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

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;

- 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:

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- 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 10th day of July, 2020.

See digital signature

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.

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