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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING - COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Monday, March 7, 2005, 3:30 p.m.

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050165 - An Ordinance providing for the submission to the qualified electors of the City of Philadelphia of an amendment to the Philadelphia Home Rule Charter creating a new Chapter 5 entitled "Referenda Approved By The Voters" in Article VIII, Provisions of General Application, and creating a new Section 8-500 entitled "Smoking i Public Places and in the Workplace" calling on the Council of the City of Philadelphia to pass no legislation that will prohibit smoking in public places and in the workplace; fixing the date of a special election for such purpose, prescribing the form of ballot questions to be voted on; and authorizing the appropriate officers to publish notice and to make arrangements for the special election.

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050176 - Resolution proposing an amendment to the Philadelphia Home Rule Charter creating a new Chapter 5 entitled "Referenda Approved By The Voters" in Article VIII, Provisions of General Application, and creating a new Section 8-500 entitled "Smoking in Public Places and in the Workplace" calling on the Council of the City of Philadelphia to pass no legislation that will prohibit smoking in public places and in the workplace.

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2 PRESENT:
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4 COUNCIL PRESIDENT ANNA C. VERNA
5 COUNCILWOMAN BLONDELL REYNOLDS BROWN
6 COUNCILMAN DAVID COHEN
7 COUNCILMAN DARRELL L. CLARKE
8 COUNCILMAN FRANK DiCICCO
9 COUNCILMAN W. WILSON GOODE, JR.
10 COUNCILMAN JACK KELLY
11 COUNCILMAN JAMES F. KENNEY
12 COUNCILMAN RICHARD T. MARIANO
13 COUNCILWOMAN DONNA REED MILLER
14 COUNCILMAN MICHAEL A. NUTTER
15 COUNCILMAN BRIAN J. O'NEILL
16 COUNCILMAN JUAN F. RAMOS
17 COUNCILMAN FRANK RIZZO
18 COUNCILWOMAN MARIAN B. TASCO
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3 P R O C E E D I N G S

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5 COUNCIL PRESIDENT VERNA: This is
6 the public hearing of the Committee of the
7 Whole, regarding Bill Numbers 050165, and
8 Resolution Number 050176.

9 I would ask Mr. McPherson to please
10 read the titles, please.

11 MR. MCPHERSON: Bill Number 050165,
12 an Ordinance providing for the submission to
13 the qualified electors of the City of
14 Philadelphia of an amendment to the
15 Philadelphia Home Rule Charter creating a new
16 Chapter 5 entitled "Referenda Approved By The
17 Voters" in Article VIII, Provisions of
18 General Application, and creating a new
19 Section 8-500 entitled "Smoking i Public
20 Places and in the Workplace" calling on the
21 Council of the City of Philadelphia to pass
22 no legislation that will prohibit smoking in
23 public places and in the workplace; fixing
24 the date of a special election for such
25 purpose, prescribing the form of ballot

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2 questions to be voted on; and authorizing the
3 appropriate officers to publish notice and to
4 make arrangements for the special election.

5 Resolution Number 050176, a
6 resolution proposing an amendment to the
7 Philadelphia Home Rule Charter creating a new
8 Chapter 5 entitled "Referenda Approved By The
9 Voters" in Article VIII, Provisions of
10 General Application, and creating a new
11 Section 8-500 entitled "Smoking in Public
12 Places and in the Workplace" calling on the
13 Council of the City of Philadelphia to pass
14 no legislation that will prohibit smoking in
15 public places and in the workplace.

16 COUNCIL PRESIDENT VERNA: Thank you.

17 We have quite a list of witnesses
18 that indicated they wanted to testify.
19 However, I know that many of them testified
20 earlier. Is there anyone here who would like
21 to testify on the bill and the resolution
22 just read by Mr. McPherson?

23 (No response.)

24 COUNCIL PRESIDENT VERNA: Do we have
25 anyone here who wants to testify?

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2 (Hands raised.)

3 COUNCIL PRESIDENT VERA:

4 Councilman, take the witness table.

5 COUNCILMAN MARIANO: Okay. It's
6 quite spooky over here.

7 I want to thank everyone for coming.
8 And I thank the Council President and my
9 colleagues for their patience after a long
10 day.

11 This is really very simple. All
12 this amendment does -- All this resolution
13 does is ask Council to vote this out of this
14 committee, and then out of Council altogether
15 when it comes in front of it, after the
16 second reading.

17 I just want to put it on the ballot.
18 I think this question -- The Councilman did a
19 lot of good work here. And it's a question
20 that affects a lot of people in the City of
21 Philadelphia.

22 We get the smoking part. I do get
23 the smoking part. My own father died of lung
24 cancer. I understand it. I'm not pro
25 smoking.

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2 I'm just trying to take care of the
3 people that can't be spoken for, the people
4 in the hospitality industry that don't work
5 for big chains and have nowhere else to go,
6 and have chosen to work in an industry that
7 there may be some exposure to secondhand
8 smoke. It's strictly an economic issue.

9 And I just want to try to get it on
10 the ballot, so the people can speak and the
11 people can vote on the first Tuesday in May.
12 I think I have the right date.

13 It's a non-binding resolution
14 anyhow, but it might give Council some
15 guidance, if the good Councilman could hold
16 up on his thing. And we could do that in
17 May, and come back in September and address
18 that like it should be addressed.

19 And it may take a lot of my
20 colleagues -- give my colleagues a chance to
21 really decide on this because this is going
22 to have a big effect on a lot of people. So
23 that is it, simply stated: Nothing more;
24 nothing less.

25 Thank you.

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2 COUNCIL PRESIDENT VERNA: Thank you
3 very much.

4 Do we have anyone else in the
5 audience who would like to testify? Please
6 approach the witness table. Have you
7 testified earlier?

8 MS. KOPKO: Yes, I did.

9 COUNCIL PRESIDENT VERNA: All right.
10 If you would simply testify on the bill and
11 resolution before us, I would appreciate it.

12 Are you all a panel?

13 (No response.)

14 COUNCIL PRESIDENT VERNA: Are you
15 all a panel?

16 (No response.)

17 COUNCIL PRESIDENT VERNA: Are you
18 all a panel?

19 Yes.

20 COUNCIL PRESIDENT VERNA: Who's
21 going to testify first? Please identify
22 yourself for the record.

23 My name is Denise Kopko. And I
24 testified this morning, but was asked to
25 testify again because a lot of the Council

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2 people were not available this morning.

