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CLERK

SUPREME COURT No. 96508-1

BENTON COUNTY SUPERIOR COURT No. 18-2-02084-03

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: THE MATTER OF:

THE RECALL OF STEVE YOUNG,
KENNEWICK CITY COUNCIL MEMBER

ON APPEAL FROM THE SUPERIOR COURT OF
BENTON, STATE OF WASHINGTON
Superior Court No. 18-2-02084-03

The Honorable Bruce A. Spanner, Judge

BRIEF OF RESPONDENTS

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Kennewick, Washington 99336

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II. RESPONDENTS ASSIGNMENT OF VALIDITY AND ERRORS

A. The Trial Court Erred by conducting its October 18, 2018 Hearing after the Court certified and transmitted the ballot synopsis to the officer subject to recall, the person demanding the recall, and the county auditor on September 14, 2018 consistent with RCW 29A.56.140

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D. Did the Trial Court err by not allowing the voters to "ultimately act as the fact finders" by correcting the ballot synopsis to exclude Charges 2, 3, 4 and 7?

IV. STATEMENT OF THE CASE

Appellant Steve Young, was appointed to the Kennewick City Council in December 2008. In 2009, the City Council elected Young as Mayor. Young held the position of Mayor until January 2018. Appellant Young continues on as a member of the Kennewick City Council having

been elected November 3, 2009, November 8, 2011 (CP 223), November 3, 2015 (CP 225) to hold the Positon 7, Ward 3 at large seat. CP 14.

On or about August 20, 2015, Appellant Young and his employer were sued under the Washington Law Against Discrimination, RCW 49.60, et. seq., for disparate treatment, creation of a hostile work environment, and retaliation on the basis of gender and for engaging in protected activities (Benton County Case No. 15-2-01914-4, Julie M. Atwood vs. Mission Support Alliance, LLC, Steve Young, an individual, and David Ruscitto, an individual).

During that trial, Appellant Young testified that his Mayoral duties benefited him and his employer as:

> "**(t)*he biggest return on me being a mayor is the Department of Energy. I'm able to do what the Department of Energy can't do because I'm an elected official***." (Emphasis added). CP 10, 33-34.

In other words, Appellant Young exercised his Mayoral status to perform activates which were prohibited for him to perform as an employee of Federal contractor (18 U.S. Code § 1913), Mission Support Alliance. In addition, Appellant Young Testified that:

> "***Well, let's use, let's use the U.S. Senate and the U.S. House of Representatives who make the determination of what's in the budget. My job, one of my jobs as mayor, is the ability to go back, meet with the Senate, meet with the House. I can actually bump a regular citizen and testify before a committee about an issue because I'm an elected official. But your local offices are restricted and are not allowed to go and speak directly to the Senate, nor to the House about budget challenges that they're facing. But I can. So what I would do is I would take these trips back to DC a couple of times a year"***. (Emphasis added). CP 9-11, 33-34.

On October 17, 2017, a Benton County Jury found Appellant Young guilty of 1) aiding, abetting, encouraging, or inciting the commission of an unfair discriminatory practice against the Plaintiff in violation of the Washington Law Against Discrimination, RCW 49.60.220, for disparate treatment, creation of a hostile work environment, and retaliation on the basis of gender and for engaging in protected activity; and 2) intentional supervisor discrimination against the Plaintiff in violation of the Washington Law Against Discrimination, RCW 49.60, et seq., for disparate treatment, creation of a hostile work environment, and retaliation on the basis of gender and for engaging in protected activity. The Jury awarded Plaintiff Atwood $8.1 million in damages. CP 12-13, 219-220.

Concurrent to the above events, a Request for Records was submitted for Appellant Young. The production showed that Appellant Young exclusively used a federal email account for conducting all his Mayoral duties as opposed to the email account assigned to him by the City of Kennewick.

On August 1, 2018, with the understanding that "Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office"[1] Kennewick Residents submitted

1 The Constitution of the State of Washington, Article I, §33 and §34, as well as RCW 29A.56 et. seq.

their Petition for the Recall of Steve Young, Kennewick Council Member. CP 6.

The Recall Petition included seven (7) charges, including six acts of malfeasance in office under RCW 29A.56.110 (1)(b): 1) violating RCW 42.17A.565, the Fair Campaign Practices Act by knowingly soliciting, directly, a contribution to a candidate for public office, from a subordinate employee in Appellant Young's local agency; 2) violating RCW 42.23.070 (1), the Code Of Ethics For Municipal Officers, by utilizing his position as a municipal officer to secure special privileges and exemptions for himself and others, including but not limited to Mission Support Alliance and the Department of Energy's Hanford Site, constituting Malfeasance in Office; 3) violating RCW 42.23.070 (2) by receiving significant benefits not available to other similarly situated Mission Support Alliance employees due to holding his municipal office; 4) committing theft under RCW 9A.56.020 by misappropriating from Mission Support Alliance in excess of five thousand dollars ($5,000.00), Theft in the First Degree, a Class B Felony, by routinely spending 20 hours per regular week on his Mayoral Duties as opposed to duties for his employer and utilizing facilities and employees of Mission Support Alliance for the conduct of his Mayoral duties; 5) violating RCW 49.60 et. seq., the Washington Law Against Discrimination, by aiding, abetting, encouraging, or inciting the commission of an unfair discriminatory practice against the Plaintiff Atwood, for disparate treatment, creation of a hostile work environment, and retaliation on the basis of gender and for engaging in protected activity; 6) violating the Washington Law Against Discrimination, RCW 49.60.26 for intentional supervisor discrimination against Plaintiff Atwood

for disparate treatment, creation of a hostile work environment, and retaliation on the basis of gender and for engaging in protected activity; and one count of violating his oath of office, 7) violating RCW 35A.12.080 Oath of Office by committing six (6) separate acts of malfeasance in office. CP 7-15.

On August 2, 2018 at 1:26 pm, 1 day after the Recall Petition was submitted, Benton County Auditor Brenda Chilton, consistent with RCW 29A.56.120, personally served Appellant Young with a copy of the "Petition for the Recall of Steve Young, Kennewick City Council Member, which consists of the following: Petition and Exhibits 1-7". CP 229.

On August 16, 2018, the provisions of RCW 29A.56.140 which requires that "(w)ithin fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party," tolled.

On August 16, 2018, the Benton County Prosecuting Attorney's Office sent notice for an August 24, 2018, 9:00 am hearing, consistent with RCW 29A.56.140. Appellant Young and Petitioners received copies of the Notice of Hearing. CP 234.

On August 16, 2018, consistent with RCW 29A.56.130, the Benton County Prosecuting Attorney's Office issued the package of documents for the August 24, 2018, 9:00 am hearing by way of U.S. Regular Mail, Postage Prepaid; including but not limited to 1) Recall Petition by James Wade, Vincent Rundhaug, Robert McClary, and Charles Tamborello, and Petition for Approval of Ballot Synopsis and Determination of Sufficiency of Charges; and 2) Benton County Prosecutor's Memorandum of Law.

Appellant Young and Respondents received copies of the aforementioned documents and the Declaration of Service. CP 249.

On August 24, 2018, Appellant Young delayed the Trial Court's hearing until August 31, 2018. CP 268.

On August 31, 2018, the Honorable Bruce A. Spanner of the Benton-Franklin Superior Court, consistent with RCW 29A.56.140 determined that Charge 1, Violation of the Fair Campaign Practices Act, RCW 42.17A.565, satisfied the criteria for which a recall petition may be filed, corrected, certified and provided all parties with a copy of the ballot synopsis to reflect the charge.[2],[3] August 31, 2018 was fifteen days after the fifteen (15) day requirement that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court under RCW 29A.56.140 tolled.

On September 14, 2018, the Court again certified and transmitted the ballot synopsis to the officer subject to recall, the person demanding the recall, and the county auditor in accordance with RCW 29A.56.140 by way of its Order Of Determination Of The Recall Of Steve Young, Sufficiency, Adoption Of Ballot Synopsis, And Certification Of Transmittal[4]. September 14, 2018 is 29 days after the after the fifteen (15) day requirement that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court under RCW 29A.56.140 tolled.

On September 21, 2018, the Trial Court issued a Notice of Hearing for Entry of final Order in relation to the subject matter. CP 330. September 21, 2018 was 36 days after the fifteen (15) day requirement

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2 Third Decl. of Rundhaug, ¶6, Ex. A Transcript Of The Verbatim Report Of Proceedings, pages 56-64, attached hereto as VIII - APPENDIX 1.
3 Third Decl. of Rundhaug, ¶6, Exs. B and C, page 4.
4 Third Decl. of Rundhaug, ¶13, Ex. I.

that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court tolled under RCW 29A.56.140.

On October 18, 2018, 63 days after the fifteen (15) day requirement that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court tolled under RCW 29A.56.140. The Court conducted a Hearing on the Entry of Final Order. CP 405-406.

On October 18, 2018, the Court issued its Order Of Determination Of Sufficiency, Adoption Of Ballot Synopsis, And Certification Of Transmittal, ordering that "the Ballot Synopsis filed with the clerk on the 31st day of August 2018, is hereby adopted"; and that "(t)he Court does hereby certify that the Ballot Synopsis above was sent by Superior Court Administration to Petitioners, Respondent and the Auditor on the 14th day of September 2018." CP 405-406. October 18, 2018 is 63 days after the fifteen (15) day requirement that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court tolled under RCW 29A.56.140,

On November 1, 2018, Appellant Young filed his appeal to the Washington State Supreme Court with the Benton County Clerk. CP 400-406. The four (4) Respondents who initiated the Recall Petition on August 1, 2018 learned about this by way of local media reports. Appellant Young's Counsel failed, on the same day, to serve the notice of appeal to any of the four Respondents who initiated the Recall Petition on August 1, 2018. Appellant Young's legal team failed to follow the requirements of Rules Of Appellate Procedure 5.4 (b) which provides:

> Service of Notice by Party. The party filing the notice of appeal or notice for discretionary review shall on the same day serve a copy of the notice on each party of record and

> file a copy of proof of service with the appellate court designated in the notice. Failure to serve a party with notice or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the clerk of the appellate court to dismiss the appeal if not cured in a timely manner. A party prejudiced by the failure to serve the notice or to file the proof of service may move in the appellate court for appropriate relief.

On November 5, 2018, 12:27 pm, Appellant Young's legal team emailed a Notice Of Appeal To The Supreme Court Of The State Of Washington. The entire document provides:

> "STEVE YOUNG, Respondent, seeks review by the Supreme Court of the State of Washington of the Order re: Sufficiency of Recall Charges and for Approval of Ballot Synopsis, attached, and Findings of Fact and Conclusions of Law, entered on October 18th, (sic) 2018 by the Honorable Bruce A. Spanner. A copy of both documents are attached to this notice.
>
> DATED this 1st Day of November, 2018.
>
> Robert Thompson, WSBA #13003". CP 400.

In his Notice Of Appeal To The Supreme Court Of The State Of Washington, Appellant Young fails to designate the decision or part of the decision the party wants reviewed, consistent with RAP 3.2, 5.1, 5.2, 5.3, 5.4, and 5.5. Further, Appellant Young fails to indicate to the Benton County Clerk that expedited processing is necessitated under RCW 29A.56.270 which provides:

> "Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court."

Concurrently, on November 5, 2018, Respondents received by way of email Appellant Young's Certificate of Service which provides:

> "I CERTIFY under penalty of perjury under the laws of the State of Washington that I am a citizen of the United States and of the State of Washington, over the age of 18 years. That on this day, I electronically mailed true and correct copies of the NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF WASHINGTON; and THIS CERTIFICATE OF SERVICE, directed to the following:
>
> 1) James E. Wade - Email: wadejim75@gmail.com
> 2) Vincent C. Rundhaug
> Via US Postal Service, a stamped and addressed envelope, affixed with the correct amount of postage to 911 W. Entiat Ave, Kennewick, WA. 99336 and for purposes of expedited delivery via email to desertgemstudio@aol.com
> 3) Robert McClary- Email: bigbobmclary@gmail.com
> 4) Charles Tamborello- Email: ctamburlll@hotmail.com
>
> DATED this 5th day of November, 2018.
>
> By: Robert Thompson, WSBA #13003"[5]

Lead Respondent Vincent C. Rundhaug received Appellant Young's Notice Of Appeal To The Supreme Court Of The State Of Washington and Certificate of Service by mail on November 10, 2018, ten (10) days after Appellant Young filed them with the Benton County Clerk. Consistent with Appellant Young's Certificate of Service, the three remaining Respondents received no mailed copy of the Notice Of Appeal To The Supreme Court Of The State Of Washington and Certificate of Service. None of the Respondents were served on the same date the Notice Of Appeal To The Supreme Court Of The State Of Washington was filed with the Benton County Superior Court Clerk on November 1,

5 Third Decl. of Rundhaug, ¶16, Ex. J.

2018.[6] Appellant Young failed to serve the parties in accordance with Civil Rule 5 (b).

On November 21, 2018, the Benton County Clerk posted on the Case Information sheet for the instant cause:

> "11/19/2018 Perfection Notice from Court of Appeals
> Comment
> Supreme Court"[7]

On November 30, 2018, the date by which Appellant Young was required to file "a designation of those Clerk's papers and exhibits the party wants the trial court clerk to transmit to this Court" in accordance with Rules Of Appellate Procedure 9.6 tolled.

On November 30, 2018, the date by which Appellant Young was required to file his "Statement Of Arrangements For Verbatim Report Of Proceedings" in accordance with Rules Of Appellate Procedure 9.2 tolled.

On and before November 1, 2018, Appellant Young arranged for, paid and obtained copies of the Transcripts Of The Verbatim Report Of Proceedings for hearings dated August 24, 20118, August 31, 2018, September 26, 2018 and October 18, 2018[8].

Appellant Young filed his Designation of Clerk's Papers and Statement of Arrangements For Verbatim Report of Proceedings on December 7, 2018[9]. **<u>Appellant Young mislead this Court by testifying</u>**:

> "ROBERT J. THOMPSON, Attorney for STEVE YOUNG, states that on or about November 27th (sic), 2018 the appellant did order the transcripts from the various court

6 Third Decl. of Rundhaug, ¶16-17.
7 Third Decl. of Rundhaug, ¶18, Ex. C, page 6.
8 Third Decl. of Rundhaug, ¶21, Ex. M, Declaration of Court Reporter Renee L. Munoz, #2330, CCR, RPR, CRR, CRC.
9 Third Decl. of Rundhaug, ¶18, Ex. C, page 7.

> proceedings from Renee Munoz, Benton County certified Court Reporter."[10]

Appellant Young's Opening Brief was due on January 21, 2018, in accordance with RAP 10.2, and on March 18, 2019 in accordance with the Court's Appellant Case Summary[11], however was not timely submitted.

V. STANDARD OF REVIEW

The opportunity to seek the recall of elected officials is a right guaranteed to the people by the state constitution. The Constitution of the State of Washington, Article I, §33 and §34; *Matter of Recall of Riddle 189Wn.2d 565, 570 (2017)*; *In re Recall of Pearsall-Stipek, 141 Wn.2d 756, 764 (2000)*[12]. Recall is the electoral process by which an elected public officer is removed from office before the expiration of his or her term. *Chandler v. Otto, 103 Wn.2d 268, 270 (1984)*. The recall process in Washington is unusual for an elections matter in that it requires a showing of cause in Superior Court before recall can proceed. *Matter of Recall of Boldt, 187 Wn.2d 542, 548 (2017)* ; *Matter of the Recall of Estey, 104 Wn.2d 597, 600 (1985)*. The fundamental requirement in judicial review of the charges is that they must be factually and legally sufficient. *In re Recall of Sandhaus, 134 Wn.2d 662, 668 (1998)*. Therefore, while recall is a constitutional right, in Washington that right can be exercised only on the basis of sufficient cause and not simply because a voter desires to remove an elected official from office. The Court is required to review the

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10 Third Decl. of Rundhaug, ¶22, Ex. N.
11 Third Decl. of Rundhaug, ¶24, Ex. P.
12 There are three Washington Supreme Court decisions by this name: *In re Recall of Pearsall-Stipek, 129 Wn.2d 399 (1996)* ("Pearsall-Stipek I"); *In re Recall of Pearsall-Stipek, 136 Wn.2d 255 (1996)* ("Pearsall-Stipek II"); and *In re Recall of Pearsall-Stipek, 141 Wn.2d 756 (2000)* ("Pearsall-Stipek III").

charges to determine whether they are sufficient to support a recall and whether the proponent has a basis in knowledge for bringing the charge. RCW 29A.56.140.

A. PROCESSING THE RECALL PETITION

1. Benton County Officials Are Responsible For Processing The Recall Petition

The statement of charges is filed with the elections officer whose duty it is to receive and file a declaration of candidacy for the office at issue. The elections officer then shall promptly: (1) serve a copy of the charges upon the officer whose recall is demanded; and (2) certify and transmit the charges to the preparer of the ballot synopsis provided in RCW 29A.56.130. RCW 29A.56.120.

Within fifteen (15) days after receiving the charge, a ballot synopsis is prepared and certified and transmitted to the following: (1) the person or persons filing the charge; (2) the officer subject to recall ; and (3) the Superior Court of the county in which the officer subject to recall resides. The officer who formulated the ballot synopsis must petition the Superior Court to review the ballot synopsis and to determine the sufficiency of the charges. RCW 29A.56.130.

Within fifteen (15) days after receiving the petition, the Superior Court must conduct a hearing and determine, without cost to any part: (1) whether or not the acts stated in the charge are sufficient; and (2) whether or not the ballot synopsis is adequate. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. RCW 29A.56.140.

If the Court finds that the charges are sufficient, then recall proponents may begin collecting the signatures of voters that are required in order to place the recall on the ballot. RCW 29A.56.150(2). Alternatively, if the Court finds that none of the charges are sufficient, then the recall may not proceed. Either decision can be appealed directly to the Supreme Court, although the Superior Court's decision with regard to the ballot synopsis is final. RCW 29A.56.140.

The superior court of the county in which the officer subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

2. Washington State Supreme Court Appeal Time Limit, Jurisdiction And Revisory Authority

The Supreme Court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts. Any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined. **Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case** and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court. RCW 29A.56.270.

B. THE SUFFICIENCY OF RECALL CHARGES

The Court will consider only the sufficiency of the charges, and not the truth of the charges. RCW 29A.56.140; *Matter of Recall of Boldt, 187 Wn.2d at 548* ("we assume the veracity of allegations made so long as they are reasonably specific and detailed"): *In re Recall of Robinson, 156 Wn.2d 704, 707 (2006).* ·"It is the voters, not the courts, who will ultimately act as the fact finders." *In re Recall of Pepper, 189 Wn.2d 546, 553 (2017)* (quoting *In re Recall of West, 155 Wn.2d 659, 662 (2005)*). Further, the Court will not consider the motives of the persons filing the charges. *Janovich v. Herron, 91 Wn.2d 767, 773 (1979).* Charges in a recall petition, however, must be both factually and legally sufficient. *Matter of Recall of Boldt, 187 Wn.2d at 548; in re Recall of Robinson, 156 Wn.2d at 707; In re Recall of Lee, 122* Wn.2d 613, *616 (1993).*

In sum, the requirements of factual and legal sufficiency relate to each other in the following way. The requirement of factual sufficiency requires the person bringing the recall charges to explain the facts underlying the charge, as well as his or her basis in knowledge of those facts. *Jewett, 123 Wn.2d at 447-48.* To be legally sufficient, the charges must clearly state conduct that, if true,[13] would constitute misfeasance, malfeasance, or a violation of the officer's oath of office. *In re Beasley, 128 Wn.2d at 426.*

C. THE ADEQUACY OF THE BALLOT SYNOPSIS

The Court will correct any ballot synopsis it deems inadequate. RCW 29A.56.140.

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13 It is important to recall that the Court, in determining the sufficiency of the charges, "shall not consider the truth of the charges, but only their sufficiency." RCW 29A.56.140.

The ballot synopsis should provide the voters with sufficient information on which to determine what acts the elected official is charged with committing and whether they believe those facts to be true. The synopsis, however, cannot provide more information than the proponents present in the statement of charges. *In re Recall of Carey, 132 Wn.2d at 527*.

VI. ARGUMENT

A. THE TRIAL COURT ERRED BY CONDUCTING ITS OCTOBER 18, 2018 HEARING AFTER THE COURT CERTIFIED AND TRANSMITTED THE BALLOT SYNOPSIS TO THE OFFICER SUBJECT TO RECALL, THE PERSON DEMANDING THE RECALL, AND THE COUNTY AUDITOR ON SEPTEMBER 14, 2018 CONSISTENT WITH RCW 29A.56.140

On September 14, 2018, consistent with the requirements of RCW 29A.56.140, the Trial Court certified and transmitted the ballot synopsis to the officer subject to recall (Appellant Young), the person demanding the recall (Respondents), and the Benton County Auditor (Brenda Chilton)[14].

RCW 29A.56.140 provides:

> "Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear

14 Third Decl. of Rundhaug, ¶13, Ex. I.

> arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW **29A.56.270**. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. **The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate** (emphasis added)."

The requirements of RCW 29A.56.140 were completed on September 14, 2018.

The Trial Court erred by conducting its October 18, 2018 hearing on the same matter already resolved.

B. APPELLANT YOUNG ERRED BY FILING HIS APPEAL AFTER THE FIFTEEN (15) DAY PERFECTED APPEAL PERIOD TOLLED; CONTINUOUSLY FILING SUBSEQUENT DOCUMENTS AFTER THE DEADLINE TOLLED; AND MAKING A MATERIAL MISSTATEMENT OF FACT TO THIS COURT

"Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29A.56.130. The manner of service shall be the same as for the commencement of a civil action in superior court." RCW 29A.56.120.

"(1) Within fifteen days after receiving a charge, the officer specified below (Benton County Prosecuting Attorney) shall formulate a ballot synopsis of the charge of not more than two hundred words. (2) The synopsis shall set forth the name of the person charged, the title of the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges. RCW 29A.56.130.

1. Appellant Young's Time To Appeal Tolled

After Appellant Young's delay of the Trial Court's August 24, 2018 Hearing, the Trial Court conducted a hearing on August 31, 2018. At that hearing, the Trial Court "shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis". After a discussion on the corrections, the Trial Court made its decision on the sufficiency of the recall petition and certified the corrected Ballot Synopsis on August 31, 2018. The Honorable Judge Spanner provided Appellant Young, his attorney Robert J. "Bob" Thompson, and Respondent copies of the certified Ballot Synopsis on August 31, 2018[15]. The Court's Case Information sheet notes:

15 Third Decl. of Rundhaug, ¶6, Ex. A, Transcript Of The Verbatim Report Of Proceedings, pages 56-64.

> "08/31/2018 Other
> Comment
> Ballot Synopsis - All parties rec'd copies".[16]

The certified corrected Ballot Synopsis was then filed with the Benton County Clerk on August 31, 2018.[17]

On September 4, 2018, the Kennewick City Council considered item 7 a, Legal Fees Defending Recall Petition as permitted in accordance with RCW 4.96.041(3). The associated staff report advised:

> "On August 31, 2018 a judicial hearing was held before the Honorable Judge Spanner to determine the sufficiency of the Petition. Judge Spanner held that of the six allegations, five were factually insufficient to support the Petition. **Judge Spanner determined that only one of the allegations was sufficient to support the Petition. Per RCW 29A.56.140 and RCW 29A.56.270 an appeal of the sufficiency decision shall be filed in the Supreme Court. The appeal to the Supreme Court must be filed and perfected within fifteen days of the decision in Superior Court** (emphasis added). Per RCW 29A.56.270, the Supreme Court will hear the appeal and make a determination within thirty days after the decision of the Superior Court. Council Member Young is represented by Attorney, Bob Thompson and has incurred legal fees in defending this Petition and intends to appeal the Superior Court decision to the State Supreme Court. To date Council Member Young has incurred approximately $8,525 in legal fees." CP 349-350.

On September 6, 2018, 11:15 am, Robert J. "Bob" Thompson, WSBA No. 13003, attorney for Appellant Young emailed Respondent Vincent C. Rundhaug the following:

> "Vincent, **now that the Judge has ruled, I think it would be prudent to consider where the parties want to be**

16 Third Decl. of Rundhaug, ¶6, Exs. B and C, page 4.
17 Third Decl. of Rundhaug, ¶7, Ex. D.

> **before I have to file the Appeal to the supreme court, I only have till tomorrow (Friday, September 7, 2018) to file** (emphasis added). I believe it might be a good thing to save Kennewick residents time and money. Please respond ASAP." CP 353.

Appellant Young was fully aware that the period to appeal began to toll on September 1, 2018, the day after the certification and production of the final Ballot Synopsis. Appellant Young filed a Brief on the application of Civil Rule 6 as it related to the initial hearing at the Trial Court for this matter. CP 259-263.

In its October 18, 2018 Hearing for Entry of Final Order, the Court issued its Order Of Determination Of Sufficiency, Adoption Of Ballot Synopsis, And Certification Of Transmittal, ordering that "**the Ballot Synopsis filed with the clerk on the 31st day of August 2018, is hereby adopted"; and that "(t)he Court does hereby certify that the Ballot Synopsis above was sent by Superior Court Administration to Petitioners, Respondent and the Auditor on the 14th day of September 2018**." CP 398-399.

The Court can select any of the following dates on which "(t)he court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate" (RCW 29A.56.140) and determine the date upon which "(a)ppellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case" tolled (RCW 29A.56.270):

Trial Court Action	**Date On Which Action Occurred**	**Date On Which RCW 29A.56.270 Appellate Review Period Tolled**
Trial Court Hearing and Certified Ballot Synopsis handed to Petitioners, Respondent and the Auditor	**August 31, 2018**	**September 16, 2018**
Trial Court certifies Ballot Synopsis sent to Petitioners, Respondent and the Auditor	**September 14, 2018**	**September 29, 2018**
Trial Court again certifies Ballot Synopsis sent to Petitioners, Respondent and the Auditor	**October 18, 2018**	**November 2, 2018**

2. Appellant Young's Notice Of Appeal Was Not Timely Perfected

On November 1, 2018, Appellant Young filed his Notice Of Appeal To The Supreme Court Of The State Of Washington with the Benton County Clerk. CP 400-406. RCW 29A.56.270 provides the Appellant fifteen (15) days in which to begin and perfect its appeal. On November 5, 2018, Appellant Young filed his Certificate of Service, and emailed copies of his Notice Of Appeal To The Supreme Court Of The State Of Washington to Respondents[18]. Appellant Young failed to file the Affidavit of Service simultaneous to his filing of his Notice Of Appeal To The Supreme Court Of The State Of Washington with the Benton County Clerk prior to any of the tolling dates listed above.

18 Third Decl. of Rundhaug, ¶16-17, Ex. J.

In accordance with the RAP Flow Chart, the Notice of Appeal and Affidavit of Service shall be filed with the County Clerk prior to a Perfection notice being issued[19]. Appellant Young's notice of appeal was not "perfected" by the time in which the fifteen (15) day appellate procedure under RCW 29A.56.270 tolled.

On November 21, 2018, the Benton County Clerk posted on the Case Information sheet for the instant cause:

> "11/19/2018 Perfection Notice from Court of Appeals
> Comment
> Supreme Court"[20]

The Perfection Notice was promulgated well after the fifteen day period allowed in RCW 29A.56.270 tolled.

3. <u>Appellant Young Failed To Simultaneously And Properly Serve The Four Respondents Who Filed The Recall Petition As Required By Rules Of Appellate Procedure 5.4 (b) And Civil Rule 5 (b)</u>

Appellant Young's Appeal was filed with the Benton County Clerk on November 1, 2018. CP 400-406. Respondents learned about Appellant Young's filing of his Notice Of Appeal To The Supreme Court Of The State Of Washington this by way of local media reports. None of the four (4) Petitioners noted in the Certificate of Service authorized service by way of email, and were not served on the same date the Notice Of Appeal To The Supreme Court Of The State Of Washington was filed with the Benton County Superior Court Clerk on November 1, 2018. Lead Respondent Vincent C. Rundhaug received Appellant Young's

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19 Third Decl. of Rundhaug, ¶18, Ex. K.
20 Third Decl. of Rundhaug, ¶18, Ex. C, page 6.

Notice Of Appeal To The Supreme Court Of The State Of Washington and Certificate of Service by mail on November 10, 2018, ten (10) days after Appellant Young filed them with the Benton County Clerk[21]. Consistent with Appellant Young's Certificate of Service, the three remaining Respondents received no mailed copy of the Notice Of Appeal To The Supreme Court Of The State Of Washington and the Certificate of Service.[22]

Appellant Young failed, on the same day, to serve the notice of appeal to any of the Respondents. Appellant Young's failed to follow the requirements of Rules Of Appellate Procedure 5.4 (b) by serving them with his Notice Of Appeal To The Supreme Court Of The State Of Washington simultaneous to the filing with the Benton County Clerk.[23] Furthermore, Appellant Young failed to properly serve Respondents in accordance with Civil Rule 5 (b).[24]

4. Appellant Young Failed To Process His Appeal In Order To Meet The Requirement Under RCW 29A.56.270

Appellant Young failed to begin and file his perfected appeal within any of the fifteen (15) day periods enumerated in item 1 above. Appellant Young further failed to process his Petitioner's brief in order

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21 Third Decl. of Rundhaug, ¶17.
22 Third Decl. of Rundhaug, ¶16.
23 Third Decl. of Rundhaug, ¶16-17, Ex. J.
24 CR 5 (b) "Service upon the attorney or upon a party shall be made by delivering a copy to the party or the party's attorney or by mailing it to the party's or the attorney's at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the party's or the attorney's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein."

that "(a)ppellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court." RCW 29A.56.270. Moreover, Appellant Young failed to indicate to the Benton County Clerk that expedited processing is necessitated under RCW 29A.56.270. As a result of Appellant Young's actions, this matter was unable to be "heard and determined within thirty days after the decision of the superior court" by this Court.

5. Appellant Young Made A Material Misstatement Of Fact To This Court In His Report Of Proceedings

On December 7, 20018, Appellant Young filed his Report Of Proceedings and swore to this Court:

> "ROBERT J. THOMPSON, Attorney for STEVE YOUNG, states that on or about November 27th (sic), 2018 the appellant did order the transcripts from the various court proceedings from Renee Munoz, Benton County certified Court Reporter.
>
> This office has arranged to pay for the transcriptions upon demand. The Appellant is already in possession of the majority of the transcripts as they were ordered during the trial court proceedings.
>
> The arrangements were finalized on November 27th (sic) 2018, the appellant further notifies the court that the designation of clerks papers were finalized and filed with the Benton County Superior Court and has electronically sent to the Supreme Court the same." [25]

25 Third Decl. of Rundhaug, ¶22, Ex. N.

However, on December 12, 2018, Court Reporter Renee L. Munoz, #2330, CCR, RPR, CRR, CRC declared that the transcripts from the various court proceedings were delivered prior to on or about November 1, 2018[26].

