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**NO. 93522-0**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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**IN THE MATTER OF THE RECALL OF MARC BOLDT, Clark  
County Councilor; JEANNE STEWART, Clark County Councilor;  
and JULIE OLSON, Clark County Councilor.**

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**Brief of Appellant**

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## **I. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Appellant identifies the following assignments of error:

The trial court erred when it ruled that the statement of charges against Councilors Boldt, Stewart and Olson were legally and factually insufficient to support the recall of the Councilors, and that Tom Mielke lacked standing to file a statement of charges against Councilor Olson because Mielke, while a Clark County registered voter, did not reside in Olson's residency district within the County.

The issues pertaining to the assignments of error are as follows:

1. Whether the charges alleged by Mielke were legally and factually sufficient under the Recall Statute?
2. Whether the term "political subdivision:" in the Recall Statutes refers to the County and not the residency district within a County?
3. Whether Mielke, as a registered voter of Clark County and a constituent of the County Board of Councilors had standing to submit the Statement of Charges against Councilor Olson though he did not reside in her residency district within the County?

## **II. STATEMENT OF FACTS**

In November 2014, voters in Clark County voted to increase the number of the Clark County Board of County Councilors ("BOCC") from three to five members. Marc Boldt and Julie Olson were elected to the two new positions and took office on January 1, 2016, with Boldt serving as Chair. Councilor Jeanne Stewart had been one of the three previous Councilors, along with Councilors David Madore and Tom Mielke, the Appellant/Petitioner in this action. CP 10, 23, 37. Boldt had previously

served as a Councilor (then called Commissioner) from 2005 through 2012 prior to his election in November 2015. CP 486. Stewart was elected to the BOCC in November 2014 and previously served on the Vancouver City Council for 12 years. CP 488. Olson was elected to the BOCC in November 2015 and previously served on the Ridgefield School Board for 8 years, 6 years as its president. CP 487.

All three were required to have received training in the requirements of the Open Public Meetings Act (“OPMA”) that specifically educates members of governing bodies on how to comply with the OPMA. RCW 42.30.205. This law has been in effect since July 1, 2014. The curriculum specifically covers what is required to comply with the OPMA.

**A. Rebecca Dean Contract.**

During the winter of 2015 and through the spring and summer of 2016 Councilor Madore repeatedly raised concerns that County prosecutors Chris Horne and Christine Cook and Planning Director Oliver Orjiako had provided false and inaccurate information to the BOCC during its consideration of the County’s Comprehensive Plan update as periodically required by the Growth Management Act. RCW 36.70A, et seq. Madore prepared a point-by-point documentation of the inaccuracies of their testimony and posted it to the County’s website. CP 129-130. On March 1, 2016, during an open public BOCC meeting Madore asked that

an independent investigator be hired to look into his allegations. The meeting minutes clearly state that Councilors Boldt, Stewart and Olson stated no investigation was necessary. CP 404.

On March 2, 2016, the day after the public meeting, a union filed a grievance alleging Madore's allegations had defamed Orjiako. CP 131-132. On March 16, 2016, Orjiako filed his own complaint alleging a hostile workplace by Madore. CP 133-140. By March 19, 2016, the County Manager had hired Rebecca Dean, an attorney, to investigate the union and Orjiako complaints against Madore without notice Councilors Madore or Mielke and without posting the contract on the County's website as the County Code required.

**B. Approval of Legal Newspaper Contract to Highest Eligible Bidder with Smallest Circulation.**

In May 2016, the three accused Councilors voted to award the County's legal newspaper contract to the highest cost eligible bidder with the lowest circulation of the two eligible bidders despite a County Charter requirement that such contracts must be awarded to the lowest bidder. The circumstances of the three Councilors' awarding of this contract forms the basis of Charge #2 and is discussed more fully below at Section III.D.

**C. Elimination of the Department of Environmental Services.**

The Department of Environmental Services was first proposed in 2009. CP 319. A draft ordinance creating the department was prepared and approved, and the position of Director of the Department Environmental Services was approved by the BOCC on August 25, 2009. CP 319-321. Funding was approved for the department through the budgetary process each fiscal year including 2016. CP 322-339.

During the 2015 budget planning process, the BOCC duly authorized and adopted a budget that both contemplated the existence of and funded a Department of Environmental Services for fiscal year 2016. CP 322-339. At this time, Don Benton served as the Director of Clark County's Environmental Services Department.

On April 29, 2016, Director Benton filed a whistleblower complaint making allegations against County Manager McCauley. CP 340-345. On May 11, 2016—just 12 days after filing his whistleblower complaint—Director Benton was fired by Manager McCauley. On that same date Manager McCauley announced that the services then housed in the Environmental Services Department would be reassigned to other departments effectively dissolving the department despite the fact that the BOCC had budgeted for the existence of the department for the entire

2016 fiscal year. CP 346. The facts surrounding the elimination of this Department, and the re-assignment of the staff and budgetary amounts for this Department, and the actions of the three accused Councilors form the basis of Charge #3 against Boldt, Stewart and Olson and are explained more fully in Section III.E below.

**D. These Proceedings.**

Mielke filed a Statement of Charges on June 28, 2016. CP 10-19, 23-32, 37-46. Clark County asked the Attorney General to prepare the ballot synopsis because the actions of the prosecutor's office were at issue in the Statement of Charges. A sufficiency hearing was held on July 29, 2016. The court ruled based solely on affidavits and review of one video tape of a BOCC meeting. The court ruled that the charges were all legally and factually insufficient and further ruled that Mielke lacked standing to seek the recall of Olson since, while he was a registered voter in Clark County, he did not reside in the residency district for Olson and could not vote for her. CP 607-608. This appeal followed.

**III. ARGUMENT AND AUTHORITY**

**A. Standard of Review and Burden of Proof**

A trial court's decision regarding the insufficiency of a statement of charges is subject to direct review by the State Supreme Court. RCW 29A.56.140.

