

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

NO. 20-2-10455-8 SEA

IN RE THE MATTER OF RECALL  
CHARGES AGAINST CITY OF  
SEATTLE MAYOR JENNY DURKAN  
(HARVEY)

RESPONSE TO MOTION FOR  
RECONSIDERATION AND CROSS-  
MOTION FOR RECONSIDERATION

I. INTRODUCTION

Previously, this Court dismissed all but one of the recall charges against Jenny Durkan, the mayor of Seattle, and amended such charge to proceed more narrowly. Mayor Durkan filed a motion for reconsideration on July 14, notably filing the motion at 4:29 pm and setting this Court's consideration for such motion for the very next day. This Court requested briefing from the petitioners, Elliott Harvey et al., who therefore submit this paperwork, both responding to Mayor Durkan's motion, and filing a cross-motion for reconsideration, asking the Court to reconsider striking Charge C and to consider widening the scope of Charge B to encompass part of Charge E.

II. RESPONSE TO STATEMENT OF FACTS

Mayor Durkan begins with a lengthy "Statement of Facts," exceeding five pages in a fourteen-page brief. Mayor Durkan therein argues a number of so-called facts that are misleading or untrue. The mayor's "Statement of Facts" demonstrates very well the reason why Washington

Courts are not to weigh the facts when ruling on a recall petition. As this Court noted in its order of July 10, 2020:

[T]he role of courts in the recall process is highly limited, and it is not for us to decide whether the alleged facts are true or not. It is the voters, not the courts, who will ultimately act as the fact finders. RCW 29A.56.140; in re Recall of Kast, 144 Wn.2d 807, 813 (2001). We merely function as a gatekeeper to ensure that the recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated charges. Id. Accordingly, our role is limited to ensuring that only legally and factually sufficient charges go to the voters. Id.

Court Order, p. 4, citing In re Recall of West, 155 Wn. 2d 659, 662, 121 P.3d 1190 (2005) (Emphasis added.)

The Petitioners could file new declarations and argue the facts for weeks in this court, in fact, one of the charges brought by Petitioners was that Chief Best and the Mayor spread multiple false narratives to help support their version of events, thereby attempting to turn not just the city, but the US itself, against the Seattle protesters. See Statement of Charges, pp 17-22 (Charge F). The Mayor continues this pattern of misdirection in her Motion, arguing, for example, that protesters “deployed several explosions toward officers,” Mayor’s Motion for Reconsideration, p.3, citing Mahaffey Affidavit, Para. 17, while neglecting to note that this same affidavit and paragraph also referred to these “explosions” as “suspected fireworks.” [Mahaffey, Paragraph 17]. This is reminiscent of the SPD tweet on June 6, 2020, where they announced that “improvised explosives” at the East Precinct had injured several officers, accompanied by a photo of such “explosives.” Numerous viewers on Twitter questioned the SPD after many pointed out that the photo showed a broken prayer candle, of the type that had been arrayed at the memorial in the area, and indeed, that a sticker was still on it from its original sale that read “candle.”<sup>1</sup> The Petitioners and Opposition could go back and forth on the individual allegations endlessly.

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<sup>1</sup> <https://twitter.com/SeattlePD/status/1269474731717087233>  
<https://twitter.com/BethLynch2020/status/1269489528772984832>

Mayor Durkan's team is well aware that it is not within the role of this Court to litigate the facts, and that making conclusions about the facts is the purview of the voters of Seattle. Having been exposed to media reports and to numerous testimonies before the Courts and before the public, those voters are fully equipped to consider the facts surrounding the Mayor's activities during the events in question and make such conclusions.

### III. LEGAL ARGUMENT.

#### A. THIS COURT SHOULD REJECT THE MOTION FOR RECONSIDERATION, AS THE MAYOR'S PURPORTED GROUNDS UNDER THE COURT RULES DO NOT APPLY.

As this Court and Mayor Durkan are fully aware, when a court has ruled, a Motion for Reconsideration must be accompanied by threshold grounds to justify such reconsideration, for example, the discovery of new evidence. A party is not entitled to a Motion for Reconsideration merely because they do not like the outcome they have received.

Here, Mayor Durkan asserts two such grounds, CR 59(a)(7) and CR 59(a)(9) (Motion for Reconsideration, p.1). Notably, the Mayor does not quote these citations or describe exactly what she is asserting, therefore it seems important to review them. They read:

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

....OR

(9) That substantial justice has not been done.

CR 59(a)(7), (9).

This Court weighed the arguments of both sides and the law of recall in its original order. In fact, the Court found in the Mayor's favor on six of the seven counts and limited the surviving seventh charge. Arguably, another judge could have found differently, but "no evidence"

justifying the order is absurd, especially in a case such as this, where the Court is not itself supposed to weigh the evidence. “Contrary to Law” is not appropriate here, where the Court’s rule is merely “as gatekeeper to insure recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated charges.” In re Recall of West, 155 Wn. 2d at 662. (Emphasis added.) Put another way, Washington courts must allow recall for cause, but free public officials from the harassment of a recall based on “frivolous charges or mere insinuations.” Chandler v. Otto, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). The voters may find against Mayor Durkan or for her, but none can claim the remaining charge to be “frivolous,” “unsubstantiated,” or “mere insinuations.” Indeed, the grounds for it were on full display in the media and internet for weeks, visible to any Seattle voter who looked there.

Mayor Durkan asserts that “substantial justice has not been done” via CR 59(a)(9), when the SPD terrorized and attempted to manipulate protesters for weeks, and exposed protesters, bystanders and businesses to chemical weapons forbidden in wartime, and yet only one count of the recall petition, and that count carefully limited, passed this Court’s scrutiny. This allegation that the Mayor has not received “substantial justice” only demonstrates her attitude that she can do no wrong, and that endlessly placing blame on her Chief of Police should be sufficient to defeat any charges against herself. This, despite the fact that she is fully the only person in Seattle besides Chief Best herself who could have curtailed SPD’s excesses. See Section B, immediately following.

This Court should therefore reject the Mayor’s motion wholly as not meeting the threshold of CR 59(a) for reconsideration.

**B. THIS COURT SHOULD REJECT THE MOTION FOR RECONSIDERATION, AS THIS COURT’S ORDER WAS NEITHER CONTRARY TO LAW NOR CONTRARY TO JUSTICE.**

1. As the Mayor of Seattle, Jenny Durkan was the only person who could be asked to stop the excesses of the SPD in an emergency besides the Chief of Police. She was called upon many times to do so, and as such, she can and should be held to account for her unreasonable failure to protect the people of Seattle from the SPD.

Under the Seattle City Charter, the Chief of Police serves at the pleasure of the Mayor. The Mayor is the only person or body in the City who can remove the Chief of Police. See Seattle City Charter, Article 6, Sec. 2 (“The Mayor may remove the Chief of Police upon filing a statement of his or her reasons for so doing with the City Council”).

Moreover, in an emergency, the Mayor of Seattle is specifically empowered to take control of the Seattle Police Department and give it orders. Article V, Section 2 of the Seattle City Charter reads in full:

The Mayor shall see that the laws in the City are enforced, and shall direct and control all subordinate officers of the City, except in so far as such enforcement, direction and control is by this Charter reposed in some other officer or board, and shall maintain peace and order in the City. He or she may, in any emergency, of which the Mayor shall be the judge, assume command of the whole or any part of the police force of the City; but before assuming such control he or she shall issue his or her proclamation to that effect, and it shall be the duty of the Chief of Police to execute orders promulgated by the Mayor during such emergency. The Mayor shall perform such other duties and exercise such other authority as may be prescribed by law.

(Emphases added.)

The Mayor asserts that the City Charter places initial implementation of SPD policies and procedures upon the Chief of Police, and this is true (See Charter, Article VI, Sec. 4), but it is fundamentally the duty of the Mayor to “see that the laws in the City are enforced” and “maintain peace and order.” These mayoral duties are mandatory in the language of the Charter. See, e.g., Erection Co. v. Department of Labor & Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993) (“It is well settled that the word ‘shall’ in a statute is presumptively imperative and operates to create a

duty....unless a contrary legislative intent is apparent”). If, as here, the behavior of the Seattle Police Department is in violation of the law and the rights of Seattle citizens, it is absolutely incumbent upon the mayor to stop such violations. Indeed, the Mayor is the only person who can.

Moreover, as noted, the Mayor is specifically empowered to take over the police force of Seattle in an emergency. When, during the time of these protests, both the citizenry and the Seattle City Council itself cried out to the mayor to stop what was happening, it is the height of cynicism to claim she had no duty here. See Timeline in Section III.B.f, infra.

As the Court is aware, it is within the Mayor’s discretion to declare an emergency. As the Mayor did declare an emergency on May 30th, her finding of the situation to be a civil emergency was complete. The Mayor did not choose to take over command of the SPD at that time, and this also would have remained within her discretion, if the police violence had not continued, night after night, for weeks. When the violence of the police was sustained against the people of Seattle and calls came for the Mayor to step in and stop the police abuses—including appeals from healthcare workers to stop the use of chemical weapons during a respiratory pandemic—her failure to act became an ongoing, manifestly unreasonable abuse of that discretion. The Mayor now seeks to be released from any accountability for this abuse of discretion, deeming it a political action rather than an abject disregard for the lives and deaths and police-inflicted disabilities of her city.

