



The Committee of **Seventy**

.....  
*Clean government. Fair elections. Informed citizens.*

# *A Roadmap to Reform*

*Recommendations presented to  
Mayor's Advisory Task Force on Ethics and  
Campaign Finance Reform*

*January 10, 2009*

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## **A BRIEF DESCRIPTION OF THE COMMITTEE OF SEVENTY**

*Clean and effective government. Fair elections. Informed voters.*

This report contains a detailed set of recommendations by the Committee of Seventy, which has been focused for more than a century on improving government and the fairness of elections in Philadelphia. There is no other organization quite like it in the country.

We feel particularly qualified to comment on campaign finance and ethics reform because we were the earliest and most strident defender of Philadelphia's current campaign finance law and have been the most outspoken proponent of closing loopholes that breed abuse, corruption and distrust of local government. We also first suggested the creation of the Task Force to whom this report is directed.

The Committee of Seventy has been especially vocal since the pay-to-play scandal erupted in Philadelphia in 2003. It often is the only group in the City to take on elected officials who improperly benefit from their positions. It has driven positive, permanent changes in the City Charter that make government cleaner and more efficient. And on the election side, it has put a force of 1,000 volunteers to work on Election Day to make sure that voters in this region get their opportunity to vote.

The non-profit Committee of Seventy is aggressively non-partisan. Its work is overseen by a 50-member Board of Directors and a small Executive Committee. Its funding comes largely from foundations and from the business and legal communities. Daniel K. Fitzpatrick, President and CEO, Citizens Bank, Eastern PA/NJ/DE, is Chairman of the Board. Zachary Stalberg is President & CEO.

Ellen Mattleman Kaplan, Vice President of the Committee of Seventy, oversaw the preparation of this report. It contains many specific recommendations. It also identifies some complex matters that will require additional research overseen by the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform.

Writing and research were done by Sean Scully; Julia M. Rafferty, Esquire, Gabriela Arce de Smith, Esquire and Antonia M. Pfeffer, Esquire of Stradley Ronon Stevens & Young; and members of the Board of the Committee of Seventy. Seventy also appreciates the contributions of its law student interns: John Fuller, Jeffrey Mannion, Jonathan Pron, Kevin Walker, and Matthew Breen. Sarah Stevenson, Esquire and Seventy intern Christina Kreibich also contributed.

# INTRODUCTION

More than five years have passed since an FBI bug was found in the mayor's office.

Much time has passed, too, since that mayor and his eventual successor separately proposed sets of laws that would help begin to limit ethical abuses involving city government. Few of the issues have been fully addressed.

The former mayor left office under a cloud, a City Councilman went to jail and another Council member's chief of staff was indicted. A judge promised favorable treatment in exchange for campaign contributions.

And every so often, Philadelphians learn there is nothing to keep an elected official from giving big pay raises to a subordinate with whom he apparently had a close relationship. Or that another official is granted the right to drive her child to school in the suburbs each day in her taxpayer-owned SUV.

Almost two years have passed since voters used a mayoral primary election to send the clear message that they wanted honesty and far greater transparency in City Hall. With the Bonusgate scandal in Harrisburg and the Blagojevich scandal in Illinois, that impulse among voters surely must be even more intense today.

Now it is up to the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform – led by Michael Schwartz, a former prosecutor who was appointed by the winner of that 2007 primary election – to get the job done.

The Committee of Seventy offers a number of detailed recommendations in this report, starting with these:

- **This Task Force should submit interim observations, at most, by the February 1, 2009 deadline set by Mayor Nutter. Then – with the addition of staff support and a**

**real budget provided by the city – it should press on to draft specific legislation and regulations that will toughen the campaign finance law and close every conceivable loophole that enables misconduct.**

- **The Task Force – and especially Mayor Nutter and City Council – should withstand the temptation to delay further reform because of the economic crisis facing the city. It is in hard times that accountable, transparent and responsive government is most important and public trust in government must be greatest.**
- **The Task Force’s top priority should be to preserve and strengthen the campaign finance law, and the companion contract-awarding law, as quickly as possible.**

**In 2007, when the Committee of Seventy first proposed the creation of the Task Force, our hope was that it would identify defects in the law after the new rules were tested through one full election cycle. The opportunity to positively influence the 2009 elections is disappearing, but politicians, middlemen and influence-seeking donors surely are working to find ways to game the system before the next big municipal elections.**

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Philadelphia has made significant progress in recent years, with the installation of a Board of Ethics, the passage of campaign finance legislation, including specific contribution caps and controls on the awarding of no-bid contracts to campaign contributors.

Yet there is much left to do. The odds of a spectacular scandal probably have been reduced, but public trust does not rise or fall just on spectacular scandals.

This Task Force has the opportunity to develop a clear roadmap to cleaner government – with simple rules covering government employees from top to bottom, and without regard to the part of government in which they serve.

It has an even greater opportunity, too.

If it does its job thoroughly and passionately, it can give incumbents in both the legislative and executive branches the political will to enact vital, fundamental and lasting reforms.

The process should start with examining campaign finance – and probably end with a deep look at public financing of campaigns.

We need to have a more user-friendly, transparent campaign finance reporting system. We need to change how we define who is a candidate and when they may collect campaign contributions.

We need to define and regulate political contributions that fall outside the narrow timeframe of an election campaign, from pre-declaration gifts to contributions to inaugural committees. Rules regarding no-bid city contracts need to extend to non-profit agencies. And we need to make sure the campaign finance rules benefit neither incumbents nor challengers.

On the broader front, we need to define the responsibilities of the city's official watchdogs – the City Controller, the District Attorney, the Inspector General, the Board of Ethics and the Chief Integrity Officer – and clearly determine how and when they should interact.

We need consistent rules about gifts to public employees and elected officials. We need to join most other cities in establishing a transparent system for registering and disclosing lobbying activity. We need to end the long tradition of nepotism in city government and better regulate outside employment by city officials and employees.

These and other questions the Task Force will consider need to pass two basic tests:

- **Are local government and the rules of politics set by government as transparent as evolving technology will permit?**
- **Are the Task Force's final recommendations reasonable? If not, the best people will not step forward to participate in government and local elections.**

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Finally and most importantly, the Task Force must use the moral authority granted to it by Mayor Nutter and by City Council President Anna Verna, who stood shoulder-to-shoulder with the Mayor as he introduced the members of the Task Force in October, 2008.

The finest report, written in the most elegant and persuasive language, is worthless if there is no action.

To ensure that action is taken, the Task Force must be the most important watchdog of all.

The Committee of Seventy helped write Philadelphia's City Charters in 1919 and 1951. It stands ready to help this historic process, too.

## Executive Summary

The Committee of Seventy, a non-partisan organization fighting for clean and effective government, fair elections and informed citizens is pleased to submit the enclosed recommendations to the Mayor's Advisory Task Force for Ethics and Campaign Finance Reform. We believe these recommendations will result in greater transparency, accountability and honesty across city government.

Our recommendations are being made at a time when Philadelphia is experiencing a fiscal crisis that is not likely to end anytime soon. If enacted, these recommendations will not solve that crisis. However, they will go a long way towards diminishing the City's historic pay-to-play culture and ensuring the public that the difficult decisions being made by their government are trustworthy and above-board.

On campaign finance, the Committee of Seventy urges the Task Force to recommend:

- Tying the receipt of campaign contributions to an election cycle;
- Adopting a more expansive and common sense definition of candidate or, alternatively, clarifying the rules on "excess pre-candidacy contributions."
- Considering incumbents to be "candidates."
- Increasing the penalties for violations of the campaign finance ordinance.
- Changing the "doubling" provision of the campaign finance ordinance to comply with a recent U.S. Supreme Court ruling;
- Simplifying the rules governing campaign contributions from firms receiving no-bid contracts and improving the public disclosure of those contributions.
- Bringing the electronic disclosure of campaign reports into the 21<sup>st</sup> Century;
- Applying campaign contribution limits to campaign committees after an election is over;

- Adopting a mechanism to give candidates ways to pay off campaign debts without creating an undue appearance of conflict of interest;
- Searching for a public financing model that works for Philadelphia;
- Adopting strategies to curb the attack ads of 527 groups;
- Giving the Board of Ethics the authority and resources to closely monitor the behavior of 527 groups in local elections;
- Extending campaign contribution limits and reporting requirements to inaugural and transition committees; and
- Requiring greater public disclosure of the relationship between elected officials and non-profit organizations that receive city funds.

On ethics regulation, the Committee of Seventy urges the Task Force to recommend:

- Enacting a specific, permanent gift policy for all salaried city employees, appointed or elected;
- Enacting a lobbyist registration and disclosure law;
- Barring city employees from hiring, supervising or promoting, or recommending that others in city government hire, promote or supervise, designated family members or anyone with whom the city employee has an unusually close personal relationship;
- Banning, with certain publicly disclosed exceptions, outside employment with any firm that does business with, or seeks to do business with, the city;
- Applying higher standards of disclosure and approval for high ranking employees and elected officials holding or seeking second jobs;
- Prohibiting high ranking employees and elected officials leaving government from accepting employment for a limited period from firms that do city business, even if they do not work directly on contracts they once directly supervised;
- Reassessing the current political activity restrictions;



- Applying any revised political activity restrictions across city government, with limited exceptions;
- Relaxing the political activity restrictions for volunteer members of City boards and commissions;
- Requiring all city employees to publicly disclose ties to non-profit agencies;
- Requiring non-profits receiving city funds to publicly disclose specified information;
- Creating a Charter-sanctioned independent Inspector General;
- Ensuring adequate funding and staffing for the Board of Ethics; and
- Disclosing waivers of the City policy prohibiting the use of City cars and other City resources for private purposes.

## **PART I: CAMPAIGN FINANCE REFORM**

Running for office costs money – sometimes a lot of money. The bottomless need for campaign cash has led more than a few otherwise honorable politicians to bend or even break the rules.

A strong campaign finance law helps deter individuals and special interests from trying to buy access and favors from public officials. And it helps ensure that public officials are not beholden to the people who gave them money.

Philadelphia passed its first campaign finance ordinance in 2003.<sup>1</sup> The ordinance passed its first real test during the 2007 municipal elections, solving many of the problems it was designed to address despite some attempts in City Council and the courts to dismantle it.

Yet it is far from perfect. Loopholes need to be identified and closed. Other issues – such as how to regulate and make transparent the efforts of 527 organizations that mount personal and racially motivated ad campaigns against individual candidates – must be addressed. In its 2007 Annual Report, the Board of Ethics noted other topics related to campaign finance that would benefit from clarification, such as establishing a specific process for dealing with excess pre-candidacy contributions.

As a result of the Pennsylvania Supreme Court's decision upholding Philadelphia's campaign finance ordinance,<sup>2</sup> other cities in the Commonwealth are considering the adoption of limitations on campaign contributions and spending. The Committee of Seventy has testified in hearings on proposed legislation convened by City Councils in Pittsburgh and Bethlehem. These cities, and others in the Commonwealth, are looking to Philadelphia's experience as a model. It is important that we present the best possible example.

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<sup>1</sup> See Philadelphia Code § 20-1000 *et seq.*

<sup>2</sup> See *Nutter v. Dougherty*, 595 Pa. 340 (2007).

## The Committee of Seventy's Recommendations

The Task Force must make it clear that Philadelphia's campaign finance ordinance must be preserved and strengthened, not weakened. There will undoubtedly be special interest groups, and many elected officials, who prefer the City's old system of placing no limits on contributions whatsoever. As an organization directly concerned with the integrity and effectiveness of Philadelphia government, the Committee of Seventy believes this would be an alarming step backwards. We believe that Task Force members who have been charged by Mayor Nutter to "recommend changes to further instill honesty, transparency and accountability throughout city government"<sup>3</sup> must share this view.

Part I of this briefing book outlines the Committee of Seventy's recommendations for strengthening the City's campaign finance ordinance. In some instances, we present complex issues that require further research.

### I. Change to a Calendar Year Cycle

#### **Recommendation: The receipt of campaign contributions should be tied to an election cycle, rather than to the calendar year.**

The 2003 campaign finance ordinance set a \$2,500 limit for contributions from individuals, (inflation adjusted to \$2,600 in 2008), and a \$10,000 limit for contributions from businesses and political committees (inflation adjusted to \$10,600 in 2008) to a candidate running for City office.<sup>4</sup> These caps are tied to the calendar year,<sup>5</sup> rather than the election cycle. This means that a contributor who donated \$2,600 in 2008 can contribute an additional \$2,600 in 2009, and again in 2010 and 2011. The use of the calendar year rather than the election cycle makes Philadelphia's ordinance unusual and results in a number of potentially unintended effects.

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<sup>3</sup> Press Release, Office of the Mayor of Philadelphia, September 24, 2008.

<sup>4</sup> These offices include: Mayor, District Attorney, City Controller, Register of Wills, Sheriff, Clerk of Quarter Sessions, City Commissioner, and City Council. Philadelphia Code § 20-1001(5).

<sup>5</sup> See Philadelphia Code § 20-1002.

Many major cities – New York<sup>6</sup> and Los Angeles,<sup>7</sup> for example – regulate campaign contributions, but unlike Philadelphia, limit the contributions on an election cycle basis.

Assuming a four-year election cycle, a contributor's limit resets after the fall election and the new limit is cumulative over the four years until the next election. If the total contribution limit is, for example, \$5,000, a contributor can either donate the \$5,000 in one payment or pay the \$5,000 in increments over the four years. Either way, a contributor cannot exceed the contribution limit of \$5,000 over the four years leading up to the election.

Another approach for limiting campaign contributions is that of the federal government, which covers candidates for Congress, President, and Vice President.<sup>8</sup> This approach allows separate contribution limits for the primary and general elections. An individual donor can give \$2,300 over four years to a candidate exclusively for the primary and \$2,300 over four years exclusively for the general election.<sup>9</sup> Party committees and certain political action committees can give up to \$5,000 for each election. Houston<sup>10</sup> is a good example of a city that follows this approach and is comparable in size to Philadelphia.

Either of the above mentioned approaches is preferable to Philadelphia's current calendar year system because Philadelphia's ordinance puts candidates who decide to run for office late in the cycle at a disadvantage. Incumbents who don't face term limits can begin active fundraising immediately after being sworn into office with no fear of tapping out donors – even if they know that they are not seeking another term. In fact, it is in their best interests to stay silent about the future so that they can continue to raise money, even if it is used to help other candidates. Therefore, each individual donor can be tapped for \$10,400 – or \$2,600 every year for the next four years. A late-declaring challenger, meanwhile, might enter the race only a year or two before election day, cutting his or her potential donation base by half or even three-quarters.

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<sup>6</sup> See New York City Administrative Code § 3-701 *et seq.*

<sup>7</sup> See Los Angeles City Charter § 470(c)(3).

<sup>8</sup> See Disclosure of Federal Campaign Funds, 2 U.S.C. §§ 431-442.

<sup>9</sup> Federal Election Commission, *Contribution Limits for 2007-08*, <http://www.fec.gov/info/contriblimits0708.pdf>. These limits are indexed for inflation in odd-numbered years.

<sup>10</sup> See Houston Code of Ordinances, §§ 18-35, 18-38.

For these reasons, the Committee of Seventy recommends that Philadelphia’s campaign finance ordinance tie the receipt of contributions to an election cycle rather than to a calendar year.

## II. Revise the Definition of “Candidate”

**Recommendation: Philadelphia should adopt Pennsylvania’s more expansive and common sense definition of “candidate.” Alternatively, the rules on “excess pre-candidacy contributions” should be clarified.**

We all know a political candidate when we see one – a person who is seeking money to build a campaign, forging alliances in the community to develop a power base, reaching out to residents to round up votes. It seems fairly self-explanatory.

Philadelphia's campaign finance ordinance, however, seems at odds with common sense, drawing a definition that is so narrow that even people who are obviously candidates are exempted from normal campaign contribution limits. The situation was highlighted in its full absurdity in 2006, when three men – John Dougherty, Chaka Fattah, and Dwight Evans – were all obviously running for mayor at that time, to the point of accepting campaign contributions, yet in the eyes of the City, they were not yet candidates and therefore not subject to the campaign finance rules.

