

**RECEIVED**  
JUL 15 2018  
WASHINGTON STATE  
SUPREME COURT

No. 96765-2

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**IN RE  
INSLEE**

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Review of a decision entered  
by the Honorable Judge Lanese  
of the Thurston County Superior Court

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**APPELLANT'S  
OPENING BRIEF**

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Arthur West  
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### III. SUMMARY OF ARGUMENT

This case involves the question of whether a Recall Petition demonstrating a failure of the Executive act to faithfully execute the laws in the face of an open and notorious public health and safety emergency throughout the state of Washington and violations of State Law and the State Constitution should have been found to be legally and factually sufficient.

Appellant claims that the Recall Petition clearly made a case that the executive failed in their duty to ensure the faithful execution of the laws in the face of the statewide public health and safety emergency caused by homelessness throughout the State, which was expressly brought to their attention by conditions in Olympia and a letter from 17 cities seeking a gubernatorial declaration of emergency in response to the homelessness crisis.

In addition the petition clearly demonstrated a deliberate pattern of violation of Article III and RCW in that the Governor failed to reside at the seat of government, frequently absenting himself from Olympia and/or the State of Washington, and neglected to perform the duty of ensuring that the Lieutenant Governor would cover for him when he was out of State.

The record in this case demonstrates the use of State resources for campaigning on behalf of a ballot measure.

In light of the supplemental material submitted by the petitioner, here simply can be no credible argument that the petition was not legally or factually sufficient.

In light of the clear precedent this case should be remanded back to the Trial Court with instructions to find the Petition legally and factually sufficient.

**IV. ASSIGNMENTS OF ERROR**

1. The Court erred in failing to accept the Recall Petition when the charges, as set forth by the petitioner were legally and factually sufficient.....
2. The Court erred in denying the Recall Petition when the charges demonstrated a recurrent pattern of violation of the mandatory terms of RCW RCW 43.06.040 and a failure to reside at the seat of government.....
3. The Court erred in denying the Recall Petition when the charges, as set forth and supported by the plaintiff, demonstrated a deliberate failure to perform the duty to ensure the faithful execution of the nuisance and environmental laws to preserve the public peace and safety in the face of an open and notorious statewide public health and safety emergency.....
4. The Court erred in denying the Recall Petition when the charges, as set forth and supported by the plaintiff demonstrated unlawful campaign activity on behalf of a ballot measure.....

**ISSUES PERTAINING TO  
ASSIGNMENTS OF ERROR**

1. Did the Court err in failing to accept the Recall Petition when the charges, as set forth by the petitioner were legally and factually sufficient ? Yes.....

2. Did the Court err in denying the Recall Petition when the charges demonstrated a recurrent pattern of violation of the mandatory terms of RCW RCW 43.06.040 and a failure to reside at the seat of government ? Yes.....

3. Did the court err in denying the Recall Petition when the charges, as set forth and supported by the plaintiff, demonstrated a deliberate failure to perform the duty to ensure the faithful execution of the nuisance and environmental laws to preserve the public peace and safety in the face of an open and notorious statewide public health and safety emergency ? Yes .....

4. Did the Court err in denying the Recall Petition when the charges, as set forth and supported by the plaintiff demonstrated unlawful campaign activity on behalf of a ballot measure ? Yes.....

## V. STATEMENT OF THE CASE

On December 13, 2018, pursuant to RCW 29A.56.120, Petitioner West filed an amended statement of charges with Washington Secretary of State Kim Wyman, requesting the recall of Jay Inslee, the Governor of the State of Washington. (CP 1-3)

The Secretary of State transmitted the statement of charges to the Office of the Attorney General on December 13, 2018.(CP4-6)

The Attorney General filed this action on December 28, 2018. (CP 1-38)

The Petition was supported by Declarations citing to the following evidence:

A copy of RCW 43.06.040, as it pertained to the duties of the Lieutenant Governor, (CP 19)

True and correct copies of correspondence between Governor Inslee and the Secretary of State of the State of Washington that petitioner West obtained from the office of the Secretary of State in response to a Public Records Request. (CP 20-38)

A letter of January 14<sup>th</sup>, 2016 from the Mayor of Bellingham to Governor Inslee requesting that the Governor declare a State of Emergency in regard to the statewide homelessness crisis.

A letter from 17 Cities to Governor Inslee requesting that the Governor declare a State of Emergency in regard to the statewide homelessness crisis. (CP 206)

Petitioner West's Second Declaration included the following:

1. City of Seattle Mayoral Proclamation of Civil Emergency of November 2, 2015, stating, in part, that: "(T)his homeless crisis is not unique to the City of Seattle, but is experienced throughout the State of Washington..."

2. City of Tacoma Ordinance Nos. 28430 and 28565, of May 9<sup>th</sup> 2017 and December 4<sup>th</sup> 2018, respectively, declaring a public emergency.

3. City of Olympia Ordinance No. 7146 of July 17, 2018, declaring a public emergency.

4. An excerpt from a the transcript of a December 10, 2018 Hearing before the Honorable Judge Dixon of the Thurston County Superior Court, including the Statement by City of Olympia counsel Jeffrey Myers that:

In looking at the City's homeless emergency declaration, that's a declaration of a legislative body. And courts typically give great deference to the findings and determinations of legislative bodies unless they are clearly baseless. And it is clearly not baseless, given the explosion of homeless in our downtown.

5. An excerpt from a December 18, 2018 pleading filed by City of Olympia counsel Jeffrey Myers stating that:

These (homeless) encampments do not have adequate sanitation, potable water, and are strewn with discarded needles, human and pet waste, rotting food, garbage, and trash which poses a significant risk of the spread of disease.

