

## **A. Legal Authority**

This Board was created by an amendment to the Philadelphia Home Rule Charter that voters approved via a ballot question at the May 2006 primary election. *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, prohibited political activities, 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. *See Code §§ 20-606(1)(a), 20-1008.*

## **B. Procedural Introduction**

The Board followed the procedures set forth in Home Rule Charter Section 8-407 when promulgating this amendment to Board Regulation No. 1 (Campaign Finance). On July 16, 2014, the Board voted to approve the posting of a proposed amendment to Regulation No. 1 at the Department of Records. The Law Department approved the proposed amendment of Regulation No. 1 for public comment posting, and on July 17, 2014, the Board filed the proposed amendment with the Records Department. The Board scheduled a hearing on the proposed amendment for September 17, 2014, notice of which was advertised in local newspapers and posted prominently on the Board's website. Board staff also provided notice to the regulated community via email.

Through this report on the September 17, 2014 hearing, the Board modifies the amendment and adopts the amendment as modified. A copy of the regulation as amended is attached as Exhibit A and shall become effective 10 days after the filing of this report with the Records Department. A blackline showing all changes made to the Regulation by the amendment as modified by this hearing report is attached as Exhibit B.

## **C. The September 17, 2014 Hearing**

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Phyllis Beck and Board members Brian McCormick and Fr. Kevin Gillespie. Lewis Rosman, Senior Attorney, attended on behalf of the Law Department. The hearing transcript is attached as Exhibit C. The proposed amendment as posted for public comment at the Records Department is included in Exhibit C as an attachment to the hearing transcript. The following witnesses provided in-person testimony: Michael Cooke, the Board's Director of Enforcement; Hope Caldwell, the City's Chief Integrity Officer, on behalf of the Administration; Megan McAllen, on behalf of the Campaign Legal Center; Ellen Kaplan, on behalf of the Committee of 70; James Browning, on behalf of Common Cause of Pennsylvania; Daniel Weiner, on behalf of the Brennan Center for Justice; Charles Goodwin; and Adam Bonin. All of the witnesses except for Mr. Cooke and Mr. Bonin submitted written testimony in advance of the hearing. All of the written testimony is attached to the hearing transcript, which is attached to the Hearing Report as Exhibit C. A blackline showing modifications made to the version posted for public comment as a result of the hearing is attached as Exhibit D.

**D. Summary of testimony and Board response**

**1. Testimony regarding proposed change to Paragraph 1.45 (Exclusion of excess pre-candidacy contributions upon becoming a candidate)**

Hope Caldwell, Ellen Kaplan, and Charles Goodwin all testified that the proposed change to Paragraph 1.45 does not provide sufficiently clear guidance on how candidates should account for excess pre-candidacy contributions. In particular, they stressed that the proposed definitions of covered and non-covered pre-candidacy expenditures are, in their view, unworkable. Ms. Caldwell and Ms. Kaplan did not suggest any specific changes. Drawing on anti-trust principles, Mr. Goodwin suggested using a multi-factor test to determine whether a pre-candidacy expenditure is made for the purpose of influencing a covered election.

**Board Response**

The Board agrees that the proposed amendment to Paragraph 1.45 should not be implemented as proposed and must be improved to address the concerns raised. The Board further agrees that the proposed definitions of covered and non-covered pre-candidacy expenditures would be difficult to implement. Accordingly, the Board modifies the proposed amendment by striking the definitions of covered and non-covered pre-candidacy expenditures, striking all of the changes to Subpart I (Excess Pre-Candidacy Contributions; Excess post-Candidacy Contributions) indicated in the proposed amendment as posted at the Records Department, except Paragraph 1.45(d), which is renumbered as Paragraph 1.44(c). The Board strikes the definitions of covered and non-covered pre-candidacy expenditures in Paragraph 1.

The Board further modifies the proposed amendment by:

1. Creating the concept of an Accounting Period, for which we add a new definition at Paragraph 1.1(a) in order to give candidates a specific period of time in which they have to track and account for excess Pre-Candidacy Contributions. The Board also adds a paragraph at 1.42 and an example in order to explain the effect of the Accounting Period;
2. Creating the concept of Pre-payment, for which we add a new definition at Paragraph 1.1(v) in order to identify the limited, specific pre-candidacy expenditures for which a candidate will have to account;
3. Adding a provision to Subpart I at 1.44(b) which sets forth two methods by which candidates can calculate how much money they need to exclude from their candidate political committee checking accounts;
4. Adding a provision to Subpart I at 1.45 which provides that if an individual segregates excess pre-candidacy contributions before becoming a candidate, those funds do not need to be included when accounting for the exclusion of excess pre-candidacy contributions upon becoming a candidate; and
5. Making minor changes to Subpart I in order to integrate the new provisions.

These modifications will provide candidates with greater clarity and flexibility in accounting for excess Pre-Candidacy Contributions.

**2. Testimony regarding proposed change to Paragraph 1.40 (Republication of campaign communications and materials)**

**a. General testimony regarding Paragraph 1.40**

Several witnesses provided general testimony about the proposed amendment to the Regulation's provisions regarding the republication by third parties of materials or communications created by a candidate's campaign. Hope Caldwell, Ellen Kaplan, James Browning, Megan McAllen, and Daniel Weiner all testified in support of the proposed change. Ms. McAllen and Mr. Weiner expressed their view that the proposed amendment is constitutional and necessary to prevent circumvention of the contribution limits.

Charles Goodwin testified that, in his view, the proposed amendment is unconstitutionally overbroad because it could treat certain expenditures as coordinated when they would actually be independent. Mr. Goodwin suggested using a multi-factor test to determine whether or not an expenditure was in-fact coordinated with a campaign.

Adam Bonin testified that, while he agreed the proposed amendment is constitutional, he believes it is "dumb." Mr. Bonin also expressed concern about what he considered to be the broad scope of the proposed amendment.

**Board Response**

The Board agrees with Ms. McAllen and Mr. Weiner that the amendment is necessary to prevent circumvention of the contribution limits. The Law Department has reviewed the proposed amendment to Paragraph 1.40 and has advised that it considers the amendment to be constitutional. In addition, the Board believes that the modifications identified below sufficiently address concerns regarding the scope and clarity of the rule. Therefore, the Board adopts the proposed amendment to Paragraph 1.40, with the specific modifications identified below.

**b. Testimony regarding specific proposed changes related to Paragraph 1.40**

**i. Adam Bonin**

Mr. Bonin testified that the Board should adopt an exception to the provisions of Paragraph 1.40 that would allow third parties to republish "brief quotes" of a candidate's materials or communications without such republication being considered a coordinated contribution. Mr. Bonin noted that the Federal Elections Commission's regulations contain such an exception. Mr. Bonin stressed the importance of such an exception because of what he sees as the broad scope of the proposed rule. He expressed particular concern about the application of the proposed rule to the activities of a) "public policy organizations set up as 501(c)(3)s or 501(c)(4)s" that reproduce parts of a campaign's policy papers or obtain photographs of a candidate and use them for candidate report cards and b) individuals who republish or "remix" campaign materials and communications on the Internet or social media.

## **Board Response**

The Board declines to adopt a “brief quote” exception. Such an exception would lead to uncertainty about when the exception would apply because what constitutes a “brief quote” is highly subjective. This would lead to a less clear rule. The Board agrees that “remixing” of campaign materials and communications on the Internet and social media should not be subject to the contribution limits. As drafted, the Board does not believe Regulation No. 1 reaches such activity since such activity does not require a specific expenditure. Regarding activity by organizations set up as 501(c)(3)s or 501(c)(4)s, if such organizations spend money to advocate or influence the election of a candidate in coordination with that candidate, it is appropriate that such expenditures are considered in-kind contributions subject to the limits.

However, to allay concerns about the application of the contribution limits to such activity, the Board makes several modifications to the Regulation. First, in order to more clearly state the application of the provisions of Subpart H, the Board modifies Paragraph 1.38 by replacing the phrase “is made for the benefit of the candidate” with the phrase “advocates or influences the election of the candidate.” The Board makes related modifications to Paragraphs 1.1(h) and (o) and Paragraph 1.15.

The Board makes three additional changes in response to Mr. Bonin’s testimony. First, the Board will modify Paragraph 1.11 to provide that incidental expenditures related to Internet activity (such as the cost of software, hardware, or Internet access) that advocate or influence the election of a candidate are not transactions subject to the contributions limits when made by persons other than campaigns. Second, at Paragraph 1.40(c), the Board exempts from the republication rule photographs obtained from a public source. Third, also at Paragraph 1.40(c), the Board exempts from the rule a person’s expenditures for republication of a candidate’s communications or materials if those expenditures are less than \$100 in the aggregate per reporting period.

### **ii. Ellen Kaplan**

(1) Ms. Kaplan proposed that the Board modify Paragraph 1.41(c) such that if a candidate and a third party have an agent in common and the third party makes an expenditure that advocates or influences the election of the candidate, the expenditure will be treated as coordinated unless the candidate can prove otherwise. (In his testimony, Mr. Bonin disagreed with Ms. Kaplan and urged the Board not to adopt her suggestion.)

## **Board Response**

The Board declines to adopt Ms. Kaplan’s proposal because the provisions of Subpart H provide sufficient means to capture coordinated expenditures. If experience demonstrates otherwise, the Board will revisit the rule.

(2) Ms. Kaplan proposed that the Board adopt a series of factors issued by the Maryland State Board of Elections as guidance regarding what constitutes coordinated expenditures. Ms. Kaplan stated that if the Board were to adopt the Maryland factors, “it would send a strong message to both candidates and others that complaints of coordination will be taken seriously.”

### **Board Response**

The Board declines to adopt Ms. Kaplan's proposal because the substance of almost all of the Maryland factors are already covered by either the current Regulation or the proposed amendment, although worded differently in some instances. Moreover, the provisions of Subpart H are better than the Maryland approach because they state definitively that certain conduct will constitute coordination. Under Maryland's approach, the presence of one or more of the identified factors does not necessarily constitute a violation. The Regulation as adopted sends a strong message to candidates and others that the rules regarding coordination are real and will be enforced.

#### **iii. Daniel Weiner**

- (1) Mr. Weiner proposed that the Board modify Paragraph 1.40(a) and (b) as follows:
- a. Shall be considered an in-kind contribution made by for the purpose of the contribution limits that apply to the person making the expenditure.
  - b. Shall be considered an in-kind contribution received by for the purposes of the contribution limits that apply to the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign...

### **Board Response**

The Board adopts the proposed change and will incorporate the phrase "for the purpose of the contribution limits" at the beginning of Paragraph 1.40.

- (2) Mr. Weiner proposed that the Board modify Paragraph 1.40(c)(ii) as follows:

The expenditure is made by the news media reproduces, republishes, or disseminates the communication or materials for the cost of covering or carrying a news story, commentary or editorial.

### **Board Response**

The Board agrees that the proposed change would improve the clarity of 1.40(c)(ii). However, as explained below, the Board intends to address the issue of media expenditures in Paragraph 1.11, and deletes Paragraph 1.40(c)(ii) altogether.

#### **iv. Michael Cooke**

- (1) Mr. Cooke proposed modifying Paragraph 1.40(b) as follows:

b. . . A campaign communication or campaign material is obtained with the candidate's consent if the candidate provides it to a third party so that for the purpose of another person is being able to obtain the communication or material from that third party.

### **Board Response**

The Board adopts the proposed change, with the additional modification:

- b. ...A campaign communication or campaign material is obtained with the candidate's consent if the candidate provides it to a third party for the purpose of enabling another person ~~being able~~ to obtain the communication or material from that third party and subsequently republish some or all of it.

- (2) Mr. Cooke proposed that the Board modify the example after Paragraph 1.40 as follows:

**Example:** . . . As such, the campaign's expenditure of \$100,000 was coordinated with Candidate A's campaign and is an in-kind contribution from the committee to ~~candidate~~ Candidate A in excess of the contribution limits.

### **Board Response**

The Board adopts the proposed change, but with the following modifications:

**Example for 1.40(a) and (b):** Three weeks before election day, candidate A's campaign uploads ~~5~~five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the ~~video~~ b-roll footage and uses ~~the footage~~ 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 from made by the committee to and an excess in-kind contribution received by Candidate A in excess of the contribution limits.~~

## **3. Other testimony**

### **a. Ellen Kaplan**

Ms. Kaplan proposed that the Board explain in the Regulation that every four years the contribution limits are adjusted to account for inflation.

### **Board Response**

The Board amends the Regulation every four years, after the adjustment to the limits has occurred, so that the Regulation always lists the current limits. Therefore, the Board declines to adopt Ms. Kaplan's suggestion.

**b. Adam Bonin**

i. Mr. Bonin proposed that the Board address the issue of media expenditures in Paragraph 1.11 (Transactions that do not count toward the contribution limits). Mr. Bonin further proposed that the Board adopt an exception similar to that found in the federal campaign finance regulations that embrace both the “professional” news media and independent journalists who are involved in blogging and social media activism.

**Board Response**

The Board agrees with Mr. Bonin’s suggestion and adds a media exception based on the FEC regulation to Paragraph 1.11 so that expenditures for media activity are identified as transactions that do not count towards the contribution limits. That provision will apply also to news stories, commentary, or editorials on the Internet.

ii. Mr. Bonin proposed that the Board modify the Regulation to permit doubling of post-candidacy contributions and contributions to litigation funds for races in which a candidate has contributed more than \$250,000 to his or her campaign.

**Board Response**

The Board does not adopt Mr. Bonin’s proposed change because Code Section 20-1002(9) explicitly provides that the limits for post-candidacy contributions shall not double and Code Section 20-1010(a) explicitly provides that the limits for contributions to litigation funds shall not double.

iii. In a footnote in his written testimony, Mr. Bonin proposes that the Board should increase the \$2,000 maximum penalty for failure by a candidate to make a timely disclosure of a contribution of more than \$250,000 to his or her campaign.

**Board Response**

The Board does not adopt Mr. Bonin’s proposed change because Code Section 20-1302 specifically provides that the maximum penalty for a violation of the City campaign finance law is \$2,000 (except in the case of late filing of campaign finance reports where the maximum penalty depends upon how late the report is filed).

**c. Daniel Weiner**

i. Mr. Weiner proposed that the Board modify Paragraph 1.39(e) as follows:

~~The candidate’s campaign has solicited funds for or directed funds to the person making the expenditure does so using funds solicited for or directed to that person by the candidate’s campaign.~~

**Board Response**

The Board adopts the proposed change, but with the following modification:

The candidate’s 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.

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- ii. Mr. Weiner proposed that the Board modify Paragraph 1.1(r) (now 1.1(q)) as follows:

**Person.** An individual, or a partnership, sole proprietorship, other form of business or nonprofit organization, or a political committee.

#### **Board Response**

The Board adopts the proposed change, but with the following modification:

**Person.** An individual, a political committee, or a partnership, sole proprietorship, or other form of business or nonprofit organization.

- d. **Michael Cooke**

- i. Mr. Cooke proposed that the Board modify Paragraph 1.1(d) (now 1.1(e)) as follows:

a. **Candidate's campaign.** A candidate, the candidate's candidate political committee (or litigation fund committee), and or an agent of any of the foregoing.

#### **Board Response**

The Board adopts the proposed change.

- ii. Mr. Cooke proposed that the Board modify the last sentence in Paragraph 1.25 as follows:

If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee and account for each office being sought.

#### **Board Response**

The Board adopts the proposed change, but with the following modification:

If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee and checking account for each office being sought.

- iii. Mr. Cooke proposed that the Board modify the note at the beginning of Subpart I by replacing the phrase "This Subpart is" with the phrase "The requirements in this Subpart regarding excess pre-candidacy contributions are."

#### **Board Response**

The Board adopts the proposed change, but with the following modifications:

Note: The requirements in this Subpart regarding excess pre-candidacy contributions are only relevant only if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office receives accepts contributions in excess of the limits set forth in Subpart B prior to that individual becoming a candidate.

- iv. Mr. Cooke proposed that the Board add an example for Paragraph 1.39(f).

**Board Response**

The Board adopts the proposed change and adds the following example:

**Example for 1.39(f):** 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 and spends \$11,500 to set up the phone bank and telephones individuals provided on the list from Candidate A. The \$11,500 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$11,500 in-kind contribution to Candidate A.

**E. Approval**

At a public meeting on October 15, 2014, the Board voted 5-0 to approve the proposed amendment to Regulation No. 1 as modified and to approve this hearing report. The Regulation as amended is attached as Exhibit A.

\* \* \*

The Board of Ethics appreciates the input of the Law Department and the participation of those who provided testimony and those who simply attended the hearing on this Regulation.

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**EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

**PHILADELPHIA BOARD OF ETHICS  
REGULATION NO. 1  
CAMPAIGN FINANCE**

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## EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014

### SUBPART A. SCOPE; DEFINITIONS

**1.0 Scope.** The requirements and prohibitions of Philadelphia’s campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq.*). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia’s campaign finance law found at Philadelphia 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 5:00pm of the day before he or she 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. **Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- e. **Candidate’s campaign.** A candidate, the candidate’s candidate political committee (or litigation fund committee), or an agent of any of the foregoing.
- f. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- g. **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.
- h. **Contribution.**
  - i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;
  - ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes any in-kind contribution, as defined at Paragraph 1.1(o); or
  - iii. Any post-candidacy contribution, as defined at Paragraph 1.1(s).
- 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.

## EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014

- k. Excess post-candidacy contribution.** The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Subpart B.
- l. Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate 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, or other person for the purpose of influencing the outcome of a covered election, including, but not limited to, any expenditure to obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- n. Independent expenditure.** An expenditure that is not made in coordination with any candidate, candidate political committee, or agent thereof. For guidance on what constitutes coordination, see Subpart H.
- o. In-kind contribution.**
- i. The provision of any goods or services directly to a candidate's campaign without charge or at a charge that is less than the usual and normal charge for such goods or services; or
  - ii. The payment or agreement to pay a third party to provide goods or services that assist in advocating or influencing the election of a candidate, if the goods and services are in fact provided.
- The term "in-kind contribution" does not include volunteer labor as described in Paragraph 1.11(g).
- p. Litigation fund committee.** The committee established by a candidate to 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 a candidate's election campaign or participation in an election, as described in Subpart G.
- q. Person.** An individual, a political committee, or a partnership, sole proprietorship, or other form of business or nonprofit organization.
- r. Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political 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.

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- s. **Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.
- t. **Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.
- 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 candidate's 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. **SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart I.
- x. **Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

### **SUBPART B. CONTRIBUTION LIMITS**

#### **1.2 Limits on contributions from individuals.**

- a. An individual shall not make total contributions per calendar year of more than \$2,900 to a candidate for City elective office, including contributions made through one or more political committees.
- b. An individual shall not make total contributions per calendar year of more than \$2,900, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart G by a candidate for City elective office.
- c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$2,900 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

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

- a. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500 to a candidate for City elective office, including contributions made through one or more political committees.
- b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500, including contributions made through one or more political committees, to a candidate's litigation fund committee.
- c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$11,500 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.
- d. In order to qualify for the \$11,500 contribution limit described in Paragraph 1.3, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

### **1.4 Contributions made through one or more political committees.**

- a. For the purposes of this Subpart, a contribution is made through a political committee when:
  - i. A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to 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. The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee's expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.
- b. For the purpose of the contribution limits, a contribution made through a political committee is from both the original contributing person or political committee and the recipient political committee through which the contribution is made. The entire amount of the contribution made through a political committee shall count toward the contribution limits of the original contributing person or political committee, and the entire amount shall also count toward the recipient political committee's contribution limits.

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**1.5 During a non-election year:**

- a. Candidates for Mayor shall receive no more than \$250,000 in total contributions from political committees;
- b. Candidates for District Attorney and Controller shall receive no more than \$100,000 in total contributions from political committees; and
- c. Candidates for City Council, Sheriff, and City Commissioner shall receive no more than \$75,000 in total contributions from political committees.

**1.6 Doubling of Contribution Limits.**

- a. If a candidate for City elective office contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, the contribution limits for all candidates 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 1.6(b).
- b. The limits for post-candidacy contributions (Paragraphs 1.2(c) and 1.3(c)) and the limits for contributions to litigation fund committees (Paragraphs 1.2(b) and 1.3(b)) do not double if a candidate contributes more than \$250,000 to his or her candidate political committee.
- c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.
- d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the \$250,000 contribution amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or
  - ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, as set forth in Paragraph 1.6, within two business days he or she shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.7 Candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.**

**1.8 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.**

**1.9 Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.**

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

**1.10** If a person or political committee makes an expenditure to a political committee in order that a candidate's name be placed on a sample ballot, the amount of the expenditure from that person or political committee is a contribution to the candidate and shall count toward the contribution limits set forth in this Subpart, so long as the expenditure is not an independent expenditure.

**1.11 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 or to the candidate's litigation fund committee;
- b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;
- c. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee;
- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.32;
- 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 candidates' 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; or
- g. Volunteer labor provided to a candidate or 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.

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## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

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

**1.12** Except as provided in Paragraphs 1.13, 1.14, and 1.15 the date of acceptance of a contribution is the date that the contribution comes into the possession of a candidate's campaign. A candidate's campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

**1.13** If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the candidate's campaign finds the contribution in the mailbox.

**1.14** 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 credit card information on the website.

#### **1.15 In kind contributions.**

- a. If a person makes an in-kind contribution by providing goods or services directly to a candidate's campaign, the date of acceptance of that contribution is the date that the candidate's 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 that assist in advocating or influencing the election of a candidate, the date of acceptance of that contribution is the date of the agreement to pay, if the goods and services are in fact provided.

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

**1.16** 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.

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

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

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

### **SUBPART E. CAMPAIGN FINANCE DISCLOSURES**

#### **1. 19 Disclosures required of candidates and candidate political committees.**

- a. Any time a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the candidate shall file electronically with the Board a copy of that report or statement.
- b. Any time the candidate political committee of a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the committee shall file electronically with the Board a copy of that report or statement.

**Example:** Candidate A is running for City office and has authorized Friends of A as her candidate political committee. Friends of A files a cycle 2 (pre-primary) campaign finance report with the City Commissioners. In addition, Candidate A personally files a campaign finance statement with the City Commissioners.

Friends of A must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the City Commissioners.

Candidate A must electronically file with the Board a copy of the cycle 2 campaign finance statement she personally filed with the City Commissioners.

#### **1. 20 Post-candidacy disclosures**

- a. Former candidates and candidate political committees shall file electronically with the Board reports of post-candidacy contributions and expenditures.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidates and candidate political committees with the City Commissioners pursuant to the Pennsylvania Election Code.
  - ii. A former candidate or a candidate political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate or candidate political committee files with the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate or candidate political committee.

**Example:** Candidate A is successful in the November general election, but her candidate political committee, Friends of A, incurred \$20,000 in debt in the course of the campaign. In December, former Candidate A raises \$10,000 in post-candidacy contributions which her committee uses to pay off some of the campaign debt. In January of the year following the general election, Friends of A files a cycle 7 campaign finance report with the City Commissioners. The cycle 7 report discloses the post-candidacy contributions and the expenditure to pay down the campaign debt.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

Friends of A can satisfy the post-candidacy disclosure requirements of Paragraph 1.20 by electronically filing with the Board a copy of the cycle 7 campaign finance report it filed with the City Commissioners.

### **1.21 Disclosures required of political committees and persons.**

- a. Any time a political committee or person is required to file a campaign finance report with the City Commissioners or the Secretary of State, as required by the Pennsylvania Election Code, the committee or person shall file electronically a copy of that report with the Board if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any expenditures made or debt incurred to influence the outcome of a covered election, including expenditures to a candidate for City elective office.

**Example:** Pennsylvanians for a Better Pennsylvania is a political committee registered with the Department of State. The committee files a cycle 2 (pre-primary) campaign finance report with the Department of State disclosing numerous expenditures to candidates for state office and one expenditure to a candidate for City office.

Pennsylvanians for a Better Pennsylvania must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the Department of State.

- b. Political committees shall file electronically with the Board reports of all post-candidacy contributions made by the political committee to any former candidate.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
  - ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

### **1.22 Disclosures required of litigation fund committees.**

- a. A litigation fund committee established as described in Subpart G shall file electronically with the Board reports of contributions and expenditures.
- b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
- c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

**1. 23 Method of filing campaign finance reports and statements.** Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board through the Department of Records and must be submitted in a format approved by the Department of Records. Information on how to electronically file a report or statement is available at the office of the Department of Records in City Hall Room 156 and at:

<http://www.phila.gov/records/CampaignFinance/CampaignFinance.html>

**1. 24 Sworn statement required for campaign finance disclosures.**

- a. Any time a candidate political committee, political committee, or litigation fund committee electronically files a campaign finance report or statement with the Board, the individual who files the report or statement on behalf of the committee shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The individual who signs the statement and the committee shall be jointly and severally subject to civil penalties if the report or statement contains any material misstatements or omissions.
- b. Any time a candidate electronically files a campaign finance report or statement with the Board, the candidate shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The candidate shall be subject to civil penalties if the report or statement contains any material misstatements or omissions.
- c. Any sworn statement required by this Paragraph shall be submitted on a form available from the Department of Records. The form may be submitted in person at the office of the Department of Records in City Hall Room 156 or via email or fax as indicated on the form.

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

**1. 25** A candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures. If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee and checking account for each office being sought.

**1. 26** If a candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

**1. 27** A candidate may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

- a. The candidate establishes the savings account at the same bank that has his or her checking account;
- b. The candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;
- c. The candidate 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
- d. 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 he or she has established a savings account.

**1. 28 Requirement to provide information to the Board about a candidate political committee.**

- a. A candidate who has a candidate political committee when he or she becomes 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 he or she becomes a candidate, he or she shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with his or her street address (other than a P.O. box), telephone number, and email address.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

- c. If a candidate establishes a candidate political committee after he or she has become a candidate, he or she shall notify the Board of the information set forth in Paragraph 1.28(a) within three business days of the formation of the committee.
- d. A candidate may satisfy the requirements of Paragraph 1.28 by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners as long as the information described in Paragraph 1.28(a)(i)-(iii) is included.
- e. If the information required by Paragraph 1.28 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- f. Information required by Paragraph 1.28 shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.29 Exercising control over another political committee.** A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

- a. The candidate is the treasurer or chair of the other political committee;
- b. The candidate established or registered the other political committee;
- c. The candidate is an authorized user or signer on the other political committee's bank account;
- d. The treasurer or chair of the other political committee is an employee of the candidate;
- e. The other political committee has the same treasurer or chair as the candidate political committee; or
- f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

**1.30 Exercising control over another political committee's expenditures.** A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

- a. The candidate, candidate political committee, or the candidate's agent provides the money to cover the specific expenditure;
- b. The candidate, candidate political committee, or the candidate's agent selects the recipient of the expenditure; or
- c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

**1.31** This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G.

**1.32** This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee 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 candidate's candidate political committee.

**1.33** This Subpart does not prohibit a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

- a. The recipient political committee offers similar services to other candidates; and
- b. The candidate does not exercise control over the political committee as defined in Paragraph 1.29.

**1.34** This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.30, other than the candidate's litigation fund committee.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

### **SUBPART G. LITIGATION FUND COMMITTEES**

#### **1.35 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a 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 1.35(d).
- b. The name of a litigation fund committee shall include the term “Litigation Fund.”
- c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.22.
- d. A 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 election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- e. A 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 may make expenditures from his or her candidate political committee for the purposes described in Paragraph 1.35(d).

#### **1.36 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 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.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the information described in (i)-(iii) above is included.

- b. If the information required by Paragraph 1.36 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

- c. Information required by Paragraph 1.36 shall be sent to the attention of the Board's Executive Director by postal mail or email.

### **1. 37 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 candidate sought, except as provided in Paragraph 1.37(b).
- 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 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.

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### **SUBPART H. COORDINATED EXPENDITURES**

**1.38** When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made to advocate or influence the election of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

**1.39** An expenditure is coordinated with a candidate's campaign if:

- a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
- b. The expenditure is made at the request or suggestion of the candidate's campaign;
- c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
- d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure;
- e. The candidate's 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
- f. The person making the expenditure uses information obtained from the candidate's 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 candidate made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.40.

**Example for 1.39(f):** 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 and spends \$11,500 to set up the phone bank and telephones individuals provided on the list from Candidate A. The \$11,500 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$11,500 in-kind contribution to Candidate A.

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**1.40 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 candidate's campaign:

- a. Shall be considered an in-kind contribution made by the person making the expenditure.
- b. Shall be considered an in-kind contribution received by the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign.

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

**Example for 1.40(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 to and an excess in-kind contribution received by Candidate A.

- 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 candidate that prepared the material;
  - ii. The item republished is a photograph obtained from a public source; or
  - iii. The person's expenditures for republication of a candidate's communications or materials are less than \$100 in the aggregate per reporting period;

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

- 1.41** An expenditure will not be considered a coordinated expenditure merely because:
- a. The person making the expenditure interviews the candidate;
  - b. The person making the expenditure has endorsed the candidate;
  - c. The person making the expenditure and the candidate's campaign have an agent in common;
  - d. The person making the expenditure has obtained from the candidate a biography of the candidate or a position paper, press release, or similar material about the candidate; or
  - e. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

### **SUBPART I. EXCESS PRE-CANDIDACY CONTRIBUTIONS; EXCESS POST-CANDIDACY CONTRIBUTIONS**

Note: The requirements in this Subpart regarding excess pre-candidacy contributions are relevant only if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office receives contributions prior to that individual becoming a candidate 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: On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. The accounting period for Candidate A is January 1, 2012 through November 30, 2014. The last Mayoral election was held in 2011 so January 1, 2012 would be the first day of the year following that election.

- 1.43 Prohibited Expenditures.** A candidate or candidate political committee shall ~~not~~:

- a. Spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.
- b. Spend any excess pre-candidacy contributions or post-candidacy contributions for the purposes of:
  - i. Transition or inauguration expenses; or
  - ii. Retiring debt that was incurred to (i) influence the outcome of an already completed covered election in which he or she was a candidate; or (ii) cover transition or inauguration expenses related to an already completed covered election.
- c. Transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart G.

