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8 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
9 **OF THE STATE OF WASHINGTON**

9 In re the Matter of Enforcement Action
10 Against:

PDC CASE NO. 87409

FINAL ORDER

11 COMMITTEE TO RECALL BENTON
12 COUNTY SHERIFF JERRY HATCHER,

13 Respondent.
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16 **I. INTRODUCTION**

17 This matter was heard remotely by the Washington State Public Disclosure Commission
18 (PDC, Commission) on May 27, 2021, by audio and online streaming. The hearing was held
19 pursuant to Chapter 34.05 RCW, Chapter 42.17A RCW, and Chapter 390-37 WAC.

20 Commissioners present both telephonically and online were Fred Jarrett, Commission
21 Chair (presiding); Nancy Isserlis, Commission Vice-Chair; and Commissioners William
22 Downing and Russell Lehman. Also present both telephonically and online were Assistant
23 Attorney General John S. Meader representing the Commission; Assistant Attorney General
24 Chad Standifer representing PDC staff; and Phil Stutzman, Compliance Officer, for PDC Staff.
25 Respondent Committee to Recall Benton County Sheriff Jerry Hatcher (Committee), was
26 represented by Kathleen Wierschke, President, who also appeared telephonically and online. The

1 Complainants received notice of the proceedings and the proceedings were open to the public as
2 limited by Governor's Order 20-28 *et seq.* and recorded.

3 The hearing concerned allegations that the Committee violated RCW 42.17A.405(3) and
4 (14) by accepting contributions that exceeded the limits set forth in RCW 42.17A.405 to certain
5 officials against whom recall charges have been filed, or to a political committee making
6 expenditures in support of the recall of such officials.

7 The Commissioners had before them the following materials:

8 Report of Investigation by Phil Stutzman for Case No. 87409, dated May 14, 2021, which
9 included the following:

- 10 ○ Complaint filed by Kevin Morton, dated March 21, 2021;
 - 11 ○ Complaint filed by Shayla Noon, dated March 22, 2021;
 - 12 ○ C-3 Report showing over-limit contributions of Kathlen Wierschke, dated
13 November 20, 2020;
 - 14 ○ C-3 Report showing over-limit contribution of the Benton County Deputy
15 Sheriff's Guild, dated November 20, 2020;
 - 16 ○ C-4 report showing over-limit in-kind contribution of Bryan Pratt, dated
17 February 15, 2021;
 - 18 ○ Compliance Office Phil Stutzman's Summary of conversation with John
19 Hodge, dated April 21, 2021.
- 20
- 21 • Proposed Stipulation as to Facts and Deferred Enforcement of Contribution Limits,
22 submitted by the parties, signed for the PDC on May 19, 2021, by Peter Lavallee,
23 Executive Director, and on May 18, 2021, by Kathlen Wierschke, President, on behalf of
24 the Committee to Recall Benton County Sheriff Jerry Hatcher.
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1 5. On November 6, 2020, the Washington State Supreme Court affirmed the Superior
2 Court's decision that the recall charges were sufficient to proceed with the recall process.

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4 6. On November 6, 2020, Benton County Deputy Sheriff's Guild made an over-limit
5 contribution to the Committee totaling \$5,000, reported by the Committee on November 20,
6 2020 on a C-3 report.

7 7. On January 15, 2021, Bryan Pratt, media consultant, made an in-kind contribution
8 totaling \$3,500 for video production services, reported by the Committee on February 15, 2021
9 on a Summary Report, Contributions and Expenditures report (C-4 report) covering the period
10 January 1, to January 31, 2021.

11 8. The over-limit monetary and in-kind contributions to the Committee were, in summary:
12 Kathlen Wierschke - \$2,347.40; Benton County Sheriffs Guild - \$5,000, and Bryan Pratt –
13 \$3,500. The Committee was allowed to accept \$1,000 from each of the over-limit contributors.

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15 9. On January 30, 2021, the Committee sent a written request to the PDC seeking a waiver
16 of the contribution limits for a recall committee as set forth in RCW 42.17A.405(3). On
17 February 16, 2021, the committee submitted a Petition for Declaratory Order to grant relief
18 from the requirements of RCW 42.17.405(3) and (14) pertaining to contribution limits imposed
19 on recall campaigns. The petition was based on PDC Declaratory Order No. 17 (2015), in
20 which the Commission suspended enforcement of RCW 42.17A.405 as applied to a recall
21 committee based on the precedent set in *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012), and
22 the absence of evidence or appearance of corruption.

