

**Benton County Officials**  
**Executive Summary and Staff Analysis**  
**PDC Case 2311 (formerly 15-001)**

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in a Public Disclosure Commission (PDC) complaint concerning Benton County Officials and PDC Case 2311 (formerly 15-001). This case resulted from a complaint that was initially filed with the PDC. There was a subsequent 45-Day Citizen Action Letter (Complaint) filed on this matter with the Washington State Attorney General's Office, and with the Benton County Prosecutor.

**I. Background and Timeline**

In September of 2012, the Benton County Commissioners approved the creation of the Benton County Criminal Justice Sales Tax Citizens Advisory Committee (Advisory Committee) that included Benton County residents, and local and county officials that were approved by the Benton County Commissioners, to analyze and review all aspects of the Benton County criminal justice system. The Advisory Committee met from September 2012 through July 2013 to determine the criminal justice needs of Benton County, and the cities of Kennewick, Prosser, Richland and West Richland.

The Advisory Committee completed their work and reported to the Benton County Commissioners in late summer of 2013, recommending the Commissioners place a measure on the ballot for a 0.3% sales tax increase to fund the county's current and future criminal justice needs, and the Commissioners supported sending a ballot measure to the voters. However, the Commissioners recommended that the Benton County Law & Justice Council (BCLJC) provide their thoughts on the overall criminal justice needs for Benton County and the local cities.

The BCLJC is comprised of Benton County officials and local city officials within Benton County, and "was designed to encourage collaboration among local criminal justice agencies to maximize and share local resources." In January of 2014, the BCLJC finalized their work and reported to the Benton County Commissioners their recommendations for Benton County's criminal justice needs that included how much revenue would be generated from the sales tax increase, how those funds would be spent and allocated between Benton County and the cities of Kennewick, Prosser, Richland and West Richland, and the proposed ballot language.

On February 14, 2014, the Citizens for Safe Communities PAC (CSC PAC) filed a Committee Registration (C-1pc report) registering as a ballot committee in support of the August 5, 2014, Benton County law and justice ballot proposition. The C-1pc disclosed CSC selected the Full Reporting option, listed Al Wehner, as the Campaign or Committee Manager; and Josie Delvin, as Committee treasurer.

On March 4, 2014, the Benton County Commissioners approved Resolution 14-5, and placed a ballot proposition on the August 5, 2014 primary election ballot, to increase the sales and use tax to fund law and justice needs throughout Benton County.

On May 20, 2014, the West Richland City Council held an open public meeting in which the council adopted a Resolution in support of Proposition 14-5. On June 3, 2014, the Richland City Council at an open public meeting, adopted Resolution No. 85-14 "Supporting Proposition 14-5, to Increase the Sales Tax by 0.3% in Benton County for Public Safety Spending.

On March 17, 2014, the Benton County Citizens for Efficient Criminal Justice and Law Enforcement filed a C-1pc report registering as a ballot committee in opposition to the August 5, 2014, ballot proposition.

On June 26, 2014, Radphord-Leon Howard filed a complaint with the PDC alleging that several public officials and public agencies in Benton County violated RCW 42.17A.555 by using public resources to aid a campaign in support of a ballot measure to increase taxes to support regional policing. In addition, Mr. Howard and Roger Lenk, a local citizen who has filed previous complaints with the PDC, filed the following information with the PDC:

- On July 16, 2014, Mr. Howard files a "first supplement" to the complaint alleging that several officials in Benton County violated RCW 42.17A.555, and he made new allegations of violations of RCW 42.17A.565 for local officials' soliciting contributions from employees of their agencies.
- On July 18, 2014, Mr. Howard filed a 45-Day Citizen Action Complaint (Complaint) with the Attorney General's Office, alleging that several Benton County officials, and officials from the cities of Kennewick, Prosser, Richland and West Richland, violated RCW 42.17A.555 by using public resources of their respective agencies to support the August 5, 2014 ballot proposition.
- On July 29, 2014, Mr. Howard files a second supplement to the complaint alleging: (1) Several officials in Benton County violated RCW 42.17A.555; (2) CSC failed to disclose the complete addresses for contributors and committee vendors as required; and (3) several local Benton County law enforcement unions and non-profit organizations concerning the use of agency shop fees to make political contributions.
- On September 18, 2014, Roger Lenk, submitted an email and attached: (1) An email from Kennewick Police Chief Ken Hohenberg to Kennewick City Manager Mosley transmitting a copy of his 2014 Performance Review; and (2) A March 22, 2014, email from Prosser Mayor Paul Warden providing recipients information about CSC including fundraising goals and solicited support for the committee.
- On September 26, 2014, Mr. Lenk submitted an additional email providing copies of documents he received from the City of Kennewick in response to a public records request

