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**SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY**

<p>MARK ELSTER and SARAH PYNCHON,</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE CITY OF SEATTLE, a Washington Municipal corporation,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p><b>COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF</b></p>
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**INTRODUCTION**

1. The City of Seattle compels property owners to sponsor the partisan political speech of city residents. A new levy on real property funds so-called “democracy vouchers” that residents donate to candidates running for local elected offices. Property owners must thereby pay for political viewpoints they object to and enrich the campaign coffers of politicians they don’t support. Indeed, “democracy voucher” is mere euphemism for a law that operates in effect as a politician enrichment tax.

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1           2.       The First Amendment embodies not only the right to speak, but also its corollary—  
2 the right not to speak. This includes the right to refrain from funding the speech of another person.  
3 The Supreme Court calls this a “bedrock principle” of the First Amendment—“that, except perhaps  
4 in the rarest of circumstances, no person in this country may be compelled to subsidize speech by  
5 a third party that he or she does not wish to support.” *Harris v. Quinn*, \_\_ U.S. \_\_, 134 S. Ct. 2618,  
6 2644, 189 L. Ed. 2d 620 (2014). The politician enrichment tax, by forcing Seattle property owners  
7 to finance campaign contributions, tramples upon this bedrock principle.

8 **PARTIES**

9           3.       Plaintiff Mark Elster has owned and resided with his family in a home in the  
10 Magnolia neighborhood of Seattle since 1990. He is subject to the politician enrichment tax.  
11 Mr. Elster grew up in West Seattle and graduated from the University of Washington with a  
12 Masters in Architectural Design in 1988. He then cofounded AOME Architects in downtown  
13 Seattle—an award-winning firm that builds homes across the Northwest. Mr. Elster has actively  
14 volunteered at his sons’ local schools over the years, including serving as PTA President, designing  
15 a school garden, and teaching magic classes to middle schoolers.

16           4.       Mr. Elster is politically active, often meeting with candidates and attending  
17 campaign activities. He cares deeply about personal liberty and robust free markets. Mr. Elster  
18 does not wish to support any of the local candidates eligible to receive democracy vouchers. He  
19 had considered using his vouchers to support Sara Nelson for city council, but Ms. Nelson has  
20 declined to participate in the democracy voucher program because she objects to it on an ethical  
21 basis. Mr. Elster no longer plans to use the vouchers. He adamantly objects to being compelled to  
22 subsidize views that conflict with his own values.

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1           5.       Plaintiff Sarah Pynchon owns property in Seattle subject to the politician  
2 enrichment tax, though she herself lives outside city limits. Ms. Pynchon moved to the Seattle area  
3 after completing her MBA at University of California-Berkeley in 1997. She worked for T-Mobile  
4 for many years before turning to her current career as a marketing consultant. She also enjoys  
5 volunteering at a camp for at-risk kids every year. Ms. Pynchon has owned and rented out a four-  
6 bedroom, single-family home in Seattle’s Broadview neighborhood since August 2005. She also  
7 rents out a small studio condo in Seattle that she purchased in 2009.

8           6.       Ms. Pynchon herself is not a Seattle resident or registered to vote in Seattle. She is  
9 therefore not qualified to receive vouchers, though she still must pay for the vouchers of Seattle  
10 residents. Ms. Pynchon objects to being compelled to subsidize other people’s political speech,  
11 especially when she herself is not entitled to vouchers.

12           7.       Defendant City of Seattle is a municipality located in King County, Washington.

13       **JURISDICTION AND VENUE**

14           8.       Plaintiffs Mark Elster and Sarah Pynchon bring this civil-rights lawsuit under 42  
15 U.S.C. § 1983 for the violation of rights secured by the First Amendment to the United States  
16 Constitution.

17           9.       This Court has jurisdiction over this matter under RCW 4.28.020, RCW 7.24.010,  
18 7.40.010, and Article IV, Sections 1 and 6, of the Washington State Constitution.

