



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

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| IN RE COMPLIANCE |) | PDC CASE NO: 1970 |
| WITH RCW 42.17A |) | |
| |) | |
| Mike Wilson |) | |
| |) | REPORT OF INVESTIGATION |
| |) | |
| Respondent. |) | |
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I. BACKGROUND

- 1.1 Mike Wilson is a member of the teaching staff at Cascade High School in the Everett School District. Mr. Wilson has been an educator for 37 years, 20 of those years at Cascade. He was also a high school football and wrestling coach until 2014, when he retired from coaching.
- 1.2 Mr. Wilson was a candidate for State Representative in the 44th Legislative District in the November 4, 2014 general election. He filed a C-1 Candidate Registration with the Public Disclosure Commission on January 28, 2014, indicating the Democratic Party as his party preference. **(Exhibit 1.)** Mr. Wilson faced Republican candidate Mark Harmsworth in the 2014 primary and general elections. He was defeated by Mr. Harmsworth in the general election.
- 1.3 In late October and early November 2014, the Everett School District completed two separate internal investigations concerning the possible use of district facilities to assist Mike Wilson's legislative campaign. The investigations resulted in a written reprimand for Mr. Wilson **(Exhibit 2)**, as well as for Steve Bertrand, a teacher and athletic coach, and for Robert Polk, the district's Athletic Director, for activities that the district found violated PDC guidelines or school policy. The district also issued a letter of direction to another teacher and coach, Eric Hruschka. The district found no evidence to support certain allegations concerning Mr. Wilson, specifically that he used district time or facilities to organize canvassing for his campaign by student athletes. The latter finding was conveyed to Mr. Wilson in a letter from district Associate Superintendent Tony Byrd. **(Exhibit 3.)**

1.4 On December 22, 2015, Mike Tiufekchiev, staff of the Washington State Republican Party, filed a complaint with the PDC alleging violations of RCW 42.17A.555 by Mike Wilson in connection with the activity described in the Everett School District's internal investigations.

II. ALLEGATIONS IN COMPLAINT

2.1 In his December 22, 2015 complaint (**Exhibit 4**), Mike Tiufekchiev alleged that Mike Wilson:

- Used school district facilities to take a picture for campaign purposes with his students;
- Used school district email to solicit another teacher to cover his study hall duties while he attended a campaign meeting;
- Used a school science building for campaign phone bank purposes;
- Used school district e-mail during school hours to send campaign related documents, including a contract for the services of a campaign consultant;
- Used school district email during work hours to solicit campaign assistance from various individuals; and
- Used cross-country student athletes to distribute campaign literature during practice.

III. SUMMARY OF FINDINGS

3.1 The evidence and testimony reviewed by PDC staff indicates that on two occasions in January and February of 2014, Mike Wilson made use of Everett School District email to assist his campaign. The second occurrence included one email sent during Mr. Wilson's contracted work hours. In both instances, Mr. Wilson did not initiate the email exchanges, however he continued the exchanges for a campaign purpose: organizing a campaign photo shoot, and inviting attendance at a campaign meeting.

3.2 The January 2014 email exchange that Mr. Wilson conducted through his school district address concerned a campaign photo shoot on the campus of Cascade High School. Mr. Wilson testified that the photo shoot involved eight students, and occurred after his contracted work day and outside the school building, though still on school property. Mr. Wilson testified that he received oral authorization to conduct a campaign photo shoot on school property from Dr. Catherine Matthews, the district's Director of Assessment. However, Dr. Matthews disputes being asked for, or providing, such authorization. PDC staff found no evidence that the school district's Director of Assessment was in a position to authorize Mr. Wilson's use of Cascade High School facilities to assist his campaign.

3.3 PDC staff found no evidence to support the remaining allegations in the complaint, including that Mr. Wilson used or authorized the use of Everett School District facilities to organize canvassing in support of his campaign by student athletes. Staff noted that two other district employees, coach Steve Bertrand and Athletic Director Robert Polk, received written letters of reprimand and direction from the district for their roles in organizing and authorizing the canvassing activity.