On August 5, 2014, the citizens of Benton County approved Proposition 14-5 by 1,969 votes, 18,873 "Yes" votes (52.69%) to 16,944 "No" votes (47.31%).

## **II. Allegations and Respondents**

The complaints and supplemental information provided by Mr. Howard and Mr. Lenk, concerned the following:

- Alleged numerous violations of RCW 42.17A.555 for use of public facilities to support a ballot proposition involving Respondents five through 19 listed below.

- Alleged violations of RCW 42.17A.565 by Sheriff Keane and Chief Hohenberg for soliciting contributions from their subordinates, employees, etc....
- Alleged violations of RCW 42.17A.235 and .240 by the CSC PAC for failing to timely file Monetary Contribution reports (C-3 reports) and Summary, Full Report Receipts and Expenditures (C-4 reports).
- Alleged violations of RCW 42.17A.240 by CSC PAC for failing to provide the required contributor information including an address, City, State and Zip Code on C-3 reports, and the required vendor information including an address, City, State and Zip Code on C-4 reports.
- Alleged violations of RCW 42.17.245 by CSC PAC for failing to timely file C-3 and C-4 reports electronically using the Online Reporting of Campaign Activity disclosing contribution and expenditure activities.
- Alleged violations of WAC 390-16-034 by CSC PAC for failing to provide the occupation, and the name and address of the person's employer for each individual person who has contributed more than \$100 to the committee in the aggregate.
- Alleged violations of RCW 42.17.500 by the West Richland Police Officers Association, Kennewick Police Officers Benefit, and Kennewick Police Management Association, by using "agency shop fees of the organizations listed above to make contributions to CSC PAC.

The 19 Respondents listed in the complaint, and the supplemental complaints included the following:

1. CSC PAC, a local political committee that supported the sales and use tax measure and its committee officers.
2. West Richland Police Officers Association.
3. Kennewick Police Officers Benefit.
4. Kennewick Police Management Association.
5. The Cities of Kennewick, Prosser, Richland, and West Richland.
6. Andy Miller (Benton County Prosecuting Attorney).
7. Jerome Delvin (Benton County Commissioner).
8. Josie Delvin (Benton County Clerk).
9. Eric Hsu (Public Defense Manager, Benton County Office of Public Defense).
10. Steven Keane (Benton County Sheriff).
11. Jacki Lahtinen (Administrator, Benton County District Court).
12. David Giles (City of Prosser Police Chief).
13. Paul Warden (City of Prosser Mayor).
14. Rachel Shaw (City of Prosser Clerk).
15. Brian McElroy (City of West Richland Police Chief).
16. Julie Richardson (City of West Richland City Clerk).
17. Ken Hohenberg (City of Kennewick Police Chief).
18. Chris Skinner (City of Richland Police Chief).
19. Al Wehner (City of Richland Former Police Captain).

### **III. Investigative Findings and Conclusions**

Based on the factors identified in the Report of Investigation, staff found and concluded that the six allegations listed below have merit that warrant either enforcement action before the Commission or PDC staff issuing warning letters.

#### **First Allegation – Use of public facilities to support a ballot proposition (RCW 42.17A.555)**

At 12:00 pm on May 13, 2014, a press conference was held at the Sun Pacific Energy facility in Kennewick, a privately-owned building, in which five local law enforcement officials appeared and included Steven Keane, Benton County Sheriff; Ken Hohenberg, City of Kennewick Police Chief; Chris Skinner, City of Richland Police Chief; David Giles, City of Prosser Police Chief; and Brian McElroy, City of West Richland Police Chief.

The press conference supported the August 5, 2014, Benton County criminal justice ballot measure.