19           10.      Under RCW 4.12.020, venue is proper in King County Superior Court because the  
20 City of Seattle sits within county limits.

21       **FACTUAL ALLEGATIONS**

22           11.      In November 2015, Seattle became the first city in the nation to single out property  
23 owners to finance campaign contributions through so-called “democracy” vouchers. Seattle voters

1 passed Initiative 122 (I-122), entitled “Honest Elections Seattle,” which established the voucher  
2 program. I-122 is codified in Subchapter VIII of Section 2.04 of the Seattle Municipal Code. A  
3 true and correct copy of this initiative is attached as Exhibit A.

#### 4 **HOW THE POLITICIAN ENRICHMENT TAX OPERATES**

##### 5 **I. The politician enrichment tax funds municipal campaign contributions**

6 12. Washington law imposes strict limits on municipalities’ power to increase property  
7 taxes. *See* RCW 84.55.010. A taxing district, however, can bypass the state law’s lid on the levy  
8 rate if the levy is authorized by an initiative approved by a voter majority. RCW 84.55.050. I-122  
9 lifts the lid for the purpose of imposing the politician enrichment tax.

10 13. The levy lift lasts from 2016 through 2025 and authorizes the county tax assessor  
11 to collect up to \$30,000,000 in politician enrichment tax revenue over that period, with a cap of  
12 \$3,000,000 per year. I-122 § 2. This is in addition to the regular property taxes that the city collects  
13 through the King County assessor’s office.

14 14. The politician enrichment tax authorized by I-122 may only be used to fund  
15 vouchers for Seattle residents to give to qualifying candidates in Seattle municipal elections and  
16 the administrative costs of running the program. *Id.*

##### 17 **II. Voucher distribution**

18 15. On the first business day of the municipal election year, the Seattle Ethics and  
19 Elections Commission (SEEC) distributes four \$25 campaign finance vouchers to Seattle voters.

20 16. Each individual duly registered to vote in Seattle elections by the prior November  
21 automatically receives four vouchers in the mail. Anyone who subsequently becomes a registered  
22 voter in Seattle by October 1 of the election year will also receive four vouchers by mail.

1           17.     Seattle residents who are not registered to vote in Seattle can also receive four  
2 vouchers. Any citizen or green-card holder over the age of 18 who has lived in the city for thirty  
3 days can obtain their vouchers upon request to the SEEC.

4 **III.    Voucher use**

5           18.     Voucher recipients can contribute the vouchers, separately or in combination, to  
6 any qualified candidate for Mayor,<sup>1</sup> City Council, or City Attorney who agrees to abide by certain  
7 conditions, listed below in paragraph 25. SMC § 2.04.620(e).

8           19.     Voucher recipients can only assign vouchers to an eligible candidate participating  
9 in the voucher program. *Id.*

10          20.     Each voucher states the voucher holder’s name, an identification number, and the  
11 election year. *Id.* § 2.04.620(c). It contains language of assignment with blank spaces for the date  
12 and the name of the candidate that the holder wishes to support. *Id.*

13          21.     No one can buy, sell, or give away unassigned vouchers. *Id.* § 2.04.620(e).  
14 Trafficking in vouchers constitutes a gross misdemeanor punishable by up to a \$5,000 fine and  
15 imprisonment for up to 364 days. *Id.* § 2.04.690(d).

16          22.     Each voucher contains the following attestation:

17                 I attest that I obtained this Democracy Voucher properly and make this  
18 assignment freely, voluntarily and without duress or in exchange for any  
19 payment of any kind for this assignment, and not for any consideration of any  
20 kind, and that I am aware that assignment does not guarantee availability of  
21 funds and is irrevocable. Assignment is complete upon delivery to Seattle  
22 Ethics and Elections Commission, the named candidate, or her or his registered  
representative. Sale/transfer for consideration of this Democracy Voucher is  
strictly prohibited. Voucher may be redeemed only by qualifying candidates  
and only if such candidate has complied with additional contribution and  
spending limits and if funds are available.

