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COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON LAW AND GOVERNMENT

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, October 19, 2006
9:00 a.m.

- - -

PRESENT:

COUNCILMAN JAMES F. KENNEY, CHAIR
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JACK KELLY
COUNCILMAN FRANK RIZZO

BILL 060629 - An ordinance amending and
clarifying the campaign finance provisions of
Chapter 20-1000 of The Philadelphia Code; in
particular, defining, for purposes of the
Chapter, what it means to be a "candidate" for
City elective office...

- - -

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COUNCILMAN KENNEY: Good

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morning, ladies and gentlemen. I lost my

4

voice this morning, so the Clerk is going

5

to read the bill for the Law and

6

Government Committee, which has a quorum

7

with members Goode, Kelly and Kenney.

8

THE CLERK: Bill No. 0606 --

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COUNCILMAN KENNEY: And

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Councilman Rizzo.

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THE CLERK: Bill No. 060629, an

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ordinance amending and clarifying the

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campaign finance provisions of Chapter

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20-1000 of The Philadelphia Code; in

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particular, defining, for purposes of the

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Chapter, what it means to be a

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"candidate" for City elective office;

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prohibiting the acceptance of

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contributions in excess of the

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contribution limits; prohibiting

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candidates from spending the amount of

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any contribution in excess of the

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contribution limits, including any excess

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contributions made before a person became

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a candidate; providing that if one

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2 candidate makes contributions of his or
3 her own resources in excess of a
4 specified amount to his or her own
5 campaign, then the contribution limits
6 for all other candidates will be
7 increased; providing for enforcement,
8 including the imposition of civil
9 penalties, by the Board of Ethics; and
10 making certain technical changes; all
11 under certain terms and conditions.

12 COUNCILMAN KENNEY: Thank you
13 very much.

14 The Chair recognizes Councilman
15 Goode.

16 COUNCILMAN GOODE: Thank you,
17 Mr. Chairman. I have some brief remarks
18 about this proposed amendment to the
19 campaign finance provisions to The
20 Philadelphia Code. First allow me to
21 describe the amendments.

22 Number one, this bill defines
23 what it means to be a candidate for City
24 elective office consistent with legal
25 opinion offered by the City Law

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2 Department.

3 Two, this bill prohibits the
4 acceptance of contributions in excess of
5 the contribution limits.

6 Three, this bill prohibits
7 candidates from spending the amount of
8 any contribution in excess of
9 contribution limits, including any excess
10 contributions made before a person became
11 a candidate.

12 Four, this bill provides a
13 Millionaires' Amendment that if one
14 candidate contributes at least \$250,000
15 of his or her own resources, then the
16 contribution limits for all the
17 candidates will be doubled.

18 Five, this bill provides for
19 enforcement, including the imposition of
20 civil penalties by the Board of Ethics.

21 It's a good bill, much better
22 than the landmark legislation I sponsored
23 in 2003.

24 I remain convinced that the
25 veto-proof majority that passed, the 2003

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2 law, would not have remained intact for
3 some of the provisions that deal with
4 specific prohibitions, enforcement and
5 penalties. I believe this body has
6 matured since then on the issue of
7 ethics.

8 The main purpose for this bill
9 is the Millionaires' Amendment, which is
10 not a new concept. The Millionaires'
11 Amendment became part of federal campaign
12 finance reform in the Bipartisan Campaign
13 Reform Act of a few years ago. A summary
14 from the Federal Election Commission is
15 contained in the Committee packets.

16 The 2001 New York City mayoral
17 election points to the need for this
18 local amendment. New York City enacted
19 campaign finance reform in the late
20 1980s, but in 2001, Michael Bloomberg
21 opted out of campaign contribution limits
22 and poured \$73 million of his own money
23 into his campaign, outspending his
24 opponent five to one.

25 I would hate to see a new

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2 municipal candidate, any municipal
3 candidate, pour tons of personal
4 resources into next year's campaign at a
5 time when other municipal candidates with
6 limited personal resources are facing
7 contribution limits for the first time in
8 the City's history. It will be a smack
9 in the face to those who have fought hard
10 to keep big money out of local politics.
11 This bill clarifies and strengthens the
12 2003 landmark legislation.

13 Thank you.

14 COUNCILMAN KENNEY: Thank you
15 very much.

16 I understand we have a panel of
17 witnesses, so if they could all come
18 forward.

19 Identify yourself and proceed.

20 COUNCILMAN GOODE: I'd like the
21 Law Department to come forward, not to
22 testify. I asked them to essentially
23 comment on the legality of the bill.
24 They've done so through a legal opinion
25 that is contained within the Committee

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2 packet. So I would like them to take
3 questions, along with the Committee of
4 Seventy, but they will not be offering
5 testimony on behalf of the
6 Administration.

