

No. 882274

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SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE MATTER OF THE RECALL OF:

Terecia Fran Bolt, Mayor Town of Marcus and  
Dennis L. Jenson, Council Member Position 4 Town of Marcus,  
Respondents,

v.

Bradley C. Rippon, Jacqueline R. Howard and William S. Courtis,  
Recall Petitioners,  
Appellants.

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**BRIEF OF APPELLANTS**

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**I. ASSIGNMENTS OF ERROR**

**A. Assignments of Error**

1. Decisions regarding Recall Charges against Mayor Bolt, Charges Nos. 1, 2, 3, 5, 6, 7, 8, 9, and 10 (except Charge No. 4).<sup>1</sup>
2. Decisions regarding Recall Charges against Council Member Jenson, Charges Nos. 1, 2, 4, 5, and 6 (except Charge No. 3).<sup>2</sup>

**B. Issues Presented**

1. Are the Recall Charges against Mayor Bolt, Charges 1, 2, 3, 5, 6, 7, 8, 9, and 10, factually and legally sufficient?
2. Are the Recall Charges against Council Member Jenson, Charges 1, 2, 4, 5 and 6, factually and legally sufficient?
3. What should the Recall Synopsis say for Mayor

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<sup>1</sup> See Appendix C, Hearing, Conclusions of Law and Determination for Mayor Bolt.

<sup>2</sup> See Appendix D, Hearing, Conclusions of Law and Determination for Council Member Jenson.

Bolt?

4. What should the Recall Synopsis say for Council Member Jenson?

## **II. STATEMENT OF FACTS**

The Town of Marcus is a Washington town<sup>3</sup> located on Franklin D. Roosevelt Lake, the reservoir above Grand Coulee Dam, on the Columbia River. It is on State Highway 25, a few miles north of Kettle Falls in Stevens County.

It operates as a town under the laws of Washington and specifically RCW Ch. 35.27. “The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; . . .” RCW 35.27.070.<sup>4</sup>

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<sup>3</sup> RCW 35.01.040 Town.

A town has a population of less than fifteen hundred at the time of its organization and does not operate under Title 35A RCW.

<sup>4</sup> RCW 35.27.070 Town officers enumerated.

The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other subordinate officers and employees as may be provided for by ordinance. All appointive officers and employees shall hold office at the pleasure of the mayor, subject to any

Marcus was officially incorporated on October 18, 1910. The original town site was submerged beneath the waters of Franklin D. Roosevelt Lake after the completion of construction of Grand Coulee Dam. It was moved to higher ground before the reservoir filled.

As of the Census of 2010, the population of Marcus was 183.<sup>5</sup>

The Recall of Mayor Bolt and the Recall of Council Member Jenson are being brought by Marcus Council Members William S. Courtis and Jacqueline R. Howard, and their fellow townsman, Bradley C. Rippon (Recall Petitioners). Mayor Bolt, CP 1 - 114; Council Member Jenson, CP 1 - 64.<sup>6</sup>

On November 5, 2012, the Recall Petitioners presented the Stevens County Auditor<sup>7</sup> with a petition of recall charges against Mayor Bolt and a petition of recall charges against Council Member Jenson.<sup>8</sup>

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applicable law, rule, or regulation relating to civil service, and shall not be subject to confirmation by the town council

<sup>5</sup> AMERICAN FACT FINDER, UNITED STATES CENSUS BUREAU. Retrieved on 2012-12-28 from the internet site of the American Fact Finder.

<sup>6</sup> Hereinafter, Bolt, CP and Jenson, CP.

<sup>7</sup> RCW 29A.56.120.

<sup>8</sup> The Recall Petitioners have met the requirements of RCW 29A.56.110; see the discussion *infra*.

A word about the compliance of the Recall Petitions with the provisions of RCW 29A.56.110.: This section sets forth certain requirements in general about recall charges. It provides:

- (1) “The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of,”
- (2) “be signed by the person or persons making the charge,”
- (3) “give their respective post office addresses, and”
- (4) “be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.”

Recall Petitioners have met these requirements with respect of the charges against Mayor Bolt and the charges against Council Member Jenson.

(1) The charges made are clearly and concisely made and each includes necessary timing of the charges. See each set of charges and the details provided in them and the Exhibits attached to them which meet the first requirement. Bolt , CP 1-114; Jenson, CP 1- 64. The Exhibits bring a great deal of weight and understanding to the charges.

(2)(3) The Recall Petitioners have signed each of the set of charges and provided their addresses.

(4) And, most important perhaps, Recall Petitioners “verified under

oath that [each] believe[s] the charge or charges to be true and [has] knowledge of the alleged facts upon which the stated grounds for recall are based.” Bolt, CP 9; Jenson, 8. The signatures were made before a notary public. Bolt, CP 10; Jenson, CP 9.

The efforts of the Recall Petitioners have been exactly what the recall petition rules require. The efforts positively establish the Recall Petitions are most serious about the pursuit of their recall rights.

### **III. SUMMARY OF ARGUMENT**

The trial court found Charge No. 4 against Mayor Bolt and Charge No. 3 against Council Member Jenson to be factually sufficient and legally sufficient to go on the Recall Ballots.

Recall Petitioners will show that all of the other charges against Mayor Bolt and Council Member Jenson are also factually sufficient and legally sufficient and should go on the Recall Ballots. Based upon the court’s final decisions as to the Charges, the Ballot Synopsis as to each Recall Election will have to be created.<sup>9</sup>

### **IV. ARGUMENT**

#### **A. Right of Recall.**

The right to recall elected officials is guaranteed by Wash. Const.

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<sup>9</sup> A proposed synopsis is attached as Appendix A for Mayor Bolt. A proposed synopsis is attached as Appendix B for Council Member Jenson.

Art. I, § 33. This constitutional guaranty is implemented by the legislature. Pursuant to Wash. Const. Art. I, § 34 it has enacted RCW Ch. 29A.56.

In brief, any legal voter may initiate a recall election by preparing a typewritten charge, naming the officer and the acts of misfeasance, malfeasance, or violation of the oath of office that constitute the basis of the recall. RCW 29A.56.110.

The voter files the charges with the auditor. The appropriate state officer, in these cases, the county prosecutor, prepares a ballot synopsis. RCW 29A.56.120-130. The superior court conducts a hearing to determine the adequacy of the charges and the ballot synopsis. RCW 29A.56.140. At this hearing, the court plays the limited role of ensuring "that the people's representatives are not subject to frivolous or unfounded charges." *In re Recall Charges Against Butler-Wall*, 162 Wn.2d 501, 508, 173 P.3d 265 (2007).

This Court has revisory jurisdiction over the decisions of superior courts in recall cases, RCW 29A.56.270, and reviews the superior court's decision *de novo*. *In re Recall of West*, 155 Wn.2d 659, 663, 121 P.3d 1190 (2005); *In re Heiberg*, 171 Wn.2d 771, 776, 257 P.3d 565 (2011).

**B. Standards and Practices of Supreme Court in Review.**

Where the right to recall is for cause only, as is the case in

Washington, the recall petition must be both legally and factually sufficient. The right to recall elected officials is limited to recall for cause so as to free public officials from the harassment of recall elections grounded on frivolous charges or mere insinuations. *In re Call*, 109 Wn.2d 954, 958, 749 P.2d 674 (1988); and *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984).

As noted in *Chandler*, the issue before this Court is "whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, . . ."

A recall petition must state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, . . . and be verified under oath that [the petitioners] believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based. RCW 29A.56.110.

*In re Morrisette*, 110 Wn.2d 933, 935, 756 P.2d 1318 (1988), it is said "[a] court reviewing a recall petition must determine 'the sufficiency of charges as a matter of law and decide whether the facts, if true, establish a prima facie act of misfeasance, malfeasance, or a violation of the oath of office.'" Citing *Cole v. Webster*, 103 Wn.2d 280, 288, 692 P.2d 799 (1984).

