

1 use of public facilities to assist his re-election campaign by
2 distributing a report on his accomplishments.

3 (3) WAC 390-05-271(2) states:

4 RCW 42.17A.555 does not prevent a public office or agency from
5 (a) making facilities available on a nondiscriminatory, equal
6 access basis for political uses or (b) making an objective and
7 fair presentation of facts relevant to a ballot proposition, if
8 such action is part of the normal and regular conduct of the
9 office or agency.

8 (4) WAC 390-05-273 states:

9 Definition of normal and regular conduct. Normal and regular
10 conduct of a public office or agency, as that term is used in the
11 proviso to RCW 42.17A.555, means conduct which is (1) lawful,
12 i.e., specifically authorized, either expressly or by necessary
13 implication, in an appropriate enactment, and (2) usual, i.e.,
14 not effected or authorized in or by some extraordinary means or
15 manner. No local office or agency may authorize a use of public
16 facilities for the purpose of assisting a candidate's campaign or
17 promoting or opposing a ballot proposition, in the absence of a
18 constitutional, charter, or statutory provision separately
19 authorizing such use.

16 (5) Memorandum by James K. Pharris, Washington Deputy Solicitor
17 General, "2009 Election-Restrictions on Use of Public Funds and
18 Property to Support or Oppose Candidates or Ballot Measures," Oct. 30,
19 2009.

20 (6) PDC, "Guidelines for Local Government Agencies in Election
21 Campaigns" PDC Interpretation #04-02 (Revised Sept. 28, 2006) includes
22 the following:
23

24 (a) WAC 390-05-271 interprets RCW 42.17.130 as allowing an agency
25 to make "an objective and fair presentation of facts relevant to
a ballot proposition, if such action is part of the normal and
regular conduct of the office or agency.

1 (b) violation of this standard is determined by considering "the
2 normal and regular conduct and the timing, tone, and tenor of
activities in relation to ballot measure elections." (p. 4)

3 (c) "The combination of a number of activities into a coordinated
4 campaign involving close coordination between agency activities
5 and citizens' committee activities which closely resembles
6 traditional election campaign activities and which is targeted at
and/or occurs close in time to a ballot measure election is
likely to draw close scrutiny and careful consideration by the
PDC as to whether a violation has occurred." (p. 4)

7 (d) "...in no case will the PDC view a marketing or sales effort
8 related to a campaign or election as normal and regular conduct."

9 (e) agency administrators "shall not coordinate informational
10 activities with campaign efforts, in a manner that makes the
agency appear to be supporting or opposing a ballot measure." (p.
11 8)

12 (f) "...the clause 'objective and fair presentation of the facts'
13 means that in addition to presenting the facts, the materials
should present accurately the costs and other anticipated impacts
of a ballot measure." (p. 6)

14 (g) The PDC states repeatedly in the document that "Agencies
15 shall not publish materials supporting or opposing a candidate or
ballot measure."

16 (h) "A particular activity may be subject to the scrutiny of the
17 PDC depending in part on whether it is a part of the "normal and
18 ordinary" conduct of a local government agency. Generally,
19 activities that occur after the elected legislative body has
passed a resolution authorizing a measure to be placed on the
20 ballot will be subject to greater scrutiny by the PDC than those
occurring before such a resolution has been passed." (p. 22)

21 III. EXHIBITS

22
23 (The skipped numbers are of exhibits that are primarily relevant
24 to other parts of the overall complaint not at issue here.)
25

- 1 (1) June 20, 2012 e-mail from Library Communications Director
2 Andra Addison regarding the 1998 "Brown Book" and the pages
3 from it that were excerpted to describe the levy.
- 4 (2) "Citizens' Summary, Libraries for All: Proposed Seattle
5 Public Library Capital Plan" (four-pages, 1998). Handout used
6 by the Library leading up to City Council adoption of the levy
7 ordinance and then up to the public vote on the levy that
8 authorized the construction bond issue.
- 9 (3) Ord. 119019 (the May 26, 1998 ordinance that defined the
10 "Libraries for All" bond issue that was on the Nov. 3, 1998
11 ballot). Ordinance number written in by Chris Leman.
- 12 (10) March 30, 2012 letter from the Seattle Community Council
13 Federation to the City Council on the proposed levy ordinance
- 14 (11) Ord. 123851 (the April 9, 2012 ordinance that defines
15 Proposition 1 that is on the August 7 ballot).
- 16 (16) Seattle Public Library InfoNET message dated April 16, 2012 and
17 entitled "Public information materials on the levy," from Andra
18 Addison and addressed to "all sites." The message gives
19 direction to staff on where to post the "Library Levy Fact
20 Sheet" and the "Blue Book" and pages from it.
- 21
22 (18) City Attorney's "Library Levy" Explanatory Statement for the
23 voters' pamphlet as submitted to the Ethics and Elections
24 Commission on May 15, 2012.
- 25

