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No. 98663-1

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE RECALL OF JASON WHITE

APPELLANT DAVID BRIGGS' OPENING BRIEF

LAW OFFICE OF E. HALLOCK, PLLC
Elizabeth Hallock, WSBA 48125
420 S. 72nd Ave., Suite 180
Yakima, WA 98908
Telephone: 360-909-6327
Email: Ehallock.law@gmail.com

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2. Charge No. 1, Legal Sufficiency – The elected official’s social media Facebook page was used to discuss city business, hold discussion forums, and broadcast live council meetings. The Mayor of Yakima stated the councilman’s conduct on social media was “reckless,” and the councilman failed to attend meetings leading up to his ultimate censure by his colleagues. The *Seattle Times* reported his conduct was interfering with the work of hospital officials who were pleading with the public to stay home. Did the lower court err in finding recall Charge No. 1 legally insufficient by holding that the elected official’s speech was private expressive speech, and “he was acting in his personal, non-official capacity?” (Assignment of Error 2)

3. Charge No. 1, Legal Sufficiency – Did the Court err in failing to find recall Charge No. 1 legally sufficient by holding that the elected official’s conduct was not related to his official duties and that “expressive conduct that is not unlawful should not be the basis of a recall petition,” where there was a nexus between Mr. White’s conduct downplaying the dangers of COVID-19 and encouraging defiance of lawful public health orders and his duties as an elected official to uphold the law; where there is a duty as an elected official not to interfere with the duties of other government officials; and when the definitions in the recall statute of what “affects, interrupts, or interferes with official duties,” should be construed in favor of the voters, who have to live (or die) with the consequences of an elected official’s misconduct, rather than in favor of an elected official? (Assignment of Error 3)

4. Charge No. 1, Legal Sufficiency – Did the Court err in failing to find recall Charge No. 1 legally sufficient by holding because the conduct was “legislative” conduct protected under the speech and debate clause (Wa. Const. Article II, §17), where there was no vote, proposed legislation, or legitimate legislative conduct involved? (Assignment of Error 4)

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6. Charge No. 3, Legal Sufficiency – Did the lower court err in failing to find recall Charge No. 3 legally insufficient by holding that there was no official duty to support the efforts of public health officials and the orders of the Governor, where elected officials have a duty to uphold operative state law? (Assignment of Error 6)

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I. IDENTITY OF THE APPELLANT

Appellant David Briggs, [hereinafter, “Mr. Briggs,” or “Appellant”] is a citizen of Washington State and a voter in Respondent Jason White’s City of Yakima electoral district number two.

II. SUMMARY OF ARGUMENT

This case involves the novel question of whether an elected official can be held accountable to the voters through a Petition for Recall under the recall statute at RCW 29A.56.110 based on the content of the official’s publicly viewable social media Facebook page. In the present case, the elected official uses his Facebook page to downplay the dangers of the deadly disease COVID-19 and encourages the public to defy the lawful orders of government officials, including the Governor of the State of Washington, and interferes with other officials’ duties and efforts to contain an infectious disease and save human life during a world-wide pandemic.

In a Petition for Recall filed with the Yakima County Auditor on April 17, 2020, Mr. Briggs charged Yakima City Councilman Jason White with misfeasance, malfeasance, and violation of oath of office under the recall statute at 29A.56.110(1),1(a), and (2). Mr. Briggs alleged that Mr. White committed misfeasance or malfeasance by using the authority inherent in his official position to downplay the risks to the public of

COVID-19 and encouraged defiance of lawful public health orders; failed to attend city council meetings as part of an anti-government protest; put at risk and interfered with the duties of other government officials, city emergency services, and healthcare workers to contain the deadly virus; and interrupted the efforts of government officials to convey a clear, consistent public health message to Mr. White's low-income, majority Latino electoral district regarding the importance of limiting non-essential trips and avoiding large gatherings to control the spread of disease. [RCW 29A.56.110(1)-(1)(a)]. Mr. Briggs also alleged violation of oath of office in that Mr. White was violating the plain text of his oath of office by failing to uphold the law and encouraging citizens to violate lawful local and statewide public health orders, including Governor Jay Inslee's March 23, 2020 Emergency Proclamation 20-25, "Stay Home, Stay Healthy." RCW 29A.56.110(2).

The Yakima County Prosecutor filed a ballot synopsis with the Yakima County Superior Court on April 30, 2020. [*Ex. A-1, (CP 7)*]. The charges relevant to this appeal are as follows:

Charge No. 1: Respondent used his position as an elected official to wrongfully encourage citizens to disobey state and local COVID-19 emergency proclamations that ordered

everyone to stay home unless they need to pursue an essential activity;

Charge No. 3: Respondent violated his oath of office pursuant to RCW 29A.56.110(2) by failing to faithfully obey, and by encouraging the public to disobey, emergency orders imposed by the State of Washington and Yakima County Health District¹.

Charge No. 5: Refused to attend Yakima City Council meetings which interfered with the performance of his official duties, and unreasonably denied his constituents representation and Council meetings.

Mr. Briggs seeks reversal of visiting Yakima County Superior Court Judge Honorable Bruce Spanner's May 27, 2020 ruling and June 23 Order [hereinafter, "the Order." *Ex. A-2*] dismissing Charge Numbers 1, 3, and 5 as factually and legally insufficient under the recall statute at RCW 29A.56.110. Mr. Briggs also seeks a reversal of the June 5 order on his CR 59 Motion for Reconsideration (CP 130), contending that an elected official violates his oath of office to uphold state law and the Constitutions of Washington and of the United States when he fails to uphold the

¹ Charge No. three was amended by the lower court to read "Yakima County Health Authority" from "City of Yakima." (CP 138).

Governor of Washington's Emergency Proclamation 20-25, and as a result of failure to uphold this valid, operative law, the elected officer can be subject to recall by the voters.

Mr. White's electoral district now has one of the most explosive outbreaks of COVID-19 in the country. Mr. Briggs demonstrated to the lower court that Yakima County has the worst outbreak of COVID-19 on the West Coast, and included a link to a Yakima Health Authority map demonstrating that his neighborhood, in the Southeast portion of Yakima, has been one of the neighborhoods hardest hit by the virus. [Ex. A-3, (CP 40)]². On June 19, the Yakima County Health Authority reported that the City of Yakima's hospital had hit capacity.³ At the time of this writing, Yakima County, with a population of two-hundred and fifty thousand, has more COVID-19 cases than the entire state of Oregon, with a population of three million, with new cases in Eastern Washington driving Washington's rising infection rate.⁴

The lower court erred by finding the Councilman was acting in his

²"COVID-19 infection rates." *Yakima Herald*, April 22, 2020.

³ COVID hotspot Yakima County exceeding hospital capacity.

<https://www.usnews.com/news/best-states/washington/articles/2020-06-19/covid-hot-spot-yakima-county-exceeding-hospital-capacity> [last checked 7/4/20]

⁴ "Surge in State COVID-19 cases driven by Eastern Washington" *Seattle Times*, July 4, 2020. <https://www.seattletimes.com/seattle-news/health/surge-in-state-covid-19-cases-driven-by-eastern-washington/> [last checked 7/4/2020]

“private, non-official capacity,” (CP 139, ¶18), characterizing the Respondent’s conduct as unrelated to his official duties and thereby, shielded from recall. The record shows that by no stretch of the imagination was the Respondent’s Facebook page a private page. The Respondent streamed live council meetings, discussed city business and his colleagues, and engaged in forums with his constituents on his publicly viewable page. (CP 60). It was on this Facebook page that the Respondent announced he would not be fulfilling his duties as a Councilman to attend meetings. [*Ex. A-4, (CP 26)*]

This is an era of twenty-four/seven social media where elected official’s conduct occurs outside of regular office hours and outside of office walls. An elected official whose conduct interferes with the duties and efforts of other elected officials health authorities, emergency services, hospitals, and the Governor during an unprecedented public health emergency should be held accountable to the voters even for his misconduct in his “free time.” Whether or not the facts specific to this case indicate Mr. White’s Facebook publicly viewable page was private or an official page, an elected official who uses social media to downplay a deadly disease and encourages defiance of the government’s coordinated efforts to get the public to voluntarily comply and take COVID-19 seriously, puts private

citizens like Mr. Briggs, a senior-citizen who is trying to protect his own health, at immediate and serious risk. Mr. Briggs has a Constitutional right under Washington Constitution article I, §33 to initiate a petition for recall and hold elected officials accountable for their conduct, especially when the conduct puts the voter at risk of losing his life to a highly infectious and deadly disease that is spreading like wildfire through the City of Yakima. (Wa. Const. art. I, §33).

The lower court erred by weighing more heavily the provisions of the Speech and Debate Clause at Washington Constitution art. II, §17 over Mr. Briggs' Constitutional right to petition under article I, §33. (Wa. Const. art. II, §17; Wa. Const. art. I, §33). Respondent's conduct was not legitimate legislative conduct and should not be shielded from recall. The Respondent refused to go to meetings, he was not undertaking a vote, nor was he proposing an ordinance or resolution. Even if this Court finds his conduct to be legislative in nature, it is anathema to the democratic process in Washington State to shield a municipal legislator from a recall action in the name of "balance of government powers" when the legislator's conduct threatens a voter's immediate health and safety, and the ultimate decision in a recall action is made by the citizens at the ballot box, not by a court of law.

The lower court committed reversible error when it did not construe the recall statute at RCW29A.56.110 in favor of the voter, and instead narrowly construed the definition of misconduct that affects, interferes, or interrupts official duties and subjects an official to recall in favor of Mr. White. The lower court erred by excusing the elected officials' conduct as private conduct that did not interfere with his job and role as an elected official. In a recall action, the courts serve a limited gatekeeper function. The voters may ultimately disagree with Mr. Briggs and refuse to sign his Petition for Recall, and they may disagree at the ballot box. But it should be up to the voters to decide if the Respondent's conduct affected or interfered with his job performance and the group effort of the government to contain COVID-19, thereby constituting misfeasance, malfeasance, or a violation of oath of office under RCW 29A.56.110.

Finally, the lower court committed reversible error when it held that the Respondent had no duty to uphold the orders of Governor Inslee, despite the plain text of Mr. White's oath of office to uphold state law, and thus he did not violate his oath of office or commit malfeasance. (CP 139, at ¶13). The lower court erred in characterizing Governor Inslee's Proclamation 20-25 "Stay Home - Stay Healthy" as simply a policy directive. The

proclamation is authorized by the legislature and has the force of operative state law.

