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**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

In the Matter of the Petition of Recall  
Mark Lindquist for a Declaratory Order  
under RCW 34.05.240

DECLARATORY ORDER NO. 17

**I. INTRODUCTION**

By letter dated June 9, 2015, Recall Mark Lindquist (Committee) through counsel requested the Washington State Public Disclosure Commission (PDC or Commission) declare that it not take action to enforce the contribution limits applicable to recall committees under RCW 42.17A.405, RCW 42.17A.125, and WAC 390-05-400 against the Committee. The Committee’s request was based on the *Farris v. Seabrook* decision (677 F.3d 858, 867, (9th Cir. 2012) (*Farris I*)) and the permanent injunction issued in favor of the *Farris* plaintiffs. The PDC staff interpreted, and the Committee agreed to participate in Commission proceedings treating the request as one for a declaratory order under RCW 34.05.240 and WAC 390-12-250.

The Commission first reviewed the Committee’s request at its June 25, 2015 regular meeting and there directed PDC staff to submit a copy of the Committee’s request to its stakeholder groups and work with the Committee to prepare additional information for the Commission to consider at its July 23, 2015 regular meeting.

1 The Commission reviewed the parties' written submissions and considered  
2 presentations at its June and July meetings. At its July meeting, the Commission determined  
3 that if the representations made by the Committee to the Commission regarding its process for  
4 addressing 1) contact with any actual or potential candidates for the position of Pierce County  
5 Prosecutor, and 2) the Committee's contributions and expenditure decision-making remained  
6 in effect during the election, no evidence of corruption or the possibility of corruption existed  
7 as discussed in the *Farris* decision. The Commission then unanimously agreed that, based  
8 strictly on the Committee's representations, the Committee's stipulation to engage in certain  
9 practices going forward, the *Farris I* decision, and the federal district court permanent  
10 injunction and subsequent circuit court opinion (*Farris II*), the application of contribution  
11 limits to the Committee would be suspended.  
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## 14 II. SUMMARY OF REQUEST AND QUESTION PRESENTED

15 Whether contribution limits identified in RCW 42.17A.405 (3) may be applied to  
16 Recall Mark Lindquist in light of the *Farris* decisions and injunction as well as the factual  
17 representations made by the Committee as to its campaign conduct.  
18

## 19 III. SUMMARY OF STIPULATIONS AS TO FACTS

20 The Committee filed a C-1pc Political Committee Registration on June 9, 2015,  
21 registering a campaign to support a ballot proposition to recall the elected Pierce County  
22 Prosecutor Mark Lindquist from office in the April 26, 2016 special election.<sup>1</sup> On June 11,  
23 2015, PDC staff received a letter dated June 9, 2015 from Jeffrey Paul Helsdon of the law firm  
24 of Oldfield & Helsdon PLLC, counsel to the Committee. Mr. Helsdon explained that he  
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<sup>1</sup> The committee filed an amended its C1-pc report on July 31, 2015.

1 represented the Committee in its efforts to recall Pierce County Prosecutor Mark Lindquist  
2 from office. Mr. Helsdon told PDC staff about certain Committee activities to be undertaken  
3 with regard to the recall process, including the Committee's intent to solicit and accept  
4 contributions in excess of \$950. He requested a determination that the PDC staff would take  
5 no action to enforce the campaign contribution limits of RCW 42.17A.405(3) against the  
6 Committee and its anticipated contributors, in light of the federal court injunction preventing  
7 enforcement of those limits against *Farris* plaintiffs.  
8

9         On August 7, 2015, the Committee submitted a signed Stipulation as to Facts, which  
10 included a description of the Committee's conduct during the election on which this  
11 declaratory order is based. A copy of that Stipulation is attached to this order and incorporated  
12 herein by reference.  
13

14         To date, the Committee received one contribution in excess of \$950. Additionally,  
15 neither the Committee nor its officers or principal decision-makers has had contact or  
16 communications with any person known to be a declared or undeclared candidate for Pierce  
17 County Prosecutor, concerning the appointment or election of any person to the office of  
18 Pierce County Prosecutor, or concerning any other subject.  
19

20         The Committee understands the term "principal decision-makers" to include the  
21 officers and directors of the Committee, the law firm of Oldfield & Helsdon PLLC, and Joan  
22 Mell, an attorney who has provided significant input to the Committee. Neither the Committee  
23 nor its officers or principal decision-makers has had contacts or communications with  
24 employees of the prosecutor's office or with members of the Pierce County Council  
25 concerning the appointment or election of any person to the office of Pierce County  
26 Prosecutor.