1 (19) Explanatory Statement for the voters' pamphlet as rewritten by
2 the Ethics and Elections Commission and now published in the
3 Voters Pamphlet (from the Commission's web site)

4 (20) "Library Levy Fact Sheet," prepared, displayed, and handed out
5 by the Seattle Public Library, April to July, 2012
6

7 (21) Five pages of 13 photos showing the Fact Sheet on display and
8 with extra copies for the public--in the Central Library and
9 four of the branches. Photos and annotations are by Chris
10 Leman.

11 (27) P. 8 from the 2010 Seattle Public Library Community Survey
12 Summary

13 (28) City of Ocean Shores, Resolution #672, the April 23, 2012
14 ordinance that defines the levy and places it on the August 7
15 ballot (pp. 3-5, not included here, consist of the City Clerk's
16 certification, and repetitions of the proposition language).

17 (29) Public Disclosure Commission, March 1, 2012 memorandum to the
18 City of Ocean Shores, Review of Information regarding Library
19 Levy Election in the City of Ocean Shores.

20 (30) "Library Levy Fact Sheet," as revised by the Seattle Public
21 Library in early July, 2012

22 IV. ORDINANCE 123851 COMPARED WITH OTHER LEVY ORDINANCES

23 As with other levies put before the voters, Proposition 1 is
24 defined by its ordinance, Ord. 123851 (exhibit 11). Contrary to
25 statements being made in the Library's "Fact sheet", and in greater

1 measure than other levy ordinances, Proposition 1 provides significant
2 discretion to the Mayor, City Council, and Library Board in how the
3 levy proceeds would be spent. Section 4 of the ordinance states:
4 "Unless otherwise directed by ordinance, Proceeds shall be deposited
5 in the Library Levy fund." That is, the levy ordinance confers
6 discretion to pass a new ordinance to spend the "library" levy funds
7 entirely on non-library purposes. In contrast (and contrary to the
8 director's interpretation of it), Ord. 119019 (exhibit 3), which
9 placed the 1998 Libraries for All bond issue before the voters, did
10 not authorize an ordinance to divert its funds away from library
11 purposes; in fact, it allowed an ordinance that would rearrange the
12 allocation of funds within the library only with extensive public
13 process and a City Council supermajority.

15 Another levy which has firmer requirements than Seattle's
16 Proposition 1 to prevent the spending of its proceeds on non-library
17 purposes is Proposition 1 in Ocean Shores, Washington (also on the
18 August 7, 2012 ballot). Ocean Shores' Resolution 672 states (sec. 2)
19 that the levy is "For the purpose of providing funds to pay for
20 operating the City's public library," and that "the City shall deposit
21 the proceeds of such levy in the City's Library Special revenue fund
22 115 to be used to pay costs of operating the City's public library."
23 Unlike the Seattle levy ordinance, no mention is made of the option of
24 depositing the proceeds in a fund for any other purpose.

25 Based on the analysis in this section, one can conclude that,
while the City of Seattle was fully within its rights to call the 1998

1 Proposition 1 a library levy for a construction bond issue, and while
2 Ocean Shores is fully within its rights to call its Proposition 1 a
3 library levy, the Seattle Public Library is not being objective or
4 fair in calling the current Proposition 1 a "library levy." Seattle's
5 2012 levy ordinance (sec. 7) correctly names the ballot title not the
6 Library Levy, but the "Regular Tax Levy including Seattle Public
7 Libraries."

