

Seattle Ethics and Elections Commission Special Meeting

July 1, 2021

A special meeting of the 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, and Commissioners Zachary Pekelis Jones, Susan Taylor, Judy Tobin, and Jeff Winmill were present. Commissioner Kristin Hawes was absent. Executive Director Wayne Barnett was present and was joined by staff members Chrissy Courtney, Randal Fu, Polly Grow, René LeBeau, Marc Mayo, Neelam Shah and Annie Tran, along with Assistant City Attorneys Teresa Chen and Gary Smith.

Action Items

1. Request for release from Maximum Campaign Valuation

The Chair asked the Director to give a summary of the request. The Director stated that the Andrew Grant Houston campaign requested release from the Democracy Voucher Program Maximum Campaign Valuation (MCV) based on the combined spending of the Bruce Harrell committee and the independent expenditure (IE) committee Bruce Harrell for Seattle. The CV for the Harrell campaign was calculated to be \$399,978.16, that is the result of contributions of \$341,853.16 combined with the value of the unredeemed vouchers for the Harrell campaign which await redemption. An IE committee which is making political expenditures for or against a candidate, can allow a campaign to show that a combined sum of the official election committee and the IE spending together, per section SMC 2.04.010, goes over the MCV for a candidate participating in the voucher program. The combined value for the Bruce Harrell campaign and the Bruce Harrell for Seattle IE was \$406,451.26 and the law was amended in 2018 to say that unless expenditure overages were inadvertent and minor then the release shall be

granted. The Director did not find the spending to be inadvertent, so there was no need to reach the minor issue and it was his recommendation for the release to be granted.

Commissioner Tobin noted that campaign finance was incredibly complex, but she did not see why the commission should not go through with the release. The Chair noted that there were several people who had joined the meeting, and asked if anyone present would like to weigh in to make a note of it and asked the commissioners if they had any questions for the Director, especially those who had not gone through a previous election cycle. Commissioner Taylor asked about a phrase in the memo provided by the Director to the commission, “the campaign can raise money privately, but no additional public financing is available” and if the Director would explain the impact for both candidates. The Director said that the Houston campaign, if released, could raise contributions of \$550 per person without any regard for the maximum campaign valuation limits. No other campaigns would be impacted by this release.

Commissioner Tobin asked if this was done for one campaign, then did each campaign then have to go through this process. The Director said that no other campaigns were eligible for release because no other campaigns had requested release at this point. Based on the commission’s determination, the Director would be able to use this decision as precedent and will be able to make this determination going forward. Commissioner Pekelis Jones asked whether the inadvertence in the law focused on the independent expenditure committee or the campaign, since the IE was not authorized, the campaign could argue that those expenditures or contributions should be considered inadvertent and he asked the Director about his view. The Director answered that the way the law was written, to make the IE portion hinge on an action of the campaign, would be internally incoherent because a campaign cannot coordinate in any way with the IE committee. Commissioner Pekelis Jones asked about the condition of minor and

whether \$6,000 would be considered minor if they had to reach this question. The Director said he would not consider it to be minor, but this was something that other commissioners have struggled with, and they found that over \$5,000 was material, which was a term in the eyes of the beholder. However, if the commission said that \$406,000 was immaterial then campaigns could spend and raise up to that amount without fear of triggering a release. The Chair noted that each voucher was \$25 and when thinking about minor or inadvertent that \$6,000 would not be minor when considered in the context of individual democracy vouchers. The Chair said that the Director laid out the situation well, and there were several city council races in 2019 that hit the MCV and there were many requests and challenges to the release process during that election cycle. No campaigns have indicated that they would like to weigh in, but if the commission agreed to the release for the Andrew Grant Houston campaign, then other campaigns that would request release based on the Harrell campaign spending could be released by the Director.

Public comment was offered anonymously regarding 2.04.634 campaign valuations, stating that there will be other campaigns who are impacted, and by releasing this cap, the commission will create more money in this race. Riall Johnson said that any money over the cap cannot be used with Democracy Vouchers, and direct donations would be used, and in terms of floodgates and other political action committees (PACs), the IEs will spend regardless, and they do not need any permission to spend. Currently the Bruce Harrell PAC had debts and obligations and because they have already started spending, and the Houston campaign was already competing against campaigns that have PACs on their behalf, this request for release was to allow the Houston campaign to keep up. Mr. Johnson noted that good faith work was common to campaigns and there was already evidence of it and Mr. Johnson hoped that other campaigns will request their releases as well. The Chair asked if there were any other questions from the

commissioners. Commissioner Tobin said that the overage was the combined total of the campaign and the IE spending, which seemed a little odd, but she isn't sure why they should not be considered independent and not part of the way the campaign raised their own funds.

