Report on public hearing held March 20, 2024 by the Philadelphia Board of Ethics
Regarding a proposed amendment to Regulation No. 1 "Campaign Finance"

Dated: *April 25, 2024*

/s/ J. Shane Creamer, Jr. Esq.

Board of Ethics
J. Shane Creamer, Jr., Esq.
Executive Director

Dated: *April 25, 2024*

Approved: */s/ Reynelle Brown Staley*

Law Department
Reynelle Brown Staley
Senior Attorney

A. Legal Authority

The Board of Ethics (hereinafter "the Board") was created by an amendment to the Philadelphia Home Rule Charter approved by voters via a ballot question in May 2006. *See* Philadelphia Home Rule Charter §§ 3-806 and 4-1100. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, such as conflicts of interest, financial disclosure, standards of governmental conduct, campaign finance, political activity, and such additional duties as City Council may assign. The Board has the power to promulgate regulations as necessary to implement and interpret the laws over which it has jurisdiction, including the City's Campaign Finance Law, which is found at Code Chapter 20-1000. *See* Code §§ 20-606(1)(a).

B. Procedural Summary

The Board followed the procedures set forth in Home Rule Charter § 8-407 when promulgating this amendment to Board Regulation No. 1 (Campaign Finance). On February 21, 2024, the Board voted to approve the posting of a proposed amendment Regulation No. 1 at the Department of Records. The Law Department approved the proposed amendment to Regulation No. 1 for public comment posting and, on February 23, 2024, the Board filed the proposed amendment with the Department of Records. The Board scheduled a hearing on the proposed regulation for March 20, 2024, notice of which was advertised in local newspapers, posted prominently on the Board's website, and shared on the Board's X (formerly known as Twitter) and LinkedIn accounts.

Through this report on the March 20, 2024 hearing, the Board modifies the proposed amendment to Regulation No. 1, and adopts it as modified. A clean copy of the regulation is attached as Exhibit 1 and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made as a result of the hearing to the proposed amendment as posted for public comment at the Records Department, and as approved by the Board through this Report, is attached as Exhibit 2.

C. The March 20, 2024 Hearing

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Brian McCormick and Board members Sanjuanita González, Ellen Mattleman Kaplan, and Valerie Harrison. The hearing transcript is attached as Exhibit 3. The proposed amendment as posted for public comment at the Department of Records is included in Exhibit 3 as Exhibit A to the hearing transcript. The following witnesses provided testimony: Jordana Greenwald, on behalf of Board staff; Adam Bonin; and Aaron McKean, on behalf of the Campaign Legal Center. Material used by Ms. Greenwald during her testimony is attached to the hearing transcript as Exhibit B. Mr. McKean provided written material accompanying his testimony that is attached to the hearing transcript as Exhibit C.

D. Summary of Hearing Testimony and Board Responses Thereto

1. Testimony of Jordana Greenwald, on behalf of Board staff

Ms. Greenwald testified that at the request of the Board during the February 21, 2024, Public Meeting, Board staff recommended the addition of a definition of "coordinated expenditure" to Paragraph 1.1 as follows:

> **h. Coordinated expenditure.** An expenditure made by a spender in concert, cooperation, consultation, or collaboration with a candidate, an individual who later becomes a candidate, a candidate political committee, a political committee or other organization that is later used as a candidate political committee, or an agent or officer of any of the above. See Subpart I for further details regarding what constitutes coordination that may result in in-kind contributions.

Board Response

The Board agrees with the change proposed by Board staff as memorialized in the slide presented at the hearing and attached as Exhibit B to the transcript, except that the Board replaces the last sentence with the following two sentences:

> There are several types of conduct or relationships that may result in in-kind contributions, including conduct or relationships that occurred or existed before an individual became a candidate. See Subpart I for further details.

This change has been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

2. Testimony of Adam Bonin

a. Mr. Bonin opined that the continued use of postal mail in Paragraph 1.5(f) to notify the Board that the doubling threshold has been reached is outmoded and potentially creates means to delay such notification. Mr. Bonin testified that those with the means to donate $250,000 to their own campaign can fairly be presumed to have access to email. He further expressed concern that these self-funding candidates might seek to delay the effective date of doubling by deliberately mailing the notice from a remote location. Mr. Bonin pointed out that the Code is silent with respect to the notification process for self-funders.

Board Response

While the Board is skeptical of the likelihood of postal mail shenanigans, the Board agrees that postal mail is no longer a necessary means of notice for self-funding. This testimony also suggests that it is not clear as to whether the "two business days" applies to the sending or receipt of the notification. It is further unclear to what email address notifications should be addressed. Accordingly, we make the following changes to Paragraph 1.5(f):

f. If a candidate makes contributions to their own campaign from their personal resources that reach the threshold described in Paragraph 1.5(a), that candidate shall deliver notification to the Board within two business days~~, that candidate shall notify the Board of this fact by postal mail or~~ by email sent to BOE.Notice@phila.gov~~the attention of the Board's Executive Director~~. The notification shall provide the date of the transaction that met or exceeded the $250,000 threshold. If the $250,000 threshold is met or exceeded before the individual becomes a candidate, the candidate shall notify the Board within two business days of becoming a candidate.

These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

b. Mr. Bonin testified that while he appreciates the effort to include pre-candidacy self-funding in determining whether the doubling threshold is met under Paragraph 1.5, the rule leaves open the possibility that a self-funder exploring a run for office will not operate through a committee at all. He expressed his concern that by not establishing a committee, a wealthy candidate could avoid having funds that they spend on their own candidacy attributed to their campaign.

Board Response

The Board believes that the doubling rules have always included pre-candidacy contributions by the eventual candidate to their own campaign. The proposed amendments are intended to clarify that such pre-candidacy contributions are covered.

While we acknowledge that a candidate is not required to establish or designate a political committee, we believe that there are significant risks and costs (e.g. taxes, accounting challenges, employment liability) associated with conducting a large-scale campaign without a committee that would deter such activity. We will continue to monitor the application of this rule and consider further adjustments as appropriate.

c. In addition to his testimony on the doubling rules, Mr. Bonin testified that he disagreed with the amendment's characterization of transition and inauguration committees as political committees. He opined that such committees are putting on civic, rather than political, events. Mr. Bonin testified that such committees should be allowed to receive contributions from businesses and nonprofits to support these civic efforts. He further opined that the contribution limits should not apply to the activities of transition and inauguration committees.

Board Response

The Board appreciates Mr. Bonin's concern about transition and inauguration committees. The Code, however, is clear that transition and inauguration committees are political committees, that their use is mandatory, and that all contributions to such committees are subject to contribution limits.

In 2019, Chapter 20-1000 (Political Contributions and Expenditures) was amended to, among other things, update the mechanism for handling contributions and expenditures related to transition and inauguration activities. Prior to 2019, Chapter 20-1000 permitted "post-candidacy contributions" to a former candidate for use in retiring debt or covering the cost of transition or inauguration. The 2019 amendments created a separate committee for transition and inauguration costs, while still allowing a former candidate to raise money through their candidate political committee to retire election-related debt.

As amended, the Code is explicit that transition and inauguration committees are political committees and that their use is compulsory:

> (1) A candidate or individual elected to City office *shall* use a *political committee* that is separate from that candidate's candidate political committee to solicit and receive contributions for transition or inauguration into City elective office. The name of such committee shall contain the terms "Transition" and "Inauguration".

Code § 20-1011 (emphasis added). The 2019 amendments updated the definitions of both "contribution" and "expenditure" to include amounts raised or spent on costs "related to transition or inauguration to City elective office." Code § 20-1001(7), (11)(a). The amendments further updated Section 20-1002 to specifically impose contribution limits on transition and inauguration committees:

> (8) Notwithstanding the limits set forth in subsections 20-1002(1) and (2), if a campaign or former candidate establishes a Transition and Inauguration Committee pursuant to Section 20-1011:
>
> (a) an individual may make contributions to that committee of up to, but not in excess of, three thousand dollars ($3,000) per calendar year, including contributions made through one or more political committees or persons; and
>
> (b) a person other than an individual may make contributions to that committee of up to, but not in excess of, twelve thousand dollars ($12,000) per calendar year, including contributions made through one or more political committees or persons.

Accordingly, the proposed amendments treat a transition and inauguration committee as a political committee for the purposes of the City's Campaign Finance Law. We note that there is no requirement that transition and inauguration committees take on any role other than managing the raising and spending of funds for transition and inauguration activities. The proposed changes reflect the focus on fundraising and spending for transition and inauguration purposes and are consistent with the transparency goals of both the original and amended ordinances.

In contrast, neither the Code nor the Regulation address whether a corporation may make contributions to a transition and inauguration committee. Rather, the restrictions on corporate contributions originate in the State Election Code.

The Board will continue to review the application of these relatively new provisions in future elections and consider whether further adjustments are warranted.

d. In addition to the specific concerns about the proposed amendments, Mr. Bonin testified that while he appreciates the Board's efforts toward campaign finance reform, he questions whether candidates won't just find another way around the rules.

Board Response

The Board appreciates Mr. Bonin's concerns about the challenges of effectively regulating circumvention of the City's Campaign Finance Law. All regulators are faced with the reality that some segment of the regulated community will seek out a new way to evade the rules. Despite frustrations inherent in this dilemma, we will continue to implement the Campaign Finance Law through rulemaking, compliance education, and advice.

3. Testimony of Aaron McKean

a. Mr. McKean suggested that the Board make more explicit in Subpart I of the regulation that expenditures resulting from coordination are in-kind contributions subject to the contribution limits. Specifically, the written testimony suggested the following adjustment to the language of Paragraph 1.33:

Recommended full text for final rule:

> **1.33 Coordination generally.** Coordination as described in this Subpart is not itself prohibited. Expenditures resulting from coordination between a spender and the benefiting candidate are deemed in-kind contributions to the benefiting candidate subject to the applicable contribution limits.

Board Response

The Board agrees that a key element of Subpart I is that coordinated expenditures are treated as in-kind contributions by the person(s) making such expenditure to the candidate(s) or candidate political committee(s) who stand to benefit from those expenditures. While we agree that clarity is desirable, the Board believes that the general rule set forth in Paragraph 1.33 is already clarified and explained by the subsequent, more specific paragraphs, and that attempting to add those specifics to Paragraph 1.33 will not add clarity. The suggested language introduces a new term ("benefiting candidate") that does not account for the full range of possible beneficiaries or persons who might be involved in coordination as defined in the proposed amendment.

That said, we acknowledge that Paragraph 1.33 could more clearly direct readers to the specifics of the subsequent paragraphs. Accordingly, we make the following change to Paragraph 1.33:

> **1.33 Coordination generally.** Coordination as described in this Subpart is not itself prohibited. ~~Expenditures resulting from coordination~~ Coordinated expenditures as described in this Subpart are deemed in-kind contributions subject to the applicable contribution limits.

This change has been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

b. Mr. McKean opined that the Board should further clarify coordination based on control of a spender or its principal funder as described in proposed amended Paragraph 1.37(c). He testified that this provision should be expanded to apply to any spender or principal funder controlled by an immediate family member of a candidate. He further testified that Paragraph 1.37(c) should be limited to the two years preceding the covered election in order to provide greater clarity to the regulated community and focus the restriction on spending coordinated by individuals with meaningful information about the campaign. Specifically, the written testimony suggested the following adjustments to the language of Paragraph 1.37(c):

Recommended full text for final rule:

> **1.37** Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):
>
> **…**
>
> c. ~~Directly~~ In the two years preceding the covered election, directly or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender. A spender or principal funder that is established, maintained, or controlled by an immediate family member of a candidate shall be considered established, maintained, or controlled by the candidate under this subparagraph;

Board Response

The Board agrees that a time limitation on coordination based on the direct or indirect establishment, maintenance, or control of a spender (or its principal funder) is appropriate to provide clarity and better target the most concerning conduct. We are likewise concerned about the use of a family member or other proxy to evade this restriction. We acknowledge, however, that not all immediate family members are politically aligned. We further recognize that a candidate's friends or business associates may have the same, or even greater, access to campaign information.

We believe that the "directly or indirectly" language already included in Paragraph 1.37(c) would cover the use of a straw person – whether or not they are a relative – to establish, maintain, or control a spender (or its principal funder). We will continue to review this new provision to assess whether specific restrictions on relatives, business associates, or others are appropriate.

Accordingly, we make the following changes to Paragraph 1.37(c):

1.37 Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):

(c) At any time during the two years preceding the covered election, directly ~~Directly~~ or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender;

c. Mr. McKean testified that the current regulation provides an exemption for spenders who use the same vendors as a candidate's campaign. He opined that the Board should remove this exemption and clarify that expenditures by a spender who uses a common vendor or hires the candidate's former staff are coordinated. In addition, he recommended the addition of a safe harbor for spenders who want to use common vendors or hire a candidate's former employees where the spender establishes and maintains an effective firewall. Specifically, the written testimony proposed the following addition to the regulation and corresponding change to proposed amended Paragraph 1.41:

Recommended full text for final rule:

1.XX Coordination through common vendors and former employees.

a. An expenditure made by a spender that, during the two years preceding the covered election, employed the services of a person who during the same period had executive or managerial authority for the candidate or candidate political committee, was authorized to raise or expend funds for the candidate or candidate political committee, or provided the candidate or candidate political committee with professional services (other than accounting or legal services) related to campaign or fundraising strategy shall be considered a coordinated expenditure.

b. Expenditures involving common vendors or former employees of a candidate or candidate political committee as described in subparagraph (a) will not be considered coordinated if the spender implements an effective firewall. A person who relies upon a firewall bears the burden of proof of showing that the firewall was effective. A firewall must do all of the following:

i. Separate staff who provide a service to the spender in relation to its covered expenditures from other staff who provide services to a candidate supported by the spender's expenditures;

ii. Forbid an organization's owners, executives, managers, and supervisors from simultaneously overseeing the work of staff separated by a firewall;

iii. Prohibit the flow of strategic non-public information between the spender and the candidate supported by the covered expenditure, and between specific staff who are separated by the firewall;

iv. Provide for physical and technological separation to ensure that strategic non-public information does not flow between the spender and the candidate, and between the specific staff separated by the firewall; and

...

1.41. An expenditure will not be considered a coordinated expenditure merely because:

...

c. The spender and the candidate's campaign use the same ~~vendor,~~ attorney~~,~~ or accountant;

Board Response

The Board agrees that common vendors and the hiring of former campaign staff provide opportunities for coordination. We do not believe, however, that the current regulation exempts shared vendor relationships from coordination. Paragraph 1.41 states that "[a]n expenditure will not be considered a coordinated expenditure merely because" of the listed relationships. That is to say, the listed relationships are not *on their own* enough to establish coordination.

For example, if a PAC and a campaign use the same printing company, that shared vendor relationship *by itself* is not enough to make the PAC's spending coordinated with the campaign. If, however, there is evidence that the printing company provided information about the campaign's mailing strategies and goals to the PAC to facilitate the PAC's spending in support of the campaign, that additional communication would make the expenditures coordinated.

We acknowledge the potential for coordination when a spender and a campaign share vendors. We further agree that it would be wise for vendors who truly have access to meaningful campaign information to utilize a firewall to protect against both actual coordination and the perception thereof. That said, we need further opportunity to evaluate the impact of formally presuming coordination based on shared vendors or the hiring of former staff of a candidate or campaign. Accordingly, the Board will consider this recommendation for potential future amendments to the regulation.

d. In addition to testimony about conduct that constitutes coordination, Mr. McKean recommended that the Board further clarify the consequences of coordination by a spender's principal funder. His written testimony described this provision as "intended to ensure that expenditures made by a spender pursuant to the principal funder's coordination with a candidate (or the candidate's political committee or agents) are attributable to both the spender and the principal funder." Specifically, the written testimony proposes the following changes to proposed amended Paragraph 1.40:

Recommended full text for final rule:

> **1.40 Coordination by principal funders.** Conduct of the principal funder of a spender shall be attributed to the spender, regardless of whether the principal funder is an agent or officer thereof. ~~Expenditures resulting~~ For the purposes of this paragraph, expenditures by the spender that result from coordination ~~between~~ by the principal funder ~~and the spender~~ shall be attributable to both the spender and the principal funder.

Board Response

The Board agrees with the recommended changes to proposed amended Paragraph 1.40. These changes have been incorporated into the final version of the regulation, attached hereto as Exhibit 1.

E. Approval

At a public meeting on April 17, 2024, the Board voted 5-0 to approve the amendment to Regulation No. 1 as modified and to approve this Hearing Report. The Regulation as approved is attached as Exhibit 1.

Exhibit 1 to Hearing Report

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 1
CAMPAIGN FINANCE

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SUBPART A. SCOPE; DEFINITIONS

1.0 Scope. The Board promulgates this Regulation pursuant to Philadelphia Home Rule Charter §§ 4-1100 and 8-407 and Philadelphia Code § 20-606(1)(a) to interpret Code Chapter 20-1000.

1.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

a. **Accounting period**. The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before they became a candidate.

b. **Agent**. An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.

c. **Board**. The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

d. **Campaign**. Includes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them.

e. **Candidate**. An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces their candidacy for City elective office, including a former candidate who receives contributions or makes expenditures to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office.

f. **Candidate political committee**. The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.

g. **City elective office**. The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.

h. **Coordinated expenditure.** An expenditure made by a spender in concert, cooperation, consultation, or collaboration with a candidate, an individual who later becomes a candidate, a candidate political committee, a political committee or other organization that is later used as a candidate political committee, or an agent or officer of any of the above. There are several types of conduct or relationships that may result in in-kind contributions, including conduct or relationships that occurred or existed before an individual became a candidate. See Subpart I for further details.

i. **Contribution**.

   i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;

   ii. An in-kind contribution, as defined at Paragraph 1.1(p); or

iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

j. **Contributor**. A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.

k. **Covered election**. Any primary, general or special election for City elective office.

l. **Electioneering communication**. Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.

m. **Excess pre-candidacy contribution**. The portion of a pre-candidacy contribution to a political committee that, had it been made to a campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.

n. **Expenditure**. The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:

i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;

ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a campaign;

iii. For an independent expenditure;

iv. For an electioneering communication; or

v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

o. **Former candidate**. An individual who was a candidate for City elective office becomes a former candidate:

i. On the day after a general election, if the individual was unopposed in that election;

ii. On the day after a primary election, if the individual concedes that election;

iii. When the individual's opponent concedes, if the individual was opposed in a general election; or

iv. If an election is contested, when that contest is resolved.

p. **Independent expenditure**. An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any campaign and that is not made in concert with or at the request or suggestion of any campaign.

q. **In-kind contribution**.

i. The provision of any goods or services directly to a campaign, litigation fund committee, or transition and inauguration committee without charge or at a charge that is less than the usual and normal charge for such goods or services;

ii. The payment or agreement to pay a third party to provide goods or services to a campaign, litigation fund committee, or transition and inauguration committee if the goods and services are in fact provided; or

iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, litigation fund committee, or transition and inauguration committee, as provided in Subpart I. ¶

The term "in-kind contribution" does not include volunteer labor as described in Paragraph 1.10(g).

r. **Litigation fund committee**. The political committee established by a candidate, campaign, or former candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of that candidate's campaign or participation in a covered election, as described in Subpart G.

s. **Person**. Any individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit organization.

t. **Political committee**. Any committee, club, association, political party, or other group of persons, including the candidate political committee, litigation fund committee, or transition and inauguration committee, of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election, to retire debt incurred to influence the outcome of a covered election, or to cover expenses related to transition or inauguration to City elective office.

u. **Pre-candidacy contribution**. A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.

v. **Pre-payment**. A payment made during the accounting period for any thing used or to be used by a campaign, including but not limited to: printed or produced campaign materials, such as sample ballots, shirts, signs, flyers, brochures, websites, photographs, audio or video recordings; advertising time or space; office space; or services or labor.

w. **Sample ballot**. A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

x. **SPEC account**. A segregated pre-candidacy excess contribution account, as described in Subpart J.

y. **Transition and Inauguration Committee**. The political committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs related to the candidate's transition or inauguration to City elective office, as described in Subpart H.

z. **Vendor**. A person, other than a political committee, that provides services to a campaign.

SUBPART B. CONTRIBUTION LIMITS

1.2 Limits on contributions from individuals.

a. A campaign shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.2: On November 1, 2021, prior to the election, Jane Doe donates $2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional $1,700 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to $3,700 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons.

1.3 Limits on contributions from political committees, partnerships, sole proprietorships, or other forms of organization.

a. A campaign shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's campaign if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.3: On November 1, 2021, prior to the election, Political Committee XYZ donates $10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional $4,800 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to $14,800 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

d. To qualify for the $14,800 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

1.4 Contributions made through other persons.

a. For the purposes of this Subpart, a contribution is made through another person, such as a political committee, when:

   i. A person makes a donation to another person, such as a political committee, and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient use all or part of the money to make a contribution to support a specific candidate.

      A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or

ii. A person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign.

b. For the purpose of the contribution limits, the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.

Example for 1.4(b): Joe Big makes a donation of $5,000 to Big PAC and tells the treasurer of the PAC that he would be ever so happy if the PAC supported candidate Lucy Largo. The next day, Big PAC makes a contribution of $5,000 to the Largo campaign.

Joe Big and Big PAC have each made a contribution of $5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by $1,300 and therefore violates the City's Campaign Finance Law.

1.5 Doubling of Contribution Limits.

a. If a candidate contributes $250,000 or more of their personal resources to their own campaign since the more recent of:

i. the most recent election cycle for the office sought by the candidate, or

ii. the last municipal election in which the candidate sought office,

the contribution limits for all campaigns for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).

