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July 1, 2008

BY FAX AND REGULAR MAIL

Kelly G. Keenan, Esq.
Legal Counsel to the Governor
111 S. Capitol Ave,
Lansing, MI 48909

**Re; Petition and Charges against the
Honorable Kwame M. Kilpatrick**

Dear Mr. Keenan,

I write in response to Ms. McPhail's recent letter dated June 23, 2008 which, I believe, can only be described as a "rant." When you first wrote to counsel, Ms. McPhail, Mr. Thomas and myself on June 3, 2008, it was my understanding that you simply asked for comment on the procedural paradigm that you had proposed. My response on June 11 was offered in that spirit. I had assumed that substantive issues would await subsequent briefing.

I thus believe counsel's recent response to be inappropriate. While I have no intention of providing a detailed, point by point answer, I would appreciate the opportunity to briefly comment on several points:

First, counsel attempts to somehow claim that an "official resolution of the legislative body of the City of Detroit ... would have to have the votes of two thirds of the elected members of the Council." There is simply very little to say to such a bald assertion (without citation to either case or statute) other than to point to the applicable Charter provision, *Section 2-108*, that requires only a simple majority for this resolution, or any other, unless specifically provided in the Charter.¹ Needless to say, Ms. McPhail has failed to cite any applicable provision of the Charter, requiring more than a simple majority for such a vote because she cannot. Needless further to say, *Section 2-108* clearly applies and controls. A simple majority was and is sufficient.

Second, my client, the Detroit City Council, appreciates that there are pending criminal charges that make it more difficult for the Mayor to defend himself in these removal proceedings. Still this reality does not convert him into Ethel or Julius Rosenberg. Nor does it turn him into innocent prisoners, awaiting

¹Perhaps Ms. McPhail is, somehow, simply confused and therefore has attempted to revive an old claim made by the Corporation Counsel, John Johnson, in a letter dated May 5, 2008. He argued there that Council's vote was insufficient because a 2/3 majority was required to overcome a mayoral veto. As you know, I responded to this claim in detail on May 21, 2008 and sent your office a copy of that response. I again enclose a copy of that response with this letter (Attachment A) for everyone's benefit. I am confident that Ms. McPhail has long had a copy of that letter, as I copied her co-counsel Mr. Thomas (a courtesy that she has not seen fit to reciprocate). The point is that Ms. McPhail fails to address the points of law and factual assertions contained in my earlier letter or to even make the argument made by Mr. Johnson at the time. I believe those points to be persuasive. But should you or the Governor require further briefing, I will be please to follow up.

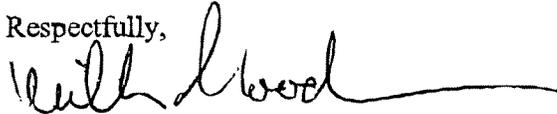
execution on death row in Illinois or elsewhere. No one is asking that he be sent to prison, executed or punished in any fashion. All that we ask is that he be removed from offices, not a criminal sanction. *Matter of Jenkins*, 437 Mich. 15 (1991). He can provide a robust defense without his own testimony. It is notable that both Presidents Clinton and Nixon faced possible criminal charges. Both were subjected to impeachment hearings. Neither testified; and neither complained about the inability to defend himself. Indeed, both found and exercised the ability to do so. Regardless, the point remains that there are times when it is necessary to protect the interests of the people, whether or not there are pending criminal charges. This is one of those times.

Third, despite her promise, at the beginning of her letter, not to address substantive issues, Ms. McPhail attempts to argue that the Council is routinely kept in the dark regarding the critical terms of settlements. There are several points that should be made at this time: 1) it is not true and I am prepared to prove it. This settlement was unique, in the centrality of the confidentiality agreement to it; b) Ms. McPhail appears to have actually conceded that the Council was indeed hoodwinked; and c) as I have pointed out to Ms. McPhail (in a letter dated May 23, 2008, copy to you) (Attachment B), she is likely to be called as a witness in the course of this matter. Nonetheless, she has decided to use her role as an attorney to commence her testimony, however not under oath. I consider it inappropriate.

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Admittedly, these points are preliminary and I intend to address these matters and others fully when the Mayor's attorneys file motions that are lawyerly and that explicitly ask for whatever relief they seek (e.g. dismissal, stay of proceedings, a bill of particulars, etc.). Perhaps it is presumptuous for me to identify the kinds of motions they should file on their client's behalf, but it is borne out of impatience with counsel's approach to this litigation, to date.

Respectfully,



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Special Counsel, Detroit City Council

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cc: Sharon McPhail, Esq.; James Thomas, Esq., Members of Council