



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission

FROM: Tony Perkins, Acting Assistant Director

DATE: July 16, 2015

SUBJECT: Petition for Declaratory Order Regarding Contribution Limits in Recall Elections – Committee to Recall Mark Lindquist

Background

On June 11, 2015, PDC staff received a letter dated June 9, 2015 from Jeffrey Paul Helsdon of the law firm of Oldfield & Helsdon PLLC, counsel to the “Committee to Recall Mark Lindquist” political committee (the Committee). Mr. Helsdon’s letter concerned the application of contribution limits in recall elections, RCW 42.17A.405(3). At the meeting of the Public Disclosure Commission on June 25, 2015, the Commission directed PDC staff to continue processing Mr. Helsdon’s inquiry received on June 11, 2015 as a petition for a declaratory ruling. Thomas Oldfield of the law firm of Oldfield & Helsdon appeared on behalf of the Committee at the June 25, 2015 meeting, and agreed that the Committee would participate in the declaratory ruling process. Mr. Oldfield stated that the Committee would cooperate with the Commission and its staff to process the Committee’s request.

Summary of Petition and Facts Presented

RCW 42.17A.405(3) provides for an \$800 limit on contributions from any person, other than a bona fide political party or a caucus political committee, to a county official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the county official. Per RCW 42.17A.125 and under the Commission’s rule WAC 390-05-400, this \$800 limit was adjusted to \$950 in 2014. Copies of RCW 42.17A.405(3) and WAC 390-05-400 are attached to this memo.

In his June 9, 2015 submission to the Commission, Mr. Helsdon explained that he represents the Committee in its efforts to recall the elected Pierce County Prosecutor Mark Lindquist from office. Mr. Helsdon posed anticipated activities concerning the recall process, including the Committee’s intent to solicit and accept contributions in excess of \$950. He inquired concerning the applicability of the contribution limits in RCW 42.17A.405(3) to the Committee and its anticipated contributors, in light of the federal court injunction preventing enforcement of those limits against *Farris v. Seabrook* plaintiffs Oldfield & Helsdon PLLC, the Recall Dale Washam political

committee, and Robin Farris. Mr. Helsdon's submission received on June 11, 2011 is attached to this memo.

Commission Options in Response to a Petition for Declaratory Order

Under RCW 34.05.240, the Commission has a number of options on how it may proceed in response to a petition for a declaratory order:

RCW 34.05.240 Declaratory order by agency — Petition

...

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

- (a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
- (b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;
- (c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or
- (d) Decline to enter a declaratory order, stating the reasons for its action.

...

In addition, WAC 390-12-250(3) provides that the executive director will present the petition to the Commission at the first meeting when it is practical to do so. This was accomplished at the Commission's June 25, 2015 meeting. Once presented, among other options, the Commission may decide that a public hearing is necessary and so order. WAC 390-12-250(6). At its June 25, 2015 meeting, the Commission directed staff to prepare for a July 23, 2015 hearing on the petition, develop the relevant facts, and give notice to stakeholders.

PDC Staff Development of Relevant Facts

Under WAC 390-12-250(2), following receipt of a petition for a declaratory order, PDC staff may conduct a review to develop facts relevant to the petition. In the case of the Committee's petition regarding RCW 42.17A.405(3), staff reviewed the November 6, 2012 *Order on Plaintiff's Motion for Summary Judgment* issued by U.S. District Court Judge Robert Bryan in the *Farris v. Seabrook* federal litigation, and the *Memorandum Opinion* of the U.S. Court of Appeals for the 9th Circuit, filed on July 11, 2014. Those filings are attached to this memo.

In light of evidence presented and considered by the federal court in the *Farris* case, staff also posed questions to the Committee concerning their activities, contacts and communications, including their contacts regarding:

- A. An effort to recall Mark Lindquist from the office of Pierce County Prosecutor;
- B. Contributions solicited or received, or expenditures made, in support of that recall effort; or

C. The appointment or election of any other person to the office of Pierce County Prosecutor.

On July 14, 2015, Thomas Oldfield provided a response to staff's inquiry on behalf of the Committee. That response is attached to this memo. The Committee's responses are included as part of the additional facts developed.

Additional Facts Developed by PDC Staff

In his response received on July 14, 2015, Mr. Oldfield provided the following information:

1. In answering staff's question concerning contacts or communications that the Committee, its officers or principal decision-makers had with persons known at the time to be a candidate for Pierce County Prosecutor, Mr. Oldfield stated that the Committee understood the term "principal decision-makers" to include the officers and directors of the Recall Mark Lindquist political committee (a nonprofit corporation), the law firm of Oldfield & Helsdon PLLC, and Joan Mell, an attorney who has provided significant input to the Committee.

Mr. Oldfield stated that none of the above persons has had contact or communications with any person known to be a declared or undeclared candidate for Pierce County Prosecutor. He went on to state, *"Should the committee become aware of such a candidate, or if any person, when contacted, indicates an intent to run for the office in the future, campaign personnel will be instructed to (i) not coordinate any campaign expenditures with such a candidate or his or her campaign committee, (ii) not solicit or accept contributions from such a candidate or his or her campaign committee, and (iii) not solicit any donations or support in support of or opposition to such a candidate or his or her candidate committee. The Committee's officials and decision makers are aware that they must abide by all existing campaign finance laws, including those applicable to coordination and volunteers will be informed of the necessity of abiding by all existing campaign finance laws, including those applicable to coordination. Campaign personnel will be directed to appropriate educational material produced by the PDC."*

2. Mr. Oldfield stated that certain officers and principal decision-makers of the Committee had spoken with employees or officials of the Pierce County Prosecutor's Office to obtain additional factual information to clarify allegations stated in whistleblower complaints filed by them, in order to assure accuracy of the statement of charges for the recall and subsequent litigation.
3. Mr. Oldfield stated that an officer or principal decision-maker of the Committee had sent an email to numerous recipients including two deputy prosecutors, telling the recipients that the Committee was conducting fundraising phone calls for the recall campaign. Mr. Oldfield stated that an employee of the Pierce County Prosecutor's Office had contributed \$140 to the Committee.

4. Mr. Oldfield stated that no officer or principal decision-maker of the Committee had contacts or communications with persons known to be a candidate for Pierce County Prosecutor, with employees of the prosecutor's office, or with members of the Pierce County Council, concerning the appointment or election of any person to the office of Pierce County Prosecutor.

Following receipt of Mr. Oldfield's response, PDC staff reviewed the record of filings by the Committee. Staff noted that the committee filed a C-1pc Political Committee Registration on June 9, 2015, registering a campaign to support a recall ballot proposition in the April 26, 2016 special election. A copy of the C-1pc registration is attached to this memo. Following this registration, the Committee would be required to file contribution and expenditure reports by July 10, 2015 if it received or spent more than \$200 before the close of June. The Committee has no campaign finance reports on file, indicating that any reportable activity (e.g., the \$140 contribution described in Mr. Oldfield's letter) occurred after June. If the contribution were received in July, it should be reported on or after August 10, 2015.

Notice to Stakeholders

On June 25, 2015, PDC staff noted agency stakeholders of the petition for a declaratory order regarding RCW 42.17A.405(3). As of the date of this memo, no comments or responses to staff's notification have been received. Any comments received prior to the hearing on the petition scheduled for July 23, 2015 will be included in extra meeting materials.

July 23, 2015 Hearing

PDC staff, Commission counsel, and counsel for the Committee will be available at the hearing to answer any questions a Commissioner might have about this matter. Commission counsel will also be available for closed session (pursuant to the Administrative Procedure Act) in the event the Commission wishes to obtain legal advice during this process.

Attachments

- Petition for a declaratory order received on June 11, 2011 from Jeffrey Helsdon
- RCW 42.17A.405
- WAC 390-05-400
- November 6, 2012 *Order on Plaintiff's Motion for Summary Judgment* issued by U.S. District Court Judge Robert Bryan
- *Memorandum Opinion* of the U.S. Court of Appeals for the 9th Circuit, filed on July 11, 2014
- Response to PDC staff inquiry to develop relevant facts, received on July 14, 2015 from Thomas Oldfield
- C-1pc Political Committee Registration filed on June 9, 2015 by the Committee to Recall Mark Lindquist



OLDFIELD & HELSDON, PLLC

ATTORNEYS AT LAW

1401 REGENTS BLVD, SUITE 102 | FIRCREST, WA 98466 | P.O. BOX 64189 | UNIVERSITY PLACE, WA 98464 | TEL: 253.564.9500 | FAX: 253.414.3500

June 9, 2015

RECEIVED

JUN 17 2015

Public Disclosure Commission

Washington Public Disclosure Commission
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504

Attn: Philip E. Stutzman, Director of Compliance
Tony Perkins, Lead Political Finance Specialist via email: pdc@pdc.wa.gov and USPS

Dear Mr. Stutzman and Mr. Perkins:

This law firm represents Recall Mark Lindquist (the "Committee"), a Washington nonprofit corporation organized as a political committee to attempt to recall Mark Lindquist, Pierce County Prosecuting Attorney, from office. The Committee intends to solicit and accept contributions to the recall campaign in excess of the \$950 per contributor limit set forth in RCW 42.17A.405(3), RCW 42.17A.125, and WAC 390-05-400.

