

Report on public hearing held August 17, 2022 by the Philadelphia Board of Ethics  
Regarding a proposed amendment to Regulation No. 1 “Campaign Finance”

Dated: September 23, 2022

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

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

Dated: September 23, 2022

Approved: /s/ Reynelle Brown Staley

Law Department  
Reynelle Brown Staley  
Senior Attorney

**A. Legal Authority**

The Board of Ethics 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, which is found at Code Chapter 20-1000. *See* Code §§ 20-606(1)(a).

**B. Procedural Summary**

The Board followed the procedures set forth in Home Rule Charter Section 8-407 when promulgating this amendment to Board Regulation No. 1 (Campaign Finance). On July 20, 2022, 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 22, 2022, the Board filed the proposed amendment with the Records Department. The Board scheduled a hearing on the proposed amendment for August 17, 2022, notice of which was advertised in local newspapers and posted prominently on the Board's website and Twitter account.

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice-Chair Phyllis Beck and Board members Sanjuanita González, Brian McCormick, and JoAnne Epps. Reynelle Staley, Senior Attorney, attended on behalf of the Law Department. A copy of the transcript of the hearing is attached as Exhibit 1. The proposed amendment as posted for public comment at the Records Department is included as Exhibit A to the hearing transcript. Written testimony submitted to the Board is included as Exhibit B to the transcript. The following witnesses provided testimony: Richard Barzaga and Michael Gutierrez, on behalf of Board staff; David Keating, on behalf of the Institute for Free Speech; Aaron McKean, on behalf of the Campaign Legal Center; Kevin Greenberg on behalf of several members of the Philadelphia bar.

Through this report on the August 17, 2022 hearing, the Board modifies the proposed amendment and adopts it as modified. A clean copy of the Regulation as amended is attached as Exhibit 2 and shall become effective 11 days after the filing of this Report with the Records Department. A markup showing all changes made to the Regulation by the regulatory process initiated on July 20, 2022, and being approved by the Board through this Report, is attached as Exhibit 3.

**C. Summary of Hearing Testimony and Board Responses Thereto**

**1. Testimony of Richard Barzaga and Michael Gutierrez, on behalf of Board staff**

Mr. Barzaga and Mr. Gutierrez offered testimony recommending the following modifications to the proposed amendment in response to questions posed by Board members at the July 20, 2022 public meeting and as a result of Staff review:

**a.** In Paragraph 1.1(d) add the introductory phrase “Includes any of the following:” so that the provision as revised would be:

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

**b.** In Paragraph 1.1(r) add the word “any” at the beginning of the definition so that the provision as revised would be:

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

**c.** In Paragraph 1.9, delete the phrase “other than a campaign,” which occurs in the first line of the paragraph and in the second line, change “candidate” to “candidate’s campaign.” The paragraph as revised would be:

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

**d.** In Paragraph 1.10(h), clarify that campaigns must pay their fair portion of joint costs within 14 days of each other and reformat the paragraph for greater ease of understanding. The paragraph as revised would be:

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

- i. pays its fair portion of the costs;
- ii. makes payment no later than 14 days after any other campaign; and
- iii. obtains and maintains appropriate documentation, including invoices and printer’s samples, which shall be provided to the Board upon request.

**e.** Add “and campaigns” to the title of Subpart F. The revised title would be:

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

f. At Paragraph 1.23(d), replace the introductory phrase “Unless specifically permitted by this Subpart” with the phrase “Except as specifically permitted by this Subpart.” The revised introductory sentence would be:

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

### **Board Response**

The Board agrees with these changes proposed by Staff. These changes have been incorporated into the final version of the amendment, attached hereto as Exhibit 2.

## **2. Testimony of David Keating, Aaron McKean, and Kevin Greenberg**

a. Messrs. Keating, McKean, and Greenberg all offered testimony on the proposed change to Paragraph 1.33(f) of the Regulation. The purpose of this proposed change is to address a situation where a third party spends money in support of a candidate based on certain publicly available statements or instructions made by a candidate. The full testimony for each of these witnesses maybe found in the transcript of the hearing and also in written testimony each of them submitted. Both are attached to the hearing transcript, which is found at Exhibit 1. In summary, however:

Mr. Keating’s testimony offered the opinion that the proposed provision “if adopted, would likely be unconstitutional and would lead to self-censorship.” In support of this view, Mr. Keating described how the Federal Elections Commission has addressed analogous provisions of Federal election law and referenced a recent ruling of the U. S. Supreme Court.

Mr. McKean’s testimony offered the opinion that the proposed provision would constitutionally curtail circumvention of the contribution limits. In support of this view, Mr. McKean described how candidates have recently used public communications to enable coordinated expenditures. He also discussed the relevant jurisprudence of the U.S. Supreme Court. Lastly, he recommended clarifying the proposed rule “by identifying the most common features of redboxing.”

Mr. Greenberg’s testimony offered the opinion that, as drafted, the proposed provision was overbroad and would chill speech. He recommended that a rule addressing this type of coordination be written more narrowly and include “bright lines” that would give clear notice to candidates. Mr. Greenberg also offered his opinion that the Board should not address this issue by regulation because it would not being doing so “in response to a direct request from City Council.” He described the proposed provision as “a policy shift for the City” and “beyond the pale of what the Board has been asked to do by City Council.”

### **Board Response**

The Board acknowledges the importance of and interest in the proposed amendments to Paragraph 1.33(f) and appreciates the thoughtfulness of the witnesses’ testimony. The Board agrees that revision of the proposed amendments is warranted. In making these revisions, the Board is guided by these basic principles: (1) coordinated expenditures may be subject to contribution limits; (2) coordination may be found in the absence of an explicit agreement to coordinate; and (3) coordination can occur via communications that are public.

In *Buckley v. Valeo*, the U.S. Supreme Court upheld the application of contribution limits in the Federal Election Campaign Act to coordinated expenditures, finding that doing so would prevent “attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions.” 424 U.S. 1, 46-47 (1976). In *McConnell v. Federal Election Commission*, the Court reaffirmed *Buckley*’s holding regarding coordinated expenditures and further held that an explicit agreement to coordinate is not a constitutional requirement. 540 U.S. 93, 219-22 (2003). As the Court wrote,

[E]xpenditures made after a wink or nod often will be as useful to the candidate as cash. For that reason, Congress has always treated expenditures made “at the request or suggestion of” a candidate as coordinated. 2 U. S. C. § 441a(a)(7)(B)(i). A supporter easily could comply with a candidate’s request or suggestion without first agreeing to do so, and the resulting expenditure would be virtually indistinguishable from [a] simple contributio[n].

*Id.* at 221-22 (some citations and quotations omitted). *See also, Federal Election Com’n v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 456 (2001) (Holding that “circumvention is a valid theory of corruption” and therefore limits on coordinated expenditures are constitutional so long as they are “closely drawn” to match the government’s interest in limiting the corruption or appearance of corrupting arising from them.); *Anh Cao v. Federal Election Commission*, 688 F.Supp.2d 498, 538 (E.D. Louisiana 2010) (As compared to independent expenditures, coordinated expenditures “pose a sufficient risk of corruption and circumvention to warrant stricter regulation.”)

In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Court overturned those portions of *McConnell* that prohibited independent expenditures by corporations but left undisturbed its holding related to coordinated expenditures. *See* 558 U.S. at 360 (“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.”); *see also In re Cao*, 619 F.3d 410, 431 (5th Cir. 2010) (“[T]he Supreme Court’s decision in *Citizens United* has no bearing on whether Congress has the power to restrict political parties’ *coordinated* expenditures.”) (emphasis in original).

While not part of the constitutional jurisprudence, it is instructive to note how regulations issued by the Federal Elections Commission address the question of coordination and publicly available information. In order for coordination to be found under the FEC regulations, the expenditure must be made either (1) at the request or suggestion of the candidate, (2) with the material involvement of the candidate, or (3) after substantial discussion with the candidate. *See* 11CFR § 109.21(d). While the regulation provides that coordination will not be found based on either material involvement or substantial discussion “if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source,” that safe harbor is not available if the expenditure in question is made at the request or suggestion of the candidate. *Id.*

Lastly, with regard to Mr. Greenberg’s argument that the Board is acting beyond the scope of its authority, we note that Section 20-606(1)(a) of the Philadelphia Code explicitly directs the Board to “promulgate rules and regulations as are necessary to implement and interpret the provisions of this Chapter consistent with the goal of providing clear guidance regarding standards of conduct and ethics.” In addition, pursuant to Home Rule Charter Section 8-407, the Board is “empowered to make such reasonable regulations as may be necessary and appropriate in the exercise of its powers and performance of its duties under this charter or under any statute or ordinance.”

Moreover, the provision proposed at Paragraph 1.33(f) is not a “policy shift” for the City. The Board adopted detailed guidance on what constitutes a coordinated expenditure in 2013. On several occasions since then, the Board has modified these provisions to account for changes in practice or the law or to include additional examples of what would constitute a coordinated expenditure. But the basic rule as set forth at Paragraph 1.33 has remained the same: an expenditure is coordinated with a campaign if it is made in cooperation, consultation or concert with that campaign. Subparagraphs (a) through (f) and the newly proposed (g), which is described above, are examples of conduct that would constitute acting “in cooperation, consultation or concert.” This is precisely the type of interpretation and explanation that is appropriate for a City agency via the regulatory process. As such, we do not agree with Mr. Greenberg’s contention that the Board is acting beyond the scope of its authority.

That said, while it is constitutionally permissible to regulate coordination of expenditures by campaigns and their supporters and within the Board’s authority for us to do so via this process, we agree with those who testified that such rules must provide clear guidance to those who may be affected and also take care not to penalize permissible speech. With that in mind, we believe a narrower approach is preferable to what was previously proposed.

In addition, we note that it is possible a situation could arise where a person makes an expenditure that meets the factors articulated in Paragraph 1.33(g) but the person did not actually rely on the information provided by the candidate to do so. Given how significantly we propose to narrow the provision we think such a situation is unlikely but if it should occur, a person should be able to avoid a violation if they can show an independent basis for the expenditure they made. Examples of such an independent basis would be information published in news reports or polling conducted by the person making the expenditure.

Accordingly, we make two major changes. First, we strike the proposed revisions from Paragraph 1.33(f) and revert it to its original text, with the exception of the substitution of “campaign” for the terms “candidate’s campaign” and “candidate” and a change to an internal citation.

As so modified, Paragraph 1.33(f) is:

The person making the expenditure uses information obtained from the campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the campaign made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.34.

Second, we add the following new subparagraph (g) to Paragraph 1.33:

**1.33** An expenditure is coordinated with a campaign if it is made in cooperation, consultation, or concert with the campaign, including the following:

\*\*\*

- g. The person making the expenditures does so based on instructions received from the campaign. A public communication by a campaign will constitute such instructions only if:
  - i. The communication includes a suggestion that the electorate or segment thereof be made of aware information identified in the communication; and
  - ii. The communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as “voters need to hear” or “voters need to see.”

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

This revision balances the need to prevent circumvention of the contribution limits with the need to have a closely drawn rule that provides clear guidance to campaigns. If experience shows that this rule does not adequately restrict coordinated expenditures, we will make appropriate revisions to it in the future.

Given the foregoing changes to the substantive rule, we also must update the examples included in the proposed amendment. Example 1 predates this amendment and remains a useful illustration of Paragraph 1.33(f). Examples 2 and 3 now only apply to Paragraph 1.33(g) and we modify them to more closely reflect that rule. The examples as modified are:

**Example 1 for 1.33(g):** Candidate A’s campaign website includes a page with text in a red box that says “Voters in South Philadelphia need to hear that Candidate A supports dog parks.” Without any other input from the campaign, Philadelphians for Philadelphia PAC pays \$25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks.

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

**Example 2 for 1.33(g):** Candidate A’s communications director tweets that “Center City voters need to see on the go that Candidate A will keep our streets clean.” Without any other input from Candidate A’s campaign, Philadelphians for Philadelphia PAC spends \$200,000 to send online advertisements to mobile devices in Center City with the message "Candidate A will keep our streets clean."

The \$200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A’s campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the \$200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A’s campaign.

We also add a third example for Paragraph 1.33(g):

**Example 3 for 1.33(g):** Philadelphians for Philadelphia PAC spends \$15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A’s campaign updates its website with the message, "Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!" After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying “Only I can kill every spotted lantern fly!” The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A's campaign updated its website with the statement about the lantern flies.

The \$15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A's campaign posted on its website.

**b.** In addition to the testimony he offered regarding Paragraph 1.33(f), Mr. Keating also testified that, in his view, the provision set forth in Paragraph 1.4(a)(i) was too vague.

### **Board Response**

The Board adopted Paragraph 1.4(a)(i) in 2011. The changes proposed by this amendment are of wording and terminology and do not alter the substance of the provision. Since 2013, we have not encountered difficulties in the administration of this provision. We also note that the U.S. Supreme Court has pointed to a similarly worded provision in federal campaign finance regulations as “disarming” the possibility of circumvention of the limits. *See McCutcheon v. Federal Election Com’n*, 572 U.S. 185, 211-12 (2014). As such, we do not believe that Paragraph 1.4(a)(i) is too vague.

**c.** In addition to the testimony he offered regarding Paragraph 1.33(f), Mr. Greenberg offered his opinion that Paragraph 1.23(c) should include a proviso that a campaign would not be found to control a committee merely because an attorney of the campaign created the committee.



### **Board Response**

The Board agrees that, on its own, the fact that the same attorney completes the paperwork for a campaign's candidate committee and a separate political committee does not mean that the campaign controls the separate political committee. We therefore add the following sentence to Paragraph 1.23(c):

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

d. Mr. Greenberg also testified that he believes that in Paragraph 1.10(h), the "14 day requirement for payment is unworkable in that it would require one committee to know when another committee has paid its bills and that's just not feasible."

### **Board Response**

Paragraph 1.10(h) implements a new provision of the Philadelphia Code (Section 20-1002(15)) that allows multiple committees to jointly pay for certain materials and activities without such payments counting toward the contribution limits for each other. Section 20-1002(15) includes a requirement that each participating campaign "contemporaneously pays its fair portion of the costs." The proposed amendment to Regulation No. 1 interprets "contemporaneously" to mean within 14 days.

Campaigns will, by necessity, need to communicate with each other in order to create, print, and distribute materials on which both candidates appear. The ordinance also requires campaigns making such expenditures to obtain and maintain appropriate documentation. Since they will already be communicating with each other about those matters, they can easily communicate with each other about when they will be making payments. The Board would certainly take it into consideration if a campaign acts with reasonable reliance on communications with another campaign as to when payment will be made.

### **F. Approval**

At a public meeting on September 21, 2022, 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 2.

\* \* \*

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.

# Exhibit 1

IN RE:  
CITY OF PHILADELPHIA BOARD OF ETHICS  
PUBLIC HEARING: REGULATION 1  
PROPOSED AMENDMENTS

- - -

TRANSCRIPT OF THE ABOVE MATTER,  
taken via Zoom web conference, by and before  
JAMES J. GALLAGHER, JR., Professional Reporter  
and Notary Public, hosted by the CITY OF  
PHILADELPHIA BOARD OF ETHICS, One Parkway  
Building, 1515 Arch Street, 18th Floor,  
Philadelphia, Pennsylvania, on Wednesday,  
August 17, 2022, commencing at 1:00 p.m.

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

PUBLIC HEARING

1 APPEARANCES:

2

BOARD MEMBERS:

3

MICHAEL H. REED, CHAIRMAN

4

PHYLISS W. BECK, VICE CHAIR

JOANNE EPPS, MEMBER

5

SANJUANITA GONZALES, MEMBER

BRIAN J. McCORMICK, MEMBER

6

7

BOARD STAFF:

8

RICHARD BARZAGA

MICHAEL GUTIERREZ

9

MICHAEL COOKE

BRYAN McHALE

10

DANI GARDNER WRIGHT

THOMAS KLEMM

11

JORDANA GREENWALD

12

ALSO PRESENT:

13

REYNELLE STALEY, LAW DEPARTMENT

14

15

TESTIMONY FROM:

16

DAVID KEATING

AARON McKEAN

17

KEVIN GREENBERG

18

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PUBLIC HEARING

3

1

INDEX

2

TESTIMONY

PAGE

3

4

RICHARD BARZAGA  
MICHAEL GUTIERREZ

9  
18

5

DAVID KEATING  
AARON McKEAN

22  
31

6

KEVIN GREENBERG

45

7

8

- - -

9

10

EXHIBITS

11

12

NUMBER

DESCRIPTION

ATTACHED

13

A  
B

DOCUMENTS  
DOCUMENTS

63  
64

14

15

16

17

18

19

20

21

22

23

24

1 PROCEEDINGS

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3 MR. REED: I would note to the  
4 Board that amendments have been  
5 recirculated to all Board members. We have  
6 a full Board. I acknowledge the presence  
7 of the full Board. My name is Mike Reed.  
8 I Chair the Philadelphia Board of Ethics.

9 Today we are holding a public  
10 hearing on proposed amendments to Board  
11 Regulation Number 1 governing campaign  
12 finance. I note for the record that I'm  
13 joined by Vice Chair Judge Beck, Board  
14 members Sanjuanita Gonzales, Brian  
15 McCormick and Joanne Epps. I further note  
16 for the record that Reynelle Staley from  
17 the Law Department is present. Welcome.

18 And today's hearing is an  
19 opportunity for members of the public and  
20 interested parties to provide comments and  
21 recommendations for modifications to  
22 proposed amendments to Regulation Number 1  
23 governing campaign finance. Copies of  
24 these proposed amendments have been made

1           available electronically. For convenience  
2           of today's attendees, I will ask a member  
3           of our staff to now provide an electronic  
4           link in the chat feature of this Zoom call,  
5           which contains the proposed amendments.

6                       The Board is following the  
7           process required by Philadelphia Home Rule  
8           Charter, Section 8-407 for these proposed  
9           amendments. The Board approved these  
10          amendments for public posting at the  
11          Records Department during it's July 20,  
12          2022 public meeting. The Law Department  
13          reviewed the proposed amendments and found  
14          that the proposed amendments to Board  
15          Regulation Number 1 are legal within the  
16          Board's authority and proper in form. The  
17          Department of Records advertised and gave  
18          public notice of the proposed amendments.  
19          The Board also took action by giving notice  
20          of the proposed amendments on its website.  
21          The Board proactively scheduled this  
22          hearing on the proposed amendments and  
23          provided notice of this hearing by  
24          newspaper and on the Board's website.

1                   The Board will not take any  
2                   action on the proposed amendments at this  
3                   hearing. Rather this hearing is an  
4                   opportunity for the public to comment on  
5                   the proposed amendments or recommendation  
6                   modifications to them. Board members may  
7                   ask questions of the witnesses if they  
8                   wish.

9                   A hearing report will be  
10                  considered and approved by the Board at a  
11                  future board meeting. The hearing report  
12                  will respond to testimony and is the  
13                  mechanism by which the Board may modify the  
14                  proposed amendments to the regulation that  
15                  are pending.

16                 Jim Gallagher of ERSA, a court  
17                 reporter, is present to transcribe this  
18                 hearing. We welcome him.

19                 At this time the documents that  
20                 the Board filed with the Department of  
21                 Records, including the proposed amendments  
22                 to Regulation Number 1 should be entered  
23                 into the record of this hearing and marked  
24                 as Exhibit A and I would ask the court



1 reporter to do that and let me know when  
2 it's done.

3 (At this time documents were  
4 marked for identification as Exhibit A.)

5 MR. REED: So, Jim, are we good  
6 to go?

7 THE COURT REPORTER: Yeah. I  
8 just made a note for the record that is was  
9 being marked.

10 MR. REED: Okay. Very cool, man.

11 We are now prepared to take  
12 testimony. I ask any person present at  
13 this hearing who wishes to testify to  
14 please notify our staff of your intent by  
15 way of the chat feature of this Zoom call.  
16 Our staff will then coordinate with each of  
17 you regarding your testimony, including the  
18 order in which you testify. When it is a  
19 witness' turn to testify, we will ask the  
20 witness to identify themselves prior to  
21 their testimony. For those of you who have  
22 documents you would like to submit as  
23 exhibits, please send a copy to capital B,  
24 capital O, capital E, capital G, capital C

1           staff at phila.gov. And I would ask staff  
2           to put that in the chat feature or  
3           somewhere else where people can find it.  
4           And the document will be added to the  
5           record.

6                       Before hearing from members of  
7           the public, I would like to invite Board  
8           staff to testify. It's my understanding  
9           that Board staff will recommend several  
10          revisions to the proposed amendment as  
11          posted in response to questions raised by  
12          -- well, actually, I don't know -- some of  
13          these may have been added before the  
14          posting, but these amendments were raised  
15          by Board members at our last member public  
16          meeting. Members of the public should not  
17          feel thrust to respond to these most recent  
18          recommendations during the hearing. Any  
19          one who wishes to comment on the revised  
20          proposed amendment after today's hearing  
21          may do so by submitting written testimony  
22          by way of email to general counsel Michael  
23          Cooke no later than September 30, 2022.  
24          Mr. Cooke's email address is Michael,

1 M-I-C-H-A-E-L dot Cooke, C-O-O-K-E, at  
2 phila dot gov. That's  
3 Michael.Cooke@phila.gov.

4 MR. COOKE: Mike, I apologize for  
5 interrupting, but that date actually should  
6 be a little earlier. That's my fault. And  
7 so if -- say if people have written  
8 testimony that they would like to submit  
9 after the hearing today, if they could  
10 please do that by September 2nd, not  
11 September 30th. I apologize for the mixup.

12 MR. REED: I suggest that we  
13 follow up with some sort of written  
14 communication in the chat feature and  
15 perhaps in other ways to make that deadline  
16 clear.

17 MR. COOKE: Yes, we will do that.

18 MR. REED: All right. So let's  
19 roll with the testimony.

20 MR. BARZAGA: Thank you, Chair  
21 Reed. Now, before I begin I'd just like  
22 note that the Board of Ethics' staff is in  
23 receipt of three pieces of written  
24 testimony thus far and those pieces of

1           written testimony are from the Campaign  
2           Legal Center, the Election Lawyers  
3           Collective and the Institute for Free  
4           Speech.

5                     I'll ask our court reporter to  
6           mark these pieces of testimony as Exhibit B  
7           collectively and ask that they be made part  
8           of today's record.

9                     (At this time, pieces of  
10          testimony were marked collectively for  
11          identification as Exhibit B.)

12                    As noted before, if anyone has  
13          additional written testimony that they  
14          would like to present and send to staff  
15          today, please feel free to send it to Board  
16          staff at the email address previously given  
17          and we will be sure to have it added to  
18          Exhibit B.

19                    MR. REED: I would also ask  
20          anybody who is going to speak, including  
21          Richard, identify themselves before  
22          speaking and say who they are. We know who  
23          you are, but --

24                    THE COURT REPORTER: Thank you.

1 MR. REED: Please proceed.

2 MR. BARZAGA: Of course, Chair  
3 Reed. Now -- so as it were, good afternoon  
4 everyone. My name is Richard Barzaga and I  
5 am a senior staff attorney with the Board  
6 of Ethics. Today, along with my colleague,  
7 Michael Gutierrez, who is also a senior  
8 staff attorney, we are here to provide  
9 testimony with regard to the amendments to  
10 Regulation 1.

11 Now, at this time, let me share a  
12 power point presentation that we've  
13 prepared in order to help facilitate our  
14 discussion today.

15 MR. REED: Are we going to share  
16 that -- you know I'm a troublemaker. Is  
17 the court reporter going to have access to  
18 that?

19 MR. BARZAGA: At this -- we  
20 hadn't planned to, but I don't see any  
21 reason that we wouldn't be able --

22 MR. REED: Well, I'm not saying  
23 concurrently, but at some point since it is  
24 in a sense arguably part of the record.

1 MR. BARZAGA: Absolutely, Chair  
2 Reed. I can have that sent --

3 MR. REED: It doesn't have to be  
4 done right now. At some point.

5 MR. BARZAGA: Yeah. Yeah.  
6 Absolutely, Chair Reed. I'll have it sent  
7 over to the court reporter and added to the  
8 hearing transcript.

9 MR. REED: Thank you.

10 MR. BARZAGA: Before I begin,  
11 Chair Reed, can you see the slides that I  
12 just put up --

13 MR. REED: I can see the slides.

14 MR. BARZAGA: Great.

15 MR. REED: If anybody can't see  
16 the slides send it through the chat feature  
17 or whatever mechanism there is to  
18 communicate to let us know. Although this  
19 is not -- I think this is -- my  
20 understanding is that this is not a  
21 necessary part of the testimony. It is an  
22 aid, so if you can't see it, it's not -- it  
23 doesn't -- it doesn't invalidate the  
24 testimony that Richard is going to give.

1                   MR. BARZAGA: Correct. Thank  
2                   you, Chair Reed. Chair Reed, Board  
3                   members, staff and members of the public,  
4                   as I said, myself and Mike Gutierrez are  
5                   here to provide testimony on behalf of the  
6                   staff of the Board of Ethics now  
7                   specifically with regard to suggestive  
8                   modifications to the proposed amendments to  
9                   Regulation 1. As Chair Reed alluded to,  
10                  these modifications rose out of concerns  
11                  raised by Board members as well as from  
12                  review of the amendments by staff members;  
13                  and, again, these are suggestive  
14                  modifications to the amendments as they had  
15                  been posted at the Department of Records.  
16                  The format that you'll be seeing and that  
17                  we will be discussing today with aid of the  
18                  slides is, you'll see the section as posted  
19                  to records, the issue of concern  
20                  specifically raised about that particular  
21                  section that you're seeing, how staff  
22                  suggests to address the concerns and  
23                  finally a clean version just for reference  
24                  sake if the amendments were to be adopted.

1           So with that, I'll jump right into the  
2           suggested modifications.

3                       So first with regards to Subpart  
4           A, the scope and definitions section, here  
5           in Paragraph 1.1 you'll see the definitions  
6           for campaign and person. As posted to the  
7           record, the only amendment was to change  
8           the utilization of the term candidate's  
9           campaign to just the word campaign. Now,  
10          that original amendment simply changed that  
11          defined to align with the ordinance passed  
12          by City Council earlier this year.

13                      Now, the issue brought up was a  
14          recommendation that these sort of catch-all  
15          definitions campaign and person use the  
16          single signal includes to better delineate  
17          what exactly is captured by the universe of  
18          these two definitions. Staff then to  
19          address that issue suggested the following  
20          modifications. You'll see them highlighted  
21          in yellow. First for campaign to use the  
22          signal includes any of the following and  
23          for person use the signal any. Now,  
24          they're addressed in slightly different



1           ways due to the way the definitions were  
2           written. One is sort of a pure list  
3           and one isn't quite as pure of a list.  
4           They're sort of modifying clauses, some  
5           stylistic, somewhat dictated in the manner  
6           in which we address the issues, but the  
7           goal ultimately was to clarify what  
8           entities fall under each defined term as  
9           utilized throughout Regulation 1 and we  
10          believe these modifications do define the  
11          universe of entities falling under each  
12          term.

13                       Finally you'll see additional  
14          redlining of the definition of campaign.  
15          That's simply to better line up the  
16          definition of campaign more precisely with  
17          what has been passed in the ordinance. So  
18          this is -- reflects the definition of  
19          campaign in the ordinance passed by City  
20          Council. So as you can see there, if the  
21          amendment is adopted, this is how the  
22          definitions for campaign and person would  
23          appear in Paragraph 1.1 respectively.

24                       Now, the next section I'd like to

1 address is Paragraph 1.9, which is located  
2 in Subpart B dealing with contribution  
3 limits. And specifically when persons make  
4 expenditures to place a candidate's name on  
5 a sample ballot and when that expenditure  
6 is made in coordination with a candidate  
7 whether or not it counts as any kind of  
8 contribution to the candidate's campaign.  
9 So this is the amendment as posted. The  
10 issue was to confirm that the terms person  
11 and campaign which are utilized in  
12 Paragraph 1.9 are, quote, unquote, in sync  
13 as used in the paragraph and really whether  
14 it makes sense to use the phrase, quote, a  
15 person other than a campaign, end quote.  
16 And just for reference sake, I'll go back  
17 to the last slide and you'll see that's  
18 really the first two clauses that we're  
19 talking about in this section, if a person  
20 comma other than a campaign.

21 Now, to address these issues,  
22 staff suggests a modification to simply  
23 strike the phrase other than a campaign.  
24 As I stated, this paragraph deals in part

1 with coordinated expenditures and since a  
2 campaign wouldn't be able to coordinate  
3 with itself to begin with, the phrase other  
4 than a campaign is frankly superfluous and  
5 so we recommend that it should be struck  
6 from this paragraph and from the amendment  
7 that's posted. Additionally, the phrase  
8 other than a campaign might give the  
9 impression that there is a loophole  
10 generally that campaigns generally wouldn't  
11 be subject to this paragraph, which is not  
12 the intention of this regulation. And an  
13 additional modification to be suggested to  
14 Paragraph 1.9 would be in the phrase,  
15 quote, and does so in coordination with  
16 that candidate, end quote. You'll see in  
17 the blue box and the blue arrows we suggest  
18 that the phrase candidate be turned into  
19 candidate's campaign and that's simply a  
20 matter of using the consistent -- being  
21 consistent with how the terms have been  
22 utilized throughout Regulation 1. The  
23 ordinances emphasize the transition from  
24 using candidate to the word campaign and

1 adding the word campaign here more closely  
2 aligns with how those terms are being used  
3 throughout Regulation 1 in light of the  
4 ordinances. Again, finally, this would be  
5 how the amendment looks with the suggested  
6 modifications, so really striking the  
7 phrase other than a campaign and changing  
8 the term campaign to -- excuse me --  
9 candidate to candidate's campaign. And  
10 finally, this would be the suggested  
11 modification clean if the amendments were  
12 adopted and the redlines were adopted by  
13 the Board, this would be how Paragraph 1.9  
14 would look.

15 Now, with that, I will turn it  
16 over to Mike Gutierrez, who will share with  
17 you all the other half of the staff's  
18 suggested modifications. Thank you.

19 Take it away, Mike.

20 MR. GUTTIEREZ: Good afternoon,  
21 everyone. As Rich mentioned, I'm also on  
22 enforcement staff. And the last of the --  
23 well, the next of the proposed changes to  
24 the amendment, I'm going to highlight the

1 Rule 1.10, Subsection H. And this  
2 provision was implementing the new  
3 allowance made for by the bills so that  
4 multiple campaigns can come together and  
5 make joint payments for campaign related  
6 activities, but only as so long that they  
7 comply with a few requirements.

8 One of these requirements is that  
9 they pay their own fair portion of the  
10 joint payments within 14 days. And it was  
11 noted at our last board meeting that we --  
12 we don't really clarify what those 14 days  
13 are. For the record, again, just to  
14 interrupt -- sorry -- I'm Mike Gutierrez.  
15 And so with this issue that was pointed out  
16 about it being unclear about what the  
17 14 days were, we took this opportunity to  
18 go back to our provision and to break out  
19 the requirements of the campaigns in order  
20 to avail themselves of this alliance -- of  
21 this allowance into subsections and you can  
22 see here that the second subsection  
23 addresses the timing component and so we  
24 clarified our requirement that each

1 campaign has to make payment no later than  
2 14 days after any other campaign and the  
3 way that it will look in the clean version  
4 is on the next slide. And so this is our  
5 proposed change to Section 1.10-H.