*Morrisette* goes on to say “[t]he petition must describe the charges "with sufficient precision and detail to enable the electorate and the challenged official to make informed decisions in the recall process.” Citing *Jenkins v. Stables*, 110 Wn.2d 305, 307, 751 P.2d 1187 (1988); see also, *Chandler v. Otto*, *supra*.

As stated above, the Supreme Court has full revisory jurisdiction over the decisions of superior courts in all recall cases, RCW 29A.56.270. It reviews the superior court's decision(s) *de novo*. *In re Heiberg*, 171 Wn.2d 771, 776, 257 P.3d 565 (2011).<sup>10</sup>

Recall petitioners must include in the petition a description of the action that constitutes malfeasance, misfeasance, or violation of the oath of office but need not employ technical, legal terms in doing so. *In re Heiberg*, *supra*, 171 Wn.2d at 778.

What constitutes malfeasance, misfeasance, or violation of the oath of office is found in RCW 29A.56.110 which provides:

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the

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<sup>10</sup> See also, *In re Recall of Telford*, 166 Wn.2d 148, 154, 206 P.3d 1248 (2009); and, *In re Recall of West*, 155 Wn.2d 659, 663, 121 P.3d 1190 (2005).

performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;[<sup>11</sup>]

(2) "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.[<sup>12</sup>]

The superior court conducts a hearing to determine the adequacy of the charges and the ballot synopsis. RCW 29A.56.140. *In re Recall Charges Against Butler-Wall*, 162 Wn.2d 501, 508, 173 P.3d 265 (2007).

In the recall review process, "it is not for [courts] to decide whether the alleged facts are true or not." *In re Recall of West*, 155 Wn.2d 659, 662, 121 P. 3d 1190 (2005). "It is the voters, not the courts, who will ultimately act as the fact finders." *Id.* The task of a court in reviewing a recall petition is to ensure that "only legally and factually sufficient charges go to the voters." *Id.*

**1. Factual Sufficiency.**

"Factually sufficient means that where the statute requires

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<sup>11</sup> RCW 42.20.100 Failure of duty by public officer a misdemeanor.

Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor.

<sup>12</sup> *Id.*

specificity, specific allegations must be made in the petition. Factually sufficient means that although the charges may contain some conclusions, taken as a whole they do state sufficient facts to show that the acts or failure to act without justification constitute a prima facie showing of misfeasance, malfeasance, or a violation of the oath of office.

3 MCQUILLIN MUNICIPAL CORPORATIONS § 12.251.35 at 532 (3d rev. ed. 1979) (footnotes omitted).

A charge is factually sufficient if the facts "establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office" and are "stated in concise language and provide a detailed description" in order to "enable the electorate and a challenged official to make informed decisions." *Recall of Telford*, 166 Wn.2d 148, 154, 206 P.3d 1248 (2009); *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003) (citing *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984); *Chandler v. Otto*, *supra*).

The petitioner must have some knowledge of the facts underlying the charges. *In re Recall of Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930 (2001). Where the charge alleges the official violated the law, the facts must show the official intended to do so. *In re Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990).

The facts alleged in a petition are sufficient to proceed to a ballot

when, taken as a whole, they "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, malfeasance, or a violation of the oath of office." *Recall of Ward*, 175 Wn.2d 429, 434, 282 P.3d 1093 2012); *Chandler v. Otto*, *supra*.

In determining whether a petition is factually sufficient, the court assumes the veracity of allegations made so long as they are reasonably specific and detailed. *See, In re Recall of Sandhaus*, 134 Wn.2d 662, 668-69, 953 P.2d 82 (1998).

Where the petition alleges that the official committed an unlawful act, factual sufficiency also requires that the petition contain a factual basis for both the proposition that the official intended to commit the act and "that the official intended to act unlawfully." *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 263, 961 P.2d 343 (1998); *In re Heiberg*, *supra*, 171 Wn.2d at 777 - 778.

## **2. Legal Sufficiency.**

"Legally sufficient means that an elected official cannot be recalled for appropriately exercising the discretion granted him or her by law. To be legally sufficient the petition must state with specificity substantial conduct clearly amounting to misfeasance, malfeasance, or a violation of the oath of office." 3 MCQUILLIN MUNICIPAL CORPORATIONS § 12.251.35

at 532 (3d rev. ed. 1979) (footnotes omitted).

A recall petition is legally sufficient if it "state [s] with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office." *Chandler*, 103 Wn.2d at 274. An appropriate exercise of discretion does not constitute grounds for recall. *Id.* An attack on the official's judgment in exercising discretion is not a proper basis for recall. *Jewett v. Hawkins*, 123 Wn.2d 446, 450-51, 868 P.2d 146 (1994).

In order to be legally sufficient, the court must conclude that the actions alleged make out a prima facie case of malfeasance, misfeasance, or violation of the oath of office. *In re Recall of Reed*, 156 Wn.2d 53, 59, 124 P.3d 279 (2005).

The court construes the recall statute in favor of the voter. *See West*, 155 Wn.2d at 663 (citing *Recall of Kast*, 144 Wn.2d 807, 813, 31 P.3d 677 (2001)); *See also, In re Dale Washam*, 171 Wn.2d 503, 510, 257 P.3d 513 (2011).

*Washam* also points out that the recall statutes are not statutes of hard requirements. The court said:

Where the recall statute declares that things shall be done in particular time and manner, the procedures will be regarded as mandatory only if they affect the actual merits of the election. *Pederson*, 99 Wn.2d at 459-60. Thus, [t]echnical violations of the governing statutes are not fatal, so long as the charges, read as a whole, give the elected official

enough information to respond to the charges and the voters enough information to evaluate them. Notwithstanding the petitioner's duty to plead with specificity, we will not strike recall efforts on merely technical grounds.

*In re Recall of West*, 155 Wn.2d 659, 663, 121 P.3d 1190 (2005).

Malfeasance in office is defined as either (1) "wrongful conduct that affects, interrupts, or interferes with the performance of official duty" or (2) "the commission of an unlawful act." RCW 29A.56.110(1)(b); *Pearsall-Stipek III*, 141 Wn.2d at 768 (holding that these prongs "are distinct statutory definitions").

"There can be no inquiry by the court into the truth or falsity of the charges, nor can there be inquiry into the motives of those filing the charges." *In re Call*, 109 Wn.2d 954, 958, 749 P.2d 674 (1988); *Roberts v. Millikin*, 200 Wn. 60, 93 P.2d 393 (1939).

### **C. Recall Charges Against Mayor Bolt.**

The Recall Petitioners have brought 10 charges against Mayor Bolt. One charge, Charge No. 4, has already been determined as factually and legally sufficient. This charge will go on the ballot, hopefully with the other charges made by the Recall Petitioners which will be discussed below.

The other recall charges against Mayor Bolt will be shown to also be factually sufficient and legally sufficient.

**1. Charge No. 1.**

**CHARGE #1: Termination of Town employee and failure to follow Personnel Policy.** Mayor Bolt is charged with malfeasance and/or violating her Oath of Office by the illegal termination of the Town Maintenance Employee on September 4th 2012 in Marcus, Washington, Mayor Bolt failed to follow Town of Marcus Personnel Policy by her immediate discharge of the Town Maintenance employee. Termination for serious offenses requires: First Offense a day off without pay; Second Offense a week off without pay; Third Offense termination, all of which must take place within a 12 month period. Mayor Bolt failed to take proper disciplinary actions required for immediate termination. Mayor Bolt, in doing, so has placed the Town at risk for a wrongful termination lawsuit.

