if you want to include or remove before I send to [Individual Donor #1]. Thanks, Olivia.

Maser replied to Scanlon, writing: "I think it's fine, a little transparency is a good thing."

xi. **September 12, 2022**: Scanlon emailed Individual Donor #1, copying Brown, and writing, part:

Thank you for your RSVP to attend tomorrow's roundtable dinner with Jeff Brown in support of For a Better Philadelphia. Please find attached the form with which to make a contribution. If you'd prefer you are welcome to bring a check with you to the dinner.

Roundtable Dinner & Discussion with Jeff Brown
Tuesday, September 13, 2022 | 6:00 PM
Steak 48 | 260 S Broad St, Philadelphia, PA 19102

Please let me know if you have any dietary restrictions that I can share with the restaurant in advance or if you have any questions regarding your contribution. Thank you very much for your generous support and I look forward to seeing you tomorrow.

xii. **September 13, 2022**: Brown attended the above-referenced fundraising dinner supporting For a Better Philadelphia which featured a roundtable discussion with him.

xiii. **September 13, 2022**: Scanlon emailed Individual Donor #1 after the dinner, and copied Brown, writing:

Thank you for your attendance tonight and generous support of For a Better Philadelphia. Please send the address I should pick up the check from tomorrow morning. Additionally please find the contribution form attached to accompany your incredibly generous contribution for our compliance team.

With gratitude,
Olivia

xiv. **October 24, 2022**: On October 24, 2022, Scanlon emailed a potential donor, writing:

Hope you are well. Jeff let me know you connected earlier this month and were willing to contribute your \$100,000 pledge into our publicly reported entity, the For a Better Philadelphia PAC. I'm attaching the contribution form here and connecting you with David Maser, the chair of For a Better Philadelphia.

17. Upon information and belief, the references to “Jeff” and “JB” in the preceding paragraphs are references to Jeff Brown.

18. Based upon published reports, on April 10, 2023, Brown publicly admitted that he solicited donations for For a Better Philadelphia prior to declaring his candidacy.

19. After Brown had solicited funds for and/or directed funds to Defendants, Defendants made expenditures to influence the outcome of the 2023 Democratic primary election for Mayor in both calendar years 2022 and 2023 totaling in the millions of dollars.

20. Defendants’ expenditures exceeded the annual campaign contribution limits for 2022 and have already exceeded the annual contribution limits for 2023, and are thus violations of those limits.

21. Upon information and belief, Defendants’ expenditures to influence the outcome of the 2023 Democratic primary election for Mayor include, but are not limited to, expenditures for electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangars, field canvassing, and voter outreach.

22. Upon information and belief, Defendants’ expenditures to influence the outcome of the 2023 Democratic primary election for Mayor continued at least until this Court’s Order of April 10, 2023, or, alternatively, the goods, services, deliverables, and other things for which Defendants have already made expenditures to influence the outcome of the election continue to be distributed, disseminated, aired, emailed, or in any other way delivered to the electorate as of the date of this filing.

COUNT I
CONTINUING AND FUTURE VIOLATIONS OF THE CAMPAIGN FINANCE LAW,
CAMPAIGN CONTRIBUTION LIMITS

23. The Board hereby incorporates the previous and subsequent paragraphs as if fully set forth herein.

24. Under Philadelphia Code Section 20-1005, the Board may seek injunctive relief in any Court of competent jurisdiction to enjoin any violations of, or to compel compliance with, the provisions of the Campaign Finance Law.

25. Although the Board may seek injunctive relief, it cannot issue an order for injunctive relief and its remedies are limited to civil monetary penalties at a maximum of \$2,000 per violation.

26. Because Defendants have already violated the campaign contribution limits for 2023, any further expenditures to influence the outcome of the 2023 Democratic primary election for Mayor are also further violations of the Campaign Finance Law.

27. Because civil monetary penalties are retrospective and are imposed for past violations of the law, they are not an adequate remedy at law to avoid the legal wrong and injury caused by Defendants' continuing and future expenditures to influence the outcome of the election.

28. Because the injury arises from not only Defendants' continuing and future expenditures but also any goods, services, deliverables, and other things Defendants have ordered or contracted to be delivered to the electorate or are yet to be delivered to the electorate but already paid for, adequate injunctive relief must extend to these items as well.

29. Additionally, to safeguard against Defendants potentially bypassing the Court's Order by transferring money to other persons in order make expenditures to influence the outcome of the election, the Court must enjoin the transfer of money from Defendants to persons who have made or will make expenditures to influence the outcome of the election.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Section 20-1002(2) pertaining to campaign contribution limits;
- (ii) an order from the Court directing Defendants to immediately:
 - (a) cease and desist from making any further expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (b) cancel any and all outstanding or unfulfilled orders for goods, services, or other deliverables from third parties, whether placed through intermediaries or otherwise, including, but not limited to all television and other media ad buys with both advertising agents and television stations; and
 - (c) refrain from distributing, disseminating, airing, emailing, or in any other way delivering to the electorate the goods, services, or other deliverables resulting from Defendants' expenditures made to date to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (d) refrain from transferring any money to any other individuals, entities, or persons whether directly or indirectly, which have made or will make expenditures to influence the outcome of the 2023 primary and general elections for Mayor of Philadelphia; and
 - (e) any other relief the Court deems just and proper.

COUNT II
MULTIPLE VIOLATIONS OF THE CAMPAIGN FINANCE LAW, CAMPAIGN
CONTRIBUTION LIMITS

30. The Board incorporates the previous paragraphs as if fully set forth herein.

31. As set by the City's Campaign Finance Law, the annual contribution limits are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations.

32. Violations of the campaign contribution limits are subject to a maximum penalty of \$2,000 per violation.

33. Defendants exceeded the undoubled 2022 limit on December 5, 2022, when they made a \$501,737.50 expenditure to Fortune Media, Inc.

34. Thereafter, Defendants made at least six additional expenditures in 2022, each of which constitutes a separate violation of the contribution limits.

35. Therefore, for Defendants' 2022 violations, the maximum civil monetary penalty allowable by law is \$14,000 subject to further expenditures yet to be discovered or disclosed.

36. Defendants exceeded the doubled limit applicable to 2023 on January 9, 2023 when they made a \$33,350.00 expenditure to Riverside Solutions, LLC.

37. Thereafter, Defendants made at least seventy-three additional expenditures, each of which constitutes a separate violation of the contribution limits.

38. Therefore, for Defendants' 2023 violations, the maximum civil monetary penalty allowable by law is \$148,000 subject to further expenditures yet to be discovered or disclosed.

39. Because, upon information and belief, there may be violations that the Board is not aware of at this time, the Board reserves the right to seek civil monetary penalties in addition to the amounts described above.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Section 20-1002(2) pertaining to campaign contribution limits;
- (ii) a civil monetary penalty of \$2,000.00 for each violation, the final number of which to be determined by the Court; and
- (iii) any other relief the Court deems just and proper.

Respectfully submitted,

BY: */s J. Shane Creamer, Jr.*
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

Richard Barzaga, Esquire
Senior Staff Attorney

Michael Gutierrez, Esquire
Senior Staff Attorney

Attorneys for Plaintiff
Philadelphia Board of Ethics

Date: April 14, 2023

VERIFICATION

I, Michael Gutierrez, Senior Staff Attorney, Philadelphia Board of Ethics hereby state that I am the Attorney for Plaintiff Philadelphia Board of Ethics in this action, and I am authorized to make this Verification. I verify that the statement(s) made in the foregoing **COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** have been prepared based upon documents and information obtained through investigation, and based upon said documents and information, are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

BY: /s Michael Gutierrez
Michael Gutierrez, Esquire
Senior Staff Attorney
Philadelphia Board of Ethics

Date: April 14, 2023

Philadelphia Board of Ethics

One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023

No. 795

CERTIFICATE OF SERVICE

I hereby certify that on or about April 14, 2023, a true and correct copy of the foregoing
**COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST
DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER
PHILADELPHIA PAC** was served via electronic filing on all parties.

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director
Philadelphia Board of Ethics
Attorney for Plaintiff
Philadelphia Board of Ethics

Case ID: 230400795
Control No.: 23051153

EXHIBIT 2

BOARD OPINION NO. 2018-002



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450
FAX 686 – 9453

**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2018-002**

May 29, 2018

Re: Coordination with a Candidate’s Campaign under the City Campaign Finance Law

Dear Attorney:

You represent an entity in its request for a non-public advisory opinion regarding its potential activities related to the 2019 municipal election. This request presents many different scenarios, each requiring an analysis of whether coordination between the entity and a candidate’s campaign would be present such that City contribution limits would apply to the related expenditures by the entity in support of the candidate.

I. Jurisdiction

The Philadelphia Home Rule Charter (“Charter”) grants the Board of Ethics jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters, which includes campaign finance matters. Charter § 4-1100. The Charter and The Philadelphia Code (“Code”) authorize the Board of Ethics to render advisory opinions explaining the application of laws under the Board’s jurisdiction, including the City Campaign Finance Law found at Code Chapter 20-1000. *See* Charter § 4-1100; Code § 20-1008 (citing Code § 20-606); Board Reg. 4 ¶ 4.1(a). An authorized representative of a person, such as an attorney, may submit a request for an advisory opinion on behalf of the person. Board Reg. 4 ¶ 4.7. Board Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board of Ethics. Board Reg. 4 ¶¶ 4.0, 4.26.

II. Information Provided by the Requestor

In your request letter, you describe your client as “an entity which has done independent expenditures on behalf of endorsed candidates in past City elections and may do so in the future.” Your client (the “Entity”) is contemplating certain activities related to the 2019 municipal election.

FOR PUBLIC RELEASE

Case ID: 230406785
Control No.: 23041558

III. Discussion

You have presented many different scenarios that are organized into five sets of questions. Each scenario requires a fact-specific analysis of whether coordination would be present between the Entity and the candidate's campaign.

A. Overview of Coordinated Expenditures

An expenditure¹ that advocates or influences the nomination or election of a candidate² and that is coordinated with that candidate's campaign³ is an in-kind contribution⁴ to the candidate that is subject to contribution limits under the City Campaign Finance Law. *See* Board Reg. 1 ¶ 1.1(q) & Subparts B, H. An expenditure is coordinated with a candidate's campaign if it is made in cooperation, consultation, or concert with the candidate's campaign. Board Reg. 1 ¶ 1.38 & Subpart H. Under certain circumstances, an in-kind contribution arises from an expenditure made to reproduce, republish, or disseminate campaign communications or campaign materials prepared by a candidate's campaign. *See* Board Reg. 1 ¶ 1.39. In contrast to coordinated expenditures, independent expenditures are not subject to contribution limits. An independent

¹ An "expenditure" is:

The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election, including: (i.) For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate; (ii.) For the payment or provision of money or other valuable thing to compensate any person for services rendered to a candidate or candidate political committee; (iii.) For an electioneering communication; or (iv.) To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

Board Reg. 1 ¶ 1.1(n).

² A "candidate" is "[a]n individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures." Board Reg. 1 ¶ 1.1(d).

³ The term "candidate's campaign" encompasses "[a] candidate, the candidate's political committee (or litigation fund committee), or an agent of any of the foregoing." Board Reg. 1 ¶ 1.1(e).

⁴ An "in-kind contribution" is:

(i.) The provision of any goods or services directly to a candidate's campaign without charge or at a charge that is less than the usual and normal charge for such goods or services; (ii.) The payment or agreement to pay a third party to provide goods or services to a candidate's candidate political committee, if the goods and services are in fact provided; or (iii.) Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, as provided in Subpart H of Board Regulation 1.

Board Reg. 1 ¶ 1.1(q).

expenditure is an expenditure to influence the outcome of a covered election that is not made in cooperation, consultation, or concert with any candidate's campaign. *See* Board Reg. 1 ¶ 1.1(p).

B. Five Sets of Questions

The questions below, which are taken verbatim from your request letter, raise the issue of whether coordination would be present in many different scenarios. Whether a particular expenditure is coordinated and made in cooperation, consultation, or concert with a candidate's campaign requires a highly fact-specific analysis.

Question Set 1: "Given that Regulation 1.38 refers to coordination with a 'candidate's campaign,' can [the Entity] meet with individuals prior to any declaration of candidacy and discuss in full the kind of support [the Entity] would be willing to provide should he or she decide to run for a particular office, including a specific electioneering communications plan? Similarly, can [the Entity] meet with individuals prior to any declaration of candidacy and discuss the kind of support that [the Entity] has provided to endorsed candidates in the past in similar races?"

Response: The City Campaign Finance Law does not prohibit the Entity from engaging in the proposed behaviors presented in this question. Rather, the issue under the City Campaign Finance Law is whether the proposed behaviors would constitute coordination with the candidate's campaign such that subsequent related expenditures would be considered an in-kind contribution made by the Entity to the candidate that is subject to City contribution limits.

This question presents two different fact patterns. The first fact pattern involves the Entity meeting with an individual who is not yet a candidate and discussing in full the kind of support, including a specific electioneering communications⁵ plan, that it will provide should the individual become a candidate. It is implicit in the question that the individual subsequently becomes a candidate for City elective office and that the Entity makes expenditures as discussed at the meeting. Whether coordination occurs before or after an individual becomes a candidate is immaterial. The key issue is whether coordination between the Entity and the candidate's campaign, which includes the candidate, occurred at all prior to the expenditures being made by the Entity. *See* Board

⁵ An "electioneering communication" is:

Any broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, or political party.

Board Reg. 1 ¶ 1.1(k).

Reg. 1 ¶ 1.1(e) (defining the term “candidate’s campaign”). In this case, at the time the Entity makes these expenditures, it has previously communicated and consulted with the candidate concerning the expenditures. *See* Board Reg. 1 ¶ 1.38. Accordingly, these expenditures by the Entity would be coordinated with the candidate’s campaign.

The second fact pattern presented in this question involves the Entity meeting with a future candidate for City elective office and discussing the expenditures that the Entity has previously made in support of candidates it endorsed in similar races. Such a discussion would jeopardize the independence of expenditures made by the Entity in support of the candidate. It is implausible that a discussion about this topic would occur without any communication between the Entity and the future candidate regarding expenditures that the Entity will make in support of the future candidate. Indeed, it is assumed that the Entity subsequently makes expenditures that mirror those conveyed during this in-person meeting or that are otherwise informed by the meeting. As such, discussion of this topic would likely lead to coordinated expenditures as it would presumably involve: (1) the Entity conveying information about expenditures that it plans to make in support of the future candidate; (2) the future candidate assenting to those expenditures; and/or (3) the Entity and the future candidate exchanging information during the meeting that informs subsequent expenditures by the Entity in support of the candidate. *See* Board Reg. 1 ¶ 1.38(b), (c).

Question Set 2: “Even after an individual has become a candidate as a matter of City law, can candidates meet with [the Entity] prior to its making an endorsement without violating Regulation 1.38? Can they discuss a general electioneering communications strategy by [the Entity], so long as no specific expenditures would be discussed? Can [the Entity] tell a declared candidate the kind of support that it has provided to endorsed candidates in the past in similar races? Can [the Entity] at a minimum indicate its budget for an electioneering communications plan, while avoiding any discussion of the content of such a plan for that candidate?”

Response: The City Campaign Finance Law does not prohibit the Entity from engaging in the proposed behaviors presented in this question. Rather, the issue under the City Campaign Finance Law is whether the proposed behaviors would lead to coordination between the Entity and the candidate’s campaign such that related expenditures made by the Entity would be considered an in-kind contribution to the candidate that is subject to City contribution limits.

The mere fact of a meeting between the Entity and a candidate prior to the Entity endorsing that candidate would not necessarily cause subsequent expenditures made by the Entity in support of the candidate to be considered coordinated expenditures. *See* Board Reg. 1 ¶ 1.40(a), (b). Rather, the existence of coordination between the Entity and a candidate’s campaign would depend on the nature and content of the discussion between the Entity and the candidate at the meeting. *See* Board Reg. 1 ¶ 1.38.

