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THE HONORABLE MARY ROBERTS
Hearing Date: July 2, 2020
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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

Case No. 20-2-10455-8 SEA

OPPOSITION TO PETITION TO
DETERMINE SUFFICIENCY OF
RECALL CHARGES AND ADEQUACY
OF BALLOT SYNOPSIS (HARVEY)

I. INTRODUCTION AND RELIEF REQUESTED

Recent months have brought unprecedented challenges for the City of Seattle and its leadership. In the midst of an ongoing global pandemic that disproportionately affects the City’s most vulnerable residents, horrifying video footage emerged of the death of George Floyd, an unarmed black man murdered by Minneapolis Police Department officers. Seattle residents powerfully took to the streets to mourn Mr. Floyd, rightfully proclaim that black lives matter, and demand an end to systemic racism.

The vast majority of protestors exercised their First Amendment rights in a peaceful manner. Indeed, on June 12, 2020, alone, more than 60,000 people peacefully marched in an event organized by Black Lives Matter Seattle-King County. In certain instances, however, individuals disrupted otherwise peaceful protests by engaging in acts of violence against community members and police officers, and causing widespread property damage in Seattle’s

1 downtown core. As Judge Richard A. Jones recently noted, the unfortunate actions of these
2 individuals left the City and its leadership in the difficult position of “drawing an enforceable
3 line that permits police officers to use appropriate means in response to violence and destruction
4 of property but that does not chill free speech or abuse those who wish to exercise it.”

5 In these exceedingly challenging circumstances, City and Seattle Police Department
6 leaders were required to make difficult discretionary decisions, often with time constraints and
7 always without the benefit of hindsight. Seattle residents can and should expect that those
8 decisions, as well as individual officers’ decision to use force, will be reviewed in a range of
9 forums to ensure best practices and accountability going forward. Disagreement with a series of
10 difficult discretionary decisions is not, however, a valid basis to petition for a recall election
11 under Washington law.

12 Mayor Jenny A. Durkan respectfully requests that this Court dismiss the above-
13 referenced recall petition (the “Petition”) filed by Petitioners Elliot Grace Harvey, Alan L.
14 Meekins Jr., Courtney Scott, Leah Solomon, and Charlie Stone (“Petitioners”). The Petition
15 spans more than 20 pages, with broad factual claims used to justify even broader legal
16 conclusions without any individualized analysis. The breadth of the Petition makes responding
17 to each of its factual allegations and legal conclusions nearly impossible.¹ Regardless, the Court
18 should dismiss the Petition as legally and factually insufficient. First, the emergency
19 proclamation and orders by Mayor Durkan were legally issued. Second, the discretionary
20 decisions to issue an emergency proclamation and orders cannot form the basis for a recall
21 petition, unless the decisions were manifestly unreasonable. Nothing alleged relating to the
22 issuance of the proclamation and orders reflects a manifestly unreasonable decision.

23 Third, the charges directed towards the Seattle Police Department’s actions are factually
24 insufficient. Neither the Petition nor its supporting materials identify any actions directed by
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26 ¹ The Petition’s lack of specificity likewise renders it insufficient under RCW 29A.56.110’s
requirement that a petition contain a “detailed description of the facts complained of.”

1 Mayor Durkan, let alone actions that were directed with intent to violate the law.

2 In short, The Petition is legally and factually insufficient under RCW 29A.56.140 and
3 should be dismissed.

4 II. STATEMENT OF FACTS

5 A. Recent Events

6 Following the murder of Mr. Floyd, protests began in Seattle on May 29, 2020. June 11,
7 2020, Declaration of Thomas Mahaffey (“Mahaffey Decl.”), ¶ 6, attached as Exhibit A to the
8 Declaration of Rebecca Roe (“Roe Decl.”), filed herewith. As it does for all major events, the
9 Seattle Police Department (“SPD”) mobilized the Seattle Police Operations Center, and planned
10 for staffing and managing demonstrations. *Id.* SPD’s objective was to “provide for the safety
11 of the general public, demonstration participants, spectators, first responders, and other
12 participants’ general safety, while facilitating free speech rights under the First Amendment,
13 during this state-wide state of emergency due to Covid-19.” *Id.* at ¶ 7. SPD’s use of crowd
14 management tools is governed by Title 8 of the SPD Manual and SPD’s use of force and crowd
15 management policies. *Id.* at ¶ 9.² SPD’s crowd management policy was developed with input
16 from the Community Police Commission, Department of Justice, and members of the federal
17 monitor’s team. The policy was approved by Judge James Robart on February 2, 2017. June
18 11, 2020, Declaration of Carolyn Boies, ¶ 2, attached as Exhibit E to the Roe Decl.