3 COUNCIL PRESIDENT Verna: But many
4 of us were listening to the testimony. Your
5 testimony will be given to the stenographer.
6 It will be made part of the record.

7 So, I am asking you to please
8 testify now on the bill and the resolution
9 before us at the moment.

10 MS. KOPKO: My testimony on the bill
11 is, this is not about -- this is not an
12 economic issue.

13 And what I tried to say this morning
14 is this is about public health. This is not
15 about economics. You can't put economics on
16 a life of a person, on the life of my
17 husband.

18 This bill... I read the bill. I
19 consider myself a pretty educated person.
20 I've got an MBA. And I can't understand what
21 you're asking me to vote for.

22 And the way a lot of these things
23 get on the ballots is so it confuses people
24 to vote, and you're not sure which way you're
25 really voting. And that's the big concern

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2 COUNCILMAN MARIANO: Point of
3 information, Madam Chair.

4 COUNCIL PRESIDENT Verna: The Chair
5 recognizes Councilman Mariano.

6 COUNCILMAN MARIANO: Ma'am, I
7 certainly sympathize with you in your quest
8 here, but this is strictly a non-binding
9 referendum.

10 No matter what happens, the people
11 are going to have a voice, the minority will
12 be heard, and the majority must be served.
13 It's very simple.

14 I said my own father died of cancer.
15 I do get it. We're just... This is strictly
16 to put something on a ballot.

17 It's not about what you testified
18 before or what anyone else here testified
19 about. And I'm sorry to want to say that,
20 but someone has to say that.

21 MS. KOPKO: Well, this is not --

22 COUNCILMAN MARIANO: I understand.
23 And I have some amendments for this. So, for
24 you to say you can't understand it, I have
25 some amendments. This is what I do for a

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2 living, and this is what the people in this
3 chamber do for a living. And we have
4 legislative staff that draw these bills up
5 and do a -- spend a whole lot of time. I
6 have some amendments.

7 Strictly, if you're going to testify
8 on what you testified before, your
9 testimony... That's not what we're here for
10 right now. We understand.

11 I was upstairs listening to what you
12 said. We do get it. The people in this --
13 The Council people in this chamber will vote,
14 and will vote either for this to get out of
15 committee or not. And when they do, that's
16 what happens. I'm sorry.

17 MS. KOPKO: And you'll delay the
18 vote another 6 months, another 12 months.

19 COUNCILMAN MARIANO: Possibly.
20 Possibly.

21 MS. KOPKO: In that time there will
22 be 12 more people who die of lung cancer.

23 COUNCILMAN MARIANO: Ma'am, I'm not
24 here to debate you. And I would ask the
25 Council President to stick to her statement

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2 that anybody that testified before shouldn't
3 be allowed to testify again, unless they want
4 to testify about this bill being on the
5 ballot or not.

6 COUNCIL PRESIDENT VERNA: Precisely.
7 They can testify on the bill on the
8 resolution before us.

9 So, I'm assuming that you're opposed
10 to the bill and the resolution?

11 MS. KOPKO: Yes.

12 COUNCIL PRESIDENT VERNA: Thank you.
13 Our next... Yes, Councilman Nutter.

14 COUNCILMAN NUTTER: Just a point of
15 clarification. I want to make sure that
16 we're all understanding the matter.

17 In the conversation just now between
18 Councilman Mariano, the sponsor -- and he and
19 I have talked about this -- and his response
20 to one of the witnesses at the table, the
21 statement was made that this was a
22 non-binding referenda.

23 I would have a question about that.
24 This is a proposed change to the Home Rule
25 Charter, preventing... the basis of which is

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2 to prevent City Council from enacting
3 legislation related to smoking in the
4 workplace.

5 That is not a non-binding
6 referendum. That is an affirmative statement
7 and prohibition on the passage of
8 legislation.

9 This is not just putting up a
10 question on the ballot to ask the public's
11 opinion. This is a matter that not only has
12 a question, but also proposes to change the
13 Home Rule Charter presently.

14 And I know that the Councilman has
15 circulated a proposed amendment. And I
16 understand the language. It does not change
17 the basis of what's proposed here, even
18 under -- Put the proposed amended language
19 aside.

20 It says that we, the citizens of
21 Philadelphia, call upon the Council of the
22 City of Philadelphia to pass no legislation
23 that would prohibit smoking in public places
24 and in the workplace. That is a restriction
25 on the Council's legislative prerogative.

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2 It's not a --

3 COUNCILMAN MARIANO: I appreciate
4 you bringing that to me. That's a mistake.
5 It wasn't supposed to be like that. I didn't
6 read it close enough. And you're absolutely
7 right. Nobody's trying to pull a fast one
8 here. We can just discontinue this hearing
9 now, if that's the case. I mean --

10 COUNCILMAN NUTTER: No, I don't
11 think you're trying to --

12 COUNCILMAN MARIANO: No. I'm
13 reading it. I'm reading it.

14 * COUNCILMAN NUTTER: Okay.

15 COUNCILMAN MARIANO: Along with him
16 I'm reading it. It was my understanding that
17 it was a non-binding resolution. That's what
18 I wanted. There's been some miscommunication
19 between myself and the person that drafted
20 the legislation. That's what I told all the
21 people on Council, and that's what I want to
22 do.

23 COUNCILMAN NUTTER: Right. No; I
24 understand.

25 COUNCILMAN MARIANO: I see the word,

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2 and as you read it, definitely.

3 COUNCILMAN NUTTER: Councilman, I
4 would only ask further, even with the
5 proposed changed language, the new bold
6 language, the result, I believe, would still
7 be the same, in terms of the effect on our
8 ability to legislate in this particular area.

9 So, we would still... We would not
10 be within the realm of a non-binding
11 referenda. If anything, I think, you have
12 made at least that proposed portion of the
13 Charter change clearer, as to what is being
14 proposed here.

15 It is a strict prohibition from
16 passing any legislation regarding smoking in
17 public places or in the workplace, unless it
18 meets a certain criteria.

19 I do not think that that would meet
20 the test of a non-binding referenda.

21 COUNCILMAN MARIANO: Again,
22 Councilman, it's wrong. You're right. I'm
23 wrong. It shouldn't be that way. It was a
24 miscommunication by the person that drafted
25 the legislation and myself. And this is

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2 actually the first time I sat down to read
3 it.

