



**Committee of Seventy
Written Testimony on Bill 190861 and Resolution 190874
City Council Committee on Law and Government**

My name is Pat Christmas, policy director for the Committee of Seventy, and I appreciate the opportunity to share testimony today around Bill 190861 and Resolution 190874, which propose to amend the City of Philadelphia's political activity rules in the Home Rule Charter, section 10-107.

The provisions in Article X, including §10-107, have been essential to guarding against corruption and abuse of public office and resources since they were adopted with the 1951 Charter. At the time, divorcing Philadelphia's political machinery from city government and services was of paramount concern. Keeping these separate has required not only strict laws but increasingly robust training and enforcement. Over the past 15 years, in particular, the City has taken enormous leaps forward in government integrity by passing strong campaign finance, ethics and lobbying rules, and standing up an independent Board of Ethics to enforce them. Given this history, any potential changes to Article X must be made with great care and a full understanding their implications.

If passed by Council and approved by the voters, the proposed Charter amendment would allow City officers and employees to engage directly in partisan campaigns for all federal offices (Presidency, U.S. Senate and House), state-level offices elected on a statewide basis (Governor, Auditor General, Attorney General, Treasurer, state appellate courts) and any other office in the state on which Philadelphia voters would not vote (e.g., County Commissioners, judgeships or General Assembly seats outside the city limits). Considering the political activity rules in other jurisdictions, evaluating a possible change to §10-107 is a legitimate issue for City Council to consider. But in evaluating the amendment, Seventy has questions and concerns both with the substance of the proposed change and in how it might be implemented.

First, with regard to the merits of opening up permissible political activity for City officers and employees to include partisan campaigning:

- 1) Is there sufficient distance between the electoral politics of the aforementioned offices and the day-to-day operations of City government** so that an employee would not be made vulnerable to inappropriate incentives or pressures in the workplace to become involved in a partisan campaign? This concern goes to the origin of § 10-107, and a strong case needs to be made that no risk would be created for our public employees or the taxpayers they serve.
- 2) Is the proposed line between covered and uncovered offices in the right place?** We agree that City offices, local judgeships and General Assembly offices in Philadelphia are too enmeshed in local politics to be included. But our U.S. Representatives also have deep roots in their communities and city politics, as they should, many having been



former city or state officials. One former congress member remains the 33-year chairperson of the Democratic party.

- 3) Should there be a distinction made between lower-level public employees who enjoy relative anonymity in their city work and higher-level officials?** Ten years ago, City Council debated legislation similar to the federal Hatch Act in which different rules would apply to different employees. While this type of framework can present its own challenges, we believe some consideration must be given to whether high-ranking public officials working on a campaign could be problematic. It may be unlikely that the job performance of a Revenue Department clerk or L&I code inspector would be affected by off-the-job, partisan canvassing, but should Board of Ethics or City Commissioners staff be eligible to engage directly in partisan politics? And should policy or political expertise of higher-level employees be made available for partisan campaigns?

Second, we believe there must be greater certainty around how the new policy would be implemented and enforced before amending the Charter.

- 1) Can we reasonably expect City employees to distinguish between electoral races they can work in and those they cannot?** The Board of Ethics, Inspector General and Chief Integrity Officer repeatedly stress to our public employees: “If you’re not sure, ask.” Still, with a workforce of more than 25,000, we are concerned about whether public employees may inadvertently violate the new rules when, for example, handing out literature that highlights candidates for multiple offices (e.g. sample ballots with candidates for local, state and/or federal offices) or in working on campaign programming that is jointly organized between a campaign in a covered election and another that is uncovered. Elizabeth Warren’s endorsement of Council At-large candidate Kendra Brooks is an example of this intersection.
- 2) Will there be an increased risk of public employees breaking the political fundraising ban, which must remain in place?** Especially in the heat of an electoral campaign, it may be challenging for employees to keep in mind the difference between prohibited fundraising activity (see § 10-107. (3)) and other campaign-related activities made permissible through this amendment; for example: door-to-door canvassing or phone-banking. The Board of Ethics has previously executed enforcement actions against City Council staffers, who are legally allowed to volunteer in political campaigns but not engage in fundraising. How many violations might be generated through tripping this distinction?

If the substantive issues can be thoroughly addressed, the new rules would be put into effect in the lead up to the November 2020 general election and undoubtedly create additional challenges. We are interested in hearing the perspective of the Board of Ethics with regard to implementation, enforcement and whether additional resources would be needed.



It should also be noted that an underlying problem has been an interpretation of the City's political activity rules that was inconsistent, ambiguous and overly-restrictive. The Board of Ethics' most recent version of Regulation 8, however, clarifies the broad degree of political expression currently allowable under the Charter for public employees. This includes, for example: campaigning around ballot questions; supporting voter registration drives not organized by a political party, candidate or campaign; signing nominating petitions; attending political rallies, fundraisers or other events; making political contributions; and participating in political activities through certain groups as long as the activities have not been coordinated with a political party, candidate or campaign.

Public employees do have opportunities to participate in politics on their own time and resources. The proposed amendment, however, is significant in how it would expand these opportunities further to engage directly in the partisan campaigns of candidates and parties. Given our concerns, Seventy cannot support the proposed Charter amendment at this time; but, we welcome continued discussion and debate around this issue.

With the very short timeline to vet in public this legislation before the end 2019, Seventy recommends, at a minimum, that this issue be brought back up for discussion by the next City Council. This additional time would be valuable for the Council, the administration, the Board of Ethics, Seventy and other stakeholders to determine with certainty the implications of the proposal for City government and our public employees.