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SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court NO. 9998-1  
BY SUSAN L. CARLSON  
CLERK

IN THE  
SUPREME COURT OF THE STATE OF  
WASHINGTON

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IN RE THE MATTER OF RECALL CHARGES  
AGAINST

BENTON COUNTY SHERIFF  
JERRY HATCHER  
APPELLANT.

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ON APPEAL  
FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
FOR BENTON COUNTY CAUSE NO. 20-2-00980-3

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BRIEF OF RESPONDENT

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#### IV. INTRODUCTION

The State Supreme Court outlines the onus upon citizens to attempt a recall of an elected official as: "For the purpose of recall, "Misfeasance or malfeasance in office means, 'wrongful conduct that affects, interrupts, or interferes with the performance of official duty." *Chandler v. Otto*, 103 Wn.2d 268, 272, 693 P.2d 71, 73 (1984), RCW 29A.56.110(1). "Malfeasance can mean 'performance of a duty in an improper manner." RCW 29A.56.110(1)(a). *Id.* "Malfeasance can mean commission of an illegal act" RCW 29A.56.010 (1)(b); and "Violation of the Oath of Office is the willful neglect or failure by an elected public officer to perform faithfully a duty imposed by law." RCW 29A.56.110(2). *Id.*

The trial court's role was as a gatekeeping role and this is based on "the framers' intent to prevent recall elections from reflecting on the popularity of the political decisions made by elected officers." *In re Recall of Telford*, 166 Wn.2d 148, 159-160 (2009). Review before this court is to be examined via *de novo* review. *In re Recall of Telford*, 166 Wn.2d 148, 154, 206 P.3d 1248 (2009).

The fact finder is not to weigh the evidence on this matter, the fact finder is to assume the allegations are true. (see RCW

29A.56.140.) "The role of courts in the recall process is highly limited, and it is not for us to decide whether the alleged facts are true or not. It is the voters, not the courts, who will ultimately act as the fact finders." RCW 29A.56.140; *In re Recall of Kast*, 144 Wn.2d 807, 813 (2001).

In *Kast* the court indicated "We merely function as a gatekeeper to ensure that the recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated charges." *Id.*

Accordingly, the court's role is limited to ensuring that only legally and factually sufficient charges go to the voters. *Id.* (citing to *In re Recall of West*, 155 Wn. 2d 659, 662 (2005).) To be factually sufficient, petitioners must only make a *prima facie* showing of misfeasance, malfeasance, or violation of oath of office to support recall. *Cole v. Webster*, 103 Wn.2d 280, 288, 692 P.2d 799 (1984). A *prima facie* showing is an extremely low burden. To be met, the petitioners need only present facts which would allow the public electorate and the challenged elective official to make informed decisions in the recall process. *Teaford v. Howard*, 104 Wn.2d 580, 584, 707 P.2d 1327 (1985).

On the 20<sup>th</sup> of August 2020, in the instant matter the Respondent satisfied this burden before Superior Court Judge Scott Wolfram, establishing that all eight (8) of the original charges were factually and legally sufficient to proceed to the signature

gathering phase.

This matter is now, before the court and the Appellant, Jerry Hatcher, argues that the trial court committed error. The Appellant incorrectly references to the 8 charges as being the “unsubstantiated” charges. The charges were actually substantiated before the Judge Wolfram. In summary, the allegations as to error are without merit and not supported by the factual record. The legal arguments are misplaced as to justification. Further, portions of the justification argument are circular and wholly without merit. Further, there is specific case law directly on point regarding alleged violations of statute as to criminal acts.

Applying *De Novo* review to this matter the Respondent respectfully requests this Court to affirm, the trial court to finding that the Hon. Scott Wolfram was correct in determining that the Respondent had met his burden to proceed to the signature gathering phase.

## **V. STATEMENT OF THE CASE**

### **A. Procedural history.**

On the 22<sup>nd</sup> of July 2020, the Respondent, Benton County Sheriff's Office (BCSO) Sgt. Jason Erickson, served a request for a petitioned to recall his employer Sheriff Jerry Hatcher, upon the Brenda Chilton the Benton County Auditor. C.P. 6-325. The request for a petition alleged Sheriff Hatcher had committed misfeasance, malfeasance, and violations of his oath of office. C.P. 7-325. This petition was filed with the full support his guild the Benton County Deputy Sheriff's Guild (BCDSG). C.P. 10. On the 27<sup>th</sup> of July 2020, Brenda Chilton served Sheriff Hatcher was served with the request for a petitioned to recall. C.P. 6., C.P.329.

On or about the 28<sup>th</sup> of July 2020 Sheriff Hatcher contacted outside counsel to prepare for the recall. Transcript of the Proceedings, August 20, 2020, pg. 10,ln 19 to pg.11, ln 3.

On the 31<sup>st</sup> of July 2020, Reid Hay filed the Petition for Recall which included five (5) exhibits, A,B,C,D, and E, which was served upon Sheriff Hatcher on that day. C.P. 1-335. On the 31<sup>st</sup> of July 2020, Counsel for Mr. Erickson filed a Notice of Appearance. C.P. 606-608. On the 4<sup>th</sup> of August 2020, Counsel for Sheriff Hatcher filed a notice of appearance. C.P. 612 to 613.

On the 13<sup>th</sup> of July 2020, a hearing was scheduled and heard

before Hon. Scott Wolfram. Transcript of the Proceedings, August 13, 2020, pgs.1-29. The Appellant requested more time to be able to prepare and the motion to continue was granted, the next hearing date was scheduled to be heard on the 20<sup>th</sup> of August 2020. Transcript of the Proceedings, August 13, 2020, pg 3 In 16-18, and pg 28, In 13-23.

On the 19<sup>th</sup> of August 2020, counsel for the Appellant filed pleadings and contemporaneous to this filing Counsel for the Mr. Erickson served and filed pleadings in the matter. C.P. 494-501, C.P. 502-575, C.P. 354-490, and C.P. 491-493.

On the 20<sup>th</sup> of August 2020, Counsel for the Appellant filed a written objection to pleadings filed by Mr. Erickson. Initially, counsel for the Appellant raised his objection to the trial court, but never followed up with the court as to a ruling on the objection. Transcript of the Proceedings, August 20, 2020, pg. 5, and C.P. 576-580. Counsel for the Appellant indicated he had filed the objection late. Transcript of the Proceedings, August 20, 2020, pg. 5, In 16 to In 19. It was filed the day of the hearing 20<sup>th</sup> of August 2020. C.P. 576.

On the 20<sup>th</sup> of August 2020, prior to the matter being heard on substance, counsel for Mr. Erickson voiced concerns over the status of the record before the court and requested a short continuance to allow for all parties to be on the same page. Transcript of the

Proceedings, August 20, 2020, pg. 6 In 3 to pg.20 In 20. Counsel for the Appellant opposed the motion and the matter went forward. Transcript of the Proceedings, August 20, 2020, Pg. 24 In 6 to In 20.

The court indicated as follows as to what he wanted to hear from Mr. Erickson's counsel on the issues, the trial court stated as follow

THE COURT: Well, counsel, I've reviewed a couple of times this several inches of things that have been filed. And I'm not sure the relevance of a number of them. And so I'm more interested in your arguments addressing the ballot synopsis.  
Transcript of the Proceedings, August 20, 2020, Pg. 25, In 7 to In 11.

Counsel for the Mr. Erickson addressed the facts for each of the allegations and their corresponding legal sufficiency. Transcript of the Proceedings, August 20, 2020, Pg. 27, In 1 to Pg. 59, In 25. Counsel for the Appellant addressed the court in reply. Transcript of the Proceedings, August 20, 2020, Pg. 61 In 3 to Pg. 83, In 13. Counsel for Mr. Erickson replied to the court on clarifying issues as to facts and or legal sufficiency for each of the allegations and the corresponding legal sufficiency. Transcript of the Proceedings, August 20, 2020, Pg. 83, In 21 to to Pg. 107, In 13. Counsel for the Appellant was asked for any further comments and indicated that the trial court had heard enough. Transcript of the Proceedings, August 20, 2020, Pg. 83, In 21. The trial then ruled, after having

heard over 2 hours of argument on the matter, that all 8 allegations were factually and legally sufficient.

The trial court indicated as follows:

Okay. So I think my duty is with reference to finding whether the charges are sufficient. Is the ballot synopsis adequate?

And are the charges legally sufficient? And from a factual standpoint, I find that there's basis and knowledge of the facts.

Question is, if that's true, is the malfeasance a violation of the oath? And just from a record standpoint, it's not my duty with reference to the truth of the charges. It's it's only the sufficiency of the charges. And, further, I don't consider the motives for the people who filed the charges. And it just goes back to the factual and legal sufficiency. I find that the ballot synopsis does provide the voters with sufficient information on which to determine what acts were thought to be committed and whether they believe those facts to be true. And I find that the charges are sufficient in their entirety.

