

NO. 93522-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

**IN THE MATTER OF THE RECALL OF MARC BOLDT, Clark
County Councilor; JEANNE STEWART, Clark County Councilor;
and JULIE OLSON, Clark County Councilor.**

Brief of Appellant

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D. Approval of the Legal Newspaper Contract to Higher Bidder with Smaller Circulation.

Each spring counties must designate a qualified newspaper to serve as the official county's newspaper of record. RCW 36.72.075. The award of this designation confers substantial business on the winner of the contract as various legal notices are required to be advertised in the paper of record to constitute adequate notice. When two or more legal

newspapers are qualified under the provisions of this section to be the official county newspaper, the county auditor shall advertise, at least five weeks before the meeting at which the county legislative authority shall let the contract for the official county newspaper, for bid proposals to be submitted by interested qualified legal newspapers. **Id.** State law provides little discretion when awarding such a contract. The final sentence of RCW 36.72.075 reads, “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 Clark County Charter is even more specific. It reads at Section 8.8 in relevant part:

All purchases, contracts and bonds subject to bid procedures shall be advertised and, unless all bids are rejected, shall be awarded on the basis of sealed bidding to the lowest responsible bidder. Elected or appointed officials and employees shall not directly benefit from contracts made by, through or under their supervision. No county elected official shall accept any employment or compensation from any county contractor during a term of office.

CP 433 (emphasis added).

The County timely solicited applications for consideration of paper of record status. Various local newspapers applied. After examination of the merits of the applicants, two papers were disqualified as not meeting

the statutory requirements of RCW 36.72.075 and only two qualified newspapers remained, The Columbian and The Reflector. The Reflector had been the paper of record for the County the previous two years.

In the material submitted with its bid, the Columbian claimed a weekly circulation of 24,152.² CP 277. The Columbian required an ad rate of \$1.77 per line for the first insertion and \$1.45 for subsequent insertions. **Id.** In the material submitted with its bid, The Reflector claimed a larger weekly circulation of 28,218. **Id.** The Reflector was less expensive with an ad rate of \$1.02 per line for the first insertion and \$0.84 for subsequent insertions. **Id.** Based on the County Charter, the Councilors were obliged to select the Reflector with its greater circulation and lower ad rate, but Boldt, Stewart and Olson nevertheless voted instead to award the contract to The Columbian. The Statement of Charges documented that The Columbian had been very critical of Madore and Mielke, going so far as to sell coffee mugs with a cartoon depiction of Madore on them and the phrase “Don’t Do Stupid Stuff”³ and the use of the phrase “M&M boys” like the candy to refer to Madore and Mielke, whereas the Reflector had been more neutral in its coverage of Madore

² This number had been was subsequently revised downward by 3000 or 11% from the number originally submitted. CP 279.

³ CP 309-314, see also <http://www.columbian.com/dont-do-stupid-stuff-mugs/>.

and Mielke and the actions of the BOCC. CP 309-314. Despite the fact that the Reflector had a lower ad price and larger circulation, Councilors Boldt, Stewart and Olson voted to select The Columbian as the County's paper of record instead of renewing the contract with the Reflector. The Statement of Charges provides sufficient detail that voters could infer Boldt, Stewart and Olson cast their votes in favor of The Columbian as a reward for the aggressive attacks on their political opponents Madore and Mielke.

The Reflector was the paper of record the past two years. It meets the two criteria required in RCW 36.72.075. The recommendations of Clark County purchasing agent go beyond the statutory requirements. But it is also misleading. First, an online website for legal notices is available to the whole County. Thus The Columbian had no advantage over The Reflector in this area. Second, the Reflector had the larger paper circulation over a larger geographical area. The decision to approve the paper of record based on the two criteria was non-discretionary when only one newspaper met both. By ignoring its statutory obligations pursuant to RCW 36.72.075, the accused Councilors committed malfeasance, misfeasance, and violated their duty to faithfully execute their oath of office. The issue should have been allowed to go to voters.