

1 BEFORE THE CITY OF SEATTLE
2 ETHICS AND ELECTIONS COMMISSION

3 IN THE MATTER OF) APPEAL OF DISMISSAL OF ALLEGATION #2,
4 COMPLIANCE WITH) COMPLAINT THAT THE LIBRARY'S WEB SITE
SMC 2.04.300) AND BLUE BOOK PROMOTE PROPOSITION 1
5 CITY OF SEATTLE) WITH STATEMENTS NOT AN "OBJECTIVE AND
6) FAIR PRESENTATION OF THE FACTS" AS
REQUIRED BY LAW IF AN AGENCY VENTURES
COMMENT ON A BALLOT MEASURE

7
8 This appeal submits that the Commission's executive director acted
9 without rational basis in dismissing allegation #2 of my July 3
10 complaint, that the City violated SMC 2.04.300 by statements on the
11 Library web site and in its "Blue Book" (which is prominently posted on
12 the web site, and pages from which are prominently displayed throughout
13 the Library system). These statements promote Proposition 1 and in a
14 way that is not an "objective and fair presentation of the facts" as is
15 required when an agency comments on an upcoming ballot measure.
16 Immediate remedies are needed and proposed below.

17 Background. Ord. 123851 (exhibit #11) provides significant
18 discretion to the Mayor, City Council, and Library Board in how the
19 Proposition 1 levy proceeds would be spent. Section 4 of the ordinance
20 states: "Unless otherwise directed by ordinance, Proceeds shall be
21 deposited in the Library Levy fund" --thus conferring discretion to
22 pass a new ordinance to spend the "library" levy funds entirely on non-
23 library purposes. Assuming that its proceeds actually reach the
24 library, the levy ordinance lacks specificity on how they would be
25 spent for Library services.

Regarding the City of Seattle's
alleged use of public facilities to
promote City Proposition 1

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1 This discretion is in marked contrast to the 1998 Ord. 119019
2 which specified (sec. 1) that \$128.6 million would be spent on bonds
3 for building a new Central Library, and \$57.9 million would be spent on
4 branch libraries,

5 which facilities shall include three new libraries, replacement of
6 six current libraries, additions to seven current libraries,
7 interior improvements to seven current libraries, and relocation
8 of two current libraries to improved facilities, all as more
specifically listed as 'elements' of this component in Attachment
A."

9
10 Seattle's 2012 levy ordinance also lacks any of the hurdles that the
11 1998 bond issue ordinance posed to make it difficult for future city
12 councils to change the balance of funds between the Central Library and
13 the branches, change or delete what the bond issue would do for the
14 branches, or make any other change in the bond issue ordinance:

15 Elements may be deleted from or added to any component of the
16 Project only by an ordinance amending the list set forth in
17 Attachment A., passed by a two-thirds vote of the City Council
after a public hearing and after City Council consideration of the
recommendations of the Board, the Oversight Committee established
in Section 6, and the Mayor.

18 The amounts of Bond proceeds to be devoted to the neighborhood
19 library and central library components of the Project, as
20 established in Section 1, may be changed only by an ordinance
21 passed by a two-thirds vote of the City Council after a public
22 hearing and after City Council consideration of the
recommendations of the Board, the Oversight Committee established
in Section 6, and the Mayor.

23 Seattle's 2012 levy ordinance (sec. 5) does state that proceeds
24 will be used "for Library services," and that investments will be made
25 "in the following four categories of Library Services": hours and
access, collections; technology; and maintenance. However, it doesn't

1 say that investment of the proceeds in library services will be limited
2 to these categories--only that "investments will be made" in them
3 (however small these investments may be).

4 Within the four categories of hours and access, collections,
5 technology, and maintenance, the levy ordinance offers as "illustrative
6 examples" that levy proceeds may be spent on "program elements" such as
7 "supporting operating hours, "replacements and upgrades to the
8 Library's computer inventory," and "regular care and major
9 maintenance." Spending in none of these program categories is
10 required, and the mention of hours refers to "supporting" rather than
11 increasing them.

12 This lack of certainty in spending of the 2012 levy proceeds
13 prompted my filing of an objection to the City Attorney's proposed
14 voters' guide Explanatory Statement (exhibit #18) for attributing more
15 certainty than was present in the levy ordinance. The final version
16 rewritten by the Commission (exhibit #19) made significant
17 improvements--removing language stating that hours and access,
18 collections, technology, and maintenance were the only categories of
19 library services that the levy could fund; and adding language to make
20 clear that program elements such as improved operating hours, reference
21 services, and computers were examples of possible funding rather than
22 certainties.

