

public sanitary sewer system (the “Sewer System”) (the “Sale”). In support of these actions, the Plaintiffs aver as follows:

PARTIES

1. Plaintiff, Kofi Osei, is an adult individual residing at 105 Cambridge Way, Harleysville, Towamencin Township, PA 19438. Plaintiff, Jennifer Foster, is an adult individual residing at 105 Concord Place, Harleysville, Towamencin Township, PA 19438. Plaintiff, Martin Cohen, is an adult individual residing at 18 Westhampton Way, Lansdale, PA, 19446 (collectively, “Plaintiffs”).
2. The Township of Towamencin, is a municipality, previously classified as a township of the second class and now operating under a Home Rule Charter in the Commonwealth of Pennsylvania, with administrative offices of 1090 Troxel Road, Lansdale, PA 19466 (the “Township”).
3. The Board of Supervisors is the governing body of the Township and is comprised of five (5) residents of the Township, elected at-large, as set forth in the Second Class Township Code, 53 P.S. § 65101, *et seq.*
4. As discussed in detail herein, the Board of Supervisors has taken actions to sell the public sanitary sewer system within Towamencin Township to Pennsylvania American Water, Inc. Plaintiffs contend that the Township is prohibited from selling the public sanitary sewer system to a non-governmental entity such as Pennsylvania American Water, Inc. and accordingly seek relief from this Honorable Court.

STANDING

5. Plaintiffs have standing to bring this matter as residents, taxpayers, ratepayers and/or Electors in Towamencin Township.

6. “Taxpayer standing is an exception to the traditional standing requirements that was first recognized by this Court in *Biester*.” *Stilp v. Com., Gen. Assembly*, 940 A.2d 1227, 1234 (Pa. 2007).
7. “[A]lthough many reasons have been advanced for granting standing to taxpayers, the fundamental reason for granting standing is simply that otherwise a large body of governmental activity would be unchallengeable in the courts... Moreover, it has been recognized that ‘the availability of such litigation is insurance against the instances in which responsible prosecutors, usually political officers, are themselves allied with the action challenged or are overly burdened to identify and rectify every illegal practice.’” *Faden v. Philadelphia Hous. Auth.*, 227 A.2d 619, 621-22 (Pa. 1967) (internal citations omitted).
8. “Where a plaintiff does not meet the traditional standing test, the circumstances of the challenge may warrant affording the plaintiff standing, as a taxpayer. Under this relaxed standard for standing, the plaintiff must show the following: (1) the governmental action in question would otherwise go unchallenged; (2) those who are directly and immediately affected by the action complained of benefit from the action and thus are not inclined to challenge it; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other person is better suited to bring the challenge.” *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 514 (Pa. Commw. Ct. 2019).
9. Plaintiff Foster is a resident, property owner, taxpayer, elector, voter and ratepayer in Towamencin Township. Plaintiff Foster resides in a portion of the Township which is entirely unmetered. Plaintiff Foster’s rates will be significantly impacted by the proposed sale of the public sanitary sewer system in Towamencin Township. It is anticipated that

Plaintiff Foster will incur significant monthly assessments to cover costs of meters being placed by the Township or the Homeowners' Association that manages the condominium association where Plaintiff Foster resides. To date, the Township has been unclear how the costs of meter installation will be paid.

10. Plaintiff Osei is a resident, elector, and voter of Towamencin, and also an active taxpayer of Towamencin through his local services tax.
11. Plaintiff Cohen is a resident, property owner, taxpayer, elector, voter and ratepayer in Towamencin Township. Plaintiff Cohen's sewer rates would likewise be significantly increased if the public sanitary sewers within Towamencin Township are sold.
12. Plaintiffs Osei, Foster, and Cohen, were elected Commissioners of the Government Study Commission which, as discussed in detail infra, recommended the adoption of the Home Rule Charter, which was approved by the voters of Towamencin Township. The Home Rule Charter, inter alia, prohibits the privatization of the Sewer System.
13. At various times, Towamencin Township, through mailings, website postings and statements of four (4) of the five (5) elected Supervisors, has declared its belief that the Sale of the Sewer System would benefit the residents and ratepayers of Towamencin Township. Further, four (4) of the five (5) elected Supervisors have repeatedly declared their intent to proceed with attempting to sell the Sewer System, despite the clear will of the electorate and the mandate of the Home Rule Charter.
14. Plaintiffs each voted in favor of the Home Rule Charter.
15. The Township's Board of Supervisors has publicly declared its intent not to comply with the provisions of the Home Rule Charter and are therefore not inclined to challenge the Township's ability to consummate the Sale of the Sewer System.

16. Certain members of the Board of Supervisors have likewise declared their belief that the payment of approximately \$104,000,000.00 to the Township that will come with the Sale of the Sewer System outweighs any negative consequences. The Township, therefore, has declared its belief that it will benefit from the Sale and, therefore, is not inclined to try to comply with the Home Rule Charter, which, as outlined infra, prohibits the Sale.
17. Plaintiffs, on the other hand, former members of the Government Study Commission and electors that voted in favor of the Home Rule Charter, are uniquely suited to bring the instant challenge. As Plaintiffs spearheaded a campaign against the Sale, won a campaign on the platform of stopping the sale in two separate elections, and continue to fight against the Sale both in the public and in the courts, no other citizens are better suited to bring this challenge.
18. Judicial redress is appropriate in this matter due to the Board of Supervisors' stated refusal to comply with the mandate of the Home Rule Charter.
19. As outlined infra, this Honorable Court has exclusive jurisdiction over Plaintiffs' claims.
20. Plaintiffs are therefore entitled to taxpayer standing.
21. Like taxpayer standing, Plaintiffs are entitled to standing as ratepayers for sewer services. As ratepayers, Plaintiffs' sewer rates will be directly affected by the Sale of the Sewer System. Plaintiff Foster, in particular, is representative of a subset of the Township that has public water and sewer, but no individual meters. It is unclear how this group of residents and ratepayers will be affected by the Sale, though it is clear that it will negatively impact Plaintiff Foster and others similarly situated. If the Township is responsible for installation of meters, as has been indicated by Pennsylvania American Water, then other Township taxpayers, including Plaintiffs Osei and Cohen, will be

responsible for absorbing costs directly related to the unnecessary and illegal Sale of the Sewer System or the Township would be required to use proceeds from the sale in order to fund this effort.

22. Plaintiffs are likewise entitled to standing as voters of Towamencin Township that are entitled to see the provisions of the Home Rule Charter implemented. Again, the Township itself seems uninterested in compliance with the Home Rule Charter, preferring instead to ignore its explicit provisions. As voters that voted in favor of the Home Rule Charter, Plaintiffs should be accorded standing similar to taxpayer standing to allow for the enforcement of the Home Rule Charter.

JURISDICTION

23. There can be no question that this Court has jurisdiction to hear all counts of this Complaint, nor can there be any question regarding the appropriateness of judicial relief.
24. “Except where exclusive original jurisdiction of an action or proceeding is by statute or by general rule adopted pursuant to section 503 (relating to reassignment of matters) vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas.” 42 Pa.C.S.A. § 931(a).
25. “Jurisdiction lies if the court has the power to adjudicate the subject matter before it and does not depend on whether it might ultimately decide that it cannot grant the relief sought. Drafto Corp. v. National Fuel Gas Dist. Corp., 806 A.2d 9 (Pa. Super. Ct. 2002), appeal denied, 819 A.2d 547 (Pa. 2003). Original jurisdiction of suits against municipal or other local authorities lies with the Courts of Common Pleas. *See* Section 931 of the

Judicial Code, 42 Pa.C.S. § 931 (stating that the courts of common pleas shall have unlimited original jurisdiction over all actions and proceedings except where exclusive original jurisdiction is vested with another court of the Commonwealth of Pennsylvania); O'Hare v. County of Northampton, 782 A.2d 7 (Pa. Commw. Ct. 2001) (holding that the court of common pleas had original jurisdiction over a Municipal Authorities Act claim); cf. Patriot–News Co. v. Empowerment Team of Harrisburg School District Members, 763 A.2d 539 (Pa. Commw. Ct. 2000) (holding that original jurisdiction was properly in the court of common pleas because the defendants were local agencies); E–Z Parks, Inc. v. Larson, 498 A.2d 1364 (Pa. Commw. Ct. 1985) (transferring a count against a local agency from this court's original jurisdiction to the court of common pleas), *aff'd*, 503 A.2d 931 (Pa. 1986).” Joseph v. Allegheny Cnty. Airport Auth., 842 A.2nd 485, 488–489 (Pa. Commw. Ct. 2004).