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

- a. Within ten days after becoming a candidate, a candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:
  - i. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account; or
  - ii. Returning excess pre-candidacy contributions to the contributors who made those contributions.
- b. **Calculation of amount to be excluded.** A candidate shall determine the amount to be excluded by using one of the following calculation methods:
  - i. **Dollar for dollar calculation.** Using this calculation method, a candidate shall exclude an amount equal to the total amount of excess pre-candidacy contributions his or her candidate political committee received during the accounting period.

Example: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account.

- ii. **Accounting-based calculation.** Using this calculation method, a candidate does not have to exclude any excess pre-candidacy contributions that he or she demonstrates, using a reasonable accounting method, were actually spent before becoming a candidate, provided that:
    - (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting must 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 candidate must exclude from the checking account of his or her candidate political committee exceeds the amount of cash the committee has on hand, the candidate must use incoming contributions to cover the amount that must be excluded.

### **1.45 Pre-candidacy segregation.** A candidate does not have to exclude any excess pre-candidacy contributions that, upon receipt, he or she had transferred to a segregated pre-candidacy excess contribution account (“SPEC account”), provided that, if he or she used any funds in a SPEC account for pre-payments, the candidate must exclude from his or her 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.

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Example 1: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014, Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral 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: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014, Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On November 30, 2014, Candidate A spends \$200 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account. While Candidate A segregated Person B and Person C's \$200 in excess contributions, she spent \$200 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 candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

- a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or
- b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

**1.47** A candidate or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates or to make post-candidacy expenditures.

**1.48** Within seven days of establishing a SPEC account, a candidate 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.

## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

### **SUBPART J. RETIRING DEBT**

- 1. 49** Except as provided in Paragraph 1.50, 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 to the candidate or former candidate and is subject to the contribution limits set forth in Subpart B.
- 1. 50** 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 K. PENALTIES**

**1. 51 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 penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

**1. 52 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 penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

**1. 53 Safe harbor if an excess contribution is returned within 15 days.** No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate who accepted the excess contribution within fifteen days after receiving the contribution:

- a. Returns the excess amount to the contributor; and
- b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

## EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014

### **1. 54 Failure to file campaign finance disclosures.**

- a. A civil penalty of \$250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart E.
- b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of \$250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report 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 is not filed.

### **1. 55 Other violations of the campaign finance law.** All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of \$1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

- a. Mitigating factors. The civil 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 is 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 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 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.

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## **EXHIBIT A – REGULATION AS APPROVED ON OCTOBER 15, 2014**

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



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**PHILADELPHIA BOARD OF ETHICS  
REGULATION NO. 1  
CAMPAIGN FINANCE**

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**SUBPART A. SCOPE; DEFINITIONS**

**1.0 Scope.** The requirements and prohibitions of Philadelphia's campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq.*). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia's campaign finance law found at Philadelphia Code Chapter 20-1000.

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**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 5:00pm of the day before he or she became a candidate.
- a.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.
- b.c. **Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- e.d. **Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- d.e. **Candidate's campaign.** A candidate, the candidate's candidate political committee (or litigation fund committee), or an agent of any of the foregoing.
- e.f. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- f.g. **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.h. **Contribution.**
  - i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;
  - ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes any in-kind contribution, as defined at Paragraph 1.1(o); (1) any payment by a person or a political committee provided for the benefit of the candidate, including any payment for the services of a person serving as an agent of the candidate, candidate political committee, or litigation fund committee, and (2) any in-kind contributions, as defined at Subparagraph 1.1(m); or
  - iii. Any post-candidacy contribution, as defined at SubParagraph 1.1(s).1.1(q).
- h.i. **Contributor.** A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.
- i.j. **Covered election.** Any primary, general or special election for City elective office.

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- j.k. Excess post-candidacy contribution.** The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Subpart B.Sections 20-1002(4) or 20-1002(5) of the Philadelphia Code.
- k.l. Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.Sections 20-1002(1) or 20-1002(2) of the Philadelphia Code.
- l.m. Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election, including, but not limited to, any expenditure to obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- m.n. Independent expenditure.** An expenditure that is not made in coordination with any candidate, candidate political committee, or agent thereof. For guidance on what constitutes coordination, see Subpart H.J.
- n.o. In-kind contribution.**
- i. The provision of any or payment for goods or services directly to a candidate's campaign without charge or at a charge that is less than the usual and normal charge for such goods or services; or where such provision or payment is made for the benefit of the candidate, but not including volunteer labor as described in Subparagraph 1.11(e).
  - ii. The payment or agreement to pay a third party to provide goods or services that assist in advocating or influencing the election of a candidate, if the goods and services are in fact provided.
- The term "in-kind contribution" does not include volunteer labor as described in Paragraph 1.11(g).
- e.p. Litigation fund committee.** The committee established by a candidate to 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 a candidate's election campaign or participation in an election, as described in Subpart G.H.
- p.q. Person.** An individual, a political committee, or a partnership, sole proprietorship, or other form of business or nonprofit organization.
- q.r. Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political 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.

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- r.s.** **Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.
- s.t.** **Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.
- t.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.
- u.v.** **Pre-payment.** A payment made during the accounting period for any thing used or to be used by a candidate's 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.w.** **SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart L.C.
- w.x.** **Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

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**SUBPART B. CONTRIBUTION LIMITS**

**1.2 Limits on contributions from individuals.**

- a. An individual shall not make total contributions per calendar year of more than \$2,900 to a candidate for City elective office, including contributions made through one or more political committees.
- b. An individual shall not make total contributions per calendar year of more than \$2,900, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart GH by a candidate for City elective office.
- c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$2,900 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

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

- a. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500 to a candidate for City elective office, including contributions made through one or more political committees.
- b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500, including contributions made through one or more political committees, to a candidate's litigation fund committee.
- c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$11,500 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.
- d. In order to qualify for the \$11,500 contribution limit described in Paragraph 1.3, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

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**1.4 Contributions made through one or more political committees.**

- a. For the purposes of this Subpart, a contribution is made through a political committee when:
  - i. A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to 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. The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee's expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.
- b. For the purpose of the contribution limits, a contribution made through a political committee is from both the original contributing person or political committee and the recipient political committee through which the contribution is made. The entire amount of the contribution made through a political committee shall count toward the contribution limits of the original contributing person or political committee, and the entire amount shall also count toward the recipient political committee's contribution limits.

**1.5 During a non-election year:**

- a. Candidates for Mayor shall receive no more than \$250,000 in total contributions from political committees;
- b. Candidates for District Attorney and Controller shall receive no more than \$100,000 in total contributions from political committees; and
- c. Candidates for City Council, Sheriff, and City Commissioner shall receive no more than \$75,000 in total contributions from political committees.

**1.6 Doubling of Contribution Limits.**

- a. If a candidate for City elective office contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, the contribution limits for all candidates 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 Subparagraph 1.6(b).
- b. The limits for post-candidacy contributions (Paragraphs(Subparagraphs 1.2(c) and 1.3(c)) and the limits for contributions to litigation fund committees (Paragraphs(Subparagraphs 1.2(b) and 1.3(b))) do not double if a candidate contributes more than \$250,000 to his or her candidate political committee.

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- c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.
- d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the \$250,000 contribution amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or
  - ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, as set forth in Paragraph 1.6, within two business days he or she shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.7** Candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.

**1.8** 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.

**1.9** Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.

**1.10** If a person or political committee makes an expenditure to a political committee in order that a candidate's name be placed on a sample ballot, the amount of the expenditure from that person or political committee is a contribution to the candidate and shall count toward the contribution limits set forth in this Subpart, so long as the expenditure is not an independent expenditure.

**1.11 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 or to the candidate's litigation fund committee;
- b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;
- c. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee;

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- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.32; 1.36; and
- 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 candidates' 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; or
- g. e. Volunteer labor provided to a candidate or 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.

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

**1.12 1.19** Except as provided in Paragraphs 1.13,1.20, 1.14,1.21, and 1.15 1.22 the date of acceptance of a contribution is the date that the contribution comes into the possession of a candidate's campaign. A candidate's campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart, the recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof.

**1.13 1.20** If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the candidate's campaign recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof finds the contribution in the mailbox.

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**1.14 1.21** 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 credit card information on the website.

**1.15 In kind contributions.**

- a. If a person makes an in-kind contribution by providing goods or services directly to a candidate's campaign, 1.22 The date of acceptance of that an in-kind contribution is the date that the candidate's campaign receives or contributor provides the goods or services.
- b. If a person services, or makes an in-kind contribution by paying or agreeing payment to pay a third party to provide for the provision of goods or services that assist in advocating or influencing, to the election of a recipient candidate, the date of acceptance of that contribution is the date of the agreement to pay, if the goods and services are in fact provided, litigation fund committee, or political committee, or agent thereof.

**1.23** A candidate, litigation fund committee, or political committee shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

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

**1.16 1.24** 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.

**1.17 25** A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

**1.18 26** A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of business organization is a contribution from the partnership, sole proprietorship, or other form of business organization, unless other facts demonstrate that the contribution is from the signer of the check.

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**SUBPART E. SUBPART I. CAMPAIGN FINANCE DISCLOSURES**

**1. 19 42      Disclosures required of candidates and candidate political committees.**

- a. Any time a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the candidate shall file electronically with the Board a copy of that report or statement.
- b. Any time the candidate political committee of a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the committee shall file electronically with the Board a copy of that report or statement.

**Example:** Candidate A is running for City office and has authorized Friends of A as her candidate political committee. Friends of A files a cycle 2 (pre-primary) campaign finance report with the City Commissioners. In addition, Candidate A personally files a campaign finance statement with the City Commissioners.

Friends of A must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the City Commissioners.

Candidate A must electronically file with the Board a copy of the cycle 2 campaign finance statement she personally filed with the City Commissioners.

**1. 20 43      Post-candidacy disclosures**

- a. Former candidates and candidate political committees shall file electronically with the Board reports of post-candidacy contributions and expenditures.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidates and candidate political committees with the City Commissioners pursuant to the Pennsylvania Election Code.
  - ii. A former candidate or a candidate political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate or candidate political committee files with the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate or candidate political committee.

**Example:** Candidate A is successful in the November general election, but her candidate political committee, Friends of A, incurred \$20,000 in debt in the course of the campaign. In December, former Candidate A raises \$10,000 in post-candidacy contributions which her committee uses to pay off some of the campaign debt. In January of the year following the general election, Friends of A files a cycle 7 campaign finance report with the City Commissioners. The cycle 7 report discloses the post-candidacy contributions and the expenditure to pay down the campaign debt.

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Friends of A can satisfy the post-candidacy disclosure requirements of Paragraph 1.201.43 by electronically filing with the Board a copy of the cycle 7 campaign finance report it filed with the City Commissioners.

| **1.21 44      Disclosures required of political committees and persons.**

- a. Any time a political committee or person is required to file a campaign finance report with the City Commissioners or the Secretary of State, as required by the Pennsylvania Election Code, the committee or person shall file electronically a copy of that report with the Board if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any expenditures made or debt incurred to influence the outcome of a covered election, including expenditures to a candidate for City elective office.

**Example:** Pennsylvanians for a Better Pennsylvania is a political committee registered with the Department of State. The committee files a cycle 2 (pre-primary) campaign finance report with the Department of State disclosing numerous expenditures to candidates for state office and one expenditure to a candidate for City office.

Pennsylvanians for a Better Pennsylvania must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the Department of State.

- b. Political committees shall file electronically with the Board reports of all post-candidacy contributions made by the political committee to any former candidate.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
  - ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

| **1.22 45      Disclosures required of litigation fund committees.**

- a. A litigation fund committee established as described in Subpart GH shall file electronically with the Board reports of contributions and expenditures.
- b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
- c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board

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copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

| **1. 23 46      Method of filing campaign finance reports and statements.** Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board through the Department of Records and must be submitted in a format approved by the Department of Records. Information on how to electronically file a report or statement is available at the office of the Department of Records in City Hall Room 156 and at:

<http://www.phila.gov/records/CampaignFinance/CampaignFinance.html>

| **1. 24 47      Sworn statement required for campaign finance disclosures.**

- a. Any time a candidate political committee, political committee, or litigation fund committee electronically files a campaign finance report or statement with the Board, the individual who files the report or statement on behalf of the committee shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The individual who signs the statement and the committee shall be jointly and severally subject to civil penalties if the report or statement contains any material misstatements or omissions.
- b. Any time a candidate electronically files a campaign finance report or statement with the Board, the candidate shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The candidate shall be subject to civil penalties if the report or statement contains any material misstatements or omissions.
- c. Any sworn statement required by this Paragraph shall be submitted on a form available from the Department of Records. The form may be submitted in person at the office of the Department of Records in City Hall Room 156 or via email or fax as indicated on the form.

**EXHIBIT B to Reg 1 hearing report –  
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**SUBPART F G. USE OF POLITICAL COMMITTEES AND CHECKING  
ACCOUNTS BY CANDIDATES**

**1. 25 1.29**—A candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures. If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee and checking account for each office being sought.

**1. 26 1.30** If a candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

**1. 27 1.31** A candidate may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

- a. The candidate establishes the savings account at the same bank that has his or her checking account;
- b. The candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;
- c. The candidate 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
- d. 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 he or she has established a savings account.

**1. 28 1.32** **Requirement to provide information to the Board about a candidate political committee.**

- a. A candidate who has a candidate political committee when he or she becomes 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.

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- b. If a candidate does not have a candidate political committee when he or she becomes a candidate, he or she shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with his or her street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after he or she has become a candidate, he or she shall notify the Board of the information set forth in Subparagraph Paragraph 1.28(a) within three business days of the formation of the committee.
- d. A candidate may satisfy the requirements of Paragraph 1.28 by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners as long as the information described in Subparagraph Paragraph 1.28(a)(i)-(iii) is included.
- e. If the information required by Paragraph 1.28 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- f. Information required by Paragraph 1.28 shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.29 1.33     Exercising control over another political committee.** A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

- a. The candidate is the treasurer or chair of the other political committee;
- b. The candidate established or registered the other political committee;
- c. The candidate is an authorized user or signer on the other political committee's bank account;
- d. The treasurer or chair of the other political committee is an employee of the candidate;
- e. The other political committee has the same treasurer or chair as the candidate political committee; or
- f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

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**1.30 1.34** **Exercising control over another political committee's expenditures.** A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

- a. The candidate, candidate political committee, or the candidate's agent provides the money to cover the specific expenditure;
- b. The candidate, candidate political committee, or the candidate's agent selects the recipient of the expenditure; or
- c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

**1.31 1.35** This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G.

**1.32 1.36** This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee 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 candidate's candidate political committee.

**1.33 1.37** This Subpart does not prohibit a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

- a. The recipient political committee offers similar services to other candidates; and
- b. The candidate does not exercise control over the political committee as defined in Paragraph 1.29.

**1.34 1.38** This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.30, other than the candidate's litigation fund committee.

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DEPARTMENT OF REVENUE  
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**SUBPART G. LITIGATION FUND COMMITTEES**

**1.35 1.39 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a 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 Subparagraph Paragraph 1.35(d).
- b. The name of a litigation fund committee shall include the term “Litigation Fund.”
- c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.22.
- d. A 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 election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- e. A 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 may make expenditures from his or her candidate political committee for the purposes described in Subparagraph Paragraph 1.35(d).

**1.36 1.40 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 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.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Subparagraph Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the information described in (i)-(iii) above is included.

- b. If the information required by Paragraph 1.36 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by Paragraph 1.36 shall be sent to the attention of the Board’s Executive Director by postal mail or email.

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**1.37 1.41      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 candidate sought, except as provided in Subparagraph Paragraph 1.37(b).
- 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 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.

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**SUBPART H.J. COORDINATED EXPENDITURES**

**1.38 48** When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made to advocate or influence for the election benefit of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

**1.39 49.** For the purposes of this Subpart, the term "candidate's campaign" includes the candidate, the candidate's candidate political committee, and an agent of either of the foregoing.

**1.50** An expenditure is coordinated with a candidate's campaign if:

- a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
- b. The expenditure is made at the request or suggestion of the candidate's campaign;
- c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
- d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure; or
- e. The candidate's 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
- f. The person making the expenditure uses information obtained from the candidate's 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 candidate made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.40.

Example for 1.39(f): 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 and spends \$11,500 to set up the phone bank and telephones individuals provided on the list from Candidate A. The \$11,500 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$11,500 in-kind contribution to Candidate A.

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**1.40 1.51. Republication of campaign communications or materials.** An expenditure 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 obtained from a candidate's campaign:

- a. Shall be considered an in-kind contribution made by the person making the expenditure.
- b. Shall be considered an in-kind contribution received by the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or campaign, or obtained from another source with the campaign's consent of the candidate's campaign, is an in-kind contribution to the candidate.

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

**Example for 1.40(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.

- 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 candidate that prepared the material;
  - ii. The item republished is a photograph obtained from a public source; or
  - iii. The person's expenditures for republication of a candidate's communications or materials are less than \$100 in the aggregate per reporting period;

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DEPARTMENT OF RECORDS  
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**1.41 52** An expenditure will not be considered a coordinated expenditure merely because:

- a. The person making the expenditure interviews the candidate;
- b. The person making the expenditure has endorsed the candidate;
- c. The person making the expenditure and the candidate's campaign have an agent in common;
- d. ~~The person making the expenditure uses information obtained from a public source or from a communication the candidate's campaign made to the general public in order to design, prepare, or pay for the specific expenditure.~~
- d. e. The person making the expenditure has obtained from the candidate a photograph or biography of the candidate or a position paper, press release, or similar material about the candidate; or
- e. f. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

**SUBPART I. EXCESS PRE-CANDIDACY CONTRIBUTIONS;  
EXCESS POST-CANDIDACY CONTRIBUTIONS**

**Note:** The requirements in this Subpart regarding excess pre-candidacy contributions are relevant only if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office receives contributions in excess of the limits set forth in Subpart B prior to that individual becoming a candidate.

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

Example: On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. The accounting period for Candidate A is January 1, 2012 through November 30, 2014. The last Mayoral election was held in 2011, so January 1, 2012 would be the first day of the year following that election.

**1.43 Prohibited Expenditures.** A candidate or candidate political committee shall not:

- a. **1.12** A candidate or candidate political committee shall not Spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.
- b. **1.14** A candidate shall not Spend any excess pre-candidacy contributions or post-candidacy contributions for the purposes of:
  - i. aTransition or inauguration expenses; or
  - ii. bRetiring debt that was incurred to (i) influence the outcome of an already completed covered election in which he or she was a candidate; or (ii) cover transition or inauguration expenses related to an already completed covered election.

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c. ~~4.13 A candidate shall not Transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart G.~~

**1.44 1.45 Exclusion of excess pre-candidacy contributions upon becoming a candidate**

a. ~~Within ten days after becoming a candidate, A~~ a candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

- i. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ~~within ten days after the individual becomes a candidate~~; or
- ii. Returning excess pre-candidacy contributions to the contributors who made those contributions ~~within ten days after the individual becomes a candidate~~.

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

i. **Dollar for dollar calculation.** Using this calculation method, a candidate shall exclude an amount equal to the total amount of excess pre-candidacy contributions his or her candidate political committee received during the accounting period.

Example: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account.

ii. **Accounting-based calculation.** Using this calculation method, a candidate does not have to exclude any excess pre-candidacy contributions that he or she demonstrates, using a reasonable accounting method, were actually spent before becoming a candidate, provided that:

- (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting must 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 candidate must exclude from the checking account of his or her candidate political committee exceeds the amount of cash the committee has on hand, the candidate must use incoming contributions to cover the amount that must be excluded.~~

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**1.45 Pre-candidacy segregation.** A candidate does not have to exclude any excess pre-candidacy contributions that, upon receipt, he or she had transferred to a segregated pre-candidacy excess contribution account (“SPEC” account), provided that, if he or she used any funds in a SPEC account for pre-payments, the candidate must exclude from his or her 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: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014, Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral 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: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014, Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On November 30, 2014, Candidate A spends \$200 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account. While Candidate A segregated Person B and Person C's \$200 in excess contributions, she spent \$200 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 1.16** A candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

- a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or
- b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

**1.47 1.17** A candidate or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates or to make post-candidacy expenditures.

**1.48 1.18** Within seven days of establishing a SPEC account, a candidate 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.

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**SUBPART J. RETIRING DEBT**

**1.49 1.27** Except as provided in Paragraph 1.50, 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 to the candidate or former candidate and is subject to the contribution limits set forth in Subpart B.

**1.50 1.28** 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.

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**SUBPART K. PENALTIES**

**1.5153      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 penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

**1.5254      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 penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

**1.5355      Safe harbor if an excess contribution is returned within 15 days.** No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate who accepted the excess contribution within fifteen days after receiving the contribution:

- a. Returns the excess amount to the contributor; and

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- b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

| **1. 5456 Failure to file campaign finance disclosures.**

- a. A civil penalty of \$250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart E. L.
- b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of \$250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report 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 is not filed.

| **1. 5557 Other violations of the campaign finance law.** All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of \$1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

- a. Mitigating factors. The civil 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 is 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 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 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.

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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





IN RE:

CITY OF PHILADELPHIA BOARD OF ETHICS  
HEARING ON PROPOSED AMENDMENTS TO  
REGULATION 1, CAMPAIGN FINANCE

TRANSCRIPT OF DEPOSITION, taken by 783018  
and before ASHLEY L. BRADY, Professional Reporter  
and Notary Public, at the offices of CITY OF  
PHILADELPHIA BOARD OF ETHICS, 1515 Arch Street, 18th  
Floor, Philadelphia, Pennsylvania, on Wednesday,  
September 17, 2014, commencing at 1:12 p.m.

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

DEPARTMENT OF COMMERCE  
2014 OCT 21 AM 8:11

TRANSCRIPT OF HEARING

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

BOARD PANEL MEMBERS:

MICHAEL H. REED ESQ., CHAIR  
JUDGE PHYLLIS BECK (RET.), VICE-CHAIR  
REVEREND C. KEVIN GILLESPIE, MEMBER  
BRIAN J. MCCORMICK, JR., ESQ., MEMBER

STAFF:

J. SHANE CREAMER, JR., EXECUTIVE DIRECTOR  
MAYA NAYAK, GENERAL COUNSEL  
NEDDA MASSAR, DEPUTY EXECUTIVE DIRECTOR  
MICHAEL COOKE, DIRECTOR OF ENFORCEMENT  
ELIZABETH DOWNEY, ASSOCIATE GENERAL COUNSEL  
JORDAN SEGALL, STAFF ATTORNEY

ALSO PRESENT:

LEWIS ROSMAN, ESQ., LAW DEPARTMENT  
HOPE CALDWELL, CHIEF INTEGRITY OFFICER, CITY OF  
PHILADELPHIA OFFICE OF THE MAYOR  
MEGAN MCALLEN, ASSOCIATE COUNCIL, CAMPAIGN LEGAL  
CENTER  
ELLEN MATTLEMAN KAPLAN, INTERIM PRESIDENT AND CEO  
OF THE COMMITTEE OF SEVENTY  
JAMES BROWNING, REGIONAL DIRECTOR FOR STATE  
OPERATIONS, COMMON CAUSE PA  
DANIEL WEINER, COUNCIL, BRENNAN CENTER FOR JUSTICE  
CHARLES GOODWIN, ESQ., LAW OFFICES OF CHARLES  
PEARSALL GOODWIN  
ADAM BONIN, ESQ., THE LAW OFFICES OF ADAM C. BONIN  
  
UNIDENTIFIED SPECTATORS

TRANSCRIPT OF HEARING

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ELLEN KAPLAN	27
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E X H I B I T S

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1 - - - - HEARING - - -

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3 CHAIRPERSON: Good afternoon.

4 My name is Michael Reed. I'm the Chair of  
5 the Ethics Board. I think we're going to  
6 get started here on our public hearing.

7 I'd like to acknowledge the  
8 presence of the quorum and the Board and I  
9 note for the record that attorney Lewis  
10 Rosman is present on behalf of the Law  
11 Department and I'm also joined by Board  
12 members Beck and Brian and Father  
13 Gillespie.

14 Our hearing today is an  
15 opportunity for members of the public and  
16 other interested parties to provide  
17 comments or recommendations for  
18 modifications to proposed amendments to  
19 the Board's Regulation No. 1 concerning  
20 Campaign Finance. Copies of these  
21 proposed amendments have been made  
22 available electronically and hard copies  
23 are available here today for anybody who  
24 needs copies.

## **TRANSCRIPT OF HEARING**

As required by Section 8-407 of  
the Home Rule Charter at its July 16, 2014  
public meeting, the Board approved these  
proposed amendments for public posting at  
the Records Department. The Board also  
scheduled today's hearing, which the  
Record's Department duly advertised. In  
addition, the Board's staff posted notice  
of the hearing on the Board's website and  
also announced the hearing by way of the  
campaign finance e-mail distribution list  
which consists of and contains  
approximately 500 e-mail addresses.

The purpose of today's hearing  
is for members of the public or other  
interested parties to offer testimony  
regarding the proposed amendment to  
Regulation No. 1. The Board and Staff  
will not respond to testimony today.  
After today's hearing, Staff will prepare  
a draft report of the hearing, which they  
will then present to the Board at a public  
meeting. The report will respond to  
testimony and is the mechanism by which

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1           changes may be made to the proposed  
2           amendment.

3                   A court reporter is present to  
4           transcribe this hearing. At this time,  
5           the proposed amendments filed with the  
6           Records Department should be entered on  
7           the record of this hearing and marked as  
8           Exhibit-1.

9                   (At this time, the court  
10          reporter marked Exhibit 1 for  
11          identification.)

12                CHAIRPERSON: With that said, we  
13          will now take testimony. I ask witnesses  
14          to sit at this table up front and to  
15          identify yourself at the beginning of your  
16          testimony. We have had several people  
17          notify us in advance of today's hearing  
18          that they wish to testify. We may also  
19          have some people who walked in. I'm being  
20          given something new, here. This is  
21          unbelievable. So Adam Bonin is a walk-in  
22          person who is going to testify. And we  
23          are going to testify in the following  
24          order, absent something unusual happening.

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1                         First, we're going to have  
2                         testimony from Board Staff. We will then  
3                         welcome Hope Caldwell on behalf of the  
4                         Administration to testify. We will then  
5                         have testimony from Megan McAllen for the  
6                         Campaign Legal Center in the District of  
7                         Columbia, in D.C. I don't know whether  
8                         that's part of the name or the entity. We  
9                         will then have testimony from Ellen Kaplan  
10                        for the committee of Seventy. We will  
11                        then have testimony from James Browning  
12                        for Common Cause PA. We will then have  
13                        testimony from Daniel Weiner for the  
14                        Brennan Center. We will then have  
15                        testimony from Charles Goodwin. And  
16                        finally, we will have testimony from Adam  
17                        Bonin.

18                        Before taking live testimony, I  
19                        note that we have received written hearing  
20                        testimony in advance of the hearing from  
21                        the following witnesses, Hope Caldwell on  
22                        behalf of the Administration, James  
23                        Browning on behalf of Common Cause PA,  
24                        Daniel Weiner on behalf of the Brennan

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1                   Center for Justice, Megan McAllen on  
2                   behalf of the Campaign Legal Center, Ellen  
3                   Mattleman Kaplan on behalf of the  
4                   committee of Seventy, Adam Bonin and  
5                   Charles Goodwin. I would like to enter  
6                   the written testimony on the hearing  
7                   record and have the written testimony  
8                   marked as Exhibits 2 through 8. I believe  
9                   we are up to 8, now.

10                  (At this time, the court  
11                 reporter marked Exhibits 2 through 8 for  
12                 identification.)

13                  CHAIRPERSON: If any other  
14                 witnesses have written testimony, please  
15                 let us know when you testify so that we  
16                 may make it part of the record.

17                  And without further ado, we  
18                 would like to call our first witness,  
19                 Mr. Cooke.

20                  MR. COOKE: Thank you,  
21                 Mr. Chair.

22                  My name is Michael Cooke and I'm  
23                 the Board's Director of Enforcement and on  
24                 behalf of Staff, I have some brief

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1                   testimony regarding some proposed wording  
2                   changes to the amendments that were posted  
3                   at the Records Department.

4                   The first thing is in Paragraph  
5                   1.1(d), which is on page 2 of the  
6                   definition section, the definition of  
7                   candidate's campaign. In that sentence,  
8                   the proposed change is to replace the "and  
9                   an agent" at the end of the sentence with  
10                  "or an agent."

11                  CHAIRPERSON: Very  
12                  controversial, Michael.

13                  MR. COOKE: I know.

14                  Paragraph 1.25, which is on page  
15                  13, there is in the proposed amendment  
16                  posted at the Record's Department, there  
17                  is the proposed addition of a new sentence  
18                  at the end there. Staff now proposed a  
19                  slight modification of this sentence  
20                  that it would say, "If a candidate is  
21                  running for more than one city elective  
22                  office simultaneously, he or she shall  
23                  maintain a separate candidate political  
24                  committee and checking account for each

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1                   office being sought."

2                   Next proposed item is on page  
3                   18. Staff believes that an example would  
4                   be helpful for 1.39(f) and will in the  
5                   hearing report, the draft hearing report,  
6                   will propose a specific example for that,  
7                   but testify today that we think that's  
8                   desirable and intend to present language  
9                   to the Board for such an example.

10                  The next proposal is on the next  
11                 page, on page 19 at 1.40(b). The second  
12                 paragraph of 1.40(b) says, "A campaign  
13                 communication or campaign material is  
14                 obtained with the candidate's consent if  
15                 the candidate provides it to a third party  
16                 so that another person is able to obtain  
17                 the communication or material from that  
18                 party." In the interest of clarity, Staff  
19                 proposed substituting the phrase "for the  
20                 purpose of" for the phrase "so that," so  
21                 that the sentence would now read, in part,  
22                 "provides it to a third party for the  
23                 purpose of that person being able to  
24                 obtain the communication or material from

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1           that third party" -- sorry. "provides it  
2           to a third-party for the purpose of  
3           another person being able to obtain the  
4           communication or material from that third  
5           party." Excuse me.