23 Web site. The director's dismissal of my complaint against the
24 Library web site is limited to three sentences:

25 I dismissed your allegations that the fact sheet was promotional
on July 6, and I am dismissing your allegation that the web site

1 is promotional here. The web site provides in-depth information
2 to individuals who go in search of information that cannot be
3 addressed in a one-page fact sheet. My review of the web site
satisfies me that it is primarily informational.

4 The director does not have a rational basis for this dismissal. While
5 the web site's many references to the levy all purport to be
6 informational, most of them state not facts but speculations and thus
7 promote a positive vote for Proposition 1. Exhibit #37 contains the
8 relevant Library web pages.

9 The web page on "Keep Libraries Open" regarding results from
10 passing the levy makes the following statements, every single one of
11 which is not fact but speculation unmandated by the levy ordinance, and
12 a matter of future discretion for the Mayor, City Council, and Library
13 Board. For example, the levy ordinance's ballot title states only that
14 the levy proceeds would "support library hours." It does not say that
15 the levy proceeds would increase library hours. There is no rational
16 basis for denying that the following statements on the web page
17 entitled "Keep Libraries Open) are not informational, but speculative
18 and promotional:

19 **What the levy means for open hours:**

20 Restore 6551 open hours per year

21 Eliminate annual one-week shutdown of entire library system

22 Add Sunday hours to 15 branches now operating only five days a
week, meaning all libraries will be open on Sundays

23 Add access in north and south Seattle by restoring seven-day-a-
week service at the Columbia and Northgate branches.

24 Restore on-site reference staff at the eight branches that lost it
in 2010

25 Restore 1613 hours each week of free Internet access, system wide

Proposition 1's ballot title states that its passage would "update
technology." However, the Library's web page entitled "Improve

1 Computer and Online Services" wildly speculates on what that will mean,
2 stating as facts the following results that are not mandated by the
3 levy ordinance:

4 **What the levy means for technology:**

5 Regular replacements and upgrades for public computers and
6 software, public printers, and copiers, computer instruction
7 labs and meeting rooms

8 High-speed Internet access and network reliability in every
9 neighborhood

10 Make it easier to use Library digital materials and resources by
11 creating a true "virtual library" with improved website design,
12 functionality, integration and accessibility

13 Proposition 1's ballot title states that it would "maintain
14 library facilities." However, the Library's web page entitled
15 "Maintain Buildings" states as facts the following speculations that
16 are not mandated by the levy ordinance:

17 **What the levy means for maintenance:**

18 Fully fund a program or repairs to extend the life of all
19 libraries in Seattle

20 Maintain building roofs and exteriors

21 Periodically update hearing, cooling, plumbing and other systems

22 Replace or repair flooring restrooms and other high-wear interior
23 elements as needed

24 Maintain equipment, such as the automated book sorter that helps
25 process holds

Keep libraries clean and functional

Provide specialized cleaning

Repair and replace public furniture as needed

Regularly service heating, cooling, plumbing and electrical
systems so buildings are energy efficient and comfortable for
patrons

As a fourth example, the web page entitled "More Books and
Materials" is the only one that has more facts than speculations.
That is because the levy ordinance, unlike its vagueness regarding the
funding of the other Library services, does state in the ballot title
that "This proposition would increase library collections". However,

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1 even this web page states as facts the following speculations that are
2 not mandated by the levy ordinance:

3 **What the levy means for the collection: ...**

4 Increase the number of new titles per year by 7000 ...

5 Increase e-content by as many as 12,000 new files annually ...

6 Increase the number or items a person may place on hold to 50

7 The Blue Book is equally speculative in its pages respecting each
8 of the 26 branches and the Central Library. Examples of illegally
9 speculative and promotional statements quoted verbatim:

10 Residents were adamant that they needed more access to Library
11 service and the levy responds by opening the Columbia Branch seven
12 days a week. (p. 22)

13 Adding Sunday hours restores critical Library services for Delridge
14 residents. (p. 23)

15 Adding Sunday hours and on-site reference staff mean Fremont
16 residents will no longer need to travel to other neighborhoods for
17 access to Library services. (p. 25)

