Legislative Ethics Board

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COMPLAINT 2022 – NO. 14
In re Bateman, Dhingra, Randall & Thai

COMPLAINT 2022 – NO. 15
In re Dhingra, Lekanoff, Lovelett, Ramel, Robinson, Rule, Shewmake & Slatter

July 25, 2023

REASONABLE CAUSE FINDING & ORDER

I. NATURE OF COMPLAINT

The complaint alleges that Respondents used the "facilities of an agency" (also called public or state resources) for campaign purposes contrary to RCW 42.52.180. The original complaint was filed against eleven legislators and was based upon their actions at two separate press events. The complaint was divided into two different case numbers based upon the press event; however, this opinion applies to all Respondents under both case numbers.

II. JURISDICTION

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

III. PROCEDURAL HISTORY

Complaints 2022 – Nos. 14 & 15 were received on October 24, 2022 and discussed at the Board's regularly scheduled meetings on November 10, 2022, December 10, 2022; February 7, 2023; March 27, 2023; May 19, 2023 and June 12, 2023.

IV. FINDINGS OF FACT

A. Respondents

1. Respondent Bateman is a member of the House of Representatives representing the 22nd legislative district. She was first elected in 2020 and was re-elected in 2022.

2. Respondent Dhingra is a member of the state Senate representing the 45th legislative district. She assumed that seat in 2017, was elected in 2018 and was re-elected in 2022.

3. Respondent Lekanoff is a member of the House of Representatives representing the 40th legislative district. She was first elected in 2018 and was re-elected in 2022.

4. Respondent Lovelett is a member of the state Senate representing the 40th legislative district. She was appointed in 2019, won a special election in the fall 2019 and was re-elected in 2020. She is not up for re-election until 2024.

5. Respondent Ramel is a member of the House of Representatives representing the 40th legislative district. He was appointed in January 2020 and was elected in November 2020 and re-elected in 2022.

6. Respondent Randall is a member of the state Senate representing the 26th legislative district. She was first elected in 2018 and re-elected in 2022.

7. Respondent Robinson is a member of the state Senate representing the 38th legislative district. She was a member of the House of Representatives from 2013 – 2020. She was appointed to the Senate in 2020 and was elected in 2022.

8. Respondent Rule is a member of the House of Representatives representing the 42nd legislative district. She was first elected in 2020 and was re-elected in 2022.

9. Respondent Shewmake was a member of the House of Representatives representing the 42nd legislative district from 2018 to 2022. She was elected to the state Senate in 2022.

10. Respondent Slatter is a member of the House of Representatives representing the 48th legislative district. She was appointed to the House in 2017, ran for election in 2018 and was re-elected in 2022.

11. Respondent Thai is a member of the House of Representatives representing the 41st legislative district. She was first elected in 2018 and re-elected in 2022.

B. Press Event on June 25, 2022

12. On the morning of June 24, 2022, the United States Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, ruling that the U.S. Constitution does not confer the right to abortion, and overturning two landmark Supreme Court decisions: *Roe v. Wade* and *Planned Parenthood v. Casey*.

13. On June 24, 2022, at approximately 11:30 am, Drew Shirk, Executive Director, Legislative Affairs for Governor Inslee sent the following email to all Democratic members of the House and Senate:

> *With the jolting news that Roe vs. Wade has now been overturned, please join Governor Inslee legislative leaders, a reproductive health provider and patient advocate tomorrow for a press conference on the Capitol steps to show solidarity in continuing to protect the right to choose in Washington State. We are*

delivering the message that Washington is a safe haven for abortions, and we still have work to do. We will highlight the policy initiatives we have collectively identified to make sure that the right to an abortion and a strong reproductive health infrastructure exists in our state.

Press conference details:

Capitol Steps in Olympia
Saturday, June 25, 2022 at 10:00am
Press have been invited to attend

Please let us know if you have any questions.

Thanks,
Drew

14. On June 24, 2022, in the late afternoon, Aaron Wasser, Communications Director for the Senate Democratic Caucus, and Jen Waldref, Communications Director for the House Democratic Caucus, received the following email from Jaime Smith in the Governor's office:

From: Smith, Jaime (GOV) <Jaime.Smith@GOV.wa.gov>

Sent: Friday, June 24, 2022 3:12 PM

To: Wasser, Aaron <Aaron.Wasser@leg.wa.gov>; Waldref, Jen <jen.waldref@leg.wa.gov>; Katie Rodihan <Katie.Rodihan@ppollianceadvocates.org>; Voris, Molly (GOV) <Molly.Voris@gov.wa.gov>; Shirk, Drew (GOV) <drew.shirk@gov.wa.gov>; Fehrenbach, Lacy M (DOH) <lacy.fehrenbach-marosfalvy@doh.wa.gov>

Cc: Wilson, Morgan (GOV) <Morgan.Wilson@gov.wa.gov>; Faulk, Mike (GOV) <Mike.Faulk@gov.wa.gov>; Kopriva, Jim (GOV) <James.Kopriva@GOV.wa.gov>; Pope, Katie (DOH) <Katie.Pope@doh.wa.gov>; Perez, Elizabeth (DOH) <Elizabeth.Perez@doh.wa.gov>; Walton, Katherine (GOV) <Katherine.Walton@gov.wa.gov>

Subject: Overview of Roe press conference

Hi everyone –

Still a few moving pieces but we're in good shape for tomorrow. Here's an outline of the logistics + advisory that went out about a half hour ago. I'll be at the office tomorrow by about 8 so text me if any urgent questions come up in the morning. 360.790.4319

