

Greg Kimsey, Auditor
1300 Franklin St., #575
Vancouver, WA 98660

June 28, 2016

Via: Hand Delivery

Re: *Filing of Statement of Charges in favor of the recall of Clark County Council Chair Marc Boldt*

Dear Mr. Kimsey:

This letter shall constitute the Statement of Charges in support of the recall of Clark County Council Chair Marc Boldt pursuant to the Washington Constitution, Article 1, Sections 33 and 34 and RCW 29A.56.110. Councilor Boldt has committed acts of malfeasance, misfeasance and has violated his oath of office while serving as a Councilor on Clark County's Board of County Councilors.

This Statement of Charges is verified under oath, states the acts complained of, and provides facts supporting the acts and is signed by the person making the charge. The undersigned is a legal voter residing in Clark County, Washington.

I. Background

In November, 2014, voters in Clark County voted to increase the number of the Clark County Board of County Councilors ("BOCC") from three to five members. Marc Boldt was elected to one of the new positions as council chair and took office on January 1, 2016. The other new position was filled by Julie Olson. Councilors Jeanne Stewart and David Madore continued serving as Councilors along with the undersigned.

Upon election, Councilors take the oath of office. The oath for Mr. Boldt was as follows:

I, Marc Boldt, do solemnly swear, that I am a citizen of the United States and the State of Washington. That I will support the Constitution of the United States and the Constitution of the State of Washington and I will to the best of my judgment skill and ability truly, faithfully, diligently, and impartially perform the duties of Council Chair as proscribed by the laws of the State of Washington.

Clark County is a home rule charter county. The position of Clark County Councilor is created by the Clark County Charter. The role of the Council is to be the "policy-determining body of the county". Charter Sec. 2.4. The enumeration of the legislative powers of the council "shall not be construed as limiting the legislative powers of the council." *Id.*

The Clark County Board of County Councilors is the legislative branch of Clark County's government. The BOCC must exercise its legislative power by adoption in enactment of ordinances, resolutions and motions. Charter, Sec. 2.4.

Clark County's county manager is part of the executive branch of Clark County's government. *Id.* Sec. 3.1. The County Code provides that the County Administrator is the "chief administrative officer of county government." Clark County Code ("Code") 2.15.010. Pursuant to Code 2.15.040 the County administrator¹ shall generally advise, assist, act as agent for and be responsible to the Board of Commissioners² for the proper and efficient conduct of the administrative affairs of the county as are placed in his/her charge by the board of commissioners. He/she shall be responsible for the enforcement of ordinances, orders, or regulations as directed by the Board of commissioners.

II. Summary of Charges

Councilor Boldt has committed malfeasance and misfeasance as Chair of the BOCC as follows: (1) he knowingly violated the law by violating the Open Public Meetings Act, RCW 42.30, in an effort to have Clark County hire an outside investigator to undertake an investigation of Councilor Boldt's political rival, David Madore; (2) he breached his fiduciary duty by grossly wasting public funds by awarding a contract to The Columbian newspaper to serve as the County's paper of record despite the fact that it was neither the low-cost bidder nor the most widely circulated eligible paper. Rather the contract was a *quid pro quo* reward to The Columbian for favorable coverage regarding Councilor Boldt and attacks on his rival Councilor Madore and to punish the other lower-cost most-widely-circulated bidder, The Reflector, for negative coverage regarding Councilor Boldt, Stewart and Olson -- and objective, more favorable, coverage of Councilor Madore; (3) he purposefully limited the access of his political rivals on the BOCC from advice from the County Prosecutor's office; and (4) he abdicated his statutory legislative responsibilities by permitting the executive branch of Clark County to unilaterally dissolve a County department without authorization or action taken in public by the legislative authority of the BOCC.

III. Acts and Omissions Constituting the Statement of Charges

1. **Councilor Boldt committed misfeasance, malfeasance and violated his oath of office when he and Councilors Olson and Stewart orchestrated the investigation of Councilor Madore while knowingly in violation of the Open Public Meetings Act.**

¹ The Charter uses "County Manager" but the Code which was in effect before the most recent Charter amendments uses "County Administrator", the nomenclature is immaterial as the description of authority remains essentially the same and does not affect the issues raised in this Petition.

² Likewise, the County Code uses the previously name "Board of Commissioners". However the term now used is "Board of County Councilors". Despite the new nomenclature – for instant purposes, its function is identical.

