

Committee of Seventy

Testimony on Proposed Ethics and Campaign Finance Bills

Philadelphia City Council

Committee of the Whole

May 12, 2010

I am Zack Stalberg, president of the non-partisan Committee of Seventy. I am here to testify on 12 ethics and campaign finance proposals.

We feel particularly qualified to speak about these proposals. For more than a century, the Committee of Seventy has been fighting for clean government in Philadelphia. We were the earliest and most strident defender of the city's current campaign finance law and have been the most outspoken proponent of closing loopholes that breed abuse, corruption and distrust of local government.

The Committee of Seventy also has been the city's most dogged advocate for tight and enforceable ethics reforms. In 2007, Seventy asked the candidates for mayor and City Council to sign on to Ethics Agendas that would help make City Hall more honest and accountable. Mayor Nutter fulfilled a pledge made in response to the Agenda by creating the Task Force on Ethics and Campaign Finance Reform.

Seventy issued two "Roadmap to Reform" reports to the Task Force that offered in-depth reform recommendations, based on research of best practices, to preserve and strengthen Philadelphia's campaign finance law, and to enact tough ethical controls extending across city government. The reports were presented to the Task Force at public hearings in January 2009 and May 2009.

Seventy released a third “Roadmap to Reform” report following the December 2009 publication of the Task Force’s Final Report and Recommendations. In addition to analyzing the recommendations and proposing priorities for implementation, Seventy challenged Mayor Nutter and City Council to exercise the leadership necessary to make sure that the Task Force’s proposals did not become – to use the Task Force’s own words – worthless by inaction.

Seventy’s three reports to the Task Force are available at:

http://www.seventy.org/OurViews_Reccomendations_to_the_Mayors_Task_Force.aspx.

Although we do not agree on each of these bills, we commend Council for taking the initiative in response to the Task Force’s report. We thank, in particular, Majority Leader Tasco and Councilman Rizzo for their sponsorship of the bills on today’s agenda, and Councilman Green for his leadership.

Seventy especially appreciates the open-mindedness Council members and their staffs have shown by engaging in conversations with the Committee of Seventy, the administration, the Board of Ethics and others to address concerns about specific provisions in the package of bills introduced on March 4. An earlier hearing on the bills was rescheduled to allow more time for discussions. Each of the original bills has been amended. While we may have differences, your approach has demonstrated a genuine willingness to give these issues the serious attention they deserve.

We urge you to continue what has been a productive give-and-take by not rushing to approve bills that would benefit from additional discussions.

Topping this list are the rules on the political activity of city workers. These rules, over 60-years old, are exceedingly complex. The Task Force on Ethics and Campaign Finance Reform debated them for over a year. Council’s Committee on Law and Government spent almost two hours talking about political activity at its March 15 hearing – and this was *after* announcing that it would postpone consideration of the ordinance.

We believe there is plenty of reason to exercise restraint in considering this package of bills. Not only are there some highly technical amendments to current law, there are some ideas that are entirely new to this city. Even under ordinary circumstances, it would be impossible to give each bill its just due.

But these are not ordinary circumstances. The city faces a \$150 million budget deficit and, tomorrow morning, Council will debate controversial proposals to increase taxes. Proposals that go to the heart of the public's trust in government deserve more than to be rushed during the most critical time in the budget season.

The Committee of Seventy is impatient for ethics and campaign finance reform. But not at the expense of the deliberate decision-making. There is too great a risk of enacting laws that are likely to be misunderstood and, therefore, violated.

There are many significant areas of ethics and campaign finance reform that are not touched in today's proposals. Among others, they include protecting whistleblowers, regulating venomous attack ads by 527 committees, requiring greater disclosure of the relationship between elected officials and non-profits receiving city money, and fixing the city's difficult-to-navigate and difficult-to-understand campaign finance database. Seventy hopes the introduction of these bills marks just the beginning of a sustained effort to satisfy the public's demand for increased integrity, transparency and accountability at all levels of government.

