





requested that Austin Burke, the former Secretary of the DCED, determine that the City of Harrisburg is a financially distressed municipality pursuant to the provisions of Subsection 201 of Act 47.

2. Subsequent to its receipt of the City of Harrisburg's Request for Determination of Municipal Financial Distress, the DCED fulfilled its obligations pursuant to the provisions of Subsections 201, 202, and 203 of Act 47 to investigate the financial affairs of the City prior to rendering a determination of financial distress.

3. On December 15, 2010, following public hearings on the City's Request for Determination of Municipal Financial Distress, and upon consideration of the Certified Record of such proceedings and review and consideration of the Proposed Findings of Fact and Conclusions of Law submitted by the City and other interested parties, Austin Burke, the former Secretary of the DCED, ordered that the City of Harrisburg had met the criteria set forth in Subsections 201(3) and 201(9) of Act 47 and, therefore, a determination of municipal financial distress was issued.

4. On January 12, 2011, Secretary Burke appointed the Novak Consulting Group as Recovery Plan Coordinator for the City of Harrisburg pursuant to the provisions of Subsection 221 of Act 47. The Recovery Plan Coordinator filed Harrisburg's Act 47 Recovery Plan with the municipal clerk in accordance with Subsection 242 of Act 47 on June 13, 2011. That Recovery Plan contained a comprehensive plan designed to overcome the City of Harrisburg's financial distress. The Recovery Plan Coordinator filed Harrisburg's Final Act 47 Recovery Plan with the municipal clerk in accordance with Subsection 244 of Act 47 on July 8, 2011 containing a revised comprehensive plan designed to overcome the City's financial distress. On July 19,

2011, a majority of the Harrisburg City Council rejected the Recovery Plan Coordinator's Final Act 47 Recovery Plan.

5. Following the City Council's failure to adopt the Recovery Coordinator's Final Act 47 Plan, Mayor Thompson developed and filed an alternate Final Recovery Plan pursuant to the provisions of Subsection 246 of Act 47 and filed such Plan with the municipal clerk on August 22, 2011. On August 31, 2011, a majority of the Harrisburg City Council rejected Mayor Thompson's Final Recovery Plan. On September 13, 2011, a majority of the Harrisburg City Council declined to reconsider its rejection of Mayor Thompson's Final Recovery Plan, leaving the City with no plan to alleviate its fiscal distress.

6. On June 20, 2011, Governor Tom Corbett signed into law Senate Bill 1151, amending Act 47 and providing for the Declaration of a Fiscal Emergency in circumstances in which a financially distressed city of the third class fails to adopt a financial recovery plan (Chapter 6) and providing for the appointment and confirmation of a receiver should the distressed city of the third class fail to enact a consent agreement as provided for in Subsection 607 of the amended Act (Chapter 7). *See* the Act of July 10, 1987, P.L. 246 (*as amended*), 53 P.S. § 11701.601 - § 11701.610 and 53 P.S. § 11701.701 - § 11701.712.

**B. Governor Corbett Has Declared a State of Fiscal Emergency within the City of Harrisburg Pursuant to Subsection 602 of Act 47 as Amended, and Delegated Certain Emergency Powers to the Secretary.**

7. As a result of the totality of the fiscal circumstances existing in the City of Harrisburg, including but not limited to the City's insolvency, the City's inability to ensure the continued provision of vital and necessary services as such term is defined by Subsection 601 of Act 47 as amended, and the City's continued failure to adopt a fiscal recovery plan prepared for the City and designed to alleviate its fiscal distress, Governor Corbett determined that a fiscal

emergency exists in the City of Harrisburg. A true and correct copy of the Concise Statement of Facts Supporting the Determination of Fiscal Emergency in the City of Harrisburg as required by 53 Pa. C.S. § 11701.602(b)(2) is attached hereto as Exhibit "A" and incorporated herein by reference as if set forth in full.

8. Accordingly, pursuant to Subsection 602(b) of Act 47 as amended, Governor Corbett issued a Declaration of Fiscal Emergency for the City of Harrisburg (the "Emergency Declaration") on October 24, 2011. A true and correct copy of such Declaration is attached hereto as Exhibit "B" and incorporated herein by reference as if set forth in full.

