

**RECALL OF MAYOR FOR THE CITY OF SEATTLE, JENNY A. DURKAN
STATEMENT OF CHARGES**

With Supporting Declarations and Exhibits

Pursuant to RCW 29A.56.110, et seq.

Ms. Julie Wise
King County Elections Director
919 SW Grady Way, Suite 100
Renton, WA 98057

RE: Filing of Statement of Charges for Recall of Jenny A. Durkan, Mayor for the City of Seattle

Ms. Wise:

This letter and its attachments constitute the Statement of Charges in support of the Recall of Mayor for the City of Seattle, Jenny A. Durkan, pursuant to RCW 29A.56.110 and the Washington State Constitution, Article I, sections 33 and 34. Mayor Durkan has committed acts of malfeasance and misfeasance while in office and has violated her oath of office. This Statement of Charges is verified under oath, states the acts complained of in concise language, gives a detailed description including the approximate date, location, and nature of each act complained of, and is signed by the person(s) making the charge.

Duties of Jenny A. Durkan, Mayor for the City of Seattle

The City of Seattle is a political subdivision of the State of Washington, incorporated with a mayor-council government in 1869 pursuant to article XI, section 10 of the Washington State Constitution. Article XI, section 10 of the Washington State Constitution provides, in relevant part, that:

Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city[.]

RCW 35.18.200 prescribes the duties of a Mayor of a municipality:

The mayor shall preside at meetings of the council, and be recognized as the head of the city or town for all ceremonial purposes and by the governor for purposes of military law.

He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by the council, shall take command of the police, maintain law, and enforce order.

The Charter of the City of Seattle Article V, section 2 prescribes the power and duties of Mayor of the City of Seattle:

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.

The Seattle Municipal Code 10.02.010A prescribes the circumstances and purposes for the proclamation of a civil emergency:

Whenever riot, unlawful assembly, insurrection, other disturbance, the imminent threat thereof, or any fire, flood, storm, earthquake, or other catastrophe or disaster occurs in the City and results in or threatens to result in the death or injury of persons or the destruction of property or the disruption of local government to such extent as to require, in the judgment of the Mayor, extraordinary measures to prevent the death or injury of persons and to protect the public peace, safety, and welfare, and alleviate damage, loss, hardship, or suffering, the Mayor shall forthwith proclaim in writing of the existence of a civil emergency.

Jenny A. Durkan was elected as the Mayor of the City of Seattle on November 7, 2017 with 122,442 votes – 55.56 percent of the 224,808 votes cast for the office.¹ On November 28, 2017, Mayor Jenny A. Durkan signed and executed her oath of office² which states as follows:

¹ King County Elections Office, *Election Results, Nov 07, 2017*, (Nov 27, 2017), aqua.kingcounty.gov/elections/2017/nov-general/results/results.pdf, page 27 attached as Exhibit 1.

²Oath of Office attached as Exhibit 2.

I, Jenny A. Durkan swear that I possess all the qualifications prescribed in the Seattle City Charter and the Seattle Municipal Code for the position of Mayor; that I will support the Constitution of the United States, the Constitution of the State of Washington, and the Charter and Ordinances of The City of Seattle; and that I will faithfully conduct myself as Mayor for the City of Seattle.

Jenny A. Durkan commenced duties to the elected position of Mayor for the City of Seattle on November 28th, 2017.

On May 30th, 2020, Mayor of the City of Seattle Jenny A. Durkan (Mayor Durkan) issued the first of several Civil Emergency Orders for the City of Seattle:

- (1) Civil Emergency Order, Establishing Prohibited Items, City of Seattle. Dated and signed the 30th day of May, 2020, at 4:59 pm.³
- (2) Civil Emergency Order, Imposing Curfew, City of Seattle. Dated and signed the 30th day of May, 2020, at 5:00 pm.⁴
- (3) Civil Emergency Order, City of Seattle, Imposing a General Curfew. Dated and signed the 1st day of June, 2020, at 12:55 pm.⁵
- (4) Civil Emergency Order, City of Seattle, Imposing a General Curfew. Dated and signed the 2nd day of June, 2020, at 5:37 pm.⁶

Summary of Charges

Since commencing the duties as Mayor of the City of Seattle, Jenny A. Durkan has (1) endangered the peace, safety, and welfare of the public; (2) failed to alleviate damage, loss, hardship, and suffering when it was in her power to do so; (3) disregarded her duty to lawfully command the Seattle Police Department; (4) violated the constitutional rights of individuals within the Seattle city limits; and (5) otherwise violated her duties as proscribed by RCW 35.18.200, and Seattle Charter Article V Sec. 2.

All the acts committed by the Mayor for the City of Seattle, Jenny A. Durkan, summarized above and further described below, were performed wrongfully, and knowingly and constitute malfeasance, misfeasance, and/or a violation of her oath of office.

³ *Civil Emergency Order, Establishing Prohibited Items, City of Seattle*, May 30, 2020, attached as Exhibit 3.

⁴ *Civil Emergency Order, Imposing Curfew, City of Seattle*, May 30, 2020, attached as Exhibit 4.

⁵ *Civil Emergency Order, City of Seattle, Imposing a General Curfew*, June 1, 2020, attached as Exhibit 5.

⁶ *Civil Emergency Order, City of Seattle, Imposing a General Curfew*, June 2, 2020, attached as Exhibit 6.

Factual and Legal Sufficiency for Recall of Jenny A. Durkan, Mayor for the City of Seattle

A. Constitutional Right to Recall

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 (amend. 8) of the Washington State Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270 (1984). Section 33 contains the substantive right of recall and provides “[e]very elective public officer of the State of Washington . . . is subject to recall and discharge by the legal voters of the state. . . .” Section 34 permits the Legislature to “pass the necessary laws” to carry out section 33 “and to facilitate its operation and effect without delay.” Pursuant to this authority, the Legislature adopted Chapter 29.82 RCW, which was enacted “to provide the substantive criteria and procedural framework for the recall process.” *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343, 347 (1998). RCW 29.82 has since been re-codified as RCW 29A.56. Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wn.2d 503, 510 (2011).

