

Memo

To: Commissioners

From: Wayne Barnett

Date: November 30, 2020

Re: Musical chairs

For the first time since the Democracy Voucher Program (DVP) debuted in 2017, there is a not insignificant chance that a participating candidate may enroll in the Program seeking to be elected to one of the positions on the ballot, and ultimately choose to seek another one of those positions. While the exercise may at the end of the day prove unneeded, staff believes it is important for the Commission to announce the rules for race-switching before a candidate attempts to do it.

The Commission's decision should be guided by the goals of the Program – “democracy and accountability, high rates of candidate participation, heavy utilization of vouchers by those who have not previously donated to Seattle political campaigns, and high public satisfaction with the Program” – and its charge to “manage Program Funds as a fiduciary, ensuring proper accumulation and distribution of funds...” SMC 2.04.690. Another principle that should come into play is “donor intent,” which guides the rules that govern race-switching outside of the DVP. (Staff communicated with the sponsors of I-122, who indicated that these questions were not contemplated by the initiative's drafters.)

Here are some of the most pressing questions presented. Answering these big questions will guide staff's analysis of other issues in a future memo, and ultimately drafting a Commission rule.

Hypothetical #1 - Qualification: Jane Smith signs a pledge to participate in the Program as a candidate for City Council Position 8 in February, and commences work gathering 400 qualifying contributions and 400 qualifying signatures. In April, the incumbent in one of the three other positions on the ballot announces that they will not seek reelection, and Jane announces her candidacy for the open seat. What happens with Jane's qualifying work up to that point?

- A. Jane must file a pledge for the new position and start qualifying anew.
- B. Jane's qualifying paperwork to date can count toward the new position.
- C. Jane can submit evidence that a qualifying contributor or signatory gives their permission to Jane to use their contribution or signature toward the open seat race.

Restarting the process would be the cleanest and easiest to administer option, but the least candidate-friendly. The Commission heard from Citywide candidates in 2017 that the qualification

process was burdensome and disadvantaged those from communities in which a \$10 contribution was a barrier. The Commission could get push back on requiring a race-switching candidate to collect up to 1,000 \$10 contributions.

Simply transferring Jane's qualifying work to the new position gives too little credence to donor intent, in staff's opinion. A donor may believe a candidate is well suited to a position on the City Council, but not yet ready to be Mayor or qualified to be City Attorney. Similarly, a donor may be satisfied that an individual would make a good City Attorney without believing them well suited to a policy-making role. Or a donor may simply prefer another candidate already in the race into which Jane is jumping. Staff recommends against B.

The final choice, C, would be difficult to administer and would not align well with existing law. In the non-DVP context, a candidate who switches positions asks Commission staff to prepare a "Last In, Last Out" list of contributors the candidate can ask for permission to transfer their contributions. The rules treat money raised first as money spent first, so in virtually every case, a candidate's early fundraising cannot be transferred. It is that early fundraising that would likely be comprised almost entirely of qualifying contributions. If the Commission would like to pursue Option C, staff will work to develop some mechanism for accomplishing this goal without running afoul of other sections of the law and rules.

Wrinkle: In the non-DVP context, a candidate can transfer money raised for one position to another race for the same position. So if she was not participating in the DVP, Jane could transfer her money raised for Position 8 to a race for Position 9 without asking donors for permission. Does the Commission want that same rule to apply to DVP candidates?

Hypothetical #2 - MCV: Jane spent \$50,000 towards her race for Position 8. She signed a lease on a campaign headquarters, started paying a campaign manager, bought some radio ads to introduce herself to voters, and printed up some yard signs reading "Jane Smith for City Council." When she switches races, does that \$50,000 count against her Maximum Campaign Valuation (MCV), or does she start again with a blank slate?

This one is difficult because some of Jane's early spending will aid her campaign for another office – all of it, if she switches to Position 9 – while the yard signs would be worthless in a run for Mayor or City Attorney. Either the Commission would need to take on a role in deciding which spending would be of benefit to her new campaign, or it would have to attribute all or none of her spending to the new campaign. Staff heard from one treasurer who thought candidates should start over with a new MCV when switching races, but that could yield outcomes that would be perceived by Jane's new opponents as unfair.

Hypothetical #3 – Assigned vouchers: Jane collected \$100,000 in vouchers toward her campaign for Position 8 prior to opting to run for the open seat.

- A. Those vouchers are null and void.
- B. Those vouchers can automatically be transferred to her new race.
- C. Those vouchers can be transferred with the permission of the donor.

This is essentially the same as Hypothetical #1, only now at issue is not qualifying contributions but assigned vouchers. Rendering the vouchers assigned to her Position 8 race void would leave the contributors who assigned their voucher to her without an opportunity to meaningfully assign their vouchers. That is a risk that voucher-holders run when they assign their vouchers, but arguably one that is harder to understand when their preferred candidate is still on the ballot.

B is again the least desirable from staff's perspective, because it creates tension with donor intent and the law that governs all other candidates. Most important, B would seem to be foreclosed by the language of the initiative itself. The Elections Code provides at SMC 2.04.634.C that voucher proceeds may only be used for "campaign costs or debts for the relevant office and election cycle," casting doubt on the ability of a candidate to collect a voucher for one run and use it for another.

C would be difficult to administer, with another writing required of contributors, in a form to be determined by the Commission. For non-DVP candidates, the campaign treasurer holds the permissions from contributors, and permission can be granted by email. With public dollars at issue, the Commission may want to consider requiring more documentation before permitting a participating campaign to transfer vouchers between races.

Wrinkle: Does the Commission want the same rules to apply for candidates switching between Council Positions 8 and 9 as would apply to candidates switching offices?

Conclusion

Answering these questions will allow staff to begin crafting a rule for the Commission's consideration. I look forward to the discussion.