



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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Memo

To: PDC Commissioners
From: Sean Flynn, General Counsel
Date: September 19, 2024
Re: Staff Presentation of CWAC Petition for Declaratory Order

This memo presents the petition for declaratory order submitted on August 27, 2024, by the Clean Water Accountability Coalition (CWAC), a political committee registered to support the recall, and oppose the candidacy, of Spokane County Commissioner Al French. The Petitioner requests the Commission to issue an order to suspend the application of RCW 42.17.405(3), establishing contribution limits to a political committee making expenditures in support of the recall of a state or local official. The petition asserts that CWAC is similarly situated to recall committees in previous declaratory orders that the Commission has approved.

Background

CWAC registered as a political committee on August 19, 2024. The registration designates the PAC's support for recalling current Spokane County Commissioner Al French, as well as opposing Commissioner French's candidacy for reelection. The only officer listed for CWAC is Rowan Lenihan, the operations director for the nonprofit organization Fuse Washington. As of August 31, 2024, CWAC has reported a single contribution of \$661.54 in the form of in-kind contributions from Fuse Votes, a PAC operated by Fuse Washington.

CWAC filed recall charges against Commissioner French on August 27, 2024, through Spokane County resident Mary Ellen Benham. If these pending charges are certified, the sponsors must obtain signatures within 180 days of the certification. *See* RCW 29A.56.150. If the requisite number of signatures is verified, the recall petition will be placed on the ballot for a special election. If the recall election is successful, the vacancy in office would be filled upon appointment by the remaining county commissioners.

Commissioner French is a candidate for the 2024 general election. His opponent in the general election is Molly Marshall, who filed her declaration of candidacy on February 9, 2024. Marshall's campaign has reported receiving a \$500 contribution from Fuse Votes on July 19, 2024, for the 2024 primary. Fuse Votes also reported a \$82 independent expenditure to Molly

Marshall, as part of the Fuse Washington Progressive Voters Guide, which endorsed Marshall for the general election.

Elements of a Petition for Declaratory Order

Any person may petition an agency for a declaratory order regarding “the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.” The petition must show there is uncertainty in the law and that an actual controversy exists arising from that uncertainty so that the order “will not be merely an advisory opinion.” Furthermore, the uncertainty must have an adverse effect on the Petitioner, which must be weighed against the likely adverse effect an order on the requested petition may have towards others. RCW 34.05.240(1). The Commission may enter an order declaring the applicability of the law, or decline to enter a declaratory order, stating the reasons for its action. RCW 34.05.240(5)(d). *See also* WAC 390-12-250(5).

Analysis of the Petition

The Petition here relies upon the analysis used in prior PDC declaratory orders granting relief in suspending the enforcement of contribution limits for two recall committees.¹ Declaratory Orders 17 and 19 were based on a Ninth Circuit federal appellate court opinion in *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012). In *Farris*, the court held that the imposition of contribution limits was unconstitutional as applied to the plaintiff recall committee in the absence of factual evidence that the campaign had any connection to a candidate. The court subsequently clarified that the holding in *Farris* further precluded enforcement of RCW 42.17A.405(3) against the committee “in all similar circumstances,” where there is no evidence or appearance of corruption. *See Farris v. Ranade*, 584 Fed. Appx. 887, 889 (9th Cir. 2014) (unpublished).

The Commission applied *Farris* in Declaratory Orders 17 and 19 to establish a similar factual record (that no candidate was connected to the campaign), which conditionally placed the committees in those matters in the same position as the plaintiff in the *Farris* case. Specifically, the Commission accepted a stipulation from the petitioner in each case of certain facts that established there was no connection with the committee or its officers to a known or potential candidate for the same office, or to the authority responsible for filling a vacancy in the office created by the recall. For example, the stipulation in the matter of Declaratory Order No. 19 (*A Better Seattle*) provided the following factual assertions:

“[T]he Committee, its officers and directors, and principal decision-makers (including any person who has provided significant input to the Committee):

¹ PDC Decl. Order No. 17, *In the Matter of the Recall Mark Lindquist* (2015) at <https://www.pdc.wa.gov/rules-enforcement/guidelines-restrictions/matter-petition-recall-mark-lindquist-declaratory-order>; PDC Decl. Order No. 19, *In the Matter of A Better Seattle* (2021) at <https://www.pdc.wa.gov/rules-enforcement/guidelines-restrictions/petition-declaratory-order-better-seattle>.

