



1 Seattle may have violated SMC 2.04.300 by using public facilities  
2 to promote Proposition 1, "A regular tax levy including Seattle  
3 Public Libraries." The August 7 election is fast approaching,  
4 and justice must be done. I ask the Commission to act quickly on  
5 the complaint and recommended remedies. In the longer term, I  
6 also ask the Commission to develop a supplementary advisory  
7 opinion to reduce uncertainty about how SMC 2.04.300 applies to  
8 ballot measures; and to develop a protocol for the advising  
9 relationship that Commission staff have with agencies.

## 10 II. APPLICABLE LAWS, RULES, AND INTERPRETATIONS

11 The following laws, regulations, and interpretations apply  
12 to the current case. Copies will be provided to the Commission  
13 upon request.

14 (1) Section 2.04.300 of the Seattle Municipal Code states:

15 Prohibition against use of public office facilities in  
16 campaigns. No elected official nor any employee of his or  
17 her office nor any person appointed to or employed by any  
18 public office or agency may use or authorize the use of any  
19 of the facilities of a public office or agency, directly or  
20 indirectly, for the purpose of assisting a campaign for  
21 election of any person to any office or for the promotion of  
22 or opposition to any ballot proposition. Facilities of  
23 public office or agency include but are not limited to use  
24 of stationery, postage, machines, and equipment, use of  
25 employees of the office or agency during working hours,  
vehicles, office space, publications of the office or  
agency, and clientele list of persons served by the officer  
or agency; provided, that the foregoing provisions of this  
section shall not apply to the following activities: ... C.  
Activities that are part of the normal and regular conduct  
of this office or agency.

(2) Seattle Ethics and Elections Commission Administrative  
Rules (November 7, 2007).

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

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1 (3) The Oct. 13, 2005 Determination and the Feb. 1, 2006  
2 Supplementary Opinion) that the Ethics and Elections Commission  
3 issued in Case No. 05-2-0413, ruling that Mayor Greg Nickels  
4 violated SMC 2.04.300's prohibition on use of public facilities  
5 to assist his re-election campaign by distributing a report on  
6 his accomplishments.

7 (3) Using language very similar to SMC 2.04.300, RCW  
8 42.17A.555 states:

9 Use of public office or agency facilities in campaigns –  
10 Prohibition – Exceptions. No elective official nor any  
11 employee of his or her office nor any person appointed to or  
12 employed by any public office or agency may use or authorize  
13 the use of any of the facilities of a public office or  
14 agency, directly or indirectly, for the purpose of assisting  
15 a campaign for election of any person to any office or for  
16 the promotion of or opposition to any ballot proposition.  
17 Facilities of a public office or agency include, but are not  
18 limited to, use of stationery, postage, machines, and  
19 equipment, use of employees of the office or agency during  
20 working hours, vehicles, office space, publications of the  
21 office or agency, and clientele lists of persons served by  
22 the office or agency. However, this does not apply to the  
23 following activities: ... 3) Activities which are part of  
24 the normal and regular conduct of the office or agency.

19 (4) WAC 390-05-271(2) states:

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

(5) WAC 390-05-273 states:

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

13        (3) Memorandum by James K. Pharris, Washington Deputy  
14       Solicitor General, "2009 Election—Restrictions on Use of Public  
15       Funds and Property to Support or Oppose Candidates or Ballot  
16       Measures," Oct. 30, 2009. In this interpretation of RCW  
17       42.52.180 (which is almost identical to SMC 2.04.300), Pharris  
18       states (p. 7) that while an agency may conduct research on the  
19       likely results of passage of a ballot measure, "it must be clear  
20       that the research is being conducted with the purpose of  
21       gathering the facts, is directly related to the ordinary conduct  
22       of the agency's business, and is not designed to support or  
23       oppose a candidate or ballot measure." He also emphasizes that  
24       it would be a violation of the law for an agency "fact sheet" to  
25       speculate about financial consequences from passage or defeat of  
26       a ballot measure:

27        The major flaw in your logic is to characterize as a "fact"  
28        your predicted outcome of the legislative session, should  
29        the initiative be approved. The legislature is legally free  
30        to replace the agency's funding, no matter how unlikely that  
31        outcome is. Therefore it is simply not a "fact" that the  
32        agency's programs would be eliminated. It is only  
33        speculation. There seems little purpose for the agency to

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35        alleged use of public facilities to  
36        promote City Proposition 1

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1 indulge in such speculation, except to influence the  
2 election results. Perhaps the agency could publish a true  
3 "fact sheet" which, for instance, lists the current programs  
4 administered by the agency with their current budget.  
Perhaps the material also could point out the current source  
of the agency's budget without speculating what would happen  
if that funding source disappeared.

5 (4) Public Disclosure Commission, "Guidelines for Local  
6 Government Agencies in Election Campaigns" PDC Interpretation

7 #04-02 (Revised Sept. 28, 2006) (on web: [www.pdc.wa.gov](http://www.pdc.wa.gov), click  
8 "home", then "laws", then "rules/commission interpretations")

9 includes the following:  
10

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

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

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

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

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

1  
2 (f) "...the clause 'objective and fair presentation of the  
3 facts' means that in addition to presenting the facts, the  
4 materials should present accurately the costs and other  
5 anticipated impacts of a ballot measure." (p. 6)

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

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

### 17 III. EXHIBITS

18 The following exhibits are offered in support of this  
19 complaint.

20 (1) June 20, 2012 e-mail from Library Communications

21 Director Andra Addison regarding the 1998 "Brown Book"

22 (2) "Citizens' Summary, Libraries for All: Proposed Seattle

23 Public Library Capital Plan" (four-pages, 1998) Handout

24 used by the Library leading up to passage of the bond

25 issue ordinance and during the ballot measure campaign.

(3) Ord. 119019 (the May 26, 1998 ordinance that defined the

"Libraries for All" bond issue that was on the Nov. 3,

1998 ballot). Ordinance number written in by Chris

Leman.

- 1 (4) First page of listing from the Ethics and Elections  
2 commission web site of 1998 donations to Neighbors for  
3 Libraries, showing a total of \$200,000 donated by the  
4 Seattle Public Library Foundation.
- 5 (5) C-1 report to the Ethics and Elections Commission filed  
6 August 18, 1998 by Neighbors for Libraries, showing Sue  
7 Tupper as a Committee Officer.
- 8 (6) Agreement between the Seattle Public Library and Suzanne  
9 M. Tupper for consultant services between January and  
10 April, 2012. Date appears to be January 18, 2012.  
11 Footer shows the topic as "LFA Levy Consulting."
- 12 (7) Sue Tupper "talking points" for January 25, 2012 meeting  
13 of the Library Board
- 14 (8) January 26, 2012 e-mail exchange between Marilyn Gardner  
15 (SPL) and Wayne Barnett (SEEC) regarding the contract  
16 that the Library had already signed with Sue Tupper
- 17 (9) March 5, 2012 filing with the Ethics and Elections  
18 Commission of the Library Levy Committee, later to be  
19 renamed Yes Seattle Libraries. The Chair is listed as  
20 Marie McCaffrey.
- 21 (10) March 30, 2012 letter from the Seattle Community  
22 Council Federation to the City Council on the proposed  
23 levy ordinance
- 24 (11) Ord. 123851 (the April 9, 2012 ordinance that defines  
25 Proposition 1 that is on the August 7 ballot).

