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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

DEMOCRATS FOR DIVERSITY AND INCLUSION,  
  
Plaintiff,  
  
vs.  
  
KING COUNTY DEMOCRATIC CENTRAL COMMITTEE and KING COUNTY COUNCIL,  
  
Defendants.

)  
) No. 16-2-29618-1-SEA  
)  
) MOTION FOR TEMPORARY  
) RESTRAINING ORDER AND ORDER TO  
) SHOW CAUSE WHY PRELIMINARY  
) INJUNCTION SHOULD NOT ISSUE  
)  
) **ORAL ARGUMENT REQUESTED**

**I. REQUEST FOR RELIEF**

Plaintiff Democrats for Diversity and Inclusion respectfully requests that the Court order Defendant King County Council to refrain from appointing an interim 37th Legislative District State Senator from the list of three nominees provided to the Council by the King County Democratic Central Committee (“KCDCC”) on December 5, 2016. Plaintiffs requests this temporary restraining order remain in effect for two weeks, or until Defendant KCDCC provides a replacement list of nominees to the King County Council that is the result of a nomination caucus that complies with the law.

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## II. INTRODUCTION

This case presents an urgent and straightforward request to restore diversity, inclusion, and fairness to the political process in Martin Luther King County’s 37th Legislative District. The King County Council is about to appoint a state legislator from a list of nominees generated through an illegal process that disenfranchised representatives of over 40,000 registered King County voters in some of the most ethnically diverse precincts in the State.

When Democrat Pramila Jayapal was elected to the United States Congress this November, it created an anticipated vacancy in the important, influential, and unique state senate seat for the 37th Legislative District. Washington’s constitution, state statute, and state and local Democratic party rules empower the King County Democratic Central Committee (“KCDCC”) to select three nominees to fill the vacancy by and through a caucus of *all* 37th Legislative District precinct committee officers (“PCOs”). The King County Council then appoints an interim legislator from the list of three nominees.

In total disregard for state law and party rules and to create a favorable electorate for certain candidates, former KCDCC Chair Richard Erwin delayed the nominating caucus until the terms of all 115 appointed PCOs expired, but before the party organization could reconvene to appoint replacement PCOs. KCDCC then refused all appointed PCOs their right to vote in the nominating caucus, something that is unprecedented in the history of the 37th District. Such procedural gamesmanship is not permitted. Party rules explicitly mandate that the nominating caucus include both elected and appointed PCOs. Furthermore, federal and state law prohibit KCDCC from disenfranchising and discriminating against appointed PCOs.

Plaintiff Democrats for Diversity and Inclusion make this motion to preserve the status quo and prevent the King County Council from appointing a senator from an illegal and invalid list of

1 nominees for the brief time it will take to restore the vote to the 115 appointed PCOs and the 40,000  
2 voters who were denied representation in the nomination of an interim 37th Legislative District  
3 senator. The requested restraining order will in no way prevent timely appointment of a 37th  
4 Legislative District senator. Indeed, the requested relief is necessary to ensure that the appointee is  
5 validly seated and may remain in office for the lawful term.

### 6 III. FACTUAL AND LEGAL BACKGROUND

#### 7 A. The 37<sup>th</sup> Legislative District and Democrats for Diversity and Inclusion

8 On February 7, 2012 the 37th Legislative District was created by law as a Special Majority-  
9 Minority Legislative District by the Washington State Legislature's passage of Engrossed House  
10 Concurrent Resolution 4409, which was signed into law by Governor Christine Gregoire. The new  
11 37th Majority-Minority District consisted of over 60% African-American, Asian, Native American,  
12 Hispanic, Immigrants and other minorities or people of color. The stated goal of the Majority-  
13 Minority District is to increase the diverse representation of ethnic minority communities in the  
14 Washington State Legislature. The 37th Legislative District is wholly within King County.

15 Democrats for Diversity and Inclusion's goals include ensuring fair representation of the  
16 diverse Democratic communities in King County and preventing the disenfranchisement and  
17 marginalization of people of color (such as African-Americans, Africans, Hispanics, Asians, Native-  
18 Americans, immigrants, and refugees). *Gunn Decl.*, ¶ 1.

