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Prosecutor Mark Lindquist says detractors are wrong as recall looms



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Pierce County Prosecutor Mark Lindquist has a message for those who hope to recall him from office: They don't know what they're talking about, and even if they do, the law is on his side.

Lindquist faces a recall hearing Tuesday in Kitsap County Superior Court. Visiting Judge Jay Roof — appointed to avoid local conflicts of interest — will consider whether 12 charges against the prosecutor meet the legal standards for recall.

If Roof says yes to any of the charges — it only takes one — Fircrest resident Cheryl Iseberg, who filed the recall petition, will have permission to gather 38,642 signatures, the threshold to bring a recall election to the ballot next year. Lindquist could appeal such a ruling to the state Supreme Court, which would have the final word.

Lindquist is weathering a storm of criticism. Two of his high-ranking staffers recently filed whistleblower complaints against him; both complaints are under active investigation. He also faces a state bar complaint that accuses him and several staffers of various acts of misconduct.

The recall charges reference those complaints, accusing Lindquist of vindictive prosecution, abuse of authority, mismanagement, spending public money to defend his personal interests, evading public disclosure laws and violating the civil rights of criminal defendants, among other things.

The Tuesday hearing represents the first detailed response from Lindquist to his detractors. In briefs filed Friday, Lindquist's attorney, Mark Hood, took aim at Iseberg's 39-page statement of charges and supporting materials, saying none of them pass the legal smell test.

"The recall proponent lacks the requisite knowledge of necessary facts to support the recall charges," Hood wrote. "Similarly, the legal basis for recall is unsupported under Washington law. This matter should be dismissed with prejudice."

Recall hearings aren't like criminal trials. Under state law, Iseberg doesn't have to prove that Lindquist committed the acts he's accused of. Instead, she must show that Lindquist's alleged actions, if true, would equate to malfeasance or misfeasance in office. Those tricky words lead to long footnotes and definitions in case law, but the basic idea is that the final decision rests with voters.

While Lindquist argues that the charges against him fail to meet the legal standard,

Iseberg's attorney, Jeff Helsdon, argues the opposite.

"All of the acts by Mr. Lindquist that are described in the statement of charges were taken by him wrongfully, knowingly, and with intent," Helsdon wrote in his primary brief. "If the situation is not immediately remedied, the continuing harm to the people of Pierce County should not be underestimated and cannot be overstated."

So what exactly is Lindquist accused of doing? Here's a breakdown of the major charges, excluding elements that tend to overlap.

The charges

- Vindictive prosecution

The charge refers to a long-running criminal case involving former Longbranch resident Lynn Dalsing, twice charged with sex crimes by Lindquist's office. Twice, judges have dismissed the charges against her, the second time due to prosecutorial vindictiveness.

The recall charge accuses Lindquist of leading that action and charging Dalsing again to stop her from gaining advantage in the false-arrest suit she filed against the county.

In response, Lindquist argues, among other things, that the second charging decision was justified and that he can't be held legally responsible for the actions of his staff:

"The entire factual scenario describes the actions of deputy prosecuting attorneys, for which Ms. Iseberg blames Mr. Lindquist, claiming that he is automatically liable for the actions of his deputies."

- Enemies list

The recall charges refer to an allegation that appears in the whistleblower and bar complaints against Lindquist: that he labeled a group of local defense attorneys "the confederacy of dunces" after they filed court briefs criticizing his actions in a separate case.

Lindquist ordered his staffers to shun those attorneys and give them unfavorable deals in plea bargains, according to the recall charges — an action that potentially affects the rights of criminal defendants to a fair trial.

Supporting briefs filed last Monday add previously undisclosed details to the allegation. One declaration comes from local defense attorney Ephraim Benjamin, a member of the so-called confederacy. Benjamin describes an incident in 2014 when he met with deputy prosecutors for a plea negotiation. Instead of talking about the case at hand, the deputies wanted to talk about the statement Benjamin filed that criticized Lindquist.

