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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, May 12, 2010
2:55 p.m.

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PRESENT:

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COUNCIL PRESIDENT ANNA C. VERNA

COUNCILWOMAN JANNIE BLACKWELL

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COUNCILMAN DARRELL CLARKE

COUNCILMAN FRANK DiCICCO

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COUNCILMAN W. WILSON GOODE, JR.

COUNCILMAN BILL GREEN

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COUNCILMAN WILLIAM K. GREENLEE

COUNCILMAN CURTIS JONES, JR.

13

COUNCILMAN JACK KELLY

COUNCILMAN JAMES KENNEY

14

COUNCILWOMAN DONNA REED MILLER

COUNCILMAN BRIAN J. O'NEILL

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COUNCILWOMAN MARIA D. QUINONES-SANCHEZ

COUNCILWOMAN BLONDELL REYNOLDS BROWN

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COUNCILMAN FRANK RIZZO, JR.

COUNCILWOMAN MARIAN B. TASCIO

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BILLS 080658, 080659, 080660, 080661, 080662,
080662, 080663, 100112, 100122, 100124,

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100125, 100126, 100127 and 100128

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COUNCIL PRESIDENT VERNA: Good

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afternoon. I apologize for the delay.

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This is a public hearing of the

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Committee of the Whole. I would like

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Ms. Ortiz to please read the title of the

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bills.

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THE CLERK: Bill No. 080658, an

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ordinance amending Chapter 20-600 of The

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Philadelphia Code, entitled "Standards of

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Conduct and Ethics," by amending

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provisions prohibiting City officers and

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employees from soliciting or accepting

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gifts from certain sources, under certain

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terms and conditions.

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Bill No. 080659, an ordinance

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amending Chapter 20-600 of The

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Philadelphia Code, entitled "Standards of

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Conduct and Ethics," to prohibit

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political committees from soliciting or

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receiving political contributions on

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behalf of elected City officials.

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Bill No. 088660, an ordinance

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amending Chapter 20-600 of The

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Philadelphia Code, entitled "Standards of

1 5/12/10 - WHOLE - BILL 080658, etc.
2 Conduct and Ethics," by adding provisions
3 restricting City officers and employees
4 from having certain kinds of outside
5 employment or business interests, under
6 certain terms and conditions, and
7 renumbering.

8 Bill No. 080661, an ordinance
9 amending Title 20 of The Philadelphia
10 Code, entitled "Officers and Employees,"
11 by adding a new Chapter entitled,
12 "Lobbying," under certain terms and
13 conditions.

14 Bill No. 080662, an ordinance
15 amending Chapter 20-600 of The
16 Philadelphia Code, entitled "Standards of
17 Conduct and Ethics," by adding
18 anti-nepotism provisions prohibiting City
19 Officers and employees, including all
20 elected City officers, from taking or
21 recommending certain personnel actions
22 affecting family members.

23 Bill No. 080663, an ordinance
24 amending Chapter 20-1000 of The
25 Philadelphia Code, entitled "Political

1 5/12/10 - WHOLE - BILL 080658, etc.
2 Contributions and Expenditures," by
3 amending the limits of campaign
4 contributions made to candidates for City
5 offices.

6 Bill No. 100122, an ordinance
7 amending Chapter 20-1000 of The
8 Philadelphia Code, entitled "Political
9 Contributions and Expenditures," by
10 authorizing the creation of inauguration
11 and transition committees and providing
12 separate limitations on contributions to
13 such committees; by requiring certain
14 disclosures with respect to a candidate's
15 various committees; by limiting
16 contributions that may be made after an
17 election to retire debt; and by otherwise
18 revising provisions of that Chapter.

19 Bill No. 100124, an ordinance
20 amending Chapter 20-1000 of The
21 Philadelphia Code, entitled "Political
22 Contributions and Expenditures," by
23 permitting a candidate for elective
24 office to establish a litigation fund to
25 receive contributions and make

1 5/12/10 - WHOLE - BILL 080658, etc.
2 expenditures for the defense of certain
3 proceedings relating to the candidate's
4 campaign, and further regulating and
5 limiting such contributions and
6 expenditures.

7 Bill No. 100125, an ordinance
8 amending Title 20 of The Philadelphia
9 Code, entitled "Officers and Employees,"
10 by revising the penalties for violations
11 of various ethics and ethics-related
12 provisions, including Chapter 20-600
13 ("Standards of Conduct and Ethics") and
14 Chapter 20-1000 ("Political Contributions
15 and Expenditures").

16 Bill No. 100126, an ordinance
17 amending Chapter 20-1000 of The
18 Philadelphia Code, entitled "Political
19 Contributions and Expenditures," by
20 providing that expenditures incurred in
21 the printing or distribution of sample
22 ballots shall not be considered a
23 contribution for purposes of the
24 contribution limits of that Chapter, and
25 clarifying that the requirement of a

1 5/12/10 - WHOLE - BILL 080658, etc.
2 single candidate political committee does
3 not prohibit other committees or entities
4 from making expenditures for the printing
5 or distribution of sample ballots listing
6 the names of more than one candidate.

7 Bill No. 100127, an ordinance
8 amending Title 20 of The Philadelphia
9 Code, entitled "Officers and Employees,"
10 by adding a new Chapter requiring the
11 registration of lobbyists and their
12 principals, and requiring disclosure of
13 lobbying expenditures.

14 Bill No. 100128, an ordinance
15 amending Chapter 20-600 of The
16 Philadelphia Code, entitled "Standards of
17 Conduct and Ethics," by establishing
18 standards of conduct regarding the
19 political activities of City officers and
20 employees, and providing penalties for
21 violations.

22 Thank you.

23 COUNCIL PRESIDENT VERNA: Thank
24 you very much.

25 The Chair recognizes

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Councilwoman Tasco.

3 COUNCILWOMAN TASCO: Thank you,
4 Madam President. Just let the audience
5 know we apologize for keeping them late.
6 We're multi-tasking today.

7 I'd just like to make a few
8 brief remarks about what we're about to
9 do here today.

10 Today, we, as a legislative
11 body, have an opportunity to take another
12 step in bringing additional ethics reform
13 to Philadelphia. A year ago and
14 following the release of the Mayor's Task
15 Force on Ethics and Campaign Finance
16 Reforms' preliminary recommendations,
17 Council developed a drafting committee to
18 address these issues. This committee has
19 been meeting with members of the Task
20 Force, the Mayor's Administration, the
21 Board of Ethics, the Committee of Seventy
22 and Common Cause regarding Council's
23 package of bills.

24 The proposed bills and the
25 amendments that we are discussing today

1 5/12/10 - WHOLE - BILL 080658, etc.
2 are based on the Task Force report,
3 federal Hatch Act, the Pennsylvania's
4 lobbying law and legislation from other
5 jurisdictions. Considering this work to
6 propose legislation provides an excellent
7 opportunity to enhance the standard of
8 governments for our city.

9 Thank you very much, Madam
10 President.

11 COUNCIL PRESIDENT VERNA:

12 You're welcome.

13 The Chair recognizes Councilman
14 Rizzo.

15 COUNCILMAN RIZZO: Thank you,
16 Madam President and colleagues. The time
17 has come to move forward to give our
18 citizens what they want, ethics reform
19 that will inspire trust and faith in City
20 government. For far too long, the public
21 perception is that Philadelphia City
22 government is about pay to play and who
23 you know. The six ethics bills I
24 originally introduced in 2007 and
25 reintroduced on September 8th, 2008 that

1 5/12/10 - WHOLE - BILL 080658, etc.
2 are before the Committee today can change
3 that perception. The list includes a
4 bill to ban nepotism; a bill to ban
5 gifts; a bill prohibiting outside
6 employment that involves even a perceived
7 conflict of interest.

8 With respect to this bill,
9 080660, in the interest of expediency, I
10 will introduce an amendment to exempt
11 current City Council members.

12 A bill that would require
13 lobbyists and principals to report
14 expenditures and principals to report
15 expenditures; a bill that would limit
16 campaign fundraising to election cycles;
17 and, finally, an anti-war chest bill that
18 would level the campaign playing field by
19 restricting fundraising to an actual
20 candidate for City office.

21 Twenty-first century
22 Philadelphia can no longer afford to be
23 saddled with a 1904 Lincoln Steffens
24 label, "Contempt and Corrupt." This City
25 should be a shining ethical light upon

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the hill, to its own citizens and to
3 other cities throughout the United
4 States.

5 The time has come for City
6 Council to rise to the challenge, to make
7 the difficult decisions and to do what is
8 right for all citizens of Philadelphia,
9 pass serious ethics reform that will
10 inspire trust and faith in our
11 government.

12 Thank you.

13 COUNCIL PRESIDENT VERNA: Thank
14 you.

15 We will now call our first
16 panel, please.

17 THE CLERK: Clarence
18 Armbrister, Joan Markman, Michael
19 Schwartz.

20 (Witnesses approached witness
21 table.)

22 COUNCIL PRESIDENT VERNA: Good
23 afternoon. Please identify yourself for
24 the record and proceed with your
25 testimony.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 MR. ARMBRISTER: Good

3 afternoon, Council President Verna and
4 members of the Committee. I am Clarence
5 Armbrister, Mayor Nutter's Chief of
6 Staff, and I think by prior direction or
7 instruction from the Clerk, that it is my
8 expectation I would read testimony on all
9 of the bills that are before the
10 Committee and then allow my colleague
11 Joan Markman and then Mr. Schwartz to
12 introduce their testimony, if that's
13 acceptable.

14 COUNCIL PRESIDENT VERNA:

15 That's fine.

16 MR. ARMBRISTER: Thank you.

17 Good afternoon, Madam Chair and
18 members of the Committee. I am Clarence
19 Armbrister, Chief of Staff to Mayor
20 Nutter. I'm here today to testify on
21 behalf of the Nutter Administration on
22 the various proposals to amend the City's
23 campaign finance laws. Specifically,
24 Bill Nos. 080659, 080663, 100122, 100124
25 and 100126.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 I'm going to start with Bill
3 No. 100122. Bill No. 100122 would make a
4 variety of changes to the City's campaign
5 finance law. In general, we have been in
6 support of this proposal. The Chief
7 Integrity Officer, Joan Markman, and my
8 staff have worked closely with certain
9 Council staff on making improvements to
10 the bill and very much have appreciated
11 the spirit of cooperation that has been
12 involved. With the exception of one
13 aspect of the bill with which we are
14 still not in full agreement, we generally
15 support the bill as we expect it will be
16 amended.

17 In significant part, the bill
18 contains provisions regulating
19 fundraising for inaugural and transition
20 committees of successful City candidates,
21 which the Administration generally
22 supports.

23 The bill, as we anticipate it
24 will be amended, would incorporate
25 fundraising for inaugural and transition

1 5/12/10 - WHOLE - BILL 080658, etc.
2 activities into the limits for
3 fundraising for campaign activities, but
4 allow an additional round of fundraising
5 inaugural and transition purposes in the
6 period between the general election and
7 assumption of the elected office.

8 Currently, there are no limits
9 to fundraising for inaugural activities.
10 The campaign finance limits do not apply,
11 because by definition, by the time of the
12 inaugural, the candidate has already been
13 elected. Therefore, the inaugural
14 activities are not conducted in support
15 of a candidate's election. The Board of
16 Ethics in Opinion No. 2007-5, however,
17 raised the issue of the potential
18 appearance of improper influence on
19 elected officials by large contributions
20 that might be made to support an elected
21 official's inauguration activities. In
22 late 2007, then Mayor-elect Nutter
23 voluntarily imposed limits on the
24 fundraising of his inaugural committee
25 similar to those contained in the

1 5/12/10 - WHOLE - BILL 080658, etc.
2 campaign finance law. The Task Force in
3 its report suggested such limits would be
4 appropriate. Given the potential for the
5 appearance that large contributions for
6 inaugural activities might have an
7 improper influence on elected officials,
8 we agree that there is value in
9 establishing contribution limits in this
10 area.

11 Similarly, the bill, as it will
12 be amended, contains limits on the
13 fundraising activities related to an
14 elected official's activities regarding
15 transition into elective office. As is
16 the case with inaugural activities, such
17 fundraising currently is not regulated.
18 The Board of Ethics has recommended that
19 such limits would eliminate the
20 appearance of improper influence. As
21 with his inaugural committee, Mayor
22 Nutter voluntarily imposed limits on the
23 fundraising activities of the entity he
24 created to carry out his transition
25 activities in late 2007 and the very

1 5/12/10 - WHOLE - BILL 080658, etc.
2 beginning of 2008. The Task Force has
3 also suggested that legal limits in this
4 area would be appropriate, and we agree.
5 We also appreciate that a provision that
6 would have prohibited fundraising for
7 potential transition type activities of
8 an official reelected to office will be
9 removed from the bill.

10 The bill also contains
11 provisions that would allow individuals
12 after their candidacy has ended an
13 additional opportunity to solicit funds
14 from individuals and political committees
15 who have already provided the maximum
16 contribution in that particular year, for
17 the purpose of retiring campaign debt.
18 In other words, if the candidate had
19 received the maximum \$2,600 yearly
20 contribution from an individual during
21 the year of the election, the candidate
22 could solicit another \$2,600 from that
23 same donor in the same calendar year in
24 order to retire debt accumulated during
25 the campaign.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Currently, the Ethics Board has
3 advised in Opinion No. 2007-03 that it
4 interprets the current provisions of
5 Chapter 20-1000 of The Philadelphia Code
6 to require that debt accumulated during
7 the course of a campaign must be paid by
8 funds raised within the limits
9 established under Chapter 20-1000. The
10 Task Force recommended more explicitly
11 codifying this interpretation in the law.

12 We are not in favor of the
13 manner in which this would be addressed
14 in the bill. Debt amassed during the
15 campaign is no different from
16 expenditures of money on hand during the
17 campaign. We have not heard a compelling
18 reason for adding special rules to allow
19 a special additional round of fundraising
20 for the purpose of satisfying campaign
21 debt. Nonetheless, we do not consider
22 the proposal's limited allowance of
23 special fundraising to retire debt as a
24 fatal flaw in the bill.

25 Lastly, the bill will require

1 5/12/10 - WHOLE - BILL 080658, etc.
2 candidates for City office to provide to
3 the Board of Ethics identifying
4 information about their single campaign
5 committee, upon declaration of candidacy.
6 The Mayor's Task Force on Ethics and
7 Campaign Finance Reform recommended that
8 candidates be required to provide such
9 information, and this makes a lot of
10 sense, to cut down on monitoring legwork
11 the Board must engage in.

12 Turning to Bill No. 100124,
13 this bill would allow candidates for
14 office to establish litigation funds and
15 do fundraising for such funds, separate
16 and apart from fundraising for basic
17 campaign activities. The litigation fund
18 could be used to pay the costs incurred
19 in connection with a legal challenge to
20 the conduct of the candidate's election
21 campaign, including proceedings involving
22 the Board of Ethics or challenges to
23 placement of the candidate on the ballot.
24 The bill would limit fundraising for the
25 litigation fund to amounts parallel to

1 5/12/10 - WHOLE - BILL 080658, etc.

2 the limits set forth in the Code for
3 campaign finance fundraising generally.

4 Permitting separate fundraising
5 for litigation funds was one of the
6 recommendations of the Mayor's Task Force
7 on Ethics and Campaign Finance Reform.
8 Legal matters surrounding elections can
9 be costly, and it makes some sense to
10 allow for separate fundraising to cover
11 such expenses. This bill contains a
12 number of the safeguards suggested by the
13 Task Force in connection with the
14 establishment of litigation funds, such
15 as providing for the return to donors of
16 funds raised for litigation purposes that
17 are not spent for such purposes.

18 Accordingly, we believe this bill would
19 be an appropriate reform and support this
20 measure.

21 Bill 100126 would make changes
22 to the campaign finance law regarding
23 expenditures for the printing and
24 distribution of sample ballots that
25 simply were not addressed in the Ethics

1 5/12/10 - WHOLE - BILL 080658, etc.
2 Task Force's report. We are not in favor
3 of Bill No. 100126 as introduced. We
4 have discussed various possible
5 amendments to the bill with Council
6 staff, again in a highly cooperative
7 spirit. Unfortunately, no version of
8 amendments we have seen would satisfy our
9 concerns regarding the bill.

10 It is our understanding that
11 the origin of this bill is based on the
12 particular facts of how sample ballots
13 and their distribution are often paid for
14 in our local campaign system. Often,
15 candidates pool resources through
16 contributions to ward committees or other
17 types of political committees for the
18 purchase and distribution of sample
19 ballots, which can be costly and
20 significant campaign expenditures.

21 If a candidate whose name
22 appears on a ballot has some measure of
23 control of the activities of the
24 committee through which the sample ballot
25 expenditures are made and that committee

1 5/12/10 - WHOLE - BILL 080658, etc.
2 is not the candidate's single campaign
3 committee, the candidate will run afoul
4 of our Code's requirement that candidates
5 maintain only a single committee through
6 which it makes campaign expenditures.

7 Similarly, if the candidate has
8 asked for participation in the pooling
9 system, a difficult question is raised as
10 to how to measure the campaign
11 contribution made to the candidate by the
12 political committee that obtained and
13 distributed the sample ballots, in part,
14 on behalf of the candidate.

15 If the candidate's campaign is
16 not involved in any way with the
17 activities of the ward or other political
18 committee that pools the candidate's
19 resources, the sample ballot costs would
20 be considered an independent expenditure
21 of the third-party committee. It is our
22 understanding that some individuals
23 involved in campaigns have been concerned
24 that independent expenditures on ballots
25 and ballot distribution by political

1 5/12/10 - WHOLE - BILL 080658, etc.
2 committees, meaning expenses that are not
3 in any way controlled by or coordinated
4 with the campaign of a candidate, might
5 nonetheless be attributed as
6 contributions to the candidate.