6. True and correct excerpts from records obtained from the Washington State Patrol demonstrating some of the dates and times the Executive Protection Unit protected the Honorable Jay Inslee at locations other than the State Capitol.

7. A true and correct copy of a

communication obtained from the Office of the Governor demonstrating the Governor's Energy Policy staff were assisting the governor in I-1631 campaign related activities, and a Stipulation as to Facts Violation and Penalty in a similar case where a public officer campaigning for a progressive initiative violated the Fair Campaign Practices Act by using his staff to coordinate initiative related activities.

8. An excerpt from an article published by the Atlantic on August 15, 2018 at <https://www.theatlantic.com/science/archive/2018/08/washington-state-carbon-tax/567523/>

that features a picture of Governor Inslee collecting signatures for I-1631 and which quotes him stating "I'm going to do everything I can for it".

9. A true and correct excerpt of a discovery response in a federal case where the Governor, through counsel, admitted to maintaining an Office of the Governor in Washington D.C.

See CP 39-126

On 11/01/2019 The Court heard argument and ruled that the petition lacked legal or factual sufficiency (CP 211-212, Transcript of January 11)

On 01/11/2019 Appellant filed a timely Notice of Appeal.  
(CP 124-127)

## STANDARD OF REVIEW

This Court reviews questions of law and statutory construction de novo. Likewise, judicial review of the question of construction and interpretation of statutes is de novo. State ex rel. Humiston v. Meyers, 61 Wn.2d 772, 777, 380 P.2d 735 (1963). This Court should review all issues de novo.

## ORDER ON APPEAL

Appellant seeks review of the Order of January 11, 2019, finding the recall petition to be legally and factually insufficient. (CP 211-212)

## VI. ARGUMENT

### **A. RECALL STATUTES ARE TO BE CONSTRUED IN FAVOR OF THE VOTER AND SUPPORTING DOCUMENTATION MAY BE CONSIDERED IN DETERMINING THAT THE CHARGES AS A WHOLE ARE SUFFICIENT TO GIVE THE ELECTED OFFICIAL ENOUGH INFORMATION TO RESPOND TO THE CHARGES AND THE VOTERS ENOUGH INFORMATION TO EVALUATE THEM**

The Court, in entering the Order of January 11, 2019 (CP 207-8) erred in adopting a hyper-technical interpretation of the recall procedure completely at odds with that set forth by the Attorney General in their

Amicus Memorandum or the Supreme Court in the recall of Mayor West.

(See In re Recall of West, 155 Wn.2d 659, (2005))

As this Court held in the Mayor West recall:

Recall statutes are construed in favor of the voter. *Id.* at 814 (citing *Skidmore v. Fuller*, 59 Wn.2d 818 , 823-24, 370 P.2d 975 (1962)). Technical violations of the governing statutes are not fatal, so long as the charges, read as a whole, give the elected official enough information to respond to the charges and the voters enough information to evaluate them. *Id.* Notwithstanding the petitioner's duty to plead with specificity, we will not strike recall efforts on merely technical grounds. *Id.* Accordingly, we may consider supporting documentation to determine whether the charges are factually sufficient. *See, e.g., id. Recall of West, at 663*

This Court, in the Recall of West case, affirmed the action of the Superior Court in correcting the ballot synopsis to fairly reflect the charges, as supported by supplemental materials, finding that the legislature has vested the responsibility for the decision to correct the Ballot Synopsis in the Superior Court:

("The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final."). The trial judge deemed the ballot synopsis inadequate because it failed to identify dates and other pertinent details and corrected the ballot synopsis to include this information. Fairly read, all the trial judge did was flesh out the factual details amply supported by supplemental materials. This fits comfortably within the common understanding

of "correct," "to make or set right: remove the faults or errors from: amend." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 511 (1993). We hold the trial judge acted within his authority by correcting the synopsis as he did.

In rejecting the very same type of hyper-technical argument advanced by the respondent in this case, the Supreme Court in *Mayor West* approved the corrected synopsis and ruled:

Charges are factually sufficient to justify recall when, "taken as a whole they . . . state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance." *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations. *Id.* 665 (Emphasis added)

As to the facts, this Court in the Recall of West held that:

We conclude the charge is factually sufficient...Read broadly, as a whole, and in favor of the voter,...

While the charges subscribed by the petitioner and filed along with the Ballot Synopsis in this case may not meet the elevated and hyper-technical standards suggested by the respondent, the charges allege specific acts of misfeasance, malfeasance, and failure of duty to uphold the oath of office of an executive officer, and, read as a whole, do give the

elected official enough information to respond to the charges and the voters enough information to evaluate them. This is the correct standard.

This Court should rule in accord with its ruling in the Recall of Mayor West and conclude the charges, read broadly, as a whole, and in favor of the voter, are legally and factually sufficient.

Significantly, in the recall of Mayor West, this Court found an amended charge of improperly using the influence of his office to promote an internship for a possible sexual liaison to be legally sufficient under these circumstances, as it specifically alleged substantial conduct clearly amounting to misfeasance. See Mayor West, Citing to Recall of *Kast*, 144 Wn.2d at 807 815. 799 P.2d 1179 (1990)

Mayor West argues, among other things, that the charge is not legally sufficient because sending an e-mail to a person interested in an internship is not conduct that affects or interferes with the performance of his official duties. But this is an overly narrow articulation of the charge brought in the petition. The charge raises the inference that Mayor West sought to capitalize on his elected office and influence in order to pursue a sexual relationship with a young person. This is clearly "wrongful conduct that affects . . . the performance of official duty [or] the performance of a duty in an improper manner." RCW 29A.56.110 (1)(a).