6                         Also on the same page in the  
7                         example at the bottom, the last paragraph,  
8                         the last line there starting from the  
9                         second to the last line, "and is an  
10                  in-kind contribution from the committee to  
11                  candidate in excess of the contribution  
12                  limits." It should say, "to candidate A  
13                  in excess of the contribution limits."

14                         CHAIRPERSON: Where is that,  
15                         Michael?

16                         MR. COOKE: It's the last line  
17                         on page 19 in the example, second  
18                         paragraph of the example.

19                         CHAIRPERSON: Give me the change  
20                         again, please.

21                         MR. COOKE: So it would now  
22                         read, "and is an in-kind contribution from  
23                         the committee to candidate A in excess of  
24                         the contribution limits."

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1                   CHAIRPERSON: Thanks.

2                   MR. COOKE: The last proposed

3                   change is on the next page, page 20, in

4                   the note at the beginning of Subpart I.

5                   Staff proposed striking the first three

6                   words of the note which read, "This

7                   subpart is," and replacing them with, "The

8                   requirements in this subpart regarding

9                   excess pre-candidacy contributions are,"

10                  and then the rest of the sentence.

11                  And that would conclude my

12                  testimony.

13                  CHAIRPERSON: Please read that

14                  again.

15                  MR. COOKE: Sure.

16                  So Staff proposed that the note

17                  be modified to read, "Note: The

18                  requirements in this subpart --

19                  CHAIRPERSON: I thought you said

20                  "of this subpart."

21                  MR. COOKE: Requirements in --

22                  if I'm not --

23                  CHAIRPERSON: I'm not holding

24                  you to it, but the first time I thought

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1                   you said "of."

2                   MR. COOKE: What I have in my  
3                   notes is, "in." So if I said, "of"  
4                   before, let's go with "in."

5                   CHAIRPERSON: Okay.

6                   MR. COOKE: "The requirements in  
7                   this subpart regarding excess  
8                   pre-candidacy contributions are only  
9                   relevant if a political committee that is  
10                  authorized to receive contributions on  
11                  behalf of an individual who subsequently  
12                  becomes a candidate for City office  
13                  accepts contributions in excess of limits  
14                  set forth in Subpart B."

15                  CHAIRPERSON: The language that is  
16                  you're adding is up to the word "are," and  
17                  you are striking out "This subpart is,"  
18                  correct?

19                  MR. COOKE: "This subpart is" is  
20                  goes away and is replaced by the new  
21                  language, yes.

22                  CHAIRPERSON: Up to the word  
23                  "are"?

24                  MR. COOKE: Correct.

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1 CHAIRPERSON: Okay.

2 MR. COOKE: Thank you.

3 CHAIRPERSON: Will that complete

4 your testimony?

5 MR. COOKE: It does.

6 CHAIRPERSON: Thank you.

7 We will now, if I can find my

8 list, welcome Hope Caldwell on behalf of

9 the Administration.

10 MS. CALDWELL: Good afternoon.

11 CHAIRPERSON: Good afternoon.

12 MS. CALDWELL: I'm Hope

13 Caldwell, Chief Integrity Officer for the

14 City of Philadelphia and I'm here today to

15 offer the City Administration's opinion

16 regarding the amended Regulation 1 on

17 Campaign Finance.

18 The administration generally

19 supports the changes to Regulation 1.

20 After reviewing the proposed changes to

21 Subpart I, however, regarding excess

22 pre-candidacy contributions, what has been

23 proposed does not seem like a workable

24 approach to handling excess contributions.

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1           The reason it is not workable is because  
2           it would require the Board to delve into  
3           questions regarding the purpose of  
4           pre-candidacy expenditures.

5                         Part of my position as Chief  
6           Integrity Officer is to help employees,  
7           citizens and vendors understand various  
8           very complex rules. It is important and  
9           helpful when possible to make definitive  
10          rules that could be followed by direct  
11          application of the law. These same  
12          principles should apply to rules for  
13          candidates and campaigns, as well.

14                       I would encourage the Board and  
15          Staff to take some extra time and refine  
16          the amended Regulation. This way, you can  
17          make clear, bright-line rules for  
18          accounting the expenditure of excess  
19          pre-candidacy contributions when  
20          determining amounts that candidates must  
21          exclude from their candidate accounts.

22                       The Board has that opportunity  
23          here to create more clarity with the  
24          changes to Regulation 1 and I hope that it

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1               does so.

2                             Thank you for the opportunity to  
3                             speak today.

4                     CHAIRPERSON: Can I ask you a  
5                     question?

6                     MS. CALDWELL: Maybe.

7                     CHAIRPERSON: Oh, we're not  
8                     supposed to do that.

9                     Any specific suggestions?

10                  MS. CALDWELL: I can provide  
11                  some later if that's easier.

12                  CHAIRPERSON: Okay. That will  
13                  be fine.

14                  MS. CALDWELL: Okay. Great.

15                  CHAIRPERSON: We will now  
16                  recognize Megan McAllen for the Campaign  
17                  Legal Center.

18                  Welcome.

19                  MS. MCALLEN: Mr. Chair, Board  
20                  members, thank you for this opportunity to  
21                  testify here today and provide my views on  
22                  the proposed amendments to Regulation No.

23                  1. My name is Megan McAllen from the  
24                  Campaign Legal Center, which is a

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1                   nonpartisan, nonprofit organization that  
2                   works in the areas of campaign finance,  
3                   elections and government ethics, and  
4                   represents the public interest in  
5                   administrative, legislative and legal  
6                   proceedings involving those issues.

7                   I'll primarily address the  
8                   changes to the coordinated expenditure  
9                   provisions at Subpart H, and I have  
10                  submitted more detailed, written testimony  
11                  for the record. In summary, the proposed  
12                  amendments are good policy and are  
13                  constitutionally sound, and I urge the  
14                  Board to adopt them.                              783022

15                  In Buckley v. Valeo, the Supreme  
16                  Court recognized that only "true"  
17                  independence from candidates "alleviates  
18                  the danger that expenditures will be given  
19                  as a quid pro quo for improper commitments  
20                  from the candidate." The Court has since  
21                  made clear that only "totally," "wholly"  
22                  or "truly" independent expenditures are  
23                  non-corruptive, whereas expenditures  
24                  coordinated with candidates pose the very

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1                 same corruption and circumvention risks as  
2                 direct contributions. As such, the  
3                 proposed amendments are amply justified  
4                 and well-tailored anticorruption measures:  
5                 they are designed to ensure that  
6                 purportedly independent advocacy  
7                 undertaken for a candidate's benefit is  
8                 truly independent from the candidate, and  
9                 thus to prevent outside groups from  
10                evading the City's candidate contribution  
11                limits under the guise of independent  
12                spending.

13                The republication rule  
14                specifically is a form of coordination  
15                regulation that will complement the  
16                existing standards governing the  
17                determination of an expenditure's  
18                independence. Under current law, if a  
19                person or committee makes an expenditure  
20                that is coordinated with and made for the  
21                benefit of a candidate's campaign, it  
22                constitutes an in-kind contribution  
23                subject to the contribution limits.  
24                However, if a so-called independent group

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1           pays to reproduce or widely disseminate a  
2           candidate's own campaign materials, it  
3           would be difficult to treat it as  
4           coordinated unless there was a showing of  
5           explicit prearrangement.

6           The new regulation effectively  
7           expands the definition of in-kind  
8           contribution to reach such payments.  
9           Without it, a supposedly independent  
10          person or group can essentially subsidize  
11          a candidate's campaign and evade the  
12          contribution limits by simply distributing  
13          the candidate's materials as its own.

14          Importantly, the amendment does  
15          not include a public domain exception,  
16          which we support, because that would  
17          obviate one of the rule's main objectives:  
18          preventing candidates from producing  
19          material on the cheap, posting it online  
20          and then relying on outside groups to  
21          bankroll its distribution, perhaps to a  
22          wider audience than the candidate could  
23          afford, herself. Given that nearly all  
24          campaign material that could be

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1                   republished could be considered to be in  
2                   the public domain, such an exception would  
3                   swallow the rule. Moreover, it's not  
4                   constitutionally required.

5                   The Supreme Court has explicitly  
6                   rejected the argument that any definition  
7                   of coordination must quote," hinge on the  
8                   presence of an agreement." Likewise,  
9                   there are no constitutional barriers to  
10                  treating payments for the duplication of  
11                  candidate campaign materials as proposed.  
12                  Notwithstanding the Supreme Court's  
13                  pronouncement in Citizens United that  
14                  independent expenditures cannot be  
15                  constitutionally limited because they  
16                  don't give rise to corruption or the  
17                  appearance of corruption, non-independent.  
18                  In other words, coordinated expenditures  
19                  are not so immunized. And while no court  
20                  has directly considered the federal  
21                  republication provision, the Supreme Court  
22                  has articulated an expansive view of  
23                  coordination in general.

24                  The Court explained in Buckley,

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1           as well, that unlike contributions,  
2           totally independent expenditures may well  
3           provide little assistance to the  
4           candidate's campaign and may even prove  
5           counterproductive.

6           CHAIRPERSON: All right. Just a  
7           moment.

8           I understand that people are  
9           having difficulty hearing. I see a number  
10          of you.

11          And please forgive me for  
12          interrupting.

13          I am -- we don't have electronic  
14          equipment. The only thing that occurs to  
15          me is that we might --

16          I was going to suggest that if  
17          you faced the audience, I think we could  
18          continue to hear you, but --

19          MS. MCALLEN: I could try and  
20          project my voice louder.

21          CHAIRPERSON: Maybe it will be  
22          easier for the audience to hear you.

23          Does anyone have a better  
24          suggestion?

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1                   MS. KAPLAN: Does the podium  
2                   with the microphone behind you work?  
3                   CHAIRPERSON: I'm not sure.  
4                   Would speaking from the podium  
5                   help?

6                   MS. KAPLAN: Maybe, with just  
7                   projecting out this way.

8                   MS. MCALLEN: I'll be happy to  
9                   endeavor to speak louder. I'm almost  
10                  done.

11                  CHAIRPERSON: Well, this isn't  
12                  just you.

13                  MS. MCALLEN: Okay.

14                  CHAIRPERSON: So just work with  
15                  me here. We have our best people on it.  
16                  Hang in there with us.

17                  MS. BECK: In the meantime, I  
18                  have a question. You're a national  
19                  organization. How did you know that the  
20                  Ethics Board was going to have this  
21                  hearing on this subject today?

22                  MS. MCALLEN: My college  
23                  actually, I believe, is associates with  
24                  Mr. Cooke and he told me. We are also

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1           often involved at the State and local  
2           levels.

3           MS. BECK: I know. I'm just  
4           curious how you get involved.

5           MR. COOKE: The campaign legal  
6           center actually helped us write Regulation  
7           2 originally back in 2007.

8           MS. MCALLEN: That's right, yes,  
9           before my time there.

10          CHAIRPERSON: Let's just go with  
11          if people would be willing to speak from  
12          this podium.

13          And would you mind giving the  
14          remainder of your remarks from the podium?  
15          Let's see how that works. And we would  
16          ask you to, you know, project as loud as  
17          you can. Thank you.

18          MS. MCALLEN: All right.

19          The Court explained in Buckley  
20          that unlike contributions, totally  
21          independent expenditures may well provide  
22          little assistance to the candidate's  
23          campaign and could even prove  
24          counterproductive. The Court explained

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1                   further that the absence of coordination  
2                   undermines the value of the expenditure to  
3                   the candidate and alleviates the danger of  
4                   quid pro quo corruption. By contrast, a  
5                   committee's duplication and republication  
6                   of a candidate's campaign material is  
7                   undoubtedly of great assistance to the  
8                   candidate's campaign and runs no risk of  
9                   being counterproductive. If the candidate  
10                  didn't view the materials as valuable to  
11                  her campaign, she wouldn't have produced  
12                  them in the first place.

13                  Turning to the solicitation by a  
14                  candidate for independent expenditures  
15                  provision at proposed Paragraph 1.39(e),  
16                  this provision clarifies that an outside  
17                  group's expenditures are not truly  
18                  independent of a candidate and thus not  
19                  devoid of corruptive potential if the  
20                  candidate is soliciting the very  
21                  contributions that will be used to make  
22                  the expenditure. Placing reasonable  
23                  limits on the degree of cooperation that  
24                  may occur between a candidate and an

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1           ostensibly independent group is a  
2           practical and entirely constitutional way  
3           to demarcate the boundary between  
4           independence and coordination.

5           Furthermore, the Supreme Court  
6           has never held that the expenditure of  
7           funds raised by a candidate to directly  
8           benefit that candidate cannot be regulated  
9           as a coordinated expenditures. Indeed,  
10          the Court has specifically recognized a  
11          serious threat of corruption or its  
12          appearance inherent in the act of  
13          candidate solicitation itself, emphasizing  
14          quote, "the substantial threat of  
15          corruption or its appearance posed by  
16          donations to or at the behest of federal  
17          candidates and officeholders," and  
18          concluding that "the value of the donation  
19          to the candidate or officeholder is  
20          evident from the fact of the solicitation  
21          itself."

22           When a candidate steers  
23          potential contributors to a certain group  
24          or makes direct solicitations on the

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1                   group's behalf, the group's later  
2                   expenditure for the candidate's benefit  
3                   are not independent in any meaningful  
4                   sense. Permitting a candidate to  
5                   participate in, and solicit unlimited  
6                   contributions for independent fundraising  
7                   efforts when the fundraising proceeds will  
8                   be used to benefit that very candidate  
9                   undeniably presents a danger that  
10                  expenditures will be given as a quid pro  
11                  quo for improper commitments from the  
12                  candidate and gives rise to the appearance  
13                  of corruption and furthermore threatens to  
14                  erode public confidence in government.

15                  The approach to defining  
16                  coordination reflected in proposed  
17                  Paragraph 1.39(e) would ensure that a  
18                  donor cannot gain undue influence over a  
19                  candidate by routing funds through another  
20                  person or committee for the candidate's  
21                  direct benefit and thus effectuates the  
22                  City's interest in preventing corruption.

23                  For all of these reasons, I  
24                  respectfully urge the Board to adopt the

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1                   proposed amendments. Thank you for the  
2                   opportunity to speak before you today.

3                   CHAIRPERSON: Thank you, Ms.  
4                   McAllen.

5                   We will now welcome Ellen Kaplan  
6                   for the Committee of Seventy, who I am  
7                   sure is going to project very forcefully  
8                   from the podium.

9                   MS. KAPLAN: Thank you,  
10                  Mr. Chairman. My name is Ellen Mattleman  
11                  Kaplan. I'm the Interim President and CEO  
12                  of the Committee of Seventy. And before I  
13                  start, I want to say that I obviously did  
14                  not coordinate my testimony with the  
15                  proper regulation, so it is Regulation No.  
16                  1, not Regulation No. 2 as I site in my  
17                  testimony, so please make that change.

18                  I'm not going to read it because  
19                  you folks can read what I wrote, but I do  
20                  want to say that I think it's exceedingly  
21                  important that we're talking about this  
22                  today because the Mayor's race is already  
23                  underway.

24                  Actually, when I wrote this this

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1           week, we had one candidate who is already  
2           declared, another announced this morning,  
3           and right before I came over here, I see  
4           that Lynne Abraham now says that she is  
5           going to run. So the declared candidates  
6           or to-be-declared candidates are mounting  
7           and we will see more of them and we will  
8           also see, I predict, our first real  
9           display of outside funding that can not be  
10          limited by our Campaign Finance Law  
11          flowing into Philadelphia.

12           Now, I have in my testimony some  
13          little housekeeping things that I won't go  
14          over, happy to go over it with Staff, but  
15          I do want to talk about coordination  
16          versus non-coordination, which is really  
17          at the heart, to me, of some of the  
18          changes in this proposed Regulation No. 1.

19           Obviously, the Committee of  
20          Seventy shares your desire to make this as  
21          clear as possible because, as we all know,  
22          the reality of "coordination" can be  
23          pretty illusive and in many cases can be  
24          deliberately masqueraded.

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1                   I can remember back during the  
2                   2007 democratic primary for Mayor, a  
3                   campaign aide for representative Bob Brady  
4                   acknowledged advising others on setting up  
5                   independent groups to attack his opponent,  
6                   Tom Knox, who was ahead in the poles at  
7                   that time, and Congressman Brady said that  
8                   he didn't know of that conduct, he didn't  
9                   condone that conduct, the aide ended up  
10                  quitting. But if others had used that  
11                  campaign aide's advise, and of course, that  
12                  advice very well can contain information  
13                  that only the Brady campaign may have been  
14                  privy to, it would be hard to argue that  
15                  this was not a coordinated expenditure.

16                  Now, Section 1.41(c), and I  
17                  didn't mention a page number because DEPART  
18                  sometimes the page numbers get a little RE  
19                  off, but if -- so Michael, maybe you can  
20                  point people to around to what page that  
21                  is --

22                  MR. COOKE: Page 19.

23                  MS. KAPLAN: Okay. Thank you.

24                  It says that, "an expenditure

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1           will not be considered coordinated merely  
2           because the person making the expenditure  
3           and the candidate's campaign have an agent  
4           in common." And according to the  
5           regulation definition of "agent," this  
6           could include paid campaign strategists,  
7           polling firms and many other people and  
8           outfits that typically work with  
9           campaigns. While a shared agent, in a  
10          point of view of the Committee of Seventy,  
11          does not automatically confer a  
12          presumption of coordination, it certainly  
13          more than raises eyebrows than some of the  
14          other examples that are sited in this  
15          Section 1.41, which is where a person  
16          making the expenditure comes in and  
17          interviews a candidate or endorses a  
18          candidate, gets the candidate's bio,  
19          position paper or other material from the  
20          candidate's campaign or even invites the  
21          candidate to a meeting in front of that  
22          person's members, employees, or  
23          shareholders.  
24           And as we all know, it is not

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1                   uncommon for employees of elected  
2                   officials to join the ranks of campaign  
3                   firms and polling outfits after they leave  
4                   the office of that elected official, and  
5                   then those same firms are now working for  
6                   the elected official. So there is ample  
7                   opportunity for coordination and certainly  
8                   the appearance of coordination.

9                   So for this reason in the case  
10                  of a shared agent, the Committee of  
11                  Seventy recommends putting the burden on  
12                  the person or political committee making  
13                  the expenditure, as well as the  
14                  candidate's campaign, to disprove  
15                  coordination. And if they can't disprove  
16                  it, those expenditures should absolutely  
17                  be considered, as you say, "in-kind  
18                  contributions" that count against the  
19                  contribution limits.

20                  Now, I've attached to this  
21                  testimony, and I'll be happy to give it to  
22                  anyone else, factors that were adopted at  
23                  the beginning of 2014 by the Maryland  
24                  State Board of Elections that they use in

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1                   determining whether coordination has  
2                   occurred. I would urge this Board and  
3                   Staff to take a look at these and consider  
4                   incorporating them into Regulation No. 1  
5                   so that you can send a very strong message  
6                   in advance of this 2015 campaign that this  
7                   Board is going to look very, very  
8                   seriously when there are complaints of  
9                   coordination.

10                  Another thing that I also wanted  
11                  to mention is because, as we all know, the  
12                  Supreme Court took up the case of the  
13                  Cozen/Brady matter, I think it was  
14                  September 10th. Obviously, there may be  
15                  something in the Court's ruling when it  
16                  comes down that may impact this  
17                  regulation. And so obviously I'm sure  
18                  this Board will be looking out for that  
19                  and there may be just something in that  
20                  Court's ruling that impact this  
21                  regulation, even though I understand that  
22                  the Cozen/Brady situation occurred when  
23                  the 2007 version of the Campaign Finance  
24                  Law was in place.

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1                   I just would ask for your  
2 indulgence in just making some brief other  
3 comments, and that is that there are other  
4 issues that aren't addressed in this  
5 regulation but really are very closely  
6 related to the continued integrity of the  
7 Campaign Finance Law. Now, I understand,  
8 and we went through this many, many times  
9 when we were discussing the gift's rule  
10 last fall, that this Board does not have  
11 the power to make law, they interpret the  
12 law. However, as I pointed out during  
13 those debates that we had on a number  
14 occasions in past years, either in your  
15 annual reports and certainly you did it  
16 with respects to the gift's rule, you have  
17 recommended legislative action or changes  
18 to the Home Rule Charter when you believe  
19 they would strengthen the City's laws.  
20 I just want to quickly mention four.  
21                   One has to do with the doubling  
22 provisions. As it stands now, if a  
23 candidate triggers the doubling provision  
24 during the primary, all the candidates in

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1           the same race, including the person who  
2           triggered the doubling provision, are  
3           permitted to accept doubling contributions  
4           and it continues even if that candidate  
5           loses in the primary. I would urge this  
6           Board to call on City Council to change  
7           that so that the doubling provision should  
8           apply to the general election only if the  
9           person who triggered it survives the  
10          primary. Because the current rule gives  
11          the primary winner, which we all know in  
12          this town is usually the democrat, an  
13          inordinate funding advantage over his or  
14          her opponent because donors are naturally  
15          going to give to the person who they know  
16          is very likely to win in the November  
17          election.

18           The second thing has to do with  
19          running for two elective offices.  
20          Candidates are permitted now to run for  
21          two elective city offices, including  
22          Council-At-Large and a District Council  
23          seat. As a matter of policy, and not  
24          withstanding the fact that this regulation

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1           does address how the finances of two  
2           simultaneous campaigns can be dealt with,  
3           it's not right. They can't serve two  
4           offices at once, they should not be able  
5           to do that.

6                         Third, and this Board has  
7           commented on this before, I urge you to  
8           ask Council to close the loophole that  
9           permits incumbents to accept unlimited  
10          contributions if they have not declared  
11          their candidacies. A bill to close this  
12          loophole was introduced by Councilman  
13          Kenney in February, 2013 after it was  
14          revealed that then Councilman Bill Green  
15          accepted \$30,000.00 from a beverage mogul,  
16          which was entirely proper under the  
17          Campaign Finance Law because he was not a  
18          declared candidate. The bill has been  
19          sitting without action in Council's Law  
20          and Government Committee. We urge this  
21          Board of Ethics to call on Council and get  
22          it out of Committee and enact it to close  
23          this loophole before we get into the heart  
24          of the 2015 campaign.

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1                           And lastly, disclosures of  
2                           independent expenditures. City Council  
3                           has already declared its concerns about  
4                           the Citizens United decision and its  
5                           potential impact on the City of  
6                           Philadelphia. Other cities and states  
7                           have taken steps to tighten disclosure  
8                           requirements and Philadelphia should do  
9                           the same thing. Also, in February of  
10                          2013, Councilman Green introduced a bill  
11                          to mandate disclosures of donors by  
12                          independent political committees who  
13                          produce campaign adds, either for or  
14                          against candidates for office. Again,  
15                          like the other bill to close the loophole,  
16                          it's sitting in Law and Government  
17                          Committee, Council has not acted on it,  
18                          and we urge this Board of Ethics to call  
19                          on them to enact it.

20                          I'm sure you've got some  
21                          recommendations of your own and, again,  
22                          it's a perfect opportunity to make them to  
23                          City Council and it may take a long time  
24                          for all of us to get this law right, but

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1                   the Committee of Seventy pledges to work  
2                   with you, with City Council, with the  
3                   Mayor's office to make sure that we do.  
4                   Thanks so much.

5                   CHAIRPERSON: Thank you,  
6                   Ms. Kaplan.

7                   We will now recognize James  
8                   Browning for Common Cause PA.

9                   MR. BROWNING: Thank you,  
10                  Mr. Chairman, members of the Board, for  
11                  this chance to testify today. I'm James  
12                  Browning, Regional Director of State 78  
13                  Operations for Common Cause and am based 027  
14                  in Bala Cynwyd, but I oversee our  
15                  operations in our state, in the  
16                  Mid-Atlantic and the Mid-West, from state  
17                  level work on down to county and municipal  
18                  level work. So with all of that going on, 14  
19                  we are really excited by the Board being 14  
20                  proactive on the amendment and in 1.41  
21                  here and solving this before it becomes an 14  
22                  even bigger problem or an even bigger 14  
23                  issue. 14  
24                  I won't repeat the arguments of 14

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1                   the previous two speakers. We certainly  
2                   agree about the dangers of coordinated  
3                   expenditures that effectively serve as  
4                   campaign contributions. We need to  
5                   recognize that reality. I just want to  
6                   share some of our experience from what we  
7                   see hearing from our members and  
8                   candidates who have to live and operate in  
9                   this world.

10                  One of the difficult things  
11                  about Citizens United is that there are  
12                  many, many examples of showing that  
13                  expenditures that a campaign claims are  
14                  independent are, in fact, not. There is  
15                  coordination. But the fact is, and  
16                  everyone who looks at campaign finance  
17                  records knows this, this often cannot be  
18                  completely proven until it's too late,  
19                  which is to say until after an election.  
20                  There is not an ability to connect those  
21                  dots until after an election and that is  
22                  too late and it's no good and the voters  
23                  need to know -- they need to be able to  
24                  connect those dots beforehand and that's

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1           why this amendment is so important and  
2           would help so much.

3                   I just really feel compelled to  
4           say for the record, here we are on  
5           Constitution Day and we have the  
6           Constitution which has been interpreted by  
7           the U.S. Supreme Court to mean that money  
8           is speech and corporations are people.

9                   Now, the Common Cause perspective on this  
10          is we hear all the time from our members  
11          that Citizens United is a national crisis  
12          with local solutions and this is really a  
13          great forward-thinking local solution and  
14          I hope that you get a favorable vote on  
15          this. Thank you.

16                   CHAIRPERSON: Thank you, Mr.  
17                   Browning.

18                   We will next recognize Mr.  
19                   Daniel Weiner for the Brennan Center. I  
20                   hope I pronounced that correctly.

21                   MR. WEINER: Yes.

22                   Good afternoon, Mr. Chairman,  
23                   members of the Board and everyone else  
24                   here. My name is Dan Weiner. I work in

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1                   the Democracy Program at the Brennan  
2                   Center for Justice at New York University  
3                   School of Law. The Brennan Center is a  
4                   law and policy institute which is  
5                   dedicated to improving our systems of  
6                   democracy in the United States. Campaign  
7                   finance has been one of our signature  
8                   issues for our entire existence, which is  
9                   now almost 20 years, and we have a long  
10                  track record of working with common sense  
11                  reforms to protect both the integrity of  
12                  our democracy and to work for the  
13                  empowerment of ordinary voters.

14                  With that background, I want to  
15                  start just by saying that we applaud the  
16                  Board for taking this step today. We  
17                  think that coordination is a vitally  
18                  important issue in the wake of Citizens  
19                  United. Coordination laws have been  
20                  around, as previous testimony has  
21                  indicated, since the Supreme Court's  
22                  decision in Buckley v. Valeo. They were a  
23                  part of the original federal law that was  
24                  being reviewed in that case, but they

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1                   really are now more important than ever.  
2                   Outside spending in elections has  
3                   skyrocketed since Citizens United. It  
4                   quadrupled between the 2006 and 2010  
5                   midterm elections and increased by more  
6                   than five times in Pennsylvania in the  
7                   Senate race. It tripled in the  
8                   presidential election, and these trends  
9                   are going to be continuing.

10                  We would also note that an  
11                  increasing amount of outside spending is  
12                  going to fund, but is spent by single  
13                  candidate outside groups, which  
14                  essentially functions as shadow campaigns  
15                  and allows maxed out donors who can no  
16                  longer give as much as they want in the  
17                  limits to just direct those same  
18                  contributions to a group devoted to  
19                  electing their candidate of choice.

20                  And finally, increasing amounts  
21                  of this outside spending is dark. It  
22                  not subject to disclosure and this has  
23                  been a huge problem at the federal level  
24                  and is, from my understanding although I

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1           am based in New York and not in  
2           Pennsylvania, but from my understanding is  
3           also an increasing problem in Pennsylvania  
4           elections.

5           Coordination is really --  
6           coordination laws really are the principle  
7           tool after Citizens United for addressing  
8           these problems. And as other testimony  
9           has indicated for all of those reasons, we  
10          believe that these laws are  
11          constitutional.

12          I'm not going to -- so in our  
13          written testimony, we address some  
14          specific concerns that we had about  
15          individual provisions. And I'm not going  
16          to spend a huge amount of time on that,  
17          but I do want to focus briefly on the  
18          candidate fund raising provision. As we  
19          indicate in our testimony, we support this  
20          provision -- just so everyone can follow  
21          along, I'm focusing on the addition in new  
22          Section 1.39(e). We support this  
23          provision in principle. We think it's an  
24          excellent proposal. As Ms. McAllen from

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1                   the Campaign Legal Center indicated, we  
2                   have every reason to believe it is  
3                   constitutional. The only reason that the  
4                   court hasn't opined, and the courts have  
5                   generally not opined on these types of  
6                   provisions, is that the phenomenon of  
7                   candidates raising funds for groups that  
8                   can raise and spend unlimited money is so  
9                   new, courts really haven't had the chance  
10                  to address this issue. But you can  
11                  already see other jurisdictions adopting  
12                  similar provisions and we think they are a  
13                  good idea.

14                  We are concerned about the  
15                  specific language proposed here because  
16                  given that money is fungible, we have a  
17                  concern that this could be interpreted to  
18                  allow candidates to raise funds unremarked  
19                  for other purposes by the outside group  
20                  and then the outside group could just use  
21                  quote, "other money" raised from different  
22                  sources to make contributions for the  
23                  candidate. We feel strongly that the  
24                  Board should clarify this regulation to

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1           make clear that any candidate fundraising  
2           for an outside group gives rise to a  
3           finding of coordination of that group's --  
4           with respect to that groups subsequent  
5           expenditures in the candidate's race. We  
6           proposed language in our written testimony  
7           to that affect.

