IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 5 EAP 2007, 6 EAP 2007, 7 EAP 2007, 8 EAP 2007 and 9 EAP 2007

Michael A. Nutter

v.

John Dougherty, Dwight Evans,
Chaka Fattah, Jonathan Saidel

The City of Philadelphia, Intervenor

Appeals of Chaka Fattah and John Dougherty

BRIEF OF APPELLEE THE CITY OF PHILADELPHIA

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

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Dated: July 11, 2007

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1. Has the General Assembly clearly expressed an intent to preclude local regulation of campaign contributions to candidates for local office where (a) the General Assembly (in the Election Code) has itself imposed a bare modicum of campaign contribution regulations and not even addressed contribution limits; (b) the General Assembly (in the Ethics Act) has expressly invited local supplementation of its ban on campaign contributions intended to influence official action; and (c) there is no reason why, with respect to campaigns for local office, regulation of campaign contributions needs to be uniform, state-wide?

Answered below: No.

Suggested answer: No.

2. Is there an irreconcilable "conflict" between the General Assembly's silence with respect to limits on campaign contributions to local candidates and the City of Philadelphia's decision to impose limits on such contributions?

Answered below: No.

Suggested answer: No.

II. COUNTER STATEMENT OF THE CASE

A. Procedural History

These are appeals by Counterclaimant John Dougherty and Intervenor/Counterclaimant Chaka Fattah from an April 2, 2007 Order of the Commonwealth Court, sitting *en banc*, entered in favor of Intervenor/Counterclaim-Defendant City of Philadelphia and Counterclaim-Defendant Michael A. Nutter, reversing the entry of judgment on the pleadings by the Court of Common Pleas of Philadelphia County declaring Chapter 20-1000 of The Philadelphia Code (entitled "Political Contributions and Expenditures") unconstitutional.

The action was originally brought by Nutter on April 12, 2006, against Defendants Dougherty, Fattah, Dwight Evans and Jonathan Saidel. The matters at issue in the original complaint are not at issue on this appeal. Nutter had sought a declaratory judgment that all defendants were "candidates" within the meaning of the City's campaign contributions ordinance (Bill No. 030562 (Dec. 18, 2003)), but Nutter subsequently discontinued his complaint on November 6, 2006, voluntarily dismissing all remaining defendants after City Council amended the ordinance to provide a more precise definition of the term "candidate" (Bill No. 060629 (passed by Council, Oct. 26, 2006; approved by Mayor, Nov. 16, 2006)).[1]

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[1] Defendant Saidel had previously been dismissed from the case on July 12, 2006.

Prior to that discontinuance, however, Defendants Dougherty, Fattah and Evans all raised as a defense to the complaint, in New Matter, the argument that the City's ordinance was preempted by State law and hence unenforceable against defendants, regardless whether they were "candidates" under the terms of the ordinance. Defendant Dougherty also raised the defense in a counterclaim seeking a declaratory judgment (along with other matters not relevant to these appeals).

On May 25, 2006, the City moved to intervene for the limited purpose of defending the validity of its campaign contribution ordinance. The court granted the City's motion on June 22, 2006.

After preliminary objections filed by the City were overruled, Defendants filed motions for judgment on the pleadings. The City filed memoranda in opposition, arguing that the General Assembly had not evinced any intent to preempt local regulation of campaign contributions, and that, in fact, the General Assembly's intent was precisely to the contrary, in that the General Assembly (in the Public Official and Employee Ethics Act) had expressly *authorized* local regulation of campaign contributions. (The State's own minimal provisions regulating campaign contributions were all adopted on the same day in 1978, in part in the Election Code and in part in the Ethics Act.)

After City Council amended the ordinance to clarify the meaning of the term "candidate" and Nutter withdrew his complaint against Dougherty, Fattah and Evans, those motions became moot, except with respect to Defendant Dougherty's counterclaim, which was not withdrawn.

On November 16, 2006, the City filed a Supplemental Response to Dougherty's Motion for Judgment on the Pleading, objecting to Dougherty's standing because he was not a "candidate" within the now-clarified meaning of that term under the ordinance. On November 29, 2006, Defendant Fattah, previously having been dismissed from the case, moved to intervene back into the case, explaining that he would provide standing for the challenge to the ordinance, to the extent Dougherty had none, as Fattah was indisputably a candidate at the time.

The court granted Fattah's intervention motion on December 8, 2006, and entered judgment on the pleadings in favor of Dougherty and Fattah on December 13, 2006, issuing a declaratory judgment that Chapter 20-1000 is "unconstitutional, void and therefore unenforceable." The judgment appeared to be based largely on the conclusion that the City's campaign contribution limits were in supposed conflict with the absence of state legislation in the area. "Findings – Conclusion and Order" (Tereshko, J.) (Exhibit "B" to Brief of Appellant Fattah (herein "Fattah Brief"); Exhibit "A" to Brief of Appellant Dougherty (herein "Dougherty Brief")). Nutter appealed to the Commonwealth Court on December 15, 2006, and the City filed its notice of appeal on December 26, 2006.

On January 29, 2007, the trial court entered an Opinion, supplementing its prior "Findings - Conclusions and Order." (Exhibit "C" to Fattah Brief; Exhibit "B" to Dougherty Brief.) In its Opinion, Common Pleas disclaimed that its judgment was based on a conflict between the City's ordinance and state law. Rather, the Opinion appears to state that, without specific authorization to do so,

the City lacks the power to adopt campaign finance legislation (a position not advocated by Fattah or Dougherty). Nowhere does the Opinion cite or discuss the City's extensive powers granted by the First Class City Home Rule Act. The Court also held that Dougherty, who never entered the Mayoral primary, had standing in the case because Nutter, in his original complaint, had claimed that Dougherty was a candidate, a claim that Dougherty disputed.[2]

On April 2, 2007, the Commonwealth Court, *en banc*, by a vote of six to one, issued an Opinion and Order reversing the trial court's grant of judgment on the pleadings. *Nutter v. Dougherty*, 921 A.2d 44 (Pa. Commw. 2007) (Exhibit "A" to Fattah Brief; Exhibit "C" to Dougherty Brief).

The Commonwealth Court noted the City's broad home rule powers and the presumption against preemption. 921 A.2d at 54-56; Slip Op. at 18-21. The Court further noted that state law contains no express language that preempts the City in this area. *Id.* at 60; Slip Op. at 28, 29. The Court also determined that conflict preemption "does not apply in this case," because there is no "conflict" between the City's ordinance and any state law. *Id.* at 49 n.4, 61 n.7; Slip Op. at 9 n.4, 29 n.7). The Court specifically distinguished this case, in which the City's ordinance presents no direct conflict with any state law, from several cases cited by the trial

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[2] Because the trial court exercised its discretion to allow Fattah back into the case, Dougherty's lack of standing was largely academic at the time of the Commonwealth Court appeal, because Fattah, a declared candidate for Mayor, did then have standing. Fattah, however, like Dougherty, now is not a candidate for Mayor and hence, though he had standing to bring this suit initially, he now lacks standing to pursue this appeal. *See* City of Philadelphia's Motion to Dismiss Appeal (July 11, 2007).

court, where ordinances struck down by the courts "permitted what the Constitution and state statutes directly forbade." 921 A.2d at 56-57; Slip Op. at 23.

The Court then examined and rejected Fattah's and Dougherty's implied field preemption argument, providing two independent grounds for reversing the trial court's conclusion. First, the Court acknowledged the comprehensive scope of the General Assembly's legislation in the field of regulation of the manner by which elections are held, including a legislative intent "to establish and maintain uniform procedures for the purpose of holding fair elections and obtaining honest election returns." *Id.* at 60; Slip Op. at 29.[3] But the Court recognized that this intended uniformity with respect to the *mechanics* of conducting elections did not extend to the separate field of campaign finance. The Court examined the General Assembly's regulatory efforts in the relevant field of campaign finance and concluded that "there is no indication of legislative intent to preempt the field of campaign finance as it relates to campaign contribution limits for local elective office." *Id.* at 61; Slip Op. at 30.

Second, the Court found independent support in the Public Official and Employee Ethics Act, 65 Pa. C.S. §§ 1101 to 1113, for the Court's conclusion that the General Assembly did not intend to preempt local regulation of campaign contributions. In the Ethics Act, the General Assembly intended to prohibit the use of campaign contributions to unduly or improperly influence public officials or

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[3] Even so, the Court found that the Election Code contemplates local involvement in fulfilling the purposes of the Election Code, so long as local government action is not inconsistent with the statute. *Id.* at 61; Slip Op. at 29.

candidates for public office, in order to strengthen the faith and confidence of the people that the financial interests of public officials and candidates do not conflict with the public's trust. 921 A.2d at 61 n.8; Slip Op. at 30 n.8 (citing 65 Pa. C.S. §§ 1101.1, 1103(b)). And the General Assembly expressly invited local governments to supplement these restrictions. 65 Pa. C.S. § 1111. The Court expressly found that the City's campaign contributions ordinance supplements the purposes of the Ethics Act, consistent with this legislative invitation for supplementation. 921 A.2d at 61 n.8; Slip Op. 30 n.8.

B. Statement of Facts

The City of Philadelphia adopted the first version of its campaign contribution rules on December 18, 2003, when City Council passed Bill No. 030562 over the Mayor's veto (R. 100a). Bill No. 030562 created a new Chapter of The Philadelphia Code, Chapter 20-1000, which established limits on the contributions that can be made by individuals, businesses and political committees to candidates for Mayor and City Council.[4]

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[4] The original bill numbered the Chapter 20-800, but the Code Editor has renumbered the Chapter. *See* www.phila.gov (Quick Hits --> City Code and Charter). The bill also established limits on the total amounts that candidates for Mayor and Council can receive from political committees in *non-election years* and required candidates to have a single account into which campaign contributions are deposited and campaign expenditures are made; established certain non-binding, voluntary expenditure limitations for candidates; and provided that the courts could order injunctive relief to compel compliance with the provisions of Chapter 20-1000. The focus of the challenge in this case is the contribution limits. *See Nutter*, 921 A.2d at 45 n.2, 61; Slip Op. at 2 n.2, 30; Findings - Conclusions and Order of Court of Common Pleas at 9-10; Common Pleas Opinion at 19, 25; Fattah Brief at 6, 9, 13, 15; Dougherty Brief at 10, 14, 16.

In its debate regarding the override vote on Bill No. 030562, the Councilmembers stated that the purposes of the bill are to prevent the influence of money from corrupting our system of democratic governance and to prevent the appearance that campaign contributions are used to receive a *quid pro quo* or otherwise to improperly influence government decision-making. *See* Transcript of the Stated Meeting of the Council of the City of Philadelphia, December 18, 2003, pp. 30-39 (Exhibit "A" hereto).

