

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

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

Recall Petitioners,

Appellants

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**SURREPLY OF RESPONDENTS**

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Terecia F. Bolt and Dennis L. Jenson  
Self Represented

Dennis L. Jenson and Terecia F. Bolt

C/O Terecia F. Bolt  
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## I. INTRODUCTION

On January 3, 2013 the Respondents provided this Court a copy of their notice of appeal which sought review of the trial court's order striking the motion for reconsideration and attached materials. This Court advised the Respondents that the notice of appeal will be consolidated with this case, Supreme Court No. 88227-4.

The Respondent's Brief filed in this Court on January 16, 2013 included issues raised regarding the trial court's order striking the motion for reconsideration and attached materials as they provide possible legal justification for the actions of the Respondents relative to Charge #3, Dennis L. Jenson and Charge #4, Terecia F. Bolt and of which are included in the Designation of Clerks Papers filed Jan. 23, 2013 with Steven's County Superior Court.

This Surreply Brief will address Appellant's Response Brief concerning Mayor Bolt's charges against her.

Next it will address Appellant's Response Brief concerning Council Member Jenson's arguments against him.

Lastly, in the Conclusion, it will ask consideration for review of Charges # 3 Dennis L. Jenson and Charge #4 Terecia F. Bolt.

**SURREPLY TO APPELLANTS BRIEF OF CHARGES  
BROUGHT AGAINST MAYOR BOLT  
Authored by Mayor Bolt**

*1. Charge No. 1.*

**CHARGE #1: Termination of Town employee and failure to follow Personnel Policy.**

The Marcus Personnel Policy states Disciplinary action may be applied, not shall be applied, which allows the Mayor to use discretion and authority provided to her by RCW 35.27.070 regarding the termination of an employee for cause(s). *Chandler* 103 Wn. 2d at 274 and *In re Recall of Ackerson* 143 Wn. 2d 366 and *Teaford v. Howard* 104 Wn 2d 580.

The personnel Policy was not adopted by an Ordinance.

*2. Charge No. 2*

**CHARGE #2 - Allowing Council Member to supervise and manage a town employee.**

There are no legal documents of record that I officially appointed delegated or allowed my supervisory authority of the town employee to Council Member Jenson. The charge fails to state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of oath of office and is based on mere conjecture. *In re Recall of Ackerson* 143 Wn. 2d 366,371 and *In-Recall of Wade* 115 Wn. 2d 544. *In re Recall of De Bruyan* 112 Wn. 2d 924.

It should also be noted the charge fails to identify and establish intentional acts of the Mayor. *Ackerson* 143 Wn 2d 366.

### 3. Charge No. 3

**CHARGE #3: Violating employee's right to Executive Session. Participating and allowing harassment, bullying and denigration of a Town Employee...**

I reference the Hearing, Conclusions of Law and determination by Superior Court Judge Nielson: There is no evidence the Mayor intended to violate the Open Public Meetings Act. *In re Recall of Wasson at 791. See People's EX. Council meeting recording DM420088 play 18:00 through 40.35. Ackerson at 368 [17].*

### 4. Charge No. 4

**Charge # 4: Circumventing Council approval and spending of Town Funds.**

The Superior court found this charge factually and legally sufficient along with *footnote However, the Court was not provided, and was unable to locate, the statutory authority for the purchase of personal property by a town.*

The Town of Marcus operates under the laws of Washington and specifically RCW CH 35.27. The purchasing authority is addressed in RCW <sup>1</sup>35.27.345(in part)

There was no Ordinance or Policy regarding, methods, procedures or dollar thresholds establishing regulations for expenditures excepting for the Budget Ordinance allowing for expenditures by fund total.

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**<sup>1</sup> RCW 35.27.345- Payment of claims and obligations by warrant or Check**

A town, by ordinance, may adopt a policy for the payment of claims or other obligations of the town, which are payable out of solvent funds, electing to pay such obligations by warrant or by check.....

Historic methods were to provide allowable expenditures, appropriated by the Town Council, and approved or ratified before or after said purchase. Historic methods also imply that the Mayor had discretion to expend funds within the budget guidelines. The only exclusion to this method was contractual purchases or public works projects.