The lower court did find that the Respondent had a duty to uphold the Constitution of the State of Washington and of the United States. (CP 139, at ¶12). Yet the court erred by implying Jay Inslee’s Emergency COVID-19 order was unconstitutional, despite the high bar to prove unconstitutionality of a state law, and zero rulings holding the Governor’s order to be constitutionally invalid. In the intervening time since this case has been argued, Federal courts, including the U.S. Supreme Court, have found the emergency “stay-at-home” orders of Governors to be federally Constitutional. The Respondent should be subject to recall for his failure to uphold Constitutionally valid, operative state laws.

This case presents an issue of grave public concern. The lower court has emboldened the Respondent to continue to defy and encourage defiance of public health officials’ orders and orders of the Governor authorized by our state legislature. On May 30, 2020, Mr. White posted on Facebook, “As the judge stated as an elected official. I have no duty to uphold an order from another elected official. My duty is to the constitution and the people who elected me.” [Ex. A-5, (CP 125)]⁵. He

⁵ Exhibits A-4 and A-5 were included as exhibits in Mr. Brigg’s Declaration supporting APPELLANT’S OPENING BRIEF – 8

also posted shortly after the lower court hearing “I will not comply!” with regards to public health officials’ masking directives. [Ex. A-6, (CP 129)].

On July 4, 2020, in a letter published in the *Yakima Herald*, the Yakima Chamber of Commerce Executive Board pointed out Mr. White’s continued encouragement of defiance of the law “Simply stating that our citizens should ignore the mask directive and personally walking around without a mask is not leadership...Show your support for the businessmen and women who elected you by helping us ‘Mask Up and Open Up Yakima.’ Your city needs and expects this from you.” [Ex. A-7].

The charges against Mr. White in the April 17, 2020 Petition for Recall were factually and legally sufficient. Mr. White continues to encourage citizens to violate the law and interfere with the public health efforts and duties of other government officials. The only thing that has changed is that Mr. White has started going to council meetings, only after the recall Petition was filed, and the spread of COVID-19 has become even more explosive in the City of Yakima.

The recall statute at 29A.56.110 should be construed in favor of the voter in finding Mr. White committed misfeasance, malfeasance, and

his CR 59 Motion for Reconsideration, but not in the original April 17 Petition for Recall filed with the Auditor.
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LAW OFFICE OF E. HALLOCK, PLLC
420 S 72nd AVE
YAKIMA, WA 98908
TELEPHONE: 360-909-6327

violation of oath of office. The Constitutional right of Mr. Briggs to Petition to Recall should weigh more heavily in this Court's determination than a separation of powers doctrine found in the Speech and Debate Clause. After all, Mr. Briggs is doing exactly what that doctrine aspires to do—as a private citizen, he is keeping the inherent and easily abused powers of a government official in check.

This case should be remanded back to the Trial Court with instructions to find that the Petition for Recall may proceed to signature gathering.

III. ASSIGNMENTS OF ERROR

1. Charge No. 1, Factual Sufficiency - The Court erred in failing to find recall Charge No. 1 factually sufficient, where the elected official spread misinformation and downplayed the risks of COVID-19, encouraged others to ignore lawful public health orders during a civic emergency, and interfered with the duties of other government officials, when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification, and where "misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty RCW 29A56.110(1), and these definitions must be construed in favor of the voter.

2. Charge No. 1, Legal Sufficiency - The Court erred in failing to find recall Charge No. 1 legally sufficient by holding that the elected official's speech was private expressive speech, and that he was not acting in his public or official capacity, where the elected official's social media Facebook page was used to discuss city business, hold discussion forums, and broadcast live council meetings.

3. Charge No. 1, Legal Sufficiency – The Court erred in failing to find

recall Charge No. 1 legally sufficient by holding that the elected official's conduct was not related to his official duties and that "expressive conduct that is not unlawful should not be the basis of a recall petition," where there was a nexus between Mr. White's conduct downplaying the dangers of COVID-19 and encouraging defiance of lawful public health orders and his duties as an elected official to uphold the law; where there is a duty as an elected official not to interfere with the duties of other government officials; and when the definitions in the recall statute of what "affects, interrupts, or interferes with official duties," should be construed in favor of the voters, who have to live (or die) with the consequences of an elected official's misconduct, rather than in favor of the elected official.

4. Charge No. 1, Legal Sufficiency - The Court erred in failing to find recall Charge No. 1 legally sufficient by holding Mr. White's conduct was legislative conduct protected from recall under the speech and debate clause (Wa. Const. Article II, §17), where the councilman was not voting, proposing an ordinance, or engaging in legitimate legislative conduct.

5. Charge No. 3, Factual Sufficiency - The Court erred in failing to find recall Charge No. 3, violation of oath of office under RCW 29A.56.110(2), factually sufficient, where the Yakima City Council Oath of Office requires the elected official to uphold state law, and when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification.

6. Charge No. 3, Legal Sufficiency - The Court erred in failing to find recall Charge No. 3 legally sufficient by holding that there was no official duty to support the efforts of public health officials and the orders of the Governor, where elected officials have a duty to uphold operative state law.

7. Charge No. 3, Legal Sufficiency - The Court erred in failing to find recall Charge No. 3 legally sufficient when holding that there was a duty to uphold the Constitution of the State of Washington and the U.S. Constitution, but no official duty to support the orders of the Washington State Governor Inslee, where Governors' emergency Executive Orders regarding COVID-19 have been upheld as Constitutional in Federal Courts.

8. Charge No. 5, Legal and Factual Sufficiency - The Court erred in finding Charge No. 5 factually and legally insufficient by ruling that an elected official cannot be recalled for a discretionary decision to

intentionally skip council meetings absent a statute mandating attendance, and the allegation that district two lacked a voice at city meetings during a time of civic crisis is insufficient “speculation,” even though the city is divided into electoral districts to ensure Latino voters have an equal voice at city council meetings.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Charge No. 1, Factual Sufficiency – “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty. RCW 29A.56.110(1). “Misfeasance” also means the performance of a duty in an improper manner. RCW 29A.56.110(1)(a). Using his social media Facebook page, the elected official spread misinformation and downplayed the risks of COVID-19, and encouraged others to ignore lawful public health orders during a civic emergency, including the Yakima County Health Authority’s March 23, 2020 “Stay at Home Order,” and Governor Jay Inslee’s Emergency Proclamation 20-25 “Stay Home – Stay Healthy.” The elected official also failed to attend meetings up until the Petition for Recall was filed out of “protest.” Was Charge No. 1 in the Petition for Recall factually sufficient, when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification, and when the definitions found in 29A.56.110(1) are to be construed in favor of the voter? (Assignment of Error 1)

2. Charge No. 1, Legal Sufficiency – The elected official’s social media Facebook page was used to discuss city business, hold discussion forums, and broadcast live council meetings. The Mayor of Yakima stated the councilman’s conduct on social media was “reckless,” and the councilman failed to attend meetings leading up to his ultimate censure by his colleagues. The *Seattle Times* reported his conduct was interfering with the work of hospital officials who were pleading with the public to stay home. Did the lower court err in finding recall Charge No. 1 legally insufficient by holding that the elected official’s speech was private expressive speech, and “he was acting in his personal, non-official capacity?” (Assignment of Error 2)

3. Charge No. 1, Legal Sufficiency – Did the Court err in failing to find

recall Charge No. 1 legally sufficient by holding that the elected official's conduct was not related to his official duties and that "expressive conduct that is not unlawful should not be the basis of a recall petition," where there was a nexus between Mr. White's conduct downplaying the dangers of COVID-19 and encouraging defiance of lawful public health orders and his duties as an elected official to uphold the law; where there is a duty as an elected official not to interfere with the duties of other government officials; and when the definitions in the recall statute of what "affects, interrupts, or interferes with official duties," should be construed in favor of the voters, who have to live (or die) with the consequences of an elected official's misconduct, rather than in favor of an elected official? (Assignment of Error 3)

4. Charge No. 1, Legal Sufficiency – Did the Court err in failing to find recall Charge No. 1 legally sufficient by holding because the conduct was "legislative" conduct protected under the speech and debate clause (Wa. Const. Article II, §17), where there was no vote, proposed legislation, or legitimate legislative conduct involved? (Assignment of Error 4)

5. Charge No. 3, Factual Sufficiency – Did the lower court err in finding recall Charge No. 3, violation of oath of office under RCW 29A.59.110(2), factually sufficient, where the Yakima City Council Oath of Office requires the elected official to uphold state law, and when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification.? (Assignment of Error 5)

6. Charge No. 3, Legal Sufficiency – Did the lower court err in failing to find recall Charge No. 3 legally insufficient by holding that there was no official duty to support the efforts of public health officials and the orders of the Governor, where elected officials have a duty to uphold operative state law? (Assignment of Error 6)

7. Charge No. 3, Legal Sufficiency – Did the lower court err in failing to find recall Charge No. 3 legally sufficient when holding that there was a duty to uphold the Constitution of the State of Washington and the U.S. Constitution, but no official duty to support the orders of the Washington State Governor Inslee, where Governors' emergency Executive Orders regarding COVID-19 have been upheld as Constitutional in Federal Courts? (Assignment of Error 7)

8. Charge No. 5, Factual and Legal Sufficiency – Did the trial court err in finding Charge No. 5 factually and legally insufficient by ruling an elected official cannot be recalled for a discretionary decision to intentionally skip council meetings absent a statute mandating attendance, and that the allegation that district two lacked a voice at city meetings during a time of civic crisis is insufficient “speculation,” even though the City of Yakima is divided into electoral districts to ensure Latino voters have an equal voice at city council meetings? (Assignment of Error 8)

V. STATEMENT OF THE CASE

This is an appeal under RAP 2.1(a)(1) from a Yakima County superior court ruling and Order [“The Order,” *Ex. A-2*] finding Mr. Brigg’s Petition to Recall a Yakima City Councilman factually and legally insufficient to proceed to signature gathering and ballot certification. The legislature affords recall petitions direct review to the Supreme Court. RCW 29A.56.270.

On April 17, 2020, Appellant filed a Petition to Recall Yakima City Councilman, district two, Jason White. (CP at 8). The City of Yakima is divided into seven electoral districts as a result of a 2015 Federal Voting Rights Act lawsuit. [(52 U.S.C. § 10301), *Montes, et. al., v. City of Yakima*, 40 F.Supp.3d 1377, Dist. Court, E.D. Wash (2014)].

The Appellant alleged misfeasance, malfeasance, and violation of oath of office under RCW 29A.56.110(1-1(a)) and (2). The Prosecutor filed a ballot synopsis with the Yakima County Superior Court on April 30, 2020. [*Ex. A-1, (CP 7)*].