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23 <sup>1</sup> Mayoral candidates may receive vouchers starting in the 2021 election cycle.

1 *Id.* § 2.04.690(c).

2 23. After listing a candidate's name and signing the voucher, the holder can deliver it  
3 to the selected candidate, an authorized representative, or the SEEC. *Id.* § 2.04.690(d). This can  
4 occur by mail, in person by anyone that the voucher holder wishes, or via SEEC's online system.

5 *Id.*

6 24. If voucher recipients do not assign the vouchers to an eligible candidate by the last  
7 business day in November after the election, then the unused voucher funds will carry over to the  
8 next election cycle to fund the program. *See id.* § 2.06.620(e); Democracy Voucher Program  
9 FAQ.<sup>2</sup> Unused voucher money does not roll over into the general fund. Democracy Voucher  
10 Program FAQ, *supra*.

11 25. The program limits candidates' eligibility to receive vouchers. Candidates  
12 interested in the program must apply to the SEEC. To qualify, candidates—among other things—  
13 must:

- 14 • Accede to specific campaign spending and contribution limits not otherwise  
15 required by law;
- 16 • Receive a specified minimum number of campaign contributions;
- 17 • Participate in at least three debates in the primary and general elections; and
- 18 • Forebear soliciting on behalf of groups that make independent expenditures in the  
19 same election cycle.

20 *Id.* § 2.04.630.

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23 <sup>2</sup> <http://www.seattle.gov/democracymoney/i-am-a-seattle-resident/faqs#> (What happens if I do  
not use my Democracy Vouchers?)

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1           26.   Candidates can only use voucher funds for campaign-related expenses. *Id.*  
2 § 2.04.630(i).

3           27.   Misuse of voucher funds can result in a civil penalty of up to \$5,000. *Id.* § 2.04.500.

4           28.   I-122 does not require the SEEC to audit candidates' uses of voucher funds. Nor  
5 does it require candidates to sign a sworn statement or otherwise affirm that they will use the  
6 voucher funds for limited campaign purposes.

7 **IV.   The Vouchers' impact**

8           29.   The politician enrichment tax disfavors minority viewpoints and undermines the  
9 speech rights of property owners

10          30.   I-122 does not provide an equal amount of funding to each eligible candidate.

11          31.   Rather, each candidate will receive campaign funding from vouchers only to the  
12 extent that Seattle residents choose to direct their vouchers to support that candidate.

13          32.   Candidates who enjoy the most support among residents will receive more voucher  
14 funds than candidates with less support.

15          33.   This distribution differs from a neutral public funding scheme in which candidates  
16 all receive an equal allotment of public funds.

17          34.   The unequal distribution of voucher funds based on voter preferences harms the  
18 political interests of property owners who must pay the politician enrichment tax yet support less  
19 popular candidates.

20          35.   Landlord-tenant issues present one example of how the law harms property owners  
21 compelled to fund campaign contributions.

22          36.   Renters comprise more than 54 percent of Seattle households. *See* Seattle  
23 Ordinance 125280.

1           37.     The political interests of Seattle’s many renters and their landlords often clash  
2 before the city council. Landlord groups like the Rental Housing Association, for example, actively  
3 opposed recent legislation such as the Seattle Renters’ Commission, caps on move-in fees, and the  
4 first-in-time rule limiting landlord discretion to select tenants. Pro-renter groups such as the  
5 Tenants Union of Washington State and Washington CAN supported these measures.

6           38.     Seattle imposes the burden of funding renters’ political speech—in the form of  
7 vouchers—solely on the shoulders of landlords and other property owners. It thus forces landlords  
8 to fund the speech of the very interest group that they often oppose before the city council.

9           39.     The current distribution of 2017 voucher funds underscores this outcome.

10          40.     As of June 7, 2017, three candidates are actively receiving vouchers, while ten more  
11 are awaiting approval from the SEEC. Two of the currently eligible candidates are running for city  
12 council, and the third is running for city attorney.