The people of Seattle can and should expect better from their mayor, a mayor who had the power to prevent police action at any time, and who was, in fact, charged with both law enforcement *and* “peace and order” in her City. This recall brings the mayor to task for failing to do so, contrary to the many voices pleading with her at the time. (See Timeline in Section III.B.f,

infra). This action by the people of Seattle—in its current state to have found great support—is thoroughly founded in the laws and ordinances of the City of Seattle.

2. That another person could also share blame does not defeat a recall petition — the determination of blame is for the voters to decide.

The Washington law of recall does not require that the recalled official be the sole person against whom charges could be laid. In fact, the laws of recall and the courts have shown that it is the voters, not the court, who decide where fault lies through the means of the recall petition itself. In re Recall of Pepper, 189 Wn.2d 546, 403 P.3d 839 (2017). Charge #3 in the Pepper case involved the respondent, “as party of a council majority, fail[ing] to enact a 2017 budget in violation of state law and instead enact[ing] a temporary budget containing illegal provisions, impairing the city's ability to provide essential services.” Id. at 561-62. Clearly, Pepper could not have failed to enact the budget herself -- the obstruction required a majority of members to be on the same side. Yet in that case, this did not defeat recall:

[The trial court] recognized that there was a factual question about who bore responsibility for this failure—Pepper or the majority—but concluded that the constitution places that decision in the hands of the voters, not the court.

The petitioners agree with the trial court.

Id. at 563.

Similarly, in In re Recall of Cy Sun, 177 Wn.2d 251, 254, 299 P.3d 651 (2013), one of the two charges was that a mayor had failed to fill department heads of a city, thereby jeopardizing the city’s insurance policy. The mayor sought to shift the blame, noting that the city council had also been obstructive, but the Supreme Court noted:

Sun attempts to shift the blame by pointing to the city council's stonewalling as the reason why positions have not been filled, while also pointing out that the CIAW's letter does not blame the mayor as the sole cause. The mayor's focus on causation, however, is misguided

as that issue is an inference best resolved by the voters. Thus, we find this charge factually sufficient.

Id. at 260 (Emphasis added.)

The issue of whether the Mayor was to blame for not controlling the SPD, perhaps by controlling the police chief is, as in Cy Sun and Pepper, an issue for the voters to decide.

3. The Mayor's argument regarding CS gas is a distraction tactic and moreover overlooks the fact that the SPD has clearly violated the federal order by Judge Jones forbidding the use of gas and blast balls except in cases of life safety.

The law as it stands on tear gas and pepper spray as crowd control measures is currently under review in a number of jurisdictions, and correctly so, as it is an indiscriminate weapon, banned by international law in wartime. Mayor Durkan spends time arguing that the use of CS gas is not wholly forbidden by law, but a request to outlaw CS gas was not present in the charges, nor was it the intent. The use of tear gas, pepper spray, pepper bombs, and other such devices on peaceful protesters and residents in their homes alike was particularly cruel both to those at risk of death by suffocation and to a healthcare system strained with the task of saving lives. If this life-threatening inaction is what the Mayor deems to be “political”, the petitioners shudder to see what degree of loss of life and liberty to be reasonable grounds for recall petition. Fortunately, we need not find out, as this role falls to the courts and then, ultimately, the voters.

As noted in an open letter regarding COVID-19 and the protests released on June 5, which was signed by more than 1200 healthcare workers, the use of a chemical irritant on the lungs is a reckless decision in a respiratory pandemic.<sup>2</sup> They called upon governments to:

Oppose any use of tear gas, smoke, or other respiratory irritants, which could increase risk for COVID-19 by making the respiratory tract more susceptible to infection, exacerbating existing inflammation, and inducing coughing.

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<sup>2</sup> <https://www.cnn.com/2020/06/05/health/health-care-open-letter-protests-coronavirus-trnd/index.html>



Id.<sup>3</sup>

Moreover, Judge Jones' TRO, which forbade the use of such weapons except in situations involving life safety, was violated repeatedly on July 1, when SPD officers cleared the area surrounding the East Precinct. In a letter to the Seattle City Attorney's Office, counsel for the Plaintiffs in the case of *Black Lives Matter et. al. v City of Seattle* addresses the use of force against protesters between July 1 and July 4, 2020; "The City's descriptions, as well as the evidence we have gathered from citizens who witnessed SPD's tactics during the relevant timeframe, indicate that SPD violated the preliminary injunction in this case."<sup>4</sup> The violations of the law have continued since the TRO was signed on June 12, 2020 (and extended by agreement through September 30, 2020). The Mayor shows little interest in maintaining control over the SPD's abuses, despite her role and her duty being that of the Chief Executive for the city. Chief Durkan has refused repeatedly to uphold the law, despite the ongoing calls made to her for just such action. See Timeline in Section III.B.f, infra.

Taken to a logical conclusion, it's clear how reckless and cynical this position is. Every one of us is ultimately responsible for the actions of those under our authority, and this holds especially true for the office of mayor. Mayor Durkan spends little time on whether SPD actions were lawful (a difficult argument in the face of a TRO) and instead focuses her attention on shifting responsibility to Chief Best. The Chief of Police was not elected by the people of Seattle, she was chosen by the Mayor. If the Mayor believes she made a bad hiring decision, she is free to rectify her actions. The City Charter is manifestly clear, the office of mayor holds final responsibility and

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<sup>3</sup> It is notable that tear gas was banned in wartime by the 1925 Geneva Protocol, in the aftermath of an influenza pandemic where World War I had accelerated the spread of a respiratory disease. Activist Shaun Scott wrote recently about this and noted "On several occasions in recent weeks, Seattle police — seemingly unconcerned with COVID-19 — used the chemical agent on protestors, covering the city's most densely populated residential neighborhood with it on June 7."

<https://crosscut.com/2020/07/durkan-seattle-police-and-undermining-civil-liberties>

<sup>4</sup> <https://twitter.com/KorematsuCtr/status/1281377739849609218>

the highest authority in the City, and is accordingly a seat selected by the voters and held accountable by the voters. The Charter need not lay out a hard line defining actions that demand the Mayor remove appointees or intervene in law enforcement, but if it did, what would the Mayor deem to be on the other side of that hard line? We need not explore hyperbole for the Court, violation of constitutional rights seems to be sufficiently egregious.

Here, the SPD was deploying chemical weapons in their own counter-protest against largely peaceful protesters for weeks, recently deemed by Judge Jones to be motivated by the content of the protester's speech. See Jones TRO, p.2, 6, 9.<sup>5</sup> Mayor Durkan's refusal to take action in the face of the many voices asking for it was not an accident or a sudden decision. As this Court noted, it was not a reasonable act of discretion, and it is now up to the voters of Seattle whether that inaction is sufficient reason to remove her.

4. The Mayor's argument that the consent decree removes power from her to manage the SPD is disingenuous.

Mayor Durkan claims that she has little or no power to regulate the SPD, but this putative "lack of authority" has been repeatedly and conveniently forgotten in the past weeks. For example, when the city overwhelmingly requested that the body-worn cameras be turned on at the protests to document any police misbehavior, Mayor Durkan quickly enacted it by executive order. [See Executive Order 2020-07-SPD.<sup>6</sup> There is no indication in the order whatsoever that the Mayor found it necessary to have Chief Best's agreement, or that she needed to notify the Western District Federal Court to ensure her order would be consistent with the consent decree. The Executive Order stated that, "effective immediately," Chief Best "will issue an interim policy change" to

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<sup>5</sup> <https://news.seattle.gov/wp-content/uploads/2020/06/061220Order.pdf>

<sup>6</sup> <https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/06/Executive-Order-2020-07-SPD-Body-Worn-Video-Recording-During-Protests..pdf>]

keep the cameras on during protests, and more formal procedures to permanently change the policy were “respectfully requested” of the City Council and City Attorney’s Office.

Moreover, Mayor Durkan expressed no qualms about signing two pieces of legislation from the City Council on June 26, 2020, both of which regulated the SPD. In neither case did she claim that she needed to obtain the agreement of Chief Best to sign ordinances that clearly governed police practices, nor that she needed to check with the federal court regarding the consent decree and whether these would matter in that regard. See Ordinance 126095, Council Bill 119803, (New ordinance prohibited police officers from using “mourning bands” to cover their badge numbers or names, since the order issued by Chief Best on the same topic had little measurable effect); and Ordinance 126096, Council Bill 119804 (New ordinance prohibiting use of chokeholds and changing language regarding use of force).

Notably, Mayor Durkan announced only in May that she was proud of how well the SPD had done under the consent decree, and therefore “the City” was moving forward in asking for it to be lifted. In the “SPD Blotter,” part of the SPD portion of the City of Seattle’s website, Mayor Durkan was quoted first and foremost ahead of Chief Best, implying that she was one of the chief movers on the decision as “we submit the final report:”

The City seeks termination of the Consent Decree provisions assessed under the Sustainment Plan because the City has achieved and maintained full and effective compliance with these requirements for two years.

