

Respondent Name
Recall Adam Fortney Committee and Lori Shavlik
Complainant Name
Charles L Eakins
Complaint Description
<p><u>Charles Eakins</u> reported via the portal Mon, 4 May 2020 at 10:11 AM</p> <p>Failed to register as a political committee under RCW 42.17A.205, despite claiming they are.</p> <p>From bottom of their website:</p> <p>Recall Adam Fortney Committee PO BOX 73 Woodinville, WA 98072 425-215-6608</p> <p>Recall Adam Fortney Page.pdf 780.35 KB</p> <p>News-Article-Fortney.pdf 1.15 MB</p> <p>recall-petition-against-sheriff-adam-fortney..pdf 1.03 MB</p>
What impact does the alleged violation(s) have on the public?
<p>Unable to determine the contributions to this committee. Or if this committee is legitimate.</p> <p>.</p>
List of attached evidence or contact information where evidence may be found
<p>PDF of petition to recall Snohomish County Sheriff.</p> <p>PDF of news article.</p> <p>PDF of Website where the committee is listed. https://recalladamfortney.com/</p>
List of potential witnesses with contact information to reach them
<p>All of Snohomish county.</p> <p>.</p>
Certification (Complainant)
<p>I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.</p>



Recall Adam Fortney



Signatures Needed!!

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recalladamfortney@gmail.com

My Blog

May 1, 2020

RECALL ADAM FORTNEY

This is not political, but rather a matter of law. We may not always agree with the laws, but Adam Fortney is not elected to "decide" law! He was elected to uphold the laws. It is alarming when our elected officials bec...

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Recall Adam Fortney Committee

PO BOX 73 Woodinville, WA 98072

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Snohomish County sheriff who blasted stay-at-home order faces recall fight

BY HANNA SCOTT
MAY 4, 2020 AT 5:26 AM



Sheriff Fortney (KIRO Radio, Hanna Scott)

Put simply, “your words were akin to yelling ‘Fire’ in a crowded theatre.” That’s how Snohomish County Prosecutor Adam Cornell closed out a letter to Sheriff Adam

Gov. Inslee extends stay-at-home order through May 31

Fortney made the comments in an April 21 [Facebook post](#) following a [statewide address](#) from Inslee outlining a path forward to reopening the economy, that critics complained lacked specific details on benchmarks.

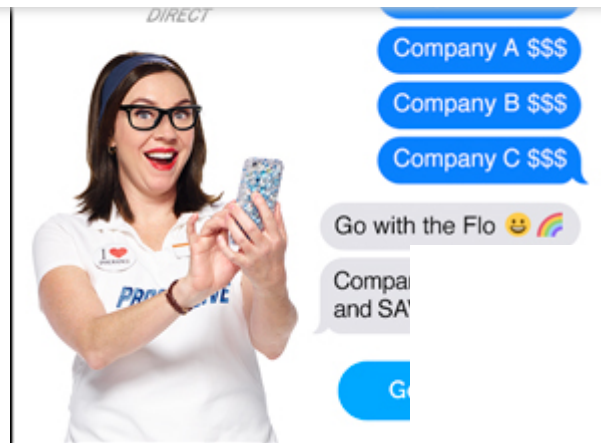
Among other things, Fortney repeatedly questioned the constitutionality of the governor's order, and reiterated his position that he would not enforce it.

The comments drew criticism from several public officials, including some county officials, State Attorney General Bob Ferguson, and the governor himself.

It also prompted the filing of a [recall petition](#) by Snohomish County resident Lori Shavlick, accusing him of malfeasance, and a violation of his oath of office for refusing to enforce the emergency order, encouraging violations, and unilaterally declaring it unconstitutional.

Last week, as first reported [by the Everett Herald](#), Fortney requested the county defend him against the recall effort, should it move forward, at the taxpayer's expense.

One day after that request, Snohomish County Prosecutor Adam Cornell responded in a [letter](#) saying that after "considerable thought," he had determined Fortney's comments on a public Facebook page did not warrant a taxpayer funded defense.