7 We would certainly support
8 legislation that made clear that
9 expenditures on printing and distribution
10 of sample ballots containing the name of
11 a candidate are independent expenditures
12 that simply are not governed by the
13 campaign finance law, as long as they are
14 made through political committees that
15 are not in any way controlled by or
16 operated in coordination with the
17 candidate or the candidate's campaign.
18 This would help clarify the distinction
19 between independent expenditures, on the
20 one hand, and expenditures on ballots
21 that constitute contributions to the
22 candidate.

23 We do not support the bill as
24 introduced or the various draft
25 amendments we have seen. However, that

1 5/12/10 - WHOLE - BILL 080658, etc.
2 would make allowances for situations
3 where the candidate in fact has a role in
4 controlling expenditures of the ward or
5 other committee that is pooling resources
6 for the distribution of sample ballots.
7 Such allowances would open up our
8 campaign finance laws to the potential
9 for abuse. Specifically, a candidate
10 could circumvent the campaign
11 contribution limits by having large
12 contributions made to a ward or other
13 committee over which the candidate has
14 control or influence, and then use some
15 or all of those contributions to support
16 his or her own campaign. Such large
17 contributions would undermine the
18 effectiveness of the campaign limits and
19 potentially bring the appearance of
20 improper influence of large campaign
21 contributions back into our system.

22 This is not in any way to
23 suggest that the pooling system has
24 actually been used in an abusive way to
25 date or that we expect most or even many

1 5/12/10 - WHOLE - BILL 080658, etc.
2 of our candidates would utilize
3 committees that pool resources for the
4 purchase and distribution of sample
5 ballots in this way. But, unfortunately,
6 laws such as these must be maintained to
7 prohibit those few who might be tempted
8 to abuse the system to obtain an
9 advantage. Because, together with
10 Council, we staff -- and our staff, we
11 have been unable to construct
12 alternatives that would allow this
13 proposal to work, without being subject
14 to potential abuse, we oppose this
15 measure.

16 Bill 080659 would prohibit any
17 incumbent City officeholder from
18 soliciting any campaign contribution
19 unless that City officeholder is a
20 declared candidate for elective office,
21 whether local, state or federal. The
22 bill would make an exception in cases
23 where the incumbent certified to the
24 Board of Ethics that the official's
25 political committee is in debt based on

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the official's campaign and the
3 contributions will be used to retire that
4 debt.

5 A complete ban on fundraising
6 by elected officials who have not
7 declared candidacy for an office would
8 seriously hamper City-elected officials
9 who might run for a non-City office
10 relative to their opponents who might be
11 elected officials in state office,
12 federal office or local office in another
13 jurisdiction. Those involved in politics
14 often seek to raise campaign funds for
15 the very purpose of determining whether
16 they are viable candidates for certain
17 offices before they are prepared to
18 announce candidacy for those offices. We
19 do not believe it would be justified to
20 completely prohibit our locally elected
21 officials from engaging in any
22 fundraising whatsoever before the
23 individual has even determined what
24 office he or she might run for.

25 The Task Force on Ethics and

1 5/12/10 - WHOLE - BILL 080658, etc.
2 Campaign Finance Reform did not adopt
3 this proposal as one of its
4 recommendations. To the extent that
5 there is any consideration of imposing
6 fundraising restrictions on incumbents
7 who have not declared candidacy for any
8 office, such restrictions should impose
9 reasonable limits on contributions from
10 individuals and other entities and not a
11 complete ban on fundraising.

12 Bill No. 080663, this bill
13 would, on its face, significantly change
14 the campaign finance rules. In practice,
15 however, it would merely complicate the
16 system unnecessarily.

17 First, the bill would take the
18 basic contribution limits that now apply
19 on an annual basis and separate them into
20 limits applicable, on the one hand, to
21 the three-and-a-half-year period starting
22 with a general election and ending with
23 the primary and, on the other hand, to
24 the six-month period between the primary
25 and the general election on the other.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 The apparent purpose of this
3 type of change is to reduce the ability
4 of incumbents to raise funds in the first
5 years immediately following an election.
6 This was the rationale stated in support
7 of this type of change in the report of
8 the Task Force on Ethics and Campaign
9 Finance Reform.

10 The bill would not accomplish
11 this goal, however. This is because of a
12 misunderstanding of how our campaign
13 finance rules work. Our law only
14 regulates "candidates" for City office.
15 There is a common misconception that
16 incumbent City-elected officials are at
17 all times "candidates" for City office,
18 as that term is used in the Code. That
19 is simply incorrect. Under our Code,
20 only individuals who have demonstrated or
21 declared that they have in fact thrown
22 their hat in the ring in a particular
23 election contest are "candidates"
24 regulated under the Code's contribution
25 limits. This bill would not change that

1 5/12/10 - WHOLE - BILL 080658, etc.

2 definition in any way.

3 Under the current rules, if an
4 individual does not declare an intent to
5 run for office until the actual election
6 year, which is a very common practice,
7 that individual does not become subject
8 to the direct campaign contribution
9 limits until that year. An important
10 rule governing how the candidate spends
11 money raised in previous years does kick
12 in, however, which limits the value of
13 large contributions received before the
14 declaration of candidacy. Similarly,
15 under the proposal of this bill, if an
16 individual does not declare candidacy
17 until the year of the election, the
18 establishment of limits applicable to a
19 period before such declaration of
20 candidacy will have no effect.

21 Accordingly, creating special limits for
22 the three-and-a-half-year period between
23 a general election and the following
24 primary election will simply have little
25 or no effect, as generally no one will

1 5/12/10 - WHOLE - BILL 080658, etc.

2 have declared candidacy and thus be
3 covered by the limits, for the vast
4 majority of that period.

5 Again, this is not to say that
6 we do not believe that there might be
7 some value to establishing some sort of
8 fundraising limits on incumbents. If
9 there is an appearance that incumbent
10 officeholders are using the authority of
11 their office to obtain large
12 contributions from individual donors --
13 and we have not heard any reports that
14 this is going on, so to the extent that
15 there is a problem, it would be one of
16 perception, not reality -- then the City
17 probably should adopt reasonable limits
18 on the fundraising of incumbent City
19 officeholders. But that is not what this
20 bill provides for and, therefore, we
21 oppose the bill in its current form.

22 This concludes my testimony on
23 Bills 080659, 080663, 100122, 100124 and
24 100126. And with the Chair's permission,
25 I would now read my testimony on the

1 5/12/10 - WHOLE - BILL 080658, etc.
2 political contributions, if that's okay.
3 Thank you.

4 Again, I'm here to testify on
5 behalf of the Nutter Administration on
6 the various proposals to amend the City's
7 campaign finance laws. Specifically,
8 Bill No. 080 -- excuse me. That's the
9 wrong testimony.

10 I'm here to testify on behalf
11 of the Nutter Administration on Bill No.
12 100128.

13 This proposal was introduced as
14 part of a package of ethics reform bills
15 introduced March 4th in the wake of the
16 recommendations the Task Force on Ethics
17 and Campaign Finance Reform made in
18 December of last year. On March 15th,
19 the Committee on Law and Government held
20 a hearing on a Charter change proposal
21 that was included in that package. The
22 Charter change would allow City Council
23 to modify and replace restrictions on the
24 political activities of City officers and
25 employees and modify other related rules

1 5/12/10 - WHOLE - BILL 080658, etc.
2 regarding campaign solicitations and
3 "resign to run" requirements that are
4 currently set forth in the City's Home
5 Rule Charter. As you may recall, I
6 testified at length at that hearing.

7 It is important to consider
8 Bill 100128, which is Council's proposal
9 with respect to how it would exercise its
10 new authority to implement the Charter
11 change, against the backdrop of the
12 proposed Charter change.

13 First, let me say that we
14 commend Council for moving away from the
15 hurried timetable that it would have
16 needed to follow to place a proposed
17 Charter change on the May ballot. These
18 are highly significant issues of policy
19 facing the City and they deserve very
20 careful consideration.

21 Although I testified in support
22 of some of the substantive purposes of
23 that Charter change proposal,
24 particularly in the area of allowing City
25 employees greater freedom to express

1 5/12/10 - WHOLE - BILL 080658, etc.
2 their political views publicly, for the
3 most part, we have opposed and continue
4 to oppose that proposal.

5 There is no compelling
6 justification to broadly allow City
7 workers to engage in partisan political
8 activities. In our view, nothing in the
9 Charter's political activities
10 restriction is fundamentally flawed or
11 broken. We agree that rules,
12 particularly in the area of the
13 expression of political opinions, may
14 have been interpreted too narrowly in
15 certain respects, but the basic
16 prohibition against active participation
17 in partisan politics by City employees
18 and officers is plainly sound as a legal
19 matter.

20 Moreover, as a matter of
21 policy, we are not convinced that there
22 is any compelling justification to change
23 the rules in any broad way. There simply
24 is no need for employees of the Executive
25 and Administrative branch of government,

1 5/12/10 - WHOLE - BILL 080658, etc.
2 particularly those involved in the
3 day-to-day operational decisions of the
4 City that affect the lives of our
5 citizens, but even those whose job duties
6 do not directly affect the citizens on a
7 day-to-day basis, to be actively involved
8 in the affairs of political candidates
9 and political parties. The required
10 separation, which protects both the
11 public and the employees themselves, has
12 served the City well for almost 60 years
13 and we have not heard arguments that
14 convince us the rules should be changed
15 now.

16 We agree with the view of the
17 Task Force that some reforms in the area
18 of allowing greater political expression
19 by City employees are indeed worthwhile.
20 This can be accomplished fairly easily,
21 however, without a resort to a Charter
22 change by simply reexamining the language
23 of the Charter itself, which on its face
24 does not appear to regulate political
25 expression. It is our understanding that

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the Board of Ethics is in fact in the
3 process of drafting a proposed regulation
4 interpreting Section 10-107 of the
5 Charter, which we hope will result in a
6 significant change in how these rules
7 affect the political expression of City
8 officers and employees.

9 Even more important, however,
10 than our basic policy differences with
11 respect to what the political activities
12 rules should be is our difference in view
13 about the mechanism by which any changes
14 in this area should be made. In our
15 view, whatever changes this body believes
16 should be made to the political
17 activities rules and the other related
18 rules covered by the Charter change,
19 there is no reason to establish those
20 rules outside of the City's Home Rule
21 Charter. Whatever changes to the
22 substance of the political activities
23 rules we may discuss, we should be
24 discussing those changes in the context
25 of changes to the Charter itself.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 The core of our position in
3 this matter is that the voters should
4 retain the final say about the rules
5 governing the political activities of
6 City officers and employees. The rules
7 have been included in the Charter for
8 nearly 60 years for a reason: to require
9 the City's elected officials to return to
10 the voters when they want to change these
11 particular rules. Regardless, the
12 outcome of any debate about the substance
13 of the particular political activities
14 rules, we strongly oppose moving the
15 authority away from the voters to make
16 those kinds of changes.

17 Turning specifically to Bill
18 No. 100128, as I have said, this bill is
19 Council's initial proposal to implement
20 the Charter change proposal that was the
21 subject of the Council hearing several
22 weeks ago. If the Charter change Council
23 as proposed were adopted, Bill 100128, in
24 its current form, would, among other
25 things, broadly allow City officers and

1 5/12/10 - WHOLE - BILL 080658, etc.
2 employees to take an active part in
3 political campaigns of a candidate and
4 serve as committee people or ward leaders
5 in political parties. By adopting Bill
6 100128, Council would be setting forth
7 the substance of the change to the
8 political activities provisions it
9 proposes, if the Charter change were to
10 go into law. It is obviously important
11 to have such rules available for review
12 if the voters were to consider a Charter
13 change granting Council authority to set
14 the rules.

15 We have also reviewed proposed
16 amendments to Bill 100128 that Council
17 has circulated. These amendments would,
18 to some extent, limit the impact of Bill
19 100128 by limiting the scope of the City
20 officers and employees with respect to
21 whom the relaxation of rules governing
22 participation in partisan political
23 activities would apply. Generally, the
24 rules would not be relaxed for certain
25 categories of employees, such as

1 5/12/10 - WHOLE - BILL 080658, etc.
2 uniformed law enforcement and public
3 safety employees. Concerns about
4 participation in partisan political
5 activities may be most acute with respect
6 to these categories of employees. We are
7 not convinced, however, that the rules
8 governing participation in true political
9 activities should be relaxed for any
10 employees of City government, whether or
11 not they are involved in law enforcement
12 or other discretionary activities that
13 substantially impact the lives of our
14 citizens.

15 Moreover, to the extent any
16 such separation between "more restricted"
17 and "less restricted" employees is made,
18 it is also very important to this
19 Administration that all employees of the
20 Administration exempt from civil service
21 be included in the category of "more
22 restricted" employees. This
23 Administration does not want any
24 appearance that any decision of a Mayoral
25 appointee could be based on an interest

1 5/12/10 - WHOLE - BILL 080658, etc.

2 in the fortunes of a political campaign
3 or those of a political party.

4 Moreover, I must return to the
5 fact that even if we were in full
6 agreement with this Council about the
7 policy choices that will be made in the
8 final form of Bill 100128, we would not
9 be satisfied. This body has often noted
10 instances in which it felt the need to
11 establish rules, not because of any lack
12 of trust with this Administration but
13 because future Administrations might not
14 adhere to the desired policy proposal.

15 Establishment of contribution
16 limits for inaugural and transition
17 committees, as proposed in Bill No.
18 100122, which is also being considered
19 today, is a good example of this. The
20 current Mayor has demonstrated that he
21 will follow self-imposed limits in that
22 regard. Yet, Council is now proposing by
23 law to bind future Mayors and other
24 elected officials to such rules.

25 Therefore, even if we agreed

1 5/12/10 - WHOLE - BILL 080658, etc.
2 with the policy choices made by this
3 Council in connection with Bill 100128,
4 the best protection against choices made
5 by future Councils that might further
6 weaken these important protections is to
7 continue to require that the voters pass
8 upon changes in this area. Removal of
9 the rules from the Charter would allow
10 future Councils to change the rules far
11 too easily without returning to the
12 voters for their agreement. This is our
13 fundamental problem with the path Council
14 has proposed.

15 Turning to other aspects of
16 Bill 100128, another of the Charter-based
17 rules that the Charter change proposal
18 would allow Council to override are rules
19 regarding the campaign fundraising in
20 which City officers and employees may
21 engage. We favor changing in the Charter
22 itself anachronistic rules about the
23 fundraising of elected officials. We do
24 not favor, however, an open-ended
25 authorization to relax the prohibition on

1 5/12/10 - WHOLE - BILL 080658, etc.
2 non-elected City officials soliciting
3 political contributions, potentially from
4 the very same citizens who may come
5 before the official with an important
6 request. Indeed, Bill No. 100128, in its
7 current form, would expressly allow
8 political fundraising by members of all
9 boards and commissions, no matter how
10 much influence those boards might have on
11 the daily lives of our citizens. We
12 oppose such a change, as it could have a
13 devastating impact on the trust of the
14 public if members of the public are
15 solicited for political contributions by
16 the very same board or commission members
17 who may make a decision on the permit
18 application appeal or other similar
19 request made by those members of the
20 public.

21 There are also several
22 provisions of the law in the Charter
23 which, if the Charter change were
24 adopted, Council could override, yet are
25 not addressed in Bill 100128. The first

1 5/12/10 - WHOLE - BILL 080658, etc.
2 are rules that prohibit political
3 solicitations from civil service
4 employees. It is unclear whether Council
5 would intend to propose changes in that
6 rule in the future. The second are rules
7 that require City officials and
8 employees, except for elected officials
9 running for reelection, to resign from
10 their position before running for
11 elective office. As noted in my previous
12 testimony, I've been advised by the Law
13 Department that the proposed grant of
14 authority to Council to repeal the
15 "resign to run" rule runs an actual risk
16 of violating a state law that prohibits
17 seeking a change to the Charter on the
18 same matter considered by the voters in
19 the previous five years. Council has not
20 proposed any substantive change to these
21 rules in Bill 100128. We are concerned,
22 however, about allowing future changes to
23 this rule so soon after the voters
24 disapproved a proposed change in this
25 area.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 In sum, we recognize there may
3 be flaws in how the Charter has been
4 interpreted with respect to restrictions
5 on political expression and that the
6 Charter contains outdated provisions
7 regarding fundraising by elected
8 officials. Those problems, however, can
9 be fixed without opening up the Charter
10 to wholesale changes regarding the
11 political activities of its employees or
12 changes related to the fundraising by
13 members of boards and commissions.

14 This Administration opposes
15 Bill 100128 because we believe that it
16 simply goes too far. Rather than
17 addressing a limited problem, it takes
18 away from the voters the authority to
19 determine the contours of strong and
20 sound protections against political
21 interference in the workings of
22 government. We urge you to table this
23 proposal and to work with the
24 Administration on narrow, targeted
25 changes to the Charter itself that would

1 5/12/10 - WHOLE - BILL 080658, etc.
2 deal with the problems at hand, without
3 dramatically altering the way the rules
4 are made in this area.

5 Thank you for the opportunity
6 to share the views of the Administration,
7 and as soon as my fellow panel mates
8 conclude their testimony, we'll be happy
9 to answer any questions. Thank you for
10 your indulgence.

11 COUNCIL PRESIDENT VERNA: Thank
12 you very much.

13 MS. MARKMAN: I think I'm up.

14 Good afternoon, Madam Chair and
15 members of the Committee. I'm Joan
16 Markman, the City's Chief Integrity
17 Officer. I'll be testifying about a
18 number of bills today, first concerning
19 Bill Nos. 100127 and 080661.

