BEFORE THE CITY OF SEATTLE
ETHICS AND ELECTIONS COMMISSION

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

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

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

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

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

which facilities shall include three new libraries, replacement of six current libraries, additions to seven current libraries, interior improvements to seven current libraries, and relocation of two current libraries to improved facilities, all as more specifically listed as ‘elements’ of this component in Attachment A.”

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

Elements may be deleted from or added to any component of the Project only by an ordinance amending the list set forth in 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.

The amounts of Bond proceeds to be devoted to the neighborhood library and central library components of the Project, as established in Section 1, may be changed only by an ordinance 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.

Seattle’s 2012 levy ordinance (sec. 5) does state that proceeds will be used “for Library services,” and that investments will be made “in the following four categories of Library Services”: hours and access, collections; technology; and maintenance. However, it doesn’t
say that investment of the proceeds in library services will be limited
to these categories--only that “investments will be made” in them
(however small these investments may be).

Within the four categories of hours and access, collections,
technology, and maintenance, the levy ordinance offers as “illustrious
total examples” that levy proceeds may be spent on “program elements” such as
“supporting operating hours, “replacements and upgrades to the
Library’s computer inventory,” and “regular care and major
maintenance.” Spending in none of these program categories is
required, and the mention of hours refers to “supporting” rather than
increasing them.

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

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

I dismissed your allegations that the fact sheet was promotional
on July 6, and I am dismissing your allegation that the web site
is promotional here. The web site provides in-depth information to individuals who go in search of information that cannot be addressed in a one-page fact sheet. My review of the web site satisfies me that it is primarily informational.

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

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

What the levy means for open hours:
- Restore 6551 open hours per year
- Eliminate annual one-week shutdown of entire library system
- Add Sunday hours to 15 branches now operating only five days a week, meaning all libraries will be open on Sundays
- Add access in north and south Seattle by restoring seven-day-a-week service at the Columbia and Northgate branches.
- Restore on-site reference staff at the eight branches that lost it in 2010
- 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
Computer and Online Services” wildly speculates on what that will mean, stating as facts the following results that are not mandated by the levy ordinance:

**What the levy means for technology:**
- Regular replacements and upgrades for public computers and software, public printers, and copiers, computer instruction labs and meeting rooms
- High-speed Internet access and network reliability in every neighborhood
- Make it easier to use Library digital materials and resources by creating a true “virtual library” with improved website design, functionality, integration and accessibility

Proposition 1’s ballot title states that it would “maintain library facilities.” However, the Library’s web page entitled “Maintain Buildings” states as facts the following speculations that are not mandated by the levy ordinance:

**What the levy means for maintenance:**
- Fully fund a program or repairs to extend the life of all libraries in Seattle
- Maintain building roofs and exteriors
- Periodically update hearing, cooling, plumbing and other systems
- Replace or repair flooring restrooms and other high-wear interior elements as needed
- Maintain equipment, such as the automated book sorter that helps 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,
even this web page states as facts the following speculations that are not mandated by the levy ordinance:

**What the levy means for the collection:** ...
Increase the number of new titles per year by 7000 ...
Increase e-content by as many as 12,000 new files annually ...
Increase the number or items a person may place on hold to 50

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

Residents were adamant that they needed more access to Library service and the levy responds by opening the Columbia Branch seven days a week. (p. 22)
Adding Sunday hours restores critical Library services for Delridge residents. (p. 23)
Adding Sunday hours and on-site reference staff mean Fremont residents will no longer need to travel to other neighborhoods for access to Library services. (p. 25)
With levy-restored open hours, the Green Lake Branch will once again bustle on Sundays. (p. 26)
Parents, students, and others will make good use of the levy-funded Sunday hours at the High Point Branch. (p. 28)
The levy will add Sunday hours and on-site reference staff (p. 29, International District/Chinatown branch)
The branch will open on Sunday as a result of the levy. (Madrona, p. 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)

Deputy Solicitor General James Pharris, in his 2009 guidance on permissible agency references to ballot measures, states that it is...
illegal for an agency to speculate about financial consequences from passage or defeat of a ballot measure:

The major flaw in your logic is to characterize as a “fact” your predicted outcome of the legislative session, should the initiative be approved. The legislature is legally free to replace the agency’s funding, no matter how unlikely that outcome is. Therefore it is simply not a “fact” that the agency’s programs would be eliminated. It is only speculation. There 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.

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

The director’s dismissal of my complaint about the Blue Book finds (p. 2) “reasonable cause to believe that the Library’s display of the
entirety of the Blue Book between April 16 and June 11 is a minor violation of the Elections Code.” His reasons for classifying the violation as minor include that the illegal exposure occurred “more than a month before voters began receiving their ballots in the mail, and before media coverage of the August election begin in earnest” as well as that “from the start, the library directed that take-home copies of the blue book be made available only to people who requested them.”

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

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

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

- While Nickels’ distribution was in March (six months before the primary election), the Library’s posting or illegally promotional material on its web site and at staffed counters throughout the Library system is continuing now the voters have received their ballots and less than a week before the August 7 election.

- Nickels was found to have violated the law even though his accomplishments report did not urge support for him or even mention his candidacy for re-election. In contrast, the Library’s Fact Sheet explicitly refers to the proposed levy and the August 7 election, and in ways that a reasonable person would 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
“objective and fair presentation of facts relevant to a ballot proposition...”

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

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

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

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

In revising its 2006 supplementary advisory opinion or doing a new one specifically about ballot measures, the Commission should elaborate...
on the application of the WAC 390-05-271(2) requirement that any agency effort to communicate to the public about a ballot measure must ensure an “objective and fair presentation of facts.” We have lost the meaning of words if “primarily informational” could characterize an agency promotion and information campaign where the information (disinformation would be a more accurate term) is not objective or accurate, and misleads the public in a pattern that consistently favors a “yes” vote.

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

Three very simple remedies are requested if the Commission chooses to uphold this complaint: (1) On the Library’s web site, revise...
references to the levy to reflect what is actually mandated by the levy ordinance; (2) remove links to the Blue Book from the Library web pages on “Levy at a Glance” and “Libraries for All,” while making it available in a historical portion of the web site; and (3) remove the location-specific pages from the Blue Book that are now displayed prominently on staffed counters throughout the Library system.

The laws that restrict how public agencies can comment on ballot measures are there for a reason. The incentives are too great for them to dissemble and to displace democracy. For the Library in its publicity to portray the levy as having certainties when they are not there—-that is not right or fair. Not telling voters the truth about the levy is a disservice to them, and it invalidates the efforts of those who worked for a more specific and accountable levy. Thank you for your consideration.

I declare under penalty of perjury of the laws of the State of Washington that I am a registered voter of the City of Seattle, and that the information in the above complaint, and the exhibits provided, are true and correct.

Dated this August 1, 2012

Chris Leman