26. Regarding the Declaratory Judgment Act: “Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.” 42 Pa.C.S.A. § 7432.
27. Regarding the Sunshine Act: “The Commonwealth Court shall have original jurisdiction of actions involving State agencies and **the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court.** The action may be brought by any person where the agency whose act is

complained of is located or where the act complained of occurred.” 65 Pa. C.S.A. § 715 (emphasis added).

28. Finally, in anticipation of Township assertions that this is a battle for the Pennsylvania Utility Commission (“PUC”), the Plaintiffs assert that PUC does not have jurisdiction to enforce mandamus actions or issue declaratory judgments regarding contractual obligations under the laws of this Commonwealth. Further, the PUC has no jurisdiction to hear claims of Sunshine Act Violations. To the contrary, the PUC’s jurisdiction in this matter is explicitly limited to review of the application and the transaction. The instant matter seeks judicial intervention related to the Township’s ability to execute the necessary agreements and documents to consummate the Sale and relief related to the Township’s repeated and flagrant violations of the Pennsylvania Sunshine Act. Plainly, the PUC does not have jurisdiction over the allegations raised in the Complaint. The Courts of Common Pleas of the Commonwealth of Pennsylvania have exclusive jurisdiction over this matter.
29. Moreover, the only other entity to issue final approval of this transaction would be the Pennsylvania Department of Environmental Protection (“DEP”), which would have to approve the 537 plans. Of course, the DEP likewise has no jurisdiction to issue any such judgments or findings as requested in this Complaint. Therefore, there is no other way for Plaintiffs to seek judicial review, mandamus, or declaratory judgment.

BACKGROUND

30. On or about September 3, 2020, Public Financial Management (“PFM”) approached the Township about possible monetization of the Sewer System. On September 3, 2020, the Township also approved a Phase 1 contract with PFM to explore monetization of the public sanitary sewer system.
31. On or about January 13, 2021, the Township approved Phase 2 and Phase 3 contracts with PFM to further explore the monetization of the sewer assets.
32. On February 24, 2021, the Township retained Dilworth Paxson, LLP as special counsel for legal services pertaining to the monetization of the sewers.
33. On February 12, 2021, the Township issued a Request for Qualifications, soliciting responses from prospective bidders for the purchase or lease of the public sanitary sewer system owned and operated by the Towamencin Municipal Authority (“Sewer System”).¹
34. On March 12, 2021, the Township received Responses to its Request for Qualifications for the sale or lease of the Sewer System. On March 17, 2021, the Township decided to prequalify all interested bidders: Aqua Pennsylvania, Inc. (“Aqua”), Pennsylvania American Water, Inc. (“PA American” or “PAAW”), NextEra Energy, Inc. (“NextEra”), Franconia Sewer Authority (“Franconia”), and Vico.
35. On or about May 21, 2021, the Township held pre-bid meetings and tours of the assets with all pre-qualified bidders.
36. On December 12, 2021, the Board of Supervisors authorized a Request for Bids for the purchase or lease of the Sewer System, with bids due on or before February 11, 2022.

¹ The Towamencin Municipal Authority is a municipal authority organized and existing pursuant to the Municipalities Authorities Act, 53 Pa.C.S. § 5601, *et seq.* The Authority was established by the Township in 1964, and is not a party to this litigation. If the proposed sale of the public sanitary sewer system were to be completed, the Authority would be dissolved and cease its existence.

37. The Township received five (5) bids, as follows:
- NextEra: \$115,300,000.00 (with a two-year rate freeze offered);
 - PAAW: \$92,400,000.00 (no rate freeze offered);
 - Aqua: \$54,100,000.00 (no rate freeze offered);
 - Franconia: \$23,500,000.00 (regardless of rate freeze); and
 - Vico:
 - With rate freeze for 2 years: \$45,000,000.00
 - Without rate freeze for 2 years: \$55,000,000.00
38. Throughout this process, members of the public have been consistently appearing at public meetings of the Board of Supervisors to voice their objection to the proposed sale and demanding increased transparency from the Board. Ultimately, the Board held two (2) town hall meetings, sent out mailers, and pledged to listen to their constituents throughout the process.
39. On or about April 6, 2022 and April 22, 2022, the Board of Supervisors held two (2) town hall meetings at Dock Academy for public presentation and comments on the proposed sale of the Sewer System. Each town hall had approximately 300 residents and other interested persons in attendance. Only two (2) members of the public voiced support of the sale, while many members of the public spoke in opposition to the sale.
40. On or about May 25, 2022, the Board of Supervisors held a public meeting to decide whether to approve a sale to NextEra. At the meeting, approximately 70 residents attended, almost unanimously speaking in opposition to the proposed sale.
41. Nevertheless, the Board of Supervisors voted four-to-one (4-1) to approve a sale of the Township's municipal sewer system to NextEra for One Hundred Fifteen Million Three Hundred Thousand Dollars (\$115,300,000.00).
42. On or about June 14, 2022, the Township entered into an Asset Purchase Agreement ("APA") with the highest bidder, NextEra.

THE SEWER COMMITTEE

43. As the public meetings progressed, members of the public began to discover that the Township had formed a Sewer Committee which had taken on responsibilities that would normally be undertaken by the Board of Supervisors as a whole. The Township was not, however, forthright about the membership or functions of the Sewer Committee, unless asked specific questions through the Right-to-Know process, despite the Township's promises and assurances regarding transparency.
44. Through these efforts, Plaintiffs have been able to piece together limited information regarding the membership and function of the Sewer Committee. Plaintiffs continue to attempt to access information regarding same.
45. For the process related to the proposed Sewer Sale, upon information and belief, the members of the Sewer Committee were H. Charles Wilson III (Chairman of the Board of Supervisors), Daniel M. Littley Jr., Robert Ford (former Township Manager), Brooke Neve, William Dingman, and Solicitor John T. Dooley.
46. Plaintiffs believe, and therefore aver, that membership of the Sewer Committee has changed over the years, but as there are no minutes of meetings or proper records of the Sewer Committee, Plaintiffs are unable to aver which members served on the Sewer Committee at which times, other than as stated herein. At some point, Supervisor Richard Marino became a part of the Sewer Committee, and was part of the Sewer Committee that recommended the proposed sale to NextEra.
47. With respect to the proposed sale, the Sewer Committee was tasked with "examin[ing] whether it is in the Township's best interest, or not, to monetize the sanitary sewer system." The Sewer Committee "recommended that an 'Analysis & Valuation' study of

the sanitary sewer system be conducted to collect the needed information to make an informed decision on monetization.” See Towamencin Sewer Sale Informational Webpage, <https://www.towamencin.org/information/sewer-system-sale/> (last visited August 9, 2023).

48. Upon information and belief, the Plaintiffs believe, and therefore aver, that the Sewer Committee was intimately involved with the process related to the Sewer Sale, including reviewing the aforementioned Analysis and Valuation study, interviewing prospective bidders, reviewing and analyzing bid submissions for the specific purpose of making a recommendation to the Board of Supervisors, and ultimately making a recommendation to the Board of Supervisors, which was accepted and approved by four (4) of the five (5) supervisors.
49. As the Sewer Committee was so incredibly influential regarding the decision to monetize the sewer assets, the interview and bid process, and the eventual persuasive recommendation to the full Board of Supervisors, the Sewer Committee, acting as an established committee of the Township, must comply with the Pennsylvania Sunshine Act, related to public meetings.
50. The Pennsylvania Sunshine Act, 65 Pa.C.S.A. § 701, *et seq.*, (the “Sunshine Act”), governs the conduct of meetings of governmental agencies. Specifically, the Sunshine Act mandates that “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public...” 65 Pa.C.S.A. § 704.
51. Official action is defined to include:
 - (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
 - (2) The establishment of policy by an agency.
 - (3) The decisions on agency business made by an agency.

