

Legislative Ethics Board

BOARD MEMBERS:
REP. LAURIE DOLAN
TOM HOEMANN
REP. LARRY HOFF
SEN. JIM HONEYFORD
JUDGE TERRY LUKENS (ret.)
PAMELA MADSON
DAN McDONALD
SEN. JAMIE PEDERSEN
PAM TAJIMA PRAEGER



101 LEGISLATIVE BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
www.leg.wa.gov/leb
JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2021 – No. 2

In re Walsh
May 14, 2021

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The Complaint alleges the following: “Rep. Walsh [Respondent] made several offensively inappropriate comments, unbecoming of an elected official representing Washington state, toward multiple Black and people of color who gave public testimony.” The complaint alleges that these questions violated the Legislative Code of Conduct and the Ethics in Public Service Act (Act) in that legislators are to treat all others with respect, dignity and civility, regardless of status or position, and to refrain from engaging in hostile, intimidating, offensive or unlawful activities or behaviors that may amount to discrimination, harassment, sexual harassment, or bullying. Although the complaint does not cite a specific statute that has been violated, the allegations were investigated under RCW 42.52.070 (special privileges).

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. 3 was received by Board counsel on February 11, 2021 and was discussed during the Board’s regularly scheduled meetings on March 1, 2021 and April 29, 2021.

IV. FINDINGS OF FACT

A. General

1. Respondent has been a member of the House of Representatives since 2016 representing the 19th legislative district.

2. The following questions or comments by Respondent are what is alleged to have violated either the Code of Conduct or the Act.
- B. HB 1283 - Including the open carry or display of weapons within the offense of criminal mischief
3. On February 2, 2021, during a House Civil Rights & Judiciary Committee, Respondent commented as follows: “Rep. Senn, your testimony and bill are full of subjective standards. One of my constituents emailed me and said her concern is that she and a couple of friends who may choose to open carry, walk by some kind of protest on a city street and they would be in violation of this proposal’s standards.”
 4. Respondent asked Ms. Lyn Idahosa-Berry of the Federal Way Black Collective as she held her young son during her public testimony, “Thank you, Mr. Chair. Thank you. Ms. Idahosa, this bill as the prime sponsor just said, leaves enforcement discretion entirely to the feelings of law enforcement officers and prosecutors, is that a satisfying standard to you? It sounds like you’re objecting to exactly that kind of subjective enforcement of the law.”
 5. Respondent asked Liz Hjselmseth, a concerned citizen, “What is your interpretation of article 1 section 24 of the Washington state constitution?” Ms. Hjselmseth did not know. Respondent continued, “It’s the state analogy to the second amendment and the federal constitution.”
 6. Respondent asked Ms. Nyla Fritz, a middle school principal, who lost her little brother in a shooting in Moses Lake, Washington, the following question: “Ms. Fritz, you have brought up the hypothetical of the protest where you feel intimidation.” Ms. Fritz responded by saying this isn’t hypothetical and that it is very real. Respondent continued, “Ok, well you brought up the scenario. If in that scenario, someone and you say you feel intimidated carrying a long gun openly opposes you. If someone was standing next to you in agreement with your protest carrying a long gun openly, would you feel intimidated?” Ms. Nyla responded by saying “100 percent. The intent of the weapons there the firearms are intimidation.”
 7. Respondent asked Ms. Emma Silver the following question: “when the gun rights people accidentally showed up across from the temple. Did they have an intent?” Ms. Silver responded that the sight of guns is offered as a means of intimidation and was close to family and children against the Jewish community and that has stayed with her.
 8. Respondent asked the following question: “Ms. Hinchcliffe, I have really a sort of philosophical question for you. When one person’s feelings conflict with another person’s constitutional rights, which should prevail?”
 9. Respondent commented to Rabbi Daniel Weiner as follows: “Rabbi, I have to ask you, the same question I asked Ms. Hinchcliffe when one individual’s feelings conflict with another individual’s constitutional right, which should prevail?”
 10. Respondent asked Rabbi Daniel Weiner the following question: “Rabbi, you are simply reading a lot of subjective inference into the proposed legislation which does not include the language that you’re inferring that it does. Don’t you see that your inference of the language in this proposed legislation is itself an undermining of the practical effect of this bill?”

C. Email from Chair Hansen

11. On February 2, 2021, Rep. Drew Hansen, chair of the House Committee on Civil Rights & Judiciary, sent an email to all the persons who testified in support of HB 1283. That email stated as follows:

I'm writing to those who testified in support of HB 1283 in the Civil Rights and Judiciary Committee today. I want to apologize for how the hearing proceeded today—specifically, for how some members of the Committee treated several of you. We want the public to feel welcome to testify, and I did not do an adequate job ensuring that members of the Committee treated public testifiers with the respect and courtesy that we expect.