The Director said that if you looked at the situation from the point of view of an opposing campaign, if an IE comes in for \$100,000 that is for an opponent then that makes it difficult for the other campaign to compete and that was one of the reasons that there was a release mechanism created, in part to encourage candidates to participate in the program. Without the release, it would make it difficult for them to compete against a high spending campaign, and most of the candidates in 2019 thought it was important to request releases to keep up.

The Vice Chair said that the commission had been through this before, and counting the IE in that number was to encourage campaigns and not limit their ability to win by going the route of participating in the voucher program, and the goal here was to not limit those people who want to use the vouchers and to encourage participation in a way that would allow them to win their races.

The Chair said in 2019 when there was a lot of outside spending and there was a lot of money put into races and there were around 50 candidates participating in the program, which was wonderful, the commission did not want to limit the participation by having great amounts of cash coming in from outside and it was part of the law to not disadvantage candidates by keeping them from competing with candidates who chose not to be in the program.

The Vice Chair also stated that neither the voucher program nor the commission had the ability to limit IE spending, but they were trying to make it so that more people participate in their democracy, and to encourage candidates to meet with residents and for residents to use their vouchers, and it would not be an appropriate goal for this commission to try to limit IEs.

The Director said in response to a request from Katherine Bobman to define an independent expenditure that it was defined in the Seattle Municipal Code and "Independent expenditure means an expenditure on behalf of or opposing any election campaign, when such expenditure: 1. Is made independently of the candidate, the candidate's political committee or agent, or any ballot proposition committee or its officers or agents; 2. Is made without the prior consent, or the collusion or cooperation, of the candidate, the candidate's agent or political committee, or the ballot proposition committee or its officers or agents; and 3. Is not a contribution as defined in this Section 2.04.010."

The Director noted that \$1,500 was spent on creating a logo which says Bruce Harrell for Seattle's Future and a website promoting Bruce Harrell and that was a clear example of an independent expenditure on behalf of a campaign. Ms. Bobman asked if the other expenses would not be counted because they were operating expenses and not for the candidate. The Director said that he thought the operating expenses should also be counted, and he would warn the commission not to get into the activity of wading into which exact costs count or do not count, they are not parsed that way, and any expenditure of the Bruce Harrell for Seattle committee would be an expenditure for Bruce Harrell's campaign. The Chair agreed with the Director and said that there was no other reason for this IE besides supporting a specific candidate and he did not think the commission or the Director should be put in the position of line iteming expenditures, when there was one clear purpose for this committee.

The Chair recognized Josie Olson, and she asked if a PAC was primarily formed as an IE and all of their expenditures were being considered as spending for or against, then did this need to be considered in terms of a reporting precedent. The Director said this committee was formed for the express purpose of promoting Bruce Harrell and Ms. Olson asked if that meant that every

expense that it had needed to be reported as an independent expenditure. Ms. Olson said that this could be impacting more than this narrow decision in terms of the reporting obligations. The Chair stated that the reporting issues should be discussed at a different time and the issue before them was only the release of the Houston campaign.

The Chair recognized Abbot Taylor, and Mr. Taylor asked if this PAC was not named Bruce Harrell for Seattle and was instead something like Progressives for Seattle, then would it still be considered as a trigger for release. The Director said he did not think so, but that question was not really before the commission, and the question before the commission needed to be resolved. Commissioner Pekelis Jones said that Ms. Olsen and Mr. Taylor raised good points and the IE spending and reporting could be a future issue, but the Bruce Harrell for Seattle PAC was defined as being for Bruce Harrell and the spending for the Harrell campaign puts the valuation above the \$400,000 mayoral limitation for Democracy Voucher Program candidates, and on these narrow issues it was clear.

The Chair said that they could work on the issue before them, and they would be voting on whether they would be authorizing the Director for the release of the Andrew Grant Houston campaign from the MCV. The Director said that it would be the commission's decision for release, they would not need to authorize him to do so. Commissioner Taylor made a motion to release the Andrew Grant Houston campaign, and Commissioner Tobin seconded the motion, which passed unanimously. The Chair thanked everyone for the good discussion and wished everyone a good July 4th holiday, and called the meeting to a close.

The Special Commission meeting of July 1, 2021 adjourned at 4:42 p.m.