As you know, the U.S. District Court for the Western District of Washington issued an injunction on July 15, 2011 prohibiting the PDC from enforcing Wash. Rev. Code §42.17A.405(3) in the recall effort against Pierce County Assessor/Treasurer Dale Washam. The PDC appealed that order. The Ninth Circuit Court of Appeals affirmed the District Court's preliminary injunction order on January 19, 2012. *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012)(as amended)(*Farris I*). The Recall Proponents moved for summary judgment. On November 6, 2012, the District Court issued its Summary Judgment Order in which it "permanently enjoined [the PDC] from enforcing RCW §42.17A.405(3) against [the Recall Proponents] in this case only." The District Court concluded that because it held the statute was unconstitutional as applied to the Recall Proponents, "the Court need not address whether RCW §42.17A.405(3) is unconstitutional on its face." The Recall Proponents appealed from the District Court's refusal to find the statute unconstitutional on its face. In its Memorandum Decision entered July 11, 2014 (*Farris II*), the Ninth Circuit acknowledged that the "district court's order was somewhat ambiguous as to the scope of its injunctive relief, insofar as its application beyond the immediate case. . . We construe the district court's order and corresponding injunction as precluding enforcement of §42.17A.405(3) against the plaintiffs in all similar circumstances, where there is no evidence or appearance of corruption."

"Under the First Amendment, contribution limits are permissible as long as the Government demonstrates that the limits are closely drawn to match a sufficiently important interest." *Farris I*, 677 F.3d at 865. RCW 42.17A.405(3) did not meet that test with regard to that recall effort – nor would it with regard to any other recall campaign.

First, the law is not supported by an important government interest because it is not directed at *quid pro quo* corruption. In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court made clear that the concept of "corruption or the appearance of corruption" was limited to *quid*

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pro quo corruption between a candidate and a donor and the Court explicitly rejected a theory of “undue influence.” *Citizens United*, 558 U.S. at 357-59; *see also FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985) (“The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. But here the conduct proscribed is not contributions to the candidate, but independent expenditures in support of the candidate.”). In the case of a recall, RCW 42.17A.405(3) limits contributions to a political committee that makes expenditures independently of a candidate or candidate committee. These expenditures are, as a matter of law, incapable of causing corruption or its appearance. Given the structure of the recall process, recall campaigns are not candidates or candidate committees and do not coordinate their speaking with candidates. There are no candidates with whom to coordinate. There is no chance for *quid pro quo* corruption because there is no candidate who may provide a *quo* for such a *quid*.

Second, the statute is fatally underinclusive and is therefore not “closely drawn.” On its face, the statute exempts “bona fide political part[ies]” and “caucus political committee[s]” from the contribution limit. There is no rational reason for such exemptions. The State has the burden to justify its restriction on speech. *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011). The Supreme Court has specifically found that political parties are so closely associated with candidates that they may serve as mere conduits for donations and therefore the government may limit contributions to them. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 445-46 (2001). Thus, RCW 42.17A.405(4) has removed the cap on contributions to entities that the Supreme Court has held do raise corruption concerns, while restricting contributions where no such concerns are possible.

The Committee requests that the PDC immediately inform the Committee that the PDC will take no action to enforce the campaign contribution limits of RCW 42.17A.405(3) against Recall Mark Lindquist. If we have not heard from you by the close of business on June 17, 2015, we will assume by such silence that the PDC intends to enforce the contribution limits in this recall, and we will pursue remedies that are available to us.

Very truly yours,



Jeffrey Paul Helsdon

JPH: tbs
cc: Recall Mark Lindquist

RCW 42.17A.405**Limits specified — Exemptions.**

(1) The contribution limits in this section apply to:

(a) Candidates for legislative office;

(b) Candidates for state office other than legislative office;

(c) Candidates for county office;

(d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;

(e) Candidates for city council office;

(f) Candidates for mayoral office;

(g) Candidates for school board office;

(h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;

(i) Persons holding an office in (a) through (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;

(j) Caucus political committees;

(k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, school board office, or public hospital district board of commissioners that in the aggregate exceed eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the

aggregate exceed eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565, a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign

if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW 42.17A.005 or electioneering communications as defined in RCW 42.17A.005.

[2013 c 311 § 1; 2012 c 202 § 1. Prior: 2010 c 206 § 1; 2010 c 204 § 602; 2006 c 348 § 1; 2005 c 445 § 11; prior: 2001 c 208 § 1; 1995 c 397 § 20; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.640.]

WAC 390-05-400

Agency filings affecting this section

Changes in dollar amounts.

Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2014 Revision
.005	Definition of "Independent Expenditure"	\$900	\$950
.445(3)	Reimbursement of candidate for loan to own campaign	\$5,000	\$5,500
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$18,000 \$900	\$19,000 \$950
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office Candidates for hospital district	\$900 \$900 \$1,800 \$1,800 \$900 \$900 \$900 \$800	\$950 \$950 \$1,900 \$1,900 \$950 \$950 \$950 \$950
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$900 \$1,800	\$950 \$1,900
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.90 per voter .45 per voter .45 per voter	.95 per registered voter .50 per registered voter .50 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties	.90 per voter .45 per voter	.95 per registered voter .50 per registered voter

	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.45 per voter	.50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$900	\$950
	To political party	\$4,500	\$5,000
.410(1)	Candidates for judicial office	\$1,800	\$1,900
.475	Contribution must be made by written instrument	\$90	\$95

[Statutory Authority: RCW 42.17A.110, 42.17A.125(1), and 42.17A.250 (1)(g). WSR 14-01-010, § 390-05-400, filed 12/5/13, effective 1/5/14. Statutory Authority: RCW 42.17A.110 and 42.17A.125. WSR 13-05-012, § 390-05-400, filed 2/7/13, effective 3/10/13. Statutory Authority: RCW 42.17.110 and 42.17.125. WSR 12-10-041, § 390-05-400, filed 4/27/12, effective 5/28/12. Statutory Authority: RCW 42.17.370(1) and 42.17.690. WSR 12-01-032, § 390-05-400, filed 12/13/11, effective 1/13/12. Statutory Authority: RCW 42.17.370(1), 42.17.690, and 42.17.645. WSR 08-04-022, § 390-05-400, filed 1/28/08, effective 2/28/08. Statutory Authority: RCW 42.17.370. WSR 07-07-005, § 390-05-400, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 06-07-001, § 390-05-400, filed 3/1/06, effective 4/1/06. Statutory Authority: RCW 42.17.690. WSR 03-22-064, § 390-05-400, filed 11/4/03, effective 1/1/04. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 01-22-050, § 390-05-400, filed 10/31/01, effective 1/1/02. Statutory Authority: RCW 42.17.370(1). WSR 00-04-058, § 390-05-400, filed 1/28/00, effective 3/1/00. Statutory Authority: RCW 42.17.690. WSR 98-08-069, § 390-05-400, filed 3/30/98, effective 5/1/98; WSR 96-04-021, § 390-05-400, filed 1/30/96, effective 3/1/96.]

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 ROBIN FARRIS; RECALL DALE
WASHAM, a Washington political
12 committee; and OLDFIELD &
HELSDON, PLLC, a Washington
13 professional limited liability company,

14 Plaintiffs,

15 v.