During numerous hearings concerning the consideration of Clark County's periodic review of its Comprehensive Plan, Councilor David Madore expressed concern that the accuracy of the testimony made to the BOCC by Planning Director Oliver Orjiako and Deputy Prosecutors Chris Horne and Christine Cook was knowingly false. Specifically, Councilor Madore alleged that Director Orjiako, and Deputies Horne and Cooke intentionally misled the BOCC with respect to what needed to be considered and the measures and methods the County needed to take when determining various alternative versions of the proposed comprehensive plans then under consideration. In support of his concerns, Councilor Madore produced a document which he supplied to other members of the BOCC and posted on the County's website alleging with specific detail the date, content, nature and effect of the erroneous testimony offered by Deputies Cook and Horne and Director Orjiako. Councilor Madore repeatedly asked for an inquiry into the correctness of his allegations.

Although not intended as such, these inquiries were nevertheless used by various employees of Clark County, including Director Orjiako, to cry foul and play the victim. On March 2, 2016, the local union representing County employees wrote a letter to Clark County Human Resources Director Francine Reis claiming Council Madore had defamed Clark County staff. Similarly, in a letter dated March 15, 2016, Director Orjiako, through his attorney, initiated a Local Government Whistleblower and Equal Employment Opportunity discrimination complaint claiming that Councilor Madore publicly harassed and demeaned him because of the Director's support of a particular version of the proposed comprehensive plan that was then under consideration by the BOCC. These allegations were designed to deter and hinder public oversight of public employees by the officials (in this case David Madore) elected by the people to do just that.

Because the unfounded allegations of bias were impacting Councilor Madore's ability to oversee County employees and projects, he asked that an independent investigator be approved to examine his allegations against Orjiako, Horne and Cook. Instead, on or before March 19, 2016, just four days after Director Orjiako filed his complaint, an outside investigator, Rebecca Dean, was contacted in order to look into *Councilor Madore's* conduct – not that of Horne, Cook, and Orjiako. Only, six days later, on March 25, 2016, County Manager Mark McCauley signed the engagement letter proposed by Dean indicating the assent of the County to the proposed terms. Between March 2, 2016, when the allegation regarding Councilor Madore was first made by the Union, and March 25, 2016, when the contract was executed by Manager McCauley, there were a total of 7 meetings noticed and convened by the BOCC. Not one of these meetings addressed hiring an investigator to look into Councilor Madore's conduct.

The BOCC is a governing body and except in limited circumstances such as executive sessions, its meetings must be public pursuant to the OPMA. The BOCC exercises its legislative power by adoption of ordinances, resolutions and motions. Neither the County's Charter nor its Code provide that the manager, a member of the executive branch, can *sua sponte*, call for an investigation of a member of the legislative branch. In fact, contracts such as the Dean contract must be posted on the County's website for a period of one week so that any Councilor may "pull" them for discussion. Contracts then identified for individual consideration can then only be approved by a majority vote of the Council at a public meeting. Code 2.09.030(2). It is only

after this approval that the County Manager then may execute the contract thereby binding the County.

The decisions to conduct the investigation and to retain an investigator occurred outside of an open meeting, and thus were made in violation of the OPMA. Actions taken outside of properly noticed and published meetings are void. In other words, the County Manager has no authority to independently call for an investigation or contract with an investigator to enquire into the workplace harassment allegedly occasioned by Councilor Madore. Rather, such action must be authorized by the BOCC.

Subsequently, on April 20, 2016, at a Board of County Councilors work session where all Councilors were present, including myself, the Dean contract was discussed. During this meeting, Manager McCauley admitted that:

This Board discussed retaining an attorney or an investigator to investigate ***the allegations made by Councilor Madore against planning staff and our PA's office***. There was unanimity among the board to proceed with that and I think we had discussions on -- on more than one occasion.

It is true that the Board of County Councilors had discussed hiring an attorney to investigate the allegations against Director Orjiako and Prosecutors Horne and Cook. But the actual contract with Dean was the opposite of that described *post hoc* by Manager McCauley. Rather than the allegations against Horne, Cook and Orjiako, the Dean contract turned the investigation on its head and it was the allegations against Councilor Madore that were to be the subject of the investigation.

Manager McCauley further admitted that while the Code requires a contract such as this to be posted, because he had “unanimous support of the Board to move ahead I elected just to sign it and get on with it.” There was no unanimous support because neither Councilor Madore nor I supported hiring an investigator to look into the actions of Councilor Madore.

