

## LITIGATION BACKGROUNDER

### Seattle’s special tax against property owners to fund private campaign contributions violates the First Amendment

#### *Elster v. City of Seattle*

Pacific Legal Foundation (PLF) is challenging Seattle’s novel approach to campaign finance in King County Superior Court. In 2015, Seattle adopted “democracy vouchers” with the passage of Initiative 122. Under this unique program, Seattle residents receive four \$25 democracy vouchers per election cycle.<sup>1</sup> They can only use the vouchers to contribute to eligible candidates for city elected offices. Seattle funds these private contributions through a dedicated property levy.<sup>2</sup>

The democracy voucher program violates the First Amendment rights of Seattle property owners. The freedom of speech includes both the right to speak and the right to refrain from speaking. This prohibition against compelled speech shields dissenters from being forced to subsidize speech that they don’t support. Through the property levy, Seattle forces property owners to pay for other people’s private political speech, whether the property owners agree with the speech or not. This forced support for political speech serves the interests of entrenched politicians, sidelines minority viewpoints, and violates the United States Constitution.

On June 28, 2017, PLF sued the City of Seattle on behalf of Mark Elster and Sarah Pynchon—two Seattle property owners—in King County Superior Court. The lawsuit alleges that the democracy voucher program violates our clients’ right against compelled speech. PLF represents Mr. Elster and Ms. Pynchon at no charge.

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<sup>1</sup> SMC § 2.04.620(b).

<sup>2</sup> Initiative 122, § 2.

## **Property owners must pay for vouchers used to promote political campaigns.**

Seattle voters passed Initiative 122—entitled “Honest Elections Seattle”—in November 2015 by a 63% margin. The initiative proclaims its purpose in sweeping terms: “This people’s initiative measure builds honest elections in [Seattle] and prevents corruption, by: giving more people an opportunity to have their voices heard in our democracy” and “ensuring a fair elections process that holds our elected leaders accountable to us by strengthening voters’ control over City government.”<sup>3</sup> The initiative seeks to achieve these goals through a variety of methods, such as:

- Banning local campaign contributions from city contractors and businesses that lobby the city;
- Tightening candidate financial disclosures;
- Reducing the campaign contribution cap; and
- Establishing the democracy voucher program.

The voucher program is the first of its kind in the nation. Every municipal election year, the Seattle Ethics and Elections Commission (SEEC) sends registered voters four \$25 vouchers in the mail. Seattle residents who aren’t registered to vote can also receive vouchers upon request if they’ve lived in the city thirty days and are eligible to contribute to campaigns under federal law.

Voucher recipients can only use the vouchers to support a local candidate running for the offices of City Council or City Attorney. The program, however, requires candidates to meet certain criteria before they can be eligible to receive vouchers. These requirements include:

- Receiving a minimum quantity of qualifying contributions;
- Participating in three debates in the primary and general elections; and
- Agreeing to an increased contribution limit.

Voucher holders cannot give their vouchers to candidates who don’t satisfy these criteria.

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<sup>3</sup> SMC § 2.04.600.

The Initiative authorizes Seattle to impose a property levy to fund the voucher program. The City can raise up to \$ 30,000,000 over a ten-year period for democracy vouchers. Many property owners—such as our client Sarah Pynchon—are subject to the levy but cannot themselves receive vouchers because they live outside Seattle city limits.

### **The democracy voucher program violates the First Amendment by forcing Seattle property owners to subsidize the political speech funded by the vouchers.**

The First Amendment embodies not only the right to speak, but also its corollary—the right not to speak. The Supreme Court, affirming that a student cannot be forced to recite the Pledge of Allegiance, said: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.”<sup>4</sup>

The right against compelled speech also includes a right to refrain from financially supporting speech. In modern politics, money talks. And when government forces a property owner to pay for another person’s political contributions, it forces them to promote partisan speech. Mr. Elster and Ms. Pynchon object to bankrolling political speech that they don’t want to support.

The democracy voucher program also disfavors minority viewpoints. Because the campaign contributions are filtered through Seattle residents, the distribution of the voucher funds will inevitably reflect mainstream views. This outcome differs from a neutral public funding scheme in which all candidates receive an equal amount of public funds. By distributing money in a manner that helps incumbents and popular candidates, this skewed outcome undermines “the equality of status in the field of ideas” that the First Amendment protects.<sup>5</sup>

Government cannot force property owners to fund other people’s political speech. The Supreme Court, in striking down a law that compelled personal care providers to subsidize a union’s speech, called it a “bedrock principle” that “except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize

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<sup>4</sup> *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>5</sup> *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1968).

speech by a third party that he or she does not wish to support.”<sup>6</sup> PLF plans to vindicate this bedrock principle on behalf of Seattle property owners.

## **Litigation Team**

PLF attorneys Ethan Blevins, Wencong Fa, and John Groen represent Mark Elster and Sarah Pynchon in King County Superior Court. Mr. Elster and Ms. Pynchon ask the court to declare that the democracy voucher program violates First Amendment rights and enjoin its enforcement.

Established in 1973, Pacific Legal Foundation ([www.pacificlegal.org](http://www.pacificlegal.org)) is the nation’s most experienced public-interest law firm dedicated to individual liberty, private property rights, and limited government. It represents clients without charge.

## **Media Contact**

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<sup>6</sup> *Harris v. Quinn*, 134 S. Ct. 2618, 2644 (2014).