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8 In the matter of:
9 MELANIE STAMBAUGH,
10 Respondent.

OAH DOCKET NO. 008318
LEB 2016 – NO. 8 AND NO. 13
OPINION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL ORDER

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13 **OVERVIEW OF THE CASE**

14 The complaints allege that Representative Melanie Stambaugh violated the state ethics
15 act by posting 19 videos and 25 photos produced by legislative staff to her Facebook page that
16 also includes campaign materials.

17 The Board has opined on this issue a number of times and made it clear that while
18 legislators may link to legislatively produced material from a campaign website, they may not
19 post or embed that material. To comply with the ethics act, the viewer must leave the
20 campaign site in order to view material produced using legislative resources. Other than the
21 large number of violations, the Board finds no significant differences in this case from others
22 that it has considered and opined upon.

23 Representative Stambaugh does not dispute that she posted these legislatively produced
24 videos and photos on her Facebook page. Nor does she dispute that she received a notice sent
25 to all legislators that such activity was not permissible under the ethics act. She does however
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1 argue that her Facebook page is not a “campaign page,” that it is not possible to provide a link
2 as authorized by the board, and that she did not receive adequate notice of the complaints.

3 Representative Stambaugh’s Facebook page contains posts of a variety of campaign
4 events. It is irrelevant that the Facebook page is not her official campaign page; because of the
5 campaign content, it functions as a campaign page. Consistent with the ethics act, the Board
6 has zero tolerance for campaign-related personal use of legislative facilities, and members may
7 not post legislatively produced materials to a site that contains any campaign material.

8 Representative Stambaugh argues that it is impossible on some social media platforms
9 to link to legislative materials; that the platforms would transform a posted link into an
10 embedded post. During the hearing, Representative Stambaugh attempted to show on her
11 cellphone that it was impossible to create a link on Facebook. In fact, she failed to show this,
12 as the linking process actually worked. If, however, the link had not worked, it does not follow
13 that she should then be allowed to post legislatively produced and taxpayer funded materials on
14 a campaign Facebook page. While difficulty in linking may limit the use of certain social
15 media platforms, the Board’s interpretation of the ethics act is not limited by currently
16 available technology.

17 Representative Stambaugh argues that she did not receive adequate notice of the
18 complaints against her. The first notice of the complaints against her were sent to the mailing
19 address that she provided. Even if, as she alleges, she did not receive the letter sent on July 6,
20 the Board finds that Representative Stambaugh actually received a copy of the first complaint
21 on August 5 and had notice of the contents of the second complaint by August 25. The public
22 hearing was held on December 13, so the notice to her was more than adequate and she was
23 fully able to prepare for and present her position at the hearing.

24 In sum, allowing posts of materials as Representative Stambaugh advocates would be
25 inconsistent with the ethics act and would allow legislators to direct the production of any
26 number of taxpayer funded videos and photos which could be used on campaign websites and

1 social media platforms without restriction. Such a misuse of public resources would be
2 inconsistent with the broad policy reflected in the ethics act and would enhance the power of
3 incumbency in legislative campaigns.

4 PROCEDURAL HISTORY

5 1.1 On June 28, 2016, the Legislative Ethics Board (Board) received a complaint
6 (Complaint 2016 No. 8) that Representative Stambaugh (Respondent) may have violated the
7 Ethics in Public Service Act, RCW 42.52 (Ethics Act).

8 1.2 On August 16, 2016, the Board determined that reasonable cause existed to
9 believe Respondent had committed 14 violations of the act and directed Keith Buchholz, staff
10 counsel, to approach Respondent to settle the matter.

11 1.3 On October 12, 2016, the Board issued a determination of reasonable cause to
12 believe that 30 additional violations of the Ethics Act occurred in relation to the investigation
13 pursuant to Complaint 2016 No. 8.

14 1.4 On October 18, 2016, the Board initiated a second complaint (Complaint 2016
15 No. 13) regarding 30 potential violations of the Ethics Act by Respondent.

16 1.5 On October 24, 2016, the Board found reasonable cause to believe a violation of
17 the Ethics Act occurred in relation to Complaint 2016 No. 13.