This charge is factually sufficient. It sets forth the facts pertaining to an action Mayor Bolt took during or on a specific date which actions were in violation of the Town of Marcus Personnel Policy. Bolt, CP 4 and exhibits pertaining to Charge No. 1. *Id.* Especially see Exhibit D, Bolt, CP 23.

The charge is legally sufficient because the actions alleged make out a prima facie case of malfeasance, misfeasance, or violation of the oath of office. The facts also show that the Mayor intended to do what she did and violated the town's own rules.

Her actions constituted misfeasance, malfeasance and violation of her oath of office. The charge establishes that Mayor Bolt, by her violation of the Personnel Policy, exposed Marcus to liability toward Mr. Bear because the Town of Marcus Personnel Policy included various

rights which the employee could take advantage of and were part of the contract between the employee and the Town of Marcus.

In *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 233, 685

P.2d 1081 (1984), the court said:

[P]romises of specific treatment in specific situations found in an employee manual or handbook issued by an employer to his or her employees may, in appropriate situations, obligate the employer to act in accord with those promises.

In *Brady v. Daily World*, 105 Wn.2d 770, 774, 718 P.2d 785

(1986), the court said:

[A]bsent specific contractual agreement to the contrary, we conclude that the employer's act in issuing an employee policy manual can lead to obligations that govern the employment relationship.

There can be no doubt that Charge No. 1 is factually and legally sufficient. The charge is bound up with conduct which constituted misfeasance, malfeasance, and violation of her oath of office.

## **2. Charge No. 2.**

CHARGE #2: Allowing a Councilman to supervise and manage a Town employee. Mayor Bolt is charged with malfeasance and/or violating her Oath of Office by illegally and inappropriately allowing and/or placing Councilman Jenson in a supervisory position of the Town Maintenance employee in Marcus, Washington and surrounding areas, often on a daily basis throughout the employee's employment history with the Town.

This charge is factually and legally sufficient. Here, Mayor

Bolt delegated her administrative / supervisory authority to her personal friend, Council Member Dennis Jenson.

The charge was legally sufficient for the reason that the rule is clear that a town mayor cannot delegate her supervisory powers under the law to someone else, especially an intimate friend. 3 MCQUILLIN ON MUNICIPAL CORPORATIONS, §12.72 at page 369. (3<sup>rd</sup> ed, revd 1990 supplemented to 1995).

The placement of supervisory authority in Council Member Jenson was invalid because Mayor Bolt was the person who could supervise.<sup>13</sup> Because she, as mayor could not delegate, her power to administer, supervise, to some other officer or employee and to that extent, the rule is *pro tanto* void. *State v. Seattle*, 50 Wn.2d 94, 97, 309 P.2d 751 (1957). *See, also, Roehl v. Public Utility Dist. No. 1*, 43 Wn.2d 214, 240, 261 P.2d 92 (1953); 3 MCQUILLIN ON MUNICIPAL CORPORATIONS, *supra* at 282, § 12.72 (3<sup>rd</sup> ed, revd). Here, Mayor Bolt did not have authority to appoint a person as one who would supervise other persons and employees.<sup>14</sup> She

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<sup>13</sup> RCW 35.27.070.

<sup>14</sup> RCW 35.27.070.

The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other

certainly did not have authority to delegate this supervisory power to a Council Member because Council Members have legislative duties and certainly do not have administrative duties.<sup>15</sup>

**3. Charge No. 3.**

CHARGE #3: Violating employee's right to Executive Session. Participating and allowing harassment, bullying\* and denigration of a Town Employee. Mayor Bolt is charged with malfeasance and/or violating her Oath of Office by allowing open meeting criticism thus violating employee's right to Executive Session Also, knowingly allowing the long term illegal harassment, bullying, and often public denigration of the Town maintenance employee by Councilman Jenson in Marcus, Washington. Mayor Bolt soon became a participant in the illegal actions. In doing so, she put the Town in legal jeopardy.

Under the Open Meetings Act, RCW 42.30.030 (Meetings declared open and public):

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

There are various exceptions at which time the body will hold

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subordinate officers and employees as may be provided for by ordinance. All appointive officers and employees shall hold office at the pleasure of the mayor, subject to any applicable law, rule, or regulation relating to civil service, and shall not be subject to confirmation by the town council. [Emphasis added].

<sup>15</sup> *Id.*

executive sessions. RCW 42.30.110 calls for executive sessions in a number of instances. One has to do with complaints and charges against an employee. The Act, RCW 42.30.110 (1) (f), reads:

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

Clearly, the charge is factually and legally sufficient. It is clearly explained what happened; it is clear that the employee had a right and not only was it a legal right, it was a contractual right. It is clear when the conduct took place. Bolt, CP 5 and the exhibits following. Charge No. 3 should go on the Bolt Recall Ballot. Mayor Bolt violated the law as to worker executive sessions.

#### **4. Charge No. 4.**

**CHARGE #4: Circumventing Council approval and spending of Town funds.** Mayor Bolt is charged with malfeasance and/or misfeasance and/or violating her Oath of Office by allowing, participating and knowingly making a number of illegal, questionable, and collective decisions to purchase Town assets with Councilman Jenson, oftentimes seeking Council approval after the fact. Thus, lending to the public's and oftentimes certain Councilpersons' perception of inappropriate spending of tax and/or public funds without prior Council approval. Purchases in point: Miscellaneous Equipment-Marcus, Washington, Gator- Auburn, Washington, Jacobson mower-Evans, Washington.

The superior court found this charge factually and legally

sufficient. The superior court has already determined that Charge No. 4 will go on the Bolt ballot. Appendix A, Hearing, Conclusions of Law and Determination - RCW 29A.56.140 pages 3 - 4.

**5. Charge No. 5.**

**CHARGE #5: Failure to follow State, Federal and Local law and policy relating to use of Town Resources.** Mayor Bolt is charged with malfeasance and/or misfeasance and/or violating her Oath of Office as she has failed and oftentimes refused to follow State and/or Federal regulations, as well as, Administrative Guidelines and to administer the laws for the proper use of Town Resources. Mayor Bolt failed to administer Council majority ruled actions and directives pertaining to the legal use of Town resources in the Town of Marcus, Washington, including but not limited to, use of the equipment effectively known as 'the gator\ Mayor Bolt knowingly and/or willfully allowed the illegal non de minimus personal use to continue despite a number of public and Council inquiries regarding conflict of interest and appearance of fairness, in allowing Councilman Jenson's continued use of the gator from purchase to September 22, 2012 (when it was red flagged) for publicly controversial and near daily two hour coffee gatherings at a personal friend's garage and other citizen and Council stated misuses. Further demonstrating her unwillingness to follow Council directives, policies, and State Laws.

Knowing that the private use of the so-called "gator" property belonging to the town by Council Member Jenson, violated the law and the town's Administrative Guidelines (see Exhibit T. Bolt CP 6). Mayor Bolt allowed her personal friend and fellow town Council Member Jenson to use the property, the gator, for his personal use, which personal use was ongoing and not at all infrequent. Her knowing and intent are set forth in

the charge.

Mayor Bolt knew of the gator use by her friend, Council Member Jenson, also violated Wash. Const. Art. VIII, § 7 – prohibition of town to make gifts of town property.

Charge No. 5 establishes that Mayor Bolt was guilty of malfeasance, misfeasance and violation of her Oath of Office.

**6. Charge No. 6.**

**CHARGE #6. Failure to administrate and assert Administrative Authority.** Mayor Bolt is charged with malfeasance and /or violating her Oath of Office by knowingly, illegally, and arbitrarily choosing to ignore her sworn duty to assert Administrative Authority in the Town of Marcus, Washington. This violation, in part, due to an unethical, undisputed, self admitted relationship with Councilman Jenson which resulted in conflict of interest and appearance of fairness by allowing Councilman Jenson to continue to have access to the gator after his refusal to cease use of the gator as directed by Council. Mayor Bolt's actions were biased and not based on fact, reason, objectivity or legal principles.