A meeting at which the Entity and the candidate discuss a general electioneering communications strategy by the Entity would lead to coordinated expenditures. This is because subsequent electioneering communication expenditures made by the Entity in support of the candidate pursuant to the strategy it had discussed with the candidate would have been made in consultation with the candidate. *See* Board Reg. 1 ¶ 1.38.

For the reasons stated in the Response to Question 1 above, coordinated expenditures would likely also arise from a meeting between the Entity and the candidate in which the Entity describes expenditures that it has previously made in support of candidates it endorsed in similar races. *See supra* Response to Question 1 at p. 4.

Similarly, coordinated expenditures may arise from a meeting at which the Entity and the candidate discuss the Entity's budget for an electioneering communications plan if the parties exchange information that informs the subsequent expenditures by the Entity in support of the candidate. *See* Board Reg. 1 ¶ 1.38. Although it is theoretically possible that coordinated expenditures would not result if the Entity stated only the total dollar amount for a budget for its electioneering communications plan, it is unrealistic that no additional information would be exchanged during an in-person meeting once the topic is broached.

As a general matter, it is inadvisable for the Entity and a candidate to meet to discuss information, strategy, or budget related to future expenditures by the Entity in support of the candidate if the Entity wishes to avoid potential coordination with the candidate's campaign. Such discussions would jeopardize the independence of expenditures made by the Entity and, at a minimum, would invite scrutiny regarding potential coordination between the Entity and the candidate's campaign.

Question Set 3: "Can [the Entity] republish in its electioneering communications a candidate photograph taken by the candidate's committee and placed on his or her own website without violating Reg. 1.39(c)(ii), so long as the image also appears on any other site (including a news media website) not controlled by the candidate committee?"

Response: The City Campaign Finance Law does not prohibit the Entity from engaging in the proposed behavior presented in this question. Rather, the issue under the City Campaign Finance Law is whether the proposed behavior would involve the republication of campaign communications or materials so that related expenditures would be considered an in-kind contribution made by the Entity to the candidate that is subject to City contribution limits.

The source of the photograph used by the Entity in its electioneering communications is central to the question of whether the related expenditures would be considered an in-kind contribution. If the Entity's electioneering communication republishes a candidate photograph that it obtained from the candidate's website, then the expenditure for the electioneering communication would be considered an in-kind contribution made by the Entity to the candidate for purposes of the

contribution limits provided that two conditions are satisfied: (1) the total for these expenditures is \$100 or more in the aggregate per reporting period; and (2) the electioneering communication that republishes the photograph does not advocate for the defeat of the candidate. *See* Board Reg. 1 ¶ 1.39(a), (c)(i), (iii).

By contrast, if the Entity's electioneering communication republishes a candidate photograph that it obtained from a news website or other public source not controlled by the candidate, then the Entity's expenditure for the electioneering communication would not be considered an in-kind contribution from the Entity to the candidate for purposes of the contribution limits. *See* Board Reg. 1 ¶ 1.39(c)(ii).

Question Set 4: "Can [the Entity] run digital ads promoting and linking to a candidate's website or Facebook page? Can its ads republish the candidate's website by pulling it up onto the same screen without violating Reg[.] 1.39?"

Response: The City Campaign Finance Law does not prohibit the Entity from engaging in the proposed behaviors presented in this question. Rather, the issue under the City Campaign Finance Law is whether the proposed behaviors would involve the republication of campaign communications or materials such that related expenditures would be considered an in-kind contribution made by the Entity to the candidate that is subject to City contribution limits.

If the Entity pays for digital ads that promote and link to a candidate's website or Facebook page without the ads displaying the content of the website or Facebook page, then this activity would not constitute an in-kind contribution in the form of the republication of campaign communications or materials. By contrast, if the Entity pays for digital ads that republish the candidate's website by displaying it on the same screen and the related expenditures are \$100 or more in the aggregate per reporting period, then this activity would entail the republication of campaign communications or materials and would be considered an in-kind contribution made by the Entity that is subject to City contribution limits. *See* Board Reg. 1 ¶ 1.39(a), (c)(iii).

Question Set 5: "Can [the Entity] announce on its website and social media platforms a detailed field canvassing plan on behalf of its preferred candidates, including the dates, modes, and locations of canvassing, thus alerting said candidates (along with the general public) as to avoid duplicative efforts, without running afoul of the coordination rules? Similarly, can it announce its electioneering communications plan via those channels?"

Response: Coordination with a candidate's campaign would not result solely from the Entity conveying the details of its field canvassing plan on behalf of candidates and its electioneering communications plan in public announcements on its website and social media platforms in a manner that is understandable to and accessible by the general public. *See* Board Reg. 1 ¶ 1.38(f). Coordination, however, may well result from related communications between the Entity and the candidate's campaign, such as the Entity directing the attention of a candidate's campaign to the public announcements.

* * * * *

Thank you for your concern about compliance with the City Campaign Finance Law and for seeking advice. Application of the City Campaign Finance Law is fact-specific. The Entity is entitled to act in reasonable reliance on this Opinion and not be subject to penalties under the laws within the Board's jurisdiction unless material facts differ from those presented here, including through omission or misstatement in the request. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since the Entity requested a non-public opinion, the original Opinion will not be made public. As required by the City Code, this version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify the Entity is being made public. Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

EXHIBIT D

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION



Philadelphia Board of Ethics

J. Shane Creamer, Jr., Esquire
Executive Director
Attorney I.D. No. 49496
Richard Barzaga, Esquire
Senior Staff Attorney
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One Parkway Building
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Attorneys for Plaintiff
Philadelphia Board of Ethics

Philadelphia Board of Ethics

One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

NOTICE TO DEFEND

NOTICE	AVISO
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p><i>You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.</i></p> <p style="text-align: center;">Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascntar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.</p> <p><i>Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.</i></p> <p style="text-align: center;">Asociacion De Licenciados De Filadelfia Servicio De Referencia E Informacion Legal One Reading Center Filadelfia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>

FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC

Plaintiff Philadelphia Board of Ethics (“Plaintiff” or the “Board”), by and through its undersigned counsel, respectfully applies to this Court for an Order imposing civil monetary penalties on the above-named Defendants For a Better Philadelphia 501(c)(4) (the “501(c)(4)”) and For a Better Philadelphia PAC (the “PAC”), collectively, “For a Better Philadelphia” or “Defendants,” for violations of the City of Philadelphia’s Campaign Finance Law and any other relief the Court deems just and proper, as authorized under the Philadelphia Home Rule Charter and Philadelphia Code. In support thereof the Board avers as follows:

PARTIES

1. The Board is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law, which is found at Philadelphia Code Chapter 20-1000, *et seq.* Pursuant to Home Rule Charter Section 4-1100, the Board may seek enforcement of the Campaign Finance Law in the Court of Common Pleas.¹

2. The 501(c)(4) is a Pennsylvania non-profit corporation registered with the Internal Revenue Service as a tax-exempt, non-profit, social welfare organization.

3. The PAC is a political committee that filed a registration statement with the Philadelphia City Commissioners on August 10, 2022.

¹ The Board proceeds with this action via Complaint pursuant to the Court’s Order of April 10, 2023. The Board does not intend to, nor does, waive any arguments regarding the use of a Petition to initiate an enforcement proceeding in the Court of Common Pleas under the Campaign Finance Law or any other provisions of the Philadelphia Code or Philadelphia Home Rule Charter in this or any future proceeding. *See, e.g.,* Local Rule of Civil Procedure 206.1(a)(viii) (providing for “Statutory Petitions”); *Chaney v. Fairmount Park Real Est. Corp.*, No. 2388 C.D. 2011, 2012 WL 8704658, at *3 (Pa. Commw. Ct. June 25, 2012) (finding petition for relief based on statutory rights falls within plain meaning of “statutory petitions” authorized by Phila. Civ. R. 206.1(a)(viii)).

4. The 501(c)(4)'s address is 614 S. 4th Street, PO Box 324, Philadelphia, PA 19147. Other known addresses for the 501(c)(4) include 614 S. 4th Street, Box 334, Philadelphia, PA 19147 and 614 S. 4th Street, #344, Philadelphia, PA 19147.

5. The PAC's address is 614 S. 4th Street, Unit #334, Philadelphia, PA 19147.

JURISDICTION AND VENUE

6. This Court has jurisdiction under Philadelphia Code Chapter 4-1100 which authorizes the Board to bring an enforcement action in the Court of Common Pleas.

7. Venue is proper in this Court because the 501(c)(4) and the PAC are resident in Philadelphia County and the transactions and occurrences underlying this action occurred in Philadelphia County.

STATEMENT OF FACTS

8. David Maser ("Maser") is the Chairperson and Treasurer of the 501(c)(4).

9. Maser is also the Chairperson of the PAC.

10. Olivia Scanlon ("Scanlon") is the Deputy Campaign Manager for Jeff Brown for Mayor, who was previously the fundraising consultant for Defendants until she joined Jeff Brown for Mayor (defined below).

11. Jeff Brown ("Brown") was a candidate in the 2023 Democratic primary election for Mayor of Philadelphia. Brown publicly declared his candidacy on November 16, 2022.

12. Jeff Brown for Mayor is Brown's candidate political committee.

I. FORMATION OF THE 501(C)(4); BROWN SOLICITED FUNDS FOR AND DIRECTED FUNDS TO THE 501(C)(4) IN 2021

13. On or about April 7, 2021, the 501(c)(4) filed with the Pennsylvania Department of State to incorporate as a domestic nonprofit corporation.

14. On or about April 9, 2021, a personal check for \$25,000.00 was issued from a joint account held by Jeff Brown and Sandra Brown, which was made payable to the order of the 501(c)(4).

15. On April 13, 2021, Maser applied for a Wells Fargo business checking account for the 501(c)(4). The application listed an opening deposit of \$25,000.00.

16. Also on April 13, 2021, the \$25,000.00 check from the Browns' joint account was deposited into the 501(c)(4)'s Wells Fargo account.

17. Through June 30, 2021, the only money that had been deposited into the 501(c)(4)'s account was the initial \$25,000.00 from the Browns' joint account.

18. On or about November 12, 2021, Brown's Super Stores, Inc. issued a check for \$225,000.00 from its "Disbursement Account" made payable to the order of the 501(c)(4).

19. The check's memo line read "For Contribution."

20. At the time Brown's Super Stores, Inc. issued the \$225,000.00 check, Brown was the Chairman and CEO of Brown's Super Stores, Inc.

21. On November 19, 2021, the check was deposited into the 501(c)(4)'s checking account.

II. BROWN SOLICITED FUNDS FOR AND DIRECTED FUNDS TO DEFENDANTS THROUGHOUT 2022

22. Brown solicited funds for, and directed funds to, Defendants throughout 2022, including but not limited to, within the twelve months prior to the May 16, 2023 Democratic primary election for Mayor.

23. Brown's solicitation of funds for, and direction of funds to, Defendants occurred prior to Defendants making expenditures to influence the outcome of the primary election.

24. Under Board Regulation No. 1.33(d), expenditures are coordinated with a campaign if the campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the twelve months before the election the person's expenditure seeks to influence.

25. Under Board Regulation No. 1.1(d), the definition of campaign includes the candidate individually.

26. Therefore, all of Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor were coordinated with Brown's campaign.

27. Under Board Regulation No. 1.1(p), any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign is an in-kind contribution to that candidate's campaign.

28. In-kind contributions are subject to the annual contribution limits set forth in the City's Campaign Finance Law and associated regulations. *See* Philadelphia Code Chapter 20-1002; Board Regulation Nos. 1.2, 1.3, 1.8.

29. Accordingly, because Defendants' expenditures were coordinated with Brown's campaign, all of Defendants' expenditures to influence the outcome of the primary election are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor and are subject to the contribution limits.

A. Details of Brown's fundraising activity on behalf of Defendants in 2022

30. On May 18, 2022, Scanlon emailed a potential donor and copied Brown after Brown and Scanlon had dinner with the potential donor on May 16, 2022, writing:

Thank you for letting me join you and Jeff for dinner on Monday night. Jeff asked me to send you the contribution form to make another \$50,000 contribution to For a Better Philadelphia.

If interested, we'd love to have you come by our office next month and see some of the materials we've put together as well as our findings from recent focus groups. Let me know if this would be of interest and I'd be happy to set it up.

Thank you again for your support,
Olivia

31. The contribution form sent to the donor on May 18, 2022, as well as the contribution form sent thereafter to other potential donors, stated that "Contributions may be used for activities of 'For a Better Philadelphia' and its affiliated PACs at 'For a Better Philadelphia's' discretion."

32. On July 7, 2022, Scanlon emailed a draft invitation to Maser and Brown for a fundraising dinner for Defendants' benefit with a cost of attendance of \$100,000 per individual featuring an "intimate dinner and roundtable discussion on the future of Philadelphia" with Brown. Scanlon further wrote: "We can discuss shortly."

33. Also on July 7, 2022, Scanlon emailed Brown, Maser, and a former candidate for federal office ("Former Candidate") regarding fundraising solicitation phone calls Former Candidate made to potential donors, directing Brown and Maser's attention to a table in the email chain showing that the phone calls were about the 2023 Philadelphia Mayoral election.

34. On July 14, 2022, Scanlon copied Brown and Maser on an email chain, where a previous email from Scanlon to Former Candidate on July 12, 2022 read: "Checking in to see how the day went with [potential donor] on Sunday and if there's an opportunity to arrange a meeting between him, you and Jeff before September."

35. Also on July 14, 2022, Scanlon sent Maser a chart about the August 2, 2022 dinner which included several references to an individual identified as "Jeff" and that individual's interactions with potential donors prior to the dinner.

36. The July 14, 2022 chart listed \$225,000.00 pledged and received from Brown and also contained the phrase “Brown’s” in the “Received” column next to Sandy Brown’s name. Upon information and belief, Sandy Brown is Jeff Brown’s wife Sandra Brown.

37. On July 19, 2022, Scanlon copied Brown and Maser on an email to a potential donor, which read:

Thank you very much for meeting with us this morning. Attached please find the form to contribute to For a Better Philadelphia. Please let us know if you have any questions.

Many thanks again - Jeff is looking forward to continuing our conversation with you in the coming weeks and months.

38. On July 20, 2022, Scanlon sent an updated chart to Maser and Brown regarding the August 2, 2022 dinner which also referenced “Jeff” as well as an individual identified as “JB” and interactions that “Jeff” and “JB” had with potential donors ahead of the dinner.

39. The updated July 20, 2022 chart included notes that, upon information and belief, indicated the listed donors’ preference to contribute to the 501(c)(4) or the PAC.

40. The July 20, 2022 chart listed \$125,000 pledged and received from Jeff Brown and \$100,000 pledged and received from Sandy Brown, with the note “C4” next to each of their names.

41. On July 31, 2022, Scanlon emailed Brown a spreadsheet about the upcoming August 2, 2022 dinner which she intended to share with a potential donor, Individual Donor #1, who was out of the country until August 30, 2022. Scanlon wrote to Brown:

JB,

I played with the numbers a little bit here to get the full 400K [Individual Donor #1] match. I included the total giving amount in case [Individual Donor #1 is] feeling generous and wants to contribute 25% of the total giving in the room that night rather than just what’s new :)

Let me know if you have any edits and we should probably call [Individual Donor #1] tomorrow to discuss.

Maser replied to Scanlon and suggested that the spreadsheet not be shared with Individual Donor #1 “as donors are anonymous,” but if Individual Donor #1 had to know to make a matching 25% contribution, that the list be read over the phone. Brown replied and directed Scanlon: “Olivia, See if that works with [Individual Donor #1]. Thank you, Jeff Brown.” At this time, Defendants were planning a September fundraising dinner that Individual Donor #1 could attend.

42. On August 2, 2022, Brown attended the above-referenced fundraising dinner supporting Defendants which featured a roundtable discussion with him speaking on the “future of Philadelphia.”

43. On August 3, 2022, Scanlon emailed Maser and Brown, in advance of the September fundraising dinner, asking them to review a guest list of those who attended the August 2, 2022 dinner before sending it to Individual Donor #1, writing:

Please take a look at the second page – I want to be transparent that we’re counting some money from folks that didn’t attend but demonstrate that they are new dollars intended for it. Could be overthinking.

