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STATE OF WASHINGTON
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No. 98918-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF:

THE RECALL OF JOHN SNAZA,
THURSTON COUNTY SHERIFF, APPELLANT

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

Cause No. 20-2-01749-34

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION.

John Snaza is the duly elected Sheriff of Thurston County Washington. On or about July 2, 2020, citizen Arthur West submitted a statement of charges with the Thurston County Auditor requesting a recall of Sheriff John Snaza based upon a “News Release” issued by the Sheriff’s Office indicating that the Sheriff would not criminally enforce the Washington Department of Health Order [WDHO] No. 20-03, requiring the mandatory wearing of face-mask coverings of the nose and mouth when in any indoor or outdoor public setting. The Thurston County Prosecutor’s Office prepared a Petition for Recall and Ballot Synopsis to the Thurston County Superior Court. Sheriff Snaza contested the Petition and Ballot Synopsis, claiming the contents were not legally sufficient. Enforcement of any individual law requires an act of discretion on behalf of the enforcing officer, and for the purposes of recall, the standard of sufficiency is a “manifestly unreasonable” abuse of that discretion. The trial court found that enforcement of WDHO No. 20-03 does not allow for discretion on behalf of the Sheriff and that the Petition and Ballot Synopsis were legally sufficient for the purpose of gathering signatures for recall. The “Order Approving Ballot Synopsis” signed by the trial judge does not contain any language

regarding discretionary acts and/or that the Sheriff manifestly abused that discretion.

B. ASSIGNMENTS OF ERROR.

1. The superior court erred in determining that enforcement of the Health Order was not a “discretionary act” afforded to the Sheriff in his capacity as a law enforcement officer.

2. The superior court erred by not weighing if that discretionary act was a “manifestly unreasonable” abuse of discretion.

3. The superior court erred by not ruling that the Petition for Recall and Ballot Synopsis was legally and factually insufficient for failing to include the “manifestly unreasonable” standard for a discretionary act.

4. Even if this Court determines that the acts of the Sheriff to criminally enforce any particular law at any particular time is not a discretionary act, the Ballot Synopsis approved by the trial judge is in error as to item (1), as the Sheriff is not “interfering” with the Health Officer Order or refusing to perform the duties of his office.

5. Even if this Court determines that the acts of the Sheriff to criminally enforce any particular law at any particular time

is not a discretionary act, the Ballot Synopsis approved by the trial judge is in error as to item (2) as the Sheriff has not committed any unlawful acts.

6. Even if this Court determines that the acts of the Sheriff to criminally enforce any particular law at any particular time is not a discretionary act, the Ballot Synopsis approved by the trial judge is in error as to item (3), as the Sheriff is not failing to perform a duty imposed by law.

7. Even if this Court determines that the acts of the Sheriff to criminally enforce any particular law at any particular time is not a discretionary act, the Ballot Synopsis approved by the trial judge is in error as to items (1), (2) and (3) as the Sheriff has not acted with misfeasance, malfeasance and/or violated his oath of office based upon the plain language of the press release, the plain language of WDHO No. 20-03, and the enforcement statutes listed therein.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Is enforcement of a Health Order a “discretionary act” as afforded to law enforcement and specifically Sheriff John Snaza?

2. If enforcement is a “discretionary act,” was the news release issued by the Thurston County Sheriff a “manifestly unreasonable” abuse of discretion?

3. Are the Petition and Ballot Synopsis legally and factually insufficient for recall for failing to contain the “manifestly unreasonable” standard for discretionary acts of elected officials?

4. Are the Petition and Ballot Synopsis legally and factually insufficient for recall for failing to establish malfeasance, misfeasance, and/or a violation of an oath of office?

D. STATEMENT OF THE CASE.

Facts.

On June 24, 2020, John Wiseman, the Washington State Secretary of Health, issued WDHO No. 20-03, requiring the wearing of face masks covering the nose and mouth when in any indoor or outdoor public setting. [CP 22-24] This Order further established the conditions under which the Order was applicable, including exceptions for children of a certain age and persons with certain medical conditions. [CP 22-24]

The last paragraph of the Order stated the following: “Members of the public are required by law to comply with this order, and violators may be subject to criminal penalties pursuant to

RCW 43.70.130(7), RCW 70.05.120(4), and WAC 246-100-070(3).”

