

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
|                                     | ) |                            |
|                                     | ) | No. 20-2-10455-8 SEA       |
| IN RE THE MATTER OF RECALL CHARGES  | ) |                            |
| AGAINST CITY OF SEATTLE MAYOR JENNY | ) | KING COUNTY PROSECUTING    |
| DURKAN (HARVEY)                     | ) | ATTORNEY’S BRIEF REGARDING |
|                                     | ) | RECALL PROCESS (HARVEY)    |
|                                     | ) |                            |
|                                     | ) |                            |

I. INTRODUCTION

The King County Prosecutor’s Office petitioned the Court to determine the sufficiency of recall charges filed against City of Seattle Mayor Jenny Durkan and pursuant to RCW 29A.56.140, the Court scheduled a hearing regarding the sufficiency of the charges and the adequacy of the ballot synopsis. The Prosecuting Attorney’s Office submits this memorandum summarizing the law relating to the recall process in order to assist the Court in conducting these proceedings.

II. THE RECALL PROCESS AND DETERMINING THE SUFFICIENCY OF CHARGES

A. The Recall Process

Recall is the electoral process by which an elected official may be removed from office before the expiration of his or her term. *In re Recall of Telford*, 166 Wn.2d 148, 153, 206 P.3d 1248 (2009) (citing *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71 (1984)). The power to

1 recall elected public officials in this state is constitutionally based. Washington Constitution,  
2 Article I, §§33, 34 (Amendment 8).<sup>1</sup>

3 The recall process is initiated when a person demanding recall files charges pursuant to  
4 RCW 29A.56.110. The charges must: (1) set forth the name of the officer subject to recall and  
5 the title of his or her office; (2) recite that the officer subject to recall has committed an act or  
6 acts of malfeasance or misfeasance while in office or that such person has violated an oath of  
7 office; (3) state the act or acts complained of in concise language; and (4) give a detailed  
8 description of each act. RCW 29A.56.110. The charges must be signed by the person making  
9 them and that person must verify under oath that he or she believes the charges to be true and  
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12 <sup>1</sup> Art. 1, §33 reads as follows:

13 Every elective public officer in the state of Washington except [except] judges of courts  
14 of record is subject to recall and discharge by the legal voters of the state, or of the  
15 political subdivision of the state, from which he was elected whenever a petition  
16 demanding his recall, reciting that such officer has committed some act or acts of  
17 malfeasance or misfeasance while in officer, or who has violated his oath of office,  
18 stating the matters complained of, signed by the percentages of the qualified electors  
19 thereof, hereinafter provided, the percentage required to be computed from the total  
20 number of votes cast for all candidates for his said office to which he was elected at the  
21 preceding election, is filed with the officer with whom a petition for nomination, or  
22 certificate for nomination, to such office must be filed under the laws of this state, and the  
23 same officer shall call a special election as provided by the general election laws of this  
state, and the result determined as therein provided.

Art. 1, §34 provides in relevant part:

The percentages required shall be, state officers, other than judges, senators, and  
representatives, city officers of cities of the first class, school district boards in cities of  
the first class; county officers of counties of the first, second and third classes, twenty-  
five percent. Officers of all other political subdivisions, cities, towns, townships,  
precincts and school districts not herein mentioned, and state senators and  
representatives, thirty-five percent.

1 that he or she has knowledge of the alleged facts upon which the stated grounds for recall are  
2 based. *Id.* The Washington Supreme Court has interpreted the requirements of the statute strictly  
3 and has directed that a prosecutor should reject a petition where the statutory requirements are  
4 not met. *In re Recall of Wasson*, 149 Wn.2d 787, 792-93, 72 P.3d 170 (2003).

5 The charges must be filed initially with “the elections officer whose duty it is to receive  
6 and file a declaration of candidacy for the office concerning the incumbent of which the recall is  
7 to be demanded.” RCW 29A.56.120. The elections officer must serve a copy of the charges upon  
8 the person whose recall is being sought and must certify the charges to the preparer of the ballot  
9 synopsis. *Id.* In the instant case, the preparer of the ballot synopsis is the King County  
10 Prosecuting Attorney. RCW 29A.56.130. Within fifteen days after receiving the charges, the  
11 prosecuting attorney is directed to prepare a ballot synopsis of the charges and petition the  
12 superior court to conduct a hearing to determine the sufficiency of the charges and the adequacy  
13 of the ballot synopsis. RCW 29A.56.130. The clerk of the court is directed to notify the person  
14 subject to recall and the person demanding recall of the hearing date. RCW 29A.56.140.

