COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, March 22, 2010, 10:12 a.m.

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BILL 110072 - Amending Section 20-606 of the Philadelphia Code, entitled "Board of Ethics," by further providing for administrative adjudication, under certain terms and conditions.

BILL 110073 - Amending Chapter 20-1000 of the Philadelphia Code, entitled "Political Contributions and Expenditures," by clarifying that no person shall make excess contributions to candidates through another political committee, and by revising the form of notice that the Board of Ethics shall provide of the contribution limits, all under certain terms and conditions.

COMMITTEE MEMBERS PRESENT:
Anna C. Verna, Chair
Marian B. Tasco, Co-Chair
Jannie C. Blackwell
Blondell Reynolds-Brown
Darrell L. Clarke
W. Wilson Goode, Jr.
Bill Green
William K. Greenlee
Curtis Jones, Jr.
James F. Kenney
Donna Reed Miller
Frank Rizzo
Maria Quiñones-Sanchez

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COUNCIL PRESIDENT VERNA: Good morning, everyone. This is a public hearing of the Committee of the Whole.

I would ask Mr. McPherson to please read the title of Bill No. 110072.

MR. McPHERSON: Bill No. 110072, an ordinance amending Section 20-606 of the Philadelphia Code, entitled "Board of Ethics," by further providing for administrative adjudication under certain terms and conditions.

COUNCIL PRESIDENT VERNA: Mr. Kramer.

(Witness comes forward.)

COUNCIL PRESIDENT VERNA: Good morning, welcome.

MR. CREAMER: Good morning. Good morning, Madam Chair and members of the committee. My name is Shane Creamer, and I'm the executive director of the Philadelphia Board of Ethics. Thank you for this opportunity to speak to you on the two bills being scheduled for a hearing today.

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The first bill, Bill No. 110072, would authorize the Ethics Board to administratively adjudicate potential violations of three provisions of the Home Rule Charter: Section 10-102, 10-105, and 10-107.

Bill No. 110073 would make two changes to the campaign finance law. First, it would clarify that no political committee shall make excess contributions to candidates through another political committee; and, second, it would revise the form of notice that the Board of Ethics is required to provide of the contribution limits.

The Ethics Board asked the Administration to request introduction of these bills in order to improve the administration and enforcement of the public integrity laws.

I will first address Bill No. 110072. That bill -- excuse me, Section 4-1100 of the Charter provides that the board shall conduct enforcement

activities either by bringing enforcement actions in the Court of Common Pleas; or, if authorized by Council by ordinance, administratively adjudicating alleged violations and imposing civil penalties and other remedies for violations.

Pursuant to Philadelphia Code Section 20-6061-H, Council has authorized the board to administratively adjudicate potential violations of the Ethics Code, the campaign finance law, the soon-to-be-effective lobbying law, and the disclosure provision in the no-bid contract law.

However, Council has not yet authorized the board to administratively adjudicate potential violations of Home Rule Charter provisions that are within the board's jurisdiction: namely, Charter Section 10-102 and 10-105 and 10-107. This means that an enforcement action for alleged violations of those three sections of the Charter must be brought in court and cannot be administratively

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adjudicated.

Not only must these types of cases be brought in court, but they must be filed in Municipal Court as private criminal complaints, because the penalties provisions for Article 10 of the Charter includes potential imprisonment in addition to civil penalties.

Pennsylvania courts have held that actions seeking enforcement of a municipal ordinance that provides for imprisonment upon conviction must be filed in the Municipal Court and litigated in compliance with the rules of criminal procedure even when the municipal agency is only seeking civil penalties.

Practically, this makes no sense, as virtually no violations of the Charter provisions at issue would warrant court hearings under the rules of criminal procedure. Therefore, we respectfully request that Council pass

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Bill No. 110072 to authorize the board to handle potential violations of Charter Sections 10-102, 10-105, and 10-107 as administrative cases heard before the board itself.

I will now address Bill No. 110073.

COUNCIL PRESIDENT VERNA: Mr. McPherson hasn't read the title of that bill yet.

MR. CREAMER: Oh, I'm sorry.

COUNCILMAN KENNEY: I have questions --

COUNCIL PRESIDENT VERNA: Oh, I'm sorry.

COUNCILMAN KENNEY: No, no, I have questions of the second bill.

COUNCIL PRESIDENT VERNA: Okay.

MR. McPHERSON: Bill No. 110073, an ordinance amending Chapter 20-1000 of the Philadelphia Code, entitled "Political Contributions and Expenditures," by clarifying that no person shall make excess contributions to

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candidates through another political committee; and by revising the form of notice that the Board of Ethics shall provide of the contribution limits, all under certain terms and conditions.

COUNCIL PRESIDENT VERNA: Mr. Creamer.

MR. CREAMER: Thank you.

Bill 110073 would amend two provisions of the campaign finance law, Section 20-1002, which includes the contribution limit rules, and Section 20-1007, which requires the board to publish information about the public campaign finance law.

The limits on contributions to candidates for City office are set forth in Section 20-1002 of the City Code. There are four separate contribution limit rules within Section 20-1002. Two of those rules set limits on contributions to candidates and two set new limits on contributions to former candidates.

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Three of the four contribution limit rules -- Sections 20-1002, 1, 4, and 5 -- have identical provisions explicitly governing the use of passthroughs, which count contributions made by individuals, political committees, and certain businesses made to or through one or more political committees towards the limits that apply to the donor in question.