- *Press conference begins at 10am on the capitol steps. (Speakers please gather inside Legislative building/rotunda at 9:50 for huddle.)*
- *This is not a rally but it is a public press conference and we welcome anyone who wants to attend in support of abortion rights. Having several dozen people with signs or shirts is great. Legislators who attend can all stand with the speakers.*
- *Topic: State and legislative actions to protect and expand protections for abortion patients and providers*
- *Speakers each have about 3 minutes. Please tailor remarks to be oriented towards next steps, policies, etc. This is about what comes next. Speaker order:*
  - *Gov. Jay Inslee*
  - *Reps: Bateman and Thai (Bateman needs to leave by 10:30)*

- *Sens. Dhingra + Randall*
- *Courtney Normand*
- *TBD patient*

Lacy on standby to help with reporter questions if needed)

For those wondering what our office will be promoting as next steps, gov will mention the need for a state constitutional right, protections against out-of-state investigations and legal action, financial support and access (especially in rural areas), and stronger protections for patient and provider data. The more everyone is talking about the same things the better so don't worry about redundancy. We're on the same team pulling in the same direction, united.

Thank you, all! See you soon.

15. Attached to this email was the following press release announcement:

ADVISORY: Press conference regarding state response to Supreme Court ruling overturning Roe v. Wade

Gov. Jay Inslee and legislators will hold a press conference tomorrow at 10:00 a.m. on the Capitol steps to discuss the state's response to the Dobbs v. Jackson Women's Health Organization decision by the Supreme Court of the United States. The court's decision overturns the constitutional right to abortion established by Roe v. Wade 49 years ago.

The press conference follows Inslee's announcement that he and the governors of California and Oregon have launched a West Coast offense to expand access and protections for all patients and providers who come into their states seeking or assisting with abortion care.

Saturday, June 25

10:00 AM – Press conference with legislators on the steps of the Washington State Capitol

Inslee will be joined by legislators, patients and providers including:

- *Senators Manka Dhingra and Emily Randall*
- *Representatives My-Linh Thai and Jessica Bateman*
- *Courtney Normand, Washington State Director at Planned Parenthood Alliance Advocates*

Also available to help answer questions from reporters will be Lacy Fehrenbach, Deputy Secretary for Prevention, Safety and Health at the Washington State Department of Health. DOH offers information about accessing abortion care, contraception and other forms of reproductive health care.

The event will be live-streamed by TVW at https://tvw.org/video/governor-jay-inslee-press-conference-2022061210/?eventID=2022061210.

***Media day-of contact**: Mike Faulk, 360.790.2920*

***JAIME SMITH** (she/her)*
Executive Director of Communications
Office of Governor Jay Inslee
360.790.4319| jaime.smith@gov.wa.gov
www.governor.wa.gov

16. Although the event was listed as a press event and not a rally, the email from Jaime Smith in which she indicated that they would "welcome anyone who wants to attend in support of abortion rights" could be read to suggest a rally. In fact, multiple spectators attended this event and cheered at certain points in the various speeches.

17. The equipment used at the event – podium, microphone, loudspeakers – were provided and set up by the Department of Enterprise Services (DES) at the request of the Governor's office. The state email system was used by the Governor's staff to communicate the event details to the legislators involved.

18. The event was held outdoors at the bottom of the north steps to the Legislative Building.

19. The Governor set the tone of the event with the following remarks: "yesterday's radical un-American decision by the U.S. Supreme Court cut off a woman's right of choice in over half of the United States. Let's be clear what this was. It was a decision by Republican appointed justices as a result of a court stacking strategy by Republicans in the US Senate advancing a long-term effort of the Republican party to strip American women of this constitutional right. . . The former Vice President said yesterday that "we must not relent until abortion is banned in every state."

20. Respondents Bateman, Dhingra, Randall and Thai spoke at this event.

C. Press Event on October 21, 2022

21. In October of 2022, Molly Vorhis, from the Governor's office contacted the chiefs of staff for the Democratic caucuses in the House and Senate informing them of the reproductive rights/abortion access press event scheduled to take place in Bellingham on October 21, 2022. The chiefs of staff reached out to their members to find out who was interested in participating in the event. The names of the members who indicated an interest were provided to the Governor's staff.

22. On October 20, 2022, the following email was sent by Molly Vorhis to the legislative members who indicated an interest in attending the press event:

From:Voris,Molly(GOV)<Molly.Voris@gov.wa.gov>
Sent:Thursday,October20,202212:32PM
To:Robinson,Sen.June<June.Robinson@leg.wa.gov>;Lovelett,Sen.Liz <Liz.Lovelett@leg.wa.gov>; Rule, Rep. Alicia <Alicia.Rule@leg.wa.gov>; Lekanoff,

Rep.Debra<Debra.Lekanoff@leg.wa.gov>;Shewmake,Rep.Sharon<Sharon.Shewmake@leg.wa.gov>;Ramel,Rep.Alex<Alex.Ramel@leg.wa.gov>;Slatter,Rep.Vandana<Vandana.Slatter@leg.wa.gov>;Dhingra,Sen.Manka<Manka.Dhingra@leg.wa.gov>;Liias,Sen.Marko<Marko.Liias@leg.wa.gov>
Cc:Shirk,Drew(GOV)<drew.shirk@gov.wa.gov>;Timmons,Joe(GOV)<Joe.Timmons@gov.wa.gov>;Meyers,Dominique<Dominique.Meyers@leg.wa.gov>;Avalos, Paulette <Paulette.Avalos@leg.wa.gov>; Armstrong, Kate <Kate.Armstrong@leg.wa.gov>;
Ndambuki,Ivy<Ivy.Ndambuki@leg.wa.gov>;Campbell,Rachel<Rachel.Campbell@leg.wa.gov>; Soulliere, Sarah <Sarah.Soulliere@leg.wa.gov>; Hubik, Amanda <Amanda.Hubik@leg.wa.gov>;Knapp,Jeremy<Jeremy.Knapp@leg.wa.gov>; Chance, Pavi <Pavi.Chance@leg.wa.gov>; Smith, Jaime (GOV) <Jaime.Smith@GOV.wa.gov>;
Faulk,Mike(GOV)<Mike.Faulk@gov.wa.gov>
Subject: details for tomorrow's Bellingham abortion access event

We look forward to you attending tomorrow's reproductive freedoms/abortion access event in Bellingham. Below are the details for the event:

The event is being held at WWU's Harrington Field, 458 South College Dr, Bellingham, WA 98225. Parking information is attached.