7 COUNCILMAN KENNEY: That's
8 fine. Please come forward.

9 Good morning. Please identify
10 yourself for the record.

11 MS. DUNHAM: Good morning, Mr.
12 Chairman and members. My name is Ned
13 Dunham and I'm the current Chair of the
14 Committee of Seventy.

15 MR. ROSMAN: My name is Lewis
16 Rosman. I'm a senior attorney at the
17 City Law Department.

18 COUNCILMAN KENNEY: Please
19 proceed.

20 MR. DUNHAM: Thank you, first
21 of all, for inviting us here to discuss
22 the pending bill. We very much
23 appreciate the opportunity.

24 We're here this morning to
25 advise this Committee and the Council

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2 against adoption of the Bill 060629 in
3 its current form and to hopefully present
4 a viable alternative.

5 Our testimony is going to focus
6 on the term "candidate." There are other
7 provisions of the bill that we're not
8 going to address, but we feel very
9 strongly that if you're going to define
10 that term, then you need to do it with a
11 broad inclusive commonsense definition.
12 That is the only way for the bill to
13 become truly effective and to accomplish
14 the purpose that you passed it in the
15 first place. In our view, to pass the
16 ordinance as it's currently worded and
17 currently stands would be to nullify much
18 of the good you've accomplished to date.

19 Maybe to just take a minute and
20 put our testimony in context, the current
21 law, as you are well aware, limits the
22 amount of money individuals and
23 organizations can contribute to a
24 candidate for certain offices, including
25 that of Mayor. When you pass

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2 legislation, it's apparent to us that two
3 things were at the front of your mind,
4 and, that is, first of all, that money
5 buys influence, and by limiting the
6 money, you limit the influence, and the
7 second is that, fairly self-evident, that
8 a disproportionate amount of money acts
9 to give far greater weight to the giver's
10 vote than to the vote of those who cannot
11 afford to give so lavishly. Your bill is
12 an attempt -- and we think a very good
13 one -- to level the playing field. You
14 passed the bill during a perfect storm of
15 wonderful pay-to-play events,
16 indictments, trials, investigations and
17 an FBI bug in the office of the Mayor.

18 What you did not do in the bill
19 was to spell out when an individual
20 seeking elective office becomes a
21 candidate for the purpose of triggering
22 the limitations. Predictably then after
23 the bill was passed, candidates for Mayor
24 took various positions as to their
25 obligations to abide by the limits. It

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2 soon became apparent that one of the
3 goals of the bill, which was to level the
4 playing field, was being compromised.

5 Allan Schimmel, who is a former
6 Chair of the Committee of Seventy and a
7 current member, filed a lawsuit that you
8 all are aware of. Mr. Schimmel seeks a
9 declaration from the court that all of
10 the potential mayoral candidates,
11 regardless of their declared or
12 undeclared status, are under an
13 obligation to abide by the limits that
14 you had set.

15 In the early stages of the
16 litigation, four of the candidates,
17 Messrs. Knox, Saidel, Evans and Nutter,
18 agreed to your limits and further agreed
19 to have a consent judgment entered
20 against them to that effect.

21 The court subsequently found
22 that your bill was both constitutional
23 and valid. What remains for the court to
24 resolve is the question of candidacy.

25 Mr. Schimmel argues, through

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2 his very able counsel, that although you
3 did not define the term "candidate," you
4 did not need to for your intended
5 restrictions to be effective. The basis
6 of Mr. Schimmel's argument, and the
7 argument that we join in, is that the
8 Commonwealth had done it for you in the
9 broad definition in the Pennsylvania
10 Election Code.

11 If you are to pass the
12 ordinance that you're considering now,
13 you will blow that argument completely
14 out of the water and make it crystal
15 clear that you really mean the limits you
16 impose not to kick in until somebody
17 either declared publicly that he was a
18 candidate for Mayor -- and at least one
19 candidate has done that -- or filed his
20 nominating papers. Nobody has done that.
21 By doing so, you'll guarantee a very
22 unlevel playing field, in our view,
23 giving those candidates with deep-pocket
24 resources a distinct advantage over the
25 lesser well-healed candidates. We would

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2 suggest that that's not your intention.

