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COMPLAINT 2017 – No. 42

In Re Kretz
May 14, 2018

DETERMINATION OF NO REASONABLE CAUSE AND ORDER OF DISMISSAL

I. Nature of the Complaint

The complaint alleges fourteen violations of the Ethics in Public Service Act by Rep. Joel Kretz. Most of the allegations address interactions between Rep. Kretz and various administrators at Washington State University (WSU) and Dr. Rob Wielgus, a professor and researcher at WSU. The complaint generally describes efforts by Rep. Kretz to criticize and ultimately restrict or eliminate the funding of Dr. Wielgus's work by the legislature, as well as threatening Dr. Wielgus's job.

The complaint alleges that Rep. Kretz's actions violate RCW 42.52.070 and .160, which in part provide:

RCW 42.52.070 Special privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

RCW 42.52.160 Use of persons, money, or property for private gain.

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.*
- (2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.*

II. Jurisdiction

The Board has personal and subject-matter jurisdiction. RCW 42.52.320.

III. Background

Rep. Joel Kretz is a member of the Washington State Legislature, having first taken office in 2005. He represents the 7th legislative district, an area of the state that contains significant numbers of large predators, including cougars, bears, and wolves.

In 2005, the expected migration of wolves into Washington led to the introduction of the first bills relevant to wolf management: Senate Bill 5216 (Morton) would have established limits on the release of gray wolves; SB 6778 (Morton, 2006) would have directed the Department of Fish and Wildlife (DFW) to adopt a gray wolf management plan. Rep. Kretz introduced two bills on bear and cougar predation; House Bill 1832 passed, requiring DFW to post website information regarding reported cougar interactions with humans, pets or livestock.

Over the last decade, legislative committees have held multiple hearings and work sessions on the issue of livestock predation by wolves and cougars. Generally, these have focused on minimizing predation, but interested stakeholder groups differed on the best means to achieve that result. Rep. Kretz participated in many of these public hearings and work sessions, as did numerous other legislators.

DFW also participated in these efforts. For several years it contracted field research to WSU. The Large Carnivore Lab, under the supervision of Dr. Rob Wielgus, performed much of that research. Some of the research performed by the lab was controversial.

In 2013, DFW established a Wolf Advisory Group (WAG) consisting of representatives from multiple stakeholder groups, including ranchers, conservationists, local government, hikers, farmers, and hunters. No legislators serve on the group. Following the hiring of a professional facilitator in 2015, the group has reportedly functioned well and been able to reach a significant level of internal consensus on the overall issue of reducing predation.

In 2014, Dr. Wielgus published a peer-reviewed paper that examined the effect that lethal removal of a wolf (or wolves) had on livestock predation; it concluded that in certain cases predation would increase due to the effect that lethal removal had on wolf pack structure. A review of that paper by the University of Washington concluded that Dr. Wielgus's findings were statistically unsupported by the data. The Washington Policy Center, a political think tank, reached a similar conclusion. Dr. Wielgus strongly disagreed with both.

In 2016, Dr. Wielgus distributed information regarding the lethal removal of the Profanity Peak wolf pack by DFW. Dr. Wielgus objected to the removal; WSU criticized his release of information. WSU issued two Memoranda of Concern to Dr. Wielgus, as well as a release disavowing Dr. Wielgus's public statements. In part, the release by WSU provides, "Some of Dr. Wielgus' statements in regard to this controversial issue have been both inaccurate

and inappropriate. As such, they have contributed substantially to the growing anger and confusion about this significant wildlife management issue and have unfairly jeopardized the Washington Department of Fish and Wildlife's Wolf Advisory Group's many-months long stakeholder process. . . . These statements are disavowed by our institutions."

Rep. Kretz has objected to Dr. Wielgus's reports for at least eight years. Rep. Kretz acknowledged several of the allegations, including his opposition to and dislike of Dr. Wielgus's research. He alternately describes Dr. Wielgus as "brilliant" and "biased." Since 2008, Rep. Kretz claims that he has continuously supported predator research but has opposed Dr. Wielgus's involvement as Rep. Kretz views Dr. Wielgus as biased.

IV. Allegations

The Complaint alleges fourteen violations of the Ethics in Public Service Act. In addition to the attachments to the complaint, Dr. Wielgus and the Complainant produced numerous documents in support of the Complaint. The allegations address multiple aspects of wolf management, the Wolf Advisory Group, and Rep. Kretz's involvement with the issues. Regardless of the merits of the individual allegations, they may be broadly grouped as follows:

- Rep. Kretz sought to restrict or de-fund Dr. Wielgus or the large carnivore laboratory at WSU.
- Rep. Kretz sought to de-fund other WSU priorities unless WSU took action against Dr. Wielgus.
- Rep. Kretz's anti-wolf efforts were based on his personal interest or gain.
- Rep. Kretz personally disliked Dr. Wielgus's research.
- Rep. Kretz attempted to undermine livestock management techniques of WAG.
- Rep. Kretz demanded that Dr. Wielgus be sanctioned, reprimanded or fired.

V. Findings of Fact

1. Rep. Joel Kretz is a member of the Washington State House of Representatives, and has been since 2005. He is the Deputy Leader in his caucus. He resides in a rural area and is a hunter. He has both a personal and legislative interest in management of wildlife, particularly mammalian predators. His personal interest predates his legislative career.
2. Wildlife management has long been a subject of legislative action. This is evidenced by numerous legislative acts by multiple legislators, as well as the existence of and appropriated support for DFW. DFW is tasked with regulating wildlife within the state, and has done so for several decades.
3. Washington State University is a public institution of higher education funded in large part through legislative appropriations. Dr. Rob Wielgus is an employee of WSU.