This testimony will focus on Seventy's general positions as follows:

- Lobbyist Registration and Disclosure (Page 4)
- Political Expression and Political Activity (Page 5)
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An attachment to our written testimony contains a more extensive examination of the individual bills, including issues we urge Council to consider in making any future amendments.

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LOBBYIST REGISTRATION AND DISCLOSURE

The Committee of Seventy SUPPORTS the proposed law requiring lobbyists to register and file annual disclosure statements (Bill No. 100127).

The Committee of Seventy applauds Council for bringing Philadelphia in line with almost all major cities by introducing a lobbyist registration and disclosure bill. The bill you have proposed largely mirrors the state's law, which will make it easier for the lobbyists it covers to understand and for the Board of Ethics, whose job it will be to monitor and enforce the new law. This is a huge step forward.

As with the city's campaign finance ordinance, the new law will require road testing to see where it can be strengthened. Council's willingness to revise several provisions of the Lobbyist Registration and Disclosure proposal introduced in March sends an important signal that this body will be amenable to making necessary changes in the future, as Los Angeles is doing. After two years of study, that city is in the process of improving its Municipal Lobbying Ordinance to ensure that the law remains clear, strong and internally consistent. It is a healthy and worthwhile exercise, particularly for newly created laws.

Seventy suggests a few minor improvements to the law in the attachment to this testimony, none of which diminish our considerable enthusiasm for this bill.

However, we are genuinely concerned about how the Philadelphia Board of Ethics will carry out its increased responsibilities under the new law.

Pennsylvania's Lobbying Act specifically establishes a restricted Lobbying Disclosure Fund, into which lobbyists' filing fees are deposited, in order to provide continuing appropriations for carrying out the law's provisions. Although Bill No. 100127 would require a \$500 fee at the time of each registration, it does not earmark those funds for the purposes discussed in the law. Philadelphia should follow the state's lead in directing registration dollars to the Ethics Board. This would obviate the need to dip into general fund dollars during tough economic times.

By way of comparison, Los Angeles currently has 21 staff members on its City Ethics Commission and a budget (in 2008-2009) of \$2.3 million. Although the Commission expects budget cuts this year as part of a government-wide effort to trim expenses, the remaining resources will still far surpass those of Philadelphia's Ethics Board.

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POLITICAL EXPRESSION AND POLITICAL ACTIVITY

The Committee of Seventy's positions on political expression and political activity (Bill No. 100128) are as follows:

- **We SUPPORT loosening the Charter's restrictions on private political expression, including removing the ban on voluntary political contributions by police officers.**
- **We OPPOSE eliminating existing political activity rules for all city employees.**
- **We OPPOSE amending the City Charter to authorize Council, by ordinance, to create standards of ethical conduct with respect to the political activities of city officers and employees and to provide penalties for violations.**

The Committee of Seventy has repeatedly urged revising the political expression and political activity rules written into the City Charter in 1951. Many are too strict, inconsistent, unclear and nearly impossible to enforce. Others raise legitimate First Amendment concerns.

However, there is no need to act in haste – especially, as we said earlier, when elected officials are deeply immersed in budget discussions and also considering other significant ethics and campaign finance reforms.

We particularly urge Council to take the time necessary to fully consider the ramifications of discarding the political activity rules. Several people testifying today oppose this change. It may be that further conversations will not sway either side. However, given the movement on other bills between March 4 and today, it is well worth the effort.

1. The Committee of Seventy SUPPORTS loosening the Charter’s restrictions on private political expression, including lifting the ban on voluntary contributions by police officers.

The Committee of Seventy strongly supports giving city employees more constitutional freedom of expression than they have under the current rules, which have been interpreted to prohibit wearing political buttons outside of work, posting lawn signs at private homes or writing letters to the editor of a newspaper as a private citizen.

The only caveat should be that city employees can only act as private citizens – which means they cannot engage in permissible political activities while on-the-job, in city owned or leased property or using city owned or leased resources. Nor can they in any way identify themselves as city employees (e.g., wearing a city uniform or displaying any type of accessory that reveals their city position) or imply that their positions are shared by the city.

