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Public Disclosure Commission
711 Capitol Way S. #206
PO Box 40908
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Dear Public Disclosure Commission:

In reference to Enforcement Case #87070

I am writing with observations on King County Elections Officials ("KCE")'s March 30, 2021 response to my complaint, highlighting false claims in KCE's letter and inculpatory facts in the Attachments. When read with attention to detail and in full context, KCE's response not only fails to refute my allegations, but adds considerable evidence to strengthen the case against KCE.

- 1. KCE asserts in its letter that "it did not allow grantees to [support or oppose a ballot measure]". But the opposite is true. KCE informed grantees that ballot measure advocacy was permitted.**

The letter uses the word "nonpartisan" 20 times in defense against my allegation that a substantial portion of VEF monies subsidized ballot measure advocacy. But this *ad nauseam* repetition of "nonpartisan" is a smokescreen. Ballot measure advocacy is commonly understood to be within the boundaries of permitted nonpartisan activity, and KCE told VEF grantees as much. I have not found a single statement prohibiting the use of 2018-2020 VEF monies for ballot measure advocacy, either in the letter's Attachments or in any other document from KCE or the Seattle Foundation. The 2018 and 2019 contracts between KCE and the Seattle Foundation (Attachments A and B) state only that:

None of the [resources provided] under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

The contracts do not contain language that prohibits ballot measure advocacy, nor do the grant award letters (Attachments I and J), nor do any of the Attached documents that were available to prospective grant applicants, nor do any of the Attached training and informational documents that were provided to grantees. The only language in any Attachment that proscribes use of VEF monies for ballot measure advocacy is in Attachment O ("VEF Talking Points March 2021"), which states "Voter Education Fund activities are NOT allowed to include [ballot measure] advocacy."

But it is laughable to purport that a 2021 document, whose meta-data shows it was created *after* I filed my complaint, is evidence that grantees in 2018-2020 were not allowed to engage in ballot measure advocacy. There is no evidence that these so-called “talking points” have been communicated to this year’s grant applicants. None of the documents for grant applicants which are posted on KCE’s website at this writing¹ (including a video and slide presentation that were posted after I filed my complaint) mention any prohibition on ballot measure advocacy.

Not only did KCE fail to produce any evidence that it prohibited grantees from engaging in ballot measure advocacy; the Attachments include a document that was distributed to grantees informing them that ballot measure advocacy is a permissible nonpartisan activity.

KCE’s Attachment N (“Staying Nonpartisan Checklist”) also appears in the slides of Attachment K (“2020 Election VEF Training”), and in Attachment L (“June 5, 2019 Orientation-Training Email with Attachments”). Under the headline “Permissible Nonpartisan Activities - with common examples”, permissible activity #7 is:

7. Support, Oppose or Host a Community Conversation on a Ballot Measure

Unlike candidates for office, nonprofits may take sides on a ballot measure. IRS rules treat this as a lobbying activity, not electioneering.

- ☐ Educate the public on your position within your normal lobbying limits.
- ☐ Have your board take a position for or against a question on the ballot.
- ☐ Engage your community leaders and residents in a conversation about the issues at the county and state level.

Q.E.D.

2. KCE claimed without evidence that the grants were awarded without preferential treatment, but information in the Attachments confirms bias in the awarding of grants.

KCE asserts that it complied with the intent behind PDC Interpretation 91-03 in avoiding preferential treatment, claiming that “The VEF grants were awarded through a competitive RFP process that is open to any ... progressive, conservative or otherwise [non-profit organization]”. Interpretation 91-03 imposes an affirmative obligation on an agency which makes available campaign information from one political group to “make a good faith effort” to obtain and make available “material from opposing or competing groups”. My complaint exhaustively documented that the *outcome* of the

¹ <https://www.kingcounty.gov/depts/elections/education-and-outreach/voter-education-fund.aspx>

grantee selection process was overwhelmingly biased toward progressive organizations with absolute uniformity of opinion on multiple ballot measures. KCE has not demonstrated that the process which led to the outcome was free of bias, and the evidence shows that it was biased.

From the outset, KCE chose as its partner the Seattle Foundation, whose expressed outlook and funding preferences are fairly described as progressive. If KCE wished to establish a non-preferential program it would have included a conservative-leaning organization in the partnership for balance, or not partnered with an advocacy-driven organization in the first place. KCE claimed that the panel which reviewed grant applications was comprised of individuals “from the county, the Seattle Foundation and the community.” Attachment S (“VEF 2018 Applications”) identifies the 2018 review panelists, exposing yet another source of bias. I list the names of the application reviewers from the Attachment, adding biographical information as of 2018 that was easily found in their LinkedIn profiles and other online information. I highlight in red the roles which have close and obvious ties to one or more grantees.

