

**Complaint Description**

[Lincoln](#) (Thu, 20 Sep at 10:45 AM)

I am the lead attorney in an ongoing Open Public Meetings Act lawsuit against the City of Seattle. The discovery process revealed the the elected leaders of the City repealed the "head tax" in order to protect the Education Levy that is on the upcoming ballot in November. Per the City Attorney, Mr. Holmes, the City's resources are being used to support the ballot measure, which would likely be a violation of RCW 42.17A.555. If this is not fully investigated and enforced, I intend to file a citizen's action.

**What impact does the alleged violation(s) have on the public?**

The public trust is being eroded and public resources are evidently being wrongfully dedicated in violation of the law:

<https://www.seattletimes.com/opinion/editorials/secret-meetings-via-text-hold-seattles-leaders-accountable/>

**List of attached evidence or contact information where evidence may be found.**

The information is widely available and has been extensively reported upon:

<https://www.seattletimes.com/opinion/editorials/secret-meetings-via-text-hold-seattles-leaders-accountable/>

<https://www.seattletimes.com/seattle-news/judge-orders-seattle-to-turn-over-internal-records-on-head-tax-repeal-ed-murray-by-sept-28/>The attached declaration from City of Seattle Attorney Pete Holmes elaborates upon the issues.

The attached declaration of Peter Holmes elaborates upon the issues. The attached emails of Councilmember Gonzalez emphasizes that the Education Levy's is implicated in the actions at issue.

**List of potential witnesses with contact information to reach them.**

See attached:

<https://www.seattletimes.com/seattle-news/what-a-mess-texts-by-seattle-mayor-council-member-shed-light-on-head-tax-repeal/>

**Complaint Certification:**

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.

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IN THE SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JAMES EGAN, individually,  
  
Plaintiff,  
  
v.  
  
CITY OF SEATTLE, a Washington  
municipal corporation,  
  
Defendant.

No. 18-2-14942-8SEA  
CONSOLIDATED

DECLARATION OF PETER S. HOLMES IN  
SUPPORT OF CITY'S RESPONSE TO  
PLAINTIFF'S MOTION TO COMPEL

ARTHUR WEST,  
  
Plaintiff,  
  
v.  
  
SEATTLE CITY COUNCIL, CITY OF  
SEATTLE, LISA HERBOLD, BRUCE  
HARRELL, KSHAMA SAWANT, ROB  
JOHNSON, DEBORA JUAREZ, MIKE  
O'BRIEN, SALLY BAGSHAW, TERESA  
MOSQUEDA, LORENA GONZALEZ,  
  
Defendants.

No. 18-2-15000-1SEA

1 I, PETER S. HOLMES, declare under the penalty of perjury under the laws of the State of  
2 Washington as follows:

- 3 1. I am over the age of eighteen and am competent to testify to matters herein. I make this  
4 declaration based on my personal knowledge unless otherwise stated herein.
- 5 2. I am the elected City Attorney for the City of Seattle.
- 6 3. When Mr. Egan originally filed this case, I entered my personal appearance, along with two  
7 Assistant City Attorneys. The City treats its obligations under the court rules in this and  
8 every case with the utmost importance.
- 9 4. In addition to those attorneys entering a notice of appearance, two additional Assistant City  
10 Attorneys have also devoted significant time to this matter, including investigation of the  
11 underlying facts and relevant documents. Aaron Valla, an Assistant City Attorney, along  
12 with Janet Francisco, a Paralegal in our office, have been assigned to work exclusively on  
13 the collection, review, and production of documents in response to discovery.
- 14 5. The Seattle Elections Code contains a strict prohibition on the use of City resources for  
15 political purposes. As an elected official, I endeavor at all times to scrupulously abide by the  
16 provisions in the Code requiring separation between political and official business. I have  
17 two separate phone lines, use a personal email account for political business, and conduct  
18 all political meetings and other business away from my City office. But there are times when  
19 the distinction between official and political business is difficult to discern, and this case  
20 provides a clear example of that.
- 21 6. For example, discussions among City Councilmembers regarding either the referendum to  
22 repeal the EHT or the education levy initiative, as a matter of law, did *not* concern official  
23 City business because they were (in the EHT referendum's case) and are (in the education

