STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

DANA J. PAJTAS,

Plaintiff/Appellant,

v

HON. PHILIP E. RODGERS, JR.
By Assignment
File No. 09-0746-22-AA

CHARLEVOIX COUNTY BOARD OF ELECTION COMMISSIONERS,

Defendant/Appellee.
/

Plaintiff/Appellant in Pro Per

John A. Jarema (P52949)
Shaynee K. Fanara (P61621)
Mark M. Muniak (P34322)
Attorneys for Defendant/Appellee

## DECISION ON APPEAL

A citizen from Norwood Township in the County of Charlevoix submitted petitions for recall of four Norwood Township Officials. The County Board of Election Commissioners (the "Board") reviewed the recall petitions on September 9, 2009 and voted to let them stand as presented. All of the officials subject to recall appealed that decision.[1]

There is no transcribed record of the proceedings before the Board. An appeal from a determination made by the Board is considered by this Court de novo. *Goldstone v Bloomfield Twp Pub Library,* 479 Mich 554, 558; 737 NW2d 476 (2007); *South Haven v Van Buren Co Bd of Comm'rs,* 478 Mich 518, 525; 734 NW2d 533 (2007).

Elected officials may only be removed from office as provided by law. See Const 1963, art 7, § 33. The people's right to recall an elected official is contained in Const 1963, art 2, § 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

[1] Three of those officials are represented by common counsel and their appeal was assigned File No. 09-0747-22-AA. The fourth official, Dana Pajtas, proceeded in pro per and this is her appeal. Separate, consistent opinions are being issued contemporaneously in both appeals.

> 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.

"Recalls of elected officials in Michigan are governed by MCL § 168.951 *et seq.*" *Dimas v Macomb Co Election Comm,* 248 Mich App 624, 627; 639 NW2d 850 (2001). This includes township officials. MCL § 168.372. Under MCL § 168.952(1)(c), a petition for the recall of an officer shall "[s]tate 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." *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 405; 760 NW2d 510, 518-519 (2008).

The standard to be applied when reviewing the clarity of a petition for recall is set forth in *Dimas, supra* at 627-628:

> 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.'** [Citations omitted.] [Emphasis added.]

"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.'" *Mastin v Oakland Co Elections Comm,* 128 Mich App 789, 795; 341 NW2d 797 (1983), quoting *Woods v Saginaw Co Clerk,* 80 Mich App 596, 598-599; 264 NW2d 74 (1978). In *In re Wayne Co Election Comm,* 150 Mich App 427, 438, 388 NW2d 707 (1986), the Court explained:

> [D]oubt as to clarity should be resolved in favor of the proponents of the recall. **Moreover, if any one of several allegations contained in the petition is deemed to be sufficiently clear, the petition must be upheld.** The foregoing rules demonstrate that the standard of review for clarity of statement is very lenient. [Citations omitted.] [Emphasis added.]

Thus, the courts only review recall petitions to determine whether a sufficiently clear statement of each of the reasons for the recall is present.

The petition language for Plaintiff/Appellant Pajtas reads as follows:

> Dana Pajtas has chosen to serve the special interest group the "Norwood Township Citizens For Health & Safety" rather than the interests of the Citizens of Norwood Township. She has violated the Open Meetings Act with improper posting of public meetings. She has violated the Freedom of Information Act with incomplete and inconsistent responses to Citizens request for public information. Her official acts have placed the Township at risk for costly future lawsuits.

The Plaintiff/Appellant contends that the recall petition language is vague and not of sufficient clarity to the office holder or to the electorate to identify the course of conduct, transaction, specific act or acts that are the basis for the recall. She also contends that the vagueness of the language makes it impossible for them to mount a defense. They rely upon *People ex rel Elliott v O'Hara*, 246 Mich 312; 224 NW 384 (1929)[2] wherein the Court held that the reasons must be stated with sufficient particularity to enable the office holder and the electorate to identify the specific transaction complained of and *Dimas, supra* in which the Court held that the petition language must not only apprise the office holder of the course of conduct that is the basis of the recall drive, it must also be language that would allow the office holder to mount a defense to what is alleged.[3]

The Defendant/Appellee Board maintains that the petition language is sufficiently clear to enable the officer holders and the electorate to identify the transaction and know the charges made in connection therewith. It relies primarily upon *Donigan v Oakland Co Election Comm*, 279 Mich App 80; 755 NW2d 209 (2008), citing *Mastin v Oakland Co Election Comm*, 128 Mich App 789, 795; 341 NW2d 797 (1983), and *Molitor v Miller*, 102 Mich App 334; 301 NW2d 532 (1980) and insists that this Court exercise judicial restraint so as not to interfere with the power of recall which is reserved to the people under both our Federal and State Constitutions.

