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Member, King County Citizens' Elections Oversight Committee (CEOC)
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March 7, 2021

King County Councilmembers
King County Courthouse
Seattle, WA 98104

Dear King County Councilmembers:

This letter is to serve as a minority report adjunct to the CEOC's Annual Report for 2020, which was submitted to the Council on or about February 1, 2021.

Background

I was the lone dissenting member of the CEOC to vote against the Annual Report and its transmission to the Council. The primary mission of the CEOC is to provide oversight on the Elections Department for the purpose of maintaining voter confidence. To that end it is essential that the CEOC inform both the Elections Department and the County Council of activities or deficiencies that may reduce voter confidence and suggest corrective improvements. I voted against the report as it was deficient in serving the CEOC's oversight mission. Indeed, the report is little more than a summary of presentations that the CEOC received from elections staff, including direct quotes from the Elections Director. This information is undoubtedly redundant to briefings and communications that the Council has already received from the Elections Department. The only reflections by CEOC members were a factual observation on the administration of the King Conservation District election (expanded upon below) and some laudatory personal opinions of the CEOC Chair, not based on any factual research by the CEOC. Furthermore, the CEOC majority voted down my request to add 4 sentences to the 18-page report, to highlight some specific concerns about Elections Department activities, and which were clearly represented as the views of one member.

In this letter I relate concerns about certain Election Department activities which were excluded from the Annual Report. I also identify some structural issues that impede the CEOC's functioning as an effective oversight body and recommend corrective action to the Council.

Issue #1 – The Voter Education Fund is unreasonably discriminatory, and appears to have violated state campaign finance laws.

King County Elections has, since 2017, partnered with the private Seattle Foundation to endow and operate the Voter Education Fund (VEF), which issues grants to King County non-profit organizations for the stated purpose of “voter engagement in communities that are historically underrepresented in the democratic process”. In 2019, \$950,000 was awarded to 39 different organizations for the 2019 and 2020 election years. The press release announcing those grants stated that:

Grantees serve a wide array of communities, including communities of color, limited-English speaking residents, low-income youth, veterans, people experiencing homelessness, and people who have been convicted of a felony. This cycle places an increased emphasis on voter outreach to people with disabilities, African American and Native American voters, and historically marginalized residents in South King County. [<https://www.kingcounty.gov/depts/elections/about-us/newsroom/news-releases/2019/May/23-voter-education-fund-announcement.aspx>]

King County Elections announced on March 1, 2021 that the VEF has been renewed for the 2021-2022 biennium, with grant applications due on April 2. Another \$950,000 will be awarded this May, with half of that amount coming from King County taxpayer funds. This year’s RFP document states that:

The Voter Education Fund will prioritize grants to organizations that work to reduce inequities in voting access in historically excluded communities who have faced systemic racism, being targets of voter suppression, and increased barriers to participation. Our focus communities for this funding opportunity includes, but is not limited to Black, indigenous, people of color, people experiencing homelessness, people convicted of a felony, limited-English speaking (LES) communities, people with disabilities and youth of color. [<https://www.kingcounty.gov/depts/elections/education-and-outreach/voter-education-fund.aspx>]

Activities eligible for funding include “Voter registration activities where historically excluded communities work, play or connect” and “Nonpartisan opportunities for communities to come together and educate themselves about what’s on the ballot”.

I have specific and serious concerns about the VEF and question the legality of its past implementation. Because applications will be accepted and acted upon imminently, I recommend that the Council act urgently to prohibit King County’s participation in the VEF either permanently or until certain revisions are made.

My concerns about the VEF:

1. It is unusual, unfair, unseemly and perhaps unconstitutional for an elections department to allocate public funds to increase voter registration and turnout of some Americans, but not other Americans, based on categories defined by the political preferences of the Elections Director. To the extent that the Elections Department grants any funds to private organizations

for voter registration and turnout, it must be done on an equal basis, without regard to the age, ethnicity, religion, criminal history or economic status of the targeted voters.

