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6 **BEFORE THE LEGISLATIVE ETHICS BOARD**
OF THE STATE OF WASHINGTON

7 In the matter of:

8 DOUG ERICKSEN,

9 Respondent.

OAH NO. 07-2021-AGO-00044

LEB NO. 2021-6

FINAL ORDER GRANTING
SUMMARY JUDGMENT

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11 This matter was heard remotely by the Legislative Ethics Board (Board) on October 13,
12 2021, by online streaming access to consider Board Staff's Motion for Summary Judgment.

13 Board staff were represented by Assistant Attorney General Chad Standifer who
14 appeared virtually. Respondent Senator Doug Ericksen represented himself and also appeared
15 virtually. The proceeding was open to the public and recorded.

16 The Board had before them the following materials:

- 17 1. Board Staff's Motion for Summary Judgment dated September 13, 2021.
18 2. The Declaration of Jennifer Strus in Support of Motion for Summary Judgment dated
19 September 10, 2021, and accompanying exhibits.
20 3. Senator Ericksen's Motion in Opposition to Summary Judgment dated September 27,
21 2021.
22 4. The Declaration of Doug Ericksen in Opposition to Summary Judgment and
23 Providing Facts for the Reversal of the Previous LEB Finding dated September 27,
24 2021 and accompanying exhibits.

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1 **I. FINDINGS OF FACT**

2 1.1 Respondent is a Senator representing the 42nd Legislative District and has filed
3 2022 campaign documents with the Washington State Public Disclosure Commission
4 indicating Respondent's intent to campaign for reelection. On April 8, 2021, Respondent
5 participated in Senate floor action from his legislative office using his legislative computer.

6 1.2. During Respondent's participation, the wall in Respondent's legislative office
7 was shown in the background. The wall contained enlarged campaign related materials from a
8 previous campaign as shown in Exhibit 3 to the Declaration of Jennifer Strus.

9 1.3. It is undisputed that the materials were displayed in Respondent's office.
10 Respondent argues that the materials are historical and not active campaign materials.

11 1.4. On April 9, 2021, the Board received a complaint alleging Respondent may
12 have violated the Ethics Act due to the display of campaign materials in his legislative office.
13

14 **II. CONCLUSIONS OF LAW**

15 2.1. The Board has jurisdiction to hear this matter under RCW 42.52.320, which
16 authorizes the Board to enforce the Ethics Act with respect to members and employees of the
17 legislative branch of state government. The Board has jurisdiction over Respondent as a
18 current member of the Legislature. The complaint was filed in accordance with
19 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an
20 adjudicative proceeding was commenced pursuant to RCW 42.52.430, .500. All required
21 procedural notices have been provided.

22 2.2 The Ethics Act governs the conduct of members of the Legislature. Under
23 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

24 2.3 RCW 42.52.180 prohibits the use of public resources for political campaigns by
25 state officers. RCW 42.52.180(1) directs, in pertinent part:
26

1 No state officer or state employee may use or authorize the use of facilities of an
2 agency, directly or indirectly, for the purpose of assisting a campaign for election
3 of a person to an office or for the promotion of or opposition to a ballot
4 proposition.

5 2.4 RCW 42.52.280(1) provides a non-exhaustive list of what comprises “facilities
6 of an agency”:

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

11 2.5 This matter comes before the Board on Board Staff’s Motion for Summary
12 Judgment. Summary judgment is a procedural device designed to avoid the time and expense
13 of a trial when no trial is necessary. *Hudesman v. Foley*, 73 Wn.2d 880, 441 P.2d 523 (1968).

14 2.6 A motion for summary judgment may be granted where there is no genuine
15 issue as to any material fact and the moving party is entitled to judgment as a matter of law.
16 *Hudesman, Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). A material fact
17 is one upon which the outcome of the litigation depends. *Hudesman*, 73 Wn.2d at 886.

18 2.7 The party moving for summary judgment has the burden of showing the
19 absence of any issue of material fact. *Id.* at 887. If the moving party meets its burden, the non-
20 moving party may not rest on mere allegations, argumentative assertions, speculation or
21 denials. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Rather, the non-moving party
22 must produce concrete evidence that shows genuine issues of fact. *Anderson v. Liberty Lobby,*
23 *Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 2505 (1986).

24 2.8 No genuine issue of material fact exists in this proceeding as the underlying
25 facts are undisputed by the parties. While Respondent alleges there are material facts in
26 dispute, Respondent’s argument is rather a legal argument that the materials hanging from
Respondent’s legislative office wall are “historical documents” that do not violate the Ethics
Act. However, there is no dispute as to the actual documents hanging on Respondent’s

1 legislative office wall. The only question before the Board is whether a violation of the Ethics
2 Act occurred and what, if any, penalty would be appropriate.