[CP 24, emphasis added]

Also, on June 24, 2020 The Thurston County Sheriff’s Office issued a “News Release” indicating that “everyone continue exercising safe and precautionary measures as we work through this pandemic, including wearing masks around those in high-risk groups.” [CP 25] Further in the release, it is indicated that it would be “inappropriate for deputies to criminally enforce this mandate.” [CP 25, emphasis added] The News Release indicates that “TCSO deputies ... will continue to engage with people when appropriate and educate them in partnership with our public health staff.” [CP 25] The “News Release” does not contain any language indicating that the Sheriff would ignore WDHO No. 20-03 or encourage his deputies to ignore the Order. The News Release does not encourage Thurston County citizens to ignore the Order, and in fact encourages citizens “to continue exercising safe and precautionary measures ... including wearing masks around those in high-risk groups,” and that the Department “encourages them (citizens) to wear one (masks).” [CP 26-27] The record does not contain any further formal or informal comment from the Thurston County Sheriff on the issue of masks or enforcement of WDHO No. 20-03.

On July 2, 2020, citizen Arthur West filed a statement of charges with the Thurston County Auditor, requesting the recall of John Snaza as Thurston County Sheriff. [CP 14-30] A Petition and Ballot Synopsis was prepared by the Thurston County Prosecuting Attorney and submitted to the Court on or about July 16, 2020. [CP 1-12] A hearing on the sufficiency of the Petition occurred on July 29, 2020. At that hearing, the visiting judge determined that a Sheriff does not have any discretion in enforcement of WDHO No. 20-03 [RP p. 39, lines 6-15], and that the Petition and Ballot Synopsis were legally and factually sufficient to proceed to signature gathering with slight alterations. [RP 29-39] [CP 39] Neither the Petition, Ballot Synopsis or Order Approving Ballot Synopsis contain language pertaining to discretionary acts and/or the legal standard for a manifest abuse of that discretion. [CP 1-39]

E. ARGUMENT.

1. Standard of Review for Sufficiency of Recall Petition and Ballot Synopsis.

In recall proceedings, questions of factual and legal sufficiency are reviewed de novo. *In re Recall Charges Against Lindquist*, 172 Wn.2d 120, 131, 258 P.3d 9 (2011) citing *Teaford v. Howard*, 104 Wn.2d 580, 590, 707 P.3d 1327 (1985).

The courts have clearly established the factual and legal requirements for a submitted Statement of Charges to be deemed sufficient:

Recall is the electoral process by which an elected officer is removed before the expiration of the term of office.” *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71 (1984). In Washington, voters have a constitutional right to recall a nonjudicial elected official who has “committed some act or acts of malfeasance or misfeasance while in office, or who has violated his [or her] oath of office.” WASH. CONST. art. I, § 33. “Misfeasance” and “malfeasance” are statutorily defined as “any wrongful conduct that affects, interrupts, or interferes with the performance of official duty.” RCW 29A.56.110(1). Additionally, “misfeasance” means “the performance of a duty in an improper manner,” while “malfeasance” also means “the commission of an unlawful act.” RCW 29A.56.110(1)(a) (b). A “violation of the oath of office” is defined as “the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.” RCW 29A.56.110(2).

It is not the role of courts to assess the truth or falsity of recall charges, but to evaluate their factual and legal sufficiency. RCW 29A.56.140; *In re Recall of Kast*, 144 Wn.2d 807, 812-13, 31 P.3d 677 (2001). “We merely function as a gatekeeper to ensure that the recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated charges.” *In re Recall of West*, 155 Wn.2d 659, 662, 121 P.3d 1190 (2005). We determine “whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.” *In re Recall of Wasson*, 149 Wn.2d 787, 792, 72 P.3d 170 (2003).

In re Recall of Burnham, 194 Wn.2d 68, at 75-76, 448 P.3d 747 (2019).

A recall petition is *legally* sufficient if it “state[s] with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office” and “there is no legal justification for the challenged conduct.” *Recall of Pepper*, 189 Wn.2d 546, 554, 403 P.3d 839 (2017), (citations omitted). The petition must “identify the standard, law, or rule that would make the officer’s conduct wrongful, improper, or unlawful.” *Id.* at 555, (citations omitted).