In 2005, Council amended Chapter 20-1000 twice. First, the provisions were amended to expand the reach of the bill to contributions to candidates for all other City elective offices (*i.e.* District Attorney, Controller, Sheriff, Clerk of Quarter Sessions and City Commissioner) and to increase the limits on contributions to $2,500 per candidate per year for individuals and $10,000 per candidate per year for businesses and political committees, Bill No. 050301-A (approved by the Mayor June 9, 2005) (R. 104a). Second, the provisions were amended to add a section requiring candidates and others to file in electronic format with the City's Ethics Board the same campaign finance disclosure information filed with the City Commissioners and Secretary of the Commonwealth, Bill No. 050014 (approved by the Mayor December 15, 2005) (R. 110a).

Council amended Chapter 20-1000 again in November 2006 by, *inter alia*, specifying that a "candidate" is either: (a) an individual who files nomination papers or petitions for City elective office; or (b) an individual who publicly announces his or her candidacy for City elective office. The 2006 amendment also

revised the dollar limits on contributions in certain circumstances and empowered the City's recently created independent Ethics Board (established by Charter change adopted at the May 2006 primary) to enforce the ordinance, including through the imposition of fines. Bill No. 060629 (approved by the Mayor November 16, 2006) (R. 114a; "Appendix A" to Opinion of Commonwealth Court).

III. SUMMARY OF ARGUMENT

Philadelphia's broad powers granted by the General Assembly include the power to regulate political contributions to local candidates. The City's attempt to bolster confidence in government through measured contribution limits must be upheld unless the General Assembly has clearly demonstrated an intent to preempt.

The General Assembly has not demonstrated an intent to preempt local regulation of local campaign contributions. Unlike the federal government and many other states, Pennsylvania has not adopted anything remotely like a comprehensive regulatory scheme. Nor is there anything about the nature of campaign contribution legislation that would suggest an intention or need to foreclose local regulation.

Indeed, the best indication of the General Assembly's intent is contained in the Ethics Act. The Ethics Act specifically invites local supplementation of its protections against corruption and the appearance of corruption, including its express prohibitions on the giving of campaign contributions with the "understanding" that they will influence official action. The Philadelphia provisions, like all contribution limits, provide a prophylactic rule designed to prevent large contributions from affecting, or appearing to affect, the decision-making of elected officials. This prophylactic rule is far more similar in kind to the Ethics Act's prohibitions than to any part of the Election Code.

Lastly, nothing in the Philadelphia rules conflicts with or is limited by any provision of state law. The state's silence regarding most aspects of campaign contribution regulation, including campaign contribution limits, cannot constitute a "conflict" with the City's regulations or a limitation on its home rule powers.

IV. ARGUMENT

1. Introduction.

Philadelphia, amidst a series of events threatening public confidence in the impartiality of government officials, has sought to shore up the confidence of its citizens by establishing limitations on the amounts that individuals, businesses and political committees can give to local candidates for local elective office. As early as the United States Supreme Court's seminal decision in *Buckley v. Valeo*, which upheld the constitutionality of reasonable campaign contribution limitations, contribution limits have been understood to serve the valuable purpose of reducing the possibility, and potential appearance of, the improper influence of large contributors on elected officials.

Philadelphia's step toward protecting the integrity and the appearance of integrity of elected officials was made for purely local purposes. It does not interfere with the operation of state election laws in any way. Elections in Philadelphia will continue to be conducted precisely as required under the State's Election Code. No state official – or anyone else – has suggested otherwise.

Although the Commonwealth has itself chosen to impose only limited restrictions regarding campaign contributions, nothing in state law provides the slightest indication that the General Assembly intended to foreclose local legislation in this area, if local conditions suggest a need for them. To the contrary, the City has taken up the invitation of the General Assembly, made in the Ethics Act, to supplement the state's prohibitions on the use of campaign

contributions to obtain favoritism from government officials with additional measures designed to restore faith in government.

Accordingly, given the strong presumption against preemption long recognized in this Court, this Court should uphold the decision of Commonwealth Court, which reversed the erroneous decision of Common Pleas to strike down Chapter 20-1000 of The Philadelphia Code on preemption grounds.

2. There Are Three Types of Preemption Under Pennsylvania Law.

The City of Philadelphia has broad powers of regulation, pursuant to the First Class City Home Rule Act, Act of April 21, 1949, P.L. 665, 53 P.S. § 13101, *et seq.* ("the Home Rule Act") and "may legislate as to municipal functions as fully as could the General Assembly." *Warren v. City of Philadelphia*, 382 Pa. 380, 384, 115 A.2d 218, 221 (1955) (upholding City rent control ordinance); *see also Devlin v. City of Philadelphia*, 580 Pa. 564, 578, 862 A.2d 1234, 1242 (2004) (upholding provision of employment benefits to same-sex partners).[5] Thus, the City has the power to regulate campaign contributions made to candidates for City

[5] The Home Rule Act itself sets forth a list of subject matter areas in connection with which the State has limited the City's otherwise plenary powers, including, for example, public schools, subjects of taxation and eminent domain. 53 P.S. §13133. Campaign contribution rules is not one of those subject matter areas.

office "as fully as could the General Assembly," *unless* the General Assembly has, either explicitly or implicitly, preempted the City from doing so.[6]

Under Pennsylvania law, there are three types of preemption of local legislation. First, the General Assembly can explicitly preempt local legislation, at least regarding matters of "statewide concern." *See Ortiz v. Commonwealth*, 545 Pa. 279, 681 A.2d 152 (1996) (amendment to Uniform Firearms Act enacted in reaction to adoption of local firearms ordinance expressly prohibits municipal regulation of the lawful ownership, possession, etc., of firearms). No one has contended in this action that the General Assembly has explicitly prohibited local legislation in the area of political campaign contributions. (In fact, as will be shown, *infra*, the General Assembly, in the Ethics Act, has explicitly *authorized* local legislation in this area.)

Second, "if the General Assembly has preempted a *field*, the state has retained all regulatory and legislative power for itself and no local legislation in that area is permitted." *Devlin*, 580 Pa. at 579, 862 A.2d at 1242 (emphasis added) (implicit preemption of field of marriage regulation). Appellant Fattah argues that the General Assembly has, through adoption of the Election Code, implicitly intended to entirely preempt the field of campaign contribution regulation, and

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[6] Because the trial court's Opinion interchangeably discussed at least two distinct concepts – *authorization* of local legislation; and *preemption* of local legislation – the Commonwealth Court also addressed the issue of the City's home rule powers at length. Neither appellant takes issue with the Commonwealth Court's conclusion in this regard or presents any argument that the City does not, absent field preemption or a conflict with state law, have the power to regulate in the area of contributions to candidates for City elective office.

therefore implicitly preempted Chapter 20-1000 in that manner. Fattah is incorrect; he misapprehends the purpose and intent of the Election Code and he completely ignores the companion State ethics legislation enacted at the same relevant time. We discuss this in subsection 3, *infra*.

Third, generally speaking, municipalities cannot adopt local ordinances that conflict with state law. This principle is also embodied in the Home Rule Act, which prohibits the exercise of City power in conflict with state laws that are applicable throughout the state. *See* 53 P.S. § 13133(b), (c); *Cali v. City of Philadelphia*, 406 Pa. 290, 177 A.2d 824 (1962); *see generally Ortiz*, 545 Pa. at 286, 681 A.2d at 156 (City's legislative powers are limited by section 13133(b), (c) "only when the General Assembly has enacted statutes on matters of statewide concern"). Appellant Dougherty argues that the City's contribution limits "conflict" with the General Assembly's silence in the area. There is no such conflict. As the Election Code does not even speak to the issues addressed by the City's ordinance, there can be no conflict. We discuss this issue in subsection 4, *infra*.

3. The General Assembly Has Not Demonstrated An Intent To Preempt The Field.

A. Field Preemption Can Only Be Found If The General Assembly Has Not Only Adopted Comprehensive State Legislation, But Has Given Some Positive Indication Of An Intent To Preempt.

In general, this Court has been "reluctan[t]" to find that the legislature has so comprehensively regulated a field of legislation that the General Assembly, without a specific statement of its desire to preempt, implicitly intended to foreclose local regulation. *Mars Emergency Med. Servs., Inc. v. Township of Adams*, 559 Pa. 309, 314, 740 A.2d 193, 195 (1999). In the limited instances in which this Court has found preemption, circumstances very specific to the field at issue led to the preemption conclusion. *See, e.g., Council of Middletown Township v. Benham*, 514 Pa. 176, 182, 523 A.2d 311, 314 (1987) (discussing special circumstances that required preemption determination in the areas of alcoholic beverages, banking and anthracite strip mining). "The state is not presumed to have preempted a field merely by legislating in it." *Id.* at 180, 523 A.2d at 313. Rather, "[t]he General Assembly must clearly show its intent to preempt a field in which it has legislated." *Id.*[7]

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[7] Moreover, the "presumption of constitutional validity that attends an act of the legislature is equally applicable to municipal ordinances." *Bilbar Constr. Co. v. Bd. of Adjustment*, 393 Pa. 62, 71, 141 A.2d 851, 856 (1958). "The burden of proving any ordinance unconstitutional is a heavy one inasmuch as the ordinance enjoys a strong presumption of validity." *Johnston v. Township of Plumcreek*, 859 A.2d 7, 10 (Pa. Commw. 2004) (*citing Shubach v. Silver*, 461 Pa. 366, 336 A.2d 328 (1975)), *alloc. den.*, 583 Pa. 684, 877 A.2d 463 (2005).

Accordingly, the burden is not on the City to demonstrate that the General Assembly intended to cede regulation of campaign contributions to local authority. Rather, the burden is on appellants to demonstrate that the General Assembly affirmatively intended to preclude the City from adopting such measures.

Moreover, as this Court's body of preemption case law demonstrates, a large regulatory scheme alone is not sufficient to find preemption. More must be shown. The Court must determine that the General Assembly actually *intended* for the state's comprehensive regulation to exclude local legislation for some particular reason, for example, because the legislature has entrusted regulation entirely to the jurisdiction of a specialized regulatory body with exclusive control of regulation of such matters.

In *Harris-Walsh, Inc. v. Dickson City Borough*, 420 Pa. 259, 274, 216 A.2d 329, 336 (1966), for example, the Anthracite Strip Mining and Conservation Act specifically provided that all coal stripping operations were within the "exclusive jurisdiction" of the Department of Mines, demonstrating an intent to preclude local regulation in that field. This Court found preemption of the field of liquor in *Commonwealth v. Wilsbach Distribs., Inc.*, 513 Pa. 215, 220-21, 519 A.2d 397, 400 (1986), because the state's regulation of alcoholic beverages is "plenary" and the Liquor Code states that the Liquor Control Board has "exclusive" control over all aspects of liquor manufacture, sale and use.