- (4) The vote taken by an agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

65 Pa.C.S.A. § 703.

52. An agency is defined to include “[t]he body, and all committees thereof authorized by the body to take official action or render advise on matters of agency business ... of any political subdivision of the Commonwealth or any ... township...” 65 Pa.C.S.A. § 703.
53. A political subdivision is defined as “[a]ny county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district or county institution district.” Id.
54. Towamencin Township is unquestionably a political subdivision and township that is subject to the provisions of the Sunshine Act, such that official actions and deliberations of Township agencies must comply with the open meeting requirements.
55. The Sewer Committee is a committee of the Township.
56. The Sewer Committee did not comply with the mandates of the Sunshine Act.
57. There were numerous Right-to-Know requests that were submitted in order to find out basic information about the Sewer Committee, its membership, and its function. *See* Exhibit “A,” multiple Right-to-Know requests and responses from the Township.
58. Requests were required to be submitted to find out:
- Sewer Committee membership
 - Sewer Committee minutes or notes
 - Any information regarding the formation of the Sewer Committee
 - Advertisements regarding Sewer Committee meetings
59. As a result of these numerous requests, it was determined that there are not complete records of who served on the Sewer Committee, there are no meeting minutes or records of discussion (including no record of any handwritten notes), there were no

advertisements of the meetings, the meeting agendas were not posted. Of great concern, the full extent of the function of the Sewer Committee remains unknown as of this filing due to the flagrant disregard of the basic tenants of the Sunshine Act. *See* Exhibit “A,” pgs. 2, 4.

60. Further, as the meetings were not advertised and no agendas were posted, there could be no public involvement or input.
61. Plaintiffs believe, and therefore aver, that the purpose of conducting the meetings of the Sewer Committee in such a fashion was to purposely exclude public input and to shield the Township’s deliberations regarding a major asset from public scrutiny, despite the requirements of the Sunshine Act and the significant public interest in the proposed sale.

THE HOME RULE CHARTER

62. There were many citizens that viewed the Township’s lack of transparency regarding this proposed sale troublesome, at best. There was a clear lack of transparency on behalf of the Township, including private meetings, insufficient information, and violations of the Sunshine Act.
63. Due to these plentiful concerns regarding the lack of transparency of the Board of Supervisors and a strong objection to the proposed sale of the Sewer System, residents of the Township organized to utilize the options of the Home Rule Charter and Optional Plans Law to petition for a government study commission and election to establish a Home Rule Charter for the Township. 53 Pa.C.S.A. § 2901, *et seq.*
64. On November 8, 2022, the following question was posed to the voters of Township on the general election ballot, “Shall a government study commission of seven members be elected to study the existing form of government of Towamencin Township, to consider

the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?”

65. Also on the ballot was a separate voting measure, which was reliant on the formation of the government study commission being approved: “If the question of forming a government study commission is approved by the voters, seven people are required to be elected to serve on the commission. Regardless of how you voted on the question of appointing a government study commission, you can vote to elect candidates to the commission. You may vote for no more than seven candidates to serve on the study commission.”
66. There were a total of fourteen (14) candidates for the government study commission. Leading up to the November 8, 2022 election, there were two (2) separate and distinct candidate slates.
67. Seven (7) of the candidates openly proclaimed their opposition to the Sewer Sale and proposed the use of the Home Rule Charter and Optional Plans law to block the proposed Sewer Sale. These candidates identified as the Neighbors Opposing Privatization Efforts, or “NOPE” slate, and were Plaintiffs, Gisela Koch, Mark Warren, Christina Gallagher and Don Lepp.
68. The remaining seven (7) candidates identified as the Township Residents United Serving Towamencin, or “TRUST” slate, and were Douglas Kile, Connie Brown, Jeffrey Baer, Nancy Becker, Richard Fisher, Amy Tarlo and Michael Main. The TRUST slate was in favor of the proposed sale, and was open in its intent to maintain the Township’s form of government to allow the proposed Sewer Sale to proceed.

69. The express primary goal of the NOPE candidates was to stop the sale of the Sewer System, with secondary goals of increased transparency from the Township and the addition of a referendum function for the voters of Towamencin Township.
70. A government study commission was approved by the voters in the November 2022 election (the “Government Study Commission” or “GSC”).
71. As the formation of the GSC was approved, the seven (7) persons with the most votes that were elected to serve on the Government Study Commission were the seven members of the NOPE slate, including Plaintiffs in this action, who became the Chair, Vice Chair and Treasurer of the Government Study Commission.²
72. On December 6, 2022, the Government Study Commission members took their oaths of office and held an organizational meeting.
73. The GSC published numerous drafts of a Home Rule Charter, held several public meetings where various elected and appointed officials were interviewed, toured the Towamencin Municipal Authority sewage treatment plant, held a public hearing, and held a town hall thereafter in pursuit of fulfilling its statutory responsibilities.
74. The GSC undertook a review of how a Home Rule Charter could change the outcome of the Sewer Sale, in addition to adding citizen participation through referenda and transparency to Township operations.
75. The GSC was clear from the beginning: its primary goal was to explore the ways in which a Home Rule Charter could stop the sewer sale. This goal, along with adding citizen referenda and transparency in Township operations, was repeated at the beginning of each GSC meeting and published on the GSC website.

² Don Lepp was unable to take office, and was thereafter replaced with Joseph Rumsey.

76. On March 1, 2023, the GSC approved the required report of its findings, its proposed Home Rule Charter (the “Charter”), and the Ballot question.
77. The Sunshine Act mandates that for each of its public meetings “the [Township] shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting.” 65 Pa.C.S.A. § 709(c.1)(1)(i).
78. The Sunshine Act prohibits the Township from taking any action on items not included in agenda: “an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification required under section 709(c.1).” 65 Pa.C.S.A. § 712.1(a).
79. The Sunshine Act allows exceptions to this mandate for emergencies and for matters that are brought to the agency’s attention during the 24-hour period between the posting of the agenda, so long as they are of a *de minimis* nature. 65 Pa.C.S.A. §§ 712.1(b) & (c). However, the agency must announce the reason for the change in the agenda at the public meeting. 65 Pa.C.S.A. § 712.1(e).
80. On March 8, 2023, at the start of its public meeting, the Board of Supervisors alerted the public to both the proposed withdrawal of NextEra and that NextEra had proposed to assign its contractual rights to PA American.
81. The Board Chairman, Charles Wilson, announced that the reason for the change in the agenda was “due to certain information recently received by the Board.” See Exhibit “B,” Minutes of the March 8, 2023 and March 22, 2023 Board of Supervisors meetings.

82. There was no statement that the information had arisen within the 24 hours prior to the meeting. Plaintiffs believe, and therefore aver, that the Township was aware of the “certain information” well prior to the 24 hours in advance of the meeting.
83. Despite having no motion on the agenda for such an action, no updated financial analysis, and in clear and flagrant violation of the Sunshine Act, the Township Supervisors voted to amend the meeting’s agenda to 1) amend the existing Asset Purchase Agreement, 2) draft an Assignment Agreement, and 3) draft an amendment to the Sewer Sale Ordinance. All of these items were approved by a vote of four-to-one (4-1), with Supervisor Joyce Snyder as the lone dissenting vote. See Exhibit “B.”
84. On March 22, 2023, the Board of Supervisors then approved the amendment to the Asset Purchase Agreement, the Assignment Agreement, and the amendment to the Sewer Sale Ordinance. At this same meeting, the Township adopted a 3-minute time limit on public comment and actively enforced this policy prior to the official adoption.
85. On March 9, 2023, the day after the Board of Supervisors announced and voted to begin the process of transferring the sale from NextEra to PAAW, the GSC released its final report, in which the adoption of a Home Rule Charter was recommended. The report was revised slightly to account for the proposed change from NextEra to PAAW. A true and correct copy of the March 9, 2023 Report is attached hereto, incorporated herein and labeled Exhibit “C.”
86. The proposed Charter did not alter elected offices, change any financial procedure, change limitations to taxation rates, or make any change to the general operating procedures of the Township. Rather, as was clearly discussed at each meeting of the GSC, the proposed Charter, *inter alia*, prohibited, “the sale or long-term lease of potable

water, wastewater, and stormwater systems to nongovernmental entities.” *See* Exhibit “C,” pg. 2.