Mayor Bolt and Counsel Member Jenson knew that Jenson's private use of town property violated the law. This was true and made clear in a phone conversation between Mayor Bolt and a representative of the auditor's office. The council weighed in on the issue and set a policy. Mayor and Council Member Jenson knew of the prohibitions against private use of public equipment. Their knowing conduct constituted malfeasance and a violation of their oaths of office.

7. *Charge No. 7.*

**CHARGE #7: Commingling clerical and Mayoral positions, duties and wages.** Mayor Bolt is charged with misfeasance and/or malfeasance and /or violating her Oath of Office by inappropriately, unethically and illegally commingling Clerk and/or Deputy (backup) Clerk wages and/or positions while also receiving Mayoral compensation in the Town of Marcus, Washington, demonstrating malfeasance and/or misfeasance and/or violating her Oath of Office. Also, the Mayor had the Deputy (backup) Clerk, and/or Clerk, and/or Clerk/Treasurer fill out the Mayor's time sheets violating Federal and/or State law. The Clerk-Treasurer was inappropriately required to sign off on her supervisor's (the Mayor's) time sheets:

This charge clearly sets forth the factual material for the charge and it sets forth the legal sufficiency for the charge. Under the laws of Washington pertaining to Towns, it is provided that the office of Clerk and Treasurer may be combined, RCW 35.57.180. The laws do not provide for the combination of any other town offices. Mayor Bolt combined her job as mayor with the job of the Clerk. She could only have done that if the laws applicable to towns allowed for it.

The fact that combination of Clerk and Treasurer was permissible by specific legislation, it must be understood that the combination of Mayor and Clerk was not permitted. The statutory interpretive rule of *ejusdem generis* precludes one from reading that the office of Clerk could be combined with the office Mayor when there was provision for combining the office of Clerk with that of Treasurer. The intent of the

legislature is reflected in its specific legislation.

The "prime consideration" remains "the intent of the legislature as reflected in its general, as well as its specific, legislation upon the particular subject." Compare *Sullivan v. Glover*, 2 Wn.2d 162, 169, 97 P.2d 628 (1940).

**8. Charge No. 8.**

**CHARGE #8: Failure to hold safety meetings and follow L&I directives.** Mayor Bolt is charged with malfeasance and/or violating her Oath of Office by failing to hold monthly safety meetings. Failure to hold safety meetings in and for the Town of Marcus, Washington prior to and since being warned and advised by the Department of Labor and Industries that she is required to do so by law.

Charge No. 8 is specifically set forth. It says that after May 7, 2012, the mayor has not held the required safety meetings of the Washington Department of Labor and Industries. This is a specific allegation and not a bare allegation. The trial court asserts that the charges were not legally insufficient in that it does not reference a specific standard, law or rule. But the fact of the matter is that it does: It refers to the Washington Department of Labor and Industries requirements that monthly safety meetings be held. This is substantiated in the Exhibits which also are a part of Charge No. 8.

That is, the law of the state of Washington and the mayor has not fulfilled that law. See Bolt, CP 101 - 106.

**9. Charge No. 9.**

**CHARGE #9: Mayor and Councilman's long term personal and public relationship.** Mayor Bolt is charged with malfeasance and/or misfeasance and/or violating her Oath of Office. Mayor Bolt allows and has maintained a long term publicly known unethical, undisputed, self admitted, personal relationship in and out of the Town of Marcus , Washington with Councilman Jenson creating public perception of conflict of interest and appearance of fairness. A Mayor provides additional administration checks. If a personal relationship exists between a Council member and a Mayor, the Council member may need no other Council members to push his/her agenda when as the Mayor is in agreement and/or follows his/her influence, and fails to enforce majority Council directives and/or State and Federal laws. Mayor Bolt's long term personal relationship with Councilman Jenson fits this description and has resulted in the unethical, unhealthy blurring between Administrative and Legislative branches of Town Government. Further evidenced in above charges #2, 3, 4, 5, 6.

See the discussion as to Council Member Jenson Charge No. 6, *infra* at which discussion is incorporated here. *Infra* at 30 and following.

**10. Charge No. 10.**

**CHARGE #10: Authorizing and allowing payment for hours not yet been worked.** Mayor Bolt is charged with malfeasance and/or misfeasance and/or violating her Oath of Office by illegally allowing payment, on paydays, for hours on that day which have not yet been worked in the Town of Marcus, Washington at the time the payroll check is issued. Contrary to the personnel pay policy.

In Charge No. 10, Recall Petitioners say that Mayor Bolt, contrary to the town personnel policy, allowed payroll payments for hours not yet worked. *See* Bolt, CP 8 for backup materials showing the town could not

pay employees unless and until work was performed.

Furthermore, the town did not have authority under the Washington Constitution to make advance payments or loans to employees. Wash Const. Art. VIII, Section 7.<sup>16</sup>

**D. Council Member Jenson.**

Recall Petitioners have brought six charges against Council Member Jenson.

**1. Charge No. 1.**

**CHARGE #1: Councilman supervising, directing and managing Town employee.** Councilman Jenson is charged with misfeasance and/or malfeasance and/or violating his Oath of Office by illegally and inappropriately accepting, acting, supervising, and/or directing and managing the Town Maintenance employee in Marcus, Washington and surrounding areas, often on a daily basis throughout the employee's employment history.

Council Member Jenson was charged by Mayor Bolt with the responsibility of supervising, directing and managing a town employee, the Town maintenance employee. Certainly, this charge is factually

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<sup>16</sup> Art. VIII, Section 7 provides:

**SECTION 7 CREDIT NOT TO BE LOANED.** No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

adequate. The record indicates that indeed Mr. Jensen was managing employee Bear. This was legally sufficient for the reason that the mayor could not delegate this function, this mayoral administrative function, to Councilman Jenson. "In the discharge of their duties the officers cannot go beyond the law." *MCQUILLIN, CORPORATIONS, supra* at § 12.126. It is axiomatic that municipal officers may only perform those duties as are prescribed or made applicable by the legislature by the legislative act.

Municipal officers are only agents of the local public in its corporate capacity; they act under defined powers and duties limited and restricted by law and the extent of these powers is to be strictly construed and may not be enlarged by usage or custom. *Id. Brougham v. Seattle*, 194 Wn. 1, 6, 76 P.2d 1013 (1938).

In addition, and most importantly is the fact that the Mayor cannot delegate her responsibilities under the law to a Council Member whose role is legislative.

## 2. *Charge No. 2.*

**CHARGE #2: Harassing, bullying, and violating employee right to Executive Session.** Councilman Jenson is charged with malfeasance and /or violating his Oath of Office by the long term illegal harassment, bullying, and often public denigration of the Town Maintenance employee in Marcus, Washington. And/or also violating Town Maintenance employee's right to privacy and Executive Session. As well as creating a toxic work environment for the Town Maintenance employee, and continued to do so even after he was removed as that

employee's supervisor. Councilman Jenson's illegal actions put the Town in legal jeopardy.

In Charge No. 2, Council Member Jenson acted in concert with others to deny the town maintenance employee Bear an executive session when he was criticized. The meeting should have been an executive session, should have been private.<sup>17</sup> Yet it was not. Mr. Jenson, along with others, broke the law when they acted as they did.<sup>18</sup> See the discussion commencing at page 17 concerning Mayor Bolt's violation of the Open Meeting Act and the right of an employee who is the topic of the meeting to have the meeting as to him be an executive session.

