



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdcc.wa.gov](http://www.pdcc.wa.gov)

June 18, 2015

TO: Commission Members  
FROM: Tony Perkins, Acting Assistant Director  
RE: **Petition for Declaratory Order from “Recall Mark Lindquist”  
Committee**

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### **Agenda Item & Background**

On June 11, 2015, PDC staff received a letter dated June 9, 2015 from Jeffrey Paul Helsdon, counsel to the “Recall Mark Lindquist” political committee (the Committee). In his letter, Mr. Helsdon described the Committee’s intent to solicit and accept contributions in excess of \$950 in an effort to recall Pierce County Prosecutor Mark Lindquist from office. He inquired whether the Public Disclosure Commission will enforce RCW 42.17A.405(3), concerning contribution limits and recall elections, against his client. Describing the injunctive relief granted to *Farris v. Seabrook* plaintiffs Oldfield & Helsdon, the Recall Dale Washam political committee, and Robin Farris, Mr. Helsdon offered arguments to support his point of view that RCW 42.17A.405(3) is facially unconstitutional.

On June 16, 2015, PDC Executive Director Fred Kiga mailed a written response to Mr. Helsdon on behalf of staff. Mr. Helsdon’s letter received June 11, 2015 and staff’s June 16, 2015 response are enclosed with this memo. Staff’s response stated that Mr. Helsdon’s question concerning RCW 42.17A.405(3) was a question to be considered by the Commission. Staff informed Mr. Helsdon that we would treat his question as a petition for a declaratory order, a process governed under RCW 34.05.240 and the Commission’s rule at WAC 390-12-250. Copies of the statute and rule are enclosed with this memo.

### **Action & Next Steps**

As described in staff’s June 16, 2015 response to Mr. Helsdon, at the June 25, 2015 Commission meeting, staff will present Mr. Helsdon’s inquiry to the Commission and seek direction concerning next steps. If the Commission determines that it will proceed with treating Mr. Helsdon’s inquiry as a petition for a declaratory order, the immediate next step would be to inform the agency stakeholder group of the petition. Staff would issue that notification on June 26,

2015. The remaining timeline for processing a petition for a declaratory order is described in staff's June 16, 2015 response to Mr. Helsdon.

**Enclosures:**

- Letter received June 11, 2015 from Jeffrey Helsdon on behalf of the Recall Mark Lindquist Committee
- June 16, 2015 letter from PDC Executive Director Fred Kiga
- RCW 34.05.240 Declaratory order by agency — Petition.
- WAC 390-12-250 Declaratory order—Petition requisites—Consideration—Disposition.



# OLDFIELD & HELSDON, PLLC

ATTORNEYS AT LAW

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June 9, 2015

RECEIVED

JUN 17 2015

Public Disclosure Commission

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

Attn: Philip E. Stutzman, Director of Compliance  
Tony Perkins, Lead Political Finance Specialist

via email: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) and USPS

Dear Mr. Stutzman and Mr. Perkins:

This law firm represents Recall Mark Lindquist (the "Committee"), a Washington nonprofit corporation organized as a political committee to attempt to recall Mark Lindquist, Pierce County Prosecuting Attorney, from office. The Committee intends to solicit and accept contributions to the recall campaign in excess of the \$950 per contributor limit set forth in RCW 42.17A.405(3), RCW 42.17A.125, and WAC 390-05-400.

As you know, the U.S. District Court for the Western District of Washington issued an injunction on July 15, 2011 prohibiting the PDC from enforcing Wash. Rev. Code §42.17A.405(3) in the recall effort against Pierce County Assessor/Treasurer Dale Washam. The PDC appealed that order. The Ninth Circuit Court of Appeals affirmed the District Court's preliminary injunction order on January 19, 2012. *Farris v. Seabrook*, 677 F.3d 858 (9<sup>th</sup> Cir. 2012)(as amended)(*Farris I*). The Recall Proponents moved for summary judgment. On November 6, 2012, the District Court issued its Summary Judgment Order in which it "permanently enjoined [the PDC] from enforcing RCW §42.17A.405(3) against [the Recall Proponents] in this case only." The District Court concluded that because it held the statute was unconstitutional as applied to the Recall Proponents, "the Court need not address whether RCW §42.17A.405(3) is unconstitutional on its face." The Recall Proponents appealed from the District Court's refusal to find the statute unconstitutional on its face. In its 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 §42.17A.405(3) against the plaintiffs in all similar circumstances, where there is no evidence or appearance of corruption."