- 1 (12) March 9, 2012 e-mail from Marilynn Gardner to the City  
2 Librarian and the Library Board regarding impending  
3 passage of the levy ordinance, and reporting that "Sue  
4 Tupper is reviewing a draft" of the Blue Book.
- 5 (13) April 3 and 4 e-mail exchange between Jennifer Cargal  
6 of the Seattle Public Library and Gary Keese of the  
7 Ethics and Elections Commission regarding under what  
8 conditions the Library's use of its "Blue Book" would  
9 violate campaign practices.
- 10 (14) April 10, 2012 Invoice for \$3,118.67 to the Seattle  
11 Public Library from Swifty Printing for publication of  
12 the above "Blue Book."
- 13 (15) Pages 10, 11, 22, 41, 44, and 50 from the "Blue Book"  
14 (52 pages) entitled Libraries for All: A Plan for the  
15 Present, a Foundation for the Future -- Proposed  
16 Library Levy.
- 17 (16) Seattle Public Library InfoNET message dated April 16,  
18 2012 and entitled "Public information materials on the  
19 levy," from Andra Addison and addressed to "all sites."  
20 The message gives direction to staff on where to post  
21 the "Library Levy Fact Sheet" and the "Blue Book" and  
22 pages from it.
- 23 (17) Seattle Public Library InfoNET message dated June 11,  
24 2012, "Location of 'Blue Book' reference copy," from  
25 Andra Addison and addressed to "all sites." The

1 message amends the direction to staff in the April 16  
2 InfoNET message.

3  
4 (18) City Attorney's "Library Levy" Explanatory Statement  
5 for the voters' pamphlet as submitted to the Ethics and  
6 Elections Commission on May 15, 2012.

7 (19) Explanatory Statement for the voters' pamphlet as  
8 rewritten by the Ethics and Elections Commission (from  
9 the Commission's web site)

10 (20) "Library Levy Fact Sheet," prepared, displayed, and  
11 handed out by the Seattle Public Library  
12

13 (21) Five pages of 13 photos showing displays and materials  
14 about the levy in the Central Library and four of the  
15 branches. Photos and annotations are by Chris Leman.

16 (22) Two pages from the City's web-based staff directory.  
17 One shows the Seattle Public Library Departmental  
18 Listings, including "Development/Foundation Office,"  
19 which when clicked produces a second City of Seattle  
20 Staff Directory page listing Jonna Ward as Executive  
21 Director of the Library Foundation.  
22

23 (23) Two pages from the web site (spl.org) of the Seattle  
24 Public library: "Support Your Library," "Levy at a  
25 Glance," and "Keep Libraries Open"

1 (24) Six pages from the web site (foundation.spl.org) of the  
2 Seattle Public Library Foundation: "Mission," "What We  
3 Fund," "Donor Benefits," "Business and Foundation  
4 Partners," "Board of Directors and Staff" and "Yes for  
5 Seattle Libraries." The "Yes for Seattle Libraries"  
6 page (here dated June 1, 2012) was later removed.

7 (25) First page of listing from the Ethics and Elections  
8 commission web site of donations received up to July 2,  
9 2012 to Yes Seattle Libraries, showing a total of  
10 \$110,000 donated by the Seattle Public Library  
11 Foundation.

12 (26) Four 2012 E-mails from SEEC's Wayne Barnett: March 2  
13 to Jonna Ward; and June 1, 4 and 5 to Chris Leman. One  
14 e-mail (June 1) from Chris Leman to Wayne Barnett.

15 (27) P. 8 from the 2010 Seattle Public Library Community  
16 Survey Summary

17 (28) City of Ocean Shores, Resolution #672, the April 23,  
18 2012 ordinance that defines the levy and places it on  
19 the August 7 ballot (pages 3-5, not included here,  
20 consist of the City Clerk's certification, and  
21 repetitions of the proposition language).

22 (29) Public Disclosure Commission, March 1, 2012 memorandum  
23 to the City of Ocean Shores, Review of Information  
24 regarding Library Levy Election in the City of Ocean  
25 Shores.

1 IV. HOW ORDINANCE 123851 DEFINES PROPOSITION 1

2 As with other levies that are put before the voters,  
3 Proposition 1 is defined by its ordinance, Ord. 123851 (exhibit  
4 11). Contrary to statements being made by the Library (see later  
5 sections), the ordinance provides significant discretion to the  
6 Mayor, City Council, and Library Board in how the levy proceeds  
7 are to be spent:  
8

- 9 (1) Seattle's 2012 levy ordinance (sec. 7) names the ballot  
10 title not the Library Levy, but the "Regular Tax Levy  
11 including Seattle Public Libraries." This difference is  
12 important because section 4 of the ordinance states:  
13 "Unless otherwise directed by ordinance, Proceeds shall  
14 be deposited in the Library Levy fund." That is, the  
15 levy ordinance gives the Mayor and City Council the  
16 discretion to pass a new ordinance to spend the  
17 "library" levy funds entirely on non-library purposes.  
18 The voters could not sue because the levy ordinance  
19 specifically allows the change to be made. In contrast,  
20 Ord. 119019 (exhibit 3), which placed the 1998 Libraries  
21 for All bond issue before the voters, did not mention  
22 the possibility of an ordinance diverting the proceeds  
23 away from Library purposes, and built in some additional  
24 hurdles to hamper such a redirection of funds.  
25

1 Another levy which has firmer requirements than  
2 Seattle's Proposition 1 to prevent the spending of its  
3 proceeds on non-library purposes is Proposition 1 in  
4 Ocean Shores, Washington (also on the August 7, 2012  
5 ballot). Ocean Shores' Resolution 672 states (sec. 2)  
6 that the levy is "For the purpose of providing funds to  
7 pay for operating the City's public library," and that  
8 "the City shall deposit the proceeds of such levy in the  
9 City's Library Special revenue fund 115 to be used to  
10 pay costs of operating the City's public library."  
11 Unlike the Seattle levy ordinance, no mention is made of  
12 the option of depositing the proceeds in a fund for any  
13 other purpose.

14 Based on the analysis in this section, one can  
15 conclude that, while the City of Seattle was fully  
16 within its rights to call the 1998 Proposition 1 a  
17 library bond issue, and while Ocean Shores is fully  
18 within its rights to call its Proposition 1 a library  
19 levy, the Library is not being entirely accurate in  
20 calling the current Proposition 1 a "library levy."

21 Assuming that its proceeds actually reach the  
22 library, Seattle's 2012 levy ordinance lacks specificity  
23 on how they would be spent for Library services. This  
24 discretion is in marked contrast to the 1998 Libraries  
25 for All bond issue, whose Ord. 119019 specified (sec. 1)

1 that \$128.6 million would be spent on building a new  
2 Central Library, and \$57.9 million would be spent on  
3 branch libraries, "which facilities shall include three  
4 new libraries, replacement of six current libraries,  
5 additions to seven current libraries, interior  
6 improvements to seven current libraries, and relocation  
7 of two current libraries to improved facilities, all as  
8 more specifically listed as 'elements' of this component  
9 in Attachment A." Seattle's 2012 levy ordinance has  
10 none of this specificity.

11 Seattle's 2012 levy ordinance also lacks any of the  
12 hurdles that the 1998 bond issue ordinance posed to make  
13 it difficult for future City Councils to change the  
14 balance of funds between the Central Library and the  
15 branches, change or delete what the bond issue would do  
16 for the branches, or make any other change in the bond  
17 issue ordinance (defined as the "Project"):

18 Elements may be deleted from or added to any  
19 component of the Project only by an ordinance  
20 amending the list set forth in Attachment A.,  
21 passed by a two-thirds vote of the City Council  
22 after a public hearing and after City Council  
23 consideration of the recommendations of the Board,  
24 the Oversight Committee established in Section 6,  
25 and the Mayor.

