

# Legislative Ethics Board

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## COMPLAINT 2024 – No. 6

*In re Mullet*

June 4, 2024

### ORDER OF DISMISSAL

#### I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated the Ethics Act by using commenting on his opponent in the Governor's race while appearing on the air while sitting in his legislative office using legislative equipment during the 2024 session in violation of RCW 42.52.180.

#### II. PROCEDURAL HISTORY

Complaint 2024 – No. 6 was received on March 27, 2024 and discussed at the Board's regularly scheduled meeting on May 21, 2024.

#### III. JURISDICTION

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

#### IV. FINDINGS OF FACT

1. Respondent is currently a member of the Senate representing the 5<sup>th</sup> legislative district. He was first elected in 2012 and has been re-elected several times since.
2. Complainant is an attorney residing in Tacoma.
3. Respondent announced his candidacy for Governor of the state of Washington on June 1, 2023.
4. Bob Ferguson announced his candidacy for Governor of the state of Washington on September 7, 2023.

5. Respondent appeared on Brandi Kruse’s show, “Undivided,” on February 28, 2024. The complete running time of the show was 30+ minutes although Respondent’s portion was only about 12 minutes.
6. The 2024 legislative session ran from January 9, 2024 to March 7, 2024.
7. At the start of the segment in which Respondent appeared, Ms. Kruse introduced him as a state Senator and also stated that he was a candidate for Governor.
8. Respondent conducted the interview with Brandi Kruse from his legislative office using legislative equipment.
9. During the interview, Ms. Kruse asked Respondent multiple questions about the initiatives that were currently before the legislature. Respondent discussed the initiatives that would receive legislative hearings and those that would not. They also discussed several bills pending before the legislature. Ms. Kruse asked Respondent several questions about the initiative that would affect the Climate Commitment Act (CCA).
10. Ms. Kruse specifically asked Respondent whether he would vote to repeal the CCA.
11. In response to Ms. Kruse’s question about whether he would vote to repeal the CCA, Respondent stated: “I have zero confidence, zero confidence, that Bob Ferguson will do anything different than what Jay Inslee has done which is he will drive up prices as high as possible and so if that is the case where I’m looking at, you know, a chance of Bob Ferguson being Governor, like, yeah I would be extremely uncomfortable with that possibility.”
12. At the time of this response, there appeared on the video a picture of Bob Ferguson.

#### 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 Reed*, 2023 – No. 3; *In re Hunt*, 2019 – No. 3; *In re Young*, 2017 – No. 41; *In re Johnson*, 1996 – No. 1; *Advisory Opinion* 1995 – No. 18.

Even if a legislator or legislative employee did not intend to violate the Act, intent is not required to establish a violation of RCW 42.52.180. *In re Carrell*, 2008 – No. 3. Furthermore, .180 “prevents legislators from having unfettered use of state resources to assist their campaigns and the legislature has declared that the Act shall be construed liberally to effectuate its purposes and policy . . .” RCW 42.52.901.” *See also In re Stambaugh*, 2016 – Nos. 8 & 13.

“Candidate” is defined as any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when the individual first: (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote the individual's candidacy for office; (b) Announces publicly or files for office; (c) Purchases commercial advertising space or broadcast time to promote the individual's candidacy; or (d) Gives consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection. RCW 42.17A.005(8).

Both Respondent and Bob Ferguson had publicly announced their candidacy for the same office in 2023. Pursuant to the definition cited above, they were both candidates running for the same office at the time Respondent appeared on “Undivided.”

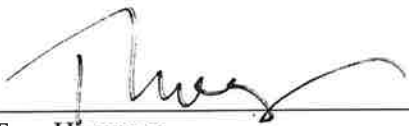
Although Respondent mentioned Bob Ferguson in his comments during the show, it appears to be a somewhat ambiguous comment in an otherwise legitimate discussion about initiatives to the legislature and other pending legislation. The question and Respondent’s response constituted approximately 23 seconds of the 12 plus minutes Respondent participated in the program. RCW 42.52.425 (1)(b) authorizes the board to issue an order of dismissal “if any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and after consideration of all the circumstances, further proceedings would not serve the purposes” of the Act.

Accordingly, having considered the Respondent’s comments and all of the circumstances, the Board finds that further proceedings would not serve the purpose of the Ethics Act.

The Board recognizes that during the legislative session, legislators are frequently interviewed by the press and asked to comment on a variety of issues. Those interviews regularly happen from legislative offices, caucus rooms, or from the wings of the House or Senate. The Board cautions legislators to use care in their comments to the press and others during the election season when speaking from state property and using legislative technology. Legislators should avoid comments on any campaign issues in that situation, as even an off-hand comment while using public resources could constitute a violation.

VI. ORDER

IT IS HEREBY ORDERED: The complaint is hereby dismissed pursuant to RCW 42.52.425(1)(b).

  
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Tom Hoemann

Date: June 4, 2024