

# Legislative Ethics Board

**BOARD MEMBERS:**  
EUGENE GREEN  
REP. DREW HANSEN  
SEN. JIM HONEYFORD  
STEPHEN L. JOHNSON  
JUDGE TERRY LUKENS (ret.)  
SEN. JAMIE PEDERSEN  
KENNY PITTMAN  
DEBBIE REGALA  
REP. BRANDON VICK



451 JOHN A. CHERBERG BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
FAX: 360-786-1553  
www.leg.wa.gov/leb

KEITH BUCHHOLZ - COUNSEL  
Keith.Buchholz@leg.wa.gov

## COMPLAINT 2016 – No. 9 In Re MCC Communications staff October 28, 2016

### DETERMINATION OF NO REASONABLE CAUSE AND DISMISSAL OF COMPLAINT

#### I. Nature of the Complaint

The complaint alleges that the Communications Staff for the Majority Coalition Caucus (“MCC”) and Senate Republican Caucus (“SRC”) used state resources to tweet a message supporting its members, half of whom are candidates. On July 19 and July 20, 2016, the MCC posted four tweets with this text: “Let’s remember @washingtonmcc pushed for tuition reduction amid resistance across the aisle. #waleg #waedu.”

The complaint alleges a violation of RCW 42.17A.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. ....

#### II. Background

The MCC is a political legislative caucus. Its members are the Republican members of the Washington Senate and a Democrat. Under Senate policy, the communications staff for the MCC maintains a Twitter account under its label as well as a Twitter account under the SRC label.

Twitter is a social media platform that serves to distribute information and messages. When a Twitter user posts a message (a “Tweet”), that message appears on the user’s Twitter page, and also is delivered to each person who “follows” the user. The follower may then “re-tweet” the original message, which serves to further distribute the message.

“Tuition reduction” is a reference to a reduction in tuition at institutions of higher learning in Washington. The bill requiring the reduction in tuition was SB 5954 (Braun (R)), passed by the legislature in June 2015 and signed by the governor in July 2015.

SB 5954 passed the legislature unanimously during the 2015 Third Special Session. Previously, it had passed the Senate 37-12 and 34-10.

### III. Jurisdiction

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

### IV. Results of Investigation

1. On July 19 and July 20, 2016, the MCC posted four tweets with this text: “Let’s remember @washingtonmcc pushed for tuition reduction amid resistance across the aisle. #waleg #waedu.” Two tweets appeared in the MCC Twitter feed, and two tweets appeared in the SRC Twitter feed.
2. The tweets were posted by the MCC communications staff, acting on behalf of the MCC and SRC. Per Senate policy, the tweet was approved by the senator designated by the caucus to approve tweets.
3. Prior to the tweets, the MCC/SRC Twitter feeds showed only two references to tuition cuts in the preceding ten months.
4. In general, Democrats and Republicans both claimed credit for the reduction in tuition as part of their re-election efforts in 2016:
  - a. Gov. Inslee (D), campaign site: “After years of skyrocketing tuition, Governor Inslee put an end to the state’s disinvestment in the higher education system and prioritized affordability and access for all Washington students. He signed a budget that included cuts in tuition for both 2-year and 4-year college students.”
  - b. WA State Republican Party campaign video: “Our Republicans Lead the Nation in Cutting the Cost of College Tuition”
5. Ballots were mailed to voters the week of July 11-15.
6. On Monday, July 18, Gov. Inslee’s campaign posted a commercial on Youtube in that claimed credit for the tuition cuts: “Largest Cut to College Tuition in State History.” The following morning, it was shared via Facebook at approximately 9:50 a.m.

7. The MCC/SRC tweets were posted July 19 and July 20, beginning a few hours after the posting of the governor's advertisement.
8. Interviews were conducted with the MCC/SRC communications director and its chief of staff. Both described the process by which the tweet was drafted, shared via email with the senator who approved the tweet, edited and posted. The tweet was repeated the following day.
9. The MCC/SRC staff had been tasked with releasing periodic tweets identifying significant legislative issues of importance to those senators who were not running for re-election or another office. The communications director had previously tweeted factual messages about Higher Education, K-12 education, and the Department of Corrections.
10. No information was uncovered that showed that either staffer had knowledge of the governor's campaign ad at the time the tweets were drafted and posted. Both denied any knowledge of the ad until after the tweets were posted. The email chains discussing the drafting and editing of the tweet showed no connection to the governor's ad or the election. The emails supported the staff's description of the process by which the tweet was drafted, edited and released.

V. Analysis of Complaint

RCW 42.52.180 prohibits the use of any "facilities of an agency" to support or oppose a candidate for public office: "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."

"Facilities of an agency" were used in the drafting, editing, approval, and release of the tweet. The question is whether the evidence allows the board to conclude that the tweet was sufficiently tied to supporting or opposing a candidate for public office.

The tweet addressed an issue of public interest, an issue that came to the Senate floor on at least four occasions. Multiple prior decisions of the Board have considered statements and publications by legislators and staff that reference elections and issues present in them. Historically such decisions have addressed comments contained in newsletters or similar constituent communications, and the Board has been reluctant to conclude that an ambiguous legislative communication constitutes support or opposition to a candidate.

Speech that is partisan in nature does not, by itself, rise to the level of a violation of .180. In Complaint 1996 – No. 3, the Board rejected a complaint that the use of partisan

speech constituted an ethics violation: “It is acceptable for [legislators] to express their positions on issues that they will be dealing with in the legislative session in partisan terms.” Shortly thereafter, the Board dismissed a complaint that a newsletter statement (“Hopefully, in November, we will return to common sense”) constituted support for a particular electoral result sufficient to violate .180. Complaint 1996 – No. 7.

In May 2016, the Board considered a complaint after a legislator wrote to constituents, “Of course, the longer-term solution is to elect legislators and a governor who will not allow such inane policies in Washington state.” Complaint 2016 – No. 2. The Board noted that the campaign reference was “rather ambiguous” and concluded that a general statement referring to changes arising through election activity did not constitute a violation of .180.

In this instance, the tweet did not reference any election activity, but instead focused on an issue of significant public importance: the reduction in tuition at institutions of higher learning. In the long run, the reduction in tuition was supported both by legislators who are running for office this November, but also those who are not. The non-candidate legislators also may have their views expressed in this manner without such expression being a statutory violation. Finally, the fact that the tweet contained a partisan message does not by itself establish a violation of .180. Complaint 1996 – No. 7.

The Board would note that its investigation was not limited to considering the text of the tweet itself; rather, the Board investigated the totality of the circumstances— including statements in interviews with the authors and approvers of the tweet and emails by and among the authors and approvers of the tweet. The Board concluded that the text of the tweet here did not give rise to find reasonable cause that public facilities were used to violate the Ethics Act by supporting or opposing a candidate for public office and expresses no opinion on whether an Ethics Act violation would have occurred had the totality of the circumstances clearly demonstrated (as it did not here) an intent to use public facilities to support or oppose a candidate for public office.

VI. Conclusion and Order

Reasonable cause does not exist to believe the MCC/SRC staff violated RCW

42.52.180 when it released a tweet referencing a legislative issue, even if the issue is part of a campaign debate.

IT IS HEREBY ORDERED: that Complaint 2016 – No. 9 is dismissed.

/s/ Kenny Pittman, Chair

Date: 10/28/2016