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Complaint sent via Email, Regular Mail, and Registered Mail - Return Receipt Requested

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TO: Washington State Auditor  
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TO: Whatcom County Prosecutor, David S. McEachran  
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FROM: Joy Gilfilen  
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RESPONDENTS:

Whatcom County Executive Jack Louws  
Whatcom County Sheriff Bill Elfo  
Whatcom County Prosecutor David S. McEachran

ALLEGED PDC VIOLATIONS – RELATING TO WHATCOM COUNTY DIRECT MAILER *Whatcom County Community Report: Whatcom County Jail*

- RCW 42.17A – Election Law Violations and WAC 390-05-273 – Normal and Regular Conduct Violations

OTHER VIOLATIONS MAY HAVE BEEN ONGOING PRIOR TO AND CONCURRENT WITH THE ELECTIONEERING TO COMPEL VOTERS INTO PASSING A DECEPTIVE TAX:

- Whatcom County Charter and Whatcom County Code Violations
- Revised Code of Washington Violations
- Washington Administrative Code Violations
- American Bar Association Standards Violations regarding Housing of Inmates
- Washington State Constitution Violations
- United State Constitution and the Bill of Rights Violations

The complainant has reason to believe that serious violations of law may have occurred in Whatcom County during the 2015 Election Campaign season that deserve outside scrutiny.

**Injustice under color of law**

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The system of governance in Whatcom County appears to have been corrupted to encourage voters to pass two more taxes to resolve a conflict created by and benefiting the administration. This created a self-destructive condition in which the drive to pass the tax compromised public safety to justify an expansion that would profit earmarked regulatory government departments and state and national jail and prison vendors; leaving the taxpayers compromised with excessive debt and expanding overhead.

1. **Civil Rights and Constitutional Rights were violated:** Prosecutorial and administrative decisions and directives purposefully increased jail populations long after both had noted the jail as overcrowded, inhumane and in violation of laws. The Executive Branch has refused to follow **Whatcom County Code 1.28.100 – Overcrowding** laws. They actively refused to propose a plan to reduce the jail population during this campaign, even though passage of this tax could not resolve the humane conditions until 2019. Other laws that have perhaps been violated include and are not limited to:

**UNITED STATES BILL OF RIGHTS:**

- Article the eighth... “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...”
- Article the tenth... “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

**UNITED STATES SUPREME COURT**

April 3, 2015 Finding that Washington State is to take immediate corrective action in the handling of the mentally ill in jails.

**AMERICAN BAR ASSOCIATION: CRIMINAL JUSTICE STANDARDS ON TREATMENT OF PRISONERS** (Approved by ABA House of Delegates, Feb. 2010)  
Standard 23-1.1 General principles governing imprisonment

2. **Rights to Due Process and Transparency for the Citizens were violated:** There is no evidence of any approved Public Participation Process for the jail's planning. There is ample evidence that the process has been prolonged, diverted, constrained and actively gamed to specifically prevent consideration of alternative sites. Hundreds of citizen concerns were systematically excluded by administrative review: dismissing them as 'outside the scope' of planning to build a jail. Repeated requests for review of administrative policies and practices causing over-incarceration and over-criminalization were ignored. Critical information about alternatives was withheld from the policymakers and the public. No public hearings were held at critical junctures in the process.
3. **Fiduciary Responsibilities to the Policymakers and the citizens were violated:** Council members lacked timely and complete facts crucial to their decision-making. The Executive Branch produced inaccurate, incomplete and confused information in response to Council questions. The context for decision-making has been intentionally constrained, artificially controlled, and action requested under a false sense of urgency.
4. **Violation of Fiscal Accountability to the taxpayers:** Since 2004 the voters and taxpayers have provided two new taxes and paid tens of millions of dollars to support building a new jail in Whatcom County, and to provide necessary mental health services to reduce incarceration and improve recovery. The money has not been used as promised and has been misdirected and consumed by bureaucratic expansion. Today we have worse conditions that violate state and national laws, and violate the recent US Supreme Court ruling on housing people with mental illness.
5. **Selling False Solution:** The jail sales tax even if passed will not solve the crisis in the jail before 2019 so the crisis used to sell the tax is not solved by the passage. The Executive branch has continually misdirected the policymakers and the voters to a false solution by withholding necessary information that could be used to resolve the problems immediately, and by not allowing alternative economic solutions to be discussed for longer term solutions.

