

GENERAL RESPONSE:

When an elected official is censured, opening the door to removal from office, it is a matter of real gravity. It means that the Board, a body of elected officials whose own power derives solely from the votes of their constituents, has decided to override a democratic election. This should not be done lightly. Such an action must be undertaken only in the case of the gravest and most harmful misconduct. It cannot and should not be done because an elected official is prickly, disagreeable, or uncooperative. Whatever else Director Daily may be, he is the representative selected democratically by a majority of voters.

Director Daily's actions, taken on behalf of his constituents, are not punishable offenses. Many of these allegations do not even contain any violation of policy or law. The high bar for contravening the will of the constituency has not been met. Director Daily should not be censured.

I. SUMMARY OF ALLEGATIONS

A. Director Daily has undertaken actions aimed at or with the effect of undermining board decisions.

On December 2, 2020, the Board adopted Resolution No 1338, authorizing a special election on February 9, 2021 "in order to submit to the qualified electors of the District the proposition of whether excess property taxes should be levied to provide educational programs and operations (hereafter levy)."

Evidence:

-Director Daily offered public testimony in opposition to the levy before the Port Orchard City Council on January 26, 2021.

-Director Daily sent emails to constituents that were posted on the Nextdoor app opposing the levy and citing inaccurate data.

RESPONSE: The Board decided to authorize a special election. The election is in the form of a question: "...whether excess property taxes should be levied" [emphasis added.] The Board did not decide to endorse a particular result for that election, nor did they resolve to require univocal support of all members for the passage of the levy. Director Daily did not oppose the holding of a special election. His actions do not constitute undermining a decision of the Board.

B. Director Daily has engaged in threatening, unprofessional, and disrespectful communications with individual board members, community members, and staff.

Evidence:

-January 12, 2020 Email communications with Board and pre-board meeting notes

-February 17, 2020 pre-board meeting notes to all directors.

-April 13, 2020 pre-board meeting notes to all directors.

"Is this seriously the agenda?"

The superintendent "is our employee; not our best friend."

"This is a total waste of time"

"I will ask for Ms Farmer's resignation and her staff at the meeting"

"I will also ask for Mr Holsten's resignation at the meeting"

If we can't get [agenda items] fixed by next meeting, I will ask for the resignation of the superintendent at that meeting."

"I have no problem embarrassing the board, the superintendent, the individual board members and asking for their resignations if you move forward with this item."

-Email communications with Peter Darragh (parent and SKSD employee)

-Email communications with Troy Grubb (SKSD employee and SEIU 925 Executive Board Member)

-Communications with Director Gattenby (and others) in connection with Public Disclosure Commission (PDC) Case 82098.

A PDC complaint was filed on December 13, 2020, alleging that the Citizens Supporting South Kitsap Schools failed to register as a political committee. Director Gattenby, Superintendent Winter, and union official John Richardson were identified as witnesses. Director Daily sent a letter to Director Gattenby, stating:

I am disappointed. Given your stated character and leadership position, I didn't think this type of stuff was your style and worth the risk.

Cordially,
J Daily

Director Gattenby feels the letter was intended to be threatening and constitutes “witness tampering.” It is believed that Director Daily sent the same letter to Superintendent Winters and Mr. Richardson.

-Emails Communications with Director Berg

RESPONSE: Criticism of persons or proceedings, even to the point of requesting a resignation in protest of an action, does not inherently constitute ‘disrespect.’ The content of Director Daily’s communications, as cited here, does not include a ‘threat’ by any normal definition thereof. Nor is there anything cited that is ‘disrespectful’ to the point that it should be punishable by censure – there is no name-calling, no personal insults or remarks, no evidence of bias, simply strongly-worded objections to Board and District actions.

The expression of an opinion, and in particular the expression of a critical political opinion, is the right of every citizen under the First Amendment and the duty of every board member. An elected official has a duty to constituents, and a board member has a duty to the health of the organization – not to any one person or policy. If a board member has a good faith belief that an action will harm the District or the constituents, it is that member’s job to question and criticize the action. Director Daily cannot be censured for doing just that.

Director Daily’s duties as an elected official include communicating with constituents. Responding when contacted by a parent or any other community member is not forbidden.

As to the allegation of ‘witness tampering,’ Director Daily categorically denies engaging in any such activity. As is well known Director Daily has many criticisms of Director Gattenby – the letter quoted here (which is undated, and unaccompanied by any statement of when or how it was received) does not refer to any particular issue, does not discuss the complaint or proceeding; does not advocate for any action; and does not in any way constitute ‘witness tampering.’ Director Daily is disappointed with any number of things Director Gattenby has said and done, and this letter does not contain any inappropriate content.