When asked by Councilor Madore if the BOCC had taken action in open public meeting to authorize the investigation contract, Councilor Jeanne Stewart admitted that it had happened secretly in an executive session, in violation of the OPMA. The law is very clear that all Councilors are entitled to be notified of all executive sessions. However, neither Councilor Madore or I were informed of any executive session wherein it would be contemplated that Councilor Madore was to be the subject of an investigation. Thus the executive session admitted to by Councilor Stewart had been secretly and illegally conducted in violation of the OPMA.

At this same April 20, 2016 work session, Councilor Madore asked if there was “an open meeting action taken to award a contract to this legal firm.” Councilor Madore further stated he was unaware of any such action in the minutes. Neither Councilors Madore nor I were aware of the contract until it appeared in The Columbian newspaper. Deputy Horne admitted that

Councilor Madore is right – they didn't – this thing wasn't posted on the grid correct[ly] and the ordinance requires it to be posted on the grid.

Neither Councilor Madore nor I were aware of the contents of the engagement letter including that Councilor Madore would be a target of the investigation.

From the circumstances described above it is objectively reasonable to conclude that Councilors Boldt, Stewart and Olson met separately to discuss the contract and the topics which were to be investigated and directed Manager McCauley to execute the Dean contract illegitimately on behalf of the County. Councilor Stewart admitted to an "executive session" being held, and any such session was not noticed to the public or two of the five Councilors (Madore and me), and would have been illegally performed as a stand-alone executive session outside of a noticed open public meeting. Further, no action can be taken in an executive session – and according to Councilor Stewart's statements regarding this meeting – action was taken therein. Since funds were expended on the investigation without proper Board consideration or authorization, Councilors Boldt, Stewart and Olson violated their fiduciary duty not to grossly waste public funds.

Councilor Boldt violated the OPMA by not requiring approval of the investigation at a meeting of the Board. Councilor Boldt violated his oath as Councilor by not only permitting the investigation to be started against another legislative member by the executive without proper authority but also by failing to correct this problem when caught. By permitting the expenditure of funds for an improperly authorized action, Councilor Boldt knowingly breached his fiduciary duty to the citizens of Clark County. These are recallable offenses.

A violation of the OPMA is a legally sufficient ground upon which to support a recall petition specifically when allegations are made that a contract was entered into outside of a public meeting and where the executor exceeded the scope of their legal authority. Councilor Boldt violated the OPMA by holding a secret and closed meeting without notice to the public or two of the five Councilors to award a contract to investigate Councilor Madore.³

Further, the expenditure of funds without proper authority is sufficient grounds for recall. When Councilor Boldt authorized Manager McCauley to expend funds to hire the investigator and did not rescind that authorization when it was raised at a meeting of the BOCC, he committed an act of misfeasance, malfeasance and violated his oath of office.

2. Councilor Boldt committed misfeasance and malfeasance and violated his oath of office when he and Councilors Olson and Stewart illegally orchestrated the assignment of the paper-of-record contract to The Columbian.

³ Any claim that this meeting was part of an executive session is not supported by even the barest minimum of facts. All councilors are entitled to notice of all sessions of the BOCC, including executive sessions. Neither Councilor Madore nor I were informed of any executive session where Councilor Madore was contemplated as the target of the investigation, much less for this purpose. If we had, Councilor Madore had the statutory right to demand the hearing be held in public.

Each spring counties must contract with a qualified newspaper to serve as a county's official newspaper of record. RCW 36.72.075. The award of this contract confers substantial business on the winner of the contract as various legal notices must be advertised in the paper of record to constitute adequate legal notice. State law provides that when two or more legal newspapers are qualified to be the newspaper of record, bid proposals may be submitted by interested newspapers. *Id.* The final sentence of RCW 36.72.075 reads as follows:

The county legislative authority shall let the contract to the best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract, with a view to giving publication of notices the widest publicity.

The County solicited applications for consideration of paper of record status. After removing candidates that were not statutorily qualified, it considered the applications of two qualified newspapers, The Columbian and The Reflector. The BOCC then considered these bids in a hearing held on April 5, 2016. The Columbian had a circulation of 24,152. The Reflector had a larger weekly circulation of 28,218. The Columbian stated an expensive rate of \$1.77 per line for the first insertion and \$1.45 for subsequent insertions. The Reflector's rate was significantly less expensive with \$1.02 per line for the first insertion and \$0.84 for subsequent insertions.