87. As part of the March 9, 2023 GSC report, four major concerns were addressed: “(1) The sewer sale is neither necessary nor popular, (2) There is little wrong with the current structure of government, (3) There isn’t enough direct democracy in Towamencin, and (4) There isn’t enough transparency in Towamencin.” *See* Exhibit “C,” pg. 5.
88. The GSC continued to move forward as commissioned. On March 10, 2023, the final report, proposed Charter and ballot question were transmitted to the Montgomery County Board of Elections for inclusion on the May 16, 2023 ballot.
89. As a result of the in-depth study and findings thereof, the required referendum was placed on the Tuesday, May 16, 2023 primary election ballot. As required by the Home Rule Charter Law, the ballot question read: “Should the Home Rule Charter contained in the report dated March 9, 2023, of the Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the Second Class Township of Towamencin?”
90. The Home Rule Charter referendum was passed by the eligible voters of Towamencin Township on Tuesday, May 16, 2023 with a vote of 2,728 to 2,418, and certified on June 5, 2023.
91. The Home Rule Charter referendum was passed with a five percent (5%) margin of victory. For context and reference, in the United States national election, President Joe Biden defeated former President Donald Trump in 2020 by 4.45%, former President George W. Bush defeated former U.S. Senator John Kerry by 4.8%. Similarly in Towamencin, Mr. Wilson won his 2019 election by approximately 3%. Despite this

incredibly slim margin of victory, no one contests that Mr. Wilson did in fact win his election. Likewise, no one contests that the Home Rule Charter also was adopted by the voters.

92. The Home Rule Charter went into effect on July 1, 2023.
93. On May 15, 2023 the Township filed a Petition *Nunc Pro Tunc* with the Pennsylvania Public Utility Commission (the “PUC”), seeking a Certificate of Public Convenience, *Nunc Pro Tunc*, seeking approval from the PUC to offer, furnish, render, and supply wastewater service, yet at the same time seeking a Certificate to Abandon Service upon the closing of a proposed sale by the Township of substantially all of the assets comprising its wastewater system to PAAW.
94. On May 16, 2023, PAAW filed an Application to Acquire the Towamencin Wastewater System with the PUC, seeking approval of the transfer of assets to PAAW and the rights of PAAW to begin to offer or furnish wastewater service.

THE FOSTER RIGHT-TO-KNOW REQUEST

95. Also on March 9, 2023, Plaintiff Foster submitted a Right-to-Know request to the Township asking for records relating to communications regarding PAAW. On March 16, 2023, the Township invoked a 30-day extension. A true and correct copy of the Right-to-Know Request is attached hereto, incorporated herein and labeled Exhibit “D.”
96. On April 13, 2023, the Township requested an additional 15 days to respond to the March 9, 2023 Right-to-Know request.
97. On May 8, 2023, the Township provided a partial response to the March 9, 2023 Right-to-Know request, and denying the request in part, citing the attorney-client privilege and internal pre-decisional records exceptions in the Pennsylvania Right-to-Know Law. A

true and correct copy of the Township's response and responsive records is attached hereto, incorporated herein, and labeled Exhibit "E."

98. At the Township meeting on May 10, 2023, Township President Charles Wilson seemingly attempted to cure the text messages as provided in response Plaintiff Foster's request, by openly amending his previously identified timeline, stating that: (1) he informed the public on March 8, 2023 that the Township was notified by NextEra of their intent to exit on or around November 28, 2022, (2) that PAAW had reached out to the Township in early December 2022 to inform the Township of NextEra's intent to assign and see if the Township was open to this change, and (3) that NextEra told the Township the Thursday or Friday before March 8th that they came to an agreement with PAAW to assume the APA.
99. On May 25, 2023, Plaintiff Foster filed an appeal of the partial denial. The Township and the Plaintiff Foster thereafter engaged in mediation, including the Township providing a supplemental affidavit.
100. The Foster Appeal closed on October 11, 2023. The Township, in response to this appeal, released 225 pages of communications.
101. The records received in the Township's partial response revealed that, contrary to the Township's assertion on March 8, 2023 that it had only recently learned of the transfer of the APA from NextEra to PAAW, text messages exchanged between two (2) Board members in early December 2022 revealed that such discussions had begun months before the Board's last minute agenda modification, which was in clear violation of the Sunshine Act.

102. At all times material hereto, the Board has continued to move forward with the proposed sale, despite lengthy public comment in opposition of the agreement, lack of public support, and an overwhelming lack of transparency.

THE COMMON INTEREST PRIVILEGE AGREEMENT

103. On or about October 4, 2023, Township Solicitor Robert Iannozzi provided an agreement in response to a Right-to-Know Appeal submitted by Ms. Vanessa Gaynor, in an attempt to explain why certain documents were privileged and subject to review prior to disclosure by PAAW.
104. In a portion of his letter to the Office of Open Records Appeal Officer Hartranft, Solicitor Iannozzi represented that “On October 3, 2023... it was brought to my attention that there existed a common interest privilege agreement requiring all records involving the PA Public Utility Commission and/or any sewer sale litigation be kept confidential.” *See* Exhibit L.
105. Solicitor Iannozzi further attached a copy of the Common Interest Privilege Agreement to this letter to the Appeals Officer.
106. Upon review of the Common Interest Agreement, it was determined that this Agreement was supposedly signed on June 8, 2023.
107. Upon information and belief, this Agreement was not listed for discussion or approval at any public meeting of the Board of Supervisors.
108. This Agreement was not known to the Plaintiffs until October 4, 2023, after the disclosure was made in the Gaynor Office of Open Records Appeal.
109. This Common Interest Agreement is being positioned as a weapon to defend public documents from disclosure.

CONTINUED VIOLATIONS OF THE SUNSHINE ACT

110. While consistently attempting to circumvent the Office of Open Records, conceal public records, and push forward an illegal sale of public assets, the Township also chooses to disregard the Sunshine Act.
111. The Township is aware of the Sunshine Act and the agenda requirements contained therein.
112. The Township has a fully barred and licensed Solicitor who is also aware of the Sunshine Act and the requirements therein.
113. Moreover, the Township has complied with the Sunshine Act agenda requirements on more than one occasion, albeit not consistently.
114. Despite the knowledge of the requirements under the Sunshine Act, on October 18, 2023, the Township had a meeting where Township business was deliberated, during a “budget workshop.”
115. The Township failed to properly post the agenda for this workshop, both on the website and on the door of the meeting location.
116. Despite knowledge and understanding, and despite the fact that the instant action was filed on or about August 22, 2023 alleging that the Township failed to comply with the mandate of the Sunshine Act, the Township continues to ignore the clear and unambiguous provisions of the Sunshine Act.

COUNT I: MANDAMUS

117. All paragraphs above are hereby incorporated by reference.
118. Plaintiffs seek an order of mandamus in this action compelling the Board of Supervisors of Towamencin Township and Towamencin Township to terminate the Asset Purchase

Agreement with Pennsylvania American Water, as the Board of Supervisors and the Township are refusing to abide by, and are blatantly violating, requirements under the Home Rule Charter.