Mr. Briggs alleged in the Petition for Recall that the Respondent uses his Facebook social media page to encourage Yakima residents to defy the government's lawful public health orders, including Yakima County's March 23, 2020 "Stay at Home" order, and Governor Jay Inslee's Emergency Proclamation No. 20-25 "Stay Home – Stay Healthy." (CP 8). The allegations included charges reported in the local newspaper of record, *The Yakima Herald*, that the Respondent was recklessly spreading conspiracy theories that downplayed the risks of ignoring public health orders for COVID-19, such as that the Centers for Disease Control [CDC] and World Health Organization [WHO] "are just the feel good branch of big pharma and Bill Gates and friends who want mandatory immunizations," and "The puppy dogs, the CDC and WHO are puppets for big pharma and are out to own all of us, this includes the orchestrator Dr. Fauci. It's time to rise up and take back our freedom!" (CP 11-12, 21).

The allegations included explanations that COVID-19 can be spread asymptotically, hence the Governor's order extended beyond just quarantining the sick. (CP 9-10). Yet the Respondent's message was singular: "Only avoid getting out if you are sick," and "I'm calling on all of the Yakima people who say they support me to grow some balls and get back to work. Take off your masks! Be healthy and take back your own

lives! Stop living in fear.” (CP 11) The Appellant also included in the Petition the councilman’s Facebook post supporting President Donald Trump’s encouragement of domestic rebellion and violating Governor’s stay-at-home orders. [Ex. A-8, (CP 108)].

The Appellant contended the Respondent’s conduct affected and interfered with his duties as an elected official, as well as interfered with the collective efforts of emergency services, hospitals, health officials, and the government as they tried to warn the public about the dangers of deadly COVID-19 and deliver a clear and consistent message.

The Appellant included a *Seattle Times* article which was the second newspaper to reach the conclusion the Respondent was interfering with the work of hospital officials and health officials. [Ex. A-9, (CP 24)].

The Appellant also alleged the Respondent abused discretion and committed misfeasance under RCW 29A.56.110(1) by failing to attend city council meetings during a time of civic emergency. The failure to attend meetings was further evidence that the Respondent’s conduct was affecting his official duties and job performance. Appellant included a Facebook post in which Respondent stated he would not participate in city council meetings out of protest. (CP 26.) Respondent only changed his conduct to attend meetings *after* the Petition for recall was filed.

The lower court heard argument on May 27, 2020.

The Honorable Judge Bruce Spanner ruled that the charges contained in the Petition for Recall of Yakima City Councilman Jason White were factually and legally insufficient and the Petition for Recall could not proceed to signature gathering and ballot certification stages. The final order was issued June 23, 2020. [*Ex. A-2, (CP 137-140)*].

With regards to Charges Nos. One and Three, misfeasance and violation of oath of office, the lower court found Respondent “was acting in a personal, non-official capacity” when posting on social media and there were “no facts establishing that Councilman White used his position as an elected official.” (CP 139, ¶18-19) The court found that misconduct must be related to an elected official’s duties (CP 138, ¶ 20), and “expressive conduct that is not unlawful should not be the basis of a recall petition...” unless coupled with “a plausible threat not to perform the official’s duties or to prevent others from carrying out their duties, or a threat to carry out unlawful conduct...” (CP 138, ¶ 25-28.)

The lower court also found support of a legislative proposition can never form the basis of a recall petition. (CP 138, ¶ 23-24).

With regards to Charge No. Five, the lower court found there was no duty to attend meetings absent a statute, and “speculation” that

constituents in district two might not have a voice is factually and legally insufficient. (CP 140, ¶ 5-8).

Finally, with regards to Charge No. Three, violation of oath of office under RCW 29A.56.110(2), and Charge No. One of misfeasance under RCW 29A.56.110(1) and 1(a), the lower court found the Respondent had no duty to uphold the orders put in effect by other elected officials. “He has no obligation to uphold the laws that are merely policy or orders put in effect by other elected officials. Without such duty, there cannot be misfeasance under the definition of doing the performance of duty in an improper manner for the commission of a malfeasance or misfeasance by commission of an unlawful act. (CP 139, at ¶13). The court also held, “What his oath really says is that he will support the Constitution of the State of Washington, and of the Unites States.” (CP 139, at ¶12).

During the May 27, 2020 proceedings, Judge Spanner stated during ruling:

“What is his oath really says is that he will support the Constitution of the State of Washington and the United States...he has no obligation to uphold the laws that are—or orders that are put in effect by other government officials.” *See* RP at 65 (¶11-13, 15-17).

On June 5, 2020, the lower also denied Mr. Brigg’s CR 59 Motion for Reconsideration (CP 109), which challenged the above ruling that

elected officials have a duty under their oath of office to uphold the Constitutions of the State of Washington and the United States, but no duty to uphold the orders of “other elected officials,” in this case, Governor Inslee’s Emergency Proclamation 20-25 “Stay Home – Stay Healthy.”

Included in the CR 59 motion was a sworn declaration of David Briggs (CP 114), which included various Facebook posts made by Mr. White since the initial April 17, 2020 filing of the Petition for Recall, in which he used profanity to encourage defiance of the Governor’s orders, “I’ll make it very simple, Inslee can [expletive deleted] off. The people are in charge,” (CP 119). The exhibits also included posts created after the May 27, 2020 hearing, including one in which Mr. White shared that he would not comply with a Yakima County Health Authority proclamation to wear a mask [**Ex. 6, CP 129**]. Since that post was created, the Washington Secretary of Health has mandated a statewide requirement of wearing face coverings in public; violation carries a criminal penalty under RCW 43.70.130(7) and WAC 246-100-070. (Order of the Secretary of Health, 20-03). Also included in the exhibits was Mr. White’s post-ruling statement that he had no duty to uphold the orders of other elected officials, only a duty to the Constitution. [**Ex. 5, (CP 125)**].

On June 11, 2020, Appellant filed a timely Notice of Appeal with

Yakima County Superior Court. (CP 131). On June 28, 2020, this Court granted accelerated review.

VI. STANDARD OF REVIEW

This Court reviews questions of law and statutory construction de novo. This Court should review all issues de novo.

VII. ORDER ON APPEAL

Appellant seeks review of the May 27, 2020 ruling and June 23 final Order dismissing the Petition for Recall and June 6 Order denying the Motion for Reconsideration. [*Ex. A-2, (CP 137); (CP 130)*].

VIII. ARGUMENT

A Petition for Recall is an action under Article I, § 33 of the Washington State Constitution. (Wash. Const. art. I, § 33). Washington voters have a Constitutional right to hold their elected officials accountable through a Petition for Recall for any wrongful conduct that “affects, interrupts, or interferes with the performance of official duty.” RCW 29A.56.110(1). Violation of oath of office can also subject the elected official to recall. RCW 29A.56.110(2).

The plain text of Respondent’s Oath of Office reads as follows:

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution **and Laws of the State of Washington**, and the Charter and Ordinances of the City of Yakima. I will faithfully and

impartially discharge and perform the duties of the office of Council Member of the City of Yakima, Washington, according to the best of my ability. SO HELP ME GOD. (City of Yakima Council Oath of Office, *Empahsis added.*)

The recall process in Washington is unusual in that the state constitution requires a showing of cause in superior court before recall can proceed. *In re Recall of Telford*, 166 Wn.2nd 148, 159 206 P.3d 1248 (2009) (construing Wash. Const. art. I, § 33, and upholding the constitutionality of statute.) The court is required to review the 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.

The courts “perform a limited gate-keeping function in the recall process.” *In re Recall of Shipman*, 125 Wn.2d 683, 684, 886 P.2d 1127 (1995). Its duty is to “simply to ascertain whether a recall petition meets the threshold standards necessary to proceed to the signature gathering phase of the recall process.” *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 764, 10 P.3d 1034 (2000). The voters, rather than the court, consider the truth of the charges if the recall proceeds to the ballot. *In re Recall of West*, 155 Wn. 2nd 767, 773, 592 P.2d 1096 (1979).

There can be no inquiry by the court into the truth or falsity of the charges, nor can there be inquiry into the motives of those filing the

charges. *Roberts v. Millikin*, 200 Wash. 60, 93 P.2d 393 (1939).

The fundamental requirements in judicial review of the charges are that they must be factually and legally sufficient. *In re Recall of Sandhaus*, 134 Wn2d 662, 668, 953 P.2d 82 (1998).

“To be factually sufficient, the petition must state in detail the acts complained of, and the petitioner must have knowledge of identifiable facts that support the charges. Legal sufficiency requires the charge ‘state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of oath of office.’” *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 765, 10 P.3d 1034, quoting *In re Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990).

The critical language of misfeasance, malfeasance, and violation of oath of office is defined by the statute:

- (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
 - (a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
 - (b) Additionally, "malfeasance" in office means the commission of an unlawful act;
- (2) "Violation of the oath of office" means the willful neglect or failure by an elective public officer to perform faithfully a duty imposed by law. RCW 29A.56.110.

“These definitions, as well as the rest of the recall statute, are to be construed in favor of the voter, not the elected official.” *Pederson v.*

Moser, 99 Wn.2d 456, 462, 662 P.2d 866 (1983).

1. Charge No. 1 in the Petition for Recall was factually sufficient, when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification, and when the definitions found in 29A.56.110(1) are to be construed in favor of the voter.

“The voters, rather than the court, consider the truth of the charges if the recall proceeds to the ballot.” *In re Recall of West*, 155 Wn. 2nd 767, 773, 592 P.2d 1096 (1979).

In this case, the lower court overstepped its bounds of “limited gate-keeper” function. *In re Recall of Shipman*, 125 Wn.2d 683, 684, 886 P.2d 1127 (1995). The court erred by denying the voters a chance to come to the exact same factual conclusions regarding Charge No. One as newspaper editors and other elected officials, that is, that the Respondent’s conduct interfered with his official duties and the aims of the government in containing a deadly and highly infectious disease. Both *The Yakima Herald* and *The Seattle Times* reported that the elected official was giving advice contrary to that of reputable health organizations, spreading conspiracy theories about COVID-19, and interfering with public health efforts to contain COVID-19 in the City of Yakima, a city with the worst outbreak of the disease on the entire West Coast.

During a regular council meeting, the Mayor of Yakima called the

Respondent's conduct as an elected official "reckless." (CP 12). "His comments are reckless, frightening and potentially harmful" to Yakima residents. On April 6, a summary of the meeting appeared in the *Yakima Herald* under the headline, "Yakima Mayor emphasizes following coronavirus precautions. City Councilman does not." (CP 11) The rest of the Council censured the Respondent's conduct in a formal vote. (RP 21).

