

1 BEFORE THE CITY OF SEATTLE
2 ETHICS AND ELECTIONS COMMISSION

3 IN THE MATTER OF) APPEAL OF DISMISSAL OF ALLEGATION
4 COMPLIANCE WITH) #6, MISUSE OF CITY FACILITIES BY
SMC 2.04.300) THE SEATTLE PUBLIC LIBRARY
5 CITY OF SEATTLE) FOUNDATION IN SUPPORT OF THE
) PROPOSITION 1 CAMPAIGN
6)

7 This appeal submits that, contrary to dismissal by the
8 Commission executive director (henceforth "the director") of my
9 July 3 complaint, the Library violated SMC 2.04.300 by providing
10 the use of public facilities to the Seattle Public Library
11 Foundation in its financial support for the Proposition 1 campaign
12 and other campaign activities.

13 The entirety of the director's dismissal is as follows:

14 I am dismissing this allegation because the SEEC staff
15 investigation concluded that the Foundation is operationally
16 separate from the Library. Computers, printers, supplies,
17 phone lines, data storage, software, web usage and remaining
18 operational costs are managed and paid through the
19 Foundation's financial officer. The bare fact that the
20 Foundation operates out of the Library, and that the
21 Librarian and a member of the Library board hold two non-
22 voting positions on the foundation's 35-member board is not
23 sufficient to establish that City facilities are being used
24 to promote the levy, with the Foundation serving as a
25 conduit. I further note that the Foundation's Executive
Director sought advice from this office in March of this year
for her and the Foundation's administrative assistant. SEEC
staff advised Foundation staff not to conduct campaign
activities from the Foundation's office in the Library.
There is no evidence that Foundation staff failed to follow
this advice.

1 This appeal maintains that the director lacked a rational
2 basis for dismissing the complaint. The SMC 2.04.300 prohibition
3 (and the same prohibition in state law) against use of City
4 facilities and resources to promote a ballot measure is
5 specifically stated to apply not just to direct efforts, but also
6 to indirect ones. The Seattle Public Library Foundation, the
7 dominant funder of the Proposition 1 campaign, is so inextricably
8 connected to the Seattle Public Library that, so long as the
9 present relationship continues, the Library cannot avoid directly
10 and indirectly assisting the Foundation's campaign efforts.

11 The Library's support is central to the Foundation's
12 fundraising efforts. According to the "Mission" page on the
13 Foundation's web site (exhibit #24):

14 The Foundation acts as the "fundraising arm" of the Library.
15 If you want to support the Library with a donation, your gift
16 goes to the Foundation. We work with the Library to identify
17 the best way donors' gifts can enhance the Library and meet
18 the ever changing needs of the community.

19 Where does this money go? Most of it is spent on the
20 Library's collections and other Library needs, but a large chunk
21 of it is spent as political contributions when there is a Library-
22 related measure on the ballot. The Seattle Public Library
23 Foundation is by far the dominant funder of "Yes Seattle
24 Libraries," the campaign committee working in favor of Proposition
25 1. As of the campaign committee's July 2 filing (exhibit #25),
Yes Seattle Libraries had received a total of \$110,000 from the
Foundation--71 percent of the total dollars it so far had raised.

Regarding the City of Seattle's
alleged use of public facilities to
promote City Proposition 1

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1 (All other donations to Yes Seattle Libraries at that time totaled
2 \$46,080). As of today (July 31), Yes Seattle Libraries had
3 received a total of \$150,000 from the Foundation.

4 The City Librarian and Library Board are fully aware of the
5 Foundation's donation of large sums to the Proposition 1 campaign,
6 because they are a part of the process. City Librarian Marcellus
7 Turner and Library Board member Theresa Fujiwara are members of
8 the Foundation board. Exhibit #24 from the Foundation's web site
9 lists them as ex officio Foundation board members (said to be non-
10 voting positions under the foundation's by-laws). And the
11 President of the Library Board (governing body for the Library),
12 Marie McCaffrey, is also the Chair of Yes Seattle Libraries, which
13 she founded as the Library Levy Committee on March 5 (exhibit #9).
14 In short, the officials who are directly responsible for the
15 Library's continued provision of fundraising and other assistance
16 to the Foundation are integral to the process by which the
17 Foundation is the primary funder of the ballot measure campaign.

18 The City Librarian and Library Board have specifically acted
19 to provide the Foundation free access to some City facilities,
20 subsidized access to other City facilities, and reimbursed but
21 exclusive access to still other City facilities. These officials
22 can hardly be unaware of the Foundation's godfather role in
23 funding much of the current Proposition 1 campaign, or of its
24 similar role in the 1998 campaign for the Libraries for All bond
25 issue. As seen in exhibit #4, the Foundation donated \$200,000 to

1 the 1998 pro-ballot measure campaign, 41 percent of the total
2 raised.

