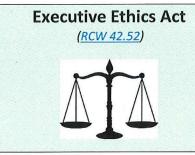
GUIDANCE CHART

I am a state employee working in an office of a state elected official (Office of the Governor). As a private citizen, I would like to volunteer on the Governor's election campaign. I know there are some laws that might impact that volunteer activity. *Question:* What are the "rules of the road"? *Answer:* This chart provides a guide. More analysis might be required in a particular situation. Note: State laws, rules, opinions and policies are as of the date below.

As a Campaign Volunteer, Can I ...



Public Records Act Considerations (RCW 42.56)

Other Considerations (Maybe talk to your supervisor or your agency's ethics



GENERAL PROHIBITIONS AND CONSIDERATIONS

1. Use my	No. <u>RCW 42.52.180; RCW 42.52.070</u> .	A "public record" is any	Before volunteering for the
agency facilities		writing containing information	campaign as a private
(state employee	"Facilities of an agency" are broadly	relating to the conduct of	citizen, you may wish to
time, or agency	defined in RCW 42.52.180(1) to	government or the	review this chart. Consider
printers,	"include, but are not limited to, use of	performance of any	your state employee official
computers, email	stationery, postage, machines, and	governmental or proprietary	job duties. Consider
systems, non-	equipment, use of state employees of	function prepared, owned,	whether any records you
public internet	the agency during working hours,	used, or retained by any state	create or receive contain
access, paper,	vehicles, office space, publications of	agency regardless of physical	information relating to the
cell phones,	the agency, and clientele lists of	form or characteristics. <u>RCW</u>	conduct of or the
databases,	persons served by the agency." See	42.56.010. Location does not	performance of government,
vehicles, etc.) to	specific examples and considerations	matter; public records can be	are related to your job
assist a	in this chart.	located in non-agency	responsibilities (within the
campaign?		accounts/devices such as	scope of your employment)
	See also <u>WAC 292-110-010(1)</u> –	public employees' personal	and further your agency's
	Executive Ethics Board (EEB)	email accounts or smart	interests. Consider any
	"Statement of Principles": "All state	phones. Also, agency records	agency policies/directives.
	employees and officers are	of activities alleging or	See, e.g., Office of the
	responsible for the proper use of state	showing a violation of the	Governor Administrative
÷	resources, including funds, facilities,	Executive Ethics Act are public	Policy – Ethics.
	tools, property, and their time."	records.	
2. Use	No. <u>RCW 42.52.160; RCW 42.52.050;</u>	See public record definition	See considerations above.
confidential or	<u>RCW 42.52.070</u> .	and considerations above.	In reviewing your official job
non-public	"Confidential information" means (a)		duties, consider whether in
information I	specific information, rather than		your campaign volunteer
obtained in my	generalized knowledge, that is not		work, you will be asked to
position at my	available to the general public on		provide confidential or non-
agency, to assist	request or (b) information made		public information obtained
a campaign?	confidential by law. <u>RCW</u>		at your agency.
	<u>42.52.010(5).</u>		
	See specific examples and		
	considerations in this chart. See also		
1	WAC 292-110-010(1) (above).		
3. Conduct	No. <u>RCW 42.52.020</u> .	See public record definition	See considerations above. In
campaign	See specific examples and	and considerations above.	reviewing your official
activities that are	considerations in this chart. See also		duties, consider whether
incompatible	WAC 292-110-010(1) (above).		your volunteer activity is
		APPROVED	

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Date:

As a Campaign Volunteer, Can I	Executive Ethics Act (RCW 42.52)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
with my official agency duties?	"Official duty" means "those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution." <u>RCW 42.52.010(12)</u> . What is an "incompatible activity"? Any activity that may conflict with the proper discharge of your official duties. It could be outside employment, a volunteer activity, ownership of a private business or any private activity, relationship, business, etc. that would <i>impair/conflict with</i> <i>your ability to make decisions on</i> <i>behalf of the state</i> . <u>EEB Online Ethics</u> Quiz.		incompatible with your public agency official duties. Would a reasonable person conclude that the campaign's interest (in the particular matter for which you are volunteering) impairs your independent and impartial judgment in the exercise of your official public agency duties? See EEB Online Ethics Quiz.