The event will have a rally feel to it, and it is for WWU students, faculty and staff. It is likely to be raining tomorrow, and while the event is outside, the stage is covered, so you should stay dry.

Below is the draft run-of-show (things may still change) starting at 10:30am:

Sislena Ledbetter, WWU's Executive Director for Counseling, Health and Wellness provides a welcome and introduces governor
Governor Inslee
Rep. Shewmake
Rep. Slatter
Sen. Dhingra
Student speaker
Other legislators in attendance will be welcomed to make very brief remarks (please keep remarks to less than 1 minute)
Governor closing

Media will be in attendance, and reporters may want to speak with you afterwards.

Please let me know what other information I can provide.

Thank you,

Molly

Molly Voris, MPH (she/her)
Special Assistant to the Chief of Staff and Deputy Chief of Staff
Senior Policy Advisor for Public Health and Health Care
Office of Governor Jay Inslee

23. According to Jaime Smith, the Governor's press secretary, the equipment used at the event – podium, microphone, loudspeakers – were provided and set up by Western Washington University (WWU) at the request of the Governor's office. She also indicated that the event was held outside one of the WWU buildings in an area accessible to the public. The Governor's staff used the state email system to communicate the event details to the involved legislators.

24. Although the event was listed as a press event and not a rally, Ms. Vorhis's email suggested that the event would have a "rally feel" to it. Multiple spectators attended the event.

25. The Governor began the press conference with the following comments: "In the last few years Republican legislators have introduced 40 bills, 40 bills, to try to reduce or eliminate a woman's right of choice in the state of Washington and those gates have been thrown open to those malicious attempts to strip women of the right of choice by the *Dobbs* decision in the US Supreme Court." The Governor also mentioned the recent statement made by Mike Pence, the former Vice- President, that Republicans must not relent until abortion is banned in every state.

26. Respondents Shewmake, Rule, Slatter, Dhingra and Lovelett spoke at the event. Although Respondents Ramel, Lekanoff and Robinson attended the event, none of them spoke.

27. Prior to the event, Respondent Dhingra arranged to meet Respondent Lovelett after the event for lunch to discuss legislative business.

D. Remarks by Respondent Dhingra

28.. On June 25, 2022, Respondent Dhingra made the following remarks:

My name's Manka Dhingra, state senator from the forty fifth legislative district and chair of law and justice committee. It is absolutely surreal for me to stand here today in the year 2022 and talk about the ramifications of Roe being overturned, not as an academic discussion, but as reality. The fact is that my daughter has fewer rights in this country than my mother had. But in Washington, reproductive health Care, gender affirming care, are legal and available. However, these rights have to be fought for and protected year after year. While we have the laws on the books, all laws are only as good as the access they create. They're only good if we have providers who can deliver these services.

Washington has to ensure that all Washingtonians, regardless of where they live, can access comprehensive reproductive health care without needing to drive for hours.

Washington has to ensure that all hospitals, regardless of whether or not they are faith-based, provide timely and necessary medical treatment to all. We will be working on this issue so it is ready for next session. It is critical for our state to ensure that those seeking medical services are protected from civil and criminal prosecution. And that those providing these much-needed services are also protected from civil and criminal liability. We need doctors who are trained on how to perform abortions, we need doctors who can go to work without being harassed and threatened. And we need to ensure that there are comprehensive health clinics that are easily accessible to all those who need them.

We need data privacy protection for medical records, as well as for electronic surveillance of individuals. We updated a cyber stalking and cyber harassment statutes last session. And we'll be looking at doxing for how to protect individuals from the public release of their personal information. So while abortion, reproductive healthcare, gender affirming care are all legal in Washington, there is a lot more work that needs to be done to ensure that they're accessible to everyone in Washington and all those individuals who need to leave their home states to access medical care. Because that is the world we live in now, that our state has to be a sanctuary state for other Americans who simply need to access medical care. And this is, this is a decision that needs to empower every single person to make sure that they're going out, registering to vote, and making sure they are voting for individuals who are reproductive health champions. Because otherwise, all our rights are under attack.

29. On October 21, 2022, Respondent Dhingra made the following remarks:

My name's Manka Dhingra, state senator from the forty fifth legislative district deputy majority leader of the Senate and chair of Law and Justice committee. It is unconscionable that women and LGBTQ individuals are being denied comprehensive health care all across our country. It is unconscionable that my mother had more rights than my two daughters. It is unconscionable that in the United States of American we have to have sanctuary so that women and LGBTQ individuals can have the full range of reproductive health care and gender affirming care. It is unconscionable that if you put on social media about accessing abortion pills that information can be used against you in other states for criminal prosecution. It is unconscionable that a person who might access reproductive health care, gender affirming care, your geolocation – all the information that consumers need to make decisions can be used against them.

But not in this Washington. My health, my data in Washington we will be ensuring that every entity obtains consent prior to collecting or sharing your health data. We're going to ensure that they are prohibited from selling your personal data (unintelligible) . We're going to ensure that you have the right to have your health data deleted and we're going to ensure that geo-fencing cannot be used around gender affirming care and reproductive care (unintelligible) . And in this Washington we are going to hold the bad actors accountable and protect the privacy and health data of all. In this Washington, (unintelligible) practices and be the national model for protecting the rights of women and LGBTQ folks.

