

## Seattle Ethics and Elections Commission Special Meeting

May 10, 2021

A special meeting of the Seattle Ethics and Elections Commission (SEEC) convened remotely. Commission Chair Richard Shordt called the meeting to order at 4:03 p.m. and Vice Chair Hardeep Singh Rekhi, along with Commissioners Bruce Carter, Kristin Hawes, Zachary Pekelis Jones, Susan Taylor, and Judy Tobin were present. Executive Director Wayne Barnett was present and was joined by staff members Chrissy Courtney, Polly Grow, René LeBeau, Fedden Amar, and Annie Tran, along with Assistant City Attorneys Teresa Chen and Gary Smith.

The Chair indicated that he would like to allow public comment to open the meeting due to a couple of items of considerable public interest on the agenda. The Chair proposed a limit of one minute per person for up to twenty minutes for public comment. The Chair asked for those members of the public who wanted to speak to make a note in the chat.

The Chair asked the two new commissioners to introduce themselves, beginning with Zachary Pekelis Jones, while folks were signing up to provide public comment. Commissioner Pekelis Jones thanked the Chair and said he was very pleased to be joining the commission and that he has worked in election law and voting rights law for many years, first in private practice and then at the US Department of Justice in the Civil Rights division, and now as Assistant Attorney General with the Washington Attorney General's office. Commissioner Pekelis Jones said he was a lifelong Seattleite and cared deeply about the issues that this commission was charged with enforcing and regulating, and he looked forward to working with the commissioners for his term.

Commissioner Kristin Hawes introduced herself next saying that she was very pleased to be a member of the commission, and like Commissioner Pekelis Jones she was also a lifelong Seattle resident and a partner in the real estate group at Summit Law Group and was interested in elections, accessibility to elections and enhancing participation and looked forward to working with the commission to achieve those goals.

The Chair welcomed and thanked the two new members and then turned to public comment. One member of the public, Henry Bridger signed up to speak on behalf of the Recall Sawant campaign. Mr. Bridger provided public comment asking the commission to table the agreement with Councilmember Sawant and to reschedule. The Chair thanked Mr. Bridger and asked if there was anyone else who wanted to provide public comment and there were none.

### **Action Items**

#### **1) Minutes for March 29, 2021 special meeting**

The Chair then moved to the first action item on the agenda, the meeting minutes from the March 29, 2021 special meeting. Commissioner Tobin moved to approve the minutes and the motion was seconded by Commissioner Taylor. The motion was approved unanimously.

#### **2) Minutes for April 7, 2021 regular meeting**

The Chair then moved to the next action item, the meeting minutes from April 7, 2021 regular meeting. Commissioner Taylor moved to approve the minutes and the motion was seconded by Commissioner Tobin. The motion was approved unanimously.

#### **3) Settlement in Case No. 20-0116-1**

The Chair then moved to the next item, Case No. 20-0116-1, the settlement agreement between the Director and Councilmember Sawant. The Chair noted that legal counsel for the

Executive Director, Carolyn Boies, and legal counsel for Councilmember Sawant, Dimitri Iglitzin, were both in attendance. Commissioner Carter recused himself from the matter.

The Chair asked the Director or Ms. Boies to begin, and then to hear from Mr. Iglitzin, and then the commission to discuss the matter, considering the public comment that had been received in writing and in person.

The Director offered a brief overview saying this matter arose out of actions from winter of 2019/2020 and the Tax Amazon movement, which was a ballot measure proposed for submission to the voters. There was activity within the Councilmember's office to promote the nascent ballot measure and the Director took the position that it was a ballot measure and city resources should not have been used for that, and that issue was resolved by the Supreme Court in line with the Director's position last month. As a result, the settlement agreement before the commission was reached with the Councilmember where she does agree that she violated the section of the law that bars the use of public resources for campaign purposes and for non-city purposes and she agreed to pay a \$3,515.74 fine, which was double the amount of the public resources expended by her office to support the measure. The Director noted that this settlement aligned very well with the previous violations of SMC 2.04.300. The Director stated that most of those were not intentional conduct violations and the closest fine to this one was when Mayor Nickels in 2005 sent out a document extolling his accomplishments of the previous three years while he was on the ballot for re-election and by a vote of 4-3 the commission found him to be in violation of the election code, and they required him to repay the value of the public resources expended on that mailing, which was roughly \$2,200. Given the aligned with the preceding cases, the Director encouraged the commission to adopt the agreement.