One of the contribution limit rules, Section 20-1002-2, perhaps merely due to oversight, does not include the same explicit limitation on the use of passthroughs. As a result, under Section 20-1002-2 of the current law, arguably, a political committee may make contributions to a candidate in excess of the contribution limits simply by passing them through a second political committee.

Bill No. 110073 would correct this inconsistency by conforming the language of Section 20-1002-2 to that of

3.23.11 COMM. OF THE WHOLE, BILLS 11072, 73 Sections 20-1002-1, 4, and 5.

The proposed change brings greater uniformity and fairness to the campaign finance law and ensures genuine compliance with the contribution limits. Section 20-1007 of the Philadelphia Code requires the board to publish the contribution limits and a plain English guide in the three newspapers with the largest circulation in the City every six months.

It costs the board approximately $8,000 per year to comply with Section 20-1007, which is about 1 percent of the board's total budget. In addition, the information is printed in small type in the legal notices' section, which leads the board to question the effectiveness of providing the information in this manner.

Bill No. 110073 would amend Section 20-1007 by requiring the board to publish the contribution limits and the plain English guide on its website rather

than in newspapers. The board respectfully requests that Council pass Bill No. 110073 in order to conserve scarce resources and because the public has greater continuous access to information about the contribution limits and the plain English guide on the board's website.

The board, therefore, respectfully questions that the Committee of the Whole report out both bills with a favorable recommendation, and we request waiver of the rules to allow these bills to be considered as expeditiously as possible.

That concludes my testimony, and I'd be happy to answer any questions that you may have.

COUNCIL PRESIDENT VERNA: Thank you.

MR. CREAMER: Thank you.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman Kenney.

COUNCILMAN KENNEY: Thank you,

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Madam Chair. And thank you for your testimony.

I assume -- really, my questions are for the second bill. The first bill, I assume, is a way to simply streamline the process on civil issues and also bring down the costs of attorney fees and other things because you can do it through the Board of Administrative Adjudication --

MR. CREAMER: That's --

COUNCILMAN KENNEY: Or you can act --

MR. CREAMER: We can do it ourselves. That's right.

COUNCILMAN KENNEY: Okay.

MR. CREAMER: Actually, we won't have to go to court basically.

COUNCILMAN KENNEY: Okay.

MR. CREAMER: The board (indiscernible) the judges.

COUNCILMAN KENNEY: Okay. On the second one, I understand the concept and I agree with it. I'm trying to

figure out how it's practically dealt with. How do you discover that there are multiple committees that are washing money through --

MR. CREAMER: Passing money through.

COUNCILMAN KENNEY: -- passing money through.

MR. CREAMER: It's a good question.

We have seen evidence of instances where a PAC makes a contribution to a particular candidate, for example, and then makes additional contributions to other PACs, maybe one, two or three our PACs, which, in turn, make similar contributions in terms of amount that were given by the first PAC to the same candidate that was supported by the original donor PAC.

COUNCILMAN KENNEY: So the original donor PAC and that chain of contributions is what would indicate to you that this activity was going on.

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MR. CREAMER: That's correct.

COUNCILMAN KENNEY: All right. And do you discover that through your own investigation, or do you have to wait for a complaint?

MR. CREAMER: We haven't had a complaint. We typically review the campaign finance reports very carefully, and we've seen this in past election cycles by just simply reviewing the reports.

Now, what we have not look for, because this is not technically a violation of the law yet, we don't think, we have not look for evidence where that first PAC has directed the other PACs to make those contributions.

In other words, we have interpreted this provision, this "to or through other political committee" language that exists in the other three contribution rules in our regulation to mean that the donor must direct or request or suggest that the money that

has been given to the other PAC be given to the candidate of their choice.

So, if we saw in the future PAC A give money to a candidate and then more money to PAC B, and PAC B gives that money to the candidate, then we would conduct an investigation to determine whether PAC A suggested, requested, or directed PAC B to make that donation to the candidate.

COUNCILMAN KENNEY: And how would that investigation be conducted, and how would you elicit the information from PAC A?

MR. CREAMER: That's a good question. I think it's a difficult proof question for all three of the existing contribution rules that have this provision.

It would come down to a determination of intent and communications between the PACs. We'd have to prove this through testimony, through e-mails, things like that.

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So it's not an easy proof issue but it can be proven.

COUNCILMAN KENNEY: Now, does your investigation and discussion or questioning come prior to the election or after the election is over?

MR. CREAMER: It depends on when we discover evidence of this. In the past --

COUNCILMAN KENNEY: After the election's over, obviously, what has been attempted has been accomplished.

MR. CREAMER: That's right.

COUNCILMAN KENNEY: Right.

MR. CREAMER: And if we have time before an election, the board will take action, and it has done to so in 2007 and 2009, in the last two election cycles that we have administered the campaign finance law.

COUNCILMAN KENNEY: And what possible sanctions are there pre-election and then post-election? If you discover and conclude the activity is happening

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pre-election --

MR. CREAMER: Right.

COUNCILMAN KENNEY: -- what sanctions actions can you take? And if you discover it post-election, what sanctions and --

MR. CREAMER: I think if we -- we can only issue monetary fines, so we're limited to issuing monetary fines for excess contributions.

If the combined contributions from PAC A and PAC B exceed the contribution limits as to PAC A, then there would be an excess contribution. And under the rules, the fine they -- Council amended the penalties last year for excess contributions.

It is three times the excess portion of the contribution or $2,000, whichever is less.