4 So, not to waste any more time...
5 And Council members, maybe we could recess
6 this till Thursday morning before Council and
7 I could possibly straighten this out. I want
8 it to be non-binding.

9 COUNCILMAN NUTTER: Okay. I just...

10 COUNCILWOMAN TASC0: You have to do
11 a new bill.

12 COUNCILMAN MARIANO: A new bill?

13 COUNCILMAN NUTTER: Okay. I mean, I
14 just --

15 COUNCILMAN MARIANO: The
16 Councilwoman says I probably have to do a new
17 bill. If that's the case, I'll do a new bill
18 this week.

19 COUNCILMAN NUTTER: Okay. Yes. I
20 just wanted to make sure before we got too
21 far down the path.

22 COUNCILMAN MARIANO: I just
23 wanted -- I mean, my madness behind this is
24 to slow this legislation down.

25 Listen, the people on this Council

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2 are going to vote one way or the other.

3 COUNCILMAN NUTTER: Okay. I
4 understand.

5 COUNCILMAN MARIANO: And I think
6 everybody knows how you and I are going to
7 vote. And like I been saying ten times a
8 day, we cancel each other out.

9 There's some people that haven't
10 made up mind and don't want to make up their
11 mind right now.

12 You've been working on this for a
13 long, long time, and you've put a lot of time
14 into this, but there's many things around
15 here that people rush into, and not because
16 of the sponsor's fault or everyone else.
17 Just that we're all busy people trying to
18 multi-task.

19 And today we had committee hearings
20 two times going on. I know we're capable of
21 multi-tasking, but I just don't know --

22 COUNCILMAN NUTTER: Right.

23 COUNCILMAN MARIANO: -- if that's
24 capable, in something that may be as
25 important as putting a whole lot of people

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2 out of work or the other extreme.

3 COUNCILMAN NUTTER: I understand.

4 COUNCILMAN MARIANO: So I appreciate
5 your helpfulness.

6 COUNCILMAN NUTTER: Thank you.

7 COUNCILMAN MARIANO: Council
8 President, I thank you for your time and
9 everyone on the committee.

10 COUNCIL PRESIDENT VERNA: I believe
11 Councilwoman Tasco had her light on. Did you
12 want to be recognized?

13 COUNCILWOMAN TASCO: I was going to
14 raise the same question.

15 COUNCIL PRESIDENT VERNA: Oh. Okay.
16 So, Councilman, what is your
17 request?

18 COUNCILMAN MARIANO: I want to
19 convene the hearing until Thursday, but I
20 think the good Councilman told me -- or the
21 Councilman said if I want to look into
22 amending this bill, I think I got to do a
23 whole new bill Thursday. I'm not sure.

24 COUNCIL PRESIDENT VERNA: I think
25 what we would have to have, if your intent

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2 is --

3 COUNCILMAN MARIANO: Is to have a
4 non-binding resolution.

5 COUNCIL PRESIDENT VERNA: -- to have
6 it on the ballot --

7 COUNCILMAN MARIANO: We have to get
8 it out by Thursday.

9 COUNCIL PRESIDENT VERNA: -- in May,
10 it would have to be passed by the 13th of
11 March.

12 COUNCILMAN MARIANO: And that would
13 mean having something before Council on
14 Thursday.

15 COUNCIL PRESIDENT VERNA: Thursday.
16 And the hearing, report it out with a
17 suspension of the rules, and then voted upon
18 on the 13th.

19 COUNCILMAN MARIANO: I think
20 Councilman Rizzo asked me if there's anything
21 we can do now.

22 I don't think so, Councilman. If
23 Councilwoman Tasco is right, and I have no
24 reason to believe she's not, I don't know if
25 we can amend this to change the whole scope

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2 of a bill.

3 COUNCILMAN NUTTER: I just raised
4 with Councilman Clarke -- I'm listening to
5 the discussion. I mean, I think you might be
6 in a serious title problem --

7 COUNCILMAN MARIANO: Yeah because of
8 the title.

9 COUNCILMAN NUTTER: -- at this
10 point, in terms of any kind of amendment.
11 I'm not trying to do anything else to your --

12 COUNCILMAN MARIANO: No.

13 COUNCILMAN NUTTER: I just want to
14 make sure that our record is clear. I mean,
15 you've got a tight title for a certain thing.
16 And I know what you're trying to accomplish.

17 I don't necessarily think that this
18 set of bills gets you where you want to be.

19 COUNCILMAN MARIANO: No.

20 COUNCILMAN NUTTER: And I don't know
21 that there's any amendment that you can make,
22 given the title that you have.

23 COUNCILMAN MARIANO: I thank you.
24 And in the words of the famous Urkel, did I
25 do that? I'm sorry. Sorry, Councilman.

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2 (Laughter.)

3 COUNCILMAN MARIANO: I'll have an
4 amendment in a couple minutes to change this.
5 I don't know. I think the title --

6 COUNCILWOMAN TASC0: It's in the
7 title.

8 COUNCIL PRESIDENT VERNA: It's the
9 title.

10 COUNCILWOMAN TASC0: You cannot
11 amend a title.

12 COUNCILMAN MARIANO: Charley, can we
13 get a legal opinion on this?

14 COUNCIL PRESIDENT VERNA: We're
15 getting Mr. Auerbach to possibly come down so
16 we can address this issue.

17 (Councilman Mariano speaking away
18 from the microphone, not reportable.)

19 COUNCIL PRESIDENT VERNA: I beg your
20 pardon?

21 COUNCILMAN MARIANO: I have another
22 opinion here from my learned legislative
23 assistant. Now, John, if I got this wrong,
24 tell me. The bill we wrote, that's why we
25 have an amendment, to make sure that it's

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2 binding -- not binding. To make sure it's
3 binding?

4 I'm going to have another amendment
5 in two minutes that straightens this out, I'm
6 told. That's why I pay these people this big
7 money to do this.

8 Thank you. Thank you, Council
9 President.

10 COUNCIL PRESIDENT VERNA: We'll have
11 Mr. Auerbach down.

12 COUNCILMAN NUTTER: Madam Chair.

13 COUNCIL PRESIDENT VERNA: Yes.

14 COUNCILMAN NUTTER: If I can at
15 least make one suggestion, the Councilman
16 should certainly be able to preserve his
17 opportunity, if there is a chance of making
18 any changes or adjustments or whatever,
19 notwithstanding my position on the bill.