Elected officials in Washington may be recalled for malfeasance, misfeasance, or violating their oath of office. Const. art. I, § 33; “Courts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters, but [they] do not evaluate the truthfulness of those charges.” *Washam*, 171 Wn.2d at 510 (citing RCW 29A.56.140).

B. The Requirement of Factual Sufficiency

Charges are factually sufficient if “taken as a whole they do state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance, malfeasance, or violation of oath of office.” *Chandler*, 103 Wn.2d at 274. “Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations.” *In re Recall of West*, 155 Wn.2d 659, 665 (2005).

“A charge is factually sufficient if the facts establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office and are stated in concise language and provide a detailed description in order to enable the electorate and a challenged official to make informed decisions.” *In re Recall of Telford*, 166 Wn.2d 148, 154 (2009) (internal citations omitted, emphasis in original). “In this context, ‘prima facie’ means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed misfeasance, malfeasance, or violations of the oath of office.” *In re Recall of Wade*, 115 Wn.2d 544, 548 (1990).

RCW 29A.56.110 requires that “the person . . . making the charge . . . have knowledge of the alleged facts upon which the stated grounds for recall are based.” There is no requirement that the petitioner have firsthand knowledge of such facts. Rather he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791 (2003); *In re Recall of Ackerson*, 143 Wn.2d 366, 372 (2001). When the charge is violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Pearsall Stipek*, 136 Wn.2d at 263. The courts may use supplemental materials to determine whether there is a factual basis for the charge. *West*, 155 Wn.2d at 665-66.

C. The Requirement of Legal Sufficiency

Charges must allege substantial conduct amounting to misfeasance, malfeasance, or violation of the oath of office to be legally sufficient. *Washam*, 171 Wn.2d at 514-15. This protects officials from being recalled for simply exercising discretion granted to him or her by law. *Chandler*, 103 Wn.2d at 274. “Officials may not be recalled for their discretionary acts absent manifest abuse of discretion.” *Id.* at 515.

The definition of misfeasance, malfeasance and violations of oath of office are set forth in RCW 29A.56.110, as follows:

For the purposes of this chapter:

- (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
 - (a) Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and
 - (b) Additionally, “malfeasance” in office means the commission of an unlawful act;
- (2) “Violation of the oath of office” means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

Acts and Omissions Constituting the Statement of Charges

The acts and omissions of Jenny A. Durkan as Mayor for the City of Seattle for which this Statement of Charges is brought are divided into the following general factual categories. Together, these charges amount to an indictment against Mayor Durkan, that she has conducted

herself, while in office, in a manner that constitutes misfeasance, malfeasance and a violation of her oath of office, where she promised in relevant part she would “support the Constitution of the United States, and of the State of Washington, and the Charter and ordinances of The City of Seattle.”⁷

The charges are summarized as follows:

- A. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3; when she issued a city-wide curfew without sufficient notice for individuals to safely disperse.
- B. 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 failed to institute new policies and safety measures for the Seattle Police Department when using crowd control measures during a public health emergency.
- C. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3 and 5. when she failed to enforce Seattle Police Officer compliance with the Seattle Municipal Code and the Seattle Police Manual, when the police deliberately attacked members of the press despite their identification as such, attacked street medics attempting to treat the injured, destroyed medical supplies, and deliberately did not use appropriate de-escalation techniques.
- D. 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, and her oath to uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1, Sec. 3-5. when she failed to protect the Right to Freedom of Speech and the Right to Peaceful Assembly under the First Amendment of the United States Constitution and Article 1, Sec. 4-5 of the Washington State Constitution.
- E. 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.

⁷ Exhibit 2

- F. 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 endangered the lives of people around the SPD East Precinct by allowing police to leak false information about fabricated crimes and threats to the media.
- G. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3 when she wrongfully disallowed certain property rights in downtown Seattle and Capitol Hill.

Substance of Acts and Omissions Constituting the Statement of Charges

- A. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3; when she issued a city-wide curfew without sufficient notice for individuals to safely disperse.

Prior to Mayor Durkan signing an emergency order on May 30, 2020,⁸ the city of Seattle — like the rest of the country — was concerned and consumed by COVID-19.⁹ On March 3, 2020, Mayor Durkan had issued a Mayoral Proclamation of Civil Emergency in response to the rapid increase in COVID-19 cases in Seattle.¹⁰

Already a hot button issue amongst residents, affordable housing came back into the spotlight¹¹ throughout March and April as rents and mortgages became due. The topic of homeless encampments in Seattle¹² also became a concern as coronavirus surged throughout the country.

Claiming a need focus on coronavirus, Mayor Durkan asked the U.S. district attorney to free the city of Seattle’s police department from federal oversight¹³ imposed in the 2012 consent

⁸ Exhibit 3

⁹ *New analysis may rewrite the history of Washington state’s coronavirus outbreak*, Seattle Times, May 26, 2020, seattletimes.com/seattle-news/health/genetic-analysis-raises-more-questions-about-the-history-of-washington-states-coronavirus-outbreak/.

¹⁰ *Mayoral Proclamation of Civil Emergency, City of Seattle*, (May 3, 2020), attached as Exhibit 7.

¹¹ *COVID-driven disaster shows we need bold action to fix housing crisis*, Seattle Times, May 29, 2020, seattletimes.com/opinion/covid-driven-disaster-shows-we-need-bold-action-to-fix-housing-crisis/.

¹² *Allowing homeless camping almost everywhere in Seattle is a bad idea*, Seattle Times, May 26, 2020, seattletimes.com/opinion/allowing-homeless-camping-almost-everywhere-in-seattle-is-a-bad-idea/.