Appellant Young made a material misstatement of fact to this Court in his Report of Proceedings.

6. Appellant Young's Opening Brief Was Not Timely Filed In Accordance With RAP 10.2 which provides that within 45 days after the report of proceedings is filed, the Appellant shall file an opening brief with the Clerk of this Court.

Appellant Young's Report Of Proceedings was filed December 7, 2018[25]. In accordance with RAP 10.2, Appellant Young's Opening Brief with this Court was required to be filed on or before January 21, 2019. This Court enumerated that Appellant Young's Opening Brief was due on March 18, 2019.

Appellant Young failed to file his opening brief with this Court by January 21, 2019 or March 18, 2019, well after the required filing date tolled.

7. Appellant Young's Appeal Must Be Dismissed

Regardless of which date is chosen, the time permitted to file this appeal under RCW 29A.56.270 tolled prior to Appellant Young filing his perfected appeal with this Court. In addition, Appellant Young failed to simultaneously serve the four (4) Respondents on

26 Third Decl. of Rundhaug, ¶21, Ex. M.

November 1, 2018 with his Notice Of Appeal To The Supreme Court Of The State Of Washington in accordance with Civil Rule 5(b). **Furthermore, Appellant Young failed to file his Opening Brief within 45 days of filing his Report of Proceedings in accordance with RAP 10.2**. **Moreover, Appellant Young made a material misstatement of fact to this Court in his Report of Proceedings**.

Appellant Young's petition for appeal must be dismissed.

C. THE TRIAL COURT CORRECTLY HELD CHARGE 1 WAS BOTH FACTUALLY AND LEGALLY SUFFICIENT FOR A RECALL PETITION

1. Appellant Young Made The Solicitation

Charge 1 relates to Appellant Young clearly violating RCW 42.17A.565 by knowingly soliciting, directly, a contribution to a candidate for public office, from a subordinate employee in Appellant Young's local agency, and constitutes Malfeasance in Office. RCW 42.17A.565 Solicitation of contributions by public officials or employees provides:

> "(1) **No state or local official or state or local official's agent may knowingly solicit, directly or indirectly, a contribution to a candidate for public office, political party, or political committee from an employee in the state or local official's agency** (emphasis added)."

Appellant Young offers an after-the-fact declaration advising that:

> "Mr. Young specifically denies that he violated the Washington Fair Campaign Act. Mr. Young factually did not solicit funds from a public employee, no monies were transferred". CP 252-255.

Contrary to Appellant Young's claim, the matter, Washington Public Disclosure Case 18253, remains open, with a notice advising "Status of Investigations: Assessment of Facts". The Washington Public Disclosure Commission routinely takes 2-3 years to finalize an investigation and conduct a hearing before the full commission, or individual commissioner.

It is noted that RCW 42.17A.565 does not deal with the exchange of money, only the direct or indirect solicitation of campaign contributions.

2. Mosley Understood Appellant Young's Solicitation as Such And Responded To the Email As If It Were A Solicitation

Appellant Young emailed Ms. Mosley "Details for June 26th Tri Cities Lunch - Dan Newhouse" which expressly noted the $100 ticket cost. Using public facilities, public time, a public computer and public email, Ms. Mosley's only and immediate response was:

> "**Thank you Steve for the invitation. I would like to contribute towards a ticket ($100) but as mentioned, I am planning on taking that day off so will not be able to attend the event. I will provide you with the $100 to go towards the table or just as a contribution (so you can also find someone else to actually sit at your table and attend lunch)** (emphasis added)". CP 18.

It should be noted that contrary to then Mayor Young's declaration, the table had not yet been paid for as the contribution did not show up on Candidate Newhouse's SCHEDULE A (FEC

Form 3) until June 26, 2014. CP 20. Over 70 contributions were filed between June 11, 2014, the date that he claimed the table was paid for by him, and June 26, 2014, when Appellant Young's actual contribution was received.

It is clear by Ms. Mosley's actions and email response thereto confirms that she understood Appellant Young's email to be a solicitation for a campaign contribution to Mr. Newhouse's June 26, Tri-Cities Lunch fundraiser. Mosley offered to contribute the $100 towards the ticket or contribution, and indicated that she would provide the $100 to then Mayor Young. No other explanation jibes with the only record available.

3. <u>The Trial Court Finds Charge 1 To Be Both Factually And Legally Sufficient</u>

The Trial Court found:

> "Of course, I found precious few cases that clarified that for me, but finally where I landed is, wait a 3 minute, if this conduct of a government official soliciting campaign contributions from employees is important enough to have a statute prohibiting it, its violation has to be substantial. So, we get to the last part, which is the one that was really the focus, I think, of the respondent's position, which was, you know, there's this law that requires that he has to have an intent to -- it's been phrased in various ways, an intent to violate the law, an intent to do something unlawful, and the law there is really muddy. I, quite frankly, could not distill a clear rule that's applicable -- that can be applied in every situation, but I found in the matter of the Recall of Riddle that -- I'll just read it.
>
> > "Riddle, however, contends that the recall petitioners must have evidence that she had

> an unlawful purpose in failing to transmit court orders, such as an intent to deprive custodial parents of child support payments. It is true that we have required such evidence where the elected official's actions would have been lawful but for the official's alleged unlawful purpose."

> Then they cite to a number of cases. So, that adds a bit of clarity, but, you know, certainly it was lawful for Mr. Young to invite Ms. Mosley to lunch. We can all agree it was not unlawful for him to solicit a campaign contribution. I believe a reasonable voter could infer that largely because of the absence of Mr. Young disclaiming an intent to solicit in the email that he forwarded to her that a reasonable voter could conclude that the purpose of the email was to solicit contributions. Now, I know that in her declaration she denied that she interpreted it that way, but I have to say, "Hold the phone". You offered a hundred bucks." It appears to me that contemporaneously she did see it as a solicitation and made that offer. **So, I do find charge 1 to be both factually and legally sufficient**".[27]

Appellant Young violated RCW 42.17A.565 by knowingly soliciting, directly, a contribution to a candidate for public office, from a subordinate employee in Appellant Young's local agency, and constitutes Malfeasance in Office.

D. THE TRIAL COURT ERRED BY HOLDING CHARGE 2 AND CHARGE 3 WAS AN INSUFFICIENT CHARGE FOR THE RECALL PETITION

Charges 2 and 3 concern Appellant Young's Violation of the Code Of Ethics For Municipal Officers. RCW 42.23.070 Prohibited acts – provides: (1) No municipal officer may use his or her position to secure

27 Third Decl. of Rundhuag, Ex. A, Transcript Of The Verbatim Report Of Proceedings, pages 53-56.

special privileges or exemptions for himself, herself, or others. (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

Moreover, 18 U.S. Code § 1913 - The Anti-Lobbying Act - Lobbying with appropriated moneys provides that "(n)o part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation".

Appellant Young "specifically denies that he violated the Washington Code of Ethics of municipal officers as being both factually and legally insufficient to support a recall petition". Moreover, Appellant Young states:

> "**Mr. Young further believes that the Washington Code of Ethics as applied to him violates his protections under the United States and Washington constitutions**" (emphasis added). CP 253.

In his September 25 and 26, 2017 testimony in *Julie Atwood v. Mission Support Alliance, LLC & Steve Young*, Mr. Young ties his actions as a municipal officer to his actions as an employee of Mission Support Alliance . For example, Appellant Young testifies:

"Q All right. Now as wearing both hats as mayor and vice president at MSA, you are a valuable commodity to MSA, are you not?
A I hope so."
A **When I'm wearing the City hat, I see a lot of opportunities for those that live in the City of Kennewick who work at Hanford. Those who live in the City of Kennewick who have stores and businesses. The biggest return on me being a mayor is the Department of Energy. I'm able to do what the Department of Energy can't do because I'm an elected official**. (Emphasis added).
Q Now so you can do what the Department can't do. Like what?
A Well, for example, the budget.
Q Which budget?
A The Department of Energy's budget at Hanford.
Q Why does it benefit the Department of Energy that you're the mayor?
A **Well, let's use, let's use the U.S. Senate and the U.S. House of Representatives who make the determination of what's in the budget. My job, one of my jobs as mayor, is the ability to go back, meet with the Senate, meet with the House. I can actually bump a regular citizen and testify before a committee about an issue because I'm an elected official. But your local offices are restricted and are not allowed to go and speak directly to the Senate, nor to the House about budget challenges that they're facing. But I can. So what I would do is I would take these trips back to DC a couple of times a year**. (Emphasis added).

So what I would do is I would take these trips back to DC a couple of times a year. I would use my vacation. I haven't had a true vacation in 14 years. I use my vacation to go back and lobby -- and I'll use the word lobby -- for the local offices for the needs that they have to try to get the money they need for the Hanford site .
Q. The local offices of the Department of Energy?
A Correct.
Q So you're lobbying, as the mayor, for the Department of Energy; correct?
A Correct.

> Q. **You could not do that if you were wearing your hat as vice president of MSA**. (emphasis added).
> A. **That's correct**. (emphasis added).
> Q **So the benefit that you get as mayor is you can actually lobby the interests of MSA under the framework of Mayor.**
> **A I cannot lobby the interests of MSA** (emphasis added).
> Q But you already told us that what's good for MSA is good for the people of Kennewick; right ?
> A That's correct. What's good for the Department of Energy is good for the community, absolutely." CP 32-34.

In his testimony, Appellant Young is clear that as a Mission Support Alliance employee, he was precluded from testifying before congress. Appellant Young's testimony further clarifies that Appellant Young was able to subvert these prohibitions by putting his Mayoral hat on in order to testify before congress, even being able to bump a provincial due to his status as an elected official.

Appellant Young's statement that RCW 42.23.070 Washington Code of Ethics as applied to him violates his protections under the United States and Washington constitutions, and is a violation of his RCW 35A.12.080 required Oath of Office. Appellant Young's disavowal of RCW 42.23.070 Washington Code of Ethics disqualifies him for public office. Either resignation or recall are the only remedies.

Appellant Young indicates he went back to "D.C." a couple times a year to testify before congress. Furthermore, on April 12, 2013 and Appellant Young testified at hearings "designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation". That April 12, 2013 Legislative Hearing was Before The Subcommittee On Public Lands And Environmental Regulation Of The

Committee On Natural Resources U.S. House Of Representatives One Hundred Thirteenth Congress First Session, Serial No. 113-10. Then Kennewick Mayor Steve Young was the first non-Congressional member/staff member to provide testimony. [28]

On August 26, 2015, then Kennewick City Mayor Steve C. Young, provided testimony To The Defense Nuclear Facilities Safety Board (DNSFB) Safety Culture At The Waste Treatment Plant (WTP). Mayor Young was the first member of the public to provide testimony at the hearing.[29]

Appellant Young's testimony at both the April 12, 2013 and August 26, 2015 legislative hearings were self admittedly a violation of his abilities as an employee of Federal Contractor Mission Support Alliance, using his local elected position to secure the special privilege to provide the first public testimony at both hearings.

Then Mayor Young intentionally and knowingly violated RCW 42.23.070 (1) by utilizing his position as a municipal officer to secure special privileges and exemptions for himself and others, including but not limited to Mission Support Alliance and the Department of Energy's Hanford Site, constituting Malfeasance in Office. Then Mayor Young also violated RCW 42.23.070 (2) by receiving perquisites not available to other similarly situated Mission Support Alliance employees by dent of his municipal office, constituting Malfeasance in Office. **Moreover, Appellant Young violated federal law by testifying at hearings "designed to influence in any manner a**

28 Third Decl. of Rundhaug, ¶11, Ex. G, pages 3, 8 & 9.
29 Third Decl. of Rundhaug, ¶12, Ex. H.

Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation".

E. THE TRIAL COURT ERRED BY HOLDING CHARGE 4 WAS AN INSUFFICIENT CHARGE FOR THE RECALL PETITION

Appellant Young was hired by MSA solely for his Mayoral pedigree[30]. Mayor Young admitted and enthused that he would consistently devote 16-20 hours per week of MSA time to his Mayoral Duties. CP 26, 37. A high-level Vice President cannot, and is unable to perform his or her responsibilities while devoting 20 hours of prime work hours (8am-5pm) to perform Mayoral duties when required to communicate with multiple subordinate staff, contractors, etc. as a Mission Support Alliance employee. The time after hours and weekends does not count when the individual holds a high-level position. It is impossible to be productive when the multitude of subordinates who report to you are not in the office. In addition, it is impossible to be productive when the workforces are not present. Appellant Young's limited time at work was not productive, and the time devoted towards Mayoral duties significantly detracted from his MSA duties.

During his testimony, Appellant Young accepted the calendars submitted as a part of Discovery. Appellant Young's Calendar was "empty", void of MSA appointments. CP 27-30.

Appellant Young's asserts that "respondent attributes trial transcripts which again show the extent the petitioners are willing to twist

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30 The testimony provides that prior to being hired by MSA, (Mayor) Young was a sole proprietor consultant, absent any staff to manage. As Vice President, Portfolio Management Mission Support Alliance, (Mayor) Young was responsible for extensive resources and staff. CP 31.

the truth to accomplish what can only be considered their political power motives." CP 278. The trial transcripts are a true and accurate record of Appellant Young's testimony. If they are incorrect, Appellant Young is perjuring. In addition, the Court will not consider the motives of the persons filing the charges. *Janovich v. Herron,. 91 Wn.2d 767, 773 (1979).*

(Mayor) Young's actions constitute theft. The minimum amounts misappropriated from MSA far exceeded five thousand dollars ($5,000.00), and meets the definition of Theft in the First Degree, a Class B Felony. Appellant Young's actions in this charge constitutes Malfeasance in Office.

F. THE TRIAL COURT ERRED BY HOLDING THAT CHARGE 7 WAS AN INSUFFICIENT CHARGE FOR THE RECALL PETITION

1. Appellant Young Signed The Oath Of Office

On December 6, 2011, Appellant Young took the RCW 35A.12.080 required Oath of Office signing the statement that:

> "I, Steve Young, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Washington, and that I will faithfully and impartially perform and discharge the duties of the office of City of Kennewick, Council member, Position 7, Ward 3, according to law, to the best of my ability. Subscribed and sworn to before me this 6th day of December, 2011." CP 223.

Appellant Young again took this Oath of Office January 5, 2016. CP 225.

2. Appellant Young Violated Washington State Laws

In applying Charge 1, Appellant Young violated RCW 42.17A.565, the Fair Campaign Practices Act. Further, on October 17, 2017, a Benton County Jury found that Appellant Young violated the Washington Law Against Discrimination, RCW 49.60.220 et. seq. , for: 1) disparate treatment; 2) creation of a hostile work environment; and 3) retaliation on the basis of gender and for engaging in protected activity. CP 216-221. **Appellant Young's violations of the laws of the State of Washington are specifically prohibited under RCW 35A.12.080, and constitute a violation of the Oath of Office**.

3. Appellant Young Disavows Washington State Law In Conflict With His Oath Of Office

Moreover Appellant Young states:

> "**Mr. Young further believes that the Washington Code of Ethics** (RCW 42.52) **as applied to him violates his protections under the United States and Washington constitutions**". (Emphasis added). CP 253

Appellant Young's statement above is a prima facie violation of his oath of office, and can only be remedied by resignation or recall. As noted herein, Appellant Young committed six (6) separate acts of malfeasance in office, thereby violating the oath subscribed and sworn by Appellant Young on December 6, 2011 and January 5, 2016.

4. Appellant Young Is In Violation Of His Oath Of Office

Appellant Young's violation of RCW 42.17A.565, conviction by a Benton County jury for of violating the Washington Law Against Discrimination, RCW 49.60.220 and statement that the Washington State Code of Ethics for Public Officials (RCW 42.52) violate his protections under the Washington State and United States constitutions are clearly violations of laws of the State of Washington, thus a violation of his Oath of Office under RCW 35A.12.080.

VII. CONCLUSION

The Trial Court erred by conducted a hearing after it had certified and transmitted the ballot synopsis to the officer subject to recall (Appellant Young), the person demanding the recall (Respondents), and the Benton County Auditor (Brenda Chilton). Furthermore, Appellant Young failed to file a perfected appeal prior to when the fifteen (15) day appeal period tolled, failed to simultaneously serve the four (4) recall petitioners on November 1, 2018 with the appeal papers, and as such his appeal should be dismissed. In the alternative, 1) the Trial Court's determination that Charge 1 in the recall petition was sufficient and should be affirmed; 2) based on the substantive documented evidence provided in the August 1, 2018 Petition For The Recall Of Steve Young, Kennewick City Council Member, and the information contained herein, Respondents conclude that sufficient evidence exists for the Court to determine that

Charges 2, 3, 4 and 7 of the recall petition are sufficient for inclusion, and the ballot synopsis should be amended to reflect these charges.

RESPECTFULLY SUBMITTED this 25th day of March, 2019.

By: James E. Wade
James E. Wade, Petitioner

Vincent C. Rundhaug, Petitioner

Robert McClary, Petitioner

Charles Tamburello, Petitioner

VIII. APPENDIX 1 - THIRD DECLARATION OF VINCENT C. RUNDHAUG

SUPREME COURT No. 96508-1

BENTON COUNTY SUPERIOR COURT No. 18-2-02084-03

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: THE MATTER OF:

THE RECALL OF STEVE YOUNG,
KENNEWICK CITY COUNCIL MEMBER

ON APPEAL FROM THE SUPERIOR COURT OF
BENTON, STATE OF WASHINGTON
Superior Court No. 18-2-02084-03

The Honorable Bruce A. Spanner, Judge

THIRD DECLARATION OF VINCENT C. RUNDHAUG

JAMES E. WADE
1813 S. Rainier Place
Kennewick, Washington 99337

ROBERT MCCLARY
5624 West 8th Avenue
Kennewick, Washington 99336

VINCENT C. RUNDHAUG
911 W. Entiat Avenue
Kennewick, Washington 99336

CHARLES TAMBURELLO
202 N. Lincoln Street
Kennewick, Washington 99336

RESPONDENTS PRO SE

STATE OF WASHINGTON)
) ss
County of Benton)

I, Vincent C. Rundhaug, pursuant to RCW 9A.72.085, state and declare as follows:

1. I am one of the four (4) residents of Kennewick which submitted the Petition for the Recall of Steve Young, Kennewick City Council Member on August 1, 2018 to Benton County Auditor Brenda Chilton.

2. On August 31, 2018, I appeared before Benton-Franklin Superior Court Judge Bruce A. Spanner for a determination of sufficiency of the recall petition enumerated in ¶1 in accordance with RCW 29A.56.140 Determination by superior court—Correction of ballot synopsis. I was the spokesperson for the Kennewick residents enumerated in ¶1.

3. In addition, the subject of the Recall Petition, Kennewick Council Member Steve Young was present. Robert J. "Bob" Thompson, WSBA No. 13003 represented Council Member Steve Young.

4. At the conclusion of the proceedings, the Honorable Judge Bruce A Spanner determined the sufficiency of Charge 1.

5. Both Mr. Thompson, WSBA No. 13003 and I, provided comments on the correction of the draft Ballot Synopsis prepared by Reid W. Hay of the Benton County Prosecuting Attorney's Office.

6. After providing our comments, the Honorable Judge Bruce A. Spanner left the court, and typed up the certified corrected Ballot Synopsis. The Honorable Judge Bruce A. Spanner returned to the courtroom and read the certified corrected Ballot Synopsis aloud. Furthermore, the Honorable Judge Bruce A. Spanner, provided a copy of the certified corrected Ballot Synopsis to Mr. Thompson, WSBA No. 13003, myself, the signers of the recall petition, as well as others present

in the courtroom. **EXHIBIT A** is a true and accurate copy of the Transcript Of The Verbatim Report Of Proceedings from that August 31, 2018 hearing. The signature of the Court Reporter, Renee L. Munoz, CCR, RPR, CRR, CRC, #2330 is on page 64. **EXHIBIT B** is a true and accurate copy of the certified corrected Ballot Synopsis handed out by the Honorable Judge Bruce A. Spanner. **EXHIBIT C** is a true and accurate copy of the Benton County Clerk's Case Summary showing that on August 31, 2018, "Ballot Synopsis - All parties rec'd copies"[1].

7. The certified corrected Ballot Synopsis was then filed with the Benton County Clerk on August 31, 2018. A true and accurate copy of that corrected Ballot Synopsis filed with the Benton County Clerk is provided as **CP 347**.

8. On September 4, 2018, the Kennewick City Council considered item 7 a, Legal Fees Defending Recall Petition as permitted in accordance with RCW 4.96.041(3).

9. Furthermore, the September 4, 2018 City of Kennewick Staff Report provides:

> "On August 31, 2018 a judicial hearing was held before the Honorable Judge Spanner to determine the sufficiency of the Petition. Judge Spanner held that of the six allegations, five were factually insufficient to support the Petition. ***Judge Spanner determined that only one of the allegations was sufficient to support the Petition. Per RCW 29A.56.140 and RCW 29A.56.270 an appeal of the sufficiency decision shall be filed in the Supreme Court. The appeal to the Supreme Court must be filed and perfected within fifteen days of the decision in Superior Court*** (emphasis added). Per RCW 29A.56.270, the Supreme Court will hear the appeal and make a determination within thirty days after the decision of the Superior Court. ***Council Member Young is represented by Attorney, Bob***

1 Ex. C, pages 3-4.

> ***Thompson and has incurred legal fees in defending this Petition and intends to appeal the Superior Court decision to the State Supreme Court*** (emphasis added). To date Council Member Young has incurred approximately $8,525 in legal fees." CP 349-350.

10. On September 6, 2018, at 11:15 am Robert J. "Bob" Thompson, WSBA No. 13003, attorney for Council Member Steve Young emailed me as follows:

> "**Vincent, now that the Judge has ruled, I think it would be prudent to consider where the parties want to be before I have to file the Appeal to the supreme court, I only have till tomorrow to file** (emphasis added). I believe it might be a good thing to save Kennewick residents time and money. Please respond ASAP." CP 352.

11. **EXHIBIT G** is a true and accurate copy of the transcript from the April 12, 2013 Legislative Hearing Before The Subcommittee On Public Lands And Environmental Regulation Of The Committee On Natural Resources U.S. House Of Representatives One Hundred Thirteenth Congress First Session, Serial No. 113-10. Then Kennewick Mayor Steve Young was the first non-Congressional member/staff member to provide testimony.

12. **EXHIBIT H** is a true and accurate copy of the August 26, 2015 Testimony By Steve C. Young, Mayor, City Of Kennewick To The Defense Nuclear Facilities Safety Board (DNSFB) Safety Culture At The Waste Treatment Plant (WTP). Mayor Young was the first member of the public to provide testimony at the hearing.

13. On September 14, 2018, the Court again certified and transmitted the ballot synopsis to the officer subject to recall, the person demanding the recall, and the county auditor in accordance with RCW 29A.56.140 by way of an Order Of Determination Of The Recall Of Steve Young, Sufficiency, Adoption Of Ballot Synopsis, And Certification Of Transmittal. **EXHIBIT I** is a true and accurate copy of that Order Of Determination Of The Recall Of Steve Young, Sufficiency, Adoption Of Ballot Synopsis, And Certification Of Transmittal. September 14, 2018 is 29 days after the after the fifteen (15) day requirement that the Recall Petition and ballot synopsis be reviewed and certified by the Superior Court under RCW 29A.56.140 tolled.

14. On Thursday, November 1, 2018, Young's legal counsel filed his unperfected appeal to the Supreme Court with the Benton County Clerk. The four (4) members who initiated the Recall Petition on August 1, 2018 learned about this by way of local media reports, Young's Counsel failed, on the same day, to serve the notice of appeal to any of the four members who initiated the Recall Petition on August 1, 2018.[2] CP 400-406. Young's legal team failed to follow the requirements of RAP 5.4 (b).

15. On November 5, 2018, 12:27 pm, Young's legal team emailed a Notice Of Appeal To The Supreme Court Of The State Of Washington[3]. The entire document provides:

> "STEVE YOUNG, Respondent, seeks review by the Supreme Court of the State of Washington of the Order re: Sufficiency of Recall Charges and for

2 Ex. C, page 6.
3 Ex. C, page 6.

> Approval of Ballot Synopsis, attached, and Findings of Fact and Conclusions of Law, entered on October 18th, (sic) 2018 by the Honorable Bruce A. Spanner. A copy of both documents are attached to this notice.
>
> DATED this 1st Day of November, 2018.
>
> Robert Thompson, WSBA #13003". CP 400-406.

16. **EXHIBIT J** is a true and accurate copy of Young's November 5, 2018 Certificate of Service. The Certificate of Service provides:

> "I CERTIFY under penalty of perjury under the laws of the State of Washington that I am a citizen of the United States and of the State of Washington, over the age of 18 years. That on this day, I electronically mailed true and correct copies of the NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF WASHINGTON; and THIS CERTIFICATE OF SERVICE, directed to the following:
>
> 1) James E. Wade - Email: wadejim75@gmail.com
> 2) Vincent C. Rundhaug Via US Postal Service, a stamped and addressed envelope, affixed with the correct amount of postage to 911 W. Entiat Ave, Kennewick, WA. 99336 and for purposes of expedited delivery via email to desertgemstudio@aol.com
> 3) Robert McClary- Email: bigbobmclary@gmail.com
> 4) Charles Tamborello- Email: ctamburlll@hotmail.com
>
> DATED this 5th day of November, 2018.
>
> By: Robert Thompson, WSBA #13003"

17. None of the four (4) Petitioners noted in the Certificate of Service authorized service by way of email, and were not served on the same date the Notice Of Appeal To The Supreme Court Of The State Of Washington was filed with the Benton County Superior Court Clerk on November 1, 2018.[4] I received Appellant Young's Notice Of Appeal To The Supreme Court Of The State Of Washington and Certificate of Service by mail on November 10, 2018, ten (10) days after Appellant Young filed them with the Benton County Clerk. Consistent with Appellant Young's Certificate of Service, the three remaining Respondents received no mailed copy of the Notice Of Appeal To The Supreme Court Of The State Of Washington and Certificate of Service.

18. **EXHIBIT K** is a true and accurate copy of the RAP Rules Flow Chart from the http://www.courts.wa.gov/appellate_trial_courts/ website. The RAP Rules Flow Chart shows that the issuance of a Perfection Notice is proceeded by the filing of a Notice of Appeal, payment of fee, and filing of the Affidavit of Service.

19. On November 19, 2018, the Benton County Clerk noted in her Case Information sheet for the instant cause that she had received the Perfection Notice from the Supreme Court. **EXHIBIT C**, page 6.

20. **EXHIBIT L** is a true and accurate copy of the TRANSCRIPT OF THE VERBATIM REPORT OF PROCEEDINGS from the October 18, 2018 Hearing. The signature of RENEE L. MUNOZ, Official Certified Court Reporter of the Superior Court of the Kennewick Judicial District, State of Washington, in and for the County of Benton is on page 24.

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4 Ex. C, page 6; Ex. J.

21. **EXHIBIT M** is a true and accurate copy of the signed DECLARATION OF RENEE L. MUNOZ, #2330, Official Court Reporter, Benton-Franklin Counties Superior Court dated December 12, 2018. The signature of RENEE L. MUNOZ, Official Certified Court Reporter of the Superior Court of the Kennewick Judicial District, State of Washington, in and for the County of Benton is on page 3.

22. **EXHIBIT N** is a true and accurate copy of Respondent Young's RAP 9.2 Statement Of Arrangements. The Signature of Respondent Young's Counsel is on pages 2 and 3.

23. **EXHIBIT O** is a true and accurate copy of a March 4, 2019 letter from Erin L. Lennon, Supreme Court Deputy Clerk, advising Appellant Young "The report of proceedings in this matter was due February 15, 2019. No report of proceedings has been filed."

24. **Exhibit P** is a true and accurate copy of the Appellate Court Case Summary for Case Number: 96508-1 dated March 17, 2019.

###

Signed this 18th day of March, 2019, under penalty of perjury under the laws of Washington, at Benton County, Washington.

By: _____
Vincent C. Rundhaug, Declarant

EXHIBIT A

COPY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF BENTON

3 DEPARTMENT C HON. BRUCE A. SPANNER, JUDGE

4

5 IN RE THE MATTER OF:)
) NO. 18-2-02084-03
6 THE RECALL OF STEVE YOUNG,)
KENNEWICK CITY COUNCIL MEMBER,)
7) August 31, 2018
)
8

9 Kennewick, Washington Friday August 31, 2018

10

11

12 TRANSCRIPT OF THE VERBATIM

13 REPORT OF PROCEEDINGS

14

15

16 APPEARANCES:

17 For the Petitioners: VINCENT C. RUNHAUG
Private Individual
18

19 For Steve Young: ROBERT J. THOMPSON
Attorney at Law
20 504 W. Margaret Street
Pasco, WA 99301
21

22 KEVIN LEE HOLT
Attorney at LaW
23 7014 W. Okanogan Place
Kennewick, WA 99336
24

25 Reported by: RENEE L. MUNOZ, CCR, RPR, CRR, CRC

NUMERICAL INDEX OF EXHIBITS

NUMBER	IDENT.	EVID.
NUMBER 1 - LETTER	18	20

1 Friday, August 31, 2018, at 8:59 a.m.
2 Kennewick, Washington
3
4 THE COURT: Good morning, everyone.
5 MR. THOMPSON: Good morning, your Honor.
6 MR. RUNDHAUG: Good morning.
7 THE COURT: Okay. We're here on the matter of
8 the Recall of Steve Young.
9 It occurs to me that even though you have the burden
10 of proof, it might make more sense if we take these one
11 at a time. I'll ask some clarifying questions and then
12 have Mr. Young give his opinion, through the attorneys,
13 of course, as to why he thinks it's insufficient either
14 factually, legally or both, and then have you respond.
15 Does that work for you?
16 MR. RUNDHAUG: I will try. Yes, sir.
17 THE COURT: Okay. The reason I suggest that is
18 your reply brief pretty much reiterated what was in your
19 petition, and I don't think I need to hear it a third
20 time -- at least not three times in a row, okay?
21 MR. RUNDHAUG: I agree, sir.
22 THE COURT: Okay, but I'm mindful that you have
23 the burden of proof.
24 Okay. So, let's start with the -- do you have
25 your -- the synopsis that the Benton County prosecutor

1 prepared handy?

2 MR. RUNDHAUG: Yes, your Honor, right here

3 (indicating).

4 THE COURT: Just the ballot synopsis.

5 MR. RUNDHAUG: Oh, the ballot synopsis?

6 THE COURT: Yeah. It's one of the last pages in

7 the packet that the prosecuting attorney gave you.

8 MR. RUNDHAUG: Let's see.

9 THE COURT: It's like the fourth page from the

10 end.

11 MR. RUNDHAUG: Certificate of ballot synopsis,

12 your Honor, is that the one?