8 Assuming that its proceeds actually reach the library, Seattle's
9 2012 levy ordinance lacks specificity on how they would be spent for
10 Library services. This discretion is in marked contrast to the 1998
11 Ord. 119019 which specified (sec. 1) that \$128.6 million would be
12 spent on bonds for building a new Central Library, and \$57.9 million
13 would be spent on branch libraries,

14 which facilities shall include three new libraries, replacement
15 of six current libraries, additions to seven current libraries,
16 interior improvements to seven current libraries, and relocation
17 of two current libraries to improved facilities, all as more
18 specifically listed as 'elements' of this component in Attachment
19 A."

20 Seattle's 2012 levy ordinance also lacks any of the hurdles that
21 the 1998 bond issue ordinance posed to make it difficult for future
22 City Councils to change the balance of funds between the Central
23 Library and the branches, change or delete what the bond issue would
24 do for the branches, or make any other change in the bond issue
25 ordinance (defined as the "Project"):

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

1 the recommendations of the Board, the Oversight Committee
2 established in Section 6, and the Mayor.

3 The amounts of Bond proceeds to be devoted to the neighborhood
4 library and central library components of the Project, as
5 established in Section 1, may be changed only by an ordinance
6 passed by a two-thirds vote of the City Council after a public
7 hearing and after City Council consideration of the
8 recommendations of the Board, the Oversight Committee established
9 in Section 6, and the Mayor.

10 Seattle's 2012 levy ordinance (sec. 5) does state that proceeds
11 will be used "for Library services," and that investments will be made
12 "in the following four categories of Library Services": hours and
13 access, collections; technology; and maintenance. However, it does
14 not say that investment of the proceeds in library services will be
15 limited to these categories--only that "investments will be made" in
16 them (however small these investments may be). It therefore is
17 speculative and not factual, objective, or fair to tell voters (as the
18 Library is doing in its Fact Sheet) that the proceeds will be spent
19 only or even primarily on these categories of Library Services.

20 Within the four categories of hours and access, collections,
21 technology, and maintenance, the levy ordinance offers as
22 "illustrative examples" that levy proceeds may be spent on "program
23 elements" such as "supporting operating hours, "replacements and
24 upgrades to the Library's computer inventory," and "regular care and
25 major maintenance." Spending in none of these program categories is
required, and the mention of hours refers to "supporting" rather than
increasing them.

1 People who saw the weaknesses in the levy ordinance tried
2 mightily to convince the City Council to include in it more certainty
3 that the good things for the Library that have been claimed would
4 actually come to pass (see, e.g. exhibit 10). We can all hope that
5 these good things will happen, but if so, it will not be because the
6 levy ordinance required them.

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

17 The Director's dismissal of the current complaint unsuccessfully
18 attempts to cite other levies as having language that is no more
19 specific. Close examination of these levies only strengthens the
20 current complaint, as they have certainty that is lacking in
21 Proposition 1: (1) the Nov. 2011 Families and Education Levy
22 ordinance requires (sec. 8) that "Proceeds may be spent only in
23 accordance with the Implementation and Evaluation plan (the Plan)
24 approved by ordinance." (2) The Nov. 2009 Housing Levy ordinance
25 requires (sec. 3) that "All the levy proceeds shall be used for the

1 purposes specified in Section 5.A.," which states: "The levy funds
2 shall be used to finance affordable housing for low-income households,
3 and otherwise to provide for the housing needs of low-income
4 households." (3) The Nov. 2008 Parks and Green Spaces levy ordinance
5 states (sec. 2) that "All the Levy Proceeds shall be used to acquire,
6 develop, or restore, existing or new, parks, recreation facilities,
7 cultural facilities, green spaces, playfields, trails, community
8 gardens, and shoreline areas."

9 The director's dismissal statement is correct in stating (p. 2)
10 that, like Proposition 1, the 2009 Housing Levy and 2011 Families and
11 Education Levy ordinance respectively specify that "unless otherwise
12 directed by ordinance, Proceeds shall be deposited in the [Education-
13 Support Services Fund] [Low-Income Housing Fund]." In citing the 1998
14 Library levy ordinance's mention of a possible later ordinance, the
15 director fails to recognize that it would only rearrange funding
16 within the Library, not divert the funds to non-Library purposes--
17 quite unlike the 2012 levy ordinance, which allows such diversion.
18 Also, note that the director is incorrect to state that ordinance for
19 the existing Parks and Green Spaces Levy allows such diversion by a
20 later ordinance.

