

PRELIMINARY REPORT OF THE CAMPAIGN FINANCE COMMITTEE OF THE AUSTIN CHARTER REVISION COMMISSION (1/8/2018)

EXECUTIVE SUMMARY: We unanimously make two major recommendations: 1) Austin add to our current campaign finance system a public small voucher component like Seattle's Democracy Voucher program; and 2) Austin adopt an independent ethics commission, such as in NYC, LA, and other major cities, with the autonomy, resources, and expertise to effectively enforce and implement our campaign finance and other ethics laws.

1) Public Small Voucher Program. We believe a public small voucher component, added to our current campaign finance system of disclosure and contribution limits, will further realize 10-1's goal of fair representation in Austin. The 10-1 single-member district system has helped ensure representation for all areas of our City-- not just a few select wealthy areas that have historically dominated Austin -- by requiring candidates come from and are elected by their distinct geographic district. Today, however, the campaign funding for these candidates still comes overwhelmingly from outside their districts from those same few wealthy Austin areas.

A public small voucher program, like Seattle's Democracy Vouchers, would address the unfair, excess influence of a few wealthy Austin areas that dominate contributions, by allowing participating candidates to raise much of their funding from their district from constituents' small vouchers. This voucher component would replace the city's very limited public funding for runoff elections and require participating candidates to agree to lower contribution limits, strict self-funding limits, and expenditure limits. Unlike in the current system, these limits could not be waived if other candidates do not participate. Austin's current system would remain essentially the same for non-participating candidates.

2) Independent Ethics Commission. We believe effective enforcement and administration are indispensable to any successful campaign finance system. We recommend Austin follow the lead of major cities that have effective programs by adopting an independent ethics commission. Such a commission would be independent of the Council and City Manager. It would have an independent, expert staff with ample resources dedicated to just campaign finance and ethics matters. It would report to a citizen board. The commission's staff would administer and enforce all Austin campaign finance ethics, conflicts, and lobbyist disclosure laws. Because of the politicized and complexity nature of these issues, in our opinion independence is the key to effective enforcement and implementation.

INTRODUCTION: The Campaign Finance Committee has been tasked with looking at the City's campaign finance laws and making recommendations to the entire Charter Revision Commission. Our members are Martha Cotera, Tane Ward, KT Musselman, and Fred Lewis. We have done extensive research and had in-depth discussions. We also have arranged for two nationally-recognized experts, Paul Ryan Vice-President of Policy and Litigation for Common

Cause and Wayne Barnett Executive Director of Seattle Ethics and Election Commission, to discuss campaign finance generally and these two recommendations with the Commission. We discuss below our views on: 1) the goals of a model campaign finance system for Austin; 2) the three basic campaign finance options for our city; 3) some troubling facts about our current system; 4) and our public voucher recommendation in detail. We also will provide brief comments on an independent ethics commission, but will provide a full report shortly.

GOALS. We believe that the main goals of an effective campaign finance system for Austin should be to ensure:

- 1) the 10-1 single-member district system's goal of fair representation is enhanced, and not undermined by, the campaign finance system;
- 2) Austinites across the city have faith that our city's democratic process is not corrupted by monied interests, thwarting the majority's will;
- 3) city candidates can run with funds primarily from their district's constituents without having to raise the vast majority of their funds from outside their district from wealthy donors;
- 4) city candidates can spend more time with and listen more to their constituents in their district, as opposed to cultivating wealthy donors who live outside their district;
- 5) at least several candidates in each are competitive financially so that voters have choices and issues are aired; and
- 6) the city's campaign finance and ethics laws are effectively and fairly enforced so that the laws are followed, violators are investigated and punished, and the public has confidence in the system's integrity.

MAJOR OPTIONS. There are 3 basic possible options (with variations) available to the Charter Revision Commission in this area:

1) The Status Quo. This recommendation would leave the current system in place with \$350 individual limits per candidate per election (\$700 in total for the general and runoff election) with a cost of living adjustment for inflation. It also would leave in place the current enforcement scheme, which we believe is not effective and under-resourced. It would not address the concern expressed by some about self-funding candidates' advantages or the alleged need for more resources in some districts. It would leave in place the current system's very limited public financing for runoff elections. This includes allowing participating candidates to continue to waive complying with spending limits and other requirements when other candidates in their race do not participate (which has always been the case). The basic argument for this approach is that our system is working fairly well.

