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**SUPREME COURT OF THE STATE OF
WASHINGTON**

IN THE MATTER OF THE RECALL OF RACHEL
RUELAS, CITY OF MABTON MAYOR

BRIEF OF RESPONDANTS

Douglas E. McKinley WSBA 20806
8350 W Grandridge Blvd Suite 200-431
Kennewick, WA 99336
Phone: 509-628-0809
Fax: 509-392-8083
Email: doug@mckinleylaw.com

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I. Introduction

This is a recall case seeking to recall the Mayor of Mabton Washington, Rachel Ruelas (hereafter referred to as “Appellant,” and “Mayor”). Four members of the City of Mabton’s City Council, Sophia Sotello, Mary Alvarado, Vera Zavala, and Arturo De La Fuentes (hereafter collectively “Appellees,” “Petitioners,” or “Appellee/Petitioners”) charged that the Mayor failed to produce a budget for the City of Mabton for the 2024 fiscal year in violation of RCW 35A.33.075. Appellee/Petitioners further charged that while acting in her official capacity as Mayor of Mabton, the Mayor used the City’s official website to advertise her private business in violation of RCW 42.23.070(1).

II. Assignments of Error

The Mayor has alleged three supposed errors in the Superior Court's ruling:

1. The Mayor makes a new allegation not brought before the Superior Court that the recall charges were allegedly not brought by an individual or an organization.

2. The Mayor makes another new allegation not brought before the Superior Court that the recall charges were allegedly void as an ultra vires act.

3. The Mayor alleges that the Superior Court erred in finding the recall charges sufficient to demonstrate grounds for recall.

By their own terms, the recall charges were brought by Petitioners acting in their individual capacities as legal voters in the City of Mabton. The charges were not levelled as an official act of the Mabton City Council. The charges were therefore brought by

“legal voters” as that term is set forth in the RCW 29A.56.110 and were not an ultra vires act. The charges were sustained by the Yakima County Superior Court as factually and legally sufficient to sustain a recall and this Court should affirm the Superior Court’s ruling.

III. Statement of the Case

On or about June 24, 2024 Petitioners initiated the recall process by sending a “Petition for recall of Mayor Rachel Ruelas of Mabton, WA” to Charles Ross, the Yakima County Auditor, (hereafter the “Petition”) leveling certain charges against the Mayor. Petitioners brought the charges in their capacity as registered voters. As noted by the Mayor in her brief, the charges begin by identifying the Petitioners as follows: “We, as the majority of the Mabton City Council, *and registered voting citizens of Mabton, WA...*” (emphasis added.) Among the other charges, Appellee/Petitioners then charged that that the Mayor failed to produce a budget and

advertised her private business on the City's official website. The Petitioners alleged that in so doing, the Mayor committed acts which constitute misfeasance, malfeasance, and a violation of her oath of office.

In support of their Petition, the Appellee/Petitioners included copies of the relevant meeting minutes of the Mabton City Council showing that the Mayor had not submitted a budget. The Appellee/Petitioners further included a photograph of the City of Mabton's website showing that the Mayor was advertising her private business on the City's website. These facts substantiated the charges set forth in the Petition. In the Mayor's brief, the Mayor admits that no budget was submitted and that she advertised her private business on the City's website, further substantiating the charges, and admitting the factual basis for those charges.

Pursuant to RCW 29A.56.130, the Yakima County Prosecutor's office then distilled those charges into six proposed

ballot synopses. After a hearing on August 14, 2024, the Superior Court issued its "Order on Legal and Factual Sufficiency of Counts" dismissing four of the synopsis, and leaving two of the ballot synopses that the Superior Court found factually and legally sufficient to move forward to the next step of the statutory recall process; gathering the required signatures. The two synopsis upheld by the Superior Court as factually and legally sufficient to move forward to the next step of the statutory recall process read as follows:

The charges that the City of Mabton Mayor, Rachel Ruelas, committed misfeasance, malfeasance and/or violated her oath of office allege she:

- 1) Failed to adopt a final 2024 City budget and transmit a copy to the state auditor and the association of Washington cities, pursuant to RCW 35A.33.075.
- 2) Used her position as Mayor to secure special privileges for herself, in violation of RCW 42.23.070(1), by advertising her personal business on the

official City website, in a photograph of the Winner of the September Home Beautification Award.

The Mayor then appealed the Superior Court's decision to this Court. In the Mayor's appeal, the Mayor raised two issues that had not been raised in the Superior Court; the Mayor's unfounded and specious allegation that the Petitioners were somehow not acting in their capacity as registered voters, and the Mayor's unfounded, false, and specious allegation that the Petition itself was an "ultra vires act" undertaken by the Mabton City Counsel.