“The Seattle Police Department has transformed itself. The original investigation of SPD showed force was being used unconstitutionally far too often, and frequently involved people in crisis or under the influence. Nearly a decade later, as we submit the final report under the sustainment plan, Seattle police officers have become a national leader in policing and de-escalation with a commitment to true and lasting reform,” said Mayor Jenny A. Durkan. “Our growing city has put more demand on police, and they have met the challenge, even during our COVID-19 crisis. In our City, our officers have responded to a record number of crisis calls, yet force has rarely been used. They have met every metric set forth by the Court’s sustainment plan. Over the past several years, our department has created new transparency and reporting to accurately track and investigate

uses of force while putting in place new policies and trainings, especially for individuals in crisis. Our officers continue to show their dedication toward building community trust.”<sup>7</sup>

Here, again, we see Mayor Durkan’s specific desire to claim the credit for some moves, some of which she had no real choice in (for example, both council bills that she signed passed the Council by a veto-busting majority). Or when she thinks her actions will be overwhelmingly popular (as with the keeping of body cams on, which according to the Executive Order itself, her office received thousands of emails about). Yet in this case, she attempts to escape any accountability that should fall her way when the SPD are out of control by claiming that she has no legitimate power over them. In a recent interview with KUOW on July 16, 2020, the Mayor repeatedly dodged specific questions in the context of the recall of whether she could direct the police, and tried to cut off the questioning by claiming, “I’m not focused on court actions or petitions.”<sup>8</sup> She did, however, claim that the City Charter “specifically gives the chief of police the duty and authority to issue specific policies and regulations.” Id.

This interview came only about a month after issuing her executive order on body cameras and a few weeks following the signing of new ordinances that required new policies and standards of the SPD. The Mayor has clearly demonstrated her ability to set SPD policy through executive order immediately, when she sees fit.

This Court will recognize the Mayor Durkan’s selective and inconsistent application of certain mayoral responsibilities, and the transparent way in which she attempts to use this Court to do her bidding rather than using her own duty to guide her actions. It has always been a question for the voters of Seattle to decide what the mayor should and shouldn’t have done. We ask that this Court pass this promptly to them, in part by denying the Mayor’s Motion.

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<sup>7</sup> <https://spdblotter.seattle.gov/2020/05/08/city-of-seattle-files-motion-to-terminate-seattle-police-department-consent-decree-sustainment-plan-with-judge-robart/>

<sup>8</sup> <https://www.kuow.org/stories/mayor-durkan-we-are-not-about-making-tweaks-we-are-really-about-reimagining>

5. The argument that Charge B is impermissibly vague is unreasonable.

Mayor Durkan claims that In re Recall of Bolt, where “bullied and harassed” was insufficiently clear to say what the official under a recall petition had done, is pertinent to this case. Motion for Reconsideration at 11, citing 177 Wn.2d 168, 176 (2013).

Charge B, as redrafted by this Court, reads:

Mayor Durkan endangered the peace and safety of the community and violated her duties under state and local laws and her oath to uphold the federal and state constitutions when she failed to institute new policies and safety measures for the Seattle Police Department after learning of the use of chemical agents on peaceful protesters as a means of crowd control during a public health emergency.

Petitioners believe this is a very clear statement of what has been alleged and what has been accepted by this court. This language addresses the specific weapons used, during peaceful protests, during the COVID-19 emergency.

The Mayor, without support, claims that the Petitioners needed to include exact dates and exact uses of force. Motion for Reconsideration at 11-12. But nothing in the law requires this level of detail, only “an approximate date, location, and nature of each act.” RCW 29A.56.110. Petitioners have been highly specific all the same, even while the rights of protesters have continued to be violated in the exact same way a multiple times since the original Statement of Charges was filed. See Timeline in Section III.B.f, infra.

Many other cases involve similarly broadly described charges that met with Court approval. For example, In In re Recall of Cy Sun, one of the two charges sustained by the Washington Supreme Court was simply: “Jeopardizing the City’s liability insurance coverage by not filling vacant department heads.” 177 Wn.2d at 258. There is no date or dates in the charge, no specific names or titles of positions unfilled. Yet the Supreme Court reviewed the materials presented, found that they were sufficient, and upheld the charge. Id. at 259-60. To be clear,

vagueness was not a challenge in Cy Sun, but if we accept the mayor's assertion that the recall petition must have the clarity of a criminal charge, then this language would be unacceptable.

Similarly, in In re Pepper, one of the charges was that:

Pepper, as part of a council majority, refused to attend council meetings and failed to approve minutes.

189 Wn.2d at 559. Presumably, under their current argument, the mayor's team would claim this charge was too vague, seeds exact dates, meetings, and a specific violation of a specific statute. But none of that appears necessary, no vagueness challenge was brought, and the Supreme Court found the charges factually and legally sufficient. Id at 559, 564. Specifically when looking at "intent," the Court noted that the allegation "did not depend on the notion that Pepper's failure to attend was itself criminal or illegal. Instead, Robbin Taylor alleges that Pepper's actions violated her duty as a council member." Id. at 559.

There is further discussion in Pepper of how the actions violated Pepper's duty, including (by the Court), a citation to a statute. Id. But in the instant case, Mayor Durkan's failure to act plainly led to extensive violations of citizens' state and federal constitutional rights, the supreme law of the land — there is no question that laws were broken, as Judge Jones' TRO finds.

Mayor Durkan, like Pepper, violated her duty and her oath of office, and this also allowed others to violate the law, extensively and aggressively, causing great personal suffering in the city. This is not confusing, and it is disingenuous to suggest that it is. The mayor has all the information she needs about the charge to be able to present a defense to the voters if she so chooses.

More simply put, no one in Seattle will look at this petition and be confused, or wonder what the Mayor is supposed to have done. The topic has been thoroughly covered in local media for over a month now. The time has come to let the people speak, as the constitutional right of recall allows.

6. The Mayor’s knowledge and intent are obvious given the timeline and the many individuals and entities pleading with her for weeks to stop the police violence against protesters.

The Mayor has downgraded to a footnote her argument that she shouldn’t be recalled for the actions “of a subordinate where the official did not direct or have knowledge of the act.” (Motion for Reconsideration, p.12, fn.11), They now only argue this issue with regard to the gas deployed on June 7. This change in tactic reflects the impossibility of an argument that attempts to paint a picture of complete mayoral ignorance of the events and police action that have unfolded in Seattle in recent months. And notable, according to the Mayor herself in an interview from KUOW on July 16, she and Chief Best are “always talking.”<sup>9</sup>

Presented below is a limited timeline, showing some opportunities for the Mayor to respond to individuals and groups calling on her to stop what was happening. **Highlighted** text indicates occasions where the mayor either was directly called upon to immediately fix the issues with SPD, or else where the mayor presented herself as playing a role in controlling the police department.

Date	Event	Source
May 28	Mayor Durkan and Chief Best hold a joint press conference to talk about the plans for weekend protests.	10
May 30	Initial Westlake protest, citizens widely denounce the pepper-spraying of an 8-year-old child by police, Mayor Durkan proclaims a civil emergency in Seattle due to the protests, by emergency order announces a curfew and a “weapons ban.”	11
May 31	At a joint press conference with Chief Best, the mayor says “ <i>Chief Best and I both give officers the support they need to do their jobs, but coming with</i> ”	12

<sup>9</sup> <https://www.kuow.org/stories/mayor-durkan-we-are-not-about-making-tweaks-we-are-really-about-reimagining>

<sup>10</sup> <https://www.seattlechannel.org/Mayor?videoid=x114449>

<sup>11</sup> <https://www.kuow.org/stories/a-child-pepper-sprayed-a-womans-eye-nearly-lost-denounce-seattle-police-tactics>; <https://www.kuow.org/stories/photos-thousands-gather-to-protest-the-murder-of-george-floyd>; <https://www.kuow.org/stories/seattle-police-use-tear-gas-and-pepper-spray-on-peaceful-protesters>;

<sup>12</sup> <https://www.seattlechannel.org/Mayor?videoid=x114478> (quotes at 29:54, and 39:00)

	<i>that that is accountability. I couldn't be more proud of Chief Carmen Best."</i> When asked about protester injuries, the mayor says, "There were no significant injuries that we're aware of."	
June 1	The Office of Police Accountability reports that 12,000 complaints about police behavior were filed over the weekend of protests.	13
June 2	Police claim that a "riot" broke out by the East Precinct and deploy CS gas, pepper spray, and flash-bang grenades by the precinct. The incident starts with a police officer snatching the pink umbrella of a protester. Footage shows chaos after the blocks filled with gas	14
June 2	Protesters chant "no gas, no gas" at a meeting with Mayor Durkan prior to her press conference. She responds, "I'm not going to stand up and make a promise."	15
June 2	Mayor Durkan announces that she has met with leaders of BLM. She also states during a joint press conference with Chief Best that she and Best agree that SPD "use and try to determine how to deescalate as a first step. The use of force--whether it be hands on, tear gas...should only be done when circumstances require."	16
June 3	BLM of Seattle/King County counters that they have not met with Mayor Durkan: "We are the representatives of BLM Seattle and we were not a part of those meetings, despite having direct lines of communication with the Chief and the Mayor for over two years; why the Mayor represents she met with Black Lives Matter Seattle given these facts undermines the integrity of any meetings or discussions that have excluded this chapter."	17
June 3	The Seattle Community Police Commission meets with Mayor Durkan and Chief Best and calls on them to immediately stop the use of flash-bang grenades and blast balls. Such recommendations dated back to 2015.	18
June 3	Mayor Durkan and Chief Best meet with "protest leaders and longtime	19

<sup>13</sup> <https://www.aclu-wa.org/docs/opa-press-release-following-demonstrations>.