18 With levy-restored open hours, the Green Lake Branch will once again
19 bustle on Sundays. (p. 26)

20 Parents, students, and others will make good use of the levy-funded
21 Sunday hours at the High Point Branch. (p. 28)

22 The levy will add Sunday hours and on-site reference staff (p. 29,
23 International District/Chinatown branch)

24 The branch will open on Sunday as a result of the levy. (Madrona, p.
25 31)

The levy will respond to community needs by opening the Magnolia
Branch on Sundays. (p. 32)

The levy will add Sunday hours and on-site reference staff (Montlake,
p. 33)

The levy will open the NewHolly Branch on Sundays (p. 34)

The levy will open the Northgate Branch seven days a week. (p. 36)

The levy will open the Queen Anne Branch on Sundays. (p. 37)

The levy will restore much-needed Sunday hours. (South Park, p. 39)

The levy will open the University Branch on Sundays (p. 41)

The levy will open the Wallingford branch on Sundays and provide on-
site reference staff. (p. 42)

24 Deputy Solicitor General James Pharris, in his 2009 guidance on
25 permissible agency references to ballot measures, states that it is

1 illegal for an agency to speculate about financial consequences from
2 passage or defeat of a ballot measure:

3 The major flaw in your logic is to characterize as a "fact" your
4 predicted outcome of the legislative session, should the
5 initiative be approved. The legislature is legally free to
6 replace the agency's funding, no matter how unlikely that outcome
7 is. Therefore it is simply not a "fact" that the agency's
8 programs would be eliminated. It is only speculation. There
9 seems little purpose for the agency to indulge in such
speculation, except to influence the election results. Perhaps
the agency could publish a true "fact sheet" which, for instance,
lists the current programs administered by the agency with their
current budget. Perhaps the material also could point out the
current source of the agency's budget without speculating what
would happen if that funding source disappeared.

10 Blue Book. In dismissing my complaint about the Blue Book, the
11 director erroneously cites the precedent of the "Brown Book" that the
12 Library distributed before and during the 1998 Libraries for All bond
13 issue campaign. The two publications were both published before
14 adoption of their ordinances and they may look the same. But their
15 legal use during respective ballot measure campaigns dramatically
16 differs because, unlike the 2012 levy ordinance, the 1998 bond issue
17 ordinance adopted as specific mandates the projects and spending
18 amounts that the Brown Book advocated--hence when the Library
19 distributed it during the election campaign, it was facts, not
20 speculation, and there was no violation of law. In contrast, the
21 projects and spending amounts advocated in the 2012 Blue Book are not
22 mandated in the levy ordinance, despite the (illegal) effort by the
23 Library to tell voters that they are.

24 The director's dismissal of my complaint about the Blue Book finds
25 (p. 2) "reasonable cause to believe that the Library's display of the

1 entirety of the Blue Book between April 16 and June 11 is a minor
2 violation of the Elections Code." His reasons for classifying the
3 violation as minor include that the illegal exposure occurred "more
4 than a month before voters began receiving their ballots in the mail,
5 and before media coverage of the August election begin in earnest" as
6 well as that "from the start, the library directed that take-home
7 copies of the blue book be made available only to people who requested
8 them."

9
10 Unfortunately, the director entirely misses the serious and
11 ongoing illegal impacts of the Blue Book: First, links to it continue
12 to be posted on the Library's web site at two key pages that address
13 the levy—the "Levy at a Glance" web page and the "Libraries for All"
14 web page. And second, pages copied from the Blue Book containing rank
15 speculation about the levy's consequences for each respective location
16 are prominently posted at virtually every counter (checkout, return,
17 information, or reference) throughout the Library system. The April 16
18 internal InfoNET direction (exhibit #16) from the Library's
19 communications director instructs staff at the 26 branches and the
20 Central Library to post at prominent locations two pages from the Blue
21 Book - the financial page (p. 50), and the page that covers the
22 respective branch or the Central Library:

23
24 Each branch and the Central Library should have received
25 Plexiglass holders containing specific information about how the
levy impacts their location on one side, and financial levy
information on the other. Please contact Jennifer Cargal at 3-

1 3683, or Jennifer.cargal@spl.org, if you need additional holders
2 with levy information.

