

CITY HAS ILLEGALLY USED FACILITIES AND RESOURCES TO PROMOTE PROPOSITION 1, “A REGULAR TAX LEVY INCLUDING SEATTLE PUBLIC LIBRARIES” -- SUMMARY OF A COMPLAINT FILED JULY 3, 2012 WITH THE SEATTLE ETHICS AND ELECTIONS COMMISSION

On July 3, 2012, Chris Leman filed with the Seattle Ethics and Elections Commission a 51-page complaint, with 29 exhibits, regarding violations of City and state campaign laws by the Seattle Public Library and the City Budget Office in their efforts to promote a yes vote on Seattle Proposition 1, which is on the August 7 ballot.

Proposition 1 would increase property taxes by \$122.6 million over seven years. The complaint presents evidence that these City agencies have violated laws and regulations that prohibit the use of City resources and facilities from being used to promote a ballot measure, and require that any statements by a public agency about a ballot measure be objective and accurate.

Key contentions in the July 3 complaint to the Ethics and Elections Commission:

- The Library’s one-page “Library Levy Fact Sheet” and 54-page “Blue Book” violate campaign laws by falsely claiming certainty that the levy proceeds will even go to the Library and by calling it a “library levy.” The correct name of the levy is “Regular Tax Levy including Seattle Public Libraries,” as defined by the levy ordinance’s section 7.
- The Library is violating campaign laws by falsely claiming in its “Fact Sheet” and “Blue Book” and on its web site and in instructions to its staff for what to say to the public, that if the levy proceeds do make it to the Library, they necessarily will be spent on increasing hours and days of operation, technology, and maintenance; and that defeat of the levy will necessarily cause cutbacks and branch closures. These statements are speculations, not facts. For an agency to speculate about the consequences of a levy’s passage or defeat is an illegal effort to influence the voters.
- The Library timed publication of 1000 copies of the Blue Book (subtitled “Proposed 2012 Library Levy”), which is ostensibly addressed to the City Council during their consideration of the levy ordinance, to actually come out after the levy ordinance was passed, and thus illegally to promote passage of the levy.
- The Library is illegally influencing voters by posting the Fact Sheet and pages from the Blue Book at every major information desk and checkout and return counters in the Central Library and the 26 branch libraries.
- The Library illegally employed Sue Tupper, a campaign manager for passage of the earlier 1998 Libraries for All bond issue, to develop strategy for the 2012 levy campaign.
- The Library provides free and subsidized use of City facilities, personnel, and fundraising help to the Seattle Public Library Foundation, dominant funder of the Proposition 1 campaign. City Librarian Marcellus Turner and Library Board member Theresa Fujiwara are members of the Foundation board. President of the Library Board (governing body

for the Library) Marie McCaffrey is also the Chair of Yes Seattle Libraries, recipient of \$110,000 from the Foundation.

- The City Budget Office has illegally promoted Proposition 1 by using City resources and facilities to develop for the Library special analyses that speculate about future cuts in ways that it has not developed for other departments. The Library is claiming that without passage of the levy, it faces a 2013 budget cut of \$5 million (almost ten percent of its budget—far more than the cuts facing much larger City departments).
- The City Budget Office and the Library are withholding documents about the Library's 2013 budget that Lemman has requested under the state Public Records Act. They claim that disclosure of the documents is exempt because they are "deliberative," and do not need to be disclosed until the Mayor has presented his 2013 budget proposals to the City Council in late September (nearly two months after the August 7 levy election). The documents should not be withheld because they are needed by voters to judge claims made on behalf of the levy, and by the Ethics and Elections Commission to track any illegal promotion of Proposition 1 in the generation and handling of the special budget estimates.