SPECIFIC EXAMPLES

(In no particular order. Not an exhaustive list. Check with your supervisor or agency ethics contact if you have questions or other examples.)

4. Write	Yes, when:	You need to be clear that the	Does your state employment
campaign	(1) on your own time; ¹ and,	speech does not relate to the	official job duties require
speeches for or	(2) using	conduct/performance of	you to write speeches for
at the request of	(a) your own resources, or the	government and you are not	the Governor? That is, does
the campaign?	campaign's resources (computers,	writing this speech in your	the campaign speech you
	devices, paper, etc.);	public employment capacity.	were asked to write (as a
	and,	(Otherwise, you may be	volunteer) directly relate to
	(b) your own general knowledge and	creating a public record.)	your same or similar public
	experience, including that gained		agency responsibilities with
	while a state officer or employee, ²		respect to speechwriting? If
	and,		so, is there a potential

¹ "**Own time**" means <u>non-working hours</u>. <u>RCW 42.52.180</u> (public facilities include "use of state employees of the agency during working hours"). See <u>WAC 292-110-020(1)</u> ("Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during nonworking hours provided that the state officer or state employee who engages in activity that would fall under RCW 42.52.180(1) during nonworking hours does not use any facilities of an agency.") See that rule for a detailed discussion of what constitutes "working hours." By Governor's Office practice, requests for leave must be submitted and approved in advance when you are participating in campaign activities during your working hours.

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² The EEB does **not** consider "general knowledge and experience gained while a person is a state officer or employee to be a state resource." <u>EEB Advisory Opinion No. 11-01</u>. The opinion also holds that in general, a state officer or employee with "specialized knowledge" can accept employment as an expert witness when (1) he/she does not use state resources including confidential information, (2) the outside employment is consistent with agency policies, and (3) the outside work does not "conflict with the proper discharge of official duties under RCW 42.52.020."

As a Campaign Volunteer, Can I	Executive Ethics Act (<u>RCW 42.52</u>)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
	 (c) non-confidential information (such as information that is already public on a website, or reliably available through the internet such as through search engines like Google, or from public records already publicly disclosed, or from information announced at a public gathering); and, (3) the activity does not present a conflict of interest with (is not incompatible with) your official duties. 		conflict of interest (would writing the campaign speech require you to engage in an activity that is in conflict with interferes with the proper discharge of your official duties, or require you to use non-public or confidential information)? For example, if your public agency duties require you to write a speech for the Governor that is <u>pro</u> -roses, but the campaign wants you to write a speech for the Governor as a candidate that is <u>anti</u> -roses, is there a conflict of interest with your official public duties (that is, do you have "divided loyalties")? ³
5. Conduct research at the	Yes, <u>when</u> : (1) on your own time; <u>and</u> ,	You need to be clear that you are not researching as part of	Is it your state employment official duty to conduct
specific request	(2) using	your public employment	research on those same
of the campaign?	 (2) using (a) your own resources, or the campaign's resources (computers, devices, paper, etc.); and, (b) your own general knowledge and experience, including that gained while a state officer or employee, and, (c) non-confidential information (such as information that is already public on a website, or reliably available through the internet such as through search engines like Google, or from public records already publicly disclosed, or from information announced at a public gathering); and, (3) the activity does not present a conflict of interest with (is not incompatible with) your official duties. 	capacity. (Otherwise, you may be creating a public record.)	matters? That is, does the research you are doing for the campaign as a volunteer, directly relate to your public agency responsibilities? If so, is there a conflict of interest (would conducting the research for the campaign require you to engage in an activity that is in conflict with interferes with the proper discharge of your official duties, or require you to use your agency's non-public or confidential information)? In addition, in their state employment capacity, staff

³ See <u>EEB Advisory Opinion No. 98-04</u> (describing where an activity may result in "divided loyalties" given an agency employee's official duties.)