6 The next proposed change that we  
7 made has to do with the title of the  
8 Subpart F. This subpart deals with the one  
9 candidate, one committee, one checking  
10 account rule. And we noted that in the  
11 title for this subpart we were talking  
12 about committees used by candidates and we  
13 just wanted to change this in order to use  
14 the new definition for campaign, which  
15 catches not only candidates, but their  
16 committees and their officers and  
17 employees. And since this is really what  
18 Subpart F is getting at, all the totality  
19 of that activity, we are going to change it  
20 in order to modify it to say at the end  
21 that its use of committees by candidates  
22 and campaigns. So this is what the  
23 modification will look like and then on  
24 next slide will be the clean version.

1                   And the last change that I'm  
2                   going to talk about today is for Paragraph  
3                   123, Subpart D. And this is another new  
4                   rule introduced by the legislation. It's a  
5                   general prohibition against campaigns using  
6                   bankers except for an enumerated list of  
7                   permissible activities. And the language  
8                   here just introduces it as unless  
9                   specifically permitted by this subpart.  
10                  And during our last board meeting it was  
11                  requested that we make a change to this  
12                  intro and -- so that it would instead open  
13                  as except as specifically permitted by this  
14                  subpart. On the next slide we have what  
15                  the modification would look like in the  
16                  amendment to the regulation. And then on  
17                  the next slide finally we have the clean  
18                  copy. And this concludes the additional  
19                  changes that are being proposed by Board  
20                  staff.

21                  MR. REED: Thank you. The floor  
22                  is open to Board members for any questions  
23                  as to this -- these witnesses' testimony.  
24                  And I'm hearing no questions from the Board

1 as to the testimony of these witnesses. We  
2 would be happy to welcome the next witness.

3 MR. COOKE: So, Mr. Chair, we've  
4 heard, I believe, from three people who  
5 would like to testify. They're David  
6 Keating, Aaron McKean and Kevin Greenberg,  
7 and we'll go in that order. If there is  
8 anybody else who would like to testify, if  
9 you haven't done so yet or if we've missed  
10 it, please put your name in the chat and we  
11 will add you to the testimony list. As the  
12 Chair noted, please identify yourself when  
13 you begin your testimony and please spell  
14 your name for the court reporter. And with  
15 that, unless there's any other questions,  
16 we will turn to Mr. David Keating for the  
17 first piece of testimony from the public.

18 MR. REED: Welcome, Mr. Keating.

19 MR. KEATING: Thank you. Thank  
20 you for having the hearing and for allowing  
21 me to speak. I appreciate the Chair and  
22 the rest of the Board getting public input.  
23 Thank you very much.

24 I've submitted written comments



1           this morning on one key provision that  
2           we're concerned about and that is the  
3           portion concerning coordinated expenditures  
4           and --

5                       MR. REED: Could you identify the  
6           entities on whose behalf you speak if it is  
7           other than yourself?

8                       MR. KEATING: Okay. My name is  
9           David Keating, that's K-E-A-T-I-N-G, with  
10          the Institute for Free Speech and I'm  
11          speaking on behalf of the institute. I'm  
12          the president.

13                      MR. REED: Thank you.

14                      MR. KEATING: Thank you. So I've  
15          submitted written comments. I think the --  
16          there's a portion of this just at the end  
17          that we cite in the written comments. Let  
18          me just -- quote, information is not  
19          provided to the general public if the  
20          circumstances indicate the campaign has  
21          made the information available so that  
22          another person may use the information to  
23          make expenditures supporting the campaign  
24          and the matter suggested by the campaign.

1           Now, the problem with this that we see is  
2           that public information just can't be used  
3           in a way to provide either quid pro quo  
4           corruption or the appearance of quid pro  
5           quo corruption. And the Supreme Court has  
6           said repeatedly the independent  
7           expenditures basically can't be limited and  
8           the only rationale for limiting political  
9           speech such as independent expenditures is  
10          the appearance of corruption or quid pro  
11          quo corruption. And if there's public  
12          information, we just think it's totally  
13          implausible that the quid or the quo can be  
14          provided. And indeed the public  
15          information could just as easily be used by  
16          opponents of the candidate that is  
17          purportedly being aided by this public  
18          information.

19                        So let's say as some of the  
20          examples indicate, there's a red box saying  
21          that voters in a certain area need to hear  
22          this kind of message. Well, someone who's  
23          supporting the opposing candidate or one of  
24          the opposing candidates, if it's

1 multi-candidate situation, could read that  
2 same information and use it to undermine  
3 any such messaging. So I just don't think  
4 it's how the real world operates and it's  
5 just implausible.

6 The other thing that I think  
7 concerns us is that this information could  
8 just as easily be given to reporters. It  
9 could be covered in a newspaper, it could  
10 be covered in a blog, it could be covered  
11 in a radio interview, a podcast interview  
12 where the candidate is asked things like,  
13 well, what might it take to win your  
14 election. Well, I need to get this message  
15 out to this vote -- these voters and this  
16 portion of the city. Well, again, that's  
17 public information, whether it's on the  
18 website or in the news report, it's still a  
19 suggestion, but the fact that it's public,  
20 I just -- I don't see how that could lead  
21 to a coordinated expenditure.

22 One final thing I'd like to say  
23 about this, which is the voters will have  
24 all this information. It's publicly

1           available. They can see it. The reports  
2           of the independent expenditures are  
3           publicly available and the voters will have  
4           the information they need to decide whether  
5           they may want to vote for this candidate or  
6           not.

7                       Now, in my written comments I did  
8           not address something else that I would  
9           like to just spend a minute addressing.  
10          That's in paragraph -- or I don't know how  
11          you refer to it on the Board, but 1.4,  
12          contributions made through one or more  
13          political committees or other persons, I  
14          guess is the new proposed language. I  
15          think this -- this language is just too  
16          vague overall. I think when you resort to  
17          things such as facts and circumstances  
18          you're not giving people clear guidance in  
19          advance about what's permitted and what  
20          isn't permitted. And the fact that, you  
21          know, a big contributor suggests it would  
22          make me happy if you gave a contribution to  
23          this candidate. Well, let's say the PAC  
24          has a standing policy and there are a

1           number of PACs that have such a standing  
2           policy where they do not take contributions  
3           that are earmarked for a particular  
4           candidate. So that puts -- that puts the  
5           donor's request in conflict with the PAC's  
6           formal written policy that is followed and  
7           I don't know what -- I don't know what the  
8           contributor would do or what the PAC would  
9           do, but I'd certainly think that if the PAC  
10          has a formal policy that it follows where  
11          they do not accept such contributions with  
12          suggestions or any form of earmarking that  
13          the contribution shouldn't be -- shouldn't  
14          count against the contribution to a  
15          candidate.

16                   Now, I think the -- the proposed  
17          regulation where it says if the majority of  
18          the contributions come from a single  
19          person, that's clear guidance that people  
20          can follow. We have no objections with  
21          that.

22                   So with that, again, I thank you  
23          for taking the comments. I would encourage  
24          you to read my written statement for

1 further information on the coordinated  
2 expenditures. Thank you.

3 MR. REED: Thank you, Mr.  
4 Keating. We appreciate your guidance and  
5 thoughts and they will be duly considered.  
6 But the floor is open to the rest of the  
7 Board for any questions or comments that  
8 they may have with regards to Mr. Keating's  
9 testimony.

10 MS. EPPS: I have a question.  
11 Thank you, Mr. Keating, for your testimony,  
12 but I did not yet have the opportunity to  
13 read your written notes, so forgive me if  
14 the answer to this question is contained  
15 therein. Am I correct in understanding you  
16 to -- with respect to the coordinated  
17 expenditures, am I correct in understanding  
18 that your objection is substantive as  
19 opposed to merely the way the reg was  
20 written?

21 MR. KEATING: Yes, I think that's  
22 a fair explanation of our concern. If  
23 there is publicly available information,  
24 you know, one could imagine from a

1           hypothetical situation perhaps, but just  
2           normal publicly available information,  
3           whether it's on the website or social  
4           media, I don't see how that could  
5           constitute coordination.

6                       Now, if the Board wanted to write  
7           something better defining what is public  
8           information, I think that could be done in  
9           a narrowly tailored way. For example,  
10          there have been concerns expressed in the  
11          past where -- am I muted? No. There have  
12          been concerns expressed in the past where  
13          information is purportedly public and it  
14          comes from a Twitter handle that has no  
15          followers, you know, it's very obscure or  
16          something like that. So if the information  
17          is publicly available on the candidate's  
18          website in a page that's easily accessible  
19          for example then I think that's clearly  
20          public information, but if there's some way  
21          to define what is publicly available then,  
22          you know, perhaps the Board could write  
23          something to ensure that it truly is  
24          publically available.

1 MS. EPPS: Thank you very much.  
2 I really appreciate it.

3 MR. KEATING: You're welcome.

4 MR. REED: Any other comments or  
5 questions? I -- the Chair has a question  
6 for Mr. Keating. Are your objections  
7 constitutionally based?

8 MR. KEATING: Yes. It's -- I  
9 think it's a combination of  
10 constitutionally based and also practically  
11 based --

12 MR. REED: Okay. Thank you.

13 MR. KEATING: -- from  
14 participating in campaigns and such.

15 MR. REED: Okay. Is the thrust  
16 of your objection at -- aimed at  
17 limitations, but -- at provisions which  
18 would prohibit contributions that are  
19 considered coordinated versus measuring  
20 those contributions in determining whether  
21 contribution limits have been exceeded the  
22 amounts limits as to how much a given  
23 person can contribute to a candidate?

24 MR. KEATING: I'm not sure I



1           understand the question. Our view is if  
2           there is truly -- if the information is  
3           truly available to the public, that's not  
4           something that can constitute a coordinated  
5           communication; and, therefore, it couldn't  
6           apply against a contribution limit. I hope  
7           that answers your question, but I'm not  
8           sure.

9                       MR. REED: That answers it for  
10           now.

11                      MR. KEATING: Okay.

12                      MR. REED: Thank have. So unless  
13           there are further questions for Mr. Keating  
14           we'll welcome -- we're ready to welcome our  
15           next witness.

16                      MR. KEATING: Thank you.

17                      MR. COOKE: That would be Aaron  
18           McKean.

19                      MR. McKEAN: Good afternoon.

20           Good afternoon. Thank you for allowing me  
21           to speak with you today. My name is Aaron  
22           McKean, that's A-A-R-O-N, M as in Mary  
23           C-K-E-A-N as in Nancy. I'm with the  
24           Campaign Legal Center and we're a

1           nonpartisan, nonprofit organization that  
2           works for advanced democracy at every level  
3           of government. The Campaign Legal Center  
4           strongly supports the Board's proposed  
5           amendment that would regulate the campaign  
6           -- the illegal campaign process known as  
7           red boxing, which is addressed in the  
8           regulation at Paragraph 1.33-F.

9                       I'm going to begin today by  
10          providing an overview of what red boxing is  
11          and why it's so important that the Board of  
12          Ethics is taking a lead on regulating this  
13          illegal campaign practice and then I'll  
14          describe our recommendation for further  
15          clarifying the rule with respect to red  
16          boxing.

17                     So to begin, red boxing is an  
18          illegal campaign practice in which a  
19          candidate publishes a campaign strategy and  
20          messaging information to their website as a  
21          way of signaling to outside spenders like  
22          super PACs that these are the kinds of  
23          political ads that they want those outside  
24          spenders, those super PACs to run in favor

1 of the candidate. The -- and red boxing is  
2 designed to exploit the safe harbor for  
3 publicly available information so that  
4 super PACs and outside spenders would use  
5 that publicly available information to run  
6 ads in favor of their favorite candidates.

7 Let me first talk to you an  
8 example just to illustrate what's going on.  
9 Let's say that a candidate is running for  
10 the Mayor of Milwaukee and that candidate  
11 is named Mark Johnson. For example, Mark  
12 updates his website to include a red box  
13 that says voters need to know right over  
14 the top of it and in that red box Mark has  
15 put a series of points and one of those  
16 points includes, you know, white men under  
17 50 need to read and see on the go that Mark  
18 Johnson supports working class values.  
19 Let's say two days later a super PAC begins  
20 running ads, like digital ads on Facebook  
21 that, you know, tell us Mark is a champion  
22 of working class values and then by the end  
23 of the week there are direct mail -- there  
24 is a direct mail campaign blanketing

1 Milwaukee with ads that say Mark Johnson is  
2 a champion of working class values. We  
3 know that the super PAC was able to pick up  
4 the message that Mark Johnson was providing  
5 in his red box and they took that and made  
6 expenditures in favor of his candidacy  
7 using specific signals that Mark has used  
8 in his red box. This is coordination and  
9 it's hidden in plain sight.

10 Now, I think it's hopeful now to  
11 try to talk about the particular pieces of  
12 a red box that make it so clear that this  
13 is coordination. We can identify red  
14 boxing through a series -- or a handful of  
15 -- a handful of signals. And those  
16 signals -- and I'm going to go through four  
17 of them. And we've also provided detailed  
18 examples in our written testimony, but at  
19 least first I'll identify them and then  
20 we'll kind of get into the details of them.

21 First, candidates will create  
22 their red box. They'll create that signal  
23 that flags down super PACs telling them  
24 this is where the information is about our

1 campaign that we want you to know. Often  
2 that's a red box on a website, but it could  
3 also come in different forms and colors or  
4 it could be -- you know, it could be on a  
5 different website entirely. That's the  
6 first piece.

7 And then the second piece is that  
8 it includes -- it often includes targeted  
9 audience information, right? This might be  
10 based on a candidate's own polling that  
11 they're specifically sharing with -- with  
12 these outside spenders and they're telling  
13 them this is who I want to target with  
14 these ads so that these ads will be more  
15 effective. In the Mark Johnson example I  
16 had said that he was trying to target those  
17 white voters under 50. And that's the kind  
18 of thing that you will see in these red  
19 boxes. It could be white voters under 50,  
20 it could be black women over 30, it could  
21 be, you know, any number of demographics  
22 that a candidate wants to target and a  
23 super PAC is going to pick that information  
24 up.

1                   Third, red boxes typically  
2                   include methods of communication, right?  
3                   So they're indicating through code words  
4                   that they want specific types of ads. So  
5                   when Mark Johnson says that white men under  
6                   50 need to read something about him, he's  
7                   saying to that super PAC that he wants  
8                   direct mail ads. If he had said that he  
9                   wanted white voters under 50 to see  
10                  something, to see an ad, that means that  
11                  they're calling for TV ads.

12                  And then the last one, if he  
13                  wants to indicate that he wants digital ads  
14                  in his favor, he's going to tell those  
15                  super PACs in his red box that he wants,  
16                  you know, white voters under 50 to see on  
17                  the go. See on the go is the code word for  
18                  digital ads. So these are the different  
19                  kind of flags that are used in red boxes to  
20                  signal the types of communications they're  
21                  indicating.

22                  And then finally, candidates also  
23                  include the specific messaging like we  
24                  talked about in the Mark Johnson example,

1           you know, he wanted to champion his working  
2           class values, but this could also include,  
3           you know, candidate endorsements. It could  
4           also include photos or videos that the  
5           candidate wants those super PACs to use in  
6           their ads supporting the candidate.

7                       So just to sum up, what we've  
8           talked about here is a red box that  
9           indicates where the information is for a  
10          super PAC and we talked about the  
11          information within that red box, targeted  
12          audience information, methods of  
13          communication and the specific messaging  
14          itself. So this is clearly coordination  
15          where a candidate is able to send those  
16          directions to super PACs, again, hidden in  
17          plain sight.

18                      Now, the Supreme Court has made  
19          it clear in Buckley versus Valeo that it is  
20          crucial to regulate coordinations in order  
21          to prevent corruption and in order to  
22          prevent the circumvention of contribution  
23          limits. This is important when we're  
24          talking about candidates and outside

1           spenders, because outside spenders have  
2           access to unlimited funding and unlimited  
3           networks in order to support these  
4           candidates. What we're concerned about is  
5           if a candidate can send these signals and  
6           effectively -- and effectively allow a  
7           super PAC to underwrite their entire  
8           campaign, that's what this coordination  
9           regulation is intended to address.

10                       Now, the Supreme Court has also  
11           made clear that you don't need a formal  
12           agreement in order to establish  
13           coordination. Instead, the Supreme Court  
14           has said that expenditures that are made,  
15           you know, after winks and nods is enough to  
16           establish that there's a coordinated  
17           expenditure and that's just as good to a  
18           candidate as campaign cash, but what we're  
19           talking about here with red boxing is much  
20           more. It's much more than winks and nods.  
21           It's clear specific directions from  
22           candidates to outside groups telling them  
23           exactly the kinds of ads they want run and  
24           how they want them run and to whom they



1 want them targeted. This is clearly  
2 illegal coordination and it needs to be  
3 regulated. But we support the Board's  
4 approach to regulating red boxing. The  
5 regulation will prevent candidates and  
6 outside groups from exploiting the safe  
7 harbor for providing public information  
8 about a candidate and we also think that  
9 there are examples provided. And example  
10 two and three will provide excellent  
11 guidance, excellent examples for people to  
12 understand what the issue is with red  
13 boxing. Our recommendation is to include  
14 further information about these telltale  
15 signals that I've described earlier, so  
16 that outside spenders can understand what  
17 the Board is going to consider when they're  
18 determining whether red boxing is  
19 occurring. Like we said, you know, those  
20 four factors are -- you know, the presence  
21 of a red box, whether that's in the form of  
22 a red box or, you know, another form, as  
23 well as that targeted information, as well  
24 as the method of communication and language

1           that indicates that these messages are  
2           supposed to be communicated to others, like  
3           voters need to know or white men need to  
4           know, these are the things that -- these  
5           are the circumstances and if we can just  
6           make it clear what the Board is considering  
7           when they're determining whether red boxing  
8           is occurring.

9                       That concludes my testimony. I  
10          have provided written testimony and I'm  
11          happy to take any questions.

12                      MR. REED: The floor is open to  
13          my colleagues on the Board for any  
14          questions for Mr. McKean or comments.

15                      MS. EPPS: Chair Reed, this is  
16          Joeanne Epps. May I ask a question?

17                      MR. REED: You must ask a  
18          question.

19                      MS. EPPS: No, I must not.

20                      Good afternoon. I don't think I  
21          did this the last time. I'm Joeanne Epps.  
22          I'm a member of the Board. Thank you, Mr.  
23          McKean, for those comments.

24                      So here's my question, I

1 appreciate your acknowledgement that the  
2 red box isn't only the definition of what  
3 you perceive to be troubling content, it  
4 could come in any form. So my question is,  
5 with regard to the four characteristics  
6 that you identified, is any one or more  
7 critical? My question for example would be  
8 this, what if a candidate buried within a  
9 long message to the public line one in the  
10 first paragraph, I'd really like, you know,  
11 to make sure that people appreciate that  
12 I'm for, you know, like working class  
13 people and then paragraph three it says the  
14 kind of people who would most be interested  
15 in that kind of message might be white men  
16 under 50 and then in paragraph eight, you  
17 know, so like is it the -- is it the  
18 targeting of the audience? Is it the --  
19 let me go back. I was taking notes.  
20 Number one is the symbol, which I'm  
21 guessing is not sine quan non -- sorry, I  
22 took Latin a while -- item number two is  
23 targeted information, number three is the  
24 code words and number four is the specific

1           messaging. I'd like to have your thoughts  
2           on whether you need all four for it to be  
3           problematic or whether one or more makes  
4           the matter problematic? First, was my  
5           question clear?

6                   MR. McKEAN: Thank you so much  
7           for that question. I do think it is clear.  
8           I appreciate the question. I think the way  
9           that we would frame it is actually the same  
10          way that the rule is framed, which is that  
11          the Board should consider all of the  
12          circumstances. It's not just any one --  
13          the presence of any one indicator, but  
14          instead the presence of probably two or  
15          more indicators, and that's what we've  
16          indicated in our written comments. When  
17          we're talking about these indicators, like  
18          the red box itself or the language that is  
19          used, we're looking for a combination of  
20          them to indicate that these are the  
21          messages that the candidate is deliberately  
22          sending to outside groups and that's how  
23          we, you know, assess it as, you know,  
24          looking at, well, is there a red box. And

1           sometimes there isn't a red box like you  
2           had said. Sometimes it's just -- it's a  
3           website that says media center, right, for  
4           a candidate and the media center will have  
5           that particular information with the  
6           targeted audience information and the --  
7           you know, code signals for the types of ads  
8           that the group -- that the candidate is  
9           requesting. And looking at the total of  
10          those circumstances, we think it's the  
11          right approach which the Board was taking  
12          with the original language and we think  
13          this is a way to supplement that language  
14          and make it clear what is being considered.  
15          So whether -- we don't think there is any  
16          one criteria that is going to be a slam  
17          dunk with this red boxing, but instead it's  
18          a consideration of all of those factors and  
19          whether they're present.

20                       MR. EPPS: Okay.

21                       MR. McKEAN: For us, it's  
22          typically two or more.

23                       MS. EPPS: Thank you very much.

24                       MR. McKEAN: Thank you.

1 MR. REED: Any other Board  
2 members?

3 Okay. The Chair is going to his  
4 thing again. So your position in contrast  
5 to -- well, I'm not going to say in  
6 contrast. Mr. Keating's position -- well,  
7 he spoke for himself. His words will speak  
8 for themselves. Your position is that  
9 coordinated -- it's appropriate to regulate  
10 coordinated expenditures insofar as they  
11 are mechanisms to evade constitutionally  
12 appropriate limitations on expenditures by  
13 candidates and others; is that a fair  
14 statement?

15 MR. McKEAN: I think so. I think  
16 that's a fair statement all the way until  
17 the end. I would say it's actually about  
18 the expenditures by the outside spenders.  
19 So the candidates coordinating these  
20 expenditures with outside spenders --

21 MR. REED: Okay.

22 MR. McKEAN: -- you know, when  
23 we're talking about these kinds of  
24 expenditures, you know, and an independent

1 group isn't allowed to make a contribution  
2 to a candidate, right? They are supposed  
3 to be independent, but --

4 MR. REED: Yeah, I got that.

5 MR. McKEAN: Okay. Great.

6 MR. REED: Oh, I thought there  
7 was another --

8 MR. McKEAN: -- there -- I am  
9 happy to elaborate, but I wanted to make  
10 sure --

11 MR. REED: No. I'm good.

12 MR. McKEAN: Okay.

13 MR. REED: If there are no  
14 further questions, I thank Mr. McKean for  
15 his testimony and visiting us today and we  
16 will prepare for our next witness.

17 MR. McKEAN: Thank you for the  
18 time.

19 MR. COOKE: The next witness is  
20 Kevin Greenberg.

21 MR. GREENBERG: Thank you, Mr.  
22 Cooke. Thank you, Mr. Chairman and Members  
23 of the Board. My name is Kevin Greenberg  
24 and I'm an election lawyer in Philadelphia.

1 I'm speaking today on my own behalf.  
2 Before the Board is a letter from myself  
3 and most of the members of the Election Bar  
4 in Philadelphia. There are some others who  
5 procedurally couldn't get it cleared in  
6 time to get into you, but their signatures  
7 may follow, but I think it's safe to say  
8 that I'm speaking on behalf of the  
9 consensus of the Election Bar or the letter  
10 we submitted is on the consensus of the  
11 Philadelphia Election Bar and I will  
12 briefly summarize that and then I will make  
13 a points of my own.

14 Essentially our point is this,  
15 that as the Chair has pointed out, finding  
16 a way to stop illegal coordination,  
17 improper coordination is a well intentioned  
18 goal; however, we believe this regulation  
19 is hitting it with a sledgehammer in an  
20 area where delicacy is most important. We  
21 all remember -- those of you who went to  
22 law school, and I see a few of you on the  
23 Board who I know did, talk about the  
24 marketplace of ideas and the way the First



1           Amendment and Freedom of Association and  
2           Freedom of Speech interplay in this space  
3           and good ideas drive out bad ideas and  
4           people need to be able to speak. On top of  
5           that, we lay all the constitutional rules,  
6           many of which I disagree from Citizens  
7           United and others, but the constitutional  
8           framework in which we must operate. And it  
9           is our conclusion as a group that these  
10          rules as proposed are unworkable and we  
11          would not be able to advise candidates or  
12          committees who wanted to speak in any  
13          meaningful way about them, because too much  
14          is left up in the air, whereas as a red box  
15          -- oh, Mr. Gallagher, I do apologize.  
16          Kevin Greenberg, G-R-E-E-N-B-E-R-G. I see  
17          your face looking for information.

18                   THE COURT REPORTER: And,  
19          Kevin -- Kevin, real quick. Just try and  
20          slow down a little bit. You're a fast  
21          talker.

22                   MR. GREENBERG: Sorry. Whereas a  
23          red box that talked about with code words  
24          means methods, targets might be an

1           appropriate means to try to regulate  
2           speech. What you'd be regulating would  
3           simply be the sloppy and nothing stops, to  
4           use a current mediate example, an  
5           independent group from listening to the  
6           media, where John Fetterman continually  
7           bashes Mehmet Oz for living in New Jersey  
8           and running ads about how he lives in New  
9           Jersey, and that should not be regulated  
10          speech. In fact, imagine a situation where  
11          Mr. Fetterman is charged with -- in implied  
12          -- implied contribution, because I hear  
13          that ad, think it's really funny and start  
14          memeing it out and spend money on my  
15          independent speech to go after his  
16          activity. That just is not a feasible  
17          situation and we believe that any attempt  
18          to regulate along the lines of 1.33-F  
19          should not be done with such a brash, broad  
20          stroke; and, in fact, in doing so will do a  
21          couple of things. It will lead to  
22          ambiguity and unenforceability. It will  
23          lead to litigation and significant damages.  
24          And we think all of that is a problem for

1           the city. And towards that end, we would  
2           point out that we believe this is not in  
3           response to a direct request from City  
4           Council, the way many of the Board's  
5           regulatory views have been in the past.  
6           This is a policy shift for the city. And  
7           much like it was done in 2005 and much like  
8           it has been done a couple of times since,  
9           this is something to be aired with City  
10          Council, heard, let the voters' direct  
11          representatives speak and address it and  
12          come up with a policy. If the Board is to  
13          then regulate on top of that, we understand  
14          that in terms of, you know, detailing and  
15          defining it, but this is an issue that  
16          belongs to the people and to -- to the  
17          people of Philadelphia and it should not be  
18          addressed in this way. We do believe this  
19          is beyond the pale of what the Board has  
20          been asked to do by City Council, by the --  
21          by our charter reform. We did adopt it.  
22          So that's sort of where -- what the group  
23          spoke for and I will speak just to a couple  
24          things on my own before we go there.

1                   Two little technical nicks in  
2                   this regulation, but I think it's  
3                   important. There is a provision in 1.23-C  
4                   that talks about common agents forming an  
5                   entity. I think that we need to, as we  
6                   have done in other past regulations, carve  
7                   out that a common attorney creating an  
8                   entity is not such that coordination is  
9                   presumed. I have many, many, many clients  
10                  whom we have created many, many, many  
11                  entities, including many candidate  
12                  committees. The idea that they use me as a  
13                  common agent, as a lawyer for example,  
14                  should not lead to a presumption that they  
15                  have coordinated, so I think you want to  
16                  carve out the service entities in  
17                  Harrisburg and lawyers from that  
18                  definition.

19                 Similarly, I think this is a  
20                 corrective nick, but one that I think is  
21                 important to what was added today in  
22                 1.10-B. The 14 day requirement for payment  
23                 is unworkable in that it would require one  
24                 committee to know when another committee

1           has paid its bills and that's just not  
2           feasible. If we're going to set it to a  
3           moment in time, it should be set to the  
4           moment of first distribution or something  
5           like that. It should not be set to when  
6           somebody else pays the bills. Again, this  
7           is much like what we've been talking about  
8           and I'll come back to in a second on the  
9           1.33 provision. We can't allow and attempt  
10          to stop circumvention to dictate how people  
11          speak and run their campaigns. Free  
12          speech, First Amendment rights and frankly  
13          the need of the people of the city to make  
14          this most important decision that needs to  
15          be front and foremost.

16                   And so that's sort of, I guess,  
17          where I am. I would just simply say on top  
18          of that to sort of pick up where some of  
19          the questions came from Dean Epps and from  
20          the Chair -- sorry, Dean -- sorry, Joanne.  
21          I know. You'll always be Dean Epps to me.  
22          But from some of these questions, this is a  
23          constitutional question, but within that  
24          constitutional framework there is a way to

1 regulate coordinated speech. The problem  
2 is that it's a delicate matter. And there  
3 is a reason why CLC is on this call saying  
4 to do this, and I respect CLC and I'm a big  
5 fan of their work, but the reason they're  
6 saying to do this is that nobody has ever  
7 tried to do it, because every time they  
8 have talked about this, everywhere in this  
9 country people have run up against it and  
10 said I don't know how to do this without  
11 stopping appropriate speech, without  
12 stopping important speech. And we can't be  
13 overbroad here. There is a reason,  
14 Philadelphia would be out of line with  
15 everybody who has looked at this, Federal,  
16 State and local. And I'm all for us making  
17 news. I'd rather we not make news for  
18 overturning the First Amendment and being  
19 out in front on that issue. It's not a  
20 place where Pennsylvania should go -- or  
21 Philadelphia should go. I am a voter. I  
22 am a resident. And I'm sorry, I think  
23 everybody -- well, maybe one of the people  
24 who signed the letter doesn't live in the

1 city, but does work here, but this is our  
2 city and these are our people and we want  
3 them to speak and speak clearly and speak  
4 fairly and we want to stop illegal  
5 coordination, but I will be clear, the  
6 regulations as they're written, the law as  
7 it's written already stops illegal  
8 coordination. What this rule proposes to  
9 do is to give such a broad, brush  
10 definition here to be able to prove  
11 coordination without actually proving  
12 coordination. And while there is clearly  
13 something that is wrong, and I think we  
14 will all talk about the example that CLC  
15 provided is a clear violation of  
16 coordination and it's coordinating in plain  
17 sight. There needs to be that level of  
18 specificity and evidence and I think our  
19 argument would be, my argument would be  
20 that there is an evidentiary -- this is a  
21 heavy lift and if you're going to make this  
22 case, if the enforcement staff is going to  
23 make this case, there needs to be an  
24 evidentiary burden for them to prove actual

1 coordination. Whether that is through a  
2 secret link that nobody know about that is  
3 communicated and they have that or whether  
4 there is some other means that is  
5 expressed, but it can't be as simple as  
6 Brendan McPhillips standing up and saying  
7 everybody needs to know that Dr. Oz lives  
8 in New Jersey. That just can't be enough.  
9 And that is exactly what the regulation as  
10 it's written would extend to and that is  
11 our problem -- well, that's my problem.

