

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

SPRAGUE ET AL : Case No. 170400137  
v. : Control No. 17042686  
WILLIAMS :

ORDER

**AND NOW**, this 17<sup>th</sup> day of May 2017, upon consideration of the Preliminary Objections of Defendant, and Plaintiffs’ response thereto, it is hereby **ORDERED** and **DECREED** the Preliminary Objection as to lack of capacity to sue per Pa.R.C.P. 1028(a)(5) is hereby **SUSTAINED**<sup>1</sup> and the action is dismissed with prejudice.<sup>2</sup>

BY THE COURT:

DANIEL J. ANDERS, JUDGE

<sup>1</sup> Plaintiff Richard A. Sprague, Esquire is a Pennsylvania citizen, a taxpayer to the City of Philadelphia, an active member of the Bar of the Commonwealth of Pennsylvania, a former prosecutor, special prosecutor and special counsel to several public entities, including the Office of the Philadelphia District Attorney, and the sole proprietor of the law firm of Sprague & Sprague, which represents individuals who are investigated, charged and/or prosecuted by the Office of the Philadelphia District Attorney. Plaintiff Lynne M. Abraham, Esquire is a citizen, taxpayer and registered voter of the City of Philadelphia, an active member of the Bar of the Commonwealth of Pennsylvania, a former Judge of the Court of Common Pleas of Philadelphia County, and the former District Attorney for the City of Philadelphia. See Complaint at ¶¶ 5-8, 11-13, 23-25.

Notwithstanding their substantial experience and long history of public service, the Court finds as a matter of law that neither plaintiff has standing to bring a *quo warranto* action, *i.e.*, they do not have a special right or interest as distinguished from the right or interest of the public generally, nor have they been specially damaged. See generally *In re One Hundred or More Qualified Electors of the Municipality of Clairton*, 683 A.2d 283 (Pa. 1996); see also *Reed v. Harrisburg City Council*, 995 A.2d 1137 (Pa. 2010); *Spykerman v. Levy*, 421 A.2d 641 (Pa. 1980). The Court notes that the complaint was not brought by a party who is the actual subject of any investigation or was actually indicted by the District Attorney. *Zontek v. Brown*, 613 A.2d 683 (Pa. Commw. Ct. 1992) (individuals who were investigated by commission had standing to bring *quo warranto* action); *Gwinn v. Kane*, 339 A.2d 838 (Pa. Commw. Ct. 1975) (individual who was indicted by special prosecutor had standing to bring *quo warranto* action).

Finally, Plaintiffs’ complaint does not raise a claim that would be traditionally classified as a *quo warranto* claim where the exigencies of the circumstances dictated allowing such a claim. For example, courts have allowed actions in equity or in the nature of a mandamus against a duly elected or appointed public official where there was evidence that the Attorney General of the Commonwealth of Pennsylvania or the local district attorney both refused to institute a *quo warranto* proceeding or where circumstances indicated that they both would have been unwilling to take such action. See, *e.g.*, *In re One Hundred or More Qualified Electors*, 683 A.2d at 286-87; *Andrezjwski v. Borough of Millvale*, 673 A.2d 879 (Pa. 1996).

<sup>2</sup> Since the case is dismissed for lack of standing, the remaining preliminary objections do not need to be addressed.