

Legislative Ethics Board



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COMPLAINT 2022 – No. 7

In re Randall

APRIL ~~May 30~~, 2022

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated the Ethics Act (RCW 42.52.180) and the guidance contained in ETHICS ALERT (September 2019) when she retweeted on her official Twitter account a tweet from the Children’s Alliance that she had been named a 2021 Champion for Children by the Alliance.

II. JURISDICTION

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

III. PROCEDURAL HISTORY

Complaint 2022 – No. 7 was received on February 26, 2022, and was discussed during the Board’s regularly scheduled meeting on April 18, 2022.

IV. FINDINGS OF FACT

1. Respondent is a member of the state Senate representing the 26th legislative district. She has served in the Senate since 2018.
2. On September 16, 2021, the Children’s Alliance tweeted the following regarding Respondent:

“Congrats #SenEmilyRandall! Thank you for your leadership in carrying multimillion-dollar request for investments in #childcare and early learning to your colleagues during the Senate budget planning process.”

3. This tweet was retweeted on Respondent’s official Twitter account on 9/16/21 with the following introductory message: “What an honor to partner with you -- & so many other powerful advocates for kiddos & families – in this work! #WaLeg”
4. Generally, items are posted on official social media pages, including Twitter, by caucus communications staff. Respondent has the ability to post items on her official social media accounts but indicated she does not post to her official Twitter account.

V. ANALYSIS AND CONCLUSIONS OF LAW

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 the 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. And as the Board has previously stated there is zero tolerance for the use of legislative facilities for campaign purposes even if there has been no actual assistance to a campaign. *In re Hunt*, 2019 – No. 3; *In re Young*, 2017 – No. 41; *In re Johnson*, 1996 – No. 1; *Advisory Opinion* 1995 – No. 18.

The statute provides a non-exclusive list of what constitutes “facilities of an agency.” The Board has determined that official social media accounts are considered “facilities of an agency.” *In re House Democratic Caucus*, 2019 – No. 13. Further, the Board has also held that a “tweet” drafted, edited, approved and released by legislative staff is considered a “facility of an agency.” *In re MCC*, 2016 – No. 9.

The statute contains several exceptions to the prohibition. One of those exceptions is for “activities that are part of the normal and regular conduct of the office or agency.” RCW 42.52.180(2)(d). The Board has construed this phrase in various opinions over the years based upon the different fact patterns presented to it. *See, e.g., In re Hargrove*, 2016 – No. 2; *In re McCune*, 2021 – No. 1; *Advisory Opinion* 1996 – No. 2.

In September 2019, the Board issued an ETHICS ALERT concerning the posting on official social media and websites of a legislator’s scorecard. The purpose of scorecards is to inform the organizations’ members how legislators have performed on legislative issues of importance to the issuing organization. Scorecards are also used to educate voters in their decision making at the ballot box and can be useful for other organizations’ endorsement of candidates. The Board determined that the fundamental purpose of scorecards is for use in political campaigns and to allow such postings on official websites or social media would violate RCW 42.52.180.

As a result of the issuance of this ALERT, the question arose whether the ALERT also prohibited “Legislator of the Year” (LOY) type awards to be posted on official sites. At the Board meeting on October 14, 2019, the Board discussed these awards. The discussion involved the differences between the LOY awards and scorecards. Some members of the Board believed that LOY were provided to legislators to recognize their legislative work in the previous session and therefore, there was a sufficient legislative nexus permitting the posting of such awards on official sites. Other members believed that LOY are not that dissimilar to scorecards and would be used for campaign purposes. There was some

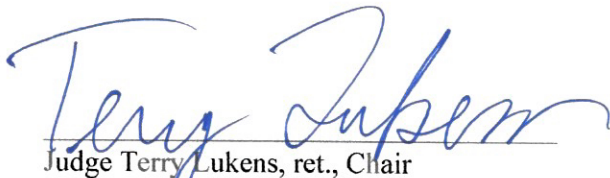
discussion that LOY awards posted on official sites close to campaign season might be suspect. However, the Board did not make a final decision on this topic and chose to wait until it received a complaint.

In this matter, the question is whether Respondent violated RCW 42.52.180 by posting her award on an official Twitter site. The official Twitter site is a “facility of an agency.” The question then becomes whether the posting violates RCW 42.52.180 – was it done to assist a campaign – or does it fall within the “normal and regular conduct” of a legislator?

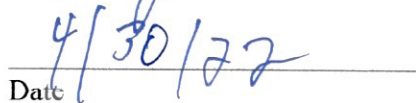
Every year, many organizations issue recognition awards to legislators who have championed their causes, usually through the legislators’ advocacy of legislation supported by the organization issuing the award or recognition. This recognition has been called by titles such as Legislator of the Year or Champion of (blank cause). These awards typically have significant legislative nexus because they recognize legislators for the legislative work they have done in their official capacities as legislators. The Board believes that communicating about these types of awards falls within “the normal and regular conduct” exception to the prohibition contained in RCW 42.52.180. The posting of such awards or recognition on official websites or official social media does not violate RCW 42.52180.

VI. ORDER

IT IS HEREBY ORDERED: that reasonable cause does not exist that Respondent, Sen. Randall, violated RCW 42.52.180.



Judge Terry Lukens, ret., Chair



Date