### 3. *Charge No. 3.*

**CHARGE #3: Purchasing Town assets and spending of public funds.** Councilman Jenson is charged with malfeasance and/or misfeasance and for violating his Oath of Office by allowing and making a number of illegal, questionable, and collective decisions to purchase Town assets along with Mayor Bolt, oftentimes seeking Council approval after the fact, thus lending to the public's and oftentimes Councils [sic] perception of inappropriate spending of tax and/or public funds without prior Council approval. Purchases in point: Miscellaneous equipment, Marcus Washington; The gator purchase at: Auburn Washington; Jacobson mower, Evans Washington.

The trial court found this charge both factually and legally sufficient.

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<sup>17</sup> RCW 42.30.110.

<sup>18</sup> RCW 42.30.120.

4. *Charge No. 4.*

**CHARGE#4: Personal use of Town resources and disregard of legislative actions.** Councilman Jenson is charged with malfeasance and/or violating his Oath of Office by refusing to follow State law concerning the use of public resources and refusing to follow local town administrative guidelines and policies for the use of Town resources which was adopted by a 5-0 vote. In addition, four Council members maintained the continued use unethical, inappropriate, and illegal. Councilman Jenson chose to ignore his sworn duty and continued his use of the Town resource effectively known as the gator even after additional Council actions, including censorship, and the State Auditors legal department reference, in particular, "...using it\*\* (gator) \*\*for more than Town purposes which is a significant problem." Councilman Jenson effectively used his personal, unethical, and controversial relationship with Mayor Bolt which resulted in conflict of interest and appearance of [un]fairness to successfully evade her ineffective directive to cease using the gator.

The trial court did not approve of this charge. It said the use was *de minimus*. The State Auditor weighed in on the issue of Council Member Jenson's use of the "gator" saying it was wrong. But the trial court said Council Member Jenson could use it because "the censure did not expressly terminate" his use of the gator.

This charge is factually and legally sufficient. Mr. Jenson is described as making illegal use of the gator. The court could not say the use was *de minimus* under the Town's policy in Resolution No. 2011 - 04 because the history shows that he was making a lot of use of the gator before the resolution and continued to make use after the Auditor had

indicated that the use was wrong.<sup>19</sup>

The private use, a private use which was ongoing and certainly not minimal, is also a violation of the lending of credit, making gifts prohibition of Wash. Const. Art. VIII, Section 7.<sup>20</sup>

Council Member Jenson is guilty of malfeasance – doing an unlawful act – and violation of his oath of office.

**5. Charge No. 5.**

**CHARGE #5: Making a quasi-legislative unilateral decision concerning the gym roof.** While acting under the pretense of Parks Chairman, former Councilman Jenson [sic] inappropriate action authorizing a provision of a bid for roof construction, effectively known as the Gym Project, without further Council action. Thus lending to the public's understanding why Councilman Yankus tendered his resignation on 13 June, 2004. Former Councilman Jenson then accepted appointment to that vacant position, on July 20, 2004. Thus lending to certain Councilpersons and the public's perception of conflict of interest and appearance of [un]fairness a result of his personal relationship with Mayor Bolt, and its affect on local legislative matters.

This charge is factually and legally sufficient. It specifies exactly what Council Member Jenson did. He held himself out as Parks Chairman. A town may have a parks commission.<sup>21</sup> Mr. Jenson held

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<sup>19</sup> See Charge No. 5 of the charges against Mayor Bolt and related materials and the discussion *supra* at 20.

<sup>20</sup> See footnote 14.

<sup>21</sup> See RCW 35.23.170 Park Commissioners.

himself out as Chairmen of the commission and accepted response to a bid for the construction of a roof over the gym. He succeeded to a position on the council when a council member objected to what had been done and that the town was going to have to pay.<sup>22</sup> There is no showing he had authority except perhaps for having the authority provided by his personal friend, Mayor Bolt, which was illegal because of the prohibition of

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Councils of second-class cities and towns may provide by ordinance, for a board of park commissioners, not to exceed seven in number, to be appointed by the mayor, with the consent of the city council, from citizens of recognized fitness for such position. No commissioner shall receive any compensation. The first commissioners shall determine by lot whose term of office shall expire each year, and a new commissioner shall be appointed annually to serve for a term of years corresponding in number to the number of commissioners in order that one term shall expire each year. Such board of park commissioners shall have only such powers and authority with respect to the management, supervision, and control of parks and recreational facilities and programs as are granted to it by the council.

<sup>22</sup> RCW 35.23.330 Limitation on allowance of claims, warrants, etc.

No claim shall be allowed against the city by the city council, nor shall the city council order any warrants to be drawn except at a general meeting of the council. The council shall never allow, make valid, or recognize any demand against the city which was not a valid claim against it when the obligation was created, nor authorize to be paid any demand which without such action would be invalid or which is then barred by the statute of limitations, or for which the city was never liable, and any such action shall be void.

delegation of mayoral powers. It appears he authorized the payment of the bid after he was on the council.<sup>23</sup> Mr. Jenson was not out of office when he engaged in this wrongful activity. He held a town position which later became a council position. The trial court is in error in saying that he was not in office at the time of the bid.

**6. Charge No. 6.**

**CHARGE #6: Councilman's personal long term relationship with Mayor.** Councilman Jenson is charged with malfeasance and/or misfeasance and/or violating his Oath of Office. Councilman Jenson has maintained a long term publicly known unethical, undisputed, self admitted, personal relationship in and out of the Town of Marcus, Washington with Mayor Bolt creating a public perception of conflict of interest and appearance of [un]fairness. A Mayor provides additional administration checks. If a "personal relationship exists between a Councilperson and a Mayor, the Councilperson may need no other Council member to push his/her agenda when as the Mayor is in agreement and/or follows his/her influence, and fails to enforce majority Council directives and/or State and Federal laws. Councilman Jenson's long term personal relationship with Mayor Bolt fits this description and has resulted in the unethical, unhealthy blurring between Administrative and Legislative branches of Town Government. Both Councilman Jenson and Mayor Bolt are legislative veterans and certainly would have the sense needed not to have pushed the 'gray' area of ethical boundaries concerning their relationship and circumventing State and/or Federal Laws specifically pertaining to such relationships. Their relationship is further evidenced in above charges #1, 2, 3, 4, 5.

There are many instances in the foregoing charges wherein an

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<sup>23</sup> RCW 35.27.370

ordinary person would conclude that there was a conflict of interest as to Mayor Bolt and Council Member Jenson and many undertakings of the town – the Mayor allowed Council Member Jenson the use of town property, she allowed the use even after she was told it was improper, she allowed the use after the town had adopted legislation pertaining to the use of town property. She allowed Council Member Jenson to act as a leader of the Town Park Department and to engage in a gym roof construction which was not authorized, involving the expenditure of considerable sums. She delegated, contrary to law, supervisory authority by Council Member Jenson over the town's maintenance man. She colluded with Council Member Jenson in taking their criticisms of the maintenance man to an Open Public Meeting when they, under law, had a duty to make such criticisms in an executive session.

## **V. CONCLUSION**

In light of the foregoing, all of the charges against Mayor Bolt and all of the charges against Council Member Jenson were factually and legally sufficient. They should go on the proper recall ballot.

Provision should be made for the preparation of a proper synopsis for each Recall Petition. *See* Appendix A for a proper synopsis for the Mayor Bolt Recall and Appendix B for a proper synopsis of the Council Member Jenson Recall Petition.

Respectfully submitted this 1st day of January, 2013.

EUGSTER LAW OFFICE PSC

A handwritten signature in black ink that reads "Stephen K. Eugster". The signature is fluid and cursive, with a prominent flourish at the end of the word "Eugster".

