BEFORE THE PUBLIC DISCLOSURE COMMISSION OF THE STATE OF WASHINGTON

In re the Petition for a Declaratory Order for:

A BETTER SEATTLE,

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

DECLARATORY ORDER OF THE PUBLIC DISCLOSURE COMMISSION

Petitioner.

I. INTRODUCTION

This matter was heard remotely by the Washington State Public Disclosure Commission (PDC, Commission) on November 24, 2021, by audio and online streaming. The hearing was held pursuant to Chapter 34.05 RCW, Chapter 42.17A RCW, and Chapter 390-12 WAC.

Commissioners present both telephonically and online were Fred Jarrett, Commission Chair (presiding); Nancy Isserlis, Commission Vice-Chair; and Commissioners William Downing and Allen Hayward. Also present both telephonically and online were Assistant Attorney General John S. Meader representing the Commission; and Sean Flynn, General Counsel for the PDC. Petitioner, A Better Seattle, a political committee (ABS, Committee), was represented by its attorney, Kevin J. Hamilton. The Kshama Solidarity Campaign political action committee was represented by its attorney, Darin M. Dalmat. Notice of the proceedings was provided and the proceedings were open to the public as limited by Governor's Order 201 28 *et seq.* and recorded.

2	The hearing concerned a petition for a Declaratory Order suspending the contribution
3	limits of RCW 42.17A.405(3) and (14) because ABS contends those limits are inapplicable to
4	the Committee pursuant to federal law.
5	The Commissioners had before them the following materials:
6	• Petition for a Declaratory Order from A Better Seattle, dated November
7	15, 2021;
8	• Letter of Objection from Dmitri Iglitzin, on behalf of the Kshama
9	Solidarity Campaign, dated November 18, 2021;
10	• Response in opposition to the Petition for a Declaratory Order from Darin
11	M. Dalmat, on behalf of the Kshama Solidarity Campaign, dated
12	November 23, 2021;
13	• Stipulation as to Facts presented by PDC staff, dated November 23, 2021,
14	and signed by Sean Flynn, General Counsel, for the PDC and Philip
15	Lloyd, Treasurer, for A Better Seattle.
16	
17	II. STIPULATION
18	PDC staff and the Committee jointly submitted a signed Stipulation as to Facts
19	(Stipulation). Mr. Flynn presented the Stipulation, reviewed the facts and summarized its
20	contents. Mr. Dalmat responded with argument in opposition to the Stipulation and to approval
21	of the Petition for a Declaratory Order and answered questions from the Commission. Mr.
22	Hamilton argued in support of the Declaratory Order and also answered the Commission's
23	questions. The Commission voted 4-0 to accept the Stipulation and to issue the Declaratory
24	Order.
25	///
26	

4

5

18

19

20

21

22

23

24

25

26

1

III. FINDINGS OF FACT

1. On September 30, 2021, King County Elections certified the recall petition against Seattle City Councilmember Kshama Sawant, and set a date for the ballot proposition of December 7, 2021.

6 2. On October 21, 2021, A Better Seattle filed a political committee registration statement
7 to support the ballot proposition seeking the recall of Councilmember Sawant from office. The
8 Committee has filed a Cash Receipts, Monetary Contributions Report (Form C-3) each
9 consecutive week from November 8, 2021, through November 22, 2021.

10 3. On November 15, 2021, the Committee submitted a petition for an expedited 11 declaratory order to grant relief from the requirements of RCW 42.17A.405 (as well as RCW 12 42.17A.125, and WAC 390-05-400), pertaining to contribution limits imposed in recall campaigns. The Commission had reviewed a similar request before issuing PDC Declaratory 13 Order 17 in 2015 that suspended enforcement of RCW 42.17A.405(3) and (14) as applied to a 14 recall committee. The basis for the Commission's actions was Farris v. Seabrook, 677 F.3d 15 858 (9th Cir., 2012), a federal case that found Washington State's application of contribution 16 limits to a recall committee was unconstitutional under circumstances in which the limits do 17 not further the important interest of preventing corruption or the appearance of corruption.

4. As of the date of the Stipulation, and based on the standard established in Declaratory
Order 17, the Committee and its officers and directors, and principal decision-makers
(including any person who has provided input to the Committee), stipulated that they:

a. Have not solicited or accepted any contribution that exceeds the applicable limit set forth in RCW 42.17A.405(3) and (14);

1	b.	Have not coordinated any contributions or expenditures with, or allowed
2		decision-making control by, a candidate or potential candidate for Seattle City
3		Council or any member of the Seattle City Council or its staff;
4		
5	с.	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,
6		concerning the appointment or election of any person to the Council, or
7		concerning any other subject;
8		
9	d.	Have not had contacts or communications with employees of the Seattle City
10		Council concerning the appointment or election of any person to the Seattle City
11		Council;
12		Have not (i) accordinated any commotion expenditures with any condidate for
13	e.	Have not (i) coordinated any campaign expenditures with any candidate for Seattle City Council or their campaign committee, (ii) solicited or accepted
14		contributions from such a candidate or their campaign committee, or (iii)
15		solicited any donations in support of or in opposition to such a candidate or their
16		candidate committee; and
17		
18	f	Have not included any members of the Seattle City Council or its staff in
10		Committee decision-making, including decision concerning Committee
20		expenditures and the solicitation or receipt of contributions.
20		
		IV. CONCLUSIONS OF LAW
22	1. The	e Commission has jurisdiction over this proceeding pursuant to Chapter 42.17A
23	RCW, the sta	te campaign finance and disclosure law; Chapter 34.05 RCW, the Administrative
24	Procedure Ac	t; and Title 390 WAC.
25		
26		

