

SUPREME COURT OF THE STATE OF WASHINGTON

In re Recall of Sun

No. 88005-1 (Wash. Apr. 25, 2013) · No. No. 88005-1 · Decided April 25, 2013

SUMMARY

The Washington Supreme Court affirmed the trial court's determination that two recall charges against Pacific Mayor Cy Sun were factually and legally sufficient for submission to voters. The charges concerned using the city police department as a personal police force and jeopardizing the city's liability insurance coverage through conduct associated with vacant department-head positions. The court also affirmed dismissal of additional recall charges as redundant, vague, or otherwise insufficient.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	C. Johnson, J.
JURISDICTION	Washington
DECIDED	April 25, 2013
DOCKET	No. 88005-1
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sun appealed an order of the superior court finding two recall charges factually and legally sufficient for submission to voters. Thomson cross-appealed the dismissal of additional recall charges.
STANDARD OF REVIEW	The court independently determines whether recall charges are factually and legally sufficient. It does not decide whether the allegations are true, but acts as a gatekeeper against frivolous recall petitions. Factual sufficiency requires a detailed description of the approximate date, location, and nature of each act that, if true, would establish a prima facie recall case. Legal sufficiency requires specific allegations of substantial conduct clearly amounting to misfeasance, malfeasance, or violation of the oath of office.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Cy Sun v. Donald Thomson

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 charge alleging that Sun directed Pacific police officers to act as his personal police force was factually and legally sufficient.
2. Whether the recall charge alleging that Sun jeopardized the city's liability insurance coverage by failing to fill department-head positions was factually and legally sufficient.
3. Whether the additional recall charges concerning impairment of governmental functioning and the Valentine Road Project were factually and legally sufficient.
4. Whether the recall petitioner had sufficient knowledge of the acts alleged in the petition.

HOLDINGS

1. A recall petitioner may satisfy the statutory knowledge requirement without firsthand knowledge when the petition is supported by firsthand witness declarations and documentary evidence identifying the people and conduct involved.
2. The charge alleging that Sun directed Pacific police officers to investigate critics and matters outside the city's jurisdiction was factually and legally sufficient for submission to the voters.
3. The charge alleging that Sun jeopardized the city's liability insurance coverage by failing to fill vacant department-head positions was factually and legally sufficient for submission to the voters.
4. When a recall petition challenges an elected official's discretionary act, the petition must allege that the official exercised discretion in a manifestly unreasonable manner.
5. The charge alleging that Sun impeded the proper functioning of city government was redundant of the insurance-coverage charge and was properly dismissed; the Valentine Road Project charge was factually and legally insufficient and was also properly dismissed.

KEY QUOTATIONS

“Although the court does not evaluate the truthfulness or falsity of the allegations, it stands as a gatekeeper to ensure that elected officials are not subject to recall for frivolous reasons.” (at 4)

“Where a recall petition seeks to recall an elected official for a discretionary act, the official must have exercised his or her discretion in a manifestly unreasonable manner.” (at 11)

FACTUAL BACKGROUND

Cy Sun became mayor of Pacific, Washington, in November 2011. The recall petition alleged that Sun used the city police department to investigate critics concerning his Oregon property and that his treatment of city employees caused numerous vacancies and jeopardized the city's liability insurance coverage. The petition also

alleged employee retaliation, improper hiring and permitting practices, interference with police and city employees, and other governmental dysfunction. The superior court found two charges sufficient for submission to voters and dismissed the remaining charges.

PROCEDURAL HISTORY

Thomson filed recall charges against Pacific Mayor Cy Sun with the King County Elections Division. The King County prosecutor petitioned the superior court to determine the sufficiency of the charges. The superior court approved two charges and dismissed the others. The Washington Supreme Court previously ruled that Thomson's cross-appeal was timely and then addressed the substantive appeals.

DISPOSITION

affirmed

CASES CITED

- Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)
- In re Recall of Bolt, No. 88227-4, 2013 WL 1286213 (Wash. Mar. 28, 2012)
- In re Recall of West, 155 Wn.2d 659, 666 n.3, 121 P.3d 1190 n.3 (2005)