

Rules Notes:

Options:

- include elected officials in the prohibition: prohibit elected officials from running for any other city office without resigning (this means council would fill the position) – Councilperson Affa is poised to suggest this as an amendment.
- candidates can only run for one city office
- elected officials can not run for another office unless they resign from the office
- elected officials can not run for another city office unless it is the end of their term
- how clear is the current language

Running for Office Discussion:

Not sure how you want this meeting to go – need some structure – how about something like this – Matt explains the Pa SC case and parameters of the Hatch Act (or maybe not the Hatch Act) – and then you move to scoping out possible options since everyone seems to be scattered in all different directions – and then council can deliberate on the options at a future meeting – say after some study – and you look at creating options and the pros and cons and coming back to another meeting. Thoughts?

Background:

Pa Supreme Court rationale: they have upheld the prohibition limitation citing a rationale that a candidate is in the position to unduly influence and intimidate employees and may neglect their duties in the interests of their candidacy.

The Hatch Act has been noted in conversations – this is a federal law that was passed in 1939 to prevent potential abuse of power – in part, it prohibits civil service employees in the executive branch of the federal government, except the president and vice president, from engaging in some forms of political activity like running for office and partisan activity. It also impacts the activity of employees whose work is tied to federal funding. While there are distinctions for different classes of employees, it prohibits Federal employees from engaging in political activities while on duty, in a Government room or building, while wearing an official uniform, or while using a Government vehicle. Under the Hatch Act, "political activity" is defined as any activity directed toward the success or failure of a political party, candidate


for partisan political office, or partisan political group. For more details of the Hatch Act see the link below.

<https://osc.gov/Services/Pages/HatchAct.aspx>

The Solicitor's response will also include an analysis along these lines. The language that follows is pulled from the Moak Pennsylvania Supreme Court case that is referenced in some whereas clauses:

The Philadelphia language at issue was from its Charter. The language read: "No officer or employee of the City, except elected officers running for re-election shall be a candidate for nomination or election to any public office unless he shall have first resigned from his then office or employment."

"Appellants further urge that the prohibition against political candidacy for public ... is an unconstitutional infringement upon their First Amendment rights.

Manifestly, appellants are correct in their assertion that freedom of political expression and activity is embodied in the First Amendment. As the United States Supreme Court said in Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1212 (1957): [HN2](#)

'Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations.'

"[T]he United States Supreme Court has specifically recognized that the State does have certain interests, as an employer, in regulating the activity of its employees. In Pickering v. Board of Education, supra at 568, 88 S. Ct. at 1734-35, the Court said: 'At the same time it cannot be gainsaid that the State has interests as an employer in regulating the . . . [activity] of its employees that differ significantly from those it possesses in connection with regulation . . . of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the . . . [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'

"In striking this balance, we are guided by further principles enunciated by the Supreme Court. In [*United Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556 \(1947\)](#), for example, the Court rejected a constitutional attack on portions of the Hatch Act and held that Congress may "regulate the political conduct of Government employees 'within reasonable limits,' even though the regulation trenches to some extent upon unfettered political action." [*Id.* at 102, 67 S. Ct. at 571](#). See also [*Oklahoma v. United States Civil Service Commission*, 330 U.S. 127, 67 S. Ct. 544 \(1947\)](#)."

"The 'reasonableness' test employed by the Court in *Mitchell* has been amplified by the 'compelling interest' standard. 'Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.' [*Bates v. City of Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412, 417 \(1960\)](#). Accord, [*Sherbert v. Verner*, *supra*](#); [*Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 83 S. Ct. 889 \(1963\)](#); [*Northern Virginia Regional Park Authority v. United States Civil Service Commission*, 437 F. 2d 1346 \(4th Cir. 1971\)](#), cert. denied, 403 U.S. 936, 91 S. Ct. 2254 (1971); [*National Association of Letters Carriers v. United States Civil Service Commission*, 346 F. Supp. 578 \(D.D.C. 1972\)](#), cert. granted, 409 U.S. 1058, 93 S. Ct. 560 (1972); ⁴ [*Mancuso v. Taft*, 341 F. Supp. 574 \(D.R.I. 1972\)](#); [*Minielly v. State*, 242 Ore. 490, 411 P. 2d 69 \(1966\)](#); [*Fort v. Civil Service Commission*, 61 Cal. 2d 331, 392 P. 2d 385, 38 Cal. Rptr. 625 \(1964\)](#).