2. The Seattle Foundation is an unsuitable partner for the Elections Department in this venture. The foundation engages in express advocacy related to ballot measures. PDC records show that it contributed a total of \$250,000 to four different ballot measure campaigns during 2018, 2019 and 2020. The foundation has helped select the grant recipients in past years, and will do so again this year. That introduces the potential for bias in the selection process towards organizations which take positions in-line with the foundation's policy preferences.
3. My concerns about potential biases of both the Seattle Foundation and Elections Director in the selection process are not merely theoretical, but were realized in practice. Many of the organizations which received VEF grants in previous years contributed to and otherwise expressly advocate for or against ballot measures while benefiting from their grants. For every ballot measure on which two or more grantees took a position, those grantees were all on the same side of the issue. For ballot measures where the Seattle Foundation contributed to the For or Against campaign, there was not a single grantee which advocated for the other side. For example, in 2018 the Seattle Foundation contributed \$100,000 to the Yes on I-1631 campaign to impose a state carbon tax. Seven of the organizations which received VEF grants in 2018 advocated for and/or contributed to the Yes on I-1631 campaign. Not one grantee advocated or contributed to the No campaign. The same consistent pattern showed up with the three other ballot measure campaigns the Seattle Foundation contributed to. Most of the grantees which advocated for I-1631 in 2018 were again awarded grants in 2019 and again engaged in express advocacy in concert with the Seattle Foundation in 2019 and 2020. In every case I found where a VEF grantee expressly supported a ballot measure campaign, it was on the side overwhelmingly supported by other progressive and Democratic groups, and overwhelmingly opposed by conservative and Republican groups.

Thus, King County Elections has paid for "opportunities for communities to come together and educate themselves about what's on the ballot" to be conducted by organizations engaged in express advocacy related to questions on the ballot. The fact that multiple grantees were advocating on the same side of multiple measures with no instructions from King County Elections to prohibit this practice and with no balance and equal treatment for the other sides, suggests that King County Elections violated state laws prohibiting the use of public facilities in campaigns.

Short of outright ballot stuffing, I can think of few activities that would destroy confidence in an elections office more than would the funneling of tax dollars to outside organizations all campaigning on the same side of a ballot contest.

My recommendation: The Council should urgently pass an ordinance to prohibit the Elections Department from promoting the VEF or selecting or funding grantees until the program is revised as follows: The VEF's definition and advertising be clearly restated to indicate that the fund is open to any

organization which conducts voter registration and voter turnout activities and may target any group of voters and potential eligible voters, and that the grantees will not be discriminated against due to ethnicity, religion, age, etc. of the target population or the viewpoints of the organization; the opportunity to apply for grants is advertised as widely as reasonably practicable; the selection process and committee are redesigned to ensure that grants are awarded without viewpoint or other discrimination; and that grantees are contractually prohibited from engaging in any express advocacy on behalf of candidates or ballot measures during the time period covered by the grants, with procedures in place to monitor and ensure that grantees do not engage in express advocacy.

Issue #2 – Security concerns with the system used for online voting for the King Conservation District.

King County Elections ran the 2020 King Conservation District (KCD) election using an online system from vendor Democracy Live. The CEOC's Annual Report included that statement that:

a CEOC member who saw a live demo of the Democracy Live system observed that it enables election administrators to look up each voter's returned ballot and see what selections the voter made. The member expressed concerns that this may violate the state Constitution's mandate to "secure to every elector absolute secrecy in preparing and depositing his ballot",

I am that member. I reiterate that concern here, since the 2021 KCD election, currently underway, is also using the Democracy Live system. I have additional concerns that signature verification in this system, where the voter signs his or her name using a mouse or trackpad, is even less reliable than it is for traditional signatures.

My recommendation: The Council should pass an ordinance requiring that any online voting system operated by the Election Department must (a) guarantee *absolute secrecy* to the voter, without the possibility that any person may look up how any voter voted; and (b) use a security method which is more accurate than verification of signatures made using a mouse.

Issue #3 – The Election Director's lobbies for state legislation outside the purview of her office.

The King County Elections Director lobbies the State Legislature on bills related to election administration, as do the Secretary of State and other County Auditors. This is a customary and appropriate activity for the Elections Director. In the current and previous sessions, however, the Elections Director lobbied the Legislature in support of bills to abolish statewide Tax Advisory votes (which ultimately failed to advance in both sessions). Such advocacy crosses the line from appropriate lobbying on election process issues to the broader policy questions of ballot content. The Tax Advisory votes were established by an Initiative to the People, and the voters weigh in on these questions in comparable numbers to their votes on other ballot measures. That majorities of King County voters have variously advised to Maintain some tax measures and to Repeal other measures, indicates that voters are engaged with these questions and think about their votes on each one. The messaging from the Elections Department is overwhelmingly promotive of voter participation and for the expansion of

voting rights. It is disappointingly discordant for the Elections Director to now advocate for the removal of the right to vote on the Tax Advisory questions, which the voters themselves established and on which they overwhelmingly choose to voice their opinions. When an election official advocates on one side of a policy issue it puts at risk the confidence of some voters in the elections office to treat all voters equally, regardless of any voter's policy positions.