13 THE COURT: It's the page right after that.

14 MR. THOMPSON: That's the one.

15 MR. RUNDHAUG: This one begins with 1 through 6?

16 THE COURT: Yes.

17 MR. RUNDHAUG: Yes. Yes, your Honor.

18 THE COURT: Why don't you pull that out of your

19 packet, please --

20 MR. RUNDHAUG: Okay.

21 THE COURT: -- because I want to refer to it a

22 number of times.

23 MR. RUNDHAUG: (Indicating.)

24 THE COURT: All right, good. Good. Okay.

25 So, the first -- the first charge is the alleged

1 solicitation of a campaign contribution on behalf of Dan
2 Newhouse.
3 Mr. Thompson, go ahead.
4 MR. THOMPSON: Well, your Honor, it's pretty
5 clear what happened. Even given the statements and
6 giving their due weight to the petitioners in this
7 action, Mr. Young sent what we would normally call a
8 political campaign fund-raiser memo to the city manager,
9 Ms. Mosley.
10 Mr. Young -- you know, it gets awkward, right,
11 because there's the true facts of what happened because
12 there was obviously a PDC. So, I want the Court to stop
13 me because if you saw my response we added some
14 additional documents more as a means of clarification.
15 So, sadly in a recall petition, your Honor, and I'm
16 gonna be real candid with the Court, there are two things
17 that go on: there's the legal analysis and there's the
18 political analysis. I think we -- it is surrounded all
19 about politics in a situation like this.
20 THE COURT: I don't understand that statement.
21 I read the law. I'm to determine, as the gatekeeper,
22 whether it's legally sufficient and factually sufficient.
23 MR. THOMPSON: And I understand that, your
24 Honor.
25 The Court probably recalls last time we were in

1 court and you made the statement is it -- basically what
2 you just said, is it factually and legally sufficient.
3 Well, the issue that we have is that if you look --
4 if you touch a part of an elephant you might think it's a
5 tree, you might think it's a snake, but you don't get the
6 full panorama of what's truly going on. In this
7 situation there was a PDC complaint that was filed, and
8 it was responded to by both the city of Kennewick and
9 Mr. Young.
10 THE COURT: Uh-huh.
11 MR. THOMPSON: Those facts, I think, were
12 readily known to the petitioners in this matter. They
13 chose to show the Court not the entire elephant. They
14 chose to cherry pick things, and you'll probably hear me
15 say that a few times, but even on its face what we have
16 is in the political world, fund-raising world, somebody
17 sends you out a generic email and you forward it on to
18 your friends.
19 Mr. Young expected her to hopefully be able to come
20 to the table, and when you -- petitioners were correct in
21 that there was a $600.00 donation paid by Steve Young,
22 all right?
23 In the PDC world had he received contributions from
24 other individuals -- because the way the PDC works the
25 candidate would have had to list those people

1 individually on supplying that. That didn't happen in
2 this case, and that's because Mr. Young basically, if you
3 read his affidavit, did what he did. He sent it out.
4 Didn't expect anybody to pay for it.
5 But sending out a collective email that doesn't say,
6 "By the way, Ms. Mosley, I expect everybody at my table
7 to kick in 150 bucks towards the Newhouse campaign."
8 That's not what happened.
9 So, factually I think it's wrong. If you look at
10 the entire elephant we know it's wrong, and I did read
11 petitioners' response into, "Well, sometimes these PDC
12 things take a number of years."
13 So, there's three possibilities. One, it's de
14 minimis, like I suggest. Maybe one is they simply don't
15 have the resources or the prioritization or, you know,
16 when they looked at the true facts it just didn't add up
17 to much of anything. I kind of think it's the last one,
18 your Honor. The petitioners claim that it takes two or
19 three -- I don't know where they got their authority for
20 that.
21 You know, that's always an issue, I think from my
22 perspective, is we can say all sorts of stuff, but don't
23 think we do not have the ability to check it out, and in
24 this case there isn't any supporting documentation about
25 the allegation about "it's not unusual".

1 You know, I can tell you my own personal experience
2 about PDC stuff, and let me tell you, it doesn't happen
3 two or three years down the road. I'm just gonna make
4 that a suggestion, even no matter how de minimis it is,
5 and so that would be my statements.
6 Even on their face it's insufficient that he's
7 soliciting funds. True facts? Clearly says that was
8 never the intent.
9 THE COURT: All right, thank you.
10 Response?
11 MR. RUNDHAUG: Well, your Honor, what I have
12 before me is a copy of the email, and I'm just dealing --
13 well, we're dealing with the evidence as it faces us.
14 That they're -- in our opinion and our belief, that
15 there's a clear solicitation going on here between a
16 subordinate and her supervisor.
17 THE AUDIENCE: I don't understand.
18 THE COURT: Does there need to be a
19 supervisor-subordinate relationship --
20 MR. HOLT: Yes.
21 MR. THOMPSON: (Indicating.)
22 THE COURT: -- or is it just enough that she is
23 an employee of the city of Kennewick?
24 MR. RUNDHAUG: Well, I would fall back on what
25 is in the content of our -- without going back over it.

1 I'm sorry, is that -- the question, is that an answer
2 that is not included in here that I'm overlooking?
3 THE COURT: Well, if we read the statute this
4 subordinate-supervisor relationship is unnecessary --
5 MR. RUNDHAUG: Oh.
6 THE COURT: -- to find a violation.
7 MR. RUNDHAUG: Okay. Thank you.
8 THE COURT: All right. Anything further on
9 that, Mr. Thompson?
10 MR. THOMPSON: We think that you need to have
11 that subordinate relationship, your Honor. Again, you
12 know, we spent a lot of time lookin' at cases, and we
13 haven't found a case where that wasn't the case in a
14 situation. I know what the statute says. I agree with
15 it, but again, I haven't found a case that articulates
16 somebody who wasn't in that situation.
17 THE COURT: But you would agree that the
18 statute, on its face, doesn't require this
19 subordinate-supervisor relationship?
20 MR. THOMPSON: On its face.
21 THE COURT: Okay. Okay. All right, then let's
22 move on to Numbers 2 and 3.
23 MR. THOMPSON: Your Honor, the only
24 clarification: I think it says an "employee". That's the
25 other part of statute.

1 THE COURT: Yes.
2 MR. THOMPSON: The question is whether or not
3 Ms. Mosley is actually an employee of Mr. Young.
4 We don't believe she is an employee of Mr. Young.
5 THE COURT: Well, the statute refers to being an
6 employee of his agency.
7 Is not his agency the city of Kennewick?
8 MR. THOMPSON: Well, he certainly is the mayor.
9 Again, that depends how far you want to go down in
10 municipal law in regards to who runs the show. So, city
11 council's elected. They set policy. With that, a
12 council -- a council decision, not just Mr. Young's
13 decision, makes the determination on who they hire as a
14 city manager.
15 After that, the city manager does what city managers
16 do. They manage a city. Council's sole role is to
17 create policy, your Honor. So, it's a little finer
18 distinction, I think, than many realize.
19 MR. RUNDHAUG: May I --
20 THE COURT: Yes.
21 MR. RUNDHAUG: -- add something here?
22 THE COURT: Sure.
23 MR. RUNDHAUG: In going to the city of
24 Kennewick's website and looking up Marie Mosley's job
25 description, the first two sentences, if I believe --

1 recall correctly, says that she works at the behest of
2 the city council.
3 Does that not develop that employee-employer
4 relationship? That would be my question.
5 THE COURT: Okay. I mean, the statute distilled
6 to the relevant essence is,
7 "No state or local official may
8 knowingly solicit, directly or indirectly,
9 a contribution to a candidate for public
10 office from an employee of the state or
11 local official's agency."
12 All right, now we can move on to Number 2. Here's
13 where the statement of charges -- Numbers 2 and 3, I
14 think we ought to take them together.
15 MR. THOMPSON: Yeah.
16 THE COURT: Here's where I'm looking at the
17 ballot synopsis that Mr. Hay prepared. Number 2,
18 "It's alleged that Mr. Young violated
19 the Washington Code of Ethics for
20 municipal officers by using his elected
21 position to assist him in appearing before
22 congress to offer testimony for the
23 benefit of his private employer and the
24 United States Department of Energy."
25 Do you agree that he accurately captured your --

1 this charge Number 2 in that synopsis statement?
2 MR. RUNDHAUG: Yes, sir.
3 THE COURT: Okay. Then Number 3 that,
4 "It's alleged that Mr. Young violated
5 the Washington Code of Ethics for
6 municipal officers by receiving from his
7 private employer a position and limited
8 working hours that would not have been
9 available if he were not an elected
10 official."
11 Does that accurately capture your allegation?
12 MR. RUNDHAUG: Yes, your Honor.
13 THE COURT: Okay. That's the one I really
14 wondered about. Number 2, I was pretty clear. All
15 right, you've confirmed for me that.
16 All right, Mr. Thompson or Mr. Holt?
17 MR. THOMPSON: Working in reference to like
18 Number 3, your Honor, I didn't see anything in the
19 petition that actually fills out that particular ballot
20 synopsis. If I understand correctly the allegations, and
21 again we're gonna differ on what -- we're gonna differ
22 with the petitioners in regards to what the role of a
23 mayor is for the city of Kennewick.
24 So there's a time, place, space -- for lack of a
25 better way of saying it -- distinction that needs to be

1 made by petitioners as well. To be able to rebut this on
2 a ballot you have to say when he testified, if he did
3 testify.
4 THE COURT: Well, that's Number 2. Number 3, as
5 I understand, he had the job with MSA and had these
6 reduced or limited working hours that allowed him also to
7 act as mayor.
8 MR. THOMPSON: Well see, I don't think that's
9 true either, right? So -- and the reason why, your
10 Honor, we did submit -- when you're an exempt employee,
11 the Fair Labor Standards Act, it's the law, says you can
12 work 5 hours, 80 hours.
13 When you're salaried you're gonna get a salary,
14 right?
15 THE COURT: Uh-huh.
16 MR. THOMPSON: The petitioners haven't said
17 anything about a 40-hour work week that was required by
18 MSA. They make a lot of inferential things, right, and
19 the Court's been around the Hanford site about as long as
20 I have and understands that people who work for federal
21 contractors also have other jobs.
22 When we reach a certain level in an organization the
23 classic example would be -- I'm not working for United
24 Way would be a classic example, but I'm not gonna sugar
25 coat what happens here, you know?

1 I have some familiarity with the duties of certain
2 political positions and as a result it is not uncommon
3 during my workday I'll go in 6:30, seven o'clock in the
4 morning. I'll have some city-related business that's
5 gonna take me out of the office for an hour, hour and a
6 half --
7 THE COURT: Uh-huh.
8 MR. THOMPSON: -- and I do that. I come back
9 and put in the time necessarily to complete my task.
10 In Mr. Young's situation, Mr. Young in his trial
11 testimony that was provided by the petitioner, says he's
12 workin' 65, 70 hours a week. Out of that 65, 70 hours
13 he's workin' 15 or 20 for the City in various roles. So,
14 you know, you get into the idea of gee, if he's puttin'
15 50 in for the company that's wrong.
16 It's difficult for me to make the distinction, and
17 the real question is, is he gettin' the special favor
18 from MSA? I don't have any documents from MSA who thinks
19 that. I don't have any documents from the Department of
20 Energy, the person who pays MSA, that they felt slighted.
21 What I do have is the inferences that are drawn by
22 the petitioners in their, again, politics enters into
23 certain things, that they want to cast things in a
24 particular light when their facts don't support it. You
25 know, this is -- they have the burden of proof, and so

1 when you make -- you can't just get there by making
2 inferences from statements that can be taken one or two
3 different ways. You don't get that luxury, in my mind,
4 under the law.
5 Frankly, that's kind of what the petitioners' whole
6 argument is. "If you believe like we believe and you
7 take these comments that are made and if you apply my
8 inference to 'em without any supporting documents" --
9 i.e. MSA was upset or MSA required, as part of his job
10 duties, he go talk to other officials, or the city of
11 Kennewick wanted him to do any of that stuff, well then
12 maybe I'd feel at least having a discussion in this case,
13 but none of those things are before the Court.
14 So, I think the Court's gonna be left with a number
15 of these is does the Court get to make the inferences
16 that petitioners want or do they have to have some kind
17 of support other than inferences that they're trying to
18 draw from trial transcripts and their own creative, you
19 know, mind-set I'll put it that way.
20 I don't think the Court gets that liberty, and the
21 cases that I've read suggest the same. I mean, the cases
22 here are kind of all over the place. I mean, you know, I
23 was really enjoyin' this because, by God, depending on
24 what was going on you get different answers for kind of
25 the same stuff.

1 THE COURT: The law is pretty muddy.

2 MR. THOMPSON: It is, and you know, the Court

3 has the ability -- you know, this is where I got totally

4 confused in this, and I'm digressing a little bit, but

5 the cases clearly say, you know, you can question the

6 petitioners about their basis of knowledge. Well, I'm

7 tryin' to figure out if the Court can do that, well, why

8 not us? Because we have answers to some of the questions

9 that have been alleged.

10 But again, as I understand it, the Court is kind of

11 limited to the fact pattern that has been provided by the

12 petitioners, right? And so that's -- but they don't get

13 the beauty of all the inferences. They can either show

14 what they've got or they can't, and in this case I don't

15 think they can, your Honor.

16 THE COURT: Okay, and so your comments address

17 both 2 and 3, that he got the job because he was mayor

18 and that he used his position to --

19 MR. THOMPSON: No.

20 THE COURT: -- appear before congress?

21 MR. THOMPSON: So, for the record, I don't know

22 if the clerk has the ability to --

23 THE COURT: Sure. You're entitled to make

24 whatever record you would like.

25 MR. THOMPSON: I would like to do that, your

1 Honor. What I'm gonna do is, one of the allegations that
2 the petitioners have made, based on the limited trial --
3 and that wasn't the issue: how did you get hired and what
4 did you get hired for?
5 So, because I have been in this world, back when
6 Mr. Young was hired in 2012, I think, they had a federal
7 hiring freeze through one of the jurisdictions. So, the
8 contractors were limited on who they could hire. So,
9 Mr. Young had a private consulting outfit. DOE was
10 trying to change its budgetary system. They lost the
11 person at MSA that was able to do that. MSA couldn't
12 replace that person unless they could hire somebody
13 called a "key personnel".
14 So, counter to what petitioners have alleged, that
15 the only reason why he got the job -- and that's kind of
16 a stretch readin' -- again, they want you to take
17 inferences from the dialogue and the trial, which when it
18 wasn't the issues nobody realized they had to rebut
19 anything, the true facts are MSA, I think they were
20 probably contacted by the Department of Energy. That's
21 usually how it works.
22 "You've got a hole in your organization. You know,
23 you're doin' our work. You need to hire somebody," and I
24 think it was at DOE's suggestion that they hire Mr. Young
25 based on the letter I'm gonna show the Court here.

1 THE CLERK: Do you want that marked as an
2 exhibit?
3 MR. THOMPSON: Yeah, if you could. Let's just
4 make it our first one.
5 I'll hand petitioners a copy as well (indicating).
6 MR. RUNDHAUG: Thank you.
7 MR. THOMPSON: So, basically what the letter
8 says, it lays out the qualifications of Mr. Young, why he
9 is the key employee and why they need to hire him to
10 complete the role that they needed in the organization at
11 MSA.
12 So, when that letter goes out, then it's the
13 responsibility of the Department of Energy to respond
14 "yay" or "nay", otherwise the person doesn't get hired
15 and they have the hole in the arrangement based on the
16 hiring freezes that were going on.
17 THE CLERK: So, Respondent's Identification
18 Number 1.
19 MR. THOMPSON: And I've given counsel -- I did
20 give petitioner a copy.
21 If I could approach, your Honor?
22 THE COURT: Yes.
23 MR. THOMPSON: (Indicating.)
24 And again --
25 THE COURT: Mr. Thompson, I'll look at this, but

1 by looking at it, it doesn't necessarily mean that I am
2 or can consider it.
3 MR. THOMPSON: And that's the reason why the law
4 is as murky as it is. If I don't create the record then
5 we can't all decide what really happened at some level.
6 So, I'm with the Court on that.
7 THE COURT: Okay. Give me a moment, please.
8 MR. THOMPSON: Fair enough.
9 THE COURT: Okay, thank you.
10 These were marked -- I think you put Exhibit 101.
11 MR. THOMPSON: So, basically the review of that
12 record simply is it rebuts the allegations that solely
13 because he was the mayor, as outlined -- and again, I've
14 been doin' this a long time and this is argument -- DOE
15 doesn't hire elected officials to do anything because
16 they can't. MSA doesn't do that. Especially in the
17 world that we were talking about in 2012, I think it was,
18 given the hiring freezes that was on and the difficulty
19 in acquiring certain individuals for work.
20 So, those are my comments in regards to the aspect
21 of whether or not he was hired solely because he was a
22 mayor as the petitioners would have the Court believe
23 based on the inferences they want to draw from the trial
24 because it's not true, and I think that rebuts that, your
25 Honor.

1 THE COURT: All right. Are you offering
2 Identification 1?
3 MR. THOMPSON: I am.
4 THE COURT: Any objection to my admitting Number
5 1 as an exhibit?
6 MR. RUNDHAUG: No, your Honor, there's none.
7 THE COURT: All right, good. Then Number 1 is
8 admitted.
9 Your response to Mr. Thompson's comments?
10 MR. RUNDHAUG: Mr. Thompson uses the operative
11 word of inferences. I don't see where in here there's an
12 inference. I see here Mr. Young's actual verbal public
13 testimony, and going off his own words, based upon the
14 transcripts, it seems quite clear.
15 THE COURT: Read that to me, please?
16 MR. RUNDHAUG: "When I'm wearing my City hat I
17 see a lot of opportunities for those that
18 live in the city of Kennewick who work at
19 Hanford. Those who live in the city of
20 Kennewick who have stores and businesses.
21 The biggest return on me being mayor
22 is the Department of Energy. I'm able to
23 do what the DOE can't do because I'm an
24 elected official."
25 I don't see in there anything that says, "I'm an MSA

1 employee." They go onto page six of this -- of our
2 response, and so the question is,
3 "So, you're lobbying as mayor for the
4 Department of Energy; is that correct?"
5 Mr. Young says,
6 "That's correct.
7 You could not do that if you were
8 wearing your hat as vice president of MSA?
9 That's correct."
10 I don't see any inference here, as I understand the
11 word. I see an outright statement of fact, I guess is
12 the word to use, for Mr. Young's response here. I'm not
13 -- that's my -- that would be my argument on that.
14 MR. THOMPSON: If I could just briefly respond,
15 because I can't help myself?
16 What happens is Mr. Young is not only the mayor of
17 Kennewick, but during this period of time I don't know if
18 he was a secretary or treasurer of an organization called
19 the Energy Community Alliance. That's a group of all old
20 DOD sites -- Savannah River or Los Alamos, Tri-Cities,
21 Oak Ridge Tennessee -- that got together to jointly try
22 to correct what we saw as deficiencies in how the federal
23 government did business at the site.
24 It all depended, back in the day, on who your
25 senator was. If you had Pete Domenici, he had New

1 Mexico, you did pretty well on funding. If you have
2 Strom Thurmond out of Superior Court you did pretty good
3 on funding, and it didn't seem to be a very smart way
4 about doing business.
5 So, this is what will happen. The Energy Community
6 Alliance will identify an individual from a particular
7 site, and they will provide -- they'll make a request on
8 the basis of the Energy Community Alliance traditionally
9 to go have an opportunity to go up on the hill and
10 provide information about things they know something
11 about.
12 So, did Mr. Young ever make the statement he ever
13 testified on behalf of MSA? And this is where it gets a
14 little cloudy because when I wear my hat I think I'm
15 representing the citizens of the jurisdiction I
16 represent. That includes contractors, worker bees and
17 the businesses that are associated with them.
18 Traditionally, that's kind of what we think our job is.
19 If it impacts -- a classic example would be the
20 Department of Energy only has certain resources. The
21 competing sites are fighting within those -- the
22 Department of Energy to get additional funding.
23 Some of us think that cleanup is a priority out at
24 the Hanford site. If Mr. Young went to testify that, "We
25 think cleanup is good because we don't want our people to

1 suffer needlessly or scare people away from our
2 community," well, that's kind of what mayors do.
3 Does that potentially benefit MSA because or the
4 Department of Energy because they get their work done
5 faster and quicker? But I don't think that's the reason
6 why he went there, and that's the reason why he testified
7 the way he did.
8 The final comment is simply this. Mr. Young can't
9 go to Patty Murray's office and say, "Patty, I want to
10 testify on behalf of the city of Kennewick, but I'm
11 really doing it." That's not how it works, okay, and so
12 I don't know if it's a lack of knowledge perspective
13 based on the petitioners, but the final decision maker on
14 anything in regards to testifying -- and I know when I
15 read the transcript they kind of bounced between, if you
16 read all the transcript, between testifying and lobbying.
17 It gets kind of blurry in regard to what people are
18 talkin' about, but lobbying: no. Testifying: yes. Does
19 it impact decisions that are made in Washington D.C.?
20 Yes. Is it any different than anybody else's? Not
21 really. He doesn't make that decision. The city of
22 Kennewick doesn't make that decision. The MSA doesn't
23 make that decision. Frankly, the Department of Energy
24 doesn't make that decision. It's the people who make the
25 decisions that get to decide who comes.

1 So again, when you look at what his role is, you
2 can't abuse a role when some people, I'd say half the
3 people would say, "If you didn't do that what the hell --
4 you know, why are you my representative?"
5 So, pretty good though. You see how I caught
6 myself? Nice, huh?
7 THE COURT: You did.
8 MR. THOMPSON: So, I think the Court gets the
9 drift. I mean, and that's where the First Amendment
10 comes in. You get elected, and sometimes when I read the
11 Code of Ethics it suggests things that I think you can't
12 curtail certain activities of political speech just
13 because you got to represent a particular group. I don't
14 think it works like that.
15 I mean, there's a -- I think it was McDaniels versus
16 Virginia where the old governor out of Virginia got
17 convicted of bribery for setting up meetings and got
18 money as a result, and that got reversed by the Supreme
19 Court because that's within the political fray.
20 THE COURT: Uh-huh.
21 MR. THOMPSON: That case spends a little bit of
22 time about talkin' -- you can't create rules that impinge
23 on the political process. I think, again, is somewhat to
24 be viewed politically is one of the issues we have. The
25 way the world works in government, maybe we'd like to

1 change it in a lot of ways, but the way that actually
2 works you have to work within it or you lose.
3 So, people that are active in that political world
4 we would not know what to do with anything because the
5 process would simply set down because "I can't represent
6 my people because somehow at some level you go out that
7 continuum a long ways (indicating) and I'm gonna actually
8 either benefit myself or an employer" when you're
9 actually trying to benefit your community and you're just
10 part of the bigger community.
11 That's where this is very awkward to argue because
12 it doesn't square with political reality as well, and
13 that's the real problem I think I have with some of the
14 petitioners' comments because I think their view is
15 "that's not the way I like the world to work". Okay, but
16 that doesn't violate the law, and it's it factually
17 insufficient, your Honor.
18 THE COURT: I'm embarrassed. We've been in this
19 half an hour, and I can't -- I don't know how to
20 pronounce your last name?
21 MR. RUNDHAUG: Rundhaug.
22 THE COURT: Rundhaug.
23 MR. RUNDHAUG: Yes.
24 THE COURT: All right. Mr. Rundhaug, your
25 response?

1 MR. RUNDHAUG: To add another element to this 2
2 and 3, I guess more to the point here Exhibit 3 on page
3 nine, again going back to the testimony of Mr. Young, the
4 attorney says,
5 "Now then -- now when you, before you
6 became mayor, MSA did not seek to hire you
7 as vice president, true?"
8 Mr. Young says,
9 "That's correct."
10 The question is,
11 "It's after you became mayor that
12 Mr. Frank Armijo, the CEO, invited you to
13 join as vice president?"
14 Mr. Young,
15 "I had. I had been mayor for almost
16 two years at that time, yes.
17 So, it's true, is it not, that before
18 you became mayor you had your own
19 consulting business, right?
20 I worked as a subcontractor. That's
21 correct."
22 I think that helps clarify our position on 2 and 3
23 as well.
24 THE COURT: All right, good. Thank you.
25 There was something I noticed, and if I don't bring

1 it up now I'll forget. You submitted a portion of the
2 transcripts of the trial against MSA.
3 MR. THOMPSON: Correct, and the rest of the
4 transcripts -- I don't have --
5 THE COURT: Let me finish.
6 MR. THOMPSON: I apologize, your Honor.
7 THE COURT: Your transcript used pages 1 through
8 11 of the proceedings on September 25th and then skipped
9 to page 12 of the proceedings of September 26th. So,
10 missing are about 50-plus pages of the rest of the
11 September 25th proceedings and the beginning of the
12 26th's.
13 MR. THOMPSON: Correct.
14 THE COURT: And that was intentional?
15 MR. THOMPSON: Well, you have -- all the
16 transcripts have already been -- well, you don't have all
17 the transcripts. You know, this is a five-week trial is
18 my understanding.
19 THE COURT: Simple question.
20 Was I correct in characterizing the transcripts you
21 submitted?
22 MR. THOMPSON: Absolutely correct. I gave a
23 portion of that.
24 THE COURT: Okay, and you didn't call that out
25 to me specifically. I had to figure it out.

1 MR. THOMPSON: I apologize because what we gave
2 you were portions of what the petitioners had already
3 done, your Honor. So, I apologize.
4 THE COURT: Do you see my concern? You went
5 from page 11 on one proceeding to -- it flowed right into
6 page 12 of the next proceeding.
7 MR. THOMPSON: If I was that clever it would
8 have been something, but that wasn't the intent, your
9 Honor.
10 THE COURT: Okay.
11 MR. THOMPSON: The only reason I gave you those
12 portions was because I thought those -- you know, you got
13 60 pages of nothing and then there's about 12 pages of
14 stuff that actually matter. So, that's the reason why I
15 did that.
16 THE COURT: Okay. I was thinking this thing
17 could go up on appeal, and that's why I wanted to clarify
18 that record.
19 Mr. Holt, did you have some additional comments?
20 MR. HOLT: I'd just like to make a short
21 comment, your Honor.
22 On 2 and 3 you specifically stated in your belief,
23 and I think you're absolutely correct, that the
24 allegation is that somehow he was employed to assist or
25 at the benefit of his private employer -- that the

1 testimony that he offered at congress was to the benefit
2 of his private employer, and that's why it's a problem
3 with the petitioners.
4 I would like to make the following really quick
5 points. One, petitioners don't actually identify what
6 was being testified to at congress. They don't
7 specifically identify the "when" it was being testified
8 at congress nor "how" he came to be at congress to
9 testify.
10 Those are facts that need to be established that the
11 voters would not have any access to, and this petition is
12 supposed to be based on facts that people can make a
13 decision about whether or not there's been an impropriety
14 in his representation.
15 For the record, your Honor, we'd like to point out
16 that the testimony offered at congress was for the
17 benefit of the Tri-Cities. It was in regards to the
18 creation of the memorials involving the national park for
19 the Manhattan Project.
20 The reason, and if you take that into context, his
21 statement that he may have bumped somebody in their
22 priority is because congress, not Mr. Young, decided that
23 what he had to say as a representative of a group of
24 people as to opposed to an individual's outlook may have
25 had more useful context and information than a general

1 petitioner in front of them.

2 We'd also like to point out that he's not the one

3 who asked to be moved ahead in the line. He's not like

4 goin' up to the front of TSA and sayin', "I have to get

5 on this plane because I'm mayor." It's like TSA is

6 coming out and sayin', "There's something about you, and

7 we want to take you and do a secondary look at you."

8 It's they're makin' the decision. He's not

9 requesting it. So therefore, there's no active misuse of

10 his position.

11 THE COURT: And unfortunately there's no -- that

12 distinction is not contained within their petition.

13 MR. HOLT: That's true, your Honor, it's not,

14 but also they don't have the facts alleging what it is

15 either. So, we're -- it's -- it's a problem.

16 THE COURT: Sure. Okay.

17 MR. RUNDHAUG: Your Honor, to Mr. Holt's point,

18 in our response here on page five, going to the

19 transcript, I'll just read the whole paragraph. Well,

20 I'll read the question.

21 "Why does it benefit the DOE that

22 you're the mayor?"

23 His answer is,

24 "Well, let's use -- let's use the

25 U.S. Sen/U.S. House of Reps who make the

1 determination of what's in the budget. My
2 job -- one of my jobs as mayor is the
3 ability to go back and meet with the
4 Senate, meet with the House.
5 I can actually bump a regular citizen
6 and testify before a committee about an
7 issue because I am an elected official,
8 but your local offices are restricted, are
9 not allowed to go and speak directly to
10 the Senate nor to the House about the
11 budget challenges that they are facing.
12 But I can. So, what I would do is I
13 would take these trips back to D.C. a
14 couple times a year."
15 Mr. Holt brought up one example. In this transcript
16 Mr. Young illustrates several examples of going back to
17 D.C. I just wanted to bring that point up, your Honor.
18 MR. THOMPSON: Final comment on the issue. In
19 regards to why Mr. Young was hired, when you read the
20 entire transcript there's a quote from Mr. Sheridan, I
21 think, who represented the plaintiff, Ms. Atwood, where
22 he says,
23 "And Mr. Armijo hired you because you
24 could resolve any problems between MSA and
25 Kennewick?"

1 THE COURT: "Objection, speculation."
2 MR. THOMPSON: Not only was it speculative,
3 Mr. Young answered,
4 "No, it wasn't."
5 THE COURT: You know, I did correctly recite the
6 objection that was stated at that time?
7 MR. THOMPSON: Yes.
8 THE COURT: Because Mr. Sheridan was asking
9 Mr. Young to testify as to what Mr. Armijo was thinking,
10 correct?
11 MR. THOMPSON: Correct, your Honor.
12 THE COURT: All right.
13 MR. HOLT: Could I have one other thing as
14 opposed to giving it to Mr. Thompson to add?
15 THE COURT: Sure.
16 MR. HOLT: Your Honor, we just want to clarify
17 that our exhibit clearly shows that his employment was
18 merit employment in that letter. It was not based on his
19 position as mayor. I just wanted that to go along with
20 our exhibits so that's clearly on the record should we
21 need to go upstairs or -- you know what I mean.
22 THE COURT: I think it's to the Supreme Court.
23 MR. THOMPSON: It is, your Honor.
24 MR. HOLT: That's what I meant, your Honor.
25 THE COURT: Yes.

1 All right, let's turn to Number 4. Just as we did
2 with the last two, I'll ask you whether or not Mr. Hay's
3 synopsis of charge Number 4 is accurate. That,
4 "It's alleged that Mr. Young
5 committed theft against his private
6 employer by performing duties of his
7 elected office during time that should
8 have been devoted to his private
9 employer."
10 Does that correctly summarize charge Number 4?
11 MR. RUNDHAUG: Yes, your Honor, I believe it
12 does.
13 THE COURT: Okay, and that the theft, of course,
14 being whatever wages MSA paid him while he was engaged in
15 city business?
16 MR. RUNDHAUG: Yes, your Honor.
17 THE COURT: Okay, Mr. Thompson?
18 MR. THOMPSON: So, real quick.
19 Again, we think this is pretty close to defamation.
20 MSA never said anybody stole anything. The Department of
21 Energy hasn't said anybody has stolen anything. Roger
22 Lenk sent a letter out to Mr. Miller, I can't remember,
23 but it's either 8 months ago or 16 months ago -- I can't
24 remember because there's two sets of letters -- saying,
25 "Hey, this is theft."