In connection with the banking industry, the Court found preemption in *City of Pittsburgh v. Allegheny Valley Bank*, 488 Pa. 544, 412 A.2d 1366 (1980), because "[i]n this area, commercial necessity presents a special need for

uniformity." *Council of Middletown Township v. Benham*, 514 Pa. 176, 183, 523 A.2d 311, 314 (1987) (discussing *Allegheny Valley Bank*). As noted by the Commonwealth Court, "[i]n these cases the legislature provided clear intent to preempt the various fields in which it has legislated." *Nutter*, 921 A.2d at 59 n.6; Slip Op. at 27 n.6 (discussing *Harris-Walsh*, *Wilsbach* and *Allegheny Valley Bank*).[8]

In the majority of implied field preemption cases, however, this Court has denied preemption claims, generally recognizing that the unique qualities and aspects of local jurisdictions might require regulation, even though circumstances throughout the state, or in other localities, might not.

In a seminal preemption decision, this Court found no preemption of a Pittsburgh ordinance requiring licensing for the operation of a restaurant, notwithstanding a comprehensive state licensing law, in part because the state scheme incorporated local involvement and in part because "it is obvious. . . that

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[8] In *Hydropress Envtl. Servs., Inc. v. Township of Upper Mount Bethel*, 575 Pa. 479, 836 A.2d 912 (2003), this Court held that the Township did not have the power, under the Second Class Township Code, to regulate and limit the deposit of biosolids on agricultural lands. *Id.* at 491-92, 836 A.2d at 919-20. A plurality of the Court (Castille, Saylor, Eakin, JJ.) would also have held that the Solid Waste Management Act preempted the local ordinance, as the Pennsylvania Department of Environmental Protection is "the expert in this area, which alone is delegated the comprehensive regulatory authority" to make decisions about the land application of biosolids. *Id.* at 493-94, 836 A.2d at 920-21. (Because an equal plurality would not have found preemption, there was no majority decision on the issue.) The plurality opinion in favor of preemption follows the pattern of this Court in sometimes finding preemption where the legislature had delegated implementation and enforcement of a complex regulatory scheme to a specialized regulatory agency.

the sanitary standards and appropriate regulations in the case of restaurants in a large city. . . might well be, and no doubt are, quite different from those applicable to rural communities." *Western Pa. Restaurant Assoc. v. Pittsburgh*, 366 Pa. 374, 382, 77 A.2d 616, 620 (1951).

In *Department of Licenses and Inspections v. Weber*, 394 Pa. 466, 471-72, 147 A.2d 326, 329 (1959), the Court emphasized that the manner of operation of beauty salons in a large City such as Philadelphia might differ substantially from that of a similar business in a smaller locale, and therefore the General Assembly could not be presumed to have foreclosed local regulation supplementing the state's regulation of such businesses.

In *Warren v. City of Philadelphia*, the Court held that the Landlord and Tenant Act, which extensively regulates the procedures for a landlord to take possession of his property, did not preempt a Philadelphia ordinance regulating the substantive grounds for eviction. 382 Pa. 380, 385-86, 115 A.2d 218, 221 (1955) (citing *Western Pa. Restaurant Assoc.* and other cases). The Court noted that generally, if the state and local law are not in conflict, the local law is upheld. "The theory behind these cases is that peculiar local conditions were such as to permit such regulation." *Id.* at 386, 115 A.2d at 221.[9]

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[9] Following this Court's lead, the Commonwealth Court has also refused suggestions that it recognize field preemption with respect to a variety of areas in which the Commonwealth has regulated far more extensively than it has with respect to campaign contributions. *See, e.g., Muehlieb v. City of Philadelphia*, 133 Pa. Commw. 133, 574 A.2d 1208 (1990) (The Dog Law, which regulates numerous aspects of dog ownership, does not prohibit local limitation on the number of dogs that may be kept by an owner in her home); *Northeastern Gas Co., Inc. v. Foster*

To be sure, and as Fattah notes (Brief at 13-14), in *some* instances in which this Court has denied preemption, its conclusion was impacted by positive indications of an intent to *permit* local legislation. *See Benham*, 514 Pa. at 180, 523 A.2d at 313 (Pennsylvania Sewage Act anticipated local involvement in enforcement of the Sewage Act and therefore Act could not be read to preempt local zoning ordinances dealing with sewers); *Mars Emergency Med. Servs.*, 559 Pa. at 315, 740 A.2d at 196 (language of Emergency Medical Services Act requiring local involvement in decision-making process regarding stratified system of trauma care demonstrates intent not to preempt local regulation in the area of emergency medical services).[10]

But Fattah ignores the tenor of the entirety of this Court's preemption precedent and misses the point.[11] The point is not that local authorization is

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Township Zoning Hearing Bd., 149 Pa. Commw. 477, 482, 613 A.2d 606, 609 (1992) (Gas Act does not preempt local regulation of the design, construction, location and operation of equipment in liquefied gas plant); *Hartman v. City of Allentown*, 880 A.2d 737 (Pa. Commw. 2005) (Pennsylvania Human Relations Act does not preempt Allentown ordinance providing for protection of classes of individuals not protected in PHRA).

[10] In *Hydropress*, the three-Justice plurality that voted against preemption (Cappy, Nigro, Lamb, JJ.) determined that various provisions of the Solid Waste Management Act, which delegated certain responsibilities to local authorities to implement the act in coordination with the Department of Environmental Resources, provided "language of intergovernmental coordination and cooperation, not of preemption." 575 Pa. at 490-91, 836 A.2d at 919.

[11] Notably, Fattah does not even cite, let alone address, the limited body of case law where the Court *found* field preemption, and therefore does not try to identify any guiding principles within this body of law.

needed in order to find that there is *no* preemption. *Western Pa. Restaurant Assoc.*, *Weber* and *Warren* do not teach that specific authorization of local regulatory authority is *necessary* for a finding that there is no preemption. Instead, the cases require that something far more than merely comprehensive state legislation is needed in order to *find* preemption. In examining whether the state legislative scheme affirmatively demonstrates an intent *to* preempt, indications of deference to local decision-making often simply provide evidence to the contrary.

Moreover, Fattah ignores the fact that the Ethics Acts *does* specifically authorize local supplementation, which, combined with the state's lack of comprehensive regulation in the relevant field, and the lack of any reason *why* a mandate of statewide uniformity *should* be inferred, conclusively demonstrates no intent to preempt.

B. Application Of These Principles Shows No Intent To Preempt.

Application of these principles leads to the conclusion that the General Assembly has not clearly demonstrated an intent to preempt the field. First, far from comprehensively legislating in the relevant field – campaign contribution regulation – the General Assembly has adopted only sparse regulation (*see* section B(1), *infra*). Second, the best indication of the General Assembly's intent is contained in the Ethics Act, which provides an explicit invitation to local government to supplement its provisions (*see* section B(2), *infra*). Third, Fattah provides no basis for a finding of an intent to preempt (*see* section B(3), *infra*). The General Assembly's choice not to adopt state-wide contribution limits

provides no indication of an intent to preempt such restrictions with respect to candidates for local office. And the policy-based concern raised by Fattah – that local governments will create "balkanized" campaign finance rules – is merely a red herring.

(1) The General Assembly Has Only Sparsely Regulated In The Relevant Field Of Campaign Contribution Rules.

Pennsylvania law contains essentially four provisions of law regarding campaign contributions: three contained in the Election Code and one contained in the Ethics Act.

Two of the provisions contained in the Election Code promote transparency with respect to political contributions (referred to herein as the "transparency provisions"):

- 25 P.S. § 3254 (prohibiting anonymous contributions, contributions made through a "pass through," or contributions in cash in amounts of more than $100 in a year); and

- 25 P.S. §§ 3242 to 3252 (requiring candidates, political committees and lobbyists to maintain records of, and publicly report, the sources and amounts of contributions they receive).

Additionally, the Election Code contains one provision directly limiting how certain entities may make political contributions:

- 25 P.S. § 3253 (prohibiting banks, corporations and unincorporated associations, except corporations formed primarily for political purposes, from making contributions or expenditures for political purposes, except that corporations

and unincorporated associations are permitted to establish segregated political funds, based on voluntary contributions from individuals, which may be used for political purposes).

These three provisions became law on October 4, 1978. Act No. 171, 1978 P.L. 893.

On that very same day, a companion law, the Public Official and Employee Ethics Act (commonly known as the "Ethics Act"), was adopted. *See* Act No. 170, 1978 P.L. 883 (subsequently codified at 65 Pa. C.S. § 1101, *et seq.*). The Ethics Act contains a provision limiting the use of political campaign contributions based on an "understanding" by the contributor that it would influence the recipient's judgment or official action:

- 65 Pa. C.S. § 1103 (prohibiting political contributions to a candidate for public office based on the contributor's understanding that the judgment or official action of the candidate will be influenced by the contribution, and prohibiting a candidate for office from soliciting such a contribution).

This is the sum total of regulation in Pennsylvania in the area of campaign contributions (apart from stray provisions addressing campaign contributions by those involved in a particular area of activity, *e.g.* 4 Pa. C.S. § 1513 (prohibiting, in the recently adopted Gaming Act, slot machine license applicants from contributing to a candidate for nomination or election to any public office in Pennsylvania)): one cannot make a contribution anonymously or in more than a small amount of cash; one cannot make a contribution directly through a corporate entity or a bank; and one cannot make a contribution with the understanding that it will influence the recipient's conduct. Nothing in these provisions regulates the

dollar amount that a lawful contributor can give to a candidate and nothing in these provisions gives any contributor a "right" to make unlimited contributions.

Fattah makes the conclusory assertion that the General Assembly has enacted "a comprehensive regulatory scheme that deals with all aspects of contributions and expenditures." Fattah Brief at 9. Yet Fattah points, in support, only to these same few provisions (though he ignores the Ethics Act's restrictions), citing a total of four rules as evidence of his "comprehensive regulatory scheme." These rules are properly characterized as a bare minimum of regulation allowing for a *modicum* of transparency regarding political contributions and *minimal* controls on the direct use of campaign contributions to obtain influence on government decision-making.

Pennsylvania's rules are nothing remotely on par with the legion of campaign contribution restrictions in place at the federal level. *See* 2 U.S.C., Chapter 14 (Federal Election Campaigns), § 431 *et seq.* (setting forth extensive rules regarding who may make contributions to federal campaigns and in what amounts, how such amounts must be reported, etc.). Nor are they even remotely as developed as the campaign contribution rules in place in most states and many localities. *See* Federal Election Commission, Campaign Finance Law 2002: A Summary of State Campaign Finance Laws With Quick Reference Charts, http://www.fec.gov/pubrec/cfl/cfl02/cfl02.shtml (outlining the extensive campaign finance rules of all the states, and demonstrating that Pennsylvania has among the fewest, and most lenient, rules of any state); New York City Administrative Code

§ 3-701, *et seq.* (providing extensive contribution limitations and other restrictions in connection with an elaborate system for public financing of election campaigns).