Reforming the rules on political expression does not require a Council ordinance. At its April 21st meeting, the Philadelphia Board of Ethics’ Executive Director Shane Creamer stated that the Board could act by regulation to supersede Civil Service Regulation 29, which delineates lists of permissible and prohibited activities that the Law Department has interpreted to apply both to civil service and exempt employees. (In a May 2008 memorandum, City Solicitor Shelley R. Smith stated that the Ethics Board is not bound by the Law Department’s opinions interpreting ethics laws, including those in the Home Rule Charter.)

We urge the Board to propose a regulation at its earliest opportunity that permits private political expression. Together with the Law Department, the Board should publish comprehensive guidelines containing real-life examples that illustrate precisely what city employees can and cannot do. An excellent model is the Political Activity Guidelines of Tucson, Arizona, available at www.ci.tucson.az.us/clerks/pdf/PAG.pdf. Educating employees would also cut down on inquiries to the Ethics Board seeking guidance on proper conduct.

We further urge Council to propose a separate ballot question to permit police officers to make voluntary contributions, like everyone else in city government, including firefighters (where the ban was struck down as unconstitutional by a federal court in 2003). This ban is included in Section 10-107(3) of the City Charter and cannot be overturned by an Ethics Board regulation.

We believe these steps would go a long way towards giving Philadelphia's city employees the same freedom of expression enjoyed by their counterparts in other cities.

2. The Committee of Seventy OPPOSES eliminating the rules on political activity.

Political activity and political expression are two entirely separate issues and must be treated as such. Like lifting the ban on donations by police officers, the political changes Council recommends cannot be accomplished by a regulation promulgated by the Ethics Board.

We will talk first about substance, and then process.

No change under consideration in Bill No. 100128 would be as dramatic, or would potentially alter the culture of city government, as politicizing a large segment of the city's workforce.

In Seventy's view, extreme caution should be exercised before fundamentally changing rules intended to insulate the city's workforce from political influence to the greatest extent possible. The concerns that led to the Charter's exemption were very real, and are no less so today.

These rules were established not only to ensure the non-partisanship of individuals who work for the city and whose salaries are paid by the taxpayers, but also to protect the same workers from outside political pressures.

We have carefully considered the two-tiered approach recommended by Council. And we have listened to the arguments of those who believe there is no more reason to assume that a ward leader or committeeperson working for the city is more likely to engage in political activity on the job than an employee who does not hold these political positions.

We are not persuaded that this is true. In fact, we believe the contrary result is likely.

Working in city government gives employees at every level access to information – some of it confidential – that can be used to benefit themselves and to benefit, or in some cases harm, others. It is not far-fetched to imagine employees using their political influence to short-circuit what a February 2010 report called the city’s confusing, unpredictable, time-consuming, and costly permitting process. Or helping a political party colleague do the same, especially if the same colleague referred the employee for a city job.

Call us cynical, but it’s hard to believe otherwise when the *Philadelphia Inquirer* reports that former Board of Revision of Taxes assessors were routinely pressured to give breaks to people with pull, including being ordered to lower the assessment of the Democratic Party’s Center City headquarters while other values on the block were soaring. Given that assessments are public information, the perception is unavoidable that politically connected people have greater leverage within government than employees who lack those connections.

The BRT may be an extreme example, but it is not the only instance of city agencies that are populated with political appointees. The Register of Wills, the Sheriff’s office and even this Council have more than a few. Political work is not something that can be turned off and on like a faucet. When you are a ward leader or committeeperson, it is integral to your everyday life, a part of what makes you effective as a leader in your community.

Contrary to what some Council members have suggested, Seventy has tremendous respect for the role of ward leaders and committeepeople in Philadelphia. Through our century-old non-partisan Voter Protection Program, we work with ward leaders and committeepeople throughout the year to answer voters' questions, resolve problems at polling places and inform residents about elections-related issues.