"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.

First, the law is not supported by an important government interest because it is not directed at *quid pro quo* corruption. In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court made clear that the concept of "corruption or the appearance of corruption" was limited to *quid*

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*pro quo* corruption between a candidate and a donor and the Court explicitly rejected a theory of “undue influence.” *Citizens United*, 558 U.S. at 357-59; *see also FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985) (“The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. But here the conduct proscribed is not contributions to the candidate, but independent expenditures in support of the candidate.”). In the case of a recall, RCW 42.17A.405(3) limits contributions to a political committee that makes expenditures independently of a candidate or candidate committee. These expenditures are, as a matter of law, incapable of causing corruption or its appearance. Given the structure of the recall process, recall campaigns are not candidates or candidate committees and do not coordinate their speaking with candidates. There are no candidates with whom to coordinate. There is no chance for *quid pro quo* corruption because there is no candidate who may provide a *quo* for such a *quid*.

Second, the statute is fatally underinclusive and is therefore not “closely drawn.” On its face, the statute exempts “bona fide political part[ies]” and “caucus political committee[s]” from the contribution limit. There is no rational reason for such exemptions. The State has the burden to justify its restriction on speech. *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9<sup>th</sup> Cir. 2011). The Supreme Court has specifically found that political parties are so closely associated with candidates that they may serve as mere conduits for donations and therefore the government may limit contributions to them. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 445-46 (2001). Thus, RCW 42.17A.405(4) has removed the cap on contributions to entities that the Supreme Court has held do raise corruption concerns, while restricting contributions where no such concerns are possible.

The Committee requests that the PDC immediately inform the Committee that the PDC will take no action to enforce the campaign contribution limits of RCW 42.17A.405(3) against Recall Mark Lindquist. If we have not heard from you by the close of business on June 17, 2015, we will assume by such silence that the PDC intends to enforce the contribution limits in this recall, and we will pursue remedies that are available to us.

Very truly yours,



Jeffrey Paul Helsdon

JPH: tbs  
cc: Recall Mark Lindquist



State of Washington  
PUBLIC DISCLOSURE COMMISSION

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June 16, 2015

Jeffrey Paul Helsdon  
Oldfield & Helsdon  
1401 Regents Blvd., Suite 102  
Fircrest, WA 98466

SENT VIA EMAIL AND U.S. MAIL

Re: Request for Action - Notice of Scheduling Presentation of Request and Possible Action by Commission - June 25, 2015 Commission Meeting

Dear Mr. Helsdon:

This letter is to confirm receipt of your letter dated June 9, 2015, in which you request to know whether the Public Disclosure Commission (Commission) will enforce provisions of RCW 42.17A related to contribution limits and recall elections. This is to advise you that your request will be presented to the Commission at its June 25, 2015 meeting for consideration of next steps. The staff will request that the Commission treat your request as a Petition for Declaratory Order from the Commission and follow the protocols applicable thereto.

**Summary of Request**

You explained that you represent the "Recall Mark Lindquist" political committee in its efforts to recall the elected Pierce County Prosecutor Mark Lindquist. In the letter, you posed anticipated activities concerning the recall process, including the committee's intent to solicit and accept contributions in excess of \$950. Your letter presented arguments to support your point of view that RCW 42.17A.405(3) is facially unconstitutional, a position that the federal courts declined to agree with. You cited the injunctive relief granted to *Farris v. Seabrook* plaintiffs Oldfield & Helsdon, the Recall Dale Washam political committee, and Robin Farris as the basis for questioning whether the Commission will enforce RCW 42.17A.405(3) against your client. This is a question to be considered by the Commission.