All contributions made after either (i) or (ii) by an individual who becomes a candidate to the political committee that becomes their candidate political committee shall count toward the $250,000 threshold regardless of whether, at the time a contribution was made, the individual was a candidate or had designated a candidate political committee.

b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b) and (c) and 1.3(b) and (c)) do not double if a candidate contributes $250,000 or more to their own campaign.

c. A contribution that exceeds the contribution limits at the time it is accepted by a campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.

d. If a campaign returns, repays, or refunds to its candidate any money the candidate had contributed from the candidate's personal resources prior to reaching the $250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.

e. Once the contribution limits double, they remain doubled even if:

   i. The candidate whose contributions triggered the doubling ceases to be a candidate; or

   ii. After the limits have doubled, a campaign returns, repays, or refunds a portion of the money contributed from the candidate's personal resources.

f. If a candidate makes contributions to their own campaign from their personal resources that reach the threshold described in Paragraph 1.5(a), that candidate shall deliver notification to the Board within two business days by email sent to BOE.Notice@phila.gov. The notification shall provide the date of the transaction that met or exceeded the $250,000 threshold. If the $250,000 threshold is met or exceeded before the individual becomes a candidate, the candidate shall notify the Board within two business days of becoming a candidate.

g. Doubling shall be effective for all campaigns for that office, including that of the candidate who triggered the doubling, beginning on the date that the Board issues an advisory alert or other public announcement that a candidate for that office has met or exceeded the $250,000 threshold.

1.6 No person shall make any contribution that exceeds the limits set forth in this Subpart.

1.7 A pre-candidacy contribution made in the same calendar year that an individual becomes a candidate shall count toward the contribution limits set forth in this Subpart.

1.8 The value of in-kind contributions counts toward the total amount of contributions made or accepted in a calendar year.

1.9 If a person makes an expenditure to another person, to place a candidate's name on a sample ballot, and does so in coordination with that candidate's campaign, that expenditure is an in-kind contribution to the candidate's campaign and shall count toward the contribution limits set forth in this Subpart. Any additional expenditures made by the recipient person to print or distribute the sample ballot shall not be counted as a contribution to the candidate's campaign.

1.10 Transactions that do not count toward the contribution limits. The following are not subject to the contribution limits set forth in this Subpart:

a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee.

b. Contributions from a candidate's candidate political committee to that candidate's litigation fund committee or transition and inauguration committee.

c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) when a campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.

d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.24(h).

e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication.

f. Incidental expenditures made by persons other than campaigns that are related to Internet activity (such as the cost of hardware, software, or Internet access) that advocates or influences the election of a candidate.

g. Volunteer labor provided to a candidate or a political committee.

   i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:

      (1) Legal or accounting work;

      (2) Entertainment such as a performance by a musical group or DJ; and

      (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.

   ii. Volunteer labor does not include the donation to a candidate of:

      (1) Equipment, such as computers, copiers, or printers;

      (2) Resources, such as postage; or

      (3) Materials, such as stationery or campaign literature.

   iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.

h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign:

   i. Pays its fair portion of the costs;

   ii. Makes payment no later than 14 days after any other campaign; and

   iii. Obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

SUBPART C. DATE OF ACCEPTANCE OF CONTRIBUTIONS WITH RESPECT TO THE CONTRIBUTION LIMITS

1.11 Except as provided in Paragraphs 1.12, 1.13, and 1.14, the date of acceptance of a contribution is the date that the contribution comes into the possession of a campaign. A campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

1.12 If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the campaign finds the contribution in the mailbox.

1.13 If a contribution is made by credit card through a website, the date that the contribution is accepted is the date on which the contributor submits their credit card information on the website.

1.14 In-kind contributions.

a. If a person makes an in-kind contribution by providing goods or services directly to a campaign, the date of acceptance of that contribution is the date that the campaign receives the goods or services.

b. If a person makes an in-kind contribution by paying or agreeing to pay a third party to provide goods or services to a campaign, the date of acceptance of that contribution is the date the goods or services are provided or the date payment is made, whichever is earlier.

SUBPART D. ATTRIBUTING CONTRIBUTIONS MADE BY CHECK FOR THE PURPOSE OF THE CONTRIBUTION LIMITS

1.15 A contribution made by a check that reflects a joint checking account of two or more individuals shall be attributed to the joint account holder who signs the check. If more than one account holder signs a contribution check, the contribution shall be apportioned evenly between the signers. If an individual other than an account holder signs a contribution check, the contribution shall be attributed evenly among the joint account holders.

1.16 A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

1.17 A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of organization is a contribution from the partnership, sole proprietorship, or other form of organization, unless other facts demonstrate that the contribution is from the signer of the check.

SUBPART E. CAMPAIGN FINANCE DISCLOSURES

1.18 Electronic filing of campaign finance reports. Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board and shall be submitted in a format required by the Board. Upon receipt of any filing, the Board shall provide a printable receipt.

The City of Philadelphia's Campaign Finance Filing System may be found at:
https://ethics.pub/CFFiling

A schedule with the specific reporting deadlines may be found at:
https://ethics.pub/CFDocs

1.19 Candidates and candidate political committees. A candidate, a treasurer of a candidate political committee, or a candidate political committee shall file a campaign finance report or statement with the Board any time it is required to file such a report or statement with the City Commissioners. A candidate political committee shall also file a campaign finance report with the Board on the sixth Tuesday before a covered election in which that committee's candidate is participating, if the committee has made expenditures to influence the outcome of that election.

1.20 Political committees and other persons.

a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:

   i. Expenditures made or debt incurred to influence the outcome of a covered election;

   ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;

   iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or

   iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

   Any report required to be filed pursuant to this Paragraph 1.20(a) shall be filed no later than the state law due date for filing that report.

b. In addition to any filing required by Paragraph 1.20(a), a political committee shall file a campaign finance report with the Board on the sixth Tuesday before a covered election if the committee has made expenditures to influence that election.

c. In addition to any filing required by Paragraphs 1.20(a) or (b), any person, including a not-for-profit organization, shall file a report with the Board on or before any report due date set forth below, if that person, whether directly or through another person, makes or promises to make expenditures of $5,000 or more in the aggregate for one or more electioneering communications that are published or to be published within 50 days of a covered election.

   If the date of dissemination of the electioneering communication precedes the date of the expenditure for it, then the date of dissemination shall be used to determine the due date of the report. Such reports shall be due (unless the same person is required to file a report under Paragraph 1.20 (a) or (b) on the same date):

   i. on the sixth Tuesday before a covered election;

   ii. on the fourth Tuesday before a covered election;

   iii. on the second Friday before a covered election;

   iv. on the Tuesday immediately before a covered election;

   v. on the Friday immediately before a covered election; and

   vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.

d. In a report filed pursuant to Paragraph 1.20(c), if a person, other than a political committee or an individual, has segregated funds used to make expenditures into one or more accounts separate from funds not used to make expenditures, that person is only required to disclose the source of contributions deposited in the segregated accounts used to make expenditures.

   An individual who files a report pursuant to Paragraph 1.20(c) is only required to disclose contributions that the individual receives or solicits in order to fund the expenditures disclosed in the report.

1.21 Content of campaign finance reports and statements.

a. A campaign finance report filed with the Board shall disclose all contributions and other receipts received, each expenditure made, any debt incurred during the relevant reporting period, and the cash balance at the beginning and end of the reporting period.

i. For each contribution of more than $50, the report shall disclose the date and amount of the contribution and the contributor's name and address.

For each contribution of more than $250, the report shall disclose the date and amount of the contribution, the contributor's name and address, and, in the case of contributions from individuals, the contributor's occupation, employer, and employer's address.

ii. For each receipt other than a contribution (such as interest income, returned checks, or refunds), the report shall disclose the name and address of the source of the funds and a description of the receipt.

iii. For each expenditure, the report shall disclose the date, amount, and recipient of the expenditure, and the recipient's address and the purpose of the expenditure.

If the filer has used a credit or charge card to make expenditures, the filer shall disclose and itemize each purchase made with such a card, not merely a lump sum payment.

iv. For each unpaid debt, the report shall disclose the name and address of the creditor, the amount of debt owed, and the date the debt was incurred, as well as a description of the debt.

The date a debt is incurred is the day on which the creditor provided the goods, services, or loan from which the debt arises.

b. If, during a reporting period, a filer has accepted contributions, made expenditures, or incurred debt of less than $250, the filer may file a statement attesting to that fact in lieu of a full report. The statement shall set forth the filer's starting and ending balance for the reporting period.

c. If a campaign makes a payment to a person other than a political committee, whether directly by the campaign or through another person, to have the name of the campaign's candidate placed on a sample ballot or to conduct or organize get-out-the-vote activities, the campaign shall disclose not just that person to whom it made payment but also any persons whom that person pays or employs in order to provide the services promised.

1.22 Affirmation required for campaign finance filings. Any candidate, treasurer, or other individual submitting a campaign finance report or statement to the Board shall affirm that the information set forth therein is true and correct. The individual who submits the report or statement shall be liable for civil penalties if it contains any material misstatements or omissions. The affirmation required by this Paragraph shall be submitted as required by the Board.

SUBPART F. USE OF POLITICAL COMMITTEES AND CHECKING ACCOUNTS BY CANDIDATES AND CAMPAIGNS

1.23 One committee and one checking account.

a. A campaign shall use no more than one political committee and one checking account for the City elective office the campaign is seeking, into which all contributions for that office shall be deposited and from which all expenditures for that office shall be made, including expenditures to retire debt incurred to influence the outcome of a covered election.

b. If a campaign has or controls other political or non-political accounts, such accounts shall not be used for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election.

c. A campaign may be found to control a political committee or an account if:

   i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;

   ii. The candidate or an agent of the campaign established or registered the political committee or account; or

   iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.

   A campaign will not be found to control a political committee merely because the campaign and the political committee used the same attorney to complete and file registration paperwork.

d. Except as specifically permitted by this Subpart, a campaign shall not make any expenditure related to a covered election through any other person or vendor.

   An expenditure is made through another person if:

   i. The campaign provides the money to cover the specific expenditure;

   ii. The campaign selects the recipient of the expenditure; or

   iii. The campaign approves the expenditure or directs that it be made.

1.24 Permissible uses of other committees or accounts.

a. **Payment service providers.**

   i. A campaign may use a payment service provider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the campaign's political committee checking account.

   ii. A campaign may use a payment service provider to make expenditures so long as any funds used for such expenditures are drawn directly from the campaign's political committee checking account.

b. **Savings account.** A campaign may transfer funds between the candidate political committee's checking account and a single savings account so long as:

   i. The savings account is at the same bank as the checking account;

   ii. The campaign deposits all contributions into the checking account before transferring such funds to the savings account;

   iii. The campaign does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and

   iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that the candidate has established a savings account.

c. A candidate or an employee or agent of a campaign may use personal funds to make purchases for the benefit of the campaign so long as:

   i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;

   ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;

   iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and

   iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

d. A campaign may make expenditures for advertising through a vendor if that vendor directly pays the media outlet in or on which such advertising shall appear. For such expenditures, a campaign shall obtain and maintain receipts and documentation of where and when the relevant advertising ran, which shall be made available to the Board upon request.

e. If, in the course of providing services to a campaign, a vendor incurs costs incidental to the provision of those services, an expenditure by the campaign to reimburse the vendor for those costs shall be permissible under this Subpart so long as the costs are promptly invoiced and the reimbursement is promptly made. For such reimbursements, a campaign shall obtain and maintain appropriate receipts and documentation, which shall be made available to the Board upon request.

f. A candidate may maintain and use a litigation fund committee established pursuant to Subpart G or a transition and inauguration committee established pursuant to Subpart H.

g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

   i. That political committee or other person offers similar services to other campaigns;

   ii. The amount charged is commensurate with the services provided; and

   iii. The candidate does not exercise control over the political committee or other person.

h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.

i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

1.25 Multiple offices sought. If a candidate is running for more than one City elective office simultaneously, that candidate shall maintain a separate candidate political committee and checking account for each office being sought.

1.26 Requirement to provide information to the Board about a candidate political committee.

a. A candidate who has a candidate political committee when becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:

   i. The committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.

b. If a candidate does not have a candidate political committee when becoming a candidate, that candidate shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with the candidate's street address (other than a P.O. box), telephone number, and email address.

c. If a candidate establishes a candidate political committee after becoming a candidate, that candidate shall provide the information required by this Paragraph within three business days of the formation of the committee.

d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

SUBPART G. LITIGATION FUND COMMITTEES

1.27 Litigation fund committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or former candidate may establish a litigation fund committee to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.27(d).

b. The litigation fund committee shall be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of the litigation fund committee shall include the term "Litigation Fund."

d. A candidate, campaign, or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

e. A candidate, campaign, or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.

f. A candidate, campaign, or former candidate may make expenditures from a candidate political committee for the purposes described in Paragraph 1.27(d) regardless of whether they have established a litigation fund committee under this subpart.

g. A candidate, campaign, or former candidate shall not transfer funds to a candidate political committee from a litigation fund committee. Nothing in this Subpart, however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a litigation fund committee.

h. A candidate, campaign, or former candidate may establish a litigation fund committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a litigation fund committee must be terminated as set forth in Paragraph 1.29.

1.28 Requirement to provide information to the Board about a litigation fund committee.

a. Within three business days of the formation of a litigation fund committee, a campaign or former candidate shall notify the Board of the following information:

   i. The litigation fund committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the litigation fund committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.

b. If the information required by this Paragraph changes, the campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.29 Termination of a litigation fund committee.

a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the campaign or former candidate sought, except as provided in Paragraph 1.29(c).

b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.

c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

   iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a campaign, former candidate, or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART H. TRANSITION AND INAUGURATION COMMITTEES

1.30 Transition and inauguration committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or former candidate elected to City office who wishes to solicit and receive contributions and make expenditures to pay fees and costs related to the candidate's transition or inauguration to City elective office shall establish a transition and inauguration committee to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.30(d).

b. The transition and inauguration committee shall be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of a transition and inauguration committee shall include the terms "Transition" and "Inauguration."

d. A candidate, campaign, or former candidate elected to City office shall make expenditures from a transition and inauguration committee solely to pay fees and costs related to the candidate's transition or inauguration to City elective office. Such expenditures include fees and costs associated with:

   i. soliciting funds for the purposes outlined in this paragraph;
   ii. payroll and consulting fees for committee staff;
   iii. recruiting and selecting City employees as part of the candidate's transition into City office except to the extent such costs are covered by the City;
   iv. temporary office space, furnishings, and equipment; and
   v. catering, entertainment, rental fees, photography, and other similar costs associated with an inauguration ceremony or celebration.

   Transition and inauguration committees may not be used to solicit contributions or make expenditures related to the purchase of durable goods or real property.

   Reelected incumbents may use a transition and inauguration committee only for inauguration costs. They shall be presumed to have no valid transition costs associated with continued service in the same office.

e. A candidate or individual elected to City office shall not transfer funds to a candidate political committee from a transition and inauguration committee. A candidate or former candidate elected to City office shall not make expenditures from a candidate political committee for the purposes described in Paragraph 1.30(d). Nothing in this Subpart, however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a transition and inauguration committee.

f. A campaign or former candidate may establish a transition and inauguration committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a transition and inauguration committee must be terminated as set forth in Paragraph 1.32.

1.31 Requirement to provide information to the Board about a transition and inauguration committee.

a. Within three business days of the formation of a transition and inauguration committee, a candidate or individual elected to City office shall notify the Board of the following information:

   i. The transition and inauguration committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the transition and inauguration committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.

b. If the information required by this Paragraph changes, the candidate or individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.32 Termination of a transition and inauguration committee.

a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.

b. Before a transition and inauguration committee is terminated, the transition and inauguration committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

   iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

c. The Board may grant an extension for terminating a transition and inauguration committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART I. COORDINATED EXPENDITURES

1.33 Coordination generally. Coordination as described in this Subpart is not itself prohibited. Coordinated expenditures as described in this Subpart are deemed in-kind contributions subject to the applicable contribution limits.

1.34 Pre-candidacy coordination.

a. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made before the individual becomes a candidate, such expenditure is a pre-candidacy in-kind contribution subject to Subpart J.

b. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made after the individual becomes a candidate, such expenditure is an in-kind contribution subject to Subpart B.

1.35 Special terms. For the purposes of this subpart:

a. A "spender" is any person making an expenditure; and

b. A "principal funder" is any person providing 50% or more of the funds received by a spender in the twelve months before the covered election.

1.36 Coordinated expenditures. A coordinated expenditure is an expenditure made by a spender in concert, cooperation, consultation, or collaboration with:

a. A candidate;
b. An individual who is a candidate at the time of the expenditure, regardless of whether they were a candidate at the time the conduct constituting coordination took place;
c. In the case of pre-candidacy expenditures, an individual who later becomes a candidate, regardless of whether they were a candidate at the time the conduct constituting coordination took place;
d. A candidate political committee;
e. A political committee or other organization that is later used as a candidate political committee; or
f. An agent or officer of any of the above.

1.37 Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):

a. Communicates with the spender concerning the expenditure before it is made, including by:
    (i) Requesting or suggesting the spender make the expenditure; or
    (ii) Assenting to an expenditure suggested by the spender;
b. Directs, places, or arranges the expenditure;
c. At any time during the two years preceding the covered election, directly or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender;

d. Provides information to the spender to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication by the source of the information to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.38; or

Example for 1.37(d): Philadelphians for Philadelphia PAC establishes a telephone bank to get out the vote for primary voters for Candidate A. Candidate A's campaign gives Philadelphians for Philadelphia a list of telephone numbers of people that contributed to Candidate A's campaign. Philadelphians for Philadelphia organizes the phone bank without any other input from Candidate A's campaign and spends $14,800 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The $14,800 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an $14,800 in-kind contribution to Candidate A's campaign.

e. Provides instructions to the spender. A public communication will constitute such instructions only if:

   i. The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and

   ii. The communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as "voters need to hear" or "voters need to see."

   Despite the presence of these factors, coordination will not be found if the spender can demonstrate that they had an independent basis for making the expenditure.

Example 1 for 1.37(e): Candidate A's campaign website includes a page with text in a red box that says "Voters in South Philadelphia need to hear that Candidate A supports dog parks." Without any other input from the campaign, Philadelphians for Philadelphia PAC pays $25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks.

The $25,000 spent by Philadelphians for Philadelphia PAC is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $25,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.

Example 2 for 1.37(e): Candidate A's communications director tweets that "Center City voters need to see on the go that Candidate A will keep our streets clean." Without any other input from Candidate A's campaign, Philadelphians for Philadelphia PAC spends $200,000 to send online advertisements to mobile devices in Center City with the message "Candidate A will keep our streets clean." The $200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.
Example 3 for 1.37(e): Philadelphians for Philadelphia PAC spends $15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A's campaign updates its website with the message, "Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!" After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying "Only I can kill every spotted lantern fly!" The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A's campaign updated its website with the statement about the lantern flies. The $15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A's campaign posted on its website.

1.38 Republication of campaign communications or materials. For the purposes of the contribution limits, an expenditure made to reproduce, republish, or disseminate a campaign communication (including audio recordings or video footage) or campaign material (such as photographs, flyers, signs, or brochures) prepared by a campaign:

a. Shall be considered an in-kind contribution made by the spender.

b. Shall be considered an in-kind contribution received by the campaign if the spender obtains the communication or materials directly from the campaign or from another source with the consent of the campaign.

   A campaign communication or campaign material is obtained with the campaign's consent if the campaign provides it to a third party for the purpose of enabling another person to (1) obtain the communication or material from that third party and (2) subsequently republish some or all of it.

c. Shall not be considered an in-kind contribution if:

   i. The communication or material is incorporated into a communication that advocates the defeat of the campaign that prepared the material;

   ii. The item republished is a photograph or video obtained from a public source that is not controlled by the campaign; or

   iii. The person's expenditures for republication of a campaign's communications or materials are less than $100 in the aggregate per reporting period.

Example for 1.38(a) and (b): Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends $100,000 to run the advertisement on three television stations during the week before election day.

Candidate A posted the b-roll footage for the purpose of enabling another person to obtain it. Pennsylvanians for a Better Pennsylvania obtained a campaign communication created by Candidate A's campaign with the consent of the candidate's campaign. As such, the committee's expenditure of $100,000 was coordinated with Candidate A's campaign and is both an excess in-kind contribution made by the committee and an excess in-kind contribution received by Candidate A.

1.39 Fundraising. Where a person listed in Paragraph 1.36(a) through (f) directs or donates funds to, solicits funds for, or otherwise provides funds to the spender in the twelve months before the covered election, whether directly or indirectly, all expenditures made by that spender after the promise or receipt of such funds are coordinated.

a. Where the spender is a nonprofit organization (other than a political committee), coordination will not be found if the nonprofit can demonstrate that the funds provided:

   i. are a bona fide membership fee or dues paid by all similarly situated members; and

   ii. account for 5% or less of the total funds received by the nonprofit in the relevant twelve-month period.

This paragraph shall not apply to fundraising for or donating to a party as defined in 25 P.S. §1102.

1.40 Coordination by principal funders. Conduct of the principal funder of a spender shall be attributed to the spender, regardless of whether the principal funder is an agent or officer thereof. For the purposes of this paragraph, expenditures by the spender that result from coordination by the principal funder shall be attributable to both the spender and the principal funder.

1.41 An expenditure will not be considered a coordinated expenditure merely because:

a. The spender interviews the candidate;

b. The spender has endorsed the candidate;

c. The spender and the candidate's campaign use the same vendor, attorney, or accountant;

d. The spender has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or

e. The spender has invited the candidate to make an appearance before the spender's members, employees, or shareholders.

SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS

Note: The following requirements regarding excess pre-candidacy contributions are relevant only if, prior to becoming a candidate for City elective office, an individual accepts contributions in excess of the limits set forth in Subpart B.

1.42 The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

> **Example for 1.42:** On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. The accounting period for Candidate A is January 1, 2018 through November 30, 2020. The last Controller election was held in 2017 so January 1, 2018 would be the first day of the year following that election.

1.43 Prohibited Expenditures.

a. A campaign shall not spend any excess pre-candidacy contributions for the purposes of: influencing the outcome of a covered election in which the campaign's candidate is a candidate; transition or inauguration expenses; or retiring debt that was incurred to either influence the outcome of an already completed covered election or cover transition or inauguration expenses related to an already completed covered election.

b. A campaign shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established pursuant to Subpart G or the candidate's transition and inauguration committee established pursuant to Subpart H.

1.44 Exclusion of excess pre-candidacy contributions upon becoming a candidate.

a. Except as provided in Paragraph 1.45, within ten days after an individual becomes a candidate, their campaign shall exclude all excess pre-candidacy contributions from its candidate political committee's checking account by one of the following methods:

   i. Transferring excess pre-candidacy contributions to a segregated account; or

   ii. Returning excess pre-candidacy contributions to their contributors.

b. **Calculation of amount to be excluded.** A campaign shall determine the amount to be excluded by using one of the following methods:

i. **Dollar-for-dollar calculation.** A campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

> **Example for 1.44:** On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Mr. B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 ($400 excess from Mr. B + $400 excess from Ms. C) from its checking account.

ii. **Accounting-based calculation.** A campaign need not exclude any excess pre-candidacy contributions that the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent pre-candidacy, provided that:

(1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and

(2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.

c. If the amount that the campaign shall exclude from the candidate political committee's checking account exceeds the amount of cash the committee has on hand, the campaign shall use incoming contributions to cover the amount that shall be excluded.

1.45 Pre-candidacy segregation. A campaign need not exclude any excess pre-candidacy contributions that, upon receipt, the campaign had transferred to a segregated pre-candidacy excess contribution account ("SPEC account"), provided that, if the campaign used any funds in a SPEC account for pre-payments, the campaign shall exclude from the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph 1.44.

Example 1 for 1.45: On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Person B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Person C (same). On November 2, 2020, Candidate A transfers $1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.
Example 2 for 1.45: On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Person B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Person C (same). On November 2, 2020, Candidate A transfers $800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends $800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 from its checking account. While Candidate A segregated the $800 in excess contributions received from Person B and Person C, she spent $800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.

1.46 A campaign shall not use money held in a SPEC account to influence the outcome of a covered election in which the campaign's candidate participates, to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office.

1.47 Within seven days of establishing a SPEC account, a campaign shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

SUBPART K. RETIRING DEBT

1.48 Except as provided in Paragraph 1.49, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor and is subject to the contribution limits set forth in Subpart B.

1.49 If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;

b. The debt has been outstanding for at least 24 months;

c. The candidate political committee does not have sufficient cash on hand to pay the creditor;

d. Forgiveness of the debt is not prohibited by any other relevant law; and

e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt.

The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

SUBPART L. PENALTIES

1.50 Acceptance of an excess contribution. A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the accepted contribution exceeded the limit, or $2,000, whichever is less.

1.51 Making an excess contribution. A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or $2,000, whichever is less.

1.52 Safe harbor if an excess contribution is returned within 15 days. No civil monetary penalty shall be imposed for an excess contribution if the campaign that accepted the excess contribution within fifteen days after receiving the contribution:

a. Returns the excess amount to the contributor; and

b. Provides the following information to the Board's Executive Director by postal mail or email: the amount of the excess contribution, the identity of the contributor, the date of receipt, and the date of return.

1.53 Failure to file campaign finance disclosures. If a political committee fails to file a campaign finance report or statement with the Board as required by Subpart E, the committee and its treasurer shall be jointly and severally subject to a civil monetary penalty of $250. If a candidate fails to file a campaign finance report or statement with the Board as required by Subpart E, the candidate shall be subject to a civil monetary penalty of $250.

Each day the report or statement is not filed shall be considered a separate offense for which an additional separate civil monetary penalty of $250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report or statement shall not exceed $2,000 for the first thirty days the report is not filed, plus $1,000 for each additional thirty-day period or part thereof the report or statement is not filed.

1.54 Material misstatements or omissions. If a campaign finance report filed with the Board contains material misstatements or omissions, the individual who filed the report shall be subject to a civil monetary penalty of $1,000 for each such misstatement or omission. If the report is filed on behalf of a political committee, the individual who filed the report and the committee shall be jointly and severally liable.

1.55 Misuse of political committees or accounts. If a campaign uses a political committee or account in violation of the requirements set forth in Subpart F, G, or H the candidate shall be subject to a civil monetary penalty of $1,000.

1.56 Excess pre-candidacy and candidacy contributions.

a. If a campaign fails to exclude any excess pre-candidacy or candidacy contributions from its candidate political committee, as required by Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000.

b. If a campaign or the committee of a former candidate spends excess pre-candidacy or candidacy contributions in violation of the prohibitions of Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000, for which their candidate political committee shall be jointly and severally liable if such expenditures were made from that committee.

1.57 Failure to provide committee or account information to Board. If a campaign fails to provide information to the Board about a political committee or account as required by Subpart F, G, H or J, the candidate shall be subject to a civil monetary penalty of $1,000.

1.58 Other violations of the campaign finance law. All other violations of the campaign finance law are subject to a civil monetary penalty of $1,000 per violation.

1.59 Increase or decrease of civil monetary penalty. A penalty imposed pursuant to Paragraph 1.54, 1.55, 1.56, 1.57, or 1.58 shall be increased or decreased as follows:

a. Mitigating factors. The civil monetary penalty of $1,000 shall be reduced by $500 if one of the following mitigating factors is present and shall be reduced by $750 if more than one of the following mitigating factors are present:

   i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.

   ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.

   iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

b. Aggravating factors. The civil monetary penalty of $1,000 shall be increased by $1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed $2,000:

   i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

   ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.

   iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006
Effective January 17, 2007
Amendment approved by Board August 21, 2007
Effective September 21, 2007

Proposed amendments approved for public comment by Board on July 21, 2010 to expand the Regulation to address the requirements, other than electronic filing, of the City's campaign finance law, Philadelphia Code Chapter 20-1000, as that law was amended in June 2010. The amendments to Regulation No. 1 completely strike and replace the original text of the regulation and delete the original exhibit.

Public hearing held September 8, 2010
Adopted by Board with modifications September 15, 2010
Effective September 27, 2010

Proposed amendments approved for public comment by Board May 11, 2011 to, among other things, reflect the April 2011 amendment to Philadelphia Code § 20-1002(2). Public hearing held June 15, 2011

Adopted by Board July 20, 2011
Effective August 11, 2011

Proposed amendments approved for public comment by Board on January 18, 2012 to reflect the City Finance Director's certification of January 2012 adjustments to the maximum annual contribution limits.

Effective March 2, 2012
Proposed amendments approved for public comment by Board on December 19, 2012
Public hearing held January 23, 2013
Adopted by Board with modifications February 20, 2013
Effective March 8, 2013

Proposed amendments approved for public comment by Board on July 16, 2014
Public hearing held September 17, 2014

Adopted by Board with modifications October 15, 2014
Effective October 31, 2014

Proposed amendments approved for public comment by Board on September 21, 2016
Public hearing held October 19, 2016
Adopted by Board with modifications November 16, 2016
Effective December 2, 2016

NOTE: As part of its November 16, 2016 vote to approve a proposed amendment to this Regulation, the Board authorizes staff to update examples set forth in this Regulation from time to time as necessary in order to ensure that they reference current contribution limits, covered elections, and reporting periods.

Proposed amendments approved for public comment by Board on September 12, 2018
Public hearing held October 17, 2018
Adopted by Board with modifications November 28, 2018
Effective December 10, 2018

Proposed amendments approved for public comment posting by Board on September 16, 2020
Effective October 26, 2020

Proposed amendments approved for public comment posting by Board on July 22, 2022
Public hearing held August 17, 2022
Adopted by Board with modifications September 21, 2022
Effective October 3, 2022

Proposed amendments approved for public comment posting by Board on February 21, 2024
Public hearing held March 20, 2024
Adopted by Board April 17, 2024
Effective _____, 2024

Exhibit 2 to Hearing Report

Exhibit 2 to Regulation No. 1 Hearing Report
Comparison of public comment posting version and final
~~Strikethrough~~ indicates matter removed; underline indicates new matter

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 1
CAMPAIGN FINANCE

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SUBPART A. SCOPE; DEFINITIONS

1.0 Scope. The Board promulgates this Regulation pursuant to Philadelphia Home Rule Charter §§ 4-1100 and 8-407 and Philadelphia Code § 20-606(1)(a) to interpret Code Chapter 20-1000.

1.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

a. **Accounting period**. The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before they became a candidate.

b. **Agent**. An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.

c. **Board**. The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

d. **Campaign**. Includes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them.

e. **Candidate**. An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces their candidacy for City elective office, including a former candidate who receives contributions or makes expenditures to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office.

f. **Candidate political committee**. The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.

g. **City elective office**. The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.

h. **Coordinated expenditure.** An expenditure made by a spender in concert, cooperation, consultation, or collaboration with a candidate, an individual who later becomes a candidate, a candidate political committee, a political committee or other organization that is later used as a candidate political committee, or an agent or officer of any of the above. There are several types of conduct or relationships that may result in in-kind contributions, including conduct or relationships that occurred or existed before an individual became a candidate. See Subpart I for further details.

i.~~h.~~ **Contribution**.

i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;

ii. An in-kind contribution, as defined at Paragraph 1.1(p); or

iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

j.~~i.~~ **Contributor**. A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.

k.~~j.~~ **Covered election**. Any primary, general or special election for City elective office.

l.~~k.~~ **Electioneering communication**. Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.

m.~~l.~~ **Excess pre-candidacy contribution**. The portion of a pre-candidacy contribution to a political committee that, had it been made to a campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.

n.~~m.~~ **Expenditure**. The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:

i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;

ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a campaign;

iii. For an independent expenditure;

iv. For an electioneering communication; or

v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

o.~~n.~~ **Former candidate**. An individual who was a candidate for City elective office becomes a former candidate:

i. On the day after a general election, if the individual was unopposed in that election;

ii. On the day after a primary election, if the individual concedes that election;

iii. When the individual's opponent concedes, if the individual was opposed in a general election; or

iv. If an election is contested, when that contest is resolved.

p.~~o.~~ **Independent expenditure**. An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any campaign and that is not made in concert with or at the request or suggestion of any campaign.

q.~~p.~~**In-kind contribution**.

i. The provision of any goods or services directly to a campaign, litigation fund committee, or transition and inauguration committee without charge or at a charge that is less than the usual and normal charge for such goods or services;

ii. The payment or agreement to pay a third party to provide goods or services to a campaign, litigation fund committee, or transition and inauguration committee if the goods and services are in fact provided; or

iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, litigation fund committee, or transition and inauguration committee, as provided in Subpart I. ¶

The term "in-kind contribution" does not include volunteer labor as described in Paragraph 1.10(g).

r.~~q.~~**Litigation fund committee**. The political committee established by a candidate, campaign, or former candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of that candidate's campaign or participation in a covered election, as described in Subpart G.

s.~~r.~~ **Person**. Any individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit organization.

t.~~s.~~ **Political committee**. Any committee, club, association, political party, or other group of persons, including the candidate political committee, litigation fund committee, or transition and inauguration committee, of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election, to retire debt incurred to influence the outcome of a covered election, or to cover expenses related to transition or inauguration to City elective office.

u.~~t.~~ **Pre-candidacy contribution**. A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.

v.~~u.~~ **Pre-payment**. A payment made during the accounting period for any thing used or to be used by a campaign, including but not limited to: printed or produced campaign materials, such as sample ballots, shirts, signs, flyers, brochures, websites,

photographs, audio or video recordings; advertising time or space; office space; or services or labor.

w.~~u.~~ **Sample ballot**. A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

x.~~w.~~ **SPEC account**. A segregated pre-candidacy excess contribution account, as described in Subpart J.

y.~~x.~~ **Transition and Inauguration Committee**. The political committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs related to the candidate's transition or inauguration to City elective office, as described in Subpart H.

z.~~y.~~ **Vendor**. A person, other than a political committee, that provides services to a campaign.

SUBPART B. CONTRIBUTION LIMITS

1.2 Limits on contributions from individuals.

a. A campaign shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.2: On November 1, 2021, prior to the election, Jane Doe donates $2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional $1,700 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to $3,700 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than $3,700 from an individual, including contributions made through one or more political committees or other persons.

1.3 Limits on contributions from political committees, partnerships, sole proprietorships, or other forms of organization.

a. A campaign shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees

or other persons. This total includes contributions made post-election to the former candidate's campaign if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.3: On November 1, 2021, prior to the election, Political Committee XYZ donates $10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional $4,800 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to $14,800 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than $14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

d. To qualify for the $14,800 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

1.4 Contributions made through other persons.

a. For the purposes of this Subpart, a contribution is made through another person, such as a political committee, when:

i. A person makes a donation to another person, such as a political committee, and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient use all or part of the money to make a contribution to support a specific candidate.

A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or

ii. A person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign.

b. For the purpose of the contribution limits, the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.

Example for 1.4(b): Joe Big makes a donation of $5,000 to Big PAC and tells the treasurer of the PAC that he would be ever so happy if the PAC supported candidate Lucy Largo. The next day, Big PAC makes a contribution of $5,000 to the Largo campaign.

Joe Big and Big PAC have each made a contribution of $5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by $1,300 and therefore violates the City's Campaign Finance Law.

1.5 Doubling of Contribution Limits.

a. If a candidate contributes $250,000 or more of their personal resources to their own campaign since the more recent of:

i. the most recent election cycle for the office sought by the candidate, or

ii. the last municipal election in which the candidate sought office,

the contribution limits for all campaigns for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).

All contributions made after either (i) or (ii) by an individual who becomes a candidate to the political committee that becomes their candidate political committee shall count toward the $250,000 threshold regardless of whether, at the time a contribution was made, the individual was a candidate or had designated a candidate political committee.

b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b) and (c) and 1.3(b) and (c)) do not double if a candidate contributes $250,000 or more to their own campaign.

c. A contribution that exceeds the contribution limits at the time it is accepted by a campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.

d. If a campaign returns, repays, or refunds to its candidate any money the candidate had contributed from the candidate's personal resources prior to reaching the $250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.

e. Once the contribution limits double, they remain doubled even if:

i. The candidate whose contributions triggered the doubling ceases to be a candidate; or

ii. After the limits have doubled, a campaign returns, repays, or refunds a portion of the money contributed from the candidate's personal resources.

f. If a candidate makes contributions ~~from their personal resources~~ to their own campaign from their personal resources that reach the threshold described in Paragraph 1.5(a), ~~within two business days,~~ that candidate shall deliver notification to the Board within two business days~~, that candidate shall notify the Board of this fact by postal mail or~~ by email sent to BOE.Notice@phila.gov~~the attention of the Board's Executive Director~~. The notification shall provide the date of the transaction that met or exceeded the $250,000 threshold. If the $250,000 threshold is met or exceeded before the individual becomes a candidate, the candidate shall notify the Board within two business days of becoming a candidate.

g. Doubling shall be effective for all campaigns for that office, including that of the candidate who triggered the doubling, beginning on the date that the Board issues an advisory alert or other public announcement that a candidate for that office has met or exceeded the $250,000 threshold.

1.6 No person shall make any contribution that exceeds the limits set forth in this Subpart.

1.7 A pre-candidacy contribution made in the same calendar year that an individual becomes a candidate shall count toward the contribution limits set forth in this Subpart.

1.8 The value of in-kind contributions counts toward the total amount of contributions made or accepted in a calendar year.

1.9 If a person makes an expenditure to another person, to place a candidate's name on a sample ballot, and does so in coordination with that candidate's campaign, that expenditure is an in-kind contribution to the candidate's campaign and shall count toward the contribution limits set forth in this Subpart. Any additional expenditures made by the recipient person to print or distribute the sample ballot shall not be counted as a contribution to the candidate's campaign.

1.10 Transactions that do not count toward the contribution limits. The following are not subject to the contribution limits set forth in this Subpart:

a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee.

b. Contributions from a candidate's candidate political committee to that candidate's litigation fund committee or transition and inauguration committee.

c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) when a campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.

d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.24(h).

e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication.

f. Incidental expenditures made by persons other than campaigns that are related to Internet activity (such as the cost of hardware, software, or Internet access) that advocates or influences the election of a candidate.

g. Volunteer labor provided to a candidate or a political committee.

   i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:

      (1) Legal or accounting work;

      (2) Entertainment such as a performance by a musical group or DJ; and

      (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.

   ii. Volunteer labor does not include the donation to a candidate of:

      (1) Equipment, such as computers, copiers, or printers;

      (2) Resources, such as postage; or

      (3) Materials, such as stationery or campaign literature.

   iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.

h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign:

   i. Pays its fair portion of the costs;

   ii. Makes payment no later than 14 days after any other campaign; and

   iii. Obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

SUBPART C. DATE OF ACCEPTANCE OF CONTRIBUTIONS WITH RESPECT TO THE CONTRIBUTION LIMITS

1.11 Except as provided in Paragraphs 1.12, 1.13, and 1.14, the date of acceptance of a contribution is the date that the contribution comes into the possession of a campaign. A

campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

1.12 If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the campaign finds the contribution in the mailbox.

1.13 If a contribution is made by credit card through a website, the date that the contribution is accepted is the date on which the contributor submits their credit card information on the website.

1.14 In-kind contributions.

a. If a person makes an in-kind contribution by providing goods or services directly to a campaign, the date of acceptance of that contribution is the date that the campaign receives the goods or services.

b. If a person makes an in-kind contribution by paying or agreeing to pay a third party to provide goods or services to a campaign, the date of acceptance of that contribution is the date the goods or services are provided or the date payment is made, whichever is earlier.

SUBPART D. ATTRIBUTING CONTRIBUTIONS MADE BY CHECK FOR THE PURPOSE OF THE CONTRIBUTION LIMITS

1.15 A contribution made by a check that reflects a joint checking account of two or more individuals shall be attributed to the joint account holder who signs the check. If more than one account holder signs a contribution check, the contribution shall be apportioned evenly between the signers. If an individual other than an account holder signs a contribution check, the contribution shall be attributed evenly among the joint account holders.

1.16 A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

1.17 A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of organization is a contribution from the partnership, sole proprietorship, or other form of organization, unless other facts demonstrate that the contribution is from the signer of the check.

SUBPART E. CAMPAIGN FINANCE DISCLOSURES

1.18 Electronic filing of campaign finance reports. Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board and shall be submitted in a format required by the Board. Upon receipt of any filing, the Board shall provide a printable receipt.

The City of Philadelphia's Campaign Finance Filing System may be found at: https://ethics.pub/CFFiling

A schedule with the specific reporting deadlines may be found at: https://ethics.pub/CFDocs

1.19 Candidates and candidate political committees. A candidate, a treasurer of a candidate political committee, or a candidate political committee shall file a campaign finance report or statement with the Board any time it is required to file such a report or statement with the City Commissioners. A candidate political committee shall also file a campaign finance report with the Board on the sixth Tuesday before a covered election in which that committee's candidate is participating, if the committee has made expenditures to influence the outcome of that election.

1.20 Political committees and other persons.

a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:

   i. Expenditures made or debt incurred to influence the outcome of a covered election;

   ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;

   iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or

   iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

   Any report required to be filed pursuant to this Paragraph 1.20(a) shall be filed no later than the state law due date for filing that report.

b. In addition to any filing required by Paragraph 1.20(a), a political committee shall file a campaign finance report with the Board on the sixth Tuesday before a covered election if the committee has made expenditures to influence that election.

c. In addition to any filing required by Paragraphs 1.20(a) or (b), any person, including a not-for-profit organization, shall file a report with the Board on or before any report due date set forth below, if that person, whether directly or through another person, makes or promises to make expenditures of $5,000 or more in the aggregate for one or more electioneering communications that are published or to be published within 50 days of a covered election.

If the date of dissemination of the electioneering communication precedes the date of the expenditure for it, then the date of dissemination shall be used to determine the due date of the report. Such reports shall be due (unless the same person is required to file a report under Paragraph 1.20 (a) or (b) on the same date):

i. on the sixth Tuesday before a covered election;

ii. on the fourth Tuesday before a covered election;

iii. on the second Friday before a covered election;

iv. on the Tuesday immediately before a covered election;

v. on the Friday immediately before a covered election; and

vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.

d. In a report filed pursuant to Paragraph 1.20(c), if a person, other than a political committee or an individual, has segregated funds used to make expenditures into one or more accounts separate from funds not used to make expenditures, that person is only required to disclose the source of contributions deposited in the segregated accounts used to make expenditures.

An individual who files a report pursuant to Paragraph 1.20(c) is only required to disclose contributions that the individual receives or solicits in order to fund the expenditures disclosed in the report.

1.21 Content of campaign finance reports and statements.

a. A campaign finance report filed with the Board shall disclose all contributions and other receipts received, each expenditure made, any debt incurred during the relevant reporting period, and the cash balance at the beginning and end of the reporting period.

i. For each contribution of more than $50, the report shall disclose the date and amount of the contribution and the contributor's name and address.

