

WASHINGTON SUPREME COURT

In re the Recall of West

155 Wash. 2d 659 (2005) · Decided October 26, 2005

OPINION

CHAMBERS, J.

¶1 Chambers, J. On August 24, 2005, we entered a brief order affirming the superior court decision authorizing a recall effort to proceed against Spokane Mayor James E. West. We now take this opportunity to explain our conclusion. ¶2 Shannon Sullivan, pro se, filed a recall petition against Mayor West. Fairly read, she charged, among other things, that Mayor West committed recallable misfeasance by offering an opportunity to obtain an internship with his office as part of an effort to pursue a sexual relationship with a young person he met while on-line in an internet chat room.

After a contested hearing, the Spokane County Superior Court found this charge to be factually and legally sufficient. The judge also corrected the ballot synopsis to include specific details supported by documentation either attached to the original petition or subsequently submitted by Sullivan. ¶3 We hold that the trial judge acted within his authority when he corrected the ballot synopsis and that the allegations are factually and legally sufficient.

Therefore, we affirm. BACKGROUND ¶4 First, we note that the role of courts in the recall process is highly limited, and it is not for us to decide whether the alleged facts are true or not. It is the voters, not the courts, who will ultimately act as the fact finders. RCW 29A.56.140; In re Recall of East, 144 Wn.2d 807, 813, 31 P.3d 677 (2001).

We merely function as a gatekeeper to ensure that the recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated charges. Id. Accordingly, our role is limited to ensuring that only legally and factually sufficient charges go to the voters. Id. ¶5 In briefest terms, and read broadly in favor of the petitioner, the surviving charge alleges that Mayor West had committed misfeasance by effectively offering to use his *663influence to assist a young person in applying for an internship with the mayor's office for his own personal benefit, i.e., to encourage a potential sexual relationship.

Clerk's Papers (CP) at 89; Verbatim Report of Proceedings (VRP) at 44-46.1 After considering the petition, documentation filed with the petition or submitted to the court separately, the ballot synopsis prepared by the Spokane County prosecutor's office, and argument from both sides, the judge found this charge factually and legally sufficient to go to the voters.

VRP at 45. Additionally, the judge considered supplemental materials and used them to enrich the ballot synopsis with factually specific detail. VRP at 20-22; CP at 89. Mayor West sought review. ANALYSIS ¶6 Most elected officials in this state may be recalled for malfeasance, misfeasance, or violation of the oath of office. Const, art. I, §§ 33-34; RCW 29A.56.110.

A superior court makes the initial determination of whether the charges are sufficient, which we review de novo. See RCW 29A-.56.140; East, 144 Wn.2d at 813. Recall statutes are construed in favor of the voter. Id. at 814 (citing Skidmore v. Fuller, 59 Wn.2d 818, 823-24, 370 P.2d 975 (1962)). Technical violations of the governing statutes are not fatal so long as the charges, read as a whole, give the elected official enough information to respond to the charges and the voters enough information to evaluate them.

Id. Notwithstanding the petitioner's duty to plead with specificity, we will not strike recall efforts on merely technical grounds. Id. Accordingly, we may consider supporting documentation to determine whether the charges are factually sufficient. See, e.g., id. *6641. Challenge to the Correction of Ballot Synopsis f7 First, we must decide whether the trial judge committed reversible error by correcting the ballot synopsis with details supplied by Sullivan in supplemental materials.

We conclude the trial judge did not overstep his authority. ¶8 The original ballot synopsis prepared by the prosecutor's office largely mirrored the charge as stated by Sullivan. Essentially, both charged that Mayor West had "committed acts of misfeasance in that: He solicited internships... for his own personal uses." CP at 19; cf CP at 6 (original petition). ¶9 The trial judge provided greater detail to the charges.

As amended, it now reads: Between March 8, 2005 and April 9, 2005, Mayor James E. West used his elected office for personal benefit. On March 21, 2005, he authored a letter intending to help obtain a student internship with the City of Spokane for a person he believed to be an 18-year-old high school student. During a series of internet conversations, before and after the letter, Mayor West sent a photograph of himself to the person, raised issues of sex, discussed dating, and urged the person to keep Mayor West's identity a secret.

Mayor West admits these conversations. Offering to help obtain a student internship with the City of Spokane under these circumstances was an improper exercise of an official duty. CP at 89. Mayor West asserts that the trial judge exceeded his authority by correcting the ballot synopsis in this way. f 10 But the legislature has vested the responsibility for this decision in the superior court.

RCW 29A.56.140 ("The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final."). The trial judge deemed the ballot synopsis inadequate because it failed to identify dates and other pertinent details and

corrected the ballot synopsis to include this information. Fairly read, all the trial judge did was flesh out the factual details amply *665supported by supplemental materials.

This fits comfortably within the common understanding of “correct,” “to make or set right: remove the faults or errors from: amend.” Webster’s Third New International Dictionary 511 (1993).² ¶11 We hold the trial judge acted within his authority by correcting the synopsis as he did. 2. Factual Sufficiency ¶12 We now turn to whether the charge was factually sufficient.

We hold that it was. ¶13 Charges are factually sufficient to justify recall when, “taken as a whole they... state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance.” *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations.