13          41.     Four local candidates have opted not to participate in the program. Of these, city  
14 council candidates Sara Nelson and David Preston have declined to participate because of ethical  
15 and constitutional objections to the program.

16          42.     As of June 9, one of the three currently eligible candidates, Jon Grant—a housing  
17 advocate and former head of the Tenants Union of Washington State—has received more  
18 compelled campaign contributions than the other two candidates combined.

19          43.     Of the 9,116 vouchers that voters have thus far assigned to candidates for the 2017  
20 election, Mr. Grant has scooped up 5,178, totaling \$129,450.<sup>3</sup>

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22 \_\_\_\_\_  
23 <sup>3</sup> Democracy Voucher Program, Program Data,  
<http://www.seattle.gov/democracypoucher/program-data>.



1 44. If elected, Mr. Grant promises, among other things, to grant renters collective  
2 bargaining rights, a proposal that will affect the political and economic interests of Seattle’s  
3 landlords.<sup>4</sup> He has vowed to “freeze all permits, licenses, and rental registrations where the  
4 landlord has any ownership stake until they meet and negotiate in good faith with the tenants.”<sup>5</sup>

5 45. I-122 forces landlords and other property owners to sponsor these messages to the  
6 tune of \$129,250 to date.<sup>6</sup>

7 46. The politician enrichment tax disfavors dissidents and compels property owners to  
8 bankroll speech they do not wish to support.

9 **CLAIM FOR RELIEF**

10 **The politician enrichment tax unconstitutionally compels property owners to fund political  
11 speech in violation of the First Amendment**

12 47. The plaintiffs reallege the preceding paragraphs as though fully set out here.

13 48. The First Amendment to the United States Constitution protects an individual’s  
14 right to refrain from speaking or subsidizing the speech of others.

15 49. I-122 violates the First Amendment on its face and as applied to Mr. Elster and  
16 Ms. Pynchon.

17 50. A viewpoint-based or content-based speech regulation—whether it compels silence  
18 or compels speech—must satisfy strict scrutiny. *See Knox v. Service Employees Int’l Union, Local*  
19 *1000*, 567 U.S. 298, 132 S. Ct. 2277, 2289, 183 L. Ed. 2d 281 (2012). Such speech regulations  
20 must serve a compelling interest in a narrowly tailored manner. *Harris*, 134 S. Ct. at 2639.

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22 <sup>4</sup> Elect Jon Grant, Affordable Housing, [http://www.electjongrant.com/affordable\\_housing](http://www.electjongrant.com/affordable_housing).

23 <sup>5</sup> *Id.*

24 <sup>6</sup> Democracy Voucher Program, Program Data,  
<http://www.seattle.gov/democracvoucher/program-data>.

1           51.     The politician enrichment tax forces Seattle property owners to subsidize campaign  
2 contributions to local politicians. By distributing such funds at the whim of majoritarian interests,  
3 the program disfavors minority viewpoints. It also disfavors the supporters of candidates who  
4 object to and refuse to abide by the increased campaign contribution limits required to participate  
5 because these candidates’ supporters cannot use their vouchers to contribute to their preferred  
6 campaign. The program is therefore viewpoint-based and must satisfy strict scrutiny.

7           52.     The law also discriminates based on content. It compels the financial support of  
8 speech on a particular topic—campaigns for Seattle elected offices. For this reason, too, the  
9 democracy voucher program must satisfy strict scrutiny.

10          53.     I-122 does not satisfy strict scrutiny because funding the speech of Seattle residents  
11 at the expense of property owners serves no compelling interest.

12          54.     The law is not narrowly tailored to achieve its purposes in a manner least restrictive  
13 of First Amendment freedoms. The voucher program, for example, claims to fight corruption.  
14 SMC § 2.04.620(a). Certainly, preventing contributions might reduce corruption. But corruption  
15 is not stymied when individuals who wish to refrain from contributing are forced to do so.