Let me know if you want to include or remove before I send to [Individual Donor #1]. Thanks, Olivia.

Maser replied to Scanlon, writing: “I think it’s fine, a little transparency is a good thing.”

44. Also on or about August 3, 2022, Brown’s Super Stores, Inc. issued another check for \$225,000.00 from its “Disbursement Account” made payable to the order of the 501(c)(4).

45. The check’s memo line read “For Contribution.”

46. At the time Brown’s Super Stores, Inc. issued the August 3, 2022 check for \$225,000.00, Brown was the Chairman and CEO of Brown’s Super Stores, Inc.

47. On August 26, 2022, the check was deposited into the 501(c)(4)'s checking account.

48. Upon information and belief, the August 3, 2022 check from Brown's Super Stores, Inc. fulfilled the pledges from Jeff Brown and Sandy Brown for the August 2, 2022 dinner, which when combined, total \$225,000.00.

49. On September 12, 2022, Scanlon emailed Individual Donor #1, copying Brown and writing in part:

Thank you for your RSVP to attend tomorrow's roundtable dinner with Jeff Brown in support of For a Better Philadelphia. Please find attached the form with which to make a contribution. If you'd prefer you are welcome to bring a check with you to the dinner.

Roundtable Dinner & Discussion with Jeff Brown
Tuesday, September 13, 2022 | 6:00 PM
Steak 48 | 260 S Broad St, Philadelphia, PA 19102

Please let me know if you have any dietary restrictions that I can share with the restaurant in advance or if you have any questions regarding your contribution. Thank you very much for your generous support and I look forward to seeing you tomorrow.

50. On September 13, 2022, Brown attended the above-referenced fundraising dinner supporting Defendants which featured a roundtable discussion with him.

51. Later on September 13, 2022, after the dinner, Scanlon emailed Individual Donor #1 and copied Brown, writing:

Thank you for your attendance tonight and generous support of For a Better Philadelphia. Please send the address I should pick up the check from tomorrow morning. Additionally please find the contribution form attached to accompany your incredibly generous contribution for our compliance team.

With gratitude,
Olivia

52. On October 24, 2022, Scanlon emailed a potential donor, writing:

Hope you are well. Jeff let me know you connected earlier this month and were willing to contribute your \$100,000 pledge into our publicly reported entity, the For a Better Philadelphia PAC. I'm attaching the contribution form here and connecting you with David Maser, the chair of For a Better Philadelphia.

53. Upon information and belief, at least some, if not most, of the references to "Jeff" and "JB" described the preceding paragraphs are references to Jeff Brown.

54. Additionally, in both published reports and media appearances, Brown has publicly admitted that he solicited funds for and directed funds to Defendants prior to declaring his candidacy.

55. All of the fundraising activity described in this Section II, A occurred in the twelve months before the May 16, 2023 Democratic primary election for Mayor.

III. BROWN'S SUPER STORES, INC. CONTRIBUTED AT LEAST \$1.25 MILLION TO THE 501(C)(4) IN 2023

56. On January 24, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$500,000.00.

57. On February 24, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$500,000.00.

58. On March 28, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$250,000.00.

59. Upon information and belief, and based on Brown's Super Stores, Inc.'s previous history of contributions to the 501(c)(4) while he was its Chairman and CEO, Jeff Brown participated in the solicitation of these funds for, and direction of these funds to, the 501(c)(4) in 2023, while he was a candidate in the 2023 Democratic primary election for Mayor.

60. According to the Pennsylvania Department of State, Jeff Brown remains Brown's Super Stores, Inc.'s President and Treasurer as of the date of this filing.

IV. THE ENTIRETY OF THE PAC'S EXPENDITURES TO INFLUENCE THE OUTCOME OF THE PRIMARY ELECTION ARE ATTRIBUTABLE TO THE 501(C)(4)

61. The PAC reported in its 2022 Annual Campaign Finance Report (Cycle 7) that it had received a total of \$3,023,525.10 in contributions in calendar year 2022.

62. According to the same report, the 501(c)(4) contributed \$2,475,000.00 to the PAC on September 14, 2022.

63. The 501(c)(4) also gave money to an IRS tax-exempt organization called MAP USA.

64. On September 23, 2022, the 501(c)(4) sent \$500,000.00 by wire transfer to MAP USA.

65. On November 1, 2022, MAP USA contributed \$350,000.00 to the PAC.

66. On November 23, 2022, Patriot Majority USA contributed \$150,000.00 to the PAC.

67. MAP USA and Patriot Majority USA are controlled by and share the same individual principal officer.

68. Upon information and belief, the 501(c)(4)'s money transfer to MAP USA on September 23, 2022 (in the amount of \$500,000.00) was used to fund MAP USA's (\$350,000.00) and Patriot Majority USA's (\$150,000.00) contributions to the PAC, which, when combined, total \$500,000.00.

69. According to the PAC's campaign finance reports filed as of May 19, 2023, it received an additional \$64,738.40 in contributions generally from January 1, 2023 through March 27, 2023.

70. Upon information and belief, the 501(c)(4) made no other contributions to any other PACs which made expenditures to influence the outcome of the 2023 Democratic primary election for Mayor.

71. Pursuant to Board Regulation No. 1.4(a)(ii), a contribution is made through another person if “[a] person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient’s contribution to support a candidate.”

72. In such a case, “the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.”

73. Upon information and belief, the PAC’s first expenditure in support of Jeff Brown for Mayor occurred on or about December 5, 2022.

74. Upon information and belief, the PAC’s last expenditure in support of Jeff Brown for Mayor occurred in or around April and May 2023.

75. Therefore, any time the PAC made an expenditure in support of Jeff Brown for Mayor, the 501(c)(4) provided a majority of the donations the PAC had received in the preceding twelve months.

76. Accordingly, because the 501(c)(4) provided the majority of donations received by the PAC within the twelve months prior to the PAC’s coordinated expenditures to support Jeff Brown for Mayor, and those expenditures are treated as in-kind contributions to Jeff Brown for Mayor, the entire amount of the PAC’s expenditures counts towards the contribution limits for both the 501(c)(4) and the PAC.

V. DEFENDANTS VIOLATED THE ANNUAL CONTRIBUTION LIMITS FOR THE MAYORAL ELECTION IN BOTH 2022 AND 2023

77. According to the PAC’s campaign finance reports, and upon information and belief, in calendar year 2022, the PAC made a total of \$1,133,830.00 in expenditures to influence the outcome of the 2023 Democratic primary election for Mayor, and, in calendar year 2023, the PAC

made a total of \$1,874,883.21 in expenditures to influence the outcome of the 2023 Democratic primary election for Mayor.

78. As described above, those expenditures count towards the contribution limits for both the PAC and the 501(c)(4).

79. The annual contribution limits to a campaign for City elective office, such as Mayor, are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations, effective until the General Election in November 2023.

80. Therefore, Defendants' expenditures exceeded the annual campaign contribution limits for both 2022 and 2023 and are thus violations of those limits.

81. Upon information and belief, Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor include, but are not limited to, expenditures for electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangers, field canvassing, Mayoral election polling, and voter outreach.

82. Upon information and belief, Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor continued at least until this Court's Order of April 10, 2023.

COUNT I
MULTIPLE VIOLATIONS OF THE CAMPAIGN FINANCE LAW, CAMPAIGN
CONTRIBUTION LIMITS

83. The Board incorporates the previous paragraphs as if fully set forth herein.

84. As set by the City's Campaign Finance Law, the annual contribution limits are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations.

85. Violations of the campaign contribution limits are subject to a maximum penalty of \$2,000 per violation. *See* Philadelphia Code Chapters 20-1008, 20-1301(1); Board Regulation No. 1.45.

86. Because Defendants' expenditures were coordinated with Brown's campaign, all of Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor.

87. In-kind contributions are subject to the annual contribution limits described above. *See* Board Regulation No. 1.8.

88. Defendants exceeded the undoubled 2022 limit on December 5, 2022, when they made a \$501,737.50 expenditure to Fortune Media, Inc.

89. Defendants made at least six additional expenditures in 2022, each of which constitutes a separate violation of the contribution limits.

90. Therefore, for Defendants' 2022 violations, the maximum civil monetary penalty allowable by law is \$14,000 subject to further expenditures yet to be discovered or disclosed.

91. Defendants exceeded the doubled limit applicable to 2023 on January 9, 2023 when they made a \$33,350.00 expenditure to Riverside Solutions, LLC.

92. Defendants made at least eighty-nine additional expenditures in 2023, each of which constitutes a separate violation of the contribution limits.

93. Therefore, for Defendants' 2023 violations, the maximum civil monetary penalty allowable by law is \$178,000 subject to further expenditures yet to be discovered or disclosed.

94. Because there may be violations that the Board is not aware of at this time, the Board reserves the right to seek civil monetary penalties in addition to the amounts described above.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Chapter 20-1002(2) pertaining to campaign contribution limits;
- (ii) a civil monetary penalty of \$2,000.00 for each violation, the final number of which to be determined by the Court; and
- (iii) any other relief the Court deems just and proper, including, but not limited to, injunctive relief.²

Respectfully submitted,

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

² On April 10, 2023, the Board filed an Emergency Petition to Enforce Philadelphia's Campaign Finance Law and Enjoin Continuing Violations Thereof. The same day, this Court issued an Order enjoining Defendants from making any new expenditures to influence the outcome of the 2023 Mayoral primary election until further Order of the Court and directing the Board to file a Complaint by April 14, 2023. Upon filing of the Board's Complaint, pursuant to the Court's Order, the Board's Emergency Petition converted to a Motion for Permanent Injunction. The Court also set a hearing on the merits of the Board's Petition/Motion for April 24, 2023.

On April 24, 2023, prior to the hearing, Plaintiff and Defendants filed a Stipulation and Order by Agreement to resolve the Board's Petition/Motion seeking injunctive relief, which the Court approved the same day. The Board reserves the right to seek further injunctive relief in this matter where appropriate as authorized by the Philadelphia Code.

Richard Barzaga, Esquire
Senior Staff Attorney

Michael Gutierrez, Esquire
Senior Staff Attorney

Attorneys for Plaintiff
Philadelphia Board of Ethics

Date: May 24, 2023

VERIFICATION

I, Michael Gutierrez, Senior Staff Attorney, Philadelphia Board of Ethics hereby state that I am the Attorney for Plaintiff Philadelphia Board of Ethics in this action, and I am authorized to make this Verification. I verify that the statement(s) made in the foregoing **FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** have been prepared based upon documents and information obtained through investigation, and based upon said documents and information, are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

BY: /s Michael Gutierrez
Michael Gutierrez, Esquire
Senior Staff Attorney
Philadelphia Board of Ethics

Date: May 24, 2023

Philadelphia Board of Ethics
One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)
614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC
614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

CERTIFICATE OF SERVICE

I hereby certify that on or about May 24, 2023, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** was served via electronic filing on all parties.

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director
Philadelphia Board of Ethics
Attorney for Plaintiff
Philadelphia Board of Ethics

Case ID: 240103181

EXHIBIT E



Filed and Attested by the
Office of Judicial Records
JUN 2023 10:12 am
AY STAMATO

PHILADELPHIA BOARD OF ETHICS,)
)
 Plaintiff,)
)
 v.)
)
 FOR A BETTER PHILADELPHIA 501(C)(4))
)
 and)
)
 FOR A BETTER PHILADELPHIA PAC,)
)
 Defendants.)

COURT OF COMMON PLEAS)
 PHILADELPHIA COUNTY)
)
)
 APRIL TERM, 2023)
)
 NO. 0795)

ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of Defendants' Preliminary Objection to Plaintiff Philadelphia Board of Ethics' First Amended Complaint, it is hereby **ORDERED** that Defendants' Preliminary Objection is **SUSTAINED**.

AND IT IS FURTHER ORDERED that:

1. Count I (Multiple Violations of the Campaign Finance Law, Campaign Contribution Limits) is dismissed with prejudice.

BY THE COURT:

, J.

BALLARD SPAHR LLP

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(202) 661-2200

*Attorneys for For a Better Philadelphia 501(c)(4)
and For a Better Philadelphia PAC*

PHILADELPHIA BOARD OF ETHICS,

Plaintiff,

v.

FOR A BETTER PHILADELPHIA 501(C)(4)

and

FOR A BETTER PHILADELPHIA PAC,

Defendants.

NOTICE TO PLEAD

TO PLAINTIFF: You are hereby notified to file a written response to the enclosed Preliminary Objection within twenty (20) days from the date of service hereof or a judgment may be entered against you.

/s/ Matthew A. White
Matthew A. White

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

APRIL TERM, 2023

NO. 0795

DEFENDANTS' PRELIMINARY OBJECTION

Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC (together, "For a Better Philadelphia" or "Defendants"), by and through their undersigned counsel, pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, hereby preliminarily object to the First Amended Complaint¹ filed by Plaintiff, the Philadelphia Board

¹ Plaintiff's original complaint alleged two counts, including one for injunctive relief. In response to For a Better Philadelphia's Preliminary Objection that the requested injunctive relief was unconstitutional, Plaintiff filed a First Amended Complaint, dropping the injunctive relief claim. In an attempt to bolster the now single-count First Amended

of Ethics (the “Board”). In support of their Preliminary Objection, Defendants submit and incorporate herein the accompanying Memorandum of Law, and state as follows:

**PROCEDURAL HISTORY AND RELEVANT FACTS ALLEGED IN
THE FIRST AMENDED COMPLAINT²**

1. Plaintiff Philadelphia Board of Ethics is a board established through the Philadelphia Home Rule Charter that “is charged with administering and enforcing Philadelphia’s Campaign Finance Law.” FAC at ¶ 1.
2. Defendant For a Better Philadelphia 501(c)(4) is a Pennsylvania non-profit social welfare corporation. FAC at ¶ 2.
3. Defendant For a Better Philadelphia PAC is an independent expenditure-only political action committee (“PAC”). FAC at ¶ 3.
4. Plaintiff initiated this action by filing an “Emergency” Petition for Injunctive Relief. On April 24, 2023, the parties filed a Stipulation to Resolve Plaintiff’s Request for Emergency Injunctive Relief, which the Court approved also on April 24, 2023.

Complaint, Plaintiff added allegations regarding (i) For a Better Philadelphia 501(c)(4)’s formation and contributions; (ii) irrelevant donations Brown’s Super Stores, Inc. made to the 501(c)(4); and (iii) an argument that “the PAC’s expenditures to influence the outcome of the primary election are attributable to the 501(c)(4).” A copy of the First Amended Complaint is attached hereto as Exhibit 1.

² Consistent with the applicable standards for Preliminary Objections in the nature of a demurrer, all well-pleaded facts are assumed to be true. And, even accepting these facts as true, Plaintiff’s First Amended Complaint fails as a matter of law. Were this case to proceed beyond this stage, For a Better Philadelphia would dispute many of the facts alleged, and any statement in these papers is without admission of the truth or accuracy of such allegation.

5. Plaintiff filed its original Complaint on April 14, 2023.

6. On May 3, 2023, For a Better Philadelphia filed Preliminary Objections to the Complaint, arguing, in part, that any requested injunctive relief violates the Pennsylvania and United States' Constitutions.

7. On May 24, 2023, in response to For a Better Philadelphia's Preliminary Objections, Plaintiff filed a First Amended Complaint, abandoning the claim for injunctive relief.

8. The First Amended Complaint alleges that between May 16, 2022 and October 24, 2022, Jeff Brown – who later became a 2023 Democratic primary candidate for Mayor of Philadelphia – engaged in fundraising activities in support of For a Better Philadelphia. FAC at ¶¶ 30-52.

9. Jeff Brown's fundraising activities included meeting with potential donors, being copied on or responding to e-mails regarding fundraising efforts, and attending and speaking at fundraising dinners. *Id.*

10. Jeff Brown publicly declared his candidacy for Mayor of Philadelphia on November 16, 2022. FAC at ¶ 11.

11. The First Amended Complaint alleges that For a Better Philadelphia made expenditures in 2022 and 2023 “to influence the outcome of the 2023 Democratic primary election for Mayor[,]” such as “electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangars, field canvassing, Mayoral election polling, and voter outreach.” FAC at ¶¶ 80, 81.