For each contribution of more than $250, the report shall disclose the date and amount of the contribution, the contributor's name and address, and, in the case of

contributions from individuals, the contributor's occupation, employer, and employer's address.

ii. For each receipt other than a contribution (such as interest income, returned checks, or refunds), the report shall disclose the name and address of the source of the funds and a description of the receipt.

iii. For each expenditure, the report shall disclose the date, amount, and recipient of the expenditure, and the recipient's address and the purpose of the expenditure.

If the filer has used a credit or charge card to make expenditures, the filer shall disclose and itemize each purchase made with such a card, not merely a lump sum payment.

iv. For each unpaid debt, the report shall disclose the name and address of the creditor, the amount of debt owed, and the date the debt was incurred, as well as a description of the debt.

The date a debt is incurred is the day on which the creditor provided the goods, services, or loan from which the debt arises.

b. If, during a reporting period, a filer has accepted contributions, made expenditures, or incurred debt of less than $250, the filer may file a statement attesting to that fact in lieu of a full report. The statement shall set forth the filer's starting and ending balance for the reporting period.

c. If a campaign makes a payment to a person other than a political committee, whether directly by the campaign or through another person, to have the name of the campaign's candidate placed on a sample ballot or to conduct or organize get-out-the-vote activities, the campaign shall disclose not just that person to whom it made payment but also any persons whom that person pays or employs in order to provide the services promised.

1.22 Affirmation required for campaign finance filings. Any candidate, treasurer, or other individual submitting a campaign finance report or statement to the Board shall affirm that the information set forth therein is true and correct. The individual who submits the report or statement shall be liable for civil penalties if it contains any material misstatements or omissions. The affirmation required by this Paragraph shall be submitted as required by the Board.

SUBPART F. USE OF POLITICAL COMMITTEES AND CHECKING ACCOUNTS BY CANDIDATES AND CAMPAIGNS

1.23 One committee and one checking account.

a. A campaign shall use no more than one political committee and one checking account for the City elective office the campaign is seeking, into which all contributions for that office shall be deposited and from which all expenditures for that office shall be made, including expenditures to retire debt incurred to influence the outcome of a covered election.

b. If a campaign has or controls other political or non-political accounts, such accounts shall not be used for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election.

c. A campaign may be found to control a political committee or an account if:

   i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;

   ii. The candidate or an agent of the campaign established or registered the political committee or account; or

   iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.

   A campaign will not be found to control a political committee merely because the campaign and the political committee used the same attorney to complete and file registration paperwork.

d. Except as specifically permitted by this Subpart, a campaign shall not make any expenditure related to a covered election through any other person or vendor.

   An expenditure is made through another person if:

   i. The campaign provides the money to cover the specific expenditure;

   ii. The campaign selects the recipient of the expenditure; or

   iii. The campaign approves the expenditure or directs that it be made.

1.24 Permissible uses of other committees or accounts.

a. **Payment service providers.**

   i. A campaign may use a payment service provider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the campaign's political committee checking account.

   ii. A campaign may use a payment service provider to make expenditures so long as any funds used for such expenditures are drawn directly from the campaign's political committee checking account.

b. **Savings account.** A campaign may transfer funds between the candidate political committee's checking account and a single savings account so long as:

   i. The savings account is at the same bank as the checking account;

   ii. The campaign deposits all contributions into the checking account before transferring such funds to the savings account;

   iii. The campaign does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and

iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that the candidate has established a savings account.

c. A candidate or an employee or agent of a campaign may use personal funds to make purchases for the benefit of the campaign so long as:

i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;

ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;

iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and

iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

d. A campaign may make expenditures for advertising through a vendor if that vendor directly pays the media outlet in or on which such advertising shall appear. For such expenditures, a campaign shall obtain and maintain receipts and documentation of where and when the relevant advertising ran, which shall be made available to the Board upon request.

e. If, in the course of providing services to a campaign, a vendor incurs costs incidental to the provision of those services, an expenditure by the campaign to reimburse the vendor for those costs shall be permissible under this Subpart so long as the costs are promptly invoiced and the reimbursement is promptly made. For such reimbursements, a campaign shall obtain and maintain appropriate receipts and documentation, which shall be made available to the Board upon request.

f. A candidate may maintain and use a litigation fund committee established pursuant to Subpart G or a transition and inauguration committee established pursuant to Subpart H.

g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

i. That political committee or other person offers similar services to other campaigns;

ii. The amount charged is commensurate with the services provided; and

iii. The candidate does not exercise control over the political committee or other person.

h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that

are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.

i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

1.25 Multiple offices sought. If a candidate is running for more than one City elective office simultaneously, that candidate shall maintain a separate candidate political committee and checking account for each office being sought.

1.26 Requirement to provide information to the Board about a candidate political committee.

a. A candidate who has a candidate political committee when becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:

   i. The committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.

b. If a candidate does not have a candidate political committee when becoming a candidate, that candidate shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with the candidate's street address (other than a P.O. box), telephone number, and email address.

c. If a candidate establishes a candidate political committee after becoming a candidate, that candidate shall provide the information required by this Paragraph within three business days of the formation of the committee.

d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

SUBPART G. LITIGATION FUND COMMITTEES

1.27 Litigation fund committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or former candidate may establish a litigation fund committee to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.27(d).

b. The litigation fund committee shall be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of the litigation fund committee shall include the term "Litigation Fund."

d. A candidate, campaign, or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

e. A candidate, campaign, or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.

f. A candidate, campaign, or former candidate may make expenditures from a candidate political committee for the purposes described in Paragraph 1.27(d) regardless of whether they have established a litigation fund committee under this subpart.

g. A candidate, campaign, or former candidate shall not transfer funds to a candidate political committee from a litigation fund committee. Nothing in this Subpart, however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a litigation fund committee.

h. A candidate, campaign, or former candidate may establish a litigation fund committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a litigation fund committee must be terminated as set forth in Paragraph 1.29.

1.28 Requirement to provide information to the Board about a litigation fund committee.

a. Within three business days of the formation of a litigation fund committee, a campaign or former candidate shall notify the Board of the following information:

   i. The litigation fund committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the litigation fund committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.

b. If the information required by this Paragraph changes, the campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.29 Termination of a litigation fund committee.

a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the campaign or former candidate sought, except as provided in Paragraph 1.29(c).

b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.

c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

   iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a campaign, former candidate, or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART H. TRANSITION AND INAUGURATION COMMITTEES

1.30 Transition and inauguration committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or former candidate elected to City office who wishes to solicit and receive contributions and make expenditures to pay fees and costs related to the candidate's transition or inauguration to City elective office shall establish a transition and inauguration committee to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.30(d).

b. The transition and inauguration committee shall be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of a transition and inauguration committee shall include the terms "Transition" and "Inauguration."

d. A candidate, campaign, or former candidate elected to City office shall make expenditures from a transition and inauguration committee solely to pay fees and costs related to the candidate's transition or inauguration to City elective office. Such expenditures include fees and costs associated with:

   i. soliciting funds for the purposes outlined in this paragraph;
   ii. payroll and consulting fees for committee staff;
   iii. recruiting and selecting City employees as part of the candidate's transition into City office except to the extent such costs are covered by the City;

   iv. temporary office space, furnishings, and equipment; and

v. catering, entertainment, rental fees, photography, and other similar costs associated with an inauguration ceremony or celebration.

Transition and inauguration committees may not be used to solicit contributions or make expenditures related to the purchase of durable goods or real property.

Reelected incumbents may use a transition and inauguration committee only for inauguration costs. They shall be presumed to have no valid transition costs associated with continued service in the same office.

e. A candidate or individual elected to City office shall not transfer funds to a candidate political committee from a transition and inauguration committee. A candidate or former candidate elected to City office shall not make expenditures from a candidate political committee for the purposes described in Paragraph 1.30(d). Nothing in this Subpart, however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a transition and inauguration committee.

f. A campaign or former candidate may establish a transition and inauguration committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a transition and inauguration committee must be terminated as set forth in Paragraph 1.32.

1.31 Requirement to provide information to the Board about a transition and inauguration committee.

a. Within three business days of the formation of a transition and inauguration committee, a candidate or individual elected to City office shall notify the Board of the following information:

i. The transition and inauguration committee's name and street address (other than a P.O. box);

ii. The name of the bank where the transition and inauguration committee's checking account is established; and

iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.

b. If the information required by this Paragraph changes, the candidate or individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.32 Termination of a transition and inauguration committee.

a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.

b. Before a transition and inauguration committee is terminated, the transition and inauguration committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

   iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

c. The Board may grant an extension for terminating a transition and inauguration committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART I. COORDINATED EXPENDITURES

1.33 Coordination generally. Coordination as described in this Subpart is not itself prohibited. ~~Expenditures resulting from coordination~~ Coordinated expenditures as described in this Subpart are deemed in-kind contributions subject to the applicable contribution limits.

1.34 Pre-candidacy coordination.

a. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made before the individual becomes a candidate, such expenditure is a pre-candidacy in-kind contribution subject to Subpart J.

b. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made after the individual becomes a candidate, such expenditure is an in-kind contribution subject to Subpart B.

1.35 Special terms. For the purposes of this subpart:

a. A "spender" is any person making an expenditure; and

b. A "principal funder" is any person providing 50% or more of the funds received by a spender in the twelve months before the covered election.

1.36 Coordinated expenditures. A coordinated expenditure is an expenditure made by a spender in concert, cooperation, consultation, or collaboration with:

a. A candidate;
b. An individual who is a candidate at the time of the expenditure, regardless of whether they were a candidate at the time the conduct constituting coordination took place;
c. In the case of pre-candidacy expenditures, an individual who later becomes a candidate, regardless of whether they were a candidate at the time the conduct constituting coordination took place;

d. A candidate political committee;
e. A political committee or other organization that is later used as a candidate political committee; or
f. An agent or officer of any of the above.

1.37 Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):

a. Communicates with the spender concerning the expenditure before it is made, including by~~;~~:
   (i) Requesting or suggesting the spender make the expenditure; or
   (ii) Assenting to an expenditure suggested by the spender;
b. Directs, places, or arranges the expenditure;
c. At any time during the two years preceding the covered election, directly ~~Directly~~ or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender;
d. Provides information to the spender to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication by the source of the information to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.38; or

Example for 1.37(d): Philadelphians for Philadelphia PAC establishes a telephone bank to get out the vote for primary voters for Candidate A. Candidate A's campaign gives Philadelphians for Philadelphia a list of telephone numbers of people that contributed to Candidate A's campaign. Philadelphians for Philadelphia organizes the phone bank without any other input from Candidate A's campaign and spends $14,800 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The $14,800 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an $14,800 in-kind contribution to Candidate A's campaign.

e. Provides instructions to the spender. A public communication will constitute such instructions only if:
   i. The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and
   ii. The communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as "voters need to hear" or "voters need to see."

Despite the presence of these factors, coordination will not be found if the spender can demonstrate that they had an independent basis for making the expenditure.

Example 1 for 1.37(e): Candidate A's campaign website includes a page with text in a red box that says "Voters in South Philadelphia need to hear that Candidate A supports dog parks." Without any other input from the campaign, Philadelphians for Philadelphia PAC pays $25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks. The $25,000 spent by Philadelphians for Philadelphia PAC is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $25,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.
Example 2 for 1.37(e): Candidate A's communications director tweets that "Center City voters need to see on the go that Candidate A will keep our streets clean." Without any other input from Candidate A's campaign, Philadelphians for Philadelphia PAC spends $200,000 to send online advertisements to mobile devices in Center City with the message "Candidate A will keep our streets clean." The $200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.
Example 3 for 1.37(e): Philadelphians for Philadelphia PAC spends $15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A's campaign updates its website with the message, "Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!" After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying "Only I can kill every spotted lantern fly!" The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A's campaign updated its website with the statement about the lantern flies. The $15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A's campaign posted on its website.

1.38 Republication of campaign communications or materials. For the purposes of the contribution limits, an expenditure made to reproduce, republish, or disseminate a campaign communication (including audio recordings or video footage) or campaign material (such as photographs, flyers, signs, or brochures) prepared by a campaign:

a. Shall be considered an in-kind contribution made by the spender.

b. Shall be considered an in-kind contribution received by the campaign if the spender obtains the communication or materials directly from the campaign or from another source with the consent of the campaign.

   A campaign communication or campaign material is obtained with the campaign's consent if the campaign provides it to a third party for the purpose of enabling another person to (1) obtain the communication or material from that third party and (2) subsequently republish some or all of it.

c. Shall not be considered an in-kind contribution if:

   i. The communication or material is incorporated into a communication that advocates the defeat of the campaign that prepared the material;

   ii. The item republished is a photograph or video obtained from a public source that is not controlled by the campaign; or

   iii. The person's expenditures for republication of a campaign's communications or materials are less than $100 in the aggregate per reporting period.

Example for 1.38(a) and (b): Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends $100,000 to run the advertisement on three television stations during the week before election day.

Candidate A posted the b-roll footage for the purpose of enabling another person to obtain it. Pennsylvanians for a Better Pennsylvania obtained a campaign communication created by Candidate A's campaign with the consent of the candidate's campaign. As such, the committee's expenditure of $100,000 was coordinated with Candidate A's campaign and is both an excess in-kind contribution made by the committee and an excess in-kind contribution received by Candidate A.

1.39 Fundraising. Where a person listed in Paragraph 1.36(a) through (f) directs or donates funds to, solicits funds for, or otherwise provides funds to the spender in the twelve months before the covered election, whether directly or indirectly, all expenditures made by that spender after the promise or receipt of such funds are coordinated.

a. Where the spender is a nonprofit organization (other than a political committee), coordination will not be found if the nonprofit can demonstrate that the funds provided:

   i. are a bona fide membership fee or dues paid by all similarly situated members; and

   ii. account for 5% or less of the total funds received by the nonprofit in the relevant twelve-month period.

This paragraph shall not apply to fundraising for or donating to a party as defined in 25 P.S. §1102.

1.40 Coordination by principal funders. Conduct of the principal funder of a spender shall be attributed to the spender, regardless of whether the principal funder is an agent or officer thereof. ~~Expenditures resulting~~ For the purposes of this paragraph, expenditures by the spender that result from coordination ~~between~~ by the principal funder ~~and the spender~~ shall be attributable to both the spender and the principal funder.

1.41 An expenditure will not be considered a coordinated expenditure merely because:

a. The spender interviews the candidate;

b. The spender has endorsed the candidate;

c. The spender and the candidate's campaign use the same vendor, attorney, or accountant;

d. The spender has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or

e. The spender has invited the candidate to make an appearance before the spender's members, employees, or shareholders.

SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS

Note: The following requirements regarding excess pre-candidacy contributions are relevant only if, prior to becoming a candidate for City elective office, an individual accepts contributions in excess of the limits set forth in Subpart B.

1.42 The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

> **Example for 1.42:** On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. The accounting period for Candidate A is January 1, 2018 through November 30, 2020. The last Controller election was held in 2017 so January 1, 2018 would be the first day of the year following that election.

1.43 Prohibited Expenditures.

a. A campaign shall not spend any excess pre-candidacy contributions for the purposes of: influencing the outcome of a covered election in which the campaign's candidate is a candidate; transition or inauguration expenses; or retiring debt that was incurred to either influence the outcome of an already completed covered election or cover transition or inauguration expenses related to an already completed covered election.

b. A campaign shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established pursuant to Subpart G or the candidate's transition and inauguration committee established pursuant to Subpart H.

1.44 Exclusion of excess pre-candidacy contributions upon becoming a candidate.

a. Except as provided in Paragraph 1.45, within ten days after an individual becomes a candidate, their campaign shall exclude all excess pre-candidacy contributions from its candidate political committee's checking account by one of the following methods:

   i. Transferring excess pre-candidacy contributions to a segregated account; or

   ii. Returning excess pre-candidacy contributions to their contributors.

b. **Calculation of amount to be excluded.** A campaign shall determine the amount to be excluded by using one of the following methods:

   i. **Dollar-for-dollar calculation.** A campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

> **Example for 1.44:** On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Mr. B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 ($400 excess from Mr. B + $400 excess from Ms. C) from its checking account.

   ii. **Accounting-based calculation.** A campaign need not exclude any excess pre-candidacy contributions that the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent pre-candidacy, provided that:

      (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and

      (2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.

c. If the amount that the campaign shall exclude from the candidate political committee's checking account exceeds the amount of cash the committee has on hand, the campaign shall use incoming contributions to cover the amount that shall be excluded.

1.45 Pre-candidacy segregation. A campaign need not exclude any excess pre-candidacy contributions that, upon receipt, the campaign had transferred to a segregated pre-candidacy excess contribution account ("SPEC account"), provided that, if the campaign used any funds in a SPEC account for pre-payments, the campaign shall exclude from the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph 1.44.

Example 1 for 1.45: On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Person B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Person C (same). On November 2, 2020, Candidate A transfers $1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.
Example 2 for 1.45: On November 1, 2020, Friends of Candidate A receives a contribution of $4,100 from Person B ($3,700 within limits, $400 excess) and a contribution of $4,100 from Person C (same). On November 2, 2020, Candidate A transfers $800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends $800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 from its checking account. While Candidate A segregated the $800 in excess contributions received from Person B and Person C, she spent $800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.

1.46 A campaign shall not use money held in a SPEC account to influence the outcome of a covered election in which the campaign's candidate participates, to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office.

1.47 Within seven days of establishing a SPEC account, a campaign shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

SUBPART K. RETIRING DEBT

1.48 Except as provided in Paragraph 1.49, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor and is subject to the contribution limits set forth in Subpart B.

1.49 If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;

b. The debt has been outstanding for at least 24 months;

c. The candidate political committee does not have sufficient cash on hand to pay the creditor;

d. Forgiveness of the debt is not prohibited by any other relevant law; and

e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt.

The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

SUBPART L. PENALTIES

1.50 Acceptance of an excess contribution. A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the accepted contribution exceeded the limit, or $2,000, whichever is less.

1.51 Making an excess contribution. A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or $2,000, whichever is less.

1.52 Safe harbor if an excess contribution is returned within 15 days. No civil monetary penalty shall be imposed for an excess contribution if the campaign that accepted the excess contribution within fifteen days after receiving the contribution:

a. Returns the excess amount to the contributor; and

b. Provides the following information to the Board's Executive Director by postal mail or email: the amount of the excess contribution, the identity of the contributor, the date of receipt, and the date of return.

1.53 Failure to file campaign finance disclosures. If a political committee fails to file a campaign finance report or statement with the Board as required by Subpart E, the committee and its treasurer shall be jointly and severally subject to a civil monetary penalty of $250. If a candidate fails to file a campaign finance report or statement with the Board as required by Subpart E, the candidate shall be subject to a civil monetary penalty of $250.

Each day the report or statement is not filed shall be considered a separate offense for which an additional separate civil monetary penalty of $250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report or statement shall not exceed $2,000 for the first thirty days the report is not filed, plus $1,000 for each additional thirty-day period or part thereof the report or statement is not filed.

1.54 Material misstatements or omissions. If a campaign finance report filed with the Board contains material misstatements or omissions, the individual who filed the report shall be subject to a civil monetary penalty of $1,000 for each such misstatement or omission. If the report is filed on behalf of a political committee, the individual who filed the report and the committee shall be jointly and severally liable.

1.55 Misuse of political committees or accounts. If a campaign uses a political committee or account in violation of the requirements set forth in Subpart F, G, or H the candidate shall be subject to a civil monetary penalty of $1,000.

1.56 Excess pre-candidacy and candidacy contributions.

a. If a campaign fails to exclude any excess pre-candidacy or candidacy contributions from its candidate political committee, as required by Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000.

b. If a campaign or the committee of a former candidate spends excess pre-candidacy or candidacy contributions in violation of the prohibitions of Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000, for which their candidate political committee shall be jointly and severally liable if such expenditures were made from that committee.

1.57 Failure to provide committee or account information to Board. If a campaign fails to provide information to the Board about a political committee or account as required by Subpart F, G, H or J, the candidate shall be subject to a civil monetary penalty of $1,000.

1.58 Other violations of the campaign finance law. All other violations of the campaign finance law are subject to a civil monetary penalty of $1,000 per violation.

1.59 Increase or decrease of civil monetary penalty. A penalty imposed pursuant to Paragraph 1.54, 1.55, 1.56, 1.57, or 1.58 shall be increased or decreased as follows:

a. Mitigating factors. The civil monetary penalty of $1,000 shall be reduced by $500 if one of the following mitigating factors is present and shall be reduced by $750 if more than one of the following mitigating factors are present:

   i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.

ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.

iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

b. Aggravating factors. The civil monetary penalty of $1,000 shall be increased by $1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed $2,000:

i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.

iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006
Effective January 17, 2007
Amendment approved by Board August 21, 2007
Effective September 21, 2007

Proposed amendments approved for public comment by Board on July 21, 2010 to expand the Regulation to address the requirements, other than electronic filing, of the City's campaign finance law, Philadelphia Code Chapter 20-1000, as that law was amended in June 2010. The amendments to Regulation No. 1 completely strike and replace the original text of the regulation and delete the original exhibit.

Public hearing held September 8, 2010
Adopted by Board with modifications September 15, 2010
Effective September 27, 2010

Proposed amendments approved for public comment by Board May 11, 2011 to, among other things, reflect the April 2011 amendment to Philadelphia Code § 20-1002(2). Public hearing held June 15, 2011

Adopted by Board July 20, 2011
Effective August 11, 2011

Proposed amendments approved for public comment by Board on January 18, 2012 to reflect the City Finance Director's certification of January 2012 adjustments to the maximum annual contribution limits.

