In the Michigan Supreme Court

Appeal from the Michigan Court of Appeals
Hon. Mark Boonstra, Kathleen Jansen, and Michael Gadola

JEREMY HOOKER,

Appellee,

v.

BRENDA M. MOORE,

Appellant.

Supreme Court Case No. _____
Court of Appeals Case No. 343334
Board of State Canvassers

APPELLANT BRENDA M. MOORE'S APPLICATION FOR LEAVE TO APPEAL

C. Nicholas Curcio (P75824)
CURCIO LAW FIRM PLC
3547 Alpine Avenue NW #104
Grand Rapids, MI 49544
(616) 430-2201
ncurcio@curciofirm.com
Attorney for Appellant

January 21, 2019

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

CONSTITUTION AND STATUTES

OTHER AUTHORITIES

EXHIBITS

QUESTION PRESENTED

Whether MCL 168.951a(3) requires the Board of State Canvassers to reject factually inaccurate recall petitions.[1]

[1] The Board of State Canvassers has answered "yes." The Court of Appeals answered "no."

OPINION BELOW

This case involves the factuality of a petition to recall a public official. Mr. Hooker submitted his proposed recall petition to the Board of State Canvassers in March 2018. The Board noticed a hearing for April 5 but failed to conduct the hearing as scheduled. As a result, the petition language was deemed approved under MCL 168.951a(3). Ms. Moore appealed the *de facto* approval to the Court of Appeals.

In a published opinion dated December 11, the Court of Appeals affirmed the Board's *de facto* decision. Ex. 1, *Hooker v Moore*, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No. 343334); slip op. This Court has jurisdiction under MCR 7.303(B)(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

1963 Michigan Constitution, Article II, Section 4:

> The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. . . .

1963 Michigan Constitution, Article II, Section 8:

> Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

Michigan Compiled Laws, Section 168.951a:

> (3) The board of state canvassers, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine by an affirmative vote of 3 of the members serving on the board of state canvassers whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition must be rejected. . . .

INTRODUCTION

Between 2000 and 2011, approximately 450 government officials in Michigan faced recall elections. This is believed to be the most in any of the 36 states that provide for recalls, dwarfing the number in most. By comparison, there were more than double the number of recall elections in Michigan than in California, the birthplace of modern recall procedures.

The summer of 2011 saw particularly high-profile recall attempts. Interest groups sought to recall the governor, attorney general, and dozens of state legislators. These efforts spurred a bipartisan conversation about the recall process and its possible abuses, prompting the Legislature to explore reform options. In late 2012, Governor Snyder signed a comprehensive reform package addressing the issue.

According to Governor Snyder, Public Act 417 sought to streamline the recall process, provide consistency, and prevent political gamesmanship. Regarding the latter goal, the act requires election officials to determine whether the reasons stated in a recall petition are "factual," in addition to being "of sufficient clarity."

The Board of State Canvassers and numerous courts and election officials interpreted the new "factuality" requirement to require factual accuracy. This reading follows the ordinary meaning of the word "factual" and creates a functional distinction between the factuality and clarity requirements. Reviewing for factual accuracy also advances the Legislature's goal of preventing gamesmanship in the recall process.

The Court of Appeals's published decision in this case overturns the Board of State Canvassers' interpretation, eroding a key component of the

2012 reforms. By holding that "factual" simply means "stated in the form of a factual assertion," the decision allows recall attempts based on false accusations. Unless this Court intervenes, appellant Brenda Moore will be the first of many elected officials harmed by the undermining of the Legislature's intended protections.

STATEMENT OF FACTS

Brenda Moore is the Muskegon County Drain Commissioner. Ex. 2 (Moore Aff.) ¶ 1. Under the Drain Code, drain commissioners construct and maintain drains to ensure the proper flow of stormwater. MCL 280.2; MCL 280.23. "Drains" come in many forms, including open stormwater ditches, sanitary sewer systems, combined sanitary and storm sewers, tile agricultural drainage systems, stormwater management facilities, and many others. See MCL 280.3.

Drain projects typically begin with a petition filed by landowners or governmental entities within the county. See MCL 280.51. Since taking office in 2013, Ms. Moore has received eighteen petitions for new projects. Moore Aff. ¶¶ 1–2. One project, known as the Kuis Drain, involves the subdivision where appellee Jeremy Hooker lives. *Id.* ¶ 5.

The Kuis Drain project was initiated by fourteen individuals who own property near Mr. Hooker. *Id.* ¶ 3. A board of determination reviewed their petition and determined that the project was necessary. *Id.* Ms. Moore then worked with licensed engineers to develop the "most cost effective" design permissible under the law. *Id.* ¶ 5. This process involved various considerations, including environmental compliance, financial partnerships,

and the expected lifespan of the proposed infrastructure. *Id.* ¶¶ 9–12. Ms. Moore also sought public input by holding meetings and submitting the plans to township officials for review and comment. *Id.* ¶ 13.

Not receiving any feedback from the township, Ms. Moore approved the plans for the Kuis Drain and bid the project in two parts. *Id.* ¶¶ 13, 16. For the first part, the open drain work, she received only a single bid. Ms. Moore accepted that bid after the engineers informed her it fell within their cost estimates. *Id.* ¶ 5. For the second part of the project, the subdivision underdrain work, five contractors submitted bids ranging from $1,079,000 to $1,265,880. Ms. Moore conferred with the engineers and accepted the lowest bid. *Id.* She then negotiated a financial partnership with the Michigan Department of Transportation, which agreed to contribute $245,000 to a portion of the project near a state highway. *Id.* ¶ 6.

Mr. Hooker opposes the Kuis Drain project and believes it is too expensive. On March 16, 2018, he submitted a petition to recall Ms. Moore from office. The reason for recall stated:

> Muskegon County Drain Commissioner, Brenda Moore, elected to undertake the broadest scopes of work and most expensive options proposed by her engineers for each project assessed during her current term of office, when less expensive alternatives were proposed to her.

Hooker, ___ Mich App ___; slip op at 1.

By statute, the Board of State of Canvassers was required to conduct a hearing on the clarity and factuality of the petition by April 5, 2018. MCL 168.951a(3). The Board noticed a hearing for that date but then failed to conduct it as scheduled. *Hooker*, ___ Mich App ___; slip op at 1. As a result,

the petition language was deemed approved by statute. See MCL 168.951a(3).

Ms. Moore timely appealed the Board's *de facto* approval to the Court of Appeals. As an exhibit to her claim, she submitted an affidavit outlining the facts that she intended to present at the Board hearing. Moore Aff. She then argued that the petition language should be rejected as factually inaccurate, since she had not chosen the "most expensive option" at any point of the process of designing the Kuis Drain. Rather, she worked with her engineers to design the "most cost effective" option, select the lowest qualified bidders, and negotiate financial partnerships with other governmental agencies. Moore Aff. ¶¶ 5–12.

Mr. Hooker responded by submitting an affidavit from an individual named Joseph Bush. Ex. 3 (Bush Aff.) Mr. Bush stated that he had spoken with a drain commissioner in another county familiar with Ms. Moore's engineers. *Id.* ¶ 4. That drain commissioner informed Mr. Bush that the engineers typically suggest a short-range, mid-range, and long-term (or "Cadillac") scope of work for each project and allow the client to choose among the three. *Id.* However, nothing in the affidavit indicates this process was used for the Kuis Drain or other projects in Muskegon County.

In a published decision, the Court of Appeals affirmed the Board of State Canvasser's *de facto* approval of the petition language. Rather than evaluating the factual accuracy of the grounds for recall, the Court held that the statute does not require such an evaluation. *Hooker*, ___ Mich App ___; slip op at 4. The Court found that under the plainest construction of the

statute, the term "factual" simply means "stated in the form of a factual assertion." Stated otherwise, a "factual" statement need not be factually accurate. *Id.*

The Court of Appeals further stated that the Legislature could not require review for factual accuracy even had it intended to, reasoning that:

> An assessment of the accuracy or truthfulness of a factual assertion is an inquiry into the sufficiency of the reason stated in support of recall; our Constitution plainly reserves that assessment to the electors, and the Legislature could not in any event remove that right from them.

Id. So, under the Court's ruling, elected officials have no recourse to correct untrue statements in recall petitions, and the Legislature is powerless to provide such recourse.

REASONS FOR GRANTING THE APPLICATION

A. The question presented is important to all elected officials in the State of Michigan.

The 1963 Constitution guarantees the right of the people to recall elected officials at the local, county, and state levels of government, with judicial officers being the only exception. See Const 1963, art II, § 8. Elected officials can be recalled for any action taken during the current term in office, not just for misconduct. See MCL 168.951a(1)(c); MCL 168.952(1)(c); *Wallace v Tripp*, 358 Mich 668, 676; 101 NW2d 312 (1960). As a result, virtually any elected official in the state could face recall if his or her opponents are sufficiently motivated.