I will be speaking with the ranking member (the lead Republican on the committee, Rep. Walsh) again about our expectations for the Committee. I said at the beginning of today's hearing (and had earlier communicated to Rep. Walsh) that we expect a civil, respectful Committee, which was clearly not the experience this morning. I should have done a better job enforcing that decorum among the members, which is on me, but I will be speaking with Rep. Walsh to reinforce our expectations—as some members may be more receptive to that message from Rep. Walsh rather than me.

I wanted to thank you for coming to testify this morning. It takes a lot of courage to testify in public, especially on an issue that causes many of you to revisit especially painful experiences in your lives. I am deeply grateful that you took the time to testify, and I apologize wholeheartedly that the Committee did not hear your testimony with the respect and civility that you deserve.

Sincerely, Rep. Drew Hansen

D. Respondent's Response

12. Respondent indicated that the questions he asked the various witnesses were not meant to offend the people testifying nor were they intended to be racist. He indicated that he asked the questions seeking clarity on the positions the testifiers had taken in their testimony on the bill.

V. ANALYSIS AND CONCLUSIONS OF LAW

A. Legislative Code of Conduct

The legislature adopted the Legislative Code of Conduct in House Concurrent Resolution 4401 during the 2019 session. The Code of Conduct provides as follows:

The Legislature is committed to maintaining a professional and respectful environment for all members of the legislative community.

As stewards of the public trust each member of the legislative community is expected to:

- *Conduct themselves with self-awareness, self-respect, and professionalism;*
- *Treat all others with respect, dignity, and civility, regardless of status or position; and*

- *Refrain from engaging in hostile, intimidating, offensive, or unlawful activities or behaviors that may amount to discrimination, harassment, sexual harassment or bullying.*

This Code of Conduct applies equally and at all times to all members of the legislative community, both on and off the capitol campus.

The Board has no independent subject matter jurisdiction over alleged violations of the Code of Conduct. To the extent an alleged violation of the Code of Conduct could also be construed as a violation of the Ethics Act, however, the Board would have concurrent subject matter jurisdiction with House and Senate administrations.

B. Special Privileges (RCW 42.52.070)

RCW 42.52.070(1) prohibits a legislator from using his or her position to obtain something someone similarly situated would not be able to obtain. Pursuant to an amendment made to the statute during the 2019 session, the legislature also included, in pertinent part, the following language:

(2) For purposes of this section, and only as applied to legislators and employees of the legislative branch, “special privileges” includes, but is not limited to, engaging in behavior that constitutes harassment. As used in this section:

(a) “Harassment” means engaging in physical, verbal, visual, or psychological conduct that:

(i) Has the purpose or effect of interfering with the person’s work performance;

(ii) Creates a hostile, intimidating, or offensive work environment

....

The complaint alleges that Respondent, by his questions to several people who testified, harassed them, which is prohibited by RCW 42.52.070. Because the addition of “harassment” to RCW 42.52.070 is so recent, the Board has only issued one ruling on what conduct constitutes harassment in the legislative context. See *In re Morgan*, 2020 – No. 3. That ruling is not applicable to the facts of this case.

C. Article II, §17, Washington State Constitution

Article II, § 17 of the Washington Constitution provides: “No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.” The scope of the state constitution’s “speech and debate” clause has never been considered by the Washington courts. To the extent other courts in states with similar constitutional provisions have considered this issue, however, they have determined that if a member is engaged in legislative business at the time he or she makes a statement, he or she is acting within the privilege afforded by that state’s constitution. *AGO Opinion No. 134* (May 14, 1962).

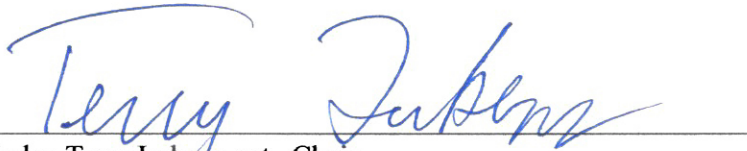
A canon of statutory construction provides that a “statute ought not to be construed to violate the constitution if any other possible construction remains available.” *Rust v. Sullivan*, 500 U.S. 173 (1991). In determining the meaning of “harassment” for purposes of RCW 42.52.070, therefore, the Board should not interpret the term in a way that would penalize conduct or speech that is protected by Article II, § 17 of the Washington constitution; doing so would cause RCW 42.52.070(2) to violate the constitution as applied.

The Board holds that when legislators ask questions or make comments to persons testifying on bills during an official legislative committee hearing, those comments or questions cannot constitute harassment for purposes of RCW 42.52.070, even if the questions are offensive, insensitive, rude or awkward. Even though the actions in this complaint may not violate the Act, they may nevertheless constitute a violation of the Legislative Code of Conduct.

VI. CONCLUSION AND ORDER

The Board finds no reasonable cause to believe the Respondent violated any provisions of the Act as alleged in this Complaint.

IT IS HEREBY ORDERED that this Complaint be dismissed.



Judge Terry Lukens, ret., Chair

Date: 5/14/21