2) Tweak the Current System: Raise Contribution Limits and Make Minor Enforcement

Changes. This recommendation would leave the current system in place but raise contribution limits per person per election. Suggestions have included raising the limits from \$500 to \$1000 to \$5000 per individual per election. The arguments for raising the limits are that candidate campaigns need more funding and self-funded candidates (who can loan their campaigns substantial sums in addition to private contributions) have an advantage, which arguably can be offset with higher contribution limits.

There are a number of counter arguments. Opponents maintain that higher limits will just further empower affluent Austinites. Even raising contribution limits to just \$500 per person per election, a wealthy couple could give \$2000 an election cycle to a candidate—which is more than many Austinites make in a month¹. This grossly unequal ability to make contributions is a result of the massive inequality of income in the U.S. and Austin, where the top 5% of Austin households have 23.3 % of all income, the top 20% have 51.9% of the income, and the bottom 40% have only 11.5% of the income.² With higher contribution limits, campaign funding for council districts with predominately lower and middle income Austinites will be even more dominated by wealthy contributors outside of their district. We believe higher limits will thwart 10-1's promise of fair representation for people of color, lower income people, and the underrepresented.

Critics also contend that raising the limits won't effectively address the wealthy self-funding candidate issue, because for candidates who can self-fund in the hundreds of thousands of dollars, raising the limits won't make meaningfully decrease their advantage. And regardless of any additional enforcement tools, we believe the city's enforcement will remain ineffective, because, in our opinion, the real problem is having the independence and resources to enforce the laws.

3) Seattle-like approach: Adding a Public Small Voucher Component with an Independent Ethics Commission. This recommendation would provide qualifying, participating candidates with the ability to receive small vouchers (Seattle provides four \$25 vouchers) from willing, supportive residents in their district. To qualify candidates would have to collect a specified

¹Twenty-two percent of Austin households (not individuals) make less than \$2000 a month. (<https://statisticalatlas.com/place/Texas/Austin/Household-Income>) (See household income distribution chart)

² <https://statisticalatlas.com/place/Texas/Austin/Household-Income> (See share of household Income chart). Wealth distribution is much more unequal than income, with most Americans having little to no wealth. See, e.g., Matthews, "Wealth Inequality is America: It's Worse Than You Think," Fortune (Oct. 31, 2014) (<http://fortune.com/2014/10/31/inequality-wealth-income-us/>)

number of signatures and small contributions to show public support and agree to various contribution, self-funding and expenditure limits. These qualifying candidates then would have to solicit the Democracy Vouchers from their constituents to fund their campaigns in addition to limited private contributions. (More details below of Seattle's program). It would establish an independent ethics commission that reports to a citizen board with the funding, independence, and expertise to enforce and implement the laws.

The arguments for this approach are that it fulfills the full promise of the 10-1 system: council candidates would be able to fund their campaigns primarily from small public vouchers from their constituents. Participating candidates would better represent their constituents by being independent of the need for contributions from affluent, powerful donors outside their district. Moreover, participating candidates in non-affluent districts would raise significantly more funds by using small public vouchers, providing them more resources to educate and turn out their district's voters. Last, voters without the discretionary income to make private contributions (which is the vast majority of Austinites) now would participate in donating to candidates, giving candidates an incentive to spend more time with and listen to them more. (Nationally, in the 2016 federal elections, only ½ of 1 percent of Americans gave a contribution over \$200 and only 8/100 of 1% gave over \$2700).³

Participating candidates would have to abide by strict self-funding limits, expenditure limits (Seattle's are \$75,000 per election for district council members), and other limitations. The expenditure, self-funding and other limits are constitutional, which they ordinarily would not be, because participating candidates voluntarily agree to these limits in exchange for participating in the voucher system.

Critics argue that the public does not support public financing and people's tax dollars should go to basic city needs. They also have concerns about the cost and the difficulty in administering such a program.