1 Well, I've addressed a little bit of this, your
2 Honor, but when you're an exempt employee -- and I
3 provided the federal Fair Labor Standard Act.
4 THE COURT: Uh-huh.
5 MR. THOMPSON: Different rules apply. You don't
6 have to be out there four hours. You could be out there
7 five hours. You're still gonna get your salary. You
8 could get out there a hundred. It's kind of like what I
9 do and you used to do. You work until the job is done.
10 I mean, there is no such thing as, "I only put in, you
11 know, 40 hours and then I go home." That's not how it
12 works. It doesn't work like that in this world either.
13 I think that's kind of the thing that's a little
14 disappointing. To think that if I put 70 hours in and 15
15 of those hours are done during the same work week that I
16 somehow shorted and stole from my employer.
17 The only person that makes that allegation, the only
18 people, is the four petitioners -- and maybe Mr. Lenk.
19 So again, there is no evidence to support that other than
20 the creative juices that can flow sometimes, but again
21 there's no requirement.
22 MSA didn't fire Mr. Young because he was stealing
23 from 'em, which they're want to do. The Department of
24 Justice -- you may remember the time fraud case that flew
25 through here awhile ago. They don't mess around with

1 that kind of stuff. Never happened.

2 Frankly, again if I can create a record, MSA won

3 additional award fee based on the budget and portfolio

4 corrections that Mr. Young made, and it came on working

5 over weekends -- you know, those Friday off at Hanford

6 never could figure it out -- workin' those Friday,

7 Saturday and Sunday until the job was done.

8 That's what you hope a citizen actually does, and

9 then they go beyond that in their civic responsibilities

10 to give something back to the community and they get

11 penalized because these guys have a unique view of the

12 world? I suppose if they were union employees and they

13 got overtime or time and a half after 40 hours.

14 That's not how that world works (indicating).

15 Frankly, it doesn't work that way in the private sector

16 if you're an independent businessman. It doesn't work

17 like that, and I think petitioners know that, and

18 that's -- I don't want to get worked up here, but that's

19 one that kind of ticks me off a little bit in regards to

20 makin' allegations that they didn't bother to either look

21 at or don't understand and throw it in the face where the

22 papers say, "He's stealing from his employer." Really?

23 Based on their imagination?

24 I'll leave it at that.

25 THE COURT: Your frustration is becoming

1 manifest.

2 Mr. Rundhaug?

3 MR. RUNDHAUG: Your Honor, the petitioners'

4 response will stand on the content of the document.

5 THE COURT: Okay, good. Thank you.

6 So, that takes us to Numbers 5 and 6. I think we

7 can take those together. That's the finding by the jury

8 in the Atwood case of discrimination and retaliation. 5

9 is discrimination. 6 is retaliation.

10 Go ahead, Mr. Thompson?

11 MR. THOMPSON: They're kind of the same thing.

12 If you looked at the synopsis of the questions that were

13 asked, I think they're almost identical but for different

14 reasons. This is where, again, the law isn't real clear

15 on this. I provided the Court with In Re: Hurley, which

16 is the only case I could find, that dealt with where

17 somebody in their civil -- civil meaning outside of

18 wearing my mayor hat --

19 THE COURT: Uh-huh.

20 MR. THOMPSON: -- had civilly done something

21 wrong, and in Hurley it was somebody had committed

22 trespass, I think that's what it was, and the Supreme

23 Court said, "Get out of here." Basically that's what it

24 was. It was about a one-page decision. Kind of what

25 they said.

1 This is a unique one because is he acting under --
2 for the City of Kennewick in this activity? Does that
3 violation of the code -- so, if I got a reckless driving
4 that would be a criminal violation of the law. Is that
5 recallable? Well, according to the petitioners
6 absolutely because I violated -- because the laws of the
7 state of Washington.
8 THE COURT: Uh-huh.
9 MR. THOMPSON: You know, I didn't sit through
10 that five-week trial, but the transcripts that I read if
11 I knew, as Mr. Young's defense counsel, I would have
12 handled the cross-examine a little differently than the
13 individuals who were representing at MSA did at the time,
14 and that we would have ferreted out a little bit more
15 information.
16 Again, it's difficult -- again, I guess the claim is
17 malfeasance, right? That's what the petitioners have
18 alleged. So, that's more than just a factual basis.
19 It's also not only that he knew the law and he intended
20 to break the law, right?
21 So, this one's a weird one because I can't find a
22 lot of cases where somebody -- and it kind of bleeds into
23 7 too. Obviously a jury under appeal, right? So,
24 there's not a final -- the jury made a decision, as I
25 understand, and that's going up on appeal. So, there's

1 no final decision really to make a decision on that by
2 this Court because, frankly, I think one of the issues
3 that didn't get argued by the attorneys who represented
4 MSA was the role Steve might have had and Mr. Young might
5 have had in violating this discrimination code.
6 Now, I will admit this, had Mr. Young in the scope
7 of his office, the mayor job, city of Kennewick
8 (indicating), private contractor (indicating), I think
9 they're two different worlds when it comes to violating
10 the law, if Mr. Young had terminated Ms. Mosley based on
11 gender discrimination, not that he could but I assume
12 counsel did for that reason, then there would be a
13 legitimate discrimination claim because that was within
14 his purview.
15 What he does at the city of Kennewick, which is why
16 we're here, is distinct and different than what any
17 activities he did on the private side, and again there
18 are not a lot of cases that help up on this frankly, but
19 I think they're two different worlds.
20 Now again, I'm gonna concede that if Mr. Young
21 discriminated against somebody within his course of
22 employment at the city, then I think the petitioners have
23 pretty good grounds to move forward, but there are no
24 facts about that.
25 I can't respond to a lot of things because we just

1 -- we don't know, all right?

2 THE COURT: And you used the word

3 discrimination, but did you also mean the finding of

4 retaliation as well?

5 MR. HOLT: Yes.

6 MR. THOMPSON: Both.

7 THE COURT: Okay.

8 MR. THOMPSON: Again, those are civil outside

9 the scope of his employment with the city, your Honor.

10 THE COURT: All right. Mr. Rundhaug?

11 MR. RUNDHAUG: Yes, your Honor.

12 I find it hard to believe that Mr. Young showing up

13 at the office actually walked in with two different hats

14 on and was able to carry the two in his hand with two

15 different hats so that the -- Ms. Atwood could understand

16 the relationship that was goin' on in their day-to-day

17 conversation and events.

18 It appears that Mr. Young co-mingled his position as

19 mayor with the MSA position, and as such I -- it's my

20 impression that it's a weighted issue that there was

21 retaliation and discriminatory action as mayor in some

22 weight and capacity and as MSA vice president in some

23 weight and capacity simply by the fact the jury believed

24 it and found that in their conclusion.

25 THE COURT: All right, thank you.

1 Mr. Thompson?

2 MR. THOMPSON: I didn't see the city of

3 Kennewick being a defendant in the Atwood case, and

4 again, we get into what I want to believe as opposed to

5 the facts of the matter. I don't know -- I heard the

6 petitioner comment in regards to Ms. Atwood was punished,

7 in part, because Mr. Young was the mayor of Kennewick.

8 Now, did Mr. Young direct law enforcement -- I don't

9 know where Ms. Atwood lived. She lived in Kennewick and

10 Mr. Young somehow directed law enforcement or their

11 building inspector or somebody to make life harder on

12 Ms. Atwood under his city hat (indicating) then I think

13 I'd understand that, but I didn't see anything in the

14 transcripts that were provided having anything to do with

15 how Kennewick discriminated against anybody.

16 MR. HOLT: No facts.

17 MR. THOMPSON: Ultimately, the Court has to

18 figure out if there's sufficient facts. Given if there

19 is sufficient facts there's a violation of the law.

20 Surmising and inferences, again my reading of the law

21 depends on which case you look at, the vast majority say

22 you gotta have real facts, and I don't have any real

23 facts in these allegations, your Honor.

24 THE COURT: Okay.

25 Anything further?

1 MR. RUNDHAUG: No, your Honor.
2 THE COURT: All right. We've turned to charge
3 Number 7, Council Member Young --
4 "Mr. Young violated his oath of
5 office."
6 Now, you did not articulate any facts to go along
7 with that. So, am I to understand that you're -- it's
8 your assertion that all of these other charges form the
9 factual basis for this Number 7, the violation of oath of
10 office?
11 MR. RUNDHAUG: Yes, your Honor.
12 THE COURT: Okay, and that I don't need to
13 consider any other facts in order to evaluate charge 7?
14 MR. RUNDHAUG: I don't believe so.
15 THE COURT: All right, Mr. Thompson?
16 MR. THOMPSON: We think there needs to be facts
17 that support the violation of the oath of office. Again,
18 when the Court reads that oath of office and is left to
19 figure out does that mean the activities of Mr. Young
20 when it works within the purview of the city of
21 Kennewick, right? I think that's why you take an oath of
22 office because the oath is for the office you're taking,
23 that's how that works, not a lot of the other stuff that
24 happens outside.
25 Again, there aren't any really clear cases on this.

1 There just aren't, and again, there are no specific
2 alleged facts other than you gotta take a look at the
3 malfeasance that we've already alleged in 1 through 6,
4 and if you think that's sufficient then he must have
5 violated his oath of office.
6 So, it's kind of a, you know -- what do we call
7 that? -- where you have the due loop of logic? So, if
8 this is true: A plus B equals C, well then, if I have C
9 plus B I have A. It doesn't necessarily work that way.
10 It's kind of the claim that the petitioners have, your
11 Honor.
12 I don't think you violate your oath of office unless
13 you're acting within the purview of that office, and
14 that's, I think, as best as I can determine from the
15 cases. That's kind of, I think, what the law's
16 suggesting to us. Otherwise, anything outside --
17 anything I do I'm subject to recall.
18 So, imagine where you end up? I mean, if you -- if
19 you -- if I say, "You know, you've been beatin' the heck
20 out of your dog for the last six weeks because I hear the
21 dog whine and the dog's been walkin' with a limp,"
22 inferentially I'm pretty sure you're beatin' the dog,
23 that's grounds for recall, okay?
24 That's the world the petitioners want this Court to
25 believe is true. We don't think it's true. I'll leave

1 it at that, your Honor.
2 THE COURT: All right, thank you.
3 Any response?
4 MR. RUNDHAUG: No, your Honor. I think we've
5 pretty much shared our issues.
6 THE COURT: Okay, and I think you've anticipated
7 my next issue.
8 Have we covered everything to your satisfaction?
9 MR. RUNDHAUG: Yes, sir.
10 THE COURT: Respondent?
11 MR. THOMPSON: Again, your Honor, because my
12 reading of the law and regarding to put a lot of
13 different documents and given the time frames that the
14 statute directs us to do has been hindered, but my
15 understanding is the Court does have to make a decision
16 within 15 days, and I even think that's kind of loose and
17 fast because the Yakima County Clerk's Office had a
18 hearing two or three years ago and those proceedings
19 spread out, and I'm not -- I wasn't purview to the
20 reasons why.
21 Again, this is not supposed to be necessarily a
22 fact-finding endeavor by the Court, but I think it's
23 important for the Court to at least -- you gotta identify
24 the facts that support the petition, and I think you
25 can't ignore the true facts because I think that is

1 injustice, your Honor.

2 So, you know, in a perfect world I'd ask for an

3 additional three to give you all the documents that I

4 could wrestle out of the Department of Energy which, I

5 don't know if the Court was ever involved in any stuff

6 with them, it isn't easy to get, okay? Ten days is like,

7 "Are you kiddin' me?"

8 But in a perfect world I'd ask for an additional 30

9 days just to support additional documents about the true

10 facts before the Court made a decision because there's,

11 again, a lot of the things that are being said by

12 petitioners are just flat out wrong and they're provable

13 and wrong.

14 So, I'll leave it at that, your Honor.

15 THE COURT: Okay. I'm sure everyone will be

16 shocked to know that I've been working real hard on this

17 for the last week getting ready for today.

18 I said that facetiously, I hope.

19 MR. THOMPSON: (Indicating.)

20 THE COURT: There we go.

21 What I'm going to do is remind everyone of some

22 overarching legal principles, and then I'll cherry pick.

23 I'll take the easiest ones first and then go back and

24 take care of the more difficult ones.

25 We are not like the state of California where

1 someone can simply file a recall petition because they
2 don't like what an elected official did. Elected
3 officials can only be recalled in the state of Washington
4 for cause: misfeasance, malfeasance or violation of one's
5 oath of office.
6 The Supreme Court has said a number of times that
7 the Court is the gatekeeper to make certain that elected
8 officials don't have to worry about the expense, the time
9 and emotions involved in frivolous or unfounded recall
10 efforts. So,
11 "Misfeasance and malfeasance amount
12 to any wrongful conduct that affects,
13 interrupts or interferes with the
14 performance of official duty.
15 Misfeasance also means the
16 performance of a duty in an improper
17 manner. Malfeasance also means the
18 commission of an unlawful act, a violation
19 of the oath of office is neglect or
20 knowing failure by an elected officer to
21 perform faithfully a duty imposed by law."
22 I was quoting from the Recall of Robinson, the
23 Benton County mayor.
24 "To present a prima facie case of
25 misfeasance or malfeasance the petition

1 must -- and also violation of oath of
2 office, the petition must identify a
3 standard law or rule that would make the
4 conduct wrongful, improper or unlawful."
5 That comes from the Recall of Zufelt as well as the
6 Recall of Mayor West from Spokane.
7 Now, procedural rules. First, and I'm quoting from
8 Chandler versus Auto,
9 "In determining the validity of
10 recall charges, courts are limited to
11 examination of the charges stated and
12 cannot inquire into factual matters
13 extraneous from the allegations.
14 Second, courts must assume the truth
15 of the charges in determining whether
16 legally sufficient grounds for recall have
17 been stated.
18 Third, just as there can be no
19 inquiry into the truth or falsity of the
20 charges, there can be no inquiry into the
21 motives of those filing the charges.
22 Fourth, recall charges are
23 sufficiently specific if they are definite
24 enough to allow the charged official to
25 meet them before a tribunal of the people.

1 Finally, any one sufficient charge
2 requires the holding of a recall
3 election,"
4 and then I can't recall the case where this came
5 from,
6 "It's up to the voters to decide
7 who's telling the truth in these things,
8 not the judge."
9 Let's turn first on charge number -- well, Numbers
10 4, 5 and 6. 4 is the theft. Let's see, where are we.
11 Theft is the wrongful taking or the exertion of
12 unauthorized control over property of another.
13 Factually, there's nothing in the record that suggests
14 that MSA objected to Mr. Young spending daylight hours,
15 working hours is probably the better way to say it,
16 working hours working for the City.
17 In the absence of that, the theft is factually
18 inadequate.
19 I also concur with Mr. Thompson that the matter of
20 the Recall of Hurley also stands for the proposition that
21 a recall petition can only be based upon conduct that was
22 performed within the context of the person's official
23 duties. This clearly does not implicate any facts that
24 would suggest that it was within the context of his
25 official duties.

1 I understand and I heard your argument about
2 comingling, but I just have to reject it, okay?
3 The same -- now, with respect to the discrimination
4 and the retaliation, the matter of the Recall of Wade
5 indicates that,
6 "There can be no serious dispute that
7 an act of discrimination or retaliation is
8 unlawful."
9 So, there's the legal standard, but this one fails
10 again under the Hurley case because the findings of
11 retaliation and the findings of discrimination were not
12 within the context of his official duties.
13 Further, I'd go on to note that all you provided was
14 the Special Verdict Form and the judgment in the Atwood
15 case. You did not provide any of the jury instructions,
16 the transcripts of the closing arguments of the parties.
17 So, I really have no idea what the factual basis is for
18 the findings of discrimination and retaliation, and
19 without those factual bases it's factually insufficient.
20 So, I'm finding charges 4, 5 and 6 insufficient.
21 Those will not go to the voters.
22 Numbers 2 and 3. The Recall of West, the mayor of
23 Spokane, I think provides the best context within which
24 to analyze this. I'll read an excerpt from the decision.
25 "In briefest terms, and read broadly

1 in favor of the petitioner, the surviving
2 charge alleges that Mayor West had
3 committed misfeasance by effectively
4 offering to use his influence to assist a
5 young person in applying for an internship
6 with the mayor's office for his own
7 personal benefit, i.e., to encourage a
8 potential sexual relationship."
9 I would note that the West court found that without
10 even referring to RCW 42.23.070 that that was factually
11 and legally misfeasance or sufficient to demonstrate
12 misfeasance that it would go to the voters, okay?
13 So, then the question becomes can the allegations
14 against Mr. Young legitimately be distinguished from
15 West? Factually they're very much different, I get that,
16 but legally can they be distinguished?
17 So, some of the facts that I found here is that it's
18 alleged that MSA employed Mr. Young as a vice president
19 because he was the mayor. There's a suggestion that he
20 was not qualified for the job by experience and training.
21 The petition also indicated that the mayor had greater
22 access to members of congress than an ordinary citizen
23 would have.
24 Next, if he were not mayor but an ordinary employee
25 of MSA he would not have the special access to members of

1 congress whom he sought to influence. Next, as mayor he
2 would have have priority over ordinary citizens in
3 accessing members of congress. Next, his access to
4 members of congress could influence the budget process to
5 the advantage of the DOE and MSA, and that Mr. Young
6 received his full salary from MSA even though he spent 16
7 to 20 hours per week on city business.
8 As you can see I'm conflating 2 and 3 factually.
9 And that it's also alleged that Mr. Young not only
10 received the job because he was the mayor but was allowed
11 to receive his full salary even though he was doing
12 duties for the city, which other employees were not
13 granted that privilege.
14 It also indicates Mr. Young used MSA phones,
15 computers and other equipment to conduct city business.
16 We can infer that a vice president would be an exempt
17 employee under labor law, and Mr. Young testified and
18 it's in the plaintiff's materials -- petitioners'
19 materials, that he worked 60 to 70 some odd hours per
20 week.
21 Also, Mr. Young testified in the Atwood trial that
22 he felt that whatever was good for MSA and the DOE
23 benefited the entire community, including the city of
24 Kennewick.
25 Now, charges are factually sufficient to justify

1 recall when taken as a whole they state sufficient facts
2 to identify to the electors and to the official being
3 recalled acts or failure to act which, without
4 justification, would constitute a prima facie showing of
5 misfeasance or malfeasance. Voters may draw reasonable
6 inferences from the facts.
7 So, the question in the petition, are there
8 sufficient facts to raise an inference that he either
9 sought to capitalize on his elected office and to
10 influence others inappropriately by gaining the special
11 privilege of access or that he received some special
12 consideration because he was the mayor?
13 I asked myself, "Well, what's missing from these
14 factual allegations that might be important?" and the
15 respondent touched on a lot of this. There's nothing in
16 the record from anyone at MSA indicating what its
17 motivation was to hire Mr. Young.
18 I guess I shouldn't say there's nothing in the
19 record. There's nothing in the record I can consider
20 that says what their motivation was. What was in their
21 heads. There's no indications that his pay was greater
22 or different than it would have been had he not been
23 mayor.
24 There's questions as what was accomplished by this
25 special access to members of congress. Was anything

1 accomplished with this special access? Who did they see?
2 What did they talk about? When did he talk to members of
3 congress? Did the DOE realize some benefit from the
4 conversations? Did the MSA receive benefit? When did --
5 I think I might have asked this already.
6 When did these conversations occur? Did anything
7 untoward occur during these conversations from which
8 there was apparently some priority access? Did Mr. Young
9 intend that the DOE and MSA would receive benefits from
10 his access to congress above and beyond or different from
11 benefits that the community, as a whole, would receive or
12 as individual entities as opposed to members of the
13 community? Is access to members of congress wrong? Is
14 priority access to members of congress wrongful?
15 It seems to me that elected officials in all
16 branches of government, even the judiciary, do seek to
17 influence members of, you know, elected officials in
18 other branches.
19 Now, the West court concluded that Mayor West sought
20 to capitalize on his elected office and influence in
21 order to pursue this sexual relationship with a person.
22 As I mentioned earlier, that's clearly wrongful conduct
23 in the performance of a duty or performing it in an
24 improper manner.
25 So, what are the differences then between this and

1 the West? I think that's where we need to go, don't we?
2 Well, and then first I'll look at this -- the special
3 privilege that's alleged to have been bestowed on the DOE
4 and MSA.
5 You know, in West there was a very specific
6 objective: a sexual relationship. There's no facts in
7 this record that suggest there was a specific objective
8 above and beyond bringing money into the community for
9 the benefit of the community.
10 In West the objective was easily articulable and
11 very finite. Not so here. In West there's no legitimate
12 purpose that could have been inferred for what he did,
13 but I think there is a legitimate purpose that could be
14 -- that inheres in one elected official seeking to
15 persuade another elected official.
16 Was the conduct in West inherently harmful or
17 inherently wrongful? Yes. Can the same be said about
18 Mr. Young? I don't think so because the DOE and MSA is
19 part of his constituency, the greater community.
20 I have to find that this charge -- these charges,
21 Numbers 2 and 3, are neither factually nor legally
22 sufficient.
23 Which leaves us with 1 and 7.
24 Let's go to Number 1.
25 We have an email that originated from Dan Newhouse's

1 campaign to Mr. Young. The email announced a campaign
2 fund-raising lunch. Mr. Young is identified as a table
3 captain. He's asked to send names of those who will be
4 at the table. He says that the attendees don't have to
5 -- this email said the attendees don't have to pay in
6 advance but can pay at the lunch. Mr. Young forwards it
7 onto Ms. Mosley without any further message.
8 Specifically, he did not say in the email that it
9 wasn't a solicitation but was merely an invitation to
10 lunch. He says that now, but he didn't say it in the
11 message when he forwarded it. Ms. Mosley was a Kennewick
12 employee. The public can certainly infer that she
13 interpreted the message as being one as a solicitation
14 because she offered a hundred bucks.
15 Ms. Mosley does not have to -- or, I mean, Mr. Young
16 does not have to be Ms. Mosley's supervisor under RCW
17 42.17A.565. You'll recall earlier that I said there
18 always has to be a standard or rule or law that is
19 violated, and that provides the standard or rule or law.
20 I thought that I did great research over this
21 question of de minimis versus a substantial violation,
22 and I went back and forth and back and forth and where I
23 landed was, number one, there cannot be a recall for de
24 minimis misfeasance, malfeasance or violations of oath of
25 office. It has to be substantial.

1 Of course, I found precious few cases that clarified
2 that for me, but finally where I landed is, wait a
3 minute, if this conduct of a government official
4 soliciting campaign contributions from employees is
5 important enough to have a statute prohibiting it, its
6 violation has to be substantial.
7 So, we get to the last part, which is the one that
8 was really the focus, I think, of the respondent's
9 position, which was, you know, there's this law that
10 requires that he has to have an intent to -- it's been
11 phrased in various ways, an intent to violate the law, an
12 intent to do something unlawful, and the law there is
13 really muddy.
14 I, quite frankly, could not distill a clear rule
15 that's applicable -- that can be applied in every
16 situation, but I found in the matter of the Recall of
17 Riddle that -- I'll just read it.
18 "Riddle, however, contends that the
19 recall petitioners must have evidence that
20 she had an unlawful purpose in failing to
21 transmit court orders, such as an intent
22 to deprive custodial parents of child
23 support payments.
24 It is true that we have required such
25 evidence where the elected official's

1 actions would have been lawful but for the
2 official's alleged unlawful purpose."
3 Then they cite to a number of cases. So, that adds
4 a bit of clarity, but, you know, certainly it was lawful
5 for Mr. Young to invite Ms. Mosley to lunch. We can all
6 agree it was not unlawful for him to solicit a campaign
7 contribution.
8 I believe a reasonable voter could infer that
9 largely because of the absence of Mr. Young disclaiming
10 an intent to solicit in the email that he forwarded to
11 her that a reasonable voter could conclude that the
12 purpose of the email was to solicit contributions.
13 Now, I know that in her declaration she denied that
14 she interpreted it that way, but I have to say, "Hold the
15 phone. You offered a hundred bucks." It appears to me
16 that contemporaneously she did see it as a solicitation
17 and made that offer.
18 So, I do find charge 1 to be both factually and
19 legally sufficient, which then finally charge 7, the
20 contention that there's a violation of an oath of office.
21 Remember,
22 "That requires proof of -- in the
23 neglect or knowing failure by an elected
24 public officer to perform faithfully a
25 duty imposed by law."

1 With respect to charges 2 through 6, I've already
2 found those to be inadequate for various reasons. So,
3 they cannot support the violation of oath of office.
4 Charge Number 1 would be misfeasance and/or
5 malfeasance but does not rise to the violation of oath of
6 office.
7 So, Number 7 should not go to the voters either.
8 Which takes us to the last point, which is part of
9 my job is to make certain that the synopsis that goes to
10 the voters accurately reflects the charge. With respect
11 to Mr. Hay, who's in the court here, I think it needs to
12 be rewritten.
13 Well, why don't I -- I'll just -- I'll read what
14 I've written instead of everyone having to try to take it
15 down real fast. I'll hand down my notes and good luck
16 reading my handwriting, but you'll -- I'll give it to the
17 petitioner, and you'll make a copy for Mr. Young.
18 MR. RUNDHAUG: Yes, sir.
19 THE COURT: All right. Here's what I wrote,
20 "The charge that Steve Young,
21 Kennewick City Council Member Number 7 at
22 large, committed misfeasance and/or
23 malfeasance alleges that he (1) violated
24 the Washington Fair Campaign Practices Act
25 by soliciting from a Kennewick employee a

1 contribution on behalf of a political
2 candidate."
3 MR. HOLT: Okay.
4 THE COURT: Okay, and the Supreme Court has
5 reiterated a number of times that it doesn't have
6 authority to review the synopsis that I've just announced
7 would be appropriate.
8 Okay. Any questions about the rulings or the
9 rationale?
10 MR. RUNDHAUG: No, your Honor.
11 MR. THOMPSON: No --
12 MR. HOLT: No.
13 MR. THOMPSON: -- but I understand the Court's
14 ruling, and I've read the Supreme Court says that what
15 the court makes a decision on -- you know, I'm an
16 attorney. So, I would quibble a little bit with the
17 stance in regard to forwarding a generic campaign ad as
18 opposed to when you read that it sounds like Mr. Young is
19 making that solicitation on behalf of maybe Mayor Young,
20 but that's not really correct.
21 That's my concern.
22 THE COURT: Hold on a second, Mr. Thompson. I
23 got ahead of myself. I meant to stop and pause and ask
24 for input on my proposed synopsis. So, thank you for
25 that.

1 How do you think it should read?

2 MR. THOMPSON: You know, frankly, the ballot

3 synopsis wouldn't be terrible by just including that

4 email in it.

5 MR. HOLT: That's confusing.

6 MR. THOMPSON: Again, you know, it's nice to

7 have nine voices, is it not, and that excludes the five

8 in my head, your Honor.

9 So, part of the issue is that the way the Court

10 worded it suggests that he is violating the Fair Campaign

11 Act by soliciting a donation. I think there needs to be

12 more factual information simply in regards to "soliciting

13 a donation for Dan Newhouse's congressional campaign by

14 attending a luncheon".

15 Something along those lines because, again, he's

16 not soliciting -- you know, most people are gonna get

17 really aggrieved when I'm soliciting money for me. In

18 this case, that's not what happened. Again, I get -- you

19 know, the great good fortune of being in my position, I

20 get 50 of those a week saying, "Please, give me money,"

21 and they're all kind of the same, right?

22 THE COURT: Uh-huh.

23 MR. THOMPSON: So, it's a little bit -- he

24 didn't draft the email, right? He didn't add anything to

25 an email, and that's the part that I had a little concern

1 about because he just simply hit "resend". So, he is not
2 actually the one making the solicitation. He is the one
3 that's forwarding somebody asking for that solicitation.
4 Maybe that's a difference without a distinction, but
5 when I look at what the ballot synopsis -- you want to
6 lay as many facts out as possible so the finders, the
7 electors, are gonna have an understanding what we're
8 talkin' about.
9 THE COURT: All right, Mr. Rundhaug?
10 MR. RUNDHAUG: Yes, your Honor.
11 I had no problem with the language that you wanted
12 to put in that synopsis.
13 THE COURT: Okay. How about this? That, "He
14 violated the Fair Campaign Practices Act by forwarding an
15 email that can be interpreted as soliciting from a
16 Kennewick employee a contribution on behalf of a
17 political candidate"?
18 MR. THOMPSON: That one's a lot closer to the
19 mark.
20 MR. HOLT: They'll still think it's him.
21 MR. THOMPSON: The question is can we put -- if
22 you read what you said, which I liked for the most part,
23 but it would -- a voter would look at that and say, "What
24 he's really doing is he's soliciting money on his own
25 behalf." That's my concern.

1 So, if we added the language for -- the true facts
2 are "for Mr. Newhouse's campaign".
3 THE COURT: How about "soliciting a contribution
4 on behalf Dan Newhouse"?
5 MR. HOLT: That would be acceptable.
6 MR. THOMPSON: That's --
7 MR. RUNDHAUG: So, how would that read again?
8 THE COURT: "It's alleged that he violated the
9 Washington Fair Campaign Practices Act by forwarding an
10 email that can be interpreted as soliciting from a city
11 of Kennewick employee a contribution on behalf of Dan
12 Newhouse."
13 MR. HOLT: Yep.
14 MR. THOMPSON: I think that's an accurate
15 portrayal.
16 MR. RUNDHAUG: It feels to me that it's not
17 painting the actual violation to the voters. Maybe they
18 can be blended a little more. Maybe perhaps what your
19 original words said with those words following it.
20 THE COURT: Try again. I didn't follow you.
21 MR. RUNDHAUG: Well, I guess my -- it sounds to
22 me like it's trying to be repainted or recolored to be --
23 MR. HOLT: Accurate. Factual.
24 MR. RUNDHAUG: What I heard of the judge's
25 original words were quite factual. I didn't have a

1 problem with that.

2 THE COURT: "No state or local official may

3 knowingly solicit, directly or indirectly,

4 a contribution to a candidate for public

5 office from an employee in the state or

6 local official's agency."

7 I -- the thing has to be confined to that RCW

8 42.17A.565. I really think that by referring to the

9 forwarding of an email that can be "interpreted as"

10 really gets to the heart of the matter.

11 MR. RUNDHAUG: Okay.

12 THE COURT: Is that interpretation correct? If

13 the voters say it is correct they would vote -- could

14 vote to recall. If they say it's incorrect they'd say,

15 "Wait a minute. We don't want to go there."