Although the courts serve a gateway function in the recall process, courts do not attempt to evaluate the truthfulness of the charges in a petition. **In re Recall of Beasley**, 128 Wn.2d 419, 427, 908 P.2d 878 (1996). Rather, the court's function is limited to evaluating the legal and factual sufficiency of the charges. **In re Recall of Pearsall-Stipek**, 141 Wn.2d 756, 764, 10 P.3d 1034 (2000). An appellate court reviews the trial court's ruling de novo and applies "the same reviewing criteria as the superior court." **Id.**

#### **B. Requirements of Recall Statement of Charges**

A recall action under RCW 29A.56.110 must allege an official has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office. RCW 29A.56.110. "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty. RCW 29A.56.110(1). Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and "malfeasance" in office means the commission of an unlawful act. RCW 29A.56.110(1)(a)-(b). "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

Where commission of an unlawful act is alleged, the petitioner is required to demonstrate that the official intended to commit the act but

also that the official intended to act unlawfully. **Pearsall-Stipek**, 141 Wn.2d at 765.

The superior court is to consider only the sufficiency of the charges and not the truth of the charges. RCW 29A.56.140. The voters, rather than the court, consider the truth of the charges if the recall proceeds to the ballot. **In re Recall of West**, 155 Wn.2d 659, 662, 121 P.3d 1190 (2005). Further, the court is not to consider the motives of the persons filing the charges. **Janovich v. Herron**, 91 Wn.2d 767, 773, 592 P.2d 1096 (1979).

“Charges are factually sufficient to justify recall when, ‘taken as a whole they ... state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance.’” **West**, 155 Wn.2d at 665 (quoting **Chandler v. Otto**, 103 Wn.2d 268, 274, 693 P.2d 71 (1984)). “Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations.” **Id.** The inferences must be supported by facts set forth in the statement of charges or supporting documentation. **In re Recall of Carkeek**, 156 Wn.2d 469, 474, 128 P.3d 1231 (2006).

“The recall statutes do not require the petitioner to have firsthand knowledge, but they do require the petitioner have some form of

knowledge more than simply a belief that the charges are true.” **In re Recall of Reed**, 156 Wn.2d 53, 58, 124 P.3d 279 (2005). The ultimate questions are whether the voters are provided with sufficient information to evaluate the charges and whether the proponent has a basis in knowledge of the charges. **In re Recall of Carey**, 132 Wn.2d 525, 527, 939 P.2d 1221 (1997).

To be legally sufficient, the charges must clearly state the conduct that, if true, would constitute misfeasance, malfeasance or a violation of the officer’s oath of office. **Beasley**, 128 Wn.2d at 426.

**C. Dean Contract: Charges of Violations of the Open Public Meeting Act and Oath of Office.**

The statement of charges alleges a violation by the three Councilors of the Open Public Meetings Act (“OPMA”), RCW 42.30, *et seq.*, and a violation of their oath of office. At the sufficiency hearing, Mielke asked that the ballot synopsis prepared by the Attorney General’s Office for this charge be amended to read:

Knowingly violated the Open Public Meetings Act, RCW 42.30, by holding a secret and closed meeting without notice to the public to approve a contract to investigate a fellow councilmember and breached his/her oath of office by permitting the County Manager to violate the Clark County Code.

RCW 42.30.030 requires that “[a]ll meetings of the governing body of a public agency shall be open and public and all person shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.” A public agency’s definition includes all municipal corporations including counties. RCW 42.30.020(1)(b). Clark County is subject to the OPMA.

The OPMA mandates that:

no governing body of the public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at meeting the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

RCW 42.30.060(1). It further prohibits voting by secret ballot when such a meeting shall be open to the public. “Any vote taken in violation of this subsection shall be null and void, and shall be considered an ‘action’ under this chapter.” RCW 42.30.060(2). All Councilors must be afforded notice of any meeting, including executive sessions. RCW 42.30.110(2).

Clark County is a Council-County Manager form of government. It is governed by the Clark County Code. The Code sets forth the County Manager’s procurement authority. Clark County Code 2.09.030. This

section permits the County Manager to engage professionals for contracts less than \$200,000. Code 2.09.030(1)(a). However, before such a contract is executed, the Manager is required to publish it on the Clark County website<sup>1</sup> for at least a week during which time any Councilor can request that the Board consider the contract during a meeting and vote on whether or not the contract should be entered into. Specifically, the Code provision says:

Prior to the execution of any contract subject to subsection (1) of this section, the county manager will publish all contracts and staff reports on the Clark County website including a summary of the contract purpose, funding sources, and contract term. The county manager will also provide a copy of the staff reports and/or contracts to county councilors for their review and will not execute the documents for one week to provide any councilor an opportunity to review and request individual consideration of a document prior to execution. Contracts signaled for individual consideration will be approved by a majority vote of the council at a public meeting.

Code 2.09.030(2). If a posted contract is not “pulled” by any Councilor, the County Manager may execute the contract because explicit BOCC approval is not required on behalf of the County. Code 2.09.030(3).

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<sup>1</sup> The County maintains a website to post documents and information for the public and is commonly referred to as “The Grid”. There are two grids, one for BOCC documents [<https://www.clark.wa.gov/the-grid>] and one for proposed contracts to be posted [<https://www.clark.wa.gov/contracts-grid>]. Councilor Madore was the driving force in the BOCC Grid’s creation for the express purpose of ensuring Clark County operated in an open and transparent manner.

It is not contested that the Manager executed a contract which he failed to post on the website. The Manager admits that he approved and entered into a contract to hire Rebecca Dean, an attorney, to investigate complaints made against Councilor Madore. CP 189-190, 192-193. The prosecuting attorney Chris Horne acknowledged during an April 20, 2016, public BOCC meeting that “Councilor Madore is right. They didn’t—**this thing wasn’t posted on the grid, and the Ordinance requires it to be posted on the grid.**” CP 199 at lines 19-22 (emphasis added). The parties further admit that Councilor Madore and Councilor Mielke were not notified of this contract, that anyone was being hired to perform this work, or the individual being hired, and that Councilors Mielke and Madore learned of the contract for the first time when it was posted as part of a news story by The Columbian, a Clark County newspaper. The parties also admit that Councilors Mielke and Madore were never notified of an executive session or other meeting of the BOCC when the hiring of Dean, or the hiring of anyone to investigate charges **against** Madore was discussed. Instead the other Respondents point to an earlier public BOCC meeting on March 1, 2016 where Madore asked for an investigator to be appointed to investigate complaints he had made against Orjiako, Horne and Cook.