COUNCILMAN KENNEY: So that can't be --

MR. CREAMER: It's no more than $2,000 per excess contribution.

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COUNCILMAN KENNEY: And that can't be paid for out of PAC funds?

MR. CREAMER: Excuse me?

COUNCILMAN KENNEY: And that can't be paid for out of PAC funds?

For example, if you find that PAC A funded PAC B, C, and D, and you conclude and issue sanctions for fines, can PAC A fund the fines for B, C, and D?

MR. CREAMER: It would -- only PAC A would be in violation.

COUNCILMAN KENNEY: PAC A would be, okay.

MR. CREAMER: Because the contributions to B, C, and D would be attributed to PAC A essentially.

COUNCILMAN KENNEY: Okay. Thank you, Madam President.

MR. GLAZER: And, Councilman, to be responsive --

COUNCILMAN KENNEY: You have to identify yourself for the record, please.

MR. GLAZER: I'm sorry. Richard Glazer, chair of the board.

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COUNCILMAN KENNEY: Okay. And say it again? I'm sorry.

MR. GLAZER: In response to your question, it would be the same penalty, whether it be pre- or post-election.

COUNCILMAN KENNEY: Okay. Thank you.

Thank you, Madam President.

COUNCIL PRESIDENT VERNA: You're welcome.

The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam President.

Good morning.

MR. CREAMER: Good morning.

MR. GLAZER: Good morning.

COUNCILMAN CLARKE: I just want to clarify the last answer to Councilman Kenney with respects to who the violation would be imposed upon. It would be imposed upon the PAC that gave the second PAC?

MR. CREAMER: That's correct.

COUNCILMAN CLARKE: Not the candidate who may have --

MR. CREAMER: No, not the --

COUNCILMAN CLARKE: -- may gotten contribution not knowingly, not knowing that this earlier -- the two earlier PACs had colluded, or whatever, to --

MR. CREAMER: That's correct.

COUNCILMAN CLARKE: -- give another contribution.

MR. CREAMER: It's PAC A that is in violation --

COUNCILMAN CLARKE: All right.

MR. CREAMER: -- of the contribution's potential.

CHIEF CLERK: So it sounds like, to me, it comes down to things similar amounts in terms of your ability to --

MR. CREAMER: That would be a red flag. If we saw PAC A give 10,600 to a candidate and then another 10,600 to

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PAC B, and then two days later, you see PAC B --

COUNCILMAN CLARKE: It triggers --

MR. CREAMER: -- make a contribution of 10,600 to the candidate, I think that would trigger an investigation.

COUNCILMAN CLARKE: So are there going to be guidelines that are clearly established that PAC A would know that if you give the same amount -- if you give a certain amount to PAC B and then the candidate is given that same amount within a period of time.

MR. CREAMER: Well, that in and of itself would not be sufficient for a potential violation of the contribution limits, assuming that the money exceeds the limits as to PAC A, if it were attributed to PAC A.

Under our regulation, we've interpreted the phrase that we seek to add to this contribution limit rule "to

or through one or more political committees" to mean that not only must you give the money to the second PAC, but you must direct, suggest, or request that the money be given to the candidate.

So if PAC A just makes a contribution to PAC B, and there's no communication about what PAC B does with the money, that money is not -- and then PAC B ultimately gives some money, whether directly or through an in-kind contribution to the candidate, that's not a potential violation for PAC A because PAC A did not direct, suggest, or request that the money given to PAC be given to the candidate of PAC A's choice.

COUNCILMAN CLARKE: What ability and authority do you have to investigate this?

MR. CREAMER: Well, we have subpoena power, so we can take depositions, we can take statements under oath essentially. We can bring the treasurer of PAC A in, the treasurer of

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PAC B in. We get e-mail records, correspondence records, and we can question them about what communications they had about what was supposed to happen with the money.

Now, having said all of that, as I said to Councilman Kenney, it's a challenging proof issue. I think it can be proven, but you'd have to have some proof there that there was a communication between PAC A and PAC B, where PAC A directed, suggested, or requested that the money be given to the candidate.

COUNCILMAN CLARKE: And your authority goes beyond the county line, so if a PAC from California --

MR. CREAMER: We -- our subpoena power is limited to the County of Philadelphia. So if they're outside the County of Philadelphia, we could not enforce a subpoena. We could try to seek their cooperation with us, but we would not be able to compel them to comply with

an administrative subpoena issued by the board.

COUNCILMAN CLARKE: All right. I just wanted to know how far your power goes.

Democratic City Committee -- and based on your earlier testimony, this probably is not going to fall with under the guidelines of this particular provision.

There are a number of people who contribute to the Democratic City Committee, the Democratic City Committee then contributes to the ward leaders and various candidates.

MR. CREAMER: Right.

COUNCILMAN CLARKE: That would probably not fall with under --

MR. CREAMER: No. My understanding of that money and the way that works is, the Democratic City Committee decides and determines where the money goes and in what amounts.

The candidates or the ward

committees are not telling the Democratic City Committee what to do with their money.

COUNCILMAN CLARKE: As a 24-year ward leader, I found that out, that we have limited ability to influence the levels of contribution.

All right. Okay, thank you.

MR. CREAMER: Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilwoman Tasco.

COUNCILWOMAN TASCO: Thank you and thank you. Good morning.

MR. GLAZER: Good morning.

MR. CREAMER: Good morning.

COUNCILWOMAN TASCO: And thank you for continuing to work with us to clarify the campaign finance laws and the ethics laws. I think we've formed a working relationship between the two, the Council and the Ethics Board.

