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FEB 23 2015

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

IN RE THE RECALL OF MARK ROE,  
SNOHOMISH COUNTY PROSECUTING  
ATTORNEY

SCSC 15-2-02357-6

MEMORANDUM OF MARK K. ROE  
IN OPPOSITION TO THE MOTION  
TO DETERMINE SUFFICIENCY OF  
RECALL CHARGES, ETC.

Mark K. Roe, the duly elected Prosecuting Attorney of Snohomish County ("Mr. Roe" or the "Prosecuting Attorney"), by and through his attorney of record, submits this memorandum challenging the sufficiency of the Recall Petition ("Petition") brought by Anne Block and Noel Fredrick ("Petitioners").

**I. INTRODUCTION**

The Petition filed against Snohomish County Prosecuting Attorney Mark Roe is the latest in a long line of unsuccessful lawsuits and recall attempts filed by petitioner Anne Block against various elected officials.<sup>1</sup> Like her previous attempts, this Petition should be

<sup>1</sup>This is Ms. Block's second attempt to recall Mr. Roe. Her first recall petition against Mr. Roe was dismissed out of hand for factual and legal deficiency. Ms. Block tried two times, without success, to recall former County Executive Aaron Reardon. *See In Re the Recall of Aaron Reardon*, Skagit County Superior Court Nos. 12-2-01365-1 and 12-2-02168-9. Block also tried, without success, to recall former Sheriff John Lovick from office. *See In Re the Recall of John Lovick*, Snohomish County Superior Court No. 13-2-04379-1. Block has also filed unsuccessful petitions for recall against other local officials: *In Re the Recall of Jo Beavers*, Snohomish County Superior Court No. 11-2-09873-5; 12-2-04108-1; 12-2-05057-9 (unsuccessful attempts to recall the Mayor of Gold Bar); *In re Recall of Christopher Wright*, Snohomish County Superior Court No. 12-2-04107-3

1 dismissed. The allegations in this Petition are based solely on Petitioners disagreement  
2 with a discretionary decision made by the Prosecuting Attorney – which is not a legally  
3 sufficient basis for recall. Moreover, and no less importantly, the Petition itself lacks any  
4 factual or legal basis to support a recall. The Petition should be dismissed in its entirety.

## 5 **II. BACKGROUND**

6 On February 18, 2014, Anne Block (“Ms. Block” or “Petitioner”) filed a Complaint  
7 in the United States District Court alleging that employees of Snohomish County and the  
8 City of Gold Bar participated in a conspiracy to retaliate against her for exercising her First  
9 Amendment right to make public records requests, post articles about government  
10 employees on her online “blog,” and filing numerous petitions to recall elected officials.  
11 *Declaration of Lyndsey M. Downs*, at ¶ 3; Ex A. Ms. Block’s Complaint named Kevin  
12 Hulten personally. *Id.*<sup>2</sup> Ms. Block generally alleges that Mr. Hulten conspired with others  
13 to retaliate against her, including creating a “Wikipedia attack piece” which included  
14 statements about her that were not true. *Id.* After receiving the Summons and Complaint,  
15 Mr. Hulten sought legal defense from the County, pursuant to SCC 2.90.090, which  
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19 (unsuccessful attempt to recall a City of Gold Bar Council member). Ms. Block previously filed  
20 suit against Snohomish County based on a claim that she did not receive a complete response to a  
21 public records request. *See Anne Block v. Snohomish County, Department of Emergency*  
22 *Management*, Skagit County Superior Court No.11-2-01357-2. The court granted the County’s  
23 motion for summary judgment and dismissed the suit, and subsequently denied Plaintiff’s CR 60  
24 motion to vacate the judgment. *Id.* Plaintiff appealed both rulings, but later dismissed her appeals.

25 <sup>2</sup> Kevin Hulten worked for former Snohomish County Executive Aaron Reardon from January 18,  
26 2011, to May 10, 2013. On March 1, 2013, Mr. Hulten was placed on administrative leave because  
allegations surfaced that Mr. Hulten was harassing Snohomish County officials and employees –  
including Mr. Roe -via anonymous public records requests. To avoid any conflict of interest, the  
criminal harassment investigation was referred to and handled by the King County Sheriff.  
*Declaration of Mark K. Roe (Roe Decl.)*, ¶3-5.

1 requires the Prosecuting Attorney to determine whether an employee is entitled to County  
2 legal defense. *Roe Decl.*, ¶8.