And from a factual standpoint, I find that there's basis and knowledge of the facts. Question is, if that's true, is the malfeasance a violation of the oath? And just from a record standpoint, it's not my duty with reference to the truth of the charges. It's it's only the sufficiency of the charges. And, further, I don't consider the motives for the people who filed the charges. And it just goes back to the factual and legal sufficiency.

And I see that the ballot synopsis is under the 200-word limit; so that's sufficient.

Transcript of the Proceedings, August 20, 2020, Pg.107, ln.22 to Pg. 108, ln 18.

On the 28<sup>th</sup> of August 2020 the Order was entered. C.P. 583-587. On the 31<sup>st</sup> of August 2020, counsel for the Appellant filed a Notice of Appeal. C.P. 588-594. There were no further motions brought before the trial court.

## **B. Substantive Facts**

On the 20<sup>th</sup> of August 2020, the trial court found the following eighty (8) allegations factually and legally sufficient. Transcript of the Proceedings, August 20, 2020, Pg.107, ln.22 to Pg. 108, ln 18.; C.P. 583-587.

The charges that Jerry Hatcher, Benton County Sheriff, committed misfeasance, malfeasance, and/or violated his oath of office allege that he

1. Illegally appropriated for his own use 14 cases of ammunition belonging to Benton County.
2. Illegally tampered with physical evidence by directing the distribution of ammunition that was potential evidence of his own alleged unlawful acts.
3. Interfered in an investigation into his conduct by acting to prevent witnesses from being interviewed.
4. Violated county anti-discrimination policy by hindering an investigation into his conduct and retaliating against the complainant and witnesses to the investigation.
5. Illegally intimidated public servants and witnesses in investigations into his conduct by raising false allegations of impropriety and threatening witnesses' jobs.
6. Illegally made false or misleading statements to law enforcement and the court regarding the number of firearms he needed to surrender pursuant to a court order.
7. Illegally made false or misleading statements to public servants claiming that he had initiated a criminal investigation into his own conduct when he had not.
8. Falsified a public record by placing a false date on an investigation request.

Should Jerry Hatcher be recalled from office based upon these charges?

It is most efficient to address the eight allegations individually below.

**1. Sheriff Hatcher illegally appropriated for his own use 14 cases of ammunition belonging to Benton County.**

On the 13<sup>th</sup> of January 2020, 14 cases of duty ammunition belonging to Benton County, were located at Sheriff Hatcher’s residence by the Kennewick Police Department. C.P. 151. Benton County Sheriff’ Office (BCSO) Det. Todd Carlson in his declaration indicated that since 2016, that he has been the person responsible for the distribution of ammunition for the Benton County Sheriff's Department. C.P. 99. Additionally, that he had never seen an accumulation of 14 cases of ammunition by an individual at the BCSO. C.P. 99. Further, he indicated that he had never seen ammunition *stockpiled* in the manner the Sheriff had acquired it, in case lot amounts and upon seeing 14 cases of ammunition that it made such an impression that he immediately reported it his immediate supervisor. C.P. 99.

Det. Carlson indicated he observed the following calibers and quantities immediately after it was transported to BCSO by K.P.D in mid-January 2020. C.P. 99.

#	Ammunition	Case(s)
1.	308 Caliber	2 cases (SWAT Duty ammunition) 1 case of .308 Tap ammo 10 boxes / 20 rounds per box= 200 rounds 1 case of .308 Win American Eagle 25 boxes / 20 rounds per box= 500 rounds
2.	.223 Caliber	6 cases which compromise of 5 full

		cases and 1 case with 21 boxes out of 25. A complete case +equals 25 boxes total
3.	.40 caliber	4 Cases 1000 rounds per case
4.	9mm	1 Case 1000 rounds per case
5.	22 caliber LR	1 Case (50 boxes / 100 rounds per box)

Det. Carlson stated that the only firearms assigned to Sheriff Hatcher were a .40 caliber pistol a .223 caliber rifle (NFA) and a 12-gaug shotgun. C.P. 99. Sheriff Hatcher was not to have dominion and control of this firearm. C.P. 99.

At no time since Det. Carlson has been the custodian of ammunition and firearms for BCSO is he aware that Sheriff Hatcher has ever been assigned any weapon that uses .308 caliber ammunition. C.P. 99. and C.P. 100. All known weapons known to use .308 rounds are assigned to only the SWAT team members at BCSO. C.P.100.

Det. Carlson also indicated that all SWAT team ammunition is "duty" ammunition, exclusively as to .308 caliber ammunition. C.P. 101. In summary, the .308 ammunition located at Sheriff Hatcher's residence was SWAT duty ammunition. C.P. 101. Multiple declarants, who have spent a career in law enforcement, indicated there is no record of Sheriff Hatcher ever having been on the SWAT team. C.P. 84. (ret.) BCSO Det. Lee Cantu with over 20 years as a BCSO employee swore that he had no knowledge of Sheriff Hatcher having

had been on SWAT. C.P. 84. Further, BCSO Det. Lee Cantu swore that he could not conceive of a reasonable basis for Sheriff Hatcher to be in possession of such an enormous amount of ammunition. C.P. 84. Cmdr. Law with almost two decades with BCSO indicated that he has been a long time SWAT member and has no memory of Sheriff Hatcher being on SWAT. C.P. 68. BCSO Cmdr. Law with also indicated as follows under oath:

Possessing ammunition for "practice" for calibers of weapons not currently assigned to a member of the office in this quantity is not reasonable. Possessing ammunition in "case" quantities for "practice" ammunition reasonable. Possessing ammunition in "case" quantities for "practice" ammunition defies reason. The purpose of "Practice" ammunition generally is to use the ammunition for weapons you are assigned in order to be proficient in the use of the weapon. If you are not assigned a .308 caliber weapon by Benton County, there is no reasonable need for the county to pay for an employee to practice with this ammunition. This conclusion also applies to the 9mm and the .22 caliber ammunition. C.P. 68- C.P. 69.

It should be noted that there is a reference by Sheriff Hatcher in his declaration that he sent a text to Cmdr. Guerro about ammunition. C.P. 338. Sheriff Hatcher swore under oath this text was sent on the 3<sup>rd</sup> of October 2019. C.P. 338. This makes little sense as the order to surrender firearms had not even been presented to a Judge at this point, as this was done on the 4<sup>th</sup> of October 2019. C.P. 302 -C.P. 305. Further, confusion on the issue of the text, was created by Mr. Telequist in his declaration where he swore in a declaration that Cmdr. Guerro sent Sheriff Hatcher a text on the 18<sup>th</sup> of February 2020 and

attached a copy of the text dated the 18<sup>th</sup> of February 2020 as an exhibit. C.P.614 and C.P. 627.

Finally, there is no record in the entirety of K.P.D. report# 19-40197, where the word ammunition is mentioned or where text messages are referenced by either Cmdr. Guerro, Cmdr. Child, and/or Cmdr. White. C.P. 126- C.P. 155. In summary, there is no reliable relevant record to support Sheriff Hatcher made any efforts to communicate to anyone about ammunition for use by other employees.

**2. Sheriff Hatcher illegally tampered with physical evidence by directing the distribution of ammunition that was potential evidence of his own alleged unlawful acts.**

On the 13<sup>th</sup> of January 2020, Steve Caughey took possession of the ammunition and which caused him concerned as to the stockpiling of the vast volume of ammunition and this activity appeared to constitute a crime. C.P. 160. On the 13<sup>th</sup> of January 2020, Steve Caughey was informed by K.P.D. staff there may be a crime associated with the ammunition located at Sheriff Hatcher's home. C.P.160. At least on one occasion prior to the 14<sup>th</sup> of February 2020, Sheriff Hatcher directed BCSO Cmdr. Steve Caughey to redistribute the 14 cases of ammunition back to the deputies. C.P. 160.

On the 14<sup>th</sup> of February at approximately 4:14 p.m. Sheriff Hatcher requested that Cmdr. Caughey redistribute the ammunition again. C.P. 160. Cmdr. Caughey told Sheriff Hatcher that he believed

that ammunition may be evidence of a criminal act. Cmdr. Caughey indicated that this had also been communicated to him by the Cmdrs. from K.P.D on or about the 13<sup>th</sup> of January 2020. C.P. 160. Sheriff Hatcher was informed by Cmdr. Caughey that he had also contacted counsel about the matter. C.P. 160. On the 17<sup>th</sup> of February 2020, Sheriff Hatcher was informed by email that Cmdr. Law and Cmdr. Caughey were witnesses in a whistleblower matter related to the ammunition. C.P. 160. Between the 13<sup>th</sup> of January 2020 and the 7<sup>th</sup> of May 2020, Cmdr. Law was ordered to redistribute the ammunition on more than one occasion, and he was intimidated with respect to his future employment. C.P. 161 and C.P. 171.