20 Both of these bills would add a
21 new Chapter to Title 20 of The
22 Philadelphia Code to require the
23 registration of lobbyists and their
24 principals and to require disclosure of
25 lobbying expenditures.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 As you know, one of the central
3 recommendations of the Mayor's Task Force
4 on Ethics and Campaign Finance Reform was
5 the adoption of requirements for the
6 public registration of lobbyists and
7 their principals and disclosure of
8 lobbying expenses. This Administration
9 agrees wholeheartedly with this
10 recommendation, since it furthers our
11 goal of making government decision-making
12 more transparent and accountable to the
13 public that we serve. We commend
14 Councilwoman Tasco and we commend
15 Councilman Rizzo, who introduced
16 legislation on this topic even before the
17 Task Force was convened, for introducing
18 legislation to make this lobbying
19 disclosure happen.

20 As originally drafted, both
21 bills contained some technical and
22 implementation issues about which we were
23 concerned. So the Administration and the
24 Board of Ethics staff have worked closely
25 and, I'm very happy to say, very

1 5/12/10 - WHOLE - BILL 080658, etc.
2 collegially with Council staff to resolve
3 those issues. The results of our
4 collaboration are contained in proposed
5 amendments to Bill No. 100127, which
6 incorporates what we believe are the best
7 features of both Councilwoman Tasco and
8 Councilman Rizzo's two bills, as well as
9 some other useful provisions. We,
10 therefore, strongly support the passage
11 of Bill No. 100127, as we understand the
12 bill will be proposed to be amended by
13 the Committee.

14 That is my testimony on these
15 two bills, 100127 and 080661.

16 COUNCIL PRESIDENT VERNA: Thank
17 you.

18 MS. MARKMAN: I'm next going to
19 testify, Madam Chair, about Bill 100125.
20 This bill would amend Title 20 of The
21 Philadelphia Code to establish penalties
22 for violations of the campaign finance
23 and ethics provisions in The Philadelphia
24 Code. The Mayor's Task Force on Ethics
25 and Campaign Finance Reform recommended

1 5/12/10 - WHOLE - BILL 080658, etc.
2 that penalties for both ethics and
3 campaign finance-related violations be
4 amended to provide for a sliding scale of
5 potential penalties for consideration of
6 a violator's intent and for a means to
7 encourage timely compliance with
8 deadlines for filing campaign finance
9 information.

10 We believe that any legislation
11 setting forth penalties for violations of
12 the ethics and campaign finance rules
13 should promote the following objectives:

14 First, the legislation should
15 deter violations and encourage compliance
16 with the regulations.

17 Second, it should provide
18 notice of consequences for violations.

19 Third, it should allow for
20 consideration of mitigating or
21 aggravating factors concerning the
22 violation or the violator.

23 And, fourth, the legislation
24 should be fair.

25 The Administration was

1 5/12/10 - WHOLE - BILL 080658, etc.
2 concerned that, although a good start,
3 the original provisions of Bill No.
4 100125 were not fully consistent with
5 these objectives. So over the last
6 several weeks, the Administration has
7 worked closely and, again, very
8 collegially with Council staff and with
9 the Board of Ethics staff on proposed
10 amendments to revise and improve Bill No.
11 100125. The results of this
12 collaboration are contained in the
13 proposed amendments to this bill that we
14 understand the Committee will consider
15 today.

16 To summarize, as recommended by
17 the Task Force on Ethics and Campaign
18 Finance Reform, the bill will contain a
19 sliding scale of penalties that considers
20 appropriate aggravating and mitigating
21 factors. Specifically, the penalty
22 provisions of Bill No. 100125 would treat
23 less harshly violators who made a
24 good-faith effort to comply with the law,
25 who took prompt corrective action for any

1 5/12/10 - WHOLE - BILL 080658, etc.
2 violation or who reported a violation
3 promptly to the Board of Ethics. The
4 penalty provisions will treat more
5 harshly violators who intentionally,
6 rather than inadvertently, engaged in
7 conduct violating the ethics or campaign
8 finance rules, violated those rules
9 repeatedly, obstructed a Board of Ethics
10 investigation into a violation or
11 disregarded a Board of Ethics notice of a
12 violation.

13 The penalty provisions also
14 will now include per diem penalties for
15 late campaign finance reports that
16 encourage prompt compliance and the
17 legislation, as amended, would eliminate
18 the so-called "death penalty" provision
19 requiring that ethics and campaign
20 finance-related violations result in
21 permanent disqualification from City
22 employment.

23 To summarize, we believe that
24 Bill No. 100125, if amended based on the
25 drafted amendments, will simply, clearly

1 5/12/10 - WHOLE - BILL 080658, etc.
2 and fairly promote the goals of
3 deterrence and compliance and notice and
4 fairness, and we, therefore, support
5 passage of an amended version of Bill No.
6 100125.

7 So that's it on 100125.

8 Finally, I'm pleased to testify
9 today, Madam Chair, concerning Bill Nos.
10 080658, 080600 and 080662 introduced by
11 Councilman Rizzo. These bills address
12 gifts, nepotism and outside employment
13 for City employees.

14 This Administration is
15 committed to ensuring that
16 decision-making by City officials and
17 employees is based solely on what's best
18 for City taxpayers and residents
19 unaffected by conflicting interests. The
20 Mayor's Task Force on Ethics and Campaign
21 Finance Reform addressed these issues in
22 its December report, and we have
23 carefully considered the Task Force's
24 recommendations in our comments on these
25 three bills.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Bill No. 080658 -- that's the
3 gifts bill -- would implement citywide
4 requirements of the current Executive
5 Order on gifts issued by Mayor Street in
6 2004. The bill also establishes
7 procedures for determining and permitting
8 so-called gifts to the City. We have
9 reviewed both this bill and the
10 recommendations of the Mayor's Task Force
11 on Ethics in this area, and the
12 Administration is in the process of
13 finalizing changes to the current gifts
14 Executive Order consistent with those
15 recommendations on some of the provisions
16 of Councilman Rizzo's bill.

17 The Mayor's Executive Order
18 only governs employees of the Executive
19 and Administration branch and does not
20 cover employees of any independent
21 elected officials. We agree with the
22 Mayor's Task Force that all City
23 employees should be subject to a uniform
24 rule concerning gifts and generally
25 support the adoption of Councilman

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Rizzo's bill.

3 Bill No. 080662 -- that's the
4 nepotism bill -- would prohibit City
5 officials and employees from involvement
6 in any personnel action regarding a
7 City-employed close relative or life
8 partner. This issue too was addressed by
9 the Mayor's Task Force on Ethics and
10 Campaign Finance Reform. The
11 Administration supports instituting a
12 rule to ensure that family loyalty does
13 not affect or interfere with City
14 employment decisions.

15 To that end, over the last
16 several months, the City's Managing
17 Director, the Department of Human
18 Relations and the Law Department have met
19 with department and agency heads to
20 determine the extent of familial
21 relationships in their agencies and to
22 determine the extent of -- excuse me; and
23 how a rule prohibiting nepotism would
24 affect their work. We are in the final
25 stages of presentation to the Mayor of a

1 5/12/10 - WHOLE - BILL 080658, etc.
2 draft Executive Order that would,
3 consistent with the Task Force
4 recommendations and also some provisions
5 of Councilman Rizzo's bill, restrict
6 supervisory and subordinate relationships
7 in City departments and agencies between
8 close family members.

9 Again, we agree with the Task
10 Force that all City employees should be
11 subject to a uniform rule concerning
12 nepotism and, therefore, support
13 legislation that would apply rules in
14 this area to more than just employees
15 under the purview of the Mayor in the
16 Executive and Administrative branch, but
17 would apply those rules to independently
18 elected officials and their staffs as
19 well.

20 Finally, Bill 080660 would
21 regulate outside employment by City
22 officers and employees. This bill would
23 prohibit City employees from working for
24 any person or business that does
25 business, seeks to do business with or

1 5/12/10 - WHOLE - BILL 080658, etc.
2 receives funding from the City. The
3 restrictions apply whether the business
4 is for-profit or non-profit and
5 regardless of whether the person is
6 receiving compensation for his or her
7 work. The bill also provides a limited
8 exception to the outside employment ban
9 for teaching positions and authorizes the
10 Ethics Board to grant limited exceptions
11 for service on the boards of non-profits.

12 We share Councilman Rizzo's
13 concern that a conflict of interest could
14 arise where a City employee holds an
15 outside job. We believe, however, that
16 the proposed legislation is overbroad and
17 that the City's current conflict of
18 interest rules are the more appropriate
19 vehicle through which to address these
20 concerns. In addition, Civil Service
21 regulations already contain restrictions
22 on outside employment by City employees
23 within the civil service system.
24 Regulation 33.02 prohibits outside
25 employment which, quote, "is incompatible

1 5/12/10 - WHOLE - BILL 080658, etc.
2 with the proper discharge," end quote, of
3 official duties, which brings disfavor or
4 disrespect upon the employee or the City
5 or which interferes with the employee's
6 effectiveness on his or her City job.
7 The regulation also allows individual
8 departments to create policies and
9 standards governing outside employment by
10 their workers, such as limiting the type
11 of employment, the number of hours worked
12 and requiring pre-approval of the outside
13 position.

14 Many City employees work second
15 jobs for financial reasons, to provide
16 for their families. Other City employees
17 volunteer off-duty time to worthwhile
18 causes throughout the City, whether it's
19 coaching a local baseball team or
20 volunteering as a tutor or mentor in a
21 City-funded program. Under the proposed
22 legislation, these employees would be
23 prohibited from doing so, not because of
24 an actual conflict of interest but
25 because of the potential for a conflict

1 5/12/10 - WHOLE - BILL 080658, etc.

2 of interest.

3 The occasional conflict issue
4 that may arise does not warrant such a
5 broad proscription of the practice.
6 There are other means to ensure that City
7 employees are not engaging in activity
8 that conflicts with their duties and
9 responsibilities as City employees. For
10 example, we could consider a requirement
11 that all City officials and employees
12 register annually their outside
13 employment with their departments and
14 with the Board of Ethics, or that
15 disclosure of outside employment and
16 reinforcement of conflict of interest
17 rules would be a more measured and
18 appropriate approach to this issue. This
19 view is consistent with the
20 recommendations made by the Mayor's Task
21 Force on Ethics and Campaign Finance
22 Reform.

23 This concludes my testimony on
24 the proposed bills.

25 MR. SCHWARTZ: Good afternoon,

1 5/12/10 - WHOLE - BILL 080658, etc.
2 President Verna and members of City
3 Council. My name is Michael Schwartz and
4 I serve as the Chair of the Mayor's Task
5 Force on Campaign Finance and Ethics
6 Reform. My complete testimony is being
7 handed out and had previously been made
8 available. I'm going to shorten the
9 testimony somewhat to discuss the two
10 issues that at least I believe are the
11 most significant this afternoon. But
12 before I start, I just want to disclose
13 that since the Task Force report had been
14 issued in December of 2009, I accepted a
15 position on the Board of the Committee of
16 Seventy. I am here to speak as the
17 former Chair of the Task Force and on
18 behalf of the Task Force and I am not
19 here speaking on behalf of the Committee
20 of Seventy.

21 The Task Force report contained
22 36 separate recommendations in the areas
23 of lobbying, campaign finance, ethics and
24 conflict of interest, and political
25 activities restrictions. Today, I'd like

1 5/12/10 - WHOLE - BILL 080658, etc.
2 to discuss the recommendations on two of
3 the bills that are pending before
4 Council, the lobbying registration and
5 disclosure bill, Bill No. 100127, and the
6 political activity bill, Bill No. 100128.
7 I'd be happy to answer questions about
8 the Task Force's consideration on any of
9 the other issues presented by the other
10 bills.

11 First, I'd like to ask the Task
12 Force's strong support of Bill No. 100127
13 relating to the registration of lobbyists
14 and disclosure of lobbying expenditures.
15 In our review, one of the most
16 significant gaps the Task Force
17 identified was with respect to the City's
18 lack of control over lobbying. To be
19 clear, the Task Force does not suggest
20 that lobbying be prohibited. Lobbyists
21 often serve an important and lawful role
22 in educating City officials about
23 legislation and administrative decisions.
24 However, the public has a right to know
25 about how those whose financial interests

1 5/12/10 - WHOLE - BILL 080658, etc.
2 are advanced are harmed by government
3 action, whether it be administrative
4 action or legislative action, how they
5 have spent money to influence government
6 decision-makers whose actions may help or
7 hurt them. To make the process of
8 lobbying much more transparent, the Task
9 Force recommends that Council enact Bill
10 No. 100127 as the Philadelphia's lobbying
11 disclosure law.

12 Next, I'd like to raise strong
13 concerns about Bill No. 100128 relating
14 to political activities by City officers
15 and employees. As we all know,
16 Philadelphia's political activity
17 restrictions are designed to separate
18 partisan politics from the functions of
19 City government, and they are contained
20 in the Charter Section 107. These
21 restrictions prohibit, among other
22 things, the use of political influence to
23 secure a civil service position and the
24 solicitation of political contributions
25 by City employees and officers. In

1 5/12/10 - WHOLE - BILL 080658, etc.
2 addition, a non-elected City officer and
3 employee may not hold political party
4 office or take part in managing any
5 political party or political campaign,
6 except to exercise his or her right as a
7 citizen privately to express his opinion
8 and to cast her vote.

9 The goal of keeping politics
10 separate from City governance remains
11 important today. The Task Force learned,
12 however, that some of the Charter
13 provisions have been applied too broadly
14 and enforced inconsistently. For
15 example, the Task Force believes that the
16 Charter Section 107(4) has been
17 interpreted to restrict private political
18 expression that poses little or no danger
19 to effective and honest governance, such
20 as permitting City employees to wear
21 political buttons or display lawn signs
22 off hours at their homes or other places.
23 Additionally, because the Charter only
24 applies to City employees and officers,
25 including some members of boards and

1 5/12/10 - WHOLE - BILL 080658, etc.
2 commissions, the restrictions in the
3 Charter about political activity do not
4 apply to individuals who work in City
5 offices but are paid by non-City agencies
6 or employed by subcontractors to do City
7 work.

8 While the Task Force supports a
9 broader reading of the Charter to allow
10 personal political expression by City
11 employees, we do not believe that such a
12 broader reading requires any change to
13 the Charter. Moreover, we have
14 significant concerns about removing the
15 political activity restrictions from the
16 Charter and replacing those restrictions
17 with the more permissive political
18 activity which would be permitted by Bill
19 No. 100128.

20 Let me explain the Task Force's
21 beliefs concerning the difference between
22 political expression and political
23 activity. The Task Force believes that
24 allowing personal expression of a City
25 official or employee's political opinion

1 5/12/10 - WHOLE - BILL 080658, etc.
2 on his or her own property or person,
3 unassociated with the workplace or the
4 workday, presents little danger of undue
5 political influence or even the
6 appearance of it in the employee's
7 performance of City duties or services.
8 To the extent that the political activity
9 restrictions also protect City employees
10 from being pressured to work for a
11 particular candidate, allowing personal
12 political expression does not diminish
13 this protection. The Task Force further
14 believes that the current interpretation
15 to the contrary is overbroad and not
16 required by the language of the Charter.
17 The Board of Ethics should be asked to
18 reconsider the interpretation of the
19 Charter to allow off-the-job personal
20 expressions of political support, such as
21 wearing political buttons and displaying
22 bumper stickers or lawn signs outside of
23 the workplace.

24 However, reconsidering
25 restrictions on political activity

1 5/12/10 - WHOLE - BILL 080658, etc.
2 presents a much more complicated question
3 that clearly is not resolved by a new
4 Ethics Board interpretation of the
5 Charter. The Task Force believes that
6 any legislation relating to ethics must
7 be based on the goal to instill honesty,
8 transparency and accountability within
9 City government.

10 When the Supreme Court
11 considered these issues and determined
12 that political activity restrictions on
13 government employees and officials, such
14 as those restrictions in our Charter,
15 were in fact constitutional, the Court
16 recognized that these restrictions
17 furthered compelling and fundamental
18 public policy of promoting government
19 without bias or favoritism for or against
20 any political party or group. The Court
21 stated that forbidding activities like
22 these will reduce the hazards to fair and
23 effective government. The Court also
24 recognized that political activity
25 restrictions ensures that government

1 5/12/10 - WHOLE - BILL 080658, etc.
2 work -- the government workforce is not
3 to be used to build a powerful,
4 invincible and perhaps corrupt political
5 machine, and that employment and
6 advancement in government shall not
7 depend on political performance.

8 Now, the Task Force recognizes
9 that political activity restrictions on
10 federal employees as set forth in the
11 Hatch Act have been amended and that the
12 current Hatch Act allows federal
13 employees varying degrees of political
14 activity in their personal time and
15 outside of the workplace. There is,
16 however, a fundamental difference between
17 federal employees and City workers and
18 how each of these categories of employees
19 can affect the lives of Philadelphians on
20 a daily basis. While federal workers
21 certainly have the power to affect lives,
22 City workers interact with Philadelphians
23 every day and more directly than most
24 federal workers. So, for example, if a
25 Streets Department worker also serves as

1 5/12/10 - WHOLE - BILL 080658, etc.
2 a political party official,
3 Philadelphians may legitimately be
4 concerned that certain businesses who
5 contribute to or support that worker's
6 candidates of choice may receive extra
7 sanitation or snow removal services.

8 Allowing political activity by
9 City employees, even off the job,
10 increases the risk of partisan politics
11 influencing government in a way that
12 allowing political expression does not.
13 It also presents monitoring and
14 enforcement challenges to ensure that
15 political activity stays truly off the
16 job.

17 Bill 100128 would significantly
18 loosen the current political activity
19 restrictions. As my fellow Task Force
20 member, Brian McCormick, explained at the
21 March 15th hearing, it is not clear from
22 the wording of the ballot question that's
23 being proposed that the voters of
24 Philadelphia will understand that voting
25 yes to the ballot questions will allow

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the increased risk that partisan politics
3 may influence the action of City workers
4 or perceive to influence those actions.
5 One remedy to that problem would be to
6 offer the voters a clear choice, either
7 amend the Charter directly to explicitly
8 eliminate or modify political activity
9 restrictions or do not seek to amend the
10 Charter and seek only a reinterpretation
11 of the Charter on the issue of
12 permissible personal political
13 expression.