3 Because Mr. Roe had been a target of Mr. Hulten's public records requests, Mr. Roe  
4 determined that Mr. Hulten's request posed a potential conflict of interest. *Roe Decl.*, ¶9.  
5 Therefore, Mr. Roe referred Mr. Hulten's request to Randall Gaylord, the San Juan County  
6 Prosecuting Attorney. *Id.*; *Declaration of Randall K. Gaylord (Gaylord Decl.)*, ¶3 Mr.  
7 Gaylord reviewed Ms. Block's Complaint and Amended Complaint, relevant provisions of  
8 state law including chapter 4.91 RCW, Snohomish County Code provisions including SCC  
9 2.90.090, relevant case law, the job description for Mr. Hulten, certain personnel policies,  
10 newspaper articles referenced in the Complaint and Amended Complaint, and other online  
11 social media posts, including the Wikipedia page mentioned in the Complaint and  
12 Amended Complaint, and interviewed Mr. Hulten. *Gaylord Decl.*, ¶5. Ultimately, Mr.  
13 Gaylord determined that Mr. Hulten was entitled to County defense pursuant to SCC  
14 2.90.090. *Gaylord Decl.*, ¶6. Mr. Gaylord notified Mr. Roe of his decision on August 7,  
15 2014. *Gaylord Decl.*, ¶8; *Roe Decl.*, ¶10. Having previously determined that there was a  
16 potential conflict of interest in representing Mr. Hulten, as discussed above, Mr. Roe  
17 authorized a contract for outside counsel, attorney John Kugler, to provide independent  
18 legal defense services for Mr. Hulten. *Roe Decl.*, ¶11; Ex A.

19 On January 29, 2015, Anne Block and Noel Frederick, Snohomish County residents,  
20 filed a petition seeking the recall of Snohomish County Prosecuting Attorney Mark Roe.  
21 The Petition alleges that Mr. Roe committed an act of misfeasance, malfeasance, and/or  
22 violated his oath of office. Specifically, the Petition sets forth the allegations as follows:  
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1 In August 2014, Snohomish County Prosecutor Mark Roe violated RCW  
2 4.96.010 when he allocated and entered into an agreement that violates  
3 RCW 4.96.010 when he used Snohomish County taxpayers monies to fund  
4 a convicted criminal and former Snohomish County Executive employee  
5 Kevin Hulten.

6 ...

7 To the extent that the criminal activities (of names persons) were neither  
8 part of their official duties nor were actions in good faith, the Snohomish  
9 County Prosecutor is well aware that providing legal counsel at taxpayers'  
10 expense is outside the scope of RCW 4.96.010.

11 On January 30, 2015, the Snohomish County Auditor verified that Ms. Block and  
12 Mr. Frederick are registered voters of Snohomish County and forwarded the Petition to the  
13 Washington State Attorney General's Office (AG's Office). *See* RCW 29A.56.130(1)(b) (If  
14 the prosecuting attorney is the officer whose recall is demanded, the attorney general is the  
15 preparer of the ballot synopsis.) The AG's Office thereafter drafted a Ballot Synopsis of  
16 Recall Charge Against Mark K. Roe. The AG's Ballot Synopsis formulated the Petition's  
17 allegations into two charges:

- 18 1. That in August 2104, Mr. Roe violated RCW 4.96.010 when he  
19 allocated and entered into an agreement to use Snohomish County  
20 taxpayer monies to fund legal counsel for former Snohomish  
21 County Executive employee Kevin Hulten, who plead guilty to  
22 criminal evidence tampering on July 7, 2014.
- 23 2. That the criminal activities of Kevin Hulten were not part of his  
24 official duties and were not actions in good faith, and Mr. Roe is  
25 aware that providing legal counsel at the taxpayers' expense is  
26 outside the scope of RCW 4.96.010.