1 Certain officers and principal decision-makers of the Committee, including Jeffrey  
2 Helsdon, Thomas Oldfield, and Joan Mell, have spoken with employees or officials of the  
3 Pierce County Prosecutor's Office for the purpose of obtaining additional factual information  
4 to clarify allegations stated in whistleblower complaints filed by them, in order to assure  
5 accuracy of the statement of charges for the recall and subsequent litigation.  
6

7 Certain officers and principal decision-makers of the Committee, including Carolyn  
8 Merrival, have communicated with employees or officials of the Pierce County Prosecutor's  
9 Office regarding the Committee's campaign fundraising. Steven Merrival, Ms. Merrival's  
10 spouse and the source of a whistleblower complaint against Mark Lindquist, has contributed  
11 \$140 to the Committee, which is within the limit of RCW 42.17A.405(3).  
12

13 The Committee has stated that if it becomes aware of the identity of any candidate for  
14 Pierce County Prosecutor, or if any person, when contacted, indicates an intent to run for the  
15 office in the future, the Committee, its officers, and principal decision-makers will not 1)  
16 coordinate any campaign expenditures with such a candidate or his or her campaign  
17 committee, 2) solicit or accept contributions from such a candidate or his or her campaign  
18 committee, and 3) solicit any donations or support in support of or opposition to such a  
19 candidate or his or her candidate committee. The Committee also stated that it will not  
20 coordinate any contributions or expenditures with, or allow decision-making control by, a  
21 member of the Pierce County Council or its staff.  
22

23 The Committee and its officers, and principal decision-makers confirmed their  
24 understanding that they will comply with all campaign finance laws and requirements of RCW  
25 42.17A and WAC 390, other than the limitations of RCW 42.17A.405(3) and its implementing  
26 regulations, including requirements applicable to the coordination of expenditures with a

1 candidate or political committee, and requirements applicable to the disclosure of contributions  
2 and expenditures.

#### 3 IV. DISCUSSION AND ANALYSIS

4 RCW 42.17A.405(3) provides for a limit on contributions from any person, other than a  
5 bona fide political party or a caucus political committee, to a county official against whom  
6 recall charges have been filed, or to a political committee having the expectation of making  
7 expenditures in support of the recall of the county official. This provision was part of Initiative  
8 134 passed in November 1992. As part of that initiative, the people of Washington declared  
9 their intent to address the “disproportionate or controlling influence on the election of  
10 candidates” by enacting contribution limits. They also recognized the “public perception that  
11 decisions of elected officials are being improperly influenced by monetary contributions.”  
12 RCW 42.17A.400(1) (a), (b). Per RCW 42.17A.125 and under the Commission’s rule WAC  
13 390-05-400, this limit is currently \$950.  
14  
15

16 In June 2011, Robin Farris, the Oldfield & Helsdon law firm, and the Recall Dale  
17 Washam political committee (*Farris* plaintiffs), challenged the recall contribution limits in  
18 RCW 42.17A.405(3). The *Farris* plaintiffs filed suit in federal district court to invalidate  
19 Washington’s contribution limits applicable to recall committees. Their constitutional  
20 challenge was both facial and as applied to the conduct of the Recall Dale Washam committee.  
21 The federal district court initially issued a preliminary injunction, which the State appealed.  
22 The Ninth Circuit Court of Appeals affirmed the issuance of the injunction and remanded the  
23 case to the district court for further proceedings.  
24

25 On remand, the federal district court considered summary judgment filed by the *Farris*  
26 plaintiffs. It reviewed the facts related to the actual conduct of the Recall Dale Washam