14 In its report, the Task Force
15 urged Council to carefully scrutinize,
16 and now I ask you to reconsider, whether
17 allowing City employees to be active
18 members of political parties and to
19 participate in the management of
20 political parties and campaigns really is
21 an ethics reform measure or instead is a
22 step backwards from the reform measures
23 that recently have been passed by this
24 Council.

25 Thank you for allowing me the

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2 opportunity to share the views of the
3 Task Force. I am happy to answer any
4 questions.

5 COUNCIL PRESIDENT VERNA: Thank
6 you very much.

7 The Chair recognizes Councilman
8 Green.

9 COUNCILMAN GREEN: Thank you
10 very much, Madam Chair.

11 I'd just like to give some
12 perspective and history on the history of
13 political restrictions and civil service
14 reform to put what we're talking about
15 here today in a little bit of context.

16 Thomas Jefferson, when he
17 became President, issued an Executive
18 Order that restricted political activity
19 and then put in place a civil service
20 system. In 1939, there had been 3,000
21 civil service rulings at the federal
22 level, and at that point, at the height
23 of many reform efforts that were
24 happening nationwide, Congress decided to
25 take the bulk of those civil service

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2 rulings and put them in what became the
3 federal Hatch Act.

4 The City of Philadelphia was
5 not that much different from the federal
6 government in terms of the fear of
7 political activity involved in public
8 officials, and, in fact, the history of
9 what happened at the federal level in
10 many ways mirrors the discussions that
11 we're having today, the arguments being
12 made in 1939 and then that were made
13 again in 1993 when Congress made
14 significant reforms to the Hatch Act are
15 the same arguments that we're hearing
16 here today, that if you allow people
17 freedom of expression, which, in my view,
18 the First Amendment doesn't stop at your
19 ability to give your opinion. The First
20 Amendment gives you the right to support
21 a candidate, to advocate for a candidate
22 and, yes, to even work for a candidate.
23 Labor is no less valuable than someone's
24 money, and the Supreme Court has been
25 extremely clear that money equals speech.

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2 I would say people who don't have money
3 should not be restricted any more than
4 those with money with respect to their
5 advocacy for a particular candidate.

6 So since the federal Hatch Act,
7 which is basically similar to the
8 legislation that we are proposing -- in
9 fact, I would argue that what City
10 Council has put together is far more
11 restrictive than the federal Hatch Act.
12 In fact, is likely to be the most
13 restriction on political activity in any
14 city in the country, even with what
15 Council is proposing.

16 So since 1993 and the Hatch Act
17 was amended to allow people who are not
18 affecting essentially people's liberty or
19 property to be politically active, the
20 number of Hatch Act complaints since the
21 effective date has gone down. The number
22 of enforcement actions has gone down, and
23 it is far easier, according to all the
24 research we've done in my office, to
25 monitor those who are politically active.

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2 In fact, they have done a study, the
3 United States MSBP did a study, that
4 found that after the 1993 reform of the
5 Hatch Act, 6.5 percent of federal
6 employees have been reported being more
7 active in politics, while 12.5 percent of
8 federal supervised have exercised the
9 additional freedom to participate in
10 politics.

11 Now, the supervisors are in the
12 more restricted category, and they would
13 be under the bill before Council today.
14 I think if you take the arguments against
15 allowing freedom of expression, which
16 includes, in my opinion, the freedom to
17 work on a campaign, to its logical
18 extension, it's preposterous. People
19 have testified that if you allow a
20 sanitation worker to be active in a
21 political campaign, that that might get
22 your streets cleaned sooner. Well, I've
23 known many Mayors of this city and I can
24 tell you that streets get cleaned by
25 Mayors, not sanitation workers, and if

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2 you take these arguments to their logical
3 extension, you should not be able to
4 contribute to a Mayor, because he's going
5 to decide ultimately who gets the
6 service, who gets the increased trash
7 pickup. You shouldn't be able to
8 contribute to City Council people,
9 because, of course, we influence policy.

10 So I just think that the
11 arguments are really boogeymen, and I
12 just wanted to put it in context and say
13 that since the reform of the federal
14 Hatch Act in 1993, there have been fewer
15 problems than prior to its reform.
16 Because as a practical matter, our
17 current system is not enforceable today,
18 because you have to monitor 23,000
19 employees.

20 So just to get that on the
21 record. I do have a question for
22 Mr. Schwartz, which I'd like to
23 understand for the record, and, that is,
24 in the preliminary Task Force report, the
25 Task Force recommended essentially that

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2 we go to a federal Hatch Act type system,
3 and I understand there was extreme
4 lobbying pressure from people in the City
5 Solicitor's Office and elsewhere to
6 change the mind of the Task Force on that
7 issue, and I wondered if you could on the
8 record give us the history of how and why
9 that change occurred.

10 MR. SCHWARTZ: Sure. The
11 process of the Task Force, Councilman
12 Green, as we've discussed before, was one
13 of evolution. We broke down the nine
14 members that came from nine separate
15 appointing authorities into subcommittees
16 to deal with the various issues, with the
17 plan that we were going to have public
18 hearings -- we had two of them -- to get
19 input and also meet individually with
20 interested parties, with elected
21 officials. We met with many of you.
22 We've met with state-level officials, and
23 thought that we would have an evolving
24 process where we would be able to
25 initially study the issue on a micro

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2 level and then discuss it among the whole
3 group, with the hope that we would come
4 to a unanimous consensus, if one could be
5 achieved.

6 With respect to the preliminary
7 recommendations of the Task Force, we had
8 each of the three member subcommittees
9 come up with preliminary recommendations
10 before our public hearing, with the idea
11 that we would issue those preliminary
12 recommendations -- this is before the
13 second public hearing. We had an initial
14 hearing. We then issued those
15 recommendations, had a second public
16 hearing, and then continued our debate as
17 to what did the Task Force as a
18 collective group think was appropriate.
19 And, yes, the preliminary recommendations
20 of the Task Force believed that a Hatch
21 Act-like system was something to be
22 considered, and when we discussed that --
23 and we had discussions with the Law
24 Department, we had discussions with the
25 Mayor's Office, we had discussions with

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2 many of you and other elected
3 officials -- the group raised concerns,
4 like the concerns that I've expressed
5 today and some of the concerns expressed
6 by the Administration, and the group came
7 to the unanimous conclusion that we had a
8 difference of view between what is
9 acceptable political expression -- as
10 I've said, we believe that that should be
11 broadened and it has been unduly
12 restricted -- compared to what we believe
13 is appropriate with respect to political
14 activity.

15 COUNCILMAN GREEN: Okay. I
16 mean, they weren't preliminary
17 considerations; they were preliminary
18 recommendations, and I'm glad we -- it
19 sounds to me like there was a lot of
20 arm-twisting and teeth-gnashing going on
21 during that process, I guess similar to
22 the legislative process perhaps, although
23 I had thought the Task Force was going to
24 exercise independent judgment.

25 With respect to the amendment

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2 of the Charter, just for the record, I'd
3 like people to understand Council's
4 consideration or at least my
5 consideration and I think those of us
6 heavily involved in this with respect to
7 that issue. It is our opinion that we
8 should not limit the ability of Council
9 to tweak the law or tweak changes, as we
10 are making a major sort of change in the
11 regulatory system governing political
12 activity in the City and we want to make
13 sure we got it right. We don't want to
14 limit our ability to make changes,
15 additional changes, four, five years,
16 which, of course, we would be doing by
17 passing a Charter change.

18 This is legislation, and it's
19 not ever going to be perfect, and if we
20 put it in stone like that, we won't be
21 able to make course corrections if we
22 were overly restrictive or overly
23 permissive in any particular category.
24 And it's our sense that the appropriate
25 place to do that is Council.

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2 I think the Administration is
3 testifying in favor of five bills
4 increasing -- or four bills that are
5 increasing ethical standards in the City
6 of Philadelphia. I believe the Ethics
7 Board is going to testify in favor of
8 five bills that are increasing ethical
9 standards in the City of Philadelphia.
10 And I fundamentally think that issue
11 comes down to a lack of trust of us and
12 our ability to continue to increase
13 ethical standards over time rather than
14 decrease ethical standards over time.

15 The testimony that we heard is,
16 you could do all these other things that
17 you're not currently doing, but we're
18 afraid you might do them in the future
19 that loosen ethical standards if you have
20 it not in the Charter but as part of an
21 ordinance, and that just is a very simple
22 statement. The implication of that is,
23 we just don't trust you to be in charge
24 of ethical standards. And that's
25 certainly a fair position. That

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2 certainly can be your position, but you
3 just have to remember where you're
4 testifying.

5 I have no more questions.

6 Thank you.

7 COUNCILWOMAN TASCO: Thank you.

8 I just want to add to
9 Councilman Green's comments about the
10 Hatch Act with regard to Washington, DC,
11 which comes under the federal Hatch Act,
12 and its employees fall into the least
13 restrictive category, meaning its
14 employees can be engaged in various forms
15 of partisan political activities. Even
16 employees like child support workers,
17 DHS, can be engaged in political
18 activity. Have you seen any wholesale
19 corruption, abuse of their position?

20 MR. SCHWARTZ: Councilwoman
21 Tasco, there has right now been a report
22 of some significant misuse in DC city
23 government relating to both political
24 activity and some of the lack of other
25 ethics issues that we have addressed here

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2 in Philadelphia. There was just a
3 special counsel investigating both
4 expenditures for a number of departments,
5 and I don't have all the details at my
6 fingertips, but about four weeks ago when
7 I was in DC, they had just appointed
8 Mr. Bennett as a special prosecutor on
9 behalf of the Council to do an
10 independent review.

11 So there have been issues.
12 It's not widespread, but it is really an
13 issue of public confidence in the
14 government workers. The perception that
15 politics will interfere with someone's
16 job performance is a real perception that
17 occurs. And the Charter was originally
18 drafted in the manner of the restrictive
19 nature to address those perceptions, and
20 I think the Supreme Court when they
21 upheld those type of restrictions both in
22 the federal Hatch Act originally and also
23 in Oklahoma State that had the identical
24 restrictive provisions to our Charter,
25 the Supreme Court talked about the public

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2 policy that is benefited through
3 separating out the political activity of
4 civil service workers from those of
5 elected officials, who, of course, can be
6 lobbied, set policy. There's nothing
7 wrong inherently with the political
8 activity by the elected officials. It's
9 a question of those non-elected
10 officials.

11 COUNCILWOMAN TASCO: Thank you
12 very much.

13 Any other questions?

14 Councilman Green.

15 COUNCILMAN GREEN: Thank you.

16 With respect to corruption in
17 Washington, DC and corruption here in
18 Pennsylvania and Philadelphia and
19 elsewhere, obviously that's against the
20 law yesterday, today and should our
21 legislation pass, it's against the law
22 tomorrow. I do want to note that all of
23 Washington, DC city employees are in the
24 least restricted category and under the
25 federal Hatch Act, which means they can

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2 basically do whatever they want
3 politically, and that I would say the
4 vast majority of City employees would be
5 in the most restricted category under the
6 Council proposal.

7 So I understand your point, but
8 it's not really on point, and I just
9 wanted to clarify that for the record.

10 Thank you.

11 COUNCILWOMAN TASC0: Councilman
12 Rizzo.

13 COUNCILMAN RIZZ0: Thank you.

14 Mr. Armbrister, you testified
15 that Bill No. 080663 creates two periods
16 of fundraising restrictions, one for six
17 months and the other for three and a half
18 years, but Bill No. 080663 was intended
19 to be read with Bill No. 080659.

20 Together, the three-and-a-half-year
21 period would actually be just several
22 months from the declaration of candidacy
23 or filing of nominating petitions until
24 the prime reelection.

25 MR. ARMBRISTER: Councilman,

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2 I'm not sure I understand the intent of
3 your point of reading those together.

4 COUNCILMAN RIZZO: Because you
5 indicated that it would be a
6 three-and-a-half-year period.

7 MR. ARMBRISTER: Well, I think
8 that with respect to the Bill 080663,
9 that was our reading of the bill. I
10 guess what I'm trying to get from you is
11 a clarification of the reading of that
12 together with 080659. I'm not sure I
13 understand the point.

14 COUNCILMAN RIZZO: I just
15 wanted to double check that I had it
16 right. They're not eligible until they
17 declare their candidacy. So that
18 wouldn't be three and a half years out.

19 MR. ARMBRISTER: Well, it
20 appeared that the intent of 080663 was to
21 regulate potential candidates. We
22 understand -- and without a change in the
23 definition of the word "candidate,"
24 you're absolutely correct. So the 080663
25 didn't seem to be attempting to reach its

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2 stated goal, because they didn't change
3 the definition of the word "candidate."

4 COUNCILMAN RIZZO: Okay. Just
5 for the record.

6 MR. ARMBRISTER: Right. Well,
7 for the record, 080663, without changing
8 the definition of the word "candidate,"
9 seems to fail to meet its objective,
10 which it seems its intent was to regulate
11 potential candidates, and so it seems not
12 to meet its objective, and that's one of
13 our concerns.

14 COUNCILMAN RIZZO: Thank you.

15 MR. ARMBRISTER: You're
16 welcome.

17 COUNCILWOMAN TASC0: Thank you.

18 Are there any other questions
19 or comments?

20 (No response.)

21 COUNCILWOMAN TASC0: Thank you
22 very much for your testimony.

23 THE CLERK: Panel No. 2, Cathy
24 Scott, Mary Catherine Roper and Brett
25 Wilmot.

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2 (Witnesses approached witness
3 table.)

4 COUNCILWOMAN TASC0: Good
5 afternoon.

6 Is Ms. Roper here?

7 (No response.)

8 COUNCILWOMAN TASC0: Okay.

9 Would you identify yourself and proceed
10 with your testimony, Ms. Scott.

11 MS. SCOTT: Yes. Good
12 afternoon, Councilwoman Tasco and other
13 members of City Council. My name is
14 Catherine Scott and I am President of
15 AFSCME District Council 47. I welcome
16 the opportunity to testify today on the
17 proposed amendment to Bill No. 100128
18 amending Chapter 20-600 of The
19 Philadelphia Code, entitled "Standards of
20 Conduct and Ethics."

21 AFSCME District Council 47 has
22 three local unions with approximately
23 4,000 members affected by this proposed
24 legislation. I would like to commend
25 City Council for analyzing and acting on

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2 the recommendations of the Mayor's Task
3 Force on Ethics and Campaign Finance
4 Reform. I do have some concerns about
5 the approach in the bill which classifies
6 some employees as "less restricted" and
7 some employees as "more restricted" in
8 their ability to engage in off-work
9 political activity. I think it bears
10 repeating that the members of AFSCME
11 District Council 47 in Locals 2186 and
12 2187 are Civil Service employees who pass
13 competitive Civil Service examinations
14 and finish high enough on the Civil
15 Service list to be hired. They
16 successfully complete six-month probation
17 periods. Many of them are members of
18 professional associations in their career
19 choice, such as the National Association
20 of Social Workers. They hold
21 certifications, such as Certified Public
22 Accountants or Social Workers or are
23 licensed to practice in their profession,
24 such as physicians, registered nurses and
25 physician assistants, to name a few. Our

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2 union objects to including any of our
3 members under Section 1(4)(d).

4 There is no credible reason why
5 employees who investigate reports of
6 child abuse and neglect should be
7 restricted as in (4)(d) Subsection (iii).
8 They follow both federal and state
9 mandates, which include very strict
10 criteria for conducting safety
11 assessments in those investigations,
12 which are then reviewed and approved at
13 multiple levels of management before
14 action is taken. In those instances
15 where there is imminent danger to a
16 child, before a child can be removed, the
17 social worker must obtain the prior
18 approval of DHS management and the City
19 Law Department, which writes and files
20 the petition, which is then acted upon by
21 a judge. Protective service workers
22 throughout the country follow these
23 mandates and are not precluded from
24 political activity.

25 Sections (4)(d)(iv), (v), (vi),

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2 (vii), (viii) and (ix) refer to employees
3 with authority to act in some way. It is
4 important to define the term "authority."
5 Let's review No. (4)(d)(iv), quote,
6 "employees with the authority to assess
7 the value of real estate or other taxable
8 property." Our members, real property
9 evaluators, review the mass assessments
10 using sales trends and other objective
11 criteria such as permits and other
12 property renovations to recommend
13 assessment changes, which are then
14 reviewed and decided by administrators or
15 the Chief Assessor. Our Union would
16 argue that our members do not have the
17 authority to assess the value.

18 In (4)(d)(v) and (4)(d)(vi), if
19 our members in the Water Department who,
20 as an example, oversee issuing bills
21 which include a legally pre-determined
22 penalty for a late payment or a legally
23 required fee such as a permit application
24 fee, we do not believe their political
25 activity should be restricted.

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2 Is the Sanitarian inspecting a
3 restaurant who find violations to the
4 Health Code as laid out by law and
5 regulation restricted, especially when
6 that violation is reviewed by multiple
7 levels of management in the Health
8 Department and possibly the Law
9 Department and may or may not be acted
10 upon? In (4)(d)(vii), is the Procurement
11 Technician who oversees the announcement
12 of contract bids and the transparent and
13 public process of reviewing bids, which
14 must conform to very specific requests
15 for proposals, restricted, especially
16 when they have no authority to ultimately
17 grant or deny those bids?

18 Number (viii) is written so
19 broadly, it is difficult, if not
20 impossible, to understand the scope of,
21 quote, "any other permission or request
22 impacting property rights or interests,"
23 end quote. Does this include the
24 Surveyor who oversees street layouts, the
25 Traffic Engineer who does street signage

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2 and traffic lights, or the Civil Engineer
3 who oversees bridge construction
4 contracts?