On February 11, 2015, the AG's Office filed a Petition to Determine the Sufficiency  
of Recall Charges and Approval of Ballot Synopsis with the Snohomish County Superior

1 Court. The AG's Office also filed a Memorandum of Law Accompanying Petition, which  
2 provides a general summary of the law of recall in Washington.<sup>3</sup>

### 3 **III. ARGUMENT**

#### 4 **1. The Recall Petition Is Neither Legally Nor Factually Sufficient.**

5 While the right to recall an elected official is a constitutional right in Washington  
6 State, the right to recall an elected official can only be exercised on the basis of sufficient  
7 cause, not simply because a voter desires to remove an elected official from office. In order  
8 to protect public officials from harassment, recall charges must be both: (1) legally, and (2)  
9 factually sufficient. *In re Ackerson*, 143 Wn.2d 366, 371, 20 P.3d 930 (2000). Judicial  
10 review of the petition serves as the "gateway function" to determine the sufficiency of a  
11 petition and to protect public officials from petitions based on "frivolous or unsubstantiated  
12 charges." *In re Recall of Kast*, 144 Wn.2d 807, 813, 31 P.3d 677 (2001); *see also In re*  
13 *Recall of Reed*, 156 Wn.2d 53, 57, 124 P.4d 279 (2005); *In re Recall of Robinson*, 156  
14 Wn.2d 704, 707, 132 P.3d 124 (2006). Hence, to be sufficient, a judge must find that the  
15 charges in a recall petition are both legally and factually sufficient. *In re Recall of*  
16 *Sandhaus*, 134 Wn.2d 662, 668, 953 P.2d 82 (1998).

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19 Legal sufficiency means that the charge defines substantial conduct amounting to  
20 misfeasance, malfeasance, or a violation of the oath of office. *In re Recall of Wasson*, 149  
21 Wn.2d 787, 791, 72 P.3d 170 (2003). "Misfeasance" and "malfeasance" in office both mean  
22 "any wrongful conduct that affects, interrupts, or interferes with performance of official  
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25 <sup>3</sup> Mr. Roe adopts and incorporates the summary of law on recall contained in the Office of Attorney  
26 General's Memorandum of Law filed in this proceeding.

1 duty.” RCW 29.56.110(1). “Misfeasance” in office also includes the performance of an  
2 official duty in an “improper manner.” “Malfeasance” in office includes the commission of  
3 an unlawful act. RCW 29A.56.110(1)(a) and (b). “Violation of the oath of office” means  
4 the “neglect or knowing failure by an elective public officer to perform faithfully a duty  
5 imposed by law.” RCW 29A.56.110(2).

6 An elected official cannot be recalled for appropriately exercising discretion granted  
7 to him or her by law. *In re Recall of Bolt*, 177 Wn. 2d 168, 174, 298 P.3d 710 (2013). “If a  
8 discretionary act is the focus of the petition, the petitioner must show that the official  
9 exercised discretion in a manifestly unreasonable manner.” *Jewett v. Hawkins*, 123 Wn.2d  
10 446, 448, 868 P.2d 146 (1994)(citing *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71  
11 (1984) and *Greco v. Parsons*, 105 Wn.2d 669, 672, 717 P.2d 1368 (1986)). In contrast,  
12 mere disagreement - however loud or noxious - with a discretionary decision is legally  
13 insufficient to support a recall. *Matter of McNeill*, 113 Wn.2d 302, 308, 778 P.2d 524  
14 (1989); *Jewett*, 123 Wn.2d at 450-51.

15  
16 To be factually sufficient, a petitioner must allege “facts that establish a prima facie  
17 case of misfeasance, malfeasance, or violation of the oath of office.” *Cole v Webster*, 103  
18 Wn. 2d 280, 288, 692 P.2d 799 (1984). The charges as a whole must identify to the electors  
19 and to the official being recalled acts or omissions that without justification support recall.  
20 *Chandler*, 103 372 Wn.2d at 274, 693 P.2d 71. This prima facie showing ensures that both  
21 the voters and the officials can make an intelligent decision on the recall charge. *Teaford v.*  
22 *Howard*, 104 Wn.2d 580, 586-87, 707 P.2d 1327 (1985); *Ackerson* 143 Wn.2d at 372.  
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1                   **A.   The Petition is Legally Insufficient Because it Relates to the**  
2                   **Exercise of Discretion Vested in a Prosecuting Attorney.**

3                   The allegations in the Petition (and formulated as Charges 1 and 2) are by definition  
4                   legally insufficient because they are based solely on the Prosecuting Attorney's  
5                   discretionary decision to represent a defendant county employee.<sup>4</sup> Pursuant to RCW  
6                   4.96.041 and SCC 2.90.090, the Snohomish County Prosecutor is vested with the authority  
7                   to authorize defense of an employee (or former employee) in an action or proceeding  
8                   brought against that individual. RCW 4.96.041(1) provides:

9                   Whenever an action or proceeding for damages is brought against any past  
10                  or present officer, employee, or volunteer of a local governmental entity of  
11                  this state, arising from acts or omissions while performing or in good faith  
12                  purporting to perform his or her official duties, such officer, employee, or  
13                  volunteer may request the local governmental entity to authorize the  
14                  defense of the action or proceeding at the expense of the local  
15                  governmental entity.