For many, this is not just a theoretical possibility. Michigan has become a nationwide leader in recall activity, with officials at every level of

government being targeted. Citizens Research Council of Michigan, *Michigan's Recall Election Law* (June 2012), pp 2–12[2] (comparing the 457 recall elections in Michigan between 2000 and 2011 to the numbers in other states). In recent years, there have been successful recalls against numerous local officials and even a state legislator. *Id.* at 5; Thorne, *Paul Scott recalled: The Rise and Fall of Michigan's Republican Wunderkind*, MLive.com (Nov 9, 2011). There have also been recall attempts against officials at the highest levels of state government, including the governor and attorney general. Hanselman, *Total Recall – Balancing the Right to Recall Elected Officials with the Orderly Operation of Government*, 93 Mich B J 34, 35 (Jan 2014).

Given the prevalence of the recall process, the question in this case is crucially important to elected officials. Under the 2012 reforms, a recall petition must be rejected unless the reasons stated are both "factual" and "of sufficient clarity." MCL 168.951a(3) (petitions against state and certain county officials); MCL 168.952(3) (petitions against local officials). If the term "factual" requires that the statements in a recall petition be true, elected officials can contest false accusations at the very beginning of the recall process, before the petition is circulated. See *id.* This opportunity saves officials from needing to invest significant time, effort, and campaign expenditures to combat misinformation in petition language. It also prevents officials from being thrown out of office based on false pretenses.

[2] For ease of reading, this brief provides hyperlinks to online resources by embedding them in the citation itself, rather than using the "available at" format.

If "factual" simply means "stated in the form of a factual assertion," officials lack any means to enjoin petitions that materially misstate their records in office. This interpretation renders the factuality requirement meaningless, restoring a statutory scheme that allows sponsors to "circulat[e] petitions bearing outright lies about the conduct of public officials." *Mastin v Oakland Co Elections Comm*, 128 Mich App 789, 798; 341 NW2d 797 (1983) (quoting House Legislative Analysis HB 5381 (1982)).

The consequences of such a scheme are significant. Numerous studies show that the wording of ballots and ballot questions can affect election results. See, e.g., Burnett & Kogan, *When Does Ballot Language Influence Voter Choices? Evidence From A Survey Experiment*, Political Communication, Vol 32 (2015), pp 109–126; Taebel, *The Effect of Ballot Position on Electoral Success*, American Journal of Political Science, Vol 19, No. 3 (Aug 1975), pp 519–526. While apparently less studied, logic suggests that the language in a recall petition can be similarly influential. Petitions are often circulated at public events, with circulators asking for signatures on the spot. In this context, the allegations in the petition may be the only thing that potential signatories know — or think they know — about the official being targeted. Further, studies have shown that, in the context of initiative petitions, "[m]ost people trust the petition circulator's description of the proposition to be accurate." Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore, MD: Johns Hopkins University Press, 1984), pp 62–63. Naturally, the more outrageous or embellished the alleged conduct is, the more likely an unfamiliar citizen might be to sign. And the more

signatures a circulator obtains, the closer they get to the 25% threshold needed to force a recall election. See Const 1963, art II, § 8.

This Court has recognized the importance of ballot access issues in our democratic system. *Stand Up For Democracy v Sec'y of State*, 492 Mich 588, 599; 822 NW2d 159 (2012) (explaining that a dispute regarding petition font-size requirements "concerns the constitutional foundation of how we govern ourselves"). The Court of Appeals's narrow interpretation of the factuality requirement will likely result in more recalls reaching the ballot and in more elected officials being unseated. As a result, this case is undoubtedly important and warrants this Court's review.

B. The Court of Appeals's decision is contrary to decisions of the Board of State Canvassers, county election commissions, and numerous courts throughout the state.

Aside from the inherent importance of the question presented, this case is also important because the decision below overturns existing practices. Although the Court of Appeals technically affirmed the Board of State Canvassers' decision regarding the petition against Ms. Moore, that is only because the Board rendered a *de facto* decision by failing to hold a hearing. MCL 168.951a(3); *Hooker*, ___ Mich App ___; slip op at 1. Had the Board considered the petition language, the result would have been different.

Unlike the Court of Appeals, the Board has interpreted MCL 168.951a(3) to require review for factual accuracy. In May 2013, five months after the 2012 recall reforms took effect, the Board adopted guidance explaining how it would comply with the new statutory directive to review whether statements in a recall petition are "factual." See Board of State

Canvassers, *Clarity/Factual Hearing Instructions* (May 22, 2013). The Board's guidance contemplates that "factual" means that the statements in a recall petition must be true, not just stated in the form of a factual assertion. See *id.* The Board advises petition sponsors to "provide documentation demonstrating that each reason for the recall is factual." As "examples of acceptable documentation," the Board lists: "an affidavit; a copy of the roll call vote indicating how a legislator targeted for recall voted on a particular measure; or a copy of the minutes of a public meeting regarding the action that prompted the recall." *Id.*

Applying this guidance, the Board has repeatedly rejected factually inaccurate petitons. As an example, a proposed petition to recall Governor Snyder offered these grounds:

> Because Governor Richard D. Snyder admitted on January 19, 2016 Michigan State of the State transcript he failed the City of Flint as quoted: 'Government failed you, federal, state, and local leaders by breaking the trust you placed in us. I am sorry most of all that I let you down. You deserve better, you deserve accountability, you deserve to know the buck stops here with me.

Board of State Canvassers, *Reasons for Recall: Examples of Approved and Rejected Recall Petitions* (Nov 26, 2018). The Board rejected the petition because the phrase "admitted . . . he failed" was unsupported by the evidence presented. *Id.* at 1. The Board then approved a subsequent petition that removed the unsupported phrase and quoted the transcript of the State of the State address verbatim. *Id.*

The Board similarly rejected a recall petition against Branch County Prosecutor Ralph Kimble. *Id.* at 2. In describing a press release in which local

judges called for an investigation of Mr. Kimble, the petition stated that the judges' actions were based on "their intimate and professional relationship and knowledge" of Mr. Kimble. *Id.* at 2. The Board rejected the petition because the sponsor presented no evidence regarding the "motivation and state of mind of the judges." The Board later approved a subsequent petition that removed this language, noting that the petition sponsors "presented evidence in support of the petition language, including a copy of the news release." *Id.*

The Board is not alone in its interpretation of the factuality requirement. Several county election commissions have interpreted the statute in the same manner and have rejected inaccurate petitions against local officials. For example, the Washtenaw County Elections Commission rejected a petition that inaccurately stated the time at which a deer cull would occur. Charniga, *Petition to Recall Councilmember Over Deer Cull Vote Rejected*, MLive.com (Dec 17, 2015). Likewise, the Oakland County Board of Election Commissioners rejected a petition that inaccurately stated the time at which a vote was taken. Laitner, *West Bloomfield Recall Petitions Rejected For 4th Time*, Detroit Free Press (June 2, 2015).

Several courts have also interpreted the statute to require factual accuracy. In a thorough opinion analyzing the text and history of the 2012 recall reforms, Kent County Circuit Court Judge Mark Trusock held that "the new factuality requirement in MCL 168.952(1)(c) means that each reason for the recall in a recall petition must be 'based on something that truly exists or a true piece of information.'" Ex. 4, *Troost v Kent Co Election Comm*,

unpublished opinion of the Kent County Circuit Court, issued Feb 21, 2014 (Docket No. 14-1038-AA), p 8. Genesee County Circuit Court Judge Joseph Farah reached the same conclusion. Ex. 5, *Adams v Genesee Co Election Comm*, unpublished order of the Genesee County Circuit Court, issued Dec 9, 2013 (Docket No. 13-101496-AA).

In sum, the Court of Appeals's decision is contrary to the considered views of numerous elected officials and judges across the state. For this reason alone, it warrants this Court's attention.

C. The Court of Appeals's decision is wrong.

The Court of Appeals's decision also warrants review because it undermines key protections that the Legislature sought to create when it added factuality requirement to MCL 168.951a. Interpreting "factual" to include false accusations is contrary to the ordinary meaning of the term and renders it superfluous. And the Court's suggestion that the Legislature lacks the power to require factual accuracy is at odds with the Constitution's broad grant of legislative authority to regulate elections.

1. The text, structure, and history of MCL 168.951a support reviewing recall petitions for factual accuracy.

MCL 168.951a(3) requires the Board of State Canvassers to determine "whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." The Court of Appeals held that "factual" means simply "stated in the form of a factual assertion," regardless of whether the statement is true. *Hooker*, ___ Mich App ___; slip op at 4.

Contrary to the Court's decision, ordinary English speakers understand that truth is an essential component of a "factual" statement. The root word "fact" means something that is true. See, e.g., *American Heritage Dictionary of the English Language* (4th ed) (defining "fact" to mean "[k]nowledge or information based on real occurrences"); *Merriam-Webster's Collegiate Dictionary* (11th ed) ("the quality of being actual" or "an actual of occurrence"); *Shorter Oxford English Dictionary* (5th ed) ("truth; reality"). As one prominent linguist has commented, "[w]riters debase the word when they qualify *facts* with an adjective like *true* or *incorrect*. We ought to be able to rely on facts being facts, instead of having to wonder whether the writer failed to describe what kind of facts they are." Garner, *Garner's Modern American Usage* (3d ed).