KEY FACTS AND PROBLEMS WITH AUSTIN'S CURRENT CAMPAIGN FINANCE SYSTEM: Based on preliminary analysis, there are two major problematic features of the current system: 1) even with \$350 limits, it is dominated by money from a few rich, Anglo zip codes; and 2) candidates in lower income, primarily minority districts generally raise substantially less money than candidates in higher income districts, providing less competition and less funding in lower income districts for educating and turning out voters.

1. A Few Anglo, Affluent Zip Codes Dominated the Contributions to City Council Candidates in the 2016 Election Cycle. See attachment one, initial January 2018 report of Leland Beatty,

³ *The Center for Responsive Politics, "Open Secrets: Donor Demographics"*
(<https://www.opensecrets.org/overview/donordemographics.php>)

Austin political statistician. The top 3 Austin contributing zip codes (out of 43 city zip codes) contributed 43.9% of all council candidate funds in the 2016 election cycle; the bottom 10 zip codes provided 1%. Using a power index, which measures the strength of zip code contributions per capita, the top zip codes had 5 times the contributions per capita of the average zip codes, and the lowest zip codes had 1/10 the contributions per capita of the average zip codes. In short, the top zip codes had 50 times more contributions per capita than the bottom zip codes. See *Beatty*, Power Map, p. 4.

In the 2016 election cycle, three Austin zip codes (78731, 78703 and 78746) each produced more than \$100,000 in council candidate contributions. These zips together produced a total of almost \$400,000, or 43.9% of all Austin-originated council contributions. The top 10 contributing zip codes produced 71% of all council contributions, although they contain only a quarter of Austin's residents. The remaining 33 Austin zip codes, containing three-fourths of Austin's population, produced only 29% of contributions. The bottom 10 contributing zip codes, with 11% of the population, produced 1% of the contributions.

2. Lower Income Council Districts Had Substantially Less Campaign Expenditures to Communicate with Voters. Preliminary analysis reveals that Austin council candidates in the lower income, mainly people of color, districts generally spent significantly less money than the council candidates in more affluent districts. They, therefore, had much fewer resources to educate and motivate their residents to participate and vote, according to data derived from the Austin Bulldog for the 2014 election cycle.⁴ See attachment 2 (*Austin Bulldog* data) and attachment 3 (expenditure chart by Fred Lewis derived from the *Bulldog's* data). The Council Districts are grouped into lower income, middle income and higher income districts, based on City of Austin's district demographic data.⁵ In lower income Districts 1, 2, and 3⁶, total candidate expenditures averaged \$152,084.⁷ Total candidate expenditures, however, averaged

⁴ Only the 2014 election cycle's expenditures were analyzed and not the 2016 election cycles because of a shortage of time. The 2014 election cycle data was used because of Ken Martin's extensive, excellent analysis and charts of the campaign finance reports (before the city had electronic filing) in the *Austin Bulldog*. His data charts are attachment 2.

⁵ Based on city demographic data by district, Districts 1, 2, 3 and 4 are classified as lower income, Districts 5, 6, and 7 as middle income, and Districts 8, 9, and 10 are higher income. See the City Demographer's analysis at <http://www.austintexas.gov/page/district-demographics-and-maps>.

⁶ We did not include District 4 in these averages because it is an outlier. We do not know why at this time.

⁷ In the lower income districts, the total expenditures per district were on average significantly lower than the more affluent districts: \$170, 657 in District 1, \$62,539 in District 2, \$223, 058 in District 3 (\$65,000 of which was public funding), and \$393, 925 in District 4. See attachment 3. Looking just at Districts 1, 2 and 3, the total expenditures per district averaged \$152, 084.

\$278,353⁸ in middle income Districts 5, 6 and 7, and averaged \$581,331 in higher income Districts 8, 9, and 10.⁹

Moreover, generally the top 2 candidates in each district had significantly less money in the less affluent districts and in three districts only one candidate had significant resources.¹⁰ For example, the top 2 candidates in Districts 2 and 3 in 2014 spent in total around \$50,000 each (which includes \$28,000 each in public funding), whereas in Districts 9 and 10 the top two candidates averaged over \$200,000 in expenditures.