For the record, while the use of West's Mayoral office to cajole an intern to "come up and see him sometime" was an egregious abuse of public office, which must be soundly condemned, this was a far more

personal matter that pales in comparison to the public impacts of the use of improper influence of the office of governor to promote an Initiative that a majority of the public did not, in fact, support.

In so doing our governor attempted to employ the influence and resources of his office engage in an improper relationship with every voter in the entire State, via personal appearances, television and the media, however well-intentioned his plan for the collection of billions of dollar in the form of a carbon tax to be spent at the discretion of the Department of Commerce might have been.

In light of these circumstances, and in light of the unique powers and duties of the chief executive officer of our State, this court should rule in accord with West. As this Court explained in Mayor West:

We are not unmindful of the fact that the original petition did not specifically articulate this charge in this way and that recourse to the attached documentation was required. However, we find that this will not defeat an otherwise adequate charge if the "gist" of the original charge is sufficiently similar to the charge as stated in the amended ballot synopsis. *In re Recall of Lee*, 122 Wn.2d 613, 618, 859 P.2d 1244 (1993). The petition read as a whole gave fair notice of the actual charges, and Sullivan unequivocally adopted the trial court's articulation of the charge at oral argument before us. We find that the charge is legally sufficient... This court will not allow merely technical violations of the statutes to block a factually and legally sufficient recall petition from going to the voters. Because the errors claimed by Mayor West are, at most,

only technical, we affirm. Recall of West, at  
668

This present case presents substantial issues far more significant to the public than an abuse of the office of Mayor to promote a single sexual relationship, no matter how heinous and abhorrent such act on the part of Mayor West was. In accord with the ruling of the Supreme Court in West, the ballot synopsis should be corrected and approved as factually and legally sufficient by this court.

**B. IN LIGHT OF THE UNIQUE POWERS OF THE CHIEF EXECUTIVE OFFICER, THE LEGAL SUFFICIENCY OF CHARGES UNDER THE RECALL STATUTE MUST BE INTERPRETED IN THE CONTEXT OF THE SUPREME EXECUTIVE AUTHORITY AND DUTY TO ENSURE FAITHFUL EXECUTION OF THE LAWS**

The Superior Court further erred in entering the Order of January 11, 2019 (CP 211-212) when the prerogative executive powers of the President and Governor are unique in both kind and scope from those of lesser ministerial officials such as Mayor West.

In the case of the unique and supreme executive office held by the respondent, the constitutional grant of supreme executive authority and the concomitant duty to ensure that the laws are faithfully executed are as different from those of a Mayor or Port Commissioner as those of the King as opposed to a Reeve, Steward, or Bailiff.

Unlike a "Governor" or King, such lesser officials as Mayors, City

Council members and Port Commissioners, (or Reeves, Stewards, and Bailiffs) lack supreme executive powers and have no duty to ensure that the laws are faithfully executed. This is a critical distinction which has not yet been explored extensively in published precedent in the context of recall proceedings, in that the recall of executive officers is vanishingly rare.

Yet there is good cause to hold that the unique powers of the Governor require a special standard. As CJS, GOVERNORS, at 255 notes:

(a)ll statutes concerning the rights and powers of the governor must be read in the context provided by sections of the state constitution that grant supreme executive authority to the governor and require that the governor take care that the laws be faithfully executed. CJS, GOVERNOR, at 255, citing Governor Bob Riley et al. v. Cornerstone Community Outreach 57 so. 3D 704 (Ala. 2010)

The principle set forth in the Governor Riley case that “*The Constitution makers did not leave any such loophole as to permit statutes enacted for general observance throughout the state to be set aside, or in practical effect repealed, in any particular section or area by the device of a failure or refusal of the local authorities to enforce such statutes*” applies with particular effect to the conditions in Washington today where many local jurisdictions such as the City of Olympia are powerless or

unwilling or unable to enforce the sanitary, nuisance and public health and environmental laws, due to the budgetary and political considerations, the sheer magnitude of the homeless emergency or vague and unworkable interpretations of the ruling of the 9<sup>th</sup> Circuit in the City of Boise case.

As the Riley Court observed:

It was foreseen, however, by the framers of the Constitution that for one cause or another, local conditions would sometimes arise which would render the local authorities powerless to enforce the laws, or unwilling or afraid to do so. It was to meet such conditions, as one of its purposes, that the constitutional and statutory authority which we have above mentioned in respect to the execution of the laws was vested in the Governor. The Constitution makers did not leave any such loophole as to permit statutes enacted for general observance throughout the state to be set aside, or in practical effect repealed, in any particular section or area by the device of a failure or refusal of the local authorities to enforce such statutes.

**“Thus and for the stated reason, the chief executive was given the authority and it was made his duty to act to enforce the laws, duly and constitutionally enacted, in every portion of the state, so that every citizen and all property would have the protection of the laws and that every criminal statute should be observed.** Thus the power to enforce the laws is not left as a matter of finality to the discretion of the local authorities or the local inhabitants; but power was placed in the head of the executive department to act, in case of need, for the whole state. See Governor Bob Riley et al. v. Cornerstone Community

Outreach 57 so. 3D 704 (Ala. 2010) (appended as an exhibit hereto)

The Governor of the State of Washington is not a mere Mayor or Port Commissioner, but possesses powers and duties unique to his office. The recall statutes should be construed in light of these exceptional powers, and the Ballot Synopsis approved.