3
4 2.9 Based on the undisputed evidence before the Board, the Board, by majority
5 vote, finds that the display of the specific campaign related materials in Respondent's
6 legislative office as shown in Exhibit 3 to the Declaration of Jennifer Strus constitutes a
7 violation of RCW 42.52.180.

8 2.10 Respondent's office constitutes a "facility of an agency" as defined in
9 RCW 42.52.180(1). A legislative office is a "facility of an agency." *In re Van Werven*, 2020 –
10 No. 9; *In re Hargrove*, 2012 – No. 1.

11 2.11 The Board enforces the Ethics Act with a no-tolerance view toward campaign
12 related activities with the use of public resources even if there has been no actual assistance to
13 the campaign. *In re Hudgins*, 2020 – No. 13; *In re Hunt*, 2019 – No. 3; *In re Young*, 2017 –
14 No. 41; *In re Hargrove*, 2012 – No. 1; *In re Johnson*, 1996 – No. 1; *Advisory Opinion* 1995 –
15 No. 18.

16 2.12 Respondent's display of the materials in his legislative office constitutes the use
17 of legislative facilities for the purpose of assisting a campaign. Respondent has filed for
18 reelection with the PDC. While the materials make no reference to any particular campaign or
19 year, it is reasonable to assume that the materials will benefit Respondent in his future
20 campaign for the same office.

21 III. ORDER

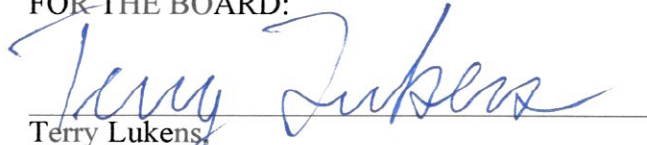
22 Based on the Findings of Fact, and the Conclusions of Law as set forth above, Board
23 Staff's Motion for Summary Judgment is GRANTED. The Board finds that Senator Ericksen
24 violated RCW 42.52.180 by the displaying the campaign materials in his legislative office as
25 shown in Exhibit 3 of the Declaration of Jennifer Strus. Before the Board could determine
26 whether to impose a penalty in this matter, the Respondent unexpectedly passed away. In light

1 of this development, the Board will not impose a penalty for this violation.

2 SO ORDERED this 27 day of January 2022.

3 WASHINGTON STATE LEGISLATIVE ETHICS BOARD

4 FOR THE BOARD:

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6 Terry Lukens
7 Chair, Legislative Ethics Board

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1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Legislative Ethic 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
5 request must be delivered to the Board office within 10 days of 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. RCW
9 34.05.470.

10 Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking 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;
- 26

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 the 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 of the
13 Board.

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**BEFORE THE LEGISLATIVE ETHICS BOARD
OF THE STATE OF WASHINGTON**

In the matter of:

DOUG ERICKSEN,

Respondent.

OAH NO. 07-2021-AGO-00044

LEB NO. 2021-6

DISSENTING OPINION

**MINORITY REPORT: APRIL 9, 2021 ETHICS COMPLAINT AGAINST
SENATOR DOUG ERICKSEN**

LAW

RCW 42.52.180

Use of public resources for political campaigns.

(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.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or

1 members of the public are afforded an approximately equal opportunity for the
2 expression of an opposing view;

3 (b) A statement by an elected official in support of or in opposition to any ballot
4 proposition at an open press conference or in response to a specific inquiry. For
5 the purposes of this subsection, it is not a violation of this section for an elected
6 official to respond to an inquiry regarding a ballot proposition, to make
7 incidental remarks concerning a ballot proposition in an official communication,
or otherwise comment on a ballot proposition without an actual, measurable
expenditure of public funds. The ethics boards shall adopt by rule a definition of
measurable expenditure;

8 (c) The maintenance of official legislative web sites throughout the year,
9 regardless of pending elections. The web sites may contain any discretionary
10 material which was also specifically prepared for the legislator in the course of
11 his or her duties as a legislator, including newsletters and press releases. The
12 official legislative web sites of legislators seeking reelection or election to any
13 office shall not be altered, other than during a special legislative session,
beginning on the first day of the declaration of candidacy filing period specified
in RCW [29A.24.050](#) through the date of certification of the general election of
the election year. The web site shall not be used for campaign purposes;

14 (d) Activities that are part of the normal and regular conduct of the office or
15 agency; and

16 (e) De minimis use of public facilities by statewide elected officials and
17 legislators incidental to the preparation or delivery of permissible
18 communications, including written and verbal communications initiated by
them of their views on ballot propositions that foreseeably may affect a matter
that falls within their constitutional or statutory responsibilities.