¹³ *In move to limit federal oversight of police, Seattle cites its hard work, need to focus on coronavirus*, Seattle Times, May 25, 2020, seattletimes.com/seattle-news/in-move-to-limit-federal-oversight-of-police-seattle-cites-its-hard-work-need-to-focus-on-the-coronavirus/.

decree with the Department of Justice.^{[14][15]} So it was that even before the protests began, Mayor Durkan’s mayorship was described as in “crisis mode.”¹⁶

Then on May 25, 2020, George Floyd was murdered by Officer Derek Chauvin in Minneapolis, MN.¹⁷ Demonstrations in Seattle began on May 29, and the following day, May 30, tensions reached a fever pitch when the Seattle Police Department (SPD) began deploying crowd control weapons, including flash bang grenades and pepper spray, on largely peaceful protesters in the downtown core of Seattle.^{[18][19]} Later that day, the SPD deployed the same weapons and CS (“tear”) gas, citing the need to control individuals who were now behaving violently and destroying property. Mayor Durkan released a statement at 4:45 pm announcing an upcoming curfew beginning at 5:00 pm.²⁰

The Civil Emergency Order Imposing Curfew²¹ was issued on May 30, 2020, signed at 5:00 pm, and states: “A general curfew is imposed in the City of Seattle: Commencing at 5:00 p.m. on May 30th, 2020, no person shall enter or remain in a public place as defined in SMC 15.02.046i.” At the time this was signed, there are thousands of people in downtown Seattle and surrounding neighborhoods, with little to no notice to safely disperse.

The purpose of the Civil Emergency Order Imposing Curfew on May 30, 2020 was clearly stated: “...to protect the public peace, safety and welfare[.]”²² When Mayor Durkan instituted a city-wide curfew — effective immediately — she knowingly threatened the safety and welfare of any person(s) away from their home and unable to instantly return there, and subjected them to immediate risk of imprisonment or fine. Mayor Durkan additionally subjected those in a public place to events that would therefore arise as a result of, and reaction to, the curfew order. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

¹⁴ Seattle Police Department, *Settlement Agreement History*, seattle.gov/police/about-us/professional-standards-bureau/settlement-agreement-history.

¹⁵ The United States Department of Justice, *Investigation of the Seattle Police Department*, Aug 6, 2015, justice.gov/crt/investigation-documents.

¹⁶ *Mayor Jenny Durkan in crisis mode as Seattle confronts coronavirus, homelessness, failing West Seattle Bridge*, Seattle Times, May 24, 2020, seattletimes.com/seattle-news/politics/my-job-has-changed-pressure-mounts-as-seattle-mayor-jenny-durkan-juggles-coronavirus-other-crises/.

¹⁷ *8 Minutes and 46 Seconds: How George Floyd Was Killed in Police Custody*, New York Times, May 31, 2020, nytimes.com/2020/05/31/us/george-floyd-investigation.html.

¹⁸ *Video shows milk poured over the face of child pepper-sprays in Seattle protest*, Q13 Fox, May 30, 2020, q13fox.com/2020/05/30/video-shows-milk-poured-over-face-of-child-pepper-sprayed-in-seattle-protest/.

¹⁹ *Seattle protest updates: The city reacts to the death of George Floyd*, Seattle Times, May 30, 2020, seattletimes.com/seattle-news/protest-updates-as-the-country-reacts-to-the-death-of-george-floyd-follow-the-latest-developments-in-seattle-and-elsewhere/.

²⁰ *Id.*

²¹ Exhibit 4.

²² *Id.*

- B. 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 failed to institute new policies and safety measures for the Seattle Police Department when using crowd control measures during a public health emergency.

On May 29, the first day of Black Lives Matter demonstrations in Seattle, there were 7,949 confirmed cases of COVID-19 in King County²³ and Mayor Durkan’s own COVID-19 emergency order²⁴ was still in effect via an executive order of extension.²⁵ With no regard for the detriment to public health during a pandemic, the Seattle Police Department (SPD) used CS (tear) gas in highly populated areas over an extended period of time. Dr. Rohini Haar explains how CS gas affects the body:²⁶

Tear gas, by nature, is indiscriminate, and affects everyone within its reach – from those who may initiate a protest, to peaceful bystanders, to children caught up in the chaos, to law enforcement officers themselves. Young children, or those with asthma or respiratory disorders, and those who may not be able to run away quickly, are particularly at risk of serious injury.

These dangers are compounded when combined with a pandemic that attacks the respiratory system. On June 5, 2020, in a letter signed by nearly 1,300 doctors and medical professionals, law enforcement was urged to enact a list of guidelines for protecting the public from the virus.²⁷ The letter makes the following recommendation regarding tear gas or “other respiratory irritants”, such as pepper spray:

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.

In addition to the deleterious effects of the gasses themselves, medical experts also warned that “those rushing to help people sprayed by tear gas could come into close contact with someone

²³ *Coronavirus daily news updates, May 29: What to know today about COVID-19 in the Seattle area, Washington state, and the world*, Seattle Times, May 29, 2020, seattletimes.com/seattle-news/health/coronavirus-daily-news-updates-may-29-what-to-know-today-about-covid-19-in-the-seattle-area-washington-state-and-the-world/.

²⁴ Exhibit 7.

²⁵ Executive Order dated May 2, 2020, attached as Exhibit 8.

²⁶ Haar, Rohini J., MD MPH, *The Very Real Health Impacts of Tear Gas*, Physicians for Human Rights, Dec 11, 2018, phr.org/our-work/resources/the-very-real-health-impacts-of-tear-gas/.

²⁷ Bender Ignacio, Rachel, MD MPH, *Open letter advocating for an anti-racist public health response to demonstrations against systemic injustice occurring during the COVID-19 pandemic*, Jun 1, 2020 attached as Exhibit 9.

already infected with the virus who is coughing infectious particles [because of the gas.]”²⁸ Moreover, the long-term effect of pepper spray on those exposed, including people simply being home when tear gas is deployed in their neighborhood, is significant: “The chemical agent also seeps into homes, contaminates food, furniture, skin and surfaces, and can cause long-term lung damage.”²⁹

The Seattle Police Department, under command of Mayor Durkan, not only disregarded the health and safety of the public, they directly damaged it. In a news report after a police assault on June 7th, 2020, an elected official observed the events: “Seattle City Council Member Kshama Sawant, who represents the district, was on the front lines during the dispersal. She claimed the police ‘maced and gassed’ her ‘with hundreds [of] others...with no provocation.’”³⁰

Mayor Durkan was both fully aware of the risks and effects of the COVID-19 public health emergency, and was aware of the risks and health impacts of using chemical crowd control agents on individuals. Mayor Durkan knowingly allowed the Seattle Police Department to use chemical agents on the people of Seattle on multiple occasions over many days, indiscriminately and without concern for the health and well-being of the community. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

- C. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3 and 5. when she failed to enforce Seattle Police Officer compliance with the Seattle Municipal Code and the Seattle Police Manual, when the police deliberately attacked members of the press despite their identification as such, attacked street medics attempting to treat the injured, destroyed medical supplies, and deliberately did not use appropriate de-escalation techniques.

