

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 5 EAP 2007, 6 EAP 2007

Michael A. Nutter,

v.

John Dougherty, Dwight Evans, Chaka Fattah, Jonathan Saidel,
and the City of Philadelphia

Nos. 7 EAP 2007, 8 EAP 2007 and 9 EAP 2007

Michael A. Nutter,

v.

John Dougherty, Dwight Evans, Chaka Fattah, Jonathan Saidel,
and the City of Philadelphia

On appeal from the Order dated April 2, 2007 of the Commonwealth Court of Pennsylvania at
Nos. 2304 C.D. 2006, 2361 C.D. 2006 and 2375 C.D. 2006

**BRIEF OF *AMICUS CURIAE*,
THE CAMPAIGN LEGAL CENTER,
IN SUPPORT OF APPELLEE MICHAEL A. NUTTER AND
APPELLEE-INTERVENOR THE CITY OF PHILADELPHIA**

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I. STATEMENT OF INTEREST

Amicus curiae, Campaign Legal Center, Inc. (CLC), is a nonpartisan, nonprofit organization which works in the area of campaign finance law, generating public policy proposals and participating in state and federal court litigation throughout the nation. The CLC has provided legal counsel to parties and *amici curiae* in campaign finance cases at both the federal and state court level, including representing intervenors Senators John McCain and Russ Feingold in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003). More recently the CLC has participated as legal counsel to parties or *amici curiae* in *Wisconsin Right to Life v. Fed. Election Comm'n*, ___ U.S. ___ (2007), 2007 WL 1804336 (June 25, 2007); *Davenport v. Wash. Educ. Ass'n*, 127 S.Ct. 2372 (2007); and *Randall v. Sorrell*, 126 S.Ct. 2479 (2006).

The CLC also assists municipal, state and federal officials in drafting and defending the legality of campaign finance ordinances and statutes. The present case raises the question of whether the Pennsylvania General Assembly expressed a clear intent to preclude the City of Philadelphia's adoption of candidate contribution limits. The broad grant of authority to municipal governments, such as the City of Philadelphia, includes the power to enact municipal campaign finance ordinances, is an important issue in campaign finance law nationally, and directly impacts the interests and activities of the *amicus curiae*.

Amicus endeavors by this brief to assist the Court's understanding of the case law addressing legal challenges to other municipal ordinances in states across the nation. *Amicus* also submits this brief to explain how this case law from other states sheds light on this Court's consideration of the questions before it in this case.

II. INCORPORATION OF STATEMENTS

Amicus incorporates by reference the Counter-Statement of Questions Involved and the Counter-Statement of the Case set forth in the brief of Appellee-Intervenor the City of Philadelphia dated July 11, 2007.

III. SUMMARY OF ARGUMENT

Pursuant to its Home Rule Charter and the express invitation of Pennsylvania's Public Official and Employee Ethics Act, 65 Pa. C.S. § 1111, the City of Philadelphia in 2003 passed an ordinance to limit campaign contributions in City elections. *See* Bill No. 030562; Phila. Code, Chapter 20-1000. In so acting, the City joined the 130 counties and municipalities across the nation that have passed campaign finance statutes to protect the integrity of their local government and electoral processes. *See* National Civic League, *Local Campaign Finance Reform* (February 2002).¹

Amicus submits that Philadelphia's ordinance, much like the more than one hundred local campaign finance laws already on the books in other states, is an important step toward bolstering public confidence in its municipal government. State courts across the country have recognized that the regulation of campaign finance and other aspects of local governmental integrity are of central importance to municipalities, and pose no threat or cost to the state or any of the neighboring localities. The applicability of Philadelphia's campaign finance ordinance quite literally stops at the City's borders: It has no external effects on the state or any surrounding municipalities, and there is no basis to fear for the balkanization of Pennsylvania campaign finance laws.

Public policy considerations also strongly support deference to the City's efforts to regulate campaign finance matters and attempts to ensure electoral integrity. Because municipal

¹ Available at <http://ncl.org/npp/lcfr/inventory.html> (last visited July 2, 2007).

reform initiatives, like the Philadelphia ordinance, allow the introduction and implementation of political innovations on the local level, they can provide important models for broader governmental reform efforts, and thereby serve the public interest generally.

For all these reasons, *amicus* respectfully urges this Court to affirm the decision of the Commonwealth Court of Pennsylvania and to uphold Philadelphia’s campaign finance ordinance.

IV. ARGUMENT

The Commonwealth Court’s Holding Below Is Consistent With State Court Decisions Across the Nation Upholding Local Campaign Finance Laws.