The term "factual," in turn, has two meanings. It can mean "restricted to or based on facts." *Merriam-Webster's Collegiate*. In this sense, it literally means "true." *Garner's Modern Usage* at 344. Examples of this use include phrases like "factual account" or "factual narrative." *Id.*

Alternatively, "factual" can mean "of or relating to facts" or "involving facts." *Merriam-Webster's Collegiate* at 448. This sense of the word "appears in phrases such as *factual finding or factual question*." *Garner's Modern Usage* at 344. When used in this sense, the relationship to truth is slightly more attenuated. For example, a "factual question" is not something that is itself true. Rather, it is a question that solicits the truth by asking the respondent to provide facts.

Importantly, in either sense, the word "factual" has a close relationship to truth and accuracy. Even when used in the more attenuated sense — "of or relating to fact" — a statement that relates to falsehoods or inaccuracies is not "factual." See *Garner's Modern Usage* at 342–344.

The Court of Appeals's key error was to equate *being* "factual" with being "*stated in the form* of a factual assertion." See *Hooker*, ___ Mich App ___; slip op at 4 (emphasis added). The two are not the same thing. The very phrase "stated in the form of" contemplates the possibility of impostures. Something can be stated in the form of a fact without being a fact — without being true. But something cannot be "factual" without being true or related to the truth. So, by smuggling in the concept of form, the Court of Appeals construed the term "factual" more broadly than its ordinary meaning allows.

Aside from these linguistic problems, the Court of Appeals's decision also creates structural redundancies in the statue. Specifically, it creates complete overlap between the factuality requirement and the clarity requirement, violating the axiom that "when the Legislature effects a change in the provisions of a statute, a presumption arises that the Legislature intends a substantive change in the law." *People v Wright*, 432 Mich 84, 92; 437 NW2d 603 (1989).

In a line of cases going back to the 1920s, courts held that the clarity requirement meant that recall petitions must "clearly state[] facts, not conclusions." *Molitor v Miller*, 102 Mich App 344, 349; 301 NW2d 532 (1980) (citing *Amberg v Welsh*, 325 Mich 285, 295; 38 NW2d 304 (1949) and *People ex rel Elliot v O'Hara*, 246 Mich 312; 224 NW2d 384 (1929)). The courts

reasoned that factual allegations are needed to provide sufficient "information to the electors on which they may form a judgment when called upon to vote." *Amberg*, 325 Mich at 293. Without specific allegations, public officials and voters may not be sufficiently "apprised of the course of conduct in office which is the basis of the recall drive," making the reasons for recall unclear. *Molitor*, 102 Mich App at 350.

In light of these holdings, the recall statute has long required that petitions be stated in the form of a factual assertion. By construing the factuality requirement to have the same meaning, the Court of Appeals's decision renders it superfluous. In order to give operative meaning to the factuality requirement, it must be construed as requiring factual accuracy.

Requiring factual accuracy also furthers the Legislature's intent to prevent "political gamesmanship." See Eggert, *Gov. Snyder Signs Bills Changing Rules to Recall Elected Officials*, MLive.com (Dec 20, 2012) (quoting Governor Snyder as stating the act "will help ensure recalls are done in a fair and consistent manner and help prevent political gamesmanship."). Public officials had long complained that the recall statute allowed petitions to include inaccurate information or "outright lies." See, e.g., *Mastin*, 128 Mich App at 798 (quoting House Legislative Analysis HB 5381 (1982)).

These complaints were part of the public discussion when the Legislature began considering recall reform. One particularly high-profile example was the effort to recall Governor Snyder in 2011 for his support of a new law allowing the appointment of Emergency Financial Managers. The Governor's attorney was highly critical of the petition language, noting that

it inaccurately indicated the Governor had raised taxes and made appointments under the new law. Askins, *Washtenaw: Snyder Recall Wording Clear*, The Ann Arbor Chronicle (Apr 30, 2011). Local officials across the state made similar factuality arguments in defending against recall efforts. See, e.g., Anesi, *What the Troy Mayor Recall Question Will Look Like On the Ballot*, Troy Patch (Oct 3, 2012); Schuch, *Abundance of Recall Attempts in the State Leave Officials Questioning if There Should be Changes to the Law*, MLive.com (Aug 1, 2011); Packer, *Six Marine City Officials Targeted for Recall*, The Voice (June 15, 2010). These types of arguments were almost certainly known to state legislators, making it even more likely that "factual" was intended to mean "factually accurate."

2. Requiring factual accuracy is a valid exercise of the Legislature's broad power to regulate elections.

This Court applies the canon of constitutional doubt only if more than one meaning of a statute is "fairly possible," and if one such meaning raises "grave doubts" about the statute's constitutionality. *People v Nyx*, 479 Mich 112, 123; 734 NW2d 547 (2007). The statute at issue in this case does not satisfy either criterion. As explained above, the text, structure, and history of MCL 168.951a(3) all support constructing "factual" to mean "factually accurate." That construction is also well within the Legislature's power to regulate elections.

Article II, Section 8, of the 1963 Constitution provides:

> Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the

> electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

The first sentence of this section was carried over almost verbatim from the 1908 Constitution. See Const 1908, art 3, § 8. It grants a constitutional right to the people while simultaneously empowering the Legislature to develop laws for implementing the right. Consequently, statutes governing the recall process date to the early 1900s. See, e.g., 1935 PA 325. Those statutes have long provided for judicial review of the clarity of petition language. *Id.* § 2; see also 1979 OAG 5556.

The second sentence of Article II, Section 8 was a new feature of the 1963 Constitution. Based on its wording, it might be plausibly read to preclude administrative and judicial review of petition language. But —as the Court of Appeals held decades ago — this is not what the Convention delegates intended. *In re Wayne Co Election Comm,* 150 Mich App 427, 434–439; 388 NW2d 707 (1986).

Rather, the second sentence of Section 8 simply clarifies and reaffirms that the Legislature cannot require that the reasons stated in a recall petition "constitute allegations of nonfeasance, misfeasance, or malfeasance in office." *Id.* at 436 (quoting *Noel v Oakland Co Clerk*, 92 Mich App 181, 186; 284 NW2d 761 (1979)). In other words, the Legislature cannot require a particular "gravity of conduct" for recalls. See *id.* The second sentence of Section 8 does not, however, otherwise limit the Legislature's authority to regulate the formulation of statements that appear on recall petitions, so

long as those regulations "do[] not frustrate the underlying purpose of the constitutional provision for recall." *Id.* at 437.

The *Wayne County* Court's construction of Section 8 is perfectly consistent with its text. Under this construction, the word "sufficiency" refers to the ultimate question of whether the statement of reasons is a proper basis for removing an elected official, not to the intermediate question of whether the statement is in an acceptable form for placement on a petition or ballot. See *id.* at 436–437. There at least three reasons this construction is correct.

First, the record of the Constitutional Convention shows that the delegates understood the second sentence as simply memorializing the courts' current interpretation of the recall provision in the 1908 Constitution. See *Wallace v Tripp*, 358 Mich 668, 680; 101 NW2d 312 (1960). The interpretation of that provision had varied over the years. See 1979 OAG 5556 (recounting this history); *Total Recall* at 34 (same). In the late 1920s, this Court interpreted the Constitution to require that recall petitions allege grounds constituting misconduct in office, namely "nonfeasance, misfeasance, or malfeasance." *People ex rel Elliot*, 246 Mich at 314; accord *Newburg v Donnelly*, 235 Mich 531, 534–535; 209 NW 572 (1926). That interpretation governed for over 30 years, until this Court reversed course in 1960.

In *Wallace v Tripp*, this Court held that the *Newburg* line of cases was an "aberration" divorced from the text of the 1908 Constitution. *Wallace*, 358 Mich at 680. Because the Constitution did not specifically limit recall to instances of misconduct, it "reserve[d] the power of recall to the people" as

a political question. *Id.* In announcing this new interpretation, the Court expressly acknowledged — and left undisturbed — the statutory requirement that recall petitions provide "a clear statement of reasons for recall." *Id.* In fact, the Court commented that the clarity requirement "could be regarded as guarding 'against abuses of the elective franchise,'" which the Legislature was expressly empowered to do. *Id.* at 676 (quoting Const 1908, art 3, § 8).

During the Constitutional Convention that convened just a year later, the delegates were aware of the *Wallace* decision and supported the new rule it announced. 2 Official Record, Constitutional Convention 1961, pp 2263–2267. There was some debate was about whether the *Wallace* decision needed to be expressly memorialized in a new constitutional provision, or whether the existing provision in the 1908 Constitution should simply be carried over as-is. The former approach carried the day, with Delegate G.E. Brown being its primary proponent. *Id.* Mr. Brown stated that his amendment was designed to constitutionalize "the present judicial interpretation" of the Constitution as announced in *Wallace*. *Id.* at 2265. Another delegate expressed the same view by calling it a "perfecting amendment." *Id.* at 2264. No one at the Convention objected to the longstanding practice of judges reviewing the clarity of petition language, as opposed to the gravity of the alleged conduct. See *id.* at 2263–2267. In fact, Delegate Brown acknowledged the clarity requirement and seemingly approved of it. See *id.* at 2263. Given this, it is highly unlikely that the delegates intended for the "political question" amendment to completely abrogate judicial review.