Just because we always come

back and rely on the record for testimony, in your testimony on page 3, you called -- you said "Bill 110073," when it should be -- "110072" would correct this inconsistency, and you said "73."

MR. CREAMER: Yes, I said "73," and my testimony says "72."

COUNCILWOMAN TASCO: Yes.

MR. CREAMER: So when I read it, I corrected it, but there is a typo in my testimony.

COUNCILWOMAN TASCO: Okay. It should be 73.

MR. CREAMER: Yes.

COUNCILWOMAN TASCO: I just want to be sure we have the correct source. Thank you.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President.

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Good morning.

MR. CREAMER: Good morning.

MR. GLAZER: Good morning.

COUNCILMAN GOODE: With regard to Bill No. 110073, the whole topic of proving collusion, I'm interested on your opinion on if the committees have the same treasurer, would that mean that they would be deemed to be automatic collusion, or does that mean that it's impossible to prove collusion?

MR. CREAMER: That's an interesting question that I hadn't considered.

There's no automatic rule. It would depend on the facts and circumstances, but I think it would be difficult for a PAC -- two PACs with the same treasurer to demonstrate that contributions made by one PAC under that treasurer's control to the other PAC under that treasurer's control and then that second PAC makes the contribution, that if it were attributed to the first

PAC would exceed the contribution limits. It could happen.

Now, that rule currently exists for post-candidacy contributions by political committees under 20-10025. And so, that rule already applies post-election. And, again, it would depend on the facts.

COUNCILMAN GOODE: I understand that it would depend on facts and you're not interviewing more than one person and a person's not going to have a conversation with him about it.

MR. CREAMER: Right.

COUNCILMAN GOODE: So seemingly the issue is whether the fact that the committees have the same treasurer would make a difference or not.

MR. CREAMER: I don't think that that in and of itself would necessarily make a difference. I think the treasurer could have communications with others who influence the decisions of the PAC.

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COUNCILMAN GOODE: Okay.

MR. CREAMER: And so, those communications would be important to us under those circumstances.

COUNCILMAN GOODE: Thank you.

MR. CREAMER: Sure.

COUNCILMAN GOODE: Thank you, Madam Chair.

COUNCILMAN CLARKE: (Inaudible; off-mic.)

COUNCIL PRESIDENT VERNA: Councilman Clarke, do you want to be recognized again?

COUNCILMAN CLARKE: Yes.

COUNCIL PRESIDENT VERNA: Thank you.

COUNCILMAN CLARKE: Thank you.

The intent I understand; I'm a little concerned about the enforcement side and what the guidelines are, 'cause as I listen to you today, it sounds like you're kind of making this up as you go. I'm serious.

MR. CREAMER: Well, I

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appreciate that --

COUNCILMAN CLARKE: And I'm a little concerned about -- I mean, will there be, like, very specific guidelines attached to the bill so people don't make mistakes, people understand what the procedures are, what your capabilities are and your authority? I'm just...

MR. CREAMER: Yes. We have a regulation which interprets this same language that already exists in the law.

COUNCILMAN CLARKE: For individuals?

(Indiscernible; parties talking over each other.)

MR. CREAMER: So as I -- it's in subpart B of regulation number 1, and it's Rule 1.3, which says, "A contribution by an individual is made" -- and we have a similar provision for PACs and businesses for post-election.

"A contribution by an individual is made through a political committee, for the purposes of paragraph

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1.2, if the individual makes a contribution to a political committee and then directs, suggests, or requests that the political committee use the contributed money to make a contribution to a specific candidate."

So that's the guideline that we have -- the guidance that we have offered through our regulation for the other three instances where this rule appears.

COUNCILMAN CLARKE: And in your interpretation of the direction or suggestion of the PAC, it would be based on written documents, e-mails, or --

MR. CREAMER: And verbal communications between the PACs that would be --

(Indiscernible; parties talking over each other.)

COUNCILMAN CLARKE: That would be determined by whom?

MR. CREAMER: What's that?

COUNCILMAN CLARKE: I mean, his

would be based on your ability to subpoena the person and ask them, Did they say this?

MR. CREAMER: That's correct.

COUNCILMAN CLARKE: Did Person A say it to Person B.

MR. CREAMER: That's right. But before we even get to an investigation under our regulation number 2, which regulates investigations and enforcement proceedings, we would have to first have a determination of whether there's probable cause to -- that a potential violation occurred and to initiate an investigation.

So we'd have to have more than simply circumstances where PAC A gives money to PAC B and they both give to a candidate. There just has to be more evidence just to start an investigation.

And then, once we start an investigation, it would depend upon the communications that we discover between the two PACs to determine whether PAC A

directed, suggested, or requested that its money be given to the candidate of its choice.

So right now, this rule already exists for an individual. So if an individual gave $2600 to a candidate and then gave $10,000 to a PAC and said, "Please give this to this candidate" --

COUNCILMAN CLARKE: I understand.

MR. CREAMER: -- that would violate the existing law.

COUNCILMAN CLARKE: I understand. Okay, all right. Thank you.

MR. CREAMER: You're welcome.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilwoman Sanchez.

COUNCILWOMAN SANCHEZ: Thank you, Madam President.

I too wanted to echo Councilwoman Tasco's comments about the participation and the discussions that

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have been going back between Council's staff and the Board of Ethics. I think it's been enlightening for us to have staff participate at some of your hearings, as I'm assuming you guys have been enlightened about the discussion around some of the practicality of this.