This Court should affirm the decision of the Superior Court because the Mayor's procedural objections to the Petition are not supported in fact or law, and because the Superior Court was correct in ruling that the charges underlying each of the two synopses are and were factually and legally sufficient. As a result, the law requires that this Court uphold the Superior Court's decision, and the recall process move forward.

IV. Argument.

A) The Mayor’s Argument That The Recall Petition Was Not Filed By An “Individual” Is Specious

The Mayor argues that the Petition is somehow defective because it was filed by four members of the Mabton City Council who identified themselves as “the majority of the Mabton City Council, *and registered voting citizens of Mabton, WA...*” (emphasis added.) The Mayor did not raise this argument in the Superior Court and should be barred from raising it for the first time on appeal. Regardless, the argument fails.

The statute upon which the Mayor’s argument rests is RCW 29A.56.110 “Initiating proceedings” which in pertinent part recites:

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...

The statute's recitation of the alternatives "legal voter(s) of the state" or "any political subdivision thereof" either "individually" or "on behalf of an organization" easily encompasses the individual members of the Mabton City Council as registered voting citizens of Mabton, Washington, regardless of any additional designations. Once the Petitioners identified themselves as "registered voting citizens of Mabton Washington," the analysis ends. They are entitled and authorized to file the Petition under the statute. The fact that they also identified themselves as constituting a "majority" of the City Council (which is indisputably true) does not change that fact. It is simply additional information that they wished to communicate to anyone who might review the Petition. It does not operate to defeat their standing to initiate the Petition as "legal voters," and the Mayor has provided no authority to the contrary.

**B) The Mayor’s Argument That The
Recall Petition Is An “Ultra Vires
Act” Is Specious**

The Mayor asserts that the Petition violated the Open Public Meetings Act (OPMA) RCW 42.30 et. seq. because the “persons submitting the recall charges represented, by describing themselves as “the majority,” that they had voted to approve the recall petition.” Mayor did not raise this argument in the Superior Court and should be barred from raising it for the first time on appeal. Regardless, the argument fails.

The Mayor’s argument is a logical fallacy. It is simply a fact that the Petitioners collectively hold a majority of the Mabton City Counsel seats. Pointing out that fact does not create a “representation that they had voted to approve the recall petition” or that they did so in their official capacity as Counsel members. In fact, they did not. There was no vote. The Mabton City Counsel acting in its capacity as a City Counsel had nothing to do with the recall Petition. The

Counsel members simply decided to petition for a recall in their own individual capacities as legal voters. Pointing out the fact that they also constituted a majority of the City Counsel in the text of the Petition does not magically transform their private actions into actions undertaken in their capacity as City Counsel members.

As a predicate to the Mayor's entire OPMA argument is the requirement of an "action" by the Mabton City Counsel. As set forth in RCW 42.30.020(3); "an "Action" means the transaction of the official business of a public agency by a governing body..." No such "action" occurred, official or otherwise. As identified in the text of the Petition, the Petitioners acted in their capacity as individuals, and the Mayor presents no records or other evidence showing otherwise, because no such evidence exists. By its own terms, the OPMA simply does not apply to any of the Petitioners' activities filing the Petition, because the Petitioners' activities were not undertaken as the "official business" of the Mabton City Counsel. The Mayor's entire argument is a red herring.

C) The First Synopsis is Factually and Legally Supported

The framework for analyzing the sufficiency of recall charges was set forth by this Court in the *Matter of Recall of Inslee*, 199 Wn.2d 416, 430, 508 P.3d 635 (2022) as follows:

This court reviews a trial court's determination of the sufficiency of recall charges de novo. *In re Recall of West*, 155 Wn.2d 659, 663, 121 P.3d 1190 (2005). Under Washington law, elected officials may be recalled for malfeasance, misfeasance, or violation of the oath of office. WASH. CONST. art. I, §§ 33-34; RCW 29A.56.110. Misfeasance and malfeasance are "any wrongful conduct that affects, interrupts, or interferes with the performance of official duty." RCW 29A.56.110(1). More specifically, misfeasance is "the performance of a duty in an improper manner" and malfeasance is "the commission of an unlawful act." RCW 29A.56.110(1)(a), (b). Violation of the oath of office is "the neglect or knowing failure ... to perform faithfully a duty imposed by law." RCW 29A.56.110(2).