What’s more, the complaint to which Director Gattenby is listed as a witness isn’t even a complaint against Director Daily. There is no allegation that Director Daily violated any rules, only a mention that a news article states Daily was a part of a citizen’s group *before* he was elected to office. This violates no rules – Director Daily is allowed to participate in citizen opposition to a levy, if indeed he did so. The complaint states no such thing.

C. Director Daily has violated the confidentiality of executive sessions.

Evidence:

At the April 21, 2021 regular Board meeting, Director Daily stated that the Board had previously discussed a Public Disclosure Commission complaint in executive session.

Director Daily disclosed confidential information regarding a potential real estate transaction to a community member.

RESPONSE: Under the Open Public Meetings Act, the discussion under Executive Session is limited to a narrow set of topics. If the Board entered executive session to discuss Public Disclosure Commission complaints, that would have to be announced with the reason for the session:

RCW 42.30.110(2): “Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded.”

If the purpose was announced, then the fact that the topic of discussion was PDC complaints would already have been public. If it was not announced, or if the reason for excluding the public was not one of the narrow allowable reasons, then the executive session was improperly convened and was not, in fact, an executive session at all, but an illegal exclusion of the public from a meeting of the Board. As PDC complaints do not obviously fit in to any of the allowable reasons for exclusion, it appears that there was no proper executive session.

As to the alleged disclosure of ‘a potential real estate deal,’ this allegation has not been brought with sufficient information to fully respond. Director Daily does not believe that he has ever made such a disclosure, but the allegation fails to indicate what ‘potential deal’ is referred to; to whom the alleged disclosure was made; how the potential disclosure would violate a rule; and what rule such a disclosure might violate.

Further, there was not a stitch of evidence in the provided attachments that even mentioned any real estate transaction. If there is some evidence indicating that Director Daily ever did such a thing, please provide it so that Director Daily may respond.

Lacking any such evidence, it can only be assumed that this allegation is based on empty speculation. If information on a confidential matter somehow got out to the public, then anyone who was privy to that information should be investigated as the potential leak. That would presumably include all the board members, the superintendent, and anyone else who had knowledge of the potential deal. Failing to investigate other potential leaks, and confining the investigation to Director Daily only, would demonstrate impropriety and potential discrimination in the investigation.

Although there is no indication in the allegations of what rule Director Daily is accused of violating, I postulate that the allegation is attempting to gesture toward the stature on Executive Session under the Open Public Meetings Act, under which certain real estate transactions may become confidential. For your convenience, I will cite the Act here:

Executive session is allowed for real estate transactions under the following sections:

RCW 42.30.110(1)(b): “To consider the selection of a site or the acquisition of real estate by lease or purchase *when public knowledge regarding such consideration would cause a likelihood of increased price;*” and **RCW 42.30.110(1)(c):** “To consider the minimum price at which real estate will be offered for sale or lease *when public knowledge regarding such consideration would cause a likelihood of decreased price.* However, final action selling or leasing public property shall be taken in a meeting open to the public.” [Emphasis added.]

Please note that an executive session is only properly called when public knowledge of a real estate deal would *cause the likelihood of a price increase/decrease*. Unless that is true, an executive session is not properly called. In order to find that Director Daily violated his obligation to confidentiality, the following would have to be demonstrated:

1. There was an executive session in which a real estate deal was discussed;
2. The executive session was properly called for the purpose of confidentiality to avoid likely price increase/decrease;
3. The executive session was properly announced to the public;
4. At that executive session, Director Daily learned of a real estate deal that he did not already know about;
5. Following that executive session, Director Daily revealed information learned in the executive session to a person who was not in the session.

The allegation and included attachments provide no indication that those findings are possible based on the information provided.

D. Director Daily's actions reflect poorly on the Board as a whole.

Evidence:

Thought Exchange Survey – only Director Daily was identified by name.

RESPONSE: There is no rule forbidding 'reflecting poorly on the Board as a whole.' The rules require that Board members follow the law and the Board's own policies. There is no policy that says a Board member who is criticized by a member of the public can be censured on the basis of that criticism. Constituents who do not wish to be represented by a Director may vote against that director; or organize their fellows to do the same. Criticism is a healthy part of an open and democratic politics. The fact that two survey respondents disagree with or dislike Director Daily breaks no policy or law.

Further, one of the highlighted comments provided as "Exhibit 1" doesn't even refer to Mr. Daily at all – it could be about any Board member.

We request that this allegation be withdrawn and all investigation on it cease, as it is not an allegation of violation of any rule or law.