I wanted to ask for the record, in terms of this year, we have a lot of candidates. For many of these candidates, this would be the first time these rules apply. What are some of the preventive and educational pieces we're doing with those candidates?

And specifically, just 'cause I was unaware about the fact that even though we're running for reelection, we needed to reregister and inform the Board of Ethics that we were running; that was the previous e-mail that went out.

Are those being given to people at different trigger points? Like, when they file a petition, they have to register with the Board of Ethics? What

are we doing to make sure of that?

MR. CREAMER: That's an excellent question.

We're doing everything we can. The hard part and the reason why Council added the notification requirement as soon as you become a candidate or within three days, you have to notify the board of basic information about your campaign, your bank accounts, your treasurer so that we can communicate better with you and monitor compliance.

And so, what we have done is, we've done several things. We have sent letters to all candidates since the petition filing, petition deadline. Once everybody had their petitions in, we knew who was a candidate. And so, we got copies of those petitions.

And those petitions list the home addresses of the candidates, so we sent a letter to all of the candidates reminding them -- well, first telling them that they are subject to the City's

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campaign finance law, that we administer it and enforce it, advising them of the notification requirement, enclosing a copy of regulation number one, which gives a comprehensive interpretation of the campaign finance law, and invites them to campaign finance training.

We've held six trainings so far. We have three more scheduled, including one today -- tomorrow, at 1 o'clock. We've trained 75 people so far in our communications to candidate campaigns and treasurers. We urge them to send at least one representative to attend campaign finance training, which is really the best way to get a handle on the requirements of the law.

MR. GLAZER: We have also provided information packets at the Records Department and the City Commissioners, so we've tried to touch every possible base.

COUNCILWOMAN SANCHEZ: Are they giving them out?

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MR. CREAMER: My understanding is, Tim Dowling is giving information packets to the City Commissioner's Office on Delaware Avenue.

COUNCILWOMAN SANCHEZ: Okay, thank you.

Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: You're welcome.

The Chair recognizes Councilman Kenney.

COUNCILMAN KENNEY: Thank you, Madam Chair.

Going back to Councilman Clarke's line of questioning relative to kind of red flags that may come up as a result of the passage of this law.

I mean, I've been around campaign financing and campaigns for thirty years and in the time prior to when we passed all of this ethics and campaign finance changes.

I mean, there are other signs too, other red flags that you could look

to, and that is that one -- PAC A is the sole provider of funds to PAC B, C, and D, or that on the same day that a $10,000 check goes from PAC A to PAC B, it goes out the door in the same amount. I mean, there are lots of red flags.

I think you're going to have trouble finding anyone to admit that they've done it. But, I mean, if you go through and look at, you know, the clear nexus between the PACs and their activities, I think it'd be better served looking at those red flags as opposed to waiting for someone to admit that they've colluded and --

MR. CREAMER: Oh, we would definitely look for those red flags, and we have seen things along the lines you've suggested.

COUNCILMAN KENNEY: The same day or the next day is usually a pretty good red flag.

MR. CREAMER: It is, indeed.

COUNCILMAN KENNEY: Okay, thank

you.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilwoman Miller.

COUNCILWOMAN MILLER: Hi, good morning.

COUNCIL PRESIDENT VERNA: Good morning.

COUNCILWOMAN MILLER: Actually, my question was more pretty much along the same lines as Councilwoman Sanchez.

I just wanted to make sure that candidates knew, and there was going to be a whole good process of educating people around these laws and reaching out to them and training. So I am glad to hear that you do -- that you're on top of that.

And if packets are in the City Commissioner's office and the records room, are they telling people they're there? Shouldn't have to hunt for this -- shouldn't have to search for this.

MR. CREAMER: Okay. We've been

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told me by Tim Dowling that he automatically gives our packet to any City candidate who files with him.

COUNCILWOMAN MILLER: Okay. And also, I did see that you have on your website something in plain language. I don't have that --

MR. CREAMER: That's right. The plain English version of the law that we're required to publish that's the subject of Bill No. 110073, it is on our website currently. And then the amendment to the law would require us to maintain that on the website.

COUNCILWOMAN MILLER: Okay, all right, 'cause I kind of thought before that you thought automatically, people knew to go on your website and you really kind of knew -- and I don't think most people even knew you existed.

So I didn't want you to automatically think that people understood your role and these laws, 'cause I think that's where a lot of the

confusion came in before.

MR. CREAMER: And we're doing our best to try to eliminate that confusion and increase awareness and understanding and also to be more accessible to requests for guidance and advice on the law as well.

COUNCILWOMAN MILLER: Okay, thank you.

MR. CREAMER: Thank you.

COUNCILWOMAN MILLER: Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Jones.

COUNCILMAN JONES: Thank you, Madam President.

Good morning.

MR. CREAMER: Good morning.

COUNCILMAN JONES: Just two quick questions for the record.

This process, by way of adjudication, does not eliminate an

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individual's right to go to court and opt to seek redress if they don't agree with things.

MR. CREAMER: That is correct. What this would do is, it would permit us to administratively adjudicate these potential violations of these Charter sections the same way we would administratively adjudicate violations of the Ethics Code, the campaign finance law, or the lobbying law.

And once you have an administrative adjudication, if a respondent is not pleased with the outcome, they have the right to challenge that ruling in the Court of Common Pleas so that they would have the opportunity to have a court review the matter for certain issues.