Id. ¶14 We first consider Mayor West’s contention that the charges are insufficient because they lack sufficient detail. We find that the petition as a whole, as aptly demonstrated by the corrected synopsis, “describe[s] the charges ‘with sufficient precision and detail to enable the electorate and the challenged official to make informed decisions in the recall process.’ ” *In re Recall of Zufelt*, 112 Wn.2d 906, 911, 774 P.2d 1223 (1989) (quoting *Jenkins v. Stables*, 110 Wn.2d 305, 307, 751 P.2d 1187 (1988)). ¶15 Mayor West next argues that the court erred by going beyond the “face” of the petition and considering attached documents.

However, this court has already decided that attached documents may be considered and Mayor West gives us no reason to revisit this practice. See, *666e.g., *Kast*, 144 Wn.2d at 814. We now hold that an alleged factual insufficiency in a recall petition may be, in the judge’s sound discretion, cured by consideration of supplemental documentation, so long as the elected official has sufficient actual notice to meaningfully respond to the factual allegations supported by the proffered supplementation.

See *Kast*, 144 Wn.2d at 814; *In re Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d 410 (1997) (“the court... may go outside the petition to determine whether there is a factual basis for the charge”). However, we caution that petitioners have the duty to “reasonably identify” the relevant facts contained in the supplemental materials and risk dismissal if courts cannot readily ascertain the factual basis of the charge. ¶16 Mayor West also argues that Sullivan does not have adequate knowledge of the facts necessary to support recall.

See RCW 29A.56.110. Mayor West analogizes the unnamed sources in the submitted newspaper articles to the unknown sources found to be inadequate in *In re Recall of Beasley*, 128 Wn.2d 419, 428, 908 P.2d 878 (1996). But *Beasley* is not on point.

In Beasley, the petitioner was “unsure” of the source of his allegation. In this case, the factual basis for the allegations is drawn almost entirely from transcripts of internet chats published in the newspapers. Sullivan and the community are aware of the source of the allegations and far better able to judge their credibility.³ ¶17 We conclude the charge is factually sufficient.

Read broadly, as a whole, and in favor of the voter, we find it alleges that an elected official offered the assistance of his office in obtaining an internship to promote a potential *667sexual relationship. CP at 74-76, 89. This is factually sufficient to raise an inference that Mayor West committed “wrongful conduct that affects... the performance of official duty [or] the performance of a duty in an improper manner.” RCW 29A.56.110(l)(a); cf. Black’s Law Dictionary 1021 (8th ed.

2004) (defining “misfeasance” as, “A lawful act performed in a wrongful manner.”). 3. Legal Sufficiency ¶18 To be legally sufficient under these circumstances, the charge must specifically allege substantial conduct clearly amounting to misfeasance. Kast, 144 Wn.2d at 815. ¶19 Mayor West argues, among other things, that the charge is not legally sufficient because sending an e-mail to a person interested in an internship is not conduct that affects or interferes with the performance of his official duties.

But this is an overly narrow articulation of the charge brought in the petition. The charge raises the inference that Mayor West sought to capitalize on his elected office and influence in order to pursue a sexual relationship with a young person. This is clearly “wrongful conduct that affects... the performance of official duty [or] the performance of a duty in an improper manner.” RCW 29A.56.110(l)(a). ¶20 We are not unmindful of the fact that the original petition did not specifically articulate this charge in this way and that recourse to the attached documentation was required.

However, we find that this will not defeat an otherwise adequate charge if the “gist” of the original charge is sufficiently similar to the charge as stated in the amended ballot synopsis. In re Recall of Lee, 122 Wn.2d 613, 618, 859 P.2d 1244 (1993).

The petition read as a whole gave fair notice of the actual charges, and Sullivan unequivocally adopted the trial court’s articulation of the *668charge at oral argument before us. We find that the charge is legally sufficient.⁴ CONCLUSION ¶21 This court will not allow merely technical violations of the statutes to block a factually and legally sufficient recall petition from going to the voters.

Because the errors claimed by Mayor West are, at most, only technical, we affirm. Alexander, C.J., and C. Johnson, Bridge, Owens, and Fairhurst, JJ., concur. Additionally, the petition alleged that Mayor West should be recalled for improper use of city computers and hurting the reputation of the city. Sullivan has not challenged the trial judge’s dismissal of these charges.

We recognize that there may be some trial court revisions to charges that, rightly understood, are not “corrections” as meant by the statute. This case gives us no occasion to consider the question, as the changes do not change the “gist” of the charge. Cf. *In re Recall of Lee*, 122 Wn.2d 613, 618, 859 P.2d 1244 (1993). Much of the factual basis for this claim appears in newspaper articles.

Nothing in this opinion should be taken to establish that media articles, categorically, may form a sufficient basis for the personal knowledge of facts required by law. See RCW 29A.56.110; cf. *Zufelt*, 112 Wn.2d at 908.

However, here, the news articles included lengthy transcripts of electronic conversations that form the basis of the charge. Additionally, we note that after a contested hearing, the trial judge essentially concluded that Mayor West had admitted the conversations, a finding Mayor West has not challenged before us, though he does challenge the transcript’s completeness and the implications to be drawn from those conversations.

CP at 89 (“Mayor West admits these conversations.”). Mayor West argues that although the trial court has the authority to correct the factual adequacy of the synopsis, it did not have the authority to correct any legal insufficiency in the petition through correcting the ballot synopsis. Since we find that the charge was legally sufficient, we need not reach this issue.

We also deny both Mayor West’s RAP 9.11 motion to supplement on the grounds that the materials are not helpful to our consideration and Sullivan’s RAP 18.9 motion for sanctions for filing the formal motion to accept the supplementation in an untimely manner.