12 With that, thank you very much.

13 MR. REED: Thank you, Kevin. The  
14 floor is open. Provost Epps?

15 MS. EPPS: I'm fastly arriving at  
16 the no title Epps, but that's okay.

17 MR. REED: You're still a  
18 professor at least.

19 MS. EPPS: Joanne Epps here,  
20 member of the Board. Thank you, Kevin --  
21 Mr. Greenberg for your comments. I have  
22 this question, so -- let me go back to your  
23 notes. So your point is that this reg  
24 allows proof of coordination without actual



1 proof of coordination and you recommend an  
2 evidentiary burden. Here's my question, if  
3 we were unanimously convinced -- we're the  
4 jury. If we're unanimously convinced that  
5 what transpired was a clear wink and a nod,  
6 is it your view that that could be enough  
7 or is it your view that a wink and a nod  
8 might not be enough? And here's the rub  
9 that I'm wondering about, so I, the  
10 candidate, am winking and I'm nodding and I  
11 have no idea whether anyone is listening,  
12 so I'm not actually coordinating with  
13 anybody that I know of. And then there is  
14 the person, using your example, that goes,  
15 well, that's interesting. Dr. Oz lives in  
16 New Jersey and let me run with it. They  
17 didn't actually get moved by the wink and  
18 the nod, they got moved by the substance;  
19 is it your position that that would be not  
20 enough, it would not prove coordination? I  
21 don't even know if that was --

22 MR. GREENBERG: I'm not sure --  
23 again, some of this is a facts and  
24 circumstances analysis and that's part of

1           where we're concerned that this is getting  
2           very tricky, because this is a place where  
3           we should stay away from the fine line. We  
4           don't want to -- I remember your colleague  
5           at Temple, Professor Street, when he was my  
6           client with the city, used to tell us that  
7           he didn't want us to walk up to the line.  
8           He wanted to know where the line was and  
9           stay a little bit back from it. I was one  
10          of the city's lawyers at the time. That's  
11          the same dynamic here. This is the First  
12          Amendment. This is political speech. We  
13          don't want to choke campaigns for fear of,  
14          hey, I can't campaign on that, because I've  
15          heard the super PAC talking about it,  
16          people will presume I'm coordinating. This  
17          fine is draconian. It would bankrupt my  
18          campaign. And that is particularly true  
19          for, as our letter points out, the small at  
20          large candidates who may, you know, be in a  
21          situation where if the Chamber of  
22          Commerce's IE is a million bucks, that  
23          would destroy the entire campaign. Just  
24          the allegation, just a letter from Ethics

1           saying we want to talk to you about this  
2           creates a weaponizing of this dynamic that  
3           we think is problematic. But to go to the  
4           answer of your question, I think the answer  
5           is actual coordination is clearly already  
6           illegal. If I were to call up Mr. Barzaga  
7           and say, hey, I know you're running for  
8           office, here's a web link where I'm going  
9           to post information that you can take and  
10          use in your ads, even if -- you know, and  
11          it's somehow proven or whatever, that is  
12          coordination and clearly violates it. I  
13          think there is probably someplace where you  
14          could regulate. I'm still not 100 percent  
15          comfortable with Exhibit-1 as it exists,  
16          which is the use of common footage on the  
17          website, but I do understand that that was  
18          an attempt to balance that within reason,  
19          but it was, again, very narrowly focused  
20          and looking at the worst abuses of what  
21          happened and how that was done. And I  
22          think could we craft a regulation that is  
23          specific to red boxing with certain tests,  
24          probably. That would just tax -- that

1           would just tax the consultant class from  
2           figuring out a way around it. And the  
3           reality of it is red boxing is great if  
4           you're running a national super PAC and you  
5           want to figure out how to speak in 25  
6           different races at the same time, but if  
7           you got a local consultant and you're a  
8           super PAC you don't -- you know, to talk  
9           about what everybody is expecting in this  
10          mayor's race, there will be multiple  
11          candidates who have outside entities  
12          spending along the lines of what happened  
13          in 2015. Those independent consultants who  
14          were running those entities don't need to  
15          talk to anybody to understand what's  
16          playing in clout. They don't need to  
17          understand what's playing on Facebook and  
18          social media and TikTok, because they're in  
19          there monitoring it themselves. They  
20          probably have their own independent  
21          polling. So to the extent that what we're  
22          doing is trying to regulate the lazy, I get  
23          that, but it feels like we're regulating  
24          the lazy with the sledgehammer to the First

1           Amendment and it will be chilling speech.  
2           And on behalf of the Election Bar, I can  
3           say it, because we wrote it, we don't know  
4           how to advise our clients where those lines  
5           are right now. We wouldn't know. And we  
6           likely wouldn't know until we finish an  
7           enforcement process sometime in 2024, which  
8           means for this entire election there is  
9           going to be a chilling effect.

10                   MS. EPSS: Thank you.

11                   MR. REED: Kevin, we won't hold  
12           those admissions that you've made against  
13           you, should we --

14                   MR. GREENBERG: They are not  
15           admissions, Mr. Chairman, just to be clear.  
16           At this point I represent nobody who has  
17           declared, because nobody has, so --

18                   MR. REED: We're not going to  
19           quote this testimony.

20                   MR. GREENBERG: It is recorded  
21           and I understand that. Go ahead, Chair.

22                   MR. REED: The floor is open to  
23           the rest of the Board.

24                   Well, thank you, Kevin. I can't

1           wait to see your letter. I want to see who  
2           the Election Bar are -- is it our or is and  
3           thank you very much.

4                       MR. GREENBERG: Thank you  
5           everyone.

6                       MR. REED: Do we have anymore  
7           witnesses in the queue?

8                       MR. COOKE: I'm not seeing  
9           anything in the chat, but I, again, urge  
10          anybody who wishes to testify, now is your  
11          chance, so if you would like to please drop  
12          something in the chat, but so far those are  
13          the only three individuals who said they  
14          wanted to testify.

15                      MR. REED: Okay. Well, that's  
16          great. We went a little over an hour, but  
17          that's not bad and we greatly appreciate  
18          everybody's attendance and their  
19          contributions. We will take all the  
20          testimony and comments and discussion under  
21          advisement and we will see where we end up  
22          with this and I guess -- I think unless  
23          there is any further business from Board  
24          members or staff, I am going to declare

1                   this public hearing closed and thank  
2                   everybody for attending.

3                               (Hearing concluded at 2:06 p.m.)

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CERTIFICATION

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

- - -

DATE:

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James J. Gallagher, Jr.  
Court Reporter



EXHIBIT-A

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EXHIBIT-B

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A		
<p><b>A-A-R-O-N</b> 31:22  <b>Aaron</b> 2:16 3:5 22:6 31:17,21  <b>able</b> 11:21 17:2 34:3 37:15  47:4,11 53:10  <b>Absolutely</b> 12:1,6  <b>abuses</b> 57:20  <b>accept</b> 27:11  <b>access</b> 11:17 38:2  <b>accessible</b> 29:18  <b>account</b> 20:10  <b>accurate</b> 62:7  <b>acknowledge</b> 4:6  <b>acknowledgement</b> 41:1  <b>action</b> 5:19 6:2  <b>activities</b> 19:6 21:7  <b>activity</b> 20:19 48:16  <b>actual</b> 53:24 54:24 57:5  <b>ad</b> 36:10 48:13  <b>add</b> 22:11  <b>added</b> 8:4,13 10:17 12:7  50:21  <b>adding</b> 18:1  <b>additional</b> 10:13 15:13 17:13  21:18  <b>Additionally</b> 17:7  <b>address</b> 8:24 10:16 13:22  14:19 15:6 16:1,21 26:8  38:9 49:11  <b>addressed</b> 14:24 32:7 49:18  <b>addresses</b> 19:23  <b>addressing</b> 26:9  <b>admissions</b> 59:12,15  <b>adopt</b> 49:21  <b>adopted</b> 13:24 15:21 18:12  18:12  <b>ads</b> 32:23 33:6,20,20 34:1  35:14,14 36:4,8,11,13,18  37:6 38:23 43:7 48:8 57:10  <b>advance</b> 26:19  <b>advanced</b> 32:2  <b>advertised</b> 5:17  <b>advise</b> 47:11 59:4  <b>advisement</b> 60:21  <b>aforementioned</b> 62:9  <b>afternoon</b> 11:3 18:20 31:19</p>	<p>31:20 40:20  <b>agent</b> 50:13  <b>agents</b> 50:4  <b>agreement</b> 38:12  <b>ahead</b> 59:21  <b>aid</b> 12:22 13:17  <b>aided</b> 24:17  <b>aimed</b> 30:16  <b>air</b> 47:14  <b>aired</b> 49:9  <b>align</b> 14:11  <b>aligns</b> 18:2  <b>allegation</b> 56:24  <b>alliance</b> 19:20  <b>allow</b> 38:6 51:9  <b>allowance</b> 19:3,21  <b>allowed</b> 45:1  <b>allowing</b> 22:20 31:20  <b>allows</b> 54:24  <b>alluded</b> 13:9  <b>ambiguity</b> 48:22  <b>amendment</b> 8:10,20 14:7,10  15:21 16:9 17:6 18:5,24  21:16 32:5 47:1 51:12  52:18 56:12 59:1  <b>amendments</b> 1:2 4:4,10,22  4:24 5:5,9,10,13,14,18,20  5:22 6:2,5,14,21 8:14 11:9  13:8,12,14,24 18:11  <b>amounts</b> 30:22  <b>analysis</b> 55:24  <b>answer</b> 28:14 57:4,4  <b>answers</b> 31:7,9  <b>anybody</b> 10:20 12:15 22:8  55:13 58:15 60:10  <b>anymore</b> 60:6  <b>apologize</b> 9:4,11 47:15  <b>appear</b> 15:23  <b>appearance</b> 24:4,10  <b>APPEARANCES</b> 2:1  <b>apply</b> 31:6  <b>appreciate</b> 22:21 28:4 30:2  41:1,11 42:8 60:17  <b>approach</b> 39:4 43:11  <b>appropriate</b> 44:9,12 48:1  52:11  <b>approved</b> 5:9 6:10</p>	<p><b>Arch</b> 1:14  <b>area</b> 24:21 46:20  <b>arguably</b> 11:24  <b>argument</b> 53:19,19  <b>arriving</b> 54:15  <b>arrows</b> 17:17  <b>asked</b> 25:12 49:20  <b>assess</b> 42:23  <b>Association</b> 47:1  <b>ATTACHED</b> 3:12  <b>attempt</b> 48:17 51:9 57:18  <b>attendance</b> 60:18  <b>attendees</b> 5:2  <b>attending</b> 61:2  <b>attorney</b> 11:5,8 50:7  <b>audience</b> 35:9 37:12 41:18  43:6  <b>August</b> 1:15  <b>authority</b> 5:16  <b>avail</b> 19:20  <b>available</b> 5:1 23:21 26:1,3  28:23 29:2,17,21,24 31:3  33:3,5</p> <hr/> <p><b>B</b></p> <p><b>B</b> 3:13 7:23 10:6,11,18 16:2  <b>back</b> 16:16 19:18 41:19 51:8  54:22 56:9  <b>bad</b> 47:3 60:17  <b>balance</b> 57:18  <b>ballot</b> 16:5  <b>bankers</b> 21:6  <b>bankrupt</b> 56:17  <b>Bar</b> 46:3,9,11 59:2 60:2  <b>Barzaga</b> 2:8 3:4 9:20 11:2,4  11:19 12:1,5,10,14 13:1  57:6  <b>based</b> 30:7,10,11 35:10  <b>bashes</b> 48:7  <b>basically</b> 24:7  <b>Beck</b> 2:4 4:13  <b>begins</b> 33:19  <b>behalf</b> 13:5 23:6,11 46:1,8  59:2  <b>believe</b> 15:10 22:4 46:18  48:17 49:2,18  <b>belongs</b> 49:16</p>

<p> <b>better</b> 14:16 15:15 29:7  <b>beyond</b> 49:19  <b>big</b> 26:21 52:4  <b>bills</b> 19:3 51:1,6  <b>bit</b> 47:20 56:9  <b>black</b> 35:20  <b>blanketing</b> 33:24  <b>blog</b> 25:10  <b>blue</b> 17:17,17  <b>board</b> 1:1,13 2:2,7 4:4,5,6,7,8  4:10,13 5:6,9,14,19,21 6:1,6  6:10,11,13,20 8:7,9,15 9:22  10:15 11:5 13:2,6,11 18:13  19:11 21:10,19,22,24 22:22  26:11 28:7 29:6,22 32:11  39:17 40:6,13,22 42:11  43:11 44:1 45:23 46:2,23  49:12,19 54:20 59:23 60:23  <b>Board's</b> 5:16,24 32:4 39:3  49:4  <b>box</b> 17:17 24:20 33:12,14  34:5,8,12,22 35:2 36:15  37:8,11 39:21,22 41:2 42:18  42:24 43:1 47:14,23  <b>boxes</b> 35:19 36:1,19  <b>boxing</b> 32:7,10,16,17 33:1  34:14 38:19 39:4,13,18 40:7  43:17 57:23 58:3  <b>brash</b> 48:19  <b>break</b> 19:18  <b>Brendan</b> 54:6  <b>Brian</b> 2:5 4:14  <b>briefly</b> 46:12  <b>broad</b> 48:19 53:9  <b>brought</b> 14:13  <b>brush</b> 53:9  <b>BRYAN</b> 2:9  <b>Buckley</b> 37:19  <b>bucks</b> 56:22  <b>Building</b> 1:14  <b>burden</b> 53:24 55:2  <b>buried</b> 41:8  <b>business</b> 60:23 </p>	<p> <b>C</b>  <b>C-O-O-K-E</b> 9:1  <b>call</b> 5:4 7:15 52:3 57:6  <b>calling</b> 36:11  <b>campaign</b> 4:11,23 10:1 14:6  14:9,9,15,21 15:14,16,19,22  16:8,11,15,20,23 17:2,4,8  17:19,24 18:1,7,8,9 19:5  20:1,2,14 23:20,23,24 31:24  32:3,5,6,13,18,19 33:24  35:1 38:8,18 56:14,18,23  <b>campaigns</b> 17:10 19:4,19  20:22 21:5 30:14 51:11  56:13  <b>candidacy</b> 34:6  <b>candidate</b> 16:6 17:16,18,24  18:9 20:9 24:16,23 25:12  26:5,23 27:4,15 30:23 32:19  33:1,9,10 35:22 37:3,5,6,15  38:5,18 39:8 41:8 42:21  43:4,8 45:2 50:11 55:10  <b>candidate's</b> 14:8 16:4,8 17:19  18:9 29:17 35:10  <b>candidates</b> 20:12,15,21 24:24  33:6 34:21 36:22 37:24  38:4,22 39:5 44:13,19 47:11  56:20 58:11  <b>capital</b> 7:23,24,24,24,24  <b>captured</b> 14:17  <b>carve</b> 50:6,16  <b>case</b> 53:22,23  <b>cash</b> 38:18  <b>catch-all</b> 14:14  <b>catches</b> 20:15  <b>center</b> 10:2 31:24 32:3 43:3,4  <b>certain</b> 24:21 57:23  <b>certainly</b> 27:9  <b>CERTIFICATION</b> 62:1  <b>certify</b> 62:6  <b>Chair</b> 2:4 4:8,13 9:20 11:2  12:1,6,11 13:2,2,9 22:3,12  22:21 30:5 40:15 44:3  46:15 51:20 59:21  <b>Chairman</b> 2:3 45:22 59:15  <b>Chamber</b> 56:21  <b>champion</b> 33:21 34:2 37:1  <b>chance</b> 60:11  <b>change</b> 14:7 20:5,6,13,19 </p>	<p> 21:1,11  <b>changed</b> 14:10  <b>changes</b> 18:23 21:19  <b>changing</b> 18:7  <b>characteristics</b> 41:5  <b>charged</b> 48:11  <b>charter</b> 5:8 49:21  <b>chat</b> 5:4 7:15 8:2 9:14 12:16  22:10 60:9,12  <b>checking</b> 20:9  <b>chilling</b> 59:1,9  <b>choke</b> 56:13  <b>circumstances</b> 23:20 26:17  40:5 42:12 43:10 55:24  <b>circumvention</b> 37:22 51:10  <b>cite</b> 23:17  <b>Citizens</b> 47:6  <b>city</b> 1:1,13 14:12 15:19 25:16  49:1,3,6,9,20 51:13 53:1,2  56:6  <b>city's</b> 56:10  <b>clarified</b> 19:24  <b>clarify</b> 15:7 19:12  <b>clarifying</b> 32:15  <b>class</b> 33:18,22 34:2 37:2  41:12 58:1  <b>clauses</b> 15:4 16:18  <b>CLC</b> 52:3,4 53:14  <b>clean</b> 13:23 18:11 20:3,24  21:17  <b>clear</b> 9:16 26:18 27:19 34:12  37:19 38:11,21 40:6 42:5,7  43:14 53:5,15 55:5 59:15  <b>cleared</b> 46:5  <b>clearly</b> 29:19 37:14 39:1 53:3  53:12 57:5,12  <b>client</b> 56:6  <b>clients</b> 50:9 59:4  <b>closed</b> 61:1  <b>closely</b> 18:1  <b>clout</b> 58:16  <b>code</b> 36:3,17 41:24 43:7  47:23  <b>colleague</b> 56:4  <b>colleagues</b> 40:13  <b>Collective</b> 10:3  <b>collectively</b> 10:7,10 </p>
--	---	---

<b>college</b> 11:6 <b>colors</b> 35:3 <b>combination</b> 30:9 42:19 <b>come</b> 19:4 27:18 35:3 41:4 49:12 51:8 <b>comes</b> 29:14 <b>comfortable</b> 57:15 <b>comma</b> 16:20 <b>commencing</b> 1:15 <b>comment</b> 6:4 8:19 <b>comments</b> 4:20 22:24 23:15 23:17 26:7 27:23 28:7 30:4 40:14,23 42:16 54:21 60:20 <b>Commerce's</b> 56:22 <b>committee</b> 20:9 50:24,24 <b>committees</b> 20:12,16,21 26:13 47:12 50:12 <b>common</b> 50:4,7,13 57:16 <b>communicate</b> 12:18 <b>communicated</b> 40:2 54:3 <b>communication</b> 9:14 31:5 36:2 37:13 39:24 <b>communications</b> 36:20 <b>comply</b> 19:7 <b>component</b> 19:23 <b>concern</b> 13:19 28:22 <b>concerned</b> 23:2 38:4 56:1 <b>concerning</b> 23:3 <b>concerns</b> 13:10,22 25:7 29:10 29:12 <b>concluded</b> 61:3 <b>concludes</b> 21:18 40:9 <b>conclusion</b> 47:9 <b>concurrently</b> 11:23 <b>conference</b> 1:12 <b>confirm</b> 16:10 <b>conflict</b> 27:5 <b>consensus</b> 46:9,10 <b>consider</b> 39:17 42:11 <b>consideration</b> 43:18 <b>considered</b> 6:10 28:5 30:19 43:14 <b>considering</b> 40:6 <b>consistent</b> 17:20,21 <b>constitute</b> 29:5 31:4 <b>constitutional</b> 47:5,7 51:23 51:24	<b>constitutionally</b> 30:7,10 44:11 <b>consultant</b> 58:1,7 <b>consultants</b> 58:13 <b>contained</b> 28:14 <b>contains</b> 5:5 <b>content</b> 41:3 <b>continually</b> 48:6 <b>contrast</b> 44:4,6 <b>contribute</b> 30:23 <b>contribution</b> 16:2,8 26:22 27:13,14 30:21 31:6 37:22 45:1 48:12 <b>contributions</b> 26:12 27:2,11 27:18 30:18,20 60:19 <b>contributor</b> 26:21 27:8 <b>convenience</b> 5:1 <b>convinced</b> 55:3,4 <b>Cooke</b> 2:9 8:23 9:1,4,17 22:3 31:17 45:19,22 60:8 <b>Cooke's</b> 8:24 <b>cool</b> 7:10 <b>coordinate</b> 7:16 17:2 <b>coordinated</b> 17:1 23:3 25:21 28:1,16 30:19 31:4 38:16 44:9,10 50:15 52:1 <b>coordinating</b> 44:19 53:16 55:12 56:16 <b>coordination</b> 16:6 17:15 29:5 34:8,13 37:14 38:8,13 39:2 46:16,17 50:8 53:5,8,11,12 53:16 54:1,24 55:1,20 57:5 57:12 <b>coordinations</b> 37:20 <b>Copies</b> 4:23 <b>copy</b> 7:23 21:18 <b>correct</b> 13:1 28:15,17 <b>corrective</b> 50:20 <b>corruption</b> 24:4,5,10,11 37:21 <b>Council</b> 14:12 15:20 49:4,10 49:20 <b>counsel</b> 8:22 <b>count</b> 27:14 <b>country</b> 52:9 <b>counts</b> 16:7 <b>couple</b> 48:21 49:8,23	<b>course</b> 11:2 <b>court</b> 1:20 6:16,24 7:7 10:5 10:24 11:17 12:7 22:14 24:5 37:18 38:10,13 47:18 62:5,23 <b>covered</b> 25:9,10,10 <b>craft</b> 57:22 <b>create</b> 34:21,22 <b>created</b> 50:10 <b>creates</b> 57:2 <b>creating</b> 50:7 <b>criteria</b> 43:16 <b>critical</b> 41:7 <b>crucial</b> 37:20 <b>current</b> 48:4
<b>D</b>		
<b>D</b> 21:3 <b>damages</b> 48:23 <b>DANI</b> 2:10 <b>date</b> 9:5 62:20 <b>David</b> 2:16 3:5 22:5,16 23:9 <b>day</b> 50:22 <b>days</b> 19:10,12,17 20:2 33:19 <b>deadline</b> 9:15 <b>dealing</b> 16:2 <b>deals</b> 16:24 20:8 <b>Dean</b> 51:19,20,21 <b>decide</b> 26:4 <b>decision</b> 51:14 <b>declare</b> 60:24 <b>declared</b> 59:17 <b>define</b> 15:10 29:21 <b>defined</b> 14:11 15:8 <b>defining</b> 29:7 49:15 <b>definition</b> 15:14,16,18 20:14 41:2 50:18 53:10 <b>definitions</b> 14:4,5,15,18 15:1 15:22 <b>deliberately</b> 42:21 <b>delicacy</b> 46:20 <b>delicate</b> 52:2 <b>delineate</b> 14:16 <b>democracy</b> 32:2 <b>demographics</b> 35:21 <b>Department</b> 2:13 4:17 5:11 5:12,17 6:20 13:15		

<p> <b>describe</b> 32:14  <b>described</b> 39:15  <b>DESCRIPTION</b> 3:12  <b>designed</b> 33:2  <b>destroy</b> 56:23  <b>detailed</b> 34:17  <b>detailing</b> 49:14  <b>details</b> 34:20  <b>determining</b> 30:20 39:18 40:7  <b>dictate</b> 51:10  <b>dictated</b> 15:5  <b>different</b> 14:24 35:3,5 36:18 58:6  <b>digital</b> 33:20 36:13,18  <b>direct</b> 33:23,24 36:8 49:3,10  <b>directions</b> 37:16 38:21  <b>disagree</b> 47:6  <b>discussing</b> 13:17  <b>discussion</b> 11:14 60:20  <b>distribution</b> 51:4  <b>document</b> 8:4  <b>documents</b> 3:13,13 6:19 7:3 7:22  <b>doing</b> 48:20 58:22  <b>donor's</b> 27:5  <b>dot</b> 9:1,2  <b>Dr</b> 54:7 55:15  <b>draconian</b> 56:17  <b>drive</b> 47:3  <b>drop</b> 60:11  <b>due</b> 15:1  <b>duly</b> 28:5  <b>dunk</b> 43:17  <b>dynamic</b> 56:11 57:2 </p>	<p> <b>elaborate</b> 45:9  <b>election</b> 10:2 25:14 45:24 46:3,9,11 59:2,8 60:2  <b>electronic</b> 5:3  <b>electronically</b> 5:1  <b>email</b> 8:22,24 10:16  <b>emphasize</b> 17:23  <b>employees</b> 20:17  <b>encourage</b> 27:23  <b>endorsements</b> 37:3  <b>enforcement</b> 18:22 53:22 59:7  <b>ensure</b> 29:23  <b>entered</b> 6:22  <b>entire</b> 38:7 56:23 59:8  <b>entirely</b> 35:5  <b>entities</b> 15:8,11 23:6 50:11,16 58:11,14  <b>entity</b> 50:5,8  <b>enumerated</b> 21:6  <b>Epps</b> 2:4 4:15 28:10 30:1 40:15,16,19,21 43:20,23 51:19,21 54:14,15,16,19,19  <b>EPSS</b> 59:10  <b>ERSA</b> 1:20 6:16  <b>Essentially</b> 46:14  <b>establish</b> 38:12,16  <b>Ethics</b> 1:1,13 4:8 11:6 13:6 32:12 56:24  <b>Ethics'</b> 9:22  <b>evade</b> 44:11  <b>everybody</b> 52:15,23 54:7 58:9 61:2  <b>everybody's</b> 60:18  <b>evidence</b> 53:18  <b>evidentiary</b> 53:20,24 55:2  <b>exactly</b> 14:17 38:23 54:9  <b>example</b> 29:9,19 33:8,11 35:15 36:24 39:9 41:7 48:4 50:13 53:14 55:14  <b>examples</b> 24:20 34:18 39:9 39:11  <b>exceeded</b> 30:21  <b>excellent</b> 39:10,11  <b>excuse</b> 18:8  <b>Exhibit</b> 6:24 7:4 10:6,11,18  <b>Exhibit-1</b> 57:15 </p>	<p> <b>EXHIBIT-A</b> 63:1  <b>EXHIBIT-B</b> 64:1  <b>exhibits</b> 3:10 7:23  <b>exists</b> 57:15  <b>expecting</b> 58:9  <b>expenditure</b> 16:5 25:21 38:17  <b>expenditures</b> 16:4 17:1 23:3 23:23 24:7,9 26:2 28:2,17 34:6 38:14 44:10,12,18,20 44:24  <b>explanation</b> 28:22  <b>exploit</b> 33:2  <b>exploiting</b> 39:6  <b>expressed</b> 29:10,12 54:5  <b>extend</b> 54:10  <b>extent</b> 58:21 </p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p> <b>F</b> 20:8,18  <b>face</b> 47:17  <b>Facebook</b> 33:20 58:17  <b>facilitate</b> 11:13  <b>fact</b> 25:19 26:20 48:10,20  <b>factors</b> 39:20 43:18  <b>facts</b> 26:17 55:23  <b>fair</b> 19:9 28:22 44:13,16  <b>fairly</b> 53:4  <b>fall</b> 15:8  <b>falling</b> 15:11  <b>fan</b> 52:5  <b>far</b> 9:24 60:12  <b>fast</b> 47:20  <b>fastly</b> 54:15  <b>fault</b> 9:6  <b>favor</b> 32:24 33:6 34:6 36:14  <b>favorite</b> 33:6  <b>fear</b> 56:13  <b>feasible</b> 48:16 51:2  <b>feature</b> 5:4 7:15 8:2 9:14 12:16  <b>Federal</b> 52:15  <b>feel</b> 8:17 10:15  <b>feels</b> 58:23  <b>Fetterman</b> 48:6,11  <b>figure</b> 58:5  <b>figuring</b> 58:2  <b>filed</b> 6:20 </p>
---	---	--

<b>final</b> 25:22 <b>finally</b> 13:23 15:13 18:4,10 21:17 36:22 <b>finance</b> 4:12,23 <b>find</b> 8:3 <b>finding</b> 46:15 <b>fine</b> 56:3,17 <b>finish</b> 59:6 <b>first</b> 14:3,21 16:18 22:17 33:7 34:19,21 35:6 41:10 42:4 46:24 51:4,12 52:18 56:11 58:24 <b>flags</b> 34:23 36:19 <b>floor</b> 1:14 21:21 28:6 40:12 54:14 59:22 <b>focused</b> 57:19 <b>follow</b> 9:13 27:20 46:7 <b>followed</b> 27:6 <b>followers</b> 29:15 <b>following</b> 5:6 14:19,22 <b>follows</b> 27:10 <b>footage</b> 57:16 <b>foregoing</b> 62:7 <b>foremost</b> 51:15 <b>forgive</b> 28:13 <b>form</b> 5:16 27:12 39:21,22 41:4 <b>formal</b> 27:6,10 38:11 <b>format</b> 13:16 <b>forming</b> 50:4 <b>forms</b> 35:3 <b>found</b> 5:13 <b>four</b> 34:16 39:20 41:5,24 42:2 <b>frame</b> 42:9 <b>framed</b> 42:10 <b>framework</b> 47:8 51:24 <b>frankly</b> 17:4 51:12 <b>free</b> 10:3,15 23:10 51:11 <b>Freedom</b> 47:1,2 <b>front</b> 51:15 52:19 <b>full</b> 4:6,7 <b>funding</b> 38:2 <b>funny</b> 48:13 <b>further</b> 4:15 28:1 31:13 32:14 39:14 45:14 60:23 <b>future</b> 6:11	<hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <b>G</b> 7:24 <b>G-R-E-E-N-B-E-R-G</b> 47:16 <b>Gallagher</b> 1:12 6:16 47:15 62:4,22 <b>GARDNER</b> 2:10 <b>general</b> 8:22 21:5 23:19 <b>generally</b> 17:10,10 <b>getting</b> 20:18 22:22 56:1 <b>give</b> 12:24 17:8 53:9 <b>given</b> 10:16 25:8 30:22 <b>giving</b> 5:19 26:18 <b>go</b> 7:6 16:16 19:18 22:7 33:17 34:16 36:17,17 41:19 48:15 49:24 52:20,21 54:22 57:3 59:21 <b>goal</b> 15:7 46:18 <b>goes</b> 55:14 <b>going</b> 10:20 11:15,17 12:24 18:24 20:19 21:2 32:9 33:8 34:16 35:23 36:14 39:17 43:16 44:3,5 51:2 53:21,22 57:8 59:9,18 60:24 <b>Gonzales</b> 2:5 4:14 <b>good</b> 7:5 11:3 18:20 31:19,20 38:17 40:20 45:11 47:3 <b>gov</b> 9:2 <b>governing</b> 4:11,23 <b>government</b> 32:3 <b>great</b> 12:14 45:5 58:3 60:16 <b>greatly</b> 60:17 <b>Greenberg</b> 2:17 3:6 22:6 45:20,21,23 47:16,22 54:21 55:22 59:14,20 60:4 <b>GREENWALD</b> 2:11 <b>group</b> 43:8 45:1 47:9 48:5 49:22 <b>groups</b> 38:22 39:6 42:22 <b>guess</b> 26:14 51:16 60:22 <b>guessing</b> 41:21 <b>guidance</b> 26:18 27:19 28:4 39:11 <b>Gutierrez</b> 2:8 3:4 11:7 13:4 18:16 19:14 <b>GUTTIEREZ</b> 18:20	<b>H</b> 2:3 19:1 <b>half</b> 18:17 <b>handful</b> 34:14,15 <b>handle</b> 29:14 <b>happened</b> 57:21 58:12 <b>happy</b> 22:2 26:22 40:11 45:9 <b>harbor</b> 33:2 39:7 <b>Harrisburg</b> 50:17 <b>hear</b> 24:21 48:12 <b>heard</b> 22:4 49:10 56:15 <b>hearing</b> 1:2 4:10,18 5:22,23 6:3,3,9,11,18,23 7:13 8:6,18 8:20 9:9 12:8 21:24 22:20 61:1,3 <b>heavy</b> 53:21 <b>help</b> 11:13 <b>hey</b> 56:14 57:7 <b>hidden</b> 34:9 37:16 <b>highlight</b> 18:24 <b>highlighted</b> 14:20 <b>hitting</b> 46:19 <b>hold</b> 59:11 <b>holding</b> 4:9 <b>Home</b> 5:7 <b>hope</b> 31:6 <b>hopeful</b> 34:10 <b>hosted</b> 1:13 <b>hour</b> 60:16 <b>hypothetical</b> 29:1
	<hr/> <p style="text-align: center;"><b>H</b></p> <hr/>	<hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <b>idea</b> 50:12 55:11 <b>ideas</b> 46:24 47:3,3 <b>identification</b> 7:4 10:11 <b>identified</b> 41:6 <b>identify</b> 7:20 10:21 22:12 23:5 34:13,19 <b>illegal</b> 32:6,13,18 39:2 46:16 53:4,7 57:6 <b>illustrate</b> 33:8 <b>imagine</b> 28:24 48:10 <b>implausible</b> 24:13 25:5 <b>implementing</b> 19:2 <b>implied</b> 48:11,12 <b>important</b> 32:11 37:23 46:20 50:3,21 51:14 52:12 <b>impression</b> 17:9