OVERVIEW OF SEATTLE DEMOCRACY VOUCHER SYSTEM: Seattle has relatively low private contribution limits (\$500 per election cycle), full campaign disclosure system, and a publicly financed small voucher system for all legal residents to use for participating candidates who agree to expenditure and lower contribution limits. Here are Seattle's Democracy Voucher program's main features:

⁸ In the middle-income districts, the total expenditures were generally substantially higher than the lower income districts: \$220,628 in District 5 (which may have been relatively low because there was only one financially viable candidate), \$287,201 in District 6, and \$327,230 in District 7. On average, these three districts averaged total expenditures of \$278,354.

⁹ In the affluent districts, the total expenditures were much higher. The total expenditures in District 8 were \$506,646, District 9 were \$464,209, and \$773,137. The average total expenditures per district were 581,331.

¹⁰ The top two candidates in these three lower income districts averaged \$48,896 in total expenditures: District 1 (\$99,232 and \$35,112), District 2 (\$57,372 and \$3,567) and District 3 (\$50,852 and \$47,238) (which includes \$28,000 each in public funding). However, in District 4 the top 2 candidates spent \$180,329 and \$101,461, for an average of \$140,893. It is unknown at this time why District 4 was different.

In the middle-income districts, the top 2 candidates averaged \$85,959 in total expenditures, which was substantially more than the lower income district top candidates: District 5 (\$144,568 and \$33,665); District 6 (\$86,832 and \$45,132), District 7 (\$87,652 and \$117,902).

In the higher income districts, the top 2 candidates averaged \$190,481: District 8 (\$153,494 and \$95,125), District 9 (\$217,794 and \$218,402), and District 10 (\$292,843 and \$165,226).

1. **The system is voluntary.** The U.S Supreme Court requires any public finance system to be voluntary for candidates, so candidates can choose not to participate. Participating candidates must opt into Seattle's voucher system to participate.

2. **Participating candidates agree to abide by various restrictions,** such as lower contribution limits, expenditure limits, and self-funding limits in exchange for being included in the in the small voucher program.

3. Participating candidates sign a binding agreement with the City of Seattle. Its requirements are binding, regardless of other candidates' actions, except expenditure limits may be waived only if a participating candidate is significantly outspent by a non-participating opposing candidate.

4. **To qualify for vouchers, candidates must collect so many contributions (of \$10 or more) and signatures:** 600 signatures and small contributions for mayoral candidates, 150 for single member district candidates (with half from the candidate's district). These are validated by the Seattle Ethics and Election Commission.

5. **The participating council candidates have individual contribution limits of \$250 per individual per election cycle and the mayoral candidates \$500 per election cycle. Non-participating candidates can receive up to \$500 per individual per election cycle,** which is the same as participating mayoral candidates and double council participating candidates. An election cycle includes both the primary and general elections. (In contrast, in Austin candidates can receive \$700 per individual in an election cycle (\$350 per general, \$350 per runoff)).

6. **Participating candidates agree to expenditure limits (only voluntary expenditure limits are constitutional):** Mayoral candidates' limits are \$400,000 in the primary and \$400,000 in the general; single member district candidates' limits are \$75,000 in the primary, \$75,000 in the general.

7. **The Ethics Commission mails in January of the election year 4 vouchers of \$25 each to all registered voters on the rolls, and thereafter mails the vouchers to those added to the rolls.**

Seattle voters can each vote for 3 or 4 positions on the ballot depending on the election: mayor, city attorney, 2 at large council members, one single member district position.

Unregistered voters and permanent legal foreign residents can submit a request for vouchers to the Commission, and with proof of residency, receive the vouchers.

8. **Voucher holders give their signed, bar coded vouchers to the candidates or Ethics Commission for a particular candidate, but the board has to validate their signatures before candidates get funds.** The holder can send its 4 \$25 vouchers to one candidate, multiple candidates, or none.

Seattle's law is included as attachment 4.

Some brief information comparing Seattle and Austin. Seattle's population in 2016 was 704,000 and Austin's 948,000. Austin elects a mayor and ten council members from single districts; Seattle elects a mayor, city attorney, 2 council members from at large districts, and 7

council members from single districts. Seattle's single member districts average 100,000 residents each, which is very similar to Austin's 98,000 residents on average each.