DETAILED FINDINGS

3.4 **Use of District Facilities to Arrange Campaign Photo Shoot:** Enclosed with Mr. Tiufekchiev's complaint was a copy of an email that Mr. Wilson sent through his Everett School District address to an unidentified student at 2:51 pm on January 30, 2014, responding to the student's questions concerning a campaign photo shoot. **(Exhibit 4, p 3.)** In his email, Mr. Wilson asked the student to meet him at his "room" at 3:00 pm on Friday, January 31, 2014 for the photo shoot.

3.5 In his January 21, 2016 formal response to the complaint **(Exhibit 5)** and in an interview under oath **(Exhibit 6)**, Mr. Wilson stated that the room discussed in the email was his classroom, and that a total of eight students met him outside of the room on January 31, 2014 for the campaign photo shoot. Mr. Wilson stated that both his email reply sent on January 30, 2014 and the photo shoot the following day occurred after school and outside of Mr. Wilson's contracted work hours. He stated that the campaign photo shoot occurred outside the school building, though still on school property.

3.6 Mr. Wilson stated that in 2014, he was unaware that state law prohibited him from responding to an unsolicited email sent to his district email address, offering campaign assistance. Regarding the photo shoot itself, although the photos were taken after work and school hours and outside the school building, Mr. Wilson stated that he received oral permission to take photos on school property from Catherine Matthews, Director of Assessment. He stated that he believed that Ms. Matthews knew that the photos would be used in his campaign.

3.7 PDC staff contacted Dr. Matthews to corroborate Mr. Wilson's statements, however Dr. Matthews stated that Mr. Wilson did not ask for her permission to conduct a photo shoot on school grounds for use in his campaign, and that she did not give any such permission. **(Exhibit 7.)** She stated that her only connection to the allegations against Mr. Wilson was to conduct the district's internal investigation concerning the use of student athletes to canvass for his campaign, following the canvassing activity. She stated that prior to that investigation, she had no contact with Mr. Wilson, and in fact did not recall ever meeting or speaking with him. She stated that she did not receive a telephone call from Mr. Wilson on any subject. Further, she stated that Mr.

Wilson would not have had any reason to seek her permission to conduct a photo shoot on school grounds, since she is the district's Director of Assessment and has no authority over Cascade High School, its staff, students, or facilities.

- 3.8 In light of this conflicting information, PDC staff contacted Mr. Wilson to determine whether he saw any need to clarify or amend his statements. As of the date of this report, Mr. Wilson has not provided a response.
- 3.9 **Alleged use of District Email during Work Hours to Arrange a Campaign Meeting:** Mr. Tiufekchiev's complaint included a copy of an email that Mr. Wilson sent through his Everett School District address to Cascade Principal Cathy Woods at 12:03 pm on January 8, 2014, concerning a scheduling conflict. **(Exhibit 4, p 4.)** In explaining the scheduling conflict, Mr. Wilson cited a 2:30 pm meeting that day with the HDCC (House Democratic Campaign Committee). In his response to the complaint, Mr. Wilson stated that the meeting in question was scheduled outside of his regular work hours, and that he sent the email to Ms. Woods only to avoid a conflict with a personal obligation. He stated that the simple fact that his email identified the conflict as a campaign meeting did not indicate a prohibited use of public facilities to assist his campaign.
- 3.10 **Alleged use of School Science Building for Campaign Phone Bank Purposes:** Mr. Tiufekchiev's complaint included a copy of an email that appeared to reference a school building in the context of a discussion of campaign phone banking activity. **(Exhibit 4, p 5.)** In his written response to the complaint, Mr. Wilson stated that this email had nothing to do with Mr. Wilson's campaign, but rather concerned a phone bank for unrelated levy and bond measures. Further, he stated that the phone banking activity occurred off school campus. Staff's review of the email indicates that Mr. Wilson was a recipient of the email, rather than a sender. Staff noted that the sender stated not that campaign phone banking would occur *in* "the [school] science building," but that he had "rallied the science building," including a number of individuals that he then identified.
- 3.11 **Use of District Facilities to Scan and Email Campaign-Related Documents:** Mr. Tiufekchiev's complaint included a copy of an email that Mr. Wilson sent to his personal address during work hours on February 27, 2014. The email had no content other than an attached scanned copy of Mr. Wilson's contract with political consultant WinPower Strategies, signed the same day. **(Exhibit 4, pp 6 - 12.)** A letter of reprimand issued to Mr. Wilson on November 3, 2014 **(Exhibit 2)** indicated that the district found Mr. Wilson also used district equipment to scan his PDC F-1 Personal Financial Affairs Statement on Sunday, January 12, 2014. **(Exhibit 8.)** Finally, a supplemental response to Mr. Tiufekchiev's complaint, received from Mr. Wilson's counsel on February 10, 2016, stated that Mr. Wilson used district

