



To: Members of the Seattle Ethics and Elections Commission
From: Alan Durning and Margaret Morales, Sightline Institute
Re: Update on Voucher Solicitation Rules
Date: May 17, 2016

On April 14th of 2016 we submitted a memo to the Seattle Ethics and Elections Commission outlining some of the questions that require the Commission's attention regarding the role of organizations in soliciting Voucher donations to participating candidates. This memo is an update to that document and includes new information we have gathered since its submission. That original memo is included below as an appendix to this update for the Commission's reference.

Central among the issues we touched upon was how expenditures made to solicit Democracy Voucher donations to specific candidates, done without communication with that candidate, should be considered. Should such efforts be considered campaign contributions, subject to contribution limits, or independent expenditures, and therefore free of limits? We believe the answer to this question is central to protecting the intention of Honest Election Seattle's Democracy Voucher Program. At the submission of the last memo, we could not offer the Commission any conclusive legal analysis regarding how to proceed with rulemaking on this matter.

Since our April submission, we have benefited from the counsel of legal advisors with expertise in campaign finance and constitutional law at the Brennan Center for Justice at New York University, the Campaign Legal Center in Washington, DC, and Pacifica Law Group in Seattle. These lawyers were all in agreement that Voucher solicitation undertaken independently of a candidate and his or her campaign would, in the eyes of federal courts under current rulings, be an independent expenditure. Independent expenditures are considered protected political speech and are therefore free from campaign contribution limits.

In this memo we first provide some updates to our April 14th memo. We then outline our concerns regarding risks of IE campaigns subverting the intent of the Democracy Voucher Program. Finally, we offer methods by which the Commission might guard against those risks.

Updates to our April, 14th memo

A spending threshold cannot be used as evidence of coordination

In our last memo we wondered whether the Commission could use a spending limit as a criterion for determining whether Voucher solicitation is done in coordination with a candidate. For example, could the Commission place a \$15,000 cap on Voucher solicitation spending, below which expenditures would be considered independent of the candidate, and above which they would be considered done in coordination, and therefore subject to in-kind donation limits. We thought this could be one means of threading the needle between encouraging participation in the Democracy Voucher Program, and limiting what could be a controlling influence from well-funded third parties.

Unfortunately, we learned that this solution would likely not pass muster in court. The *amount* of money spent on an activity cannot alone be evidence of coordination.

A finer point regarding who may collect and deliver Vouchers

In our previous memo we also discussed the definition of a “candidate representative.” We highlighted how a narrow definition of this term may unduly limit legitimate political engagement opportunities, such as Voucher donations at house parties, while too broad a definition may permit the appearance of bundling.

The Campaign Legal Center pointed out that the Initiative text is unclear on the precise role of registered representatives. Section 2.04.620 (d) states that a Voucher holder may assign a Voucher by signing it and then,

“delivering the signed and dated Voucher to the candidate, or to SEEC, or to any candidate’s representative who shall be registered for this purpose with the SEEC. Delivery may be by mail, *in person (by any person the holder requests to deliver the voucher)*, or electronically via a secure SEEC online system.”
(emphasis added)

The second sentence of this excerpt indicates that an individual, even if not registered as a candidate representative, could deliver a Voucher on behalf of a Voucher holder so long as he or she is requested to do so by the holder and does so in person. This sentence would circumvent the need for candidate representatives, potentially opening more opportunities for broad volunteer engagement in Voucher solicitation. On the other hand, it could also leave the door open for activities more akin to bundling. The Commission may need to clarify the meaning of this parenthetical in the context of the rest of the text, and determine whether it applies to any individual, or only certain individuals. For example, does it mean members of a family and friends may deliver each others’ vouchers as a courtesy and convenience? Does it also mean that a volunteer can go door to door collecting Vouchers to deliver,

even if s/he is not a candidate's representative? We would lean toward the former and encourage the Commission to write rules that discourage widespread use of the "delivery provision." To this end, the Commission might require the signature of a form verifying that the Voucher holder has requested an individual to deliver the Voucher for them.

This decision would push the issue of who may touch paper Vouchers back to its core place: the definition of a candidate representative, an issue we return to in the third section of this memo.

