

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/12/2020 2:48 PM  
BY SUSAN L. CARLSON

SUPREME COURT  
IN AND FOR THE STATE OF WASHINGTON

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

No.

King County Superior Court  
Case No. 20-2-10455-8 SEA

**DECLARATION OF  
SERVICE OF NOTICE OF  
APPEAL TO  
WASHINGTON SUPREME  
COURT**

I, Sabrina Mitchell, declare under penalty of perjury of the laws of the State of Washington that on this 12th day of August, 2020, I caused the attached true and correct copy of the Notice of Appeal to Washington Supreme Court and its exhibits to be filed with the Clerk of the King County Superior Court and served on the parties via the King County Superior Court E-service application, as well as by email and U.S. Mail, First Class postage prepaid, addressed as follows:

Jennifer Atchison  
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DATED this 12th day of August, 2020.

*/s/ Sabrina Mitchell*  
Sabrina Mitchell

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THE HONORABLE MARY ROBERTS

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

**NOTICE OF APPEAL TO  
WASHINGTON SUPREME COURT**

Pursuant to RCW 29A.56.270, Mayor Jenny A. Durkan respectfully seeks review by the Washington Supreme Court of the following decisions as outlined herein:

- July 10, 2020, Order on Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. Mayor Durkan specifically seeks review of the portion of the Order addressing Charge B of the above-referenced recall petition. A copy of this order is attached as **Exhibit A**.
- July 29, 2020, Order on Motion for Reconsideration. A copy of this order is attached as **Exhibit B**.

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DATED this 12th day of August, 2020.

SCHROETER GOLDMARK & BENDER

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*Attorneys for City of Seattle  
Mayor Jenny A. Durkan*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2020, I caused the foregoing document to be served via the Court’s e-service portal, email, and US Mail, First Class postage prepaid, on the parties listed below:

Jennifer Atchison  
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DATED this 12th day of August, 2020.

s/ Sabrina Mitchell  
Sabrina Mitchell

# **EXHIBIT A**

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JUDGE MARY E. ROBERTS

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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

NO. 20-2-10455-8 SEA

ORDER ON PETITION TO DETERMINE  
SUFFICIENCY OF RECALL CHARGES AND  
ADEQUACY OF BALLOT SYNOPSIS

*Clerk's Action Required*

This matter came before the court upon the King County Prosecuting Attorney (KCPA)'s petition to determine (1) the sufficiency of recall charges filed by Elliott Grace Harvey, Alan L. Meekins, Jr., Courtney Scott, Leah Solomon, and Charlie Stone (the Recall Petitioners), against City of Seattle Mayor Jenny Durkan, and (2) the adequacy of the ballot synopsis formulated by the KCPA from the charges.



1 The charges leveled against Mayor Durkan by these five citizens arise in the context of  
2 largely peaceful local protests against racism and police brutality, following the death of  
3 George Floyd while being restrained by police officers in Minneapolis.

4 The court held a telephonic hearing on July 2, 2020. Present telephonically were Janine  
5 Joly and Jennifer Atchison on behalf of the KCPA; each of the Recall Petitioners except for  
6 Alan L. Meekins, Jr.; and attorneys Rebecca J. Roe, G. William Shaw, Ryan J. Groshong, and  
7 Matthew Clark on behalf of Mayor Durkan. The court heard and considered argument from  
8 Elliott Grace Harvey on behalf of the Recall Petitioners, and from Rebecca J. Roe on behalf of  
9 Mayor Durkan. Ms. Joly and Ms. Atchison were present and available for questions, but did  
10 not offer argument.  
11

12 On June 15, 2020, the Recall Petitioners filed a statement of charges with the King  
13 County Elections Department seeking the recall of Mayor Durkan. The Recall Petitioners  
14 summarize their charges as follows:  
15

16 A Mayor Durkan endangered the peace and safety of the community and violated her  
17 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her  
18 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.

19 B. Mayor Durkan endangered the peace and safety of the community and violated her  
20 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her  
21 oath to uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1 Sec. 3-5,  
22 when she failed to institute new polices and safety measures for the Seattle  
Police Department when using crowd control measures during a public health  
emergency.