Nothing in Philadelphia's campaign contribution regulations would frustrate either the purpose or effect of any provision of the Election Code; both sets of rules can readily and easily co-exist. Far from occupying the field, nothing in Pennsylvania's minimalist approach to campaign contribution regulation evinces an intent by the General Assembly to preclude local supplementation.

Appellant Fattah also appears to argue that the Commonwealth's admittedly comprehensive regulation of the *mechanics* of actual elections – the location of polling places, the polling equipment used, the dates of elections, the mechanics of nominating candidates, the procedures for conducting the election, the procedures for counting votes, etc. – preempts the field of campaign contribution rules. Fattah seeks to shift the focus from the bare minimum of regulation in the relevant field to the Commonwealth's admittedly comprehensive regulation of the mechanics of elections. *See* Fattah Brief at 8-9.

Campaign contribution rules have virtually nothing to do with the mechanics of how elections are run. Rules governing the conduct of elections and rules governing campaign contributions involve separate fields.

The Election Code's rules governing the mechanics of how elections are conducted establish the means by which candidates gain access to the ballot; the means by which government operates the elections themselves (*i.e.*, where, when and how the government places and operates its voting machinery); and the means by which the citizens actually cast their ballots. Ultimately, by establishing the

rules for the mechanics of elections, the General Assembly assures that the government accurately polls the people to determine their will.

In contrast, campaign contribution limits regulate the relationship between contributors and candidates. The primary purpose of such rules is to reduce the influence (both actual and apparent) of political contributors on the decision-making of those candidates, once they become elected officials. The fact that the General Assembly may have comprehensively, and perhaps even preemptively, regulated in the area of the manner by which local governments conduct the *mechanics of elections* is irrelevant to the General Assembly's intent with respect to regulation of the relationship between campaign contributors and future elected officials.

Accordingly, Fattah's reference to the Pennsylvania constitutional mandate that laws "regulating the holding of elections" and for "the registration of electors. . . shall be uniform throughout the State" is inapt. Fattah Brief at 8. Similarly, Fattah's repeated citation to *Kuznik v. Westmoreland County Bd. of Comm'rs*, 588 Pa. 95, 902 A.2d 476 (2006) (relying in part on the constitutional requirement that laws "regulating the holding of elections" be uniform to permit the purchase of certain electronic voting machines so that the use of separate machines to cast votes for state and federal candidates could be avoided) (Fattah Brief at 8, 13, 15), is also inapt. Philadelphia has not regulated with respect to the "holding of

elections" and therefore has not entered an area where "uniformity" is either required or even necessary.[12]

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[12] Fattah argues that two sections of the 1937 Election Code invite local legislation with respect to election matters, and that this demonstrates an intent *not* to permit local legislation with respect to other matters covered within the Election Code, including matters added to the Election Code 40 years later. Fattah Brief at 13. Fattah is wrong about the invitation, and wrong about the conclusion.

The first of the provisions cited by Fattah – 25 P.S. § 2641(a) – is entirely inapt, because it does not authorize local legislation. Rather, it simply designates county boards of election as the administrative agencies charged with conducting elections. Nor is the second provision – 25 P.S. § 2642(f) – instructive. Subsection 2642(f) authorizes county boards of election to make rules and regulations, not inconsistent with law, necessary to guide voting machine custodians, election officers and electors. The subsection is not an invitation to local supplementation. Rather, it is the express method by which the state seeks to carry out its own regulatory scheme, set forth in the very statutory section that *establishes the powers* of the administrative agencies – local boards of election – which the General Assembly has chosen to administer its electoral system.

Moreover, even if this provision were viewed as an invitation to local supplementation, the fact that the General Assembly (in 1937) would have deemed it necessary to specifically authorize local supplementation with respect to the core aspects of the mechanics of elections, such as instructions to the voters – where state-wide legislation obviously is comprehensive and with respect to which a need for uniformity of procedure would readily be assumed – says absolutely nothing about the General Assembly's intent (in 1978) with respect to an entirely different field (campaign contributions), particularly when the General Assembly has left that field largely unregulated and with respect to which field there is no need for statewide uniformity.

Lastly, as discussed in section B(2), *infra*, the explicit invitation in the Ethics Act regarding local supplementation of matters such as campaign contributions made to elected officials is the clearest, and most telling, indication of the General Assembly's intent in this regard.

The General Assembly's decision to place some of its few campaign contribution rules into the comprehensive statute regulating the mechanics of elections (the Election Code) neither turns the contribution rules into rules governing the mechanics of elections, nor subjects them to any preemption that might apply to the rules governing election mechanics.

As the Commonwealth Court recognized (*Nutter*, 921 A.2d at 60-61; Slip Op. at 29-30), regardless the comprehensiveness of the state's regulation of the mechanics of elections, the real question is whether the General Assembly has expressed an intent to preempt the field of campaign contribution limits.[13] The Commonwealth is, of course, not obligated to provide comprehensive (or even any) campaign contribution rules. But the minimal rules it has adopted (a few transparency rules set forth in the Election Code and a significant prohibition contained in the Ethics Act) cannot fairly be described as "comprehensive."

(2) The Ethics Act Explicitly Invites Supplementation By Local Governments.

This Court need not rely solely on the fact that the General Assembly has regulated so minimally in the relevant field to determine that there is no field preemption here. The very best indication of the intent of the General Assembly

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[13] The trial court also properly recognized that the relevant question is *not* whether the General Assembly has evinced an intent to occupy fully the field of election regulation, but, rather, the relevant "field" for purposes of field preemption analysis is the field of campaign contribution regulation. *See* "Findings-Conclusions and Order" at 9 (finding "comprehensive legislative scheme regulating political campaign contributions"); Opinion at 19.

with respect to campaign contribution rules is set forth in the Public Official and Employee Ethics Act (the "Ethics Act"), which *explicitly authorizes* supplemental legislation.

On September 27, 1978, the General Assembly addressed the area of campaign contributions by: providing for limited transparency (Act No. 171); prohibiting certain corporate contributions (Act No. 171); and prohibiting contributions made with an understanding that they would influence public decision makers (Act No. 170). At the same time, the General Assembly made clear its intent with respect to local legislation. Section 11 of Act No. 170, now codified at 65 Pa. C.S. § 1111, provides: **"Any governmental body may adopt requirements to supplement this chapter, provided that no such requirements shall in any way be less restrictive than the chapter."** (Emphasis added.) Both Act No. 170 and Act No. 171 were signed into law by the Governor on October 4, 1978, each to be effective January 1, 1979.[14]

The General Assembly could not possibly have provided a clearer statement of its intent with respect to preemption regarding the regulation of campaign contributions. The General Assembly has prohibited campaign contributions intended to influence official action, and has expressly authorized local legislation designed to "supplement" this prohibition.

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[14] *See* 1 Pa. C.S. § 1932 (statutes that "relate to the same persons or things or to the same class of persons or things" are in "pari materia" and "shall be construed together, if possible, as one statute.").

We argued this point extensively below. *See* Brief of Appellant City of Philadelphia (Commonwealth Court) at 29-38. The Commonwealth Court expressly agreed with us, relying on the Ethics Act as additional support for its conclusion that the General Assembly did not intent to preempt. *Nutter*, 921 A.2d at 61 n.8; Slip Op. at 30 n.8 ("The Court agrees with Nutter and the City that the Ethics Act provides added support for validating the Ordinance, which supplements the purposes of the Ethics Act."). Yet Appellants ignore this holding of the Commonwealth Court below, not once citing, let alone attempting to distinguish, the Ethics Act's express authorization of local supplementation.

Appellants will argue in reply that Chapter 20-1000 is not the sort of ethics regulation that the General Assembly invited in section 1111 of Title 65, Pa. C.S. But Appellants cannot point to anything in the Ethics Act to support this speculation. The Ethics Act – in the very same Chapter in which the General Assembly invites supplemental local regulation – explicitly prohibits the use of a campaign contribution to influence governmental decision-making. The contribution limitations of Chapter 20-1000 are precisely the type of supplemental legislation contemplated by the Ethics Act. Indeed, the contribution limitations of Chapter 20-1000 are far more akin to the Ethics Act's prohibitions on influence-seeking contributions than they are to any provisions of the Election Code.

There can be no serious dispute regarding the purpose of campaign contribution limitations, and that purpose is fully aligned with the Ethics Act's purpose. As the United States Supreme Court has long recognized, in the seminal case testing the constitutionality of campaign contribution limitations, the

"constitutionally sufficient justification" for campaign contribution limitations is "the prevention of corruption and the appearance of corruption." *Buckley v. Valeo*, 424 U.S. 1, 25-26 (1976).

> To the extent that large contributions are given to secure political *quid pro quo*'s from current and potential office holders, the integrity of our system of representative democracy is undermined. . . Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent."

Id. at 27 (quoting *United States Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973)). *See also Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 385-394 (2000) (discussing and applying *Buckley*).

These concerns were plainly shared by the City Council itself, including the sponsor of the legislation and other supporters, in enacting Chapter 20-1000. *See, e.g.*, Transcript of the Stated Meeting of the Council of the City of Philadelphia, December 18, 2003 (Exhibit "A" hereto), p. 30 (Goode, the Bill's sponsor) ("the influence of political money is corrupting our system of democratic governance"); p. 32 (Kenney) (bill will combat public perception that "people take campaign contributions automatically to give a *quid pro quo* for consideration of bills"); p. 50 (Ortiz) ("This is one step" toward eliminating "pay-to-play."). In a related Philadelphia case, in which defendants also challenged the validity of the same

ordinance at issue here, the Court of Common Pleas explained "[t]he rationale for the ordinance is to promote honesty in government by prohibiting individuals from contributing more than $2500 per calendar year to a candidate . . . .". *Schimmel v. Dougherty, et al.*, April Term 2006, No. 1233 (Phila. C.P.) (Glazer, J.) (R. 123a).[15]

The Ethics Act, like the campaign contribution limits at issue in this case, is also explicitly intended to protect against the erosion of confidence in the impartiality of elected officials. In explaining the purpose of the Ethics Act, the General Assembly stated: "In order to strengthen the faith and confidence of the people of this Commonwealth in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of *or nominees or candidates for public office* do not conflict with the public trust." 65 Pa. C.S. § 1101.1 (emphasis added).