1 levy's case) active ballot campaigns. By definition, the provisions of the OPMA did not and  
2 could not apply to them. In contrast, discussions regarding possible Council action to repeal  
3 the EHT did relate to official business. But what is a Councilmember to do upon receiving  
4 a communication that, for example, suggests the Council consider repealing the EHT to  
5 protect the prospects for the education levy on the ballot. Does that concern political activity,  
6 to which the OPMA does not apply and which by law cannot be conducted on City phones  
7 or email? Yes, because it involves the education levy's ballot campaign. Does it  
8 simultaneously concern official business, which is governed by the OPMA? Also yes,  
9 because it involves possible legislative action by Council. Similarly, could five or more  
10 Councilmembers meet, in their personal capacities and away from the office, to discuss  
11 strategies for defeating the EHT referendum and promoting the education levy? Yes. But if,  
12 in the course of that conversation, discussion turns to the possibility of legislatively repealing  
13 the EHT, in order to be assured safe legal harbor under our unsettled and overlapping laws,  
14 it is advisable for some Councilmembers to leave the room to avoid having a quorum present.  
15 I use this example to highlight the difficulty for City officials to continually observe these  
16 distinctions when the nature of communications and meetings may change from minute to  
17 minute and even from word to word.

- 18 7. Because the events leading up to the EHT repeal involved both political and official conduct,  
19 individuals were using both personal and City devices for some potentially relevant  
20 communications, and discovery in this case is more complicated than it would be were these  
21 factors not present. The practical effect on our response to discovery is that there are many  
22 more devices that need to be searched, more communications with clients to ascertain the  
23 context of specific records, and more investigation and analysis of relevant records than

1 would be present in a different type of case. Thus, significant time and effort is required to  
2 respond to discovery.

3 DATED this 12<sup>th</sup> day of September 2018.

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5 Peter S. Holmes  
6 Seattle City Attorney  
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CMLG



Glad I was here in person for the post call debrief. Rolf and the DMs were the only other ones at EMC. they are going to communicate these results to the other 4 CMs and the Mayor (possibly with a redo of this briefing). Their goal is to have unity on a repeal and that would mean triangulating any of the core 4 who aren't in agreement.

Call into this number now.

[3195272980](tel:3195272980)

No code

Had to jump off. My bottom line is: repeal.

A replacement may be in



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CMLG



A replacement may be in the cards but not now. We need to get rid of this albatross and then quietly work to figure out what takes its place that will also drive people who will vote for existing 7 CMs to turn out to vote for the replacement too.

But I'm thinking this is a November 2019 strategy.

Taking off. Later!

I agree completely and with everything you said on the call

Sent as Text Message

TM kept talking about needing an alternative measure. I think that is not



iMessage





CMLG



TM kept talking about needing an alternative measure. I think that is not viable with 6/10 people in March saying we don't need more City resources

Sent as Text Message

Agree it's the mayors turn to lead without abdicating council responsibilities of course

Sent as Text Message

Have a good flight!

Sent as Text Message

Sat, Jun 9, 7:44 PM

Yeah. I think TM is being overly optimistic, which I admire but then there's reality. What a mess.

Yeah it is



iMessage





CMLG



Yeah, it is

I'm gonna be on the mayors staff like crazy because they might scoop council on repeal. Her favorables are much better than council and I imagine she's feeling emboldened

As she should.

Because she is.

Also, Sejal, Lindsey, Beth and I are working on messaging in response to Tuesday presser re: petitions

She's still in honeymoon period. Not long before the shit will be all over her face too



iMessage





CMLG



too

And we should allow an opportunity for that to happen rather than attempting to own it. It's time for us to swallow our medicine. "We" fucked this up. Royally.

Yeah

I agree with what you said earlier: council tried to show leadership. People didn't like our plan. Time for someone else to step up

Sadly, the policy is right. Our timing, however, was off. It'll occur but we need to socialize people to what we've done, what we could



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CMLG



Sadly, the policy is right. Our timing, however, was off. It'll occur but we need to socialize people to what we've done, what we could do, the need and the real lack of resources. Then we need to give them the choice to support those additional resources. Right now I'm in "protect the Ed Levy mode."

It breaks my heart that more homeless people will die before the privileged voter is ready to act. It's nauseating actually.

Yeah. We and others came to support the EHT over a period of intellectual engagement with the issue of both homelessness and our taxation options. The



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CMLG



Yeah. We and others came to support the EHT over a period of intellectual engagement with the issue of both homelessness and our taxation options. The public needs a similar education campaign to get on board

We live to fight another day, politically, but it's tragic how many people will continue to suffer until more people are willing to take real action.

Mon, Jun 11, 2:08 PM

Has CS reviewer the statement or should I send to him?

Reviewed



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CMLG



our taxation options. The public needs a similar education campaign to get on board

We live to fight another day, politically, but it's tragic how many people will continue to suffer until more people are willing to take real action.

Mon, Jun 11, 2:08 PM

Has CS reviewer the statement or should I send to him?

Reviewed

Please share with him.

On it



iMessage