An alternative approach that also merits consideration would be to allow widespread reliance on this "delivery provision" for all volunteers citywide, largely as a way to save SEEC the work of registering candidates' agents. SEEC would need to make clear that no one may perform this function in his or her capacity as a member or employee or representative of an organization, because doing so would violate state bundling laws. A volunteer for the Sierra Club going door to door is banned by state law from collecting vouchers for a candidate, just as the Sierra Club is banned from collecting contributions for a candidate. But a volunteer unaffiliated with an organization is allowed under state law to bundle contributions and could, therefore, collect vouchers from many people. The downside of this approach is that with no system of registering such volunteers, it might be harder to investigate suspected abuses of the system. If candidates' representatives must register with SEEC, SEEC will have an easy opportunity to provide them with program rules and will, in the event of irregularities, have a way to contact the agents.

Clarifications regarding access to SEEC's online Voucher assignment system

Finally, in our last memo we suggested that Voucher assignment via SEEC's secure online system (as described in *New Section 2.04.620 (d)*), may be a means of resolving a number of challenges we identified. Among these, the online system could facilitate Voucher donation at public events even when no candidate or representative is present. Event sponsors could make electronic devices (such as laptops, tablets, or iPads) available for attendees to use to access SEEC's Voucher assignment system and assign their Vouchers directly.

One issue we did not point out is that the Initiative language is somewhat unclear regarding who can assist Voucher holders in accessing this system. New Section 2.04.620(e) states that,

"A candidate or registered candidate representative may seek assignment in person or through representatives or by assisting a voter to access the SEEC secure online system."

The text is not clear that any other person, besides a candidate or candidate representative, may assist a Voucher holder in accessing the online system. We see no reason that any individual couldn't assist anyone else in this way; further, the Initiative certainly does not prohibit this activity. We encourage the Commission to clarify, via rulemaking, that anyone can assist a Voucher holder with online system access.

Another issue to consider related to the online system is whether the purchase of electronic devices

meant to facilitate online access should be considered campaign contributions. For example, if individuals involved with hosting a political rally offer their previously purchased personal electronic devices to assist attendees in accessing the online system, this might be considered, “personal services of the sort commonly performed by volunteer campaign workers,” as defined in Rule 1 N of the Seattle Elections Code Administrative Rules. If, however, the electronic devices are purchased by an individual or an organization for the express purpose of facilitating Voucher donations, these purchases may be considered campaign contributions, and therefore subject to in-kind donation limits. Of course, if the devices are purchased and used by individuals and organizations working independently of candidates, their purchase would likely be considered an independent expenditure, free from contribution limits.

Our concerns with classifying Voucher solicitation activities as independent expenditures

As stated above, the experts we contacted all agreed that, according to judicial precedent, expenses incurred in Democracy Voucher solicitation done independently of a candidate would likely be considered independent expenditures. While this may facilitate one goal of Honest Elections Seattle in strengthening grassroots participation in the Program, we worry that this interpretation may create risks for the Democracy Voucher Program as a whole.

Chief among our concerns is that well-funded Independent Expenditure (IE) political committees may in effect become the fundraising arms for the candidates they support. While these political committees can still offer only a limited amount of money directly to the candidates they support, under this interpretation of Voucher solicitation, they could direct the rest of their resources through an IE toward funding a candidate’s campaign by encouraging Seattle residents to donate Vouchers to those candidates.

The role of private interest groups in Seattle’s elections via IE committees has been strong in most recent elections, such as Seattle experienced in 2009 when the plastics industry ran a nearly \$1.5 million dollar campaign to overturn Seattle’s plastic bag fee. Nevertheless, Vouchers could make this influence even stronger by giving third parties a mechanism by which they can fill a candidate’s coffers directly. We worry that big-money interests will run campaigns that push Vouchers to candidates they prefer, not by collecting paper vouchers themselves (that would be bundling), but by encouraging voucher assignment electronically or by mail. We fear IEs will pay phone bankers and canvassers, sponsor events, or run online and broadcast advertisements all pushing vouchers to their candidates. Such big-money Voucher pushing would become yet another way in which well-funded interests could wield disproportionate influence in Seattle’s democratic system.

It’s very difficult to predict whether third party spenders will find Voucher pushing a worthwhile means of achieving their political goals. Perhaps they will calculate that their dollars would be more effectively spent pursuing the types of expenditures they’ve traditionally undertaken – running independent

advertising campaigns, intended to encourage votes rather than dollars. Still, we worry that this interpretation of Voucher solicitation leaves a gate open by which the intentions of the Program could be corrupted.