5 Our members' jobs is to provide
6 essential City and County services and
7 enforce City codes, regulations and laws.
8 These restrictions appear to be written
9 to keep the City's professional employees
10 and first-level supervisors from engaging
11 in political activity. Our Union
12 believes that this approach is
13 unconstitutional.

14 In addition, we believe that
15 Section 1(4)(a)(viii) should include the
16 ability to circulate nominating petitions
17 in addition to signing nominating
18 petitions. For many citizens,
19 circulating a nominating petition is a
20 very basic way to engage in the political
21 process and a way to express their
22 opinion about a candidate. If a
23 potential candidate cannot obtain a
24 sufficient number of signatures on
25 nominating petitions, he or she never

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2 becomes a candidate. I would suggest
3 that No. (viii) be amended to read "sign
4 and circulate nominating petitions."

5 What this legislation fails to
6 address is the inconsistent application
7 of political activity restrictions on
8 some City employees referenced on Page 40
9 of the Mayor's Task Force report,
10 especially, and I quote from that report,
11 "contract employees who work full time in
12 City offices alongside City employees and
13 perform the same functions as some City
14 employees, and are, to the public,
15 indistinguishable from City employees,
16 are not subject to the same restrictions
17 because they are not subject to the
18 Charter." This legislation would codify
19 that inconsistency.

20 If the work performed by tax
21 analysts in the Law Department or tax and
22 revenue conferees in the Revenue
23 Department could be covered as activities
24 listed in the subsection of (4)(d) such
25 as No. (viii), how does the City propose

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2 to address what appears to be obvious
3 inconsistency of contracting out this
4 work? I believe that in order to address
5 this issue, a few questions need to be
6 answered.

7 One, has the Administration
8 provided City Council with a list of all
9 contracts it presently has with private
10 companies and agencies which perform the
11 work and activities listed in the
12 subsections of (4)(d)(v) through (xi)?

13 Two, has the Administration
14 explained why employees who work for
15 private companies or agencies which are
16 not subject to the Charter should be
17 permitted the unfettered ability to
18 engage in political activity, especially
19 if there is far less public
20 accountability and transparency over the
21 work they are performing than the work
22 that Civil Service public employees are
23 performing, while City employees
24 performing that work would have their
25 political activity restricted?

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2 Our Union believes that
3 restricting the political activity of
4 Civil Service City employees engaged in
5 activities listed in (4)(d) but
6 contracting that work out to private
7 agencies or companies whose firm and
8 employees can engage in political
9 activity is arbitrary and capricious.
10 The City should have a consistent policy
11 that all of those who perform this work
12 listed in (4)(d) should be restricted
13 from engaging in political activity and,
14 therefore, can only be done by City
15 employees, or that none of the work
16 listed in (4)(d) should have political
17 restrictions. Unless the legislation
18 addresses this issue, it is fatally
19 flawed.

20 The framers of the Charter
21 believed that City Civil Service
22 employees should perform the vast
23 majority of City work, with limited
24 exceptions. The philosophy of the City
25 Administrations of the past two decades

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2 has carved out numerous exceptions to
3 Civil Service employees exclusively
4 performing the work, and the budget
5 allocation in Class 200 category
6 demonstrates that reality. There must be
7 provisions in this legislation to address
8 this reality.

9 I would also like to add that
10 the Union objects to the restrictions in
11 Bill No. 080660. We support the Task
12 Force recommendation on Page 28 to
13 maintain the status quo. Except for the
14 teaching provision in Section 2, many of
15 our members would be forced to leave
16 their outside employment. I don't need
17 to repeat Ms. Markman's comments on
18 outside employment, with which we agree,
19 except to emphasize that this proposed
20 bill is overly broad. For this reason,
21 we do not support the bill.

22 COUNCIL PRESIDENT VERNA: Thank
23 you.

24 MS. SCOTT: Thank you for the
25 opportunity to testify.

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2 COUNCIL PRESIDENT Verna: Thank
3 you. If you would remain at the table,
4 please.

5 Mr. Wilmot.

6 MR. WILMOT: Good afternoon.

7 COUNCIL PRESIDENT Verna: Good
8 afternoon.

9 MR. WILMOT: My name is Brett
10 Wilmot. I am the Associate Director of
11 the Ethics Program at Villanova
12 University.

13 Members of the City Council,
14 thank you for the opportunity to speak at
15 this hearing regarding the ethics bills
16 under consideration.

17 I have been invited today to
18 speak in my capacity as an ethicist. My
19 training in ethics is from the University
20 of Chicago, where I received my Ph.D. My
21 purpose today is not to provide detailed
22 commentary on the proposals before you.
23 Others here are more expert than I on the
24 technical issues that must be considered
25 when evaluating such changes as those

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2 proposed here today. I will offer some
3 brief thoughts about the general focus of
4 these proposals, but my more pointed
5 comments will be directed at the idea of
6 ethics reform in general, particularly
7 through administrative or legislative
8 actions.

9 While I find much to admire in
10 the specifics of these bills and in the
11 motivations behind them, I think it's
12 important to note that creating an
13 ethical culture for those working in City
14 government requires going beyond a
15 standard of legal compliance.

16 The law is a teacher, and good
17 laws and policies make a significant
18 contribution to how those guided by them
19 form and exercise their judgment as moral
20 agents. The items before you attempt to
21 provide additional guidance to City
22 officers and employees, particularly with
23 respect to activities where perceived or
24 actual corruption can have significant
25 negative effects on the operations of

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2 City government and the perception of
3 that government by its citizens.
4 Specifically, the limits on gifts that
5 might be perceived to influence City
6 officers and employees in Item 080658,
7 the anti-nepotism provisions of Item
8 080662 and the limitations on
9 solicitation of political contributions
10 in Item 080659 all seem like worthy
11 proposals. Each target specific areas of
12 concern where even the appearance of
13 corruption can undermine the faith of
14 citizens in their government and hinder
15 that government's effectiveness. In
16 highlighting these items, I don't mean to
17 suggest that the provisions in the other
18 items are less worthy or problematic in
19 any way.

20 The limits on campaign
21 contributions in Item 080663 and
22 restrictions on employment in Item 080660
23 are potentially more complicated matters,
24 and while I respect the motivations
25 behind them, I'll leave it to those with

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2 greater technical expertise in these
3 matters to render judgment as to their
4 benefits and practicality.

5 I'm confident that the proposed
6 changes, if implemented, will have a
7 beneficial effect on how City government
8 is perceived. This is no small matter,
9 as respect for government these days is a
10 too scarce commodity, but one that is
11 nonetheless essential for effective
12 governance in the long run. There is a
13 risk, however, of mistaking changes in
14 administrative policies and law for a
15 change in the culture, or ethos, within
16 which City business occurs. This is no
17 specific criticism of Philadelphia's City
18 government, but merely the recognition
19 that the creation of an ethical culture
20 and the inculcation of moral virtues in
21 its participants require something more
22 than clarifying policies and amending
23 existing laws. The risk is that we come
24 to equate compliance with policy and law,
25 a bare minimum that excludes abuse of

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2 authority and criminality, with our
3 highest ethical standards. That would be
4 a mistake. That one is not subject to
5 administrative rebuke or criminal
6 prosecution is not the same as being
7 exemplary in terms of one's behavior.
8 And I would offer the opinion that our
9 citizens deserve exemplary behavior on
10 the part of those entrusted with guarding
11 and promoting the commonweal.

12 Whether these or other
13 proposals or amended proposals are
14 ultimately passed by this Council, I
15 would encourage our City officers to
16 continue pursuing the creation of an
17 ethical culture for City government, one
18 in which the appearance of corruption,
19 much less its presence, simply is not
20 tolerated, and compliance to law and
21 policy is recognized as our minimum
22 standard, a standard that is consistently
23 exceeded by our City officers and
24 employees. Toward that end, I encourage
25 the Council to give serious consideration

1 5/12/10 - WHOLE - BILL 080658, etc.
2 to these proposals, but also to exploring
3 additional strategies for creating an
4 ethical culture in Philadelphia City
5 government that is second to none.

6 Thank you for your time and for
7 this opportunity to contribute to the
8 deliberations of this Committee.

9 COUNCIL PRESIDENT Verna: Thank
10 you very much.

11 Are there any questions from
12 members of the Committee?

13 (No response.)

14 COUNCIL PRESIDENT Verna:
15 Seeing none, thank you very much.

16 THE CLERK: Panel No. 3, Nolan
17 Atkinson, James Browning and Zack
18 Stalberg.

19 (Witnesses approached witness
20 table.)

21 COUNCIL PRESIDENT Verna: Good
22 afternoon.

23 MR. ATKINSON: Good afternoon.
24 I'm Nolan Atkinson, a member of the
25 Philadelphia Board of Ethics, here to

1 5/12/10 - WHOLE - BILL 080658, etc.
2 give testimony before the Committee of
3 the Whole on Bills 080658, 080659,
4 080660, 080661, 080662, 080663, 100122,
5 100124, 100125, 100126, 100127 and
6 100128.

7 Good afternoon, members of this
8 Committee. I am a member of the
9 Philadelphia Board of Ethics, and thank
10 you for the opportunity to speak on the
11 12 bills scheduled to be heard today by
12 the Committee of the Whole.

13 Before I begin my testimony, I
14 should disclose that I was a member of
15 the Mayor's Task Force on Ethics and
16 Campaign Finance Reform, which issued its
17 final report in December 2009. However,
18 I am testifying today on behalf of the
19 Ethics Board and not on behalf of the
20 Task Force.

21 Two of the bills being
22 considered today would establish a new
23 lobbying registration and reporting law
24 that the Ethics Board would administer
25 and enforce. Five of the bills would

1 5/12/10 - WHOLE - BILL 080658, etc.
2 amend the campaign finance law, and four
3 would amend the Ethics Code. Finally,
4 the twelfth bill, which is a companion to
5 Bill 100121 and Resolution 100139 that
6 received a hearing on March 15th,
7 contains a Code provision that would
8 supersede and replace the restrictions on
9 partisan political activities that are in
10 Code Section 10-107 of the Home Rule
11 Charter, if voters approve the ballot
12 question contained in Bill 100121 on
13 November 18th.

14 Because the Ethics Board has
15 jurisdiction over the laws that these
16 bills would amend and would have
17 jurisdiction over either lobbying
18 proposal, the Board has a significant
19 interest in the proposed legislation
20 being considered today. In addition, the
21 Board has a mandate to make
22 recommendations to the Mayor and City
23 Council, including any legislative
24 changes which strengthen or clarify the
25 standards of conduct and ethics. I am

1 5/12/10 - WHOLE - BILL 080658, etc.
2 here to present the Board's position on
3 the proposed legislation pursuant to this
4 mandate.

5 The Board would like to
6 acknowledge Councilman Rizzo for being
7 among those at the forefront of the push
8 for further ethics reform. The Board
9 thanks Councilman Rizzo for introducing a
10 package of ethics and campaign finance
11 bills two years ago, even before the
12 formation of the Mayor's Advisory Task
13 Force on Ethics and Campaign Finance
14 Reform.

15 At our last Board meeting on
16 April 21st, the Board discussed the
17 pending legislation that is the subject
18 of today's hearing. Unfortunately, the
19 information we had at that time was that
20 the 2008 bills on ethics and campaign
21 finance reform were not on the agenda for
22 this hearing. Accordingly, the Board did
23 not discuss the 2008 bills, and I cannot
24 express the Board's position on these
25 bills today.

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2 However, as a general concept,
3 the Board believes that public confidence
4 in government can be enhanced when the
5 rules are strengthened to decrease the
6 potential for government decision-making
7 to be influenced by gifts, family
8 relationships or personal financial
9 interests. It has been the practice of
10 the Board to support additional controls
11 in these areas that would encourage the
12 impartial administration of government
13 services.

14 Again, I regret that I am not
15 in position to offer more detailed
16 testimony on the 2008 bills today. That
17 said, I believe these topics - gifts,
18 nepotism and outside employment - do
19 deserve the attention of all of us and
20 warrant further consideration. The Board
21 is willing to participate in a continued
22 discussion on how to best improve and
23 enhance the rules in these areas.

24 Six of the bills being
25 considered today were introduced on March

1 5/12/10 - WHOLE - BILL 080658, etc.
2 4th. Since then, there have been
3 considerable discussions between Council
4 staff and Ethics Board staff. These
5 discussions, including several meetings,
6 enabled Ethics Board staff to provide
7 comment on the proposals to Council staff
8 in a constructive manner. We appreciate
9 having the opportunity to provide input
10 on the legislation prior to today's
11 hearing and note that Council has both
12 shared draft amendments and welcomed the
13 Board's comments.

14 I should also note that
15 Councilman Bill Green and the staff of
16 several Councilmembers attended the
17 Board's last public meeting on April
18 21st, which gave them an opportunity to
19 both listen to the Board's discussion of
20 the recently introduced bills and respond
21 to the Board at the meeting. We believe
22 that the proposed legislation has been
23 improved by the dialogue that has
24 occurred since the bills were introduced
25 on March 4th.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 We understand that Council has
3 prepared significant amendments to the
4 bills introduced on March 4th. Many of
5 these changes demonstrate that Council
6 has been receptive to alternative
7 approaches and ideas on how to improve
8 the City's public integrity laws, and the
9 Board now supports many of the amended
10 proposals. Although the Board may not
11 support each and every proposed change,
12 Council should be commended for keeping
13 an open mind towards reform strategies
14 and for listening carefully to input from
15 various stakeholders.

16 I will now address the proposed
17 bills by category in the following order:
18 lobbying, campaign finance, ethics and
19 political activity.

20 Lobbying: The Mayor's Advisory
21 Task Force on Ethics and Campaign Finance
22 Reform identified the absence of a
23 lobbying law in Philadelphia as a, quote,
24 "significant gap" and called for the
25 Board of Ethics oversight of lobbying

1 5/12/10 - WHOLE - BILL 080658, etc.
2 registration and reporting. The Task
3 Force said that it was unacceptable that
4 Philadelphia is the largest municipal
5 government in the United States without
6 any lobbyist registration and oversight,
7 and called for public disclosure by those
8 who have, quote, "spent money to
9 influence Philadelphia governmental
10 decision-makers," unquote.

11 At its meeting on April 21st,
12 the Board of Ethics expressed its support
13 for the Task Force conclusion that there
14 is a vital need for a lobbying law in
15 Philadelphia. While there are some
16 differences, both lobbying bills on your
17 agenda today, amended Bill 100127 and
18 Bill 080661, would meet this need.

19 Regardless of the desirability
20 of a lobbying law in Philadelphia, I
21 cannot stress strongly enough that the
22 two bills share the same major fault.
23 Neither lobbying bill provides an
24 appropriation or an ongoing source of
25 funds to support the expansive additional

1 5/12/10 - WHOLE - BILL 080658, etc.
2 lobbying responsibilities that would be
3 assigned to the Board of Ethics. The
4 Board's existing staff of seven cannot
5 absorb the breadth of the proposed
6 lobbying legislation. Without sufficient
7 additional funding, each lobbying bill
8 would radically dilute the Board's
9 ability to carry out its already heavy
10 mandates.

11 Each bill imposes an annual
12 registration fee on lobbyists and
13 principals. However, all fees so imposed
14 are payable to the City of Philadelphia
15 and go into the General Fund, not to the
16 Board of Ethics. Under the Home Rule
17 Charter, the Board may not spend money
18 that has not been appropriated to it. As
19 a result, each of the two lobbying bills
20 creates an expansive, unfunded mandate
21 for the Board. Even if the registration
22 fees were paid directly to the Board,
23 they would not provide sufficient funding
24 to administer lobbyist registration and
25 disclosure.

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2 Specifically, Bill No. 100127
3 requires electronic filing of
4 registrations and quarterly reports, and
5 that significant lobbying data and
6 information be made publicly available,
7 including a searchable database of
8 registration and quarterly report
9 information. The reporting requirements
10 of Bill No. 100127 were modeled upon and
11 are essentially identical to the
12 Pennsylvania lobbying law. Information
13 from the Pennsylvania Department of
14 State, which administers electronic
15 filing for state lobbyists, indicates
16 that it costs approximately \$1 million to
17 design and implement the state's lobbying
18 software which includes searchable
19 database features.

20 As a further comparison, it
21 costs approximately \$500,000 to design
22 and implement the City's campaign finance
23 electronic filing software. The Board,
24 therefore, believes that it is reasonable
25 to project that the cost to implement

1 5/12/10 - WHOLE - BILL 080658, etc.
2 electronic filing for lobbyists in
3 Philadelphia could be as much as \$500,000
4 and possibly more. There is also no
5 provision in Bill 100127 for the
6 continuing cost in future years to
7 maintain and improve the complex software
8 and the searchable database.

9 Lobbying registration and
10 reporting cannot be implemented by the
11 Board without new funding for additional
12 staff. The Board estimates that it will
13 cost \$250,000 per year to implement and
14 maintain a citywide lobbying program.
15 Additional staff must be hired to conduct
16 training for filers, provide advice,
17 respond to "help desk" to electronic
18 filing issues, investigate potential
19 violations and conduct enforcement, and
20 continually update lobbying information
21 on the Board's website.

22 It makes no sense to create a
23 lobbying requirement and then make it
24 impossible for the Board of Ethics to
25 implement and enforce the new law.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Timing is also critical. A
3 complex lobbying program cannot be
4 designed and implemented overnight.
5 Funding for staff and electronic filing
6 must be provided well in advance of the
7 start date for lobbying registration and
8 reporting. It will take at least six
9 months to design and test electronic
10 filing software and to hire and train
11 staff. Therefore, if funding becomes
12 available July 1, 2011, FY12, it may be
13 possible to accept lobbying registrations
14 beginning July 1 -- January 1, 2012 and
15 first quarterly reports in April 2012.
16 To be realistic, the effective date of
17 the law must reflect this schedule.