18 1.6 On December 13, 2016, after due and proper notice, a hearing was held before
19 the Board on both Complaint 2016 No. 8 and No. 13. The hearing was held at 451 John A.
20 Cherberg Building in Olympia, Washington. Administrative Law Judge Debra Pierce from the
21 Office of Administrative Hearings conducted the proceedings, and Board Chair Kenny
22 Pittman, and members Eugene Green, Representative Drew Hansen, Senator Jim Honeyford,
23 Steven L. Johnson, Judge Terry Lukens (ret.), Senator Jamie Pedersen, Debbie Regala, and
24 Representative Brandon Vick were present. Also present were Jeannie Gorrell, Senate Counsel,
25 and Laura Anglin, Senate Counsel, serving as legal advisors to the Board.

1 1.7 Legislative Ethics Board Staff (Board Staff) was represented by Chad C.
2 Standifer, Assistant Attorney General. Respondent was present and was represented by
3 attorney Nicholas Power.

4 1.8 Board Staff offered Exhibits 1-9. Exhibits 1-9, listed below, were admitted into
5 evidence. The Board was provided copies of documents that were admitted as exhibits.

- 6 1. Ethics Complaint dated June 22, 2016, regarding Melanie Stambaugh (5 pages);
- 7 2. Letter dated July 6, 2016, from Board Staff to Melanie Stambaugh (1 page);
- 8 3. Email dated August 5, 2016, from Board Staff to Melanie Stambaugh (1 page);
- 9 4. Report of Legislative Service Center Staff concerning Melanie Stambaugh's
10 legislative videos (2 pages);
- 11 5. Gallery of 25 Legislative photos posted by Melanie Stambaugh on her campaign
12 website (1 page);
- 13 6. DVD of 19 legislative videos posted by Melanie Stambaugh on her campaign
14 website;
- 15 7. Legislative Support Services order form dated April 7, 2016 (5 pages);
- 16 8. Legislative Support Services order confirmation dated August 27, 2016 (3 pages);
17 and
- 18 9. Email from Cathy Maynard to House members dated April 26, 2016 (1 page).

19 1.9 Representative Stambaugh offered Exhibits R-1 – R-33. Exhibits R-1 – R-22, R-
20 24, R-25, and R-28 – R-32 listed below, were admitted into evidence. Exhibits R-23, R-26, R-
21 27, and R-33 were submitted to the Board but were not admitted into evidence. The Board was
22 provided copies of documents that were admitted as exhibits.

- 23 R-1. Emails of Aug. 15 and 16, 2016 between Stambaugh and Buchholz (1 page);
- 24 R-2. Undated letter (presumably Aug. 16, 2016) of Stambaugh to Board re complaint (1
25 page);
- 26 R-3. Email of Aug 25, 2016 from Buchholz to Stambaugh (2 pages);
- R-4. Email discussion between Buchholz and Stambaugh August 26-30 (4 pages);

- 1 R-5. Email of Sept. 15, 2016 from Buchholz to Stambaugh (1 page);
- 2 R-6. Email of Sept. 20, 2016 from Stambaugh to Buchholz (2 pages);
- 3 R-7. Email of Sept. 27, 2016 from Buchholz to Stambaugh (1 page);
- 4 R-8. Email of Oct. 7, 2016 between Buchholz and Stambaugh (1 page);
- 5 R-9. Email of Oct. 12, 2016 from Buchholz to Stambaugh (1 page);
- 6 R-10. Email of Oct. 13, 2016 to and from Buchholz to Stambaugh (2 pages);
- 7 R-11. Email of Oct 18, 2016 to and from Buchholz to Stambaugh (2 pages);
- 8 R-12. Letter of July 6, 2016 from Mike O'Connell to Josh Rogers and Mitch McGeary
9 (2 pages);
- 10 R-13. Email of October 20, 2016 from Buchholz to Stambaugh (1 page);
- 11 R-14. Ethics Complaint form of October 18, 2016 by Kenny Pittman (5 pages);
- 12 R-15. Email of October 20, 2016 from Buchholz to Stambaugh (1 page);
- 13 R-16. Letter of October 24, 2016 Stambaugh to LEB (3 pages);
- 14 R-17. Email of October 24, 2016 from Buchholz to Stambaugh (1 page);
- 15 R-18. Letter of Nov. 2, 2016 from Stambaugh to LEB (1 page);
- 16 R-19. August 26 email from Barna to Buchholz (3 pages);
- 17 R-20. Email September 8, 2015 from Hoover to Jacobs (2 pages);
- 18 R-21. Timeline Created by Stambaugh illustrating key dates (1 page);
- 19 R-22. House Republican Caucus Social Media Policy (2 pages);
- 20 R-24. Phone Records for Melanie Stambaugh (9 pages);
- 21 R-25. House Republican Website for Melanie Stambaugh (1 page);
- 22 R-28. Flickr rights granted (1 page);
- 23 R-29. Washington House of Representatives Policy & Procedures Manual, Appendix 1
24 (Standards of Conduct Regarding the Use of Public Facilities (5 pages);
- 25
- 26