Redistribution of the ammunition would effectively destroy the quality and nature of the evidence. C.P. 20. Those who eventually conducted the administrative investigation had not engaged in any type of per box documentation. Further, no per documentation, i.e. as to each box being photographed or video recorded ever occurred. There is no record of this documentation in the record. C.P. 1-763.

**3. Sheriff Hatcher interfered in an investigation into his conduct by acting to prevent witnesses from being interviewed.**

On the 30<sup>th</sup> of January 2020, BCSO Lt. Erik Magnuson filed a complaint against Sheriff Hatcher asserting violations of the 2008 Benton County Anti-Discrimination and Harassment Policy. C.P. 22. On the 5<sup>th</sup> of February 2020, Sheriff Hatcher cornered Cmdr. Caughey

and asked him very directed questions about whether or not Lt. Erik Magnuson had filed a complaint with Benton County HR. C.P. 23. Initially, Cmdr. Steve Caughey tried to avoid answering in attempts to comply with the policy set out above. C.P. 24. It is uncontested that Sheriff Hatcher forced Cmdr. Caughey to respond to his inquiry about Erik Magnuson. C.P. 23. This was also the finding of Ms. Blatt. C.P. 23, C.P. 272. It is also uncontested that Sheriff Hatcher engaged in this activity as he admitted the same to Ms. Blatt. C.P. 195.

On the 19<sup>th</sup> of March 2020, at the point when Ms. Blatt attempted to interview Cmdr. Law and Cmdr. Caughey, Sheriff Hatcher actively interfered with their ability to be interviewed. C.P. 272. Specifically, Cmdr. Law and Cmdr. Caughey both wished to have counsel present during their interview. C.P. 272. C.P. 24. On the 19<sup>th</sup> of March 2020, Sheriff Hatcher denied Cmdr. Law and Cmdr. Caughey the opportunity to be interviewed although they had no items scheduled that would conflict. C.P. 272. C.P. 24. On the 19<sup>th</sup> of March 2020, they were denied the opportunity to be interviewed when Sheriff Hatcher heard that they were going to have counsel present for the interview. C.P. 272. C.P. 24.

**4. Sheriff Hatcher violated county anti-discrimination policy by hindering an investigation into his conduct and retaliating against the complainant and witnesses to the investigation.**

As set out above there was a pending investigation related to Lt. Magnuson's matter and neither Cmdr. Law nor Cmdr. Caughey had

been interviewed in that matter by the 7<sup>th</sup> of April 2020. C.P. 195- C.P. 196. On the 7<sup>th</sup> of April 2020, BCSO Det. Todd Carlson's immediate supervisor was Cmdr. Caughey. C.P.163. On 7<sup>th</sup> of April 2020, Sheriff Hatcher was aware that Steve Caughey and Cmdr. Law were witnesses in two separate active investigations. C.P.163. On the 7<sup>th</sup> of April 2020, Sheriff Hatcher's was also aware Det. Carlson was part of one of those pending investigations relating to the ammunition. 163. Sheriff Hatcher, unsolicited, contacted for an ad-hoc meeting and made accusations of potential criminal activity as to Cmdr. Law and Cmdr. Caughey. C.P. 164. C.P. 198. This was the first time Sheriff Hatcher had scheduled such a one on one meeting with to Det. Carlson since his employment at BCSO. Sheriff Hatcher's conversation with Det. Todd Carlson was an attempt to communicate with a witness in an investigation that Sheriff Hatcher had initiated. C.P. 164. Further, it was an attempt to intimidate both Cmdr. Law and Cmdr. Caughey due to the nature of the communication, i.e. making allegations about past conduct of criminal nature that was years old. C.P. 164 and C.P. 192.

**5. Sheriff Hatcher illegally intimidated public servants and witnesses in investigations into his conduct by raising false allegations of impropriety and threatening witnesses' jobs.**

The facts set out above in #4 are incorporated by reference into this section. Prior to the 7<sup>th</sup> of May 2020, Sheriff Hatcher requested a meeting with Cmdr. Law and Cmdr. Caughey under the pretext of

staffing on the Patrol and Investigation units. C.P. 169. On 05/07/2020, at 1:30 p.m. Cmdr. Jon Law and Cmdr. Caughey met with Sheriff Jerry Hatcher at the Sheriff's Office, in the Administration conference room. C.P. 169. The meeting went from 1:30 p.m. to approximately 8:00 p.m. It was never anticipated by Cmdr. Caughey or Cmdr. Law that the meeting last 6.5 hours. C.P. 169. The meeting started on staffing issues and quickly moved to Sheriff Hatcher asking detailed questions about Cmdr. Caughey and Cmdr. Law's roles as witnesses in both the HR investigation where Erik Magnuson was a complainant and BCSO IA 20-001. C.P. 169- C.P. 170 Sheriff Hatcher made this statement several times and was asked what was his plan for his command staff and in summary he indicated he didn't yet have one. C.P. 170. C.P. 198.

On the 7th of May 2020, Sheriff Hatcher was aware that Cmdr. Law and Cmdr. Caughey were both witnesses in both investigations and that we had provided statements in both of these investigations. C.P. 173. Sheriff Hatcher went on to discuss how both Cmdr. Law and Cmdr. Caughey should have responded in BCSO IA 20-01. C.P. 172. Sheriff Hatcher told them they should have said they didn't know if having the ammunition was a crime. C.P.172. Sheriff Hatcher admitted to both Cmdr. Law and Cmdr. Caughey that he authorized the 2017 use of ammunition, admitted to his conversations with Det. Carlson and admitted to having a similar conversation with Cmdr. Croskrey. C.P. 172.

Sheriff Hatcher repeatedly in the 6.5-hour meeting indicated that people are calling him a thief and asked them both if they had said it in the investigations. C.P. 170. Sheriff Hatcher repeatedly asked them to confirm what they had said and stated "are you sure" and then indicated that he had the completed investigative binders from the BCSO IA 20-001 on his desk and that he was "going to know." If they were not telling him the truth. C.P. 170. Sheriff Hatcher made a similar statement with respect to the HR investigation. C.P.170.

During the meeting he ordered them not to document what he was saying because they would share it with their attorney. C.P. 170. Sheriff Hatcher then started to ask Cmdr. Caughey why he had even documented the ammunition and filed a report. C.P. 171. It was clear from these questions that Sheriff Hatcher didn't approve of this act. C.P. 171. Further, Sheriff Hatcher referenced his prior request(s) that Cmdr. Caughey redistribute the 14 cases of ammunition back into use despite it being evidence in an investigation. C.P. 171. Sheriff Hatcher was confronted about investigating himself as a suspect and he replied that this was the law and that Cmdr. Law and Cmdr. Caughey should familiarize themselves with this fact. C.P.171. In the 6.5 hour meeting Sheriff Hatcher repeatedly stated that he would find out who was loyal to him and who was not and there would be consequences for those who were not. C.P. 174.

As to a different witness, Cmdr. Tom Croskrey the BCSO liaison to administrative investigation BCSO IA 20-001, a number of

issues arose from March to June 2020. C.P. 91. In early June Cmdr. Croskrey, while still employed with Benton County sent an email to HR formerly filing a complaint regarding his concerns as to the conduct of Sheriff Hatcher. C.P. 47, C.P. 200.

As a part of the process of my resignation, Cmdr. Croskrey had a meeting with administrators from the Benton County Human Resources Department and others. C.P. 200. Cmdr. Croskrey had no issues with his timecard or any issues relating to accounting for any time. C.P. 200.

Cmdr. Croskrey indicated in his complaint to Benton County Human Resources Department that he had a number of conversations since after Sheriff Hatcher's return in the fall of 2019 to the office. C.P. 95. In June 2020, Cmdr. Croskrey reported to HR that it was where Sheriff Hatcher had indicated that he was going to initiate an internal affairs investigation into Cmdr. Croskrey's son, who is a BCSO Deputy. C.P. 95. C.P. 200, C.P. 47-48. Right after saying he was going to start an I/A on Cmdr. Croskrey's son Sheriff Hatcher asked Cmdr. Croskey to call the Tri-City Herald and give them information showing support for him. C.P. 95. At the time Cmdr. Croskrey took the whole conversation as a threat and an attempt to coerce him into supporting him. C.P. 95. Cmdr. Croskrey refused to do this but continued to work until June 2020. C.P. 47.

