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Complaint to Seattle Ethics and Elections Commission

September 15, 2021

Consistent with Seattle Ethics and Elections Commission Administrative Rule 3(B), we write to bring your attention to apparent violations of Seattle Municipal Code Chapter 2.04 by Seattle City Councilmember Kshama Sawant.

The voters of Seattle City Council District Three currently are exercising their constitutional right to petition for the recall of their representative, Councilmember Sawant. Because Washington's recall process requires a court to review recall charges, District Three voters have been forced to hire lawyers to represent them and, to date, have expended hundreds of thousands of dollars in legal fees.

While District Three voters have been paying directly to secure their constitutional rights, *all* Seattle voters have been paying for Councilmember Sawant's campaign against the recall effort since the City Council voted to pay her legal expenses.

Councilmember Sawant has unlawfully accepted campaign funds from the City of Seattle and has expended them for legal fees benefiting her campaign but not reported as required by law. We request that the SEEC order Councilmember Sawant to reimburse the City of Seattle from her campaign funds and report her legal fees as campaign expenditures as required by law and to restore a fair balance to her recall election.

Factual Background

On August 18, 2020, recall charges were filed with the King County Elections Department seeking the recall of Councilmember Sawant.¹ Consistent with RCW 29A.56.130 and 140, the King County Prosecutor's Office formulated a ballot synopsis of the charges against Councilmember Sawant and transmitted that synopsis to King County Superior Court, for a determination of the factual and legal sufficiency of the charges.²

On September 15, 2020, the Seattle City Council passed Ordinance 126168, authorizing payment by the City of Seattle of "the necessary expenses of defending Councilmember Kshama Sawant in any and all judicial hearings to determine the sufficiency of" the recall charges against

¹ See Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis (Sep. 1, 2020), Dkt 1, *In re the Matter of Recall Charges against Kshama Sawant*, King Co. Sup. Ct, No. 20-2-13314-1 SEA.

² See *Matter of Recall of Sawant*.

her.³ Councilmember Sawant retained the law firm Barnard Iglitzen & Lavitt, LLP to represent her in the recall proceedings.

On September 16, 2020, the King County Superior Court found four charges against Councilmember Sawant were legally and factually sufficient to proceed, and on September 21, it issued an order approving a ballot synopsis.⁴ Councilmember Sawant moved for reconsideration of the Court's order approving the charges and, when it was denied, appealed the Court's orders to the Washington Supreme Court.⁵ On April 1, 2021, the Supreme Court upheld three of the four charges against Councilmember Sawant.⁶ After the Supreme Court ruled, the recall petitioners and Councilmember Sawant returned to King County Superior Court for a determination of the appropriate language of the ballot synopsis and the time in which the petitioners might collect the necessary signatures for the recall petition to proceed to voters in Councilmember Sawant's district.⁷ Councilmember Sawant was represented in all these proceedings by lawyers at Barnard Iglitzen & Lavitt.

Consistent with Washington law and the Seattle Municipal Code, recall petitioners have regularly filed disclosures of the contributions they have received in support of the recall campaign, and their expenditure of those contributions.⁸ Those disclosures show that recall petitioners have expended \$164,543.46 in legal fees in support of their constitutional right to seek recall of their elected representative.⁹ The Recall Kshama Sawant Committee has been transparent and in full compliance with the City's disclosure laws, in contrast to the underhanded, backdoor illegal financing of her campaign expenses by Councilmember Sawant.

Councilmember Sawant has also filed disclosures of the contributions she has received to oppose the recall campaign.¹⁰ Those disclosures indicate that Councilmember Sawant has raised \$686,805.22 and spent \$591,235.25 of that on various expenses, including posters, mailers, other marketing, payroll, and credit card and bank processing fees. Those disclosures *do not*, however, contain any reference to the contributions made to Councilmember Sawant by the City of Seattle, nor Councilmember Sawant's expenditure of those funds in opposition to the recall campaign. Assuming Councilmember Sawant's legal fees have been approximate to the petitioner's, Councilmember Sawant has failed to disclose as much—or more—than \$100,000 in contributions and expenditures.

Consequently, by virtue of the gift of funds by the City Council to Sawant's campaign opposing recall, Councilmember Sawant has obtained an approximate advantage of over \$200,000 against the citizens exercising their constitutional right of recall. The SEEC should require the return of these funds to the City of Seattle because, once the courts found factual and legal sufficiency, all legal expenses incurred by Sawant became campaign expenditures. Sawant should return this gift of City funds, but to date she has refused to do so. The SEEC should

³ City of Seattle Ordinance 126168 (Sep. 25, 2021).

⁴ Order on the Sufficiency of Charges, Dkt. 19, Order on the Ballot Synopsis, Dkt. 25, *Matter of Recall of Sawant*.

⁵ Notice of Appeal, Dkt. 29, *Matter of Recall of Sawant*.

⁶ Opinion, *In the Matter of the Recall of Kshama Sawant*, No. 99089-1.

⁷ See Order on Certification and Transmission of Ballot Synopsis, Order on Request to Clarify, Order on Clarification, *Matter of Recall of Sawant*, No. 20-2-13314-1 SEA.

⁸ See <http://web6.seattle.gov/ethics/elections/filings.aspx>

⁹ See Wash. Const. art. I, § 33.

