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The Honorable Frank E. Cuthbertson
Hearing Date: 5/8/15
Hearing Time: 1:30 PM

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

IN THE MATTER OF:

NO. 15-2-08040-2

THE RECALL OF TROY X.
KELLEY, AUDITOR OF THE STATE
OF WASHINGTON

RESPONSE OF AUDITOR KELLEY
TO PROPOSED CHARGE #2 IN THE
PETITION TO DETERMINE
SUFFICIENCY OF RECALL
CHARGES AND APPROVAL OF
BALLOT SYNOPSIS

I. INTRODUCTION

Recall Proponent Will Knedlik (Mr. Knedlik) asserts that the elected State Auditor Troy Kelley (Auditor Kelley) should be recalled from office based upon several charges. This brief addresses Mr. Knedlik's allegations in Proposed Charge #2, which focus on audit activity related to Sound Transit, a regional transit authority founded by King, Pierce, and Snohomish Counties in 1993. Auditor Kelley's personal counsel will address the other two charges.¹

In Washington, an elected official can be removed from office only for cause. In recall proceedings, the court plays the role of a "gatekeeper" to ensure that elected officials are not

¹ The proposed Ballot Synopsis contains three charges. Petition to Determine Sufficiency of Recall Charges and for Approval of Ballot Synopsis, Ex. B. The undersigned counsel's appearance and representation of Auditor Kelley in this response is limited to Proposed Charge #2 (a) through (d). Proposed Charge #2 stems directly from actions taken in Auditor Kelley's official capacity, and therefore raises issues germane to the institutional interests of the Office of the State Auditor, and not to Auditor Kelley in his private capacity. See RCW 43.10.030(3). As stated in the Notice of Limited Appearance, this limited appearance should not in any way reflect on the sufficiency of the remaining charges.

RESPONSE OF AUDITOR KELLEY TO
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PETITION TO DETERMINE
SUFFICIENCY OF RECALL CHARGES
AND APPROVAL OF BALLOT
SYNOPSIS

1

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1 subject to frivolous or unsubstantiated claims for removal. *In re Robinson*, 156 Wn.2d 704,
2 707, 132 P.3d 124 (2006). An elected official can only be removed if the recall proponent
3 establishes that the official has committed an act of misfeasance or malfeasance or has failed to
4 faithfully discharge a duty imposed by law. The court must make its determination based only
5 on the information presented in the statement of charges.

6 In Proposed Charge #2, Mr. Knedlik alleges that in carrying out his audit duties,
7 Auditor Kelley failed to investigate and report the following activities by Sound Transit:

- 8 • “Ballot-title” fraud involving the need for annual independent performance
9 audits
- 10 • Unauthorized taxation
- 11 • Evasion of debt limitations.

12 This charge is legally insufficient as Mr. Knedlik fails to establish the basis for a legal
13 duty for the Auditor regarding these allegations. Mr. Knedlik lists several statutes in his
14 charge in an attempt to establish such a duty regarding Sound Transit. These laws, however,
15 fail to establish such a duty as all of the statutes cited govern audits of state agencies, not local
16 entities such as Sound Transit. Even if Auditor Kelley had such duties, the allegations involve
17 matters over which Auditor Kelley is statutorily authorized to exercise discretion; thus,
18 Proposed Charge #2 does not form a valid legal basis for recall. Finally, the recall charge also
19 fails as factually insufficient as it lacks facts from which either Auditor Kelley or the electorate
20 could determine how or when he failed to discharge his duties. Accordingly, Proposed
21 Charge #2 must be dismissed as legally and factually deficient.

22 II. RECALL PROCEDURE IN WASHINGTON

23 Recall is a process by which an elected public officer may be removed from office
24 before the expiration of his or her term. *Chandler v. Otto*, 103 Wn.2d 268, 270, 693 P.2d 71
25 (1984). Of the states that allow recall, only Washington requires in its constitution that recall
26 be for cause. *Estey v. Dempsey*, 104 Wn.2d 597, 600, 707 P.2d 1338 (1985).

1 In Washington, the right to recall an elected official from office can be exercised only
2 on the basis of sufficient cause and not on the basis of a voter's disagreement with the elected
3 official's views or discretionary actions. Cause requires a showing of malfeasance,
4 misfeasance, or violation of an oath of office. *Chandler*, 103 Wn.2d at 270-71. A proposed
5 recall cannot proceed unless the proponent shows cause in court as to why the charges are both
6 factually and legally sufficient. *Recall of Sandhaus*, 134 Wn.2d 662, 668, 953 P.2d 82 (1998).
7 The Court must determine sufficiency from the face of the recall petition. *In re Zufelt*, 112
8 Wn.2d 906, 914, 774 P.2d 24, 1223 (1989).