3 In the alternative, if you're
4 going to define the term at all and thus
5 determine when your limitations become
6 effective, we suggest that the law,
7 commonsense and the intent of this body
8 is to define the candidate in a very
9 broad language of the Pennsylvania
10 Election Code. That, just to paraphrase
11 it, kicks in the -- one becomes a
12 candidate as one takes positive steps to
13 run for office: You begin to raise
14 money, you have others raise money for
15 you, you spend money or you actually file
16 your nominating papers.

17 You're all familiar with the
18 definition. I won't go into that now,
19 but we feel very strongly that we're
20 right on the law and that it's correct to
21 apply this very broad definition to your
22 original bill.

23 Mr. Schimmel's counsel has done
24 some strong and in-depth research that's
25 a matter of the public record in that

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2 court filing, and we can make it
3 available to you.

4 We are also aware, of course,
5 that our learned colleague, Mr. Romy
6 Diaz, has taken a contrary position in
7 favor of a very narrow definition of the
8 term "candidate" that would have your
9 campaign finance limits kick in only when
10 a candidate formally declares or files
11 his nominating papers. With all due
12 respect to Mr. Diaz's opinion, we, quite
13 frankly, think he got it wrong, and we've
14 discussed this with him, on this
15 particular issue when he relies on a
16 "resign to run" case that was handed down
17 by the Commonwealth court in 1990.

18 From the commonsense
19 standpoint, the Pennsylvania Election
20 Code broad definition is just that, it's
21 just plain commonsense. I don't want to
22 be flippant, but if it looks like a duck
23 and walks like a duck and quacks like a
24 duck, then maybe it is a duck, or a
25 candidate.

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2 This is a definition that
3 voters can understand. If you pass the
4 ordinance before you so that candidates
5 would be permitted to raise as much money
6 as they wanted to prior to publicly
7 declaring their candidacy or filing their
8 nominating papers, they could raise
9 unlimited amounts, giving rise to the
10 opportunity for wealthy donors to buy a
11 certain level of influence. The playing
12 field would not only not be level, but
13 your original intent would be frustrated.

14 As a third factor in support of
15 the broad definition of "candidate," we
16 had the intent of this body. We
17 recognize that intentions are often
18 difficult to discern with real precision,
19 but in this case, you've made the task a
20 little bit easier.

21 Councilman Goode, in a very
22 nice op-ed piece in the Daily News
23 earlier this year, noted that you did not
24 define the term "candidate" because the
25 State Election Code had done it for you.

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2 To quote Mr. Goode, "We would all prefer
3 a national or even state remedy for low
4 voter participation, but the State
5 Election Code is silent on the issue of
6 campaign contribution limits as it
7 relates to that matter, but the State
8 Election Code is not silent on the
9 definition of 'candidate' for elective
10 office. So the local law did not seek to
11 locally define it. In the end, the local
12 law cannot be preempted by nothing from
13 the state, but has to be preempted by
14 something. Even I know that as a
15 freshman lawmaker."

16 That was an op-ed piece in the
17 Daily News in April of this year. We say
18 amen to that and that it was well said.
19 We take that to mean that very sensibly
20 this body did not attempt to define
21 "candidate" because the Commonwealth had
22 already done it for you. You were right
23 then. We'd suggest that if you continue
24 on this course, you will still be right,
25 and if you decide to define the term

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2 "candidate" at all, it will be the very
3 broad definition that's found in the
4 Pennsylvania Election Code.

5 Thank you very much.

6 COUNCILMAN KENNEY: Thank you
7 for your testimony.

8 Councilman Goode.

9 COUNCILMAN GOODE: Thank you.

10 Let me start with the Law
11 Department response to what Mr. Dunham
12 has said and specifically as it relates
13 to the definition of "candidate." And
14 actually if you could just review the
15 legal opinion in totality and then speak
16 specifically to the term "candidate."

17 MR. ROSMAN: You'd like me to
18 review the opinion most recently on this,
19 on your current bill?

20 COUNCILMAN GOODE: Yes.

21 MR. ROSMAN: Because as you
22 know, Councilman, the opinion regarding
23 the definition of the term "candidate"
24 goes well back to -- there was an opinion
25 issued in December of 2005 to the Ethics

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2 Board that itself was based on opinion
3 that was provided in 2004 to Councilman
4 Mariano.