Courts do not evaluate whether the allegations against an elected official are true or false but,

rather, stand as gatekeepers to ensure that elected officials are not subject to recall for frivolous reasons. *In re Recall of Cy Sun*, 177 Wn.2d 251, 255, 299 P.3d 651 (2013). To that end, courts must determine whether the recall petitioner has knowledge of the acts complained of and whether the allegations are legally and factually sufficient. *Id.* The burden of establishing that the charges alleged in the recall petition are both legally and factually sufficient falls on the proponent of the recall. *In re Recall of Kelley*, 185 Wn.2d 158, 163, 369 P.3d 494 (2016).

An allegation is factually sufficient if the petition gives "a detailed description" of how and when the elected official engaged in unlawful conduct, "including the approximate date, location, and nature of each act" that constitutes a prima facie case of misfeasance, malfeasance, or the violation of the oath of office. *Id.* at 163-64 (internal quotation marks omitted) (quoting *In re Recall of Sun*, 177 Wn.2d at 255). An allegation is legally sufficient if the petitioner identifies some substantial conduct of the elected official that would clearly amount to misfeasance, malfeasance, or violation of the oath of office. RCW 29A.56.110. In other words, the petitioner must "identify the `standard, law, or rule that would make the officer's conduct wrongful, improper, or unlawful." *In re Recall of Inslee*, 194 Wn.2d 563, 568, 451 P.3d 305 (2019)

(internal quotation marks omitted) (quoting *In re Recall of Pepper*, 189 Wn.2d 546, 554-55, 403 P.3d 839 (2017)). If there is a legal justification for the challenged action, the charge is not legally sufficient. *In re Recall of Wasson*, 149 Wn.2d 787, 791-92, 72 P.3d 170 (2003) (citing *In re Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990)). More specifically, recall charges based on discretionary acts are legally sufficient only if the elected official exercised their discretion in a manifestly unreasonable manner, which "may be shown by demonstrating discretion was exercised [on] untenable grounds or for untenable reasons." *In re Recall of Inslee*, 194 Wn.2d 572 (2022).

Applying the Court's analysis to the charge underlying the first synopsis; (that the Mayor violated RCW 35A.33.075 by failing to adopt a final 2024 City budget and transmit a copy to the state auditor and the association of Washington cities) demonstrates that it is factually and legally supported by the Petition. The factual basis for the charge is that the Mayor failed to act, and that by failing to act the Mayor violated RCW 35A.33.075. The charge is factually supported by the City Council's meeting minutes submitted with the

Petition showing that the Mayor did not present either a preliminary or a final 2024 City budget nor did she transmit a copy to the state auditor and the association of Washington cities. Indeed, in the Mayor's brief to this Court, she admits that she did not undertake those actions. The charge is legally supported by the language of RCW 35A.33 et. seq., which requires the Mayor to take each of those actions.

RCW 35A.33.010(1) designates the Mayor as the "Chief Administrative Officer" of the City of Mabton. It reads:

(1) "Chief administrative officer" as used in this chapter includes the mayor of cities having a mayor-council form of government, the commissioners in cities having a commission form of government, the city manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

RCW 35A.33.052 then specifies that the “Chief Administrative Officer” is responsible for preparation of the budget. It reads:

Preliminary budget.

The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's next fiscal year he or she shall file it with the city clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal year.

As shown in the meeting minutes presented with the charges and reviewed by the Yakima Superior Court, the preparation of the preliminary budget by the chief administrative officer, (Mayor Ruelas), did not happen. *The Mayor does not contest the fact that this did not happen.* RCW 35A.33.055 then specifies that the budget prepared by the city's chief administrative officer (Mayor Ruelas)

“shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal year.” As shown in the meeting minutes presented with the charges that were reviewed by the Superior Court, that also did not happen. *The Mayor also does not contest the fact that this did not happen.* RCW 35A.33.060 then provides the procedure for the notice of the hearing on the final budget, which also did not happen, because Mayor Ruelas had never prepared the preliminary budget. RCW 35A.33.070 requires a hearing on the final budget, and RCW 35A.33.075 requires the adoption of the final budget and that a “complete copy of the final budget as adopted shall be transmitted to the state auditor, and to the association of Washington cities.” None of those things happened because Mayor Ruelas failed, completely, to do her job. *The Mayor does not contest the fact she did not do any of these acts.*

Instead, the Mayor suggests that the City Council could have done the Mayor's job for her, by preparing a budget for her, calling a

special meeting, and then adopting the budget at a special meeting even if the Mayor was not in attendance. However, even if this work-around suggested by the Mayor was possible and/or legal, that does not absolve her of failing to perform her duties as set forth in the statute. Even if the possibility exists that the City Council could have prepared and adopted a budget without the cooperation of the Mayor, that does not absolve the Mayor of the Mayor's duty to "prepare the 2024 City budget and transmit a copy to the state auditor and the association of Washington cities pursuant to RCW 35A.33.075."