119. A “[m]andamus is the proper remedy only where the plaintiff demonstrates (1) a clear legal right in the petitioner, (2) a corresponding duty in the respondent, and (3) absence of any other appropriate or adequate remedy.” Equitable Gas Co. v. City of Pittsburgh, 488 A.2d 270, 272 (Pa. 1985). Plaintiffs clearly satisfy each prong of this test, as the Plaintiffs have a clear right to relief, the Township and the Board of Supervisors have an unequivocal duty, and there is a clear lack of other appropriate remedies.
120. Despite the Home Rule Charter going into effect, the Board of Supervisors and Township are intent on proceeding with a proposed sale that is in direct violation of the clear language of the Charter as well as the obvious intent of the voters of Towamencin Township.
121. The Home Rule Charter states that, “The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater System, or a Storm Water System in the Township, shall not permanently sell, transfer, assign, or deliver ownership or operation of the Potable Water System, the Wastewater System, or the Storm Water System to a non-governmental entity.” *See* Exhibit “F,” at Article 6, § 601.
122. Plaintiffs seek a mandamus action as a “[m]andamus is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate remedy at law.” Allegheny County v. Com., 490 A.2d 402, 408 (Pa.

1985). Moreover, “[t]o succeed in an action of mandamus, the plaintiff must show an immediate, specific, well defined and complete legal right to the thing demanded.”

Equitable Gas Co. v. City of Pittsburgh, 488 A.2d 270, 273 (Pa. 1985).

123. The Charter creates a clear right to relief for Plaintiffs, as residents of the Township are entitled to see the provisions of the Charter followed. Further, due to a recently issued Commonwealth Court opinion, it has become abundantly clear that the proposed sale of the Sewer System must fail. *See generally* Cicero v. Penna. Public Utility Comm’n, Docket No. 910 C.D. 2022 (Pa. Commw. Ct., July 31, 2023).
124. There can be no question regarding the duties of the Board of Supervisors in this action, as the Charter is explicit, unambiguous and does not give the Board of Supervisors or the Township any discretion in complying with its terms. The Charter creates an unequivocal duty for the Township and the Board of Supervisors to terminate the APA, as the Township cannot proceed with the proposed sale.
125. Despite this, the Board of Supervisors openly and confidently continues to promote, encourage, and advance the illegal proposed sale.
126. Indeed, four (4) of the Supervisors issued a joint statement advising of their intent to disregard the Charter, which stated: “As have we previously stated, and as we have shared with the opponents of the sewer system sale, the Township legal team does not believe the passage of the Home Rule Charter negates the sewer sale under current Pennsylvania law and the Pennsylvania Constitution. There is strong legal precedent against overturning pre-existing contracts based on the passage of new laws. As such, we do not intend to seek to terminate the contract.” *See* Towamencin Board of Supervisors’ Statement: Home Rule Charter, May 25, 2023, <https://www.towamencin.org/media/2607/>

- bos-statement-home-rule-charter_sewer-sale.pdf. (Last visited August 14, 2023).
127. The duty of the Board of Supervisors and the Township is to comply with the Charter. The Home Rule Charter created a final governmental order or decision that prohibits the Township from consummating the transaction.
128. The present situation is expressly contemplated by the clear and unambiguous terms of the APA.
129. The APA, Section 14.01(b)(ii), states that, “This agreement may...be terminated and abandoned at any time before completion of the Closing...by the Seller or the Buyer if...any Governmental Authority shall have issued an order, decree or ruling or **taken any other action**, in each case permanently **restraining, enjoining, or otherwise prohibiting the material transactions contemplated by this agreement.**” *See* Exhibit “G,” at 52 (emphasis added).
130. A “Governmental Authority” is defined in the APA to mean “**any** court, department, commission, board, bureau, municipality, municipal authority (established pursuant to the Pennsylvania Municipal Authorities Act of the Commonwealth of Pennsylvania), **agency** or instrumentality of the United States, **any state, county, city or political subdivision thereof**, or any foreign governmental body, including without limitation, the PaPUC, the EPA, PaDEP, **the Municipal Board** and the Authority Board.” *See* Exhibit “G,” at 6 (emphasis added).
131. The Township is, by this definition, a Governmental Authority.
132. As noted above, the voters of the Township voted in favor of adopting a Home Rule Charter.

133. The newly adopted Charter specifically prohibits the transactions contemplated by the APA. Specifically, because of the clear and unambiguous terms of the Home Rule Charter, the Township may not execute any of the final asset transfer agreements that are necessary to complete the proposed sale.
134. The APA is, by its terms, an agreement to agree at a later date if certain conditions precedent are met. Because of the Charter, the conditions precedent, the execution of the final transfer documents, can no longer be met and the APA is, therefore, no longer performable.
135. “If performance on one side or another of a contract becomes excusably impossible while the transaction is wholly executory on both sides, not only is the contract discharged, but neither party is subject to obligation of any kind.” Davis-Haas v. Exeter Twp. Zoning Hearing Bd., 166 A.3d 527, 538 (Pa. Commw. Ct. 2017).
136. Black’s Law Dictionary defines an executory contract as, “A contract that remains wholly unperformed or **for which there remains something still to be done on both sides, often as a component of a larger transaction** and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement.” Black's Law Dictionary (11th ed. 2019).
137. Here, the Township must transfer the assets to PAAW and PAAW must obtain approval from the Pennsylvania Public Utility Commission. There can be no doubt that the current APA with PAAW is entirely and wholly executory. Therefore, this contract may be discharged and the Township is under no obligation to consummate the transaction.

138. This Home Rule Charter is now in effect and binding upon the Township, constituting a new form of government that the Board of Supervisors and the Township must abide by, including their inability to consummate this transaction.
139. At various times, four (4) of the five (5) members of the Board of Supervisors have stated their belief that the Charter cannot interfere with the APA, which they have opined is a legally binding contract.
140. As outlined above, however, the Charter does exactly what is specifically contemplated by the APA: it prevents the Township from being able to sign the final transfer documents. The APA is, by its terms, an agreement to agree at a later date, assuming that all agencies having jurisdiction have otherwise approved the proposed sale and that the Township is able to sign the final transfer agreements.
141. The only decision the Board of Supervisors can make is to comply with the legal requirements of the Charter. A majority of the Board of Supervisors has publicly declared their intent to ignore the Charter and attempt to proceed with the proposed sale.
142. In doing so, the Township will continue to incur substantial costs in the form of legal expenses related to petitions before the PUC, and will continue to frustrate the clear intent of the electorate.
143. No other remedy is sufficient to protect the Plaintiffs' interests. If the Township is permitted to proceed with the process of attempting to sell the Sewer System, the Township will continue to incur costs in the form of legal fees and consultant fees that are incurred through the prosecution of the Township's PUC petition and other associated matters.

144. As such, “[m]andamus is proper to compel the performance of legal duties, even where the existence and scope of such duties must be found and defined in the course of the mandamus action itself.” Delaware River Port Auth. v. Thornburgh, 493 A.2d 1351, 1355 (Pa. 1985) (citing Volunteer Firemen’s Relief Assoc. v. Minehart, 203 A.2d 476 (Pa. 1964)).
145. Plaintiffs are, therefore, entitled to the relief sought.

WHEREFORE, Plaintiffs respectfully requests this Honorable Court enter an order of Mandamus, directing the Township to comply with the Home Rule Charter and terminate the Agreement, as the Home Rule Charter is a final governmental order, prohibiting the material transaction from occurring.

COUNT II: DECLARATORY JUDGMENT – SALE OF SEWER SYSTEM

146. All preceding paragraphs are hereby incorporated by reference.
147. A Declaratory Judgment, “declares the rights, status, and other legal relations whether or not further relief is or could be claimed. It has been observed that declaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation. **Stated otherwise, the purpose of awarding declaratory relief is to finally settle and make certain the rights or legal status of parties.**” J.B. v. Pennsylvania State Police, 288 A.3d 946, 951 (Pa. Commw. Ct. 2023) (emphasis added).
148. “[T]he Declaratory Judgments Act is remedial in nature and **intended to provide relief from uncertainty and establish various legal relationships.**” Curtis v. Cleland, 552 A.2d 316, (Pa. Commw. Ct. 1988) (emphasis added).