15 Within fifteen days after receiving the petition, the superior court is to conduct a hearing  
16 to determine the sufficiency of the recall charges and the adequacy of the ballot synopsis.<sup>2</sup> RCW  
17 29A.56.140. Both the elected official subject to recall and the person demanding recall may  
18 appear with or without counsel and present arguments as to the sufficiency of the recall charges  
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20 <sup>2</sup> In 2011, the Washington Supreme Court rejected a challenge to a trial court’s failure to  
21 determine the adequacy of recall charges within fifteen days, noting in the case that the official  
22 subject to recall asked for more time. *In the Matter of the Recall of Dale Washam*, 171 W.2d  
23 503, 518, 257 P.3d 513 (2011). Moreover, the Court held that “procedures will be regarded as  
mandatory only if they affect the actual merits of the election.” *Id.* (quoting *Pederson v. Moser*,  
99 Wn.2d 456, 460, 662 P.2d 866 (1983)).

1 and the adequacy of the ballot synopsis. *Id.*

2 B. Determining the Sufficiency of Recall Charges

3 The courts of this state have found a clear legislative intent to “allow recall for cause yet  
4 free public officials from the harassment of recall elections grounded on frivolous charges or  
5 mere insinuations”. *Chandler*, 103 Wn.2d at 274. As a consequence, recall petitions must be both  
6 legally and factually sufficient. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 764, 10 P.3d  
7 1034 (2000); *In re Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003)(citing *In re*  
8 *Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930 (2001)). In addition, courts must ensure that  
9 “persons submitting charges “have some knowledge of the facts underlying the charges.”  
10 *Wasson* at 791. A simple belief that the charges are true is not enough. *Id*; *see also Ackerson* at  
11 372; *Cole v. Webster*, 103 Wn.2d 280, 288, 692 P.2d 799 (1984).

12 In order to protect elected officials from recall petitions based on frivolous charges, the  
13 superior courts serve as gatekeepers and are entrusted with initially determining whether a recall  
14 charge is legally and factually sufficient. *In re Recall of Bolt*, 177 Wn.2d 168, 298 P.3d 710  
15 (2013)(citing *In re Recall of Kast*, 144 Wn.2d 807, 812-13, 31 P.3d 677 (2001)). RCW  
16 29A.56.140 directs the court to “not consider the truth of the charges, but only their sufficiency.”  
17 The court must determine “whether, accepting the allegations as true, the charges on their face  
18 support the conclusion that the officer abused his or her position.” *In re Recall of Wasson*, 149  
19 Wn.2d 787, 792, 72 P.3d 170 (2003); *In re Recall of Inslee*, 194 Wn.2d 563, 567, 451 P.3d 305  
20 (2019)(citing *In re Recall of Zuflet*, 112 Wn.2d 906, 914, 774 P.2d 1223 (1989)(court must  
21 determine sufficiency from face of petition).

1 The court may hear arguments as to the sufficiency of the charges and the adequacy of  
2 the ballot synopsis. While a limited voir dire examination of the persons seeking recall may be  
3 deemed appropriate in an effort to determine the factual sufficiency of the charges, such voir dire  
4 must be limited to questions directed at the charging party's knowledge and/or the basis of the  
5 charging party's knowledge of the charges contained in the recall petition. *Cole v. Webster*, 103  
6 Wn.2d 280, 288-89, 692 P.2d 799 (1984). While a court should not attempt to determine if the  
7 charges are true or false, it may examine whether there is a factual basis to the charges. *Pearsall-*  
8 *Stipek*, 141 Wn.2d at 766. In addition, the court may correct any ballot synopsis it deems  
9 inadequate. RCW 29A.56.140.

10 1. Legal Sufficiency of the Charges

11 The threshold inquiry is whether the charges are legally sufficient to support a recall  
12 petition. To be legally sufficient,

13 the charge must define substantial conduct clearly amounting to misfeasance,  
14 malfeasance or violation of the oath of office.