19 Immediately following the November 8, 2016 general election, Defendant King County  
20 Democrats anticipated 37th District State Senator Pramila Jayapal's resignation from the Legislature  
21 to serve in Congress as the 7th District's United States Representative. Democrats for Diversity and  
22 Inclusion's members include at least one candidate for interim appointment to fill this upcoming  
23 vacancy in the 37th Legislative District. *Gunn Decl.*, ¶ 1.  
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1           **B.     Legal Requirements for Filling State Senate Vacancies**

2           Article II, Section 15 of the Washington State Constitution provides that “vacancies as may  
3 occur in either house of the legislature or in any partisan county elective office shall be filled by  
4 appointment by the county legislative authority of the county in which the vacancy occurs: *Provided,*  
5 That the person appointed to fill the vacancy must be from the same legislative district, county, or  
6 county commissioner or council district and the same political party as the legislator or partisan  
7 county elective officer whose office has been vacated, and shall be one of three persons who shall be  
8 nominated by the county central committee of that party . . .”

9           1.       The KCDCC comprises elected and appointed PCOs.

10          RCW 29A.80.030 provides that “[t]he county central committee of each major political party  
11 consists of the precinct committee officers of the party from the several voting precincts of the  
12 county.” State statute permits each political party organization to adopt rules governing its own  
13 organization and the nonstatutory functions of that organization. RCW 29A.80.010. To that end,  
14 Article VIII, § A of the Washington State Democratic Central Committee’s (WSDCC’s) bylaws add  
15 further detail to the statutory definition of the county central committee. Specifically, the bylaws  
16 state that the county central committee “shall be composed of all elected and appointed precinct  
17 committee officers.” WSDCC Bylaws at 9 (April 18, 2015) (available at [http://www.wa-](http://www.wa-democrats.org/about/documents)  
18 [democrats.org/about/documents](http://www.wa-democrats.org/about/documents)). Absent contrary statutory or constitutional authority, these party  
19 rules control. *King Cty. Republican Cent. Comm. v. Republican State Comm.*, 79 Wn. 2d 202, 211,  
20 484 P.2d 387, 392 (1971).

21           2.       State law requires KCDCC to fill PCO vacancies.

22          RCW 29A.80.031 states that the chair of the county central committee “shall fill” precinct  
23 committee officer vacancies by appointment, including if the vacancy is the result of a failure to  
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1 elect. KCDCC's bylaws state that each legislative district is responsible for filling as many of its  
2 PCO positions as possible. King County Democrats Bylaws, Art. IV, § 4.2  
3 (<https://www.kcdems.org/bylaws/bylaws.xml#AIV-4.2>).

4 3. State Democratic Party rules require a caucus of elected and appointed PCOs to  
5 nominate three candidates to fill a state legislator vacancy.

6 Article VII, § C of the WSDCC's bylaws provides that:

7 In making interim legislative appointments in single-county legislative districts, the county  
8 central committee shall make its appointment from a list of three names submitted to the  
9 committee **by a caucus of the elected and appointed Democratic precinct committee**  
10 **officers of the precincts within the legislative district.** The county chair shall call this  
11 caucus.

12 *Id.* at 8 (emphasis added).

13 4. KCDCC Standing Rules fix the date for determining PCOs eligible to vote in the  
14 nominating caucus as November 22, 2016.

15 KCDCC's standing rule titled "Procedures for the Nomination of Candidates for Filling  
16 Vacancies in Single County Legislative Districts" states that:

17 Only duly elected and appointed PCO's within the county or district are eligible to vote. To be  
18 eligible to vote, appointed PCO's must have been appointed by the county chair as of the most  
19 recent regular county central committee meeting prior to the occurrence of the vacancy.  
20

21 *Tonry Decl.*, Ex. C. State statute provides that "[a elective office] vacancy caused by resignation  
22 shall be deemed to occur upon the effective date of the resignation." RCW 42.12.010.

23 Representative elect Jayapal's resignation is effective December 11, 2016. <http://www.kcdems.org/>  
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1 (last visited Dec. 9, 2016). The most recent regular KCDCC meeting prior to December 11 was  
2 November 22, 2016. *Id.* (calendar).