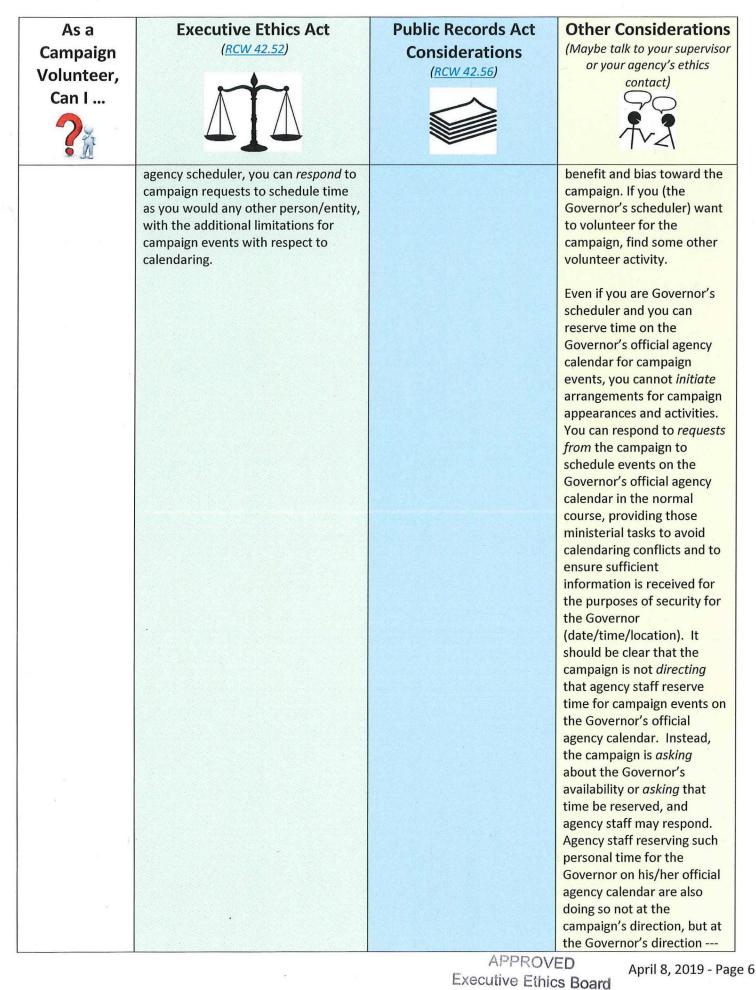
Executive Ethics Board Date: 5-10-19

As a Campaign Volunteer, Can I	Executive Ethics Act (RCW 42.52)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
			may conduct research for the Governor on issues of public concern, and accordingly, in his official capacity, he may issue statements reflecting his position on any public policy issues. Any person, including the media, stakeholders, or even campaigns, can request information about the Governor's position on a matter, and staff can respond in their normal and regular manner. However, on state work time, staff cannot research and prepare a policy response that is specifically designed to assist a campaign. For staff conducting the research, you will want to avoid conducting research when you are doing so only because you expect it will be requested by a campaign. A determination of whether a particular inquiry from a campaign is a general question about the Governor's (official agency) position on a matter, or is in
			effect a request for staff to research the matter and develop a policy statement at the specific request of the campaign, may need to be decided on a case-by-case basis.
6. On behalf of the campaign, submit comments to the	Yes, <u>when</u> : (1) on your own time; <u>and</u> , (2) using your own resources, or the campaign's resources (computers,	The writings to/from the campaign about the draft of the official speech are public records.	Do your agency official job duties require you to solicit comments from stakeholders on draft