<sup>14</sup> <https://mynorthwest.com/1906245/live-updates-seattle-bellevue-protests/>  
[https://twitter.com/HannaKIROFM/status/1267674896009584640?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1267674896009584640%7Ctwgr%5E&ref\\_url=https%3A%2F%2Fmef\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1267674896009584640%7Ctwgr%5E&ref\\_url=https%3A%2F%2Fmynorthwest.com%2F1906245%2Flive-updates-seattle-bellevue-protests%2F%3F](https://twitter.com/HannaKIROFM/status/1267674896009584640?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1267674896009584640%7Ctwgr%5E&ref_url=https%3A%2F%2Fmef_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1267674896009584640%7Ctwgr%5E&ref_url=https%3A%2F%2Fmynorthwest.com%2F1906245%2Flive-updates-seattle-bellevue-protests%2F%3F)

<sup>15</sup> <https://twitter.com/UrbanistOrg/status/1267976301823967232>  
<https://www.facebook.com/stuart.t.apy/videos/10223924720052535/> (last exchange about gas begins at 1:46:39)

<sup>16</sup> <https://www.seattlechannel.org/Mayor?videoid=x114487> (quote at 9:30)

<sup>17</sup> <https://southseattleemerald.com/2020/06/03/opinion-black-lives-matter-seattle-king-county-responds-to-recent-protests-and-actions-by-the-city-of-seattle-mayor-durkan/>

<sup>18</sup> <https://twitter.com/SeaCPC/status/1268284361746509824>

<sup>19</sup> <https://www.seattletimes.com/seattle-news/seattle-area-protests-mayor-jenny-durkan-to-meet-with-protest-leaders-today-as-demonstrators-prepare-for-sixth-day-of-action-after-george-floyds-death/>



	<i>community activists to address the ongoing protests over police killings of Black people.”</i>	
June 3	Seattle City Attorney Pete Holmes announces the city will withdraw its request to remove police force from federal oversight, “ <i>a dramatic change that comes after six days of protests.</i> ”	20
June 3	An <i>open letter to Mayor Durkan from a citizen of Capitol Hill</i> is published in a popular local blog, where the citizen complains about tear gas blowing into his bedroom and asks: <i>Even if you believe that people first threw water bottles at the officers, allow me to point out that these are frustrated civilians whereas the officers are supposed to be professionals trained at deescalation. Instead, the cops responded with shots, explosions, and tear gas. I asked this once and I’ll ask it again – what the actual fuck?!?”</i>  <i>The next night, last night, was no different and I was there when I witnessed first hand again, how the groups of cops who acted like thugs laden with military-style equipment, were given the green light and released into the neighborhood to test out their new toys against people, and literally terrorize the neighborhood. I actually heard some of them chuckle with glee. Later that night, I saw live video recordings of them turning over dumpsters, ripping umbrellas from people’s hands and destroying them, while chasing after unarmed civilians like a pack of high school bullies hunting rats. ....</i> <i>What you call policing, I call rioting and active instigation and propagation of violence in my neighborhood. You invaded my home, you invaded my very bedroom, all the while shooting at innocent civilians who are rightly protesting the daily, senseless murder of black men and women at the hands of Seattle police.</i>	21
June 3	At a Special Public Safety Committee meeting, Councilmember Lisa Herbold and Councilmember Mosqueda call for emergency recommendations on the use of tear gas. [Tweet is from the next day.]	22
June 4	A professor and a lecturer at the UW Medicine issue an open letter to the members of UW Medicine to support the protests. In that letter, they also note that <i>every dean at UW Medicine has signed on the a specific list of demands to: “Mayor Durkan, County Executive Constantine, and Governor Inslee: You must declare Racism and Police Violence as a Public Health Issue”</i> (demands follow in the letter, including <i>to stop using tear gas during</i>	23

<sup>20</sup> <https://www.seattletimes.com/seattle-news/seattle-area-protests-mayor-jenny-durkan-to-meet-with-protest-leaders-today-as-demonstrators-prepare-for-sixth-day-of-action-after-george-floyds-death/>

<sup>21</sup> <https://www.capitolhillseattle.com/2020/06/capitol-hill-community-post-open-letter-to-mayor-durkan/>

<sup>22</sup> [https://twitter.com/Lisa\\_Herbold/status/1268770833981267969](https://twitter.com/Lisa_Herbold/status/1268770833981267969)

<sup>23</sup> <https://huddle.uwmedicine.org/people/in-the-community/join-us-in-the-march-justice>

	the COVID-19 pandemic).	
June 4	The King County Labor Coalition announces that they will expel SPOG unless it addresses racism in its ranks, based on behavior witnessed in the last few weeks.	24
June 4	“Defund the Police” becomes the loudest call from the Capitol Hill protest on this date -- more than 17,000 people sign a petition within 48 hours calling on 50% defunding of SPD	25
June 5	The residents of the Sunset Electric Building close to the East Precinct write an article published in the popular Capitol Hill Blog stating in part that they are working on an open letter to Mayor Durkan and Chief Best about the use of tear gas. <i>“If those of us in nearby buildings felt the harmful side effects of the tear gas we can only imagine how the protesters on the ground felt.”</i>	26
June 5	Issuing a memorandum to Mayor Durkan, Chief Best, and the City Attorney, all three of Seattle’s police oversight agencies — the Community Police Commission (CPC), Office of Police Accountability (OPA), and Office of Inspector General (OIG) — jointly recommend the SPD stop using CS gas, noting in the article on the subject: <i>SPD has no department-wide policies on the use of tear gas. Police officers should not be deploying use of force tools for which they do not have policies and training. That is not how our system of police accountability works, nor should it.</i>  The same article reminds the recipients that other respiratory irritants and blast balls are also a problem.	27
June 5	Councilmember Herbold issues a statement approving of the memorandum from the CPC, OIG, and OPA and also recommending immediate cessation of the use of tear gas, writing in part: <i>Infectious disease experts, and our own Dr. Jeffrey Duchin of Public Health of Seattle and King County, have warned police departments around the country against tear gas, because it causes people to cough and can make the body more susceptible to infection. Coughing because of tear gas could further cause the spread of coronavirus during this pandemic, which is disproportionately affecting people of color.</i> <i>While I’m confident that Seattle Police Chief Carmen Best and Mayor</i>	28

<sup>24</sup> <https://crosscut.com/2020/06/labor-council-seattle-police-union-address-racism-or-get-out>

<sup>25</sup> <https://mynorthwest.com/1916442/seattle-rally-city-defund-the-police-community-solutions/>

<sup>26</sup> <https://www.capitolhillseattle.com/2020/06/capitol-hill-community-post-a-call-to-action-for-businesses-and-residents-subjected-to-spd-tear-gas-during-the-capitol-hill-protests/>

<sup>27</sup> <http://perspectives.seattle.gov/cpc-oig-opa-seattle-police-should-stop-using-tear-gas/48>

<https://seattlecpc.files.wordpress.com/2020/06/accountability-mass-demonstration-memorandum-060520.pdf>

<sup>28</sup> <https://council.seattle.gov/2020/06/05/councilmember-herbold-supports-recommendations-by-cpc-opa-oig-to-stop-use-of-tear-gas/>

	<i>Durkan will seriously consider these recommendations, legislation to support the CPC, OPA and OIG's recommendations may be forthcoming.</i>	
June 5	<p>Chief Best and Mayor Durkan commit to no further use of CS gas for 30 days and state that they wish to “de-escalate tensions.” At a joint press conference with Chief Best, Mayor Durkan was asked specifically about the “pink umbrella video,” and the attack on protesters, and responded: <i>I asked [Office of Police Accountability] to review the individual actions of officers and the overall crowd control management and provide me and the chief with any immediate changes we could make...Because of SPD's actions, tear gas has not been used since earlier this week. But it's critical that this is addressed by policy and the chief's direction. Chief Best has ordered, and I agree, a 30 day ban on use of tear gas at any of these protests. I know she agrees that officers do not need to be using tear gas at protests as a crowd management tool.</i></p> <p>During this same press conference, Mayor Durkan says she hasn't seen the CPC recommendations regarding blast balls.</p>	29
June 5	<p>Shortly after the story breaks that Mayor Durkan denied seeing the CPC's recommendations, the CPC tweets that they discussed the recommendations with Mayor Durkan and Chief Best at a meeting earlier that week.</p>	30
June 5	<p>News breaks that the head of the Seattle Office for Civil Rights Mariko Lockhart, a Durkan appointee, wrote an open letter to her staff after attending the protests and being terrified by police behavior. In the email, she described the fear of police she experienced firsthand while marching “in protest to grieve and be in the community with others,” and urged the city to “immediately halt” using tear gas, flash-bang devices and rubber bullets during demonstrations.</p> <p><i>“I, along with other demonstrators, were met with tear gas and flash grenades thrown into the crowd by our City colleagues at SPD,” Lockhart wrote, in what she described as “an open letter” first reported by independent journalist Erica C. Barnett. “What I experienced in person and have seen in video footage has been terrifying. I have heard from other city leadership and employees that they fear for their personal safety, not because of other protesters but because of the police.”</i></p>	31