The Seattle Police Manual (SPM) governs the actions of officers, in accordance with Seattle Charter Art. VI, Sec. 5.4. The SPM preface further prescribes: “It is the responsibility of each member of the Department to comply with the Manual’s rules and provisions.” During the Black Lives Matter demonstrations in Seattle between May 29, 2020 and June 8, 2020, the SPD

²⁸ *Can Tear Gas and Pepper Spray Increase Virus Spread?* New York Times, June 8, 2020, [nytimes.com/aponline/2020/06/08/health/ap-us-med-america-protests-tear-gas-virus.html](https://www.nytimes.com/aponline/2020/06/08/health/ap-us-med-america-protests-tear-gas-virus.html).

²⁹ *Tear Gas Is Way More Dangerous Than Police Let On — Especially During the Coronavirus Pandemic*, ProPublica, June 4, 2020, [propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic](https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic).

³⁰ *Cops Deploy Blast Balls, Tear Gas in Longest Confrontation Yet on Capitol Hill*, The Stranger, Jun 8, 2020, [thestranger.com/slog/2020/06/08/43864805/cops-deploy-blast-balls-and-chemical-agents-in-longest-confrontation-yet-on-capitol-hill](https://www.thestranger.com/slog/2020/06/08/43864805/cops-deploy-blast-balls-and-chemical-agents-in-longest-confrontation-yet-on-capitol-hill).

repeatedly and deliberately violated their governing regulations, and Mayor Durkan knowingly allowed the SPD to do so.

- (1) The Seattle Police Department disregard SMC 12A.12.020 regulations regarding treatment of members of the press.

The SMC 12A.12.020 addresses “public safety orders” and failure to disperse: “No such order shall apply to a news reporter or other person observing or recording the events on behalf of the public press or other news media, unless he is physically obstructing lawful efforts by such officer to disperse the group.” During the Seattle BLM demonstrations, members of the press who clearly declared their presence were attacked by officers or physically removed from the scene.^{[31][32]}

- (2) The Seattle Police Department disregarded SCM 14.090-POL-10(b) regulations regarding the provision of medical care in a crowd management setting.

The SPM 14.090-POL-10(b) addresses the duty of police officers to provide medical care to victims of crowd control techniques and so-called less-lethal weapons:

Officers will request medical response or assistance for subjects exposed to OC when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-existing medical condition (e.g. asthma, emphysema, bronchitis, heart ailment, etc) that may be aggravated by OC.

Officers will request medical response or assistance for subjects who appear to have been injured by a blast ball or who complain of pain or injury from having been struck by a blast ball.

SPD officers inflicted hundreds of injuries on the public and there is no evidence that they provided medical care. In at least two case the SPD blocked access to impromptu medical aid stations and continued to detonate devices around medics attempting to aid the injured, and in some cases interfered with treatment or rendered medical supplies unusable.^{[33][34][35][36]} Should

³¹ Picket, Jordan, Jun 8, 2020, twitter.com/jordanpicket/status/1269929380987334658?s=21%5D.

³² Sowersby, Shauna, Jun 6, 2020, twitter.com/shauna_sowersby/status/1269463849725390849?s=21

³³ *‘It’s pretty traumatizing’: Protester hit by SPD flash bang says she nearly died*, Komo News, Jun 9, 2020, komonews.com/news/local/protester-injured-by-exploding-flash-bang-shares-her-story.

³⁴ T, @t_shortstack, Jun 6, 2020, twitter.com/t_shortstack/status/1269463231090888704?s=2.

³⁵ WorriedPotato, @velaharigaming, Jun 7, 2020, twitter.com/velaharigaming/status/1269685373816332289

³⁶ *Folks, I need your help*, Reddit, Jun 8, 2020, reddit.com/r/Seattle/comments/gywxhz/folks_i_need_your_help/

these acts have been committed in a military setting, they could easily be classified as war crimes.^{[37][38]}

- (3) The Seattle Police Department disregarded SPM 8.100-POL-1 regulations regarding the use of de-escalation techniques.

The SPM 8.100-POL-1 addresses the duty of police officers to use de-escalation techniques: “When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.” On many different occasions SPD officers have been quick to react, and failing to issue dispersal warnings.³⁹ Mayor Durkan and Seattle Chief of Police Carmen Best (Chief Best) acknowledged the lack of de-escalation, and reportedly “apologized for instances in which they said officers may have failed to deescalate tense moments, used disproportionate force against demonstrators and deployed less-than-lethal weapons too quickly.”⁴⁰

While under Mayor Durkan’s command and knowledge, on repeated occasions the Seattle Police Department behaved recklessly, violated the constitutional right of the press to be free from interference, disregarded appropriate concern for public safety, failed to provide medical care, and defied of the SMC & SPD Manual that regulates their actions. Mayor Durkan did not appropriately and promptly prevent the Seattle Police Department from continuing to endanger the public. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

- D. 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, and her oath to uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1, Sec. 3-5. when she failed to protect the Right to Freedom of Speech and the Right to Peaceful Assembly under the First Amendment of the United States Constitution and Article 1, Sec. 4-5 of the Washington State Constitution.

³⁷ *Rule 25. Medical Personnel*, IHL Database, accessed Jun 12, 2020, ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule25

³⁸ *The Guardian view on targeting medics in wartimes: protect those who serve*, The Guardian, Sep 29, 2016, theguardian.com/commentisfree/2016/sep/29/the-guardian-view-on-targeting-medics-in-wartime-protect-those-who-serve

³⁹ *Seattle-area protests: Police declare a riot as demonstrators gather for fourth day to call for police accountability*, Seattle Times, Jun 1, 2020, seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/.

