

MEMORANDUM IN SUPPORT OF COMPLAINT AGAINST SENATOR VALARIE LAWSON

POTENTIAL VIOLATION: Senator Valarie Lawson appears to have violated R.I.G.L §§ 36-14-5(a), 36-14-5(d), 36-14-7(a) and Regulation 36-14-5002 by sponsoring, advocating and voting for legislation (2019-S0512A). This legislation would require any provisions related to wages and benefits, except as to limiting layoffs, contained in an expired collective bargaining agreement with a teacher union to remain in effect in perpetuity until such time that a new collective bargaining agreement is agreed upon. The National Education Association of Rhode Island (NEARI) lobbied in favor of this legislation. Senator Lawson is the Vice President of NEARI and receives compensation from this organization.

FACTUAL BACKGROUND: Valarie Lawson is the Vice President of NEARI, and receives compensation from this organization.¹ On February 27, 2019, Senator Lawson cosponsored legislation 2019-S0512. This legislation requires any provisions related to wages and benefits, except as to limiting layoffs, contained in an expired collective bargaining agreement with a teacher union to remain in effect indefinitely until such time that a new collective bargaining agreement is agreed upon. On April 24, 2019, the Senate Labor Committee considered and voted in favor of an amended version of this legislation 2019-S0512A. Patrick Crowley, an employee and lobbyist for NEARI, testified before the Senate Labor Committee in support of the legislation.² As a member of Senate Labor Committee, Senator Lawson voted in favor of the legislation.³ On May 1, 2019, on the Senate floor, Senator Lawson advocated for the legislation in a speech in which she discussed her involvement in a contract dispute involving the City of East Providence, and then subsequently voted for it.⁴

RELEVANT LAWS:

R.I. Gen. Laws § 36-14-5

(a) No person subject to this code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, as defined in § 36-14-7.

(d) No person subject to this code of ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

R.I. Gen. Laws § 36-14-7

¹ Lawson R.I. Ethics Commission 2018 Financial Statement; National Education Association Rhode Island 2016 Form 990; “R.I. Senate approves package of labor-backed bills” Providence Journal 5/1/19

² Video of R.I. Senate Labor Comm. <http://ritv.devosvideo.com/show?video=39de5e07fba2&apg=face07a6>; Patrick Crowley March 2019 Sec of State Lobbyist Activities Report

³ “Bills on expired contracts, firefighter OT sail through R.I. Senate Labor Committee”, Providence Journal 4/24/19

⁴ “Labor-backed bills win R.I. Senate approval”, Providence Journal 5/1/19

(a) A person subject to this code of ethics has an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, if he or she has reason to believe or expect that he or she or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity.

(b) A person subject to this code of ethics does not have an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him or her or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents, as a member of a business, profession, occupation, or group, or of any significant and definable class of persons within the business, profession, occupation, or group, to no greater extent than any other similarly situated member of the business, profession, occupation, or group, or of the significant and definable class of persons within the business, profession, occupation or group.

R.I. Gen. Laws § 36-14-2

(2) "Business" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit or not for profit is conducted.

(3) "Business associate" means a person joined together with another person to achieve a common financial objective.

Regulation 36-14-5002

A person subject to this Code of Ethics must also recuse himself or herself from participation in accordance with R.I. Gen. Laws § 36-14-6 when any of the following circumstances arises:

2. His or her business associate or employer appears or presents evidence or arguments before his or her state or municipal agency.

LEGAL ARGUMENT:

The NEARI is a bargaining agent for teachers.⁵ There are only two major bargaining agents for teachers in Rhode Island: NEARI and the Rhode Island Federation of Teachers. As a Senator, Valarie Lawson sponsored, advocated and voted for legislation which directly benefited the NEARI. The legislation prevents an employer from altering the wages and benefits of teachers after a collective agreement has expired. This legislation benefited NEARI because it increased the negotiating leverage of teacher unions in the collective bargaining process. This increased leverage can be used to financially benefit the membership of teacher unions. Valarie Lawson is not only a state senator but also the vice president of the NEARI. As vice president of NEARI,

⁵ The mission of NEARI is to be the "Bargaining agent for personnel." National Education Association Rhode Island 2016 Form 990.

she receives compensation. This is a violation of R.I.G.L. § 36-14-5(a) which prohibits a person from having “*any interest, financial or otherwise, direct or indirect*, or engage in any business, employment, ... which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest.” The fact that Lawson sponsored, advocated and voted for it on the Senate floor is violation of R.I.G.L. § 36-14-5(d) which prohibits a person from using “*in any way* his or her public office ... to obtain financial gain ... for... or any business by which the person is employed or which the person represents.”