16                  A local governmental entity may create a procedure to determine whether the acts or  
17                  omissions were within the scope of official duties or in good faith purported to be within  
18                  those duties. RCW 4.96.041(2). If they were, the request will be granted and the "necessary  
19                  expenses of defending the action or proceeding shall be paid by the local governmental  
20                  entity." *Id.*

21                  Chapter 2.90 SCC is the Snohomish County policy implementing RCW 4.96.041.  
22                  SCC 2.90.090(1) provides:

23                  Whenever any action or proceeding is brought against any county  
24                  employee, officer, or volunteer, who is not an independent contractor, or

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26                  <sup>4</sup>As discussed below, to the extent that the Petition is not clear about the conduct that it alleges is  
wrongful, (is the allegation based on the act of determining that Mr. Hulten is entitled to County  
defense or the act of authorizing the agreement for outside counsel to provide such County defense  
for Mr. Hulten) it is factually insufficient.

1 against such person and the spouse and/or marital community of any such  
2 person, arising from acts or omissions of that person while performing or  
3 in good faith purporting to perform his or her official duties, the county  
4 shall, upon request, authorize defense of the action or proceeding at  
5 county expense in accordance with this section. Snohomish County shall  
6 defend, indemnify, and hold harmless said protected personnel, subject to  
7 conditions and limitations of this chapter and RCW 36.16.134, from all  
8 costs, judgments or other civil liabilities, except punitive damages. This  
9 duty shall not apply to criminal, infraction or other non-civil proceedings  
10 or liabilities or where a lawsuit arises out of use of his or her personal  
11 vehicle by a county officer, employee or volunteer.

12 This provision, however, is subject to the limitations and process set forth in SCC  
13 2.90.090(2) - (4), which require an individual seeking legal representation at the expense of  
14 the County to apply to the Prosecuting Attorney for County defense. SCC 2.90.090(4)  
15 expressly authorizes the Prosecuting Attorney to review the application and determine  
16 whether the individual requesting representation is a county officer, employee or volunteer  
17 and that the action arises out of acts or omissions performed or in good faith purported to  
18 have been performed in the course of his or her official duties. SCC 2.90.090(4) provides:

19 The prosecuting attorney or his or her designee shall review the  
20 application for representation and if the prosecuting attorney or his or her  
21 designee determines that the individual requesting representation is a  
22 county officer, employee or volunteer and that the action arises out of acts  
23 or omissions performed or in good faith purported to have been performed  
24 in the course of his or her official duties, the prosecuting attorney shall  
25 authorize representation at county expense.

26 In *Colby v. Yakima County*, 133 Wn. App 386, 136 P.3d 131 (2006), the court  
upheld the Yakima County Prosecuting Attorney's determination that certain actions of a  
sitting district court judge were not performed in good faith or within the scope of his  
official duties. Through its prosecuting attorney, Yakima County had direct legislative  
authority to make that determination. See YCC 2.98.030 (YCC 2.98.030 empowers the



1 Yakima County Prosecuting Attorney to determine whether an action arises out of acts or  
2 omissions performed in good faith or purported to have been performed in good faith by a  
3 county employee or official.) It is not the court's function to "second guess the prosecuting  
4 attorney's determination following such delegation of legislative authority." *Colby*, 133 Wn.  
5 App at 391.

6 Case law and state and local law are all clear -- the Snohomish County Prosecuting  
7 Attorney is vested with broad discretion to determine, based on consideration of individual  
8 facts and circumstances, whether an action arises out of acts or omissions performed in  
9 good faith or purported to have been performed in good faith by an employee. If the  
10 Prosecuting Attorney determines that the employee acted or purportedly acted in good faith  
11 then "the prosecuting attorney shall authorize representation at county expense." SCC  
12 2.90.090(4).  
13