Second, the *Wayne County* Court's interpretation of Section 8 is further supported by the original wording of Mr. Brown's proposal, which read: "Any statement of reasons or grounds procedurally required shall be deemed to pose a political rather than a judicial question." *Id.* at 2263. This formulation makes clear (perhaps moreso than the final approved language) that the delegates were concerned only with judicial review of the gravity of the alleged conduct. Under Mr. Brown's original formulation, the statement in the petition is understood to directly "pose" a question: "Should this elected official be removed from office?" Thus, the delegates simply reserve this ultimate question for the voters as a "political" issue, not for the courts as a "judicial" one.[3]

Third, and perhaps most important, Mr. Brown's amendment must be understood in the context of the Constitution as a whole, which gives the Legislature broad power over elections. Section 8 itself includes a specific grant of power to the Legislature regarding recall elections. Its first sentence begins: "Laws shall be enacted to provide for the recall of all elective officers . . . ." Const 1963, art II, § 8. Section 4 provides a more general grant of power over elections, directing the Legislature to enact laws that "preserve the purity of elections [and] guard against abuses of the elective franchise." Const 1963, art II, § 8.

[3] Notably, the elimination of the "deemed to pose" language did not substantively alter Mr. Brown's amendment. It was a stylistic change recommended by the Committee on Style and Drafting. See Journal of the Constitutional Convention 1961–1962, p 1542; Journal No 133A (May 7, 1962), p 3.

This Court has repeatedly described the Legislature's power over elections as "one of large dimensions." See, e.g., *Grebner v State*, 480 Mich 939, 943; 744 NW2d 123 (2007). The phrase "purity of elections" has been given a particularly broad construction, as it can be "applied in different factual settings" and "has no single, precise meaning." *Id.* Its "touchstone . . . is whether the election procedure created affords an unfair advantage to one party or its candidates over a rival party or its candidates." *Socialist Workers Party v Sec'y of State*, 412 Mich 571, 598–599; 317 NW2d 1 (1982). Thus, it encompasses laws that are reasonably aimed to "prevent voter confusion," which could unfairly influence elections. *Id.* at 594. For the same reason, it authorizes the Legislature to enact laws aimed at preventing "fraud and corrupt practices" in the electoral process. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 18; 740 NW2d 445 (2007). This "ensure[s] that an individual's right to vote is not undermined by fraud" perpetrated by others. *Id.* at 19 (quoting *Burson v Freeman*, 504 US 191, 199; 112 S Ct 1846; 119 L Ed 2d 5 (1992)).

When viewed in this context, the "political question" provision in Article II, Section 8 cannot be interpreted as precluding administrative or judicial review of recall petitions. The provision simply preserves the right of the people to recall an elected official for any act committed in office. It does not, however, give an official's political opponents the right to confuse or mislead voters.

Thus, the Legislature properly exercised its constitutional powers when it enacted the clarity requirement to prevent voter confusion. See *Wallace*,

358 Mich at 676; *Wayne Co,* 150 Mich App at 434–439. By the same token, the Legislature is constitutionally authorized to require that the statements in a recall petition be factually accurate. This requirement protects both voters and elected officials from misinformation and corrupt practices, consistent with the "purity of elections" clause. And it does so in a way that "does not frustrate the underlying purpose of the constitutional provision for recall," *Wayne Co*, 150 Mich App at 437, since it still allows recall for any reason. For example, if there is insufficient evidence that an elected official committed certain actions, a recall petition can be factually accurate by simply stating that the official is "under investigation for" or even "suspected by the petition sponsor of" the alleged conduct. Requiring this type of qualifying language imposes a minimal burden on the petition sponsor, but goes a long way to preventing misinformation in the electoral process.

In sum, the Court of Appeals's conclusion that the Legislature cannot require factual accuracy, *Hooker*, ___ Mich App ___; slip op at 4, is based on a misunderstanding of Article II, Section 8 and a failure to consider the Legislature's broad power over elections.

D. This case is a good vehicle for addressing the meaning of the factuality requirement.

The Court of Appeals's approval of the recall petition against Ms. Moore was based solely on its conclusion that MCL 168.951a(3) does not require factual accuracy. As a result, this case squarely presents the proper interpretation of the factuality requirement.

If the Court of Appeals's interpretation is wrong, Ms. Moore will likely succeed in contesting the petition language on remand. Ms. Moore's affidavit

directly refutes the petition's claim that she chose the "most expensive options proposed by her engineers for each project assessed during her current term of office, when less expensive alternatives were proposed to her." Her affidavit explains in detail how she worked with her engineers to design the "most cost effective" option, select the lowest qualified bidders, and negotiate financial partnerships with other governmental agencies to reduce costs. Moore Aff. ¶¶ 5–12.

The affidavit on which Mr. Hooker relies, on the other hand, does not address the specific decisions that Ms. Moore made when designing the Kuis Drain project or any other drain project undertaken during her current term in office. See Bush Aff., passim. Instead, it merely states that Ms. Moore's engineers *typically* provide three separate design options of varying scopes. *Id.* ¶ 4. The inference that the engineers offered three options to Ms. Moore — and that she chose the most expensive option — is based entirely on speculation. Thus, the language in the recall petition is not "factual" and should be rejected on remand.

RELIEF SOUGHT

Ms. Moore respectfully requests that this Court grant the application for leave to appeal, reverse the judgment of the Court of Appeals, and remand the case for proper application of the factuality requirement in MCL 168.951a(3).

Respectfully Submitted,

CURCIO LAW FIRM PLC

Dated: January 21, 2019

By: */s/ C. Nicholas Curcio*

C. Nicholas Curcio
3547 Alpine Avenue NW #104
Grand Rapids, MI 49544
(616) 430-2201
ncurcio@curciofirm.com
Attorney for Appellant

Exhibits

Exhibit 1

STATE OF MICHIGAN

COURT OF APPEALS

JEREMY HOOKER,

Appellee,

v

BRENDA M. MOORE,

Appellant.

FOR PUBLICATION
December 11, 2018
9:05 a.m.

No. 343334
Board of State Canvassers

Before: BOONSTRA, P.J., and JANSEN and GADOLA, JJ.

GADOLA, J.

Appellant, Brenda M. Moore, appeals as of right the determination of the Board of State Canvassers (the Board) that the petition for recall submitted by appellee, Jeremy Hooker, complied with the requirements of MCL 168.951a(1)(c). Because we conclude that the petition for recall met the requirements of that statutory section, we affirm.

I. FACTS

Appellant has been serving as the Muskegon County Drain Commissioner since November 2013. She asserts that in her capacity as drain commissioner she has overseen 18 petitions for drainage projects. According to appellant, with regard to each project she complied with the applicable laws by referring each project to engineers to determine the most cost-effective option, then submitted each project for bids and accepted the lowest bid for each project.

On March 16, 2018, appellee submitted a petition for the recall of appellant to the Secretary of State. The petition stated the following reason for the proposed recall: "Muskegon County Drain Commissioner, Brenda Moore, elected to undertake the broadest scopes of work and most expensive options proposed by her engineers for each project assessed during her current term in office, when less expensive alternatives were proposed to her."

The Department of State, Bureau of Elections, notified appellant of the recall petition by letter, indicating that the Board would meet to conduct a "Clarity-Factual Hearing" on April 5, 2018. The parties do not dispute that the Board did not hold the planned hearing on April 5, 2018, and that the Board's failure to conduct the hearing constituted "a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for

the recall." MCL 168.951a(3). Appellant thereafter appealed the determination of the Board to this Court. See MCL 168.951a(6).

II. ANALYSIS

Appellant challenges the Board's determination that the reason stated in the recall petition met the statutory requirements that the reason be factual and of sufficient clarity. MCL 168.951a(1)(c). Initially, we note that an elected officer whose recall is sought may appeal a determination by the Board to this Court for a determination concerning whether the reasons stated in the petition are factual and of sufficient clarity. See MCL 168.951a(6). Resolution of this appeal involves a question of statutory construction, which this Court reviews de novo. *Hastings Mut Ins Co v Grange Ins Co of Mich*, 319 Mich App 579, 583; 903 NW2d 400 (2017).

The right to recall an elected official is reserved to the voters of this state by our state constitution. See Const 1963, art 2, § 8. In that regard, our Legislature enacted MCL 168.951a, applicable to the attempted recall of a county official other than a county commissioner. See MCL 168.951a(1) and MCL 168.959. At the times relevant to the appeal, MCL 168.951a(1)[1] provided:

> (1) A petition for the recall of an officer listed in section 959 [MCL 168.959] shall meet all of the following requirements:
>
> (a) Comply with section 544(c)(1) and (2) [MCL 168.544c(1) and (2)].
>
> (b) Be printed.
>
> (c) State factually and clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten. If any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall shall not misrepresent the content of the specific legislation.
>
> (d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.
>
> (e) Be in a form prescribed by the secretary of state.

Before a petition for recall may be circulated, the petition must be submitted to the Board. MCL 168.951a(2). The Board must then meet and "determine . . . whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.951a(3). If the Board determines that "any reason for the recall is not factual or of sufficient clarity," it must reject the entire petition. MCL 168.951a(3).