9 A charge is legally sufficient only if it defines "substantial conduct clearly amounting
10 to misfeasance, malfeasance or violation of the oath of office" and no legal justification exists
11 for the challenged conduct. *Recall of Telford*, 166 Wn.2d 148, 154, 206 P.3d 1248 (2009),
12 quoting *Recall of Wasson*, 149 Wn.2d 787, 791, 72 P.3d 170 (2003). Misfeasance or
13 malfeasance in office is defined as "wrongful conduct that affects, interrupts, or interferes with
14 the performance of official duty." RCW 29A.56.110. Misfeasance also includes "the
15 performance of a duty in an improper manner." Malfeasance in office means "the commission
16 of an unlawful act". *Id.* "Violation of the oath of office" is defined as "the neglect or knowing
17 failure by an elective public officer to perform faithfully a duty imposed by law." *Id.* "Lawful,
18 discretionary acts are not a basis for recall." *Telford*, 166 Wn.2d at 154. A charge is factually
19 sufficient only if the facts "establish a prima facie case of misfeasance, malfeasance, or
20 violation of the oath of office." *Wasson*, 149 Wn.2d at 791.

21 The recall process begins with the filing of a statement of charges with the officer who
22 accepts declarations of candidacy for elections to the office in question, here, the Secretary of
23 State. RCW 29A.56.110 (describing the contents of the statement of charges);
24 RCW 29A.56.120 (describing the officer with whom the statement is filed).

25 A court then conducts a hearing and decides (1) whether the recall proponent has
26 demonstrated a sufficient factual and legal basis for recall, and (2) whether the ballot synopsis is

1 adequate. RCW 29A.56.140. The recall proponent may not begin collecting voters' signatures
2 that are required in order to place the recall on the ballot until a court determines the statement of
3 charges to be sufficient, and until any appeal is resolved. RCW 29A.56.150(2). A recall may
4 proceed only if a recall proponent demonstrates that the charges are sufficient. Either party may
5 appeal the court's decision on this question directly to the Washington Supreme Court.
6 RCW 29A.56.140. The superior court's decision with regard to the ballot synopsis is final.
7 RCW 29A.56.140.

8 III. FACTS RELEVANT TO PROPOSED CHARGE #2

9 On April 3, 2015, Mr. Knedlik filed a recall statement of charges with the Secretary of
10 State.² Then on April 9, 2015, Mr. Knedlik filed "Expanded Charges for Recall by Voters and
11 for Removal under Law" seeking the recall of Auditor Kelley. The Secretary of State provided
12 copies of both "Charges" to the Attorney General's Office, as well as to Auditor Kelley.
13 RCW 29A.56.120 requires the Attorney General to prepare the ballot synopsis for the charges.

14 In accordance with his statutory obligation, the Attorney General prepared a ballot
15 synopsis. On April 24, 2015, the Attorney General petitioned this Court for a determination of the
16 sufficiency of the recall charges and to approve the ballot synopsis.³ See RCW 29A.56.130.
17 "[T]he Attorney General does not authenticate, substantiate, or validate any legal or factual
18 allegations charged in support of recall. Rather, the Attorney General is merely the person
19 designated by statute to place this matter before the court for hearing." See Petition To
20 Determine Sufficiency Of Recall Charges And For Approval Of Ballot Synopsis (Pet.) at 1.

21 Proposed Charge #2 focuses on audit activity about Sound Transit, a regional transit
22 authority founded by King, Pierce, and Snohomish Counties in 1993. While Mr. Knedlik fails
23

24 ² A copy of the statement of charges is appended to the Petition To Determine Sufficiency Of Recall
25 Charges And For Approval Of Ballot Synopsis.

26 ³ The Attorney General also represents statewide elected officials when charges stem from actions taken
in their official capacity. See *supra* fn. 1.

1 to set forth facts in his Statement of Charges to support Proposed Charge #2, the following
2 background information is provided to assist the Court.