It comes down to just a few words. Philadelphia's campaign finance ordinance defines a candidate as "an individual who files nomination papers or petitions for city elective office [or] who announces his or her candidacy for city elective office."<sup>11</sup>

The state law, however, defines a candidate more broadly, as "any individual who seeks nomination or election to public office ... whether or not such individual is nominated or elected."<sup>12</sup> It goes on to specify that a person becomes a candidate not only when filing formal election petitions or papers, but the moment he or she has "received a contribution or made an

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<sup>11</sup> Philadelphia Code § 20-1001(2).

<sup>12</sup> 25 P.S. § 3241(a)(1).

expenditure, or given his consent for any other person or committee to receive a contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the individual has made known the specific office for which he or she will seek nomination or election at the time the contribution is received or the expenditure is made."<sup>13</sup>

This difference is not trivial. Because Dougherty, Fattah, and Evans had not uttered the words "I am a candidate" in public, they were able plausibly to claim that they were not yet subject to the Philadelphia ordinance.

This leads to an inconsistent result: a person who is clearly a candidate in all but a narrow legalistic sense is free to raise unlimited amounts of money from just about anyone. This presents an open invitation for abuse and an easy opportunity for an unseemly appearance of a conflict of interest. And even the most honest individual is left with a number of problems, particularly how to handle and account for the money and what to do with the extra funds after officially becoming a candidate under the City's narrow definition.

The Committee of Seventy urges the immediate adoption of the state definition of "candidate." It may not be possible to regulate every scenario under which a potential candidate might receive money before becoming a legal candidate, but this proposed change would close the most obvious loophole.

If the City's definition of "candidate" is not changed, the rules on "excess pre-candidacy contributions" must be clarified.

The campaign finance ordinance contains an awkward provision on "excess pre-candidacy contributions."<sup>14</sup> Once candidates go from the exploratory stage to the official candidate stage, they may only spend from any given contribution as much as would have been allowed had they been candidates at the time. If someone donated \$100,000 before the person became a candidate,

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<sup>13</sup> 25 P.S. § 3241(a)(1).

<sup>14</sup> See Philadelphia Code § 20-1002(4).

only \$2,600 of that particular donation is supposed to be spent on that person's campaign. The rules are silent on what happens to the rest of that money – which should not be the case.

As a mayoral candidate, Michael Nutter asked the Board of Ethics a series of basic questions about how such a system should work, and specifically how to handle and account for the money. The Board admitted that there are no clear answers to most of Nutter's questions. Despite this ambiguity, they said in Advisory Opinion 2006-003 that "the burden to comply with the spending restriction ... is on the candidate and his or her candidate political committee."<sup>15</sup>

It is not the Board's fault that it was unable to answer questions on how to bear this burden. The campaign finance ordinance is silent as to how City Council intended this system to work, forcing the Board to resort to non-binding suggestions on what to do. The Board said it might promulgate some regulations to answer the questions, but the Committee of Seventy urges specifying, in the campaign finance ordinance, how excess pre-candidacy contributions should be handled, accounted for, and disclosed to the public.

Moreover, the campaign finance ordinance should clarify what the candidates can and should do with any excess money they cannot legally spend once they do become formal candidates. The burden of making these decisions is too great, and the consequences of doing the wrong thing are too steep, to force candidates to operate in a vacuum. The public, meanwhile, deserves the same level of transparency in contributions to potential candidates as it expects from fully declared candidates.

### **III. Address Incumbents**

#### **Recommendation: Incumbents should be considered “candidates.”**

One of the curious aspects of the current City's campaign finance ordinance is that an incumbent clearly interested in running for reelection can legitimately claim not to be an official candidate until filing the formal paperwork or publicly acknowledging candidacy. This allows raising an

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<sup>15</sup> Philadelphia Board of Ethics, Advisory Opinion No. 2006-003: Response to Candidate Inquiry Regarding “Excess Pre-Candidacy Contributions”; the Single Political Committee and Account Rule; and Training for Candidates and their Treasurers, 2, available at [http://www.phila.gov/ETHICSBOARD/pdfs/Advisory\\_Opinion\\_2006-003\\_FINAL.pdf](http://www.phila.gov/ETHICSBOARD/pdfs/Advisory_Opinion_2006-003_FINAL.pdf).

unlimited amount of money despite the "excess pre-candidacy contributions" provision of the campaign finance ordinance that precludes spending all of that money on the reelection campaign the incumbent officially becomes a candidate.

This means an unscrupulous incumbent could pressure donors into giving money – the fate of which is unclear under the City ordinance, as described above – effectively without any contribution limits. The potential for misconduct is undeniable, and experience here in Philadelphia and in other places shows that there are politicians who would use such a loophole as a way to solicit contributors, enforce loyalty, and perhaps divert such money to other purposes. Even if the incumbent isn't trying to misuse his or her position, City contractors and businesses might feel pressure to contribute to maintain favor with a powerful official.

While changing the City's definition of "candidate" to match the state definition would be helpful, we believe the City should go further and consider a system of specifically regulating contributions to incumbents by considering an incumbent a de facto candidate for reelection immediately upon being sworn in absent a formal declaration otherwise by the incumbent or some obvious factor that precludes it, such as term limits. Some will argue, no doubt, that any such system would disadvantage an incumbent, but we believe the inherent advantages of incumbency, and the danger of abuse of real power and influence, more than outweigh any slight inconvenience.

#### **IV. Increase Penalties for Violations**

**Recommendation: The penalties for violating the campaign finance ordinance should be increased as a demonstration of Philadelphia's strong commitment to ethical behavior.**

A law is only as effective as the bite its creators put behind its bark. Philadelphia's ethics and campaign finance ordinances include reasonably strong penalties, but they should be strengthened to reflect the importance of ethical behavior by elected officials.



The City' ethics ordinance calls for fines of up to \$2,000 per violation and provides that someone in violation is "forever disqualified from holding any elected or appointed city office or employment with the city, its agencies, authorities, boards or Task Forces."<sup>16</sup> It also allows the Board of Ethics to ask a court to tack on an additional \$300, plus up to 90 days in jail, for every repeat violation of the ordinance. The City's campaign finance ordinance adopts these penalties as well.<sup>17</sup>

In order to ensure that candidates do not find it more worthwhile to cheat than to comply, and recognizing the imprisonment is highly unlikely, the Committee of Seventy believes the fines for violating the ordinance should be increased as a strong statement on how seriously the City takes good ethical conduct.

Los Angeles, for example, provides for a \$5,000 fine or three times any amount a candidate failed to report on the required disclosures, whichever is greater, for violations of the campaign finance ordinance.<sup>18</sup> Unfortunately, the Los Angeles ordinance includes a 90 day statute of limitations on violations, which the Committee of Seventy would not support.<sup>19</sup>

Interestingly, Pennsylvania's law is weaker in some respects than the City's, yet in some instances violations are considered criminal acts. With a few exceptions, the state treats violations of the campaign finance law as misdemeanors, punishable by a maximum fine of \$1,000 or up to a year in jail, or both.<sup>20</sup> Certain violations, such as offering bribes to voters,<sup>21</sup> fundraising or campaign expenditures by persons not officially authorized by the candidate or his committee,<sup>22</sup> and failure to file an expense report with the state,<sup>23</sup> are punished more severely under state law.

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<sup>16</sup> Philadelphia Code § 20-612(1).

<sup>17</sup> See Philadelphia Code § 20-1008.

<sup>18</sup> See Los Angeles Administrative Code § 24.1.2(e)(7)(F)(iii).

<sup>19</sup> See Los Angeles Administrative Code § 24.1.2(e)(7)(G).

<sup>20</sup> See 25 P.S. § 3550.

<sup>21</sup> See 25 P.S. § 3539.

<sup>22</sup> See 25 P.S. §§ 3540-41.

<sup>23</sup> See 25 P.S. § 3545.

New York City's law has some interesting features that bear considering. It provides that a candidate or committee violating the ordinance will be subject to an administrative fine of \$10,000.<sup>24</sup> A candidate violating the contribution limits can be subject to an additional fine up to three times the sum by which the candidate exceeded the limit.<sup>25</sup> Anyone who fails to comply with a Campaign Finance Board audit could be subject to a fine of up to 10 percent of the public money given to the candidate under the City's public financing system.<sup>26</sup> At the same time, the ordinance permits the Campaign Finance Board to create a schedule of lesser penalties for violations, taking into account mitigating circumstances.<sup>27</sup> The ordinance makes it a misdemeanor to file false information or attempt to doctor the books to cover up a violation of the campaign law,<sup>28</sup> but it also provides candidates an out – if they file a correction of any violation before the Board sends a notice of an official investigation, then they are exempt from any charges or fines.<sup>29</sup>

These approaches have some strengths and weaknesses. The Committee of Seventy urges the Task Force to recommend upgrading the penalties of the Philadelphia ordinance by using the strongest elements of these other examples. We would like, for example, to see increased penalties, at least as strong as the \$5,000 or three-times the value of the violation formula used by Los Angeles. We also support the imposition of criminal penalties for willful violations and cover-ups, along the lines of the New York City ordinance.

Philadelphia does not need to be overly draconian about it, but stronger penalties would signify the City's serious commitment to ethics reform and enforcement and, at the same time, help deter violations.

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<sup>24</sup> See New York City Administrative Code § 3-711(1).

<sup>25</sup> See New York City Administrative Code § 3-711(2)(a).

<sup>26</sup> See New York City Administrative Code § 3-711(2)(b).

<sup>27</sup> See New York City Administrative Code § 3-711(1).

<sup>28</sup> See New York City Administrative Code § 3-711(3).

<sup>29</sup> See New York City Administrative Code § 3-711(4).

## V. Amend the “Doubling Provision”

### **Recommendation: The “doubling” provision of the campaign finance ordinance should be amended to comply with the recent U.S. Supreme Court ruling.**

In the 2007 Mayoral election, businessman Tom Knox unnerved the Democratic Party apparatus by spending a reported \$12 million on his race for Mayor, a significant portion of which was his own money. This money was in part responsible for vaulting Knox from a relative unknown to runner-up in the Democratic primary. Other candidates were rightly alarmed that Knox's personal fortune would swamp their own campaign fundraising efforts, which were limited by the City's campaign finance ordinance. In response, City Council doubled the contribution limits for the other, non-self-funded candidates any time a candidate spent \$250,000 or more of personal money on a race.<sup>30</sup>

While this seems straightforward on its face, the idea turned out to have unintended consequences and highlighted an unrelated weakness in the campaign finance ordinance.

First, it turns out that the doubling provision is likely unconstitutional, although that didn't become clear until after the mayoral election was long over. In June 2008, the United States Supreme Court considered a similar federal provision and said that a law cannot double the contribution limits for non-self-funded candidates without also doubling them for the self-funded candidate.<sup>31</sup>

Second, because of the calendar year system for imposing contribution limits, there was no mechanism to turn the doubling provision off for the rest of the year, after Knox was defeated in the May primary. This allowed both Democrat Michael Nutter and Republican Al Taubenberger to continue to collect money at double the normal limit for the general election, even though

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<sup>30</sup> See Philadelphia Code § 20-1002(6).

<sup>31</sup> See *Davis v. FEC*, 554 U.S. \_\_\_\_ (2008). In a 5-4 decision, the Court ruled that the wealthy candidate's First Amendment rights are impaired when he or she is forced to choose between not spending over the threshold amount, or entering an uneven fundraising scheme where only his or her opponents can solicit over the law's stated limits.

there was not a self-funded challenger in the race and the outcome in the mayoral election was all but certain.

So long as the U.S. Supreme Court continues to protect a candidate's right to devote a personal fortune to a race, it may be difficult constitutionally to overcome the advantage of self-funded candidates, who can pump unlimited money into their own campaigns.<sup>32</sup> But at minimum, City Council should immediately amend the campaign finance ordinance to reduce the risk of a constitutional challenge by making the doubling provision apply to all candidates, including the self-funder. The federal government is already well along in the process of removing its own unconstitutional provision; the City should not be far behind.

As outlined above, the Committee of Seventy supports changing from a calendar year to an election cycle system for tallying contributions. If that were coupled with a distinction between primary and general election fundraising, it would be easier to trigger – and turn off – the doubling system or any other system for dealing with self-funded candidates in a way that would not create unintended side effects, as the provision did in 2007.

## **VI. Simplify the Rules Governing Contributions Relating to No-Bid Contracts**

**Recommendation: Rules governing campaign contributions from firms that receive no-bid contracts should be simplified and clarified, and the public disclosure of such contributions significantly improved.**

Corruption and pay-to-play politics in Philadelphia are not new, but the insidious practices that have long plagued Philadelphia came into sharp focus in 2003, when the scandal over fundraiser Ron White broke. Prosecutors said White, a close friend of and fundraiser for then-Mayor John Street, conspired with City officials to steer no-bid contracts to various companies in return for campaign donations and personal favors.

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<sup>32</sup> See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976). The Court in *Buckley* swiftly rejected FECA's limits on expenditures by candidates from their personal funds. The Court began by stressing the importance of allowing candidates "the unfettered opportunity to make their views known." *Id.* at 52-53. It then rejected the two proffered governmental interests—the prevention of corruption and the equalizing of candidate's financial resources.

The scandal was shocking, but not surprising. As far back as 1961, City officials were worried about the temptation for some officials to use no-bid contracts, which are often awarded largely outside of public view and in the absence of any competitive process to determine the lowest bidder, to extort money and favors from contractors. Mayor Richardson Dilworth appointed a Task Force, commonly known as the Fordham Committee, to study the matter, yet it took more than 40 years for the City to take serious action.<sup>33</sup>

Finally, in 2005, in the shadow of the Ron White scandal, City voters overwhelmingly approved a change to the Philadelphia Home Rule Charter that allowed City Council to regulate the unseemly nexus between no-bid contracts and campaign contributions.<sup>34</sup> The result was a system precluding no-bid contract work worth more than \$25,000 to businesses that contribute more than \$10,600 to any City candidate or incumbent.<sup>35</sup> This limit also applies if individual executives of for-profit businesses contribute this amount cumulatively.

While this is an enormous step forward, the results have not been perfect. As the City itself admits, the software to enforce this system was outdated and has required extensive revision, which is still not complete.<sup>36</sup> It is clear from reading the City's plan to improve the system that technicians are focusing mostly on internal improvements that will make it easier for companies to request no-bid contract work and for City procurement officers to review their applications. Forgotten, to some degree, is the public.

The most effective way to assure the public that City contracts will not be the reward for filling campaign coffers is to enact a complete ban on contributions, both to candidates and incumbent officials, from donors seeking City business and also from lobbyists.

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<sup>33</sup> See City Archives, Mayor's Ad Hoc Committee on Improvement in Municipal Standards and Practices [Record group 60-117-1], available at <http://www.phila.gov/phils/docs/inventor/graphics/agencies/m117.htm>.

<sup>34</sup> See Philadelphia City Charter § 2-309(3).

<sup>35</sup> See Philadelphia Code § 17-1400 *et seq.*

<sup>36</sup> See Analysis of the City's Experience with the Requirements Set Forth in Chapter 17-1400 of the Philadelphia Code, Sept. 30, 2008.

Although we are not recommending this at this time, we do note that banning donations from those seeking government business is not a novel concept. Connecticut, for example, bans lobbyists and contractors from making political contributions to candidates for state office,<sup>37</sup> a law upheld by a federal court on December 29, 2008.

In the absence of a complete ban, Philadelphia must further strengthen the laws already on the books regulating contributions from those seeking no-bid contracts. As the law is written now, for example, the executives of a for-profit business may not contribute more than \$10,600 together to any one candidate, but the same attribution limit does not apply to non-profits. Corruption, abuse, and mismanagement are not the sole province of for-profit companies and we believe the law should apply equally to all types of businesses.

We also believe that Council must heed the significant concerns of firms and companies that struggle with the strict attribution limits. Unlike the campaign finance ordinance, the City's law regulating contributions from entities seeking no-bid contracts treat contributions made or solicited by partners, officers, directors, shareholders, PACs, subsidiaries and affiliates of that entity as one cumulative contribution. This places an enormous strain on large companies, such as law firms or consultancies that have offices in many locations around the world with thousands of principals and partners. It is not difficult to inadvertently exceed the \$10,600 cumulative limit, thereby becoming ineligible for a no-bid City contract.

The Committee of Seventy does not recommend removing the attribution provisions. Nor do we recommend raising the limit or otherwise weakening the law. But we do urge City Council to listen to the legitimate complaints and examine reasonable suggestions for making it easier for large outfits seeking no-bid contracts to understand and comply with the regulations.