Cornell said he believed Fortney's statements could reasonably be read as a call to defy public health officials, and a declaration that the stay home order was unconstitutional. Cornell added that he felt Fortney's comments put the public at risk.

"By directly or indirectly encouraging people to disobey data-driven, science-based lawful orders handed down expressly to limit the spread of COVID-19 and to protect our health and well-being during this pandemic emergency, your statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death," Cornell wrote. "Put simply, your words were akin to yelling 'fire' in a crowded theater."

Fortney did not respond to a request for comment. However, in a press conference following a public lashing by the governor, Fortney explained he had hoped to open a dialogue with Inslee about concerns regarding the order and its impact on businesses, residents and the overall economy – though admitting he had not first tried to reach out to Inslee directly before going public with his critique.



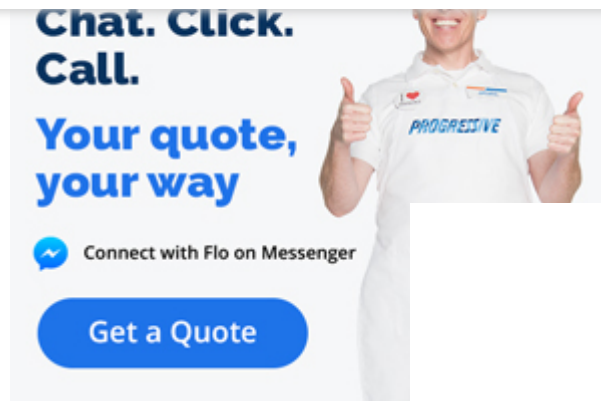
Fortney has also stated if elected sheriffs believe something is pushing constitutional boundaries, not only should they speak up, but they are obligated to.

How early COVID-19 detection sounded ‘tornado siren’ for WA response

Shavlick, who filed the recall petition, doesn’t see it that way. She was angry when she saw the Facebook post.

“I was angry about this person who stood up. He was the person and raised his hand and said ‘I will uphold the laws of our community and protect our citizens.’ And then he turns around, gets into office and says, ‘I don’t like this law, I’m not going to choose to follow this.’ And we depend on him for our safety,” Shavlick said in an interview with KIRO Radio.

“When people are given the message that you don’t have to follow the laws you don’t like, that creates a big fear among people that feel that they’ve been betrayed. What’s going to happen if somebody decides to not follow the law and harms other people?” she added.



Others agree in a [Change.org petition](#) calling for Sheriff Fortney to be recalled, saying his job is to enforce the law, not decide what it is, and accusing him of going “rogue.”

But, Fortney also has supporters who, after hearing the county won’t cover the recall defense, started a [Go Fund Me](#) effort to raise money for his defense, praising Fortney for “rightly questioned the logic and legality of many aspects of Washington Governor Jay Inslee’s stay-at-home order, and he refused to go after his own citizens by enforcing [it].”

Shavlick believes she has the signatures for the recall but because of the pandemic gathering them the traditional way is a challenge, so she’s waiting to hear if the courts will allow a special online signature gathering. She is keeping supporters [updated here](#).

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FCC STATION REPRESENTATIVE: CHELSEA MILLER – CMILLER@BONNEVILLE.COM 206.726.7000

To: Snohomish County Auditor

April 22, 2020

Re: Petition to Recall Snohomish County Sheriff Adam Fortney

From: Lori Shavlik

I. Introduction

Snohomish County Sheriff Adam Fortney is subject to recall. He has committed an act or acts of malfeasance, misfeasance, or violation of oath of office. The following recall petition is being submitted in accordance with RCW 29A.56.110.

II. Basis of the Complaint:

Snohomish County Sheriff Adam Fortney's refusal to perform the duties of his office, and his conduct in interfering with State, City, emergency management, local and state public health, and hospital officials in their efforts to protect the public during a worldwide pandemic constitutes malfeasance, misfeasance, and violation of oath of office under RCW 29A.56.110. Snohomish County Sheriff Adam Fortney has stated that he will not enforce the State of Washington's emergency, mandatory, non-discretionary stay-at-home proclamation, which he unilaterally declared to be "Unconstitutional" and has encouraged violations of Governor Inslee's Emergency Proclamation No. 20-25 "Stay Home – Stay Healthy" may be subject to criminal penalties in accordance with RCW 43.06.220(5).