A petition is *factually* sufficient if it alleges acts or failures to act that, without justification, would constitute misfeasance, malfeasance, or a violation of the oath of office. *Id.* If the petition alleges that the subject committed an unlawful act, it is factually sufficient only if it also alleges “facts indicating the official had knowledge of and intent to commit an unlawful act.” *Id.* “The purpose of requiring factual sufficiency is to ensure that charges, ‘although adequate on their face, do not constitute grounds for recall unless supported by identifiable facts.’” *In re Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990) (quoting *Teaford v. Howard* at 585).

2. Purpose of Recall Statutes.

The recall statute, chapter 29A.56 RCW (previously codified as chapter 29.82 RCW), “clearly disclose an intent by the Legislature to limit the scope of the recall right to recall for cause and thereby free public officials from the *harassment* of recall elections grounded on *frivolous charges* or *mere insinuations*.” *Cole v. Webster*, 103 Wn.2d 280, 283, 692 P.2d 799 (1984), emphasis added.

Washington's constitution differs from most other states:

. . . it is the only constitution that allows recall only for cause. See Cohen, *Recall in Washington: A Time for Reform*, 50 Wash. L. Rev. 29 (1974). This distinction is well analyzed in 4 E. McQuillin, *Municipal Corporations* § 12.251b, at 334 (3d rev. ed. 1979):

The reasons or grounds for the recall of the officer must be stated and may relate to reasons which are purely political in nature according to the *minority view*. . . In some jurisdictions, however, it is held that the charges, grounds, or reasons given for the *recall must be more than disagreement with matters of policy*, and must, in effect, constitute misfeasance, malfeasance, or nonfeasance in office.

(Footnotes omitted.) Hence, the right of recall in Washington is clearly distinguishable from the right provided by other states.

Cole, at 286. [Emphasis supplied; citations omitted].

In Washington, unlike the minority view, the grounds for recall of an officer “must be more than disagreement with matters of

policy” or “reasons which are purely political in nature.”

3. Discretionary Acts.

To be legally sufficient, a recall petition must state with specificity “substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office.” (*In re Recall of Wade* at 549, quoting *Teaford*, 104 Wn.2d at 584). “[A] legally cognizable justification for an official's conduct renders a recall petition insufficient.” *Id.* “[A]n elected official cannot be recalled for appropriately exercising the discretion granted him or her by law.” *In re Recall of Reed*, 156 Wn.2d 53, 59, 124 P.3d 279 (2005), see also *Chandler v. Otto* at 274. Officials cannot be recalled for exercising their discretion unless that discretion was exercised in a manifestly unreasonable manner. *Id.* An attack on the official's judgment in exercising discretion is not a proper basis for recall. *Jewett v. Hawkins*, 123 Wn.2d 446, 450-51, 868 P.2d 146 (1994). To be legally sufficient, a charge must state with specificity “substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office.” *In re Wade, supra* at 549 (quoting *Teaford v. Howard*, at 584). If a discretionary act is the focus of the petition, the petitioner must show that the official exercised discretion in a manifestly unreasonable manner. *Greco v.*

Parsons, 105 Wn.2d 669, 672, 717 P.2d 1368 (1986).

Discretionary acts of a public official are not a basis for recall insofar as those acts are an appropriate exercise of discretion by the official in the performance of his or her duties. *Chandler v. Otto* at 270. Discretion implies knowledge and prudence and that discernment which enables a person to judge critically what is correct and proper. *Cole* at 285.

4. The Determination of a County Sheriff or any Law Enforcement Agency to Criminally Enforce a Law is a Discretionary Act.

The trial judge, in her ruling on the Recall Petition and Ballot Synopsis, stated unequivocally that the Thurston County Sheriff had no discretion in choosing to enforce WDHO No. 20-03. [RP at 39, lines 6-13]. The effect of this ruling is that every law enforcement agency in the State of Washington has no discretion as to this order and that the criminal provisions provided in RCW 70.05.120(4) are mandatory and must be enforced. This is patently absurd on its face. The result of this ruling, if upheld, is that law enforcement across the state must treat every observed mask violation as a crime and either issue a criminal citation and/or make an arrest.

a. This Court has Previously Ruled that Enforcement of Laws is a Discretionary Act.