**C. THE SUPPLEMENTAL MATERIALS FILED WITH THE CHARGES AND IN A TIMELY MANNER THEREAFTER DEMONSTRATE ACTS AND A FAILURE TO ACT WITH SUFFICIENT PRECISION AND DETAIL TO ENABLE THE PEOPLE AND THE CHALLENGED OFFICIAL TO MAKE INFORMED DECISIONS IN THE RECALL PROCESS**

The court erred in entering the Order of January 11, 2019 when there were ample grounds to find that the charges in this case, as supplemented, demonstrated acts and failures to act with sufficient precision and detail to enable the people and the governor to make informed decisions in the recall process.

In the Recall of West case, the Supreme Court made short shrift of Mayor West's claims that the charges were insufficient because they lacked sufficient detail.

We find that the petition as a whole, as aptly demonstrated by the corrected synopsis, "describe[s] the charges 'with sufficient precision and detail to enable the electorate and the challenged official to make informed decisions in the recall process.' " *In re Recall of Zufelt* , 112 Wn.2d 906 , 911, 774 P.2d 1223

(1989) (quoting *Jenkins v. Stables* , 110 Wn.2d 305 , 307, 751 P.2d 1187 (1988)). Mayor West, at 665

Further, this Court in the Recall of Mayor West held that an alleged factual insufficiency in a recall petition may, in the Judge's sound discretion, be cured by consideration of supplemental documentation, so long as the elected official has sufficient actual notice to meaningfully respond to the factual allegations supported by the proffered supplementation.

We now hold that an alleged factual insufficiency in a recall petition may be, in the judge's sound discretion, cured by consideration of supplemental documentation, so long as the elected official has sufficient actual notice to meaningfully respond to the factual allegations supported by the proffered supplementation. *See Kast* , 144 Wn.2d at 814 ; *In re Recall of Anderson*, 131 Wn.2d 92 , 95, 929 P.2d 410 (1997) ("the court . . . may go outside the petition to determine whether there is a factual basis for the charge."). Recall of West, at 666

In accord with it's previous ruling in Mayor West, this court should review all of the timely filings, determine that a factual and legal basis for the charges exists, and remand for further proceedings.

**IV. THE TRIAL COURT SHOULD HAVE CORRECTED THE BALLOT SYNOPSIS TO MORE CORRECTLY REFLECT THE CHARGES AS A WHOLE**

In the present case the Trial Court should have approved the synopsis composed by the Attorney General or corrected the ballot synopsis to more specifically reflect the charges, as supplemented.

1. Governor Inslee, on March 16, 2018, May 8-May 10, 2018, May 14-May 17, 2018, June 21-June 24, 2018, June 29-July 1, August 10-11, 2018, October 10, 2018, November 7-November 8, 2018, November 26, 2018, and November 30-December 1, 2018, deliberately absented himself from the State after failing to contact or coordinate with the Lieutenant Governor to ensure that the Lieutenant Governor assumed the duties of Governor as required under RCW 43.06.040, creating a vacancy in the office, committing misfeasance, and failing to uphold his oath of office, while simultaneously depleting the public treasury for the costs of his security detail at times when neither he nor the Lieutenant Governor were executing their duties of office.

2. Governor Inslee acted in an unreasonable manner and without justification in failing in his duty to declare an emergency when requested to do so by local governments throughout the State<sup>1</sup>, and when a severe statewide homeless emergency openly, notoriously and undeniably existed endangering the health, safety, and peaceful repose of the people of Washington.

3. Governor Inslee, between August and December of 2018, acted in an unreasonable manner and without justification and failed to abide by his oath of office in failing in his duty to declare an emergency when a severe homeless public health and safety emergency openly, notoriously and undeniably

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<sup>1</sup> Including Auburn, Bellingham, Black Diamond, Covington, Federal Way, Kennewick, Kirkland, Medina, Mercer Island, Normandy Park, Pacific, Renton, Seattle, Shoreline, Snoqualmie, and Vancouver.

existed throughout the State and in the seat of government and within a mile of the main offices of the three branches of government of the State of Washington, and when the Nuisance, Sanitary, and Environmental Laws had been improperly suspended as a result of the emergency by the City of Olympia and other municipalities throughout the State.

4. Governor Inslee, between May and November 7, 2018, and on May 21<sup>st</sup> and September 28, 2018 improperly expended public funds and resources and the authority of his office to collect signatures for, campaign for and support I-1631, a private Initiative and Ballot Measure.

5. Governor Inslee, on between April and December of 2018, deliberately failed to reside at the seat of government as required by Article III, section 24 of the State Constitution by failing to employ a location at the seat of government as his primary residence, by residing on Bainbridge Island, and by regularly and frequently absenting himself from the seat of government to attend to business other than that of the people of the State of Washington.

Such charges in this case would clearly demonstrate acts and a failure to act with sufficient precision and detail to enable the people and the governor to make informed decisions in the recall process.

**D. GOVERNOR INSLEE FAILED IN HIS DUTY AND ACTED IN A MANIFESTLY UNREASONABLE MANNER IN FAILING TO DECLARE AN EMERGENCY IN THE FACE OF EXIGENT CIRCUMSTANCES AND REQUESTS BY BELLINGHAM AND AT LEAST 17 OTHER CITIES THROUGHOUT THE STATE OF WASHINGTON**

As the January 14, 2016 correspondence from the City of Bellingham filed in this case along with the Ballot Synopsis demonstrates, the Governor has been on notice of the nature of the homeless emergency and local jurisdictions inability to address it for some time now. The

Bellingham letter stated...