9. As part of the Emergency Declaration, Governor Corbett directed the Secretary to prepare an Emergency Action Plan as prescribed by Subsections 602(c) and 603 of Act 47 as amended to ensure that vital and necessary services are maintained within the City of Harrisburg during the state of fiscal emergency. The Emergency Declaration also delegated the Governor's authority pursuant to Chapter 6 of Act 47 as amended to the Secretary. See Exhibit "B".

10. Following the issuance of the Emergency Declaration, on November 15, 2011, Governor Corbett directed the Secretary to file the instant petition with this Honorable Court in accordance with the provisions of Chapter 7 of Act 47 as amended. 53 P.S. § 11701.702(a). A true and correct copy of the Governor's letter to the Secretary is attached hereto as Exhibit "C" and incorporated herein by reference as if set forth in full.

## **II. RELIEF SOUGHT**

### **A. Entry of an Order Pursuant to Section 702(E) of Act 47 as Amended.**

11. In fulfillment of the Governor's directive pursuant to Subsection 702(a) of Act 47 as amended, the Secretary hereby petitions this Honorable Court for the appointment of David Unkovic as the Receiver for the City of Harrisburg.

12. The Secretary respectfully submits that Mr. Unkovic meets the qualifications set forth under Subsection 705 of Act 47 as amended to act as the Receiver, in that he has over 14 years' experience and demonstrable expertise in public finance and state budgetary matters, and has been a resident of the Commonwealth of Pennsylvania for at least one year prior to this appointment. The *curriculum vitae* of Mr. Unkovic is attached as Exhibit "D" hereto and incorporated herein by reference as if set forth in full.

13. The Secretary requests the Court to conduct a hearing on this Petition in accordance with the provisions of Subsection 702(c) of Act 47 as amended within fifteen (15) days of the Governor's notification, by letter to the Secretary dated November 15, 2011, of the failure of the City of Harrisburg to adopt a valid ordinance under Subsection 607.

14. The Secretary also petitions the Court for the entry of an Order, no later than 60 days following the date hereof, as prescribed by Subsection 702(e) of Act 47 as amended.

15. Petitioner respectfully requests that the Order issued by this Honorable Court granting the relief requested in the Petition include the findings set forth in Subsection 702(d)(1)-(3) of Act 47 as amended.

16. Petitioner also respectfully requests that the Order issued by this Honorable Court comport with the provisions of Subsection 702(e) of Act 47 as amended.

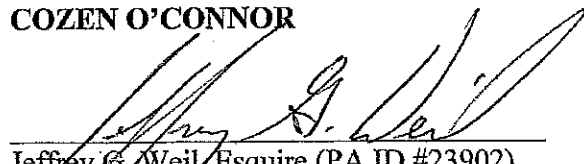
### **III. NOTICE**

17. In compliance with Subsection 702(b) of Act 47 as amended, the Secretary has caused this Petition to be served upon: (i) the Harrisburg City Council; (ii) Mayor Thompson; and (iii) the governing body of each Authority (as defined in Chapter 7 of Act 47 as amended). The Secretary will also publish notice of this Petition once in a newspaper of general circulation.

WHEREFORE, for the reasons set forth above, the Secretary of the Department of Community and Economic Development respectfully requests that this Honorable Court conduct a hearing on or before November 30, 2011 and enter an Order on or before January 16, 2012 (i) containing the findings set forth in Subsection 702(d)(1)-(3) of Act 47 as amended; (ii) granting the Petition and declaring the City of Harrisburg to be in receivership; (iii) appointing the individual named in this Petition to be the Receiver for the City of Harrisburg for a period not to exceed two years, subject to extension under Subsection 710(b) of Act 47 as amended; (iv) directing the Receiver to develop a recovery plan within 30 days under Subsection 703 of Act 47 as amended and submit it to this Court, the Secretary of the Department of Community and Economic Development, the Harrisburg City Council, and Mayor Linda D. Thompson; and (v) requiring and empowering the Receiver to implement the Emergency Action Plan developed by the Secretary under Subsection 602 of Act 47 as amended until a recovery plan developed by the Receiver is approved by the court under Subsection 703 of Act 47 as amended.