19 Demonstrations on May 29 and 30, 2020, involved injuries to civilians and police
20 officers, multiple arson events, theft, and destruction of both City and private property. *Id.* at ¶¶
21 12-13. On May 31, 2020, SPD Chief Carmen Best authorized Assistant Chief Thomas Mahaffey
22 to “enable patrol to use CS gas in the necessary event of crowd disbursement otherwise consistent
23 with SPD policy, following two days of depleting less-lethal tools available [to] SPD officers as
24 they managed the significant violence, property damage, and injuries to police and other civilians
25

26 ² SPD’s use of force policy is publicly available on its website: <http://www.seattle.gov/police-manual/title-8>.

1 during the events of May 29 and 30.” *Id.* at ¶ 14.³

2 Beginning May 31, 2020, the focus of the demonstrations shifted from the downtown
3 core to the area around SPD’s East Precinct. *Id.* at ¶ 15. Though “largely peaceful,”
4 demonstrations near the East Precinct from May 31, 2020, through June 5, 2020, involved the
5 following:

- 6 • Fireworks deployed from the crowd towards police officers;
- 7 • Officers being hit and incurring injuries from bottles, rocks, and other projectiles; and
- 8 • Officers having lasers pointed at their eyes.

9 *Id.* at ¶¶ 15-20.

10 On June 5, 2020, SPD issued a departmental directive prohibiting the use of CS gas
11 except: “[w]here SWAT is on-scene, consistent with [the SPD Manual], SWAT will follow all
12 department policies and procedures regarding the use of specialty tools, to include the use of CS
13 gas, in life-safety circumstances and consistent with training. **In such instances, and until**
14 **further notice, any deployment must be approved by the Chief or the Chief’s designee.**”

15 *Id.* at ¶ 21 (emphasis in original).

16 After 10 p.m. on June 7, 2020, officers on the ground near the East Precinct received
17 reports of individuals continuing attempts to create a disturbance. *Id.* at ¶ 24. Due to the life-
18 safety circumstances presented, CS gas was deployed pursuant to SPD’s amended policy. *Id.* at
19 ¶ 25. Even after the deployment, officers continued to be hit with bottles and other projectiles,
20 in addition to receiving reports of armed individuals in the area. *Id.*

21 Since June 8, 2020, although demonstrations have continued, there have not been any
22 further deployments of CS gas. *Id.* at ¶ 26.

23
24 ³ On June 12, 2020, the Seattle Office of Inspector General released its Informational Summary
25 of Less Lethal Weapons Usage in Protests. *See*, Roe Decl., Ex. B. The summary notes that even
26 under “normal circumstances,” SWAT is authorized to use CS gas in crowd management
circumstances. *Id.* at 2. “Chief Best temporarily authorized use of CS canisters and the 40mm
launcher by patrol officers for mass demonstrations occurring between 5/31/2020 and 6/5/2020,
citing shortages in other less lethal tools such as blast balls and OC spray.” *Id.*

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B. Emergency Actions

Expressly noting the “clear and present, and escalating” threat of violence the City faced at the time, Mayor Durkan invoked her statutory authority to issue a Mayoral Proclamation of Civil Emergency (the “Emergency Proclamation”) at 4:58 p.m. on May 30, 2020. Declaration of Monica Simmons (“Simmons Decl.”), Ex. B. The Emergency Proclamation identified the perilous safety situation, including: assaults on police officers with rocks, bottles, and other projectiles, SPD cars being set on fire, an SPD rifle being stolen from a police vehicle and fired; and Molotov cocktails being thrown at SPD headquarters. *Id.* at 1.