1 R-30. Legislative support services Photo Service Page (4 pages);

2 R-31. House Republicans Social Media Policy (2 pages); and

3 R-32. Email of April 2 and February 25 between Stambaugh and Nick Jacob (2 pages).

4 1.10 The proceedings were recorded and open to the public.

5 1.11 The Board heard the testimony of Keith Buchholz, Melanie Stambaugh, and Chad
6 Magendanz.

7 1.12 The hearing was adjourned on December 13, 2016, but the record was kept open
8 for the limited purpose of having the parties submit post-hearing briefs and/or proposed orders
9 to the Board no later than December 23, 2016.

10 1.13. On January 25, 2017, the Board met in executive session, considered the post-
11 hearing briefs and proposed orders, and decided the matter.

12 Based on the evidence presented, the Board unanimously enters the following Findings
13 of Fact, Conclusions of Law, and Final Order:

14 **I. FINDINGS OF FACT**

15 2.1 Board Staff mailed Respondent a copy of the original complaint in this matter
16 on July 6, 2016¹ and a copy was later emailed to her on August 5, 2016. S. Exs. 2-3.²

17 2.2 Since 2010, Respondent has maintained a Facebook page with mixed content,
18 located at <https://www.facebook.com/Stambaugh.Melanie>. Testimony of Stambaugh.

19 Beginning in 2014 when she began her first campaign, the Facebook page contained posts
20 about activities that were campaign related, including door-belling, sign-waving, and campaign
21 rallies. Testimony of Buchholz and Stambaugh. Since Respondent's election to office, the
22

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24
25 ¹ Respondent contends she did not receive the July 6, 2016 mailing.

26 ² Board Staff Exhibits will appear as "S. Ex." followed by the number of the exhibit. Respondent's Exhibits will similarly appear as "R. Ex." followed by the number of the exhibit.

1 Facebook page has also contained posts pertaining to legislative activities and issues.

2 Testimony of Stambaugh.

3 2.3 In 2000, the Board authorized campaign websites to include a single link to
4 legislative materials without violating RCW 42.52.180's prohibition on using state facilities for
5 campaign purposes. Advisory Opinion 2000 – No. 2. In 2009, the Board liberalized the rules
6 to allow multiple links. Advisory Opinion 2009 – No. 1.

7 2.4 At no point has the Board suggested that elected officials could post the full
8 content of legislative materials on their campaign webpages without violating RCW
9 42.52.180's prohibition on using state facilities for campaigning.

10 2.5 On April 26, 2016, all House members including Respondent received an email
11 from House Speaker's counsel regarding the position of the Legislative Ethics Board as to
12 when and how legislative videos may be linked or viewed from campaign sites. S. Ex. 9.
13 Regarding such videos, the email stated, in pertinent part, "any link must take the user off of
14 that campaign site or page so that they may view the video on a legislative site, such as a
15 caucus webpage, a member's individual webpage, or a member or caucus YouTube channel."
16 *Id.* The email further stated, "[i]t is important to understand that this is the only Board-
17 approved means of linking to legislatively-produced videos from a campaign site or page." *Id.*
18 Respondent received this email. Testimony of Stambaugh.

19 2.6 As of July 6, 2016, Respondent's campaign Facebook page contained embedded
20 videos produced by legislative staff. In total, there were fourteen (14) legislative videos
21 produced in 2015 that were posted on Respondent's Facebook page under the "Videos" link on
22 that page, and five (5) videos produced in 2016 that were posted on Respondent's Facebook
23 timeline. S. Exs. 4, 6. The Facebook page did not redirect the user to the original, legislative-
24 approved hosting site; rather, the videos could be played directly from the Facebook page. S.
25 Ex. 4.

