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STATE OF WASHINGTON
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No. 1034440

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

In the Matter of: the Recall of: Rachel Ruelas, City of Mabton Mayor

BRIEF OF APPELLANT

Rachel Ruelas

Mayor of the City of Mabton

PO Box 831 Mabton WA 98935

Rruelas42@yahoo.com

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A. ASSIGNMENT OF ERROR

Assignment of Error

1. The recall charges were not brought by an individual or an organization.
2. The recall charges are void as an ultra vires act.
3. The Superior Court erred in finding the recall charges sufficient to demonstrate grounds for recall.

Issues Pertaining to Assignments of Error

1. The recall charges state in part “We, as the majority of the Mabton City Council, …”. Are four members of five-member City Council a “majority” when there was no vote to sign the charges held at a scheduled city council meeting? (Pertaining to Assignment of Error No. 1)
2. Is a purported standing “majority” of a city council, an “organization” under RCW 29A.56.110? (Pertaining to Assignment of Error No. 1)

3. Where the signature blocks of each of the signers of the charges identified them by their respective city council seats, were the recall charges brought by an individual as required by RCW 29A.56.110? (Pertaining to Assignment of Error No. 1)
4. Where the charges on their face demonstrate that four members of a five-member City Council all signed the recall charges outside of any publicly noticed hearing, did preparation, agreement to, signing, and submission of the charges constitute a meeting in violation of the requirements of the Open Meetings Act, RCW Chap. 42.30? (Pertaining to Assignment of Error No. 2)
5. Where the persons signing the charges misrepresented themselves as “the majority” of the City Council, and held meetings in violation of the Open Meetings Act to prepare, agree upon, sign, and file the charges, were the signing and filing of the petition ultra vires acts rendering the petition void? (Pertaining to Assignment of Error No. 2)

6. Where adoption of the city budget is a legislative function, is the charge that the Mayor failed to adopt a budget sufficient to support a recall charge? (Pertaining to Assignment of Error No. 3)
7. Are the factual allegations of the charges that the name of a business owned by the Mayor appears in a photo on the City's website, where the intent of the photo is to honor a homeowner with a home beautification award, with no showing of actual profit or special privilege to the Mayor, sufficient to state grounds for recall? (Pertaining to Assignment of Error No. 3)

B. STATEMENT OF THE CASE

The City of Mabton, population 1959 in the 2020 census, https://data.census.gov/profile/Mabton_city,_Washington?g=160XX00US5340980, is formed under RCW Chap. 35A.12, as a noncharter code city with a Mayor-Council

plan of government. Mabton Municipal Code 1.06.010. Its City Council is comprised of five members. RCW 35A.12.010. While statutes require a majority vote of the council for matters that require their approval, RCW 35A.12.120, no statute or ordinance designates certain members of the council as "the majority" apart from any specific vote held.

The regular meetings of the Mabton City Council are held on the second and fourth Tuesdays of each month. MMC 2.04.010. The charges for recall bear a date of June 24th, 2024. CP 7. The Court should take judicial notice that June 24th, 2024, was Monday. There is no indication in the record that any special meeting was properly requested or noticed for June 24th, 2024. The body of the petition also references having received no agenda "[a]s of today, June 25th, … for tonight's meeting." CP 7. An inference can be drawn that the petition was drawn up on June 24th, 2024, and edited the following day prior to any regular meeting.

According to the media, the *Sunnyside Sun*, the City Council voted on June 25th, 2024, to request the Mayor to resign. https://www.sunnysidesun.com/news/mabton-city-council-votes-for-mayor-ruelas-resignation/article_2af4257c-38b1-11ef-b912-376cc95929f9.html. "I make a motion that the council, with a majority vote, request that Mayor Ruelas resign from her position due to incompetency and violation of her oath …," councilmember Sophia G. Sotela read, according to the *Sun* article.

The charge begins with "We, as the majority of the Mabton City Council, and registered voting citizens of Mabton, WA, are submitting this request to your office to review our recall petition of our city mayor, Rachel Ruelas." CP 7. Each signature block indicates the signers identify themselves by their position on the City Council. For example, "Sophia Sotello Mabton City Council Position 2." CP 8.

The charge alleges that the Mayor used the City website for her own business purposes, "since she took office in January 2022." CP 8. Attached to the charge is a page from the city website with a photo captioned "Winner of the September Home Beautification Award." CP 21. The photo depicts a homeowner and the Mayor in front of a home, with a sign reading: "Neighborhood Home of The Month. Sponsored by Forever Bridal Decorating And The City of Mabton." CP 21.

The charge is date-stamped as received by "Yakima County Elections" on June 27th, 2024. CP 7.