19 (3) As to state officers and employees, this section operates to the exclusion of
20 RCW [42.17A.555](#). [[2017 c 7 § 2](#); [2011 c 60 § 30](#); [2010 c 185 § 1](#); [1995 c 397 §](#)
[30](#); [1994 c 154 § 118](#).]

21 **COMPLAINT**

22 On April 9, 2021, Adam Bartz filed a complaint with the Legislative Ethics Board
23 alleging that Senator Doug Ericksen violated the state ethics law, RCW 42.42.

24 In the complaint, Mr. Bartz* wrote: "On April 8, 2021, Sen. Doug Ericksen
25 prominently displayed Committee to Elect Doug Ericksen campaign literature during floor
26 debate on SB 5126."

1 The complaint also attached a photo of Sen. Ericksen with the literature behind him.
2 Due to Covid most legislators were working virtually from their legislative office or home.
3 RCW 42.52.180 reads in part:

4 (1) No state officer or state employee may use or authorize the use of facilities
5 of an agency, directly or indirectly, for the purpose of assisting a campaign for
6 election of a person to an office

7 (2) This section shall not apply to the following activities:

8 (d) Activities that are part of the normal and regular conduct of the office or
9 agency...

10 When contacted by the Legislative Ethics Board about the complaint, Sen. Ericksen
11 directed his staff to promptly take down the memorabilia when informed there was a question
12 that it might violate RCW 42.52.180.

13 **QUESTION PRESENTED**

14 **The question presented is whether Sen. Ericksen's display of past campaign memorabilia**
15 **qualifies as "assisting a campaign" for purposes of RCW 42,52.180.**

16 **DISCUSSION**

17 Sen. Ericksen asserts that the old campaign memorabilia on the wall in no way assists a
18 campaign. He asserts that the memorabilia is historical and he uses it to serve constituents by
19 reminding him of the promises he made to them so that he can keep those promises.

20 The Ethics Board has not offered direct advice on a matter with this fact pattern in the
21 past, so legislators had no guidance from the Board.

22 The question thus turns on whether a reasonable person would find that displaying
23 memorabilia from a past campaign could be determined to be "assisting a campaign" in the
24 future.

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1 The memorabilia in question was posted on a wall. It was not easy to read. It was not
2 handed out to potential voters. On first impression, the memorabilia seems totally
3 commemorative with absolutely no future ability to help a future campaign.

4 Would a reasonable person find as such?

5 It seems like multitudes of members and staff all over the legislative campus view such
6 memorabilia in exactly that way.

7 **PRESIDENT OBAMA'S CAMPAIGN MATERIAL WIDESPREAD ON CAMPUS**
8 **DUING HIS FIRST TERM WHILE THEY COULD BE VIEWED AS SUPPORTING A**
9 **POTENTIAL SECOND TERM**



16 Following Barack Obama's 2008 presidential campaign, his famous "Hope" picture
17 appeared in many legislative offices across campus. Specific members and staff who still are
18 part of the legislature had these posters in their offices. President Obama was still eligible to
19 run for a second term, which, of course, he did.

20 Here is what Wikipedia says about the poster:

21 “The image was widely described as iconic and came to represent Obama's 2008
22 presidential campaign....It was...widely distributed...during the 2008 election season, with
23 approval from the Obama campaign....The image became one of the most widely recognized
24 symbols of Obama's campaign....”

25 From 2008 until the 2012 reelection of President Obama, Democrat Senators,
26 Representatives and staff displayed the Obama poster in their offices not to assist in his 2012

1 campaign, but because the poster reminded them of the hope they felt with the election of the
2 first African American President. The poster was absolutely not to assist a future campaign.
3 They were hung purely for commemorative purposes. Republicans when they walked into
4 Democrat offices with the posters never even considered filing an ethics complaint. They
5 knew that the posters were commemorative memorabilia from a previous campaign.

6 **ADDITIONAL COMMEMORATIVE MEMORABILIA: BUTTONS**

7 In fact, a tour across campus will find offices replete with commemorative campaign
8 memorabilia even relating to past campaigns of legislators currently serving in office. Strips of
9 cloth filled with past campaign buttons adorn numerous offices. Some of the buttons are for
10 people who are still alive and could possibly run again.