Ward leaders and committeepeople are the backbone of the city's political structure. They are heavily relied on by their parties to operate within their neighborhoods to recruit volunteers, talk to voters, seek votes for candidates and explain the party's positions on issues, among many other duties. Their knowledge of the city and how government works are precisely the qualities Council members point to as examples of the value ward leaders and committeepeople would bring to city government, and as why at least a certain subset of the workforce (those who fit the definition of "less restricted") should be permitted to hold these positions.

Yet these same qualities also make it easy to imagine clerk typist/committeeperson receiving a call during the workday from a neighbor looking for help in protesting a city tax bill or asking what to do if they can't vote in person on Election Day. Or to imagine the same clerk typist who is also actively managing a political campaign urging a colleague at the next work station to attend a political rally or to sign a nominating petition.

Since "less restricted" employees are largely invisible to the public, and operate with relative anonymity within the city's bureaucracy, the probability of detecting impermissible activities would be slim at best. It would be as ludicrous to direct someone to lurk in city offices to eavesdrop on employees as it would be to conduct drive-bys of their private homes to see if a candidate's poster is displayed on their lawn (which is one reason why lifting the current ban on this particular form of private political expression makes great sense).

Would requiring all "lesser restricted" employees to take a merit-based civil service examination before hiring or promotion ease Seventy's concerns? To some degree, yes. However, the potential for abuse remains after someone gets a foot in the door and, as we have said, becomes more facile in accessing information and navigating the city's bureaucracy.

Bad behavior can happen despite the most airtight laws. Over \$1million in bonuses were given to seven state legislative staffers who later pleaded guilty for working on reelection campaigns on state time, in state buildings and using state equipment. A former Philadelphia city treasurer was captured on tape during office hours discussing special treatment for political contributors. Two sisters of a Pennsylvania Supreme Court Justice, one a state Senator and the other an employee of the justice, were recently indicted for working on the justice's campaign during taxpayer-funded workdays.

But the antidote is not to intentionally invite situations where there is a greater likelihood that rules will be ignored, circumvented or broken.

3. The Committee of Seventy OPPOSES amending the City Charter to authorize Council, by ordinance, to create standards of ethical conduct with respect to the political activities of city officers and employees and to provide penalties for violations.

As we understand it, Council intends to present a question on the November 2010 ballot that asks voters to allow Council, by ordinance, to change the political activity rules. However, Council can seek voter approval of their desired outcome without at the same time opening the door for future Councils to enact ordinances altering any portion of the political activity rules (thereby bypassing the Charter amendment process) whenever they choose.

When adopting the City Charter – Philadelphia's governing document – voters decided to restrict political activity by city workers because of rampant abuses. Voters must still have the fundamental right to weigh in on specific changes in political activity rules this Council – or future Councils – might desire.

We sincerely hope Council members will revisit, and reverse, their support for a two-tiered system for permissible and impermissible political activities. However, if you continue to believe that this system is preferable to the current rules, you can – and should – put this specific question directly to the voters.

Everyone – Mayor Nutter, City Council, the Committee of Seventy, the Task Force and others who oppose the change – will have to accept the voters’ decision. Council has asked the electorate to weigh in on matters far less fundamental to the city’s governance than the rules governing the conduct of its workforce.

We hope this testimony makes exceedingly clear where the Committee of Seventy stands on Bill No. 100128. Again, we ask Council to refer to the attached document for more specific recommendations pertaining to this bill if it is passed as written.

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CAMPAIGN FINANCE

1. The Committee of Seventy SUPPORTS allowing covered candidates to receive post-candidacy contributions to retire campaign debt or to defray the cost of a transition or inauguration (Bill No. 100122).

Council’s revisions to Bill No. 100122 address Seventy’s concerns about the proliferation of committees and checking accounts, all tied to one political candidate.