23 C. Mayor Durkan endangered the peace and safety of the community and violated her  
24 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her  
25 oath to uphold US Const., Amend. 4, Washington Constitution, Art. 1, Sec. 3 and 5,

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

6 D. Mayor Durkan endangered the peace and safety of the community and violated her  
7 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, and her oath to  
8 uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1, Sec. 3-5, when  
9 she failed to protect the Right to Freedom of Speech and the Right to Peaceful  
10 Assembly under the First Amendment of the United States Constitution and Article 1,  
11 Sec. 4-5 of the Washington State Constitution.

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

17 F. Mayor Durkan endangered the peace and safety of the community and violated her  
18 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her  
19 oath to uphold US Const., Amends. 1 and 4, Washington Constitution, Art. 1 Sec. 3-5,  
20 when she endangered the lives of people around the SPD East Precinct by allowing  
21 police to leak false information about fabricated crimes and threats to the media.

22 G. Mayor Durkan endangered the peace and safety of the community and violated her  
23 duties under RCW 35.18.200, Seattle Charter Art. V, Sec. 2, SMC 10.02.010A, and her  
24 oath to uphold US Const., Amends. 4, Washington Constitution, Art. 1 Sec. 3, when  
25 she wrongfully disallowed certain property rights in downtown Seattle and Capitol Hill.

Statement of Charges, pp. 6-7.

This court's role in this case is limited. At this stage of a recall effort, the court is to  
assume that the Recall Petitioners' allegations are true, and to determine whether if true, they  
can support a recall. RCW 29A.56.140. This gatekeeping role is based on "the framers' intent  
to prevent recall elections from reflecting on the popularity of the political decisions made by

1 | elected officers.” *In re Recall of Telford*, 166 Wn.2d 148, 159-160 (2009). To quote the  
2 | Washington Supreme Court,

3 | [T]he role of courts in the recall process is highly limited, and it is not for us to decide  
4 | whether the alleged facts are true or not. It is the voters, no the courts, who will  
5 | ultimately act as the fact finders. RCW 29A.56.140; *in re Recall of Kast*, 144 Wn.2d  
6 | 807, 813 (2001). We merely function as a gatekeeper to ensure that the recall process  
7 | is not used to harass public officials by subjecting them to frivolous or unsubstantiated  
8 | charges. *Id.* Accordingly, our role is limited to ensuring that only legally and factually  
9 | sufficient charges go to the voters. *Id.*

10 | *In re Recall of West*, 155 Wn. 2d 659, 662 (2005).

11 | Charge A pertains to Mayor Durkan’s May 30, 2020 emergency curfew order, which  
12 | became effective upon issuance. The recall petitioners allege that the fact it was effective  
13 | immediately left members of the public in violation without warning, thereby threatening their  
14 | safety and welfare. This charge is both legally and factually insufficient. The issuance of the  
15 | emergency order was a discretionary act within Mayor Durkan’s legal authority. The Recall  
16 | Petitioners point to no instances of threats to the safety and welfare of members of the public.  
17 | Finally, nothing alleged relating to the issuance of the emergency proclamation and order  
18 | reflects a manifestly unreasonable decision.

19 | Charge B alleges that Mayor Durkan failed to institute new policies and safety  
20 | measures for SPD to prohibit the use of tear gas and other chemical crowd control agents by  
21 | SPD when such use would be particularly detrimental to public health during the COVID-19  
22 | pandemic. The Recall Petitioners further allege that Mayor Durkan knowingly allowed SPD  
23 | officers to continue to use chemical crowd control agents over many days without concern for  
24 | the health and well-being of the community, constituting misfeasance, malfeasance, and  
25 |

1 violation of oath of office. Any alleged failure of Mayor Durkan to prohibit use of chemical  
2 crowd control agents by SPD based on the early conduct before she can be said to have been  
3 aware, are legally and factually insufficient. To the extent the allegations pertain to failure to  
4 step in to stop the use of chemical crowd control agents after Mayor Durkan is alleged to have  
5 become aware of and opposed to their alleged use on peaceful protesters as a means of crowd  
6 control, such allegations are legally and factually sufficient to go forward.  
7