149. Moreover, “the Declaratory Judgments Act provides that it should be used to ‘settle and to afford relief from uncertainty and insecurity with respect to the rights, status and other legal relations and should be liberally construed ...’” National Solid Wastes Mgmt. Assoc. v. Casey, 580 A.2d 893, 898 (Pa. Commw. Ct. 1990) (internal citations omitted).
150. As noted at length above, a substantial portion of the Home Rule Charter is the prohibition on the sale of wastewater assets to non-governmental entities. The Plaintiffs in this action are the former Chair, Vice Chair and Treasurer of the GSC, originally tasked with drafting the now-adopted Charter.
151. Despite the adoption of the Charter, the Township continues to actively pursue completion of this transaction. Four (4) of the five (5) elected Supervisors stated in their May 25, 2023 press release that, “the Township legal team does not believe the passage of the Home Rule Charter negates the sewer sale under current Pennsylvania law and the Pennsylvania Constitution. There is strong legal precedent against overturning pre-existing contracts based on the passage of new laws. As such, we do not intend to seek to terminate the contract.” A true and correct copy of the Township’s May 25, 2023 press release is attached hereto, incorporated herein and labeled as Exhibit “H.”
152. However, Defendants fail to acknowledge, or blatantly disregard, their duty and powers as established under the Home Rule Charter.
153. **“A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter.** All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or

general terms, shall be liberally construed in favor of the municipality.” Wecht v. Roddey, 815 A.2d 1146, 1150–51 (Pa. Commw. Ct. 2002) (emphasis added).

154. This Charter, as adopted by the citizens of Towamencin, specifically denies the Township the right to sell any public wastewater asset to a private entity, yet the Township continues to proceed with the Sale despite the clear prohibition on such sales and in direct conflict with the Charter.
155. The Township has retained Dilworth Paxson, LLP to represent it in front of the PUC regarding the Application *Nunc Pro Tunc* to furnish wastewater services – a clear action taken so that the Township may sell its sewer assets, as it has provided wastewater services for decades without such necessary certificates. In addition, the Township seeks a certificate to Abandon Wastewater Services after the sale to PAAW is finalized. This application directly cites to the PAAW application to acquire the Towamencin Wastewater Service System on numerous occasions. *See* Exhibit “I.”
156. An action brought under the Declaratory Judgments Act must allege an interest by the party seeking relief which is direct, substantial and present, and must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of one's legal rights. Bowen v. Mount Joy Twp., 644 A.2d 818, 821 (Pa. Commw. Ct. 1994).
157. The Plaintiffs have an interest which is direct, substantial and present. Plaintiffs are residents and voters of the Township and are entitled to see the Township and the Board of Supervisors comply with the Home Rule Charter.
158. There is an ongoing controversy: the requirements under the Charter are clear and unambiguous, yet Defendants continue to intentionally ignore the mandate of the Charter and mischaracterize its implications. Defendants willfully turn a blind eye to the mandate

given to them by the electorate, falsely claiming that their hands are tied and attempting to proceed with the sale of a public asset. As they proceed, the Defendants are wasting thousands of taxpayer dollars to continue with a process that cannot ultimately be concluded, for the reasons outlined herein.

159. As outlined above, the instant situation is expressly contemplated by the APA, and the Township is prohibited from executing the final transfer documents.
160. The frivolous expenditure of public tax dollars in pursuit of a futile and illegal sale is most certainly a direct, substantial, and present controversy, which is entirely related to the invasion of the rights of the voters of Towamencin, who are vehemently opposed to this sale and are having their tax dollars squandered in pursuit thereof.
161. The residents of Towamencin cannot and will not ever recover these poorly spent funds, and a majority the Board of Supervisors refuses to listen to the will and concern of the voters of the Township. The longer the Township continues to erroneously assert that the transaction is legal and operate under such misrepresentations, the longer residents and taxpayers continue to suffer.
162. In further demonstration of the futility and frivolousness of this attempt to sell the Sewer System, in a case with nearly identical facts to the instant matter, a recent Commonwealth Court decision overturned the PUC approval of a sewer sale finding there to be no financial benefit. *See Cicero v. Penna. Public Utility Comm'n*, Docket No. 910 C.D. 2022, Opinion Issued July 31, 2023.
163. In Cicero, the court held that “financial, technical, and managerial ‘benefits’ the Commission concluded could result from [a] transaction relate to and/or are not benefits

that ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’” Id. at 18-19.

164. The Cicero court further reasoned that there was no public benefit regarding the sale of a public sewer system to a private entity because, “the System is already providing and is capable of providing the same or similar benefits without the acknowledged rate increase that will occur as a result of the acquisition.” Id. The court also stated that, “[h]olding that a transaction will result in substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit, let alone a substantial affirmative public one as required by statute and our caselaw. Nor is it a benefit to provide for upgrades that Township is equally capable of providing...This is particularly true when the existing system is already operating safely and reliably.” Id.
165. The Sewer System here is in perfect functioning order. Even on the Township flyer titled, “Why The Sewer Sale Is Good For Towamencin Families,” the Township is only able to point to monetary benefits that will “eliminate township debt” or “enhance existing township pension plan trust” or “eliminate need for future borrowings.” *See* Exhibit “J.”
166. Moreover, the President of the Board, Charles Wilson, noted that, “The system has been well maintained with annual inspection and repair activities. The plant is in good condition.” *See* Exhibit “K.”
167. It is obvious that the Home Rule Charter was enacted in order to protect public assets and keep public assets in public hands. It is also no secret that the intent behind the Government Study Commission, and the resulting Home Rule Charter, was to remedy the sale of public assets in good working order to a private entity under the guise of “public benefit,” and to specifically prevent the proposed sale now contemplated by the Board of

Supervisors. Most certainly, one cannot begin to assert that there is any benefit to the public when looking at increased rates, assessments to install meters, and the dissolution of a government entity that was built with the funds of taxpayers and ratepayers in the Township.

168. It is obvious based on the representations of the Township, there is no actual public benefit to the sale of the Sewer System, except for an enormous financial windfall to the Township. This financial motivation is further diminished when, faced with the prospect of increased sewer rental fees and taxes or the sale of the Sewer System, the voters of Towamencin Township voted for increased fees and taxes. Residents spoke at public meetings encouraging the Board to raise taxes rather than sell the Sewer System.
169. The Township is also fruitlessly, frivolously, and wastefully spending taxpayer funds to push a sale forward that provides no public benefits, which is a losing argument as evidence by the holding in Cicero.
170. However, this proposed sale fails on its own without reliance on the Cicero decision. The Township is not permitted to sell the Sewer System under the Home Rule Charter. The Township is specifically blocked from consummating the transaction.
171. This declaratory action is necessary to stop the Township from continuing to try to consummate the transaction they are so obviously and legally barred from, to stop the Township from continuing to litigate a sale that should never get approved under current caselaw, and from wasting hard earned taxpayer funds in pursuit of an incredibly short sighted and lackluster financial proposition, the sale to PAAW.
172. Therefore, this Honorable Court should issue an Order prohibiting the Township from executing the final transfer documents and finalizing the sale to PAAW.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order that the Township of Towamencin cannot finalize this Transaction and may not execute the necessary documents to complete the transfer of the sewer system assets.

COUNT III: VIOLATION OF THE SUNSHINE ACT

173. The preceding paragraphs are hereby incorporated by reference.
174. The Township glaringly has been committing, and upon information and belief continues to commit, violations of the Sunshine Act for some time, though the extent of those violations is still unknown.
175. This sale was precipitated by PFM approaching the Township regarding the potential monetization of the Sewer System.
176. The Sewer Committee, as noted *infra*, was fully entrusted with 1) deciding whether to monetize the sewer assets, 2) to review bids and interview bidders, and 3) make a recommendation regarding bid acceptance and monetization to the Board of Township Supervisors for final approval.
177. The Sewer Committee most certainly meets the definition of “Agency” under the Sunshine Act: “the body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business...” *See* 65 Pa.C.S.A. § 70
178. The Sewer Committee also performed “Agency Business”, which is defined by the Act as: “**the framing, preparation**, making or enactment of laws, policy or regulations, **the creation of liability by contract** or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” Id.