We are also concerned that third party spending on Voucher pushing will further erode Seattle resident's trust in their democratic system. Honest Elections Seattle was understood by Seattle residents as a means of reducing the influence of private moneyed interests in City Hall. Should it be co-opted by these interest groups into yet another avenue by which they can disproportionately influence political outcomes, we worry voters will lose confidence in the Program and perhaps even vote to discontinue it.

What can the Commission do about it?

We see two alternatives open before the Commission. The first is to define independent Democracy Voucher solicitation as an independent expenditure, thereby avoiding legal challenge. In this scenario there may be a few avenues by which the Commission may reduce the risk of big-money Voucher pushing efforts subverting the Program. These include strengthening existing coordination regulations, carefully crafting the definition of a candidate's representative, and potentially charging participating candidates with greater responsibility to investigate IEs they suspect are influencing Voucher donations. The SEEC can also clearly state its intention to protect the program's purposes and thereby clear the way toward future actions to safeguard the program.

The second possibility is to define any Voucher solicitation efforts as coordinated with the campaign they aim to support, and therefore subject to in-kind contribution limits. Though this may bring legal challenge, we also believe the policy would be well justified. It would be a rule required to protect the anti-corruption purposes of Honest Elections Seattle. We discuss this option at the end of this section.

Strengthening Existing Coordination Regulations

The Commission could strengthen its coordination regulations (detailed in Rule 8 of the Seattle Elections Code Administrative Rules) as a means of limiting the range of activities that can be undertaken as independent expenditures. One model for such a revision may be California's recently updated coordination regulations, which rely on a series of rebuttable presumptions under which a communication is considered done in coordination with a candidate. The updated California regulations are available here: [\[\[http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/NewRegs/18225.7.pdf\]\]](http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/NewRegs/18225.7.pdf). We believe that the Commission will shortly, or has already, received a separate memo from the Campaign Legal Center further detailing how California's model may be applicable to Seattle.

State Initiative 1464, the Washington Government Accountability Act, which is currently collecting signatures, also offers an example of how to draft such policies. It's here: [\[\[http://www.politico.com/story/2016/05/exxon-climate-campaign-222920\]\]](http://www.politico.com/story/2016/05/exxon-climate-campaign-222920).

Crafting the Definition of a Candidate's Representative

Another factor that may help to define the role of third parties in Voucher solicitation is the definition the Commission decides upon for a candidate's representative. As we pointed out earlier in this memo, the Commission needs to determine the role these representatives will play in Voucher donations.

It is clear from the Initiative text that representatives must register with SEEC (*New Section 2.04.620 (d)*), but there is no requirement that they are also approved by the candidate to serve in this capacity. If the Commission determines that candidates must affirmatively approve of their representatives, then any action taken by these representatives would necessarily be done in coordination with the candidate. Therefore, depending on how important candidate representatives are to the Voucher assignment process, a strong definition of candidate representative could be one means by which the Commission could reduce the ability of third party spenders to independently amass and deliver paper Vouchers to their chosen candidates. As we have signaled, the importance of a candidate representative will rest on a number of the Commission's other rulemaking decisions regarding who can collect and transmit a Voucher.

Placing Greater Responsibility on Participating Candidates

Finally, the Commission could place additional responsibilities on candidates to limit the influence of third party spenders on their campaigns. The Initiative is already very clear that participating candidates have added responsibility to create distance between themselves and any political action committees or organizations that will make independent expenditures (*Section 2.04.630 (b)*). The Commission could expand this responsibility by requiring candidates to investigate and report instances when they suspect that a third party is spending money to direct a large volume of Vouchers to their campaign. If the Commission chooses to add this responsibility to participating candidates, we suggest a clause capturing this responsibility be included in the candidate's intent to participate statement.

In principle, candidates who opt into the Democracy Voucher program could be asked to refuse to accept assignments of Vouchers from Voucher holders they believe have been swayed by an IE. We believe this approach would be completely defensible under federal court precedents. Unfortunately, it would be a difficult policy to enforce. Still, a modest approach along these lines might be helpful.

