

# Legislative Ethics Board

451 JOHN A. CHERBERG BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
FAX: 360-786-1553  
www.leg.wa.gov/feb

KEITH BUCHHOLZ - COUNSEL  
Keith.Buchholz@leg.wa.gov

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## COMPLAINT 2016 – No. 7 In Re Kochmar

REASONABLE CAUSE DETERMINATION AND DISMISSAL OF COMPLAINT  
Link to Legislative Material  
September 15, 2016

### I. Nature of the Complaint

The complaint alleges that Rep. Kochmar improperly posted a legislative video to her Facebook campaign site. That video is described as “Watch my state video for the job fair at Cheney Stadium for returning veterans.”

The complaint alleges a violation of RCW 42.17A.555. That statute is the general prohibition on the use of state resources for campaigns. It is similar to the prohibition contained in the Ethics Act (RCW 42.52.180), which in part provides:

- (1) 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 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....

## II. Background

Complaint 2016 – No. 7 was received in June 2016. Board counsel (O’Connell and Buchholz) investigated the complaint pursuant to RCW 42.52.420.

The Board has on several occasions addressed the question of a legislator/candidate posting legislative materials on the legislator’s campaign webpage. On at least three occasions, the Board has determined that legislators may link to legislative materials from a campaign site, but may not directly post legislatively prepared materials on a campaign site. Advisory Opinion 2000 – No. 2; Advisory Opinion 2009 – No. 1; Complaint Opinion 2016 – Nos. 1 and 5.

The Board’s most recent opinions on the question of links between campaign sites and legislative materials were released on May 25, 2016. Complaint Opinion 2016 – Nos. 1 and 5. In part those opinions stated:

*RCW 42.52.180 allows a legislator to create a link from a site used for campaign purposes to a legislative video and other legislative materials. This link must take the user out of the campaign webpage, or campaign social media site, or any site which is involved in campaign activity, and redirect the user to the original, legislative-approved hosting site.*

The subject of the complaint is a 2013 video posted on Rep. Kochmar’s campaign Facebook page. Rep. Kochmar does not dispute that the video was produced with legislative resources. Any viewer of the page could experience the complete video without leaving the Facebook site.

## III. Jurisdiction

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

## IV. Findings of Fact

1. Rep. Kochmar is an elected representative who maintains a campaign Facebook page with mixed content. The majority of her Facebook activities are campaign related: debates, door-belling, sign-waving, and campaign rallies.
2. In 2013, Rep. Kochmar posted a video to her campaign Facebook page. The video was produced at state expense by legislative staff.
3. On April 26, all members of the House of Representatives were notified of the Board’s decision in Complaint Opinion 2016 – No. 1 and No. 5. Those members were advised “[in] no case may a legislative video be viewed within a campaign page or site.” The advice, applicable to Facebook sites, instructed members to establish “a true link that takes the user out of the campaign webpage or social media site and

redirects the user to the original, legislative-approved hosting site (most commonly, the member's caucus webpage)."

4. Following receipt of the complaint regarding Rep. Kochmar, Legislative Service Center staff reviewed her campaign Facebook pages. Their summary identified two legislative videos that were posted on Rep. Kochmar's Facebook page. One is the subject of the complaint. The second video was also from 2013. It is unclear whether the second video was produced by legislative staff.
5. Upon being notified of the ethics complaint by counsel, Rep. Kochmar immediately deleted the video identified in the complaint. When informed of the second video, Rep. Kochmar promptly deleted it.

V. Conclusions of Law

1. A video produced at state expense by state employees is a facility of an agency under RCW 42.52.180. State officers and employees are prohibited from using any facility of an agency in support of a campaign.
2. Posting the video to Rep. Kochmar's campaign Facebook page violated RCW 42.52.180.
3. Reasonable cause exists to believe the actions of Rep. Kochmar violated RCW 42.52.180 when she posted a legislative video on her campaign Facebook page.

VI. Order of Dismissal

Although the Board has concluded that reasonable cause exists to find that Rep. Kochmar violated the Ethics in Public Service Act, the Board retains the discretion to dismiss an ethics complaint when it finds that the violation "has been cured, and after consideration of all the circumstances, further proceedings would not serve the purposes of the chapter." RCW 42.52.425.

The circumstances in this complaint are the passage of time between the public posting of the video and the complaint, the fact that Rep. Kochmar posted only a single video clearly produced with state resources, the prompt recognition by Rep. Kochmar of the violation and her prompt action to cure the violation.

IT IS HEREBY ORDERED: that Complaint 2016 No. 7 is dismissed.

/s/ Kenny Pittman, Chair

Date: 9/15/2016