The amounts of Bond proceeds to be devoted to the  
neighborhood library and central library components  
of the Project, as established in Section 1, may be  
changed only by an ordinance passed by a two-thirds  
vote of the City Council after a public hearing and

1 after City Council consideration of the  
2 recommendations of the Board, the Oversight  
3 Committee established in Section 6, and the Mayor.

4 Seattle's 2012 levy ordinance lacks the specificity  
5 and safeguards that were in the 1998 bond issue  
6 ordinance. Its section 5 does state that proceeds will  
7 be used "for Library services," and that investments  
8 will be made "in the following four categories of  
9 Library Services": hours and access, collections;  
10 technology; and maintenance. However, the ordinance  
11 does not say that investments of the levy proceeds in  
12 library services will be limited to these categories,  
13 only that "investments will be made" in them (however  
14 small these investments may be). It therefore is not  
15 be accurate to tell voters (as the Library is doing)  
16 that the levy proceeds will be spent only or even  
17 primarily on these categories of Library Services.

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

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

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

22 V. STATEMENTS IN THE LIBRARY LEVY FACT SHEET AND BLUE BOOK,  
23 AND ON THE WEB SITE, MISCHARACTERIZE AND PROMOTE PROPOSITION 1

24 WAC 390-05-271(2) interprets RCW 42.17A.555 as allowing a  
25 public agency to describe to the public an upcoming ballot

1 measure, but only if in doing so it makes an "objective and fair  
2 presentation of facts" that does not advocate for or against the  
3 measure. In the current case, two key Library documents (the  
4 Blue Book and the Library Levy Fact Sheet) and the web site do  
5 not meet this standard. They are rife with advocacy and  
6 inaccuracy.

7 Blue Book. The Blue Book opens with a March 23, 2012 letter  
8 from the City Librarian and Library Board President to the Mayor  
9 and City Council, urging that a Library Levy be put before the  
10 voters. However, only a few dozen copies of the Blue Book were  
11 distributed before the City Council passed the levy ordinance on  
12 April 9. Distribution of almost all of the 1000 copies did not  
13 begin until the levy campaign had begun.

14 It was legal and expected that Library officials would  
15 advocate for passage of the levy ordinance. They could  
16 characterize the levy any way they wanted because the ordinance  
17 that would authorize it was still only a draft. But once the  
18 City Council passed the ordinance that put the levy on the  
19 ballot, everything changed. What is said about the levy must be  
20 tested against the actual language of the levy ordinance. The  
21 Blue Book's advocacy for the levy ordinance now, depending on how  
22 the Blue Book is presented and distributed, can be an illegal  
23 promotion of the levy and not an "objective and fair presentation  
24 of facts."

1 This change in the meaning of the Blue Book after passage of  
2 the levy ordinance was recognized by SEEC staff when they  
3 instructed the Library (exhibit 13) not to actively use it at  
4 that point, but rather to

5 just make the Blue Book available as a resource (what I call  
6 for lack of a better term 'passive'), the best way to go may  
7 be just to keep it as it is as a historical document  
8 presented to the Council. If you are thinking more about  
9 using it actively as a communication piece to citizens, then  
I would suggest making a summary more like the fact sheet—  
just the facts ma'am.

10 The Library staff agreed in an April 4 e-mail (exhibit 13),  
11 "the Blue Book will be available on the web as a historical  
12 document we presented to the Council." However, that is not what  
13 happened. A few days later, on April 16 (exhibit 16), staff in  
14 every Library facility were instructed to make a reference copy  
15 and extra copies of the Blue Book available to the public, and it  
16 became central to the displays about the levy placed throughout  
17 the Library system. As outlined below, it was not until June 11  
18 that another message (exhibit 17) instructed staff at every  
19 facility to keep the Blue Book reference copy behind the counter,  
20 to be available on request.

21 The Blue Book has many statements that promote the levy or  
22 make greater claims for it than borne out by the plain language  
23 of the levy ordinance. Four different pages (pp. 11, 13, 15, and  
24 17) repeat these sentences:

25 What the levy means for the public. ... In 2013 we face  
deeper cuts. The city anticipates a budget gap that will

1 mean cutting another \$5 million from the Library budget.  
2 There is no way we can absorb a reduction of that size  
3 without severe impacts, such as closing branches and cutting  
4 even deeper into the budget for books, technology and  
5 maintenance.

6 Statements like the above about the consequences of not passing  
7 the levy do not seem consistent with Deputy Solicitor General  
8 Pharris' warning (see section II above) to agencies against  
9 speculating about the consequences of a ballot measure. Just as  
10 Pharris said regarding the legislature, the City Council "is  
11 legally free to replace the agency's funding, no matter how  
12 unlikely that outcome is."

13 The Blue Book has a great many statements about the  
14 consequences of passing the levy that also are speculation that  
15 is prohibited by law. Page 9: "The levy also protects current  
16 core services." Page 11: "What the levy means for the public:  
17 ... The proposed levy will restore 6,551 open hours in 2013,  
18 giving every community access to the Library on Sundays." We can  
19 all hope that these results will come if the levy is passed, but  
20 there is nothing in the levy ordinance to make them so. The  
21 ordinance itself says (exhibit 11, sec. 5) that "Levy proceeds  
22 will be spent in accordance with the annual City budget process  
23 for each year of the levy."

24 In part to address concerns that I had expressed to the  
25 Ethics and Elections Commission, the Library sent out a June 11  
message to all sites reversing its earlier direction, now

1 instructing staff not to display the Blue Book, but rather keep  
2 it for requests. However, the most problematic pages from the  
3 Blue Book live on in the displays that are posted all over the  
4 Library system. Most of these displays reproduce page 50, and in  
5 each branch library or the Central library, also the Blue Book  
6 page for that facility. In all instances I have observed, these  
7 pages are in color (the Blue Book was printed in black and white,  
8 so an extra effort has been made to have them be in color).

9 The Blue Book's page 50 is entitled "Library levy will  
10 restore, maintain, and improve essential services." Page 44  
11 (about the Central Library) states: "The levy will strengthen  
12 the Central Library's pivotal position by preserving open hours,  
13 updating the technology infrastructure that supports Library  
14 operations system wide, maintaining the book-sorting equipment,  
15 investing in audiovisual services for citywide events, and adding  
16 technical support for people using the public computers on Level  
17 5."

18 On the Blue Book page for each of the 26 branches, too,  
19 promotional and incorrect claims are made for the levy.  
20 Examples: On page 22 about the Columbia branch: "Residents were  
21 adamant that they needed more access to Library service the levy  
22 responds by opening the Columbia Branch seven days a week." On  
23 page 41 about the University Branch: "To expand access to this  
24 diverse neighborhood of readers, the levy will open the  
25 University branch on Sundays."

1 The release of the Blue Book just two weeks before passage  
2 of the levy ordinance, with most of the copies being distributed  
3 after the ordinance's passage (and thus during the ballot measure  
4 campaign) does not reflect "normal and regular conduct" for the  
5 Seattle Public Library. In March 1998, two months before passage  
6 of the bond issue ordinance that placed Libraries for All before  
7 the voters, the Library issued the Brown Book, with construction  
8 or renovation proposals for most of the libraries. As reported  
9 in exhibit 1, the Library no longer has a record of how many  
10 copies of the Brown Book it printed or how much they cost.