20 I don't necessarily know that
21 there's any harm to the continuation to
22 Thursday.

23 On the other hand, we do have
24 members of the public, whatever their various
25 positions may be, who may not necessarily be

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2 able to come back with us on Thursday.

3 Why don't we -- I don't -- I have a
4 sense of this panel -- There might be another
5 panel. I believe everybody should have a
6 chance to say their piece.

7 So we can take all of the testimony,
8 recess till Thursday morning. We probably
9 won't have any more Thursday on Thursday, and
10 then we'll figure out the legislative matters
11 later.

12 COUNCIL PRESIDENT VERNA: Thank you.
13 I had full intentions of doing that.
14 However, I think that the public, as long as
15 they're here, should also know what it is
16 that we would be voting on.

17 COUNCILMAN NUTTER: Right.

18 COUNCILMAN MARIANO: What are we
19 going to be asking them to testify on? I
20 think if we have patience for about two more
21 minutes and see what secret amendment they
22 have there for me; if not, we'll... you know,
23 we can recess it until Thursday and see what
24 Rick Auerbach says.

25 I think the people at the table

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2 understand what Councilman Mariano's intent
3 is. If they want to make some comments now,
4 please feel free to do so.

5 MR. DELANEY: Madam President, good
6 afternoon, Council members. My name is
7 Patrick Delaney, and I represent the American
8 Cancer Society here in Southeastern
9 Pennsylvania, where it's my privilege to
10 serve as vice president in charge of our
11 operations, as coordinated by our
12 professional staff and thousands of
13 volunteers in and around Philadelphia.

14 I'm here to go on the record on
15 behalf of the American Cancer Society that we
16 do oppose Councilman Mariano's bill --
17 resolution -- excuse me -- and are in full
18 support of Councilman Nutter's proposed bill
19 for clean indoor air in the workplace.

20 I understand some of the debate.
21 I've been here all day. And I fully
22 appreciate our democratic process. But I
23 would just like to point out that for each
24 day that we delay approving such legislation,
25 five Pennsylvanians will die from secondhand

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2 smoke related illness.

3 For each day that we delay voting on
4 Councilman Nutter's bill and enacting such a
5 bill, 22 Pennsylvanians will die from lung
6 cancer. That's per day. That's today.

7 I'm not a mathematician, but in the
8 time I've spent in Council chambers, at least
9 three people have died in Pennsylvania
10 because of secondhand related smoke. That's
11 unacceptable.

12 As an employer who employs 80 people
13 here in Philadelphia, I support this
14 legislation, not just to support those who
15 work in an office setting, but for those who
16 do not have the opportunity of such
17 protection, such as those in the hospitality
18 industry.

19 COUNCIL PRESIDENT VERNA: Thank you.

20 MR. DELANEY: Thank you.

21 COUNCIL PRESIDENT VERNA: Do we have
22 anyone else that would like to testify?

23 MR. MAINS: Madam President, my name
24 is Nathan Mains. I'm with the American Lung
25 Association of Pennsylvania. We did not

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2 testify earlier, but we are here in
3 opposition to the resolution, and in favor of
4 Councilman Nutter's bill.

5 I'd like to echo the comments of my
6 colleague at the American Cancer Society.
7 The American Lung Association would call on
8 Council to stop any efforts to delay
9 Councilman Nutter's bill.

10 The Mayor and a majority of Council
11 members have indicated their support for
12 banning smoking in all public places.

13 Each day of a delay is one more
14 opportunity to save another Philadelphian,
15 another family member, another loved one from
16 the potentially deadly effects that we've
17 heard about all day long of secondhand smoke.
18 So, we would call on Council to oppose the
19 resolution and pass Councilman Nutter's bill.
20 Thank you.

21 COUNCIL PRESIDENT VERNA: Thank you
22 very much.

23 Can we hear from our next witness,
24 please.

25 MS. SIREN: Hello, Councilmen. And

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2 thank you, Madam President.

3 COUNCIL PRESIDENT VERA: Welcome.

4 MS. SIREN: My name is Karen Siren.

5 I'm a second-year medical student at Temple

6 University. And I'm here representing not

7 just myself but all of the medical students

8 here in the City of Philadelphia.

9 There are five medical schools in

10 the city: Temple, Jefferson, Drexel,

11 University of Pennsylvania, and PCOM.

12 A majority of students at each of

13 these schools supports Councilman Nutter's

14 bill and opposes Resolution 05716.

15 The reason that I am here to speak

16 with you is that Philadelphia is regarded as

17 a great city to get an education, but it's

18 not always regarded as the place to stay once

19 you have received that education.

20 And in a few years, two years to be

21 exact, I'll have the choice of where I'm

22 going to do my residency and begin my career.

23 And I would like to stay in

24 Philadelphia, but there are other cities like

25 New York and Boston which are, quite frankly,

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2 a bit more appealing at this stage because
3 they are more progressive, and they are
4 actually up with the times, and recognize at
5 the fact that myself and my children and my
6 family and all the people that are employed
7 in the city deserve the right to clean air
8 when they are working.

9 Councilman Nutter's bill not only
10 makes sense, but it's way overdue. And this
11 is an important public health matter that's
12 near and dear to us.

13 I mean, you've heard the statistics.
14 But quite frankly, in nearly every patient
15 encounter that I've had thus far, the main
16 prescription is to stop smoking.

17 If this ban goes into effect, it
18 would very much help the city because people
19 have a much better rate of quitting smoke
20 when there is smoking bans in the city. So,
21 I thank you very much.

22 COUNCIL PRESIDENT VERA: Thank you.
23 And good luck to you.

24 MR. MCGOLDRICK: Good afternoon.
25 I'm Danny McGoldrick. I'm with the Campaign

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2 Tobacco-Free Kids in Washington, D.C.

3 I testified this morning in support
4 of Councilman Nutter's bill. I oppose this
5 bill. You make decisions here every day that
6 affect lots of people in Pennsylvania.

7 I think the proposed bill on the
8 floor now is an attempt to stop you from
9 exercising that responsibility to protect the
10 people from Philadelphia.