26

1 2.7 As of July 6, 2016, Respondent's campaign Facebook page contained 25
 2 legislative photographs taken by legislative staff under the "Photos" link on that page. The
 3 following chart summarizes when Respondent posted the photos, and the period of time it took
 4 her to either purchase or delete the photos:

Photo ID number	Date posted on campaign site	Date purchased
20150225_111230sc.jpg	2/26/2015	8/27/2016
20150225_112227sc.jpg	2/26/2015	8/27/2016
20150302_112622sc.jpg	3/2/2015	8/27/2016
20150306_110137sc.jpg	3/6/2015	4/7/2016
20150317_121859sc.jpg	3/17/2015	8/27/2016
20150401_112924cr.jpg	4/3/2015	8/27/2016
20150401_113535cr.jpg	4/3/2015	8/27/2016
20150401_124457cr.jpg	4/3/2015	8/27/2016
20150422_111204ab- 2.jpg	4/22/2015	8/27/2016
20150422_111209ab.jpg	4/22/2015	4/7/2016
20150423_120349sc.jpg	4/23/2015	8/27/2016
20150514_105721ab.jpg	5/14/2015	4/7/2016
20160118_155757cr.jpg	1/19/2016	8/27/2016
20160119_081711jg.jpg	1/19/2016	8/27/2016
20160215_093125ab.jpg	2/15/2016	4/7/2016
20160301_094150fm.jpg	3/2/2016 ³	Deleted 8/27/2016
20160301_095302jg.jpg	3/2/2016	Deleted 8/27/2016
20160301_111434cr.jpg	3/2/2016	8/27/2016
20160301_120547kb.jpg	3/2/2016	Deleted 8/27/2016
20160301_121653ks.jpg	3/2/2016	Deleted 8/27/2016
20160301_125016kb.jpg	3/2/2016	8/27/2016
20160301_130008kb.jpg	3/2/2016	8/27/2016
20160301_130153kb.jpg	3/2/2016 ⁴	Deleted 8/27/2016
20160310_124652fm.jpg	3/14/2016	4/7/2016
Stambaugh- 2015_CROPPED	12/19/2014 "Official Legislative Portrait"	Not purchased

22 S. Ex. 5; R. Ex. 21; Testimony of Buchholz.

23 2.8 On April 7, 2016, Respondent paid for five of the photos she had already posted
 24 on Facebook. S. Exs. 5, 7; Testimony of Buchholz.

25 ³ Posting date (March 2) is assumed from date of photo (March 1) and posting dates of other related photos.

26 ⁴ Posting date (March 2) is assumed from date of photo (March 1) and posting dates of other related photos.

1 2.9 On August 27, 2016, Respondent paid for 14 of the photos she had already
2 posted on Facebook. S. Exs. 5, 8; Testimony of Buchholz.

3 2.10 On August 27, 2016, five unpurchased photos were deleted from Respondent's
4 Facebook campaign page. S. Ex. 5; Testimony of Buchholz.

5 2.11 Shortly after Respondent spoke with Keith Buchholz on August 4, 2016, she
6 removed the legislative videos produced in 2015 from her Facebook campaign page.
7 Testimony of Buchholz. The legislative videos produced in 2016 were removed from the
8 Facebook campaign page on August 27, 2016, as confirmed by Respondent's email to
9 Mr. Buchholz on August 29, 2016. R. Ex. 4.

10 2.12 As of the date of hearing, one photo that had not been removed had not been
11 paid for. This photo was her official legislative portrait, which was being used on the front
12 page of <https://www.facebook.com/Stambaugh.Melanie>. Testimony of Keith Buchholz.

13 2.13 Respondent testified that she was responsible for posting the 19 legislatively
14 produced videos, as well as the 25 legislatively produced photos, to
15 <https://www.facebook.com/Stambaugh.Melanie>. Testimony of Stambaugh. She confirmed that
16 the videos were embedded in this Facebook page, and were not linked to a separate website. *Id.*

17 2.14 Representative Chad Magendanz testified on behalf of Respondent. He had no
18 personal knowledge of Respondent's posting of the videos and photos in question. Testimony
19 of Magendanz.

20 2.15 Respondent failed to demonstrate that compliance with the law was impossible.
21 During the hearing, her attempt to show that Facebook would not allow her to post a link
22 demonstrated that it would allow a link to be posted.

23 2.16 The Board found that all Findings of Fact were proven by a preponderance of
24 the evidence.