As we stated in our reports to the Task Force, we recognize that many candidates exit their campaigns with substantial debt. And we also understand that some winning candidates – such as a first term mayor or District Attorney – need to spend money to successfully transition from one administration to the next, and may also wish to host inauguration activities. However, Seventy was deeply concerned that the original version of Bill No. 100122 would have resulted in a substantial increase in the amount of total calendar year contributions permitted from an individual or political committee.

Allowing post-candidacy contributions to be donated only after a primary election (for losing primary candidates) or after a general election (for candidates remaining in the race post-primary) makes sense. As do requiring reports on post-candidacy contributions to the Board of Ethics to ensure that there is no confusion about the purpose of such contributions and to differentiate them from contributions made support a candidate’s campaign operations.

Seventy further appreciates that Council's decision not to apply the campaign finance ordinance's doubling provisions to post-candidacy contributions, and not to allow the use of pre-candidacy dollars to retire debt or for transition or inaugural purposes. (In fact, we do not believe doubled contributions should apply to the general election if the self-funder who triggered the doubling provision in the primary suffers a primary election defeat. We hope to convince Council and the Board of Ethics of the wisdom of this notion at a later date.)

Finally, we are gratified that Council has also omitted a provision in an earlier bill that would have allowed candidates to use surplus inauguration or transition funds to donate to a tax-exempt non-profit. Given recent scandals involving ties between lawmakers and non-profits, even if the lawmaker does not technically "control" the non-profit, we feared this provision could have led to abuses.

This revised bill is an excellent example of the positive outcome of conversations between Council and interested constituents to advance our mutual interest in improving the campaign finance ordinance.

2. The Committee of Seventy SUPPORTS allowing covered candidates to establish a separate committee and checking account for contributions to defray litigation expenses (Bill No. 100124).

In its report to the Task Force, Seventy acknowledged that candidates often incur fees and costs to defend against a legal proceeding related to their campaigns or elections. We recommended that Philadelphia consider adopting San Diego's system of allowing a carefully segregated fund for legal defense.

Bill No. 100124 creates a litigation fund committee in addition to the candidate's political committee, and allows donors to contribute at the same contribution levels during the same calendar year. Although we were wary about additional committees and checking accounts in the context of inaugurations, transitions and debt retirement, we believe this proposal is reasonable given the alternative of candidates having no funds with which to defend against frivolous

lawsuits. We urge Council to clarify in the bill that the fund should not be used to *initiate* litigation. This is implied, but it is advisable to leave no room for misunderstanding.

Again, we are gratified that Council explicitly states that the doubling provision does not apply to contributions to a litigation fund, and that no excess pre-candidacy dollars can be used for this purpose.

We have two concerns, one of which relates to the implications of this bill on the city's attribution rules. Since the issue is complex and would not impact Seventy's support for this bill, we will not raise it today. However, we ask Council to read the attachment to this testimony and we look forward to your reaction.

The second concern is allowing candidates to transfer unlimited funds from their political committees to their litigation funds. Presumably donors to a candidate's political committee would be not averse to allowing a candidate to use their campaign contributions to defend against efforts to derail their candidacy (for example, to remove the candidate from the ballot). However, a donor might feel differently about subsidizing costs incurred as a result of an investigation or enforcement action initiated against the same candidate by the Board of Ethics.

Full disclosure that funds in a candidate's political committee may be transferred to his or her litigation fund would give a donor the choice of opting in or opting out.

3. The Committee of Seventy SUPPORTS increased penalties for violations of ethics and campaign finance laws, along with a sliding scale for considering mitigating and aggravating factors (Bill No. 100125).

Revised Bill No. 100125 has addressed Seventy's two major concerns with the original bill introduced on March 4: financial penalties that were too low to deter compliance with a number of the ethics and campaign finance laws and too rigid to allow consideration of either mitigating or aggravating factors.

However, we are concerned that the decreased penalties for mitigating factors – reducing a \$1,000 civil penalty by \$500 for one mitigating factor and by \$750 for two or more – are too steep.