179. As the Sewer Committee so clearly meets the definitions of “Agency” and “Agency Business,” it is entirely unclear to Plaintiffs why not a single meeting was advertised, nor a single agenda provided, nor a roster of members kept, nor at the very least, why there are no records of what occurred in those meetings.
180. While the Sewer Committee did not take the final vote entering the Township into the APA, the Sewer Committee handled the entire deliberative process that typically would be the responsibility of the Board of Supervisors. The purpose of such actions can only have been to avoid public deliberations surrounding a deeply unpopular proposed sale of a Township asset.
181. The Township, once again operating in secrecy to cover up actions that were detrimental to the residents of the Township, hid behind a Committee to block the public’s view and input regarding these important decisions, discussions, and processes.
182. Sewer Committee meetings and the results of such illegal meetings, including the recommendation to the Township that NextEra bids be accepted and the sewer assets monetized, are in violation and the recommendations that resulted from such meetings be overturned.
183. The Township cannot be rewarded for attempting, and succeeding, to conceal its actions through a Committee that willfully disregarded the requirements of the Sunshine Act.
184. Moreover, the Township openly violated the Sunshine Act by amending the agenda on March 9, 2023 to include considerations of amendments of agreements and the assignment of NextEra contractual rights to PAAW.

185. Based on the Township's website Sewer Sale Update, dated April 11, 2023, the Township asserted that right before its March 8th meeting, the Board was advised of NextEra's intent to withdrawal and PAAW's intent to assume the NextEra contract.
186. The Township, however, was well aware of the intended change in advance of the March 8th meeting, with plenty of time to properly post the agenda and the motions, for adequate public notice and comment. Furthermore, the Township has offered no reason, emergency or otherwise, as to why the vote could not be postponed to the next regularly-scheduled or special meeting of the Board of Supervisors. Plaintiffs believe and therefore aver that the rushed and illegal vote was to intimidate and influence the work of the GSC and the adoption of the Charter in advance of its submission for the ballot and the May 16, 2023 election and to prevent the public from having adequate notice of a major Township decision.
187. The Sunshine Act both requires that agencies, "post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting...[and] shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, at the location of the meeting and at the principal office of the agency." *See* 65 Pa. C.S.A. § 709(c.1)(i-ii).
188. Again, operating under the cover of darkness, and knowing full well that this information had been available well prior to 24 hours before the meeting, the Board of Supervisors hid these facts from the residents and failed to comply with the Sunshine Act, despite their self-serving assertions on their website that they fully complied.

189. The Township, anticipating push back from their cloak and dagger approach, asserted on their own website that they amended the agenda, “in accordance with the PA Sunshine Law Section 712.1(c).” Towamencin Township, Sewer Sale Update, <https://www.towamencin.org/resources/news/article/?id=5621> (last visited August 18, 2023).
190. Section 712.1(c) allows for items to be added to an agency agenda, without having been properly noticed if, “An agency may take official action on a matter of agency business that is not listed on a meeting agenda if: (1) the matter arises or is brought to the attention of the agency within the 24-hour period prior to the meeting; and (2) the matter is *de minimis* in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.” 65 Pa C.S.A. § 712.1(c).
191. It remains unclear why the Township felt the need to so publicly proclaim compliance with the Act, when it does not actively post regarding its compliance with any other vote, agenda, or agency decision.
192. Further, it is unfathomable that the Township both believed that by authorizing the Township Solicitor to move forward with all the required paperwork was not indicative of entering into a new contract or agreement *and* that the authorization of the Solicitor and special counsel to proceed with this work in a short amount of time did not involve the expenditure of funds.
193. The Plaintiffs find it further noteworthy that this glaring violation of an Act meant to increase transparency was only discovered upon the filing of several Right-to-Know requests which revealed that these conversations had happened months before the March 8, 2023 meeting and prior to the GSC members even being sworn into their roles. *See Generally*, Exhibit “A.”

194. The Plaintiffs further note that the Foster Right-to-Know request that brought the violation to light is still the subject of an appeal with the Office of Open Records. Despite mediation, the Township refused to provide certain responsive records under the guise of Attorney-Client privilege and pre-decisional deliberations.
195. The Foster Right-to-Know appeal was closed on October 11, 2023, with the Township releasing 225 pages of communications in response to the appeal.
196. Even more egregious is the fact that several Supervisors have spoken at meetings of the GSC and their own public meetings, to admonish both the public and the GSC of the potential for NextEra to pursue legal action related to a potential termination of the APA, despite knowing full well that NextEra had already declared its intent to remove itself from the industry entirely and terminate or transfer the APA.
197. Further, the Township's claims that the Home Rule Charter can have no effect upon the APA are diluted by their dishonest, illegal and unethical behavior and comments surrounding the change from NextEra to PAAW. Several members of the Board of Supervisors spoke at GSC meetings regarding their belief that the Home Rule Charter could expose the Township to liability under the APA with NextEra, despite knowing that NextEra had already communicated its intent to terminate or assign the APA.
198. The Township cannot be rewarded for the underhandedness with which it has operated to sell an asset that the voters of Towamencin have clearly and unambiguously, through two separate elections, declared that they do not wish to sell.
199. As this was a willful violation of the Sunshine Act, the business transacted at that meeting should be void, "[a] legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within **30 days from the discovery of**

any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting...Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid.” 65 Pa.C.S.A. § 713 (emphasis added).

200. This assertion of a Sunshine Act violation involves complex facts. The Plaintiffs do not dispute the proper advertising of the March 8, 2023 meeting date and that the meeting was open to the public. However, the Sunshine Act was clearly violated and the actual discovery of many of the violations did not occur until much later and, indeed, continues to be revealed.
201. Therefore, as the Plaintiffs are still actively fighting in Office of Open Records for documents that would reveal the true extent of the violations, the willfulness thereof, and the blatant disregard of the law, the time for filing a claim for the clear violations has not yet begun to run.
202. The Board of Supervisors continues to violate the Sunshine Act in furtherance of this Transaction.
203. The initial complaint in this matter was served on the Board of Supervisors on August 23, 2023, and was acknowledged by the Chairman of the Board of Supervisors at a public meeting held that evening.
204. Counsel entered their appearance on behalf of the Towamencin Township Board of Supervisors and filed Preliminary Objections to the Complaint on September 12, 2023, which were served on the undersigned on September 13, 2023. Presumably, therefore,

- the Board of Supervisors were aware that counsel would be defending this matter on or before this date.
205. At its public meeting held on September 27, 2023, the Board of Supervisors approved a new agreement with Dilworth Paxson, LLP to defend the instant litigation.
 206. The Board of Supervisors also had held a public meeting on September 13, 2023. There was no reason that the Board of Supervisors could not have voted on the appointment of Counsel at the September 13, 2023 meeting, especially considering that Counsel had already entered their appearance on behalf of the Board of Supervisors the day prior to the meeting. There was ample time to add this to the September 13, 2023 agenda. But, the Board of Supervisors decided to delay the ratification for no valid reason.
 207. This approval is yet another instance of the Board of Supervisors' flagrant disregard of the Sunshine Act.
 208. The Plaintiffs are now bringing this Action, with no ability to reasonably discern how intensive or how rampant such violations are, as the Township continues to commit Sunshine Act violations and hide the full extent and deceit under the guise of false exemptions.
 209. The Sunshine Act challenges are, therefore, timely.
 210. Despite consistently violating the Sunshine Act and Open Records Laws which consistently result in appeals and litigation, the Township Board of Supervisors continues to openly and brazenly violate the Sunshine Act.
 211. Most recently, the Township held a Budget Workshop meeting on October 18, 2023.
 212. As this Budget Workshop Meeting most certainly discussed and deliberated agency business, the Township properly held this as a public meeting.

