



Snohomish County
Prosecuting Attorney

Adam Cornell
Prosecuting Attorney

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April 28, 2020

Snohomish County Sheriff Adam Fortney
3000 Rockefeller Avenue
Everett, WA 98201

Via Electronic Mail: Adam.Fortney@snoco.org

Re: Response to your request for counsel at public expense pursuant to RCW 4.96.041

Dear Sheriff Fortney,

On April 23, 2020, a charge was filed by a citizen seeking your recall. On April 27, 2020, pursuant to RCW 4.96.041, you requested the charge be defended by the County at taxpayer expense. The decision to grant such a request rests with, and requires the consent of, both the legislative authority of Snohomish County (the County Council) and the Prosecuting Attorney. Our state Supreme Court has recognized that one of the purposes of RCW 4.96.041 "is to protect elected officials from being subjected to the financial and personal burden of recall elections *based on false and frivolous charges.*" Recall of Persall-Stipek, 129 Wn.2d 399, 402, 918 P.2d 493 (1996) (*emphasis added*).

After considerable thought, it is my determination that the public statements made by you on a personal Facebook page, which serve as the basis of the charge, do not warrant a defense at public expense. Without commenting on the ultimate merits of the charge, the petition sets forth a colorable a question as to whether your public comments evidence misfeasance, neglect, or a knowing failure to perform faithfully the duties imposed on you by law. At a minimum, the record before me is insufficient to conclude that the petition is false or frivolous.

This exercise of my statutory discretion is informed by my belief that your Facebook post of April 21, 2020, can reasonably be read as a call to defy public health officials and a declaration that Governor Inslee's Stay At Home order is unconstitutional. It can also be read as a pronouncement that the medical science and current statistical modeling relied upon by the Governor, and others, is flawed and not to be trusted; that citizens—particularly those who look to you for guidance as our County's chief law enforcement officer—have your permission to disregard orders that intrude on their rights to life, liberty, the pursuit of happiness, the exercise of religious freedom, or other constitutional entitlements, on the promise that you will not enforce any violation of those orders. 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

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pandemic emergency, your statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death. Put simply, your words were akin to yelling "fire" in a crowded theater.

The above notwithstanding, if after judicial review of the charge it is determined that the petition is false and frivolous, upon request, I will revisit my determination that any costs associated with defending the petition should be covered at taxpayer expense. At that time, the matter would also require independent review and approval by the County Council.

Sincerely,



Adam Cornell
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Cc: Nate Nehring, Chair, Snohomish County Council
Stephanie Wright, Vice Chair, Snohomish County Council
Sam Low, Snohomish County Councilmember
Megan Dunn, Snohomish County Councilmember
Jared Mead, Snohomish County Councilmember
Geoffrey Thomas, Chief of Staff, Snohomish County Council

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