Effective March 2, 2012
Proposed amendments approved for public comment by Board on December 19, 2012

Public hearing held January 23, 2013
Adopted by Board with modifications February 20, 2013
Effective March 8, 2013

Proposed amendments approved for public comment by Board on July 16, 2014
Public hearing held September 17, 2014
Adopted by Board with modifications October 15, 2014
Effective October 31, 2014

Proposed amendments approved for public comment by Board on September 21, 2016
Public hearing held October 19, 2016
Adopted by Board with modifications November 16, 2016
Effective December 2, 2016

NOTE: As part of its November 16, 2016 vote to approve a proposed amendment to this Regulation, the Board authorizes staff to update examples set forth in this Regulation from time to time as necessary in order to ensure that they reference current contribution limits, covered elections, and reporting periods.

Proposed amendments approved for public comment by Board on September 12, 2018
Public hearing held October 17, 2018
Adopted by Board with modifications November 28, 2018
Effective December 10, 2018

Proposed amendments approved for public comment posting by Board on September 16, 2020
Effective October 26, 2020

Proposed amendments approved for public comment posting by Board on July 22, 2022
Public hearing held August 17, 2022
Adopted by Board with modifications September 21, 2022
Effective October 3, 2022

Proposed amendments approved for public comment posting by Board on February 21, 2024
Public hearing held March 20, 2024
Adopted by Board April 17, 2024
Effective _____, 2024

Exhibit 3 to Hearing Report

RE: PHILADELPHIA BOARD OF ETHICS HEARING

TRANSCRIPT OF DEPOSITION, taken by and before ALLISON D. LEVARI, Professional Reporter and Notary Public, at the Municipal Services Building, 1401 John F. Kennedy Boulevard, Room 16Y, Philadelphia, Pennsylvania, on Wednesday, March 20, 2024, commencing at 1:07 p.m.

ERSA COURT REPORTERS
30 South 17th Street
United Plaza - Suite 1520
Philadelphia, Pennsylvania 19103
(215)564-1233

1 A P P E A R A N C E S:

2

3 BOARD MEMBERS:

4 Michael H. Reed, Esquire, Chair

5 Brian McCormick, Esquire, Vice Chair

6 Sanjuanita Gonzalez, Esquire

7 Ellen Mattleman Kaplan, Esquire

8 Dr. Valerie Harrison, Esquire

9

10 BOARD STAFF

11 J. Shane Creamer, Jr. Esquire

12 Jordana Greenwald, Esquire

13 Thomas E. Klemm, Esquire

14 Bryan McHale

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I N D E X

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By:	Ms. Greenwald	9
By:	Adam Bonin	13
By:	Aaron McKean	21

- - -

E X H I B I T S

NUMBER	DESCRIPTION	PAGE MARKED	PAGE ATTACHED
Exhibit-A	Documents Submitted to Records Department	7	36
Exhibit-B	PowerPoint Slide	11	37
Exhibit-C	Written Testimony of Aaron McKean	34	38

- - -

1 - - -

2 PROCEEDINGS

3 - - -

4 MR. REED: Welcome,

5 everyone. My name is Mike Reed. I'm

6 the Chair of the Philadelphia Board of

7 Ethics. Today we are holding a public

8 hearing on proposed amendments to

9 Board regulation No. 1, which relates

10 to campaign finance. I note for the

11 record that I am joined by Vice Chair

12 Brian McCormick and Board Members,

13 Sanjuanita Gonzalez, Ellen Mattleman

14 Kaplan, and Dr. Valerie Harrison. The

15 full board.

16 Today's hearing is an

17 opportunity for members of the public

18 and interested parties to provide

19 comments and recommendations for the

20 proposed amendments to Regulation No.

21 1. Copies of these proposed

22 amendments have been made available

23 electronically. For the convenience

24 of today's electronic attendees, I

1 will ask a number of our staff to now
2 provide an electronic link in the chat
3 feature of this Zoom call, which
4 contains the proposed amendments.
5 The Board is following the
6 process required by Philadelphia Home
7 Rule Charter Section 8-407 for the
8 proposed amendments. The Board
9 approved these proposed amendments to
10 public posting at the Records
11 Department during its February 21,
12 '24 -- February 24th, 2024 public
13 meeting. The Law Department reviewed
14 the proposed amendments, Board
15 Regulation No. 1, and found them to be
16 legal within the Board's authority and
17 the proper form. The Department of
18 Records advertised and gave public
19 notice of the proposed amendments.
20 The Board also took action giving
21 notice of the proposed amendments on
22 its website. The Board proactively
23 scheduled this hearing on the proposed
24 amendments and provided notice of this

hearing by newspaper and on the Board's website. The board will not take action on the proposed amendments at this hearing. Rather, this hearing is an opportunity for the public to comment on the proposed amendments, or recommend modifications to them. Board members may ask questions of the witnesses, if they wish. A hearing report will be considered and approved by the Board at a future Board meeting. The hearing report will respond to testimony and is the mechanism by which the Board may modify the proposed amendments.

Allison Levari, a court reporter, is present to transcribe this hearing. At this time, the documents that the Board filed with the Department of Records, including the proposed amendments to Board regulation No. 1, should be entered into the record of this hearing and marked as Exhibit-A.

(At this time, Exhibit-A was marked for identification.)

MR. REED: Is that happening?

JORDANA L. GREENWALD: Yes. I will provide it to you electronically.

MR. REED: We will now take testimony. I ask any person present at this hearing to notify our staff if they intend to testify. Those present by way of Zoom, please notify your intent of testifying by way of the chat feature of the Zoom application. Those of you who are present in person, please notify your -- give your -- give notice of your intent to speak, to testify, by raising your hand. Our staff will then coordinate with each of you regarding your testimony, including the order in which you testify. When it is a witness' turn to testify, we will ask the witness to identify themselves

prior to their testimony. For those of you that have any documents you would like to submit as exhibits, please send a copy to capital B-O-E-G-C, staff, staff is lowercase, at Phila.gov. I'm going to say that again. Capital B-O-E-G-C, staff lowercase, @phila.gov. And the document will be added to the record.

Before hearing from members of the public, I would like to invite Board staff to testify. It is my understanding that Board staff will recommend subtle provisions to the proposed amendments as posted. Members of the public should not feel pressed to respond to these recommendations during this hearing. Anyone who wishes to comment on the revised proposed amendments after today's hearing may do so by submitting written testimony by way of email to the same email address I just gave. I'll give it again. Capital

1 B-O-E-G-C, staff. The S on Staff is
2 capitalized -- I don't think it has to
3 be -- T-A-F-F is lowercase,
4 @phila.gov, no later than April 3,
5 2024.
6 So I will now recognize
7 Board staff. Please identify
8 yourself.
9 JORDANA L. GREENWALD: Good
10 afternoon, Board Members. I'm Jordana
11 Greenwald. I am General Counsel for
12 the Board of Ethics. And before I get
13 started with my presentation, I did
14 put -- for everybody who is online, I
15 did put the email address that our
16 chair patiently read into the record
17 in the chat so that folks can use it
18 from there.
19 Just a moment. So, I, on
20 behalf of staff, am proposing one
21 addition to the public posting version
22 of regulation No. 1 to the amendments
23 that have already been posed through
24 that posting process. And that is to

1 add, as requested by the Board during
2 last month's public meeting when I
3 presented the proposed amendments to
4 the regulation, a definition in the
5 Definition Section of the regulation,
6 which will show up, I believe, at
7 1.1(h), to be inserted there, a
8 definition of Coordinated Expenditure,
9 as shown on your screen, which is a
10 Coordinated expenditure is an
11 expenditure made by a spender in
12 concert, cooperation, consultation, or
13 collaboration with a candidate, an
14 individual who later becomes a
15 candidate, a candidate political
16 committee, a political committee, or
17 other organization that is later used
18 as a candidate political committee, or
19 an agent or officer of any of the
20 above. And then it references, as
21 requested by the Board, see Subpart I,
22 which deals with coordinated
23 expenditures for further details
24 regarding what constitutes

coordination that may result in in-kind contributions.

And I have not marked it here, but there will be resulting re-lettering and re-numbering of both the definitions and the internal references within the regulation that would need to be made to accommodate this, but those would be just non-substantive changes if the Board chooses to insert a definition along these lines.

(At this time, Exhibit-B was marked for identification.)

JORDANA L. GREENWALD: That is the only piece of the regulation that staff is proposing to change as far as the existing amendments. And that concludes my testimony for today, unless there's any questions.

MR. REED: I would open up the floor to the full Board for any questions or comments for Ms. Greenwald, our General Counsel, on

her testimony. Hearing none.

Thank you for your testimony, Ms. Greenwald.

Are there any other witnesses who wish to offer testimony about the proposed amendments to Board Regulation No. 1? And I would ask staff that if they are receiving information online, that they let me know, because I have gone offline.

BRYAN MCHALE: Chair Reed, we have two attendees on Zoom who would like to testify on this. It would be Adam Bonin and Aaron McKean.

MR. REED: Okay. So, are you going to admit -- or have they been admitted?

BRYAN MCHALE: They are admitted and Adam is getting ready to speak now.

Adam, if you would log in and then spell your name when you introduce yourself.

ADAM BONIN: Sure.

Everything is working okay and you can hear me now?

MR. MCHALE: We can.

ADAM BONIN: Good afternoon, everyone. My name is Adam Bonin, B-O-N-I-N. As the Board is generally aware, I'm an attorney who practices in the field of campaign finance and election law here in the City of Philadelphia representing candidate clients and other clients for the Board, and elsewhere. These comments are solely my personal capacity, and do not reflect the views of any of my clients, necessarily. Just my own, sort of, take on the regulations.

And there's really only two areas in which I want to focus. And I'll be brief. No. 1 deals with the proposed amendments to transition at inauguration committees. And what the regulations do in -- you know, what -- you know, the definitions in 1S and 1X, as well as, you know, in the

1 section itself, dealing with -- and
2 with such committees 1.30, is to
3 really double down on an ongoing --
4 well, not ongoing. I guess a -- you
5 know, they buy in the old argument
6 that's been had and has been shifting
7 with the Board staff. And it deals
8 with the question of, are these, in
9 fact, political committees, and if so,
10 what -- what restriction is attached
11 to them. And what these proposed
12 regulations do is, really, wean into
13 and double down on the idea that these
14 are considered by the Board to be
15 political committees. And I will
16 note, you know -- as the Board, you
17 know -- as the Board staff is aware,
18 that I recognize that the staff -- you
19 know, the ordinance given to you by
20 counsel does include that -- you know,
21 the term political committee,
22 described as committees. But what
23 they are doing is not in any way
24 political. You know, an inauguration

after someone has been elected, or transitioned to office after someone has been elected, these are not political events. These are civic events. And, you know, those of us who have attended, for example, the open house which counsel holds every four years at the start of a new term after the inauguration ceremonies where they welcome in, you know, small caterers and, you know, vendors from their communities, you know, throughout the -- you know, for the public to enjoy their stuff. I mean, this is a tremendous civic event, and it is not, in any way, a political, slash, electoral event.

By doubling down on this political committee language, what it's doing is that it is preventing members of -- you know, members of counsel, City Row Officers, you know, from fundraising from C3s, C4s, local businesses, in support of these civic

1 efforts. Whether we're talking about,
2 you know, a mayoral reception, you
3 know, the evening of the inauguration
4 or this, you know -- you know, the
5 events being held on election day, or
6 when it comes to transition expenses,
7 you know, the ability to receive
8 in-kinds from -- you know, in-kinds
9 from 501 -- you know, local 501 C4s,
10 to the extent that, quote-unquote,
11 everything needs to go through the
12 committee.
13 This may have to be fixed by
14 counsel. But it would be wonderful
15 if -- you know, this is something I've
16 discussed with, you know, Board staff
17 before, if the Board could at least
18 set forth, you know, sort of as an
19 enforcement priority, you know,
20 this -- you know, the same rules
21 around contribution limits and sources
22 just should not apply to these things
23 because they are not truly political
24 expenses, even if, you know, counsel

has saddled these things with the named political committee, for reasons I'm not sure.

Thing No. 2 deals with some of the alterations on self-funders. And I understand what the -- what this regulation is trying to do here by roping in pre-candidacy self-funding to a committee. And that is all well and good, but it leaves open the possibility that a self-funder who is exploring a run for office will not operate through a committee at all. Will not be raising funds at all. Will just be acting as a candidate either through the entirety of their campaigns or, you know, at a minimum, until announcing.

And so I think that there's -- there's a door left open in the way that this regulation is written that could allow, you know, a wealthy candidate to avoid having all of those funds attributed to the

subsequent campaign. And thus, you know, wanting into some of the problems that we've also seen.

The other thing that I just want to say on self-funders, and then I have one concluding comment, is, you know, the language in 1.5G, in terms of, you know, notification becomes -- you know, the committee has to notify the Board when its reached this level by email or by postal mail. And then, you know, once the Board announces that it's in effect, that's when doubling takes effect. Doing so, just invites a manipulation of the process.

First of all, you know, as I -- I went back to the original ordinance. I don't think that there's anything in there -- and if I'm wrong, I'm wrong -- which specifies how the Board is to be notified. If you can get rid of the reference to postal mail at all, then do so. It's 2024. They should be required to, you

1 know -- they should be required to
2 email. And especially, you know --
3 you know, not only does everyone have
4 email, but when we're talking about
5 candidates who are wealthy enough to
6 spend at least a
7 quarter-million-dollars on their own
8 elections, they certainly have email.
9 And, so, it should be email --
10 immediate email to the Board -- you
11 know, to the Boards Executive
12 Director, which is required. But you
13 don't want to leave the door open for
14 notification by getting a friend in
15 Hawaii or Alaska to put a stamp on
16 something and then waiting a week for
17 it to arrive there. That defeats the
18 purpose. I would get rid of that.
19 Finally, I know that most of
20 the media attention to these proposed
21 changes have been to the changes on
22 coordinated expenditures, and trying
23 to rope in sort of the activity which
24 has been the subject of a lot of

1 litigation during and since. I don't
2 want to comment on that specifically,
3 other than to say two things. Number
4 one is that I wonder if chasing the
5 last offense does nothing to corral
6 whatever the next one will be. And I
7 don't know -- I don't know how to
8 figure out what the next bad thing
9 will be. All I know is, you know,
10 wherever the fences are set up, some
11 will do their best to find the hole in
12 them. And I'm just -- I'm a little
13 sanguined. I mean, I've been doing --
14 I've been working on campaign reform
15 issues for almost 20 years now, and I
16 really -- I admire the Board's efforts
17 to try to do something more here.
18 I've become incredibly depressed about
19 the possibility that absent Citizens
20 United being overturned that it's
21 going to happen. But I certainly wish
22 you well in these efforts.
23 And with that, I'm done.
24 MR. REED: Thank you,

Mr. Bonin, for your testimony.

Any Board members have questions for Mr. Bonin? Hearing none, we can thank Adam for his testimony and will be happy to recognize our next witness.

MR. MCHALE: If Aaron McKean would please un-mute himself and introduce himself.

AARON MCKEAN: Good afternoon, Chair and Vice Chair, and members of the Board.

My name is Aaron McKean, and that's spelled A-A-R-O-N, M-C-K-E-A-N I'm Senior Legal Counsel at Campaign Legal Center. Campaign Legal Center is a nonpartisan, nonprofit organization that works to advance democracy at every level in government, and I'm testifying today in support of the coordination rules that are put forward -- or the proposed rules for coordination in the proposed regulation. We strongly

support the Board's efforts to strengthen their coordination rules because they're so important for upholding the integrity of our election system. I mean, as the previous speaker noted, in the aftermath of Citizens United there has been just a total unleashing of big spending in elections, and that has really put pressure on, you know, the contribution limits that we have in place, in Philadelphia and in other places. And it's put pressure on the system to make sure that campaign spending is actually independent, and not, you know, subject to all these games that candidates and outside spenders want to play, you know, to abate the contribution limits.

I submitted written testimony that goes into more detail about the change of the rule and our recommendations for improving the rules. But I just want to highlight

today, you know, the importance of these coordination changes, as well as our recommendations. And I'll try to be brief, but I'll be happy to answer any questions.

And I think the best place to start is, you know, the US Supreme Court, which has recognized that coordination laws are essential for upholding the integrity of our campaign finance system and contribution limits. They ensure that outside spenders, as well as special interests, can't coordinate their spending with candidates, and in that way, essentially, bankroll the campaigns of their preferred candidates. That creates obvious corruption concerns. Everyone should be subject to the appropriate contribution limits.

So, with that as sort of the starting point, recognizing that coordinated expenditures are,

1 essentially, just contributions
2 through winks and nods, through
3 agreements, you know, we strongly
4 support the Board's rules, because
5 they're already strong, and these
6 changes only make them stronger. The
7 changes that are included in the
8 rules, you know, the key changes for
9 us are, you know, making sure that a
10 candidate who coordinates their
11 campaign activity with an outside
12 spender, before they officially
13 declare their candidacy, would be
14 covered by these rules. That's a key
15 change, because we've seen these
16 problems at the Federal level, at the
17 state level, and other places, where
18 candidates want to play games by, you
19 know, delaying their candidacy
20 declaration and then, you know, doing
21 all sorts of fundraising for an
22 outside group, setting up an outside
23 group in advance, and then, you know,
24 that activity clearly would be

1 coordinated if they were a candidate.
2 But they hold off on doing that, and
3 then they declare their candidacy
4 later on, just so that they can have
5 that all set up to spend in their
6 favor later on in the campaign.
7 That's, clearly, a problem that
8 these -- those regulations address.
9 The second one that I want
10 to highlight is, you know, ensuring
11 that the regulation ensures that if a
12 candidate's, you know, agents,
13 officers, anybody with their political
14 committee, establishes an outside
15 group, an outside spender, or
16 principally funds an outside spender,
17 that that outside spender's
18 expenditures in support of that
19 candidate's campaign would also be
20 considered coordinated. And this is
21 important because we know that, you
22 know, if my campaign manager goes off
23 and sets up a Super PAC and then
24 spends in my favor, we know that my

1 campaign manager for the last couple
2 years has lots of information about,
3 you know, my own campaign strategy or,
4 you know, my own campaign leads.
5 Clearly, even if -- I probably don't
6 even need to send a text message to
7 him to say, do this message, do this
8 advertisement, because he already
9 knows all that stuff. And that's the
10 kind of, you know, I guess, covert
11 coordination, you know, that
12 candidates engage in to get around
13 contribution limits. Get someone else
14 to do that spending for you who
15 already knows all the information
16 about your campaign.
17 And then, finally, the other
18 key piece that we -- that the rules
19 address is making sure it's clear
20 about how a candidate -- how a
21 candidate, you know, fundraises for an
22 outside group. You know, it should be
23 considered coordinate -- I'm sorry.
24 If a candidate fundraises for an

1 outside group, then that outside group
2 that later spends in support of that
3 candidate, that's considered
4 coordination. And that should be
5 clear, right? You know, if I'm
6 fundraising for a group and giving
7 them big money, you know, I guess I
8 give all sorts of money to this
9 outside group that has unlimited, you
10 know, ability to raise money and spend
11 money in support of my campaign, you
12 know, that's just another way of
13 getting another spender in there who
14 can spend in my favor, who isn't
15 subject to limits like I am as a
16 candidate. It's just another way to
17 get around the contribution limits.
18 So providing further clarity on that
19 rule, I think is really helpful.
20 We do have some
21 recommendations for strengthening the
22 rules. Again, we submitted written
23 testimony in support of these rules.
24 These recommendations are included

there because we provided additional, you know, suggestions about how to implement these recommendations. I'll highlight them briefly and then I'll be happy to be available for questions.

You know, the first recommendation that we have is that, you know, the rules just be clarified so that it's clear that coordination between a candidate and an outside spender is only going to be considered a coordination if the spending ends up benefiting that particular candidate. So I just think that clarification would be helpful in the rule. Again, this isn't explicit in the rule, but making it explicit would be, you know, a way to provide more guidance.

