

Legislative Ethics Board

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COMPLAINT 2016 – No. 6 In Re HDC E-Clips

DETERMINATION OF NO REASONABLE CAUSE AND ORDER OF DISMISSAL Use of Public Resources to Oppose a Ballot Measure October 18, 2016

I. Nature of the Complaint - Background

The complaint was filed June 20, 2016. It alleges that the website of the Washington House Democratic Caucus (HDC) contained a link to a news article regarding Initiative 1515, that the article “appears to be biased” against the initiative, and that “using a legislative website to link to the article may violate the Ethics in Public Service Act.” No specific individuals are named in the complaint.

The complaint alleges that on May 4, 2016, the HDC communications staff provided a link to an article appearing in *The Stranger*. The article concerns the opponents of I-1515, the initiative regarding bathroom use by transgender persons. The webpage is maintained by the HDC staff.

The complaint does not allege a violation of a specific portion of the Ethics Act. However, the most applicable statute is RCW 42.52.180, which in part provides:

- (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the

agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency....

Board counsel (O'Connell and Buchholz) investigated the complaint pursuant to RCW 42.52.420; interviews were conducted with House staff, regarding House policies and procedures, and the history of the clipping service (the "clips").

II. Jurisdiction

The Board has personal and subject-matter jurisdiction. RCW 42.52.320. Although the individuals directly responsible for the HDC link are not known to the complainant, exclusive control of the HDC website remained with legislative staff.

III. Reasonable Cause

Based on the investigation and determinations of fact, the Board concludes that reasonable cause does not exist to believe the HDC staff violated RCW 42.52.180 by linking to the article.

IV. Determinations of Fact

1. Historically, the caucus staffs in the House and Senate have assembled daily newspaper clippings of articles addressing various issues of significance to legislators. Each of the four caucuses produced a different set of clips, distributing them in hard copy form.
2. During the 2008/09 recession, the clipping services were consolidated and converted to an electronic format. Each weekday the House Democratic Caucus (HDC) staff produces one set of clips with input from the Senate Democratic Caucus staff; the House Republican Caucus (HRC) staff produces a different set with input from the Senate Republican Caucus staff. In terms of format, the caucuses produce lists of headlines (with links to each article), and distribute them internally to members and legislative staff. Both the HDC and HRC staffs post the clips to each caucus's respective webpage, and members of the public can view them by visiting the webpages, or by signing up to have the clips received via email. Each daily set of clips is a list of headlines and links.
3. The HDC has adopted a clips policy to provide guidance to its staff and to set broad limitations in the inclusion of articles in the clips. This is the complete policy statement:

The Washington State House Democratic Caucus staff collects online news, opinion articles, and blog posts from a wide range of outlets to provide news and

insight to legislators, staff members, and interested stakeholders regarding the state legislative process and actions by other elected leaders and organizations that could become a part of legislative discussion and debate.

Our goal is to provide a balanced, objective view of these issues so that those subscribing to our e-clips service can see the various points of view expressed by Democrats, Republicans, stakeholders, and others. With that in mind, we do place an emphasis on coverage of our House Democratic Caucus members so that they understand what their HDC colleagues are doing in various policy arenas.

Our intent is to inform, not influence, readers. Any story included is done so with that in mind.

We collect these electronic clips daily using a name and issue recognition application that identifies potential stories. With the growth of the internet and non-traditional news outlets, we search for stories from: the state's major daily papers; community news sources; national publications; local and national electronic media (television, radio); and various internet sources. These stories are then assessed by HDC Communications staff to ensure we do not violate our policy before being compiled into the final daily "E-clips" document.

Given the vast amount of information, it is possible that we may omit certain repetitive stories or miss others because of the large information flow. We are happy to review suggested stories that were not included, although no guarantee is made that they will be placed in a future document.

We make every effort to stay away from specific candidates' campaign-related work (for example, we will not include stories discussing a candidate's fundraising activities, political rallies, etc.) We do not include opinion pieces or editorial board endorsements that encourage readers to vote for or against a specific candidate or ballot measure. However, on occasion we will include political stories that have information that – if separated from the main political discussion in the story – does impart educational information to our stakeholders.

If you have comments, concerns or complaints about the HDC Daily E-Clips, please contact us at hdc.media@leg.wa.gov. Thank you.