3 In basing the dismissal partially on a finding that the City-
4 owned "computers, printers, supplies, phone lines, data storage,
5 software, web usage and remaining operational costs" that the
6 Foundation enjoys "are managed and paid through the Foundation's
7 financial officer," the SEEC director misses the point on several
8 counts.

9 First, he misses a tangible and very substantial benefit from
10 the Library that the Foundation does not pay for. As the July 3
11 complaint reported (based on my interview with the Foundation's
12 executive director), the Library provides free to the Foundation
13 its office and furniture in the Central Library. Thus the
14 Foundation enjoys exclusive offices that are perfectly located
15 downtown in a world architectural icon and a prestige address.
16 The market rate to rent these facilities would be substantial,
17 plus of course the Foundation enjoys favored access to this free
18 benefit, which is not available to organizations that may be
19 opposed or neutral regarding Proposition 1.

20 Second, the director's dismissal fails to recognize that, for
21 the myriad other services which the Foundation receives from the
22 Library and for which the Foundation may pay something, the
23 Foundation's direct and indirect efforts on behalf of Proposition
24 1 are inherently helped by this relationship. The Library has
25 placed itself squarely in the role of sponsoring the fundraising

1 that leads to the Foundation's political contributions to the
2 Proposition 1 campaign. The Foundation reaps prestige and
3 donations from ties such as the following:

4 The Foundation uses the Seattle Public Library's e-mail and
5 telephone systems and its web site. The Library's home page is
6 <http://www.spl.org> and the Foundation's web site address is
7 <http://foundation.spl.org>. The e-mail address and phone number
8 for the City Librarian are marcellus.turner@spl.org and 206-386-
9 4102, and for the Foundation Director are jonna.ward@spl.org and
10 206-386-4131. In the web-based City of Seattle staff directory's
11 front page for the Seattle Public Library departmental listings,
12 there is a category for Development/Foundation Office. Clicking
13 on it takes the user to the Foundation Director; another click
14 takes the user to the address "Central Library, 1000 Fourth
15 Avenue." In all cases, the web-based City of Seattle staff
16 directory's front page lists the Foundation Director as being on
17 the City of Seattle staff. Any payment that the Foundation may
18 make to the Library for these services misses the point that the
19 Library has granted to the Foundation unique access to them, not
20 available to other organizations that are opposed or neutral
21 regarding Proposition 1.
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25 Beyond the Library's hosting the Seattle Public Library
Foundation free in its executive offices and providing it

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1 reimbursed City staff and all of the services enjoyed by other
2 City staff, the Seattle Public Library goes out of its way to
3 channel donations to the Foundation that would otherwise go
4 directly to the Library. Members of the public can make donations
5 directly to the Library or to other City agencies. According to
6 my interview with the Library business office, the library will
7 deposit in a City account checks sent to the City Librarian or the
8 business office and made out to "Seattle Public Library."
9 However, this information is available nowhere on the Library's
10 web site; in its place, at various places on the Library's web
11 site (see exhibit #23) is a button labeled "Donate now to the
12 Seattle Public Library Foundation." A click takes the user
13 straight to the Foundation's "Ways to Give" web page.

14 The Foundation also uses Library facilities and staff as
15 incentives for donors to give to the Foundation. Again, even if
16 the Foundation somehow compensates the Library for these services,
17 the Foundation has favored or exclusive access to them not
18 available to other organizations that are opposed or neutral
19 regarding Proposition 1. The Foundation's web site (exhibit #24)
20 offers a range of Library-related benefits for donations to the
21 Foundation. While the Foundation may reimburse the City for these
22 benefits, certainly the Library does not make them available to
23 other organizations (least of all those who are neutral or opposed
24 to Proposition 1):

- 25 (a) free parking in the Central Library garage
- (b) free use of a meeting room at the Central Library

- (c) free use of the computer lab for group training or an event space
- (d) reserved seating at author events
- (e) invitations to private author receptions
- (f) invitations to events hosted by the City Librarian
- (g) designation as an annual Business Partner at the Central Library
- (h) recognition at an annual event at the Central Library.

The Seattle Public Library Foundation's executive director has told me and others (including an investigator for the Ethics and Elections Commission) that the Foundation's 2012 political contributions to the Proposition 1 campaign were not from donated funds, but rather from the Foundation's investment returns. However, lawyers I've consulted say that because the principal that produced the investment returns is itself the result of donations, the Foundation is still using donations for political purposes, and thus the City's role in helping to raise the donations is causing the City to violate SMC 2.04.300 by providing the use of public facilities to the Seattle Public Library Foundation in its financial and other support for the Proposition 1 campaign.