The Chair thanked the Director and asked Mr. Iglitzin to speak. Mr. Iglitzin thanked the commission, and stated that at a previous meeting he had requested the commission to wait to address this issue because he believed that the legal issue in dispute, which was whether resources devoted to a planned or anticipated ballot proposition could properly be characterized as support for a ballot proposition even if nothing had been filed and no signatures gathered, would be resolved by the Supreme Court. Mr. Iglitzin agreed that the Supreme Court sided with the Director's interpretation of the SEEC rules and laws, and since there is no longer any ambiguity, the settlement indicated that the Councilmember Sawant indicated that is not what she believed the intent of the law to be at that time, but now that it has been clarified by the Supreme Court they do believe it is appropriate to resolve this matter as proposed by the Director.

The Chair thanked Mr. Iglitzin and then asked the Vice Chair if he had any questions or if he had any comments. The Vice Chair asked the Director why he chose to double the amount and whether that was in line with other penalties as well. The Director answered that he chose to double it because the most comparable case was the one involving Mayor Nickels, and the divided commission at that time felt it was appropriate to fine the campaign the amount involved, and the Director decided in this case the doubling of the fine was merited.

The Chair asked Commissioner Tobin if she had any questions and she said that it had been on the docket for a while but then the decision seemed to be made quickly and she was not clear about whether the concerns regarding other behavior by Councilmember Sawant are impacted by this settlement, and she wanted to clarify whether this just pertained to the misuse of city funds. The Director answered yes, this settlement only pertained to the Tax Amazon ballot measure and the other issues were before the voters in the recall election. Commissioner Tobin

asked how this agreement came so quickly since there weren't any discussions by the commissioners and asked whether she just did not understand the process since she was new to the commission or whether it was usual for the Director to make the agreements without counsel.

Vice Chair Rekhi said that he had been on the commission for a bit and wanted to give his perspective, saying this had been on the agenda for a while, but the commission decided to wait for the Supreme Court decision and once that decision was handed down, then the settlement agreement was completed, and it was usual for these types of violations for the Director to reach a settlement agreement and then that settlement is presented to the commission for their review to decide if it is reasonable and appropriate. Commissioner Tobin said that made it clear that the situation was pending, waiting on the Supreme Court, and that was in agreement prior to her joining, and so it seemed quick to her, but longer to everyone else.

The Chair said that it was pending and they invited the parties earlier this year to provide a briefing schedule in the event there would be a hearing since they knew the Supreme Court would be issuing a decision, and in this case the parties met and agreed to the settlement, which is standard and both parties generally reach a reasonable agreement.

Commissioner Taylor asked the Director about the costs and the doubling thereof and whether indirect costs, such as salaries for city employees doing this work would be appropriate to consider as well. The Director answered that they did not take into account the salaries and whether it would be appropriate to do so was a question for the commission. The Director noted that it is difficult to quantify how much time it would take to put together a poster or putting out a social media post, and he considered those to take minimal time, and so the direct costs were an accurate reflection on which to base the fine, and doubling it would hopefully include some of the indirect cost.

Commissioner Taylor then asked whether in the drafting of the settlement the Councilmember was being released from claims just associated with the ballot initiative issue specifically being discussed or whether it was broader, and they are releasing the Councilmember from possibly unknown claims. The Director answered that it is strictly related to the Tax Amazon ballot measure and that is the only claim the Councilmember would be released from. The Chair then asked to clarify whether only the three charges in the charging documents would form the basis for this issue, and if there are matters outside of the Tax Amazon initiative that might impact the elections code that may be brought forward by the public, they are not to be construed as being waived by this settlement agreement. The Director answered that the Chair was correct. The Chair then asked whether there was anything that would preclude any member of the public from requesting the commission to investigate issues related to violations of the ethics codes that fall outside of these three issues. The Director answered no.