Name	Affiliation	Other Affiliation
Aaron Robertson	Seattle Foundation	Washington Bus Education Fund, Board President.
Jonathan Cunningham	Seattle Foundation	
Cherry Cayabyab	King County	
Ericka Cox	King County	
Giselle Zapata-Garcia	King County	Latino Community Fund, Board Member
Cara Bilodeau	Community	Win/Win Network and Win/Win Action, Associate Director
Meron Kasahun	Community	Ethiopian Community in Seattle, Executive Director
Toby Crittenden	Community	The Washington Bus and Washington Bus Education Fund, former Executive Director

We see that 3 of the 8 reviewers in 2018 were either current or former board members or executives of a 2018 grant recipient. Ms. Bilodeau’s position as an executive of Win/Win Network² merits elaboration. Multiple grantees mentioned that organization in grant applications and year-end reports as integral to their VEF-supported activities. Specifically, these grantees informed KCE that their VEF activities, such as phone-banking and mailings, involved use of the Voter Activation Network (VAN) that they accessed through arrangements with the Win/Win Network³.

² The Win/Win Network describes itself as “a network of progressive organizations working together to advance racial, social, and economic equity through civic engagement.” Its home page, <http://winwinnetwork.org/> lists several VEF grantees as “c3 Partners”: APACEvotes, Asian Counseling and Referral Service, El Centro de la Raza, Latino Community Fund, OneAmerica, The Washington Bus Education Fund, Washington CAN.

³ Exhibit E provides relevant grantee statements from grant applications and year-end reports. The source documents are public records held by King County Elections.

VAN is a voter database and targeting technology captive to the Democratic National Committee. It is available exclusively to state Democratic party organizations and campaigns and progressive organizations approved by the Democratic Party⁴.

Although I saw no evidence that VEF grantees communicated express candidate advocacy, their use of the VAN shows that their voter mobilization activities, supported by VEF, were coordinated with the Democratic Party through the Win/Win Network. To believe that the Democratic Party would provide access to the most sophisticated voter targeting technology on the planet for any purpose other than to identify and turn-out Democratic-leaning voters, is to believe in the Tooth Fairy.

Attachment S shows that Ms. Bilodeau was assigned to review the applications of 4 of the 6 Win/Win client organizations which applied that year. All 6 received grants and engaged in express ballot measure advocacy that year.

Far from being a disinterested committee from the community, the review panel is shown to be dominated by a chummy clique of like-minded activists whose organizations partner with one another inside and outside the VEF and approve each other's grant proposals. If KCE wished to establish a non-preferential program it would have included in the review panel community members from conservative-leaning organizations for balance, and excluded from the panel individuals connected to with grant applicants; it certainly would not have included in the review panel the Democratic Party's designated agent for providing the party's voter targeting technology to local progressive activists. If KCE wished to implement a non-preferential program it would have awarded more grants to the applicants who focused primarily on services and less on advocacy, and eschewed the applicants with track records of express advocacy. And it would have imposed strict contractual prohibitions against using VEF monies to directly or indirectly assist a campaign for promotion of or opposition to any ballot measure.

KCE's letter also stated that "During [the close-out phase of the grant cycle], some grantees are simultaneously submitting applications for the next grant cycle", thus admitting that it gave preferential treatment to returning grantees (whose political biases were known). If KCE made a "good faith effort" to recruit a more balanced pool of applicants, reduce the obvious bias in its

⁴ See, for example: <https://www.linkedin.com/company/voter-activation-network/about/>
<https://personaldemocracy.com/company-reviews-2010/voter-activation-network>
<https://www.ngpvan.com/about>
<https://medium.com/@AmyKDacey/here-s-what-happened-with-ngp-van-the-sanders-campaign-and-the-clinton-campaign-d75dd1d2edbf>
<https://www.reamp.org/wp-content/uploads/2013/12/Voter-File-FAQ.pdf>
<https://www.statevoices.org/state-tables/washington/>

selection panel, or otherwise mitigate the obviously biased outcome of its selection process, it has not explained what steps it took to ensure a more balanced outcome.

3. KCE absurdly asserts that if the PDC were to find against KCE in this case, it would have a major impact on government funding of community organizations, and would jeopardize the Seattle Democracy Voucher Program and even the voters' pamphlet.

- a. There is an enormous difference between the voter's pamphlet, which is required and specified by state law and which provides for equal space to every candidate on the ballot and to both sides of every ballot measure; and the VEF, which provides funding to a selected few advocacy organizations at the discretion of King County Elections officials.
- b. There is an enormous difference between the Seattle Democracy Voucher Program, which allocates funds to candidates according to the independent choices of the hundreds of thousands of eligible Seattle residents, and where no public official has any discretion over candidate eligibility or funding level; and the VEF, where eligibility and funding levels are at the discretion of King County Elections officials.
- c. There is an enormous difference between a public contract issued to a community organization to provide a service unrelated to voting, and where the vendor may separately endorse a ballot measure and/or engage in some lobbying activities, but where the service-related monies and activities are contractually segregated from the political monies and activities; and a VEF grant, which is specifically used to educate voters about what is on the ballot and to motivate voter turnout. In the latter case it would be all but impossible in practice for an entity engaged in express advocacy to strictly separate its advocacy-neutral education and get-out-the-vote activities from its advocatory get-out-the-vote operations.