2. Based on the facts set forth above, the arguments, and the stipulation, and reserving 1 the right to engage in enforcement if in the future contrary information comes before the Commission, the Committee has not received monetary contributions which exceeded the 3 contribution limits established under RCW 42.17A.405(3) and (14) for a recall campaign.

3. In recognition of the holding in Farris v. Seabrook, 677 F.3d 858 (9th Cir. 2012),¹ 6 campaign finance contribution limits against the Committee should be suspended. The 7 Commission is not passing on the constitutionality of RCW 42.17A.405 but simply applying the 8 limited exception outlined in *Farris* to the identically situated A Better Seattle recall committee 9 10 as required by law.

4. The requirements for issuance of a Declaratory Order under RCW 34.05.240 and 12 WAC 390-12-250 have been met and the Commission affirms the analysis and order in 13 Declaratory Order 17. There was uncertainty and controversy about whether the Committee 14 qualified for the waiver of contribution limits under the law and whether enforcement of those 15 requirements would be pursued. Arguments and information presented to the Commission show 16 the Committee has met the requirements of the *Farris* court. The adverse effects on the 17 Committee and their rights as outlined in *Farris* outweigh any adverse effects on others or the 18 public. The Committee has further complied with all other agency statutes and rules for the 19 Commission to consider the matter. 20

21 22

25

2

4

5

11

V. **ORDER**

Based upon the representations and information before it, including the Stipulation, and 23 24 the above Findings of Fact and Conclusions of law, the Commission orders that:

¹ Including the unpublished Amended Memorandum Disposition at Farris v. Ranade, 584 Fed.Appx. 887 26 (9th Cir., 2014).

1	1. Enforcement of any monetary and in-kind contributions that exceed
2	contribution limits as established under RCW 42.17A.405(3) and (14) for this
3	pro-recall campaign are SUSPENDED from the date of this order with the
4	following conditions:
	a Should the Committee through its officers and directors and
5	a. Should the Committee, through its officers and directors, and
6	principal decision-makers (including any person who has provided
7	significant input to the Committee), become aware of the identity of any
8	candidate for Seattle City Council; or if any person, when contacted,
9	indicates an intent to run for the office in the future, the Committee, its
10	officers, directors, and principal decision-makers (including any person who has provided significant input to the Committee), will not: i)
11	coordinate any campaign expenditures with such a candidate or their
	campaign committee, ii) solicit or accept contributions from such a
12	
13	candidate or their campaign committee, or iii) solicit any donations or
14	support, whether in support of or in opposition to such a candidate or his
15	or her candidate committee.
16	b. The Committee will not include any members of the Seattle City
17	Council or its staff in Committee decision-making, including decisions
18	concerning Committee expenditures, and the solicitation or receipt of
19	contributions.
20	2. If the conditions set forth above in paragraph 1 are found not to have been met,
21	the Committee may be subject to potential enforcement for any violation(s) of
22	RCW 42.17A.405(3) and (14) including those prior to or subsequent to this
23	order.
24	
25	3. The Committee, its officers, and its principal decision-makers shall continue to
26	comply with all campaign finance laws and requirements of Chapter 42.17A

1	RCW and Title 390 WAC, other than the limitations of RCW 42.17A.405(3)		
2	and (14) and its implementing regulations, subject to the requirements		
3	proscribed in this Order. This includes requirements applicable to the		
4	coordination of expenditures with a candidate or political committee, and		
5	requirements applicable to the disclosure of contributions and expenditures.		
6	4. The conditions for suspension of enforcement shall remain in effect until the		
7	dissolution of the Committee.		
8			
9	So ORDERED this 26th_day of November, 2021.		
10	WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION		
11	FOR THE COMMISSION:		
12	the arrest		
13	Fred Jarrett,		
14	Chair, Public Disclosure Commission		
15	Copy of this Order mailed and/or emailed to:		
16	Kevin J. Hamilton, Attorney, for A Better Seattle, <u>khamilton@perkinscoie.com</u>		
17	Darin M. Dalmat, Attorney, for Kshama Solidarity Campaign;		
18	dalmat@workerlaw.com		
19	Sean Flynn, General Counsel, for PDC Staff, Sean.flynn@pdc.wa.gov		
20			
21			
22	I,, certify that I mailed or e-mailed a copy of this order to the Respondent/ Applicant at his/her respective address postage pre-paid on the date stated		
23	herein.		
24			
25	Signed Date		
	Jighed		