⁴⁰ *Man shot on Capitol Hill in Seattle after gunman drives car into George Floyd protest*, Seattle Times, Jun 7, 2020, seattletimes.com/seattle-news/crime/man-shot-after-gunman-drives-car-into-capitol-hill-protesters/.

During the Seattle demonstrations against police brutality from May 29, 2020 to June 8, 2020, the Seattle Police Department consistently reacted with disproportionate and unnecessary force against peaceful protesters, violating their constitutional right to assembly and freedom of speech.

Protesters in Seattle communicated messages primarily revolving around “racial injustice and a lack of police accountability.”⁴¹ Officers often acted in a defensive way, protecting themselves first, and denying the public’s right to peaceful assembly. When protesters denounced police violence they were met with police violence:

[May 30, 2020] At 4:49 PM, many additional explosive devices were thrown into a crowd of nonviolent demonstrators who were chanting "arms up, don't shoot" in unison with arms raised. I did not witness any verbal demands of dispersal on behalf of the Seattle Police Department, nor did I witness any actions against the police to warrant any such response.⁴²

I was the recipient of pepper spray myself and experienced burning in my eyes, nose and throat which made it very difficult for me to run in the opposite direction, which seemed to be the instruction. We never got answers as to why we weren’t allowed to march. I found out by a police officer yelling in my face at 5:05 that there was a curfew just handed down by the mayor for 5pm.⁴³

On June 1, 2020, a group of protesters indicated to the Seattle Police Department at 5:40 pm that they might march towards the East Police Precinct.⁴⁴ By the time the marchers arrived at the precinct at 7:11 pm that same day, the SPD had already created a police line, blocking access for demonstrators to freely continue their march past the precinct. In *Collins v. Jordan* (1996),⁴⁵ the courts clearly indicated that: “First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence.”

Here, the SPD acted in a manner intent on protecting their precinct against suspected threat based on the actions of select individuals on May 30, 2020. There was no indication the group of protesters on June 1 was anything other than a peaceful assembly and should have been

⁴¹ *Seattle police use blast balls, pepper spray to try to disperse Saturday protesters*, Seattle Times, Jun 6, 2020, seattletimes.com/seattle-news/seattle-area-protests-demonstrators-prepare-for-ninth-day-of-action-after-george-floyds-killing/.

⁴² Doe declaration, attached as Exhibit 10.

⁴³ Solomon declaration attached as Exhibit 11.

⁴⁴ *Timelines of Police Responses to Demonstrations*, SPD Blotter, June 7, 2020, spdblotter.seattle.gov/2020/06/07/timelines-of-police-responses-to-demonstrations/, relevant sections attached as Exhibit 12.

⁴⁵ *Collins v. Jordan* Nos. 95-15737, 95-15738, 95-15739. 110 F.3d 1363 (1996),

permitted to continue their demonstration unhindered. Later that same evening, at 9:10 pm, the police line at the East Precinct used pepper spray, blast balls, and CS gas on a group of peaceful protesters without issuing a clear dispersal order,^{[46][47]} in violation of their constitutional rights and in violation of SPM 14.090-POL-9(a).

[V]ideos of the officers spraying the crowd and deploying flash bangs quickly spread on social media Monday night; many of those who shared them said the footage showed the police were responsible for escalating the confrontation. A police officer at the front of the crowd can be seen grabbing a protester’s umbrella just before other officers deploy pepper spray into the crowd.⁴⁸

The Seattle Police Department —under Mayor Durkan’s oversight— continued to barricade their precinct and attack protesters demonstrating against police violence. On June 5, 2020, Mayor Durkan addressed the use of tear gas: “In conversations with the chief, I know she agrees that SPD officers do not need to be using tear gas at protests as a crowd management tool[.]”⁴⁹ Mayor Durkan knowingly acknowledged that the SPD should not use CS(tear) gas, and only two days later, the SPD continued to deploy CS gas against protestors.⁵⁰

When the SPD requested on May 31, 2020, permission to use CS gas and 40 mm launchers,⁵¹ the reason given was not that a situation had developed causing the use of CS gas to be appropriate and necessary, but because supplies had run out:

Consistent with department policies that govern the use of force during crowd management events, SPD officers attempted to disperse the crowd using less-lethal munitions on hand, including blast balls and OC spray. As a result of the magnitude of last night’s event, both Patrol and SWAT are both now largely depleted of these less-lethal munitions.

⁴⁶ *Seattle-area protests: Police declare a riot as demonstrators gather for fourth day to call for police accountability*, Seattle Times, Jun 1, 2020, [seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/](https://www.seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/).

⁴⁷ Exhibit 12.

⁴⁸ *Seattle police use blast balls, pepper spray to try to disperse Saturday protesters*, Seattle Times, Jun 6, 2020, [seattletimes.com/seattle-news/seattle-area-protests-demonstrators-prepare-for-ninth-day-of-action-after-george-floyds-killing/](https://www.seattletimes.com/seattle-news/seattle-area-protests-demonstrators-prepare-for-ninth-day-of-action-after-george-floyds-killing/).

⁴⁹ *How ambiguity and a loophole undermined Seattle’s ban on tear gas during George Floyd demonstrations*, Seattle Times, Jun 9, 2020, [seattletimes.com/seattle-news/how-ambiguity-and-a-loophole-undermined-seattles-ban-on-tear-gas-during-george-floyd-demonstrations/](https://www.seattletimes.com/seattle-news/how-ambiguity-and-a-loophole-undermined-seattles-ban-on-tear-gas-during-george-floyd-demonstrations/).

⁵⁰ *Id.*

⁵¹ Letter from the SPD requesting to use CS and 40mm launchers, attached as Exhibit 13.

The SPD and Chief Best rescinded the May 31 authorization for CS canisters and 40 mm launchers on June 5, stating a different reason for their request of these munitions:⁵²

[A] concern that should there be indication of events similarly escalating in rapid and violent manner, SPD would not be sufficiently equipped to prevent further largescale property destruction such as that seen in the downtown core.