16 So, I mean, I think it really defines the dispute of

17 how do you interpret that email, right?

18 MR. RUNDHAUG: You're the gatekeeper, your

19 Honor, and I'm going to default to your judgment on that.

20 MR. HOLT: So, would you please read it to us

21 one last time, your Honor, as you propose it?

22 THE COURT: Well, did you hear what he said

23 about me?

24 MR. HOLT: Yes. I'm not arguing that point.

25 I'm just asking for your final word on the subject.

1 THE COURT: I'm having a little bit of fun with
2 the lawyers.
3 At any rate that, "It's alleged that he violated the
4 Washington Fair Campaign Practices Act by forwarding an
5 email that can be interpreted as soliciting from a city
6 of Kennewick employee a contribution on behalf Dan
7 Newhouse."
8 MR. HOLT: Okay.
9 THE COURT: Good?
10 MR. HOLT: Yes.
11 MR. RUNDHAUG: (Indicating.)
12 THE COURT: All right. I marked the thing up to
13 now where you won't be able to read my writing. Why
14 don't I go back, type it up and we'll distribute that.
15 So, if the litigants will stay behind, it should only
16 take me with five minutes or so --
17 MR. HOLT: Okay.
18 THE COURT: -- and you'll both be able to leave
19 with that.
20 All right then, thank you.
21 MR. THOMPSON: Thank you, your Honor.
22 THE COURT: We'll be in recess.
23
24 (Whereupon the proceedings concluded at 10:20 a.m.)
25

1 STATE OF WASHINGTON)
) SS.
2 COUNTY OF BENTON)
3
4 I, RENEE L. MUNOZ, Official Certified Court Reporter
5 of the Superior Court of the Kennewick Judicial District,
6 State of Washington, in and for the County of Benton,
7 hereby certify under penalty of perjury that the
8 foregoing pages comprise a full, true, and correct
9 transcript of the proceedings had in the within-entitled
10 matter, recorded by me in stenotype on the date and at
11 the hour herein written, and thereafter transcribed by
12 computer-aided transcription into typewriting to the best
13 of my ability, including any changes made by the trial
14 judge reviewing the transcript. I am in no way related
15 to or employed by any party in this matter, nor any
16 counsel in the matter, I have no financial interest in
17 the litigation, and that I am certified to report
18 Superior Court proceedings in the State of Washington.
19
20 SIGNED and DATED this 2nd day of October, 2018.
21
22
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RENEE L. MUNOZ, #2330
Official Court Reporter
Benton-Franklin Counties
Superior Court

EXHIBIT B

BALLOT SYNOPSIS
OF RECALL CHARGES AGAINST STEVE YOUNG,
KENNEWICK CITY COUNCIL MEMBER, POSITION 7, AT LARGE

The charge that Steve Young, Kennewick City Council Member, Position 7, At Large, committed misfeasance and/or malfeasance alleges that he violated the Washington Fair Campaign Practices Act by forwarding an email that can be interpreted as soliciting from a City of Kennewick employee a contribution on behalf of Dan Newhouse.

Should Steve Young be recalled from office based on this charge?

EXHIBIT C

Case Information

18-2-02084-03 | In Re the Matter of: The Recall of Steve Young, Kennewick City Council Member

Case Number	Court	
18-2-02084-03	Benton	
File Date	Case Type	Case Status
08/16/2018	MSC2 Miscellaneous - Civil	On Appeal

Party

Plaintiff
Wade, James E.

Plaintiff
Rundhaug, Vincent C.

Plaintiff
McClary, Robert

Plaintiff
Tamborello, Charles

Defendant
Young, Steve

Events and Hearings

08/16/2018 Petition

Comment
for Recall

08/16/2018 Memorandum

Comment
of Law - BCPA

08/16/2018 Affidavit Declaration Certificate Confirmation of Service

08/16/2018 Affidavit Declaration Certificate Confirmation of Service

08/16/2018 Notice of Hearing

08/16/2018 Notice of Hearing

08/16/2018 Certificate of Mailing

08/23/2018 Notice of Appearance

Comment
Robert Thompson for Defendant

08/23/2018 Notice of Association of Counsel

08/23/2018 Answer

Comment
to Recall Petition

08/23/2018 Declaration Affidavit

Comment
of Counsel Robert Thompson

08/23/2018 Objection Opposition

Comment
to Hearing Date for Recall Petition

08/23/2018 Declaration Affidavit

Comment
of Marie Mosley

08/24/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
9:00 AM

Comment
MSC/Petition for Recall

08/24/2018 Motion Hearing

Judicial Officer	Comment
Spanner, Bruce A	Munoz/SLH/E

08/28/2018 Memorandum of Authorities

Comment
by Respondent's

08/30/2018 Response

Comment
by Petitioner in Re: Respondent's Memorandum and Points and Authorities

08/30/2018 Affidavit Declaration Certificate Confirmation of Service

08/31/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
9:00 AM

Comment
MSC/Petition for Recall

08/31/2018 Exhibit List

08/31/2018 Other

Comment
Ballot Synopsis - All parties rec'd copies

08/31/2018 Motion Hearing

Judicial Officer	Comment
Spanner, Bruce A	Munoz/AAM/C

08/31/2018 Order Re Exhibits

Judicial Officer
Spanner, Bruce A

09/17/2018 Certificate of Mailing

09/18/2018 Notice of Hearing

Comment
MSC/Entry of Final Order *Spec Set w/BAS 09-26-18 @ 3:30 pm**

09/18/2018 Certificate of Mailing

09/25/2018 Motion

Comment
by Petitioners for Entry of Final Order Hearing

09/25/2018 Affidavit Declaration Certificate Confirmation of Service

09/25/2018 Declaration Affidavit

Comment
of Vincent C Rundhaug

09/26/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
3:30 PM

Comment
MSC/Entry of Final Order *Spec set @ 3:30 pm*

09/26/2018 Motion

Comment
for Sanction

09/26/2018 Affidavit

Comment
of Robert Thompson

09/26/2018 Motion Hearing

Judicial Officer	Comment
Spanner, Bruce A	Munoz/SLH/E

09/27/2018 Return On

Comment
No Docket Date or Time Provided

10/11/2018 Memorandum

Comment
Opposing Nunc Pro Tunc Date of Final Order

10/12/2018 Request

Comment
for Evidentiary Hearing, Challenge to RCW 42.17A.565

10/12/2018 Note for Motion Docket

10/15/2018 Order Shortening Time

10/15/2018 Ex Parte Action With Order

Judicial Officer
Spanner, Bruce A

10/16/2018 Response

Comment
Petitioner's to Motion for Sanctions

10/16/2018 Affidavit Declaration Certificate Confirmation of Service

10/18/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
11:00 AM

Comment
MSC/Entry of Final Orders/Mt for Sanctions

10/18/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
11:00 AM

Comment
MSC/Rsp Challenge to RCW 42.17A.565 & Mtn for Evid Hrg

10/18/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
11:00 AM

Comment
MSC/Def's Mt re Constitutionality of RCW 42.17A.565

10/18/2018 Order

Comment
of Determination of Suff, Adoption of Ballot Synopsis, and Cert of Transmittal

10/18/2018 Motion Hearing

Judicial Officer	Comment
Spanner, Bruce A	Munoz/AAM/E

11/01/2018 Notice of Appeal to Supreme Court

11/05/2018 Affidavit Declaration Certificate Confirmation of Service

11/13/2018 Transmittal Letter Copy Filed

Comment
Notice of Appeal filed with Supreme Court

11/19/2018 Perfection Notice from Court of Appeals

Comment
Supreme Court

11/28/2018 Proposed Order Findings

Comment
re: Respondents Sanctions

11/28/2018 Proposed Order Findings

Comment
re: Petitioner's Motion

11/28/2018 Notice of Hearing

12/07/2018 Designation of Clerks Papers

12/07/2018 Statement

Comment
of Arrangements

12/11/2018 Response

Comment
Pet to Hearing Set

12/11/2018 Declaration Affidavit

Comment
of Vincent Rundhaug

12/11/2018 Affidavit Declaration Certificate Confirmation of Service

12/13/2018 Motion Hearing

Judicial Officer
Spanner, Bruce A

Hearing Time
8:30 AM

Comment
MSC/Entry of Orders

12/13/2018 Findings of Fact and Conclusions of Law

12/13/2018 Findings of Fact and Conclusions of Law

12/13/2018 Motion Hearing

Judicial Officer	Comment
Spanner, Bruce A	Pelletier/HAG/E

12/13/2018 Affidavit Declaration Certificate Confirmation of Service

12/14/2018 Invoice Voucher

Comment
to Attorney Thompon for Prep of Clerk's Papers Index Attached

12/18/2018 Statement

Comment
of Arrangements Amended

EXHIBIT D

EXHIBIT INTENTIONALLY BLANK

EXHIBIT E

EXHIBIT INTENTIONALLY BLANK

EXHIBIT F

EXHIBIT INTENTIONALLY BLANK

EXHIBIT G

[House Hearing, 113 Congress]
[From the U.S. Government Publishing Office]

H.R. 1208, TO ESTABLISH THE MANHATTAN PROJECT NATIONAL HISTORICAL PARK IN OAK RIDGE, TN, LOS ALAMOS, NM, AND HANFORD, WA

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LEGISLATIVE HEARING

before the

SUBCOMMITTEE ON PUBLIC LANDS

AND ENVIRONMENTAL REGULATION

of the

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

_____

Friday, April 12, 2013

_____

Serial No. 113-10

_____

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LEGISLATIVE HEARING ON H.R. 1208, TO ESTABLISH THE MANHATTAN PROJECT NATIONAL HISTORICAL PARK IN OAK RIDGE, TENNESSEE, LOS ALAMOS, NEW MEXICO AND HANFORD, WASHINGTON, AND FOR OTHER PURPOSES

Friday, April 12, 2013

U.S. House of Representatives

Subcommittee on Public Lands and Environmental Regulation

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:01 a.m. in room 1324, Longworth House Office Building, Hon. Doc Hastings presiding.

Members present: Representatives McClintock, Tipton, Cramer, LaMalfa, Grijalva, and Sablan.

Also present: Representatives Hastings and Fleischmann.

Mr. Hastings. The Subcommittee will come to order, and I'll note that this is the Subcommittee that Chairman Bishop has a conflict. And so as Chairman of the Full Committee, I get to take his place, and so I'm pleased to be here.

The Chair notes the presence of a quorum, and I would ask unanimous consent that Mr. Fleischmann from Tennessee, who used to be a member of this Committee, be allowed to sit on the dais and participate.

Without objection, so ordered. And, welcome, Chuck.

Under the rules, opening statements are limited to the Chairman and the Ranking Member; however, I ask unanimous consent that any Member that wishes, to have a statement submitted to the clerk prior to close of business today. I will now recognize myself for 5 minutes for my opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Hastings. Today's hearing is another step forward in the effort to establish a historical park to preserve the story and facilities of the Manhattan Project. This effort consists of many years of careful study and consideration, and even more years of dedicated advocacy by individuals and organizations in communities that are directly touched and were directly touched by the Manhattan Project.

Last June, these years of efforts culminated in the introduction of a bipartisan legislation in both the House and the Senate to establish a Manhattan Project National Historical Park and that park would be at Hanford in my State of Washington; Los Alamos in New Mexico, and Oak Ridge in Tennessee. As with hundreds of other bills, this legislation did not advance to become law in the last Congress, yet significant progress was made.

The House and Senate held back-to-back hearings to hear testimony of support, and the bill was approved by this Committee and advanced to the full House for consideration. In a vote of the House under suspension process, it requires two-thirds majority. And, while we had a majority, we didn't have the two-thirds, so the bill did not pass the House last year. But, we do know that the majority of the House supports this legislation, both Democrats and Republicans; and, so, the question of passage is not one of if, but when, and we will obviously work on that.

As we begin this new Congress, bipartisan legislation has again been introduced in both the House and the Senate and the Senate is expected to follow today's hearing with one of their own later on this month. The Representatives and Senators of both parties that are working together on this legislation are very committed to advancing this historical park into law. And even though we have a great deal of passion, that passion is exceeded by those, the volunteers, in the respective communities across the Nation.

We are fortunate to have representatives from each of the three communities here today to testify on this legislation. There are many historical, economic and tourism development organizations in each of these communities that have helped lead the way in preserving this piece of our Nation's history. They are doing a tremendous job communicating the important positive role this part can play in telling the story of our efforts during the Second World War as we move forward, and what they did with the Manhattan Project.

Today's witnesses are all elected leaders and members of the Energy Community Alliance, an organization of local communities whose towns are directly impacted by the presence of significant Department of Energy facilities. I am particularly grateful for the Alliance's willingness to work with the Committee in arranging today's hearing, which coincides with their annual meeting here in our nation's capital.

We are also joined by a witness from the National Park Service. Establishing a Manhattan Project National Historical Park is supported by the Park Service as well as Department of the Interior and Department of Energy. One key point that I know the witnesses will cover, that I believe is important to stress, is that the vast majority of the historical facilities identified for inclusion in this park are already owned by the Federal Government. At Hanford, in my State of Washington, every single property is federally owned. Department of Energy is responsible for these properties and is, in fact, legally responsible for spending tens of millions of dollars to destroy what's on those properties.

Rather than spend vast sums of taxpayer dollars to

dismantle and demolish irreplaceable pieces of our Nation's history, it is far wiser and cheaper to dedicate lower sums of money to preserve them for posterity. Clearly, the nature and location of these facilities, especially those located on secure Department of Energy sites presents a challenge, but this legislation facilitates coordination, planning and cooperation with the Department of Energy to ensure safe and secure visitor access and protection of our national security.

So, I would like to ask unanimous consent, because this is kind of a repeat hearing of what we had last time, unanimous consent that the testimony of witnesses at last year's hearing be part of this record, and without objection, so ordered. (Testimony from the June 28, 2012 hearing can be found at http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74876/pdf/CHRG-112hhrg74876.pdf.)

[The prepared statement of Mr. Hastings follows:]

Prepared Statement of The Honorable Doc Hastings, Chairman, Committee on Natural Resources

Today's hearing is another step forward in the effort to establish a historical park to preserve the story and facilities of the Manhattan Project. This effort consists of many years of careful study and consideration, and even more years of dedicated advocacy by individuals and organizations in communities directly touched by the Manhattan Project. Last June, these years of efforts culminated in the introduction of bipartisan legislation in both the House and Senate to establish a Manhattan Project National Historical Park at Hanford, Washington, Los Alamos, New Mexico and Oak Ridge, Tennessee.

As with hundreds of other bills, this legislation did not advance to become law last Congress. Yet significant progress was made. The House and Senate held back-to-back hearings to hear testimony of support, and the bill was approved by the House Natural Resources Committee and advanced to the full House for consideration. In a vote of the House under the suspension process, a strong majority of the House voted to pass the bill, though it did not receive the super-majority vote of two-thirds needed to send the bill to the Senate under this expedited procedure. We now know that a majority of the House--which includes both a majority of Republicans and Democrats--support establishment of this Historical Park and its passage is now a question of when, not if.

As we begin this new Congress, bipartisan legislation has again been proposed in both the House and Senate. And the Senate is expected to follow today's hearing with its own later this month.

The Representatives and Senators of both parties that are working together on this legislation are very committed to advancing this historical park into law--though even our passion for establishing the park is exceeded by that of the volunteers and local leaders in the three Manhattan Project communities and others across the Nation. We were fortunate to have a representative from each of the three communities testify at last year's hearing, and we are fortunate to have similar representation today. There are many historical, economic and tourism development organizations in each of the communities that have helped lead the way in preserving this piece of our Nation's history. They are doing a tremendous job communicating the important positive role this park can play in telling the story of efforts during the Second World War to accomplish an unprecedented, and many thought, impossible, industrial and scientific achievement--to construct a nuclear weapon and counter threats of similar development by Nazi Germany.

Mr. Hastings. And with that, I recognize the distinguished Ranking Member for his opening statement.

STATEMENT OF THE HON. RAUL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Grijalva. Thank you very much. Chairman and witnesses, thank you for coming today. I hope you had a peek at the cherry blossoms, because after this storm today there might not be too many of them left for you to enjoy.

Many of us supported the Chairman's legislation and his efforts to move this legislation last Congress. It's a good idea and the Chairman has worked hard on the issue for a long time. We continue to have concerns with provisions in the legislation limiting the park service from acquiring additional lands or facilities in the future, and that concern has been noted. And, without any further ado, so the witnesses can get to their testimony, let me thank you and thank you for coming today. And I yield back, Mr. Chair.

Mr. Hastings. Thank you very much for the brevity of your opening statement, and I would tell my good friend from Arizona that cherry blossoms are real blossoms in my State of Washington, because at the end of the day they produce cherries.

[Laughter.]

We have a distinguished panel here. We have Mr. Victor Knox, who is Associate Director of Park Planning, Facilities, and Public Lands of the National Park Service from the Department of the Interior. I will yield to my friend from Tennessee for the introduction of Tom Beehan, but we have also with us the Mayor of the City of Kennewick, part of the Tri-Cities in my home State.

I have known Steve for a number of years. He said it was 30. I didn't know it was that long. It could have been, but, at any rate, Steve has been very much an advocate and a very good representative for our three communities there as far as this Manhattan Project. And we also have Fran Berting, County Councilor for the County of Los Alamos in New Mexico and a former resident, by the way, of the Tri-Cities. And, Fran, thank you for reminding me of that. My memory now is coming back.

At this time, I'd like to yield to my colleague from Tennessee for purposes of introduction. Chuck?

STATEMENT OF THE HON. CHARLES J. ``CHUCK'' FLEISCHMANN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Fleischmann. Thank you, Mr. Chairman.

Chairman Hastings, Ranking Member Grijalva, distinguished members of the Subcommittee. Thank you for giving me the opportunity to introduce Oak Ridge Mayor Tom Beehan. Mayor Beehan is a constituent of mine and has joined us here today to talk about the importance of the Manhattan Project National Park to Oak Ridge and all of east Tennessee.

I represent the Third District of Tennessee, which includes Oak Ridge. One cannot spend much time in my district without becoming aware of just how important the legacy of the Manhattan Project is to east Tennessee. From our cutting edge scientific research at Oak Ridge National Lab to critical National Security work at Y-12 to our important nuclear clean-up mission, so much of our history began with the thousands of Tennesseeans who worked hard every day to complete the Manhattan Project.

The Park will provide visitors with a first-hand look at the incredible work done at Oak Ridge and pay tribute to those who work at Y-12, K25, and the X-10 graphite reactor. A unique time in our history, we accomplished incredible feats in completing the Manhattan project.

Mayor Beehan understands the importance of the Park to our community. Who knows why it is so important to preserve the

unique place that Oak Ridge holds in the history of our Nation, just like it's important that we preserve legacies at Hanford and Los Alamos.

I thank Mayor Beehan for his dedication to the Manhattan National Park and I thank him for joining us today. It is my pleasure to introduce Mayor Tom Beehan of Oak Ridge, Tennessee.

Mr. Hastings. I thank the gentleman for the introduction and for the panel that's here. For those of you that are testifying in front of Congress the first time, I'll tell you how the process goes. You have that little timer in front of you, and there's a green light and a yellow light and a red light. And the way it works, first of all, your full statement will appear in the record that you have submitted to the Government.

That will appear in the record. But what I'd like to do is ask you to keep your oral statements within the 5-minute rule. And the way the lights work is when the green light is on, you're doing extremely well; but, when the green light goes off and the yellow light comes on, that means there's 1 minute left. And then when the red light goes on, well, you just don't want to go there. OK?

I could, of course, but if you would keep your remarks within that 5 minutes, that's what the lights are when they come on. So, if you could do it that way, we'll start then, Mr. Knox, with you, and you are recognized for 5 minutes.

STATEMENT OF VICTOR W. KNOX, ASSOCIATE DIRECTOR, PARK PLANNING, FACILITIES, AND PUBLIC LANDS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. Knox. Mr. Chairman, I am very pleased to be here today and thank you for the opportunity to present the Department of the Interior's views on H.R. 1208. I'd like to submit a full statement for the record and summarize our position today here.

The Administration supports H.R. 1208 with amendments. The bill would authorize establishment of Manhattan Project National Historical Park in Oak Ridge, Tennessee, Los Alamos, New Mexico and Hanford, Washington.

Development of the atomic bomb through the Manhattan Project was one of the most transformative events in our Nation's history. It ushered in the atomic age. It changed the role of the United States in the world community and set the stage for the cold war. This legislation would enable the National Park Service to work in partnership with the Department of Energy to ensure the preservation of key resources associated with the Manhattan Project and to increase public awareness and understanding of this consequential event.

H.R. 1208 is based on the recommendations developed through the special resource study for the Manhattan Project sites. It was authorized by Congress in 2004 and transmitted to Congress in July 2011. The study, which was conducted by the National Park Service in consultation with the Department of Energy determined that resources at Oak Ridge, Los Alamos and Hanford met the National Park Service criteria of national significance suitability, feasibility and the need for Federal management for designation as a unit of the national park system.

H.R. 1208 assigns the respective roles and responsibility of the National Park Service and the Department of Energy as envisioned in the study. Basically, the National Park Service would use its expertise in the areas of interpretation and education to increase public awareness and understanding of this story, while the Department of Energy would retain full responsibility for our operations, maintenance, safe access and preservation of the historic Manhattan Project properties already under its jurisdiction.

We appreciate the language in the bill specifically providing for amendments to a future agreement with the Department of Energy and a broad range of authorities for the Secretary of the Interior, as these provisions would give the National Park Service flexibility to shape the park over time and to maximize the promotion of education and interpretation related to the Park's purpose.

We look forward to implementing this legislation in partnership with the Department of Energy. While we support H.R. 1208, there are some areas where we would like to recommend amendments. Among our concerns to the bill language are the bill language regarding the written consent of property owners, land acquisition limitations and activities outside of the park. We are continuing to review the bill for any technical issues and we would be happy to work with the Committee to develop appropriate language and will provide our recommendations in the near future.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions.

[The prepared statement of Mr. Knox follows:]

Prepared Statement of Victor W. Knox, Associate Director, Park Planning, Facilities, and Public Lands, National Park Service, U.S. Department of the Interior

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1208, a bill to establish the Manhattan Project National Historical Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Hanford, Washington, and for other purposes.

The Administration supports H.R. 1208 with amendments. The development of the atomic bomb through the Manhattan Project was one of the most transformative events in our Nation's history: it ushered in the atomic age, changed the role of the United States in the world community, and set the stage for the cold war. This legislation would enable the National Park Service to work in partnership with the Department of Energy to ensure the preservation of key resources associated with the Manhattan Project and to increase public awareness and understanding of this consequential effort.

H.R. 1208 would require the establishment of the Manhattan Project National Historical Park as a unit of the National Park System within 1 year of enactment, during which time the Secretary of the Interior and the Secretary of Energy would enter into an agreement on the respective roles of the two departments. The unit would consist of facilities and areas located in Oak Ridge, Los Alamos, and Hanford, as identified in the bill and determined by the Secretary of the Interior in consultation with the Secretary of Energy, except for the B Reactor National Historic Landmark in Hanford, which would be required to be included in the park. The National Historical Park would be established by the Secretary of the Interior by publication of a Federal Register notice within 30 days after the agreement is made between the two secretaries.

The bill would also provide authority for the Secretary of the Interior to enter into agreements with other Federal agencies to provide public access to, and management, interpretation, and historic preservation of, historically significant resources associated with the Manhattan Project; to provide technical assistance for Manhattan Project resources not included within the park; and to enter into cooperative agreements and accept donations related to park purposes. Additionally, it would allow the Secretary of the Interior to accept donations or enter into agreements to provide visitor services and administrative facilities within reasonable proximity to the park. The Secretary of Energy would be authorized to accept donations to help preserve and provide access to Manhattan Project resources.

H.R. 1208 is based on the recommendations developed through the special resource study for the Manhattan Project Sites that was authorized by Congress in 2004 and transmitted to Congress in July 2011. The study, which was conducted by the National Park Service in

consultation with the Department of Energy, determined that resources at Oak Ridge, Los Alamos, and Hanford, met the National Park Service's criteria of national significance, suitability, feasibility, and the need for Federal management for designation as a unit of the National Park System. H.R. 1208 assigns the respective roles and responsibilities of the National Park Service and the Department of Energy as envisioned in the study; the National Park Service would use its expertise in the areas of interpretation and education to increase public awareness and understanding of the story, while the Department of Energy would retain full responsibility for operations, maintenance, safe access, and preservation of historic Manhattan Project properties already under its jurisdiction along with full responsibility for any environmental remediation that is deemed necessary related to the properties to ensure public safety.

Because the Department of Energy would maintain and operate, as they do currently, the primary facilities associated with the Manhattan Project National Historical Park, the study estimated that the National Park Service's annual operation and maintenance costs for the three sites together would range from $2.45 million to $4 million. It also estimated that completing the General Management Plan for the park would cost an estimated $750,000. Costs of acquiring lands or interests in land, or developing facilities, would be estimated during the development of the General Management Plan. The Department of Energy has not yet assessed fully the operational difficulties in terms of security and public health and safety, applicable statutory and regulatory requirements, and the potential new cost of national park designation at the sensitive national security and cleanup sites, which would be addressed with the context of the General Management Plan.

The Department anticipates that the initial agreement between the two Departments likely would be fairly limited in scope, given the bill's 1-year timeframe for executing an agreement that would enable the Secretary of the Interior to establish the Manhattan Project National Historical Park. We appreciate the language specifically providing for amendments to the agreement and a broad range of authorities for the Secretary of the Interior, as these provisions would give the National Park Service the flexibility to shape the park over time and to maximize the promotion of education and interpretation related to the park's purpose in coordination and consultation with the Department of Energy.

The flexibility is particularly important because managing a park with such complex resources, in partnership with another Federal agency, at three sites across the country, will likely bring unanticipated challenges. Some of the resources that may be included in the park may be near facilities that have highly sensitive, ongoing national security missions including nuclear weapons production and intelligence activities. Also, some of these sites may be on the U.S. Environmental Protection Agency's National Priorities List. If this legislation is enacted, these issues, among others, will be taken into consideration by the Departments in the development of an agreement and management plan. The National Park Service has already begun a partnership with the Department of Energy regarding the Manhattan Project resources through our coordinated work on the study. If this legislation is enacted, we look forward to building a stronger partnership that will enable us to meet the challenges ahead.

While we support H.R. 1208, there are some areas where we would like to recommend amendments. Among our concerns are the bill language regarding the written consent of owners; land acquisition limitations; and activities outside of the park. We are continuing to review the bill for any technical issues. We would be happy to work with the committee to develop the appropriate language and will provide our recommendations in the near future.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you may have.

Mr. Hastings. Thank you very much, Mr. Knox. By the way, you can't transfer more time to another witness here.

Mr. Knox. Oh, I was hoping you could. Thank you, Mr. Chairman.

Mr. Hastings. I appreciate that very much. Next, I recognize Mayor Steve Young from the City of Kennewick and my home State of Washington.

Mayor Young, you are recognized.

STATEMENT OF THE HON. STEVEN C. YOUNG, MAYOR,
CITY OF KENNEWICK, WASHINGTON

Mr. Young. Thank you, Mr. Chairman.

I want to thank you and the Committee members for inviting me to testify on House Resolution 1208, which is a bill to establish the Manhattan Project National Historic Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and, of course, Hanford, Washington. But I would also like to thank Chairman Doc Hastings and Representatives Ben Ray Lujan and Chuck Fleischmann for co-sponsoring this bill.

My name is Steve Young. I am the Mayor of the City of Kennewick, Washington. I am also Chairman of the Hanford communities and Secretary to the Energy Communities Alliance, and I am here speaking in favor of H.R. 1208 on behalf of the Tri-Cities community of Washington State as well as in support of community organizations in Oak Ridge, Tennessee and Los Alamos, New Mexico. All three of our communities have passed resolutions supporting the Manhattan Project National Historical Park. And, since its inception we have been united in our support of this bill.

It is easy for those of us who live in the communities of Oak Ridge, Los Alamos and Tri-Cities to say that the Manhattan Project changed the world; but, on August 13, 1942, the Manhattan Project was established under the command of Col. Leslie Groves. Three years and 1 day later, August 14, 1945, the war was done. Between those dates, more than 100,000 men and women were brought to these three sites from all over the world. A majority of these young men and women had no idea what they were building. At Hanford, more than 2,000 residents, mostly farmers, were given just days to weeks to move off their land. This included moving, getting rid of thousands of animals, all the farm equipment, and, most importantly, closing schools and moving families lock, stock and barrel.

Once land was acquired by the Government, workers had to be found, engineers, physicists, chemists, carpenters, et cetera. Then, these same individuals first had to build their own town dormitories, mess halls, water, sewer rows, infrastructure of all kinds. This had to be done before they could even start construction on the reactors, nuclear fuel manufacturing and final chemical separation. At Hanford, the construction camp quickly became the third largest city in the State of Washington with 50,000 construction workers.

Hanford construction stretched the imagination, housing the 50,000 men and women, 386 miles of highway, 780,000 yards of concrete, and 158 miles of new railroad track. All of this was done without the aid of computers. These were the days of slide rules and handcrafted blueprints, and yes, I remember those. Equipment, electronics and piping could not be bought off the shelf, and for the most part everything used had to be fabricated on the Hanford site. The B reactor, itself, the world's, first, full-scale nuclear reactor was built in just 11 months, start to finish.

The design was based on the success of Enrico Fermi's Chicago Pile 1 and a pilot plant, the X-10 graphite reactor, located in Oak Ridge Tennessee. B Reactor was designed to

produce 250 million watts, a million times more powerful than Chicago Pile 1, which produced the first ever sustained nuclear fission chain reaction under the bleachers at the University of Chicago Staff Field in December of 1942.

Most importantly, the workers brought in to these three sites were among the most talented in the respective fields, whether it was physics or whether it was in pipe fitting. While we recognize the names of Enrico Fermi and Robert Oppenheimer, and Hans Bethe, we also need to give recognition to the many individual workers, most of whom stayed on the job and in these communities long after 1945. These are the engineering feats and accomplishments that must be told to future generations and it needs to be told before all of those old-timers are gone. As these three sites, and Oak Ridge, Los Alamos and Hanford are being cleaned up and many buildings are demolished and removed, the history of the scientific and engineering achievement at the birth of the atomic age must be preserved.

Mr. Chairman, there is much more to my testimony, but my clock is running out. Do you have a copy of this? I hate this light, by the way.

[The prepared statement of Mr. Young follows:]

Prepared Statement of The Honorable Steve C. Young, Mayor, City of Kennewick, Washington

Mr. Chairman and Members of the Committee:

I thank you for inviting me to testify on H.R. 1208, a bill to establish the Manhattan Project National Historical Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Hanford Washington. I also would like to thank Chairman Doc Hastings, Representatives Ben Ray Lujan, and Chuck Fleischmann for co-sponsoring this bill.