15 *Telford*, 166 Wn.2d 154; *Wasson*, 149 Wn.2d at 791. "Misfeasance" and "malfeasance" in office  
16 both mean "any wrongful conduct that affects, interrupts, or interferes with performance of  
17 official duty." RCW 29A.56.110(1). "Misfeasance" in office also includes the performance of an  
18 official duty in an "improper manner," and "malfeasance" in office includes the commission of  
19 an unlawful act. RCW 29A.56.110(1)(a) and (b). "Violation of the oath of office" means the  
20 "neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by  
21 law." RCW 29A.56.110(2). The burden is on the petitioner to establish legal sufficiency, which  
22 includes the identification of the "standard, law, or rule that would make the officer's conduct  
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1 wrongful, improper, or unlawful.” *Bolt*, 177 Wn.2d at 174 (quoting *In re Recall of Ackerson*, 143  
2 Wn.2d 366, 377, 20 P.3d 930 (2001).

3 Generally, discretionary acts are not a legally sufficient basis for recall insofar as those  
4 acts are an appropriate exercise of discretion by the official in the performance of his or her  
5 duties. *Inslee*, 194 Wn.2d at 572 (citing *Bolt*, 177 Wn.2d at 174 and *Cole*, 103 Wn.2d at 283).  
6 Thus, for the charges to be legally sufficient, the person making the charge must set forth facts  
7 that indicate a clear abuse of discretion. *Id.* A clear abuse of discretion may be shown by setting  
8 forth facts demonstrating the officer exercised his or her discretion in a manner that was  
9 manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *Id.*

10 2. Factual Sufficiency of the Charges

11 To be factually sufficient, the recall charges must establish a prima facie case of  
12 misfeasance, malfeasance, or violation of the oath of office. *Wasson*, 149 Wn.2d at 791. Prima  
13 facie in this context means accepting the allegations as true, the charge on its face supports the  
14 conclusion that the officer committed misfeasance, malfeasance, or violation of the oath of  
15 office. Pursuant to the legislative definitions of these terms [found in RCW 29A.56.110] the  
16 charge must on its face show the official acted wrongfully, improperly, unlawfully, or  
17 negligently in the performance of his or her duties. A prima facie showing of misfeasance,  
18 malfeasance, or violation of the oath of office will assure that both the voters and officials can  
19 make intelligent decisions on the recall charge. *Teaford*, 104 Wn.2d at 586-87.

20 To be sufficient, the facts must be concisely stated with a detailed description that  
21 includes the date, location, and nature of each allegation. *Id.* The charges must be made “with  
22 sufficient precision and detail to enable the electorate and the challenged official to make  
23

1 informed decisions during the recall process”. *Lee*, 122 Wn.2d at 616 (citing *Jenkins v. Stables*,  
2 110 Wn.2d 305, 307, 751 P.2d 1187 (1988)).

3 A charge also must sufficiently ‘specify why [the challenged] acts constitute misfeasance,  
4 malfeasance or violation of the oath of office as defined in RCW 29.82.010 [the former  
5 version of RCW 29A.56.110].’ In other words, a petition is insufficient if ‘[v]oters cannot  
6 determine whether they actually believe the act requires removal of the official from  
7 office.’ Moreover, where the petition charges the official with violating the law,  
8 petitioners must at least have knowledge of facts which indicate an intent to commit an  
9 unlawful act.

10 *Matter of Recall of Wade*, 115 Wn.2d 544, 548-49, 799 P.2d 734 (1990) (citations omitted).

11 Further:

12 Although charges may contain some conclusions, they must state sufficient facts to  
13 ‘identify to the electors and the official being recalled acts or failure to act which without  
14 justification would constitute a prima facie showing of misfeasance, malfeasance or a  
15 violation of the oath of office.’

16 *Jewett v. Hawkins*, 123 Wn.2d 446, 447-48, 868 P.2d 146 (1994).

17 A recall charge is factually sufficient only if the person making the charges has  
18 knowledge of the underlying facts, as opposed to simply a belief that the charges are true. *In re*  
19 *DeBruyn*, 112 Wn.2d 924, 927, 774 P.2d 1196 (1989). The recall statutes do not require the  
20 petitioner to have firsthand knowledge of the facts underlying the charges but must demonstrate  
21 to the court that he or she knows of identifiable facts that support the charges. *In re Recall*  
22 *Charges Against Seattle School Dist. No. 1 Directors*, 162 Wn.2d 501, 509-10, 173 P.3d 265  
23 (2007).