16 DAVE SEABROOK, Chair; BARRY
SEHLIN, Vice Chair; DOUGLAS ELLIS,
17 Interim Executive Director; JENNIFER
JOLY; and JIM CLEMENTS, in their
18 official capacities as officers and members
of the Washington State Public Disclosure
19 Commission,

20 Defendant.

CASE NO. 3:11-cv-5431 RJB

ORDER ON PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

21 This matter comes before the Court on Plaintiffs' Motion for Summary Judgment. Dkt.

22 61. The Court has considered the pleadings filed in support of and in opposition to the Motion
23 and the file herein.
24

1 FACTS

2 This case arises from Plaintiffs' attempts to recall an elected official in Pierce County,
3 Washington, and implicates Washington's campaign finance laws. Dkt. 1. Plaintiffs challenge
4 the constitutionality of two Washington statutes which limit campaign contributions, RCW §§
5 42.17A.405(3) and 42.17A.420(1) (the statutes were codified as 42.17.640(3) and 42.17.105(8),
6 respectively, when Plaintiffs filed the Complaint). *Id.*

7 **A. LEGAL PROCEEDINGS TO RECALL DALE WASHAM**

8 In 2010, Plaintiff Robin Farris became concerned about the conduct of an elected official,
9 Dale Washam, in Pierce County, Washington. Dkt. 13-1, at 2. Mr. Washam was elected as the
10 Pierce County, Washington Assessor-Treasurer in November of 2008. *Id.* Prompted by her
11 concern about Mr. Washam's behavior, Ms. Farris decided to try to recall him. *Id.* She created a
12 political committee called Recall Dale Washam ("RDW") and registered RDW as a "mini
13 reporting" committee with Washington's Public Disclosure Commission. *Id.* Mini reporting
14 committees are subject to fewer reporting requirements if the committee's contributions and
15 expenditures remain below a certain threshold. *Id.*

16 On October 29, 2010, Ms. Farris, acting *pro se*, filed six written charges against Mr.
17 Washam with the Pierce County Auditor seeking to place on the ballot the question of whether
18 Mr. Washam should be recalled. Dkt. 13-1, at 2. The auditor arranged for Mr. Washam to be
19 served with the recall charges and referred the matter to the Pierce County, Washington
20 Prosecutor's Office. *In Re Recall of Washam*, 171 Wash.2d 503 (2011). A Special Deputy
21 Prosecuting Attorney formulated a ballot synopsis, arranged for Washam to be served with
22 charges, and on November 12, 2010, petitioned the Pierce County Superior Court to review the
23 adequacy of the charges. *Id.*

1 In November of 2010, Ms. Farris set up a Recall Dale Washam campaign website
2 (recalldalewasham.org), and a Recall Dale Washam Facebook page that was originally attached
3 to her personal Facebook page. Dkt. 73, at 37. Ms. Farris closed to the public the Facebook
4 page attached to her personal page after a copy of a posting surfaced during the litigation before
5 this Court. *Id.* Ms. Farris then set up a separate Recall Dale Washam Facebook page that could
6 be seen by the public. *Id.* at 39.

7 Plaintiff Oldfield & Helsdon, PLLC, is a law firm whose principals, Tom Oldfield and
8 Jeff Helsdon, practice law in Pierce County, Washington. Dkts. 13-2; 13-3. They state that they
9 also became aware of numerous allegations regarding Mr. Washam's conduct in office after
10 reading about them in the *Tacoma News Tribune* in 2009 and 2010. Dkts. 13-2, at 1; 13-3, at 1.
11 They state that they also came to believe that for the good of Pierce County, Mr. Washam should
12 be recalled. Dkts. 13-2, at 2; 13-3, at 3.

13 After reading in the newspaper about the start of recall proceedings in the superior court,
14 on November 16, 2010, Mr. Oldfield and Mr. Helsdon contacted Ms. Farris to offer pro bono
15 legal services for the superior court's sufficiency hearing and the recall effort in general. Dkt.
16 13-1, at 2. She accepted their offer. *Id.* On November 17, 2010, Ms. Farris, "by then assisted by
17 pro bono counsel, filed an amended request that contained a proper verification under RCW
18 29A.56.110 and corrected a few typographical errors." *In Re Recall of Washam*, 171 Wash.2d
19 503 (2011).

20 The superior court held a hearing on the factual and legal sufficiency of the charges on
21 December 16, 2010. *In Re Recall of Washam*, 171 Wash.2d 503 (2011). The superior court
22 found five of the six charges sufficient. *Id.* The superior court corrected the ballot synopsis by
23 striking one of the charges and by inserting dates. *Id.* The ballot synopsis now reads:

1 The charge that Dale Washam, as Pierce County Assessor-Treasurer, committed
2 misfeasance in office, malfeasance in office and/or violated his oath of office
3 alleges that he violated state and local law by (1) retaliating against an employee
4 for filing a complaint against him between January 22, 2009 and March 16, 2010,
5 (2) grossly wasting public funds in pursuing criminal charges against his
6 predecessor as Assessor-Treasurer from January 2, 2009 until October 29, 2010,
7 (3) failing to protect the employee from retaliation, false accusations or future
8 improper treatment between January 22, 2009 and March 16, 2010, and by failing
9 thereafter to rectify his retaliatory actions against his employee, (4) refusing to
10 participate in investigations of whether he had discriminated and retaliated against
11 his employees between January 22, 2009 and March 16, 2010, and (5) discharging
12 his duties in an unlawful and biased manner from January 2, 2009 until October
13 29, 2010. Should Dale Washam be recalled from office based on this charge?

14 *In Re Recall of Washam*, 171 Wash.2d 503 (2011). Ms. Farris and RDW were represented by
15 Mr. Oldfield and Mr. Helsdon at the hearing. Dkt. 13-2, at 3.

16 On March 3, 2011, the Washington Supreme Court affirmed the superior court's
17 sufficiency determination and the superior court's corrections to the ballot synopsis. *In Re*
18 *Recall of Washam*, 171 Wash.2d 503 (2011). A written opinion followed on May 12, 2011. *Id.*
19 Ms. Farris and RDW were again represented by Mr. Oldfield and Mr. Helsdon during the
20 Supreme Court proceedings. Dkt. 13-2, at 3. Ms. Farris states that she would not have been able
21 to afford to hire legal assistance for the recall campaign at that point. Dkt. 13-1, at 4.

22 **B. WASHINGTON'S CONTRIBUTION LIMITS ON RECALL CAMPAIGNS AND THE** 23 **PUBLIC DISCLOSURE COMMISSION**

24 RCW § 42.17A.405(3), states that

No person, other than a bona fide political party or a caucus political committee,
may make contributions to a state official, a county official, a city official, a
school board member, or a public official in a special purpose district against
whom recall charges have been filed, or to a political committee having the
expectation of making expenditures in support of the recall of the state official,
county official, city official, school board member, or public official in a special
purpose district during a recall campaign that in the aggregate exceed eight
hundred dollars if for a legislative office, county office, school board office . . .

1 As implemented by WAC 390-05-400, RCW § 42.17A.405(3) now prohibits
2 contributions over nine hundred dollars.

3 RCW § 42.17A.420(1) states that

4 It is a violation of this chapter for any person to make, or for any candidate or
5 political committee to accept from any one person, contributions reportable under
6 RCW 42.17A.240 in the aggregate exceeding fifty thousand dollars for any
7 campaign for statewide office or exceeding five thousand dollars for any other
8 campaign subject to the provisions of this chapter within twenty-one days of a
9 general election

10 Under then-RCW § 42.17.020(15)(c), campaign contributions other than money “are
11 deemed to have monetary value.” Services furnished at less than their fair market value for the
12 purpose of assisting a political committee are deemed a contribution. *Id.* “Such a contribution
13 must be reported as an in-kind contribution at its fair market value and counts towards any
14 applicable contribution limit of the provider.” *Id.*

15 After contacting Plaintiffs informally, on February 9, 2011, Washington’s Public
16 Disclosure Commission (“PDC”) issued a “Notice of Administrative Charges” to RDW. Dkt.
17 13-1, at 12. The PDC alleged that RDW exceeded the limitations for mini campaign reporting
18 before requesting a change in reporting options. *Id.* The PDC also alleged that RDW “violated
19 RCW 42.17.640 (now 42.17A.405(3)) by exceeding the \$800 per-election limit on contributions
20 from any one source (other than a bona fide political party or a caucus political committee) to a
21 political committee supporting the recall of an elective county officeholder.” *Id.* The PDC
22 stated that it considered that “early contributions to and expenditures by a recall committee,
23 including legal expenses, are subject to reporting.” *Id.* at 13. The PDC asserted that as of
24 December 31, 2010, RDW had exceeded the “\$500 limit of the mini reporting option on
contributions from one source by \$21,116.25 and exceeded the \$5,000 limit of mini reporting on

1 total contributions by \$19,556.25. Oldfield & Helsdon, PLLC's in kind contributions exceeded
2 the \$800 per-election limit in RCW 42.17.640 by \$20,816.25." *Id.* at 15.

3 After receiving correspondence from Plaintiffs, the PDC, by letter, withdrew the
4 February 9, 2011 Notice of Administrative Charges against RDW. Dkt. 13-1, at 35-36. The
5 PDC stated that it intended to reissue charges alleging violations of the reporting requirements.
6 *Id.* at 35. It further stated that

7 PDC staff does not intend to allege that Recall Dale Washam violated RCW
8 42.17.640 by exceeding the \$800 per-election limit on contributions from any one
9 source (other than a bona fide political party or a caucus political committee) to a
10 political committee supporting the recall of an elective county officeholder. The
11 fact that the PDC staff does not intend to allege a violation of RCW 42.17.640
12 should not be construed to mean that the contribution limits of RCW 42.17.640
13 are not applicable to the recall election. The statute, as written, is to be followed
14 during the recall campaign.