I am honored to do this work with all the stakeholders we have, our elected officials, tech companies and each and every one of you. Because we are not going back in Washington.

We are going to be the beacon of hope for the rest of the nation. But to do this we need all of you and I'm speaking specifically about all the students here. We need each and every one of you to speak up. We need each and every one of you to have your voices heard and we need each and every one of you to vote. We need you, all your friends, your families, your neighbors, all the people who represent your values and who are willing to fight to protect your rights. Just 5 years ago, just 5 years ago, the Senate was held by Republicans. That's just 5 years ago. We're not going to go back. We're going to continue to move forward and to all of you here today thank you.

E. Remarks by Respondent Thai

30. On June 25, 2022, Respondent Thai made the following remarks:

I am My-Linh Thai state representative. It is an honor to be here. I want to thank you Governor Inslee for your commitment to protect the people's right to reproductive health. I also want to take a moment to acknowledge our collective pain and suffer [sic]the SCOTUS decision yesterday has inflicted upon you and your loved ones. The decision one made that affects their liberty and happiness is nuanced, is complicated and difficult. And that is why that individual is the only one who can make that decision for themselves.

Years ago, when I was about to graduate from University of Washington pharmacy school, I learned I was pregnant despite using contraception. I made a decision to get an abortion. I made a choice, a choice that could afford me to finish my education. A choice that would impact my future. A choice that would allow me to have a healthy family when I am ready. A choice that my children are fully supported. Sorry I am breathing because this is hard on all of us. The SCOTUS decision yesterday exposes pregnant people to arbitrary, state-based restriction regulation and man's [sic] that will leave many people unable to access the needed medical care. These restriction are not based on science, nor medicine, and worse yet allow it allowing unrelated third party to make decisions as rightfully and ethically should be made only by individuals and their health care providers.

Abortion is safe. It is an essential part of a comprehensive health care, just like any other safe and effective medical intervention. It must be available equitably to people no matter their race, their social economic status, sexual orientation, or where they reside. The impact of this irresponsible decision will fall disproportionately on people who already face barriers accessing health care, including people of color, those living in rural areas and those without ample financial resources.

This decision confirmed that this is a dark and dangerous time for the people and health care providers in America. Here in Washington, I commit to work with my fellow lawmakers, leader across Washington State, and working with the Governor's Office to create the strongest possible safety net for the people in Washington, and to protect the right of all individuals to their reproductive health. Here in Washington, the people, not politician, not a judge get to make the most private and personal decision to your well-being. And that is my commitment.

F. Remarks by Respondent Bateman

31. On June 25, 2022, Respondent Bateman made the following remarks:

> *Hi everyone. I'm honored to be here today with my fellow legislators and the governor's office to ensure*
> *that in Washington, reproductive health care, including access to safe and legal abortion remains a fundamental and protected right. I am here today not only as a legislator, but as one of the one in 4 women who have had an abortion. That is a health care decision that I made privately with my health care provider. And I am fortunate that I was able to have a safe and legal abortion in Washington State. That is not something that I've shared publicly, and I would have preferred to have kept that private. But at this dire time in our nation's history, I will not remain silent while this fundamental right is stripped from millions of my fellow Americans. Despite almost fifty years of legal precedent and years of Supreme Court justice*
> *nominees stating on the record that Roe is settled law, this activist Supreme Court has issued a decision overturning Roe v. Wade.*
>
> *This is a radical, dangerous opinion that will harm women and people who can become pregnant. It also puts in jeopardy other constitutional protections like the right to privacy, same sex marriage and access to contraception. This decision is a direct attack on our bodily autonomy, reproductive freedom and economic justice. We know abortion will not stop. It will not go away, but safe and legal abortions will.*
>
> *While this decision will impact millions of Americans, it will also, it will disproportionately impact people of color, LGBTQ individuals, and those with limited incomes. I know my fellow Washingtonians are outraged by this decision and fearful of what a post Roe world looks like. Washington voters have continually reaffirmed their support for choice by passing an initiative in 1991 protecting this right. And since then, Democratic lawmakers have consistently strengthened those reproductive freedoms in our state.*
>
> *In Washington State, abortion will remain legal. And we welcome those coming to our state to seek access to their reproductive freedom. In the coming weeks, my colleagues and I will be working to plan our legislative strategy so we can strengthen reproductive health care in Washington and protect access to safe and legal abortion, including added protections for medical providers, shielding them and patients from other states' penalties for abortion, increasing patient privacy protections and training the right to abortion in our constitution. And introduce increasing reproductive healthcare access across our state. Because you can't access reproductive health care if you don't have it. My colleagues and I are committed to protecting the right to choose for all. And we need you, each and every single one of you that's impacted by this decision to remain vigilant, to organize and to let your voices be heard both here and in our nation's capital.*

G. Remarks by Respondent Randall

32. On June 25, 2022, Respondent Randall made the following remarks:

My name is Emily Randall and I am the senator for the twenty sixth district. I am also a daughter, a sister an auntie, a queer Chicana woman, and a former planned parenthood fundraiser. I'm here today in this place, but also in office in the first place because we knew this day would come. This war on abortion access and our reproductive rights to keep us from planning our families when and how it is right for us has long been waging. Right wing extremists have been vying for power and control over our bodies.

But we will not let them win. Women and LGBTQ folks, people of color and allies have long been fighting back, resisting and reclaiming our power. Midwives like my great grandmother in rural New Mexico in the thirties. Activists including many of you who passed Washington's ballot measures to codify abortion rights in the 70's and the 90's and the activists across the state who got out the vote to take control of the Washington State Senate in 2017.