The Minutes of the March 1, 2016 meeting clearly state that the BOCC discussed hiring an investigator to investigate those concerns raised by Madore, and that Boldt, Stewart and Olson “stated no investigation was needed.” CP 404.

After Mielke and Madore learned of the signing of a contract with Dean from The Columbian’s website, they discussed the issue in a public BOCC meeting on April 20, 2016, specifically questioning when such contract had been discussed and why it was not posted on the website as the County Code required. Councilor Stewart stated during the meeting that the subject had been discussed at an executive session (CP 191 at lines 3-11); a statement she has since tried to back away from since there was no executive session to which Mielke and Madore had been notified. This is of course because a failure to notify all five Councilors that an executive session would take place, or not allowing all members to participate in an executive session to which all five Councilors had been invited, would clearly violate the OPMA. In subsequently-filed declarations Boldt, Stewart and Olson fail to show an illegal meeting did not occur and further provide evidence calling their ever-shifting version of the facts into question.

In her declaration, Councilor Stewart discussed the March 1, 2016 open public meeting of the BOCC where Madore requested an

independent investigator be hired to investigate his allegations, and where the minutes of the meeting clearly indicate that Boldt, Stewart and Olson all indicated no investigation was needed. Compare CP 514 with CP 404. Stewart then in the next sentence stated “We did not take a vote in executive session. Legal counsel for the Board was present at our executive session, and I relied on counsel’s advice regarding the executive session.” CP 514. The sentence immediately before the above-quoted passage referred to the March 1, 2016 public meeting, not an executive session, and acknowledges it was a discussion about hiring an investigator to investigate Madore’s allegations against Orjiako, Horne and Cook—not those against Madore. (This is incontrovertible because no allegations against Madore had been levied at that time.) There was no “executive session” identified where this subject was discussed or the subject of hiring someone to investigate allegations against Madore. Stewart further claims “In fact, I specifically asked whether this contract [hiring Dean to investigate Madore] was within the County Manager’s authority and he told me it was.” CP 515. Stewart does not state when the conversation with the Manager occurred—perhaps during the unidentified alleged “executive session” to which Madore and Mielke had not been invited.

Councilor Olson’s declaration similarly raises more questions about violations of the OPMA than it answers. She stated that on March

2, 2016, Planning Director Oliver Orjiako, who was the subject of some of Madore's complaints, filed a complaint against Madore—the day after the public meeting when Madore had asked for an investigator to be appointed and Boldt, Stewart and Olson had declared no investigation was necessary. CP 510; CP 404. The Orjiako complaint was not received until March 16, 2016—and was dated March 15, 2016. Olson then stated in her declaration that on March 16, 2016, a union had filed a complaint against Madore and “So during an executive session pursuant to potential or pending litigation, RCW 42.30.110(1)(d), the Board discussed whether to proceed with an investigation regarding Councilor Madore's allegations.” CP 510 ¶ 2. The union complaint was received March 2, 2016.

The problem with this recitation of fact, besides the reversal of the dates of the union and Orjiako complaint, is that the Orjiako complaint was received March 16, 2016 some 15 days after the public meeting—not an executive session—and by March 19, 2016, the Manager had already contacted and retained Dean to investigate Madore since Dean wrote to the Manager thanking him for the assignment and specifying the terms and scope of work. CP 141-145. The Manager signed the contract with Dean on March 25, 2016. CP 12. Olson, like Stewart, alleged the prosecutor was present at the un-dated “executive session” and that she relied on his

advice regarding their compliance with the law and that the contract need not be posted on the grid. CP 511 ¶¶ 3 and 6.

Councilor Boldt in his declaration also referred to an un-dated “executive session” occurring after the March 16, 2016, complaint against Madore was received, states counsel was present during this un-dated executive session, and that he understood the contract need not be posted on the grid and relied on the advice of counsel for that belief. CP 506-507.

Although all three of the accused Councilors allege there were discussions in an executive session and that they relied on the advice of counsel in believing the contract need not have been posted to the website (aka “ The Grid”) the April 20, 2016 transcript of the BOCC public meeting of that day directly contradicts those claims as prosecutor Chris Horne stated clearly that he could not offer advice since his office was the subject of some of the allegations made by Madore (which was discussed during the March 1, 2016 meeting), that he would have to get back to the Counsel with a written response (that was never provided) and specifically agreed that Madore was correct when he stated the contract was required to be posted on The Grid pursuant to the Code and that the contract had not been so posted. CP 191-198. Furthermore, the minutes of the March 1, 2016 meeting—the only meeting with all five Councilors notified and in

attendance where the hiring of an investigator was ever discussed, and where it was contemplated that the investigator was to investigate Madore's allegations against Orjiako, Horne and Cook—the minutes clearly reflect that Boldt, Stewart and Olson voted that an investigation is not needed. CP 404.

Boldt, Stewart and Olson cannot defeat the clear inference that a meeting occurred where they supported the hiring of an independent investigator to investigate allegations against Madore, and that that meeting occurred after March 16, 2016. They also cannot defeat the clear evidence in the record that Mielke and Madore were unaware an investigator was being hired, or even considered, to investigate allegations against Madore, or that any investigation was being considered since Boldt, Stewart and Olson all voted during the March 1, 2016 that no investigation was necessary. They further cannot defeat the clear evidence that Mielke and Madore—two of the five elected Councilors—first learned of the hiring of an investigator when they saw a copy of the contract with Dean posted on the Columbian's website with a news story.

It is clear the Manager violated the County Code when he failed to post the contract on The Grid as required to give Madore and Mielke notice and a week's time to pull the contract so it had to be discussed and approved during a public BOCC meeting. It is also clear that the county

attorney, who Boldt, Stewart and Olson alleged they relied upon in their belief the contract need not be posted, in fact agreed with Madore and admitted publicly during the April 20, 2016 meeting that the Code required that the contract be posted to The Grid and that the contract had not been so posted. It is also clear that Stewart, Boldt and Olson were not surprised when the revelation about the hiring of Dean was published on the Columbian's website, and that Stewart admitted to asking the Manager if he had the authority to negotiate the contract. All three accused Councilors similarly freely admit to an un-identified, unnoticed, executive session where they claim the issue was discussed, although the other two Councilors Mielke and Madore have no knowledge of such meeting and for which no documentation has been provided.