The press conference was scheduled for the noon hour to allow the law enforcement officers in attendance the opportunity to attend the event during their personal lunch hour. All five of the law enforcement officers in attendance at the press conference in support of the ballot proposition, wore their respective county or city police uniforms and drove to the press conference in their respective county or city patrol cars.

**PDC Interpretation 04-02** includes a section for Uniforms and Related Equipment and discusses Permitted, Not Permitted, and General Considerations that includes the following under the Not Permitted column:

- Agency employees shall not use or wear their agency issued, agency-purchased, agency-owned or agency replaced uniforms to assist a campaign or to support or oppose a ballot proposition. (Note - this prohibition applies to use of any part of such a uniform including the shirt, pants, shoes, hat, etc.).
- This same prohibition also applies to related equipment including but not limited to: firearms; badges; nametags; holsters; handcuffs; jackets; belts; vests; shoes; agency patches, logos, insignias, emblems; and radios. Prohibited uses include but are not limited to using or wearing those uniforms at campaign functions. Exceptions exist for officials to attend campaign functions in uniform and may be made on a case-by case basis under exigent circumstances

In the responses from the law enforcement officials, all five acknowledged wearing their respective uniforms at the press conference, and driving their assigned patrol cars to the event. In addition, while the law enforcement officials were conducting official business before and after the press conference, there was no exigent circumstances that arose during the press conference.

**Second Allegation – Failure to timely file C-3 and C-4 reports (RCW 42.17A.235 and .240)**

On February 14, 2014, CSC PAC filed a Committee Registration (C-1pc report) registering as a ballot committee in support of the August 5, 2014, Benton County law and justice ballot proposition.

CSC PAC was a first-time political committee formed in 2014, and the C-1pc disclosed the committee selected the Full Reporting option, listed Al Wehner, as the Campaign or Committee Manager; and Josie Delvin, as Committee treasurer. The campaign finance reports filed by CSC (C-3 and C-4 reports) disclosed that the committee raised and spent a total of \$29,296.

The initial paper-filed C-3 and C-4 reports submitted by CSC PDC were filed at the same time, and contained contribution and expenditure information that was disclosed for incorrect and overlapping reporting periods (i.e.- April 9 to May 9 and May 9 to June 9, 2014, instead of April 1-30 and May 1-31, 2014).

Two of the paper-filed C-4 reports were filed late disclosing \$12,696 in contributions received and \$3,770 in expenditures made and included: (1) the initial C-4 report which was filed three days late; and (2) the March 10 to April 9, 2014 C-4 report which was filed four days late.

CSC PAC filed several C-3 reports (manually on paper) that included multiple bank deposits, and those contributions were not timely disclosed on a separate C-3 report. The late filed contributions totaled \$12,450, were disclosed one to 22 days late, and were required to have been disclosed on a separate C-3 report, and represented 42.5% of all contributions received.

**Third Allegation – Failure to timely file C-3 and C-4 reports electronically (RCW 42.17A.245)**

The electronic filing requirements in RCW 42.17A.245 requires political committees expending or expecting to expend \$5,000 in the current year to comply with the law and file the C-3 and C-4 reports using the PDC's Online Reporting of Campaign Activity (ORCA) or similar campaign finance filing software.

CSC PAC made a \$1,370 expenditure on May 27, 2014 to Diane Wehner, to reimburse her for an out-of-pocket purchase for committee yard signs. When combined with other CSC expenditures incurred prior to May 27, 2014, the \$1,370 expenditure resulted in CSC PAC's expenditures totaling \$5,751, which exceeded the \$5,000 electronic filing expenditure threshold.

CSC PAC was required to file its committee C-3 and C-4 reports electronically using ORCA or similar campaign finance filing software on May 27, 2014.

On July 31, 2014, CSC PAC electronically filed its C-3 and C-4 reports, six days before the August 5, 2014 primary election date. CSC PAC electronically filed the C-3 and C-4 reports 64 days late, based on the required electronic filing date of May 27, 2014.