The director states in the dismissal that in March "SEEC staff advised Foundation staff not to conduct campaign activities from the Foundation's office in the Library." The director did not have a rational basis for the sentence that follows: "There is no evidence that Foundation staff failed to follow this advice." This statement is incorrect. Most importantly, the \$150,000 in donations that the Foundation has made in recent

1 months to the Proposition 1 campaign are inherently a campaign
2 activity, and are inherent in the operation of the Foundation's
3 office. It would not be possible for the Foundation to make these
4 political contributions and to account for them without doing so
5 in the Foundation office.

6 In another instance documented in exhibit #24 that was
7 provided along with my July 3 complaint, the Foundation's web site
8 included a page that was posted on about June 1, 2012 and entitled
9 "Yes for Seattle Libraries" that urged: "Please join us and
10 protect our great libraries for all Seattle residents by
11 supporting Seattle Proposition 1 - Yes for Our Libraries. Please
12 visit YESSEATTLELIBRARIES.COM for more information." Clicking on
13 the link took the user to the pro campaign web site. The web page
14 also included a button with the logo of the pro campaign clearly
15 labeled "Libraries Yes! Seattle Prop. 1," clicking on which took
16 the user directly to the pro campaign web site. When I notified
17 the SEEC director about the infraction, he contacted the
18 Foundation and instructed them to remove the campaign web page,
19 which they eventually did.

20 This Foundation web page advocating a yes vote on Proposition
21 1 and soliciting involvement in the campaign was accessed by a
22 link from the June 2012 issue of the "Seattle Public Library E-
23 News: Information about the Seattle Public Library, Foundation,
24 and Friends," which was sent from the Library address
25 librarynews@spl.ccsend.com. I have another document stating that

1 100,000 users are on this Seattle Public Library's e-mail list.
2 Like its disbursement and accounting functions, management of the
3 Foundation's web site resides at its office. Clearly, the Seattle
4 Public Library through its association with the Foundation caused
5 City facilities to be used to expose a large number of Seattle
6 voters to Proposition 1 campaign activities.

7 The SEEC director dismissed the Foundation-related parts of
8 the July 3 complaint on the grounds that "There is no evidence
9 that Foundation staff failed to follow this advice" (namely, his
10 advice not to conduct campaign activities from the Foundation's
11 office). Note that the director's dismissal is not on the basis
12 that the campaign web page was either an inadvertent or a minor
13 infraction, but rather that "There is no evidence" of infractions
14 by the Foundation. Therefore the Commission cannot uphold the
15 director's dismissal as being on the grounds of being an
16 inadvertent or minor Foundation infraction, because those were not
17 his grounds for dismissing the complaint. Rather, the Commission
18 must find that the director in claiming that there had been no
19 infraction (whether inadvertent, minor, or otherwise) did not have
20 a rational basis for dismissing the complaint.

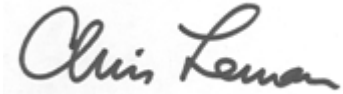
21 To conclude: The Seattle Public Library Foundation's
22 fundraising efforts are materially aided by benefits that it
23 receives free, subsidized, on a reimbursable but favored or
24 exclusive basis from the Library. Also, on its web site and in
25 other ways, the Library encourages that donors who wish to give to

1 the Library should instead make donations to the Foundation, even
2 though the Library and other City agencies can accept donations
3 themselves. These benefits are not available to non-profit groups
4 that are neutral or opposed to Proposition 1. The Seattle Public
5 Library's assistance to the Foundation's fundraising is part of
6 the arrangement under which the Foundation routinely spends
7 hundreds of thousands of dollars on behalf of ballot measures that
8 involve the Library.

9 The SEEC director did not have a rational basis for
10 dismissing this complaint. The Seattle Public Library has
11 violated the SMC 2.04.300 prohibition against use of City
12 facilities to promote a ballot measure by aiding the Seattle
13 Public Library Foundation's promotion of Proposition 1. As
14 mentioned earlier, the SMC 2.04.300 prohibition (and the same
15 prohibition in state law) on use of City facilities and resources
16 to promote a ballot measure is specifically stated to apply not
17 just to direct efforts, but also to indirect ones. It is clear
18 that through the Foundation, the Library is involved both directly
19 and indirectly in illegally promoting Proposition 1. The only
20 ways to avoid this situation are either for the Foundation to stop
21 making political donations or for the Library to disengage from
22 its compromising relationship with the Foundation. The Ethics and
23 Elections Commission must act to preserve the integrity of the
24 election process and enforce SMC 2.04.300.

1 I declare under penalty of perjury of the laws of the State
2 of Washington that I am a registered voter of the City of Seattle,
3 and that the information in the above statement, and the exhibits
4 provided, are true and correct.

5 Dated this July 31, 2012

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7 

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