11 Library Levy Fact Sheet. The Fact Sheet also makes claims  
12 for the levy that are not sustained by the ordinance. Its title,  
13 "Library Levy Fact Sheet," even misnames the levy in a way that  
14 wrongly communicates that the proceeds must be spent on the  
15 Library. The official name as specified in Ord. 123851 is  
16 "Regular Tax Levy Including Seattle Public Libraries." This  
17 title more accurately reflects the uncertainty as to how much of  
18 the levy proceeds will actually go to the Library.

19 The Fact Sheet grossly understates the cost of the levy as  
20 \$17 million (the cost for one year), when the seven-year levy  
21 would cost taxpayers about \$122 million. A mistake of this  
22 magnitude does not speak well for the process by which the Fact  
23 Sheet was developed and approved.

24 The Fact Sheet states that the levy "will provide \$5 million  
25 to address the City Budget office's estimated \$5 million cut to

1 the 2013 Library budget," and warns darkly that "a reduction of  
2 that size will impact patron services." However, it does not  
3 acknowledge that claims of the projected cut are not sustained by  
4 the public record; that the projected cut is not of the current  
5 budget but of the 2013 baseline budget (which is the 2012  
6 spending plus inflation); and that if the cut does come to pass,  
7 backfilling it with \$5 million/year in levy funds will still  
8 leave impacts on patron services. Fortunately, the library does  
9 not need to get into these questions, as it is unlawful for an  
10 agency to speculate about the consequences of a ballot measure.

11 The Library Levy Fact Sheet lists ten improvements that the  
12 levy "will" do, among them: add Sunday hours at 16 branches,  
13 restore seven-day-a-week service at the Columbia and Northgate  
14 branches, eliminate the annual one-week shutdown, and increase to  
15 50 the number of items a person may place on hold. Speculation,  
16 speculation, speculation. Much as we might hope that these  
17 improvements happen with passage of the levy, voters cannot  
18 accurately be told that they "will" happen. The levy ordinance  
19 does not require these consequences, and provides such  
20 significant discretion that the funds may never reach the  
21 library, much less be spent in the ways promised by the Library  
22 Levy Fact Sheet.

23 The Fact Sheet's statements about what the levy "will" do  
24 are not objective and accurate. Statements identical in all  
25 material respects to these were overruled by the Ethics and

1 Elections Commission when it rejected and rewrote the Explanatory  
2 Statement that had been submitted by the City Attorney.

3 The Fact Sheet does not reflect "normal and regular conduct"  
4 for the Seattle Public Library, which did not prepare or  
5 distribute a fact sheet during the 1998 Library bond issue  
6 campaigns. Instead the Library continued to distribute the  
7 Citizens' Summary (exhibit 2) which it had released two months  
8 before passage of the bond issue ordinance. Like the Brown Book  
9 (from which it was directly taken), the Citizens Summary listed  
10 the construction and renovation projects that were being proposed  
11 for the bond issue ordinance. This same list was actually  
12 adopted when the ordinance was passed, and so during the  
13 campaign, the Citizens Summary was there to correctly list the  
14 projects that the ballot measure would fund. There was no  
15 speculation, and no violation of law.

16 The Library's current web site section on "Keep Libraries  
17 Open" (exhibit 23) describes the negative impacts of past budget  
18 cuts and warns of additional cuts in 2013. Under the theme of  
19 "What the levy means for open hours" the site states that 22  
20 percent of the levy (\$26.9 million) would be spent on open hours,  
21 and promises that the levy will restore 6551 open hours per year,  
22 including the same improvements in days and branches claimed in  
23 the Fact Sheet. As outlined earlier, these statements are  
24 speculative and thus contrary the requirement that anything said  
25 about a levy by objective and accurate.

1        Summary of this section. The Library's Blue Book, Fact  
2 Sheet, and web site do not describe the ballot measure  
3 "objectively and accurately," and all of the inaccuracies err on  
4 the side of promoting Proposition 1. The levy ordinance does  
5 not, in itself, increase or even protect from cuts any of the  
6 four areas of Library services that it mentions (hours and  
7 access, collections, technology, and maintenance). The  
8 ordinance's mention of hours is only that it will "support"  
9 hours, and even this statement is offered only as an illustrative  
10 example, subject to the annual budget process.

11        The mis-statements in the Fact Sheet and Blue Book, and on  
12 the Library web site, are identical in all material respects to  
13 some that the Ethics and Elections Commission rejected and  
14 rewrote, producing the Explanatory Statement that is now in the  
15 Voters' Pamphlet. The Library and all City agencies are  
16 prohibited from describing a ballot measure unless they do so  
17 "objectively and accurately," a target grossly missed in this  
18 case.

19        VI. PUBLICATION OF THE "BLUE BOOK" WAS TIMED TO PROMOTE  
20 PROPOSITION 1

21        From the above section II, recall this warning from the 2006  
22 PDC Interpretation:

23        Generally, activities that occur after the elected  
24 legislative body has passed a resolution authorizing a  
25 measure to be placed on the ballot will be subject to  
greater scrutiny by the PDC than those occurring before such  
a resolution has been passed.

1  
2 The April 10, 2012 invoice (exhibit 14) for publication of  
3 1000 copies of the Blue Book came one day after the City Council  
4 had adopted the April 9 levy ordinance. While the Blue Book  
5 publication seems to have occurred prior to April 9, it certainly  
6 was undertaken only after the Library management knew that the  
7 City Council was expected to pass the ordinance unanimously.

8 According to Library staff I spoke with by phone, as few as  
9 32 copies of the Blue Book were distributed before passage of the  
10 April 9 levy ordinance. Almost all of the 1000 Blue Book copies  
11 that were published were distributed after the passage of the  
12 levy ordinance—that is, after it was known that the levy would be  
13 on the August 7 ballot.

14 The available evidence suggests that the Library's  
15 publication of the 2012 Blue Book was done to influence voters in  
16 favor of Proposition 1. This is much more likely the case than  
17 with the Library's publication of the Brown Book two months  
18 before the City Council passed on May 26, 1998 the ordinance  
19 putting the Libraries for All bond issue on the ballot.

20  
21 VII. OTHER CITY ACTIVITIES ARE PROMOTING PASSAGE OF  
22 PROPOSITION 1

23 The Seattle Public Library and the City Budget Office are  
24 engaging in other activities that appear to violate Section  
25 2.04.300 of the Seattle Municipal Code, "Prohibition against use  
of public office facilities in campaigns":

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

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1 (1) Quoted in the Library's Fact Sheet, Blue Book, and web  
2 site as an argument for the levy is a City Budget Office  
3 estimate that the Library's 2013 budget will be cut by  
4 \$5 million. If (as seems the case) this estimate was  
5 developed earlier than for other departments, City  
6 facilities and resources may have been used illegally in  
7 an effort to promote Proposition 1. Ascertaining  
8 whether the law was broken (and evaluating the case for  
9 the levy) requires access to the City Budget Office and  
10 Library documents and communications. Unfortunately,  
11 both agencies have denied my public records requests,  
12 invoking an exemption for deliberative documents. They  
13 say they will not release the documents until after the  
14 Mayor presents his budget proposals in late September  
15 (seven weeks after the August 7 levy election).