<b>improper</b> 46:17 <b>include</b> 33:12 36:2,23 37:2,4 39:13 <b>includes</b> 14:16,22 33:16 35:8 35:8 <b>including</b> 6:21 7:17 10:20 50:11 <b>independent</b> 24:6,9 26:2 44:24 45:3 48:5,15 58:13,20 <b>INDEX</b> 3:1 <b>indicate</b> 23:20 24:20 36:13 42:20 <b>indicated</b> 42:16 <b>indicates</b> 37:9 40:1 <b>indicating</b> 36:3,21 <b>indicator</b> 42:13 <b>indicators</b> 42:15,17 <b>individuals</b> 60:13 <b>information</b> 23:18,21,22 24:2 24:12,15,18 25:2,7,17,24 26:4 28:1,23 29:2,8,13,16 29:20 31:2 32:20 33:3,5 34:24 35:9,23 37:9,11,12 39:7,14,23 41:23 43:5,6 47:17 57:9 <b>input</b> 22:22 <b>insofar</b> 44:10 <b>institute</b> 10:3 23:10,11 <b>intended</b> 38:9 <b>intent</b> 7:14 <b>intention</b> 17:12 <b>intentioned</b> 46:17 <b>interested</b> 4:20 41:14 <b>interesting</b> 55:15 <b>interplay</b> 47:2 <b>interrupt</b> 19:14 <b>interrupting</b> 9:5 <b>interview</b> 25:11,11 <b>intro</b> 21:12 <b>introduced</b> 21:4 <b>introduces</b> 21:8 <b>invalidate</b> 12:23 <b>invite</b> 8:7 <b>issue</b> 13:19 14:13,19 16:10 19:15 39:12 49:15 52:19 <b>issues</b> 15:6 16:21 <b>item</b> 41:22	<hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <b>J</b> 1:12 2:5 62:4,22 <b>James</b> 1:12 62:4,22 <b>Jersey</b> 48:7,9 54:8 55:16 <b>Jim</b> 6:16 7:5 <b>Joanne</b> 2:4 4:15 54:19 <b>Joeanne</b> 40:16,21 51:20 <b>John</b> 48:6 <b>Johnson</b> 33:11,18 34:1,4 35:15 36:5,24 <b>joined</b> 4:13 <b>joint</b> 19:5,10 <b>JORDANA</b> 2:11 <b>Jr</b> 1:12 62:4,22 <b>Judge</b> 4:13 <b>July</b> 5:11 <b>jump</b> 14:1 <b>jury</b> 55:4	42:18 43:12,13 <b>large</b> 56:20 <b>Latin</b> 41:22 <b>law</b> 2:13 4:17 5:12 46:22 53:6 <b>lawyer</b> 45:24 50:13 <b>lawyers</b> 10:2 50:17 56:10 <b>lay</b> 47:5 <b>lazy</b> 58:22,24 <b>lead</b> 25:20 32:12 48:21,23 50:14 <b>left</b> 47:14 <b>legal</b> 5:15 10:2 31:24 32:3 <b>legislation</b> 21:4 <b>let's</b> 9:18 24:19 26:23 33:9,19 <b>letter</b> 46:2,9 52:24 56:19,24 60:1 <b>level</b> 32:2 53:17 <b>lift</b> 53:21 <b>light</b> 18:3 <b>limit</b> 31:6 <b>limitations</b> 30:17 44:12 <b>limited</b> 24:7 <b>limiting</b> 24:8 <b>limits</b> 16:3 30:21,22 37:23 <b>line</b> 15:15 41:9 52:14 56:3,7,8 <b>lines</b> 48:18 58:12 59:4 <b>link</b> 5:4 54:2 57:8 <b>list</b> 15:2,3 21:6 22:11 <b>listening</b> 48:5 55:11 <b>litigation</b> 48:23 <b>little</b> 9:6 47:20 50:1 56:9 60:16 <b>live</b> 52:24 <b>lives</b> 48:8 54:7 55:15 <b>living</b> 48:7 <b>local</b> 52:16 58:7 <b>located</b> 16:1 <b>long</b> 19:6 41:9 <b>look</b> 18:14 20:3,23 21:15 <b>looked</b> 52:15 <b>looking</b> 42:19,24 43:9 47:17 57:20 <b>looks</b> 18:5 <b>loophole</b> 17:9
	<hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <b>K-E-A-T-I-N-G</b> 23:9 <b>Keating</b> 2:16 3:5 22:6,16,18 22:19 23:8,9,14 28:4,11,21 30:3,6,8,13,24 31:11,13,16 <b>Keating's</b> 28:8 44:6 <b>Kevin</b> 2:17 3:6 22:6 45:20,23 47:16,19,19 54:13,20 59:11 59:24 <b>key</b> 23:1 <b>kind</b> 16:7 24:22 34:20 35:17 36:19 41:14,15 <b>kinds</b> 32:22 38:23 44:23 <b>KLEMM</b> 2:10 <b>know</b> 7:1 8:12 10:22 11:16 12:18 26:10,21 27:7,7 28:24 29:15,22 33:13,16,21 34:3 35:1,4,21 36:16 37:1,3 38:15 39:19,20,22 40:3,4 41:10,12,17 42:23,23 43:7 44:22,24 46:23 49:14 50:24 51:21 52:10 54:2,7 55:13,21 56:8,20 57:7,10 58:8 59:3,5 59:6 <b>known</b> 32:6	
	<hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <b>language</b> 21:7 26:14,15 39:24	<hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <b>M</b> 31:22



<b>M-I-C-H-A-E-L</b> 9:1 <b>mail</b> 33:23,24 36:8 <b>majority</b> 27:17 <b>making</b> 52:16 <b>man</b> 7:10 <b>manner</b> 15:5 <b>mark</b> 10:6 33:11,11,14,17,21 34:1,4,7 35:15 36:5,24 <b>marked</b> 6:23 7:4,9 10:10 <b>marketplace</b> 46:24 <b>Mary</b> 31:22 <b>matter</b> 1:11 17:20 23:24 42:4 52:2 62:9 <b>Mayor</b> 33:10 <b>mayor's</b> 58:10 <b>McCORMICK</b> 2:5 4:15 <b>McHALE</b> 2:9 <b>McKEAN</b> 2:16 3:5 22:6 31:18,19,22 40:14,23 42:6 43:21,24 44:15,22 45:5,8,12 45:14,17 <b>McPhillips</b> 54:6 <b>meaningful</b> 47:13 <b>means</b> 36:10 47:24 48:1 54:4 59:8 <b>measuring</b> 30:19 <b>mechanism</b> 6:13 12:17 <b>mechanisms</b> 44:11 <b>media</b> 29:4 43:3,4 48:6 58:18 <b>mediate</b> 48:4 <b>meeting</b> 5:12 6:11 8:16 19:11 21:10 <b>Mehmet</b> 48:7 <b>member</b> 2:4,5,5 5:2 8:15 40:22 54:20 <b>members</b> 2:2 4:5,14,19 6:6 8:6,15,16 13:3,3,11,12 21:22 44:2 45:22 46:3 60:24 <b>memeing</b> 48:14 <b>men</b> 33:16 36:5 40:3 41:15 <b>mentioned</b> 18:21 <b>merely</b> 28:19 <b>message</b> 24:22 25:14 34:4 41:9,15 <b>messages</b> 40:1 42:21 <b>messaging</b> 25:3 32:20 36:23	37:13 42:1 <b>method</b> 39:24 <b>methods</b> 36:2 37:12 47:24 <b>Michael</b> 2:3,8,9 3:4 8:22,24 11:7 <b>Michael.Cooke@phila.gov</b> 9:3 <b>Mike</b> 4:7 9:4 13:4 18:16,19 19:14 <b>million</b> 56:22 <b>Milwaukee</b> 33:10 34:1 <b>minute</b> 26:9 <b>missed</b> 22:9 <b>mixup</b> 9:11 <b>modification</b> 16:22 17:13 18:11 20:23 21:15 <b>modifications</b> 4:21 6:6 13:8 13:10,14 14:2,20 15:10 18:6 18:18 <b>modify</b> 6:13 20:20 <b>modifying</b> 15:4 <b>moment</b> 51:3,4 <b>money</b> 48:14 <b>monitoring</b> 58:19 <b>morning</b> 23:1 <b>moved</b> 55:17,18 <b>multi-candidate</b> 25:1 <b>multiple</b> 19:4 58:10 <b>muted</b> 29:11	<b>news</b> 25:18 52:17,17 <b>newspaper</b> 5:24 25:9 <b>nick</b> 50:20 <b>nicks</b> 50:1 <b>nod</b> 55:5,7,18 <b>nodding</b> 55:10 <b>nods</b> 38:15,20 <b>non</b> 41:21 <b>nonpartisan</b> 32:1 <b>nonprofit</b> 32:1 <b>normal</b> 29:2 <b>Notary</b> 1:13 62:5 <b>note</b> 4:3,12,15 7:8 9:22 <b>noted</b> 10:12 19:11 20:10 22:12 <b>notes</b> 28:13 41:19 54:23 62:8 <b>notice</b> 5:18,19,23 <b>notify</b> 7:14 <b>number</b> 3:12 4:11,22 5:15 6:22 27:1 35:21 41:20,22,23 41:24
<b>O</b>		
<b>O</b> 7:24 <b>objection</b> 28:18 30:16 <b>objections</b> 27:20 30:6 <b>obscure</b> 29:15 <b>occurring</b> 39:19 40:8 <b>office</b> 57:8 <b>officers</b> 20:16 <b>oh</b> 45:6 47:15 <b>okay</b> 7:10 23:8 30:12,15 31:11 43:20 44:3,21 45:5,12 54:16 60:15 <b>open</b> 21:12,22 28:6 40:12 54:14 59:22 <b>operate</b> 47:8 <b>operates</b> 25:4 <b>opponents</b> 24:16 <b>opportunity</b> 4:19 6:4 19:17 28:12 <b>opposed</b> 28:19 <b>opposing</b> 24:23,24 <b>order</b> 7:18 11:13 19:19 20:13 20:20 22:7 37:20,21 38:3,12 <b>ordinance</b> 14:11 15:17,19 <b>ordinances</b> 17:23 18:4		
<b>N</b>		
<b>name</b> 4:7 11:4 16:4 22:10,14 23:8 31:21 45:23 <b>named</b> 33:11 <b>Nancy</b> 31:23 <b>narrowly</b> 29:9 57:19 <b>national</b> 58:4 <b>necessary</b> 12:21 <b>need</b> 24:21 25:14 26:4 33:13 33:17 36:6 38:11 40:3,3 42:2 47:4 50:5 51:13 58:14 58:16 <b>needs</b> 39:2 51:14 53:17,23 54:7 <b>networks</b> 38:3 <b>new</b> 19:2 20:14 21:3 26:14 48:7,8 54:8 55:16		

<b>organization</b> 32:1 <b>original</b> 14:10 43:12 <b>outside</b> 32:21,23 33:4 35:12 37:24 38:1,22 39:6,16 42:22 44:18,20 58:11 <b>overall</b> 26:16 <b>overbroad</b> 52:13 <b>overturning</b> 52:18 <b>overview</b> 32:10 <b>Oz</b> 48:7 54:7 55:15	<b>percent</b> 57:14 <b>permissible</b> 21:7 <b>permitted</b> 21:9,13 26:19,20 <b>person</b> 7:12 14:6,15,23 15:22 16:10,15,19 23:22 27:19 30:23 55:14 <b>persons</b> 16:3 26:13 <b>phila</b> 9:2 <b>phila.gov</b> 8:1 <b>Philadelphia</b> 1:1,13,14,23 4:8 5:7 45:24 46:4,11 49:17 52:14,21 <b>photos</b> 37:4 <b>phrase</b> 16:14,23 17:3,7,14,18 18:7 <b>PHYLISS</b> 2:4 <b>pick</b> 34:3 35:23 51:18 <b>piece</b> 22:17 35:6,7 <b>pieces</b> 9:23,24 10:6,9 34:11 <b>place</b> 16:4 52:20 56:2 <b>plain</b> 34:9 37:17 53:16 <b>planned</b> 11:20 <b>playing</b> 58:16,17 <b>please</b> 7:14,23 9:10 10:15 11:1 22:10,12,13 60:11 <b>podcast</b> 25:11 <b>point</b> 11:12,23 12:4 46:14 49:2 54:23 59:16 <b>pointed</b> 19:15 46:15 <b>points</b> 33:15,16 46:13 56:19 <b>policy</b> 26:24 27:2,6,10 49:6 49:12 <b>political</b> 24:8 26:13 32:23 56:12 <b>polling</b> 35:10 58:21 <b>portion</b> 19:9 23:3,16 25:16 <b>position</b> 44:4,6,8 55:19 <b>post</b> 57:9 <b>posted</b> 8:11 13:15,18 14:6 16:9 17:7 <b>posting</b> 5:10 8:14 <b>power</b> 11:12 <b>practically</b> 30:10 <b>practice</b> 32:13,18 <b>precisely</b> 15:16 <b>prepare</b> 45:16 <b>prepared</b> 7:11 11:13	<b>presence</b> 4:6 39:20 42:13,14 <b>present</b> 2:12 4:17 6:17 7:12 10:14 43:19 <b>presentation</b> 11:12 <b>president</b> 23:12 <b>presume</b> 56:16 <b>presumed</b> 50:9 <b>presumption</b> 50:14 <b>prevent</b> 37:21,22 39:5 <b>previously</b> 10:16 <b>prior</b> 7:20 <b>pro</b> 24:3,4,10 <b>proactively</b> 5:21 <b>probably</b> 42:14 57:13,24 58:20 <b>problem</b> 24:1 48:24 52:1 54:11,11 <b>problematic</b> 42:3,4 57:3 <b>procedurally</b> 46:5 <b>proceed</b> 11:1 <b>PROCEEDINGS</b> 4:1 <b>process</b> 5:7 32:6 59:7 <b>Professional</b> 1:12 62:5 <b>professor</b> 54:18 56:5 <b>prohibit</b> 30:18 <b>prohibition</b> 21:5 <b>proof</b> 54:24 55:1 <b>proper</b> 5:16 <b>proposed</b> 1:2 4:10,22,24 5:5 5:8,13,14,18,20,22 6:2,5,14 6:21 8:10,20 13:8 18:23 20:5,6 21:19 26:14 27:16 32:4 47:10 <b>proposes</b> 53:8 <b>prove</b> 53:10,24 55:20 <b>proven</b> 57:11 <b>provide</b> 4:20 5:3 11:8 13:5 24:3 39:10 <b>provided</b> 5:23 23:19 24:14 34:17 39:9 40:10 53:15 <b>providing</b> 32:10 34:4 39:7 <b>proving</b> 53:11 <b>provision</b> 19:2,18 23:1 50:3 51:9 <b>provisions</b> 30:17 <b>Provost</b> 54:14 <b>public</b> 1:2,13 4:9,19 5:10,12
--	--	---

<p>5:18 6:4 8:7,15,16 13:3  22:17,22 23:19 24:2,11,14  24:17 25:17,19 29:7,13,20  31:3 39:7 41:9 61:1 62:6  <b>publically</b> 29:24  <b>publicly</b> 25:24 26:3 28:23  29:2,17,21 33:3,5  <b>publishes</b> 32:19  <b>pure</b> 15:2,3  <b>purportedly</b> 24:17 29:13  <b>put</b> 8:2 12:12 22:10 33:15  <b>puts</b> 27:4,4</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>quan</b> 41:21  <b>question</b> 28:10,14 30:5 31:1,7  40:16,18,24 41:4,7 42:5,7,8  51:23 54:22 55:2 57:4  <b>questions</b> 6:7 8:11 21:22,24  22:15 28:7 30:5 31:13  40:11,14 45:14 51:19,22  <b>queue</b> 60:7  <b>quick</b> 47:19  <b>quid</b> 24:3,4,10,13  <b>quite</b> 15:3  <b>quo</b> 24:3,5,11,13  <b>quote</b> 16:12,14,15 17:15,16  23:18 59:19</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>race</b> 58:10  <b>races</b> 58:6  <b>radio</b> 25:11  <b>raised</b> 8:11,14 13:11,20  <b>rationale</b> 24:8  <b>read</b> 25:1 27:24 28:13 33:17  36:6  <b>ready</b> 31:14  <b>real</b> 25:4 47:19  <b>reality</b> 58:3  <b>really</b> 16:13,18 18:6 19:12  20:17 30:2 41:10 48:13  <b>reason</b> 11:21 52:3,5,13 57:18  <b>receipt</b> 9:23  <b>recirculated</b> 4:5  <b>recommend</b> 8:9 17:5 55:1  <b>recommendation</b> 6:5 14:14</p>	<p>32:14 39:13  <b>recommendations</b> 4:21 8:18  <b>record</b> 4:12,16 6:23 7:8 8:5  10:8 11:24 14:7 19:13  <b>recorded</b> 59:20  <b>records</b> 5:11,17 6:21 13:15  13:19  <b>red</b> 24:20 32:7,10,15,17 33:1  33:12,14 34:5,8,12,13,22  35:2,18 36:1,15,19 37:8,11  38:19 39:4,12,18,21,22 40:7  41:2 42:18,24 43:1,17 47:14  47:23 57:23 58:3  <b>redlines</b> 18:12  <b>redlining</b> 15:14  <b>Reed</b> 2:3 4:3,7 7:5,10 9:12,18  9:21 10:19 11:1,3,15,22  12:2,3,6,9,11,13,15 13:2,2,9  21:21 22:18 23:5,13 28:3  30:4,12,15 31:9,12 40:12,15  40:17 44:1,21 45:4,6,11,13  54:13,17 59:11,18,22 60:6  60:15  <b>refer</b> 26:11  <b>reference</b> 13:23 16:16  <b>reflects</b> 15:18  <b>reform</b> 49:21  <b>reg</b> 28:19 54:23  <b>regard</b> 11:9 13:7 41:5  <b>regarding</b> 7:17  <b>regards</b> 14:3 28:8  <b>regulate</b> 32:5 37:20 44:9 48:1  48:18 49:13 52:1 57:14  58:22  <b>regulated</b> 39:3 48:9  <b>regulating</b> 32:12 39:4 48:2  58:23  <b>regulation</b> 1:2 4:11,22 5:15  6:14,22 11:10 13:9 15:9  17:12,22 18:3 21:16 27:17  32:8 38:9 39:5 46:18 50:2  54:9 57:22  <b>regulations</b> 50:6 53:6  <b>regulatory</b> 49:5  <b>related</b> 19:5  <b>remember</b> 46:21 56:4  <b>repeatedly</b> 24:6</p>	<p><b>report</b> 6:9,11 25:18  <b>reporter</b> 1:12 6:17 7:1,7 10:5  10:24 11:17 12:7 22:14  47:18 62:5,23  <b>reporters</b> 1:20 25:8  <b>reports</b> 26:1  <b>represent</b> 59:16  <b>representatives</b> 49:11  <b>request</b> 27:5 49:3  <b>requested</b> 21:11  <b>requesting</b> 43:9  <b>require</b> 50:23  <b>required</b> 5:7  <b>requirement</b> 19:24 50:22  <b>requirements</b> 19:7,8,19  <b>resident</b> 52:22  <b>resort</b> 26:16  <b>respect</b> 28:16 32:15 52:4  <b>respectively</b> 15:23  <b>respond</b> 6:12 8:17  <b>response</b> 8:11 49:3  <b>rest</b> 22:22 28:6 59:23  <b>review</b> 13:12  <b>reviewed</b> 5:13  <b>revised</b> 8:19  <b>revisions</b> 8:10  <b>Reynelle</b> 2:13 4:16  <b>Rich</b> 18:21  <b>Richard</b> 2:8 3:4 10:21 11:4  12:24  <b>right</b> 9:18 12:4 14:1 33:13  35:9 36:2 43:3,11 45:2 59:5  <b>rights</b> 51:12  <b>roll</b> 9:19  <b>rose</b> 13:10  <b>rub</b> 55:8  <b>rule</b> 5:7 19:1 20:10 21:4  32:15 42:10 53:8  <b>rules</b> 47:5,10  <b>run</b> 32:24 33:5 38:23,24  51:11 52:9 55:16  <b>running</b> 33:9,20 48:8 57:7  58:4,14</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> 33:2 39:6 46:7  <b>sake</b> 13:24 16:16</p>
---	--	---

<b>sample</b> 16:5 <b>Sanjuanita</b> 2:5 4:14 <b>saying</b> 11:22 24:20 36:7 52:3 52:6 54:6 57:1 <b>says</b> 27:17 33:13 36:5 41:13 43:3 <b>scheduled</b> 5:21 <b>school</b> 46:22 <b>scope</b> 14:4 <b>second</b> 19:22 35:7 51:8 <b>secret</b> 54:2 <b>section</b> 5:8 13:18,21 14:4 15:24 16:19 20:5 <b>see</b> 11:20 12:11,13,15,22 13:18 14:5,20 15:13,20 16:17 17:16 19:22 24:1 25:20 26:1 29:4 33:17 35:18 36:9,10,16,17 46:22 47:16 60:1,1,21 <b>seeing</b> 13:16,21 60:8 <b>send</b> 7:23 10:14,15 12:16 37:15 38:5 <b>sending</b> 42:22 <b>senior</b> 11:5,7 <b>sense</b> 11:24 16:14 <b>sent</b> 12:2,6 <b>September</b> 8:23 9:10,11 <b>series</b> 33:15 34:14 <b>service</b> 50:16 <b>set</b> 51:2,3,5 <b>share</b> 11:11,15 18:16 <b>sharing</b> 35:11 <b>shift</b> 49:6 <b>sight</b> 34:9 37:17 53:17 <b>signal</b> 14:16,22,23 34:22 36:20 <b>signaling</b> 32:21 <b>signals</b> 34:7,15,16 38:5 39:15 43:7 <b>signatures</b> 46:6 <b>signed</b> 52:24 <b>significant</b> 48:23 <b>Similarly</b> 50:19 <b>simple</b> 54:5 <b>simply</b> 14:10 15:15 16:22 17:19 48:3 51:17 <b>sine</b> 41:21	<b>single</b> 14:16 27:18 <b>situation</b> 25:1 29:1 48:10,17 56:21 <b>slam</b> 43:16 <b>sledgehammer</b> 46:19 58:24 <b>slide</b> 16:17 20:4,24 21:14,17 <b>slides</b> 12:11,13,16 13:18 <b>slightly</b> 14:24 <b>sloppy</b> 48:3 <b>slow</b> 47:20 <b>small</b> 56:19 <b>social</b> 29:3 58:18 <b>somebody</b> 51:6 <b>someplace</b> 57:13 <b>somewhat</b> 15:5 <b>sorry</b> 19:14 41:21 47:22 51:20,20 52:22 <b>sort</b> 9:13 14:14 15:2,4 49:22 51:16,18 <b>South</b> 1:21 <b>space</b> 47:2 <b>speak</b> 10:20 22:21 23:6 31:21 44:7 47:4,12 49:11,23 51:11 53:3,3,3 58:5 <b>speaking</b> 10:22 23:11 46:1,8 <b>specific</b> 34:7 36:4,23 37:13 38:21 41:24 57:23 <b>specifically</b> 13:7,20 16:3 21:9 21:13 35:11 <b>specificity</b> 53:18 <b>speech</b> 10:4 23:10 24:9 47:2 48:2,10,15 51:12 52:1,11,12 56:12 59:1 <b>spell</b> 22:13 <b>spend</b> 26:9 48:14 <b>spenders</b> 32:21,24 33:4 35:12 38:1,1 39:16 44:18,20 <b>spending</b> 58:12 <b>spoke</b> 44:7 49:23 <b>staff</b> 2:7 5:3 7:14,16 8:1,1,8,9 9:22 10:14,16 11:5,8 13:3,6 13:12,21 14:18 16:22 18:22 21:20 53:22 60:24 <b>staff's</b> 18:17 <b>Staley</b> 2:13 4:16 <b>standing</b> 26:24 27:1 54:6 <b>start</b> 48:13	<b>State</b> 52:16 <b>stated</b> 16:24 <b>statement</b> 27:24 44:14,16 <b>stay</b> 56:3,9 <b>stenographic</b> 62:8 <b>stop</b> 46:16 51:10 53:4 <b>stopping</b> 52:11,12 <b>stops</b> 48:3 53:7 <b>strategy</b> 32:19 <b>Street</b> 1:14,21 56:5 <b>strike</b> 16:23 <b>striking</b> 18:6 <b>stroke</b> 48:20 <b>strongly</b> 32:4 <b>struck</b> 17:5 <b>stylistic</b> 15:5 <b>subject</b> 17:11 <b>submit</b> 7:22 9:8 <b>submitted</b> 22:24 23:15 46:10 <b>submitting</b> 8:21 <b>subpart</b> 14:3 16:2 20:8,8,11 20:18 21:3,9,14 <b>subsection</b> 19:1,22 <b>subsections</b> 19:21 <b>substance</b> 55:18 <b>substantive</b> 28:18 <b>suggest</b> 9:12 17:17 <b>suggested</b> 14:2,19 17:13 18:5 18:10,18 23:24 <b>suggestion</b> 25:19 <b>suggestions</b> 27:12 <b>suggestive</b> 13:7,13 <b>suggests</b> 13:22 16:22 26:21 <b>Suite</b> 1:22 <b>sum</b> 37:7 <b>summarize</b> 46:12 <b>super</b> 32:22,24 33:4,19 34:3 34:23 35:23 36:7,15 37:5,10 37:16 38:7 56:15 58:4,8 <b>superfluous</b> 17:4 <b>supplement</b> 43:13 <b>support</b> 38:3 39:3 <b>supporting</b> 23:23 24:23 37:6 <b>supports</b> 32:4 33:18 <b>supposed</b> 40:2 45:2 <b>Supreme</b> 24:5 37:18 38:10,13 <b>sure</b> 10:17 30:24 31:8 41:11
--	---	--

45:10 55:22 <b>symbol</b> 41:20 <b>sync</b> 16:12	<b>thing</b> 25:6,22 35:18 44:4 <b>things</b> 25:12 26:17 40:4 48:21 <b>think</b> 12:19 23:15 24:12 25:3 25:6 26:15,16 27:9,16 28:21 29:8,19 30:9 34:10 39:8 40:20 42:7,8 43:10,12,15 44:15,15 46:7 48:13,24 50:2 50:5,15,19,20 52:22 53:13 53:18 57:3,4,13,22 60:22 <b>Third</b> 36:1 <b>THOMAS</b> 2:10 <b>thought</b> 45:6 <b>thoughts</b> 28:5 42:1 <b>three</b> 9:23 22:4 39:10 41:13 41:23 60:13 <b>thrust</b> 8:17 30:15 <b>TikTok</b> 58:18 <b>time</b> 6:19 7:3 10:9 11:11 40:21 45:18 46:6 51:3 52:7 56:10 58:6 <b>times</b> 49:8 <b>timing</b> 19:23 <b>tings</b> 49:24 <b>title</b> 20:7,11 54:16 <b>today</b> 4:9 9:9 10:15 11:6,14 13:17 21:2 31:21 32:9 45:15 46:1 50:21 <b>today's</b> 4:18 5:2 8:20 10:8 <b>top</b> 33:14 47:4 49:13 51:17 <b>total</b> 43:9 <b>totality</b> 20:18 <b>totally</b> 24:12 <b>transcribe</b> 6:17 <b>transcript</b> 1:11 12:8 62:7 <b>transition</b> 17:23 <b>transpired</b> 55:5 <b>tricky</b> 56:2 <b>tried</b> 52:7 <b>troublemaker</b> 11:16 <b>troubling</b> 41:3 <b>true</b> 56:18 62:7 <b>truly</b> 29:23 31:2,3 <b>try</b> 34:11 47:19 48:1 <b>trying</b> 35:16 58:22 <b>turn</b> 7:19 18:15 22:16 <b>turned</b> 17:18	<b>TV</b> 36:11 <b>Twitter</b> 29:14 <b>two</b> 14:18 16:18 33:19 39:10 41:22 42:14 43:22 50:1 <b>types</b> 36:4,20 43:7 <b>typically</b> 36:1 43:22
<hr/> <b>T</b> <hr/> <b>tailored</b> 29:9 <b>take</b> 6:1 7:11 18:19 25:13 27:2 40:11 57:9 60:19 <b>taken</b> 1:12 62:8 <b>talk</b> 21:2 33:7 34:11 46:23 53:14 57:1 58:8,15 <b>talked</b> 36:24 37:8,10 47:23 52:8 <b>talker</b> 47:21 <b>talking</b> 16:19 20:11 37:24 38:19 42:17 44:23 51:7 56:15 <b>talks</b> 50:4 <b>target</b> 35:13,16,22 <b>targeted</b> 35:8 37:11 39:1,23 41:23 43:6 <b>targeting</b> 41:18 <b>targets</b> 47:24 <b>tax</b> 57:24 58:1 <b>technical</b> 50:1 <b>tell</b> 33:21 36:14 56:6 <b>telling</b> 34:23 35:12 38:22 <b>telltale</b> 39:14 <b>Temple</b> 56:5 <b>term</b> 14:8 15:8,12 18:8 <b>terms</b> 16:10 17:21 18:2 49:14 <b>testify</b> 7:13,18,19 8:8 22:5,8 60:10,14 <b>testimony</b> 2:15 3:2 6:12 7:12 7:17,21 8:21 9:8,19,24 10:1 10:6,10,13 11:9 12:21,24 13:5 21:23 22:1,11,13,17 28:9,11 34:18 40:9,10 45:15 59:19 60:20 <b>tests</b> 57:23 <b>thank</b> 9:20 10:24 12:9 13:1 18:18 21:21 22:19,19,23 23:13,14 27:22 28:2,3,11 30:1,12 31:12,16,20 40:22 42:6 43:23,24 45:14,17,21 45:22 54:12,13,20 59:10,24 60:3,4 61:1	<hr/> <b>U</b> <hr/> <b>ultimately</b> 15:7 <b>unanimously</b> 55:3,4 <b>unclear</b> 19:16 <b>undermine</b> 25:2 <b>understand</b> 31:1 39:12,16 49:13 57:17 58:15,17 59:21 <b>understanding</b> 8:8 12:20 28:15,17 <b>underwrite</b> 38:7 <b>unenforceability</b> 48:22 <b>United</b> 47:7 <b>universe</b> 14:17 15:11 <b>unlimited</b> 38:2,2 <b>unquote</b> 16:12 <b>unworkable</b> 47:10 50:23 <b>updates</b> 33:12 <b>urge</b> 60:9 <b>use</b> 14:15,21,23 16:14 20:13 20:21 23:22 25:2 33:4 37:5 48:4 50:12 57:10,16 <b>utilization</b> 14:8 <b>utilized</b> 15:9 16:11 17:22	<hr/> <b>V</b> <hr/> <b>vague</b> 26:16 <b>Valeo</b> 37:19 <b>values</b> 33:18,22 34:2 37:2 <b>version</b> 13:23 20:3,24 <b>versus</b> 30:19 37:19 <b>Vice</b> 2:4 4:13 <b>videos</b> 37:4 <b>view</b> 31:1 55:6,7 <b>views</b> 49:5 <b>violates</b> 57:12 <b>violation</b> 53:15 <b>visiting</b> 45:15 <b>vote</b> 25:15 26:5 <b>voter</b> 52:21 <b>voters</b> 24:21 25:15,23 26:3