COUNCILMAN JONES: And then the second question: In that adjudication process, it is still open, transparent to the public?

MR. CREAMER: Correct. The

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administrative adjudications under regulation number two are public hearings. You have a right of representation, you have a right to respond to the board's allegations before the hearing, and you have a chance to present your case at that hearing.

COUNCILMAN JONES: Thank you, Mr. Creamer.

Thank you, Madam Chair.

MR. CREAMER: Thank you.

(Councilwoman Tasco assumes chairmanship of hearing.)

COUNCILWOMAN TASCO: The Chair recognizes Councilman Green.

COUNCILMAN GREEN: Thank you, Madam Chair.

Good morning.

MR. CREAMER: Good morning.

COUNCILMAN GREEN: I apologize for my lateness; I had a Criminal Justice Advisory Board meeting this morning, so I'm sorry I missed your testimony.

I have a couple of questions

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about the two bills.

The first relates to the administrative adjudication. And having missed your testimony but just having heard your conversation with Councilman Jones, this would give you the authority to administratively adjudicate Charter violations?

MR. CREAMER: Yes, of the three Charter provisions identified in the bill.

COUNCILMAN GREEN: Okay. Recently, in amending the Ethics Code and other provisions of the code, we eliminated references to the Charter that had what I'll call "the death penalty," for lack of a better term, which basically said you could be removed from office or not allowed to -- for sort of minor violations, and that's what the law currently is.

Does the Charter still have -- I mean, explain to me -- I cannot recall if the death penalty provision is in the

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Charter and the Charter has not been amended. And by now giving you administrative authority over these Charter provisions, we're essentially giving you back the death penalty, which we just took away.

MR. CREAMER: Good question.

There are two things at work. There's what you're referring to as "the death penalty," which we refer to as the "disqualification provision," which existed in various code provisions, and that was taken out of the penalty provision of the Ethics Code last year, and we supported that effort.

Separately, there were provisions throughout the code and in the Charter which called for imprisonment of up to 90 days for violations. There was a 1990 or '91 Commonwealth case, the Penrose case, involving the City of Philadelphia. The City of Philadelphia was trying to recovery wage taxes that were owed to it by a Luzerne County-based

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firm.

And the code provision contained an imprisonment penalty, and although the City was not seeking an imprisonment penalty, the Commonwealth Court affirmed the trial court's dismissal of the action, saying the rules of criminal procedure apply, you filed this in civil court, it belongs in criminal court, and the rules of criminal procedure apply.

So after the Penrose case, the Law Department stripped out the imprisonment provisions wherever they could in the Charter to avoid this problem in the future because they were only seeking civil enforcement; they weren't seeking criminal penalties.

However, there's a provision in Article 10 of the Charter, 10-109, which is the penalty provision for that entire article, and that includes -- the penalty says that violations are subject to a $300 monetary fine, and violations shall

be a misdemeanor subject to imprisonment of not more than 90 days, I think it says. And in addition, if a violator is an employee of the City, they are subject to immediate dismissal and are ineligible for one year.

So that's still in the Charter. It would take -- as you know, it would take a ballot question and voter approval to remove that provision. It's not as easy to get the imprisonment out the of the Charter as it is out of the code. So that's why it's still in there.

And that's why it's a problem for us, because, right now, we can only go to court to enforce these provisions, including 10-107. And we discovered last year, in the course of an enforcement action that we were investigating, that we were going to have to go to Municipal Court, file a private criminal complaint, and if the rules of criminal procedure would apply to the proceedings.

And so, to avoid that only

option that we have, we're seeking to administratively adjudicate these matters, and the law limits us to civil penalties.

COUNCILMAN GREEN: And civil penalties do not include dismissal as an employee? Or removal from office? Or they do?

MR. CREAMER: I'm sorry? Excuse me?

COUNCILMAN GREEN: Civil penalties do not include removal from office or dismissal as an employee, or they do?

MR. CREAMER: That's correct. The bill would only authorize us to impose civil monetary fines.

However, a person who would be found in violation of those Charter provisions may be subject to removal from office anyway.

COUNCILMAN GREEN: By...?

MR. CREAMER: By their supervisor.

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COUNCILMAN GREEN: Okay. But that has nothing to do with your authority.

MR. CREAMER: No. We --

COUNCILMAN GREEN: Strictly talking about your authority.

MR. CREAMER: The board does not have equitable powers to compel someone to leave office. So the board would be limited to finding a violation of a Charter provision and then imposing monetary fines.

And then the Charter says that a person found in violation of this chapter shall be subject to dismissal. So that would be an issue that would be dealt with outside or after the administrative hearing by the board.

COUNCILMAN GREEN: So said another way, by giving you the authority to adjudicate whether or not a Charter provision has been violated, assuming you agree that it had, a third party or an individual citizen or your supervisor or

others could then bring an action to have somebody dismissed?

MR. CREAMER: I'm not sure about third parties.

COUNCILMAN GREEN: I think any citizen right now can enforce a Charter provision under the terms of the Charter; is that not correct?

MR. CREAMER: I'm not sure about that. I'd have to -- I'd want to check with the Law Department. You may be right.

COUNCILMAN GREEN: Does the lawyer to your right know the answer to that question?

MR. COOKE: My name is Michael Cooke. I'm the director of enforcement for the Board of Ethics.

I do not know whether the Charter gives individual citizens a right to bring an action to enforce a Charter provision. It may well be that even if the Charter doesn't, and the individual could bring a mandamus action in court to

compel an appointing authority to comply with the requirement of the Charter of removal.