As the Supreme Court of Oregon recently stated: The state must show that it has a compelling governmental interest warranting a restriction of a First Amendment right. [*Bates v. Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412, 4 L. Ed. 2d 480 \(1960\)](#); [*Gibson v. Florida*, 372 U.S. 539, 555, 83 S. Ct. 889, 9 L. Ed. 2d 929 \(1963\)](#); *NAACP v. Button*, *supra*, [^{**}889] 371 U.S. at 438. Such compelling interest must be the controlling justification for the statute." [*Minielly v. State*, *supra* at 505, 411 P. 2d at 76](#).

Additionally, the governmental unit has the burden of showing that the restriction on the First Amendment activity is the least drastic means for achieving the governmental purpose. "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." [*Shelton v. Tucker*, *supra* at 488, 81 S. Ct. at 252](#) (footnotes

⁴ This case was argued with [*Broadrick v. Oklahoma ex rel. Oklahoma State Personnel Board*, 338 F. Supp. 711 \(W.D. Okla. 1972\)](#), in April, 1973, 41 U.S.L.W. 3521 (1973). See note 8, *infra*.

omitted). Accord, [*Sherbert v. Verner* \[***12\] , supra](#); [*Northern Virginia Regional Park Authority v. United States Civil Service Commission*, supra](#); [*National Association of Letter Carriers v. United States Civil Service Commission*, supra](#); [*Mancuso v. Taft*, supra](#).”

“[W]e hold that the prohibition on political candidacy ... is a constitutionally permissible restriction on the political activity of Philadelphia's officers and employees. While the test employed in *Mitchell* may not be all inclusive the principle it announced is very much alive today. "The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service." [*United Public Workers v. Mitchell*, supra at 96-97, 67 S. Ct. at 568](#).”

We conclude that the City of Philadelphia has a compelling governmental interest which justifies requiring City officers and employees to resign before becoming a candidate for nomination or election for any public office. The reason -- as stated in the Annotation to [the Section at issue] -- for imposing this requirement is "because an officer or employee who is a candidate for elective office is in a position to influence unduly and to intimidate employees under his supervision and because he may neglect his official duties in the interests of his candidacy."

Ken Hefentrager:

*These comments are in reference to Bill 72

*First, I am encouraging all council persons to VOTE NO, if the Commonwealth already has something similar, well then, issue solved.

But.....If the members of City Council feel the need to vote yes, then I say with an amendment to the ordinance, having to do with sitting elected officials.

Take in consideration this part of Bill 72...

WHEREAS, it is central to gaining and retaining the public's trust in our city's government that public servants seek to avoid even the appearance of impropriety. Fulfilling one's role as public servant sometimes means sacrificing rather than gaining opportunities.

*When residents go out to the polls on election day, they choose who they want to have sitting on the dais representing them for the next four years. The residents trust that individual who they voted for is going to serve them for the next four years.

*Recently the issue of who will be running next year for Mayor has become a conversation piece. Two names that came up are Joshua Siegel, elected just last November for a FOUR YEAR TERM, and Ce Ce Gerlach also elected by the residents for a FOUR YEAR TERM. Councilman Siegel has already said he was going to run for Mayor, not even a year has passed, and he is ready to move on. No sacrifice there, just going for a "gained opportunity", so much for the residents trusting there vote. Ce Ce Gerlach has a planned announcement coming up, I'm quite sure what that will be, read the above comments and insert here.