8           And I -- you know, speaking on a  
9           personal note, I was formally Senior  
10          Council to a Commissioner on the Federal  
11          Election Commission and circumvention of  
12          these provisions can be a major, major  
13          challenge and we urge you to be very  
14          careful in crafting your regulatory  
15          language to make your intent absolutely  
16          clear to avoid circumvention.

17          We also embrace the proposed  
18          changes in Section 1.40. We had a couple  
19          minor concerns related to their clarity  
20          set forth in our written testimony. I  
21          won't go into those here unless you have  
22          questions.

23          And finally, we note in the  
24          regulation as a whole that the definition

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1                   of "person" and the word "person" is used  
2                   in a number of provisions, does not  
3                   include political committees and also is  
4                   supposedly mentions only business  
5                   organizations, entities that are business  
6                   organizations or it could be read that  
7                   way. We think the Board's intent with  
8                   that provision, when read in context, is  
9                   clear. Nevertheless, we would urge you to  
10                  consider revising the definition of  
11                  "person" to make it clear that it does  
12                  include political committees and then you  
13                  may want to make some conforming edits to  
14                  the same. But again, that is -- we do not  
15                  believe that there could be reasonable  
16                  confusion about your intent, but for  
17                  avoidance of doubt, we think that that  
18                  would be a good technical and conforming  
19                  editing.

20                  So unless the Board has any  
21                  questions, that's all I have.

22                  CHAIRPERSON: Thank you,  
23                  Mr. Weiner.

24                  We will now welcome Mr. Charles

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1                   Goodwin.

2                   MR. GOODWIN: I would first like  
3                   to say good afternoon to Chairman and the  
4                   Board. My name is Charles Goodwin and I'm  
5                   speaking, actually, as a private citizen  
6                   and a resident of this City. I am a  
7                   lawyer and I do have some representation  
8                   of elected officials, but I am also an  
9                   anti-trust litigator and that's going to  
10                  become relevant in a little bit.

11                  I'd like to address both the  
12                  republication and the pre-candidacy  
13                  proposed amendments and I'm going to -- I  
14                  submitted a letter which I assume you all  
15                  have gotten. I'm going to -- for reasons  
16                  that will be apparent also in a little  
17                  bit, I'm going to address pre-candidacy  
18                  first, here. And as Ms. Caldwell says or  
19                  said in her testimony, it's a defect in  
20                  the draft that it looks at a candidate's  
21                  purpose in making the expenditure. A  
22                  candidate's purpose or a campaign's  
23                  purpose is opaque to the outside. We  
24                  can't look into a politician's heart, if

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1                   they have one, or into their head. What  
2                   we need -- or the rule should be revised.  
3                   I have proposed some provisions in my  
4                   letter. It's some objective criteria that  
5                   can be deployed that can determine when a  
6                   pre-candidacy expenditure is dedicated to  
7                   the covered election the City campaign  
8                   candidate transitions into. The things  
9                   that I proposed were expenses on the  
10                  advisability of the City campaign,  
11                  reaching people outside an incumbent's  
12                  district in another area, and expenditures  
13                  that would just not be germane to the  
14                  prior office. I would certainly -- there  
15                  are many brighter people and more  
16                  experienced people in this room than I am.  
17                  I think that the Board would probably do  
18                  better developing those factors more.

19                   Turning to republication, I  
20                  first want to say this: The proposed  
21                  amendments serve an extremely important,  
22                  if not noble, purpose. Preventing the  
23                  appearance of corruption, if not actual  
24                  corruption, the appearance of favoritism,

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1                   reducing the raw influence of wealth on  
2                   politics, preventing politicians from  
3                   buying their way out of bad governments,  
4                   making elections about issues rather than  
5                   who can raise the most money, it's an  
6                   extremely important amendment to the  
7                   proposed regulation. The legislative  
8                   purpose is overwhelming. But for better  
9                   or for worse, five justices on our Supreme  
10                  Court have decided the independent  
11                  expenditure of money to influence the  
12                  outcome of elections is protected free  
13                  speech and we have to live with that at  
14                  least for the foreseeable future. So  
15                  therefore, government just has, in  
16                  essence, very limited power to regulate  
17                  independent expenditure, to regulate free  
18                  speech. The problem with the current  
19                  draft, both as Mr. Cooke proposed to  
20                  amendment orally here earlier and as  
21                  originally drafted, is that it could well  
22                  impede protected speech, truly  
23                  independent, uncoordinated speech, however  
24                  much it is babbitting a campaign. The

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1 consequence of that is that there is  
2 likely going to be a successful court  
3 challenge to the current draft and it will  
4 be struck down. Equally to the extent  
5 that one has the belief that independent  
6 expenditure is a good thing, that outside  
7 groups pushing their agendas in elections  
8 is a good thing, it threatens to chill  
9 those outside groups and that is not  
10 something I think we want to do overall  
11 because those outside groups are not just  
12 the Coke Brothers, it's also the Teacher's  
13 Union, it's also just ordinary people on  
14 the street.

8  
C  
030

15 So what the Board really can  
16 regulate is the coordination of the  
17 so-called independent expenditure -- or  
18 the coordination between the independent  
19 expenditure and the campaign. The Board  
20 can regulate that. That is clear in the  
21 law. The law actually has extensive  
22 experience with finding unlawfully coordinated  
23 conduct that proports to be  
24 independent, and this is where anti-trust

DEPARTMENT OF RECONSTRUCTION  
BOARD OF TRUSTS  
AT 8:12

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1 law, of all things, actually becomes  
2 relevant.

3 Anti-trust law forbids price  
4 fixing, coordinated conduct to chart,  
5 raise and elevate prices for goods and  
6 services. But, you know, price fixing  
7 agreements are seldom reduced to writing.  
8 They are really recorded by video and most  
9 of the time people simply lie about their  
10 existence -- I hate to say that -- and  
11 claim that they never had an agreement.  
12 So the law is developed knowing that the  
13 parties are going to deny what's going on  
14 and has developed a way around this. The  
15 doctrine is called Parallel Conduct, which  
16 is prices moving together, the competitors  
17 all charge the same price and they all go  
18 up at the same time. And then with the  
19 Parallel Conduct, the law looks at Plus  
20 Factors. Getting down into the weeds,  
21 that's like a strong motive to conspire,  
22 frequent contacts among the competitors,  
23 so forth and so on.  
24 Here, the Parallel Conduct by

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1                   analogy is the act of republication of a  
2                   campaign material. So the question is can  
3                   we derive Plus Factors or other factors to  
4                   consider going with the act of  
5                   republication that would take an act of  
6                   republication and label it a product of  
7                   coordination. And, you know, in my  
8                   lengthy letter I submitted a very long  
9                   text, but factors like timing, the  
10                  substantiality of the copy, the  
11                  transformation of the speech from campaign  
12                  to independent group, the steps the  
13                  candidate took to prevent copying, and  
14                  also the association between the campaign  
15                  and the independent group through agents,  
16                  consultants, and so on. Ms. Kaplan  
17                  referred to the Maryland factors in her  
18                  written submission. Those would also be  
19                  worthy things to consider in developing a  
20                  list of factors that would go into that  
21                  judgment. And I believe I actually  
22                  omitted the candidate's solicitation of  
23                  the outside money. That's certainly  
24                  something that needs to be considered.

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1                   The other point I wish to make  
2                   here is there should be a safe harbor.  
3                   Candidates can't control truly  
4                   uncoordinated speech. And since the text  
5                   of the rule could reach truly  
6                   uncoordinated, unconnected speech, there  
7                   is no safe harbor in the rule for a  
8                   candidate to protect themselves against  
9                   that. In the letter I submitted, I  
10                  propose the use of the copyright laws and  
11                  the procedures under that as a way that  
12                  the candidate could control that  
13                  disclosure.

14                  I will close just by saying  
15                  these are, you know, very important  
16                  amendments to the regulation and they  
17                  should go through, but they need some  
18                  tweaking to make them work better for  
19                  everyone. And if the Board has no further  
20                  questions, I will step down.

21                  CHAIRPERSON: Thank you,  
22                  Mr. Goodwin.

23                  We will now be please to welcome  
24                  Mr. Adam Bonin.

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1                   MR. BONIN: Thank you, Chairman  
2                   Reed, members of the Board. It's always a  
3                   pleasure to be able to testify before the  
4                   Board.

5                   I am, as members of the Board  
6                   know, an attorney based in Philadelphia  
7                   who frequently represents clients in  
8                   election law matters, including both  
9                   candidates for office, potential  
10                  candidates for office, as well as  
11                  political committees and outside groups.  
12                  So in effect, I am, you know -- in      78  
13                  addition to Mr. Goodwin, I am speaking      W0  
14                  behalf of the regulated community here,      1  
15                  although not on behalf of any particular  
16                  client right now. None of them have  
17                  vented. These are really just my own  
18                  thoughts on this.

19                  I do have two prefatory things I  
20                  want to say before I get into going over  
21                  some of my written testimony and they are  
22                  both in response to some of the  
23                  suggestions of the Committee of Seventy,  
24                  which I just want to remark upon myself

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2014.CIT.8.12

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1                   because if I don't do it at the top here,  
2                   I'm going to forget it.

3                   Number one, as to modifications  
4                   to the shared agent rule 1.41(c), the idea  
5                   of shifting the burden to the entities  
6                   which share an agent to disprove  
7                   coordination is something which, as an  
8                   attorney, frightens me. As I said, I  
9                   represent some candidates. I represent  
10                  some outside groups. I'm not going to  
11                  enable them to break the law. I'm going  
12                  to follow the law completely. But the  
13                  idea that, you know, that these groups  
14                  acting independently from each other and  
15                  not flowing things through me, that I  
16                  would somehow have to prove that I didn't  
17                  coordinate things, I don't know how I do  
18                  that without violating the attorney/client  
19                  privilege and I don't know how I do that.  
20                  So that would trouble me, deeply.

21                  The other suggestion that I just  
22                  want to comment on very briefly is on  
23                  changing the doubling rules to reflecting  
24                  pre and postprimary election versus

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1 general election rule. I think it's a  
2 very interesting idea, but I think that if  
3 we're going to be shifting to a campaign  
4 finance system that looks at the primary  
5 and general elections as separate  
6 elections, then this is something that  
7 should be done comprehensively through  
8 legislation to effect every aspect of the  
9 campaign finance rules in shifting from  
10 the current yearly system to a primary and  
11 general election system. I don't quite  
12 understand how it would make sense to make  
13 this modification only for the doubling  
14 provisions and not overall.

15 Okay. Back to the business at  
16 hand. It is Constitution Day today and so  
17 I feel kind of odd about the fact that I'm  
18 not going to be talking about the  
19 Constitution, at all. Many of the  
20 previous speakers have spoken about it.  
21 They have assured the Board that the  
22 proposed regulations are constitutional.  
23 I agree with them that they're  
24 constitutional. I also think that they

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1           are dumb. I think that the way that these  
2           regulations are drafted are a no hold  
3           effort that does not go after the problem  
4           to the extent that there is a problem in  
5           the right way.

6           It is bizarre that we're going  
7           to have a situation in which the legal  
8           treatment of a particular form of  
9           political speech is going to depend on the  
10          perceived intent behind that speech,  
11          whether the speaker intended for it to be  
12          in support of a candidate, in opposition  
13          to a candidate, or was neutral towards  
14          that candidate. And the fact that the way  
15          that the regulation was written is any  
16          speech that does not advocate for the  
17          candidate's defeat is considered to be an  
18          in-kind contribution and is considered to  
19          be coordination.

20           What does this do? This means  
21          that any time that a public policy  
22          organization wants to reproduce parts of  
23          campaign's policy papers or even grabbing  
24          candidate's photographs off of a website

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1           to do their own report cards on  
2           candidates, to do their own evaluation of  
3           a candidate's position, that's  
4           coordination under these rules. You know,  
5           if social media activists want to remix  
6           candidate's clips for amusement, for  
7           entertainment or, you know, for purposes  
8           of enlightenment, you know, making their  
9           own messages out of a candidate's  
10          materials, that's covered under these  
11          rules as being a republication, as being  
12          an in-kind contribution and potentially  
13          being illegal. What about, you know, if  
14          you cut and paste -- it's been called, you  
15          know, fisking back in the day of the  
16          internet, you know, taking apart a  
17          statement, just going line-by-line reading  
18          of it. You know, some of it is  
19          supportive, some of it is in opposition.  
20          I don't know how that kind of remixing,  
21          that kind of transposing, that kind of  
22          republication, you know, is covered by  
23          this regulation and it shouldn't be.  
24           In deed, it gets worse when

24 OCT 2013  
AM 8:52  
DEPARTMENT OF RECORDS

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1               you're talking about 501(c) (3) and  
2               501(c) (4) organizations. You know, when  
3               these organizations are doing any of this,  
4               even if it's, as I said before, grabbing  
5               candidate's pictures off of their websites  
6               to put on their websites to illustrate  
7               some point, that's not only a  
8               republication of a campaign's  
9               communications, but because they're  
10               corporations it's an illegal republication  
11               and that is a real problem.

12               You know, the biggest part of  
13               that problem is something that does not  
14               exist in these regulations which does  
15               exist in the Parallel Federal Regulations,  
16               which is a Fair Use Exception. Under the  
17               Parallel Federal Regulation, it says,  
18               "When the campaign material used consists  
19               of a brief quote of materials that  
20               demonstrates a candidate's position as  
21               part of a person's expression of it's own  
22               views, that's not a republication." So if  
23               you're going to go down this route, if  
24               you're going to do any part of 1.40, I

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1           would urge the Board to consider that as  
2           an additional exception to these rules.

3                 There is also an exception in  
4           these rules for what the news media does.  
5           That term isn't defined in these  
6           regulations at all. It isn't defined as a  
7           matter of Pennsylvania or Philadelphia  
8           campaign finance law at all. I'm going to  
9           get into that in a minute because it's an  
10          important exception, it's a necessary  
11          exception, but if you're going to do it,  
12          you actually have to say what it means.

13               I said before that the FEC has  
14          its own regulations on this stuff, but the  
15          FEC has refused to enforce it against the  
16          kind of remixing of materials that I  
17          believe is the intent behind these  
18          regulations as evidenced by the example  
19          given at the end, you know, this so-called  
20          "McConnelling" stuff, you know, and what  
21          happened, for example, in the 13th  
22          congressional district. The FEC has taken  
23          a -- you know, has divided on this and has  
24          been unable to -- you know, has declined

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1                   to enforce against similar provisions.

2                   And what, you know, three of the

3                   commissioners have said there, and I go

4                   into this in great deal in my written

5                   testimony, is when you're using snippets,

6                   when you're using B-roll, as long as

7                   you're not repeating, you know, the

8                   content, the format and the overall

9                   message of the candidate's original

10                  speech, then that's not something that

11                  they are interested in pursuing. The

12                  question is whether the independent

13                  group's message is distinct from the

14                  candidate's message or whether it simply

15                  repeats verbatim the candidate's message.

16                  And, you know, these three commissioners

17                  have held that the candidate's add has not

18                  been republished even if the campaign's

19                  footage makes up a third of the images in

20                  the independent expenditure in one of

21                  these cases so long as the outside group

22                  or Super PAC has added its own text,

23                  graphic, audio or narration causing the

24                  add to become the outside group's own

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1 message.

2                   The purpose behind their rules,  
3                   these commissioners have said, is to  
4                   capture situations in which third parties  
5                   subsidize a candidate's campaign by  
6                   expanding the distribution of the  
7                   communications whose content, format and  
8                   overall message are devised by the  
9                   candidate. But that's not what happens  
10                  when an outside group takes some materials  
11                  and makes its own message out of it.

12                  Now, look. It is possible, and  
13                  certainly even likely, that the Staff ~~of~~<sup>to</sup>  
14                  the Board of Ethics is going to exercise ~~to~~<sup>to</sup>  
15                  prosecutorial discretion and not go after  
16                  the majority of the types of cases that  
17                  I've cited. They're not going to go after  
18                  the Committee of Seventy if they happen to  
19                  use, you know, pictures of the candidate  
20                  websites and, you know, pictures from  
21                  their policy proposals in order to  
22                  illustrate where the candidates stand ~~on~~<sup>to</sup>  
23                  issues pertinent to the committee. But  
24                  that's not to say that the way to let this

DEPARTMENT OF ECONOMIC  
21  
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23  
24  
AM 8:14

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1           sit is through discretion. The way to  
2        resolve this properly is by writing  
3        regulations in the first place that are  
4        narrow enough to only capture the types of  
5        activities that are clearly worthy of  
6        regulation and leave everyone else alone.

7           And I just don't believe -- I  
8        mean, the regulations, as they stand,  
9        already capture actual republication.  
10       They capture, you know, if the candidate  
11       has a flyer and you Xerox another thousand  
12       of them yourself and you mail it out  
13       there. That's already covered by the  
14       rules. I'm not quite sure that there is  
15       any real purpose in going forward and I  
16       would further say that you run the real  
17       risk of deterring the kind of social media  
18       activism that is at the heart of what can  
19       displace the rule of unmasked wealth in  
20       elections. This is actually an argument  
21       that I've been having with the Campaign  
22       Legal Center for almost a decade now,  
23       going back to 2005 when the Federal  
24       Election Commission first considered

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1 regulation of the internet. And with all  
2 due respect to my friends and frequent  
3 allies in the Campaign Finance Reform  
4 community, you know, the best thing to do  
5 in a lot of these cases is to leave the  
6 internet alone. Leave remixing alone.  
7 Enable social media activists to use the  
8 materials that are out there to make their  
9 own messages, to make powerful messages  
10 that go viral by taking the bits and  
11 pieces of existing culture -- you know,  
12 something that happened, you know -- you  
13 can go back to Walt Disney's first  
14 cartoon, Steamboat Willie, which was a  
15 parody of a Buster Keaton short. Let's  
16 enable that kind of remixing rather than  
17 scare people away from doing that.

18 That was point one. Point two  
19 is the media exception. There is a  
20 specific exception within the  
21 republication rules where there's a quote,  
22 "What the news media does." These  
23 regulations don't define what the news  
24 media is and in general under regulation

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1           1.11 there is no exception for what the  
2           news media does. This is an important  
3           thing that's worth adding.

4           You know, when the Philadelphia  
5           Inquirer, which is a corporation, runs an  
6           endorsement of a candidate, runs an  
7           editorial endorsing a candidate and even  
8           encourages people to raise money on behalf  
9           of that candidate, that's a corporation  
10          spending its resources to make an in-kind  
11          contribution on behalf of that candidate.  
12          Strictly speaking under these regulations,  
13          that remains against the law. It  
14          shouldn't be. It's crazy that it would  
15          be. We need protections for both the  
16          professional media, as well as independent  
17          journalists who are involved in blogging  
18          and social media activism to know that  
19          their work isn't going to be categorized  
20          as illegal, whether they work for the  
21          established press or whether it's the  
22          stereotyped blogger in pajamas sitting at  
23          home. There is -- you know, there are  
24          federal regulations that could be looked

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1           at as guides to this. It's 11 CFR 100.73,  
2           which were expanded in 2006 to include  
3           online media and I would encourage the  
4           Board to look into that as something worth  
5           adding here. If you're going to include  
6           an exception for the news media, at some  
7           point we need to define what it is.

8           The last thing I did want to  
9           talk about is the doubling provisions.  
10          Just very briefly, and I just have a  
11          paragraph on this in my comments. If  
12          you're going to allow for doubling for a  
13          candidate's principle committee when ~~and~~  
14          ~~opponent has spent more than \$250,000.~~  
15          ~~worth of their resources, it makes sense~~  
16          to also allow that doubling for all the  
17          candidate's other potential committees, a  
18          litigation fund committee, if that  
19          self-funding candidate also employs his/her  
20          wealth, to try to knock that candidate  
21          out of a race, as well as a post-candidacy  
22          debt resolution. Again, if you're running  
23          against a self-funder, you may end up  
24          having to run up greater expenses than you

DEPARTMENT OF ECONOMIC  
DEVELOPMENT

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1           would, otherwise. So if you're going to  
2           be doubling one committee, you might as  
3           well double them all.

4                         And the last thing that I would  
5           just like to say, and this would probably  
6           require irregulatory process, is that I --  
7           you know, I wish that the Board's rules  
8           allowed you to ask questions during these  
9           hearings. There is a lot of value to be  
10          gained through colloquy as we've seen over  
11          the years here, you know? And whether the  
12          Board wants to pursue that through open  
13          session during its regular meeting which  
14          follows this hearing or otherwise, as long  
15          as we're all here we should have a broader  
16          conversation about this as opposed to each  
17          of us speaking and the Board remaining  
18          silent. I think a better regulatory  
19          process can happen that way.

20                         With that, I'll conclude my  
21          remarks.

22                         CHAIRPERSON: Thank you,  
23                         Mr. Browning.

24                         Yes?

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1                   MR. GOODWIN: I know I have  
2                   spoken too much already today, but to  
3                   follow up on Mr. Bonin's comments about  
4                   prosecutorial discretion, I think the  
5                   Board should take note that Section  
6                   20-1005 of the Philadelphia Code  
7                   authorizes any private citizen of this  
8                   city or resident of this city to bring an  
9                   enforcement action of fee shifting in  
10                  favor of the plaintiffs only.

11                  CHAIRPERSON: Okay.

12                  MR. GOODWIN: So while  
13                  prosecutorial discretion would work, the  
14                  contention fee lawyer in me sees  
15                  opportunities.

16                  CHAIRPERSON: Okay. Thank you.  
17                  Are there any other witnesses?  
18                  Hearing nothing further, we're  
19                  going to close the public hearing. I  
20                  thank everyone for attending.

21                  (Hearing concluded at 2:15 p.m.)

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

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3           I, ASHLEY L. BRADY, a Certified  
4         Professional Reporter and Notary Public  
5         for the Commonwealth of Pennsylvania, do  
6         hereby certify that the foregoing is a  
7         true and accurate transcript of the  
8         stenographic notes taken by me in the  
9         aforementioned matter.

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11           - - -

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21         DATED:

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23

24

ASHLEY L. BRADY

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CITY OF PHILADELPHIA  
BOARD OF ETHICS

MEMORANDUM

TO: Department of Records  
Attn: Lillie Lawrence  
*MN by END*

FROM: Maya Nayak, General Counsel

DATE: July 17, 2014

SUBJECT: Board of Ethics Regulation 1 ("Campaign Finance")

782/59

2014 JULY 17 DEPARTMENT OF RECORDS 783040  
783039 1:12 PM 2014  
FOR APPROVAL

At a public meeting on July 16, 2014, the Board of Ethics voted to approve<sup>for</sup> public comment the proposed amendments to Regulation 1 ("Campaign Finance") that are attached. In accordance with Section 8-407 of the Home Rule Charter, the proposed amendments have been submitted to the Law Department, which has given approval as reflected in the attached Law Department memo. I am forwarding the proposed amendments to Regulation 1 to you for advertising and public inspection.

The Board has already scheduled a public hearing on these proposed amendments, so the newspaper legal notice of these proposed amendments should also announce a public hearing to be held on September 17, 2014 at 1pm at this location:

Philadelphia Board of Ethics  
Room #18-020  
One Parkway Building,  
1515 Arch Street, 18<sup>th</sup> floor  
Philadelphia, PA 19102

DEPARTMENT OF RECORDS  
2014 JULY 17 1:12 PM 2014  
FOR APPROVAL

Please let me know if you have any questions. Thank you for your assistance with this matter.

Enclosures (Law Dept. approval memo; Reg. 1 approved for public comment)

cc: Martha Johnston, Senior Attorney (via email)

CITY OF PHILADELPHIA  
782160  
LAW DEPARTMENT

DEPARTMENT OF RECORDS  
2014 JUL 17 PM 12:25

MEMORANDUM

DATE: July 17, 2014

**TO:** Michael H. Reed, Chair, Board of Ethics  
**FROM:** Martha Johnston, Senior Attorney/MJ  
**SUBJECT:** Ethics Board Regulation No. 1 – Campaign Finance

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I have reviewed the Philadelphia Board of Ethics' proposed amendment to Ethics Board Regulation No. 1, and find it to be legal, within the Board's authority, and in proper form. Such approval does not indicate agreement or disagreement with the Board's interpretation and administration of ethics rules under the Philadelphia Home Rule Charter or The Philadelphia Code, which is the exclusive role of the Board pursuant to Section 4-1100 of the Charter.

In accordance with Section 8-407(a) of the Home Rule Charter, you may now forward the proposed Regulation to the Department of Records where it will be made available for public inspection.

Attachment

Cc: Shane Creamer, Executive Director  
Michael J. Cooke, Esq., Director of Enforcement

**PROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT**  
**POSTING BY BOARD AT JULY 16, 2014 MEETING**

**PHILADELPHIA BOARD OF ETHICS**  
**REGULATION NO. 1**  
**CAMPAIGN FINANCE**

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DEPARTMENT OF ETHICS  
2014 JULY 17 12:25

782161

FROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT  
POSTING BY BOARD AT JULY 16, 2014 MEETING

**SUBPART A. SCOPE; DEFINITIONS**

**1.0 Scope.** The requirements and prohibitions of Philadelphia's campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq.*). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia's campaign finance law found at Philadelphia Code Chapter 20-1000.

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

- a. **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.
- b. **Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- c. **Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- d. **Candidate's campaign.** A candidate, the candidate's candidate political committee (or litigation fund committee), and an agent of any of the foregoing.
- e. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- 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. **Contribution.**
  - i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;
  - ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes (1) any payment by a person or a political committee provided for the benefit of the candidate, including any payment for the services of a person serving as an agent of the candidate, candidate political committee, or litigation fund committee, and (2) any in-kind contributions, as defined at Subparagraph Paragraph 1.1(o); or
  - iii. Any post-candidacy contribution, as defined at Subparagraph Paragraph 1.1(t).

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- h. Contributor.** A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.
- i. Covered election.** Any primary, general or special election for City elective office.
- j. Covered pre-candidacy expenditure.** An expenditure by a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office, where such expenditure was for the purpose of influencing the outcome of the covered election in which the candidate is participating.
- k. Excess post-candidacy contribution.** The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Subpart B. Sections 20-1002(4) or 20-1002(5) of the Philadelphia Code.
- l. Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limitations set forth in Subpart B. Sections 20-1002(1) or 20-1002(2) of the Philadelphia Code.
- m. Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election, including, but not limited to, any expenditure to obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- n. Independent expenditure.** An expenditure that is not made in coordination with any candidate, candidate political committee, or agent thereof. For guidance on what constitutes coordination, see Subpart H.J.
- o. In-kind contribution.** The provision of or payment for goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services where such provision or payment is made for the benefit of the candidate, but not including volunteer labor as described in Subparagraph Paragraph 1.11(e).
- p. Litigation fund committee.** The committee established by a candidate to 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 a candidate's election campaign or participation in an election, as described in Subpart G.H.

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- q. **Non-covered pre-candidacy expenditure.** An expenditure by a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office, where such expenditure was not for the purpose of influencing the outcome of the covered election in which the candidate is participating.
- r. **Person.** An individual, or a partnership, sole proprietorship, or other form of business organization.
- s. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political 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.
- t. **Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.
- u. **Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.
- v. **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.
- w. **SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart I.C.
- x. **Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

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**SUBPART B. CONTRIBUTION LIMITS**

**1.2 Limits on contributions from individuals.**

- a. An individual shall not make total contributions per calendar year of more than \$2,900 to a candidate for City elective office, including contributions made through one or more political committees.
- b. An individual shall not make total contributions per calendar year of more than \$2,900, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart GH by a candidate for City elective office.
- c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$2,900 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

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

- a. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500 to a candidate for City elective office, including contributions made through one or more political committees.
- b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500, including contributions made through one or more political committees, to a candidate's litigation fund committee.
- c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$11,500 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.
- d. In order to qualify for the \$11,500 contribution limit described in Paragraph 1.3, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

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**1.4 Contributions made through one or more political committees.**

- a. For the purposes of this Subpart, a contribution is made through a political committee when:
  - i. A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to 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. The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee's expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.
- b. For the purpose of the contribution limits, a contribution made through a political committee is from both the original contributing person or political committee and the recipient political committee through which the contribution is made. The entire amount of the contribution made through a political committee shall count toward the contribution limits of the original contributing person or political committee, and the entire amount shall also count toward the recipient political committee's contribution limits.

**1.5 During a non-election year:**

- a. Candidates for Mayor shall receive no more than \$250,000 in total contributions from political committees;
- b. Candidates for District Attorney and Controller shall receive no more than \$100,000 in total contributions from political committees; and
- c. Candidates for City Council, Sheriff, and City Commissioner shall receive no more than \$75,000 in total contributions from political committees.

**1.6 Doubling of Contribution Limits.**

- a. If a candidate for City elective office contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, the contribution limits for all candidates 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 Subparagraph Paragraph 1.6(b).
- b. The limits for post-candidacy contributions (Subparagraphs Paragraphs 1.2(c) and 1.3(c)) and the limits for contributions to litigation fund committees (Subparagraphs Paragraphs 1.2(b) and 1.3(b)) do not double if a candidate contributes more than \$250,000 to his or her candidate political committee.

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- c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.
- d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the \$250,000 contribution amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or
  - ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, as set forth in Paragraph 1.6, within two business days he or she shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.7** Candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.

**1.8** 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.

**1.9** Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.

**1.10** If a person or political committee makes an expenditure to a political committee in order that a candidate's name be placed on a sample ballot, the amount of the expenditure from that person or political committee is a contribution to the candidate and shall count toward the contribution limits set forth in this Subpart, so long as the expenditure is not an independent expenditure.

**1.11 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 or to the candidate's litigation fund committee;
- b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;
- c. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee;

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- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.32; 1.36; and
- e. Volunteer labor provided to a candidate or 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.

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

1.12 4.19 Except as provided in Paragraphs 1.13, 4.20, 1.14, 4.21, and 1.15 4.22 the date of acceptance of a contribution is the date that the contribution comes into the possession of a candidate's campaign. A candidate's campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart, the recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof.

1.13 4.20 If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the candidate's campaign, recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof finds the contribution in the mailbox.