4. On March 18, 2016, Initiative 1515 was filed with the Secretary of State. Upon that filing, it became a "ballot measure" for the purposes of RCW 42.52.180. Advisory Opinion 1995 – No. 18. Its supporters began gathering signatures in support of the measure.
5. The complaint accurately cited a link on the HDC website that was associated with the Stranger article. That article largely concerned the opponents of Initiative 1515, an initiative that sought to effectively reverse WAC 162-32-060, adopted by the Human Rights Commission in 2015. WAC 162-32-060 is familiarly known as the "bathroom rule." Broadly, the WAC provides that transgender persons may use the bathroom of the gender with which they identify.

6. In the 2016 legislative session, five bills were introduced in the legislature to alter or reverse the WAC: House Bills 2589, 2782 and 2941, and Senate Bills 6443 and 6548. Senate Bill 6443 was brought to the Senate floor and debated, after which it failed on a 24-25 vote.
7. In June 2016, a petition was brought before the Joint Administrative Rules Review Committee, a legislative committee empowered to address the validity of rules adopted by agencies, including the Human Rights Commission. That petition also sought to reverse the actions of the commission. Following a public hearing on June 9, the JARRC petition failed on a 4-4 vote.
8. On June 15, 2015, the HDC clips contained a link to an article in *The Stranger*. The article described the opponents of Initiative 1515, their strategy, and their arguments against the initiative. Those opponents of I-1515 are organized under “Washington Won’t Discriminate.” The article identifies and quotes those opponents, including several significant business entities that oppose I-1515. It highlights the group’s strategy of launching its efforts from a church in Renton.
9. The article does not quote the initiative’s supporters, who are organized under “Just Want Privacy.” It negatively characterizes the arguments of “Just Want Privacy”: “the anti-LGBTQ group trying to police trans people’s genitalia” that “has repeatedly made wild and false claims about the danger of transgender people using bathrooms with ‘little girls’”
10. A single neutral reference is made to the act of gathering signatures: “I-1515 is still collecting the 246,372 signatures it needs to qualify for the ballot.” The article provides a brief summary of the donations received by the initiative’s proponents and opponents.
11. HDC Communications Director Jim Richards emphasized that portion of the HDC policy that states, “*those [persons] subscribing to our e-clips service can see the various points of view expressed by Democrats, Republicans, stakeholders, and others.*” The HDC clips often contain links to articles that do not reflect the political views of the Democratic members of the House of Representatives.
12. The HDC clips provide links to materials that provide a snapshot of issues that are important to Democratic legislators, without regard to whether those articles support or oppose the position of those legislators. Examples include:
 - a. TNT article critical of tactics of I-1515 opponents, June 23, 2016.
<http://www.thenewtribune.com/opinion/article85675772.html>
 - b. *Stranger* article re failure to gather sufficient signatures, quoting statement by I-1515 supporters, July 7, 2016.

- <http://www.thestranger.com/slog/2016/07/07/24318533/trans-rights-won-just-want-privacy-didnt-get-enough-signatures-for-november-ballot>
- c. Boeing op-ed by Sen. Schoesler (R), July 3, 2016.
<http://www.heraldnet.com/opinion/state-gov-inslee-risk-jobs-by-going-back-on-word-to-boeing/>
 - d. Article in support of Vancouver oil terminal, July 10, 2016.
<http://www.heraldnet.com/opinion/vancouver-oil-terminal-necessary-to-state-u-s-energy-needs/>
 - e. Cautionary op-ed re increases in minimum wage, July 30, 2016.
<http://www.seattletimes.com/opinion/editorials/know-the-effects-of-the-minimum-wage-experiment/>

V. Conclusions of Law

Reasonable cause does not exist to believe that the HDC staff violated RCW 42.52.180 when it included a link to an article focusing on the opponents to I-1515 for the following collective reasons:

1. The legislative clips are intended to provide a daily snapshot of issues being discussed in various Washington and national media.
2. The links are intended to focus on “what’s being said” about issues before the legislature, or issues that may be before the legislature in the near future.
3. Significantly, the issue presented in I-1515 was the subject of action by a state agency, was addressed in 5 separate bills before the legislature, and debated on the floor of the state Senate.

IT IS HEREBY ORDERED: that Complaint 2016 No. 6 is hereby dismissed.

/s/ Kenny Pittman, Chair

Date: October 18, 2016