"Factually sufficient indicates that although the charges may contain some conclusions, taken as a whole they do 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, malfeasance, or a violation of the oath of office..." *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). Although the charges of Mr. Briggs may require the voters to make reasonable conclusions that Mr. White was encouraging defiance of the law, and that people were listening to Mr. White's advice and ignoring public health directives, taken as a whole, the stated facts were sufficient to satisfy the factual sufficiency requirement of the recall statute at 29A.56.110(1) and (1)(a).

An example of insufficient charges is found in *In re Recall of Morissette*, 110 Wn.2d 933, 936, 756 P.2d 1318 (1998). There the recall charges alleged the Sheriff, through his subordinates, mishandled

evidence, and failed to arrest an un-named assailant for an alleged assault. The charges were insufficient because there were no allegations in the charges that the Sheriff even knew of the incident or directed his subordinates' actions.

The Petition in this action clearly put Mr. White was on notice that he was being accused of encouraging the public to violate local and state public health orders, specifically as related to his Facebook posts reprinted in *The Yakima Herald*, alongside his statement encouraging domestic rebellion and uprising against Governor Inslee's emergency order. [Ex. A-8].

The Appellant argues that if *The Seattle Times* can reach the conclusion that “the [Yakima] hospital’s efforts have been hampered by Jason White...who has been telling citizens to ignore the advice of public health officials,” [Ex. A-9], then the voters of district two should be afforded the same right to draw from the facts presented in the Petition for Recall their own conclusions, and decide if the Respondent’s conduct is worthy of recall.

The court erred in overstepping its role as purely a gatekeeper and instead took on the role of final decision-maker as to whether or not Mr. White violated the recall statute. “Factually sufficient indicates that

although the charges may contain some conclusions, taken as a whole they do state sufficient facts to the electors...” *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). The court drew conclusions that should be left to the domain of the voters. The voters of Yakima district two decide through signatures and votes if Mr. White’s conduct interfered with the work of public health officials, if he should be held accountable for the deadly spike in cases in his electoral district, and if his misconduct was sufficient to constitute recall.

The court erred because “there can be no inquiry by the court into the truth or falsity of the charges...” *Roberts v. Millikin*, 200 Wash. 60, 93 P.2d 393 (1939). The truth of the charges is up to the voters to decide, and they have more understanding of the background and facts of this case, and Mr. White’s contribution to the rampant spread of COVID-19 in Yakima, than a visiting judge from Benton County.

2. The Court erred in failing to find recall Charge No. 1 legally sufficient by holding that the elected official’s speech was protected “private” speech, and that he was not acting in his public or official capacity, where the elected official’s social media Facebook page was used to discuss city business, hold discussion forums, and broadcast live council meetings.

The Facebook page was by no stretch of the imagination private. There is no standard for what constitutes a private social media page in the context of a recall action under RCW 29A.56.110.

Cases under the Public Records Act at RCW 42.56 can be instructive as to what constitutes a city councilor's private versus official page. In *West v. Puyallup*, the Court of Appeals, Division II developed a standard to determine if a private Facebook page could be subject to a government records search. *West v. Puyallup*, 410 P.3d 1197, Ct. of Appeals WA, Div. II, No. 49857-0-II (2018). The Public Records Act standard is not perfectly analogous to this case, as it contemplates public versus private in terms of the definitions of public records contained in the Act, and incorporates theories of *respondeat superior* in its analysis of whether or not local government can be held liable for failing to disclose records on a Facebook page.

The Court of Appeals defined "conducting public business" as creating posts that contain specific details of the position as a City Council member or regarding City Council "discussions, decisions, or other actions." *West v. Puyallup*, at 1204, Ct. of Appeals WA, Div. II (2018). Mr. White may not be acting on behalf of his employer in his Facebook posts, but he is "conducting public business" to such a level that his page is an official City of Yakima Councilman's page.

Despite the lower court's characterization of Mr. White's Facebook page as a forum for private, unofficial, and protected personal expressive

conduct, the crucial issue in a recall action is not whether the official's conduct is public or private, but whether the conduct falls into the definitions of misfeasance or malfeasance at RCW 29A.56.110(1) - (1)(a).

The statute clearly states at RCW 29A.56.110(1): "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty. The legislature created no distinction between private or public conduct in the statute's plain text. The only requirement is that the conduct affect an elected official's duties.

Mr. White's conduct on Facebook affected, interrupted, and interfered with the performance of his official duty to protect public welfare during a public health emergency and worldwide pandemic; he used Facebook to convey that he was refusing to attend council meetings during a civic state of emergency, leaving his majority Latino constituents with no representation at city council meetings (representation that had been hard-won in a landmark Voting Rights Act lawsuit); his Facebook conduct interfered with his colleagues' efforts to convey clear and consistent messages warning citizens about the dangers of COVID-19, garner voluntary compliance with public health directives, and protect the health and safety of city employees and emergency service workers. As a result, Mr. White committed misfeasance. His Facebook conduct violated

RCW 29A.56.110(1) - (1)(a), and he should be subject to recall by the voters in his electoral district, regardless of whether his Facebook page is characterized as “official” or “private.”

Additionally, at the lower court proceedings, Mr. Briggs pointed to a Department of Health administrative code that makes it clear that consistency amongst government officers is essential in a public health crisis such as the one Yakima faces. (CP 48). WAC 246-100-070 states:

An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the state board of health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with RCW 43.20.050.

Mr. Briggs contends “officers and employees of any political subdivision,” including Mr. White, have a duty to uphold and not to interfere with the efforts of public health officials. The lower court read this administrative code narrowly, stating that the Respondent was not a police officer or sheriff, and thus had no duty under the public health administrative code.

Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't*, 110 Wash.2d 806, 810, 756 P.2d 736 (1988). Likewise, plain administrative language is not superfluous.

"Rules of statutory construction apply to administrative rules and regulations, particularly where... they are adopted pursuant to express legislative authority." *State v. Burke*, 92 Wash.2d 474, 478, 598 P.2d 395 (1979), citing *Hayes v. Yount*, 87 Wash.2d 280, 552 P.2d 1038 (1976))

WAC 246-100-070 clearly states: "[A]ll other officers and employees of any political subdivisions" have a duty to enforce health official orders. If they have a duty to enforce the orders, then they also have a duty, at a bare minimum, to uphold the law and not encourage the public to interfere with the efforts and duties of public health officials and tax-payer funded emergency service personnel.

Mr. Briggs further contends it should be up to the voters to decide if the conduct in question rises to the level of misfeasance or malfeasance and those definitions should be construed in favor of the voter. After all, it is the voters who must live, or die from, the consequences of the elected official's conduct.

Furthermore, an elected official's speech is not protected by the First Amendment in a Petition for Recall, as recall is an action of the people, not the government. This Court made that clear in a recent case against former Yakima County Auditor Janelle Riddle, and stated as follows with respect to an elected official attempting to elude recall by making a First

Amendment claim:

Riddle appears to be unaware that the First Amendment prevents *governments* from restricting or chilling free speech. 16A AM. JUR. 2D *Constitutional Law* § 400 (2008). A recall proceeding is an action by the voters, not the government. CONST. art. I, § 33. The voters unquestionably have a right to base their decisions on what a public official says, the First Amendment notwithstanding.

While Riddle cites authorities, they do not support her position. One of the cases cited, which does not deal with recall, holds that “[t]o be sure, the First Amendment protects [the plaintiff]’s discordant speech as a general matter; it does not, however, immunize him from the political fallout of what he says.” *In the Matter of Recall of Janelle Riddle*, 402 P.3d 839, 859-60 (2017), citing *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 542 (9th Cir. 2010).

The lower court distinguished this case from Riddle in that the Respondent never threatened to shut down a government office. He was, according to the lower court, merely acting in a “private, non-official capacity.” (CP 139, at ¶18). However, even though the Respondent’s conduct differs from prior cases, that does not make his conduct shielded from recall.

In the internet era, an elected official can be “on and off the clock” at any time of day or night. The relevant question is whether his conduct “affected, interfered or interrupted official duties” under RCW 29A.56.110(1) or he “performed duties in an improper manner” under RCW 29A.56.110(1)(a).

Mr. White's conduct on his publicly viewable Facebook page did "affect, interfere, and interrupt his official duties" as an elected official. RCW 29A.56.110(1), despite the lower court's characterization of his conduct as having nothing to do with his elected position.

Mr. White used his position as a city councilman in an improper manner. His Facebook page highlighted the fact that he was a sitting councilman, and he used the public trust inherent in his government office to encourage others to defy lawful public health orders and interfere with the duties of other elected officials. Through his conduct on his social media Facebook page, Mr. White performed his duties in an improper manner during an outbreak of a deadly disease. He committed misfeasance under RCW 29A.56.110(1)(a) and is subject to recall.

3. Even if the councilman's conduct was private, expressive conduct on a private page rather than public Facebook page, there was a nexus between his conduct downplaying the dangers of COVID-19 and his duties as an elected official to uphold the law, as well as his duties not to interfere with the duties of other government officials. The recall statute must be construed in favor of the voters.

As stated *supra*, the recall statute at RCW 29A.56.110 does not distinguish between private and official conduct; it only distinguishes between conduct that affects, interrupts, or interferes with the performance of an official duty, and conduct that violates the law.

The statute provides: "Misfeasance" or "malfeasance" in office means

conduct outside the realm of his official duties, and that with no duty, the Respondent could not be subject to recall. However, Mr. Briggs offers that during a civic emergency and public health crisis, elected officials have a duty at all times of day and night to uphold lawful public health orders and contribute to the government's coordinated effort to contain a deadly virus. The legislature has authorized the state Department of Health to require as much under WAC 246-100-070.

The definitions found in the recall statute at RCW 29A.56.110(1) of "official duty" and "interference" with the performance of those duties should be construed in favor of Mr. Briggs. These are unprecedented times, the likes of which elected officials have not had to deal with in over one-hundred years since the Spanish flu pandemic in 1918. Mr. Briggs has a Constitutional right to petition to recall an elected official who threatens the public health, safety, and welfare of his community during a time of crisis.

This Court has clearly stated that the recall statute should be construed in favor of the voter, not the elected official in analyzing the legal sufficiency of the recall charges. "Legal sufficiency requires the charge 'state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of oath of office.'" *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 765, 10 P.3d 1034, quoting *In re Recall*

of Wade, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990). “These definitions, as well as the rest of the recall statute, are to be construed in favor of the voter, not the elected official.” *Pederson v. Moser*, 99 Wn.2d 456, 462, 662 P.2d 866 (1983).