**Fourth Allegation – Failure to timely disclose required contributor and vendor information (RCW 42.17A.240)**

The initial paper-filed C-4 reports submitted by CSC PDC failed to disclose the complete address for vendors disclosed on the Schedule A to C-4 report. The initial paper-filed C-3 reports submitted by CSC PAC failed to disclose the complete address for contributors of \$25 or more, and the Employer and Occupation information for contributions received from individuals of more than \$100.

On August 9, 2014, four days after the primary election was held, CSC filed several amended C-3 and C-4 reports electronically, disclosing the complete mailing address for most contributors and vendors.

**Fifth Allegation – Failing to provide the occupation and employer information for individuals who contributed more than \$100 (WAC 390-16-034).**

The initial paper-filed C-3 reports submitted by CSC PDC failed to disclose the Employer and Occupation information for 28 individuals who contributed more than \$100.

Once CSC PAC became aware of the complaint, and the Employer and Occupation disclosure requirements, the committee filed amended C-3 reports electronically providing the Employer and Occupation for 23 individual contributors that made monetary contributions of more than \$100. CSC listed “Unknown” in the Employer and Occupation sections of the C-3 reports for five individuals.

**Sixth Allegation – Use of public facilities to support a ballot proposition (RCW 42.17A.555)**

In 2000, the Washington State Legislature passed legislation (RCW 72.09) requiring each county in Washington State to create a county law and justice council.

Benton County created the BCLJC, which is comprised of Benton County officials and local city officials within Benton County including most the Respondents listed above in section II. In late summer of 2013, the Benton County Commissioners supported sending a ballot measure concerning criminal justice funding to the voters, but requested recommendations from the BCLJC about the overall criminal justice needs for Benton County.

Eric Hsu, Benton County Public Defense Manager, was the Chair of the BCLJC at the time of the request from the Benton County Commissioners.

On September 18, 2013, Mr. Hsu, using his Benton County work computer and county email address, sent an email to the email to all BCLJC members at their public email addresses, and attached the “Strategic Plan” document that he had received from Mr. Wehner. The email reminded members of the upcoming September 25, 2013 BCLJC meeting, and requested the members take the time to review the attached Strategic Plan in detail, so that it can be discussed and presented for formal adoption by the BCLJC at the September 25, 2013 meeting.

The Strategic Plan was a 14-page document was broken down into three sections (Sections A-C) that began with a Preface that included the following statements:

*“This plan includes various issues the campaign committee should consider in promoting the ballot measure.”*

*“This plan is designated to serve as a starting point for both the BCLJC and campaign committee. Recommendations offered are based upon my knowledge and experience in campaign matters. Persons participating in this effort, who have political experience, are encouraged to offer their insight and opinions. It is anticipated the plan will be changed as needed to ensure successful passage of the measure.”*

*“Passage of this measure is critically important to the criminal justice system in Benton County.”*

Section C of the Strategic Plan was entitled “The Role of the Campaign Committee” and provided information concerning creating a political committee in support of a local ballot measure. The information in Section C: (1) discussed the legal requirements and goals of a ballot measure committee; (2) identified key committee positions, without naming any specific individuals; (3) described the positions of committee officers, campaign manager, and steering committee members, along with the duties and responsibilities for each position; (4) identified other committee positions such as voter analyst, and coordinators for fundraising, advertising, doorbelling, and yard signs; (5) included a one and one-half page committee timeline with a detailed chart which discussed dates by which specific committee activities should be undertaken.

On September 25, 2013, the BCLJC held a meeting of its members in the Benton County Sheriff’s Office Training room during the members’ lunch hour in which they discussed the “Strategic Plan” for the proposed Benton County law and justice sales tax measure. BCLJC’s meeting minutes for the September 25, 2013 meeting list the members present, including Mr. Hsu as Chair. The meeting minutes also referenced adoption of the “Strategic Plan”, the BCLJC’s work and timeline moving forward, determining which ballot the sales tax measure will appear, and future subcommittee work of the BCLJC. The following statement is included within Section A of the Strategic Plan, under the heading “Legal Considerations”:

*“Public officials or employees involved in campaigning for the criminal justice sales tax measure should ensure they adhere to legal restrictions. For example, creation of this plan was done on personal time, using personal equipment. Correspondence on any campaign effort will be done via home e-mail rather than work e-mail.”*

#### **IV. PDC Staff action**

Concerning the allegations and finding described above, PDC staff has:

1. Issued Notices of Administrative Charges for the five law enforcement officers, Steven Keane, Benton County Sheriff; Ken Hohenberg, City of Kennewick Police Chief; Chris Skinner, City of Richland Police Chief; David Giles, City of Prosser Police Chief; and Brian McElroy, City of West Richland Police Chief.

