

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

In the Matter of Enforcement Action
Against:

Committee to Recall Benton County
Sheriff Jerry Hatcher

Respondent.

PDC Case 87409

STIPULATION AS TO FACTS AND
DEFERRED ENFORCEMENT OF
CONTRIBUTION LIMITS

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Peter Frey Lavalley, and Committee to Recall Benton County Sheriff Jerry Hatcher, Respondent, through Kathlen Wierschke, President, submit this Stipulation as to Deferred Enforcement of Contribution Limits. The parties agree the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree in the event the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to a hearing before the Commission.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW, the state campaign finance and disclosure laws; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC.

III. FACTS

1. The Committee to Recall Benton County Sheriff Jerry Hatcher (Committee) is a pro-recall committee that supports the recall of Benton County Sheriff Jerry Hatcher. The Committee registered with the Public Disclosure Commission on July 17, 2020 and selected the Full

Reporting Option. At the time the complaints were filed, and during the period covered by the alleged violations, the Committee officers on the Committee Registration were Kathlen Wierschke, President and Crystal Christian, Treasurer.

2. On July 17, 2020, Jason Erickson, a Deputy Benton County Sheriff, filed a Statement of Charges with the Benton County Auditor for the recall of Jerry Hatcher, in Benton County Superior Court.
3. On July 27, 2020, the Benton County Auditor sent the Statement of Charges to the Benton County Prosecuting Attorney for review and to write a Ballot Synopsis.
4. On July 30, 2020, Reid W. Hay, Deputy Prosecuting Attorney, filed a Proposed Ballot Synopsis in Re Petition for recall of Jerry Hatcher, Benton County Sheriff, in Benton County Superior Court.
5. On August 13, 2020, the Benton County Superior Court Judge assigned to rule on the Petition continued the hearing on the sufficiency of the Statement of Charges to August 20, 2020.
6. On August 20, 2020, it was determined in Benton County Superior Court the recall charges were sufficient to proceed with the recall process.
7. On August 21, 2020, Sheriff Jerry Hatcher appealed the Superior Court decision to the Washington State Supreme Court.
8. On November 6, 2020, the State Supreme Court affirmed the Superior Court's decision that the recall charges were sufficient to proceed with the recall process.
9. On November 20, 2020, the Committee filed a Cash Receipts, Monetary Contributions Report (Form C-3) disclosing two contributions from Kathlen Wierschke, received August 22, 2020, totaling \$2,347.40.
10. On November 20, 2020, the Committee filed a C-3 report disclosing a monetary contribution from Benton County Deputy Sheriff's Guild, received November 6, 2020, totaling \$5,000.

11. On February 15, 2021, the Committee filed a Summary Report, Contributions and Expenditures (C-4 Report) covering the period January 1 – January 31, 2021, disclosing an in-kind contribution from Bryan Pratt, media consultant, received January 15, 2021, totaling \$3,500, for video production services.
12. The Committee’s over-limit contributions are summarized below:

<u>Kathlen Wierschke Contributions</u> August 22, 2020: \$2,200.00 August 22, 2020: \$ 147.40 Total Monetary Contributions: \$2,347.40
<u>Benton County Deputy Sheriff’s Guild Contribution</u> November 6, 2020: \$5,000 Total Monetary Contributions: \$5,000
<u>Bryan Pratt In-Kind Contribution</u> January 15, 2021: \$3,500.00 (In-kind contribution for video production services) Total In-Kind Contributions: \$3,500

13. The Committee was allowed to accept \$1,000 from each of the over-limit contributors.
14. On January 30, 2021, the Committee sent a written request to the PDC seeking a waiver of the contribution limits for a recall committee set forth in RCW 42.17A.405(3). On February 16, 2021, in support of the written request, the Committee submitted a petition for a declaratory order to grant relief from the requirements of RCW 42.17A.405(3) and (14), pertaining to contribution limits imposed on recall campaigns. The petition was based on PDC Declaratory Order 17 (2015), in which the Commission suspended enforcement of RCW 42.17A.405 as applied to a recall committee, based on the precedent set in *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012) and the absence of evidence or appearance of corruption.

15. In addition to reviewing the Committee's written request seeking a waiver of the contribution limits for a recall committee and the Committee's request for a Declaratory Order, PDC staff spoke with Kathlen Wierschke, President of the Committee, about the Committee's written assertions, and spoke with John Hodge, a committee volunteer. Staff learned:

- a. The Committee was unaware contribution limits applied to recall committees. The Committee did not intentionally exceed the contribution limits of RCW 42.17A.405(3) and (14).
- b. The Committee is focused on its recall efforts and has no interest in who is appointed Sheriff by the Benton County Commissioners if the recall effort is successful, or in who becomes a candidate for Sheriff in the future.
- c. The Committee has no relationship with the Benton County Deputy Sheriff's Guild, from whom it received an over-limit contribution, other than the Guild has provided volunteers for events organized by the Committee.
- d. The Committee spoke briefly with one of the Benton County Commissioners for the sole purpose of understanding the County Commissioners' decision to take control of the Benton County jail from the Benton County Sheriff.
- e. The Committee recently became aware that John Hodge: (1) contributed \$100 to the Recall Committee on August 22, 2020; (2) made a statement to the Tri-City Herald on September 8, 2020 saying he was looking into the possibility of becoming a candidate for Benton County Sheriff in the future; and (3) volunteered as the "voice-over" in December 2020 for radio ads sponsored by the recall committee in January 2021 encouraging listeners to sign a petition to recall Benton County Sheriff Jerry Hatcher.
- f. Kathlen Wierschke stated when Mr. Hodge provided the volunteer work, the Committee was unaware of his statement to a newspaper reporter that he was considering running for Sheriff. Ms. Wierschke also stated Mr. Hodge was an inactive member of the Committee's "closed Facebook group" that periodically

discussed the recall effort, but said Mr. Hodge was not an active member of the group. Ms. Wierschke said Mr. Hodge has been removed from the Committee's closed Facebook group.

- g. Kathlen Wierschke said the Committee has made it clear to its members that none of its members are to contact Mr. Hodge since they are now aware of his earlier statement to the Tri-City Herald. Ms. Wierschke said the Committee is not aware whether Mr. Hodge is seeking the interim appointment, is planning on seeking election, or is still considering the position. The Committee issued a refund to Mr. Hodge on April 15, 2021 of his \$100 contribution, and in conjunction with issuing the refund check, informed Mr. Hodge that, because of his statement, the Committee will have no further contact with him.
- h. Other than the conduct described above, the Committee has had no contact or communication with Mr. Hodge.

STATUTORY AUTHORITY

RCW 42.17A.405(3) and (14) prohibit making or accepting, respectively, contributions that exceed the limits set forth in RCW 42.17A.405 to certain officials against whom recall charges have been filed, or to a political committee making expenditures in support of the recall of such officials. In 2020 and 2021 the applicable contribution limit concerning county officials is \$1,000.

DEFERRED ENFORCEMENT

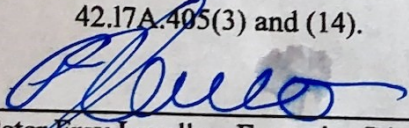
- 1. Based on the facts set forth above, the Respondent stipulates that the monetary contributions received from Kathlen Wierschke and Benton County Sheriff's Guild, and the in-kind contribution received from Bryan Pratt exceeded the contribution limits established under RCW 42.17A.405(3) and (14) for a recall campaign by a total of \$7,847.40, but further states that Respondent, its officers and directors, and principal decision-makers (including any person who has provided significant input to the Committee):

- a. Have not coordinated any contributions or expenditures with, or allowed decision-making control by, a candidate or potential candidate for Benton County Sheriff or any member of the Board of Benton County Commissioners or its staff;
 - b. Have not had contact or communications with any person known to them at the time to be a declared or undeclared candidate for Benton County Sheriff, concerning the appointment or election of any person to the office of Benton County Sheriff, or concerning any other subject;
 - c. Have not had contacts or communications with employees of the sheriff's office or with members of the Board of Benton County Commissioners concerning the appointment or election of any person to the office of Benton County Sheriff;
 - d. Have not (1) coordinated any campaign expenditures with any candidate for Benton County Sheriff or his or her campaign committee, (2) solicited or accepted contributions from such a candidate or his or her campaign committee, or (3) solicited any donations or support in support of or in opposition to such a candidate or his or her candidate committee; and
 - e. Have not included any members of the Board of Benton County Commissioners or staff in Committee decision-making, including decisions concerning Committee expenditures, and the solicitation or receipt of contributions.
2. In recognition of applicable federal law, and Respondent's statements set forth above in paragraph 1, enforcement as to any violations of RCW 42.17A.405(3) and (14) committed by Respondent based on the facts of this case as set forth above will be deferred, upon adherence to the following conditions:
- a. Should the Respondent become aware of the identity of any candidate for Benton County Sheriff, or if any person, when contacted, indicates an intent to run for the office in the future, the Respondent, its officers, directors, and principal decision-makers will not 1) coordinate any campaign expenditures with such a candidate or his or her campaign committee, 2) solicit or accept contributions

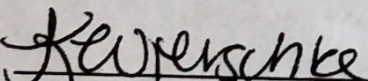
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from such a candidate or his or her campaign committee, or 3) solicit any donations or support in support of or in opposition to such a candidate or his or her candidate committee; and

- b. The Respondent will not include any members of the Board of Benton County Commissioners or staff in Committee decision-making, including decisions concerning Committee expenditures, and the solicitation or receipt of contributions.
3. The Respondent's compliance with the conditions of the deferred enforcement set forth above in paragraph 2 will be used by the Public Disclosure Commission to assess any future complaint that alleges any violation of RCW 42.17A.405(3) and (14) by the Respondent in relation to its support for the recall of Benton County Sheriff Jerry Hatcher. If it is found the conditions set forth above in paragraph 2 have not been met, the Respondent may be subject to potential enforcement for any violation(s) of RCW 42.17A.405(3) and (14).


Peter Frey Lavalley, Executive Director
Public Disclosure Commission

5/19/2021
Date Signed


Kathlen Wierschke, President, Committee to
Recall Benton County Sheriff Jerry Hatcher

5/18/21
Date Signed