18 A significant difference
19 between the bills is that Bill 100127
20 provides for mandatory electronic filing
21 while Bill 080661 does not. The Board
22 believes that mandatory electronic filing
23 is essential to an effective lobbying
24 program, as it provides superior public
25 access to lobbyist information and

1 5/12/10 - WHOLE - BILL 080658, etc.

2 conserves staff time and resources.

3 The Board urges Council to
4 adopt a much-needed lobbying law in
5 Philadelphia with sufficient funding to
6 make its implementation possible. Both
7 of the bills before you today would open
8 lobbying activity to public scrutiny and
9 permit Philadelphia's citizens to
10 understand the process that shapes
11 legislative and administrative decisions.

12 The Board believes that enactment of
13 lobbying legislation would bring
14 necessary transparency to the day-to-day
15 operations of City government.

16 Campaign finance,
17 post-candidacy contributions, Bill
18 100122: Currently, fundraising for
19 inaugural events and transition
20 activities are unregulated and not
21 subject to contribution limits or
22 disclosure requirements. This creates
23 the potential opportunity for donors to
24 attempt to influence elected officials
25 with large donations for these

1 5/12/10 - WHOLE - BILL 080658, etc.

2 activities.

3 Both the Task Force and the
4 Ethics Board have recommended the
5 application of contribution limits to
6 transition and inauguration fundraising.
7 Amended Bill 100122 would regulate
8 transition and inauguration fundraising
9 by requiring elected officials to raise
10 money for these activities through their
11 single candidate committees and by
12 applying contribution limits. The bill
13 would provide public disclosure for these
14 fundraising activities while preserving
15 the integrity of the campaign finance
16 law's single committee rule.

17 Bill 100122 also provides
18 explicit language supporting the Board's
19 interpretation that the contribution
20 limits apply to contributions solicited
21 or made after an election for the purpose
22 of retiring campaign debt. The Board
23 fully supports application of the
24 contribution limitations and reporting
25 requirements to debt retirement and

1 5/12/10 - WHOLE - BILL 080658, etc.
2 transition and inauguration activities as
3 set forth in Bill 100122.

4 The Board commends Council for
5 amending the bill in a way that provides
6 efficient regulation for inaugural and
7 transition fundraising without
8 unnecessarily complicating the existing
9 law. The Board would also like to
10 acknowledge the fact that Council staff
11 and Board staff have been able to work
12 closely together in order to come up with
13 practical solutions that improved this
14 important extension of the City's
15 campaign finance law.

16 Sample ballots, Bill 100126:
17 Bill 100126, as amended, would exempt
18 expenditures by a political committee for
19 the printing and distribution of sample
20 ballots from being counted as a
21 contribution to a candidate for the
22 purpose of calculating the contribution
23 limits when that candidate or a supporter
24 of that candidate makes a payment in
25 order to be included on the political

1 5/12/10 - WHOLE - BILL 080658, etc.
2 committee's sample ballot. This approach
3 is consistent with how the Board has
4 interpreted and enforced the City's
5 campaign finance law.

6 Bill 100126, as amended, would
7 also establish an exception to the single
8 committee rule so that a candidate who is
9 a ward leader can use his or her ward
10 committee to make expenditures for sample
11 ballot printing and distribution without
12 violating the single committee rule.

13 The Board has concerns about
14 the fairness of an exception to the
15 single committee rule that benefits some,
16 but not all candidates. However, the
17 Board recognizes that the benefit those
18 candidates will receive from the
19 exception may not be significant, given
20 the advantage they already enjoy as
21 members of party leadership. Under the
22 circumstances, the Board does not oppose
23 Bill 100126.

24 Litigation fund, Bill 100124:
25 The Board supports amendment of the

1 5/12/10 - WHOLE - BILL 080658, etc.
2 City's campaign finance law to permit
3 candidates to create legal defense funds.
4 Contributions to such funds would be
5 subject to contribution limits. This
6 concept was recommended by the Task
7 Force. Bill 100124, however, would allow
8 candidates to form such litigation funds
9 upon a declaration of candidacy
10 regardless of whether the candidate is
11 facing a legal challenge. Although
12 unused money in a litigation fund must be
13 returned, there is the potential that
14 contributors may seek to influence
15 candidates through contributions to
16 litigation funds.

17 The Board believes that it
18 would be preferable if litigation funds
19 could only be established when a
20 candidate has a specific, imminent legal
21 challenge. For example, a litigation
22 fund would be authorized when a candidate
23 receives notice of a probable legal
24 challenge, such as a petition challenge,
25 or is otherwise able to demonstrate a

1 5/12/10 - WHOLE - BILL 080658, etc.
2 real likelihood that an identifiable need
3 for a legal defense is imminent.

4 Requiring a specific legal
5 challenge for litigation fund formation
6 is the approach taken by the San Diego
7 law that the Task Force cited as a model
8 that Philadelphia should follow on this
9 subject. A specific legal challenge
10 requirement would allow candidates the
11 litigation defense funds they need, while
12 also helping limit the potential
13 opportunity for donors to seek influence
14 with a second donation.

15 Penalties: Bill 100125 creates
16 a sliding scale approach to the
17 imposition of penalties for violations of
18 the City Ethics Code and campaign finance
19 law. This approach allows the Board or a
20 court to assess the appropriate penalties
21 for violations by taking into
22 consideration aggravating and mitigating
23 factors. We believe that this approach
24 is better than a fixed penalty schedule,
25 where every violation of the same rule is

1 5/12/10 - WHOLE - BILL 080658, etc.
2 treated the same regardless of the
3 circumstances. The Board is pleased that
4 its staff and Council staff worked
5 closely together to improve upon the
6 original bill.

7 The Board recommends a sliding
8 scale approach in part because it is
9 consistent with the Board's past
10 practices in enforcement matters. I note
11 that all enforcement matters to date by
12 the Board of Ethics have been resolved
13 with settlement agreements where the
14 parties mutually agree on the terms of
15 the resolution. Because we have been
16 able to settle all enforcement cases so
17 far, the Board has not yet imposed a
18 penalty through an administrative
19 adjudication.

20 Based on the Board's experience
21 enforcing the City's public integrity
22 laws over the past three years, the Board
23 believes that not all violations of the
24 same rule should be treated exactly the
25 same. Some violations of a particular

1 5/12/10 - WHOLE - BILL 080658, etc.
2 rule are more egregious than others. For
3 example, some violations are intentional
4 or are compounded by an attempt to
5 obstruct the Board's investigation. By
6 contrast, other violations of the same
7 rule may involve simple mistakes or are
8 promptly corrected. This bill would
9 allow the Board or a court to assess
10 greater penalties for more egregious
11 violations and lesser penalties for less
12 egregious violations -- if I have to say
13 that word one more time, I'm going to
14 blow it completely. Excuse me, Madam
15 Chair -- and the Board believes this
16 result is appropriate.

17 The Board supports Bill No.
18 100125's implementation of the Mayor's
19 Advisory Task Force recommendations of
20 the sliding scale approach and a per diem
21 penalty for failure to file timely
22 campaign finance disclosure reports. The
23 Board believes a per diem penalty will
24 enforce prompt filing, which in turn will
25 provide the public timely notice of

1 5/12/10 - WHOLE - BILL 080658, etc.
2 campaign contributions and expenditures.

3 Political activity: Bill No.
4 100128 is the companion bill to
5 Resolution 100139 and Bill 100121, which
6 received a separate hearing before
7 Council's Law and Government Committee on
8 March 15th. Resolution 100139 would
9 allow Council to supersede by ordinance
10 Charter restrictions on political
11 fundraising, partisan political activity,
12 the "resign to run" rule and the penalty
13 provisions. Bill 100128 contains a
14 proposed Code provision that would
15 replace Sections 10-107(3) and 10-107(4)
16 of the Charter.

17 As a threshold matter, the
18 Board is concerned with the language of
19 the proposed ballot question in 100121,
20 which asks, quote, "Shall the
21 Philadelphia Home Rule Charter be amended
22 to authorize the creation by ordinance of
23 standards of ethical conduct with respect
24 to the political activities of City
25 officers and employees, and to provide

1 5/12/10 - WHOLE - BILL 080658, etc.
2 penalties for violations?"

3 As explained in Chairman
4 Richard Glazer's March 26th letter to
5 Council, the Board is concerned that
6 voters would not be given sufficient
7 notice of what they are being asked to
8 approve with this proposed question.
9 Asking voters to authorize the creation
10 of standards of conduct regarding
11 political activities and to provide for
12 penalties suggests that such standards
13 and penalties do not yet exist in
14 Philadelphia, which is not the case. It
15 would be more accurate to ask voters to
16 authorize Council to supersede, change or
17 eliminate the existing Charter
18 restrictions on political activities and
19 existing penalties without any further
20 approval by voters.

21 The Board believes that voters
22 should be given clear notice of what they
23 are being asked to approve by ballot
24 question, so that they can make an
25 intelligent decision when casting their

1 5/12/10 - WHOLE - BILL 080658, etc.
2 votes. The proposed question in Bill
3 100121 does not provide voters with clear
4 notice that voters deserve. The Board
5 urges Council to consider alternative
6 language for the proposed ballot
7 question.

8 Beyond the Board's concerns
9 with the proposed ballot question in Bill
10 100121, the Board has a substantive
11 concern with the proposed replacement of
12 the current restrictions on political
13 activities in Bill 100128.

14 The restrictions on partisan
15 political activities exist to separate
16 politics from the operation of the City
17 and to prevent the perception or reality
18 that official decisions and actions are
19 inappropriately influenced by political
20 interests. As the United States Supreme
21 Court and Pennsylvania State Courts have
22 held, restrictions on partisan political
23 activity serve the compelling interest of
24 protecting the integrity, efficiency and
25 impartiality of the administration of

1 5/12/10 - WHOLE - BILL 080658, etc.

2 public service.

3 We must distinguish
4 restrictions on partisan political
5 activity from those on private political
6 expression. This distinction was
7 explained by the Task Force in its final
8 report. Although Charter Section
9 10-107(4) permits the private expression
10 of political opinion, the Civil Service
11 Commission narrowly interpreted 10-107(4)
12 in Civil Service Regulation 29 decades
13 ago. The prohibitions on wearing
14 political buttons, displaying political
15 lawn signs and submitting letters
16 supporting political candidates are all
17 in Civil Service Regulation 29. No such
18 restrictions on political expression
19 exist in 10-107(4) of the Charter itself.

20 The Ethics Board has the
21 authority to reinterpret 10-107(4) by the
22 regulation, which would supersede and
23 replace the interpretation in Civil
24 Service Regulation 29. Earlier this
25 year, the Board began discussing possible

1 5/12/10 - WHOLE - BILL 080658, etc.
2 regulations that would identify
3 permissible political expression. We
4 hope to begin work on those regulations
5 in the coming months.

6 On a practical level, the Board
7 is concerned that the approach set forth
8 in Bill 100128 would be unworkable. The
9 bill would create two classes of
10 employees. One class would be permitted
11 to engage in partisan political activity
12 off duty, while the other class of
13 employees would be prohibited from
14 engaging in partisan political activity
15 at any time.

16 As an initial matter, partisan
17 political activity is conduct that is
18 difficult to turn off once inside City
19 Hall. For example, it is difficult to
20 imagine how someone could be elected to
21 be a ward leader for a four-year term but
22 not be the ward leader during certain
23 hours of the day or while being in a City
24 building.

25 Additionally, Bill 100128

1 5/12/10 - WHOLE - BILL 080658, etc.
2 attempts to distinguish between the two
3 categories of employees based on job
4 duties and would require the Board of
5 Ethics to sort of all of the City's
6 approximately 23,000 employees into two
7 categories based on their job
8 descriptions. It will be very difficult
9 to determine which employees are subject
10 to heightened restrictions based on the
11 duties identified in Bill 100128.

12 Finally, Bill 100128 would also
13 create the potential for different rules
14 for people who work side by side. By
15 comparison, the Task Force recommended
16 that the rules apply equally to all City
17 employees. The Board believes that the
18 City needs rules that set clear,
19 enforceable boundaries. Such rules are
20 easier to understand and to enforce
21 without claims of unfairness. Creating a
22 system of different rules for employees
23 who work side by side would not set
24 clear, enforceable boundaries that we can
25 agree are fair.

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2 I thank you for allowing the
3 Board to engage in this process, and I
4 think that exchange has been helpful to
5 where we are at this time.

6 Thank you, Madam Chair.

7 COUNCILWOMAN TASCO: Thank you
8 very much.

9 Who is next? Mr. Browning?

10 MR. BROWNING: Thank you very
11 much. I'm James Browning, Director for
12 Development for Common Cause
13 Pennsylvania. Thank you for the
14 opportunity to testify today. I'd like
15 to address specifically the bills
16 introduced covering lobbyist registration
17 and campaign finance reform.

18 I'd like to frame my remarks
19 about transparency in the context of a
20 study we released yesterday on campaign
21 contributions. It was a study of money
22 coming in from the national gas industry
23 and it was put together by looking
24 through data we got from the Pennsylvania
25 Department of State. Now, obviously the

1 5/12/10 - WHOLE - BILL 080658, etc.
2 issue of building a more fully searchable
3 and accessible database for Philadelphia
4 is something that the Task Force took a
5 hard look at and recommended, and we wish
6 that were part of the package that has
7 been introduced.

8 Just to give you probably the
9 most striking example that came out of
10 that experience of looking at the state
11 data was, we found one donor who by
12 herself had given almost a million
13 dollars, but because she gave under two
14 different names and because those names
15 were either misspelled or entered in
16 various formats, it was impossible to see
17 the big picture. And there aren't a lot
18 of people who give a million dollars, but
19 the same problem is repeated throughout
20 the City's database, throughout the
21 State's database, and so we just urge
22 that in looking at the campaign finance
23 database or creating a new system for
24 tracking lobbyist expenditures, that we
25 make it a priority to come up with a good

1 5/12/10 - WHOLE - BILL 080658, etc.
2 tracking system up front. So as we get
3 more and more data over time, citizens
4 can have access to what's happened in the
5 past, to what's happening now and to the
6 big picture.

7 I would like to commend
8 Council --

9 COUNCILWOMAN TASCO: We were
10 asked to pass legislation. Nobody ever
11 talked about how much it was going to
12 cost. We had that discussion.

13 Proceed.

14 MR. BROWNING: I would like to
15 commend Council on the lobbyist
16 registration bill that is emerging, and
17 many of the provisions in the draft
18 that's been introduced in 100127 would
19 really make it a model bill.
20 Specifically, the ban on lobbying for
21 contingent compensation, the ban on
22 introducing legislation for the purpose
23 of opposing it, and the prohibitions on
24 making false statements or misstatements.
25 And I also very much appreciate Council's

1 5/12/10 - WHOLE - BILL 080658, etc.
2 openness and willingness to consider
3 further measures that could make this an
4 even better bill, and I'd just like to
5 specifically talk about a few of those.

6 The issue came up before of
7 having dedicated funding for doing some
8 of the new work that would be demanded of
9 the Board of Ethics. Certainly the same
10 is true for funding for creating a
11 database of the new lobbyist registration
12 information.

13 Tightening up the reporting
14 requirement on issues that a lobbyist is
15 working on, including also bill numbers,
16 I think would be a big improvement. I
17 mentioned already the issue of having an
18 electronic and fully searchable database.
19 An amendment to have Board of Ethics
20 training for people who register as
21 lobbyists is really key in instilling --
22 helping to instill a culture of
23 accountability. Penalties for late
24 filing or failure to file. And, finally,
25 having not only lobbyists but principals

1 5/12/10 - WHOLE - BILL 080658, etc.
2 register with the City as well. These
3 are issues I've already had the chance to
4 talk to some members of Council and staff
5 about. I appreciate your openness about
6 these issues, and I believe that all of
7 these things would be excellent additions
8 to the bill.

9 Thank you.

10 COUNCILWOMAN TASCO: Thank you
11 very much.

12 Mr. Stalberg.

13 MR. STALBERG: I'm Zack
14 Stalberg, President of the Committee of
15 Seventy. I'm accompanied by Ellen
16 Mattleman Kaplan, who is Vice-President
17 for Policy and has been permitted to work
18 closely with members of Council and the
19 Council staff in terms of making these
20 bills as best as they possibly can.

21 I particularly want to thank
22 you for your role, Councilwoman Tasco, in
23 getting us to this point.

24 We have submitted detailed
25 testimony and a detailed attachment on

1 5/12/10 - WHOLE - BILL 080658, etc.
2 how to make some of the bills even
3 better. So for the sake of time, I
4 don't -- I'll trust that everyone will
5 read those, and I don't want to get into
6 terribly specific comments here.

7 I would ask that you move very
8 deliberately. This is -- obviously we
9 are talking about a dozen bills here that
10 are extremely complex. I ask that you
11 move very deliberately in altering them
12 and moving them forward. And, as you
13 know, we are, as the Board of Ethics is,
14 concerned about the Charter change itself
15 that would allow future Councils to
16 perhaps change the political activity
17 rules in particular with not enough care.

18 The amended bills represent
19 several steps forward. We particularly
20 favor the lobbyist registration and
21 disclosure bill and support the Board of
22 Ethics' call for increased funding in
23 order to monitor the lobbyists as well.

24 There are several other
25 positive steps in this - the movement to

1 5/12/10 - WHOLE - BILL 080658, etc.
2 give City employees much greater
3 political expression, the implementation
4 of a sliding scale and some increased
5 penalties for campaign violations. And
6 we should just recognize as we move these
7 bills forward, that we are permitting
8 larger annual contributions than were
9 originally envisioned under Councilman
10 Goode's campaign finance law. So with
11 the creation of a debt fund and the
12 creation of a litigation fund, there is
13 the likelihood that donors will be asked
14 to give more money.