3 5. 37th District PCOs.

4 Washington Democratic PCOs serve terms up to two years, ending November 30 of even-  
5 numbered years. As of November 22, 2016, the date that fixed the PCO electorate for the  
6 nomination, there were 176 PCOs for the 176 precincts in the 37th Legislative District, 115 of whom  
7 were appointed. *Gunn Decl.*, ¶ 2. All 115 of these appointed PCOs' terms expired after November  
8 30, 2016.

9 6. KCDCC's call for an illegal nominating caucus.

10 On November 10, 2016 former KCDCC Chair Richard Erwin called for a nominating caucus  
11 to fill the 37th Legislative District seat. *Gunn Decl.*, ¶ 5. Erwin scheduled the caucus for December  
12 5, 2016 so as to prevent any appointed PCOs from casting a vote to nominate a legislator for their  
13 district. Erwin sent a notice of the nominating caucus and an invitation to attend it only to the 106  
14 newly elected PCOs whose terms were to begin December 1, 2016. *Id.*, Ex. D

15  
16 Delaying the caucus to December 5, 2016 was designed to prevent appointed PCOs from  
17 participating in the vote, despite KCDCC rules to the contrary. It was in the middle of an  
18 approximately two-week period after the terms of all appointed PCOs had expired but before the  
19 party could fulfill its statutory duty of appointing new PCOs to fill the vacancies. As a result of  
20 Erwin's arbitrary delay there were no PCOs to represent 70 precincts in the vote. *Gunn Decl.*, ¶ 4.

21 Former KCDCC Chair Erwin admitted that the nominating caucus could have been held in  
22 November. The South Seattle Emerald Newspaper reported that when asked if the nomination vote  
23 could have been scheduled before November 30th, Erwin stated, "anything is possible." *Gunn Decl.*,  
24 Ex. E.  
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1 On November 14, 2016 the 37th District Democrats passed a motion directing the KCDCC  
2 Chair to hold the nominating caucus on or before November 30, 2016 to comply with Article VII,  
3 Section C the Washington State Democratic Party bylaws which require “elected and appointed  
4 PCOs” to vote on the three candidates to be submitted to the King County Council for appointment  
5 to the Washington State Senate. *Gunn Decl.*, ¶ 7. Former Chair Erwin attended the 37th District  
6 meeting and spoke against the motion, but the motion was passed over his objections. *Id.* The  
7 following day, despite the motion, Erwin re-issued the call for a nominating caucus to be held on  
8 December 5, 2016. *Id.*

9 On November 29, 2016, Democrats for Diversity and Inclusion submitted a Petition signed  
10 by over 50 PCOs and members of the 37<sup>th</sup> District, urging the Martin Luther King County Council to  
11 withhold action on the 37<sup>th</sup> District State Senate Appointment until the KCDCC complied with the  
12 Washington State Democratic Party By-Laws and allowed both Appointed and Elected PCOs to vote  
13 in the Nominating Caucus. *Id.*, ¶ 8. The following day, King County Council Chair Joe  
14 McDermott’s office confirmed receipt of the Petition. *Id.*

15  
16 5. The December 5, 2016 nominating caucus.

17 As of December 5, 2016, former Chair Erwin had failed to appoint any PCOs to fill the 70  
18 vacancies left by appointed PCOs whose terms expired November 30, 2016 and were not succeeded  
19 by elected PCOs. *Gunn Decl.*, ¶ 4.

20 On December 5, 2016 the KCDCC held the nominating caucus for the 37th District. PCOs  
21 appointed to serve until November 30, 2016 attended the caucus, presented their credentials, and  
22 demanded their right to vote. *Id.* ¶ 9. KCDCC refused to allow any appointed PCOs to vote. *Id.*  
23 Only the 106 newly elected PCOs were permitted to vote in the nominating caucus, 82 of whom  
24 attended and voted. *Id.* The newly elected PCOs awarded Rory O’Sullivan first place nomination,  
25

1 Rebecca Saldaña second place nomination, and Shasti Conrad third place nomination to fill the  
2 forthcoming vacancy resulting from Jaypal's election to federal office. <http://www.kcdems.org/> (last  
3 visited Dec. 9, 2016).

