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**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

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	)	Agency No. _____
	)	
<b>IN RE:</b>	)	<b>Request for Determination</b>
	)	<b>of Distress Under Act 47</b>
<b>THE CITY OF HARRISBURG</b>	)	
	)	

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**MOTION TO JOIN and  
SUPPORT MOTION FOR CONTINUANCE OF  
MEMBERS OF THE HARRISBURG CITY COUNCIL SO TO  
OBTAIN AND HAVE REPRESENTATION BY  
QUALIFIED LEGAL COUNSEL**

1. On or about October 1, 2010, the City of Harrisburg (hereinafter “the Applicant”), upon the signatures of its Mayor, the Honorable Linda D. Thompson and the Acting City Solicitor, Philip Harper, Esquire, filed a *Request for Determination of Distress* (hereinafter “the Application”) with the Commonwealth of Pennsylvania through the Department of Community and Economic Development (hereinafter “DCED” or “the Agency”), seeking acceptance into certain programs administered by the Agency under the Financially Distressed Municipalities Act, Act of July 10, 1987, P.L. 246, No. 47, 53 P.S. §§ 11701.101 -- 11701.501 (hereinafter “Act 47”).

2. On October 19, 2010, a Motion joined in by the majority of our duly elected City Council sought a Continuance of these proceedings so that they may obtain the advice of qualified legal counsel.

3. Council had properly commenced a process to obtain such legal counsel before the Application was fled and did so, as they must, in a manner consistent with consistent with the

adopted Ordinances and Resolutions of the City of Harrisburg.

4. The right to qualified legal counsel is a fundamental right.
5. By denying Council members that right, the Agency is denying all interested persons that right.
6. The Administrative Agency Law, at 2 Pa.C.S.A. § 502 recognizes that fundamental right, as does the full body case law on administrative hearings in Pennsylvania.
7. On October 20, 2010, an Act 47 administrative hearing was commenced and the matter proceeded with the Council unrepresented, as the City Solicitor openly removed himself from the table when Council members were called to testify.
8. Under both the federal and state constitutions, there exists a fundamental right of due process of law for all parties to a proceeding, including administrative proceedings.
9. Under Pennsylvania law, the process due a party to protect and insure those fundamental rights are set forth in Administrative Agency Law, 2 Pa.C.S.A. §101. et seq. and bolstered by the General Rules of Administrative Practice and Procedure, as well as any given Agency's own properly promulgated procedural regulations for hearings and appeals. DCED has not promulgated any specific regulations for hearings and appeals, other than 12 Pa Code 115.10, which requires the Agency to follow the procedures set forth in GRAPP.
10. The right to be heard has been universally held to require that a hearing must provide each party with meaningful right.
11. Act 47 requires a hearing be commenced within 30 days of the Notice of Hearing, which must be issued within 10 days of the filing of Application.
12. The implementation and carrying out of the mandates of Act 47 does not and simply cannot permit or authorize the Secretary or his designee to strip from any party their fundamental rights to due process of law .
13. Act 47 is silent as to when a hearing must be concluded, indicating only that it must be initially held within 30 days. Held does not mean completed but commenced. Just as a speedy trial requirement is recognized to mean that the trial of a person charged with a criminal offense must be commenced within 180 days, but not concluded therein, the same legal application of principles and analysis applies to the 30-day hearing requirement under Act 47. See Pa. R. of Cr P. 100 and its progeny. Otherwise, the 30-day requirement itself would violate due process and thereby be unconstitutional construct on its face.
14. Neither the grant or denial of the Application will provide the Applicant with

immediate funds to address current financial obligations. Any funds available to them now will be available to them whether the application is merely pending or is in fact granted. Therefore, there is no urgency or emergency that justifies the premature closing of the hearing record

15. Accordingly, the Presiding Officer should hold the record of these proceedings open for City Council to complete the interview and hiring and advice process of qualified legal counsel and reconvene to hear testimony after they have received legal representation and advice on Act 47 and Chapter 9.

16. This and other motions were lawfully and properly presented orally at the hearing and now a written form of the motion is being filed as mandated by the presiding officer with a noon filing deadline the day after the proceedings ended at approximately 9:00 p.m.

17. For all the foregoing reasons, the requested relief should be granted herein

Respectfully submitted,.

LAW OFFICE OF NEIL A. GROVER

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*Pro se* and as Counsel for DEBT WATCH  
HARRISBURG and its members

**COMMONWEALTH OF PENNSYLVANIA  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21<sup>th</sup> day of October 2010, served a true and correct copy of the foregoing Motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

Steven J. Fishman, Esquire  
Charles Brown, Esquire  
Department of Community &  
Economic Development  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225  
*Fax No. 717-783-1402*

Philip Harper, Esquire  
Solicitor for the City of Harrisburg  
Rev. Dr. Martin Luther King, Jr. City  
Gvn't Center  
10 North Second Street, Suite 402  
Harrisburg, PA 17101  
*Fax No: 717-255-3056*

Respectfully submitted,

LAW OFFICE OF NEIL A. GROVER

By \_\_\_\_\_  
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