33:13 35:17,19 36:9,16 40:3 <b>voters'</b> 49:10	<b>witnesses</b> 6:7 22:1 60:7 <b>witnesses'</b> 21:23 <b>women</b> 35:20 <b>wondering</b> 55:9 <b>word</b> 14:9 17:24 18:1 36:17 <b>words</b> 36:3 41:24 44:7 47:23 <b>work</b> 52:5 53:1 <b>working</b> 33:18,22 34:2 37:1 41:12 <b>works</b> 32:2 <b>world</b> 25:4 <b>worst</b> 57:20 <b>wouldn't</b> 11:21 17:2,10 59:5 59:6 <b>WRIGHT</b> 2:10 <b>write</b> 29:6,22 <b>written</b> 8:21 9:7,13,23 10:1 10:13 15:2 22:24 23:15,17 26:7 27:6,24 28:13,20 34:18 40:10 42:16 53:6,7 54:10 <b>wrong</b> 53:13 <b>wrote</b> 59:3	<b>100</b> 57:14 <b>123</b> 21:3 <b>14</b> 19:10,12,17 20:2 50:22 <b>1515</b> 1:14 <b>1520</b> 1:22 <b>17</b> 1:15 <b>17th</b> 1:21 <b>18</b> 3:4 <b>18th</b> 1:14 <b>19103</b> 1:23
<hr/> <b>W</b> <hr/>		<hr/> <b>2</b> <hr/>
<b>W</b> 2:4 <b>wait</b> 60:1 <b>walk</b> 56:7 <b>want</b> 26:5 32:23 35:1,13 36:4 38:23,24 39:1 50:15 53:2,4 56:4,7,13 57:1 58:5 60:1 <b>wanted</b> 20:13 29:6 36:9 37:1 45:9 47:12 56:8 60:14 <b>wants</b> 35:22 36:7,13,13,15 37:5 <b>way</b> 7:15 8:22 15:1 20:3 24:3 28:19 29:9,20 32:21 42:8,10 43:13 44:16 46:16,24 47:13 49:4,18 51:24 58:2 <b>ways</b> 9:15 15:1 <b>we'll</b> 22:7 31:14 34:20 <b>we're</b> 16:18 23:2 31:14,24 37:23 38:4,18 42:17,19 44:23 51:2 55:3,4 56:1 58:21,23 59:18 <b>we've</b> 11:12 22:3,9 34:17 37:7 42:15 51:7 <b>weaponizing</b> 57:2 <b>web</b> 1:12 57:8 <b>website</b> 5:20,24 25:18 29:3 29:18 32:20 33:12 35:2,5 43:3 57:17 <b>Wednesday</b> 1:14 <b>week</b> 33:23 <b>welcome</b> 4:17 6:18 22:2,18 30:3 31:14,14 <b>went</b> 46:21 60:16 <b>white</b> 33:16 35:17,19 36:5,9 36:16 40:3 41:15 <b>win</b> 25:13 <b>wink</b> 55:5,7,17 <b>winking</b> 55:10 <b>winks</b> 38:15,20 <b>wish</b> 6:8 <b>wishes</b> 7:13 8:19 60:10 <b>witness</b> 7:20 22:2 31:15 45:16,19 <b>witness'</b> 7:19	<b>witnesses</b> 6:7 22:1 60:7 <b>witnesses'</b> 21:23 <b>women</b> 35:20 <b>wondering</b> 55:9 <b>word</b> 14:9 17:24 18:1 36:17 <b>words</b> 36:3 41:24 44:7 47:23 <b>work</b> 52:5 53:1 <b>working</b> 33:18,22 34:2 37:1 41:12 <b>works</b> 32:2 <b>world</b> 25:4 <b>worst</b> 57:20 <b>wouldn't</b> 11:21 17:2,10 59:5 59:6 <b>WRIGHT</b> 2:10 <b>write</b> 29:6,22 <b>written</b> 8:21 9:7,13,23 10:1 10:13 15:2 22:24 23:15,17 26:7 27:6,24 28:13,20 34:18 40:10 42:16 53:6,7 54:10 <b>wrong</b> 53:13 <b>wrote</b> 59:3	<b>2:06</b> 61:3 <b>20</b> 5:11 <b>2005</b> 49:7 <b>2015</b> 58:13 <b>2022</b> 1:15 5:12 8:23 <b>2024</b> 59:7 <b>215</b> 1:24 <b>22</b> 3:5 <b>25</b> 58:5 <b>2nd</b> 9:10
	<hr/> <b>X</b> <hr/>	<hr/> <b>3</b> <hr/>
	<hr/> <b>Y</b> <hr/>	<b>30</b> 1:21 8:23 35:20 <b>30th</b> 9:11 <b>31</b> 3:5
	<hr/> <b>Yeah</b> 7:7 12:5,5 45:4 <b>year</b> 14:12 <b>yellow</b> 14:21	<hr/> <b>4</b> <hr/>
	<hr/> <b>Z</b> <hr/>	<b>45</b> 3:6
<b>Zoom</b> 1:12 5:4 7:15		<hr/> <b>5</b> <hr/>
<hr/> <b>0</b> <hr/>		<b>50</b> 33:17 35:17,19 36:6,9,16 41:16 <b>564-1233</b> 1:24
<hr/> <b>1</b> <hr/>	<b>1</b> 1:2 4:11,22 5:15 6:22 11:10 13:9 15:9 17:22 18:3 <b>1.1</b> 14:5 15:23 <b>1.10</b> 19:1 <b>1.10-B</b> 50:22 <b>1.10-H</b> 20:5 <b>1.23-C</b> 50:3 <b>1.33</b> 51:9 <b>1.33-F</b> 32:8 48:18 <b>1.4</b> 26:11 <b>1.9</b> 16:1,12 17:14 18:13 <b>1:00</b> 1:15	<hr/> <b>6</b> <hr/>
		<b>63</b> 3:13 <b>64</b> 3:13
		<hr/> <b>7</b> <hr/>
		<hr/> <b>8</b> <hr/>
		<b>8-407</b> 5:8
		<hr/> <b>9</b> <hr/>
		<b>9</b> 3:4

**Proposed amendment approved by Board on July 20, 2022 for public  
comment posting**

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

**Table of Contents**

Subpart A.	Scope; Definitions.....	pg. 2
Subpart B.	Contribution Limits.....	pg. 5
Subpart C.	Date of Acceptance of Contributions with Respect to the Contribution Limits.....	pg. 8
Subpart D.	Attributing Contributions Made by Check for the Purpose of the Contribution Limits.....	pg. 9
Subpart E.	Campaign Finance Disclosures.....	pg. 9
Subpart F.	Use of Political Committees and Checking Accounts by Candidates .....	pg. 11
Subpart G.	Litigation Fund Committees .....	pg. 14
Subpart H.	Transition and Inauguration Committees .....	pg. 16
Subpart I.	Coordinated Expenditures.....	pg. 17
Subpart J.	Excess Pre-Candidacy Contributions.....	pg. 19
Subpart K.	Retiring Debt.....	pg. 21
Subpart L.	Penalties .....	pg. 22

**EXHIBIT**

**A**

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## SUBPART A. SCOPE; DEFINITIONS

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

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

- a. **Accounting period.** The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before ~~he or she~~ they became a candidate.
- b. **Agent.** An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.
- c. **Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- d. **~~Candidate's Campaign Campaign~~.** A candidate, the candidate's candidate political committee (or litigation fund committee), or an officer or an agent of any of the foregoing.
- e. **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.
- f. **Candidate political committee.** The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.
- g. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- h. **Contribution.**
  - i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a ~~candidate's~~ campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;
  - ii. An in-kind contribution, as defined at Paragraph 1.1(p); or
  - iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of ~~the candidate's~~ a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- i. **Contributor.** A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.
- j. **Covered election.** Any primary, general or special election for City elective office.



- k. **Electioneering communication.** Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.
- l. **Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.
- m. **Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:
- i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;
  - ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a candidate or candidate political committee campaign;
  - iii. For an independent expenditure;
  - iv. For an electioneering communication; or
  - v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- n. **Former candidate.** An individual who was a candidate for City elective office becomes a former candidate:
- i. On the day after a general election, if ~~he or she~~ the individual was unopposed in that election;
  - ii. On the day after a primary election, if ~~he or she~~ the individual concedes that election;
  - iii. When ~~his or her~~ the individual's opponent concedes, if ~~he or she~~ the individual was opposed in a general election; or
  - iv. If an election is contested, when that contest is resolved.
- o. **Independent expenditure.** An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any candidate's campaign and that is not made in concert with or at the request or suggestion of any candidate's campaign.

p. **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;
- ii. The payment or agreement to pay a third party to provide goods or services to a ~~candidate's candidate political committee~~ campaign, if the goods and services are in fact provided; or
- iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, as provided in Subpart I.

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

- q. **Litigation fund committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of ~~a~~ that candidate's ~~election~~ campaign or participation in an election, as described in Subpart G.
- r. **Person.** An individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other ~~for-profit~~ or not-for-profit-organization.
- s. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political committee 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. **Pre-candidacy contribution.** A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.
- u. **Pre-payment.** A payment made during the accounting period for any thing used or to be used by a ~~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. x.~~ **Sample ballot.** A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.
- ~~w. w.~~ **SPEC account.** A segregated pre-candidacy excess contribution account, as described in Subpart J.
- ~~w. x.~~ **Transition and Inauguration Committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs incurred by the candidate for the candidate's transition or inauguration into City elective office, as described in Subpart H.
- y. **Vendor.** A person, other than a political committee, that provides services to a campaign.

## SUBPART B. CONTRIBUTION LIMITS

### 1.2 Limits on contributions from individuals.

- a. ~~A candidate for City elective office campaign~~ shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.2:** On November 1, 2021, prior to the election, Jane Doe donates \$2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional \$1,100 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to \$3,100 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.
- c. A transition and inauguration committee, established as described in Subpart H by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.

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

- a. A ~~candidate for City elective office campaign~~ shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's ~~candidate committee campaign~~ if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.3:** On November 1, 2021, prior to the election, Political Committee XYZ donates \$10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional ~~\$1,900~~ \$2,600 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to ~~\$11,900~~ \$12,600 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or ~~other~~ persons.
- c. A transition and inauguration committee, established as described in Subpart H by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or ~~other~~ persons.
- d. ~~In order To~~ qualify for the \$12,600 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

#### 1.4 Contributions made through ~~one or more political committees~~ other persons.

- a. For the purposes of this Subpart, a contribution is made through ~~a another person, such as a~~ political committee, when:
  - i. A person ~~or political committee~~ makes a ~~contribution donation~~ to ~~a another person, such as 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 a expenditure contribution~~ to support a specific candidate.  
  
A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or
  - ii. ~~The contributing A~~ person ~~or political committee~~ has provided the majority of the ~~contributions donations~~ received by ~~the recipient a~~ political committee ~~or other person~~, whether directly or indirectly, in the twelve months prior to the recipient's ~~political committee's expenditure contribution~~ to support ~~the a~~ candidate, unless the recipient ~~political committee~~ can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the ~~contributing person donor or political committee~~ was not used to make the ~~expenditure contribution~~ to the ~~candidate campaign~~.
- b. For the purpose of the contribution limits, the entire amount of a contribution made through ~~a political committee another person is from~~ counts towards the contribution limits for both the ~~original contributing person or political committee original donor~~ and the ~~recipient political committee person~~ through which whom 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.~~

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

Joe Big and Big PAC have each made a contribution of \$5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by \$1,900 and therefore violates the City's Campaign Finance Law.

## **1.5 Doubling of Contribution Limits.**

- a. If a candidate ~~for City elective office~~ contributes \$250,000 or more of ~~his or her~~ their personal resources to ~~his or her~~ their candidate political committee own campaign since the more recent of (i) the most recent election cycle for the office sought by the candidate, or (ii) the last municipal election in which the candidate sought office, the contribution limits for all ~~candidates campaigns~~ for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).
- b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b)&(c) and 1.3(b)&(c)) do not double if a candidate contributes \$250,000 or more to ~~his or her candidate political committee~~ their own campaign.
- 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~~ campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.
- d. If a ~~candidate political committee campaign~~ returns, repays, or refunds to ~~a its~~ candidate any money the candidate had contributed from ~~his or her the~~ candidate's personal resources prior to reaching the \$250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions ~~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 campaign~~ returns, repays, or refunds ~~to the candidate~~ a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes \$250,000 or more of ~~his or her~~ their personal resources to ~~his or her candidate political committee~~ their own campaign, within two business days, ~~he or she~~ that candidate shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.6** No ~~individual, political committee, or other~~ person shall make any contribution that exceeds the limits set forth in this Subpart.

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

1.8 ~~Candidates and contributors shall include the~~ The value of in-kind contributions ~~when determining counts toward~~ the total amount of contributions made or accepted in a calendar year.

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

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

- a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee~~;~~.
- b. Contributions from a candidate's candidate political committee~~;~~ to that candidate's litigation fund committee~~;~~ or transition and inauguration committee~~;~~.
- c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) where when 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; campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.
- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.3424(h)~~;~~.
- e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication~~;~~.
- f. Incidental expenditures made by persons other than ~~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 a political committee.
  - i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:
    - (1) Legal or accounting work;
    - (2) Entertainment such as a performance by a musical group or DJ; and

- (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.
- ii. Volunteer labor does not include the donation to a candidate of:
  - (1) Equipment, such as computers, copiers, or printers;
  - (2) Resources, such as postage; or
  - (3) Materials, such as stationery or campaign literature.
- iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.
- h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign pays its fair portion of the costs within 14 days and obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.
- i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

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

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

**1.12** 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.

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

**1.14 In-kind contributions.**

- a. If a person makes an in-kind contribution by providing goods or services directly to a ~~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 to a ~~candidate's~~ campaign, the date of acceptance of that contribution is the date the goods or services are provided or the date payment is made, whichever is earlier.



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

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

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

**1.17** A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of ~~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.

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

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

**Information on how to electronically file a report or statement The City of Philadelphia's Campaign Finance Filing System is available may be found at:**  
**<http://www.phila.gov/ethicsboard/campaignfinance/Pages/Filecfinformation.aspx>**

**A schedule with the specific reporting deadlines  
may be found ~~following this Regulation and at:~~**

**<http://www.phila.gov/ethicsboard/campaignfinance/Pages/default.aspx>**

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

**1.20 Political committees and other persons.**

- a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:
  - i. Expenditures made or debt incurred to influence the outcome of a covered election;



- ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;
- iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or
- iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

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

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

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

- i. on the sixth Tuesday before a covered election;
- ii. on the fourth Tuesday before a covered election;
- iii. on the second Friday before a covered election;
- iv. on the Tuesday immediately before a covered election;
- v. on the Friday immediately before a covered election; and
- vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.

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

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

### **1.21 Content of campaign finance reports and statements.**

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

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

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

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

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

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

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

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

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

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

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

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

### 1.23 One committee and one checking account.

- a. A ~~candidate's~~ campaign shall use no more than one political committee and one checking account for the City elective office the ~~candidate~~ campaign is seeking, into which all contributions for that office shall be deposited and from which all ~~campaign~~ expenditures for that office shall be made, including and expenditures to retire debt incurred to influence the outcome of a covered election ~~for that campaign shall be made~~.
- b. If a ~~candidate maintains~~ campaign has or controls other political or non-political accounts ~~for which contributions are solicited, such funds collected in those, such~~ accounts shall not be used for the purpose of influencing the outcome of a covered election or to ~~make expenditures to~~ retire ~~campaign~~ debt incurred to influence the outcome of a covered election.
- c. A campaign may be found to control a political committee or an account if:
  - i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;
  - ii. The candidate or an agent of the campaign established or registered the political committee or account; or
  - iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.
- d. Unless specifically permitted by this Subpart, a campaign shall not make any expenditure related to a covered election through any other person or vendor.  
An expenditure is made through another person if:
  - i. The campaign provides the money to cover the specific expenditure;
  - ii. The campaign selects the recipient of the expenditure; or
  - iii. The campaign approves the expenditure or directs that it be made.

### 1.24 Permissible uses of other committees or accounts.

#### ~~e.a.~~ Payment Sservice Pproviders.

- i. A ~~candidate's~~ campaign may use a Ppayment Sservice Pprovider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the ~~candidate~~ campaign's political committee's checking account.
- ii. A ~~candidate's~~ campaign may use a Ppayment Sservice Pprovider to make expenditures so long as any funds used for such expenditures are drawn directly from the ~~candidate committee's~~ campaign's political committee checking account.

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

- i. The savings account is at the same bank as the checking account;
- ii. The ~~candidate campaign~~ deposits all contributions into ~~his or her~~ the checking account before transferring such funds to the savings account;
- iii. The ~~candidate campaign~~ does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and
- iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that ~~he or she~~ the candidate has established a savings account.

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

- i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;
- ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;
- iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and
- iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

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

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

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

- g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:
  - i. That political committee or other person offers similar services to other campaigns;
  - ii. The amount charged is commensurate with the services provided; and
  - iii. The candidate does not exercise control over the political committee or other person.
- h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.
- i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

**1.2425 Multiple offices sought.** If a candidate is running for more than one City elective office simultaneously, ~~he or she~~ that candidate shall maintain a separate candidate political committee and checking account for each office being sought.

**1.2526 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~~ becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:
  - i. The committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.
- b. If a candidate does not have a candidate political committee when ~~he or she becomes~~ becoming a candidate, ~~he or she~~ that candidate shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with ~~his or her~~ the candidate's street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after ~~he or she has become~~ becoming a candidate, ~~he or she~~ that candidate shall provide the information required by this Paragraph within three business days of the formation of the committee.

- d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at [phila.gov/ethicsboard/campaignfinance](http://phila.gov/ethicsboard/campaignfinance) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

~~**1.26—Exercising control over another political committee or bank account.** Other than the candidate's designated candidate political committee, a litigation fund committee established pursuant to Subpart G, a transition or inauguration committee established pursuant to Subpart H, or a checking account of such committees, a candidate's campaign shall not exercise control over any political committee or checking account that makes expenditures to influence a covered election.~~

~~For example, a candidate's campaign may be found to exercise control over a political committee or an account if:~~

- ~~a. The candidate or an agent of the candidate's campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;~~
- ~~b. The candidate or an agent of the candidate's campaign established or registered the political committee or account; or~~
- ~~c. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the candidate.~~

~~**1.27—**Other than expenditures made by the candidate's designated candidate political committee, a litigation fund committee established pursuant to Subpart G, or a transition and inauguration committee established pursuant to Subpart H, a candidate's campaign shall not exercise control over an expenditure made to influence a covered election.~~

~~For example, a candidate's campaign may be found to exercise control over an expenditure made to influence a covered election if:~~

- ~~a. The candidate's campaign provides the money to cover the specific expenditure;~~
- ~~b. The candidate's campaign selects the recipient of the expenditure; or~~
- ~~c. The candidate's campaign approves the expenditure or directs that it be made.~~

~~**1.28—Reimbursed expenditures.** A candidate or an employee or agent of a candidate's campaign may use personal funds to make purchases for the benefit of the campaign so long as:~~

- ~~a. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;~~
- ~~b. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;~~
- ~~c. The reimbursement is disclosed and accurately described in the required campaign finance report; and~~
- ~~d. The candidate's campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not~~

~~violate Paragraphs 1.23, 1.26 & 1.27 and shall not count towards the contribution limits set forth in Subpart B.~~

~~**1.29—Expenditures by Vendors.** A vendor may make expenditures on behalf of a campaign, and such expenditures shall not count against the vendor's contribution limits and shall not constitute a prohibited expenditure of the campaign, so long as the expenditures are for an expense that is incidental to the contractual provision of services by the vendor to the campaign, consistent with standard business practice, and the campaign promptly reimburses the vendor for the expenditure.~~

~~**1.30—**This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G or a transition and inauguration committee established pursuant to Subpart H.~~

~~**1.31—**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.~~

~~**1.32—**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.~~

~~**1.33—**This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee.~~

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

### **1.3427 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a candidate campaign or former candidate for City elective office may establish a litigation fund committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.34(e) 1.27(c).
- b. The name of a litigation fund committee shall include the term "Litigation Fund." The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.
- c. A candidate campaign or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's campaign's or former candidate's election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

- d. A candidate campaign or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.
- e. A candidate campaign or former candidate may make expenditures from ~~his or her~~ a candidate political committee for the purposes described in Paragraph ~~1.34(e)~~ 1.27(c).
- f. A candidate campaign or former candidate shall not transfer funds to ~~his or her~~ a candidate political committee from a litigation fund committee.

**1.3528 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 campaign or former candidate shall notify the Board of the following information:
  - i. The litigation fund committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the litigation fund committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.
- b. If the information required by this Paragraph changes, the candidate campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at [phila.gov/ethicsboard/campaignfinance](http://phila.gov/ethicsboard/campaignfinance) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.3629 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 campaign or former candidate sought, except as provided in Paragraph ~~1.36(e)~~ 1.29(c).
- b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.
- c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a "last in, first out" accounting basis;
  - ii. On a "first in, first out" accounting basis;
  - iii. On a pro-rata accounting basis; or



- iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a ~~candidate campaign~~, former candidate, or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.
- d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

## **SUBPART H. TRANSITION AND INAUGURATION COMMITTEES**

### **1.3730 Transition and inauguration committee requirements.**

- a. In addition to a candidate political committee, a candidate or ~~former candidate for individual elected to~~ City ~~elective~~ office may establish a transition and inauguration committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph ~~1.37(e)~~ 1.30(c).
- b. The name of a transition and inauguration committee shall include the terms "Transition" and "Inauguration." The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.
- c. A candidate or ~~former candidate~~ individual elected to City office shall make expenditures from a transition and inauguration committee solely to pay costs incurred for the transition and inauguration into City elective office of the candidate.
- d. A candidate or ~~former candidate~~ individual elected to City office may make expenditures from ~~his or her a~~ candidate political committee for the purposes described in Paragraph ~~1.37(e)~~ 1.30(c).
- e. A candidate or ~~former candidate~~ individual elected to City office shall not transfer funds to ~~his or her a~~ candidate political committee from a transition and inauguration committee.

### **1.3831 Requirement to provide information to the Board about a transition and inauguration committee.**

- a. Within three business days of the formation of a transition and inauguration committee, a candidate or ~~former candidate~~ individual elected to City office shall notify the Board of the following information:
  - i. The transition and inauguration committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the transition and inauguration committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.
- b. If the information required by this Paragraph changes, the candidate or ~~former candidate~~ individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.

- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at [phila.gov/ethicsboard/campaignfinance](http://phila.gov/ethicsboard/campaignfinance) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.3932 Termination of a transition and inauguration committee.**

- a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.
- b. Before a transition and inauguration committee is terminated, the transition and inauguration committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a "last in, first out" accounting basis;
  - ii. On a "first in, first out" accounting basis;
  - iii. On a pro-rata accounting basis; or
  - iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.
- c. The Board may grant an extension for terminating a transition and inauguration committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

**SUBPART I. COORDINATED EXPENDITURES**

**1.4033** An expenditure is coordinated with a ~~candidate's~~ campaign if it is made in cooperation, consultation or concert with the ~~candidate's~~ campaign, including the following:

- a. The expenditure is made at the request or suggestion of the ~~candidate's~~ campaign;
- b. A person suggests making an expenditure and the ~~candidate's~~ campaign assents to the suggestion;
- c. The person making the expenditure communicates with the ~~candidate's~~ campaign concerning the expenditure before making the expenditure;
- d. 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
- e. ~~An agent of the candidate's~~ The campaign directs, places, or arranges the expenditure; 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 the candidate campaign provided that information made~~ to the general public. ~~This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.41.~~

Information is not provided to the general public if the circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.

**Example 1 for ~~1.40(f)~~ 1.33(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's campaign and spends \$12,600 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The \$12,600 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$12,600 in-kind contribution to Candidate A's campaign.

**Example 2 for 1.33(f):** Candidate A's campaign website includes a page with a red box containing information about the candidate, the candidate's opponent, and the candidate's stance on certain issues. The text in the red box says that voters in South Philadelphia need to know the information contained in the red box. Without any other input from the campaign, Philadelphians for Philadelphia PAC produces a poster that includes the information from the red box. Philadelphians for Philadelphia spends \$25,000 to print the posters and place them around South Philadelphia.

The \$25,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the circumstances indicate that the information in the red box was posted on the website so that other persons could use the information to make expenditures beneficial to the campaign in South Philadelphia. As such, the \$25,000 is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.

**Example 3 for 1.33(f):** Candidate A's communications director tweets that "Philadelphia voters need to hear that Candidate A's decades of experience in both the private and public sector is a strength that Candidate A's opponent lacks." Without any other input from Candidate A's campaign, Philadelphians for Philadelphia PAC produces and airs a radio advertisement that discusses Candidate A's experience in the private and public sector as compared to Candidate A's opponent. The advertisement airs throughout Philadelphia County. The PAC spends \$200,000 to produce and air the advertisement.

The \$200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because circumstances indicate that the information in

the tweet was made so that other persons could use the information to make expenditures for radio ads supporting the campaign. As such, the \$200,000 is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A's campaign.

**1.4134 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~~ campaign 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~~ campaign's consent if the ~~candidate~~ campaign 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.

- 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~~ campaign that prepared the material;
  - ii. The item republished is a photograph or video obtained from a public source that is not controlled by the ~~candidate's~~ campaign; or
  - iii. The person's expenditures for republication of a ~~candidate's~~ campaign's communications or materials are less than \$100 in the aggregate per reporting period.

**Example for ~~1.41~~ 1.34 (a) and (b):** Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends \$100,000 to run the advertisement on three television stations during the week before election day.

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

**1.4235** 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 use the same vendor, attorney, or accountant;
- d. The person making the expenditure has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or
- e. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

## **SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS**

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

**1.4336** The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

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

### **1.4437 Prohibited Expenditures.**

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

transition or inauguration expenses related to an already completed covered election.

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

**1.4538 Exclusion of excess pre-candidacy contributions upon becoming a candidate.**

- a. Except as provided in Paragraph ~~1.46~~ 1.39, within ten days after ~~becoming an individual becomes~~ a candidate, ~~a candidate~~ their campaign shall exclude all excess pre-candidacy contributions from ~~his or her~~ its candidate political ~~committee's~~ committee checking account by one of the following methods:
  - i. Transferring excess pre-candidacy contributions to a segregated account; or
  - ii. Returning excess pre-candidacy contributions to their contributors.
- b. **Calculation of amount to be excluded.** A ~~candidate~~ campaign shall determine ~~the~~ amount to be excluded by using one of the following methods:
  - i. **Dollar for dollar calculation.** A ~~candidate~~ campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

**Example:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Mr. B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 (\$400 excess from Mr. B + \$400 excess from Ms. C) from its checking account.

- ii. **Accounting-based calculation.** A ~~candidate~~ campaign ~~does need~~ not ~~have to~~ exclude any excess pre-candidacy contributions that ~~he or she~~ the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent ~~pre-candidacy before becoming a candidate~~, provided that:
    - (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and
    - (2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.
- c. If the amount that the ~~candidate~~ campaign shall exclude from the ~~candidate political committee's~~ checking account ~~of the candidate political committee~~ exceeds the amount of cash the committee has on hand, the ~~candidate~~ campaign shall use incoming contributions to cover the amount that shall be excluded.

**1.4639** Pre-candidacy segregation. A ~~candidate-campaign~~ does need not ~~have to~~ exclude any excess pre-candidacy contributions that, upon receipt, ~~he or she~~ the campaign had transferred to a segregated pre-candidacy excess contribution account (“SPEC account”), provided that, if ~~he or she~~ the campaign used any funds in a SPEC account for pre-payments, the ~~candidate-campaign~~ shall exclude from ~~his or her~~ the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph ~~1.45~~ 1.38.

**Example 1:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.

**Example 2:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends \$800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 from its checking account. While Candidate A segregated the \$800 in excess contributions received from Person B and Person C, she spent \$800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.

**1.4740** A ~~candidate or a candidate political committee campaign~~ shall not use money held in a SPEC account to influence the outcome of a covered election in which the campaign's candidate participates, to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office.

**1.4841** Within seven days of establishing a SPEC account, a ~~candidate-campaign~~ shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

## **SUBPART K. RETIRING DEBT**

**1.4942** Except as provided in Paragraph ~~1.50~~ 1.43, 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.



**1.5043** If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

- a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;
- b. The debt has been outstanding for at least 24 months;
- c. The candidate political committee does not have sufficient cash on hand to pay the creditor;
- d. Forgiveness of the debt is not prohibited by any other relevant law; and
- e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt. The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

#### **SUBPART L. PENALTIES**

**1.5144 Acceptance of an excess contribution.** A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

**1.5245 Making an excess contribution.** A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

**1.5346 Safe harbor if an excess contribution is returned within 15 days.** No civil monetary penalty shall be imposed for an excess contribution if the ~~candidate campaign~~ who that accepted the excess contribution within fifteen days after receiving the contribution:

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

**1.5447 Failure to file campaign finance disclosures.** If a political committee fails to file a campaign finance report or statement with the Board as required by Subpart E, the committee and its treasurer shall be jointly and severally subject to a civil monetary penalty of \$250. If a candidate fails to file a campaign finance report or statement with the Board as required by Subpart E, the candidate shall be subject to a civil monetary penalty of \$250.



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

**1.5548 Material misstatements or omissions.** If a campaign finance report filed with the Board contains material misstatements or omissions, the ~~candidate, treasurer, or other~~ individual who filed the report shall be subject to a civil monetary penalty of \$1,000 for each such misstatement or omission. If the report is filed on behalf of a political committee, the individual who filed the report and the committee shall be jointly and severally liable.

**1.5649 Misuse of political committees or accounts.** If a ~~candidate's~~ campaign uses a political committee or account in violation of the requirements set forth in Subpart F, G, or H the candidate shall be subject to a civil monetary penalty of \$1,000.

**1.5750 Excess pre-candidacy and candidacy contributions.**

- a. If a ~~candidate or former candidate~~ campaign fails to exclude any excess pre-candidacy or candidacy contributions from ~~his or her~~ its candidate political committee, as required by Subpart J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000.
- b. If a candidate campaign or the committee of a former candidate spends excess pre-candidacy or candidacy contributions in violation of the prohibitions of Subpart J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000, for which ~~his or her~~ their candidate political committee shall be jointly and severally liable if such expenditures were made from that committee.

**1.5851 Failure to provide committee or account information to Board.** If a candidate campaign fails to provide information to the Board about a political committee or account as required by Subpart F, G, H or J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000.

**1.5952 Other violations of the campaign finance law.** All other violations of the campaign finance law are subject to a civil monetary penalty of \$1,000 per violation.