15 We have several concerns, too.
16 The largest one -- and I'm trying not to
17 repeat a great deal of what has already
18 been said. The largest concern deals
19 with the political activity rule or
20 legislation. I really appreciate all the
21 work that's gone into trying to make that
22 better and all the thinking that went
23 behind the two-tiered system. However,
24 given the one that we seem to be talking
25 about at the moment, the bill that we

1 5/12/10 - WHOLE - BILL 080658, etc.
2 seem to be talking about at the moment,
3 we're still concerned that it would be
4 dangerous to have, even in a less
5 restricted category, some City workers
6 who are also serving as elected committee
7 men and women and elected ward leaders.
8 There's no question that there would be
9 temptation on the part of those people to
10 abuse their authority or the information
11 to which they had access, and there's no
12 question, in our minds at least, that the
13 current system, which I'm proud to say
14 the Committee of Seventy helped to write
15 into the current Home Rule Charter, the
16 current system has served us well and has
17 helped protect workers, City workers,
18 from political pressure.

19 The bottom line for us is that
20 we think people need to have a trust in
21 government and that the bright line
22 represented by the current rule really
23 does that better than anything else.

24 Very quickly, some other
25 concerns. We would have preferred it if

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the issue of the definition of
3 "candidate" was addressed. We would have
4 preferred it if the issue of the election
5 cycle was addressed. The current
6 arrangement clearly benefits the
7 incumbents.

8 Ignored at least in this stage
9 of examination of the Task Force
10 recommendations are issues involving
11 whistle blowers, fraternization,
12 disclosure of connection between
13 politicians and the non-profits that they
14 might be involved in, and some other key
15 issues.

16 And, finally, I'm concerned
17 that the so-called Rizzo bills, which
18 probably deserve some improvement but
19 have been sitting around for a long time
20 without attention, may be ignored by this
21 Council at this cycle. We're strongly in
22 favor of uniform rules that deal with
23 gifts, nepotism and outside employment.

24 Thanks very much for the
25 opportunity to testify.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 COUNCILWOMAN TASC0: Thank you
3 very much.

4 The Chair recognizes Councilman
5 Green.

6 COUNCILMAN GREEN: Thank you,
7 Madam Chair.

8 They're not here today, but I
9 just wanted to remind us and those
10 testifying for the record that when the
11 professor from Penn Law, Seth Kreimer,
12 was here -- he's also on the ACLU Board.
13 ACLU person was not able to make it
14 today, although she was originally
15 scheduled to testify. I think this is
16 not a direct quote, but it's pretty
17 close: If City Council doesn't change
18 10-107 of the Charter, the courts surely
19 will. And I think that is something that
20 certainly I believe. As I've said, I see
21 no distinction between freedom of
22 expression and the ability to exercise
23 that expression through action.

24 So with that said, I have no
25 questions for this panel.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 MR. STALBERG: If I might just
3 add, we certainly believe that there
4 should be changes in the laws as it
5 relates to freedom of expression, support
6 the Council on this, and agree that the
7 courts would eventually have a position
8 on at least that aspect.

9 COUNCILWOMAN TASCO:
10 Councilman.

11 COUNCILMAN GREEN: Thank you.

12 I would be remiss if I did not
13 say to all three people up there
14 testifying that these measures, most of
15 which you agree with, five measures in
16 the case of the Board of Ethics and four
17 in the case of the City and most of them
18 in the case of the Committee of Seventy,
19 really were improved through a continuing
20 dialogue between ourselves and our
21 excellent staffs, and so I thank you for
22 participating in a process which has
23 resulted in a bunch of bills that I'm
24 very proud of and you mostly support.

25 Thank you.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 COUNCILWOMAN TASC0: I'll just
3 add to that while I have the mike open.
4 I think the process has been one of
5 collaboration, and thanks to Sophie of
6 Councilman Green's staff and Derek of my
7 staff and Councilwoman Sanchez's staff
8 worked very hard to try to have a
9 collaborative effort on this so that --
10 and certainly part of it was an
11 educational process. I think that has
12 been helpful to members of the Ethics
13 Board also. And so it worked well. At
14 one point, we invited the entire Council
15 to meet with the Ethics Board staff and
16 had a very excellent exchange of
17 information. And so we were always
18 involved -- wanted to be involved in
19 creating an open process, and we wanted
20 the rules to be helpful and not punitive.
21 And that was my basic concern, that we
22 try and look at all of this in a way that
23 people will feel that they're going to be
24 treated fairly and that the law is fair,
25 and I think we've done a fairly decent

1 5/12/10 - WHOLE - BILL 080658, etc.
2 job. We may not agree on all of it, and
3 we'll probably never agree on all of it.

4 I just want to make one
5 comment. The gentleman, Mr. Schwartz,
6 testified about DC, and I quickly asked
7 my staff to Google. We may have missed
8 something, but the charges brought in DC
9 were basically around Councilpeople and
10 not civil service. But there may be --
11 we will continue to Google to do our
12 research to make sure, but it has nothing
13 to do with the civil servants. It had to
14 do with the Mayor and Council.

15 The Chair recognizes Councilman
16 DiCicco.

17 COUNCILMAN DiCICCO: Thank you,
18 Madam Chair.

19 Kind of a question and a
20 statement at the same time. Would you
21 happen to know if any of the cost to
22 implement any of the legislation that
23 we're talking about here is in this
24 year's budget?

25 COUNCILWOMAN TASC0: As far as

1 5/12/10 - WHOLE - BILL 080658, etc.
2 we know now, no. Particularly around the
3 whole issue of the technology that's
4 needed. We did talk to the gentleman
5 from Common Cause about that,
6 Mr. Browning, but we had --

7 COUNCILMAN DiCICCO: Because
8 the one item that jumps out at me -- and
9 I did have a sidebar with Councilwoman
10 Sanchez -- when we look at the Bill
11 100127, the cost of the electronic
12 software filing, the additional staff,
13 filing -- the electronic filing software
14 will cost 500,000, if not more, \$250,000
15 a year to implement and maintain. We're
16 probably looking at a million dollars
17 maybe in the first year, and if you take
18 the 250 over the five years, you got
19 another million dollars over the Five
20 Year Plan.

21 So if it's not in there, I was
22 just wondering when we would be putting
23 that in, or is that an appropriations
24 change? And I find it interesting -- and
25 no disrespect. There are a lot of people

1 5/12/10 - WHOLE - BILL 080658, etc.
2 who put a lot of time into this, but I
3 know that some of the sponsors and/or
4 co-sponsors of this legislation have
5 already publicly said they were not for
6 any tax increases. So I wonder how they
7 expect to fund this if they're not going
8 to be voting for a budget in whatever
9 shape or form it eventually comes to us
10 for approval. That's my statement,
11 obviously.

12 COUNCILMAN GREEN: Madam Chair?

13 COUNCILMAN DiCICCO: Thank you.

14 COUNCILWOMAN TASC0: Councilman
15 Green.

16 COUNCILMAN GREEN: Thank you,
17 Madam Chair.

18 The effective date of the
19 legislation for lobbying is 2011, July
20 1st. So it is in the next fiscal year
21 for exactly these reasons, we need to
22 find a funding mechanism for it. And we
23 are hoping to work with Common Cause,
24 with some of our charitable foundations
25 and others to try to get an effective

1 5/12/10 - WHOLE - BILL 080658, etc.
2 system in place.

3 Also, we have modeled this
4 legislation specifically on the State
5 law, and the State law has electronic
6 filing, and I believe that the cost
7 estimates are extraordinarily high
8 compared to what it will actually cost,
9 and I happen to know a little bit
10 something about the implementation of
11 technology.

12 And, finally, I have a five
13 percent property tax increase bill before
14 Council at this moment, and I'm willing
15 to --

16 COUNCILMAN DiCICCO: Point of
17 information.

18 COUNCILMAN GREEN: Excuse me,
19 Councilman. I did not interrupt you.

20 COUNCILMAN DiCICCO: We still
21 have --

22 COUNCILMAN GREEN: I have a
23 five percent bill before City Council to
24 increase the property taxes, and I'm
25 willing to support that bill and ask

1 5/12/10 - WHOLE - BILL 080658, etc.
2 Councilman DiCicco to please also support
3 that bill. I do note that he withdrew
4 his property tax increase bill.

5 COUNCILMAN DiCICCO: Because I
6 didn't have any support for the 12.10
7 percent.

8 But my comment and my
9 statement, Councilman Green, was not
10 directed to you, because I know that you
11 are in support of a tax increase. It may
12 not be the tax increase that I and other
13 members of this body will eventually
14 endorse.

15 So it wasn't meant for you, but
16 there are other sponsors of this
17 legislation who have repeatedly said they
18 are not for any tax increases. So they
19 kind of want it both ways.

20 Thank you.

21 MR. ATKINSON: Madam Chair?

22 COUNCILWOMAN TASC0: Yes.

23 MR. ATKINSON: I've just been
24 informed that it's my understanding that
25 the Board of Ethics cannot spend any

1 5/12/10 - WHOLE - BILL 080658, etc.
2 funds which have not been appropriated by
3 this Council.

4 COUNCILWOMAN TASCO: We
5 understand that.

6 Well, you see, the Task Force
7 made recommendations, and we were charged
8 to take action quickly. We took action
9 quickly, and then we were moving too
10 fast. So we'd be damned if we do and be
11 damned if we don't. So now here we are,
12 with all of the legislation, and no money
13 to pass it. But as always in a
14 legislative body in government, we'll
15 figure it all out as we go along.

16 Now, Councilwoman Sanchez.

17 COUNCILWOMAN SANCHEZ: Thank
18 you.

19 COUNCILWOMAN TASCO: Brown.
20 I'm sorry.

21 Councilwoman Sanchez.

22 COUNCILWOMAN SANCHEZ: Thank
23 you.

24 You probably captured the
25 spirit of what I was going to say. I

1 5/12/10 - WHOLE - BILL 080658, etc.
2 just wanted to add for the record that
3 what you were saying in terms of the work
4 that's been done. I'm a good government
5 person, and I think that we have put
6 forth what we believe to be a very
7 thoughtful process, I believe a historic
8 process in terms of ensuring that all of
9 the different departments that have been
10 created in the last two years around
11 transparency, around compliance -- and
12 I'll stress compliance versus
13 enforcement -- compliance, this Council
14 has supported and found a way to support
15 the increases in the Inspector General's
16 Office, the increases in the Controller's
17 Office. We're trying to figure out how
18 we increase the funding in the DA's
19 Office. We have time and time again
20 found a way to support those policies
21 that we put forth and make sense and make
22 for better government.

23 I agree with Councilman Green.
24 I think this number could be revisited
25 and we can come up to some compliance.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 When you talk about potentially a million
3 dollars for 50 lobbyists that may end up
4 registering in this, I mean, I think the
5 number is exorbitant and sends the wrong
6 message that we can't make this happen.

7 So I just wanted to thank all
8 of the folks who have been involved in
9 this process and my Council colleagues,
10 the Board of Ethics, the Administration
11 staff. This is just the beginning, and
12 as you stated, Madam Chair, we are always
13 under public pressure to act, and I found
14 it very ironic that then folks are asking
15 us not only to slow down but even
16 consider letting some of this stuff be
17 done by Executive Order. So talk about
18 having it both ways, some people want to
19 have it all three different ways.

20 So I just want to thank
21 everybody and remind everybody that we
22 are moving forward in a very positive
23 way, and we will continue to consider the
24 rest of the recommendations of the Task
25 Force. And as some of the discussion

1 5/12/10 - WHOLE - BILL 080658, etc.
2 that happened with the Board of Ethics
3 and others is, really look at a full
4 alignment of all of the entities, both
5 independent and within the Executive
6 structure, who review and have oversight
7 to make sure that we don't have
8 duplicity, so that we don't have to worry
9 about financing this, but that the roles
10 and responsibilities about who is
11 responsible for looking at what parts of
12 the law and enforcing them are clear. I
13 think as it stands now, there is some
14 repetition, and I think that what we
15 learned in this process is that there's
16 still a lot more work to be done so that
17 we can be more efficient in giving people
18 the good government that they deserve.

19 So I want to thank everybody
20 for their participation.

21 Thank you.

22 COUNCILWOMAN TASC0: Thank you.

23 I'd just like to make one other
24 comment before we go to -- go ahead. Let
25 me -- while we're in this context. When

1 5/12/10 - WHOLE - BILL 080658, etc.
2 we were meeting with the staff of the
3 Board of Ethics, we had some really very
4 lively discussions around some of the
5 issues, and so at one point, they said,
6 Well, you can legislate.

7 I said, Yes, we might be, but
8 we want you to come up with a solution.
9 And I want to say that I appreciate your
10 doing that. The two young lawyers who
11 worked on this legislation with the
12 staff, they did come up with solutions
13 that we could all agree with. So it was
14 a good collaboration. It's not perfect,
15 but this is the legislative process. You
16 could change it next week, next year.
17 It's fluid. So if something is not
18 working, we work to make it better. It's
19 not the end all here today.

20 Yes. Councilman Kenney.

21 COUNCILMAN KENNEY: Thank you,
22 Madam Chair.

23 While I do appreciate the new
24 spirit of cooperation and involvement on
25 both sides, I sit here sometimes and I

1 5/12/10 - WHOLE - BILL 080658, etc.
2 wonder how the Board of Ethics and
3 campaign finance legislation got passed
4 in the first place. Do you know how it
5 happened?

6 COUNCILWOMAN TASCO: We did.

7 COUNCILMAN KENNEY: Yeah, we
8 did it. And sometimes I sit here and I
9 either read the paper or I listen to
10 people making testimony, and I sit here
11 and say, Did we do that or did someone
12 else do that for us? And I think that of
13 any other Council in history, that
14 Council broke more ground and continues
15 to break ground in this particular term
16 on all of these issues.

17 So it gets frustrating
18 sometimes when the public at large and
19 the press in certain respects or the
20 editorial boards in certain respects or
21 the watch dog groups in certain respects
22 kind of forget what we went through to
23 pass this stuff in the first place to
24 create all these agencies, and I just
25 think it's a shame that -- I guess people

1 5/12/10 - WHOLE - BILL 080658, etc.
2 just don't like politicians, but we're
3 the ones who actually changed all these
4 laws. We are the ones who put ourselves
5 under campaign finance reform. And it
6 wasn't easy when we first went through
7 the first election with that. It was
8 difficult for our staff, difficult for
9 all of us to understand it. But I sit
10 here and marvel sometimes at the fact
11 that we seem to be just -- it happened
12 like by magic.

13 So I just want the record to be
14 clear that the last Council did it, this
15 Council is improving it, and I'd like to
16 get a little bit of credit for it every
17 now and then.

18 Thanks.

19 COUNCILWOMAN TASC0: Thank you.

20 The Chair recognizes
21 Councilwoman Brown.

22 COUNCILWOMAN BROWN: Thank you,
23 Madam Chair.

24 Councilman Jim Kenney actually
25 provides the backdrop of my opening

1 5/12/10 - WHOLE - BILL 080658, etc.
2 statement and then a couple of questions.
3 Yes, people do forget that we did this,
4 but, more importantly, folks forget why
5 we even got in this business. We decided
6 to run for elected office to make a
7 better difference.

8 And so my only friendly
9 amendment to Councilwoman Sanchez's
10 opening remarks is that we're all for
11 good government, and in some ways it's
12 regrettable that we've had to take this
13 amount of time to what some believe right
14 some wrongs. So let me say thank you
15 also for the enormous amount of time and
16 intellect that has gone into these
17 important issues.

18 I want to direct my questions
19 to Mr. Zack Stalberg, and my questions
20 for sure are a lot more narrow, because
21 my interest in all of this is narrow.
22 First state for the record again the role
23 and the purpose of your organization.

24 MR. STALBERG: It's a
25 non-partisan, non-profit group that works

1 5/12/10 - WHOLE - BILL 080658, etc.
2 for better and more efficient government
3 and clean elections.

4 COUNCILWOMAN BROWN: Are you
5 familiar with City Council's continued
6 interest, always vigilance around the
7 issue of inclusion?

8 MR. STALBERG: Yes.

9 COUNCILWOMAN BROWN: And what
10 is the standard operating procedure for
11 the Committee of Seventy when it comes to
12 ballot questions?

13 MR. STALBERG: You mean how are
14 the decisions made?

15 COUNCILWOMAN BROWN: Yes.

16 MR. STALBERG: They're made by
17 a committee of Board members of the
18 Committee of Seventy and then obviously
19 posted. If you're getting to the
20 question of Ballot Question 1 --

21 COUNCILWOMAN BROWN: I am.

22 MR. STALBERG: -- we got some
23 important information earlier in this
24 hearing from Councilman Goode and we'll
25 go back and review our position on Ballot

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Question 1, because I think we were under
3 a misimpression about that ballot
4 question.

5 COUNCILWOMAN BROWN: So state
6 again for me what is the standard
7 operating procedure for the Committee of
8 Seventy when it comes to review of ballot
9 questions.

10 MR. STALBERG: A subcommittee
11 of the Board reviews the ballot question.
12 It happens to be made up of several
13 lawyers, who in this case may have missed
14 an important fact. But so a subcommittee
15 of the Board reviews the ballot questions
16 and decides whether to take a position or
17 not.

18 COUNCILWOMAN BROWN: So the
19 segue for that is this: I need to thank
20 you for responding to the letter where I
21 asked a series of questions around the
22 composition of your Board.

23 MR. STALBERG: Right.

24 COUNCILWOMAN BROWN: Because it
25 is my personal view that organizations

1 5/12/10 - WHOLE - BILL 080658, etc.
2 that do not look like Philadelphia, in my
3 view, should have less to say about what
4 we do and what we don't do. To the
5 extent that an organization looks like
6 Philly, that being men and women of all
7 stripes, from all walks of life, have, I
8 believe, a greater say because they are
9 living what we are living every single
10 day.