Bottomline, taxpayers felt they were being scammed in full daylight during an election using taxpayer's money and facilities. It seems like it is a version of "noble cause corruption" done under the leadership of elected officials, specifically Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor David S. McEachran working together or separately (with the cooperation of some of their staff) who can be identified during the investigation.

**Noble cause corruption is defined by Wikipedia as:**

"Corruption caused by the adherence to a teleological ethical system, suggesting that persons "will utilize unethical, and sometimes illegal, means to obtain a desired result,"[1] a result which appears to benefit the greater good. Where traditional corruption is defined by personal gain,[2] noble cause corruptions form when someone is convinced of their righteousness, and will do anything within their powers to obtain or concertize the execution of righteous actions. Ultimately, noble cause corruption is police misconduct

"committed in the name of good ends"[3] or neglect of due process through "a moral commitment to make the world a safer place to live."[4]

In Whatcom County the administration of our government system has become imbalanced whereby the Executive Branch dominates and controls the information flow to the Legislative branch which compromises the decision making process.

It has been observed that this puts the people at risk to exclusion from the process, and at risk of being professionally scammed. In Whatcom County, this sales tax initiative was seen as a scam: It was selling the pretense that a big earmarked and forever tax would build a big, new jail and that this jail equals public safety. The facts do not substantiate this conclusion.

**Rather than address the facts about over-incarceration to find the best solution for the taxpayers, the Executive Branch set about achieving their jail building goals in the following manner:**

- 1) **Set Up: Create demand/crisis – Expand and control the “emergency conditions” in the jail.**  
The Executive branch has been continually operating the Whatcom County Jail in consistently overcrowded conditions for decades. Ironically, as arrest rates have recently dropped, the average length of stay has effectively doubled. The Executive Branch asked for and received tens of millions of extra dollars in two prior sales tax moves, while misdirecting the funds and not producing the results promised; then continued to perpetuate civil rights violations and liabilities by not maintaining the facilities which created more fear in the people; knowingly violating Washington State laws – ultimately creating an inhumane situation that established urgency.
- 2) **Escalate Fear: Pushing the jail initiative to the voters using high pressure sales tactics.**  
The Executive branch was in the power position to control the fear state by using emotional drama, fear-mongering, sensationalism and high pressure tactics to compel the voters: dismissing citizen concerns by administrative action, fast tracking the purchase of the land in 10 days, bypassing the process to approve the jail plan, spending millions in planning using flawed and incomplete assessments; fast tracking the initiative itself past the Council by ganging up on the Whatcom County Council using the small city mayors, refusing to negotiate with the City of Bellingham and threatening to exclude the City’s misdemeanants from the jail, using hard ball negotiating tactics, and even threatening the senior population with severe property taxes and dire consequences of liabilities caused by catastrophic loss of life. Then violated the voters trust by producing the mailer.
- 3) **Increase pain: Withheld services to compel compliance from non-profits and families and to compel a ‘yes’ vote on the sales tax initiative.** Withholding promised services and funding from those most vulnerable created extreme fear in the populace. When loved ones were being harmed, families and staff were effectively silenced. This happened by not providing adequate mental health services, crisis care, rehab, detox and other services as promised; repeatedly dismissing citizen concerns; reducing drug court, misrepresenting the amount of

services provided. Some non-profits were told they would be at risk for losing their funding if they opposed the jail. Then obviously violating the April 3, 2015 US Supreme Court Ruling regarding treatment of the mentally ill and not using the tens of millions of dollars received from the mental health tax as expected.