The Ethics Act supports these salutary principles by prohibiting the use of campaign contributions for the purpose of obtaining influence. Chapter 20-1000 furthers these same purposes and principles by establishing a prophylactic measure to restrain giving that might lead to, or appear to lead to, improper influence or understandings, thereby adding greater protections against the use of campaign contributions for improper purposes. This prophylactic measure supplements the

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[15] In a ruling on preliminary objections, the *Schimmel* court rejected the preemption argument and upheld the validity of the ordinance. (R. 122a) The *Schimmel* case was withdrawn before a final order was issued, however, hence no appeal was taken in that case.

more direct prohibition contained in the Ethics Act.[16] Thus, there really can be no dispute that both legislative provisions are designed to serve the same purpose and to prevent the same evil, that they regulate in the same field, and that the Council legislation supplements the salutary purposes of the state legislation.[17]

Although the "transparency provisions" of the Election Code might have some impact in this same regard, to the extent they do so they are much less direct than either the Ethics Act prohibitions or the prophylactic rules of Chapter 20-1000. Although the transparency provisions permit the press and the public to scrutinize who has contributed to candidates, so that the possibility of public criticism might dampen the willingness of contributors and politicians to stand

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[16] We say more direct because, in this regard, the Ethics Act goes even farther than a traditional bribery statute that prohibits "*quid pro quo*" arrangements. The Ethics Act prohibits contributions "based on the offeror's or donor's understanding" that the action or judgment of the candidate "would be influenced thereby." 65 Pa. C.S. § 1103. Under section 1103, it is not necessary for the offeror or contributor to actually receive a governmental benefit as a result of the contribution in order to violate the statute, or even to have an actual agreement or understanding with the recipient. It is sufficient to be in violation if the offeror or contributor provides the contribution merely with his or her own unilateral "understanding" that the contribution will influence decision-making. *See Commonwealth v. Heistand*, 454 Pa. Super. 482, 486-87, 685 A.2d 1026, 1028 (1996).

[17] The Ethics Act also bans public officials and employees from receiving honoraria. 65 Pa. C.S. 1103(d). The ban on honoraria is the same type of prophylactic rule as the City's campaign contribution limits, *i.e.*, the ban is a prophylactic rule that protects the impartiality of government officials and employees, even in circumstances where no actual *quid pro quo* or improper understanding has been suggested, because of the broad potential for abuse in that area.

accused of engaging in improper or *quid pro quo* arrangements (or arrangements that appear to cast an improper appearance), they do not provide any direct protections against improper influence or *quid pro quo* in the same manner as do the Ethics Act rules and the prophylactic rules of Chapter 20-1000. Thus, it cannot genuinely be disputed that Chapter 20-1000 supplements the Ethics Act far more than it can be said to supplement the Election Code (not that there is even the remotest indication that the City is precluded from supplementing the Election Code's minimal campaign contribution regulations).[18]

For these reasons, the City's case is even stronger than presented by Allegheny County in *Retail Master Bakers Assoc. v. Allegheny County*, 400 Pa. 1, 161 A.2d 36 (1960). In that case, a bakers association argued that state law regulating bakers preempted the field of baking regulation. In addition to determining that the state legislation reflected no intention to preempt the field (similarly to cases like *Western Pa. Restaurant Assoc.* and *Weber*), the Court held

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[18] To be sure, certain provisions of Chapter 20-1000 would supplement the "transparency provisions" of the Election Code. Chapter 20-1000, for example, requires the electronic filing of campaign finance disclosures, to improve upon the public availability and transparency of campaign finance filings. But the core of Chapter 20-1000 about which appellants protest – the campaign contribution limitations – are far more akin to the direct protections of the Ethics Act against improper campaign contributions than they are to the transparency rules of the Election Code. And even if this Court were to conclude that the General Assembly had occupied the field of transparency regulations through a comprehensive regulatory scheme and that there was such a need for uniformity as to prevent local rules for local candidates, such a conclusion would not overcome the lack of any occupation of the field of *regulating contributions* or the General Assembly's explicit invitation for local supplementation in the field of prevention of the potential corruption of local officials.

that "[t]he case is stronger where, as here," Allegheny County could point to the state's explicit authorization to the county to regulate public health. *Id.* at 4, 161 A.2d at 38. Thus, even the *general* authorization to protect public health in that case supported the conclusion that the General Assembly did not intend to preempt through its more specific bakers law. In the instant case, the authorization in the Ethics Act is *specific* to the very subject regulated by Chapter 20-1000 – measures designed to prevent improper influence on government decision-making, whether through campaign contributions, honoraria or otherwise.[19]

For these reasons, the explicit authorization of supplemental legislation in the Ethics Act demonstrates that not only did the General Assembly not intend to preempt local legislation when it enacted its few campaign contribution rules in 1978, but that the General Assembly has demonstrated a clear intent to invite local

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[19] In *Hartman v. City of Allentown*, 880 A.2d 737 (Pa. Commw. 2005), the Commonwealth Court analyzed whether the Pennsylvania Human Relations Act preempted an Allentown ordinance that prohibited discrimination based on sexual orientation and gender identity, given that the PHRA did not prohibit such discrimination and did not recognize either sexual orientation or gender identity as a basis for claiming protection from discrimination. The Court determined that supplementation provisions of the PHRA helped demonstrate that "the General Assembly intended to preserve anti-discrimination ordinances from preemption," *id.* at 751, even though the Allentown ordinance plainly addressed matters of discrimination not even contemplated by the PHRA. In *Hartman*, the statutory provisions inviting supplemental legislation were cited in support of local legislation, protecting entirely new classes of individuals, lying far afield from the basic state law. Here, the City does not stray nearly as far as did Allentown from the authorizing state law. Chapter 20-1000 not only supplements, but indeed complements, the state's mode of addressing the very same evil. The nexus between the Ethics Act and the Philadelphia ordinance is far greater than the nexus between the PHRA and the Allentown ordinance upheld in *Hartman*.

regulation of campaign contributions, particularly when those local regulations are fully aligned with the purposes of the Ethics Act.

(3) Fattah Proffers No Legitimate Basis On Which A Determination Of An Intent To Preempt Could Be Based.

(i) Silence With Respect To A Subject Cannot Constitute Legislative Intent To Foreclose Supplemental Legislation.

The primary thrust of Fattah's argument in support of field preemption (Fattah Brief at 11-13, 14) is that the General Assembly's choice not to replicate at the state level the truly comprehensive contribution regulations that were adopted at the federal level demonstrates an intent to foreclose supplemental legislation at the local level. "That omission to adopt contribution limits, notwithstanding the adoption of other key language from the federal model, is virtually dispositive of the question whether the General Assembly intended, as the City now contends, to permit municipalities to impose contribution limits." *Id.* at 13.

Fattah's argument makes no sense and makes a mockery of field preemption analysis. The mere fact that the General Assembly chose not to regulate certain behavior at the state level says absolutely nothing about its intent with respect to local regulation of that behavior at the local level. Indeed, it flips the required analysis on its head. An affirmative decision to *comprehensively* regulate in a field is a precondition for finding an intent to fully occupy the field and preempt. A

decision *not* to adopt regulations signifies the opposite, *i.e.*, a decision *not* to occupy the field.

Moreover, in *every* field preemption challenge, a local body will have regulated behavior that the General Assembly has chosen not to regulate. If Fattah's theory were to hold, the Court would have found field preemption in *Weber* and *Western Pa. Restaurant Assoc.* and all other field preemption cases, because in all such cases the local body has imposed requirements at the local level that the General Assembly has chosen not to establish at the state level. Accordingly, this Court should apply the time-tested field preemption test, and not Fattah's inverse preemption analysis.[20]

For these reasons, the Commonwealth Court specifically rejected Fattah's argument:

> the Court is not persuaded by the contention that the legislature's failure to adopt the federal campaign contribution limits somehow forecasts the legislature's intent to preempt the field of campaign finance in connection with the regulation of limits on the dollar amount of campaign contributions made to candidates for local elective office.

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[20] Fattah tries to make much of the claim that the policy choices regarding campaign contributions were supposedly "before" the General Assembly in the 1970s, given that the General Assembly was supposedly working off of a federal model that contained such regulations when it adopted its own, minimal provisions. But Fattah does not and cannot provide any case law support for the concept that the legislature's awareness and rejection of a particular policy option is relevant to determining whether or not their policy choices at the state level reflect an intent to preempt local regulation.

921 A.2d at 61 n.8; Slip Op. at 30 n.8. As continues to be the case, "Fattah [has not] offered statutory or case law authority to support [his] position[]." *Id.* The General Assembly's silence with respect to contribution limits tells us nothing other than that the General Assembly did not wish to impose contribution limits statewide.

Regardless, even if one could *infer* from silence an *implicit* intent to preempt, any such *implied* suggestion is belied by and superseded by the General Assembly's *express* authorization enacted at the same time as the 1978 "enactment" of the silence. Indeed, the General Assembly made express its intent to have the Ethics Act supersede in this regard, stating, "if the provisions of this chapter [the Ethics Act] conflict with any other statute, ordinance, regulation or rule, the provisions of this chapter shall control." 65 Pa. C.S. § 1112. Thus, the local supplementation "provision[] of this chapter [section 1111] . . . control[s]" over any conflicting statute. *Cf. City of Philadelphia v. Clement & Muller, Inc.*, 552 Pa. 317, 715 A.2d 397 (1998) (express authorization of local taxation "[n]otwithstanding a contrary provision of law of the Commonwealth," supersedes implied preemption of liquor taxation previously found in *Wilsbach*).

(ii) The Supposed Specter Of "Balkanized" Regulation Is A Red Herring.

Fattah's second basis for claiming the General Assembly has demonstrated an intent to preempt is his conclusory assertion, quoting the lone dissent to the Commonwealth Court's *en banc* decision, that "the natural consequence of this

decision will be that any County or municipality with a home rule charter will adopt its own campaign financing code" and that this will create "balkanization of the Election Code." Fattah Brief at 10 (quoting dissenting Opinion of Colins, J., *Nutter*, 921 A.2d at 68; Slip Op. at JGC-4). This assertion completely misses the point.

First, because campaign contribution rules regulate an area entirely independent of the mechanics of elections regulated by the Election Code generally, the rules governing the conduct of *elections* will retain precisely the same uniformity they now enjoy, regardless the campaign contribution rules that local jurisdictions may adopt in the future. Balkanization of campaign contribution rules applicable to local candidates might result, but not "balkanization of the Election Code."

Second, Fattah does not, and cannot, identify a single harm that would flow from the application of different contribution rules in local elections in different jurisdictions. Fattah provides no explanation for why such supposed balkanization would be a problem.