12 *Id.*

13 After the PDC issued amended charges regarding the mini committee reporting
14 violations, on April 25, 2011, the PDC and RDW entered into a stipulation. Dkt. 13-2, at 34-40.
15 As part of that stipulation, the PDC recognized that "pro bono legal services rendered by
16 Oldfield & Helsdon, PLLC to RDW after the December 16, 2010, hearing with regard to
17 assisting RDW with the Supreme Court appeal by Dale Washam do not constitute a contribution
18 as defined in RCW § 42.17.020(15)(c)." *Id.* at 39. In addition to the payment of a civil penalty
19 of \$500, RDW agreed to not commit "further violations of RCW 42.17 through the election
20 campaign for which RDW was formed." *Id.* The stipulation concluded the charges issued
21 against RDW. *Id.* The stipulation provided that "[b]y virtue of the Commission's issuance of an
22 order approving this stipulation, Recall Dale Washam surrenders all rights to appeal, or
23 otherwise seek judicial review of, such order." *Id.*

1 The Stipulation, however, did not address the constitutionality of the two statutes at issue.

2 **C. RECALL PETITION RESULTS**

3 If Washington's courts find the charges sufficient, sponsors of a recall petition can then
4 begin to collect signatures of legal voters who support the petition. RCW § 29A.56.180. In the
5 case of a county official whose county's population exceeds forty thousand, signatures "equal to
6 twenty-five percent of the total number of votes cast for all candidates for the office to which the
7 officer whose recall is demanded was elected at the preceding election" must be collected. RCW
8 § 29A.56.180(2). Signatures in support of recalling a county officer must be collected and filed
9 within one hundred eighty days after the issuance of a ballot synopsis by the superior court.

10 RCW § 29A.56.150. If the superior court decision is appealed, the period for collecting and
11 filing "signatures begins on the day following the issuance of the decision by the supreme court."

12 *Id.* The county auditor then determines if the petition bears the required number of signatures and
13 verifies the signatures. RCW § 29A.56.210. If enough signatures are properly gathered, the
14 county auditor certifies the petition as sufficient and fixes a "date for the special election to
15 determine whether or not the officer charged shall be recalled and discharged from office." *Id.*
16 If the recall is successful and the office is vacated, the county board of commissioners appoints a
17 successor. RCW § 36.16.110.

18 RDW had to collect 65,495 valid signatures. Dkt. 75-1, at 14. RDW collected 84,602
19 signatures. *Id.* The Pierce County Auditor's Office invalidated 20,215 signatures, leaving a total
20 of 64,387 valid signatures. *Id.* The recall petition failed. After late August 2011, once the recall
21 effort failed, Ms. Farris closed down the Recall Dale Washam campaign website that had been
22 used to organize the recall effort. Dkt. 73, at 31.

23 **D. RDW CONTACTS WITH PIERCE COUNTY COUNCILMEMBERS, ASSESSOR- 24 TREASURER CANDIDATES, AND POTENTIAL CANDIDATES**

1 One of the issues in this Motion for Summary Judgment is whether Plaintiffs had
2 sufficient contacts and communications with members of the local political community to create
3 the appearance of or actual corruption during the recall effort. Plaintiffs had contacts with
4 several individuals, which will be outlined below.

5 **1. Pierce County Councilmember Tim Farrell**

6 Before August of 2011, RDW, through Ms. Farris, had four contacts with Tim Farrell.
7 Dkt. 75, at 21. Ms. Farris exchanged a message with Mr. Farrell on Facebook, met him at a
8 legislative district meeting, met him at a parade, and had a telephone conversation with him. *Id.*
9 Ms. Farris states that she asked Mr. Farrell a question on Facebook about the process for
10 replacing the Assessor-Treasurer if Mr. Washam were recalled. *Id.* at 22. Mr. Farrell responded
11 and explained the process. *Id.* At the time of the Facebook communication, Ms. Farris had
12 heard rumors that Mr. Farrell was a candidate for the Assessor-Treasurer position in 2012. *Id.* at
13 24. Ms. Farris learned that Mr. Farrell was actually a candidate for the position when she
14 attended the legislative district meeting, sometime after the Facebook contact. *Id.* at 24. After
15 the legislative district meeting, Ms. Farris and Mr. Farrell communicated during a parade
16 regarding a copy of the Facebook post, which surfaced in this litigation. Dkt. 74, at 12. RDW
17 never asked Mr. Farrell to contribute to RDW and Mr. Farrell never contributed to RDW. Dkt.
18 75, at 25.

19 **2. Pierce County Councilmember Dick Muri**

20 Before the recall effort ended in August of 2011, Ms. Farris had five contacts with Mr.
21 Muri, including one e-mail, three telephone conversations, and one interaction at the RDW
22 closing event. Dkts. 74, at 6-9; 75, at 34; 75-1, at 1-2. First, Mr. Muri e-mailed Ms. Farris and
23 asked her to contact him. Dkt. 75, at 34. Ms. Farris then called Mr. Muri and they spoke about
24

1 Ms. Farris's background and motivation for initiating the recall petition. *Id.* In the second
2 telephone conversation, Mr. Muri asked Ms. Farris what her plans were for deploying volunteers
3 to collect signatures for the recall petition and gave advice about collecting signatures. Dkt. 75-
4 1, at 1. During the third telephone conversation, Mr. Muri offered to collect signatures. *Id.* at 2.
5 In their final contact, Mr. Muri attended RDW's closing party. *Id.* Ms. Farris states that at no
6 time did she and Mr. Muri discuss possible replacement candidates that the Council would
7 appoint in the event of a successful recall. Dkt. 74, at 8.

8 **3. Candidate Corrigan Gommenginger**

9 Mr. Gommenginger contacted Ms. Farris through the RDW website, volunteering to help
10 with the campaign finance reporting requirements. Dkt. 74, at 23. After Ms. Farris did not hear
11 from him regarding his request to volunteer, Ms. Farris contacted him. Dkt. 75-1, at 3. Mr.
12 Gommenginger told Ms. Farris that he could not volunteer after all because he was thinking of
13 running for the Assessor-Treasurer position in 2012. *Id.* On May 15, 2012, Mr. Gommenginger
14 posted on his website (voteformcorrigan.com) that he was dropping out of the race and that he was
15 endorsing candidate Billie O'Brien. *Id.* at 17.

16 **4. Candidate Billie O'Brien**

17 Ms. Farris had five contacts with Ms. O'Brien, an employee of the Assessor-Treasurer's
18 Office, which included telephone conversations, text messages, one meeting at a public auction,
19 and one meeting after the recall campaign failed. Dkts. 74, at 14; 75, at 26. Ms. Farris stated
20 that Ms. O'Brien never expressed to Ms. Farris an interest in running for the Assessor-Treasurer
21 position. Dkt. 74, at 23. Ms. O'Brien eventually filed her candidacy in June of 2012. *Id.* at 25.
22 Ms. Farris and Ms. O'Brien first contacted each other on the telephone, during which Ms.
23 O'Brien provided background information to Ms. Farris about the function of the Assessor-
24

1 Treasurer's Office. Dkt. 75, at 26. In November of 2010, Ms. Farris attended an Assessor-
2 Treasurer's property auction where she interacted with Ms. O'Brien in a group setting with other
3 employees of the Assessor-Treasurer's Office and talked about Dale Washam's absence at the
4 auction. Dkts. 75, at 25-27; 74, at 24-25. Ms. Farris also texted Ms. O'Brien and other
5 employees to update them on the results of RDW's litigation in superior court. Dkts. 75, at 26;
6 74, at 25. RDW never asked for nor did Ms. O'Brien give any contributions to RDW. Dkt. 75,
7 at 28. Finally, Ms. Farris and Ms. O'Brien met after the recall petition failed and discussed why
8 Ms. O'Brien was running for Assessor-Treasurer. *Id.*

9 **5. Candidate Mike Lonergan**

10 Ms. Farris had two contacts with Mr. Lonergan, one during the recall campaign and one
11 after the campaign. Dkt. 74, at 26-27. First, in the spring of 2011, Ms. Farris acted as a call-in
12 guest on Mr. Lonergan's radio talk show, during which Ms. Farris talked for two or three
13 minutes about the recall. *Id.* at 26. Later, in June of 2012, Ms. Farris and Mr. Lonergan met for
14 coffee. *Id.* at 27. Ms. Farris stated that, during this meeting, she believed that Mr. Lonergan
15 wanted her to endorse him, which she did not. *Id.* During the recall campaign, no one indicated
16 to Ms. Farris that Mr. Lonergan was considering running for the Assessor-Treasurer position. *Id.*

17 **6. Candidate Spiro Manthou**

18 Ms. Farris and Mr. Manthou had one contact. In June of 2012, they met, and Mr.
19 Manthou asked for Ms. Farris's endorsement. Dkt. 74, at 28. She did not give him an
20 endorsement. *Id.* Ms. Farris had no contact with Mr. Manthou during the recall campaign and
21 no one indicated to her that Mr. Manthou was considering running for the Assessor-Treasurer
22 position. *Id.*

23 **7. Candidate Dale Washam**

24

1 Ms. Farris and Mr. Washam never made contact with each other, except during the two
2 recall petition sufficiency hearings in superior court. Dkt. 74, at 29. During the recall campaign,
3 Ms. Farris did not know that he was running for re-election. *Id.*

4 **8. Contacts with Assessor-Treasurer Office Employees and the Office's Union**

5 During the recall campaign, RDW and Ms. Farris had several communications with
6 Assessor-Treasurer Office employees (Dkt. 74, at 13-14) and Teamsters Local 117, the union
7 representing the Office's employees (Dkt. 75-2, at 10-25). The Office's employees provided Ms.
8 Farris with background information about the Office. Dkt. 74, at 13-14. Also, Ms. Farris
9 produced a strategic program for the Teamsters to identify, train, and mentor Teamster 117
10 candidates to run for local political office in the future. Dkt. 75-2, at 21-25.