Respectfully submitted,

**COZEN O'CONNOR**



Jeffrey G. Weil, Esquire (PA ID #23902)  
Neal D. Colton, Esquire (PA ID#02729)  
Stephen Miller, Esquire (PA ID#308590)  
Eric L. Scherling, Esquire (PA ID#87925)  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-2000

Attorneys for the Commonwealth of Pennsylvania  
and the Secretary for the Department of Community  
and Economic Development

Dated: November 18, 2011

**EXHIBIT A**



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR  
HARRISBURG

THE GOVERNOR

**CONCISE STATEMENT OF FACTS SUPPORTING THE DETERMINATION  
OF FISCAL EMERGENCY IN THE CITY OF HARRISBURG  
REQUIRED BY 53 P.S. § 11701.602(b)(1)**

On October 1, 2010, Linda D. Thompson, Mayor of the City of Harrisburg, filed a Request for Determination of Municipal Financial Distress pursuant to the provisions of Sections 202 and 203 of the Municipalities Financial Recovery Act, 53 P.S. § 11701.101 *et seq.* ("Act 47"). By and through the aforesaid Request, Mayor Thompson requested that the Secretary of Community and Economic Development determine that the City of Harrisburg is a financially distressed municipality pursuant to the provisions of Section 201 of Act 47.

Subsequent to its receipt of the City of Harrisburg's Request for Determination of Municipal Financial Distress, the Department of Community and Economic Development fulfilled its obligations pursuant to the provisions of Section 203 of Act 47 to investigate the financial affairs of the City prior to rendering a determination of financial distress. On December 15, 2010, following public hearings on the City's Request for Determination of Municipal Financial Distress, and upon consideration of the Certified Record of such proceedings and review and consideration of the Proposed Findings of Fact and Conclusions of Law submitted by the City and other interested parties, Austin Burke, the former Secretary of Community and Economic Development, ordered that the City of Harrisburg had met the criteria set forth in Sections 201(3) and 201(9) of Act 47 and, therefore, a determination of municipal financial distress was issued.

On January 12, 2011, Secretary Burke appointed the Noyak Consulting Group as Recovery Plan Coordinator for the City of Harrisburg pursuant to the provisions of Section 221 of Act 47. The Recovery Plan Coordinator filed Harrisburg's Act 47 Recovery Plan with the

municipal clerk in accordance with Section 242 of Act 47 on June 13, 2011, containing a comprehensive plan designed to overcome the City of Harrisburg's financial distress. The Recovery Plan Coordinator filed Harrisburg's Final Act 47 Recovery Plan with the municipal clerk in accordance with Section 244 of Act 47 on July 8, 2011, containing a revised comprehensive plan designed to overcome the City's financial distress. On July 19, 2011, a majority of the Harrisburg City Council rejected the Recovery Plan Coordinator's Final Act 47 Recovery Plan.

Following the City Council's failure to adopt the Recovery Coordinator's Final Act 47 Plan, Mayor Thompson developed an alternate Final Recovery Plan pursuant to the provisions of Section 246 of Act 47 and filed such Plan with the municipal clerk on August 22, 2011. On August 31, 2011, a majority of the Harrisburg City Council rejected Mayor Thompson's Final Recovery Plan. On September 13, 2011, a majority of the Harrisburg City Council declined to reconsider its rejection of Mayor Thompson's Final Recovery Plan, leaving the City with no plan to alleviate its fiscal distress.

The City of Harrisburg is insolvent. Notwithstanding this fact, the City has repeatedly failed to enact or implement a fiscal plan to adequately address or prevent insolvency after repeated opportunities to do so. The City has repeatedly failed to pay guaranteed bond debt associated with the Harrisburg Materials, Energy, Recycling and Recovery Facilities (the "Incinerator") for which it is liable in the principal amount of \$242 Million, and for which the approximate amount of \$83 Million, representing past due payments and additional sums for 2011 debt service, is required in order to bring the City's guaranteed bond debt obligations current. The Incinerator debt is the subject of six (6) lawsuits currently pending in the Dauphin County Court of Common Pleas against the City of Harrisburg, each case seeking a money judgment and mandamus against the City pursuant to the provisions of the Debt Act which would require the City Treasurer to apply all tax monies received by the City first to the repayment of the Incinerator bonds.

The City of Harrisburg carried a budget deficit in 2010 of \$5.35 Million and is projected to have a budget deficit of approximately \$3 Million in 2011. The City's budget deficits in 2010

and 2011 were incurred despite the fact that the City paid no guaranteed bond obligations associated with the Incinerator in either year. The City has not budgeted for any bond debt service payments associated with the Incinerator debt in its 2011 budget.