I am Steve Young, Mayor of the City of Kennewick, Washington, speaking in favor of H.R. 5987 on behalf of the Tri-Cities Community in Washington State, and in support of community organizations in Oak Ridge, Tennessee and Los Alamos, New Mexico. All three of our communities have passed resolutions supporting the Manhattan Project National Historical Park, and we have been united in our support of this bill.

Support for H.R. 5987

It is easy for those of us who live in the communities of Oak Ridge, Los Alamos and the Tri-Cities to say that the Manhattan Project changed the world.

On August 13, 1942 the Manhattan Project was established under the command of Colonel Leslie R. Groves. Three years and 1 day later, August 14, 1945, the War was done!

In between those dates, more than 100,000 men and women were brought to these three sites from all over the world. The majority of these young men and women had no idea what they were building.

At Hanford more than 2,000 residents--mostly farmers--were given just days to weeks, to move off their land. This included moving, getting rid of thousands of animals, all the farm equipment and most importantly closing schools and moving families--lock-stock-and barrel!

Once the land was acquired by the Government, the workers had to be found--engineers, physicists, chemists, carpenters, electricians, iron workers, cement masons and a multitude of office workers, cooks, guards, and truck drivers. Then these same individuals first had to build their own town with dormitories, mess halls, water, sewer, roads and railroads. This had to be done BEFORE they could start construction on reactors, nuclear fuel manufacturing and chemical separations. At Hanford the construction camp quickly became the third largest town in the State of Washington, with 50,000 construction workers.

Hanford construction stretched the imagination. Housing for 50,000 men and women; 386 miles of highway (including Washington State's first four-lane highway); 780,000 yards of concrete, and 158 miles of railroad track.

All of this was done without the aid of computers! These were the days of slide-rules and hand-crafted blueprints!

Equipment, electronics and piping could not be bought off-the shelf. For the most part everything had to be fabricated on the Hanford site.

B Reactor itself, the world's first full-scale nuclear reactor, was built in just 11 months start-to-finish. The design was based on the success of Enrico Fermi's ``Chicago Pile 1;'' and a pilot plant, the X-10 graphite reactor located in Oak Ridge, Tennessee. B Reactor was designed to produce 250 million watts; a million times more powerful than Chicago Pile 1, which produced the first ever sustained nuclear fission chain reaction under the bleachers at the University of Chicago's Staff Field in December of 1942.

Most of the workers brought in to these three sites were among the most talented in their respective fields; whether it was physics, or pipefitting. While we recognize the names of Enrico Fermi, J. Robert Oppenheimer and Hans Bethe; we also need to give recognition to individual workers, many of whom stayed on the job and in these communities after 1945.

These are engineering feats and accomplishments that must be told to future generations! And, it needs to be told before all of the ``old-timers'' are gone.

As these three sites in Oak Ridge, Los Alamos and Hanford are being cleaned up, and many buildings are demolished and removed; the history of scientific and engineering achievement at the birth of the Atomic Age must be preserved.

The National Park Service, as it does with all of its sites, interprets the sites, and attempts to address ALL viewpoints to give a full and fair picture. We support such actions. This will not be a park that gives just a nuclear weapons viewpoint. We believe it is more about the thousands of men and women who built buildings, equipment and processes that became a turning point in the history of the United States. The science of the Manhattan Project has transformed contemporary society with significant contributions in fields such as nuclear medicine, industrial isotopes, and nanotechnology. This historic park will tell all sides of the story of what occurred at Oak Ridge, Los Alamos and the Hanford/Tri-Cities area, as was identified in the National Park Service Special Resource Study released last year.

Our three communities have collectively worked toward this legislation for more than 3 years. Within the Tri-Cities an ad-hoc group of TRIDEC, the Visitor & Convention Bureau, B Reactor Museum Association and Hanford Communities led the charge. In this process, we not only partnered with each other, but we also worked closely with the Department of Energy, the Department of the Interior, the Energy Communities Alliance, the Atomic Heritage Foundation, the National Parks Conservation Association, State Historical Preservation Officers, and the National Trust for Historic Preservation.

There is no question in our minds of the importance of creating this new national park, nor of the public interest to view these former ``secret'' sites.

At Hanford, DOE hosted 8,000 visitors to B Reactor last year. These visitors came from all 50 States, and from 48 foreign countries. These numbers were the result of only ONE announcement by DOE that 8,000 seats to B Reactor would be open to the public last summer. The tours filled in less than 5 hours. Last year DOE increased the number of seats to 10,000. Unlike the National Park Service, DOE (except for one single public announcement) does not advertise its tours.

These visitor numbers also clearly demonstrate that designating these three sites as the Manhattan Project National Historical Park will create jobs and provide an economic development benefit for all three communities. Such designation will come at a time when all three sites are seeing downturns in Federal employment as these sites are being cleaned up. Cleaning up these sites, and opening them to public viewing is of major importance to three communities that have been supporting national missions since 1943.

The Manhattan Project National Historical Park at Oak Ridge, Los Alamos and Hanford is critical to the preservation of one of our

Nation's most historic events of the 20th Century.

Our Tri-Cities community encourages you to move forward with this legislation. We have unanimity with our sister communities in Oak Ridge and Los Alamos that the Park should be established in the near term in order to honor our Manhattan Project and Cold War veterans.

We urge Congress to pass this National Park legislation.

Mr. Hastings. Well, I thank the gentleman. As I said, your full statement will appear in the record, and thank you very much for your testimony.

Next, we go over to Mayor Beehan from the City of Oak Ridge Tennessee. Mayor?

STATEMENT OF THE HON. THOMAS L. BEEHAN, MAYOR, CITY OF OAK RIDGE, TENNESSEE, CHAIRMAN, ENERGY COMMUNITIES ALLIANCE

Mr. Beehan. Chairman Hastings and members of the Committee, I want to thank you for allowing me to testify on H.R. 1208. I would also like to thank the co-sponsors of this bill, yourself, Chairman Hastings, Rep. Fleischmann and Rep. Ben Ray Lujan.

I have provided the Committee with a copy of my written comments. I am Tom Beehan, the Mayor of Oak Ridge, Tennessee and I am Chairman of the Energy Community Alliance. Our members include local governments and other community organizations from Oak Ridge to Los Alamos and the Tri-Cities area. The testimony I will present to you today is on behalf of the City of Oak Ridge in conjunction with the Energy Community Alliance; but, I would also like to recognize many of the Energy Community Alliance elected officials and partners who are here today in the room and thank them for their support--glad they're here.

First and most importantly I would like to stress that our three communities are united in support of the passage of this bill to establish the three-unit National Historical Park in Tennessee, New Mexico and Washington. There is also bipartisan support for this bill in the House and the Senate, and our communities have been working for many years to preserve the history of the Manhattan Project at our sites, and we feel that now is the time to pass a bill that will lead to the establishment of a national historical park. It is easy for those of us who lived there in these communities to support the Manhattan Project before it changed the world. It began in great secrecy in 1942 and the original mission was established and completed in August of 1947--I'm sorry--August of 1945 when the Japanese surrendered.

The Manhattan Project is an incredible story and deserves to be preserved and told. Let me be clear, however, and the interpretation of these sites will be about giving current and future generations an understanding of this indisputable turning point in American and indeed world history. Despite what some detractors may claim, this is not a park about weapons. I believe this is a historical park about scientific, energy and engineering accomplishments at a time when our country was defending itself, both during World War II and the cold war. This historic park will tell all sides of the story at what occurred at Oak Ridge, Los Alamos and the Tri-Cities, and it has been identified in a National Park Service Special Resource Study.

The National Park Service interprets all sites and attempts to address all viewpoints to give a full and fair picture, and we support these actions. According to the National Park Study, cultural resources associated with the Manhattan Project are

not currently represented in the National Park System and comparably managed areas are not protected. Further, including the Manhattan related sites in the National Park System will provide for comprehensive interpretation and public understanding of this nationally significant story.

Last year, the ECA sponsored a trip to the Hanford site. Our group toured the B Reactor in the world's first scale production nuclear reactor. When visiting the B Reactor, one really gets an appreciation for the potential of the site to attract thousands of visitors a year. Already, a few public tours are available for the B Reactor, and they fill up almost immediately. In Oak Ridge we also have assets that are open to visitors who want to get a glimpse of what life was like behind the gate.

In 2011 around 8,000 people visited the graphic reactor at ORNL, and close to 5,000 people came through the Y-12 New Hope Center. Additional special tours are held each year during the secret city festival, which attracts between 20,000 to 30,000 people. The historic, Alexander and key community asset is being restored in the original town site of Oak Ridge. In Los Alamos, the industrial laboratory work, such as the Gun Site and the Little Boy are also there and can be visited.

Time is running out, so I am going to jump. The Manhattan Project National Park is needed to preserve the history of the most significant event in the 20th century. As you proceed, we ask you to consider the following recommendations. Establish the park to honor our veterans who are still with us; protect the ongoing mission of DOE; authorize user entrance fees; donation authority should be broad. All inclusion of Nationally significant sites: We need to be flexible to permit the National Park Service to work with our communities to be able to add sites that are nationally significant and suitable for inclusion in the Park.

Thank you for allowing me to testify.

[The prepared statement of Mr. Beehan follows:]

Prepared Statement of The Honorable Thomas L. Beehan, Mayor, City of Oak Ridge, Tennessee, Chairman, Energy Communities Alliance

Chairman Bishop, Ranking Member Grijalva and members of the Committee, I thank you for inviting me to testify on H.R. 1208, a bill To Establish the Manhattan Project National Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Hanford, Washington, and for other purposes. I would also like to thank the co-sponsors of this bill: Representative Doc Hastings, Representative Chuck Fleischmann and Representative Ben Ray Lujan. I am Tom Beehan, the Mayor of the City of Oak Ridge, Tennessee and the Chairman of the Energy Communities Alliance (ECA), the association of local governments that are adjacent to, impacted by, or support Department of Energy (DOE) activities. Our members include local governments and other community organizations from the Oak Ridge, Los Alamos and the Tri-Cities (Hanford) areas, and all three communities have passed resolutions supporting the Manhattan Project National Historical Park. The testimony I will present to you today is on behalf of the City of Oak Ridge in conjunction with the Energy Communities Alliance.

The City of Oak Ridge and the Energy Communities Alliance Support the Bill To Establish the Manhattan Project National Historical Park in Oak Ridge, Los Alamos and Hanford

First, and most importantly, I would like to stress that all three of our communities are united in our support for the passage of this bill to establish a 3-unit National Historical Park in Tennessee, New Mexico and Washington. There is also bi-partisan support for this bill from the Senators and Members of Congress from all three of our States. Our communities have been working for many years to preserve the history of the Manhattan Project at our sites, and we feel that now is the time to pass a bill that will lead to the establishment of a National Historical Park. In addition, there is support for both bills

among the State and local elected officials, historic preservation organizations, National Park Service officials, Department of Energy officials, business leaders, environmental cleanup advocates, chambers of commerce, museum officials, librarians and many others.

Among the biggest advocates of the National Historical Park are the people who worked at the three sites during World War II. It is important to remember that no one in our country knew what the workers were building at the sites--they were truly ``Secret Cities.'' Most of the young men and women working in these communities did not even know what the project was. These were among the nation's best and brightest citizens from all walks of life.

National Historical Parks are developed to ensure that we preserve our country's assets and open them to the public to learn about our Nation's history. We should work to open this park while some of the Manhattan Project Veterans are still alive and able to see their work recognized by our Nation. These people played a valuable role in ending World War II and defending not only the United States but also democracies throughout the world. They are every bit as important to telling the story of the Manhattan Project as are our buildings and equipment. These true heroes, who dedicated their wartime service to the Manhattan Project, appreciate the legislation developed by your committee.

The Important History of the Manhattan Project Sites Must Be Preserved

As an expert panel of historians reported in 2001, the top-secret Manhattan Project program during World War II, centered in Los Alamos, NM, Oak Ridge, TN, and Hanford, WA, has been called ``the single most significant event of the 20th century.'' Operating from December 1942 until September 1945, the Manhattan Project was a $2.2 billion effort that employed 130,000 workers at its peak, but was kept secret and out of public view.

It is easy for those of us who live in the communities of Oak Ridge, Los Alamos and the Tri-Cities to say that the Manhattan Project changed the world. The Manhattan Project began in great secrecy in 1942, and the original mission was essentially completed by August of 1945 when the Japanese surrendered. The engineering and construction feats of the more than 100,000 men and women who were brought to these three sites from all over the world to build and operate first-of-a-kind nuclear plants, is an incredible story that deserves to be preserved and told.

On August 13, 1942 at the direction of FDR, the Manhattan Engineer District was established under the command of Colonel Leslie R. Groves. By September of 1942 Groves selected Oak Ridge, Tennessee as the site for uranium isotope separation. In November 1942 Los Alamos was chosen as the laboratory to build the integral parts, under the direction of J. Robert Oppenheimer. And in January 1943 Hanford was selected for plutonium production. In 1945, just three years after the start of the project, the war with Japan was over. This was an incredible wartime achievement.

In today's world, it is mind-boggling to think of what happened in these 3 short years. First, the actual land had to be acquired and existing homes and landowners had to be relocated. Then, workers of all types had to be recruited--engineers, physicists, chemists, mathematicians, as well as carpenters, electricians, iron workers, cement masons, and a multitude of office workers, cooks, guards and truck drivers. These individuals had to first build their own towns with dormitories and barracks, mess halls, utilities, roads, railroads, and even shower houses. Now almost 70 years later, these sites are being reindustrialized, and many ancillary buildings have been demolished and removed. The history of these human scientific and engineering achievements at the birth of the Atomic Age must be interpreted and preserved.

Let me be clear, interpretation at these sites will be about giving current and future generations an understanding of this indisputable turning point in American, and indeed world history. Despite what some detractors may claim, this is not a park about weapons. I believe this

Historical Park is about the feats of scientific and engineering accomplishments developed at a time when our country was defending itself, both during World War II and the cold war. The construction and operation of the first generation reactors in total secrecy was an astounding development. Now, the science of the Manhattan Project has transformed contemporary society with significant contributions in fields such as nuclear medicine and nanotechnology. This Historical Park will tell all sides of the story of what occurred at Oak Ridge, Los Alamos and the Tri-cities, as has been identified in the National Park Service Special Resource Study released in 2011. The National Park Service interprets all sites and attempts to address all viewpoints to give a full and fair picture, and we support such actions. Most importantly, the Park will tell one of the most important stories of how Americans from all walks of life came together, formed a community, and dedicated themselves to protecting all that we hold dear in this country.

Background of Legislation

The National Park Service, at the direction of Congress, conducted a special resource study on several Manhattan Project sites for possible inclusion in the National Park System. The study recommends that the best way to preserve and interpret the Manhattan Project is for Congress to establish a national historical park at the three sites where a majority of the key scientific activity associated with the project occurred: Los Alamos, Oak Ridge and Hanford. The study acknowledged the significant Department of Energy investment in preservation of its assets, which played a role in the Park Service recommendation to proceed with a park designation. The DOE support provides the foundation for National Park Service interpretation of these assets for the public to see.

According to the National Park Service study, ``Cultural resources associated with the Manhattan Project are not currently represented in the national park system, and comparably managed areas are not protected . . . the comprehensive story of the nationally significant Manhattan Project is not told anywhere . . . Including Manhattan Project-related sites in the national park system will provide for comprehensive interpretation and public understanding of this nationally significant story in 20th century American history.''

Oak Ridge, Los Alamos, the Tri-Cities Communities Are Committed To Working Together To Establish a National Historical Park

Since the Department of Interior's final study and recommendation was announced in July 2011, our State, city and county officials, business leaders, historical societies and groups, various community groups and individuals in our communities and throughout the country have been working diligently with you and your staffs to support this legislative process; and we come here to support the legislation introduced in both the Senate and the House.

Many of us participated in Energy Communities Alliance ``Peer Exchange'' meetings in Richland, Washington and in Los Alamos, New Mexico to discuss many of the issues surrounding the establishment of a National Historical Park at our sites. Our organization plans to visit Oak Ridge, Tennessee this year to discuss the topic further. At these meetings, all the participants stressed the need to work together to get this park established. The three communities have not only partnered together to work on this important initiative, but we have also worked with DOE, the Department of the Interior, State Historical Preservation Officers, The National Trust for Historic Preservation, the National Parks Conservation Association, the Atomic Heritage Foundation and many others to support the establishment of a National Park Unit at ours sites.

While in Richland, our group toured the B Reactor, the incredible engineering accomplishment that is the world's first full scale production nuclear reactor. The B Reactor was built in just 11 months. The design was based on the success of Enrico Fermi's ``Chicago Pile 1'' and a pilot plant, the X-10 Graphite Reactor, located at what is now the Oak Ridge National Laboratory. This tour provided the potential

experience that a visitor to a National Park would have when visiting the site, and the National Park Service has not even started their interpretative work. When visiting the B Reactor, one really gets an appreciation for the potential of the site to attract thousands of visitors a year. Already the few public tours that are available for the B Reactor fill up almost as soon as they become available. Last year, more than 8,000 seats were filled in less than 5 hours. This year more than 10,000 people will go on the tour. The B Reactor has had visitors from all 50 States and 48 countries.

Oak Ridge has many assets that are open to visitors and community members who want to learn more and get a glimpse of what life was like ``behind the gate''. The Department of Energy Facilities Public Bus Tours, held from June through August each summer, highlight the Graphite Reactor at the Oak Ridge National Laboratory, the New Hope Center at Y-12, the DOE operated American Museum of Science and Energy, and portions of the City of Oak Ridge, where housing and other structures from the Manhattan Project era remain. In 2011, around 8,000 people visited the Graphite Reactor at ORNL and close to 5,000 people came through the Y-12 New Hope Center. Additional special tours of these facilities, along with the Y-12 facility are held each year during the ``Secret City Festival,'' which attracts between 20,000-30,000 people. These tours are one of the most popular events during the festival weekend and over 700 people recently participated in the tour in a single day. The historical Alexander Inn Guest House, a key community asset, is being restored in the original townsite of Oak Ridge.

In Los Alamos, our group got to tour the site where the industrial work at the laboratory was on a smaller scale than at Oak Ridge or Hanford. Properties, such as the Gun Site, where the work on Little Boy was done, and at the V Site, where work on the ``Gadget'' was accomplished, allowed us to get a sense of the ``can-do'' spirit of the scientists and technicians who had to make do in make-shift buildings with some rather creative equipment. We are confident the Department of Energy and Department of the Interior can work out visitor access issues to these sites. At the same time, in the Los Alamos' historic center, visitors can walk the same paths as the giants of 20th century physicists, and see the homes where J. Robert Oppenheimer, Hans Bethe, and other talented scientists once lived and socialized.

Recommendations

The Manhattan Project National Historical Park is needed to preserve the history of the most significant event of the 20th century. As you proceed, we ask that you consider the following recommendations:

Establish the Park Now to Honor Our Manhattan Project Veterans. There is unanimity among the three communities that the Park should be established in the near term in order to honor our Manhattan Project and cold war veterans.

Protect ongoing Missions of DOE. We support legislative language that protects the ongoing missions of DOE, and recognize the need for appropriate flexibility in the partnership among the stakeholders.

Authorize User/Entrance Fees. Although the legislation should recognize DOE's responsibility to maintain its assets, authorization for a modest entry/user fee should be included to assist in the long term stewardship of non-DOE-owned assets.

Donations authority should be broad. We want to ensure that the National Park is permitted to accept both personal property and financial donations to support the park and the tours of the sites.

Allow inclusion of Nationally Significant Sites. We need flexibility to permit the NPS to work with communities to be able to add sites that are nationally significant and suitable for inclusion in the Historical Park.

Conclusion

In closing, we believe the proposed Historical Park will serve as a 21st century model for the National Park Service, or as the National

Park Service study calls it ``A new innovative Manhattan Project National Historical Park,'' one that is based on Federal, State and community partnerships. We look forward to working with you, and urge that this Congress pass this National Park legislation. The City of Oak Ridge supports this important legislation H.R. 1208. We thank you and the full committee for your leadership and support.

Mr. Hastings. Mayor Beehan, thank you very much for your testimony.

And, last, and certainly not least, Fran Berting, who is the County Councilor for the County of Los Alamos in New Mexico, as I mentioned in my introduction of former residents of the Tri-Cities.

STATEMENT OF FRAN BERTING, COUNTY COUNCILOR, THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

Ms. Berting. Thank you, Mr. Chairman, and good morning, Chairman Hastings.

Mr. Hastings. Can you move that microphone a little bit closer to you?

Ms. Berting. Is that better?

Mr. Hastings. That's better. Thank you.

Ms. Berting. OK. Very good.

Well, good morning, again, Chairman Hastings and Ranking Member Grijalva and distinguished members of the Committee. I would like, first of all, to thank the co-sponsors of bill H.R. 1208, Rep. Ben Ray Lujan, yourself Rep. Doc Hastings, and Rep. Chuck Fleischmann.

I am Fran Berting, County Counselor for the incorporated county of Los Alamos, and Treasurer of the Energy Community Alliance, also representing ECA. I am presenting this testimony on behalf of the County of Los Alamos and Los Alamos Historical Society, both of which heartily support H.R. 1208.

The key points of my testimony are: (1) the Manhattan Project was one of the most significant historical events of the 20th century, if not the most significant, considering its worldwide ramifications; (2) throughout northern New Mexico there is broad support to establish a national park unit in Los Alamos, our County and many other groups have been working cooperatively to bring about the legislation in the establishment of the park; (3) the park will have a positive economic impact on the region in addition to the tourism; and (4) for a park to be born, we need legislation, and legislation that allows for partnerships among Federal agencies, community groups, individuals and others.

At its heart, the story of the Manhattan Project is an amazing episode of our Nation's history and that of the world. It brought together the brightest scientists, many of them immigrants who came to this country seeking freedom. They face pressures to end World War II by creating something that had only existed in theory. The story of making theory, of taking theory to the instrument that brought the war with Japan to an end must be told. Tied together under the auspices of a national park, the Manhattan Project industrial sites in Los Alamos, Oak Ridge and Hanford, along with the places where soldiers and scientists lived and formed communities, will create a full picture of the history.

In some we look forward to sharing our stories with the many visitors a national historical park will bring. These stories will benefit from the balanced interpretation provided by the National Park Service. We are heartened to see the Department of Energy working with the Department of the Interior and many other partners to make this world changing

history accessible. So we thank you for your leadership and support, and thank you, Mr. Chair, for the opportunity to testify.

[The prepared statement of Ms. Berting follows:]

Prepared Statement of Fran Berting, County Councilor, The Incorporated County of Los Alamos, New Mexico

Chairman Bishop, Ranking Member Grijalva and Members of the Committee, I thank you for inviting me to testify on H.R. 1208, a bill To Establish the Manhattan Project National Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Hanford, Washington, and for other purposes. I would also like to thank the co-sponsors of this bill: Representative Ben Ray Lujan, Representative Doc Hastings, and Representative Chuck Fleischmann. I am Fran Berting, and I serve as a County Councilor for the Incorporated County of Los Alamos. I will present this testimony on behalf of the Incorporated County of Los Alamos in conjunction with the Los Alamos Historical Society.\1\ Both the Incorporated County of Los Alamos and the Los Alamos Historical Society support H.R. 1208.

\1\ The Los Alamos Historical Society is a non-profit organization whose mission is to preserve, promote, and communicate the remarkable history and inspiring stories of Los Alamos and its people for our community, for the global audience, and for future generations. Among its many activities, the Historical Society operates the Los Alamos Historical Museum and owns, in a life trust, the World War II home of Dr. J. Robert Oppenheimer, scientific director of the Manhattan Project. As the owner of this home in the Los Alamos Historic District, the Historical Society is the property owner within the potential boundary of the park. Additionally, helping to establish the Manhattan Project National Historical Park is one of seven planks the Historical Society's strategic plan.

The key points of my testimony are:

1. The Manhattan Project has been described as one of the most significant historical events of the 20th century and therefore the key sites at Los Alamos, Oak Ridge and Hanford should be preserved in a National Historical Park.

2. Throughout northern New Mexico, there is broad support to establish a National Park unit at Los Alamos. Our County and many other groups have been working cooperatively to support this legislation and the establishment of the Manhattan Project National Historical Park.

3. Establishment of a National Park unit at Los Alamos will have a positive impact on the citizens and economy of northern New Mexico.

4. For a Manhattan Project National Historical Park to be successful, we need legislation that allows for partnerships among Federal agencies, community groups, individuals and others.

Due to Their Historical Significance, the Manhattan Project Sites Should Be Preserved in a National Historical Park

Historians have called the Manhattan Project the most significant undertaking of the 20th century. Employing hundreds of thousands at its peak, located in widely scattered, secret communities, the project brought an end to World War II and ushered in the atomic age. The Incorporated County of Los Alamos is pleased to support H.R. 1208, a bill to establish the Manhattan Project in Oak Ridge, Tennessee, Los Alamos, New Mexico and Hanford, Washington.

At its heart, the story of the Manhattan Project is an amazing episode of our great Nation's history. It brought together the brightest scientists, many of them immigrants who came to this country seeking freedom. They faced pressure to end the world's most horrible war by creating something that had only existed in theory. The Manhattan Project is a story about young people with a can-do spirit who brought about a great technological achievement. It is the story of unleashing a mysterious force of nature and of fostering fear and

uncertainty about the future of humankind. It is a story about creativity. It is a scientific story, a soldier's story, a spy story, and a human story. The story of the Manhattan Project is one that, from the perspectives of all who participated and all who were affected, must be told.

The County and the Historical Society fully support this bill's efforts to ``enhance the protection and preservation of such resources and provide for comprehensive interpretation and public understanding of this nationally significant story in 20th century American history.''

Tied together under the auspices of a national park, the Manhattan Project industrial sites in Los Alamos, Oak Ridge, and Hanford, along with the places where soldiers and scientists lived and formed communities, will create a full picture of the history.

Some critics have said that a national park dedicated to the Manhattan Project will glorify the atomic bomb or create a theme park for weapons of mass destruction. We disagree. The National Park Service, of all government agencies, is the most trusted for telling complete stories from all sides--the good and bad, the painful and the poignant. Parks and monuments that commemorate battles or massacres do not celebrate ugly moments in American history. They teach about them; they help us, as a nation, to reflect and learn. The Nation needs to understand the Manhattan Project from all sides.

There is Broad Support for This Bill Throughout Los Alamos County and Our Region

In 2007, recognizing the impact of a possible national park on our community, our County Council appointed an ad hoc committee to determine what such a park might look like in Los Alamos. The details of the committee recommendations are attached to this testimony as ``Attachment A.'' In summary, the committee envisioned a downtown national park visitor center where guests would learn about the Manhattan Project and then be sent to existing venues to learn more, a recommendation the National Park Service adopted in its final report to Congress.

The communities called out in this legislation--Los Alamos, Oak Ridge, and Hanford--fully support this park. In 2008, the ad hoc committee held public meetings in Los Alamos as well as meetings with potential partners, from tour guides to the nearby pueblos. After some initial--and false--concern that the park service might take over the iconic Fuller Lodge in downtown Los Alamos as a park headquarters was resolved, the community came out fully in support of the park. The County Council passed a resolution to that effect in February 2010 (see ``Attachment B''). We have had several meetings with our counterparts in Hanford and Oak Ridge to discuss park possibilities. In short, we are excited about this park and are happy to assist the Department of the Interior, the Department of Energy, Los Alamos National Laboratory, and others to make it happen. We believe it will be a benefit not only to Los Alamos but to nearby communities, as well.

A Manhattan Project National Historical Park Unit at Los Alamos Will Provide Economic Benefits to Northern New Mexico

With, by the Park Services own estimate, hundreds of thousands of additional annual visitors the Manhattan Project National Historical Park will provide economic benefits to northern New Mexico. The region will need workers not only in tourism and service industries but in construction and other related industries to support the Park.

As the ad hoc committee suggested, the story of the Manhattan Project isn't just about world-class scientists. The story includes people from the rural communities and pueblos surrounding Los Alamos, mostly Native Americans and Hispanics, who provided the backbone of a labor force that built and maintained the laboratories and facilities, cleaned the houses, and drove the trucks. The Manhattan Project forever changed rustic northern New Mexico. In fact, the Manhattan Project National Historical Park will, once again, transform these communities, creating an economic driver based on heritage tourism that provides jobs, educational opportunities, and improved futures to traditionally

under-served communities.

Legislation Must Allow for Partnerships Among Federal Agencies, Communities, Historical Societies and Other Interested Organizations and Individuals

Finally, we appreciate with enthusiasm the statement in Section 3 of this bill that one purpose of the park is ``to assist the Department of Energy, Historical Park communities, historical societies, and other interested organizations and individuals in efforts to preserve and protect the historically significant resources associated with the Manhattan Project.'' Protecting these resources is something the Los Alamos Historical Society has been working on for nearly 50 years. Partnerships and cooperative agreements between Federal agencies, local governments, non-profit groups, and even private property owners will make this park happen, bringing together widespread resources for the benefit of our Nation as the Manhattan Project did years ago.

Again, I urge you to view the recommendations from the ad hoc committee, specifically the section about partnerships. Manhattan Project resources, from museums to the laboratory and from tour guides to the famous ``gatekeeper'' office at 109 E. Palace Avenue in Santa Fe, are dispersed and disorganized when it comes to the theme of Manhattan Project history. The national park will bring these resources together, along with those of Hanford and Oak Ridge, for visitors to understand a bigger picture.

We are also especially pleased to see in the final section of the bill that both the Department of the Interior and the Department of Energy will be able to accept monetary or service donations for the park. This is particularly important to restoration work at Los Alamos National Laboratory and will assist the lab in preserving a significant historic site. One individual has been waiting in the wings for years to donate to the site's restoration but has had no mechanism for giving the money. The park will allow this preservation project to take place.

Conclusion

In sum, we look forward to sharing our stories with the many visitors a national historical park will bring in addition to sharing our resources with the National Park Service to assist in creation of the park. Along with many community partners who have worked on this project, the Incorporated County of Los Alamos in conjunction with the Los Alamos Historical Society supports the establishment of the Manhattan Project National Historical Park in order to preserve and teach this important history. We have also briefed the Regional Coalition of LANL Communities and they support our efforts. The park has tremendous support in our community. We believe it will have economic benefit to northern New Mexico. We are heartened to see the Department of Energy willing to work with the Department of Interior and other partners to make this world-changing history accessible. We thank you for your leadership and support.

ATTACHMENT A

Recommendations to the Los Alamos County Council From the Manhattan Project National Historical Park (MPNHP) Ad Hoc Committee 04/02/2008

I. Purpose

In 2004, Congress approved and the President signed legislation directing the NPS to conduct a special resource study to determine the national significance, suitability, and feasibility of designating one or more historic sites of the Manhattan Project for potential inclusion in the National Park System. This park could include non-contiguous sites in Los Alamos, Oak Ridge, Hanford, and Dayton. The NPS held meetings in each of the communities during the spring and summer of 2006 to gather public input.