- a. Have not solicited or accepted any contribution that exceeds the applicable limit set forth in RCW 42.17A.405(3) & (14);
- b. Have not coordinated any contributions or expenditures with, or allowed decision-making control by, a candidate or potential candidate for Seattle City Council or any member of the Seattle City Council or its staff;
- c. Have not had contact or communications with any person known to them at the time to be a declared or undeclared candidate for Seattle City Council, concerning the appointment or election of any person to the Council, or concerning any other subject;
- d. Have not had contacts or communications with employees of the Seattle City Council concerning the appointment or election of any person to the office of Seattle City Council;
- e. Have not (1) coordinated any campaign expenditures with any candidate for Seattle City Council or their campaign committee, (2) solicited or accepted contributions from such a candidate or their campaign committee, or (3) solicited any donations or support in support of or in opposition to such a candidate or their candidate committee; and
- f. Have not included any members of the Seattle City Council or staff in Committee decision-making, including decisions concerning Committee expenditures, and the solicitation or receipt of contributions.”²

CWAC’s petition presents a proposed stipulation to demonstrate it is similarly situated to committees in the previous declaratory orders. However, there are some important differences in CWAC’s proposed stipulation. Whereas in the previous petitions there was no connection to a declared or undeclared candidate for the official’s position, in this case there is a known candidate, Molly Marshall, who is currently campaigning against Commissioner French in the general election for the same county commissioner seat. The existence of a known candidate, as well as a pending election for that office, increases the scrutiny on the potential for connection with the candidate.³

The proximity of the general election to the recall campaign blurs the lines between the candidate election and the recall campaign. While the petition asserts that “CWAC is a registered Washington committee focused specifically and exclusively on supporting the effort to recall Al French,” CWAC’s own committee registration (C-1 Report) identifies its purpose as supporting the recall of Al French *as well as* opposing Al French as a candidate for county commissioner.

Specifically regarding CWAC’s proposed stipulation, paragraph 4 states that CWAC has not and will not “(iii) solicit any donations in support of or in opposition to such a candidate or their candidate committee.” This statement only stipulates to CWAC’s activity, whereas the stipulation in Declaratory Order No. 19 (A Better Seattle) extended to “the Committee, its officers and directors,

² PDC Decl. Order No. 19, *A Better Seattle*, Stipulation as to Facts at 2-3 (2021).

³ See *Farris*, 677 F.3d at 867 n. 7 (noting that Washington’s recall procedures do not call for an election to replace a recalled official, and that “Plaintiffs’ likelihood of success might be different if recall elections in Washington were accompanied by an election for the successor, as is the case in many state. . . and a recall committee coordinated its expenditures with one of the candidates for office.”).

and principal decision-makers (including any person who has provided significant input to the Committee).” (Empasis added).⁴ The CWAC stipulation does not include officers, directors, or principal decision-makers.

The distinction is important as CWAC is operated by Fuse Washington, which has endorsed Al French’s opponent. In addition, it is funded by Fuse Washington’s PAC, Fuse Votes, and Fuse Votes has reported making a contribution and independent expenditure in support of the Marshall campaign. Given these facts, it appears unlikely that CWAC could stipulate to the statement that an officer or principal decision-maker of the PAC had not solicited any donations in support of the Marshall campaign.

Recommendations

CWAC bases its petition on the claim that it is similarly situated to the previous recall committees seeking declaratory relief and that its petition should be approved consistent with the Commission’s approval in those matters. The facts presented here appear to support a conclusion that CWAC has not shown it is similarly situated to the previous recall committees, so the petition could be denied on such grounds. If CWAC has other legal or factual arguments, it has not made such assertions in this petition.

⁴ See also Decl. Order 17, *In re Linqvist*, Stipulation as to Facts at 3-4 (including a finding that “the Committee, its officers and principal decision-makers will not . . . (3) solicit any donations or support in support of or opposition to such a candidate or his or her candidate committee.” (emphasis added)).