*If either candidate would win the office of Mayor, Council would have to appoint someone to that open seat, taking the residents vote and throwing it out the window.

*So I encourage that Council draw up an amendment stating that an already elected official can not run for a different office unless that individual was in there final year of there current elected position.

*Simple as that, fulfilling ones role as a public servant. Vote No or Vote Yes with an amendment attached.

Jessica Ortiz, 523 Tilghman St

I write to you today in objection of this amendment. I take it as a disrespect to me and the citizens of Allentown. Each elected member of the office is voted in by the people and although often it is not the candidate we personally voted for it was the one the majority of those who voted did. That being said each person who holds a seat runs a campaign on what they vow to do and then take a vow to uphold those promise and do what is best for the people. Now candidates are saying to our voices don't matter and they don't owe us the respect to complete the task they have decided to take on.

This is what I hear, the candidate dated us and then promised to love us until death do us part, and now they are seeking an annulment because it was a drunk night of passion and they just want to move on.

How fair is this to the people. Now, what happens to all the work and needs to the seat that was promised. Often we see when candidates bein there raced it is just that race, that's why it's called running for office so where will the time be for the position or seat they currently hold? When a candidate seeks a seat they currently hold it is not as difficult because they are campaigning for the seat they are in which keeps them on focus because the task at

hand is still the same and even then often the elected officials stary to far and forget about the duties they hold.

I sincerely urge you not to change this bill but if you do it needs more clarity. Elected officials can only run for office for a seat they currently hold or until their term has expired or has resigned from their seat. No elected official can run for office until 1 full year of resignation from a preciously upheld elected seat.

Such as the resign to run law,

Supporters of resign-to-run laws argue that a politician running for one office while holding another might neglect the duties of their current office since they spend much of their time campaigning for the new office. They also believe that in a race between someone who currently holds another office and someone who doesn't, the person who holds another office can unfairly use their incumbency as leverage in the campaign, for example by funneling official resources into the campaign or by using their office as a fallback in case they lose the race.

An officeholder who wants to run for higher office may time their run to complete their tasks in their current office. An example of this is Rodney Glassman, a 2010 candidate for U.S.

Senate<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FUnited_States_Senate&data=04%7C01%7CMichael.Hanlon%40allentownpa.gov%7C8d89627613b94d64a90708d88bccdb1e%7C1b6e3ffc79834623ac728e476fef6b0d%7C0%7C0%7C637413059257219183%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=1i3VC6QsR%2ByqKY6cRDO5A%2BGqU5O2PXkjHoHkKqLmN1A%3D&reserved=0> from

Arizona<<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FArizona&data=04%7C01%7CMichael.Hanlon%40allentownpa.gov%7C8d89627613b94d64a90708d88bccdb1e%7C1b6e3ffc79834623ac728e476fef6b0d%7C0%7C0%7C637413059257229148%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=6firxgWwrhdNXh117Wg3udkCGc10oAgQRjUyjiNITiEw%3D&reserved=0>>, who delayed his formal announcement until the city's budget was

completed.[1]<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FResign-to-run_law%23cite_note-1&data=04%7C01%7CMichael.Hanlon%40allentownpa.gov%7C8d89627613b94d64a90708d88bccdb1e%7C1b6e3ffc79834623ac728e476fef6b0d%7C0%7C0%7C637413059257229148%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=FF3udGaBWeAP5eqru49ShVYFDySbzn4fNS4p7LIKNP0%3D&reserved=0>

Opponents say that resign-to-run laws are likely to harm people who have public service as a job since these people might not be in a good enough financial position to resign from

their current office if they want to run for another office. People who want to hold a particular office might also be dissuaded from running for lower offices beforehand, as holding lower offices would block them from running for their desired office and serve as a hindrance instead of a stepping stone.

Our city has serious issues and we will get nowhere if we keep changing the rules to benefit a certain few. Many blamed our previous Mayor for the cloud, well what's the excuse nowwe have more than a cloud we have severe thunderstorms with a chance of a tsunami!