The second one I want to highlight is that we do think it would also be important to ensure that we consider expenditures supporting a candidate to be coordinated when those

1 expenditures are made by an outside
2 group that's established not just by
3 the agents and officers of the
4 candidate, but also by that
5 candidate's close family members.
6 This is, obviously, an issue where,
7 you know, somebody's spouse, or
8 somebody's kids, or people who live
9 with them, maybe they establish the
10 outside spender and they're doing --
11 they're raising all sorts of money and
12 spending in favor of their spouse's
13 campaign. Clearly, there's a
14 connection between, you know, a
15 candidate and their spouse that allows
16 the spouse to know all sorts of
17 campaign strategy and information that
18 could go into that kind of spending.
19 And so we think it's a great expansion
20 of the rule to include in coordinated
21 spending groups that are established
22 by a candidate's agents or officers,
23 but we think it should also include
24 groups that are established by that

1 person's family members.
2 The third recommendation we
3 have is, actually, dealing with an
4 exemption in the rule, currently.
5 Regulation No. 1 currently exempts
6 coordination -- coordinated
7 expending -- expenditures,
8 expenditures that are made through a
9 vendor that's common to a candidate
10 and an outside spender. So, as a
11 candidate, you know, I might use the
12 vendor to develop my ads or place my
13 ads, and if an outside spender who
14 wants to spend in my favor is using
15 that same vendor, that vendor will
16 have all sorts of information about my
17 campaign that can go right into that
18 outside spender's, you know, campaign
19 ads and strategy. And that is
20 another, you know, kind of covert way
21 that information can travel between
22 campaign and being an independent or
23 outside spender. And we think it
24 would be appropriate to remove that

1 exception and, instead, you know, make
2 it clear that using a common vendor is
3 the form of coordinated spending, and
4 should be included in the rule.
5 We've also suggested that,
6 in addition to improving this
7 exemption, the Board should also
8 include a firewall provision. So,
9 essentially, if there's a common
10 vendor between a candidate and an
11 outside spender, then the candidate
12 would be -- I'm sorry -- the outside
13 spender would be required to implement
14 a firewall that ensures that the staff
15 who are working to provide services to
16 that outside spender are walled off,
17 essentially, from the staff who are
18 providing services to the candidate.
19 And that includes, you know, physical
20 and technological separation. That
21 would include making sure that the
22 managers or the people who are
23 overseeing these operations are
24 separated as well. So you can't have

1 someone who is kind of looking on both
2 sides of the firewall, or only seeing
3 both sides of the firewall. And then
4 making sure that everybody actually
5 has the firewall policy and that it
6 will be available for the Board to
7 review. So that would be a safe
8 harbor for a common vendor. You know,
9 in general, expenditures by a common
10 vendor should be considered
11 coordinated expenditures, but there
12 will be the safe harbor of the common
13 vendors and outside spender who have
14 the firewall in place to prevent, you
15 know, strategic campaign information
16 from going in between the two
17 entities.
18 And then I finally have just
19 one more of our recommendations, and
20 that's just a clarification in one
21 portion of the rule. There's a
22 portion of the rule that says that if
23 a principal funder of an outside
24 spender is the one who coordinates

1 with a candidate, and then the outside
2 spender makes an expenditure in
3 support of the candidate pursuant to
4 that coordination, that those
5 coordinated expenditures apply to
6 both -- they, essentially, are
7 attributed as contributions to both
8 the principle funder and the outside
9 spender, right, for the purposes of
10 the contribution limits. We think
11 that's an important and good rule, but
12 we did provide language just to
13 clarify, you know, how that rule works
14 in our written testimony.
15 And those are the
16 recommendations that I have, and I'm
17 happy to be available for questions.
18 MR. REED: Thank you for
19 your testimony, Mr. McKean. I would
20 open up the floor to my colleagues on
21 the Board for any questions they may
22 have for you. Hearing none, we thank
23 you for your testimony and we will
24 assure that your submissions are

included in the record.

AARON MCKEAN: Thank you very much.

MR. REED: Are there any other witnesses who wish to offer testimony about the Proposed Amendments to Board Regulation No. 1? Hearing none, I declare this public hearing closed. Thank you all for attending.

(At this time, Exhibit-C was marked for identification.)

(The hearing is concluded at 1:36 p.m.)

C E R T I F I C A T I O N

I, ALLISON D. LEVARI, Professional Court Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the stenographic notes taken by me in the aforementioned matter.

- - -

DATE: _____

ALLISON D. LEVARI
Notary Public

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Exhibit-B

Exhibit-C

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Proposed amendments for public comment posting
Additions in blue underline; deletions in ~~red strikethrough~~

PHILADELPHIA BOARD OF ETHICS
AMENDMENT TO REGULATION NO. 1
CAMPAIGN FINANCE

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SUBPART A. SCOPE; DEFINITIONS

1.0 Scope. The Board promulgates this Regulation pursuant to Philadelphia Home Rule Charter §§ 4-1100 and 8-407 and Philadelphia Code § 20-606(1)(a) to interpret Code Chapter 20-1000.

1.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

a. **Accounting period**. The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before they became a candidate.

b. **Agent**. An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.

c. **Board**. The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

d. **Campaign**. Includes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them.

e. **Candidate**. An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces ~~his or her~~their candidacy for City elective office, including a former candidate who receives ~~post-candidacy~~ contributions or makes ~~post-candidacy~~ expenditures to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office.

f. **Candidate political committee**. The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.

g. **City elective office**. The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.

h. **Contribution**.

   i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;

   ii. An in-kind contribution, as defined at Paragraph 1.1(p); or

   iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

i. **Contributor**. A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.

j. **Covered election**. Any primary, general or special election for City elective office.

k. **Electioneering communication**. Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.

l. **Excess pre-candidacy contribution**. The portion of a pre-candidacy contribution to a political committee that, had it been made to a campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.

m. **Expenditure**. The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:

   i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;

   ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a campaign;

   iii. For an independent expenditure;

   iv. For an electioneering communication; or

   v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

n. **Former candidate**. An individual who was a candidate for City elective office becomes a former candidate:

   i. On the day after a general election, if the individual was unopposed in that election;

   ii. On the day after a primary election, if the individual concedes that election;

   iii. When the individual's opponent concedes, if the individual was opposed in a general election; or

   iv. If an election is contested, when that contest is resolved.

o. **Independent expenditure**. An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any campaign and that is not made in concert with or at the request or suggestion of any campaign.

p. **In-kind contribution**.

i. The provision of any goods or services directly to a campaign, litigation fund committee, or transition and inauguration committee without charge or at a charge that is less than the usual and normal charge for such goods or services;

ii. The payment or agreement to pay a third party to provide goods or services to a campaign, litigation fund committee, or transition and inauguration committee if the goods and services are in fact provided; or

iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, litigation fund committee, or transition and inauguration committee, as provided in Subpart I.

The term "in-kind contribution" does not include volunteer labor as described in Paragraph 1.10(g).

q. **Litigation fund committee**. The political committee established by a candidate, campaign, or former candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of that candidate's campaign or participation in a~~n~~ covered election, as described in Subpart G.

r. **Person**. Any individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit-organization.

s. **Political committee**. Any committee, club, association, political party, or other group of persons, including the candidate political committee, litigation fund committee, or transition and inauguration committee, of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election, to retire debt incurred to influence the outcome of a covered election, or to cover expenses related to transition or inauguration to City elective office.

t. **Pre-candidacy contribution**. A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.

u. **Pre-payment**. A payment made during the accounting period for any thing used or to be used by a campaign, including but not limited to: printed or produced campaign materials, such as sample ballots, shirts, signs, flyers, brochures, websites, photographs, audio or video recordings; advertising time or space; office space; or services or labor.

v. **Sample ballot**. A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

w. **SPEC account**. A segregated pre-candidacy excess contribution account, as described in Subpart J.

x. **Transition and Inauguration Committee**. The political committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs ~~incurred by the candidate for~~ related to the candidate's transition or inauguration ~~into~~ to City elective office, as described in Subpart H.

y. **Vendor**. A person, other than a political committee, that provides services to a campaign.

SUBPART B. CONTRIBUTION LIMITS

1.2 Limits on contributions from individuals.

a. A campaign shall not accept total contributions per calendar year of more than ~~$3,100~~$3,700 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.2: On November 1, 2021, prior to the election, Jane Doe donates $2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional ~~$1,100~~$1,700 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to ~~$3,100~~$3,700 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than ~~$3,100~~$3,700 from an individual, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than ~~$3,100~~$3,700 from an individual, including contributions made through one or more political committees or other persons.

1.3 Limits on contributions from political committees, partnerships, sole proprietorships, or other forms of organization.

a. A campaign shall not accept total contributions per calendar year of more than ~~$12,600~~$14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's campaign if the committee is carrying debt incurred to influence the outcome of that election.

Example for 1.3: On November 1, 2021, prior to the election, Political Committee XYZ donates $10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional ~~$2,600~~$4,800 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to ~~$12,600~~$14,800 of additional funds to Candidate A.

b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than ~~$12,600~~$14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than ~~$12,600~~$14,800 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

d. To qualify for the ~~$12,600~~$14,800 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

1.4 Contributions made through other persons.

a. For the purposes of this Subpart, a contribution is made through another person, such as a political committee, when:

   i. A person makes a donation to another person, such as a political committee, and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient use all or part of the money to make a contribution to support a specific candidate.

      A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or

   ii. A person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign.

b. For the purpose of the contribution limits, the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.

Example for 1.4(b): Joe Big makes a donation of $5,000 to Big PAC and tells the treasurer of the PAC that he would be ever so happy if the PAC supported candidate Lucy Largo. The next day, Big PAC makes a contribution of $5,000 to the Largo campaign.

Joe Big and Big PAC have each made a contribution of $5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by ~~$1,900~~$1,300 and therefore violates the City's Campaign Finance Law.

1.5 Doubling of Contribution Limits.

a. If a candidate contributes $250,000 or more of their personal resources to their own campaign since the more recent of:

~~(i)~~ i. the most recent election cycle for the office sought by the candidate, or

~~(ii)~~ ii. the last municipal election in which the candidate sought office,

the contribution limits for all campaigns for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).

All contributions made after either (i) or (ii) by an individual who becomes a candidate to the political committee that becomes their candidate political committee shall count toward the $250,000 threshold regardless of whether, at the time a contribution was made, the individual was a candidate or had designated a candidate political committee.

b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b)~~&~~ and (c) and 1.3(b)~~&~~ and (c)) do not double if a candidate contributes $250,000 or more to their own campaign.

c. A contribution that exceeds the contribution limits at the time it is accepted by a campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.

d. If a campaign returns, repays, or refunds to its candidate any money the candidate had contributed from the candidate's personal resources prior to reaching the $250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.

e. Once the contribution limits double, they remain doubled even if:

i. The candidate whose contributions triggered the doubling ceases to be a candidate; or

ii. After the limits have doubled, a campaign returns, repays, or refunds a portion of the money contributed from the candidate's personal resources.

f. If a candidate ~~contributes $250,000 or more of their personal resources to their own campaign~~makes contributions to their own campaign from their personal resources that reach the threshold described in Paragraph 1.5(a), within two business days, that

candidate shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director. The notification shall provide the date of the transaction that met or exceeded the $250,000 threshold. If the $250,000 threshold is met or exceeded before the individual becomes a candidate, the candidate shall notify the Board within two business days of becoming a candidate.

g. Doubling shall be effective for all campaigns for that office, including that of the candidate who triggered the doubling, beginning on the date that the Board issues an advisory alert or other public announcement that a candidate for that office has met or exceeded the $250,000 threshold.

1.6 No person shall make any contribution that exceeds the limits set forth in this Subpart.

1.7 A pre-candidacy contribution made in the same calendar year that an individual becomes a candidate shall count toward the contribution limits set forth in this Subpart.

1.8 The value of in-kind contributions counts toward the total amount of contributions made or accepted in a calendar year.

1.9 If a person makes an expenditure to another person, to place a candidate's name on a sample ballot, and does so in coordination with that candidate's campaign, that expenditure is an in-kind contribution to the candidate's campaign and shall count toward the contribution limits set forth in this Subpart. Any additional expenditures made by the recipient person to print or distribute the sample ballot shall not be counted as a contribution to the candidate's campaign.

1.10 Transactions that do not count toward the contribution limits. The following are not subject to the contribution limits set forth in this Subpart:

a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee.

b. Contributions from a candidate's candidate political committee to that candidate's litigation fund committee or transition and inauguration committee.

c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) when a campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.

d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.24(h).

e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication.

f. Incidental expenditures made by persons other than campaigns that are related to Internet activity (such as the cost of hardware, software, or Internet access) that advocates or influences the election of a candidate.

g. Volunteer labor provided to a candidate or a political committee.

   i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:

      (1) Legal or accounting work;

      (2) Entertainment such as a performance by a musical group or DJ; and

      (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.

   ii. Volunteer labor does not include the donation to a candidate of:

      (1) Equipment, such as computers, copiers, or printers;

      (2) Resources, such as postage; or

      (3) Materials, such as stationery or campaign literature.

   iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.

h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign:

   i. Pays its fair portion of the costs;

   ii. Makes payment no later than 14 days after any other campaign; and

   iii. Obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

SUBPART C. DATE OF ACCEPTANCE OF CONTRIBUTIONS WITH RESPECT TO THE CONTRIBUTION LIMITS

1.11 Except as provided in Paragraphs 1.12, 1.13, and 1.14, the date of acceptance of a contribution is the date that the contribution comes into the possession of a campaign. A campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

1.12 If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the campaign finds the contribution in the mailbox.

1.13 If a contribution is made by credit card through a website, the date that the contribution is accepted is the date on which the contributor submits ~~his or her~~ their credit card information on the website.

1.14 In-kind contributions.

a. If a person makes an in-kind contribution by providing goods or services directly to a campaign, the date of acceptance of that contribution is the date that the campaign receives the goods or services.

b. If a person makes an in-kind contribution by paying or agreeing to pay a third party to provide goods or services to a campaign, the date of acceptance of that contribution is the date the goods or services are provided or the date payment is made, whichever is earlier.

SUBPART D. ATTRIBUTING CONTRIBUTIONS MADE BY CHECK FOR THE PURPOSE OF THE CONTRIBUTION LIMITS

1.15 A contribution made by a check that reflects a joint checking account of two or more individuals shall be attributed to the joint account holder who signs the check. If more than one account holder signs a contribution check, the contribution shall be apportioned evenly between the signers. If an individual other than an account holder signs a contribution check, the contribution shall be attributed evenly among the joint account holders.

1.16 A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

1.17 A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of organization is a contribution from the partnership, sole proprietorship, or other form of organization, unless other facts demonstrate that the contribution is from the signer of the check.

SUBPART E. CAMPAIGN FINANCE DISCLOSURES

1.18 Electronic filing of campaign finance reports. Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board and shall be submitted in a format required by the Board. Upon receipt of any filing, the Board shall provide a printable receipt.

The City of Philadelphia's Campaign Finance Filing System may be found at:
https://ethics.pub/CFFiling

A schedule with the specific reporting deadlines may be found at:
https://ethics.pub/CFDocs

1.19 Candidates and candidate political committees. A candidate, a treasurer of a candidate political committee, or a candidate political committee shall file a campaign finance report or statement with the Board any time it is required to file such a report or statement with the City Commissioners. A candidate political committee shall also file a campaign finance report with the Board on the sixth Tuesday before a covered election in which that committee's candidate is participating, if the committee has made expenditures to influence the outcome of that election.

1.20 Political committees and other persons.

a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:

   i. Expenditures made or debt incurred to influence the outcome of a covered election;

   ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;

   iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or

   iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

   Any report required to be filed pursuant to this Paragraph 1.20(a) shall be filed no later than the state law due date for filing that report.

b. In addition to any filing required by Paragraph 1.20(a), a political committee shall file a campaign finance report with the Board on the sixth Tuesday before a covered election if the committee has made expenditures to influence that election.

c. In addition to any filing required by Paragraphs 1.20-(a) or (b), any person, including a not-for-profit organization, shall file a report with the Board on or before any report due date set forth below, if that person, whether directly or through another person, makes or promises to make expenditures of $5,000 or more in the aggregate for one or more electioneering communications that are published or to be published within 50 days of a covered election.

   If the date of dissemination of the electioneering communication precedes the date of the expenditure for it, then the date of dissemination shall be used to determine the due date of the report. Such reports shall be due (unless the same person is required to file a report under Paragraph 1.20 (a) or (b) on the same date):

   i. on the sixth Tuesday before a covered election;

   ii. on the fourth Tuesday before a covered election;

iii. on the second Friday before a covered election;

iv. on the Tuesday immediately before a covered election;

v. on the Friday immediately before a covered election; and

vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.

d. In a report filed pursuant to Paragraph 1.20(c), if a person, other than a political committee or an individual, has segregated funds used to make expenditures into one or more accounts separate from funds not used to make expenditures, that person is only required to disclose the source of contributions deposited in the segregated accounts used to make expenditures.

An individual who files a report pursuant to Paragraph 1.20(c) is only required to disclose contributions that the individual receives or solicits in order to fund the expenditures disclosed in the report.

1.21 Content of campaign finance reports and statements.

a. A campaign finance report filed with the Board shall disclose all contributions and other receipts received, each expenditure made, any debt incurred during the relevant reporting period, and the cash balance at the beginning and end of the reporting period.

i. For each contribution of more than $50, the report shall disclose the date and amount of the contribution and the contributor's name and address.

For each contribution of more than $250, the report shall disclose the date and amount of the contribution, the contributor's name and address, and, in the case of contributions from individuals, the contributor's occupation, employer, and employer's address.

ii. For each receipt other than a contribution (such as interest income, returned checks, or refunds), the report shall disclose the name and address of the source of the funds and a description of the receipt.

iii. For each expenditure, the report shall disclose the date, amount, and recipient of the expenditure, and the recipient's address and the purpose of the expenditure.

If the filer has used a credit or charge card to make expenditures, the filer shall disclose and itemize each purchase made with such a card, not merely a lump sum payment.

iv. For each unpaid debt, the report shall disclose the name and address of the creditor, the amount of debt owed, and the date the debt was incurred, as well as a description of the debt.

The date a debt is incurred is the day on which the creditor provided the goods, services, or loan from which the debt arises.

b. If, during a reporting period, a filer has accepted contributions, made expenditures, or incurred debt of less than $250, the filer may file a statement attesting to that fact in lieu of a full report. The statement shall set forth the filer's starting and ending balance for the reporting period.

c. If a campaign makes a payment to a person other than a political committee, whether directly by the campaign or through another person, to have the name of the campaign's candidate placed on a sample ballot or to conduct or organize get-out-the-vote activities, the campaign shall disclose not just that person to whom it made payment but also any persons whom that person pays or employs in order to provide the services promised.

1.22 Affirmation required for campaign finance filings. Any candidate, treasurer, or other individual submitting a campaign finance report or statement to the Board shall affirm that the information set forth therein is true and correct. The individual who submits the report or statement shall be liable for civil penalties if it contains any material misstatements or omissions. The affirmation required by this Paragraph shall be submitted as required by the Board.

SUBPART F. USE OF POLITICAL COMMITTEES AND CHECKING ACCOUNTS BY CANDIDATES AND CAMPAIGNS

1.23 One committee and one checking account.

a. A campaign shall use no more than one political committee and one checking account for the City elective office the campaign is seeking, into which all contributions for that office shall be deposited and from which all expenditures for that office shall be made, including expenditures to retire debt incurred to influence the outcome of a covered election.

b. If a campaign has or controls other political or non-political accounts, such accounts shall not be used for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election.

c. A campaign may be found to control a political committee or an account if:

   i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;

   ii. The candidate or an agent of the campaign established or registered the political committee or account; or

   iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.

   A campaign will not be found to control a political committee merely because the campaign and the political committee used the same attorney to complete and file registration paperwork.

d. Except as specifically permitted by this Subpart, a campaign shall not make any expenditure related to a covered election through any other person or vendor.

An expenditure is made through another person if:

i. The campaign provides the money to cover the specific expenditure;

ii. The campaign selects the recipient of the expenditure; or

iii. The campaign approves the expenditure or directs that it be made.

1.24 Permissible uses of other committees or accounts.

a. **Payment service providers.**

i. A campaign may use a payment service provider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the campaign's political committee checking account.

ii. A campaign may use a payment service provider to make expenditures so long as any funds used for such expenditures are drawn directly from the campaign's political committee checking account.

b. **Savings account.** A campaign may transfer funds between the candidate political committee's checking account and a single savings account so long as:

i. The savings account is at the same bank as the checking account;

ii. The campaign deposits all contributions into the checking account before transferring such funds to the savings account;

iii. The campaign does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and

iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that the candidate has established a savings account.

c. A candidate or an employee or agent of a campaign may use personal funds to make purchases for the benefit of the campaign so long as:

i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;

ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;

iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and

iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

d. A campaign may make expenditures for advertising through a vendor if that vendor directly pays the media outlet in or on which such advertising shall appear. For such expenditures, a campaign shall obtain and maintain receipts and documentation of

where and when the relevant advertising ran, which shall be made available to the Board upon request.

e. If, in the course of providing services to a campaign, a vendor incurs costs incidental to the provision of those services, an expenditure by the campaign to reimburse the vendor for those costs shall be permissible under this Subpart so long as the costs are promptly invoiced and the reimbursement is promptly made. For such reimbursements, a campaign shall obtain and maintain appropriate receipts and documentation, which shall be made available to the Board upon request.

f. A candidate may maintain and use a litigation fund committee established pursuant to Subpart G or a transition and inauguration committee established pursuant to Subpart H.

g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

   i. That political committee or other person offers similar services to other campaigns;

   ii. The amount charged is commensurate with the services provided; and

   iii. The candidate does not exercise control over the political committee or other person.

h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.

i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

1.25 Multiple offices sought. If a candidate is running for more than one City elective office simultaneously, that candidate shall maintain a separate candidate political committee and checking account for each office being sought.

1.26 Requirement to provide information to the Board about a candidate political committee.

a. A candidate who has a candidate political committee when becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:

   i. The committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the committee's checking account is established; and

iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.

b. If a candidate does not have a candidate political committee when becoming a candidate, that candidate shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with the candidate's street address (other than a P.O. box), telephone number, and email address.

c. If a candidate establishes a candidate political committee after becoming a candidate, that candidate shall provide the information required by this Paragraph within three business days of the formation of the committee.

d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

SUBPART G. LITIGATION FUND COMMITTEES

1.27 Litigation fund committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or former candidate ~~for City elective office~~ may establish a litigation fund committee ~~with a single separate checking account~~ to solicit and receive contributions and make expenditures for the purposes described in Paragraph ~~1.27(c)~~1.27(d).

b. The ~~name of a~~ litigation fund committee shall ~~include the term "Litigation Fund."~~be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of the litigation fund committee shall include the term "Litigation Fund."

d. A candidate, campaign, or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's campaign~~'s~~ or ~~former candidate's campaign or~~ participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

~~d.~~e. A candidate, campaign, or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.

~~e.~~f. A candidate, campaign, or former candidate may make expenditures from a candidate political committee for the purposes described in Paragraph ~~1.27(c).~~1.27(d) regardless of whether they have established a litigation fund committee under this subpart.

