

Memo

To: Seattle Ethics and Elections Commission

From: Wayne Barnett

Date: June 30, 2021

Re: Request for Release

Overview

In order to participate in the Democracy Voucher Program, candidates must agree to comply with a maximum campaign valuation (MCV), colloquially, a spending limit. Because many candidates would not participate in the Program if they were locking themselves in to being outspent by an opponent or an independent expenditure (IE) committee, the Program's designers created a mechanism for a participating candidate to request release from the MCV if an opponent and/or an IE committee combined to exceed the cap.

The MCV for the Primary for the Mayoral race is \$400,000. Andrew Grant Houston's campaign on June 28 requested to be released from the MCV because the campaign valuation of Bruce Harrell's campaign, combined with independent expenditures on his campaign's behalf, together exceed \$400,000.

Legal Framework

SMC 2.04.634 - Campaign valuations, releases, and use of proceeds

A. Participating candidates shall comply with all campaign laws and not exceed the corresponding maximum campaign valuation. A campaign valuation is:

1. The value of unredeemed democracy vouchers assigned to the candidate that the candidate may redeem without exceeding the maximum in Table A for [2.04.634](#); plus

2. The greater of:

a. Total contributions received; and

b. Money spent to date (equal to prior expenditures, plus debts and obligations).

B. A qualified candidate may demonstrate to the Commission that an opponent's campaign valuation, or the sum of an opponent's campaign valuation and independent expenditures either adverse to the candidate or in favor of at least one opponent, is higher than the relevant figure in Table A for [2.04.634](#). If the Commission does not find the excess valuation inadvertent and

minor, the Commission shall allow the candidate to be released from the maximum campaign valuation. If the demonstration does not involve independent expenditures, the Commission also shall allow the candidate to be released from the campaign contribution limit. The Commission shall allow the released candidate to redeem democracy vouchers up to an amount that does not bring the campaign valuation above the maximum; after redemption, the candidate may engage in campaign fundraising without regard to anything in this subsection 2.04.634.B from which the candidate has been released.

SMC 2.04.010 – Definitions

...

“Expenditure” means a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. “Expenditure” also includes a promise to pay; and a payment or transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For purposes of this [Chapter 2.04](#), expenditures other than money or its equivalent shall be deemed to have a monetary value equal to the fair market value of the expenditure. “Expenditure” shall not include: (a) the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported, or (b) the value of in-kind labor, or (c) fines or any amounts returned to the election campaign account as a result of any penalties imposed on a candidate for violating this [Chapter 2.04](#).

...

“Independent expenditure” means an expenditure on behalf of or opposing any election campaign, when such expenditure:

1. Is made independently of the candidate, the candidate's political committee or agent, or any ballot proposition committee or its officers or agents;
2. Is made without the prior consent, or the collusion or cooperation, of the candidate, the candidate’s agent or political committee, or the ballot proposition committee or its officers or agents; and
3. Is not a contribution as defined in this [Section 2.04.010](#).

An independent expenditure is made by a person on the earliest of the following events: (a) the person agrees with a vendor or provider of services to make an independent expenditure; or (b) the person incurs the obligation to make an independent expenditure; or (c) the person pays for an independent expenditure.

...

Analysis

Under SMC 2.04.634.A, calculating Bruce Harrell’s campaign valuation requires summing his total contributions received to date (\$341,853.16.) with the value of unredeemed democracy vouchers assigned to the candidate that the candidate may redeem without exceeding \$400,000. As of 2:30 this afternoon, Bruce Harrell’s campaign had 3,389 unredeemed vouchers that had been verified by King County Elections, for a value of \$84,725. Of those, it would be possible for the Harrell campaign to redeem \$58,125 worth of vouchers without exceeding \$400,000, putting the campaign’s valuation at **\$399,978.16**.

Conceptually, a campaign’s contributions to date are comparable to a checking account. Unredeemed vouchers are comparable to a savings account. A campaign can access voucher dollars once those vouchers have successfully moved through the signature verification process. They are legally entitled to those proceeds, provided they do not put them over the maximum campaign valuation.

On May 5, 2021, an Independent Expenditure (IE) Committee registered with the Commission with the name “Bruce Harrell for Seattle’s Future.” The IE Committee has reported to date expenditures—as that term is defined in SMC 2.04.010—totaling **\$6,473.10**. These expenditures consist of (a) payments to a credit card processor in the month of May totaling \$932, (b) money owed to a fundraising firm totaling \$2,500, (c) money owed for logo and website development totaling \$1,500, (d) money owed for accounting and compliance services totaling \$1,500, and (e) \$41.10 in other expenses.

The combined valuation of the Harrell campaign and Bruce Harrell for Seattle’s Future expenditures to date is **\$406,451.26**.

Recommendation

I recommend the Commission grant this request for release. The **\$6,451.26** in excess valuation is not inadvertent *and* minor. Inadvertent is synonymous with “accidental,” so envisions a campaign volunteer buying office supplies without authorization from the campaign manager, or two campaign workers crossing wires and each buying a replacement cell phone for the candidate in the run up to Election Day. The IE Committee’s expenditures are not inadvertent, nor is the Harrell campaign’s activities to date.

For the 2017 election cycle, the legal standard for granting a release was a “material” breach of the MCV. The Commission found this standard difficult to apply and in 2018, the law was amended to introduce the “inadvertent and minor” standard. The standard, borrowed from the Ethics Code, worked well in 2019.

I should underscore that releasing the Houston campaign from the maximum campaign valuation does not entitle the campaign to any addition public financing. The campaign can raise money privately since it has already reached the maximum campaign valuation, but no additional public financing is available to the campaign.