1 committee and its officers and officials. The district court considered whether the committee  
2 had “sufficient contacts and communications with members of the local political community to  
3 create the appearance of or actual corruption during the recall effort.” The district court further  
4 examined the conduct of the Recall Dale Washam committee through its officers in  
5 communications with Pierce County Council members (the body which would have appointed  
6 a successor in the event of a successful recall), local politicians and community members, and  
7 identified candidates for the position for which recall was sought. Ultimately, the district court  
8 granted the *Farris* plaintiffs summary judgment.  
9

10 In granting summary judgment, the federal district and appellate courts in *Farris I*  
11 recognized the possibility that “the outcome might be different if there were evidence that  
12 contributions were being made with a ‘wink and a nod’ from Council members indicating that  
13 a particular candidate would be appointed” if a recall election were successful. *Farris v.*  
14 *Seabrook*, 677 F.3d 858, 867, n. 8 (9th Cir. 2012); *Farris v. Seabrook*, Order on Summary  
15 Judgment at 18. Once recognizing that the possibility for coordination with candidates existed  
16 (*id.*), the district court determined that the evidence did not support such a conclusion in the  
17 *Farris* case. It went on to declare that “as applied to Plaintiffs”, RCW 42.17A.405(3) was  
18 unconstitutional. The *Farris* plaintiffs appealed the district court’s decision to not address their  
19 facial challenge to RCW 42.17A.405(3). However, the circuit court agreed with the district  
20 court’s decision to not review the facial constitutionality of the statute, concluding that the  
21 *Farris* plaintiffs had received all the relief to which they were entitled. “[*F*]arris I and the  
22 district court’s order clearly preclude enforcement of §42.17A.405(3) against the plaintiffs  
23 when there is no evidence or appearance of corruption, because the provision is  
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1 in the *Farris* decisions and injunction. The Commission determined that the *Farris* decisions  
2 anticipated an evaluation of the individual and specific facts of each committee and its  
3 campaign activities before deciding whether the actual or appearance of corruption to be  
4 eliminated by contribution limits on recall committees, had been addressed before enforcement  
5 of the contribution limit of RCW 42.17A.405(3) could be suspended.  
6

7 In relying solely on the Committee's specific request for suspension of the limits to its  
8 activities, and its representations and stipulated facts, known at this time, the Commission  
9 decided that enforcement of the contribution limits of RCW 42.17A.405(3) could be and are  
10 hereby suspended. The Commission further determined that this Declaratory Order applies  
11 only to the Committee and not to any other existing or future recall committee whose  
12 circumstances are not before the Commission.  
13

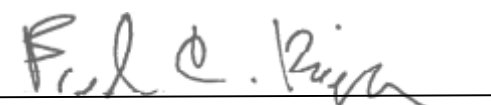
14 By a vote of 4-0 at its July 23, 2015 meeting, the Commission directed PDC staff and  
15 counsel work with the Committee and its counsel to memorialize the Committee's  
16 representations to the Commission and to prepare a draft Declaratory Order for the  
17 Commission's review. At its August 7, 2015 special meeting, the Commission reviewed the  
18 submitted Stipulations and provided feedback concerning the draft order.  
19

20 By a vote of 4-0 at its August 7, 2015 meeting, the Commission approved the draft  
21 order with specific changes and authorized the Interim Executive Director to review the final  
22 version and execute it on the Commission's behalf. With that direction, this written, binding  
23 Declaratory Order was adopted at the Commission's special meeting in Olympia, Washington  
24 on August 7, 2015. Contribution limits in RCW 42.17A.405(3) are suspended as to the  
25 Committee.  
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DATED this 10<sup>th</sup> day of August, 2015.



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FREDERICK C. KIGA, Interim Executive Director  
acting for the Public Disclosure Commission

**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

In the Matter of the Petition of Recall  
Mark Lindquist for a Declaratory Order  
under RCW 34.05.240

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DECLARATORY NO. 17  
STIPULATION AS TO FACTS

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Frederick C. Kiga, and Recall Mark Lindquist, a registered political committee (the Committee), submit this Stipulation as to Facts regarding the Committee's request that the PDC will take no action to enforce the contribution limits of RCW 42.17A.405 (3) against the Committee.