Despite the fact that The Reflector's rates were more economical and that it had a wider circulation, Councilors Boldt, Stewart and Olson voted to select The Columbian as the County's paper of record. Councilor Boldt's, Stewart's and Olson's votes were not cast in favor of The Columbian because it was the better selection; rather, the three Councilors supported the lucrative contract as a *quid pro quo* for unfavorable political coverage of their political adversaries, Councilor Madore and myself, and favorable coverage of themselves. They did not select the "best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract" as RCW 36.72.075 requires. Rather, they voted to reward a newspaper that had attacked their opponents and written favorably about themselves and to punish The Reflector for coverage that had been more objective and thus more favorable to Councilor Madore and myself and at times more critical of Boldt, Stewart and Olson.

Since being awarded the contract as the paper of record, The Columbian has waged an all-out editorial campaign against Councilor David Madore and myself. Because I am not running again for reelection but Madore is, The Columbian has focused its editorial wrath on Madore and has run anti-Madore articles and opinion pieces on April 3, April 4, April 5, April 6, April 7, April 12, April 14, April 15, April 19, April 20, April 21, April 22, April 23, April 26, May 5, May 12, May 14, May 15, and May 16, 2016.

Perhaps the most glaring example out of the above is The Columbian Editor Lou Brancaccio's column of May 14 wherein he begins, "[i]f you laid out all the complaints, lawsuits and other stupid stuff Republican County Councilor David Madore is involved with, the pile would reach from here to the doorsteps of Hell...." Mr. Brancaccio then makes further false allegations

including that “[a] county department head is suing him for what he has said about his department.”⁴

Editor Brancaccio abundantly signaled his willingness to “play ball” in his editorial piece published March 19, 2016 where he describes Councilor Madore as “delusional” and exhibiting “inappropriate behavior” toward other Council members. Likewise in a column of March 5, 2016, Mr. Brancaccio compares Councilor Madore to current presidential candidate Donald Trump. He writes:

“I’m able to peek into the Twilight Zone because we have our very own mini-Trump right here in River City. And his name is Madore. As in County Councilor David Madore. Madore has these similar qualities: He’s a rich guy ... check. He had no political experience ... check. He’s a successful businessman ... check. He says he loves the little people ... check. And when he ran, he told us he would shake things up ... double check! Now — after witnessing three years of Madore World — I’m pretty ready to use a word to describe how it’s working. Nightmare.”

The Columbian’s efforts to disparage Councilor Madore and me do not stop with its reporting. The Columbian has taken upon itself to be a retail vendor of a solitary item – coffee mugs with a quote “Don’t Do Stupid Stuff” emblazoned on the mug and attributed to Mr. Brancaccio. Beside this quotation is a cartoonish depiction of Councilor Madore energetically excavating with a pick-axe at the toe of a bank upon which stands an idealized version of the likeness of Brancaccio who looks down at the excavating Madore with a critical eye. Editor Brancaccio often appears at BOCC meetings with the mug in hand communicating his unfavorable view of Councilor Madore. He also wears a tie to the meetings depicting the M&M candy characters, M&M referencing his use of the term to refer to Councilor Madore and myself.⁵

The evidence shows that The Columbian and Councilors Boldt, Stewart and Olson have joined forces against Councilor Madore and myself. In exchange for the award of the contract as the newspaper of record – and despite the fact The Columbian was not the “best and lowest responsible bidder, giving consideration to the question of circulation” and thus was not entitled to the award – The Columbian’s editorial staff continuously disparages Councilor Madore and myself and is trying to bias Clark County voters against Councilor Madore during his reelection bid.⁶ The lackluster circulation numbers and expense of advertising can lead to no other conclusion that the paper of record contract was awarded on a *quid pro quo* basis where the

⁴ The statement is plainly false. To date there has been no suit filed against Mr. Madore or Clark County relating to what Councilor Madore has said about anyone, at any time.

⁵ In fact, The Columbian’s use of the “M&M” logo has been so pervasive as to attract the attention of the Mars Corporation, the owner of the registered trademark of the M&M brand. The use of the “M&M” logo by The Columbian stopped shortly thereafter.

⁶ The Columbian is certainly entitled to say what it wants about me or Councilor Madore but Councilors should not be awarding lucrative government contracts to a less qualified newspaper bidder because they like that the selected paper hates and attacks their opponents where a more qualified bidder has provided more objective coverage.

designation would be granted as an award for the past and future “hit pieces” put out by The Columbian against Councilor Madore and myself. Obviously newspapers have a First Amendment right to express editorial opinions, and it is clear The Columbian and its management absolutely despise and are not objective in their coverage of Councilor Madore and I, but an elected County Councilor should not award lucrative government contracts to less qualified newspaper bidders as a reward for attacking opponents or deny such a contract to a more qualified bidder as punishment for its coverage. Such an abuse of discretion is a violation of duties to faithfully execute the oath of office and constitutes misfeasance and malfeasance.