Washington Courts have previously ruled on several occasions that the decision to criminally enforce the laws by a Sheriff or other law enforcement officer is a discretionary act and cannot be enforced through mandamus:

Mandamus will not lie to compel a general course of official conduct, as it is impossible for a court to oversee the performance of such duties. This was said in affirming the superior court's denial of an application for mandamus to compel Brewer, the sheriff, to prosecute all persons violating, in the city of Everett, laws respecting the keeping of places of business open and selling goods and liquors, etc., on Sunday, which was a misdemeanor under the laws of the state, there being numerous alleged violations. The denial of the writ was affirmed by this court upon the ground above quoted. This view of the law was adhered to in *State ex. rel. Pacific American Fisheries v. Darwin*, 81 Wash. 1, 142 P. 441 (1914).

State ex rel. Beardslee v. Landes, 149 Wash. 570, 571, 271 P. 829 (1928). See also *State ex rel. Hawes v. Brewer*, 39 Wash. 65, 66, 80 P. 1001 (1905). "Mandamus cannot control the discretion that the law entrusts to an official." *Colvin v. Inslee*, 195 Wn.2d 879, 883, 467 P.3d 953 (2020). If enforcement of laws cannot be compelled by the courts as that act is a "general course of official conduct," or a discretionary function of law enforcement as this court has previously ruled on a multiple of occasions, then the standard for recall must be a Manifestly Unreasonable abuse of

that discretion, and, therefore, the Ballot Synopsis and Petition were approved in error.

b. The Sheriff's Function in the Executive Branch is Similar to the Role of the Prosecuting Attorney.

The Sheriff performs the investigation of crimes prior to referring them to a prosecuting attorney for a charging decision. This Court has previously ruled in *Lindquist* that a prosecuting attorney has broad discretion in his or her function within the executive branch.

A prosecuting attorney may decline to prosecute ... in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law." RCW 9.94A.411(1). Prosecutors enjoy wide discretion "to file charges or refuse to charge for reasons other than the mere ability to establish guilt. [The prosecutor] may consider a wide range of factors in addition to the strength of the State's case in deciding whether prosecution would be in the public interest." *State v. Rowe*, 93 Wn.2d 277, 287, 609 P.2d 1348 (1980).

Id. at 132. It is certainly no great stretch to say that the roles of the prosecutor and sheriff are similar and the analysis in *Lindquist* related to discretion is analogous to the responsibilities of a Sheriff or any law enforcement officer to make discretionary decisions in the public interest.

c. WDHO No. 20-03 does not Mandate Criminal Enforcement.

Even if the Court determines that enforcement of laws is not discretionary *per se*, the plain language in the last paragraph of WDHO No. 20-03 regarding enforcement is clearly intended for enforcement to be permissive. “Members of the public are required by law to comply with this order, and violators may be subject to criminal penalties ...” [emphasis added]. The rules of statutory construction have established the term “may” to be permissive in nature as opposed to mandatory. [T]he phrase “may be compensated” as used in section 14 of the ordinance is to be construed as permissive, thereby conferring discretionary power on the city to determine whether or not to pay for overtime. *State Ex Rel Beck v. Carter*, 2 Wn. App. 974, 977, 471 P.2d 127 (1970) [emphasis added]. The general rule of statutory construction has long been that the word ‘may’ when used in a statute or ordinance is permissive and operates to confer discretion.” *State Ex Rel Beck, Id.* See also *Petrarca v. Halligan*, 83 Wn.2d 773, 776, 552 P.2d 827 (1974) (construing “may” as “permissive language”); *Clark County v. W. Wash Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 254 P.3d 862 (2011) (noting that the Supreme Court has used “may” to denote “permissive language”); *State v. Harner*, 153 Wn.2d 228,

103 P.3d 738 (2004); (noting that the legislature used “permissive language” (may) when establishing drug courts, and that a county failing to provide a drug court has not violated a constitutional right), etc.

The intent of the drafter becomes even more clear as to the use of permissive language when mandatory language is used in the same action:

Also, when both discretionary and mandatory language are used in a statute or ordinance, there is an inference that the legislature realized the difference in their meaning:

Where both mandatory and directory verbs are used in the same statute, or in the same section, paragraph, or sentence of a statute, it is a fair inference that the legislature realized the difference in meaning and intended that the verbs used should carry with them their ordinary meanings. Especially is this true where “shall” and “may” are used in close juxtaposition in a statutory provision, under circumstances that would indicate that a different treatment is intended for the predicates following them.