1.14 4.21 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 credit card information on the website.

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1.22 The date of acceptance of an in-kind contribution is the date that the contributor provides the goods or services, or makes payment to a third party for the provision of goods or services, to the recipient candidate, litigation fund committee, or political committee, or agent thereof.

**1.15 In kind contributions.**

- a. If a person makes an in-kind contribution by providing goods or services directly to a candidate's campaign, the date of acceptance of that contribution is the date that the candidate's 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 that benefit a candidate's campaign, the date of acceptance of that contribution is the date of the agreement to pay, if the goods and services are in fact provided.

1.23 A candidate, litigation fund committee, or political committee shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

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

1.16 1.24 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.

1.17 1.25 A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

1.18 1.26 A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of business organization is a contribution from the partnership, sole proprietorship, or other form of business organization, unless other facts demonstrate that the contribution is from the signer of the check.

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**| SUBPART E. CAMPAIGN FINANCE DISCLOSURES**

**| 1.19 1.42 Disclosures required of candidates and candidate political committees.**

- a. Any time a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the candidate shall file electronically with the Board a copy of that report or statement.
- b. Any time the candidate political committee of a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the committee shall file electronically with the Board a copy of that report or statement.

**Example:** Candidate A is running for City office and has authorized Friends of A as her candidate political committee. Friends of A files a cycle 2 (pre-primary) campaign finance report with the City Commissioners. In addition, Candidate A personally files a campaign finance statement with the City Commissioners.

Friends of A must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the City Commissioners.

Candidate A must electronically file with the Board a copy of the cycle 2 campaign finance statement she personally filed with the City Commissioners.

**| 1.20 1.43 Post-candidacy disclosures**

- a. Former candidates and candidate political committees shall file electronically with the Board reports of post-candidacy contributions and expenditures.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidates and candidate political committees with the City Commissioners pursuant to the Pennsylvania Election Code.
  - ii. A former candidate or a candidate political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate or candidate political committee files with the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate or candidate political committee.

**Example:** Candidate A is successful in the November general election, but her candidate political committee, Friends of A, incurred \$20,000 in debt in the course of the campaign. In December, former Candidate A raises \$10,000 in post-candidacy contributions which her committee uses to pay off some of the campaign debt. In January of the year following the general election, Friends of A files a cycle 7 campaign finance report with the City Commissioners. The cycle 7 report discloses the post-candidacy contributions and the expenditure to pay down the campaign debt.

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Friends of A can satisfy the post-candidacy disclosure requirements of Paragraph 1.204.43 by electronically filing with the Board a copy of the cycle 7 campaign finance report it filed with the City Commissioners.

| **1.21 4.44 Disclosures required of political committees and persons.**

- a. Any time a political committee or person is required to file a campaign finance report with the City Commissioners or the Secretary of State, as required by the Pennsylvania Election Code, the committee or person shall file electronically a copy of that report with the Board if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any expenditures made or debt incurred to influence the outcome of a covered election, including expenditures to a candidate for City elective office.

**Example:** Pennsylvanians for a Better Pennsylvania is a political committee registered with the Department of State. The committee files a cycle 2 (pre-primary) campaign finance report with the Department of State disclosing numerous expenditures to candidates for state office and one expenditure to a candidate for City office.

Pennsylvanians for a Better Pennsylvania must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the Department of State.

- b. Political committees shall file electronically with the Board reports of all post-candidacy contributions made by the political committee to any former candidate.
- i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
- ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

| **1.22 4.45 Disclosures required of litigation fund committees.**

- a. A litigation fund committee established as described in Subpart GH shall file electronically with the Board reports of contributions and expenditures.
- b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

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- c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

| **1. 23 4.46 Method of filing campaign finance reports and statements.** Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board through the Department of Records and must be submitted in a format approved by the Department of Records. Information on how to electronically file a report or statement is available at the office of the Department of Records in City Hall Room 156 and at:

<http://www.phila.gov/records/CampaignFinance/CampaignFinance.html>

| **1. 24 4.47 Sworn statement required for campaign finance disclosures.**

- a. Any time a candidate political committee, political committee, or litigation fund committee electronically files a campaign finance report or statement with the Board, the individual who files the report or statement on behalf of the committee shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The individual who signs the statement and the committee shall be jointly and severally subject to civil penalties if the report or statement contains any material misstatements or omissions.
- b. Any time a candidate electronically files a campaign finance report or statement with the Board, the candidate shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The candidate shall be subject to civil penalties if the report or statement contains any material misstatements or omissions.
- c. Any sworn statement required by this Paragraph shall be submitted on a form available from the Department of Records. The form may be submitted in person at the office of the Department of Records in City Hall Room 156 or via email or fax as indicated on the form.

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**SUBPART E G. USE OF POLITICAL COMMITTEES AND CHECKING  
ACCOUNTS BY CANDIDATES**

1. 25 4.29—A candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures. If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee for each office being sought.

1. 26 4.30 If a candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

1. 27 4.34 A candidate may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

- a. The candidate establishes the savings account at the same bank that has his or her checking account;
- b. The candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;
- c. The candidate 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
- d. 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 he or she has established a savings account.

1. 28 4.32 Requirement to provide information to the Board about a candidate political committee.

- a. A candidate who has a candidate political committee when he or she becomes 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.

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- b. If a candidate does not have a candidate political committee when he or she becomes a candidate, he or she shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with his or her street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after he or she has become a candidate, he or she shall notify the Board of the information set forth in Subparagraph Paragraph 1.28(a) within three business days of the formation of the committee.
- d. A candidate may satisfy the requirements of Paragraph 1.28 by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners as long as the information described in Subparagraph Paragraph 1.28(a)(i)-(iii) is included.
- e. If the information required by Paragraph 1.28 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- f. Information required by Paragraph 1.28 shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.29 4.33 **Exercising control over another political committee.** A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

- a. The candidate is the treasurer or chair of the other political committee;
- b. The candidate established or registered the other political committee;
- c. The candidate is an authorized user or signer on the other political committee's bank account;
- d. The treasurer or chair of the other political committee is an employee of the candidate;
- e. The other political committee has the same treasurer or chair as the candidate political committee; or
- f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

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1.30 **1.34** **Exercising control over another political committee's expenditures.** A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

- a. The candidate, candidate political committee, or the candidate's agent provides the money to cover the specific expenditure;
- b. The candidate, candidate political committee, or the candidate's agent selects the recipient of the expenditure; or
- c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

1.31 **1.35** This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G.

1.32 **1.36** This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee 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 candidate's candidate political committee.

1.33 **1.37** This Subpart does not prohibit a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

- a. The recipient political committee offers similar services to other candidates; and
- b. The candidate does not exercise control over the political committee as defined in Paragraph 1.29.

1.34 **1.38** This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.30, other than the candidate's litigation fund committee.

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**SUBPART G. LITIGATION FUND COMMITTEES**

1.35.4.39 **Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a 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 Subparagraph Paragraph 1.35(d).
- b. The name of a litigation fund committee shall include the term "Litigation Fund."
- c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.22.
- d. A 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 election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- e. A 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 may make expenditures from his or her candidate political committee for the purposes described in Subparagraph Paragraph 1.35(d).

1.36.4.10 **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 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.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Subparagraph Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the information described in (i)-(iii) above is included.

- b. If the information required by Paragraph 1.36 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

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- c. Information required by Paragraph 1.36 shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.37 +44      **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 candidate sought, except as provided in Subparagraph Paragraph 1.37(b).
- 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 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.

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**SUBPART H.J. COORDINATED EXPENDITURES**

1.38 ~~1.48~~ When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made for the benefit of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

~~1.49.~~ For the purposes of this Subpart, the term "candidate's campaign" includes the candidate, the candidate's candidate political committee, and an agent of either of the foregoing.

1.39 ~~1.50~~ An expenditure is coordinated with a candidate's campaign if:

- a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
- b. The expenditure is made at the request or suggestion of the candidate's campaign;
- c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
- d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure; or
- e. The person making the expenditure does so using funds solicited for or directed to that person by the candidate's campaign; or
- f. The person making the expenditure uses information obtained from the candidate's 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 candidate made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.40.

~~1.51.~~ An expenditure made to reproduce, republish, or disseminate a campaign communication or campaign material (such as flyers, signs, or brochures) obtained from a candidate's campaign, or obtained from another source with the campaign's consent, is an in-kind contribution to the candidate.

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**1.40 Republication of campaign communications or materials.** 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 candidate's campaign:

- a. Shall be considered an in-kind contribution for the purposes of the contribution limits that apply to the person making the expenditure.
- b. Shall be considered an in-kind contribution for the purposes of the contribution limits that apply to the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign.

A campaign communication or campaign material is obtained with the candidate's consent if the candidate provides it to a third party so that another person is able to obtain the communication or material from that third party.

- c. Shall not be considered an in-kind contribution for the purposes of the contribution limits if:
  - i. The communication or material is incorporated into a communication that advocates the defeat of the candidate that prepared the material; or
  - ii. The news media reproduces, republishes, or disseminates the communication or material.

**Example:** Three weeks before election day, candidate A's campaign uploads 5 minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the video and uses the footage to create a television advertisement. The committee spends \$100,000 to run the advertisement on three television stations during the week before election day.

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 an in-kind contribution from the committee to candidate in excess of the contribution limits.

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- | 1.41 1.52 An expenditure will not be considered a coordinated expenditure merely because:
- a. The person making the expenditure interviews the candidate;
  - b. The person making the expenditure has endorsed the candidate;
  - c. The person making the expenditure and the candidate's campaign have an agent in common;
  - d. The person making the expenditure uses information obtained from a public source or from a communication the candidate's campaign made to the general public in order to design, prepare, or pay for the specific expenditure.
  - d. e. The person making the expenditure has obtained from the candidate a photograph or biography of the candidate or a position paper, press release, or similar material about the candidate; or
  - e. f. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

**SUBPART I. EXCESS PRE-CANDIDACY CONTRIBUTIONS;  
EXCESS POST-CANDIDACY CONTRIBUTIONS**

Note: This Subpart is only relevant if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office accepts contributions in excess of the limits set forth in Subpart B.

1.42 1.12 A candidate or candidate political committee shall not spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.

1.43 1.13 A candidate shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart G.

1.44 1.14 A candidate shall not spend any excess pre-candidacy contributions or excess post-candidacy contributions for the purposes of:

- a. Transition or inauguration expenses; or
- b. Retiring debt that was incurred to (i) influence the outcome of an already completed covered election; or (ii) cover transition or inauguration expenses related to an already completed covered election.

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I. 45 Exclusion of excess pre-candidacy contributions upon becoming a candidate

- a. ~~1.15~~ A candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:
  - i. a Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ("SPEC" account) within ten days after the individual becomes a candidate; or
  - ii. b Returning excess pre-candidacy contributions to the contributors who made those contributions within ten days after the individual becomes a candidate.

Example: Before becoming a candidate, Ms. A accepts a total of \$50,000 in within limits pre-candidacy contributions and \$20,000 in excess pre-candidacy contributions. Within 10 days of becoming a candidate, Ms. A must exclude \$20,000 from the checking account of her candidate political committee.

- b. A candidate may deduct non-covered pre-candidacy expenditures from the amount of excess pre-candidacy contributions he or she must exclude.

Example: Before becoming a candidate, Mr. B accepts a total of \$50,000 in within limits pre-candidacy contributions and \$25,000 in excess pre-candidacy contributions. However, Mr. B makes \$10,000 in non-covered pre-candidacy expenditures. Within 10 days of becoming a candidate, Mr. B must exclude \$15,000 from the checking account of his candidate political committee.

- c. A candidate may not deduct covered pre-candidacy expenditures from the amount of excess pre-candidacy contributions he or she must exclude.

Example: On January 10, 20XX, Ms. A accepts a total of \$5,000 in within limits pre-candidacy contributions and \$20,000 in excess pre-candidacy contributions. On January 10, Ms. A makes a covered pre-candidacy expenditure of \$10,000 and a non-covered pre-candidacy expenditure of \$5,000. On January 11, Ms. A declares her candidacy for City office. By January 21, Ms. A must exclude \$15,000 from her primary checking account (\$20,000 in excess pre-candidacy contributions less the \$5,000 non-covered pre-candidacy expenditure, but not less the covered pre-candidacy expenditure of \$10,000.).

- d. If the amount that the candidate must exclude from the checking account of his or her candidate political committee exceeds the amount of cash the committee has on hand, the candidate must use incoming contributions to cover the amount that must be excluded.

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1.46 1.16 A candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

- a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or
- b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

1.47 1.17 A candidate or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates or to make post-candidacy expenditures.

1.48 1.18 Within seven days of establishing a SPEC account, a candidate 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 J. RETIRING DEBT**

1.49 1.27 Except as provided in Paragraph 1.50, 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 to the candidate or former candidate and is subject to the contribution limits set forth in Subpart B.

1.50 1.28 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.

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**SUBPART K. PENALTIES**

1. 51 ~~1.53~~ **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 penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

1. 52 ~~1.54~~ **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 penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

1. 53 ~~1.55~~ **Safe harbor if an excess contribution is returned within 15 days.** No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate who accepted the excess contribution within fifteen days after receiving the contribution:

- a. Returns the excess amount to the contributor; and
- b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

1. 54 ~~1.56~~ **Failure to file campaign finance disclosures.**

- a. A civil penalty of \$250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart E.L.  
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- b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of \$250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report 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 is not filed.  
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1. 55 ~~1.57~~ **Other violations of the campaign finance law.** All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of \$1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

- a. Mitigating factors. The civil 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 is 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.

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

Adopted by Board with modifications

Effective

**TRANSCRIPT OF HEARING**

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**EXHIBIT-2**

ETHICS BOARD HEARING – REGULATION 1 –Campaign Finance

I am Hope Caldwell, Chief Integrity Officer for the City, and offer the City Administration’s opinion regarding the Amended Regulation 1 on Campaign Finance.

The Administration generally supports the changes to Regulation 1. After reviewing the proposed changes to Subpart I, however, regarding Excess Pre-Candidacy Contributions, what has been proposed does not seem like a workable approach to handling excess contributions. The reason it is not workable is because it would require the Board to delve into questions regarding the “purpose” of pre-candidacy expenditures.

Part of my position is to help employees, vendors and citizens understand various rules. It is important and helpful, when possible, to make definitive rules that can be followed by direct application of the law. These same principles should apply to rules for candidates and campaigns as well.

I would encourage the Board and staff to take some extra time in refining the amended regulation. This way, you can make clear, bright-line rules for accounting the expenditure of excess pre-candidacy contributions when determining amounts that candidates must exclude from their candidate accounts.

The board has that opportunity here to create more clarity with the changes to Regulation 1 and I hope it does so.

Thank you for the opportunity to speak at today’s hearing.

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EXHIBIT-3

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## Testimony on Philadelphia Board of Ethics Regulation No. 1

By James Browning, Regional Director for State Operations, Common Cause  
September 17, 2014

My name is James Browning and I am the Regional Director of State Operations for Common Cause, a nonpartisan government watchdog group. Our Pennsylvania chapter has 600 members in Philadelphia and more than 4,000 statewide. Since 1974, Common Cause Pennsylvania has been one of the state's most effective good government groups, leading efforts to promote more open and accountable government at the state and local levels.

Common Cause supports the proposed amendment to Section 1.40 of Regulation No. 1 that would treat republication of campaign material as a contribution or in-kind contribution to that campaign. We believe the rationale for doing so is obvious—that allowing outside interests who are not subject to the same contribution limits and disclosure requirements as candidates to disseminate their campaign materials would completely undermine the integrity of the city's campaign finance system.

A valuable precedent is a 2005 complaint filed by the Campaign Legal Center and Democracy 21 against Senate Majority PAC (SMP), challenging its republication of campaign materials produced by the campaign of Bruce Braley. SMP had asked for an exemption from campaign spending that would have covered “republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues, or voting records.” Common Cause agrees with the FEC’s refusal to grant this exemption on the grounds that it would “swallow the rule” in question.

One of the ugly ironies of the U.S. Supreme Court’s decision in *Citizens United* has been that while it is easy to demonstrate that so-called “independent” groups are often working closely or very closely with the campaigns they support, the full extent of this coordination can sometimes not be exposed until after an election—too late for voters to know which interests are supporting which candidates. The Board of Ethics should be commended for being proactive on this issue of coordinated expenditures.

Thank you for this opportunity to submit testimony and I welcome your questions.

**TRANSCRIPT OF HEARING**

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**EXHIBIT-4**

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August 15, 2014

**By First Class Mail &**  
**Email to Hortencia.Vasquez@phila.gov**

Board of Ethics

*Also to the attention of Maya Nayak, Esq.,  
Michael Cooke, Esq., and J. Shane Creamer, Esq.*

City of Philadelphia  
One Parkway Building  
1515 Arch Street, 18th Floor  
Philadelphia, PA 19102-1504

**Re: Proposed Amendments to Regulation No. 1**

Dear Board Members, Ms. Nayak, Messrs. Creamer and Cooke and Staff,

I write to give public comment on the Proposed Amendment to Board of Ethics Regulation No. 1, released for comment on July 16, 2014. In short, the proposed amendments are meritorious and close loopholes that allow candidates to frustrate the purposes of Philadelphia campaign finance law. The proposed amendments, however, should be refined to better serve their purpose. The proposed amendment on republication of campaign materials is over-inclusive barring protected (i.e., truly uncoordinated) speech and thus may be struck down in the courts.

The proposed amendment on pre-candidacy expenditures fails to explicate the circumstances that are relevant to the determination of whether a covered pre-candidacy expenditure was made for the purpose of influencing the outcome of a covered election. Given the lack of explanation, this regulation may be unenforceable due to its vagueness.

Modest revision to the proposed amendment can eliminate these problems.

**I. Republication**

The proposed amendments on republication are intended to prevent tacit coordination between campaigns, subject to campaign finance regulation, and supposedly independent groups that may raise and expend unlimited funds advocating for the candidate under the Supreme Court's decision in *Citizens United v. Federal Election Comm.*, 558 U.S. \_\_ (2010). The specific abuse that the proposed amendments address occurs when a campaign prepares campaign materials that it places in the public domain where the "independent" group appropriates and

further distributes those campaign materials. An example would be where a campaign prepared a brief promotional video that it then placed in the public domain (i.e., on youtube.com) where a purportedly independent group will acquire, then televise, that video as an advertisement for the candidate.

As drafted, however, the proposed amendments are so broad that they shackle protected speech – *i.e.*, truly uncoordinated speech – while failing to address other instances of tacit coordination between campaigns and putative independent groups. The proposed amendments also subject candidates to sanction and impose potentially ruinous burdens on campaigns for actions by third parties that their campaigns are legitimately unable to control or influence. Further, the proposed regulations do not include any safe harbor provisions that candidates may use to protect themselves from their overly enthusiastic supporters.

The regulation thus chills not only protected independent political speech but also chills candidate speech by subjecting candidates to potential liability for putting their statements into the public discourse. The proposed regulation deters candidates from placing materials in locations where they may be appropriated by “independent” groups when those locations may well be locations that are accessible to, and convenient for, member of the general public. In this situation, the regulation diminishes the public’s access to campaign materials that may help voters decide among candidates. Simply put, you tube and social media are places where members of the public would got to learn about candidates and their positions – and the regulation discourages candidates’ use of social media and youtube because campaign materials can be readily reproduced from these sources. These chilling effects are deleterious to vigorous political discourse and harmful to the open electoral process that the campaign finance laws are intended to protect.

The following example illustrates this point: A campaign videotapes its candidate speaking at an event and puts the resulting video on youtube.com. An ostensibly independent group downloads that video and airs it as an advertisement on television at a cost of \$20,000. Under the amendment (as now drafted), the candidate would be at risk of having to “refund” the \$20,000 to the independent group or face violation of Philadelphia campaign finance laws, including being fined by the Board of Ethics. If the proposed amendments were adopted as written, the following factors would be irrelevant to whether the expenditures were coordinated:

- Whether the campaign posted the video three years or three days before the independent group aired the video as a television ad;
- Whether the campaign attempted to block the supposedly independent use;
- Whether the campaign embossed the video with a disclaimer saying that the campaign did not authorize republication of the video;
- Whether the campaign copyrighted the video;
- Whether the campaign had edited the video – or otherwise transformed the raw content – before posting it;

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- Whether the campaign assembled the video from disparate sources (e.g., created a video excerpting “greatest hits” from the candidates’ speeches);
- Whether the video was made in a public forum (or from widely available materials) where the independent group could have as easily videotaped the matter as the campaign;
- Whether the outside group used a small portion, a large portion, or the whole of the video;
- Whether the outside group transformed/edited the video;
- Whether the video was posted in a form lending itself to republication (i.e., in high resolution, TV-ready form versus low resolution);
- Whether the republication occurred in an area likely to influence the election (i.e., under the proposed amendment, it doesn’t matter whether the material is republished in Philadelphia or Seattle); or
- Whether the purportedly independent group is lead, staffed or funded by people currently or formerly affiliated with the candidate.

In addition, it does not matter what is republished – whether the reproduce material is a 75-page position paper or a yard sign or a single-sheet mailing.

A well-drafted regulation would address these factors, create appropriate presumptions, and provide a safe harbor for candidates to protect themselves. The following is a proposed revision to Regulation 1.40:

- (a) The expense for Republication of Campaign Materials, if Coordinated, is an in-kind contribution to the Candidate’s Campaign for the purposes of the contribution limits applicable both to the candidate or the person making the in-kind contribution in an amount equal to the expense of Republication.
- (b) A Republication is “Coordinated” between a candidate, the candidate’s committee and the agents of either (jointly and severally, the “Candidate’s Campaign”) and the person republishing it (the “Republisher”) as follows:
  - (1) If the time between the Republication and the Candidate’s Campaign’s release of the Campaign Materials is greater than 24 calendar months, Republication shall be presumed to be independent.
  - (2) Unless the Candidate’s Campaign complies with the safe harbor provisions in paragraph 1.40(c) below,
    - (i) If the time between the Republication and the Candidate’s Campaign’s release of the Campaign Materials is less than 61 days, Republication shall be presumed to be coordinated.

- (ii) If the time between the Republication and the Candidate's Campaign's release of the Campaign Materials is greater than 60 days but not greater than 24 calendar months, the Board of Ethics will determine whether Republication is Coordinated on the evaluation of the following factors, none of which is by itself controlling and which factors may be weighed as the Board of Ethics determines appropriate in light of the legislative purposes of Philadelphia campaign finance law:
- (1) Whether the Candidate's Campaign has asserted copyright over the campaign materials;
  - (2) What actions, if any, the Candidate's Campaign has taken to prevent Republications;
  - (3) Whether the Campaign Materials are released in a manner and format conducive to Republication, including the resolution and quality of any video or audio recordings;
  - (4) Whether, and the extent to which, the Candidate's Campaign has marked or embossed the Campaign Material with a disclaimer prohibiting Republication;
  - (5) Whether, and the extent to which, the Republisher has transformed the Campaign Materials prior to Republication;
  - (6) Whether, and the extent to which, the Republisher has added additional content to the Campaign Materials prior to Republication;
  - (7) Whether, and the extent to which, the Republisher has selected limited portions from, or edited out portions, of the Campaign Materials;
  - (8) Whether the underlying sources of the Campaign Materials are themselves public sources or sources widely available, including the circumstances in which any reproduced remarks are made;
  - (9) The extent to which the Candidate's Campaign has transformed from the Campaign Materials from their underlying sources;
  - (10) The extent to which the Candidate's Campaign has assembled the Campaign Materials from disparate sources;
  - (11) The association, if any, of the officers, staff and funders of the Republisher with the Candidate's Campaign, including (without limitation) prior employment relations, familial affiliation, and common membership or employment;
  - (12) Whether, and the extent to which, the Candidate's Campaign and the Republisher share consultants, vendors, service providers, producers and/or professional staff;

- (13) Whether, and the extent to which, there are communications between the Candidate's Campaign (including its personnel) and the Republisher (and its personnel);
  - (14) Whether the Republication occurs in a manner that may influence an election in which the Candidate's Campaign is participating, including both primary and general elections; and
  - (15) The medium in which the Candidate's Campaign releases Campaign Materials;
- (c) Notwithstanding the above, the Republication of Campaign Materials shall not be found to be Coordinated if the Candidate's Campaign takes the following actions:
- (1) The Candidate's Campaign has embossed the Campaign Materials with a copyright symbol and a disclaimer against Republication;
    - (i) In the case of audio recordings, the disclaimer may take the form of remarks asserting the copyright and warning against Repunctuation that precede or follow the recording);
  - (2) The Candidate's Campaign, within 72 hours of learning of a Republication (or, if Republication occurs within 14 days of the election, 24 hours), the Candidate's Campaign makes a written demand on the Republisher that it cease-and-desist Republication;
  - (3) If within the time period provided above in ¶ 1.40(c)(3), the Candidate's Campaign also issues a public statement (including press release) disclaiming coordination and demanding that the Republisher cease and desist; and
  - (4) If the Republisher fails to cease-and-desist from Republication within 24 hours of the Candidate's Campaign's written demand, the Candidate's Campaign brings legal action against the Republisher to enjoin Republication, which action includes at a minimum a request for both a temporary restraining order and a preliminary injunction against Republication.

The revised language above (i) closes the loophole in Philadelphia campaign finance law, (ii) blocks coordinated speech, (iii) allows constitutionally-protected uncoordinated speech, and (iv) provides candidates with a means of disseminating their message(s) without subjecting them the risk that they will be held liable for actions they cannot control.

## **II. Pre-Candidacy Expenditures.**

The proposed amendments concerns pre-candidacy expenditures from being deducted from excess pre-candidacy contributions that must be segregated when a candidate – who has been raising funds in contemplation of running for another office – begins to seek election to a city office that is covered by Philadelphia campaign finance law. What the regulation seeks to prevent candidates making expenditures in pursuit of a City office, prior to the time that the candidate announces his or her campaign for city offices.

By way of illustration, “Jane Smith,” a member of the state legislature, may raise and spend unlimited amounts of money in her campaigns for state office. If Jane Smith decides at some point that she would rather run for City office, current law allows her to spend unlimited funds that will help her in the City race in the period before she announces her campaign for City office – which expenses Jane Smith may use to minimize the excess pre-candidacy expenses that she cannot use in her pursuit of City office. Jane Smith thus possesses an advantage over other candidates and may defeat the intent of the City’s campaign finance laws.

The proposed amendment defines a “covered pre-candidacy expenditure” as “[a]n expenditure by a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office, where such expenditure was for the purpose of influencing the outcome of the covered election in which the candidate is participating.”

As drafted, the amendment focuses (exclusively) on the candidate’s “purpose” in making the expenditure. A candidate’s “purpose,” however, is a mental state that is unlike to be observable to those – such as the Board of Ethics – who are outside of the candidate’s campaign. The draft amendment also speaks to “the” purpose when, an expenditure may have multiple purposes – for instance, an expenditure to build a candidate’s name recognition could assist the candidate in running for election to a state office, as well as bolstering the candidate’s yet-to-be-announced campaign for City office. The same logic applies to a vast array of expenditures – meals with movers and shakers, entertainment for contributors, image consulting, professional headshots, haircuts and makeovers, and so on. In short, anything that makes the candidate more appealing to voters in the uncovered election may also be beneficial to the candidate’s run for city office. A savvy candidate could easily avoid the reach of the amended provision by cagily papering his or her files with documents explaining why the expenditures were made for the purpose of influencing a non-covered election.

The proposed amendment may be revised to serve better its purposes and to provide better guidance to candidates, their campaigns and to enforcement staff. The following revision to the definition of “covered pre-candidacy expenditure” – while not perfect – is closer to accomplishing the desired result while providing greater clarity:

**Covered pre-candidacy expenditure.** An expenditure by any political committee that is authorized to receive contributions on behalf of an individual, who – within the subsequent six months – becomes a candidate for City office, where a reasonable voter would understand such expenditures to be intended to influence the outcome of the covered election in which the candidate is participating, including (without limitation) (1) expenditures made to determine the advisability of a candidacy for city office, (2) expenditures made to reach voters outside the geographic area for which the candidate held, holds or has sought to hold office, and (3) expenditures that are or were not germane to the candidate’s election or re-election to another office.

The revision will prevent the relevant abuse while not making enforcement dependent on the candidate’s purported state of mind.

LAW OFFICES OF CHARLES P. GOODWIN

\* \* \*

I hope the above proves useful to the Board in its deliberations. I welcome any inquiries or comments the Board or its staff may have.

Respectfully,

A handwritten signature in black ink, appearing to read "C.P.G." followed by a surname.

Charles P. Goodwin

**TRANSCRIPT OF HEARING**

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**EXHIBIT-5**

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**Testimony of Daniel I. Weiner**

**Counsel, Brennan Center for Justice at NYU School of Law**

**Submitted to the Philadelphia Board of Ethics**

**September 17, 2014 Hearing**

The Brennan Center for Justice at NYU School of Law appreciates the opportunity to discuss before the Board today the proposed amendments to Regulation No. 1's provisions governing coordinated expenditures.<sup>1</sup> The Supreme Court has made clear that Philadelphia has the right to guard against the dangers of real and apparent *quid pro quo* corruption by setting reasonable contribution limits. To prevent wholesale circumvention of such limits, it is essential that expenditures coordinated between candidates and outside groups be treated as contributions. Robust coordination rules have never been more important than they are now, given the exponential increase in outside election spending resulting from *Citizens United* and other recent court decisions. With City elections coming up in 2015 – including a wide open mayor's race – now is the time to make sure that Philadelphia has strong campaign finance laws. We applaud the Board for taking this step.

Regulation No. 1 already classifies some kinds of coordinated expenditures as contributions, but the proposed amendments provide much-needed enhancements. In our view, these changes are reasonable and appropriately tailored to the reality of how campaigns unfold. Accordingly, we believe the relevant provisions of Regulation No. 1 as amended would survive constitutional scrutiny. Adopting the proposed amendments regarding coordinated expenditures (with certain modest revisions) would be a positive step for democracy in this City.<sup>2</sup>

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center's Money and Politics project works to reduce the influence of large concentrations of private wealth in our democracy. The opinions expressed in this Testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law, if any.