An award of the relief requested in the pending lawsuits will render the City of Harrisburg incapable of providing for vital and necessary services by eliminating the City's receipt of tax revenues that would preclude the City's payment and/or provision of essential government services, including but not limited to, basic and fundamental municipal services such as police and fire services; ambulance and rescue services; water supply and distribution; wastewater services; refuse collection and disposal; snow removal; payroll and pension obligations; and fulfillment of payment of debt obligations or any other financial obligations. This threat to the City of Harrisburg's ability to provide vital and necessary services jeopardizes the health, safety and welfare of the citizens of Harrisburg, as well as citizens of the Commonwealth who work in or visit the City. Moreover, the City's ongoing fiscal distress threatens the fiscal stability of neighboring communities.

As a result of the totality of the fiscal circumstances existing in the City of Harrisburg, including but not limited to the City's insolvency, the City's inability to ensure the continued provision of vital and necessary services as such term is defined by Section 601 of the Act of July 10, 1987, P.L. 246, (*as amended*), 53 P.S. § 11701.601 ("Act 47 as amended"), and the City's continued failure to adopt a fiscal recovery plan prepared for the City and designed to alleviate its fiscal distress, a determination of the existence of a fiscal emergency is warranted.

**EXHIBIT B**

# Commonwealth of Pennsylvania



## Governor's Office

*Declaration of Fiscal Emergency – City of Harrisburg, Pennsylvania  
October 24, 2011*

*WHEREAS, a duly authorized Request for Determination of Municipal Financial Distress was filed by the Honorable Linda D. Thompson, Mayor of the City of Harrisburg, pursuant to the provisions of Sections 202 and 203 of the Municipalities Financial Recovery Act, 53 P.S. § 11701.101 et seq. (Act 47), on October 1, 2010; and*

*WHEREAS, on December 15, 2010, the Secretary of Community and Economic Development determined that the City of Harrisburg had met the criteria set forth in Sections 201(3) and 201(9) of Act 47 and, therefore, issued a determination of municipal financial distress; and*

*WHEREAS, the City of Harrisburg has failed to adopt a plan for relieving the City's financial distress pursuant to Act 47, having rejected the Final Act 47 Recovery Plan filed by the Recovery Plan Coordinator in accordance with Section 244 of Act 47 on July 8, 2011, and the alternate Final Recovery Plan presented by Mayor Thompson pursuant to the provisions of Section 246 of Act 47 on August 22, 2011; and*

*WHEREAS, there exists a sustained failure by the City of Harrisburg's governing body to enact or implement a fiscal plan to adequately address or prevent insolvency despite repeated opportunities to do so; and*

*WHEREAS, the ongoing fiscal distress of the City of Harrisburg jeopardizes the health, safety and welfare of its citizens and threatens the fiscal stability of neighboring communities; and*

*WHEREAS, the City of Harrisburg is insolvent; and*

*WHEREAS, the City of Harrisburg is subject to various pending legal actions, all of which seek money judgments that the City does not have the ability to pay without jeopardizing the provision of vital and necessary services to its citizens and, therefore, is unable to ensure the continued provision of such services.*

*NOW, THEREFORE, pursuant to the provisions of Sections 602(a)(1)(i) & (ii) and 602(a)(2)(i) of the Act of July 10, 1987 (P.L. 246, No. 47), as amended, 53 P.S. §§ 11701.101-11701.712 (Act 47 as amended), I hereby determine that a fiscal emergency exists in the City of Harrisburg.*

*FURTHER, in accordance with Section 602(b)(1) of Act 47 as amended, and contemporaneously with this Proclamation, I hereby adopt and issue, and incorporate herein by reference, a Concise Statement of Facts supporting the determination of the existence of a fiscal emergency in the City of Harrisburg.*

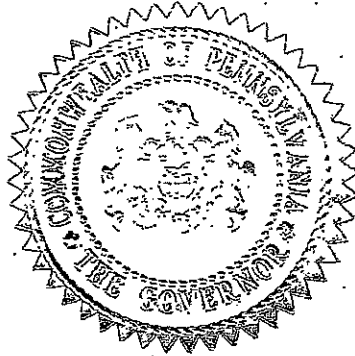
*FURTHER, in accordance with Section 602(b)(1) of Act 47, I hereby direct the Secretary of Community and Economic Development forthwith to serve written notice of this*