3 Sutherland, Statutory Construction, § 5821, at 116 (3d ed. 1943).

State Ex Rel Beck at 978.

The Secretary of Health in WDHO No. 20-03 uses both mandatory and permissive language in the Order, making clear his intent. At page one, “Every person in Washington State must wear a face covering ...”. At page two, “Individuals may remove their

face coverings ...” [emphasis added to each]. Clearly, the Secretary of Health understood the difference between “mandatory” language (“must”) and permissive language (“may”) when drafting this Order. The only way to construe the plain language of the Order and the intent of the Secretary is to conclude that the enforcement requirement is permissive.

This presumption is supported by the language found on the Washington State Department of Health Website. In the section under “Cloth Face Mask Coverings and Masks FAQ.” The Question is posed: “Who will enforce the requirement for the public to wear a face covering?” The answer to that question, in part, states “The order is not intended to penalize people, but to encourage each of us to wear a face covering ...” [emphasis added].¹

On the same page, the Question is posed: “What is the penalty for not wearing a face covering?” the answer is again permissive, stating in part that “[N]ot following the order may result in a misdemeanor ...” [emphasis added]. *Id.*

By the State Department of Health’s own words, the intent of the order is not to penalize. If that is their intent, then criminal enforcement must be the last, most severe tool for law enforcement

¹ <https://www.doh.wa.gov/Emergencies/COVID19/ClothFaceCoveringsandMasks/ClothFaceCoveringsandMasksFAQ>.

to use to ensure compliance with the order. If criminal enforcement is not mandated by WDHO No. 20-03, then it is entirely an act of discretion for the Sheriff or any law enforcement agency to choose criminal enforcement over a less restrictive method of enforcement.

5. If the Sheriff had/has Discretion to Enforce WDHO No. 20-03, then the Petition and Ballot Synopsis were Legally Insufficient for Failing to Include that Standard.

As argued *supra*, for a recall petition to be legally sufficient in a case where the basis for the petition is a discretionary act of an elected official, it must state that the discretion exercised by that official was in a manifestly unreasonable manner. The Ballot Synopsis and Petition were silent on this standard and, therefore, legally insufficient to be approved and submitted for signature.

6. Manifestly Unreasonable Act.

If the Court takes it upon itself to determine if the Sheriff did exercise discretion in a manifestly unreasonable manner, the facts indicate that he did not.

“Discretion implies knowledge and prudence and that discernment which enables a person to judge critically what is correct and proper. It is judgment directed by circumspection. *Merritt Sch. Dist. 50 v. Kimm*, 22 Wn.2d 887, 891, 157 P.2d 989 (1945); *Ledgering v. State*, 63 Wn.2d 94, 102, 385 P.2d 522

(1963).” “A clear abuse of discretion may be shown by demonstrating discretion was exercised for untenable grounds or for untenable reasons.” *Id.* at 284-85. *Cole v. Webster*, 103 Wn.2d 280, 284-85, 692 P.2d 799 (1984) See also *In re Recall of Inslee*, 194 Wn.2d 563, 451 P.3d 305 (2019). At the initial hearing, the Petitioner failed to make any argument as to manifest unreasonableness. The court failed to entertain or make a ruling on the issue as the court determined that the Sheriff had no discretion. In the “News Release” that is the entire factual basis for the recall petition [CP 25-27], the Thurston County Sheriff makes it clear that while exercising his discretion as to criminal enforcement, he will not be ignoring the mandate or encouraging others to do so. Instead, he makes the determination to act with the “knowledge, prudence and discernment” as noted above to take what he determines in his discretion to be the best course of action. The Sheriff recommends that citizens “exercise safe and precautionary measures,” including “wearing masks.” The language of the News Release does not show any nefarious or improper intent. The language does not compel citizens to ignore WDHO No. 20-03 or act out in any way in violation of the order. The Sheriff indicates support for public health by indicating that he and his staff will

continue to “engage with people when appropriate and educate them in partnership with our public health staff.” [CP 25] The News Release does not rise to a level of an abuse of discretion that was untenable or a manifestly unreasonable exercise of discretion.