21 In citing these four other levy ordinances, the director misses
22 the entire point of my complaint, which is that if such a provision
23 exists in a levy ordinance, a public agency that ventures to describe
24 a levy ordinance to the voters bears a heavy responsibility to mention
25 it, on pains of breaking the law requiring it to be factual,

1 objective, and fair. The Library Levy Fact sheet completely fails to
2 correctly characterize this important aspect of the levy ordinance,
3 and by attributing certainty in funding, thus is illegally speculating
4 rather than being factual.

5 V. STATEMENTS IN THE LIBRARY LEVY FACT SHEET MISCHARACTERIZE AND
6 PROMOTE PROPOSITION 1, AND ITS PLACEMENT AT KEY LIBRARY
7 LOCATIONS IS A MISUSE OF FACILITIES

8 WAC 390-05-271(2) interprets RCW 42.17A.555 as allowing a public
9 agency to describe to the public an upcoming ballot measure, but only
10 if in doing so it makes an "objective and fair presentation of facts"
11 that does not advocate for or against the measure. The Library Levy
12 Fact Sheet does not meet this standard.

13 The Fact Sheet's very title, "Library Levy Fact Sheet," misnames
14 the levy in a way that wrongly communicates that the proceeds must be
15 spent on the Library. The official name as specified in Ord. 123851
16 is "Regular Tax Levy Including Seattle Public Libraries." This title
17 more accurately reflects the uncertainty as to how much of the levy
18 proceeds will actually go to the Library.

19 Statements by a public agency about a ballot measure must be
20 facts rather than unlawful speculation about consequences. The
21 Library Levy Fact Sheet unlawfully speculates when it states as fact
22 ten improvements that the levy "will" do, among them: add Sunday
23 hours at 16 branches, restore seven-day-a-week service at the Columbia
24 and Northgate branches, eliminate the annual one-week shutdown, and
25 increase to 50 the number of items a person may place on hold. Much
as we might hope that these improvements happen with passage of the

1 levy, it is not an "objective and fair presentation of facts" for the
2 voters to be told that they "will" happen. The levy ordinance does
3 not require these consequences, and provides such significant
4 discretion that the funds may never reach the library, much less be
5 spent in the ways promised by the Library Levy Fact Sheet. It is just
6 as Deputy Solicitor General James Pharris stated above on page 7 of
7 the 2009 memorandum cited earlier that interprets RCW 42.52.180 (which
8 is almost identical to SMC 2.04.300): while an agency may conduct
9 research on the likely results of passage of a ballot measure,

10 it must be clear that the research is being conducted with the
11 purpose of gathering the facts, is directly related to the
12 ordinary conduct of the agency's business, and is not designed to
13 support or oppose a candidate or ballot measure.

14 Pharris stresses that it is a violation of the law for an agency "fact
15 sheet" to speculate about financial consequences from passage or
16 defeat of a ballot measure:

17 The major flaw in your logic is to characterize as a "fact" your
18 predicted outcome of the legislative session, should the
19 initiative be approved. The legislature is legally free to
20 replace the agency's funding, no matter how unlikely that outcome
21 is. Therefore it is simply not a "fact" that the agency's
22 programs would be eliminated. It is only speculation. There
23 seems little purpose for the agency to indulge in such
24 speculation, except to influence the election results. Perhaps
25 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.

26 The Fact Sheet does not reflect "normal and regular conduct" for
27 the Seattle Public Library, which did not prepare or distribute a fact
28 sheet during the 1998 Library bond issue campaigns. Instead the

1 Library continued to distribute the Citizens' Summary (exhibit 2)
2 which it had released two months before passage of the bond issue
3 ordinance. Like the Brown Book (from which it was directly taken),
4 the Citizens Summary listed the construction and renovation projects
5 that were being proposed for the bond issue ordinance. This same list
6 was actually adopted when the ordinance was passed, and so during the
7 campaign, the Citizens Summary was there to correctly list the
8 projects that the ballot measure would fund. There was no speculation,
9 and no violation of law.

10 The Fact Sheet's statements about what the levy "will" do are not
11 objective and accurate. The Fact Sheet does not describe the ballot
12 measure "objectively and accurately," and all of the inaccuracies err
13 on the side of promoting Proposition 1. The levy ordinance does not,
14 in itself, increase or even protect from cuts any of the four areas of
15 Library services that it mentions (hours and access, collections,
16 technology, and maintenance). The ordinance's mention of hours is
17 only that it will "support" hours, and even this statement is offered
18 only as an illustrative example, subject to the annual budget process.