11 PROCEDURAL HISTORY

12 **A. MOTION FOR PRELIMINARY INJUNCTION**

13 On June 21, 2011, Plaintiffs filed a Motion for Preliminary Injunction, arguing that
14 enforcement of RCW § 42.17.640(3) (now 42.17A.405(3)) violates Plaintiffs' free speech
15 protections under the First Amendment of the United States Constitution by limiting the amount
16 of contribution that a person may donate to a recall committee. Dkt. 13. On July 15, 2011, this
17 Court granted Plaintiffs' Motion. Dkt. 30. On January 19, 2012, the Ninth Circuit Court of
18 Appeals affirmed (case no. 11-35620). Dkt. 48. The appeals court reasoned that Plaintiffs
19 would likely succeed on the merits and would suffer irreparable harm by engaging in protected
20 political speech because Defendants had not shown any evidence of the appearance of or actual
21 corruption between RDW and any candidates, potential candidates, or councilmembers. Dkt. 48.

22 **B. MOTION FOR SUMMARY JUDGMENT**

1 On August 28, 2012, Plaintiffs filed this Motion for Summary Judgment. Dkt. 61.
2 Plaintiffs argue that RCW §§ 42.17A.405(3) and 42.17A.420(1) are unconstitutional facially and
3 as applied to Plaintiffs because (1) the structure of Washington's recall process prohibits recall
4 committees from coordinating their campaigns with replacement candidates, which negates the
5 appearance of quid pro quo corruption; (2) a disproportionate influence from recall committees is
6 not a sufficient justification for enforcing contribution limits on recall campaigns; and (3) lack of
7 voter access to contributor information is not a sufficient justification for enforcing contribution
8 limits on recall campaigns. Dkt. 61.

9 In response, Defendants first argue that Plaintiffs request to enjoin enforcement of RCW
10 §§ 42.17A.405(3) and 42.17A.420(1) is moot because (1) there is no live controversy, given that
11 the recall campaign has ended; (2) RCW § 42.17A.420(1) never applied to Plaintiffs, given that
12 the campaign ended prior to the date when RCW § 42.17A.420(1) would have taken effect; and
13 (3) RCW § 42.17A.420(1) has already been declared unconstitutional. Dkt. 70, at 9-12.

14 Alternatively, Defendants argue that the provisions at issue are facially constitutional because
15 Plaintiffs cannot show that the provisions are substantially overbroad by infringing on protected
16 speech because the government has a legitimate interest in deterring the appearance of
17 corruption. *Id.* at 13-15. Last, Defendants argue that the provisions are constitutional as applied
18 to Plaintiffs because there are issues of material fact regarding an appearance of corruption
19 between RDW, Ms. Farris, existing and subsequent candidates, candidate committee staff, and to
20 and from the Council that would appoint a successor in the event of a successful recall. *Id.* at 17.

21 In reply, Plaintiffs argue that the case is not moot because it is capable of repetition and
22 would evade review if not reviewed by this Court. Dkt. 76, at 5-6. Second, Plaintiffs argue that
23 RCW § 42.17A.405(3) is unconstitutional on its face and as applied to Plaintiffs because (1) there
24 is no actual or appearance of corruption, given that no evidence exists showing RDW contributed

1 to or coordinated with candidates; and (2) the provision is overbroad by prohibiting a substantial
2 amount of protected speech. *Id.* at 6-12.

3 In their Surreply, Defendants request that the Court strike several declarations filed in
4 support of Plaintiffs' Reply: the declarations of (1) Robin Farris (Dkt. 77); (2) Jeanette Peterson
5 (Dkt. 78); (3) Jeffrey P. Helsdon (Dkt. 79); (4) Thomas Oldfield (Dkt. 80); and (5) Tracey Apata
6 (Dkt. 81). Dkt. 83. Defendants also request that the Court strike those portions of Plaintiffs'
7 Reply that rely on these declarations. *Id.* Defendants argue that the declarations (1) are not
8 properly sworn; (2) are not attested to being made from personal knowledge; and (3) assert new
9 issues based on previously undisclosed facts. *Id.*

10 SUMMARY JUDGMENT STANDARD

11 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
12 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
13 movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is
14 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
15 showing on an essential element of a claim in the case on which the nonmoving party has the
16 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue
17 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
18 for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
19 (1986)(nonmoving party must present specific, significant probative evidence, not simply "some
20 metaphysical doubt."). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a
21 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
22 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*

1 *Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
2 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The court
4 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
5 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
6 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
7 of the nonmoving party only when the facts specifically attested by that party contradict facts
8 specifically attested by the moving party. The nonmoving party may not merely state that it will
9 discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial
10 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
11 Conclusory, non specific statements in affidavits are not sufficient, and "missing facts" will not
12 be "presumed." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

13 DISCUSSION

14 **A. Motion to Strike**

15 Defendants argue that the declarations supporting Plaintiffs' Reply (1) are not properly
16 sworn; (2) are not attested to being made from personal knowledge; and (3) assert new issues
17 based on previously undisclosed facts. Dkt. 83.

18 "It is well established that new arguments and evidence presented for the first time in
19 Reply are waived." *DocuSign, Inc. v. Sertifi, Inc.*, 468 F. Supp. 2d 1305, 1307 (W.D. Wash.
20 2006). Here, Plaintiffs presented the new issue of standing that was not contained in their
21 original Motion. Nor were the facts regarding Plaintiffs' current recall efforts disclosed in the
22 filings with Plaintiffs' original Motion. For these reasons, the Court should grant Defendants'
23 Motion to Strike the declarations of (1) Robin Farris (Dkt. 77); (2) Jeanette Peterson (Dkt. 78);
24

1 (3) Jeffrey P. Helsdon (Dkt. 79); (4) Thomas Oldfield (Dkt. 80); (5) Tracey Apata (Dkt. 81); and
2 those portions of Plaintiffs' Reply that rely on these declarations.

3 **B. Standing**

4 Defendants argue that RCW § 42.17A.405(3) is moot because RDW has ceased
5 operations. Defendants also argue that RCW § 42.17A.420(1) is moot because RDW efforts
6 failed and never reached the general election ballot, and because the court in *Family PAC v.*
7 *McKenna*, 685 F.3d 800 (9th Cir. 2012) already ruled that RCW § 41.17A.420(1) is
8 unconstitutional.

9 Plaintiffs argue that RCW § 42.17A.405(3) is not moot because Plaintiffs' actions are
10 capable of repetition and would evade review if not reviewed by this Court. Plaintiffs do not
11 argue against the mootness of the challenge to RCW § 42.17A.420(1).

12 "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly
13 unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S.
14 737, 751 (1984). To determine if a case is moot, a court must decide if it can give any effective
15 relief in the event that it decides the matter on the merits; if a court can grant such relief, the
16 matter is not moot. *Enyart v. Nat'l Conference of Bar Examiners, Inc.*, 630 F.3d 1153, 1159 (9th
17 Cir. 2011). "The exception applies where (1) the challenged action is in its duration too short to
18 be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the
19 same complaining party will be subject to the same action again." *Id.* (citation omitted)

20 1. RCW § 42.17A.420(1): \$5,000 Limit

21 The Ninth Circuit in *Family PAC v. McKenna*, 685 F.3d 800 (9th Cir. 2012) ruled that
22 RCW § 42.17A.420(1) is unconstitutional. It is unnecessary for this Court to review the
23 constitutionality of RCW § 42.17A.420(1). The Plaintiffs' challenge to RCW § 42.17A.420(1) is
24

1 moot and, therefore, they do not have standing. To the extent Plaintiffs' Motion is based on a
2 challenge of RCW § 42.17A.420(1), it should be denied.

