

**Seattle Ethics and Elections Commission Regular Meeting  
October 5, 2016**

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on October 5, 2016 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Eileen Norton called the meeting to order at 4:00 p.m. Vice Chair Brendan Donckers and Commissioners Bruce Carter and Hardeep Singh Rekhi were in attendance. Commissioner Vickie Rawlins joined the meeting during public comment, and Commissioner Alexandra McKay joined the meeting during the consideration of the August 3, 2006 meeting minutes. Commissioner Charlene Angeles was absent. Executive Director Wayne Barnett and staff members Polly Grow, Jhileah Jackson, Rene LeBeau, Marc Mayo, and Annie Tran were present. Assistant City Attorney Gary Smith was also in attendance.

**1) Public Comment**

Samara Parra from OneAmerica Votes and Mauricio Ayon from Washington Community Action Network spoke about the Democracy Voucher Program and their desire for clarity around the roles that organizations can play in collecting vouchers.

**Action Items**

**2) July 6, 2016 regular meeting minutes**

Commissioner Rekhi moved the adoption of the minutes and the Vice Chair seconded. The motion passed unanimously.

**3) August 3, 2016 regular meeting minutes**

Commissioner Carter moved the adoption of the minutes and Commissioner Rawlins seconded. The motion passed unanimously.

#### **4) Executive Director's attendance at COGEL conference**

The Director reported that he had been asked to sit on two panels at the annual COGEL conference, and asked the Commission's permission to attend the conference. Commissioner Carter asked how much the conference would cost, and the Director replied that it would be airfare, hotel, conference registration, and per diem.

Commissioner Carter made a motion to approve the Executive Director's attendance, which Commissioner Rawlins seconded. The motion carried unanimously.

#### **5a) I-122 Rulemaking**

#### **5b) The role of organizations in the democracy voucher program**

Assistant City Attorney Gary Smith told the Commission that the rulemaking process provides the Commission the opportunity to make reasonable interpretations of laws and to fill in gaps in I-122. It does not give the Commission the authority to amend I-122 or to otherwise make law. So long as the Commission acts within the scope of its authority, rules are reviewed by courts under an arbitrary and capricious standard. So long as reasonable minds can disagree, a Court will defer to the agency's interpretation.

The Director then provided an overview of the first draft of the rules. He stressed that the draft the Commission was looking at was a first draft and that a public hearing would be held in November at which point the Commission could potentially adopt rules.

He said the six rules in the draft were largely rules that I-122 mandated the Commission adopt.

The Vice Chair and Chair both questioned what happens when a campaign ends the campaign in debt. The Director said that issue exists independently of the democracy voucher program, and that it has bedeviled the staff in the past. Generally, a candidate assumes personal

liability for what they owe, but the problem is that the Commission has no way of knowing whether that debt is ever paid.

Commissioner Carter asked about the circumstances under which the Commission will seek repayment from a participating candidate of all the voucher proceeds paid out to that candidate. The Director said he envisioned resorting to that “nuclear option” when a candidate intentionally fails to comply with the conditions imposed for participating in the program.

In response to a question from Commissioner Carter about an organization being designated as a candidate’s representative under I-122, the Director said that the City will need to seek clarification from the PDC on the interplay of the state’s bundling law and I-122. The City can’t do anything that would free candidate’s from complying with state law.

Commissioner Donckers asked whether five days was sufficient time to initiate contact with a voucher-holder when there is suspected fraud or abuse. The Director said he envisioned this being a form letter that is generated automatically by the software that will track vouchers.

Commissioner Rekhi asked staff for greater clarity in the rule governing staff investigations. The Chair was not comfortable with the Director making a probable cause determination. The Director said that this is the first time that Commission staff will be charged with investigating conduct that would also be a crime under the law, subjecting a violator to time in jail. The Director agreed to seek legal counsel on that rule.

Commissioner Rekhi said he thought clarity regarding timelines would help to avoid any claims that the Commission was delaying or speeding an investigation to influence an election.

The Vice Chair asked about the interplay between the democracy voucher program and the public records act. Assistant City Attorney Smith said that all voucher-related documents would be subject to the public records act.

The Chair asked what will happen if a participating candidate isn't invited to participate in three debates. The Director said that staff has talked about serving as a sponsor of debates if there are not enough debates scheduled.

Commissioner Carter had a question for Alan Durning of Sightline about the intersection of the law governing independent expenditures and the state's bundling laws. Mr. Durning explained that coordination is the animating feature that separates a contribution from an independent expenditure. The Director interjected that the Commission has no authority to issue interpretations of the state's bundling laws.

Cara Bilodou of the Win-Win Network told the Commission that grassroots organizations would like as much clarity as possible around what they can and cannot do when they are canvassing.

The Director said that the Commission would run into significant legal obstacles if it tried to interfere with organizations encouraging people to donate their vouchers to a particular candidate. He said the issue would be whether the organization was coordinating with a campaign. If they coordinate, that activity is subject to the contribution limit.

**5c) I-122 status report**

Rene LeBeau and Polly Grow both spoke to what information would be available about voucher assignments on the Commission's web site, on the PDC's web site, and what information would be public although not published on the web.

Commissioner Donckers asked what the staff was hearing from the public about the property tax levied to pay for the program. Ms. LeBeau replied that staff had received several emails after providing a briefing to the City Council in late September.

Ms. LeBeau then told the Commission about the focus groups underway to help staff understand what messages it was important to convey with the initial distribution of the vouchers.

She then walked the Commission through the contents of the January 3, 2017 voucher mailing, highlighting the fact that current plans were to include a postage prepaid envelope in the mailing.

She closed by telling the Commission about the plan to have a preregistration drive to give non-voters an opportunity to apply to receive vouchers.

#### **6) Executive Director's report**

The Director also talked about the September City Council meeting to discuss the democracy voucher program. He then told the Commission about the upcoming boards and commissions appreciation reception scheduled for October 22. He also told the Commission about a budget request that he believed was in the works to spend \$100,000 to conduct outreach around the democracy voucher program. He said one of the big questions was whether the Commission would manage contracts with outreach agencies or whether another agency would be better equipped to manage those contracts.

**The Regular Commission meeting for August 3, 2016 adjourned at 5:45 p.m.**