19 The mis-statements in the Fact Sheet are identical in all
20 material respects to some that the Ethics and Elections Commission
21 rejected and rewrote, producing the Explanatory Statement that is now
22 in the Voters' Pamphlet. The Library and all City agencies are
23 prohibited from describing a ballot measure unless they do so
24 "objectively and accurately," a target grossly missed in this case.

1 Placement at key locations in the Central and branch libraries of
2 the Library Levy Fact Sheet are a use of City facilities to influence
3 the outcome of Proposition 1, in violation of City and state law. The
4 2010 Seattle Public Library Community Survey found that about two-
5 thirds of Seattle residents have a library card, and about half of
6 those (one third of all Seattle residents) had used the Library in the
7 past year (exhibit 27). Many voters are among these patrons, and the
8 Library wants to reach them. It is a widely accepted principle in
9 retailing that the checkout counter where customers stop to purchase
10 items is the most valuable marketing location, even to the extent that
11 wholesalers pay extra to have their products placed at these visible
12 locations. In the Library, a close parallel are the many counters
13 where patrons check out, return, or pick up items, ask for
14 information, etc. It would be a dream come true for any campaign to
15 have the exclusive right to post its advertising there.

16
17 Seattle Public Library resources are being used to place
18 information advocating the levy in the places where voters will see
19 them. The April 16 internal InfoNET direction (exhibit 16) from the
20 Library's communications director to staff at all sites states
21 [letters added]:

- 22 (a) "The Library will have copies of a one-page fact sheet
23 available at every branch and at Central Library public
24 service desks and Welcome Desks this week."
25 (b) "One copy of the full 51-page Library Levy proposal as
presented to the City Council has been delivered to every
branch and Central Library public service desks and Welcome
Desks in white, three ring binder notebooks. ... These were
delivered to the attention of assistant managers and they

1 should be in a visible location for the public and staff to
2 access."

3 (c) "Each branch and the Central Library should have
4 received Plexiglass holders containing specific information
5 about how the levy impacts their location on one side, and
6 financial levy information on the other. Please contact
7 Jennifer Cargal at 3-3683, or Jennifer.cargal@spl.org, if
8 you need additional holders with levy information."

9 As a result of this direction from the Library
10 communications office, since about a week after the April 9
11 passage of the ordinance placing Proposition 1 on the August 7
12 ballot, displays and handouts promoting the levy have been in
13 place at many stations throughout the Central Library and at
14 every branch, often in more than one place in each branch--all
15 places where large numbers of Seattle voters are sure to see
16 them.

17 Photos of the displays and handouts in the Central Library
18 and four branches (Capitol Hill, Columbia, Rainier Beach, and
19 University) are in exhibit 21, with annotations explaining what
20 is in each photo. Brief summaries are provided here. In
21 addition to the Central library, these four branches were the
22 only branches I had time to visit before filing the July 3
23 complaint, but given the InfoNET posting (exhibit 16) in which
24 the Library's communications director directed that similar
25 displays be placed prominently at all the branches, I believe
that we can stipulate that the displays in the other 22 branches
are similar.

1 The displays of information about the levy that are now
2 placed throughout the Central Library and the branches typically
3 include the Library Levy Fact Sheet (with some also providing
4 handout copies). The first three pages of photos in exhibit 21
5 show levy displays in the Central Library. The first photo page
6 shows levy displays on the Fourth Avenue main floor--in the
7 children's section and at two different locations in the literacy
8 and languages section. The second photo page shows the levy
9 displays at counters for assisted check-out and self check-out
10 (both on the Fourth Avenue main floor) and at the counter for
11 reading suggestions (on the Fifth Avenue main floor). The third
12 photo page shows a levy display at the welcome desk on the Fifth
13 Avenue main floor, and a levy display at the University Branch
14 checkout counter. The fourth photo page shows levy displays at
15 the Columbia branch and the Capitol Hill branch. The fifth photo
16 page shows levy displays at two locations in the Rainier Beach
17 branch (check-out counter and book return). Note that at two of
18 these branches, larger signs state "LIBRARY LEVY INFORMATION"
19 (Capitol Hill) and "LEVY INFORMATION" (University).