<sup>29</sup> <https://www.seattletimes.com/seattle-news/seattle-area-protests-demonstrators-plan-eighth-day-of-action-after-george-floyds-killing/>  
<https://www.seattlechannel.org/mayor-and-council/mayor/city-of-seattle-mayor-videos/?videoid=x114620> (quote at 4:40, emphasis added)

<sup>30</sup> <https://twitter.com/SeaCPC/status/1269046205180329984>

<sup>31</sup> [http://www.chronline.com/northwest\\_regional\\_news/seattle-mayor-police-chief-agree-to-ban-use-of-tear-gas-on-protesters-amid-ongoing/article\\_3c510f22-a834-11ea-864d-3fd5fa5654de.html](http://www.chronline.com/northwest_regional_news/seattle-mayor-police-chief-agree-to-ban-use-of-tear-gas-on-protesters-amid-ongoing/article_3c510f22-a834-11ea-864d-3fd5fa5654de.html)

June 5	<p><b>43rd District Democrats call on the mayor to resign</b> because, among other charges, she failed to protect protesters:</p> <p><i>“Here in Seattle and across the nation, police have repeatedly escalated and responded to peaceful protesters with violence. Multiple reports, photos, and videos show the Seattle Police Department targeting peaceful protesters, children, and members of the media with tear gas, pepper spray, flash bangs, and rubber bullets, while frequently covering their names and badge numbers with tape—contrary to the strong recommendations made by the Seattle Office of Professional Accountability (OPA) in 2015 and the Seattle Community Police Commission in 2016. More than 14,000 complaints about SPD police officer actions have already been submitted to the Office of Police Accountability so far.”</i></p>	32
June 6	<p><b>Councilmember Kshama Sawant calls upon the mayor to resign:</b> <i>“The police have inflicted tear gas, mace, rubber bullets, flash-bang grenades, curfews, arrests and other repressive tactics on Seattle activists and residents — including children — in an attempt to bully and silence the protest movement,”</i> the council member said.</p>	33
June 6	<p>Fearing imminent violence, local journalist Omari Salisbury calls on elected officials to come to the barricades to avoid it. Councilmembers Mosqueda, Herbold, Strauss, Morales, Representative Macri, and King County Councilmember Zahilay all come to the scene. <b>Councilmember Morales tweets while en route that she has called both Mayor Durkan and Chief Best.</b></p>	34
June 7	<p><b>A letter to Mayor Durkan from 26 elected officials is released publicly, with the signers asking</b> <i>“We firmly request that you direct SPD to change their tactics,”</i> including the use of tear gas. The letter is signed by: 4 members of the City Council, 3 members of the County Council, 6 state senators, and 13 state representatives.</p>	35
June 7	<p>Mayor Durkan and Chief Best hold a press conference together, largely supporting each other. Durkan appears to state that several decisions were joint ones:</p>	36

<sup>32</sup> <https://thecisforcrank.com/2020/06/05/another-day-of-protests-small-concessions-from-the-city-and-calls-for-systemic-change-in-seattle/>  
<https://docs.google.com/document/d/1Eyndzr3YyrqqqBgLw7haREiT9b3t2HIx2UtBD7IFta4/edit>

<sup>33</sup> <https://www.seattletimes.com/seattle-news/politics/seattle-councilmember-sawant-calls-on-mayor-durkan-to-resign-over-police-response-to-george-floyd-protests/>

<sup>34</sup> <https://twitter.com/omaraisal/status/1269474578276835328?lang=en>  
<https://twitter.com/CMTammyMorales/status/1269507391281758208>

<sup>35</sup> <https://www.kuow.org/stories/rein-in-police-city-council-members-tell-seattle-mayor-jenny-durkan>

<sup>36</sup> <https://www.kiro7.com/news/local/mayor-durkan-chief-best-hold-news-conference-sunday-night/ZU4JRJKZPFAODCERS2RGJAUCOE/>  
<https://durkan.seattle.gov/2020/06/transcript-mayor-durkans-remarks-at-sunday-june-7-press-conference/>

	<p><i>The actions both Chief Best and I have taken been for the interest of Seattle. From canceling the curfew, to suspending the use of tear gas, to ending the mourning band policy, were the right decisions. We acted in days, but we should have acted sooner.</i></p> <p>Mayor Durkan also indicated that she had called for oversight of the officers' actions, and that she had control over items such as the timeline of that investigation:</p> <p><i>[W]e've asked our civilian independent police accountability partners – OPA, OIG, and CPC – as well as the DOJ and federal monitor to examine all of the current Seattle Police policies for crowd management. This includes evaluating recent events, and the need or the failure to de-escalate.</i></p> <p><i>Over the next 30 days, they are reviewing whether to permanently ban tear gas and make any other recommendations to de-escalate or use less lethal crowd management tools. If they need more time, it will be extended.</i></p>	
June 7	About a half-hour after the joint press conference, a relative of an SPD officer drives his vehicle at an accelerated speed into the crowd on 11th Ave and Pine St, he shoots a protester, then walks behind the line of East Precinct officers afterwards. The contrast between the way in which this shooter was apprehended and the police treatment of protesters mere hours later is significant.	37
June 7	Police use pepper spray and flash-bang grenades on protesters, despite the agreement the previous day to not use CS gas, Councilmember Sawant is hit by tear gas at the protests	38
June 7	A young protester is nearly killed after being struck in the chest by a flash-bang grenade shot by police at the protests. Her heart stops beating three times enroute to the hospital.	39
June 8	Mayor Durkan declares by Executive Order that SPD body cams will remain on when police are interacting with protesters.	40

<sup>37</sup> <https://www.kiro7.com/news/local/suspect-arrested-after-shooting-protest-seattle-police-say/AW6EX6BPJRGLPJ4CRR27BMHLL4/>  
<https://www.columbian.com/news/2020/jun/08/man-drives-car-at-seattle-george-floyd-protesters-one-injured/>

<sup>38</sup> <https://abcnews.go.com/US/wireStory/latest-statue-gen-wickham-toppled-richmond-71117416>  
<https://mobile.twitter.com/cmckshama/status/1269897621218312192?lang=en>

<sup>39</sup> <https://komonews.com/news/local/protester-injured-by-exploding-flash-bang-shares-her-story>  
<https://youtu.be/qjkbPbEPfPc> (video of attack where woman shot).

<sup>40</sup> <https://durkan.seattle.gov/2020/06/mayor-durkan-signs-executive-order-to-activate-body-worn-camera-recording-during-demonstrations/>

June 8	Councilmembers Tammy Morales and Teresa Mosqueda join in Councilmember Kshama Sawant’s call for the mayor to resign: <i>Mosqueda further said “How many people need to write in about being gassed? How many people have to be sprayed in the street every night? The mayor should ask herself if she is the right leader, and resign.”</i>	41
June 8	CPC issues letter to Mayor Durkan, Chief Best, and Councilmembers González and Herbold with 13 recommendations regarding use of force at protests, and notes that contrary to established policy, they were not informed about the policy change on May 31 specifically allowing the use of CS gas: <i>“We are dismayed that SPD did not alert the CPC of these changes, and that these were not mentioned by Chief Best or Mayor Durkan when they attended last week’s CPC meeting. We are left wondering what other policy changes are occurring without our knowledge or the community’s knowledge. The CPC’s responsibilities under the Consent Decree and the 2017 Accountability Ordinance include the review of Seattle Police Department (SPD) policies. We cannot do our job without this information.”</i>	42
June 9	Youthcare posts an open letter to Mayor Durkan asking her to <i>“Defund. Reform. Redistribute. Reinvest.”</i>	43
June 9	The Citywide Race and Social Justice Initiative (RSJI) Change Team Co-Leads, representing 28 different city agencies specifically tasked with undoing systemic racism call directly on Mayor Durkan to protect the protesters, enforce de-escalation requirements, and directly call for an end to chemical weapons during COVID-19.	44
June 9	During a Seattle City Council meeting, Councilmember Debora Juarez declares, <i>“When I hear people say there’s just a few bad apples on the police force I adamantly disagree with that. It’s just not a healthy tree[.]”</i>	45
June 9	Seattle Immigrant and Refugee Commission issues an open letter to Mayor Durkan to address the SPD abuses of protesters and to maintain the ban on CS gas.	46

<sup>41</sup> <https://www.kuow.org/stories/3-seattle-council-members-say-mayor-durkan-should-resign-after-police-response-to-protests>

<sup>42</sup> <http://perspectives.seattle.gov/seattle-cpc-outlines-next-steps-the-city-must-take-to-address-police-accountability/>

<sup>43</sup> <https://youthcare.org/blog/letter-to-mayor-durkan/>

<sup>44</sup> <https://thecisforcrank.com/2020/07/06/fbi-says-there-was-specific-threat-against-east-precinct-durkan-letter-dodges-protesters-three-demands/> (link to letter itself is midway down, in the paragraph: “A month after the heads of the city’s Race and Social Justice Initiative “change teams” sent a letter to Mayor Jenny Durkan asking her to substantively address the demands of protesters, Durkan has responded, with a letter outlining many of the same actions the mayor has highlighted in her press appearances since George Floyd’s murder sparked protests against police violence in late May.”)

