

Legislative Ethics Board

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COMPLAINT 2024 – No. 5

In re Wirtz
May 1, 2024

NO REASONABLE CAUSE – ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated the Ethics Act by using public resources with which to discuss the six initiatives to the legislature. Although the complaint does not cite a specific provision of the Act to have been violated by Respondent, the Board has analyzed the complaint as alleging a violation of RCW 42.52.180 (use of public resources for campaign purposes).

II. PROCEDURAL HISTORY

Complaint 2024 – No. 5 was received on March 12, 2024 and discussed at the Board's regularly scheduled meeting on April 22, 2024.

III. JURISDICTION

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

IV. FINDINGS OF FACT

1. Kim Wirtz is the Communications Director for the Senate Republican Caucus (SRC).
2. She attended the Roanoke Conference that started at 5:00 on Friday, January 26, 2024 and ended at 11:30 am on Sunday, January 28, 2024. The conference was held at the Ocean Shores Convention Center. Wirtz is a board member of the Roanoke Conference.
3. Toward the end of the Q&A portion of the breakout session on Saturday, entitled "Taking Initiative: How the Six Big Initiatives are Changing Politics and This Year's Election," there were still lots of questions. Ms. Wirtz indicated she texted Jim Troyer, Staff Director of the SRC and asked if she should mention the pages about the initiatives the SRC had published on its website. Mr. Troyer said yes and the following are the remarks made by Ms. Wirtz.

4. *"So my name is Kim Wirtz and I'm the communications director for the Senate Republicans. And so when these people up here are talking about getting educated, I have resources that you can use to do so. I've created the document that I handed out to you on your way in. We have a website for Senate Republicans. It is SRC.wastateleg.org. and in the coming week now that all six initiatives have been certified, we will be building out resource pages on the website for you to use.*

One thing that you should note is that the caucuses from the legislative perspective can only communicate on these initiatives until March 7th, which is Sine Die. That's the last day of the legislative session. After that day, they become ballot measures again, after which I and my staff cannot communicate on them anymore. And that turns it over to the politicians to discuss them on their personal time, on their private time, and on their campaign if they're running for reelection.

So the other thing is to watch our social media, which is @WashingtonSRC and we have a Facebook page and we have Instagram and we have X. And we do a lot of messaging on these issues and on the initiatives themselves. Feel free to comment, feel free to share any of that stuff. Again, I will have to stop posting fresh content on that as of March 7th. But up until then, please feel free to share. And even after then the posts should be perennial enough that you could continue to share them throughout the summer."

5. Complainant alleges that it is an ethics violation for Ms. Wirtz to offer materials paid for with tax dollars to use through election day.
6. Complainant also alleges that her use of collective pronouns in her speech suggests that she was not alone in drafting or preparing these materials and that other caucus members are likely involved.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.180 prohibits the direct or indirect use of public resources by a legislator or legislative staff person to assist the campaign for election of a person to an office or for the promotion or opposition to a ballot proposition. Legislators and staff are permitted to promote or oppose a ballot measure using public resources if they do so by engaging in activities that are part of the "normal and regular" conduct of a legislator or legislative staff. RCW 42.52.180(2)(c).

It is within the "normal and regular" conduct of a legislator to discuss an Initiative to the Legislature or argue for or against it during a legislative session as they would any other piece of legislation. *Advisory Opinion* 1997 – No. 5. It is within the "normal and regular" conduct of communications staff to assist legislators in doing so. If an Initiative to the Legislature is not passed by the end of session, it reverts to a ballot measure and public resources cannot be used to support or oppose it either directly or indirectly.

Of the six initiatives to the legislature this past session, all six¹ were before the legislature by the time the Roanoke Conference began. The Board has previously determined that an Initiative to the Legislature

¹ I-2113 was received 1/11/24; I-2117 was received 1/16/24; I-2081 was received 1/18/24; I-2109 was received 1/23/24; I-2111 was received 1/24/24; and I-2124 was received 1/26/24.


is “before the legislature” when it has been finally certified by the Secretary of State and received by either chamber of the legislature. *Ethics Alert*, January 2024.

In this matter, Ms. Wirtz was attending the conference on her own time – a weekend. There is no evidence to support Complainant’s claim that she used public resources in preparation for her remarks. In fact, her remarks were completely impromptu. Further, the initiatives were before the legislature at the time of her remarks. As such they could be discussed as if they were bills currently pending before the legislature.

Complainant is also concerned that the materials Ms. Wirtz referred to in her remarks could be used even after session ended. Official legislative websites² may contain discretionary material which was “[s]pecifically prepared for the legislator in the course of his or her duties as a legislator including press releases and newsletters.” RCW 42.52.180(2)(c)(i). The materials that Ms. Wirtz referred to as being available on the SRC website and on social media that discuss the initiatives are discretionary materials prepared during the legislative session and pursuant to the statute would remain available even after the session ended and the restrictions on the use of public resources regarding ballot measures resumed.

VI. ORDER

IT IS HEREBY ORDERED: that there is no reasonable cause to believe Respondent violated the Ethics Act. The complaint is hereby dismissed.



Tom Hoemann

Date: May 2, 2024

² This term includes social media such as Facebook, Instagram and X (formerly Twitter).