By the SPD's own admission, the reason for approval and potential use of CS gas was for events of similar escalation as on May 30, 2020.⁵³ There is insufficient evidence that any protester initiated event in Seattle from May 31 to June 8 had a comparable level of violence or destruction. Regardless of this fact, the SPD deployed CS gas on peaceful protesters without sufficient cause on June 1, June 2, and in the early morning hours of June 8.

In a recent TRO filed on June 12, 2020, the U.S. Dist. Court WD Wash. stated in reference to recent actions by the Seattle Police Department: "Based on the Court's review, the video and testimonial evidence show that on some occasions the SPD has in fact used less-lethal weapons disproportionately and without provocation."⁵⁴ The order further states: "The use of indiscriminate weapons against all protesters—not just the violent ones—supports the inference that SPD's actions were substantially motivated by Plaintiffs' protected First Amendment activity."

During the dates from May 30th, 2020, to June 8th, 2020, the Seattle Police Department, under the command of Mayor Durkan, grossly and consistently impeded the right to peaceful assembly in the City of Seattle. Peaceful demonstrators were indiscriminately injured by the SPD, and others feared for their personal safety and were forced against their will to abandon their right to peaceful assembly. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

- E. 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 subjected bystanders to chemical weapons and crowd control measures.

On June 1, 2020, a city-wide curfew was in place in Seattle beginning at 6 pm.⁵⁵ At 9:10 pm that same day, the Seattle Police Department deployed blast balls and CS(tear) gas canisters

⁵² Letter rescinding CS approval on June 5, attached as Exhibit 14.

⁵³ *Seattle protest updates: The city reacts to the death of George Floyd*, Seattle Times, May 30, 2020, seattletimes.com/seattle-news/protest-updates-as-the-country-reacts-to-the-death-of-george-floyd-follow-the-latest-developments-in-seattle-and-elsewhere/.

⁵⁴ Unpublished TRO in *Black Live Matter et al. v. City of Seattle* attached at Exhibit 15.

⁵⁵ Exhibit 5.

near the SPD East Precinct at 11th Ave and E Pine St.⁵⁶ 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.⁵⁷ A nearby resident that was impacted shared his story at a Seattle City Council subcommittee hearing:⁵⁸

[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, a city-wide curfew was in place in Seattle beginning at 9 pm.⁵⁹ At 11:36, the Seattle Police Department deployed OC⁶⁰ and blast balls and 100 seconds later, CS gas.⁶¹ 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:⁶²

The SPD's use of tear gas on the evenings of June 1 and 2 blanketed the intersection of 11th and Pine Street and sprawled throughout the neighborhood. 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.

On June 6, 2020, no curfew was in place.⁶³ At 7:36 pm it was well before sunset when OC and blast balls were deployed at 11th Ave and E Pine St.⁶⁴ The previous day, Mayor Durkan said during a press conference, "SPD officers do not need to be using tear gas at protests as a

⁵⁶ Exhibit 10.

⁵⁷ *Pike/Pine Conservation Study*, Lund Consulting for the City of Seattle, 2008, relevant population information attached as Exhibit 16.

⁵⁸ Azoulai, Daniel, Public comment, City of Seattle Public Safety and Human Services Committee Meeting, Jun 3, 2020, attached as Exhibit 17.

⁵⁹ Exhibit 6.

⁶⁰ "OC" (oleoresin capsicum) can mean pepper spray or OC canisters ("pepper bombs"). Both were used by the SDP between May 29 and June 8, 2020, it's unclear what was used when.

⁶¹ Exhibit 10.

⁶² *A Call to Action for Businesses and Residents Subjected to SPD Tear Gas During the Capitol Hill Protests*, Capitol Hill Seattle Blog, Jun 5, 2020, 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/.

⁶³ *Mayor Durkan Will Be Terminating Citywide Curfew Effective Immediately*, Office of the Mayor, Jun 3, 2020, durkan.seattle.gov/2020/06/mayor-durkan-will-be-terminating-citywide-curfew-effective-immediately/.

⁶⁴ Exhibit 10.

crowd management tool[.]”⁶⁵ The Seattle Police Department used OC canisters instead,⁶⁶ allowing clouds of OC gas to drift around the neighborhood at a time when residents are most likely to be doing grocery shopping.⁶⁷

On June 7, 2020, no curfew was in place. In the early hours of June 8, at 12:04 am, SPD officers again deployed OC and blast balls near the East Precinct.⁶⁸ Ten minutes later at 12:14 am, CS gas was again deployed,⁶⁹ only two days following an announcement from Mayor Durkan and Chief Best “suspending the use of CS gas for at least thirty (30) days[.]”⁷⁰ This assault continued for some time. A resident within one block of the police assault described the scene:⁷¹

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.

The Mayor for the City of Seattle has specific duties according to Seattle Charter Art. V, Sec. 2 and their Oath of Office. These duties include declaring a civil emergency when appropriate to “prevent the death or injury of persons and to protect the public peace, safety, and welfare, and alleviate damage, loss, hardship or suffering[.]” As Mayor for the City of Seattle, Jenny A. Durkan declared a civil emergency on May 30th, 2020, and knowingly neglected the personal safety and welfare of the general public, both those in their homes and those conducting essential activities. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

- F. 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 endangered the lives of people around the SPD East Precinct by allowing police to leak false information about fabricated crimes and threats to the media.

⁶⁵ *How ambiguity and a loophole undermined Seattle’s ban on tear gas during George Floyd demonstrations*, Seattle Times, Jun 9, 2020, seattletimes.com/seattle-news/how-ambiguity-and-a-loophole-undermined-seattles-ban-on-tear-gas-during-george-floyd-demonstrations/.

⁶⁶ *SPD Disperses Crowd with Blast Balls, “Chemical Agents,” on Eighth Day of Protests Against Police Brutality*, The Stranger, June 7, 2020, thestranger.com/slog/2020/06/06/43857405/spd-disperses-crowd-with-blast-balls-chemical-agents-pepper-spray-on-eight-day-of-protests-against-police-brutality.

⁶⁷ Keimig, Jasmyne, Jun 7, 2020, twitter.com/jasmynekeimig/status/1269535478581100544.

⁶⁸ Exhibit 10.

