No. ____

In The

Supreme Court of the United States

MARK ELSTER and SARAH PYNCHON,
Petitioners,

v.

THE CITY OF SEATTLE,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Seattle's "democracy voucher" program establishes a dedicated property levy used solely to fund individual contributions from Seattle residents to the political campaigns of participating candidates.

The questions presented are:

1. Whether a levy that forces property owners to fund other individuals' campaign donations implicates the First Amendment's compelled-subsidy doctrine.
2. Whether a compelled subsidy of speech should be examined under rational basis review, as the decision below concluded, or whether a higher standard of review is appropriate.

PARTIES TO THE PROCEEDINGS AND RULE 29.6

Petitioners, who were Plaintiffs-Appellants in the court below, are Mark Elster and Sarah Pynchon. Respondent, Defendant-Appellee below, is the City of Seattle. All parties to this petition were parties below. No Petitioner is a corporation, so a corporate disclosure statement is not required under Supreme Court Rule 29.6.

RULE 14.1(b)(iii) STATEMENT OF RELATED CASES

The proceedings in the Washington State trial and appellate courts identified below are directly related to the above-captioned case in this Court.

Mark Elster and Sarah Pynchon v. The City of Seattle, Case No. 17-2-16501-8 SEA, Washington State Superior Court for King County. Date of Judgment: November 2, 2017.

Mark Elster and Sarah Pynchon v. The City of Seattle, Case No. 77880-3-I, Court of Appeals of the State of Washington Division One. Date of Judgment: December 17, 2018.

Mark Elster and Sarah Pynchon v. The City of Seattle, Case No. 96660-5, Supreme Court of the State of Washington. Date of Judgment: July 11, 2019.

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INTRODUCTION

In 2015, the City of Seattle implemented a novel method for funding political campaigns. The program implicates a special First Amendment concern because it forces some individuals, here property owners, to pay for the campaign contributions of other private individuals. *See Eu v. San Francisco County Democratic Cent. Committee*, 489 U.S. 214, 223 (1989) ("Indeed, the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." (quoting *Monitor Patriot Co. v. Roy*, 410 U.S. 265, 272 (1971))); *Janus v. Am. Fed'n of State, Cty., & Mun. Employees*, 138 S. Ct. 2448, 2464 (2018) ("'[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.'" (quoting A Bill for Establishing Religious Freedom, *in* 2 *Papers of Thomas Jefferson* 545 (J. Boyd ed. 1950))).

Seattle's public financing program issues four $25 "democracy vouchers" to Seattle residents each election year. *See* Appendix (App.) G at 6–7. The voucher holder can only use the vouchers to support a qualified local candidate that chooses to participate in the program. *See id.* at 8–9. Not surprisingly, most of the vouchers fund the re-election campaigns of the Seattle city council. *Cf.* Danny Westneat, *Democracy vouchers are supposed to be an answer, but big money is swamping Seattle's elections*, Seattle Times, Sept. 25, 2019[1] (pointing out that the voucher program has not shaken up electoral politics as expected).

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[1] https://is.gd/THVF4t.

A dedicated property levy is the exclusive method for funding the campaign subsidies. *See* App. H at 24.

The campaign subsidy program raises serious constitutional concerns under this Court's compelled-subsidy precedents, namely *Janus*, 138 S. Ct. 2448, and *Board of Regents of University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000). Specifically, the campaign subsidy program guarantees that Petitioners will be compelled to fund private political speech with which they disagree. Campaign funding will inherently be skewed in favor of currently popular candidates, so property owners who favor less popular candidates, such as Petitioners, are compelled to fund a program that favors candidates and campaign-related speech that they oppose, thus compelling them to "betray[] their convictions." *Janus*, 138 S. Ct. at 2464. The Washington Supreme Court upheld the program under rational basis scrutiny, an excessively deferential test that this Court has rejected in the compelled-subsidy context: "This form of minimal scrutiny is foreign to our free-speech jurisprudence, and we reject it here." *Id.* at 2465.

This case implicates compelling, unresolved questions that deserve this Court's attention, such as the compelled-subsidy doctrine's application to taxes levied to fund the private political speech of other individuals, the level of scrutiny that should apply to compelled-subsidy claims, and how the doctrine applies to the compelled funding of political campaigns. This Court should grant the petition to address these significant but lingering questions.

PETITION FOR A WRIT OF CERTIORARI

Petitioners Mark Elster and Sarah Pynchon respectfully petition for a writ of certiorari to review the judgment of the Washington Supreme Court.

OPINIONS BELOW

The opinion of the Washington Supreme Court affirming the Washington State Superior Court's dismissal of Petitioners' complaint is reported at 444 P.3d 590 (Wash. 2019) and reproduced in Appendix A. The order of the Washington State Court of Appeals certifying the case to the Washington Supreme Court is unreported but is reproduced here as Appendix B. The ruling of the commissioner of the Washington Supreme Court accepting certification of the case is unreported but reproduced here as Appendix C. The Washington State Superior Court's order granting Respondent's motion to dismiss is unreported but may be found at 2017 WL 11407502 (Super. Ct. Wash. 2017) and is reproduced here as Appendix D. The superior court's order denying Petitioners' motion for reconsideration can be found at 2017 WL 11441828 (Super. Ct. Wash. 2017) and is reproduced here as Appendix E. The mandate of the Washington Supreme Court, issued August 9, 2019, is reproduced here as Appendix F.

STATEMENT OF JURISDICTION

The Washington Supreme Court entered judgment on July 11, 2019. On September 26, 2019, Justice Kagan extended the time for filing this petition to November 8, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION AND ORDINANCE AT ISSUE

The First Amendment, as incorporated against the states by the Fourteenth Amendment, provides that the states "shall make no law . . . abridging the freedom of speech."

Seattle Municipal Code (SMC) Chapter 2.04, entitled Honest Elections Seattle, "creates a democracy voucher public finance program." SMC § 2.04.600. The full language of the chapter and the initiative are reproduced in Appendices G and H.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

In 2015, Seattle voters approved Initiative 122, which instituted the campaign subsidy program, the first of its kind in the country. *See generally* App. H. The initiative is incorporated in the Seattle Municipal Code. *See generally* App. G.

Under the program, the City mails four $25 vouchers to each registered voter in Seattle at the beginning of each election year. App. G at 7. Seattle residents who are not registered to vote are also entitled to vouchers upon request. *Id.*

Voucher recipients can only assign the voucher funds to candidates for city-elected offices who have opted in to the campaign subsidy program. *See id.* at 9. Such candidates can only redeem campaign subsidies by satisfying certain qualifications, such as agreeing to lower contribution limits and obtaining a minimum number of contributions. *See id.* at 10–12.

The Initiative gives the City two options for funding the campaign subsidy program—

appropriations from the general revenue or a dedicated property levy. App. H at 23–24. The City opted to raise the voucher funds—up to $3 million per year—through the new levy. *Id.* at 24.[2] The levy funds may only be used to fund the campaign subsidy program. *See id.*

Petitioners Mark Elster and Sarah Pynchon are Seattle property owners subject to the voucher levy, and they object to funding other people's political speech. *See* App. I at 2–3. Mr. Elster is politically active, often meeting with candidates and attending campaign activities. *Id.* at 2. He does not wish to support any of the local candidates who opt to receive campaign subsidies. *Id.* He adamantly objects to being compelled to subsidize political views that conflict with his own values. *Id.*

Ms. Pynchon owns property in Seattle subject to the voucher levy, though she herself lives outside city limits. *Id.* at 3. She is therefore not qualified to receive vouchers. *Id.* Ms. Pynchon objects to being compelled to pay for other people's campaign contributions, particularly when she herself is not entitled to vouchers. *Id.*

II. PROCEDURAL BACKGROUND

Petitioners sued the City of Seattle in the Washington State Superior Court for King County in June 2017, alleging that the campaign subsidy program violates their First Amendment rights by compelling them to subsidize other individuals'

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[2] *See* https://www.seattle.gov/democracyvoucher/about-the-program (explaining the levy funding).

political speech. *See* App. I. They sought declaratory and injunctive relief. *See id.* at 13–14.

The trial court granted the City's motion to dismiss on November 3, 2017. *See generally* App. D. While it held that the program implicated the First Amendment, the trial court applied a relaxed standard of review because the program was akin to a "nonpublic or limited public forum." *Id.* at 6. Therefore, the program passed muster so long as it was "reasonable and viewpoint neutral." *Id.* (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 469–70 (2009)). The court held that increasing voter participation in the electoral process through campaign contributions was a "reasonable justification" for the program. *Id.* at 9. It later denied Petitioners' motion for reconsideration. *See* App. E.

This Court issued two key decisions during the pendency of Petitioners' appeal: *Janus*, 138 S. Ct. 2448, and *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018). In late 2018, Division I of the Washington Court of Appeals certified the appeal to the Washington Supreme Court because the case "presents a fundamental and urgent issue of broad public import requiring prompt and ultimate determination." App. B. The Washington Supreme Court granted certification and upheld the campaign subsidy program under rational basis scrutiny as a viewpoint-neutral means of facilitating speech. *See generally* App. A, C.

Because this case raises important and unresolved questions concerning the scope of compelled subsidies

that affect core First Amendment rights, Petitioners seek certiorari review.[3]

REASONS FOR GRANTING THE PETITION

This case allows the Court to address important and unresolved issues about the contours and strength of the compelled-subsidy doctrine. These include issues such as when and how the compelled-subsidy doctrine applies to speech subsidies drawn from taxes levied to fund the private political speech of other individuals, the proper level of scrutiny for a compelled subsidy of political speech, and the doctrine's role regarding compelled funding of political campaigns.

The Washington Supreme Court's reasoning conflicts with precedent from this Court and the federal circuit courts. The Washington Supreme Court imposed rational basis review, a standard that the federal courts have universally rejected as inappropriate in the First Amendment and compelled-subsidy contexts. The court also held that a compelled

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[3] Petitioners have standing to raise this challenge. It is "the rule of this Court" that "[t]he interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate." *Frothingham v. Mellon*, 262 U.S. 447, 486 (1923). *See also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 349 (2006) ("The *Frothingham* Court noted with approval the standing of municipal residents to enjoin the 'illegal use of the moneys of a municipal corporation,' relying on 'the peculiar relation of the corporate taxpayer to the corporation' to distinguish such a case from the general bar on taxpayer suits." (quoting *Frothingham*, 262 U.S. at 487)); *Smith v. Jefferson Cty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 210–11 (6th Cir. 2011) (affirming the municipal taxpayer standing rule in *Frothingham*); *United States v. City of New York*, 972 F.2d 464, 471 (2d Cir. 1992) (same).

subsidy is only unconstitutional if the objector is "associated with" the message she's forced to subsidize. App. A at 9. This ruling fundamentally misreads this Court's *Janus* decision in a manner that threatens the vitality of this important First Amendment doctrine. Similarly, the Washington Supreme Court's holding that the campaign subsidy program creates no First Amendment problem because voucher holders are free to decide how to assign the vouchers clashes with the fundamental principles behind the compelled-subsidy doctrine that this Court has developed and defended for four decades.

Finally, the validity of Seattle's campaign subsidy program has become a matter of national significance. At the federal, state, and local levels, legislators are proposing compelled political subsidy programs that emulate Seattle's. These programs burden First Amendment rights and threaten to severely distort electoral discourse. The constitutionality of such programs is a pressing concern that warrants this Court's attention.

I

IMPORTANT QUESTIONS REGARDING THE COMPELLED-SUBSIDY DOCTRINE REMAIN UNRESOLVED

A. This Court should address whether the compelled-subsidy doctrine applies to a property tax levied to fund the private political speech of other individuals

Seattle singles out property owners to sponsor other individuals' partisan campaign contributions. The fact that the City compels this subsidy through

taxes rather than a fee or targeted assessment does not ameliorate the injury done to Petitioners' "individual freedom of mind." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 642 (1943) (holding that students who objected to participating in the pledge of allegiance cannot be forced to betray their own consciences). Yet this Court has never directly addressed whether the compelled-subsidy doctrine can apply to a tax. It should do so now.

Historically, the federal courts have applied the compelled-subsidy doctrine to a range of fees and targeted assessments. These include union agency-shop fees, bar dues, targeted assessments on industry participants, and university student fees.[4] Nonetheless, neither this Court's precedents nor the rationale for the compelled-subsidy doctrine prevents the doctrine's application to subsidies drawn from tax revenue.

This Court has implied that the compelled-subsidy doctrine can extend to such circumstances but has yet to issue an express holding to that effect. In *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005), this Court addressed whether the government-speech doctrine barred a compelled-subsidy claim where the subsidy targeted a particular industry. The Court said: "The compelled-*subsidy* analysis is altogether unaffected by whether the funds for the promotions are raised by general taxes or through a targeted assessment. . . . [T]he injury of compelled funding (as opposed to the injury of compelled speech)

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[4] *See Janus*, 138 S. Ct. 2448 (agency-shop fees); *Keller v. State Bar of California*, 496 U.S. 1 (1990) (bar dues); *United States v. United Foods, Inc.*, 533 U.S. 405 (2001) (industry assessments); *Southworth*, 529 U.S. 217 (2000) (student activity fees).

does not stem from the government's mode of accounting." *Id.* at 562–63. While this holding only addressed an attempt to limit the government-speech doctrine, there is no reason that the method of appropriating funds should affect the compelled-subsidy analysis more generally. *See* William Baude & Eugene Volokh, *Compelled Subsidies and the First Amendment*, 132 Harv. L. Rev. 171, 183 (2018) ("Another possible distinction is that most taxes go to a wide range of uses, and come from a wide range of taxpayers; agency fees are narrower in both respects. But we think the Court was quite right in *Johanns* to conclude that this distinction can't make a First Amendment difference.").

The issue remains unresolved in the lower courts. For example, in *O'Brien v. Village of Lincolnshire*, 354 F. Supp. 3d 911 (N.D. Ill. 2018), a federal district court addressed whether funding a non-government municipal league with funds from income, sales, and utility taxes resulted in an unconstitutional compelled subsidy. *See id.* at 914. The Court did not, however, decide whether expenditures from general tax revenue implicated the First Amendment, instead holding that the municipal league's expression constituted government speech. *Id.* at 918–19.[5]

The question of the compelled-subsidy doctrine's scope is a significant one. When government compels a speech subsidy, a First Amendment injury occurs because no one should be "coerced into betraying their convictions." *Janus*, 138 S. Ct. at 2464. So long as the funding is compelled, this injury is the same whether

[5] The assignment of vouchers to political candidates does not constitute government speech because the voucher holder decides which campaign to support. *See* App. A at 9 n.4.

the money comes from dues, fees, or taxation. *See* Baude & Volokh, *supra* at 184 ("[T]here is no practical ground for a distinction between agency fees and taxes, nor is there anything in the text of the First Amendment that suggests one."). Petitioners must betray their own convictions to the same extent as Mark Janus. Yet legislation subsidizing speech through general appropriations is not uncommon. *See Buckley v. Valeo*, 424 U.S. 1, 93 n.127 (1976) ("Our statute books are replete with laws providing financial assistance to the exercise of free speech, such as aid to public broadcasting and other forms of educational media, and preferential postal rates and antitrust exemptions for newspapers." (internal citations omitted)); Baude & Volokh, *supra* at 187 (describing commonplace examples of speech subsidies). Many such speech subsidies likely qualify as government speech, but some may not, and the open question of whether the compelled-subsidy doctrine may apply in such settings is an important one that will likely recur. *See, e.g.*, *O'Brien*, 354 F. Supp. 3d at 920 (holding that funding of municipal league speech through general revenue was a valid subsidy of government speech). In fact, some lawmakers have suggested resorting to tax revenue as a means of continuing to fund union speech through compulsion following *Janus*. *See*, *e.g.*, Nolan Hicks, *Dem Lawmaker has 'workaround' to SCOTUS unions decision*, New York Post, July 4, 2018.[6] Thus, this question has direct bearing on this Court's precedent.

This petition presents an ideal vehicle for establishing the scope of the compelled-subsidy

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[6] https://nypost.com/2018/07/04/dem-lawmaker-has-workaround-to-scotus-unions-decision/.

doctrine in the context of taxation. The campaign subsidy program sits at a middle ground between an appropriation from a general fund on the one hand, and a targeted assessment or fee on the other. The vouchers are funded by a dedicated property levy. *See* App. H at 23–25. The levy will raise a maximum of $30,000,000 over a 10-year duration at a rate of $3,000,000 per year. *Id.* The voucher levy applies to commercial, business, and residential properties. Seattle.gov, About the Democracy Voucher Program.[7] Washington state law limits municipalities' ability to increase or impose new property taxes such as the voucher levy, *see* Wash. Rev. Code § 84.55.010, but a taxing district may exceed such limits if the levy is authorized by a majority vote of the voters in the district. *See id.* § 84.55.050(1).

The campaign subsidy program used this exception to the state levy cap. *See* App. H at 23–25. The levy only goes to funding the campaign subsidy program. *See id.* Hence, the campaign subsidy program creates a new tax dedicated solely to funding campaign subsidies, without which the increased property tax burden would not exist. Thus, while the campaign subsidy program is funded by a generally applicable tax, it differs from an allocation from the general revenue because the money comes from a new, dedicated tax against a subset of the electorate—property owners. The voucher funding is therefore more akin to "a special subsid[y] exacted from a designated class of persons." *United States v. United Foods*, 533 U.S. 405, 410 (2001).

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[7] https://www.seattle.gov/democracyvoucher/about-the-program (last visited Nov. 4, 2019).

This funding mechanism makes the campaign subsidy program an excellent vehicle for addressing how the compelled-subsidy doctrine applies to taxation. The Court need not address the larger question of whether all allocations from general revenue that go to fund private speech can be subject to a compelled-subsidy challenge, but the Court could still reach an important and unresolved question about how far the compelled-subsidy doctrine may extend.

The case is an excellent opportunity in another important sense. Unlike in *Janus* or other landmark compelled-subsidy cases, the levy funds go exclusively to funding private speech on a specific topic: campaign contributions for local candidates for elected office. Hence, the Court need not address whether appropriations from general revenue for use by private parties will always implicate the compelled-subsidy doctrine if just a portion of that money is used for speech. Moreover, this Court has long recognized that the First Amendment plays a special role in the context of campaign speech. *See Eu*, 489 U.S. at 223. Given both the dedicated tax that funds the vouchers, and the specific use to which the vouchers are put, this case presents an excellent vehicle for addressing an important question about the scope of the compelled-subsidy doctrine in a limited fashion.

B. This case presents the lingering question of which level of scrutiny applies to compelled subsidies

This Court has acknowledged that the level of scrutiny applicable to a compelled speech subsidy is an open question. *See Janus*, 138 S. Ct. at 2465 ("[W]e again find it unnecessary to decide the issue of strict

scrutiny because the Illinois scheme cannot survive under even the more permissive standard applied in *Knox* and *Harris*."); *Harris v. Quinn*, 573 U.S. 616, 648 (2014) ("For present purposes, however, no fine parsing of levels of First Amendment scrutiny is needed because the agency-fee provision here cannot satisfy even the test used in *Knox*."); *Knox v. Service Employees Int'l Union, Local 1000*, 567 U.S. 298, 310 (2012) ("[C]ompulsory subsidies for private speech are subject to exacting First Amendment scrutiny. . . ."). This case presents a clear factual context for answering that question.