**1.6053 Increase or decrease of civil monetary penalty.** A penalty imposed pursuant to Paragraph ~~1.55, 1.56, 1.57, 1.58 or 1.59~~ 1.48, 1.49, 150, 1.51, or 1.52 shall be increased or decreased as follows:

- a. Mitigating factors. The civil monetary penalty of \$1,000 shall be reduced by \$500 if one of the following mitigating factors is present and shall be reduced by \$750 if more than one of the following mitigating factors are present:
  - i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
  - ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
  - iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

- b. Aggravating factors. The civil monetary penalty of \$1,000 shall be increased by \$1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed \$2,000:
  - i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
  - ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
  - iv. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006

Effective January 17, 2007

Amendment approved by Board August 21, 2007

Effective September 21, 2007

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

Public hearing held September 8, 2010

Adopted by Board with modifications September 15, 2010

Effective September 27, 2010

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

Public hearing held June 15, 2011

Adopted by Board July 20, 2011

Effective August 11, 2011

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

Effective March 2, 2012

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

Public hearing held January 23, 2013

Adopted by Board with modifications February 20, 2013

Effective March 8, 2013

Proposed amendments approved for public comment by Board on July 16, 2014

Public hearing held September 17, 2014

Adopted by Board with modifications October 15, 2014

Effective October 31, 2014

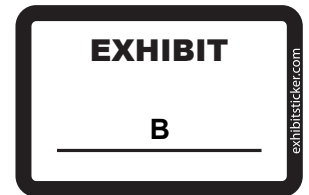
Proposed amendments approved for public comment by Board on September 21, 2016  
Public hearing held October 19, 2016  
Adopted by Board with modifications November 16, 2016  
Effective December 2, 2016

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

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

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

Proposed amendments approved for public comment posting by Board on:  
Public hearing held:  
Adopted by Board with modifications:  
Effective:



August 16, 2022

Submitted electronically to [Michael.Cooke@phila.gov](mailto:Michael.Cooke@phila.gov)

Michael Reed, Esq.  
Chair  
Philadelphia Board of Ethics

Hon. Phyllis W. Beck  
Vice-Chair  
Philadelphia Board of Ethics

Dear Chair Reed, Vice-Chair Beck, and Members of the Board,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the Philadelphia Board of Ethics in support of the Board’s proposed amendment to Regulation No. 1, Campaign Finance.<sup>1</sup> These comments primarily address the amendment to paragraph 1.33(f), regulating the practice known as “redboxing.”

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court cases. Our work promotes every American’s right to an accountable and transparent democratic system.

CLC supports the Board’s proposed regulation addressing redboxing, an illegal practice by which candidates coordinate their electoral activity with outside groups by communicating their preferred campaign messaging and strategy—often in an actual red box on the candidate’s campaign website—for use by outside groups to develop, run, and pay for ads that support the candidate. Federal law and the law of many states and localities prohibit coordination between campaigns and outside groups. These laws play a crucial role in our democratic process by helping prevent wealthy special interests from using their ability to engage in unlimited fundraising and spending to directly underwrite a candidate’s campaign expenses, a practice

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<sup>1</sup> See Amendment to Phila. Bd. Ethics Reg. No. 1 (“Campaign Finance”) (filed July 24, 2022), <https://bit.ly/3A22CUZ>.

that raises obvious corruption concerns. At the federal level, redboxing is often used to evade federal regulations that prohibit such coordination between candidates and super PACs.

In these comments, we first describe the practice of redboxing and its key features, demonstrating how candidates signal illicit requests, hidden in plain sight, to outside spenders for specific advertising in support of their campaigns. Second, we provide an overview of the U.S. Supreme Court’s case law concerning coordination restrictions and explain how it applies to redboxing. Finally, we recommend further clarifying the proposed rule by identifying the most common features of redboxing, and we set out proposed rule language that would incorporate our recommendation.

## **I. Redboxing is used to circumvent coordination rules.**

“Redboxing” is named for the tell-tale, red-outlined box on a candidate’s website that contains specific information detailing the campaign’s preferred messaging and strategy, which is then used by outside spenders—such as super PACs, *i.e.*, federal political committees that are permitted to raise and spend unlimited amounts to pay for independent expenditures provided such expenditures are not coordinated with any candidate or campaign committee—to make political ads in support of the candidate.

An example from the New Hampshire race for U.S. Senate in 2014 illustrates how redboxing works: In April 2014, Senator Jeanne Shaheen’s campaign updated a redbox on their campaign website to “assert that when Shaheen’s opponent Scott ‘Brown was the Senator from Massachusetts[,] he gave big oil billions in special breaks.’”<sup>2</sup> The Democratic Senatorial Campaign Committee tweeted out a message that linked directly to the redbox on Senator Shaheen’s campaign website and three days later “the super PAC Senate Majority PAC came out with an advertisement on Scott Brown’s ‘big oil baggage’ taking the Shaheen campaign’s redbox message point-by-point and incorporating it into the script of the ad.”<sup>3</sup>

At the federal level, redboxing exploits gaps in the Federal Election Commission’s (“FEC”) coordination regulations, which exclude from the definition of “coordinated communication” certain candidate-related information that is obtained from a publicly available source.<sup>4</sup> Campaigns have increasingly abused the federal safe

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<sup>2</sup> Kaveri Sharma, *Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections*, 130 Yale L.J. 1898, 1917 (2022) <https://www.yalelawjournal.org/note/voters-need-to-know>.

<sup>3</sup> *Id.*

<sup>4</sup> Recently, the FEC appeared to endorse the idea that federal candidates may legally communicate instructions to super PACs through public-facing social media platforms like Twitter. See FEC MUR 7700 (VoteVets, et al.), Statement of Reasons of Chairman Allen J. Dickerson, Commissioner Sean J. Cooksey, Commissioner James E. “Trey” Trainor, III, and Commissioner Ellen L. Weintraub (Apr. 29, 2022), [https://www.fec.gov/files/legal/murs/7700/7700\\_14.pdf](https://www.fec.gov/files/legal/murs/7700/7700_14.pdf).

harbor for “publicly available information” by publicly communicating their advertising requests to independent groups, and claiming the safe harbor as protection for their unlawful coordination activity.

Although redboxing tactics vary from one campaign to another, redboxing schemes tend to include commonly understood signals and phrasing that make it easy for outside groups to identify a candidate’s requests for desired communications, including who should be targeted with what messages, delivered via which media channels. A redbox generally includes a combination of two or more of these elements to get the attention of supportive super PACs:

**A. Signals and repositories.** Candidates typically signal their messaging and strategy to outside spenders by circumscribing the information within a discrete part of their campaign website, such as in a red box or on a separate web page. But despite the name, “redboxes” come in a variety of forms (and colors). Candidates may signal their redbox with specific phrases like, “Voters Need to Know” or “All Philadelphians Need to Know,” highlighting a section or page of the candidate’s website that contains messaging and strategy information directed at super PACs.<sup>5</sup> Redboxes also signal how recently they have been updated, so that super PACs know they are using the latest message and strategy information from the candidate to create their political ads.<sup>6</sup>

Political parties also create and maintain their own online aggregated repositories of redboxes to support their party’s candidates.<sup>7</sup> These websites streamline the process of communicating campaign strategy and messages to outside spenders, making it easy to find updated party messaging for specific elections across the country.

**B. Targeted audience information.** Redboxes often contain information telling outside spenders who the intended audience is for particular campaign messaging. This tactic ensures that their ads are more effective for the candidate because the campaign is sharing crucial targeting information, often based on their polling data.<sup>8</sup> This information often includes specific demographic and location signals, like “voters in St. Louis over the age of 65” or “men who are Democrats under 50.”

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<sup>5</sup> See, e.g., Karin Norington-Reaves Democrat for Congress, *Voter Alert*, [https://www.votekarin.com/?page\\_id=993](https://www.votekarin.com/?page_id=993) [<https://perma.cc/84KM-PNQK>].

<sup>6</sup> *Id.*

<sup>7</sup> See e.g., Nat’l Republican Senatorial Comm., *New Hampshire*, <https://www.nrsc.org/state-facts/new-hampshire/> [<https://perma.cc/W75E-QKU8>].

<sup>8</sup> Chris Moody, *How the GOP Used Twitter to Stretch Election Laws*, CNN (Nov. 17, 2014) <https://www.cnn.com/2014/11/17/politics/twitter-republicans-outside-groups/index.html>.

- C. Communication methods.** In addition to providing targeting information, campaigns specify to outside spenders how to disseminate a communication using widely known code words. A redbox indicating that voters need “to see” means the outside group should run television ads; content that a voter needs “to read” should be sent via direct mail; and the phrasing “see on the go” is a request for digital ads.<sup>9</sup>
- D. Messaging content.** Candidates use redboxes to specify particular messages they want outside spenders to use in political ads, combining their signals for who to target and how with specific campaign messages. For example, when Karen Carter Peterson ran for Congress in a special election in Louisiana in 2021, her campaign website’s redbox signaled to super PACs that “[y]oung Black voters and White Women who are non-GOP voters need to **read** and **see on the go** that Karen Carter Petersen has been endorsed by Gary Chambers and Stacey Abrams.”<sup>10</sup> This instruction to super PACs identified specific groups to target and called for direct mail and digital ads highlighting the candidate’s endorsements.

In Wisconsin, the website for Mandela Barnes’s 2022 campaign for the U.S. Senate instructs outside groups that “voters outside of the Madison and Milwaukee media markets need to read that Mandela Barnes grew up in middle-class Wisconsin, his mom a teacher and his dad a third shift worker.”<sup>11</sup> To a super PAC looking to support Barnes’s campaign, it’s a clear set of instructions for a direct mail campaign conveying a specific message about the candidate, targeted outside of the state’s two major cities where Barnes’s campaign thought that message would resonate most effectively.

In addition to providing specific messaging, candidates also make documents, photos, and videos available through their redboxes, allowing super PACs to use ready-made advertising production elements to quickly develop political ads, instead of spending time and resources producing their own materials.<sup>12</sup>

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<sup>9</sup> Shane Goldmacher, *The Little Red Boxes Making a Mockery of Campaign Finance Law*, N.Y. TIMES (May 16, 2022) <https://www.nytimes.com/2022/05/16/us/politics/red-boxes-campaign-finance-democrats.html>.

<sup>10</sup> Karen Carter Peterson for Congress, *What Voters Need to Know*, [https://www.karencarterpeterson.com/what\\_voters\\_need\\_to\\_know/](https://www.karencarterpeterson.com/what_voters_need_to_know/) [<https://perma.cc/W38U-XA7R>] (emphasis in original).

<sup>11</sup> Mandela Barnes for U.S. Senate, *Media*, <https://mandelabarnes.com/media/> [<https://perma.cc/273C-P3B8>].

<sup>12</sup> See, e.g., John Gibbs for United States Congress, *Media*, <https://www.votejohnngibbs.com/media> [<https://perma.cc/XN4Q-C4EA>].

Putting these mechanisms together, candidates communicate their desired strategy and messaging to supportive outside spenders and quickly turn an effective redbox into large advertising buys in support of their candidacy. For example, in Matt Rosendale’s 2018 campaign for a U.S. Senate seat in Montana, Rosendale updated his campaign website to include points attacking his opponent, Jon Tester, “for his ‘D’ rating from the NRA and his votes for anti-Second Amendment judges.”<sup>13</sup> In response and on the same day, “the NRA ordered a \$93,000 flight of radio ads to attack Rosendale’s opponent.”<sup>14</sup>

## **II. Redboxing enables quid pro quo corruption and the appearance of such corruption.**

The Board’s proposed rule to specifically regulate redboxing as a form of coordination addresses a growing issue in contemporary elections: Ensuring that wealthy special interests are unable to underwrite candidates’ campaigns by coordinating their spending with their preferred candidates. As decades of U.S. Supreme Court precedent has established, regulating coordinated spending between candidates and outside spenders is constitutional, and essential for reducing political corruption.

Beginning with its seminal decision in *Buckley v. Valeo* (1976), the U.S. Supreme Court has consistently maintained that outside expenditures “controlled by or coordinated with a candidate” may be constitutionally limited in the same manner as direct contributions to the candidate’s campaign.<sup>15</sup> Because coordinated expenditures are essentially indirect or in-kind contributions to candidates, limiting expenditures made in coordination with candidates furthers the same anti-corruption interests served by limits on direct campaign contributions and, critically, “prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions.”<sup>16</sup>

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<sup>13</sup> Sharma, *supra* note 2, at 1917.

<sup>14</sup> *Id.*

<sup>15</sup> 424 U.S. 1, 46-47 (1976).

<sup>16</sup> *Id.* at 455.



In *McConnell v. FEC* (2003), the Supreme Court upheld part of the federal Bipartisan Campaign Reform Act requiring coordination rules to cover coordinated expenditures made in the absence of “an agreement or formal collaboration” with a candidate.<sup>17</sup> *McConnell* noted that the existence of a formal agreement did not establish “the dividing line” between coordinated and independent spending, and explained that “expenditures made after a ‘wink or nod’ often will be ‘as useful to the candidate as cash.’”<sup>18</sup> Moreover, the Court reiterated that only “wholly independent” spending is constitutionally distinguishable.<sup>19</sup>

Since the Supreme Court struck down the ban on corporate independent expenditures in *Citizens United v. FEC* (2010),<sup>20</sup> coordination rules have become especially critical to enforcing statutory restrictions and prohibitions on corporate contributions to candidates, such as Pennsylvania’s ban on corporate contributions to candidates and political committees.<sup>21</sup> Indeed, the majority opinion in *Citizens United* relied on the assumption that *independent* expenditures, unlike direct campaign contributions, do not create a risk of “quid pro quo” corruption because they are made without “prearrangement and coordination” with candidates,<sup>22</sup> making clear the importance of the distinction between coordinated and independent spending.

As the examples in Part I illustrate, redboxing belies any commonsense understanding of “independent” spending and undermines limits on campaign contributions that are key to maintaining accountability and preventing corruption in our democratic process. Instead, when an ostensibly “independent” outside spender pays to run advertisements following the explicit request and instructions from a candidate, those ads will plainly be “as useful to the candidate as cash.”<sup>23</sup> Ads run by outside spenders according to the express wishes of their preferred candidates are plainly not “wholly independent” spending, and such spending poses a clear risk of corruption and the appearance of the corruption.

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<sup>17</sup> 540 U.S. 93, 220-23 (2003).

<sup>18</sup> *Id.* at 221 (quoting *FEC v. Colo. Republican Federal Campaign Committee*, 533 U.S. 421, 446 (2001)); *see also id.* at 222 (“A supporter could easily comply with a candidate’s request or suggestion without first agreeing to do so, and the resulting expenditure would be virtually indistinguishable from a simple contribution.” (internal quotation marks and brackets omitted)).

<sup>19</sup> *Id.* at 221.

<sup>20</sup> 558 U.S. 310 (2010).

<sup>21</sup> *See* 25 Pa. Cons. Stat. § 3253(a).

<sup>22</sup> 558 U.S. at 357. The Court in *Citizens United* made a point to distinguish the challenge at hand from its precedent upholding prohibitions on corporate contributions to candidates, which, the Court noted, “have been an accepted means to prevent *quid pro quo* corruption.” *Id.* at 359 (emphasis in original).

<sup>23</sup> 540 U.S. 93, 221 (2003).

### III. Recommendations for final rule.

Proposed paragraph 1.33(f) addresses redboxing as follows. First, the proposed rule would maintain the generally applicable exception to existing coordination rules that provides the provision of information by the candidate to the “general public” will not be considered a form of coordination. Second, the proposed rule provides that this exception would not apply where “the circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.”

We support the Board’s approach to addressing redboxing. While information provided to the general public for bona fide campaign purposes—such as a campaign speech or other communications aimed at influencing voters—is not indicative of coordination, the coordination of requested messaging and strategy direction between campaigns and outside spenders should not be permitted merely because it is done in public. Additionally, we support the inclusion of proposed Examples 2 and 3, which provide clear illustrations of redboxing.

To provide further clarity in the rule, we recommend specifying some of the “circumstances” that the Board will consider in determining whether a campaign has made information publicly available “so that another person may use [it] to make expenditures supporting the campaign” — including, *e.g.*, by identifying common redboxing tactics. CLC has prepared the following draft language (indicated by underline) for the Board to consider adding to the proposed paragraph 1.33(f).

#### ***Recommended full text for final rule:***

The person making the expenditure uses information from the campaign, unless the campaign provided that information to the general public.

Information is not provided to the general public if the circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.

In determining whether this exception applies, the Board may consider any and all relevant circumstances. Examples of such circumstances include, but are not limited to:

- i. The manner in which the information is published, such as the placement of the information on a discrete webpage or portion of a webpage containing other indicators identified in this paragraph;

- ii. Whether the information includes language suggesting that the information be communicated to others, such as “voters need to know” or “Philadelphians need to know”;
- iii. Whether the information includes targeted audience information, such as specific demographics or the location of intended or suggested recipients; and
- iv. Whether the information includes suggested methods of communication, such as indicating that recipients need to “see,” “hear,” or “see on the go” the information.

### **Conclusion**

We respectfully urge the Board to adopt the proposed rule regulating redboxing and to incorporate our recommendation. We would be happy to answer questions or provide additional information to assist the Board in promulgating the final rule for paragraph 1.33(f) of Regulation No. 1, Campaign Finance. Thank you for your time and consideration.

Respectfully submitted,

/s/ Aaron McKean

Aaron McKean

Legal Counsel

Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, DC 20005

August 17, 2022

Philadelphia Board of Ethics  
1515 Arch Street, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

Re: Proposed Reg 1.33(f) and Proposed Examples 2 and 3

To the Board:

As election law attorneys, the co-authors<sup>1</sup> write in unison to urge you not to adopt Proposed Reg. 1.33(f) and accompanying proposed Examples 2 and 3. While well-intentioned, in its current form—and potentially in any form—such a broad effort to outlaw “signaling” or “red boxing” by campaigns will chill Constitutionally protected political speech and prove impossible to effectively administer.

The proposal before the Board focuses on what is perceived to be a problem of circumvention but, in doing so, it apparently ignores the broader context of free speech and the rights, opportunities, and challenges of free speech and association. By narrowly focusing on the purported, or even intended, circumvention of Regulation 1, the Board loses sight of the value of First Amendment speech, the marketplace of ideas, and the aim of ideas, candidates, and those that have something to say about them being heard in public discourse.

When faced with a regulation that would both curtail circumvention and chill political speech by candidates and campaigns, the Board should choose not to act. Not just because an overbroad regulation will be struck down in court, but, more importantly, these voices should be heard.

As to this language, as the Board is aware, the current regulations provide an exception to its definition of coordinated expenditures, such that an expenditure is not deemed coordinated with a campaign if the speaker has obtained relevant information from a public source or the candidate provided that information to the general public. That regulation exists only because of litigation and administrative disputes, in Philadelphia and in state and federal courts, which have made clear core protections for political speech.

The new proposal seeks to significantly circumscribe this basic exception that recognizes the marketplace of ideas. The staff proposal adopts as a basic, amorphous intent standard that determines that “Information is not provided to the general public if the circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.”

Respectfully, sussing out what the Board’s enforcement staff, and eventually the Board, will deem suspicious “circumstances” is an impossible task. Towards that end, the proposed regulation proposes examples that take simple arguments and quickly presume intent.

For example, Example 3 provided in the proposed regulation: “Candidate A’s communications director tweets that ‘Philadelphia voters need to hear that Candidate A’s decades of experience in both the private and public sector is a strength that Candidate A’s opponent lacks.’”

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<sup>1</sup> Each of us is writing in our individual capacities, and not on behalf of any client, firm, or other entity.

According to the example, without more this is already sufficient to deem an outside PAC's radio advertisement on the topic to be a coordinated expenditure even in the absence of evidence that anyone from the outside PAC ever saw the tweet, let alone a showing from that PAC that it had conducted its own research and determined that this was a message which would help Candidate A be elected. It is not clear if this is a magic words test requiring explicit language akin to "Philadelphia voters need to hear" or if it deems as coordination *any* speech which resonates and repeats a campaign's themes and messaging.

Furthermore, the presence or absence of "magic words" like "Philadelphia voters need to hear" cannot or should not be the primary determining factor. After all, if a campaign relentlessly beats a drum on a particular issue – such as the John Fetterman for U.S. Senate campaign's current hammering at his opponent on residency/carpetbagger issues – that means that it's something they believe that voters need to know *regardless of whether they use such language in framing their communications*. Indeed, anything said online by a candidate, staff, or campaign consultants regarding a race is something which they evidently believe voters need to hear

However, if any outside committee, individual, or group chose to promote the same message suddenly the campaign could be faced with hefty penalties, including having to disgorge the full expense of a communication it never solicited, based on a staffer's tweet which the outside PAC may never have seen – in the event that the Board believed that "circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign."

The ambiguity alone will chill speech. That's unacceptable. And it will prove particularly burdensome and chilling for those smaller campaigns, particular grassroots candidates for City Council At-Large, for whom social media the only method they can afford to reach mass audiences, and who cannot afford to consult with private counsel or wait for an Ethics advisory opinion to vet every potential Facebook posting or tweet. Because what is a campaign to do if some outside PAC happens to echo the same criticisms of an opponent which the campaign has stated or plans to state?

The massive potential liability puts campaigns in an impossible position. If every tweet or Facebook post expressing what the campaign believes is important can be construed as a signal to outside PACs as to which messages to amplify, then as counsel it's hard for us to advise them meaningfully. And the idiosyncrasies of enforcement decisions will be amplified.

There needs to be some strict limiting principles with conclusive standards in place –clear guidelines as to which communications *do* raise a fair inference that improper "coordination in plain sight" is being attempted. The Board should only act to chill speech that is definitely proven to be coordinated, not speech that might be inferred to be coordinated.

If a regulation to this end is to be pursued, and we believe it should not be, to avoid the certainty of Constitutional infirmity, we would suggest a few bright lines:

- Is the communication occurring in a public setting (permissible), or only via private links or networks made available to a select few (impermissible and potentially to be circumscribed)?

- Does the communication indicate in meaningful detail particular media which should be used by others to convey a particular message (potentially circumscribable) or is it merely a statement of principles or audiences (permissible)?

Most critically, the issue should be **expressly**: does the speech potentially convey something other than improper coordination, if so it should not, and cannot, be restricted by this Board.

A candidate who talks about student loan obligations and how the City should attack them and recognizes the obvious impact on young voters is fundamentally different than someone saying that “How Opposing Candidate X Voted on Bill Y Would Be of Interest to Voters Who Watch Wheel of Fortune.” Before even alleging coordination, we would urge the Board to require clear and express coordination cues evident of an overt intent to circumvent.

If any inference is to be drawn at all, and again, we stress this is very perilous ground, at a minimum, the regulation should require express, complex, and specific language with no possible other alternative purpose. For example, if anything would pass regulatory muster, it would be to restrict speech like “Pro-choice women voters of all ages, pro-choice voters who are less likely to vote, pro-choice non-college educated women, and pro-choice college educated voters should receive mail and see digital ads about [list of topics] featuring images of [specific targeting].”

*Every* communication, even *every tweet*, conveys information which the speaker believes *some* voters need to know and. The Board – if it wants to change its approach at all to get into regulating political speech – should carefully and clearly focus on those communications which expressly tell potential supporters how and to whom it should be repeated to others, and which are not expressed truly publicly in the first place.

Finally, if the City wishes to focus on such explicit direction for future communications provided to potential outside spenders, the boundaries and scope will influence the 2023 elections in uncertainty and future elections in more certain ways after the inevitable litigation. This proposal represents a new and fundamentally different policy choice being made by this Board, and one not being driven by direction from Council to act. A massive rewriting of Philadelphia’s rules, and the inevitable civil damages which will arise from the federal litigation to follow, are policy choices which should be made through the Council legislative process, as was done in 2005, and not via this Board’s *sua sponte* decision to impact an election which has already begun.

Sincerely,

Adam C. Bonin  
Charles Gibbs  
Kevin Greenberg  
Steve Masters  
Marni Jo Snyder

August 17, 2022

Michael H. Reed, Esq.  
Chair  
Philadelphia Board of Ethics  
One Parkway Building  
1515 Arch Street, 18th Floor  
Philadelphia, PA 19102

Dear Mr. Reed:

Regulation No.1 raises serious free speech concerns in its proposed treatment of publicly available information in defining coordinated expenditures. The measure, if adopted, would likely be unconstitutional and would lead to self-censorship.

The proposed change in Subpart I (on pp. 20-21) would provide as follows:

An expenditure is coordinated with a candidate's campaign if it is made in cooperation, consultation or concert with the candidate's campaign, including the following...

f. The person making the expenditure uses information obtained from the campaign, unless the campaign provided that information to the general public.

Information is not provided to the general public if the circumstances indicate that the campaign has made the information available so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.

To avoid infringing on the First Amendment to the U.S. Constitution, the Board of Ethics should delete the second paragraph of Subpart I(f). This would make the proposed rule consistent with the federal exception for publicly available information in defining coordinated communications.<sup>1</sup>

In 2003, the year that the revised federal coordinated communications regulation took effect, the Federal Election Commission (FEC) provided a detailed explanation of how to interpret its rule.<sup>2</sup> In its Explanation and Justification, the FEC noted that the provision defining requests or suggestions as coordinated communications "is intended to cover

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<sup>1</sup> 11 C.F.R. §109.21.

<sup>2</sup> Coordinated and Independent Expenditures, 68 Fed. Reg. 421 (Jan. 3, 2003).

requests or suggestions made to a select audience, but not those offered to the public generally.”<sup>3</sup> It went on to state that “a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard...but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard.”<sup>4</sup>

When the FEC recently dismissed the complaint filed against VoteVets (Matter Under Review 7700), the bipartisan Statement of Reasons explained the rationale for dismissal. There, “the complaint alleged that” Pete Buttigieg’s presidential election committee “requested or suggested that VoteVets create and air pro-Buttigieg television advertisements” after a senior official for the committee tweeted, “Pete’s military experience and closing message from Iowa work everywhere especially in Nevada where it’s critical they see this on the air through the caucus.”<sup>5</sup> The complaint claimed that this communication was coordinated and VoteVets “responded to the tweet by spending \$639,0000 to produce and air television advertisements, which it reported as independent expenditures.”<sup>6</sup>

The FEC noted that the tweet was ambiguous, as “it could have been a generalized call for independent Buttigieg supporters to get off the sidelines and full-throatedly support the candidate ahead of the Nevada caucuses.”<sup>7</sup> The FEC continued, “It could also be interpreted as a statement forecasting the Committee’s intentions for its own advertising in Nevada, rather than a request for someone else’s spending.”<sup>8</sup>

Additionally, VoteVets already paid for communications “highlight[ing] Buttigieg’s military service.”<sup>9</sup> After the tweet, VoteVets aired another advertisement “prais[ing] Buttigieg’s military service.”<sup>10</sup> The complaint interpreted this history to show that VoteVets was “the only super PAC...that could reasonably be expected to follow through on the request or suggestion,” indicating coordination.<sup>11</sup>

The FEC found that the consistent advertising supported VoteVet’s autonomy. Additionally, the fact that a *Politico* article from the same day as the tweet quoted Buttigieg’s committee spokesperson stating, “[Buttigieg] is the only candidate who isn’t a millionaire or billionaire. And if the largest progressive veterans group wants to help spread the word about his service, we welcome it,” did not add a coordination inference.<sup>12</sup>

More importantly, the Supreme Court’s ruling in *Federal Election Commission v. Ted Cruz for Senate* is instructive. There, the Court stated that “the First Amendment requires

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<sup>3</sup> *Id.* at 432

<sup>4</sup> *Id.*

<sup>5</sup> [FEC MUR 7700, at 3 \(2022\)](#).

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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



us to err on the side of protecting political speech rather than suppressing it.”<sup>13</sup> The Court also noted, “The First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office.... This broad protection, we have explained, reflects our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”<sup>14</sup>

The second paragraph of Subpart I(f) cannot withstand judicial scrutiny. In the Supreme Court’s words:

This Court has recognized only one permissible ground for restricting political speech: the prevention of “quid pro quo” corruption or its appearance. See *id.*, at 207; see also *Federal Election Comm’n v. National Conservative Political Action Comm.*, 470 U. S. 480, 497 (1985). We have consistently rejected attempts to restrict campaign speech based on other legislative aims. For example, we have denied attempts to ... limit the general influence a contributor may have over an elected official, see *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 359–360 (2010). However well intentioned such proposals may be, the First Amendment—as this Court has repeatedly emphasized—prohibits such attempts to tamper with the “right of citizens to choose who shall govern them.” *McCutcheon*, 572 U. S., at 227; see also *Davis*, 554 U. S., at 742; *Bennett*, 564 U. S., at 750.<sup>15</sup>

In the opinion, the Supreme Court also notes that conclusive evidence is required:

Because the Government is defending a restriction on speech as necessary to prevent an anticipated harm, it must do more than simply posit the existence of the disease sought to be cured. It must instead point to record evidence or legislative findings demonstrating the need to address a special problem. We have never accepted mere conjecture as adequate to carry a First Amendment burden.<sup>16</sup>

The Board presents no such evidence that would justify this proposed regulation. It fails to offer proof of quid pro quo corruption or its appearance where a candidate releases information to the public and a group later makes independent expenditures. Without the connection between expenditures and an exchange by the candidate, none of the dangers that contribution laws aim to alleviate are present.<sup>17</sup>

It is implausible that publicly available information could be used to effectuate a quid pro quo exchange. If the information is readily available to everyone, it is not, as the FEC noted, “a request to a select audience” to provide the necessary quid, much less the quo.

Indeed, such public information could just as easily be used by supporters of another candidate. Example 2 of the proposed regulation states that Candidate A “says that voters in South Philadelphia need to know the information contained in the red box.” Yet

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<sup>13</sup> *FEC v. Cruz*, slip op., at 16 quoting, *McCutcheon v. FEC*, 572 U.S. 185, 209 (2014).

<sup>14</sup> *Id.* at 12–13.

<sup>15</sup> *Id.* at 13–14.

<sup>16</sup> *Id.* at 15 (citations and internal quotation marks omitted).

<sup>17</sup> See *Citizens United v. SEC*, 558 U.S. 310 (2011); *McConnell v. FEC*, 540 U.S. 93 (2003).

supporters of Candidate B could use the same information to design communications to undermine the message explained in the red box. To allow supporters of Candidate B to use the information to design communications while prohibiting supporters of Candidate A from doing the same thing unless it bears the additional burdens of the proposed coordination regulation resembles textbook viewpoint discrimination.

Worse, the plain text of the proposed regulation would appear to apply to any publicly available information, such as news articles or blog posts on the candidate's strategy that quote the candidate or campaign officials.

The media and blogs routinely report on this subject. Of course, these news sources are not clairvoyant. Presumably, they reported on the candidate's needs through interviews of the candidate or campaign agents or review of public statements. Thus, any independent speaker who is informed by these publicly available reports would – in the language of the proposal – have received information “so that another person may use that information to make expenditures supporting the campaign in a manner suggested by the campaign.”

Any such public information would appear to create at least a danger of a presumption that the expenditure is coordinated. Given the sheer breadth of the proposed rule, independent speakers would have to hermetically isolate themselves from the rest of the world lest their speech be considered “coordinated” with a candidate. They could not use the internet, read social media, a newspaper or a blog, listen to the radio, or talk to anyone who may have done so. And even then, they might have to prove a negative.

Surely, an independent expenditure cannot be coordinated simply because it is informed by a candidate's desire to see voters given certain information. In short, the proposal is wildly unrealistic.

The U.S. Supreme Court has held clearly that independent political speech must be protected<sup>18</sup>, and municipalities are not free to disregard the Court's holding<sup>19</sup>, no matter how difficult it may be to grapple with the challenge of limiting quid pro quo corruption or its appearance.

The language of Subpart I(f)'s second paragraph is too broad, too vague, and contrary to Supreme Court rulings. It should be removed from the final version of the proposed regulation.

Respectfully submitted,

David Keating  
President

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<sup>18</sup> See, e.g., *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

<sup>19</sup> See *Amer. Tradition Partnership v. Bullock*, 132 S. Ct. 2490 (2012).



**Board of Ethics Staff  
Suggested Modifications to  
Proposed Regulation No. 1  
Amendments**  
(Campaign Finance)

## Subpart A: Scope; Definitions

As posted

### 1.1

- d. **Candidate's Campaign Campaign**. A candidate, the candidate's candidate political committee (or litigation fund committee), or an officer or an agent of any of the foregoing.
- r. **Person**. An individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit-organization.