11 **ADDITIONAL COMMEMORATIVE MEMORABILIA: EMERY BOARDS**

12 A former cosmetologist who used to be a Senator in the tenth Legislative District used
13 to produce emery boards with campaign messages to promote her elections. These were found
14 in numerous offices on campus and can still be found in some. That former Senator is still
15 alive and could run again. However, the emery boards on campus were never to promote any
16 past run or a possible future run, but were kept as memorabilia of a clever marketing strategy.

17 **ADDITIONAL COMMEMORATIVE MEMORABILIA: MOM IN TENNIS SHOE**
18 **MATERIALS**

19 A former state Senator ran for the United States Senate as a "Mom in Tennis Shoes."
20 Materials with this slogan have been seen in numerous offices on the legislative campus.
21 Bumper stickers (on walls) and buttons have been particularly popular. The materials aren't to
22 advocate for her election in 2022. They are to commemorate Washington's first female U.S.
23 Senator.

24 **ADDITIONAL COMMEMORATIVE MEMORABILIA: ETC.**

25 Similar campaign memorabilia can be found on campus for Christine Gregoire, Dino
26 Rossi, Gary Locke, Slade Gorton, Jay Inslee and Donald Trump. Senator Gorton has since

1 passed, but all the rest are alive to run for office in the future if that is their desire. The
2 materials are purely commemorative and serve absolutely no purpose to directly or indirectly
3 assist the campaign of a person to office.

4 **CONCLUSION**

5 A reasonable person would **not** find the display of past campaign memorabilia to be
6 "assisting a campaign" and a reasonable person would not a violation of RCW 42.52.180.

7 In fact, a reasonable person might find that displaying old campaign memorabilia is so
8 widespread by members, and staff and the press on the capital campus that the activities are
9 part of the "normal conduct" of the legislature and are specifically allowed under RCW
10 42.52.180:

11 "(2) This section shall not apply to the following activities:

12 "(d) Activities that are part of the normal and regular conduct of the office or
13 agency..."

14 In conclusion,

15 1. A reasonable person would find that Senator Ericksen's poster, that is the center
16 of this complaint, clearly is only memorabilia from a past campaign and does not violate the
17 intent of RCW 42.52.180.

18 2. Senator Ericksen contends that the poster in question is actually "historical" in
19 nature and therefore allowed. He further contends, which was supported, that the Legislative
20 Ethics Board (LEB) has been unclear regarding the tacit acceptance of campaign mementos or
21 articles involving past campaigns being allowed in legislative offices.

22 3. Upon notification of the violation, Senator Ericksen promptly removed the
23 poster from his office.

24 4. Senator Ericksen made a valid point as to the ambiguous nature of what is
25 allowed in a legislative office and what is not.

1 5. The proper course of action for the Board if a majority wanted to change current
2 widely held practices and understandings about political memorabilia would have been to
3 accept Senator Ericksen's immediate removal of his poster as his acceptance and simply offer
4 an LEB counseling opinion on the matter. In addition, the LEB should discuss and offer an
5 opinion on the matter of past campaign materials, of any nature, being allowed in legislative
6 offices.

7 **ADDENDUM: ON JUSTICE**

8 Justice is defined as

- 9 • acting or disposed to act conformably to what is right;
10 • rendering or disposed to render to each one his due
11 • equitable in the distribution of justice
12 • impartial
13 • fair
14 • conformed to rules or principles of justice
15 • rightful

16 Keeping previous political memorabilia in a legislative office does not directly or
17 indirectly assist the election of a person to an office. To find otherwise violates the plain
18 words of RCW 42.52.180. It also goes against what has been a common understanding of the
19 law on this campus and in this state.

20 Perhaps of greater concern, is that finding that RCW 42.52,180 has been violated in this
21 case seems to be undermine the cause of justice to which this Board should be called.

22 Numerous members and staff have kept and continue to keep previous political
23 memorabilia in their offices. They do so not to assist in the election of a person to an office.
24 They do so to remember a specific person who ran for office -- whether they won or not.

25 To find one person among many has violated a law -- which is not clear on this point --
26 is to invite disrespect for the principle of justice.

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1 We should act justly in this case. We should walk humbly. We should dismiss this
2 case, but offer a prospective advisory opinion if the Board feels that years of practice should be
3 changed.

4 DATED this _____ day of January, 2022.

5 

6 _____
7 SENATOR JIM HONEYFORD

8 

9 _____
10 DAN MCDONALD