

# Legislative Ethics Board

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## COMPLAINT 2017 – No. 43 In Re Darneille, Jinkins, and Fey January 18, 2018

### DETERMINATION OF NO REASONABLE CAUSE AND ORDER OF DISMISSAL

#### I. Nature of the Complaint

The complaint alleges that Sen. Jeannie Darneille, Rep. Laurie Jinkins and Rep. Jake Fey produced a joint newsletter that contained prohibited partisan content.

The complaint alleges that several specific statements in the newsletter contain partisan content and therefore violate the Ethics in Public Service Act. Those statements are:

- “Democrats proposed revenue options that were more progressive and better for working families....”
- “The final revenue package was a much lower property tax increase than Senate Republicans wanted.”
- “[We] are proud of the hard work, dedication and success we accomplished as Democrats....”
- “[We’re] sorry to report that Senate Republicans refused to vote on the construction budget....”

Further, the complaint alleges that the newsletter’s “timing coincides with [the] general election and this has occurred in past years.”

#### II. Jurisdiction

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

### III. Findings of Fact

1. Sen. Jeannie Darneille, Rep. Laurie Jinkins and Rep. Jake Fey are elected legislators representing the 27<sup>th</sup> legislative district. In 2017, the legislators chose to distribute a joint newsletter to their constituents.
2. None of the legislators in this complaint were candidates in 2017; none appear on the election results for Pierce County.
3. The 2017 general election contained several legislative races and ballot measures. None were specific to the 27<sup>th</sup> District, although one legislative race (31<sup>st</sup> district) was in Pierce County.
4. RCW 42.52.185 requires each legislative chamber to establish a biennial Printing and Production budget for each legislator to pay the cost of newsletters and other outreach efforts. None of the legislators exceeded their production budgets.
5. The joint newsletter contained partisan language. That language is:
  - “Democrats proposed revenue options that were more progressive and better for working families....”
  - “The final revenue package was a much lower property tax increase than Senate Republicans wanted.”
  - “[We] are proud of the hard work, dedication and success we accomplished as Democrats....”
  - “[We’re] sorry to report that Senate Republicans refused to vote on the construction budget....”

### IV. Prior Board Decisions.

The Board has previously considered several complaints based on partisan statements by legislators.

1. *Complaint 1996 – No. 3* (Sommers/Silver): the Board considered the role of partisan statements in a newsletter: "REPUBLICAN COMMITMENT TO THE PEOPLE: Making government responsible and accountable to its citizens." Dismissing the complaint, the Board commented:

*The members of the legislature are elected on a partisan basis. It is acceptable for [them] to express their positions on issues that they will be dealing with in the legislative session in partisan terms. In that manner, their constituents are kept informed of how they are being represented in the legislature.*

2. *Complaint 1996 – No. 7 (Conway)*: the Board considered critical partisan comments in a newsletter. Dismissing the complaint, the Board also addressed the role of RCW 42.52.185 (mailing restrictions):

*If the mailing in question is a newsletter, and if it was mailed within the time frame allowed by the statute, then there is no violation of RCW 42.17.132 [now RCW 42.52.185].*

3. *Complaint 2005 – No. 8 (McCune)* was factually most similar to the present complaint. Rep. McCune made several statements to distinguish his political position from his partisan opponents:

- “Republicans were shut out while [the budget] was created in virtual secrecy.”
- “I joined my 42 House Republican colleagues **in voting no** on this unsustainable budget, but all 55 Democrats voted **yes**, and the people of Washington are left to foot the bill.”
- “We try to encourage children to stay away from [cigarettes and alcohol], **but the majority party insisted on linking education funding to tobacco and alcohol consumption.**”
- On the 2004 gubernatorial election: “we don’t know who *really* won – and we never will.”

Again, the Board dismissed the complaint.

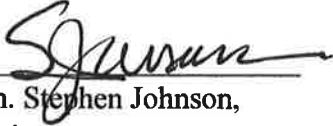
4. Recently, the Board dismissed a complaint that an e-newsletter made explicit partisan references to voting. In *Complaint 2016 – No. 2 (Hargrove)*, a legislator released a legislative update critical of an action by the Human Rights Commission and stated, “Of course, the longer term solution is to elect legislators and a governor who will not allow such inane policies in Washington [State].” The Board dismissed the complaint on the grounds that partisan speech by legislators is “normal and regular” conduct, and that the election reference was too ambiguous to be considered a violation.

## V. Conclusions of Law

1. Legislators are elected on a partisan basis and engaging in partisan speech is part of the “normal and regular” conduct of a legislative office.
2. Statements made by Sen. Darneille, Rep. Jinkins and Rep. Fey in their joint newsletter constituted partisan speech, were made consistent with the timelines and budget restrictions in RCW 42.52.185, and made no reference to any election or vote.

VI. Order

It is hereby ORDERED that Complaint 2017 – No. 43 is dismissed.

A handwritten signature in black ink, appearing to read "Stephen Johnson", written over a horizontal line.

Sen. Stephen Johnson,  
Chair