4 The 115 PCOs who were illegally disenfranchised represent more than 40,000 registered 37th  
5 District voters in precincts that are primarily African Americans, Hispanics, immigrants and People  
6 of Color. *See Gunn Decl.*, Ex. B and *Tonry Ex. A*. Similarly, the 70 precincts that were denied any  
7 representation in the nomination caucus on December 5 are primarily ethnically diverse communities  
8 of color. *See id.*

9 6. King County Council's appointment decision is imminent.

10 Also on December 5, 2016, the King County Democratic Executive Board forwarded the list  
11 of the Elected PCOs' three nominees to the King County Council.

12 The King County Council plans to appoint one of the Elected PCO's three nominees to serve  
13 as the 37th Legislative District Senator when it meets December 12, 2016 or imminently thereafter.  
14 *Tonry Decl.*, Ex. B.

15  
16 **IV. RULE 65 NOTICE CERTIFICATION**

17 Under Rule 65(b), the Court may grant the requested temporary restraining order without  
18 notice because the facts in the declarations on file show that Democrats for Diversity and Inclusion  
19 will suffer immediate and irreparable injury if the King County Council appoints a 37th District  
20 senator from the list provided to it on December 5, and the Council plans to do so on December 12,  
21 2016. Furthermore, Plaintiff's attorney gave the King County Council notice of Plaintiff's intent to  
22 move for a temporary restraining order and the time and place of the anticipated hearing, as well as  
23 an opportunity to come to an agreement to obviate the need for a temporary restraining order. *Tonry*  
24 *Decl.*, ¶ 4.  
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**V. QUESTION PRESENTED**

Should the Court order the King County Council temporarily postpone appointing an illegally nominated candidate to fill a legislative vacancy for the brief period necessary to allow the Democratic party to conduct a legal nomination process that will restore the statutory voting rights to 115 disenfranchised precinct committee officers and the more than 40,000 King County residents they represent?

**VI. EVIDENCE RELIED UPON**

This brief and motion rely on the Declarations of Clarence Gunn and Claire Tonry.

**VII. AUTHORITY & ARGUMENT**

**A. Temporary and Preliminary Injunction Standards.**

A temporary restraining order merely preserves the status quo until the court can conduct a full hearing on the merits. *Ameriquist Mortg. Co. v. Attorney Gen.*, 148 Wn. App. 145, 157 (2009). “Whether to grant a temporary injunction lies within the sound discretion of the court...” *Alderwood Assocs. v. Wash. Env’tl. Council*, 96 Wn.2d 230, 233 (1981). The Court’s discretion is broad. *Isthmian Steamship Co. v. Nat’l Marine Engineers*, 41 Wn.2d 106 (1952).

“[T]he burdens at the preliminary injunction stage track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). To obtain a temporary injunction, however, Democrats for Diversity and Inclusion “need not prove and the trial court does not reach or resolve the merits of the issues.” *Nw. Gas Ass’n v. Utils. & Transp. Comm’n*, 141 Wn. App. 98, 116, 168 P.3d 443 (2007). Rather, Plaintiff need only show a *likelihood* it will ultimately prevail by demonstrating: 1) a clear legal or equitable right (2) reasonable fear of invasion of that right, and (3) that the action sought to be restrained will result in substantial harm. *Ameriquist Mortg. Co.*, 148 Wn. App. at 157; *and see In re Dependency of Q.L.M.*, 105 Wn. App. 532, 537-538

1 (2001).<sup>1</sup> Under CR 65(b), Plaintiff must also show by specific facts that “immediate and irreparable  
2 injury, loss, or damage will result to the applicant before the adverse party or his attorney can be  
3 heard in opposition” See *Fisher v. Parkview Properties*, 71 Wn. App. 468, 475 (1993).