3 2. RCW § 42.17A.405(3): \$900 Limit

4 On appeal from this Court's preliminary injunction, the Ninth Circuit held that the
5 exception to the mootness doctrine applied in this case because "[t]he parties could not
6 practically obtain appellate review of the district court order within this time. Furthermore, if the
7 plaintiffs attempt another recall, they will be subject to the same \$800 contribution limit." *Farris*
8 *v. Seabrook*, 677 F.3d 858, 863-64 (9th Cir. 2012) (citation omitted). Nothing has changed this
9 rationale for applying the exception to the mootness doctrine in this case. This Court should find
10 that Plaintiffs' challenge to RCW § 42.17A.405(3) is not moot and, therefore, they have
11 standing.

12 **C. Constitutionality of RCW § 42.17A.405(3): \$900 Limit**

13 1. As-Applied Challenge

14 Defendants contend that Plaintiffs have had sufficient contact and communication
15 with candidates, potential candidates, councilmembers, union representatives, and
16 employees of the Assessor-Treasurer's Office to create the appearance of corruption.
17 Plaintiffs argue that these contacts are insufficient to create the appearance of corruption
18 because RDW did not coordinate expenditures during any of these contacts and
19 communications.

20 On appeal from this Court's preliminary injunction, the Ninth Circuit outlined the
21 law governing First Amendment challenges to contribution limits for recall committees.

22 "Under the First Amendment, contribution limitations are permissible as long as the
23 Government demonstrates that the limits are closely drawn to match a sufficiently
24

1 important interest. . . . [S]tates have an important governmental interest in preventing the
2 actuality or appearance of quid pro quo corruption. . . . This anticorruption interest
3 justifies limits on contributions to political committees operated by candidates
4 themselves. . . . It also justifies limits on contributions to committees that, although
5 formally separate from the candidate, are sufficiently close to the candidate to present a
6 risk of actual or apparent corruption.” *Farris*, 677 F.3d at 865 (internal citations omitted).

7 The *Farris* Court continued

8 On the other hand, both this court and the Supreme Court have rejected
9 contribution limits as applied to committees having only a tenuous connection to
10 political candidates. In *Citizens United*, the Court held that a federal law
11 restricting corporate and union spending on electioneering communications that
12 support or oppose a political candidate could not be sustained by the
13 anticorruption interest. The Court reasoned that the absence of prearrangement
14 and coordination of an expenditure with the candidate or his agent not only
15 undermines the value of the expenditure to the candidate, but also alleviates the
16 danger that expenditures will be given as a *quid pro quo* for improper
17 commitments from the candidate.

18 Similarly, in *Long Beach*, we invalidated contribution limits as applied to
19 political action committees making independent expenditures to support or
20 oppose candidates for office. We explained that:

21 the strength of the state's interest in preventing corruption is highly
22 correlated to the nature of the contribution's recipient. Thus, the
23 state's interest in the prevention of corruption—and, therefore, its
24 power to impose contribution limits—is strongest when the state
limits contributions made directly to political candidates. . . . As
one moves away from the case in which a donor gives money
directly to a candidate, however, the state's interest in preventing
corruption necessarily decreases.

We observed that the Supreme Court has upheld limitations on contributions to
entities whose relationships with candidates are sufficiently close to justify
concerns about corruption or the appearance thereof. Because the political action
committees made independent expenditures and were several significant steps
removed from the case in which a donor gives money directly to a candidate, we
held that the state's anticorruption interest was insufficient to uphold the
contribution limits.

Like independent expenditure committees, recall committees in
Washington have at most a tenuous relationship with candidates. The contribution
limit here is thus materially indistinguishable from the limit we invalidated in
Long Beach. Under Washington's recall system, political committees seeking to

1 recall officials do not coordinate their spending with candidates for office. In the
2 event a recall is successful, the successor to office is appointed by a governmental
3 entity designated by state law—in this case, the Pierce County Council. *See*
4 Wash. Rev. Code § 36.16.110; Pierce County, Wash., Charter art. 4, § 4.70. Thus,
5 as Washington law is structured, expenditures by recall committees are similar to
6 independent expenditures. Given that recall committees do not coordinate or
7 prearrange their independent expenditures with candidates, and they do not take
8 direction from candidates on how their dollars will be spent, they do not have the
9 sort of close relationship with candidates that supports a threat of actual or
10 apparent corruption.

11 *Farris*, 677 F.3d at 866-67 (internal citations and quotations omitted).

12 The Ninth Circuit, however, left open the possibility that “the outcome might be different
13 if there were evidence that contributions were being made with a ‘wink and a nod’ from Council
14 members indicating that a particular candidate would be appointed.” *Farris*, 677 F.3d at 867 n.8.
15 Therefore, although Washington law is structured to prevent recall committees from coordinating
16 expenditures with candidates, the Ninth Circuit recognized that the possibility of coordination
17 does exist. That possibility is at issue in the Motion for Summary Judgment before this Court.

18 Here, there is no evidence in the record that that contributions were made with ‘a wink
19 and a nod’ from Councilmembers about who the Council would appoint in the event of a
20 successful recall. RDW’s communication with Councilmember Farrell only involved relaying
21 information about the recall process via Facebook. RDW’s communication with Councilmember
22 Muri only involved explaining Ms. Farris’s motivation for starting the recall, and relaying
23 information and advice about plans to collect signatures for the recall effort.

24 There is no evidence that Plaintiffs coordinated expenditures with candidates or potential
25 candidates. RDW’s communication with Candidate Gommenginger only involved a withdrawn
26 request to volunteer for RDW. RDW’s communication with Candidate O’Brien only involved
27 providing information on how the Assessor-Treasurer’s Office functioned, questioning why Dale
28 Washam was not present at a property auction, updating Candidate O’Brien and other Assessor-

1 Treasurer employees about RDW's litigation in superior court, and, after RDW ceased
2 operations, why Candidate O'Brien was running for office. Further, RDW's communications
3 with Candidate Lonergan only involved Ms. Farris informing Mr. Lonergan's radio show
4 listeners about RDW's recall efforts, and, after RDW ceased operations, Ms. Farris's denied
5 endorsement of Mr. Lonergan. Also, RDW's communication with Candidate Manthou, after
6 RDW ceased operations, only involved Ms. Farris's denied endorsement of Mr. Manthou.

7 Finally, there is no evidence of coordination between Plaintiffs and employees of the
8 Assessor-Treasurer's Office or union representatives in regards to contributions, expenditures, or
9 election of a new Assessor-Treasurer.

10 In sum, the only evidence presented regarding RDW communications concerns
11 exchanges of information about the recall process, the progress of RDW's recall efforts, denial of
12 requests for endorsements after RDW ceased operations, and innocuous exchanges between local
13 political professionals. There is no evidence of coordination of expenditures or 'a wink and a
14 nod' to justify the State's anti-corruption interest. The Government has presented no evidence
15 demonstrating an issue of material fact regarding the appearance of or actual corruption.

16 For these reasons, the Court should grant summary judgment for Plaintiffs and hold RCW
17 § 42.17A.405(3) unconstitutional as applied to Plaintiffs.

18 2. Facial Challenge

19 Because this Court should provide Plaintiffs' requested relief and hold that RCW §
20 42.17A.405(3) is unconstitutional as applied to Plaintiffs, the Court need not address whether
21 RCW § 42.17A.405(3) is unconstitutional on its face.

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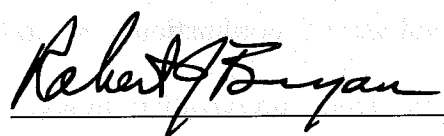
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Accordingly, it is hereby **ORDERED** that Plaintiffs' Motion for Summary Judgment (Dkt. 61) is **GRANTED**. Defendants are permanently enjoined from enforcing RCW § 42.17A.405(3) against Plaintiffs in this case only.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 6th day of November, 2012.



ROBERT J. BRYAN
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 11 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBIN FARRIS; RECALL DALE
WASHAM, a Washington political
committee; OLDFIELD & HELSDON,
PLLC, a Washington professional limited
liability company,

Plaintiffs - Appellants,

v.

AMIT D. RANADE, Chair; GRANT S.
DEGGINGER, Attorney, Vice Chair;
KATHY TURNER; KATRINA ASAY, in
their Official Capacities as Officers and
Members of the Washington State Public
Disclosure Commission; ANDREA
MCNAMARA DOYLE, in His Official
Capacity as Interim Executive Director of
the Washington State Public Disclosure
Commission,

Defendants - Appellees.

No. 12-35949

D.C. No. 3:11-cv-05431-RJB

MEMORANDUM*

ROBIN FARRIS; RECALL DALE
WASHAM, a Washington political
committee; OLDFIELD & HELSDON,
PLLC, a Washington professional limited
liability company,

No. 13-35040

D.C. No. 3:11-cv-05431-RJB

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Plaintiffs - Appellants,

v.