3 As a result of this direction, since about a week after the April 9
4 passage of the ordinance placing Proposition 1 on the August 7 ballot,
5 displays and handouts non-objectively and non-fairly promoting the levy
6 have been placed where large numbers of Seattle voters are sure to see
7 them. Photos of some of these displays were provided in Exhibit #21
8 along with the July 3 complaint.

9 The Ethics and Elections Commission ruled in 2005, with a
10 supplementary opinion in 2006, that Mayor Nickels had violated SMC
11 2.04.300's prohibition on use of public facilities by printing and
12 mailing an accomplishments report. The Nickels case has important
13 parallels to the current Library case, all of which indicate that the
14 Library's violation is more serious than was Nickels':

- 15 • While Nickels' distribution was in March (six months before the
16 primary election), the Library's posting or illegally promotional
17 material on its web site and at staffed counters throughout the
18 Library system is continuing now the voters have received their
19 ballots and less than a week before the August 7 election.
- 20 • Nickels was found to have violated the law even though his
21 accomplishments report did not urge support for him or even
22 mention his candidacy for re-election. In contrast, the
23 Library's Fact Sheet explicitly refers to the proposed levy and
24 the August 7 election, and in ways that a reasonable person would
25 judge favorable to a yes vote on Proposition 1.
- In their potential influence on the election, the Library's
efforts are much more important than was Mayor Nickels' 2005
accomplishments report as an impact on his own re-election.
- And while the Commission did not find Nickels' accomplishments
report lacking in objectivity or fairness, a central part of this
complaint is that the Library has violated this requirement for an

1 "objective and fair presentation of facts relevant to a ballot
2 proposition...."

3 New advisory opinion needed. My July 3 complaint asks the
4 director and Commission to reconsider the standard adopted in its 2006
5 supplementary advisory opinion on the Nickels case (pp. 3-4), quoting:

6 The key question is whether, to a reasonable person, the activity
7 or document appears PRIMARILY designed to influence the outcome of
8 an election, or PRIMARILY designed to be informational with only
an incidental effect of assisting a candidate's campaign for
election.

9 The Library efforts documented in this complaint and appeal are clearly
10 not "primarily informational." The promotional speculations on the
11 Library's web site and on the pages of the Blue Book respecting each
12 branch and the Central Library that are posted prominently at these
13 locations simply do not qualify as "primarily informational." The
14 Library's effort has been too specific about the levy and its timing,
15 too focused on reaching potential voters who use the Libraries, and too
16 astray from being objective and fair, to be regarded as anything but an
17 effort primarily designed to influence the outcome of the August 7
18 election.

19 An agency effort that is designed to influence an election should
20 not be allowed, even if its purpose is "primarily informational." The
21 Commission and director should reconsider and change anything in the
22 2006 advisory opinion that would find an agency's clear efforts to
23 promote a ballot measure being within the law. It is not rational to
24 apply a standard that is itself not rational.

25 In revising its 2006 supplementary advisory opinion or doing a new
one specifically about ballot measures, the Commission should elaborate

1 on the application of the WAC 390-05-271(2) requirement that any agency
2 effort to communicate to the public about a ballot measure must ensure
3 an "objective and fair presentation of facts." We have lost the
4 meaning of words if "primarily informational" could characterize an
5 agency promotion and information campaign where the information
6 (disinformation would be a more accurate term) is not objective or
7 accurate, and misleads the public in a pattern that consistently favors
8 a "yes" vote.

9 Conclusion and requested remedies. The Library's web site and
10 Blue Book do not describe the ballot measure "objectively and
11 accurately," and all of the inaccuracies err on the side of promoting
12 Proposition 1. WAC 390-05-271(2) interprets RCW 42.17A.555 as allowing
13 a public agency to describe to the public an upcoming ballot measure,
14 but only if in doing so it makes an "objective and fair presentation of
15 facts" that does not advocate for or against the measure. Statements
16 by a public agency about a ballot measure must be facts rather than
17 unlawful speculation about consequences. The Library Levy Fact Sheet
18 does not meet this standard. The mis-statements in the Blue Book, and
19 on the Library web site, are identical in all material respects to some
20 that the Ethics and Elections Commission rejected and rewrote,
21 producing an objective and fair Explanatory Statement that is now in
22 the Voters' Pamphlet. The same standard of objectivity and fairness
23 should be expected of the Library.

24 Three very simple remedies are requested if the Commission chooses
25 to uphold this complaint: (1) On the Library's web site, revise