Mielke further provided evidence the accused Councilors had all received training in the OPMA, had extensive experience serving on various boards covered by the Act, and they knew their obligations under the Act (CP 486-488) and that meeting without notice to Councilors Mielke and Madore, and meeting without notice to the public, was illegal under the OPMA.

Boldt, Stewart and Olson were informed both by Madore and Mielke but also by prosecuting attorney Horne during the April 20, 2016 meeting that the contract was required to have posted to The Grid and that

it had not been. Boldt, Stewart and Olson were obligated to oversee and manage the Manager, who clearly had violated the Code in approving a significant contract without notice to the whole board and without posting the contract to The Grid for review by the whole board and the right of any Councilor to pull the contract for discussion at an open public BOCC meeting. The failure by Boldt, Stewart and Olson to remedy the illegal act was itself a recallable offense.

The trial court's job was not to assess the truth of the allegations, only their factual and legal sufficiency. It is for the voters to decide the truth of the allegations, and the matter should have been allowed to proceed to the petition stage so voters could make that determination.

This Court has defined that a "meeting" within the meaning of the OPMA "occurs when a majority of its members gathers with the collective intent of transacting the governing body's business." **Citizens Alliance for Property Rights Legal Fund v. San Juan County**, 184 Wn.2d 428, 444, 359 P.3d 753, 761 (2015). A meeting of three out of five councilors of the BOCC to discuss soliciting or approving a contract would be a violation of the OPMA. This is because three members constitute a quorum for the transaction of business. *See* CP 124; *see also* **Citizen's Alliance**, 184 Wn.2d at 445 ("Under Washington Law, the OPMA applies

to a gathering of a governing body's members only if a majority of members are present.”) (citing **Beasley**, 128 Wn.2d at 427).

Thus the “executive session” the Councilors conducted was an illegal and unnoticed meeting of Clark County’s governing body. Even more fundamentally, it cannot be considered a proper session when not all the Councilors were informed of the meeting. While special meetings can be requested by any Councilor per the rules of procedure—no such request was made because notification must be made to each Councilor that such a meeting is desired—and none was made to either Councilors Mielke or Madore. CP 124-125. Even if such a special meeting occurred, the action then taken was illegal because any action must be taken in an open session. Since there was no formal vote in an open meeting a blatant violation of the OPMA occurred. **See Feature Realty, Inc. v. City of Spokane**, 331 F.3d 1082 (9<sup>th</sup> Cir. 2003).

In **Feature Realty**, the City of Spokane was sued for its wrongful interference with Feature Realty’s property rights. The City Council then considered a confidential memorandum to settle the case in executive session. **Id.** at 1085. “While no actual vote took place, an informal consensus was achieved by ‘going around the table,’ whereupon each of the council members indicated their approval of the settlement.” **Id.** The case was then dismissed by Feature Realty with prejudice. **Id.** After a

subsequent disagreement, litigation ensued. **Id.** After the city realized it had violated the OPMA, it moved for summary judgment on the basis that its prior informal decision to settle the case was null and void. **Id.** at 1085-86. The issue before the federal court was whether or not the city council could approve the settlement during an executive session based on discussions with legal counsel. **Id.** at 1087. It was not disputed that an executive session could be convened to discuss matters with counsel. “[O]nly the action explicitly specified by the exception’ is privileged. All other actions are ‘beyond the scope of the exception,’ and must take place in public.” **Id.** at 1090 (quoting **Miller v. City of Tacoma**, 138 Wn.2d 318, 327, 979 P.2d 429 (1999)).

This Court has found that a violation of the OPMA, specifically when allegations are made that a contract was entered into outside of a public meeting and where the executor exceeded the scope of his or her legal authority, is a legally sufficient ground upon which to support a recall petition. **In re Recall of Davis**, 164 Wn.2d 361, 193 P.3d 98 (2008). **Davis** is on all fours with the instant case.

In **Davis**, a Port of Seattle Commissioner signed a transition memorandum for the Port’s Chief Executive Officer. In this memorandum it assured the CEO up to a full years pay upon his resignation. **Id.** at 364-65. A recall petition was filed and at the

subsequent sufficiency hearing the OPMA challenge was found legally sufficient to support recall. **Id.** at 366. The charge in **Davis** included signing an agreement to pay money without a public vote. After review of the evidence, this Court held it could be inferred from the record that Commissioner Davis understood her duties as Port Commissioner and the legal necessity of voting in public session before potentially obligating the Port in any monetary agreement, and, for purposes of recall, intentionally acted outside the scope of these duties . . . .” **Id.** at 370.

Just like in **Davis**, the Councilors have violated their duties by failing to vote in public for the expenditure of public funds. Not only did the accused Councilors’ actions violate the Code and the OPMA but they constituted a breach of their oath of office.

[W]here a municipal charter or code “prescribes a definite method for the enactment of ordinances, such requirements are mandatory, and no authority is vested in the lawmaking body of the municipality to pass ordinances except in the manner required by the charter . . .

**Savage v. City of Tacoma**, 61 Wash. 1, 112 P. 78, 80 (1910). Clark County’s Code and Rules as well as State law mandated a process and the Councilors violated the mandatory provisions. Consequently, they also violated their oaths of office, and it was intentional.

Further proof of their intentionality is that they had the opportunity to cure the violation on April 20, 2016 but failed to do so. They were told

that the action was illegal and yet they refused to fix the problem. Interpretation of such an action is not unprecedented. **See In re Recall of Sandhaus**, 134 Wn.2d 662, 953 P.2d 82 (1998). Sandhaus failed to secure a bond before taking office as the Adams County Prosecuting Attorney. After examining the facts, this Court determined there were no facts supporting an argument he intended to violate RCW 36.16.050 because he quickly cured the problem. **Sandhaus**, 134 Wn.2d at 670. Analysis on an attempt to cure is focused on the facts and circumstances of the record. **Davis**, 164 Wn.2d at 370. If the accused Councilors had felt they had not intended to violate the OPMA, they had the opportunity to cure their error when on April 20, 2016 they were clearly notified of the error. Unlike **Sandhaus**, the Councilors here failed to cure the problem further evidencing intent to act as they had acted with knowledge of the actions' illegality.