In the Emergency Proclamation, Mayor Durkan delegated to the Fire Chief and Police Chief “direction of any necessary population and property protection, as well as control of incidents and maintenance of public peace and order.” *Id.* at 3.

Following the Proclamation, Mayor Durkan further issued a series of civil emergency orders beginning May 30, 2020 (the “Emergency Orders”). The Emergency Orders noted the emergency powers granted to the mayor under local and Washington law, including the authorization to “proclaim such other orders as are imminently necessary for the protection of life and property,” as well as to take extraordinary measures to protect the public peace, safety, and welfare. *Id.* at Exs. C-F. The Emergency Orders explicitly identified the following exigent circumstances:

- A man with a rifle on the Yesler overpass;
- Individuals using illegal weapons including Molotov cocktails and other incendiary devices, as well as throwing rocks, bottles, and other objects to incite violence and rioting; and
- Criminal acts of destruction of property, burning vehicles, looting, stolen property, and fire damage.

Id. at Exs. C-F.

1 Pursuant to Mayor Durkan’s statutory authority, the Emergency Orders issued May 30,
2 2020, imposed a general curfew and implemented a ban on possessing weapons in and around
3 Seattle’s downtown core. *Id.* at Exs. C, D. Emergency Orders issued June 1 and 2, 2020,
4 extended the general curfew, noting that the Chief of Police, under her charge as the chief peace
5 officer of the City, had determined that a “city-wide general curfew is necessary to maintain the
6 peace and quiet of the City during this civil emergency.” *Id.* at Exs. E, F.⁴

7 Pursuant to SMC 10.02.010.C, the Seattle Council may, by resolution, modify or reject
8 an emergency proclamation. If the Council rejects the proclamation, it shall be void. *Id.* The
9 Council did not schedule a meeting nor take any other action regarding any of the Emergency
10 Orders. Simmons Decl. ¶ 8. *See* SMC 10.02.010.C (“The Council may, by resolution, modify
11 or reject the proclamation and, if rejected, it shall be void. . . . The Council shall endeavor to
12 act on any proclamation of civil emergency within 48 hours of being presented to the Council
13 by the Mayor.”).

14 **C. Western District of Washington Decision**

15 On June 12, 2020, Judge Richard A. Jones of the Western District of Washington issued
16 an order granting a temporary restraining order relating to the ongoing demonstrations. In his
17 order, Judge Jones recognized that “people have a right to demonstrate and protest government
18 officials, police officers being no exception.” *Black Lives Matter Seattle-King County v. City of*
19 *Seattle, Seattle Police Dep’t*, No. 2:20-cv-00887-RAJ, 2020 WL 3128299, at *2 (W.D. Wash.
20 June 12, 2020). Judge Jones nonetheless noted, however, that “to protect person and property,
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25 _____
26 ⁴ At least 40 other cities in the country imposed similar curfews. 23 states called up National
Guard to support local law enforcement in protecting life and property. Simmons Decl., Exs. E,
F. ____.

1 police officers must make split-second decisions, often while in harm’s way.”⁵ *Id.*

2 In his order, Judge Jones permitted the use of CS gas “only if (a) efforts to subdue a threat
3 by using alternative crowd measures, including pepper spray, as permitted by [the order], have
4 been exhausted and ineffective and (b) SPD’s Chief of Police has determined that use of [CS]
5 gas is the only reasonable alternative available.” *Id.* at 5. The order further did not “preclude
6 individual officers from taking necessary, reasonable, proportional, and targeted action against
7 a specific imminent threat of physical harm to themselves or identifiable others or to respond to
8 specific acts of violence or destruction of property.” *Id.*

9 On June 17, 2020, the court entered a Stipulated Order Entering a Preliminary Injunction
10 that extended the above terms until September 30, 2020. Roe Decl., Ex. C. Plaintiffs have not
11 alleged any violations of the order since it was originally entered.