equipment to scan and email his C-1 Candidate Registration to his personal address on or around January 12, 2014. **(Exhibit 9.)**

- 3.12 In original and supplemental responses to the complaint, and in his interview with PDC staff, Mr. Wilson confirmed that he used a district scanner to scan and email campaign-related documents to his classroom email address, which he then used to forward the documents to his personal email address. He stated this use of district equipment was conducted while creating instructional tools for a civics class, and was therefore a part of his normal and regular conduct as a teacher. He stated that the district's reprimand to him for this use of equipment was improper.
- 3.13 In his interview with PDC staff, Mr. Wilson stated that the civics class is called "Government," and is a required course for all seniors. He stated that he has taught the class for approximately 20 years, and for the last eight, has included a unit called "Party Time," in which students invent a political party, identify issues, and plan a hypothetical candidate's campaign. With his February 10, 2016 supplemental response, Mr. Wilson provided copies of course materials related to the unit. **(Exhibit 9, pp 3 – 11.)** He stated that he thought that campaign documents such as his WinPower contract could be useful to his students in completing this unit—after the fact of Mr. Wilson's campaign—and that it was for this purpose alone that he used district equipment to save the documents.
- 3.14 Mr. Wilson stated that Everett School District employees have electronic storage space on district servers, and that he has used this space for many years as a football coach and a teacher. However, he stated that due to space limitations, he has also removed files from the district's servers and stored them on external hard drives. He stated that during February of 2014, the time period in question, 5-10% of electronic files he needed for his classroom instruction were stored at home. He stated that he typically accomplished this transfer by attaching the files to an email from his district address to his personal address.
- 3.15 Mr. Wilson stated that he had no campaign-related need to scan and email the WinPower contract on February 27, 2014, because he hand-delivered the contract to his campaign consultant during a 3:30 meeting that same afternoon at Starbucks. He stated that he emailed the contract to his personal email address, and to no other addresses.
- 3.16 PDC staff reviewed contemporaneous notes taken by Everett School District investigator Randi Seaberg during the district's internal investigation of the alleged use of agency facilities for campaign purposes. Ms. Seaberg's notes indicate that in a meeting on November 3, 2014, Mr. Wilson stated that he *"filed [his] PDC from home, not school"* and that he *"scanned [the documents] for use or potential use in [his] classroom."* **(Exhibit 10, pp 2, 4.)**

3.17 In his interview with PDC staff, Mr. Wilson stated that due to the district's internal investigation, he elected to not use his campaign documents in his government class as originally intended. He stated, "*I didn't want to start a bonfire and throw gasoline on it.*" Noting that the district's November 4, 2014 letter of reprimand characterized Mr. Wilson as regretful and apologetic concerning his use of agency equipment, PDC staff asked Mr. Wilson why he accepted a reprimand that did not make any reference to his intended use of the scanned campaign documents. Mr. Wilson replied that at the time, he simply wished to move on from the issue.

3.18 Use of District Email during Work Hours to Solicit Campaign

Assistance: Mr. Tiufekchiev's complaint included a copy of emails that Mr. Wilson exchanged with supporter James Riley from February 20 - 24, 2014, discussing a campaign meeting at Mr. Wilson's house. **(Exhibit 4, p 13.)** In his interview with PDC staff, Mr. Wilson confirmed that the exchange, which was initiated by Mr. Riley, involved emails sent and received through Mr. Wilson's district email account, during Mr. Wilson's work hours. In part, Mr. Wilson's participation in this exchange formed the basis for the Everett School District's written reprimand to him issued on November 4, 2014.

