



**TESTIMONY ON CAMPAIGN FINANCE REFORM
AND HOUSE BILLS 1497 AND 1720**

**PRESENTED TO THE STATE GOVERNMENT COMMITTEE OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES'**

The Committee of Seventy
August 14, 2007

Thank you for the opportunity to offer testimony today on campaign finance reform generally and on two bills that have been referred to the State Government Committee: House Bills 1497 and 1720. My name is Christopher Sheridan and I am the Director of Voting Rights and Election Reform for the Committee of Seventy.

The Committee of Seventy is an independent non-partisan, non-profit organization, formed over a century ago by Philadelphia's civic and business leaders to fight corruption and advocate reform of the political system. It is Seventy's mission to conduct a permanent campaign to improve the Philadelphia region by demanding ethical conduct of elected officials, promoting government efficiency, educating citizens and safeguarding elections. Freeing elected officials and their campaigns of undue influences touches on all aspects of this mission. We commend this Committee, and the sponsors of House Bills 1497 and 1720, for inviting public comment on this issue.

I want to talk first about campaign finance reform generally, notably within the context of Philadelphia's first municipal elections conducted under a campaign finance ordinance.¹

The ordinance was enacted by Council in the wake of the 2003 mayoral election that cost in excess of \$23 million. Yet the high cost of local elections was not the most compelling reason for campaign finance reform. The existence of pay-to-play (that is, the making of political contributions or gifts to candidates and public officials in return for city business) has long been an open secret in Philadelphia. With no limits on the size of campaign contributions, donors were able to give as much as they wanted and as often as they wanted.

The impact of big money has not been lost on political hopefuls. As then-candidate John Street candidly told the Philadelphia Inquirer in 1999, "The people who support me in the general election have a greater chance of getting business from my administration than the people who support [opponent] Sam Katz. . . . Anybody who doesn't acknowledge that's the way it works is either a liar or thinks you're really stupid."²

In recent years, municipal scandals have resulted in the conviction of more than a dozen people involved in "pay-to-play" with City government. The appearance that pay-to-play is endemic has tarnished Philadelphia's reputation,³ discouraging competition and the infusion of new business

¹ Chapter 20-1000 of the Philadelphia Code sets forth restrictions on the amount of contributions that can be made to, and the receipt of contributions by, candidates for primary, general and special elections for specified elected offices in Philadelphia, including the City's mayor. Specifically, with respect to contributions, the ordinance prohibits individuals from contributing more than \$2,500 per calendar year to a candidate for mayor, and limits political committees and persons other than individuals from contributing more than \$10,000 per calendar year to each such candidate.

² Burton, Cynthia and Ken Dilanian. "The Way It Works." Philadelphia Inquirer, 15 December 2002. The article also reported that "47 [of the 50 biggest donors to Street's 1999 campaign] have won city contracts, subsidies or appointments since he became mayor, or have stood to gain from his administration's regulatory decisions."

³ The New York Times has noted in 2005 that Philadelphia has a "reputation for graft." "Philadelphia Voters to Consider a Measure on Political Ethics." The New York Times. Editorial. 6 November 2005.

necessary for the City's continued growth. The City's citizens have become disaffected,⁴ with a resulting lack of participation in municipal government and low voter turnout.

As an organization directly concerned with the integrity and effectiveness of Philadelphia government, Seventy has followed these alarming developments with great concern. As a result, we have responded vigorously to the ethical challenges facing Philadelphia. Seventy helped lead the most successful ballot question campaign in Philadelphia history, where 87% of voters in November 2005 supported a change in how the City awards non-competitively bid contracts.⁵ Seventy was also a key force behind legislation to create an independent Philadelphia Board of Ethics with both investigative and enforcement powers, including jurisdiction over the provisions of the campaign finance ordinance. The establishment of the Board of Ethics was approved by 80% of voters in May 2006.

During this spring's municipal primary campaign, Seventy asked the mayoral candidates to commit to an "Ethics Agenda," which included 28 specific reforms aimed at changing the political culture in Philadelphia. All five of the Democratic nominees, and the Republican nominee, rose to Seventy's challenge by committing to running a more open, transparent and ethical city government if elected. Each candidate also agreed to convene an independent panel to conduct a comprehensive and dispassionate review of the entire campaign finance system, and to consider public financing, after the November 2007 election. We intend to hold the next Mayor – Democrat Michael Nutter or Republican Al Taubenberger – to those promises.