The definitions found in RCW 29A.56.110(1) should be construed to allow Appellant and Yakima voters to determine if the Respondent’s conduct constitutes wrongful conduct that affects, interrupts, or interferes with the performance of official duty. After all, they are the ones subject to infectious disease; it is literally their lives that are at risk.

No case law shields an elected official from recall when he acts in a private capacity and there is a direct nexus between his conduct and his duties as an elected official to uphold the law and the goals of the government during a public health emergency. *In re Recall of Hurley*, 120 Wn.2d 378, P.2d 756 (1992), which the lower court relied on in its ruling, stands for exactly this proposition that private conduct that “affects, interferes, or interrupts” the duties and responsibilities of elected officials is a recallable offense.

In *Hurley*, a citizen accused an elected official of trespassing on his private property and defamation. This private dispute, which had nothing to do with city business or the government’s interests, was the

sole basis of the charges against the elected official. The Court stated:
“Nor are there any facts from which to conclude that the alleged trespass affected, interrupted, or interfered with Councilmember Hurley's official duties, so as to constitute malfeasance or misfeasance under RCW 29.82.010(1). The allegation of civil trespass is therefore legally inadequate to support the recall petition.” *In re Recall of Hurley*, 120 Wn.2d 378, 382, P.2d 756 (1992).

In contrast, Mr. White’s conduct in the face of local and state emergency orders during a global pandemic has a nexus to his duties as a government official charged with the task of safeguarding the health, safety, and welfare of his constituency in an electoral district that has one of the highest rates of COVID-19 infection in Yakima County and on the entire West Coast. His conduct affected, interrupted, and interfered with his duties and was, at a minimum, misfeasance under RCW 29A.56.110(1). The Respondent was not merely trespassing on someone’s yard, he was disrupting the efforts of health officials to convey a clear and consistent message that COVID-19 is a deadly disease and all but essential trips outside should be put on hold.

This court in *In re Recall of Pearsall-Stipek* thoroughly examined the history of the recall statute. *In re Recall of Pearsall-Stipek*, 141 Wn.2d

756, 10 P.3d 1034 (2000). “In 1913, the Legislature enacted statutory provisions to effectuate the recall amendment. Laws of 1913, ch. 146, § 1. This original statute left the term "malfeasance" undefined. See Laws of 1913, ch. 146, § 1. Nonetheless, this court made clear in a series of decisions to follow that the term "malfeasance" contemplated a nexus between the alleged wrongful conduct and the official duties of the party subject to recall.” *In re Recall of Pearsall-Stipek* at 785, citing *State ex rel. Nisbet v. Coulter*, 182 Wash. 377, 382, 47 P.2d 668 (1935).

An elected official cannot evade recall by drawing an arbitrary line between private and public citizen when it is convenient to his purposes—which is why the law disfavors elected officials attempting to defend misconduct by claiming the misconduct was on their personal time.

When Mr. White chose to become an elected official, his role as a private citizen changed. His blatant attempts to interfere with a government directive and encourage others to break the law has a “nexus” to his official duties and is a recallable offense.

During oral argument at the May 27, 2020 recall hearing, the judge asked counsel for Mr. Briggs how Mr. White’s conduct rose to the level of committing misfeasance or malfeasance as defined by the recall statute at RCW 29A.56.110(1) and (1)(a):

THE COURT: How did [Mr. White's conduct] affect, interrupt, or interfere with the performance of his official duty?

MS. HALLOCK: So his official duty is to uphold the law. He was also censored [sic] by counsel...He also chose not to attend meetings...And in general...that when there's a nexus between the conduct and your job as a government official, misfeasance can be a recallable offense...So I think there's a legal conduct that Mr. White engaged in that affected his role as a government official and the role of the City and County in trying to get people to voluntarily comply with the law. And let's remember that Yakima County has the highest rate of COVID-19 infections on the entire West Coast. And this cavalier attitude by an elected official, that is part of the problem, Your Honor.

THE COURT: ... Well one of the definitions of misfeasance is the performance of a duty in an improper manner. Are you alleging that the recall should go forward on that basis?

MS. HALLOCK: ...it should go forward on 1, 1(a), 2, on all of those. Especially the violation of oath of office, Your Honor...Mr. White doesn't get to decide under the recall statute where his private behavior stops and his public behavior begins. When there's a nexus, as it says in Pearsall-Stipek, between this conduct and official duties in ensuring that the police, the fire, the EMTs are safe, and that city resources are not extended in an outbreak of COVID-19 [and] that the county can move to Stage 2 and reopen business. When there's a nexus between this kind of behavior and official duties that relate to the operations of government, I think for Section 1, 1(a), and 2, Mr. White has violated the provisions of the recall statute here and committed misfeasance. (RP 20-23).

The Court erred by failing to find Mr. White's conduct affected the performance of his official duties and that of other government officials, by failing to construe in favor of the voter the definitions found in RCW 29A.56.110(a) and (a)(1) as to what conduct "affects, interrupts, and interferes" with official duties, what constitutes "performance of a duty in an improper manner," and what Mr. White's "official duties" are. Instead, the court narrowly defined misfeasance and official duties in favor of Mr.

White.

Additionally, the court failed to connect the councilman's Facebook conduct and his refusal to attend council meetings out of protest in its analysis of the legal sufficiency of the charges. His conduct in spreading a harmful anti-government message during a time of crisis and his anti-government protest of not attending meetings were clearly related. His conduct had a nexus to a failure to attend meetings, and he gleefully shared his misconduct of missing meetings on Facebook. (CP 26). His conduct interfered with his official duties and he performed his duties in an improper manner. This legally constituted recallable misfeasance under RCW 29A.56.110(1)-(1)(a).

4. The Court erred in failing to find recall Charge No. 1 legally sufficient by holding the conduct was "legislative" conduct protected by the Speech and Debate clause (Wa. Const. Article II, §17), where there was no legitimate legislative conduct at issue.

The lower court also committed reversible error by characterizing Mr. White's speech as protected legislative speech protected from recall under Wa. Const. article II, §17. (Wa. Const. art II, §17, CP 138, ¶23).⁶ While the Respondent agrees that Mr. White was acting in his official

⁶ Despite defining the Respondent's conduct as private and performed outside the context of his official duties in its ruling, the lower court also labeled the Respondent's conduct protected legislative speech.

capacity when posting on Facebook, Mr. White was not proposing a resolution or ordinance, or discussing a vote. He was discussing laws he had no role in crafting and encouraging domestic rebellion. His speech is distinct from speech made during a legislative vote or debate and should not be immune from recall.

Even giving Mr. White the benefit of the doubt, and supposing he was critiquing extant law for purposes of proposed legislation, he crossed a line when he actively encouraged the public to break existing law and interfered with the government's collective efforts to transmit clear and consistent government messaging designed to preserve human life in the face of a highly infectious and virulent disease. Mr. White puts Mr. Briggs and his neighbors in very real and very serious danger.

Mr. White holds an office inherently endowed with the public's trust. Mr. White never disclaimed his opinions as personal opinions of him alone and not in his capacity as an elected official representing the City of Yakima. His conflicting, anti-government message wreaked havoc on the efforts of other officials to contain COVID-19. He interfered with the duties of other officials in trying to get the public to voluntarily comply and stay at home in order to stop the disease's spread. Mr. White committed misfeasance or malfeasance under RCW 26.59A.110(1)-(1)(a), and cannot

be perpetually immune from accountability for his misconduct because of the Speech and Debate clause.

In characterizing the Respondent's speech as legislative speech protected from recall, the court relied on *In re Call*, 109 Wn.2d 954 (1988). (CP 38, ¶23). That reliance is severely misplaced. In that case, Fife City Councilman Jim Call was charged with making an improper resolution and for his votes in legislative chambers. In that case, this Court wrote:

Proposing a resolution is a legitimate legislative function. Call was within his discretion to propose a resolution when acting in a legislative capacity as a city council member... There is no greater or more important discretion afforded a legislator, whether state or municipal, than to engage in debate in the legislative context, including the offering of proposed resolutions or legislation. (*In re Call*, at 958-59).

The Respondent's conduct in encouraging insurrection, spreading conspiracy theories, and encouraging others to violate lawful public health orders during a worldwide pandemic is not "enag[ing] in debate in the legislative context, including the offering of proposed resolutions or legislation." Nor was the Respondent engaged in a "legitimate legislative function" by encouraging people to break the law and downplaying the dangers of a virus.

Federal case law is comparatively instructive regarding the courts' interpretation of the Speech and Debate clause of the U.S. Constitution.

(U.S. Const. Art. I, § 6, cl. 1). “Our cases make perfectly apparent, however, that everything a Member of Congress may regularly do is not a legislative act within the protection of the Speech or Debate Clause...” *Doe v McMillan*, 412 US 306, 312, 93 S. Ct. 2018 (1973), citing *Kilbourn v. Thompson*, 103 U. S. 168, 204 (1881).

This Court has noted the importance of the Speech and Debate clause in separating the co-equal branches of government, “[T]he courts have ever been alert and resolute to keep the legislative, executive, and judicial functions carefully separated, and that to this is due the steady equilibrium of our governmental system; ...” *In re Bruen*, 102 Wash. 472, 172 Pac. 1152 (1918). On its face, Washington’s Speech and Debate clause applies only to the State Legislature, and only for conduct on the chamber floor. But *In re Call* expanded the doctrine to protect municipal officers from judicial interference.

What *In re Call* failed to apprehend is that in Washington State, the people constitute another branch of the government, at times in a legislative capacity, and at other times by serving as a check and balance on the conduct of their government officials through a recall action. Courts are not the ultimate decision-makers in a recall action, the voters are. The Courts serve merely as “gatekeepers.” *In re Recall of Shipman*, 125 Wn.2d 683,

684, 886 P.2d 1127 (1995).

The purpose of the Speech and Debate clause in the American tradition is to protect legislators from an overreaching monarch and "to prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary," *Gravel v. United States*, 08 US 606, 617, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972). The purpose of the clause in the American tradition is not to shield legislators from accountability to the voters in a recall action. Nor was the clause intended to shield legislators in all circumstances outside of the legislative sphere. When an elected official deliberately abuses the public trust inherently placed in an elected office to disrupt the duties of other elected official in the midst of a deadly pandemic, the Speech and Debate clause should not shield that official from accountability to the voters via a Petition for Recall.