If there is a compelled-subsidy case in which strict scrutiny ought to be applied, it is this one. The campaign subsidy program is unlike the subsidies considered by this Court in the past because the money drawn from the dedicated property levy is specifically and exclusively earmarked for a narrow category of political speech: campaign contributions to select Seattle electoral candidates. To date, this Court has only had occasion to apply the intermediate scrutiny standard utilized in *United States v. United Foods*, 533 U.S. 405, where "the mundane commercial nature" of mushroom ads did not create as serious a crisis of conscience as do compelled political subsidies. *Harris*, 573 U.S. at 648 (applying the *United Foods* standard to union fees required of in-home care providers even though "it is arguable that the *United Foods* standard is too permissive"). *See also Knox*, 567 U.S. at 309–10 (applying the *United Foods* standard to an unconsented increase in compelled agency-shop fees). As the *United Foods* dissent argued, "[n]o one here claims that the mushroom producers are restrained from . . . doing anything else more central to the First Amendment's concern with democratic

self-government" and therefore there existed "no risk of significant harm to an individual's conscience." *United Foods*, 533 U.S. at 426–27 (Breyer, J., dissenting).

Hence, this Court has been applying a relaxed test designed for a non-political commercial context where the betrayal of conscience so central to the compelled-subsidy doctrine is not as poignant as the political context in which the test is frequently applied. The time has come for the Court to put new wine into a new bottle.

This case is a prime opportunity for addressing whether that level of scrutiny should be tightened because the speech being subsidized here—campaign contributions—touches on political speech in the course of an election, where First Amendment protection "has its fullest and most urgent application" and where considerations of conscience are especially poignant. *Eu*, 489 U.S. at 223. *See also Citizens United v. FEC*, 558 U.S. 310, 334 (2010) (noting the "primary importance of speech itself to the integrity of the election process"); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("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."). The rationale for heightened scrutiny grows where, as here, government compels some people to pay for other people's speech on matters of the highest significance.

The narrow use of the voucher funds may also be relevant to the level of scrutiny because, in this

Court's other compelled-subsidy cases, the subsidy went to pay for a whole range of activities, only some of which included speech. *See, e.g.*, *Janus*, 138 S. Ct. at 2461 (nonmembers' fees went to social and recreational activities, membership meetings and conventions, and other services in addition to the lobbying and other speech to which nonmembers objected); *Southworth*, 529 U.S. at 222–23 (student activity fees went to "various campus services and extracurricular student activities," only a portion of which included private speech by registered student organizations); *United Foods*, 533 U.S. at 408 ("The assessments can be used for projects of mushroom promotion, research, consumer information, and industry information. It is undisputed, though, that most moneys raised by the assessments are spent for generic advertising to promote mushroom sales.").

Seattle's compelled speech subsidy is different. The property levy goes wholly to funding private political speech, thus heightening the injury to objecting property owners. Objectors end up funding two forms of purely private speech: the campaign contribution itself, and the use of that money by the candidate as a "means of disseminating ideas as well as attaining political office." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979).

Both the dedication of the levy solely to speech and the political nature of that speech raise significant questions as to whether the campaign subsidy program should be reviewed under a higher level of scrutiny than assessments that go partially to mushroom advertisements, an issue not "likely to stir the passions of many." *Knox*, 567 U.S. at 309. After all,

where the injury to conscience grows more acute, the concerns that animate strict scrutiny in the compelled speech context rise. Freedom of conscience is the key driver in that context, acting as a safeguard against speech compulsion that "invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." *Barnette*, 319 U.S. at 642. Hence, where a speech subsidy goes directly and exclusively to private speech "that touch[es] on the heart of the existing order," such as political campaigns, then a serious question arises regarding whether strict scrutiny should apply. *Id.*

This Court should also resolve the proper level of scrutiny in order to bring the compelled speech and compelled-subsidy doctrines into greater harmony. This Court has said that the injuries from compelled speech and compelled subsidies are parallel. *See Janus*, 138 S. Ct. at 2464 ("When speech is compelled, however, additional damage is done . . . . Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns."); *Knox*, 567 U.S. at 309 ("Closely related to compelled speech and compelled association is compelled funding of other private speakers or groups."); *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 788 (1961) ("Compelling a man by law to pay his money to elect candidates or advocate laws or doctrines he is against differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a cause he is against." (Black, J., dissenting)). Yet it is well-established that compelled speech outside the context of uncontroversial factual consumer disclosures must face strict scrutiny, *NIFLA v. Becerra*, 138 S. Ct. at 2371–72, while compelled subsidies still face an

intermediate scrutiny designed for the commercial context. It is unclear why the additional link of money that fuels the objectionable speech should make a constitutional difference. After all, "[t]his Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment." *Buckley*, 424 U.S. at 16. This Court should grant the petition to address this discrepancy and determine whether strict scrutiny should apply to at least some compelled subsidies.

Several Justices have expressed an interest in grappling with this issue. This Court in *Harris v. Quinn* noted that "it is arguable that the *United Foods* standard is too permissive." 573 U.S. at 648. Justice Stevens's *United Foods* concurrence noted that he considered regulation of campaign contributions to be a lesser restraint on liberty than forcing someone to subsidize speech. *United Foods*, 533 U.S. at 418 n.* (Stevens, J., concurring). Since a form of intermediate scrutiny applies to limits on campaign contributions, *see McCutcheon v. FEC*, 572 U.S. 185, 197 (2014), this indicates that Justice Stevens believed something greater than intermediate scrutiny should apply to compelled subsidies of speech, even in the rather mundane context of mushroom advertisements. Justice Thomas's concurrence in *United Foods* agreed: "Any regulation that compels the funding of advertising must be subjected to the most stringent First Amendment scrutiny." 533 U.S. at 419 (Thomas, J., concurring). The Court should grant this petition and decide this important constitutional question.

C. This case offers the Court an opportunity to address tension between campaign finance caselaw and compelled-subsidy caselaw

This Court has never directly addressed the uneasy relationship between the compelled-subsidy doctrine and public financing of political campaigns. The Court should grant this petition to explain how the compelled-subsidy doctrine interacts with the world of public campaign financing.

Campaign funding translates directly to political speech: "When an individual donates money to a candidate or to a partisan organization, he enhances the donee's ability to communicate a message and thereby adds to political debate, just as when that individual communicates the message himself." *Colo. Republican Fed. Campaign Commission v. FEC*, 518 U.S. 604, 636 (1996) (Thomas, J., concurring in part and dissenting in part). *See also Buckley*, 424 U.S. at 19 ("A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."). Hence, when someone is forced to subsidize a political campaign, as here, that taxpayer is involuntarily funding the political messages of private individuals. This clashes with principles animating the compelled-subsidy doctrine. The doctrine should therefore apply to the public funding of campaigns, at least where the distribution of the funds is not viewpoint-neutral. *See Southworth*, 529 U.S. at 235 (requiring that student activity fees

be distributed to student groups in a viewpoint-neutral manner).

Yet some courts have read this Court's decision in *Buckley v. Valeo*, 424 U.S. 1, as either foreclosing or severely limiting compelled-subsidy claims in the campaign-finance context. *See, e.g.*, *Little v. Florida Dep't of State*, 19 F.3d 4, 5 (11th Cir. 1994) (reasoning that striking down Florida's allocations to a campaign trust fund as a compelled subsidy would be "contrary to *Buckley*"); *Libertarian Party of Indiana v. Packard*, 741 F.2d 981 (7th Cir. 1984) ("As we interpret *Buckley*, the reason that government constitutionally may be allowed to use public funds to finance political parties is that the funds are not considered to be contributing to the spreading of a political message, but rather are advancing an important public interest, the facilitation of 'public and discussion and participation in the electoral process, goals vital to a self-governing people.'" (quoting *Buckley*, 424 U.S. at 92–93 (footnote omitted))); *May v. McNally*, 55 P.3d 768, 770 (Ariz. 2002) (relying on *Buckley* to reject a compelled-subsidy claim challenging Arizona's public campaign finance program). *Contra Butterworth v. Republican Party of Florida*, 604 So. 2d 477 (Fla. 1992) (holding that an assessment on political contributions that went to funding public campaign financing violated the compelled-subsidy doctrine). The Washington Supreme Court likewise relied on *Buckley* to uphold Seattle's speech subsidy. *See* App. A at 5.

Yet *Buckley* should not be viewed as a compelled-subsidy precedent because the *Buckley* Court did not face a compelled-subsidy claim. Among other things, the *Buckley* plaintiffs challenged the constitutionality of the Presidential Election Campaign Fund (PECF),

which allows federal taxpayers to voluntarily devote a dollar of their tax liability to a fund for presidential campaigns. *See Buckley*, 424 U.S. at 86. For the general election, eligible major-party candidates are entitled to a flat lump sum of $20 million. *Id.* at 87. Eligible primary candidates, on the other hand, receive public funds via a one-for-one matching formula that offers a dollar of public funds for every contribution dollar, up to $250 per contribution. *Id.* at 90.

The *Buckley* plaintiffs primarily argued that the PECF violated the First Amendment by discriminating against non-eligible candidates and minor-party candidates, who were entitled to less money in the general election than their major-party counterparts. *See Buckley*, Brief of the Appellants, 1975 WL 441595, at *152–169. They did not raise a compelled-subsidy claim. Nor could they have done so, since the tax checkoff was not compelled. *Buckley* simply has nothing to say about whether a compelled-subsidy claim is viable in the campaign-finance context.

Buckley's relevance to the compelled-subsidy realm is even more dubious given developments in the law since *Buckley* was decided. This Court's first case recognizing the compelled-subsidy doctrine, *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), was not even decided until a year after *Buckley*, and the doctrine has developed substantially since that time. *Compare Abood*, 431 U.S. 209, *with Janus*, 138 S. Ct. 2448.

Hence, while lower courts have mistakenly concluded that *Buckley* settled the question of compelled subsidies in the campaign-finance context,

this Court has not yet addressed the uneasy tension between public campaign financing programs and the compelled-subsidy doctrine. Yet the conflict is a significant one. This Court has said that "the compelled subsidization of private speech seriously impinges on First Amendment rights" and therefore "cannot be casually allowed." *Janus*, 138 S. Ct. at 2464. But many campaign finance programs across the country compel people to subsidize "speech uttered during a campaign for political office," where the First Amendment "has its fullest and most urgent application." *Eu*, 489 U.S. at 223.

This issue has grown in significance as public funding of campaigns has proliferated. Fourteen states currently offer public financing for candidates. *See* National Conference of State Legislatures (NCSL), *Public Financing of Campaigns: Overview* (Feb. 8, 2019).[8] A number of major cities offer public financing as well.[9] These programs differ in important and constitutionally relevant ways. For example, some states allot funds to all eligible candidates as a lump sum, often in an amount equal to the state's expenditure limit. *See id.* Others match private donations up to a certain amount at a dollar-for-dollar ratio, essentially allowing private donors to determine which candidates receive public dollars. *See id.* Whether any such programs fall within the scope of the compelled-subsidy doctrine is an important question given the primacy of individuals' right to

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[8] http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx.

[9] *See, e.g.*, New York City's Matching Funds Program (https://www.nyccfb.info/program); Denver's Fair Elections Fund (Denver Municipal Code, Section 15-51).

refrain from “betraying their convictions.” *Janus*, 138 S. Ct. at 2464.

This case is an excellent vehicle for addressing this gap in compelled-subsidy caselaw. The campaign subsidy program has special features that make it especially vulnerable to a compelled-subsidy claim—namely, the program’s use of voucher recipients to designate which candidates receive public dollars. *See* App. G at 8–9. That funding mechanism makes the program particularly vulnerable to constitutional challenge. *See infra* II.B. This case would therefore allow this Court to address the compelled-subsidy doctrine’s applicability in this important context without having to decide now whether all other forms of public financing violate the First Amendment.

II

THE SUPREME COURT OF WASHINGTON DEVIATED FROM THIS COURT’S COMPELLED-SUBSIDY CASELAW

The Washington Supreme Court’s decision created three important conflicts with federal caselaw. First, the Court applied a permissive standard of review that federal courts have widely rejected. Second, the Court misconstrued *Janus* as requiring that a subsidy individually associate the payer with the objectionable speech. App. A at 9. And third, in holding that the program is viewpoint-neutral, the Washington Supreme Court misconstrued this Court’s reasoning in *Southworth*, 529 U.S. 217, and employed faulty reasoning that clashes with this Court’s compelled-subsidy doctrine.

A. The lower court departed from the uniform consensus among federal courts that rational basis review is not an appropriate standard for free speech claims, including compelled subsidies

The Washington Supreme Court created a conflict with the federal courts in determining that rational basis review was the proper analysis rather than reasonableness review, which is the correct test for viewpoint-neutral speech subsidies. In *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995), this Court held that such subsidies must be "reasonable in light of the purpose served by the forum." Federal circuits have made clear that reasonableness review must not be conflated with rational basis. *See Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 966–67 (9th Cir. 2002) ("The 'reasonableness' requirement for restrictions on speech in a nonpublic forum requires more of a showing than does the traditional rational basis test."); *Multimedia Pub. Co of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir. 1993) ("[I]t isn't enough simply to establish that the regulation is rationally related to a legitimate governmental objective, as might be the case for a typical exercise of the government's police power, for this regulation affects protected First Amendment activity that is entitled to special solicitude even in this nonpublic forum.").

This Court has directly rejected rational basis in the compelled-subsidy context. Responding to the dissent in *Janus*, this Court said rational basis applied to a compelled subsidy is "foreign to our free-speech jurisprudence, and we reject it here." *Janus*,

138 S. Ct. at 2465. Even if this Court does not believe the time is ripe to determine whether strict scrutiny applies to compelled subsidies, the Court should still grant the petition to address the Washington Supreme Court's conflict with federal caselaw.

B. The lower court misconstrued this Court's reasoning in *Janus*

This Court should grant the petition to correct the Washington Supreme Court's misreading of *Janus*. The Washington Supreme Court imposed an unsupported and ambiguous limit on the reach of that precedent. The lower court distinguished *Janus* from the campaign subsidy program by emphasizing association, without citing to *Janus* itself: "Unlike the employees in *Janus*, Elster and Pynchon cannot show the tax individually associated them with any message conveyed by the Democracy Voucher Program." App. A at 9. In light of the Washington Court's additional citation to *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980), it appears that the Court meant that a compelled-subsidy plaintiff must show that he is likely to be identified as holding the views funded by the subsidy. *See* App. A at 9. *See also Pruneyard*, 447 U.S. at 87 ("[V]iews expressed by members of the public . . . will not likely be identified with those of the owner."). Neither *Janus* nor any other compelled-subsidy case from this Court requires such a showing. Moreover, such a requirement at best injects deep ambiguity into the compelled-subsidy doctrine and at worst threatens to neuter it.

Mark Janus likely would have lost his compelled-subsidy challenge had this Court required him to show that others were likely to confuse his views with the union's. After all, *Janus* is about the rights of

nonmembers to refrain from funding the union, and nonmembers are not likely to be associated with the union, given their lack of membership. Mark Janus was one of 35,000 public employees in his state represented by the American Federation of State, County, and Municipal employees, a massive national organization. *Janus*, 138 S. Ct. at 2461. The risk that he would be directly identified with the views of a large national labor organization that he had not joined was non-existent and irrelevant to this Court's decision. *Cf. D'Agostini v. Baker*, 812 F.3d 240, 244 (1st Cir. 2016) ("And the freedom of the dissenting appellants to speak out publicly on any union position further counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views.").

The idea that a compelled subsidy must personally identify the payer with the message he objects to in order to sustain a First Amendment injury misapprehends the nature of the First Amendment harm. That injury is to the "individual freedom of mind," which arises whether or not others may mistake the objector's opinions. *Barnette*, 319 U.S. at 633–34. As the *Janus* Court said, coercing people into "betraying their convictions" is a First Amendment harm whether the individual must utter the objectionable speech or pay for the objectionable speech. *Janus,* 138 S. Ct. at 2464. Whether a subsidy "invades the sphere of intellect and spirit" protected by the First Amendment simply has nothing to do with whether the plaintiff is forced to be identified by the public with the message he opposes. *Barnette*, 319 U.S. at 642. *See also Wooley v. Maynard*, 430 U.S. 705 (1977) (plaintiffs could not be forced to install license plate with motto "Live Free or Die" even though there

was no risk that others would identify them as affirming belief in that message).

This fundamental error, if followed by other courts, would threaten the viability of this Court's compelled-subsidy doctrine as a whole. In the union context, nonmembers are not "associated with" the union's political speech just because their wages are garnished, nor are university students associated with the speech of independent student publications funded with student activity fees. Indeed, it is difficult to see how anyone could bring a compelled-subsidy claim under this requirement unless they are forced to pay for a private organization's speech *and* forced to be members of that organization, or where they are unable to engage in speech distancing themselves from the objectionable message. *Cf. Wooley*, 430 U.S. at 722 ("Thus appellees could place on the bumper a conspicuous bumper sticker explaining in no uncertain terms that they do not profess the motto 'Live Free or Die' and that they violently disagree with the connotations of that motto.") (Rehnquist, J., dissenting). This Court has never endorsed such a cramped view of the First Amendment, and doing so would largely undo this Court's holding in *Janus*.

C. The lower court declined to apply this Court's reasoning in *Southworth*

In holding that the campaign subsidy program is viewpoint-neutral, the Washington Supreme Court once again created a conflict with this Court's compelled-subsidy doctrine, specifically *Board of Regents of University of Wisconsin System v. Southworth*, 529 U.S. 217. Contrary to this Court's reasoning in *Southworth*, the Washington Supreme Court held that a program that distributes public

funds to speakers in a manner that favors majoritarian views is viewpoint-neutral. That conflict deserves this Court's attention.

Petitioners argued below that the campaign subsidy program was not viewpoint-neutral because the design and purpose of the program are to allow private citizens to allot public money based on their partisan political viewpoints. As a result, speech subsidies inevitably skew in favor of candidates with majoritarian support. Thus, in design and effect, the program is not viewpoint-neutral.

In reaching the contrary conclusion, the Washington Supreme Court misread this Court's reasoning in *Southworth*, 529 U.S. 217. In that case, this Court examined the constitutionality of student activity fees paid by university students that funded a variety of extracurricular activities, including speech by registered student organizations. *Id.* at 222–23. The Court held that the subsidy implicated the First Amendment and could only withstand scrutiny if it was viewpoint-neutral. *Id.* at 229–30. The university had various means of allocating activity-fee funds, one of which was a referendum process that allowed a majority vote of the student body to fund or defund a registered student organization. *Id.* at 230. The Court reasoned that such a process violated viewpoint neutrality: "To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the

same respect as are majority views." *Id.* at 235.[10] *See also Amidon v. Student Ass'n of SUNY at Albany*, 508 F.3d 94, 102 (2d Cir. 2007) (Holding that a similar "referendum policy creates a substantial risk that funding will be discriminatorily skewed in favor of [registered student organizations] with majoritarian views. Favoritism of majority views is not an acceptable principle for allocating resources in a limited public forum.").

The Washington Supreme Court agreed with Petitioners that the campaign subsidy program necessarily means that popular candidates will receive more public money for their campaign than unpopular candidates. *See* App. A at 6. According to the lower court, however, this majoritarian skew did not implicate *Southworth* because that distortionary effect "reflects the inherently majoritarian nature of democracy and elections." *See id.* But this "majoritarian" skew was present in *Southworth* as well. In fact, that was the crux of the problem in *Southworth*. While the government may rightfully subject some aspects of governance to the democratic process, it is axiomatic that the "very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy" and "place them beyond the reach of majorities." *Barnette*, 319 U.S. at 638. The "individual freedom of mind" protected by the compelled subsidy and compelled speech doctrines is one of these subjects. *Id.* at 637.