In numerous advisory opinions, the Ethics Commission has warned state legislators to recuse themselves from sponsoring, participating or voting on legislation which directly affects the employer of a legislator. For example, the Commission informed a state representative, who was employed by a private recycling company, that he could not “participate or vote on matters of legislation concerning the recycling or solid waste matters.”⁶ Also, the Commission indicated to a state representative, who was physician employed by a Massachusetts company and who performed limited work in Rhode Island, that he could not “sponsor, participate or vote on certain legislation relating to the budget for public and private health care expenditures, reform of the Rhode Island medical malpractice laws, and health care restructuring relating to overhead costs to Rhode Island hospitals and doctors.”⁷ In addition, the Commission declared that a state representative, who was employed by a non-profit organization, that she had to recuse from “any participation or voting in connection” with “matters specifically relating” to her employer.⁸ Lastly, the Commission stated that a state senate candidate, who was employed by a non-profit that provides services to state agencies, that he “cannot sponsor or participate in the development of or voting for legislation directly affecting his employer” such as “the responsibilities or budget of state agencies that contract with” his employer.⁹ Lawson sponsored, advocated, and voted for legislation which benefited teacher unions, and she is compensated by a teacher union, the NEARI.

Furthermore, the NEARI lobbied the General Assembly in favor of this legislation. The NEARI lobbyist Patrick Crowley appeared before the Senate Labor Committee. Like Senator Lawson, he receives compensation from the NEARI. Crowley and Lawson are business associates under R.I.G.L. § 36-14-2(3). Under the circumstances, Lawson should have recused herself entirely from participating or voting on the legislation, for which Crowley lobbied. Instead, she voted in favor of it at the Senate labor Committee, and then advocated for it on the Senate floor before voting for it. This is a violation of R.I.G.L. § 36-14-5(d) which prohibits a person from using “*in any way* his or her public office ... to obtain financial gain ...for ... any business associate.” She also violated Regulation 36-14-5002, which requires a public official to “recuse himself or herself from participation” when a “business associate or employer appears or presents evidence or arguments before his or her state or municipal agency.”

In advisory opinions the Ethics Commission has warned public officials to recuse from considering or voting on matters for which a business associate appeared before them in a public body. For example, the Commission warned a state legislator that if a lobbyist from a union from which he receives compensation appeared before him to testify on legislation, he “must recuse from participation during such testimony, and from *any* matters before the Labor Committee and/or the

⁶ A.O. 1991-16, Re: George A. Zainyeh

⁷ A.O. 1992-28, Re: K. Nicholas Tsiongas

⁸ A.O. 1995-20, Re: The Honorable Nancy C. Hetherington

⁹ A.O. 1996-89, Re: Michael C. Cerullo

Senate that would *likely* financially impact” the union.¹⁰ The Commission has made it clear that recusal includes voting. The Commission indicated that a member of a planning board was “prohibited ... from participating in the Planning Board’s discussions and *voting* relative to applications for subdivisions and land development projects in which her business associate appears as an expert witness for the applicant.”¹¹ Also, in one advisory opinion, the Commission informed a state representative that he must “recuse” from participation on legislation when his “spouse” who was lobbyist “appears before his committee”.¹² Only after the legislation was “out of committee” would the Commission permit a state representative to “participate and/or vote” on the matter.¹³ While her business associate Crowley testified in support of the legislation, Lawson did not sit with the other members of the Senate Labor Committee. However, at the end of the hearing at which Crowley testified, she voted in favor of his legislation. To fully recuse oneself from participation at the Senate Labor Committee, Lawson should not have voted on the legislation in committee. It seems absurd to claim that a state legislator properly recused herself by stepping away from a committee momentarily while a business associate testified when the legislator returned later to the committee to vote in favor of the legislation the business associate just supported. If the act of being present to hear the testimony of a business associate is unethical, so should the act of voting in favor of what business associate just requested.

Lawson’s behavior regarding this legislation is not excused by the class exception of R.I.G.L § 36-14-7(b). Lawson is not just a rank-and-file teacher. She is an officer of a statewide teacher union organization from which she receives compensation. The Commission has distinguished between officers and those holding leadership positions in a union organization from ordinary rank-and-file members. For example, the Commission has stated a “union member who is not officer or in some other leadership position in the union does not have a business association with the umbrella organization”.¹⁴ Lawson is a member of a small group, the officers and high-level employees of NEARI. They are business associates of one another. Lawson advocated for and voted for legislation lobbied by her business associates, which will benefit her business, the NEARI.

Furthermore, the class exception of R.I.G.L § 36-14-7(b) does not apply because this legislation benefited Lawson and her fellow officers and employees at NEARI, to a “greater extent” than the typical Rhode Island teacher. Because of a recent U.S. Supreme Court decision, public sector employees, who refuse to be members in a union, cannot be compelled to pay union dues.¹⁵ As a result, teachers can refuse to pay dues to NEARI. The compensation of NEARI officers and employees are dependent on union dues. The more teachers who refuse to pay dues to the NEARI, the less compensation NEARI officers and employees will receive. This legislation increases the negotiating leverage of teacher unions in the collective bargaining process. Increasing the leverage of teacher unions in collective bargaining, decreases the likelihood that teachers would want to cease being dues paying members of teacher unions. If an employer can make unilateral changes in teacher compensation, teachers may decide that there is no value in remaining a union member. Legislation which increases the power of public employee unions in collective bargaining

¹⁰ A.O. 2019-20, Re: The Honorable Frank A. Ciccone, III

¹¹ A.O. 2016-45, Re: Melissa Hutchinson

¹² A.O. 2003-02, Re: Arthur Handy

¹³ *Id.*

¹⁴ A.O. 2008-15, Re: Bruce J. Whitehouse

¹⁵ *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018).

financially benefits the officers and employees of public employee unions because their compensation is dependent upon retaining union membership.

Lastly, Lawson has publicly disclosed that she is a paid officer of the NEARI. However, violations of R.I.G.L §§ 36-14-5(a), 36-14-5(d), and 36-14-7(a) are not excused by publicly disclosing a potential conflict of interest. A violation of these statutes is avoided by recusing yourself from sponsoring, participating in or voting on the legislation which financially benefits your employer and for which a business associate lobbied in favor. Even if Lawson simply recused herself completely from legislation, which financially benefits teacher unions, Lawson would still be able to represent her constituents on nearly all legislation that comes before the State Senate.

CONCLUSION

Senator Valarie Lawson appears to have violated R.I.G.L §§ 36-14-5(a), 36-14-5(d), 36-14-7(a), and Regulation 36-14-5002 by sponsoring, advocating and voting for 2019-S0512A. This legislation directly financially benefits teacher unions like NEARI by increasing the negotiating leverage of teacher unions with employers on financial issues. It was supported by the NEARI, an organization from which Lawson receives compensation, and by a business associate of Senator Lawson who appeared before the Senate Labor Committee.

In the past, the Commission declared that “it is imperative that the public interest and not the interest of his employer guide a legislator’s decision.”¹⁶ In 2016, voters approved an amendment to the state constitution to give the Ethics Commission clear authority over the legislative activities of state legislators. The Ethics Commission should exercise this authority over Senator Lawson. If it does not, then it will send a message that in Rhode Island, a legislator can sponsor, advocate and vote for legislation lobbied by a business associate of the legislator that will benefit a business that is paying the legislator.

¹⁶ A.O. 2003-02, Re: Arthur Handy