8 Charges C allege that Mayor Durkan allowed SPD officers to deliberately violate the  
9 law in a number of ways aimed at members of the press, and street medics. Mayor Durkan is  
10 not accountable by way of recall for the actions of her subordinates without her knowledge, not  
11 at her direction. *In Re Recall of Morisette*, 110 Wn.2d 933, 936 (1988). This charge is legally  
12 insufficient.  
13

14 Charge D alleges in essence that Mayor Durkan, allowed SPD officers to violate city  
15 ordinances and other laws pertaining to managing crowd control more generally. As stated  
16 above, Mayor Durkan is not accountable by way of recall for the actions of her subordinates  
17 without her knowledge, not at her direction. The allegations in Charge D are general in nature  
18 and are not legally or factually sufficient.  
19

20 Charge E alleges again a failure to direct the SPD in a manner consistent with  
21 upholding protestors' rights to peaceful assembly to exercise their free speech rights. This  
22 charge is duplicative of Charge B.

23 Charge F alleges Mayor Durkan allowed SPD officers to leak false information about  
24 fabricated crimes and threats to the media. This charge is legally and factually insufficient.  
25

1 Charge G pertains to Mayor Durkan's May 30, 2020 emergency order banning from the  
2 downtown and Capitol Hill neighborhood weapons and items that could be used as weapons,  
3 such as rocks, bottles, pipes, and bats. The recall petitioners point to the ban of lightbulbs in  
4 particular to support their assertion that the ban is "grossly overbroad," in that it would place  
5 homeowners in danger of violating the order by having lightbulbs in their homes. This charge  
6 is both legally and factually insufficient. The issuance of the emergency order was a  
7 discretionary act within Mayor Durkan's legal authority. The Recall Petitioners point to no  
8 instances of members of the public being held to violate the order by way of ordinary  
9 possession of lightbulbs in their homes, and such. Finally, nothing alleged relating to the  
10 issuance of this emergency order reflects a manifestly unreasonable decision.  
11  
12

13 The Elections Department sent a copy of the statement of charges to the KCPA's Office  
14 for preparation of the ballot synopsis pursuant to RCW 29A.56.120. The ballot synopsis reads  
15 as follows:  
16

17 As alleged by King County voters Elliott Grace Harvey, Alan L. Meekins, Jr.,  
18 Courtney Scott, Leah Solomon and Charlie Stone, shall Jenny Durkan be recalled from  
19 office for misfeasance, malfeasance, and violation of the oath of office, based on the  
following charges:

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

- 22 (1) Issued a citywide curfew without sufficient notice for individuals to safely disperse;  
23  
24 (2) Failed to institute new policies and safety measures for the Seattle Police  
Department when using crowd control measures during a public health emergency;  
25

- 1 (3) Failed to enforce police officer compliance with the Seattle Municipal Code and the  
2 Seattle Police Department Manual when the police attacked members of the press  
and street medics and failed to use appropriate de-escalation techniques;
- 3 (4) Failed to protect freedom of speech and the right to peaceful assemble;
- 4 (5) Wrongfully subjected bystanders to chemical weapons and crowd control measures;
- 5 (6) Allowed police to leak false information to the media about fabricated crimes and  
6 threats;
- 7 (7) Issued an overbroad order prohibiting possession of certain items in areas of the  
8 city.

9 The synopsis is inconsistent with the court's rulings above. Based on the foregoing, the  
10 court ORDERS as follows:

- 11
- 12
- 13
- 14 1. Charges A, and C-G are DISMISSED as insufficient.
- 15 2. Charge B is allowed to proceed, more narrowly than alleged.
- 16 3. The ballot synopsis is amended to read as follows:
- 17

18 As alleged by King County voters Elliott Grace Harvey, Alan L. Meekins, Jr.,  
19 Courtney Scott, Leah Solomon and Charlie Stone, shall Jenny Durkan be recalled from  
20 office for misfeasance, malfeasance, and violation of the oath of office, based on the  
following charge:

21 Mayor Durkan endangered the peace and safety of the community and violated her  
22 duties under state and local laws and her oath to uphold the federal and state  
23 constitutions when she failed to institute new policies and safety measures for the  
Seattle Police Department after learning of the use of chemical agents on peaceful  
24 protesters as a means of crowd control during a public health emergency.  
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4. The Clerk of the Court Shall certify and submit the above ballot synopsis to Mayor Jenny Durkan, to each Recall Petitioner, and to the County Auditor.