Paving the way for future action

In addition to reducing the role of IEs under the current system, the Commission could pave the way for future action on this issue should it become clear that third party spending is disproportionately influencing the Democracy Voucher Program. Specifically, the Commission could mention in any printed documents it produces about the Program (such as candidate or program manuals) that it would regard any large-scale, big-money attempt at "voucher pushing" as a violation of the intention of the program, that it will be closely monitor the influence of third party spending on Democracy Voucher assignment, and that it will act swiftly and decisively if such attempts become apparent. This type of signaling may help to establish a precedent the Commission and others could refer to should legal action on this issue

become a reality in the future.

In each of our conversations with our legal advisors, furthermore, the likelihood came up that federal court precedents may shift dramatically in the years ahead. *Citizens United* was a five-four decision, and the reasoning in the dissents suggests that a new Supreme Court justice could lead to a reversal and perhaps a new, broader set of standards for regulation of money in politics.

The Alternative: Voucher Solicitation is Always Coordinated

Up to this point we have outlined strategies the Commission could employ to reduce the influence of IEs on Voucher assignments should it choose to classify Voucher solicitation done independently of a candidate as independent spending. Unfortunately, we suspect these measures will ultimately have only minor impact should large third party spenders choose to use the Voucher Program to meet their political ends.

There is an alternative: the Commission could determine that *any* Voucher-pushing will be considered coordinated action, subject to campaign contribution limits. As we pointed out in our previous memo on this topic, a number of actions would remain exempt from this limit, allowing for strong grassroots participation in the Program without opening the door for disproportionate influence from private money interests. These include member only communication, ordinary home hospitality events, volunteer work, and open community forums that show no candidate preference.

As we've stated, such a determination may bring legal challenge. We also believe that such a determination is in the best interest of Honest Elections Seattle and its intent to prevent corruption and "safeguard the people's control of the elections process in Seattle" (*Section 2.04.600 (a)*).

As always, we hope this review offers the Commission some avenues forward as you continue with rulemaking on Honest Elections Seattle. We appreciate your work and hope to continue to be of service in any way we can.

Sincerely,

Alan Durning, Executive Director, and
Margaret Morales, Senior Research Associate
[Sightline Institute](#)

APPENDIX A: Previous Memo to the Commission dated April 14th, 2016

To: Members of the Seattle Ethics and Elections Commission

From: Alan Durning and Margaret Morales, Sightline Institute

Re: Honest Election Seattle's Candidate Representatives & the Role of Organizations in the Democracy Voucher Program

Date: April 14, 2016

A central provision of Honest Election Seattle (HES) is the Democracy Voucher Program ("Program"). The Initiative states, "Democracy Vouchers are vital to ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates, to strengthen democracy... and prevent corruption" (*New Section 2.04.620 (a)*). The Commission is charged with rulemaking to protect and honor these purposes (*New Section 2.04.690 (b)*).

We believe the Democracy Voucher Program offers a new means by which a range of organizations, including advocacy groups, businesses, political committees, unions, and other membership organizations and non-profits, can organize their constituents, engage them in the political process, and grow their voices. In particular, we hope they will encourage both their members and wider Seattle audiences to meet candidates, engage on local issues, and be a part of grassroots campaign financing by assigning their Vouchers to qualifying candidates. Organizations can also serve as important conduits by which candidates running via the Program can meet their constituents and raise Voucher funds.

We also see that if rules regarding the role of organizations in the Democracy Voucher Program are not crafted carefully, well-funded organizations could easily subvert the purpose of the Program. Organizations with relatively larger resources at hand could mobilize widespread efforts to direct vouchers to particular candidates, and very quickly fund a large portion of a particular candidate's campaign. These organizations would garner disproportionate favor with their chosen candidates and undermine a key purpose of the Program, which is to "ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates" (*New Section 2.04.620 (a)*).

In order to encourage organizations to actively engage individuals in the Voucher Program in ways that foster the spirit of the Program, they will need clear guidelines regarding what they can and cannot do with Vouchers. Initiative 122 leaves open for interpretation a number of points that will have significant impact on the role of organizations in the Program. We believe three points in particular require the Commission's thoughtful rulemaking to preserve the intent of the Program.

The risks to Honest Elections Seattle are not theoretical but real and imminent. In the 2015 Seattle elections for city council, for example, a single organization—CASE, a political committee affiliated with the Seattle Metropolitan Chamber of Commerce—spent two-thirds of a million dollars on independent expenditures (IEs). Overall, IEs exceeded \$1 million, far more than in any previous Seattle election and an amount equal to one fourth of all campaign spending in the city. The US Supreme Court has established the right of Americans to express their political views through independent expenditures. Without abridging that right, Honest Elections Seattle aims to strengthen the voice of ordinary voters. To achieve that end, SEEC’s rulemaking can prevent IEs from gaming the new Democracy Voucher program and converting it to a servant of big money interests.