<sup>45</sup> <https://www.kuow.org/stories/spd-c039>

<sup>46</sup> <https://medium.com/@SeattleIRC/seattle-immigrant-refugee-commissions-open-letter-to-city-leadership-be319b2526bf>



June 10	10 elected officials of color send an open letter to Mayor Jenny Durkan and Chief Best, calling upon them first and foremost to: <i>“sto[p] the use of all forms of chemical substances for crowd control; en[d] the use of rubber bullets and flash-bangs; and demilitariz[e] police on the streets who interact with protestors.”</i>	47
June 10	Protesters take over City Hall and chant calls <i>“for Mayor Jenny Durkan’s ouster.”</i>	48
June 10	Seattle City Council begins an inquest into the SPD budget	49
June 10	OneAmerica issues an open letter to Mayor Durkan and the City Council asking for police reform	50
June 11	The Pride Foundation issues an open letter to Mayor Durkan from a large Seattle LGBTQ leadership. The letter is signed by 16 leaders from 13 different LGBTQ organizations, in part writing:  <i>Your response has been to stand by SPD, even as they escalate violence day after day. Your response has been to ignore community voices asking that the SPD budget needs to be cut. Your response has been to use your sexual orientation as a way to insinuate deeper empathy for these calls for action than your actual actions suggest. Your response has been to promise to identify \$100 Million from somewhere else.</i>  <i>We know what that means: you are not listening.</i>	51
June 13	Petition for Recall begins to receive press attention	52
June 16	Seattle City Council votes unanimously to ban the use of tear gas and other crowd-control weapons, as well as banning chokeholds	53
June 16	Chief Best says during an interview that if the Seattle City Council takes away the use of tear gas, <i>“[W]e’re back to batons.”</i>	54

<sup>47</sup> <http://seattlemedium.com/10-elected-officials-of-color-send-letter-to-mayor-durkan-and-chief-best/>

<sup>48</sup> <https://www.thedailybeast.com/seattle-protesters-take-over-city-hall-with-help-from-council-member>

<sup>49</sup> <https://www.king5.com/article/news/local/protests/seattle-starts-to-look-at-police-budget-amid-demands-to-defund-the-police/281-b46eb49d-869d-4953-88db-8769c0dc684c>

<sup>50</sup> <https://weareoneamerica.org/2020/06/10/oneamerica-sends-letter-to-mayor-durkan-and-seattle-city-council-in-solidarity-with-the-black-lives-matter-movement-demands/>

<sup>51</sup> <https://pridefoundation.org/2020/06/a-joint-open-letter-from-seattle-lgbtq-organizational-leaders/>

<sup>52</sup> <https://www.kiro7.com/news/local/police-response-protests-fueling-petition-recall-seattle-mayor/TKFYUMGAD5BL3EWDDEX6JAKI3Y/>

<sup>53</sup> <https://kuow.org/stories/seattle-city-council-bars-police-use-of-tear-gas-chokeholds>

<sup>54</sup> <https://www.kuow.org/stories/seattle-police-chief-defends-tear-gas-and-wants-east-precinct-back-she-also-wants-change>

June 18	A new business coalition of tech leaders for racial justice calls on the mayor, demanding she implement the CPC police reforms.	55
June 24	Seattle Indivisible responds to the Mayor's proposed cuts to the SPD by explaining that they are too few, and that in light of the behavior of the police this spring, the SPD need greater transformation.	56
June 30	Late at night, Mayor Durkan issues an emergency order to clear the area surrounding the East Precinct the next day, enforcement occurs at 5am the next day, before most protesters had time to learn of the order.	57
July 1	SPD clears out the area surrounding the East Precinct in the early morning hours, using pepper spray, CS gas, and flashbang grenades/	58
July 1	During clearing of the area surrounding the East Precinct, police arrest one identified British journalist, detain a local journalist in place without cause, and apparently keep additional reporters out of the area during the clearing.	59
July 2	SPD continues to clash with protesters on Capitol Hill, using pepper spray, CS gas, and flashbang grenades.	60
July 9	The ACLU, the Fred T. Korematsu Center for Law and Equality, and Perkins Coie send a letter to the City Attorney's office, asserting that the SPD has violated Judge Jones' TRO multiple times, as well as the new Council ordinance that prohibits the use of blast balls, tear gas, and pepper spray. The letter demands that the city " <i>immediately direct the officers to not to deploy</i> " such weapons.	61
July 10	Councilmember Lisa Herbold issues another open letter to Mayor Durkan, this one about the constituted violations of rights and the arrest/detention of reporters: " <i>It is our job as elected officials to ensure the press remains free and is able to carry out its work, in accordance with the Constitution and City law. The Constitution and Municipal Code protections for the press, and observers,</i>	62

<sup>55</sup> <https://www.geekwire.com/2020/seattle-tech-business-leaders-form-racial-justice-coalition-demand-police-reforms/>

<sup>56</sup> [https://docs.google.com/document/d/1NBebCYKRss-haR2cvDdFEz5bF14W\\_Era80ajxJ6XM7Q/edit](https://docs.google.com/document/d/1NBebCYKRss-haR2cvDdFEz5bF14W_Era80ajxJ6XM7Q/edit)

<sup>57</sup> <https://spdblotter.seattle.gov/2020/07/01/mayor-durkan-issues-emergency-order-regarding-capitol-hill-protest-zone/>

<sup>58</sup> <https://www.seattletimes.com/seattle-news/seattle-police-clearing-chop-protest-zone/>

<https://www.nytimes.com/2020/07/01/us/seattle-protest-zone-CHOP-CHAZ-unrest.html>

<sup>59</sup> <https://www.independent.co.uk/news/world/americas/seattle-journalist-arrested-andrew-buncombe-trump-mayor-police-a9613736.html>

<sup>60</sup> <https://www.capitolhillseattle.com/2020/07/post-chop-protests-and-arrests-continue-for-second-night-on-capitol-hill/>

<sup>61</sup> <https://twitter.com/KorematsuCtr/status/1281377739849609218>

<sup>62</sup> <https://herbold.seattle.gov/west-seattle-bridge-update-2020-budget-rebalancing-deliberations-new-homeless-service-provider-funding-directors-rule-for-exceptional-and-significant-trees-jump-start-investments-seattle/>



	<i>do not exist for the convenience of government, to be cast aside whenever they happen to be inconvenient to government.”</i>	
July 17	Democratic party leaders from the 6th, 37th, and 43rd Districts issue a joint statement asking Mayor Durkan to resign. It reads in part: <i>Under the Mayor’s authority, and often at her direction or with her approval, the Seattle Police Department (SPD) enacted violence against Seattle residents.</i>  <i>Mayor Durkan and SPD have used chemical weapons, flash bangs, and other forms of police brutality; enacted restrictive and explicitly biased curfews; and performed cruel ‘sweeps’ of unsheltered people during a pandemic, which violate both human rights and the Centers for Disease Control’s policy.</i>	63
July 18	Mayor Durkan has the City Attorney file papers with the US District Court for the Western District to the effect that the ban on crowd-control weapons passed by the City Council conflicts with the SPD Consent Decree	64
July 19	On the Sunday that this document is being assembled, reports come that CS gas and pepper spray have been deployed by SPD at protests at the West Precinct.	65

This is, obviously, a lengthy review, due to the fact that in both the media and in this Court, Mayor Durkan has claimed that she was not at fault when she failed to stop the abuses by SPD, and claimed in large part that she did not have power over the Police Department.<sup>66</sup> She seeks to dodge accountability, seemingly, because she was putatively not in charge.