As indicated the information above was reported by Cmdr. Croskrey to HR during that the above referenced meeting in June 2020. C.P. 47 On the 23<sup>rd</sup> of June 2020, after Cmdr. Croskrey's email and complaint to Benton County Human Resources was public, and Sheriff Hatcher appeared on KONA radio and gave an interview between 4:00 p.m. and 5:00 p.m. C.P. 47 and C.P. 200.

During the interview Sheriff Hatcher, over live radio, made public allegations relating to Cmdr. Croskrey's time management and related to a time care investigation. CP.199-200. Sheand stated that that there were issues relating to his use of time. Sheriff Hatcher clearly knew about Cmdr. Croskrey's complaint and referenced them during his comments on the radi C.P. 47, C.P. 48 and C.P. 200. Cmdr. Croskrey's position as a witness and a whistleblower was public. C.P. 47 and C.P. 200. Cmdr. Croskrey was offended, shocked and intimidated by Sheriff Hatcher's conduct. C.P. 48. And C.P. 200.

**6. Sheriff Hatcher Illegally made false or misleading statements to law enforcement and the court regarding the number of firearms he needed to surrender pursuant to a court order.**

The following facts are not in dispute. On or about the 4th of October 2019 a lawful order was filed in Benton County Superior Court, in the Hatcher v Hatcher matter under Benton County Superior Court Cause No 19-3-00868-03. C.P. 302 -C.P. 305. The order compelled Gerald Duane Hatcher, aka Benton County Sheriff Hatcher, to surrender all firearms in his possession and control including, but not limited to, those located on his person, vehicle, home in Kennewick and Montana. C.P. 304.

The firearms surrender order contained the following language:

The Law Enforcement Officer serving this order shall inform you that the order is in effect upon service and that you must immediately surrender all firearms, other dangerous weapons and any concealed pistol licenses issue under RCW 9.41.070. The serving officer shall conduct any search for firearms, other

dangerous weapons, and concealed pistol licenses as permitted by law. C.P.304.

On the 7th of October 2019, this order was served upon Sheriff Hatcher. C.P. 128. The service was arranged by phone between K.P.D. Commander Chris Guerro and Sheriff Hatcher. C.P.128. A meeting was arranged. There is no evidence that this meeting was not scheduled to occur at Sheriff Hatcher's residence. C.P. 128. No search was discussed. C.P. 128. On or about the 7th of October 2019, the KPD report# 19-40197 indicates that Sheriff Hatcher was served the order by Kennewick peace officers and/or public servants engaged in the duty of enforcing the lawfully executed and served firearms surrender order. C.P. 128 and C.P. 130

On the 7<sup>th</sup> of October 2019, in their first contact on that date, Sheriff Hatcher indicated to Cmdr. Guerro that he had two BCSO department firearms at his residence in Kennewick at 98303 E. Ridgeview. C.P. 128. There is no reference in any part of the 29-page Kennewick Police report of ammunition or duty ammunition. C.P. 128. There is no evidence in C.P. 1-763, that Sheriff Hatcher made a reference to anyone of possessing duty ammunition. There is no reference in the Kennewick Reports (C.P. 126-155 and/or C.P. 205-246) of Sheriff Hatcher or anyone making a reference to ammunition or even using the term. There is no reference in the Kennewick Reports (C.P. 126-155 and/or C.P. 205-246) of Sheriff Hatcher or anyone making a reference to texting or even using the term.

Additionally, there was a second contact between Sheriff Hatcher and Commander Guerro on the 7<sup>th</sup> of October 2019, where an additional firearm was discussed again by phone, and Sheriff Hatcher arranged to surrender this newly discovered firearm. C.P. 130. On the 8<sup>th</sup> of October 2019, Sheriff Hatcher was provided the courtesy of showing up at the Kennewick Police Department to make contact with Cmdr. Guerro and surrender the firearm. C.P. 130. Sheriff Hatcher provided a great deal of specificity when he described to the types, number, and variety of all other firearms he would be surrendering. referenced by Sheriff Hatcher in the reports. C.P. 126-155 and/or C.P. 205-246.

On or about the 15<sup>th</sup> of October 2019, Sheriff Hatcher appeared in court with his attorney at approximately 9:17 a.m. for a Hearing in the Hatcher v Hatcher matter in Benton County Superior Court Cause No 19-3-00868-03. C.P. 308. During the hearing Pat Chvatal, Monica Hatcher's lawyer, said that Sheriff Hatcher still has seven more firearms inside of their family home or shared residence. C.P. 317 - C.P. 318. The hearing closed at 9:33 a.m. C.P. 320.

On the 15<sup>th</sup> of October 2019, Sheriff Hatcher provided no information to the court about the information he had provided to K.P.D. peace officers on the 7<sup>th</sup> of October 2019. C.P. 306-321. Sheriff Hatcher did not inform the trial court administering the firearms surrender order that he had previously indicated that he only had *two* firearms at the

Ridgefield address located in the unincorporated portion of Benton County. C.P. 306-C.P. 321.

According to Kennewick Police Report# 19-40197, it appears that 10:41, just over an hour after Sheriff Hatcher concluded his appearance in court on the 15th of October 2019, Sheriff Hatcher contacted K.P.D. Commander Scott Childs. C.P. 133- C.P.134. Sheriff Hatcher indicated to K.P.D. Cmdr. Childs that he wanted to turn in some firearms reference a court order to surrender firearms to the courts. C.P. 134

This time Sheriff Hatcher requested that Cmdr. Childs appear at Sheriff Hatcher's residence in Kennewick as the weapons were in *his* vehicle which was parked in the garage. C.P. 134. This meeting occurred on the 15<sup>th</sup> of October 2019 at approximately 11:01 a.m., Sheriff Hatcher indicated to K.P.D. Cmdr. Childs and K.P.D. Cmdr. White that he was having carpet installed at the house and his car was blocked by the installer's vehicle and equipment. C.P. 134. Sheriff Hatcher at the end of the meeting mentioned to K.P.D. Cmdr. Childs that he had "several more of his firearms" at the 98303 E. Ridgeview Kennewick residence. C.P. 134. There is no record from C.P. 1-C.P. 763 to suggest that Sheriff Hatcher indicated anything about his appearance in court less than two hours before to Cmdr. Childs or Cmdr. White.

On or about the 15th of October 2019, the KPD report# 19-40197 indicates that Sheriff Hatcher contacted Kennewick peace officers and/or public servants engaged in the duty of continuing to enforce the lawfully executed and served firearms surrender order with respect to the order served on the 7<sup>th</sup> of October 2019. C.P. 128, C.P. 130, and C.P. 134.

On January 13, 2020 at about 3:10 p.m., K.P.D. Cmdr. Chris Guerro and K.P.D. Cmdr. Scott Child arrived at the 98303 E. Ridgeview Kennewick residence. K.P.D. Cmdr. Guerro and K.P.D. Cmdr. Childs went to a basement level garage where the ammunition and guns were located. C.P. 151. They collected 15 cases of duty ammunition, 14 of which were Benton County property and 10 firearms belonging to Sheriff Hatcher, two of which were duty weapons he had referenced on the 7<sup>th</sup> of October 2020. C.P. 128, C.P. 145- C.P. 151. After leaving the Hatcher residence K.P.D. Commander Guerro contacted BCSO Cmdr. Steve Caughey to arrange the transfer to Cmdr. Caughey the possession of the items that belonged to the Sheriff's office with him. C.P. 151-C.P. 152. There is no evidence that any of the actions above occurred as a result of any effort by Sheriff Hatcher regarding securing the 14 cases of duty ammunition located at the residence. (C.P.1-763).

**7. Sheriff Hatcher illegally made false or misleading statements to public servants claiming that he had**

**initiated a criminal investigation into his own conduct when he had not.**

The facts below are sworn to as fact by both Sgt. Jason Erickson and BCSO Tom Croskrey. On the 14<sup>th</sup> of February 2020, Sgt. Erickson was aware of the facts surrounding the 14 cases of ammunition and the 10 firearms located at Sheriff Hatcher's shared residence, and the totality of the facts and circumstances caused me considerable stress, concern, and anxiety to the extent that he could no longer be able to serve his capacity as a Lt. for Sheriff Hatcher and he chose to self-demote. C.P. 21.

On the 14<sup>th</sup> of February 2020, Sheriff Hatcher read Sgt. Erickson's self-demotion resignation letter which referred vaguely to his concerns about property located at his residence. C.P. 21 and C.P. 90-91. Sgt. Erickson had left for the day, but he was ordered back to work by Sheriff Hatcher. C.P. 21 and C.P. 90-91. When Sgt. Erickson provided his letter of resignation in the early a.m. he had originally appeared with my guild attorney. C.P. 21 Sgt. Erickson was called back to work hours later and Sheriff Hatcher informed him that he was going to answer Sheriff Hatcher's questions about his letter and if he would not answer he would be disciplined up to and including termination. C.P. 21 and C.P. 90. Sgt. Erickson asked for his attorney to be present and the attorney appeared, within an hour or so. C.P. 21 and C.P. 90. After Sgt. Erickson's attorney appeared Sheriff Hatcher then ordered or compelled Sgt. Erickson to answer his questions in

order to allow the Sheriff to determine whether a criminal investigation would be instituted. C.P.21 and C.P. 91. During the questioning Sheriff Hatcher was informed by Sgt. Erickson's attorney that he had already sought whistleblower protections relating to the issue surrounding the ammunition/ Benton County property located at the Sheriff's home. C.P. 21. and C.P. 91.