Dear Governor Inslee,

I am writing to ask you to declare a state of emergency for the State of Washington around the issue of homelessness. Bellingham applauds you for the actions we have already taken and the City of Seattle and King County for recognizing the urgent need to address homelessness in our communities, and I agree that the state plays a significant role in ensuring that all communities have the tools and resources they need to prevent and end homelessness. *This is a crisis faced by communities throughout the West Coast, and we are asking that Washington join Hawaii in declaring this a state-wide emergency.* I believe it is *only with support at the state level that local jurisdictions will be able to adequately address this homelessness crisis.* We are facing a large number of people without homes or secure access to housing, and ***this endangers the health, safety and welfare of the people***, including families and children, and poses a threat to the environment and community development. We need decisive and swift action to prevent further suffering from this humanitarian disaster,... (emphasis added)

A few Months later, Bellingham, along with 17 other Cities throughout the state sent another letter asking the governor to declare an emergency and to address homelessness as a statewide emergency.

Dear Governor Inslee:

As you are well aware, many of our communities throughout this state remain in crisis with regard to the growing number of people experiencing homelessness. Our state's current needs outweigh current capacity,

leaving too many seniors, families, youth and individuals vulnerably sleeping on the street. The reasons underlying this crisis are many. No local government or the State can solve this issue alone. This is why *we, the undersigned, are making a formal request to you as governor of the state of Washington to continue to build on your investments today by acknowledging the crisis at hand and officially declaring a state of emergency.* (emphasis added)

In light of this compelling demonstration that an emergency existed that only the governor's prerogative powers could address by nearly a score of elected officials throughout the State, and in his failure to act to declare an emergency even when this statewide severe public health and safety emergency created a severe public health and safety emergency in the very seat of government of the State of Washington, under which sanitation, nuisance, and environmental laws were suspended, governor Inslee committed misfeasance and violated his oath of office by failing to act to ensure that the laws of the State were faithfully executed, and by failing to act while an open, notorious, and undeniable emergency threatened the health and well being of citizens throughout the State, to say nothing of the environment, which our beloved governor was, at least on a macroscopic level, so zealously campaigning on behalf of private Ballot Measure to save.

In so doing, Governor Inslee violated not only his constitutional and statutory duties, but duties incumbent upon executive branch officials

and heads of state dating back over 8 centuries to the very foundations of the modern Anglo-American system of Law.

Chapter 61 of the original (translated) 1512 Magna Carta provided, in pertinent part:

61. Since moreover for God, for the improvement of our kingdom, and for the better allayment of the conflict that has arisen between us and our barons,... **if we or our justiciar or our bailiffs or any of our ministers are in any respect delinquent toward any one or transgress any article of the peace or the security,... those... barons shall come to us, or to our justiciar if we are out of the kingdom, to explain to us the wrong, asking that without delay we cause this wrong to be redressed. And if within a period of forty days, counted from the time that notification is made to us, or to our justiciar if we are out of the kingdom, we do not redress the wrong,...those twenty-five barons, together with the community of the entire country, shall distrain and distress us in every way they can, namely, by seizing castles, lands, possessions, and in such other ways as they can, saving our person and the persons of our queen and our children, until, in their opinion, amends have been made; and when amends have been made, they shall obey us as they did before.**

To this meagre beginning are traceable, in some measure, Parliament itself and its procedures in the enactment of legislation, the equity jurisdiction of the Lord Chancellor, the proceedings against the Crown by "petition of right" and more recently, in contemporary times, the constitutional right to recall under Article which has at its central function the preservation of the sovereignty of the people, a sovereignty many believe to have been first acknowledged in the form of a charter over 8

centuries ago by King John Plantagenet.

As Sir Winston Churchill wrote of Article 61 of the Great Charter of 1215, in *A History of the English Speaking Peoples* (1956):

“The underlying idea of the sovereignty of the law, long existent in feudal custom, was raised by it into a doctrine for the national state. And when in subsequent ages the State, swollen with its own authority, has attempted to ride roughshod over the rights and liberties of the subject, it is to this doctrine (Magna Carta) that appeal has again and again been made, and never as yet, without success.”

By failing to act to address a statewide public health and safety emergency, the Honorable Jay Inslee failed to perform duties expected of “executive” officers centuries before there was a State of Washington or a United States of America.

**E. BY HIS FREQUENT OUT OF STATE TRIPS, AND BY FAILING TO ADHERE TO THE MANDATORY TERMS OF RCW 43.06.040, GOVERNOR INSLEE FAILED TO ENSURE THAT RCW 43.06.040 WAS FAITHFULLY EXECUTED AND CREATED A VACANCY IN THE OFFICE OF GOVERNOR REQUIRING EXTRA-STATUTORY ACTION BY THE SECRETARY OF STATE.**

While it may be possible for counsel to split hairs as to what the term “reside” in Article III, Section 24 requires, or whether the governor's frequent absences from the seat of government on business other than that of the People of the State of Washington were derelictions of duty per se, the irreducible minimum of the

acts complained of in this case stemming from the governor's out of state travel is that, on ten (10) occasions, in 2018 alone, the clear, mandatory terms of RCW 43.06.040 were knowingly and deliberately violated<sup>2</sup>.