5 The Law Department has, since
6 the inception of the campaign finance
7 law, understood the term "candidate" must
8 mean someone who has declared that they
9 are running for Philadelphia office.
10 Primarily that's because it's fairly
11 clear that the City cannot regulate
12 someone who is raising money that might
13 be used to run for something other than
14 City office. In other words, if someone
15 is raising money and they have not
16 decided what they're going to use it for,
17 they may run for state office, they might
18 run for City office, they might run for
19 federal office, that the City does not
20 have the power to regulate someone in
21 that position until it is known that what
22 they intend to use the money for is in
23 fact a run for City office. And that is
24 why the Law Department has consistently
25 since 2004 viewed the ordinance as

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2 regulating those who have declared that
3 they are running for City office, and
4 that's in line with the City Charter's
5 use of the word "candidate" in the
6 provision, the "resign to run" provision,
7 that says you cannot become a candidate
8 for elective office unless you resign
9 from your City office or employment. And
10 the courts had said what that means to
11 become a candidate under the Charter
12 provision is if you have declared
13 publicly that you are running for an
14 office or you have filed papers to do so.

15 The opinion that's been
16 provided several days ago regarding Bill
17 060629 reiterates that view of the Law
18 Department and says that this bill would
19 make that explicit. Our understanding of
20 the implicit meaning of the word would be
21 explicit in the Code, which, of course,
22 is helpful to everyone to know if the
23 terms are explicitly defined and it puts
24 it right out on the table, it would, as
25 Mr. Dunham said, end the litigation over

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2 what the term means, which the Law
3 Department is not taking a policy view on
4 with respect to what the law should be,
5 but with respect to having clarity in the
6 law so that everybody knows what the
7 rules are, that is obviously a good
8 thing.

9 There's another important
10 provision of 060629 which in many
11 respects addresses the policy concerns
12 that Mr. Dunham is expressing about the
13 way the term "candidate" is defined, and,
14 that is, the opinion of the Solicitor to
15 the Ethics Board in December 9, 2005,
16 which is available on the Ethics Board
17 website, explains that the understanding
18 of the Law Department is if you are not
19 yet a candidate and you are raising funds
20 in excess of the limits set forth in the
21 ordinance, in the Code, once you become a
22 candidate, the Law Department's
23 understanding is that you would be
24 limited in how you could spend the money
25 that you received before you became a

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2 candidate. Call those pre-candidacy
3 excess contributions. So if you raised
4 from somebody more than what you would be
5 allowed to raise if you were a candidate,
6 once you become a candidate, you could
7 only spend the portion of that money that
8 would be within the limits on your
9 candidacy. The rest of the money you
10 would have to use somehow else.

11 COUNCILMAN KENNEY: Just one
12 clarification. If I'm raising money and
13 I'm not a candidate, the money has to go
14 into some type of fund, it has to have
15 some title, name on it.

16 MR. ROSMAN: Right.

17 COUNCILMAN KENNEY: If I
18 declare my candidacy for Mayor and form a
19 mayoral campaign committee, how do I
20 legally transfer the money from there to
21 that committee without violating existing
22 City law?

23 MR. ROSMAN: Well, I'm not sure
24 what --

25 COUNCILMAN KENNEY: Because

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2 there's a limitation on PAC contributions
3 of \$10,000. If I raise 200,000 in an
4 exploratory committee, how do I get that
5 200,000 into my mayoral committee without
6 violating the law?

7 MR. ROSMAN: I'm not sure I can
8 give an opinion on what are the
9 permissible ways to do that.

10 COUNCILMAN KENNEY: Under our
11 current law, I don't think there is any.

12 MR. ROSMAN: Well, I think
13 there's been an assumption, although I
14 don't want to give an opinion about
15 whether this is okay or not. I think
16 there's an assumption built into our
17 December 2005 opinion that you could
18 simply change the name from your Joe
19 Smith 2007 to --

20 COUNCILMAN KENNEY: You can't
21 just change the name. You'd have to make
22 one defunct or create another one. You
23 couldn't just simply change the name of
24 it, because that's basically creating a
25 new PAC.

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2 MR. ROSMAN: Perhaps if you
3 change the name, that you could transfer
4 that money and that it would not count as
5 a PAC to fund contribution. Maybe it
6 would, but the assumption here is that it
7 would not.

8 COUNCILMAN KENNEY: But you
9 don't have a definitive answer.

10 MR. ROSMAN: Right. But if you
11 transferred that money, you would still
12 be limited in spending the portions of
13 that money on your campaign to the
14 portions that you could have raised under
15 the limits, and the rest of the money
16 that would be in excess of the limits you
17 would have to use for some other purpose.

18 COUNCILMAN KENNEY: My
19 assumption is that the court would make
20 that decision, because that's something
21 that would be argued.

