

Legislative Ethics Board



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101 LEGISLATIVE BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
www.leg.wa.gov/lecb

JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2020 – No. 9

In re Van Werven
September 18, 2020

REASONABLE CAUSE DETERMINATION AND STIPULATION

I. NATURE OF COMPLAINT

The Complaint was filed by a resident of Bellingham, WA. The complaint alleges that Respondent violated RCW 42.52.180 (use of state resources to affect a campaign) by recording a welcome speech to the Whatcom County Republican Caucus in her legislative office in the John L. O'Brien Building.

II. JURISDICTION

The Board has personal and subject matter jurisdiction over the Respondent. RCW 42.52.320.

III. PROCEDURAL HISTORY

The complaint was received by Board counsel on June 9, 2020 and was discussed by the Board at its regularly scheduled meetings on August 3, 2020 and August 31, 2020.

IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives and has represented the 42nd legislative district since 2015. She is also a member of the Legislative Ethics Board and did not participate in the deliberations or the decision of the Board concerning this complaint.
2. The Complainant is a resident of the 40th legislative district in Bellingham, WA.
3. On February 28, 2020, the Whatcom County Republican Party sent an email to a mailing list reminding people that the county caucus event was the next day.
4. The email included a screenshot of and a link to a video recorded by Respondent. The video remains on YouTube.

5. Respondent indicated that she was asked to do the welcome for the caucus but because she could not be there in person (the House was planning to work over the weekend) she recorded the video instead.
6. Respondent stated that she initially tried to record the welcome speech on the steps of the capitol but it was too public. As a result, she went to her office and recorded her speech using her personal cell phone.
7. The following is the content of her recorded speech:

Good morning and welcome to Republican caucus Saturday. I am Luanne Van Werven, your state representative in the 42nd district, proudly serving you in Olympia. I am so pleased that you are part of the Republican caucuses today. This is an important step in the process of self-government. This is where we work hard to elect Republicans from President to the legislature. And I'm going to need your help this year and I would invite you to step forward with energy and enthusiasm that we would campaign side by side and then be victorious in November. The Democrats in Olympia have no shortage of bad ideas and bad policies and I want you to know that I am fighting for you. And I am fighting for the values we share. There is a target on the backs of our families, our businesses and our communities. So, I would ask that you send me back to Olympia. I would ask that you send Jennifer Sefzik to Olympia. So that once again we would have a Republican delegation representing the 42nd district. But whether you live in the 42nd district or the 40th district, I want you to know that I represent you and I am fighting for the values that we share. So I invite you to sit back and enjoy and sign up for the projects at hand today. I hope you enjoy this day and God bless.

8. This video was recorded in Respondent's office. Respondent admits that it was recorded there. House security took a picture of Respondent's office last week and the background in Respondent's video matches the current background of her office.
9. Respondent stated that she did not use caucus staff to assist her in either recording or writing the speech.

V. CONCLUSIONS OF LAW AND ANALYSIS

RCW 42.52.180 prohibits a state officer from using or authorizing 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 or opposition to a ballot proposition. 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.... (emphasis added). An exception to this prohibition exists for "activities that are part of the normal and regular conduct of the office or agency." RCW 42.52.180(2)(c).

In *In re Hargrove*, 2012 – No. 1, the Board determined that Respondent violated RCW 42.52.180 by recording a campaign video in the House Republican caucus room located in the Legislative Building.

The Board held that office space in the Legislative Building is a facility of the agency and its use for campaign purposes violated the Ethics Act.

Likewise, in this matter, Respondent's use of her office with which to record a video asking viewers to vote for her and another Republican candidate as well as to get involved in the Republican caucuses is a use of the facilities of an agency in violation of .180. That she used her personal cellphone to record the video does not excuse the use of her legislative office within which to record the video.

In her welcome speech, Respondent encouraged viewers to vote for her and for Jennifer Sefzik. In *Advisory Opinion* 2004- No. 2, the Board stated, "while members remain free to voice their views on electoral participation, the use of public resources to solicit constituents to register to vote, ...or to advise on how to vote, is not 'normal and regular conduct' for a legislative office and would violate RCW 42.52.180." *See also, In re Das*, 2019 – No. 10. Asking viewers to vote for Respondent and another candidate is not normal and regular conduct and appears to violate .180.

VI. ORDER AND STIPULATION

IT IS HEREBY ORDERED: that reasonable cause exists that Rep. Van Werven violated RCW 42.52.180 and that she pay a civil penalty of Three Hundred Dollars (\$300), payable to the Washington State Treasurer; provided, however, that One Hundred Fifty Dollars (\$150) of this penalty be suspended, with such suspension conditioned upon Rep. Van Werven having no further violations of the Ethics in Public Service Act (RCW 42.52) through August 2025.

Eugene Green

Eugene Green, Chair

9-18-20

Date

I, Luanne Van Werven, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.

Luanne Van Werven

Rep. Luanne Van Werven

Date: 9-15-20

Having reviewed the proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.

Eugene Green

Eugene Green, Chair