21 I searched for all staffed counters at the Central Library
22 on two occasions--on Sunday, June 3, and on Friday, June 29,
23 finding levy displays at every public counter that I could find,
24 and some at self-service and return counters as well. On June
25 29, I specifically counted 15, and made a list (see below). As

1 before, all stations had the Library Levy Fact Sheet. Below is
2 an inventory of the fourteen separate levy displays of the "Fact
3 Sheet" that I saw in the Central Library in the June 29 visit:

- 4 (a) Fourth Ave. main floor check-out counter
- 5 (b) Fourth Ave. main floor self check-out counter
- 6 (c) Fourth Ave. main floor children's section information
counter
- 7 (d) literacy and languages section information counter: Fact
sheet in Spanish
- 8 (e) Fifth Ave. main floor welcome desk:
- 9 (f) Fifth Ave. main floor check-out counter:
- 10 (g) Fifth Ave. main floor teen section information counter
- 11 (h) Mixing Chamber information desk
- 12 (i) Seattle room information desk
- 13 (j) History, Biography, maps, and genealogy section main counter
- 14 (k) Arts and Literature Collection information counter
- 15 (l) Business Collection information counter
- 16 (m) Magazines and newspapers information counter

17
18 IX. APPLICATION OF THE RELEVANT LAWS, AND COMPARISON TO THE CASE
19 IN WHICH SEEC FINED MAYOR NICKELS FOR USING CITY FACILITIES
20 TOWARD HIS RE-ELECTION

21 The Ethics and Elections Commission ruled in 2005, with a
22 supplementary opinion in 2006, that Mayor Nickels had violated SMC
23 2.04.300's prohibition on use of public facilities by printing and
24 mailing an accomplishments report that assisted his re-election
25 campaign. The City resources quantified were to print and mail the
document, plus unaccounted staff time. The Nickels case has important
parallels to the current Library case, all of which suggest that the
Library's violation is more serious than was Nickels'.

26 Timing. Nickels was found to have misused City facilities in
27 support of his re-election even though, as SEEC observed in its
28 supplementary opinion (p. 8), the March distribution "was not as close

1 in time to the September and November 2005 elections as most general
2 campaign mailings to the electorate would be." In contrast, most of
3 the Library's violations of SMC 2.04.300 alleged here are still
4 ongoing, just three weeks before the August 7 election; others
5 happened within three months of the election--far closer in time than
6 Nickels' infraction. As SEEC stated in the supplementary opinion (p.
7 4),

8 SMC 2.04.300 does not prohibit all communication that has the
9 incidental effect of promoting a candidacy in the year the
10 official is on the ballot. However the timing of the
11 communication is a factor that may lead a reasonable person to
12 more readily conclude that the primary purpose of the
13 communication is to influence the outcome of an election.

14 Specificity. Nickels was found to have violated the law even
15 though his accomplishments report did not urge support for him or even
16 mention his candidacy for re-election. In contrast, the Library's
17 Fact Sheet explicitly refers to the proposed levy and the August 7
18 election, and in ways that a reasonable person would judge favorable
19 to a yes vote on Proposition 1.

20 Objective and fair. The Commission apparently did not find
21 Nickels' accomplishments report lacking in objectivity or fairness,
22 perhaps because these standards arise in relation to WAC 390-05-271(2)
23 and its interpretation of RCW 42.17A.555, which applies only
24 prohibitions on referring to a ballot proposition (an agency is
25 allowed to make a presentation of facts about the proposition only if
"objective and fair"). A central part of this complaint is that the
Library has violated this requirement for an "objective and fair

1 presentation of facts relevant to a ballot proposition..." The Fact
2 Sheet makes statements about the levy that are contrary to fact, and
3 in ways that consistently err toward promoting the levy.

4 Normal and regular. Nickels' 2005 distribution of his
5 accomplishments report was found to be a misuse of City facilities to
6 aid his election even though he had done accomplishments reports in
7 the three previous years—2002, 2003, and 2004. That is, even "normal
8 and regular" is no defense if the promotion is illegal. The Library
9 is even more vulnerable on this score, as not only are its efforts
10 contrary to prohibitions against promoting a ballot measure, but it
11 has not for a decade or more made efforts of this kind to prominently
12 inform its patrons about any ballot measure. (I made a public records
13 request for any such efforts, and received nothing.) Also, during the
14 1998 bond issue campaign, the Library did not develop a ballot measure
15 fact sheet. It did distribute the Brown Book and a Citizens Guide that
16 was made up of a few pages from the Brown Book. However, as outlined
17 above, because of the greater specificity of the bond issue ordinance,
18 the 1998 Brown Book and Citizens Guide described what was in the bond
19 issue more objectively and fairly than 2012 Fact Sheet described what
20 is in the levy.