At the regular meeting of the Public Disclosure Commission on July 23, 2015, the Commission acted unanimously on a motion to issue a declaratory order regarding the enforcement of RCW 42.17A.405(3) within 90 days of receipt of the Committee's request, provided that 1) the Committee signs a stipulation with PDC staff regarding the facts on which the declaratory order would be based, and 2) that the Committee stipulates that it will comply with all other applicable laws requiring the disclosure of contributions. The Commission's motion provided that any declaratory order the Commission issues suspending enforcement of RCW 42.17A.405(3) will be based on the Committee's representations of its intended campaign conduct and its stipulation as to those representations, and that the Commission's action will not suspend enforcement of the recall contribution limits applicable to other recall campaign committees.

## JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

## FACTS

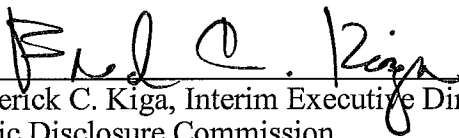
1. Recall Mark Lindquist, a registered political committee (the Committee) filed a C-1pc Political Committee Registration on June 9, 2015, registering a campaign to support a ballot proposition to recall the elected Pierce County Prosecutor Mark Lindquist from office in the April 26, 2016 special election.
2. 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.
3. 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. Mr. Helsdon explained that he represents the Committee in its efforts to recall Pierce County Prosecutor Mark Lindquist from office. Mr. Helsdon told PDC staff of the Committee's intended activities concerning the recall, including the Committee's intent to solicit and accept contributions in excess of \$950. On behalf of the Committee, he requested "that the PDC immediately inform the Committee that the PDC will take no action to enforce the contribution limits of RCW 42.17A.405(3). He based this request on the Committee's view that the limits could not be constitutionally applied 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, as affirmed by the Ninth Circuit Court of Appeals in *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012) (*as amended*).

4. As of the Commission's July 23, 2015 meeting, the Committee has received one contribution in excess of \$950.
5. As of the date of this Stipulation, neither the Committee nor its officers or principal decision-makers has had contact or communications with any person known to be a declared or undeclared candidate for Pierce County Prosecutor, concerning the appointment or election of any person to the office of Pierce County Prosecutor.
6. The Committee understands 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.
7. As of the date of this Stipulation, neither the Committee nor its officers or principal decision-makers has had contacts or communications 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.
8. Certain officers and principal decision-makers of the Committee, including Jeffrey Helsdon, Thomas Oldfield, and Joan Mell, have spoken with employees or officials of the Pierce County Prosecutor's Office for the purpose of obtaining 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.
9. Certain officers and principal decision-makers of the Committee, including Carolyn Merrival, have communicated with employees or officials of the Pierce County Prosecutor's Office regarding the Committee's campaign fundraising.
10. Steven Merrival, the spouse of Carolyn Merrival and the source of a whistleblower complaint against Mark Lindquist, has contributed \$140 to the Committee, which is within the limit of RCW 42.17A.405(3).
11. If the Committee become aware of the identity of any candidate for Pierce County Prosecutor, or if any person, when contacted, indicates an intent to run for the office

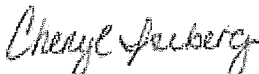
in the future, the Committee, its officers, and principal decision-makers will not 1) coordinate any campaign expenditures with such a candidate or his or her campaign committee, 2) solicit or accept contributions from such a candidate or his or her campaign committee, and 3) solicit any donations or support in support of or opposition to such a candidate or his or her candidate committee.

12. The Committee, its officers, and principal decision-makers will not include any Pierce County Council members or their staff in Committee decision making, including decisions concerning Committee expenditures, and the solicitation or receipt of contributions.

13. The Committee acknowledges that the Committee and its officers and principal decision-makers are subject to all campaign finance laws and requirements of RCW 42.17A and WAC 390, other than the limitations of RCW 42.17A.405(3) and its implementing regulations, including requirements applicable to the coordination of expenditures with a candidate or political committee, and requirements applicable to the disclosure of contributions and expenditures.

  
\_\_\_\_\_  
Frederick C. Kiga, Interim Executive Director  
Public Disclosure Commission

8-7-15  
Date Signed

  
\_\_\_\_\_  
Cheryl Iseberg, President,  
Recall Mark Lindquist

**August 7, 2015**

\_\_\_\_\_  
Date Signed