In the vast majority of cases, Michigan courts have found that the reasons stated in recall petitions are sufficiently clear. For example, in *Molitor v Miller*, *supra* at 350, n 9, the recall petition set forth the reasons in support of the recall of a township supervisor in the following language:

---

[2] This case was decided when the courts were judicially imposing a requirement that recall petitions allege nonfeasance, misfeasance, or malfeasance in office. See also, *Amberg v Welsh*, 325 Mich 185; 38 NW2d 304 (1949) and *Eaton v Baker*, 334 Mich 521; 55 NW2d 77 (1952). These cases were superseded by statute and overruled in *Wallace v Tripp*, 358 Mich 668, 675; 101 NW2d 312, 313 (1960) on this point of law.

[3] The officer whose recall is sought has the right to include a statement setting forth justification for his conduct in office. MCL § 168.966(2).

Nonfeasance of office:

Failure to conduct township business for the good and welfare of all residents:

Conducting secret meetings in violation of the open meetings act:

Failure to follow procedures set forth in the township officers manual: (appointments of committees, boards, etc.)" [*Id.* at 346.]

While the Court held that the first and second reasons were insufficient, it upheld the petition language as a whole, saying:

> After reviewing the reasons stated in the petition in the instant case, we find the first two allegations clearly inadequate under the statute. Suggestions that the officer may have been guilty of nonfeasance in office or that he failed to conduct township business for the good and welfare of all residents do not clearly inform the electorate regarding the nature and circumstances surrounding these acts. Additionally, the reasons are insufficient in that they fail to supply the official with any notice of the incidents to which these allegations refer. The first two allegations are very similar to the reasons for recall found insufficient in *Noel, supra.*
>
> However, in our opinion reasons 3 and 4 are 'clearly stated' allegations of misconduct. Both refer to specific acts of alleged misfeasance, that is, the violation of a particular state law and the township's procedural rules. The former alleges a breach of the Open Meetings Act and the latter claims a failure to abide by the proper township procedure in the appointment of committees and boards. These reasons for recall are far more specific than the abstract principles found deficient in *Noel* and are similar to the allegation considered sufficient in *Amberg, supra.*
>
> We are convinced that the latter two allegations were stated with sufficient clarity to enable both the officer and the electors to identify the transactions and the substance of the claimed wrongdoing. Specific allegations of time, place, person or occasion are not required for a sufficiently clear petition. *People ex rel Elliot v O'Hara, supra.* Nor is it necessary that the petitioner enumerate every single violation of the state law and township procedures. As long as plaintiff was apprised of the course of conduct in office which is the basis of the recall drive, he can defend against such charges. *Wallace v Tripp, supra* at 680. Reasons 3 and 4 focused the attention of the officer and the voter on the specific conduct that is alleged to be violative of state law and township procedure. Certainly the supervisor could prepare a response to such charges, either by a general denial or by explanation of any conduct which may have been at variance with the appropriate statute or rule. . .

> We are persuaded that the petition in this case provided plaintiff with fair notice of the charges brought against him. **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. To require overly detailed statements of charges would serve to complicate the recall process and defeat the underlying purpose of the recall petition,** i.e., 'an effective and speedy remedy to remove an official who is not giving satisfaction'. *Wallace v Tripp, supra* at 678, quoting *Dunham v Ardery*, 43 Okl 619, 625-626; 143 P 331 (1914). [*Id.* at 349-351.] [Emphasis added.]