To the extent any of his refusals to enforce the law or recommendations to defy a state and local stay-at-home order were discretionary acts, they were manifestly unreasonable.

III. Procedural Basis:

The opportunity to seek the recall of elected officials is a right guaranteed to the people by the state constitution. *In re Recall of Olsen*, 154 Wn2d 606, 609, 116 P.3d 378 (2005). Recall is a process by which an elected public officer is removed from office before the expiration of his term. *Chandler v. Otto*, 103 Wn. 2d 268, 270, 693 P.2d 71 (1984). 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 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). 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.

Any voter can initiate a recall by filing a typewritten charge pursuant to RCW 29A.56.110. The typewritten charge must provide (1) the name and office of the officer subject to recall (2) a recitation that the office who is subject to recall has committed an act or acts of malfeasance, misfeasance, or

violation of oath of office, or that such person has been guilty of any two or more of the acts specified in the constitution as grounds for recall (3) a concise statement of the act or acts forming the basis of the complaint; and (4) a detailed description of each of those acts(s). RCW 29A.56.110.

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

The officer who formulated the ballot synopsis shall petition the superior court to approve the ballot synopsis and to determine the sufficiency of the charges. RCW 29A.56.130.

Within 15 days after receiving the petition, the superior court is directed to conduct a hearing and determine, without cost to any party, (1) whether or not the acts stated in the charge are sufficient and (2) whether or not the ballot synopsis is adequate. RCW 29A.56.140. If the court finds the charges are sufficient, then the recall proponent may begin collecting the signatures of voters that are required in order to place the recall onto the ballot. RCW 29A.56.150(2). Alternatively, if the court finds that the charges are not sufficient, then the recall may not proceed. Either decision can be appealed directly to the Supreme Court, although the superior court's decision with regard to the ballot synopsis is final. RCW 29A.56.140.

IV . Facts:

On January 31, 2020, the U.S. Secretary of Health and Human Services, Alex Azar, declared a public health emergency regarding the novel corona virus.

On February 29, the State of Washington declared a State of Emergency in order to combat the spread of COVID-19, via the Governor's Emergency Proclamation 20-05. Governor Inslee declared the "worldwide outbreak" of COVID-19 a "public disaster...creating an extreme public health risk that may spread quickly."

The World Health Organization [WHO] has declared the COVID-19 contagion to be a worldwide pandemic.

The Centers for Disease Control and Prevention [CDC] states that "the best way to prevent illness is to avoid being exposed," and "some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms." The following about COVID-19 and its transmission is found on the CDC's website under "Know How it Spreads:"

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). **The best way to prevent illness is to avoid being exposed to this virus.** [Emphasis in original] The virus is thought to spread mainly from person-to-person between people who are in close contact with one another (within about 6 feet).

Through respiratory droplets produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

By March 12, Governor Inslee and the State Superintendent of Schools made the decision, on the advice of public health officials and scientists, to begin closing schools to combat and contain the spread of COVID-19. Although few children have died from COVID-19, except those with underlying health conditions, according to health authorities they can spread the disease, even asymptotically. All schools remain closed until the end of the school year, mid-June, in order to contain this dangerous virus.

On March 16, Governor Inslee amended emergency proclamation 20-05, closing restaurants and bars for inside service. Unlike the Yakima Health Authority's order, adherence to the Governor's order was and is mandatory. Citizens retain no authority to simply re-open their restaurants, nor do public officials (other than the Governor) have the authority to instruct others to do so. The Attorney General's office maintains a form on its website to investigate non-compliance with the order, and local and state officials can punish non-compliance with fines and charges of a criminal gross misdemeanor.