11 This bill would do nothing to
12 protect the citizens of Philadelphia from
13 secondhand smoke. It will, in fact, delay
14 your action in doing that and cost city
15 resources while we wait and delay, as more
16 and more people have to be exposed to the
17 dangers of secondhand smoke.

18 The sponsoring Council member even
19 said he would pay no attention to the vote
20 anyway, no matter how it came out, however
21 the public decided.

22 So, I encourage you to defeat this
23 bill, and get on with protecting the people
24 of Philadelphia.

25 Thanks.

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2 COUNCIL PRESIDENT Verna: Thank you.

3 Are there are questions from members
4 of the committee?

5 (No response.)

6 COUNCIL PRESIDENT Verna: Seeing
7 none, I thank you very much.

8 (Applause.)

9 COUNCIL PRESIDENT Verna: Good
10 afternoon. Kindly identify yourself for the
11 record.

12 MR. MANTZAVINOS: Sure. Thank you
13 very much. My name is Spiros Mantzavinos. I
14 am with the American Heart Association in
15 Southeast Pennsylvania.

16 COUNCIL PRESIDENT Verna: Is your
17 microphone on, sir?

18 MR. MANTZAVINOS: Yes. I'm sorry.
19 Is that better?

20 COUNCIL PRESIDENT Verna: Better.

21 MR. MANTZAVINOS: I'm with the Heart
22 Association. The Heart Association strongly
23 believes and respectfully submits that the
24 appropriate legislative process to debate,
25 discuss and vote on this important public

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2 health initiative is in City Council rather
3 than a referendum.

4 For example, City Councils in New
5 York City; Tempe, Arizona; Fayetteville,
6 Arkansas; Decatur, Georgia; Lexington,
7 Kentucky; Rockville, Maryland; Lincoln,
8 Nebraska; Albuquerque, New Mexico; San
9 Antonio, Texas; Burlington, Vermont, as well
10 as many others across the country, have
11 received input from the public, debated, and
12 ultimately passed smoke-free laws.

13 This issue is not any different from
14 other public health issues. The connection
15 between secondhand smoke and heart disease is
16 established.

17 Council must not remove itself from
18 this debate. And I ask what sort of
19 precedent this would establish if City
20 Council did remove itself from a debate over
21 a public health issue.

22 There's currently another bill under
23 consideration and moving through the
24 legislative process --

25 COUNCIL PRESIDENT VERNA: Excuse me,

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2 sir. One moment, please.

3 COUNCILMAN COHEN: I would ask you
4 to just slow down a little bit.

5 MR. MANTZAVINOS: I apologize.

6 This issue is not any different from
7 any other public health issue. The
8 connection between secondhand smoke and heart
9 disease is established.

10 City Council must not remove itself
11 from this debate. What sort of precedent
12 would this establish if City Council did
13 remove itself from a debate over a public
14 health issue.

15 There's currently another bill under
16 consideration and moving through the
17 legislative process that would address
18 smoking in the workplace.

19 The American Heart Association
20 strongly believes and respectfully asks that
21 Council Bill 050063, rather than a
22 referendum, reach the full City Council for a
23 debate and vote.

24 Thank you.

25 COUNCIL PRESIDENT VERNA: Thank you

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2 very much.

3 Again, I would say to the other
4 witnesses, if you've testified earlier, I
5 would ask you simply to give your position on
6 the bill before us and the resolution. Thank
7 you.

8 DR. TSOU: Thank you, President
9 Verna. I'm Dr. Tsou.

10 COUNCIL PRESIDENT VERNA: Nice
11 seeing you.

12 DR. TSOU: I'm currently President
13 of the American Public Health Association,
14 the largest public health organization in the
15 country.

16 In 2000, as many of you know, when
17 the first restriction of smoking was
18 introduced by Councilman Nutter, I served as
19 the Health Commissioner of Philadelphia.

20 This amendment that Councilman
21 Mariano has proposed for changing the City
22 Charter is a bad idea, for the various
23 reasons that other people have spoken before.

24 And I believe it is confusing the
25 way it's worded. I think people have to read

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2 it three or four times, and it's subject to
3 actually heavy lobbying by the tobacco and
4 beverage industry who will try to force us as
5 Council --

6 COUNCIL PRESIDENT VERNA: Doctor, I
7 don't know if your microphone's on, but we
8 seem to be losing your voice. Is your
9 microphone on?

10 DR. TSOU: I think it is. The green
11 light's on.

12 COUNCIL PRESIDENT VERNA: Okay.

13 DR. TSOU: It would force members of
14 Council to not enact a law for smoke-free
15 places in Philadelphia, which is something
16 that I believe would be counterproductive.
17 And I understand that Councilman does not
18 intend that.

19 I actually also believe that we, as
20 the American Public Health Association, which
21 hosts the largest public health convention in
22 the country, recognizes the hypocrisy of
23 promoting public health and not supporting
24 smoke-free cities.

25 Last year we passed a resolution

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2 that APHA will in general only hold
3 conventions in cities that are smoke free.
4 We believe that other health-related
5 conventions will be adopting similar
6 resolutions in the future.

7 So, in summary I want to simply
8 state that I believe changing or amending the
9 Home Rule Charter with its poorly worded
10 amendment is a bad idea. We've delayed long
11 enough. It's time for to us pass smoke-free
12 legislation in Philadelphia.

13 COUNCIL PRESIDENT Verna: Thank you,
14 Doctor.

15 Good afternoon. Please identify
16 yourself for the record.

17 DR. LACHMAN: My name is Dr. Vicki
18 Lachman. I am a nurse, and I'm also an
19 associate professor at Drexel University in
20 the College of Nursing and Health
21 Professions.

22 I would like to submit written
23 testimony in support of the Clean Indoor Air
24 Worker Protection Law and against the
25 Resolution 050716.

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2 I have been working to create
3 smoke-free environments since 1996, and I
4 have helped facilitate the Chestnut Hill
5 Community Association passing a resolution
6 which stated that the Chestnut Hill Community
7 Association encourages all restaurants,
8 stores, and other public places in Chestnut
9 Hill to maintain a smoke-free environment.

10 Last month they passed a resolution
11 in support of making all public places in
12 Chestnut Hill smoke free.

13 Over 100 businesses in Chestnut Hill
14 display a decal indicating that they support
15 a smoke-free environment.

16 Both Fiesta Pizza and McNally's
17 Tavern experienced an increase in business
18 when they went smoke free. People did not go
19 to Montgomery County or Cherry Hill, New
20 Jersey.