The language of the statute is clear and unambiguous, and states:

If the governor absents himself or herself from the state, he or she shall, prior to his or her departure, notify the lieutenant governor of his or her proposed absence, and during such absence the lieutenant governor **shall** perform all the duties of the governor. (emphasis added)

There is simply no authority for a chief executive officer to obstruct a member of the executive branch from the performance of a ministerial duty lawfully imposed upon him by the Legislature. (See, in accord, *Marbury v. Madison* (1803); and *Kendall v. United States ex rel. Stokes* (1838)). This principle is especially salient in regard to the duties of the lieutenant governor, whose primary duty is to act in the governor's absence, and who must, according to his own official website<sup>3</sup> be prepared “at a moment's notice” to “assume all of the state’s executive responsibilities”.

Nor can there be any legitimate claim that the clear, mandatory terms of RCW 43.06.040 were “faithfully executed”,

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<sup>2</sup> See exhibits of correspondence from Jay Inslee attached to Petitioner's Declaration, filed with the Ballot Synopsis.

<sup>3</sup> See <http://www.ltgov.wa.gov/executive-branch/> “The Lieutenant Governor serves as Acting Governor, with all of the powers and responsibilities of the Governor, when the Governor is out of the state or is otherwise unable to serve. In this capacity, the Lieutenant Governor needs to be prepared to assume all of the state’s executive responsibilities at a moment’s notice, particularly in response to an emergency.”

when this law was deliberately trampled upon with impunity<sup>4</sup> as a matter of course.

Similarly, the use of public resources and authority of public office to campaign for initiative I-1631, as demonstrated by the exhibits to Petitioner's Second Declaration, A true and correct copy of a communication obtained from the Office of the Governor demonstrating the Governor's Energy Policy staff were assisting the governor in I-1631 campaign related activities, and an excerpt from an article that features a picture of Governor Inslee collecting signatures for I-1631 and which quotes him stating "I'm going to do everything I can for it".

These "campaign related" actions supported by public resources were clear violations of the Washington State Fair Campaign Practices Act, vitiating any claim that the clear, mandatory terms of this "Law" were "faithfully executed", when they, too, were deliberately trampled upon with impunity as a matter of course.

**F. THE FAILURE TO PROPERLY EXERCISE THE PREROGATIVE POWERS OF THE EXECUTIVE IN THE FACE OF AN OPEN AND NOTORIOUS PUBLIC HEALTH AND SAFETY EMERGENCY IS JUDICIALLY REVIEWABLE AND A VALID BASIS FOR RECALL**

This case involves the prerogative or executive powers of the

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<sup>4</sup> See text of 11 separate communication of the Honorable Jay Inslee to Secretary of State Wyman stating: "While RCW 43.06.040 requires me to notify Lieutenant Governor Habib of my departure; he will also be out of state and is unable to serve as Acting Governor. Below are the dates and times I would like to ask you to serve in my place:"

Governor of the State of Washington to faithfully execute the laws and to act in the case of emergency. It is anticipated that the respondent will argue, as the counselors for the King of England in the *Case of Ship Money* and Assistant Attorney General Baldrige in the *Case of Steel Seizure*<sup>5</sup> that these prerogative powers are “no subject for the tongue of a lawyer<sup>6</sup>” and that “the executive determines the emergencies and the courts cannot even review whether it is an emergency<sup>7</sup>”

Petitioner asserts that, viewed in the context of existing precedent on executive powers in our constitutional system, there is a recognized, judicially reviewable “organic” duty on the part of the executive to act to preserve the peace and security of the community over which he or she presides. See in accord, *In re Neagle*, 135 U.S. 1 (1890).

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<sup>5</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

<sup>6</sup> See, generally, Bernard Schwartz, *Commentary on the Constitution of the United States*, (1983), at P. 79: “The last important restriction on Presidential prerogative...is that it is subject to judicial review. This restriction alone makes for an essential difference between the prerogative in our time and that asserted by the Stuart Kings. Today we recognize that to claim, as once did James I, that the prerogative is “no subject for the tongue of a lawyer” is a heresy inconsistent with the essence of our constitutional structure.”

<sup>7</sup> See Schwartz, *supra*, at P. 66, citing to the argument before the district court in the *Steel Seizure* case: THE COURT: So you contend the executive has unlimited power in time of an emergency? Mr. Baldrige: He has the power to take such action as is necessary to meet the emergency.... THE COURT: And the executive determines the emergencies and the court cannot even review whether it is an emergency. Mr. Baldrige: That is correct.

As the Attorney General of the State of Washington noted in  
AGO 1991 No. 21:

Executive power given to the Governor by Washington's Constitution closely resembles, for obvious historical reasons, similar powers given to the President by the Federal Constitution. Thus, the Question of the extent of presidential power has instructive value in the interpretation of a state's Constitution with respect to the powers of its chief executive officer. Brown v. Barkely, 628 S.W.2d 616, 622 (Ky. 1982); Chang v. University of Rhode Island, 375 A.2d 925, 928, 118 R.I. 631 (1977) (See AGO 1991 No. 21)

The *Take Care Clause*, also known as the *Faithful Execution Clause* of our federal constitution provides that the President must "take care that the laws be faithfully executed." This clause in the Constitution imposes a duty on the President to enforce the laws of the United States. Addressing the North Carolina ratifying convention, William Maclaine declared that the Faithful Execution Clause was "one of the [Constitution's] best provisions." If the President "takes care to see the laws faithfully executed, it will be more than is done in any government on the continent; for I will venture to say that our government, and those of the other states, are, with respect to the execution of the laws, in many respects mere

ciphers."