INITIAL RESULTS FROM SEATTLE'S 2017 ELECTION

Initial analysis on Seattle's first election with its Democracy Voucher program indicates it has been successful, according to the report *First Look: Seattle's Democracy Voucher Program: Reducing the Power of Big Money and Expanding Political Participation* (Every Voice Center, November 15, 2017) (attachment 5). The report found that "Seattle's Democracy Voucher Program is achieving its intended goals by generating historic numbers of new and small donors, diversifying the makeup of campaign supporters to better reflect the people of Seattle, and limiting the reliance on big money in local elections." *First Look*, p. 1.

Key findings were verbatim:

"At least 25,000 Seattle residents—a historic number—participated as campaign donors in this election cycle, three times the roughly 8,200 residents who donated to candidates in 2013.

"As of publication, more than 18,000 Seattle residents gave nearly 70,000 Democracy Vouchers to 2017 candidates, and more Democracy Vouchers are likely to be received before the December 1 deadline.

"An estimated 84 percent of this election cycle's Seattle donors were new donors—about 20,900 individuals who had not contributed to city candidates in the 2015 or 2013 cycles. Among these new donors, 71 percent were voucher donors.

"Contrasting voucher donors to city council and city attorney candidates with cash donors to mayoral candidates in 2017, Democracy Voucher donors better reflected Seattle's population including young people, women, people of color, and less affluent residents.

"Candidates in races eligible for Democracy Vouchers relied less on big money. Instead, 87 percent of the support for their campaigns came from small donations of \$250 or less and Democracy Vouchers. By contrast, small donations accounted for just 48 percent of the money backing candidates for city council and city attorney in the 2013 elections."

First Look, p. 1.

Initial analysis of the Democracy Voucher Program shows much greater diversity of contributors in Seattle's elections, which in the past were "funded disproportionately by rich, white donors": "Democracy Voucher donors better reflected Seattle's population of young people, women, people of color, and less affluent residents." *First Look*, pp. 3-4. Lower income neighborhoods had a 42% increase in their share of voucher donors compared to private donors: "[T]otal donation amounts from each of these lower income neighborhoods to mayoral candidates,

shows low amounts of giving throughout most the city, while the same map for voucher donors shows an overall increase in giving that is dispersed across the city." *First Look*, p. 4. Communities of color showed a 46% increase in their share of voucher donors compared to private contributors in the mayor's race. *First Look*, p. 5.

Similarly, the report found that young adult's (18-35 years) share of vouchers was 3 times greater than private contributions, going from 9% to 27% (much closer to their share of the electorate). In addition, women made up the majority of voucher donors, but less than half of the private contributions. *First Look*, p. 4.

An Independent Ethics Commission: In brief (more in a later report), we recommend Austin establish an independent ethics agency that has expertise in ethics, lobbyist, conflicts of interest, and campaign finance laws, and the autonomy and budget to implement and enforce these laws. The advantages, we believe, of an independent agency are that it will have the autonomy, and culture of expertise and support for the laws, to effectively enforce and administer them. See, e.g., for background on Ethics Commissions, *Comlosy, Ethics Commissions: Representing the Public Interest* (Center for Ethics In Government 2017); *Understanding the Role of Ethics Commissions* (Institute for Local Government, Dec. 2007)

We believe Austin's current enforcement and administration fails in many regards: lack of expertise, inadequate staffing, short on funding, no proactive recommendation process, and little enforcement. Austin, unlike exemplary municipal independent enforcement agencies, issues no advisory opinions, provides little to no advice to candidates or the public on the laws, does limited training, has no in-depth investigations, and has little enforcement with no fines in the last 3 years (4 mild reprimands)(Just obtained in December 2017 for Public Information Act Requests). This area is no Department's priority.

Looking at Seattle, LA, and San Francisco, and other major cities' Ethics Commissions, we recommend an effective, well-funded independent commission for Austin. It would be an independent entity with similar autonomy features to the Independent Citizens Redistricting Commission.

We look forward to discussing our recommendations and the various alterative approaches with the full Commission.