On March 25, Governor Inslee amended the emergency proclamation again. The Governor's amended emergency order, "Stay Home - Stay Healthy," mandates compliance. Its enforcement is discretionary, but violation of the order can be punishable as a gross misdemeanor. RCW 43.06.220(5). According to the amended proclamation, Washington residents are only to leave home for essential trips and for essential job duties. This order is still in effect at the time of this petition and will not be lifted until May 4, 2020, at the earliest.

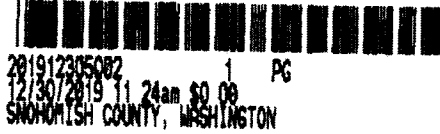
The Snohomish County Health Officer has also issued similar protective and guidance Orders, including the Order of March 31, 2020 and a Quarantine Directive and Isolation Order.

Snohomish County Sheriff Adam Fortney's oath of office requires adherence to the law. It reads as follows:



OATH OF OFFICE

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)



I, **Adam Fortney**, do solemnly swear (or affirm) that I will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington and the provisions of the Charter and Ordinances of Snohomish County, and that I will faithfully and impartially discharge the duties of the office of **Snohomish County Sheriff** for a **4-year term** according to law to the best of my ability



Signature of elected or appointed official

Subscribed and sworn to before me this 30 day of December, 2019



Signature of oath administrator

Superior Court Judge

Official Title Anna G. Alexander

Officials may retain a copy for their records. Return original to Snohomish County Elections
Mail: 3000 Rockefeller Ave M/S 505, Everett WA 98201 Email: elections@snoco.org Fax: 425-259-2777

PETITION FOR RECALL OF SNOHOMISH COUNTY SHERIFF ADAM FORTNEY

On April 21, 2020, with knowledge and intent, encouraged the public to violate the Governor's stay-at-home order. In one of his many posts on the matter¹, he wrote:

"As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order...The impacts of COVID 19 no longer warrant the suspension of our constitutional rights. ...the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights."

The Statement concludes: "...this is a time to lead the way." "Sheriff Adam Fortney"

COVID-19 is particularly deadly to seniors, those with compromised immune systems such as cancer patients, those with high blood pressure, heart disease, diabetes, or asthma, pregnant women, and vulnerable children and babies. COVID-19 can and has killed healthy people with no underlying health conditions as well. The WHO website explains:

People of all ages can be infected by the new coronavirus (2019-nCoV). Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus. WHO advises people of all ages to take steps to protect themselves from the virus...

To date, there is no specific medicine recommended to prevent or treat the new coronavirus (2019-nCoV). [<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> Last visited 4/13/20.]

The U.S. Centers for Disease Control and Prevention (CDC) identified Washington's asthma prevalence as among the highest in the nation, making residents at risk to COVID-19, which attacks lung tissue.

The Snohomish County Health Officer has also issued protective Orders, including the Order of March 31, 2020 and a Quarantine Directive and Isolation Order.

V. Charges:

Under RCW 36.28.010, a County Sheriff has the following duties:

General duties.

The sheriff is the chief executive officer and conservator of the peace of the county.

In the execution of his or her office, he or she and his or her deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

¹ See Statement of Sheriff Forney of April 19, attached Appendix A

- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

Snohomish County Sheriff Adam Fortney failed to perform these duties, including but not limited to those set forth in RCW 36.28.10 (1), (2), (3), and (6) as well as the duty to make reports in RCW 36.28.011.

Snohomish County Sheriff Adam Fortney's conduct in interfering with and refusing to enforce lawful State Orders and State and local Health Official's Orders interfered with emergency management, public health, and hospital officials constitutes malfeasance, misfeasance, and violation of oath of office under RCW 29A.56.110.

Snohomish County Sheriff Adam Fortney used his position as an elected official to encourage citizens to defy the law and violate the Governor's Emergency Proclamations, and local health directives, which ordered non-essential businesses to close, and ordered citizens to stay at home, except for essential trips and essential jobs. Malfeasance also includes the commission of an unlawful act. RCW 29A.56.110(1)(b). Violation of the Governor's Order is punishable as a gross misdemeanor.