Prior to being interviewed Sgt. Erickson had already engaged in what was understood were to be his duty to report as public servant and issues of misuse of property or funds as has been laid out above. C.P. 21. Sheriff Hatcher ignored this concern and continued to asked questions of Sgt. Erickson. C.P. 21 and C.P. 90.

On the 14th of February 2020, BCSO Sgt. Jason Erickson was a public servant and a peace officer. C.P. 22. and C.P. 91. On the 14<sup>th</sup> of BCSO Sgt. Erickson was questioned by BCSO Sheriff Hatcher regarding a crime where Sheriff Hatcher would be the primary suspect. C.P. 91. At the conclusion of the digitally recorded interview Sheriff Hatcher then informed Sgt. Erickson, a public servant and peace officer and Cmdr. Tom Croskrey, a public servant, that he, Sheriff Hatcher, was instituting a criminal and administrative investigation surrounding the subject of his inquiry of me. Sgt. Jason Erickson C.P. 22 , C.P. 91, C.P. 117.

There is no record that a criminal investigation was instituted. C.P.1-C.P. 763. Additionally, Sheriff Hatcher at no location in the pleadings denied he stated that this occurred. The only reference in

the materials. Sheriff Hatcher swore as follows:

Specifically, the allegation states I violated RCW9A.76.175 on February 14th by Making false or misleading statements; stating I said I would have a criminal investigation done. There was no criminal allegation brought forward by the petitioner or anyone on February 14<sup>th</sup>. C.P. 343

Sheriff Hatcher had every opportunity to deny that he didn't make the statement and he has not stated this in the record. Sheriff Hatcher's failure to provide a justification for the lack of an investigation and the fact that there are no contrary facts support no other conclusion than he made the statement to Sgt. Erickson and Cmdr. Croskrey.

**8. Sheriff Hatcher Falsified a public record by placing a false date on an investigation request.**

When the petition was filed the only document provided to Sgt. Erickson via a public records request was the document at located at C.P. 324. This document in line with the meta date is dated on or about the 21st of February 2020. C.P. 202. C.P. 325. However, the document is dated on its face the 14<sup>th</sup> of February 2020. C.P. 202 and C.P. 324. The letter located at C.P. 324, is a true and accurate copy of an attachment to an email, and the hard copy of a MS word document that is a letter, secured from public records request. C.P. 204 C.P. 323 and C.P. 324. The email was sent on the 21<sup>st</sup> of February 2020, from Benton County Sheriff Jerry Hatcher to Franklin County Sheriff Jim Raymond. C.P. 204 and C.P. 323. The MS Word document information screen is a true and accurate copy of portions of the meta data from the MS word document letter. C.P. 204 and C.P. 325. The Metadata

shows that the MS word document a letter dated 14<sup>th</sup> of February 2020, was created on the 21<sup>st</sup> of February 2020 at 11:23 a.m. and modified by Jerry Hatcher on the 21<sup>st</sup> of February 2020 at 11:23 a.m. C.P. 204 and C.P. 325. Consider also that Sheriff Hatcher had contact on the 14<sup>th</sup> of February 2020 at approximately 4:14 p.m. and the notice provided to Sheriff Hatcher by Cmdr. Steve Caughey, that Cmdr. Caughey believed the ammunition was criminal. C.P. 160. It was during this conversation that Sheriff Hatcher had requested, again, that Cmdr. Caughey redistribute the ammunition, prior to the commencement of any investigation. C.P. 160. There is no documentary evidence that the investigation was initiated prior to the email sent on the 21<sup>st</sup> of February 2020. C.P. 1-763. It was raised to the trial court that a subsequent document was located after the filing of the petition, but that it didn't impact the overall issue of presentation of document with a false date. Transcript of the Proceeding, August 20, 2020, Pg. 56 ln 10.

### **C. Argument**

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 of the Washington State Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270 (1984). In line with this authority, the Legislature adopted Chapter RCW 29A.56. (originally RCW 29.82, but recodified as

RCW 29A.56), which was enacted “to provide the substantive criteria and procedural framework for the recall process.” *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343 (1998).

Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wn.2d 503, 510, 257 P.3d 513 (2011). Courts act as “a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters”, but the court “does not evaluate the truthfulness of those charges.” *Id* at 510. (also citing RCW 29A.56.140).

Charges are factually sufficient if “taken as a whole they do 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, malfeasance, or violation of oath of office.” *Chandler*, 103 Wn.2d at 274. “In this context, ‘*prima facie*’ means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed misfeasance, malfeasance, or violations of the oath of office.” *In re Recall of Wade*, 115 Wn.2d 544, 548, 799 P.2d 1179 (1990).

Pursuant to RCW 29A.56.110 the person making the charge or charges verified under oath that they believe the charge or charges to be true and have knowledge of the alleged

facts upon which the stated grounds for recall are based. There is no requirement that the petitioner have firsthand knowledge of such facts. Rather he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003).

When the charge is a violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Pearsall-Stipek*, 136 Wn.2d at 263. The courts may use supplemental materials to determine whether there is a factual basis for the charge. *West*, 155 Wn.2d at 665-66. Charges must also allege substantial conduct amounting to misfeasance, malfeasance, or violation of the oath of office to be legally sufficient. *Washam*, 171 Wn.2d at 514-15.

RCW 29A.56.110 set out the definition of misfeasance, malfeasance and violations of oath of office are set forth in, as follows:

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 performance of a duty in an improper manner; and
  - (b) Additionally, "malfeasance" in office means the commission of an unlawful

act;

(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.

Applying the above law and applicable law to each of the eight charges below, it clear that all eight are factually an legally sufficient and that the trial court committed no error.

**1. Sheriff Hatcher illegally appropriated for his own use 14 cases of ammunition belonging to Benton County.**

This court has addressed the application of RCW 40.16.020 in a recall matter. *In re Recall Charges Against Feetham*, 149 Wash.2d 860 (2003).

In *Feetham*, Robin Feetham was the mayor of Concrete, Washington. Mayor Feetham while a member of the Concrete Council, performed work on his property that required authorization from the Town regarding permits. *Id.* at 866. Mayor Feetham's property had an associated city file, which included copies of correspondence from the then building inspector and then town attorney advising the Mayor to comply with the law relating to his property. *Id.* at 867. Mayor Feetham failed to obtain required permits, even after being advised of the requirement. *Id.* That file was removed from Town hall and Town possession. *Id.* Mayor Feetham ordered the then clerk/treasurer not to request a law enforcement investigation of the missing file. *Id.* at 867-868.

The removal, for private purposes, other than official Town business, was found to constitute an injury or misappropriation of record. The Mayor's action in taking and keeping that file, and failure to comply, was found to violate, RCW 40.16.020, and of his oath of office. *Id at 868.* Recall was proper pursuant to RCW 29.82. (now recodified as RCW 29A.56.) *Id.* RCW 40.16.020 provides as follows in relevant part as follows:

Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

In the instant case Sheriff Hatcher knew he had the following duty ammunition at the Kennewick residence.

#	Ammunition	Case(s)
1.	308 Caliber	2 cases (SWAT Duty ammunition) 1 case of .308 Tap ammo 10 boxes / 20 rounds per box= 200 rounds 1 case of .308 Win American Eagle 25 boxes / 20 rounds per box= 500 rounds
2.	.223 Caliber	6 cases which compromise of 5 full cases and 1 case with 21 boxes out of 25. A complete case +equals 25 boxes total
3.	.40 caliber	4 Cases 1000 rounds per case

4.	9mm	1 Case 1000 rounds per case
5.	22 caliber LR	1 Case (50 boxes / 100 rounds per box)

Sheriff Hatcher was not assigned any duty weapon for a 9mm caliber weapon. Sheriff Hatcher was not assigned any duty weapon for a 22 caliber LR weapon. Sheriff Hatcher was not assigned any duty weapon for a .308 caliber weapon. All .308 ammunition is duty ammunition and assigned for SWAT members.