Seventy urges Council to consider a sliding scale with respect to mitigating factors – without fixed financial decreases – that would give the Board of Ethics greater flexibility in setting civil penalties. Members of this Council were livid when the Board imposed what they considered to be a paltry \$500 fine on its Executive Director for violating confidentiality rules. Following the example in Bill No. 100125, the fine could have been reduced to at least \$250 for self-reporting and to \$125 if the Board chose to consider other mitigating factors.

We raise this example not to rehash the details of that situation, but to illustrate that predetermined reductions unnecessarily tie the hands of the Ethics Board.

Increasing the civil penalties is not an option since state law prohibits fines over \$2,000. However, Seventy does not believe it would be unreasonable to impose more severe sanctions – including disqualification from holding any elected or appointed city office or city employment – for extreme violations of the ethics laws or campaign finance ordinance. The Ethics Board should be required to spell out by regulation which behaviors would constitute “extreme violations” (such as the same offenses occurring in three or more elections), and to make factual findings in individual cases.

4. The Committee of Seventy OPPOSES allowing ward committees controlled by ward leaders/candidates to print and distribute sample ballots (Bill No. 100126).

This is a technical amendment to the campaign finance ordinance with which Seventy does not agree for the reasons we will discuss. However, our opposition is lukewarm in light of the marked improvement of the bill over the original version introduced on March 4.

Seventy believes that allowing ward leaders/candidates to spend funds through their ward’s political committees to print or distribute sample ballots gives them an unfair advantage over

non-ward leader challengers. The ward leaders/candidates can also ensure that other incumbents are on the ward's sample ballot, again giving the incumbent a leg up over challengers.

We appreciate that Council has altered the original version of Bill No. 100126 to limit its scope to sample ballots. As we understand it, it would violate the campaign finance ordinance if a ward committee engaged in other activities to promote the ward leader/candidate, such as distributing cash to election workers to get-out-the-vote (as alleged in the enforcement petition filed by the Board of Ethics in January 2010 against former Clerk of Quarter Sessions Vivian Miller).

It may be naïve to believe that a wall can be constructed separating a ward leader/candidate from his or her ward political committee. The only alternative would be to prohibit candidates from serving as ward leaders, at least during the year in which they are running for office. But this is unrealistic.

The Board of Ethics' proposed Regulation #8 goes into great detail on when a candidate will be considered to have control over his or her ward committee for the purposes of determining whether expenditures by that committee violate the single committee rule. If Bill No. 100126 passes, as we expect it will, we urge the Ethics Board at its hearing on Regulation #8 to address whether there is an effective way to separate ward leader/candidates from ward expenditures.

5. The Committee of Seventy OPPOSES requiring treasurers of elected officeholders' political committees to certify campaign debt and to declare that solicitations to retire debt will cease when the debt is repaid (Bill No. 080659).

Councilman Rizzo's bill would require elected officeholders to provide documented evidence of campaign debt and to declare that solicitations to retire debt will cease when the debt is paid off.

Seventy opposes this bill as unnecessary. To our knowledge, there have been no abuses associated with elected officials raising money to retire debt that call for the restrictions in the proposed bill. Its enactment would create more oversight responsibilities for an already overtaxed Board of Ethics.

Moreover, Bill No. 100122 (which we discussed earlier in this testimony) requires former candidates and treasurers of political committees to file reports of post-candidacy contributions and expenditures made to retire debt. We believe these requirements are sufficient and improve upon Councilman Rizzo's bill by expanding the reporting requirement to include all candidates for office, not just elected officeholders.

6. The Committee of Seventy SUPPORTS tying the receipt of campaign contributions to an election cycle, but OPPOSES lowering the campaign contribution limits (Bill No. 080663).

Both the Committee of Seventy and the Task Force urged revising the city's campaign finance ordinance that allows candidates to receive contributions (pursuant to prescribed limits) each calendar year in favor of tying the receipt of campaign dollars to an election cycle. Both New York and Los Angeles follow this approach.

The Task Force also endorsed modeling Philadelphia's ordinance after the federal campaign finance bill, which covers candidates for President, Vice President and Congress, and treating the primary and general elections as two separate cycles. Houston, Texas, a city of comparable size to Philadelphia, also adopts this approach.