In *Mastin, supra* at 800, n 8, the court found the following language to be sufficiently clear:

> 1. Failure to faithfully represent the people of the 8th Senatorial District by voting on March 23, 1983, to report a tax increase bill (HB 4092) out of committee with a recommendation for passage.
>
> 2. Failure to faithfully represent the people of the 8th Senatorial District by voting 'yes' on March 24, 1983, to a bill increasing the State income tax (HB 4092). [*Id.* at 792.]

In *Schmidt v Genesee Co Clerk,* 127 Mich App 694; 339 NW2d 526 (1983), the court found that, taken as a whole, the following language met the clarity standards required by the statute:

> Ex-HIBITED SPEND AND TAX-TAX and SPEND mentality. At a time when governmental units are cutting back on budget expenditures and laying off people the above elected official presented the 1982 budget which was a increase of $400,000.00 over the 1981 budget (December 7, 1981).-INCREASED the budget again by another additional $185,516.00 on August 2, 1982, which can only result in future higher taxes.-Voted, at a special, not regular meeting, to INCREASE operational taxes by one mill without a vote of the people.-INCREASED sewer and water rates above the recommendation of the County.-Voted to spend $63,000.00 to RE ASSESS ALL TOWNSHIP PROPERTIES.-Acted to violate the provisions of the Charter Township Act requiring the budget to be presented for public inspection before adoption. -Allowed Township Funds to be invested in UN AUTHORIZED ACCOUNT and not available for public inspection. -Failed to follow campaign promise to give open, clean, honest, and efficient government, and at all times be available to serve and to administer the Township efficiently and remain within a budget. [*Id.* at 698.]

In *Donigan, supra* at 81, the Court found the following recall petition language to be sufficiently clear:

> Voted yes on 2007 House Bill 5194 to increase the income tax to 4.35 percent, and voted yes on 2007 House Bill 5198 to impose new 6 percent taxes on certain services.

Other than the names of the council members, the language in the three approved petitions in *Dimas, supra* at 626 was essentially identical and alleged that "during a Warren City Council meeting on December 21, 1999, [council members George L. Dimas, Charles T. Busse, and Ann E. Klein] voted to raise Warren's potable water rates by 10.97% to its consumers." The Court found that language was sufficiently clear.

In *Meyers v Patchkowski*, 216 Mich App 513, 517; 549 NW2d 602, 604 (1996), the upheld petitions contained the following language:

> Through [his or her] duties as an elected member of the Rogers City Area Schools school board, [name of the board member] has failed to represent the best interests and the true will of the majority of the electorate of the Rogers City Area Schools school district for the following reason: On February 14, 1994, [name of the school board member] voted to not renew or extend the employment contract of Rogers City Area Schools Superintendent, Roger Benner.

In *Pearson v Macomb Co Election Comm*, 199 Mich App 170, 171; 500 NW2d 746, 747 (1993), the court upheld the petitions seeking the recall of several officials of the City of Warren, including the mayor and various members of the city council, for the following reasons:

> [Concerning the mayor:]
>
> 1. For recommending to council to create the position of administrative assistant in the office of mayor thereby increasing the number of personnel in the mayor's office.
>
> 2. For recommending to council the 1988/89 police and fire department budget resulting in the lay off of police officers and fire fighters.
>
> [Concerning city council members:]
>
> 1. For voting to create the position of administrative assistant in the office of the mayor thereby increasing the number of personnel in the mayor's office.
>
> 2. For voting to adopt the 1988/89 police and fire department budgets resulting in the lay off of police officers and fire fighters.

In *In re Wayne Co Election Comm*, 150 Mich App 427, 430; 388 NW2d 707, 708 (1986), the petition that alleged the following reasons for the recall was held to be sufficiently clear:

> 1. He supported 4.4 mil tax increase proposal.
>
> 2. Mayor has allowed his administration to provide him with a 1984 Lincoln Continental.
>
> 3. Under his supervision his administration supported a $100,000, 15 year loan at one per cent (1%) interest to a developer.
>
> 4. He has failed to take effective steps to provide adequate police and fire protection."