Sheriff Hatcher's position that he possessed the ammunition for purposes of practice is not supported by the facts, logic or anyone who works with him that is contained in the record. The following witnesses indicated that the stockpiling of the duty ammunition for calibers you are not assigned to as duty weapons under the pre-text it is for "practice" is non-sensical. Cmdr. Caughey, Cmdr. Law, Det. Todd Carlson, Sgt. Jason Erickson, (fmr.) Cmdr. Tom Croskrey and (ret.) Detective Lee Cantu all clearly have stated under oath the amount of ammunition stockpiled by Sheriff Hatcher was astounding and the vast majority stated under oath it was evidence of a criminal act. It is clear that in January of 2020, Sheriff Hatcher was not even capable of legally using the ammunition.

Sheriff Hatcher knowingly appropriated thousands of rounds to his own use. Sheriff Hatcher knowingly had the 14 cases of duty

ammunition secreted and stockpiled with intent to appropriate the ammunition or county property to his own use and his access to the property was by virtue of his office. The facts relating to charge #1 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance, malfeasance and or violated his oath of office and the trial court committed no error in this determination.

**2. Sheriff Hatcher illegally tampered with physical evidence by directing the distribution of ammunition that was potential evidence of his own alleged unlawful acts.**

RCW 9A.72.150, Tampering with physical evidence, provides as follows:

(1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding;

In the instant matter, on the 14<sup>th</sup> of February 2020, prior to his call to Cmdr. Steve Caughey at 4:14 p.m. Sheriff Hatcher had interviewed Sgt. Jason Erickson. It is uncontested that during the interview Sgt. Erickson identified himself as a whistleblower witness. It is unrefuted that at the close of the interview with Sgt. Erickson, Sheriff Hatcher indicated to Sgt. Erickson and Cmdr. Croskrey that a “criminal” investigation was going to be instituted. Criminal investigations can lead to official proceedings.

After all of these events occurred Sheriff Hatcher called Steve

Caughey at approximately 4:14 p.m. on the 14<sup>th</sup> of February 2020. It is uncontested that Sheriff Hatcher made a direct request during his call with Cmdr. Steve Caughey, that Cmdr. Caughey was to “redistribute” the duty ammunition secured by K.P.D. on the 13<sup>th</sup> of January 2020. The request for redistribution of the ammunition on the 14<sup>th</sup> of February 2020 was before any investigators had been assigned to do anything. There is nothing in the record to support a conclusion that when Sheriff Hatcher repeated his earlier request to redistribute that any case of ammunition had actually been opened to determine the nature and quality of the contents. Redistribution on the 14<sup>th</sup> of February 2020, would have absolutely changed the character of the evidence.

Additionally, prior to 4:14 p.m. on the 14<sup>th</sup> of February 2020, Sheriff Hatcher knew that Sgt. Erickson had identified himself as a whistleblower and had already voiced concerns during his interview, that the interview itself was improper and in violation of the protections afforded to whistleblowers. The mechanisms afforded to whistleblowers as means of securing a remedy include a hearing before an administrative law judge, which is an official proceeding per RCW 9A.72.010 (4).

Sheriff Hatcher’s actions and contact with Cmdr. Caughey constituted a substantial step to tamper with evidence of a crime. There is no question as to Sheriff Hatcher’s understanding given the timeline in the matter and the facts that a reasonable person could conclude he was aware of the nature of his conduct, i.e. he did this act

knowingly.

There is sufficient evidence to show his actions were intentional, deliberate, and even goal directed. The facts relating to charge #2 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance, malfeasance and or violated his oath of office and the trial court committed no error in this determination.

**3. Sheriff Hatcher interfered in an investigation into his conduct by acting to prevent witnesses from being interviewed.**

In *re Recall of Washam*, 171 Wash.2d 503, 510, 257 P.3d 513 (2011), the Supreme Court held that five charges were legally sufficient for a recall petition in that matter.

In *Washam*, the Washington Supreme Court held that allegations as to an elected official accused of violating county ordinances prohibiting certain employment practices was sufficient to support a recall petition. Three of the specific allegations were based upon violations of statutory and/or county ordinances that parallel those included within this matter, in relation to Benton County's adoption of RCW 42.41 and the 2008 Benton County adoption of the Anti-Discrimination Policy.

The five charges sustained in *Washam* were:

1. Retaliating against an employee for filing a complaint against him (*Washam*);

2. Failing to protect an employee from retaliation, false accusations, or future improper treatment, and failing to rectify retaliation in relation to whistleblowers.
3. Refusing to participate in investigations into whether he had discriminated and retaliated against employees.
4. Grossly wasting public funds in pursuing criminal charges against his predecessor
5. Discharging his duties in an unlawful and biased manner. *Id.*

In the middle of March 2020, Sheriff Hatcher clearly engaged in actions where Cmdr. Caughey and Cmdr. Law were not interviewed due to his intentional actions. Specifically, these occurred on the 19<sup>th</sup> of March 2020 and on another occasion. There is no question that Sheriff Hatcher knew that the investigation was related to investigation related to Lt. Magnuson's complaint where Sheriff Hatcher was the subject of the complaint. Sheriff Hatcher was aware of this when he engaged in the conduct. The 2008 Benton County Anti-Harassment Policy provides in relevant part as follows:

The County maintains a personnel policy, prohibiting discrimination and harassment in the workplace, which provides in relevant part as follows (bold for emphasis):

Benton County strictly prohibits and does not tolerate unlawful discrimination or harassment on the basis of age, sex (including pregnancy), marital status, sexual orientation, race, color, creed, religion, national origin, ... or any other protected status, as provided by law.

Unlawful discrimination and harassment can occur in a variety of ways and can include derogatory comments, jokes, names, or pictures, acts of physical aggression, intimidation, hostility, or

unequal treatment based on a protected status.

....

Benton County protects the confidentiality of discrimination and harassment complaints to the extent possible...

Benton County does not tolerate any retaliation against any person for opposing unlawful discrimination or harassment, making a discrimination or harassment complaint, **or participating in an investigation or complaint proceeding.**

**Prohibited conduct includes any adverse treatment that is based on a retaliatory motive and that is reasonably likely to deter an individual from engaging in protected activity.**

Such prohibited conduct can include, but is not limited to, hostility toward a complainant or participant in an investigation, exclusion/ostracism of such individuals, and/or negative remarks about such individuals.

It is clear the Sheriff Hatcher's actions were goal directed on the 19<sup>th</sup> of March 2020. Ms. Blatt, the independent investigator, reasonably concluded Sheriff Hatcher's actions were intended to interfere with Cmdr. Law's and/or Cmdr. Caughey's ability to participate in the investigation. The action of making Cmdr. Law and Cmdr. Caughey whether they could have counsel for the interview or not be paid was reasonably likely to deter them from engaging in the investigation. The appointment for an in-person interview on the 19<sup>th</sup> of March 2020 during the early stages of the world wide pandemic was already scheduled. Both Cmdr. Law and Cmdr. Caughey were the subjects of action that was hostile towards their participation in the matter.

By application of the holding in *Washam*, it is clear that the facts relating to charge #3 are factually and legally sufficient to establish that Sheriff Hatcher committed malfeasance and or violated his oath of office and the trial court committed no error in this determination. In addition, it is clear from the holding in *Washam* that violating county policy in an employment related matter of this nature would also establish misfeasance had occurred.

**4. Sheriff Hatcher violated county anti-discrimination policy by hindering an investigation into his conduct and retaliating against the complainant and witnesses to the investigation.**

Incorporating the analysis from the # 3, immediately above and applying this in more detail to the Erick Magnuson investigation as to what occurred on the 7<sup>th</sup> of April 2020. Specifically, when Sheriff Hatcher met with Det. Todd Carlson and alleged that Cmdr. Caughey and Cmdr. Law had engaged in criminal activity was a clear effort to retaliate against two identified witnesses in that investigation.

Additionally, there was no reasonable basis for Sheriff Hatcher to wait for years to discuss or publish the accusations regarding Cmdr. Law and Cmdr. Caughey. Especially, given the temporal proximity to Cmdr. Law and Cmdr. Caughey's interviews scheduled to occur after the 7<sup>th</sup> of April 2020 in Lt. Magnuson's

matter.

Applying the 2008 Benton County Anti-Harassment Policy it is clear this was a retaliatory act. Ms. Blatt also found it was a retaliatory act based upon the above facts. It was another hostile action towards participants, separated apart and after Sheriff Hatcher had successfully prevented the first attempt at interviewing Cmdr. Law and Cmdr. Caughey. Looking at Ms. Blatt's exhibits and her report it is undeniable that Sheriff Hatcher knew that Cmdr. Law were witnesses in Lt. Magnuson's matter on the 7<sup>th</sup> of April 2020.