7. Misfeasance, Malfeasance and/or Violation of the Oath of Office.

If this Court determines that the Sheriff lacked discretion to take the position outlined in the News Release, the Ballot Synopsis and Petition were factually and legally insufficient on their face based upon the facts in the record.

a. “Misfeasance’ or “Malfeasance”.

Elected officials in Washington may only be recalled for malfeasance, misfeasance, or violation of their oath of office. Wash. Const. Art. I, §§ 33-34; RCW 29A.56.110-.270. “‘Misfeasance’ or ‘malfeasance’ in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty[.]” RCW 29A.56.110(1). Further, “misfeasance” is “the performance of a duty in an improper manner,” and “malfeasance” is “the commission of an unlawful act.” RCW 29A.56.110(1)(a) & (b).

Understanding that it is the court’s job to rule on *sufficiency*, not *validity* of the charges, the evidence presented does not meet the legal standard for recall. The only record of alleged

misfeasance, malfeasance and/or violation of oath of office the Court has for consideration is the June 24, 2020 “News Release” issued by the Thurston County Sheriff. The Sheriff does not refuse to enforce WDHO No. 20-03. The “News Release” indicates only that he will not criminally enforce violations, which is only one means of enforcement. The “News Release” is unequivocal that the Sheriff’s Office will engage and educate violators in conjunction with Public Health. This is an option available to the Sheriff based upon the plain language of WDHO No. 20-03 and the Department of Health’s own FAQ as noted *supra*. This less aggressive method of enforcement, which is an option available to the Sheriff in this and any other matters involving policing of citizens, is not “wrongful conduct” nor the performance of a duty in an improper manner (misfeasance), or the commission of an unlawful act (malfeasance). The Petition is insufficient as to these legal standards.

b. Violation of Oath of Office.

“Violation of the oath of office’ means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.” RCW 29A.56.110(2).

Where the petition charges the official with violating the law, the petitioner must at least have knowledge of facts which indicate

an intent to commit an unlawful act. The petitioner must have “some form of knowledge of the facts upon which the charges are based *rather than simply a belief that the charges are true.*” *In re Recall of Lee*, 122 Wn.2d 617, 614, 859 P.2d 1244, (1993), *Jewett v. Hawkins*, 123 Wn.2d 446, 447, 868 P.2d 146, 147 (1994). [Emphasis supplied].

The Statement of Charges states no facts that Sheriff Snaza had (1) knowledge of and (2) an intent to commit an unlawful act. The fact that WDHO No. 20-03 includes criminal enforcement as a permissive and not mandatory measure, and that the Department of Health’s own resources viewable to the public indicate an intent not to penalize citizens, it is evident that the Sheriff was acting within the written instructions from the State Department of Health as well as the parameters of his oath of office to make a decision on how to enforce the Heath Order. These actions demonstrate that the Sheriff only intended to exercise his discretion and had no intent to violate the law.

F. CONCLUSION.

Law enforcement decisions on citation and arrest require discretion. That discretion is exercised every day by every law enforcement officer throughout the state. If enforcement of the law

allows for discretion, then the ballot synopsis order signed by the trial judge is insufficient to submit for the gathering of recall signatures. For discretionary functions, the legal standard is a manifestly unreasonable exercise of that discretion. As the trial court determined that the Thurston County Sheriff lacked discretion to criminally enforce WDHO No. 20-03, there was no examination as to whether that exercise of discretion was manifestly unreasonable. In either regard, the trial court's ruling to issue the Ballot Synopsis in its current form was in error and must be overturned.

Even if this Court determines that the trial court was correct as to a lack of discretion, the Petition and Ballot Synopsis are factually and legally insufficient as the plain language of the Health Order is permissive as to criminal enforcement, and that permissive standard is supported by the Department of Health's own FAQ instructions to the public. The Ballot Synopsis approved by the trial

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court is not factually or legally sufficient to establish that the Thurston County Sheriff committed misfeasance, malfeasance or violated his oath of office.

Respectfully submitted this 5th day of October, 2020.



DONALD R. PETERS, WSBA# 23642
Attorney for Appellant

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Supreme Court using the Appellate Courts' Portal utilized by the Washington State Supreme Court, which will provide service of this document to the attorneys of record and to Arthur West at awestaa@gmail.com.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: October 5, 2020

Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

October 05, 2020 - 9:22 AM

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