**D. Approval of the Legal Newspaper Contract to Higher Bidder with Smaller Circulation.**

Each spring counties must designate a qualified newspaper to serve as the official county's newspaper of record. RCW 36.72.075. The award of this designation confers substantial business on the winner of the contract as various legal notices are required to be advertised in the paper of record to constitute adequate notice. When two or more legal

newspapers are qualified under the provisions of this section to be the official county newspaper, the county auditor shall advertise, at least five weeks before the meeting at which the county legislative authority shall let the contract for the official county newspaper, for bid proposals to be submitted by interested qualified legal newspapers. **Id.** State law provides little discretion when awarding such a contract. The final sentence of RCW 36.72.075 reads, “the county legislative authority shall let the contract to the best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract, with a view to giving publication of notices the widest publicity.” The Clark County Charter is even more specific. It reads at Section 8.8 in relevant part:

**All purchases, contracts and bonds subject to bid procedures shall be advertised and, unless all bids are rejected, shall be awarded on the basis of sealed bidding to the lowest responsible bidder.** Elected or appointed officials and employees shall not directly benefit from contracts made by, through or under their supervision. No county elected official shall accept any employment or compensation from any county contractor during a term of office.

CP 433 (emphasis added).

The County timely solicited applications for consideration of paper of record status. Various local newspapers applied. After examination of the merits of the applicants, two papers were disqualified as not meeting

the statutory requirements of RCW 36.72.075 and only two qualified newspapers remained, The Columbian and The Reflector. The Reflector had been the paper of record for the County the previous two years.

In the material submitted with its bid, the Columbian claimed a weekly circulation of 24,152.<sup>2</sup> CP 277. The Columbian required an ad rate of \$1.77 per line for the first insertion and \$1.45 for subsequent insertions. **Id.** In the material submitted with its bid, The Reflector claimed a larger weekly circulation of 28,218. **Id.** The Reflector was less expensive with an ad rate of \$1.02 per line for the first insertion and \$0.84 for subsequent insertions. **Id.** Based on the County Charter, the Councilors were obliged to select the Reflector with its greater circulation and lower ad rate, but Boldt, Stewart and Olson nevertheless voted instead to award the contract to The Columbian. The Statement of Charges documented that The Columbian had been very critical of Madore and Mielke, going so far as to sell coffee mugs with a cartoon depiction of Madore on them and the phrase “Don’t Do Stupid Stuff”<sup>3</sup> and the use of the phrase “M&M boys” like the candy to refer to Madore and Mielke, whereas the Reflector had been more neutral in its coverage of Madore

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<sup>2</sup> This number had been was subsequently revised downward by 3000 or 11% from the number originally submitted. CP 279.

<sup>3</sup> CP 309-314, see also <http://www.columbian.com/dont-do-stupid-stuff-mugs/>.

and Mielke and the actions of the BOCC. CP 309-314. Despite the fact that the Reflector had a lower ad price and larger circulation, Councilors Boldt, Stewart and Olson voted to select The Columbian as the County's paper of record instead of renewing the contract with the Reflector. The Statement of Charges provides sufficient detail that voters could infer Boldt, Stewart and Olson cast their votes in favor of The Columbian as a reward for the aggressive attacks on their political opponents Madore and Mielke.

The Reflector was the paper of record the past two years. It meets the two criteria required in RCW 36.72.075. The recommendations of Clark County purchasing agent go beyond the statutory requirements. But it is also misleading. First, an online website for legal notices is available to the whole County. Thus The Columbian had no advantage over The Reflector in this area. Second, the Reflector had the larger paper circulation over a larger geographical area. The decision to approve the paper of record based on the two criteria was non-discretionary when only one newspaper met both. By ignoring its statutory obligations pursuant to RCW 36.72.075, the accused Councilors committed malfeasance, misfeasance, and violated their duty to faithfully execute their oath of office. The issue should have been allowed to go to voters.

**E. Elimination of a Department within Clark County.**

The Department of Environmental Services was first proposed in 2009. CP 319. A draft ordinance creating the department was prepared and approved, and the position of Director of the Department Environmental Services was approved by the BOCC on August 25, 2009. CP 319-321. Funding was approved for the department through the budgetary process each fiscal year including 2016. CP 322-339.

During the 2015 budget planning process, the BOCC duly authorized and adopted a budget that both contemplated the existence of and funded a Department of Environmental Services for fiscal year 2016. CP 322-339. At this time, Don Benton served as the Director of Clark County's Environmental Services Department.

On April 29, 2016, Director Benton filed a whistleblower complaint with the Washington State Auditor and sent the same to Director Francine Reis. CP 340-345. In this complaint, Director Benton alleged that County Manager McCauley directed Benton to prepare a report that directly contradicted the BOCC's action taken on December 15, 2015. **Id.** The allegations in that complaint echoes the allegations above with respect to the Dean contract in that the three Councilors directed Manager McCaulley to accomplish a directive from Councilors Stewart, Olson and Boldt, but not on behalf of the BOCC. Specifically,

Director Benton alleged that he was ordered to stop the process of putting a particular parcel into surplus as had been previously authorized by the Board. Director Benton alleged that this was part of Manager McCauley's ongoing vendetta against Councilor Madore and Mielke as they had supported putting the parcel into surplus.

In support of his allegations, Director Benton detailed the disciplining of his staff because of support they had shown minority BOCC members. Specifically, Director Benton detailed that one of his staff had been disciplined by Manager McCauley at the behest of Councilors Boldt, Stewart and Olson because he had indicated his support of Councilor Madore's version of events with respect to Director Orjiako's and Deputy Prosecutors Horne's and Cook's lying to the Board about procedures used to measure potential land use densities.

