

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████
Respondent.

No. 2015-060

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████ ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

A. STIPULATED FACTS

1. On June 26, 2015, the Executive Ethics Board (Board) received a complaint alleging that ██████████, a faculty member at The Evergreen State College (TESC) may have violated the Ethics in Public Service Act by using public resources for a political campaign. The complaint alleges that during a commencement ceremony held on TESC campus, where Dr. ██████████ was the faculty speaker, he promoted a fundraising event for Kshama Sawant (Ms. Sawant) a Seattle City Council member who was running for reelection.

2. For all times pertinent to this investigation, ██████████ was employed as a faculty member for TESC. ██████████ retired on June 15, 2015 but continues to teach one quarter per academic year at TESC with a post retirement contract.

3. Graduation ceremonies were held on June 12, 2015 on the campus of TESC. Ms. Sawant was the keynote speaker for the event and [REDACTED] was the faculty speaker. His speech immediately followed Ms. Sawant's speech.

4. Board staff reviewed a videotape of [REDACTED]'s commencement speech, which lasted approximately ten minutes. During the speech, he spoke of the "*many roads you can take to impact social change; in addition to protesting, and direct action which I mentioned earlier, you can also vote, or as Kshama Sawant has done, you can run for office and win.*" Following this statement, Mr. Mosqueda paused and stated, "*Now let me do a commercial break here for a second... There's actually a fundraiser for Kshama Sawant tonight at Ninth and Columbia at 6 pm, Ninth and Columbia at 6 pm for Kshama Sawant.*" This statement was approximately ten seconds long and did not appear to be scripted into his prepared remarks. [REDACTED] then said "*now back to our regular program*" and he continued his speech for approximately five more minutes.

5. In his response to Board staff, [REDACTED] acknowledged making the remarks regarding the fundraiser during his speech. He believed the First Amendment protected the content of his speech. He did not consider the speech as part of his "regular duties" as a state employee but rather an extraordinary honor that he had been chosen to perform based on a faculty vote.

6. Additionally in his written response, [REDACTED] indicated that he was a volunteer for Ms. Sawant's reelection campaign but he did not feel his brief remarks about her fundraiser influenced anyone in attendance at the ceremony to attend her event later that evening.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from use of public resources for political campaigns. RCW 42.52.180 (1) states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationary, 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.

2. Based on the stipulated facts above, [REDACTED] used public resources for a political campaign when he announced a political fundraising event during a graduation speech at TESC graduation ceremony, in violation of RCW42.52.180.

3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is a mitigating factor that the violation was unintentional.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. [REDACTED] [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against [REDACTED] at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of one-thousand dollars (\$1,000) for the violations associated with RCW 42.52. The Board agrees to suspend five hundred dollars (\$500) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of five hundred dollars (\$500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED] hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without

my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.



10/26/16
Date

Presented by:

K. Reynolds 11/1/14
KATE REYNOLDS Date
Executive Director

II. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓

ACCEPTED in its entirety;

REJECTED in its entirety;

MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

DATED this 18th day of November, 2016

absent
Anna Dudek Ross, Chair

[Signature]
Samantha Simmons, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

absent
Sumeer Singla, Member

[Signature]
John Ladenburg, Sr., Member

* I, [redacted], accept/do not accept (circle one) the proposed modification(s).

[redacted], Respondent Date