Even if the Speech and Debate clause can be used to shield an elected official from voter accountability in some circumstances, this Court has stated it will overstep its boundaries to maintain the balance of government powers and intervene in legislative situations where legislators could cause immediate and irreparable harm:

We have not overlooked that under certain circumstances an exception to the general rule prevails whereby courts of equity may enjoin legislative action of municipal bodies when the action would cause immediate and irreparable harm for which no other adequate

remedy is available. *State ex. rel. Gunning v. Odell*, 58 Wn.2d 275, 279, 362 P.2d 254 (1961), citing Annot., 140 A.L.R. 439 (1942).

Such is the case here. Mr. White's conduct, even if legislative, is causing immediate and irreparable harm to Mr. Briggs and to the voters of Yakima. Mr. White continues to encourage others to ignore public health warnings, interfering with the work of other government officials and employees to maintain voluntary compliance with lawful orders and contain a deadly virus. His unabashed conduct, based on conspiracy theories rather than science, puts healthcare workers, emergency services personnel, and the public at risk.

Mr. White failed to attend meetings during a civic emergency until the Petition for Recall was filed. The voters in Mr. Brigg's district fought long and hard to have a seat at the Yakima City Council table. The voters in district two are not judges, they are not kings, they are, by and large, low-income people of color. On balance, their Constitutional right to Petition under Wa. Const. art. I, §33 trumps Mr. White's protections under the Speech and Debate Clause when the harm he is causing could cost them their lives.

Legislators are not perpetually immune from accountability by the Speech and Debate Clause when their conduct interferes with their performance of official duties, interferes with the duties of other

government officials, and violates an oath of office to uphold the law in violation of RCW 29A.56.110.

Encouraging citizens to defy the law and be cavalier about spreading a deadly disease cannot be considered “legitimate legislative activity.” The Court erred in shielding the councilman’s conduct from recall and the petition should be given leave to proceed.

5. The Court erred in failing to find recall Charge No. 3 factually sufficient, where the Yakima City Council Oath of Office requires the elected official to uphold state law, and when taken as a whole there were sufficient facts to identify to the electors and to the official being recalled acts or failure to act without justification.

For the same reasons described *supra* regarding Charge No. 1, Charge No. 3, violation of oath of office, was factually sufficient.

6. The Court erred in failing to find recall Charge No. 3 legally sufficient by holding that there was no official duty to support the efforts of public health officials and the orders of the Governor, where elected officials have a duty to uphold operative state law.

The trial court judge failed to acknowledge the duty to uphold operative state law. At the May 27, 2020 the Judge ruled:

“What is his oath really says is that he will support the Constitution of the State of Washington and the United States...he has no obligation to uphold the laws that are—or orders that are put in effect by other government officials.” *See* RP at 65 (¶11-13, 15-17).

Governor Jay Inslee’s Emergency Order 20-25 is operative law. According to Washington State AGO No. 21-Jun 11, 1991, Emergency

Orders authorized by statute have the force and effect of law.⁷ “In certain situations the Legislature has enacted statutes that specifically authorize the Governor to issue orders that have operative effect. For example, RCW 43.06.010(12) authorizes the Governor to declare a state of emergency under certain circumstances...In such situations executive orders have the force and effect of law and serve as a source of authority for those who act in response to those orders.” [AGO No. 21, (June 11, 1991), Orig. at 3].

In a similar emergency situation, Governor Ray issued an order establishing a red zone around Mt. St. Helens, which was later challenged by business owners. “These statutory powers evidence a clear intent by the Legislature to delegate requisite police powers to the Governor in times of emergency.” *Cougar Business Owners Ass’n v. State*, 97 Wn.2d 466, 474, 647 P.2d 481 (1982).

Jay Inslee’s Emergency Order is authorized by legislative statute and carries the force and effect of law. As such, it is considered one of the “Laws of the State of Washington” the Councilman is charged by his oath of office to uphold. The Councilman failed to uphold this law in believing he had no duty to uphold the orders of other elected officials. The lower

⁷ An Attorney General opinion is not controlling, but is entitled to considerable weight. *Bellevue Fire Fighters, Local 1604 v. Bellevue*, 100 Wn.2d 748, 751 n. 1, 675 P.2d 592, cert. denied, 471 U.S. 1015 (1984).

court's ruling sets a dangerous precedent and was reversible error. The charge of violation of oath of office under RCW 29A.56.110(2) was legally sufficient and Mr. Brigg's recall petition should be given leave to proceed to signature gathering.

7. The Court erred in failing to find recall Charge No. 3 legally sufficient when holding that there was a duty to uphold the Constitution of the State of Washington and the U.S. Constitution, yet no official duty to support the orders of the Governor, where the Governor's Executive Proclamation 20-25 has been found to be Constitutional in Federal Courts.

Since the disposition at the trial court level, the District Court of Eastern Washington has found Jay Inslee's order Constitutional in denying an attempt of a Chelan water park to obtain a temporary restraining order against the state's business closure order. See *Slidewaters LLC v. Washington State Dept. of Labor and Industries, et. al.*, No.2:20-CV-0210-TOR, Dist. Court, E.D.Wash., ___F. Supp. ___, TRO decided June 12, 2020.

The U.S. Supreme Court has also found California Governor Newsom's ban on gatherings Constitutional, following, in part, Justice Brandeis' famous dissent in *Terminiello v. Chicago*, "the Constitution is not a suicide pact." *South Bay United Pentecostal Church, et al. v. Newsom*, ___ U.S. ___ (decided May 29, 2020); See also *Terminiello v. Chicago*, 337 U.S. 1 (1949).

The lower Court ruled the Respondent must uphold the Constitution. Thus, his oath of office requires he must uphold Governor Inslee's Emergency Proclamation 20-25. Mr. White did not, instead encouraging others to defy it. He even posted content on his social media page supporting domestic rebellion in response to the Governor's comments that Donald Trump's comments that states should "liberate" themselves from statewide public health orders were dangerous.

It is a high bar to find a state law unconstitutional, and there were zero rulings finding the Governor's orders unconstitutional at the time of this decision. Now, the reverse has proved true. The lower court erred by assuming the Governor's orders were unconstitutional. The Petition for Recall was legally sufficient and should be allowed to proceed.

8. The court erred in failing to find failure to attend meetings, and only start attending them after the Petition for Recall was filed, an abuse of discretion worthy of recall, and erred by labeling the fact that electoral district two lacked a voice at city meetings during a time of civic crisis as insufficient "speculation," where the city is divided into electoral districts to ensure Latino voters have an equal voice at city council meetings.

On April 8, 2020, Mr. White publicly posted on his Facebook page that he would not attend city council meetings out of protest [*Ex. A-4, (CP 26)*]. Mr. White's manifest abuse of discretion in failing to attend council meetings was both misfeasance and a further example of how his conduct interfered with his official duties. RCW 29A.56.110(1).

The fact that the City of Yakima has not adopted an attendance statute in its Charter is not relevant when the official's questioned conduct is a discretionary act, indicating that he has some choice in how he performs his official duties, but exercised his decision-making unreasonably. "Where a discretionary act is the focus of the controversy, recall petitioners must show that the official exercised discretion in a manner which was manifestly unreasonable." *Greco v. Parsons*, 105 Wn2d 669, 672, 717 P.2d 1368 (1986).

The statute necessary to complete the analysis of whether Mr. White's conduct in skipping meetings rose to the level of misfeasance is not an attendance statute, but rather, the recall statute itself at RCW 29A.56.110(1).

Mr. White justified his conduct of not appearing at meetings as a protest tactic. Because his justification is not a legal one, but rather, purely philosophical, it should be up to the voters to decide if his intentional failure to attend meetings was a manifestly unreasonable abuse of discretion or valid as a form of protest. The voters should have the right to decide if an anti-government protester, who chooses to avoid council meetings during a civic emergency, but instead posts false information and encourages violation of lawful public health orders on his Facebook page,

is who they want for their elected representative.

Mr. Briggs argued to the lower court that the City was divided into a district-based system, and showing up to meetings matters in Yakima. The Respondent's electoral district was carved out by a 2015 Federal court-ordered settlement. It was a long, hard-fought battle for the Latino residents of district two to gain a seat at the council decision-making table. The lower court erred when it said Charge No. Five was legally and factually insufficient because the harm to the voters of not attending meetings was "speculative," when they had fought so hard and so long to gain a seat to represent their neighborhoods at the council table.

Speculative harm is not fatal to a recall petition. Again, from *Chandler*, "Factually sufficient indicates that although the charges may contain some conclusions, taken as a whole they do state sufficient facts ... which without justification would constitute a prima facie showing of misfeasance, malfeasance, or a violation of the oath of office..." *Chandler v. Otto* at 274, 693 P.2d 71 (1984).

It should be up to the voters of district two to decide if Mr. White's discretionary decision not to attend meetings during a civic emergency was manifestly unreasonable and rose to the level of violating the recall statute at RCW 29A.56.110(1). Indeed, it was the recall process itself that

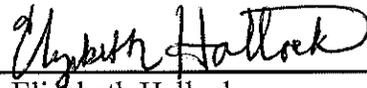
spurred Mr. White into ending his “protest” and start attending meetings. The recall process, which affords Washington voters the right to ensure their elected representatives remain accountable to the people, should be granted leave to proceed in this case.

IX. CONCLUSION AND RELIEF SOUGHT

The elected official’s conduct clearly constitutes misfeasance and violation of oath of office sufficient for recall. The recall statute should be construed in favor of the voter and his Constitutional right to petition, especially when human life in City of Yakima district two is at stake. The Appellant respectfully requests that this Court reverse the lower court’s ruling with regards to Charge Nos. One, Three, and Five. This case should be remanded for further proceedings with instructions for the court to allow Mr. Briggs’ Petition for recall to proceed, and to issue such further relief as is appropriate.

RESPECTFULLY SUBMITTED this 6th day of JULY, 2020.