Snohomish County Sheriff Adam Fortney has intentionally undermined the public's trust in his fellow county officers, public health officials, and State officials. He puts others at risk, including public health officials, and emergency management teams. This was Malfeasance, Misfeasance and a violation of his Oath of Office.

Regardless of whether the platform that he used was a personal or public Facebook page, Snohomish County Sheriff Adam Fortney discussed county business and indicated his refusal to comply with his oath of office. Snohomish County Sheriff Adam Fortney lacks such repute and medical/public health education and training. His recommendations to ignore public health officials were irresponsible, unconscionable, and manifestly unreasonable.

Snohomish County Sheriff Adam Fortney's conduct on April 21 and 22 demonstrated acts of malfeasance, misfeasance, unlawful conduct, and/or violation of his oath of office. (See RCW

29A.56.110). His malfeasance and misfeasance included “wrongful conduct that affects, interrupts, or interferes with the performance of official duty.” (See RCW 29A.56.110(1)). Snohomish County Sheriff Adam Fortney’s misfeasance and malfeasance additionally includes “the performance of a duty in an improper manner.” (See RCW 29A.56.110(1)(a)).

Snohomish County Sheriff Adam Fortney’s statement encouraged residents to violate the emergency efforts of the County, state law, and the public health official’s orders, were “reckless”, and endangered the rest of the community. In a responsive statement, Snohomish County Prosecutor Adam Cornell said the governor has legal authority to issue a stay-home order, and that anyone who violated it could be punished under the law.

“Any attempt to undermine that authority is both irresponsible, unhelpful in these difficult times, and contrary to the rule of law,” he said. “I fear that the recent statements of Sheriff Fortney will be interpreted by some citizens around the state to grant license to willfully and blatantly violate the law. Let me be clear: actions have consequences.”

Health officials in Snohomish County on Wednesday, April 22nd issued a statement in response to Sheriff Fortney’s social media post urging residents to “stay the course” and continue following social distancing and hygiene guidelines contained in the governor’s emergency orders.

“We all want to open businesses back up as soon as possible, but now is not yet that time,” the district said in a statement, noting that “social distancing and temporary mitigation measures will likely be a part of our new normal for months and years to come.”

David Postman, Inslee’s chief of staff, said Wednesday April 22nd that neither Fortney nor Franklin County Sheriff Jim Raymond — who has also refused to enforce the emergency restrictions — have the authority to countermand the state’s chief executive and wonders why they would want to.

“People should not be looking to the sheriff’s Facebook page either for constitutional analysis or health advice,” said David Postman, Gov. Inslee’s chief of staff. “Now is not the time to get distracted or let up on what we’re doing. It’s working.”

In a prepared statement, Snohomish County Executive Dave Somers also seemed to push back against Fortney, without explicitly mentioning him. Somers, a fisheries biologist by trade, said that the county has been able to slow the spread of the virus precisely because of the restrictions that have been put in place.

“This isn’t about the opinions of any single elected official,” Somers said. “It’s about the health and safety of all the people we serve – not the few. Snohomish County will continue to make data-driven, science-based policy decisions. Anything less would be a disservice to the residents of Snohomish County and be playing Russian roulette with the lives of those we are charged to protect.”

Despite all of these well reasoned statements from County and State officials, Sheriff Fortney staged a Press Conference on April 22, 2020, where he reiterated and doubled down on his previous statements and expressed a shocking lack of concern in regard to the potential of his statements to encourage unlawful behavior such as the recent lethal threats directed at Governor Inslee.

Snohomish County Sheriff Adam Fortney's wrongful conduct interferes with and interrupts the attempts of the rest of the County and County health officials to get people to stay home to prevent the spread of COVID-19.

Snohomish County Sheriff Adam Fortney's wrongful conduct violates WAC 246-100-070 and RCW 43.20.050 and 70.05.120 as they pertain to enforcement of local health officer orders.

(1) 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**.