16 (2) Placement at key locations in the Central and branch  
17 libraries of the Library Levy Fact Sheet and copies of  
18 the Blue Book and selected pages from it are a use of  
19 City facilities to influence the outcome of Proposition  
20 1, in violation of City and state law. The 2010 Seattle  
21 Public Library Community Survey found that about two-  
22 thirds of Seattle residents have a library card, and  
23 about half of those (one third of all Seattle residents)  
24 had used the Library in the past year (exhibit 27).  
25 Many voters are among these patrons, and the Library

1 wants to reach them. It is a widely accepted principle  
2 in retailing that the checkout counter where customers  
3 stop to purchase items is the most valuable marketing  
4 location, even to the extent that wholesalers pay extra  
5 to have their products placed at these visible  
6 locations. In the Library, a close parallel are the  
7 many counters where patrons check out, return, or pick  
8 up items, ask for information, etc. It would be a dream  
9 come true for any campaign to have the exclusive right  
10 to post its advertising there.

11 (3) From January 18 to sometime in April 2012, the Library  
12 employed as a consultant Suzanne M. Tupper, who had been  
13 a campaign manager for "Neighbors for Libraries," which  
14 campaigned for passage of the 1998 Library bond issue  
15 (exhibit 5 shows her role in that campaign, and exhibit  
16 6 is her 2012 contract with the Library). After  
17 Tupper's contract was signed, SEEC Executive Director  
18 Wayne Barnett wrote to the Library's Marilyn Gardner  
19 (exhibit 8), expressing concern about the language of  
20 the contract; apparently the changes he suggested were  
21 never made:

22 City resources may be used to explore what  
23 residents want from their libraries, and to  
24 determine funding sources that would most  
25 effectively meet those expectations. City  
resources may not be used, however to promote any  
package that may emerge from this effort to the  
city's voters. To that end, I'd recommend making

1 express that the "overall communications strategy"  
2 and "clear and effective message" that Ms. Tupper  
3 will be providing under Paragraph B of the Scope of  
4 Work relate solely to the public engagement and  
5 planning efforts. Especially since Ms. Tupper has  
6 experience with managing campaigns, I think it is  
7 important to state clearly that the "effective  
8 message" that she is developing is not a *campaign*  
9 message, but instead is a message relating to  
10 running an inclusive public engagement process, and  
11 to the Library's planning efforts as well.

8 Although the official purpose of the Library's  
9 consultant agreement with Tupper was given as "to  
10 enhance the effectiveness of the public engagement and  
11 planning efforts related to developing a proposal for a  
12 potential revenue measure designed to stabilize Library  
13 funding and ensure that Library services meet community  
14 priorities," the footer of each page of the agreement is  
15 more revealingly labeled, "LFA Levy Consulting."

16 It appears that the Library did receive advice from  
17 Sue Tupper on a potential levy campaign. Her talking  
18 points (exhibit 7) for a meeting with the Library Board  
19 on January 25, 2012 include the following:

- 20
- 21 a. Background—lessons from experience with first  
Libraries for All effort—1998:
- 22 • began w/a process for public input—and, where  
possible, that input was incorporated.
  - 23 • Key to success—a robust outreach effort, unified  
24 team, community support—time and money
  - 25 • Above all, success was the result of starting out  
with an agreed to plan—and having the team  
discipline to stick with it.

- 1           • 70% support—a clear demonstration of Seattle’s  
2           support for our libraries ...  
3           c. Current environment--challenges  
4           • Conscious decision to make net impact of shrinking  
5           resources as invisible as possible the public-  
6           that’s great!  
7           • The downside--majority Seattle unaware of what it  
8           has taken to sustain cuts—and therefore may lack a  
9           sense of urgency. ...

10          III. GROUND RULES...

- 11          • c. NO POLITICAL WORK/CAMPAIGNING NOW - Until there  
12          is an authorizing Council ordinance, no one  
13          involved in this effort should engage in campaign  
14          efforts. ...  
15          • e. IF A LEVY GOES TO BALLOT: continued spirit of  
16          collaboration and support is essential.

17          Also, an internal Library e-mail by the Library’s chief  
18          financial and administrative officer (exhibit 12)  
19          states:

20                 We are focused now on completing the “blue book,”  
21                 which will be presented to the Mayor and Council at  
22                 the March 23 meeting and be used to educate the  
23                 community about the proposal. Sue Tupper is  
24                 reviewing a draft with the levy team today.

- 25          (4) The Seattle Public Library’s April 16 internal InfoNET  
26          posting to all sites provides its staff “basic talking  
27          points” for fielding questions from the public, with the  
28          instruction to say that “the levy will increase Library  
29          resources in four areas: hours, books and materials,  
30          computers, and online services and building  
31          maintenance.” As explained in sections IV and V above,

1 statements of this kind do not objectively or accurately  
2 characterize what the levy ordinance requires. The levy  
3 ordinance does not in fact ensure an increase in Library  
4 resources in any of these four areas. The Library's  
5 guidance to its staff, as with similar statements made  
6 in the Blue Book, the Library Levy Fact Sheet, and on  
7 the web site (see section V above), is contrary to the  
8 requirement that if an agency describes a ballot  
9 measure, it do so "objectively and accurately."

10 (5) Seattle Public Library resources are being used to place  
11 information advocating the levy in the places where  
12 voters will see them. The April 16 internal InfoNET  
13 direction (exhibit 16) from the Library's communications  
14 director to staff at all sites states [letters added]:  
15

16 (a) "The Library will have copies of a one-page fact  
17 sheet available at every branch and at Central Library  
18 public service desks and Welcome Desks this week."

19 (b) "One copy of the full 51-page Library Levy proposal  
20 as presented to the City Council has been delivered to  
21 every branch and Central Library public service desks  
22 and Welcome Desks in white, three ring binder notebooks.  
23 ... These were delivered to the attention of assistant  
24 managers and they should be in a visible location for  
25 the public and staff to access."

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

1           The specific information referred to in the InfoNET  
2 direction to be posted throughout the Library system  
3 consists of pages from the Blue Book: (a) page 50, entitled  
4 "Library levy will restore, maintain, and improve essential  
5 services," contains many statements about what the levy  
6 "will" do that (as outlined in sections IV and IV above) are  
7 inaccurate and that favor the pro-levy side; and (b) the  
8 respective pages of the Blue Book that (again inaccurately)  
9 describe many favorable results for each branch or the  
10 Central library, again favoring the pro-levy side.

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

20  
21           Photos of the displays and handouts in the Central  
22 Library and four branches (Capitol Hill, Columbia, Rainier  
23 Beach, and University) are in exhibit 21, with annotations  
24 explaining what is in each photo. Brief summaries are  
25

1 provided here. In addition to the Central library, these  
2 four branches were the only branches I have had time to  
3 visit, but given the InfoNET posting (exhibit 16) in which  
4 the Library's communications director directed that similar  
5 displays be placed prominently at all the branches, I assume  
6 that the displays in the other 22 branches are similar.  
7

8 The displays of information about the levy that are now  
9 placed throughout the Central Library and the branches  
10 typically include the Library Levy Fact Sheet (with some  
11 also providing handout copies), and almost always the page  
12 from the Blue Book which describes what the Levy "will" do  
13 at that particular branch. Usually there is also a copy of  
14 the Blue Book's page 50, entitled "Library Levy will  
15 restore, maintain, and improve essential services." As  
16 discussed in sections IV and V above, these documents that  
17 are now on display are not an accurate depiction of  
18 Proposition 1, with the inaccuracies favoring passage of  
19 Proposition 1.  
20  
21

22 The Blue Book is published in black and white, but as  
23 seen in these photos, the pages from it that are displayed  
24 in the Libraries have color photos and graphics, reflecting  
25 that Library resources have been spent on enhancing them

1 beyond what the Blue Book provided (and thus clearly  
2 contrary to SEEC's advice and the Library's commitment  
3 (exhibit 13) that the Blue Book was to be treated as a  
4 historical document.