In recent years, local government campaign finance reform efforts have grown steadily across the nation. More than 130 municipal and county governments in at least 18 states have enacted local laws addressing the role of money in local elections. *See* National Civic League, *Local Campaign Finance Reform* (February 2002), *supra*. Contribution limitations are an important and widespread form of campaign finance regulation, and have been enacted in approximately 115 localities. *See* Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & Pol. 1, 9 (2006).

Much like Philadelphia’s contribution limits ordinance, virtually all of these innovative reforms have raised questions about the authority of local governments to enact them. And while the case law regarding local government authority to enact campaign finance laws is rather modest, the Commonwealth Court’s holding below is consistent with the prevailing trend among state courts—which recognize an “intense local interest in the structures and procedures of local governance” and the “absence of external effects or state-wide costs from local variations.” *Id.* at 28.

1. State Courts Across The Nation Recognize That The Integrity of Local Elections and Government Is Of Central Importance To Home Rule And Poses No Threat Or Cost To The State Or Neighboring Localities.

A review of state court decisions around the nation regarding local political reform laws shows a prevailing trend among state courts recognizing that the integrity of elections and sound governmental structures are matters of intense local interest, and that variations in such laws entail little, if any, external effects or costs.

In *Johnson v. Bradley*, 4 Cal.4th 389 (1992), for example, the Supreme Court of California considered the question of whether the City of Los Angeles' adoption of a comprehensive campaign, election and ethics reform law, including public campaign financing, was a permissible exercise of its home rule authority. Despite the fact that the City of Los Angeles' public financing law directly conflicted with a state statute prohibiting the use of public funds to finance candidate campaigns, the court nevertheless upheld the city's campaign finance law, reasoning:

When the local matter under review "implicates a 'municipal affair' and poses a genuine conflict with state law, the question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted. If the subject of the statute fails to qualify as one of statewide concern, then the conflicting charter city measure is a 'municipal affair' and 'beyond the reach of legislative enactment.' . . . If, however, the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related [and 'narrowly tailored' to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by [the state Constitution] from addressing the statewide dimension by its own tailored enactments."

Johnson, 4 Cal.4th at 399 (footnote omitted) (quoting *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal.3d 1, 17 (1991)).

In upholding Los Angeles' municipal campaign finance law, the Supreme Court of California correctly rejected the notion that uniformity of campaign financing laws throughout

the state is a matter of such grave concern that it supersedes the interest that a local government possesses when it enacts local campaign finance laws:

[T]he bare interest of “uniformity in the manner of electing officials” is no justification for treating public funding of municipal elections as a statewide concern, because, standing alone, it reveals no “convincing basis for legislative action originating in extramunicipal concerns.” Accordingly, we decline to accept *County of Sacramento*’s holding that campaign financing, and in particular, partial public funding of local election campaigns, is a statewide concern, because neither the *County of Sacramento* court, nor petitioners or their amicus curiae herein, have established any convincing reason, grounded on statewide interests, supporting Proposition 73’s attempt to treat public funding of election campaigns as a “statewide concern.”

Johnson, 4 Cal.4th at 406 (internal citation omitted). While the *Johnson* court recognized that maintenance of the integrity of local elections was a legitimate statewide interest, *id.* at 409, at the same time that court found that the local campaign finance laws advanced the state’s interest. Thus, the state ban on public campaign financing actually frustrated that interest. *Id.* at 410-411.

In a similar vein, state courts elsewhere have also considered and rejected challenges to local legislation that address electoral regulations. The Supreme Court of Connecticut, for example, rejected a challenge to a local government charter amendment requiring voter referenda on certain town budget items. In doing so, the court examined the distinction between matters of local interest and matters of statewide interest, stating:

“The purpose . . . of Connecticut’s Home Rule Act is clearly twofold: to relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern and to enable a municipality to draft and adopt a home rule charter or ordinance which shall constitute the organic law of the city The rationale of the act, simply stated, is that issues of local concern are most logically answered locally, pursuant to a home rule charter, exclusive of the provisions of the General Statutes Moreover, home rule legislation was enacted to enable municipalities to conduct their own business and [to] control their own affairs to the fullest possible extent in their own way . . . upon the principle that the municipality itself kn[ows] better what it want[s] and need[s] than . . . the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.” Consistent with this purpose, a state statute “cannot deprive cities of the right to legislate on purely local affairs germane to city purposes.” Consequently,

“a general law, in order to prevail over a conflicting charter provision of a city having a home rule charter, must pertain to those things of general concern to the people of the state”

Board of Educ. of Town and Borough of Naugatuck v. Town of Borough of Naugatuck, 268 Conn. 295, 306, 843 A.2d 603, 611-12 (2004) (internal citations omitted). *Amicus* recognizes that this case is not about the City of Philadelphia’s home rule authority, but rather involves the question of whether the Pennsylvania General Assembly has preempted local governments’ efforts to enact local campaign contribution limits. Nevertheless, the court’s reasoning may be illuminating to the issues before this Court.