21 Why did I support Philadelphia's
22 smoke-free initiative five years ago and now?
23 Because secondhand smoke causes lung disease
24 and cardiac disease and kills 400,000 people
25 a year.

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2 Do we want on our consciences what
3 the Lung Association, the Cancer Association
4 say the number of people who will die this
5 year if in fact we wait?

6 This is a public health issue. And
7 workers in Philadelphia deserve a working
8 environment that's smoke free.

9 We do not vote on public health
10 issues in this city. Since Philadelphia
11 first proposed a smoke-free law in 2000, a
12 lot has changed.

13 There's been a ground swell of other
14 cities going smoke free. The numbers have
15 been named, and there's now over 90 million
16 people who are covered by strong anti-smoking
17 bills.

18 The time is right for Philadelphia
19 to join these other places. Given that
20 Indonesia has gone smoke free, why can't
21 Philadelphia?

22 As numerous surveys have shown, the
23 community overwhelmingly supports smoke-free
24 workplaces. We do not need a referendum to
25 show that.

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2 The Council has had years to
3 consider this issue, and now has a year's
4 worth of information from smoke-free cities
5 upon which to base a sound decision.

6 You are well equipped, Council, to
7 make a decision on this issue. And the
8 voters of Philadelphia have expressed their
9 opinion when they selected you as their
10 representatives.

11 Councilman's bill is nothing more
12 than a stalling tactic, to try and confuse
13 the critically important public health issue.

14 This time, please, Council, stand up
15 and be counted as representatives of the
16 people, representatives who support the
17 health of the citizens who have elected you.

18 COUNCIL PRESIDENT VERNA: Thank you.

19 (Applause.)

20 COUNCIL PRESIDENT VERNA: Our next
21 witness.

22 I really don't know if you testified
23 earlier. But as I said, I would really like
24 you to focus on the bill and the resolution
25 before us now. Thank you.

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2 MR. BRENDLINGER: Okay. Thank you
3 very much. My name is Thurman Brendlinger,
4 and I'm with the Clean Air Council, a
5 non-profit environmental health advocacy
6 group. Been around for 30 years, over 30
7 years, preserving everyone's right to breathe
8 clean air.

9 We applaud City Council for looking
10 at a smoking ban in the City of Philadelphia.
11 City Council has a long and profound history
12 of leading the nation when it comes to
13 protecting workers' health.

14 The Clean Air Council was proud to
15 work with City Council when it passed the
16 nation's first right to know law. That
17 measure intended to protect the first
18 responders, workers and community residents,
19 was a model later adopted by state and
20 Federal governments.

21 Despite spirited gloom and doom
22 predictions by industry, City Council passed
23 this law because it was the right thing to
24 do. City Council did not take the issue to
25 the voters.

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2 A few years later, the Clean Air
3 Council again proudly worked with City
4 Council to protect workers from exposure to
5 asbestos.

6 Again, despite near hysterical
7 opposition from the regulated industry, City
8 Council stood up for workers and the
9 community. Again, City Council did not
10 propose taking the issue of whether to
11 protect workers' health to the voters.

12 Workers in the hospitality industry
13 are at particular risk with secondhand smoke.
14 In a recent study by researcher Jim Repace,
15 it was determined that air in a smoky bar is
16 two-and-a-half times more polluted than air
17 on a busy highway.

18 Can we really justify making people
19 work in that kind of environment? There's
20 really no good alternative to adopting
21 smoke-free ordinances.

22 In the past, attempts have been made
23 to mitigate the secondhand smoke problem
24 through the use of ventilation systems in
25 bars and restaurants.

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2 The Council had the pleasure of
3 being at -- The Clean Air Council had the
4 pleasure of being asked by the Philadelphia
5 Health Commissioner to serve on a committee
6 studying this issue when City Council first
7 looked at workplace smoking regulations.

8 The Clean Air Council concluded that
9 ventilation technology cannot ensure the
10 harmful components of smoke are removed from
11 the air.

12 In conclusion, amending the City
13 Charter should not be used by City Council to
14 avoid having to make tough public policy
15 decisions.

16 The Clean Air Council also believes
17 it is bad public policy to ask the people --
18 public to vote on whether or not to protect
19 workers' health.

20 It is a terrible precedent. City
21 Council should vote on the workplace smoking
22 ordinance proposed by Councilman Nutter and
23 supported by Mayor Street.

24 The role of the public is to let
25 their elected officials know how they feel

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2 about this issue, and to hold elected
3 officials accountable for their vote.

4 COUNCIL PRESIDENT VERNA: Thank you
5 very much.

6 (Applause.)

7 COUNCIL PRESIDENT VERNA: Thank you.

8 I believe the gentlemen in the front
9 row were attempting to come up to the witness
10 table.

11 If you have testified before, I
12 would ask that you please be focused on the
13 bill before us. Thank you.

14 MR. DiPIPI: Hi. My name is Greg
15 DiPipi. I manage a restaurant and lounge in
16 Old City. I live and work here --

17 COUNCIL PRESIDENT VERNA: I'm sorry.
18 Where do you manage?

19 MR. DiPIPI: A restaurant and lounge
20 in Old City.

21 COUNCIL PRESIDENT VERNA: Old City.

22 MR. DiPIPI: Yes. I live and work
23 here in Philadelphia. And I do think the
24 opinion of the voters should be heard. It
25 can't be harmful.

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2 What I am concerned with... It is a
3 health bill, and that's great. But what I'm
4 concerned with is the actual logistics. I've
5 been in the business for 15 years. And I
6 deal with L & I. I deal with the
7 Pennsylvania Liquor Control Board. I deal
8 with the Health Department, making sure we're
9 up to Code.

10 What I don't want to see happen is a
11 rush into a bill, that to enforce will become
12 a problem down the road.

13 They just upped on the amendment
14 from 10 feet out of the egress to 15 feet.
15 The width of the pavement on Second Street
16 where I'm located is 12 feet.

17 So, 12 feet... At 15, you're not
18 allowed to walk down second Street and smoke
19 because you're pretty much lined up with bars
20 between Market and Chestnut. So now, that
21 puts people out in the street.

22 These are issues that have to be
23 dealt with. And at some point someone's
24 going to have to regulate how they're dealt
25 with.

