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Public Disclosure Commission
711 Capitol Way S #206
Olympia, WA 98504

Re: BIL File No. 6518-007

Dear Commissioners:

We represent Clean Water Accountability Commission (CWAC), a registered political committee. CWAC requests that the PDC issue an expedited Declaratory Order, as allowed under WAC 390-12-255, suspending the contribution limits under RCW 42.17A.405(3), 42.17A.125, and WAC 390.05.400 for contributions made to CWAC pertaining to the Al French recall campaign.

I. A Declaratory Order is Appropriate Under the Pertinent Regulatory Framework.

CWAC is a registered Washington committee focused specifically and exclusively on supporting the effort to recall Al French. Given this mission, it does not have the requisite potential for or appearance of corruption sufficient for the PDC to enforce the contribution limits without violating CWAC's First Amendment rights. Accordingly, CWAC seeks an expedited Declaratory Order under the appropriate regulatory framework, as interpreted by the Ninth Circuit and effectuated in prior Declaratory Orders from the PDC.

A. Regulatory Framework

CWAC may petition the PDC for a Declaratory Order by setting forth facts that (a) uncertainty necessitating resolution exists; (b) there is an actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; (c) the uncertainty adversely affects the petitioner; (d) the adverse effect of uncertainty on the petitioner outweighs any adverse effects on other or on the general public that may likely arise from the order requested; and (e) the petition complies with any additional requirements established by the applicable regulations. RCW 34.05.240(1). Here, there is sufficient uncertainty and adverse effect regarding the potential imposition of contribution limits against CWAC's work as a recall committee.

Statutory contribution limits on contributions to political committees operated by candidates are important to belie corruption in state politics. Accordingly, Washington's Fair Campaign Practices Act (FCPA) places limits on contributions, or transfers of funds, "made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political or incidental

committee, the person or persons named on the candidate’s or committee’s registration form.” RCW 42.17A.005(15)(a)(ii); 42.17A.405. In contrast to a contribution, an independent expenditure is not limited by state regulations and is a “constitutionally protected form of speech.” PDC, *Independent Expenditures*, <https://www.pdc.wa.gov/registration-reporting/independent-expenditures>; RCW 42.17A.255(1).

Under this regulatory framework, FCPA considers “expenditures in support of the recall of [a] ... county official,” as contributions subject to the state regulatory limitations on contributions. RCW 42.17A.405(3). However, the Ninth Circuit has taken issue with this application of contribution limits to such expenditures in support of particular recall campaigns; and instead, the Court found such contributions are more analogous to constitutionally protected independent expenditures and should be free of such limitations.

B. Ninth Circuit Precedent

The state’s interest in limiting corruption is sufficient to impose limits on contributions – and consequently impose limits on individuals’ First Amendment rights. *Farris v. Seabrook*, 677 F.3d 858, 865 (9th Cir. 2012) (*Farris I*). However, without sufficient potential for corruption, such limitations are unconstitutional as applied. *Id.* at 867. As such, the Ninth Circuit has found RCW 42.17A.405(3)’s contribution limit is unconstitutional as applied to recall committees that have little or no connection to the candidates and are more similar to “independent expenditure committees,” that “have at most a tenuous relationship with candidates.” *Id.* at 866. *See also Farris v. Ranade*, 584 Fed. Appx. 887, 889 (9th Cir. 2014) (*Farris II*) (finding contribution limits invalidated as applied to recall committees). Accordingly, the Ninth Circuit held that without evidence a recall committee “would have any influence on the Council’s appointment decision upon a successful recall,” contribution limits are unconstitutional as enforced against such recall committees. *Farris I*, 677 F.3d at 867.

C. Prior Declaratory Orders

The PDC has previously acted in accordance with the Ninth Circuit’s analysis and granted Declaratory Orders which suspended the enforcement contribution limits against various recall committees. Although the PDC was clear that these Declaratory Orders only applied to the petitioning committees, CWAC is a similarly situated recall committee and requests an expedited Declaratory Order consistent with the other Declaratory Orders the PDC issued.