## **Declaratory Order Process and Scheduling**

### **Public Notice and Scheduling Generally**

The declaratory order process under RCW 34.05.240 contemplates a public process and public notification of the request, providing in subsection (3) that "Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable." In the case of the "Recall Mark Lindquist" political committee, if the Commission determines that it will follow this process, staff will provide notice of your request to the agency stakeholder group within that timeframe. In addition, the Commission will provide the public notice of its meetings and hearings. The Commission posts its meeting agendas and materials on the agency website at [www.pdc.wa.gov](http://www.pdc.wa.gov) in order to notify the public of anticipated Commission actions. PDC staff would follow those procedures and make a copy of the letter available to the general public when the meeting to allow for Commission consideration occurs next month.

RCW 34.05.240 provides the timeframe for consideration:

- (5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:
  - (a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
  - (b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;
  - (c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or
  - (d) Decline to enter a declaratory order, stating the reasons for its action.
- (6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

In addition, WAC 390-12-250(3) provides that the executive director will present the petition to the Commission at the first meeting when it is practical to do so, in this case, July 23, 2015. At that point, among other options, the Commission may decide that a public hearing is necessary and conduct the hearing at that time. WAC 390-12-250(6). The purpose of the July meeting time would be to accomplish the following:

First, it would enable the Commission to determine how it wishes to proceed. See RCW 34.05.240 and WAC 390-12-250(5) and (6). The matter would be listed on the agenda as "*Presentation of Petition for Declaratory Order Regarding Contribution Limits Applicable to Recall Committees and Possible Hearing*" or similar description. The agenda item would notify the public of the Commission's consideration of how to

proceed on July 23. You and your client would be invited to attend the July 23 meeting and respond to Commission questions concerning your request, if any.

Second, the time would enable the development of any additional facts if needed. See WAC 390-120-250(2) (the executive director may conduct an independent investigation in order to fully develop the relevant facts).<sup>1</sup>

Third, as previously described, it will notify stakeholders as well as the general public of the petition. This process allows members of the public to determine if they will seek to participate before the Commission. It notifies them of the question raised in your request, an inquiry which may also interest them. In particular, there may be public interest in your request given RCW 42.17.010(1) which provides in pertinent part that the intent of RCW 42.17 includes "that political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided."

Finally, this process will provide you the opportunity to timely submit additional information if you so choose. See WAC 390-12-250(4) and the scheduling details provided in this letter.<sup>2</sup>

### **Scheduling Details**

In going forward with your inquiry, the following schedule will be recommended to the Commission. This information will allow you and staff to prepare for both the June 25 and July 23 (if necessary) meetings, taking into account the above factors. It will also provide a process for information to be submitted as expeditiously as possible for the Commission consideration and in the event a hearing proceeds on that date.

<b>SCHEDULE</b>	
<b>June 18</b>	Date by which PDC staff will notify Commission that the request has been received.
<b>June 25</b>	Date upon which the Commission will consider next steps for addressing your request and to set process for consideration of questions, if appropriate. In the event the Commission determines to move forward with the petition process, the following dates are going to be recommended for the proper administration of the request.
<b>July 10</b>	Date by which any supplemental information in response to PDC staff questions would be required from you.

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<sup>1</sup> For example, you are aware of the evidence the federal court considered and relied upon in determining that the law violated the Recall Proponents' constitutional rights. A similar inquiry would likely be required from your client for the Commission to consider.

<sup>2</sup> For example, you may wish to submit additional materials if staff has questions concerning your petition and you want to provide additional information in response to any information provided by stakeholders.