3.19 In his written response to the complaint, Mr. Wilson stated that his emails to Mr. Riley were meant only to offer to continue the conversation at Wilson's residence, and that he was not soliciting campaign help. However, the emails appeared intended to do more, since they contained substantive campaign information. Mr. Wilson used his district email to inform Mr. Riley that he met monthly with a campaign advisory group consisting of 7 -10 people, and stated that he believed Mr. Riley would fit in well with that group. Finally, Mr. Wilson provided Mr. Riley with all the details of a campaign meeting.

3.20 Responding to the allegation that this email exchange constituted a use of public facilities to assist his campaign, Mr. Wilson stated that at the time of the exchange, he wasn't aware that it was inappropriate to respond to an unsolicited campaign email from his district account. He believed that the Everett School District does not give clear guidance on whether or how to respond to emails from outside the agency. He stated that he now recognizes that it was a mistake to respond to Mr. Riley's campaign email in the manner that he did.

3.21 **Participation of Student Athletes in Campaign Activity:** As indicated above, in its internal investigation, the Everett School District found no evidence that Mr. Wilson used district time or facilities to organize canvassing for his campaign by student athletes. Rather, the district's investigative report indicated that Mr. Wilson was the passive recipient of support provided by others. The October 28, 2014 report **(Exhibit 11)** provided extensive detail on how this support was arranged. PDC staff questioned Mr. Wilson concerning the canvassing activity in his interview under oath. **(Exhibit 6.)**

Staff also conducted an interview under oath with Steve Bertrand, a 39-year Everett Schools employee who the district concluded bore primary responsibility for organizing the activity. **(Exhibit 12.)** Finally, PDC staff requested copies of internal district emails concerning or discussing the students' campaign activity. **(Exhibit 13.)**

- 3.22 The testimony and evidence reviewed indicates that during the spring of 2014, a cross-country athlete and student of Mr. Wilson's suggested the canvassing activity to Mr. Bertrand, who was then the head track coach for Cascade High School. The canvassing began in July of 2014, during informal running sessions on the athletes' own time. According to the district's investigative report, 3,000 Wilson flyers were distributed over that summer. The use of public facilities to organize the students' activity appears to have begun with a flurry of emails that Mr. Bertrand exchanged with other staff from October 8 – 15, 2014, culminating in a neighborhood canvassing session after school on October 15, 2014.
- 3.23 The emails indicate that although other staff of the district's athletic program participated in the canvassing activity, Steve Bertrand was the primary organizer. Mr. Wilson was listed as a recipient of one email that Mr. Bertrand sent through his district email account, discussing the start time and location of the October 15, 2014 canvassing session. Otherwise, Mr. Wilson did not participate in the exchange of emails.
- 3.24 Although the canvassing may have been suggested by a student, based on the content of the emails and the testimony of Mr. Bertrand, it appears the student in question did not organize the student athletes, or work with the Wilson campaign to plan the activity. Rather, Mr. Bertrand planned and organized the activity, and the student participated as one athlete among many who ran flyers for the campaign. In addition, the canvassing was not part of a class project for which school credit was awarded. Accordingly, although the Public Disclosure Commission has opined that students may originate school projects for credit that support a candidate, and may use public facilities to carry out for-credit, student-originated projects to support a ballot proposition, it does not appear that the 2014 canvassing in support of Mr. Wilson's campaign was such a project.
- 3.25 In his interview under oath, Mr. Bertrand stated that in the fall of 2014, he did not view his work to organize the canvassing activity as a use of agency facilities to assist a candidate's campaign. Rather, he stated he believed he was simply supporting a student in carrying out student's idea for a community service project, while also running with the student's fellow athletes. He stated that he has offered the same organizational support to student athletes in many other contexts involving community service projects. He stated further that in the past, student athletes have provided similar support to candidates for office. However, he had no other recent example in mind.