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2 At the time we do have smokers that
3 have a choice. Non-smokers have a choice
4 whether to visit or not visit any particular
5 venue.

6 The employees also have a choice.
7 If things are working that well in New York,
8 it's an Amtrack train ride away to go up to
9 New York and work.

10 Don't want to be negative with the
11 workers and people that spoke here before,
12 but they're right. I don't change a lot of
13 staff. But my staff doesn't really complain
14 about being in a potentially smoking
15 environment. I see no reason why we can't
16 let it go to... It should not be a Charter
17 Change. Councilman Mariano has not said it's
18 supposed to be.

19 So why can't it just go to a vote,
20 get the opinion of the voters in
21 Philadelphia, and then City Council can work
22 from there?

23 In the meantime, the actual
24 logistics of how things are to be enforced
25 and what's to happen can be worked out.

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2 Thank you.

3 COUNCIL PRESIDENT Verna: Thank you.

4 Please identify yourself for the
5 record. Make sure your microphone is on,
6 please.

7 MR. STANTON: Yes, it's on. Is it
8 working?

9 COUNCIL PRESIDENT Verna: Yes.

10 MR. STANTON: My name is John
11 Stanton from Licensed Beverage Association of
12 Philadelphia, and also a bar owner in the
13 Sommerton section of Philadelphia. I did
14 testify earlier, and I promise I will stick
15 to the subject at hand here.

16 I just wanted to comment on
17 something that they had said just a few
18 minutes ago, the people that were just up
19 here a little while ago, about how every day
20 five people will die in Philadelphia or the
21 State of Pennsylvania because of smoking in
22 bars and because of other health issues.

23 I guess they're going to have us
24 believe that if this committee were to not
25 let this go to public vote, that if they were

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2 to vote on it today and pass it, that those
3 same people wouldn't die that are already
4 sick. I don't understand.

5 I just wanted to make a comment
6 about that. I believe that their whole
7 defense or their whole offense, I should say,
8 on this smoking ban is the public. The
9 public work, the public this, the public
10 that. Public, public, public.

11 Let the public vote. I mean, you're
12 all about the public. You're protecting the
13 public. Let them tell you if they feel
14 they're in danger or they want to be
15 regulated like this.

16 City Council's job is to represent
17 the people. But people have jobs. People
18 have families and kids. They don't have time
19 to come to these chambers on days like today
20 and express their opinions, like I do.

21 They do have time, however, after
22 work to go to the polls and pull a lever.
23 So, I'd just like to make that position, that
24 to allow them to do that, it will be a
25 non-binding thing. City Council can then

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2 vote afterwards. But get the public's
3 opinion. So, I'm very in favor of that.

4 And one more comment I'd like to
5 make, is that they also testified that only
6 25 percent of the population smokes, so what
7 are they afraid of? What exactly -- 25
8 percent. 75 percent of the population do not
9 smoke. It sounds like a landslide to me.

10 So, let the public do that. Let it
11 go to voting, and we'll take from it there.

12 Thank you.

13 COUNCIL PRESIDENT Verna: Thank you.

14 MR. SHERIDAN: Good afternoon,
15 Council President Verna.

16 COUNCIL PRESIDENT Verna: Good
17 afternoon.

18 MR. SHERIDAN: My name is
19 Christopher Sheridan. I'm the research
20 director for The Committee of 70,
21 Philadelphia's Good Government Organization
22 and Watchdog Organization for a hundred years
23 now.

24 This is a significant public health
25 matter, significant and complicated. At the

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2 present time, there's legislation before a
3 group of -- a body of experienced
4 legislators, supported by professional
5 staffs, informed by anyone who wanted to come
6 here today and speak, and anyone who wanted
7 to submit written commentary.

8 I believe that this bill is in the
9 proper place, and those of you who have been
10 informed by all viewpoints should ultimately
11 make this decision, and not voters who we're
12 going to have a low turnout because this is
13 going to be a relatively low-interest
14 election. So, it's going to be maybe 15
15 percent of the electorate, who don't have the
16 information at their disposal or have a
17 fraction of the information that members of
18 Council have here today, as a result of
19 listening to every viewpoint that's been
20 offered.

21 70 does not take a position on this
22 bill for or against smoking. The issue here
23 is that this is a proper matter for City
24 Council, in the exercise of your professional
25 discretion. And I encourage you to move

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2 forward with it.

3 COUNCIL PRESIDENT Verna: Thank you.

4 (Applause.)

5 COUNCIL PRESIDENT Verna: Thank you
6 very much.

7 Do we have anyone else to testify?

8 Please approach the witness table.

9 If you have testified earlier, I
10 would only request that you please focus on
11 the bill number that's before us presently in
12 the resolution. Thank you.

13 Please identify yourself for the
14 record.

15 DR. GOLD: My name is Dr. Marla
16 Gold. I serve as Dean of the Drexel
17 University School of Public Health. We're
18 the region's only school of public health.

19 I'm also a physician, a former City
20 Assistant Health Commissioner, and a member
21 of the Philadelphia Board of Health.

22 And I'm here also as a resident of
23 Philadelphia, and the mother of a 13 year-old
24 boy with asthma. I'm wearing all these hats,
25 an expert in public health with knowledge of

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2 the potential complexity involved with
3 enactment of legislation, and I'm a citizen
4 who deeply loves this city for all that it
5 has to offer.

6 Over the years I have worked on many
7 often controversial public health issues in
8 Philadelphia, a lot around A.I.D.S., STDs,
9 arguments about condoms, what we should do in
10 the high schools.

11 These were issues that required
12 special hearings, prolonged task force
13 reviews, made it into the headlines day in
14 and day out.

15 Throughout my work in the public
16 health arena, I have been guided, as I hoped
17 Council would be, by two main points. First,
18 the mission of public health is to ensure
19 conditions in which people, entire
20 communities, in this case the city and all
21 who love it as much to also come and visit.
22 Entire communities can be healthy; and
23 second, decisions affecting the health should
24 be informed by solid data.

25 In regard to both these points,

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2 throughout the morning from the legislation
3 that you've heard, the legislation being
4 considered this morning is a slam dunk, and
5 that this afternoon that we're considering,
6 actually I believe it doesn't need to go to
7 the people because it's a public health
8 issue. And I'll address that in a second.