President George Washington interpreted this clause as imposing on him a unique duty to ensure the execution of federal law. Washington observed, "*it is my duty to see the Laws executed: to permit them to be trampled upon with impunity would be repugnant to [that duty.]*" Similarly, in *Printz v. United States*, the Supreme Court explained unequivocally how the President executes the law: "The Constitution does not leave to speculation who is to administer the laws enacted by Congress; the President, it says, "shall take Care that the Laws be faithfully executed,"

In his Memoirs, Truman noted that: "Whatever the six Justices of the Supreme Court meant in their differing opinions of the constitutional powers of the president, we must always act in a national emergency"

The Corpus Juris Secundum (CJS) similarly notes that:

"State constitutions also charge the governor with the duty of seeing that legislative acts are carried into effect and the responsibility for faithful execution of the laws. He or she must apply his or her full energy and resources to ensure that the intended goals of duly enacted legislation are effectuated." CJS, STATES, at 254, citing *American Federation of State, County and Municipal Employees v. Martinez*, 132, 257 P.3d 952 (2011)

In Martinez, the Supreme Court of New Mexico, construing a clause virtually identical to Washington's article III, section 5<sup>8</sup>, held:

Article V, Section 4 requires the Governor to "take care that the laws be faithfully executed." In order to carry out this constitutional mandate, the Governor is required to apply his or her full energy and resources to ensure that the intended goals of duly enacted legislation are effectuated. Martinez, citing *Op. of the Justices to the Senate*, 376 N.E.2d 1217, 1221 (Mass. 1978).

In the present case it cannot reasonably be disputed that there is a widespread statewide emergency threatening the peace and security of the people of the State of Washington. Numerous government agencies have declared public health and safety emergencies to exist and requested State assistance from the Governor, pointing out that only with a regional approach and sufficient resources can any progress be hoped for. Yet after 3 years of a perpetual state of emergency our executive has refused to act to address a growing crisis which exists not only throughout the state but within walking distance of the offices of the three branches of

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<sup>8</sup> The governor... shall see that the laws are faithfully executed.

the government of the State of Washington.

The Honorable Jay Inslee, possibly due to his preoccupation with campaigning and attempting to use state resources to “do anything (he) can” to secure the passage of I-1631, has clearly failed “to apply his or her full energy and resources to ensure that the intended goals of duly enacted legislation are effectuated.” in the State of Washington.

State nuisance law, public health and safety laws and regulations, and the environmental laws protecting water, air and the quality of the environment have been “trampled upon with impunity” throughout this State for over 3 years, and yet the only officer with authority to act in a decisive manner to end this perpetual state of emergency refuses to perform his duty to act to preserve peace<sup>9</sup> and security, even at the seat of government.

As counsel for the City of Olympia recently observed:

These (homeless) encampments do not have adequate sanitation, potable water, and are strewn with discarded needles, human and pet waste, rotting food, garbage, and trash which poses a significant risk of the spread of disease.

Failure to act in the face of this legislatively and judicially

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<sup>9</sup> See Declaration of John Doe, appended.

declared<sup>10</sup> emergency in Olympia and throughout the State has resulted in an untenable permanent state of emergency where thousands remain unsheltered in unsafe, unhealthy primitive accommodations, and where the once thriving downtown areas of our cities are reduced to garbage, needle and feces ridden “mitigation site” wastelands where manifestly unhealthy and unsafe conditions are perpetuated, with no end in sight.

In failing to act to address this open, notorious, and ongoing emergency, Governor Inslee egregiously abused what little discretion he may have had in the exercise of his executive prerogatives, thereby neglecting his duty in a manner subject to recall.

**G. BY REFUSING TO ACT IN RESPONSE TO THE OPEN AND NOTORIOUS PUBLIC HEALTH AND SAFETY EMERGENCY OF WIDESPREAD HOMELESS ENCAMPMENTS THROUGHOUT THE STATE OF WASHINGTON, GOVERNOR INSLEE FAILED TO ENSURE THAT THE LAW OF NUISANCE WAS FAITHFULLY EXECUTED**

The Washington State Legislature has broadly defined nuisance as “unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the

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<sup>10</sup> See the December 21, 2018 ruling of the Honorable Judge Dixon in Cause No. 18-2-06080-34.

comfort, repose, health or safety of others ... or in any way renders other persons insecure in life, or in the use of property.” RCW 7.48.120.

Pursuant to RCW 7.48.010, nuisance is actionable for: “whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of ... life and property.”

RCW 7.48.010 further provides: “(A)ll... places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking<sup>11</sup> is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter.”

By formal legislative declaration and by Court decree, widespread nuisances exist in Olympia and throughout the cities and counties of the State of Washington. This vitiates any legitimate claim that the clear, mandatory terms of RCW 7.48 were “faithfully

<sup>11</sup> The reference in State Nuisance Law to an archaic mode of opiate ingestion that has been outmoded for over half a century underscores the longstanding and time-honored nature of the common law action of nuisance, which dates back to the reign of King Henry III. See, e. g. Brenner, Joel Franklin, (1974), "Nuisance Law and the Industrial Revolution", *Journal of Legal Studies*, University of Chicago Press, at page 403, citing to 17<sup>th</sup> Century precedent: "as every man is bound to look to his cattle, as to keep them out of his neighbour's ground; so he must keep in the filth of his house of office, that it may not flow in upon and damnify his neighbour". For the present day, however, it can safely be presumed from the number of discarded needles in the vicinity that should anyone within the encampments still seek to indulge in the antiquated custom of smoking opium, they would find no impediment to such practice.

executed”, when the provisions of this law are being trampled upon with impunity and as a matter of course.