14 In this case, because Mr. Hulten sent multiple public records act requests in an  
15 attempt to harass Mr. Roe, the potential conflict of interest created by Mr. Hulten's request  
16 for County defense required Mr. Roe to refer that determination to a disinterested party.  
17 *Roe Decl.*, ¶9. Accordingly, Mr. Gaylord, acting on Mr. Roe's behalf, reviewed Ms.  
18 Block's Complaint and Amended Complaint, relevant provisions of state law including  
19 chapter 4.91 RCW, Snohomish County Code provisions including SCC 2.90.090, relevant  
20 case law, the job description for Mr. Hulten, certain personnel policies, newspaper articles  
21 referenced in the Complaint and Amended Complaint, online social media posts, including  
22 the Wikipedia page mentioned in the Complaint and Amended Complaint, and interviewed  
23 Mr. Hulten. *Gaylord Decl.*, ¶5. As a result of his review, Mr. Gaylord concluded that Mr.  
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1 Hulten was entitled to defense at the County's expense. *Gaylord Decl.*, ¶6-7. Acting in  
2 accordance with Mr. Gaylord's conclusion, Mr. Roe authorized an agreement to provide  
3 Mr. Hulten with a County defense. *Roe Decl.*, ¶11. In this case, the discretion exercised by  
4 Mr. Roe, as delegated to Mr. Gaylord, was appropriate and within the requirements of the  
5 laws of the State of Washington and the Snohomish County Code and consistent with his  
6 ethical obligations under the Rules of Professional Conduct.

7 Plainly, Petitioners disagree with the Prosecutor's decision. However, the law  
8 recognizes that elected officials and citizens will not always agree. Disagreement over a  
9 discretionary decision is not sufficient grounds for recall. *McNeill*, 113 Wn.2d at 308.  
10 Because mere disagreement with a decision fails to establish that the decision was  
11 manifestly unreasonable or that Mr. Roe engaged in conduct that amounts to misfeasance,  
12 malfeasance or violation of his oath of office, the charges are legally insufficient.

13  
14 **B. The Petition is Factually Insufficient Because it Does Not Allege**  
15 **Any Conduct Which, On Its Face, Constitutes Any Wrongdoing.**

16 To be deemed factually sufficient, a petition must make a prima facie showing of  
17 misfeasance, malfeasance, or violation of the oath of office. In other words, the petition  
18 must allege an official duty and conduct that, if accepted as true, substantially affects,  
19 interrupts, or interferes with the performance of that duty. The Petition is factually  
20 insufficient because neither determining whether the employee is entitled to County defense  
21 nor authorizing an agreement for legal defense violates any duty or is otherwise wrongful.

22  
23 The Petition alleges that Mr. Roe violated RCW 4.96.010 when he made the  
24 determination that Kevin Hulten was entitled to County defense in response to Ms. Block's  
25 lawsuit; however, RCW 4.96.010 does not impose any duty on Snohomish County or the  
26

1 Prosecuting Attorney. RCW 4.96.010 was enacted in 1967 to abolish the doctrine of  
2 sovereign immunity for the political subdivisions of the state. RCW 4.96.010(1) states:

3 All local governmental entities, whether acting in a governmental or  
4 proprietary capacity, shall be liable for damages arising out of their  
5 tortious conduct, or the tortious conduct of their past or present officers,  
6 employees, or volunteers while performing or in good faith purporting to  
7 perform their official duties, to the same extent as if they were a private  
8 person or corporation. Filing a claim for damages within the time allowed  
by law shall be a condition precedent to the commencement of any action  
claiming damages. The laws specifying the content for such claims shall  
be liberally construed so that substantial compliance therewith will be  
deemed satisfactory.

9 Thus, RCW 4.96.010 imposes a requirement on an individual seeking to maintain a  
10 tort claim against a local government entity. It does not create any affirmative duty on  
11 behalf of Snohomish County or the Snohomish County Prosecutor. Petitioners fail to  
12 provide any analysis or facts that explain how RCW 4.96.010 applies in this case. Because  
13 RCW 4.96.010 does not create a duty that Mr. Roe could have violated, the Petition is  
14 factually insufficient.  
15

16 Furthermore, there are no facts to show that Mr. Roe's actions violated any actual  
17 duty or his oath of office. In addition to the authority provided in SCC 2.90.090, the  
18 Snohomish County Code explicitly authorizes the Prosecuting Attorney to "make  
19 appropriate arrangements for the representation of the county official or employee" when a  
20 possible conflict exists between the county employee entitled to representation" SCC  
21 2.90.085(6). The Prosecuting Attorney also has the authority to award and approve all  
22 "contracts incidental to litigation for \$50,000 or less." SCC 3.04.140.  
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1 There is no dispute that Mr. Roe authorized the contract to provide legal services to  
2 Kevin Hulten in the lawsuit initiated by Ms. Block. This Petition is factually insufficient  
3 because authorizing the agreement was not wrongful, improper or unlawful. Furthermore,  
4 authorizing the agreement is not conduct that substantially affects, interrupts, or interferes  
5 with the performance of a duty. To the contrary, the authorization of the contract  
6 demonstrates that Mr. Roe acted appropriately and consistently with his duties set forth in  
7 in the Snohomish County Code. Because Petitioners have failed to made prima facie  
8 showing that Mr. Roe's actions substantially affect, interrupt, or interfere with his duties,  
9 the Petition should be dismissed.  
10