[1] MCL 168.951a was amended by 2018 PA 190, effective June 20, 2018.

In this case, the Board did not meet on the date scheduled to consider whether appellee's petition met the statutory criteria. The Board's failure to meet therefore constituted "a determination" by the Board "that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.951a(3). Appellant challenges whether the petition meets the requirements of MCL 168.951a(1)(c) that the petition "[s]tate factually and clearly each reason for the recall." Specifically, she argues that appellee's stated ground for recall is not factual because he misstates her record, and the term "factual" as used in the statute must be understood to require that the petition be truthful.[2] In response, appellee contends that the reason stated in the recall petition is factually accurate.

We have previously held that Const 1963, art 2, § 8, reserving to the voters the right to recall an elected official, "was intended to preclude judicial or administrative review of the substantive merit of the reasons alleged in a recall petition," while recognizing the statutory requirement that a recall petition must clearly state the reason for the recall attempt, which is subject to judicial review. *In re Wayne Co Election Comm*, 150 Mich App 427, 437; 388 NW2d 707 (1986). Before the enactment of 2012 PA 417, which added MCL 168.951a and amended MCL 168.952, this Court was tasked with determining the "clarity" of recall petitions, and we noted that our review was limited in scope:

> The standard of review for clarity of recall petitions has been described as both "lenient," and "very lenient." "Thus, recall review by the courts should be very, very limited." A meticulous and detailed statement of the charges against an officeholder is not required. It is sufficient if an officeholder is apprised of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct. "Where the clarity of the reasons stated in the petition is a close question, doubt should be resolved in favor of the individual formulating the petition." [*Dimas v Macomb Co Election Comm*, 248 Mich App 624, 627-628; 639 NW2d 850 (2001) (citations omitted).]

We held that under the version of MCL 168.952 then in effect that whether the statements in a petition are true is not a proper consideration for rejecting the petition on grounds of clarity because such a determination is a political question that must be left to the electors under Const 1963, art 2, § 8. *Donigan v Oakland Co Election Comm*, 279 Mich App 80, 83-84; 755 NW2d 209 (2008) (discussing MCL 169.952 before the enactment of 2012 PA 417).

---

[2] Appellant also asserts, in conclusory fashion and without citation to supporting legal authority, that this Court must interpret MCL 168.951a(1)(c) to require truthful statements because to do otherwise would constitute an unconstitutional taking of her property right to continue in office. It is well settled that political officers have no property rights in their offices. See *Detroit v Div 26 of the Amalgamated Assoc*, 332 Mich 237, 251; 51 NW2d 228 (1952). It is equally well settled that when a party merely announces her position and fails to cite any supporting legal authority, the issue is deemed abandoned. *Southfield Ed Ass'n v Bd of Ed of Southfield Pub Sch*, 320 Mich App 353, 379; 909 NW2d 1 (2017).

Our Legislature has since enacted 2012 PA 417, adding MCL 168.951a, which requires a recall petition to state "factually and clearly each reason for recall." If the Board determines that "any reason for the recall is not factual or of sufficient clarity," it must reject the entire petition. MCL 168.951a(3). Upon appeal to this Court, this Court is charged with determining "whether each reason [stated in the recall petition] is factual and of sufficient clarity." MCL 168.951a(6). Accordingly, we now consider whether the addition of the terms "factually" and "factual" to the requirement of clarity altered the scope of the determination by this Court to include a determination of "truthfulness."

When construing a statute, our primary task is to discern and give effect to the intent of the Legislature. *Coldwater v Consumers Energy Co*, 500 Mich 158, 167; 895 NW2d 154 (2017). We begin by examining the language of the statute as the most reliable evidence of the intent of the Legislature, and give the language of the statute its plain and ordinary meaning. *Tomra of North America v Dep't of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket Nos. 336871, 337663); slip op at 4. If the language is unambiguous, we will conclude that the Legislature intended the meaning clearly expressed and will enforce the statute as written. *Coldwater*, 500 Mich at 167, citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

In ordinary usage, the word "factual" can mean "restricted to or based on fact," while the word "fact" can be understood to mean "an actual occurrence" and "a piece of information presented as having objective reality." *Merriam Webster's Collegiate Dictionary* (11th ed). When read in the context of the statute as a whole, the plainest construction is that the Legislature included the terms "factual" and "factually" in MCL 168.951a to ensure that the grounds set forth in a recall petition are stated in terms of a factual occurrence. That is, the ground for recall must be stated in the form of a factual assertion about the official's conduct that the proponent believes warrants the recall. The language of MCL 168.951a does not specify, however, that the reason for the recall stated in the petition must be truthful.

Our state constitution provides that "[t]he sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question." Const 1963, art 2, § 8. An assessment of the accuracy or truthfulness of a factual assertion is an inquiry into the sufficiency of the reason stated in support of recall; our Constitution plainly reserves that assessment to the electors, and the Legislature could not in any event remove that right from them. *Donigan*, 279 Mich App at 84, citing *Meyers v Patchkowski*, 216 Mich App 513, 518; 549 NW2d 602 (1996). We therefore conclude that the terms "factually" and "factual," as used in MCL 168.951a, require the reason stated in the recall petition to be in the form of a factual assertion, but does not confer upon the Board or upon this Court the task of determining the truthfulness of the statement. See Const 1963, art 2, § 8; *Donigan*, 279 Mich App at 84.[3]

[3] Left as an open question by our ruling in this case is whether the statutory requirement that the stated reason or reasons for recall be "factual" is an unconstitutional limitation on the people's right to recall elected officials. This is a question worth pondering in light of the requirement of Const 1963, art 2, § 8 that the sufficiency of the reasons or grounds stated in a recall petition

In his petition, appellee stated that appellant "elected to undertake the broadest scopes of work and most expensive options proposed by her engineers for each project assessed during her current term in office, when less expensive alternatives were proposed to her." Regardless of whether this is true or false, this is a clearly-stated factual assertion. Because the statement is factually and clearly stated, the petition meets the requirements of MCL 168.951a(1)(c). If the petition garners the requisite support, it will be for the electorate to determine whether the assertion is actually true and warrants recall. See *Donigan*, 279 Mich App at 84-85.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Kathleen Jansen

shall be a political rather than a judicial question. As appellee fails to raise this issue, we decline to address it.

Exhibit 2

AFFIDAVIT

AFFIANT, Brenda M. Moore, states that if called to testify, under oath, that she would competently testify, based upon personal knowledge, as follows:

1. I have been the Muskegon County Drain Commissioner, since November 7, 2013. (see DA's Exhibit 2 attached to Complaint)

2. There have been 18 Petitions filed, during my approximately, 4 ½ years in office. (DA's Exhibit 3 attached)

3. Section 280.191 of the Drain Code states that it takes 5 signatures from freeholders in the Drainage district to start the public process for a petitioned project. For the Kuis petition, there were 14 valid signatures, all of which came from the subject subdivisions, in which the Petitioner lives.

4. Section 280.241 of the Drain Code states that drain work of over $3,000 in cost **must be conducted under the supervision of a licensed engineer.** This is **to prevent unwise alterations** to a drainage system that can cause flooding, sediment deposition, environmental damage **and unnecessary costs.**

5. **In the case of the Kuis Drain** (Petitioner's District), eight excavation firms attended the pre-bid meeting. **For the open drain work, only one bid was received**; it met with the engineer's cost estimates and was accepted. **For the subdivision** underdrain work, **five bids were received** ranging from $1,079,000 to $1,265,880. **The low bid from Mccormick Sand, Inc. was accepted at $186,880 less than the highest bid,** and the "notice of award" given. (DA's Exhibit 4 attached)

6. **In the case of the Kuis Drain,** I was able to reduce costs by getting the Michigan Department of Transportation to pay $245,000 toward drain repairs near US31.

   Sometimes what "appears" to be the most expensive option is "chosen by the licensed engineer" is the least expensive, due to the longevity of the infrastructure. For example, cement culverts last about 4 times longer than metal culverts. If a cement culvert is twice as expensive as a metal one, it is still only ½ the cost over the long term.

7. **The licensed engineer has always drafted the most cost effective option, that is permissible under the law.**

8. Unfortunately, the petitioner has no direct knowledge of the decision process for this and other drain district projects, requirements of state and federal law, or requirements for environmental best management practices. These issues are not decided by the Drain Commissioner.
   (DA's Exhibit 3 attached)

9. Prior to 2014, when the current Drain Commissioner took office, most drain district work was exempt from Natural Resource & Environmental Protection Act provisions including, wetlands protection, inland lakes & streams, and soil erosion control. Now, as part of any Michigan Department of Environmental Quality or US Army Corp of Engineers permits, **environmental protection measures must be taken.**

10. **To meet state and federal permit requirements, Drain Commissioners must utilize established best management practices (BMPs) as part of any project.** Example practices include blanketing and seeding drain slopes and placing in-stream structures that prevent sedimentation and damage to stream channels. **All of these required measures protect water quality, habitat, and property. They also increase project costs, which the Drain Commissioner has absolutely no choice or control. The engineers determine what is necessary under the law. The project is put up for bid and the lowest bids are always accepted by the Drain Commissioner.**

11. **Final engineering plans must be approved by both the Michigan Department of Environmental Quality and the Army Corp of Engineers.** This was the case in the Kuis Drain project and permits have been issued.