12 **D. Filing of the Petition**

13 On or around June 15, 2020, Petitioners filed the Petition with the King County
14 Department of Elections. Petitioners broadly alleged that all of the acts in the Petition “were
15 performed wrongfully, and knowingly and constitute malfeasance, misfeasance, and/or a
16 violation of [Mayor Durkan’s] oath of office.” Specifically, the Petition leveled the following
17 charges against Mayor Durkan:

- 18 A. Mayor Durkan endangered the peace and safety of the community and violated
19 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC
20 10.02.010A, and her oath to uphold US Const., Amend. 4, Washington
21 Constitution, Art. 1, Sec. 3; when she issued a city-wide curfew without sufficient
22 notice for individuals to safely disperse.
- 23 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

24 ⁵ As the City noted in its briefing, “[SPD] will generate after-action reports[,] and [] dedicated
25 Force Review Boards will examine each crowd management event and every use of force, whether
26 ordered by the incident commander or used by an individual officer. There are hundreds of hours
of body worn camera evidence to review. Additionally, the Office of Police Accountability will
be independently reviewing complaints, which . . . number in the thousands. Finally, the Office
of the Inspector General will be systematically reviewing the policies and procedures of [SPD] in
this context.” Roe Decl., Ex. D at 7.

1 10.020.010A, and her oath to uphold US Const., Amends. 1 and 4, Washington
2 Constitution, Art. 1, Sec. 3-5 when she failed to institute new policies and safety
3 measures for the Seattle Police Department when using crowd control measures
during a public health emergency.

4 C. Mayor Durkan endangered the peace and safety of the community and violated
5 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC
6 10.02.010A, and her oath to uphold US Const., Amend. 4, Washington
7 Constitution, Art. 1, Sec. 3 and 5, when she failed to enforce Seattle Police Officer
8 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.

9 D. Mayor Durkan endangered the peace and safety of the community and violated
10 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, and her oath to
11 uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1, Sec. 3-5,
12 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.

13 E. Mayor Durkan endangered the peace and safety of the community and violated
14 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC
15 10.02.010A, and her oath to uphold US Const., Amends. 1 and 4, Washington
16 Constitution, Art. 1, Sec. 3-5, when she wrongfully subjected bystanders to
chemical weapons and crowd control measures.

17 F. Mayor Durkan endangered the peace and safety of the community and violated
18 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC
19 10.02.010A, and her oath to uphold US Const., Amends 1 and 4, Washington
20 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.

21 G. Mayor Durkan endangered the peace and safety of the community and violated
22 her duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC
23 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.

24 Petition at 7. On June 25, 2020, the King County Prosecuting Attorney's Office filed its Petition
25 to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis with this Court.

26 *See* Dkt. 1.

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III. EVIDENCE RELIED UPON

Mayor Durkan relies upon the Declarations of Rebecca Roe and Monica Simmons, the exhibits thereto, and the pleadings and papers on file with this Court.

IV. AUTHORITY AND ARGUMENT

A. Legal Standard

Washington law only allows a public official to be recalled for cause. *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003). In recall proceedings, courts serve a gatekeeping function to ensure that unsubstantiated or frivolous petitions do not reach the voters. *In re Recall of Kast*, 144 Wn.2d 807, 813, 31 P.3d 677 (2001). In this role, courts do not evaluate the truthfulness of the charges in a recall petition. *Id.* Rather, courts review the charges to determine whether they are sufficient to support a recall and whether the proponent has a basis in knowledge for bringing the charge. RCW 29A.56.140. The requirement of a judicial finding of sufficiency reflects “the framers’ intent to prevent recall elections from reflecting on the popularity of the political decisions made by elected officers.” *In re Recall of Telford*, 166 Wn.2d 148, 159-160, 206 P.3d 1248 (2009).

In order to proceed to the voters, a recall petition must be factually and legally sufficient. *See In re Recall of Sandhaus*, 134 Wn.2d 662, 668, 953 P.2d 82 (1998). Courts determine whether a petition is factually and legally sufficient from the face of the petition and any timely submitted supplemental materials. *See Matter of Recall of Inslee*, 194 Wn.2d 563, 567, 451 P.3d 305 (2019). 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 . . . to enable the electorate and a challenged official to make

1 informed decisions.” *Wasson*, 149 Wn.2d at 791.⁶ A charge is legally sufficient if it defines
2 “substantial conduct clearly amounting to misfeasance, malfeasance, or a violation of the oath
3 of office,” and there is no legal justification for the challenged conduct. *Wasson*, 149 Wn.2d at
4 791-792.