16          55.     The law also purports to level the playing field and strengthen democracy. *Id.* By  
17 disfavoring minority viewpoints, however, the law undermines rather than serves these goals. A  
18 program that funnels money in a partisan manner does not level the playing field, strengthen  
19 democracy, or prevent corruption. Indeed, the program contradicts each of these goals. It therefore  
20 fails strict scrutiny and violates the First Amendment on its face.

21          56.     Additionally, the politician enrichment tax violates the First Amendment as applied  
22 to Mr. Elster and Ms. Pynchon.

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1           57.     Mr. Elster does not support any of the candidates currently eligible to receive  
2 vouchers. He had planned to use his vouchers to support Sara Nelson, but she has refused to  
3 participate in the program because she objects to the policy. Therefore any use of the voucher  
4 funds will enrich the war chests of candidates that he opposes. I-122 thus violates his First  
5 Amendment right to refrain from supporting speech with which he disagrees.

6           58.     Ms. Pynchon, as a property owner who lives outside the city, must subsidize private  
7 speech, but she cannot avail herself of the voucher program to counteract voucher contributions to  
8 candidates that she does not want to support. I-122 therefore violates her First Amendment right  
9 to refrain from subsidizing speech.

10          59.     Plaintiffs have and will continue to suffer irreparable harm until this law is declared  
11 unconstitutional and void.

12     **DECLARATORY RELIEF ALLEGATIONS**

13          60.     An actual and substantial controversy exists between Plaintiffs and the City as to  
14 their respective legal rights and duties.

15          61.     Under 42 U.S.C. § 1983, Plaintiffs contend that Subchapter VIII of Section 2.04 of  
16 the Seattle Municipal Code and the associated property levy violate the First Amendment on their  
17 face and as applied to Mr. Elster and Ms. Pynchon.

18          62.     The First Amendment to the United States Constitution does not allow local  
19 governments to force individuals to subsidize private political speech.

20          63.     I-122 violates the First Amendment by compelling Seattle property owners to pay  
21 for other people's campaign contributions.

22          64.     A declaratory judgment will afford relief from the uncertainty and insecurity giving  
23 rise to this controversy.

1 **PERMANENT INJUNCTIVE RELIEF ALLEGATIONS**

2 65. Mr. Elster and Ms. Pynchon have no adequate remedy at law to address the City’s  
3 forced subsidization of private political speech.

4 66. I-122 offers no refund mechanism or exemption for conscientious objection.  
5 Mr. Elster and Ms. Pynchon therefore will suffer irreparable injury absent an injunction restraining  
6 the City from administering this unconstitutional program.

7 **PRAYER FOR RELIEF**

8 Plaintiffs pray for the following relief:

- 9 1. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal  
10 Code and the associated levy facially violate the First Amendment to the United  
11 States Constitution;
- 12 2. For a declaration that Subchapter VIII of Section 2.04 of the Seattle Municipal  
13 Code and the associated levy violate the First Amendment to the United States  
14 Constitution as applied to Mr. Elster and Ms. Pynchon;
- 15 3. For a permanent injunction forbidding the City from enforcing Subchapter VIII of  
16 Section 2.04 of the Seattle Municipal Code;
- 17 4. For an award of reasonable attorney fees, expenses, and costs under 42 U.S.C.  
18 § 1988; and
- 19 5. For such other relief as the Court deems just and proper.

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PACIFIC LEGAL FOUNDATION  
BRIAN T. HODGES, WSBA No. 31976  
ETHAN W. BLEVINS, WSBA No. 48219

Date: June 28, 2017

By: s/ Ethan W. Blevins  
Ethan W. Blevins  
WSBA No. 48219  
10940 NE 33<sup>rd</sup> Place, Suite 210  
Bellevue Washington 98004  
Telephone: (425) 576-0484  
Facsimile: (425) 576-9565  
Email: EBlevins@pacificlegal.org

*Attorneys for Plaintiffs*