9 You've heard many data-laden
10 testimonies that have been provided, with
11 countless fact sheets. I'll spare you.

12 In approaching the question as to
13 whether to support smoke-free legislation,
14 the first area is a thorough review that
15 you've done. This addresses the effects of
16 secondhand smoke. And you've heard that.

17 This information is readily
18 available. I have it in my written
19 testimony. And again, it's been presented.
20 All available reputable data strongly
21 indicate that exposure to secondhand smoke is
22 a significant cause of disease and death. So
23 that's number one.

24 And, again, I'm going to jump
25 through the next paragraph as being written

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2 testimony that I leave. So, you have those
3 facts.

4 The bottom line is that secondhand
5 smoke is a classified carcinogen that causes
6 disease and death. So also do persons
7 working or visiting places in our city have
8 significant exposure to the smoke. And
9 again, you've heard testimony that they do.

10 The next area of consideration is
11 whether requiring smoke-free environments in
12 all places, as named in the legislation, will
13 expert a negative impact on revenue. And
14 I'll skip over that because we've already
15 heard today there's no negative impact. And
16 in fact, we've got solid data that, if
17 anything, we see an increase in jobs, an
18 increase in people coming in to visit the
19 various cities where there's been enactment
20 of such legislation.

21 So, to what's before us currently in
22 the afternoon, what else needs to be
23 considered, I mentioned I am a former City
24 Assistant Health Commissioner, and I know all
25 too well about these issues, in terms of the

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2 public.

3 It's important to know if we have
4 the support of Philadelphians, yes. But we
5 have enough polls to indicate that such
6 support exists. Various polls indicate that
7 a majority of people who live here want to
8 breathe clean air here.

9 What about the impact on personal
10 freedom? I've heard and read the debate
11 concerning whether mandating a smoke-free
12 environment is akin to taking away liberty.

13 I actually almost take offense, as a
14 public health official, to use of the word
15 liberty in the afternoon proposal because it
16 implies that we are doing such a thing.

17 We do not ask Philadelphians to vote
18 on whether we should make meningitis a
19 reportable disease. We do not ask them to
20 talk about things just as bad as secondhand
21 smoke, that they should have a hand in public
22 health policy, when people can significantly
23 die or have disease. And I do not feel we
24 need to do it in this case. There is just
25 way too much scientific data to support that

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2 City Council can move on this.

3 Healthy People 2010, as you heard,
4 is the nation's blueprint -- I'm wrapping up.
5 It contains an objective to establish laws on
6 smoke-free indoor air that prohibits smoking
7 in public places.

8 So, here's the nation asking for the
9 establishment also of legislation as is being
10 considered today.

11 Through policy, I believe that you,
12 City Council, have the opportunity to protect
13 the public's health and make our wonderful
14 city a healthier city.

15 And I thank you for joining me
16 because your public health works as well in
17 what you do with us in the city.

18 COUNCIL PRESIDENT VERA: Thank you,
19 doctor.

20 (Applause.)

21 COUNCIL PRESIDENT VERA: Are there
22 any other witnesses who would like to
23 testify?

24 Please approach the witness table.
25 I know that you testified earlier, so I would

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2 ask you to please be focused on the bill and
3 the resolution before us presently. Thank
4 you.

5 MR. JONIK: My name is John Jonik,
6 and I would like to strenuously ask for a
7 continuation of this bill, if not a complete
8 rewriting of it.

9 As I explained before, the
10 Environmental Protection Agency's secondhand
11 smoke material was completely thrown out of
12 federal court in 1998. It remains invalid
13 material to use.

14 If that's the only material that we
15 can come up with to indict secondhand smoke,
16 that's pretty flimsy.

17 The National Cancer Institute also
18 indicts secondhand smoke. I've read the
19 material. I'm not even a scientist, but I
20 can look through it, and I can find not one
21 word about describing the cigarette, not one
22 word about describing the dioxins or the
23 radiation coming from it from industrial
24 components. These are two parts of the bill
25 already that are completely invalidated, that

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2 science does not support the secondhand smoke
3 bans until it's defined. The word tobacco is
4 not defined in here.

5 COUNCIL PRESIDENT VERNA: I'm sorry.
6 I'm sorry. I was distracted. Are you
7 testifying on this bill and --

8 MR. JONIK: I'm testifying that
9 there should be a continuation of this thing
10 to study these points, such as the
11 definitions of words, and to legitimize these
12 studies of secondhand smoke, which are...
13 One's questionable and the other one's
14 already been thrown out of federal court.

15 COUNCIL PRESIDENT VERNA: I think
16 the question here is do you believe that this
17 issue should go on a ballot?

18 MR. JONIK: To the city -- To the
19 public.

20 COUNCIL PRESIDENT VERNA: Yes.

21 MR. JONIK: If there's an informed
22 public, certainly.

23 COUNCIL PRESIDENT VERNA: I'm sorry.
24 Is your microphone on? I'm having difficulty
25 hearing you.

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2 MR. JONIK: I do believe this should
3 be brought to the public after serious public
4 discussion. If the public knows what a
5 cigarette is, and they know that it's not
6 tobacco necessarily in there. That's what
7 the public -- The public right now is told
8 that tobacco industries make tobacco
9 products.

10 And there's evidence galore in the
11 U.S. government that these things may or may
12 not be tobacco. I showed you a pack of
13 cigarettes here that I photographed -- and
14 there's many of them like that -- that do not
15 say the word tobacco anywhere on the label.

16 There's no law requiring that it be
17 tobacco. The public doesn't know this. And
18 an uninformed public cannot vote properly on
19 this, as it never can.

20 An informed public would probably
21 say, I feel cheated, and I've been gypped by
22 this cigarette industry for years, and I've
23 been gypped by anything and harmed,
24 physically harmed, by anything that called it
25 tobacco and made me think it was tobacco, yet

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2 your patience.
3 (Public hearing concluded at 4:20
4 p.m.)
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2 CERTIFICATE

3

4 I HEREBY CERTIFY that the proceedings and
5 evidence are contained fully and accurately in the
6 stenographic notes taken by me upon the public
7 hearing of The Philadelphia City Council, taken on
8 March 7, 2005, and that this is a true and correct
9 transcript of same.

10

11

12

13

14

15 _____
16 DAVID A. DEIK, RPR and
17 Commissioner of Deeds

18

19

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21 this transcript does not apply to any
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