All of these allegations can be substantiated with documentation, and most is available through public records. There is a file compiled on this case that would be available in an investigation. Experience and documents show that these three officials have substantially breached Section 9.50 of the Whatcom County Code regarding their Oaths of Office, and should resign, be removed from office, or prosecuted as appropriate.

This combination of factors created extreme pressure on the electorate, and the political campaign affected the elections results in Whatcom County. In your investigation, please review the issues brought forward by the citizens of Whatcom County in the following cases:

- PDC #1122 – complaints by multiple citizen’s about the mailer
- Civil Rights complaint filed by Junga Subedar, Edward Alexander and others
- PDC Case # 1125 filed by Mike Estes regarding Citizens for a Safe and Humane Jail Now
- PDC Case # 1217 filed by Alex Ramel and Sandra Robson regarding Clear Ballot Choices.

## **Misuse of Funds and Facilities that violate PDC Regulations RCW42.17A**

Directly regarding the production and mailing of the Whatcom County Community Report: Whatcom County Jail mailer

The largest, most immediate and clear violations were caused by the recent and pre-meditated production, distribution and use of the Jail Sales Tax Mailer to directly influence the 2015 Whatcom County Election by Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor McEachran, among other Whatcom County staff and the DLR Group, a jail industry consultant. Two of these officials were candidates in this election.

### **Election interference with this mailer used taxpayer facilities, staff and funds:**

Whatcom County mailed promotional material for a ballot measure in violation of RCW 2.17A.555 and WAC 390-05-273. Mailer: <http://www.whatcomcounty.us/documentcenter/view/13253>.

Legal Issues to consider include (and are not limited to):

- General applications of RCW 42.17A.555 says in part, “RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use

of the facilities of a public office or agency.”

- RCW 42.17A.555 says in part “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....”
- WAC 390-05-273 says, in part, “Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555 means...No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

### **Concerns and Analysis:**

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1. **The mailer appears to have been produced by staff in coordination with consultant DLR Group** advising the County on jail design and construction. Whatcom County Contract No. 20140913 stipulates that the consultant will develop a “coordinated message and...graphics to support the message”. The message in this mailer appears to be supportive of the sales tax measure since it is missing critical information that would not support the sales tax and misinforms the voters. Therefore it does not constitute a fair and objective fact sheet as required by law.
2. **Written to emotionally sell the sales tax issue to the voters.**
  - a. Using taxpayer’s funds and facilities, this is a direct sales and marketing piece developed and designed with the agreement of these three elected officials.
  - b. The layout style was an oversized commercial sales piece used for marketing and promotion, a style to influence close rates.
  - c. The mailer includes emotionally contrasting pictures of real inmates in overcrowded conditions, and then shows dramatically different imaginary new-jail conditions. This triggers emotional reactions.
3. **Deceptive Sales/Promotion Tactics:** Two of the officials quoted and given top billing in the mailing, were running campaigns for re-election. Their comments and photos occupied prime and substantial marketing space on the mailer. Their photographs, statements and official positions were used in the mailer to invoke the authority of their office to authenticate the mailing as an official mailing, and to promote their stature. The Sheriff was in uniform. It was then further validated by using the seal of the County, and mailed from the County address to voters which mailing coincided with the date ballots were received on or after Oct. 16, 2015. Even without a direct statement to compel voters to vote Yes, it is by the selection of the information presented, and by the omission of critical information, that the implied sales pitch

was delivered.

4. **Withheld Facts about 2004 and 2008 sales taxes avoids use of funds discussion**

In the mailer, the authorities did not disclose that voters had already passed a 2004 Jail Sales Tax and a 2008 Mental Health Tax. These funds have not been used as the voters expected. By withholding these facts in the mailer, the voters are misled to conclude that the extreme conditions in the jail must be caused by a lack of funds...otherwise why would the officials be asking to pass a big tax? This withhold is deceptive and untruthful.