4 **B. Democrats for Diversity and Inclusion Is Likely to Prevail on the Merits.**

5 Under the first prong, Plaintiff must show it is *likely* to prevail on the merits or that  
6 “sufficiently serious questions going to the merits [] make the case a fair ground for litigation with  
7 the balance of hardships tipping decidedly in its favor.” *Ameriquest Mortg. Co.*, 148 Wn. App. at  
8 158; *League of Women Voters v. Elections Servs. Div.*, 133 Wn. App. 374, 384-85 (2006).

9 1. The December 5 list of nominees is invalid because the nominating caucus illegally  
10 disenfranchised appointed PCOs.

11 The Washington State Constitution limits the King County Council’s appointment of a 37<sup>th</sup>  
12 District senator to one of three people nominated by the KCDCC. Art. II, § 17. The state and county  
13 party central committees are empowered to make rules to further define the process, but once  
14 promulgated those rules must be followed, unless they are contrary to statutory or constitutional  
15 authority. RCW 29A.80.010; *King Cty. Republican Cent. Comm. v. Republican State Comm.*, 79  
16 Wn. 2d 202, 211, 484 P.2d 387, 392 (1971). State party rules explicitly mandate that the nominating  
17 caucus consist of the elected *and* appointed PCOs. WSDCC Bylaws, Articles VII, § C. KCDCC  
18 rules further specify the date for determining the PCO electorate for the nomination vote, which in  
19 this case was November 22, 2016 when there were 115 appointed PCOs. *Tonry Decl.*, Ex. C. In  
20 addition, state law requires KCDCC to appoint PCOs to fill vacancies left after an election in which  
21 no PCO ran for a precinct. RCW 29A.80.031.  
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25 <sup>1</sup> This is the same standard required to be met for issuance of a preliminary injunction once formal notice has been given.  
See 65(a)-(b): *Fisher v. Parkview Properties*, 71 Wn. App. 468, 474, (1993).

1 KCDCC violated these rules by denying 115 appointed PCOs as of November 22 an  
2 opportunity to vote, and by holding the caucus after these 115 appointed PCOs' terms expired but  
3 before making mandatory appointments to fill any of the 70 PCO vacancies. 70 precincts – or 40%  
4 of the precincts entitled to vote in the caucus – were denied any representation, despite there being  
5 eligible appointed PCOs for each of these precincts who requested the opportunity to vote. This  
6 arbitrary denial violates state statute and state and county party rules.

7 The nominee list that resulted from this illegal process is necessarily invalid. The list of  
8 nominees does not meet the constitutional requirement of having been “nominated by the county  
9 central committee of [the Democratic] party,” as “county central committee” is defined by statute to  
10 comprise all PCOs, and state party rules further specify that both elected and nominated PCOs are  
11 entitled to vote in the nominating caucus.

12  
13 2. Democrats for Diversity has a right to a representative nomination process.

14 Plaintiff's members' rights to be represented in the nomination and appointment of their state  
15 senator cannot be disputed. Like the plaintiffs in *Maxey v. Washington Democratic Committee*, 319  
16 F. Supp. 673, 677 (W.D. Wash. 1970), Democrats for Diversity's membership includes party officers  
17 and members who participate regularly in the selection of their representatives who “have a deep  
18 personal stake in the outcome” of a challenge to the constitutionality of selection procedures.

19 Plaintiff's members also include a candidate who was not a top-three nominee but very well may  
20 have been if so many precincts had not been denied representation. This individual suffered legally  
21 cognizable harm as a result. *See Marchioro v. Chaney*, 90 Wn. 2d 298, 304, 582 P.2d 487, 491  
22 (1978).

23 Moreover, numerous courts have recognized that election of public officials is a “basic  
24 instrument of democratic government,” and is therefore subject to federal Constitutional protections.  
25

1 *See Idaho Coal. United for Bears v. Cenarrusa*, 343 F.3d 1073, 1076 (9th Cir. 2003). Democrats for  
2 Diversity and Inclusion’s members have a fundamental equitable right to a state senator nomination  
3 process free from arbitrary exclusion of 40% of the electorate. *See Maxey v. Wash. State Democratic*  
4 *Comm.*, 319 F. Supp. 673, 678-79 (W.D. Wash. 1970) (Democratic party process for nominating  
5 candidates constitutes state action and “[c]lose constitutional scrutiny ... is in order wherever state  
6 and party procedures offer the voter something less than the fullest possible participation in the  
7 nominating process.”) As former Chair Erwin admitted, the nominating caucus could have been held  
8 on or before November 30, which would have ensured all 176 precincts had a vote in the nominating  
9 caucus. Thus, there is no compelling state or party interest in disenfranchising PCOs who represent  
10 40,000 registered voters.