At the same time, to make any of the foregoing changes truly effective, the City needs better public disclosure of campaign contributions. Making it easier for people to understand who gets no-bid contracts is essential to cutting down on this lynchpin of the City's pay-to-play culture. The City is obligated to provide public information on campaign contributions, dating back two

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<sup>37</sup> See *Green Party of Connecticut et al. v. Garfield et al.*, Civil Action No. 3:06-cv-01030-SRU.

years, for companies that receive no-bid work. Sadly, the disclosure system on the City of Philadelphia website, eContract Philly,<sup>38</sup> is cumbersome at best. Its functionality does not work on all Web browsers and the information about campaign contributions by vendors is difficult to find – one must search through several cryptic links and examine each contract individually, then separately examine reports from each contractor and subcontractor involved. The material is not in a format that is easy to search or download to a spreadsheet or other analytical software.

The absence of an easily readable and searchable database effectively cripples the public's ability to determine what vendors receiving no-bid contracts have contributed, as well as the City's ability to enforce the law. The Committee of Seventy recommends that the City of Philadelphia substantially improve its database to provide data that can be more easily reviewed and analyzed.

## **VII. Improve Public Access to Campaign Finance Reports**

**Recommendation: The current electronic system for disclosing campaign finance reports must be upgraded to reflect 21<sup>st</sup> Century technological advances.**

Trying to decipher campaign finance reports is almost as frustrating as trying to figure out eContract Philly. Any campaign finance regulation system is only as good as the access the public has to the reports. Without the possibility for City residents, investigators, and public watchdogs to see and analyze the information, there is no way to look for conflicts of interest, detect pay-to-play schemes, or root out irregularities and corruption.

Campaign finance laws usually require that candidates and political committees keep detailed records of contributions and expenditures – including the name, address, and employer of anyone who gives money – and that they report that information to the government, which then makes it available to the public. With the spread of computer technology, most jurisdictions require that such reports be filed electronically and that the information be made available to the public in a

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<sup>38</sup> See City of Philadelphia, eContract Philly, <https://ework.phila.gov/econtractphilly>.

searchable database. At least 30 states and several large cities had comprehensive electronic reporting systems, including both filing and public access to data, as of 2000; by 2003, at least 46 jurisdictions in the United States and Canada had some form of electronic filing.<sup>39</sup>

In Philadelphia, the City's campaign finance ordinance requires candidates and committees to file their disclosure reports electronically<sup>40</sup> and it also requires the Board of Ethics to make those reports easily available online.<sup>41</sup> Yet nearly three years after the legislation passed, the online access system is difficult to use and incomplete. It is barely searchable and cannot aggregate data in any meaningful way. As a result, curious members of the public must sift through page after page of information, adding totals manually.

There are three online sources for City data, none of which is particularly helpful. The database maintained by the City Controller's office provides access to disclosure forms from political action and candidate committees, but only as PDF files, a read-only format that does not allow for easy searching and makes it impossible to download data to a spreadsheet or other analytic software.<sup>42</sup> The City's Records Department has a somewhat better system, which allows users to search for campaign finance data by candidate, race, party, name, and employer of a campaign donor. But the system is still difficult to use and confusing. It divides records according to the state's system of reporting cycles, which makes it virtually impossible to figure out totals for candidates or individual contributors. The data is presented in a format that is difficult to download into a spreadsheet or other analytic software.<sup>43</sup> The third source is the state campaign finance reporting system, where the information provided is sketchy and it is difficult to search for municipal candidates or to download and analyze data.<sup>44</sup>

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<sup>39</sup>See Craig B. Holman & Robert M. Stern, Access Delayed is Access Denied: Electronic Reporting of Campaign Finance Activity, 11 (2000), available at [http://www.brennancenter.org/content/resource/access\\_delayed\\_is\\_access\\_denied\\_electronic\\_reporting\\_of\\_campaign\\_finance\\_act](http://www.brennancenter.org/content/resource/access_delayed_is_access_denied_electronic_reporting_of_campaign_finance_act).

<sup>40</sup> See Philadelphia Code § 20-1006(1).

<sup>41</sup> See Philadelphia Code § 20-1006(2).

<sup>42</sup> See generally City of Philadelphia, Office of the Controller, <http://www.philadelphiacontroller.org/campaign-finance-reports.asp>.

<sup>43</sup> See generally City of Philadelphia, Department of Records, <http://www.phila.gov/records/CampaignFinance/CampaignFinance.html>.

<sup>44</sup> See generally Pennsylvania Department of State, Campaign Finance Reporting, <http://www.campaignfinance.state.pa.us/ReportSearch.aspx>.



Considering that the campaign finance legislation leaves at least some of the burden on the public to monitor campaign finance violations and bring complaints to enforce the law, this clumsy, inadequate system is a huge impediment to the implementation of effective campaign finance legislation.

In an era where many people have access to simple and effective database and spreadsheet programs, there is no excuse for this. There is no reason why the candidates should not account for their donations quickly, fully, and in a standard electronic form. There is no reason why the City should not be able to make such reports available within 24 hours of the filing deadline.

Nor is this impossible. New York State, for example, has an excellent campaign finance database online through the State Board of Elections. It allows anyone to search reports back to 1999 by donor, recipient, or amount. It allows users to search for donations within a certain size range, by county, by zip code, by type of contributor, by type of election and office. It allows anyone to search for expenditures of candidates and committees and even generate combined contribution and expense reports for individuals or by office type and district. It is an amazingly flexible tool that affords nearly instant access to information on who is backing their political candidates.<sup>45</sup> Florida, meanwhile, has a system that allows users to search elections back to 1996 by contributor, candidate, party, office, district, zip code, and a number of other criteria. While it is slightly less user-friendly than New York's, it has the virtue of being able to generate reports in a format that can be downloaded easily into a spreadsheet.<sup>46</sup>

Nor is this purely a venture for well-funded state governments. The City of Pittsburgh has announced it will replace its antiquated paper-based system with a searchable database in time for the May 19, 2009 primary election. The Los Angeles City Ethics Task Force hosts a comprehensive and simple-to-use database of contributions and expenses back to 1998 that includes detailed information about each contribution and donor.<sup>47</sup>

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<sup>45</sup> See New York State Board of Elections, Contribution and Expenditure Database, <http://www.elections.state.ny.us/contribandexpnd.html>.

<sup>46</sup> See Florida Division of Elections, Campaign Finance Database, <http://election.dos.state.fl.us/campaign-finance/cam-finance-data.shtml>.

<sup>47</sup> See Los Angeles, City Ethics Task Force, [http://ethics.lacity.org/efs/public\\_search.cfm?pubsearchstep=2&rept\\_type=ALLCon](http://ethics.lacity.org/efs/public_search.cfm?pubsearchstep=2&rept_type=ALLCon).

Philadelphia can build or buy a system as strong as these. The people of Philadelphia have waited long enough for the City to make good on its promise. Because easy access to reported information is essential to an effective system of disclosure, the Committee of Seventy recommends the City of Philadelphia refine the current method of electronic filing and swiftly bringing its online system for disclosing campaign contributions to the public into the 21<sup>st</sup> Century.

### **VIII. Apply Post-Election Contribution Limits to Campaign Committees**

#### **Recommendation: Campaign contribution limits should apply to campaign committees after an election is over.**

The City's campaign finance ordinance does not specifically say what rules apply to a campaign committee after the election is over, yet clearly campaign committees at all levels of government continue to exist, sometimes long after the candidate has been defeated or has retired. Often, these committees are forced to continue as the candidates struggle to retire debt. The most striking example of this may have been former Senator John Glenn, whose 1984 presidential campaign ran up \$2.7 million in debts that took 22 years to settle. His federal campaign committee for that year didn't close until 2006.

Pennsylvania law says a campaign committee must continue to file annual reports until all the money is gone or all the debts are paid,<sup>48</sup> but the City's ordinance doesn't regulate the behavior of that committee while it continues to operate.

In 2007, the Board of Ethics considered the case of an unsuccessful mayoral candidate, examining how he should proceed in trying to retire a considerable debt to a law firm incurred during the campaign. While the board did not name the candidate in its documents, it was widely reported to be Congressman Bob Brady, who had incurred a \$448,468 debt when he hired the law firm of Cozen O'Connor to defend him against a ballot challenge from fellow

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<sup>48</sup> See 25 P.S. § 3247.

Democratic candidate Tom Knox. The board was asked, among other things, whether Congressman Brady's campaign committee was still bound by the contribution limits in force during the election, even though Brady had lost and there was no way that a contributor could buy mayoral favor with a contribution.

The Board of Ethics found that those limits must be maintained even after the campaign was over. It also highlighted the fact that City Council will need to step in and codify the Board's ruling.<sup>49</sup>

If post-election contributions were not subject to normal limits, the Board wrote, it would be an easy matter for candidates to limit their pre-election fund-raising, run up substantial debts, then allow donors to pay off those debts unencumbered by normal limits. "It would defeat the purpose of [the City ordinance] if candidates could evade the campaign finance restrictions by the stratagem of deferring payment of expenses until after the election," it wrote.<sup>50</sup>

This interpretation is consistent with state law, which defines "contribution" as including money or goods given after the election.<sup>51</sup> It is also consistent with the way the Federal Election Commission has viewed post-election contributions (the federal law is similar to Philadelphia's ordinance in that it does not specifically say what happens to contribution limits after an election). Federal courts have upheld this approach.<sup>52</sup>

The Committee of Seventy fully supports the position taken by the Board of Ethics and calls upon City Council to amend the campaign finance ordinance to clarify that post-election contributions to any candidate must be treated exactly the same as election season donations, and also to clarify whether pre-election litigation defense expenses are campaign contributions

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<sup>49</sup> See Philadelphia Board of Ethics, Ethics Board Confidential Opinion No. 2007-003: Re: Campaign Finance – Post-election payments to retire debt, *available at* [http://www.phila.gov/ethicsboard/pdfs/Redacted\\_Confidential\\_Opinion\\_2007-003\\_92607.pdf](http://www.phila.gov/ethicsboard/pdfs/Redacted_Confidential_Opinion_2007-003_92607.pdf).

<sup>50</sup> See Philadelphia Board of Ethics, Ethics Board Confidential Opinion No. 2007-003: Re: Campaign Finance – Post-election payments to retire debt, *available at* [http://www.phila.gov/ethicsboard/pdfs/Redacted\\_Confidential\\_Opinion\\_2007-003\\_92607.pdf](http://www.phila.gov/ethicsboard/pdfs/Redacted_Confidential_Opinion_2007-003_92607.pdf)

<sup>51</sup> See 25 P.S. § 3241(b).

<sup>52</sup> See, e.g., *United States v. Sun-Diamond Growers of California*, 941 F.Supp. 1277, 1280-81 (D.D.C. 1996).

subject to the City's contribution limits. We urge the City to adopt the state's language with regard to the latter. To do otherwise would invite chaos.

We do note, however, that Congressman Brady's debts were incurred not by profligate election spending, but to fend off a well-funded rival who was aggressively challenging Brady's right to stay on the ballot. An unscrupulous and wealthy candidate could use this precedent to bankrupt his rivals, or intimidate them out of the race with the threat of bankruptcy, by relentlessly suing and forcing them to accumulate expensive legal fees that could be difficult to pay off.

The Committee of Seventy urges the Task Force to recommend the adoption of a mechanism to give candidates ways to pay off such debts without creating an undue appearance of conflict of interest. We would not want to create an automatic, blanket exception that might allow powerful law firms to curry favor by providing free legal representation, but neither do we think it is fair for candidates to find themselves with no legal counsel because law firms are afraid of extending credit to a political committee for fear of being stuck with a bill that will never be paid off due to strict campaign donation limits.

Candidates should be permitted to establish separate accounts strictly to pay for legal compliance, as federal law allows,<sup>53</sup> and to pay for legal expenses. Philadelphia might, for example, consider adopting San Diego's system of allowing a carefully segregated fund for legal defense.<sup>54</sup> It provides that a candidate's legal fund may be used not only to pay for work arising from an audit by the city's Ethics Task Force or the state's Fair Political Practices Task Force, but to pay for a legal defense to "one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the City Official's governmental activities and duties."

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<sup>53</sup> See 11 CFR § 100.85 (regarding contributions); 11 CFR § 100.145 (regarding expenditures).

<sup>54</sup> See San Diego Municipal Code § 27.2965(b)(1)-(2).

## IX. Consider Public Financing of Municipal Elections

### **Recommendation: Philadelphia should search for an effective public financing model.**

A great many of the recent ethical ills that have afflicted the City, including the painful pay-to-play trials, revolve around a stark fact of political life – it costs a lot of money to run for office. Mayor Nutter, for example, reportedly spent more than \$4 million for his winning bid. Mayor Nutter's Democratic primary rivals Chaka Fattah, Dwight Evans, and Bob Brady spent more than \$2 million each on their unsuccessful primary campaigns. Self-funder Tom Knox spent more than all of his opponents combined. Even relatively obscure offices and non-controversial races, such as Common Pleas Court Judge, can cost \$500,000 or more for the winning candidate.

This insatiable need for money entices otherwise honest candidates to bend the rules or tolerate marginal conduct. It gives ample opportunity for candidates, or people acting in their names, to pressure companies and individuals with an interest in city government to give money. It offers a wide field for wealthy companies and individuals to seek special favor from candidates and officials. It can create unseemly conflicts of interest, whether real or perceived. It can disillusion the public when the average constituent cannot seem to match the power and access that large donors almost always seem to have.

And, perhaps worst of all, the high cost of an election discourages talented, honest, and dedicated people who might wish to run for office and serve the public good, but for whatever reason cannot raise the kinds of money it takes to compete and win.

Some believe that the best solution lies in public financing of campaigns. The Center for Governmental Studies has called public financing the “most important” development in campaign financing reform in the last thirty years.<sup>55</sup> The idea started at the federal level in 1971, but that system never took hold and appears to have collapsed completely in the wake of

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<sup>55</sup> See Steven M. Levin, *Keep It Clean: Public Financing in American Elections*, Center for Governmental Studies xi (2006), available at [http://www.cgs.org/images/publications/Keeping\\_It\\_Clean.pdf](http://www.cgs.org/images/publications/Keeping_It_Clean.pdf).

President-Elect Barack Obama's breathtaking \$750 million fundraising effort. Despite the failure of the federal system, a series of state and local systems appear to be working.

A recent report by the Center for Governmental Studies found that the state and local financing systems, while far from perfect, have succeeded in increasing the number and diversity of candidates, have freed candidates from the time-intensive chore of fundraising, and have decreased the number of money-related scandals. At least in some cases, they have improved public perception of the trustworthiness of the candidates and the effectiveness of the government.

The Committee of Seventy is not prepared to recommend any particular model at this point, or to declare that public financing will work for Philadelphia. However, we urge the Task Force to recommend a serious study of how to enact an effective public financing system in Philadelphia. The possibilities break down loosely into two groups: full financing and partial financing.

Full financing is in place for candidates in Maine,<sup>56</sup> Arizona,<sup>57</sup> and Connecticut,<sup>58</sup> and for a restricted set of candidates in several more states, including New Jersey. The cities of Albuquerque, New Mexico, and Portland, Oregon, created full financing systems in 2005.<sup>59</sup> As the name suggests, such an arrangement nearly eliminates campaign fundraising by covering all costs.

The other approach is partial financing. Cities that provide some level of funding include New York,<sup>60</sup> Los Angeles,<sup>61</sup> San Francisco,<sup>62</sup> and Tucson.<sup>63</sup> While there are many possible ways to provide partial financing, the most common is a matching system, where the public provides

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<sup>56</sup> See Maine Task Force on Governmental Ethics & Election Practices, Campaign Finance, <http://www.mainecampaignfinance.com/public/home.asp>.

<sup>57</sup> See Arizona Secretary of State, Campaign Finance, <http://www.azsos.gov/cfs/>.

<sup>58</sup> See Connecticut State Enforcement Task Force, Citizens' Election Program, <http://www.ct.gov/seec/cwp/view.asp?a=2861&q=332462&seecNav=1>.

<sup>59</sup> See Steven M. Levin, *Keep It Clean: Public Financing in American Elections*, Center for Governmental Studies xi (2006), available at [http://www.cgs.org/images/publications/Keeping\\_It\\_Clean.pdf](http://www.cgs.org/images/publications/Keeping_It_Clean.pdf).

<sup>60</sup> See New York City Campaign Finance Board, <http://www.nyccfb.info/>.