12. The First Amended Complaint fails to identify any allegedly offending communications funded by Defendants.

13. The First Amended Complaint makes no allegation that Jeff Brown directed in any way the activities of either Defendant.

14. Nevertheless, the First Amended Complaint alleges that Mr. Brown's fundraising, prior to his candidacy, in support of For a Better Philadelphia constitutes "coordinated" expenditures under Philadelphia Board of Ethics Regulation No. 1, and therefore For a Better Philadelphia's expenditures are in-kind contributions that are subject to campaign contribution limits. FAC at ¶ 29.

15. Additionally, the First Amended Complaint alleges that between January 2023 and March 2023, Brown's Super Stores, Inc. wired funds to the 501(c)(4) on three separate occasions. FAC at ¶¶ 56-58.

16. The First Amended Complaint also alleges, upon information and belief, that Jeff Brown was the President and Treasurer of Brown's Super Stores, Inc. when Brown's Super Stores, Inc. made its contributions to the 501(c)(4), and therefore Mr. Brown "participated in the solicitation of these funds for, and direction of these funds to, the 501(c)(4) in 2023, while he was a candidate[.]" FAC at ¶¶ 59-60.³

³ These Preliminary Objections must assume the accuracy of these allegations. Defendants, however, do not believe these allegations are correct, and if called upon to Answer, would deny them.

17. The First Amended Complaint does not allege that the 501(c)(4) used these funds for any particular purpose, including to influence the outcome of any election, or made any contributions in 2023 to the PAC following receipt of these funds.

18. Lastly, the First Amended Complaint alleges that because the 501(c)(4) contributed the majority of the funds received by the PAC, that those funds should be treated as in-kind contributions, resulting in the entire amount being subject to campaign contribution limits. FAC at ¶ 76.

19. Thus, the First Amended Complaint alleges that For a Better Philadelphia's expenditures exceeded the annual campaign contribution limits for 2022 and 2023, resulting in a violation of Philadelphia's Campaign Finance Law. FAC at ¶ 80.

20. The First Amended Complaint seeks a judgment that For a Better Philadelphia violated Philadelphia's Campaign Finance Law regarding campaign contribution limits. FAC at Count I Wherefore Clause and Prayer for Relief.

21. The First Amended Complaint further seeks a monetary penalty of \$2,000 for each purported violation of the Campaign Finance Law, along with "any other relief the Court deems just and proper, including, . . . injunctive relief."⁴ *Id.*

⁴ To the extent the First Amended Complaint seeks to reserve any right to injunctive relief, after having dropped its previous count for injunctive relief, For a Better Philadelphia reserves its right to argue against the constitutionality—under both the United State and Pennsylvania Constitutions—of such relief that would be tantamount to a prior restraint of political speech. As the United States Supreme Court has repeatedly recognized, "[t]he First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." *FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1650 (2022) (internal quotation marks omitted); *Citizens United v. FEC*, 558 U.S. 310, 329 (2010) (noting that "political speech . . . is central to the meaning and purpose of the First

PRELIMINARY OBJECTION

DEMURRER

22. The single-count First Amended Complaint purports to state a claim for violations of Philadelphia’s Campaign Finance Law, but the plain language of the Regulation does not bar any of the alleged conduct.

23. As more fully set forth in the accompanying Memorandum of Law, under Rule 1028(a)(4), Plaintiff does not state a cause of action.

24. A **Campaign** “[i]ncludes any of the following: A candidate, the candidate’s candidate political committee and its officers, and agents of any of them.” Regulation No. 1, Section 1.1(d).

25. A **Candidate** is “[a]n individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.” Section 1.1(e).

Amendment”); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”). This is because the “[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of our system of government.” *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (internal quotation marks omitted). Under Article I, §7 of the Pennsylvania Constitution, “political contributions are a form of non-verbal, protected expression” and “expressive conduct represented by political donations is subject to strict scrutiny.” *DePaul v. Commonwealth*, 969 A.2d 536, 548 (Pa. 2009) (declaring unconstitutional a statute barring certain casino officers, directors, and shareholders from making political contributions). In particular, this provision was “designed to prohibit the imposition of prior restraints upon the communication of thoughts and opinions.” *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (internal quotation marks omitted).

26. Thus, there is no **Campaign**, until there is a **Candidate**.

27. The gravamen of Plaintiff's First Amended Complaint is that Defendants violated Section 1.33(d) by coordinating activities with a campaign. Under that Regulation, an expenditure is coordinated with a **Campaign**, if "[t]he **campaign** has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence." Thus, as a matter of law and of the plain language of the Board's regulations, there can be no "coordination" unless and until Jeff Brown became a **Candidate**.

28. The First Amended Complaint admits that Jeff Brown became a Candidate on November 16, 2022.

29. All the allegedly "coordinated" fundraising occurred prior to November 16, 2022.

30. A plain reading of this Regulation does not prohibit fundraising for an independent expenditure PAC or a 501(c)(4) by a person who later becomes a candidate.

31. To the extent the First Amended Complaint attempts to allege that Jeff Brown solicited or directed funds to For a Better Philadelphia 501(c)(4) through Brown's Super Stores, Inc. **after** publicly declaring his candidacy (i.e., after November 16, 2022), it fails to allege **any** facts regarding how or when the 501(c)(4) used those funds, if at all.

32. There are no allegations that the 501(c)(4) made any contributions to the PAC in 2023, when this supposed "solicitation" and "directing" took place.

33. Under the Section 1.33(d), there is no "coordination" without an expenditure.

34. Therefore, like the attempt to allege “coordination” **before** Jeff Brown became a Candidate, merely because a separate entity (Brown’s Super Stores, Inc.) made contributions to the 501(c)(4) **after** Jeff Brown became a candidate, without any allegation how or when those funds were used, must also fail.

WHEREFORE, For a Better Philadelphia respectfully requests that the First Amended Complaint be dismissed with prejudice under Rule 1028(a)(4) for failure to state a cause of action.

Date: June 5, 2023

Respectfully submitted,

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PHILADELPHIA BOARD OF ETHICS,

Plaintiff,

v.

FOR A BETTER PHILADELPHIA 501(C)(4)

and

FOR A BETTER PHILADELPHIA PAC,

Defendants.

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

APRIL TERM, 2023

NO. 0795

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS’ PRELIMINARY OBJECTION**

I. MATTER BEFORE THE COURT

Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC (together, “For a Better Philadelphia”) submit this Memorandum of Law in support of their Preliminary Objection to the First Amended Complaint filed by Plaintiff Philadelphia Board of Ethics (“Plaintiff” or “the Board”).

II. STATEMENT OF QUESTION INVOLVED

1. Should the Court dismiss Plaintiff's single-count First Amended Complaint with prejudice pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), where a plain reading of the operative regulation does not prohibit a private citizen (a non-Candidate) from raising money for an independent expenditure PAC or a 501(c)(4) nonprofit organization?

Suggested Answer: Yes.

III. RELEVANT ALLEGATIONS

Plaintiff alleges that between May 16, 2022 and October 24, 2022, Jeff Brown, at the time a private citizen, engaged in fundraising activities in support of For a Better Philadelphia by meeting with potential donors, being copied on or responding to e-mails regarding fundraising efforts, and attending and speaking at fundraising dinners. FAC at ¶¶ 30-52. The First Amended Complaint admits that on November 16, 2022, Jeff Brown became a candidate for mayor. *Id.* at ¶ 11. According to the First Amended Complaint, For a Better Philadelphia made expenditures in 2022 and 2023 “to influence the outcome of the 2023 Democratic primary election for Mayor[.]” such as “electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangars, field canvassing, Mayoral election polling, and voter outreach.” *Id.* at ¶¶ 80, 81. The First Amended Complaint provides no details or examples of any such allegedly offending political speech. Nor does the First Amended Complaint allege that Mr. Brown, either before or after becoming a candidate, directed any of the activities of either Defendant. Similarly, the First Amended Complaint alleges that Brown's Super Stores, Inc. wired funds to the 501(c)(4) on three separate occasions between January 2023 and March 2023, but fails to allege when, whether, or how the 501(c)(4) used those funds. FAC at ¶¶ 56-58.

Ignoring the actual language of the Regulation, Plaintiff asserts that Mr. Brown’s fundraising while he was a private citizen (that is, before he declared his candidacy for Mayor on November 16, 2022) in support of For a Better Philadelphia constitutes “coordinated” expenditures under Philadelphia Board of Ethics Regulation No. 1, and therefore For a Better Philadelphia’s expenditures are in-kind contributions that are subject to campaign contribution limits. *Id.* at ¶ 29. Plaintiff further alleges that the expenditures exceeded the annual campaign contribution limits for 2022 and 2023, resulting in a violation of the Campaign Finance Law. *Id.* at ¶ 20.

Even accepting these allegations as true, Plaintiff’s First Amended Complaint fails as a matter of law.

IV. ARGUMENT

A. Legal Standard

Preliminary objections in the nature of a demurrer challenge the legal insufficiency of a pleading. Pa. R.Civ.P. 1028(a)(4); *Kelly v. Kelly*, 887 A.2d 788, 790-91 (Pa. Super. Ct. 2005); *Giordano v. Ridge*, 737 A.2d 350, 352 (Pa. Commw. Ct. 1999). If a claim is legally insufficient on its face such that the law will not permit recovery, dismissal is appropriate. *Kelly*, 887 A.2d at 790-91.

In ruling upon preliminary objections, courts are to accept as true all well-pleaded factual allegations and reasonable inferences—but they should not accept as true unwarranted inferences from facts, conclusions of law, argumentative allegations, or opinions. *Erie Cnty. League of Women Voters v. Dep’t of Env’tl Res.*, 525 A.2d 1290, 1291 (Pa. Commw. Ct. 1987). Further, dismissal with prejudice is appropriate where it is clear that amendment would be futile. *Carlino v. Whitpain Investors*, 453 A.2d 1385, 1388 (1982).

The Court should dismiss Plaintiff's First Amended Complaint in its entirety, and with prejudice, because Plaintiff (again) pleads no facts that violate the operative Regulation.

B. The Allegations Do Not State A Violation of the Campaign Finance Law.

The Philadelphia Board of Ethics' Regulation No. 1 ("Regulation No. 1") does not prohibit private citizens from fundraising for independent expenditure PACs and get-out-the-vote non-profits. Yet, that is the central thrust of Plaintiff's First Amended Complaint. To find a hook upon which to hang a claim, the Board has to intentionally misread the actual regulations it has passed. This, of course, is improper.

When interpreting local laws, Pennsylvania courts are guided by the Statutory Construction Act of 1972 (the "Act"). *Cozen O'Connor v. City of Phila. Bd. of Ethics*, 105 A.3d 1217, 1230 (Pa. 2014) ("*Cozen II*"); *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 315 (Pa. 1987); 1 Pa.C.S. § 1501 *et seq.* The Act makes clear that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). However, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). Ambiguity exists when a statute or regulation's "language is subject to two or more reasonable interpretations." Courts should therefore resort to statutory construction *only* "[w]hen the words of a statute are not explicit[.]" 1 Pa.C.S. § 1921(c).

When construing a statute, courts must "give effect to all its provisions," as no provision should be "reduced to mere surplusage." *Walker v. Eleby*, 842 A.2d 389, 400 (Pa. 2004). Further, if statutory construction is necessary, courts may consider, in part, "[t]he consequences of a particular interpretation." 1 Pa.C.S. § 1921(c)(6). It is presumed that lawmakers "do[] not intend a result that is absurd, impossible of execution, or unreasonable." 1 Pa.C.S. § 1922(1).

Here, the Court need not engage in complex statutory analysis because the language of Regulation No. 1 is explicit and free from ambiguity. We start with the relevant definitions. Section 1.1(d) defines a **campaign** as including “[a] **candidate**, the candidate’s candidate political committee and its officers, and agents of any of them.” Section 1.1(e) defines a **candidate** as “[a]n individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office” Thus, there is no “campaign” until there is a “candidate.” The timing is crucial, and it is in the hands of the candidate to decide. Thus, for example, various candidates in this past election cycle—including the winning candidates in both parties-- were members of City Council. They did not formally become Candidates until they announced or filed papers stating their intent, which had other ramifications, such as when they were required to resign from City Council. A plain reading of these Sections shows that one does not become a candidate until they either file their nomination papers or publicly announce their candidacy. And the definition of Candidate in the Regulation has no “look back” that retroactively includes periods of time before the triggering events.

Section 1.1(p) defines in-kind contributions as including “any expenditure that advocates or influences the nomination or election of a candidate *that is coordinated with that candidate’s campaign[.]*” (emphasis added). Section 1.33, the provision at issue here, states that “[a]n expenditure is coordinated with a campaign *if it is made in cooperation, consultation or concert with the campaign[.]*” (emphasis added). An example of coordination includes:

The **campaign** has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or

Section 1.33(d) (emphasis added). A plain reading of Section 1.33 demonstrates that an expenditure is only coordinated with a campaign if the *campaign* is involved in the making of the expenditure or if the *campaign* solicited or directed funds. The prohibitions of Section 1.33 all relate to activities of a campaign, and under the applicable definitions, there cannot be a campaign until there is a candidate.

The Board alleges that Jeff Brown’s activities in May 2022 through October 2022 “solicited funds for[] and directed funds to” For a Better Philadelphia as described in Section 1.33(d). FAC at ¶ 22-55. Therefore, the Board’s argument goes, Jeff Brown coordinated with For a Better Philadelphia such that *all* of For a Better Philadelphia’s expenditures are in-kind contributions that are subject to campaign contribution limits. *Id.* at ¶ 29. The fallacy of this position is that it ignores the plain language of the applicable regulations. The Board alleges that this coordination took place between May 16, 2022 and October 24, 2022. *Id.* at ¶¶ 30, 52. The Board concedes, however, that Jeff Brown did not publicly declare his candidacy until November 16, 2022. *Id.* at ¶ 11. The Board carefully defined the term “candidate” to include only those who file nomination papers or publicly announce their candidacy, and it is bound by its definition. If the Board wanted the definition of “candidate” to include “any person who becomes a candidate within six months of fundraising for a PAC or 501(c)(4),” then it could have attempted to promulgate the Regulation to say that, but, to date, it has not done so.⁵

⁵ Importantly, we do not suggest that an amendment of the Regulation to support the Board’s erroneous interpretation would be viable. It is illogical that a private citizen can fundraise unlimited amounts for an independent expenditure PAC, commonly referred to as a “Super PAC,” but if that citizen subsequently becomes a candidate, their past conduct could be deemed coordination, leading to a potential violation of Campaign Finance Law.⁵ Indeed, “the First Amendment safeguards an individual’s right to participate in the public debate through political expression and political association.” *McCutcheon v. FEC*, 572 U.S. 185, 203 (2014). And “[t]hose First Amendment rights are important regardless whether the

To the extent that the First Amended Complaint attempts to allege that For a Better Philadelphia 501(c)(4) coordinated with Jeff Brown *during* his candidacy, those allegations also fail to state a claim upon which relief can be granted. Implicitly acknowledging the legal deficiencies in its position that For a Better Philadelphia coordinated with Jeff Brown *prior* to him publicly declaring his candidacy, the Board inserts some vague innuendo to allege that Jeff Brown “solicited” and “donated” funds to the 501(c)(4) *after* he was a candidate through his supposed role (pled “on information and belief”) as President and Treasurer of Brown’s Super Stores, Inc.⁶ Specifically, the Board alleges that Brown’s Super Stores, Inc. wired funds to the 501(c)(4) on three separate occasions between January 2023 and March 2023. Remarkably absent from the First Amended Complaint, however, are any allegations regarding how, when, or whether the 501(c)(4) used these funds, if at all. Indeed, there are no allegations that the 501(c)(4) made any contributions in 2023, much less a contribution “to influence the outcome of the 2023 Democratic primary election for Mayor.” Without such an expenditure, there is no coordination. *See* Regulation 1.33 and 1.33(d). Thus, these implausible allegations cannot save the Board’s claim.