<sup>2</sup> Except for the proposed change to section 1.1(r) discussed below, the scope of this Testimony is limited to changes proposed to Regulation No. 1, Subpart H (Coordinated Expenditures). We express no view on the other substantive changes to Regulation No. 1 that have been proposed.

## The Constitutionality of Regulating Coordinated Spending

In *Buckley v. Valeo*, the Supreme Court drew a clear line between limits on independent expenditures and limits on contributions to candidates. The Court reasoned that while limits on independent expenditures warrant strict constitutional scrutiny, contribution limits “entail[] only a marginal restriction” on First Amendment rights, and therefore merit less onerous judicial review.<sup>3</sup> The *Buckley* Court further explained that third-party expenditures “coordinated” with a candidate could be “treated as contributions,” because “[t]he ultimate effect is the same as if the [spender] had contributed the dollar amount [of the expenditure] to the candidate.”<sup>4</sup>

In the years after *Buckley*, the Court made clear that coordination need not entail actual “agreement or formal collaboration” between a candidate and an outside group.<sup>5</sup> “[E]xpenditures made after a ‘wink or nod,’” the Court repeatedly observed, “will be ‘as useful to the candidate as cash.’”<sup>6</sup> Consistent with this reasoning, many jurisdictions presently consider a wide variety of conduct to be indicia of coordination, including sharing material information, employment of common staff or use of a common vendor, republication of campaign communications or materials and candidate fundraising for outside groups active in the candidate’s own race.<sup>7</sup>

Although *Citizens United v. FEC* overruled prior campaign finance jurisprudence in other respects, it left the Court’s longstanding approach to coordination undisturbed. *Citizens United*’s holding invalidating most limits on independent expenditures turned on the “absence of prearrangement and coordination” characteristic of such spending.<sup>8</sup> It is that absence of coordination, in the Court’s view, which “undermines the value of the expenditure to the candidate” and alleviates the danger of *quid pro quo* corruption.<sup>9</sup>

If anything, the flood of outside spending unleashed by *Citizens United* and related cases necessitates a *more* robust regulatory approach to coordination than jurisdictions might previously have adopted. Because of these decisions, outside spending in U.S. elections has skyrocketed; at the federal level, it tripled between the 2008 and 2012 presidential elections, and quadrupled between the 2006 and 2012 midterm elections.<sup>10</sup> Pennsylvania elections have not

<sup>3</sup> 424 U.S. 1, 20, 23 (1976). The controlling plurality in the Court’s recent decision in *McCutcheon v. FEC* explicitly disclaimed “any need to revisit *Buckley*’s distinction between contributions and independent expenditures and the corollary distinction in the applicable standards of review.” 164 S.Ct. 1434, 1445 (2014) (plurality opinion).

<sup>4</sup> 424 U.S. at 36-37.

<sup>5</sup> *McConnell v. FEC*, 540 U.S. 93, 219 (2003).

<sup>6</sup> *Id.* at 221 (quoting *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 442, 446 (2001)).

<sup>7</sup> See 11. C.F.R. § 109.21(d); Fla. St. Ann. § 106.011(12(b); Ohio Admin. Code § 111-3-02; Conn. Gen. St. Ann. § 9-601c(b); Cal. Code Regs. tit. 2, § 18550.1(b); Minn. Campaign Fin. & Pub. Disclosure Bd. Advisory Op. No. 437, at 5.

<sup>8</sup> *Citizens United v. FEC*, 558 U.S. 310, 360 (2010).

<sup>9</sup> *Id.*

<sup>10</sup> See Center for Responsive Politics, *Total Outside Spending by Election Cycle, Excluding Party Committees*, at [http://opensecrets.org/outsidespending/cycle\\_tots.php](http://opensecrets.org/outsidespending/cycle_tots.php).

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been immune from this trend. The 2010 U.S. Senate race, for example, featured a level of outside spending more than five times that of the prior contest in 2006.<sup>11</sup> Moreover, such spending increasingly comes from groups devoted to electing a single candidate – often staffed by the candidate’s family, friends or former staffers.<sup>12</sup> These single-candidate groups allow maxed-out contributors to target particular races in exactly the same way as they can with direct contributions, resulting in exponentially greater corruption concerns.

In addition, more and more outside spending comes from “dark money” groups who are not required to disclose their donors.<sup>13</sup> Without effective coordination laws, there is nothing to prevent such groups from spending large sums in cooperation with candidates, with little public scrutiny. Secrecy of this nature is a further breeding ground for corruption, and also undermines transparency rules essential for voters to make “informed decisions and give proper weight to different speakers and messages” – which the Supreme Court has wholeheartedly embraced.<sup>14</sup>

For all of these reasons, we believe that the enhancements to the coordinated spending provisions of Regulation No. 1 reflected in the proposed amendments would survive judicial review. We support these changes, with certain minor proposed revisions discussed below.

#### Proposed Subpart H, Section 1.39(e)

Proposed section 1.39(e) states that an expenditure is coordinated if the person who makes the expenditure “does so using funds solicited for or directed to that person by the candidate’s campaign.” We agree with the substance of this revision, but recommend clarifying its language.

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<sup>11</sup> Total outside spending was approximately \$2.7 million in 2006 and approximately \$13.5 million in 2010. See Center for Responsive Politics, *2006 Outside Spending by Race, Excluding Party Committees*, at <http://www.opensecrets.org/outsidespending/summ.php?cycle=2006&disp=R&pty=N&type=A>; Center for Responsive Politics, *2010 Outside Spending by Race, Excluding Party Committees*, at <http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&disp=R&pty=N&type=A>.

<sup>12</sup> PUBLIC CITIZEN, SUPER CONNECTED 10 (2013), available at <http://www.citizen.org/documents/super-connected-march-2013-update-candidate-super-pacs-not-independent-report.pdf> (estimating that 45% of super PAC spending in 2012 was by groups devoted to electing a single candidate).

<sup>13</sup> See Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections and How 2012 Became the “Dark Money” Election*, 27 NOTRE DAME J. L. ETHICS & PUB. POL’Y 383, 384 (2013) (noting “dark money “currently accounts for almost sixty percent of all outside spending at the federal level); Robert Maguire, *How 2014 Is Shaping Up To Be the Darkest Money Election To-Date*, OPENSECRETS.ORG, Apr. 30, 2014, <http://www.opensecrets.org/news/2014/04/how-2014-is-shaping-up-to-be-the-darkest-money-election-to-date/> (finding that the current cycle’s dark money total is on pace to exceed that of 2012 three-fold, notwithstanding the absence of a presidential race). Although the surge in dark money has been most documented at the federal level, dark money is also emerging as a major issue in Pennsylvania state politics. See, e.g., Mike Wereschagin, *Shadowy Group’s Advertisements Slap Pennsylvania Governor*, PITTSBURGH TRIBUNE REVIEW ONLINE, July 7, 2013, at <http://triblive.com/news/allegheny/4237964-74/accountability-state-union#axzz3D7xigf8j>; Common Cause Pennsylvania, *Exposing Dark Money*, at <http://www.commoncause.org/states/pennsylvania/issues/money-in-politics/exposing-dark-money/> (noting dark money loopholes in Pennsylvania disclosure laws).

<sup>14</sup> *Citizens United*, 558 U.S. at 371; see also *McCutcheon*, 134 S.Ct. at 1460 (plurality opinion) (transparency “arms the voting public with information” and prevents “abuse of the campaign finance system”).

Philadelphia would not be the first jurisdiction to enact a rule taking into account candidate fundraising for an outside group to determine whether that group's expenditures in the candidate's race are coordinated. Recently, for example, Minnesota's Campaign Finance and Public Disclosure Board determined that "fundraising for, or promotion of, an [independent expenditure committee] constitutes cooperation that destroys the independence of any subsequent expenditures made . . . to affect the Candidate's election."<sup>15</sup> Similarly, under Connecticut law as interpreted by its State Elections Enforcement Commission, candidate fundraising for an outside group can be evidence of coordination.<sup>16</sup> A similar rule has been proposed at the federal level, with the Brennan Center's support.<sup>17</sup>

We are unaware of any case law specifically determining the constitutionality of such rules, which is unsurprising, given that candidate fundraising for outside groups that can raise and spend unlimited funds is a relatively new phenomenon. Nevertheless, these rules are likely constitutional. As Professor Richard Hasen has observed, "a candidate who raises funds for a group by definition is coordinating fundraising strategy with that group."<sup>18</sup> Especially where the group's stated objective is to work for the candidate's election (as is increasingly the case), candidate fundraising essentially "lets would-be donors and the world know that a donation to the [group] is just as good (or better, given the lack of contribution limits) as a donation to the candidate's campaign."<sup>19</sup> Any notion that the group's spending in the candidate's race remains "independent" of the candidate under these circumstances simply is not credible. To address the inherent *quid pro quo* corruption concerns that arise in connection to such spending, it is appropriate to treat the group's expenditures in the candidate's race as coordinated.

While we agree with the substance of proposed section 1.39(e), we are concerned that its current language could be interpreted more narrowly than intended. According to the proposed language, an expenditure is coordinated if it "us[es] funds" raised by the candidate's campaign. Based on this language, some might argue that the provision applies only to expenditures funded by contributions actually raised by the candidate's campaign, and not to all expenditures by the outside group in the candidate's race. Since money is fungible, such an interpretation would allow easy circumvention of the regulation, as groups could simply deny that they were paying for particular expenditures with candidate-raised funds.

In light of the above concern, it would be preferable to make clear that any candidate fundraising for an outside group renders the group's subsequent expenditures in the candidate's race coordinated. To that end, we suggest altering the current language in proposed section 1.39(e) as follows:

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<sup>15</sup> Minn. Campaign Fin. & Pub. Disclosure Bd., Advisory Opinion No. 437, at 5.

<sup>16</sup> Conn. St. Elections Enf. Com'n Decl. Ruling No. 2014-2, at 5.

<sup>17</sup> See Empowering Citizens Act, H.R. 270, 114th Cong. (2014), § 324(c)(1)(B).

<sup>18</sup> See Richard L. Hasen, *Super PAC Contributions, Corruption, and the Proxy War over Coordination*, DUKE J. OF CONST. L. & PUB. POL'Y 16, 20 (forthcoming 2014), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2383452&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383452&download=yes).

<sup>19</sup> *Id.*; accord Richard Briffault, *Coordination Reconsidered*, 113 COLUM. L. REV. SIDEBAR 88, 97 (2013).

The candidate's campaign has solicited funds for or directed funds to the person making the expenditure does so using funds solicited for or directed to that person by the candidate's campaign.

#### Proposed Subpart H, Section 1.40

Proposed section 1.40 seeks to ensure that if an outside spender reproduces, republishes or disseminates campaign communications or materials, the money used to do so will be treated as a contribution. We also support these amendments, with relatively minor suggested edits.

Reproduction of campaign materials is one of the easiest ways for outside groups to circumvent contribution limits, and has thus long been treated as a type of contribution under federal law and the laws of many states.<sup>20</sup> Recently, however, many campaigns have sought to exploit what they consider to be a loophole in such laws, by producing professional video footage and other images of candidates and putting these materials online for use by outside groups in their own advertisements (a tactic the press has dubbed “McConnelling,” because it was pioneered by the campaign of Senate Minority Leader Mitch McConnell).<sup>21</sup>

Proposed section 1.40 appropriately treats such conduct and other outside efforts to disseminate campaign communications and materials as contributions. Republication of this sort provides a direct benefit to a candidate, no different than any other type of in-kind contribution. Moreover, by making stock footage and other images available online for use by outside groups, campaigns are engaging in exactly the sort of “wink or nod” that is the essence of most coordination.

Although we support enactment of proposed section 1.40, we do recommend certain relatively minor clarifications.

First, proposed section 1.40(b) discusses when an expenditure to republish campaign communications or materials “[s]hall be considered an in-kind contribution for the purposes of the contribution limits that apply to the candidate....” Some might read “contribution limits that apply to the candidate” to refer only to the candidate-specific limits set forth in Philadelphia Code § 20-1002(3), which we doubt is the Board’s intent. To clarify that this provision applies to all Philadelphia contribution limits, we propose the following edit, along with a conforming edit to proposed section 1.40(a):

- a. Shall be considered an in-kind contribution made by for the purpose of the contribution limits that apply to the person making the expenditure.

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<sup>20</sup> See 11 C.F.R. § 109.23; Coordinated and Independent Expenditures, 68 Fed. Reg. 421. 441-42 (Fed. Election Com'n 2003); Ohio Admin. Code § 111-3-02; Fla. Stat. Ann. § 106.011(12)(b); Me. Rev. Stat. tit. 21-A, § 1015(5).

<sup>21</sup> See Jaime Fuller, *The Fix: How ‘McConnelling’ Came To Be The Hottest Thing on the Political Web*, THE WASHINGTON POST ONLINE, Mar. 14, 2014, at <http://www.washingtonpost.com/blogs/the-fix/wp/2014/03/14/how-mcconnelling-came-to-be/>.

- b. Shall be considered an in-kind contribution received by ~~for the purposes of the contribution limits that apply to~~ the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign...

Second, proposed section 1.40(c)(ii) provides that republished communications or materials do not constitute in-kind contributions if “[t]he news media reproduces, republishes, or disseminates the communication or material.” We believe that the Board’s intent is to create an exception only for news media, such that a media outlet’s republication of campaign communications or materials does not constitute a contribution. To clarify that purpose, we propose the following changes:

- c. Shall not be considered an in-kind contribution for the purposes of the contribution limits if:

...

- ii. The expenditure is made by ~~T~~he news media reproduces, republishes, or disseminates the communication or materials for the cost of covering or carrying a news story, commentary or editorial.

#### Section 1.1(r)

Finally, we note that use of the term “person” in several provisions of Regulation No. 1, including those discussed above, could create ambiguity because the term as defined in section 1.1(r) does not expressly include political committees (which are not otherwise named in the relevant provisions), and refers only to entities that are “business organizations.” While we doubt that a reasonable reader could interpret these provisions, read in context, not to apply to political committees or other entities making expenditures, for avoidance of doubt we suggest the following modifications to section 1.1(r):

- r. **Person.** An individual, or a partnership, sole proprietorship, other form of business or nonprofit organization, or a political committee.

If the Board makes this proposed change, it may also wish to replace the phrase “person” or “political committee” where it appears in Regulation No. 1 with the word “person” to avoid redundancy.

\* \* \*

The proposed changes to Regulation No. 1’s provisions governing coordinated expenditures will help to protect the integrity of Philadelphia’s elections from the risks posed by real and apparent *quid pro quo* corruption. We applaud the Board’s efforts to improve the City’s campaign finance laws in this manner, and would be happy to provide any further assistance that may be required.

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**Testimony of Megan P. McAllen<sup>1</sup> before the Philadelphia Board of Ethics**  
*Re: Proposed Amendments to Regulation No. 1, Campaign Finance*

**September 17, 2014**

Thank you for this opportunity to provide my views on the proposed amendments to Ethics Board Regulation No. 1, Campaign Finance, on behalf of the Campaign Legal Center.<sup>2</sup>

These comments will primarily address the revisions that would improve the regulation's treatment of "coordinated expenditures."<sup>3</sup> Specifically, those changes include a new provision clarifying that any expenditure made to "reproduce, republish, or disseminate" material that was "prepared by a candidate's campaign" constitutes an "in-kind contribution" to the preparing candidate (proposed ¶ 1.40), as well as an addition to paragraph 1.39 specifying that an expenditure is coordinated with (i.e., is not "independent" from) a candidate if the person making the expenditure uses funds that the candidate's committee raised on the person's behalf (proposed ¶ 1.39(e)).

In *Buckley v. Valeo*, the Supreme Court recognized that only "true" independence from candidates "alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate."<sup>4</sup> The Court has since made clear that only "totally," "wholly," or "truly" independent expenditures are non-corruptive, whereas expenditures coordinated with candidates pose the same corruption and circumvention risks as do direct contributions. As such, the proposed amendments to Regulation No. 1 are amply justified and well-tailored anticorruption measures: they are designed to ensure that purportedly "independent" advocacy undertaken for a candidate's benefit is *truly* independent from the candidate, and thus to prevent "outside" groups from evading the City's candidate contribution limits under the guise of "independent" spending. The proposed revisions are constitutionally sound and represent wise policy, and I urge the Board to adopt them.

**1. Republication of campaign communications or materials (proposed ¶ 1.40)**

Proposed paragraph 1.40 ("Republication of campaign communications or materials") is a form of "coordination" regulation intended to complement the existing standards governing the determination of an expenditure's "independence." Under current law, if a person or committee makes an expenditure that is "coordinated with" and "made for the benefit of" a candidate's campaign, it constitutes an ~~independ~~ contribution "subject to the contribution limits set forth in Subpart B."<sup>5</sup> However, if a purportedly

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<sup>1</sup> Associate Counsel, Campaign Legal Center.

<sup>2</sup> The Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization founded in 2002 that works in the areas of campaign finance, elections and government ethics. The CLC offers nonpartisan analyses of issues and represents the public interest in administrative, legislative and legal proceedings, at the federal, state and local levels.

<sup>3</sup> See Proposed Amendments to Regulation No. 1, Subpart H, ¶¶ 1.39–1.41 (approved for public comment July 16, 2014).

<sup>4</sup> 424 U.S. 1, 47 (1976).

<sup>5</sup> Regulation No. 1, ¶ 1.48 (recodified at ¶ 1.38 under proposed amendment).

“independent” group pays to reproduce or widely disseminate a candidate’s own campaign materials, it would be difficult to treat the expenditure as “coordinated”—notwithstanding the clear connection between the candidate’s campaign and the group’s expenditure, and the manifest risk that such activity would pose to the candidate contribution limits—absent a showing of explicit prearrangement. The new regulation closes this gap by effectively expanding the definition of “in-kind contribution” to reach such payments. Without such a provision, a supposedly “independent” person or group can subsidize a candidate’s campaign and evade the candidate contribution limits by simply distributing the candidate’s materials as its own.

*a. The proposed republication rule will prevent circumvention of the contribution limits.*

The Board’s proposed republication provision is modeled on a similar federal regulation involving the duplication of candidate campaign material, which provides that financing the “dissemination, distribution, or republication, in whole or in part,” of any campaign materials prepared by a candidate or an agent of the candidate “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.” 11 C.F.R. § 109.23. Like proposed paragraph 1.40(a), the FEC regulation treats an expenditure for the republication of campaign materials as an in-kind contribution irrespective of whether the expenditure is also a “coordinated communication”—i.e., meets one of the specified “conduct” prongs of the FEC’s “coordinated communication” regulation.<sup>6</sup> Therefore, under both the federal provision and proposed paragraph 1.40(a), only the person or group financing the republication of candidate materials—but not the candidate herself—is liable for the in-kind contribution.<sup>7</sup>

Paragraph 1.40(b) further provides that if the republished material is obtained “directly from the candidate’s campaign or from another source with the consent of the candidate’s campaign,” it will also constitute an in-kind contribution as to the candidate herself. The republished material has been obtained with the candidate’s consent “if the candidate provides it to a third party so that another person is able to obtain the communication or material from that third party.” This provision directly addresses situations in which a candidate has developed material and posted it online with the plain expectation that it will be picked up and disseminated by a deep-pocketed “independent” committee—free of charge to the candidate.<sup>8</sup> The illustrative scenario included in paragraph 1.40 makes clear that when an independent

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<sup>6</sup> “Coordination” only occurs under federal law when an expenditure for a specific communication meets *both* prongs of the “coordinated communication” regulation: (1) the ad contains specified content *and* (2) the candidate suggests or requests the ad; is materially involved in the spender’s decisions regarding the content of the ad, the intended audience, or the media outlet used; or otherwise meets one of the rule’s narrow “conduct” standards. *See* 11 C.F.R. § 109.21(c) (content standards) and 109.21(d) (conduct standards). The “conduct” standards are also met by use of a “common vendor” absent a firewall, or involvement of a person or contractor who had been employed by the candidate in the previous 120 days, absent a firewall. *See* 11 C.F.R. § 109.21(d)(1)–(5); 109.21(h). To establish “coordination” with respect to republished campaign materials, the republication is itself sufficient to satisfy the regulation’s “content” standards. 11 C.F.R. § 109.21(c)(2). The “conduct” standards, however, include exceptions for material obtained from the public domain. *Id.* § 109.21(d)(2).

<sup>7</sup> *See* 11 C.F.R. § 109.23(a) (providing that “[t]he candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure,” unless the expenditure is also coordinated within the meaning of 11 C.F.R. § 109.21 (coordinated communications) or 11 C.F.R. § 109.37 (party coordinated communications)).

<sup>8</sup> This practice has become increasingly widespread. *See, e.g.*, Sean Sullivan, *McConnell-aligned group launches seven-figure ad campaign with his footage*, Wash. Post, Mar. 18, 2014, [http://www.washingtonpost.com/blogs/post-politics/wp/2014/03/18/mcconnell-aligned-group-launches-seven-figure-ad-campaign-with-his-footage/?wprss=rss\\_politics](http://www.washingtonpost.com/blogs/post-politics/wp/2014/03/18/mcconnell-aligned-group-launches-seven-figure-ad-campaign-with-his-footage/?wprss=rss_politics); *see also* Sean Sullivan, *How campaigns and outside groups communicate silently, revisited*, Wash. Post, Sept. 15, 2014,

committee incorporates a candidate’s publicly-posted “b-roll” video footage into its own advertisement, it has coordinated with the candidate’s campaign: the footage was created by the candidate and obtained “with the candidate’s consent,” so the committee’s payment for its republication constitutes an in-kind contribution.

The federal regulation sets forth five exceptions to the general rule treating the financing of republication of campaign materials as a contribution by the republisher—(1) republication by the candidate who prepared the material, (2) republication of material by an opponent of the candidate who prepared the material, (3) press exemption, (4) brief quote of material by a person expressing her own views, and (5) republication by a party committee as a coordinated expenditure. 11 C.F.R. § 109.23(b). Similarly, the provisions of proposed paragraph 1.40 do not apply if the communication or material is “incorporated into a communication that *advocates the defeat* of the candidate that prepared the material,” ¶ 1.40(c)(i), or is “reproduce[d], republish[e]d, or disseminate[d]” by the “news media,” ¶ 1.40(c)(ii). These exceptions roughly track the federal law, and reflect a considered approach that balances the Board’s interest in preventing the abuse and circumvention of the campaign finance laws with the regulated community’s need for clear guidance.

*b. The proposed republication provision is constitutional.*

There are no constitutional barriers to subjecting payments for duplication of candidate campaign materials to the City’s candidate contribution limits as proposed, because notwithstanding the Supreme Court’s pronouncement in *Citizens United v. FEC* that independent expenditures cannot be constitutionally limited because they “do not give rise to corruption or the appearance of corruption,”<sup>9</sup> non-independent—i.e., coordinated—expenditures are not so immunized. While no court has directly considered the federal regulation that provided the model for the Board’s proposed law, 11 C.F.R. § 109.23, the Supreme Court has maintained a broad view of coordination in general, and has spoken expansively about the degree of independence that is necessary to prevent outside spending from “undermin[ing] contribution limits.”<sup>10</sup> Only “totally independent,” “wholly independent,” and “truly independent” expenditures qualify.

Since the Supreme Court’s decision in *Buckley*, the Court has distinguished for constitutional purposes between limitations on “contributions” to a candidate’s campaign, and limitations on “expenditures” to influence an election made independently of candidates. The *Buckley* Court therefore upheld candidate contribution limits as constitutionally permissible, but struck down limits on individual independent expenditures.<sup>11</sup> The Court also recognized, however, that any limitations on campaign contributions, in order to be effective, must apply to expenditures made in coordination with a candidate, so as to “prevent attempts to circumvent the [campaign finance laws] through prearranged or coordinated expenditures amounting to disguised contributions.”<sup>12</sup> The *Buckley* Court further explained that there was a difference between expenditures “made *totally* independently of the candidate and his

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<http://www.washingtonpost.com/blogs/post-politics/wp/2014/09/15/how-campaigns-and-outside-groups-communicate-silently-revisited>.

<sup>9</sup> 558 U.S. 310, 357 (2010).

<sup>10</sup> *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 464 (2001) (“Colorado II”).

<sup>11</sup> *Buckley*, 424 U.S. at 29, 51.

<sup>12</sup> *Id.* at 47.

campaign,”<sup>13</sup> and “coordinated expenditures,” and construed the contribution limits to include not only contributions made directly to a candidate, but also “all expenditures placed in cooperation with or with the consent of a candidate” or the candidate’s campaign committee.<sup>14</sup>

Unlike contributions, the *Buckley* Court explained, *totally* independent expenditures “may well provide little assistance to the candidate’s campaign and indeed may prove counterproductive.”<sup>15</sup> The Court explained further that the absence of coordination “undermines the value of the expenditure to the candidate” and “alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.”<sup>16</sup> By contrast, a committee’s duplication and republication of a candidate’s campaign materials is undoubtedly of great assistance to the candidate’s campaign and runs no risk of being counterproductive. If the candidate did not view the materials as valuable to her campaign, she would not have produced them in the first instance. For this reason, payments to duplicate and distribute campaign materials pose precisely the same threat of corruption as a contributions given directly to a candidate—and such contributions may be limited under *Buckley*.

The Court echoed *Buckley*’s broad language regarding coordination in later decisions on the same topic. In *Colorado Republican Federal Campaign Committee v. FEC* (“*Colorado I*”), the Court held that a radio advertisement aired by the Republican Party attacking the Democratic Party’s presumptive nominee to the U.S. Senate would not be treated as coordinated because the ad was developed “independently and not pursuant to any general or particular understanding with a candidate . . .”<sup>17</sup> Shortly thereafter, the Court—again in the context of party spending—noted that independent expenditures are only those “without any candidate’s approval (or *wink or nod*) . . .”<sup>18</sup> Finally, in *McConnell v. FEC*, the Court again noted that the relevant “dividing line” was “between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that truly are independent.”<sup>19</sup>

In the course of striking down spending limits, the *Buckley* Court specifically considered the possibility that the federal contribution limits could be evaded by “the simple expedient of paying directly for media advertisements or for other portions of the candidate’s campaign activities” using “independent” expenditures.<sup>20</sup> The Court explained that there was no such risk, because those direct payments were to be treated as contributions subject to the limits and prohibitions of the Act. The Court later repeated this straightforward conclusion—that paying a campaign’s media bills is “virtually indistinguishable” from making a contribution—in *Colorado I*.<sup>21</sup> Paying to reproduce and disseminate a candidate’s own campaign materials likewise amounts to “paying directly for [a candidate’s] media advertisements,” and such payments can be constitutionally regulated as in-kind contributions. As the district court explained in *FEC v. Christian Coalition*, “[a] mere expenditure to increase the volume of the candidate’s speech

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<sup>13</sup> *Id.* (emphasis added)

<sup>14</sup> *Id.* at 46–47 n.53; *see also id.* at 78.

<sup>15</sup> *Id.* at 47.

<sup>16</sup> *Id.*

<sup>17</sup> 518 U.S. 604, 614 (1996).

<sup>18</sup> *Colorado II*, 533 U.S. at 442, 447 (emphasis added).

<sup>19</sup> 540 U.S. 93, 221 (2003) (emphasis added).

<sup>20</sup> *Buckley*, 424 U.S. at 46.

<sup>21</sup> *Colorado I*, 518 U.S. at 624.

by funding additional purchases of campaign materials . . . does not raise the same type of First Amendment concerns” as might other forms of coordination rules.<sup>22</sup>

c. *A public domain exception is not required and would “swallow the rule.”*

The proposed amendment does not exclude from regulation the duplication of materials already available in the public domain. Paragraph 1.39(f) provides that using “information obtained from the candidate’s campaign to design, prepare or pay for” a particular expenditure constitutes coordination *unless* the information is “obtained from a public source or from a communication the candidate made to the general public.” However, this general “public domain” carve-out, by its explicit terms, “*does not apply to the republication of campaign communications or materials.*” *Id.* ¶ 1.39(f) (emphasis added). Excluding such material would remove from the provision’s coverage the very concern it was likely drafted to address: candidates posting b-roll footage online and relying on outside groups to bankroll its distribution as part of a candidate ad.<sup>23</sup>

As the history of the federal republication provision further demonstrates, a public domain exception would neuter the law. In a 2002 FEC rulemaking proceeding, one commenter proposed an exception from the coordination/republication rule “to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records.”<sup>24</sup> The FEC, however, “decline[d] to promulgate a ‘public domain’ exception because such an exception could ‘swallow the rule,’ given that *virtually all campaign material that could be republished could be considered to be ‘in the public domain.’*”<sup>25</sup>

Moreover, a public domain exception is not constitutionally required. In *McConnell*, the plaintiffs argued that any definition of coordination that did not “hinge on the presence of an agreement” failed to provide the “‘precise guidance’ that the First Amendment demands.”<sup>26</sup> But the Supreme Court concluded otherwise: in particular, the Court was “not persuaded that the presence of an agreement marks the dividing line between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that truly are independent.”<sup>27</sup> In short, “the rationale for affording special protection to wholly independent expenditures”—i.e., that their independence “alleviates the danger” of quid pro quo corruption and may even make them “counterproductive” to the candidate’s campaign—does not extend to something as obviously beneficial as outright duplication of

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<sup>22</sup> 52 F. Supp. 2d 45, 85 n.45 (D.D.C. 1999) (distinguishing the federal republication provisions from the standard for conduct constituting coordination, and narrowing the latter as overbroad).

<sup>23</sup> A recent FEC enforcement matter demonstrates, in stark terms, how a candidate might benefit from republication. There, a purportedly “independent expenditure-only” group, American Crossroads, spent \$440,000 to broadcast an ad featuring footage that the candidate had spent a mere \$14,000 to produce. As three FEC Commissioners put it, “[o]ne can easily see what a boon this could become to candidates if they need only incur the low cost of producing video and posting it to the internet, and then [independent expenditure-only political committees] could download the images and spend hundreds of thousands of dollars broadcasting them to a wider audience, magnifying the impact of the campaign’s spending many times over.” Statement of Reasons (Weintraub, Bauerly, Walther), FEC Matter Under Review 6357 (Feb. 27, 2012).