11 So now what is the composition
12 of your Board specifically as it relates
13 to Philadelphia residents?

14 MR. STALBERG: I don't have
15 those numbers, although I can get them
16 for you. I would say that because of our
17 conversation about this --

18 COUNCILWOMAN BROWN: Some time
19 ago.

20 MR. STALBERG: -- during the
21 BRT hearing, I think it was, that we've
22 accelerated our efforts to diversify the
23 Board and change the way we recruit
24 members and so forth. So in time, I
25 believe that we'll reach the goal you're

1 5/12/10 - WHOLE - BILL 080658, etc.
2 talking about. I think there's a
3 legitimate argument about whether
4 Philadelphia should be the measure or
5 whether geography should be the measure
6 or some other measure should be the
7 measure. So that's a conversation I'd
8 love to have with you off to the side.
9 But we're definitely committed to the
10 goals that you were talking about back at
11 that BRT hearing.

12 COUNCILWOMAN BROWN: The record
13 should reflect that I did respond to your
14 request and submitted in writing a number
15 of prospective candidates of all stripes
16 and women.

17 MR. STALBERG: Right.

18 COUNCILWOMAN BROWN: And today
19 we learned that Mr. Michael A. Schwartz
20 is a new member. So the opportunity with
21 a pipeline for additional members going
22 forward is what?

23 MR. STALBERG: Essentially
24 there's also a subcommittee of the Board
25 that works on recruiting new members, and

1 5/12/10 - WHOLE - BILL 080658, etc.
2 we've approached more than one, I think,
3 of the names that you suggested and are
4 trying to convince them to join the
5 Board.

6 COUNCILWOMAN BROWN: Well, we
7 look forward to the Board's reaction,
8 comment or recommendation around Ballot
9 Question No. 1, which deals with an issue
10 that is really warranted and worthy of
11 the same level of look-see that ethics
12 has had over the past many years.

13 Let me thank you all for your
14 testimony.

15 MR. STALBERG: Sure. And I
16 really want to -- if I failed to do this,
17 I want to thank Councilman Goode for
18 bringing this up, approaching us on this,
19 because without that piece of
20 information, I don't think we would have
21 been aware of the problem.

22 COUNCILWOMAN BROWN: Okay.
23 Thank you very much.

24 MR. STALBERG: Sure.

25 COUNCILWOMAN BROWN: Thank you,

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Madam Chair.

3 COUNCILWOMAN TASC0: Thank you
4 very much.

5 Is there anyone else here to
6 testify on this bill?

7 Would you come forward, please.

8 Thank you, panel, very much. I
9 appreciate your testimony and your time.

10 Councilwoman Miller.

11 COUNCILWOMAN MILLER: I just
12 want to say for the record that I thought
13 that many of the discussions around the
14 creation of these amendments was really
15 good, because it helped -- I felt it
16 helped people in their various roles,
17 whether they were on the Ethics Board or
18 Ethics staff, to increase their
19 understanding and awareness of the roles
20 and responsibilities of various political
21 figures and titles, their
22 responsibilities, their resources.

23 Because sometimes when I hear people
24 talk, you would think that ward leaders
25 are these great big powerful people, and

1 5/12/10 - WHOLE - BILL 080658, etc.

2 I think that when we had our meetings
3 over there at the Ethics Board, it really
4 gave people a chance that are not
5 involved in the political process on a
6 daily basis to understand what the
7 various titles mean, the roles and
8 responsibilities of those titles, rather
9 than to just have their own personal
10 perception of what it is.

11 So I think that that's really
12 played an important part in coming up
13 with these amendments and the support of
14 many of the amendments, which I think is
15 good and valuable, because a lot of times
16 what we read is distorted regarding what
17 people actually do and the reality of
18 what they do.

19 I just wanted to say that.

20 COUNCILWOMAN TASC0: Thank you
21 very much, Councilwoman.

22 Thank you.

23 (Witness approached witness
24 table.)

25 COUNCILWOMAN TASC0: Yes.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 Would you identify yourself for the
3 record, please.

4 MR. SCOTT: Yes. Good
5 afternoon, Majority Leader Tasco and
6 members of Council. Thank you very much
7 for allowing me to give my perspective
8 today, and thank you for having this
9 hearing on this important topic. My name
10 is Kevin Scott. I'm a Philadelphia
11 homeowner and business owner, and I serve
12 on my ward committee, as well as
13 democratic state committee.

14 Some of you I have had the
15 pleasure of meeting and speaking with
16 individually and -- by the way, for the
17 record, even before Councilman Kenney's
18 comments, which I'm quite sympathetic to,
19 I was planning on giving a little
20 recognition here today. So if you'll
21 allow me, I just want to mention that the
22 last -- by the way, the last time I
23 addressed this body, it was on the topic
24 of recycling, and I'd just like to note
25 that since then, the City has taken steps

1 5/12/10 - WHOLE - BILL 080658, etc.
2 to dramatically improve our recycling
3 program. So I'd like to thank all of you
4 for your part in that, and it shows what
5 can happen when citizens and elected
6 officials work together. So thank you.

7 I'm going to keep my remarks
8 brief. As someone who is active in
9 politics, I spend a lot of time,
10 especially this time of year, educating
11 voters about issues and candidates, and
12 unfortunately, I do encounter a lot of
13 skepticism. A lot of people are
14 skeptical about politics and about
15 politicians, and I want to be able to
16 assure them that their elected officials
17 are doing the right thing.

18 We've made a lot of progress on
19 ethics -- on the ethics front in
20 Philadelphia, but we do still have a ways
21 to go. A few years ago this body showed
22 real leadership when it enacted a
23 landmark package of ethics reforms,
24 including the anti-pay-to-play law and
25 our first ever campaign contribution

1 5/12/10 - WHOLE - BILL 080658, etc.
2 limits. This is something for which many
3 of you here today deserve tremendous
4 credit.

5 In particular, the contribution
6 limits law has taken us out of the dark
7 ages. However, since its passage, a
8 serious flaw in this law has been
9 discovered that causes it to fail to
10 create a level playing field for
11 candidates, as I'm sure it was intended.
12 Fortunately, there is a simple and
13 straightforward fix for this that has no
14 cost and no downside. This is to modify
15 the law so as to apply the limits per
16 election, meaning once for the primary
17 and once for the general, as recommended
18 by the Task Force's final report and as
19 is done at the federal level and
20 elsewhere.

21 So we now know that this fix is
22 needed. Clearly, it's one of the
23 essential recommendations in the Task
24 Force's report, and must be included in
25 any group of bills if that package is to

1 5/12/10 - WHOLE - BILL 080658, etc.

2 have credibility.

3 Now, this is a complex set of
4 bills, and obviously the devil is in the
5 details, but in the end, everyone is
6 going to know whether you did a good job
7 or not at reducing both the appearance
8 and the reality of conflicts of interest
9 and improving the ethical climate of our
10 City.

11 In summary, if you're going to
12 pass a set of bills, I respectfully urge
13 you to make them a set of bills that will
14 make Philadelphians proud of our
15 government.

16 Thank you very much.

17 COUNCILWOMAN TASC0: Thank you.

18 Any questions on behalf of this
19 witness?

20 (No response.)

21 COUNCILWOMAN TASC0: Thank you
22 very much for your testimony.

23 Is there anyone else here to
24 testify on this bill?

25 (No response.)

1 5/12/10 - WHOLE - BILL 080658, etc.

2 COUNCILWOMAN TASC0: There
3 being none, this hearing is adjourned.
4 We will go into our public meeting.

5 The Chair recognizes
6 Councilwoman Sanchez for an amendment on
7 Bill 100122.

8 COUNCILWOMAN SANCHEZ: Thank
9 you, Madam Chair. I move that Bill No.
10 100122 --

11 COUNCILWOMAN TASC0: Offer the
12 amendment first, please.

13 COUNCILWOMAN SANCHEZ: I move
14 the proposed amendment to Bill 100122 be
15 adopted.

16 (Duly seconded.)

17 COUNCILWOMAN TASC0: It has
18 been moved and properly seconded that the
19 amendment to Bill 100122 be accepted.

20 All in favor will say aye.

21 (Aye.)

22 COUNCILWOMAN TASC0: Is there
23 any opposition?

24 (No response.)

25 COUNCILWOMAN TASC0: There

1 5/12/10 - WHOLE - BILL 080658, etc.

2 being none, I call on Councilwoman

3 Sanchez to move Bill 100122.

4 COUNCILWOMAN SANCHEZ: I move

5 for the amendment of Bill No. 1001 --

6 COUNCILWOMAN TASC0: No.

7 Report the bill out of Committee as

8 amended.

9 COUNCILWOMAN SANCHEZ: I'm

10 sorry. I move that Bill 100122 be moved

11 out of Committee with a favorable

12 recommendation, as amended, and that the

13 rules of Council be suspended to allow

14 first reading at our next public session.

15 (Duly seconded.)

16 COUNCILWOMAN TASC0: It has

17 been moved and seconded that Bill 100122,

18 as amended, be reported out of Committee

19 with a favorable recommendation and the

20 rules of Council be suspended so as to

21 have first reading of this bill at

22 Council's next session.

23 All in favor will say aye.

24 (Aye.)

25 COUNCILWOMAN TASC0: Any

1 5/12/10 - WHOLE - BILL 080658, etc.

2 opposition?

3 (No response.)

4 COUNCILWOMAN TASC0: Thank you.

5 The Chair recognizes

6 Councilwoman Sanchez for an amendment to

7 Bill 100124.

8 COUNCILWOMAN SANCHEZ: I

9 propose an amendment as circulated to

10 Bill 100124.

11 (Duly seconded.)

12 COUNCILWOMAN TASC0: It has

13 been moved and seconded that we adopt the

14 amendment to 100124.

15 All in favor?

16 (Aye.)

17 COUNCILWOMAN TASC0: Any

18 opposition?

19 (No response.)

20 COUNCILWOMAN TASC0: There

21 being none, it is passed.

22 The Chair recognizes

23 Councilwoman Sanchez.

24 COUNCILWOMAN SANCHEZ: I move

25 that Bill 100124, as amended, be moved

1 5/12/10 - WHOLE - BILL 080658, etc.

2 out of Committee with a favorable
3 recommendation and that the rules of
4 Council be suspended to allow first
5 reading at our next Council session.

6 (Duly seconded.)

7 COUNCILWOMAN TASC0: It has
8 been moved and seconded that Bill 100124,
9 as amended, be reported out of Committee
10 with a favorable recommendation and that
11 the rules of Council be suspended so this
12 bill can be heard at Council's next
13 session.

14 All in favor will say aye.

15 (Aye.)

16 COUNCILWOMAN TASC0: Is there
17 any opposition?

18 (No response.)

19 COUNCILWOMAN TASC0: There
20 being none, the motion is carried.

21 The Chair recognizes
22 Councilwoman Sanchez for an amendment to
23 Bill 100125.

24 COUNCILWOMAN SANCHEZ: I
25 propose an amendment to Bill 100125.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 (Duly seconded.)

3 COUNCILWOMAN TASC0: It has
4 been moved and seconded that we adopt an
5 amendment to 100125.

6 All in favor?

7 (Aye.)

8 COUNCILWOMAN TASC0: Is there
9 any opposition?

10 (No response.)

11 COUNCILWOMAN TASC0: There
12 being none, the motion is carried.

13 The Chair recognizes
14 Councilwoman Sanchez.

15 COUNCILWOMAN SANCHEZ: I move
16 that Bill 100125 be moved out of
17 Committee, as amended, with a favorable
18 recommendation and that the rules of
19 Council be suspended to allow first
20 reading at our next session.

21 (Duly seconded.)

22 COUNCILWOMAN TASC0: It has
23 been moved and seconded that Bill 100125,
24 as amended, be reported out of Committee
25 with a favorable recommendation and that

1 5/12/10 - WHOLE - BILL 080658, etc.
2 the rules of Council be suspended so this
3 bill can be heard at Council's next
4 session.

5 All in favor will say aye.

6 (Aye.)

7 COUNCILWOMAN TASC0: Is there
8 any opposition?

9 (No response.)

10 COUNCILWOMAN TASC0: There
11 being none, the motion is carried.

12 The Chair recognizes
13 Councilwoman Sanchez for an amendment to
14 Bill 100126.

15 COUNCILWOMAN SANCHEZ: I move
16 for the proposed amendment to Bill
17 100126.

18 (Duly seconded.)

19 COUNCILWOMAN TASC0: It has
20 been moved that we adopt the amendment to
21 Bill 100126.

22 All in favor will say aye.

23 (Aye.)

24 COUNCILWOMAN TASC0: Is there
25 any opposition?

1 5/12/10 - WHOLE - BILL 080658, etc.

2 (No response.)

3 COUNCILWOMAN TASC0: There
4 being none, the motion is carried.

5 The Chair recognizes
6 Councilwoman Sanchez.

7 COUNCILWOMAN SANCHEZ: I move
8 for the favorable recommendation of Bill
9 100126, as amended, be moved out of
10 Committee with a favorable recommendation
11 and that the rules of Council be
12 suspended to allow first reading.

13 (Duly seconded.)

14 COUNCILWOMAN TASC0: It has
15 been moved and seconded that Bill 100126,
16 as amended, be reported out of Committee
17 with a favorable recommendation and a
18 recommendation that the rules of Council
19 be suspended so as to have first reading
20 of this bill at Council's next session.

21 All in favor will say aye.

22 (Aye.)

23 COUNCILWOMAN TASC0: Is there
24 any opposition?

25 (No response.)

1 5/12/10 - WHOLE - BILL 080658, etc.

2 COUNCILWOMAN TASC0: There
3 being none, the motion is carried.

4 The Chair recognizes
5 Councilwoman Sanchez.

6 COUNCILWOMAN SANCHEZ: I move
7 for the proposed amendment to Bill
8 100127.

9 (Duly seconded.)

10 COUNCILWOMAN TASC0: It has
11 been moved that we adopt the amendment to
12 100127.

13 Can I get a second?

14 (Duly seconded.)

15 COUNCILWOMAN TASC0: It has
16 been moved and seconded that Bill 100127,
17 as amended, be reported out of Committee
18 with a favorable recommendation and that
19 the rules of Council be suspended so that
20 this bill can be heard --

21 COUNCILWOMAN SANCHEZ: No, no,
22 no. We just did the amendment.

23 COUNCILWOMAN TASC0: I'm sorry.
24 You did the amendment.

25 I move for the adoption of the

1 5/12/10 - WHOLE - BILL 080658, etc.

2 amendment.

3 (Duly seconded.)

4 COUNCILWOMAN TASC0: All in

5 favor will say aye.

6 (Aye.)

7 COUNCILWOMAN TASC0: Any

8 opposition?

9 (No response.)

10 COUNCILWOMAN TASC0: Thank you.

11 Back to Councilwoman Sanchez.

12 COUNCILWOMAN SANCHEZ: Yes. I

13 move that Bill 100127, as amended, be

14 moved out of Committee with a favorable

15 recommendation and that the rules of

16 Council be suspended to allow first

17 reading at our next public session.

18 (Duly seconded.)

19 COUNCILWOMAN TASC0: It has

20 been moved and seconded that Bill 100127

21 be reported out of Committee with a

22 favorable recommendation and that the

23 rules of Council be suspended so as to

24 have first reading of this bill at

25 Council's next session.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 All in favor will say aye.

3 (Aye.)

4 COUNCILWOMAN TASC0: Any

5 opposition?

6 (No response.)

7 COUNCILWOMAN TASC0: There

8 being none, the motion is carried.

9 The Chair recognizes

10 Councilwoman Sanchez for an amendment to

11 Bill 100128.

12 COUNCILWOMAN SANCHEZ: I move

13 that the proposed amendment to Bill

14 100128 be adopted.

15 COUNCILWOMAN TASC0: It has

16 been moved that we adopt the amendment to

17 100128. Can I get a second?

18 (Duly seconded.)

19 COUNCILWOMAN TASC0: It has

20 been moved and seconded we adopt the

21 amendment to Bill 100128.

22 All in favor will say aye.

23 (Aye.)

24 COUNCILWOMAN TASC0: The Chair

25 recognizes Councilwoman Sanchez.

1 5/12/10 - WHOLE - BILL 080658, etc.

2 COUNCILWOMAN SANCHEZ: I move
3 that Bill 100128, as amended, be moved
4 out of Committee and that the rules of
5 Council be suspended to allow first
6 reading at our next public session.

7 (Duly seconded.)

8 COUNCILWOMAN TASC0: It has
9 been moved to report Bill 100128, as
10 amended, out of Committee.

11 All in favor of the amendment
12 will say aye.

13 (Aye.)

14 COUNCILWOMAN TASC0: Any
15 opposition?

16 (No response.)

17 COUNCILWOMAN TASC0: There
18 being none, the motion is carried.

19 Now we'll recognize
20 Councilwoman Sanchez.

21 COUNCILWOMAN SANCHEZ: I move
22 that Bill 100128, as amended, be moved
23 out of Committee with a favorable
24 recommendation and that the rules of
25 Council be suspended to allow first

1 5/12/10 - WHOLE - BILL 080658, etc.

2 reading at our next public session.

3 (Duly seconded.)

4 COUNCILWOMAN TASC0: It has
5 been moved and seconded that we amend
6 Bill 100128 -- I'm sorry. I'm distracted
7 here for a minute.

8 It has been moved and seconded
9 that Bill 100128 be reported out of
10 Committee, as amended, and the suspension
11 of the rules to have this bill read at
12 Council's next session.

13 All in favor?

14 (Aye.)

15 COUNCILWOMAN TASC0: Any
16 opposition?

17 (No response.)

18 COUNCILWOMAN TASC0: Thank you.
19 The motion is carried.

20 Thank you very much. This
21 Committee will stand in recess to the
22 call of the Chair.

23 (Committee of the Whole
24 concluded at 5:45 p.m.)

25 - - -

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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

6

stenographic notes taken by me upon the

7

foregoing matter on May 12, 2010, 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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