But I do think the key point from the board's perspective is, the board cannot order removal of an employee for a result of a Charter violation; all it can do is impose a fine. And in addition, the removal is only available for Charter violations.

The bill doesn't reinstate that disqualification provision for any violation of 2600 or 21000.

COUNCILMAN GREEN: Okay. I just -- I'm not opposed to this. I just want it to be clear to everybody exactly what it is that, you know, the authority that you're being given can lead to a result from a third party, not the Ethics Board at any rate, that is sort of draconian as a result of the ruling you make.

MR. CREAMER: Right.

COUNCILMAN GREEN: Now, if that

ruling is appealed and overturned, obviously, that would have no impact; is that --

MR. CREAMER: Correct.

COUNCILMAN GREEN: Just for the record?

MR. CREAMER: Correct.

COUNCILMAN GREEN: Yes? Okay. My other question relates to political contributions and expenditures, and my question there is: Doesn't State law already say this?

MR. CREAMER: It does in part. It says -- State law has what is commonly referred to as "an anti-conduit provision," and that basically says that no person shall give money to another person for the purpose of making a political contribution.

"Person" is not defined under the State law. It probably does not apply to PACs because -- again, because "person" is not defined under the law. I'm not aware of any interpretation of

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that --

COUNCILMAN GREEN: I am aware of interpretations at the State level that that applies to PACs. You can't, you know, give from one PAC to another PAC for the purpose of having that PAC give to another person. And it's my understanding that State law applies to Philadelphia as well.

MR. CREAMER: That's correct. It's a little bit different because what this rule would do, it would attribute that contribution to the first PAC for purposes of the contribution limits.

So whether they can do it at all under State law is a slightly different question. If it is done, then that the contribution counts towards the limits for that first PAC. That's what this change would do.

COUNCILMAN GREEN: So --

MR. CREAMER: It doesn't prohibit -- so, in other words, PAC A, under our law, PAC A could not make a

contribution at all to the candidate, give $10,000 to PAC B, and PAC B makes the contribution to the candidate at the direction of the first PAC, and that would not violate the contribution limits, because they've only made a $10,000 contribution through another PAC.

Now, whether they can do that under State law is a different question.

COUNCILMAN GREEN: Right, but I'm trying to understand. So who -- when you say "directs," I mean, what standards do you apply to determine -- what do you mean by "direct"?

I just want the record to be clear and the legislative history to be clear.

MR. CREAMER: Yes, it would be a direct request or suggests that the second PAC contribute that money to the candidate of the first PAC's choice. And so, that would depend upon a factual inquiry. We'd have to have evidence of communications between the two PACs where

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the first PAC directs, suggests, or requests either -- you know, whether it be a phone call, if we can get them to admit to a conversation, or if there's an e-mail or a cover letter for the check, something like that, some communication that demonstrates that the first PAC was controlling the money, even though the money was given to another PAC.

We'd have to find proof of that sufficient to convince the Ethics Board in an administrative hearing or the Court of Common Pleas for that matter, if we're going there, that by a preponderance of the evidence, the first PAC was controlling that money and did, in fact, direct, suggest, or request that the money be given to the candidate of the first PAC's choosing.

COUNCILMAN GREEN: So I don't understand that, because the language of the statute clearly does not implicate control or common control or any standard like that at all.

MR. CREAMER: That's correct.

COUNCILMAN GREEN: So I don't read the law to say what you just said.

MR. CREAMER: The statute just says -- and, again, there are four contribution rules in 20-1002. Three of them already have this provision; we're just seeking to add the "to or through one or more political committees" to the fourth provision.

COUNCILMAN GREEN: To or through --

MR. CREAMER: To or through; that's what it says.

COUNCILMAN GREEN: -- has nothing to do with common control or control or even like or the same treasurer and chairman of different PACs --

MR. CREAMER: I agree.

COUNCILMAN GREEN: -- or anything like that.

MR. CREAMER: I agree, but our regulation number one has interpreted

this language in the other three contribution limit rules to mean that to or through another -- making a contribution to or through another political committee means that you have given them money and that you have directed, suggested, or requested that they give that money to the candidate of the donor's choosing.

COUNCILMAN GREEN: Well --

MR. CREAMER: That's our interpretation under regulation number one.

COUNCILMAN GREEN: Okay. I would say that the terms "suggested or requested" are not a fair reading of that language in the statute under -- I mean are not -- are overbroad and are not fair, and I'll -- or not a reasonable interpretation of what City Council has legislated.

For example, people can give money to a PAC and then -- and they can be constant contributors to that PAC.

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And there is -- I don't see anything wrong with them exercising their First Amendment rights and soliciting from that PAC money for a candidate that they have already supported.

MR. CREAMER: I think, actually, our interpretation is narrower than the language in the law because "to or through a political committee" has no intent attached to it.

So you could argue that a reasonable interpretation would mean that if an individual makes a contribution to a PAC and then has no idea what happens to that money afterwards but that the money winds up in a donation to a candidate that that individual has already given money to, you could take the position of, Well, that individual has effectively made a contribution to a candidate through another political committee and that, therefore, that contribution from the committee should count towards that individual's

contribution limits.

COUNCILMAN GREEN: Right, but the law --

MR. CREAMER: But our interpretation is narrower because we'd have to prove that there was some communication, some -- we've actually added a level-of-intent burden for us that doesn't really appear on the face of the law.