The Washington Supreme Court also sought to absolve the City of any responsibility for a partisan

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[10] This Court remanded the case for the lower courts to address the constitutionality of the referendum because of lingering factual questions. *Id.* at 221.

distortion in funding by pointing out that "the decision who receives vouchers is left to the individual municipal resident and is not dictated by the city or subject to referendum." App. A at 6. But the university in *Southworth* was not responsible for the vote of its student body either. Rather, it was the governmental decision to allow private individuals to decide where public money goes that created the constitutional problem. And while *Southworth* involved an up-or-down vote regarding whether a group would receive funding, this is only a difference in degree. It was the idea that more popular organizations would be favored in the funding process that troubled the *Southworth* Court, and that problem persists here.

The fact that private individuals decide where the money goes cannot absolve the City of an unconstitutional compelled subsidy. After all, in any viable compelled-subsidy case, the private speaker decides what to say with the compelled funds. Indeed, that's the nature of the constitutional problem. If the government, rather than the private speaker, decided on the message funded by the subsidy, then a compelled-subsidy claim could not be brought because of the government speech doctrine. *See Johanns*, 544 U.S. at 562 (government speech doctrine bars a compelled-subsidy claim where "the government sets the overall message to be communicated and approves every word that is disseminated").

This Court should grant the petition to correct the Washington Supreme Court's mistaken interpretations of *Janus*, *Southworth,* and the compelled-subsidy doctrine.

III

PROGRAMS SIMILAR TO THE CAMPAIGN SUBSIDY PROGRAM ARE GROWING IN POPULARITY, AND THEY POSE A SERIOUS THREAT TO FIRST AMENDMENT INTERESTS AND POLITICAL DEBATE

Seattle's campaign subsidy idea has quickly become an issue of national interest. Federal, state, and local governments across the country are proposing programs like Seattle's, while presidential candidates and scholars are advocating for their proliferation. Since Seattle's program is the first of its kind, "[a]dvocates for campaign finance reform are eagerly watching Seattle's experiment to see if they want to seek its adoption in other cities." Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 Geo. Wash. L. Rev. 1039, 1076 (2017). Although state and local governments are often thought to be "laboratories of democracy," any experimentation must be consistent with the First Amendment. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Given the rising interest in Seattle's program, it is important for this Court to address the constitutional questions it raises.

Campaign subsidy programs like Seattle's have gained traction at all levels of government across the nation. In March, the House of Representatives passed a bill that would establish a pilot voucher program. H.R. 1, 116th Cong. § 5101 (1st Sess. 2019). Were this pilot program to become law, voters in three states designated by the Federal Election Commission could request $25 vouchers to give to a congressional candidate. *Id.* § 5101(a); § 5102(a)(1)(A). And last year, Congressman Ro Khanna introduced a similar

concept called "The Democracy Dollars Act." H.R. 7306, 115th Congress (2d Sess. 2018); *see also* Press Release, Rep. Khanna Welcomes Sen. Gillibrand's "Democracy Dollars" Plan, Praises Others to Join the Field, (May 1, 2019).[11] Two states—Washington (Initiative 1464) and South Dakota (Initiated Measure 22)—have also considered "Democracy Dollars" programs. South Dakota passed voucher legislation but ultimately repealed its program after a court granted a preliminary injunction against the program in a lawsuit brought by republican lawmakers, and voters rejected Washington's program at the ballot box. *See* Ballotpedia, *South Dakota Revision of State Campaign Finance and Lobbying Laws, Initiated Measure 22 (2016)*;[12] Lewis Kamb, *Washington voters rejecting overhaul of campaign finance system*, Seattle Times, Nov. 8, 2016.[13]

Following in Seattle's footsteps, cities like Albuquerque, Austin, New York, San Diego, and San Francisco have expressed interest in campaign subsidy programs. Gregory Scruggs, *Can Small-Money Democracy Vouchers Balance Out Big-Money PACs in Seattle's Municipal Elections?*, Next City, Aug. 6, 2019.[14] In this month's elections, Albuquerque voters defeated a program patterned after Seattle's by a narrow margin. *See* Ballotpedia, *Albuquerque, New Mexico, Proposition 2, Democracy Dollars Program Initiative (November 2019).*[15]

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[11] https://is.gd/3wUIez.
[12] https://is.gd/dVGfR8.
[13] https://is.gd/jfooHO.
[14] https://is.gd/b0PzFl.
[15] https://is.gd/v7n4gr (last visited Nov. 6, 2019).

Even presidential candidates are calling for "Democracy Dollars" programs. Inspired by Seattle, Senator Kristen Gillibrand advocated for "Democracy Dollars" as a part of her "Clean Elections Plan." David Gutman, *Presidential hopeful Kirsten Gillibrand wants to take Seattle's public campaign finance system nationwide*, Seattle Times, May 17, 2019.[16] Following Gillibrand's lead, presidential candidate Andrew Yang has also proposed a "Democracy Dollars" initiative. Policy Democracy Dollars, Yang 2020,[17] (stating that a program like Democracy Dollars "has been used in Seattle to great effect, and we can take their program national to move towards publicly funded elections").

Legal scholarship is also promoting the proliferation of campaign subsidy programs. Nearly 10 years ago, Professor Lawrence Lessig of Harvard Law School advocated for a program strikingly similar to the one challenged here. Lawrence Lessig, *More Money Can Beat Big Money*, NY Times, Nov. 16, 2011.[18] Scholars have subsequently praised Seattle and sought to expand the blueprint nationwide: Yale Law Professors Bruce Ackerman and Ian Ayres wrote that "[t]he challenge is to transform Seattle's approach into a plausible national program." Bruce Ackerman & Ian Ayres, *'Democracy dollars' can give every voter a real voice in American politics*, The Washington Post, Nov. 5, 2015;[19] s*ee also* Joshua A. Douglas, *Local Democracy on the Ballot*, 111 Nw. U. L. Rev. Online 173, 178 (2017) ("[C]ities should now

[16] https://is.gd/4yuJgh.
[17] https://is.gd/TieIN7 (last visited Nov. 5, 2019).
[18] https://is.gd/yb5kD1.
[19] https://is.gd/B6pSNT.

watch Seattle and evaluate the success of its experiment with using campaign subsidies for public financing. Seattle is the courageous city that has gone first, and if the overall experience is positive, then other cities can use that evidence in support of their own similar initiatives. Academics should study these reforms to discern which ones work best and deserve widespread adoption.").

The majoritarian nature of Seattle's vouchers and the program's funding mechanism make it even more problematic than ordinary campaign-finance laws. Under the campaign subsidy program, popular candidates necessarily receive more money than unpopular candidates. By favoring speakers with majoritarian support at the expense of candidates supported by a minority of voters, the program distorts public debate and further entrenches popular platforms and candidates. Seattle's program, and others like it, will entrench incumbents and place lesser-known candidates at a heavy disadvantage. The spread of the voucher idea poses a threat to democratic politics that warrants this Court's consideration.

CONCLUSION

This Court should grant the petition.

DATED: November 2019.

Respectfully submitted,

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FILE
In Clerks Office
Supreme Court of Washington
Date JUL 11 2019
s/ FAIRHURST, CJ

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

MARK ELSTER and	)	
SARAH PYNCHON,	)	NO. 96660-5
Appellants,	)	
v.	)	En Banc
THE CITY OF SEATTLE,	)	
Respondent.	)	
	)	Filed JUL 11 2019

GONZALEZ, J.–Seattle voters approved the "Democracy Voucher Program," intending to increase civic engagement. Under this program, the city provides vouchers to registered municipal voters and qualifying residents. Recipients can give their vouchers to qualified municipal candidates, who then may redeem them for campaign purposes. The city funds the program from property taxes. Mark Elster and Sarah Pynchon sued in King County Superior Court, arguing the taxes funding the program burden First Amendment rights and unconstitutionally compel speech. U.S. Const. amend. I. The superior court dismissed the suit. Because the program does not violate the First Amendment, we affirm.

FACTS

In 2015, Seattle voters approved Initiative 122, establishing the Democracy Voucher Program. According to the initiative, the program's purposes are (1) to "expand the pool of candidates for city offices and to safeguard the people's control of the elections process," (2) to "ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates," and (3) to "prevent corruption." Clerk's Papers at 14, 16.

The Democracy Voucher Program attempts to further these goals by providing vouchers to eligible municipal residents for use in city elections.[1] Voter registration in Seattle makes one automatically eligible to receive vouchers; municipal residents who can donate to a political campaign under federal law can also receive vouchers. A voter-approved, 10-year property tax funds the program, collecting in 2016 "approximately $0.0194/$1000 assessed value" in additional property taxes. *Id.* at 57. The voucher recipients can give their vouchers to qualified municipal candidates. Elster and Pynchon own property in Seattle. They brought a 42 U.S.C § 1983 action challenging the constitutionality of the Democracy Voucher Program, arguing it is unconstitutional to use tax dollars to underwrite campaign contributions.

[1] To be eligible to receive vouchers from municipal residents, municipal candidates must obtain a required number of signatures and contributions from qualified municipal residents.

Instead of answering Elster and Pynchon's complaint, the city moved to dismiss. The superior court granted the city's motion, upholding the Democracy Voucher Program. It found that the city "articulated a reasonable justification" for the program that was consistent with United States Supreme Court precedent: "an increase in voter participation in the electoral process." *Id.* at 115. Elster and Pynchon appealed, and the Court of Appeals certified the case to us.

STANDARD OF SCRUTINY

Elster and Pynchon challenge the city's use of tax revenue to fund political speech. "[T]he central purpose of the [First Amendment is] to assure a society in which 'uninhibited, robust, and wide-open' public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish." *Buckley v. Valeo*, 424 U.S. 1, 93 n.127, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (quoting *N. Y. Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)).

If the Democracy Voucher Program does not burden fundamental rights, the program enjoys the presumption of constitutionality and the challengers bear the heavy burden of showing the city lacked the power to impose the tax under rational basis scrutiny. *See Forbes v. City of Seattle*, 113 Wn.2d 929, 941, 785 P.2d 431 (1990) (upholding theater ticket admission tax against First Amendment and equal protection challenges (citing *Fin. Pac. Leasing, Inc. v. City of Tacoma*, 113 Wn.2d 143, 147, 776 P.2d 136 (1989))). The power to tax is a fundamental, necessary sovereign power of government. *Love v. King County*, 181 Wash. 462, 467, 44 P.2d 175 (1935). "The

government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties." *Bd. of Regents v. Southworth*, 529 U.S. 217, 229, 120 S. Ct. 1346, 146 L. Ed. 2d 193 (2000). If rational basis scrutiny applies, the program's tax need only rationally relate to a legitimate government interest. *See Dot Foods, Inc. v. Dep't of Revenue*, 185 Wn.2d 239,249, 372 P.3d 747 (2016).

Elster and Pynchon ask us to apply strict scrutiny, alleging the Democracy Voucher Program burdens fundamental rights. If the program burdens fundamental rights, strict scrutiny applies; to survive strict scrutiny, the city needs to show the program furthers a compelling interest and is narrowly tailored to achieve that interest. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) ("Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints."); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995) (viewpoint neutrality requires the government to "abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction"). As will be discussed below in the context of Elster and Pynchon's substantive arguments, heightened scrutiny does not apply. Accordingly, we apply rational basis review.

ANALYSIS

Elster and Pynchon assert the Democracy Voucher Program, *through its tax*, unconstitutionally compels them to support the program's message. Neither this

court nor the United States Supreme Court has squarely addressed the issue before us: whether a tax used to fund a public financing system violates First Amendment rights. Elster and Pynchon do not assert a violation of the state constitution. Most related cases have addressed challenges to the public financing systems themselves, not the potential injury to the taxpayers funding those systems. *See, e.g.*, *Buckley*, 424 U.S. at 92-93; *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 755, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011).

In *Buckley*, the Court upheld the public financing of elections, in the context of a system where taxpayers elect to authorize payment from their taxes to the Presidential Election Campaign Fund. The Court held public financing of elections "is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." 424 U.S. at 92-93. The Court concluded that the public financing system was constitutional despite the fact it amounted to the disbursement of tax revenue to political parties; the Court found that "every appropriation made by Congress uses public money in a manner to which some taxpayers object." *Id.* at 92.

Public financing schemes must not burden freedom of speech and they are presumptively unconstitutional if they do. For example, in *Bennett*, the Court declared unconstitutional an Arizona system that provided matching funds to publicly financed candidates, if those candidates agreed to certain campaign restrictions, after their opponents

privately raised or spent funds beyond a threshold amount. 564 U.S. at 747. The Arizona system operated in a way that burdened the speech of both privately financed candidates and groups independently advocating for those candidates. The matching funds penalized privately financed candidates who "'robustly'" exercised their First Amendment rights, by providing funds to their political rivals. *Id.* at 736 (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 739, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008)). The Court found the matching funds "particularly burdensome" on independent groups because their choices were to "trigger matching funds, change your message, or do not speak." *Id.* at 739. The Court distinguished its holding in Buckley—that public financing systems are constitutional—from cases in which the speech of some is increased "at the expense of impermissibly burdening (and thus reducing) the speech" of others. *Id.* at 741.

Elster and Pynchon argue the Democracy Voucher Program is not viewpoint neutral because the vouchers will be distributed among qualified municipal candidates unevenly and according to majoritarian preferences. "The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views." *Southworth*, 529 U.S. at 235. Here, the decision of who receives vouchers is left to the individual municipal resident and is not dictated by the city or subject to referendum. Elster and Pynchon do not dispute that the city imposes neutral criteria on who can receive vouchers and who can redeem them, making the program's administration viewpoint neutral. That some candidates will receive more vouchers reflects

the inherently majoritarian nature of democracy and elections, not the city's intent to subvert minority views.

The tax at issue here does not alter, abridge, restrict, censor, or burden speech. On the contrary, the Democracy Voucher Program "facilitate[s] and enlarge[s] public discussion and participation in the electoral process." *Buckley*, 424 U.S. at 92-93. The program resembles other content neutral ways the government facilitates political speech, for example, when the government distributes voters' pamphlets. *See*, *e.g.*, RCW 29A.32.010 (concerning distribution of voters' pamphlets for the general election); *see also* Laws of 2013, chs. 143, 195 (ensuring contested judicial races and other nonpartisan races are not decided at the primary).[2] Thus, wholly distinct from

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[2] The lack of a primary voter's pamphlet for statewide races in most counties was one of the concerns that drove the legislature to move these races to the general election. *See* S.B. REP. ON H.B. 1474, at 2, 63d Leg., Reg. Sess. (Wash. 2013).
Another recent example of governmental facilitation of political speech is when the State allocated funds for prepaid postage election expenses. Letter from Jay Inslee, Governor of Washington State, to Kim Wyman, Washington Secretary of State (May 14, 2018), http://www.governor.wa.gov/sites/ default/files/ SOS %20Efund%20letter%20for%20elections.pdf [https://perma.cc/A2P5-TDPU]; *cf Burdick v. Takushi*, 504 U.S. 428, 438, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992) (the Court has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls" (citing

cases involving unconstitutional campaign finance laws and laws that discriminate based on content or viewpoint, the program does not burden freedom of speech, and strict scrutiny does not apply.[3]

Elster and Pynchon argue *Janus v. American Federation of State, County & Municipal Employees, Council 31*, __U.S.__, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018), renders the Democracy Voucher Program unconstitutional because they disagree with the program's message. In *Janus*, the Court held that the funding of the collective bargaining process through an agency fee of nonmember public sector employees "seriously impinges on First Amendment rights." *Id.* at 2464. The collective bargaining process compelled the nonmembers to "provide financial support for a union" that adopts powerful political positions the nonmembers oppose. *Id.*; *see also United States v. United Foods*, 533 U.S. 405, 415-16, 121 S. Ct. 2334, 150 L. Ed. 2d 438 (2001) (finding unconstitutional an assessment on mushroom handlers that funds the promotion of mushroom advertisements created by a council of industry representatives).

Janus involved an agency fee that directly subsidized the union's collective bargaining activities,

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Munro v. Socialist Workers Party, 479 U.S. 189, 199, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986))).

[3] We disagree with Elster and Pynchon's contention in the alternative that *Buckley* requires heightened scrutiny under these facts. *Compare* 424 U.S. at 17-84 (applying heightened scrutiny to various campaign restrictions), *with id.* at 92-93 (not applying heightened scrutiny to the public financing scheme).

which burdened "'associational freedoms.'" 138 S. Ct. at 2466, 2468 (quoting *Harris v. Quinn*, 573 U.S. 616, 649, 134 S. Ct. 2618, 189 L. Ed. 2d 620 (2014)). Unlike the employees in *Janus*, Elster and Pynchon cannot show the tax individually associated them with any message conveyed by the Democracy Voucher Program.[4] Without such a showing, *Janus* has no bearing on this case and the program is not subject to heightened scrutiny. *See PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 87, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980) (noting the First Amendment was not violated where "views expressed by members of the public ... will not likely be identified with those of the owner"); *accord Southworth*, 529 U.S. at 233 (university's viewpoint neutral funding of student groups ensured student groups' activities did not burden objecting students' associational freedoms).

The Democracy Voucher Program's purpose is to, among other things, "giv[e] more people an opportunity to have their voices heard in democracy." Seattle Municipal Code 2.04.600. The government has a legitimate interest in its public financing of elections, as *Buckley* held. *See* 424 U.S. at 92-93. The program's tax directly supports this interest. The program, therefore, survives rational basis scrutiny.

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[4] The Democracy Voucher Program funds the speech of municipal residents and candidates. It does not fund government speech. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 559, 125 S. Ct. 2055, 161 L. Ed. 2d 896 (2005).

CONCLUSION

The Democracy Voucher Program does not alter, abridge, restrict, censor, or burden speech. Nor does it force association between taxpayers and any message conveyed by the program. Thus, the program does not violate First Amendment rights. We affirm.

s/ GONZALEZ, J.

WE CONCUR:

s/ FAIRHURST, CJ.

s/ STEPHENS, J.

s/ JOHNSON, J.

s/ WIGGINS, J.

s/ MADSEN, J.

s/ GORDON-McCLOUD, J.

s/ OWENS, J.

s/ YU, J.

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION ONE

MARK ELSTER and SARAH PYNCHON, Appellants, v. THE CITY OF SEATTLE, a Washington municipal corporation, Respondent.	))))))))	No. 77880-3-I ORDER OF CERTIFICATION

A panel of the court has considered this matter pursuant to RCW 2.06.030 and has determined that it presents a fundamental and urgent issue of broad public import requiring prompt and ultimate determination, including whether the City of Seattle campaign voucher program implicates constitutional guarantees of free speech. The matter shall accordingly be certified to the Supreme Court of the State of Washington for such disposition as it deems appropriate.

Now, therefore, it is hereby

ORDERED that the case is certified to the Supreme Court for such determination as that court deems appropriate

Done this 17th day of December, 2018.

