

# Memo

To: Commission

From: Wayne Barnett

Date: November 30, 2016

Re: Contributions from candidates participating in the Democracy Voucher Program

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In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court struck down Congress's effort to legislate limits on a candidate's contribution to his or her own campaign. The Court wrote that "[t]he primary governmental interest served by the [Federal Election Campaign] Act – the prevention of actual and apparent corruption of the political process – does not support the limitation on the candidate's expenditure of his own personal funds." *Id.* at 53. The Court continued, writing that "[i]ndeed, the use of personal funds reduces the candidate's dependence on outside contributions, and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act's contribution limitations are directed."

This constitutional principle lives in the Seattle Municipal Code in Section 2.04.370.E.1, which excepts from the \$500 contribution limit "[a] candidate's contributions of his or her own resources to his or her own campaign or contributions to the candidate's campaign by the candidate or the candidate's spouse or state registered domestic partner of their jointly owned assets."

From *Buckley* we also know that what the government cannot *compel* without running afoul of the First Amendment, it can *encourage* by making a condition of a voluntary scheme. The Presidential Election Campaign Fund established by the Act conditioned a candidate's receipt of public funds on that candidate's agreement to abide by spending limits, even though elsewhere the opinion the Court ruled that the Act's *imposition* of spending limits violated the First Amendment.

All of this is prelude to the question of whether democracy voucher program participants are limited in what they can contribute to their own campaigns. Unlike in Seattle's last public financing program (which limited a candidate to contributing from their own funds no more than three percent of the spending cap), and unlike in the state voucher program that failed at the polls earlier this month (which capped candidate contributions at \$5,000), there is no express limit on what a participating

candidate can spend of their own money. Nor is there, though, language mirroring SMC 2.04.370.E, expressly providing that a candidate’s contributions of their own resources is unlimited. Here is the exact language of SMC 2.04.630(b) establishing contribution limits for program participants:

...Further Program requirements are that a candidate for Mayor shall not solicit or accept total contributions from any individual or entity in excess of a total of \$500 during one election cycle, and a candidate for City Attorney or City Council shall not solicit or accept total contributions from any individual or entity in excess of a total of \$250 during one election cycle (including any contribution used to qualify for Democracy Vouchers, but excluding the value of Democracy Vouchers assigned to such candidate) (subject to exceptions provided herein).

1. *Arguments in favor of interpreting this language to limit a participating candidate’s contributions of their own resources.*

First and foremost, the plain language of this section limits contributions from **any** individual or entity, and there is no provision excepting a candidate from this language. The clear exception for non-participating candidates in SMC 2.04.370.E creates an inference that the two sections should be read differently. “A familiar principle of statutory construction ... is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.” *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006).

Finally, one of the purposes of I-122 is “giving more people an opportunity to have their voices heard in our democracy,” a purpose that is ill-served by a participating candidate self-financing. SMC 2.04.600.

2. *Arguments against interpreting this language to limit a participating candidate’s contributions of their own resources.*

It is not SMC 2.04.370.E that creates an exception for a candidate’s contribution of their own resources, it is the First Amendment. Overcoming that constitutional imperative ought to require some express provision, not just silence. Moreover, the first purpose of I-122 is the same purpose that the Court rejected as a basis for limiting candidate contributions forty years ago: preventing corruption.