Because of you, we passed reproductive parity requiring insurance companies that cover maternity care to also cover abortion access. Because you organized and voted, together we passed reproductive health access for all guaranteeing access to abortion and care, regardless of gender identification or immigration status. Because you organized and voted we passed comprehensive sex ed. Because you organized and voted we extended the reproductive parity out to cover college student health plans. Because you organized and you voted we protected pregnant patients, ensuring that folks experiencing miscarriage, or ectopic pregnancy, cannot be denied life-saving care at Catholic hospitals. Because you organized and you voted.

And this year we passed the Washington, abortion access act, updating our statute to be gender inclusive, strengthening our network of abortion providers and protecting providers, helpful friends, and Lyft drivers from the type of vigilante lawsuits we're seeing in Idaho, in Texas and across the country and we did it because you organized and you voted. We have worked tirelessly to strengthen and protect reproductive health access and abortion access in this Washington. But just because our right to abortion is codified in state law does not mean we can stop fighting. Because five years ago, anti-abortion extremists in the Republican party controlled the Washington State Senate. And we will not let them win it back. We will organize, we will vote and we will not stop fighting for our reproductive rights and our freedoms.

H. Remarks by Respondent Shewmake

33. On October 21, 2022, Respondent Shewmake made the following remarks:

Thank you all for being here today to stand up for basic freedoms. We have the freedom to make the most personal decision of your life – whether or not to become a parent and we are not going to give it up. Since the Dobbs decision, I have found my constituents are super mad and super engaged because this is not OK. And when the Republicans are asked about it they won't tell you where they stand. Sometimes they'll say things like, well you know it's already been decided yada yada. No that's not enough – you need to tell us where you stand because every single year the Republicans introduce legislation to ban or restrict your basic freedoms – your basic, basic freedoms and that is not OK. There's also a lot of work to be done when other states are banning abortions. So what happens to the licenses of the doctor who provides the abortion and an activist in Alabama gets angry? We need to

make sure we're protecting those doctors, their medical licenses, the women. The nurses, the medical professionals to make sure they can experience the right for who decides who becomes a parent. What happens? The Governor spoke about sanctuary laws. You listen to the Republicans and they think sanctuary means we are publicly funding a whole lot of people to come here. No. That's not what it means at all. This line shows how out of touch they are with the people of this state. So we are going to stand, we are going to be energized and we are not going to forget the fact that this is incredibly important. We have hard policy work to do and we have a lot of organizing work to go forward and bring this national so we don't see a national abortion ban. We codify Roe at the federal level and we protect everyone's freedoms to make this incredibly personal decision that politicians in Olympia, DC, all those other places have no right making. It's your individual right, not theirs.

I. Remarks by Respondent Lovelett

34. On October 21, 2022, Respondent Lovelett made the following remarks:

My name is Liz Lovelett. I am your Senator right here in the 40th district. (mentioned names of local legislators – unintelligible) – just know we are a unified front against any attacks against your privacy, your body autonomy and your health care. Im honored today to be here also with my mom who is not only a Western alumna but previous agitator (unintelligible) because now I have two kids of my own that may be faced with a decision that they need to make about their own bodies. So we are united in purpose, we are united in generations of advocacy and we're here together knowing that you guys have the ability to turn the tides on elections this year, next year and the year after. You can be an incredibly powerful voting bloc so we can ensure these rights are permanently protected. The piece of legislation I will be working on this year is another privacy protection and that is to protect the personal information of care providers to make sure their addresses are exempted from public records searches so they can continue to practice their trade and provide these necessary services without having fear of people coming to their homes and threaten violence and harassment. So that's my dedication to you. Your dedication needs to be to vote and I'll pass it over to my other incredible colleagues.

J. Remarks by Respondent Slatter

35. On October 21, 2022, Respondent Slatter made the following remarks:

Thanks for coming out today – can I just see how many students we have here today. Thank you so much. My name is Verdana Slatter. I'm a mom, a pharmacist by training and a Washington state legislator. On June 24, 2022, the Supreme Court overturned Roe v. Wade, the constitutional right to safe and legal abortion. I remember how unbelievable that moment was. Take away a constitutional right. Here in Washington state I'm proud to say that we continue to have access to safe and legal abortion and reproductive care. But we have more work to do to ensure nobody in our state is left behind and that the people who travel here are protected. This is where the Supreme Court overturned our right our right to health care involved the autonomy and leaving it up to each state. What they are really saying is that access to abortion is only available for the rich and powerful and privileged. But we will not leave behind pregnant people in Texas or Idaho

or here in Washington. Now more than ever we have to ensure that reproductive care is accessible, affordable, safe and private.

It makes me think of a young college student having sex and the condom breaks. She is scared, she lives in Texas. She wants to make her own decisions about her health and her future. She doesn't have easy access to Plan B and wants to know her options. So just like any of us would do she goes online so she can see where

she can go to have an abortion or reproductive health care. What she doesn't know is that accessing the information puts her in harms way. A recent article reported that for only $160, the equivalent of one-quarter of the cost of the phone in your pocket, anyone can find her search information for a data broker. They can find out where she lives, what clinic she searched, who her providers are and she can be hunted and fined up to $10,000. And this can happen to women who travel to access abortion services in our state too.

That is why I am introducing the Washington My Health My Data Act, a bill that will ensure our health data information about our private health care decisions about our bodies cannot be collected or shared without our consent and cannot be bought or sold. Most of us expect that our health care data is protected. Under laws like under HIPAA when you go and see the doctor; however, the reality is you don't have the same protections when you share any personal health information in an app or website or searches. This leaves your data vulnerable to being sold or shared with people who may be targeting you. This means for example that your menstrual tracking app can sell sensitive information about a late period or a miscarriage. Women, people, can sometimes turn to crisis pregnancy centers in their search for abortion care only to find they cannot receive an abortion at that facility. And while she is there the crisis pregnancy center can collect her data and share it with anti-abortion groups or others,

You're already seeing a huge increase in people traveling to Washington from Idaho and Montana and across the country seeking care. The latest estimates from the good mom institute, a reproductive health research organization is projecting a 385% increase in patients from out of state seeking care. That is the number of people who would fill up the size of three football fields. Think about them and most need to do online research to get here finding transportation, locating a clinic, a provider, somewhere to stay. We need privacy laws to protect their information. I believe this in an important opportunity to build and protect our health data especially during this unprecedented time in which our constitutional rights to reproductive health care are being attacked across the country. Health care is a human right for everyone. That means accessible health care, affordable health care and private health care.

