

WASHINGTON SUPREME COURT

In re the Recall of Ward

175 Wash. 2d 429 (2012) · Decided August 9, 2012

SUMMARY

The Washington Supreme Court reviewed a recall petition against commissioners of Jefferson County Fire Protection District No. 2. The court held that three charges concerning creation and continuation of a chief organizational officer position and retroactive compensation were legally insufficient, while a charge alleging knowing falsification of public-meeting minutes could proceed to the signature-gathering phase. The court also denied the commissioners’ request for attorney fees.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Stephens, J.; Madsen, C.J.; C. Johnson, J.; Chambers, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Wiggins, J.; González, J.
JURISDICTION	Washington
DECIDED	August 9, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the superior court's dismissal of three recall charges, and Ward and Whittaker cross-appealed the court's decision allowing a fourth charge to proceed to signature gathering. The Washington Supreme Court affirmed.
STANDARD OF REVIEW	De novo review. The court independently reviews whether recall charges are factually and legally sufficient, assuming the truth of reasonably specific factual allegations and acting as a gatekeeper rather than resolving their truth.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court opinion.
PARTIES	Harry Goodrich, Linda Saunders v. David Ward, Michael Whittaker

TOPICS

- recall elections
- election law
- municipal law
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the recall charges concerning creation of the chief organizational officer position, continuation of that position after a new fire chief was hired, and retroactive compensation and retirement credits were factually sufficient.
2. Whether those three charges were legally sufficient to constitute substantial misfeasance, malfeasance, or violation of the oath of office.
3. Whether the alleged knowing falsification of meeting minutes to reflect passage of a Public Employees' Retirement System resolution at an open meeting was legally and factually sufficient to proceed to the signature-gathering phase.
4. Whether Ward and Whittaker were entitled to attorney fees under CR 11.

HOLDINGS

1. The recall petition was factually sufficient because the allegations were made in good faith with adequate specificity and detail. The reviewing court must assume the veracity of reasonably specific allegations and may not resolve factual disputes at the gatekeeping stage.
2. Charges alleging that Ward created the chief organizational officer position without specified employment procedures, continued in the position after a new fire chief was hired, and sought retroactive compensation or retirement credits were legally insufficient to constitute substantial misfeasance, malfeasance, or violation of the oath of office.
3. The charge that Ward and Whittaker knowingly falsified meeting minutes to reflect passage of a Public Employees' Retirement System resolution at an open meeting was legally and factually sufficient to proceed to the signature-gathering phase.
4. Ward and Whittaker were not entitled to attorney fees because the recall petition, although partially legally insufficient, was not shown to be frivolous, baseless, or initiated for an illegitimate purpose.

KEY QUOTATIONS

“In a recall proceeding, a court acts as a gatekeeper to ensure that elected officials are not subjected to frivolous, harassing, or unsubstantiated charges.” (435)

“The task of a court in reviewing a recall petition is to ensure that “only legally and factually sufficient charges go to the voters.”” (435)

“While Ward, Whittaker, and their supporters dispute the veracity of the facts as presented by Goodrich and Saunders, it is not for a reviewing court to pass judgment upon the truthfulness of the charges leveled against a public official.” (436)

“Being a factually and legally sufficient charge, it is up to the voters of the District to decide whether this action justifies a recall.” (439)

FACTUAL BACKGROUND

David Ward and Michael Whittaker were elected commissioners of Jefferson County Fire Protection District No. 2. After the fire chief died, the commissioners created a chief organizational officer position for Ward, who received compensation and sought retroactive public-employee retirement credits. Petitioners alleged that the position and compensation were improper and that the commissioners falsified meeting minutes to show that the District had enrolled in the Public Employees' Retirement System during an open meeting when the resolution allegedly had not been discussed or passed.

PROCEDURAL HISTORY

Goodrich and Saunders filed a recall petition against fire district commissioners Ward and Whittaker alleging four acts of misfeasance. A superior court commissioner allowed the four charges to survive initial review. A superior court judge dismissed charges one, two, and four but allowed charge three, concerning an alleged violation of the Open Public Meetings Act, to proceed. The parties appealed and cross-appealed, and the matters were consolidated.

DISPOSITION

affirmed

CASES CITED

- In re Recall of Telford, 166 Wn.2d 148, 154, 206 P.3d 1248 (2009)
- In re Recall of West, 155 Wn.2d 659, 662, 667, 121 P.3d 1190 (2005)
- Chandler v. Otto, 103 Wn.2d 268, 274-75, 693 P.2d 71 (1984)
- In re Recall of Sandhaus, 134 Wn.2d 662, 668-69, 953 P.2d 82 (1998)
- In re Recall Charges Against Lundquist, 172 Wn.2d 120, 136, 258 P.3d 9 (2011)