21 Primary purpose. SEEC's supplementary opinion in the Nickels
22 case states (pp. 3-4):

23 It is not sufficient to ask simply whether a document is
24 'informational or promotional.' Many documents will have
25 attributes of both. Useful information sent by an elected
official will frequently serve to promote that official, thereby
assisting that official's reelection. The key question is
whether, to a reasonable person, the activity or document appears

1 PRIMARILY designed to influence the outcome of an election, or
2 PRIMARILY designed to be informational with only an incidental
 effect of assisting a candidate's campaign for election.

3 SEEC's supplementary opinion further comments (p. 4):

4 The primary purpose of a use of facilities is determined by
5 considering the totality of the circumstances surround that use.
6 Among the factors to be considered when a message is convened at
7 public expense are the tone (style), the tenor (content), the
 timing (in relation to the events during an election cycle), and
 the audience to which a message is distributed.

8 When the above factors are viewed as a whole, I suggest that the
9 Library's Fact Sheet constitutes an effort whose purpose is not
10 primarily informational, but is primarily to promote Proposition 1.
11 And in their potential influence on the election, the Library's
12 efforts are much more important than was Mayor Nickels' 2005
13 accomplishments report as an impact on his own re-election.

14 This, however, was not the conclusion drawn by SEEC's Executive
15 Director, who in a June 4 e-mail (exhibit 26) informed me as follows:
16 "I approved the library's fact sheet as 'primarily informational'
17 which is the standard articulated by the Commission in In re Nickels
18 in 2005."

19 By this complaint, I am inviting the Commission and the Executive
20 Director himself to rethink and reverse this finding. The efforts
21 documented in this complaint are clearly not "primarily
22 informational." The Library's Fact Sheet and its posting in displays
23 at all major counters in all of the libraries in the weeks preceding a
24 levy election, simply does not qualify as "primarily informational."
25 These efforts have all the indications of a marketing campaign.

1 The Library's effort has been too specific about levy and its
2 timing, too focused on reaching potential voters who use the
3 Libraries, and too astray from being objective and fair, to be
4 regarded as anything but an effort primarily designed to influence the
5 outcome of the August 7 election.

6 An agency effort that is designed to influence an election should
7 not be allowed, even if its purpose is "primarily informational." The
8 Commission and Executive Director should reconsider and change
9 anything in the 2006 Commission advisory opinion that would find an
10 agency's clear efforts to promote a ballot measure being within the
11 law because of being associated with other efforts--even very large
12 efforts--that are informational. To do so would create a perverse
13 incentive for agencies to conduct huge exercises in outreach in order
14 for them to camouflage promotional efforts that are illegal whether
15 alone or mixed in with the rest of the outreach.

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

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3 XII. CONCLUSION

4 The laws that restrict how public agencies can comment on ballot
5 measures are there for a reason. The incentives are too great for
6 them to dissemble and to displace democracy with the people's own
7 money and power. For the Library (yes, a library: an institution
8 dedicated to the quest for truth) in its publicity to portray the levy
9 as having certainties when they are not there--that is not right or
10 fair. And, as it happens, it is not legal, as I hope the reader who
11 has come this far will now agree.

12 In stark contrast to the 2012 levy now at hand, the 1998
13 Libraries for All bond issue that is so often invoked but so seldom
14 studied had firm commitments and safeguards. Not telling voters the
15 truth about the levy is a disservice to them, it invalidates the
16 efforts of those who worked for a better levy, and it loses our
17 history. That is why I have brought this complaint and why I hope
18 that the Commission finds urgent merit in it. Thank you for your
19 consideration.

20
21 I declare under penalty of perjury of the laws of the State of
22 Washington that I am a registered voter of the City of Seattle, and
23 that the information in the above complaint, and the exhibits
24 provided, are true and correct.

25 Dated this July 17, 2012

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Chris Leman