<sup>61</sup> See Los Angeles City Ethics Commission, Campaign Finance, <http://ethics.lacity.org/campaignfinance.cfm>.

<sup>62</sup> See San Francisco Ethics Commission, Campaign Finance, [http://www.sfgov.org/site/ethics\\_index.asp?id=13729](http://www.sfgov.org/site/ethics_index.asp?id=13729).

<sup>63</sup> See Tucson City Clerk's Office, Campaign Finance, <http://www.ci.tucson.az.us/clerks/campaignfinance.php>.

funding proportional to the candidates fundraising – New York City, for example, provides \$6 for every \$1 raised by the candidates, with the possibility of more in certain situations. It is possible to weight the matching to favor small donations, or to compensate for wealthy opponents, as a disincentive to rely on deep-pocketed donors or special interests. The New York City system, for example, allows candidates who participate in public financing to receive additional money and have higher spending limits – in some case removing the spending limits entirely, if they face a self-funded or lavishly supported candidate who does not take public funds.<sup>64</sup>

Adopting public financing in Philadelphia would hardly solve all the problems inherent in political fundraising, but it is certainly worth research as an option that could go a long way toward diminishing the pay-to-play culture that has plagued this City throughout its history.

## **X. Explore Methods to Regulate Outside Advertising**

**Recommendation: Philadelphia should adopt strategies to curb attack ads by 527 groups. The Board of Ethics should be given the authority and resources to closely monitor the behavior of 527 groups in local elections.**

The hard-fought 2007 Democratic Mayoral primary saw an ominous development in City elections – the substantial involvement of shadowy groups in venomous advertising campaigns designed to sway the election outside the normal rules of donation limits and disclosure.

First came the so-called "527" groups, which had become infamous during the 2004 presidential election, when the "Swiftboat Veterans for Truth" targeted John Kerry by distorting or fabricating accounts of his war record. In Philadelphia, a number of 527 groups emerged, including ones sharply attacking businessman Tom Knox. The "Economic Justice Coalition for Truth," for example, hounded Knox with ads detailing his association with a company that made pay-day loans and raising questions about one of Knox's employees, who was a convicted felon. While the organizers of this group were publicly identified in local media, nobody was able to

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<sup>64</sup> See generally New York City Finance Board Rules 5-01 to 5-04.

clearly answer questions about the associations of some of its financial backers with Knox's rival Bob Brady.

These 527 groups are tax exempt political organizations that get their name from the section of the Internal Revenue Code that created them.<sup>65</sup> They generally do not register as political committees under federal laws, which enable them to ignore many of the country's campaign finances laws and to influence elections without much public disclosure of their finances or contributors.<sup>66</sup>

A more shadowy situation developed during the 2007 mayoral campaign with a series of fliers attacking then-candidate Michael Nutter. In one case, a flier distributed in black neighborhoods showed an old picture of police officers detaining and strip searching black men – a pointed reminder of the racially fraught 1970s – and accusing the candidate of favoring "racial profiling" by police. Another flier, distributed in front of predominantly white Catholic churches on a spring Sunday, pointed out that Tom Knox was a practicing Catholic, while Nutter had left the church – after receiving a discounted education at a Catholic school – to become a Baptist, suggesting he had done so opportunistically to appeal to the largely Baptist black electorate.

It wasn't clear at the time who was responsible for the fliers, which, while not explicitly racist, were seemingly designed to pick at the tender scab over race relations in the City. The Board of Ethics subsequently traced the fliers to two political consultants with ties to the local chapter of the International Brotherhood of Electrical Workers and its powerful boss John Dougherty, who himself had toyed with running for mayor and later ran unsuccessfully for retiring Vince Fumo's First State Senate district seat in 2008. The union finally admitted its role in financing the fliers as part of a settlement with the Board of Ethics. The union also admitted to a number of violations of the City's campaign finance ordinance and agreed to pay \$10,000 in fines.<sup>67</sup>

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<sup>65</sup> See, e.g., Paul S. Ryan, *527s in 2008: The Past, Present, and Future of 527 Organization Political Activity Regulation*, 45 HARV. J. ON LEGIS. 471, 475 (2008).

<sup>66</sup> *Id.* at 473.

<sup>67</sup> See Settlement Agreement between the Philadelphia Board of Ethics and COPE, Oct. 15, 2008, [http://www.phila.gov/ethicsboard/pdfs/COPE\\_Settlement\\_Agreement\\_signed.pdf](http://www.phila.gov/ethicsboard/pdfs/COPE_Settlement_Agreement_signed.pdf), 4-5 (last visited Dec 28, 2008).



These two cases show that Philadelphia elections are not immune to the kinds of rule-bending shenanigans by shadowy non-campaign groups that have afflicted national races. While the City cannot ban 527 groups, and can never fully do away with outright cheating, as the Board of Ethics uncovered in the case of the anti-Nutter fliers, City Council should examine its options to limit such third-party interference in elections.

The Pennsylvania General Assembly is considering a bill<sup>68</sup> that would require any person or group that engages in large-scale electioneering – advertising, mailings, or fliers that directly support or attack any candidate – to file a detailed disclosure form. The state bill isn't a perfect model, but it points to one possible approach. Some states have already modified their laws in an attempt to indirectly regulate 527 groups.<sup>69</sup>

Another approach is suggested by the Board of Ethics' aggressive investigation of the anti-Nutter fliers and its pursuit of answers from the IBEW. The Committee of Seventy urges City Council to make sure that the Board of Ethics has the money – and plenty of clear, independent legal authority – to investigate possible violations of disclosure requirements or political activity limitations.

The Board should be encouraged to challenge the tax-exempt status of 527 groups that appear to cross the line. Under the federal statute and court precedent, 527 groups may only spend money to comment on issues, not to specifically call for the election or defeat of a particular candidate.<sup>70</sup> This may seem like a fine distinction when a 527 is engaging in personal smears or drawing unfavorable portraits of one particular candidate during a heated election season, as The Economic Justice Coalition for Truth did to Tom Knox in the 2007 primary, but the Board of Ethics should be quick to aggressively challenge the tax exempt status of 527 groups that circumvent the law by using personal attacks or misinformation to influence the election.

A third approach is only just developing among advocates of reform: the notion of "counter speech." Courts have been clear in recent years that they do not approve of limits on freedom of

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<sup>68</sup> See H.B. 2825, 2008 Legis. (Pa. 2008).

<sup>69</sup> See Ryan, *supra* note 65 at 485-88.

<sup>70</sup> See *id.* at 471.

speech by campaign finance regulators, making it difficult to ban or rein in 527 groups and others interested in influencing an election. In response, reformers have begun to consider the alternative of encouraging even more speech by allowing those who are attacked by these groups the time and resources to respond. A lengthy piece in the October 2008 Wisconsin Law Review outlined the possibilities in great detail.<sup>71</sup> Most – such as requiring media outlets to offer equal time, or reduced rates on advertising – are well beyond the resources or legal authority of City government. The author points out, however, that the federal courts have upheld Maine's system for providing some public resources to compensate for independent attack ads. We urge City Council to investigate and consider a similar system, perhaps as part of a public financing program as outlined above.

## **XI. Additional Regulations on Political Committees**

**Recommendation: Campaign contribution limits and reporting requirements should be extended to certain political committees that do not deal directly with elections, such as inaugural and transition committees.**

Philadelphia's campaign finance law only covers contributions raised in the process of campaigning for office. It is obvious, however, that there are other kinds of political donations that don't relate directly to day-to-day campaigning, but can create just as much opportunity for corruption or the appearance of a conflict of interest.

Successful candidates, from the Mayor up to the President, are expected to celebrate their swearing-in with parties, balls, and other festivities. Yet they are usually expected to do so with little or no public money. As a result, elected officials tend to create separate non-profit committees to solicit private donations to pay for the ceremonies.

Surprisingly, it appears to be unusual for local, state, or federal governments to regulate the donations to inaugural funds, or to funds designed to pay for costs associated with the transition between administrations. There doesn't seem to be any Constitutional reason why there is little

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<sup>71</sup> Adam Welle, Note, *Campaign Counterspeech: A New Strategy to Control Sham Issue Advocacy in the Wake of FEC v. Wisconsin Right to Life*, 2008 WIS. L. REV. 795 (2008).

regulation – it just appears to be a topic few jurisdictions have considered. On the whole, mayors, governors, and presidents tend to impose voluntary limits. President-Elect Barack Obama, for example, will accept no more than \$50,000 from any single source for his inauguration.<sup>72</sup> For his inaugural events, then Mayor-Elect Michael Nutter set a \$5,000 per person, or \$20,000 per organization, limit. As a precaution, Nutter asked the Board of Ethics whether he needed to abide by normal campaign limits or disclose the donors. The Board, in its Advisory Opinion 2007-005, said that he did not, since the City ordinance is silent on the matter and he was not using City employees in fundraising for the inaugural celebration.<sup>73</sup>

New Jersey is one of the few states that impose such a restriction, placing a \$500 limit on donations to inaugural committees. A 2005 opinion by the New Jersey Election Law Enforcement Task Force, however, gutted that statute by ruling that although the legislation limited donations from "a person, candidate, candidate committee, joint candidate committee, political committee, or continuing political committee," it did not specifically mention "state political party committee."<sup>74</sup> Inaugural committees, therefore, could accept unlimited donations from the state parties.

New York City, meanwhile, has a well-thought-out system governing inaugural and transition committees for the Mayor, Public Advocate, Comptroller, Borough President and City Council.<sup>75</sup> The ordinance puts a \$100 limit on donations and calls for comprehensive disclosure, including all expenses and the identities of all donors. It has limits on when and how the money should be raised and spent and makes clear that the committees may only operate in the narrow window between the election and swearing in of an official. It has guidelines preventing a candidate from diverting money to other purposes or using the inaugural committee as a back-door way to settle campaign debts.

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<sup>72</sup> See Nikita Stewart, *Inaugural Gift Limits, Co-Chairs Announced*, WASH. POST, Nov. 26, 2008, at B01.

<sup>73</sup> See Philadelphia Board of Ethics, Advisory Opinion No. 2007-005 (Dec. 5, 2007).

<sup>74</sup> State of New Jersey, Election Law Enforcement Comm'n, Advisory Opinion No. 05-2005, 2 (Dec. 21, 2005).

<sup>75</sup> See New York City Campaign Finance Board, Campaign Finance Handbooks, <http://www.nycffb.info/candidates/candidates/handbooks/index.htm> (follow "for Participants" or "for Non-participants" link to access the appropriate handbook).

Philadelphia would set a good example for governments nationwide by joining New York City in amending the campaign finance ordinance to include a simple and reasonable set of limits on inaugural or transition committee donations and requiring disclosure of donors.

## **XII. Disclose Relationships between Elected Officials and Organizations Receiving City Funds**

**Recommendation: The relationship between elected officials and non-profits and other organizations that receive City funds should be fully disclosed to the public.**

One of the more difficult issues to address is how to regulate the relationship between public officials and private non-profit organizations. A robust set of ethics laws and campaign finance regulations can prevent direct bribery of officials in the form of personal money or campaign contributions, but experience has shown that unscrupulous officials can still demand a quid-pro-quo, and unscrupulous would-be contractors can still curry favor with officials, by way of donations to non-profits and charities with ties to government officials.

Former State Senator Vince Fumo, for example, stands accused of using the non-profit Citizens Alliance for Better Neighborhoods for the enrichment of himself, his family, and his friends.<sup>76</sup> Fumo raised millions for the non-profit, including a \$17 million donation from PECO. At the same time, according to testimony in his ongoing federal trial, he used the employees and resources of the non-profit to buy items, maintain his homes, and even hire private detectives to investigate his ex-girlfriends and political rivals, including Governor Ed Rendell.

On the federal level, meanwhile, a number of lawmakers face questions about their ties to charities. The Seattle Times reported recently, for example, that defense contractors, such as Boeing, gave at least half a million dollars to charities favored by Representative Norm Dicks, a member of the Defense Appropriations Subcommittee.<sup>77</sup> And among a number of ethics questions facing Ways and Means Committee Chairman Charlie Rangel is whether he protected

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<sup>76</sup> For up-to-date information on the Fumo trial, visit <http://www.philly.com/inquirer/special/fumo/> (last visited Jan. 7, 2009).

<sup>77</sup> See Bob Young, *\$478,000 Donated in Rep. Dick's Name*, SEATTLE TIMES, Nov. 30, 2008.

a tax loophole for a person who gave \$1 million to the Charles B. Rangel Center for Public Service at City College of New York.<sup>78</sup>

The Committee of Seventy does not suggest that government can or should get deeply into regulating donations by private citizens to legitimate private charities and non-profits; such regulation would likely be counter-productive on many levels and hurt organizations that do much good in society. Yet we see a clear need for closer scrutiny of how public officials and donors can misuse non-profits to evade normal limits on campaign contributions and to skirt traditional laws against graft. Later in this document, we will propose a system of disclosure that may help shed some light on the murky nexus between politicians and non-profits.<sup>79</sup> We urge City Council to consider such a system as well under the umbrella of campaign finance regulation.

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<sup>78</sup> See David Kocieniewski, *House Ethics Panel Expands Rangel Inquiry*, N.Y. TIMES, Dec. 10, 2008, at A36.

<sup>79</sup> See *infra* pp. 66-68.

## **Part II: Ethics Reform**

Philadelphia is sorely in need of major ethics reforms that extend across the entire government. Most other major cities are further ahead in addressing many of the issues the city has not yet touched, such as lobbyist disclosure and nepotism, and dealing more aggressively on other issues, such as regulating gifts and outside employment.

In recent decades, scandals and investigations have caused residents to lose confidence in government and their elected representatives. Restoring that confidence is particularly important during tough economic times when the city's leadership is often forced to make painful decisions.

This Task Force has an outstanding opportunity to help government earn back the public's trust.

Part II of this briefing book outlines the Committee of Seventy's ethics reform recommendations. In some instances, we present complex issues that require further research.

# The Committee of Seventy's Recommendations

## I. Extend the Gift Policy across City Government

### **Recommendation: A specific, permanent gift policy should apply to every salaried city employee, appointed or elected.**

Allowing public employees to accept gifts for their personal use is simply an invitation to corruption. Even if the gift is given innocently, it creates the appearance of a conflict of interest if the gift giver is in any way associated with the City, perhaps as a contractor or a business owner that is regulated by the City. Philadelphia needs a strong, comprehensive policy to prevent such conflicts.

There are, of course, already limits on gifts that City employees may accept, but the system is inconsistent across city agencies. Different standards apply, for example, to City Council and their staffers and employees in the executive branch. Although the Board of Ethics has made some efforts to interpret the differing rules consistently, the time has come to enact a consistent, comprehensive, and reasonable gift rule applicable to all salaried city employees.

Under the City Code, city employees and officials may not accept any gift of "substantial economic value,"<sup>80</sup> although it does not specify a dollar value. What is substantial to one employee might not be substantial to another.

In 2004, then-Mayor John Street expanded on these rules for executive branch employees in an executive order<sup>81</sup> that banned them from accepting "anything of value, including any gift, gratuity, favor, entertainment, or loan" from a series of "prohibited sources," including any person or business who does business with the city or even who is inspected or regulated by the city. Since this definition conceivably applies to virtually every person or business located in or

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<sup>80</sup> Philadelphia Code § 20-604.

<sup>81</sup> Mayor John Street, Executive Order 002-04 (Aug. 12, 2004), *available at* [http://www.phila.gov/executive\\_orders/pdfs/executive%20orders/9.%20Mayor%20Street/2004/002-04.pdf](http://www.phila.gov/executive_orders/pdfs/executive%20orders/9.%20Mayor%20Street/2004/002-04.pdf).

doing any business in the city, it effectively banned all gifts outside of a few limited social and family contexts.

Mayor Street went even further by providing that if any such businesses or persons tried to offer a gift to a city employee, the city could choose to disqualify them – temporarily or permanently – from soliciting or receiving contracts from the city.

The Committee of Seventy applauds Mayor Street for setting specific guidelines for executive branch employees, and also Mayor Nutter for keeping those guidelines in place. He reiterated the policy in a recent letter to City vendors and prospective vendors that “offering such gifts, gratuities or tokens of appreciation to officials and employees of City departments, where your relationship is based on their City employment, including invitations to holiday parties, is prohibited.”<sup>82</sup> A letter explaining the parameters of the gifts policy was also sent to all administration employees.<sup>83</sup>

The time has come to expand these more specific rules to all salaried city employees, including those employed by City Council and the row officers, and to implement better mechanisms for monitoring gift giving and making judgments as to what gifts are reasonable and appropriate.