Stephen K. Eugster, WSBA#2003  
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eugster@eugsterlaw.com

## CERTIFICATE OF SERVICE

I, Stephen K. Eugster, certify that on the date set forth below, I mailed a copy of the foregoing Brief of Appellants together with Appendices which follow to the individuals named below at their addresses so indicated, by Pre-paid, First Class U.S., Mail.

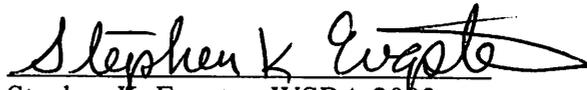
Tim Rasmussen, Pros.  
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Colville, WA 99114

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Dennis L. Jenson  
P.O. Box 666  
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Terecia Fran Bolt  
P.O. Box 687  
Marcus, WA 99151

Dated: January 1, 2013.

  
Stephen K. Eugster, WSBA 2003

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**BALLOT SYNOPSIS FOR RECALL OF  
TRECIA FRAN BOLT  
MAYOR OF THE TOWN OF MARCUS**

Trecia Fran Bolt is accused of ten counts of malfeasance and/or acts of misfeasance and violations of Oath of Office while serving as the elected mayor of the Town of Marcus in violation of RCW 29A.56.110. The statement of charges claims that Ms. Bolt:

1. Improperly terminated an employee of the Town;
2. Allowed a Councilman to supervise and manage a Town employee;
3. Violated the employee's right to Executive Session;
4. Circumvented Council approval and spending of Town funds;
5. Failed to follow State, Federal and local law and policy relating to use of Town resources;
6. Failed to administrate and assert administrative authority;
7. Commingled clerical and mayoral positions, duties and wages;
8. Failed to hold safety meetings and follow Labor and Industries directives;
9. Engaged in a long term personal and public relationship with a Councilman;
10. Authorized and allowed payment for hours not yet worked by Town employees and/or officials.

Should Town of Marcus Mayor Trecia Fran Bolt be recalled from office based upon these charges?

YES

NO

*Appendix A*

**BALLOT SYNOPSIS FOR RECALL OF  
DENNIS L. JENSON  
COUNCILMAN, POSITION 4, OF THE TOWN OF MARCUS**

Dennis L. Jenson is accused of six counts of malfeasance and/or acts of misfeasance and violations of Oath of Office while serving as an elected Councilman of the Town of Marcus in violation of RCW 29A.56.110. The statement of charges claims that Mr. Jenson:

1. Supervised, directed and managed a Town employee;
2. Harassed, bullied and violated the employee's right to Executive Session;
3. Inappropriate purchase of Town assets and spending of public funds;
4. Personally used Town resources and disregarded Council legislative actions;
5. Made a quasi-legislative unilateral decision concerning the gym roof;
6. Maintained a personal long term relationship with Mayor Bolt;

Should Town of Marcus Councilman Dennis L. Jenson be recalled from office based upon these charges?

YES

NO

Appendix B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

IN THE MATTER OF THE RECALL OF:

TERECIA FRAN.BOLT,  
Mayor of the Town of Marcus.

NO. 12-2-00507-7

HEARING, CONCLUSIONS OF LAW  
AND DETERMINATION -- RCW  
29A.56.140

**I. HEARING**

On November 26, 2012, the Court conducted a hearing on the November 15, 2012  
Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. The  
Petition was filed by the Stevens County Prosecuting Attorney as a result of the Recall  
Charge Dennis L. Jenson, Councilman, Position 4, Town of Marcus, Stevens County,  
Washington State; and Recall Charge Terecia F. Bolt, Mayor, Town of Marcus, Stevens  
County, Washington State; which were both filed with the Stevens County Auditor on  
November 5, 2012. Present at the hearing were those demanding recall, William S. Courtis,  
Jacqueline R. Howard, and Bradley C. Rippon; and officers subject to recall, Terecia F. Bolt  
and Dennis L. Jenson. The Court reviewed the files and heard argument as to the

**Appendix C**

1 sufficiency of the charges and adequacy of the ballot synopsis from the individuals  
2 demanding recall and subject to recall.<sup>1</sup> The Court did not consider the truth of the charges,  
3 only their sufficiency.<sup>2</sup> On November 27, 2012, the Ballot Synopsis For Recall of Terecia  
4 Fran Bolt, Mayor of the Town of Marcus and a Ballot Synopsis For Recall of Dennis L.  
5 Jenson, Councilman of the Town of Marcus were certified and mailed to the Stevens County  
6 Auditor, the officers subject to recall, and those persons demanding recall.

## 8 II. CONCLUSIONS OF LAW

9 Do acts stated satisfy recall petition criteria? No as to all charges but Charge No. 6.

10 Charge No. 1. On September 4, 2012, Mayor Bolt terminated town maintenance  
11 employee, Michael Bear, contrary to the incremental discipline requirements of the Town of  
12 Marcus Personnel Policy ("Policy").<sup>3</sup> The Mayor, under the Policy, had discretion "... to  
13 discipline or discharge an employee ..." And, it was within her discretion to stack the  
14 necessary four serious offenses which allowed for termination of Mr. Bear. Lawful  
15 discretionary acts are not a sufficient legal basis for the recall of an elected employee.  
16 *In re Recall of Wasson*, 149 Wn.2d 787, 791-92, 72 P.3d 170 (2003). An elected official  
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20 <sup>1</sup> The petitions were heard together on agreement of the parties.

21 <sup>2</sup> Those demanding recall filed documents authored by the Mayor.

22 <sup>3</sup> Those demanding recall and those subject to recall were self-represented. The charges must state each act  
23 of misfeasance, malfeasance, or breach of the oath of office in concise language, and provide a detailed  
24 description, including the approximate date, location, and nature of each act. *Recall Charges Against*  
25 *Lindquist*, 172 Wn.2d 120, 132 (2011). But charges can include unverified attachments and a trial judge  
has the power to correct an inadequate ballot synopsis as long as the gist of the charges remains the same.  
*Recall of Washam*, 171 Wn.2d 503, 511-14, 257 P.3d 513 (2011). And, technical violations of statutes  
governing recall are not fatal as long as the charges read as a whole, give the elected official enough  
information to respond to the charges and the voters enough information to evaluate them. *In re Heiberg*,  
171 Wn.2d 771, 778, 257 P.3d 565 (2011). The Court paraphrased the charges in order to frame their  
review.

HEARING, CONCLUSION OF LAW AND  
DETERMINATION – RCW 29A.56.140

Page 2

1 cannot be recalled for exercising discretion granted by law. *Chandler v. Otto*, 103 Wn.2d  
2 268, 274, 20 P.3d 930 (2001).

3 Charge No. 2. Mayor Bolt, at an unspecified time, inappropriately allowed  
4 Councilman Jenson to supervise Mr. Bear. This charge is legally insufficient in that it does  
5 not identify the standard, law, or rule that makes the Mayor's conduct wrongful, improper,  
6 or unlawful. *In re Ackerson*, 143 Wn.2d 366, 371, 20 P.3d 930 (2001). This claim fails to  
7 state with specificity substantial conduct clearly amounting to misfeasance, malfeasance, or  
8 violation of oath of office. *Recall of Sandhaus*, 134 Wn.2d 662, 668, 953 P.2d 82 (1998).  
9 And, this charge lacks sufficient precision and detail. *Recall of Sandhaus* at 669.