Sheriff Hatcher scheduled a meeting with Det. Carlson, which was the first time Det. Carlson had ever had a meeting alone with Sheriff Hatcher. Det. Carlson did not initiate the conversation about anything remotely related to Cmdr. Law and/or Cmdr. Caughey, the topic was raised by Sheriff Hatcher. It was a goal directed effort, purposeful and intentional attempt to damage the reputation of two witnesses. Given, that Cmdr. Caughey was the supervisor of Det. Carlson, it was completely foreseeable that the information would be communicated back to Cmdr. Caughey, and then onto Cmdr. Law. All of the above facts support the conclusion that this was a retaliatory act.

By application of the holding in *Washam*, it is clear that the facts relating to charge #4 are factually and legally sufficient to establish that Sheriff Hatcher committed malfeasance and or

violated his oath of office and the trial court committed no error in this determination. In addition, it is clear from the holding in *Washam* that violating county policy in an employment related matter of this nature would also establish malfeasance had occurred.

**5. Sheriff Hatcher illegally intimidated public servants and witnesses in investigations into his conduct by raising false allegations of impropriety and threatening witnesses' jobs.**

The facts set out above in #4 and the analysis are incorporated by reference into this section. Pursuant to RCW 40.16.020 and/or RCW 42.20.070 "public officer" have a duty in line with to report the willful neglect of duty, especially as to financially based crimes against the public. Specifically, when these acts are committed, by the public officer, or a person holding the public trust.

RCW 9A.04.110(23) renders "public officer" and public servant synonymous terms. "Public officer," for purposes of RCW 40.16.020 includes assistants, deputies, clerks, and employees of any public officer, rather than more restrictive common-law definition of public officer. *State v. Korba* 66 Wash.App. 666, 832 P.2d 1346 (1992).

RCW 9A.76.180, Intimidating a public servant provides in relevant part as follows:

- (1) A person is guilty of intimidating a public servant if, by

use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

- (2) For purposes of this section "public servant" shall not include jurors.
- (3) "Threat" as used in this section means:
  - (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
  - (b) Threats as defined in RCW 9A.04.110.

RCW 9A.72.110 Intimidating a witness. RCW 9A.76.180,

Intimidating a public servant provides in relevant part as follows:

- (1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;

- (3) As used in this section:

- (a) "Threat" means:

- (i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

- (ii) Threat as defined in \*RCW 9A.04.110(27).

- (b) "Current or prospective witness" means:

- (i) A person endorsed as a witness in an official proceeding.

- (ii) A person whom the actor believes may be called as a witness in any official proceeding.

Excluding RCW 9A.04.110(28)(j) from consideration in the analysis Threats defined under 9A.04.110 (28) as to other relevant sections is set out below:

(28) "Threat" means to communicate, directly or indirectly the intent:

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding;

The mechanisms afforded to whistleblowers as means of securing a remedy include a hearing before an administrative law judge, which is an official proceeding per RCW 9A.72.010 (4).

On the 7<sup>th</sup> of April 2020, Cmdr. Jon Law and Cmdr. Steve Caughey were public servants and identified whistle blower witnesses, in two separate open investigations, Ms. Blatt's investigation and the Franklin County Investigation, BCSO IA 20-001, initiated at the direction of Sheriff Hatcher.

Although, no criminal investigation had been instituted by the suspect, here the Sheriff of Benton County, it was foreseeable that one could be instituted in this matter and Cmdr. Caughey and/or Commander Law would be material witnesses.

On the 7<sup>th</sup> of April 2020, Sheriff Hatcher's accusations of potential criminal activity published to first Det. Todd Carlson and later to Cmdr. Tom Croskrey, were reasonably perceived to be threats to

Cmdr. Law and Cmdr. Caughey by the Sheriff to act in his capacity as Sheriff. These were threats per 9A.04.110(28) (d)(e) or (h). This applies in their role as public servants in the execution of their duties as public servants, as potential witnesses in a criminal matter and/ or a whistleblower matter.

On the 7<sup>th</sup> of May 2020, repeated inquiries, and threats as to Cmdr. Law and Cmdr. Caughey's future status and the Sheriff's revisitation of the criminal accusations continued the concerns of Cmdr. Law and Cmdr. Caughey. The actions on the 7<sup>th</sup> of May were also threats per 9A.04.110(28) (d)(e) or (h). This applies in their role as public servants in the execution of their duties as public servants, as potential witnesses in a criminal matter and/ or a whistleblower matter.

On the 23<sup>rd</sup> of June 2020, the allegations of criminal activity by Sheriff Hatcher publicly broadcast during on a KONA radio relating to Tom Croskrey was a clear effort to use the Sheriff's office and the mechanisms therein as a threat. The fact that Tom Croskrey's had provided damaging information was known to Sheriff Hatcher and was discussed during the same program. Tom Croskrey reasonably perceived the statement as a threat per 9A.04.110(28) (d) or (h).

By application of the above applicable statutes and facts it is clear that the facts relating to charge #5 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance,

malfeasance, and or violated his oath of office and the trial court committed no error in this determination.

**6. Sheriff Hatcher Illegally made false or misleading statements to law enforcement and the court regarding the number of firearms he needed to surrender pursuant to a court order.**

RCW 9A.76.175 Making a false or misleading statement to a public servant provides as follows:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor.

"Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

In the instant matter, the following facts are not disputed by Sheriff Hatcher. On the 4th of October 2019 a lawful order was filed in Benton County Superior Court, in the Hatcher v Hatcher matter under Benton County Superior Court Cause No 19-3-00868-03. At the time the order was issued there were contemporaneous allegations relating to a pending Assault in the Second Degree.

On the 7<sup>th</sup> of October 2019, this order was served upon Sheriff Hatcher with the benefit accorded to the Sheriff by virtue of his office. Although, he was the suspect of an assault at the time of the service of the order, Sheriff Hatcher was contacted by phone and service was arranged by a K.P.D. commander. Sheriff Hatcher's order compelled Sheriff Hatcher to surrender all firearms in his possession and control

including, but not limited to, those located on his person, vehicle, residence in Kennewick and Montana. This information and the provision of the same was material information to be provided to the K.P.D officers to allow them to engage in the lawful process of the surrender of firearms. On the 7<sup>th</sup> of October 2019 the first information provided by Sheriff Hatcher was that he had two (2) department weapons at his residence E. Ridgeview Dr. in Kennewick, Washington.

On or about the 15<sup>th</sup> of October 2019, Sheriff Hatcher appeared in court with his attorney at a hearing in the Hatcher v Hatcher matter in Benton County Superior Court Cause No 19-3-00868-03. It was raised by his spouse's lawyer that Sheriff Hatcher still has seven more guns at his residence E. Ridgeview Dr. in Kennewick.

At the hearing Sheriff Hatcher provided no information to the court about the information he had provided to K.P.D. on the 7<sup>th</sup> of October 2019 as their being only two firearms. The number of firearms is clearly material information related to the enforcement of the order. The fact there is a significant difference about the information relating to the prior number of firearms, two firearms, provided to K.P.D, as opposed to seven is not just troubling, it is relevant given the position and knowledge of the person involved, here the Sheriff of Benton County. Additionally, the fact being that when the information occurred in open court and was provided to a Superior Court Judge, it did not come from Sheriff Hatcher, but he did nothing to inform the court about the disparity, clear it up or provide information. From an examination

of the transcript of the proceedings it is clear the court was not aware or informed that there were two duty weapons at the residence E. Ridgeview Dr. in Kennewick, Washington or that this was the information that Sheriff Hatcher had provided law enforcement eight days prior to the hearing.

Approximately an hour after leaving court, on the 15<sup>th</sup> of October 2019, Sheriff Hatcher then engaged in actively contacting a K.P.D. Commander and arranged a meeting. There is no evidence indicating the K.P.D. Commander had any information that Sheriff Hatcher had just appeared in court and the information regarding the number of firearms he had previously disclosed had just tripled. However, Sheriff Hatcher provided new information regarding the number of firearms at the residence E. Ridgeview Dr. in Kennewick, Washington. During this contact Sheriff Hatcher did not communicate that this was up to as many as seven additional firearms more than he had additionally disclosed on the 7<sup>th</sup> of October 2019.

On the 15<sup>th</sup> of October 2019, the nature of the contact by Sheriff Hatcher with the K.P.D. commander is important to note as the Sheriff was contacted at his home and he was afforded the ability to organize the meeting in a what appears to be a very relaxed environment. Two K.P.D. commanders waited outside the Sheriff's residence as he is having renovations done. In passing during the contact, Sheriff Hatcher modified the number of firearms from two (2) departmental firearms, which was the information provided to law enforcement eight

days earlier to “several”. There is no evidence of the K.P.D. commander(s) inquired why the number appeared to have expanded.