5  
6 The first three pages of photos in exhibit 21 show levy  
7 displays in the Central Library. The first photo page shows  
8 levy displays on the Fourth Avenue main floor--in the  
9 children's section and at two different locations in the  
10 literacy and languages section. The second photo page shows  
11 the levy displays at counters for assisted check-out and  
12 self check-out (both on the Fourth Avenue main floor) and at  
13 the counter for reading suggestions (on the Fifth Avenue  
14 main floor). The third photo page shows a levy display at  
15 the welcome desk on the Fifth Avenue main floor, and a levy  
16 display at the University Branch checkout counter. The  
17 fourth photo page shows levy displays at the Columbia branch  
18 and the Capitol Hill branch. The fifth photo page shows  
19 levy displays at two locations in the Rainier Beach branch  
20 (check-out counter and book return). Note that at two of  
21 these branches, larger signs state "LIBRARY LEVY  
22 INFORMATION" (Capitol Hill) and "LEVY INFORMATION"  
23 (University).

1 I searched for all staffed counters at the Central  
2 Library on two occasions—on Sunday, June 3, and on Friday,  
3 June 29, finding levy displays at every public counter that  
4 I could find, and some at self-service and return counters  
5 as well. On June 29, I specifically counted 15, and made a  
6 list (see below). As before, all stations had the Library  
7 Levy Fact Sheet, and most had either the Blue Book's p. 44  
8 or its p. 50 (p. 44 is the page about what the levy "will"  
9 do for the Central Library; p. 50 is entitled, "Library levy  
10 will restore, maintain and improve essential services.")  
11

12  
13 The main change between June 3 and June 29 was that  
14 (presumably as a result of the Communication Director's June  
15 11 broadcast message to staff, exhibit 17) some of the Blue  
16 Book reference copies that had been out for display or  
17 distribution were now kept behind the counter (although they  
18 still could be found at some counters, such as the exhibit  
19 21 photo taken June 29 of the literacy and languages section  
20 counter).  
21

22 Below is an inventory of the fifteen separate levy  
23 displays that I saw in the Central Library in the June 29  
24 visit:  
25

(a) Fourth Ave. main floor check-out counter: Fact Sheet  
and Blue Book's page 44

- 1 (b) Fourth Ave. main floor self check-out counter: Fact  
2 Sheet and Blue Book's page 44
- 3 (c) Fourth Ave. main floor children's section information  
4 counter: Fact sheet and Blue Book's page 50
- 5 (d) literacy and languages section information counter:  
6 Fact sheet in Spanish
- 7 (e) Fourth Ave. main floor world languages and new books  
8 shelf: Blue Book's p. 50
- 9 (f) Fifth Ave. main floor welcome desk: Fact sheet and Blue  
10 Book's p. 50
- 11 (g) Fifth Ave. main floor check-out counter: Fact sheet and  
12 Blue Book's p. 44
- 13 (h) Fifth Ave. main floor reading suggestions desk: blue  
14 book's p. 50.
- 15 (i) Fifth Ave. main floor teen section information counter:  
16 Fact Sheet and Blue Book's p. 44
- 17 (j) Mixing Chamber information desk: Fact sheet and Blue  
18 Book's fact sheet
- 19 (k) Seattle room information desk: Fact Sheet and Blue  
20 Book's p. 44
- 21 (l) History, Biography, maps, and genealogy section main  
22 counter: Fact Sheet and Blue Book's p. 44
- 23 (m) Arts and Literature Collection information counter:  
24 Fact sheet and Blue Book's p. 44
- 25 (n) Business Collection information counter: Fact Sheet and  
Blue Book's p. 44
- (o) Magazines and newspapers information counter: Fact  
Sheet and Blue Book's p. 44

VIII. THE LIBRARY PROVIDES FREE AND SUBSIDIZED USE OF CITY  
FACILITIES TO THE SEATTLE PUBLIC LIBRARY FOUNDATION,  
DOMINANT FUNDER OF THE PROPOSITION 1 CAMPAIGN

The Seattle Public Library Foundation is the dominant funder  
of "Yes Seattle Libraries," the campaign committee working in  
favor of Proposition 1. As of the campaign committee's July 2  
filing (exhibit 25), Yes Seattle Libraries had received \$110,000  
from the Foundation--71 percent of the total dollars it so far

1 has raised. (All other donations to Yes Seattle Libraries total  
2 \$46,080).

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

18 The City Librarian, Library Board, and others in City  
19 government who are responsible for the free or favorable terms  
20 under which the Seattle Public Library Foundation enjoys use of  
21 City facilities and resources can hardly be unaware that the  
22 Foundation was the biggest single donor to the 1998 Libraries for  
23 all bond issue. As seen in exhibit 4, the Foundation donated  
24 \$200,000 to the 1998 pro-ballot measure campaign, 41 percent of  
25 the total raised.

1 It appears that the Seattle Public Library has violated the  
2 SMC 2.04.300 prohibition against use of City facilities to  
3 promote a ballot measure by aiding the Seattle Public Library  
4 Foundation's promotion of Proposition 1, as follows:

5 (1) The Seattle Public Library Foundation is staffed by  
6 employees of the Seattle Public Library. The Foundation  
7 is provided an office and furniture in the Central  
8 Library free of charge. As mentioned earlier, City  
9 Librarian Marcellus Turner and Library Board member  
10 Theresa Fujiwara serve as members of the Foundation's  
11 Board of Trustees (ex officio positions said to be non-  
12 voting positions under the Foundation's by-laws).

13 (2) The Seattle Public Library Foundation uses the Seattle  
14 Public Library's e-mail and telephone systems and its  
15 web site. The Library's home page is <http://www.spl.org>  
16 and the Foundation's web site address is  
17 <http://foundation.spl.org>. The e-mail address and phone  
18 number for the City Librarian are  
19 [marcellus.turner@spl.org](mailto:marcellus.turner@spl.org) and 206-386-4102, and for the  
20 Foundation Director are [jonna.ward@spl.org](mailto:jonna.ward@spl.org) and 206-386-  
21 4131. In the web-based City of Seattle staff  
22 directory's front page for the Seattle Public Library  
23 departmental listings, there is a category for  
24 Development/Foundation Office. Clicking on it takes the  
25 user to the Foundation Director; another click takes the

1 user to the address "Central Library, 1000 Fourth  
2 Avenue." In all cases, the web-based City of Seattle  
3 staff directory's front page lists the Foundation  
4 Director as being on the City of Seattle staff.

5 (3) The Seattle Public Library Foundation  
6 purportedly reimburses the Library for salaries,  
7 benefits, and utilities, and other services, but it is  
8 doubtful that this reimbursement approaches the full  
9 cost to the City of the assistance provided, or the full  
10 value of what the Foundation receives from the City.  
11 The Library Foundation has use of its space and the  
12 furniture rent-free in the Central Library, which is not  
13 only perfectly located downtown but a world  
14 architectural icon and a prestige address, with  
15 unmatched access to the building's much-sought-after  
16 conference rooms and other facilities. The market rate  
17 to rent these facilities would be substantial, but the  
18 Foundation also receives benefits to its fundraising and  
19 activities that come from being located so close to the  
20 office of the City Librarian.

21 (4) Beyond hosting the Seattle Public Library Foundation  
22 free in its executive offices, the Seattle Public  
23 Library lends substantial City resources to the  
24 Foundation's fundraising efforts. At various places on  
25 the Library's own web site (see exhibit 23) is a button

1 labeled "Donate now to the Seattle Public Library  
2 Foundation." Just a click takes the user straight to the  
3 Foundation's "Ways to Give" page.