“The deputies put on the brakes and said that, ‘Before we negotiate with you, we want to talk to you about the declaration you signed,’” Benjamin wrote. “They started questioning me as if I was under interrogation.”

A separate declaration filed by Iseberg refers to her discussions with other unnamed lawyers in the confederacy who do not wish to be identified for fear of retaliation from Lindquist.

One attorney said he was forced to withdraw from defending a client who expressed concern about being represented by a lawyer who was a member of the confederacy, according to Iseberg’s declaration.

“Mr. Lindquist has given all clients or former clients of lawyers on the Enemies List a unique basis to overturn their convictions,” Iseberg’s statement reads.

In response to the allegation, Lindquist contends that Iseberg hasn’t identified a specific case where defense attorneys or their clients were treated improperly. Hood’s briefing adds that prosecutors have wide discretion when it comes to charging decisions and plea bargains.

- Private use of public funds

The allegation relates to a long-running case involving Lindquist’s personal cellphone records and text messages, which is currently awaiting a decision by the state Supreme Court.

The recall charge contends that Lindquist’s staffers wrote supporting legal briefs in the case on public time, which were presented as the work of outside entities such as state employee unions.

Outside attorneys hired by the county reviewed those briefs, the charges state, alleging an improper and illegal gift of public funds.

In response, Lindquist’s brief states that Iseberg hasn’t explained what law is being

broken.

“Ms. Iseberg has failed to show how the participation of deputy prosecuting attorneys in amicus briefs violates a standard, law or rule,” the brief states.

- Evading public disclosure

The recall charges state that Lindquist orders his staff to limit the use of email, text messages and calendars to avoid creating public records.

In response, Lindquist’s brief denies the charge, while adding that public officials have no obligation to create records, and that the recall charge fails to cite any standard or law that would make his conduct unlawful.

- Intimidating staff

The charge echoes allegations from the whistleblower complaints, contending that Lindquist admonishes and retaliates against those who disagree with him, including monitoring their spouses; statements in social media.

Lindquist’s brief replies that he’s done nothing illegal.

“In essence, this charge accuses Mr. Lindquist of being a difficult boss because he sets high performance standards,” Lindquist’s brief states. “But being a difficult boss, even a mean boss, is not illegal.”

- Discrimination

The charge accuses Lindquist of hiring staffers based on their attractiveness rather than their qualifications. Lindquist’s brief denies it, and adds a stinger:

“There is one simple reason why this charge fails: physical attractiveness, or the lack thereof, is not a protected class,” the brief states.

- Racially hostile workplace

The charge accuses Lindquist of making casually insensitive remarks, admonishing an African-American deputy prosecutor for her activism, and assigning an African-American deputy prosecutor a caseload of primarily African-American defendants.

Lindquist’s brief states that casual remarks don’t rise to the level of creating a hostile workplace. It adds that appointing a caseload of minority defendants to a prosecutor who is also a minority “does not constitute discrimination.”

- Union interference

The charge contends that Lindquist monitors his staff's union activities and elections and tries to manipulate elections of officers by having staffers gather votes and support his favored candidates.

Lindquist's brief says that Iseberg doesn't provide specific detail on the charge, and adds that, "there is no suggestion that Mr. Lindquist intended to act unlawfully."

Overall

The final charge is a conscious catch-all. It states that Lindquist has abused the power of his office to damage civil servants and citizens. It refers to all the prior charges, wrapping them together to suggest a pattern of misconduct.

"Mr. Lindquist's abuse of power is evident in all 11 of the previous charges," the brief states. "He should be recalled from office for this conduct, the pursuit of which has disrupted civil and criminal justice in Pierce County, already costing the people of Pierce County hundreds of thousands of dollars, with the potential for much more to come. The great interest of man on earth is justice. It cannot be casually tossed aside. Mark Lindquist has tossed it aside."

In response, Lindquist's brief calls the final charge "vague and rambling," and adds that identifies no specific violation of law or unlawful intent by Lindquist.

"Because the charges are factually and legally insufficient, Mr. Lindquist requests that this court reject the petition and dismiss the recall proceeding," the brief states.

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