22 MR. ROSMAN: I guess so, if
23 that were challenged the way that the
24 money were transferred from fund to fund.

25 COUNCILMAN GOODE: I actually

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2 think the Chair is very clear, that you
3 cannot change the name of a committee
4 without forming a new committee. I
5 believe that is impossible. You can
6 change treasurers, you can change
7 chairmen, you can change any number of
8 things on a committee, but once you
9 change the name of a committee, you're
10 actually changing committees.

11 So I think that the law is
12 pretty clear and solid in terms of you
13 cannot transfer money from one committee
14 to another committee in excess of the
15 contribution limits. But whatever was
16 unclear about the 2003 ordinance is made
17 clear by this ordinance. And so my first
18 question for Mr. Dunham is, regardless of
19 when someone becomes a candidate, whether
20 you're using a broad definition or
21 whether you're using a narrow definition,
22 the other provisions of this bill that
23 prohibit the acceptance of contributions
24 in excess of contribution limits, that
25 prohibit the spending of the amount of

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2 any contribution in excess of the
3 contribution limits, including excess
4 contributions made before a person became
5 a candidate, does that or does that not
6 make the issue moot?

7 MR. DUNHAM: Well,
8 Mr. Councilman, I don't think it makes
9 the issue moot because I think that there
10 are -- and we all know that there are
11 ways of spending the money in advance of
12 the time when the limits actually kick
13 in. I agree that --

14 COUNCILMAN GOODE: You mean in
15 advance of when someone becomes a
16 candidate.

17 MR. DUNHAM: Well, when someone
18 becomes a candidate, but that's always
19 the question. That puts the rabbit in
20 the hat.

21 I think that you've raised a
22 very good question about transferring the
23 funds, I mean, changing the name on the
24 bag. I think that's a real legitimate
25 issue that needs to be addressed. And

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2 fundamentally --

3 COUNCILMAN GOODE: It's an
4 issue you mean that needs to be addressed
5 legislatively?

6 MR. DUNHAM: I think
7 legislatively if you're going to --
8 because otherwise you've got a perception
9 out there that somebody --

10 COUNCILMAN GOODE: There is no
11 misperception. The original legislation
12 says you can only have one committee.

13 MR. DUNHAM: Okay. And you
14 don't change the name of that committee.

15 COUNCILMAN GOODE: Well, you
16 can't change the name of the committee
17 under the State Election Code.

18 MR. DUNHAM: Right. Right.

19 COUNCILMAN GOODE: So there's
20 no confusion here. The legislation says
21 you can only have one committee.

22 MR. DUNHAM: I think the
23 Chairman raised a good question, though.
24 How do you get the money that you've
25 collected in advance.

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2 COUNCILMAN GOODE: You can't,
3 because -- this is why the Law Department
4 doesn't like to testify at a hearing,
5 because essentially the Chairman asked
6 them how to do it. He can't suggest how
7 to do it legally because it can't be done
8 legally. That's why his answer is the
9 way it is. But let me ask you a few
10 other questions.

11 MR. DUNHAM: Sure.

12 COUNCILMAN GOODE: You have
13 alluded to the fact that you believe that
14 candidates are candidates when they begin
15 to raise money that might be used for a
16 race.

17 MR. DUNHAM: Right.

18 COUNCILMAN GOODE: Where does
19 that come from?

20 MR. DUNHAM: Well, it comes
21 from, I think, the definition of the
22 Pennsylvania Election Code, which is, I
23 think, pretty clear. When you either
24 personally raise money or you authorize
25 the committee to do it, to raise it and

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2 which a covered election takes place.

3 MR. DUNHAM: Right.

4 COUNCILMAN GOODE: That is the
5 election cycle by the law. You can't
6 change it. I mean, you've taken a lot of
7 liberties here with my original
8 legislative intent and the intent of
9 Council with regard to the original
10 ordinance. I mean, you spoke about it
11 here today, you spoke about it before
12 today.

13 Clearly, we are the sole
14 arbiters of our legislative intent, and I
15 am the sole arbiter of the intent of why
16 I drafted it the way I drafted it. You
17 simply can't tell me why I drafted it
18 that way.

19 MR. DUNHAM: Well, I was only
20 using what you said in the op-ed piece,
21 which we thought was very well done, and
22 it looked to us like that's what you
23 intended, that --

24 COUNCILMAN GOODE: That's
25 absolutely what I intended in the

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2 original ordinance.