FOR THE PANEL:

s/ Verellen, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK ELSTER and SARAH PYNCHON, Appellants, v. THE CITY OF SEATTLE, a Washington municipal corporation, Respondent.	)	SUPREME COURT NO. 96660-5 COURT OF APPEALS NO. 77880-3-I RULING ACCEPTING CERTIFICATION

By order dated December 17, 2018, this matter was certified to this court by Division One of the Court of Appeals pursuant to RCW 2.06.030. Having reviewed the Court of Appeals file, I agree that the case warrants direct review under the cited statute. Certification is therefore accepted. Court of Appeals Cause No. 77880-3-I, in its entirety, is hereby transferred to this court for determination on the merits.

s/ Michael E. Johnston
COMMISSIONER

December 19, 2018

Hon. Beth Andrus

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MARK ELSTER and SARAH PYNCHON, Plaintiffs, vs. THE CITY OF SEATTLE, Defendant.	No. 17-2-16501-8 SEA ORDER GRANTING CITY OF SEATTLE'S MOTION TO DISMISS

Defendant City of Seattle has moved to dismiss the complaint filed by Plaintiffs Mark Elster and Sarah Pynchon. After briefing and argument of counsel,[1] the Court GRANTS the City's motion to dismiss based on the analysis set out below.

City of Seattle's Democracy Voucher Program

On November 3, 2015, the voters in the City of Seattle passed Initiative I-122, codified as "Honest Election Seattle," in Seattle Municipal Code (SMC) 2.04.600 to 2.04.690. The initiative authorized the funding of a "Democracy Voucher Program" through

[1] *See* Appendix A for the materials considered by the Court.

the imposition of an additional property tax imposed in years 2016 through 2025. The proceeds of this tax may be used only to fund the Democracy Voucher Program.

Under this program, every Seattle registered voter received four vouchers totaling $100 which the voter can assign to qualified candidates running for election to the position of city mayor, city attorney, and city councilmember. SMC 2.04.620(b) and (e).

Candidates qualify to receive these vouchers from voters if they agree to participate in at least three public debates for both the primary and general elections, and they agree to comply with special campaign contribution and spending limits. SMC 2.04.630(b). To qualify for the program, candidates must receive a minimum number of campaign contributions, ranging from 600 for a mayoral candidate to 150 for a city attorney candidate, of at least $10 or more. SMC 2.04.630(c). The campaign spending limits run from a high of $800,000 total for a mayoral candidate, to $150,000 total for district city council candidates and city attorney candidates. SMC 2.04.630(d). If a qualifying candidate demonstrates that his or her opponent has exceeded these spending limits, the candidate may ask the Seattle Ethics and Elections Commission (SEEC) to be released from the program's contribution and spending limits. SMC 2.04.630(f).

All Seattle residents are entitled to receive Democracy Vouchers, whether the residents own property or not. No residents living outside of Seattle may receive these vouchers even if they own real estate within the city and are paying property taxes for the Democracy Voucher Program fund.

Plaintiffs' Complaint

On June 28, 2017, Mark Elster and Sarah Pynchon filed this lawsuit challenging the constitutionality of the Democracy Voucher Program. Mr. Elster who owns a family home in Magnolia, has been taxed under the program and received but not used Democracy Vouchers. Complaint, ¶4. Ms. Pynchon owns property in Seattle and has been taxed under the program but, because she lives outside the city limits, is not entitled to receive any Democracy Vouchers. Complaint, ¶5. Mr. Elster and Ms. Pynchon contend that the Democracy Voucher Program is a compelled subsidy of political speech which violates their First Amendment rights. The City counters that the program is a constitutionally valid method of public campaign finance approved by the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

ANALYSIS

The parties agree that this case presents the Court with an issue of first impression. Although there are reported cases affirming and invalidating various means of publicly funding political campaigns, none involve the imposition of a tax used to finance a voucher program in which registered voters make campaign contributions of their choice to candidates in certain qualified electoral races.

After reviewing the case law cited by both parties and considering the arguments of the parties, the Court finds the City's position to be the more persuasive one.

Buckley v. Valeo: The Use of Public Money to Finance Political Campaigns

In 1976, the Supreme Court considered the constitutionality of the Federal Election Campaign Act, which placed limits on campaign contributions and expenditures and created a system of public financing of presidential election campaigns and nominating conventions. The Court invalidated the campaign spending provisions but affirmed the public financing provision of the act, known as Subtitle H.

Subtitle H created a Presidential Election Campaign Fund financed from general tax revenues. Taxpayers may check a box on their tax returns authorizing the diversion of taxes to a fund for distribution to presidential candidates for nominating conventions and primary and general election campaigns. 424 U.S. at 86-87. The amount of money each campaign was entitled to receive depended on whether the candidate belonged to a major or minor political party. *Id.*

The challengers contended that Subtitle H constituted government support of political speech in violation of the First Amendment. The Supreme Court rejected this argument and concluded that the program was intended "not to abridge, restrict, or censor speech, but rather *to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.*" *Id.* at 92-93 (emphasis added). *Buckley v. Valeo* public financing of political candidates, in and of itself, does not violate the First Amendment, even though the funding may be used to further speech to which the contributor objects." *May v. McNally*, 203 Ariz. 425, 428, 55 P.3d 768 (2002).

Public Funding of Political Campaigns Post-*Buckley*

Since *Buckley v. Valeo*, several states have passed laws publicly funding political campaigns. Some have survived constitutional challenge. *See Libertarian Party of Ind. v. Packard*, 741 F.2d 981 (7th Cir. 1984) (imposing sales tax on personalized license plates to publicly fund campaigns); *Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977) (allowing income tax filer to allocate taxes to state election campaign fund for use by specific party); May, 203 Ariz. 425 (imposing 10% surcharge on criminal and civil traffic fines to publicly fund campaigns).

Some have not. *See Vt. Soc'y of Ass'n Execs. v. Milne*, 172 Vt. 375, 779 A.2d 20 (2001) (imposing tax on lobbyist expenditures to fund public grants to gubernatorial candidates violated lobbyists' First Amendment rights); *Butterworth v. Republican Party of Fla.*, 604 So. 2d 477 (Fla. 1992) (imposing 1.5% assessment on donations to state political parties to finance public campaign funding of qualifying candidates violated First Amendment).

Plaintiffs contend that the Democracy Voucher program cannot survive their First Amendment challenge because the City is compelling them to subsidize the voucher recipients' private political speech. They argue that this program, unlike any other public campaign finance case, involves a government entity allowing voters to choose to whom to donate public funds. They contend that the voucher feature interferes with the Plaintiffs' First Amendment right to support candidates other than those selected by the voucher holder, or the right to not support any candidate at all.

The Court agrees with Plaintiffs that the City's Democracy Voucher program does implicate their First Amendment rights. In *Board of Regents v. Southworth*, 529 U.S. 217, 120 S. Ct. 1346, 146 L. Ed. 2d 193 (2000), the Supreme Court considered a First Amendment challenge to a mandatory student fee used to support student organizations engaged in expressive activities. The plaintiffs claimed that they should not be compelled to subsidize student organizations with which they disagreed. *Id.* at 222-24. The Court held that once the university conditioned the opportunity to obtain an education on an agreement to support objectionable speech (through the imposition of a mandatory fee), the First Amendment was implicated. *Id.* at 231. By analogy here, the City is conditioning property owners' rights to their land on the payment of a tax used to support speech property owners may find objectionable. The First Amendment is implicated.

Viewpoint Neutrality

But the fact that the First Amendment is implicated does not mean that the program is unconstitutional. The City asks this Court to adopt the public forum standard of viewpoint neutrality when evaluating the Democracy Voucher Program. Under public forum law, when a government creates a nonpublic or limited public forum, namely a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects, speech restrictions need only be "reasonable and viewpoint neutral." *Pleasant Grove City v. Summum*, 555 U.S. 460, 469-70, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009). In *Southworth*, the Supreme Court applied this standard when assessing the constitutionality of

mandatory student funding of organizations. 529 U.S. at 230.

Plaintiffs, however, ask the Court to apply the "compelled funding of speech" cases. *See Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 309-10, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977). In *Knox*, the Supreme Court held that the compelled funding of the speech of other private speakers or groups" is unconstitutional unless (1) there is a comprehensive regulatory scheme involving a mandated association among those who are required to pay the subsidy; and (2) the mandatory fee or tax is a necessary incident of the larger regulatory purpose which justified the required association. 567 U.S. at 310 (citing *United States v. United Foods, Inc.*, 533 U.S. 405, 414, 121 S. Ct. 2334, 150 L. Ed. 2d 438 (2001)). The *Southworth* Court acknowledged this line of cases but concluded that those cases did not apply in the context of extracurricular student speech at a university. 529 U.S. at 230.

The Court does not find the test used in *Knox* or more recently *Harris v. Quinn*, __ U.S. __, 134 S. Ct. 2618, 189 L. Ed. 2d 620 (2014) to be any more applicable to the City's Democracy Voucher Plan than it was to the University of Wisconsin's student fee. The program is not mandating that property owners associate with each other. Without this mandated association, it is difficult to see how the test laid out in the "compelled funding of speech" cases fits a campaign funding tax.

Plaintiffs next argue that the City's funding plan is not viewpoint neutral because it "distribut[es]

voucher funds through the majoritarian preferences of Seattle residents." Response, p. 21. At oral argument, counsel clarified this argument: the voucher recipient is choosing to whom to donate public money, rather than the City, based on the voter's viewpoint preference, making the decision as to which candidate receives financial support viewpoint-based. They rely on *Amidon v. Student Ass'n of the State University of New York*, 508 F.3d 94 (2d Cir. 2007) in which a federal court of appeals held that the use of a student referendum to determine how to allocate student fees among student organizations was not viewpoint neutral because the vote reflected the student body's majority opinion of the value or popularity of an organization's speech. *Id.* at 101.

This Court does not find *Amidon* to be analytically helpful. The City sets eligibility requirements for Democracy Voucher candidates. Candidates must demonstrate adequate grassroots support to qualify for the program by showing they have received a certain number of donations of $10 or more. In *Buckley*, the Supreme Court held that it was permissible for a government to set eligibility requirements because "Congress' interest in not funding hopeless candidacies with large sums of public money necessarily justifies the withholding of public assistance from candidates without sufficient public support." 424 U.S. at 96 (citation omitted). The City does not, however, put eligibility to a popular vote, as in *Amidon*. Any voter can assign a $25 voucher to any eligible candidate, even if that candidate's viewpoint is unpopular with the majority of Seattle voters. The City is not distributing voucher funds "through majoritarian preferences of Seattle residents."

The City argues that its voucher program should be deemed viewpoint neutral because the City is not choosing to whom to allocate campaign funds and is allowing voters to make a completely private choice, similar to school voucher programs. In *Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct. 2460, 153 L. Ed. 2d 604 (2002), the Supreme Court held that a government school voucher program was constitutional under the Establishment Clause because it was "neutral with respect to religion," and provided assistance to a broad class of citizens who directed the aid to a religious school "wholly as a result of their own genuine and independent private choice." *Id.* at 652. The Court is reluctant to invoke Establishment Clause precedent here given the Supreme Court's admonition in *Buckley* that any analogy to Establishment Clause case law is "patently inapplicable" to the issue presented in that case. 424 U.S. at 92. But the Court can find no other analogous precedent. This Court concludes that the Democracy Voucher program is viewpoint neutral because candidates qualify for voucher support regardless of the views they espouse, and the City imposes no restrictions on voters' choice as to whom they may assign their vouchers.

The City has articulated a reasonable justification for the Democracy Voucher Program. It seeks an increase in voter participation in the electoral process. This goal was recognized by the *Buckley* Court to be "goals vital to a self-governing people." *Id.* at 92-93. The Democracy Voucher Program is a viewpoint neutral method for achieving this goal.

For the foregoing reasons, the Court GRANTS the City's motion to dismiss Plaintiffs' complaint.

IT IS SO ORDERED this 3rd day of November, 2017.

Electronic Signature attached
Honorable Beth M. Andrus

APPENDIX A

Plaintiffs' Complaint, Sub. #1
City of Seattle's Rule 12(b)(6) Motion to Dismiss, Sub. #17
Amicus Curiae Brief of Washington CAN!, et al, Sub. #20
Plaintiffs' Response to Defendant's Motion to Dismiss, Sub. #34
Plaintiffs' Consolidated Response to Amicus Briefs Filed in Support of City, Sub. #35
City of Seattle's Reply in Support of Its Rule 12(b)(6) Motion to Dismiss, Sub. #36

Appendix E-1

Hon. Beth Andrus

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MARK ELSTER and SARAH PYNCHON, Plaintiffs, vs. THE CITY OF SEATTLE, Defendant.	No. 17-2-16501-8 SEA ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER OF DISMISSAL

Pending before the Court is Plaintiffs' motion for reconsideration of the Court's order granting the City of Seattle's motion to dismiss. Plaintiffs' motion for reconsideration is DENIED.

Dated: November 15, 2017

Electronic signature attached
Honorable Beth M. Andrus
Chief Civil Judge for the
King County Superior Court

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK ELSTER and SARAH PYNCHON, Appellants, v. THE CITY OF SEATTLE, Respondent.	**M A N D A T E** NO. 96660-5 King County No. 17-2-16501-8 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County

The opinion of the Supreme Court of the State of Washington was filed on May 11, 2019, and became the decision terminating review of this Court in the above entitled case on July 31, 2019. This case is mandated to the superior court from which the appellate review was taken for further proceedings in accordance with the attached true copy of the opinion.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Olympia, Washington, this 9th day of August, 2019.

s/ Susan L. Carlson
SUSAN L. CARLSON
Clerk of the Supreme Court
State of Washington

Appendix G-1

Seattle Municipal Code, Title 2 [June 12, 2017]

Chapter 2.04 Election Campaign Contributions

Subchapter VIII - Honest Elections Seattle

2.04.600 - Purpose and Authority.

(a) Purpose. This people's initiative measure builds honest elections in the City of Seattle ("City" or "Seattle") and prevents corruption, by: giving more people an opportunity to have their voices heard in our democracy; ensuring a fair elections process that holds our elected leaders accountable to us by strengthening voters' control over City government; banning campaign contributions by City contractors and entities using paid lobbyists; lowering campaign contribution limits; tightening prohibitions on lobbying by former elected officials (the "revolving door" problem); expanding requirements for candidates to disclose their financial holdings and interests; and increasing fines on violators of campaign rules. This measure also creates a Democracy Voucher campaign public finance program ("Democracy Voucher Program" or "Program") to expand the pool of candidates for city offices and to safeguard the people's control of the elections process in Seattle.

(b) Authority of the People. The People have vested legislative powers of the City in a Mayor and City Council, but reserved to themselves independent of the Mayor and the City Council the power to propose for themselves measures dealing with any matter within the realm of local affairs or municipal business. That power includes the use of an initiative petition to submit to the qualified electors of the city a

measure as authorized by RCW 84.55.050 to exceed the limitations of regular property taxes contained in RCW Chapter 84.55, as it now exists or may hereinafter be amended. The authority of the people to adopt this measure is also specifically authorized and reserved to the electors of the City of Seattle by RCW 42.17A.550, which allows a city to use locally derived public funds (whether from taxes, fees, penalties or other sources) to publicly finance local political campaigns, if the proposal to do so is submitted to City of Seattle voters for their adoption and approval, or rejection.

(Initiative 122, § 1, 2015.)

2.04.601 - No Campaign Contributions from City Contractors or their PACs.

No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution for himself or herself or for any political party, political committee, campaign committee or public office fund, directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. If the first sentence of this section is invalidated then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution of more than $250 in one calendar year, directly or indirectly, from any entity or person who in the prior two years has earned or

received more than $250,000, under a contractual relationship with the City. If the second sentence of this section is invalidated then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution of more than $250, for himself or herself or for any political party, political committee, campaign committee or public office fund, directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. In all cases such a candidate or office holder may solicit and accept assignment of Democracy Vouchers without such solicitation or assignment being considered a violation of this section. If any part of this section is held invalid the remainder shall be construed to effect the anticorruption purposes of this section to the maximum extent allowable.

(Initiative 122, § 1, 2015.)

2.04.602 - No Campaign Contributions From Regulated Corporations/Industries that Hire Lobbyists.

No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution, for himself or herself or for any political party, political committee, campaign committee or public office fund, from any entity or person who during the

past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. If the first sentence of this section is invalidated, then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution of more than $250 in any one calendar year, directly or indirectly from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. If the second sentence of this section is invalidated, then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution of more than $250, for himself or herself or for any political party, political committee, campaign committee or public office fund, from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. In all cases such a candidate or office holder may solicit and accept assignment of Democracy Vouchers without such solicitation or assignment being considered a violation of this section. If any part of this section is held invalid the remainder shall be construed to effect the anticorruption purposes of this section to the maximum extent allowable.

(Initiative 122, § 1, 2015.)

2.04.605 - Expedited Reporting of Electronic Contributions.

To ensure the Seattle Ethics and Elections Commission ("SEEC") creates an electronic reporting system that increases transparency, does not

discriminate against low budget campaigns, and takes advantage of advances in information technology, all candidates for City of Seattle electoral offices shall report to the Seattle City Clerk any campaign contribution made electronically upon deposit into a candidate's account; provided that this provision shall take effect only after SEEC shall have determined that there are two or more electronic payment processing companies that have the capacity to report contributions to the SEEC as soon as the contribution is transferred to the candidate's account. To give campaigns time to prepare for this section, SEEC shall establish the effective date of this section by rule published reasonably in advance of the election cycle in which campaigns shall comply. SEEC shall ensure that before a contribution is required to be publicly disclosed as received by a campaign it shall have reasonable opportunity to reject or return undesired or illegal contributions.

(Initiative 122, § 1, 2015.)

2.04.606 - Signature Gatherers Must Disclose if Paid for Signatures.

Any person or entity that is a compensated or paid signature gatherer for any City of Seattle ballot measure, initiative, referendum, or charter amendment shall disclose to each person from whom a signature is sought, in writing via a conspicuous, legible sign, placard, or badge, stating "PAID SIGNATURE GATHERER."

(Initiative 122, § 1, 2015.)

2.04.607 - Three-year Ban on Mayor, Councilmember, City Attorney or Top Staff Paid Lobbying.

A former Mayor, City Council member, City Attorney, or City Department head or the highest paid aide or employee directly reporting to any of the foregoing, may not, during the period of three years after leaving City office or position, participate in paid lobbying as defined in SMC 2.06.010. If the foregoing sentence is invalidated, then a former Mayor, City Council member, City Attorney, or City Department head or the highest paid aide or employee directly reporting to any of the foregoing, may not, during the period of two years after leaving City office or position, participate in paid lobbying as defined in SMC 2.06.010.

(Initiative 122, § 1, 2015.)

2.04.620 - The Right to $100 in Democracy Vouchers, For Assignment to Qualified Candidates.

(a) Democracy Vouchers. Democracy Vouchers are vital to ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates, to strengthen democracy, fulfill other purposes of this subchapter and prevent corruption.