3. **Councilor Boldt committed misfeasance and malfeasance and violated his oath of office when he and Councilors Olson and Stewart prevented Councilor Madore and myself from utilizing the legal expertise of the Clark County Prosecutor’s Office.**

RCW 36.27.020(2) specifically provides that a county’s prosecuting attorney shall “be legal adviser to all county and precinct officers and school directors in all matters relating to their official business....”

On multiple occasions Councilor Madore has submitted questions to the Prosecuting Attorney or his deputies requesting legal opinions on a variety of matters concerning County governance. The Prosecuting Attorney or his deputies have continually failed to respond to Mr. Madore’s inquiries. On April 19, 2016, the Board voted to allow Deputy Prosecutors Horne and Cook to continue to advise the Board on Growth Management Act (“GMA”) matters despite Councilor Madore’s then-recent accusation that they had knowingly provided false information to the BOCC. It was only after Madore’s personal attorney intervened and personally met with Prosecutor Anthony Golik did the prosecutor’s office decide not to use the waiver and retained outside counsel to advise the BOCC on matters concerning the GMA.

On May 17, 2016 the BOCC, by ordinance, adopted of Rules of Procedure for the BOCC and inclusion in the Clark County Code as 2.09.040 by a vote of 3 to 2 with the 2 being Councilors Madore and myself. Item XI in the Adopted Rules of Procedure provides that “requests to the Prosecuting Attorney for formal legal opinions relating to the county board will be presented in writing and approved by the county manager, board chair or a majority (3) of the board.” Such a provision is in conflict with RCW 36.27.020 and prevents minority council members from obtaining legal advice as must be provided by state statute.

The section in the ordinance – and its application preventing access to legal counsel -- is a violation of the rights of minority Councilors. This section of the procedural rules has never been enforced against the minority members when Councilor Madore and I were in the majority prior to the increase in the number of councilors. By enforcing unlawful procedural rules that violate the statutory requirements of RCW 36.27.020(2), Councilor Boldt has committed an act of malfeasance and misfeasance and violated his oath of office.

4. **Councilor Boldt committed misfeasance, malfeasance and violated his oath of office when he and Councilors Olson and**

**Stewart permitted Manager McCauley to Dissolve a
Department of Clark County.**

The Clark County Charter specifically grants the BOCC the power to levy taxes, appropriate revenue and adopt budgets for the County. Charter Sec. 2.4. The process of establishing a county budget is further set forth in RCW 36.40. The budget process requires both revenues and expenses to be described by offices, departments, services and institutions. RCW 36.40.050.

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

On April 29, 2016, Director Benton filed a whistleblower complaint with the Washington State Auditor and sent the same to Clark County Human Resources Director Francine Reis. In this complaint, Director Benton alleged that County Manager McCauley directed Benton to prepare a report that directly contradicted the BOCC's action taken on December 15, 2015. Specifically, Director Benton alleged that he was ordered to stop the process of putting a particular parcel into surplus as had been previously authorized by the Board. Director Benton alleged that this was part of Manager McCauley's ongoing vendetta against Councilor Madore and I as we had supported putting the parcel into surplus.

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

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

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

The BOCC held no meetings and took no action with respect to the dissolution the department. Both Councilors Madore and the undersigned objected to the dissolution. By not forestalling the dissolution of the Department by Manager McCauley or undertaking appropriate process to dissolve the Department, Councilors Boldt, Stewart and Olson either abdicated their budgetary responsibility under the Charter and RCW 36.40, colluded in secret in violation of the OPMA

and ordered McCauley to effectuate such departmental dissolution or violated their responsibility to the charter by unlawfully yielding their legislative power to the executive.

Such actions were violations of Councilor Boldt's oath of office and are acts of malfeasance and misfeasance.

IV. CONCLUSION

A voter could reasonably conclude based on the facts set forth above that Councilor Boldt committed malfeasance and misfeasance. Similarly, a voter could also reasonably conclude that Councilor Boldt violated his oath of office. Representative office requires more than politics, it requires representing the best interests of constituents and adherence to legal process.

Certification

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and that I have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.

DATED THIS June _____, 2016 in Vancouver, WA.

Tom Mielke, Petitioner