24 Additionally, for the factual sufficiency requirement to be satisfied, the petitioner must  
25 demonstrate not only that the official intended to commit the act, but that he or she intended to  
26 act unlawfully. *Pearsall-Stipek*, 141 Wn.2d at 765 (citing *Pearsall-Stipek*, 136 Wn.2d at 263,

1 961 P.2d 343 (1996)); *see also Matter of the Petition for Recall of Rick Heiberg*, 171 Wn.2d 771,  
2 779, 257 P.3d 565 (2011) and *Wade*, 115 Wn.2d at 549.

3 A complete summary of all cases involving a determination of the sufficiency of recall  
4 charges is beyond the scope of this brief. However, the following cases are illustrative of some  
5 of the types of factors considered.

6 *Matter of the Recall of Jay Inslee*

7 Last year, the Washington Supreme Court reviewed the trial court’s dismissal of recall  
8 charges against Governor Inslee. *In re Matter of the Recall of Inslee*, 192 Wn.2d 563, 451 P.3d  
9 305 (2019). The Supreme Court affirmed the trial court’s finding that each of the charges was  
10 insufficient to support a recall. In one of the charges, the petitioner alleged that Governor  
11 Inslee’s failure to declare homelessness a statewide emergency was manifestly unreasonable .  
12 *Id.* at 572. Noting that the declaration of a state of emergency, by the plain language of the  
13 statute, RCW 43.06.010(12)<sup>3</sup>, is discretionary, the Court concluded that the petitioner’s general  
14 allegation that the existence of a crisis requires an emergency declaration was not sufficiently  
15 detailed to establish that the governor’s discretionary act was manifestly unreasonable and thus,  
16 the petitioner did not demonstrate a prima facie case of misfeasance, malfeasance, or violation of  
17 the oath of office. *Id.* at 573.

18 *In re Recall of Terecia F. Bolt (Mayor) and Dennis L. Jenson (Councilmember)*

19 In *Bolt*, 177 Wn.2d 168 (2013), the Washington Supreme Court held a recall charge  
20 stating that the town mayor and a councilmember made three purchases of used equipment for  
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22 <sup>3</sup> RCW 43.06.010(12) states: The governor may, after finding that a public disorder, disaster,  
23 energy emergency, or riot exists within this state or any part thereof which affects life, health,  
property, or the public peace, proclaim a state of emergency in the area affected.



1 the town without advance authorization was legally insufficient. In reversing the trial court's  
2 sufficiency finding, the Court noted that: (1) the need to purchase the equipment was discussed at  
3 town council meetings prior the purchases; (2) the purchases were unique opportunities to buy  
4 equipment at reduced prices; and (3) the purchases were ratified by the town council after the  
5 fact, including by some of the recall petitioners who were also councilmembers. *Bolt* at 183-84.  
6 However, the Court stated that even setting aside these facts, the petitioners did not point to any  
7 town ordinance or purchasing policy that required authorization by the council prior to purchase  
8 and the charges were therefore legally insufficient. *Id.* Moreover, the Court stated that there was  
9 no indication that either the mayor or councilmember had the intent to violate such a law, further  
10 evidencing both legal and factual insufficiency. *Id.*

11 The decision in *Bolt* is noteworthy procedurally because the Court reviewed the charge  
12 discussed above despite the fact that the mayor and councilmember did not properly raise it  
13 through a cross appeal to the petitioners' appeal of the other 14 charges that were dismissed by  
14 the trial court (and affirmed by the Supreme Court). The Court found that the mayor and  
15 councilmember, who were proceeding without counsel, had expressed the desire to appeal the  
16 issue and failed to raise it due only to a misunderstanding of the process. The Court held that the  
17 petitioners had the opportunity to respond to the issue on appeal and that allowing the appeal was  
18 appropriate in a recall case.

19 [R]efusing to review this issue on appeal would prioritize form over substance and  
20 disadvantage these pro se parties who are small-town civil servants who receive only a  
nominal stipend for their service and are not in court of their own accord.

21 *Bolt*, 177 Wn.2d at 183.  
22  
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1           *In re Recall of City of Pacific Mayor Cy Sun*

2           In *Sun*, the Washington Supreme Court affirmed the trial court's order that two charges  
3 against the mayor were factually and legally sufficient. *In re Recall of Cy Sun*, 177 Wn.2d 251,  
4 299 P.3d 651 (2013). The first charge stated that the mayor sent a letter to the acting police chief  
5 demanding an investigation into the identity of the person who created a pamphlet critical of the  
6 mayor. This charge was legally and factually sufficient because the facts showed an improper  
7 use of city resources and actions in excess of the mayor's authority. *Sun* at 257-58.