In this memo we present these three issues and a range of related scenarios we could see unfold with respect to organizations and Vouchers. Careful consideration of these scenarios will be vital for successful rulemaking.

Three Key Questions about Organizations and Democracy Vouchers

1. Who can register as a candidate’s representative?
2. Is encouraging voucher donations to a specific candidate a form of coordination with that candidate and/or his or her campaign?
3. What role can organizations play in soliciting voucher donations both generally and for particular candidates?

1) Who can register as a candidate’s representative?

Honest Elections Seattle states that Vouchers may be delivered “to the candidate, or to SEEC, or to any candidate’s representative who shall be registered for this purpose with SEEC” (*New Section 2.04.620 (d)*). The initiative offers no further definition of “candidate’s representative.” This presents an important question to the Commission: who can register as a “candidate’s representative” and what can they do?

As the Initiative states, a central purpose of the Democracy Voucher Program is to prevent corruption. We include within this purpose the “bundling” of Vouchers or the appearance of bundling. Many voters expressed concerns during the campaign for I-122 about special interests “scooping up all the vouchers.” This concern reflects a larger, and possibly justified, public cynicism that big-money interests always find ways to subvert campaign reforms and reassert their dominance.

A broad definition of “candidate’s representative” could allow organizations with substantial financial interests in city politics to recruit and deploy private armies of voucher collectors on behalf of favored candidates, undermining the purposes of the program.

On the other hand, too narrow a definition of “candidate’s representative” could restrict legitimate opportunities for politically engaged citizens or grassroots organizations to participate meaningfully in the Program. For example, an individual’s social network may overlap considerably with their political affiliations and group memberships. If an individual registered as a “candidate’s representative” with the intention of hosting a house party, inviting their friends, and encouraging voucher donations to a candidate they favor, could they not invite any acquaintances who are members of the clubs and organizations they are a part of?

The Washington State Public Disclosure Commission’s (PDC) instructions regarding state bundling laws (*RCW 42.17A.470*) present a conservative definition of bundling. The PDC writes,

“Only an individual is permitted to collect contributions from others and transmit them to a candidate. Political committees, businesses, unions, and organizations (or people representing them) are prohibited from collecting contributions from various sources (commonly known as bundling) and delivering or transmitting those bundled contributions to a candidate.

With respect to the legal bundling undertaken by individuals – unless collected contributions are from the individual’s employer, immediate family or an association to which the individual belongs – deliver the contributions to the candidate and provide the following information each contribution: contributor’s full name, street address, occupation, name of employer or, if self-employed, and place of business.”

(See: [[<https://www.pdc.wa.gov/learn/publications/political-committee-instructions/prohibitions-and-restrictions/contributions-2>]]).

If this definition were extended to the collection of Democracy Vouchers, individuals would likely not be able to collect Vouchers from other people in common associations with them. While this may avoid unethical Voucher bundling within an organization, it may also significantly limit the role individuals can play in promoting the candidates they favor.

SEEC’s secure online system for Voucher assignment (as described in *New Section 2.04.620 (d)*) may offer one means of avoiding this conflict of interest. Such a system would offer individuals a means by which they could solicit Voucher donations for a candidate of their choice, while not needing to register as “candidate representatives” or collect Vouchers themselves. Instead, individuals could present an electronic device (such as a laptop, tablet, or iPad) and encourage others to make their contributions

directly to SEEC via the system.

2) Is soliciting voucher donations for specific candidates an act done in coordination with that candidate?

We envision that organizations, including advocacy groups, businesses, political committees, unions, and other membership organizations and non-profits, may want to encourage voucher donations to specific candidates from both their members and broader audiences in Seattle. The Commission needs to determine whether soliciting voucher contributions for a specific candidate, or candidates, will be considered an independent act, or an act done in coordination with that candidate and his or her campaign.

This question is central to the success of the Democracy Voucher program. While we want to encourage the participation of grassroots organizations in the Voucher Program as much as possible, we also recognize that the Program requires safeguards to ensure it is not overrun by well-funded interests. Without protection, independent interests could expend unlimited money encouraging Voucher contributions to specific candidates, thereby corrupting the Program's intentions.