⁶⁹ *Id.*

⁷⁰ Durkan, Jenny A. *Evaluation of Crowd Management Tactics and Use of Less-Lethal Tools*, Jun 5, 2020, attached as Exhibit 18.

⁷¹ Harvey declaration attached as Exhibit 19.

(1) The Seattle Police Department and Chief Best freely spread disinformation under Mayor Durkan’s oversight, and these claims were unsubstantiated or proven to be false.

i. Proud Boys.

Black Live Matter protesters were known by SPD to be listening to police scanners. On the night of June 8, 2020, they listened for much of the night to SPD officers claiming to track the far-right group “Proud Boys”⁷² throughout Seattle as the group reportedly grew and became more “rowdy” and, reportedly, more armed. One Twitter user obtained recordings of these police radio broadcasts and posted them, including an unedited recording of the entire night.⁷³

Protesters from the area around the East Precinct but were unable to find the reported “20-30 people,” despite following along in the areas the SPD claimed to be reporting from.⁷⁴

ii. Increase in calls to the SPD East Precinct.

On the morning of June 12, Chief Best gave a video address to SPD officers, wherein she claimed that SPD was unable to get to reports of rapes and armed robberies in the area surrounding the East Precinct, and that calls had “tripled.”⁷⁵⁷⁶

The SPD’s own technology showed no increase in service calls and no sexual assaults reported.⁷⁷

iii. Checkpoints and extortion.

At a press conference on June 11, Assistant Chief Dianna Nollette of the SPD complained that protesters were extorting money from people and businesses in the area around the East

⁷² *Proud Boys*, Southern Poverty Law Center, accessed Jun 14, 2020, splcenter.org/fighting-hate/extremist-files/group/proud-boys.

⁷³ Spek, @spekulation, Jun 11, 2020, twitter.com/spekulation/status/1271187995102638081.

⁷⁴ Beverlin, Kristina, Jun 9, 2020, twitter.com/krisbeverlin/status/1270253053145305088.

⁷⁵ Spek, @spekulation, Jun 12, 2020, twitter.com/spekulation/status/1271631384025554944.

⁷⁶ *Seattle Police Chief: ‘We’re Not Able to Get to’ 911 Calls ‘Rape, Robbery’ in Autonomous Zone*, National Review, Jun 12, 2020, nationalreview.com/news/seattle-police-chief-were-not-able-to-get-to-911-calls-for-rape-robbery-in-autonomous-zone/.

⁷⁷ Seattle Police Department Data Maps, Accessed Jun 14, 2020, arcgis.com/apps/MapSeries/index.html?appid=94c31b66face438b95d95a6cb6a0ff2e&fbclid=IwAR2DYKpJ9_chSO DsPgBnYdyJhgjo6XSNkghUXUqenDn3QSeDB2Pluq37A8E.

Precinct, and that armed protesters were making identity checks at the entrances.⁷⁸ Chief Best made the claim again in a video sent to SPD officers on June 11, 2020.⁷⁹

The SPD itself recanted the extortion claims, in a quote from Chief Best, “That has not happened affirmatively,” and, “We haven’t heard any formal reports of this occurring.”⁸⁰

Deception without cause is a violation of the SPM 5.001-POL-11 on “Standards and Duties”:

Employees Shall Be Truthful and Complete in All Communication

Exception: Employees may use deception for a specific and lawful purpose in certain circumstances, when:

- There is an exigent threat to life safety or public safety
- It is necessary due to the nature of the employee's assignment
- There is a need to acquire information for a criminal investigation

Based on available reports, none of these exceptions were met in the current case. There was not an exigent threat, no assignment was involved, and there was no criminal investigation occurring. These actions were a disinformation campaign against a group that posed no threat.

- (2) Members of the public, the media, and national leaders spread, and reacted to, misinformation from the SPD, creating threats to the people of Seattle.

Misinformation is often used as a tool to weaponize law enforcement or the public. There are many examples of this: “swatting,” where false reports are made to send law enforcement to the victim’s home,⁸¹ “doxxing,” in which personal identifying information such as a home address is posted online to facilitate members of the public in harassment,⁸² or racially motivated calls to local police for lawful activities.⁸³

⁷⁸ *Seattle police seek to resume East Precinct staffing*, Q13 Fox, Jun 10, 2020, q13fox.com/2020/06/10/spd-seeks-to-resume-east-precinct-staffing/.

⁷⁹ *Seattle-area protest updates: No police reports filed about use of weapons to extort Capitol Hill businesses, Best says*, Seattle Times, Jun 11, 2020, seattletimes.com/seattle-news/seattle-area-protests-updates-for-thursday-june-11/.

⁸⁰ *Seattle police walk back claim of business extortion in cop-free zone*, New York Post, Jun 12, 2020, nypost.com/2020/06/12/seattle-police-walk-back-claim-of-business-extortion-in-cop-free-zone/.

⁸¹ Homchick, Natalia, *Reaching Through the “Ghost Doxer:” An Argument for Imposing Secondary Liability on Online Intermediaries*, 76 Wash. & Lee L. Rev. 1307 (2019), <https://scholarlycommons.law.wlu.edu/wlulr/vol76/iss3/7>.

⁸² *Id.*

⁸³ *White Woman Calls Police On Black Man After His Dog ‘Humps’ Her Dog*, Defender Network, Mar 8, 2019, Dog park story <https://defendernetwork.com/news/national/white-woman-calls-police-on-black-man-after-his-dog-humps-her-dog/>.

The State of Oregon recently signed a comprehensive new bill in 2019 addressing this issue of weaponizing the police:⁸⁴ “A person may bring a civil action for damages against any person who knowingly causes a police officer to arrive at a location to contact another person with the intent to:” among many things, “[c]ause the other person to feel harassed, humiliated or embarrassed[.]” In the wake of *Elonis v. United States (2014)*, the legal system in the United States is evolving to recognize this new form of harassment: weaponizing an outside entity.

At best, the Seattle Police Department has neglected their duty to serve and protect the public, to use evidence to support their conclusions, and to use deception only when there is a specific and lawful purpose. The evidence unfortunately supports a more sinister interpretation: the SPD have found themselves the source of harsh criticism and have reacted, both through violence and harassment.