At bottom, the Board’s interpretation of Regulation No. 1 runs contrary to its plain text and is illogical. Under the plain text of the Regulation, *and as the Board admits*, Jeff Brown did

individual is . . . someone who spends substantial amounts of money in order to communicate his political ideas through sophisticated means.” *Id.* (internal quotation marks and alterations omitted).

⁶ We must accept as true this allegation. If Defendants were to Answer, these allegations would be denied.

not become a candidate until November 16, 2022. And, there is no campaign or campaign political committee until there is a candidate. Without a campaign, there are no coordinated expenditures. Without coordinated expenditures, For a Better Philadelphia's expenditures are *not* in-kind contributions subject to campaign contribution limits. A plain reading of the statute simply demonstrates that the Board's First Amended Complaint fails as a matter of law.

V. RELIEF

For all the foregoing reasons, For a Better Philadelphia respectfully requests that this Court dismiss with prejudice Plaintiff's First Amended Complaint for failure to state a cause of action under Rule 1028(a)(4).

Date: June 5, 2023

Respectfully submitted,

Katherine Belinski (*admitted pro hac vice*)

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*Attorneys for For a Better Philadelphia 501(c)(4)
and For a Better Philadelphia PAC*

CERTIFICATE OF SERVICE

I, Matthew A. White, do hereby certify that on June 5, 2023, I caused a correct copy of the foregoing Preliminary Objection of Defendants For a Better Philadelphia 501(c)(4) and For a Better Philadelphia PAC to be electronically filed and served upon the following counsel of record via the Court's Electronic Filing System:

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Richard Barzaga, Esq.
Michael Gutierrez, Esq.
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Counsel for Philadelphia Board of Ethics

Dated: June 5, 2023

/s/ Matthew A. White
Matthew A. White

EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION



Philadelphia Board of Ethics

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Plaintiff

vs.

For a Better Philadelphia 501(c)(4)

614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC

614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

NOTICE TO DEFEND

NOTICE	AVISO
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p><i>You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.</i></p> <p style="text-align: center;">Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascntar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.</p> <p><i>Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.</i></p> <p style="text-align: center;">Asociacion De Licenciados De Filadelfia Servicio De Referencia E Informacion Legal One Reading Center Filadelfia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197</p>

FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC

Plaintiff Philadelphia Board of Ethics (“Plaintiff” or the “Board”), by and through its undersigned counsel, respectfully applies to this Court for an Order imposing civil monetary penalties on the above-named Defendants For a Better Philadelphia 501(c)(4) (the “501(c)(4)”) and For a Better Philadelphia PAC (the “PAC”), collectively, “For a Better Philadelphia” or “Defendants,” for violations of the City of Philadelphia’s Campaign Finance Law and any other relief the Court deems just and proper, as authorized under the Philadelphia Home Rule Charter and Philadelphia Code. In support thereof the Board avers as follows:

PARTIES

1. The Board is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law, which is found at Philadelphia Code Chapter 20-1000, *et seq.* Pursuant to Home Rule Charter Section 4-1100, the Board may seek enforcement of the Campaign Finance Law in the Court of Common Pleas.¹

2. The 501(c)(4) is a Pennsylvania non-profit corporation registered with the Internal Revenue Service as a tax-exempt, non-profit, social welfare organization.

3. The PAC is a political committee that filed a registration statement with the Philadelphia City Commissioners on August 10, 2022.

¹ The Board proceeds with this action via Complaint pursuant to the Court’s Order of April 10, 2023. The Board does not intend to, nor does, waive any arguments regarding the use of a Petition to initiate an enforcement proceeding in the Court of Common Pleas under the Campaign Finance Law or any other provisions of the Philadelphia Code or Philadelphia Home Rule Charter in this or any future proceeding. *See, e.g.,* Local Rule of Civil Procedure 206.1(a)(viii) (providing for “Statutory Petitions”); *Chaney v. Fairmount Park Real Est. Corp.*, No. 2388 C.D. 2011, 2012 WL 8704658, at *3 (Pa. Commw. Ct. June 25, 2012) (finding petition for relief based on statutory rights falls within plain meaning of “statutory petitions” authorized by Phila. Civ. R. 206.1(a)(viii)).

4. The 501(c)(4)'s address is 614 S. 4th Street, PO Box 324, Philadelphia, PA 19147. Other known addresses for the 501(c)(4) include 614 S. 4th Street, Box 334, Philadelphia, PA 19147 and 614 S. 4th Street, #344, Philadelphia, PA 19147.

5. The PAC's address is 614 S. 4th Street, Unit #334, Philadelphia, PA 19147.

JURISDICTION AND VENUE

6. This Court has jurisdiction under Philadelphia Code Chapter 4-1100 which authorizes the Board to bring an enforcement action in the Court of Common Pleas.

7. Venue is proper in this Court because the 501(c)(4) and the PAC are resident in Philadelphia County and the transactions and occurrences underlying this action occurred in Philadelphia County.

STATEMENT OF FACTS

8. David Maser ("Maser") is the Chairperson and Treasurer of the 501(c)(4).

9. Maser is also the Chairperson of the PAC.

10. Olivia Scanlon ("Scanlon") is the Deputy Campaign Manager for Jeff Brown for Mayor, who was previously the fundraising consultant for Defendants until she joined Jeff Brown for Mayor (defined below).

11. Jeff Brown ("Brown") was a candidate in the 2023 Democratic primary election for Mayor of Philadelphia. Brown publicly declared his candidacy on November 16, 2022.

12. Jeff Brown for Mayor is Brown's candidate political committee.

I. FORMATION OF THE 501(C)(4); BROWN SOLICITED FUNDS FOR AND DIRECTED FUNDS TO THE 501(C)(4) IN 2021

13. On or about April 7, 2021, the 501(c)(4) filed with the Pennsylvania Department of State to incorporate as a domestic nonprofit corporation.

14. On or about April 9, 2021, a personal check for \$25,000.00 was issued from a joint account held by Jeff Brown and Sandra Brown, which was made payable to the order of the 501(c)(4).

15. On April 13, 2021, Maser applied for a Wells Fargo business checking account for the 501(c)(4). The application listed an opening deposit of \$25,000.00.

16. Also on April 13, 2021, the \$25,000.00 check from the Browns' joint account was deposited into the 501(c)(4)'s Wells Fargo account.

17. Through June 30, 2021, the only money that had been deposited into the 501(c)(4)'s account was the initial \$25,000.00 from the Browns' joint account.

18. On or about November 12, 2021, Brown's Super Stores, Inc. issued a check for \$225,000.00 from its "Disbursement Account" made payable to the order of the 501(c)(4).

19. The check's memo line read "For Contribution."

20. At the time Brown's Super Stores, Inc. issued the \$225,000.00 check, Brown was the Chairman and CEO of Brown's Super Stores, Inc.

21. On November 19, 2021, the check was deposited into the 501(c)(4)'s checking account.

II. BROWN SOLICITED FUNDS FOR AND DIRECTED FUNDS TO DEFENDANTS THROUGHOUT 2022

22. Brown solicited funds for, and directed funds to, Defendants throughout 2022, including but not limited to, within the twelve months prior to the May 16, 2023 Democratic primary election for Mayor.

23. Brown's solicitation of funds for, and direction of funds to, Defendants occurred prior to Defendants making expenditures to influence the outcome of the primary election.

24. Under Board Regulation No. 1.33(d), expenditures are coordinated with a campaign if the campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the twelve months before the election the person's expenditure seeks to influence.

25. Under Board Regulation No. 1.1(d), the definition of campaign includes the candidate individually.

26. Therefore, all of Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor were coordinated with Brown's campaign.

27. Under Board Regulation No. 1.1(p), any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign is an in-kind contribution to that candidate's campaign.

28. In-kind contributions are subject to the annual contribution limits set forth in the City's Campaign Finance Law and associated regulations. *See* Philadelphia Code Chapter 20-1002; Board Regulation Nos. 1.2, 1.3, 1.8.

29. Accordingly, because Defendants' expenditures were coordinated with Brown's campaign, all of Defendants' expenditures to influence the outcome of the primary election are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor and are subject to the contribution limits.

A. Details of Brown's fundraising activity on behalf of Defendants in 2022

30. On May 18, 2022, Scanlon emailed a potential donor and copied Brown after Brown and Scanlon had dinner with the potential donor on May 16, 2022, writing:

Thank you for letting me join you and Jeff for dinner on Monday night. Jeff asked me to send you the contribution form to make another \$50,000 contribution to For a Better Philadelphia.

If interested, we'd love to have you come by our office next month and see some of the materials we've put together as well as our findings from recent focus groups. Let me know if this would be of interest and I'd be happy to set it up.

Thank you again for your support,
Olivia

31. The contribution form sent to the donor on May 18, 2022, as well as the contribution form sent thereafter to other potential donors, stated that "Contributions may be used for activities of 'For a Better Philadelphia' and its affiliated PACs at 'For a Better Philadelphia's' discretion."

32. On July 7, 2022, Scanlon emailed a draft invitation to Maser and Brown for a fundraising dinner for Defendants' benefit with a cost of attendance of \$100,000 per individual featuring an "intimate dinner and roundtable discussion on the future of Philadelphia" with Brown. Scanlon further wrote: "We can discuss shortly."

33. Also on July 7, 2022, Scanlon emailed Brown, Maser, and a former candidate for federal office ("Former Candidate") regarding fundraising solicitation phone calls Former Candidate made to potential donors, directing Brown and Maser's attention to a table in the email chain showing that the phone calls were about the 2023 Philadelphia Mayoral election.

34. On July 14, 2022, Scanlon copied Brown and Maser on an email chain, where a previous email from Scanlon to Former Candidate on July 12, 2022 read: "Checking in to see how the day went with [potential donor] on Sunday and if there's an opportunity to arrange a meeting between him, you and Jeff before September."

35. Also on July 14, 2022, Scanlon sent Maser a chart about the August 2, 2022 dinner which included several references to an individual identified as "Jeff" and that individual's interactions with potential donors prior to the dinner.

36. The July 14, 2022 chart listed \$225,000.00 pledged and received from Brown and also contained the phrase “Brown’s” in the “Received” column next to Sandy Brown’s name. Upon information and belief, Sandy Brown is Jeff Brown’s wife Sandra Brown.

37. On July 19, 2022, Scanlon copied Brown and Maser on an email to a potential donor, which read:

Thank you very much for meeting with us this morning. Attached please find the form to contribute to For a Better Philadelphia. Please let us know if you have any questions.

Many thanks again - Jeff is looking forward to continuing our conversation with you in the coming weeks and months.

38. On July 20, 2022, Scanlon sent an updated chart to Maser and Brown regarding the August 2, 2022 dinner which also referenced “Jeff” as well as an individual identified as “JB” and interactions that “Jeff” and “JB” had with potential donors ahead of the dinner.

39. The updated July 20, 2022 chart included notes that, upon information and belief, indicated the listed donors’ preference to contribute to the 501(c)(4) or the PAC.

40. The July 20, 2022 chart listed \$125,000 pledged and received from Jeff Brown and \$100,000 pledged and received from Sandy Brown, with the note “C4” next to each of their names.

41. On July 31, 2022, Scanlon emailed Brown a spreadsheet about the upcoming August 2, 2022 dinner which she intended to share with a potential donor, Individual Donor #1, who was out of the country until August 30, 2022. Scanlon wrote to Brown:

JB,

I played with the numbers a little bit here to get the full 400K [Individual Donor #1] match. I included the total giving amount in case [Individual Donor #1 is] feeling generous and wants to contribute 25% of the total giving in the room that night rather than just what’s new :)

Let me know if you have any edits and we should probably call [Individual Donor #1] tomorrow to discuss.

Maser replied to Scanlon and suggested that the spreadsheet not be shared with Individual Donor #1 “as donors are anonymous,” but if Individual Donor #1 had to know to make a matching 25% contribution, that the list be read over the phone. Brown replied and directed Scanlon: “Olivia, See if that works with [Individual Donor #1]. Thank you, Jeff Brown.” At this time, Defendants were planning a September fundraising dinner that Individual Donor #1 could attend.

42. On August 2, 2022, Brown attended the above-referenced fundraising dinner supporting Defendants which featured a roundtable discussion with him speaking on the “future of Philadelphia.”

43. On August 3, 2022, Scanlon emailed Maser and Brown, in advance of the September fundraising dinner, asking them to review a guest list of those who attended the August 2, 2022 dinner before sending it to Individual Donor #1, writing:

Please take a look at the second page – I want to be transparent that we’re counting some money from folks that didn’t attend but demonstrate that they are new dollars intended for it. Could be overthinking.

Let me know if you want to include or remove before I send to [Individual Donor #1]. Thanks, Olivia.

Maser replied to Scanlon, writing: “I think it’s fine, a little transparency is a good thing.”

44. Also on or about August 3, 2022, Brown’s Super Stores, Inc. issued another check for \$225,000.00 from its “Disbursement Account” made payable to the order of the 501(c)(4).

45. The check’s memo line read “For Contribution.”

46. At the time Brown’s Super Stores, Inc. issued the August 3, 2022 check for \$225,000.00, Brown was the Chairman and CEO of Brown’s Super Stores, Inc.

47. On August 26, 2022, the check was deposited into the 501(c)(4)'s checking account.

48. Upon information and belief, the August 3, 2022 check from Brown's Super Stores, Inc. fulfilled the pledges from Jeff Brown and Sandy Brown for the August 2, 2022 dinner, which when combined, total \$225,000.00.

49. On September 12, 2022, Scanlon emailed Individual Donor #1, copying Brown and writing in part:

Thank you for your RSVP to attend tomorrow's roundtable dinner with Jeff Brown in support of For a Better Philadelphia. Please find attached the form with which to make a contribution. If you'd prefer you are welcome to bring a check with you to the dinner.

Roundtable Dinner & Discussion with Jeff Brown
Tuesday, September 13, 2022 | 6:00 PM
Steak 48 | 260 S Broad St, Philadelphia, PA 19102

Please let me know if you have any dietary restrictions that I can share with the restaurant in advance or if you have any questions regarding your contribution. Thank you very much for your generous support and I look forward to seeing you tomorrow.

50. On September 13, 2022, Brown attended the above-referenced fundraising dinner supporting Defendants which featured a roundtable discussion with him.

51. Later on September 13, 2022, after the dinner, Scanlon emailed Individual Donor #1 and copied Brown, writing:

Thank you for your attendance tonight and generous support of For a Better Philadelphia. Please send the address I should pick up the check from tomorrow morning. Additionally please find the contribution form attached to accompany your incredibly generous contribution for our compliance team.

With gratitude,
Olivia

52. On October 24, 2022, Scanlon emailed a potential donor, writing:

Hope you are well. Jeff let me know you connected earlier this month and were willing to contribute your \$100,000 pledge into our publicly reported entity, the For a Better Philadelphia PAC. I'm attaching the contribution form here and connecting you with David Maser, the chair of For a Better Philadelphia.

53. Upon information and belief, at least some, if not most, of the references to "Jeff" and "JB" described the preceding paragraphs are references to Jeff Brown.

54. Additionally, in both published reports and media appearances, Brown has publicly admitted that he solicited funds for and directed funds to Defendants prior to declaring his candidacy.

55. All of the fundraising activity described in this Section II, A occurred in the twelve months before the May 16, 2023 Democratic primary election for Mayor.

III. BROWN'S SUPER STORES, INC. CONTRIBUTED AT LEAST \$1.25 MILLION TO THE 501(C)(4) IN 2023

56. On January 24, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$500,000.00.

57. On February 24, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$500,000.00.

58. On March 28, 2023, Brown's Super Stores, Inc. wired the 501(c)(4) \$250,000.00.

59. Upon information and belief, and based on Brown's Super Stores, Inc.'s previous history of contributions to the 501(c)(4) while he was its Chairman and CEO, Jeff Brown participated in the solicitation of these funds for, and direction of these funds to, the 501(c)(4) in 2023, while he was a candidate in the 2023 Democratic primary election for Mayor.