DATED this 10<sup>th</sup> day of July, 2020.

See digital signature  
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JUDGE MARY E. ROBERTS

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 20-2-10455-8  
Case Title: IN RE JENNY DURKAN / RECALL CHARGES AND  
ADEQUACY OF BALLOT SYNOPSIS  
Document Title: ORDER RE RECALL PETITION

Signed by: Mary Roberts  
Date: 7/10/2020 4:13:11 PM

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Mary".

Judge/Commissioner: Mary Roberts

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 3D64BFCEEA2C954279D2D48411270A0F20B49453  
Certificate effective date: 7/16/2018 1:34:44 PM  
Certificate expiry date: 7/16/2023 1:34:44 PM  
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Mary Roberts:  
YO/0sIr95BGVOK5mH11GsA=="



# **EXHIBIT B**

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JUDGE MARY E. ROBERTS

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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

NO. 20-2-10455-8 SEA

ORDER ON MAYOR DURKAN'S  
MOTION FOR RECONSIDERATION

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This matter came before the court upon Mayor Jenny Durkan's Motion for Reconsideration of Order on Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. The court requested and received a response and reply, and has now considered all written submissions of the parties in support of and in opposition to the motion for reconsideration. The court has also reviewed anew the entire court record through the date designated for briefing on the motion, July 24, 2020.

Mayor Durkan's motion requests reconsideration of a portion of the court's ruling in its July 10, 2020 Order on Petition to Determine Sufficiency of Recall Charges and Adequacy of

1 Ballot Synopsis (“Order”). The Order ruled on a petition brought by the King County  
2 Prosecuting Attorney (KCPA) to determine (1) the sufficiency of recall charges filed by Elliott  
3 Grace Harvey, Alan L. Meekins, Jr., Courtney Scott, Leah Solomon, and Charlie Stone (the  
4 Recall Petitioners), against City of Seattle Mayor Jenny Durkan, and (2) the adequacy of the  
5 ballot synopsis formulated by the KCPA from the charges.  
6

7 The seven charges leveled against Mayor Durkan by these citizens arose in the context  
8 of largely peaceful local protests against racism and police brutality, following the death of  
9 George Floyd while being restrained by police officers in Minneapolis. The court in its Order  
10 dismissed six of the seven charges in their entirety but ruled that a subset of one of the Recall  
11 Petitioners’ charges was factually and legally sufficient, as follows:

12 Charge B alleges that Mayor Durkan failed to institute new policies and safety  
13 measures for SPD to prohibit the use of tear gas and other chemical crowd control  
14 agents by SPD when such use would be particularly detrimental to public health during  
15 the COVID-19 pandemic. The Recall Petitioners further allege that Mayor Durkan  
16 knowingly allowed SPD officers to continue to use chemical crowd control agents over  
17 many days without concern for the health and well-being of the community,  
18 constituting misfeasance, malfeasance, and violation of oath of office. Any alleged  
19 failure of Mayor Durkan to prohibit use of chemical crowd control agents by SPD  
20 based on the early conduct before she can be said to have been aware, are legally and  
21 factually insufficient. To the extent the allegations pertain to failure to step in to stop  
22 the use of chemical crowd control agents after Mayor Durkan is alleged to have become  
23 aware of and opposed to their alleged use on peaceful protesters as a means of crowd  
24 control, such allegations are legally and factually sufficient to go forward.  
25

Order, pp. 4-5.

Consistent with the narrowed charge, the court crafted the following ballot synopsis:

As alleged by King County voters Elliott Grace Harvey, Alan L. Meekins, Jr., Courtney Scott, Leah Solomon and Charlie Stone, shall Jenny Durkan be recalled from office for misfeasance, malfeasance, and violation of the oath of office, based on the following charge:

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

5 Order, p. 7.

6 Mayor Durkan asserts that the court erred, and requests reconsideration pursuant to CR  
7 59(a)(7) (“[t]hat there is no evidence or reasonable inference from the evidence to justify the  
8 ... decision, or that it is contrary to law,”) and (9) (“[t]hat substantial justice has not been  
9 done.”).