It makes no sense for the City to have one gift policy for some city employees, and a different policy for other city employees. Why assume that someone who works for a City Councilman is any less susceptible to influence than someone who works for the mayor? And switching jobs within city government, as many people do, should not have to involve relearning the ethics rules.

That’s why the City must adopt a specific, permanent gift policy that applies to salaried employees in all branches of city government, appointed or elected. We prefer the more stringent, and more specific, language included in the Executive Order to the more ambiguous

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<sup>82</sup> Letter from Philadelphia Mayor Michael Nutter to City Vendors and Prospective Vendors (n.d.), *available at* <http://www.phila.gov/pdfs/VendorsGiftLetter.pdf>.

<sup>83</sup> Letter from Philadelphia Mayor Michael Nutter to Administration Employees (n.d.), *available at* <http://www.phila.gov/pdfs/EmployeeGiftLetter.pdf>.



rules in the City Code. And it's the Executive Order, with an acceptable dollar figure, that should be written into the City Code. Executive orders are, by their nature, temporary. They can be amended or revoked by any mayor at the stroke of a pen. Despite Mayor Nutter's commitment to continuing Mayor Street's executive order, good government practice demands that such rules not depend on the good will and good judgment of this or any future mayor.

There are many models available to craft a gift policy, starting with the rules laid down under Mayor Street's executive order. It would be useful, however, to consider the approaches of other cities.

Pittsburgh, for example, says any public official, City employee or agent of the City "shall not solicit or accept from an interested party, nor shall any interested party offer or give anything of value to a public official, City employee or agent of the city."<sup>84</sup> It exempts only gifts from family members, non-monetary awards given for public service, small token gifts of "nominal value," travel expenses for official purposes, complimentary refreshments, and admission to charitable or civic events. It also permits accepting admission to cultural and athletic events, but puts a \$250 per year limit on such gifts for each official, of which no more than \$100 may come from any one person.

Los Angeles,<sup>85</sup> meanwhile, has a three part gift policy for what they consider "high level government officials," generally elected or appointed officials, and members of powerful boards and commissions. Gifts from registered lobbyists are restricted to \$25 per year per official; gifts from "restricted sources," generally city contractors or anyone seeking business with the city, are limited to \$100 per year; most other kinds of gifts are restricted to \$360 total per year, though the exact definition of this category varies by city agency. Gifts from family members are not restricted, nor are tickets to most political fundraisers or charitable events. The policy also allows some exceptions, including gifts of \$100 or less given in connection with special family events such as weddings.

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<sup>84</sup> Pittsburgh City Code § 197.07.

<sup>85</sup> See Los Angeles Municipal Code § 49.5.1.

New York City allows officials and employees to accept gifts worth less than \$50, but sets a \$50 limit from any one source, meaning an employee could accept two \$25 gifts from one source in a year, but not two \$50 gifts.<sup>86</sup> The city's ethics rules grant a variety of exceptions, including gifts from family members, and gifts "that are customary on family and social occasions" such as weddings, but such gifts are reviewable by the city's Conflict of Interest Board to make sure they are legitimate and not intended to influence an employees official conduct. The city has a well-developed set of criteria allowing officials to accept non-monetary awards and making clear that they are free to participate in civic events and functions, including eating the food provided to participants, provided it is part of their official duties.

The New York City policy makes one important exception: it bans gifts of any sort from registered lobbyists (with very limited exceptions, such as token gifts).<sup>87</sup> Elsewhere in this document, we call for Philadelphia to establish a system of lobbyist registration and regulation and we would support language in both that legislation and in any comprehensive gift policy making clear that city officials and employees may not accept gifts from registered lobbyists, whose avowed purpose is to influence action and policy and seek business with the city.

An expanded gift policy for Philadelphia should draw on these and other examples, and include the following elements:

- The city should adopt a reasonable and modest threshold for gifts that are acceptable, such as the \$50 limit imposed by New York. It's tempting to recommend a complete ban on gifts. It's cleaner and would help prevent unscrupulous officials and gift givers from slipping small gratuities under the radar. But there are weaknesses to a zero tolerance policy. It can lead to absurd situations such a forbidding the mayor from nibbling on a cookie at a reception, or accepting a business card or a pencil with a corporate logo. Even the mere act of walking into a luxury box at Lincoln Financial Field during a football game could be seen as a prohibited "entertainment" gift, given the extraordinary cost

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<sup>86</sup> See Conflicts of Interest Board of the City of New York, *available at* <http://www.nyc.gov/html/conflicts/downloads/pdf/gifts.pdf> (last visited Dec. 30, 2008).

<sup>87</sup> See New York City Conflict of Interest Board, Rules of the Board, [http://www.nyc.gov/html/conflicts/downloads/pdf2/Lobbyist\\_Rules.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/Lobbyist_Rules.pdf).

and demand for such boxes. While we agree that city employees shouldn't be wined and dined freely in such boxes, it seems absurd to think that the Mayor or Council members might have to stand outside the threshold of such boxes to exchange social pleasantries with those inside.

Adding a specific threshold, such as New York City's limited \$50 cap, relieves city employees from awkward situations, such as having to refuse a cup of coffee or some relatively meaningless trinket like a key chain or logo-bearing pencil. This is not to say that gifts under \$50 don't open the door to the appearance of a conflict of interest. After all, there are plenty of desirable objects that can be had for, say, \$49.99 and could be used to curry some small measure of favor from a city official. However, establishing a specific threshold takes the decision about whether something has "substantial economic value" (City Code) or is "anything of value" (Executive Order) away from the individual. It eliminates uncertainty in an area where ambiguity has led to significant ethical lapses by public officials.

If the city does not establish a specific monetary threshold for gifts, it should at least adopt a clear set of policies on how and when a city official may accept small items – such as food at a public reception – as part of their official duties. Even though New York City has a threshold for gifts, it also provides a lengthy and well-thought-out set of guidelines to help officials be more comfortable in attending receptions and other official functions. Without such a policy, Philadelphia could face a repeat of the case last year where the Ethics Board's General Counsel had to go through considerable mental gymnastics to determine if Mayor Nutter would violate the executive order banning gifts if he attended and ate food at his own inaugural events. He concluded, reasonably, the mayor would not.<sup>88</sup>

- The city should ban gifts from lobbyists as part of a comprehensive system of registration and regulation of lobbying, as we advocate for later in this document. It seems self evident that the very people who are specifically trying to solicit business or encourage

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<sup>88</sup> Philadelphia Board of Ethics, Advice of Counsel, Jan. 2, 2008.

action from the city should not buy favor from officials even in the smallest way. Some may argue that a public official would not be corrupted by a small gift, but we say the risk is too high and the symbolic conflict of interest is too great to allow gift exchanges between officials and the people seeking to lobby them.

Many states and several other major cities have such bans in place, including Los Angeles<sup>89</sup> and New York.<sup>90</sup> New York City went a step further in 2006 and banned gifts also from officers or employees of any organization that engages in lobbying, whether those people are personally registered as lobbyists or not.<sup>91</sup> Baltimore forbids public servants from soliciting gifts, including from lobbyists with matters before them.<sup>92</sup> Pittsburgh includes lobbyists as an “interested party” from whom gifts cannot be accepted.<sup>93</sup> Additionally, a federal court in Connecticut recently upheld a campaign finance law banning lobbyists from making political contributions to candidates running for state office.<sup>94</sup>

Pennsylvania's lobbying law<sup>95</sup> does not ban gifts from lobbyists, and even exempts "a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business." It also exempts "hospitality, transportation or lodging."<sup>96</sup> Indeed, the law could be read to sanction such gifts by making them reportable expenses on lobbying disclosure reports. City Council should set an example for Harrisburg by banning gifts from lobbyists outright.

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<sup>89</sup> See City of Los Angeles Administrative Code § 49.5.10(A).

<sup>90</sup> See City of New York City Conflict of Interest Board, Rules of the Board, §§ 1-01, 1-16.

<sup>91</sup> See *id.* § 1-16.

<sup>92</sup> See Baltimore City Code, Art. 8, § 6-26(a).

<sup>93</sup> See Pittsburgh City Code § 197.07. The definition of “interested party” includes: “(1) A person or agent having or seeking to obtain a contract, grant, employment or any financial relationship with the City or any of its departments, agencies, boards, commissions or authorities; (2) A principal, agent and/or attorney in legal proceedings in which the City is then an adverse party; or (3) A person with an interest that may be substantially affected by the performance or nonperformance of the official duties of the public official or City employee.” Pittsburgh City Code § 197.02(g).

<sup>94</sup> See Brian Baxter, *Hogan & Hartson Uphold state ‘Pay-to-Play’ Ban*, AMLAWDAILY, Dec. 23, 2008, available at <http://amlawdaily.typepad.com/amlawdaily/2008/12/hogan-hartson-helps-uphold-state-pay-to-play-ban.html> (last visited Dec. 28, 2008).

<sup>95</sup> 65 Pa. C.S. § 13A01 *et seq.*

<sup>96</sup> *Id.* § 13A03.

- All financial disclosure forms from elected and senior appointed officials should be available and searchable online. The new gift ordinance should require high ranking city employees to disclose in detail to the Board of Ethics any gifts they may receive or face stiff penalties. When the Miami-Dade Commission on Ethics and Public Trust imposed the strictest allowable penalty, \$500, on Miami Police Chief (and former Philadelphia Police Commissioner) John Timoney for failure to disclose as a gift his free use of a Lexus hybrid SUV for 14 months, the low level of the fine was criticized by several Commission members.<sup>97</sup>

Creating a strong gift policy that extends across city government should be a top priority. There are models from other cities to draw from, and the executive order provides a good base from which to begin.

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<sup>97</sup> See Charles Rabin, *County is urged to put tight lid on gifts*, MIAMI HERALD, Feb. 1, 2008. Chief Timoney later reached a settlement with the Florida Commission on Ethics that required a \$500 fine and an admission that he violated the state's required government disclosure rules. See <http://cbs4.com/local/miami.police.chief.2.809287.html>.

## II. Enact a Strong Lobbyist Registration and Disclosure Law

### **Recommendation: All lobbyists should be required to register with the City and to regularly disclose their clients, spending and the officials they are lobbying.**

Astonishingly, the city of Philadelphia has no provision for regulating lobbyists of any sort. It is the largest city in the U.S. with no regulation on this at all.<sup>98</sup> The City doesn't even have a way to determine who is a lobbyist.

The immediate need for such a system is unquestionable; there may be no more compelling ethics reform that this Task Force can recommend. An excessively cozy relationship between officials and lobbyists, with a lack of transparency and accountability, has led to some of the city's most embarrassing scandals, including the pay-to-play investigation that netted City Treasurer Corey Kemp and the late attorney Ron White, who was simultaneously a lobbyist and chief fundraiser for then-Mayor John Street. Without clear regulation, there is no reasonable way for the public to see who represents whom and to determine where there may be conflicts of interest, or even outright corruption.

A registry of lobbyists, with strong public disclosure requirements for those lobbyists, would allow the public to see the otherwise hazy relationships between the people entrusted with public money and the people seeking that money. But it's more than just a good-government nicety – it would be a useful tool in regulating campaign contributions and gift giving, as we discuss elsewhere in this document.

There is no reason why Philadelphia cannot enact a lobbyist regulation and disclosure law quickly since models abound. Any system should have a few basic features:

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<sup>98</sup> New York, Los Angeles, Chicago, Houston, Phoenix, San Antonio, San Diego and San Jose each have lobbyist registration and disclosure requirements. Certain Philadelphia officials are required to disclose gifts over \$200 and executive branch employees are generally prohibited from accepting gifts from a person or business seeking legislative or administrative action. However, the City's financial disclosure forms – on which gifts are listed – are not available online.

- The law should be drafted carefully to include lawyers, but with utmost consideration to the fact that only the state Supreme Court is permitted to regulate the “practice of law,” and that certain lobbying activities performed by lawyers are “practice of law.”<sup>99</sup> It is for that reason that careful consideration must be given to the attorney-client relationship, including lawyers’ lobbying activities relating to legal cases and administrative proceedings before city agencies and quasi city-agencies.<sup>100</sup> Nor would we want to carelessly outlaw grassroots advocacy by regular constituents or volunteer activists; the City may want to look at Pennsylvania state law, which exempts people who receive no pay for lobbying or who are working on behalf of a church in defense of the free exercise of religion.<sup>101</sup>
- Any meaningful law must require detailed disclosure of total spending and all lobbying activity, including who paid the lobbyist, how the lobbyist spent the money, and who in government the lobbyist lobbied. New York City, for example, has a well-developed system that requires detailed public reporting from anyone who spends more than \$2,000 per year on trying to influence the government.<sup>102</sup> Baltimore has even stricter lobbyist reporting laws that require detailed disclosure on a myriad of topics such as meals and trips, speaking engagements, and itemization of gifts, among others.<sup>103</sup> Pennsylvania’s lobbying law requires expense reports from anyone who is spending more than \$2,500 per quarter on lobbying.<sup>104</sup> The Committee of Seventy supports a threshold for Philadelphia that is considerably lower than the state’s, more like New York’s \$2,000 per year limit. The city should also consider requiring more frequent disclosure, such as New York State’s bi-monthly requirement.<sup>105</sup> City Council should give clear authority and sufficient resources for the Ethics Board to monitor lobbying disclosures and aggressively pursue violations.

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<sup>99</sup> See *Gmerek v. State Ethics Commission*, 807 A.2d 812 (2002).

<sup>100</sup> See *id.*

<sup>101</sup> See 65 Pa. C.S. § 13A06.

<sup>102</sup> See City of New York, Office of the City Clerk, Advisory Opinion No. 1987-13 available at <http://www.cityclerk.nyc.gov/html/lobbying/1987-13.shtml> (last visited Dec. 27, 2008).

<sup>103</sup> Baltimore City Code, Art. 8 §§ 8-19, 20; see also City of Phoenix, Ariz., Lobbyist Handbook (Rev. Aug. 2004).

<sup>104</sup> See 65 Pa. C.S. § 13A05 (d).

<sup>105</sup> See New York State Lobbying Act § 1- h.

- The system should strictly ban "contingent compensation," which means lobbyists only get paid if they succeed in getting the city to take some action (or not take an action). This kind of payment is an open invitation to corruption, since it places an enormous pressure on the lobbyist to win at all costs.
- The city should ban specific practices by lobbyists that create a clear conflict of interest. For example, lobbyists should be forbidden from serving on a candidate's campaign committee or political action committee. And lobbyists should not be allowed to charge a fee to a client with the understanding that money would be channeled into campaign contributions. The state law could be used as an example of language to prohibit both of these.<sup>106</sup>
- The city should, as we will argue elsewhere in this document, forbid former government officials from lobbying their former colleagues for at least one year after leaving government service.<sup>107</sup> New York City and Pennsylvania already have such a ban. The U.S. Congress recently increased its ban on lobbying by former members from one year to two.
- Philadelphia's new lobbyist regulation should, to the greatest extent possible, correlate to the already-existing lobbyist laws and regulations existing in the Commonwealth of Pennsylvania. As mentioned elsewhere, Pennsylvania already has a Lobbyist Disclosure Law and the Department of State also has regulations pertaining to lobbyists. Philadelphia's lobbyist regulations should not be too narrow or too broad so as to run afoul of the systems already in place. To the greatest extent possible, mirroring the existing state system is also likely to reduce the costs of maintaining Philadelphia's own lobbyist registration and disclosure system.
- Philadelphia should develop policy and educational manuals for principals and lobbyists in order to facilitate access to information and increase the level of knowledge required to

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<sup>106</sup> 65 Pa. C.S. § 13A07.

<sup>107</sup> See *infra* pp. 57-59.



comply with ethics requirements. The policies and manuals should include hypothetical situations with answers as to how to act in compliance with the ethics laws in specific scenarios. The policies and manuals should be assembled with the joint effort of the Board of Ethics and the Chief Integrity Officer.

Philadelphia must move swiftly to enact a lobbyist regulation and disclosure law that will shed light on the potential for corruption by special interest groups trying to influence public officials and the legislative process. Unlike the campaign finance, this is not a matter of mending an existing law. There is no law. And the city has been humiliated far too many times because of its absence.

