

Dear Director Lavalley and Members of the Commission:

I write in response to the Memorandum you recently received from PDC staff regarding my request for Declaratory Order. I only received the memo this morning, so my time to respond has been unfortunately limited, but I would like to respond to several points in the memo to further explain why a declaratory order is necessary and why you should clarify that the fundraising freeze in RCW 42.17A.560 does not apply to state employees.

### **My request meets the criteria for a declaratory order**

First, the staff memo suggests that my request does not meet the criteria for a declaratory order because there is no actual dispute presented. I respectfully disagree. State employees run for office every election cycle. My initial request for declaratory order gave examples of state employees who ran for office in 2022 (Sharlett Mena), 2020 (Michael Pellicioitti), 2016 (Kristine Reeves), and 2014 (Chris Kilduff). A quick search of 2018 records reveals that then-Assistant Attorney General Becca Glasgow ran for and was elected judge that year. Thus, every election cycle for the last decade has seen at least one state employee run for office. I am certain there are many other examples I am simply unaware of, especially of state employees running for other offices, such as school board, city council, or superior court judge. This is not a hypothetical possibility; it happens every election.

To the extent the Commission believes a more specific example is necessary, consider the situation of my former client, Noah Purcell, as illustrative. As Solicitor General in the Washington Attorney General's Office, Noah is a state employee. He considered running for Attorney General in 2020 and retained my firm to handle PDC compliance and reporting. I and many others told him there is a universal understanding among political consultants and compliance lawyers that the fundraising freeze does not apply to state employees like him, but Noah, in an abundance of caution, decided to check with PDC staff. PDC staff informed him that because of the prior letter deeming legislative assistants covered by the freeze, the PDC might deem him to be covered as well if a complaint were filed, but they could not be sure. Noah therefore did not raise funds during the 2019 legislative session, waiting to do so until after the freeze ended and putting himself at a potential disadvantage compared to possible candidates working in the private sector. If Noah decided to run for Attorney General again in 2024, he would face the same uncertainty, and again could be put at a competitive disadvantage compared to private employees.

In light of these examples, I ask you to please reject the PDC staff recommendation to deem my request merely advisory. The staff memo cites four factors for you to consider as to whether a request is advisory, namely whether: (1) Uncertainty necessitating resolution exists; (2) An actual controversy arises from the uncertainty so that an order will not be merely an advisory opinion; (3) The uncertainty adversely affects the petitioner; and (4) The adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

All of these factors are satisfied here. On the first point, I and other compliance professionals (including Mr. Stafford, who commented), have never understood the fundraising freeze to apply

to state employees, and no state employee running for office has ever faced a complaint on this basis. Yet the staff memo you received suggests that PDC staff believe some state employees are covered by the freeze. There is thus clearly uncertainty necessitating resolution as to this important issue.

On the second point, as noted, this issue arises every election cycle, and I am aware of at least one individual my firm has worked with in the past who may be affected by this issue in the 2024 election cycle. I am certain there are others of which I am unaware.

Third, this uncertainty harms me because I do not know what to advise my clients who are state employees. In the past I would have advised them that they are clearly not covered by the freeze, but the ambiguous guidance Noah received and the staff memo make that unclear. More broadly, this is not a question on which individual state employees should have to seek guidance from the PDC. It is a straightforward legal question that affects many people, and the PDC should be willing to answer it in response to a request from a compliance professional like me.

Finally, I am not aware of any adverse effect on anyone if the PDC issues an order clarifying the point I have requested. State employees will have a clear answer about whether the freeze applies to them. No one will be harmed.

### **The statute does not cover state employees**

Assuming the PDC agrees to answer my question, it should conclude that state employees are not covered by the freeze when they run for office themselves because they are not “employed by or acting on behalf of a state official or state legislator.” The PDC staff memo does not provide a definitive position on this point, but it offers some policy reasons why the freeze might arguably cover some state employees in supervisory or policy roles. There are two basic problems with this suggestion.

First, the idea that the freeze might apply to some state employees but not others depending on their role has no basis in the language of the fundraising freeze statute. As I explained in my initial request, applying the fundraising freeze to state employees doesn’t make any sense under the statute’s plain language. The freeze statute applies to state officials and people “employed by or acting on behalf of a state official.” RCW 42.17A.560(1). A person who works for a state agency is an employee *of the agency*, not of the state official who runs the agency. For example, a person who works for the Department of Natural Resources (DNR) is an employee of DNR, not of Hilary Franz, the Commissioner of Public Lands. While Commissioner Franz leads the agency, she is not the employer of DNR employees. To conclude otherwise is to confuse being a person’s supervisor and being their employer. If a new Commissioner of Public Lands is elected, DNR employees will remain DNR employees, they do not immediately become employees of whoever the new Commissioner is. By the same token, a private CEO, like Jeff Bezos, supervises many employees, but it is the company (Amazon) that is their employer, not the CEO. If the legislature intended the fundraising freeze to cover some or all state employees, it could have said that in a much more straightforward way.

Even if there were an arguable contrary view, i.e., that state employees are actually employees of the individual elected officials who lead their agencies, there would still be no basis for the distinction PDC staff propose between “supervisory, policy-making, or policy-enforcing” roles and other jobs within the agency. It makes no sense to say that a DNR supervisor in Spokane is an employee of Hilary Franz while all other employees in the Spokane office are employees of DNR. The language of the statute does not support such a distinction.

Second, the policy rationale offered by the staff memo doesn’t withstand scrutiny. PDC staff and the comment from Mr. Stafford point out that the purpose of the freeze is to protect the integrity of the legislative process. But the freeze applies *regardless of what office a person is running for*. That is, if DNR employees are covered by the freeze, then they are covered regardless of whether they are running for Lands Commissioner, state legislature, school board, mayor, or city councilmember. What possible purpose does the legislative freeze serve as to a DNR employee who decides to run for Yakima City Council, even if the employee holds a policy or supervisory role? My initial request letter did not raise any constitutional questions, but Mr. Stafford’s comment highlights that if the PDC interpreted the freeze that broadly, it is hard to imagine a court would find it constitutional.

For all of these reasons, I ask you to please answer my request for declaratory order and please clarify that the fundraising freeze statute does not apply to state employees who decide to run for office themselves.

Sincerely,



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