## Subpart A: Scope; Definitions

### Issue

Recommend that catch-all definitions like **Campaign** and **Person** use the signal "Includes..."

## Subpart A: Scope; Definitions

# Suggested modification

## 1.1

- d. ~~Candidate's campaign~~ **Campaign.** Includes any of the following: A candidate, the candidate's candidate political committee ~~(or litigation fund committee)~~ and its officers, ~~or an officer or an agent of any of the foregoing~~ and agents of any of them.
- r. **Person.** ~~An~~ Any individual, ~~a~~ political committee, ~~a~~ corporation, ~~a~~ partnership, ~~a~~ sole proprietorship, or ~~any~~ other for-profit or not-for-profit-organization.

## Subpart A: Scope; Definitions

### Suggested modification (clean)

#### 1.1

- d. **Campaign.** Includes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them.
- r. **Person.** Any individual, political committee, corporation, partnership, sole proprietorship, or other for-profit or not-for-profit-organization.

## Subpart B: Contribution Limits

As posted

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



## **Subpart B: Contribution Limits**

### **Issue**

Confirm that the defined terms “Person” and Campaign” are in sync when used in Paragraph 1.9, specifically in the phrase “A person, other than a campaign....”

## Subpart B: Contribution Limits

### Suggested modification

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

## Subpart B: Contribution Limits

### Suggested modification

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

candidate → candidate's campaign

## Subpart B: Contribution Limits

### Suggested modification

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

## Subpart B: Contribution Limits

### Suggested modification (clean)

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

## Subpart B: Contribution Limits

### As posted **1.10(h)**

Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign pays its fair portion of the costs within 14 days and obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

## **Subpart B: Contribution Limits**

### **Issue**

Clarify that campaigns must pay their fair portion of joint costs within 14 days “of each other.”

## Subpart B: Contribution Limits

### Suggested modification 1.10(h)

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

- i. pays its fair portion of the costs;
- ii. makes payment no later than 14 days after any other campaign; and
- iii. obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

FORMATTING



## Subpart B: Contribution Limits

### Suggested modification (clean)

#### 1.10(h)

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

- i. pays its fair portion of the costs;
- ii. makes payment no later than 14 days after any other campaign; and
- iii. obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.

## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

As posted

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

## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

## **Issue**

Subpart F title should match the language updates made elsewhere in Regulation 1 for consistency.

## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

Suggested modification

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

## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

Suggested modification (clean)

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

## Subpart F:

### Use Of Political Committees and Checking Accounts by Candidates

As posted

## 1.23(d)

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

An expenditure is made through another person if:

- i. The campaign provides the money to cover the specific expenditure;
- ii. The campaign selects the recipient of the expenditure; or
- iii. The campaign approves the expenditure or directs that it be made.

## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

## **Issue**

Prefer language to read “Except as specifically permitted by this Subpart” instead of “Unless specifically permitted by this Subpart....”

## Subpart F:

### Use Of Political Committees and Checking Accounts by Candidates

# Suggested modification

## 1.23(d)

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

An expenditure is made through another person if:

- i. The campaign provides the money to cover the specific expenditure;
- ii. The campaign selects the recipient of the expenditure; or
- iii. The campaign approves the expenditure or directs that it be made.



## **Subpart F:**

### **Use Of Political Committees and Checking Accounts by Candidates**

## **Suggested modification (clean)**

### **1.23(d)**

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

An expenditure is made through another person if:

- i. The campaign provides the money to cover the specific expenditure;
- ii. The campaign selects the recipient of the expenditure; or
- iii. The campaign approves the expenditure or directs that it be made.

# Exhibit 2

**Exhibit 2**  
**Final version of regulation as approved by Board on September 21, 2022**

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

**Table of Contents**

Subpart A.	Scope; Definitions.....	pg. 2
Subpart B.	Contribution Limits.....	pg. 5
Subpart C.	Date of Acceptance of Contributions with Respect to the Contribution Limits.....	pg. 9
Subpart D.	Attributing Contributions Made by Check for the Purpose of the Contribution Limits.....	pg. 9
Subpart E.	Campaign Finance Disclosures.....	pg. 10
Subpart F.	Use of Political Committees and Checking Accounts by Candidates .....	pg. 12
Subpart G.	Litigation Fund Committees .....	pg. 15
Subpart H.	Transition and Inauguration Committees .....	pg. 17
Subpart I.	Coordinated Expenditures.....	pg. 18
Subpart J.	Excess Pre-Candidacy Contributions.....	pg. 21
Subpart K.	Retiring Debt.....	pg. 23
Subpart L.	Penalties .....	pg. 24

## **SUBPART A. SCOPE; DEFINITIONS**

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

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

- a. **Accounting period.** The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before they became a candidate.
- b. **Agent.** An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.
- c. **Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- d. **Campaign.** Includes any of the following: A candidate, the candidate's candidate political committee and its officers, and agents of any of them.
- e. **Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- f. **Candidate political committee.** The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.
- g. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- h. **Contribution.**
  - i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;
  - ii. An in-kind contribution, as defined at Paragraph 1.1(p); or
  - iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- i. **Contributor.** A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.
- j. **Covered election.** Any primary, general or special election for City elective office.
- k. **Electioneering communication.** Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or

- opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.
- l. **Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.
  - m. **Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:
    - i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;
    - ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a campaign;
    - iii. For an independent expenditure;
    - iv. For an electioneering communication; or
    - v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
  - n. **Former candidate.** An individual who was a candidate for City elective office becomes a former candidate:
    - i. On the day after a general election, if the individual was unopposed in that election;
    - ii. On the day after a primary election, if the individual concedes that election;
    - iii. When the individual's opponent concedes, if the individual was opposed in a general election; or
    - iv. If an election is contested, when that contest is resolved.
  - o. **Independent expenditure.** An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any campaign and that is not made in concert with or at the request or suggestion of any campaign.
  - p. **In-kind contribution.**
    - i. The provision of any goods or services directly to a campaign without charge or at a charge that is less than the usual and normal charge for such goods or services;
    - ii. The payment or agreement to pay a third party to provide goods or services to a campaign, if the goods and services are in fact provided; or

- iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, as provided in Subpart I.

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

- q. **Litigation fund committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of that candidate's campaign or participation in an election, as described in Subpart G.
- r. **Person.** Any individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit-organization.
- s. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political committee 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. **Pre-candidacy contribution.** A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.
- u. **Pre-payment.** A payment made during the accounting period for any thing used or to be used by a campaign, including but not limited to: printed or produced campaign materials, such as sample ballots, shirts, signs, flyers, brochures, websites, photographs, audio or video recordings; advertising time or space; office space; or services or labor.
- v. **Sample ballot.** A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.
- w. **SPEC account.** A segregated pre-candidacy excess contribution account, as described in Subpart J.
- x. **Transition and Inauguration Committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs incurred by the candidate for the candidate's transition or inauguration into City elective office, as described in Subpart H.
- y. **Vendor.** A person, other than a political committee, that provides services to a campaign.

## **SUBPART B. CONTRIBUTION LIMITS**

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

- a. A campaign shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-

election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.2:** On November 1, 2021, prior to the election, Jane Doe donates \$2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional \$1,100 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to \$3,100 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.
- c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.

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

- a. A campaign shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's campaign if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.3:** On November 1, 2021, prior to the election, Political Committee XYZ donates \$10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional \$2,600 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to \$12,600 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a campaign, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.
- c. A transition and inauguration committee, established as described in Subpart H by a campaign, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of organization, including contributions made through one or more political committees or other persons.

- d. To qualify for the \$12,600 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

#### **1.4 Contributions made through other persons.**

- a. For the purposes of this Subpart, a contribution is made through another person, such as a political committee, when:
  - i. A person makes a donation to another person, such as a political committee, and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient use all or part of the money to make a contribution to support a specific candidate.

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

- ii. A person has provided the majority of the donations received by a political committee or other person, whether directly or indirectly, in the twelve months prior to the recipient's contribution to support a candidate, unless the recipient can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the donor was not used to make the contribution to the campaign.
- b. For the purpose of the contribution limits, the entire amount of a contribution made through another person counts towards the contribution limits for both the original donor and the person through whom the contribution is made.

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

Joe Big and Big PAC have each made a contribution of \$5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by \$1,900 and therefore violates the City's Campaign Finance Law.

#### **1.5 Doubling of Contribution Limits.**

- a. If a candidate contributes \$250,000 or more of their personal resources to their own campaign since the more recent of (i) the most recent election cycle for the office sought by the candidate, or (ii) the last municipal election in which the candidate sought office, the contribution limits for all campaigns for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).
- b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b)&(c) and 1.3(b)&(c)) do not double if a candidate contributes \$250,000 or more to their own campaign.
- c. A contribution that exceeds the contribution limits at the time it is accepted by a campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.



- d. If a campaign returns, repays, or refunds to its candidate any money the candidate had contributed from the candidate's personal resources prior to reaching the \$250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions triggered the doubling ceases to be a candidate; or
  - ii. After the limits have doubled, a campaign returns, repays, or refunds a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes \$250,000 or more of their personal resources to their own campaign, within two business days, that candidate shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

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

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

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

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

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

- a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee.
- b. Contributions from a candidate's candidate political committee to that candidate's litigation fund committee or transition and inauguration committee.
- c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) when a campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.
- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.24(h).

- e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication.
- f. Incidental expenditures made by persons other than campaigns that are related to Internet activity (such as the cost of hardware, software, or Internet access) that advocates or influences the election of a candidate.
- g. Volunteer labor provided to a candidate or a political committee.
  - i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:
    - (1) Legal or accounting work;
    - (2) Entertainment such as a performance by a musical group or DJ; and
    - (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.
  - ii. Volunteer labor does not include the donation to a candidate of:
    - (1) Equipment, such as computers, copiers, or printers;
    - (2) Resources, such as postage; or
    - (3) Materials, such as stationery or campaign literature.
  - iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.
- h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign:
  - i. Pays its fair portion of the costs;
  - ii. Makes payment no later than 14 days after any other campaign; and
  - iii. Obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.
- i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

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

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

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

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

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

**1.14 In-kind contributions.**

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

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

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

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

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

**SUBPART E. CAMPAIGN FINANCE DISCLOSURES**

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

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

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

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

**1.20 Political committees and other persons.**

- a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:
  - i. Expenditures made or debt incurred to influence the outcome of a covered election;
  - ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;
  - iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or
  - iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

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

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

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

- i. on the sixth Tuesday before a covered election;

- ii. on the fourth Tuesday before a covered election;
  - iii. on the second Friday before a covered election;
  - iv. on the Tuesday immediately before a covered election;
  - v. on the Friday immediately before a covered election; and
  - vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.
- d. In a report filed pursuant to Paragraph 1.20(c), if a person, other than a political committee or an individual, has segregated funds used to make expenditures into one or more accounts separate from funds not used to make expenditures, that person is only required to disclose the source of contributions deposited in the segregated accounts used to make expenditures.

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

#### **1.21 Content of campaign finance reports and statements.**

- a. A campaign finance report filed with the Board shall disclose all contributions and other receipts received, each expenditure made, any debt incurred during the relevant reporting period, and the cash balance at the beginning and end of the reporting period.
- i. For each contribution of more than \$50, the report shall disclose the date and amount of the contribution and the contributor's name and address.  
  
For each contribution of more than \$250, the report shall disclose the date and amount of the contribution, the contributor's name and address, and, in the case of contributions from individuals, the contributor's occupation, employer, and employer's address.
  - ii. For each receipt other than a contribution (such as interest income, returned checks, or refunds), the report shall disclose the name and address of the source of the funds and a description of the receipt.
  - iii. For each expenditure, the report shall disclose the date, amount, and recipient of the expenditure, and the recipient's address and the purpose of the expenditure.  
  
If the filer has used a credit or charge card to make expenditures, the filer shall disclose and itemize each purchase made with such a card, not merely a lump sum payment.
  - iv. For each unpaid debt, the report shall disclose the name and address of the creditor, the amount of debt owed, and the date the debt was incurred, as well as a description of the debt.

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

- b. If, during a reporting period, a filer has accepted contributions, made expenditures, or incurred debt of less than \$250, the filer may file a statement attesting to that fact in lieu of a full report. The statement shall set forth the filer's starting and ending balance for the reporting period.
- c. If a campaign makes a payment to a person other than a political committee, whether directly by the campaign or through another person, to have the name of the campaign's candidate placed on a sample ballot or to conduct or organize get-out-the-vote activities, the campaign shall disclose not just that person to whom it made payment but also any persons whom that person pays or employs in order to provide the services promised.

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

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

### **1.23 One committee and one checking account.**

- a. A campaign shall use no more than one political committee and one checking account for the City elective office the campaign is seeking, into which all contributions for that office shall be deposited and from which all expenditures for that office shall be made, including expenditures to retire debt incurred to influence the outcome of a covered election.
- b. If a campaign has or controls other political or non-political accounts, such accounts shall not be used for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election.
- c. A campaign may be found to control a political committee or an account if:
  - i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;
  - ii. The candidate or an agent of the campaign established or registered the political committee or account; or
  - iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.

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

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

An expenditure is made through another person if:

- i. The campaign provides the money to cover the specific expenditure;
- ii. The campaign selects the recipient of the expenditure; or
- iii. The campaign approves the expenditure or directs that it be made.

**1.24 Permissible uses of other committees or accounts.**

**a. Payment service providers.**

- i. A campaign may use a payment service provider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the campaign's political committee checking account.
- ii. A campaign may use a payment service provider to make expenditures so long as any funds used for such expenditures are drawn directly from the campaign's political committee checking account.

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

- i. The savings account is at the same bank as the checking account;
- ii. The campaign deposits all contributions into the checking account before transferring such funds to the savings account;
- iii. The campaign does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and
- iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that the candidate has established a savings account.

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

- i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;
- ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;
- iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and
- iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

**d.** A campaign may make expenditures for advertising through a vendor if that vendor directly pays the media outlet in or on which such advertising shall appear. For such expenditures, a campaign shall obtain and maintain receipts and

documentation of where and when the relevant advertising ran, which shall be made available to the Board upon request.

- e. If, in the course of providing services to a campaign, a vendor incurs costs incidental to the provision of those services, an expenditure by the campaign to reimburse the vendor for those costs shall be permissible under this Subpart so long as the costs are promptly invoiced and the reimbursement is promptly made. For such reimbursements, a campaign shall obtain and maintain appropriate receipts and documentation, which shall be made available to the Board upon request.
- f. A candidate may maintain and use a litigation fund committee established pursuant to Subpart G or a transition and inauguration committee established pursuant to Subpart H.
- g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:
  - i. That political committee or other person offers similar services to other campaigns;
  - ii. The amount charged is commensurate with the services provided; and
  - iii. The candidate does not exercise control over the political committee or other person.
- h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.
- i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

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

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

- a. A candidate who has a candidate political committee when becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:
  - i. The committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the committee's checking account is established; and



- iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.
- b. If a candidate does not have a candidate political committee when becoming a candidate, that candidate shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with the candidate's street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after becoming a candidate, that candidate shall provide the information required by this Paragraph within three business days of the formation of the committee.
- d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at [phila.gov/departments/board-of-ethics/campaign-finance/](http://phila.gov/departments/board-of-ethics/campaign-finance/) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

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

### **1.27 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a campaign or former candidate for City elective office may establish a litigation fund committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.27(c).
- b. The name of a litigation fund committee shall include the term "Litigation Fund." The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.
- c. A campaign or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the campaign's or former candidate's campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- d. A campaign or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.
- e. A campaign or former candidate may make expenditures from a candidate political committee for the purposes described in Paragraph 1.27(c).
- f. A campaign or former candidate shall not transfer funds to a candidate political committee from a litigation fund committee.

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

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

- i. The litigation fund committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the litigation fund committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.
- b. If the information required by this Paragraph changes, the campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at [phila.gov/departments/board-of-ethics/campaign-finance/](http://phila.gov/departments/board-of-ethics/campaign-finance/) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

#### **1.29 Termination of a litigation fund committee.**

- a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the campaign or former candidate sought, except as provided in Paragraph 1.36(c) 1.29(c).
- b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.
- c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a "last in, first out" accounting basis;
  - ii. On a "first in, first out" accounting basis;
  - iii. On a pro-rata accounting basis; or
  - iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a campaign, former candidate, or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.
- d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

### **SUBPART H. TRANSITION AND INAUGURATION COMMITTEES**

#### **1.30 Transition and inauguration committee requirements.**

- a. In addition to a candidate political committee, a candidate or individual elected to City office may establish a transition and inauguration committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph 1.30(c).

- b. The name of a transition and inauguration committee shall include the terms “Transition” and “Inauguration.” The committee shall have a treasurer who shall be responsible for keeping records of the committee’s transactions.
- c. A candidate or individual elected to City office shall make expenditures from a transition and inauguration committee solely to pay costs incurred for the transition and inauguration into City elective office of the candidate.
- d. A candidate or individual elected to City office may make expenditures from a candidate political committee for the purposes described in Paragraph 1.30(c).
- e. A candidate or individual elected to City office shall not transfer funds to a candidate political committee from a transition and inauguration committee.

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

- a. Within three business days of the formation of a transition and inauguration committee, a candidate or individual elected to City office shall notify the Board of the following information:
  - i. The transition and inauguration committee’s name and street address (other than a P.O. box);
  - ii. The name of the bank where the transition and inauguration committee’s checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.
- b. If the information required by this Paragraph changes, the candidate or individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board’s website at [phila.gov/departments/board-of-ethics/campaign-finance/](http://phila.gov/departments/board-of-ethics/campaign-finance/) and shall be sent to the attention of the Board’s Executive Director by postal mail or email.

**1.32 Termination of a transition and inauguration committee.**

- a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.
- b. Before a transition and inauguration committee is terminated, the transition and inauguration committee’s checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a “last in, first out” accounting basis;
  - ii. On a “first in, first out” accounting basis;
  - iii. On a pro-rata accounting basis; or
  - iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail

or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

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

## **SUBPART I. COORDINATED EXPENDITURES**

**1.33** An expenditure is coordinated with a campaign if it is made in cooperation, consultation or concert with the campaign, including the following:

- a. The expenditure is made at the request or suggestion of the campaign;
- b. A person suggests making an expenditure and the campaign assents to the suggestion;
- c. The person making the expenditure communicates with the campaign concerning the expenditure before making the expenditure;
- d. The campaign has solicited funds for or directed funds to the person making the expenditure, but only if the solicitation occurred within the 12 months before the election that the expenditure seeks to influence; or
- e. The campaign directs, places, or arranges the expenditure; or
- f. The person making the expenditure uses information obtained from the campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the campaign made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.34.

**Example for 1.33(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's campaign and spends \$12,600 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The \$12,600 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$12,600 in-kind contribution to Candidate A's campaign.

- g. The person making the expenditures does so based on instructions received from the campaign. A public communication by a campaign will constitute such instructions only if:
  - i. The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and

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

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

**Example 1 for 1.33(g):** Candidate A’s campaign website includes a page with text in a red box that says “Voters in South Philadelphia need to hear that Candidate A supports dog parks.” Without any other input from the campaign, Philadelphians for Philadelphia PAC pays \$25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks.

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

**Example 2 for 1.33(g):** Candidate A’s communications director tweets that “Center City voters need to see on the go that Candidate A will keep our streets clean.” Without any other input from Candidate A’s campaign, Philadelphians for Philadelphia PAC spends \$200,000 to send online advertisements to mobile devices in Center City with the message “Candidate A will keep our streets clean.”

The \$200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A’s campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the \$200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A’s campaign.

**Example 3 for 1.33(g):** Philadelphians for Philadelphia PAC spends \$15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A’s campaign updates its website with the message, “Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!” After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying “Only I can kill every spotted lantern fly!” The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A’s campaign updated its website with the statement about the lantern flies.

The \$15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A’s campaign posted on its website.

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

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

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

- c. Shall not be considered an in-kind contribution if:
  - i. The communication or material is incorporated into a communication that advocates the defeat of the campaign that prepared the material;
  - ii. The item republished is a photograph or video obtained from a public source that is not controlled by the campaign; or
  - iii. The person's expenditures for republication of a campaign's communications or materials are less than \$100 in the aggregate per reporting period.

**Example for 1.34 (a) and (b):** Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends \$100,000 to run the advertisement on three television stations during the week before election day.

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

**1.35** 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 use the same vendor, attorney, or accountant;
- d. The person making the expenditure has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or
- e. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

## SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS

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

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

**Example for 1.36:** On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. The accounting period for Candidate A is January 1, 2018 through November 30, 2020. The last Controller election was held in 2017 so January 1, 2018 would be the first day of the year following that election.

### **1.37 Prohibited Expenditures.**

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

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

- a. Except as provided in Paragraph 1.39, within ten days after an individual becomes a candidate, their campaign shall exclude all excess pre-candidacy contributions from its candidate political committee's checking account by one of the following methods:
  - i. Transferring excess pre-candidacy contributions to a segregated account; or
  - ii. Returning excess pre-candidacy contributions to their contributors.
- b. **Calculation of amount to be excluded.** A campaign shall determine the amount to be excluded by using one of the following methods:
  - i. **Dollar for dollar calculation.** A campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

**Example for 1.38:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Mr. B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 (\$400 excess from Mr. B + \$400 excess from Ms. C) from its checking account.

- ii. **Accounting-based calculation.** A campaign need not exclude any excess pre-candidacy contributions that the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent pre-candidacy, provided that:
  - (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and
  - (2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.
- c. If the amount that the campaign shall exclude from the candidate political committee's checking account exceeds the amount of cash the committee has on hand, the campaign shall use incoming contributions to cover the amount that shall be excluded.

**1.39 Pre-candidacy segregation.** A campaign need not exclude any excess pre-candidacy contributions that, upon receipt, the campaign had transferred to a segregated pre-candidacy excess contribution account ("SPEC account"), provided that, if the campaign used any funds in a SPEC account for pre-payments, the campaign shall exclude from the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph 1.38.

**Example 1 for 1.39:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controllor primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.

**Example 2 for 1.39:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends \$800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controllor primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 from its checking account. While Candidate A segregated the \$800 in excess contributions received from Person B and Person C, she spent \$800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.



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

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

#### **SUBPART K. RETIRING DEBT**

**1.42** Except as provided in Paragraph 1.43, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor and is subject to the contribution limits set forth in Subpart B.

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

- a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;
- b. The debt has been outstanding for at least 24 months;
- c. The candidate political committee does not have sufficient cash on hand to pay the creditor;
- d. Forgiveness of the debt is not prohibited by any other relevant law; and
- e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt. The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

#### **SUBPART L. PENALTIES**

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

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

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

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

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

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

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

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

**1.50 Excess pre-candidacy and candidacy contributions.**

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

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

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

**1.53 Increase or decrease of civil monetary penalty.** A penalty imposed pursuant to Paragraph 1.48, 1.49, 1.50, 1.51, or 1.52 shall be increased or decreased as follows:

- a. Mitigating factors. The civil monetary penalty of \$1,000 shall be reduced by \$500 if one of the following mitigating factors is present and shall be reduced by \$750 if more than one of the following mitigating factors are present:
  - i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
  - ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
  - iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.
- b. Aggravating factors. The civil monetary penalty of \$1,000 shall be increased by \$1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed \$2,000:
  - i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
  - ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
  - iv. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006

Effective January 17, 2007

Amendment approved by Board August 21, 2007

Effective September 21, 2007

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

Public hearing held September 8, 2010

Adopted by Board with modifications September 15, 2010

Effective September 27, 2010

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

Public hearing held June 15, 2011

Adopted by Board July 20, 2011

Effective August 11, 2011

Proposed amendments approved for public comment by Board on January 18, 2012 to reflect the City Finance Director's certification of January 2012 adjustments to the maximum annual contribution limits.  
Effective March 2, 2012

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

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

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

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

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

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

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

# Exhibit 3

**Exhibit 3**  
**All changes made by regulatory process begun on July 22, 2022**

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

**Table of Contents**

Subpart A.	Scope; Definitions.....	pg. 2
Subpart B.	Contribution Limits.....	pg. 5
Subpart C.	Date of Acceptance of Contributions with Respect to the Contribution Limits.....	pg. <del>89</del>
Subpart D.	Attributing Contributions Made by Check for the Purpose of the Contribution Limits.....	pg. 9
Subpart E.	Campaign Finance Disclosures.....	pg. <del>910</del>
Subpart F.	Use of Political Committees and Checking Accounts by Candidates .....	pg. <del>412</del>
Subpart G.	Litigation Fund Committees .....	pg. <del>415</del>
Subpart H.	Transition and Inauguration Committees .....	pg. <del>417</del>
Subpart I.	Coordinated Expenditures.....	pg. <del>4718</del>
Subpart J.	Excess Pre-Candidacy Contributions.....	pg. <del>4921</del>
Subpart K.	Retiring Debt.....	pg. <del>2423</del>
Subpart L.	Penalties .....	pg. <del>2224</del>

## SUBPART A. SCOPE; DEFINITIONS

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

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

- a. **Accounting period.** The period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00 p.m. of the day before ~~he or she~~ they became a candidate.
- b. **Agent.** An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.
- c. **Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.
- d. ~~Candidate's campaign~~ **Campaign.** Includes any of the following: A candidate, the candidate's candidate political committee ~~(or litigation fund committee), or an officer or an agent of any of the foregoing~~ and its officers, and agents of any of them.
- e. **Candidate.** An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.
- f. **Candidate political committee.** The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.
- g. **City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.
- h. **Contribution.**
  - i. Any money, gifts, loans, forgiveness of debts, or things having a monetary value incurred or received by either a ~~candidate's~~ campaign for use in advocating or influencing the election of the candidate or by a former candidate to retire debt incurred to influence a covered election or to pay costs related to transition or inauguration to City elective office;
  - ii. An in-kind contribution, as defined at Paragraph 1.1(p); or
  - iii. Any money, gifts, forgiveness of debts, or loans incurred or received to pay fees and costs incurred in any civil, criminal, or administrative proceeding arising directly out of the conduct of ~~the candidate's~~ a campaign or with respect to a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- i. **Contributor.** A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.
- j. **Covered election.** Any primary, general or special election for City elective office.

- k. **Electioneering communication.** Any publicly distributed broadcast, cable, radio, print, Internet, or satellite communication (a) that promotes, attacks, supports, or opposes a candidate, or (b) that, within 50 days of a covered election, names, refers to, includes, or depicts a candidate in that covered election; provided that, however, the term shall not include: (i) sponsorship or organization of a candidate debate or forum; or (ii) any news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication, unless the station, newspaper, magazine, or publication is owned or controlled by a candidate, political committee, campaign, or political party.
- l. **Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate campaign for City elective office, would have been in excess of the contribution limitations set forth in Subpart B.
- m. **Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, campaign or other person for the purpose of influencing the outcome of a covered election or to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office, including:
- i. For the provision of a service or other valuable thing for the purpose of influencing the outcome of the nomination or election of a candidate;
  - ii. For the payment or provision of money or other valuable thing to compensate any person for services rendered to a candidate or candidate political committee campaign;
  - iii. For an independent expenditure;
  - iv. For an electioneering communication; or
  - v. To obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.
- n. **Former candidate.** An individual who was a candidate for City elective office becomes a former candidate:
- i. On the day after a general election, if ~~he or she~~ the individual was unopposed in that election;
  - ii. On the day after a primary election, if ~~he or she~~ the individual concedes that election;
  - iii. When ~~his or her~~ the individual's opponent concedes, if ~~he or she~~ the individual was opposed in a general election; or
  - iv. If an election is contested, when that contest is resolved.
- o. **Independent expenditure.** An expenditure to influence the outcome of a covered election that is made without the cooperation or consultation of any candidate's campaign and that is not made in concert with or at the request or suggestion of any candidate's campaign.



p. **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;
- ii. The payment or agreement to pay a third party to provide goods or services to a ~~candidate's candidate political committee~~ campaign, if the goods and services are in fact provided; or
- iii. Any expenditure that advocates or influences the nomination or election of a candidate that is coordinated with that candidate's campaign, as provided in Subpart I.

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

- q. **Litigation fund committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of ~~a~~ that candidate's ~~election~~ campaign or participation in an election, as described in Subpart G.
- r. **Person.** ~~Any~~ Any individual, a political committee, a corporation, a partnership, a sole proprietorship, or any other for-profit or not-for-profit-organization.
- s. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political committee 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. **Pre-candidacy contribution.** A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.
- u. **Pre-payment.** A payment made during the accounting period for any thing used or to be used by a ~~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. x.~~ **Sample ballot.** A ballot distributed by a campaign or political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.
- ~~w. w.~~ **SPEC account.** A segregated pre-candidacy excess contribution account, as described in Subpart J.
- ~~w. x.~~ **Transition and Inauguration Committee.** The committee established by a candidate to solicit and receive contributions and make expenditures solely to pay fees and costs incurred by the candidate for the candidate's transition or inauguration into City elective office, as described in Subpart H.
- y. **Vendor.** A person, other than a political committee, that provides services to a campaign.

## SUBPART B. CONTRIBUTION LIMITS

### 1.2 Limits on contributions from individuals.

- a. ~~A candidate for City elective office campaign~~ shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's candidate committee if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.2:** On November 1, 2021, prior to the election, Jane Doe donates \$2,000 to Candidate A, a candidate for City elective office. After the election, former Candidate A is carrying debt from the campaign. Jane Doe may donate up to an additional \$1,100 to former Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Jane Doe can donate up to \$3,100 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.
- c. A transition and inauguration committee, established as described in Subpart H by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$3,100 from an individual, including contributions made through one or more political committees or other persons.

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

- a. A ~~candidate for City elective office campaign~~ shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or other persons. This total includes contributions made post-election to the former candidate's ~~candidate committee campaign~~ if the committee is carrying debt incurred to influence the outcome of that election.

**Example for 1.3:** On November 1, 2021, prior to the election, Political Committee XYZ donates \$10,000 to Candidate A, a candidate for City elective office. After the election, Candidate A is a former candidate who is carrying debt regarding his previous 2021 campaign. Political Committee XYZ may donate up to an additional ~~\$1,900~~ \$2,600 to Candidate A before the end of 2021. In 2022, if Candidate A is still carrying debt regarding his 2021 campaign, Political Committee XYZ can donate up to ~~\$11,900~~ \$12,600 of additional funds to Candidate A.

- b. A litigation fund committee, established as described in Subpart G by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or ~~other~~ persons.
- c. A transition and inauguration committee, established as described in Subpart H by a ~~candidate for City elective office campaign~~, shall not accept total contributions per calendar year of more than \$12,600 from a political committee, partnership, sole proprietorship, or other form of ~~business~~ organization, including contributions made through one or more political committees or ~~other~~ persons.
- d. ~~In order To~~ qualify for the \$12,600 contribution limit described in this Paragraph, the finances of a sole proprietorship, partnership, or other form of organization shall be distinct and segregated from the personal finances of its proprietor or partners.

#### 1.4 Contributions made through ~~one or more political committees~~ other persons.

- a. For the purposes of this Subpart, a contribution is made through ~~a another person, such as a~~ political committee, when:
  - i. A person ~~or political committee~~ makes a ~~contribution donation~~ to ~~a another person, such as 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 a expenditure contribution~~ to support a specific candidate.