8           The Court also upheld a second charge that the mayor jeopardized the city's liability  
9 insurance coverage by not filling vacant department head positions. The Court reviewed a  
10 significant number of factual statements related to this issue and discussed the mayor's  
11 contention that the vacancies were the council's fault, not his. The Court rejected the causation  
12 argument, saying it was an issue for the voters. As to legal sufficiency, while the Court found  
13 that the alleged acts were discretionary, it held that if the voters were to find the allegations to be  
14 true, the allegations would show that the mayor exercised his discretion in a manifestly  
15 unreasonable manner. Thus, the charges were legally sufficient. *Sun* at 259-60.

16           *Matter of the Recall of Mark E. Lindquist*

17           In 2011, the Washington Supreme Court upheld the dismissal of recall charges filed  
18 against the Pierce County Prosecuting Attorney. *Matter of the Recall of Mark E. Lindquist*, 172  
19 Wn.2d 120, 258 P.3d 9 (2011). The charges of misfeasance, malfeasance and violation of the  
20 oath of office were based on: 1) an alleged failure to investigate corruption and falsification of  
21 records charges; and 2) obstruction of justice for allegedly deterring law enforcement  
22 investigations. Charge one was found to be legally and factually insufficient because the  
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1 prosecutor had no duty to investigate the charges and even if presented with a law enforcement  
2 investigation, the prosecutor had discretion to decide whether to prosecute. *Id.* at 134. Charge  
3 two was dismissed because the court held that petitioners failed to show facts indicating  
4 knowledge and intent to commit an unlawful act. *Id.* at 134-35. Further, because the court found  
5 that the filing of the petition was intentionally frivolous and done for the purpose of harassment,  
6 and that the petitioners acted in bad faith throughout the recall process, it upheld the trial court's  
7 award of \$50,000 in attorney fees and awarded fees on appeal. *Id.* at 137-39.

8 *Matter of the Petition for Recall of Rick Heiberg*

9 A recall charge against the Coulee City Mayor alleging that he purchased a truck for the  
10 town without council approval and without requesting bids as required by state law and city  
11 ordinance was dismissed as factually insufficient. *Matter of the Petition for Recall of Rick*  
12 *Heiberg*, 171 Wn.2d 771, 257 P.3d 565 (2011). The court found the charge lacked the required  
13 factual basis to show the mayor intended to violate the law. *Id.* at 778. A second charge that a  
14 public document was improperly destroyed was also found to be factually insufficient as there  
15 was no factual basis to show the record was destroyed, much less that the mayor destroyed it. *Id.*  
16 at 780. The court cited to its decision in *Reed* stating, "there is 'no authority for the proposition  
17 that a public official may be recalled for the act of a subordinate done without the official's  
18 knowledge or discretion.'" *Id.* (citing *In Recall of Reed*, 156 Wn.2d 53, 58, 124 P.3d 279 (2005)).

19 *Matter of Recall Charges of Seattle School District Board Directors*

20 In a recall case against Seattle School District board directors, the Washington Supreme  
21 Court upheld the trial court's dismissal of all charges for factual and legal insufficiency. *Matter*  
22 *of Recall Charges Against Seattle School District Board Directors*, 162 Wn.2d 501, 173 P.3d

1 265 (2007). The allegations concerning one charge were found to be factually inaccurate and  
2 therefore lacking merit. The other two charges were found to be legally insufficient. *Id.* at 510.  
3 With respect to one of the charges, the court held that there was no legal requirement for the  
4 board directors to hold the type of hearing the petitioner alleged they failed to timely hold. *Id.* at  
5 511. The other charge was that the directors failed to stop the sale of certain district property. *Id.*  
6 The court found that the directors acted properly and that contrary to the charges, there was no  
7 action they could have taken to stop the sale. *Id.*

8 *Matter of Recall Charges of Telford*

9 In *Matter of Recall Charges of Telford*, the Washington Supreme Court dismissed recall  
10 charges against two port commissioners. 166 Wn.2d 148, 206 P.3d 1248 (2009). Two of the  
11 charges related to approval of expenditures for the port which the petitioner alleged were done in  
12 violation of a statute requiring that a comprehensive scheme of harbor improvements be in place  
13 prior to such approval. *Id.* at 156-57. The court dismissed the charges as legally insufficient  
14 finding that the port had adopted a comprehensive scheme. *Id.* The court said that the port  
15 commission had considerable discretion in adopting the scheme and that the scheme was not  
16 required to be one single document as alleged by petitioner. *Id.* A third charge against one of the  
17 commissioners was dismissed as both factually and legally insufficient in part, because there was  
18 no evidence presented of intent to violate the law. *Id.* at 157-58. The court stated, "While some  
19 inferences are permissible in a recall petition, on the whole, the facts must indicate an intention  
20 to violate the law." *Id.* (citing *Matter of Recall Charges of Carkeek*, 156 Wn.2d 469, 128 P.3d 1.