(3) Any person who shall fail or refuse to obey any lawful order issued by any local health officer shall be deemed guilty of a misdemeanor punishable as provided under RCW 70.05.120

Snohomish County Sheriff Adam Fortney's use of his position as a public official for private gain to support his private business interests, and to urge residents to disobey state and local emergency proclamations constituted a violation of RCW 42.23.070(1), that states: No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

All of the acts and omissions described herein constituted "the performance of a duty in an improper manner." Despite his oath of office to uphold local and state law, Sheriff Fortney publicly states that the Orders of the Governor and State and local Health authorities are "Unconstitutional", downplays the severity of the virus, and incites others to ignore the will of the State, the County and the State and Local Departments of Health.

Additionally, Snohomish County Sheriff Adam Fortney has committed violations of his oath of office including "the neglect or knowing failure by an elective public office to perform faithfully a duty imposed by law." (See RCW 29A.56.110(2)) Snohomish County Sheriff Adam Fortney has a duty to faithfully obey emergency orders imposed by the State of Washington and the County of Snohomish. He also has a duty to ensure he is not encouraging the public to disobey these directives. Unfortunately, Snohomish County Sheriff Adam Fortney has knowingly and intentionally failed to perform his duties as both a Sheriff and a public official, putting the public at great risk during an extraordinary global health crisis, and undermining the Rule of Law in our Democratic Republic

VI. Sufficiency of the Charges:

The superior court shall consider only the sufficiency of the charges. RCW 29A.56.140. 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. 2d 767, 773, 592 P.2d 1096 (1979). The court will not consider the motives of the persons filing the charges. *Janovich v. Herron*, 91 Wn. 2d 767, 773, 592 P.2d 1096 (1979).

Charges in a recall action, however, must be both factually and legally sufficient. *In re Recall of Lee*, 122 Wn.2d 613, 616, 859 P.2d 1244 (1993). “Charges are factually sufficient when, ‘taken as a whole they...state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a *prima facie* showing of malfeasance.’” *In re Recall of West*, 155 Wn. 2d. at 665 (quoting *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984).

“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). To the extent, if any, Sheriff Fortney was not compelled by law to obey stay-at-home orders, or was not compelled by law to dissuade others from violating the orders of public health officials and the Governor in the midst of a worldwide pandemic, Sheriff Fortney discretionary acts were manifestly unreasonable.

The petitioner has personal knowledge of the facts and circumstances surrounding the charges. Much of the evidence rests on Snohomish County Sheriff Adam Fortney’s social media announcement of April 21 and the public Press Conference of April 22. The charges also rely on the accounts of the articles set forth in the links below, (incorporated herein by reference) including Fox News, The Everett Herald, The Seattle Times, and The Daily Mail.

<https://www.foxnews.com/us/washington-county-sheriff-wont-enforce-governors-stay-at-home-order>

<https://www.heraldnet.com/news/snohomish-county-sheriff-questions-governors-stay-home-order/>

<https://www.seattletimes.com/seattle-news/snohomish-county-sheriff-says-he-wont-enforce-inslees-stay-home-order/>

<https://www.dailymail.co.uk/news/article-8245923/Snohomish-County-sheriff-says-wont-enforce-Washingtons-unconstitutional-stay-home-order.html>

<https://q13fox.com/2020/04/22/snohomish-county-sheriff-says-he-wont-enforce-inslees-stay-home-order/>

<https://www.king5.com/article/news/health/coronavirus/coronavirus-stay-at-home-order-snohomish-county-sheriff-adam-fortney/281-cbabdfcc-1d6a-45be-8d14-555c980f3ecd>

<https://www.kiro7.com/news/local/sheriff-eastern-washington-says-he-wont-enforce-stay-at-home-order/N5LX5OIUAJGQNC7UJO5IULIRIA/>

<https://www.usnews.com/news/best-states/washington/articles/2020-04-22/snohomish-county-sheriff-wont-enforce-stay-at-home-order>

<https://komonews.com/news/coronavirus/franklin-county-sheriff-wont-enforce-stay-at-home-order>

<https://www.washingtonpost.com/politics/2020/04/23/why-constitutional-sheriffs-wont-enforce-coronavirus-restrictions/>