23 10. PDC staff investigated the matter and determined:

- 24 a. The Committee was unaware contribution limits applied to recall committees
25 and the Committee did not intentionally exceed the contribution limits of RCW
26 42.17A.405(3) and (14).

- 1 b. The Committee denies any interest in who is appointed Sheriff by the Benton
2 County Commissioners if the recall is successful.
- 3
- 4 c. The Committee has no relationship with the Benton County Sheriff's Guild,
5 from whom it received over-limit contributions, other than the Guild has
6 provided volunteers for events organized by the Committee.
- 7
- 8 d. The Committee spoke briefly with one of the Benton County Commissioners
9 for the sole purpose of understanding the County Commissioners' decision to
10 take control of the Benton County jail from the Benton County Sheriff.
- 11
- 12 e. The Committee recently became aware that John Hodge contributed \$100 to the
13 Committee on August 22, 2020, and later on September 8, 2020, made a
14 statement to the Tri-City Herald that he was looking into the possibility of
15 becoming a candidate for Benton County Sheriff in the future. Mr. Hodge also
16 volunteered as the "voice over" in December, 2020, for radio ads sponsored by
17 the Committee that aired in January, 2021, encouraging listeners to sign a
18 petition to recall Benton County Sheriff Jerry Hatcher.
- 19
- 20 f. Ms. Wierschke stated that when Mr. Hodge provided the volunteer work, the
21 Committee was unaware of his statement that he was considering running for
22 Sheriff. Ms. Wierschke also stated that Mr. Hodge was an inactive member of
23 the Committee's "closed Facebook group" that periodically discusses the recall
24 effort and had been removed from that group.
- 25
- 26 g. Ms. Wierschke further stated the Committee had made it clear to members that
 they were not to contact Mr. Hodge now that they were aware of his possible
 candidacy. The Committee issued a refund to Mr. Hodge of his \$100
 contribution on April 15, 2021, and informed him that, because of his public
 statement, they will have no further contact with him.

1 h. Beyond the contact described above, PDC staff could find no further evidence
2 of contact with Mr. Hodge by the Committee or its members.

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4 11. Except as described in section 10 above, the Committee:

5 a. Has not coordinated any contributions or expenditures with, or allowed
6 decision-making control by, a candidate or potential candidate for Benton
7 County Sheriff or any member of the Board of Benton County Commissioners
8 or its staff.

9 b. Has not had contact or communications with any person known to them at the
10 time to be a declared or undeclared candidate for Benton County Sheriff,
11 concerning the appointment or election of any person to the office of Benton
12 County Sheriff, or concerning any other subject.

13 c. Has not had contacts or communications with employees of the Sheriff's Office
14 or with members of the Board of Benton County Commissioners concerning the
15 appointment or election of any person to the office of Benton County Sheriff.

16 d. Has not 1) coordinated any campaign expenditures with any candidate for
17 Benton County Sheriff or his or her campaign committee; 2) solicited or
18 accepted contributions from such a candidate or his or her campaign committee;
19 or 3) solicited any donations in support of or opposition to such a candidate or
20 his or her candidate committee; and

21 e. Has not included any Benton County Commissioners or staff in Committee
22 decision making, including decisions concerning Committee expenditures, and
23 the solicitation or receipt of contributions.

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1 **IV. CONCLUSIONS OF LAW**

2 1. The Commission has jurisdiction over this proceeding pursuant to Chapter 42.17A
3 RCW, the state campaign finance and disclosure law; Chapter 34.05 RCW, the Administrative
4 Procedure Act; and Title 390 WAC.

5
6 2. Based on the facts set forth above and the agreed stipulation of the parties, Respondent
7 Committee received monetary contributions from Kathlen Wierschke and Benton County
8 Deputy Sheriff's Guild, and accepted an in-kind contribution from Bryan Pratt which exceeded
9 the contribution limits established under RCW 42.17A.405(3) and (14) for a recall campaign.