Likewise, the whistleblower complaint alleged that Manager McCauley at the behest of the 3 accused Councilors rescinded his approval of the promotion of another of his staff as political payback for Director Benton's support of Councilors Madore and Mielke. Moreover, Benton listed a litany of other ethical and legal violations including violations of the OPMA occasioned by Councilors Stewart, Olson and Boldt. **Id.**

On May 11, 2016—just 12 days after filing his whistleblower complaint—Director Benton was fired by Manager McCauley. On that same date Manager McCauley announced that the services then housed in the Environmental Services Department would be reassigned to other departments effectively dissolving the department despite the fact that the BOCC had budgeted for the existence of the department for the entire 2016 fiscal year. CP 346.

Once again, the Councilors facing recall were obviously informed of this move before it was made because no comments were made at the BOCC meeting that day. Councilors Madore and Mielke once again had to learn of this change via *The Columbian*. CP 346.

At the executive session on May 18, 2016, Councilor Mielke objected to the action, raising concerns that such an action infringed on the powers of the BOCC. Manager McCauley presumptively stated that he had the power to do it and that was that. *See* CP 347-349. Councilor Boldt stated it was McCauley's independent decision, abrogating any power to oversee such decisions by the county manager to which Olson and Stewart demurred.

Councilor Mielke objected to the dissolution and called Emily Sheldrick at the Prosecutor's Office to ask for legal assistance. He left a message. CP 347-349. He then called Prosecutor Golik and left another

message. **Id.** He then emailed Prosecutor Golik about these problems. CP 347-348. His request was responded to that afternoon by Deputy Prosecutor Sheldrick who parroted Manager McCauley's justification stating that "since [the] question concerns personnel matters, it should be directed to the County Manager. CP 349-350. Mielke took exception because it had to do with employee salaries, budgets and departmental structure. **Id.** In the exchange, it was proposed that the issue could be discussed during an executive session. Mielke accepted this as "better late than not at all." **Id.** Mielke then stated "that we authorize the existence of a department by budget and only the Board does [the] budget, only the Board can authorize the money budgeted to be moved." **Id.** Prosecutor Golik returned Mielke's email agreeing an executive session of the BOCC should resolve this matter. CP 347-348.

At the executive session on May 26, 2016, Councilor Mielke tried to discuss this issue with the Board. He was steamrolled by Councilor Boldt, who claimed Manager McCauley had the power to do such despite the fact that Boldt previously had favored having a separate department in the first place *and had voted for funding to establish it in the first place.* Such a reversal indicates that Councilor Boldt's action was politically motivated and not structurally expedient in that something that is formally

done by the BOCC must be undone by the same process. The other two Councilors, Olson and Stewart, went along with Councilor Boldt.

The Clark County Charter specifically grants the BOCC the power to levy taxes, appropriate revenue and adopt budgets for the County. Charter Sec. 2.4. The process of establishing a county budget is set forth in RCW 36.40 *et seq.* The budget is submitted by the auditor or chief financial officer each year. The county Board then considers the proposed budget and makes whatever changes it feels are advisable. RCW 36.40.050. The budget process requires both revenues and expenses to be described by offices, departments, services and institutions. RCW 36.40.050. Once the budgetary hearing is complete, the BOCC fixes and determines each budget item and adopts it by resolution. RCW 36.40.080 states as follows:

Upon the conclusion of the budget hearing the county legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the state auditor.

When interpreting a statute, courts first look to its plain language. **State v. Armendariz**, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, the court's inquiry ends because plain language does not require construction. **Id.** The power

of the county’s legislative authority is clear—the BOCC has the responsibility for the final budget, not the County Manager.

Where a statutory scheme contains the words “shall” and “may,” it is presumed “shall” is mandatory and “may” is permissive. **Scannell v. City of Seattle**, 97 Wn.2d 701, 704-05, 648 P.2d 435 (1982) (citing **State ex rel. Public Disclosure Comm'n v. Rains**, 87 Wn.2d 626, 633-34, 555 P.2d 1368 (1976)). RCW 36.40.080 uses the mandatory language while RCW 36.40.070 states taxpayers may appear to testify and the hearing may be continued as required. This establishes the legislative use of permissive language in the statutory scheme. Therefore, the mandatory language requiring that each item (read department) must be fixed separately is absolute and mandatory.

This mandatory language also includes transfers of funds from one division to another. RCW 36.40.100 states the following:

The estimates of expenditures itemized and classified as required in RCW 36.40.040 and as finally fixed and adopted in detail by the board of county commissioners shall constitute the appropriations for the county for the ensuing fiscal year; and every county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of the detailed appropriation items or classes respectively: PROVIDED, That upon a resolution formally adopted by the board at a regular or special meeting and entered upon the minutes, transfers or revisions within departments, or supplemental appropriations to the budget from unanticipated federal or state funds may be made

The plain language makes it clear that all county officials including the Clark County Manager are bound by this statute and their authority is limited to what the approved budget has provided for. A county may transfer appropriations between departments provided a formal resolution is adopted by the board at a regular or special meeting and entered in the minutes. Obviously, the dissolving of the Department Environmental Services and the movement of its staff to other departments require a transfer of funds from the original department to the remaining departments for salaries. No such resolution was made and voted on. The County Manager violated RCW 36.40.100 when he made such a transfer without BOCC approval. The accused Councilors violated this same statute when they permitted the County Manager to violate this statute.

Moreover, County Manager McCauley violated the Clark County Charter and Code, and even after being made aware of such a violation the accused Councilors let him carry on. The BOCC has the sole authority to adopt budgets for the County. Section 2.4.A. Code 2.15.050 sets forth the duties of the county administrator. Nowhere does it permit the County Manager to dissolve a Department established by the BOCC. At most, the County Manager has two functions: (1) recommending an annual budget and provides budgetary supervision (Code 2.15.050(1)); and (2)

coordinating the functions and work of the officers, committees, institutions and departments of Clark County. Code 2.15.050(4).

The Councilors also violated their oath of office when they let Manager McCauley violate the Clark County Charter's separation of powers requirement. Section 1.5, titled "Separation of powers and cooperation of branches" states the following:

On January 1, 2015, the effective date of this charter, the legislative and executive powers shall be separated into two (2) branches of government. Each branch is to dutifully fulfill its responsibilities, and shall not extend its authority into the other branch, as defined in this charter.