5 To show misfeasance or malfeasance, the petitioner must describe “wrongful conduct
6 that affects, interrupts, or interferes with the performance of an official duty.” RCW
7 29A.56.110(1). In addition, misfeasance is defined as “the performance of a duty in an improper
8 manner,” while malfeasance also requires the “commission of an unlawful act.” RCW
9 29A.56.110 (1)(a)-(b). Moreover, where the commission of an unlawful act is alleged, “the
10 petitioner must show facts indicating the official had knowledge of and intent to commit an
11 unlawful act.” *In re Recall of Lindquist*, 172 Wn.2d 120, 132, 258 P.3d 9 (2011); *Matter of*
12 *Recall of Inslee*, 194 Wn.2d 563, 568, 451 P.3d 305 (2019) (“Where the charge alleges the
13 official violated the law, the facts must show the official intended to do so.”). “Violation of the
14 oath of office is the neglect or knowing failure by an elective public officer to perform faithfully
15 a duty imposed by law.” RCW 29A.56.110 (2).

16 **B. The Petition is Legally Insufficient.**

17 1. The Proclamation and Orders were Lawfully Issued Pursuant to Seattle
18 Municipal Code.

19 Legal sufficiency is not satisfied “when there is a legal justification for the challenged
20 official’s conduct.” *Wasson*, 149 Wn.2d at 791-92. SMC 10.02.010A expressly provides the
21 Mayor the statutory authority to proclaim the existence of a civil emergency in writing.
22 Accordingly, Petitioners cannot make even a threshold showing of legal sufficiency with respect
23

24 _____
25 ⁶ Though Washington law does not require the petitioner to have firsthand knowledge of the
26 facts alleged, the petitioner is required to “have some form of knowledge more than simply a
belief that the charges are true.” *In re Recall of Reed*, 156 Wn.2d 53, 58, 124 P.3d 279 (2005).
Here, the Petition’s allegations appear to be heavily based on media accounts. The record also
includes an unsigned declaration.

1 to the charges.

2 2. Discretionary Decisions Are Not a Basis for a Recall Petition.

3 “[D]iscretionary acts of a public official are not a basis for recall insofar as those acts are
4 an appropriate exercise of discretion by the official in the performance of his or her duties. *In re*
5 *Recall of Bolt*, 177 Wn.2d 168, 174, 298 P.3d 710 (2013) (termination of an employee is a
6 discretionary decision). Rather, “[a]n official may be recalled for execution of discretionary acts
7 only if the official exercised discretion in a manifestly unreasonable manner.” *Id.* For example,
8 in *In re Shipman*, 125 Wn.2d 683, 886 P.2d 1127 (1995), the petitioner sought to remove a county
9 public utility district commissioner, alleging mismanagement, and inadequate and improper
10 accounting practices. The Court, however, held that the allegations were insufficient for a recall
11 petition: “[a]ll in all, appellants accuse respondents of inadequate accounting practices,
12 mismanagement, and poor judgment. While these matters may be properly raised in the course
13 of a regular election, such questions of judgment and discretion do not constitute proper bases
14 for recall.” *Id.* at 687.

15 The Washington Supreme Court has dismissed or upheld the dismissal of a number of
16 other petitions as legally insufficient because the conduct at issue involved the official’s exercise
17 of discretion. Most recent and relevant is *Inslee*, where the Court rejected as insufficient the
18 governor’s refusal to declare an emergency regarding homelessness. 194 Wn.2d at 575.
19 Likewise, in *Lindquist*, the Court rejected a petition based on a prosecutor’s failure to charge as
20 a basis for recall. 172 Wn.2d at 135-36; *see also Chandler v. Otto* 103 Wn.2d 268, 274, 693
21 P.2d 71 (1984) (petition was legally insufficient where petitioner asserted that city council
22 member could be recalled based on vote to award a solid waste contract); *Robinson*, 156 Wn.2d
23 at 709 (petition’s allegation that mayor assisted in drafting city contracts legally insufficient);
24 *Burnham*, 194 Wn.2d at 81-82 (petition legally insufficient where based on purchase and sale of
25 property); *Telford*, 166 Wn.2d at 161 (port commissioner’s authorization of expenditures and
26

1 leases without a comprehensive harbor improvement scheme legally insufficient).