Commissioner Taylor then asked Mr. Iglitzin whether Councilmember Sawant planned to change her website with respect to her claim that the recall issues were all inaccurate. Mr. Iglitzin said that he had not reviewed her website and had no answer to that question and indicated that neither the City nor the Washington State Public Disclosure Commission takes it upon themselves to police electioneering communications to the extent that there are politicking regarding the recall. Commissioner Taylor asked Mr. Iglitzin whether Councilmember Sawant acknowledged that she violated the ethics code. Mr. Iglitzin said that for a variety of reasons he would direct the attention to the actual language in the settlement agreement signed by the Councilmember, but he was not Councilmember Sawant and he could not put words in her mouth.

Commissioner Tobin said she wanted to make it very clear that this settlement only applied to a very specific violation with a monetary penalty, and other outside accusations are not under the purview of the commission right now, but future actions by the commission are not precluded. The Director concurred and said this agreement only released the Councilmember for her violation of the election code by using public resources to promote the Tax Amazon ballot initiative by paying a fine. Ms. Boies said that she would point the commission to the recital section of the agreement where it listed the facts which were the basis for the charge at issue in the settlement agreement, and that was the basis for the release this settlement agreement resolves; only those facts and that charge.

Commissioner Pekelis Jones asked Mr. Iglitzin, in reference to the letter that was provided by the Recall Sawant campaign counsel John McKay, whether he had a chance to review that letter. Mr. Iglitzin said he had not been sent that letter. Commissioner Pekelis Jones said that it appeared that a website called Kshamasolidarity.org had posted a statement that claimed that the Councilmember did not use city resources to promote a ballot initiative which was patently inconsistent with the terms of the settlement agreement. Commissioner Pekelis Jones continued that this raised questions whether this website was run or controlled in any way by the Councilmember and whether it might be appropriate as part of the settlement agreement to include a provision that the Councilmember would refrain from making statements that were inconsistent with the settlement agreement. Commissioner Pekelis Jones noted this was dangerous territory perhaps by regulating the content of campaign speech and related protected speech but it also went towards an interest of this commission to ensure that the provisions of its settlement agreements and its authority are not disregarded by parties immediately after the ink had dried and he asked Mr. Iglitzin what he thought his client's take would be on that.

Mr. Iglitzin said that he had not discussed this with his client and could not speak for the Councilmember but his reaction to this was that there was nothing in the Seattle Ethics and Elections Code that allowed the city to regulate political speech, so on a minor point, Mr. Iglitzin speculated that the language on that website was likely in place prior to this agreement. Mr. Iglitzin continued that his position, which had been taken openly before the commission, was that until a ballot measure was filed with an appropriate election official or signatures were being gathered, it was only an idea, not an actual ballot measure, and therefore the Director's interpretation of the law had been incorrect, but the Supreme Court ruling sided with the Director's interpretation.

Commissioner Pekelis Jones then asked Mr. Iglitzin to confirm that he would not be able to speak on behalf of the Councilmember regarding whether the website would change. Mr. Iglitzin said he could not, but he did say it was fundamentally in excess of the City's authority to tell any incumbent or any candidate what messages they can or cannot say based on what the SEEC believed to be true or not, and the focus should be on a specific violation, and he did not think that as part of a settlement agreement there should be any prior restraints on speech. Commissioner Pekelis Jones asked Ms. Boies if she had any response. Ms. Boies said she would point the commission to the content of the settlement agreement that indicated the Councilmember's stated prior understanding and also acknowledged that understanding had been answered by the ruling of the Supreme Court and she understands the obligations of the Ethics and Elections Code going forward.

Commissioner Pekelis Jones said that the commission received several emails regarding the settlement and one issue that came up was the total amount that could be assessed, and he asked Ms. Boies what the maximum penalty could be in this case. Ms. Boies answered that she



was not prepared to say that at this time, the discussion of the penalty gets into privileged communications between herself and her client, the Executive Director.

Commissioner Hawes said that her questions had largely been answered by the other commissioners questions, but she did note that in the first agreement paragraph Councilmember Sawant expressly acknowledged that she did violate the ethics code and so with respect to future statements of a non-violation Commissioner Hawes considered it adequately expressed as written. Commissioner Hawes asked about the amount of the penalty, saying that it did seem to be line with previous cases, but in reading the public comments there was considerable agitation around this issue and there seemed to be conflation with the resolution of this issue by the commission and the progress of the recall campaign. Commissioner Hawes's understanding was that the two were completely independent of one another. The Director stated that they were completely separate, and the matters before the voters in the recall were not in any way resolved by this agreement.