In addition to these facts being matters of public record, (and uncontested by the Mayor), as City Council members, the Petitioners possessed personal knowledge of these facts. The charges underlying the first synopsis therefore contain "a detailed description" of how and when the Mayor engaged in unlawful conduct, including the approximate date, location, and nature of each failure by the Mayor to act that constitutes a prima facie case of misfeasance, malfeasance, and/or violation of her oath of office. The charges further identify

“substantial conduct” of the Mayor that “clearly amounts to misfeasance, malfeasance, and/or a violation of her oath of office,” and the charges “identify the standard, law, or rule that would make the officer's conduct wrongful, improper, or unlawful.”

Appellant’s argument, that she cannot be held responsible for her failure to prepare and transmit a budget, is directly refuted by the statutory scheme of RCW 35A.33, et. seq. The legislature placed the responsibility for the preparation of the preliminary budget squarely on the Mayor, and she simply failed to prepare it. The First Synopsis is therefore factually and legally sufficient.

D) The Second Synopsis is Factually and Legally Supported

The charge underlying the second synopsis; (that the Mayor used her position as Mayor to secure special privileges for herself, in violation of RCW 42.23.070(1), by advertising her personal business on the official City website in a photograph of the “Winner of the

September Home Beautification Award”) is also factually and legally supported by the Petition. Petitioners submitted a photograph of the “Winner of the September Home Beautification Award,” (wherein the Mayor advertised her personal business on the official Mabton City website) as an attachment to the statement of charges filed in the Superior Court, which demonstrated the Petitioners’ personal knowledge of the fact that the Mayor had advertised her business in this manner. In the Mayor’s brief, the Mayor admits that she used her position as Mayor to advertise her business in this manner, but she characterizes the benefit as “de minimus” and “speculative.”

The second charge is thereby factually sufficient. The advertisement demonstrates that the Mayor of Mabton used her position as Mayor to secure special privileges for herself (advertising her personal business on the City’s website) in violation of the plain language of RCW 42.23.070(1), demonstrating that the second charge is also legally sufficient. The question of whether the Mayor should be forgiven for acquiring this benefit for herself, or whether the benefit

was “de minimus” and/or “speculative,” is for the voters of the City of Mabton to decide, not the Mayor or this Court.

V. Conclusion.

While it is the voters who ultimately decide the facts in a recall case, neither the Mayor nor anyone else can rationally dispute the factual and legal basis for the Charges issued by the Superior Court or that the Petitioners had actual knowledge of those facts. For the reasons set forth herein, this Court should therefore uphold the Superior Court’s ruling that the two synopses and the underlying charges are legally and factually sufficient, and remand the matter to the Superior Court with instructions that the recall process should move forward.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(c)(2) that the foregoing contains **3624** exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities and this certificate of compliance.

RESPECTFULLY SUBMITTED this 25th day of
November 2024.

By s/ Douglas E. McKinley, Jr.
Douglas E. McKinley, Jr.
WSBA # 20806
Law Office of Douglas E. McKinley, Jr.
8350 Grandridge Blvd., Suite 200
Kennewick, WA 99336
(509) 628-0809
Attorney for Appellees

CERTIFICATE OF SERVICE

I, Douglas E. McKinley, Jr., hereby certify that Appellant and the Yakima County Prosecuting Attorney were served the forgoing BRIEF OF RESPONDANTS through the Supreme Court's electronic filing portal on November 25, 2024.

Executed this 25th day of November, 2024, at Richland, Washington.

By s/ Douglas E. McKinley, Jr.
Douglas E. McKinley, Jr.
WSBA # 20806
Law Office of Douglas E. McKinley, Jr.
8350 Grandridge Blvd., Suite 200
Kennewick, WA 99336
(509) 628-0809
Attorney for Appellees

LAW OFFICE OF DOUGLAS E. MCKINLEY, JR.

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- rruelas42@yahoo.com

Comments:

Sender Name: Douglas Mc Kinley - Email: doug@mckinleylaw.com

Address:

8350 W GRANDRIDGE BLVD STE 200

KENNEWICK, WA, 99336-1678

Phone: 509-628-0809

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