The media, *Apple Valley News Now*, reported to the public that the "Mabton City Council" filed for recall. https://www.youtube.com/watch?v=Z_JomqGoSKw. "Mabton City Council files to recall Mayor, here's what that process looks like." *Id.*

Following filing of the charges, the Yakima County prosecutor filed a petition for the Superior Court to determine the sufficiency of the charges. CP 3-5. Following hearing, the Superior Court entered an Order Re Sufficiency of Recall Charges and for Approval of Ballot Synopsis. CP 34-35. The order sustained only two of many charges, those of failing adopt a budget and of securing special privileges for herself by "advertising" her business in a photograph of the September Home Beautification Award on the City website. *Id.*

The ballot synopsis approved by the order indicates the Superior Court struck out language that would have put on the ballot that the Mayor had failed to file a preliminary final 2024 budget resulting in no notice of the hearing and no hearing being held. CP 37. This appeal followed.

C. ARGUMENT

Standard of Review

“The supreme court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts.” RCW 29A.56.270.

The Supreme Court of Washington

> has revisory jurisdiction over the decisions of superior courts in recall cases, RCW 29A.56.270, and reviews the superior court’s decision de novo, *In re Recall of West,* 155 Wn.2d 659, 663, 121 P.3d 1190 (2005) (*West I*).
>
> *In Re Recall of Heiberg*, 171 Wn.2d 771, 776, 257 P.2d 565 (2011).

1. <u>The Petition did not comply with RCW 29A.56.110</u>

RCW 29A.56.110

Initiating proceedings—Statement—Contents—Verification—Definitions.

Whenever any legal voter of the state or of any political subdivision thereof, **either individually or on behalf of an organization**, desires to demand the recall and discharge of any elective public officer

> of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.
>
> … (Emphasis added.)

a. There is no such entity as "*the* majority" of the Mabton City Council

The charges assert they are brought by "we, the majority" of the Mabton City Council. Each signature block for the four signers indicates they each identify themselves by their respective city council positions. CP 8.

Mabton is a city organized under RCW Chap. 35A.12. The statutory scheme provides for regular council meetings to be held, for five members on the city council, and for certain actions to be approved by majority vote of a city council. RCW 35A.12.010,.110. While the statutes indicate a vote of three members is a majority, and also a quorum for conduction a meeting, .120, the determination of a "majority" for a quorum is on a meeting-by-meeting basis, or a vote-by-vote basis. A "majority" could be comprised of different members each time there is a vote, the language of the charge dispenses with "a majority" and falsely states there is a standing entity known as "***the*** majority."

There is no such thing as "the majority" other than for determining if a quorum exists or if a vote has passed. With five members on the council, four took it upon themselves to declare themselves "the majority" of the council, when the petition was not up for a vote for a regular council

meeting and not approved at any properly held meeting. If it was decided upon at an illegal meeting, that is the subject of another section, below.

It was fraudulent to represent that the petition was properly submitted on behalf of a legally non-existent majority. This may have influenced the Superior Court Judge and may hold sway over the voters from the impression given.

b. The petition was not on behalf of an organization

RCW 29A.56.110 was not complied with, as there is no "organization" known as "the majority" of the Mabton City Council for these purposes, so the charges were not made on behalf of a legitimate "organization."

c. The petition was not submitted by an individual

Nor was the petition submitted "individually" as the signature blocks indicate each signer is signing in their official capacity as a City Council member. That is not a

valid function of a City Council member acting alone. The legislature could have provided for a municipal official in that capacity to be a signer, but they did not. The intent of the signers was to sign as an organization, however invalidly, to carry the assumed "clout" of a majority of the council. Throughout the charges, they refer to themselves in their role as council members or the purported majority. "We have asked for …, …we passed a motion… we still have not received …" CP 7. Having tried to add validity to the petition by signing in their official capacities, the council members are now estopped from claiming to have submitted the charges "individually."

Acts in their official capacity entitle them to immunity under RCW 4.24.470 (1). They should not be able to both claim immunity and that they acted as individuals. It was not the intent of the legislature that "individual" officials be considered to have acted "individually" when claiming official status in submitting a recall petition.

The council members are not the same as people acting as individuals as they stand in line to fill a vacancy in the Mayor's position. RCW 35A.12.050, RCW 42.12.070.

2. The Petition is in violation of the Open Meetings Act, RCW Chap. 42.30.

There could have been no regular council meeting on June 24th, 2024, the date on the upper right of the petition, as regular meetings are on Tuesday and June 24th, 2024 fell on Monday. The contents of the petition refer to having no agenda for "tonight's meeting," CP 7, so apparently it was edited as some point but before the regular meeting on the 25th.

There is no evidence in the record that a special meeting of any kind was properly requested, with public notice of the same given, as required by RCW 42.30.080, and compliance with RCW 35A.12.110.

RCW 42.30.030

Meetings declared open and public.