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As a Campaign Volunteer, Can I	Executive Ethics Act (RCW 42.52)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
Governor's office on the draft of an official (office) speech?	devices, paper, phones, vehicles, etc.); <u>and</u> , (3) the activity does not present a conflict of interest with your official duties.	Agency records of activities alleging or showing a violation of the Executive Ethics Act are public records.	speeches? If so, don't you have a conflict by both soliciting and submitting comments? If others in your office are soliciting comments on the draft, is it normal and regular to do so? <i>However</i> , caution is advised if the state agency is soliciting comments on the draft <u>only</u> from the campaign. This effort could be viewed as assisting the campaign, or providing a special privilege or confidential information to the campaign.
7. Speak at a campaign event on behalf of the candidate (Governor)?	Yes, when: (1) on your own time; and, (2) using your own resources, or the campaign's resources (including travel resources). <i>However</i> , you cannot use your state employment non-elected job title <u>unless</u> you make it clear in a disclaimer you are speaking in your personal capacity only, and not on behalf of your agency. <u>EEB Advisory</u> Opinion 00-08.	If you have speaking notes or a written speech, it needs to be clear that these were not prepared in your public employment capacity, and you did not use public agency facilities in preparing the speech or traveling to the campaign event. (Otherwise, you may have created a public record.)	If there is campaign advertising or announcements about your speech, have you made it clear to the campaign that you are not speaking on behalf of your agency? Have you included a disclaimer in your remarks? If the speech is during your work hours, you will need to submit a leave slip and obtain
8. On behalf of the campaign, assist the campaign in scheduling campaign events where the candidate (Governor) will be or is asked to speak?	Yes, when you are not the scheduler for the Governor. On behalf of the campaign, you can contact your agency through the office's normal and regular channels that apply to any person or entity asking for time on the Governor's calendar. You are not permitted to use your state employment position to secure special privileges for other persons. No, when you are the Governor's scheduler. You should not be volunteering as a scheduler for the campaign. Instead, as the Governor's	Writings with communications to/from the campaign with respect to scheduling events on the Governor's calendar are public records.	leave slip and obtain approval in advance. If you are both the Governor's scheduler (your official duty), and the campaign's scheduler, there a conflict of interest. The campaign volunteer work can place you in an activity that is in conflict with your official duties, and/or require you to use non- public or confidential information. There can be a perception or a consequence that your activities will result in

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As a	Executive Ethics Act	Public Records Act	Other Considerations
Campaign	(<u>RCW 42.52</u>)	Considerations	(Maybe talk to your supervisor
		(RCW 42.56)	or your agency's ethics
Volunteer,			contact)
Can I		\sim	~
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2			Tra
5 1		and the second se	1
			either generally, or only for
			specific appointments,
			depending upon the
			circumstances.
9. Engage in	Yes, <u>when</u> :	Records of requests from the	If you engage in these
other common	(1) on your own time; <u>and</u> ,	campaign for you to conduct	campaign activities during
campaign	(2) using your own resources, or the	these volunteer activities, and	your work hours, you will
activities at the	campaign's resources (computers,	your responses, typically do	need to submit a leave slip
request of the	devices, paper, phones, vehicles,	not relate to governmental or	and obtain approval in
campaign (stuff	etc.); <u>and</u> ,	proprietary functions, and are	advance.
envelopes,	(3) the activity does not present a	typically not public records.	
maintain	conflict of interest with your official	However, no such records	
campaign	duties.	should be in your agency	
websites,		accounts, or on agency	
doorbell, and the		devices.	
like)? 10. Work with	Yes, when:	You need to be clear that you	If you engage in these
the campaign on	(1) on your own time; <u>and</u> ,	are not strategizing with the	campaign activities during
campaign	(2) using	campaign in your public	your work hours, you will
strategy?	(a) your own resources, or the	employment capacity, and are	need to submit a leave slip
01	campaign's resources (computers,	using your own or the	and obtain approval in
	devices, paper, etc.);	campaign's resources with	advance.
	and,	respect to any activities.	
	(b) your own general knowledge and	(Otherwise, you may be	See also considerations in ##
	experience, including that gained	creating a public record.)	4 & 5 above (campaign
	while a state officer or employee,		research, speeches).
	and,		
	(c) non-confidential information (such		
	as information that is already public		
<u>_</u>	on a website, or reliably available		
	through the internet such as through		
	search engines like Google, or from		
	public records already publicly		
	disclosed, or from information		
	announced at a public gathering); <u>and</u> ,		
	(3) the activity does not present a		
	conflict of interest with your official		
11 On habelf of	duties.	Records of such requests that	If providing such
11. On behalf of	Yes, <u>when</u> : (1) on your own time; <u>and</u> ,	were prepared, owned, used	briefings/information is part
the campaign, ask for	(1) on your own time; <u>and</u> , (2) using your own resources, or the	or retained by the state	of your official job duties at
	campaign's resources (computers,	agency are "public records."	the agency, requesting such
"briefings" or information	devices, phones, email address); <u>and</u> ,	agency are public records.	briefings as a campaign
sharing about the	(3) the activity does not present a		volunteer may be a conflict
business of the	conflict of interest with your official		and may be incompatible
Governor?	duties.		with your public duties. See
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As a Campaign Volunteer, Can I	Executive Ethics Act (RCW 42.52)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
12. On behalf of the campaign, make a Public Records Act request to my agency?	Yes, when you submit the PRA request: (1) on your own time; and, (2) using the campaign's or your own resources including email or mailing account/address; and, (3) using the <i>normal and regular</i> <i>channels</i> for a PRA request (typically directed to the agency's public records officer or other publicly described point of contact). Remember, however, that you cannot use your insider confidential knowledge to provide a special privilege to the campaign. So, for example, based on your insider knowledge obtained in your employment position, you could not tell the campaign to ask for specific records that you know have not otherwise been made publically available or publically discussed.	The request itself, and the agency's response(s), are public records. The PRA does not permit agencies to distinguish among requesters, unless a law permits. <u>RCW 42.56.080(2)</u> .	also considerations in ## 4 & 5 above (campaign research, speeches). It may be prudent for someone else on the campaign to ask the agency for a briefing. <i>Caution:</i> state employees <i>receiving</i> such requests from campaigns for briefings should communicate in the same way as they would with the public and the media with respect to inquiries about issues, policies, legislation and records of actions or accomplishments. If you are the agency's Public Records Officer or designee, making a PRA request on behalf of the campaign to your agency could be a conflict of interest and incompatible with your public duties. If you decide to make such a request on behalf of the campaign nevertheless, at minimum, you must screen yourself from the agency's processing and responses, except to produce your responsive public records. There may be other steps you need to take. Talk to your supervisor or your agency's ethics contact.
13. Take or make calls, texts or emails on behalf of the campaign, with respect to	Yes, <u>when</u> : (1) done on your own time (including a break time); <u>and</u> , (2) with your own devices.	Records of calls/texts/emails to/from the campaign with respect to your volunteer activities, and your responses, do not relate to governmental	If you need to take/make such a call/text/email, use your personal device and do it while on a break or during non-work hours. Step