Rather than being matters of statewide concern, Philadelphia’s ethics and campaign finance ordinance addresses matters of local concern that go to the heart of the City’s interest in protecting the integrity of its elected officials, and has no external effects on the state or neighboring localities. Indeed, close attention to the specific details of the Philadelphia ordinance underscores its limited application. The restrictions established by Phila. Code § 20-1002 apply only to contributions to candidates for city office—and do not limit contributions to political parties or other political entities that operate beyond City’s borders. Any monetary cost of enforcing the City’s contribution limits is borne entirely by local taxpayers. Nor will any candidates beyond Philadelphia’s borders be impacted by the City’s contribution limits ordinance.

Thus, Philadelphia’s contribution limits are narrowly tailored to eliminating real and potential corruption that stem from unlimited political contributions in city elections. As the United States Supreme Court has noted in the federal context, “contribution limits are grounded in the important governmental interests in preventing ‘both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.’” *McConnell*, 540 U.S. at 94-95 (quoting *Federal*

Election Comm'n v. Nat'l Right to Work Comm., 459 U.S. 197, 208 (1982)). The City of Philadelphia's efforts to guard against real or potential corruption would almost certainly include safeguards to protect municipal elections through the enactment of reasonable contribution limits.

2. Public Policy Considerations Weigh Heavily In Support Of Philadelphia's Contribution Limits.

This case is part of a growing national body of law regarding the efforts of local governments to enact laws that bring about political and governmental ethics reform. As noted above, Philadelphia is one of more than over one hundred local governments that have enacted local laws addressing the role of money in local elections, not to mention countless other municipalities that have enacted other electoral and ethical reforms addressing the restoration or maintenance of governmental integrity.

The Philadelphia ordinance is hardly unique. *Amicus* has found a number of instances nationwide where municipalities have enacted campaign finance legislation in the absence of any state law in this area. For example, though Texas has no state statutes limiting campaign contributions, the City of Austin expressly limits contributions to candidates for mayor or city council to \$100.² See Charter, City of Austin, Texas, art. 3 § 8, available at <http://www.ci.austin.tx.us/law/lgchta3.htm>. Similarly, Salt Lake City's municipal code limits individual contributions to candidates for city council to \$1,500 and to candidates for mayor to \$7,500, though the State of Utah not enacted any contribution limits. See Salt Lake City, Utah, City Code, § 2.46.050, available at http://66.113.195.234/UT/Salt_Lake_City/index.htm. See also Cook County, Illinois, Code of Ordinances § 2.585, available at <http://www.municode.com/Resources/gateway.asp?pid=13805&sid=13> (providing for county

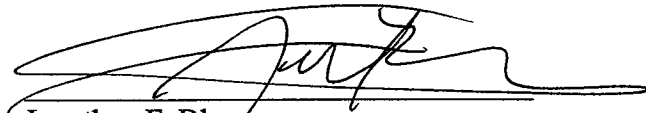
² The Charter provision also places limits on aggregate contributions from out-of-city contributors. See City of Austin Charter, art. 3 § 8, available at <http://www.ci.austin.tx.us/law/lgchta3.htm>.

limit of \$1,500 per candidacy for contributions to county candidates or officials from persons doing business with the County, although Illinois has no state contribution limits). In each of these instances, municipal regulation took place in the absence of state laws limiting contributions. In none of these areas has the silence of the state legislature been interpreted as precluding local political reform. *Amicus* has not found a single instance where a court has held that a local government was precluded from enacting campaign contribution limits where the state legislature had not enacted any state contribution limits of its own.

V. CONCLUSION

For the foregoing reasons, the Order of the Commonwealth Court should be affirmed.

Respectfully submitted,



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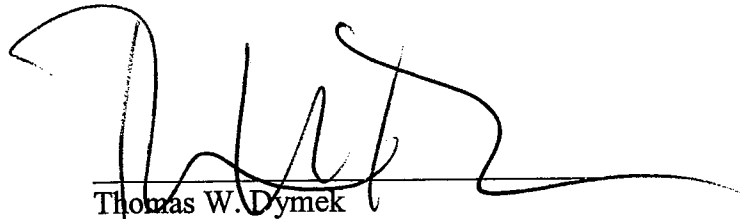
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