5. **The data given with the pie charts and facts is lacking adequate information.** It was skewed to look like, by law, the County has no choice but to house everyone. While this seems to remove blame from the administration for the overcrowding, this is a false conclusion. The administration is fully capable of relieving the overcrowding – they have the authority, capacity and funds to get it done. To the voter, not providing full facts is a form of obfuscation and deception = lying.

6. **Voter's Guide Information is deceptive by omission:** It is deceptive to exclude from the description of the tax the highly relevant fact that the taxpayers have already passed a new jail tax in 2004, and the Mental Health Tax in 2008 – both to resolve this exact problem. By stating that 1/10<sup>th</sup> of the tax goes away in 30years is deceptive, for it does not explain that the remaining 1/10<sup>th</sup> of 1% of taxes will be a forever tax is similarly deceptive.

The fact that this forever tax is specifically earmarked to exclusive use by the Executive Branch, uncontrolled by the County Council is also deceptive, for it does not show that this earmarking is unusual or has implications on the future ability for the County to use this tax for emergencies. Technically you can figure it out, but by omission as written it is deceiving.

7. **Misrepresentation shifts 'Responsibility' away from those in Responsible Charge to Voters:**

In Sheriff Elfo's section of the mailer, he infers that the current conditions are not his fault by shifting the blame away from today to being decades old; then underscores this by writing about "18 years" of reports. Voters are left to speculate that it must be the Council's fault, or it is because the voters are not paying enough. In effect, the message "shames and guilt's" the voters to pay up more money – when in fact the problem is mismanagement.

- a. The Sheriff is in direct responsible charge of maintenance, and that jail is less than 30 years old.
- b. The Sheriff is directly responsible for ignoring reports, not maintaining the facility, not managing the jail to code and as mandated by law.
- c. The Sheriff is responsible for Emergency Management.
- d. Combined with the actions of the Prosecutor and the County Executive, ultimately these elected officials are directly and indirectly responsible for the overcrowding, for allowing the "severe and unsustainable" conditions inside the jail to increase the liabilities to the County, to the taxpayers and the inmates.

Passage of the 2004 and 2008 taxes provided the County money to fix the problems. This money has been misappropriated. Millions have been saved to build the Sheriff's new facility, to build a new mental health facility...even as inmates are being treated in an inhumane manner. To the layman, this is manipulation = lying.

**8. False Reporting Misleads Voters into a False Sense of Security in Due Process:**

In the *Citizens and Experts Develop Plan* section, facts and sentences are convoluted and miss critical information that would change the meaning for the voters. The net effect misleads voters into concluding that citizens working with experts developed the plan, that there seems to be unanimous support for the jail plan from public meetings, that it is all authorized, on track, with the full support of the County Council and others. This glosses over facts.

When diagramming the facts, it can be shown that these statements are opposite of the truth, and therefore misleading. For example:

- a. No one has yet to approve the actual jail plan, so there is no consensus on the size, location or the price tag for the jail.
- b. The Jail Task Force was created as a result of citizen complaints - to rein in and downsize the original facilities demand from an oversized 2400 bed proposal.
- c. Citizens tried to stop the excessive planning to build a big jail, tried to bring forward restorative justice and other economic alternatives. Most of the citizen concerns were not addressed and instead summarily dismissed as "outside the scope" in the FEIS document, and afterwards. Questions at Council Meetings asking about the due process, calling for review, asking for facts, even requesting more information on the past use of sales tax monies were ignored or obscured by this administration.
- d. Contrary to allegations by the County Executive, there truly was no Needs Assessment completed to justify the fundamental basis of the jail expansion. The alleged needs assessment was in fact an incomplete Jail Capacity Needs Document delivered after the fact - delivered after the entire proposed jail was designed (not before) and it was dismissed on Page FS-7 of the FEIS as being inadequate.
- e. There has not been one full public hearing on the final jail plan, no agreement on the final size, and no agreement on the jail tax proposal with the cities.
- f. The planning to build the jail was initiated by the administration as far back as 2003. The Jail Task Force was created by voter outrage. The Task Force was composed of an exclusive selected group that included a preponderance of Executive branch and sheriff's influences. This Task Force intentionally excluded the Restorative Community Coalition from being represented, the only non-profit that was actively speaking out for alternative options to building the jail. The Task Force took in limited public testimony. The Sheriff, while not officially on the Task Force, sat at the planning table and participated fully as if he was a



member of the Task Force and his bias and recommendations were imbedded in discussions.