II. CONCLUSIONS OF LAW

1
2 3.1 The Board has jurisdiction to hear this matter under RCW 42.52.320, which
3 authorizes the Board to enforce the Ethics Act with respect to members and employees of the
4 legislative branch of state government. The Board has jurisdiction over Respondent Melanie
5 Stambaugh, whose actions occurred while she was a member of the Legislature. The
6 complaints were filed in accordance with RCW 42.52.410, the Board found reasonable cause
7 pursuant to RCW 42.52.420, and an adjudicative proceeding was conducted pursuant to
8 RCW 42.52.430, .500. All the required procedural notices have been provided.

9 3.2 The Ethics Act governs the conduct of members of the Legislature. Under
10 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

11 3.3 RCW 42.52.180 prohibits the use of public resources for political campaigns by
12 state officers. RCW 42.52.180(1) directs, in pertinent part:

13 No state officer or state employee may use or authorize the use of facilities of an
14 agency, directly or indirectly, for the purpose of assisting a campaign for election
15 of a person to an office or for the promotion of or opposition to a ballot
16 proposition.

17 The Board's rules provide further that "[a] legislator or legislative employee may not make
18 private use of state resources for any campaign related activity." Board Rule Number 3(D)(1).

19 3.4 RCW 42.52.180(1) provides a nonexclusive list of what comprises "facilities of
20 an agency":

21 Facilities of an agency include, but are not limited to, use of stationery, postage,
22 machines, and equipment, use of state employees of the agency during working
23 hours, vehicles, office space, publications of the agency, and clientele lists of
24 persons served by the agency. . . .

25 The 25 photos and 19 videos at issue here, as well as the use of legislative staff to produce
26 them, constitute, at a minimum, the "use of state employees of the agency during working
hours" and "publications of the agency", and thus are "facilities of an agency" within the
meaning of RCW 42.52.180(1).

1 3.5 Respondent admitted to having posted 25 photographs produced by legislative
2 staff under the "Photos" link on Facebook page. Testimony of Stambaugh. By posting these
3 photos on a campaign webpage prior to having purchased them, Respondent violated RCW
4 42.52.180.

5 3.6 In construing whether photos and videos are "facilities of the agency,"
6 Respondent focuses exclusively on whether they constitute "publication of the agency."
7 RCW 42.52.180(1), however, provides a *nonexclusive* list of what comprises "facilities of an
8 agency": "Facilities of an agency include, but are not limited to, use of stationery, postage,
9 machines, and equipment, use of state employees of the agency during working hours,
10 vehicles, office space, publications of the agency, and clientele lists of persons served by the
11 agency. Respondent argues that the phrase "publication of the agency" is vague, but it is
12 evident that because both photos and videos are items produced and disseminated by staff, and
13 are therefore published, they meet this definition. Also evident is that the use of legislative
14 staff to take the photos and produce the videos in question constitutes the "use of state
15 employees of the agency during working hours." RCW 42.52.180(1). In addition, the photos
16 and videos themselves constitute the type of "equipment" or other property which is
17 contemplated by the definition. *Id.* Finally, "facilities of an agency" includes but is "not limited
18 to" the items listed in the definition, rendering a general application of the definition possible
19 as well. *Id.*

20 3.7 Respondent admitted that her Facebook page contained 19 videos produced by
21 legislative staff. Testimony of Stambaugh. In total, there were 14 legislative videos produced
22 in 2015 that were posted on Respondent's Facebook page under the "Videos" link on that page,
23 and five videos produced in 2016 that were posted on Respondent's Facebook timeline.
24 Testimony of Stambaugh and Buchholz. By posting these videos on a campaign webpage in
25 the manner she did, Respondent violated RCW 42.52.180. Had Respondent's campaign
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1 website redirected users to the legislative-approved hosting site, no violation would have
2 occurred. Instead, the videos could be played directly from the Facebook page.

3 3.8 Respondent testified that her Facebook page was not a “campaign” website.
4 But, as other testimony confirmed, the website contained information about her 2014 and 2016
5 campaigns, such as door-belling activities, sign-waving, and campaign rallies. Testimony of
6 Stambaugh and Buchholz. RCW 42.52.180 and Board Rule Number 3(D)(1) do not allow for
7 *any* campaign-related personal use of legislative facilities. Whether or not the Facebook page
8 was her "official" campaign website is not relevant, as the prohibition extends to *any* website
9 that is involved in campaign activity. Neither is it relevant that the photos and videos were not
10 themselves of campaign events. Consistent with RCW 42.52.180, the Board has a zero
11 tolerance policy for campaign-related personal use of legislative facilities. *See* 2015 Legislative
12 Ethics Manual at 7, available at: [http://leg.wa.gov/LEB/Documents/Ethics Board Manual](http://leg.wa.gov/LEB/Documents/Ethics Board Manual 2015B 8.5xll.pdf)
13 [2015B 8.5xll.pdf](http://leg.wa.gov/LEB/Documents/Ethics Board Manual 2015B 8.5xll.pdf). By posting the photos and videos in question on a website which
14 prominently featured her campaign, Respondent used these legislative facilities for the purpose
15 of assisting her campaign in violation of RCW 42.52.180.