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As a	Executive Ethics Act	Public Records Act	Other Considerations
Campaign	(<u>RCW 42.52</u>)	Considerations	(Maybe talk to your supervisor
		(RCW 42.56)	or your agency's ethics
Volunteer,		(1.000 (2.00)	contact)
Can I		\wedge	20
?*			Tra
my volunteer activities at the campaign?	In addition, you must take or make such calls/texts/emails only in the public area of your building (not in your office or your cubicle, or at your work station).	or proprietary functions, and are typically not public records. <i>However</i> , no such records should be in your agency accounts, or on agency devices.	outside or into a public area of your office (areas accessible to the public – public hallways, cafeterias, reception areas, etc.).
14. Wear campaign buttons or clothing at the state office?	Maybe. Personal clothing is not considered a "public facility." <i>However</i> , caution and prudence are advised. Closely related activity in the state workplace, such as wearing political buttons while interacting with the public, could result in prohibited campaigning or violate agency policy. <u>EEB Advisory Opinion 02-02A</u> .	Agency records of activities alleging or showing a violation of the Executive Ethics Act are public records.	Special caution is advised if your official job duties require you to interact with the public, in-person. <i>Query:</i> Would a reasonable member of the public believe this activity was a candidate endorsement being made on state agency time?
			The Governor's Office strongly requests that you not wear campaign buttons or clothing during your work hours.
15. Have campaign signs or bumper stickers on my personal car, which is parked on state property?	Yes. This is allowed, so long as it is your personal vehicle. No campaign signs/bumper stickers are permitted on state vehicles.	Agency records of activities alleging or showing a violation of the Executive Ethics Act are public records.	Some caution may be advised if your car is regularly parked in a prominent public area related to your office, such as next to the front door. <i>Query:</i> what would a reasonable member of the public think?
16. Put up campaign signs, stickers in my cubicle, office or work space?	No. These are agency facilities. While we appreciate that you may consider some portions of that space your "personal space", to avoid the perception that the agency is endorsing a particular candidate, we do not want current campaign signs or stickers posted in the state office.	Agency records of activities alleging or showing a violation of the Executive Ethics Act are public records.	We are aware some staff may have historical campaign posters or materials in their individual workspaces, posted or framed as artwork. The restriction applies only to <i>current</i> campaigns.
17. As a	No, not on work time. In addition,	Agency records of activities	If one of your subordinate
supervisor, ask or	even in non-work time, this request or	alleging or showing a violation	employees initiates the
direct my subordinate	direction might also be a conflict with	of the Executive Ethics Act are	conversation ("How do I volunteer for the
employees to	(incompatible with) your official duties. See # 3.	public records.	campaign?"), direct him/her
also volunteer on			to the campaign.
the campaign?	***		
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As a Campaign Volunteer, Can I	Executive Ethics Act (RCW 42.52)	Public Records Act Considerations (RCW 42.56)	Other Considerations (Maybe talk to your supervisor or your agency's ethics contact)
	See also <u>RCW 42.17A.495(2)</u> (limitations on employers).		Even on your own time, if you ask a subordinate employee if he/she would like to volunteer for the campaign, the employee might feel he/she is being coerced or influenced to participate in a political campaign. And, this request might also be viewed as a conflict of interest (an activity that may be incompatible with your official duties in supervising the employee). <i>Caution is</i> <i>advised; consult with your</i> <i>supervisor or agency ethics</i> <i>contact.</i>
18. Use state facilities to assist the campaign, if it is really a small amount (" <i>de</i> <i>minimis</i> ")?	No. There is no "de minimis" exception for using state resources to assist a candidate's campaign. See <u>EEB Advisory Opinion 02-02A</u> . (There is a "de minimis" use exception for certain incidental "permissible" communications from statewide elected officials including for their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory duties. <u>RCW 42.52.180</u> . The EEB has said there is no de minimis use for political or campaign activities. <u>EEB Advisory Opinion 02-02A</u> .)	Agency records of activities alleging or showing a violation of the Executive Ethics Act are public records.	There are a number of EEB enforcement actions involving limited use of state email, resulting in personal liability for penalties imposed on the employees.