3 The counties formed Sound Transit as a separate entity authorized by RCW 81.112.030.
4 The Legislature authorized the creation of a new "local agency" to implement a high capacity
5 transit system for these areas, finding the transportation facilities inadequate in the state's most
6 populous areas. RCW 81.112.010. In 1996, voters approved Sound Transit's implementation
7 plan, which included the imposition of local taxes. *Sane Transit v. Sound Transit*, 151 Wn.2d
8 60, 66, 85 P.3d 346 (2004).

9 Sound Transit's expenditure of taxes gathered pursuant to this election has previously
10 been challenged. The original plan put before the voters proposed a 21 mile light rail system.
11 After the taxes were approved, Sound Transit determined that it did not have sufficient funding
12 to construct the entire 21 mile route and decreased the initial construction of the route to 14
13 miles. A nonprofit corporation and an individual filed suit contending this decrease constituted
14 an unlawful substantial deviation from the voter's approval. The Supreme Court concluded
15 that the voters had provided Sound Transit with discretion to adjust the original plan. *Sane*
16 *Transit*, 151 Wn.2d at 74. The Court further found that Sound Transit had authority to
17 continue collecting taxes beyond the originally envisioned 10 year period in order to finance
18 additional construction and maintenance and operating costs. *Id.* at 79.

19 In 2007, then-State Auditor Brian Sonntag released the performance audit mentioned
20 by Mr. Knedlik in his petition. Performance Audit Report No. 1000005.⁴ The audit contained
21 a recommendation that Sound Transit engage in annual performance audits of its activities. *Id.*
22 at 35-38. A 2009 report issued by Auditor Sonntag states that all recommendations contained
23 in the 2007 audit had been implemented. Performance Audit Report No. 1002767 at A5.⁵ In a

24 ⁴ <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1000005&isFinding=false&sp=false>

25 ⁵ <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1002767&isFinding=false&sp=false>

1 2012 Performance Audit of Sound Transit, Auditor Sonntag again noted that Sound Transit had
2 implemented all recommendations from prior performance audits. Performance Audit Report
3 No. 1008277 at 99.⁶

4 Mr. Knedlik provides no facts in his recall charge regarding his contention that Auditor
5 Kelley failed to identify an alleged Sound Transit “fraud to evade a \$800 million ceiling on
6 long-term debt as negotiated with King County.”

7 IV. ARGUMENT

8 A. Proposed Charge #2 Relies On Statutes Applicable To *State* Agency Audits And 9 Therefore Is Not Legally Sufficient To Establish A Duty Regarding Audits Of 10 Sound Transit

11 Mr. Knedlik fails to assert a legal basis for the duties that he contends Auditor Kelley
12 failed to faithfully discharge. To be legally sufficient, a petition must identify the “standard,
13 law, or rule that would make the officer’s conduct wrongful, improper, or unlawful.” *Recall of*
14 *Bolt*, 177 Wn.2d 168, 174, 298 P.3d 710 (2013) quoting *Recall of Ackerson*, 143 Wash.2d 366,
15 377, 20 P.3d 930 (2001). Mr. Knedlik fails to make such a showing in his recall charge.

16 Sound Transit is a local government entity. Mr. Knedlik contends that Auditor Kelley
17 failed to faithfully discharge his duty under RCW 43.09.050(3) to “[i]nvestigate improper
18 governmental activity under chapter 42.40 RCW”. Pet., Ex. A. His claim fails for two
19 reasons. First, RCW 42.40 is the *state* Whistleblower Act, which does not apply to local
20 government actions. And, second, Mr. Knedlik’s charge does not actually describe a
21 whistleblower action. Further, RCW 43.09.050(3) does not impose any duty upon Auditor
22 Kelley to act concerning Sound Transit as a *local* government entity. Instead,
23 RCW 43.09.050(3) relates only to conduct involving whistleblower complaints against *state*
24 agency officials or actions.

25 ⁶ <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1008277&isFinding=false&sp=false>

1 Under RCW 42.40.040, Auditor Kelley has the authority to investigate allegations of
2 “improper governmental action” reported to his office. The statute defines “improper
3 governmental action” as delineated “action by an *employee* undertaken in the performance of
4 the employee’s official duties...” RCW 42.40.020(6)(a) (emphasis added). RCW 42.40.010(2)
5 defines “employee” as “any individual employed or holding office in any department or agency
6 of *state* government.” Accordingly, the responsibilities set forth in RCW 42.40 extend only to
7 activities of a *state* agency, not those of a *local* government entity such as Sound Transit. The
8 statute simply does not impose a duty on Auditor Kelley as alleged by Mr. Knedlik.