1           Matter of Recall Charges of Davis

2           In 2008, the Washington Supreme Court found a charge that a port commissioner acted  
3 outside of her legal authority by signing an agreement promising payment of port money without  
4 a vote in public session to be legally and factually sufficient. *Matter of Recall Charges of Davis*,  
5 164 Wn.2d 361, 193 P.3d 98 (2008). The court found that the charge was a prima facie case of  
6 malfeasance supported by the record which it said showed that the commissioner acted with  
7 intent when she signed the agreement and that she understood her duties as a commissioner and  
8 the legal necessity of voting in public session before obligating the port to a monetary agreement.  
9       In upholding the sufficiency of the charge, the court held that the commissioner "intentionally  
10 acted outside the scope of these duties by signing [the] agreement." *Id.* at 370. The court  
11 dismissed other charges in the case because it held that petitioner's reliance on newspaper articles  
12 to support those charges was insufficient to show personal knowledge as required to allege an act  
13 of malfeasance for purposes of recall. *Id.* at 369.

14           Matter of Recall Charges of Robinson

15           The Washington Supreme Court dismissed recall charges alleging that the Benton City  
16 mayor willfully failed to carry out his duties by failing to sign certain city contracts and by  
17 demanding contractual amendments and signing the amended contracts without city council  
18 review and approval. *Matter of Recall Charges of Robinson*, 156 Wn.2d 704, 132 P.3d 124  
19 (2006). In dismissing the charges, the court stated that the mayor could not be recalled for  
20 appropriately exercising the discretion granted to him by law. *Id.* The court found the mayor did  
21 have general statutory duties for the supervision and administration of city contracts and that  
22 drafting the amendments and negotiating with parties to the contract was within his discretion.

1 *Id.* The court further held that the mayor's delay in signing particular contracts was not  
2 unreasonable. *Id.* In dismissing the charges, the court stated that the petitioner failed to establish  
3 legal sufficiency on any of the charges because the actions were a reasonable exercise of his  
4 mayoral discretion. *Id.*

5 *In re Recall of West*

6 In *West*, the trial court upheld a recall petition alleging, in part, that Mayor West had  
7 committed a recallable offense by offering an internship opportunity with his office as part of an  
8 effort to pursue a sexual relationship with a young person he met online. *In Recall of West*, 155  
9 Wn.2d 659, 121 P.3d 1190 (2005). On appeal, the mayor objected to the trial court's  
10 consideration of supplemental documentation that went beyond the face of the petition. The  
11 Washington Supreme Court upheld the trial court's decision and consideration of the  
12 supplemental documentation stating that it was within the trial judge's sound discretion to decide  
13 to go outside the petition to determine if there was a factual basis for the charge. *Id.* at 666  
14 (citing *In Recall of Kast*, 144 Wn.2d 807, 814, 31 P.3d 677 (2001); *In Recall of Anderson*, 131  
15 Wn.2d 92, 95, 929 P.2d 410 (1997)).

16 The mayor also argued the petitioner did not have adequate knowledge of the facts  
17 necessary to support recall because they were based in part on unnamed sources in newspaper  
18 articles. The Court held the charge was still factually sufficient as the allegations were drawn  
19 almost entirely from transcripts of internet chats published in the newspapers and that the  
20 community could judge the credibility of the allegations at the recall election. *Id.*

1 There are numerous other cases decided by the Washington Supreme Court involving  
2 determinations of the factual and legal sufficiency of recall charges that apply the tests and  
3 standards as discussed above.

4 III. CONCLUSION

5 The foregoing has been submitted by the King County Prosecuting Attorney, by and  
6 through his deputies, as a friend of the court to assist the court in its determination as to the  
7 sufficiency of the recall charges presented. The prosecutor would be pleased to provide any  
8 additional assistance the court may wish in this matter.

9 Respectfully submitted this 26th day of June, 2020.

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