### **III. Enact a Nepotism Policy across City Government**

Recommendation: No City employee should be permitted to hire, promote, or recommend the hiring or promotion of designated family members.

Philadelphia has no policy whatsoever barring city employees from hiring or promoting, or recommending the hiring or promotion, of a family member. Over time, a great many wives, husbands, children, and other assorted relatives of city officials have been on the public payroll, and even under the direct management of their powerful family member.

How are the residents of Philadelphia, most of whom have limited access to the lucrative jobs and the resume-building internships and board seats that city government provides, supposed to interpret the fact that the kin of public officials and employees wind up in these posts? How are rank-and-file city employees supposed to react when they see their better-connected colleagues hired or advanced by virtue of their family connections? Nepotism in city government is a direct slap in the face to the public and to public employees. Enacting a nepotism policy would help curb the disillusionment of a population weary of conflicts of interest and lax ethical standards in city government

There are those that will say, of course, that these family members provide vital services and were chosen because they were the most qualified for the job. That may be true, but the reality is that there are more than 1 million people living in Philadelphia. It seems nearly inconceivable that city government is overflowing with jobs that are so specialized that there is literally only one in a million who can perform the task. And it is even more astonishing that the one-in-a-million chance just happens to strike in the form of a family member of a public official.

The Board of Ethics has made clear that it takes a dim view of nepotism but lacks any authority to do anything about it because of the striking hole in the city law. In 2007, the board was asked to consider whether a city employee could hire a close relative for a volunteer position.<sup>108</sup> While the Board could not rule against the request because the city lacks any nepotism policy, Board

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<sup>108</sup> Philadelphia Board of Ethics, Confidential Opinion No. 2007-002 (Aug. 22, 2007).

members said such hiring would "create the appearance of impropriety."<sup>109</sup> They further said that, if asked, they would publicly recommend that City adopt a strong and enforceable nepotism policy.<sup>110</sup>

"A City official's appointment of a close relative to a position (whether they are compensated or not), invariably creates the perception that the person is being selected based upon their relationship to the appointing official rather than upon their qualifications, regardless of how well-qualified they may be," the board wrote in the Confidential Opinion.<sup>111</sup>

We could not agree more.

The Board of Ethics did raise one intriguing possibility. In its opinion, the board pointed out that it is possible to read the existing conflict of interest provision<sup>112</sup> of the city's ethics code to bar nepotism in some cases. According to that provision, any city employee, official, or member of Council who has a financial interest in an action by the city must recuse himself from that action. The "financial interest" also extends to "a parent, spouse, child, brother, sister or like relative-in-law."<sup>113</sup> In its decision, the board said that such a provision could, in theory, be used to ban any hiring or personnel action related to a family member of an official, or even a resume-enhancing volunteer position that could be used to further a relative's career later.

But we shouldn't have to rely on the Board of Ethics to push the limits of its authority to ban nepotism. There should be an explicit, comprehensive, and reasonable prohibition on nepotism that prevents any city official from hiring, promoting, or even recommending a relative for hire or promotion by others in city government. Other cities, such as Baltimore, have regulations prohibiting public officials from using "public funds to employ a relative of that elected official or of any other elected official."<sup>114</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Philadelphia Code § 20-607.

<sup>113</sup> *Id.*

<sup>114</sup> Baltimore City Code Art. 8 § 6-39.

Pittsburgh also takes a strict but straightforward approach to nepotism: a public official or employee of the City may not hire or promote a family member, nor may the public official or employee advocate the hiring or promotion of a family member to any position of employment under the jurisdiction or control of the city. Pittsburgh prohibits an employee from working under a family member who currently works for the City. The Pittsburgh Ethics Hearing Board is given discretion to waive these requirements if it finds that the public interest would not be jeopardized by the appointment or promotion of the family member.<sup>115</sup>

New York City, meanwhile, does not ban family members from working together, but it does prohibit a city employee from taking any part in any decision related to a relative, from hiring to promotion to discipline to firing.<sup>116</sup> Chicago simply bans city officials from hiring, or encouraging the hiring, of any relative within the same agency.<sup>117</sup>

The Committee of Seventy supports the development of a tough policy against nepotism, combining the best features of the examples above, not simply forbidding family members from working together in the same agency, but banning city employees from taking any formal or informal action that relates to a close relative anywhere in city government, whether that be hiring, promotion, discipline, or firing. The policy should include:

- A flexible and common sense definition of relative, extending it to immediate relatives and domestic partners, and but not unnecessarily cramping the ability of extended relatives to find work with the city. The ban should set a higher bar against directly employing even extended relatives. There no reason a city employee’s cousin should not also have a job with the city, for example, but he or she should not be working for that employee directly. The policy should also make clear that city employees and officials

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<sup>115</sup> City of Pittsburgh Code § 197.05.

<sup>116</sup> New York City Charter chapter 68: Conflicts of Interest.

§ 2604(b)(3): No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

§ 2601(5) Associated: a person or firm “associated” with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

<sup>117</sup> Municipal Code of Chicago § 2-156-130.

should not hire or supervise anyone with whom they have an unusually close personal relationship.

- A comprehensive disclosure provision, at least for high-ranking employees. Elected and appointive officials should have to disclose to the Board of Ethics whether any close relatives work for the city (or lobby the city) and the Board should be empowered to investigate whether those officials have taken any actions related to the employment of those relatives.
- A broad scope to make clear that the ban on nepotism includes both paid and unpaid positions. There are plenty of unpaid positions with the city, such as board and commission memberships, that have some power and potentially some economic value to the persons holding them. City officials should not be in a position to dole those jobs out to relatives.
- A provision whereby the Board of Ethics could grant a waiver in the rare case where it turns out a family member does in fact have some important and specialized skill that the city requires. The waivers should, however, be considered and granted in public and the bar should be set as high as possible. The Board should start with the presumption that nepotism is never acceptable and the burden should rest on the applicant to prove that his or her skills are so vital as to outweigh the compelling public interest in preventing nepotism.

While an immediate ban on nepotism would send a strong message to the public, the Committee of Seventy recognizes that it is probably necessary to grandfather any family members who now hold positions with the city. We would hope that such grandfathered employees are subject to continuing monitoring by the Board of Ethics.

The Committee of Seventy urges the Task Force to urge the swift adoption of a nepotism policy. In his 2007 “The Nutter Plan for Ethics and Government Reform Now,” then-candidate Michael Nutter vowed to “prohibit all officials and employees who fall under the Mayor’s control from

approving the hiring of a relative, or recommending the hiring of a relative, for a job, contract, or sub-contract in any City or City-related office, department, board, commission, agency or authority.”<sup>118</sup>

While the mayor was careful to limit his pledge to officials and employees reporting to him, there is no reason why this standard should not apply across the board to all of city government. It would make no sense, and in fact would be embarrassing to the city, for only one branch of local government to have a nepotism policy. The Task Force should make sure this does not happen.

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<sup>118</sup> See “The Nutter Plan For Ethics and Government Reform Now” at [www.nutter2007.com](http://www.nutter2007.com).

## IV. Regulate Outside Employment

Recommendation: With certain publicly disclosed exceptions, Philadelphia should ban outside employment with any firm that does business with, or seeks to do business with, the city. Higher standards of disclosure and approval should be applied to elected officials and high ranking employees.

It is not unusual for Philadelphia's city employees to hold second jobs, even those at the highest level of government. For example, it is well known that City Councilman Jim Kenney works for Vitetta Architects & Engineers, Councilman Brian O'Neill and Bill Green are "of counsel" at Fox Rothschild LLP and Pepper Hamilton LLP respectively.

Philadelphia isn't entirely alone in this practice - New York City allows city council members to hold second jobs.<sup>119</sup> But the Committee of Seventy believes that Philadelphia could and should set an example by putting some controls on this blanket policy.

Outside employment is a sensitive matter; the possibility of creating conflicts of interest and abuse is enormous. For example, New York City Housing Authority employees were recently banned from moonlighting after a city employee used city resources to work for another company.<sup>120</sup> In Miami, three city employees were accused of corruption and the authorities questioned the propriety of employees holding second jobs.<sup>121</sup>

Moonlighting can create a glaring conflict of interest when the outside employer has, or is seeking, work or financial assistance from the City. Even the most innocent, above-the-table transactions, even when an official is careful to publicly recuse himself from decisions related to his employer, still creates the appearance of conflict of interest. How is the public to be sure that a particular firm or agency didn't benefit from having a powerful public official as an employee or consultant? How is the public to be sure that a powerful public official will not be moved to view his employer more favorably, or for others in city government to feel pressure to view his employer more favorably, and be tempted to help out in some subtle way?

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<sup>119</sup> A. Lisenberg & K. Danis, *Council Takes Raise as Some double-Dip*, N.Y. DAILY NEWS, Oct. 16, 2007, at News.

<sup>120</sup> Ray Rivera, *No Moonlighting for City Elevator Employees*, N.Y. TIMES, Dec. 16, 2008, at A33.

<sup>121</sup> Tania Valdemoros, *Accused Miami Beach Inspectors had Outside Jobs*, MIAMI HERALD, Apr. 13, 2008, at MB.

The temptation for abuse is obvious. If you draw a salary, your employer has a direct means of control over you, no matter how independent you may believe you are.

Some public officials argue that their work for outside firms is carefully designed to keep them at arm's length from any governmental lobbying or contracting the firms may do. Yet no matter how hard a public official tries to create a distance, there is still the possible appearance of impropriety.

And the public is still left to wonder whether the city employee might be using city time and resources, however subtly, to benefit his outside employer. This is already barred under city rules of course, but it would be naïve to think that the line between a city job and a second non-city job is never crossed. The on-going trial of former State Senator Vince Fumo, for example, has featured extensive testimony that he used state employees to perform a variety of personal tasks, justifying it by saying that the personal tasks freed him up to do public business. The city should draft its rules to make crystal clear that this is never an acceptable justification for personal use of city resources.

The current City Code is weak on the issue of outside employment. It does require officials to disclose obvious conflicts of interest or financial interests in any actions they may take and to recuse themselves as necessary.<sup>122</sup> It also requires that city officials not "directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others."<sup>123</sup>

This is not adequate to ensure that public officials are attending to their city jobs and are not compromised by outside employment. Philadelphia needs much stricter and clear rules that specifically, rather than generally, outline the type of improper outside employment. For example, the Municipal Code of Chicago has rules governing use of city time and city owned-

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<sup>122</sup> Philadelphia Code § 20-608.

<sup>123</sup> *Id.* § 20-609.



property, use of city title or position, use of confidential information gained through a position with the city, influencing governmental decisions relating to outside employers, giving advice or assistance to outside employers on matters concerning the operation or business of the city, representing outside employers in proceedings before city agencies or courts, and having a financial interest in any contract or business transaction with the city.<sup>124</sup>

We recognize the economic reality that some city employees need second jobs to support themselves and their families. To be sure, many public servants could be earning higher salaries if they had chosen to remain in the private sector, but they still earn far more than the \$34,767 median household income of most Philadelphia residents in 2007, according to the Census Bureau.<sup>125</sup> City Council members by law can't earn less than \$98,000.<sup>126</sup> We suspect it would be hard for most Philadelphia residents who earn anywhere close to the median salary to generate much sympathy for high-level public officials who say they need extra income on top of their public salaries.

Seventy is well aware that limitations on outside employment will be a difficult sell to City Council. And we certainly would not want to ban rank-and-file city employees from having a second job to make ends meet. Short of enacting a complete ban at this time, there should be a stronger policy governing when and how employees at all levels of government may take outside jobs. The policy should include:

- Banning outside employment with any firm that does business with, or seeks to do business with, the city.
- Permitting flexibility by allowing the Board of Ethics to create carefully crafted but limited exemptions, such as working for a longstanding family business or teaching classes in high schools or universities provided the connection with the institution is purely educational and the employee refrains from making any government decisions that

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<sup>124</sup> Municipal Code of Chicago, § 2-156; *see also* Los Angeles Ethics Commission, *The Public Trust, Outside Employment: Five Quick Tips*, Vol. 11 Iss. 1 (May 2008) (providing guidelines for city employees who want to acquire a second employment).

<sup>125</sup> Census Bureau Information, *available at* <http://factfinder.census.gov> (last visited Dec. 30, 2008).

<sup>126</sup> Philadelphia Code § 20-305.

benefit the institution. Nor would we want to prevent a city employee from expressing his or her religious convictions. Work on behalf of religious institutions should be exempted, provided the purpose was purely pastoral or spiritual and the employee refrains from making any government decision that affects the institution. In considering exemptions, we strongly urge the Board of Ethics to consider whether it is appropriate for city employees to serve on paid boards of organizations that do city business.

- Making the limits on outside employment proportional – the bar should get higher as the power and responsibility of the public official increases. The regulation should not be drafted so narrowly, for example, as to prevent a city-paid teacher or police officer from working a private second job to earn more money as long as they are not acting on city time or using city resources.
- Reiterating that under no circumstances should city equipment, supplies, cars or other government resources be used to benefit an outside employer.
- Requiring careful disclosure to, and scrutiny by, the Board of Ethics.

Disclosure is sufficiently important to deserve further discussion. Since even the limited right to engage in outside work opens the possibility of abuse and can create an appearance of a conflict of interest, the Board of Ethics needs the power to review all outside employment by high ranking elected and appointed city officials. The Committee of Seventy urges the Task Force to recommend a system of reporting and disclosure, which should be readily available online for public inspection. Rank-and-file city employees should be required to get permission from supervisors for outside work; current Civil Service regulations permit agencies to require such approval but don't require it.<sup>127</sup> Elected and appointed city officials should be required to disclose such work on their annual disclosure forms, including the specific duties and work performed and the full value of any salary or benefits they receive.

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<sup>127</sup> Philadelphia Civil Service Reg. 33.02.

The current rule only requires that salaried employees and members of boards and commissions must disclose any employment for which they receive \$500 or more,<sup>128</sup> but it does not require officials to disclose the exact amount of the compensation beyond that. The Committee of Seventy believes this is inadequate, at least for elected and appointed officials, and that the public has a right to know the full compensation high ranking public servants are earning from outside sources. Some will argue, no doubt, that this is personal information, but we believe requiring disclosure is imperative given the high potential for abuse and the public's compelling right to know. It is a long-held legal principle that public officials forfeit some expectation of privacy when they are elected or appointed, so we do not think this disclosure requirement is unreasonable.

We also believe that the Board of Ethics should make all such disclosures, and the details of any exceptions it grants, available to the public in an easily-searchable online format.

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<sup>128</sup> Philadelphia Code § 20-610(2)(e).

## V. Strengthen the Rules Governing Post-City Employment

Recommendation: City employees, at the very least high ranking employees and elected officials, should be prohibited from accepting employment from firms that do business with the city for a limited time period, even if they do not work directly on contracts they once directly supervised.

It is understandable that City officials who are considering leaving public service, whether voluntarily or due to an election or change of administration, would be seeking work. It would be inappropriate for the City to try to prevent its employees from discussing any possible future employment, but the City needs to do everything it can to discourage outside firms from using lucrative job offers as inducements for public officials to award business or take legislative or administrative action. The dangers of this were highlighted by the case of Darleen Druyun, a senior Air Force procurement official who used her influence to steer a huge contract to Boeing in return for lucrative jobs from the company for herself and some family members.<sup>129</sup>

A less disturbing, but nonetheless questionable, situation came up in Philadelphia in 2006, when Dianah Neff, the City's Chief Information Officer, left her job to join a telecommunications consultancy with which she had close dealings – and to which she had been responsible for awarding no-bid contracts – in building the Wireless Philadelphia project. At the request of then-Mayor John Street, the City Board of Ethics<sup>130</sup> considered the case and found no evidence that she had violated City ordinances by profiting from the relationship or taking inappropriate actions to benefit the company while she was still in government service.

But the Board still criticized Neff, saying it created the appearance of a conflict of interest to have a powerful City official join a City contractor with which she had such close relations. The board's ruling highlights the fact that the City lacks specific policies to prevent such an appearance of conflict of interest.<sup>131</sup>

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<sup>129</sup>See Rebecca Leung, *Cashing In For Profit?*, CBSNews.com, Jan. 5, 2005, available at <http://www.cbsnews.com/stories/2005/01/04/60II/main664652.shtml>.