The following are two examples of the many violent reactions that have arisen in response to media stories about the area surrounding the SPD East Precinct:

- i. Mr. Donald Trump in a tweet on Jun 11, 2020, states: “Take back your city NOW. If you don’t do it, I will. This is not a game. These ugly Anarchists must be stopped IMMEDIATELY. MOVE FAST!”⁸⁵ The following day Mr. Trump posts another tweet on the topic: “...The terrorists burn and pillage our cities, and they think it is just wonderful, even the death. Must end this Seattle takeover now!”⁸⁶
- ii. A public event was created and posted on Facebook, “American Patriots Retake The Seattle Occupation Zone For America, 12Th & Pike / Capitol Hill[.]”⁸⁷ The details for their event include: “[A]ntifa members are illegally occupying public property and terrorizing small businesses in the neighborhood. American patriots have agreed to come together again, remove the barricades illegally obstructing traffic, and free the people in the zone.” “...and return[sic] the police station over to Seattle Police Department control.”

It’s true that the law is still developing in the way it treats misinformation used to incite violence on a victim. In this case, however, regardless of proof of intent, there is neglect of duty on the part of the City of Seattle. Lies have been perpetrated in the Seattle Police Department, and by Chief Best herself. Whatever the intent, it is unlawful, and there is harm.

⁸⁴ ORS 30.845(1)(c).

⁸⁵ Trump, Donald, Jun 11, 2020, twitter.com/realDonaldTrump/status/1271142274416562176.

⁸⁶ Trump, Donald, Jun 12, 2020, twitter.com/realDonaldTrump/status/1271446019281215488.

⁸⁷ Event page, *American Patriots Retake The Seattle Occupation Zone For America*, attached as Exhibit 20.

Giving out false information to encourage the city and/or outsiders to turn against the protesters is reprehensible. Leadership in the SPD appears determined to foster tension and dangerous environments in Seattle, and Mayor Durkan has failed to take control and prevent this reckless spread of misinformation and harassment. Mayor Durkan has now either knowingly neglected or actively endangered the personal safety and welfare of the citizens of Seattle. These actions constitute misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

G. 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., Amend. 4, Washington Constitution, Art. 1, Sec. 3 when she wrongfully disallowed certain property rights in downtown Seattle and Capitol Hill.

On May 30, 2020, Mayor Durkan also issued an emergency order banning “weapons” and certain items.⁸⁸ Specifically, Mayor Durkan ordered that in all individuals in the downtown area and Capitol Hill up to 15th Ave East were prohibited from:

[P]ossessing, transporting, purchasing, furnishing, or selling any weapon, including, but not limited to: rocks, bottles, pipes, bats, clubs, chains, sharpened signs, shields, gas, road flares, torches, paintballs, light bulbs, any incendiary device, pry-bars, skateboards, balloons filled with liquid, dimensional lumber with a dimension greater than ½ inch, or any other objects which can be used for infliction of bodily harm or damage to property.

This order is grossly overbroad, it goes so far as to prohibit residents from currently possessing lightbulbs in their homes, or anything else that could be deemed a “weapon.” It is not difficult to see that between a city-wide curfew and this list of prohibited items, Mayor Durkan has instantly exposed thousands of people, knowingly or unknowingly, to risk of arrest.⁸⁹ Without any change in behavior or individual cause, at 5 pm on May 30, 2020, Mayor Durkan subjected virtually any person within the Seattle city limits to possible arrest.

Mayor Durkan is quoted at the time, explaining her reasoning for the restrictive order(s), “[t]he curfew is a tool the police can use, like any other law, to help control and maintain public safety.”⁹⁰ A multitude of laws are already in place in Seattle, providing the SPD with ample tools to perform their duty. It was not necessary or justifiable for Mayor Durkan to violate the constitutional rights of property and protection from search and seizure. It was not necessary to subject all of the public to risk of arrest in order to protect them, there’s no one left to “protect.” This order is thus unconstitutionally overbroad.

⁸⁸ Exhibit 3.

⁸⁹ Order establishing prohibited items, Exhibit 3: “Any individual who violates this order shall be subject to arrest[.]” Order imposing curfew, Exhibit 4: “Any person found to have knowingly violated this Civil Emergency Order...may be punishable by a fine...or by imprisonment...or both such fine and imprisonment.”

⁹⁰ *Seattle mayor extends curfew as City Council questions police response to George Floyd Protests*, Seattle Times, Jun 1, 2020, [seattletimes.com/seattle-news/politics/seattle-mayor-extends-curfew-as-city-council-questions-police-response-to-george-floyd-protests/](https://www.seattletimes.com/seattle-news/politics/seattle-mayor-extends-curfew-as-city-council-questions-police-response-to-george-floyd-protests/).

At this time, we are unaware of any persons who were arrested or charged under this overbroad order, however, this knowledge is limited to the small number of charges that have come to light. Certainly, deliberate issuance of an overbroad, unconstitutional order constitutes misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

Conclusion

When faced with a civil emergency Mayor Durkan: (1) issued a city-wide curfew without sufficient notice for individuals to safely disperse; (2) failed to institute new policies and safety measures for the Seattle Police Department when using crowd control measures during a public health emergency; (3) failed to enforce Seattle Police Officer compliance with the Seattle Municipal Code and the Seattle Police Manual; (4) failed to protect the Right to Peaceful Assembly and the Right to Freedom of Speech under the First Amendment of the United States Constitution; (5) wrongfully subjected bystanders to chemical weapons and crowd control measures; (6) allowed and/or participated in a campaign of disinformation by the SPD; and (7) violated constitutional rights of personal property.

Jenny A. Durkan’s actions and conduct resulting in these charges constitute misfeasance, malfeasance, and a violation of her oath of office. The factual basis for these charges includes the information contained in the attached exhibits, which are incorporated by reference.

Petitioners declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of our knowledge, and that we have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.

Signed in Seattle, WA this 15th day of June 2020.

Elliott Grace Harvey

Alan L Meekins Jr.

Courtney Scott

Leah Solomon

Charlie Stone

Matthew L. Cromwell