213. The Township, however, did not publicly post an agenda 24 hours in advance of the meeting as required by the Sunshine Act. *See* 65 Pa.C.S. 709(c.1).
214. The Township admitted this in the meeting.
215. As of this filing, the Township has not posted any minutes regarding the Budget Workshop Meetings, which occurred on September 20, 2023, October 4, 2023, and October 18, 2023, respectively.
216. Written minutes are required to be kept of all open meetings of the Township. 65 Pa.C.S. §706.
217. The Board of Supervisors for the Township have, on occasion, decided to comply with the laws of the Sunshine Act.
218. The Board did not lack legal knowledge or notice of the requirements of the Sunshine Act, the Board merely chose not to follow it, again. The Board has repeatedly, flagrantly and inexcusably ignored the mandate of the Sunshine Act. The Board is not above the law, and must be held accountable for its clear and repeated violations of the law.
219. While this infraction of the Sunshine Act may appear to be minimal in nature, it is evidence of ongoing and blatant disregard for the laws and requirements of this Commonwealth and the complete disrespect for the residents of the Township.
220. The Board cannot be permitted to continuously violate the Sunshine Act with no recourse by the citizens.
221. It is further believed that additional violations of the Sunshine Act will be identified during the discovery process.
222. It is also believed that other violations of the Sunshine Act will be committed during the pendency of this litigation.

223. This Honorable Court is empowered to issue an Order that will provide the public with a reasonable means of participating in the process.
224. Plaintiffs believe, and therefore aver, that the only appropriate remedy is to find the Township in violation of the Sunshine Act, impose the maximum penalties possible under the law, strike the votes taken at the March 8, 2023 and March 22, 2023 meetings related to the proposed Sewer System sale, invalidate the APA with PAAW and invalidate Ordinance Number 23-03 due to the serious and glaring violations of the Sunshine Act.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order, declaring that the Township has consistently violated the Shine Act, declaring that the action taken by the Board on March 8, 2023 and March 22, 2023 are in violation of the Sunshine Act, declare their actions null and void, invalidating the APA with PAAW, voiding Ordinance No. 23-03, and imposing the maximum amount of fines permitted under the Act.

COUNT IV: DECLARATORY JUDGMENT – COMMON INTEREST AGREEMENT

225. The preceding paragraphs are hereby incorporated by reference.
226. The Township entered into a Common Interest Agreement on June 8, 2023 with PAAW and the Towamencin Authority.
227. Common Interest Privilege and Common Interest Agreements have been recognized by Pennsylvania Law, however, such privileges and agreements are not absolute.
228. A party must prove four elements in order to demonstrate that the common interest doctrine applies: “(1) the parties’ agreement to the same; (2) a common-interest in the litigation or a jointly shared litigation strategy; (3) the communications were made

pursuant to such agreement; and (4) the continued confidentiality of the communications.” Pennsylvania Pub. Util. Comm'n v. Sunrise Energy, LLC, 177 A.3d 438, 445 (Pa. Commw. Ct. 2018) (internal citations omitted).

229. While it is almost certain that the Township and PAAW will argue that there is an obvious common interest in the sale of the Sewer Assets, “various decisions have emphasized that a shared common business interest or an interest that is solely commercial is insufficient to warrant application of the privilege.” Id.
230. The only true common interest of the parties to the sewer sale is a commercial and financial interest in selling/obtaining the sewer assets. PAAW does not care what happens to the proceeds of the sale after closing, just as the Township does not particularly care what happens to the assets or the ratepayers after closing. The only common interest here is a business and commercial interest, which is insufficient to warrant the finding of common interest privilege.
231. Moreover, even if this Honorable Court does find that the Township and PAAW are able to establish a common interest outside the business transaction of the sale, the Township illegally and improperly entered into this Common Interest Agreement and it must be invalidated.
232. Despite the Township having signed this Agreement months prior, the Township Solicitor represented in a letter to an Office of Open Records Appeal Officer that the Common Interest Agreement had just been brought to his attention.
233. In his correspondence to the Appeal Officer, the Township Solicitor further attached a copy of the agreement.

234. The Common Interest Agreement was not considered or approved at a public meeting of the Board.
235. By entering into this Common Interest Agreement, the Board took official action.
236. The Sunshine Act is clear that, Agency Business is “[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” 65 Pa.C.S.A. § 703 (West).
237. Moreover, the Sunshine Act further defines Official Action as, “(1) Recommendations made by an agency pursuant to statute, ordinance, or executive order. (2) The establishment of policy by an agency. (3) The decisions on agency business made by an agency. (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.”
238. “To be a vote constituting official action as defined in Section 3 of the Sunshine Act, it must be on a matter that commits the agency to a course of conduct.” Morning Call, Inc. v. Bd. of Sch. Directors of S. Lehigh Sch. Dist., 642 A.2d 619, 270 (Pa. Commw. Ct. 1994).
239. By the Board signing the Common Interest Agreement, the Board took Official Action on Agency Business. The Township created liability by signing a contractual agreement, which was a decision related to Township business, made by the Board.
240. This Common Interest Agreement establishes a policy of confidentiality for specific documents by the Township and committed the Township to a course of conduct.
241. There can be no argument that official actions and deliberation by a quorum of members must take place at an open public meeting. See Generally 65 Pa.C.S.A. § 704. Further, an

agenda listing each matter of Township business, including anything that will be or may be the subject of official action, must be posted at least 24 hours in advance of the meeting. See 65 Pa.C.S.A. § 709(c.1).

242. As there is no doubt that entering into the Common Interest Agreement the Board took official action, there can be no doubt that by entering into this Agreement, the Board once again violated the Sunshine Act.
243. Having not been approved at a public meeting of the Board, as required by the Sunshine Act, the Common Interest Agreement cannot be enforceable as to the Township, as the Township's public approval of the Agreement is a condition precedent to its enforceability. See Preston v. Saucon Valley Sch. Dist., 666 A.2d 1120, 1123 (Pa. Commw. Ct. 1995).
244. Moreover, notwithstanding the Sunshine Act procedural concerns, the Common Interest Agreement itself is in direct contrast to the Sunshine Act and the Open Records Act of the Commonwealth of Pennsylvania. The Agreement is, on its face, the Township's attempt to contract itself around the mandates of both statutes so that it can discuss the unpopular proposed sale of a public asset without having to do so with the public's knowledge and consent. As a public policy matter, municipal entities should not be permitted to enter into such contracts as a matter of law.
245. The intent of the Sunshine Act was to enact a public policy of the Commonwealth to, "insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon..." 65 Pa.C.S.A. § 702 (West).

246. Moreover, the General Assembly found that it was the right of the public to, “be present at all meetings of agencies and to witness the deliberation, policy formulation and decision-making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.”

Id.

247. The Township entered into this Common Interest Agreement with PAAW, in an attempt to render public documents confidential and in an attempt to discuss the proposed sale of a public asset without the public’s knowledge.

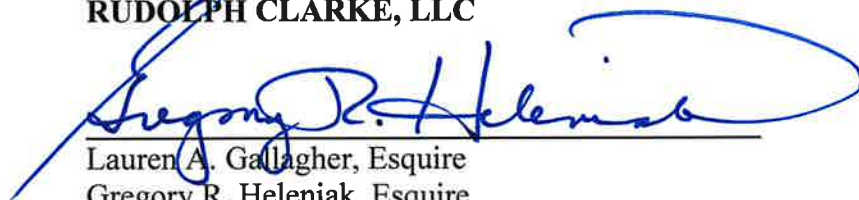
248. The Township further purposely entered into this Common Interest Agreement in secret, with no public vote, no public deliberation, and no notice to the residents of the Township.

249. It is unfathomable that an agreement, which attempts to circumvent all public transparency laws, is in direct contrast to the clear intent of the General Assembly, is repugnant to public policy, and was entered into in secret and in violation of the Sunshine Act, can be held to be valid.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order declaring the Township and PAAW do not meet the standards necessary to substantiate a Common Interest Agreement, that the Township is in violation of the Sunshine Act by entering into this Common Interest Agreement, and declaring the Agreement be stricken and held as invalid. Plaintiffs further respectfully request that this Honorable Court enter an order declaring that municipal entities cannot, as a matter of law, attempt to contract themselves out of the requirements of the Sunshine Act and/or the Open Records Law.

Respectfully Submitted,

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