THE LAW OFFICE OF E. HALLOCK, PLLC



Elizabeth Hallock
WSB# 48125
420 S 72nd Ave., Suite 180
Yakima, WA 98908
360-909-6327
Ehallock.law@gmail.com

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SUPREME COURT
STATE OF WASHINGTON
7/6/2020 1:18 PM
BY SUSAN L. CARLSON
CLERK

No. 98663-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

IN THE MATTER OF THE
RECALL OF JASON WHITE

**DECLARATION OF
SERVICE**

I, Charles Berdell, do declare under penalty of perjury under the laws of the State of Washington that I am over 18 years of age, not a party in the above proceedings, and competent to testify to the matters herein that:

On July 6, 2020, I caused to be served by electronic delivery and U.P.S. Mail postage prepaid the following pleadings along with this declaration of service:

DECLARATION OF SERVICE

LAW OFFICE OF E. HALLOCK, PLLC
420 S 72nd AVE
YAKIMA, WA 98908
TELEPHONE: 360-909-6327

1. Appellant's Opening Brief

To the following at their addresses of record:

Respondent:

JASON WHITE
Jason.white@yakimawa.gov
107 S. 8th Street
Yakima, WA 98901

Attorney for Yakima County:

YAKIMA COUNTY PROSECUTOR
Joe Brusic – josephb@co.yakima.wa.us
2 N 11th St
Yakima, WA 98908

Dated this 4 Day of July, 2020,



Charles Berdell
4815 California Ave SW
Seattle, WA 98116
Email: sberdell@yahoo.com
Telephone: 505-603-0090

X. APPENDIX

Exhibit A-1

BALLOT SYNOPSIS OF RECALL CHARGE

JASON WHITE
CITY OF YAKIMA DISTRICT 2 COUNCILMAN

The charge that City of Yakima District 2 Councilman, Jason White, committed misfeasance, malfeasance and/or violated his oath of office alleges he:

- (1) used his position as an elected official to wrongfully encourage citizens to disobey state and local COVID-19 emergency proclamations that ordered everyone to stay home unless they need to pursue an essential activity;
- (2) committed malfeasance pursuant to RCW 29A.56.110(1)(b) by disobeying state and local COVID-19 emergency proclamations;
- (3) violated his oath of office pursuant to RCW 29A.56.110(2) by failing to faithfully obey, and by encouraging the public to disobey, emergency orders imposed by the State of Washington and the City of Yakima;
- (4) engaged in reckless conduct that endangered and/or put the public at risk;
- (5) refused to attend Yakima City Council meetings which interfered with the performance of his official duties, and unreasonably denied his constituents representation at Council meetings.

Should Jason White be recalled from office based on these charges?

Prepared by:
YAKIMA COUNTY PROSECUTING ATTORNEY


JOSEPH A. BRUSIC, WSBA# 18488
Yakima County Prosecuting Attorney
128 North Second Street, Room 211
Yakima WA 98901
(509) 574-1205

Exhibit A-2

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SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

IN THE MATTER OF:

No. 20-2-01135-39

THE RECALL OF JASON WHITE,
CITY OF YAKIMA DISTRICT 2
COUNCILMAN.

**Finding of Fact and Conclusions of
Law,
Order**

**x Dismissed (ORDSM)
Clerk's Action Required: Paragraph 4.1**

I. Hearing

1.1 The court held a hearing in this case on May 27, 2020 on a petition requesting that charges based on the petition be submitted for judicial review to be certified for the ballot and signature gathering process.

1.2 The following persons appeared via Zoom Conference:

Elizabeth Hallock, Petitioner, Counsel for Petitioners.

David A Briggs, Petitioner

Jason White, Respondent

Zach Stambaugh, Counsel for Respondent

Don L. Anderson, Chief Civil Deputy Prosecuting Attorney

1.3 The court heard testimony from both Petitioner and Respondent.

II. Charges and Law

The charges considered are as follows:

Charge 1: The charge that City of Yakima District 2 Councilman, Jason White, committed misfeasance, malfeasance, and/or violated his oath of office alleges he:

- (1) used his position as an elected official to wrongfully encourage citizens to disobey state and local covid-19 emergency proclamations that ordered

55

1 everyone to stay at home unless they need to pursue an essential activity;

2 (2) committed malfeasance pursuant to RCW 29A.56.110(1)(b) by disobeying
3 state and local COVID-19 emergency proclamations;

4 Charge 3: originally stated as follows:

5 (3) violated his oath of office pursuant to RCW 29A.56.110(2) by failing to
6 faithfully obey, and by encouraging the public to disobey emergency orders
7 imposed by the State of Washington and the City of Yakima;"

8 It was amended in court to read,

9 (3) "violated his oath of office pursuant to RCW 29A.56.110(1)(b) by encouraging
10 the
11 public to disobey, emergency orders imposed by the State of Washington and the
12 Yakima County Health District;"

13 ~~Then charge 3 was subsequently abandoned by Petitioner.~~

14 (4) engaged in reckless conduct that endangered and/or put the public at risk;

15 (5) refused to attend Yakima City Council meetings which interfered with the
16 performance of his official duties, and unreasonably denied his constituents
17 representation at Council meetings.

18 Additionally, Petitioner's demand that the court ignore the statutory recall signature
19 gathering process in favor ordering of a novel "E-Petition" process on the court's own
20 authority was withdrawn in court.

21 Law

22 2.1 Misconduct must be related to the person's official duties. *See In re Recall of Hurley*,
23 120 Wn.2d 378, 381(Wa Sup Ct. 1992).

24 2.2 The case *Recall of Carr* indicates that expressions and support of a legislative
25 proposition can never form the basis of a recall petition.

26 2.3 Expressive conduct that is not unlawful should not be the basis of a recall petition, unless
27 that unlawful expressive conduct is coupled to a threat that constitutes a plausible threat not to
28 perform the official's duties or to prevent others from carrying out their duties, or a threat to carry
out unlawful conduct. *See In re Recall of Hurley*, 120 Wn.2d 378, 379, 841 P.2d 756, 756 (

1 Wa Sup Ct. 1992); *In re Recall of Riddle*, 189 Wn.2d 565 (Wash. 2017).

2
3 If a government official believes another official is wrong, he can express that both privately and
4 professionally. In this case the expressive conduct was private, but would have been lawful either
5 way. "A legally cognizable justification for conduct renders a recall charge insufficient."

6 2.4 An official must know that his conduct would violate the law, and the facts of the petition
7 must establish that knowledge. None of the conduct alleged was actually unlawful. It was either
8 expressive conduct and therefore lawful, or legal conduct compliant with the order. In this case,
9 delivering food lawfully. Moreover, none of the allegations in the petition identified the elements of
10 any law and facts relating to those elements.

11 Only if such a prima facie case is established in the pleadings can a petition go before the voters.
12 Anything short would destabilize the electoral process. Here the prima facie case has not been
13 met. Accordingly, the voters have had their say via the results of the election. We need not
14 question their judgement, nor put the choice back in front of them, absent a prima facie showing of
15 misfeasance or malfeasance.

16 Counsel for Petitioner has argued that Mr. White has a duty to uphold the law as articulated in his
17 oath. What his oath really says is that he will support the Constitution of the State of Washington,
18 and of the United States and will faithfully and impartially discharge and perform the duties of the
19 office of a city council member. He has no obligation to uphold the laws that are merely policy or
20 orders put in effect by other elected officials. Without such duty, there cannot be a misfeasance
21 under the definition of doing the performance of duty in an improper manner for the commission of
22 a malfeasance or misfeasance by commission of an unlawful act.

23 III. Application to the Charges,

24 3.5 Relating to charge 1):

25 a) Found: There are no facts establishing that Councilman White used his position as an
26 elected official. Rather, he was acting in his personal, non-official capacity.

27 b) Held. This charge fails on that basis.

28 c) Petitioner limited this charge to misfeasance.

This charge is found not factually sufficient, because the specific personal actions
alleged are not unlawful.

This charge is held not legally sufficient, because the petition did not lay out any particular
law with specificity to show a particular violation.

29 Relating to Charge 2):

30 a) Found: There are no facts establishing that Councilman White used his position as an
31 elected official. Rather, he was acting in his personal, non-official capacity.

32 b) Held. This charge fails on that basis.

33 c) Petitioner limited this charge to misfeasance.

34 Relating to Charge 3):

35 a) Had it not been, this charge would be found insufficient both factually and legally for the
36 same reasons as charge number 1).

37 b) Petitioner was given opportunity to revise this charge, and the analysis applies either to
38 the original version or to the revised version.

1 Relating to Charge 4):

- 2 a) This charge was abandoned by Petitioner.
- 3 b) Found: There are no facts establishing that Councilman White used his position as an
- 4 elected official. Rather, he was acting in his personal, non-official capacity.
- 5 c) Held. This charge fails on that basis.

6 Relating to Charge 5):

- 7 a) Found: Councilmember White failed to attend three meetings.
- 8 b) Found: No facts were cited which indicated harm occurred from those three absences.
- 9 c) Found: Petitioner's Council failed to cite any law or rule which created a duty to attend
- 10 those particular meetings.
- 11 d) Found: Petitioner's Council failed to cite any facts that there was any interference with
- 12 City business because of his absence.
- 13 3) Speculation that Councilman White's constituents in district 2 might not have had a
- 14 voice is factually and legally insufficient.

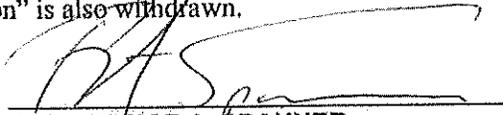
15 **IV. Order**

16 4.1 The petition is denied and the action is dismissed without prejudice. The Clerk shall file such papers

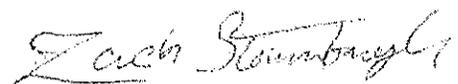
17 4.2 Each individual charge is dismissed. The fourth charge was also withdrawn by Petitioner.

18 4.6 The request to create and order an "E-Petition" is also withdrawn.