The Chair asked the Director what circumstances would potentially lead to an investigation of this consent agreement. The Director said that within the agreed period if there was not a payment, then there would be a potential for a hearing. The Chair said that to make the record as clear as possible, there have been public comments on this matter received by the commission, and to the extent that any of those comment involve allegations or complaints, there was nothing that would preclude these allegations or complaints being brought before the commission. The Director confirmed that the Chair was correct.

The Vice Chair asked the Director if anyone else had raised an issue that was pending before the commission against Councilmember Sawant currently. Vice Chair Rekhi then asked if there had been any prior violations. The Director answered no, there have been an inordinate

number of complaints filed against the Councilmember, but this was the first time that the Director has believed she violated the law. The Vice Chair asked whether the other complaints were investigated. The Director said yes, there have been a number of dismissals of alleged violations, some of which were appealed to the commission and the dismissals have been upheld. The Vice Chair asked if this was the first violation that was levied against the Councilmember and the Director answered yes. The Chair asked if there were any other commissioners with questions or comments, and Vice Chair Rekhi asked whether this investigation was started by the Director himself or whether this was prompted by a complaint. The Director answered that it was brought to his attention, but he would not describe it as a formal complaint.

The Chair said that the Recall Sawant campaign had identified a number of issues and the Supreme Court had weighed in on several of those issues and he asked the Director whether the SEEC had any jurisdiction to hear or address the other matters that were considered by the Supreme Court. The Director said that he was not able to remember everything that was in the case before the Supreme Court, but one that he did remember was the accusation that the Councilmember shared confidential information with regards to the Mayor's address, but the Director had never received any complaints that indicated that the Councilmember had obtained that address from using city resources or using anything she learned from her position as a Councilmember. The Chair said that the options before the commission were to approve the settlement agreement, reject the agreement or to modify the agreement. The Chair asked if there was a motion.

Commissioner Pekelis Jones said he wanted to ask another question of the Director as to whether there was an ethics or elections code violation that was later or concurrently the subject of a recall petition. Commissioner Pekelis Jones said that it seemed that there was an assumption

that the actions of the commission were entirely separate from the recall campaigns, but that these proceedings might be used within the context of the recall campaigns, either for or against.

The Director answered that frequently issues have come before the commission where people are on the ballot and it was not unusual for the commission to weigh how their actions may impact the electoral process. So, while this was something that was considered, the job was to do the work without being too mindful of how it would impact the electoral prospects of any candidate.

Commissioner Tobin said she thought this was a cut and dried case and she was inclined to move forward with it as it was narrowly defined. The Chair said that he thought Commissioner Tobin made sense and in response to Commissioner Pekelis Jones, the Chair thought it was in the commission's best interest that when there were violations of the law that the penalties should be consistent with the violations. The Chair continued that it was not good to have a practice of inconsistent penalties, and because there were swirling accusations and a very vocal recall effort, if those issues did not touch on the settlement itself, his view was that they would not militate in favor of special, enhanced, or unique penalties and said the Director had negotiated what he believed was a reasonable and appropriate settlement.

The Chair asked if there was a motion, and Commissioner Tobin moved to agree to the settlement and Vice Chair Rekhi seconded the motion and the motion passed, with Commissioner Carter in abstention.

**4) Case No. 21-WBI-0304-1**

The Chair then moved to the first discussion item of Case No. 21-WBI-0304-1 and asked the Director to provide an overview. The Director pointed out that Mr. Darwin Roberts was in attendance and he had apparently been retained by Ms. Michelle Chen as her attorney, and he

wasn't sure if the Chair would like to hear from Mr. Roberts. The Director said that they received a letter from Mr. Roberts in the last 45 minutes or so, and he had not had a chance to review any of the materials submitted yet.