As a clinical pharmacist I had the honor of testifying many years ago on the importance of Plan B through comprehensive reproductive care. As a legislator I am honored to sponsor the Washington my health my data bill in the House this coming session to protect our health data and privacy in Washington state. I'm inspired to work with Senator Dhingra, Governor Inslee, Attorney General Ferguson, Representative Shewmake and all of my colleagues here today and especially inspired by every single one of you for standing up for the freedom to choose our future and to fight for the right

to privacy. So today, I want people in Texas and anti-abortion Republicans across the nation to hear our resolve.

K. Remarks by Respondent Rule

36. On October 21, 2022, Respondent Rule provided the following remarks:

Hello everybody. It's so great to see you. I am your representative in the 42nd district Alicia Rule. I am a mother of 3, I'm a social worker and I will always always trust and stand with women. Thank you.

L. Interviews with Respondents

37. All Respondents indicated that they decided to attend and /or speak at the press conferences because of their interest in reproductive health issues.

38. All Respondents appeared at the press events in their official capacities as legislators.

39. The Respondents indicated that they did not use legislative staff to assist in writing their remarks or in any other way in preparation for the events. They each stated they wrote their own remarks.

40. Legislative caucus staff and legislative assistants did assist the members with logistical information about the event.

41. None of the Respondents submitted an Election Year Activity (EYA) form[1] for approval before speaking at the events.

42. Respondent Robinson sought and received mileage reimbursement to attend the October 21, 2022 event. The reimbursement was paid from her Senate office expense account.

43. Respondent Dhingra sought and received mileage reimbursement to attend the June 25, 2022 and October 21, 2022 events. The reimbursement was paid from her Senate office expense account.

44. Office expense account reimbursement requests are submitted after the activity for which the legislator is seeking reimbursement. Before the request is submitted, members must attest that the expenses are true and correct reimbursement claims for necessary legislative expenses.

45. Respondent Thai sponsored HB 1851 during the 2022 legislative session. HB 1851 preserved a pregnant person's ability to access abortion care. Respondent Bateman co-sponsored HB 1851. Respondent Randall sponsored the companion bill to HB 1851 (SB 5766) in the Senate. Respondent Dhingra co-sponsored the Senate bill. Respondent Randall also sponsored various other health care related bills during the 2022 session: SB 5068 (Post partum Period – Medicaid); SB 5688 (Health Care Marketplace); SB 5765

1Once election restrictions begin in an election year, legislators, when performing any kind of outreach must submit and have approved an EYA form before they can be involved in any outreach activity. Election year restrictions began on May 16, 2022.

(Midwifery). None of the other named Respondents sponsored any reproductive health care related legislation during the 2022 session.

46. During the 2023 session, several bills relating to abortion were introduced or passed the legislature: ESHB 1469 (Thai, Slatter, Ramel, Bateman) SB 5489 (Dhingra, Lovelett, Randall) passed the House and was referred to the Senate Law and Justice Committee of which Respondent Dhingra is the chair; and HB 1155 sponsored by Respondent Slatter (Bateman, Thai, Lekanoff, Ramel) SB 5351 (Dhingra, Randall, Lovelett, Shewmake);SB 5242 (Robinson, Dhingra, Lovelett); HB 1340 (Thia, Bateman, Lekanoff, Ramel); SB 5400 (Randall, Dhingra, Lovelett, Shewmake); SB 5768 (Dhingra, Lovelett, Randall); HB 1854 (Bateman, Thai, Lekanoff, Slatter).

M. June 25, 2022 Press Event & Election Timeline

47. This press event occurred the day after the Supreme Court released the *Dobbs* decision.

48. This event occurred more than 5 weeks before the August primary election and two-and-a-half weeks before ballots could be submitted for the primary.

49. Although each of the legislators was running for re-election during this time, none of them mentioned this fact when they spoke.

N. Election and the October 21, 2022 Press Event

50. The press event which is the subject of this complaint occurred 4 months after the *Dobbs* decision was released by the US Supreme Court.

51. This press event occurred 17 days before the general election on November 8, 2022.

52. The day before this event, October 20, 2022, the 18-day election period began, during which voters could begin to return ballots.

53. Access to reproductive health care was a major issue in the general election, both in Washington and across the country.

54. This event was held at WWU which is located in the 40th legislative district. The 40th legislative district abuts the 42nd legislative district. The elections in the 42nd district were hotly contested, particularly the race for the Senate seat which Respondent Shewmake eventually won by a narrow margin.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.180 (1) provides in pertinent part as follows:

> 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.

The first question to be answered in this matter is whether the members who spoke at these events used the "facilities of agency" for the purpose of assisting a campaign for the election of a person to an office. It is important to note that the Board enforces the Act with a zero-tolerance view toward campaign-related activities with the use of public resources even if there has been no actual assistance toward the campaign. *See, e.g., In re Hudgins*, 2020 – No. 13. Furthermore, intent to violate RCW 42.52.180 is not required to establish a violation of .180. *In re Carrell*, 2008 – No. 3.

The Board has held previously that the following items or activities constitute "the use of facilities of an agency": legislative badges; official newsletters; state letterhead; legislative staff; photographs and video produced by legislative staff; a tweet drafted and posted by legislative staff; official social media accounts; legislative offices and legislative websites. *See Advisory Opinion*, 2021 – No. 1.