**H. BY REFUSING TO ACT IN RESPONSE TO THE OPEN AND NOTORIOUS PUBLIC HEALTH AND SAFETY EMERGENCY OF WIDESPREAD HOMELESS ENCAMPMENTS THROUGHOUT THE STATE OF WASHINGTON, GOVERNOR INSLEE FAILED TO ENSURE THAT ENVIRONMENTAL LAWS WERE FAITHFULLY EXECUTED**

The Court erred in entering the Order of January 11, 2019 (CP 211-212) failing to find the Petition sufficient when the environmental laws of this State have been suspended or are being officially and systematically ignored in many areas due to the perpetual homelessness emergency.

Homeless encampments are environmental disaster sites with massive impacts on the environment and the quality of life for those of us who, unlike Governor Inslee, actually have to reside in urban areas like Olympia negatively impacted by thousands of people living in the most primitive accommodations imaginable.

In addition, concentrations of large numbers of people in substandard housing lacking proper sanitation similar or comparable to the conditions in Seattle, Tacoma, Everett, Bellingham, Vancouver, and downtown Olympia have recently led to epidemics in a number of West Coast cities: including Typhus, (Los Angeles), Shigella, (Portland), and Hepatitis, (San Diego). One organization, the American Council on Science and Health, has concluded that “Homeless Camps are infectious disease time bombs”.

In response to this “trampling” deluge of the unhoused, many

cities, such as Olympia, have suspended enforcement of nuisance laws and environmental review under their usurped emergency powers resulting in decision making by default for a perpetual emergency without any evaluation of possible adverse significant impacts on the environment or the quality of life, or any real aid to the impoverished in their attempts to survive the converging catastrophes of the 21<sup>st</sup> Century<sup>12</sup>.

Yet State Law in the form of SEPA requires that the "environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations." RCW 43.21C.030(2) (b). It is an attempt by the people to shape their future environment by deliberation, not default, and is "intended to prevent action which is ill-considered from an environmental perspective. "

Clearly there cannot be any legitimate claim that the clear, mandatory terms of the State Environmental Policy Act or the Clean Water Act were "faithfully executed", when these law have been, and continue to be, waived by cities such as Olympia, or deliberately trampled upon with impunity as a matter of course throughout the State and at the very seat of State Government due to the overwhelming crisis caused by government inaction in response to thousands of citizens existing in what can only be described as medieval conditions.

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<sup>12</sup> See, e.g. *The Long Emergency: Surviving the End of Oil, Climate Change, and Other Converging Catastrophes of the Twenty-First Century*, James Howard Kunstler (Grove/Atlantic, 2005)

**I. GOVERNOR INSLEE'S LONG ABSENCES FROM THE STATE, HIS MAINTENANCE OF A WASHINGTON D. C. OFFICE AND HIS FAILURE TO RESIDE EXCLUSIVELY IN OLYMPIA UNDERSCORE HIS FAILURE TO ACT IN RESPONSE TO AN OPEN AND NOTORIOUS PUBLIC HEALTH AND SAFETY EMERGENCY AT THE SEAT OF GOVERNMENT**

The Superior Court erred in failing to find the Recall Petition legally and factually sufficient when it credibly demonstrated a violation of Article III, section 24, which requires that the governor reside at the seat of government and maintain all of his books and papers there.

This is designed to ensure that the chief executive officer of the State have some degree of presence and continuity of office at the seat of government, and that he be responsive to his constituents.

The frequent absences from the seat of government of our chief executive officer not only demonstrate a cavalier attitude toward the requirements of office, they underscore a continuing failure to acknowledge or respond to the worsening statewide homelessness crisis that, by creating a health and safety emergency in the State Capitol, poses an un-assessed and unaddressed potential epidemiological threat to the security and continuity of government of this State.

The Honorable Jay Inslee, by absenting himself from office and tolerating and perpetuating a “Long Emergency” of converging homeless catastrophes as the status quo in disregard for the health, safety, and well being of his constituents, has not only committed misfeasance and failed to perform the duties of his office in a

manner subjecting him to recall, he has given credence to one of the more salient observations<sup>13</sup> of the author of *The Long Emergency*.

**VII CONCLUSION: THE BALLOT SYNOPSIS SHOULD HAVE BEEN APPROVED**

A governor is a unique public official with explicit and inherent duties and responsibilities far transcending those of a Mayor or Port Commissioner. The Courts' analysis of these duties and responsibilities under the Recall Statutes should reflect these circumstances.

This Court should amend the Ballot Synopsis to more accurately reflect the actual charges, as amended and supplemented, and approve the recall petition for at least the most egregious and indefensible of the actions complained of herein.

For the foregoing reasons, appellant respectfully requests that this Court reverse the Trial Court's ruling in every respect and remand this matter back to the Superior Court with instructions to approve the ballot synopsis.

Respectfully submitted this 15<sup>th</sup> day of July, 2019.

*s/Arthur West*  
ARTHUR WEST

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<sup>13</sup> "The United States is the wealthiest nation in the history of the world, yet its inhabitants are strikingly unhappy. Accordingly, we present to the rest of mankind, on a planet rife with suffering and tragedy, the spectacle of a clown civilization...We move about a landscape filled with cartoon buildings in clownmobiles, absorbed in clownish activities. We fill our idle hours enjoying the canned antics of professional clowns... Death, when we acknowledge it, is just another pratfall on the boob tube. Bang! You're dead!"

**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2019, I caused to be served a true and correct copy of the preceding document on the party listed below at their addresses of record via Email:

**Jeffrey Even**, Attorney for Respondent

s/Arthur West  
ARTHUR WEST