*Declaration, along with the Concise Statement of Facts, upon the governing body of the City of Harrisburg and its Chief Executive Officer.*

*FURTHER, having determined that a fiscal emergency exists in the City of Harrisburg, and acting pursuant to the powers by law vested in me to invoke the Commonwealth of Pennsylvania's sovereign and plenary police power in emergency fiscal conditions to protect the health, safety and welfare of a municipality's citizens when local officials are unwilling or unable to accept a solvency plan developed for the benefit of the community, and pursuant to the Commonwealth's paramount right and duty to maintain law and order and protect and preserve the health, safety and welfare of its citizens and ensure compliance with Act 47 as amended under Article IX of the Constitution of Pennsylvania, and pursuant to the provisions of Section 602(a) & (b) of Act 47 as amended, I do hereby declare a state of fiscal emergency within the City of Harrisburg, Pennsylvania.*

*FURTHER, I hereby direct the Secretary of Community and Economic Development, within ten (10) days of this Declaration, to develop an Emergency Action Plan as prescribed by Sections 602(c) and 603 of Act 47 as amended to ensure that vital and necessary services are maintained within the City of Harrisburg during the state of fiscal emergency.*

*FURTHER, I hereby delegate the authority conferred upon me as Governor pursuant to the provisions of Section 604 of Act 47 as amended to the Secretary of Community and Economic Development, and I hereby authorize and direct the Secretary or his designee to carry out any emergency powers and issue any Orders otherwise reserved for the Governor pursuant to the aforesaid Section 604.*



*GIVEN under my hand and the Seal of the Governor, at the City of Harrisburg, this twenty-fourth day of October in the year of our Lord two thousand eleven, and of the Commonwealth the two hundred and thirty-fifth.*

A handwritten signature in black ink, appearing to read "Tom Corbett".

**TOM CORBETT**  
Governor

**EXHIBIT C**



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR  
HARRISBURG

THE GOVERNOR

November 15, 2011

The Honorable C. Alan Walker  
Department of Community and Economic Development  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120

Re: City of Harrisburg – Initiation of Chapter 7 Proceedings Pursuant to Act 47/  
Appointment of Receiver

Dear Secretary Walker:

As you are aware, on October 24, 2011, I issued a Declaration of Fiscal Emergency for the City of Harrisburg, Dauphin County, Pennsylvania, pursuant to the provisions of Sections 602(a)(1)(i) & (ii) and 602(a)(2)(i) of the Act of July 10, 1987, P.L. 246, *as amended*, 53 P.S. §§ 11701.101-11701.712 (“Act 47 as amended” or the “Act”). Within 20 days of the Declaration of Fiscal Emergency, the City was obligated pursuant to Section 607(c) of the Act to present you with a consent agreement, approved by a majority of the Harrisburg City Council, incorporating a plan setting forth measures designed to provide long-term financial stability to the City of Harrisburg. Regrettably, the City has failed in its responsibility and will not be adopting a valid ordinance under Section 607(c)(3) of the Act. Consequently, in accordance with Section 607(d)(2), the City of Harrisburg has consented to proceedings under Chapter 7 of Act 47 as amended.

Accordingly, pursuant to the provisions of Section 702(a) of Act 47 as amended, I hereby direct you to file a petition in Commonwealth Court to appoint a receiver for the City of Harrisburg.

Sincerely,

TOM CORBETT  
Governor

**EXHIBIT D**

## **DAVID UNKOVIC**

Department of Community  
and Economic Development  
400 North Street, Plaza Level  
Harrisburg, PA 17120  
717-720-7328  
[dunkovic@pa.gov](mailto:dunkovic@pa.gov)

1420 Hillside Road  
Wynnewood, PA 19096

### **EMPLOYMENT HISTORY**

Office of General Counsel and Department of Community and Economic Development of the Commonwealth of Pennsylvania (July 2011 to present)

- Chief Counsel, Department of Community and Economic Development.

Cozen O'Connor (2008-July 2011)

- Member of Public and Project Finance Group within the Business Department.