60. According to the Pennsylvania Department of State, Jeff Brown remains Brown's Super Stores, Inc.'s President and Treasurer as of the date of this filing.

IV. THE ENTIRETY OF THE PAC'S EXPENDITURES TO INFLUENCE THE OUTCOME OF THE PRIMARY ELECTION ARE ATTRIBUTABLE TO THE 501(C)(4)

61. The PAC reported in its 2022 Annual Campaign Finance Report (Cycle 7) that it had received a total of \$3,023,525.10 in contributions in calendar year 2022.

62. According to the same report, the 501(c)(4) contributed \$2,475,000.00 to the PAC on September 14, 2022.

63. The 501(c)(4) also gave money to an IRS tax-exempt organization called MAP USA.

64. On September 23, 2022, the 501(c)(4) sent \$500,000.00 by wire transfer to MAP USA.

65. On November 1, 2022, MAP USA contributed \$350,000.00 to the PAC.

66. On November 23, 2022, Patriot Majority USA contributed \$150,000.00 to the PAC.

67. MAP USA and Patriot Majority USA are controlled by and share the same individual principal officer.

68. Upon information and belief, the 501(c)(4)'s money transfer to MAP USA on September 23, 2022 (in the amount of \$500,000.00) was used to fund MAP USA's (\$350,000.00) and Patriot Majority USA's (\$150,000.00) contributions to the PAC, which, when combined, total \$500,000.00.

69. According to the PAC's campaign finance reports filed as of May 19, 2023, it received an additional \$64,738.40 in contributions generally from January 1, 2023 through March 27, 2023.

70. Upon information and belief, the 501(c)(4) made no other contributions to any other PACs which made expenditures to influence the outcome of the 2023 Democratic primary election for Mayor.

71. Pursuant to Board Regulation No. 1.4(a)(ii), a contribution is made through another person if “[a] person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient’s contribution to support a candidate.”

72. In such a case, “the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.”

73. Upon information and belief, the PAC’s first expenditure in support of Jeff Brown for Mayor occurred on or about December 5, 2022.

74. Upon information and belief, the PAC’s last expenditure in support of Jeff Brown for Mayor occurred in or around April and May 2023.

75. Therefore, any time the PAC made an expenditure in support of Jeff Brown for Mayor, the 501(c)(4) provided a majority of the donations the PAC had received in the preceding twelve months.

76. Accordingly, because the 501(c)(4) provided the majority of donations received by the PAC within the twelve months prior to the PAC’s coordinated expenditures to support Jeff Brown for Mayor, and those expenditures are treated as in-kind contributions to Jeff Brown for Mayor, the entire amount of the PAC’s expenditures counts towards the contribution limits for both the 501(c)(4) and the PAC.

V. DEFENDANTS VIOLATED THE ANNUAL CONTRIBUTION LIMITS FOR THE MAYORAL ELECTION IN BOTH 2022 AND 2023

77. According to the PAC’s campaign finance reports, and upon information and belief, in calendar year 2022, the PAC made a total of \$1,133,830.00 in expenditures to influence the outcome of the 2023 Democratic primary election for Mayor, and, in calendar year 2023, the PAC

made a total of \$1,874,883.21 in expenditures to influence the outcome of the 2023 Democratic primary election for Mayor.

78. As described above, those expenditures count towards the contribution limits for both the PAC and the 501(c)(4).

79. The annual contribution limits to a campaign for City elective office, such as Mayor, are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations, effective until the General Election in November 2023.

80. Therefore, Defendants' expenditures exceeded the annual campaign contribution limits for both 2022 and 2023 and are thus violations of those limits.

81. Upon information and belief, Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor include, but are not limited to, expenditures for electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangers, field canvassing, Mayoral election polling, and voter outreach.

82. Upon information and belief, Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor continued at least until this Court's Order of April 10, 2023.

COUNT I
MULTIPLE VIOLATIONS OF THE CAMPAIGN FINANCE LAW, CAMPAIGN
CONTRIBUTION LIMITS

83. The Board incorporates the previous paragraphs as if fully set forth herein.

84. As set by the City's Campaign Finance Law, the annual contribution limits are ordinarily \$3,100 for individuals and \$12,600 for political committees and unincorporated business organizations. On December 30, 2022, the annual contribution limits for the 2023 Philadelphia Mayoral election doubled to \$6,200 for individuals and \$25,200 for political committees and unincorporated business organizations.

85. Violations of the campaign contribution limits are subject to a maximum penalty of \$2,000 per violation. *See* Philadelphia Code Chapters 20-1008, 20-1301(1); Board Regulation No. 1.45.

86. Because Defendants' expenditures were coordinated with Brown's campaign, all of Defendants' expenditures to influence the outcome of the 2023 Democratic primary election for Mayor are in-kind contributions to Brown's designated candidate political committee Jeff Brown for Mayor.

87. In-kind contributions are subject to the annual contribution limits described above. *See* Board Regulation No. 1.8.

88. Defendants exceeded the undoubled 2022 limit on December 5, 2022, when they made a \$501,737.50 expenditure to Fortune Media, Inc.

89. Defendants made at least six additional expenditures in 2022, each of which constitutes a separate violation of the contribution limits.

90. Therefore, for Defendants' 2022 violations, the maximum civil monetary penalty allowable by law is \$14,000 subject to further expenditures yet to be discovered or disclosed.

91. Defendants exceeded the doubled limit applicable to 2023 on January 9, 2023 when they made a \$33,350.00 expenditure to Riverside Solutions, LLC.

92. Defendants made at least eighty-nine additional expenditures in 2023, each of which constitutes a separate violation of the contribution limits.

93. Therefore, for Defendants' 2023 violations, the maximum civil monetary penalty allowable by law is \$178,000 subject to further expenditures yet to be discovered or disclosed.

94. Because there may be violations that the Board is not aware of at this time, the Board reserves the right to seek civil monetary penalties in addition to the amounts described above.

WHEREFORE, Plaintiff the Board respectfully prays that this Honorable Court grant the following relief:

- (i) a judgment that Defendants violated Philadelphia Code Chapter 20-1002(2) pertaining to campaign contribution limits;
- (ii) a civil monetary penalty of \$2,000.00 for each violation, the final number of which to be determined by the Court; and
- (iii) any other relief the Court deems just and proper, including, but not limited to, injunctive relief.²

Respectfully submitted,

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director, Philadelphia Board of Ethics

² On April 10, 2023, the Board filed an Emergency Petition to Enforce Philadelphia's Campaign Finance Law and Enjoin Continuing Violations Thereof. The same day, this Court issued an Order enjoining Defendants from making any new expenditures to influence the outcome of the 2023 Mayoral primary election until further Order of the Court and directing the Board to file a Complaint by April 14, 2023. Upon filing of the Board's Complaint, pursuant to the Court's Order, the Board's Emergency Petition converted to a Motion for Permanent Injunction. The Court also set a hearing on the merits of the Board's Petition/Motion for April 24, 2023.

On April 24, 2023, prior to the hearing, Plaintiff and Defendants filed a Stipulation and Order by Agreement to resolve the Board's Petition/Motion seeking injunctive relief, which the Court approved the same day. The Board reserves the right to seek further injunctive relief in this matter where appropriate as authorized by the Philadelphia Code.

Richard Barzaga, Esquire
Senior Staff Attorney

Michael Gutierrez, Esquire
Senior Staff Attorney

Attorneys for Plaintiff
Philadelphia Board of Ethics

Date: May 24, 2023

VERIFICATION

I, Michael Gutierrez, Senior Staff Attorney, Philadelphia Board of Ethics hereby state that I am the Attorney for Plaintiff Philadelphia Board of Ethics in this action, and I am authorized to make this Verification. I verify that the statement(s) made in the foregoing **FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** have been prepared based upon documents and information obtained through investigation, and based upon said documents and information, are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

BY: /s Michael Gutierrez
Michael Gutierrez, Esquire
Senior Staff Attorney
Philadelphia Board of Ethics

Date: May 24, 2023

Philadelphia Board of Ethics
One Parkway Building
1515 Arch Street, 18th Floor
Philadelphia, PA 19102-1595

Plaintiff

vs.

For a Better Philadelphia 501(c)(4)
614 S. 4th Street
PO Box 324
Philadelphia, PA 19147

and

For a Better Philadelphia PAC
614 S. 4th Street
Unit #334
Philadelphia, PA 19147

Defendants

APRIL TERM, 2023
No. 795

CERTIFICATE OF SERVICE

I hereby certify that on or about May 24, 2023, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT OF PLAINTIFF PHILADELPHIA BOARD OF ETHICS AGAINST DEFENDANTS FOR A BETTER PHILADELPHIA 501(C)(4) AND FOR A BETTER PHILADELPHIA PAC** was served via electronic filing on all parties.

BY: /s J. Shane Creamer, Jr.
J. Shane Creamer, Jr., Esquire
Executive Director
Philadelphia Board of Ethics
Attorney for Plaintiff
Philadelphia Board of Ethics

Case ID: 240103181
Control No.: 23060820

EXHIBIT F

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

JUDICIAL RECORDS
1ST JUDICIAL DISTRICT PA

2023 SEP 11 AM 11:14

FILED

PHILADELPHIA BOARD OF ETHICS :
v. : April Term 2023
FOR A BETTER PHILADELPHIA :
501(C)(4) and FOR A BETTER : No. 0795
PHILADELPHIA PAC : Control No. 23060820

ORDMM-Philadelphia Board Of Ethics Vs For A Better Phila

MEMORANDUM OPINION



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The City of Philadelphia has promulgated campaign finance laws and regulations intended to guide participants in the political process in Philadelphia. The Board of Ethics is charged with enforcing the campaign finance laws. But the Board of Ethics does not have free rein to interpret and apply those laws in any way it sees fit to do so. Here, the Board, through an unsupported application of its regulations, attempts to sanction the For A Better Philadelphia 501(c)(4) and For A Better Philadelphia PAC (“PAC”) for their collective conduct in connection with the 2023 mayoral primary election.¹

A faithful reading of the Board’s regulations does not support the Board’s conclusion. Accepting as true all well-pleaded factual allegations and reasonable inferences in the Amended Complaint, the Board’s conclusion plainly fails. Thus, for the reasons discussed below, the Court shall sustain the PAC’s preliminary objections and dismiss the Amended Complaint.

¹ Unless otherwise specified, the term PAC refers to both the 501(c)(4) and the PAC.

A. Preliminary Injunction Standard and Background Facts

The Court writes this Memorandum Opinion for the benefit of the parties to provide a brief explanation for the Order sustaining the preliminary objections. In considering the preliminary objections, this Court must accept as true all well-pleaded allegations of material fact in the Amended Complaint, as well as reasonable inferences that can be deduced from those facts. *Funk v. Com., Dep't of Env't Prot.*, 71 A.3d 1097, 1101 n.4 (Pa. Commw. 2013); *Com. v. Percudani*, 825 A.2d 743, 745 (Pa. Commw. 2003). This Court, however, is not required to accept as true conclusions of law, unwarranted factual inferences, argumentative allegations, or expressions of opinion. *Id.*

The facts in the Board's Amended Complaint are straightforward. In April 2021, the 501(c)(4) registered with the Commonwealth of Pennsylvania and the PAC registered with the City of Philadelphia. At that same time, Jeff Brown and Sandra Brown (Jeff Brown's wife) made a \$25,000 contribution from their joint checking account to the 501(c)(4). In November 2021, Brown's Super Stores, Inc. (the company for which Mr. Brown was Chairman and CEO) made a \$225,000 contribution to the 501(c)(4). Between January 2023 and March 2023, Brown's Super Stores, Inc., contributed an additional \$1.25 million to the 501(c)(4) in 3 separate transactions.

From May 2022 into October 2022, Jeff Brown, along with David Maser, the chairperson and treasurer of the PAC and 501(c)(4), and Olivia Scanlon, a fundraising consultant for the PAC, solicited donations to the PAC and 501(c)(4). In

all, the PAC received contributions totaling \$3,023,525.10 by the end of 2022. Of that total, the 501(c)(4) contributed \$2,475,000 to the PAC in 2022. The 501(c)(4) also contributed \$500,000 in 2022 to MAP USA, another political action committee. In 2022, MAP USA contributed \$350,000 to the PAC. MAP USA also facilitated the contribution of \$150,000 in 2022 by Patriot Majority USA, another political action committee, to the PAC.² From January 1, 2023 to March 27, 2023, the PAC reported an additional \$64,738.40 in contributions.

In 2022, the PAC spent \$1,133,830.00 via six expenditures, and in 2023, the PAC spent \$1,874,883.21 via 89 expenditures toward the following election-related activities in connection with the 2023 mayoral primary election: electioneering communications, advertising, lawn signs, literature, direct mail, flyers, posters, door hangers, field canvassing, mayoral election polling, and voter outreach. The Amended Complaint alleges that on or about December 5, 2022, the PAC paid \$501,737.50 to Fortune Media, Inc., a media publishing company, and on or about January 9, 2023, the PAC paid \$33,350 to Riverside Solutions, a political consulting firm. The Board specifically identifies these two aforementioned transactions because the 2022 transaction triggers enforcement for 2022, and the 2023 transaction triggers enforcement for 2023.

² MAP USA and Patriot Majority USA are not parties to this action. Moreover, no party has advised the Court that there is any enforcement action pending against MAP USA or Patriot Majority USA.

On November 16, 2022, Jeff Brown declared himself as a candidate for Mayor of Philadelphia. Mr. Brown set up “Jeff Brown for Mayor” as his candidate political action committee.

B. The Amended Complaint Does Not State A Claim

Although the Court must accept the Board’s facts as true, the Board must allege sufficient facts to support its claim. Pennsylvania’s fact pleading rules require the Board to articulate those facts that are essential. The Court is not to draw inferences from the facts or “fill in” information that is not specifically alleged in the Amended Complaint. To this end, the Court observes that there are no allegations in the Amended Complaint that any of the PAC’s expenditures were made on Jeff Brown’s behalf, that any of the expenditures involved Jeff Brown’s input, were made for the exclusive purpose of supporting Jeff Brown, or that any of the expenditures were authorized by or vetted by Jeff Brown (or his authorized agents).

Instead, the Board, through its own interpretation and application of its regulations, argues for a “strict liability” standard – that because Jeff Brown was involved with the PAC in 2022, prior to his candidacy, then *ipso facto*, the PAC’s expenditures in 2022 and 2023 were made in coordination with the “Jeff Brown campaign,” and violate the City’s campaign finance laws.

City Council enacted the campaign finance law and empowered the Board of Ethics to both promulgate its own regulations and to enforce the campaign finance law. The Board of Ethics regulations define a campaign to include a “candidate, the

candidate's candidate political committee and its officers, and agents of any of them." § 1.1(d).³ In this case, Jeff Brown is the candidate, and "Jeff Brown for Mayor" is the candidate's political action committee.⁴ A person is not a "candidate" until they file nomination petitions for City elective office or publicly announce their candidacy for City elective office. § 1.1(e). Jeff Brown first became a candidate when he announced his candidacy on November 16, 2022 (Mr. Brown eventually filed nomination petitions in 2023 at the time designated by the Department of State).

The annual contribution limits to a campaign for City elective office was \$3,100 for individuals and \$12,600 for political action committees in 2022. §§ 1.2, 1.3. On December 30, 2022, the annual contribution limits for the 2023 Mayoral election doubled to \$6,200 for individuals and \$25,200 for political action committees, effective until the November 2023 general election. § 1.5.

The limits apply to direct, indirect, and "in-kind" contributions. A direct contribution is self-explanatory. An indirect contribution occurs when (i) a person contributes to another person, or another political action committee, with the intention of having the other person or political action committee turn around and contribute the identical amount to a specific candidate; or (ii) a person has provided the majority of the donations received by a political action committee or other

³ <https://www.phila.gov/documents/regulations-of-the-board-of-ethics/> (last visited Sep. 8, 2023).