AMIT D. RANADE, Chair; GRANT S. DEGGINGER, Attorney, Vice Chair; KATHY TURNER; KATRINA ASAY, in their Official Capacities as Officers and Members of the Washington State Public Disclosure Commission; ANDREA MCNAMARA DOYLE, in His Official Capacity as Interim Executive Director of the Washington State Public Disclosure Commission,

Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, Senior District Judge, Presiding

Argued and Submitted February 6, 2014
Seattle, Washington

Before: FISHER, GOULD and CHRISTEN, Circuit Judges.

The plaintiffs appeal the district court's summary judgment order, insofar as it declined to address the plaintiffs' facial challenge to Washington Revised Code § 42.17A.405(3). They also appeal the district court's ruling that their motion for attorney's fees was untimely and that they did not demonstrate excusable neglect warranting an extension of the deadline. We have jurisdiction under 28 U.S.C. §

1291. We affirm the summary judgment order but vacate and remand on the attorney's fees issue.

1. In *Farris v. Seabrook (Farris I)*, 677 F.3d 858, 867 (9th Cir. 2012), we affirmed the district court's preliminary injunction order, concluding that "the State did not identify a sufficiently important interest to justify [§ 42.17A.405(3)'s] \$800 limit on contributions to recall committees."¹ Most of the underlying facts relevant to the current appeal are fully set forth in *Farris I* and need not be repeated. Of particular relevance here, we acknowledged the State's interest in preventing the actuality or appearance of quid pro quo corruption in recall elections, but likened Washington recall committees to political action committees making independent expenditures to support or oppose candidates, for which contribution limits had been invalidated because of tenuous connections or no connection to the candidates themselves. *See id.* at 865-67. We explained that "[n]either the State nor amici . . . presented any evidence showing that contributions to recall committees in Washington raise the specter of corruption, and certainly not in this case," but noted that "the outcome might be different if there were evidence that contributions were being made with a 'wink and a nod'

¹ The limit has since been raised to \$950. *See* Wash. Admin. Code § 390-05-400.

from Council members indicating that a particular candidate would be appointed.”

See id. at 867 & n.8.

On remand, the district court’s summary judgment order applied *Farris I* to the evidence presented and entered a permanent injunction, stating that the court would “grant summary judgment for Plaintiffs and hold RCW § 42.17A.405(3) unconstitutional as applied to Plaintiffs.” The court found that “[t]here is no evidence of coordination of expenditures or ‘a wink and a nod’ to justify the State’s anti-corruption interest. The Government has presented no evidence demonstrating an issue of material fact regarding the appearance of or actual corruption.” The district court also determined that “[b]ecause this Court should provide Plaintiffs’ requested relief and hold that RCW § 42.17A.405(3) is unconstitutional as applied to Plaintiffs, the Court need not address whether RCW § 42.17A.405(3) is unconstitutional on its face.”

We agree with the district court’s decision not to address the plaintiffs’ broader facial challenge. Given the record in this case, the plaintiffs have received all the relief to which they are entitled. The district court’s order was somewhat ambiguous as to the scope of its injunctive relief, insofar as its application beyond the immediate case. The court stated that § 42.17A.405(3) was unconstitutional as applied to the plaintiffs, but also that the defendants were enjoined from enforcing

§ 42.17A.405(3) “against Plaintiffs *in this case only*” (emphasis added). We construe the district court’s order and corresponding injunction as precluding enforcement of § 42.17A.405(3) against the plaintiffs in all similar circumstances, where there is no evidence or appearance of corruption. The defendants themselves have acknowledged that “the [Washington Public Disclosure] Commission read the order in the broadest manner possible, *i.e.*, that it is enjoined from ever enforcing Wash. Rev. Code § 42.17A.405(3)’s contribution limits against the Recall Proponents.”² Even if there may be non-parties to this litigation who generally may enforce § 42.17A.405(3) and who theoretically might not be bound by the district court’s injunction, *see* Fed. R. Civ. P. 65(d)(2), *Farris I* and the district court’s order clearly preclude enforcement of §42.17A.405(3) against the plaintiffs when there is no evidence or appearance of corruption, because the provision is unconstitutional in such instances. Accordingly, the plaintiffs have received all the relief to which they are entitled.

² The defendants also said that “until a court directs that the Commission may interpret the order more narrowly, the Commission remains permanently enjoined from enforcing the contribution limits against the Recall Proponents.” We conclude that the Commission is enjoined from enforcing § 42.17A.405(3) against the plaintiffs in the future, but, consistent with *Farris I* and as we have emphasized, only in cases where there is no evidence or appearance of corruption.

This interpretation comports with the general notion that courts should favor narrow constitutional rulings over broad ones. *See, e.g., Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (“Facial challenges are disfavored for several reasons.”); *United States v. Raines*, 362 U.S. 17, 21 (1960) (“This Court . . . is bound by two rules, to which it has rigidly adhered: one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.” (internal quotation marks omitted)); *Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1144-45, 1155-56 (10th Cir. 2007) (holding that an as-applied ruling on part of a campaign finance reform amendment was sufficient and that the court did not need to reach a facial challenge, as “the nature of judicial review constrains a federal court to consider only the case that is actually before it”).

Finally, even if the district court abused its discretion in striking declarations concerning standing that the plaintiffs filed with their reply brief, the additional recall campaign Jeffrey Helsdon described in his declaration did not include evidence or the appearance of corruption. Accordingly, *Farris I* and the district court’s order extend to this second recall campaign, so the plaintiffs’ challenge to this portion of the court’s order is moot.

2. The district court correctly ruled that the plaintiffs' motion for attorney's fees was filed after the applicable 14-day deadline. *See* Fed. R. Civ. P. 54(d)(2)(B) ("Unless a statute or a court order provides otherwise, the motion [for attorney's fees] must: (i) be filed no later than 14 days after the entry of judgment . . ."). On the other hand, the court erred in analyzing whether the plaintiffs' error was the result of excusable neglect and they were entitled to an extension of the deadline. *See* Fed. R. Civ. P. 6(b)(1) ("When an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . (B) on motion made after the time has expired if the party failed to act because of excusable neglect.").

The court relied primarily on *Kyle v. Campbell Soup Co.*, 28 F.3d 928 (9th Cir. 1994), and the three-judge panel opinion in *Pincay v. Andrews (Pincay I)*, 351 F.3d 947 (9th Cir. 2003), in evaluating possible excusable neglect. But we reversed *Pincay I* in our en banc decision in the same case, *see Pincay v. Andrews (Pincay II)*, 389 F.3d 853, 860 (9th Cir. 2004) (en banc), and *Pincay II* cited *Kyle* as part of "[o]ur circuit's confusion" on excusable neglect, *id.* at 857. Moreover, the district court listed all four factors from *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), but did not address the first and fourth in its analysis. *See Pioneer*, 507 U.S. at 395 (A court typically

considers four factors in determining whether a moving party engaged in excusable neglect: (1) “the danger of prejudice” to the opposing party; (2) “the length of the delay and its potential impact on judicial proceedings”; (3) “the reason for the delay, including whether it was within the reasonable control of the movant”; and (4) “whether the movant acted in good faith.”); *see also Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261-62 (9th Cir. 2010) (“[T]he district court here neither cited nor applied the *Pioneer* test, but instead based its decision solely on whether the reason for the delay – the third *Pioneer* factor – could establish excusable neglect. By ignoring the other three factors, the district court abused its discretion.”); *Lemoge v. United States*, 587 F.3d 1188, 1194 (9th Cir. 2009) (“[W]e conclude that it will always be a better practice for the district court to touch upon and analyze at least all four of the explicit *Pioneer* factors.”).

On remand, the district court should reevaluate the excusable neglect issue by addressing all four factors of the *Pioneer* test under our current law.

Costs on appeal awarded to the plaintiffs.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.



July 14, 2015

Washington Public Disclosure Commission
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504

Attn: Tony Perkins, Lead Political Finance Specialist

via email: pdc@pdc.wa.gov and USPS

Dear Mr. Perkins:

This letter is to respond to the questions presented in your e-mail of July 9, 2015. In several of your inquiries, you use the terms “principal decision makers”, which does not appear to be a defined term either in statutes or regulation. Recall Mark Lindquist is a nonprofit corporation. For clarity, we will treat the officers and directors as “principal decision makers”, but also include Oldfield & Helsdon, PLLC, its counsel, and Joan Mell, an attorney who has provided significant input, within the category of principal decision makers for purposes of this response.

1. Has the Committee, its officers or principal decision-makers had contact or entered into any communication with a person known at the time to be a candidate for Pierce County Prosecutor in a future election, or with that candidate’s agent concerning the proposed recall of Mark Lindquist or the Committee?