19 Dated: 6/23/2020

20 
21 Judge BRUCE A. SPANNER

22 Presented by:

23 
24 Signature

25 Zach Stambaugh 49918
26 Type or Print Name WSBA No.

27 **AGREED AS TO FORM, BUT OBJECTING TO SUBSTANCE**

28 Concurred by Elizabeth Hallock

29  6/16/20
30 Signature

31 Elizabeth Hallock 41825
32 Type or Print Name WSBA No.

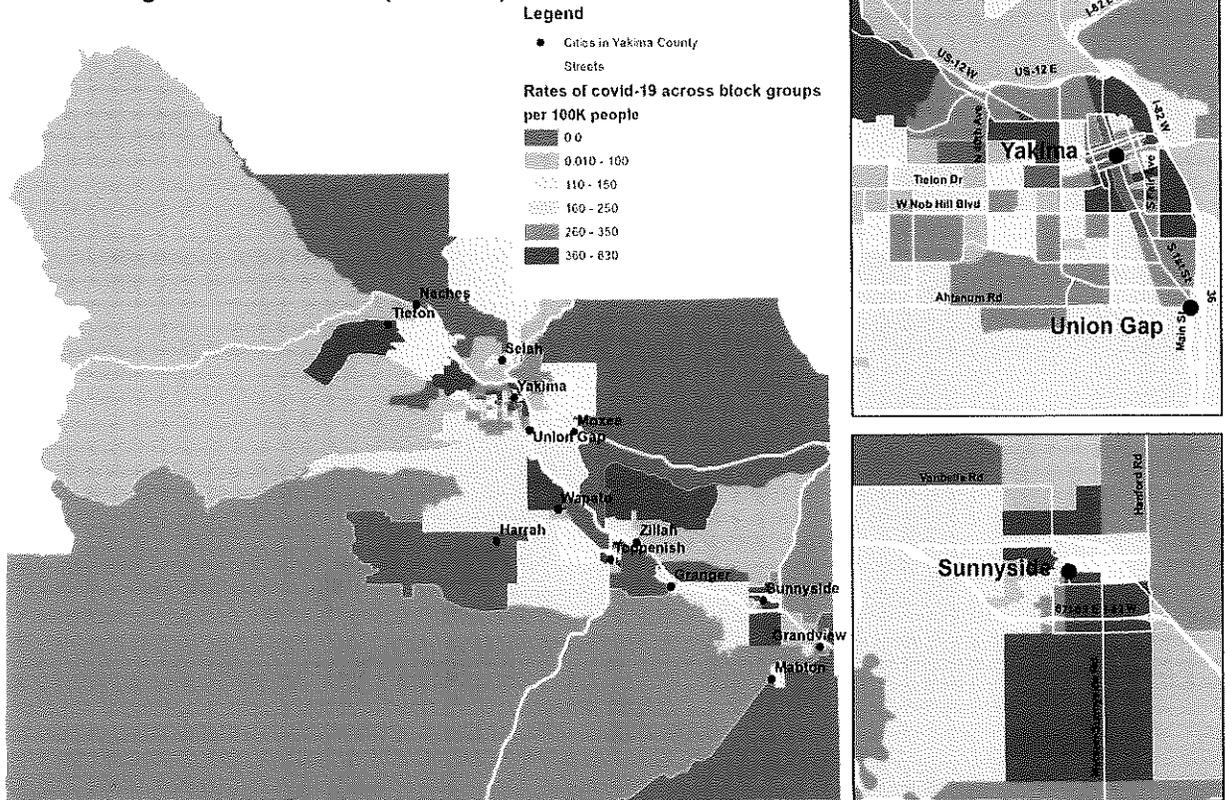
33 Attorney for Petitioner Briggs

Exhibit A-3

Covid-19 infection rates

Yakima County Health District
Apr 22, 2020

Rates of covid-19 across block groups in Yakima County excluding cases in long-term care facilities (4/19/2020).



NOTE: Out of the 792 confirmed cases of covid-19, 489 were geocoded at the block group level.
Two hundred (n=200) cases were in long-term care facilities.
One hundred three (n=103) cases included non geocodable addresses (i.e., PO Box, an inaccurate address, or no address).

This Yakima Health District map shows where community members infected with the virus live, not where they contracted the virus. Community members can contract the virus from anywhere in the community, not just areas with higher rates of residents with confirmed cases.

The health district mapping is based on COVID-19 cases per 100,000 population, not actual case numbers in each town or city. Cases in long-term care facilities, which account for about a third of cases in the county, were not included in the map to prevent the data from being skewed. P.O. Box addresses were also excluded.

Yakima County Health District

Related Content



Yakima County has highest rate of COVID-19 cases in Washington, double the state rate

Yakima County has the highest rate of COVID-19 infections in the state by a

60

Exhibit A-4



Jason White

April 8 at 10:18 AM

DONATED!! side note. This same post is from the FB page Yakima Cares.

In light of my protest to not participate Council meetings, I will be donating my pay of 1000.00 to purchase and deliver items to those in need. Please reach out there is anything you are in need of. Vitamins? I will get them for you.

R E C E I V E D
APR 16 2020
Yakima County
Election Division **62**

...

was deleted

in City
/ take home
r necessary
at to me if

RECEIVED
APR 16 2020
Yakima County
Election Division
53

Exhibit A-5

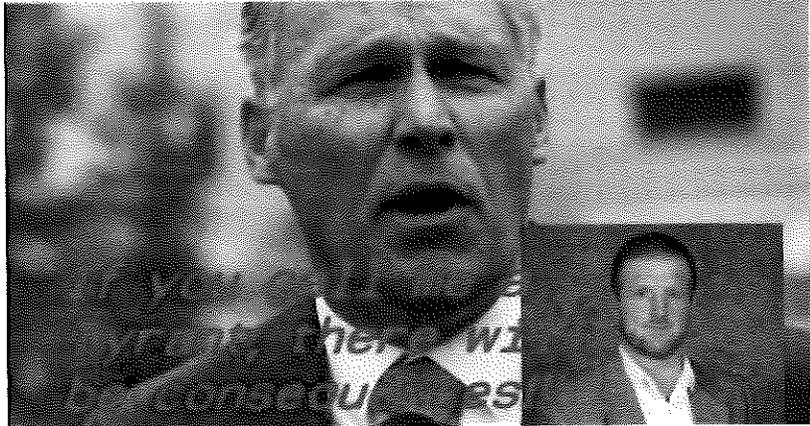


Jason White



Saturday at 1:33 PM · 🌐

As the judge stated as an elected official I have no duty to uphold an order from another elected official. My duty is to the constitution and the people who elected me.



WETHEGOVERNED.COM

Recall of Yakima Councilman for calling Governor "tyrant" fails in court | We the Governed

Exhibit A-6

66

< **Jason White**



Jason White

3 hrs · 🌐



I will not comply!



YAKTRINEWS.COM

Face coverings required in Yakima County starting June 3
- YakTriNews.com

Exhibit A-7

https://www.yakimaherald.com/opinion/letters_to_editor/letter-calling-for-people-to-ignore-safety-guidelines-is-not-leadership/article_4b9a7460-5abf-5862-8908-b2b2b90f8735.html

Letter: Calling for people to ignore safety guidelines is not leadership

Kristi Foster, Yakima Valley Chamber of Commerce Executive Board
Jul 4, 2020

To the editor — Yakima Chamber of Commerce believes in freedom of speech. That is why we believe City Councilman Jason White and his associates should be able to post what they want on their own social media pages. However, the crude words, vicious tone and inaccurate statements are not what you want or need to see and hear from an elected City Council representative.

Leaders do what their position requires, and professionalism and appropriate conduct are staples of good leadership. It is always easier to tear down than it is to build up and find the path out. Simply stating that our citizens should ignore the mask directive and personally walking around without a mask is not leadership. You may want to wish away or ignore the governor's directive (not recommended) or you propose a way to move forward with the rules in front of us.

Instead of spending time complaining and/or criticizing our hard-working and health-conscious citizens, we invite everyone to come work with us to reopen Yakima. Show your support for the businessmen and women who elected you by helping us "Mask Up and Open Up Yakima." Your city needs and expects this from you.

KRISTI FOSTER

Yakima Valley Chamber of Commerce executive board



Exhibit A-8

8:32

86%

Search



Mary Lopez

Yesterday at 12:20 PM

How can the council member, Jason White, dare to speak like this of our governor. This not only exposes the community to the high risk of getting CoVid-19, but also he doesn't respect our government.

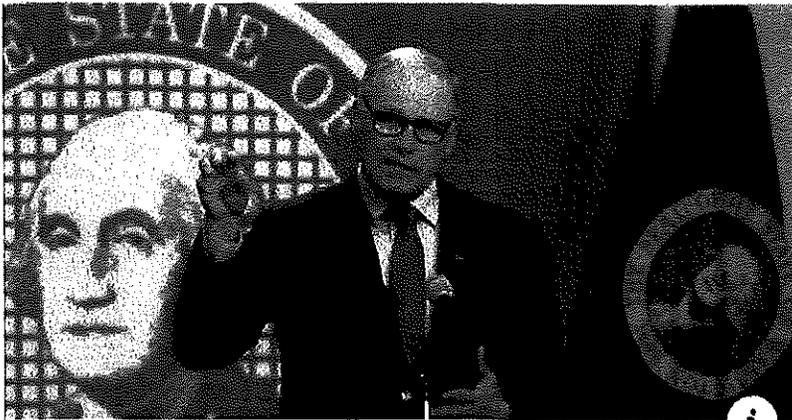
To be clear, Jason White is a public servant !!



Jason White

6 hrs

Eastern Washington, it's time for us to demand our liberation from the tyrant Inslee. Treat people like dogs and they become wolves.



KPTV.COM

Washington Gov. Inslee blasts Trump, accuses president of 'fomenting dom...

41

6 Comments 2 Shares

Exhibit A-9

<https://www.seattletimes.com/seattle-news/health/coronavirus-daily-news-update-april-7-what-to-know-today-about-covid-19-in-the-seattle-area-washington-state-and-the-nation/>

Nina Shapiro

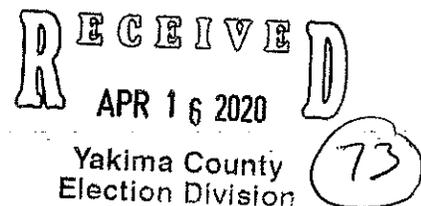
Seattle Times reporter

(206) 464-3303

Twitter: @NinaShapiro

<http://www.seattletimes.com/author/nina-shapiro/>

Show quoted text



R E C E I V E D
APR 16 2020

Yakima County
Election Division

12:51 pm, Apr. 7, 2020

Yakima doctors plead with residents to stay home

Doctors at Yakima's only hospital pleaded with residents on Tuesday to continue to stay home, saying the valley has had success in slowing the spread of the new coronavirus, but there's still a risk of their facilities being overrun with patients.

Yakima County has 346 confirmed COVID-19 cases — fourth most in the state, after King, Pierce and

74

~~74~~

RECEIVED
APR 16 2020

Yakima County
Election Division

COVID-19, there is no vaccine and there is no treatment. We need you to keep up your isolation efforts to help slow the spread.”

The hospital’s efforts have been hampered by Jason White, a conservative Yakima City Council member, who has been telling citizens to ignore the advice of public health officials.

On his Facebook page, White has promoted conspiracy theories about forced immunizations and the World Health Organization and urged

(75)

LAW OFFICE OF ELIZABETH HALLOCK

July 06, 2020 - 1:18 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98663-1
Appellate Court Case Title: In the Matter of the Recall of Jason White
Superior Court Case Number: 20-2-01135-4

The following documents have been uploaded:

- 986631_Briefs_20200706131529SC101766_3042.pdf
This File Contains:
Briefs - Appellants
The Original File Name was 986631BriggsOpeningBrief.pdf
- 986631_Cert_of_Service_20200706131529SC101766_4611.pdf
This File Contains:
Certificate of Service
The Original File Name was 986631DeclofServiceOpeningBrief.pdf

A copy of the uploaded files will be sent to:

- don.anderson@co.yakima.wa.us
- jason.white@yakimawa.gov
- joseph.brusic@co.yakima.wa.us

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