COUNCILMAN GREEN: Right. It's not in the law right now with respect to PACs.

MR. CREAMER: It is for post-candidacy contributions for PACs. It's not -- again, there are four provisions; two apply to contributions to candidates and --

COUNCILMAN GREEN: Right, I mean --

MR. CREAMER: -- two apply post --

COUNCILMAN GREEN: -- in terms of what we're discussing, it's under the

law with respect to PACs, and I will respectfully disagree with your interpretation of the City Council ordinance with respect to "suggests or requests."

You know, it's basically what exists in State law, and I'm not sure I have an objection to it, but I may have some language suggestions that, you know, we can discuss with the sponsor and the Ethics Board to try to make this and the other bill precisely clear as to what it means, as your testimony has.

I'm not sure -- I'd rather not have to rely on legislative history for figuring out what this means, and maybe we can --

MR. CREAMER: Nor would I, and I'd be happy to talk to you in the future about this.

COUNCILMAN GREEN: Okay.

Thank you very much, Madam President.

COUNCIL PRESIDENT VERNA: Thank

you.

Are there any other questions or comments from members of the committee?

COUNCILMAN GREEN: I'm sorry, Madam President. I have one more question.

COUNCIL PRESIDENT VERNA: Councilman Green.

COUNCILMAN GREEN: Thank you.

Who is liable for a violation if a -- let's just take the example of an individual.

If I gave Councilwoman Sanchez $1,000 in cash and asked her to make a contribution of that money to Councilman Kenney --

COUNCILMAN KENNEY: Oh, no, no, no.

(Laughter.)

I'd send it back. Thank you.

COUNCILMAN GREEN: So the question is: Who violates the law if Councilman Kenney was not aware of the

interaction between Councilwoman Sanchez and I.

COUNCILMAN KENNEY: (Not completely audible; off-mic.) Point of information? I didn't hear the whole question. Cash?

COUNCIL PRESIDENT VERNA: Cash.

COUNCILMAN GREEN: If a third --

COUNCILMAN KENNEY: I mean, is it check or cash?

COUNCILMAN GREEN: If I gave Councilwoman Sanchez a check or cash --

COUNCILMAN KENNEY: Cash.

COUNCIL PRESIDENT VERNA: Cash.

COUNCILMAN GREEN: Right, I understand that. My point is --

COUNCILMAN KENNEY: We're talking checks here, right?

COUNCILMAN GREEN: -- if she then took a thousand dollars and gave it to another person at my request --

COUNCILMAN KENNEY: Thank you.

COUNCILMAN GREEN: -- who would

be liable under the law, in your view.

MR. CREAMER: Under our law?

COUNCILMAN GREEN: Assuming the person receiving the money had no knowledge of that transaction?

MR. CREAMER: Under our law, nobody. Under the State law, I think you would violate the conduit provision.

If I could change your hypothetical a little bit. If you gave $2600 to Councilman Kenney and then gave $10,000 to Councilwoman Sanchez's candidate committee and directed her to give the money to Councilman Kenney --

COUNCILMAN KENNEY: Point of order. (Not completely audible; off-mic.)

COUNCIL PRESIDENT VERNA: Here we go again. Wait a minute. Let's clarify that.

(Laughter.)

MR. CREAMER: Then you would be in violation of the contribution limit rule, not Councilman Kenney.

COUNCILMAN GREEN: Not Councilman Kenney.

MR. CREAMER: Not Councilman Kenney, no.

COUNCILMAN GREEN: Okay. Thank you.

COUNCILMAN KENNEY: (Inaudible off-mic.)

COUNCIL PRESIDENT VERNA: Any other questions or comments from members of the committee?

(No further questions.)

COUNCIL PRESIDENT VERNA: Hearing none, gentlemen, thank you.

MR. CREAMER: Thank you very much.

COUNCIL PRESIDENT VERNA: Do we have anyone else to testify on these bills?

(No response.)

COUNCIL PRESIDENT VERNA: Anyone else to testify on these bills?

(No response.)

COUNCIL PRESIDENT VERNA: This

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will conclude our public hearing, and we will now go into our Public meeting.

And the Chair recognizes Councilwoman Tasco.

COUNCILWOMAN TASCO: Madam President, I move that we move Bill 110072 out of committee with a favorable recommendation and that the rules of Council be suspended so that this bill can be heard at Council's next session.

(Motion duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that Bill No. 110072 be reported out of committee with a favorable recommendation and, further, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will say aye.

Those opposed?

The ayes have it, and the motion carries.

Again, the Chair recognizes Councilwoman Tasco regarding Bill

3.23.11 COMM. OF THE WHOLE, BILLS 11072, 73 No. 110073.

COUNCILWOMAN TASCO: Madam Chair, I move that Bill No. 110073 be reported out of committee with a favorable recommendation and a request for the rules of Council to be suspended so this bill can be heard at Council's next session.

(Motion duly seconded.)

COUNCIL PRESIDENT VERNA: It has been moved and seconded that Bill No. 110073 be reported out of committee with a favorable recommendation and, further, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will say aye.

Those opposed?

The ayes have it, and the motion carries. And this concludes our public meeting.

Thank you.

(Proceedings end at 11:13 a.m.)

* * *

C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings of the City of Philadelphia Council Committee of the Whole are contained fully and accurately in the stenographic notes taken by me on Tuesday, March 22, 2011, and that this is a true and correct statement of same.

_____

JOSEPHINE CARDILLO

Registered Professional Reporter

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