The Ethics in Public Service Act (Act) governs both the legislative and executive branches of government. In this case, because state agencies were involved in both press events, the "facilities of an agency" used were the podium and loudspeaker system provided by DES and WWU and the premises under their control, all at the direction of the Governor. Furthermore, both events were planned and communicated by the Governor's staff using the state email system. Both the staff and the email system would also be considered "facilities of an agency." The question, then, is whether the items provided by these state agencies to facilitate the press events organized by the Governor's office and facilitated by DES and WWU at the Governor's staff's direction and at which legislative members spoke constituted the legislators' "use of facilities of an agency."[2]

When the Board previously has been presented with the use of public resources question, the issue was whether legislative resources were used for campaign purposes. The issue of whether a legislator's use of the facilities of another state agency, or what we regard as an "indirect use" of public resources, for campaign purposes is prohibited under the Act is a question of first impression. Therefore, the next question is whether the members in this matter indirectly used public resources for campaign purposes. In other words, even though legislative resources were not used, by speaking at these events, did the members nonetheless use the public resources provided for campaign purposes?

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[2] "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government. RCW 42.52.010(1).

The Board believes that a legislator's use of the public resources provided by another state agency for campaign purposes constitutes an "indirect" use of state resources as contemplated by the language in .180. Therefore, do legislators need to pay attention to the use of public resources by another state agency before they decide whether to participate in an event? The Board holds that they do.

Even if the legislators used the facilities of another agency to assist a campaign, their actions do not constitute a violation of .180 if those actions fall within the exception for "normal and regular conduct." After the first day of candidacy filing under RCW 29A.24.050, outreach[3] that is usually presumed to be part of the normal and regular conduct for a legislator faces a heightened level of scrutiny to ensure that public resources (facilities of an agency) will not be used to assist a campaign. *See Advisory Opinion* 2021 – No. 1.

Having held that the indirect use of public resources could violate .180, do the restrictions the Board has previously placed on the use of **legislative resources** for campaign purposes apply to the indirect use of public resources provided by another public agency? The Board holds they do.

In 2020, the Board established a 7-factor test for determining whether outreach by a member during the election restriction period constitutes "normal and regular conduct." *Advisory Opinion* 2020 – No. 1. In that *Advisory Opinion*, the Board was asked about the issuance of a press release during the election restriction period; however, any type of outreach by a legislator during the election restriction period – and not just the issuance of a press release – must meet 6 of the 7 factors to be considered "normal and regular conduct" under .180. The 7 factors are as follows: triggering circumstances; personal nexus; timeliness; proximity to election; relevance; source of initial statement; and tone and tenor.

The Board has previously defined a triggering circumstance as an urgent or emergency situation. An "urgent" situation is one requiring immediate action or attention; an emergency is a serious, unexpected and often dangerous situation requiring immediate action. *Advisory Opinion* 2020 – No. 1, pg. 5. In that opinion, the Board recognized that while a natural disaster may constitute a triggering circumstance, so too, may a court opinion that impacts the legislature in some significant way. *Id.* In this matter, the Board believes the *Dobbs* decision qualifies as a triggering circumstance for both press events.

The second factor – personal nexus – requires that the legislator involved in the outreach has a special connection to the issue and is someone the public would expect to hear from about the issue. Often, this nexus exists because of some event occurring in the legislator's district that constituents would expect to hear about from that legislator. But the Board has recognized that certain legislators (chairs of legislative committees; those in leadership positions) might have a personal nexus because of their legislative position. In this matter, then, would the public expect to hear from the legislators who spoke about reproductive health care? Other than Respondent Dhingra who chaired the Senate Law and Justice Committee, none of the members who spoke at either event chaired a committee likely to hear abortion related bills and none of them occupied a leadership position at the time they spoke. Nevertheless, all of the legislators against whom these complaints have been filed were involved in legislation dealing with reproductive health issues that were introduced and/or passed during the 2023 legislative session. Accordingly, the personal nexus factor is met for each of the legislators named in these complaints.

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[3] Outreach means the contact was initiated by the legislator rather than the legislator responding to an inquiry.

The third factor is timeliness. Generally, the outreach must occur reasonably close in time to the triggering circumstance. The June 25th event occurred one day after the *Dobbs* decision was released. However, the October 21st event occurred 4 months after the *Dobbs* decision was released. The timeliness factor is met by Respondents Bateman, Thai, Randall and Dhingra in the June 25th event but not by Respondents Dhingra, Slatter, Shewmake, Lovelett or Rule in the October 21st event.

The fourth factor is proximity to election. The Board has held that the closer the outreach occurs to the date of an election, the more likely the outreach is designed to persuade or attempt to persuade persons to vote one way or another. The June 25th event occurred more than 5 weeks before the primary election and more than 4 months before the general election. The October 21st press event occurred a mere 17 days before the general election in a legislative district that abuts one in which all the races were hotly contested. The October 21st event also occurred the day after the start of the election period when ballots could be submitted. Further, the topic at the event was reproductive health care which, by then, was a major issue in the general election. The Board believes the June 25th event was sufficiently distant from the primary election date so that the outreach by Respondents Dhingra, Randall, Thai and Bateman would not be presumed to persuade or attempt to persuade persons to vote one way or another. The October 21st event, however, was in very close proximity to the general election and the Board, applying the heightened level of scrutiny, holds that the event could be an attempt to persuade persons to vote a certain way based upon the issue of reproductive health care. Accordingly, this factor has not been met for Respondents Dhingra, Slatter, Shewmake, Lovelett and Rule – those legislators who spoke at the event.