1. Declaratory Order for Recall Mark Lindquist Committee

On August 10, 2015, the PDC issued Declaratory Order No. 17 and agreed to not enforce contribution limits against the Recall Mark Lindquist Committee. In so finding, the PDC determined that upon request from a recall campaign, factfinding is appropriate to determine if contribution limits are constitutionally applied. *See Decl. Order No. 17* at 8 (“the *Farris* decisions anticipated an evaluation of the individual and specific facts of each committee and its campaign activities ... before enforcement of the contribution limit of RCW 42.17A.405(3) could be suspended.”) In seeking its Declaratory Order, the Recall Mark Lindquist Committee stipulated it would not:

- 1) coordinate any campaign expenditures with such a candidate or his or her campaign, 2) solicit or accept contributions from such a candidate or his or her campaign committee, and 3) solicit any donations or support in support of or opposition to such a candidate or his or her candidate committee.

Id. at 7. Relying on these representations and stipulated facts, the PDC suspended the enforcement of contribution limits under RCW 42.17A.405(3) against the Recall Mark Lindquist Committee. *Id.*

2. Declaratory Order for A Better Seattle

On November 26, 2021, the PDC issued a Declaratory Order and suspended the enforcement of contribution limits under RCW 42.17A.405(3) and (14) against A Better Seattle as a recall committee. Declaratory Order ABS at 6. In seeking a Declaratory Order, A Better Seattle stipulated that they:

- a. Have not solicited or accepted any contribution that exceeds the applicable limit set forth in RCW 42.17A.405(3) and (14);
- b. Have not coordinated any contributions or expenditures with, or allowed decision-making control by, a candidate or potential candidate for Seattle City Council or any member of the Seattle City Council or its staff;
- c. Have not had contact or communications with any person known to them at the time to be a declared or undeclared candidate for Seattle City Council, concerning the appointment or election of any person to the Council, or concerning any other subject;
- d. Have not had contacts or communications with employees of the Seattle City Council concerning the appointment or election of any person to the Seattle City Council;
- e. Have not (i) coordinated any campaign expenditures with any candidate for Seattle City Council or their campaign committee, (ii) solicited or accepted contributions from such a candidate or their campaign committee, or (iii) solicited any donations in support of or in opposition to such a candidate or their candidate committee; and
- f. Have not included any members of the Seattle City Council or its staff in Committee decision-making, including decision concerning Committee expenditures and the solicitation or receipt of contributions.

Id. at 3-4. Based on these representations and stipulations, the PDC found, “[t]he adverse effects on the Committee and their rights as outlined in *Farris* outweigh any adverse effects on other or the public.” *Id.* at 5.

CWAC is a similarly situated committee to both Recall Mark Lindquist Committee and A Better Seattle. To preserve its First Amendment rights, and in accordance with the PDC’s prior Declaratory Orders, it requests the PDC grant its request for an expedited Declaratory Order suspending the enforcement of contribution limits against CWAC.

II. A Declaratory Order is Further Appropriate Under CWAC's Proffered Stipulations.

In seeking a Declaratory Order suspending the enforcement of contribution limits against its work on the Al French recall campaign, CWAC stipulates that it:

1. Has not to date, and will not going forward, coordinated any contributions or expenditures with, or allow decision-making control by, a candidate or potential candidate for Spokane County Board of Commissioners or any of the Board Commissioners or its staff;
2. Has not to date, and will not going forward, have any contact or communications with any person known to CWAC at the time to be a declared or undeclared candidate for Spokane County Board of Commissioners concerning the appointment or election of any person to the Board, or concerning any other subject;
3. Has not to date, and will not going forward, have any contact or communication with employees of the Spokane County Board of Commissioners concerning the appointment or election off any person to the Board;
4. Has not to date, and will not going forward (i) coordinate any campaign expenditures with any candidate for the Spokane County Board of Commissioners or their campaign committee; (ii) solicit or accept any contributions from such candidate or their campaign committee; or (iii) solicit any donations in support of or in opposition to such a candidate or their candidate committee; and
5. Has not to date, and will not going forward, include any Spokane County Board Commissioners or its staff in CWAC decision-making, including decision concerning CWAC expenditures and the solicitation or receipt of contributions.

CWAC's stipulations ensure there is no potential for or occurrence of corruption. In absence of such potential for corruption, the adverse effects on CWAC and its First Amendment rights outweigh any adverse effects on the public. In accordance with Ninth Circuit precedent established in *Farris I* and *Farris II*, CWAC respectfully requests the PDC issue an expedited Declaratory Order suspending the enforcement of contribution limits in connection with CWAC's work in relation to the Al French recall campaign.

Please contact me with any questions or concerns at (206) 257-6005.

Sincerely,



Juliana DeFilippis

Counsel for Clean Water Accountability Commission