4 Library facilities and staff serve as incentives  
5 for donors to give to the Foundation. On pages of the  
6 Foundation's web site (exhibit 24), donors receive  
7 benefits such as the following, for which the Foundation  
8 purportedly reimburses the City:

- 9 (a) free parking in the Central Library garage
- 10 (b) free use of a meeting room at the Central Library
- 11 (c) free use of the computer lab for group training or  
an event space
- 12 (d) reserved seating at author events
- 13 (e) invitations to private author receptions
- 14 (f) invitations to events hosted by the City Librarian
- 15 (g) designation as an annual Business Partner at the  
Central Library
- 16 (h) recognition at an annual event at the Central  
Library.

17 (5) The close relationship of the Library and Foundation in  
18 raising funds also exists in how the funds are spent.  
19 According to the "Mission" page on the Foundation's web  
20 site (exhibit 24):

21 The Foundation acts as the "fundraising arm" of the  
22 Library. If you want to support the Library with a  
23 donation, your gift goes to the Foundation. We  
24 work with the Library to identify the best way  
25 donors' gifts can enhance the Library and meet the  
ever changing needs of the community.

The Library directs donors to the Foundation, and the  
Foundation decides how to spend the money in

1 consultation with the Library. Did this process of  
2 consultation with Library officials occur regarding the  
3 Foundation's donations to the 1998 and 2012 ballot  
4 measure campaigns? An official of the Seattle Public  
5 Library Foundation told me that the Foundation's 2012  
6 campaign donations were not from donated funds, but from  
7 the Foundation's investment earnings. Does that  
8 gyration eliminate potential violation of prohibitions  
9 on the use of City facilities for campaigns? I suggest  
10 not. If the investment earnings are upon donations that  
11 the Foundation raised with City help, the City role  
12 remains.

13 The Seattle Public Library Foundation's fundraising  
14 efforts are materially aided by benefits that it  
15 receives free or at subsidized prices from the Library.  
16 These benefits are not available to non-profit groups  
17 that are opposed to Proposition 1, nor to groups that  
18 are even neutral on the ballot measure. The Seattle  
19 Public Library's assistance to the Foundation's  
20 fundraising is part of the arrangement under which the  
21 Foundation routinely spends hundreds of thousands of  
22 dollars on behalf of ballot measures that involve the  
23 Library.

24 The SMC 2.04.300 prohibition (and the same  
25 prohibition in state law) on use of City facilities and

1 resources to promote a ballot measure is stated to apply  
2 not just to direct efforts, but also to indirect ones.  
3 In aiding the Seattle Public Library Foundation in its  
4 fundraising and other activities, the Seattle Public  
5 Library is aiding the Proposition 1 campaign indirectly.  
6 The best way to avoid this situation is for the  
7 Foundation to stop making political donations.

8  
9 IX. APPLICATION OF THE RELEVANT LAWS, AND COMPARISON TO THE  
10 CASE IN WHICH SEEC FINED MAYOR NICKELS FOR USING CITY  
11 FACILITIES TOWARD HIS RE-ELECTION

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

21 Timing. Nickels was found to have misused City facilities  
22 in support of his re-election even though, as SEEC observed in  
23 its supplementary opinion (p. 8), the March distribution "was not  
24 as close in time to the September and November 2005 elections as  
25 most general campaign mailings to the electorate would be." In  
contrast, most of the Library's violations of SMC 2.04.300  
alleged here are still ongoing, just five weeks before the August

1 7 election; others happened within three months of the election--  
2 far closer in time than Nickels' infraction. As SEEC stated in  
3 the supplementary opinion (p. 4),

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

10 Specificity. Nickels was found to have violated the law  
11 even though his accomplishments report did not urge support for  
12 him or even mention his candidacy for re-election. In contrast,  
13 the Library's Fact Sheet, Blue Book, web site, and instructions  
14 to staff all explicitly refer to the proposed levy and the August  
15 7 election, and in ways that a reasonable person would judge  
16 favorable to a yes vote on Proposition 1.

17 Value. Nickels was found to have spent \$2205 in City  
18 resources for the printing and mailing of his accomplishments  
19 report. The Library has spent considerably more on the efforts  
20 outlined in this complaint. In addition to \$3,118.67 spent in  
21 printing the Blue Book, there are additional costs (so far not  
22 quantified): enhanced color versions of pages from the Blue Book  
23 that are being prominently displayed throughout the Library  
24 system; plastic displays for the many locations; handout copies  
25 of the Library Levy Fact Sheet; addition to the Library web site  
of information from the Blue Book and Fact Sheet; and assistance  
given to the Seattle Public Library Foundation.

1       Objective and fair. The Commission apparently did not find  
2 Nickels' accomplishments report lacking in objectivity or  
3 fairness, perhaps because these standards arise in relation to  
4 WAC 390-05-271(2) and its interpretation of RCW 42.17A.555, which  
5 applies only prohibitions on referring to a ballot proposition  
6 (an agency is allowed to make a presentation of facts about the  
7 proposition only if "objective and fair"). A central part of  
8 this complaint is that the Library has violated this requirement  
9 for an "objective and fair presentation of facts relevant to a  
10 ballot proposition...." As outlined in sections IV and V, the Fact  
11 Sheet, Blue Book, web site, and instructions to staff all make  
12 statements about the levy that are contrary to fact, and in ways  
13 that consistently err toward promoting the levy.

14       Normal and regular. Nickels' 2005 distribution of his  
15 accomplishments report was found to be a misuse of City  
16 facilities to aid his election even though he had done  
17 accomplishments reports in the three previous years—2002, 2003,  
18 and 2004. That is, even "normal and regular" is no defense if  
19 the promotion is illegal. The Library is even more vulnerable on  
20 this score, as not only are its efforts contrary to prohibitions  
21 against promoting a ballot measure, but it has not for a decade  
22 or more made efforts of this kind to prominently inform its  
23 patrons about any ballot measure. (I made a public records  
24 request for any such efforts, and received nothing.) Also,  
25 during the 1998 bond issue campaign, the Library did not develop

1 a ballot measure fact sheet. It did distribute the Brown Book and  
2 a Citizens Guide that was made up of a few pages from the Brown  
3 Book. However, as outlined above in sections V and VI, because  
4 of the greater specificity of the bond issue ordinance, the 1998  
5 Brown Book and Citizens Guide described what was in the bond  
6 issue more accurately than the 2012 Blue Book and Fact Sheet  
7 describe what is in the levy.

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

10 It is not sufficient to ask simply whether a document is  
11 'informational or promotional.' Many documents will have  
12 attributes of both. Useful information sent by an elected  
13 official will frequently serve to promote that official,  
14 thereby assisting that official's reelection. The key  
15 question is whether, to a reasonable person, the activity or  
16 document appears PRIMARILY designed to influence the outcome  
17 of an election, or PRIMARILY designed to be informational  
18 with only an incidental effect of assisting a candidate's  
19 campaign for election.

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

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

When the above factors are viewed as a whole, I suggest that  
the Library's Fact Sheet, Blue Book, web site references,  
instructions to staff, and other Library activities constitute an  
effort whose primary purpose is not informational, but is

1 primarily to promote Proposition 1. And in their potential  
2 influence on the election, the Library's efforts are much more  
3 important than was Mayor Nickels' 2005 accomplishments report as  
4 an impact on his own re-election.