12. During the planning stages of all projects, several options are discussed in an effort to keep the design cost-effective. Such considerations include finding finance partners, (e.g., the County Road Commission or the Michigan Department of Transportation) or securing grants.

13. **In addition to two public hearing processes under the Drain Code, extra public meetings for design input were also conducted. Draft engineering plans were provided to the local municipality for their comment. In the case of the Kuis, the township provided no specific design comments.**

14. Prior to seeking funding for a project, a "Computation of Cost" must be provided to the public as part of the Day of Review (DOR). This is the day apportionments are presented, which becomes the basis for a final assessment roll.

15. As part of the public process, there are opportunities for appeal. During the course of the Kuis process, for example, 4 appeals were filed, all of them were dropped.

16. After the DOR appeal process timeline passes, **finalized engineering plans become the basis of a bidding process. In the case of the Kuis, the project was split into two components; 1) the subdivision underdrain work and 2) the open channel restoration.**

17. Bids are requested via our website and direct email contact with our list of qualified contractors. We also require a pre-bid meeting to review project scope, insurance and bonding requirements, etc.

Further, affiant says not.

Brenda M. Moore

Brenda M. Moore

4/11/18
Date

James T. Walters
Witness

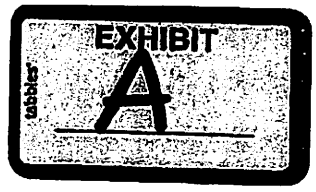
4/11/18
Date

Subscribed and sworn to before me on this 11th day of April, 2018.

Michelle A. Bailey
Michelle A. Bailey
Notary Public
Muskegon County, Michigan.

My Commission Expires: 5/20/2024

Exhibit 3



STATE OF MICHIGAN COURT OF APPEALS

GRAND RAPIDS

JEREMY HOOKER,

Plaintiff Appellee,

v.

BRENDA M. MOORE

Defendant Appellant.

Case No. 343334

Joseph S. Bush (P55823)
Bush Law Offices, PLLC
Attorney for Plaintiff / Appellee
318 Houston Avenue
Muskegon, MI 49441
(231) 760-4490
joe@bushlawoffices.net

James L. Waters (P22022)
Waters Law Offices, PC
Attorney for Defendant / Appellant
1725 Peck Street
Muskegon, MI 49441
(231) 755-0600
jlwaterslaw@gmail.com

AFFIDAVIT OF JOSEPH S. BUSH

NOW COMES Joseph S. Bush, and for his affidavit in the above captioned case states:

1. I am the attorney for Appellee in this matter and am authorized to make this affidavit.
2. If sworn as a witness in this matter, I will have other counsel take my direct testimony for that portion of the case so that I can testify accurately and truthfully as I am doing so within this affidavit.
3. In February of 2018, I was contacted by my client, regarding the recall effort he had attempted against Appellant in January of 2018 that was improperly put before the County Election Commission and rejected. The County Election Commission should not review a recall petition for a County-wide elected official, but the Chair of the Election Commission, County Clerk Nancy Waters, husband of counsel for Appellant, elected to

keep the original petition filed by Appellee before the County Election Commission, which was rejected and found to be unclear, despite being a factually accurate and crystal clear statement because the Commission found that the statement did not state that the Drain Commissioner had done anything wrong. See Exhibit 1 & 2 attached hereto.

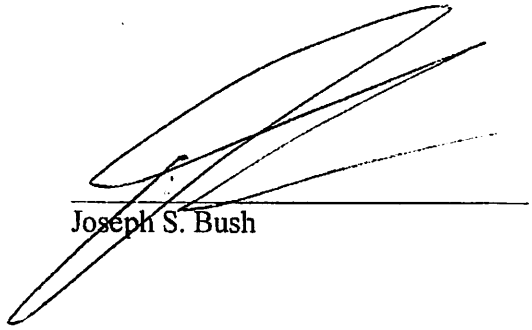
4. In reviewing the matter, I spoke with Ottawa County Water Resource Commissioner (Drain Commissioner), incidentally who is also named Joe Bush, who indicated that Drain Commissioners generally exercise some discretion with regard to the scope of projects and that he also uses ENG., Inc., who will often verbally suggest short-range, mid-range and long term or "Cadillac Plan" scopes with regard to drainage district projects and that once the drain commissioner indicates the scope they would like to pursue, then they move on to the next step and the bid process will begin.
5. Mr. Bush had been summoned to attend a meeting of several farmers in Muskegon County who had been complaining about the scope and dollar value of projects undertaken by Appellant, by the Michigan Farm Bureau, to try to help bring some resolution to the complaints and see if there might be some way to get Appellant to narrow the scope on the drainage district projects she commences so as to keep assessment affordability in mind when making decisions. In particular, because Appellant had apparently told one of her complaining constituents that if they could not afford the new assessment then they could not afford to be living in their home.
6. Based on that information, Petitioner, Appellee, Jeremy Hooker, revised the language from the original Recall Petition to the Petition that is currently under appeal and has been deemed by statute to be true and clear, and is truthful and accurate, despite

Appellant's claims that the Recall Petition is libelous, malicious and defamatory. See Exhibit 3.

7. Appellant's affidavit states that she is bound by what the engineer's choose, yet she also states she has options with regard to the scope and therefore the correlating greater expense. Nowhere does she deny that she has chosen to lower range or mid-range scope of a drainage district project within her pleadings or Affidavit. Rather, she gives a tacit admission by way of her example of choosing a more expensive option because it will likely be more durable and last longer. By her own words, the petition is truthful.

8. Further Affiant Sayeth Not.

Dated: May 10, 2018



Joseph S. Bush

Subscribed and sworn to before me this 10th day of May 2018.

Shannon R. Chester

Shannon R. Chester, Notary Public
Muskegon County, Michigan
My Comm. Expires: 09/06/2021
Acting in Muskegon County

Exhibit 4

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PATRICIA TROOST,

Appellant,

vs

KENT COUNTY ELECTION COMMISSION, AND MARK LAWS,

Appelles.

Case No. 14-00840-AA

HON. MARK A. TRUSOCK

ASHLEY BREMMER,

Appellant,

vs

KENT COUNTY ELECTION COMMISSION, AND MARK LAWS,

Case No. 14-01038-AA

HON. MARK A. TRUSOCOK

/

ORDER

At a session of said Court, held in the Kent County Courthouse in the City of Grand Rapids, Kent County, Michigan on February 21, 2014.

PRESENT: Hon. Mark A. Trusock, Circuit Judge

I. Introduction

On January 10, 2014, Appellee Mark Laws, a resident of Cedar Springs, submitted two recall petitions to Appellee Kent County Election Commission ("the KCEC"), seeking to recall Appellants Patricia Troost and Ashley Bremmer, both Council Members of the Cedar Springs City Council. It was the second set of petitions that Laws had submitted; the previous set having been rejected by the KCEC.

On January 29, 2014, the KCEC approved the petitions in a 2-1 vote. Chief Probate Judge David Murkowski was the lone dissenting vote. Judge Murkowski's dissent was based on his concern regarding clarity, as the petition referred only to actions taken by the City Council, and not any actions taken by Troost or Bremmer. Troost and Bremmer ("the Appellants") timely filed respective appeals to this Court.

II. Standard of Review

As set forth in *Dimas v Macomb Co Election Comm*:[1]

> The standard of review for clarity of recall petitions has been described as both "lenient," and "very lenient." "Thus, recall review by the courts should be very, very limited." A meticulous and detailed statement of the charges against an officeholder is not required. It is sufficient if an officeholder is apprised of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct. "Where the clarity of the reasons stated in the petition is a close question, doubt should be resolved in favor of the individual formulating the petition."[2]

Further,

> All that is required is that the reason for recall be stated with sufficient clarity "to enable the officer and electors to identify the transaction and know the charges made in connection therewith."[3]

Additionally, in 2012, the Legislature amended MCL 168.952, adding a factuality requirement for recall petitions. The Legislature did not define "factual," and, to date, there is no caselaw interpreting this new requirement. Therefore, "[r]esolution of this appeal [also] entails a matter of statutory construction," which this Court reviews de novo.[4]

III. Applicable Law

Article 2, Section 8 of the Michigan Constitution states:

> Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

---

[1] 248 Mich App 624, 627-628 (2001).
[2] Citations omitted.
[3] *Mastin v Oakland Co Elections Comm*, 128 Mich App 789, 795 (1983), quoting *Woods v Saginaw Co Clerk*, 80 Mich App 596, 598–599 (1978).
[4] *Id.* at 627.

The accompanying convention comment indicates that the last sentence was added to emphasize that "the reasons for a recall shall be a political question, so that courts cannot set aside a recall on the grounds that the reasons for it are in some way inadequate."

MCL 168.952(1) sets forth the requirements for a recall petition, in pertinent part, as follows:

> A petition for the recall of an officer...shall meet all of the following requirements:
>
> ***
>
> (c) State factually and clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office...