(b) Issuance of Democracy Vouchers. On the first business day in every municipal election year, SEEC shall mail to each person who was by the previous November 15th, duly registered to vote in the City of Seattle, at his or her address in the voter registration records, $100 in vouchers ("Democracy Vouchers") consisting of four Democracy Vouchers of $25 each, except that SEEC may deliver Democracy Vouchers online or in other manners if the person receiving same elects other manner of delivery as provided in this subchapter. Thereafter SEEC shall regularly

issue $100 in Democracy Vouchers to any person becoming a duly registered City of Seattle voter after the previous November 15th, up until October 1st of the election year. To be consistent with federal law, any adult natural person who resides more than 30 days in the City of Seattle, and who is a registered voter, or is eligible to vote under local, state or federal law, or who is eligible under federal law to donate to a political campaign, but who has not received any Democracy Vouchers in the election cycle, may opt in to the Program and obtain an equivalent number of Democracy Vouchers by application to SEEC. Any eligible adult may request Democracy Vouchers be mailed or emailed to an address other than that indicated in the voter registration records, or be delivered at SEEC offices, as soon as SEEC shall have developed a secure system for such distributions of Democracy Vouchers, including distribution online, in person, or to an address not listed in voter registration records. No resident outside Seattle, no corporation or other non-human entity, no person under the age of 18 years, and no person ineligible to make political contributions under federal law, may receive a Democracy Voucher.

(c) Form of Democracy Vouchers. Each $25 Democracy Voucher shall state the holder's name, a unique voucher identification number, the election year, and words of assignment with blank spaces for the holder to designate a candidate and sign the holder's name, and may include information SEEC deems helpful for verifying signatures such as the voter identification number and barcode, in substantially the following form:

Appendix G-8

$25 1 of 4 Democracy Voucher for 20xx Election Jane Q. Public
On [insert date] _________ / ________ / _________ , 20xx, I, Jane Q. Public, a resident of the City of Seattle, assigned this Democracy Voucher to a candidate for mayor, city attorney or city council named _____ .
I attest that I obtained this Democracy Voucher properly and make this assignment freely, voluntarily and without duress or in exchange for any payment of any kind for this assignment, and not for any consideration of any kind, and that I am aware that assignment does not guarantee availability of funds and is irrevocable. Assignment is complete upon delivery to Seattle Ethics and Elections Commission, the named candidate, or her or his registered representative. Sale/transfer for consideration of this Democracy Voucher is strictly prohibited. Voucher may be redeemed only by qualifying candidates and only if such candidate has complied with additional contributions and spending limits and if funds are available.
Signed: _________ on _________ , 20xx.
Jane Q. Public voter ID and bar code Voucher ID #123,456,789

(d) Assignment of Democracy Vouchers. Vouchers are only transferable or assignable as stated herein. Any person properly obtaining and holding a Democracy Voucher may assign it by writing the name of the assignee candidate, and signing the holder's name on

and dating the Voucher where indicated thereon, and delivering the signed and dated Voucher to the candidate, or to SEEC, or to any candidate's representative who shall be registered for this purpose with SEEC. Delivery may be by mail, in person (by any person the holder requests to deliver the voucher), or electronically via a secure SEEC online system. SEEC shall establish a secure online system for delivery of Democracy Vouchers (without prejudice to any eligible person's right to receive Democracy Vouchers in the mail at his or her option) no later than prior to the 2017 election cycle, unless SEEC determines this target date is not practicable; and in any event no later than the 2019 election cycle.

(e) Limitations on Assignment. A person may only assign a Voucher to a candidate who has chosen to participate in the Seattle Democracy Voucher Program and who has filed a signed statement of participation and pledge with SEEC as described below. No Democracy Voucher may be assigned after the last business day in November following the election, or to any candidate filing for participation who then fails to qualify or becomes unqualified for the position sought or for the Program. A candidate or registered candidate representative may seek assignment in person or through representatives or by assisting a voter to access the SEEC secure online system. A valid assignment is irrevocable. A person may assign any number of his or her Democracy Vouchers to the same candidate in a given year. Assignment or transfer for cash or any consideration is prohibited. Offering to purchase, buy or sell a Democracy Voucher is prohibited. No person may give or gift a Democracy Voucher to another person, except by assigning it to a candidate as provided herein.

Democracy Vouchers have no cash value and are not assets, income or property of the holder. A Democracy Voucher may not be assigned by proxy, power of attorney or by an agent.

(f) Assignor Assumes Certain Risks. A Democracy Voucher expires if the holder is no longer resident in the City of Seattle, or no longer or not eligible to make political contributions under federal law, if such circumstances take place prior to the assignment to a qualified candidate. The holder of a Democracy Voucher assumes the risk that he or she may change his or her mind after assignment, or that the Democracy Voucher may not have use or be redeemed due to any contingency, including but not limited to unavailability of Program funds; the assignee candidate reaching the “Campaign Spending Limit” (described and defined below); a candidate’s death, disqualification, dropping out, failure to redeem or use the Democracy Voucher; a candidate’s not qualifying or violating the terms of qualification; or otherwise.

(Initiative 122 , § 1, 2015.)

2.04.630 - Candidates to Qualify By Showing Grass Roots Support and Agreeing to New Campaign and Contribution Limits; Redemption of Democracy Vouchers; New Limits on Use of Funds.

(a) Only Qualified Candidates Redeem Democracy Vouchers. Only a candidate who has filed with SEEC for participation in the Seattle Democracy Voucher Program may receive assignment of a Democracy Voucher. Only a candidate certified as qualified by SEEC may redeem a Democracy Voucher. Only a person eligible for and seeking the office of Mayor,

City Attorney or City Council shall be eligible to file for Program participation.

(b) Requirements for Program. To seek qualification, the candidate shall file with SEEC, on or after July 1st the year before an election year and within two weeks after filing a declaration of candidacy, a sworn statement attesting to his or her intent to participate, asserting that the candidate shall timely file or has filed a declaration of candidacy for the office indicated, and that the candidate shall comply with Program requirements and applicable campaign laws. Such Program requirements are that the candidate: shall take part in at least three public debates for primary and general elections each (as defined by SEEC, and SEEC may waive or reduce the number of debates, if a qualifying candidate makes all reasonable efforts to participate in debates and similar public events); shall comply with campaign laws and spending and contribution limits; and, the candidate shall not knowingly solicit money for or on behalf of any political action committee, political party, or any organization that will make an independent expenditure for or against any City of Seattle candidate within the same election cycle (for the purposes of this section, appearing as a featured speaker at a fundraising event for a committee or entity shall constitute soliciting money for such committee or entity). Further Program requirements are that a candidate for Mayor shall not solicit or accept total contributions from any individual or entity in excess of a total of $500 during one election cycle, and a candidate for City Attorney or City Council shall not solicit or accept total contributions from any individual or entity in excess of a total of $250 during one election cycle (including any

contribution used to qualify for Democracy Vouchers, but excluding the value of Democracy Vouchers assigned to such candidate) (subject to exceptions provided herein).

(c) Qualifying Contributions. To qualify for the Democracy Voucher Program, candidates shall show they have received at least the following numbers of "Qualifying Contributions" of at least $10 but not more than the Program contribution limit for the office sought provided in SMC 2.04.630(b) from individual adults (18 years of age or older), who are human natural persons residing in the City of Seattle, and eligible under federal law to make political contributions: Mayoral candidates, at least 600; City Attorney candidates, at least 150; at-large City Council candidates, at least 400; and district City Council candidates, at least 150 (of which at least 75 shall be from individuals residing in the district sought to be represented by the candidate). SEEC shall maintain a list of qualified candidates and make it readily accessible to the public, including by publishing it on SEEC's website.

(d) Campaign Spending Limit. Participating candidates shall comply with all campaign laws and not exceed the following "Campaign Spending Limits" (defined as (i) money spent to date (equal to prior expenditures, plus debts and obligations), and the value of any in kind donations reported, plus (ii) cash on hand and (iii) the value of unredeemed Vouchers on hand which the candidate shall have allocated to the primary or general election): Mayor $400,000 for the primary election, and $800,000 total (for both primary and general election); City Attorney, $75,000 for the primary election, and $150,000 total; at-large

City Council, $150,000 for the primary election, and $300,000 total; district City Council, $75,000 for the primary election and $150,000 total.

(e) Further Limits on Redemption. A qualified candidate may collect Democracy Vouchers for the general election before the primary election takes place and allocate same to the general election without such Vouchers counting against the Campaign Spending Limit for the primary election, but may not redeem Vouchers for the general election unless such candidate advances to the general election.

(f) Remedies for Exceeding Campaign Spending Limit. If a qualified candidate demonstrates to SEEC that he or she has an opponent (whether or not participating in the Program) whose campaign spending has exceeded the Campaign Spending Limit for the position sought as indicated above, where SEEC deems the excess material it shall allow such candidate to choose to be released from the Campaign Spending Limit and campaign contribution limits for the Program, in which case SEEC shall allow such candidate to redeem his or her Democracy Vouchers received theretofore or thereafter up to the amount of the Campaign Spending Limit only, then allow such candidate to engage in campaign fundraising without regard to any Program requirements. SEEC shall also release a qualifying candidate from the Campaign Spending Limit to the extent that it is shown (on application of a Seattle candidate or citizen) that said qualified candidate faces independent expenditures as defined in SMC 2.04.010 adverse to the candidate or in favor of an opponent and the sum of such independent expenditures plus said candidate's

opponent's campaign spending materially exceeds the Campaign Spending Limit for that office.

(g) Loss of Qualification. A candidate loses qualification for the Program by publicly announcing withdrawal, abandoning the race, failing to advance to the general election, or if SEEC finds sufficient material violations of election laws or Program requirements such as violation of spending or contribution limits, or fraudulent or attempted fraudulent assignment of Democracy Vouchers.

(h) Redemption of Vouchers. SEEC shall redeem Democracy Vouchers only after verifying the assignment by ensuring the Voucher was issued to an eligible person, and verifying the signature written in the words of assignment, and only if redemption shall not put the candidate over the Campaign Spending Limit and only if Program funds are available. To verify signatures SEEC may employ the division of King County Records and Elections which verifies signatures for initiative petitions or mail-in ballots. SEEC shall redeem Democracy Vouchers on published regular redemption dates that shall be no less frequent than twice a month and may redeem Vouchers on other dates notified in advance if SEEC deems it practicable. SEEC shall not redeem any Democracy Voucher received by SEEC after the first business day in the month of December after the general election.

(i) Limits on Use of Voucher Proceeds. Candidates shall use Democracy Voucher proceeds only for campaign costs or debts for the relevant office and election cycle, and may not use such proceeds after a reasonable period (to be set by SEEC) following the election to pay campaign debts. Candidates shall not

use Democracy Voucher proceeds for any cash payments or in violation of any law; nor to pay the candidate (except to repay or reimburse a loan to his or her political committee or campaign in an amount not greater than that provided in RCW 42.17A.445(3) or WAC 390-05-400) or pay a member of the candidate's immediate family as defined in RCW 4.16.030; pay any entity in which the candidate or an immediate family member holds a ten percent or greater ownership interest; pay any amount over fair market value for any services, goods, facilities or things of value; pay any penalty or fine; or pay any inaugural costs or office funds cost.

(j) Return of Democracy Voucher Proceeds. A candidate who has redeemed a Democracy Voucher, then withdraws, dies, becomes ineligible, loses qualification, or is eliminated in any primary or general election or wins a general election, shall within a reasonable period, as defined by SEEC, pay all debts and obligations, account to SEEC and restore to SEEC and the Program "Unspent Democracy Voucher Proceeds." SEEC shall define "Unspent Democracy Voucher Proceeds" by rule.

(Initiative 122 , § 1, 2015.)

2.04.658 - Transparency.

Assigning a Democracy Voucher is a public act and recipients of Democracy Vouchers shall expect same to be public and made public and shall have no expectation of privacy in registering to obtain Democracy Vouchers or in assigning same. All Democracy Voucher holders are on notice the process is public and transparent, except that SEEC shall not publish mail, email or other addresses to which

Democracy Vouchers are sent. SEEC shall make transparent at its offices and on its website all assignments and redemptions of Democracy Vouchers including recipient name, Democracy Voucher identification number and suffix, date assigned, to whom assigned, when redeemed and amount redeemed. SEEC shall provide other necessary means to make the Seattle Democracy Voucher process and Program open and transparent so that each Democracy Voucher recipient and the media and public may track assignments of Democracy Vouchers to assist in exposing any potential forgery, fraud, or misconduct regarding same. If a Democracy Voucher recipient believes that his or her Democracy Voucher was lost, stolen or fraudulently or improperly assigned or redeemed, SEEC shall require a notarized declaration or affidavit or additional process in its judgment to find the relevant facts then provide relief it deems appropriate including Democracy Voucher replacement, cancellation of assignment or reimbursement of any improperly obtained Program funds. SEEC shall promulgate rules and regulations for such proceedings and cases where it receives duplicate copies of the same Democracy Voucher and shall ensure that any Democracy Voucher recipient may attempt to show, without any filing fee or charge, the facts of loss, theft, destruction or forgery of or duress in or other improper acts concerning or in the assignment of the Democracy Voucher. Such process shall include procedures through mails or in person and shall include an online process when and if SEEC develops same. SEEC shall also provide forms, and for in-person procedures, a notary at SEEC offices during normal business hours for this purpose, without charge. In all cases, no Democracy Voucher

assignment shall be deemed invalid or revocable simply because the assignor changes opinion or changes his or her mind, gets new information from or about any candidate or campaign, or based on any allegation of misstatement or misinformation by any candidate or any person, or any other source, or for any reason other than duplicate voucher or forgery, threats, coercion, or physical duress, shown by clear and convincing evidence. SEEC shall issue regulations providing remedies and consequences for such acts, which may include, for sufficient material violation of Program requirements, campaign laws, or any acts of intentional forgery, threats, duress, or coercion in obtaining assigned Democracy Vouchers, an order requiring a candidate to return to the Program any proceeds of Democracy Vouchers or disqualifying a candidate from the Program.

(Initiative 122 , § 1, 2015.)

2.04.690 - Transition; SEEC Administration Authority; Penalties; Crimes; Severability.

(a) Transition. To allow accumulation of Program funds, in the 2017 election only and notwithstanding other provisions of this subchapter, no Mayoral candidate shall be eligible to participate in the Program or receive or redeem Democracy Vouchers.

(b) SEEC to administer. SEEC shall implement and administer the Program, Program funds, and provisions in this subchapter including issuing and promulgating appropriate regulations, forms, rules, information packets, procedures, and enforcement mechanisms. SEEC shall through rule making carry out the provisions of this subchapter including but not limited to making regulations, defining terms,

establishing other rules or promulgating any other administrative regulations or guidelines not inconsistent with the provisions of this subchapter. Anything herein said to be done by SEEC, other than such rule making, shall be done by its Executive Director or another person indicated in SEEC regulations or a duly approved printer or contractor. Prior to each election cycle, SEEC shall inform the public about Democracy Vouchers and the Program. SEEC shall publish appropriate guidebooks for candidates and Democracy Voucher recipients, and all forms, instructions, brochures and documents necessary and proper for this Program, which shall include key documents accessible to those with visual or other disability, and translations into languages other than English spoken by a significant number of Seattle residents, which shall be presumed initially to include Spanish, Vietnamese, Cantonese, Mandarin, Somali, Tagalog, Korean, Cambodian, Amharic, Oromo, Tigrinya, Laotian, Thai, and Russian. Prior to each election cycle, SEEC may reasonably adjust the Campaign Spending Limits, the dollar amounts for and numbers of qualifying contributions, the contribution limits per contributor provided in SMC 2.04.630(b) (but SEEC shall not set a contribution limit for qualifying candidates that exceeds the contribution limit specified for candidates in SMC 2.04.370, or the number or value of Democracy Vouchers provided to each eligible person, in order to account for inflation or deflation, and ensure the goals and purposes of the Program including democracy and accountability, high rates of candidate participation, heavy utilization of vouchers by those who have not previously donated to Seattle political campaigns, and high public satisfaction with the Program. After each

election cycle SEEC shall review the Program and submit reports to the public and City Council. Promptly after the effective date of this measure, SEEC shall project Program revenue, expenditures, and Democracy Voucher Program Funds ("Program Funds") balances from 2016 through at least 2021, and shall revise and update such projections regularly, and at all times shall manage Program Funds as a fiduciary, ensuring proper accumulation and distribution of funds, during nonelection and election years, to achieve Program purposes and goals. In making such projections and administering this Program, SEEC shall consider all relevant circumstances including differing Campaign Spending Limits for different offices, differing funding needs in mayoral and non-mayoral election years, and the need to manage the Program and funds to seek to ensure participation by candidates. SEEC before January 1st of each municipal election year shall manage and prudently conserve Program Funds, by considering and projecting Program Funds availability and disbursements for that year and publicizing such projections which shall include and consider needs of participating candidates, needs for conservation of funds for future years or reserve accumulation, prudent operating cost and cost of administration, and prudent conservation of public resources. To assure candidates that ample funds will be available for Voucher redemptions and to assure the public that Voucher fund redemptions will be prudently managed, by January 1st of each municipal election year, SEEC shall publish an "Available Program Funds Limit" for that year for Voucher redemptions. In setting the Available Program Funds Limit, SEEC shall use its best efforts to reasonably

project and ensure that adequate Program Funds are available for that election year consistent with this subchapter, its goals and purposes and all reasonably foreseeable circumstances and contingencies and shall set aside at least an amount needed for six primary and two general election candidates for each position in that year's election to qualify and spend their respective Campaign Spending Limit using Democracy Vouchers only (rather than private contributions, except for private contributions used to qualify). During any municipal election year, as soon as SEEC receives or reasonably believes it shall receive Democracy Vouchers for redemption in excess of the Available Program Funds Limit for that year, then Program Funds shall be deemed unavailable and SEEC shall publicly announce same and set a prompt deadline date for Democracy Voucher delivery, following which SEEC shall consider Democracy Vouchers received and available Program Funds and shall allocate remaining available Program Funds proportionately per unredeemed verified Democracy Vouchers on hand, pro rata among all participating candidates for all offices without discrimination. If any special election is called, SEEC shall set aside Program Funds for such election in an amount it deems appropriate, and shall be empowered to act and change, alter, or modify or set and implement standards, procedures, limits and deadlines as similar as may be practicable to those provided in this subchapter as SEEC deems proper and necessary for such special election, taking care to not unduly prejudice accumulation of funds for the Program.

(c) Penalties. No penalty provision in this subchapter shall diminish any other penalty or remedy under any other law. Participating candidates who make

expenditures in excess of the Campaign Spending Limit shall be subject to a civil penalty of twice the amount of the expenditure in excess of such limit, unless SEEC determines that the overspending is insignificant or trivial. All enforcement, administrative and other powers, procedures, rights, duties, remedies, process, civil penalties and other provisions in SMC 2.04.060, 2.04.070, 2.04.075, 2.04.090, 2.04.500, 2.04.510, 2.04.520, 2.16.010 and 2.16.020, relating to violations of election campaign contributions laws or initiative laws, shall apply in case of violations of this subchapter, and all penalties, remedies or consequences applicable to violations of SMC 2.04 or 2.06 shall be applicable for any violation of this subchapter, including but not limited to an order requiring the party to take particular action in order to comply with the law, and in addition, or alternatively, sanctions up to $5,000 for each violation.