My recommendation: The Elections Director should remain neutral and refrain from advocacy for or against ballot content.

Structural Issues with the CEOC

The CEOC's current membership reflects the ethnic diversity of King County's population. On other dimensions, King County's voters are less fairly and proportionately represented. This limits the CEOC's effectiveness to generate recommendations for maintaining the confidence of all King County voters in our Elections Department.

One concern is lack of geographic diversity. Ten of the CEOC's current 13 members (77%) live in the City of Seattle. One member lives in Kent, one in Renton, and one in Bellevue (Council District 6). There are no current members from either Council District 3 or District 9.

A second concern is lack of ideological diversity. I am the representative to the CEOC from the King County Republican Party, a seat provided for in Ordinance 18795 that specifies the committee composition. However it is apparent that I am the only current member of the committee who leans right of center ideologically. For example, several of the other members are listed in the PDC database as having donated to Democrat and progressive candidates. Other members' left of center views are apparent from Internet presence and in comments in CEOC meetings. As far as I can tell, I am the only member who is on record with the PDC or FEC as having donated to any Republican candidate.

It is fair and reasonable for heavily Democratic King County to have Democratic majorities on its boards and commissions, particularly on boards that set policy, allocate funds, and make other binding recommendations. However, an advisory committee, such as the CEOC, which raises issues and generates suggestions to be implemented at the discretion of elected officials, should aim for broad ideological diversity to generate a broad wealth of ideas for policy makers to consider. This is particularly true in the realm of elections, where the rights of minority voting blocs must be protected. Republican candidates typically garner in the range of 25-40% of the King County vote, depending on the candidate and election year. An electoral minority of that size deserves to be represented in an elections oversight committee by more than a single member out of thirteen. (8% of the committee's votes).

When failures in election administration do occur, it is seldom the side that just won an election which complains about how the election was conducted. It is invariably a losing side which is motivated to look for and report any errors, unequal treatment, and other irregularities. Squelching and minimizing the

observations and views of an electoral minority regarding election administration does more than undermine the minority's confidence in elections administration. It also deprives administrators and policy makers of information needed to investigate reported failures and address shortcomings for the benefit of the entire electorate. Effective oversight of King County Elections demands that the CEOC include a broad and balanced range of perspectives.

My third concern about the CEOC's structure is the fixed formula for committee membership, per Ordinance 18795. This formula gives preference to certain private organizations and also reserves 4 seats for representatives of the language communities which by law may receive non-English voting materials (one member each for the Chinese, Vietnamese, Spanish and Korean communities). The voices of these communities are important and deserve to be considered in the oversight process. However, non-English ballots accounted for approximately 0.5% of all votes cast in King County in November 2020, while the minority language representatives together wield 4 out of 13 (31%) of the current votes in the CEOC, a disproportionately large share by any reasonable measure.

My recommendation: The Council should repeal the fixed formula for CEOC composition, with no reserved seats for any political party, language or other interest group. Instead of appointments made by the Council Employment and Administration Committee and confirmed by the Full Council, each Councilmember would appoint two members to the CEOC at his or her discretion. This would ensure both geographical diversity, as well as King County's political diversity aligned to Council membership. Of course, the Councilmembers would be free to, and I expect would, appoint individuals from minority language communities and other interest groups that are currently represented per fixed formula.

Until such time as changes are made to the CEOC composition formula, I remind the Council that as of this writing there are two vacancies on the CEOC. I encourage the Council to fill these vacancies with residents of the unrepresented Council Districts 3 and 9.

I also recommend that the Council amend Ordinance 18795, which mandates that the CEOC "Submit a report to the council on its observations, findings and recommendations... by February 1 of each year...", to also require that the report include the opinions of the CEOC minority.

I thank the King County Councilmembers for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Stefan Sharkansky". The signature is written in a cursive, slightly slanted style.

Stefan Sharkansky