~~f.~~g. A candidate, campaign, or former candidate shall not transfer funds to a candidate political committee from a litigation fund committee. Nothing in this Subpart,

however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a litigation fund committee.

h. A candidate, campaign, or former candidate may establish a litigation fund committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a litigation fund committee must be terminated as set forth in Paragraph 1.29.

1.28 Requirement to provide information to the Board about a litigation fund committee.

a. Within three business days of the formation of a litigation fund committee, a campaign or former candidate shall notify the Board of the following information:

   i. The litigation fund committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the litigation fund committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.

b. If the information required by this Paragraph changes, the campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.29 Termination of a litigation fund committee.

a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the campaign or former candidate sought, except as provided in Paragraph 1.29(c).

b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.

c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

   iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a campaign, former candidate, or treasurer of a

litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART H. TRANSITION AND INAUGURATION COMMITTEES

1.30 Transition and inauguration committee requirements.

a. In addition to establishing a candidate political committee, a candidate, campaign, or ~~individual~~former candidate elected to City office ~~may~~ who wishes to solicit and receive contributions and make expenditures to pay fees and costs related to the candidate's transition or inauguration ~~into~~ to City elective office shall establish a transition and inauguration committee ~~with a single separate checking account~~ to solicit and receive contributions and make expenditures for the purposes described in Paragraph ~~1.30(c)~~1.30(d).

b. The ~~name of a~~ transition and inauguration committee shall ~~include the terms "Transition" and "Inauguration."~~be a separate political committee with a single separate checking account. The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

c. The name of a transition and inauguration committee shall include the terms "Transition" and "Inauguration."

d. A candidate, campaign, or ~~individual~~former candidate elected to City office shall make expenditures from a transition and inauguration committee solely to pay fees and costs ~~incurred for~~ related to the candidate's transition ~~and~~ or inauguration ~~into~~ to City elective office ~~of the candidate~~. Such expenditures include fees and costs associated with:

i. soliciting funds for the purposes outlined in this paragraph;
ii. payroll and consulting fees for committee staff;
iii. recruiting and selecting City employees as part of the candidate's transition into City office except to the extent such costs are covered by the City;
iv. temporary office space, furnishings, and equipment; and
v. catering, entertainment, rental fees, photography, and other similar costs associated with an inauguration ceremony or celebration.

Transition and inauguration committees may not be used to solicit contributions or make expenditures ~~from~~ related to the purchase of durable goods or real property.

Reelected incumbents may use a ~~candidate political committee for the purposes described in Paragraph 1.30(c).~~ transition and inauguration committee only for inauguration costs. They shall be presumed to have no valid transition costs associated with continued service in the same office.

e. A candidate or individual elected to City office shall not transfer funds to a candidate political committee from a transition and inauguration committee. A candidate or former candidate elected to City office shall not make expenditures from a candidate political committee for the purposes described in Paragraph 1.30(d). Nothing in this Subpart, however, prohibits a campaign or former candidate from transferring funds from a candidate political committee to a transition and inauguration committee.

f. A campaign or former candidate may establish a transition and inauguration committee at any time after the candidate either files nomination papers or petitions or publicly declares their candidacy for City elective office. Once established, a transition and inauguration committee must be terminated as set forth in Paragraph 1.32.

1.31 Requirement to provide information to the Board about a transition and inauguration committee.

a. Within three business days of the formation of a transition and inauguration committee, a candidate or individual elected to City office shall notify the Board of the following information:

   i. The transition and inauguration committee's name and street address (other than a P.O. box);

   ii. The name of the bank where the transition and inauguration committee's checking account is established; and

   iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.

b. If the information required by this Paragraph changes, the candidate or individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at https://ethics.pub/InfoForm and shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.32 Termination of a transition and inauguration committee.

a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.

b. Before a transition and inauguration committee is terminated, the transition and inauguration committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

   i. On a "last in, first out" accounting basis;

   ii. On a "first in, first out" accounting basis;

   iii. On a pro-rata accounting basis; or

iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

c. The Board may grant an extension for terminating a transition and inauguration committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART I. COORDINATED EXPENDITURES

1.33 ~~An expenditure is coordinated with a campaign if it is made in cooperation, consultation or concert with the campaign, including the following:~~

~~a. The expenditure is made at the request or suggestion of the campaign;~~
~~b. A person suggests making an expenditure and the campaign assents to the suggestion;~~
~~c. The person making the expenditure communicates with the campaign concerning the expenditure before making the expenditure;~~
~~d. The campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or~~
~~e. The campaign directs, places, or arranges the expenditure; or~~
~~f. The person making the expenditure uses information obtained from the campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the campaign made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.34.~~

Coordination generally. Coordination as described in this Subpart is not itself prohibited. Expenditures resulting from coordination are deemed in-kind contributions subject to the applicable contribution limits.

1.34 Pre-candidacy coordination.

a. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made before the individual becomes a candidate, such expenditure is a pre-candidacy in-kind contribution subject to Subpart J.

b. Where conduct constituting coordination occurs before an individual is a candidate, and a resulting coordinated expenditure is made after the individual becomes a candidate, such expenditure is an in-kind contribution subject to Subpart B.

1.35 Special terms. For the purposes of this subpart:

a. A "spender" is any person making an expenditure; and

b. A "principal funder" is any person providing 50% or more of the funds received by a spender in the twelve months before the covered election.

1.36 Coordinated expenditures. A coordinated expenditure is an expenditure made by a spender in concert, cooperation, consultation, or collaboration with:

a. A candidate;
b. An individual who is a candidate at the time of the expenditure, regardless of whether they were a candidate at the time the conduct constituting coordination took place;
c. In the case of pre-candidacy expenditures, an individual who later becomes a candidate, regardless of whether they were a candidate at the time the conduct constituting coordination took place;
d. A candidate political committee;
e. A political committee or other organization that is later used as a candidate political committee; or
f. An agent or officer of any of the above.

1.37 Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):

a. Communicates with the spender concerning the expenditure before it is made, including by;
   (i) Requesting or suggesting the spender make the expenditure;
   (ii) Assenting to an expenditure suggested by the spender;
b. Directs, places, or arranges the expenditure;
c. Directly or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender;
d. Provides information to the spender to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication by the source of the information to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.38; or

Example for ~~1.33(f)~~1.37(d): Philadelphians for Philadelphia PAC establishes a telephone bank to get out the vote for primary voters for Candidate A. Candidate A's campaign gives Philadelphians for Philadelphia a list of telephone numbers of people that contributed to Candidate A's campaign. Philadelphians for Philadelphia organizes the phone bank without any other input from Candidate A's campaign and spends ~~$12,600~~$14,800 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The ~~$12,600~~$14,800 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an ~~$12,600~~$14,800 in-kind contribution to Candidate A's campaign.

~~g~~e. Provides instructions to the spender ~~The person making the expenditures does so based on instructions received from the campaign.~~ A public communication ~~by a campaign~~ will constitute such instructions only if:

i. The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and

ii. The communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as "voters need to hear" or "voters need to see."

Despite the presence of these factors, coordination will not be found if the ~~person~~ spender can demonstrate that they had an independent basis for making the expenditure.

Example 1 for ~~1.33(g)~~1.37(e): Candidate A's campaign website includes a page with text in a red box that says "Voters in South Philadelphia need to hear that Candidate A supports dog parks." Without any other input from the campaign, Philadelphians for Philadelphia PAC pays $25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks. The $25,000 spent by Philadelphians for Philadelphia PAC is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $25,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.
Example 2 for ~~1.33(g)~~1.37(e): Candidate A's communications director tweets that "Center City voters need to see on the go that Candidate A will keep our streets clean." Without any other input from Candidate A's campaign, Philadelphians for Philadelphia PAC spends $200,000 to send online advertisements to mobile devices in Center City with the message "Candidate A will keep our streets clean." The $200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the $200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.

Example 3 for ~~1.33(g)~~1.37(e): Philadelphians for Philadelphia PAC spends $15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A's campaign updates its website with the message, "Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!" After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying "Only I can kill every spotted lantern fly!" The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A's campaign updated its website with the statement about the lantern flies.

The $15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A's campaign posted on its website.

1.38 Republication of campaign communications or materials. For the purposes of the contribution limits, an expenditure made to reproduce, republish, or disseminate a campaign communication (including audio recordings or video footage) or campaign material (such as photographs, flyers, signs, or brochures) prepared by a campaign:

a. Shall be considered an in-kind contribution made by the ~~person making the expenditure~~spender.

b. Shall be considered an in-kind contribution received by the campaign if the ~~person making the expenditure~~spender obtains the communication or materials directly from the campaign or from another source with the consent of the campaign.

   A campaign communication or campaign material is obtained with the campaign's consent if the campaign provides it to a third party for the purpose of enabling another person to (1) obtain the communication or material from that third party and (2) subsequently republish some or all of it.

c. Shall not be considered an in-kind contribution if:

   i. The communication or material is incorporated into a communication that advocates the defeat of the campaign that prepared the material;

   ii. The item republished is a photograph or video obtained from a public source that is not controlled by the campaign; or

   iii. The person's expenditures for republication of a campaign's communications or materials are less than $100 in the aggregate per reporting period.

Example for ~~1.34~~1.38(a) and (b): Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll

footage and uses it to create a television advertisement. The committee spends $100,000 to run the advertisement on three television stations during the week before election day. Candidate A posted the b-roll footage for the purpose of enabling another person to obtain it. Pennsylvanians for a Better Pennsylvania obtained a campaign communication created by Candidate A's campaign with the consent of the candidate's campaign. As such, the committee's expenditure of $100,000 was coordinated with Candidate A's campaign and is both an excess in-kind contribution made by the committee and an excess in-kind contribution received by Candidate A.

1.39 Fundraising. Where a person listed in Paragraph 1.36(a) through (f) directs or donates funds to, solicits funds for, or otherwise provides funds to the spender in the twelve months before the covered election, whether directly or indirectly, all expenditures made by that spender after the promise or receipt of such funds are coordinated.

a. Where the spender is a nonprofit organization (other than a political committee), coordination will not be found if the nonprofit can demonstrate that the funds provided:

   i. are a bona fide membership fee or dues paid by all similarly situated members; and

   ii. account for 5% or less of the total funds received by the nonprofit in the relevant twelve-month period.

This paragraph shall not apply to fundraising for or donating to a party as defined in 25 P.S. §1102.

1.40 Coordination by principal funders. Conduct of the principal funder of a spender shall be attributed to the spender, regardless of whether the principal funder is an agent or officer thereof. Expenditures resulting from coordination between the principal funder and the spender shall be attributable to both.

~~1.35~~**1.41** An expenditure will not be considered a coordinated expenditure merely because:

a. The ~~person making the expenditure~~spender interviews the candidate;

b. The ~~person making the expenditure~~spender has endorsed the candidate;

c. The ~~person making the expenditure~~spender and the candidate's campaign use the same vendor, attorney, or accountant;

d. The ~~person making the expenditure~~spender has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or

e. The ~~person making the expenditure~~spender has invited the candidate to make an appearance before the ~~person's~~spender's members, employees, or shareholders.

SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS

Note: The following requirements regarding excess pre-candidacy contributions are relevant only if, prior to becoming a candidate for City elective office, an individual accepts contributions in excess of the limits set forth in Subpart B.

~~1.36~~1.42 The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

> **Example for ~~1.36~~1.42:** On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. The accounting period for Candidate A is January 1, 2018 through November 30, 2020. The last Controller election was held in 2017 so January 1, 2018 would be the first day of the year following that election.

~~1.37~~1.43 Prohibited Expenditures.

a. A campaign shall not spend any excess pre-candidacy contributions for the purposes of: influencing the outcome of a covered election in which the campaign's candidate is a candidate; transition or inauguration expenses; or retiring debt that was incurred to either influence the outcome of an already completed covered election or cover transition or inauguration expenses related to an already completed covered election.

b. A campaign shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established pursuant to Subpart G or the candidate's transition and inauguration committee established pursuant to Subpart H.

~~1.38~~1.44 Exclusion of excess pre-candidacy contributions upon becoming a candidate.

a. Except as provided in Paragraph ~~1.39~~1.45, within ten days after an individual becomes a candidate, their campaign shall exclude all excess pre-candidacy contributions from its candidate political committee's checking account by one of the following methods:

   i. Transferring excess pre-candidacy contributions to a segregated account; or

   ii. Returning excess pre-candidacy contributions to their contributors.

b. **Calculation of amount to be excluded.** A campaign shall determine the amount to be excluded by using one of the following methods:

   i. **Dollar-for-dollar calculation.** A campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

Example for ~~1.38~~1.44: On November 1, 2020, Friends of Candidate A receives a contribution of ~~$3,500~~$4,100 from Mr. B (~~$3,100~~$3,700 within limits, $400 excess) and a contribution of ~~$3,500~~$4,100 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 ($400 excess from Mr. B + $400 excess from Ms. C) from its checking account.

ii. **Accounting-based calculation.** A campaign need not exclude any excess pre-candidacy contributions that the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent pre-candidacy, provided that:

(1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and

(2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.

c. If the amount that the campaign shall exclude from the candidate political committee's checking account exceeds the amount of cash the committee has on hand, the campaign shall use incoming contributions to cover the amount that shall be excluded.

~~1.39~~1.45 **Pre-candidacy segregation.** A campaign need not exclude any excess pre-candidacy contributions that, upon receipt, the campaign had transferred to a segregated pre-candidacy excess contribution account ("SPEC account"), provided that, if the campaign used any funds in a SPEC account for pre-payments, the campaign shall exclude from the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph ~~1.38~~1.44.

Example 1 for ~~1.39~~1.45: On November 1, 2020, Friends of Candidate A receives a contribution of ~~$3,500~~$4,100 from Person B (~~$3,100~~$3,700 within limits, $400 excess) and a contribution of ~~$3,500~~$4,100 from Person C (same). On November 2, 2020, Candidate A transfers $1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.

Example 2 for ~~1.39~~1.45: On November 1, 2020, Friends of Candidate A receives a contribution of ~~$3,500~~$4,100 from Person B (~~$3,100~~$3,700 within limits, $400 excess) and a contribution of ~~$3,500~~$4,100 from Person C (same). On November 2, 2020, Candidate A transfers $800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends $800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude $800 from its checking account. While Candidate A segregated the $800 in excess contributions received from Person B and Person C, she spent $800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.

~~1.40~~1.46 A campaign shall not use money held in a SPEC account to influence the outcome of a covered election in which the campaign's candidate participates, to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office.

~~1.41~~1.47 Within seven days of establishing a SPEC account, a campaign shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

SUBPART K. RETIRING DEBT

~~1.42~~1.48 Except as provided in Paragraph ~~1.43~~1.49, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor and is subject to the contribution limits set forth in Subpart B.

~~1.43~~1.49 If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;

b. The debt has been outstanding for at least 24 months;

c. The candidate political committee does not have sufficient cash on hand to pay the creditor;

d. Forgiveness of the debt is not prohibited by any other relevant law; and

e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt.

The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

SUBPART L. PENALTIES

~~1.44~~1.50 **Acceptance of an excess contribution.** A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the accepted contribution exceeded the limit, or $2,000, whichever is less.

~~1.45~~1.51 **Making an excess contribution.** A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or $2,000, whichever is less.

~~1.46~~1.52 **Safe harbor if an excess contribution is returned within 15 days.** No civil monetary penalty shall be imposed for an excess contribution if the campaign that accepted the excess contribution within fifteen days after receiving the contribution:

a. Returns the excess amount to the contributor; and

b. Provides the following information to the Board's Executive Director by postal mail or email: the amount of the excess contribution, the identity of the contributor, the date of receipt, and the date of return.

~~1.47~~1.53 **Failure to file campaign finance disclosures.** If a political committee fails to file a campaign finance report or statement with the Board as required by Subpart E, the committee and its treasurer shall be jointly and severally subject to a civil monetary penalty of $250. If a candidate fails to file a campaign finance report or statement with the Board as required by Subpart E, the candidate shall be subject to a civil monetary penalty of $250.

Each day the report or statement is not filed shall be considered a separate offense for which an additional separate civil monetary penalty of $250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report or statement shall not exceed $2,000 for the first thirty days the report is not filed, plus $1,000 for each additional thirty-day period or part thereof the report or statement is not filed.

~~1.48~~1.54 **Material misstatements or omissions.** If a campaign finance report filed with the Board contains material misstatements or omissions, the individual who filed the report shall be subject to a civil monetary penalty of $1,000 for each such misstatement or omission. If the report is filed on behalf of a political committee, the individual who filed the report and the committee shall be jointly and severally liable.

~~1.49~~1.55 **Misuse of political committees or accounts.** If a campaign uses a political committee or account in violation of the requirements set forth in Subpart F, G, or H the candidate shall be subject to a civil monetary penalty of $1,000.

~~1.50~~1.56 Excess pre-candidacy and candidacy contributions.

a. If a campaign fails to exclude any excess pre-candidacy or candidacy contributions from its candidate political committee, as required by Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000.

b. If a campaign or the committee of a former candidate spends excess pre-candidacy or candidacy contributions in violation of the prohibitions of Subpart J, the candidate shall be subject to a civil monetary penalty of $1,000, for which their candidate political committee shall be jointly and severally liable if such expenditures were made from that committee.

~~1.51~~1.57 Failure to provide committee or account information to Board. If a campaign fails to provide information to the Board about a political committee or account as required by Subpart F, G, H or J, the candidate shall be subject to a civil monetary penalty of $1,000.

~~1.52~~1.58 Other violations of the campaign finance law. All other violations of the campaign finance law are subject to a civil monetary penalty of $1,000 per violation.

~~1.53~~1.59 Increase or decrease of civil monetary penalty. A penalty imposed pursuant to Paragraph ~~1.48~~1.54, ~~1.49~~1.55, ~~1.50~~1.56, ~~1.51~~1.57, or ~~1.52~~1.58 shall be increased or decreased as follows:

a. Mitigating factors. The civil monetary penalty of $1,000 shall be reduced by $500 if one of the following mitigating factors is present and shall be reduced by $750 if more than one of the following mitigating factors are present:

   i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.

   ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.

   iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

b. Aggravating factors. The civil monetary penalty of $1,000 shall be increased by $1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed $2,000:

   i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

   ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.

   iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006
Effective January 17, 2007
Amendment approved by Board August 21, 2007
Effective September 21, 2007

Proposed amendments approved for public comment by Board on July 21, 2010 to expand the Regulation to address the requirements, other than electronic filing, of the City's campaign finance law, Philadelphia Code Chapter 20-1000, as that law was amended in June 2010. The amendments to Regulation No. 1 completely strike and replace the original text of the regulation and delete the original exhibit.

Public hearing held September 8, 2010
Adopted by Board with modifications September 15, 2010
Effective September 27, 2010

Proposed amendments approved for public comment by Board May 11, 2011 to, among other things, reflect the April 2011 amendment to Philadelphia Code § 20-1002(2). Public hearing held June 15, 2011

Adopted by Board July 20, 2011
Effective August 11, 2011

Proposed amendments approved for public comment by Board on January 18, 2012 to reflect the City Finance Director's certification of January 2012 adjustments to the maximum annual contribution limits.

Effective March 2, 2012
Proposed amendments approved for public comment by Board on December 19, 2012
Public hearing held January 23, 2013
Adopted by Board with modifications February 20, 2013
Effective March 8, 2013

Proposed amendments approved for public comment by Board on July 16, 2014
Public hearing held September 17, 2014
Adopted by Board with modifications October 15, 2014
Effective October 31, 2014

Proposed amendments approved for public comment by Board on September 21, 2016
Public hearing held October 19, 2016
Adopted by Board with modifications November 16, 2016
Effective December 2, 2016

NOTE: As part of its November 16, 2016 vote to approve a proposed amendment to this Regulation, the Board authorizes staff to update examples set forth in this Regulation from time to time as necessary in order to ensure that they reference current contribution limits, covered elections, and reporting periods.

Proposed amendments approved for public comment by Board on September 12, 2018
Public hearing held October 17, 2018
Adopted by Board with modifications November 28, 2018
Effective December 10, 2018

Proposed amendments approved for public comment posting by Board on September 16, 2020
Effective October 26, 2020

Proposed amendments approved for public comment posting by Board on July 22, 2022
Public hearing held August 17, 2022
Adopted by Board with modifications September 21, 2022
Effective October 3, 2022

Proposed amendments approved for public comment posting by Board on February 21, 2024
Public hearing held _____, 2024
Adopted by Board _____, 2024
Effective _____, 2024

Proposed Definition

1.1(h)

h. **Coordinated expenditure.** A coordinated expenditure is an expenditure made by a spender in concert, cooperation, consultation, or collaboration with a candidate, an individual who later becomes a candidate, a candidate political committee, a political committee or other organization that is later used as a candidate political committee, or an agent or officer of any of the above. See Subpart I for further details regarding what constitutes coordination that may result in in-kind contributions.

EXHIBIT

B

exhibitsticker.com

EXHIBIT
C
exhibitsticker.com

March 19, 2024

Submitted electronically to Jordana.Greenwald@phila.gov

Michael Reed, Esq.
Chair
Philadelphia Board of Ethics

Brian J. McCormick, Jr., Esq.
Vice Chair
Philadelphia Board of Ethics

Dear Chair Reed, Vice Chair McCormick, and Members of the Board,

Campaign Legal Center (CLC) respectfully submits these written comments to the Philadelphia Board of Ethics (Board) in support of the Board's proposed amendment to Regulation No. 1, Campaign Finance (Proposed Rule).[1] These comments primarily address the amendments to Subpart I, regulating coordinated expenditures.

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court cases. Our work promotes every American's right to an accountable and transparent democratic system.