MCL 168.952(2) requires a recall petition to be submitted to the board of county election commissioners before it is circulated. The board of county election commissioners consists of the chief probate judge, the county clerk, and the county treasurer.[5]

MCL 168.952(3) requires the board to,

> determine whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall.

In addition to the new factuality requirement, in 2012, the Legislature also added a provision to MCL 168.952(3), providing that "[i]f any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected" by the board. This is a significant amendment, in that prior caselaw had held just the opposite; if any reason in the petition was "deemed to be sufficiently clear, the petition" was required to be upheld.[6]

MCL 168.952(4) requires the board to,

> notify the officer whose recall is sought of each reason stated in the recall petition and of the date of the meeting of the board...to consider whether each reason is factual and of sufficient clarity.

Under MCL 168.952(5), the officer, as well as the sponsors of the recall petition, "may appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity."

---

[5] MCL 168.23.

[6] *In re Wayne Co Election Comm*, 150 Mich App 427, 438 (1986).

Under MCL 168.952(6), an appeal of the board's determination must be filed within 10 days. Further, if an appeal is filed, the recall petition may not be circulated until the circuit court determines "whether each reason is factual and of sufficient clarity…or until 40 days after the date of the appeal, whichever is sooner."[7] This provision leads to the ineluctable conclusion that the circuit court should make its determination on appeal within 40 days, as evidenced by the expedited nature in which this appeal is being decided.

IV. Violation of MCL 168.952(5)

The Appellants first argue that the KCEC violated MCL 168.952(5) when it held its meeting and made its determination without them being present. The Appellants were delayed by slow traffic caused by poor weather conditions. The meeting was scheduled for 8:00 a.m. Judge Murkowski called the meeting to order at 8:10 a.m. By the time the Appellants arrived, the KCEC had made its determination and adjourned the meeting.

The Appellants argue that their tardiness was not willful and that the KCEC should have accommodated the weather. Moreover, the Appellants argue that the KCEC's myopic decision to wait no more than 10 minutes for the Appellants denied them their right to be heard.

This Court agrees with the KCEC that it did not violate MCL 168.952(5). MCL 168.952(5) states that "[t]he officer whose recall is sought…*may* appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity."[8] Under the statute, the Appellants had the right to appear at the meeting. But nothing in the statute requires the KCEC to wait for the officer or sponsor of a recall petition to appear, or that it must consider arguments from either in making its determination. As the KCEC argues, the Appellants simply missed their opportunity to be heard.

V. Requirements of MCL 168.952(1)(c)

Under MCL 168.952(6), this Court must make "a determination of whether each reason [in Laws' recall petitions] is factual and of sufficient clarity…" The Appellants argue that neither of the reasons in Laws' recall petitions satisfies either requirement of MCL 168.952(1)(c).

A. Clarity Requirement

As the Appellants note, the clarity requirement has existed long enough that there is significant caselaw regarding it. Beginning with *Wallace v Tripp*,[9] the clarity requirement has meant that:

---

[7] MCL 168.952(6).
[8] Emphasis added.
[9] 358 Mich 668, 680 (1960).

> Michigan's Constitution and [recall] statute require a clear statement of reasons for recall *based upon an act or acts in the course of conduct in office of the officer whose recall is sought.* Beyond this, the Constitution reserves the power of recall to the people.[10]

Following decades of caselaw that conformed with *Wallace*, in 1993, the Legislature essentially codified *Wallace* when it added the following language to the clarity requirement in MCL 168.952(1)(c): "[e]ach reason for the recall *shall be based upon the officer's conduct* during his or her current term of office."

The Appellants argue that the reasons in Laws' recall petitions do not satisfy the clarity requirement because they are not based upon the Appellants' conduct. This Court agrees.

The two reasons listed in each petition are identical, and read as follows:

> 1. On July 11, 2013 the city council motioned and supported to adjourn to a closed session and then adjourned. The Open Meetings Act 267, 15.268, 8a allows a closed session if the named person requests a closed hearing. No such request was made.
>
> 2. City council has a protocol in place requiring any change of import to be on agenda for public input and comment before it can be acted on by council in a following meeting. Former council member Merlington wrote this protocol. The new logo that was approved in November 2013 council meeting was not presented to the public for input or comment.

Neither of these reasons identifies any conduct by either of the Appellants, as required by MCL 168.952(1)(c). The reasons refer only to actions taken by the City Council. As the Appellants argue, perhaps, because they know how they voted, the reasons would be sufficient if the only objective of the clarity requirement was to inform the officer "of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct."[11]

However, the other objective of the clarity requirement is to "enable…the electors to identify the course of conduct that is the basis for the recall."[12] The purpose being "to prevent abuse of the elective franchise by ensuring deliberate and *informed* action by those called upon to sign the recall petition."[13]

Nothing in Laws' recall petitions tell the electors of Cedar Springs that the Appellants voted for a closed session or voted to change the city logo. Again, Laws' recall petitions only indicate that the City Council took those actions. Clearly, that is insufficient to enable the electors of Cedar Springs to identify the conduct of the

---

[10] Emphasis added.
[11] *Dimas, supra* at 628.
[12] MCL 168.952(3).
[13] *Noel v Oakland Co Clerk*, 92 Mich App 181, 187-188 (1979) (emphasis in original).

Appellants that is the basis for the recall, and, thereby, make an informed decision in signing the recall petitions.

B. Factuality Requirement

As stated above, one of the significant amendments made to MCL 168.952 in 2012 is that it now provides that"[i]f any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected" by the board.[14] It would seem that this Court, in its appellate duties, would have the same authority. In such case, having found that the reasons in Laws' recall petitions are not "of sufficient clarity," this Court's duties would be complete. However, for the sake of completeness, this Court will address the factuality requirement under MCL 168.952(1)(c).

The Legislature obfuscated this new requirement by declining to define the term "factually," "factual," or "factualness," all of which were added to MCL 168.952 in various places. And, to date, there is no caselaw interpreting this requirement. Therefore, this Court must address this new statutory requirement with no lodestar, save for principles of statutory construction.

As recently stated by the Court of Appeals:

> The goal of statutory interpretation is to discern the intent of the Legislature by examining the plain language of the statute. "When the language is clear and unambiguous, [the court] will apply the statute as written and judicial construction is not permitted." Absent an alternative definition set forth in the statute, "every word or phrase of a statute will be ascribed its plain and ordinary meaning." Dictionary definitions may be consulted to determine the plain and ordinary meaning of a term.[15]

Both parties refer to the same definition of "factual," which provides two meanings: "of or relating to facts," and "restricted to or based on fact."[16] The Appellants argue that the former definition suggests allegations of actual conduct, as opposed to conclusions, while the latter suggests accuracy or truthfulness. As it relates to MCL 168.952(1)(c), these two definitions mean two very different things.

The Appellants argue that the former definition can be eliminated from consideration. Going back several decades, caselaw has repeatedly held that the reasons for a recall satisfy the clarity requirement if they "set up facts, as distinguished from conclusions."[17] Therefore, using the former definition of "factual" would add nothing to MCL 168.952(1)(c). And, as the Appellants note, "a fundamental rule of statutory

---

[14] MCL 168.952(3).

[15] *Aroma Wines and Equip, Inc v Columbia Distribution Services, Inc*, ___ Mich ___ (2013) (citations omitted).

[16] *Factual – Definition and More from the Free Merriam-Webster Dictionary* <http://www.merriam-webster.com/dictionary/factual> (accessed February 20, 2014).

[17] *People ex rel Elliot v O'Hara*, 246 Mich 312, 314 (1929); *Amberg v Welsh*, 325 Mich 285, 295 (1949); *Molitor v Miller*, 102 Mich App 344, 349 (1980).

construction is that the Legislature did not intend to do a useless thing."[18] Additionally, "[i]t is axiomatic that when the Legislature effects a change in the provisions of a statute, a presumption arises that the Legislature intends a substantive change in the law."[19]

Therefore, the Appellants argue that the Legislature intended the latter definition of "factual" when it amended the statute. Unlike the former definition, the latter definition, requiring that each reason for the recall be "restricted to or based on fact," would result in a change to MCL 168.952(1)(c).

Further, the Appellants argue that use of the latter definition is confirmed by another principle of statutory construction:

> Where the language of a statute is of doubtful meaning, a court must look to the object of the statute in light of the harm it is designed to remedy, and strive to apply a reasonable construction that will best accomplish the Legislature's purpose.[20]

The Appellants cite to relatively recent caselaw where the Court of Appeals has rejected the argument that each reason for the recall must be truthful. For example, in *Meyers v Patchkowski*,[21] the Court held that the circuit court "did not have authority to review the statements in the petitions for truth or falsity." Referring to Article 2, Section 8 of the Michigan Constitution, which, as stated above, provides that "the sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question," the Court held that a determination of truth or falsity "is a political question for the voters, not the courts."[22] Likewise, in *Donigan v Oakland Co Election Comm*,[23] the Court held that "[w]hether the representations…[in the recall petition] are truthful or complete is irrelevant for purposes of determining the clarity of the language."

