

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Clifford Mass

Respondent.

No. 2018-058

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, CLIFFORD MASS, 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 October 25, 2018, the Executive Ethics Board (Board) received a complaint alleging that Cliff Mass (Mr. Mass), Professor of Atmospheric Sciences at the University of Washington (UW), may have violated the Ethics in Public Service Act by using state resources to oppose Initiative -1631<sup>1</sup> during the 2018 statewide election.

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<sup>1</sup> The Washington Carbon Emissions Fee and Revenue Allocation Initiative, also known as Initiative 1631 or the Protect Washington Act was a ballot measure that appeared on ballots in the State of Washington in the November 2018 election. The initiative proposed to reduce pollution by levying a fee on greenhouse gas emissions generated within the state of Washington, and using that revenue to support air quality and energy projects, as well as water quality and forest health initiatives. The measure failed with 56.3% of voters rejecting it.

2. Mr. Mass was hired as an Assistant Professor in the UW Department of Atmospheric Sciences in 1981. He is currently a full-time Professor and was so for all times pertinent to this investigation.

3. On August 28, 2018, Clifford Webster (Mr. Webster), a lobbyist working for the Law Offices of Carney, Bradley, and Spellman sent an email to Mr. Mass at his UW email account asking that Mr. Mass sign on to the voters pamphlet statement against I-1631. Mr. Mass replied using his UW email account indicating that he authorized the use of his signature on the argument against I-1631 and that his signature was attached to the email.

4. On August 31, 2018, Stephanie Harrington (Ms. Harrington), Associate Dean for the Administration in the UW College of Environment, contacted Mr. Mass to inform him that she had been made aware that he had signed onto a position statement regarding I-1631 in the voters guide and that his signature included his title and affiliation with the UW. She further advised Mr. Mass that if he did not provide a disclaimer to explicitly indicate that his affiliation with the UW was only included for identification purposes he would be in violation with the Ethics Act.

5. On August 31, 2018, Mr. Mass sent an email to Mr. Webster indicating that his name could be used but not with an affiliation to the UW or that a disclaimer had to be included.

6. On September 4, 2018, Mr. Mass received an email from Mr. Webster indicating that his signature with the required disclaimer was added to the official state version of the voters pamphlet. Mr. Mass replied "thanks....glad it was fixed..."

7. On October 18, 2018, Mr. Mass received an email from Chuck Bolland (Mr. Bolland) from the Ironworkers Union and the State Labor Council. Mr. Bolland advised Mr. Mass that he had read an interview of Mr. Mass in a recent publication concerning the faults of I-1631 and wanted to do a short video interview.

8. Mr. Mass responded to Mr. Bolland's email using his UW email account. Mr. Mass' response indicated that he did not want to do any commercials, believing that commercials would undercut his ability to be seen as an independent voice.

9. Mr. Bolland responded via email that these videos would not be commercials, that it would be for education of the labor community, stressing, "you will not see these on TV or in any form of a commercial."

10. Mr. Mass responded via his UW email that he would do it. He suggested the next day, October 19, 2018, at 11:30 am. Mr. Bolland agreed to the date and time.

11. Mr. Mass indicated in a response to Board staff that he never signed an agreement with the Ironworkers Union but he told Mr. Bolland over the phone and in person that the interview could not be used for political purposes or be publically accessible.

12. On October 25, 2018, at 11:49 am, Ms. Harrington sent an email to Mr. Mass advising him that she had received a complaint via the President's Office regarding the Iron Workers District Council of the Pacific Northwest Facebook ads in which he appeared opposing I-1631. The video ad was taken in his UW office and using his UW title and affiliation without a disclaimer about not being a representative of the UW.

13. Mr. Mass indicated in response to Board staff that he was interviewed by Mr. Bolland in his UW office without him being aware that the video contained any identification of its location, or would contain any reference to his affiliation with the UW.

14. Board staff has viewed both of the Facebook advertisements in which Mr. Mass is opposing I-1631. Video-1 starts at the outside entrance to the UW Atmospheric Sciences – Geophysics Building identified by a UW logoed sign. The video then transitions into the UW office of Mr. Mass with a label identifying him as a professor in the UW Department of

Atmospheric Sciences. The video does not include a disclaimer indicating that the views are those of Mr. Mass not those of the University.

15. Video-2 starts with a PowerPoint slide titled "Initiative 1631". The slide contains a photo of Mr. Mass in his UW office. The slide transitions into a video of Mr. Mass in his UW office making statements opposing I-1631. The video does not include a disclaimer indicating that the views are those of Mr. Mass not those of the University.

16. Mr. Mass indicated in his response that he was unaware that Mr. Bolland had taken video footage of the outside entrances of the UW Atmospheric Science building or that he would add a subtitle regarding his affiliation with the UW.

17. On October 25, 2018, at 12:34 pm, Mr. Mass sent an email to the Ironworkers Union asking that the ad be immediately removed from their Facebook page. He further indicated in the email that he agreed to do the videos with the understanding that the videos would never be used in ads or available to the public. Both ads were removed from the Ironworkers Labor Union Facebook page on October 25, 2018.

18. According to an email sent to Ms. Harrington from Mr. Mass the videos were removed from Facebook by 2:44 pm on October 25, 2018.

19. Board staff's review of Mr. Mass' UW Outlook email account for the period of August 28, 2018, through November 3, 2018, showed Mr. Mass had sent at least 33 emails to individuals outside of UW where he was indicating his opposition to I-1631. Most of his responses were related to emails that were sent to his UW email account following the October 21, 2018 blog post from people that both supported and opposed I-1631.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources 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. RCW 42.52.180(1) states:

RCW 42.52.180 – Use of public resources for political campaigns:

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 a 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 the use of stationary, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, and publications of the agency and clientele lists of the persons served by the agency

2. Based on the stipulated facts above, Mr. Mass used state resources to oppose a ballot initiative in violation of RCW 42.52.180.

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. In the matter at hand, it is aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees.

## **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Clifford Mass 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. Clifford Mass 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. Clifford Mass 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. Clifford Mass 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 Clifford Mass 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. Clifford Mass 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 Clifford Mass and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 Clifford Mass 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, Clifford Mass 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, Clifford Mass 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. Clifford Mass agrees to pay a civil penalty in the amount of five thousand dollars (\$5,000) associated with violations of RCW 42.52.180. The Board agrees to suspend one thousand, five hundred dollars (\$1,500) on the condition that Clifford Mass 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 non-suspended portion of the civil penalty in the amount of three thousand, five hundred dollars (\$3,500) 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, Clifford Mass, 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.

  
CLIFFORD MASS                      Date  
Respondent

Presented by:

\_\_\_\_\_  
KATE REYNOLDS                      Date  
Executive Director



**III. 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):

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\_\_\_\_\_  
\_\_\_\_\_

DATED this 12<sup>th</sup> day of July, 2019

Shirley Battan  
Shirley Battan, Chair

Gerri Davis  
Gerri Davis, Vice-Chair

Lisa Marsh  
Lisa Marsh, Member

Anna Dudek Ross / RB  
Anna Dudek Ross, Member

\* I, Clifford Mass, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
Clifford Mass, Respondent                      Date