2. The Notice of Administrative Charges filed against the five law enforcement officers listed above was regarding the alleged violations of RCW 42.17A.555 by appearing in uniform at a press conference in support of a ballot proposition, and driving to the event in the assigned patrol vehicles.
3. Issued Notices of Administrative Charges for Citizens for Safe Communities PAC with regards to alleged violations of the following: (1) RCW 42.17A.235 and .240 for failing to timely file C-3 and C-4 reports; (2) RCW 42.17A.240 for failing to provide the required contributor information on C-3 reports, and the required vendor information on C-4 reports; (3) RCW 42.17.245 for failing to timely file C-3 and C-4 reports electronically using the Online Reporting of Campaign Activity (ORCA) campaign finance software; and (4) WAC 390-16-034 for failing to provide the occupation, and employer information individuals who contributed more than \$100 to the committee in the aggregate.
4. Issued Warning Letters to six members of the Benton County Law and Justice Council (BCLJC) concerning alleged violations of RCW 42.17A.555 by using the facilities of the Law and Justice Council (and Benton County and local cities within the county) to support the future law and justice ballot proposition.

The six Benton County Law and Justice Council members that received warning letters included Eric Hsu, Benton County Public Defense Manager and Chair of the BCLJC; Al Wehner, former City of Richland Police Captain; Andy Miller, Benton County Prosecuting Attorney; Josie Delvin, Benton County Clerk; Ken Hohenberg, City of Kennewick Police Chief; and Paul Warden, City of Prosser Mayor.

5. Recommend that the Commission dismiss the following allegations:
  - Several Benton County elected and local officials used official agency vehicles or received an auto allowance to attend/conduct activities in support of the August 5, 2014 ballot proposition.
  - The City Councils of Kennewick, Prosser, Richland, and West Richland allowed Citizens for Safe Communities PAC officers to make presentations at official City Council meetings in support of the criminal justice ballot measure.
  - Many public officials from Benton County, Kennewick, Prosser, Richland, and West Richland officials used public facilities to assist Citizens for Safe Communities PAC (CSC PAC) with its efforts to promote the sales and use tax measure by compiling and emailing law and justice budget and crime-related statistics to CSC committee members using public agency computers. The information was then posted on the CSC website, and the officials received a follow-up email from CSC members requesting they visit the CSC website and review the information for accuracy.
  - Andy Miller, a candidate for re-election to Benton County Prosecutor, and Josie Delvin, a candidate for re-election to Benton County Treasurer, both used Benton County public facilities to assist their re-election campaigns.

- CSC PAC officers and members used the public facilities of their respective offices and agencies to solicit and accept contributions for the committee.
- Benton-Franklin Community Health Alliance used Benton County public facilities to endorse the Benton County Law & Justice ballot proposition.
- Respondents Hohenberg, Miller and Wehner coordinated CSC PAC presentations to community groups (Benton County Democrats, Chamber of Commerce, Kiwanis) and participated in writing a “Letter to the Editor” of the Tri-City Herald concerning the ballot proposition.
- Respondents Sheriff Keane, Chief Hohenberg and Mr. Wehner communicated information about meeting with the Benton County Sheriff’s Guild, and Respondents Keane and Wehner communicated information about meeting with the Benton County Corrections Officer Association, to discuss the ballot proposition using public agency computers and email system.
- There was a public email chain concerning a private Pancake Breakfast Fundraiser which mentioned the ballot proposition and distributing information about the ballot proposition at the event.
- Sheriff Keane and Chief Hohenberg allegedly solicited contributions from employees in violation of RCW 42.17A.565.
- Three local Benton County law enforcement associations, West Richland Police Officers Association, Kennewick Police Officers Benefit, and the Kennewick Police Management Association made monetary contributions to CSC PAC, and used agency shop fees to make the contributions.