3.26 Mr. Bertrand believed that, as in the past, during 2014 the Everett School District was aware of and supported students' community service projects involving candidate support. PDC staff noted that the district issued a letter of reprimand to Athletic Director Robert Polk for authorizing the activity.

(Exhibit 14.)

3.27 Further, Mr. Bertrand contended that the students supporting Mr. Wilson were on their own time and participated voluntarily in the canvassing activity. He provided a statement signed by thirteen student athletes indicating that their participation in the canvassing was voluntary and occurred outside of cross-country practice. **(Exhibit 15.)** Based on this, he stated that the students were not under his supervision at the time. However, the school district viewed the students' canvassing activity as part of a required cross-country practice session. On that basis, and because Mr. Bertrand used district email and work time to organize the activity, the district issued a written reprimand to Mr. Bertrand **(Exhibit 16)** for his role in the activity.¹

3.28 Associate Superintendent Anthony Byrd's reprimand to Mr. Bertrand contained the following direction:

As a result of these incidents and the investigation, you are hereby reprimanded and directed to:

- *Refrain from any further activity that would violate Board Policies and Procedures 5225, 5225P, and 4412.*
- *Ensure that your students are adequately supervised and that you obtain parent permission for all activities that deviate from normal practice or meet expectations.*

3.29 Associate Superintendent Byrd's reprimand to Mr. Polk contained the following direction:

As a result of this investigation, you are receiving this letter of reprimand. Additionally, I am directing you to do the following:

- *Immediately review the Public Disclosure Commission's Guidelines for School Districts in Election Campaigns and the board policies and procedures referenced in this letter.*
- *Review these guidelines, policies and procedures with me at our next meeting.*

¹ Following this reprimand, on December 16, 2014 the Everett School District informed Mr. Bertrand that the agency would not renew his contract as head track coach, though there was no explicit connection between this action and the findings of the district's investigation. Following a public outcry, in January of 2015 Mr. Bertrand was offered and accepted a new contract as an assistant cross-country and track coach.

- *Review these guidelines, policies and procedures with coaches at your next meeting with coaches.*
- *Confirm with me when you have completed this review with your coaches.*
- *When in doubt about a particular situation, seek district direction immediately. You may direct your questions to Debbie Kovacs, Executive Director of Human Resources, or me.*

Failure to follow these expectations will result in further disciplinary action up to and including termination from employment.

3.30 In his interview under oath, Mr. Wilson stated that the student canvassing activity was suggested by Steve Bertrand, and that he did not solicit the help. He stated that he insisted to Mr. Bertrand that he (Mr. Wilson) would not be involved in recruiting volunteers for the canvassing activity. He stated that at the time of the activity, he believed that no public facilities had been used in violation of the law. He stated that he verified that the canvassing occurred outside the school day, and asked Mr. Bertrand not to use any school facility as part of the activity, including busses or vans. He stated that from speaking with Mr. Bertrand, he understood that cross-country practice would be over before the canvassing occurred. Mr. Wilson stated, *"I did everything I could to make it an event that was off district property and outside the realm of their practice...When Steve approached me with this I said 'Steve, your first stop is going be to our district. You've got to make sure Robert Polk, and even people above Robert Polk, know about this and are good with this. If they are, then I'll have my campaign around the event, if everything's copacetic.'"*

3.31 Mr. Wilson stated that at the October 15, 2014 canvassing event, he thanked the students for volunteering to help his campaign, and reminded them that they were free to leave if they did not want to be involved. He said that there was nothing about the students' demeanor that told him any were uncomfortable with the canvassing activity.

