

NO. 98897-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF RECALL CHARGES AGAINST

CITY OF SEATTLE

MAYOR JENNY DURKAN

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary E. Roberts

PETITIONER'S REPLY TO MAYOR DURKAN'S RESPONSE
TO PETITIONER'S EMERGENCY MOTION TO SET A SCHEDULE
THAT COMPLIES WITH RCW 29A.56.270

PETITIONER ELLIOTT GRACE HARVEY

I. MAYOR DURKAN'S RESPONSE.

Mayor Jenny Durkan filed her reply to our Emergency Motion to Set a Schedule that Complies with RCW 29A.56.270. She indicates, with no apparent sense of shame, that her four attorneys require six weeks to brief this matter, followed by two months for the next two briefs, and then the other brief (that of Petitioners) can be due with “an appropriately expedited deadline.”

II. ARGUMENT

This is absurd and shows vast disdain for Petitioners and, indeed, for all the voters of Seattle. Moreover, it violates the rights of the voters and the intent of RCW 29A.56.270.

In relevant part, RCW 29A.56.270 reads:

Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered **an emergency matter of public concern** by the supreme court, and **heard and determined within thirty days after the decision of the superior court.**

(Emphases added.)

Far from treating this as “an emergency matter of public concern,” the mayor would clearly like this case to be forgotten about entirely. The Mayor knows that Petitioners still have to acquire signatures for the recall,

and then a voting date must be set. The Mayor is up for reelection in 2021, and if she can delay, she may be able to suppress the vote of her constituents entirely.

The Mayor has hired not one, but four lawyers to represent her, from two separate law firms. According to its website, Schroeter Goldmark & Bender employs an additional 27 attorneys, and 14 staff members, including as legal secretaries and paralegals. K&L Gates is even larger – according to LinkedIn, it has 283 employees in Seattle alone.

While the Mayor doesn't have access to all of these attorneys, it is also true that her attorneys will have plenty of support, in the form of associates, paralegals, and other staff, including other attorneys. Moreover, this case has already been briefed significantly below. The proposition that the Mayor needs six weeks to file a brief that has already been 75% written is an insult to the intelligence of Petitioners, protesters, this Court and – most importantly – the voters of Seattle.

RCW 29A.56.270 demands that this case be seen as “an emergency matter of public concern,” but to be clear, this is not merely an emergency because a statute tells us so. Petitioner has attached a few of the photographs that were filed in the Superior Court as attachments to declarations of witnesses. These are injuries that were inflicted on

protesters on July 25, 2020, by the Seattle Police Department. The horrifying tactics of SPD did not stop at the Mayor's first knowledge of SPD violence, but are ongoing.

This situation is, very specifically, an emergency, deserving emergency treatment. We are asking the Court to set a schedule that reflects that emergency, rather than accommodating the Mayor's desire to suppress a petition and election altogether. We understand from the Court's letter that this Court is not bound by RCW 29A.56.270, but we ask this court to consider the ethical implications of delay, while Seattle voters have their right to vote deliberately suppressed by the Mayor they wish to hold accountable. Mayor Durkan has, at various occasions, expressed in statements regarding the recall petition a sentiment that she is very busy running a City, too busy to deal with recall. This is easily solved by choosing to accept the decision of the Superior Court instead of using the Supreme Court as a tool to suit her purposes.

Deliberate delay is clear from the record – the Mayor filed a Motion to Reconsider below, as was her right. But this action delayed the “final order” that could be appealed under RAP 2.2 from July 10 to July 29. Then the Mayor chose to wait to file her Notice of Appeal until nearly the last minute – she filed on day 14 of a 15-day appellate period. Again,

this is her right, but the implication that the Mayor would like this case to take all the time it possibly can is easily made, especially in the context of her Response today.

Taking, as she was required to, the Petitioners' facts as proven, Judge Roberts found that the voters should be able to review this "alleged failure to protect the health and the well-being of the community." Order on Motion for Reconsideration, at 3. The voters of Seattle should be passing on this question, and the Mayor's delay is intended to effectively deprive the voters of that clear right. RCW 29A.56.270 clearly was intended to protect the right of voters to pass such judgements quickly, not after a year or more of court battles.

We ask this Court to maintain the schedule asked for by Respondents/Cross-Appellants, insofar as is possible, given the Mayor's delays so far. RCW 29A.56.270 is unambiguous in its intent that this type of case be treated as "an emergency matter of public concern" – and moreover, the facts demand that it would be, even in the absence of a statute. Mayor Durkan had every opportunity to gain more time to prepare for appeal to this Court by skipping the Motion for Reconsideration and filing for Appeal at the soonest opportunity: July 13, 2020. The Mayor

instead delayed the process for a full thirty days, demonstrating yet again that when she has an opportunity to act expediently, she chooses not to.

Petitioner/Respondents/Cross-Appellants respectfully ask that this Court treat the case as the law intends.

III. CONCLUSION

Petitioners request the Supreme Court set their requested schedule, or one functionally similar, as this is most definitely an “emergency matter of public concern.”

Signed this 12th Day of August 2020 in Seattle, WA.

By Elliott Grace Harvey