⁴ A candidate political committee is defined as "[t]he one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code." § 1.1(f).

person, whether directly or indirectly, in the 12 months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign. § 1.4(a). The entire amount of the contribution discussed *supra* counts toward the contribution limit for the original donor and the "pass through" through whom the contribution was made. § 1.4(b).

An "in-kind" contribution, for purposes of this case, is an expenditure "that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign." § 1.1(p). An expenditure is coordinated with a campaign if: (i) the expenditure is made at the direct request of the campaign, or with information and/or instruction provided by the campaign; (ii) the campaign has solicited funds for or directed funds to the person making the expenditure within the 12 months before the election for which the expenditure was made; or (iii) the campaign directs, places, or arranges the expenditure. § 1.33. There is no coordination if the person (or political action committee) who made the expenditure can demonstrate that they had an independent basis for making the expenditure. § 1.33.

There is no dispute that the City may regulate political campaigns and financial contributions related to the political process. The issue is the Board's enforcement. A step-by-step analysis of the timeline and regulations at issue leads

to the inevitable conclusion that the Board's enforcement is inconsistent with its own regulations.

- Jeff Brown announced his candidacy for mayor on November 16, 2022, per the definition of candidate in Section 1.1(e).
- Prior to November 16, 2022, there was no "Jeff Brown campaign," as defined by the Board's regulation.
- In order for there to be a campaign, there must be a candidate, per the definition of campaign in Section 1.1(d).
- If there was no candidate until November 16, 2022, there could be no campaign until November 16, 2022.
- Prior to November 16, 2022, Jeff Brown engaged in political activity, including fundraising.
- Prior to November 16, 2022, Jeff Brown contributed to the PAC and helped solicit donations on behalf of the PAC.
- The Amended Complaint does not allege that *any* expenditure by the PAC involved Jeff Brown in any manner whatsoever, was orchestrated by Jeff Brown, done at the instruction of Jeff Brown, or even mentioned (or pictured) Jeff Brown. In this context, the Court is referring to the "Jeff Brown campaign."

The Board alleges that the PAC and the "Jeff Brown campaign" coordinated because the "Jeff Brown campaign" contributed to and solicited funds on behalf of the PAC in the 12-month period before the May 2023 primary election. § 1.33(d). The result of the coordination, according to the Board, is that the PAC exceeded the contribution limits for 2022 and 2023. But based on these clear and plain facts, it is impossible to conclude that the "Jeff Brown campaign" could have coordinated with the PAC prior to November 16, 2022. There was no "Jeff Brown campaign" prior to November 16, 2022.

This Court's interpretation of the campaign finance law and Board regulations is governed by the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501-1991. The Act requires this Court to ascertain and effectuate the intent of the legislative body. 1 Pa.C.S. § 1921(a). A court must presume that the legislative body did not intend for an absurd or impossible result. 1 Pa.C.S. § 1922(1). If the words of a statute are clear and free from all ambiguity, however, a court may not disregard the plain language under the pretext of pursuing the "spirit" of the statute. 1 Pa.C.S. § 1921(b). An ambiguity only exists when language is subject to two or more reasonable interpretations. *Bethenergy Mines Inc. v. Com., Dep't of Env't Prot.*, 676 A.2d 711, 715 (Pa. Commw. 1996). Stated another way, if the words of a statute are explicit, then a court shall not attempt to ascertain legislative intent and shall instead apply the plain language of the statute. 1 Pa.C.S. § 1921(c).

As just discussed, the Court concludes that the regulations are clear and unambiguous. The Board, invoking the language of Section § 1922(1), argues that this Court's straightforward interpretation of Section 1.33(d) would lead to an absurd result and render the section unreasonable or surplusage. This Court disagrees.

Here, City Council and the Board are the drafters of the campaign finance law and regulations, respectively. This Court reasonably presumes that the drafters made intentional choices with respect to definitions, and application of those definitions. To that end, in crafting its own regulations, the Board defined the term "campaign." The Board defined the term "candidate." And the Board

articulated the 7 methods of coordination enumerated in Section 1.33. The Board is bound by the definitions it enacted in the past, even though the Board, as a party in this case, is now advocating for a broader meaning than what is explicitly stated in the regulations.

Simply because the Board's application of Section 1.33(d) does not fit with the facts here does not mean that Section 1.33(d) could never apply to a situation – it just first requires a “campaign.” And certainly, there are other coordination subsections of Section 1.33 that could apply if the facts supported such application. The Board chose to put all of its proverbial eggs in the Section 1.33(d) basket, *knowing* that there was no “Jeff Brown campaign,” as defined by Section 1.4 (d), prior to November 16, 2022.

There are 7 total subsections in Section 1.33. Other than Section 1.33(d), most of the remaining subsections relate to what a lay person using common sense would consider coordination – broadly speaking, where a campaign is involved in the independent expenditure in some manner (rendering the expenditure not-so independent). Here, as noted *supra*, the Board does not allege *any* facts supporting coordination pursuant to any subsection other than Section 1.33(d). Clearly, the Board views the conduct of Jeff Brown and the PAC as violative of the campaign finance laws. The Board, in the absence of actual facts supporting “common sense” coordination [note – this is the Court's term from above], engages in a bit of sophistry. The Board rationalized that because Jeff Brown, then a private citizen, was involved with the PAC in 2022, then the “Jeff Brown campaign” coordinated

with the PAC in 2022 and 2023. But we know the “Jeff Brown campaign” did not exist until November 16, 2022. And there are no facts alleging that the “Jeff Brown campaign,” after it formed on November 16, 2022, had any involvement with the PAC’s expenditures in 2022 or 2023.

The Court reiterates that this conclusion does not mean that there can never be coordination, or Section 1.33(d) is surplusage and has no meaning. It just means that (i) the Board’s application of Section 1.33(d) is not supported by the plain unambiguous language; and (ii) the Board failed to allege facts that support coordination in this case pursuant to Section 1.33.

C. Conclusion

Based on the foregoing, the Court is entering a contemporaneous Order sustaining the preliminary objections and dismissing the Board’s Amended Complaint.

BY THE COURT:



J.

Dated: September 11, 2023

EXHIBIT G



POLITICS > ELECTION



Philly's ethics board usually flies under the radar. That changed with its lawsuit against a super PAC backing Jeff Brown.

The Philadelphia ethics board's lawsuit against a super PAC backing Jeff Brown for mayor upended the race and exposed to scrutiny the choices of the small but important city agency.



J. Shane Creamer Jr., executive director of the Philadelphia Board of Ethics, in the agency's conference room overlooking City Hall.

Jessica Griffin / Staff Photographer

by Sean Collins Walsh

Published May. 27, 2023, 5:00 a.m. ET

J. Shane Creamer Jr. has been the executive director of the Philadelphia Board of Ethics since its inception almost 20 years ago, and he knew the 2023 mayor's race would present one of the agency's greatest challenges.

The Democratic primary featured an unusually large and deep field of candidates, and it was just the second open mayor's race since the advent of super PACs, independent political action committees that can raise money in amounts that exceed the city's contribution limits so long as they do not coordinate with candidates.

The regulation of super PACs is almost nonexistent in federal elections. But in Philadelphia, the ethics board actively enforces its campaign finance rules, and in December, Creamer and board chair Michael H. Reed [published an opinion piece in The Inquirer](#) to remind everyone.

"We were planting a flag in the ground and really trying to warn people that Philadelphia is different," Creamer said in an interview Thursday. "We didn't know what was going to happen. Frankly, we were concerned we were going to be overwhelmed with issues with multiple super PACs."

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» [READ MORE: Inside the Board of Ethics' case against the super PAC supporting mayoral candidate Jeff Brown](#)

The board ended up spending much of its time dealing with one super PAC, For a Better Philadelphia, which raised about \$3 million to boost ShopRite proprietor and first-time candidate Jeff Brown in the mayor's race.

The board's investigation into the group had an obvious effect: It upended the mayor's race and damaged Brown's chances of becoming mayor. But it also exposed to scrutiny the choices of the small but important city agency that plays a role in every Philadelphia election but is often invisible to voters.

Creamer said he initiated the investigation into the super PAC on his own accord. He declined to say what sparked his interest.

The board's investigations typically end in settlement agreements with the offending parties agreeing to pay fines and admitting fault. When it became clear that the PAC wouldn't agree to a settlement, Creamer ran out of patience.

At 9:18 p.m. on April 3, he sent a pointed email to the PAC's lawyer and another ethics board lawyer.

"Times up. These are bad people who are not negotiating in good faith," Creamer wrote in the email, which was acquired by The Inquirer. "[W]e are prepared to go to court to expose the most massive scheme to circumvent the city's contribution limits in 17 years. I consider negotiations over. I don't trust you."

One week later, the ethics board sued.

Ethics agencies and law enforcement often try to stay above the fray and avoid playing public roles in campaigns. The board's decision to go public with its case reshaped the mayor's race and pulled the agency into the political arena, with Brown and his allies questioning its impartiality.

"They wanted to influence the election, and they did," said Matthew A. White, an attorney for the super PAC and its related nonprofit of the same name. "I think they specifically were targeting Jeff Brown."

Creamer said that the five-member board, which is made up of mayoral appointees, errs on the side of taking action on campaign finance violations as soon as it can because it "would leave footprints either way."

"If we were in a position to take action to address violations either through a settlement agreement or suing somebody in court and did not take that action until after the primary, we're influencing the election," he said. "This board has always chosen to take that action when it can, when it believes that it has sufficient evidence of probable violations."

A family history of reform

Creamer, who is 61 and lives in East Falls, grew up in Overbrook. After graduating from the Villanova School of Law, he worked for 13 years at the Duane Morris law firm before joining then-Mayor John F. Street's

Public integrity laws are often forged from scandal, and Philadelphia's ethics rules and the current incarnation of the board are a result of one of the most high-profile episodes in the city's long history of corruption investigations: the discovery of an FBI listening device in the mayor's office during Street's first term.

Then-City Councilmember Michael A. Nutter, a Street antagonist, passed legislation that led to the creation of the board as an independent and well-funded city department. Nutter went on to win the 2007 mayor's race, the board's first major test since adopting campaign contribution limits.

Creamer initially led the board's staff on an interim basis before becoming its permanent executive director. It was a natural fit.

Being a good-government crusader is something of a family tradition for Creamer, whose [late father, J. Shane Creamer Sr.](#), was a Pennsylvania attorney general and first assistant U.S. attorney in Philadelphia. Like his son, the elder Creamer helped establish a watchdog agency, the since-disbanded Pennsylvania Crime Commission.

"He was a reformer, and he wanted to make things better," Creamer said of his father. "He had an idealism and a belief that government, when directed well

and carefully with the right policies, could be a great change agent for the better.”

Philadelphia now boasts unusually strong public integrity laws, with strict rules on campaign finance, conflicts of interest, city employees’ political activity, financial disclosure for top officials, and lobbyist registration — all of which the board either oversees or has a hand in.

“It’s amazing Philadelphia has created this board that I think is one of the strongest in the nation,” Creamer said. “It’s had a profound impact on how not only elections are run and campaigns, but also on how the city government is run.”

The unusual step to sue

In early March, Brown was riding high.

With a string of notable endorsements and ubiquitous TV ads pitching him as an altruistic businessman and political outsider who could clean up City Hall, Brown appeared to have vaulted to the top of the field in the mayor’s race.

Many of those ads were paid for by For a Better Philadelphia, which the board at that time had already begun investigating in connection with potential

[The Inquirer reported that the board](#) was looking into campaign finance activities related to Brown on March 15. His opponents pounced and called on the ethics board to wrap up its probe speedily so voters could learn about the allegations.

Two weeks later, the board sued the super PAC, alleging Brown illegally coordinated with the group by fundraising for it in the months leading up to entering the race.

Brown and the super PAC admit that he raised money for it before launching his campaign. But they contend that the relationship cannot be considered illegal coordination between a campaign and PAC because Brown had not yet announced his candidacy.

The ethics board interprets its regulations to mean that no coordinated activity can occur within the 12 months before an election, regardless of when somebody becomes a candidate. That question is central to the still-ongoing case before Common Pleas Court Judge Joshua Roberts.

The lawsuit became public the day before the first televised debate. Brown's opponents piled on him during the forum, he made other unforced errors, and his candidacy never recovered. He called the probe a "political hit job" and implied the board was out to get him.

"This is about the political establishment not wanting the change that we so desperately need," he said after the debate. "This has not been tried. When it gets tried, I will win."

» **READ MORE:** [Why Rebecca Rhynhart's second-place campaign for Philly mayor still beat expectations](#)

White has maintained that it was inappropriate for the board to take the extraordinary step of going to court when its settlement agreements are usually handled administratively. The PAC, he noted, had already agreed to stop spending money to influence the outcome of the primary by the time the board sued.

Brown has since threatened to sue the board. He said on Wednesday that he hasn't decided whether to proceed with legal action and is waiting for the board's case against the super PAC to finish unfolding in the courts.

Brown's comments in the wake of the lawsuit put the board in the uncomfortable position. But Creamer defended the board's actions and pointedly responded to Brown.

"The allegations in the board's emergency petition for injunctive relief is based on facts and evidence," Creamer said in April. "We know what Jeff Brown did last summer. What facts and evidence is Jeff Brown's accusation against the board based upon?"

'They had to make a hard call'

George Burrell, a former Council member and member of Street's administration, said he thought the ethics board acted appropriately but questioned Creamer's decision to engage in a public back-and-forth with Brown.

Burrell said Brown's claim that he was being persecuted for being a political outsider rang hollow because the board has a long track record of going after established incumbents. But the board engaging with Brown, he said, made it seem as if it were no longer above the fray.

“They went about doing what they needed to do in an ethical and an appropriate way,” Burrell said. “I think that they should have avoided the public commentary. You do yourself a disservice whether you’re right or wrong when you get into public conversation.”

Others have applauded Creamer and the board for being clear about what was going on with the case instead of letting voters try to figure it out based on what little information had leaked.

» **READ MORE:** [Cherelle Parker breaks bread with mayor's race rivals](#)

Patrick Christmas, policy director with the good-government group Committee of Seventy, said he was alarmed by Brown’s comments attacking the ethics board and did not question Creamer’s decision to respond.

“We were most troubled by the campaign rhetoric [implying] that a trusted city institution in Philadelphia was wholly political,” he said.

Christmas added that it was appropriate for the board to make its case publicly by filing suit so that voters wouldn’t be in the dark.

“What is lamented sometimes in ethics [cases] is that the punishments come after the fact and they’re too small,” he said. “They had to make a hard call, but I believe it was the right one.”

Brown, who is white, was seen as perhaps the only non-Black candidate who could make significant inroads with African American voters thanks to his record of opening groceries in underserved neighborhoods and hiring formerly incarcerated people at his stores.

His downfall didn’t just hurt his chances of mayor. It also benefited former

Black candidate among the viable contenders.

By the time the primary arrived, Brown had plummeted in the polls. He finished a distant fifth to Parker.

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EXHIBIT H

Short Message Report

Conversations: 1	Participants: 2
Total Messages: 7	Date Range: 12/13/2022

Outline of Conversations



CHAT - CRSH000000001 - 01114 - 2022/12/13 • 7 messages on 12/13/2022 • Chris Brennan
<+1215 [REDACTED]> • Shane Creamer <+1215 [REDACTED]>

Messages in chronological order (times are shown in GMT -05:00)

-  **CHAT - CRSH000000001 - 01114 - 2022/12/13**
- CB **Chris Brennan** <+1215 [REDACTED]> 12/13/2022, 11:47 AM
Good morning. What's the "Millionaire's Provision" threshold these days? And am I remembering correctly that candidates have to report when they trigger it to the Board of Ethics, even if the spending doesn't show up yet in campaign finance reports? CB
- SC **Shane Creamer** <+1215 [REDACTED]> 12/13/2022, 11:52 AM
\$250k. A candidate who contributes \$250k or more to their campaign must notify the Board within two business days under paragraph 1.5 f of Reg 1.
- SC **Shane Creamer** <+1215 [REDACTED]> 12/13/2022, 11:53 AM
It's the contribution that triggers the doubling and reporting.
- CB **Chris Brennan** <+1215 [REDACTED]> 12/13/2022, 11:54 AM
And that applies to people now, well before people file financial declarations and petitions and such?
- SC **Shane Creamer** <+1215 [REDACTED]> 12/13/2022, 11:55 AM
Applies to "candidates," which at this point includes publicly declared candidates.
- SC **Shane Creamer** <+1215 [REDACTED]> 12/13/2022, 12:04 PM
It would be a poor decision to trigger doubling now, because it gives their opponents two calendar years of doubled limits within which to raise money. Better to wait until 2023.
- CB **Chris Brennan** <+1215 [REDACTED]> 12/13/2022, 12:05 PM
That's what I was thinking. Jeff Brown is going up with about \$100K in an ad buy this month. Maybe he'll keep it under \$250K for 2022.