2 It is difficult to imagine a more apt example of a public official's discretionary decision-
3 making power than the authority granted to a mayor in emergency situations under local law.

4 SMC 10.02.010A provides:

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

13 (Emphasis added). Indeed, there are no published cases in which Washington courts allowed a
14 recall petition to proceed based on a public officer's decisions during a declared state of
15 emergency.

16 Here, Mayor Durkan took swift action as a public safety emergency rapidly unfolded in
17 the midst of a public health emergency. In enacting the Emergency Proclamation and Emergency
18 Orders (the subjects of charges A and G) Mayor Durkan acted within her lawful, discretionary
19 authority to take reasonable measures to protect public safety. Indeed, though served with the
20 documents pursuant to the Seattle Municipal Code, the City Council did not modify or reject the
21 Proclamation or Orders, thereby demonstrating that the City Council did not find issuance of the
22 orders manifestly unreasonable. While Petitioners may disagree with Mayor Durkan's actions
23 as a matter of policy, such disagreements cannot form the basis of a recall petition.

24 3. Certain Allegations Relate to Insubstantial or De Minimus Conduct.

25 To be legally sufficient, a petition must state with specificity *substantial conduct*
26 amounting to misfeasance, malfeasance, or violation of the oath of office. *In re Recall of*
Burnham, 194 Wn.2d 68, 81, 448 P.2d 747 (2019) (holding that charge was insufficient where
mayor's use of a town-owned parking lot to park his vehicle not substantial conduct given others'

1 use of the lot) (emphasis added); *In re Recall of Inslee, 194 Wn.2d at 575* (incidental use of
2 public facilities by the governor when campaigning for a ballot measure was de minimus); *Bolt,*
3 *177 Wn.2d at 178* (mayor occasionally parking his city vehicle at friend’s house when he stopped
4 for coffee was “insubstantial”).

5 Here, even accepting Petitioners’ construction of the weapon ban in charge G as accurate
6 (which Mayor Durkan does not concede), Petitioners admit that they are “unaware of any persons
7 who were arrested or charged” over the weapons ban, nor do they allege that the alleged lack of
8 notice in charge A resulted in any arrests or charges. The purported over breadth and lack of
9 notice is accordingly insubstantial for recall purposes.

10 **C. The Petition is Factually Insufficient.**

11 1. The Petition Fails to Allege Conduct Taken or Directed by Mayor Durkan.

12 Washington law is clear that an official cannot be recalled for an act of a subordinate
13 where the official did not direct or have knowledge of the act.⁷ For example, in *In re Matter of*
14 *Recall of Morrisette, 110 Wn.2d 933, 936, 756 P.2d 1318 (1988)*, petitioners sought to recall a
15 sheriff in part based on the actions of one of his deputies. The Court, however, held that the
16 allegations were insufficient, stating:

17 Furthermore, appellants do not allege that Sheriff Morrisette knew of these
18 incidents or that he directed the deputy’s actions. Appellants contend Sheriff
19 Morrisette is legally responsible for the actions of his subordinates. While this may
20 be true as a principle of tort law, *appellants cite no authority for the proposition*
21 *that a public official may be recalled for the act of a subordinate done without the*
22 *official’s knowledge or direction.*

23 ⁷ Though Petitioners cite statutes that give a mayor the authority to assume command of law
24 enforcement in emergency situations, there is no evidence that Mayor Durkan did so here.
25 Rather, the Emergency Proclamation expressly delegates responsibility for public safety to the
26 Fire Chief and Police Chief. *See Simmons Decl., Ex. B.* (Mayor Durkan’s Emergency
Proclamation delegating safety responsibility to the Police Chief and the Fire Chief); Charter of
the City of Seattle, Art. VI, Sec. 5, (“The Chief of Police shall be the chief peace officer of the
City . . .”).