(d) Crimes. A person is guilty of trafficking in a Democracy Voucher if the person knowingly purchases, buys, or pays consideration for any Democracy Voucher or knowingly sells, conveys for consideration or receives consideration for any Democracy Voucher; or attempts same. A person is guilty of theft of a Democracy Voucher if he or she steals (defined as when one knowingly obtains or exerts unauthorized control over with intent to deprive the proper holder or recipient thereof) or attempts to steal, a Democracy Voucher. A person is guilty of the crime of forgery of a Democracy Voucher if, with intent to injure or defraud, he or she attempts to falsely make, complete, or alter a Democracy Voucher or its assignment or possess, utter, offer, dispose of, or put off as true a Democracy Voucher or

written assigned Democracy Voucher that he or she knows is forged. For purposes of this section, “falsely alter” means to change, without authorization by the holder or recipient of the Voucher entitled to grant it, a Democracy Voucher by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner; to “falsely complete” means to make a Democracy Voucher assignment complete by adding or inserting matter, including but not limited to a forged signature, without the authority of the person entitled to assign the Voucher; to “falsely make” means to make or draw a complete or incomplete Democracy Voucher which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing or signing thereof; and “forged” or “forgery” means a Democracy Voucher which has been falsely made, completed, or altered. A person is guilty of possession of a stolen Democracy Voucher if he, she or it, being other than the recipient of a proper assignment of a Democracy Voucher, knowingly receives, retains, possesses, conceals or disposes of another’s Democracy Voucher knowing that it has been stolen and withholds or appropriates the same to the use of any person other than the true owner or person entitled thereto. A person is guilty of trafficking in a stolen Democracy Voucher if the person attempts to traffic in a stolen Democracy Voucher, meaning to sell, transfer, distribute, dispense, or otherwise dispose of such stolen Democracy Voucher pertaining to another person, or to buy, receive, possess, or obtain control of same with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

The crimes of trafficking in a Democracy Voucher, theft or forgery of a Democracy Voucher, possession of a stolen Democracy Voucher, or trafficking in a stolen Democracy Voucher, are each a gross misdemeanor punishable by a fine not to exceed $5,000 or, by imprisonment for a term of up to 364 days, or both, or as otherwise provided by State law. In this subsection the term "person," "he," "she" or "actor" include any natural person, and, in addition, a corporation, a joint stock association, an unincorporated association or a political committee. In cases of all crimes defined by this subsection the Court may also require restitution to the Program of all costs of prosecution, including attorneys fees, as well as any amounts misappropriated or the face value of Democracy Vouchers misused and in case of crimes by a candidate or political committee the Court also may require return of all funds received from the Program in that election cycle consistent with equity, due process and proportional justice and or may disqualify such political committee or candidate from participating in the Program for that election cycle.

(e) Severability and captions. Provisions of this subchapter and its sections are separate and severable. The invalidity of any part or its application to any circumstance, shall not affect the validity of other parts or application to other circumstances. Captions provided are not substantive. The City Clerk may renumber or reformat this subchapter, this ordinance or these sections, for proper codification in the Seattle Municipal Code, without changing the substance.

(Initiative 122 , § 1, 2015.)

Appendix H-1

Initiative 122
Passed by voters 11/3/2015, enacted 11/24/15

AN ACT relating to reducing the influence of money, ensuring accountability, and preventing corruption in City of Seattle government.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SEATTLE:

Section 1. A new Subchapter VIII titled, "Honest Elections Seattle," is added to the Seattle Municipal Code, Chapter 2.04 - ELECTION CAMPAIGN CONTRIBUTIONS, as follows:

NEW SECTION 2.04.600 – Purpose and Authority. (a) Purpose. This people's initiative measure builds honest elections in the City of Seattle ("City" or "Seattle") and prevents corruption, by: giving more people an opportunity to have their voices heard in our democracy; ensuring a fair elections process that holds our elected leaders accountable to us by strengthening voters' control over City government; banning campaign contributions by City contractors and entities using paid lobbyists; lowering campaign contribution limits; tightening prohibitions on lobbying by former elected officials (the "revolving door" problem); expanding requirements for candidates to disclose their financial holdings and interests; and increasing fines on violators of campaign rules. This measure also creates a Democracy Voucher campaign public finance program ("Democracy Voucher Program" or "Program") to expand the pool of candidates for city offices and to

safeguard the people's control of the elections process in Seattle. (b) Authority of the People. The People have vested legislative powers of the City in a Mayor and City Council, but reserved to themselves independent of the Mayor and the City Council the power to propose for themselves measures dealing with any matter within the realm of local affairs or municipal business. That power includes the use of an initiative petition to submit to the qualified electors of the city a measure as authorized by RCW 84.55.050 to exceed the limitations of regular property taxes contained in RCW Chapter 84.55, as it now exists or may hereinafter be amended. The authority of the people to adopt this measure is also specifically authorized and reserved to the electors of the City of Seattle by RCW 42.17A.550, which allows a city to use locally derived public funds (whether from taxes, fees, penalties or other sources) to publicly finance local political campaigns, if the proposal to do so is submitted to City of Seattle voters for their adoption and approval, or rejection.

NEW SECTION 2.04.601 – No Campaign Contributions from City Contractors or their PACs.

No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution for himself or herself or for any political party, political committee, campaign committee or public office fund,

directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. If the first sentence of this section is invalidated then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution of more than $250 in one calendar year, directly or indirectly, from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. If the second sentence of this section is invalidated then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution of more than $250, for himself or herself or for any political party, political committee, campaign committee or public office fund, directly or indirectly from any entity or person who in the prior two years has earned or received more than $250,000, under a contractual relationship with the City. In all cases such a candidate or office holder may solicit and accept assignment of Democracy Vouchers without such solicitation or assignment being considered a violation of this section. If any part of this section is held invalid the remainder shall be construed to effect the anticorruption purposes of this section to the maximum extent allowable.

NEW SECTION 2.04.602 – No Campaign Contributions From Regulated Corporations / Industries that Hire Lobbyists.

No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution directly or indirectly from any entity or person who during the past 12 month period

has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. No Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution, for himself or herself or for any political party, political committee, campaign committee or public office fund, from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. If the first sentence of this section is invalidated, then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly accept any contribution of more than $250 in any one calendar year, directly or indirectly from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. If the second sentence of this section is invalidated, then no Mayor, City Council member or City Attorney or any candidate for any such position shall knowingly solicit a contribution of more than $250, for himself or herself or for any political party, political committee, campaign committee or public office fund, from any entity or person who during the past 12 month period has paid $5,000 or more to a lobbyist or lobbying entity (as such terms are defined in SMC 2.06.010) for lobbying the City of Seattle. In all cases such a candidate or office holder may solicit and accept assignment of Democracy Vouchers without such solicitation or assignment being considered a violation of this section. If any part of this section is held invalid the remainder shall be

construed to effect the anticorruption purposes of this section to the maximum extent allowable.

NEW SECTION 2.04.605 – Expedited Reporting of Electronic Contributions. To ensure the Seattle Ethics and Elections Commission ("SEEC") creates an electronic reporting system that increases transparency, does not discriminate against low budget campaigns, and takes advantage of advances in information technology, all candidates for City of Seattle electoral offices shall report to the Seattle City Clerk any campaign contribution made electronically upon deposit into a candidate's account; provided that this provision shall take effect only after SEEC shall have determined that there are two or more electronic payment processing companies that have the capacity to report contributions to the SEEC as soon as the contribution is transferred to the candidate's account. To give campaigns time to prepare for this section, SEEC shall establish the effective date of this section by rule published reasonably in advance of the election cycle in which campaigns shall comply. SEEC shall ensure that before a contribution is required to be publicly disclosed as received by a campaign it shall have reasonable opportunity to reject or return undesired or illegal contributions.

NEW SECTION 2.04.606 – Signature Gatherers Must Disclose if Paid for Signatures. Any person or entity that is a compensated or paid signature gatherer for any City of Seattle ballot measure, initiative, referendum, or charter amendment shall disclose to each person from whom a signature is sought, in writing via a conspicuous, legible sign, placard, or badge, stating "PAID SIGNATURE GATHERER."

NEW SECTION 2.04.607 - Three-year Ban on Mayor, Councilmember, City Attorney or Top Staff Paid Lobbying. A former Mayor, City Council member, City Attorney, or City Department head or the highest paid aide or employee directly reporting to any of the foregoing, may not, during the period of three years after leaving City office or position, participate in paid lobbying as defined in SMC 2.06.010. If the foregoing sentence is invalidated, then a former Mayor, City Council member, City Attorney, or City Department head or the highest paid aide or employee directly reporting to any of the foregoing, may not, during the period of two years after leaving City office or position, participate in paid lobbying as defined in SMC 2.06.010.

NEW SECTION 2.04.620 - The Right to $100 in Democracy Vouchers, For Assignment to Qualified Candidates. (a) Democracy Vouchers. Democracy Vouchers are vital to ensure the people of Seattle have equal opportunity to participate in political campaigns and be heard by candidates, to strengthen democracy, fulfill other purposes of this subchapter and prevent corruption.

(b) Issuance of Democracy Vouchers. On the first business day in every municipal election year, SEEC shall mail to each person who was by the previous November 15th, duly registered to vote in the City of Seattle, at his or her address in the voter registration records, $100 in vouchers ("Democracy Vouchers") consisting of four Democracy Vouchers of $25 each, except that SEEC may deliver Democracy Vouchers online or in other manners if the person receiving same elects other manner of delivery as provided in this subchapter. Thereafter SEEC shall regularly

issue $100 in Democracy Vouchers to any person becoming a duly registered City of Seattle voter after the previous November 15th, up until October 1st of the election year. To be consistent with federal law, any adult natural person who resides more than 30 days in the City of Seattle, and who is a registered voter, or is eligible to vote under local, state or federal law, or who is eligible under federal law to donate to a political campaign, but who has not received any Democracy Vouchers in the election cycle, may opt in to the Program and obtain an equivalent number of Democracy Vouchers by application to SEEC. Any eligible adult may request Democracy Vouchers be mailed or emailed to an address other than that indicated in the voter registration records, or be delivered at SEEC offices, as soon as SEEC shall have developed a secure system for such distributions of Democracy Vouchers, including distribution online, in person, or to an address not listed in voter registration records. No resident outside Seattle, no corporation or other non-human entity, no person under the age of 18 years, and no person ineligible to make political contributions under federal law, may receive a Democracy Voucher.

(c) Form of Democracy Vouchers. Each $25 Democracy Voucher shall state the holder's name, a unique voucher identification number, the election year, and words of assignment with blank spaces for the holder to designate a candidate and sign the holder's name, and may include information SEEC deems helpful for verifying signatures such as the voter identification number and barcode, in substantially the following form:

Appendix H-8

$25 1 of 4 Democracy Voucher for 20xx Election Jane Q. Public

On [insert date] _______________, 20xx, I, Jane Q. Public, a resident of the City of Seattle, assigned this Democracy Voucher to a candidate for mayor, city attorney or city council named

____.

I attest that I obtained this Democracy Voucher properly and make this assignment freely, voluntarily and without duress or in exchange for any payment of any kind for this assignment, and not for any consideration of any kind, and that I am aware that assignment does not guarantee availability of funds and is irrevocable. Assignment is complete upon delivery to Seattle Ethics and Elections Commission, the named candidate, or her or his registered representative. Sale/transfer for consideration of this Democracy Voucher is strictly prohibited. Voucher may be redeemed only by qualifying candidates and only if such candidate has complied with additional contributions and spending limits and if funds are available.

Signed: ________________ on _______, 20xx.

Jane Q. Public voter ID and bar code Voucher ID #123,456,789

(d) Assignment of Democracy Vouchers. Vouchers are only transferable or assignable as stated herein. Any person properly obtaining and holding a

Democracy Voucher may assign it by writing the name of the assignee candidate, and signing the holder's name on and dating the Voucher where indicated thereon, and delivering the signed and dated Voucher to the candidate, or to SEEC, or to any candidate's representative who shall be registered for this purpose with SEEC. Delivery may be by mail, in person (by any person the holder requests to deliver the voucher), or electronically via a secure SEEC online system. SEEC shall establish a secure online system for delivery of Democracy Vouchers (without prejudice to any eligible person's right to receive Democracy Vouchers in the mail at his or her option) no later than prior to the 2017 election cycle, unless SEEC determines this target date is not practicable; and in any event no later than the 2019 election cycle.

(e) Limitations on Assignment. A person may only assign a Voucher to a candidate who has chosen to participate in the Seattle Democracy Voucher Program and who has filed a signed statement of participation and pledge with SEEC as described below. No Democracy Voucher may be assigned after the last business day in November following the election, or to any candidate filing for participation who then fails to qualify or becomes unqualified for the position sought or for the Program. A candidate or registered candidate representative may seek assignment in person or through representatives or by assisting a voter to access the SEEC secure online system. A valid assignment is irrevocable. A person may assign any number of his or her Democracy Vouchers to the same candidate in a given year. Assignment or transfer for cash or any consideration is prohibited. Offering to purchase, buy or sell a Democracy Voucher is prohibited. No person may give

or gift a Democracy Voucher to another person, except by assigning it to a candidate as provided herein. Democracy Vouchers have no cash value and are not assets, income or property of the holder. A Democracy Voucher may not be assigned by proxy, power of attorney or by an agent.

(f) Assignor Assumes Certain Risks. A Democracy Voucher expires if the holder is no longer resident in the City of Seattle, or no longer or not eligible to make political contributions under federal law, if such circumstances take place prior to the assignment to a qualified candidate. The holder of a Democracy Voucher assumes the risk that he or she may change his or her mind after assignment, or that the Democracy Voucher may not have use or be redeemed due to any contingency, including but not limited to unavailability of Program funds; the assignee candidate reaching the "Campaign Spending Limit" (described and defined below); a candidate's death, disqualification, dropping out, failure to redeem or use the Democracy Voucher; a candidate's not qualifying or violating the terms of qualification; or otherwise.

NEW SECTION 2.04.630 - Candidates to Qualify By Showing Grass Roots Support and Agreeing to New Campaign and Contribution Limits; Redemption of Democracy Vouchers; New Limits on Use of Funds.

(a) Only Qualified Candidates Redeem Democracy Vouchers. Only a candidate who has filed with SEEC for participation in the Seattle Democracy Voucher Program may receive assignment of a Democracy Voucher. Only a candidate certified as qualified by SEEC may redeem a Democracy Voucher. Only a person eligible for and seeking the office of

Mayor, City Attorney or City Council shall be eligible to file for Program participation.

(b) Requirements for Program. To seek qualification, the candidate shall file with SEEC, on or after July 1st the year before an election year and within two weeks after filing a declaration of candidacy, a sworn statement attesting to his or her intent to participate, asserting that the candidate shall timely file or has filed a declaration of candidacy for the office indicated, and that the candidate shall comply with Program requirements and applicable campaign laws. Such Program requirements are that the candidate: shall take part in at least three public debates for primary and general elections each (as defined by SEEC, and SEEC may waive or reduce the number of debates, if a qualifying candidate makes all reasonable efforts to participate in debates and similar public events); shall comply with campaign laws and spending and contribution limits; and, the candidate shall not knowingly solicit money for or on behalf of any political action committee, political party, or any organization that will make an independent expenditure for or against any City of Seattle candidate within the same election cycle (for the purposes of this section, appearing as a featured speaker at a fundraising event for a committee or entity shall constitute soliciting money for such committee or entity). Further Program requirements are that a candidate for Mayor shall not solicit or accept total contributions from any individual or entity in excess of a total of $500 during one election cycle, and a candidate for City Attorney or City Council shall not solicit or accept total contributions from any individual or entity in excess of a total of $250 during one election cycle (including any

contribution used to qualify for Democracy Vouchers, but excluding the value of Democracy Vouchers assigned to such candidate) (subject to exceptions provided herein).

(c) Qualifying Contributions. To qualify for the Democracy Voucher Program, candidates shall show they have received at least the following numbers of "Qualifying Contributions" of at least $10 but not more than the Program contribution limit for the office sought provided in SMC 2.04.630(b) from individual adults (18 years of age or older), who are human natural persons residing in the City of Seattle, and eligible under federal law to make political contributions: Mayoral candidates, at least 600; City Attorney candidates, at least 150; at-large City Council candidates, at least 400; and district City Council candidates, at least 150 (of which at least 75 shall be from individuals residing in the district sought to be represented by the candidate). SEEC shall maintain a list of qualified candidates and make it readily accessible to the public, including by publishing it on SEEC's website.

(d) Campaign Spending Limit. Participating candidates shall comply with all campaign laws and not exceed the following "Campaign Spending Limits" (defined as (i) money spent to date (equal to prior expenditures, plus debts and obligations), and the value of any in kind donations reported, plus (ii) cash on hand and (iii) the value of unredeemed Vouchers on hand which the candidate shall have allocated to the primary or general election): Mayor $400,000 for the primary election, and $800,000 total (for both primary and general election); City Attorney, $75,000 for the primary election, and $150,000 total; at-large

City Council, $150,000 for the primary election, and $300,000 total; district City Council, $75,000 for the primary election and $150,000 total.

(e) Further Limits on Redemption. A qualified candidate may collect Democracy Vouchers for the general election before the primary election takes place and allocate same to the general election without such Vouchers counting against the Campaign Spending Limit for the primary election, but may not redeem Vouchers for the general election unless such candidate advances to the general election.

(f) Remedies for Exceeding Campaign Spending Limit. If a qualified candidate demonstrates to SEEC that he or she has an opponent (whether or not participating in the Program) whose campaign spending has exceeded the Campaign Spending Limit for the position sought as indicated above, where SEEC deems the excess material it shall allow such candidate to choose to be released from the Campaign Spending Limit and campaign contribution limits for the Program, in which case SEEC shall allow such candidate to redeem his or her Democracy Vouchers received theretofore or thereafter up to the amount of the Campaign Spending Limit only, then allow such candidate to engage in campaign fundraising without regard to any Program requirements. SEEC shall also release a qualifying candidate from the Campaign Spending Limit to the extent that it is shown (on application of a Seattle candidate or citizen) that said qualified candidate faces independent expenditures as defined in SMC 2.04.010 adverse to the candidate or in favor of an opponent and the sum of such independent expenditures plus said candidate's

opponent's campaign spending materially exceeds the Campaign Spending Limit for that office.

(g) Loss of Qualification. A candidate loses qualification for the Program by publicly announcing withdrawal, abandoning the race, failing to advance to the general election, or if SEEC finds sufficient material violations of election laws or Program requirements such as violation of spending or contribution limits, or fraudulent or attempted fraudulent assignment of Democracy Vouchers.

(h) Redemption of Vouchers. SEEC shall redeem Democracy Vouchers only after verifying the assignment by ensuring the Voucher was issued to an eligible person, and verifying the signature written in the words of assignment, and only if redemption shall not put the candidate over the Campaign Spending Limit and only if Program funds are available. To verify signatures SEEC may employ the division of King County Records and Elections which verifies signatures for initiative petitions or mail-in ballots. SEEC shall redeem Democracy Vouchers on published regular redemption dates that shall be no less frequent than twice a month and may redeem Vouchers on other dates notified in advance if SEEC deems it practicable. SEEC shall not redeem any Democracy Voucher received by SEEC after the first business day in the month of December after the general election.

(i) Limits on Use of Voucher Proceeds. Candidates shall use Democracy Voucher proceeds only for campaign costs or debts for the relevant office and election cycle, and may not use such proceeds after a reasonable period (to be set by SEEC) following the election to pay campaign debts. Candidates shall

not use Democracy Voucher proceeds for any cash payments or in violation of any law; nor to pay the candidate (except to repay or reimburse a loan to his or her political committee or campaign in an amount not greater than that provided in RCW 42.17A.445(3) or WAC 390-05-400) or pay a member of the candidate's immediate family as defined in RCW 4.16.030; pay any entity in which the candidate or an immediate family member holds a ten percent or greater ownership interest; pay any amount over fair market value for any services, goods, facilities or things of value; pay any penalty or fine; or pay any inaugural costs or office funds cost.

