

Memo

To: Commission

From: Wayne Barnett

Date: September 11, 2017

Re: Debate requirement in SMC 2.04.630(b)

Procedural Posture and Question Before the Commission

On August 17, 2017, the Commission received a complaint alleging that Councilmember Lorena González failed to attend three public debates before the Primary (Attachment A). On August 31, 2017, Councilmember González filed her response to the complaint (Attachment B).

The question before the Commission is whether Councilmember González is still qualified to participate in the Democracy Voucher Program (“Program”).

Laws and Rules at Issue

SMC 2.04.630(b) lists as one of the requirements of participating in the Program that a candidate “shall comply with Program requirements and applicable campaign laws. Such Program requirements are that the candidate: shall take part in at least three public debates for primary and general elections each (as defined by SEEC, and SEEC may waive or reduce the number of debates, if a qualifying candidate makes all reasonable efforts to participate in debates and similar public events). . . .”

At its December 7, 2016 meeting, the Commission adopted Rule 16.B, defining a debate as “a live event, open to the general public, at which all the candidates in a particular race have an opportunity to respond to questions. Each candidate must be given an equal opportunity to participate.”

SMC 2.04.630(g) states that “[a] candidate loses qualification for the Program by publicly announcing withdrawal, abandoning the race, failing to advance to the general election, or if SEEC finds sufficient material violations of election laws or Program requirements such as violation of spending or contribution limits, or fraudulent or attempted fraudulent assignment of Democracy Vouchers.”

Executive Director’s Analysis and Recommendation

Councilmember González provided the Commission with a list of seven events she attended: five of them sponsored by organizations affiliated with the Democratic Party, a Women of Color candidate forum at the University of Washington, and a candidate forum sponsored by the Delridge Neighborhood District Council and the Highland Park Improvement Club. Since Democratic Party endorsements are not available to those who are not members of the Party, and five of the seven

events listed by Councilmember González were party endorsement meetings, Councilmember González has failed to establish that she participated in three debates as that term was defined by the Commission.

SMC. 2.04.630(b) gives the Commission the authority to waive or reduce the number of debates if a candidate makes all reasonable efforts to participate in debates and similar public events. Councilmember González in her written submission to the Commission notes this provision and writes: “As the only incumbent running for Seattle City Council, it is often the case that City business conflicts with campaign-related events. In those instances, my availability for certain public debates was impacted by my obligation to attend to city-related business.” If the Commission were to exercise its authority on this basis, it would establish one standard for incumbents and a higher standard for challengers. I recommend that the Commission reject this approach.

In the Director’s opinion, therefore, the question before the Commission is whether Councilmember González’s failure to satisfy the debate requirement constitutes a “material” violation of the Program requirements, ending her participation in the Program. For the following reasons, the Director does not recommend that the Commission treat this as a material violation.

1. The section on loss of qualification lists three examples of “material” violations: (1) violations of the Program spending limits, (2) violations of the Program contribution limits, or (3) fraudulent or attempted fraudulent assignment of democracy vouchers. Participating in only one of the three debates required before the Primary does not seem to be on par with those three violations listed as examples of material violations.

2. If the Commission terminates the candidate’s participation in the Program, it will invalidate the choice of the more than 2,100 residents to date who have assigned their vouchers to Councilmember González. The Program exists to empower residents to participate in elections in ways they have not been involved in the past. The Commission should be cautious about exercising the “nuclear option” in a way that disserves one of the primary goals of the Program.

3. The Program is brand new, and while Rule 16 was adopted almost a year ago with notice to all candidates and officeholders, the Commission should exercise its authority judiciously in this maiden voyage of the Program. This is an opportunity to educate candidates about their obligations under the Program in the future.

Other observations

The complaint also asks the Commission to fine Councilmember González for an alleged misrepresentation in her campaign’s initial list of three events that the candidate attended. Even assuming arguendo that there was a misrepresentation, it would not violate any ordinances administered by the Commission, and is therefore not something for which the Commission can penalize a candidate.

Councilmember González writes that Rule 16.B “effectively imposes upon candidates a new administrative burden...It is not and should not be the campaign’s responsibility to delve into a third-party’s method of organizing and structuring the programmatic aspects of a public debate before accepting an invitation....” Rule 16 is not intended to discourage candidates from participating in

Party events, or any events that do not meet that Rule’s definition of a “debate.” Rule 16 only seeks to ensure that in the months leading up to an election a participating candidate participate in three events that are open to candidates and members of the public regardless of their political persuasion. The Director encourages the Commission to adopt a standard that a candidate “knows or should have known” that a forum was or was not open to all candidates when determining whether that event counts toward the three-debate requirement. No searching inquiry of the host’s organizing efforts is required.

For example, a candidate should know that Democratic Party endorsement meetings are generally only open to those seeking the Democratic Party’s endorsement, and should not count those towards meeting the requirement. (If a candidate learns that in fact all the candidates in a race were invited to a Party event, and the public was invited, they could count that event toward the three-debate requirement.) A neighborhood candidate forum like the one hosted by Delridge and Highland Park, conversely, is one that a candidate can rightly assume is open to all candidates, especially when five of the seven candidates for the seat participate in the event, as was the case with that event. (If a candidate is informed by the host that not all candidates were invited, that actual knowledge would mean that they could not count it toward the three-debate requirement.)

The Commission may, however, want to revisit Rule 16 before the next election cycle. Had candidates for mayor been eligible to participate in the Program this year, only forums to which all 21 candidates had been invited would count toward meeting the Program requirement.