⁴A March 2007 Temple University poll taken in the Philadelphia metropolitan area for the Pennsylvania Economy League reported that "76 percent agreed that 'a few big interests' run City Hall for their own benefit." Fitzgerald, Thomas. "On Nutter's Horizon, Graft to Grips: Why Voters Chose Change." *Philadelphia Inquirer*. 20 May 2007.

⁵ This law prohibits most law firms and other professional-services businesses from receiving no-bid city contracts worth more than \$25,000 if they donate \$10,000 or more that year to a candidate for city office. Contributions from a business' officers, directors, shareholders or partners count toward the \$10,000 limit.

Seventy also emerged as the most vigorous defender of the City's campaign finance ordinance. We led the fight to require candidates for municipal office to adhere to the contribution limitations, successfully turned back efforts in City Council to dismantle the limitations⁶ and filed an amicus brief in the Commonwealth Court in a case challenging the constitutionality of the ordinance. In a six-to-one *en banc* decision, the Commonwealth Court ruled the ordinance to be "constitutional and, therefore . . . enforceable." *Nutter v. Dougherty*, 921 A.2d 44, 63 (Pa. Cmwlth. 2007). An appeal is now pending in the Pennsylvania Supreme Court.⁷

In Seventy's view, Philadelphia's first real test of its campaign finance ordinance had an overwhelmingly positive outcome. (As a strictly non-partisan organization, Seventy is not referring to the winning primary election candidates.) Candidates, for the most part, abided by the contribution limits – and when they did not, the Board of Ethics investigated potential violations and actively enforced the limits.⁸ While we do not offer Philadelphia's ordinance as the basis for emulation by the state, the City's experience is useful in rebutting many of the arguments typically raised by opponents of campaign finance reform.

- Limiting campaign contributions brings far more people into the elective process. No longer able to rely on unlimited donations, the candidates were forced to reach out to a broad number of contributors. Eleven days before the primary, Michael Nutter reported

⁶ In February 2007, after the release of a Daily News poll showing millionaire Tom Knox leading in the race for the Democratic mayoral nomination, Councilman Jim Kenney introduced an ordinance to lift all limitations on campaign contributions if any candidate spent more than \$2 million of his or her own money. Mr. Knox had already spent over \$2 million in television ads to promote his candidacy.

⁷ Seventy has submitted an amicus brief in this case as well.

⁸ For example, the Board approved a settlement agreement with Congressman Chaka Fattah in which his mayoral campaign agreed to reimburse his exploratory committee for \$33,251.46 in expenses that should have been made by his mayoral campaign. In addition, his exploratory committee agreed to return a \$20,000 contribution received after he declared his candidacy and agreed to return all remaining funds in his exploratory committee to contributors on a *pro rata* basis.

raising \$3.4 million from over 4,000 individuals,⁹ including over 3,000 donations of \$250 or less.¹⁰ Opponent Dwight Evans raised \$1.4 million, also from over 4,000 individual contributors. No one individual made a contribution in excess of \$5,000.¹¹ Prior to the ordinance, single donors routinely made six-figure contributions to mayoral candidates.¹²

According to political observers, the need to reach out to more citizens resulted in a marked increase in personal appearances by candidates at meetings and forums in Philadelphia's neighborhoods, as well as televised debates, resulting in exchanges with "real voters" and the news media about issues of concern to the citizenry.¹³ As former Philadelphia Daily News editor and now Seventy's President and CEO Zack Stalberg noted, "Because [the candidates] could not easily raise big gobs of money, they had to show up at these forums and participate and talk to real voters for the first time in probably half a century."¹⁴

- Limiting contributions do not ensure victory for the self-funded candidate. Despite causing panic among his opponents – triggering attempts to topple the campaign finance ordinance and to dominate the airwaves with blistering attack ads, including by 527 committees – self-funded candidate Tom Knox's \$12 million race did not buy him the Democratic nomination. As the Philadelphia Inquirer editorialized:

Given the new politics of Philadelphia, it's at least possible to conclude

⁹ Gelbart, Marcia and Craig R. McCoy. "Evans, Nutter shows gains in primary war chests." Philadelphia Inquirer. 5 May 2007.