<sup>130</sup>The Ethics Board that considered the Dianah Neff issue was established by Mayor John Street's Executive Order in August 2004. The current independent Board of Ethics, which was approved by the voters in May 2006, was formally installed in November 2006, two months after this opinion. See [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard).

<sup>131</sup>See Philadelphia Board of Ethics, In Re: Dianah Neff, Sept. 20, 2006, available at [http://www.phila.gov/ethicsboard/pdfs/Neff\\_Report.pdf](http://www.phila.gov/ethicsboard/pdfs/Neff_Report.pdf).

While there is probably no perfect system for preventing such appearances of a conflict of interest, or of outright abuse such as the Druyun case, there should be articulated checks on job searches by individuals leaving City government. The City's current Ethics Code requires only that a City employee wait at least two years before becoming "financially interested" in any contract or venture he had a direct hand in approving during his time in City service.<sup>132</sup> While this might prevent some kinds of quid-pro-quo offers of jobs to City officials, we believe it is inadequate.

The Committee of Seventy urges the Task Force to recommend a post-City employment policy that prohibits City employees, at least high ranking employees and elected officials, from accepting employment for a specified time period from firms that do business with the City, even if they do not work directly on contracts they once directly supervised. At a minimum, high-ranking employees and elected officials should be prohibited from registering as a City lobbyist for two years after leaving City employment. The U.S. Congress, for example, prohibits former members from lobbying their colleagues for two years after leaving Capitol Hill and high ranking staffers from lobbying for one year.<sup>133</sup>

The City of Chicago's Governmental Ethics Code, for example, forbids a former official or employee from representing a person (which also includes businesses and organizations) if the official or employee was counsel of record or participated in the proceedings involving that person during his term of office or City employment. Additionally, the Code forbids former officials or employees from, for a period of one year after the termination of the term of office or employment, assisting any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment.<sup>134</sup> Similarly, the City of Baltimore imposes a two-year restriction after leaving office or terminating employment, forbidding former public servants from assisting a party in a matter for compensation if: (1) the

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<sup>132</sup> Philadelphia Code § 20-607(c).

<sup>133</sup> See Standing Rules of the Senate, Rule XXXVII, Conflict of Interest, §§ 8-9; Rules of the House of Representatives, Rule XXVII, Disclosure By Members and Staff Of Employment Negotiations.

<sup>134</sup> Municipal Code of Chicago § 2-156-100.

matter involves City government; and (2) the former public servant significantly participated in the same matter as a public servant.<sup>135</sup>

To avoid conflicts of interest, the Committee of Seventy again urges the Task Force to recommend a more robust post-city employment policy – most importantly for elected officials and high-ranking employees – containing the elements discussed in this section. This reform would avoid potential conflicts of interest, yet still provide enough flexibility to people leaving their city jobs for other opportunities.

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<sup>135</sup> Baltimore City Code Art. 8 § 6-22.

## **VI. Review Current Restrictions on Political Activities and Extend Revised Provisions to all Non-Elected City Employees**

Recommendation: The current restrictions on the political activities of non-elected city employees should be reassessed. Revised provisions should be applicable across city government (with the exception of any political activity rules that apply exclusively to elected officials).

Philadelphia has numerous rules restricting when and how City employees may campaign or raise funds or engage in various other forms of political advocacy not related to their official jobs, but the rules are inconsistent, unclear, poorly enforced, and, in some cases, so broad as to be counterproductive. There must be specific and unequivocal ethics provisions that thicken the wall that separates official city business from political activity. And it goes without saying that public employees and officials – paid or unpaid, elected or appointed – should not engage in any political activity on public time and with public resources.

Existing rules governing political activities by City employees are a complex patchwork. Section 10-107 of the Philadelphia Home Rule Charter, which was adopted in 1951, outlines the restrictions on the political activities of City officials and employees.<sup>136</sup> The rules for civil servants are, by and large, fairly well-established and clear, but because of some long-standing legal quirks and administrative decisions, they do not apply to all City employees evenly. For example, a 1952 ruling by the City Solicitor exempts employees of City Council from most of the rules, with the exception of fundraising.<sup>137</sup> And the terms of the 1951 merger between the City and County of Philadelphia left the employees of a handful of officials, including the Register of Wills, exempt from the Home Rule Charter, which governs political activity.<sup>138</sup> Elected officials are also subject to the political activity restrictions. However, they are permitted to take part in political parties, clubs, and political campaigns as long as they are not in any way involved in fundraising.<sup>139</sup>

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<sup>136</sup> Philadelphia Home Rule Charter § 10-107.

<sup>137</sup> Formal Opinion No. 50, from Solicitor Abraham Freedman to Council President James Finnegan (Oct. 15, 1952).

<sup>138</sup> See City of Philadelphia Law Department, Political Activity Guide 6 (2005), available at [http://www.phila.gov/law/pdfs/Political\\_Activity\\_G.pdf](http://www.phila.gov/law/pdfs/Political_Activity_G.pdf).

<sup>139</sup> Philadelphia Home Rule Charter §10-107(3), (4).

Given the inconsistencies of the City's political activity restrictions, the Committee of Seventy urges the Task Force to recommend that City Council undertake, with the assistance of the Board of Ethics and the City's Chief Integrity Office, a thorough review of the complete list of restricted political activities. Once the review is completed, all agreed-upon restrictions should be applicable across City government, including staff of City Council members. (We do not advocate changing the rules that apply specifically to elected officials.)

Until the political activity restrictions are changed, we urge the Task Force to recommend the following:

- We find it unseemly and inexplicable that Council staff is free to campaign and engage in other political activity while the Mayor's staff is not. There is no logical distinction. Although they both work for elected officials, City Council's staff and appointed members of the Mayor's administration, are public servants just as much as any civil service employees. We recognize that employees of City Council have a direct stake in making sure their boss gets reelected. However, like other non-elected city employees, they do not belong on the campaign trail. If necessary, the City Solicitor should be asked to reconsider the ruling issued by her 1952 predecessor.

Many legislative bodies successfully restrict political work by staff members. Congress, for example, has a well-established wall between campaign and legislative offices – any staff member wishing to work on the campaign must take a leave of absence without pay to do so and there is a clear and limited list of activities and materials that a member's office can share with the campaign.<sup>140</sup> Anyone with a lingering hesitation about the importance of including City Council staffers in the political activity restriction policy should read the July 2008 indictment of 10 Democratic staffers of the Pennsylvania

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<sup>140</sup>See U.S. House of Representatives, Committee on Standards of Official Conduct, House Ethics Manual 135-137, available at [http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf). The House Ethics Manual recommends that employees keep strict records of their time expended to show they did not conduct partisan activities on official governmental time. However, the Hatch Act imposes greater restrictions on executive branch personnel. See Hatch Act, 5 U.S.C. § 7321 *et seq.*; *Alexander v. Merit Systems Protection Bd.*, 165 F.3d 474, 482 (6th Cir. 1999) (holding the Hatch Act applies to employees regardless of the employees' leave status).



House of Representatives that included, among other things, allegations of financial rewards for working on political campaigns on state time.

- The ban on political activity by City employees applies even when an employee takes a leave of absence.<sup>141</sup> Both Congress and the Federal Civil Service, however, permit public employees to engage in partisan political activity so long as they are on an authorized leave without pay. The Committee of Seventy believes this is a reasonable approach.
- The City's current rules also ban campaign activities in state and national races, even races that have nothing directly to do with Philadelphia. Needless to say, all City employees should continue to be prohibited from using official time and resources for any political campaign – federal, state or local. However, we favor relaxing the rules for non-elected employees who wish to be involved with, for example, presidential campaigns, or races well outside the geographic range of the City as long as they do not in any way represent that they are acting in their capacity as a government employee. At the very least, the prohibition should be lifted for unpaid members of Boards and Commissions.
- Officers or members of the Philadelphia Police Department are the only City employees who are prohibited from making political contributions.<sup>142</sup> The Committee of Seventy seriously questions the constitutionality of banning this form of private political speech, particularly considering a similar ban on fire fighters was struck down by a federal court as unconstitutional in 2003.<sup>143</sup>
- In looking at how various jurisdictions regulate political activity, we encountered an intriguing provision that Council might want to consider.<sup>144</sup> Pittsburgh's otherwise

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<sup>141</sup> See City of Philadelphia Law Department, Political Activity Guide 6, available at [http://www.phila.gov/law/pdfs/Political\\_Activity\\_G.pdf](http://www.phila.gov/law/pdfs/Political_Activity_G.pdf).

<sup>142</sup> Philadelphia Home Rule Charter §10-107(3).

<sup>143</sup> See Philadelphia Home Rule Charter § 10-107(3); *Philadelphia Fire Fighters Union Local 22, AFL-CIO v. City of Phila.*, 286 F. Supp. 2d 476 (E.D. Pa. 2003).

<sup>144</sup> See, e.g., City of Pittsburgh, Ethics Handbook 5 (2008), available at [http://www.city.pittsburgh.pa.us/mayor/BAC/ethics/08\\_ethics\\_handbook.pdf](http://www.city.pittsburgh.pa.us/mayor/BAC/ethics/08_ethics_handbook.pdf) (prohibiting city employees from “engaging in political activity during working hours and at all times in City offices”); N.Y.C. Charter § 2604(b)(15)

painfully sketchy policy on political activity imposes a \$100 per election cycle limit on contributions by public employees to their bosses (that would be the mayor for executive branch employees, City Council for legislative branch employees, and so on). For senior appointive officials, the limit rises to \$200.<sup>145</sup> Such a provision would help protect employees from feeling undue pressure to pay up to keep their jobs while still allowing them to exercise their right to free speech in the form of campaign donations.

- While the current rules ban political activity on City time, or using official authority for political purposes, they do not explicitly ban the use of city resources, including offices, equipment, and stationery,<sup>146</sup> common sense, however, should certainly warn any City employee away from misusing resources in this way. So that there is no confusion, however, the Committee of Seventy urges the Task Force to recommend the enactment of specific rules preventing the use of any public resource for private or partisan political purposes. This isn't a revolutionary suggestion – the Legislative and Executive branches of the federal government have clear rules forbidding the use of official offices, time, equipment, and other resources for political purposes.<sup>147</sup> The rules of the U.S. House of Representatives on how members must separate their congressional and campaign operations, including specific and reasonable rules for ways the offices must necessarily interact, should be carefully examined as a good model on how to specifically regulate the political activity of elected officials and employees acting in their public service capacities.<sup>148</sup>

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(restricting the political activities of elected officials and other public servants who are charged with substantial policy discretion); Phoenix City Charter, chp. XXV, § 11 (prohibiting any city employee, except elected officials, from participating in political activities other than voting and privately expressing opinions); Municipal Code of Chicago § 2-156-140 (restricting city officials and employees from soliciting contributions and serving on political fundraising committees).

<sup>145</sup> See City of Pittsburgh, Ethics Handbook 5, § VI (E) (2008), *available at* [http://www.city.pittsburgh.pa.us/mayor/BAC/ethics/08\\_ethics\\_handbook.pdf](http://www.city.pittsburgh.pa.us/mayor/BAC/ethics/08_ethics_handbook.pdf).

<sup>146</sup> See Philadelphia Civil Service Reg. 29.

<sup>147</sup> See U.S. House of Representatives, Committee on Standards of Official Conduct, House Ethics Manual 121-135, *available at* [http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf). Other cities have rules prohibiting the use of city resources on partisan political activity. See Los Angeles City Code § 49.5.5 (prohibiting use of city “facilities, equipment, supplies, or other city resources for campaign-related activities”); Massachusetts State Ethics Commission, Commission Advisory No. 84-01, *available at* [http://www.mass.gov/ethics/adv8401.htm#N\\_1\\_](http://www.mass.gov/ethics/adv8401.htm#N_1_) (prohibiting the use of government resources for political activities).

<sup>148</sup> See U.S. House of Representatives, Committee on Standards of Official Conduct, House Ethics Manual 121-135, *available at* [http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf).

The Committee of Seventy recognizes that reexamining the current restrictions on political activities will take some time and that changes would involve amending the Philadelphia Home Rule Charter. However, we feel it is an exercise that is well worth the effort.

## **VII. Relax Political Activity Restrictions on Volunteer Members of City Boards and Commissions**

Recommendation: Volunteer members of City boards and commissions should not be bound by the same political activity restrictions that apply to salaried city employees; those restrictions should be relaxed so as not to deter public service.

According to two 2007 rulings by the Board of Ethics, since members of twenty-five City boards and commissions are to exercise a significant power of government, they are bound by the same political activity rules as most other salaried city employees.<sup>149</sup> In fact, they are more restricted than staff of City Council members.

The Committee of Seventy urges the Task Force to recommend loosening these restrictions. The Board of Ethics' rulings overturned half a century of City precedent of applying the restrictions based on whether or not those members received compensation. The Board's rulings also in effect created a more expansive system pertaining to Philadelphia boards than applies to important regional authorities such as the Philadelphia Regional Port Authority or SEPTA, which are governed by the State Ethics law. The state applies political activity restrictions to members of boards that can authorize the spending of public money;<sup>150</sup> the Board of Ethics' expansive interpretation applied the City rules to boards and commissions that can expend public money and can independently exercise some of the authority of the City (for example, the Planning Commission, which can take some independent executive action). This expansive definition draws in even such relatively obscure groups as the City's Art Commission.

This recommendation might seem odd coming from the Committee of Seventy, given this organization's interest in removing political favoritism from government. We are well aware the appointment of political friends and financial supporters to boards and commissions may create doubts about their qualifications and independence. However, we are not convinced that the

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<sup>149</sup> See Philadelphia Board of Ethics, Advisory Opinion No. 2007-004 (holding four Philadelphia boards subject to § 10-107); Philadelphia Board of Ethics, Advisory Opinion No. 2007-006 (naming twenty-one different boards, councils, and committees subject to § 10-107).

<sup>150</sup> See Philadelphia Board of Ethics, Advisory Opinion No. 2007-004, at 7; Pennsylvania Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa. C.S. §§ 1102, 1104.

antidote is to subject these volunteers to the same political activity restrictions applicable to paid City employees.

Our concern, as we expressed to the Board of Ethics at the time of its rulings, is that the best people will resign from, or refuse to accept appointments to, City boards and commissions. In fact, the Board's rulings created considerable consternation among members of the affected boards and commission members, who are unpaid volunteers performing valuable City service. Some members chose to resign rather than have their political activities restricted. Other prospective volunteers declined invitations to serve.

Seventy supports the Ethics Board's recommendation that the Nutter administration assign a liaison to the Board to assure that current boards and commissions are carefully tracked, contact information for their members is secured, appointments and vacancies are recorded, as well as to make certain that all members of City boards and commissions adhere to the City's ethical requirements, such as attending ethics training and filing financial disclosure forms. We further urge public disclosure – on the City's searchable database – of information pertaining to all members' contributions to political candidates and officials, as well as their involvement with any political party, political club or political campaign.<sup>151</sup>

In that way, potential conflicts of interest would be more visible to members of the public who could, in turn, report any suspected problems to the Ethics Board. We have every confidence that the Ethics Board would act forcefully and quickly to enforce any violations and mete out the appropriate penalties.

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<sup>151</sup> Since 25 P.S. § 3246 requires all candidates to disclose contributions in excess of \$250, and this information is available online, this should not cause a hardship for any contributor.

## VIII. Regulate the Relationship between Public Officials and Non-Profit Organizations

Recommendation: All city employees should be required to disclose any direct or indirect ties to non-profit agencies, including family connections or financial relationships. Non-profits receiving city money should also be required to disclose specified information. All disclosures should be available to the public online.

Non-profit agencies do much good in our City, providing education, community development, and poverty relief at the community level in ways government sometimes finds too difficult and too costly. But, all too often, public officials are deeply involved with non-profits and use them for their own benefit; non-profits get special favors from public officials. We would not favor any regulation that would damage the good work that non-profits do in Philadelphia, but it is obvious that the City needs a system to regulate the interaction between public officials and private non-profit organizations to prevent abuse.