1 *Id.* at 936 (emphasis added); *see also In re Heiberg*, 171 Wn.2d 771, 780, 257 P.3d 565 (2011)
2 (holding that for recall purposes, mayor was not responsible for the clerk’s destruction of a
3 document simply by virtue of the mayor’s supervisory capacity over the clerk).

4 Petitioners do not allege that Mayor Durkan directed or had advance knowledge of any
5 allegedly illegal act, nor that she had specific intent to violate the law. Likewise, many of the
6 charges are directed at Police Chief Carmen Best. To the contrary, the record shows that she,
7 too, has exercised her challenging duties lawfully and appropriately. Indeed, the directives
8 issued by Chief Best demonstrate her intent to comply with the law and SPD policy, not violate
9 it. *Inslee*, 194 Wn.2d at 570 (governor’s request to Secretary of State to act in his stead in
10 instance of unavailability demonstrated intent to comply with the law). Even assuming for the
11 sake of argument that any individual officers did violate the law or SPD’s policies, there is no
12 evidence that this result was directed or intended by the Mayor or the Police Chief. Knowledge
13 and specific intent must appear on the face of the Petition and supporting materials; it cannot be
14 inferred. *Lindquist* 172 Wn.2d at 132; *see also Inslee* 194 Wn.2d at 575. The Petition is
15 accordingly factually insufficient.

16 D. Even if the Court determines the Petition is Sufficient, the Proposed Ballot
17 Synopsis is Inadequate and Should be Revised.

18 In addition to considering the factual and legal sufficiency of the charges, the trial court
19 reviews “the adequacy of the ballot synopsis” and “correct[s] any ballot synopsis it deems
20 inadequate.” RCW 29A.56.140. For the reasons discussed above, the Petition is insufficient and
21 should be dismissed. Thus, this Court need not address the ballot title synopsis. If, however,
22 the court concludes that the Petition is sufficient to continue with recall proceedings, Mayor
23 Durkan respectfully requests 24 hours to submit a proposed alternative ballot for the Court’s
24 consideration.⁸

25 _____
26 ⁸ The ballot synopsis also does not confirm whether the Petitioners are Seattle voters, as
required by RCW 29A.56.110 and Washington Const. Art. I, § 33.

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V. CONCLUSION

For the foregoing reasons, Mayor Durkan respectfully requests that this Court dismiss the Petition.

I certify that this memorandum contains 4,189 words, in compliance with the Local Civil Rules

DATED this 30th day of June, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2020 I caused the foregoing opposition to be served via the Court's e-service portal on the party listed below:

Jennifer Atchison
Janine Joly
Daniel T. Satterberg
King County Prosecuting Attorney
Civil Division, Contracts Section
900 King County Administration Building
500 Fourth Avenue
Seattle, WA 98104

And served the following via email to their known email addresses as indicated below:

CROMWELL, MATTHEW LEE - Email address of matthewlcromwell@gmail.com
418 23RD AVE E
SEATTLE, WA 98112

HARVEY, ELLIOTT (GRACE) Email address of elliotgraceharvey@gmail.com
1505 11TH AVE APT 203
SEATTLE, WA 98122

MEEKINS, ALAN LAWRENCE Jr Email address of nullagent@gmail.com
4200 MARY GATES MEMORIAL DR NE # Q221
SEATTLE, WA 98105

SCOTT, COURTNEY K Email address of courtneykscott@me.com
1907 13TH AVE S
SEATTLE, WA 98144

SOLOMON, LEAH MICHELE Email address of solomon.lm@gmail.com
1621 N 47TH ST
SEATTLE, WA 98103

STONE, CHARLIE JENNA Email address of: charliehorsepower26@gmail.com
505 BOYLSTON AVE E # 304
SEATTLE, WA 98102

DATED this 30th day of June, 2020

s/ Sabrina Mitchell
Sabrina Mitchell, Sr. Practice Assistant