Response: The Recall Mark Lindquist Committee (the “Committee”) is unaware of any declared or undeclared candidates for Pierce County Prosecutor at this time. To the extent that any potential donor has indicated a possible interest to seek the office of Pierce County Prosecuting Attorney in the future, please see the response to question 7, below.

2. Has the Committee, its officers or principal decision-makers had contact or entered into any communication with any employee or official of the Pierce County Prosecutor’s Office concerning the proposed recall of Mark Lindquist or the Committee?

Response: Yes.

3. Has the Committee, its officers or principal decision-makers had contact or entered into any communication with members of the Pierce County Council concerning the proposed recall of Mark Lindquist or the Committee?

Response: No.

4. If the answer to questions 1, 2, or 3 is yes, identify the officer or principal decision-maker of the Committee who had the contact, the candidate or other individual contacted, the time and place of each contact, and the substance of the information exchanged. In particular, please state whether the contacts concerned either:

- a. an effort to recall Mark Lindquist from the office of Pierce County Prosecutor;**
- b. campaign expenditures in support of that effort; or**
- c. the appointment or election of any other person to that office.**

Response:

(a) Certain officers and principal decision makers of the Recall Mark Lindquist Committee have had contact with employees or officials of the Pierce County Prosecutor's Office to obtain additional factual information to clarify allegations stated in whistleblower complaints filed by them to assure accuracy of the statement of charges for the recall and subsequent litigation. These include:

Carolyn Merrival, the spouse of one of the whistleblowers has spoken with her husband about the recall. She has spoken to a deputy prosecutor who is not a contributor and who does not want his/her identity disclosed due to fear of retribution regarding fundraising strategy;

Mr. Helsdon and Mr. Oldfield have spoken to two deputy prosecuting attorneys regarding the recall and related litigation. The identity of the persons contacted and the subject and/or content of the communications is privileged as attorney-client communication and attorney work product; and

Ms. Mell has spoken to the whistleblowers to obtain additional factual information to clarify allegations stated in whistleblower complaints filed by them to assure accuracy of the statement of charges for the recall and subsequent litigation.

(b) Ms. Merrival sent out an email to numerous recipients including two deputy prosecutors telling the recipients that the committee is doing phone calls for fundraising; and

Steve Merrival contributed \$140 to the Committee.

(c) No.

5. Has the Committee solicited or received any offer of contributions from any person identified in response to question 4?

Response: Yes.

6. If the answer to question 4 is yes, please identify the person who was solicited, or who offered a contribution to the Committee, and the amount of the contribution solicited or offered.

Response: Steve Merrival has contributed \$140.

7. Does the Committee have any plan or protocol in place to prohibit actual or potential candidate contact or decision-making authority for the Committee?

Response: As noted above, the Committee is unaware of any declared or undeclared candidates for Pierce County Prosecutor at this time. Should the committee become aware of such a candidate, or if any person, when contacted, indicates an intent to run for the office in the future, campaign personnel will be instructed to (i) not coordinate any campaign expenditures with such a candidate or his or her campaign committee, (ii) not solicit or accept contributions from such a candidate or his or her campaign committee, and (iii) not solicit any donations or support in support of or opposition to such a candidate or his or her candidate committee. The Committee's officials and decision makers are aware that they must abide by all existing campaign finance laws, including those applicable to coordination and volunteers will be informed of the necessity of abiding by all existing campaign finance laws, including those applicable to coordination. Campaign personnel will be directed to appropriate educational material produced by the PDC.

8. What steps has the Committee taken or plan on taking to educate committee officials, decision-makers or volunteers on potential "coordination" with actual or potential candidates?

Response: See response to question 7 above.

9. What position does the Committee take with respect to contribution limits being applicable to other political committees involved in a recall election? Does the Committee believe that such limits should or should not apply?

Response: The Committee believes that all political committees involved in recall campaigns should be able to freely speak and associate, and that the voters benefit from learning as much about the issues regarding the recall campaign as possible. The Committee therefore does not believe that such limits should apply to other political committees involved in this recall election. However, the Committee wishes to note that, regardless of the Committee's position, the U.S. Court of Appeals for the Ninth Circuit held that the fear of "disproportionate influence" by the Committee cannot justify the Public Disclosure Commission's application of the cap to the Committee if it decides that the cap should apply to any political committee formed to retain Mr. Lindquist in office. In particular, the Ninth Circuit stated:

[T]he State argues that allowing it to limit contributions to incumbent political officials opposing a recall, but prohibiting it from enforcing contribution limits against recall committees supporting the recall would lead to disproportionate influence by recall committees. The possibility that independent committees will make expenditures disproportionate to political candidates or incumbents, however, is simply a consequence of *Citizens United* that is now a feature of all political campaigns. See *Citizens United* [*v. FEC*, 130 S. Ct. 876, 910 (2010)] (“Reliance on a ‘generic favoritism or influence theory ... is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.” (quoting *McConnell* [*v. FEC*, 540 U.S. 93, 296 (2003)])). The State has not provided any evidence that Washington's recall elections present a special circumstance in which “[t]he appearance of influence or access” would “cause the electorate to lose faith in our democracy.” *Id.*

Farris v. Seabrook, 677 F.3d 858, 867 n.9 (9th Cir. 2012). Thus, whether the Commission may apply the cap to the Recall Mark Lindquist Committee does not, and cannot, depend on whether the Commission does or does not apply the cap to any committee formed to retain Mr. Lindquist.


I trust that this is fully responsive to your inquiries. I look forward to addressing this matter further at the Commission hearing on July 23, 2015. In the meantime, if I can be of any further assistance, please contact me.

Very truly yours,

/s/ Thomas H. Oldfield

Thomas H. Oldfield

THO:hs
cc: Recall Mark Lindquist

 PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 Toll Free 1-877-601-2828		Political Committee Registration		C1PC (1/12)		100643192 06-09-2015	
Committee Name (Include sponsor in committee name. See next page for definition of "sponsor." Show entire official name. Do not use abbreviations or acronyms in this box.) COMMITTEE TO RECALL MARK LINDQUIST				Acronym: CRML		Telephone: 206-849-9310	
Mailing Address 1401 REGENTS BLVD., #102				Fax:		E-mail: CHERYL@RECALLMARKLINDQUIST.CO	
City FIRCREST		County PIERCE		Zip + 4 98466			
NEW OR AMENDED REGISTRATION? <input checked="" type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.		COMMITTEE STATUS <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input checked="" type="checkbox"/> 2016 election year only. Date of general or special election: <u>04/26/2016</u> (Year)					
1. What is the purpose or description of the committee? <input type="checkbox"/> Bona Fide Political Party Committee - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.							
<input checked="" type="checkbox"/> Ballot Committee - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: RECALL MARK LINDQUIST						Ballot Number FOR AGAINST ? <input checked="" type="checkbox"/> <input type="checkbox"/>	
<input type="checkbox"/> Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:							
For single election-year only committees (not continuing committees): Is the committee supporting or opposing (a) one or more candidates? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach a list of each candidate's name, office sought and political party affiliation. (b) the entire ticket of a political party? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify the party:							
2. Related or affiliated committees. List name, address and relationship. <input type="checkbox"/> Continued on attached sheet.							
3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.) If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options. <input type="checkbox"/> MINI REPORTING Mini Reporting is selected. No more than \$5,000 will be raised or spent and no more than \$500 in the aggregate will be accepted from any one contributor.							
<input checked="" type="checkbox"/> FULL REPORTING Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.							
4. Campaign Manager's or Media Contact's Name and Address						Telephone Number:	
5. Treasurer's Name and Address. Does treasurer perform <u>only</u> ministerial functions? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet. VANESSA TUCKER 2732 38TH ST. SE, PUYALLUP WA 98374						Daytime Telephone Number: 253-444-8706	
6. Persons who perform only ministerial functions on behalf of this committee <u>and</u> on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. <input type="checkbox"/> Continued on attached sheet.							
7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." <input type="checkbox"/> Continued on attached sheet. CHERYL ISEBERG, PRESIDENT, 1035 MONTEREY LANE, FIRCREST WA 98466 JEFF HELSDEN, OFFICER, 1401 REGENTS BLVD., #102, FIRCREST WA 98466							
8. Campaign Bank or Depository COLUMBIA BANK		Branch 84TH ST		City TACOMA			
9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address. Street Address, Room Number, City where campaign books will be available for inspection 1401 REGENTS BLVD., #102, FIRCREST In order to make an appointment, contact the campaign at (telephone, fax, e-mail): 253-444-8706 VANESSA@RECALLMARKLINDQUIST.COM							
10. Eligibility to Give to Political Committees and State Office Candidates: A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters. <input checked="" type="checkbox"/> A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.				11. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge. <div style="display: flex; justify-content: space-between;"> <div> Committee Treasurer's Signature VANESSA TUCKER </div> <div> Date 06-09-2015 </div> </div>			