9 Similar difficulties attach to the other statutes Mr. Knedlik cites in his charges. Mr.
10 Knedlik contends that Auditor Kelley failed in his duties by neglecting to “promptly report any
11 irregularities to the attorney general.” He relies on RCW 43.88.160(6)(e) for this duty.
12 RCW 43.88 is entitled “State Budgeting, Accounting, and Reporting System.” This chapter
13 governs budgeting and accounting matters related again to *state* agencies, as opposed to *local*
14 government entities. See RCW 43.88.010 (establishes a system for state government
15 activities); RCW 43.88.020 (defines “agency” to mean every state office, institution, or
16 department). The specific provision cited by Mr. Knedlik, RCW 43.88.160(6)(e), governs
17 Auditor Kelley’s authority over audits of *state* agencies. Here again, the statute relied upon by
18 Mr. Knedlik does not establish any duty regarding *local* government entities such as Sound
19 Transit.

20 Mr. Knedlik’s charge that Auditor Kelley failed to investigate Sound Transit’s taxing
21 activities suffers from the same infirmities discussed above. To establish a duty in this regard,
22 Mr. Knedlik relies on RCW 43.88.160(6)(f) and RCW 42.40, both of which are inapplicable to
23 the activities of a local government entity. Thus, this charge also is legally insufficient.

24 Next, Mr. Knedlik alleges that Auditor Kelley failed to investigate “ballot-title fraud.”
25 This charge must also fail. Mr. Knedlik provides no authority establishing that Auditor Kelley
26 has a duty regarding investigation of “ballot-title fraud.” More fundamentally, Washington

1 law does not recognize any such legal doctrine as "ballot-title fraud." Legal requirements must
2 be found, if at all, in the text of the law rather than in a ballot title. A ballot title is not part of
3 the actual law, but is simply a statutorily-required brief description of a proposed law written
4 by either the Attorney General, for a state measure, or a county prosecutor for certain local
5 measures. RCW 29A.72.060 (role of Attorney General in drafting state ballot titles);
6 RCW 29A.36.071 (role of county prosecutor in drafting local ballot titles). The title merely
7 provides a brief summary of a measure for the benefit of voters. *See Washington Federation of*
8 *State Employees v. State*, 127 Wn.2d 544, 554, 901 P.2d 1028 (1995). The ballot title of a
9 local measure therefore cannot create any duty on the part of the State Auditor.

10 **B. Auditor Kelley May Not Be Recalled Based Upon His Exercise Of Lawful**
11 **Discretionary Authority, And As Such, Mr. Knedlik's Allegation In Proposed**
12 **Charge #2 Is Legally Insufficient**

13 A recall charge is legally sufficient only if the charge defines "substantial conduct
14 clearly amounting to misfeasance, malfeasance or a violation of the oath of office," and there is
15 no legal justification for the challenged conduct." *Telford*, 166 Wn.2d at 154 (internal
16 punctuation marks omitted). The charges must also sufficiently "specify why the acts
17 constitute misfeasance, malfeasance or violation of the oath of office." *Teaford v. Howard*,
18 104 Wn.2d 580, 587, 707 P.2d 1327 (1985). "[A]n elected official cannot be recalled for
19 appropriately exercising the discretion granted him or her by law." *In re Reed*, 156 Wn.2d 53,
20 59, 124 P.3d 279 (2005). "If a discretionary act is the focus of the petition, the petitioner must
21 show that the official exercised discretion in a manifestly unreasonable manner." *Jewett v.*
22 *Hawkins*, 123 Wn.2d 446, 448, 868 P.2d 146 (1994) (citing *Chandler*, 103 Wn.2d at 274, and
23 *Greco v. Parsons*, 105 Wn.2d 669, 672, 717 P.2d 1368 (1986)). Mere disagreement with a
24 discretionary decision, in contrast, is not sufficient. *Recall of McNeill*, 113 Wn.2d 302, 308,
25 778 P.2d 524 (1989); *Jewett*, 123 Wn.2d at 450-51.