In August 2007, Los Alamos County Council approved the establishment of an ad hoc committee to help determine what the proposed non-contiguous Manhattan Project National Historical Park might look like in Los Alamos. This committee is comprised of

representatives involved in historic preservation and tourism from throughout the community, including Los Alamos National Laboratory (LANL). After approval by Council, the committee will present its plan to NPS representatives when they come to Los Alamos for a second round of community meetings in 2008.

II. Committee Conduct

The committee began meeting bi-weekly in August 2007 and discussed several ideas, such as what ``attractions'' might be included in a national park and who locally might participate. These ideas were expanded upon and refined over time. A great deal of Manhattan Project history has already been preserved in our community in places such as the Los Alamos Historical Museum, the Bradbury Science Museum, and the Oppenheimer House. The committee members do not believe that the NPS needs to ``reinvent the wheel.''

In October, the committee took a special ``behind the fence'' tour of sites at LANL which may be included in the park, either as part of periodic tours or which may be open to more public access in the future.

On Nov. 6 and 9, the committee held meetings by invitation and word of mouth for potential partners in the park. Approximately 15 people attended the first meeting and 10 attended the second. At both meetings, ad hoc committee members shared their vision for the park site (see III. below) Most of these potential partners were intrigued with the idea of a Manhattan Project National Historical Park within the community and looked forward to getting more information from the NPS.

On November 13, the committee held an advertised public meeting in Fuller Lodge to discuss this vision for the park. Another 15 people attended and added to the committee's ideas.

Based on input from these meetings, the committee has refined its vision and proposes the following:

III. Park Vision

A. Centralized Park Headquarters: At a central Visitor Center, which would include information and interpretation, a Park Ranger would greet visitors, tell them about the National Park and then direct them to other sites in the area where they would be able to see tangible historical sites and objects from the Manhattan Project (Ashley Pond, Lamy Train Station) as well as interpretation and information that is already taking place in the community (LA Historical Museum, Bradbury Science Museum).

B. Tours

a. Guided and Self-Guided: These would include ranger-guided walking tours through the downtown historic district and other sites; driving and walking audio tours; as well as guided tours that would show visitors accessible areas of LANL, historic downtown, the old Main Gate location, and other sites.

b. LANL: With approval and coordination of LANL and the Department of Energy officials, periodic ``Behind the Fence Tours'' to V-Site, Gun Site, and other restored Manhattan Project-era buildings, similar to the tours held at Trinity Site.

C. Partners

Potential partners in this project are those who own, maintain or have some other association (such as tourist services or items) with tangible historical objects or buildings from the Manhattan Project--something that will enhance visitors' experiences and increase their understanding of this time in history. The lists below are not all-inclusive.

D. Potential Themes of Interpretation

1. People/Social History
    a. Scientists and their families
    b. Military
        i. In Los Alamos (SEDs, MPs, etc.)
        ii. In the Pacific, including POWs
    c. Local Pueblo and Hispanic populations whose lives were affected and who were an essential part of the project (stet)

d. Local historical figures such as Edith Warner, Dorothy McKibbin, Evelyn Frey
e. Stories of people affected by the bombings, both American and Japanese
f. Responses to the bomb

2. Science
a. Bradbury Science Museum

3. Impacts
a. Science
b. Northern New Mexico
c. Military
d. International Relations
e. Cold War
f. Environmental/Health
g. Government
i. Civilian control of nuclear resources (AEC, DOE)
ii. The growth of government-run, multi-disciplinary science labs

4. Growth of the town of Los Alamos
5. What happened to people after the war?

E. Potential Visitor Sites

1. Local
a. The Los Alamos Historical Museum
b. The Bradbury Science Museum
c. Oppenheimer House
d. Ashley Pond
e. Ice House Memorial
f. Fuller Lodge
g. Historic Walking Tour of Bathtub Row
h. Periodic ``Behind the Fence'' Tours to V-Site, Gun Site, and other restored Manhattan-era buildings at LANL
i. Unitarian Church (former dorm)
j. Little Theater (former Rec Hall)
k. Christian Science Church (former dorm)
l. Hill Diner (WWII-era building)
m. Main Hill Road/Main Gate area
n. Last Sundt apartment building in Los Alamos (Dentist office on Trinity)
o. Crossroads Bible Church (WWII-era Theater)

2. Nearby
a. Bandelier National Monument
b. Pajarito Mountain Ski Area
c. Valles Caldera
d. Otowi Bridge
e. Sundt apartments in Espanola on Railroad Avenue

3. Santa Fe
a. 109 E. Palace Ave.
b. La Fonda
c. Lamy Train Station
d. Delgado Street Bridge and other spy-related sites

4. Albuquerque
a. Oxnard Air Field (Kirtland AFB)
b. National Atomic Museum

5. Future considerations
a. Sculptures, outdoor art, and other monuments to the Manhattan Project era that are currently under consideration

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Mr. Hastings. Thank you very much, Ms. Berting. I appreciate your testimony and I appreciate all of your testimony. I only have a few questions, and I'll recognize myself first.

Mr. Knox, I mentioned in my opening statement that the bill did pass out of committee, but it failed under the procedural Rule getting two-thirds vote on the House. Part of that was the

debate. I didn't agree with that portion of the debate that was opposed to it; and the portion of the debate I didn't agree with was that this legislation would glorify atomic weapons.

Give me your thoughts on that observation.

Mr. Knox. Yes. The National Park Service from our perspective; we don't see the purpose here at all to be glorifying nuclear weapons. It's about an event--the Manhattan Project--that changed the history of the United States and of the world. And telling that story, and telling all sides of that story, and we do that in the National Park System at other places.

At Manzanar Internment Camp in California we tell the story of the Japanese Internment in World War II. At Andersonville in Georgia, we talk about that POW Camp that existed during the Civil War and the conditions that were there. At the Sand Creek Massacre site in Colorado we talk about the massacre of Indians during the 19th century. Those are not all events that we're entirely proud of as a nation, but they're events we need to learn from, and that's what we try and do from the National Parks, which is tell the whole story.

Mr. Hastings. Well, I appreciate that, because I had a conversation with the member who is no longer here on that. I just respectfully disagreed with his position, but he made his position known; and, as a result, we didn't get the two-thirds vote at that particular time.

I just want to mention Mayor Young pointed out how quickly this came together. To build a nuclear reactor in 11 months is absolutely remarkable. You couldn't do it today; and it was done then because we were in a war effort. And the only mission we have at Hanford right now is to clean up the legacy, and we are in defense production in Hanford until the late 1980s.

But just to give you an idea of the complexity of building nuclear weapons and the process that goes in there, a lot of the waste, a majority of the waste, I should say, in developing these nuclear weapons, is stored now in Hanford in underground tanks. And you might have heard some of the tanks have leaked. We've known that, going back for some 30 years. But because they're underground, people have a hard time quantifying how much we're really talking about. And there's 53 million gallons of hazardous/radioactive waste that's stored underground at Hanford.

To put it in a context that we all understand, if you were to put those 53 million gallons in a facility here that we all know about, like the House chamber, it would make up over 20 House chambers. That's how much 53 million gallons is, and that's the legacy there that we need to clean up, and that's why Yucca Mountain is so important in this whole process, and that's why WIPP is important in New Mexico for this whole process.

But over 20 House chambers of radioactive/nuclear waste is what is stored underground next to the Columbia River in my State of Washington. And that's why the clean-up of this is so important. But the legacy--let's not lose site of the legacy. The legacy was we didn't know if we were going to win that war. We thought that Nazi Germany was ahead of us, and we had to move as quickly as we possibly could in order to achieve what we did do. And, by the way, we won the Second World War and we won the cold war, largely, because of the efforts of these communities.

At this time I recognize the distinguished Ranking Member of the Committee, Mr. Grijalva.

Mr. Grijalva. Thank you very much, Mr. Chairman, and you asked the question that I was going to ask about the discussion last time and the debate last time over the glorification issue and the impact of what this program and what this designation

meant. And I appreciate the answers that were just given to us.

I thought I got caught up in that debate at a late moment when people weren't able to react to it and that it was also this legislation was caught up in a debate unrelated on another item unrelated to this issue. And I appreciate these answers about what the interpretation is and what it has been for the Park Service and all of its sites.

Ms. Berting, if I may, last Congress, the New Mexico Historical Society, expressed concerns with language in the legislation and I have heard it from other witnesses: preventing the Park Service from using Federal funds for acquisition of additional property. This was particularly a concern around Los Alamos. Is that concern still a valid one with the society as far as you can relate to us?

Ms. Berting. I haven't heard that particular argument, as a matter of fact. There were other concerns about whether the land to be acquired had permission from the landowner and that sort of thing. So I do think there is concern having to do with Federal dollars, particularly at this point, but that has not been raised as an issue against the park to my knowledge.

Mr. Grijalva. OK. I appreciate that.

Mayor Young, the Chairman began with the point you made about the storage of the nuclear waste. I think the article that appeared in the New York Times pointing out potential problems and consequences that resulted in those problems, and some of those consequences they pointed out were dire to say the least, at least in that article.

Do we need to be concerned that the safety issues that are being talked about by that advisory committee on the waste treatment plant could impact visitors to the B Reactor?

Mr. Young. Yes. That is an excellent question and it is a simple answer of no. We monitor those tanks daily by the hour; we know where the leaks are. We know where it is progressing. All of these tanks are underground. There is no impact to the air at all, and the travel between B Reactor and the old city site and Bruggemann Warehouse is all way outside of those tank farms. So there would be no threat to the public.

In fact, we have had the public traveling in and out of there viewing these marvelous sites for quite some time now; but, no. We test the air daily. We know exactly what's out there and we have had no problems.

Mr. Grijalva. Excuse me. You are talking specifically about the waste treatment plant. Correct?

Mr. Young. Yes, the waste treatment plant. Yes, absolutely; so, we again, the National Park area itself would be quite a distance from the tank farms and it would also be a safe traveled area.

Mr. Grijalva. Thank you very much. Mr. Chairman, I have no other questions other than a disagreement with your analogy example of taking all those barrels of waste, and it would be like 20 times the size of the House chamber, given, on occasion, the already radioactive quality to that chamber.

[Laughter.]

Mr. Grijalva. It might be creating some other situation that I wouldn't want to deal with, but with that I yield back.

Mr. Hastings. Will the Chairman yield to me before?

Mr. Grijalva. Absolutely.

Mr. Hastings. Well, I would just say that perhaps there is some radioactivity on some sides of the House chamber and not on others, but I won't go into that detail.

[Laughter.]

Mr. Hastings. The gentleman's point is well taken.

Mr. Grijalva. Thank you, sir.

Mr. Hastings. The Chair recognizes the gentleman from California, Mr. LaMalfa.

Mr. LaMalfa. Thank you, Mr. Chairman, and thanks for allowing me to have a moment here; just a couple sentiments here. First, I thank the Chairman for finding this a creative way to make a good thing happen, and a good thing to acknowledge in our history. Not all of our parks get to acknowledge and remember good things in our past. This could be seen as a mixed bag in how our country came together in order to find a way to solve the war at that time.

Again, that could be taken in a lot of ways, but it was certainly the country coming together doing a pretty amazing thing in that project. And so the Chairman's method here of something that would actually cost us a lot more to recover instead of making this an example of something that people can see as a tourist attraction and a learning experience.

I read a lot about the Manhattan Project as a junior high kid when I read a lot about World War II as well, so I think it can be a great experience for us to know and understand, and something to think about in the future of why we don't want to use these in future conflicts. But I also appreciate Mayor Young's comment on the red lights here. I hate them in traffic, if you ever try and drive through this town or home. But they're the only way we can get anything done in this place, thankfully, especially when we are talking about member conversations.

But I think this is a great measure here to have this bit of tourism and taking this asset, and have it be an asset instead of actually bear cost on recovery of what it would take to do the clean-up side, the recovery side. So I support what you're trying to do and appreciate your efforts, Mr. Chairman. So thank you. Thank you all for coming way out here and I appreciate you all doing this. Thank you.

Mr. Hastings. The gentleman yields back. The gentleman from Northern Marianas, Mr. Sablan.

Mr. Sablan. Well, thank you very much, Mr. Chairman, and good morning everyone.

Mr. Chairman, I know how much effort you have given to H.R. 1208, and I am sure we all recognize the historical significance of the Manhattan Project and the importance of protecting events associated with the development of the bomb. And so I fully support the bill, but the story of the atomic bomb will not be complete.

In fact, the bomb would never have ended World War II in the Pacific without the contribution of those areas of our country where delivery was perfected and from where the bombs were launched against Japan. I am speaking of Wendover Air Force Base in Yucca, where Col. Paul Tibbets was school trained in the B29 super fortresses for their historic flights. And I am speaking of the air fields in the Northern Mariana Islands and final assembly where arming of this weapon took place. From here, the Enola Gay took off carrying the weapon that was dropped on Hiroshima, and later box car carrying the bomb to Nagasaki.

Without the work that went on at this site in Utah and Northern Mariana Islands, all of the work on the Manhattan Project in Tennessee, New Mexico and Washington would not have had its intended effect. So I would simply like to note for the record, Mr. Chairman, that this Committee should at some point in the future recognize these additional sites and consider their addition to the Manhattan Project National Historical Park that the Chairman's bill is establishing, of which, again, I fully support.

I thank you very much, Mr. Chairman, for all of your effort on H.R. 1208.

Mr. Hastings. Would the gentleman yield?

Mr. Sablan. I yield to the Chair.

Mr. Hastings. I certainly concur with that, because the effort to win the Second World War, obviously, was not confined to just these three areas, but the concentration of that. Boy! You could make the case in a variety of ways that helped that war effort.

I think the key point is, and I certainly concur, is we should not lose sight of the history that has brought us where we are today. And I think that is what the gentleman's point is and I certainly concur with that.

Mr. Sablan. Thank you, Mr. Chairman. Actually, we should compute the history. And, God forbid that we ever have to--no one ever has to use this weapon again upon anybody. But thank you very much for your efforts, sir. I support, fully support H.R. 1208.

Mr. Hastings. I thank the gentleman for yielding, and the Chair recognizes the gentleman from California, Mr. McClintock.

Mr. McClintock. Well, I thank you. I just wanted to add that although hundreds of thousands of Japanese were killed by the deployment of these bombs, millions of Japanese and at least hundreds of thousands of American lives were saved by the deployment of these bombs.

My father was a member of the 88th Infantry Division. He arrived in Italy in the spring of 1945. The 88th Infantry Division was to be part of the invasion of Japan with horrendous casualties projected on both sides. It was the deployment of the bomb because of the work that was carried out at these facilities, that invasion never had to take place. Those lives were saved and that's a very important part of the story that we should never forget.

Mr. Hastings. I thank the gentleman. Is there any other questions for the panel?

I am going to be parochial here for a minute, because I saw some people came into the hearing room a little bit late; namely, my wife, my daughter and my three granddaughters are here. So if you would stand up, I would appreciate that, just to be recognized, they are here visiting. So thank you.

[Applause.]

Mr. Hastings. If there is no further business to come before the Committee, the Committee stands adjourned.

[Whereupon, at 10:46 a.m., the Subcommittee was adjourned.]

[Additional Materials Submitted for the Record]

Clarification for the Record by Fran Berting

April 18, 2013.

The Honorable Rob Bishop,
U.S. House of Representatives,
Washington, DC 20515.
The Honorable Raul Grijalva,
U.S. House of Representatives,
Washington, DC 20515.

Dear Chairman Bishop and Ranking Member Grijalva,

Thank you for the opportunity to testify last week on H.R. 1208, a bill to establish the Manhattan Project National Park in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Hanford, Washington, and for other purposes. I would like to take this opportunity to clarify my answer to a question from Ranking Member Grijalva regarding using Federal funds for acquisition of additional property. The question from Ranking Member Grijalva was:

``Ms. Berting, last Congress the [Los Alamos] Historical Society expressed concerns with the language in this legislation, and I've heard it from other witnesses, preventing the park service from using Federal funds for acquisition of additional property. This is

particularly of concern around Los Alamos. Is that concern still a valid one with the Society?''

The position of the Los Alamos County and the Los Alamos Historical Society is that because of geography and history, the layout of Los Alamos is slightly different than the other Manhattan Project communities. The historic downtown, where the scientists lived, is several miles away from the remaining WWII sites at the laboratory, many of which are still behind the fence. Based on public meetings and a significant amount of local input, we know the community desires to have a park visitor's center located in or near the historic downtown. The National Park Service has also recommended a centralized visitors center in Los Alamos. The property in the downtown is privately owned and valuable, making a donation of such property to the park service difficult. Los Alamos County and the Los Alamos Historical Society would like the Park Service to have the option to be able to obtain property through purchase in order to achieve the ideal of a downtown park visitor's center.

I would like to have this information added to the Subcommittee hearing record. Thank you again for the opportunity to testify on this important bill. I look forward to working with you and your committee to get a park established in Los Alamos, Oak Ridge and Hanford. Please contact me or Harry Burgess, County Administrator, with any additional questions.

Sincerely,

Fran Berting,

Councilor, Incorporated County of Los Alamos.

EXHIBIT H

TESTIMONY BY

STEVE C. YOUNG, MAYOR, CITY OF KENNEWICK

TO THE

DEFENSE NUCLEAR FACILITIES SAFETY BOARD (DNSFB)

SAFETY CULTURE AT THE WASTE TREATMENT PLANT (WTP)

August 26, 2015

As the Vice Chairman of the Energy Communities Alliance (ECA), Vice Chairman of the Hanford Communities and more importantly the Mayor of the City of Kennewick located just 17 miles from the Hanford Site I want to thank the members of the DNFSB for the opportunity to testify this evening regarding the safety culture at the Waste Treatment Plant. The issue of safety at the WTP is of the utmost importance to the citizens of the city of Kennewick as well as the three other cities and two counties that make up the primary population affected by the work performed at the Hanford Site. As an elected official I think it is important to understand that we see ourselves, the citizens, as the customer of the cleanup mission at Hanford. We stand to have the greatest loss if safety is ever compromised. Unsafe conditions effect our constituents, our agricultural crops, tourism, and our workers. Therefore, the four cities and two counties are dramatically affected by all of DOE's cleanup operations at Hanford.

These affects can be and are clearly mitigated by stability and we need and expect stability in the WTP work planning, stability in the WTP workforce, stability in contracting at all levels and stability in both DOE and prime contractor leadership. As a community leader, I have had the unique opportunity to closely observe both the Office of River Protection (ORP) and Bechtel National, Inc. (BNI) and can say that they have made major improvements in many areas, including professionalism, work relationships, work planning, communication with the workforce, and most importantly, communication with the communities. All of which has led and continues to lead to a more stable and confident community where workers, their families and companies want to remain long after this site has been cleaned up and new industry has emerged.

From my observations, things have really changed over the past 2 years. Concerned employees and/or whistle blowers have pretty much disappeared. What we see now are legacy cases from the past now making the news as they are brought to closure. ORP and BNI appear to see a common purpose, holding events like the Grand Challenge competitions to encourage creative ideas for improving safety and efficiency throughout the project. Both ORP and BNI leadership have embraced and rewarded employees for identifying safety issues and in fact go so far as to encourage the identification of such issues. This is

the kind of safety culture behavior and attitude we need to get the WTP completed, operating and the waste tanks emptied, closed and put to bed once and for all.

We as a community have waited a long time for this positive safety culture at the WTP. As a Mayor, I have waited a long time not to receive those late evening or weekend calls by frustrated and frightened workers who believe that nobody was watching out for their best interest. From the employees, workers, and family members within the community that I come in contact with, they universally tell me that ORP, BNI and WRPS have the right leadership and the culture is dramatically better and headed in a very good direction. I implore you as a customer and representing the more than 75,000 customers that live within the city of Kennewick to keep this culture moving forward, to ensure the protection of the workforce and to encourage efficiencies in the planning, construction and operation of the WTP.

Thank you for your time.

EXHIBIT I

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

COURT ADMINISTRATOR
PATRICIA J. AUSTIN

ADMINISTRATIVE ASSISTANT
TIFFANY DEATON

BENTON COUNTY JUSTICE CENTER
FRANKLIN COUNTY COURTHOUSE
TELEPHONE (509) 736-3071
FAX (509) 736-3057

September 14, 2018

Re: Ballot Synopsis
Case No. 18-2-02084-03

Greetings,

Please find enclosed a true and correct certified copy of the Ballot Synopsis from the hearing held on August 31, 2018 by Judge Spanner.

A true and correct certified copy will be mailed (certified mail/return receipt requested) on this date to all the parties and attorneys of record for Case No. 18-2-02084-03, as well as Brenda Chilton, Benton County Auditor.

Sincerely,

Patricia Austin

Patricia Austin
Court Administrator

18-2-02084-03

JOSIE DELVIN
BENTON COUNTY CLERK
AUG 31 2018
FILED

BALLOT SYNOPSIS

OF RECALL CHARGES AGAINST STEVE YOUNG,

KENNEWICK CITY COUNCIL MEMBER, POSITION 7, AT LARGE

The charge that Steve Young, Kennewick City Council Member, Position 7, At Large, committed misfeasance and/or malfeasance alleges that he violated the Washington Fair Campaign Practices Act by forwarding an email that can be interpreted as soliciting from a City of Kennewick employee a contribution on behalf of Dan Newhouse.

Should Steve Young be recalled from office based on this charge?

EXHIBIT J

-----Original Message-----
From: Robert Thompson <rjt@RobertJThompsonLawOffice.com>
To: desertgemstudio@aol.com <desertgemstudio@aol.com>; wadejim75@gmail.com <wadejim75@gmail.com>; bigbobmcclary@gmail.com <bigbobmcclary@gmail.com>; ctambur111@hotmail.com <ctambur111@hotmail.com>
Cc: Robert Thompson <rjt@RobertJThompsonLawOffice.com>; 'Kevin Holt (holt.kevin.L@gmail.com)' <holt.kevin.L@gmail.com>; angela brabant <kholtlawoffice@gmail.com>
Sent: Mon, Nov 5, 2018 12:27 pm
Subject: Notice of Appeal and Certificate of Service

Please find attached the Notice of Appeal that was filed on November 1st as well as a Certificate of Service that will be filed today with the court, November 5th.

Thank you,

Robert J. Thompson, PS
504 W. Margaret St.
Pasco, WA 99301
Phone: (509) 547-4011 Fax: (509) 547-0076
Email: rjt@robertjthompsonlawoffice.com

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

IN RE THE MATTER OF: THE RECALL OF STEVE YOUNG	CASE NO. 18-2-02084-03 CERTIFICATE OF SERVICE

I CERTIFY under penalty of perjury under the laws of the State of Washington that I am a citizen of the United States and of the State of Washington, over the age of 18 years.

That on this day, I electronically mailed true and correct copies of the NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF WASHINGTON; and this CERTIFICATE OF SERVICE, directed to the following:

1) James E. Wade – Email: wadejim75@gmail.com
2) Vincent C. Rundhaug
   Via US Postal Service, a stamped and addressed envelope, affixed with the correct amount of postage to 911 W. Entiat Ave, Kennewick, WA. 99336 and for purposes of expedited delivery via email to desertgemstudio@aol.com
3) Robert McClary – Email: bigbobmclary@gmail.com
4) Charles Tamborello – Email: ctambur111@hotmail.com

ROBERT J. THOMPSON, PS
504 W. MARGARET ST.
PASCO, WA. 99301
PH: 509 547 4011 F: 509 547-0076
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DATED this 5th day of November, 2018.

By:
Robert Thompson, WSBA #13003

ROBERT J. THOMPSON, PS
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EXHIBIT K

MOTIONS THAT MAY BE FILED

1. Motion to allow late notice of appeal/ discretionary review
2. Motion to consolidate
3. Motion to determine appealability
   (a) guilty plea/standard range sentence
   (b) no final order
   (c) CR 54 (no findings of no just reason for delay)
4. Motion for abandonment for failure to pay filing fee or order of indigency
5. Motion for abandonment for no service
6, Motion to dismiss or withdraw appeal
7. Motion for extension
8. Motion to waive sanction
9. Notice to substitute counsel or party
10. Motion to accelerate review (general)
11. Motion to stay (trial court/court of appeals)
12. Motion to allow out-of-state counsel to appear on appeal
13. Motion to take additional evidence (RAP 9.11)
14. Motion to review bail/supersedeas decision
15. Motion to stay
16. Clerk's motion for sanctions and ruling

1. Motion to strike brief
2. Motion to amend brief
3. Motion to supplement (RP)
4. Invoice from counsel
5. motion for accelerated review - Juvenile/adult (sentencing)
6. Motion on the merits to affirm
7. Motion on the merits to reverse
8. Motion to withdraw (RAP 18.3(a)(2), (3), & (4))
9. Motion to continue argument

1. Motion for attorney's fees
2. Motion to modify
3. Motion to reconsider
4. Motion to recall mandate

NOT. OF DISCRETIONARY REVIEW
Filing Fee/Order of Ind.
Affidavit of Service

15 Days
RAP 6.2(b)

Motion for Discretionary Review

If Granted

If Denied

Cert. Of Finality

NOTICE OF APPEAL
Filing Fee/Order of Ind.
Affidavit of Service

Perfection Notice

30 Days
RAP 9.6(a)

DESIGNATION OF CLERKS PAPERS

30 Days
RAP 9.2(a)

STATEMENT OF ARRANGEMENTS

60 Days
RAP 9.5(a)

If VRP | No VRP

RAP 9.2(a)

VERBATIM RPT (VP)
NARRATIVE RPT (NRP)
AGREED RPT (ARP)

CIVIL CASES

45 Days
RAP 10.2(a)

App's Opening Brief
Affidavit of Service

30 Days
RAP 10.2(b)

Respondent's Brief
Affidavit of Service

30 Days
RAP 10.2(d)

App's Reply Brief
Affidavit of Service

CRIMINAL CASES

45 days
RAP 10.2(a)

Motion to Withdraw

App's Opening Brief
Affidavit of Service

30 Days
RAP 10.1(d)

Notice & RP Sent to Defendant

If Yes | If No

30 Days
RAP 10.10(d)

Statement of Additional Grounds

30 Days

Resp's Reply Brief (If directed)
Affidavit of Service

60 Days
RAP 10.2(c)

Respondent's Brief
Affidavit of Service

30 Days
RAP 10.2(D)

App's Reply Brief
Affidavit of Service

Oral Argument
Additional Authorities

OPINION/RULING

20 Days
RAP 12.4(b)

30 Days
RAP 13.4(a)

30 Days
RAP 13.4(a)

30 Days
RAP 12.5(b)(1)

10 Days
RAP 14.4(a)

Motion to Reconsider

Petition for Review
(PRV)

MANDATE

Cost Bill

30 Days
RAP 12.5(b)(2)

EXHIBIT L

From:	Records Request Center (Kennewick, WA)
To:	Lenk.Roger@Gmail.com
Subject:	Public Records Request - PRR :: C000392-102418
Date:	Thursday, November 15, 2018 10:24:10 AM

--- Please respond above this line ---

Roger Lenk
1817 N. Road 76
Pasco WA 99301

RE: PUBLIC RECORDS REQUEST C000392-102418

Dear Mr. Lenk:

The City has completed its search for records responsive to your public records request concerning " . . . a transcript of the October 18, 2018 11:00 am Hearing before Judge Spanner. "

A total of 24 pages have been scanned at a cost of $.10 each. Therefore, the total amount due is $2.40.

Your payment may be made:

- In person (by cash, credit, check) at City Hall's Customer Service Counter (Monday - Friday 8:30 - 4:30). Please note that City Hall is closed for all Federal Holidays.
- Via mail (by check) at City of Kennewick |ATTN: Krystal Roe, Public Records Officer |PO Box 6108 |Kennewick, WA 99338

Once payment has been received your records will be released to you according to your preference provided to you within three business days.
Your request will remain open pending your payment through December 15, 2018. Without your action the request will be automatically closed as abandoned. Please keep in mind records are subject to the state retention schedule and may be not be available in the future should you abandon this request.

Please know I'm happy to assist to you with any questions or concerns you may have and can be reached at 509-585-4578 or by your direct response to this message. My office hours are Monday - Thursday between 7:30 a.m. and 12:30 p.m.

Kind regards,

Krystal Roe
Public Records Officer

NOTE:
Please be sure to review our public records policy *(via this link)* which contains important information about how the City administers public records requests, the rights of requestors, and the obligations of each party.

To monitor the progress or update this request please log into the Public Records

Center.

COPY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF BENTON

3 DEPARTMENT E HON. BRUCE A. SPANNER, JUDGE

4

5 IN RE THE MATTER OF:)
) NO. 18-2-02084-03
6 THE RECALL OF STEVE YOUNG,)
KENNEWICK CITY COUNCIL MEMBER,)
7)
)
8

9 Kennewick, Washington Thursday October 18, 2018

10

11

12 TRANSCRIPT OF THE VERBATIM

13 REPORT OF PROCEEDINGS

14

15

16 APPEARANCES:

17 For the Petitioners: VINCENT C. RUNHAUG
Private Individual
18

19 For Steve Young: ROBERT J. THOMPSON
Attorney at Law
20 504 W. Margaret Street
Pasco, WA 99301
21

22 KEVIN LEE HOLT
Attorney at LaW
23 7014 W. Okanogan Place
Kennewick, WA 99336
24

25 Reported by: RENEE L. MUNOZ, CCR, RPR, CRR, CRC

1 Thursday, October 18, 2018, at 11:00 a.m.
2 Kennewick, Washington
3
4 THE COURT: All right, good morning.
5 MR. HOLT: Good morning, your Honor.
6 THE COURT: Calling In Re: The matter of The
7 Recall of Steve Young.
8 MR. HOLT: Your Honor, I don't know if it's my
9 hearing, but I can't hear a word you're saying.
10 THE COURT: We have new microphones that have
11 not yet been tuned.
12 Is that better?
13 MR. HOLT: Not much. A little bit.
14 THE COURT: Yes. It's on. I'll speak up a
15 little bit. The problem is I turn up my hearing aids
16 which then causes my voice to lower.
17 All right. We're here ostensibly to enter the order
18 of determination of sufficiency adoption of ballot
19 synopsis and certification of transmittal.
20 I think Mr. Thompson has filed a couple more
21 motions. One is to challenge the constitutionality of
22 RCW 42.17A.565 and to request an evidentiary hearing on
23 that, and then there's also a motion for sanctions and
24 then there's the issue of whether or not this order of
25 determination should be backdated to -- it was August

1 31st was the date we heard the motion.

2 How do you wish to proceed?

3 MR. THOMPSON: Well, your Honor, I don't think

4 anybody disputes the entry of the ballot order as of

5 today. Obviously, that leads to the other question: Is

6 today the proper date? I think both sides have their

7 position on that.

8 It is kind of an interesting issue. Having had an

9 opportunity to review the petitioner's response that

10 might throw shade on a couple different things, but we

11 could get in a situation where you have a conflict of

12 laws or, I guess could you say, there's a difference

13 between what the legislature says versus how the courts

14 work.