Again, all purchases cited in the recall were all discussed, approved and ratified by the entire Town Council at a regularly scheduled meeting and with no murmur of dissent or objection. (the Gator was pre-approved as is clearly indicated in People's EX. K

Review of this charge, as provided by law, would lend itself to the justification of actions by the officers recalled relative to intentional conduct and/or acts. *In-Recall of Wade 115 Wn. 2d 544,549*

### **5. Charge No. 5**

#### **CHARGE #5: Failure to follow State, Federal and Local law and policy relating to the use of Town Resources.**

I will reference the Hearing, Conclusion of Law and Determination by Stevens County Superior Court Judge Nielson, relative to this charge. Appellants fail to specify substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office. *In-Recall of Wade 115 Wn. 2d 544 and Chandler 103 Wn. 2d at 274 and Ackerson at 371.*

**6. Charge No. 6**

**CHARGE # 6. Failure to Administrate and assert  
Administrative Authority**

I refer back to Hearing, Conclusion of Law of Law and  
Determination by Stevens County Superior Court Judge Nielson.

Following the accepted legal definition of "Personal Use" I was  
not in violation of the Administrative Policy for Use of Town Resources,  
State or Federal Statues. I also acted on the advice by the State Auditor  
with regards to the "Appearance by 1 or more persons being a possible  
problem." In re of *Wade 115 Wn. 2d 544 and Sandhaus, 134 Wn.2d at 668  
and Wasson, at 791-92*

**7. Charge No. 7**

**CHARGE #7: Commingling clerical and Mayoral positions,  
duties and wages.**

I will refer back to Hearing, Conclusion of Law and Determination  
by Stevens County Superior Court Judge Nielson regarding this charge.  
The records clearly indicate there were no intention to combine the office  
of Mayor and Clerk. Furthermore, this action was approved by The  
Council. Appellants fail to specify substantial conduct clearly amounting  
to intentional misfeasance, malfeasance or violation of the oath of office *n  
re Wasson at 791-2 and In re Ackerson, at 371. Ackerson 143 Wn. 2d  
366.*

**8. Charge No. 8**

**CHARGE #8: Failure to hold safety meetings and follow L & I directives.**

I in-fact did hold safety meetings after May 7, 2012. See Exhibit CP \_\_\_ Bolt, Minutes of Safety Meetings upon awareness of the law. Appellants fail to specify substantial conduct clearly amounting to intentional misfeasance, malfeasance or violation of the oath of office. *Sandhaus, 134 Wn.2d at 668 and In re Wade 115 Wn.2d 549*

**9. Charge No. 9**

**CHARGE #9: Mayor and Councilman's long term personal and public relationship.**

I refer back to Hearing and Conclusions of Law Determination by Stevens County Superior Court Judge Nielson regarding this issue. *In re Wade 115 Wn.2d 549.*

With reference to "Appellants Reply" there is more than one insinuation with lack of specific substantial conduct relative to intentional violation of the oath of office.... As in "She colluded with Council Member Jenson". *Chandler Wn. 2d at 274. Also Reference People's Exhibit Council meeting recording DM420088 play 18:00 through 40.35. Ackerson at 368 [17].*

*10. Charge No. 10*

**CHARGE #10: Authorizing and allowing payment for hours not yet been worked.**

I refer back to Hearing, Conclusions of Law and Determination by Stevens County Superior Court Judge Nielson regarding this charge.

Relative to the charge of gifting or loan of public funds, if the hours are worked before the end of the day, they would not be considered gifting or a loan. This is the case with all payroll checks, both past and present. As well, this method has been reviewed and approved by the State Auditor throughout the many years it has been practiced.

**II. SURREPLY TO APPELLANTS BRIEF OF CHARGES  
AGAINST COUNCIL MEMBER JENSON.  
Statements authored by Dennis L. Jenson**

*1. Charge No. 1*

**CHARGE #1: Councilman supervising, directing and managing Town employee.**

The record indicates that I was working with employee Bear, not managing him. The charge fails to provide and identify the standard, law or rule as to a Council Member, acting as a volunteer and helping with town duties that substantiates my conduct wrongful, improper, or unlawful. Appellants fail to specify substantial conduct clearly amounting to intentional misfeasance, malfeasance or violation of the oath of office.

*In re Ackerson 143.Wn 2d 366,371 and Ackerson at 373.*

## 2. Charge No. 2

### **Charge #2: Harassing, bullying, and violating employee right to Executive Session.**

See People's Exhibit I- Council meeting 05/01/12. **DM420088**

**Play 24:00 through 40.35** This entire segment clarifies my concerns and demonstrates my demeanor with my query of the town employee while at this council meeting. *In re Ackerson 368 [17]* I submit there is no evidence proving any intention of misfeasance, malfeasance or violation of the oath of office regarding this issue. Furthermore, no Council Member motioned to conduct an executive session during this segment.