For example, we fear that the well-funded political committees, such as those who made independent expenditures over \$100,000 to influence the 2015 Seattle city council races, could use their deep pockets to host events intended to funnel large numbers of Vouchers from Seattle residents to the candidates they endorse. This would not only be counter to the Program's intent to "safeguard the people's control of the elections process in Seattle" (*New Section 2.04.600 (a)*), it would also erode the public's trust in the Program as a viable means of grassroots campaign financing.

On the other hand, grassroots organizations that regularly endorse political candidates, such as Social Welfare Organizations (known as 501(c)4 organizations under the Internal Revenue Code), see the Democracy Voucher program as a means of strengthening constituents' voices. These organizations can serve as a means of encouraging participation in the democratic process in communities not commonly looked to as sources of significant campaign funding and would like the opportunity to mobilize Voucher support for specific candidates without running up against the low Program contribution limits (\$250 per entity per election cycle to any candidate). Such efforts may help to achieve another goal of the program, "to expand the pool of candidates for city offices" (*New Section 2.04.600 (a)*).

One policy solution that may thread the needle between containing the deep pockets of well-funded interests, and encouraging community-based organizations to engage individuals in the democratic process may be a monetary threshold to the definition of "in coordination" with respect to Democracy Vouchers. Expenses incurred to encourage Voucher donations to specific candidates below such a threshold would not be considered "in coordination," while expenses above this threshold would be

considered in coordination, and therefore subject to in-kind contribution limits. We are researching the legality of such a measure.

3) How can organizations solicit voucher donations?

The Commission faces a number of questions regarding what organizations can do to solicit Voucher donations both to specific candidates, and to candidates generally, as well as the mechanisms for Voucher delivery at hosted events.

Organizations Encouraging Voucher Contributions to Specific Candidates

Organizations may encourage individuals to contribute their Vouchers to specific Program candidates. This could be done through a variety of mediums, including, but not limited to, events, door-to-door or telephone canvassing, public tabling, or advertising, such as through social media, websites, flyers, newsletters, or ads. As discussed in Section 2 above, the Commission will need to determine whether work done to encourage contributions to specific candidates or campaigns should be considered done in coordination with those candidates and campaigns, and therefore subject to Program campaign contribution limits (\$500 for Mayoral candidates, and \$250 for City Council and City Attorney candidates (*SMC New Section 2.04.630 (b)*)).

Seattle Municipal Code specifies two types of activities organizations can undertake to support specific candidates that do not need to be reported as contributions. These excepted activities, outlined below, are both specified as member-only activities. If the Commission determines that these exceptions apply to Vouchers as well, it may need to reexamine its definition of membership to encompass the range of actors interested in participating in the Voucher Program.

Exemptions from Contribution Limits: Member-only Communication

Member-only communication is not considered a campaign contribution according to *SMC 2.04.010 (13)*, and therefore not subject to campaign contribution limits or independent expenditure reporting requirements. If this exemption were also applied to Vouchers, organizations could spend unlimited time and resources encouraging their members to send Vouchers to specific candidates via member-only communication channels. Organizations could also spend time growing their legitimate memberships within the City of Seattle in order for their member-only communications regarding specific candidates to reach broader audiences.

Exempt from Contribution Limits: Regularly Scheduled Member-only Events that are “Ordinary Home Hospitality”

An organization’s regularly scheduled event at which a candidate, candidate’s agent, or member of the organization solicits contributions for a specific candidate is exempt from in-kind contribution limits so long as the event meets the requirements of “ordinary home hospitality” (*SMC 2.04.010 (13)*). These requirements are that the meeting was regularly scheduled so that any fundraising ask is incidental to the event taking place, no admission fee is charged or contribution expected, and consumables at the event do not exceed half the campaign contribution limit. The Seattle Elections Code Administrative Rules further defines “ordinary home hospitality” as:

“the provision of beverages and food items, such as coffee, tea, soft drinks, cookies, pie, cakes, chips at gatherings where the purpose is to meet the candidate or organize a campaign and where no admission fee is charged or contributions suggested to, or expected from, those attending. Events where the value of the consumables exceeds half the campaign contribution limit do not qualify as ordinary home hospitality.”