11 3. Democrats for Diversity has an equitable right to party rules being followed.

12 Plaintiff’s members, which include appointed PCOs who were denied a vote, and at least one  
13 candidate who did not receive a nomination, have an equitable right to a nomination process that  
14 complies with party rules for the additional reason that they organized and campaigned in reliance on  
15 those rules. As early as the August primary, people volunteered to appointed PCO positions, and  
16 candidates anticipating the vacancy in the 37th District began campaigning among the then-  
17 appointed PCOs. These people acted in reliance on the clear rule that elected and appointed PCOs  
18 would have a vote in the nomination process.

19 4. There are serious questions going to the merits of Plaintiff’s ethnic discrimination  
20 claim and the balance of hardships tips decidedly in Plaintiff’s favor.

21 Even at this preliminary stage without the benefit of any discovery, Plaintiff can show serious  
22 questions going to the merits of its claim that KCDCC’s disenfranchisement of 115 PCOs was the  
23 result of ethnic discrimination. The precincts that were disenfranchised include most of the precincts  
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1 that have the highest percentages of African-Americans, Latinos, and people of color. *Gunn Decl.*,  
2 Ex. B and *Tonry Decl.*, Ex. A. There is no hardship on King County Council from postponing their  
3 appointment vote for a couple of weeks, particularly when weighed against the hardships of race-  
4 based disenfranchisement in the 37th District, which is intended to increase the diverse  
5 representation of ethnic minority communities in the Washington State Legislature.

6 **C. Democrats for Diversity Has a Well-Founded Fear that the County Will Appoint a**  
7 **Senator from the Invalid List of Nominees.**

8 Appointment of a 37th District senator from the list of nominees provided by KCDCC is on  
9 the King County Council's meeting agenda for December 12, 2016. This is more than sufficient to  
10 establish the reasonableness of Plaintiff's fear that the County will appoint a senator from the invalid  
11 and un-representative list of nominees the KCDCC provided. *See Spokane Sch. Dist. No. 81 v.*  
12 *Spokane Educ. Ass'n*, 182 Wn. App. 291, 312 (2014) (once a union submitted a dispute to arbitration,  
13 district had a reasonable fear the union would move forward with arbitration).

14  
15 **D. Democrats for Diversity Will Suffer Irreparable Harm If the County Appoints a**  
16 **Senator from KCDCC's Invalid List.**

17 In addition to the havoc it would create for state and local government, appointing an illegally  
18 nominated candidate to represent the 37th District, even for the brief period necessary for the Court  
19 to decide a preliminary injunction motion, would irreparably harm Plaintiff and Plaintiff's members.  
20 *See Farris v. Seabrook*, 677 F.3d 858, 868 (9th Cir. 2012) (internal quotation omitted) ("The loss of  
21 First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable  
22 injury and that harm is particularly irreparable where, as here, a [party] seeks to engage in political  
23 speech, as timing is of the essence in politics and [a] delay of even a day or two may be intolerable.")  
24 For example if a candidate is erroneously appointed, that person will enjoy an improper "incumbent"  
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1 status advantage over candidates in a fair and legal nominating process. In addition, an invalid  
2 appointee along with his or her supporters, will have an incentive to delay and obstruct a revote,  
3 whereas preserving the status quo ensures all interested parties have an incentive to expedite a revote  
4 to determine the proper list of nominees that represent all of the 37th District.