The power of the BOCC is clearly set forth in Section 2.4. There, it provides the BOCC with enumerated powers as the legislative body. Section 2.4.E. The BOCC members are not permitted to interfere in the administration of the executive branch by issuing orders to any individual subject to the supervision of the county manager or other elected official. Section 2.6.A. The county manager is also provided powers in Section 3.2.B. These powers permit the manager to supervise "all administrative departments established by this charter or created by the council." Section 3.2.B.(1). The county manager has the power to appoint chief officers of each administrative department. Section 3.3.A. Nowhere does the Charter give Manager McCauley the power and authority to reconfigure Clark County's administrative structure. "Abdication or transfer of the

legislative function to other governmental branches is unconstitutional.”  
**State v. Brosius**, 154 Wn. App. 714, 719, 225 P.3d 1049, 1051 (2010)  
(citing **Brower v. State**, 137 Wn.2d 44, 54, 969 P.2d 42 (1998)). By  
permitting the County Manager to dissolve a department and manipulate  
the budget without oversight, the Councilors abdicated the BOCC’s  
legislative function to the executive.

Again, the accused Councilors then had the opportunity to cure  
Manager McCauley’s improper action dissolving the Department and  
moving various employees and their salaries to other departments. They  
took no action. Manager McCauley spent many years as an officer in the  
United States Army. As such, he has an understanding of the chain of  
command. In such a situation as this, it is inconceivable that an individual  
with this background would not have discussed this action with the  
Councilors. Such actions were violations of the Councilors oath of office  
and are acts of malfeasance and misfeasance.

By not forestalling the dissolution of the Department by Manager  
McCauley or undertaking appropriate process to dissolve the Department,  
Councilors Boldt, Stewart and Olson either abdicated their budgetary  
responsibility under the Charter and RCW 36.40, colluded in secret in  
violation of the OPMA, or violated their responsibility to the Charter by  
unlawfully delegating their legislative power to the executive.

Based on the actions of each Councilor subject to recall, Councilor Mielke asked during the trial court proceeding that the ballot synopsis for issue number 4 be modified for each Councilor to state the following:

Knowingly abdicated his/her budgetary and legislative responsibility granted by the Clark County Charter and Code to the County Manager to dissolve a county department that had been approved and budgeted by the Board of County Councilors for the 2016 fiscal year and knowingly violated the Open Public Meetings Act in doing so.

His Statement of Charges for this count was factually and legally sufficient and it should have been allowed to go to the voters.

**F. The Trial Court Erred In its Determination that Petitioner Mielke as a Resident of Clark County District 4 Could not seek to Recall Councilor Olson a resident of District 2.**

In what is evidently an issue of first impression, the issue as to whether or not Petitioner Mielke -- a voter who resides in Clark County, but not in Councilor Olson's residency district -- could instigate her recall since he is not a member of her constituency. The trial court held that the term "political subdivision" in the first sentence of RCW 29A.56.110 meant, in this case, residency district and as such Petitioner Mielke did not have standing to seek her recall as he was not her constituent and could not vote for her. CP 607-608. This was error.

Washington is somewhat anomalous when it comes to the hurdles that must be overcome by a party seeking recall. Specific allegations are only required in seven other states besides Washington<sup>4</sup> and of these, only a fraction of these states void petitions because of insufficiency of grounds alleged<sup>5</sup>—nor do these states all require the sponsor of the petition to be a voter.<sup>6</sup> Indeed some states are entirely silent on who may initiate recall.<sup>7</sup>

A fair reading of RCW 29A.56.110 demands a conclusion that the statute does not require that a sponsor be a constituent of the target of recall. The operative sentence in the statute reads “Whenever **any legal voter** of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall

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<sup>4</sup> Alaska, AS § 15.45.510; Georgia, Ga. Code §21-4-3(7) and 21-4-4(c), Kansas, KS Stat. §25-4301, Minnesota, Minn. Const. Art. VII §6, Montana, Mont. Code §2-16-603, Rhode Island, R.I. Const. Art. IV § 1, Virginia, VA Code §24.2-233.

<sup>5</sup> See, for example, KS Stat. § 25-4302(a) “Grounds for recall are conviction of a felony, misconduct in office or failure to perform duties prescribed by law. **No recall submitted to the voters shall be held void because of the insufficiency of the grounds**, application, or petition by which the submission was procured.” [Emphasis supplied].

<sup>6</sup> See, for e.g., KS Stat. §25-4306 which requires a proponent of an recall election merely to “possess the qualifications of an elector of the state of Kansas. . . .”

<sup>7</sup> For example, California’s, Constitution simply provides “Recall of a state officer is initiated by delivering to the Secretary of State a petition alleging reason for the recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.” Cal. Const. art. II, § 14(a). Likewise, proceedings against local officers “may be commenced for the recall of any elective officer, including any officer appointed in lieu of election or to fill a vacancy, by the service, filing and publication or posting of a notice of intention to circulate a recall petition pursuant to this chapter.” Cal. Civ. Code § 11006.

and discharge of **any elective public officer of the state** or of such political subdivision . . . .” [Emphasis supplied].

The language of the statute is expansive. Indeed, the term “any” prior to both the terms “voter” and “elective public officer” clearly indicates statewide ability of voters to initiate recall proceedings. Indeed, a plain reading of the statute would allow a disgruntled voter residing in Seattle in the 23<sup>rd</sup> legislative district to file a statement of charges seeking the removal of a senator from the San Juan Islands in the 40<sup>th</sup> legislative district. This is so because the impact of statewide legislation could be felt just as acutely—or perhaps even more acutely—by non-constituents.

So just as a state senator from the 40<sup>th</sup> District encompassing the San Juan Islands legislates laws that affect all Washington citizens, Julie Olson passes ordinances and resolutions that affect the lives of all Clark County residents. It would be wholly incongruous to allow only her constituents to institute her recall since just as “any voter of the state . . . desires to demand the recall and discharge of any elective public officer of the state . . .” it logically follows that any voter of the county be able to demand the recall of any public officer of the county.