¹⁰ Gelbart, Marcia. "City's New Campaign Law Called a Winner." Philadelphia Inquirer. 21 May 2007.

¹¹ In October 2006, Council amended Chapter 20-1000 of the Philadelphia Code to include a "millionaire's" exception that would permit the doubling of contributions to all 2007 mayoral candidates in the event one candidate contributed more than \$250,000 of his or her own money. As a result of Tom Knox's self-funding, the contribution limit from individuals was raised to \$5,000 and from political committees and persons other than individuals to \$20,000.

¹² Benson, Clea. "No Limits Are Set for Campaign Donations." Philadelphia Inquirer. 26 October 2003.

¹³ Warner, Bob. "A Nutter Test for Mike." Philadelphia Daily News, 2 July 2007.

¹⁴ Gelbart, supra n.9.

that money isn't the *only* thing anymore. That's a major achievement, considering the city's corrosive, pay-to-play political culture. All of the credit goes to the now battle-tested campaign-finance limits. . . .¹⁵

- Limiting contributions makes it more difficult to “pay-to-play.” A May 2005 statewide poll conducted by IssuesPa/Pew reported that over 80% of the respondents believed that people making large political contributions are trying to buy special favors.”¹⁶ It stands to reason that eliminating large campaign contributions diminishes both the perception and the reality that political favors are expected and given. As New York City's Mayor Michael Bloomberg said in a June 5, 2007 press release introducing a sweeping municipal campaign finance reform proposal, “By setting up the nation's toughest campaign finance limits, we're ensuring that campaign contributions don't lead to special favors from government so every New Yorker knows that their government truly works for them, not the special interests.”

Campaign finance reform is not the antidote for all of Philadelphia's ethical abuses. And, unfortunately, there was not a marked improvement in voter turnout for the May primary.¹⁷

Nor is the current ordinance without its problems. Seventy intends to prepare model campaign finance legislation to resolve some of its ambiguities and loopholes and to introduce new reforms to address issues that emerged during the primary (e.g., regulating “527” committees and considering whether to restrict the “millionaire's exception” only to the election – primary,

¹⁵ “Campaign-Finance Limits: The city was the real winner.” Editorial. *Philadelphia Inquirer*. 17 May 2007.

¹⁶ Issues PA/Pew Poll: Money, Politics and Pennsylvanians' Appetite for Change, May 2005. See <http://www.issuespa.net/print/articles/13244?p=1>.

¹⁷ There are about 993,000 registered voters in Philadelphia. Approximately 330,000 people voted in the city for a turnout of about 33 percent. See www.seventy.org for a report on the May 15, 2007 primary.

general or special – in which the self-funder is running). We are looking forward to working with the next Mayor and City Council to improve future City elections.

I'd like to turn now to House Bills 1497 and 1720. Comprehensive campaign finance reform in Pennsylvania is long overdue. According to the Brennan Center for Justice, a nonpartisan think tank and legal advocacy organization, only three states (Illinois, Oregon and Virginia) lack any contribution limits. Most states impose some form of contribution limits, varying widely in terms of the size of the state, the amounts permitted to be raised from various constituencies and the offices to which the limits are applicable.

House Bill 1720 is a good start. While Seventy has not taken a formal position on the bill, we do have a few preliminary concerns and observations.

- By extending its reach to any candidate for a county or local office (Section 1627.1), House Bill 1720 would appear to preempt Philadelphia's campaign finance ordinance. Seventy strongly supports House Bill 116, which was passed twice by the House and gives Philadelphia the authority to adopt and enforce a local campaign finance ordinance. In Seventy's view, Chapter 20-1000 of The Philadelphia Code is a valid exercise of municipal power over local affairs. Philadelphia's experience with respect to the impact of big money on its municipal officers, and on candidates for its municipal offices, is not the same as that of smaller municipalities in other parts of the state. That is why specific regulations directed to Philadelphia's particular needs are not only warranted, but absolutely essential. We hope the Senate will move swiftly to pass this legislation, and will vigorously urge them to do so.