<sup>63</sup> <https://southseattleemerald.com/2020/07/17/seattle-democratic-groups-demand-durkan-resign-or-face-removal/>

<sup>64</sup> <https://www.seattletimes.com/seattle-news/durkan-chief-says-city-councils-ban-on-police-crowd-control-weapons-conflicts-with-consent-decree/>

<sup>65</sup> <https://twitter.com/TheUrbanAce/status/1285030173989941248>  
<https://twitter.com/DylanInSeattle/status/1285037625225523200>  
<https://twitter.com/stupice/status/1284981722484846592>  
<https://twitter.com/Rochelle/status/1284980857443250177>

<sup>66</sup> <https://www.kuow.org/stories/mayor-durkan-we-are-not-about-making-tweaks-we-are-really-about-reimagining>  
<https://www.seattletimes.com/seattle-news/politics/seattle-mayor-jenny-durkan-asks-judge-to-reconsider-recall-decision-says-she-has-no-duty-to-dictate-police-policy/> (article says Durkan’s position is “it’s not her duty to dictate Seattle police policies and, even if it was, changing police policies without court approval would violate the city’s longstanding consent decree.”)

If the mayor thought she was not in charge of SPD insofar as being able to curb its abuses, it is remarkable the number of sophisticated entities and individuals who believed that she was, including multiple city departments, her own appointees, multiple state, city, and county elected officials, the OIG, the CPC, the OPA, multiple nonprofits, multiple citizens issuing their own letters, and the protesters themselves.

Mayor Durkan and Chief Best largely presented a united front. They held multiple press conferences together and almost uniformly supported each other's positions. They are plainly both responsible for the outcome. Indeed, if Mayor Durkan disapproved of Chief Best's activities, she has failed to make that clear. In a Seattle Times article of June 24, a reporter said the mayor's relationship with Chief Best "has never been stronger."

"My relationship with Chief Best is excellent," Durkan said in a recent interview. "I think the whole narrative of somehow this friction between the chief and I just isn't accurate and it really diminishes her role. She's a national leader on policing."<sup>67</sup>

But this court need not -- and should not -- determine whether Chief Best or Mayor Durkan was "the one" at fault. In fact, that is a determination for the voters of Seattle, and only the voters of Seattle, under the Supreme Court decisions of Pepper and Cy Sun. And it is time for the voters to speak on the matter.

C. THIS COURT SHOULD GRANT THE PETITIONER'S CROSS-MOTION FOR RECONSIDERATION.

1. This cross-motion meets, variously, the requirements of CR 59(a)(4), (7), and (9).

a. CR 59(a)(4).

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<sup>67</sup> Kamb, Lewis, "Seattle Mayor Jenny Durkan and police Chief Carmen Best: A pairing under stress, put to the test," Seattle Times, June 24, 2020, <https://www.seattletimes.com/seattle-news/politics/seattle-mayor-jenny-durkan-and-police-chief-carmen-best-a-pairing-under-stress-put-to-the-test/>

The classically valid reason for a Motion for Reconsideration is “[n]ewly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced [at the hearing.]” CR 59(a)(4). If new, relevant evidence comes to light, a party is justified in bringing it to the Court’s attention.

A recall petition and hearing is necessarily a quickly assembled project. Petitioners typically must file their charges with urgency for the recall to have effect, for the fact that the longer a petitioner delays, the longer the official stays in office. Given that a hearing on the charges must take place within 15 days, there is minimal time to collect evidence.

During the time between the filing of the charges and now, more evidence has accumulated on Charge C. This evidence was not available on filing, because these events had not occurred, or else the filing was too rapid to have collected the information. Given that Charge C did not pass this Court’s initial scrutiny, and Petitioners ask that this Charge be reconsidered in light of this new evidence.

*b. CR 59(a)(7) and (9).*

Moreover, based upon CR 59(a)(7) and (9) —the very rules under which Mayor Durkan brings this motion— this Court should reconsider the limitation of Charge B, and at minimum expand it to encompass the activity of Charge E, which is reflected nowhere in this Court’s initial order.

2. Charge B should be expanded with language from Charge E.

In its order, this Court found that Charge E was duplicative of Charge B. Order, p.5. But in the order, this Court also narrowly describes crowd-control measures as utilized on “protesters.”

At the heart of Charge E was the fact that bystanders and residents already living in the area surrounding the East Precinct were also exposed to CS gas and pepper spray, indeed, in large quantities. The original text of this charge read:

Mayor Durkan endangered the peace and safety of the community and violated her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her oath to uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1, Sec. 3-5, when she wrongfully subjected bystanders to chemical weapons and crowd control measures.

(Emphasis added).

Moreover, in the Statement of Charges, the Petitioners wrote (internal citations omitted, but available in the original document):

*On June 1, 2020, a city-wide curfew was in place in Seattle beginning at 6 pm. At 9:10 pm that same day, the Seattle Police Department deployed blast balls and CS(tear) gas canisters near the SPD East Precinct at 11th Ave and E Pine St. CS gas and chemical agents drifted throughout the neighborhood surrounding the East Precinct and seeped into the homes of residents observing the 6 pm curfew. The impact zone surrounding the precinct has an estimated several thousand residents. A nearby resident that was impacted shared his story at a Seattle City Council subcommittee hearing: (Emphasis added.)*

*[T]here was a protest and once the flashbangs and tear gas went off, it seeped into my apartment. And my three-month-old son, Nadav, who was sleeping, was awoken from his sleep, coughing, crying, spitting up mucus, mucus bubbling out of his nose, he was bright red. And we were forced to leave through our homes. We ran to our car. We didn't have time to even put him in the car seat because it was so bad. My wife had to pour breast milk on his eyes and we had to go and leave our home.*

*On June 2, 2020....at 11:36, the Seattle Police Department deployed OC and blast balls and 100 seconds later, CS gas. Chemical agents again impacted residents in their homes in the area surrounding the East Precinct. A collective statement from the residents of a building overlooking the scenes describes how they were impacted: (Emphasis added.)*

....  
*In the early hours of June 8, at 12:04 am, SPD officers again deployed OC and blast balls near the East Precinct. Ten minutes later at 12:14 am, CS gas was again deployed, only two days following an announcement from Mayor Durkan and Chief Best “suspending the use of CS gas for at least thirty (30) days[.]” This assault continued for some time. A resident within one block of the police assault described the scene: (Emphasis added.)*

*The onslaught of explosions was relentless, it seemed like they should stop right away, but they didn't. I went to my door to see if anyone needed refuge from the smoke, people were still there watching the police deploy these explosive weapons. A live band was playing while in the midst of clouds of smoke and gas. The sounds of the music punctuated by detonations was devastating.*

Statement of Charges, p.15-17.

As recently determined by Judge Jones, the SPD did not have sufficient reason to use CS gas and pepper spray on peaceful protesters in the manner it did. Accordingly, SPD had no cause at all to subject residents in their homes to chemical weapons. The fundamental rights of these residents to be safe in their own homes were actively violated by the SPD and by Mayor Durkan's refusal to take action, night after night, but the violation of their rights is nowhere reflected in the remaining charge. We ask this Court to expand the charge to include that bystanders' and residents' rights were also violated by Mayor Durkan's inaction.

3. Charge C should be reconsidered given accumulated evidence, which was not reasonably available at the time of the initial filing.

Charge C, as rewritten by the Prosecuting Attorney for the ballot summary, read:

Mayor Durkan endangered the peace and safety of the community and violated her duties under state and local laws and her oath to uphold the federal and state constitutions when she:

.....

Failed to enforce police officer compliance with the Seattle Municipal Code and the Seattle Police Department Manual when the police attacked members of the press and street medics and failed to use appropriate de-escalation techniques....

In this section of the charges, Petitioners addressed three separate violations:

- Attacks on members of the press, in violation of SMC 12A.12.020;
- Attacks on street medics attempting to treat patients in violation SPM 14.090-POL-10(b) and also of both constitutional rights and basic humanity; and
- Failure to de-escalate in violation of SPM 8.100-POL-1.

Statement of Charges, pp 10-12.

In its ruling, this Court found that unlike the longstanding, widely-known issues described in Charge B, the Mayor could not be recalled for these more specific issues in police management as they would be “the actions of her subordinates without her knowledge, not at her direction.” Order at 5, citing In Re Recall of Morissette, 110 Wn.2d 933, 936 (1988).

Since charges were initially filed, and even since this Court ruled, more information has come to light on these charges, making them more longstanding and vastly more likely to be recognized by the mayor. In that light, we ask the Court to reconsider its decision and allow the Petitioners to add Charge C to the recall petition. Mayor Durkan declined to act in such a way as to protect the citizens of Seattle after she was on notice of these abuses, and she did so in clear view of any voter in Seattle.

a. Members of the press were attacked early on during the protests, and during the clearing of the area surrounding the East Precinct, there was clear coordination of SPD officers to keep reporters out or in place, and one member of the press was even arrested. Given that Mayor Durkan decided on when the area would be cleared, and made the order to clear it, and given that she was already on notice from this petition and other sources that the press had been attacked, this charge should stand.