26 / / /

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1 The state constitutional provision governing recalls was specifically crafted to prevent
2 recall elections based upon the popularity of decisions made by elected officials. *Telford*, 166
3 Wn.2d at 159-60 (describing Wash. Const. art. I, § 33, and quoting *Chandler*, 103 Wn.2d at
4 270-71). The Washington Supreme Court noted the danger that recall could encourage abuse
5 absent the safeguard of showing cause. This abuse includes recall motivated solely by political
6 objectives. *Id.* This point is essential to the nature of recall in Washington. The process
7 cannot be based upon a desire to remove an elected official from office because of
8 disagreement with one or more of an elected official's discretionary decisions. Wash. Const.
9 art. I, § 33 (requiring that recall be based only on a showing of sufficient cause). Mr.
10 Knedlik's allegations in Proposed Charge #2 go to the heart of Auditor Kelley's discretionary
11 powers.

12 Additionally, Mr. Knedlik's cited statutory authority does not dictate the matters
13 Auditor Kelley must examine in any given audit nor does it require that Auditor Kelley inquire
14 into every possible concern. Such decisions clearly require the judgment of any elected auditor
15 including Auditor Kelley and are thus discretionary. With thousands of entities to audit and
16 limited staff, the elected auditor must make decisions regarding how to deploy those resources.

17 A similar challenge was rejected in *Sandhaus*. There, the county prosecutor was
18 charged with not devoting sufficient resources to civil legal matters. In finding the petition
19 insufficient, the Supreme Court stated:

20 Balancing priorities in a public office with limited funds and personnel is a matter
21 within the discretion of the office supervisor, and whether *Sandhaus* is doing a
22 satisfactory job of managing his office is a quintessential political issue which is
23 properly brought before the voters at a regular election. Where discretion is
24 involved, the recall petitioner must show manifest abuse. The petition here fails
25 to make that showing.

26 134 Wn.2d at 670 (citation omitted).

Similarly, Mr. Knedlik contends Auditor Kelley failed to take sufficient action
regarding certain aspects of Sound Transit's operations. He asserts that Auditor Kelley should

1 have discovered ballot title and debt limit fraud, investigated improper governmental activity
2 by Sound Transit, and reported "irregularities" to the Attorney General through performance
3 and other audits or investigations of that local entity. Determining what to audit, as well as the
4 conclusions to be drawn from such audits, requires the exercise of the audit staff's judgment.
5 In essence, Mr. Knedlik challenges Auditor Kelley's Office's decisions regarding the scope
6 and conduct of Sound Transit audits. Such actions are most certainly discretionary and cannot
7 form the basis for recall.

8 Only if the recall charges set forth sufficient facts demonstrating that the elected official
9 exercised his or her discretion in a manner that was "manifestly unreasonable, or exercised that
10 discretion on untenable grounds or for untenable reasons" are they sufficient for recall. *Cole v.*
11 *Webster*, 103 Wn.2d 280, 284-85, 692 P.2d 799 (1984). Mere disagreement with a
12 discretionary decision, in contrast, is insufficient. *McNeill*, 113 Wn.2d at 308); *Jewett*, 123
13 Wn.2d at 450-51.

14 While Mr. Knedlik may disagree with decisions made by Auditor Kelley or his staff, he
15 has made no showing that Auditor Kelley's discretionary decisions regarding the scope and
16 content of audit activities were made on improper grounds. A mere attack on an officer's
17 judgment is not sufficient in the absence of any allegation of fraud or arbitrary, unreasonable
18 misuse of discretion by the elected official. *Chandler*, 103 Wn.2d at 275. Mr. Knedlik's
19 allegations suffer from a similar lack of information that Auditor Kelley acted in an arbitrary or
20 unreasonable manner.

21 Finally, Mr. Knedlik alludes obliquely to a suggestion of a "failure to report to work."
22 *Pet., Ex. B* at 1. If this passing reference was intended to amount to a charge on which recall
23 could be based, then it is legally insufficient as well. State law does not require elected
24 officials to work a specific number of hours. *See RCW 41.06.070(1)(e)* (exempting elected
25 officials from state civil service laws). "[T]he precise manner in which elected officials
26 perform their duties is entrusted to their sound discretion and to periodic review by the voters."

1 AGO 2003 No. 6, at 2. And again, as a discretionary act, it cannot form the basis for recall.
2 *Reed*, 156 Wn.2d at 59. Accordingly, Proposed Charge #2 is legally insufficient and should be
3 dismissed.