16 3.9 RCW 42.52.180 exempts “[a]ctivities that are part of the normal and regular
17 conduct of the office or agency.” RCW 42.52.180(2)(d). Respondent argues that her posting of
18 the videos and photos constitutes the normal and regular conduct of the Legislature. The
19 creation of the videos and photos appears to constitute normal and regular conduct by
20 legislative staff. The use of those videos and photos by Respondent on a campaign website,
21 however, was not. To qualify for the exemption, the activities must be "otherwise **lawful** and
22 customary." Board Advisory Opinion 1995 — No. 18 at 3 (Emphasis added). The *creation* of
23 the videos and photos, which itself was lawful, must be separated from the *use* of those videos
24 and photos. Rather, any such use falls squarely within the general prohibition against the use of
25 facilities for the purpose of assisting a campaign. In summary, Respondent has not
26 demonstrated that her conduct falls within the exemption found in RCW 42.52.180(2)(d).

1 3.10 As Representative Chad Magendanz had no personal knowledge of
2 Respondent's posting of the videos and photos in question, his testimony did not aid the
3 Board's determination as to whether or not Respondent committed violations of
4 RCW 42.52.180.

5 3.11 Respondent argues her constitutional rights have been impaired in some
6 manner. This Board lacks the authority to invalidate legislation or agency rules on
7 constitutional grounds. Accordingly, the Board cannot consider the assertions of
8 unconstitutionality she raises. *See Bare v. Gorton*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).

9 3.12 Despite Respondent's failure to prove impossibility of compliance with the
10 Board's linking exception using certain mediums, there is no legal authority to permit posting
11 in any medium that is also used for campaign activity. This may limit the use of certain
12 technology, but the Board's interpretation of the Ethics Act is not governed by technology.

13 3.13 RCW 42.52.180 prevents members of the Legislature from having unfettered
14 use of state resources to assist their campaigns. The Legislature has declared that the Ethics
15 Act "shall be construed liberally to effectuate its purposes and policy and to supplement
16 existing laws as may relate to the same subject." RCW 42.52.901. Respondent argues that this
17 Board should fashion a new policy with respect to the posting of state resources on social
18 media. But her view of the statute turns back the clock to a time prior to the passage of the
19 Ethics Act in 1994, when state resources were routinely used on political campaigns. To be
20 sure, in recognizing that members may post links to legislative videos and purchase legislative
21 photos, this Board has recognized the public interest in having access to those resources. To go
22 further, as Respondent would have the Board do, and to remove all restrictions on the use of
23 these resources on websites and social media platforms such as Facebook would contradict the
24 statutory prohibition found in RCW 42.52.180, and would be inconsistent with the liberal
25 construction required of the Ethics Act. Members of the legislature have considerable
26 discretion to use legislative staff to produce videos and take pictures under the guise of

1 informing their constituents. Respondent exercised this discretion quite liberally, obtaining the
2 assistance of staff in creating nineteen separate videos in just fifteen months. And while photos
3 and videos created by legislative staff provide a useful means to inform the public, they may
4 also prove useful to one's campaign, particularly if posted to a campaign website. If
5 Respondent's construction of the statute were adopted, members of the Legislature could use
6 legislative staff to produce an unlimited quantity of videos and photos, all of which could be
7 used on campaign websites and social media platforms without restriction. Such a misuse of
8 state resources would turn the statute on its head, and would also work to the disadvantage of a
9 private sector campaign opponent who has no access to these resources. Construing provisions
10 of the Ethics Act in such a manner is not what the Legislature intended when the Act was
11 adopted. Regardless of how the law may evolve in the future, Respondent's view clearly does
12 not square with the current state of the law.