E. Director Daily makes excessive public records requests resulting in unnecessary costs to the District.

Director Daily has been informed that as a board member, he has the right to request information from the District, but instead he files multiple public records requests, resulting in unnecessary expense to the District.

Evidence:

-April 2020 emails with the superintendent and District staff.

-May 19, 2021 Annual Technology Update. Public records requests have increased 400%. On average each request consumes 6 hours of staff time to respond.

RESPONSE: Again, this 'allegation' does not contain anything that would be a violation of law or policy. The Public Records Act makes public records requests a right of all Washingtonians. That right is not forfeit when someone is elected to office

– if anything, the right to access government documents becomes a duty to follow up on any potential government malfeasance. The Public Records Act does not restrict the number of requests that a citizen can make. Like every other Washingtonian, Mr. Daily has every right to make as many records requests as he chooses.

Answering public records request is not an ‘unnecessary expense’ to the district. It is a very necessary, legally required expense. It is also unclear why providing the documents via public records request would be any more expensive than providing the exact same documents via an information request to the District by a board member.

It is very disturbing that the District would seek to restrict or retaliate against Director Daily for his exercise of his rights. Should the District or the Board make a finding that Director Daily ‘made excessive public records requests,’ that would be the basis of a lawsuit for serious willful violation of the Act and retaliation for the use of the Act. **I formally request that the District immediately withdraw and remove all allegations referring to ‘excessive’ public records requests and cease all investigations of any such allegations.**

F. Director Daily has failed to fulfill the duties and responsibilities of a director.

Evidence:

Director Daily often refuses to sign board documents.

Director Daily abstained from voting on the election of board president and vice president during the December 2, 2020 regular board meeting.

Director Daily declined a board assignment during the December 2, 2020 regular board meeting (WIAA Representative).

Director Daily failed/refused to attend a special session on January 23, 2021, dedicated to professional development (review and training of “Coherent Governance.”).

Director Daily frequently abstains to avoid going on record or if he believes the agenda includes items that he believes should not be on the agenda.

RESPONSE: There is no law or policy requiring signing every board document or accepting every assignment; there is no law or policy forbidding abstention from vote or being absent from a single meeting. There is no stated attendance policy, policy on

acceptance of assignment, nor any policy on abstention in any of the policies cited in this list of allegations. A director cannot be censured for ‘violating’ a policy that does not exist.

G. Director Daily is divisive, abrasive, and makes accusations of wrongdoing against individual Board members and District staff without offering factual support.

Evidence:

Claimed there was \$18 Million in unaccounted funds without evidence.

Stated that the District could not pass a State audit.

Claimed the District had approved a 3% across-the-board increase for District staff during the pandemic.

RESPONSE:

Director Daily has a fiduciary duty to address any malfeasance that might come to his attention. If he made a good faith evaluation of the finances and found a discrepancy, that should be addressed. Director Daily was fulfilling his duty as a board member when he requested information that would shed light on what he believed to be a major financial problem. If it turns out that his calculation was in error, or there is contradicting information he did not have at the time of his statement, that is not grounds for censure. He was acting in good faith and addressing an issue that could be very serious.

Director Daily’s opinion as a Board member that the District would fail a state audit is not an accusation, but a statement that he believes there are financial problems in the District. The response to potential problems with the District accounting, coming from a Board member, should be to examine those problems, and to find out what, if anything, is going wrong, and then work to fix the system. The response should not be to censure the person who raises a concern.

In the section identified as a meeting transcript in Exhibit 1, Director Daily did not say there was a 3% “across-the-board” raise – Mr. Winter was the one who used that term. Mr. Daily referred to a pay raise “for everybody.” Clearly, this is a colloquialism – Director Daily was not saying there was a 3% raise for every individual person in the world. According to Mr. Winter’s email included in Exhibit 1, there was in fact a 3% raise for SEIU and PSE employees – that is the ‘everybody’ Mr. Daily is referring to, and it appears to be factually correct from the materials in Exhibit 1.

The other 'evidence' provided for this allegation is a screenshot from an anonymous post on a social media website. The anonymous poster claims to be quoting an email from Director Daily – but no such email has been presented or evaluated. Hearsay from an anonymous online post can't possibly be considered sufficient evidence to form the basis of censure.

CONCLUSION:

Many of the allegations brought here should be dropped entirely from consideration, because they would not constitute violations of any rule or law, even if true. Those that would constitute violations are insufficiently supported by the evidence provided.

If there is additional evidence of any allegation, please provide that so that Director Daily may respond.

The responses to these allegations have been prepared by Director Daily's attorney, Sarah Lippek. All communication on this matter should be directed to Ms. Lippek.