BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action Against: Brian Melody Respondent.	Case No. 12~~-145~~ 14-038 (RP) STIPULATION AS TO FACTS, VIOLATION AND PENALTY

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Brian Melody, through his attorney, Paul Clay, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the Public Disclosure Act; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. In the March 10, 2009 special election, Spokane School District 81 (Spokane Schools) held a maintenance and operations replacement levy election and a bond election. The levy and bond propositions were assigned Proposition No. 1 and Proposition No 2., respectively. Proposition 1 and Proposition 2 were approved by more than 60% of voters participating in the election.

2. Respondent Brian Melody held the position of Principal of Woodridge Elementary School in the months prior to the March 10, 2009 special election.

3. At 3:12 pm on Friday, January 30, 2009, Mr. Melody used his Spokane Schools email address and district computer to forward an email sent from the private address of a Mary Brown. Ms. Brown's original email and Mr. Melody's forwarded email contained an attachment, *"Letterslevy.doc,"* a letter to the editor of the Spokane *Spokesman-Review*. The letter promoted the 2009 levy: *"Vote YES for schools; protect the investment we've made in our children and in the future of a healthy community."*

4. Respondent Brian Melody has cooperated with Commission staff during this investigation, and has stated that it was not his intent to inappropriately use public facilities.

5. Mr. Melody has no prior enforcement history before the Public Disclosure Commission.

STATUTORY AND RULE AUTHORITY

6. **RCW 42.17.130** (effective January 1, 2012, codified as **RCW 42.17A.555**) states: No elective official nor any employee of his [or her] office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

> (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, 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 so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
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> (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
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> (3) Activities which are part of the normal and regular conduct of the office or agency.

7. **WAC 390-03-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

8. **RCW 42.17A.755(5)** provides that the commission may waive a fine for a first-time violation.

VIOLATION

Based on the Stipulation of Facts set forth above, Respondent Brian Melody stipulates to a violation of RCW 42.17.130 for his single use of the district email system as described herein.

PENALTY

Based upon the above Stipulated Facts and Violation, the parties agree that no monetary penalty should be imposed for the Respondent and that the Commission should waive any monetary penalty as allowed by RCW 42.17A.755(5).

Respondent Brian Melody re-affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

Andrea M. Doyle
Andrea McNamara Doyle, Executive Director
Public Disclosure Commission

2/19/14
Date Signed

Paul Clay, Counsel for Respondent
Brian Melody

1/24/14
Date Signed