10 Mayor Durkan argues, as she did in the initial response to the petition, that she has no  
11 legal or constitutional duty to “prescribe policies and procedure for SPD.” The gravamen of  
12 the court’s ruling as summarized above is more broadly the alleged failure to protect the health  
13 and well-being of the community. The critical role of the Chief of Police in commanding her  
14 department does not vitiate the Mayor’s obligations.

15 Mayor Durkan (and the Remand Petitioners) also submitted substantial additional  
16 evidence on reconsideration related to the handling of protests in the city.

17 As the court already described in the Order, the court’s role in this case is limited. At  
18 this stage of a recall effort, the court is to assume that the Recall Petitioners’ allegations are  
19 true, and to determine whether if true, they can support a recall. RCW 29A.56.140. This  
20 gatekeeping role is based on “the framers’ intent to prevent recall elections from reflecting on  
21 the popularity of the political decisions made by elected officers.” *In re Recall of Telford*, 166  
22 Wn.2d 148, 159-160 (2009). To quote the Washington Supreme Court,  
23  
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1 [T]he role of courts in the recall process is highly limited, and it is not for us to decide  
2 whether the alleged facts are true or not. It is the voters, no the courts, who will  
3 ultimately act as the fact finders. RCW 29A.56.140; *in re Recall of Kast*, 144 Wn.2d  
4 807, 813 (2001). We merely function as a gatekeeper to ensure that the recall process  
5 is not used to harass public officials by subjecting them to frivolous or unsubstantiated  
6 charges. *Id.* Accordingly, our role is limited to ensuring that only legally and factually  
7 sufficient charges go to the voters. *Id.*

8 *In re Recall of West*, 155 Wn. 2d 659, 662 (2005). Consistent with these legal principles, the  
9 court declines to weigh the evidence and make factual determinations as to what has happened  
10 and what reasonably should have been done on any step of the way. The court does not opine  
11 on whether Mayor Durkan should replace Chief Best, or under what circumstances the use of  
12 CS gas and the like may reasonably and legally be justified. The Recall Petitioners and Mayor  
13 Durkan have each provided the court with compelling evidence of the incredible challenges  
14 faced by each in the past weeks; application of the court's limited authority in this proceeding  
15 is not meant to diminish the presentations on either side of these important issues.

16 Mayor Durkan's motion for reconsideration is DENIED.<sup>i</sup>

17 DATED this 29<sup>th</sup> day of July, 2020.

18 See digital signature  
19 JUDGE MARY E. ROBERTS

20  
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24 <sup>i</sup> The Recall Petitioners included within their response memorandum a "cross motion for reconsideration." That  
25 motion was not noted for hearing; it is not properly before the court for consideration.

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 20-2-10455-8  
Case Title: IN RE JENNY DURKAN / RECALL CHARGES AND  
ADEQUACY OF BALLOT SYNOPSIS  
Document Title: ORDER RE RECONSIDERATION

Signed by: Mary Roberts  
Date: 7/29/2020 2:51:19 PM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'Mary' followed by a stylized flourish.

Judge/Commissioner: Mary Roberts

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 3D64BFCEEA2C954279D2D48411270A0F20B49453  
Certificate effective date: 7/16/2018 1:34:44 PM  
Certificate expiry date: 7/16/2023 1:34:44 PM  
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Mary Roberts:  
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**August 12, 2020 - 2:48 PM**

**Filing Motion for Discretionary Review of Superior Court (RAP 15.2(h))**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Trial Court Case Title:** in Re Jenny Durkan / Recall Charges and Adequacy of Ballot Synopsis  
**Trial Court Case Number:** 20-2-10455-8  
**Trial Court County:** King County Superior Court  
**Signing Judge:** Honorable Mary Roberts  
**Judgment Date:** 07/29/2020

**The following documents have been uploaded:**

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