

## SUPREME COURT OF WASHINGTON

# In re the Recall Charges Against Port of Seattle Commissioner Davis

164 Wash. 2d 361 (2008) · Decided August 14, 2008

### SUMMARY

The Washington Supreme Court reviewed the factual and legal sufficiency of recall charges against Port of Seattle Commissioner Pat Davis. The court held that the charge alleging Davis signed a memorandum potentially obligating the Port to pay an outgoing employee was sufficient, but charges alleging violations of the Open Public Meetings Act were insufficient because the petitioner lacked adequate factual knowledge supporting them. The court affirmed in part, reversed in part, and remanded for preparation of a revised ballot synopsis.

### CASE DETAILS

|                       |                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Washington                                                                                                                                                          |
| WRITING FOR THE COURT | Johnson, J.; Alexander, C.J.; Chambers, J.; Fairhurst, J.; Madsen, J.; Owens, J.; Sanders, J.; Stephens, J.                                                                          |
| JURISDICTION          | Washington                                                                                                                                                                           |
| DECIDED               | August 14, 2008                                                                                                                                                                      |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                |
| PROCEDURAL POSTURE    | Pat Davis appealed under RCW 29A.56.270 and RAP 4.2(a)(1) from a King County Superior Court order determining that recall charges against her were legally and factually sufficient. |
| STANDARD OF REVIEW    | The sufficiency of a recall petition is reviewed de novo.                                                                                                                            |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                       |
| PARTIES               | Pat Davis, Port of Seattle Commissioner v. Christopher Clifford                                                                                                                      |

### TOPICS

[recall elections](#) [election law](#) [municipal law](#) [appellate procedure](#) [standard of review](#)

### PRACTICE AREAS

[election law](#) [municipal law](#) [appellate procedure](#)

### QUESTIONS PRESENTED

1. Whether the recall charges were factually sufficient under chapter 29A.56 RCW.
2. Whether the recall charges were legally sufficient because, accepting the allegations as true, they established a prima facie case of malfeasance, misfeasance, or violation of the oath of office.
3. Whether allegations that Davis voted in executive session were supported by the petitioner's required personal knowledge.
4. Whether Davis's signed memorandum had the potential effect of obligating the Port to pay transition benefits without prior public approval.

## HOLDINGS

1. A recall petition must be factually and legally sufficient. Factual sufficiency requires a prima facie showing of misfeasance, malfeasance, or violation of the oath of office, while legal sufficiency requires substantial conduct amounting to one of those grounds.
2. Charges alleging that Davis voted in executive session in violation of the Open Public Meetings Act were factually insufficient because the record did not establish that the petitioner had personal knowledge that any vote occurred.
3. The charge that Davis signed a memorandum with the potential effect of obligating the Port to pay Dinsmore at least \$239,000 outside his employment contract was factually sufficient.
4. The memorandum charge was legally sufficient because, accepting the allegations as true, signing an agreement that could obligate Port funds without a public vote constituted a prima facie case of malfeasance.
5. At the recall-petition sufficiency stage, the reviewing court does not decide whether the charges are true; it determines whether, accepting the allegations as true, they facially support a conclusion that the officer abused her position.

## KEY QUOTATIONS

*“A reviewing court does not look to the truthfulness of the charges but instead considers whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.” (367)*

*“We find, when read as a whole, the petition is legally sufficient in charging Comm. Davis with an act of malfeasance by signing an October 10, 2006, memorandum addressed to then chief executive officer of the Port, Dinsmore, which had the potential effect of obligating the Port to pay Dinsmore, an outgoing Port employee, at least \$239,000 outside of his employment contract.” (371)*

## FACTUAL BACKGROUND

Pat Davis, a Port of Seattle Commissioner, signed an October 10, 2006 memorandum addressed to Port CEO M.R. Dinsmore that described transition benefits potentially totaling at least \$239,000 and was signed by both Davis and Dinsmore. The memorandum was not approved by the Port commissioners at a regularly scheduled public hearing. Christopher Clifford, a registered voter in the Port's jurisdiction, filed a recall petition alleging

that Davis committed malfeasance by signing the memorandum and by voting or acting improperly in executive sessions in violation of the Open Public Meetings Act.

#### PROCEDURAL HISTORY

Christopher Clifford filed a recall petition containing six charges against Port of Seattle Commissioner Pat Davis. The King County Superior Court found charges one, four, five, and six legally and factually sufficient and found charge two sufficient as modified in the ballot synopsis; it also struck factual assertions in Clifford's supporting memorandum and supplemental materials. The Washington Supreme Court reviewed the sufficiency determination de novo, affirmed the sufficiency of charge one, reversed as to charges two and three as stated in the ballot synopsis, and remanded for preparation of a new ballot synopsis.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The trial court must prepare a new ballot synopsis consistent with the Supreme Court's determination that charge one is legally and factually sufficient and charges two and three, as written in the ballot synopsis, are legally and factually insufficient.

#### CASES CITED

- Chandler v. Otto, 103 Wn.2d 268, 270, 693 P.2d 71 (1984)
- In re Recall of Wasson, 149 Wn.2d 787, 791, 72 P.3d 170 (2003)
- In re Recall of Young, 152 Wn.2d 848, 852, 100 P.3d 307 (2004)
- In re Recall of West, 155 Wn.2d 659, 666 n.3, 121 P.3d 1190 (2005)
- In re Recall of Beasley, 128 Wn.2d 419, 908 P.2d 878 (1996)
- In re Recall of Sandhaus, 134 Wn.2d 662, 670, 953 P.2d 82 (1998)
- In re Recall of Zufelt, 112 Wn.2d 906, 774 P.2d 1223 (1989)
- In re Recall of East, 144 Wn.2d 807, 813, 31 P.3d 677 (2001)

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