IV. SCOPE

4.1 PDC staff reviewed the following documents:

1. A complaint filed against Mike Wilson, filed by Mike Tiufekchiev on December 22, 2015;
2. Formal and supplemental responses to the complaint, received from Mr. Wilson's counsel on January 21, 2016 and February 10, 2016;
3. Investigative report and investigator's notes concerning the Everett School District's internal investigation of alleged prohibited use of public facilities by Mike Wilson and other district staff;

4. Letters of reprimand or direction issued by Everett School District administrators to Mike Wilson, Steve Bertrand, Robert Polk, and Eric Hruschka;
5. Emails sent and received with Everett School District addresses and through district servers by Mike Wilson, Steve Bertrand, and other district staff and officials;
6. PDC reports filed by Mike Wilson in his 2014 campaign for State Representative;
7. Email correspondence received from Catherine Matthews on July 20, 2016;
8. Email correspondence received from Steve Bertrand on April 22, April 27, April 28, April 29, 2016, May 4, May 10, May 11, May 12, 2016, September 7 and September 8, 2016; and
9. Faxed correspondence received from Steve Bertrand on May 10, 2016.

4.2 PDC staff conducted the following interviews under oath:

1. Mike Wilson was interviewed on March 29, 2016; and
2. Steve Bertrand was interviewed on April 27, 2016.

V. LAW

RCW 42.17A.555 states, in part:

“No elective official nor any employee of his 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.

...[T]he foregoing provisions of this section shall not apply to the following activities:

...(3) Activities which are part of the normal and regular conduct of the office or agency.”

WAC 390-05-273 defines “normal and regular conduct” as conduct that 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.

WAC 390-05-271 states that *“(1) RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.”*

In **PDC Interpretation 01-03, *Guidelines for School Districts in Election Campaigns***, the Public Disclosure Commission stated that under RCW 42.17A.555, *“Students may originate school projects for credit that promote or oppose candidates or ballot measures [and] may use public resources to carry out school projects promoting or opposing ballot measures, to the extent that such resources are regularly and routinely made available for other student projects.”*

Respectfully submitted this 29th day of September, 2016.



Tony Perkins
PDC Compliance Officer

EXHIBIT LIST

- Exhibit 1** C-1 Candidate Registration for 2014 Mike Wilson campaign, filed with the PDC on January 28, 2014.
- Exhibit 2** Written letter of reprimand issued to Mike Wilson on November 3, 2014 by Jeff Moore, Executive Director of Finance and Business Services for the Everett School District.
- Exhibit 3** October 31, 2014 letter to Mike Wilson from Everett School District Associate Superintendent Tony Byrd.
- Exhibit 4** PDC complaint against Mike Wilson, filed by Mike Tiufekchiev on December 22, 2015.
- Exhibit 5** Formal response to the complaint filed by Mike Tiufekchiev, received from counsel to Mike Wilson on January 21, 2016.
- Exhibit 6** Recorded interview under oath with Mike Wilson on March 29, 2016.

- Exhibit 7** PDC staff email exchange with Dr. Catherine Matthews, Everett School District Director of Assessment, on July 20, 2016.
- Exhibit 8** PDC F-1 Personal Financial Affairs Statement scanned and emailed to Mike Wilson's personal email address on Sunday, January 12, 2014, using Everett School District equipment.
- Exhibit 9** Supplemental response to Mr. Tiufekchiev's complaint, received from Mr. Wilson's counsel on February 10, 2016.
- Exhibit 10** Written notes of Everett School District investigator Randi Seaberg, taken on November 3, 2014 during the district's internal investigation of possible use of public facilities to assist Mike Wilson's campaign.
- Exhibit 11** Written report of Everett School District Director of Assessment Catherine Matthews, concerning campaign activity conducted by student athletes in support of Mike Wilson.
- Exhibit 12** Recorded interview under oath with Steve Bertrand on April 27, 2016.
- Exhibit 13** Internal Everett School District emails concerning or discussing student athletes' activity in support of Mike Wilson's 2014 campaign.
- Exhibit 14** Written letter of reprimand issued to Everett School District Athletic Director Robert Polk on October 30, 2014 by Associate Superintendent Tony Byrd.
- Exhibit 15** Statement signed by thirteen Cascade High School student athletes concerning their participation in canvassing for Mike Wilson.
- Exhibit 16** Written letter of reprimand issued to Steve Bertrand on October 31, 2014 by Associate Superintendent Tony Byrd.