- g. When bringing forward the plan to buy the land, the Executive recommended that the Council not hold public hearings. The DLR Group told the Council that a public hearing was not necessary, and that the land could be purchased 10 days from the date the FEIS was delivered to the Whatcom County Council...coincidentally only 7 days away, since the FEIS had been delivered to the Council online on a Friday before a 3-day weekend. The date of the option expiration coincidentally coincided with the 10 day timeline that was given by the Executive Branch and DLR Group for purchasing the land.
- h. The process of bringing this sales tax to the voters was “fast tracked” past the Council by the Executive Branch maneuvers, not because of consensus.
- i. The fact was omitted that the Bellingham City Council and Mayor refused to sign the Interlocal Agreement. In the mailer, it was omitted that they refused to build the proposed jail and pass this tax without addressing prevention, early intervention and other alternatives to incarceration first. Since Bellingham is the single biggest consumer of jail services, this is a substantial omission of facts.
- j. To the average citizen or layman, it is bearing false witness to pretend that the community is backing this, and that so many things are true when they are not true. To the average person this is deception or lying.

9. **Misdirection from the County Executive avoids addressing efficacy of Programs:**

The Executive takes credit for \$11.5 Million dollars being spent on Behavioral Health Services. This is misleading to the voters. Just because money is spent on bureaucratic expansion and planning does not mean that that taxpayers got the results they were promised. The sales tax passed for mental health in 2008 has been collecting millions a year, yet the impact of that money is not getting to the field. Why it is not yielding the expected results should be investigated for elections violations and material misrepresentation.

The Executive’s section compared the total money spent on behavioral health services to jail operations costs. This is a false comparison; it is misleading and illogical. Louws discussed spending but did not include the lack of return on investment of these programs and he excluded critical information needed for contextual perspective. For example, some of the programs listed are maxed or have been reduced in size, or are only partially related to the jail. Some are only recently created and are token programs that benefit 5 or 8 people. This is misleading to the voters, for spending does not equal results. It may equal bureaucracy.

The gross misdirection is when Louws says, ‘these programs are designed to make it possible for people to stay out of jail, or re-enter society with the tools needed for success.’ This is only partly true. Louws’ statement avoided discussing the real demand. The demand for new, high return on investment alternative programs that could immediately divert 50 or 100 people out

of the incarceration funnel before they are arrested; programs that would immediately reduce overcrowding and make building a bigger jail obsolete. That is all missing.

Instead the voter is given the impression that the County is outperforming in this area. This is a half-truth. There was no discussion about the lack of preventive care, restorative justice programs, early education, job education and mentorship programs – all programs that were brought forward by citizens and dismissed as outside the scope. There was no discussion about known demand for intervention programs like expanding crisis care, detox, rehabilitation, trauma, and recovery programs that would interrupt the cycle of incarceration at inception, thereby reducing the demand for jail beds and sharply reduced costs.

This section of the mailer was especially deceptive and untrue to those who have family members affected by addiction and mental illness issues and who have not been able to access these services because they do not exist. They felt outraged to read this glossing over of truth. To the layman, this was like raising a false flag = lying with intent to deceive.

**10. Financial Comparison illustrated by Prosecuting Attorney is Questionable:**

How was the prosecutors section useful for the reader? It seems incongruent and unexplainable, except to somehow lend credibility to the Budgeted-for Alternatives comparison used by the Executive in the comments in the section above. By placing the jail operating costs beside the diversion costs is not comparing like-kind issues. It puts information out of context.