- Seventy has historically supported an appointed, rather than an elected, judiciary. Among other things, we firmly believe that judicial candidates should not be raising campaign funds from people who may appear before them once they are elected. As long as Pennsylvania continues to be one of only a small handful of states that continues to elect all of its judges, limiting contributions (as House Bill 1720 does for Common Pleas Court judges) is preferable to the current system of no caps at all. However, we would much prefer moving away from electing judges altogether.
- The individual giving limits of \$200 per election (\$400 per cycle) are quite low. Without the doubling provision in effect, Philadelphia's campaign finance ordinance limits contributions from individuals to \$2,500 per year. In 2006, the U.S. Supreme Court invalidated Vermont's limits on contributions from individuals, political action committees and political parties of \$400 to candidates for statewide office, \$300 to candidates for State Senator and \$200 to candidates for State Representative per election cycle.¹⁸ The Court's reasoning was based, in part, on the absence of a demonstrated need for the low limits (such as a history of corruption) and the inability of candidates to mount competitive races with such meager resources.

In New York State,¹⁹ contributions from a non-family contributor²⁰ to candidates for State Senate are capped at \$6,000 for the primary election and \$9,500 for the general election. The individual contribution limits for State Assembly candidates are \$3,800 for both the primary and the general election. New York election law also places

¹⁸ *Randall v. Sorrell*, 126 S.Ct. 2479 (2006).

¹⁹ <http://www.elections.state.ny.us>

²⁰ A contributor is defined as an individual, corporation, limited liability company, another candidate's political committee, an unincorporated union or trade organization, a political action committee or any other entity such as a League or association.

aggregate calendar year restrictions on the amount of political contributions that can be made by individuals or corporations to New York State candidates and committees: an individual can contribute up to \$150,000, and a corporation up to \$5,000.

I won't take up more of the Committee's time with additional statistics from other states. However, Seventy would caution the General Assembly to give careful consideration to contribution levels that are reasonable and fair to all candidates. The limits should be neither too low (thereby making it virtually impossible to challenge incumbents who are more likely to have party support and a network of donors and also ensuring the likelihood of efforts to circumvent the rules) nor too high (thereby heightening the potential for undue influence by those with the deepest pockets). At the same time, the levels should reflect the reality that running for political office is expensive, particularly given the cost of television and radio advertising in the major media markets. A related concern is whether the size of the limits invites underfunded candidates to engage or encourage improper activities, such as by "527 committees." This occurred in Philadelphia where the contribution levels are much higher than those proposed in House Bill 1497.

- The legislation does not address enforcement. Without explicit consequences for violations, campaign finance limits are meaningless. In Philadelphia, the Board of Ethics has the responsibility for enforcing the campaign finance ordinance, either in court or administratively. The Board has acted aggressively in numerous cases, either by demanding that violators take corrective action or by imposing penalties or fines. In whatever campaign finance legislation that is ultimately enacted, we urge the General Assembly to include an enforcement mechanism and ensure that it is clearly understood.

Training sessions should be offered so that all candidates and their campaign treasurers fully appreciate their responsibilities under the campaign finance law.

- Finally, Seventy would urge the General Assembly to enact more frequent campaign finance disclosure requirements. The first reports required by the Commonwealth's Department of State are due only six weeks before the primary and general elections. As a result, contribution and spending information for the period between January 1st and roughly the end of March is not available until six weeks before an election. This timetable does not allow the public to become sufficiently educated about information that may be highly relevant to their vote. In the case of municipal and local offices, there is almost no opportunity for public scrutiny because the only pre-election report required is the "Second Friday" report and there is still no requirement of electronic filing. Using the May 15, 2007 Primary as a reference, local candidate reports were not due until Friday, May 4th, were not generally available via the internet, were not available in a searchable format, and with two intervening weekends, were not available to anyone who could not visit their county seat during the six workdays leading up to the election. There was also very little to discourage the late filing of reports, since the penalty is just \$20 per day for the first six days and \$10 thereafter, with a maximum of \$250. Given the significant discretion local officials have over land use, municipal contracting, and the siting of public improvements, Pennsylvanians deserve a much greater opportunity to cast an informed ballot in local elections.

I will now speak to House Bill 1497: legislation on the public financing of campaigns for Pennsylvania's Governor and Lieutenant Governor.