11 Charge No. 3. Mayor Bolt participated in illegal harassment, bullying, and open  
12 public denigration of Mr. Bear; and she allowed an open meeting where Mr. Bear was  
13 criticized in violation of his right to an executive session. This charge is legally insufficient  
14 in that it fails to state with specificity substantial conduct clearly amounting to misfeasance,  
15 malfeasance, or violation of oath of office. *Recall of Sandhaus*, at 668; *Teaford v. Howard*,  
16 104 Wn.2d 580, 584-88, 707 P.2d 1327 (1985). Further, any criticism was in an open public  
17 meeting which was not contrary to the Open Public Meeting Act, RCW Chapter 42.30. "It  
18 is the intent of this chapter that their (public entities) actions be taken openly and that their  
19 deliberations be conducted openly." RCW 42.30.010. Further, there is no evidence the  
20 Mayor intended to violate the Open Public Meetings Act. *In re Recall of Wasson* at 791.

22 Charge No. 4. Mayor Bolt purchased or assisted in the purchase of Town equipment  
23 including equipment valued at \$4,000 on October 4, 2005; a utility vehicle valued at \$1,500  
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1 on August 10, 2007; and a Turfcat valued at \$2,500 on April 24, 2008 – without advance  
2 authorization of the Town Council. This is legally sufficient.<sup>4</sup>

3 Charge No. 5. Mayor Bolt failed to enforce Council actions related to use of a gator  
4 by Councilman Dennis L. Jenson from June 7, 2011 to September 22, 2012; such use being  
5 “near daily two hour coffee gatherings at a friend’s garage.” This charge includes a number  
6 of related, partial charges that are legally and factually insufficient. *In re Ackerson*, at 371;  
7 *Recall of Sandhaus*, at 668-69. The remaining charge under Resolution No. 2011-04 “A  
8 Resolution of the Town Council of Marcus Establishing Guidelines for the Ethical, Lawful,  
9 Responsible and Non-Discriminatory Use of Town Resources by Town Officials,  
10 Employees and Volunteers” adopted February 1, 2011, is also factually and legally  
11 insufficient; and it also charges Mayor Bolt for actions well within her discretion. *In re*  
12 *Recall of Wasson*, at 791-92. Councilman Jenson’s use of the gator, as described in the  
13 charge, clearly was diminimus, permissible use, and was not prohibited use. Further, the  
14 facts presented show Mayor Bolt did not intend to violate Resolution 2011-04 – to the  
15 contrary, she did her best to determine whether Councilman Jenson’s actions were lawful.  
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18 Charge No. 6. Mayor Bolt allowed Councilman Jenson to use the gator, after he had  
19 been directed to stop. This charge fails to identify a specific standard, law, or rule making  
20 Mayor Bolt’s conduct wrongful, improper, or unlawful. *In re Ackerson*, at 371. It, too, is  
21 not legally or factually sufficient; see Charge No. 5.  
22

23 Charge No. 7. Mayor Bolt on April 16, 2008, April 30, 2008, September 15, 2008,  
24

25 <sup>4</sup> However, the Court was not provided, and was unable to locate, the statutory authority for the purchase of  
personal property by a town.

1 October 1, 2008, February 15, 2011, February 28, 2011, December 31, 2010, May 31, 2011,  
2 June 30, 2011, July 15, 2011, July 29, 2011, August 31, 2011, September 15, 2011, October  
3 14, 2011, and October 31, 2011 received both Mayor's pay and Clerk's wages, comingled  
4 the position of Mayor and Clerk, and had the Clerk sign off on the Mayor's time sheets.

5 This charge fails to identify a specific standard law or rule. *In re Ackerson*, at 371. The  
6  
7 Town of Marcus Personnel Policy provides:

8 "ELECTED TOWN OFFICIAL PERFORMING HOURLY EMPLOYEE DUTIES:  
9 Any elected Town official may perform the duties/actions of any hourly Town  
10 employee that the official is competent to perform, provided there is a short term  
11 need for help as determined by Council for that position. The elected official may  
12 request, and be authorized by Council, to be paid at the same rate as the hourly  
13 employee. If the elected official is to be paid, time sheets must be completed the  
14 same as is expected of the regular hourly employee. Town Official time sheets will  
15 be subject to the same internal controls and work product review as the regular  
16 hourly employee receives. The subject 'elected official', will remove themselves  
17 from any internal control processes and final approval."

18 This fill-in work by Mayor Bolt was clearly not wrongful, improper, or unlawful.

19 Further, given that it was openly ongoing for three years, it was likely reviewed by the State  
20 Auditor. It came within the Mayor's discretion. *Wasson*, at 791-92.

21 Charge No.8. Mayor Bolt, post May 7, 2012, has not held monthly safety meetings  
22 required by the Washington Department of Labor & Industries. This charge is factually  
23 insufficient – on a bare allegation. Further, it is legally insufficient in that it does not  
24 reference a specific standard, law, or rule. *Recall of Sandhaus*, at 668-69.

25 Charge No.9. Mayor Bolt's long-term personal and public relationship with  
Councilman Dennis L. Jenson makes for a conflict of interest, and appearance of  
"unfairness" and blurs the lines between the administrative and legislative branches of Town

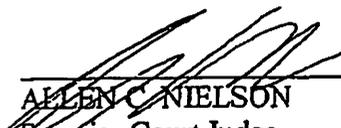
1 government. This is factually and legally insufficient. It references no specific standard,  
2 law or rule. In particular, no conflict of interest is identified. And, the appearance of  
3 fairness doctrine applies only to hearings – quasi-judicial, or legislative. *Zehring v. Bellvue*,  
4 99 Wn.2d 488, 495, 663 P.2d 823 (1983).

5 Charge No.10. Mayor Bolt, contrary to the Town of Marcus Personnel Policy,  
6 allowed payroll payments for hours not yet worked. This charge is legally insufficient in  
7 that such early payments are not expressly contrary to the personnel policy. The  
8 authorization of such payments is within a Mayor's discretion and no specific standard, law,  
9 or rule is referenced. *In re Ackerson*, at 371.

11 Is the Ballot Synopsis legally sufficient? No.

12 The Ballot Synopsis for Recall of Terecia Fran Bolt, Mayor Marcus, Charges No. 1  
13 to No. 10, is inadequate because none of the charges include dates and pertinent details.  
14 *Recall of West*, 155 Wn.2d 659, 664, 121 P.3d 1190 (2005). Charge No. 4, has been  
15 corrected to remedy these inadequacies. *Recall of West*, at 664-65.

16 DATED this 12<sup>th</sup> day of December, 2012.

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20 ALLEN C. NIELSON  
21 Superior Court Judge  
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**CERTIFICATE OF MAILING/DELIVERY**

I hereby certify, under penalty of perjury of the laws of the State of Washington, that I am a U.S. citizen and neither a party to nor interested in the above-entitled action and that a true copy of the Hearing, Conclusions of Law and Determination – RCW 29A.56.140, was mailed by U.S. Mail, postage prepaid, or hand delivered to the following parties on the date shown below:

Dennis L. Jenson  
P. O. Box 666  
Marcus, WA 99151

U.S. Mail  
 Hand delivery

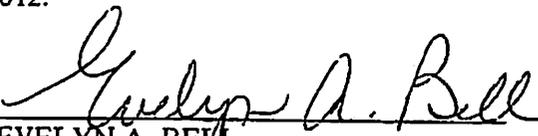
Terecia Fran Bolt  
P. O. Box 687  
Marcus, WA 99151

U.S. Mail  
 Hand delivery

Stephen K. Eugster  
Attorney at Law  
2418 W. Pacific Ave.  
Spokane, WA 99201-6244

U.S. Mail  
 Hand delivery

DATED this 13<sup>th</sup> day of December, 2012.

  
EVELYN A. BELL

  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

IN THE MATTER OF THE RECALL OF:  
DENNIS L. JENSON,  
Councilperson Position 4 of the Town of  
Marcus.