Further, it is clear Sheriff Hatcher was intentionally vague and misleading in the provision of information as to content and the circumstances as to the change in information. It is reasonable to conclude that Sheriff Hatcher was aware that had he indicated what had just occurred in open court there may have been some follow-up questions. The complete lack of candor when looking at the intent behind Firearm Surrender Orders after finding by a court there as to a order arising from allegations of domestic violence is apparent when it was later discovered that there was actually 10 firearms and just 14 cases (just under 14 thousand) rounds of Benton County ammunition at the Ridgeview Dr. in Kennewick, Washington.

On the 13<sup>th</sup> of January 2020, K.P.D. arrived and located 10 total firearms belonging to Sheriff Hatcher at the E. Ridgeview Dr. residence, which included two of his duty weapons, one which was a fully suppressed assault rifle. “Several” has many definitions, but there are none that can be located in case law. No definition located was close to 10.

In summary, it is clear that on the 7<sup>th</sup> of October 2019, Sheriff Hatcher provided misleading or false information about the number of firearms at the E. Ridgeview Dr. Kennewick residence as the actual number 10 was actually 5 times greater that the number provided, 2.

It is clear that in the process of service of the order and that Sheriff Hatcher was provided the benefits of his office. In open court when Sheriff Hatcher had an opportunity to correct the record or even address it before a Superior Court Judge he remained silent as to the fact he had provided significantly different information to Law Enforcement. This omission was related to information that the court would require to better assess and take action in the enforcement of a lawful order. It is clear from the transcript the court was unaware that one of the weapons was a fully suppressed assault weapon.

Finally, on the 15<sup>th</sup> of October 2020, the act of arranging a meeting and providing partial new information to K.P.D. that there were now “several” firearms at the E. Ridgeview Dr. residence was a clear attempt to provide vague misleading information to law enforcement who were attempting to enforce a lawful order. The timing of the contact and fact that the information was unsolicited highlights the Sheriff’s motivations as to control the record. The pattern of misleading information over an eight-day period is also important to consider when considering that the source is the chief law enforcement in Benton County.

By application RCW 9A.76.175 it is clear that the facts relating to charge #6 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance, malfeasance, and or violated his oath of office and the trial court committed no error in this determination. .

**7. Sheriff Hatcher illegally made false or misleading statements to public servants claiming that he had initiated a criminal investigation into his own conduct when he had not.**

RCW 9A.04.110(23) renders "public officer" and public servant synonymous terms. "Public officer," for purposes of RCW 40.16.020 includes assistants, deputies, clerks, and employees of any public officer, rather than more restrictive common-law definition of public officer. *State v. Korba* 66 Wash.App. 666, 832 P.2d 1346 (1992).

Pursuant to RCW 40.16.020 and/or RCW 42.20.070 "public officer" have a duty in line with to report the willful neglect of duty, especially as to financially based crimes against the public. Specifically, when these acts are committed, by the public officer, or a person holding the public trust.

RCW 9A.76.175 Making a false or misleading statement to a public servant provides as follows:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor.

"Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

On the 14<sup>th</sup> of February 2020, Sgt. Jason Erickson was called by Sheriff Hatcher to return to work. He was ordered to answer questions related to the above duty. On the 14<sup>th</sup> of February 2020 Sgt. Erickson was acting as a public servant or public officer at all times during his

contact with Sheriff Hatcher. Sgt. Erickson was ordered to provide more details about his prior written stated concerns contained in his resignation letter regarding the legality of Sheriff Hatcher's past actions. During the interview it became clear that the conduct described related to Sheriff Hatcher's possession of thousands of rounds of Benton County duty ammunition.

During the process of engaging in an interview of Sgt. Erickson on the 14<sup>th</sup> of February 2020, Sheriff Hatcher involved Benton County Commander Tom Croskrey. Cmdr. Croskrey also fits the definition of a public servant or officer pursuant to RCW 9A.04.110(23). Cmdr. Croskrey's primary duty was to document, through notes and a digital recording, the investigative interview.

At the close of the interview, after Sheriff Hatcher had been clearly identified as the potential subject in allegations of criminal activity, Sheriff Hatcher provided two public servants, Sgt. Erickson and Cmdr. Croskrey, with material information, stating that a criminal investigation was going to be initiated in relation to the information and concerns stated by Sgt. Erickson. It is uncontested that Sheriff Hatcher made this statement.

It was material information that was relied upon by both Sgt. Erickson and Cmdr. Croskrey in the performance of their duties. It was a false statement. Sheriff Hatcher never instituted a criminal investigation. Sgt. Erickson initially relied upon the

Sheriff's statement until he found out later that it was false. On the 14<sup>th</sup> of February Sgt. Erickson considered the initiation of a criminal investigation to satisfy his duty to report.

The act of Sheriff Hatcher communicating to Cmdr. Croskrey, that he was initiating a criminal investigation, would reasonably inform him that he would be a witness in the future matter and to be prepared in that role accordingly in his official duties.

Sheriff Hatcher provided material information to two public servants engaged in their duties, in a matter where he was an identified suspect, and the information was false. The facts relating to charge #7 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance, malfeasance and or violated his oath of office and the trial court committed no error in this determination.

**8. Sheriff Hatcher Falsified a public record by placing a false date on an investigation request.**

RCW 40.16.020 provides as follows in relevant part as follows:

Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by

imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

Sheriff Hatcher back dated or falsified a record in contravention of RCW 40.16.020, when he backdated a document, an official record, initiating an investigation on the 21<sup>st</sup> of February 2020, but purporting that the document existed and related actions by extension on the 14<sup>th</sup> of February 2020.

The letter which had the effect of delegating Benton County Sheriff Hatcher's duties as to an investigation within his department to Franklin County Sheriff Jim Raymond. The letter contained a false date of creation. This was a falsification of record that pertained to the date of the record. This conduct also violated the Sheriff's oath of office to support the laws of the State of Washington.

Sheriff Hatcher violated of RCW 40.16.020, by generating an official investigation, in a matter where he was an identified suspect, and the information as to the initiation of the document was false. The facts relating to charge #8 are factually and legally sufficient to establish that Sheriff Hatcher committed misfeasance, malfeasance, and or violated his oath of office and the trial court committed no error in this determination.

## VI. CONCLUSION

The superior court did not err in any of the rulings that have been challenged by Sheriff Hatcher in his opening brief. As there is a sufficient factual and legal basis for each of the approved charges, Respondent respectfully request this Court affirm the orders of the Hon Scott Wolfram and approve this recall petition to proceed to the signature gathering phase.

Respectfully submitted,



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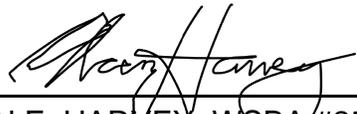
ALAN E. HARVEY, WSBA #25785  
Attorney for the Petitioner

**I. CERTIFICATE OF PERSONAL SERVICE AND ELECTRONIC  
SERVICE**

I hereby certify that on 2<sup>nd</sup> of October 2020, I filed the foregoing in with the Clerk of the Washington State Supreme Court and had the above in this matter which was electronically served upon counsel for Sheriff Hatcher. Additionally, I electronically served and the assigned Benton County Deputy Prosecuting Attorney, at their Office and then by email notification of such filing to the following above attorney of record, Reid Hay :

Reid Hay Deputy Prosecuting Attorney Benton County Prosecuting Attorney's 7122 W. Okanogan Place, Email;	George Telquist TELARE LAW, PLLC 1321 Columbia Park Trail Richland, WA 99352 Email: <a href="mailto:george@telarelaw.com">george@telarelaw.com</a>
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DATED this 2<sup>nd</sup> day of October 2020

  
\_\_\_\_\_  
ALAN E. HARVEY, WSBA #25785  
Attorney for the Petitioner



**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** ["Alan Harvey"](#)  
**Cc:** [George Telquist](#); [Reid Hay](#)  
**Subject:** RE: 98968-1 - In Re the Recall of Gerald D. Hatcher (Benton County Superior Court Cause No. 20-2-00980-3)  
**Date:** Friday, October 2, 2020 11:23:59 AM

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Received 10-2-2020

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**From:** Alan Harvey [mailto:alan.harvey@pnwla.com]  
**Sent:** Friday, October 2, 2020 11:13 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** George Telquist <george@telarelaw.com>; Reid Hay <Reid.Hay@co.benton.wa.us>; Alan Harvey <alan.harvey@pnwla.com>  
**Subject:** FW: 98968-1 - In Re the Recall of Gerald D. Hatcher (Benton County Superior Court Cause No. 20-2-00980-3)

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To whom it may concern,

I called yesterday afternoon. and left a message regarding issue I was having with my wifi and internet access.

I resolved the issue and I have made efforts to present the briefing as quickly as I could this am.

Please advise if providing the Motion by email will suffice until I have resolved my portal issues.

Regards,

Alan E. Harvey  
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