Seventy is intrigued by the general concept of public campaign financing for several reasons. First, the availability of public funds is likely to expand the pool of qualified candidates willing to seek public office. Second, public funding would promote accountability to the voters and increase the public's trust by decreasing a candidate's dependence on large contributors. In a February 2007 report on campaign finance in Illinois, Arizona Governor Janet Napolitano (who was twice elected under that state's public financing system), explained the linkage between public funding and her order creating a discount prescription drug program:

If I had not run [under the public funding program], I would surely have been paid visits by numerous campaign contributors representing pharmaceutical interests and the like, urging me either to shelve that idea or to create it in their image...All the while, they would be wielding the implied threat to yank their support and shop for an opponent in four years."²¹

However, public funding can have several drawbacks. The availability of public funds might inspire less qualified candidates to run for office at the taxpayers' expense (although this is less likely for statewide campaigns). Moreover, since the candidates' participation cannot be required, many will reject public funding if they have personal wealth or the ability to raise significant private funds. Both Jon Corzine and Douglas Forrester opted out of New Jersey's gubernatorial public financing system that would have provided about \$6.4 million in taxpayer funds but limited a candidate to a total of \$9.6 million for the general election.²²

Finally, where (as in House Bill 1497) the source of the public funds is the voluntary redirection of personal income taxes, the amount of money available may not be sufficient to support viable

²¹Novak, Suzanne and Seema Shah. "Campaign Finance in Illinois." Brennan Center for Justice at New York University School of Law. February 2007:9

²² Kocieniewski, David. "Spending Sets Record in the Race for Governor." *New York Times*. 10 October 2005. With four weeks remaining in the 2005 campaign for Governor, the combined spending by both candidates was approaching a record mark of nearly \$30 million.

campaigns. The National Conference of State Legislatures reports that taxpayer participation in public financing programs is declining while the cost of campaigns is rising.²³ In a recent op-ed piece, Kentucky's Senate Republican leader Mitch McConnell urged the abolition of the presidential public funding system candidates by noting that only 9% of tax filers in 2004 agreed to send \$3 from the national treasury to national campaigns.²⁴ However, Ciara Torres-Spelliscy, Counsel to the Brennan Center for Justice at New York University School of Law, recently opined that the fund can be "revived" through "legislative fixes that make [the election fund] better suited to current election conditions and by a public education campaign about its purpose."²⁵

Pennsylvania might consider enacting a similar system for legislative candidates after examining the results of a "Clean Elections" public financial pilot program now being undertaken in New Jersey.²⁶ This program provides public funds to candidates running for State Senate and General Assembly in the general election in three targeted districts.²⁷ Citing the benefits of Clean Elections programs in both Maine and Arizona, The Times (Trenton) recently editorialized that "when primaries are included, as they are in the other Clean Elections states, the opportunity to run for office is opened to citizens who are turned off by traditional party politics, including the

²³ <http://www.ncsl.org/programs/legismgt/about/campfin.htm>

²⁴ "Opposing View: Stop Arm-twisting 'support.'" USA Today. Editorial. 8 February 2007.

²⁵ Torres-Spelliscy, Ciara. The New York Times. Letter to the Editor. 23 January 2007. Ms. Torres-Spelliscy, citing a 2006 Greenberg Quinlan Rosner Research poll commissioned by the Brennan Center to test the reasons taxpayers did or did not check off the election fund box, reported that 2/3 of those polled lacked basic knowledge about the fund.

²⁶ This program makes public money available to candidates who raise at least \$4,000 in \$10 contributions from registered voters and agree to limit their campaign spending.

²⁷ <http://www.njcleanelections.com/>

money scramble. In this way, the base of participation in representative government is broadened.”²⁸

In sum, although Seventy has not taken a position on House Bill 1720, we support the concept of a public financing alternative to the current system of unlimited campaign contributions to candidates for Governor and Lieutenant Governor. We hope that the General Assembly will continue to refine legislation that would permit this option.

Once again, I thank the Committee for inviting the Committee of Seventy to testify today. We are pleased that the General Assembly is willing to tackle this critical issue and hope that your efforts will result in campaign finance reform that will gain national recognition for Pennsylvania and serve as a model for states throughout the country.

²⁸ “Let The Voters Own The Election.” The Times (Trenton). Editorial. 6 August 2007. While endorsing the principle of clean elections as “rock solid,” the editorial goes on to say that the Clean Elections law remains imperfect.