Indeed, a "balkanized" system is now the precise model under which candidates operate pursuant to differing federal and state campaign finance rules. Federal candidates operate under one uniform system; yet each state has its own distinct system for regulating contributions to candidates for state office. The City's rules, as an addition to the state framework, parallel the federal/state model. Congressman Fattah, when he is a Congressional candidate, must follow the federal rules and, should he run for Pennsylvania office, he would also be subject

to the minimal rules applicable at the state level. Candidates for City office in Philadelphia, in addition to being subject to the minimal state contribution rules, are also subject to the City's local contribution limits. Candidates for municipal office in other Pennsylvania municipalities would similarly be subject to local rules applicable there. The federal/state model clearly demonstrates why there is **no** "need" for uniformity with respect to local candidates. Different rules that apply to candidates for different tiers of government office can, and do, work well together.[21]

Balkanization is merely another way of saying that differing jurisdictions may take different approaches to varying degrees of the same type of problem. Fattah cannot dispute the City's contention (and City Council's conclusion) that the public perception regarding political representation in Philadelphia may be sufficiently different from local public perception in other parts of the Commonwealth so as to necessitate local contribution limits, applicable only in Philadelphia. As recognized in *Western Pa. Restaurant Assoc. v. Pittsburgh*, 366 Pa. 374, 77 A.2d 616 (1951) (regulation of sanitary conditions of restaurants), the particular needs of different localities may require varying local responses, and the

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[21] Notwithstanding the fact that both federal and state officials were candidates in the recently conducted primary campaign for Mayor in Philadelphia, Fattah has not even suggested that application of the Philadelphia rules created any compliance problems for such candidates. Nor will any difficulties arise from federal and state candidates' need to follow federal campaign contribution rules in connection with their federal campaigns; the state's minimal rules with respect to their state campaigns; and both state and local rules with respect to their local campaigns.

state legislature is not presumed to have foreclosed such responses merely upon phantom suggestions of "balkanization."[22]

As explained in a decision of the Supreme Court of Utah in a similar context,

> With the differences in the nature of the counties in the State of Utah with respect to population, wealth, and other factors which have a relationship to the integrity of the electoral processes, it is reasonable, in the absence of state legislation, that each county should deal with the problem of the integrity of its electoral processes as it deems appropriate.

The State of Utah v. Hutchinson, 624 P.2d 1116, 1127 (Utah 1980). This is particularly true in connection with the state's largest city, Philadelphia, which is a

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[22] In *Hydropress*, the plurality of the Court that would have determined an ordinance of the Township of Upper Mount Bethel preempted by the Solid Waste Management Act (Castille, Saylor, Eakin, JJ.) (*see* footnote 8, *supra*) stated that it was "implausible" that the General Assembly "contemplated that a subject such as this [land deposit of biosolids] should be subject to the inevitable balkanization that would follow from permitting onerous regulations propounded by the myriad of local governmental entities, unskilled in this area." 575 Pa. at 494, 836 A.2d at 921. Balkanization of the regulation of solid waste disposal obviously presents practical concerns not presented by varied local regulation of campaign contributions to candidates for local office. Treated municipal waste must be deposited somewhere, and the "not in my back yard" attitude likely to crop up in myriad local jurisdictions, as the well as the border-crossing environmental problems associated with agricultural run-off, and the lack of local, technical expertise, present problems that cry out for centralized treatment at the state level. The plurality therefore understandably considered the General Assembly's assignment of regulatory and permitting authority to the Department of Environmental Protection to be exclusive. *Id.* at 493-94, 836 A.2d at 920-21. Here, however, there simply is no reason that "balkanized" regulation of contributions to local candidates presents any sort of state-wide problem or need for uniformity. Indeed, it would be the truly rare candidate who would need to familiarize himself with the contribution limitations of more than one jurisdiction.

notoriously expensive media market and the location of many large businesses and wealthy individuals, where the potential costs of a political campaign are high, fundraising opportunities are significant, and thus the potentially corrupting influence of campaign contributions is particularly acute. Nothing in state law suggests an intention to abrogate the opportunity for local governments to supplement the minimal state legislation in this area as local bodies deem appropriate.[23]

4. Not A Single Provision Of Chapter 20-1000 Conflicts In Any Respect With Any Provision Of The Election Code.

Unlike Appellant Fattah, Appellant Dougherty does not rely on a "field preemption" argument. Dougherty, rather, argues that Chapter 20-1000 is somehow "contrary to" or "in limitation of" the Pennsylvania Election Code, in violation of the First Class City Home Rule Act. Dougherty Brief, *passim.*[24]

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[23] Fattah also tries to compare the City's legislation to the hunting regulations struck down by the Commonwealth Court in *Duff v. Township of Northampton*, 110 Pa. Commw. 277, 532 A.2d 500 (1987), *aff'd mem.*, 520 Pa. 79, 550 A.2d 1319 (1988). Fattah Brief at 10-11. In *Duff*, the Commonwealth Court addressed the rules that would apply to one, indivisible activity. Unlike political candidates who run for "state" or "local" office, there is no such thing as "state" hunting or "local" hunting. Hunting is hunting; game do not respect jurisdictional boundaries. "[C]haos, confusion and danger" might truly arise if different rules applied in different jurisdictions. *Duff*, 110 Pa. Commw. at 293, 532 A.2d at 507. In contrast, campaigns for political office are segregated between campaigns for local office and campaigns for state office. Fattah has simply failed to demonstrate that any concrete problems follow from the application of state-wide rules to candidates for all offices, and certain additional rules to candidates for local office.

[24] Although Fattah also made the "conflict" argument below (*see* Brief of Appellee Fattah (Commonwealth Court) at 5-10, 15), he has abandoned the

Dougherty argues that the contribution limits of Chapter 20-1000 somehow conflict with the absence of contribution limits in state law. This argument turns Pennsylvania preemption case law entirely on its head. In support of this argument, Dougherty relies almost exclusively on a misreading of *Cali v. City of Philadelphia*, 406 Pa. 290, 177 A.2d 824 (1962), which provides no support for his position.

The standard for finding conflict preemption is quite high. "Where an ordinance conflicts with a statute, the will of the municipality as expressed through an ordinance will be respected unless the conflict between the statute and the ordinance is irreconcilable." *City Council of the City of Bethlehem v. Marcincin*, 512 Pa. 1, 13, 515 A.2d 1320, 1326 (1986). Chapter 20-1000 does not actually conflict with any statute, however, and therefore the Court need not even apply this standard.[25]

Notwithstanding Dougherty's claims to the contrary (Dougherty Brief at 14, 16), nothing in state law affirmatively permits, or provides a right to, unlimited contributions to local (or, for that matter, any) candidates. Dougherty cannot point to anything in the state's campaign contribution rules suggesting a desire to promote or protect unlimited contributions to local candidates. As recognized by Judge Glazer in the related *Schimmel* case, "[t]he Election Code does not

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argument before this Court, instead relying entirely upon the argument that the General Assembly has, *sub silentio*, preempted the field of campaign finance regulation.

[25] The Commonwealth Court stated that it "agrees with the City that conflict preemption does not apply." *Nutter*, 921 A.2d at 49 n.4; Slip Op. at 8 n.4.

affirmatively protect any right of a candidate to receive unlimited campaign contributions." (R. 123a) Rather, apart from a few scattered measures, the General Assembly has simply chosen not to adopt its own restrictions.

Silence on a subject does not, as Dougherty claims, create an affirmative permission to act. If state silence were sufficient to create a conflict, then every preemption challenge to local legislation would succeed, because in every case the locality would be regulating conduct the General Assembly had chosen not to prohibit, *i.e.*, where the General Assembly had remained silent. But the Pennsylvania courts obviously do not treat preemption in this manner. *See, e.g., Department of Licenses and Inspections v. Weber*, 394 Pa. 466, 474-75, 147 A.2d 326, 300-31 (1959) (when Philadelphia imposed local regulation on the sanitary conditions of beauty salons, new "straws of the statutory broom [were] added," where the General Assembly had otherwise been silent; no preemption); *Hartman v. City of Allentown*, 880 A.2d 737 (Pa. Commw. 2005) (no conflict between the General Assembly's silence with respect to discrimination based on sexual orientation and local ordinance prohibiting such discrimination).[26]

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[26] Indeed, even in cases where the state has affirmatively licensed an activity, this has been held insufficient to demonstrate an intent to "permit" an activity that local government was attempting to prohibit. *See Muehlieb v. City of Philadelphia*, 133 Pa. Commw. 133, 139, 574 A.2d 1208, 1211 (1990) (state license under the Dog Law to operate a 50-dog kennel does not "grant to Muehlieb the unfettered right to house up to fifty dogs in her home without regard to the City's legitimate interest in protecting the health, safety and welfare of its residents"). In *Duff*, 110 Pa. Commw. at 284, 532 A.2d at 503, the Commonwealth Court recognized that, in adopting the Game Law, the State was balancing a need for uniform safety precautions with *the need to affirmatively permit hunting*; and that if localities had more restrictive "safety zone" rules than established under

Moreover, as we explained *supra* (page 36), if this were not the rule, the entire concept of "field" preemption would make no sense at all, as all field preemption challenges are premised on situations where a local body has regulated in an area to a greater extent than has the General Assembly. If Dougherty's proposed standard were the law, *every* local regulation would *always be preempted* when it addressed an aspect of a field of regulation left unaddressed by the General Assembly. But this is not the law.[27]

The only case law cited by Dougherty in support of his conflict argument is the *Cali* decision, which, as the Commonwealth Court explained, does not support Dougherty's erroneous view of conflict preemption. In *Cali*, several taxpayers challenged a plan to nominate candidates for Mayor to be selected at a special election during the 1962 general election, in order to fill a vacancy in the office of Mayor created by the February 1962 resignation of Richardson Dilworth. The

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state law, this would interfere with the state's balanced scheme to *promote* hunting, within limits circumscribed by the state. Nothing in the state's election laws are designed to *promote* campaign contributions. As the Commonwealth Court noted below, this case is unlike *Duff*, where the local law conflicted with state law. Unlike in *Duff*, "[t]he Ordinance here was not enacted in direct conflict with a state statute." *Nutter*, 921 A.2d at 61 n.7; Slip Op. at 29 n.7.

[27] Dougherty has not even attempted to argue that Chapter 20-1000 in any way constitutes an obstacle to the accomplishment and execution of the objectives of state law. Dougherty has not suggested any concrete problem in the full enforcement of state law in tandem with the enforcement of Chapter 20-1000. All the goals and objectives of the state rules governing the operation of elections can be fully realized, without impairment whatsoever, notwithstanding enforcement of Chapter 20-1000. All the goals and objectives of the state's minimal rules governing campaign contributions can be fully realized, without impairment whatsoever, notwithstanding enforcement of Chapter 20-1000.

Philadelphia Home Rule Charter provides in relevant part that "[a]n election to fill a vacancy for an unexpired term in the office of Mayor shall be held at the next municipal or general election occurring more than thirty days after the vacancy occurs." Charter section 3-500 (emphasis added). The Pennsylvania Election Code, however, provides that "all. . . city. . . officers shall be elected at the municipal election." Section 602 of the Election Code, 25 P.S. § 2752 (emphasis added). Hence, the conflict.

This Court, focusing on the above-quoted language in the Election Code, determined that

> The language of Section 602 is mandatory and requires *all* city officers to be elected at the municipal election which shall be held in odd-numbered years. The City contends that this refers only to an election for a regular term of service, and not to elections to fill a vacancy or to other special elections. . . . we disagree with this contention.

Id. at 303-04, 177 A.2d at 831.