CLC supports the Board's proposed amendments to clarify and strengthen the coordination provisions of Regulation No. 1. Coordination laws play a crucial role in our democratic process: Preventing wealthy special interests from using their ability to engage in unlimited fundraising and spending to directly underwrite a candidate's campaign expenses, a practice that raises obvious corruption concerns. As outside spending in elections has exploded in the wake of *Citizens United*, weak coordination laws have allowed candidates to evade contribution limits by working

[1] *See* Amendment to Phila. Bd. Ethics Reg. No. 1 ("Campaign Finance") (filed February 26, 2024), https://www.phila.gov/departments/department-of-records/regulations/board-regulation-proposed-amendments-approved.pdf.

with ostensibly "independent" groups, effectively permitting groups that can raise unlimited funds to bankroll candidates' campaigns.[2] Without effective regulation of coordinated spending between candidates and outside spenders, wealthy special interests can easily sidestep existing limits on direct contributions.

The Proposed Rule would clarify and expand the types of conduct that constitute coordination, thereby preventing outside groups from circumventing contribution limits. As the U. S. Supreme Court has recognized, regulating coordinated expenditures advances the same anti-corruption interests as limits on contributions, and "prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions."[3]

In these comments, we first summarize the coordination rules in Regulation No. 1 and the changes made by the Proposed Rule. Second, we provide an overview of the U.S. Supreme Court's case law concerning coordinated election spending and its application to the types of coordination regulated by the Proposed Rule. Finally, we provide recommendations intended to strengthen the Proposed Rule, including proposed language to implement our recommendations.

I. The Proposed Rule expands Regulation No. 1's coverage of coordinated spending to include common forms of coordination.

The Proposed Rule revises Regulation No. 1's coordination standards to clarify their application to candidates—regardless of whether a person has declared their candidacy under Philadelphia law—and address additional forms of coordination that outside spenders employ to evade reasonable contribution limits and source restrictions.

A. Coordination under existing Regulation No. 1

Currently, Regulation No. 1 provides that an expenditure is coordinated with a campaign, and thus subject to applicable contribution limits, "when made in cooperation, consultation, or concert with a campaign."[4] Regulation No. 1 further delineates conduct constituting coordination under this general definition, including the following activities:

- A person makes an expenditure at the request or suggestion of the campaign; [5]

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[2] *See generally* SAURAV GHOSH ET AL., CAMPAIGN LEGAL CTR., THE ILLUSION OF INDEPENDENCE: HOW UNREGULATED COORDINATION IS UNDERMINING OUR DEMOCRACY, AND WHAT CAN BE DONE TO STOP IT (2023) https://perma.cc/4VC9-KZKG.

[3] *FEC v. Colo. Republican Fed. Campaign Committee*, 533 U.S. 431, 456 (2001).

[4] Phila. Bd. Ethics Reg. No. 1 ¶ 1.33.

[5] *Id.* at ¶ 1.33(a).

- A person makes an expenditure after suggesting it to the campaign and the campaign assents to the suggestion; [6]
- The person making the expenditure communicates with the campaign concerning the expenditure before making the expenditure;[7]
- The campaign fundraises for the person making the expenditure in the 12 months before the relevant election;[8]
- The campaign directs, places, or arranges the expenditure;[9] or
- The person making the expenditure does so using information obtained from the campaign to design, prepare, or pay for the expenditure.[10]

Recently, the Board amended Regulation No. 1 to address "redboxing," an emergent campaign practice designed to evade traditional coordination laws. Redboxing occurs when a campaign publishes detailed instructions regarding campaign strategy and messaging on its website or digital media channels and an outside spender uses those instructions to make political ads to support the campaign.[11] Under Regulation No. 1, a person who makes an expenditure based on the campaign's instructions is presumed to have made an expenditure in coordination with the campaign.[12]

Separately, Regulation No. 1 addresses another common coordination tactic, in which a campaign makes their preferred video footage or campaign materials publicly available and an outside spender republishes the footage or materials in its own political ads.[13] Campaigns thus directly help to create an outside spender's ads. Regulation No. 1 provides that a person makes a coordinated expenditure when the person pays to "reproduce, republish, or disseminate a campaign communication ...or campaign material...prepared by a campaign" and the person obtained the campaign materials "directly from the campaign or from another source with the consent of the campaign.[14]

Finally, Regulation No. 1 exempts certain activities from its coordination rules, providing that "an expenditure will not be considered a coordinated

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[6] *Id.* at ¶ 1.33(b).
[7] *Id.* at ¶ 1.33(c)
[8] *Id.* at ¶ 1.33(d).
[9] *Id.* at ¶ 1.33(e)
[10] *Id.* at ¶ 1.33(f)
[11] Saurav Ghosh, *Voters Need to Know What "Redboxing" Is and How It Undermines Democracy*, CAMPAIGN LEGAL CTR. (May 13, 2022) https://campaignlegal.org/update/voters-need-know-what-redboxing-and-how-it-undermines-democracy,
[12] Phila. Bd. Ethics Reg. No. 1 ¶ 1.33(g).
[13] *See, e.g.,* Brendan Fischer, *CLC Complaint Alleges Super PAC Illegally Republished Trump Ad in Swing States,* CAMPAIGN LEGAL CTR. (Dec. 21, 2020) https://campaignlegal.org/update/clc-complaint-alleges-super-pac-illegally-republished-trump-ad-swing-states,
[14] Phila. Bd. Ethics Reg. No. 1 ¶ 1.34.

expenditure merely because" a spender, among other things, uses "the same vendor, attorney, or accountant" as the candidate's campaign.[15]

B. Additional coordination activity regulated by the Proposed Rule.

The Proposed Rule clarifies Regulation No. 1 by ensuring its application to all candidates and any related candidate political committees.[16] Specifically, the Proposed Rule makes explicit that expenditures are considered coordinated with a candidate regardless of whether the coordinating conduct occurred prior to the person declaring their candidacy.[17] The Proposed Rule also makes explicit that conduct constituting coordination that results in an expenditure before an individual declares their candidacy is a pre-candidacy in-kind contribution subject to Regulation No. 1's existing pre-candidacy contribution rules.[18]

The Proposed Rule also expands on the types of conduct between a campaign and a spender that would result in a coordinated expenditure. In addition to the conduct already included in Regulation No. 1, the Proposed Rule would consider an expenditure coordinated if a candidate or candidate political committee "directly or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender."[19] Further, coordinated conduct by a "principal funder" of a spender—defined to mean a person providing 50% or more of the spender's funds in the 12 months before an election[20]—is attributed to both the principal funder and the spender for the purpose of determining whether an expenditure by the spender is coordinated.[21]

Finally, the Proposed Rule provides further guidance concerning expenditures made by a spender for whom a candidate or candidate political committee raises funds. If a candidate or committee "directs or donates funds to, solicits funds for, or otherwise provides funds" directly or indirectly to the spender in the 12 months before an election, the spender's subsequent expenditures are considered coordinated with the candidate or committee.[22] The Proposed Rule provides a safe harbor for certain nonprofit organizations that are membership organizations, specifying that paying "bona fide membership fee[s] or dues," which are also paid by similarly situated members, and which comprise 5% or less of the

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[15] *See* Phila. Bd. Ethics Reg. No. 1 ¶ 1.35. The regulation provides additional exemptions for interviewing or endorsing a candidate, making an expenditure using publicly available information about a candidate, and inviting a candidate to appear before an organization's members, employees, or shareholders. *Id.*
[16] Proposed Rule ¶ 1.36.
[17] Proposed Rule ¶¶ 1.34, 1.36(b) and (c).
[18] Proposed Rule ¶ 1.34(a).
[19] Proposed Rule ¶ 1.37(c).
[20] Proposed Rule ¶ 1.35(b).
[21] Proposed Rule ¶ 1.40.
[22] Proposed Rule ¶ 1.39.

total funds received by the nonprofit "in the relevant twelve-month period," will not be considered coordination.[23]

II. Comprehensive regulation of coordinated electoral spending is necessary to prevent quid pro quo corruption and the appearance of such corruption.

The Proposed Rule addresses an ever-growing issue in contemporary elections by helping prevent wealthy special interests from directly financing candidates' campaigns by coordinating their electoral spending with their preferred candidates.[24] As decades of U.S. Supreme Court precedent has established, regulating coordinated spending between candidates and outside spenders is both constitutional and essential for reducing political corruption.

Beginning with its seminal decision in *Buckley v. Valeo*, the U.S. Supreme Court has consistently maintained that outside expenditures "controlled by or coordinated with a candidate" may be constitutionally limited in the same manner as direct contributions to the candidate's campaign.[25] Because coordinated expenditures are essentially in-kind contributions to candidates, limiting expenditures made in coordination with candidates furthers the same anti-corruption interests served by limits on direct monetary contributions to candidates and, critically, "prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions."[26]

In *McConnell v. FEC*, the Supreme Court upheld BCRA's expansion of federal coordination rules to cover coordinated expenditures made in the absence of "an agreement or formal collaboration" with a candidate.[27] The Court in *McConnell* noted that the existence of a formal agreement did not establish "the dividing line" between coordinated and independent spending, and explained that "expenditures made after a 'wink or nod' often will be 'as useful to the candidate as cash.'"[28] Moreover, the Court reiterated that only "wholly independent" spending is constitutionally distinguishable.[29]

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[23] *Id.*

[24] *See, e.g.*, Maia Cook, *Super PACs raise millions as concerns about illegal campaign coordination raise questions*, OPENSECRETS (Aug. 18, 2023), https://www.opensecrets.org/news/2023/08/super-pacs-raise-millions-concerns-illegal-campaign-coordination-raise-questions/. *See also* SAURAV GHOSH ET AL., *supra* note 2.

[25] 424 U.S. 1, 46-47 (1976).

[26] *Id.* at 455.

[27] 540 U.S. 93, 220-23 (2003).

[28] *Id.* at 221 (quoting *FEC v. Colo. Republican Federal Campaign Committee*, 533 U.S. 421, 446 (2001)); *see also id.* at 222 ("A supporter could easily comply with a candidate's request or suggestion without first agreeing to do so, and the resulting expenditure would be virtually indistinguishable from a simple contribution." (internal quotation marks and brackets omitted)).

[29] *Id.* at 221.

Since the Supreme Court struck down the ban on corporate independent expenditures in *Citizens United v. FEC*,[30] coordination rules have become especially critical to enforcing statutory limits on contributions. Indeed, the majority opinion in *Citizens United* heavily relied on the assumption that *independent* expenditures, unlike direct campaign contributions, do not create a risk of "quid pro quo" corruption because they are made without "prearrangement and coordination" with candidates,[31] making clear the importance of the distinction between coordinated and independent spending.

The Proposed Rule strengthens the Board's coordination laws by explicitly addressing additional tactics candidates and outside spenders use to circumvent contribution limits that are key to preventing corruption in our democratic process. Clarifying that the coordination rules apply regardless of whether a person has officially declared their candidacy guards against candidates gaming the system to engage in conduct that would unquestionably be considered coordination—and shatter the applicable contribution limits—once they officially declare their candidacy.[32] The Proposed Rule applies to situations where a candidate or a candidate's agent or officer "establishes, maintains, or controls" an outside spender,[33] or otherwise fundraises for or principally funds the spender,[34] both increasingly common forms of covert coordination between candidates and spenders.[35] The Proposed Rule also prevents an outside spender from evading coordination rules by outsourcing its coordination with candidates to its principal funder. When candidates and outside groups engage in these kinds of coordinated spending, such spending is clearly not "wholly independent."

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[30] 558 U.S. 310 (2010).

[31] *Id.* at 357.

[32] *See, e.g.*, John DiStaso, *New Hampshire Primary Source: Kasich backers say he filmed super PAC ads before becoming a candidate*, WMUR (Sept. 10, 2015), https://www.wmur.com/article/new-hampshire-primary-source-kasich-backers-say-he-filmed-super-pac-ads-before-becoming-a-candidate/5203789#.

[33] *See, e.g.*, Michael Scherer, et al., *DeSantis Group Plans Field Program, Showing the Expanding Role of Super PACs*, WASH. POST (Apr. 19, 2023), https://www.washingtonpost.com/politics/2023/04/19/desantis-super-pac-campaign. Other state agencies have interpreted coordination laws to cover expenditures made by entities with close connections candidates and their former staffers. For example, California's Fair Political Practices Commission has adopted a rebuttable presumption that any expenditure made by an entity "established, run, or staffed" by a candidate's former senior staff is "coordinated" with such candidate. 2 Cal. Code Regs. § 18225.7(d)(6).

[34] *See e.g.*, Minn. Campaign Fin. & Pub. Disclosure Bd. Advisory Op. 437, at 5 (Feb. 11, 2014), https://cfb.mn.gov/pdf/advisory_opinions/AO437.pdf?t=1525448588 (concluding that a candidate fundraising on behalf of an independent expenditure PAC "destroys the independence of any subsequent expenditures made by the IEPC to affect the Candidate's election").

[35] *See* SAURAV GHOSH ET AL., *supra* note 2, at 40.

III. Recommendations for the final rule.

By clarifying the application of the coordination rules to candidates engaging in coordinated conduct before declaring their candidacy and regulating additional common coordination practices, the final rule will more comprehensively address coordinated election spending in Philadelphia elections. To further strengthen the final rule, we recommend four changes: First, the Proposed Rule should be amended to make clear that a spender coordinating with a benefiting candidate makes an in-kind contribution to that candidate. Second, we recommend strengthening the Proposed Rule by specifying that expenditures made by spenders and principal funders established, maintained, or controlled by a candidate's immediate family are expenditures coordinated with the candidate. Third, we recommend removing current law's exemption for expenditures made by a spender who employs the same vendor as the candidate's campaign and ensuring that expenditures made using common vendors or former staff of a candidate are covered by the coordination rules. Finally, we recommend clarifying the Proposed Rule's provision that attributes expenditures coordinated by a spender's principal funder to both the spender and the principal funder. Each part of our recommendations also includes proposed text for the final rule.

A. Coordinated expenditures benefiting a candidate.

The Proposed Rule clarifies that coordination "is not itself prohibited," and that expenditures "resulting from coordination are deemed in-kind contributions subject to the applicable contribution limits." CLC recommends making explicit that such coordinated expenditures are in-kind contributions to the candidate benefiting from the coordinated expenditure. Although it may be implicit in the Proposed Rule, it should be made clear that electoral spending coordinated with a candidate is an in-kind contribution only when the spending benefits that candidate.[36]

Recommended full text for final rule:

1.33 Coordination generally. Coordination as described in this Subpart is not itself prohibited. Expenditures resulting from coordination <u>between a spender and the benefiting candidate</u> are deemed in-kind contributions <u>to the benefiting candidate</u> subject to the applicable contribution limits.

[36] *See, e.g.*, R.I. Gen. Laws §§ 17-25-23, 17-25.3-1 (coordinated conduct between a candidate and a person resulting in an expenditure by the person "to directly influence the outcome of the electoral contest involving the candidate shall be considered a contribution received by or an expenditure made by the candidate"); *see also* 2 Cal. Code Regs. § 18225.7(e)(7) (an "expenditure is not considered to be coordinated...based solely" on the circumstance that the expenditure is made at the request or suggestion of a candidate for the benefit of another candidate).

B. Coordination through spenders established, maintained, or controlled by immediate family members of a candidate.

The Proposed Rule specifies, in relevant part, that expenditures are considered coordinated if a candidate, the candidate's political committee, or an agent or officer of the candidate or committee "establishes, maintains, or controls the spender" or "the principal funder of the spender." CLC recommends amending the Proposed Rule to include expenditures made by spenders and principal funders established, maintained, or controlled by the candidate's close family members, in addition to agents and officers.[37]

CLC also recommends amending the Proposed Rule to specify that expenditures by such spenders will be considered coordinated only if the spenders were established, maintained, controlled, or principally funded by the candidate's agents, officers, or close family members during the two-year period prior to the relevant election. Specifying a period during which such conduct is considered coordinated will provide more clarity to the regulated community and ensure that the final rule addresses election spending coordinated by individuals with meaningful campaign information.[38]

Recommended full text for final rule:

1.37 Conduct constitutes coordination when a person listed in Paragraph 1.36(a) through (f):

...

c. ~~Directly~~ In the two years preceding the covered election, directly or indirectly establishes, maintains, or controls the spender, including by establishing, maintaining, or controlling the principal funder of the spender. A spender or principal funder that is established, maintained, or controlled by an immediate family member of a candidate shall be considered established, maintained, or controlled by the candidate under this subparagraph;

C. Coordination through common vendors and former staff.

The Proposed Rule maintains Regulation No. 1's exemption for spenders who make expenditures using the same vendors as a candidate's campaign. CLC recommends strengthening the Proposed Rule by removing this exemption and establishing that expenditures made by a spender who employs common vendors or a candidate's former staff are coordinated expenditures subject to contribution limits. Candidates and outside groups have increasingly taken advantage of

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[37] *See, e.g.*, Md. Code, Elec. Law § 13-249(d)(5) (defining "coordinated spender," in relevant part, to mean "a person established, financed, directed or managed by a member of the immediate family of the candidate").

[38] *See, e.g.*, N.Y. Elec. Law § 14-107(1)(d)(i) (expenditures considered coordinated if made by an independent expenditure group established by a candidate's agent within two years of the relevant election).

schemes to share strategic campaign information through common vendors and consultants.[39] Like other coordinated activity, election spending conducted through these covert schemes should be treated the same as an in-kind contribution to the candidate's campaign.[40]

Rather than wholly exempting the use of a common vendor from coordination rules, the Board should provide a safe harbor for a spender that shares a common vendor with a candidate or employs the candidate's former staff if the spender establishes an effective firewall to provide meaningful separation between staff working for a campaign and staff working for outside spenders. Other jurisdictions have adopted objective firewall requirements to prevent the sharing of strategic campaign information between firewalled staff and clients, thus ensuring the relevant expenditures are truly independent.[41]

Recommended full text for final rule:

1.XX Coordination through common vendors and former employees.

a. An expenditure made by a spender that, during the two years preceding the covered election, employed the services of a person who during the same period had executive or managerial authority for the candidate or candidate political committee, was authorized to raise or expend funds for the candidate or candidate political committee, or provided the candidate or candidate political committee with professional services (other than accounting or legal services) related to campaign or fundraising strategy shall be considered a coordinated expenditure.

b. Expenditures involving common vendors or former employees of a candidate or candidate political committee as described in subparagraph (a) will not be considered coordinated if the spender implements an effective firewall. A person who relies upon a firewall bears the burden of proof of showing that the firewall was effective. A firewall must do all of the following:

i. Separate staff who provide a service to the spender in relation to its covered expenditures from other staff who provide services to a candidate supported by the spender's expenditures;

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[39] *See e.g.*, Jill Colvin, *Donald Trump allies create a new super PAC called MAGA Inc.*, PBS NEWSHOUR (Sept. 23, 2022) https://www.pbs.org/newshour/politics/donald-trump-allies-create-a-new-super-pac-called-maga-inc. *See also* Mike Spies, *Documents Point to Illegal Campaign Coordination Between Trump and NRA*, THE TRACE (Dec. 6, 2018) https://www.thetrace.org/2018/12/trump-nra-campaign-coordination.

[40] See, e.g., N.Y. Elec. Law § 14-107(1)(d)(iii) and (viii) (expenditures considered coordinated when made by a committee employing the same vendor as a candidate or a candidate's former staff). *See also* 2 Cal. Code Regs. § 18225.7(d)(3) and (6).

[41] *See, e.g.*, Minn. Stat. § 10A.176 subd. 4. *and* W.Va. Code R. § 146-3-14.7.1-3.

ii. Forbid an organization's owners, executives, managers, and supervisors from simultaneously overseeing the work of staff separated by a firewall;

iii. Prohibit the flow of strategic non-public information between the spender and the candidate supported by the covered expenditure, and between specific staff who are separated by the firewall;

iv. Provide for physical and technological separation to ensure that strategic non-public information does not flow between the spender and the candidate, and between the specific staff separated by the firewall; and

v. Be in writing and distributed to all relevant employees and consultants before any relevant work is performed regarding both the general firewall policy and any specific firewall created pursuant to such a policy, and provided to the Board upon request.

...

1.41. An expenditure will not be considered a coordinated expenditure merely because:

...

c. The spender and the candidate's campaign use the same ~~vendor,~~ attorney~~,~~ or accountant;

D. Coordinated conduct by the principal funder of a spender.

Under the Proposed Rule, when a spender's principal funder engages in coordinated conduct, the coordinated conducted is attributed to the spender. The Proposed Rule then specifies that "[e]xpenditures resulting from coordination between the principal funder and the spender shall be attributable to both." Our understanding is that this provision is intended to ensure that expenditures made by a spender pursuant to the principal funder's coordination with a candidate (or the candidate's political committee or agents) are attributable to both the spender and the principal funder. With this understanding, we recommend revising the provision to clarify its application to spenders and their expenditures that are coordinated by the principal funder.

Recommended full text for final rule:

1.40 Coordination by principal funders. Conduct of the principal funder of a spender shall be attributed to the spender, regardless of whether the principal funder is an agent or officer thereof. ~~Expenditures resulting~~ For the purposes of this paragraph, expenditures by the spender that result from coordination ~~between~~ by the principal funder ~~and the spender~~ shall be attributable to both the spender and the principal funder.

Conclusion

We respectfully urge the Board to adopt the Proposed Rule to clarify and strengthen the coordination provisions of Regulation No. 1 and to incorporate our recommendations. We would be happy to answer questions or provide additional information to assist the Board in promulgating the final rule. Thank you for your time and consideration.

Respectfully submitted,

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