NO. 12-2-00506-9  
HEARING, CONCLUSIONS OF LAW  
AND DETERMINATION -- RCW  
29A.56.140

**I. HEARING**

On November 26, 2012, the Court conducted a hearing on the November 15, 2012  
Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. The  
Petition was filed by the Stevens County Prosecuting Attorney as a result of the Recall  
Charge Dennis L. Jenson, Councilman, Position 4, Town of Marcus, Stevens County,  
Washington State; and Recall Charge Terecia F. Bolt, Mayor, Town of Marcus, Stevens  
County, Washington State; which were both filed with the Stevens County Auditor on  
November 5, 2012. Present at the hearing were those demanding recall, William S. Courtis,  
Jacqueline R. Howard, and Bradley C. Rippon; and officers subject to recall, Terecia F. Bolt  
and Dennis L. Jenson. The Court reviewed the files and heard argument as to the

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1 sufficiency of the charges and adequacy of the ballot synopsis from the individuals  
2 demanding recall and subject to recall.<sup>1</sup> The Court did not consider the truth of the charges,  
3 only their sufficiency.<sup>2</sup> On November 27, 2012, the Ballot Synopsis For Recall of Terecia  
4 Fran Bolt, Mayor of the Town of Marcus; and a Ballot Synopsis For Recall of Dennis L.  
5 Jenson, Councilman of the Town of Marcus; were certified and mailed to the Stevens  
6 County Auditor, the officers subject to recall, and those persons demanding recall.

## 8 II. CONCLUSIONS OF LAW

9 Do acts stated satisfy recall petition criteria? No as to all charges but Charge No. 6.

10 Charge No. 1. Councilman Jenson supervised maintenance man Michael Bear  
11 throughout Mr. Bear's employment with the Town of Marcus.<sup>3</sup> This charge is legally  
12 insufficient in that it does not identify the standard, law, or rule that makes Councilman  
13 Jenson's conduct wrongful, improper, or unlawful. *In re Ackerson*, 143 Wn.2d 366, 371, 20  
14 P.3d 930 (2001). Also, this claim fails to state with specificity substantial conduct clearly  
15 amounting to misfeasance, malfeasance, or violation of oath of office. *Recall of Sandhaus*,  
16 134 Wn.2d 662, 668, 953 P.2d 82 (1998).

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20 <sup>1</sup> The petitions were heard together on agreement of the parties.

21 <sup>2</sup> Those demanding recall filed documents authored by the Mayor.

22 <sup>3</sup> Those demanding recall and those subject to recall were self-represented. The charges must state each act  
23 of misfeasance, malfeasance, or breach of the oath of office in concise language, and provide a detailed  
24 description, including the approximate date, location, and nature of each act. *Recall Charges Against*  
25 *Lindquist*, 172 Wn.2d 120, 132 (2011). But charges can include unverified attachments and a trial judge  
has the power to correct an inadequate ballot synopsis as long as the gist of the charges remains the same.  
*Recall of Washam*, 171 Wn.2d 503, 511-14, 257 P.3d 513 (2011). And, technical violations of statutes  
governing recall are not fatal as long as the charges read as a whole, give the elected official enough  
information to respond to the charges and the voters enough information to evaluate them. *In re Heiberg*,  
171 Wn.2d 771, 778, 257 P.3d 565 (2011). The Court paraphrased the charges in order to frame their  
review.

1           Charge No. 2. Councilman Jenson participated in illegal harassment, bullying, and  
2 open public denigration of Mr. Bear; and he allowed an open meeting where Mr. Bear was  
3 criticized in violation of his right to an executive session. This charge is legally insufficient  
4 in that it fails to state with specificity substantial conduct clearly amounting to misfeasance,  
5 malfeasance, or violation of oath of office. *Recall of Sandhaus*, at 668; *Teaford v. Howard*,  
6 104 Wn.2d 580, 584-88, 707 P.2d 1327 (1985).. Further, criticism was in an open public.  
7 meeting which was not contrary to the Open Public Meeting Act, RCW Chapter 42.30. "It  
8 is the intent of this chapter that their (public entities) actions be taken openly and that their  
9 deliberations be conducted openly." RCW 42.30.010. There is no evidence the Councilman  
10 intended to violate the Open Public Meetings Act. *In re Recall of Wasson* at 791.

11           Charge No. 3. Councilman Jenson purchased or assisted in the purchase of Town  
12 equipment including equipment valued at \$4,000 on October 4, 2005; a utility vehicle  
13 valued at \$1,500 on August 10, 2007; and a Turfcats valued at \$2,500 on April 24, 2008 –  
14 without advance authorization of the Town Council. This is legally sufficient.<sup>4</sup>

15           Charge No. 4. Councilman Jenson, contrary to Resolution No. 2011-04 "A  
16 Resolution of the Town Council of Marcus Establishing Guidelines for the Ethical, Lawful,  
17 Responsible and Non-discriminatory Use of Town Resources By Town Officials,  
18 Employees and Volunteers" adopted February 1, 2011, did from May 31, 2011 to June 7,  
19 2011, made non-diminimus, personal use of the gator. This use, as charged, was diminimus,  
20 permissible personal use, and was not prohibited use under the Guidelines.  
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25           <sup>4</sup> However, the Court was not provided, and was unable to locate, the statutory authority for the purchase of  
personal property by a town.

1 Further, Councilman Jenson is charged with continuing to make such use of the  
2 gator, even after he had been censured by the remaining councilpersons and warning by the  
3 State Auditor. But the censure did not expressly terminate his use of the gator. And, no  
4 conflict of interest is identified and the appearance of fairness doctrine does not apply.  
5

6 Charge No. 5. Councilman Jenson, while out of office, authorized a roof  
7 construction bid. Only the Town Council can erect or maintain buildings or purchase real or  
8 personal property, RCW 35.27.360; but the charge has Councilman Jenson not in office at  
9 the time of the bid. The charge is factually and legally insufficient. *Recall of Sandhaus*, at  
10 668; *In re Ackerson*, at 371.

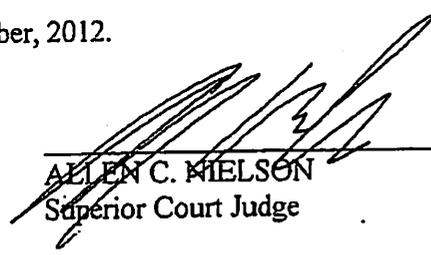
11 Charge No. 6. Councilman Jenson's long-term personal and public relationship  
12 with Mayor Bolt makes for a conflict of interest and appearance of "unfairness" and blurs  
13 the lines between the administrative and legislative branches of Town government. This is  
14 factually and legally insufficient. It references no specific standard, law or rule. In  
15 particular, no conflict of interest is identified. *Recall of Sandhaus*, at 668; *In re Ackerson*, at  
16 371. And, the appearance of fairness doctrine applies only to hearings – quasi-judicial, or  
17 legislative. *Zehring v. Bellvue*, 99 Wn.2d 488, 495, 663 P.2d 823 (1983).  
18

19 Is the Ballot Synopsis legally sufficient? No.

20 The Ballot Synopsis for Recall of Dennis L. Jenson, Councilman, Position 4 of the  
21 Town of Marcus, is inadequate because none of the charges include dates and pertinent  
22 details. *Recall of West*, 155 Wn.2d 659, 664, 121 P.3d 1190 (2005). Charge No. 3 has been  
23 corrected to remedy these inadequacies. *Recall of West*, at 664-65.  
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DATED this 12<sup>th</sup> day of December, 2012.

  
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ALLEN C. NIELSON  
Superior Court Judge

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Stephen K. Eugster  
Attorney at Law  
2418 W. Pacific Ave.  
Spokane, WA 99201-6244

U.S. Mail  
 Hand delivery

DATED this 13<sup>th</sup> day of December, 2012.

  
EVELYN A. BEIL