3 MR. DUNHAM: Right, not to
4 define it.

5 COUNCILMAN GOODE: I'm
6 intending to amend the original ordinance
7 for the purpose of the Millionaires'
8 Amendment and I'm attempting to narrow
9 the definition now, particularly as it
10 remains to the Millionaires' Amendment,
11 and in doing so, I believe the Law
12 Department agrees that, in our view,
13 which I've shared with you, it causes
14 less confusion, not more confusion. Now,
15 if you disagree with that, that's fine,
16 but our legal opinion says that the
17 clarification that exists within this
18 bill takes away the ambiguity, takes away
19 the confusion, actually offers clarity,
20 and probably diffuses some of the
21 litigation. Not the litigation in regard
22 to constitutionality, but the litigation
23 with regard to the definition of
24 "candidate."

25 MR. DUNHAM: Well, I would

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2 certainly agree with you that it removes
3 any ambiguity. It knocks the pins out
4 from under the argument that the
5 Pennsylvania Election Code definition
6 should be used, but I think that when you
7 remove the ambiguity, I think you create
8 the unlevel playing field that you were
9 trying not to do.

10 COUNCILMAN GOODE: Let me ask
11 you a couple questions, Mr. Dunham.
12 How did you become Chair of the
13 Committee of Seventy?

14 MR. DUNHAM: How did I become
15 Chair?

16 COUNCILMAN GOODE: Yes.

17 MR. DUNHAM: Through the
18 nominating process. I stuck my hat in
19 the ring and they choose to elect me.

20 COUNCILMAN GOODE: Nominating
21 process by who?

22 MR. DUNHAM: It was a Board
23 function. There was a nominating
24 committee.

25 COUNCILMAN GOODE: So you were

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2 on the Board?

3 MR. DUNHAM: Yes, sir.

4 COUNCILMAN GOODE: How did you
5 come to be on the Board?

6 MR. DUNHAM: I was invited to
7 join the Board in, I think, about 1995 by
8 then a current member of the Board who I
9 happened to know.

10 COUNCILMAN GOODE: Under the
11 current Board membership policy, is there
12 a dues structure?

13 MR. DUNHAM: Yes, sir.

14 COUNCILMAN GOODE: And what is
15 the dues structure?

16 MR. DUNHAM: There is an
17 obligation of \$1,200 per year for the
18 members and then there's an expectation
19 that they will help us raise an
20 additional \$1,300. So the total
21 obligation is \$2,500.

22 COUNCILMAN GOODE: And who pays
23 that? Do you pay that personally?

24 MR. DUNHAM: I do, and I think
25 most of the members do.

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2 COUNCILMAN GOODE: Are you
3 associated with any particular law firm
4 in this City?

5 MR. DUNHAM: No, sir.

6 COUNCILMAN GOODE: You are not?

7 MR. DUNHAM: Am I associated
8 with the Law Department? No.

9 COUNCILMAN GOODE: With any law
10 firm in the City.

11 MR. DUNHAM: Oh, law firm?
12 Yes, sir; Duane Morris.

13 COUNCILMAN GOODE: Does that
14 law firm represent any of the potential
15 mayoral candidates on the issues of
16 campaign finance?

17 MR. DUNHAM: One of my
18 partners, Nolan Atkinson, represents
19 Dwight Evans.

20 COUNCILMAN GOODE: So your law
21 firm actually represents one of the
22 potential mayoral candidates.

23 MR. DUNHAM: It does.

24 COUNCILMAN GOODE: On the issue
25 of campaign finance?

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2 MR. DUNHAM: I believe it does,
3 yes.

4 COUNCILMAN GOODE: Isn't that a
5 conflict of interest?

6 MR. DUNHAM: I don't think it
7 is. I have never acted in my capacity as
8 a Duane Morris partner. My capacity is
9 as a Chairman of the Committee of
10 Seventy, and the lawsuit itself is not
11 brought by the Committee of Seventy.

12 COUNCILMAN GOODE: Let me walk
13 you through perception.

14 MR. DUNHAM: Okay.

15 COUNCILMAN GOODE: Perception
16 is that Seventy decides to sue potential
17 mayoral candidates, people who I don't
18 believe are necessarily mayoral
19 candidates, but Seventy decides to sue
20 potential mayoral candidates. Your law
21 firm chooses to defend one of those
22 potential candidates. Seventy then
23 releases that person from the suit.
24 That's not a conflict of interest?

25 MR. DUNHAM: We released four

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2 people from the suit in exchange for
3 their agreement to abide by the campaign
4 finance limits. I don't think it's a
5 conflict of interest at all.

6 COUNCILMAN GOODE: Is your law
7 firm politically backing the candidate
8 that you represent?

9 MR. DUNHAM: Our policy
10 generally is that individual partners
11 back whoever they want to back, and we
12 have a PAC and that goes to certain
13 candidates, and I'm just not aware of the
14 details.