¹⁰ See <http://web6.seattle.gov/ethics/elections/campaigns.aspx>

exercise its authority to correct this violation of Seattle’s election laws and to require full disclosure so the voters can make their own decisions, free from political gamesmanship and the obvious “thumb on the scale” obtained by Councilmember Sawant. Because the courts have found the recall charges legally and factually sufficient, the receipt of City funds and payment of legal fees should be considered Sawant’s campaign contributions and expenditures, just as they are for the Recall Kshama Sawant campaign. Fairness dictates nothing less.

Relevant Law

To ensure the honest and open administration of our political process, the Seattle Municipal Code sets out rules for the contributions to and expenditures by political campaigns.¹¹ The Seattle City Council’s funding of Councilmember Sawant’s legal fees is such a contribution, and her payments to legal counsel opposing the recall campaign against her is such an expenditure.

For the purposes of the Seattle Municipal Code, a “contribution” includes a “gift, deposit, . . . donation, advance, pledge, payment, . . . or transfer of anything of value, including personal and professional services, for less than full consideration.”¹² The definition contains several exceptions, including “legal or accounting services [rendered] on behalf of a candidate or an authorized political committee, but only to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws.”¹³ An “expenditure” includes payments, advances, and gifts, including “payment . . . in exchange for . . . services . . . for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.”¹⁴ Specifically, the Code requires “[e]ach candidate or political committee that . . . receives \$5,000 or more in aggregate contributions during the applicable period” to file reports of those contributions with the City Clerk.¹⁵

The Code also requires that expenditures may only be “made or incurred by any candidate or political committee . . . on the authority of the campaign treasurer or the candidate,” that the campaign treasurer maintain a record of all such expenditures, and that all contributions and expenditures be regularly reported to the City Clerk.¹⁶

The Code also limits the timing and amount of contributions that a person may make, and that a candidate may receive. No person may make a contribution to any candidate for the City Council other than in the election cycle for that candidate, and no candidate may receive a

¹¹ See SMC § 2.04.150.

¹² SMC § 2.04.010.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ SMC § 2.04.155(A). The “applicable period” during which disclosures are required depends on the nature of the underlying political activity. For “a candidate or a candidate’s authorized political committee,” the applicable period is the election cycle. SMC § 2.04.010. For “a ballot proposition political committee”—which includes a recall ballot proposition—the applicable period is “from the time the campaign activity begins until the end of the period covered by the final report.” *Id.*

¹⁶ SMC §§ 2.04.240, .250.

contribution outside that period.¹⁷ No person may donate more than \$500 to a candidate for the City Council, nor may a candidate for City Council accept a contribution greater than \$500.¹⁸

The Washington Constitution makes “[e]very elective public officer of the state of Washington [except] judges of courts of record . . . subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected.” Wash. Const. art. I, § 33. The Washington Legislature has developed procedures to implement the people’s constitutional right to recall their elected officials.¹⁹ These include procedures for judicial review of the recall charges, as referenced above.²⁰

Washington law also provides for the payment of damages and expenses of defense by local government entities in certain actions brought against local government officials, including recall petitions.²¹ Specifically, “[t]he necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge . . . shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity.”²² Although the RCW thus permits a local governmental entity to pay the legal fees of an elected official, it does not explicitly or implicitly exempt the official from other requirements in law, including campaign finance laws.

Complaint

When it authorized the payment of “the necessary expenses of defending Councilmember Kshama Sawant in any and all judicial hearings to determine the sufficiency of a recall charge,” the Seattle City Council necessarily effected a *contribution* to Councilmember Sawant’s *election campaign*.²³ When the Council approved that contribution, they could reasonably expect it to far exceed \$500, and it has. To date, the Seattle City Council has contributed tens of thousands of dollars towards Councilmember Sawant’s efforts to fight the voters’ recall campaign against her.

The Seattle Municipal Code prohibited Councilmember Sawant from accepting the City Council’s contribution in support of her campaign against the recall effort. The Code also required Councilmember Sawant to disclose the contribution, and to disclose expenditures on legal fees made in support of her opposition to the recall campaign. She has done neither. State law permits a local governmental entity to pay the necessary expenses of defending an elected official in judicial proceedings to determine the sufficiency of recall charges, but nothing in the law exempts the official from complying with campaign finance reporting requirements.²⁴

The law also does not authorize the City Council to make, nor Councilmember Sawant to accept, a contribution to her campaign opposing the recall effort. Although the SEEC might

¹⁷ SMC §§ 2.04.370(A), (C).

¹⁸ *Id.* at § 2.04.370(B), (D).

¹⁹ *See* RCW §§ 29A.56.110-270.

²⁰ *See* RCW § 29A.56.140.

²¹ RCW § 4.96.041.

²² *Id.*

²³ An “election campaign” is “any campaign in support of or in opposition to a candidate for election to public office of the City and any campaign in support of or in opposition to a ballot proposition.” SMC § 2.04.010.

²⁴ *See* RCW 4.96.041(3).

decline to act before the courts found the recall petition legally and factually sufficient, once this decision occurred both parties' legal expenses became campaign contributions and expenditures.

We request the Executive Director initiate an investigation into Councilmember Sawant's violations of Chapter 2.04, as required by Rule 3.C.2. and for the relief requested herein.

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I declare under penalty of perjury of the laws of the State of Washington that the information in this complaint is true and correct.



Henry Bridger II
Campaign Manager/Chairman

9/15/21

Date

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