<sup>24</sup> *Coordinated and Independent Expenditures*, Final Rules & Explanation & Justification, 68 Fed. Reg. 421, 442–43 (Jan. 3, 2003).

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> 540 U.S. at 221.

<sup>27</sup> *Id.*

the candidate’s campaign materials.<sup>28</sup> Instead, when a supposedly “independent” committee pays to reproduce and disseminate all or part of something specifically prepared by a candidate—even if acquired from a publicly available source—it will plainly be “as useful to the candidate as cash.”<sup>29</sup> Such a scenario, unlike “truly” or “wholly” independent spending, poses a clear risk of corruption and the appearance of corruption.

## **2. Solicitation by candidates for “independent” expenditures (proposed ¶ 1.39(e))**

Proposed paragraph 1.39(e) provides that an expenditure made “using funds solicited for or directed to” the person making the expenditure by a candidate’s committee is coordinated with such candidate. This provision clarifies that an outside group’s expenditures are not truly “independent” of a candidate—and thus are not devoid of any corruptive potential—if the candidate is soliciting the very contributions used to make the expenditure. Placing reasonable limits on the degree of cooperation that may occur between a candidate and an ostensibly “independent” group is a practical and entirely constitutional way to demarcate the boundary between “independence” and “coordination.”

- a. Solicitation by candidates poses a serious threat of corruption and circumvention—even when the funds are solicited for and spent by another entity.*

The Supreme Court has never held that the expenditure of funds raised by a candidate to directly benefit that candidate cannot be regulated as a coordinated expenditure. Indeed, the Court has specifically recognized a serious threat of corruption or its appearance inherent in the act of candidate solicitation itself, in the context of upholding federal law restrictions on candidate solicitation of “soft money” (i.e., money raised outside of contribution amount limits and corporate/union source prohibitions) in connection with any election.<sup>30</sup> The federal solicitation restrictions, which were enacted as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), were challenged and upheld in *McConnell*,<sup>31</sup> including with the vote of Justice Kennedy, who otherwise dissented in the case.<sup>32</sup> In so holding, the Court emphasized “the substantial threat of corruption or its appearance posed by donations to or at the behest of federal candidates and officeholders,” noting that “the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself.”<sup>33</sup>

The Court’s reasoning in *McConnell* makes clear that permitting a candidate to directly solicit funds on behalf of a purportedly independent committee, which will then use the funds for ads that directly benefit that same candidate, poses “a substantial threat of corruption.” If a candidate can solicit unlimited contributions to an “independent” committee—precisely the “quid” that Justice Kennedy identified as toxic—it poses just as serious a threat of a return “quo” to the donor from the grateful candidate who

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> The federal law prohibition on “soft money” fundraising provides: “A candidate … shall not … solicit, receive, direct, transfer, or spend funds in connection” with any election unless the funds are subject to the contribution limitations and prohibitions of the Federal Election Campaign Act. *See* 2 U.S.C. § 441i(e)(1)(A) (prohibiting such activity in connection with federal elections) and (B) (prohibiting such activity in connection with nonfederal elections).

<sup>31</sup> 540 U.S. at 142–54, 181–84.

<sup>32</sup> *See id.* at 308 (Kennedy, J. dissenting in part and concurring in part).

<sup>33</sup> *Id.* at 182–84.

solicited the funds (and who will benefit from the spending of them) as a large contribution made directly to the candidate.

The approach to defining coordination reflected in proposed paragraph 1.39(e) would ensure that a donor cannot gain undue influence over a candidate by routing funds through another person or committee for the candidate's direct benefit, and thus effectuates the City's interest in preventing corruption and its appearance. Permitting a candidate to participate in, and solicit unlimited contributions for, "independent" fundraising efforts—when the fundraising proceeds will be used to benefit that very candidate—undeniably presents a "danger that expenditures will be given as a quid pro quo for improper commitments from the candidate."<sup>34</sup> Similarly, such an arrangement would also give rise to "the appearance of improper influence," which must be prevented "if confidence in the system of representative Government is not to be eroded to a disastrous extent."<sup>35</sup>

In short, a candidate's assistance with fundraising, whether accomplished by steering potential contributors to the spender or by making direct solicitations on the spender's behalf, means that the spender's later expenditure for the candidate's benefit is not "independent" in any meaningful sense. Under such circumstances, it can be reasonably inferred that the solicitation is undertaken with an expectation or understanding that the person receiving those funds will use them in ads to benefit the soliciting candidate—and indeed, the risk of a more explicit arrangement, going beyond a "wink or nod" or "general agreement," cannot be realistically denied.

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For all of the above-stated reasons, I respectfully urge the Board to adopt these amendments. Thank you for the opportunity to testify before you today.

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<sup>34</sup> *Buckley*, 424 U.S. at 47.

<sup>35</sup> *Id.* at 27 (citation omitted).

TRANSCRIPT OF HEARING

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EXHIBIT-7

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# Committee of Seventy

Fighting for Better Local Government

## Testimony on Proposed Regulation No. 2

Philadelphia Board of Ethics

September 17, 2014

I am Ellen Matteleman Kaplan, Interim President and CEO of the Committee of Seventy, a non-partisan government watchdog.

With the 2015 municipal elections already underway, Seventy commends the Ethics Board for proposing amendments to its regulation interpreting the city's campaign finance law.

Yes, there are loopholes and violations have occurred. But, in large part, this law has worked exceedingly well in driving down the influence of big money in city politics.

In the wake of recent U.S. Supreme Court rulings in campaign finance cases, this may not continue. Over the next year, we are likely to see the first real display of outside money flowing into Philadelphia that is not subject to the city's contribution limits.

As this happens, Seventy urges this Board to play a proactive role in urging City Council to strengthen the campaign finance law.

In the meantime, here are some comments on today's proposed regulation.

1. **Subpart B, Contributions Limits.** This is a small point. The \$2,900 and \$11,500 maximum contribution limits will not last forever. If this is to be a living document, you may want to explain that the maximum contribution limits are adjusted every four years according to a consumer price index multiplier.
2. **Subpart H, Coordinated Expenditures, Section 1.41:** Seventy shares your desire to clarify the understanding around coordinated versus uncoordinated expenditures. The reality of "coordination" can be elusive, and in some cases, deliberately masqueraded.

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For instance, during the 2007 Democratic mayoral primary, a campaign aide for U.S. Representative Bob Brady acknowledged advising others on setting up independent groups to attack opponent Tom Knox, who was ahead in the polls. Representative Brady said he didn't know about or endorse this conduct, and the aide left the campaign. If others used the campaign aide's advice – which could well have included information only the Brady campaign was privy to – it would be hard to argue this was not a coordinated expenditure.

Section 1.41c says an expenditure will not be considered coordinated “merely” because the person making the expenditure and the candidate’s campaign have an agent in common. According to the regulation’s definition of “agent,” this could include paid campaign strategists, polling firms and many others whose services are typically used by political campaigns. While a shared agent does not automatically confer a presumption of coordination, a shared agent certainly raises more eyebrows than the other examples cited in Section 1.41, e.g., where a person making the expenditure interviews or endorses a candidate; obtains the candidate’s bio, position paper, press release or similar material about the candidate or; invites the candidate to appear before that person’s members, employees or shareholders.

As we all know, it’s not uncommon for employees of elected officials to join the staff of campaign strategists and polling firms who are then hired by the same elected officials for their campaigns. There is ample opportunity for coordination, or at least the appearance of coordination to occur.

For this reason, in the case of a shared agent, Seventy recommends putting the burden on the person or political committee making the expenditure – as well as the candidate’s campaign – to *disprove* coordination. If they can’t, those expenditures should be considered “in-kind contributions” that count against the contribution limits in the campaign finance law.

Attached to this testimony are factors adopted in January 2014 by the Maryland State Board of Elections in determining whether coordination has occurred. If this Board were to adopt these factors, and include them in Regulation 2, it would send a strong message to both candidates and others that complaints of coordination will be taken very seriously.

3. **Subpart I, Section 1.45, Exclusion of excess pre-candidacy contributions upon becoming a candidate.** Again, this is a small point. Section 1.45b references “non-covered pre-candidacy expenditures.” Although this is included in Subpart A, 1.1q, it is still not clear what this

refers to. Some examples would be useful.

4. **Subpart J. Retiring Debt:** The Brady/Cozen matter arose under the 2007 version of the city's campaign finance law. But could the Pennsylvania Supreme Court's decision in this case, which was just argued earlier this month, potentially have any impact on this provision? If so, you might want to hold off on a final version of this regulation until this decision is handed down.

Next, I want to raise a few issues that are not addressed in this regulation, but are closely related to the continued integrity of the city's campaign finance law.

Seventy understands that this Board does not have the power to create new law, but is bound by existing city rules.

However, as Seventy noted during discussions last fall over the city's gifts rules, the Philadelphia Code explicitly gives the Ethics Board the authority to tell the mayor and City Council when its laws are too weak or unclear:

The Board shall, whenever it deems necessary, make recommendations to the Mayor and to City Council which seek to improve the administration and enforcement of [the Code's Chapter on Conduct and Ethics], including any legislative changes which help strengthen or clarify the standards of conduct and ethics. Phila. Code, Section 20-606 (1)(i)(ii).

On a number of occasions in past years – in its Annual Reports and with respect to the gifts rules – the Ethics Board has taken this role to heart by recommending legislative action or changes to the Philadelphia Home Rule Charter.

Here, briefly, are Seventy's recommendations:

1. **Limiting the doubling provision.** As it now stands, if a candidate triggers the doubling provision during the primary, all candidates in the same race (including the candidate who triggered the doubling provision) are permitted to accept doubled contributions. This continues even if the candidate who triggered the doubling provision loses in the primary election.

Unfortunately, truly competitive races are rare in this town. The current rule gives the primary winner (usually a Democrat) an inordinate fundraising advantage over his or her opponent. Donors are naturally more likely to give the maximum dollars to the person they believe is poised to become the winner in the November election.

The doubling provision should apply to the general election only if the person who triggered it survives the primary.

2. **Running for two elective city offices.** Candidates are currently permitted to run for two elective city offices, even a district Council seat and a Council At-Large seat. As a matter of good policy, and even if the financial aspects of two campaigns can be resolved as recommended in Subpart F of Regulation 2, Seventy believes this should not be permitted.
3. **Close loophole that permits incumbents to accept unlimited contributions if they have not declared their candidacies.** A bill to close this loophole was introduced by Councilman Jim Kenney in February 2013 after it was revealed that then-Councilman Bill Green accepted a \$30,000 donation from a beverage mogul when he was not a candidate for elective office – which is entirely legal under the current campaign finance law. The bill has been sitting without action in Council's Law and Government Committee. This Board should urge City Council to pass this bill and incorporate it into the campaign finance law.
4. **Disclosures of independent expenditures.** City Council has already expressed its concerns regarding the unleashing of unlimited independent money in the wake of the U.S. Supreme Court's *Citizens United* case. Other cities and states have taken steps to tighten disclosure requirements so that voters can know the sources of funds behind independent groups.

Philadelphia should do the same. Also in February 2013, then-Councilman Green introduced a bill to mandate disclosure of donors by independent political committees who produce campaign ads either for or against candidates for office. Again, this bill has been sitting without action in Council's Law and Government Committee. This Board should urge City Council to adopt it.

In addition to our recommendations, this Board undoubtedly has recommendations of its own to make to Council.

It is the perfect moment to do this. One candidate has already declared for mayor. Another is announcing today. There will also be races for all 17 City Council seats, City Commissioners and Sheriff that are governed by the campaign finance law.

It may take a very long time to get this law right. Seventy looks forward to working with the Board, and with City Council and the Mayor's office, for as long as it takes.

Thank you.

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**MARYLAND**

**STATE BOARD OF ELECTIONS**

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**MARYLAND STATE BOARD OF ELECTIONS**

**Issue Date: January 29, 2014.**

**COORDINATION AND COOPERATION**

The State Board of Elections issues this guidance for publication and inclusion as a section in the Summary Guide as a clarification on the application of the standards regarding coordination and cooperation between candidates, campaign finance entities and other persons.

Factors to be considered by the State Board of Elections in determining whether a candidate, covered official under Election Law Article §13-235, a campaign finance entity, or a person making independent expenditures act, organize or operate in coordination and cooperation with each other, include the following.

- Acting at the request or suggestion of the candidate.
- Sharing of campaign material, strategies, or information that is not generally available to the public, such as advertising, messaging, strategy, polling, research, or allocation of resources.
- Publishing or distributing campaign material prepared by the candidate.
- Whether the candidate made an agreement with another candidate or person on the payment of expenses or receipt of contributions, for example designs or schemes to evade Election Law disclosure requirements or contribution limits.
- Whether the candidate is substantially involved in, or had more than incidental discussions with respect to, decisions regarding the content, targeted or intended audience, means or mode of a public communication, specific media outlet used, the timing or frequency or size or prominence of a communication or fundraising event for another candidate.
- The extent to which a candidate shares operations, responsible officers, staff, consultants and other third party vendors with another candidate or person.
- Whether the candidate directs or controls access to funds of a political committee or directs or controls the activity of the political committee.
- Whether the candidate's name or photo is featured on a solicitation or at the fundraiser event.

The term "candidate" as referenced above will typically be understood to mean the following:

- A candidate as defined by Election Law Article §1-101
- An official under Election Law Article §13-235
- A campaign finance entity, or
- Agents on their behalf.

**TRANSCRIPT OF HEARING**

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**EXHIBIT-8**

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September 17, 2014

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**Re: Proposed Revisions to Regulation 1**

To the Board:

I am writing to raise my concerns regarding the proposed Amendments to Regulation 1. These comments are in my personal capacity, as an attorney whose practice encompasses the representation of regulated entities before the Board, both candidates and political committees, but are not offered on behalf of any particular client past or present.

My primary concerns are with Proposed Reg. 1.40, the so-called anti-“McConnelling” regulation, which seeks to deem as in-kind contributions the re-use of campaign-produced materials by outside groups. While I recognize that the Federal Election Commission has enacted somewhat similar regulations on the federal level, it is nonetheless bizarre to have a situation which the legal treatment of a particular form of political speech depends on the perceived intent behind such speech—namely, whether the speaker “intended” for it to be in support of or in opposition to the candidate whose materials have been republished, or rather, as long as it did not advocate for that candidate’s defeat.

Why the Board of Ethics would want to treat *neutral* republications as contributions is beyond my ken. The language of Proposed Reg. 1.40 would seem to impair the ability of public policy organizations to re-use campaign policy papers and even candidate photographs as part of nonpartisan voter guides, or of social media activists to remix candidate clips for purposes of amusement and entertainment rather than electioneering. What about a blogger who cuts-and-pastes images from a candidate’s policy platform and writes accompanying text which supports

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1900 Market Street, Philadelphia, PA 19103

September 17, 2014

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some aspects while criticizing others? All these actions can constitute expenditures for the purpose of influencing the outcome of an election which reproduce, republish, or disseminate materials prepared by a candidate's campaign—by bringing certain issues to the public eye, or by drawing attention to certain candidates—without raising any concerns about corruption or undue influence such that regulation makes sense.

Indeed, for public policy organizations organized as 501(c)(3)s or 501(c)(4)s it's even worse: editing candidate-produced statements into an online comparison video might not only constitute an in-kind contribution, but an *illegal* one—owing to their use of the corporate form. Similarly, how would this regulation treat the downloading of a photograph from a candidate's website for republication in a voter guide, mailer, or other election-related material created independently from a campaign?<sup>1</sup>

As drafted, the proposed regulation treats *anyone* who makes an expenditure to reuse a campaign's materials, for *any* purpose other than advocating for that candidate's defeat, as making an in-kind contribution to that candidate.<sup>2</sup> And unlike the parallel federal regulation, there is no exception created when "the campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views." 11 CFR §109.23(b)(4). If this regulation were to be adopted, such a "fair use" exception would be absolutely crucial.

[The "news media" is exempt, but that term is nowhere defined under the regulations or anywhere in Pennsylvania or Philadelphia campaign finance law. I'll get to that issue in the next section, because there's a better way to resolve this.]

This morass is why, since 2010, the Federal Election Commission has declined to enforce its own parallel regulations against outside groups charged with republishing a candidate's materials, so long as the outside group inserts its "own message" over the candidate's footage and there is no direct contact between the campaign and the outside group. As former Democratic FEC Commissioner Robert Lenhard has summarized:

Beginning with a 2010 decision involving the Democratic Congressional Campaign Committee (MUR 5879), followed by a 2012 decision involving American Crossroads (MUR 6357) and two decisions last year involving among others Christie Vilsack for Iowa (MUR 6617) and House Majority PAC and Cheri Bustos for

<sup>1</sup> The FEC dismissed a complaint seeking to punish such activity. See MUR 5743 (Betty Sutton for Congress).

<sup>2</sup> What constitutes an "expenditure" here? In order to place a remixed video onto YouTube for free distribution, for instance, an activist will need to pay at some point for (a) a computer, (b) the proper software, and (c) internet access. Would any of these acts count as expenditures under Proposed Reg. 1.40?

Congress (MUR 6667), the FEC has split over whether an outside group can incorporate 10 to 15 seconds of footage obtained from the candidate's website in a 30 or 33 second commercial. Three Commissioners have consistently found that an outside group — even a Super PAC — may use of “snippets” of a campaign’s publicly available “B roll” footage, so long as it does not repeat the “content, format and overall message” of the candidate’s ad. Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn II and Matthew S. Petersen, MUR 6357, page 4.

**For these three Commissioners, the question turns on whether the independent group’s message is distinct from the candidate’s message, or if it simply “repeat[s] verbatim [the candidate’s] message....”** Statement of Reasons of Commissioners Hunter and Petersen, MUR 6617, page 1, quoting Statement of Reasons of Chair Hunter and Commissioners McGahn and Petersen in MUR 6357. **The candidate’s ad has not been “republished,” even if the campaign’s footage makes up a third of the images used in the independent expenditure, so long as the outside group or Super PAC has added its own “text, graphic, audio, and narration,” causing the ad to become the outside group’s “own message.”** Statement of Reasons of Chair Caroline C. Hunter and Commissions Donald F. McGahn II and Matthew S. Petersen, MUR 6357, page 4. The fact that the outside group’s ad and the campaign’s ad touch on the same themes is not “materially significant” to the analysis. Only if the ad is “close to a carbon copy” of the candidate’s ad does it appear that it will run afoul of the law under this analysis.

See Robert Lenhard, “Super PACs Using Candidates’ B-roll Footage and the FEC’s “Own Message” Cases,” (3/19/14), available online at <http://www.insidepoliticallaw.com/2014/03/19/super-pacs-using-candidates-b-roll-footage-and-the-fecs-own-message-cases/> (Emphasis added.)

As those Commissioners explained in MUR 6357, which I’ve attached to this comment as an exhibit:

**The Act’s republication provision is designed to capture situations where third parties, in essence, subsidize a candidate’s campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate.** But clearly that is not what

happened here. American Crossroads did not repeat verbatim the Portman Committee's message; rather, it created its own.

Proposed Regulation 1.40, as drafted, should not be adopted at all. There is no crisis calling for such broad language. It will cause confusion, chill harmless speech, and cede too many literal violations of the law to the mercy of prosecutorial discretion. It is better to add new regulations only narrowly, and when their ambit is clear, than to regulate broadly and hope that such language will be reasonably interpreted.

Actual reproduction of a campaign's own messaging and materials is worth regulating and already is regulated. Direct coordination between campaigns and outside groups is now more clearly defined, and the Board will have its first chance this cycle to see how well its new regulations perform. But brief quotes from a campaign's materials, and other forms of "remixing" do not present the same subsidization issues,<sup>3</sup> and I urge the Board to reconsider wading into those waters at the present time. Indeed, as Harvard law professor Lawrence Lessig explained, denying the ability to remix is to deter the ability of citizen-activists to engage in low-cost, powerful speech which can spread important messages virally:

The obvious point is that a remix [...] can't help but make its argument, at least in our culture, far more effectively than could words. (By "effectively," I mean that it delivers its message successfully to a wide range of viewers.) For anyone who has lived in our era, a mix of images and sounds makes its point far more powerfully than any eight- hundred- word essay in the New York Times could.

Lawrence Lessig, *Remix: Making art and commerce thrive in the hybrid economy* 74 (2008).

The best way to push back against the influence of amassed wealth on the electoral process is to encourage the ways in which grassroots activists can promote their own messages. By regulating these works, the Board of Ethics would deter such creativity and move in the opposite direction.

As promised, this leads to a second issue, part of Regulation 1 for which amendment has not been proposed at this time, but should be.

**Media exception:** While the Board proposes a specific exemption within the republication rules for media activities, as an overall matter Regulation 1.11 ("Transactions that do not count toward the contribution limits") does not include such an exception. Said provision

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<sup>3</sup> Those candidates who place B-roll online in the hopes that it will be remixed favorably run the risk of being hoisted by their own online petard through unfavorable remixing as well. See, e.g., "#Boyleing – Oh Yeah," available online at <https://www.youtube.com/watch?v=Hv5Jkx9e5qU>

exists under the parallel federal regulations for contributions and expenditures, and would be of vital importance in ensuring the role that local media, which often is incorporated, plays in our democracy.<sup>4</sup> Without such protection, both the professional media and independent journalists involved in blogging and social media activism theoretically risk<sup>5</sup> seeing their work categorized as illegal (in the case of media organized in the corporate form) or excessive/unreported contributions.

Is a newspaper's editorial endorsement of a candidate an in-kind contribution to her campaign, and an illegal one if the newspaper is incorporated? Without this protection, yes, strictly speaking, it is. The relevant parallel federal regulation reads as follows:

**§ 100.73 News story, commentary, or editorial by the media.**

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

- (a) That represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and
- (b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

As Congress explained in 1974, in enacting the Federal Election Campaign Act, which was the genesis of this exception:

[I]t is not the intent of the Congress in the present legislation to limit or burden *in any way* the first amendment freedoms of the press and of association. Thus [the media exemption] assures the *unfettered* right of the newspapers, TV networks, and other media to cover and comment on political campaigns.

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<sup>4</sup> For the record, I first testified about this issue before the Mayor's Task Force on Ethics and Campaign Finance Reform on January 10, 2009, and have no intention of dropping it.

<sup>5</sup> Granting that it's doubtful that you'd ever enforce the law against them, but the risk is out there if you read the regulations strictly.

Proposed Amendments to Regulation No. 1

September 17, 2014

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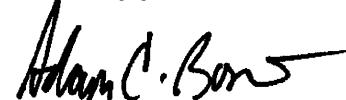
H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974) (emphasis added). I encourage the Board to consider a similar exception here, one which is as robust as the version the FEC amended in 2006 to provide online media with equal treatment to the established press.

***One last thing:*** In reviewing these regulations, I noticed that the doubling of contributions (Reg 1.6.) does not affect doubling for the limits to post-candidacy contributions or litigation fund committees. Why not? Surely, the same public policy concerns which animated the so-called millionaire's provision in the first place, and which occasioned the Board to create litigation fund committees—in terms of leveling the playing field when a candidate is facing a self-funded opponent, and especially when an opponent seeks to leverage that wealth into costly ballot access litigation—suggest that if some limits are to be doubled when facing such a challenge, *all* limits should be doubled to promote fairness.<sup>6</sup>

\* \* \*

Thank you for your consideration of these comments, and members of the Board and Staff should feel free to contact me if there are any questions.

Very truly yours,

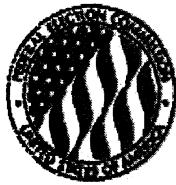


ADAM C. BONIN

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DEPARTMENT OF RECORDS  
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<sup>6</sup> Also, am I correct that if a self-funder fails to make a timely disclosure of crossing the \$250,000 threshold (Reg 1.6(f))—suppose a candidate does so in fall 2014 but it's not revealed until his 2013 Cycle 7 filing on February 2, 2015—the maximum penalty is only a \$2,000 civil penalty for an intentional violation under Reg. 1.57(b) (Proposed Reg 1.55)? That seems low, especially given the irreparable harm suffered by competing candidates who will have lost the ability to pursue double-contributions in the prior calendar year.



**FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463**

## **BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
American Crossroads, et al. ) MUR 6357

## **STATEMENT OF REASONS**

**Chair CAROLINE C. HUNTER and Commissioners DONALD F. McGAHN and MATTHEW S. PETERSEN**

At issue in this matter is whether American Crossroads<sup>1</sup> made an excessive in-kind contribution to the Portman for Senate Committee (“Portman Committee”) by airing television advertisements that included several fleeting snippets of Portman Committee video footage obtained from publicly available Internet websites. In 2010, American Crossroads funded the advertisement in question, “Jobs for Ohio,” and filed a timely report with the Commission disclosing the expenditure shortly after it was made. The Ohio Democratic Party filed a complaint alleging that the American Crossroads advertisement amounted to “republication of campaign materials” and, thus, constituted an excessive in-kind contribution to the Portman Committee—Rob Portman’s principal campaign committee for U.S. Senate in Ohio. Under this theory, American Crossroads allegedly violated the contribution limits and disclosure provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”), that apply to political committees.

We voted against finding reason to believe that American Crossroads and Margee Clancy, in her official capacity as treasurer, violated 2 U.S.C. §§441a(a) and 434(b) by making an excessive in-kind contribution as a result of republishing campaign materials and by failing to disclose the cost of the communication as a contribution.<sup>2</sup> American Crossroads' use of the

**American Crossroads** is an independent expenditure-only political committee registered with the Commission.

<sup>2</sup> Because we concluded that "Jobs for Ohio" was not an in-kind contribution to the Portman Committee, we need not address the complainant's assertion that because American Crossroads made a contribution by republishing campaign materials, it was thereafter subject to a \$5,000 contribution limit and the prohibition on contributions from corporations and labor unions.

OGC also recommended that the Commission dismiss, as a matter of prosecutorial discretion, the allegation that American Crossroads and Margee Clancy, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by accepting excessive and prohibited contributions. For the reasons stated in the First General Counsel's Report, we agree for purposes of 2 U.S.C. § 437(e)(8).

Statement of Reasons in MUR 6357  
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video footage snippets in its own communication was consistent with the Act and Commission regulations covering republication of campaign materials and fits squarely within Commission precedent dismissing allegations of campaign material republication in similar cases. This statement provides the basis for our conclusion.

I. Background

In 2010, American Crossroads spent \$454,341.80 on a television advertisement entitled "Jobs for Ohio." The complainant alleges that this spending was an excessive in-kind contribution to the Portman Committee "by financing the republication of Senate candidate Rob Portman's campaign materials."

The complaint identifies a YouTube video, "Portmans Celebrate Memorial Day," posted by the YouTube user "PortmanforSenate" on June 1, 2010, as the source of a portion of the footage of Rob Portman contained in the advertisement.<sup>3</sup> This Portman Committee video consists primarily of unembellished footage of Rob Portman and his family on the campaign trail. It appears that several images in the "Jobs for Ohio" advertisement, including footage of Portman walking in a parade and eating at a picnic table, were obtained from this video.

A second video posted on YouTube—"Portman's Statewide Jobs Tour," posted by the "robportman"—is the apparent source of additional images of Rob Portman contained in the "Jobs for Ohio" advertisement.<sup>4</sup> It appears that clips of Rob Portman talking to individuals or groups of workers and speaking at a podium holding up a brochure entitled "Portman Plan to Create Ohio Jobs" in the "Jobs for Ohio" advertisement was obtained from this video.

In contrast to the "day in the life"-style of the Portman Committee footage, American Crossroads' "Jobs for Ohio" advertisement consists of numerous fleeting images—including several brief snippets of Portman Committee video footage—that are incorporated into a checkerboard-style graphic and set alongside text, images, and visuals that are unique to this advertisement. Moreover, American Crossroads adds its own audio and narration to this spot.

American Crossroads filed a 48-Hour Independent Expenditure Report disclosing the costs of the advertisement on August 17, 2010.<sup>5</sup> Thus, the advertisements were fully disclosed

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In addition, although the complaint does not specifically allege that American Crossroads coordinated the advertisement with the Portman Committee, the Commission voted unanimously to accept OGC's recommendation to find no reason to believe that the Portman Committee violated 2 U.S.C. § 441a(f) by accepting an excessive in-kind contribution from American Crossroads in the form of a coordinated communication. The basis for this finding is the Factual and Legal Analysis for the Portman Committee available in the publicly available file.

<sup>3</sup> See <http://www.youtube.com/watch?v=10r6Y6cmqI4>.

<sup>4</sup> See <http://www.youtube.com/watch?v=3Xs3j8gibog>.

<sup>5</sup> Available at <http://query.nictusa.com/cgi-bin/dcdev/forms/C00487363/488248/>.

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Statement of Reasons in MUR 6357  
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and included a full disclaimer identifying who paid for the communication, American Crossroads' website, and statements that American Crossroads was responsible for the content of the advertisement and the advertisement was not authorized by any candidate or candidate's committee.

The Office of General Counsel ("OGC") recommended that the Commission find reason to believe that American Crossroads and Margee Clancy, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a) and 434(b) by making an excessive in-kind contribution as a result of republishing campaign materials and by failing to properly disclose the cost of its advertisement as a campaign contribution.