15 You may have some familiarity with how the executive

16 branch works with legislation, but the statute reads 15

17 days. Well, it says do it as quickly as possible.

18 There's time limits, but then again, there's the judicial

19 process. It's really not -- Mr. Holt wrote that motion.

20 I don't want to go on, but I think that needs to be

21 resolved: entering the order, do we backdate it or do we

22 do it today, and I'll let Mr. Holt argue that.

23 The other issue is, and it's really kind of a quick

24 one, your Honor, and I don't want to spend -- petitioners

25 haven't responded to the constitutional aspect of this.

1 I don't know because I haven't received any documentation
2 whether they -- I'm sure they do not concede that, but
3 they haven't filed anything that I'm aware of.
4 So, I guess, the first question is did the
5 petitioners file a response to the constitutional
6 argument?
7 MR. RUNDHAUG: I guess my question would be I
8 don't -- well, it wouldn't be a question. It would be I
9 don't know if we filed one or not. I -- is this
10 regarding RCW --
11 MR. THOMPSON: Yeah, 42 --
12 MR. RUNDHAUG: -- 42 --
13 MR. THOMPSON: -- 17A.565.
14 THE COURT: Hold on. Hold on. You have to
15 direct your comments to the Court rather than each other.
16 MR. THOMPSON: Yes, your Honor
17 MR. RUNDHAUG: I'm sorry.
18 THE COURT: I haven't found in the file, and I
19 haven't been provided with any response from the
20 petitioners.
21 MR. RUNDHAUG: Okay, and that could be a mistake
22 on our part, and I would apologize for that.
23 THE COURT: You did file a response to the
24 request for sanctions.
25 MR. RUNDHAUG: Yes, sir.

1 THE COURT: I read that.

2 MR. RUNDHAUG: Yes, your Honor.

3 THE COURT: All right. So, Mr. Thompson, it

4 sounds like what you want to do first is take up this

5 constitutional challenge?

6 MR. THOMPSON: Yeah.

7 It's -- I raised this, your Honor, because this is,

8 believe it or not, becoming a bigger issue than you might

9 think. Washington legislature adopted 42.17A.565. They

10 had well in mind what they believe an impetus to stop

11 corruption, and everybody, I think, agrees with that, but

12 as you apply it to certain fact patterns is where we come

13 into issues with the First Amendment.

14 It was just yesterday that the District Court in

15 Atlanta, Georgia in Cochran versus City of Atlanta agreed

16 with the City had passed an ordinance in regards to not

17 being -- saying a politically incorrect thing. A fire

18 chief on his own time had written a religious document

19 that, I guess, it would -- the best way to say it was

20 against gay marriage for lack of a better way of saying

21 it.

22 As a result of him writing that on his own time the

23 City of Atlanta fired him. That issue went on for about

24 three years and finally got resolved with a judgment of

25 1.2 million dollars against Atlanta for violating his

1 First Amendment rights.

2 The fact pattern is very unique in this situation.

3 The reason why I asked for the evidentiary hearing, and

4 it's a pretty limited evidentiary hearing, your Honor --

5 because obviously the petitioners have a right to respond

6 and they haven't -- but all I'm interested in is, as the

7 Court is aware, under the recall petition as it addressed

8 you're not necessarily supposed to consider new evidence,

9 correct?

10 I mean, that's what the law suggests, but you are

11 actually using a portion of the law that we think

12 violates Mr. Young's First Amendment rights, and as a

13 result of that I think that an evidentiary hearing is

14 necessary. The only documents are actually already in

15 the Court's file. Mr. Young had a declaration,

16 Ms. Mosley had a declaration, and petitioners filed the

17 PDC claim where Mr. Young paid the $600.00 and it was

18 noted by the PDC.

19 Those are the only evidence that I think is

20 necessary to preserve my motion, and that's the reason

21 why I made that request. I think that sometimes we get

22 to a place where --

23 THE COURT: I was with you, and then all of a

24 sudden I lost you.

25 You want to supplement the record with respect to

1 the outcome of the PDC complaint?

2 MR. THOMPSON: No.

3 THE COURT: Is that all the evidence you want to

4 offer?

5 MR. THOMPSON: No.

6 At this point, your Honor, I think those three are

7 crucial because again, as we apply this statute as

8 applied to the facts in this particular case, I think

9 it's incumbent on the Court to get the facts of the case

10 because if it gets reviewed on a higher level I think

11 it's incumbent because, again, the question under

12 42.17A.565 is to prevent corruption, right? Undue

13 influence based on political favors.

14 I think the Court needs to create a record on that

15 so a higher court could take a look at whether applying

16 this statute is unconstitutional. The position of

17 Mr. Young is that it is, in fact, unconstitutional

18 because it violates his First Amendment rights.

19 THE COURT: All right. In your brief you stated

20 it a little bit differently, which was under the Citizens

21 United case you assert that,

22 "There must be a present quid pro

23 quo corruption to trump free speech."

24 MR. THOMPSON: That's correct, your Honor.

25 THE COURT: And then went on to indicate that,

1 "Such quid pro quo corruption is
2 the only permissible government reason to
3 justify the regulations that would
4 contravene the First Amendment."
5 I was reading from pages two and three of your
6 brief.
7 Is that what you're stating here today?
8 MR. THOMPSON: That is, your Honor.
9 THE COURT: Okay. Response?
10 MR. RUNDHAUG: Your Honor, yeah, I did have a
11 note regarding this RCW 42.17. Perhaps this is the
12 reason why we didn't have a response was that Mr. Young
13 has no charges pending before him which would result in a
14 conviction in Superior Court. It's my understanding or
15 our understanding an evidentiary hearing is usually a
16 criminal law matter. In this case it's a recall.
17 THE COURT: Okay.
18 Do you want to respond to that, Mr. Thompson?
19 MR. THOMPSON: Well, we take evidentiary
20 hearings all the time in regards to discovery issues,
21 things like that. So, I think the petitioners' arguments
22 are misplaced in regard to that.
23 In my review, cases I cited, evidentiary hearings
24 were, in fact, done by the court to make a determination
25 on whether or not the statute did, in fact, violate an

1 individual's constitutional rights. Not all rights are
2 the same.
3 I've given the Court a couple cases, and then I
4 cited one here a moment ago that I have a copy of that
5 just came out of Georgia with regard to First Amendment.
6 There are other rights, due process rights that can be
7 involved. We aren't raising due process considerations,
8 your Honor. Just First Amendment freedom of speech.
9 THE COURT: Okay. I did some research on this,
10 and I don't believe the Georgia case has any
11 applicability. There's well-developed law relating to
12 the federal Hatch Act, which sets limitations on
13 participation in the political process by federal
14 governmental employees, and many states, including
15 Washington, have adopted similar statutes.
16 I disagree with your reading of Citizens United that
17 you say it stands for the proposition that there has to
18 be a "quid pro quo corruption to trump free speech under
19 the First Amendment". As I read Citizens United rather,
20 the government in that case asserted that the statute at
21 issue should be upheld because of the possibility of quid
22 pro quo corruption.
23 The Supreme Court rejected that proposition as a
24 matter of law not as a matter of fact because the facts
25 were so different in Citizens United. The plaintiff had

1 created a documentary that was critical of Hillary
2 Clinton and then they wanted to offer it to the public
3 within a specified period of time before an election, and
4 this federal statute appeared to prohibit that so they
5 sued for declaratory action.
6 So, it's a long way of saying that that case does
7 not support your proposition that there's a factual issue
8 in this case regarding quid pro quo corruption. The
9 suggestion that Citizens United stands for the
10 proposition that the only basis upon which the government
11 may regulate freedom of speech I don't agree with that
12 either.
13 I reviewed a number of ad Hatch cases. For example,
14 provisions similar to this one can be upheld on other
15 grounds, namely the prohibition of elected officials
16 exerting undue influence upon their subordinates within
17 the context of political campaigns.
18 So, I'm going to deny your request for an
19 evidentiary hearing. I just simply don't believe it's
20 necessary, which then, I think, brings me -- I think I'm
21 prepared then -- no, I'm not prepared yet to sign the
22 order of determination because we have the issue of
23 whether or not it should be backdated or, in other words,
24 should be an order of nunc pro tunc.
25 Mr. Holt, I understand you're gonna take that issue?

1 MR. HOLT: Yes, your Honor.

2 Your Honor, the situation is that in order for
3 anything to be final in a court there has to be an order
4 by the judge, and I supplied some briefing. I found this
5 very interesting. That the overall ruling is that
6 lawyers often talk and judges speak and all of that takes
7 place in court but none of that's appealable until there
8 is a final written order, and I cited some case law
9 specifically addressing that.

10 There's one here where they re quoted the Nebraska I
11 believe it was or maybe I just have Nebraska on the mind.
12 No, Michigan. Michigan rules are well established, the
13 courts speak through their judgments and decrees not
14 their oral statements or written opinions.

15 Generally, judgment or order to reduce is reduced to
16 writing as was contemplated, and then in this case until
17 reduced to writing and signed the judgment did not become
18 effective and the parties remained married. It was a
19 marriage case they were talking about.

20 "Judgment is a final consideration
21 and determination of a court of competent
22 jurisdiction upon the matters submitted.
23 Until a judgment is signed by the judge he
24 may change his mind."

25 There's other case law that I supported with it.

1 So, the bottom line is that although we had a hearing on
2 August 31st, it was still not final. Once it becomes
3 final it's final with that signing by you, which is what
4 we're supposed to do.
5 Now, we run into a difficulty here because
6 petitioners pretend or actually do not know the rules and
7 they want to take advantage of that. The situation is,
8 is that as the prevailing party you have responsibilities
9 placed upon you. It's your responsibility as prevailing
10 party to prepare those findings of facts conclusions of
11 law, and although either party can set a hearing date
12 it's also really your responsibility to set that date for
13 entry of those orders.
14 THE COURT: The "your" in that sentence is
15 referring to the Court?
16 MR. HOLT: The Court's orders. For the Court to
17 enter its order there has to be a date set for the entry
18 of that.
19 THE COURT: And whose responsibility is that?
20 MR. HOLT: It's the prevailing party's
21 responsibility.
22 THE COURT: Okay.
23 MR. HOLT: They want to shirk that off and say,
24 "Well, we didn't know about it. We didn't have any
25 responsibility, and we couldn't do it anyway because we

1 didn't have the transcript from Ms. Munoz and we decided
2 to exercise caution and not impose the costs of a
3 transcript because we're gonna wait until we could get it
4 free through public disclosure."
5 That's kind of the problem with that, your Honor.
6 Her transcript and her work product is never gonna be
7 free. It's not gonna be part of public disclosure. If
8 they want to review it to prepare their findings of facts
9 conclusions of law they have to follow the rules, and
10 they have to purchase it. You know, it's a product that
11 she has a proprietary interest in, and we do not have an
12 obligation to send them over a free copy.
13 So, they want to blame us for not getting a free
14 copy to them in order for them to set a hearing in order
15 to make their judgment and sentence, and since we can't
16 do that they want us now to go back in time to say,
17 "Well, let's declare the August 31st oral decision by the
18 Court the hearing and the ruling and let's give it a
19 date."
20 Now, that is a little more interesting, your Honor,
21 because you have the absolute ability for two separate
22 sections, both under common law as I quoted and under
23 statutory law in certain situations, to nunc pro tunc an
24 order.
25 To nunc pro tunc the order though, your Honor, all

1 of the rules are is that it has to be in order to prevent
2 an improper ruling. It has to be to correct a mistake.
3 It has to be to set the record straight.
4 Most of the case law I found dealt with one of two
5 major areas, either divorces where there was a divorce
6 and somebody got married before the divorce had been
7 signed by the judge or there was a death and they were
8 trying to figure out whether or not the estate should go
9 to A or B so they nunc pro tunced it back to when it
10 should have been done.
11 That is also a statutory proviso that gives you the
12 right to do that. They pointed out no statutory right
13 here to go back and nunc pro tunc this.
14 So, you have to ask yourself was there a mistake
15 that can be cured by going back and postdating this to
16 the 31st of August? The answer is their negligence or
17 inaction doesn't create a situation where you get to go
18 back and postdate it.
19 You know, it still requires that you have to do a
20 written order, and that's also necessary from the rights
21 of both parties to perfect an appeal because the Court of
22 Appeals will not take an appeal unless there's a final
23 order and that final order's in writing. So, there's no
24 way we could have moved forward without a written
25 document.

1 So, now to go back and say, "Well, let's postdate it
2 back to August 31st," what they're really asking you to
3 do, your Honor, is rule this is over. No appeal. They
4 do not have a right to appeal. It goes back to August
5 31st. Their time for appeal has expired, and let's go
6 forward and get this thing done."
7 That's just not the way we work. It's not the court
8 procedures. We kind of have two things goin' on here, I
9 guess. We have a little bit of a legislative idea as
10 being executed through the petition, but we also have the
11 judicial branch which has its own rules and regulations
12 and guidelines, and it's rules are written order to
13 perfect an appeal from or be appealed from, and the Court
14 can only nunc pro tunc things when it is in the interests
15 of justice, to correct a mistake or an inadvertent
16 action.
17 That's not the case here, your Honor.
18 THE COURT: All right, thank you.
19 Go ahead.
20 MR. RUNDHAUG: Yes, your Honor.
21 It's our understanding that once the petition has
22 been introduced that the time lines are generally taken
23 over by the Court and the prosecuting attorney's office,
24 and that has been our understanding. Whether it's
25 factual or not that's basically where we've been coming

1 from on this.

2 THE COURT: Any response on that?

3 MR. HOLT: Just briefly, your Honor.

4 In their response to sanctions they mention several

5 people who are responsible for their inactions. The

6 prosecuting attorney's office owed them filing their

7 findings of fact and conclusions of law, which isn't

8 true, and that the court reporter owed them a free

9 transcript, and that because of all these things they

10 should be entitled to have a date back to the 31st of

11 August.

12 That's not the case here, your Honor. We allowed

13 them to proceed pro se because they asserted that they

14 were capable of proceeding pro se. That means that they

15 also need to be familiar with the rules and the way this

16 court operates. It isn't being done here, your Honor.

17 Their neglect or failure to follow the rules is not a

18 reason to change this back to August 31st.

19 THE COURT: All right. A couple of things. To

20 backdate a court order is to issue it nunc pro tunc, and

21 there are specific limitations upon the Court's ability

22 to do that. Mr. Holt is correct, that there has to be

23 some sort of mistake that was made and the only way to

24 correct it would be to backdate an order.

25 I can think of an example where -- it's not

1 backdated. It's effective as some past date rather than
2 effective as of the date today. So, for example, an
3 order is inartfully drafted. People act upon it and rely
4 upon it, and then it turns out it needs to be amended.
5 That amendment under appropriate circumstances could be
6 made effective on this earlier date in order to prevent
7 someone from losing rights that they otherwise would have
8 had, had the first order been correct in the first place.
9 That's not the situation here. I had no -- oh, and
10 the orders nunc pro tunc also have to reflect what the
11 judge's intentions were, and I had no intention that my
12 decision of August 31st would be effective that date. I
13 knew, as Mr. Holt has explained, that our orders aren't
14 effective until there's a signed order.
15 Then moving that a little bit further, as the
16 prevailing party it was your obligation to prepare that
17 order and to note it up for a hearing. I watched this
18 case and I noticed that that wasn't getting done, and I
19 assumed it's because there were pro se litigants, and
20 being mindful of the legislature's desire that these
21 recall cases proceed expeditiously, I went ahead and
22 drafted the proposed order and I noted it for a hearing
23 just because it did not appear to me that the parties
24 would be so -- were going to get it done in a timely
25 manner.

1 All right, and so I'll deny your request to make
2 this order nunc pro tunc back to August 31st. I'm
3 prepared to sign it today now unless I hear an objection.
4 MR. THOMPSON: No objection, your Honor.
5 MR. RUNDHAUG: No objection, your Honor.
6 THE COURT: Okay. Staci, I put lines for both
7 sides to sign simply acknowledging receipt of the order,
8 and I'll get you copies afterward.
9 All right, I think there's only one issue left, and
10 that's the request for sanctions by the respondent, am I
11 correct?
12 MR. HOLT: That's correct, your Honor.
13 THE COURT: Okay.
14 MR. HOLT: Your Honor, I kind of hit on this a
15 lot in my last argument. The bottom line is, is that
16 because the rules were not followed or observed we've
17 actually added two full court appearances on this, it was
18 necessary to respond to the order nunc pro tunc with a
19 written memorandum objecting to their request to go back
20 to August 31st, and we had to actually research that.
21 There's 7.5 hours of additional research that was
22 incurred, plus two additional court appearances.
23 You know, I'm usually not one to quibble about these
24 type of things and argue for sanctions, but in this
25 situation, your Honor, it seems like the system was being

1 used to obfuscate and create a situation either for
2 political gain, to get more publicity counter to
3 Mr. Young or to cause him additional expenses in
4 litigation because all this stuff had to be responded to.
5 The City of Kennewick is ultimately going to front,
6 I guess, this bill. It is the tax payers of Kennewick
7 these people are costing money, and we would not take the
8 money. We would return it to the tax payers of
9 Kennewick, but I think the tax payers of Kennewick have a
10 right to be reimbursed for the abuse of the system here,
11 and that's 7.5 hours of my time, plus two court
12 appearances, your Honor.
13 THE COURT: What are the two --
14 MR. HOLT: The 31st and today.
15 THE COURT: -- waste of the court time you say
16 attributed to the petitioners?
17 MR. HOLT: The 26th had to be canceled, your
18 Honor, and today.
19 THE COURT: Oh, okay. I remember in the initial
20 motion you were attributing to the petitioner the problem
21 with the very first hearing where your side objected that
22 timely notice wasn't given.
23 Are you now conceding that notice was sent out by
24 the clerk rather than petitioner, and they were not at
25 fault?

1 MR. HOLT: Yes, your Honor. I realized the
2 clerk sent that out, but I still believe that they're
3 responsible for it, your Honor, because if they would
4 have actually scheduled a hearing, as they're required to
5 do as the prevailing party, then we would have had one
6 hearing with enough time in it and it would have been
7 taken care of.
8 THE COURT: I have to bring my phone into the
9 courtroom to turn my hearing aids -- to control my
10 hearing aids, and sometimes I forget to silence it. My
11 apologies to everybody.
12 All right. So, the first hearing was the August
13 24th where there was supposed to be a -- where we thought
14 there would be a decision on the merits.
15 MR. HOLT: Yes, your Honor.
16 THE COURT: That was deferred because of the
17 shortened notice, and that hearing was scheduled by court
18 administration with the clerk sending out the notice of
19 hearing.
20 MR. HOLT: That's correct, your Honor. I agree
21 with your fact pattern. I guess -- I just have a
22 different spin on it, I guess. I hate to use that term.
23 THE COURT: Then on the 26th was the presentment
24 hearing that was set at my request as I mentioned a few
25 minutes ago, and you objected to that one because a day

1 or two before, or maybe the day of, the plaintiffs asked
2 for this order to be entered nunc pro tunc.
3 MR. HOLT: Right, your Honor --
4 THE COURT: Okay, and then there's --
5 MR. HOLT: -- and then there's today.
6 THE COURT: -- today's hearing to give
7 respondent time to respond to the request for nunc pro
8 tunc.
9 MR. HOLT: And I said two days, your Honor,
10 because all this could have been done in one day -- the
11 hearing. We needed one day's hearing to file the order
12 no matter what. I agree with that, but we could have
13 done it on September 26th if they wouldn't have filed
14 their motion late trying to nunc pro tunc it.
15 THE COURT: Uh-huh.
16 MR. HOLT: So, that's one day I think they're
17 attributed for their failure to follow the rules, and the
18 other time the clerks set it and did not give us
19 sufficient notice. I think if they would have been
20 following the rules and following everything they would
21 have told the clerk and it would have been set out.
22 So, that was my take on it.
23 THE COURT: Okay. All right, good.
24 Response?
25 MR. RUNDHAUG: Well, in our response to their

1 sanctions we stated that the petitioners have not engaged
2 in any of the activities contained in respondent Young's
3 conclusions. Furthermore, it's noted above the process
4 carried out under RCW 29A.56.140 is to be carried out
5 without cost to any party.
6 THE COURT: Huh.
7 MR. RUNDHAUG: So, I guess I would object to
8 their sanctions.
9 THE COURT: Okay. Well, as the petitioner
10 knows, and I think from the first time you appeared
11 before me, I have to treat you the same as I treat the
12 lawyers, and if I were to sanction every attorney for
13 every mistake that the attorney made that resulted in a
14 hearing being canceled and rescheduled I'd spend most of
15 my time sanctioning attorneys.
16 I don't think I'd be doing my job if I were to do
17 so. I only sanction for one reason, and that is to
18 educate to get behavior changed for the future, and I
19 don't think we would accomplish that in this particular
20 circumstance.
21 It's unfortunate that between the court
22 administration and the clerk, you know, notice was sent
23 out one day late. I can't fault the plaintiff on that.
24 It's unfortunate that the plaintiff purported to file --
25 you know, filed a motion on the day of the September 26th

1 hearing, but I've seen that happen as well and did not
2 sanction for that.
3 So, I'm denying the motion for sanctions -- a long
4 way of saying that.
5 Okay, are there any other issues for today?
6 MR. THOMPSON: No, your Honor.
7 THE COURT: Who has the original order?
8 THE CLERK: (Indicating.)
9 THE COURT: I don't need it. I know it went out
10 to counsel table. I wanted to make sure it made its way
11 back to the clerk.
12 Okay, good. You have your appealable order. Good
13 luck to everyone.
14 MR. THOMPSON: Your Honor, I will draft, and
15 I'll share with petitioners, the Court's decision on
16 First Amendment as applied as well.
17 THE COURT: Okay. Okay.
18 All right. We'll be in recess.
19 MR. HOLT: Thank you, your Honor.
20
21
22
23 (Whereupon the proceedings concluded at 11:30 a.m.)
24
25

STATE OF WASHINGTON)
) SS.
COUNTY OF BENTON)

I, RENEE L. MUNOZ, Official Certified Court Reporter of the Superior Court of the Kennewick Judicial District, State of Washington, in and for the County of Benton, hereby certify under penalty of perjury that the foregoing pages comprise a full, true, and correct transcript of the proceedings had in the within-entitled matter, recorded by me in stenotype on the date and at the hour herein written, and thereafter transcribed by computer-aided transcription into typewriting to the best of my ability, including any changes made by the trial judge reviewing the transcript. I am in no way related to or employed by any party in this matter, nor any counsel in the matter, I have no financial interest in the litigation, and that I am certified to report Superior Court proceedings in the State of Washington.

SIGNED and DATED this 7th day of November, 2018.

Renée L. Munoz

RENEE L. MUNOZ, #2330
Official Court Reporter
Benton-Franklin Counties
Superior Court

EXHIBIT M

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

IN RE THE MATTER OF:	)	NO. 18-2-02084-03
	)	
THE RECALL OF STEVE YOUNG,	)	
KENNEWICK CITY COUNCIL MEMBER,	)	DECLARATION OF
	)	RENEE L. MUNOZ

This declaration is made by:

Name: Renee L. Munoz

Age: 49

Relationship to parties in this action:

Official Court Reporter for court hearings

I DECLARE that:

I was the Official Court Reporter, assigned by Benton County Superior Court Administration, to preserve by stenographic means the court record for the following hearings held in the above-entitled case: 08-24-2018, 08-31-2018, 09-26-2018 and 10-18-2018.

On August 31, 2018, Mr. Young requested transcripts of the 08-24-2018 and 08-31-2018 hearings in his case. He paid the fee by personal check.

On Monday, September 17, 2018, at 10:52 a.m., I received an email from Mr. Roger Lenk regarding the fee

for the 08-31-2018 hearing transcript in the above-entitled case. I responded on Monday, September 17, 2017 at 11:00 a.m. regarding fee and projected transcript completion date.

On Tuesday, October 2, 2018, at 10:36 a.m., I received a request from Ms. Krystal Roe, Public Records Officer for the City of Kennewick, for a physical/hard copy of the 08-31-2018 hearing in the above-entitled case. I responded on Tuesday, October 2, 2018, at 11:41 a.m., attaching an invoice as requested for the cost of the 08-31-2018 transcript. That transcript was delivered some time in the next week after payment was received.

On or about October 31, 2018, Kevin Holt requested transcripts of the 09-26-2018 and 10-18-2018 hearings in the above-entitled case. He paid by personal check. The transcripts were delivered on or about November 1, 2018.

On or about November 7, 2018, I received a request from Ms. Krystal Roe, Public Records Officer for the City of Kennewick, for a physical/hard copy of the 09-26-2018 hearing in the above-entitled case. The transcript was delivered some time in the next week after payment was received.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and

correct.

Signed at Kennewick, Washington on 12-12-2018.

Signature

Renee L. Muñoz
Print or Type Name

EXHIBIT N

JOSIE DELVIN
BENTON COUNTY CLERK
DEC 07 2018
FILED

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF: THE RECALL OF STEVE YOUNG	SUPREME COURT NO. 96508-1 BENTON COUNTY NO. 18-2-02084-8 **STATEMENT OF ARRANGEMENTS**

ROBERT J. THOMPSON, Attorney for STEVE YOUNG, states that on or about November 27th, 2018 the appellant did order the transcripts from the various court proceedings from Renee Munoz, Benton County certified Court Reporter.

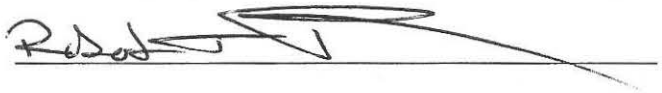
This office has arranged to pay for the transcriptions upon demand. The Appellant is already in possession of the majority of the transcripts as they were ordered during the trial court proceedings.

The arrangements were finalized on November 27th, 2018, the appellant further notifies the court that the designation of clerks papers were finalized and filed with the Benton County Superior Court and has electronically sent to the Supreme Court the same.

ROBERT J. THOMPSON, PS
504 W. MARGARET ST.
PASCO, WA. 99301
Ph: (509) 547-4011 Fax: (509) 547-0076
rjt@robertjthompsonlawoffice.com

The office stands ready to pay upon billing the clerk's cost in copying and transmitting the documents to the Supreme Court.

DATED this day of the 7th of December, 2018



ROBERT J. THOMPSON, WSBA #13003

ROBERT J. THOMPSON, PS
504 W. MARGARET ST.
PASCO, WA. 99301
Ph: (509) 547-4011 Fax: (509) 547-0076
rjt@robertjthompsonlawoffice.com

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date I caused to be served in the manner noted below a copy of the foregoing document on the Respondents in this case:

[X] VIA U.S. MAIL [first class] – to Vincent C. Rundhaug
[X] VIA HAND DELIVERY to Clerk of the Court, Benton County Superior Court
[X] VIA ELECTRONIC MAIL – Vincent C. Rundhaug and additional Respondents
[X] VIA ELECTRONIC MAIL to The Washington State Supreme Court

TO:

Robert J. Thompson — Date: 12-7-18

ROBERT J. THOMPSON, PS
504 W. MARGARET ST.
PASCO, WA. 99301
Ph: (509) 547-4011 Fax: (509) 547-0076
rjt@robertjthompsonlawoffice.com

EXHIBIT O

THE SUPREME COURT
STATE OF WASHINGTON

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

March 4, 2019

LETTER SENT BY E-MAIL ONLY

Robert J. Thompson
Attorney at Law
504 W. Margaret Street
Pasco, WA 99301-5209

Kevin Lee Holt
Attorney at Law
7014 W. Okanogan Place
Kennewick, WA 99336-5076

Re: Supreme Court No. 96508-1 - In the Matter of the Recall of Steve Young
Benton County Superior Court No. 18-2-02084-8

Counsel:

The report of proceedings in this matter was due February 15, 2019. No report of proceedings has been filed.

The Appellant is responsible for ensuring that the report of proceedings is properly filed. Therefore, the Appellant is directed to contact the court reporter or transcriptionist and ensure that the report of proceedings in this matter is filed by March 11, 2019.

Sincerely,

Erin L. Lennon
Supreme Court Deputy Clerk

ELL:bw

EXHIBIT P

Appellate Court Case Summary

Case Number: 965081
Filing Date: 11-13-2018
Supreme Court

Event Date	Event Description	Action
11-13-18	Notice of Appeal	Filed
11-14-18	Case Received and Pending	Status Changed
11-14-18	Letter	Sent by Court
12-03-18	Statement of Arrangements	Not filed
12-07-18	Designation of Clerks Papers	Filed
12-11-18	Letter	Sent by Court
12-17-18	Statement of Arrangements	Filed
01-09-19	Clerk's Papers	Filed
03-04-19	Letter	Sent by Court
03-11-19	Report of Proceedings	Filed
03-15-19	Letter	Sent by Court
03-18-19	Appellants brief	Due
04-17-19	Respondents brief	Due
05-17-19	Appellants Reply brief	Due

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Supreme Court
Location: 415 12th Ave SW
Olympia, WA 98501-2314
Map & Directions
360-357-2077[General Information]
[Office Email]
Visit Website

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

How can I obtain the complete court record?
You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

EXHIBIT Q

EXHIBIT INTENTIONALLY BLANK

IX. CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

1. I am a citizen of the United States and of the State of Washington, over the age of 18 years; and competent to be a witness in said cause.

2. On this 29th day of March, 2019, I caused the document to which this certificate is attached, Brief of Respondents, inclusive of Appendix 1 - Third Declaration Of Vincent C. Rundhaug to be filed with the Clerk of the Washington State Supreme Court, and served upon counsel of record in the manner indicated below:

Robert J. Thompson, WSBA No. 13003, Via U.S. Postal Service, a stamped and addressed envelope, affixed with the correct amount of postage to 504 W. Margaret Street Pasco, Washington 99301 and for purposes of expedited delivery via Email:
rjt@robertjthompsonlawoffice.com.
Attorneys for Appellant
Via Email and First Class Mail

No address, email or phone number was submitted with Kevin L. Holt, WSBA # 16672, "NOTICE OF ASSOCIATION" signed and dated this 9th Day of March, 2018 (sic), prior to the recall petition being submitted to the Benton County Clerk.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of March, 2019 at Benton County, Washington.

VINCENT C. RUNDHAUG

From:	OFFICE RECEPTIONIST, CLERK
To:	"desertgemstudio@aol.com"
Subject:	RE: Subject: 96508-1 In the Matter of the Recall of Steve Young
Date:	Monday, May 20, 2019 8:09:12 AM

Received 5-20-19

From: desertgemstudio@aol.com [mailto:desertgemstudio@aol.com]
Sent: Sunday, May 19, 2019 11:08 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Subject: 96508-1 In the Matter of the Recall of Steve Young

Resubmission of Respondents brief.

Will try to submit through WA State Portal system. Have tried, twice, to submit meeting with failure both times. Please advise if something more is needed.
Thanks.

Vincent Rundhaug