It seems that McEachran's testimonial was there just to validate the contention that a bigger jail was needed to support new mental health and treatment programs. Why use a Prosecuting Attorney, who is not a mental health professional, to explain the lack of treatments available? Are they trying to prop up either Jack Louw's image or the Prosecutors stature as an official who endorses the sales tax? While an informed voter might question the logic, an uninformed voter would assume the Prosecutor must know best, so they just accept the endorsement by a high ranking official. Once seen, this is a form of subterfuge = lying.

**11. Mailer shows a pattern of misconduct.** This mailer illustrates how the Executive Branch has a practice of circumventing logical due process, using deception and intentionally not informing the public of critical information. According to USLegal.com, "Misconduct means dereliction of duty or unlawful or improper behavior. It also refers to an attorney's dishonesty or attempt to persuade a court or jury by using deceptive or reprehensible methods."

**Related Issues:**

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1. **Conflict of Interest:** Might there be a conflict of interest with using the DLR group as a lobbying consultant on this tax? This company is in the business of building jails and is and will continue to profit from the results. Why has the DLR Group been continually contracted with, and have been paid for research, planning, permitting, designing, recommending and now promoting the tax to fund the jail? This seems to cross the line of conflict of interest and potential cronyism. Their work has been found to be faulty, and resulted in a plan that has still

not been approved by the Whatcom County Council.

2. **Targeted Mailing:** A key question is how many and who of the County's 129,345 registered voters were selected to receive this mailing? Estimating that this mailer may have cost \$1 each...how much of taxpayer dollars was really spent on this mailing? And if not sent to all of them, then why did they use a targeted list? Many voters have reported not receiving one. Was it sent to swing precincts? How does this mailer meet electoral guidelines? Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent only to select voters instead of property addresses. It is not clear how selecting voting recipients constitutes a jurisdiction-wide distribution.
3. **Confusion to Gain Advantage:** The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting), a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members. Given that the attorneys were conversant on the issues, the question should be asked... Was this intentional? This is a substantial issue, for the Charter Review issue is a constitutional issue and changes the balance of power. It seems odd that the writers of this mailer could have confused the issues, for they are not the same issues.
4. **Distraction:** This confusion also distracted voters from paying attention to other Charter Amendment issues, like the amendments limiting the power and manner in which the Council can change the Charter, again changing the balance of power. Was there a side benefit to the Executive Branch in creating this confusion?
5. **Sidestepped Due Process:** During the lead-up to the campaign, during the campaign and leading up to the mailer, the logical due process of working with and engaging the Councils and the voters was not followed. It seems that the logical step of gaining approval of the jail plan first by the Whatcom County Council, the tribes and the other cities would have happened. In fact, this process was sidestepped completely.
6. **Ganging Up:** Executive Jack Louws did an end-run, and stated his intention to "fast track" the sales tax initiative to the ballot. He did this first by meeting with the small cities independently to get them to approve a funding plan (without an approval on the jail plan), and used this to compel the Whatcom County Council and the City of Bellingham to agree.

This sideswiped the opposition, creating instant conflict, outrage and upheaval in the political world. It created distrust and a polarizing situation which emotionalized the conversations, costing people critical time and energy, distracting the people from logical thinking. It felt like the small city mayors were used to gang up on the County Council and the City of Bellingham, to compel these policymaking bodies to move by political pressure. This is contrary to good business practices.

Is this illegal? It was an effective red herring. The illogical process created confusion and distraction as the Councils and the public spent months of this campaign period arguing over

the Interlocal Agreements. Councils were not holding public meetings and were distracted from addressing the emergency conditions inside the jail or the liability issues. As a consequence, real people have been harmed.

7. **Fast Tracking:** Executive Louws added to the pressure by publicly announcing he was “fast tracking” to get the sales tax initiative to the Primary Ballot, providing a pre-fabricated excuse to shortcut the processes. (He had roughly 16 months of pre-planning time with no public meetings preceding this maneuver.) Again, this forced the conversation away from solid planning. As a tactical maneuver, this compressed and shortened the public disclosure and education period for the voters to discover what was happening. Since public debates don’t happen until the General Election period, getting the sales tax initiative on the primary would have bypassed public discussion, and it would have required a smaller number of voters to pass the tax.