4. Each biennium WSU seeks legislative funding for multiple projects, through both the operating and capital budgets. Legislative support for its requests are critical.
5. Rep. Kretz maintains a long-standing opposition to the research conducted by Dr. Wielgus. Through the legislative budget process, he has supported restrictions in legislative appropriations that directly support Dr. Wielgus, while supporting continued funding for the Large Carnivore Laboratory at WSU. Rep. Kretz also supported an appropriation used by DFW to fund an analysis of Dr. Wielgus's research by the University of Washington.
6. There is no documented confirmation that Rep. Kretz sought to have Dr. Wielgus fired, sanctioned or reprimanded. However, in his written statement filed in response to the Complaint, Rep. Kretz acknowledged that he stated to WSU administrators that "I opined that I thought [Dr. Wielgus] should be fired for his actions, but that is up to [WSU]."

VI. Conclusions of Law

1. The Washington State Constitution establishes the Washington legislature in Article 2. It is a citizen-legislature: this concept assumes that legislators have non-legislative jobs, interests, and experiences, and that the legislature benefits from the knowledge that those outside experiences bring. The Legislative Ethics Board is required to consider the citizen-legislator concept in its application of the Ethics in Public Service Act. RCW 42.52.330.
2. Appropriation of state funds is a core duty of the legislature. Washington State Constitution, Arts. 2, 7 and 8. The legislature provides at most a two-year (biennial) budget, requiring state agencies to continually appear before the legislature to request funds in support of their operations. Legislative budgets often provide general appropriations to state agencies, as well as specific appropriations with limited uses.
3. Legislators commonly express their support for or opposition to various state programs through the appropriations process. An appropriation by one legislature does not bind either those legislators or another legislature to support or oppose similar appropriations in the future. Legislators may appropriately change the manner in which state funds are used by agencies, may redirect funds from one agency to another, and may even move a particular function from one agency to another. See, e.g., 2E2SHB 1661 (2017) (creating the department of children, youth and families). Even if true, shifting appropriated funds from WSU to the University of Washington (UW), or funding a study by the UW instead of WSU, does not constitute an ethical violation.
4. Legislators may apply their professional and personal knowledge and opinions in their exercise of legislative duties. Legislators may disagree with one another. Legislators may disagree with decisions made by the majority in the chamber in which the legislators serve. Substantive legislative disagreements often continue for years in part because of the biennial budget system, as funding issues are revisited each time a new biennium

approaches. Even if true, Rep. Kretz's alleged dislike of Dr. Wielgus, his research, or the large carnivore laboratory does not constitute an ethical violation.

5. As a state agency, WSU depends in part upon legislative appropriations. Legislators may place limits on the use of appropriated funds by state agencies; state agencies that receive funds appropriated for specific projects or programs may not lawfully use such funds for reasons not authorized by the appropriation. See, generally, Chapter 43.88 RCW.
6. Actions taken by Rep. Kretz to affect funding for WSU's budget requests, including funding for the Large Carnivore Laboratory and Dr. Wielgus, are part of his core duties as a legislator. These duties fall within the scope of his employment and are official legislative duties. RCW 42.52.070 and 42.52.160.
7. Management of wildlife within the state is proper subject for legislative action. "Wildlife, fish, and shellfish are the property of the state." RCW 77.04.012 (2000 c 107 sect. 2).
8. Rep. Kretz's interest in wolf management is legislative as well as personal. Due to the citizen-legislator concept, Rep. Kretz is expected to bring his outside interests and perspectives to bear on his legislative work. He is not required to abandon his personal interests and perspectives in the performance of his legislative work. Even if the Complainant's descriptions of Rep. Kretz's personal motivations are true, Rep. Kretz's did not stand to benefit or gain personally in a manner that could constitute an ethical violation. Complaint Opinion 2017 – Nos. 12-14, Complaint Opinion 2005 – No. 6, Complaint Opinion 1995 – No. 6, and Advisory Opinion 1995 – No. 1.
9. Actions by a legislator to influence agency behavior are not without limits. In Advisory Opinion 1995 - No. 1, the Board determined that legislators' efforts to influence agency action, while often appropriate, do not allow legislators to use "improper means" to influence an agency. The Board stated in its Manual that "improper means" would include "Communications to state and local agencies that seek special favors or privileges, or which agency officials or employees might reasonably perceive as threatening." The Board recognized the "improper means" test as applying to the actions of legislators under RCW 42.52.070 and .160.
10. In some circumstances a comment by a legislator to an agency that one of its employees should be fired could reasonably be perceived as threatening and could constitute improper means to exert influence. However, the facts in this case do not lead us to conclude that Rep. Kretz used improper means to influence the behavior of WSU or Dr. Wielgus. Rep. Kretz sought no special treatment or private gain, and made his statements based on policy advocacy and to bring what he viewed as employee misconduct to light.
11. Whether calling for an agency employee to be fired constitutes improper means depends on the facts of each situation. In another case, factors such as the nature of the statement, the roles or titles of the legislator, the reasonableness of the legislator's position, and/or other facts and circumstances may lead the Board to conclude that a similar statement

does, in fact, constitute improper means. The Board cautions legislators to tread carefully when making statements encouraging the termination of employment of a state employee.

VI. Order of Dismissal

It is hereby ORDERED that Complaint 2017 – No. 42 is dismissed.



Sen. Stephen Johnson
Chair