<https://www.miamiherald.com/news/article242200046.html>

<https://www.columbiabasinherald.com/news/2020/apr/22/snohomish-county-sheriff-wont-enforce-stay-2/>

<https://www.bellinghamherald.com/latest-news/article242200046.html>

<https://www.dailyherald.com/business/20200422/many-wary-of-virus-reopenings-as-some-us-states-loosen-rules>

<https://www.ncwlife.com/inslee-ferguson-warn-residents-not-to-listen-to-local-officials-on-ignoring-stay-home-order/>

Media accounts are “not *per se* insufficient to show some form of knowledge of the facts.” *In re Recall of Kelley*, 185 Wn.2d 158, 170. 369 P.3d 494 (2016). Furthermore, the facts of this case are generally known and subject to Judicial Notice under ER 201.

Overall, to be legally sufficient, the charges in a recall petition must clearly state conduct that, if true, would constitute malfeasance, misfeasance, or a violation of the officer’s oath of office. *In re Recall of Beasley*, 128 Wn. 2d 419, 426, 908 P.2d 878 (1996). That standard is met here.

VII. Special Circumstances for Gathering Signatures during a Global Pandemic to Prevent the Mortal Hazard of Local Officials Acting with Impunity During a State of Emergency:

In order to place the recall of Sheriff Fortney on the ballot, it is required to collect “signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.” RCW 29A.56.180(2).

In addition to evaluating the sufficiency of the charges of this recall petition, petitioner respectfully requests that signatures be permitted to be gathered electronically. However, petitioner requests that the issue of method of signature collecting remain separate from the issue of determining the sufficiency of the charges itself, so that the signature gathering and certification process can proceed independently of any ruling or appeal on the issue of the method signature collection.

Sheriff Fortney may be emboldened in his behavior because he understands the difficulties of signature gathering during a pandemic. At the state level, RCW 29A.72.170 allows the Secretary of State to

reject an initiative or referendum for lack of signatures. “In case of such refusal, the Secretary of State shall endorse on the petition the word ‘submitted’ and the date, and retain the petition pending appeal.” RCW 29A.72.170(3); *see also Wyman v. Ball*, ORDER No. 96191-3 Thurston County No. 18-2-03747-3.

However, the presiding officer in this petition is not the Secretary of State, and the process for removing a local official is found in a code section separate from traditional initiatives and referendums, entitled “Special Circumstances Elections.” RCW 29A.56. That section lacks a directive calling for immediate rejection for a lack of signatures. Such rejection may be implied under normal circumstances. But these are not normal circumstances, these are once-in-a-century circumstances.

When circumstances are special enough to warrant a recall, and special enough for the Governor to order the public to refrain from in-person contact except in very specific circumstances, the combination of the two requires gathering signatures in a non-traditional, non-in-person manner. Otherwise the law would create a moral hazard of an elected official behaving horrifically and with impunity during a national, state, and local emergency.

Particularly given the nature of this case, in which an elected official is defying the warnings of public health officials trying to contain a pandemic by warning people to stay home, and the high risk of unintentional spread of COVID-19 to signature gatherers, or signature gatherers to citizens, petitioner respectfully requests that signature gathering be permitted via a non-in-person platform, such as an online signature gathering website.

Petitioner argues the duty to allow non-in-person signatures is a non-discretionary duty of the County Auditor in light of the Governor’s stay-at-home order. The presiding officer should have no choice but to allow online signature gathering for the duration of the Governor’s mandatory order.

Petitioner also acknowledges the reverse: that by omission, the Governor does not want any in-person signature gathering, and by extension, recalls of elected officials by the public in this calendar year. This logic can lead to absurd results, and could allow a public official to remain in office who urges people to defy the Governor’s self-same emergency order.