EXHIBIT I



POLITICS > PHILADELPHIA



The Philly ethics board dropped its case against the 'super PAC' that backed mayoral candidate Jeff Brown

The board announced Monday that it will instead revise the campaign finance regulations that were at the center of the dispute.



Democrat Jeff Brown finished fifth in the Democratic primary for mayor.

Alejandro A. Alvarez / Staff Photographer

by Sean Collins Walsh

The Philadelphia Board of Ethics has dropped its lawsuit against the “super PAC” that supported Jeff Brown’s unsuccessful run for mayor, ending a high-profile legal saga that shook up the election and contributed to Brown’s fifth-place finish in the Democratic primary.

The board announced Monday that it will instead focus on revising the campaign finance regulations that were [at the center of the dispute](#).

» **READ MORE: [Inside the Board of Ethics’ case against the super PAC supporting mayoral candidate Jeff Brown](#)**

The ethics board is a city agency that enforces Philadelphia’s good government laws. In April, the board filed a lawsuit alleging that he had illegally coordinated with For A Better Philadelphia, an outside spending group, or “super PAC,” that spent millions to boost his candidacy but was required by law to operate independently from his campaign.

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Brown, a grocery store proprietor and first-time candidate, was once considered a frontrunner in the race. But because of the ethics board probe and other controversies, he fell out of contention by the May 16 primary, which was won by Mayor-elect Cherelle Parker.

The board’s lawsuit, however, was still working its way through the courts. In September, Philadelphia Common Pleas Court Judge Joshua Roberts dismissed the suit, saying it contradicted part of the board’s own regulations, and the board announced weeks later announced it would appeal Roberts’ ruling to the Commonwealth Court.

But on Monday, the board reversed course.

“While the Board disagrees with the court’s reasoning and conclusions, the goals of meaningful contribution limits and transparency in City elections are best served by amending Regulation 1 to remove any doubt about the coordination rules,” Shane Creamer, the board’s executive director, said in a statement.

Neither Brown nor a lawyer for For A Better Philadelphia immediately responded to a request for comment.

The dispute centered on whether Brown was allowed to raise money for the super PAC and its related nonprofit in the months leading up to the launch of his campaign in late 2022.

Super PACs are allowed to raise money in unlimited amounts, unlike campaigns, which in Philadelphia are subject to contribution limits. Consequently, they are prohibited from coordinating with the candidates they seek to benefit, and the ethics board includes fundraising in its definition of prohibited coordination.

Neither Brown nor the super PAC denied that he raised money for the group. (More than \$1 million came from Brown’s family’s company.) Instead, For A Better Philadelphia argued in court that Brown was allowed to do so because

The group pointed to the ethics board's regulations, which define a candidate as "an individual who files nomination papers or petitions for City elective office, or publicly announces his or her candidacy for City elective office," and noted that Brown had done neither of those things at the time that he solicited donations for the super PAC.

The ethics board's regulations state that there is illegal coordination between the candidate and super PAC if the candidate or "the campaign has solicited funds for or directed funds to" the super PAC "within the 12 months before the election."

The board has contended that last phrase means there is a retroactive 12-month period before elections in which future candidates cannot work with the super PACs that eventually work to boost them, a position it has held since at least 2018, when it published an advisory opinion on the subject.

But Roberts sided with the super PAC's interpretation and dismissed the board's case without a trial. At the time, Brown said the decision was a vindication for him.

"From the very beginning, I said that this entire matter was a politically motivated sham, with the intent of affecting the results of the election," Brown

entity charged with safeguarding ethical conduct has incorrectly and inappropriately inserted itself in such a politically motivated manner.”

Creamer said in Monday’s announcement that the board is dropping its appeal of Roberts’ ruling to focus on clearing up the disputed language in advance of the next municipal election, which will take place in 2025 when district attorney and city controller races will be on the ballot.

“Focusing on amendment rather than appeal allows the Board to provide certainty to the public in months (rather than years for an appeal),” he said.

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EXHIBIT J

Message

From: Shane Creamer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6A26A230CE0C492FBA4502B46CCB0D01-SHANE.CREAM]
Sent: 4/21/2023 10:33:56 AM
To: swalsh@inquirer.com
Subject: Follow-up

Good morning Sean,

I have a few additional thoughts after our conversation yesterday,

First, we don't really know what the defendants' arguments are because they haven't filed answers to the Board's petition and complaint.

Second, while other candidates have super PACs supporting them, which is a concerning trend, those groups are required to disclose their donors to the public and therefore have a level of transparency. By contrast, the dark money group supporting Jeff Brown makes no public disclosures and therefore has no transparency. When a candidate solicits contributions for a group like this, as the Board alleges Jeff Brown did, it offers donors a way to anonymously circumvent the city's contribution limits. If a candidate who solicits donations to a dark money group that supports his or her candidacy is elected to public office, citizens would have no idea what possible private deals may have been made in exchange for those large, anonymous donations. The elected official may say "I've made no deals," but there would be no way for the public to verify that claim. This would tend to undermine confidence in government.

Thirteen years ago, the US Supreme Court defined the potential *quid pro quo* deal-making made possible when candidates coordinate with outside spending groups as "corruption" in *Citizens United vs. FEC* and ruled that governments like Philadelphia could regulate it. Coordinated expenditures by outside spending groups are subject to the contribution limits. The Board alleges that the defendants have spent millions of dollars in excess of the limits to support Jeff Brown. The Board is attempting to enforce the city's contribution limits with this lawsuit.

Finally, this litigation has been a heavy lift for the Board and would not have been possible if the Administration had not added funding to the Board's budget in this fiscal year, which enabled us to hire two enforcement attorneys.

Shane

EXHIBIT K



OPINION > COMMENTARY



Campaign finance rules just got a bit stricter in Philly. And they will be enforced.

As members of the agency that enforces campaign finance rules, our eyes will be on the crowded mayoral field, as well as the candidates running for other important offices in the coming year.



J. Shane Creamer Jr., the executive director of the Philadelphia Board of Ethics.

by Michael H. Reed and J. Shane Creamer Jr., For The Inquirer

Published Dec. 28, 2022, 5:00 a.m. ET

In 2023, Philadelphians will [vote for a new mayor](#). They will also choose candidates to fill other important city offices. Millions of dollars will be spent by hundreds of political committees to influence who we vote for in each of these races — but the largest amount of money will [likely be spent on the mayor's race](#).

As the chair and executive director of the [Philadelphia Board of Ethics](#), which enforces campaign finance rules, we want to send a message to all candidates and political committees: We are watching.

The city has [contribution limits enforced by the Philadelphia Board of Ethics](#) that are designed to restrain the influence of large donors on city contracts and policies. Specifically, campaigns cannot accept [more than \\$12,600 in contributions](#) from an organization.

However, the U.S. Supreme Court's decision in [Citizens United v. FEC](#) issued in 2010 significantly deregulated money in politics and strengthened the influence of large donors, especially at the federal level.

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What did [Citizens United](#) mean for Philadelphia? It meant that “[independent expenditure committees](#)” — as they are now known under Pennsylvania law — can raise and spend unlimited amounts of money, including money from corporations and unions, but only if they refrain from making direct or indirect contributions to candidates or “coordinating” with candidates. In other words, organizations can throw as much money at the 2023 mayoral candidates as they want, but they have to play by the rules.

This ability to raise unlimited amounts of money is why these independent committees [are often called “super PACs.”](#)

In order to ensure super PACs remain truly independent, courts and regulatory agencies like the board enforce rules against “coordination” between candidates and super PACs. Coordination can include activity where a candidate helps a super PAC plan how the PAC spends money, gives the PAC materials to use for “republishing” (which could include using campaign materials in political ads by the PAC), or helps the PAC raise money, even up to a year before the election.

When super PACs coordinate with candidates, they are no longer acting “independently” and are breaking the rules. Coordination is a way to circumvent the city’s contribution limits, which is not fair to other candidates who follow these rules.

“[Coordination with super PACs] is not fair to other candidates who follow these rules.”

— Michael H. Reed and J. Shane Creamer Jr.

If a super PAC spends money in coordination with a Philadelphia candidate, that activity is no longer considered an independent expenditure — and if that money exceeds the city’s contribution limit, it would be considered unlawful. For example, if a super PAC works with a candidate on a \$500,000 TV ad buy, the board can ask a Philadelphia Court of Common Pleas judge to order the super PAC to stop its advertising plan and levy financial penalties against the super PAC for any related campaign finance violations, because such a coordinated ad buy would be a contribution that exceeds the city’s \$12,600 limit.

While there may or may not be violations for the candidate, people running for public office in Philadelphia should think carefully before agreeing to have

Case ID: 240103181

their campaign financially boosted by such a rule-breaking scheme.

Unlike federal elections, where the rules and enforcement have struggled to keep pace with the emerging ways candidates and super PACs coordinate, Philadelphia has tracked the latest super PAC trends around the country since *Citizens United* and has amended and refined its campaign finance rules — as recently as this summer.

Our latest update over the summer addresses the newer trend of “redboxing,” where candidates place instructions in red boxes on their campaign websites. Super PACs interpret these instructions as directions on what information the candidates want super PACs to include. The instructions are often thinly veiled – for instance, a campaign may say a message should reach voters “on the go,” which means it should be part of a mobile ad. So make no mistake: Redboxing is a means of circumventing the rules against super PACs directly coordinating with the campaigns they support.

» **READ MORE: [Philly’s Board of Ethics voted to close a loophole that super PACs use to get instructions from campaigns](#)**

In September, Philadelphia became the only jurisdiction in the country that we know of to address redboxing, when the Board of Ethics [unanimously voted to regulate the strategy](#). Redboxing has been used in federal campaigns around

the country, but complaints to the Federal Election Commission [have mostly gone unheeded](#).

We hope this sends a message to Philadelphia candidates that running for office in this city is not like running for federal office. That message is: [Philadelphia has different rules](#). And they will be enforced.

Michael H. Reed and J. Shane Creamer Jr. are the chair and executive director, respectively, of the Philadelphia Board of Ethics, a five-member volunteer city agency that is independent of the administration.

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EXHIBIT L

Message

From: Shane Creamer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6A26A230CE0C492FBA4502B46CCB0D01-SHANE.CREAM]
Sent: 2/22/2023 3:56:06 PM
To: Briggs, Ryan [rbriggs@inquirer.com]
Subject: Agreement
Attachments: El-Shabazz Settlement - Complete.pdf

Hi Ryan,

As we discussed, attached is the Board's settlement agreement with Tariq El-Shabazz, which the Board approved this afternoon. I'm giving this to you on an embargoed basis until we issue a press release, which we plan to do tomorrow morning around 10:00 am.

Shane

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into by and among the Board of Ethics of the City of Philadelphia (the “Board”); J. Shane Creamer, Jr., Executive Director of the Board (the “Executive Director”); and Tariq Karim El-Shabazz, Undersheriff of the Philadelphia Sheriff’s Office (the “Undersheriff”); jointly referred to as “the Parties,” each a “Party.”

RECITALS

- A. The Board is an independent, five-member board of the City of Philadelphia (the “City”) established in 2006 by voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter and Chapter 20-600 of the Philadelphia Code, the Board is charged with administering and enforcing the standards of governmental conduct and ethics for City employees, including restrictions on the representation of individuals in transactions involving the City.
- B. The Undersheriff has served in the Philadelphia Sheriff’s Office since his appointment on May 10, 2021.
- C. Pursuant to Section 20-602(1)(a) of the Philadelphia Code, City employees are prohibited from representing another person in any transaction involving the City.
- D. Since his appointment, the Undersheriff has maintained a private legal practice, part of which previously included representing criminal defendants prosecuted by the Philadelphia County District Attorney’s Office (the “District Attorney”).
- E. The Undersheriff fully cooperated with the Board’s investigation and resolution of the matter described in this agreement.

AGREEMENT

The Parties hereby agree to the following:

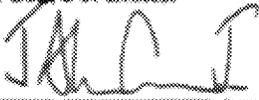
- 1. The Recitals paragraphs A through E above are made part of this Agreement as if fully set forth herein.
- 2. By representing defendants in cases prosecuted by the District Attorney, the Undersheriff violated Philadelphia Code Section 20-602(1)(a). The total civil monetary penalty for these violations is \$16,000.
- 3. The Undersheriff shall pay the total civil monetary penalty in full by check or money order made payable to the City of Philadelphia and delivered no later than thirty (30) days after the effective date of the Agreement to the Board’s office at the following address:
 - City of Philadelphia Board of Ethics
 - One Parkway Building
 - 1515 Arch Street
 - 18th Floor
 - Philadelphia, PA 19102
- 4. The Undersheriff represents and warrants that, as of the effective date of the Agreement, he has ceased representing defendants in cases prosecuted by the District Attorney.

5. The Undersheriff shall refrain from representing defendants in cases prosecuted by the District Attorney, or any other representation that would violate Section 20-602(1)(a), for the remainder of his employment with the City.
6. The Undersheriff releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.
7. In consideration of the above and in exchange for the Undersheriff's compliance with the terms of the Agreement, the Board waives any further penalties or fines against the Undersheriff for the violations described in the Agreement.
8. The Parties shall not make any public statements that are inconsistent with the terms of the Agreement.
9. If the Board or the City is forced to seek judicial enforcement of this Agreement, and prevails, the Undersheriff shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board or City attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
10. The Agreement contains the entire agreement between the Parties.
11. The Agreement is severable. If any court of competent jurisdiction determines that any paragraph or part set forth in the Agreement is unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect as if the unenforceable paragraphs or parts were omitted.
12. Upon execution of the Agreement by the Undersheriff, the Executive Director shall submit a signed copy of the Agreement to the Board for approval.
13. The Agreement shall become effective only upon approval by the members of the Board. The effective date of the Agreement is the date the Board Chair signs the Agreement.
14. If the Board rejects the proposed Agreement, nothing in the proposed Agreement shall be considered an admission by either party and, except for this paragraph, nothing in the Agreement shall be effective.
15. If the Board approves the proposed Agreement, the Board shall make the Agreement available to the public as required by Board Regulation 2.27 by posting the Agreement to the Board's website.

In witness whereof, the Parties hereto have executed the Agreement on the dates set forth below:

Dated: 2/16/23

By the Executive Director of
the Board of Ethics:



J. Shane Cramer, Jr., Executive Director

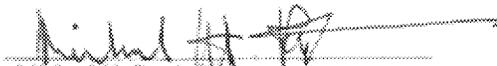
Dated: 2-15-23

By Tariq Karim El-Shabazz:



Approved by the Board of Ethics:

Dated: 2/22/2023



Michael H. Reed, Clerk

Message

From: Shane Creamer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6A26A230CE0C492FBA4502B46CCB0D01-SHANE.CREAM]
Sent: 2/23/2023 12:07:01 PM
To: Briggs, Ryan [rbriggs@inquirer.com]
Subject: Settlement Agreement

Hi Ryan,

The Settlement Agreement has been posted on our website and tweeted. It will be sent out to our press list by email this afternoon. The embargo is obviously over.

Here's the post on our website:

<https://www.phila.gov/2023-02-23-board-of-ethics-settlement-agreement-february-23-2022/>



Board of Ethics settlement agreement –
February 23, 2022 | Board of Ethics

The Board of Ethics approved a settlement agreement on February 22, 2023. For details and link, see the press release.

www.phila.gov