11 **C. The Petition is Factually Insufficient Because it Does Not Include**  
12 **Detailed a Description Required by RCW 29A.56.110.**

13 The Petition and Charges 1 and 2 are factually insufficient because they do not set  
14 forth a *concise statement* of the violations and a detailed description of the acts charged.<sup>5</sup>  
15 RCW 29A.56.110; *Chandler*, 103 Wn.2d at 274. In order to be deemed factually sufficient,  
16 the charge must enable the public and the challenged public official to identify the "acts or  
17 failure to act which without justification would constitute a prima facie showing of  
18 misfeasance, malfeasance, or a violation of the oath of office." *In re Recall of Bolt*, 177  
19 Wn.2d at 173-74 (internal quotation marks omitted) (quoting RCW 29A.56.110; *Kast*, 144  
20 Wn.2d at 813). The Petition and charges fail in this regard.  
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24 <sup>5</sup> The Petition is not concise. The first page does not reference any conduct attributed to Mr. Roe.  
25 Moreover, because both pages of the Petition include numerous grammatical errors, it is difficult to  
26 determine Petitioners' claims.

1 The Petition alleges that in August 2014, Mark Roe "entered into an agreement ...  
2 to fund a convicted criminal ...". *Petition* at 2. The Petition does not specify what  
3 agreement was entered into; it merely states that there is an agreement. The Petition  
4 provides no information about the purpose of the agreement, the terms of the agreement, the  
5 parties to the agreement, or any other relevant information that would inform a voter about  
6 what Mr. Roe actually did. The Petition is also ambiguous in that it could be read as either  
7 asserting that Mr. Roe should have denied Mr. Hulten's request for County defense in  
8 response to Ms. Block's Complaint or that Mr. Roe should not have authorized the  
9 agreement for outside counsel to provide such County defense. These allegations lack the  
10 "precision and detail required to enable the electorate and a challenged official to make  
11 informed decisions" about the truth of the charges, and thus render the Petition factually  
12 insufficient. *See In re Recall of Wasson*, 149 Wn.2d at 791.

14 **2. Consideration of the Adequacy of the Ballot Synopsis is Unnecessary.**

15 As described above, the Petition and Charges 1 and 2 are legally and factually  
16 insufficient, which renders the determination on adequacy of the ballot synopsis moot. To  
17 the extent that the Court determines that it is necessary to address the adequacy of the ballot  
18 synopsis, the Petition's lack of detail and clarity renders the Charges as articulated in the  
19 ballot synopsis inadequate. The problem for the AG's Office in drafting the ballot  
20 synopsis, of course, is that the Petitioners omit critical details and fail to clearly describe the  
21 conduct they are challenging. Any ballot synopsis based on such a petition is inadequate,  
22 not as a result of drafting, but because the petition itself fails to identify for voters what  
23 conduct it is challenging.  
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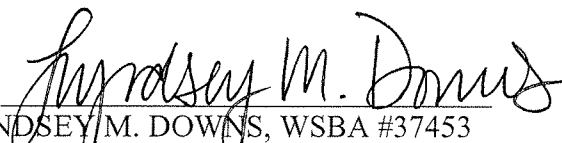
1 In this instance, the AG's Office opted to provide two plausible interpretations of  
2 the acts alleged in this Petition. However, by including plausible options, the ballot  
3 synopsis does not necessarily reflect the allegation(s) stated in the Petition, and is therefore  
4 inadequate.

### 5 III. CONCLUSION

6 Based on the legal and factual deficiencies described above, the Petition should be  
7 dismissed.

8 DATED this 23<sup>rd</sup> day of February, 2015.

9  
10 MARK K. ROE  
11 Snohomish County Prosecuting Attorney

12  
13 By:   
14 LYNDSEY M. DOWNS, WSBA #37453  
15 Deputy Prosecuting Attorney  
16 Attorney for Mark Roe  
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