PFM Asset Management LLC, Harrisburg, PA (2006-2008)

- Managing Director of PFM Asset Management LLC (registered investment advisor) and related entities, and Chief Compliance Officer of PFM Asset Management LLC.

Saul Ewing LLP, Philadelphia, PA (1979-2006)

- Summer associate in 1978, then associate following graduation, from law school in 1979. Partner from 1987 to 2006.
- Co-chairman of Public Finance Department, 1998-2001. Chairman of various firm committees over the years - Profitability; Opinions; Pro Bono.

### **RESPONSIBILITIES AT DCED**

Chief Counsel for DCED. Advising the Secretary and other employees on a broad range of economic development and local government issues. Participation in various legislative initiatives. Representation of various funding authorities. Overseeing DCED Legal Office.

## **SCOPE OF PRACTICE AT COZEN O'CONNOR AND SAUL EWING**

Public Finance - representation of governments, nonprofit corporations, for profit corporations and financial institutions in financings of capital projects. Government clients ranged from large state entities to all sizes of counties, school districts, authorities, boroughs and townships across Pennsylvania. Governmental projects included water and sewer systems, transportation, open space, schools and general infrastructure. Other financings involved economic development projects such as hotels and office buildings, and nonprofit projects for universities, private schools, health systems and retirement facilities.

Investments and Derivatives - representation of governments and financial institutions in investment transactions including repurchase agreements, collateralized certificates of deposit and interest rate swaps. General representation of the Pennsylvania Local Government Investment Trust (PLGIT), a statewide local government investment pool formed under the Intergovernmental Cooperation Act.

Banking - representation of lending, letter of credit and corporate trust departments of banks in public financings and private loans.

Defaulted securities - representation of parties in situations involving defaulted securities.

Litigation - several years of litigation experience at inception of career.

## **RESPONSIBILITIES AT PFM ASSET MANAGEMENT LLC**

Responsible for compliance by a registered investment advisor, two registered investment companies, a limited broker-dealer and related entities with the requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940 and related statutes and regulations.

## **EDUCATION**

Harvard Law School, J.D. (1979).

University of Pennsylvania, B.A., Political Science (1976).

*Honors: Summa Cum Laude, Phi Beta Kappa.*

North Catholic High School, Pittsburgh (1972).

St. Sebastian Grade School, Pittsburgh (1968).

## **BAR ADMISSION**

Pennsylvania (1979).

## PROFESSIONAL ACTIVITIES

Pennsylvania Association of Bond Lawyers - President (1993-94), Treasurer (2009-11), board member (1991-95, 2009-11).

Member or associate member of American College of Bond Counsel (Fellow), National Association of Bond Lawyers, American Bar Association, American Bar Foundation (Life Fellow), Pennsylvania Bar Association (House of Delegates, 1996- 99), Pennsylvania Bar Foundation (Life Fellow), Philadelphia Bar Association (Board of Governors, 1997, 1999), Pennsylvania Association of School Business Officials, Pennsylvania Government Finance Officers Association and Pennsylvania Municipal Authorities Association.

Board memberships, including leadership positions, in organizations providing or funding legal services to the poor, including Pennsylvania Legal Services (now Pennsylvania Legal Aid Network), 1998-2003 (President, 2000-02); Lawyer Trust Account Board (IOLTA), 1991-94, 1996-98 (Chairman, 1992-94); Philadelphia Bar Foundation, 1996-2001 (President, 1999); Philadelphia Volunteers for the Indigent Program, 1991-96, 2009-11 (President, 1995; Chair of 30<sup>th</sup> Anniversary Gala, 2011); Community Legal Services (2006). Recipient of various awards for pro bono services including the Pennsylvania Bar Association's Louis J. Goffinan Award, the Pennsylvania legal Aid Network's Outstanding Leadership in Support of Legal Services Award, and the Philadelphia Bar Association's Fidelity Award.

## COMMUNITY ACTIVITIES

Election Board, Lower Merion Township (Montgomery County), Ward 8, Division 3, 1995-2000, 2004-11. Election volunteer, Committee of 70 (Philadelphia), 1981-89.

Coach, Lower Merion Little League, 1996-7, 1999-2005; Lower Merion Soccer Club, 1999-2000, 2003-2006.

Sunday School Teacher, St. Denis Parish, Havertown, PA (1996-2005).