For More Information, See Other Resources:

State Ethics Law

- <u>Executive Ethics Board website</u>, which has links to statutes, rules, Advisory Opinions, contact information, other resources, including:
 - o RCW 42.52
 - o <u>WAC 292-110</u>
 - o <u>Advisory Opinions</u> Nos. 98-04, 00-08, 02-02A, 11-01
 - o Online Ethics Quiz
- Office of the Governor Administrative Policy (Ethics)

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Memo from Office of the Attorney General to Interested Parties regarding Use of Public Funds/Facilities in Election • Campaigns

Public Records Act

- RCW 42.56 0
- Office of the Attorney General Chart When is a "Writing" a "Public Record" under the Public Records Act (1/25/19) •
- Concerned Ratepayers Ass'n v. Pub. Util. Dist. No. 1, 138 Wn.2d 950, 983 P.2d 635 (1999)
- *Tiberino v. Spokane County*, 103 Wn. App. 680, 13 P.3d 1104 (2000)
- SEIU Local 925 v. Univ. of Wash., Freedom Foundation, 4 Wn. App. 2d 605, 423 P.3d 849 (2018) (petition for review granted)
- Mechling v. City of Monroe, 152 Wn. App. 830, 222 P.3d 808 (2009) •
- O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010) •
- Forbes v. City of Gold Bar, 171 Wn. App. 857, 288 P.3d 384 (2012) ٠
- Nissen v. Pierce County, 183 Wn.2d 863, 357 P.3d 45 (2015)
- West v. Vermillion, 196 Wn. App 627, 384 P.3d 634 (2016)
- West v. Puyallup, 2 Wn. App. 2d 586, 410 P.3d 1197 (2018)

State Civil Service Law

RCW 41.06.250 (political activities) .

Campaign Finance Law

RCW 42.17A.495(2) (limitations on employers)

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