Understandably, candidates prefer a calendar year system: Assuming a \$2,600 cap on an individual contribution, a candidate can raise up to a maximum of \$2,600 for four calendar years (three non-election years and one election year) for a total of \$10,400. Under a split primary and election cycle, a candidate can raise up to a maximum of \$2,600 from an individual donor for the primary election, and up to a maximum of \$2,600 from the same donor for the general election, for a total of \$5,200. Under a single election cycle system, a candidate can raise up to a maximum of \$2,600 from an individual donor for the entire election cycle.

But there are compelling reasons supporting an election cycle approach:

- *It would level the playing field.* While incumbents are not likely to appreciate this, at one time they, too, were once first-time candidates. Changing to an election cycle would allow all candidates to raise the prescribed maximum from each individual and political

committee donor for each election cycle. The current system forces candidates to decide to run as far in advance of an election as possible in order to take advantage of calendar year contributions.

- *It would obviate the need to deal with excess pre-candidacy contributions.* 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 have they been candidates at the time the contribution was received. Excess pre-candidacy contributions have been a thorny issue in the operation and enforcement of the city's campaign finance ordinance. Moving to an election cycle – especially if accompanied by changing the definition of candidate to the more common-sense and expanded definition used by Pennsylvania – would lower the temptation to go back to the same donors year after year for contributions, knowing perfectly well that some of the funds cannot even be spent.
- *It would reduce the pressure to continually fundraise.* Many candidates find continually chasing dollars the least attractive part of campaigning. Moving to an election cycle allows candidates to stretch out the fundraising process over a longer time period. It takes far more effort to solicit four checks than one.

We strongly oppose Councilman Rizzo's recommendations for lowering the contribution limits (although we understand that this bill was first introduced several years ago). While it may sound counter-intuitive from an organization that savors any opportunity to reduce the potential for pay-to-play, Seventy believes the current contribution limits are sensible and should be maintained. Lowering the limits would entice self-funders who otherwise would not consider running for office to enter the race and disadvantage candidates who are sincerely interested but lack substantial personal resources.

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ETHICS

The Committee of Seventy's three reports to the Task Force proposed many ethics reforms applicable to all city employees that we believe will instill public confidence in the trustworthiness of government and its elected leaders. Philadelphians should not have to wait for the next scandal to happen before reforms are enacted.

The three ethics reforms we will address today were first introduced by Councilman Rizzo in 2007. The topics covered they cover were not included in the March 4 packet of Council's ethics and campaign finance proposals. Nor were they on the original hearing agenda.

We strongly urge Council not to reject these bills out of hand because the topics they address – gifts, nepotism and outside employment – touch a raw nerve. If, as we suspect, they are not voted on today, we hope these issues will be seriously addressed in the near future. You can expect the Committee of Seventy to continue beating this drum.

In addition to the following comments, we ask Council to refer to the attachment to this testimony for more specific recommendations on these bills.

1. The Committee of Seventy SUPPORTS a strong gifts policy that extends equally to all city employees, paid or unpaid, elected or appointed (Bill No. 080658).

We are perplexed why Council would not welcome clearer rules on what city employees can and cannot accept.

An Executive Order first adopted by former Mayor John Street and renewed by Mayor Nutter sets tighter limits on members of the executive branch than the Philadelphia Code does on members of other branches of government. The Executive Order is not without its flaws. Read literally, the order arguably disallows even nominal gifts. As the Task Force notes in its report, the administration's Chief Integrity Officer has softened this overly stringent policy by permitting the acceptance of tickets to attend certain events as an acceptable "gift to the city," rather than as a gift to the individual executive branch official or employee.

However, the Executive Order is preferable to the city's existing rules, which err in the other direction by inviting subjective determinations both of whether a gift is of "substantial value" or "reasonably expected" to influence the official or employee. What is substantial to one employee is not necessarily substantial to another. And employees should not have to speculate about the intent of the donor.