15 COUNCILMAN GOODE: But it's not
16 uncommon for your law firm to choose
17 particular candidates?

18 MR. DUNHAM: It's not uncommon
19 for us to choose several candidates. I
20 don't think that we in the past have been
21 known to pick a particular candidate and
22 focus our efforts on that one candidate.

23 COUNCILMAN GOODE: The
24 candidate that your law firm currently
25 represents, where do they stand in the

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2 polls?

3 MR. DUNHAM: I'm sorry?

4 COUNCILMAN GOODE: The
5 candidate that your law firm currently
6 represents, where do they stand in the
7 polls?

8 MR. DUNHAM: Where do they
9 stand in the polls?

10 COUNCILMAN GOODE: Yes.

11 MR. DUNHAM: You mean where
12 does Mr. Evans stand? I'm not aware.
13 And, incidentally, I mean, our law firm's
14 involvement in that lawsuit was
15 terminated when Mr. Evans got out of the
16 lawsuit, and I have no idea where he
17 stands in the polls.

18 COUNCILMAN GOODE: When Seventy
19 released Mr. Evans from the lawsuit, he
20 no longer then needed a lawyer.

21 MR. DUNHAM: That's right.

22 COUNCILMAN GOODE: But my
23 question is, where -- I'll change my
24 question.

25 Where did the candidate that

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2 your law firm represented stand in the
3 polls when you represented that
4 candidate?

5 MR. DUNHAM: I have no idea,
6 sir.

7 COUNCILMAN GOODE: What if I
8 told you it was second?

9 MR. DUNHAM: I'd accept that
10 because you said so.

11 COUNCILMAN GOODE: And what if
12 I told you that the candidate is a
13 front-runner you did not release from the
14 lawsuit?

15 MR. DUNHAM: Well, I guess I'd
16 like to know front-runner by whose poll?
17 I don't know who you're talking about.

18 COUNCILMAN GOODE: By several
19 polls and by every poll.

20 MR. DUNHAM: And that candidate
21 would be who, sir?

22 COUNCILMAN GOODE: I'm asking
23 you if the candidate that your law firm
24 represented was released from a lawsuit
25 and was second in the polls and Seventy

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2 still continues to sue other candidates,
3 is that not a conflicts of interest?

4 MR. DUNHAM: I don't see it. I
5 understand the question. I don't see it
6 as a conflict.

7 COUNCILMAN GOODE: I'll finish
8 up, and this is in no way meant to offend
9 you or to attack your character, but you
10 would understand why I would rely upon
11 the Law Department's legal opinion before
12 I rely upon yours?

13 MR. DUNHAM: I would understand
14 that, yes, sir.

15 COUNCILMAN GOODE: Thank you.
16 No more questions.

17 MR. DUNHAM: And no offense
18 taken.

19 COUNCILMAN KENNEY: Thank you
20 very much.

21 Councilman Kelly.

22 COUNCILMAN KELLY: Thank you
23 very much.

24 Mr. Dunham, I just want to
25 know, candidates running for state

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2 offices, do they have any limits?

3 MR. DUNHAM: Under the Election
4 Code, Pennsylvania Election Code, I do
5 not believe they do.

6 COUNCILMAN KELLY: They don't?

7 MR. DUNHAM: I do not believe
8 they do.

9 COUNCILMAN KELLY: And yet
10 you're saying that we should use or abide
11 by the state regulations concerning our
12 candidates.

13 MR. DUNHAM: Concerning the
14 definition of "candidate."

15 COUNCILMAN KELLY: Now, I know
16 that candidates for federal office have
17 limits.

18 MR. DUNHAM: Right.

19 COUNCILMAN KELLY: In other
20 words, if a person who is presently a
21 candidate or presently a legislator could
22 possibly be probably raising a
23 substantial amount of money. Now, can
24 that person, if he decides to run for a
25 City position, use that money in his

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2 election?

3 MR. DUNHAM: Well, I think, as
4 Councilman Goode pointed out, I think
5 there's a real restriction on that. I
6 think that if he's raised money in excess
7 of City Council limits, then he is
8 restricted from --

9 COUNCILMAN KELLY: Well, it
10 seems to be very hazy as to transferring
11 this money out of, I would say, an old
12 account or a previous account that the
13 person had and then transfer it over to a
14 new account or a new committee, whatever
15 you want to call it. I don't know.
16 That's questionable.

17 I don't see the real drawback
18 here of being explicit and by really
19 defining when a person is a candidate,
20 and that's by filing petitions or coming
21 out with a statement saying you're
22 definitely running for an office.