The effect of this is that a fraction of the conservative voters would have been needed to encumber large numbers of people to pay the jail tax forever. Only a fraction of the voters are needed to pass the tax in the primary, and they are known in political circles as the conservative voters, which would have set up a condition where the odds of passing the tax were reduced substantially. This tactic set up confusion and a political pressure cooker. Even as the measure failed to get on the primary and it failed to gain consensus, the lack of support or any of the concerns brought up during that compressed time period was not represented in the mailer.

8. **Contrarian Logic:** The Prosecutors section in the mailer was misleading for his comments are not necessary to the subject and seemed to overreach his office. His comments seem to instead be used to create credibility for the jail tax by using his official title to promote the need for a bigger jail on a general threat of public safety, and without factual substantiation.

Notably, the issues that are within the expertise of the Prosecutor were not included in the mailer. Is that because the information he would need to share was contraindicated to passing the tax? Are they avoiding exposing the fact that the Prosecutor’s office is at least partially responsible for the overcrowding in the facility, even though the overcrowding is contraindicated to public safety?

According to USLegal.com, Prosecutorial Discretion Law & Legal Definition says that,

“Prosecutorial discretion refers to the fact that under American law, government prosecuting attorneys have nearly absolute powers. A prosecuting attorney has power on various matters including those relating to choosing whether or not to bring criminal charges, deciding the nature of charges, plea bargaining and sentence recommendation. This discretion of the prosecuting attorney is called prosecutorial discretion.”

The Prosecutor’s demonstrated practices, combined with the unwillingness of this administration to review or release people from the jail even under overcrowded conditions

has partially contributed to the fact that the average length of stay (ALS) daily jail bed occupancy rate has dramatically increased from roughly 9.07 days in 1986 to as high as 22.91 days in 2006. Statistics are from page S2 in the Draft Environmental Impact Statement dated October 18, 2010. In 2012 the ALS was 22 days as per page S1 in the Final Environmental Impact Statement. Why would the Prosecutor condone and help increase the average jail bed stay rate when statistics show that more trauma and longer incarceration is contraindicated to public health?

Ironically, based on this Prosecutor's testimony before the County Council in May, 2015, his trends show a Whatcom County decrease of 25% on serious offense arrests, and 80% reduction in juvenile arrests in the past 5 years - indicating a clear downtrend in demand for jail bed space. Yet he still testified that this reduction in arrests meant that we needed a bigger jail.

Prosecutor McEachran testified that he increased the standards to make it harder for drug court participants to enter the Department of Justice awarded and well-functioning drug court program. As a result the program participation was reduced by 1/3. This is counter intuitive when the overcrowded, inhumane conditions exist.

Also in County Council chambers, Prosecutor McEachran described how he has created a Fast Track Program for quickly punishing and releasing known drug offenders who do not want to be rehabilitated. He apparently reduces their charges if they admit to their wrongdoing, pay their bail and fines, and they get a short stay. The inference was that this saved the taxpayers money from incarcerating them longer. This is also counter to logic. If these are the drug dealers, why release them early? His testimony can be checked in the public records not just before the Whatcom County Council, but when he restated this before the Incarceration Prevention and Reduction Task Force.

This Prosecutorial dichotomy of releasing a small number of known drug offenders faster, and keeping the larger number of addicted people away from treatment and in jail longer is counterproductive to public safety. Where is his credibility to argue for a larger jail? Are we over-criminalizing and over-incarcerating our citizens to expand the size of a jail?