There were attacks on the press from early in the protests. In one video taken on June 1, a TV team is hit by what appears to be either a firework or a tear gas grenade (the item remains on the ground issuing smoke like such a grenade), and as the team is retreating, the reporter states that they were hit by items that came from SPD.<sup>68</sup>

There were also apparent incidents of reprisal. For example, Evan Hreha was not an official journalist, but he was the man who took the video of the child who was pepper sprayed by police on May 30. Outraged by the activities of the police, he released that video almost immediately to social media. On June 6, he was arrested, allegedly for use of a laser to shine at

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<sup>68</sup> <https://twitter.com/Acyn/status/1267673936659021830>

police officers earlier in the night. Hreha says he was cooking hot dogs all evening, which he and his friends were distributing to hungry protesters for free. He offered to be searched, and said he didn't have a laser on him and does not even own one, but after his arrest, he was held for 46 hours with no charges or opportunity to be released. The Seattle City Attorney has apparently declined to file charges in Hreha's case.<sup>69</sup>

These happened prior to the filing of charges, but when the area surrounding the East Precinct was forcibly disbanded by SPD on July 1, there was a clear goal of keeping journalists away from the activity and one UK reporter was arrested and held. For example, a reporter from The Stranger emailed us to explain how he was blockaded by SPD from getting to his office in by police. See Exhibit A (email from Rich Smith). Omari Salisbury reported from inside the area that all journalists had been expelled the morning of the clearing.<sup>70</sup>

Omari Salisbury, whose office at Converge Media is in the same block as The Stranger, was forced by police to stand on his doorstep as he repeatedly explained to officers that he was press and they could not hold him.<sup>71</sup> They also warned him that he had to stop broadcasting or he would be arrested.<sup>72</sup> He livestreamed this whole interaction, including the police officer repeatedly telling him that the order that there be no media inside the area was "by order of Mayor Jenny Durkan."<sup>73</sup>

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<sup>69</sup> <https://www.kuow.org/stories/he-captured-footage-of-child-pepper-sprayed-during-seattle-protest-then-was-arrested>

<https://techcrunch.com/2020/07/18/for-seattles-cop-free-protest-zone-tech-is-both-a-revolutionary-asset-and-disastrous-liability/>

<sup>70</sup> <https://www.youtube.com/watch?v=6Jl8lFZNkz8> (discussion of moving the journalists out begins at 6:30).

<sup>71</sup> <https://www.youtube.com/watch?v=6Jl8lFZNkz8> (discussion of SPD telling him to move begins at 8:04).

<sup>72</sup> <https://twitter.com/Omarisal/status/1278412776403202049>

<sup>73</sup> <https://twitter.com/Omarisal/status/1278371101261697029> (video, two of the discussions with police happens at 17:00, where Salisbury is walked out of the park by an officer and told to return to his office, and then again at 1:02:48 in the video, the SPD officer says that media is not allowed to move around in the CHOP without being invited and accompanied by the SPD, "by order of the mayor").

This was covered later by John Helmiere in Real Change:

Thousands of us watched Omari Salisbury livestream the SPD sweep of CHOP and return to the East Precinct. We saw cops repeatedly harass Salisbury. They demanded he leave the area and threatened to arrest him. His office is next door to the precinct, he has been at the scene daily for a month, he displayed his press credentials and he gently explained that he was a journalist. The officers got more agitated. Salisbury kept filming, but backed far enough from the scene that it was hard to see what the police were doing. Salisbury soon tweeted about the police, citing an order by Durkan, disallowing him from broadcasting. The police eventually tweeted back, “We are not limiting [Converge Media’s/Salisbury’s] ability to broadcast. This was a misunderstanding...”.

SPD’s public relations department could see Salisbury’s footage showing what their officers did, but when given the choice to accept responsibility or lie ... they chose to lie.<sup>74</sup>

Even worse, on July 1, a UK reporter was actually arrested and jailed, seemingly for just being present near the precinct. Andrew Buncombe showed his State Department-issued press credentials, but was nonetheless arrested and jailed,<sup>75</sup> triggering an international incident. He was held in the King County Jail, in conditions that he reported as unsanitary, inhumane, and unsafe, and the charges of failure to disperse were not immediately dropped.<sup>76</sup>

This information could not be before the judge at the time of the charges being filed, because such acts had not happened yet. An SPD officer explained that “by order of Mayor Jenny Durkan” media was not allowed in the area surrounding the East Precinct, and a reporter with a US State Dept. issued press pass got arrested because he disobeyed Mayor Durkan’s order, those two facts alone justify the reinstatement of this charge.

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<sup>74</sup> <https://www.realchangenews.org/2020/07/08/deceit-conceit-and-mercy-durkan-s-seattle>

<sup>75</sup> <https://www.kuow.org/stories/british-journalist-arrested-at-the-chop-protest-tells-his-story>

<sup>76</sup> <https://www.independent.co.uk/news/world/americas/journalist-arrest-seattle-chaz-protest-police-prison-black-lives-matter-a9606846.html>



b. The medics were attacked frequently during the protests, and the mayor was on notice of that from this petition, if nothing else. But attacks on the medics continued, and the Seattle Fire Department and SPD refused to help injured protesters, leading to deaths. For these reasons, this charge should stand.

In addition to gross disrespect for freedom of the press, Mayor Durkan did nothing to protect street medics or help them to do their job, despite being warned of the problem by the Statement of Charges and later-filed documents. In the case of Lorenzo Anderson, the consequences were deadly.

Street medics had reached out to Seattle Fire Department to make sure they had coordinated plans for emergency evacuation.<sup>77</sup> Seattle Fire declined to follow the plan in the case of Lorenzo Anderson. The medics believed SFD were on the way, as seen by the video, but SFD declined to move into the area without an okay from SPD. This despite a medic sprinting to Station 25 and begging on her hands and knees for the SFD to go to the injured young man.<sup>78</sup> A different protester approached an SFD aid car and similarly begged the car to respond.<sup>79</sup> The street medics eventually transported Anderson themselves,<sup>80</sup> but he did not survive.

SPD arrived much later than expected, demanding to be allowed to get to the victim, who had already left minutes before.<sup>81</sup> SPD claimed later that they could not enter the area because of a hostile crowd, but body cam footage made it obvious that this was untrue.<sup>82</sup> SFD is required to

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<sup>77</sup> [https://www.youtube.com/watch?time\\_continue=394&v=3LZMjbtzXTQ&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=394&v=3LZMjbtzXTQ&feature=emb_logo) (Discussion with a street medic who has been at the protests continuously Discussion of the red zone/green zone rendezvous points arranged between street medics and SFD to make sure they had coordinated plans to take out severely injured persons, starts at 1:19. The medic was the one who treated Lorenzo Anderson).

<sup>78</sup> [https://www.youtube.com/watch?time\\_continue=394&v=3LZMjbtzXTQ&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=394&v=3LZMjbtzXTQ&feature=emb_logo) (story told at 21:20)

<sup>79</sup> <https://twitter.com/spekulation/status/1274574573426507776> (video of protester begging SFD aid team to go to the aid of Anderson)

<sup>80</sup> <https://www.youtube.com/watch?v=-m-WUbXrdR0&feature=youtu.be&t=356> (livestreamed footage of medics and protesters arguing about whether to move Anderson themselves).

<sup>81</sup> <https://www.youtube.com/watch?v=n4Nui661FPA> (report by KING 5)

<sup>82</sup> [https://twitter.com/spekulation/status/1275130917187547136?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1275130917187547136%7Ctwgr%5E&ref\\_url=https%3A%2F%2Fthreadreaderapp.com%2Fthre](https://twitter.com/spekulation/status/1275130917187547136?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1275130917187547136%7Ctwgr%5E&ref_url=https%3A%2F%2Fthreadreaderapp.com%2Fthre)

follow its orders, and they later told protesters they could not respond without SPD's clearance. But SPD delayed response and then misrepresented the circumstances of that delay. Given that Mayor Durkan knew that the area surrounding the East Precinct was staffed by volunteer street medics, and that they had been attacked repeatedly by SPD, the question was not whether a tragedy would occur, but when.

Mayor Durkan had notice about the situation and did nothing to make sure the medics would have backup from the City and Seattle Fire, a young man died. For that reason, this charge should go forward to the voters.

c. Given that Mayor was already on notice from this petition and other sources that the SPD was not observing its de-escalation duties, and spoke on this exact issue herself, the continued lack of de-escalation is relevant and a matter appropriately before this Court. For these reasons, this charge should stand.

The Petitioners could list incident after incident where the SPD did not de-escalate since the time these charges were filed. It seems to happen every time protesters and police clash, and so the exception is actually when de-escalation occurs. Given that the mayor has had plenty of notice that the SPD continues to decline to use its de-escalation training to avoid violent encounters with protesters, this charge should be reinstated.

In closing, for all three of the above reasons, we ask this Court to reconsider its position on Charge C and allow Petitioners to take the charge to the voters with this recall petition.

IV. CONCLUSION

The foregoing has been submitted by the Petitioners, Elliott G. Harvey et al., at the request of the Court. We ask that this Court deny the mayor's Motion for Reconsideration, and grant Petitioner's Motion to allow Charge C to proceed, and to broaden Charge B to encompass the suffering of bystanders and residents of Seattle. Petitioners ask the Court to consider the recent loss of life and violations of liberty as a significant reason for the voters of Seattle to be allowed the opportunity to recall their Mayor.

Respectfully submitted the 20th day of July, 2020.

A handwritten signature in black ink, appearing to read "Elliott Grace Harvey", written over a horizontal line.

By: Elliott Grace Harvey