<b>July 13</b> <b>1:00 p.m.</b>	Date and time by which information concerning who will be participating in the July 23 meeting and possible hearing <b>on behalf of your client</b> , and any other written information from the petitioners for Commission consideration, is due to be provided to PDC staff.
<b>July 16</b> <b>1:00 p.m.</b>	Date and time by which information concerning who will be participating in the meeting and possible hearing <b>on behalf of the PDC staff</b> , and any other written information from the staff for Commission consideration, is due to be provided to you. Date and time by which you and PDC staff will exchange information concerning other known parties who have expressed an interest in participating in the meeting and possible hearing, if any. (Per usual procedures, the meeting materials containing the petition and its additional information, staff presentation and other relevant information will be posted on the PDC website with the agenda approximately one week before the meeting.)
<b>July 23</b>	Date on which the petition will be considered by the Commission. The specific time is yet to be set but will most likely be in the morning. Unless otherwise determined by the Commission, one hour will be allotted on the agenda including 20 minutes of presentation per side, plus time for Commission questions or deliberations. Please note that as described in RCW 34.05.240 and WAC 390-12-250, the Commission has a number of options on how it may proceed on January 28.

\*All materials to be submitted are due at 5:00 p.m. unless an earlier time is specified.

### **Staff Assistance Available**

In anticipation of the June 25 meeting, I am requesting staff to assist you in providing information should you wish such staff assistance, as well as to follow up on any additional information that may be necessary from staff prior to the Commission's consideration of next steps. (It is my understanding that this is the only contact you have had with staff on the information or question in the letter.) I have requested PDC Acting Assistant Director Tony Perkins to be your point of contact. He can be reached via our toll-free number at 1-877-601-2828 or at his direct line at (360) 586-1042. His email address is [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov). If he is unavailable to take your calls or respond to your emails on the dates our office is open, please contact Director of Compliance Phil Stutzman at the toll-free number, or direct line at (360) 664-8853, or by email at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

I hope the information provided herein is helpful, and I encourage you and/or your client to avail themselves of the assistance that staff routinely provides to persons who have questions regarding compliance with RCW 42.17A. That assistance includes but is not limited to providing information on the website such as laws, rules, manuals and other materials and providing a toll-free number so the public and filers can easily contact staff.

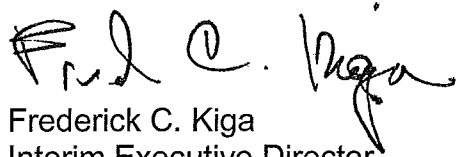


Jeffrey Paul Helsdon

June 15, 2015

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Sincerely,

A handwritten signature in black ink, appearing to read "Fred C. Kiga". The signature is written in a cursive style with a large initial "F" and a distinct "K".

Frederick C. Kiga

Interim Executive Director

cc: Tony Perkins, Acting Assistant Director  
Phil Stutzman, Director of Compliance

**RCW 34.05.240****Declaratory order by agency — Petition.**

(1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That 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; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

[1988 c 288 § 204; 1959 c 234 § 8. Formerly RCW 34.04.080.]

**WAC 390-12-250**

No agency filings affecting this section since 2003

**Declaratory order—Petition requisites—Consideration—Disposition.**

(1) Any person may submit a petition for a declaratory order pursuant to RCW 34.05.240 in any form so long as it

(a) Clearly states the question the declaratory order is to answer, and

(b) Provides a statement of the facts which raise the question.

(2) The executive director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The executive director will present the petition to the commission at the first meeting when it is practical to do so and will provide the petitioner with at least five days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The commission may issue either a binding or a nonbinding order or decline to issue any order.

(6) The commission may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five days notice of such meeting shall be provided to the petitioner.

(7) If an order is to be issued, the petitioner shall be provided a copy of the proposed order and invited to comment.

(8) The declaratory order cannot be a substitute for a compliance action and is intended to be prospective in effect.

(9) The commission will decline to consider a petition for a declaratory or to issue an order when (a) the petition requests advice regarding a factual situation which has actually taken place, or (b) when a pending investigation or compliance action involves a similar factual situation.

[Statutory Authority: RCW 42.17.370. WSR 90-16-083, § 390-12-250, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-12-250, filed 7/9/85; WSR 81-18-043 (Order 81-03), § 390-12-250, filed 8/28/81.]