Ms. Boies said that the report the commission provided to Mayor Durkan, as well as possibly the letter Mr. Roberts submitted, which she had also not had a chance to review, may refer to privileged legal advice and that privilege is held within the Executive Department, within the Mayor's office, and they would be the only ones to waive privilege and so Ms. Boies wanted to remind everyone in their comments today to not get into the privileged legal advice that the Mayor has not yet waived privilege on. The Chair asked for an informational high level review.

The Director stated this was a report of improper governmental action that was received at the start of March. As the report makes clear, the Director retained Ramsey Ramerman, a renowned public disclosure expert, to conduct the investigation and make legal analysis. Mr. Ramerman fulfilled those duties and a report was sent to the Mayor, the City Attorney, the City Council President, and to the complainants. Under the whistleblower protection code, there was a finding of one instance of improper governmental action, i.e. a violation of the public records act, one area where they found a failure to follow best practices. The Director noted there was no role for the commission in this matter, since there was not an allegation of a violation of the ethics or elections code. This did not convert the commission into an enforcer of the public records act.

The Chair said that he did not believe that there needed to be public comment on this but said that the commission had received a letter from Mr. Roberts, and Mr. Roberts had requested to make a statement on the record. Commissioner Hawes said she wanted to disclose to the commission that she had a long standing friendship with Ms. Chen and thus would not be part of

the discussion. Commissioner Pekelis Jones said that he would like to disclose that he did not have a personal friendship with Ms. Chen, but he did work with her in the course of the appointment to this commission, as he was, along with Commissioner Hawes, one of the Mayor's selections, but he did not think there was a need for his recusal.

The Chair said he did not think this issue was ripe for discussion and asked Mr. Roberts if he had anything to say that was not already covered in the materials submitted that afternoon. Mr. Roberts thanked the Chair for the opportunity to speak briefly, saying that the reason they sent the letter of objection to the Director and the commission is because they think the report is not accurate and it misrepresents Ms. Chen's actions as counsel to the Mayor. Mr. Roberts continued that they believed that the report was issued in a manner that deprived Ms. Chen of her right of due process. The Chair asked Mr. Roberts if there was anything new to add to the letter that was received. Mr. Roberts said that Ms. Chen, by not being permitted sufficient time to develop the documentary evidence to support her position, Ms. Chen is being subjected to a publicly issued report with the imprimatur of this commission, casting aspersions on her performance as the Mayor's counsel and implying that she was engaged in an active effort to hide records from the public, and the statements in the letter indicate that the report should not be viewed as complete and should be revised by the commission if Ms. Chen is to have a fair chance to make a presentation.

The Chair thanked Mr. Roberts and asked the Director if anything else needed to be discussed. The Director said that he stood by the report and he would read Mr. Roberts' letter and give it due consideration, but he was confident that the report that was issued was fair and accurate.

## 5) Democracy Voucher Program report

The Chair then moved to the Democracy Voucher Program update. Ms. René LeBeau, program manager, began by sharing an update on the activities. Ms. LeBeau then shared her screen, which showed that there were a high number of candidates choosing to use the voucher program, and seven candidates have finished the qualifying process and there are candidates who are in the process of qualifying.

Over \$900,000 has been distributed to campaigns, which is very similar to this time in 2019, and roughly 64,000 vouchers have been received, which is slightly more than the same time in 2019. The month of May has been slow in the past two cycles, but we are seeing a pretty consistent 20-25% of the vouchers are being returned by residents using the online portal, and between 10-20% of the vouchers are being returned through the Campaign Replacement Forms.

In the last commission meeting, the campaigns had been allowed to post the Replacement Forms online, and campaigns have been submitting those forms and there have not been any problems with that process thus far, and the campaigns have been very responsive.

The Chair asked if there were any complaints or concerns regarding the emergency rule for allowing online Replacement Forms. Ms. LeBeau answered no, there have not been any. Commissioner Tobin asked if it was possible to tell the difference in the forms that are completed online vs in person. Ms. LeBeau said that yes, so far, it has been easy to tell the difference, the online forms are largely coming through electronically and those gathered in person are coming in on paper forms in stacks. Commissioner Tobin asked if it was making any difference and Ms. LeBeau said that it was a little early to tell but she would keep an eye out for any surprises.