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

  - ii. ~~The contributing A~~ person ~~or political committee~~ has provided the majority of the ~~contributions donations~~ received by ~~the recipient a~~ political committee ~~or other person~~, whether directly or indirectly, in the twelve months prior to the recipient's ~~political committee's expenditure contribution~~ to support ~~the a~~ candidate, unless the recipient ~~political committee~~ can demonstrate, based on either a last in/first out or first in/first out accounting method that money from the ~~contributing person donor or political committee~~ was not used to make the ~~expenditure contribution~~ to the ~~candidate campaign~~.
- b. For the purpose of the contribution limits, the entire amount of a contribution made through ~~a political committee another person is from~~ counts towards the contribution limits for both the ~~original contributing person or political committee original donor~~ and the ~~recipient political committee person~~ through which whom 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.~~

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

Joe Big and Big PAC have each made a contribution of \$5,000 to the Largo campaign. The contribution from Joe exceeds the contribution limits by \$1,900 and therefore violates the City's Campaign Finance Law.

## **1.5 Doubling of Contribution Limits.**

- a. If a candidate ~~for City elective office~~ contributes \$250,000 or more of ~~his or her~~ their personal resources to ~~his or her~~ their candidate political committee own campaign since the more recent of (i) the most recent election cycle for the office sought by the candidate, or (ii) the last municipal election in which the candidate sought office, the contribution limits for all ~~candidates campaigns~~ for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Paragraph 1.5(b).
- b. The limits for contributions to litigation fund and transition and inauguration committees (Paragraphs 1.2(b)&(c) and 1.3(b)&(c)) do not double if a candidate contributes \$250,000 or more to ~~his or her candidate political committee~~ their own campaign.
- 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~~ campaign violates this Subpart even if the limits subsequently double and the contributing person's total contributions are within the doubled limits.
- d. If a ~~candidate political committee campaign~~ returns, repays, or refunds to ~~a its~~ candidate any money the candidate had contributed from ~~his or her the~~ candidate's personal resources prior to reaching the \$250,000 threshold, the returned amount shall not count toward the amount required to trigger doubling of the limits.
- e. Once the contribution limits double, they remain doubled even if:
  - i. The candidate whose contributions ~~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 campaign~~ returns, repays, or refunds ~~to the candidate~~ a portion of the money contributed from the candidate's personal resources.
- f. If a candidate contributes \$250,000 or more of ~~his or her~~ their personal resources to ~~his or her candidate political committee~~ their own campaign, within two business days, ~~he or she~~ that candidate shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

**1.6** No ~~individual, political committee, or other~~ person shall make any contribution that exceeds the limits set forth in this Subpart.

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

1.8 ~~Candidates and contributors shall include the~~ The value of in-kind contributions ~~when determining counts toward~~ the total amount of contributions made or accepted in a calendar year.

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

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

- a. Contributions from a candidate's personal resources to the candidate's candidate political committee, litigation fund committee, or transition and inauguration committee~~;~~ ;
- b. Contributions from a candidate's candidate political committee~~;~~ to that candidate's litigation fund committee~~;~~ or transition and inauguration committee~~;~~ ;
- c. A political committee's or other person's costs to print or distribute a sample ballot or to conduct or organize get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots) where when 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; campaign pays an amount commensurate with the services provided and the political committee or other person offers similar services to other campaigns.
- d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.3424(h)~~;~~ ;
- e. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication, including any Internet periodical publication~~;~~ ;
- f. Incidental expenditures made by persons other than ~~candidates'~~ campaigns that are related to ~~internet~~ Internet activity (such as the cost of hardware, software, or ~~internet~~ Internet access) that advocates or influences the election of a candidate~~;~~ ;  
~~or~~
- g. Volunteer labor provided to a candidate or a political committee.
  - i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:
    - (1) Legal or accounting work;

- (2) Entertainment such as a performance by a musical group or DJ; and
  - (3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.
  - ii. Volunteer labor does not include the donation to a candidate of:
    - (1) Equipment, such as computers, copiers, or printers;
    - (2) Resources, such as postage; or
    - (3) Materials, such as stationery or campaign literature.
  - iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.
- h. Joint payments made by two or more campaigns for campaign literature, advertising, or get-out-the-vote activities (such as canvassing or the distribution of campaign literature or sample ballots), so long as each campaign:
- i. Pays its fair portion of the costs;
  - ii. Makes payment no later than 14 days after any other campaign; and
  - iii. Obtains and maintains appropriate documentation, including invoices and printer's samples, which shall be provided to the Board upon request.
- i. Costs incurred by a vendor that are incidental to services provided by the vendor to a campaign, so long as such costs are promptly invoiced to and reimbursed by the campaign.

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

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

**1.12** 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.

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

### **1.14 In-kind contributions.**

- a. If a person makes an in-kind contribution by providing goods or services directly to a ~~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 to a ~~candidate's~~ campaign, the date of acceptance of that contribution is the date the goods or services are provided or the date payment is made, whichever is earlier.

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

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

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

**1.17** A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of ~~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.

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

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

~~Information on how to electronically file a report or statement~~ The City of Philadelphia's Campaign Finance Filing System is available may be found at:  
<http://www.phila.gov/ethicsboard/campaignfinance/Pages/Filecfinformation.aspx>  
<https://ethics.pub/CFFiling>

~~A schedule with the specific reporting deadlines~~  
~~may be found following this Regulation and at:~~  
<http://www.phila.gov/ethicsboard/campaignfinance/Pages/default.aspx>  
<https://ethics.pub/CFDocs>

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

**1.20 Political committees and other persons.**



- a. Any time any political committee, treasurer of a political committee, or other person is required by the Pennsylvania Election Code to file a campaign finance report with the City Commissioners or the Secretary of State, that person, treasurer, or political committee shall also file that report with the Board if the report discloses or is required to disclose any:
  - i. Expenditures made or debt incurred to influence the outcome of a covered election;
  - ii. Contributions to or expenditures by the candidate political committee of a former candidate that is carrying debt incurred to influence the outcome of a covered election;
  - iii. Contributions to or expenditures by a Litigation Fund Committee established pursuant to Subpart G; or
  - iv. Contributions to or expenditures by a Transition and Inauguration Committee established pursuant to Subpart H.

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

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

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

- i. on the sixth Tuesday before a covered election;
- ii. on the fourth Tuesday before a covered election;
- iii. on the second Friday before a covered election;
- iv. on the Tuesday immediately before a covered election;
- v. on the Friday immediately before a covered election; and
- vi. for any covered electioneering communication expenditures made after the last expenditure reported under Paragraph 1.20(c)(v) above, by the 30th day after a covered election.



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

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

## **1.21 Content of campaign finance reports and statements.**

- a. -A campaign finance report filed with the Board shall disclose all contributions and other receipts received, each expenditure made, any debt incurred during the relevant reporting period, and the cash balance at the beginning and end of the reporting period.
- i. For each contribution of more than \$50, the report shall disclose the date and amount of the contribution and the contributor's name and address.
- For each contribution of more than \$250, the report shall disclose the date and amount of the contribution, the contributor's name and address, and, in the case of contributions from individuals, the contributor's occupation, employer, and employer's address.
- ii. For each receipt other than a contribution (such as interest income, returned checks, or refunds), the report shall disclose the name and address of the source of the funds and a description of the receipt.
- iii. For each expenditure, the report shall disclose the date, amount, and recipient of the expenditure, and the recipient's address and the purpose of the expenditure.
- If the filer has used a credit or charge card to make expenditures, the filer shall disclose and itemize each purchase made with such a card, not merely a lump sum payment.
- iv. For each unpaid debt, the report shall disclose the name and address of the creditor, the amount of debt owed, and the date the debt was incurred, as well as a description of the debt.
- The date a debt is incurred is the day on which the creditor provided the goods, services, or loan from which the debt arises.
- b. If, during a reporting period, a filer has accepted contributions, made expenditures, or incurred debt of less than \$250, the filer may file a statement attesting to that fact in lieu of a full report. The statement shall set forth the filer's starting and ending balance for the reporting period.
- c. If a campaign makes a payment to a person other than a political committee, whether directly by the campaign or through another person, to have the name of the campaign's candidate placed on a sample ballot or to conduct or organize get-out-the-vote activities, the campaign shall disclose not just that person to whom it

made payment but also any persons whom that person pays or employs in order to provide the services promised.

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

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

### **1.23 One committee and one checking account.**

- a. A ~~candidate's~~ campaign shall use no more than one political committee and one checking account for the City elective office the ~~candidate~~ campaign is seeking, into which all contributions for that office shall be deposited and from which all ~~campaign~~ expenditures for that office shall be made, including and expenditures to retire debt incurred to influence the outcome of a covered election ~~for that campaign shall be made.~~
- b. If a ~~candidate maintains~~ campaign has or controls other political or non-political accounts ~~for which contributions are solicited, such funds collected in those, such~~ accounts shall not be used for the purpose of influencing the outcome of a covered election or to ~~make expenditures to~~ retire ~~campaign~~ debt incurred to influence the outcome of a covered election.
- c. A campaign may be found to control a political committee or an account if:
  - i. The candidate or an agent of the candidate or the campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;
  - ii. The candidate or an agent of the campaign established or registered the political committee or account; or
  - iii. The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the campaign.

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

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

An expenditure is made through another person if:

- i. The campaign provides the money to cover the specific expenditure;
- ii. The campaign selects the recipient of the expenditure; or
- iii. The campaign approves the expenditure or directs that it be made.

## **1.24 Permissible uses of other committees or accounts.**

### **e.a. ~~Payment Service Providers~~ service providers.**

- i. A ~~candidate's~~ campaign may use a ~~Payment Service Provider~~ payment service provider (such as PayPal) to accept contributions so long as all such contributions are promptly transferred to the ~~candidate~~ campaign's political committee's checking account.
- ii. A ~~candidate's~~ campaign may use a ~~Payment Service Provider~~ payment service provider to make expenditures so long as any funds used for such expenditures are drawn directly from the ~~candidate committee's~~ campaign's political committee checking account.

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

- i. The savings account is at the same bank as the checking account;
- ii. The ~~candidate~~ campaign deposits all contributions into ~~his or her~~ the checking account before transferring such funds to the savings account;
- iii. The ~~candidate~~ campaign does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and
- iv. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that ~~he or she~~ the candidate has established a savings account.

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

- i. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;
- ii. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;
- iii. The reimbursement is disclosed and accurately described in the required campaign finance report; and
- iv. The campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraph 1.23 and shall not count towards the contribution limits set forth in Subpart B.

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

- e. If, in the course of providing services to a campaign, a vendor incurs costs incidental to the provision of those services, an expenditure by the campaign to reimburse the vendor for those costs shall be permissible under this Subpart so long as the costs are promptly invoiced and the reimbursement is promptly made. For such reimbursements, a campaign shall obtain and maintain appropriate receipts and documentation, which shall be made available to the Board upon request.
- f. A candidate may maintain and use a litigation fund committee established pursuant to Subpart G or a transition and inauguration committee established pursuant to Subpart H.
- g. A candidate may pay a political committee or other person to have the candidate's name placed on a sample ballot distributed by that person or to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:
  - i. That political committee or other person offers similar services to other campaigns;
  - ii. The amount charged is commensurate with the services provided; and
  - iii. The candidate does not exercise control over the political committee or other person.
- h. A candidate may make expenditures through up to one political committee in addition to that candidate's campaign for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the campaign's political committee.
- i. A candidate may make a contribution within the contribution limits to that candidate's political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee or transition and inauguration committee.

**1.2425 Multiple offices sought.** If a candidate is running for more than one City elective office simultaneously, ~~he or she~~ that candidate shall maintain a separate candidate political committee and checking account for each office being sought.

**1.2526 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~~ becoming a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:
  - i. The committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.

- b. If a candidate does not have a candidate political committee when ~~he or she becomes becoming~~ a candidate, ~~he or she that candidate~~ shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with ~~his or her the candidate's~~ street address (other than a P.O. box), telephone number, and email address.
- c. If a candidate establishes a candidate political committee after ~~he or she has become becoming~~ a candidate, ~~he or she that candidate~~ shall provide the information required by this Paragraph within three business days of the formation of the committee.
- d. If the information required by this Paragraph changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.
- e. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at ~~phila.gov/ethicsboard/campaignfinance~~ [phila.gov/departments/board-of-ethics/campaign-finance/](http://phila.gov/departments/board-of-ethics/campaign-finance/) and shall be sent to the attention of the Board's Executive Director by postal mail or email.

~~**1.26—Exercising control over another political committee or bank account.** Other than the candidate's designated candidate political committee, a litigation fund committee established pursuant to Subpart G, a transition or inauguration committee established pursuant to Subpart H, or a checking account of such committees, a candidate's campaign shall not exercise control over any political committee or checking account that makes expenditures to influence a covered election.~~

~~For example, a candidate's campaign may be found to exercise control over a political committee or an account if:~~

- ~~a.—The candidate or an agent of the candidate's campaign is the treasurer or chair of the political committee or a signer on, or authorized user of, the account;~~
- ~~b.—The candidate or an agent of the candidate's campaign established or registered the political committee or account; or~~
- ~~c.—The treasurer or chair of the political committee, or a signer on or authorized user of the account, is an employee of the candidate.~~

~~**1.27—**Other than expenditures made by the candidate's designated candidate political committee, a litigation fund committee established pursuant to Subpart G, or a transition and inauguration committee established pursuant to Subpart H, a candidate's campaign shall not exercise control over an expenditure made to influence a covered election.~~

~~For example, a candidate's campaign may be found to exercise control over an expenditure made to influence a covered election if:~~

- ~~a.—The candidate's campaign provides the money to cover the specific expenditure;~~
- ~~b.—The candidate's campaign selects the recipient of the expenditure; or~~
- ~~c.—The candidate's campaign approves the expenditure or directs that it be made.~~

~~**1.28—Reimbursed expenditures.** A candidate or an employee or agent of a candidate's campaign may use personal funds to make purchases for the benefit of the campaign so long as:~~

- ~~a. It is reasonably necessary that such purchases are not made from the candidate committee's checking account;~~
- ~~b. The campaign reimburses the candidate or employee or agent within 45 days of the purchase;~~
- ~~c. The reimbursement is disclosed and accurately described in the required campaign finance report; and~~
- ~~d. The candidate's campaign maintains documentation of the reimbursement and underlying purchase. A purchase that complies with the foregoing shall not violate Paragraphs 1.23, 1.26 & 1.27 and shall not count towards the contribution limits set forth in Subpart B.~~

~~**1.29—Expenditures by Vendors.** A vendor may make expenditures on behalf of a campaign, and such expenditures shall not count against the vendor's contribution limits and shall not constitute a prohibited expenditure of the campaign, so long as the expenditures are for an expense that is incidental to the contractual provision of services by the vendor to the campaign, consistent with standard business practice, and the campaign promptly reimburses the vendor for the expenditure.~~

~~**1.30—**This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart G or a transition and inauguration committee established pursuant to Subpart H.~~

~~**1.31—**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.~~

~~**1.32—**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.~~

~~**1.33—**This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from a political committee controlled by the candidate, other than the candidate's litigation fund committee.~~

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

### **1.3427 Litigation fund committee requirements.**

- a. In addition to a candidate political committee, a **candidate campaign** or former candidate for City elective office may establish a litigation fund committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph ~~1.34(e)~~ **1.27(c)**.
- b. The name of a litigation fund committee shall include the term "Litigation Fund." The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.

- c. A ~~candidate~~ campaign or former candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the ~~candidate's campaign's~~ or former candidate's ~~election~~ campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
- d. A ~~candidate~~ campaign or former candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.
- e. A ~~candidate~~ campaign or former candidate may make expenditures from ~~his or her~~ a candidate political committee for the purposes described in Paragraph ~~1.34(e)~~ 1.27(c).
- f. A ~~candidate~~ campaign or former candidate shall not transfer funds to ~~his or her~~ a candidate political committee from a litigation fund committee.

**1.3528 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~~ campaign or former candidate shall notify the Board of the following information:
  - i. The litigation fund committee's name and street address (other than a P.O. box);
  - ii. The name of the bank where the litigation fund committee's checking account is established; and
  - iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.
- b. If the information required by this Paragraph changes, the ~~candidate~~ campaign or former candidate shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at ~~phila.gov/ethicsboard/campaignfinance~~ phila.gov/departments/board-of-ethics/campaign-finance/ and shall be sent to the attention of the Board's Executive Director by postal mail or email.

**1.3629 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~~ campaign or former candidate sought, except as provided in Paragraph ~~1.36(e)~~ 1.29(c).
- b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.



- c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a "last in, first out" accounting basis;
  - ii. On a "first in, first out" accounting basis;
  - iii. On a pro-rata accounting basis; or
  - iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a ~~candidate campaign~~, former candidate, or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.
- d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

## **SUBPART H. TRANSITION AND INAUGURATION COMMITTEES**

### **1.3730 Transition and inauguration committee requirements.**

- a. In addition to a candidate political committee, a candidate or ~~former candidate for individual elected to~~ City ~~elective~~ office may establish a transition and inauguration committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Paragraph ~~1.37(e)~~ 1.30(c).
- b. The name of a transition and inauguration committee shall include the terms "Transition" and "Inauguration." The committee shall have a treasurer who shall be responsible for keeping records of the committee's transactions.
- c. A candidate or ~~former candidate~~ individual elected to City office shall make expenditures from a transition and inauguration committee solely to pay costs incurred for the transition and inauguration into City elective office of the candidate.
- d. A candidate or ~~former candidate~~ individual elected to City office may make expenditures from ~~his or her~~ a candidate political committee for the purposes described in Paragraph ~~1.37(e)~~ 1.30(c).
- e. A candidate or ~~former candidate~~ individual elected to City office shall not transfer funds to ~~his or her~~ a candidate political committee from a transition and inauguration committee.

### **1.3831 Requirement to provide information to the Board about a transition and inauguration committee.**

- a. Within three business days of the formation of a transition and inauguration committee, a candidate or ~~former candidate~~ individual elected to City office shall notify the Board of the following information:
  - i. The transition and inauguration committee's name and street address (other than a P.O. box);



- ii. The name of the bank where the transition and inauguration committee's checking account is established; and
- iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the transition and inauguration committee.
- b. If the information required by this Paragraph changes, the candidate or ~~former candidate~~ individual elected to City office shall notify the Board of the updated information within three business days of the change occurring.
- c. Information required by this Paragraph shall be provided on a form required by the Board and available on the Board's website at ~~phila.gov/ethicsboard/campaignfinance~~ phila.gov/departments/board-of-ethics/campaign-finance/ and shall be sent to the attention of the Board's Executive Director by postal mail or email.

### **1.3932 Termination of a transition and inauguration committee.**

- a. A transition and inauguration committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought.
- b. Before a transition and inauguration committee is terminated, the transition and inauguration committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:
  - i. On a "last in, first out" accounting basis;
  - ii. On a "first in, first out" accounting basis;
  - iii. On a pro-rata accounting basis; or
  - iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate, individual elected to City office, or treasurer of a transition and inauguration committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.
- c. The Board may grant an extension for terminating a transition and inauguration committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

## **SUBPART I. COORDINATED EXPENDITURES**

**1.4033** An expenditure is coordinated with a ~~candidate's~~ campaign if it is made in cooperation, consultation or concert with the ~~candidate's~~ campaign, including the following:

- a. The expenditure is made at the request or suggestion of the ~~candidate's~~ campaign;
- b. A person suggests making an expenditure and the ~~candidate's~~ campaign assents to the suggestion;
- c. The person making the expenditure communicates with the ~~candidate's~~ campaign concerning the expenditure before making the expenditure;

- d. 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
- e. ~~An agent of the candidate's~~ The campaign directs, places, or arranges the expenditure; 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 campaign made to the general public. This subparagraph does not apply to the republication of campaign communications or materials, which is covered by Paragraph 1.~~41~~34.

**Example for ~~1.40(f)~~ 1.33(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's campaign and spends \$12,600 to set up the phone bank and telephones individuals provided on the list from Candidate A's campaign.

The \$12,600 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A's campaign because the PAC used information obtained from Candidate A's campaign for the phone bank. As such, Philadelphians for Philadelphia has made an \$12,600 in-kind contribution to Candidate A's campaign.

- g. The person making the expenditures does so based on instructions received from the campaign. A public communication by a campaign will constitute such instructions only if:
- i. The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and
  - ii. The communication suggests the manner in which the information should be presented, for example, if the communication includes a phrase such as "voters need to hear" or "voters need to see."

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

**Example 1 for 1.33(g):** Candidate A's campaign website includes a page with text in a red box that says "Voters in South Philadelphia need to hear that Candidate A supports dog parks." Without any other input from the campaign, Philadelphians for Philadelphia PAC pays \$25,000 for a sound truck to drive through South Philadelphia playing a recording praising Candidate A for his support of dog parks.

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

**Example 2 for 1.33(g):** Candidate A's communications director tweets that "Center City voters need to see on the go that Candidate A will keep our streets clean." Without any other input from Candidate A's campaign, Philadelphians for

Philadelphia PAC spends \$200,000 to send online advertisements to mobile devices in Center City with the message “Candidate A will keep our streets clean.”

The \$200,000 spent by Philadelphians for Philadelphia is a coordinated expenditure with Candidate A’s campaign because Philadelphians for Philadelphia PAC made the expenditure based on instructions from the campaign. As such, the \$200,000 spent is both an excess in-kind contribution made by the PAC and an excess in-kind contribution received by Candidate A’s campaign.

**Example 3 for 1.33(g):** Philadelphians for Philadelphia PAC spends \$15,000 to purchase a series of full-page newspaper advertisements saying Candidate A is the only candidate who will rid Philadelphia of spotted lanternflies. Shortly before the ads begin to appear in the newspaper, Candidate A’s campaign updates its website with the message, “Philadelphia voters need to read that Candidate A will rid our city of spotted lanternflies!” After the first ad is published, Board Staff contacts Philadelphians for Philadelphia PAC about the appearance of a coordinated expenditure. In response, Philadelphians for Philadelphia PAC provides a newspaper article from a month earlier in which Candidate A is quoted as saying “Only I can kill every spotted lantern fly!” The PAC also shares invoices for the ads showing that the PAC paid for them before Candidate A’s campaign updated its website with the statement about the lantern flies.

The \$15,000 Philadelphians for Philadelphia PAC spent was not a coordinated expenditure because the PAC had a basis for the information in its advertisements that was independent of the information Candidate A’s campaign posted on its website.

**1.4134 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~~ campaign 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~~ campaign’s consent if the ~~candidate~~ campaign 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.

- 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~~ campaign that prepared the material;
  - ii. The item republished is a photograph or video obtained from a public source that is not controlled by the ~~candidate’s~~ campaign; or

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

**Example for ~~1.41~~ 1.34 (a) and (b):** Three weeks before election day, Candidate A's campaign uploads five minutes of b-roll video footage to her YouTube channel. The political committee Pennsylvanians for a Better Pennsylvania downloads the b-roll footage and uses it to create a television advertisement. The committee spends \$100,000 to run the advertisement on three television stations during the week before election day.

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

**1.4235** 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 use the same vendor, attorney, or accountant;
- d. The person making the expenditure has obtained from the candidate's campaign a biography of the candidate or a position paper, press release, or similar material about the candidate; or
- e. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

## **SUBPART J. EXCESS PRE-CANDIDACY CONTRIBUTIONS**

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

**1.4336** The provisions of this Subpart regarding excess pre-candidacy contributions apply only to contributions received during the accounting period.

**Example for 1.36:** On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. The accounting period for Candidate A is January 1, 2018 through November 30, 2020. The last Controller election was held in 2017 so January 1, 2018 would be the first day of the year following that election.

### **1.4437 Prohibited Expenditures.**

- a. A ~~candidate or candidate-political committee~~ campaign shall not spend any excess pre-candidacy contributions for the purposes of: influencing the outcome of a covered election in which ~~he or she~~ the campaign's candidate is a candidate; transition or inauguration expenses; or retiring debt that was incurred to either

influence the outcome of an already completed covered election or cover transition or inauguration expenses related to an already completed covered election.

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

**1.4538 Exclusion of excess pre-candidacy contributions upon becoming a candidate.**

- a. Except as provided in Paragraph ~~1.46~~ 1.39, within ten days after ~~becoming an individual becomes~~ a candidate, ~~a candidate~~ their campaign shall exclude all excess pre-candidacy contributions from ~~his or her~~ its candidate political ~~committee's committee~~ checking account by one of the following methods:
  - i. Transferring excess pre-candidacy contributions to a segregated account; or
  - ii. Returning excess pre-candidacy contributions to their contributors.
- b. **Calculation of amount to be excluded.** A ~~candidate~~ campaign shall ~~determine~~ the amount to be excluded by using one of the following methods:
  - i. **Dollar for dollar calculation.** A ~~candidate~~ campaign shall exclude an amount equal to the total amount of excess pre-candidacy contributions received during the accounting period.

**Example for 1.38:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Mr. B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Ms. C (same). On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 (\$400 excess from Mr. B + \$400 excess from Ms. C) from its checking account.

- ii. **Accounting-based calculation.** A ~~candidate~~ campaign ~~does need~~ not ~~have to~~ exclude any excess pre-candidacy contributions that ~~he or she~~ the campaign demonstrates, using either a last in/first out or first in/first out accounting method, were actually spent pre-candidacy ~~before becoming a candidate~~, provided that:
    - (1) Before accounting for the expenditure of any excess pre-candidacy contributions, an accounting shall be made for the expenditure of the balance of the committee account as it existed on the day before the start of the accounting period; and
    - (2) Pre-payments that were made by the candidate's political committee shall not constitute expenditures of excess pre-candidacy contributions using this accounting method.
- c. If the amount that the ~~candidate~~ campaign shall exclude from the candidate political committee's checking account ~~of the candidate political committee~~ exceeds the amount of cash the committee has on hand, the ~~candidate~~ campaign shall use incoming contributions to cover the amount that shall be excluded.

**1.4639** Pre-candidacy segregation. A candidate campaign does need not ~~have to~~ exclude any excess pre-candidacy contributions that, upon receipt, ~~he or she~~ the campaign had transferred to a segregated pre-candidacy excess contribution account (“SPEC account”), provided that, if ~~he or she~~ the campaign used any funds in a SPEC account for pre-payments, the candidate campaign shall exclude from ~~his or her~~ the candidate committee account an amount equal to those pre-payments. Funds transferred into a SPEC account that were not used for pre-payments need not be included in accounting for the exclusion of excess pre-candidacy contributions under either calculation method described in Paragraph ~~1.45~~ 1.38.

**Example 1 for 1.39:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$1,000 from the checking account of the candidate political committee to a SPEC account. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. Friends of Candidate A has already segregated Person B and Person C's excess contributions and therefore does not need to exclude any other money from its checking account.

**Example 2 for 1.39:** On November 1, 2020, Friends of Candidate A receives a contribution of \$3,500 from Person B (\$3,100 within limits, \$400 excess) and a contribution of \$3,500 from Person C (same). On November 2, 2020, Candidate A transfers \$800 from the checking account of the candidate political committee to a SPEC account. On November 30, 2020, Candidate A spends \$800 from the SPEC account on fliers to be used in the upcoming election. On December 1, 2020, Candidate A declares her candidacy for the May 2021 Controller primary election. By December 11, 2020, Friends of Candidate A must exclude \$800 from its checking account. While Candidate A segregated the \$800 in excess contributions received from Person B and Person C, she spent \$800 from the SPEC account on pre-payment expenditures during the accounting period and must therefore exclude an amount equal to those pre-payments from the Friends of Candidate A checking account.

**1.4740** A ~~candidate or a candidate political committee~~ campaign shall not use money held in a SPEC account to influence the outcome of a covered election in which the campaign's candidate participates, to retire debt incurred to influence the outcome of a covered election or to cover expenses related to transition or inauguration to City elective office.

**1.4841** Within seven days of establishing a SPEC account, a candidate campaign shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

#### **SUBPART K. RETIRING DEBT**

**1.4942** Except as provided in Paragraph ~~1.50~~ 1.43, 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.



**1.5043** If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

- a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;
- b. The debt has been outstanding for at least 24 months;
- c. The candidate political committee does not have sufficient cash on hand to pay the creditor;
- d. Forgiveness of the debt is not prohibited by any other relevant law; and
- e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt. The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart E.

## **SUBPART L. PENALTIES**

**1.5144 Acceptance of an excess contribution.** A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the accepted contribution exceeded the limit, or \$2,000, whichever is less.

**1.5245 Making an excess contribution.** A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.

**1.5346 Safe harbor if an excess contribution is returned within 15 days.** No civil monetary penalty shall be imposed for an excess contribution if the ~~candidate campaign~~ candidate campaign ~~who that~~ accepted the excess contribution within fifteen days after receiving the contribution:

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

**1.5447 Failure to file campaign finance disclosures.** If a political committee fails to file a campaign finance report or statement with the Board as required by Subpart E, the committee and its treasurer shall be jointly and severally subject to a civil monetary penalty of \$250. If a candidate fails to file a campaign finance report or statement with the Board as required by Subpart E, the candidate shall be subject to a civil monetary penalty of \$250.



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

**1.5548 Material misstatements or omissions.** If a campaign finance report filed with the Board contains material misstatements or omissions, the ~~candidate, treasurer, or other~~ individual who filed the report shall be subject to a civil monetary penalty of \$1,000 for each such misstatement or omission. If the report is filed on behalf of a political committee, the individual who filed the report and the committee shall be jointly and severally liable.

**1.5649 Misuse of political committees or accounts.** If a ~~candidate's~~ campaign uses a political committee or account in violation of the requirements set forth in Subpart F, G, or H the candidate shall be subject to a civil monetary penalty of \$1,000.

**1.5750 Excess pre-candidacy and candidacy contributions.**

- a. If a ~~candidate or former candidate~~ campaign fails to exclude any excess pre-candidacy or candidacy contributions from ~~his or her~~ its candidate political committee, as required by Subpart J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000.
- b. If a candidate campaign or the committee of a former candidate spends excess pre-candidacy or candidacy contributions in violation of the prohibitions of Subpart J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000, for which ~~his or her~~ their candidate political committee shall be jointly and severally liable if such expenditures were made from that committee.

**1.5851 Failure to provide committee or account information to Board.** If a candidate campaign fails to provide information to the Board about a political committee or account as required by Subpart F, G, H or J, ~~he or she~~ the candidate shall be subject to a civil monetary penalty of \$1,000.

**1.5952 Other violations of the campaign finance law.** All other violations of the campaign finance law are subject to a civil monetary penalty of \$1,000 per violation.

**1.6053 Increase or decrease of civil monetary penalty.** A penalty imposed pursuant to Paragraph ~~1.55, 1.56, 1.57, 1.58 or 1.59~~ 1.48, 1.49, 150, 1.51, or 1.52 shall be increased or decreased as follows:

- a. Mitigating factors. The civil monetary penalty of \$1,000 shall be reduced by \$500 if one of the following mitigating factors is present and shall be reduced by \$750 if more than one of the following mitigating factors are present:
  - i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
  - ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
  - iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

- b. Aggravating factors. The civil monetary penalty of \$1,000 shall be increased by \$1,000 for each of the following aggravating factors that is present, provided that the total civil monetary penalty that may be imposed for one violation shall not exceed \$2,000:
  - i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
  - ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
  - iv. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006

Effective January 17, 2007

Amendment approved by Board August 21, 2007

Effective September 21, 2007

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

Public hearing held September 8, 2010

Adopted by Board with modifications September 15, 2010

Effective September 27, 2010

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

Public hearing held June 15, 2011

Adopted by Board July 20, 2011

Effective August 11, 2011

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

Effective March 2, 2012

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

Public hearing held January 23, 2013

Adopted by Board with modifications February 20, 2013

Effective March 8, 2013

Proposed amendments approved for public comment by Board on July 16, 2014

Public hearing held September 17, 2014

Adopted by Board with modifications October 15, 2014

Effective October 31, 2014

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

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

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

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

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