Unambiguous rules with explicit dollar limits, as both Seventy and the Task Force recommended in their reports, would obviate the need for guesswork. The same rules should cover everyone who works in city government, paid or unpaid, elected or appointed.

Bill No. 080658 would go a long way towards accomplishing this. It offers a common-sense approach that incorporates, for example, the earlier discussed "gift to the city" interpretation of the Executive Order. Although the bill could be further improved by incorporating the recommendations we suggest in the attachment to this testimony, we urge its serious consideration as a model for a new gifts policy.

2. The Committee of Seventy SUPPORTS the enactment of the city's first ordinance to regulate nepotism in city government (Bill No. 080662).

Seventy is not opposed to relatives of city officers and employees working in the government. We simply believe that city officers and employees should not be permitted to take personnel actions, or to recommend that others in city government take personnel actions, involving close relatives. This is not a novel concept.

Many cities and private companies have explicit personnel policies regulating nepotism. Placing constraints on favoritism based on familial ties is not an unduly harsh burden – either on job applicants or city employees. In a 23,000 person government, a well-qualified individual should be able to find a position without being hired or recommended by a relative already in government.

Bill No. 080662 contains basic restrictions on nepotism that are present in several other municipalities. It would prohibit city officers and employees – elected or unelected – from taking personnel actions concerning a close relatives or life partners. It would bar non-elected city officers and employees from recommending personnel actions by others in city agencies or quasi-public agencies if the officer or employee serves in or exercises jurisdiction or control over those agencies; elected officials could not recommend personnel actions irrespective of their authority over these agencies.

The bill can be improved upon. Seventy recommends several ways to enhance its basic restrictions in the attachment to this testimony.

Somewhat related to the issue of nepotism is whether city officers and employees should be permitted to engage in personnel actions – either directly or through recommendations made to others – regarding individuals with whom they are involved in a romantic relationship. Although no bill on today’s agenda covers this issue, it was raised by both Seventy and the Task Force and deserves attention.

Detroit Mayor Kwame Kilpatrick was forced to step down in 2008 after pleading guilty to obstruction of justice stemming from a scandal involving his efforts to cover up an apparent romantic relationship with his former Chief of Staff. Former New Jersey Governor Jim McGreevy appointed a man he later identified as his lover as the state’s Homeland Security Advisor.

Adopting an anti-fraternization policy that addresses the potential conflict of interest raised by office romances, particularly those involving a boss and a subordinate, will help the city protect itself from liability for sexual harassment and other lawsuits that could arise if a relationship sours. Well over a year ago, Mayor Nutter promised to enact an Executive Order on this issue. He should do so promptly and set an example for the rest of government.

3. The Committee of Seventy SUPPORTS greater restrictions on city employees holding second jobs (Bill No. 080660).

Seventy believes that, with a few limited exceptions, the most effective way to deter the potential for improper influence is to ban elected officials and appointed officials in the highest level of government from holding outside jobs with any firm that does, or seeks to do, city business.

We recognize that this position goes beyond the Task Force's recommendation and is perhaps the least popular proposal on today's agenda.

For this reason, we will confine our specific comments on Councilman Rizzo's bill to the attachment.

However, we urge greater transparency of second jobs by requiring individuals covered by the city's Statement of Financial Interests to report, and make publicly available on the city's website, their compensation (salaries, wages and fees) from non-city sources. Individuals covered by Mayor Nutter's stronger Executive Order are already obligated to do this. There is no reason why members of City Council, their staffs, City Controller, District Attorney and the row officers should not make the same disclosures.

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The Committee of Seventy appreciates Council's consideration of its testimony and also its input on improving the March 4 package of ethics and campaign finance proposals. We look forward to continuing our dialogue.

To repeat what we said in our March 15 testimony before Council's Law and Government Committee: Honest government is not just a *nice* goal.

It is essential to Philadelphia's efforts to attract businesses, jobs and residents. We thank Council for providing leadership on this issue.

Thank you.