Commissioner Carter asked with reference to the emergency rule, he understood that they were going to be submitting electronic signatures and asked if they were having trouble evaluating the signatures at the county. Ms. LeBeau answered that so far, they have not heard of any issues. Ms. LeBeau noted that several campaigns have been gathering electronic signatures for the qualifying process and they have been working out, because the residents are not allowed to sign using a font, but instead they are using a drawn signature option. Ms. LeBeau also noted that if any of the signatures are not accepted, then the residents are sent a letter giving them the option to correct the issue.

Ms. LeBeau continued that candidate filing week started next week and candidates have until June 4 to decide whether to participate in the voucher program. Ms. LeBeau also noted that there have been two meetings with the community based organizations who have contracted with the program, and everyone is excited to get out there and do outreach, and there has been a lot of discussion about candidate debates and forums. There is a partnership with the Lake City Collective in north Seattle working on training volunteers as well as working on focusing on a community forum for candidates. Annie Tran, the Senior Communications Specialist, has some exciting outreach opportunities, including partnering with local groups at vaccine sites.

Commissioner Hawes said there was an interesting editorial in the Seattle Times by Naomi Ishisaka about the utilization of the Democracy Vouchers and their potential impact in terms of historically marginalized communities, and Commissioner Hawes asked if the usage of vouchers was tracked throughout the election cycle or if there was an analysis when all of the opportunities for utilization are concluded. Ms. LeBeau said that was analyzed after the election by an outside firm that looks at neighborhood characteristics, and then there are two professors who look deeply into the demographics around the users of vouchers. Ms. LeBeau continued that

during the year, the utilization of vouchers within the districts is followed, and to some degree that will depend on the candidates running, but this year they were seeing more utilization in Districts 2 and 3, and it was otherwise fairly even across the other districts.

The Chair said that last election there were several campaigns that had asked for release from the limits and he asked whether it was anticipated that there would be more releases this election year as well. Ms. LeBeau answered yes, we were just starting to see some campaigns reach their maximums for the primary, so she would anticipate releases in this election year. The Chair then asked if this was in a specific race or if this was across all the races. Ms. LeBeau answered that it was mostly in the mayoral race where we were seeing people bumping up against the limits.

The Chair asked Ms. LeBeau to explain for the new commissioners that release process. Ms. LeBeau said that essentially the candidates have a limit to the amount of the value of their campaign, and that amount varies depending on the position. The mayor can reach a campaign valuation of \$400,000 through the primary, and the other races for city council positions 8 and 9 and the city attorney can only reach a maximum valuation of \$187,500 through the primary. If there is oppositional spending greater than those limits, then the candidates in the program can contact the Director and request a release from that limit. The Director said that based on 2019, where independent spending did not tip any races arguably in the direction intended, and the Chamber of Commerce said they were closing their political action committee, the Director thought it was an open question as to whether the independent expenditures in 2021 would look like they did in 2019 and prior years. Ms. LeBeau noted that leading up to the release process, proceeds are released twice a month, and the available data on the campaign valuations was



reviewed with Polly Grow, the SEEC campaign finance auditor, as well as the campaigns, to make sure that no campaigns would be pushed over the limit by voucher proceeds.

Commissioner Pekelis Jones asked Ms. LeBeau if she had seen an article in the Stranger recently that brought up Democracy Vouchers being solicited using duplicitous means and Ms. LeBeau said she was aware of it. Commissioner Pekelis Jones said he was curious about how many complaints the commission received regarding this issue. Ms. LeBeau said there have been some comments received from the public on this, and the Director noted that they had asked legal for advice on what, if anything, could be done on that matter. Ms. LeBeau noted that the campaign replacement form came from a good place of wanting there to be a connection between the resident and the candidate. Ms. LeBeau thanked the commission and welcomed the new commissioners.

**6) Executive Director's report**

The Director welcomed the new commissioners as well and noted that the City Council was continuing to find a commissioner to take Commissioner Carter's place, and the Council was looking for someone who had experience on the election side as opposed to the ethics side. The Chair asked about whether there was any guidance on when the staff would return to the office full time. The Director said that repeating rumor, there would be an opportunity for those who could continue to work remotely through the end of the summer. The Chair thanked everyone and called the meeting to a close.

**The Special Commission meeting of May 10, 2021 adjourned at 5:33 p.m.**