(Seattle Elections Code Administrative Rule 1 M)

Regularly scheduled member-only events at which candidates, representatives, or group members solicit Voucher contributions could also fall under this exemption. If so, the Commission will need to determine whether the limit on consumables of “half the campaign contribution limit” would be half of the general \$500 contribution limit for all candidates under the updated *SMC 2.04.370*, or half of the Democracy Voucher Program contribution limits outlined in *SMC New Section 2.04.630 (b)*.

Definition of Membership

Both exempted activities described above rely heavily on a definition of membership. If the Commission determines that member-only communication soliciting Voucher donations to specific candidates, or ordinary home hospitality events at which members are asked to donate Vouchers to specific candidates are exempt from campaign contribution limits, the Commission may need to reexamine its definition of membership. *Seattle Municipal Code 2.04.010 (13)* defines members as,

“those who (i) regularly pay dues in exchange for benefits from the organization, or (ii) are able to vote, directly or indirectly, for at least one (1) member of the organization's governing board, or (iii) adhere to a code of conduct, the violation of which may subject the members to sanctions that could adversely affect their livelihood, or (iv) participate in the organization's policy-formulating committees.”

Many civic organizations in Seattle employ a broader definition of member. These definitions often include any individual who donates to, or volunteers for, the organization, or anyone who

subscribes to one of the organization's media outlets, such as Facebook, Twitter, or blog feed, or regular newsletter.

While too broad a definition of membership may leave the door open for well-funded interests to blast wide swaths of the Seattle public with ads encouraging Voucher donations to specific candidates, too narrow a definition could unreasonably limit the ability of community organizations to mobilize their members.

Organizations Encouraging Voucher Contributions Generally

Organizations may encourage members of the public to contribute their Vouchers to qualifying candidates generally, without showing preference for one candidate over another. This could be done through a variety of avenues, including, but not limited to, public forums, educational events, advertising, or contacting the public via door-to-door or telephone canvassing or public tabling. These activities have not typically been considered political expenditures in the past, and therefore have not been subject to contribution limits or reporting requirements. We suspect this will hold true with respect to Vouchers as well.

Hosting Public Forums to Which All Candidates Are Invited

Public Forums are not typically considered political expenditures so long as all candidates for a specific office are invited to participate, and there is no obvious sign of favor for one candidate over another.

The Commission may need to determine whether forums specifically billed as "voucher forums" must invite all candidates running for a particular office, or only those candidates participating in the Democracy Voucher Program. In the interest of keeping events manageable, the Commission may also determine whether all candidates must be invited, or only some qualifying percentage of candidates.

Advertising materials that do not prefer individual candidates

Finally, the Commission may need to consider how websites and advertisements developed by organizations that encourage Voucher donations generally should be regulated. Typically these materials are not considered expenditures so long as no specific candidates are named, or all candidates are listed either alphabetically, or in the order they appear on the ballot, with no comment favoring one candidate over another. This is in keeping with *Seattle Elections Code Administrative Rule 7 G 3*.

Delivery of Vouchers at Organization Events

A main purpose of the Democracy Voucher Program is to "ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates" (New Section 2.04.620 (a)). We see a significant opportunity for technology to facilitate Program participation.

New Section 2.04.620 (d) states that Vouchers can be delivered to SEEC, the candidate, or a candidate's representative. Regardless of the definition of "candidate's representative" the Commission adopts, individuals could assign vouchers to candidates via SEEC's secure online system (as described in *New Section 2.04.620 (d)*), via electronic devices (such as laptop, tablet, or iPad) available at the event. This online system would make it possible for individuals to assign vouchers to candidates even when no candidate or candidate representative is present at an organization's activity or event, and would facilitate participation from individuals who do not have their paper vouchers with them at the event.

Honest Elections Seattle is intended to strengthen democracy in the City of Seattle. We believe that organizations could play a central role in this and want to encourage their participation in the Voucher Program as much as possible. At the same time, we see a need for thoughtful rulemaking to protect against well-funded organizations subverting the purposes of the Program and eroding the trust of Seattle's residents in the Democracy Voucher Program.

We very much look forward to the Commission's deliberation on these questions. We believe they are central to the success of Seattle's new Democracy Voucher Program and we trust the Commission's thoughtful consideration to protect the spirit of Honest Elections Seattle.

Sincerely,

Alan Durning, Executive Director, and
Margaret Morales, Research Associate
[Sightline Institute](#)