5 **E. The Balance of the Equities and Public Interest Favor the Requested Relief.**

6 Plaintiff merely requests that the Court restrain King County Council from appointing a 37th  
7 District senator for two weeks, or until the Court can decide on a preliminary injunction. This short  
8 delay will not cause anyone to miss any deadlines. Indeed, if the Court grants the requested relief,  
9 Defendants can proceed to a valid appointment on the following schedule:

- 10 1. December 9: KCDCC chair can issue a call for the 37th District's required  
11 Reorganization Meeting and a call setting a special nominating caucus of elected and appointed  
12 PCOs for anytime between December 12 and December 30;
- 14 2. December 12: Already scheduled 37th District meeting may be used to appoint PCOs  
15 to vacant precincts;
- 16 3. Between December 12 and 30: Special nominating caucus to nominate three 37th  
17 District candidates to be provided to the KCDCC;
- 18 4. January 3: KCDCC to submit nominee list to King County Council for an  
19 appointment vote at the already scheduled January 3, 2017 full council meeting;
- 20 5. January 9: State Legislative Session begins with 37th District senator seat filled.

21 The Court should find that a temporary restraining order is warranted because the equities  
22 strongly favor maintaining the status quo pending the resolution of this matter. Again, there is no  
23 hardship on King County Council from postponing their appointment vote for a couple of weeks, and  
24 even if there were it would be far outweighed by Democrats for Diversity and Inclusion's and  
25

1 especially the public's interest in ensuring the 37th District is fairly represented by the final  
2 appointee.

3 **F. No Bond or a Nominal Bond is Warranted.**


4 No bond should be required here because Democrats for Inclusion and Diversity is a non-  
5 profit organization seeking to protect democratic rights of over 40,000 King County voters. *See, e.g.,*  
6 *Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (waiving bond  
7 requirement for non-profit seeking to protect public rights). The Court should exercise its discretion  
8 and issue no or a nominal bond because Plaintiff is acting on behalf of the 37th District's residents to  
9 protect the public. CR 65; RCW 7.40.080 (amount of bond is discretionary). *See* RCW 7.43.040 (no  
10 bond or security when relief sought by municipalities or political subdivisions of the state).  
11 Furthermore, the County's costs of complying with the requested order are nominal at most.

12 **VIII. CONCLUSION**

13  
14 For the foregoing reasons, Democrats for Diversity and Inclusion respectfully request that the  
15 Court restrain the King County Council from appointing an interim 37th Legislative District State  
16 Senator until Defendant KCDCC provides a list of nominees to the King County Council that is the  
17 result of a nomination caucus that complies with the law and respects the democratic rights of the  
18 diverse communities in the 37th District.

19 RESPECTFULLY SUBMITTED this 9th day of December, 2016.

20  
21 SMITH & LOWNEY, PLLC

22 By:   
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24 Claire Tonry, WSBA # 44497  
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MOTION FOR TEMPORARY RESTRAINING  
ORDER

- 15

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(206) 860-2883

CERTIFICATE OF SERVICE

I, Jessie Sherwood, declare under penalty of perjury of the laws of the State of Washington, that I am a citizen of the United States and a resident of the State of Washington, that I am over the age of eighteen, that I am not a party to this lawsuit, and that on December 9, 2016 I served the foregoing Motion for Temporary Restraining Order and its supporting declarations on the following in the manner indicated:

Table with 3 rows and 2 columns. Row 1: Thomas Kuffel, WSBA #20118; Janine Joly, WSBA #27314; Senior Deputy Prosecuting Attorneys; 500 Fourth Avenue, 9th Floor; Seattle, WA 98104-2316; Telephone: (206) 296-0430; Email: Thomas.Kuffel@kingcounty.gov; Janine.Joly@kingcounty.gov; Linda.Bondar@kingcounty.gov; Heidi.Lau@kingcounty.gov. Row 2: King County Democratic Central Committee; Chair Bailey Stober; P.O. Box 525; Mercer Island, WA 98040; baileystober@hotmail.com. Row 3: David Thomas McDonald; K&L Gates LLP; 925 4th Ave Ste 2900; Seattle, WA 98104-1158; david.mcdonald@klgates.com. All rows have checkboxes for Messenger, U.S. Mail (postage prepaid), and E-mail (checked).

DATED this 9th day of December, 2016 in Seattle, Washington.

Jessie C. Sherwood
Jessie Sherwood