Therefore, the Appellants argue that the new factuality requirement means that the reasons in a recall petition must be accurate and truthful. This Court agrees.

The KCEC does not dispute the Appellants' arguments in favor of employing the latter definition of "factual" when interpreting MCL 168.952(1)(c). Rather, it contends that nowhere in that definition does it suggest that "factual" means truthful. This Court finds this argument unpersuasive.

Again, the latter definition states, "restricted to or based on fact." Clearly, the KCEC is correct that this definition does not use the word "truthful." However, the word "fact" is defined as "something that truly exists," or "a true piece of information."[24]

---

[18] *South Haven v Van Buren Co Bd of Comm'rs*, 478 Mich 518, 532 (2007).
[19] *People v Wright*, 432 Mich 84, 92 (1989).
[20] *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644 (1994).
[21] 216 Mich App 513, 518 (1996).
[22] *Id.*
[23] 279 Mich App 80, 85 (2008).
[24] *Facts – Definition and More from the Free Merriam-Webster Dictionary* <http://www.merriam-webster.com/dictionary/facts> (accessed February 20, 2014).

Therefore, the latter definition of "factual," means "restricted to or based on something that truly exists or a true piece of information."

This Court finds, then, that the new factuality requirement in MCL 168.952(1)(c) means that each reason for the recall in a recall petition must be "based on something that truly exists or a true piece of information."

Neither is this Court persuaded by the KCEC's arguments that this Court should look to legislative history, such as staff analyses, or an administrative agency's interpretation, in order to determine the meaning of the factuality requirement. As the Appellants note in their reply brief, now permitted by MCR 7.111(A)(3), "a legislative analysis is a feeble indicator of legislative intent and is therefore a generally unpersuasive tool of statutory construction."[25] Further,

> Because of the risk a court may rely on the dubious authenticity of the analysis, even the analyses themselves carry a warning "that they do not constitute an official statement of legislative intent."[26]

Indeed, the staff analyses submitted by the KCEC contain such a warning.

As for the manual recently issued by the Michigan Bureau of Elections, as the Appellants note, courts defer only to administrative interpretations of a statute that are "used for a long period,"[27] or "[l]ong-standing."[28]

More importantly, as the Appellants note, there is no commentary in the staff analyses or manual issued by the Michigan Bureau of Elections interpreting the factuality requirement. This Court is not influenced by, nor need it defer to, silence.

This Court is also not persuaded by the KCEC's argument, found in the determination of another county's election commission, that the interpretation that "factual" means "truthful" would invade the electorate's power under Article 2, Section 8 of the Michigan Constitution to determine "[t]he sufficiency of any statement of reasons or grounds" for recall. This was the Court of Appeals' holding in *Patchkowski*.[29] As argued by the Appellants, the Legislature's addition of the factuality requirement was designed to remedy this holding.

In other words, *Patchkowski* was superseded by the Legislature's addition of the factuality requirement to MCL 168.952(1)(c). Such legislative action was appropriate, as, respectfully, this Court finds that the Court's holding in *Patchkowski* was erroneous.

---

[25] *Morales v Mich Parole Bd*, 260 Mich App 29, 43 (2003) quoting *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587 (2001).
[26] *Id.* (citation omitted).
[27] *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 24 (2004).
[28] *Brunswick Bowling & Billiards Corp v Dep't of Treasury*, 267 Mich App 682, 688 (2005) (citation omitted).
[29] *Supra*.

The issue of whether a statement of reasons is "factual," i.e., "truthful," is distinguishable from whether a statement of reasons is "sufficient" for recall. "Sufficiency" means "the quality or state of being sufficient."[30] In turn, "sufficient" means "enough to meet the needs of a situation or a proposed end."[31] Therefore, "sufficiency" means "the quality or state of being enough to meet the needs of a situation or a proposed end."

With that definition in mind, Article 2, Section 8 of the Michigan Constitution provides that whether the reasons or grounds stated in a recall petition are "enough" to justify removing an officer from his or her elected position is a question for the electorate, not the courts. Requiring the board of county election commissioners and circuit courts to determine whether each reason for the recall in a recall petition is stated "factually," i.e., "based on something that truly exists or a true piece of information," has nothing to do with whether a reason is "enough" to justify removing an elected official from office. After all, as the Appellants note, a reason that is stated "factually" may be sufficient or insufficient in the judgment of the electorate.

This Court would note that a recent article in the Michigan Bar Journal, regarding the 2012 amendments to MCL 168.952, supports its holding. Addressing the circumstances that brought about the amendments, the author writes:

> In the summer of 2011…various groups and individuals pushed the right to recall public officials to its limits in seeking to recall dozens of state legislators, the attorney general, and the governor.[32]

Further addressing the circumstances that brought about the amendments, the author stresses the distinction between the new factuality requirement in MCL 168.952(1)(c) and the "political question" of "sufficiency" in the Michigan Constitution:

> The 2012 amendments…added a factuality requirement so that a petition must now state the reasons for recall both "factually and clearly." Although the grounds for recall remain a political question, for the sake of avoiding voter confusion in the present climate of relentless (and often intentionally misleading) political advertisements, the legislature commanded that the ballot language itself must be both factual and clear.[33]

Addressing the reasons in Laws' recall petitions, the first reason states that the named person did not request a closed hearing. The Appellants argue that the minutes of the July 11, 2013 meeting of the Cedar Springs City Council show that this is not "factual." The minutes show that the named person voted in favor of the closed session.

---

[30] *Sufficiency – Definition and More from the Free Merriam-Webster Dictionary* <http://www.merriam-webster.com/dictionary/sufficiency> (accessed February 20, 2014).
[31] *Sufficient – Definition and More from the Free Merriam-Webster Dictionary* <http://www.merriam-webster.com/dictionary/sufficient> (accessed February 20, 2014).
[32] Hanselman, *Total Recall – Balancing the Right to Recall Elected Officials with the Orderly Operation of Government*, 93 Mich B J 34, 35 (January 2014).
[33] *Id.* at 36 (footnote omitted).

Therefore, the Appellants argue that because the named person concurred in the closed session, the implication that he did not is inaccurate.

However, this reason does not suggest that the named person did not concur with the closed session. Rather, the reason states that the requirements of the Open Meetings Act were not complied with, in that the named person did not request a closed session. The minutes of the July 11, 2013 meeting do not indicate that the named person requested a closed session. Additionally, the minutes indicate that the named person did not bring the motion to adjourn to a closed session.

Based on the information before it, this Court finds that the first reason satisfies the factuality requirement. This is of little importance, however, as this Court already determined that the first reason did not satisfy the clarity requirement.

As for the second reason, according to the City Clerk, the alleged protocol requiring public input for "any change of import" does not exist. Therefore, this Court finds that the second reason does not satisfy the factuality requirement.

VI. Conclusion

This Court's determination is not an indictment that Laws' recall petitions are mendacious. Rather, Laws' recall petitions simply do not satisfy the requirements of MCL 168.952(1)(c), which were heightened with the addition of the factuality requirement in 2012.

VII. Judgment

Accordingly, Appellee Kent County Election Commission's January 29, 2014 Determination is **reversed**.

MARK A. TRUSOCK

Mark A. Trusock, Circuit Judge

ATTEST: A true copy

Circuit Court Clerk

Exhibit 5

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

Pegge Lorraine Adams,

Appellant,

v.

Genesee County Election Commission,

Appellee,

/

No. 13-101496-AA

Hon. Joseph J. Farah

Goodman Acker, P.C.
By: Mark Brewer (P35661)
Attorneys for Appellant Pegge Lorraine Adams
17000 W. 10 Mile Rd, Southfield, MI 48075
248-483-5000
mbrewer@goodmanacker.com

Celeste Bell (P41453)
Attorney for Appellee Genesee County Election Commission
1101 Beach St Rm 317, Flint,MI 48502
810-257-3050
cbell@co.genesee.mi.us

/

At a session of said Court held in the City of Flint, County of Genesee on the 9th day of December, 2013

PRESENT: HONORABLE JOSEPH J. FARAH

ORDER REVERSING DECISION OF GENESEE COUNTY ELECTION COMMISSION

This matter having come to be heard on the appeal of County Commissioner Pegge Adams from the October 22; 2013 decision of the Genesee County Election Commission approving a recall petition against her; and the Court having considered the briefs of the Appellant and Appellee and the transcript of the October 22, 2013

Commission hearing; and the Court having heard the oral arguments of Appellant and Appellee on December 9, 2013; and the Court being fully advised in the premises;

NOW, THEREFORE, the Court holds as a matter of law that the statutory requirement that the reasons stated in a recall petition be "factual" means that the reasons for recall must be true. Accordingly, for this reason and for the reasons set forth at the hearing on December 9, 2013, the Court holds that the Genesee County Election Commission erred in its determination that the petition submitted was both factual and clear; and

IT IS THEREFORE ORDERED that the October 22, 2013 decision of the Genesee County Election Commission be and the same is hereby REVERSED.

JOSEPH J. FARAH
P-30439
Honorable Joseph J. Farah
Genesee County Circuit Court

12/16/13

Approved as to form:

Celeste Bell/MB
Celeste Bell (P41453)