



COMMITTEE TO RECALL SNOHOMISH COUNTY
SHERIFF ADAM FORTNEY
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October 26, 2020

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

Re: Relief from campaign contribution limits for the Committee to Recall Snohomish
County Sheriff Adam Fortney

Dear Commissioners:

The Committee to Recall Snohomish County Sheriff Adam Fortney is made up of numerous private citizens from various professions. The Committee was formed after Sheriff Fortney declared publicly that he would not be enforcing laws related to the COVID-19 pandemic. The Committee has reported two contributions which exceed the statutory limit of \$1,000 in the form of in-kind contributions related to work performed by the legal subcommittee. Additionally, the Committee intends to solicit monetary contributions in excess of the \$1,000 limit throughout this process. Therefore, the Committee is seeking a Declaratory Order granting relief from the campaign contribution limits described in RCW 42.17a.405(3), 42.17a.125, and WAC 390.05.400.

Pursuant to RCW 34.05.240(1), the Committee may petition the Commission for a Declaratory Order when: (a) uncertainty necessitating resolution exists; (b) there is actual controversy arising from the uncertainty such that the declaratory order will not be merely an advisory opinion; (c) the uncertainty adversely affects the petitioner; (d) the adverse effect of the uncertainty on the petitioner outweighs the adverse effects on others or on the general public that may likely arise from the order requested; and (e) the petition complies with the requirements of the applicable rules and statutes. The posture of this request is substantially similar to that of the petition by the Recall Mark Lindquist committee which resulted in Declaratory Order 17. In that matter, the Commission granted relief from the statutory contribution limits as requested under the guidance of the Ninth Circuit Court of Appeals. The Commission should grant similar relief to the Committee to Recall Snohomish County Sheriff Adam Fortney.

In 2011, an injunction was issued by the U.S. District Court for the Western District of Washington prohibiting the PDC from enforcing RCW 42.17a.405(3) in the recall effort against Pierce County Assessor/Treasurer Dale Washam. The PDC appealed that order to the Ninth Circuit Court of Appeals, which affirmed the District Court's preliminary injunction order. *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012)(*Farris I*). The District Court then granted a motion for

summary judgment and issued its Summary Judgment Order in which it “permanently enjoined [the PDC] from enforcing RCW §42.17A.405(3) against [the Recall of Washam] in this case only.”

The District Court concluded that because it held the statute was unconstitutional as applied to the Recall of Washam, “the Court need not address whether RCW §42.17A.405(3) is unconstitutional on its face.” The Recall of Washam appealed to the Ninth Circuit the District Court’s refusal to find the statute unconstitutional on its face. In a 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 RCW 42.17a.405(3) against the plaintiffs in all similar circumstances, where there is no evidence or appearance of corruption.” *Farris II*. “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.

Here, no evidence or appearance of corruption exists. However, without a declaratory order, the contribution limits are presumed to apply to the Committee. This is contrary to the determinations made by the Ninth Circuit and no sufficiently important interests are being met by having these limits imposed upon the Committee. Unlike an individual candidate whose goal is to achieve or retain elected office and enjoy the power and privileges that come along with it, the Committee’s sole purpose is to remove Adam Fortney from the office of sheriff. Once this campaign is over, no later than May 2021 according to the timeline prescribed in RCW 29A.56, the Committee will be dissolved. There will be no occasion for the Committee to continue its work, as the recall process will have run its course. This is true regardless of the outcome.

Additionally, the committee-members have no stake in the process for installing a new sheriff, should the recall effort be successful. None of the committee-members has any influence over the Snohomish County Council, which is the body tasked with appointing an interim sheriff. Also, none of the committee-members intends on seeking the office of sheriff themselves, should there be a special election. Accordingly, no opportunity for corruption, as foreseen by the Ninth Circuit, exists as pertaining to the Committee.

The Committee respectfully requests the Commission issue a declaratory order granting relief from RCW 42.17a.405(3), effective immediately. Additionally, the Committee respectfully requests the Commission dismiss any ongoing enforcement investigations related to the limits in RCW 42.17a.405(3), RCW 42.17a.125, and WAC 390.05.400. Should we not hear from the Commission by November 6, 2020, we will assume the Commission intends to deny this petition and we will pursue alternative remedies.

Warm regards,

Colin J. McMahon, Chair

Eric Halvorson, Treasurer