There is little court guidance to interpreting emergency orders in order to prevent absurd results. But statutory interpretation of legislative commands could assist. Absurd results that skirt the intent of the law should be avoided. The Governor’s Emergency Order 20-25 is clear and unambiguous, but it certainly could not be the Governor’s intent to make it impossible for the public to recall elected officials who defy, and encourage defiance, of his order. The case law is not completely on point (as this is a unique, once in a century situation), but the Governor’s intent in issuing his executive order matters. Governor Inslee intended for people to follow his order and for elected officials to uphold the law and participate in the statewide effort. [The “primary objective in interpreting a statute is to ascertain and give effect to the intent of the Legislature” *State v. Keller*, 98 Wash. 2d 725, 728, 657 P.2d 1384, 1386 (1983). The purpose of an enactment should prevail over express but inept wording. *State ex rel. Royal v. Bd. of Yakima County Comm’rs*, 123 Wash. 2d 451, 462, 869 P.2d 56 (1994).]

By not allowing online signature gathering during a statewide emergency, there is a risk of creating a mortal hazard of elected officials going rogue and acting with mal- and misfeasance because they know they cannot be recalled by the public through certification of a petition via in-person signature gathering.

Thus, petitioner respectfully requests the presiding officer's support in this matter. Petitioner also acknowledges the Superior Court has original jurisdiction to compel Sheriff Fortney to compel the performance of any act required by any public officer or to prevent the performance by any such officer of any act in relation this recall not in compliance with the law. RCW 29A.56.270.

VIII. Affirmation:

I Lori Shavlik, affirm and swear under oath that I am a registered voter in Snohomish County and I believe the charge or charges to be true based upon personal knowledge of the alleged facts upon which the stated grounds for recall are based. I certify the truth of the foregoing under penalty of perjury of the Laws of the State of Washington.

Dated this 22nd day of April, 2020.



Lori Shavlik
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Appendix 1



Snohomish County Sheriff Adam Fortney

20 hrs ·

Snohomish County Residents and Business Owners,

I just watched the Governor's speech to Washingtonian's regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn't even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I'm not even sure he knows what he is doing or knows what struggles Washingtonian's face right now.

I want to start by saying this virus is very real and sadly, it has taken 97 lives in Snohomish County. This is a very serious issue and the appropriate precautions need to be taken to protect our most vulnerable populations. However, our communities have already shown and continue to show they understand the severity of the situation and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

I am worried about the economy and I am worried about Washingtonian's that need to make a living for their family. As more data floods in week by week and day by day about this pandemic I think it is clear that the "models" have not been entirely accurate. While that is okay, we cannot continue down the same path we have been on if the government reaction does not fit the data or even worse, the same government reaction makes our situation worse.

As elected leaders I think we should be questioning the Governor when it makes sense to do so. Are pot shops really essential or did he allow them to stay in business because of the government taxes received from them? That seems like a reasonable question. If pot shops are essential, then why aren't gun shops essential? Our Governor has told us that private building/construction must stop as it is not essential, but government construction is okay to continue. So let me get this right, according to the Governor if you are employed or contracted by the government to build government things you can still make a living for your family in spite of any health risk. If you are a construction worker in the private sector you cannot make a living and support your family because the health risk is too high. This contradiction is not okay and in my opinion is bordering on unethical.

As I arrive to work at the courthouse, I see landscapers show up each day to install new landscape and maintain our flowerbeds. How has Governor Inslee deemed this essential work? However, a father who owns a construction company and works alone while outdoors is not allowed to run his business to make a living to provide for his wife and children? How has Governor Inslee deemed thousands of Boeing employees who work inside a factory building airplanes essential? But building residential homes is not essential? If a factory with 20,000+ employees each day can implement safe practices to conduct normal business operations, I am entirely confident that our small business owners and independent contractors are more than capable of doing the same.

If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn't matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it's time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit

of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights. I strongly encourage each of you to reach out and contact your councilmembers, local leaders and state representatives to demand we allow businesses to begin reopening and allow our residents, all of them, to return to work if they choose to do so.

The great thing about Snohomish County government is we have all worked very well together during this crisis. I'm not saying we agree all of the time, I'm saying we have the talent and ability to get this done for Snohomish County! This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney