

June 30, 2016

Dear Lieutenant Governor Owen:

I was surprised and disappointed by the letter you sent to me and to the media on Tuesday for several reasons: the numerous inaccuracies it contained, the blatant condescension and discourtesy with which you addressed me, the impropriety of your sending a clearly political letter to my official Senate office in violation of ethics rules, the impugning of motives without any first-hand knowledge of the facts to which you made reference, and, above all, the fact that you decided to make public accusations without even once reaching out to me personally to air your concerns or hear my perspective. That hardly seems like the "fair, nonpartisan and impartial" approach you pride yourself on taking in your letter, nor does it constitute treating your colleague with the "dignity, order and decorum" to which you also make reference. It rather resembles the "rancor and political mistrust" that you ironically suggest that I would engender.

When you and I met during the 2016 session and you asked me to do my best to keep your past ethics violations and fines out of the media coverage of this race, I agreed to do so out of respect for you and for the office. Similarly, when discussing the ways in which I intend to use the office to reach out into communities throughout the state, I have, at your request, never once made reference to the KING5 investigative story about your infrequent office appearances. To the extent I have discussed my belief that this office could play a more public role in addressing the challenges and opportunities facing our state, I have done so without dishonoring your years of public service. It is therefore particularly disappointing that you would take such an uncharitable and, some might say political, approach to resolving any concerns you might have with respect to my campaign.

Turning to those concerns, let me set the record straight: I have never claimed that the Lt. Governor has any sort of veto power, but your assertion that the act of signing a bill is "a ministerial duty" conflicts with numerous State Supreme Court rulings, and diminishes an important role of the office. In *Walker v. Munro*, the State Supreme Court held with respect to the President of the Senate that "the signing of a bill is not a ministerial task." That was reaffirmed in *Brown v. Owen*, in which the Court again made clear that "the duties of the Speaker of the House and the President of the Senate" are "discretionary," including the power to declare a bill passed or not passed. At the same time, the Court also made clear that, pursuant to the Senate's own rules, "any member of the senate who disagrees with the president's ruling on a point of order may appeal to the body of the Senate," and overturn the President's ruling "with a simple majority of the Senate." Accordingly, what I have said is that, if a point of order were raised with respect to the constitutionality of a bill or legislative provision, I would issue a ruling on that question, and that, if I were overruled by the Senate, I would reserve the right to have the ruling of the Lt. Governor made a part of the legislative record and then defer to the President pro tem to sign the bill instead. I do believe it is important that the Lt. Governor do everything within his or her power to hold the Senate accountable to the Constitution, but I by no means believe that his or her power contains the ability to veto legislation.

Your own understanding and use of power in this office have not been without controversy. After you were reprimanded and fined by the Executive Ethics Board for

improperly using tax-payer resources for your private activities, which you unsuccessfully argued were permitted, you then attempted to expand the duties of state officers to prospectively allow such activities. The Governor vetoed that bill, SB 5785, writing that it would “unnecessarily risk endangering the public's trust.” That same year, you also requested legislation, SB 5771, which would have prohibited the Attorney General’s Office from investigating ethics violations such as yours. Following opposition by the Attorney General, that bill also failed. I certainly hope that any disagreements you had at that time regarding your interpretation of the Lt. Governor’s powers were more respectful than what was embodied in your letter to me.

Finally, allow me to clear up two other inaccuracies in your letter. I have never said that the Lt. Governor appoints “hundreds of citizens to state boards and commissions.” I have consistently said that “the Lt. Governor makes appointments to over 40 boards and commissions,” and that I would do my best to ensure that those appointees are reflective of the diversity of our state. Likewise, I have never said that I “will not need the two Senate caucus attorneys.” The closest I have come to that is to point out, as I did in my Voters’ Guide Statement, that I am the only attorney in the race and also a professor of legislative procedure at Seattle University, and that these unique experiences will serve me well as the Senate’s presiding officer.

I regret that you feel that my desire to use the office to speak out about the importance of complying with the Constitution and getting the state out from under a contempt order constitutes partisanship; I see it as the duty of anyone holding high state office to do so in these challenging times. I believe in the power of this office to work with legislators in both parties and in both chambers, as well as with the Governor and other statewide officials, to facilitate a more effective, efficient, and amicable legislative process in the years to come. I see the office as a vehicle for outreach to underserved populations who could use increased access to the Legislature through innovations such as remote testimony and more open government practices. Finally, I share your commitment to using the office to promote Washington State nationally and abroad, and to expanding tourism and economic development opportunities throughout the state. Nothing about those priorities strike me as in the least partisan.

If you have any further concerns you’d like to discuss, might I suggest that you do so in person or by phone? I would be more than happy to meet with you, provided that you refrain from making comparisons to Donald Trump or other ad hominem attacks.

Sincerely yours,
Cyrus Habib