

Legislative Ethics Board

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COMPLAINT 2021 – No. 5

In re Claire Wilson & Senate Democratic Caucus Staff

June - May 3, 2021

REASONABLE CAUSE DETERMINATION AND STIPULATION

I. NATURE OF COMPLAINT

The complaint alleges that Respondents, Sen. Claire Wilson and the Senate Democratic Caucus (SDC) staff, violated the Ethics in Public Service Act (Act) because a photograph of Respondent Wilson speaking at a rally for Planned Parenthood was posted on the SDC caucus web page. Although the complaint does not cite a specific statute to have been violated, the allegations were investigated under RCW 42.52.160 (use of state resources for private gain).

II. JURISDICTION

The Board has personal and subject matter jurisdiction over the allegations in this complaint. RCW 42.52.320.

III. PROCEDURAL HISTORY

Complaint 2021 – No. 5 was received by Board counsel on March 31, 2021 and was discussed during the Board’s regularly scheduled meeting on April 29, 2021.

IV. FINDINGS OF FACT

1. Respondent Wilson is a member of the state Senate representing the 30th Legislative District. She has served in the Senate since 2018.
2. Respondent SDC staff are various communications staff.
3. The complaint contained an attachment which is a picture of Respondent Wilson speaking in front of a lectern on which the banner “I Stand with Planned Parenthood” is displayed. The attachment was taken from the Senate Democratic Caucus website.

4. Respondent Wilson believes the photo was selected by the communications staff assigned to her when she was first elected. She indicated that she had no role in selecting the photo.
5. The SDC communications staff assigned to Respondent Wilson when she was first elected has no recollection of who selected the photo at issue in this complaint.
6. The photo at issue was taken by an LSS photographer. LSS was requested to photograph the rally at which Respondent's photo was taken.
7. One of an LSS photographer's duties is to photograph legislators in various aspects of their duties.
8. Many of the requests to photograph members come from the communications staff who work for the various caucuses.
9. LSS photos of members are downloaded onto a shared drive. The communications staff for each caucus has access to the shared drive.
10. The photos are available for legitimate legislative events. If the photos are to be used for personal reasons they must be purchased.
11. During the 2020 interim, the website on which Respondent Wilson's picture appeared was rebuilt by SDC staff. To the extent photos and text could be copied and pasted from the old website they were. The photo of Respondent Wilson at issue in this complaint had been on the old website and was cut and pasted onto the new website.
12. According to SDC staff, Respondent Wilson was not involved in or consulted about the photo selected for the new website. Rarely are legislators consulted about the photos SDC communications staff use in their publications. However, if a member would like a photo changed, the staff will accommodate that request.
13. SDC communications staff believed that the LSS photos on the shared drive had been "blessed" for legislative use as is. However, there has never been such a clearance issued; LSS takes the photos and loads them onto the shared drive; the communications staff decide how to edit and use them.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.160 prohibits the use of persons, property or money (often referred to in the opinions as "public resources") under a legislator's official control or direction, or in his or her official custody, for the private benefit of self or another unless that use is part of the legislator's official duties. *See, e.g., In re Schmidt, 2006 – No. 4.*

The first question is whether "public resources" were used. Legislative employees photographed Respondent Wilson and loaded the photo on a shared drive. The photo was taken off the shared drive by caucus communications staff and placed on the official caucus website. Since legislative staff are considered a public resource, clearly public resources were used in taking and posting the photo.

The next question is whether Respondents had official control over the photo that was placed on the caucus website. The term “control” is not defined in the Act; therefore, a dictionary definition will be used. “Control” is defined as follows: to exercise restraining or directing influence over; to have power over. MERRIAM-WEBSTER DICTIONARY. Based upon the facts presented, both Respondents had control over the publication of the photo. If Respondent Wilson had asked that the photo be removed or changed, the communications staff would have accommodated that request.

The posting of a photograph on a website is considered a publication. “Publication” is defined as the “act of offering something for the general public to inspect or scrutinize. It means to convey knowledge or give notice.” LEGAL DICTIONARY.COM. Access to the SDC website is available to the general public; in many respects the website on which Respondent Wilson’s photo appeared was built for public viewing. Members are ultimately responsible for their publications. *In re Marr, Oemig & Tom, 2007 – No. 3* (The Board not sympathetic to claims a document was not carefully reviewed or that legislators are too busy to question contents or proposed use); *In re Schmidt & Huff, 1998 – No. 3*. That Respondent Wilson had no involvement in choosing the photo is irrelevant; she is ultimately responsible for her publications.

The Act applies to all legislative staff. Furthermore, all legislative staff receive ethics training and have four ethics advisers they can consult about whether particular postings may pose ethical issues. In 2019, the Board issued an advisory opinion at the request of communications staff. *Advisory Opinion, 2019 – No. 2*. In that *Opinion*, the Board determined that the use of public resources to video a member explaining to constituents how legislative actions will or might impact them would not violate .160 even if the name of a business appears in the video. The Board was clear that the member could not extol the virtues of the business or mention it in any way because to do that might violate .160.

In this matter, we have a photo in which Respondent Wilson is speaking at a rally and the lectern at which she is standing states “I Stand with Planned Parenthood.” This photo is a violation of RCW 42.52.160 because it clearly promotes Planned Parenthood contrary to the statute which prohibits the use of public resources for the gain of another. Both Respondents should have been aware that this photo was a potential violation of the Act.

VI. ORDER AND STIPULATION AS TO RESPONDENT WILSON

IT IS HEREBY ORDERED: that reasonable cause exists that Respondents, Sen. Claire Wilson violated RCW 42.52.160 and that Respondent Wilson is ordered to pay a civil penalty of One Hundred dollars (\$100), payable to the Washington State Treasurer.




Judge Terry Lukens, ret., Chair



Date

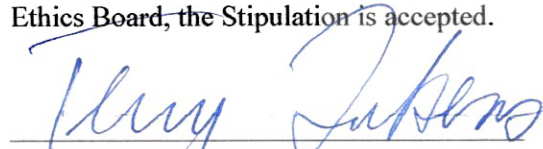
I, Claire Wilson, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal

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.


Sen. Claire Wilson

Date: 5/20/21

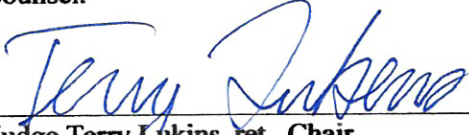
Having reviewed the proposed Stipulation as to Respondent Wilson, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.


Judge Terry Lukens, ret., Chair

Date: 6/3/21

VII. ORDER AND STIPULATION AS TO RESPONDENT SENATE DEMOCRATIC CAUCUS STAFF

IT IS HEREBY ORDERED: that reasonable cause exists that Respondent SDC staff violated RCW 42.52.160 and that SDC communications staff is to undergo refresher ethics training provided by Board counsel.



Judge Terry Lukens, ret., Chair

Date: 6/3/21

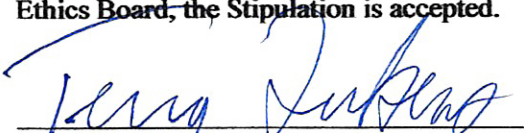
I, Paulette Avalos, as Staff Director of the Senate Democratic Caucus, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance 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.



Paulette Avalos

Date: 5/27/2021

Having reviewed the proposed Stipulation as to Respondent SDC staff, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.



Judge Terry Lukens, ret., Chair

Date: 6/3/21