4 **C. Mr. Knedlik's Charge About Sound Transit Audits Lacks Sufficient Information**
5 **Regarding The Date, Time, Or Location Of The Alleged Acts; As Such, It Is**
6 **Factually Insufficient**

7 In addition to being legally sufficient, a recall charge also must be factually sufficient to
8 establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office.
9 *Chandler*, 103 Wn.2d at 274. This inquiry involves whether the charge states in detail the acts
10 complained of, as well as whether it demonstrates identifiable facts in support. *Reed*, 156
11 Wn.2d at 58.

12 To be factually sufficient, recall charges must "state the act or acts complained of in
13 concise language [and] give a detailed description including the approximate date, location,
14 and nature of each act complained of." RCW 29A.56.110. A petition must provide specifics
15 regarding when, where, and how the alleged violations occurred. *Recall of Ackerson*, 143
16 Wn.2d at 374. This "specificity" requirement enables the elected official to prepare a defense
17 and ensures that the electorate could understand the charge if it reaches the ballot. *Telford*, 166
18 Wn.2d at 154. Proposed Charge #2 does not contain the required specificity.

19 Mr. Knedlik fails to provide any reference to the specific nature of the actions he
20 alleges, when they took place, where they occurred, or the nature of the violation as required
21 by RCW 29A.56.110. This void is particularly evident as it relates to the "ballot-title" fraud
22 allegations. Mr. Knedlik provides no explanation of what he means by "ballot-fraud," nor does
23 his allegation contain any facts from which an understanding could be gleaned. *See supra* at
24 p. 4-6. Similar difficulties attach to the allegations of debt-ceiling fraud. Additionally, Mr.
25 Knedlik fails to include a single fact about whether Auditor Kelley comes to work.
26 *See* RCW 29A.56.110 (requiring the recall proponent to "give a detailed description including
the approximate date, location, and nature of each act complained of").

1 Nor does the recall charge contain a factual statement as to why any of these alleged
2 acts constitute misfeasance, malfeasance, or violation of the oath of office. As currently
3 asserted, the electorate could not make an informed decision regarding the actions of Auditor
4 Kelley from the information contained in this charge.

5 In the event the recall charges contained sufficient information that the official violated
6 the law, the recall proponent would still be required to demonstrate the official's intent to
7 commit an unlawful act. *Recall of Pearsall-Stipek*, 136 Wn.2d 255, 263, 961 P.2d 343 (1998)
8 (*Pearsall-Stipek II*). "This means that for the factual sufficiency requirement to be satisfied,
9 the petitioner is required to demonstrate 'not only that the official intended to commit the act,
10 but also that the official intended to act unlawfully.'" *Recall of Pearsall-Stipek*, 141 Wn.2d
11 756, 765, 10 P.3d 1034 (2000) (*Pearsall-Stipek III*) (*quoting Pearsall-Stipek II*, 136 Wn.2d at
12 263). Again, Mr. Knedlik provides no facts from which the Court could conclude that Auditor
13 Kelley personally participated or was aware of the alleged misconduct or that he had any intent
14 to violate the law. *See Recall of Pearsall-Stipek*, 129 Wn.2d 399, 405, 918 P.2d 493 (1996)
15 (*Pearsall-Stipek I*).

16 These specificity requirements leave intact the inherent right of the people to
17 recall elected officials for cause. Const. Art. 1, §§33, 34 (amend. 8). The only
18 burden is that recall must be based on specific and definite charges. This is not a
19 cumbersome burden

20 *Cole*, 103 Wn.2d at 285.

21 For these reasons, Mr. Knedlik's allegations about the Sound Transit audit and Auditor
22 Kelley are factually insufficient and should be dismissed.

23 V. CONCLUSION

24 The Court should determine that Mr. Knedlik's recall statement of charges relating to
25 audits of Sound Transit is factually and legally insufficient. Auditor Kelly respectfully
26

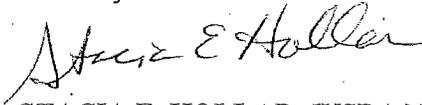
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1 requests that this Court dismiss Proposed Charge #2. In doing so, the Court need not reach the
2 adequacy of the ballot synopsis.

3 DATED this 6th day of May, 2015.

4
5 ROBERT W. FERGUSON
Attorney General

6 

7 STACIA E. HOLLAR, WSBA No. 15546
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10 Counsel for Washington State Auditor on
11 Proposed Charge #2

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of May, 2015, at Olympia, Washington.


Darla Aumiller, Legal Assistant