The fifth factor – relevance – is met if the triggering circumstance has some relevance to legitimate legislative issues that are either pending before the legislature, have been considered in the past or could be considered by the legislature in the future. This factor is met. At the June 25th event, several of the legislators who spoke discussed possible legislative approaches to the abortion issue. In fact, all four members who spoke had some involvement in the abortion related legislation that passed during the 2023 session. *See* Finding of Fact 46.

Likewise, the legislators who spoke at the October 21st event also mentioned possible future legislative responses to the *Dobbs* decision. For example, Respondent Slatter remarked that she was planning to introduce legislation to address data privacy in relation to reproductive health care. There were several bills introduced in the 2023 legislative session dealing with reproductive health care as well (HB 1469; SB 5351; SB 5242). The *Dobbs* decision appeared to be the catalyst for these bills. *See* Finding of Fact 46.

The sixth factor – source of initial statement – is not relevant to this matter because the outreach was not related to responding to an outside statement made by another official.

The seventh factor – tone and tenor – is met if the language used in the outreach is only that necessary to adequately respond to the triggering circumstances. It should be respectful and not impugn the character of another legislator or elected official. Several legislators who spoke arguably impugned the character of Republicans related to abortion access although no specific elected official was mentioned.

As the Board has previously stated, 6 of the 7 factors must be met before the exception for normal and regular conduct applies. The exception is met in the June 25th event.

The October 21st event is a different matter entirely. While *Dobbs* remains the triggering event, the Board believes the timeliness factor is not met because this event occurred 4 months after the *Dobbs* decision was released. The personal nexus factor is met because all of the members who spoke were involved in reproductive health legislation either in the 2022 or the 2023 legislative session such that the public would expect to hear from them about reproductive health care issues.

The timeliness factor is not met. Unlike the June 25th event, this event occurred 17 days before the general election in a district that abutted another in which all three legislative races were hotly contested. It also occurred after the ballots for the general election had gone out and the time period for them to be returned had begun. The relevance factor is met for the same reasons the relevance factor was met in the June 25th event. The tone and tenor factor is not met as several speakers once again impugned Republicans in relation to reproductive health care issues. As a result, the actions of the legislators who spoke would not be considered to fall under the normal and regular conduct exception because not all 6 factors were met and would be considered to violate .180 if those members had used public resources provided by the legislative branch.

The Board would be remiss if it did not mention its previous decisions in which it has held that certain conduct may never be considered "normal and regular." While members remain free to voice their views on electoral participation, the use of public resources to solicit people to register to vote or advise them how to vote is not considered normal and regular conduct for a legislative office and would violate RCW 42.52.180. *Advisory Opinion* 2004 – No. 2; *In re Das*, 2019 – No. 2.

Senators Dhingra, Randall and Rep. Shewmake all made remarks that could be viewed as telling people how to vote. Because neither Sen. Randall nor Rep. Shewmake used legislative resources in providing their remarks, the Board finds no violation. However, had the Board previously ruled that using resources provided by another state agency constituted an indirect use of public resources, their remarks would have violated .180. Senator Dhingra did use legislative resources for both these events – mileage reimbursement – accordingly her comments regarding voting were not exempt under the normal and regular exemption and violated .180.

VI. ORDER

This is a case of first impression: the Board has never before considered a complaint based upon a legislator's use of another public agency's resources for campaign purposes, resources over which the legislator has no control. These complaints are further complicated by the decision of the Executive Ethics Board (EEB) that the Governor did not violate RCW 42.52.180. However, the decision of the EEB should not be determinative of how this Board decides these complaints. At the time of these events, the Governor was not up for re-election. With the exception of one of the legislators who participated in these events, the remaining legislators were running for re-election. While the EEB took a more lenient approach to .180 than this Board has historically done, we will continue to take a more conservative approach.

The Board finds that using the resources of another state agency for campaign purposes constitutes an indirect use of public resources under RCW 42.52.180. The specific instances of such use are set forth below for the involved legislators. The effect of the Board's finding is to place a duty on legislators (and others working at their direction) to inquire about the use of public resources by another state agency that was not clear under prior Board decisions. Accordingly, the Board's holding regarding the "indirect" use of public resources applies prospectively.

IT IS HEREBY ORDERED that there is no reasonable cause to believe that Respondents Ramel, Robinson, or Lekanoff violated RCW 42.52.180 because they did not speak at the October 21st event. Mere attendance at the event, without more, does not constitute an indirect use of public resources.

IT IS HEREBY ORDERED that there is no reasonable cause to believe Respondents Bateman, Randall and Thai violated RCW 42.52.180 because their activities met the criteria necessary to find that their conduct falls within the exception for normal and regular conduct.

IT IS FURTHER ORDERED that there is no reasonable cause to believe Respondents Shewmake, Slatter, Rule and Lovelett violated .180 because even though their activities did not meet all of the criteria necessary to find that their conduct met the normal and regular conduct exception to .180 they did not use legislative resources. Because of the prospective nature of the Board's holding, and although the Board found reasonable cause to believe .180 was violated, the Board does not impose a penalty on Respondents Shewmake, Slatter, Thai, Bateman, Rule, Randall and Lovelett.

VII. ORDER AND STIPULATION REGARDING RESPONDENT DHINGRA

IT IS HEREBYORDERED that reasonable cause exists to find that there is reasonable cause to believe Respondent Dhingra violated RCW 42.52.180 in the June 25th event because she received mileage reimbursement to attend this event, public resources over which she did have control. She is ordered to reimburse the Senate in the amount of $92.43 which is the amount of her mileage reimbursement for the June event. The Board further orders that she pay a fine of $250 for her violation of RCW 42.52.180.

Tom Hoemann, Chair

7/25/23
Date

I, Manka Dhingra, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.

Manka Dhingra

Manka Dhingra

7/21/2023

Date

Having reviewed this proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.

Tom Hoemann, Chair