23 You're saying that we should
24 abide by the state regulations. Well, in
25 my opinion, they constantly want to just,

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2 I think, eliminate this Council
3 completely the way they've been going
4 over the years. I don't know what we're
5 doing here sometimes, because I think
6 that they just want to usurp our
7 authority all over the place. In my
8 opinion, these are City offices, and I
9 think we have the right to be involved in
10 the process.

11 That's all I wanted to say at
12 this time. I don't see any drawback to
13 being explicit in defining a candidate.

14 MR. DUNHAM: Well, I wouldn't
15 disagree with you that there's no
16 drawback to being explicit. Where you
17 and I would have our conversation is,
18 what are we going to say. And I would
19 say that the state has put a good
20 definition on your plate and you don't
21 need to go any further. You don't need
22 to amend the bill with that respect,
23 because you already got a good
24 definition. And you and I could have a
25 much longer conversation about what the

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2 intent of the state is. That's a
3 conversation for another day.

4 COUNCILMAN KELLY: Okay. Thank
5 you.

6 COUNCILMAN KENNEY: Thank you
7 very much.

8 COUNCILMAN KELLY: Thank you,
9 Mr. Chairman.

10 COUNCILMAN KENNEY: Under this
11 bill, if someone attempted to transfer
12 money from a state account to a local
13 account, an individual could file a
14 complaint with the Board of Ethics, who
15 would then make a determination on
16 whether that happened or not and act
17 accordingly with civil penalties and bad
18 publicity for that candidate. So you can
19 do it, but you have to at least explain
20 it or be called on the carpet for it at
21 some point in time.

22 MR. DUNHAM: Yes.

23 COUNCILMAN KENNEY: Are there
24 any other questions for this witness?

25 COUNCILMAN KELLY:

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2 Mr. Chairman, I just have a question.

3 COUNCILMAN KENNEY: Councilman
4 Kelly.

5 COUNCILMAN KELLY: Would you
6 have to dissolve your committee and then
7 form a new committee if you want to
8 transfer the funds?

9 COUNCILMAN KENNEY: No. You
10 can keep that committee forever. You can
11 just form a new committee and try to
12 transfer it, but you'd be in violation of
13 the City ordinance.

14 COUNCILMAN KELLY: Okay. Thank
15 you.

16 COUNCILMAN KENNEY: Any other
17 questions for these witnesses?

18 (No response.)

19 COUNCILMAN KENNEY: Thank you.
20 Is there anyone else to
21 testify?

22 (No response.)

23 MR. DUNHAM: Thank you very
24 much. I guess in closing I would say
25 that we're all on the same page here.

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2 We're all trying to reach the same
3 objective. We're just having a dialogue
4 about how we get there. Thank you.

5 COUNCILMAN KENNEY: Thank you.

6 That concludes the public
7 hearing. We will now convene the public
8 meeting.

9 The Chair recognizes
10 Councilmember Goode for a motion on Bill
11 No. 060629.

12 COUNCILMAN GOODE: Thank you,
13 Mr. Chairman. I move that Bill 060629 be
14 reported out of Committee with a
15 favorable recommendation, that the rules
16 of Council be suspended so as to permit
17 first reading at our next Council
18 session.

19 (Duly seconded.)

20 COUNCILMAN KENNEY: Moved and
21 seconded.

22 All in favor?

23 (Aye.)

24 COUNCILMAN KENNEY: There are
25 none opposed.

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2 The chair recognizes
3 Councilmember Goode for a motion to
4 suspend the rules for first reading.

5 COUNCILMAN GOODE: Thank you,
6 Mr. Chairman. I move that the rules of
7 Council be suspended so as to permit
8 first reading at our next Council
9 session.

10 (Duly seconded.)

11 COUNCILMAN KENNEY: Moved and
12 seconded.

13 All in favor?

14 (Aye.)

15 COUNCILMAN KENNEY: Bill No.
16 060602 is reported out of this Committee
17 favorably and a request made for a rules
18 suspension to allow first reading at our
19 next Council session.

20 That ends our business, thank
21 God. Thank you.

22 (Committee on Law and
23 Government adjourned at 9:35 a.m.)

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CERTIFICATE

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I HEREBY CERTIFY that the

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proceedings, evidence and objections are

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contained fully and accurately in the

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stenographic notes taken by me upon the

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foregoing matter on October 19, 2006, and that

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this is a true and correct transcript of same.

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MICHELE L. MURPHY

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RPR-Notary Public

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