13 3.14 Due to her posting of 25 unpurchased photos and 19 videos, Respondent
14 committed 44 separate violations of the Ethics Act, justifying the levying of a civil penalty in
15 this matter. RCW 42.52.480 authorizes the Board to order the following where a violation of the
16 Ethics Act is sustained:

- 17 (b) From each such person, a **civil penalty of up to five thousand dollars per**
18 **violation** or three times the economic value of any thing received or sought in
19 violation of this chapter or rules adopted under it, whichever is greater; and
20 (c) **Costs, including reasonable investigative costs**, which shall be included as
21 part of the limit under (b) of this subsection. The costs may not exceed the penalty
imposed. The payment owed on the penalty shall be reduced by the amount of the
costs paid. (Emphasis added).

22 3.15 In determining the amount of the penalty, the Board recognizes that
23 Respondent's violations were "continuing in nature." Board Rule Number 6(C)(2)(a). She
24 committed her first violation on or about December 19, 2014, when she posted her official
25 legislative portrait on her Facebook website. R. Ex. 21. The majority of her violations
26 continued through at least August 27, 2016, when she removed the video postings and paid for,

1 or removed, all but one of the photos at issue. S. Exs. 7-8; Testimony of Stambaugh and
2 Buchholz.

3 3.16 Aggravating circumstances considered in levying a penalty include whether the
4 violator “[i]ntentionally committed the violation with knowledge that the conduct constituted a
5 violation.” Board Rule Number 6(C)(3)(a). While it is possible that Respondent was not aware
6 of the restriction on the use of photos and videos created by legislative staff at the time she
7 began her service in the Legislature, she later knew or should have known that her conduct was
8 in violation of RCW 42.52.180. In September 2015, at Respondent’s request, Public
9 Information Officer Nick Jacob sought and obtained advice from Mike Hoover stating that
10 photos used on a campaign site must be purchased, and videos should not be posted on such
11 sites. R. Ex. 20. She then either failed to follow Mr. Hoover’s advice, or neglected to follow up
12 with Mr. Jacob about that advice. Testimony of Stambaugh. In addition, as she confirmed,
13 Respondent was directly informed via email of the Board’s policy with respect to how to
14 properly post videos created by legislative staff on April 27, 2016. S. Ex. 9; Testimony of
15 Stambaugh. She also acknowledged that she understood that photos used for campaign
16 purposes had to be purchased. Testimony of Stambaugh. She failed to pay for or remove
17 videos and photos from her Facebook website until late August 2016, several weeks after a
18 complaint had been filed against her.

19 3.17 In determining the appropriate sanction, including the amount of any civil
20 penalty, the Board considered the mitigating circumstances set forth under Board Rule 6(C)(4),
21 which include:

- 22 (a) Prior corrective action taken against the violator;
23 (b) Prior recovery of damages to the state;
24 (c) The unethical conduct was approved or required by the violator's supervisor
25 or agency;
26 (d) The violation was unintentional;
(e) The violator relied on advice from board staff or designated ethics advisers;
(f) Other mitigating factors deemed relevant by the board.

1 There was no evidence provided at hearing supporting any of the foregoing mitigating
2 factors, such that a reduction in the penalty under consideration would be appropriate.

3 3.18 The Board concludes that a \$5,000 civil penalty is appropriate based on
4 Respondent's violations of RCW 42.52.180 all of which will be applied to the costs of the
5 investigation and hearing in this matter.

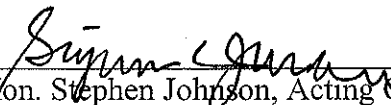
6 **III. ORDER**

7 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
8 ordered that Representative Melanie Stambaugh is assessed a total monetary civil penalty of
9 \$5,000 based on her violations of RCW 42.52.180.

10 4.2 The total amount of \$5,000 is payable in full within 90 days of the effective date
11 of this order.

12 DATED this 14th day of February 2017.

13 WASHINGTON STATE LEGISLATIVE ETHICS BOARD

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17 Hon. Stephen Johnson, Acting Chair
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1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Legislative Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 Respondent is not required to ask the Board to reconsider the Final Order before seeking
11 judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Legislative Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
22 (2) The name and mailing address of the petitioner's attorney, if any;
23 (3) The name and mailing address of the agency whose action is at issue;
24 (4) Identification of the agency action at issue, together with a duplicate copy,
25 summary, or brief description of the agency action;
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1 (5) Identification of persons who were parties in any adjudicative proceedings that
2 led to the agency action;

3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

4 (7) The petitioner's reasons for believing that relief should be granted; and

5 (8) A request for relief, specifying the type and extent of relief requested.

6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board.

9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
13 Board.