(j) Return of Democracy Voucher Proceeds. A candidate who has redeemed a Democracy Voucher, then withdraws, dies, becomes ineligible, loses qualification, or is eliminated in any primary or general election or wins a general election, shall within a reasonable period, as defined by SEEC, pay all debts and obligations, account to SEEC and restore to SEEC and the Program "Unspent Democracy Voucher Proceeds." SEEC shall define "Unspent Democracy Voucher Proceeds" by rule.

NEW SECTION 2.04.658 - Transparency. Assigning a Democracy Voucher is a public act and recipients of Democracy Vouchers shall expect same to be public and made public and shall have no expectation of privacy in registering to obtain Democracy Vouchers or in assigning same. All Democracy Voucher holders are on notice the process is public and transparent, except that SEEC shall not publish mail, email or other addresses to which Democracy Vouchers are sent. SEEC shall make transparent at its offices and on its website all

assignments and redemptions of Democracy Vouchers including recipient name, Democracy Voucher identification number and suffix, date assigned, to whom assigned, when redeemed and amount redeemed. SEEC shall provide other necessary means to make the Seattle Democracy Voucher process and Program open and transparent so that each Democracy Voucher recipient and the media and public may track assignments of Democracy Vouchers to assist in exposing any potential forgery, fraud, or misconduct regarding same. If a Democracy Voucher recipient believes that his or her Democracy Voucher was lost, stolen or fraudulently or improperly assigned or redeemed, SEEC shall require a notarized declaration or affidavit or additional process in its judgment to find the relevant facts then provide relief it deems appropriate including Democracy Voucher replacement, cancellation of assignment or reimbursement of any improperly obtained Program funds. SEEC shall promulgate rules and regulations for such proceedings and cases where it receives duplicate copies of the same Democracy Voucher and shall ensure that any Democracy Voucher recipient may attempt to show, without any filing fee or charge, the facts of loss, theft, destruction or forgery of or duress in or other improper acts concerning or in the assignment of the Democracy Voucher. Such process shall include procedures through mails or in person and shall include an online process when and if SEEC develops same. SEEC shall also provide forms, and for in-person procedures, a notary at SEEC offices during normal business hours for this purpose, without charge. In all cases, no Democracy Voucher assignment shall be deemed invalid or revocable simply because the assignor changes opinion or

changes his or her mind, gets new information from or about any candidate or campaign, or based on any allegation of misstatement or misinformation by any candidate or any person, or any other source, or for any reason other than duplicate voucher or forgery, threats, coercion, or physical duress, shown by clear and convincing evidence. SEEC shall issue regulations providing remedies and consequences for such acts, which may include, for sufficient material violation of Program requirements, campaign laws, or any acts of intentional forgery, threats, duress, or coercion in obtaining assigned Democracy Vouchers, an order requiring a candidate to return to the Program any proceeds of Democracy Vouchers or disqualifying a candidate from the Program.

NEW SECTION 2.04.690 - Transition; SEEC Administration Authority; Penalties; Crimes; Severability.

(a) Transition. To allow accumulation of Program funds, in the 2017 election only and notwithstanding other provisions of this subchapter, no Mayoral candidate shall be eligible to participate in the Program or receive or redeem Democracy Vouchers.

(b) SEEC to administer. SEEC shall implement and administer the Program, Program funds, and provisions in this subchapter including issuing and promulgating appropriate regulations, forms, rules, information packets, procedures, and enforcement mechanisms. SEEC shall through rule making carry out the provisions of this subchapter including but not limited to making regulations, defining terms, establishing other rules or promulgating any other administrative regulations or guidelines not inconsistent with the provisions of this subchapter.

Anything herein said to be done by SEEC, other than such rule making, shall be done by its Executive Director or another person indicated in SEEC regulations or a duly approved printer or contractor. Prior to each election cycle, SEEC shall inform the public about Democracy Vouchers and the Program. SEEC shall publish appropriate guidebooks for candidates and Democracy Voucher recipients, and all forms, instructions, brochures and documents necessary and proper for this Program, which shall include key documents accessible to those with visual or other disability, and translations into languages other than English spoken by a significant number of Seattle residents, which shall be presumed initially to include Spanish, Vietnamese, Cantonese, Mandarin, Somali, Tagalog, Korean, Cambodian, Amharic, Oromo, Tigrinya, Laotian, Thai, and Russian. Prior to each election cycle, SEEC may reasonably adjust the Campaign Spending Limits, the dollar amounts for and numbers of qualifying contributions, the contribution limits per contributor provided in SMC 2.04.630(b) (but SEEC shall not set a contribution limit for qualifying candidates that exceeds the contribution limit specified for candidates in SMC 2.04.370, or the number or value of Democracy Vouchers provided to each eligible person, in order to account for inflation or deflation, and ensure the goals and purposes of the Program including democracy and accountability, high rates of candidate participation, heavy utilization of vouchers by those who have not previously donated to Seattle political campaigns,, and high public satisfaction with the Program. After each election cycle SEEC shall review the Program and submit reports to the public and City Council. Promptly after the effective date of this measure,

SEEC shall project Program revenue, expenditures, and Democracy Voucher Program Funds ("Program Funds") balances from 2016 through at least 2021, and shall revise and update such projections regularly, and at all times shall manage Program Funds as a fiduciary, ensuring proper accumulation and distribution of funds, during nonelection and election years, to achieve Program purposes and goals. In making such projections and administering this Program, SEEC shall consider all relevant circumstances including differing Campaign Spending Limits for different offices, differing funding needs in mayoral and non-mayoral election years, and the need to manage the Program and funds to seek to ensure participation by candidates. SEEC before January 1st of each municipal election year shall manage and prudently conserve Program Funds, by considering and projecting Program Funds availability and disbursements for that year and publicizing such projections which shall include and consider needs of participating candidates, needs for conservation of funds for future years or reserve accumulation, prudent operating cost and cost of administration, and prudent conservation of public resources. To assure candidates that ample funds will be available for Voucher redemptions and to assure the public that Voucher fund redemptions will be prudently managed, by January 1st of each municipal election year, SEEC shall publish an "Available Program Funds Limit" for that year for Voucher redemptions. In setting the Available Program Funds Limit, SEEC shall use its best efforts to reasonably project and ensure that adequate Program Funds are available for that election year consistent with this subchapter, its goals and purposes and all reasonably

foreseeable circumstances and contingencies and shall set aside at least an amount needed for six primary and two general election candidates for each position in that year's election to qualify and spend their respective Campaign Spending Limit using Democracy Vouchers only (rather than private contributions, except for private contributions used to qualify). During any municipal election year, as soon as SEEC receives or reasonably believes it shall receive Democracy Vouchers for redemption in excess of the Available Program Funds Limit for that year, then Program Funds shall be deemed unavailable and SEEC shall publicly announce same and set a prompt deadline date for Democracy Voucher delivery, following which SEEC shall consider Democracy Vouchers received and available Program Funds and shall allocate remaining available Program Funds proportionately per unredeemed verified Democracy Vouchers on hand, pro rata among all participating candidates for all offices without discrimination. If any special election is called, SEEC shall set aside Program Funds for such election in an amount it deems appropriate, and shall be empowered to act and change, alter, or modify or set and implement standards, procedures, limits and deadlines as similar as may be practicable to those provided in this subchapter as SEEC deems proper and necessary for such special election, taking care to not unduly prejudice accumulation of funds for the Program.

(c) Penalties. No penalty provision in this subchapter shall diminish any other penalty or remedy under any other law. Participating candidates who make expenditures in excess of the Campaign Spending Limit shall be subject to a civil penalty of twice the amount of the expenditure in excess of such

limit, unless SEEC determines that the overspending is insignificant or trivial. All enforcement, administrative and other powers, procedures, rights, duties, remedies, process, civil penalties and other provisions in SMC 2.04.060, 2.04.070, 2.04.075, 2.04.090, 2.04.500, 2.04.510, 2.04.520, 2.16.010 and 2.16.020, relating to violations of election campaign contributions laws or initiative laws, shall apply in case of violations of this subchapter, and all penalties, remedies or consequences applicable to violations of SMC 2.04 or 2.06 shall be applicable for any violation of this subchapter, including but not limited to an order requiring the party to take particular action in order to comply with the law, and in addition, or alternatively, sanctions up to $5,000 for each violation.

(d) Crimes. A person is guilty of trafficking in a Democracy Voucher if the person knowingly purchases, buys, or pays consideration for any Democracy Voucher or knowingly sells, conveys for consideration or receives consideration for any Democracy Voucher; or attempts same. A person is guilty of theft of a Democracy Voucher if he or she steals (defined as when one knowingly obtains or exerts unauthorized control over with intent to deprive the proper holder or recipient thereof) or attempts to steal, a Democracy Voucher. A person is guilty of the crime of forgery of a Democracy Voucher if, with intent to injure or defraud, he or she attempts to falsely make, complete, or alter a Democracy Voucher or its assignment or possess, utter, offer, dispose of, or put off as true a Democracy Voucher or written assigned Democracy Voucher that he or she knows is forged. For purposes of this section, "falsely alter" means to change, without authorization by the

holder or recipient of the Voucher entitled to grant it, a Democracy Voucher by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner; to "falsely complete" means to make a Democracy Voucher assignment complete by adding or inserting matter, including but not limited to a forged signature, without the authority of the person entitled to assign the Voucher; to "falsely make" means to make or draw a complete or incomplete Democracy Voucher which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing or signing thereof; and "forged" or "forgery" means a Democracy Voucher which has been falsely made, completed, or altered. A person is guilty of possession of a stolen Democracy Voucher if he, she or it, being other than the recipient of a proper assignment of a Democracy Voucher, knowingly receives, retains, possesses, conceals or disposes of another's Democracy Voucher knowing that it has been stolen and withholds or appropriates the same to the use of any person other than the true owner or person entitled thereto. A person is guilty of trafficking in a stolen Democracy Voucher if the person attempts to traffic in a stolen Democracy Voucher, meaning to sell, transfer, distribute, dispense, or otherwise dispose of such stolen Democracy Voucher pertaining to another person, or to buy, receive, possess, or obtain control of same with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person. The crimes of trafficking in a Democracy Voucher, theft or forgery of a Democracy Voucher, possession of a stolen Democracy Voucher, or trafficking in a stolen

Democracy Voucher, are each a gross misdemeanor punishable by a fine not to exceed $5,000 or, by imprisonment for a term of up to 364 days, or both, or as otherwise provided by State law. In this subsection the term "person," "he," "she" or "actor" include any natural person, and, in addition, a corporation, a joint stock association, an unincorporated association or a political committee. In cases of all crimes defined by this subsection the Court may also require restitution to the Program of all costs of prosecution, including attorneys fees, as well as any amounts misappropriated or the face value of Democracy Vouchers misused and in case of crimes by a candidate or political committee the Court also may require return of all funds received from the Program in that election cycle consistent with equity, due process and proportional justice and or may disqualify such political committee or candidate from participating in the Program for that election cycle.

(e) Severability and captions. Provisions of this subchapter and its sections are separate and severable. The invalidity of any part or its application to any circumstance, shall not affect the validity of other parts or application to other circumstances. Captions provided are not substantive. The City Clerk may renumber or reformat this subchapter, this ordinance or these sections, for proper codification in the Seattle Municipal Code, without changing the substance.

Section 2. Funding; Lift of Levy Lids for Regular Property Taxes – Submittal and Amount.

To allow funding of the Seattle Democracy Voucher Program, provided in Section 1 above, the qualified electors of the City of Seattle hereby resolve to allow

funding through a levy lift under RCW 84.55.050 and resolve that the City's legislative authority may fund the Program pursuant to that authorization or alternatively through the general fund or any other lawful source of funds of its choosing. The taxes authorized in this section may be levied for collection in 2016 through 2025, raising up to $30,000,000 in aggregate over a period of up to ten years. The City shall not levy more than $3,000,000 (about 2.5 cents per $1,000 of assessed value) for this purpose in the first year, and in each subsequent year, in addition to the maximum amount of regular property taxes it would have been limited to by RCW 84.55.010 in the absence of voter approval under this ordinance, plus other authorized lid lifts. In 2016, total City regular property taxes collected would not exceed $3.60 per$1,000 of assessed value. Proceeds from the tax authorized in this section shall be used only to fund the Seattle Democracy Vouchers Program as provided in Section 1 of this measure, and any amendments thereto adopted by future Council ordinance. Pursuant to RCW 84.55.050(5), the maximum regular property taxes that may be levied in 2025 for collection in 2026 and in later years shall be computed as if the levy lid in RCW 84.55.010 had not been lifted under this ordinance. The tax authorized in this section shall not be collected to the extent the City allocates funds sufficient to establish and pay for the Program from other sources. Program funds including but not limited to any proceeds from the levy authorized herein, interest or earnings thereon, any amounts returned from candidates, and other funds allocated for the Program, shall be used for purposes of this ordinance and Program funds may be temporarily deposited or invested in such manner as

may be lawful for the investment of City money, and interest and other earnings shall be used for the same purposes as the proceeds.

Section 3. SMC 2.06.130 - Civil Remedies and Sanctions, is amended as follows:

Upon determining pursuant to SMC 2.04.060 through SMC 2.04.090 that a violation of this chapter has occurred, the Commission may issue an order requiring the party to take particular action in order to comply with the law, and in addition, or alternatively, may impose sanctions up to Five Thousand Dollars ($5,000) per violation. Any person who fails to file a properly completed registration or report within the time required by this chapter may also be subject to a civil penalty of ~~Ten Dollars ($10)~~ Seventy Five Dollars ($75) per day for each day each such delinquency continues except that during the last 30 days before any election such fine shall be at least Two Hundred Fifty Dollars ($250) per day and up to $1,000 per day in the discretion of SEEC, for each day such delinquency continues.

Section 4. SMC 2.04.165 - Reports of personal financial affairs, is amended as follows:

A. The following shall file a statement of financial affairs:

1. Every candidate shall within two weeks of becoming a candidate file with the City Clerk a statement of financial affairs for the preceding twelve months.

2. Every elected official and every candidate for a future election shall after January 1st and before April 15th of each year file with the City Clerk a

statement of financial affairs for the preceding calendar year, unless a statement for that same twelve month period has already been filed with the City Clerk. Any elected official whose term of office expires immediately after December 31st shall file the statement required to be filed by this section for the year that ended on that December 31st.

3. Every person appointed to a vacancy in an elective office shall within two weeks of being so appointed file with the City Clerk a statement of financial affairs for the preceding twelve months.

4. A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

5. No individual may be required to file more than once in any calendar year.

6. Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

B. The statement of financial affairs report shall contain the following:

1. The statement of financial affairs required by this chapter shall disclose for the reporting individual and each member of his or her immediate family:

a. Occupation, name of employer, and business address; and

b. Each bank or savings account or insurance policy in which any such person or persons owned a direct financial interest that exceeded $5,000 at any time

during the reporting period; each other item of intangible personal property in which any such person or persons owned a direct financial interest, the value of which exceeded $500 during the reporting period; the name, address, and nature of the entity; and the nature and highest value of each such direct financial interest during the reporting period; and

c. The name and address of each creditor to whom the value of $500 or more was owned; the original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt; provided, that debts arising out of a "retail installment transaction" as defined in Chapter 63.14 RCW (Retail Installment Sales Act) need not be reported; and

d. Every public or private office, directorship, and position held as trustee; and

e. All persons for whom any legislation, rule, rate, or standard has been prepared, promoted, or opposed for current or deferred compensation; provided, that for the purposes of this subsection, "compensation" does not include payments made to the person reporting by the governmental entity for which such person serves as an elected official for his or her service in office; the description of such actual or proposed legislation, rules, rates, or standards; and the amount of current or deferred compensation paid or promised to be paid; and

f. The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has

been received in any form of a total value of $500 or more; the value of the compensation; and the consideration given or performed in exchange for the compensation; and

g. The name of any corporation, partnership, joint venture, association, union, or other entity in which is held any office, directorship, or any general partnership interest, or an ownership interest of ten (10) percent or more; the name or title of that office, directorship, or partnership; the nature of ownership interest; and with respect to each such entity: (i) with respect to a governmental unit in which the official seeks or holds any office or position, if the entity has received compensation in any form during the preceding twelve months from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; (ii) the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in any form in the amount of $2,500 or more during the preceding twelve months and the consideration given or performed in exchange for the compensation; provided, that the term "compensation" for purposes of this subsection B1gii does not include payment for water and other utility services at rates approved by the Washington State Utilities and Transportation Commission or the legislative authority of the public entity providing the service; provided, further, that with respect to any bank or commercial lending institution in which is held any office, directorship, partnership interest, or ownership interest, it shall only be necessary to report either the name, address, and occupation of every

director and officer of the bank or commercial lending institution and the average monthly balance of each account held during the preceding twelve months by the bank or commercial lending institution from the government entity for which the individual is an official or candidate or professional staff member, or all interest paid by a borrower on loans from and all interest paid to a depositor by the bank or commercial lending institution if the interest exceeds $600; and

h. A list, including legal or other sufficient descriptions as prescribed by the Commission of all real property in The State of Washington, the assessed valuation of which exceeds $2,500 in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for that interest; and

i. A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State Of Washington, the assessed valuation of which exceeds $2,500 in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for that interest, and the name and address of the person furnishing the consideration; and

j. A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State of Washington, the assessed valuation of which exceeds $2,500 in which a direct financial interest was held; provided, that if a description of the property has been included in a report previously filed, the property may be listed, for purposes of this

provision, by reference to the previously filed report; and

k. A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State of Washington, the assessed valuation of which exceeds $5,000, in which a corporation, partnership, firm, enterprise, or other entity had a direct financial interest, in which corporation, partnership, firm, or enterprise a ten (10) percent or greater ownership interest was held; and

l. A list of each occasion, specifying date, donor, and amount, at which food and beverage in excess of $50 was accepted from a source other than the City provided all or portion; and

m. A list of each occasion, specifying date, donor, and amount, at a source other than the City paid for or otherwise provided all or a portion of the travel or seminars, educational programs or other training; and

n. Such other information as the Commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the Commission shall prescribe by rule.

2. Where an amount is required to be reported under subsections B1a through m of this section, it shall be sufficient to comply with the requirement to report whether the amount is less than $1,000, at least $1,000 but less than $5,000, at least $5,000 but less than $10,000, at least $10,000 but less than $25,000, ~~or~~ at least $25,000 but less than $100,000, at least $100,000 but less than $200,000, at least $200,000 but less than $1,000,000, at least $1,000,000 but less than $5,000,000, or $5,000,000 or more. An amount of stock

shall be ~~may be~~ reported by ~~number of shares instead of by~~ market value at the time of reporting. Each person reporting shall also report his or her reasonably estimated net worth. No provision of this subsection may be interpreted to prevent any person from filing more information or more detailed information than required.

3. Items of value given to an official's or employee's spouse or family member are attributable to the official or employee, except the item is not attributable if an independent business, family, or social relationship exists between the donor and the spouse or family member.

C. Concealing Identity of Source of Payment is Prohibited—Exception. No payment shall be made to any person required to report under this chapter and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment except that the Commission may issue categorical and specific exemptions to the reporting of the actual source when there is an undisclosed principal for recognized legitimate business purposes.