(1) All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.
…

RCW 42.30.080

Special meetings.

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by email to each member of the governing body. …

RCW 42.30.080 (2) then requires notice to the media and on the City's website.

The persons submitting the recall charges represented, by describing themselves as "the majority," that they had voted to approve the recall petition, as there is no such thing as a "majority" of the council except by vote. An

inference can be drawn they conducted their own, off-the record meeting and secret “vote” or similar action sometime prior to a regular meeting that would be held June 25th, 2024.

The press also reported that they had voted at the June 25th, 2024, meeting to request the Mayor’s resignation. Thus, the council members’ charges for recall represented that they were conducting the official business of the City and they purported to make the matter City business by taking a vote, as reported by the press, to “recall” the Mayor at the June 25th, 2024 meeting.

A “meeting” need not take the appearance of an official meeting in order to constitute a meeting under the Open Meetings Act.

> The OPMA defines “action” as “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final

actions." RCW 42.30.020(3).

Wood v. Battle Ground Sch. Dist., 107 Wn. App. 550, 559, 27 P.3d 1208 (2001).

Wood also argues that the Board members violated the OPMA by discussing Board business by private e-mails. She contends that the OPMA does not require the contemporaneous physical presence of the members to trigger its provisions.

Wood, 107 Wn. App. at 562.

Thus, in light of the OPMA's broad definition of "meeting" and its broad purpose, and considering the mandate to liberally construe this statute in favor of coverage, we conclude that the exchange of e-mails can constitute a "meeting." In doing so, we also recognize the need for balance between the right of the public to have its business conducted in the open and the need for members of governing bodies to obtain information and communicate in order to function effectively.

Wood, 107 Wn. App. at 564.

Here, the self-proclaimed "majority," in fact "*the* majority" in one form or another, met to discuss whether they should bring charges to recall the Mayor, to agree upon it, to

prepare the petition, and met, whether all in person or by circulating the document, and to sign, the petition. For the four to agree on it was the equivalent of a “secret ballot.” They met probably multiple times from the date on the petition being the day before the apparent edit to include the complaint of lack of an agenda prior to “tonight’s meeting.” They also likely discussed a plan to ask the Mayor to resign at the June 25th meeting, due to having planned by June 24th to bring recall charges. It cannot be denied as being represented as City business, when the petition claims they are “the majority” of the City council, when a true “majority” means a vote was taken, when each signer describes themselves as a city council member and when they portrayed the removal of the Mayor from office as part of city business at the regular meeting of June 25th, 2024.

If all of the signers went to the auditor’s office on June 27th, 2024, they all met on that date outside of any regular

or properly requested and notice special meeting. Since RCW 29A.56.120 requires “any person” making a charge to file it with the auditor, then from the “majority” all signing the same document, they likely all met at the auditor’s office to file the charges.

The acts of agreeing to, preparing, signing, and submitting the charges are void as in violation of OMA.

RCW 42.30.060

Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. **Any action** taken at meetings failing to comply with the provisions of this subsection shall be **null and void**.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by **secret ballot**. Any vote taken in violation of this subsection shall be **null and void**, and shall be considered an "action" under this chapter.

(Emphasis added.)

This Court should hold that the "charge" and ensuing process are all void as in violation of the Open Meetings Act and reverse the Superior Court order and dismiss.

3. The Petition is not supported by sufficient allegations.

a. Adoption of the budget is the role of the council

The Order entered by the Court states in part:

> The Mayor of Mabton violated her statutory duty to adopt a final 2024 Mabton City budget and transmit a copy to the state auditor and association of Washington cities, pursuant to RCW 35A.33.075.
>
> CP 35.

RCW 35A.33.075

Budget adoption.

Following conclusion of the hearing, and prior to the beginning of the fiscal year, **the legislative body shall** make such adjustments and changes

as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content.…

A complete copy of the final budget **as adopted** shall be transmitted to the state auditor, and to the association of Washington cities.

(Emphasis added.)

The Mayor is not the "legislative body," she is the chief executive officer, and presides over the meetings, with limited veto power that can be overridden by the Council.

RCW 35A.12.100

…

The mayor shall preside over all meetings of the city council, when present, but **shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money**. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall

> make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. **The mayor shall have the power to veto ordinances** passed by the council and submitted to him or her as provided in RCW 35A.12.130 **but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote**.
>
> …
>
> (Emphasis added.)

The Superior Court, appropriately, affirmatively rejected charges that the Mayor had failed to file a preliminary final budget with the Clerk or submit it to the Council allegedly "resulting in" no notice of a final budget hearing. CP 37. This left only the adoption of the budget as the alleged failure of the Mayor.

The Council could have called a special meeting to adopt a budget.