II. Analysis

Under the Act, "the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure..."<sup>6</sup>

For several reasons, including the Commission's treatment of similar allegations in prior matters,<sup>7</sup> we reject the arguments of complainants and OGC that American Crossroads' use of the snippets of Portman Committee footage resulted in an in-kind contribution to the Portman Committee. The activity at issue here does not constitute "republication of campaign materials" as contemplated by the Act and Commission regulations.<sup>8</sup> In MUR 5996 (Tim Bee), the Commission did not find reason to believe that an independent group's use of a candidate's "head shot" photograph in a television advertisement constituted republication. The Commission voted to exercise its prosecutorial discretion and dismiss the allegation that the group made an excessive or prohibited contribution because the photograph was downloaded from a candidate's publicly available website and was shown for only a few seconds in the ad at issue. We

<sup>6</sup> 2 U.S.C. § 441a(a)(7)(B)(iii) (emphasis added). Commission regulations, on the other hand, provide that the republication of campaign materials prepared by a candidate's authorized committee is "considered a *contribution* for purposes of contribution limitations and reporting responsibilities of the person making the expenditure." 11 C.F.R. § 109.23 (emphasis added). Notwithstanding the seeming incongruity between how the Act and Commission regulations treat republication (expenditure versus contribution), we need not address the discrepancy here since we conclude that the American Crossroads advertisement at issue does not amount to republication.

<sup>7</sup> MUR 2272 (American Medical Association), MUR 2766 (Auto Dealers and Drivers for Free Trade Political Committee), MUR 5743 (Betty Sutton for Congress), MUR 5996 (Tim Bee), and MUR 5879 (Democratic Congressional Campaign Committee). Advisory Opinion 2008-10 (VoterVoter.com) addressed a question similar to the one presented by this matter. There, the Commission concluded that given the facts of the request, "if an individual independently creates and uses his or her own footage of a candidate at a public appearance in an ad he or she posts on VoterVoter.com, the footage would not constitute candidate campaign materials." Here, American Crossroads created and used its own footage by incorporating snippets of Portman Committee video it obtained from YouTube.

<sup>8</sup> MUR 5996 (Tim Bee), Statement of Reasons, Commissioners Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn, at 3.

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Statement of Reasons in MUR 6357

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explained in a separate Statement of Reasons that “[t]he traditional type of republication involves the reprinting and dissemination of a candidate's mailers, brochures, yard signs, billboards, or posters—in other words, materials that copy and convey a campaign's message.”<sup>9</sup>

In that statement, we reaffirmed the reasoning of Commissioners von Spakovsky and Weintraub in MUR 5743 (Betty Sutton for Congress). As they explained in that matter, “downloading a photograph from a candidate's website that is open to the world, for incidental use in a large mailer that is designed, created, and paid for by a political committee as part of an independent expenditure without any coordination with the candidate, does not constitute the ‘dissemination, distribution, or republication of candidate campaign materials.’”<sup>10</sup> We agree with this reasoning and apply it here.

Like MUR 5743 (Betty Sutton for Congress) and MUR 5996 (Tim Bee), the video footage of Rob Portman at issue was obtained without direct contact with the campaign; in this case, it was obtained from a publicly available Internet website. Furthermore, the generic Portman footage is shown only in a portion of the American Crossroads advertisement, which does not repeat the entirety, or even any substantial portion, of the Portman Committee footage. Thus, the snippets used are incidental to the advertisement as a whole.

Moreover, the overall audio and visual presentation in the American Crossroads advertisement is wholly different from that in the Portman Committee footage. As noted above, the few fleeting images from the Portman Committee footage are incorporated into a communication in which American Crossroads adds its own text, graphics, audio, and narration to create its own message. In other words, the American Crossroads advertisement—neither in whole nor in substantial part—is anything close to a carbon copy of the Portman Committee footage.

The Act's republication provision is designed to capture situations where third parties, in essence, subsidize a candidate's campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate. But clearly that is not what happened here. American Crossroads did not repeat verbatim the Portman Committee's message; rather, it created its own. Therefore, we concluded that the American Crossroads advertisement did not constitute “a republication of campaign materials.”

In this matter, OGC raised two additional arguments in support of its reason to believe recommendation. First, OGC argues that the video images “convey meaning that is central to the advertisement's message.” The idea, however, that the Portman Committee video segments purportedly conveyed a campaign theme—namely, creating jobs—is not materially significant.

<sup>9</sup> *Id.*

<sup>10</sup> MUR 5743 (Betty Sutton for Congress), Statement of Reasons of Commissioners Hans A. von Spakovsky and Ellen L. Weintraub. The Commission dismissed the matter but admonished EMILY's List for using candidate photographs obtained directly from the candidate's website in several mail pieces. However, we have declined the invitation to admonish committees as a form of punishment because the statute does not list admonishment as a power vested with the Commission, and for that reason we read MUR 5743 as a dismissal by the Commission.

Statement of Reasons in MUR 6357  
Page 5 of 7

As prior Commissioners said in a similar matter, it is "reasonably attributed to the common sense conclusion that most parties and candidates will be addressing a defined set of campaign issues in their advertising. The Commission has no legal basis to assign a legal consequence to these similarities without specific evidence of prior coordination."<sup>11</sup> Here, there is absolutely no indication of prior coordination.

Moreover, this argument has been rejected by the Commission in prior MURs. For example, in MUR 2272 (American Medical Association, *et al.*), Commissioner Josefiaik explained, "the regulations do not convert independent expenditures for those communications into contributions based upon a similarity or even identity of themes with the campaign effort. Ideas and information can come from many sources, and their commonality is of itself insufficient to demonstrate either coordination or 'copying.'"<sup>12</sup> Likewise, the Commission rejected a similar theory in MUR 2766 (Auto Dealers and Drivers for Free Trade Political Committee, *et al.*). Commissioner Josefiaik noted: "The practical reality is that an intelligently planned independent expenditure effort will always employ similar themes and issues, or attack the same weaknesses of the opponent, as the campaign of the beneficiary candidate."<sup>13</sup> Ultimately, "the Commission cannot turn independent expenditures into presumptively illegal activity."<sup>14</sup> Therefore, the mere fact that "Jobs for Ohio" and the Portman campaign both focused on job creation provides no basis to find that this triggered the Act's republication provision.

Second, OGC asserts that the brief quote exception to the republication rule<sup>15</sup> "is inapplicable because the video does not 'quote' the candidate on a particular issue," nor does "Jobs for Ohio" use a quotation of a campaign publication. We disagree with this excessively narrow reading of the brief quote exception. The dictionary defines "quote" to mean, among other things, "to use a brief excerpt from: *The composer quotes Beethoven's Fifth in his latest work*"<sup>16</sup> It would be odd to suggest that a direct candidate quote would be less republication than use of images. Thus, we rejected OGC's reading of the exception and believe it includes more. Though we need not rely on this exception to determine that American Crossroads did not

<sup>11</sup> MUR 5369 (Rhode Island Republican Party), Statement for the Record, Commissioners David M. Mason, Bradley A. Smith, and Michael E. Toner, at 5.

<sup>12</sup> MUR 2272 (American Medical Association, *et al.*), Statement of Reasons, Commissioner Thomas J. Josefiaik at 8.

<sup>13</sup> MUR 2766 (Auto Dealers and Drivers for Free Trade PAC), Statement of Reasons, Commissioner Thomas J. Josefiaik at 23.

<sup>14</sup> MUR 2766 (Auto Dealers and Drivers for Free Trade PAC), Statement of Reasons of Chairman Lee Ann Elliot and Commissioners Joan Aikens and Thomas Josefiaik at 3.

<sup>15</sup> The republication rule contains five exceptions, the relevant exception being if the campaign material consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views then such use will not constitute a contribution to the candidate who originally prepared that material. 11 C.F.R. § 109.23(b)(4).

<sup>16</sup> Random House Webster's Unabridged Dictionary, 2d ed. (2005).

**Statement of Reasons in MUR 6357**  
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run afoul of the law, it does provide an additional basis to conclude that "Jobs for Ohio" does not amount to republishing of campaign materials.

**III. Conclusion**

For the foregoing reasons, we voted not to find reason to believe that American Crossroads violated the contribution limitation and disclosure provisions of the Act by republishing Portman Committee campaign materials.

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Statement of Reasons in MUR 6357  
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2/22/12  
Date

  
CAROLINE C. HUNTER  
Chair

2/22/12  
Date

  
DONALD F. MCGAHN II  
Commissioner

2/22/12  
Date

  
MATTHEW S. PETERSEN  
Commissioner

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**EXHIBIT D –**  
**BLACKLINE SHOWING MODIFICATIONS MADE TO THE VERSION POSTED FOR PUBLIC  
COMMENT AS A RESULT OF THE SEPTEMBER 17, 2014 HEARING**

**Double underline shows additions made post hearing;  
double strikethrough shows deletions made post hearing**

**PHILADELPHIA BOARD OF ETHICS  
REGULATION NO. 1  
CAMPAIGN FINANCE**

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DEPARTMENT OF RECORDS

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**PROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT  
POSTING BY BOARD AT JULY 16, 2014 MEETING**

**SUBPART A. SCOPE; DEFINITIONS**

**1.0 Scope.** The requirements and prohibitions of Philadelphia's campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq.*). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia's campaign finance law found at Philadelphia 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 5:00pm of the day before he or she became a candidate.
- b. **a- 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. **b-Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- d. **c-Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- e. **d Candidate's campaign.** A candidate, the candidate's candidate political committee (or litigation fund committee), and or an agent of any of the foregoing.
- f. **e City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- g. **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.
- h. **g-Contribution.**
  - i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;
  - ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes (1) ~~any payment by a person or a political committee provided for the benefit of the candidate, including any payment for the services of a person serving as an agent of the candidate, candidate political committee, or litigation fund committee, and (2)~~ any in-kind contributions, as defined at Subparagraph Paragraph 1.1(o); or

**PROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT  
POSTING BY BOARD AT JULY 16, 2014 MEETING**

- iii. Any post-candidacy contribution, as defined at Subparagraph Paragraph 1.1(t).
- 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. Covered pre-candidacy expenditure. An expenditure by a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office, where such expenditure was for the purpose of influencing the outcome of the covered election in which the candidate is participating.**
- k. Excess post-candidacy contribution.** The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Subpart B Sections 20-1002(4) or 20-1002(5) of the Philadelphia Code.
- l. Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limitations set forth in Subpart B Sections 20-1002(1) or 20-1002(2) of the Philadelphia Code.
- m. Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election, including, but not limited to, any expenditure to obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- n. Independent expenditure.** An expenditure that is not made in coordination with any candidate, candidate political committee, or agent thereof. For guidance on what constitutes coordination, see Subpart H.J.
- o. In-kind contribution.** The provision of or payment for goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services where such provision or payment is made for the benefit of the candidate, but not including volunteer labor as described in Subparagraph Paragraph 1.11(e).
  - i. The provision of any goods or services directly to a candidate's campaign without charge or at a charge that is less than the usual and normal charge for such goods or services; or
  - ii. The payment or agreement to pay a third party to provide goods or services that assist in advocating or influencing the election of a candidate, if the goods and services are in fact provided.

**PROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT  
POSTING BY BOARD AT JULY 16, 2014 MEETING**

- p. **Litigation fund committee.** The committee established by a candidate to 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 a candidate's election campaign or participation in an election, as described in Subpart G.H.
- q. **Non-covered pre-candidacy expenditure.** An expenditure by a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office, where such expenditure was not for the purpose of influencing the outcome of the covered election in which the candidate is participating.
- q. **Person.** An individual, a political committee or a partnership, sole proprietorship, or other form of business or nonprofit organization.
- r. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political 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.
- s. **Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.
- t. **Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.
- 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 candidate's 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. **SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart I.C.
- x. **Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

**PROPOSED AMENDMENT APPROVED FOR PUBLIC COMMENT  
POSTING BY BOARD AT JULY 16, 2014 MEETING**

**SUBPART B. CONTRIBUTION LIMITS**

**1.2 Limits on contributions from individuals.**

- a. An individual shall not make total contributions per calendar year of more than \$2,900 to a candidate for City elective office, including contributions made through one or more political committees.
- b. An individual shall not make total contributions per calendar year of more than \$2,900, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart GH by a candidate for City elective office.
- c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$2,900 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

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

- a. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500 to a candidate for City elective office, including contributions made through one or more political committees.
- b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than \$11,500, including contributions made through one or more political committees, to a candidate's litigation fund committee.
- c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than \$11,500 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.
- d. In order to qualify for the \$11,500 contribution limit described in Paragraph 1.3, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

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**1.4 Contributions made through one or more political committees.**

- a. For the purposes of this Subpart, a contribution is made through a political committee when:
  - i. A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to 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. The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee's expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.
- b. For the purpose of the contribution limits, a contribution made through a political committee is from both the original contributing person or political committee and the recipient political committee through which the contribution is made. The entire amount of the contribution made through a political committee shall count toward the contribution limits of the original contributing person or political committee, and the entire amount shall also count toward the recipient political committee's contribution limits.

**1.5 During a non-election year:**

- a. Candidates for Mayor shall receive no more than \$250,000 in total contributions from political committees;
- b. Candidates for District Attorney and Controller shall receive no more than \$100,000 in total contributions from political committees; and
- c. Candidates for City Council, Sheriff, and City Commissioner shall receive no more than \$75,000 in total contributions from political committees.

**1.6 Doubling of Contribution Limits.**

- a. If a candidate for City elective office contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, the contribution limits for all candidates 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 Subparagraph Paragraph 1.6(b).
- b. The limits for post-candidacy contributions (Subparagraphs Paragraphs 1.2(c) and 1.3(c)) and the limits for contributions to litigation fund committees (Subparagraphs Paragraphs 1.2(b) and 1.3(b)) do not double if a candidate contributes more than \$250,000 to his or her candidate political committee.

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- c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.
- d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the \$250,000 contribution amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or
  - ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes more than \$250,000 of his or her personal resources to his or her candidate political committee, as set forth in Paragraph 1.6, within two business days he or she shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.7** Candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.

**1.8** 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.

**1.9** Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.

**1.10** If a person or political committee makes an expenditure to a political committee in order that a candidate's name be placed on a sample ballot, the amount of the expenditure from that person or political committee is a contribution to the candidate and shall count toward the contribution limits set forth in this Subpart, so long as the expenditure is not an independent expenditure.

**1.11 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 or to the candidate's litigation fund committee;
- b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;
- c. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee;

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- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.32; 1.36; and
- 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 candidates' 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; or
- g. Volunteer labor provided to a candidate or 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.

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

**1.12 4.19** Except as provided in Paragraphs 1.13; 1.20; 1.14; 1.21, and 1.15 4.22 the date of acceptance of a contribution is the date that the contribution comes into the possession of a candidate's campaign. A candidate's campaign shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart, the recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof.

**1.13 4.20** If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the candidate's campaign, recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof finds the contribution in the mailbox.

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**1.14 1.21** 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 credit card information on the website.

**1.22** ~~The date of acceptance of an in-kind contribution is the date that the contributor provides the goods or services, or makes payment to a third party for the provision of goods or services, to the recipient candidate, litigation fund committee, or political committee, or agent thereof.~~

**1.15 In kind contributions.**

- a. ~~If a person makes an in-kind contribution by providing goods or services directly to a candidate's campaign, the date of acceptance of that contribution is the date that the candidate's 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 that benefit a candidate's campaign, assist in advocating or influencing the election of a candidate, the date of acceptance of that contribution is the date of the agreement to pay, if the goods and services are in fact provided.~~

**1.23** ~~A candidate, litigation fund committee, or political committee shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.~~

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

**1.16 1.24** 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.

**1.17 1.25** A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

**1.18 1.26** A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of business organization is a contribution from the partnership, sole proprietorship, or other form of business organization, unless other facts demonstrate that the contribution is from the signer of the check.

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**| SUBPART E. CAMPAIGN FINANCE DISCLOSURES**

**| 1.19 1.42 Disclosures required of candidates and candidate political committees.**

- a. Any time a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the candidate shall file electronically with the Board a copy of that report or statement.
- b. Any time the candidate political committee of a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the committee shall file electronically with the Board a copy of that report or statement.

**Example:** Candidate A is running for City office and has authorized Friends of A as her candidate political committee. Friends of A files a cycle 2 (pre-primary) campaign finance report with the City Commissioners. In addition, Candidate A personally files a campaign finance statement with the City Commissioners.

Friends of A must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the City Commissioners.

Candidate A must electronically file with the Board a copy of the cycle 2 campaign finance statement she personally filed with the City Commissioners.

**| 1.20 1.43 Post-candidacy disclosures**

- a. Former candidates and candidate political committees shall file electronically with the Board reports of post-candidacy contributions and expenditures.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidates and candidate political committees with the City Commissioners pursuant to the Pennsylvania Election Code.
  - ii. A former candidate or a candidate political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate or candidate political committee files with the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate or candidate political committee.

**Example:** Candidate A is successful in the November general election, but her candidate political committee, Friends of A, incurred \$20,000 in debt in the course of the campaign. In December, former Candidate A raises \$10,000 in post-candidacy contributions which her committee uses to pay off some of the campaign debt. In January of the year following the general election, Friends of A files a cycle 7 campaign finance report with the City Commissioners. The cycle 7 report discloses the post-candidacy contributions and the expenditure to pay down the campaign debt.

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Friends of A can satisfy the post-candidacy disclosure requirements of Paragraph 1.201.43 by electronically filing with the Board a copy of the cycle 7 campaign finance report it filed with the City Commissioners.

| **1.21 4.44 Disclosures required of political committees and persons.**

- a. Any time a political committee or person is required to file a campaign finance report with the City Commissioners or the Secretary of State, as required by the Pennsylvania Election Code, the committee or person shall file electronically a copy of that report with the Board if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any expenditures made or debt incurred to influence the outcome of a covered election, including expenditures to a candidate for City elective office.

**Example:** Pennsylvanians for a Better Pennsylvania is a political committee registered with the Department of State. The committee files a cycle 2 (pre-primary) campaign finance report with the Department of State disclosing numerous expenditures to candidates for state office and one expenditure to a candidate for City office.

Pennsylvanians for a Better Pennsylvania must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the Department of State.

- b. Political committees shall file electronically with the Board reports of all post-candidacy contributions made by the political committee to any former candidate.
  - i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.
  - ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

| **1.22 4.45 Disclosures required of litigation fund committees.**

- a. A litigation fund committee established as described in Subpart GH shall file electronically with the Board reports of contributions and expenditures.
- b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

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- c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

| **1.23 1.46 Method of filing campaign finance reports and statements.** Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board through the Department of Records and must be submitted in a format approved by the Department of Records. Information on how to electronically file a report or statement is available at the office of the Department of Records in City Hall Room 156 and at:

<http://www.phila.gov/records/CampaignFinance/CampaignFinance.html>

| **1.24 1.47 Sworn statement required for campaign finance disclosures.**

- a. Any time a candidate political committee, political committee, or litigation fund committee electronically files a campaign finance report or statement with the Board, the individual who files the report or statement on behalf of the committee shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The individual who signs the statement and the committee shall be jointly and severally subject to civil penalties if the report or statement contains any material misstatements or omissions.
- b. Any time a candidate electronically files a campaign finance report or statement with the Board, the candidate shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The candidate shall be subject to civil penalties if the report or statement contains any material misstatements or omissions.
- c. Any sworn statement required by this Paragraph shall be submitted on a form available from the Department of Records. The form may be submitted in person at the office of the Department of Records in City Hall Room 156 or via email or fax as indicated on the form.

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

**1. 25 1.29**—A candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures. If a candidate is running for more than one City elective office simultaneously, he or she shall maintain a separate candidate political committee and checking account for each office being sought.

**1. 26 1.30** If a candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

**1. 27 1.31** A candidate may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

- a. The candidate establishes the savings account at the same bank that has his or her checking account;
- b. The candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;
- c. The candidate 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
- d. 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 he or she has established a savings account.

**1. 28 1.32 Requirement to provide information to the Board about a candidate political committee.**

- a. A candidate who has a candidate political committee when he or she becomes 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.

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- b. If a candidate does not have a candidate political committee when he or she becomes a candidate, he or she shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with his or her street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after he or she has become a candidate, he or she shall notify the Board of the information set forth in Subparagraph Paragraph 1.28(a) within three business days of the formation of the committee.
- d. A candidate may satisfy the requirements of Paragraph 1.28 by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners as long as the information described in Subparagraph Paragraph 1.28(a)(i)-(iii) is included.
- e. If the information required by Paragraph 1.28 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- f. Information required by Paragraph 1.28 shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.29 1.33 Exercising control over another political committee.** A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

- a. The candidate is the treasurer or chair of the other political committee;
- b. The candidate established or registered the other political committee;
- c. The candidate is an authorized user or signer on the other political committee's bank account;
- d. The treasurer or chair of the other political committee is an employee of the candidate;
- e. The other political committee has the same treasurer or chair as the candidate political committee; or
- f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

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**1.30 1.34** **Exercising control over another political committee's expenditures.** A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

- a. The candidate, candidate political committee, or the candidate's agent provides the money to cover the specific expenditure;
- b. The candidate, candidate political committee, or the candidate's agent selects the recipient of the expenditure; or
- c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

**1.31 1.35** This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G.

**1.32 1.36** This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee 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 candidate's candidate political committee.

**1.33 1.37** This Subpart does not prohibit a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

- a. The recipient political committee offers similar services to other candidates; and
- b. The candidate does not exercise control over the political committee as defined in Paragraph 1.29.

**1.34 1.38** This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.30, other than the candidate's litigation fund committee.

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**SUBPART G. LITIGATION FUND COMMITTEES**

**1.35 1.39 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a 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 Subparagraph Paragraph 1.35(d).
- b. The name of a litigation fund committee shall include the term "Litigation Fund."
- c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.22.
- d. A 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 election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- e. A 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 may make expenditures from his or her candidate political committee for the purposes described in Subparagraph Paragraph 1.35(d).

**1.36 1.40 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 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.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Subparagraph Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the information described in (i)-(iii) above is included.

- b. If the information required by Paragraph 1.36 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

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- c. Information required by Paragraph 1.36 shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.37 1.41 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 candidate sought, except as provided in Subparagraph Paragraph 1.37(b).
- 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 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.

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**SUBPART H.J. COORDINATED EXPENDITURES**

**1.38 1.48** When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made ~~for the benefit to advocate or influence the election~~ of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

**1.49.** ~~For the purposes of this Subpart, the term "candidate's campaign" includes the candidate, the candidate's candidate political committee, and an agent of either of the foregoing.~~

**1.39 1.50** An expenditure is coordinated with a candidate's campaign if:

- a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
- b. The expenditure is made at the request or suggestion of the candidate's campaign;
- c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
- d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure; or
- e. ~~The candidate's campaign has solicited funds for or directed funds to the person making the expenditure does so using funds solicited for or directed to that person by the candidate's campaign, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or~~
- f. The person making the expenditure uses information obtained from the candidate's 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 candidate made to the general public. ~~This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.40.~~

Example for 1.39(f): 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 and spends \$11,500 to set up the phone bank and telephones individuals provided on the list from Candidate A. The \$11,500 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$11,500 in-kind contribution to Candidate A.

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**1.51.** An expenditure made to reproduce, republish, or disseminate a campaign communication or campaign material (such as flyers, signs, or brochures) obtained from a candidate's campaign, or obtained from another source with the campaign's consent, is an in-kind contribution to the candidate.

**1.40 Republication of campaign communications or materials.** For the purposes of the contribution limits, An 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 candidate's campaign:

- a. Shall be considered an in-kind contribution made by for the purpose of the contribution limits that apply to the person making the expenditure.
- b. Shall be considered an in-kind contribution received by for the purposes of the contribution limits that apply to the candidate if the person making the expenditure obtains the communication or materials directly from the candidate's campaign or from another source with the consent of the candidate's campaign.

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

**Example for 1.40(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 video b-roll footage and uses the footage 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 from made by the committee to and an excess in-kind contribution received by candidate Candidate A in excess of the contribution limits.

- c. Shall not be considered an in-kind contribution for the purposes of the contribution limits if:
  - i. The communication or material is incorporated into a communication that advocates the defeat of the candidate that prepared the material; or
  - ii. The item republished is a photograph obtained from a public source; or

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

ii. The news media reproduces, republishes, or disseminates the communication or material.

**1.41 1.52** An expenditure will not be considered a coordinated expenditure merely because:

- a. The person making the expenditure interviews the candidate;
- b. The person making the expenditure has endorsed the candidate;
- c. The person making the expenditure and the candidate's campaign have an agent in common;
- d. ~~The person making the expenditure uses information obtained from a public source or from a communication the candidate's campaign made to the general public in order to design, prepare, or pay for the specific expenditure.~~
- e. The person making the expenditure has obtained from the candidate a photograph or biography of the candidate or a position paper, press release, or similar material about the candidate; or
- f. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

**SUBPART I. EXCESS PRE-CANDIDACY CONTRIBUTIONS;  
EXCESS POST-CANDIDACY CONTRIBUTIONS**

Note: This Subpart is The requirements in this Subpart regarding excess pre-candidacy contributions are only relevant only if a political committee that is authorized to receive contributions on behalf of an individual who subsequently becomes a candidate for City office receives accepts contributions in excess of the limits set forth in Subpart B prior to that individual becoming a candidate.

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

Example: On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. The accounting period for Candidate A is January 1, 2012 through November 30, 2014. The last Mayoral election was held in 2011, so January 1, 2012 would be the first day of the year following that election.

**1.43 Prohibited Expenditures.** A candidate or candidate political committee shall not:

- a. ~~1.42~~ A candidate or candidate political committee shall not Spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.

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- b. ~~1.44 A candidate shall not~~ Spend any excess pre-candidacy contributions or post-candidacy contributions for the purposes of:
- i. ~~a~~Transition or inauguration expenses; or
  - ii. ~~b~~Retiring debt that was incurred to (i) influence the outcome of an already completed covered election in which he or she was a candidate; or (ii) cover transition or inauguration expenses related to an already completed covered election.
- c. ~~1.43 A candidate shall not~~ Transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart G.

**1.44 1.45 Exclusion of excess pre-candidacy contributions upon becoming a candidate**

- a. Within ten days after becoming a candidate, ~~A~~ a candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:
- i. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ~~within ten days after the individual becomes a candidate~~; or
  - ii. Returning excess pre-candidacy contributions to the contributors who made those contributions ~~within ten days after the individual becomes a candidate~~.
- b. Calculation of amount to be excluded. A candidate shall determine the amount to be excluded by using one of the following calculation methods:

- i. Dollar for dollar calculation. Using this calculation method, a candidate shall exclude an amount equal to the total amount of excess pre-candidacy contributions his or her candidate political committee received during the accounting period.

Example: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account.

- ii. Accounting-based calculation. Using this calculation method, a candidate does not have to exclude any excess pre-candidacy contributions that he or she demonstrates, using a reasonable accounting method, were actually spent before becoming a candidate, provided that:

- (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting must 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

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- (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 candidate must exclude from the checking account of his or her candidate political committee exceeds the amount of cash the committee has on hand, the candidate must use incoming contributions to cover the amount that must be excluded.

**Example:** Before becoming a candidate, Ms. A accepts a total of \$50,000 in within limits pre-candidacy contributions and \$20,000 in excess pre-candidacy contributions. Within 10 days of becoming a candidate, Ms. A must exclude \$20,000 from the checking account of her candidate political committee.

- b. A candidate may deduct non-covered pre-candidacy expenditures from the amount of excess pre-candidacy contributions he or she must exclude.

**Example:** Before becoming a candidate, Mr. B accepts a total of \$50,000 in within limits pre-candidacy contributions and \$25,000 in excess pre-candidacy contributions. However, Mr. B makes \$10,000 in non-covered pre-candidacy expenditures. Within 10 days of becoming a candidate, Mr. B must exclude \$15,000 from the checking account of his candidate political committee.

- e. A candidate may not deduct covered pre-candidacy expenditures from the amount of excess pre-candidacy contributions he or she must exclude.

**Example:** On January 10, 20XX, Ms. A accepts a total of \$5,000 in within limits pre-candidacy contributions and \$20,000 in excess pre-candidacy contributions. On January 10, Ms. A makes a covered pre-candidacy expenditure of \$10,000 and a non-covered pre-candidacy expenditure of \$5,000. On January 11, Ms. A declares her candidacy for City office. By January 21, Ms. A must exclude \$15,000 from her primary checking account (\$20,000 in excess pre-candidacy contributions less the \$5,000 non-covered pre-candidacy expenditure, but not less the covered pre-candidacy expenditure of \$10,000.).

**1.45 Pre-candidacy segregation.** A candidate does not have to exclude any excess pre-candidacy contributions that, upon receipt, he or she had transferred to a segregated pre-candidacy excess contribution account ("SPEC" account), provided that, if he or she used any funds in a SPEC account for pre-payments, the candidate must exclude from his or her 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:** On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014,

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Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral 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: On November 1, 2014, Friends of Candidate A receives a contribution of \$3,000 from Person B (\$2,900 within limits, \$100 excess) and a contribution of \$3,000 from Person C (same). On November 2, 2014, Candidate A transfers \$200 from the checking account of the candidate political committee to a SPEC account. On November 30, 2014, Candidate A spends \$200 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2014, Candidate A declares her candidacy for the May 2015 Mayoral primary election. By December 11, 2014, Friends of Candidate A must exclude \$200 from its checking account. While Candidate A segregated Person B and Person C's \$200 in excess contributions, she spent \$200 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 4.16** A candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

- a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or
- b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

**1.47 4.17** A candidate or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates or to make post-candidacy expenditures.

**1.48 4.18** Within seven days of establishing a SPEC account, a candidate 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 J. RETIRING DEBT**

**1.49 4.27** Except as provided in Paragraph 1.50, 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 to the candidate or former candidate and is subject to the contribution limits set forth in Subpart B.

**1.50 4.28** 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:

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- 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 K. PENALTIES**

**1.51 1.53 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 penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

**1.52 1.54 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 penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

**1.53 1.55 Safe harbor if an excess contribution is returned within 15 days.** No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate who accepted the excess contribution within fifteen days after receiving the contribution:

- a. Returns the excess amount to the contributor; and
- b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

**1.54 1.56 Failure to file campaign finance disclosures.**

- a. A civil penalty of \$250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart E.I.

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- b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of \$250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report 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 is not filed.

**1.55 1.57 Other violations of the campaign finance law.** All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of \$1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

- a. Mitigating factors. The civil 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 is 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 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 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

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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