Section 5. SMC 2.04.370 - Mandatory limitations on contributions, is amended as follows:

A. No person shall make a contribution to any candidate for Mayor, member of the City Council, or City Attorney of the City, except in the election cycle for that candidate as defined in Section 2.04.010

B. No person shall contribute more than $500~~700~~ to any candidate for Mayor, member of the City Council, or City Attorney of the City, in any election cycle.

C. A candidate for Mayor, member of the City Council, or City Attorney of the City, may only accept or receive a campaign contribution during an election cycle as defined in Section 2.04.010

D. No candidate for Mayor, member of the City council or City Attorney of the City shall solicit or receive campaign contributions of more than $500~~700~~ from any person in any election cycle.

E. The limitations imposed by this section 2.04.370 shall not apply to:

1. A candidate's contributions of his or her own resources to his or her own campaign or contributions to the candidate's campaign by the candidate or the candidate's spouse or state registered domestic partner of their jointly owned assets;

2. Independent expenditures as defined by this Chapter 2.04

3. The value of in-kind labor; and

4. Contributions consisting of the rendering of clerical or computer services on behalf of a candidate or an authorized political committee, to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws.

F. The limitations imposed by this section shall apply to contributions of the candidate’s spouse’s or state registered domestic partner's separate property.

G. The limitations in this section shall be adjusted commencing before the 2019 election cycle, and prior to each election cycle thereafter, by SEEC to account for inflation or deflation using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the period since the effective date of this measure or the prior adjustment, as calculated by the United States Department of Labor. The declaration of the Washington State Department of Labor and Industries each September 30 regarding the rate by which Washington State's minimum wage rate is to be increased effective the following January 1, shall be the authoritative determination of the rate or percentage of increase or decrease to be adjusted, except that SEEC may round the new figure up or down, to the nearest $5 or $10 increment, as it deems proper. Section 6. The provisions of Seattle Municipal Code sections 2.04.400, 2.04.410, 2.04.420, 2.04.430, 2.04.440, 2.04.50, 2.04.460 and 2.04.470 are repealed.

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

MARK ELSTER and SARAH PYNCHON, Plaintiffs, v. THE CITY OF SEATTLE, a Washington Municipal corporation, Defendant.	Case No. __________ **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The City of Seattle compels property owners to sponsor the partisan political speech of city residents. A new levy on real property funds so-called "democracy vouchers" that residents donate to candidates running for local elected offices. Property owners must thereby pay for political viewpoints they object to and enrich the campaign coffers of politicians they don't support. Indeed, "democracy voucher" is mere euphemism for a law that operates in effect as a politician enrichment tax.

2. The First Amendment embodies not only the right to speak, but also its corollary—the right not to speak. This includes the right to refrain from funding the speech of another person. The Supreme Court calls this a "bedrock principle" of the First Amendment—"that, except perhaps in the rarest of circumstances, no person in this country may be

compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn*, __ U.S. __, 134 S. Ct. 2618, 2644, 189 L. Ed. 2d 620 (2014). The politician enrichment tax, by forcing Seattle property owners to finance campaign contributions, tramples upon this bedrock principle.

PARTIES

3. Plaintiff Mark Elster has owned and resided with his family in a home in the Magnolia neighborhood of Seattle since 1990. He is subject to the politician enrichment tax. Mr. Elster grew up in West Seattle and graduated from the University of Washington with a Masters in Architectural Design in 1988. He then cofounded AOME Architects in downtown Seattle—an award-winning firm that builds homes across the Northwest. Mr. Elster has actively volunteered at his sons' local schools over the years, including serving as PTA President, designing a school garden, and teaching magic classes to middle schoolers.

4. Mr. Elster is politically active, often meeting with candidates and attending campaign activities. He cares deeply about personal liberty and robust free markets. Mr. Elster does not wish to support any of the local candidates eligible to receive democracy vouchers. He had considered using his vouchers to support Sara Nelson for city council, but Ms. Nelson has declined to participate in the democracy voucher program because she objects to it on an ethical basis. Mr. Elster no longer plans to use the vouchers. He adamantly objects to being compelled to subsidize views that conflict with his own values.

5. Plaintiff Sarah Pynchon owns property in Seattle subject to the politician enrichment tax, though she herself lives outside city limits. Ms. Pynchon moved to the Seattle area after completing her MBA at University of California-Berkeley in 1997. She worked for T-Mobile for many years before turning to her current career as a marketing consultant. She also enjoys volunteering at a camp for at-risk kids every year. Ms. Pynchon has owned and rented out a four-bedroom, single-family home in Seattle's Broadview neighborhood since August 2005. She also rents out a small studio condo in Seattle that she purchased in 2009.

6. Ms. Pynchon herself is not a Seattle resident or registered to vote in Seattle. She is therefore not qualified to receive vouchers, though she still must pay for the vouchers of Seattle residents. Ms. Pynchon objects to being compelled to subsidize other people's political speech, especially when she herself is not entitled to vouchers.

7. Defendant City of Seattle is a municipality located in King County, Washington.

JURISDICTION AND VENUE

8. Plaintiffs Mark Elster and Sarah Pynchon bring this civil-rights lawsuit under 42 U.S.C. § 1983 for the violation of rights secured by the First Amendment to the United States Constitution.

9. This Court has jurisdiction over this matter under RCW 4.28.020, RCW 7.24.010, 7.40.010, and Article IV, Sections 1 and 6, of the Washington State Constitution.

10. Under RCW 4.12.020, venue is proper in King County Superior Court because the City of Seattle sits within county limits.

FACTUAL ALLEGATIONS

11. In November 2015, Seattle became the first city in the nation to single out property owners to finance campaign contributions through so-called "democracy" vouchers. Seattle voters passed Initiative 122 (I-122), entitled "Honest Elections Seattle," which established the voucher program. I-122 is codified in Subchapter VIII of Section 2.04 of the Seattle Municipal Code. A true and correct copy of this initiative is attached as Exhibit A.

HOW THE POLITICIAN ENRICHMENT TAX OPERATES

I. The politician enrichment tax funds municipal campaign contributions

12. Washington law imposes strict limits on municipalities' power to increase property taxes. *See* RCW 84.55.010. A taxing district, however, can bypass the state law's lid on the levy rate if the levy is authorized by an initiative approved by a voter majority. RCW 84.55.050. I-122 lifts the lid for the purpose of imposing the politician enrichment tax.

13. The levy lift lasts from 2016 through 2025 and authorizes the county tax assessor to collect up to $30,000,000 in politician enrichment tax revenue over that period, with a cap of $3,000,000 per year. I-122 § 2. This is in addition to the regular property taxes that the city collects through the King County assessor's office.

14. The politician enrichment tax authorized by I-122 may only be used to fund vouchers for Seattle residents to give to qualifying candidates in Seattle municipal elections and the administrative costs of running the program. *Id.*

II. Voucher distribution

15. On the first business day of the municipal election year, the Seattle Ethics and Elections Commission (SEEC) distributes four $25 campaign finance vouchers to Seattle voters.

16. Each individual duly registered to vote in Seattle elections by the prior November automatically receives four vouchers in the mail. Anyone who subsequently becomes a registered voter in Seattle by October 1 of the election year will also receive four vouchers by mail.

17. Seattle residents who are not registered to vote in Seattle can also receive four vouchers. Any citizen or green-card holder over the age of 18 who has lived in the city for thirty days can obtain their vouchers upon request to the SEEC.

III. Voucher use

18. Voucher recipients can contribute the vouchers, separately or in combination, to any qualified candidate for Mayor,[1] City Council, or City Attorney who agrees to abide by certain conditions, listed below in paragraph 25. SMC § 2.04.620(e).

---

[1] Mayoral candidates may receive vouchers starting in the 2021 election cycle.

19. Voucher recipients can only assign vouchers to an eligible candidate participating in the voucher program. *Id.*

20. Each voucher states the voucher holder's name, an identification number, and the election year. *Id.* § 2.04.620(c). It contains language of assignment with blank spaces for the date and the name of the candidate that the holder wishes to support. *Id.*

21. No one can buy, sell, or give away unassigned vouchers. *Id.* § 2.04.620(e). Trafficking in vouchers constitutes a gross misdemeanor punishable by up to a $5,000 fine and imprisonment for up to 364 days. *Id.* § 2.04.690(d).

22. Each voucher contains the following attestation:

> I attest that I obtained this Democracy Voucher properly and make this assignment freely, voluntarily and without duress or in exchange for any payment of any kind for this assignment, and not for any consideration of any kind, and that I am aware that assignment does not guarantee availability of funds and is irrevocable. Assignment is complete upon delivery to Seattle Ethics and Elections Commission, the named candidate, or her or his registered representative. Sale/transfer for consideration of this Democracy Voucher is strictly prohibited. Voucher may be redeemed only by qualifying candidates and only if such candidate has complied with additional

> contribution and spending limits and if funds are available.

Id. § 2.04.690(c).

23. After listing a candidate's name and signing the voucher, the holder can deliver it to the selected candidate, an authorized representative, or the SEEC. *Id.* § 2.04.690(d). This can occur by mail, in person by anyone that the voucher holder wishes, or via SEEC's online system. *Id.*

24. If voucher recipients do not assign the vouchers to an eligible candidate by the last business day in November after the election, then the unused voucher funds will carry over to the next election cycle to fund the program. *See id.* § 2.06.620(e); Democracy Voucher Program FAQ.[2] Unused voucher money does not roll over into the general fund. Democracy Voucher Program FAQ, *supra*.

25. The program limits candidates' eligibility to receive vouchers. Candidates interested in the program must apply to the SEEC. To qualify, candidates—among other things—must:

- Accede to specific campaign spending and contribution limits not otherwise required by law;
- Receive a specified minimum number of campaign contributions;
- Participate in at least three debates in the primary and general elections; and

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[2] http://www.seattle.gov/democracyvoucher/i-am-a-seattle-resident/faqs# (What happens if I do not use my Democracy Vouchers?)

- Forebear soliciting on behalf of groups that make independent expenditures in the same election cycle.

Id. § 2.04.630.

26. Candidates can only use voucher funds for campaign-related expenses. *Id.* § 2.04.630(i).

27. Misuse of voucher funds can result in a civil penalty of up to $5,000. *Id.* § 2.04.500.

28. I-122 does not require the SEEC to audit candidates' uses of voucher funds. Nor does it require candidates to sign a sworn statement or otherwise affirm that they will use the voucher funds for limited campaign purposes.

IV. The Vouchers' impact

29. The politician enrichment tax disfavors minority viewpoints and undermines the speech rights of property owners

30. I-122 does not provide an equal amount of funding to each eligible candidate.

31. Rather, each candidate will receive campaign funding from vouchers only to the extent that Seattle residents choose to direct their vouchers to support that candidate.

32. Candidates who enjoy the most support among residents will receive more voucher funds than candidates with less support.

33. This distribution differs from a neutral public funding scheme in which candidates all receive an equal allotment of public funds.

34. The unequal distribution of voucher funds based on voter preferences harms the political interests of property owners who must pay the politician enrichment tax yet support less popular candidates.

35. Landlord-tenant issues present one example of how the law harms property owners compelled to fund campaign contributions.

36. Renters comprise more than 54 percent of Seattle households. *See* Seattle Ordinance 125280.

37. The political interests of Seattle's many renters and their landlords often clash before the city council. Landlord groups like the Rental Housing Association, for example, actively opposed recent legislation such as the Seattle Renters' Commission, caps on move-in fees, and the first-in-time rule limiting landlord discretion to select tenants. Pro-renter groups such as the Tenants Union of Washington State and Washington CAN supported these measures.

38. Seattle imposes the burden of funding renters' political speech—in the form of vouchers—solely on the shoulders of landlords and other property owners. It thus forces landlords to fund the speech of the very interest group that they often oppose before the city council.

39. The current distribution of 2017 voucher funds underscores this outcome.

40. As of June 7, 2017, three candidates are actively receiving vouchers, while ten more are awaiting approval from the SEEC. Two of the

currently eligible candidates are running for city council, and the third is running for city attorney.

41. Four local candidates have opted not to participate in the program. Of these, city council candidates Sara Nelson and David Preston have declined to participate because of ethical and constitutional objections to the program.

42. As of June 9, one of the three currently eligible candidates, Jon Grant—a housing advocate and former head of the Tenants Union of Washington State—has received more compelled campaign contributions than the other two candidates combined.

43. Of the 9,116 vouchers that voters have thus far assigned to candidates for the 2017 election, Mr. Grant has scooped up 5,178, totaling $129,450.[3]

44. If elected, Mr. Grant promises, among other things, to grant renters collective bargaining rights, a proposal that will affect the political and economic interests of Seattle's landlords.[4] He has vowed to "freeze all permits, licenses, and rental registrations where the landlord has any ownership stake until they meet and negotiate in good faith with the tenants."[5]

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[3] Democracy Voucher Program, Program Data, http://www.seattle.gov/democracyvoucher/program-data.

[4] Elect Jon Grant, Affordable Housing, http://www.electjongrant.com/affordable_housing.

[5] *Id.*

45. I-122 forces landlords and other property owners to sponsor these messages to the tune of $129,250 to date.[6]

46. The politician enrichment tax disfavors dissidents and compels property owners to bankroll speech they do not wish to support.

CLAIM FOR RELIEF

The politician enrichment tax unconstitutionally compels property owners to fund political speech in violation of the First Amendment

47. The plaintiffs reallege the preceding paragraphs as though fully set out here.

48. The First Amendment to the United States Constitution protects an individual's right to refrain from speaking or subsidizing the speech of others.

49. I-122 violates the First Amendment on its face and as applied to Mr. Elster and Ms. Pynchon.

50. A viewpoint-based or content-based speech regulation—whether it compels silence or compels speech—must satisfy strict scrutiny. *See Knox v. Service Employees Int'l Union, Local 1000*, 567 U.S. 298, 132 S. Ct. 2277, 2289, 183 L. Ed. 2d 281 (2012). Such speech regulations must serve a compelling interest in a narrowly tailored manner. *Harris*, 134 S. Ct. at 2639.

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[6] Democracy Voucher Program, Program Data, http://www.seattle.gov/democracyvoucher/program-data.

51. The politician enrichment tax forces Seattle property owners to subsidize campaign contributions to local politicians. By distributing such funds at the whim of majoritarian interests, the program disfavors minority viewpoints. It also disfavors the supporters of candidates who object to and refuse to abide by the increased campaign contribution limits required to participate because these candidates' supporters cannot use their vouchers to contribute to their preferred campaign. The program is therefore viewpoint-based and must satisfy strict scrutiny.

52. The law also discriminates based on content. It compels the financial support of speech on a particular topic—campaigns for Seattle elected offices. For this reason, too, the democracy voucher program must satisfy strict scrutiny.

53. I-122 does not satisfy strict scrutiny because funding the speech of Seattle residents at the expense of property owners serves no compelling interest.

54. The law is not narrowly tailored to achieve its purposes in a manner least restrictive of First Amendment freedoms. The voucher program, for example, claims to fight corruption. SMC § 2.04.620(a). Certainly, preventing contributions might reduce corruption. But corruption is not stymied when individuals who wish to refrain from contributing are forced to do so.

55. The law also purports to level the playing field and strengthen democracy. *Id.* By disfavoring minority viewpoints, however, the law undermines rather than serves these goals. A

program that funnels money in a partisan manner does not level the playing field, strengthen democracy, or prevent corruption. Indeed, the program contradicts each of these goals. It therefore fails strict scrutiny and violates the First Amendment on its face.

56. Additionally, the politician enrichment tax violates the First Amendment as applied to Mr. Elster and Ms. Pynchon.

57. Mr. Elster does not support any of the candidates currently eligible to receive vouchers. He had planned to use his vouchers to support Sara Nelson, but she has refused to participate in the program because she objects to the policy. Therefore any use of the voucher funds will enrich the war chests of candidates that he opposes. I-122 thus violates his First Amendment right to refrain from supporting speech with which he disagrees.

58. Ms. Pynchon, as a property owner who lives outside the city, must subsidize private speech, but she cannot avail herself of the voucher program to counteract voucher contributions to candidates that she does not want to support. I-122 therefore violates her First Amendment right to refrain from subsidizing speech.

59. Plaintiffs have and will continue to suffer irreparable harm until this law is declared unconstitutional and void.

DECLARATORY RELIEF ALLEGATIONS

60. An actual and substantial controversy exists between Plaintiffs and the City as to their respective legal rights and duties.

61. Under 42 U.S.C. § 1983, Plaintiffs contend that Subchapter VIII of Section 2.04 of the Seattle Municipal Code and the associated property levy violate the First Amendment on their face and as applied to Mr. Elster and Ms. Pynchon.

62. The First Amendment to the United States Constitution does not allow local governments to force individuals to subsidize private political speech.

63. I-122 violates the First Amendment by compelling Seattle property owners to pay for other people's campaign contributions.

64. A declaratory judgment will afford relief from the uncertainty and insecurity giving rise to this controversy.

PERMANENT INJUNCTIVE RELIEF ALLEGATIONS

65. Mr. Elster and Ms. Pynchon have no adequate remedy at law to address the City's forced subsidization of private political speech.

66. I-122 offers no refund mechanism or exemption for conscientious objection. Mr. Elster and Ms. Pynchon therefore will suffer irreparable injury absent an injunction restraining the City from administering this unconstitutional program.

PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

1. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal Code and the associated levy facially violate the First Amendment to the United States Constitution;

2. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal Code and the associated levy violate the First Amendment to the United States Constitution as applied to Mr. Elster and Ms. Pynchon;

3. For a permanent injunction forbidding the City from enforcing Subchapter VIII of Section 2.04 of the Seattle Municipal Code;

4. For an award of reasonable attorney fees, expenses, and costs under 42 U.S.C. § 1988; and

5. For such other relief as the Court deems just and proper.

PACIFIC LEGAL FOUNDATION
BRIAN T. HODGES, WSBA No. 31976
ETHAN W. BLEVINS, WSBA No. 48219

Date: June 28, 2017

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Attorneys for Plaintiffs

No. ________

MARK ELSTER and SARAH PYNCHON
v.
THE CITY OF SEATTLE

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR A WRIT OF CERTIORARI, contains 8,393 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Nov. 6, 2019.

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No. ____

MARK ELSTER and SARAH PYNCHON,
Petitioners,
v.
THE CITY OF SEATTLE,
Respondent.

AFFIDAVIT OF SERVICE

I, Andrew Cockle, of lawful age, being duly sworn, upon my oath state that I did, on the 7th day of November, 2019, send out from Omaha, NE 2 package(s) containing * copies of the PETITION FOR WRIT OF CERTIORARI in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

SEE ATTACHED

To be filed for:

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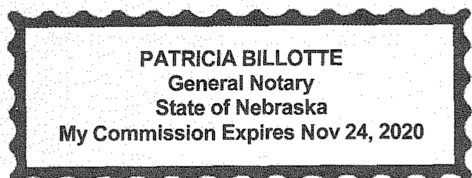
Counsel of Record
WENCONG FA
MOLLIE R. WILLIAMS
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Email: EBlevins@pacificlegal.org

Counsel for Petitioners

Subscribed and sworn to before me this 7th day of November, 2019.
I am duly authorized under the laws of the State of Nebraska to administer oaths.



Patricia C. Billotte
Notary Public

Andrew H. Cockle
Affiant

38506

SERVICE LIST, ELSTER v. CITY OF SEATTLE, NO. ______

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