As KCE acknowledged in its letter "there [is no] specific requirement for segregation of VEF money from other funds". Nor has KCE provided any evidence that there is any requirement that grantees segregate their VEF activities from their ballot measure advocacy. Without any specific requirement to segregate these funds and activities, and reassured by KCE that ballot measure advocacy is "permissible nonpartisan activity", there is no reason for any grantee to segregate the funds and activities. And there is evidence that resources for used in other VEF activities were commingled with resources used for ballot measure advocacy. In my complaint I provided many examples where grantees promoted ballot measures in social media channels which they also reported using in their VEF activities. It is implausible that voter contact and engagement data produced from VEF funded activities (such as through use of the VAN system) were only used to deliver advocacy-neutral reminders to vote, yet were never used for delivering the advocacy messages that the grantees were shown to be propagating.

I am confident in the PDC's ability to consider the specific circumstances in this case and determine whether there were violations without setting a precedent that would affect future cases with completely different circumstances. For example, the PDC might issue an Interpretation that any entity under contract with a public agency to perform voter outreach and education services is prohibited from engaging in express advocacy during the term of the contract; and that any assets, such as voter information, produced under the contract may not be transferred or used in any future express advocacy activities.

As a King County voter, I am outraged that my Elections Department has diverted hundreds of thousands of dollars of county funds earmarked for election administration into advocacy campaign organizations. These are the most brazen, systematic, expensive and far-reaching violations of RCW 42.17A.555 that I have seen in the many years I have been following PDC enforcement cases. I am appalled by the flippant and dishonest excuses KCE provided in its response, and which are refuted by the facts in its own Attachments. It is even more concerning that KCE is proceeding towards a repeat of the same violations with this year's VEF grants, without even amending the information for grant applicants to clearly prohibit ballot measure advocacy.

I encourage the PDC to act on my complaint swiftly and decisively, both to penalize the violations which have occurred, and to prevent future violations.

Sincerely,

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

Stefan Sharkansky

Exhibit E

Organization	Document	Quotes regarding Win/Win and/or Voter Activation Network (VAN)
APACEvotes	2019 Application	“Research from the VAN and Census show that many low propensity voters live in South King County and South Seattle. We used strategic targeting mechanisms in past GOTV campaigns, using the VAN to locate and engage low-propensity AAPI voters in these localities” “We also use VAN data and data from King County Elections to measure the rates of voter turnout for AAPI populations over the years. We keep records of all the voter registrations that are completed in our organization database. We also employ pledge-to- vote cards that keep our constituents in the loop about our work. We are also planning to execute a monthly newsletter and advocacy action alert system with our new CRM.”
Asian Counseling and Referral Service	2019 Application	“For certain activities, such as robo-calls, phone banks, and texting banks, ACRS partners with Win Win for access to the Voter Activation Network (VAN), which allows us to easily track our progress and evaluate outreach success.” “We use the VAN to create phone banking lists for various AAPI languages to match our volunteer language skills.” “As soon as signature challenge lists are available , we will match voter IDs to the VAN to identify likely AAPIs whose ballot signature s were rejected and call them to make sure they understand how to ensure that their ballot is counted.”
Asian Counseling and Referral Service	2020 Year-end Report	“...we have tools like the VAN to support us in reaching out to AAPI community members by phone”
El Centro de la Raza	2019 Year-end Report	“...we have begun to pursue opportunities to engage with Win Win Action to help us optimize our outreach techniques and facilitate new methods such as phone banking and mobile communication. Discussions began in late 2019, and our hope is to begin implementing tools from Win Win Action as part of our efforts in 2020.”
El Centro de la Raza	2020 Year-end Report	“During the weeks prior to the November General election, we were able to compound all of these efforts with a virtual phone-based Ballot Assistance Event (or ‘Ballot Party’) led by volunteers, as well as postcard outreach to participants based in King County. For the latter, we engaged with Win Win Action to retrieve VPN data on our participant list to help us to build our postal mailing list.”
Latino Community Fund	2019 Application	“Through this grant we will work with partners to: Train leaders at partner organizations on methods for: leading voter registrations in their communities, implementing Get out the Vote efforts, developing phonebanks, accessing and using VAN data to reach low-propensity and first-time voters, canvassing;”
Washington Bus	2019 Application	“We also work closely with the data department at Win/Win Network to evaluate our effectiveness in driving youth voter turnout using the Voter Activation Network”
Washington Bus	2020 Year-end Report	“[The WinWin Network has] supported the Washington Bus Education Fund for many years, and we consider them to be key strategic partners in most of our work. Their expertise on data administration and technological strategies is critical to our work. We’re grateful for their support throughout the entirety of our Voter Education Fund grant term.”