The Court then proceeded to explain two related reasons for why it determined that the state-law requirement that "all" city officers be elected at the municipal election was in conflict with the Home Rule Charter's provision permitting Mayoral vacancies to be filled at a primary election. First, the Court explained, "the word 'all' is prima facie all-inclusive." *Id.* at 304, 177 A.2d at 831. Second, although the Election Code contains provisions permitting special elections for vacant senatorial and gubernatorial seats, and even vacant City

Council seats, at out-of-the-ordinary times, the Election Code contains no such provision for Mayoral elections. *Id.*

The Court did not, however, determine that the Election Code was "silent" with respect to special elections. Rather, it determined that special elections were specifically covered by the statute's reference to the election of "all" city officers, in part evidenced by the fact that the General Assembly, having adopted a specific rule applicable to special elections for other types of office, apparently decided not to do so with respect to special elections to municipal office.

The case is simply inapposite, as recognized by the Commonwealth Court, because the ordinance in *Cali* "permitted what. . . state statute[] directly forbade." *Nutter*, 921 A.2d at 56; Slip Op. at 23-24 (*Cali* Court ruled against City because state law providing for election of "all" city officers in odd-numbered years was in direct conflict with City provision providing for special election in even-numbered year).

For these reasons, Dougherty's conflict preemption argument is without merit, as there is no conflict between Chapter 20-1000 and any state law provisions; nor is there anything in state law that suggests any limitation on the City's power to enact campaign contribution regulations. The General Assembly's silence with respect to certain aspects of regulation is irrelevant to this analysis.

V. CONCLUSION

The City of Philadelphia respectfully requests this Court to affirm the decision of the Commonwealth Court, which reversed the decision of the trial court below striking down the City's campaign contributions Ordinance, and to enter judgment in favor of The City of Philadelphia with respect to the Counterclaim of Dougherty and Fattah, and affirm the validity of Chapter 20-1000 of The Philadelphia Code.

Respectfully submitted,

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Dated: July 11, 2007

EXHIBIT "A"

COUNCIL OF THE CITY OF PHILADELPHIA

STATED MEETING

- - - -

Room 696, City Hall
Philadelphia, Pennsylvania
Thursday, December 18, 2003
10:30 a.m.

- - - -

PRESENT:

COUNCIL PRESIDENT ANNA C. VERNA
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK J. DICICCO
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JAMES F. KENNEY
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN BRIAN J. O'NEILL
COUNCILMAN ANGEL L. ORTIZ
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN FRANK RIZZO
COUNCILWOMAN MARIAN B. TASCO

PATRICIA RAFFERTY, CHIEF CLERK

- - - -

V A R A L L O Incorporated
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copies of the Mayor's bills that he's vetoing?

If you don't, please -- do we have copies of Bill No. 030686?

(Pause.)

COUNCIL PRESIDENT VERNA: Does everyone now have a copy of the letter regarding Bill No. 030686?

If you do not, please raise your hand so that we'll make certain that you have a copy of the letter.

So I'm assuming everyone has a copy of the letter.

Do Councilmembers want a brief time to read the letters since we just received them?

(Pause.)

COUNCIL PRESIDENT VERNA: Council will now proceed under a special order of business to the reconsideration of Bill No. 030562. This bill was passed by the Council at its December 4, 2003 Session and was returned disapproved by the Mayor to today's Session of Council.

At this time, the Chair recognizes

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Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President. I move that Council reconsider Bill No. 030562, which was approved by Council on December 4, 2003.

(Duly seconded.)

COUNCILMAN GOODE: And I would like to be heard at the appropriate time on the veto override.

COUNCIL PRESIDENT VERNA: The Clerk will please read the title of the bill.

THE CHIEF CLERK: Bill No. 030562, an ordinance amending Title 20 of the Philadelphia Code, entitled "officers and Employees," by adding a new chapter entitled "Campaign contributions and expenditures, under certain terms and conditions.

COUNCIL PRESIDENT VERNA: All in favor, let it known by saying aye.

(Aye.)

COUNCIL PRESIDENT VERNA: Those opposed?

(No response.)

COUNCIL PRESIDENT VERNA: The ayes

have it, the motion carries.

Council will now reconsider the vote by which Bill No. 030562 was passed.

The Chief Clerk has already read the title of the bill.

Councilman Goode wants to be heard on the motion.

COUNCILMAN GOODE: Thank you, Madam President. Today as is the last session of my freshman term in Council. First I want to sincerely thank every member of this Council for their unanimous support of my first 17 bills. I also want to thank Councilwoman Brown for her cosponsorship of this bill.

In addition, I must give Councilmen Kenney, Ortiz and Cohen credit for their leadership on this issue over the last few years.

Today, this Council answered a fundamental question: Should a candidate to become Mayor of this City or candidate to become a member of this Council be able to take as much money as they want from whoever they want whenever they want? The answer

should be no.

Today, a majority of this Council will vote to override the Mayor's veto of this bill that establishes fair and reasonable contribution limits, establishing some rules rather than none.

Today, a majority of this Council will protect the most fundamental precept of American democracy, the precept that we live in a one-person, one-vote political system. Others may argue that we also live in a capital system of free enterprise protected by First Amendment rights. The Supreme Court recently ruled on that matter as it relates to political money. To paraphrase majority opinion of the Court, the influence of political money is corrupting our system of democratic governance. It is clear that big political money is destroying our one-person, one-vote system. Wealthy political contributors are consciously seeing to strip economically disadvantaged Americans of their political equality. Let me repeat that. It's clear that big political money is destroying

our one-person, one-vote system. Wealthy political contributors are consciously seeking to strip economically disadvantaged Americans of the political equality.

It's time to do the right thing. Vote for reform. Thank you.

(Applause.)

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Kenney.

COUNCILMAN KENNEY: Thank you, Madam President. I would like to thank Councilman Goode for his leadership in this issue and for his comments relative to myself and Councilmember Ortiz's efforts over the last number of years to get something like this passed. I'm glad that he's had the fortitude, the stick-to-itiveness to stick to this issue and to see it through, and I think we will be successful today.

There is no piece of legislation that is perfect. And anyone, if you have a lawyer in the room one or more lawyers, will find a way around any piece of legislation.

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This is a historic opportunity for us in this City in this body today to take a step forward to change the perception that the general public has about the way we do business.

Do I think that people take campaign contributions automatically to give a quid pro quo for consideration of bills? No, I do not think that people in this body act that way. I don't think the Mayor acts that way. But I think the public perceives it that way. And with all the money that we're talking, all the money we need to raise to run our elections, from Council to the Mayor, we need to change the way we do this business. And if this is a small step -- it may be an imperfect step, there may be people who try to find ways around it; fine. We will try to plug those holes as we go along.

But this is an opportunity, especially in the environment that we are in today, with all that's swirling around our government, with all that's swirling around this City, we need to take a step forward and stand up to do something that's right that's a

long time coming.

And I want command again Councilman Goode and Brown for efforts in this regard. And I urge all of our members to examine their conscience and know that we need to move forward in the right way and send the right message to the people of this city and the state and this country. We need to be leaders in ourselves.

I remember the same argument was made about issues regarding apartheid and legislation that went throughout this country city by city. It was said that the state government should do it first, that the federal government should do it first. Well, the reason that the apartheid measures were so successful is because they went -- the anti-apartheid legislation was so successful is because it went city by city. Grass roots people cared about an issue, stood up, and the local governments responded. I think we need to respond and take the chains of money away from our process, away from our elected process and override this veto. And thank the

Members for their vote today.

Thank you, Madam Chair.

(Applause.)

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Ortiz.

COUNCILMAN ORTIZ: Thank you, Madam Chair.

I also want to join in thanking Councilman Goode for bringing it up and having this legislation at this point.

We have tried over the years in this Council to bring some sort of sense to campaign contributions. This is the end of Councilman Goode's first term. It is the end of my 20 years in Council. And I think it would be very good and it would be a great going away gift if we bring some sense and taking away of the influence of big money from political elections in City politics.

We have seen how the cost of elections in this City have gone up over the years. When you have elections, District Council elections in districts likes 5th, 7th,

the 1st, 2nd, and every other district in the City of Philadelphia, and in those district elections, the cost of getting elected has gone from a few thousand dollars to over a quarter of a million dollars to half a million dollars, it isn't the citizens of those districts that are contributing the money. It is the corporate institutions that want to build in this City cheaply and at the expense of taxpayers who are contributing the money.

(Applause.)

COUNCILMAN ORTIZ: It is the Wal-Marts. It is the --

(Applause.)

COUNCILMAN ORTIZ: It is the individuals, the developers with big pockets, deep pockets, who want their way to be done.

When poor people, when working class people need something from this Council, it takes a heck of a lot of work to get it done. When a developer needs something, a contribution gets it done. Let me tell you something. It does get it done. Money talks.

(Applause.)

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COUNCILMAN ORTIZ: The Mayor in his veto message says -- and I'm going to quote -- "That each of us as candidates knows all too well that the time required to raise money keeps increasing. But we also know that to remain competitive and discourage competition, we will put in the time required to fund our campaigns."

Well, the purpose of a democracy, a representative democracy is not to discourage competition; it is to have competition for elective office. And we should try to make it as easy as possible for people, ordinary people, working class people, professional, other individuals that do not have great amounts of money to be able to run for political office. We should not be able to use money to discourage competition. We should not be able to use campaign contributions to remain in office just because we have more money and we're able to spend it, we're able to buy it, and we're able to then get our way done.

Money corrupts. It has been a

corrupting influence in the political process. I think it's time to end it.

A long journey starts with one step. This is our step. Thank you.

(Applause.)

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam President. And I'd like to take this opportunity to speak in favor of this bill as well.

As someone who probably has the ability to raise more money than just about any other Councilperson in this body, I can tell you firsthand, and I think most of you would share this same feeling, that it is probably one of the most of the demeaning things for me to have to do. But as Councilman Ortiz pointed out, it's just the way things are done in Philadelphia, and probably in other communities as well across this nation. The cost of running elections is just increasing and continues to increase, and I just don't know where it will all end unless

we take steps today to at least let the people in this City know that we understand and we care.

It's interesting. I'm seeing a lot of signs out here today in opposition to Wal-Mart and some in favor. But there's a sign the lady's holding in front of me, and if you look at it, it says, Whose, and there's dollars sign where the S should be after whose and there's some other dollar signs. And I would suspect that the lady probably thinks that somehow the developer's gotten to me somehow --

(Applause.)

COUNCILMAN DICICCO: -- that somehow the developer's money flowed into my campaign or my future campaign and that has caused me to make the decision to support the Wal-Mart development.

(Applause.)

COUNCILMAN DICICCO: And I know that probably no matter what I say, unless each and every one of you takes a look at my financial report, will always be of the opinion that in

some way, shape, or form I was bought off.

I'm not here to defend myself, but to say that in this case -- and I know that Councilman Ortiz didn't mean this personal to me when he commingled his statement about Wal-Mart and campaign contributions. I understood exactly what he was referencing. There was money. There is no money coming from the developer. There has been no money. The record is open.

