

THE SUPREME COURT OF WASHINGTON

In re the Petition for Recall of)	No. 101490-2
)	
JOHN PAIS, BRIAN JUTSON, and ALBERT)	ORDER
WILDER, Mason County Fire District 12)	
Commissioners,)	Mason County Superior Court
)	Nos. 22-2-00536-23
Appellants.)	(consolidated with 22-2-00537-23
)	and 22-2-00538-23)
)	
)	
)	

On November 17, 2022, Appellants John Pais, Albert “Buck Wilder,” and Brian Jutson filed Notices of Appeal seeking Supreme Court review of the trial court’s decisions on these recall cases. On November 30, 2022, our Court consolidated the three appeals. On December 22, 2022, the recall petitioners’ motion to accelerate review was granted in part and a briefing schedule was established. On January 25, 2023, the appellants filed their opening brief. On February 9, 2023, the respondents filed their opening brief. On February 22, 2023, the appellants filed their reply brief. On March 16, 2023, the respondents filed a motion for an order with opinion to follow.

The Court, at its April 6, 2023, En Banc Conference (Justice Owens and Justice Whitener did not sit), considered the issues presented and now enters the following order.

Washington voters have the power to recall any elected, nonjudicial public officer for acts of misfeasance, malfeasance, or violations of their oath of office. WASH. CONST. art I, §§ 33-34. The process for initiating a recall election is detailed in chapter 29A.56 RCW. The recall statutes are to be construed in favor of the voter. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 765, 10 P.3d

1034 (2000). In the recall process, courts perform a “limited gatekeeping function” where “[o]ur responsibility is simply to ascertain whether a recall petition meets the threshold standards necessary to proceed to the signature gathering phase.” *Id.* at 764. A superior court makes the initial determination of whether the charges are sufficient, which this Court reviews de novo. *In re Recall of West*, 155 Wn.2d 659, 663, 121 P.3d 1190 (2005).

Recall petitions must be both legally and factually sufficient. *In re Recall of Inslee*, 200 Wn.2d 809, 817, 522 P.3d 972 (2023). A charge is factually sufficient where the alleged facts, taken as a whole, “‘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, malfeasance, or a violation of the oath of office.’” *In re Recall of Boldt*, 187 Wn.2d 542, 549, 386 P.3d 1104 (2017) (quoting *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984)). A charge “is legally sufficient if it ‘state[s] with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office.’” *Id.* (quoting *Chandler*, 103 Wn.2d at 274). Our review requires that we treat the factual allegations as true. *Id.*

After carefully considering the issues presented, the Court concludes that all of the recall charges the superior court found were factually and legally sufficient to proceed are factually and legally sufficient and may proceed. The charges the trial court found insufficient are insufficient and shall not proceed. This order affirming the superior court constitutes our decision on the matter. No opinion will follow. Now, therefore, it is hereby

ORDERED:

That the motion for an order of decision is granted.

That the Court unanimously affirms the trial courts’ orders.

DATED at Olympia, Washington this 10th day of April, 2023.

For the Court


CHIEF JUSTICE