In *Woods v Clerk of Saginaw Co*, 80 Mich App 596, 598; 264 NW2d 74, 75 (1978), the reasons set forth in the challenged petitions were as follows:

> (1) That Mr. Woods misled the voters in his campaign for Supervisor by failing to disclose his plan for changing the Township Manager form of government without study and without a vote of the electorate; and/or
>
> (2) That the Township residents should have been allowed an opportunity to vote on such an essential matter as changing the existing form of Township government and significantly increasing the powers of the Supervisor.

The Court found that these reasons were sufficiently clear.

In *Wallace v Tripp*, 358 Mich 668, 675; 101 NW2d 312, 313 (1960), the approved reason on the petitions for recall was essentially that defendants had exercised their authority as a majority of the school board by discharging the school superintendent, and that such discharge was improper and detrimental to the school district.

In contrast, there are very few cases in which Michigan courts have found recall petitions lacking in sufficient clarity. In *Noel v Oakland Co Clerk,* 92 Mich App 181, 284 NW2d 761 (1979), the Court was presented with the following language: "Incompetence in administering his/her duties as an elected official and in a manner not conducive to the better interests of the residents of the City of South Lyon," which it found to be insufficiently specific. *Id.* at 183. Relying on the Supreme Court's decision in *Wallace v Tripp*, 358 Mich 668; 101 NW2d 312 (1960), the *Noel* Court found that "administrative incompetence" was not a sufficiently clear reason for the recall because it did not "enable the officer and electors to

identify the transaction and know the charges made in connection therewith," citing *People ex rel Elliot v O'Hara, supra.* The Court said:

> *Wallace, supra* at 678, 680, reaffirmed the necessity that the reasons, whatever they may be, must be stated with adequate clarity. We are in accord, and view such a rule as necessary, on one hand, to prevent abuse of the elective franchise by ensuring deliberate and informed action by those called upon to sign the recall petition, see *Wallace, supra*, at 676-677; *O'Hara, supra* at 315, while at the same time affording the official sought to be recalled at least some minimal due process guarantees. MCL § 168.966 directs that the recall ballot shall include a statement of 200 words or less setting forth the official's justification for his conduct in office. A rule which dictates clarity in the reasons for recall gives the charged official sufficient notification of the actions he is called upon to defend and accords him information from which to frame a proper response in support of his performance. [*Noel, supra* at 187-188.]

In summary, this Court must decide whether the language in the subject recall petition "ensur[es] deliberate and informed action by those called upon to sign the recall petition" and, at the same time, "gives the charged official sufficient notification of the actions he is called upon to defend and accords him information from which to frame a proper response in support of his performance." *Wallace, supra.* "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.'" *Mastin, supra* at 795, quoting *Woods v Saginaw Co Clerk,* 80 Mich App 596, 598-599; 264 NW2d 74 (1978).

In the case of Dana Pajtas, the recall petition states that (1) she has chosen to serve a special interest group rather than the citizens of the Township; (2) has violated the Open Meetings Act with improper posting of public meetings; (3) she has violated the Freedom of Information Act with incomplete and inconsistent responses to citizen requests for public information; and (4) her official acts have placed the Township at risk for costly future lawsuits.

Reasons 1 and 4 are clearly inadequate under the statute. They are conclusions; not statements of fact. They are not reasons for recall that are sufficiently clear to enable the electorate to identify a particular transaction and know the charges made in connection therewith. Additionally, they are insufficient in that they fail to supply the official with any notice of the incidents to which they refer. They are very similar to the reasons for recall found insufficient in *Noel, supra.*

The second and third reasons, however, are clear allegations of violations of state law - violation of the Open Meetings Act by improperly posting public meetings and violation of the Freedom of Information Act by incomplete and inconsistent responses to citizen requests for public information. Under *Molitor, supra,* these sufficiently clear reasons for the recall "focus the attention of the officer and the voter on the specific conduct that is alleged to be violative of state law." See also, *In re Wayne Co Election Comm, supra.* Certainly Ms. Pajtas can prepare a response to such charges, either by a general denial or by explanation of any conduct which may have been at variance with the Open Meetings Act or the Freedom of Information Act.

Taken as a whole, the Pajtas recall petition is sufficiently clear to meet the requirements of MCL § 168.952. The Board's decision that the Pajtas recall petition is sufficiently clear is affirmed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 11/20/09