But I think what we need to do today is set the record straight and hopefully, hopefully, people will think a lot different about us when they realize that this kind of legislation will prevent any suggestion or reality that we would be able to collect or raise money from developers as a quid pro quo.

Thank you.

(Applause.)

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President. I'll be real brief.

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I just wanted to mention also that there are 50 local jurisdictions around this nation that have laws limiting campaign contributions. The City of Chicago has a law, although the state of Illinois does not. The City of Albuquerque has a law, although New Mexico does not. The City of Austin has a law, although Texas does not.

This is not the time to pass the buck to Harrisburg. The buck stops here right now. We have to make a decision. Are we reformers or are we just status quo politicians?

COUNCIL PRESIDENT VERNA: Thank you very much.

The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam President. Madam President, I was not going to speak, but I feel that I need to speak on this particular bill.

First, I'd like to say I want to commend Councilman Goode and some of the other members who have been working on this issue

for quite some time; I think Councilman Cohen and Ortiz and Kenney. And I support their efforts, although I may not support this particular piece of legislation. I do believe that there should be some reform, but I'm extremely concerned about this particular piece of legislation, as I was the legislation that did not pass because I think it creates an environment that we do not have a level playing field, particularly for those members who are running for Council or who are incumbent Councilmembers or Mayor. I don't think it's right for Members of Council and members of the Mayor to be limited in terms of their ability to raise money but every other elected official, not only in the municipality of this City of Philadelphia but in the State of Pennsylvania and on a federal level those Congress people who represent areas within the City, can raise unlimited amounts of money.

I am extremely concerned about the soft money issue. And I understand the sponsor of the bill addressed that issue and, in fact, he does not have the authority nor

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does this Council have the authority to limit soft money, but soft money finds a way in our campaigns. Unfortunately, it has not found a way into my particular campaign because I was never able to take advantage of the numerous packs that are around the City and that has funded campaigns.

I represent a district that, frankly speaking, had some problems. I represent portions of my district that, frankly speaking, were it not for my ability to contribute to the local drill team or to contribute to the local recreation center, they would not be able to have a program.

Yesterday morning, I sponsored a breakfast for 150 senior citizens at the Spring Garden Older Adult Center. If I did not have money in my campaign, I would not be able to bring happiness to those individuals.

Last night I had a function, a holiday function, where I had over a hundred people, community leaders, that I had to pay for out of my campaign expense fund.

Saturday, I will have a function at

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the Hardtranft Community Center for children where we've invited 200 children, and we will hopefully bring some joy to those underprivileged individuals . I have to pay for that out of my campaign expense account.

I do not have a healthy non-profit corporation that can sponsor such events in my particular district. So while I agree in terms of the spirit of this particular legislation, I just think that this particular Councilperson will not be in a position to do the numerous things that I am called to do on numerous occasions throughout the course of the year.

I would like at some future date to work with members of this body to address the other numerous problems associated with campaign expense reforms regardless of the outcome of this particular bill. But because of the concerns that I have raised in this particular discussion, I cannot vote for this particular bill. So I just wanted to say that while I can't be supportive, I commend the sponsor on his efforts and look forward to

working with the sponsor and numerous other Members of Council in the future to work on needed expense reform, but in a fair and equitable way, in a way that allows me to represent the constituents in the 5th Councilmanic District.

Thank you, Madam President.

COUNCIL PRESIDENT VERNA: You're welcome.

The Chair again recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President.

Let me first address to my colleague Councilman Clarke that it is actually inappropriate to use political money for those types of things and he should probably set up a charity to handle those types of needs within his district.

But let me say there have been two very false arguments put out about this bill. One, that there is an unlevel playing field between the Members of Council and the Mayor with regard to competing with other people in

the future. The truth of the matter is this bill does not say anything about office holders, but candidates; any candidates. And any person who's a candidate for City Council or Mayor, whether they happen to be existing Councilperson or an incumbent Mayor, everyone has to play by the same rules. So that's a false argument.

The second false argument has been made that somehow something is going to happened on the state level with regard to campaign finance reform. But my particular concern with that is that this body is about to adjourn a term. Members will be sworn in on January 5th, will not run again until 2007 if they choose to. If state reform is going to come even within the next year, how much big money do you have to take between now and when state reform comes?

COUNCIL PRESIDENT VERNA: Thank you.

Councilman Clarke, your light is on. Do you wish to be recognized.

COUNCILMAN CLARKE: Yes. I just want to make one point. While I agree with

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the sponsor, and I traditionally don't debate with this particular sponsor because we tend to agree on most things and we have similar interests as it relates my COUNCIL district, with respect to the issue on a candidate, the reality is an individual, a State Representative as an example, can raise unlimited amounts of dollars clearly understanding that they are target that particular Councilperson. Those monies can be spent to influence the vote, not necessarily the vote for that particular seat because, obviously, you would have to file a campaign expense report and a Committee for Council. But knowing some of the state elected officials and their ability to do whatever they need to do, they can clearly get their name out, they can clearly influence individuals as it relates to the popularity of those particular individuals, and I think they can clearly position themselves once they have to file for that particular office and file a Campaign Committee that they will essentially have gotten a leg up on the particular

incumbent Councilperson. So that's all I'm saying on that one.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair again recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam President. I won't belabor this too much more but, once again, another false argument. The truth of the matter is anybody, whether they're a State Rep, whether they're someone just thinking about running for Council can raise as much money as they want. But under this bill, they cannot transfer it from one Committee to another Committee except in allotments of $5,000, and that is appropriate. So there's a level playing field for all candidates for Council. And that's just a false argument.

And lastly, this whole argument about State Reps and State Senators running for City Council, I don't even remember who the last State Rep or State Senator running for City Council was. I believe it might have been John White back in 1979.

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COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilwoman Brown.

COUNCILWOMAN BROWN: Thank you, Madam President.

It's clear by the dialog and discussion we've had on this bill that I cosponsored with my colleague Councilman Goode that this is an enormously important issue. Councilman Goode shared with us that campaign finance reform has taken place in other cities across the country, namely Chicago. So though imperfect, I think we have a responsibility to start somewhere. This bill is a beginning of starting somewhere with the expectation and hope that the State will do the right thing and pull their heads together to provide us with comprehensive campaign finance reform. So I felt compelled to support my colleague because it is a beginning of us taking a hard look and trying to put a stop to what we already see in campaigns, and currently that is unlimited giving. Thus, I will be supporting this bill.

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COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Madam President, I'm going to defer to my good friend Councilman Cohen.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman Cohen.

COUNCILMAN COHEN: Thank you, Madam President.

I want to say today I think is a very important day because very important issues are coming up. We're going to find out if Council has a spine for good government. This is the first bill that's going to question that. I think the arguments made by the speakers in favor of overriding the veto are compelling. You can always find an excuse to do nothing. This is a time when we've got to be clear and clean, and both things require a vote to override the Mayor today on this bill. Thank you.

(Applause.)

COUNCIL PRESIDENT VERNA: Thank you.

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The Chair again recognizes Councilman Ortiz.

COUNCILMAN ORTIZ: Thank you, Madam President.

Councilman Goode forgot to mention that New York City has campaign finance reform. And not only does it have campaign finance reform, but it has campaign finance that is financed by the taxpayers of the City. And in order to get that assistance, you have to commit yourself to only spend a certain amount in any campaign.

Last time around, the current Mayor of New York City, Mayor Bloomberg, spent, I think, $80 million to get elected of his own money. And if anybody's been reading the papers for the last seven months in the City of Philadelphia, you have become very much aware of the term "pay-to-play." Anytime you pick up the Daily News, The Inquirer, that is the phrase. Well, the taxpayers of this City understand what pay-to-play means. So it is very clear. This is one step. It is not the perfect, but it's the first step. And in

order for us to begin a very long journey, we have to begin here. It doesn't begin at the State level; it begins here in City of Philadelphia, the largest City in the Commonwealth of Pennsylvania.

(Applause.)

COUNCIL PRESIDENT VERNA: Thank you.

At this time the Chair recognizes Councilwoman Tasco.

COUNCILWOMAN TASCO: Thank you, Madam President. I just want to say in a moment of levity that I hate campaign finance reform, but I do plan to vote for this bill because I think it's the right thing to do. Thank you very much.

COUNCIL PRESIDENT VERNA: Thank you.

This bill having been read on two different days was duly approved by City Council December 4, 2003, and was returned to Council by the Mayor as disapproved at today's Session of Council.

The question now is, shall Bill No. 030562 pass notwithstanding the Mayor's disapproval.

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Please note that a vote of aye, a vote of aye is a vote to override the Mayor's veto. And a vote of no, a vote of no is to sustain the Mayor's veto.

At this time I would ask the Chief Clerk to please call the roll.

THE CHIEF CLERK: Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Aye.

THE CHIEF CLERK: Councilman Clarke.

COUNCILMAN CLARKE: Aye.

THE CHIEF CLERK: Councilman Cohen.

COUNCILMAN COHEN: No.

THE CHIEF CLERK: Councilman DiCicco.

COUNCILMAN DICICCO: Aye.

THE CHIEF CLERK: Councilman Goode.

COUNCILMAN GOODE: Aye.

THE CHIEF CLERK: Councilman Kenney.

COUNCILMAN KENNEY: Aye.

THE CHIEF CLERK: Councilwoman Krajewski.

COUNCILWOMAN KRAJEWSKI: No.

THE CHIEF CLERK: Councilwoman

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Miller.

COUNCILWOMAN MILLER: Aye.

THE CHIEF CLERK: Councilman Nutter.

COUNCILMAN NUTTER: Aye.

THE CHIEF CLERK: Councilman O'Neill.

COUNCILMAN O'NEILL: No.

THE CHIEF CLERK: Councilman Ortiz.

COUNCILMAN ORTIZ: Aye.

THE CHIEF CLERK: Councilwoman Reynolds Brown.

COUNCILWOMAN REYNOLDS BROWN: Aye.

THE CHIEF CLERK: Councilman Rizzo.

COUNCILMAN RIZZO: Aye.

THE CHIEF CLERK: Councilwoman Tasco.

COUNCILWOMAN TASCO: Aye.

THE CHIEF CLERK: Council President Verna.

COUNCIL PRESIDENT VERNA: Aye.

Applause.)

COUNCIL PRESIDENT VERNA: The veto overridden. The ayes are 12, the nays are 3.

Council will now proceed again under

C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of December 18, 2003, were reported fully and accurately by me, and that this is a correct transcript of the same.

RE: STATED MEETING

_____

Lisa C. Bradley, RPR

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Brief of Appellee City of Philadelphia upon the following persons by hand delivery:

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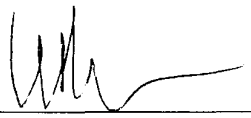

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Dated: July 11, 2007

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