9. **Public Tours of the Jail** – Is this constitutional, legal and an acceptable use of facilities and funds in a campaign? As the campaign progressed, the Whatcom County Sheriff announced in debates that the public could call a special number, so people could receive full tours of the jail.
1. Is this a violation of inmate civil rights?
  2. Was this a fair and unbiased use of information or emotional manipulation?
  3. Did these tours come with a fair and unbiased fiscal analysis of alternatives?
  4. Was this an appropriate use of facilities and resources for electioneering?
  5. How much of staff time, money and resources were allocated?
  6. Employees and staff were videotaped giving testimonials about the jail and sales tax initiative, about the unclean and unsafe conditions and these were posted on You Tube at

the Whatcom Jail section. <https://www.google.com/search?q=You+Tube.com&ie=utf-8&oe=utf-8#q=Whatcom%20Jail%20site%3Ayoutube.com>; <https://www.youtube.com/watch?v=NvMBOrs-WLc> and <https://www.youtube.com/watch?v=grA-8ourv9E>

## **Breach of Integrity Violated Public Trust and the Oath of Office**

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This mailer complaint deserves to be seen in context of the whole campaign, the whole issue, and inside the context that these three elected officials have sworn an oath of office to protect and uphold the laws of our land, including the US Constitution, our Washington State Constitution and the Whatcom County Charter (our County's constitution).

### **Whatcom County Charter Section 9.50 Oath of Office and Bonds.**

“An oath or affirmation to support the Constitutions of the United States and the State of Washington and the Charter and ordinances of Whatcom County and to perform faithfully, impartially, and honestly the duties of office, shall be made by each elected officer before entering upon the duties of office.”

This mailer is a direct violation of public trust. It extends to abuse of authority and a violation of honor. Even under the auspices of providing public safety it is out of integrity to withhold critical information with the purpose to deceive the people to build a jail under false pretenses.

This piece violated not just the PDC rules, but it violated personal integrity. Citizens trust their elected officials who are in charge of the administration of justice to tell them the truth. To find that our officials are untrustworthy is a deep violation of our core beliefs, and it is challenging to accept.

Voters do not expect a sales pitch inside a civic report. We expect our Executive leadership, the law enforcement officers, the Prosecutor, our court systems to uphold the law and play by rules of fair play and honor. It is hard for voters to believe people in these positions will violate this trust, and the laws they are sworn (and being paid) to uphold. This is a line that should not be crossed when writing a factual report, for it sets up voters to be taken advantage of and victimized.

It was deeply disturbing for voters to receive this commercial sales pitch on the jail. To find out this was done by using their elected influence and our taxpayer money was shocking. It was with a sense of deep betrayal that voters stood up at a Whatcom County Council meeting to complain to the Council on October 27, 2015, that these trusted officials were telling untruths, confusing the voters, and 'selling a bill of goods'.

On that date, the County Executive and the Prosecutor came fully prepared to defend their actions during the public comments section of the County Council meeting. They used public comment time to explain how they spent days examining this mailer to ensure they were in compliance. They showed how they used multiple county attorneys to cross-examine their work. What this

demonstrated to the people is that this event was a pre-meditated violation of public integrity.

This destabilizes voter trust in government. It is disruptive to a safe society, for voters have realized that these officials violated the voters while using deliberate intent to walk the lines of legality, while using the predatory tactics of emotional manipulation inside the mailer to achieve their end results, calculating their risk of violating the PDC rules.

Therefore, voters feel that our “most trusted” public servants, three elected officials who swore to uphold our constitutional rights, violated the public’s trust. In effect, the feeling is that these officials deliberately preyed upon public innocence. Due to this flagrant flouting of the law, the voters deserve to have this entire situation investigated to the fullest extent of the law.

**CITIZENS DESERVE THE RIGHT TO A FULL INVESTIGATION:**

1. IMMEDIATELY AND FOREMOST - to correct the inhumane conditions inside the jail
2. Reveal truthful information to the voters and to the policymakers to ensure good policy
3. Expose any corrupted systems or failures in our democratic process to stop further loss
4. Expose any misappropriation of tax dollars, breaches of contracts, or conflicts of interest
5. Expose any election fraud, electioneering violations, or criminal violations
6. Expose any dysfunctional behaviors of our government that are promoting the growth of the jail industry to the detriment of our citizens, our freedom

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