The complaint asks the Ethics and Elections Commission to take the following actions:

- Issue a preliminary order directing the City to temporarily suspend the promotional activities that are the subject of this complaint.
- Well before the August 7 election, find the City in violation of Seattle Municipal Code 42.17.130 for using public facilities to promote Proposition 1.
- Ask the Seattle Public Library Foundation to stop making donations to the Yes Seattle Libraries campaign until the Commission finishes action on this complaint.
- Institute informal dispute resolution measures that are available under section L of the Commission's General Rules and Procedure.
- Instruct the Ethics and Elections Commission staff to request the Seattle Channel to fund and broadcast, and to work with the Seattle Channel to produce, a Video Voters Guide containing statements from the yes and no campaigns regarding City Proposition 1; and (optionally for the Commission and staff) for County Proposition 1 (the juvenile justice levy). (In recent years, Video Voters Guides have been produced only in odd numbered years.)
- Make public the Commission staff report on this complaint at the earliest feasible opportunity.

BACKGROUND

Ordinance 123851, which defines Proposition 1, makes it is one of the weakest and most unaccountable ballot measures placed before the voters in a generation. Its section 4 states: "Unless otherwise directed by ordinance, Proceeds shall be deposited in the Library Levy fund."

That is, the levy ordinance gives the Mayor and City Council the discretion to pass a new ordinance to spend the “library” levy funds entirely on non-library purposes. The ordinance also contains no commitments on how the levy proceeds would be spent on the Library, if any of the proceeds actually get there. In contrast, Ord. 119019, which placed the 1998 Libraries for All bond issue before the voters, did not provide for the possibility of an ordinance diverting the proceeds away from Library purposes, and listed specific projects and amounts, requiring additional public process and a City Council supermajority for any changes in the commitments it made to the voters.

Seattle’s 2012 levy ordinance lacks the specificity and safeguards that were in the 1998 bond issue ordinance. Section 5 of the 2012 levy ordinance states that “The levy proceeds will be spent in accordance with the annual City budget process for each year of the levy.” It does state that proceeds will be used “for Library services,” and that investments will be made “in the following four categories of Library Services”: hours and access, collections; technology; and maintenance. However, the ordinance does not say that investments of the levy proceeds in library services will be limited to these categories, only that “investments will be made” in them (however small these investments may be). It therefore is not accurate to tell voters (as the Library and the pro campaign are doing) that the levy proceeds will be spent only or even primarily on these categories of Library services.

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

Unanimous City Council passage of the levy ordinance on April 9 seems to have resulted from a deal among the Library, Mayor, City Council, and City Budget Office under which \$5 million/year of the funding that the Library receives from the City’s General Subfund would be transferred to other departments, to be supplanted by levy funds--so that, at best, the net addition to the Library from the \$17 million/year levy would be only \$12 million, with the likelihood that the Mayor and City Council will make further cuts in the General Subfund dollars going to the Library. Even though this cut in General Subfund funding to the Library is claimed to be necessitated by the tough economy and the City’s tight revenue situation, it would continue through the seven years of the levy, with no commitment to restore or increase the Library’s current share of the General Subfund when the economy and revenues improve. When the levy expires after seven years, the Library will thus be in worse shape financially than it is now, as the Mayor and City Council will have committed to other departments at least this \$5

million/year and probably more in additional cuts they will make in the Library's share of the General Subfund in later years of the levy.

Because of the lack of certainty in where the proceeds from the 2012 levy would go, Leman earlier filed an objection with the Ethics and Elections Commission to the City Attorney's proposed voters' pamphlet Explanatory Statement for attributing more certainty than was present in the levy ordinance. As a result, the Commission rewrote the Explanatory Statement, removing language stating that hours and access, collections, technology, and maintenance were the only categories of library services that the levy could fund; and by adding language to make clear that program elements such as operating hours, reference services, and computers were examples of possible funding rather than certainties. Unfortunately, the Library and the pro campaign are continuing to make claims about the levy that the Ethics and Elections Commission has thus disallowed.

The Ethics and Elections Commission ruled in 2005, with a supplementary opinion in 2006, that Mayor Nickels had violated SMC 2.04.300's prohibition on use of public facilities by printing and mailing an accomplishments report that assisted his re-election campaign. The Nickels case has important parallels to the current Library case, all of which suggest that the Library's violation is more serious than was Nickels'.

Leman's complaint concludes as follows:

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

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

For more information: Chris Leman, cleman@oo.net (206) 322-5463.