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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

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  
24  
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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

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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 surname.

Judge/Commissioner: Mary Roberts

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

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O=KCDJA, CN="Mary Roberts:  
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