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NO. 1034440

**SUPREME COURT OF THE STATE OF
WASHINGTON**

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

BRIEF OF RESPONDANTS

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Washington Cases

Matter of Recall of Inslee,

199 Wn.2d 416, 508 P.3d 635 (2022).....23,24,25,46,49

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RCW 35A.33.0751, 3, 5, 9, 11

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RCW 35A.33.05511

RCW 35A.33.06011

RCW 35A.33.07011

I. Introduction

This is a recall case seeking to recall the Mayor of Mabton Washington, Rachel Ruelas (hereafter variously 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,” “Appellee/Petitioners “ and “Council”) 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, Ruelas used the City’s official website to advertise her private business in violation of RCW 42.23.070(1).

II. Assignments of Error

Since filing her notice of appeal, the Mayor has yet to file any other document with this Court and has missed all applicable deadlines, including the deadline for her to file her merits brief.¹ Nevertheless, in an abundance of caution, Appellees assume that the Mayor would contend that the charges sustained by the Yakima County Superior Court were not factually and legally sufficient to sustain a recall. As such, the assignment of error would appear as follows:

¹ The Mayor first failed to file the Designation of Clerk's Papers and Statement of Arrangements by this Court's original deadline of September 26, 2024. The Mayor then failed to file a response to the Council's Motion to Accelerate (which was due October 7, 2024). On October 9, 2024, the Court notified the parties that the Council's Motion to Accelerate was granted, and Appellant's opening brief due October 22, 2024. The Court went on to note that the case had been tentatively set for consideration by the Court at the December 5, 2024 en banc conference. The Mayor then failed (again) to file the Designation of Clerk's Papers and Statement of Arrangements by the revised deadline of October 10, 2024. The Mayor then failed to respond to the Acting Clerk's letter of October 15, 2024 requiring Parties to provide "additional information" regarding the apparent duplicative filings in this case and case no. 1035420 by October 18, 2024. The Mayor then failed to file the Mayor's merits brief by the Court's October 22, 2024 deadline. Finally, the Mayor then failed to file a response to the Appellee's motion to dismiss by the Court's October 25, 2024 deadline.

Did the Superior Court rule correctly when it held that each of the following the synopses were factually and legally sufficient to support moving forward with the recall process against the Appellants?

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.

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. Among the other charges, Appellee/Petitioners charged that in failing to produce a budget and advertising her private business on the City’s official website 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 and photograph of the City of Mabton’s website showing that the Mayor was advertising her private business on the City’s website, substantiating the charges set forth in the Petition.

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. Mayor Ruelas then appealed the Superior Courts' decision to this Court. Whether the two synopsis upheld by the Superior Court are factually and legally sufficient to move forward to the next step of the statutory recall process are therefore the sole possible subjects of this appeal. They 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.

This Court should affirm the decision of the Superior Court because the Superior Court was correct in ruling that the charges underlying each of these 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.

The applicable law was stated succinctly 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)

A) The First Synopsis is Factually and Legally Supported

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) 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 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. 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. 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. 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. In addition to these facts being matters of public records, as City Council members, the Petitioners also 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 in the Yakima Superior Court, that she cannot be held responsible for preparation of the 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.

B) 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 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. The second charge is thereby factually sufficient. The advertisement further 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.

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 **2417** 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 28th day of
October 2024.

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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 October 28, 2024.

Executed this 28th day of October, 2024, at Sicily, Italy.

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Superior Court Case Number: 24-2-01939-1

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