Moreover, a plain reading of the statute indicates expansiveness. The statute contemplates that a proponent can be either a voter itself or a

voter who represents “an organization”<sup>8</sup> which may or may not be constituted by “voters”. Had the legislature wished to specify that only voters who voted for a particular officer could recall that officer it could have so indicated simply by using the word “constituency” or other term that would indicate such a limitation and would necessarily foreclose initiation by an organization – as they are simply not constituents. The fact that organizations can be the designated proponent and the party of interest in a recall action, albeit acting through “any legal voter”, is indicative of expansive legislative intent.

What protects elected officials from ouster by non-constituents is, of course, RCW 29A.56.180. That statute provides:

When the person, committee, or organization demanding the recall of a public officer has secured sufficient signatures upon the recall petition the person, committee, or organization may submit the same to the officer with whom the charge was filed for filing in his or her office. The number of signatures required shall be as follows:

(1) In the case of a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county with a population of forty thousand or more—signatures of legal voters equal to twenty-five percent of the total number of votes cast for all

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<sup>8</sup> Interestingly, while RCW 29A.56.110 only speaks of a “voter” and “organization” RCW 29A.56.180 speaks of “when the person, *committee*, or organization” demanding the recall has secured sufficient signatures.” Indicating the legislative preference for an even broader universe of potential proponent.

candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) In the case of an officer of any political subdivision, city, town, township, precinct, or school district other than those mentioned in subsection (1) of this section, and in the case of a state senator or representative—signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

RCW 29A.56.180.

Thus RCW 29A.56.180 provides for a bifurcated process that allows a larger class of potential instigators and a smaller class of voters who can then sign the petition that determines whether a special election is held. In other words, elected officers are protected from ouster by non-constituents because RCW 29A.56.180 requires a percentage of constituent signatures equal to a percent “of the total number of votes cast for all candidates of the office to which the officer whose recall is demanded was elected at the preceding election.” It also bears noting that in RCW 29A.56.180 the term “voter” is completely absent from the first sentence and the instigator of the recall is described as just “person, committee, or organization” – again, allowing insight into the legislative intent.

Moreover, clues to the legislative intent as to the meaning of “political subdivision” is found in RCW 29A.56.160 which specifies the language that the actual petition that is canvassed must contain.

According to the statute, the petition must state “We, the undersigned citizens and legal voters of (the state of Washington or the *political subdivision in which the recall is to be held*), respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he or she holds) be recalled and discharged from his or her office. . . .” [emphasis supplied].

The use of the term “political subdivision” likewise gives credence to Appellant’s interpretation, since clearly the term is used to describe the corporate entity for which elections are held. Since counties -- not residency districts -- hold elections this usage is indicative of Appellant’s interpretation.

As a policy matter it should make no difference whether the person who makes the charge is a constituent of the recall target or not. Indeed, it would be a very strange world where recall is stymied just because it is a non-constituent who is the only witness to the misfeasance or malfeasance of an elected officer and able to produce evidence sufficient to survive a sufficiency hearing.

Finally, looking to other areas of the law where the term “political subdivision” is defined, courts have made decisions that support Appellant’s interpretation that the term “political subdivision” means a corporate body, in this case Clark County—and not a residency district.

A controversy arose a few years ago as a result of an IRS audit of bonds issued by a Florida Community Development District (“CDD”). That audit led to a request for a Technical Advice Memorandum (“TAM”) TAM 201334038 from the IRS Chief Counsel’s office. The TAM concluded that the bonds of that specific CDD were not tax-exempt because the particular CDD under consideration was not, in the view of the IRS, a “political subdivision” for federal tax purposes. The TAM relied on the concept that, along with other longstanding tests of what constitutes a political subdivision, a political subdivision must also be responsible, at least indirectly, to the political process by being subject to the control of an electorate. See, 26 USC § 103 and Treasury Regulation §1.103-1(b).

The existing law focused on the powers of the political subdivision, specifically having at least a substantial amount of one of three powers: the power to tax, the power of eminent domain, and the police power, sometimes referred to as the “Shamberg Powers” after a 2<sup>nd</sup> Circuit decision in **Commissioner of Internal Revenue v. Shamberg’s**

**Estate**, 144 F.2d 998 (2<sup>nd</sup> Cir. 1944). As the judge in that case, Judge

Augustus<sup>9</sup> Hand explained:

The term 'political subdivision,' within the meaning of the exemption, denotes any division of the State or territory which is a municipal corporation, or to which has been delegated the right to exercise part of the sovereign power of the State or Territory. As thus defined, a political subdivision of a State or Territory may, for the purpose of exemption, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of a State or Territory."

**Id.** at 999-1000. What all the entities described by Judge Hand have in common is some power to tax, take property by eminent domain or exercise police power. This is, of course, in stark contrast of residency districts that have none of these powers and are simply electoral districts and not corporate entities.

The plain language, intent of the legislature and policy rationales behind the Washington recall statute all support the conclusion that a voter in a county can initiate a recall action despite not being a resident of the target's residency district, and accordingly Appellant had standing to file a statement of charges against Respondent Olson. The trial court's conclusion in this matter to the contrary should be overturned.

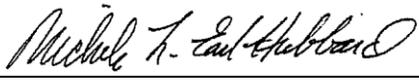
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<sup>9</sup> A cousin of Judge Learned Hand.

#### IV. CONCLUSION

Appellant respectfully asks that the Court overturn the trial court and find the acts alleged herein satisfy the criteria for which a recall petition may be presented to the voters and remand for certification of the adequacy of the ballot synopsis pursuant to RCW 29A.56.140 and further direct the synopsis to the county auditor with an appropriate order commanding that an election be held so that the citizens might be allowed to recall their elected officials for the above described malfeasance and misconduct and violations of their oaths of office.

Respectfully submitted this 10th day of October, 2016.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on October 10, 2016, I filed a copy of the foregoing document with the Supreme Court and caused a true and correct copy to be delivered by email pursuant to agreement to the following:

David B. Markowitz, special admission pending;  
Kristin Asai, WSBA # 49511; and Shannon Armstrong, WSBA # 45947  
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Dated this day 10<sup>th</sup> day of October, 2016, in Seattle, Washington.



\_\_\_\_\_  
Michele Earl-Hubbard