RCW 35A.12.110:

> … Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. …

If the Mayor failed to attend such a meeting, then the mayor pro tem or a council member selected by a majority could preside. *Id.* There is no showing on an intent to violate a duty where the duty was that of the council and they could have acted without the Mayor if they chose on adoption of the budget.

The only charge upheld by the Superior Court is that of not performing a function that is not that of the Mayor, "adopting" the budget, so this cannot be a sufficient ground for recall.

b. The home beautification award sign is not a substantial violation of law

The allegation in the charges was that the Mayor had promoted her own business, specifically since she took office in January of 2022. A copy of a City webpage includes a photo for an award in September of an unidentified year, which includes a sign that the award was sponsored by a business and by the City of Mabton.

Note that part of the charging document states “she is in the Mayor’s seat simply to promote her business.” CP 8. Merely posting a sign including the Mayor’s business as a sponsor of the “Neighborhood Home of the Month,” CP 21, is not evidence of being in office only “to” promote her business and to “drum up sales.” CP 8. The sign for the September award is the only specific allegation provided. There is no showing the “majority” of the council brought

the sign issue to the Mayor's attention before utilizing it as a "gotcha" tactic to remove her from office.

Pursuant to RCW 35A.12.100, "… The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, …" The Mayor was primarily carrying out that duty by appearing to present the award to the homeowner.

RCW 42.23.070, entitled **Prohibited acts,** states, in part (1): "No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others."

There are no allegations establishing that anyone or business who chose to help sponsor the "Home of the Month" award could not have also had their name on the sign as a co-sponsor. So the "special privileges" requirement is not met.

There is no showing of an actual, substantial benefit to the Mayor personally through her business. The idea was to promote the beautification of homes in the City. It was true that a business owned by the Mayor was a co-sponsor, along with the City. There is no showing that the value of any publicity outweighed the cost of sponsoring the award. A *de minimus* and speculative personal benefit should not be sufficient to support a recall. The inclusion of the business name in a sign in a photo was incidental to the Mayor acting as ceremonial head of the City and promoting the welfare of the City in terms of its improvement. There is no showing that her intent was to violate the law as required under *In Re Recall of Bolt* 177 Wn.2d 168, 298 P.3d 710 (2013), that "the petitioners must at least have knowledge of facts which indicated an intent to commit an unlawful act." (Quoting *In Re Recall of Wade*, 115 Wn.2d 144, 549, 799 P2d 1199 (1990).)

> Where the petition alleges that the official committed an unlawful act, factual sufficiency also requires that the petition contain a factual basis for both the proposition that the official intended to commit the act *and* "that the official intended to act unlawfully." *In re Recall of Pearsall–Stipek,* 136 Wn.2d 255, 263, 961 P.2d 343 (1998).
>
> *In Re Heiberg*, 177 Wn.2d at 778.

D. CONCLUSION

This Court should hold that the "majority"s recall charges did not meet the threshold requirement that charges be submitted by an individual or on behalf of a valid organization. This Court should hold that the petition is void as the product of violations of the Open Meetings Act. This Court should hold that a Mayor cannot be recalled for failing to "adopt" a budget, as it is a legislative function. This Court should hold that the sign honoring a homeowner is not a ground for recall.

This Court should reverse the Superior Court and dismiss the recall petition.

Word count: This document contains 4009, excluding words exempted by RAP 18.17.

Respectfully submitted,

Dated this 15th day of November, 2024

Rachel Ruelas

Rachel Ruelas, City Mabton Mayor
Appellant

Certificate of Service

I hereby certify under penalty of perjury that on November 15th, 2024, I emailed the foregoing document to: Joseph A. Brusic, Yakima County Prosecutor, at joseph.brusic@co.yakima.wa.us, Don Le Roy Anderson, Deputy Yakima County Prosecutor, at don.anderson@co.yakima.wa.us, and Douglas McKinley, Attorney for Respondents, at doug@mckinleylaw.com.

Dated November 15th 2024 at Mabton, Washington.

Rachel Ruelas

Rachel Ruelas

Outlook

Re: Brief Of Appelant

From OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Date Mon 11/18/2024 10:33 AM
To Rachel Ruelas <rruelas42@yahoo.com>; joseph.brusic@co.yakima.wa.us <joseph.brusic@co.yakima.wa.us>; don.anderson@co.yakima.wa.us <don.anderson@co.yakima.wa.us>; doug@mckinleylaw.com <doug@mckinleylaw.com>

Received 11/15/24 @ 5:04 pm

From: Rachel Ruelas <rruelas42@yahoo.com>
Sent: Friday, November 15, 2024 5:02 PM
To: joseph.brusic@co.yakima.wa.us <joseph.brusic@co.yakima.wa.us>; don.anderson@co.yakima.wa.us <don.anderson@co.yakima.wa.us>; doug@mckinleylaw.com <doug@mckinleylaw.com>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Brief Of Appelant

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