I will also refer back to Hearing, Conclusion of Law and Determination by Stevens County Superior Court Judge.

## 3. Charge No. 3

### **CHARGE #3: Purchasing Town assets and spending of public funds.**

The appellants motion to strike Motion for Reconsideration was made due to inadvertent late filing of the Motion ( 1 day late). Also, it pointed out the extreme timelines for the petitioners to be able to exercise their right to a recall. During the hearing, regarding the motion to strike Motion for Reconsideration and attending materials, Judge Nielson was reluctant to strike the materials. Appellants Attorney, Stephen K. Eugster, convinced us that we could appeal to the Supreme Court regarding this issue. It was our understanding we could appeal the decision of the trial

Court concerning the Striking of materials. Now, Mr. Eugster is saying that if the Motion to Strike is granted, the attached materials should also be stricken.

The Notice of appeal to the Supreme Court was made appealing the decisions of the trial court concerning the Striking of materials attached to the Motion for Reconsideration as they provided possible legal justification for the conduct and actions by the Charged Officers.

I respectfully request review of this charge with the inclusion of materials attached to the Motion for Reconsideration as I believe it will provide the necessary legal justification of our conduct.

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

#### **CHARGE #4: Personal use of Town resources and disregard of legislative actions.**

I will refer back to hearing, Conclusion of Law and Determination by Stevens County Superior Court Judge Nielson regarding this charge.

I further state that my understanding of personal use is the use of town resources is the personal use for self or others on personal or other private property to the benefit and/or financial gain of self others. It is with that understanding I declared my use was not personal. I do not consider The Marcus Council the voice of authority regarding “their opinion and definition of personal use.” Appellants fail to specify substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office relative to personal use. *In re Recall of Wade 115Wn.2d 549*

### **5. Charge No. 5**

#### **CHARGE #5: Making a quasi-legislative unilateral decision concerning the gym roof.**

I refer back to Hearing, Conclusion of Law and Determination of Stevens County Superior Court Judge Nielson for facts. I was not in office at the time this charge is referenced.

As to the remaining argument in the Response by the Appellants Pg. 16, clearly demonstrates argument based on convoluted statements without any factual or legal reference stating a standard, law or rule regarding the actions or conduct with this charge. *Ackerson 143 Wn 2d 366,367.*

### **6. Charge No. 6**

#### **CHARGE #6: Councilman's personal long term relationship with the Mayor.**

I will refer back to Hearing, Conclusions of law and Determination by Steven's County Superior Court Judge Nielson.

### **III. CONCLUSION:**

We respectfully convey to this court that the respondents, Terecia F. Bolt and Dennis L. Jenson remain self represented. We hope you will consider our statements and pardon our lack of legal proficiency and/or procedures with respect to our Briefs.

While the courts do not consider the truthfulness of the charges, only the sufficiency of such, we submit Appellants have failed to specify substantial conduct clearly amounting to intentional misfeasance, malfeasance or violation of the oath of office in all charges.

We respectfully submit our statements to the Supreme Court for consideration as response and justification of our actions. We further respectfully submit that Charges #3, Dennis L. Jenson and Charge #4 Terecia F. Bolt be reviewed along with the inclusion of additional materials attached to Motion for Reconsideration.

Respectfully Submitted this 29th day of January,

Respondents:

Terecia F. Bolt  
Town of Marcus Mayor

Dennis L. Jenson  
Council Member 4, Town of  
Marcus

## CERTIFICATE OF SERVICE

I, Angela D. Sphuler, certify that on the date set forth below, I emailed a copy of the foregoing Brief of Respondents to the individual entities as designated below.

Susan L. Carlson  
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Dated January 29th, 2013.

Angela D. Sphuler  
P.O. Box 62,  
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**OFFICE RECEPTIONIST, CLERK**

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**To:** Fran Bolt  
**Subject:** RE: Surreply to Supreme Court

Rec'd 1-29-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Fran Bolt [<mailto:franbolt64@gmail.com>]  
**Sent:** Tuesday, January 29, 2013 11:03 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Surreply to Supreme Court

Please find attached Surreply of respondents.

Thank you,  
Angie Sphuler