10
11 3. In recognition of the holding in *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012),
12 enforcement of campaign finance contribution limits against the Committee should be deferred.

13
14 **V. ORDER**

15 Based upon its Findings of Fact and the stipulated Findings and Conclusions, the
16 Commission accepts the agreed Stipulation of the parties and orders that:

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18 1. Enforcement of the monetary and in-kind contributions that exceeded
19 contribution limits as established under RCW 42.17A.405(3) and (14) for a
20 recall campaign are DEFERRED with the following conditions:

21 a. Should the Respondent become aware of the identity of any
22 candidate for Benton County Sheriff, or if any person, when contacted,
23 indicates an intent to run for the office in the future, the Respondent, its
24 officers, directors, and principal decision-makers will not: i) coordinate
25 any campaign expenditures with such a candidate or their campaign
26 committee, ii) solicit or accept contributions from such a candidate or

1 their campaign committee, and iii) solicit any donations or support,
2 whether in support of or in opposition to such a candidate or his or her
3 candidate committee.

4 b. The Respondent will not include any Benton County
5 Commissioners or staff in Committee decision making, including
6 decisions concerning Committee expenditures, and the solicitation or
7 receipt of contributions.

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9 2. The Respondent agrees that its compliance with the conditions of the deferred
10 enforcement set forth in paragraph 1 may be used by the Public Disclosure
11 Commission to assess any current or future complaint that alleges any violation
12 of RCW 42.17A.405(3) or (14) by Respondent in relation to their support for
13 the recall of Benton County Sheriff Jerry Hatcher. If the conditions set forth
14 above in paragraph 1 are found not to have been met, the Respondent may be
15 subject to potential enforcement for any violation(s) of RCW 42.17A.405(3)
16 and (14) including those subject to this order.


17 3. The Committee, its officers, and its principal decision-makers shall continue to
18 comply with all campaign finance laws and requirements of Chapter 42.17A
19 RCW and Title 390 WAC, other than the limitations of RCW 42.17A.405(3)
20 and (14) and its implementing regulations, subject to the requirements
21 proscribed in this Order. This includes requirements applicable to the
22 coordination of expenditures with a candidate or political committee, and
23 requirements applicable to the disclosure of contributions and expenditures.

24 4. The conditions for deferral of enforcement shall remain in effect until the
25 dissolution of the Committee.
26

1 So ORDERED this 10th day of June, 2021.

2 WASHINGTON STATE PUBLIC
3 DISCLOSURE COMMISSION

4 FOR THE COMMISSION:

5 

6 Fred Jarrett,
7 Chair, Public Disclosure Commission

8 *Copy of this Order mailed and/or emailed to:*

9 Kathleen Wierschke, President, Committee to Recall Benton County Sheriff Jerry Hatcher 4505
10 Sunlake Dr., West Richland, WA 99353.

11 Phil Stutzman, PDC Compliance Officer (phil.stutzman@pdc.wa.gov);

12 Chad Standifer, Assistant Attorney General, Counsel for PDC Staff (ChadS@atg.wa.gov).

13 I, Phil Stutzman, certify that I mailed or e-mailed a copy of this order to the Respondent/
14 Applicant at his/her respective address postage pre-paid on the date stated herein.

15 Electronically Signed Philip E. Stutzman, June 10, 2021

16 Signed Date

17 **NOTICE: RECONSIDERATION**

18 Pursuant to the provisions of RCW 34.05.470 and WAC 390-37-150, you may file a Petition for
19 Reconsideration with the PDC within ten (10) days from the date this Final Order is served upon
20 you. Any Request for reconsideration must state the specific grounds for the relief requested.
21 Petitions must be electronically mailed to the Washington State Public Disclosure Commission,
22 711 Capitol Way, Room 206, Box 40908, Olympia WA 98504-0908, pdc@pdc.wa.gov.

23 **NOTICE: PETITION FOR JUDICIAL REVIEW**

24 You have the right to appeal this Final Order to Superior Court, pursuant to the Petition for
25 Judicial Review provisions of RCW 34.05.542. Any Petition for Judicial Review of this Final
26 Order must be filed with the court and also served upon both the Commission and the Office of
the Attorney general within thirty (30) days after the date this Final Order is served upon you.