Probably the most blatant example of such abuse is emerging in the ongoing trial of former State Senator Vince Fumo. Among other charges, Senator Fumo is accused of using his non-profit community development group, Citizens Alliance for Better Neighborhoods, to divert at least \$1 million for his personal use.<sup>152</sup>

This is not the only example where the connection between public officials and non-profit organizations has been called into question. In early 2008, Mayor Nutter ordered a report on the operations of Philadelphia Safe and Sound, a non-profit organization that was headed at one time by the wife of former Mayor John Street. It is not clear that there was any illegality involved with the non-profit, but investigators found lax financial controls, poor accounting practices, rapidly inflating salaries, and a confusing jumble of vendors who could not be properly accounted for. Yet the organization enjoyed vast financial support from Mayor Street. In his last year in office, he directed at least \$75 million of the City's budget to Philadelphia Safe & Sound.<sup>153</sup>

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<sup>152</sup> Mario F. Cattabiani, *et al.*, *Pa. Targets Fumo Charity on Spending*, PHILA. INQUIRER, Dec. 14, 2008.

<sup>153</sup> Regan Toomer, *Safe & Sound: Council Questions Non-profit's Spending*, PHILA. TRIBUNE, Feb. 22, 2008.

Other cities have placed restrictions on the relationships between elected officials and non-profits. For example, New York City allows public servants to associate with a non-profit which has a business relationship with the city, as long as: (1) the public servant is not directly or indirectly involved in the non-profit and city's business dealings; (2) the non-profit has no direct or indirect interest in any business dealings with the city agency for which the public servant works; (3) the public servant performs his duties for the non-profit; and (4) the public servant receives no compensation in connection with the non-profit and city's business dealings.<sup>154</sup> Pittsburgh takes a different approach and requires elected city officials to disclose, on an annual basis, the names of the non-profit organizations with which they have a connection (e.g., owner, officer, employee, consultant, member, beneficiary, or participant), or financial or property interest.<sup>155</sup>

While it would be too far-reaching to forbid public officials from having ties to non-profit agencies, shedding light on those ties is both wise and appropriate. This would allow investigators and members of the public to clearly see the details of any relationship and help expose any conflicts of interest. The Committee of Seventy urges the Task Force to recommend requiring elected and appointed officials to disclose any direct or indirect ties to non-profit agencies, including family ties to the non-profit's leadership, or any financial relationships. This can be made part of the required financial disclosure form,<sup>156</sup> which should be made available to the public online.

We also urge the Task Force to recommend that all non-profit agencies that receive public money file a public disclosure form, identifying the amount and nature of the public funding, the specific work that will be performed or grants given with the money, and the names of all executives and board members of the agency. At the completion of a city grant, the non-profit should be required to file a report on how the money was used and what results were achieved. Connections with city officials should also be disclosed, including the identities of any family

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<sup>154</sup> New York City Charter § 2604(c)(6).

<sup>155</sup> Pittsburgh Home Rule Charter § 801.

<sup>156</sup> See Philadelphia Code § 20-601 (providing definitions relating to standards of conduct and ethics); Philadelphia Code § 20-610 (requiring certain officers and members of boards, commissions, councils, and committees to file a statement of financial interest).

members currently or formerly employed by the agency. All such disclosures should be readily available to the public online in an easily searchable format.<sup>157</sup> There should also be penalties for non-compliance, including making the non-profit ineligible for future city funds.

We realize these steps could impose a paperwork burden on small non-profit agencies, but we believe the public's interest in seeing where and how tax dollars are spent is so compelling, and the need to avoid corruption and conflict of interest is so pressing, that the extra administrative burden is a small price to pay.

Finally, as we did in February 2008, the Committee of Seventy strongly recommends a top-to-bottom review of the entire process by which City government awards funds to non-profit organizations that are not subject to its direct control or oversight. As discussed earlier in this document, although the names of recipients of no-bid contracts are available on the City's website, there is no easy way to determine why the funds were awarded, what expectations have been placed by the City on the expenditure of the funds, whether the funds are being spent for the intended purposes and if the anticipated outcomes were, in fact, achieved. Making this information readily available to the public will result in far more accountability and transparency.

With the economic crisis forcing difficult decisions about how the City's limited resources are directed, this inquiry is both timely and appropriate.

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<sup>157</sup> Non-profits make financial disclosures in the IRS Form 990, but those forms are long, detailed and not specific to Philadelphia. Pennsylvania requires filings from non-profits, but it lists little more than the technical management details.



## IX. Strengthen the Capabilities of the City's Watchdogs

Recommendation: Philadelphia should have a Charter-sanctioned independent Inspector General. The Board of Ethics should be adequately funded and staffed to enable it to effectively oversee the City's campaign finance and ethics rules.

All laws, ordinances, guidelines, and regulations are ultimately meaningless without effective oversight. If there is nobody to discover, investigate, and punish violations of those rules, then the rules might as well not exist.

Philadelphia has come a long way in this regard in recent years. For a long time, the only effective internal oversight was an Inspector General's office that was created by Mayor W. Wilson Goode by a February 1985 executive order and therefore was dependent on the mayor and empowered only to investigate executive branch matters. The current Inspector General still operates under an executive order.

In 2006, Philadelphia voters approved of the establishment in the Philadelphia Home Rule Charter of an independent Board of Ethics, which could interpret ethics rules and investigate violations.<sup>158</sup> And, in his first 100 days in office, Mayor Michael Nutter created a new position: Chief Integrity Officer.<sup>159</sup> The executive order creating the position outlines the general responsibilities of the Chief Integrity Officer,<sup>160</sup> which include "mak[ing] recommendations for reforms that enhance the openness, honesty and transparency" of the city's actions and procedures.<sup>161</sup> While the role of the Chief Integrity Officer is still evolving, creating the position

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<sup>158</sup> See Philadelphia Board of Ethics, <http://www.phila.gov/ethicsboard/index.html>.

<sup>159</sup> Phila. Executive Order No. 2-08, Relating to the Office of the Chief Integrity Officer (Jan. 7, 2007).

<sup>160</sup> These responsibilities include: (1) reviewing, monitoring, and investigating the award of city contracts to ensure the process is fair and conforms to City laws; (2) reviewing, monitoring, and investigating the procedures for the disposition of City property; (3) reviewing, monitoring, and investigating the policies and procedures regarding the use of City resources to ensure they are being used for governmental business, and not personal affairs; (4) providing guidance to City departments, agencies, boards, and commissions to improve policies and procedures to promote integrity and transparency; (5) reporting improprieties of City officers to the City's Inspector General; (6) referring to the law department opportunities for the City to seek damages caused by unlawful or unethical conduct; and (7) performing other duties requested by the Mayor.

<sup>161</sup> *Id.*

makes a strong statement about the Mayor's commitment to ethical behavior within his administration.

The existence of numerous watchdogs is a positive development in the effort to improve the historical pay-to-play political culture in Philadelphia. The roles and responsibilities of each office should be spelled out carefully and each given clear authority to do its job.

The Committee of Seventy urges the Task Force to issue two recommendations to further improve the City's various oversight capabilities:

- Creating a Charter-sanctioned and independent Inspector General would be a major improvement. The greatest possible distance should exist between city government and the person charged with rooting out municipal waste and fraud. A clear example of why this matter was demonstrated less in June 2007 in Chicago when a federal judge approved a \$12 million settlement to compensate victims of politically-based personnel decisions by the administration of Mayor Richard Daley. One of the conditions of the settlement was the issuance of an Executive Order banning political hiring. The job of investigating alleged violations of the Executive Order will belong to that City's Inspector General. Specifically noting the independence shown by the current occupant of the office towards Mayor Daley, the judge stated his intent to ensure adequate funding that would allow the Inspector General's Office to fulfill its new responsibility.<sup>162</sup>

Philadelphia would not be alone if it were to institute this reform. Several other cities, including Baltimore, New York, Los Angeles and Chicago, have made their Inspector General positions permanent with broad powers to monitor the city's governmental subdivisions.<sup>163</sup>

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<sup>162</sup> Dan Mihalopoulos, *Settlement OK'd in Shakman suit*, *Chicago Tribune*. June 1, 2007. Apparently Mayor Daley publicly rebuffed the Inspector General's previous requests to fund additional investigators.

<sup>163</sup> The websites of the named cities provide information regarding the positions, history, and current duties. See Baltimore Office of Inspector General, <http://www.ci.baltimore.md.us/government/inspectorgeneral/index.php>; New York City Office of Inspector General, [http://www.nyc.gov/html/doi/html/ig\\_office.html](http://www.nyc.gov/html/doi/html/ig_office.html); Los Angeles Office of Inspector General, <http://www.ci.la.ca.us/oig/isgig2a.htm>; Chicago Office of Inspector General, <http://www.chicagoinspectorgeneral.org/>.

City Council is considering a bill<sup>164</sup> to remove the Inspector General from the executive branch, making the position a permanent part of the City Charter and giving the holder of that position broad authority to monitor the entire city government.

In response to a similar bill that was introduced in Council in 2007, the Committee of Seventy made known its views on the importance of this reform, and offered recommendations to strengthen the independence and effectiveness of that office.<sup>165</sup>

Among other things, the Inspector General should be subject to City Council confirmation, which is how members of the Board of Ethics are appointed and how other jurisdictions, including Chicago, name their Inspectors General.<sup>166</sup> The Mayor alone should not have the right to appoint and remove the Inspector General. Rather, the removal of an Inspector General should require a public hearing and approval by two-thirds of City Council.<sup>167</sup> Again, this would mirror the requirements for the removal of a member of the Board of Ethics. In addition, while the Charter need not be excessively specific, it is appropriate to require the Inspector General to have deep investigative and oversight experience.

Unfortunately, the bill and companion resolution to accomplish this lie dormant in a City Council committee. The Committee of Seventy urges Council to act on this proposal as soon as possible so it may be put to the voters.

- Since its official installation in November 2006, the Board of Ethics has performed admirably in defining and enforcing the City's campaign finance ordinance and ethics rules. However, the Board has run across some holes in its authority. For example, there have been a number of occasions where the Board could only guess at how to interpret a provision or offer non-binding guidance. In many cases, these holes could be solved by City Council making specific changes we have suggested elsewhere in this document,

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<sup>164</sup> See City of Phila. Bill No. 080007 (proposed in January 2008); City of Phila. Resolution No. 080039 (proposed in January 2008).

<sup>165</sup> Committee of Seventy's Testimony on Proposed Amendment to the Philadelphia Home Rule Charter, Presented to City Council's Committee on Law and Government, July 12, 2007.

<sup>166</sup> Municipal Code of Chicago § 2-56-020 (providing that the Inspector General is appointed by the Mayor and confirmed by City Council).

<sup>167</sup> In Chicago, the Inspector General may only be removed for cause. Municipal Code of Chicago § 2-56-130.

such as making inauguration committees subject to campaign finance limits, or passing a nepotism policy across city government. But we urge City Council to pay heed to recommendations contained in the Board of Ethics' Advisory Opinions and its Annual Reports about ways to improve the campaign finance ordinance and ethics regulations.

They may not always agree, but its growing experience makes the Board of Ethics an important voice for diminishing the potential for conflicts of interest and abuse in City government.

Finally, although we are acutely aware of the current fiscal crisis that has impacted all City-funded departments, we feel strongly that the Board of Ethics' funding and staffing must be adequate to permit it to remain a robust force for overseeing the city's campaign finance and ethics rules. Otherwise, too many things are likely to slip through the cracks. Ethics Boards in many other major cities<sup>168</sup> are considerably better financed and staffed.

On balance, as we have said, too many watchdogs are better than too few watchdogs. But we need to make certain that they are as effective as possible in carrying out the duties to which they have been assigned.

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<sup>168</sup> See Baltimore City Code Art. 8 § 3 (establishing the Board of Ethics); N.Y.C. Charter § 2602 (establishing the Conflicts of Interest Board); Los Angeles City Charter § 700 (establishing the Ethics Commission); City of Pittsburgh Ethics Code § 197.09 (establishing the Ethics Hearing Board); Municipal Code of Chicago § 2-156-310 *et seq.* (establishing the Board of Ethics).

## **X. Require Public Disclosure of the Private Use of City Resources**

Recommendation: No City resource should be used for private or political purposes. Any waiver of this policy should be fully disclosed, including the reason for the waiver and the applicable time limit.

At a time when the City faces a huge budget deficit and is proposing drastic cuts in city services, such as libraries and swimming pools, it is not surprising that many Philadelphians reacted negatively when they learned that some public officials were using their official vehicles for personal purposes, including dropping their children off at school. In exposing this private use of city vehicles, Fox-29 reported in November 2008 that the City spends \$50,000 on gas and maintenance for City Council vehicles and that City taxpayers are liable for any damage or injury should one of those vehicles get into an accident.<sup>169</sup>

An Administrative Board rule explicitly prohibits using City cars for personal purposes, including transporting family members. Moreover, the regulations specifically direct employees with official vehicles to "avoid any vehicle use which might result in or create the appearance of impropriety with regard to public perception concerning misuse of City vehicles."<sup>170</sup> However, the Mayor, the Mayor's Chief of Staff, Cabinet officers and other elected officials are permitted to use city-owned vehicles "for transportation to and from places of residence and to keep such vehicles at the places of residence overnight or on the weekend and/or holidays."<sup>171</sup>

Since taking office, Mayor Nutter has taken some action to reduce the use of city resources for non-governmental business by delegating the oversight responsibility to his new Chief Integrity Officer. Specifically, the Chief Integrity Officer is charged with reviewing, monitoring, and investigating the practices and procedures of Philadelphia's agencies, departments, boards, and commissions' use of City buildings, facilities, and equipment to ensure the resources are being used only for governmental business.<sup>172</sup>

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<sup>169</sup> *Fox Investigates: Councilwoman's Use of City Vehicles* (Nov. 23, 2008), available at <http://www.myfoxphilly.com/>.

<sup>170</sup> Phila. Administrative Board Rule 46 (1992).

<sup>171</sup> *Id.*

<sup>172</sup> Phila. Executive Order No. 2-08 §3(3).

The rules are already quite clear in prohibiting the use of City cars for private purposes,<sup>173</sup> but there needs to be better accounting and reporting to make sure that the policy is not being abused.

As we learned from the Fox-29 report, some officials have sought waivers to use City the vehicles for personal purposes.<sup>174</sup> This waiver system is not part of the City Code or Administrative Board Rule 46. Nor does there seem to be any public record disclosing who has obtained a waiver, for what purposes the waiver was granted, and the time period during which the waiver is in force.<sup>175</sup>

If waivers are granted, there also must be transparency. A City employee may have an entirely valid reason for requiring the use of his or her City car for a non-business purpose. But the public has a right to expect an explanation for the waiver, which may well expose City taxpayers to significant liability in the event of an accident.

Waivers should be the rare exception. The Committee of Seventy would not presume to articulate the reasons for which a waiver might be appropriate. However, the burden is on the public official to make his or her case, with the presumption that the private use of a public resource is always banned absent a compelling reason otherwise.

It further makes sense to require a time limit on waivers so that city employees obtaining a waiver do not take advantage of that waiver indefinitely. In some instances, the initial purpose for which the waiver was granted may have long expired.

While we have confined this discussion to the use of City-owned cars, the same public accounting and disclosure requirements must apply to other personal uses of City resources, including buildings, facilities, and equipment. Again, we raise the federal allegations that

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<sup>173</sup> See Phila. Administrative Board Rule 46.

<sup>174</sup> Eric Mayes, *Extracurricular Use of City Cars Questioned*, PHILA. TRIBUNE (2008), available at <http://www.phillytrib.com/tribune/>.

<sup>175</sup> See Phila. Administrative Board Rule 46.

Senator Vince Fumo used state personnel to, among other things, collect his laundry, chauffeur his family, do work on his farm and conduct many other prohibited personal and political tasks.

Nobody anywhere in City government should be permitted to use City resources for personal or political purposes. There must be absolutely no exception to this rule. No waivers. No looking the other way. The taxpayers have a right to know and believe that their dollars are not being abused.

## **Conclusion**

Many of the recommendations in this report date back to the "Ethics Agenda for Mayoral Candidates" and "Ethics Agenda for City Council Candidates" that were issued in early 2007. Some of the ideas are far older and were first introduced into public debate by others.

There are many reasons to adopt these recommendations. Perhaps the most significant one is that the perception of continuing misbehavior in one corner of City Hall or another remains a major obstacle to Philadelphia's growth and success.

The Committee of Seventy urges the Task Force to send the strongest possible recommendations to Mayor Nutter -- who proposed or endorsed many of them in the past, but has not been quick to try to drive them through City Council -- and to this City Council, which has demonstrated very little interest in supporting higher standards and tighter controls that are commonplace in the private sector and in other major cities.

The Task Force has the ability to define and bring attention to these necessary reforms. The Committee of Seventy will fight for their enactment.