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

10 By this complaint, I am inviting the Commission and the  
11 Executive Director himself to rethink and reverse this finding.  
12 The efforts documented in this complaint are not "primarily  
13 informational." The Library's Fact Sheet, Blue Book, and web  
14 site, as well as the instructions to staff on how to describe the  
15 levy to the public and the posting of displays at all major  
16 counters in all of the libraries in the weeks preceding a levy  
17 election, simply do not qualify as "primarily informational."  
18 These efforts have all the indications of a marketing campaign,  
19 and one designed in part by a campaign consultant (Sue Tupper)  
20 who was a campaign manager for the 1998 Libraries for All ballot  
21 measure.

22 The Library's effort has been too specific about levy and  
23 its timing, too focused on reaching potential voters who use the  
24 Libraries, and too astray from being objective and accurate, to  
25

1 be regarded as anything but an effort primarily designed to  
2 influence the outcome of the August 7 election.

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

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

1 X. STAFF REVIEW OF AGENCIES' PROPOSED ACTIVITIES REGARDING  
2 BALLOT MEASURES: SUGGESTIONS TOWARD A PROTOCOL TO MAKE THE  
3 REVIEW MORE FORMAL, CONDITIONAL, COMPARTMENTALIZED, AND  
4 TRANSPARENT

5 Exhibit 29 is a memorandum from a staff person of the Public  
6 Disclosure Commission to the Ocean Shores Library regarding  
7 information they planned to distribute in advance of a library  
8 levy election. The following differences from the PDC process  
9 are evident in how the Seattle Ethics and Elections Commission  
10 has so far reviewed the Seattle Public Library's activities  
11 regarding its impending levy election:

- 12 (1) Compartmentalize. SEEC's director was deeply involved  
13 in giving advice to the agency, whereas the PDC's  
14 director was not. Consider the contrasting results if a  
15 citizen complaint is brought: At the PDC, the director  
16 is compartmentalized from the earlier advice to the  
17 agency, thus free of any potential conflicts in ensuring  
18 a fair investigation of the complaint. The director  
19 can, if need be, assign the investigation to a staff  
20 person who was not involved in the initial staff-level  
21 advice on the practices being complained of. At SEEC,  
22 it would be expecting a lot for the director to review  
23 and overrule his own decision, nor could subordinate be  
24 expected to feel completely free, if assigned, to  
25 reconsider his or her superior's decision.

1 (2) Formalize. The PDC advice is given in a formal memo,  
2 whereas the SEEC advice is given not in a formal memo,  
3 but in part by e-mails and in part orally. For example,  
4 in the current case there is no written paper trail or  
5 decision document with the SEEC Executive Director's  
6 approval of the Library Levy Fact Sheet or his reasons  
7 for doing so.

8 (3) Make conditional. The PDC written advice by the staff  
9 to the agency contemplating activities regarding a  
10 ballot measure contains the following proviso:

11 We cannot certify that the proposed fact sheet  
12 would not be found objectionable even after our  
13 review, should a complaint be filed by a citizen  
14 under RCW.42.17A.555. The communication of this  
15 information, when combined with other activities to  
16 communicate information about the levy, may be  
17 constructed by residents of the City of Ocean  
18 Shores as "campaigning" in support of a ballot  
19 proposition.

20 The SEEC written advice (to the extent that any of the  
21 advice is actually written) does not contain anything  
22 like this this proviso. Agencies are not warned (at  
23 least in writing) that the advice is not binding on the  
24 Commission nor that, should a citizen complaint be  
25 filed, it will be investigated fully and fairly.  
Citizens--whose complaints are a lifeblood for the  
Commission enforcement process--do not see such a

1           proviso to help assure them that their complaints will  
2           be fully and fairly adjudicated.

3           (4) Make transparent. It would be best for SEEC and PDC  
4           alike for the more formalized process for agency advice  
5           to be made transparent to the public, at least for  
6           ballot measures, which are of such wide interest and are  
7           so tempting for agencies to try to promote or defeat.  
8           Posting of advice on the SEEC and PDC web site would  
9           attract public attention as an additional check and  
10           balance that will help improve the advisory process.

11           The suggested changes for SEEC staff review of agencies'  
12           proposed activities regarding ballot measures would have helped  
13           the current situation, in which this complaint necessarily  
14           addresses some Library activities that the Commission staff in  
15           some form told the Library were allowable. In a June 5 e-mail  
16           (exhibit 26), SEEC's Executive Director stated:

17           I can't charge library personnel with violating the law by  
18           printing and distributing a fact sheet that I approved the  
19           printing and distribution of. (And yes, given my conclusion  
20           that the publication was primarily informational, I did tell  
21           the library that they could post it in the libraries.) The  
22           library relied on my approval, so it would have to be the  
23           full commission that decided whether or not I erred.

24           It my hope that the Executive Director and the Commission  
25           will be open to the enhancements suggested here for the advising  
26           relationship regarding agency activities that could affect an  
27           election. Greater formality, compartmentalization, transparency,

1 and a conditional proviso would have made the current complaint  
2 much easier to prepare, and likely would have rendered it  
3 completely unnecessary.

4  
5 XII. REQUEST FOR RELIEF

6 In view of the serious breaches of law alleged here and the  
7 impending urgency of the August 7 election, I ask the Commission  
8 to consider the following relief:

9 (1) That the Commission issue a preliminary order directing  
10 the City to temporarily suspend the promotional activities  
11 that are the subject of this complaint.

12 (2) That the Commission find the City of Seattle in  
13 violation of SMC 42.17.130 for using public facilities to  
14 promote Proposition 1; and to do so quickly, as Proposition  
15 1 will be on the ballot soon, and sufficient evidence is  
16 provided in the attached exhibits.

17 (3) That the Commission ask the Seattle Public Library  
18 Foundation to stop making donations to the Yes Seattle  
19 Libraries campaign until the Commission finishes action on  
20 this complaint.

21 (4) That the Commission encourage the Library management and  
22 the SEEC Executive Director to engage with me promptly in  
23 the informal dispute resolution measures that are available  
24 under section L of the Commission's General Rules and  
25 Procedure.

1 (5) That the Commission instruct the staff to request the  
2 Seattle Channel to fund and broadcast, and to work with the  
3 Seattle Channel to produce, a Video Voters Guide containing  
4 statements from the yes and no campaigns regarding City  
5 Proposition 1; and (optionally for the Commission and staff)  
6 for County Proposition 1 (the juvenile justice levy).

7 (6) That the Commission make available to me and the rest of  
8 the public the staff report on this complaint by Saturday,  
9 July 7, allowing me to prepare a response over the weekend  
10 and provide it to the Commission and staff by the early  
11 morning of Monday, July 9, thus allowing a further staff  
12 response if the staff wishes.

13  
14 XII. CONCLUSION

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

23 In stark contrast to the 2012 levy now at hand, the 1998  
24 Libraries for All bond issue that is so often invoked but so  
25 seldom studied had firm commitments and safeguards. Not telling

1 voters the truth about the levy is a disservice to them, it  
2 invalidates the efforts of those who worked for a better levy,  
3 and it loses our history. That is why I have brought this  
4 complaint and why I hope that the Commission finds urgent merit  
5 in it. Thank you for your consideration.

6  
7 I declare under penalty of perjury of the laws of the State of  
8 Washington that I am a registered voter of the City of Seattle,  
9 and that the information in the above complaint, and the exhibits  
10 provided, are true and correct.

11 Dated this July 3, 2012

12 

13  
14  
15 Chris Leman