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COA No: 71790-1  
Supreme Court No. 89099-4

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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Will Knedlik,  
Appellant,

v.

Snohomish County as Defendant,  
Respondent,

Carolyn Weikel, Aaron Reardon, Mike Hope, Central Puget Sound  
Regional Transit Authority, Public Disclosure Commission and  
Snohomish County Council,

Interested Parties.

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**BRIEF OF RESPONDENT SNOHOMISH COUNTY; CAROLYN  
WEIKEL; AND AARON REARDON**

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 ORIGINAL

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## **I. INTRODUCTION**

This case involves Appellant, Will Knedlik's (Knedlik) longstanding opposition to anything, or anyone, related to Sound Transit and an attempt at a collateral attack of a member of the Sound Transit board, Aaron Reardon through an improper recall and "citizens action." The Superior Court correctly found as a matter of law that only a legal voter of Snohomish County may bring a recall petition against a Snohomish County elected official and that because Knedlik is not a Snohomish County voter he lacks standing to bring a recall petition against Aaron Reardon. The Superior Court also found that RCW 42.17A.765(4) imposes certain requirements on individuals who wish to maintain a "citizens action" to address violations of the Fair Campaign Practices Act (Chapter 42.17A RCW) and that Knedlik, failed to comply with that chapter's pre-filing requirements. The Superior Court's decision to grant Snohomish County's motion to dismiss should be upheld.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- A. Did the Superior Court correctly conclude that RCW 29A.56.110 limits the right of recall to constituents of the office subject to the recall?
- B. Did the Superior Court correctly conclude that Knedlik failed to comply with the requirements of RCW 42.17A.765(4)?

### III. RESTATEMENT OF RELEVANT FACTS

On February 28, 2012, the Snohomish County Auditor received from Knedlik a document entitled “Charges for Recall by Voters and Removal by Law as to Honorable Aaron Reardon as an Elective Public Officer for Misfeasance or Malfeasance and Violation of His Oath of Office.” On February 29, 2012, the County notified Knedlik that because he was not a legal voter of Snohomish County, his document was not a valid petition for recall and would not be processed pursuant to RCW 29A.56.110. CP 32.

On September 7, 2012, Knedlik delivered a letter to the then Washington State Attorney General, Rob McKenna (AG), and the Snohomish County Prosecuting Attorney, Mark Roe (Prosecuting Attorney), asking the AG and/or the Prosecuting Attorney to file "civil litigation to compel reballoting for the Snohomish County Executive election" because of an alleged violation of chapter 42.17A RCW. CP 12. While the letter referenced RCW 42.17A.765, it did not cite any provision of election law that the Snohomish County Executive was alleged to have violated. Id. In addition, the letter failed to provide any factual

information about why Knedlik believed a violation of chapter 42.17A RCW had occurred. Id.

On October 24, 2012, Knedlik delivered a second letter, notifying the AG and the Prosecuting Attorney of his intent to commence a citizen's action pursuant to RCW 42.17A.765. CP 14. The October 24, letter restated Knedlik's previous allegations and did not provide any additional factual information. Id.

On February 5, 2013, Knedlik filed this lawsuit, naming himself as the Plaintiff, and Snohomish County as Defendant, and listing Carolyn Weikel, the Snohomish County Auditor, Aaron Reardon, the then Snohomish County Executive, Mike Hope, the candidate Reardon defeated, and the Central Puget Sound Regional Transit Authority (Sound Transit) as Interested Parties. CP 1-35. The lawsuit was based on two main claims. First, Knedlik claimed that Snohomish County's interpretation that RCW 29A.56.110 limited the right of recall to legal voters of the office subject to the recall was in error. Second, Knedlik asserted a "citizens action" pursuant to RCW 42.17A.765, alleging that the Snohomish County Executive had engaged in misconduct that violated chapter 42.17A RCW. Id.

The County and Interested Parties Weikel and Reardon filed a CR 12(b)(6) motion to dismiss. CP 36-37. Sound Transit filed a separate

motion to dismiss. The Superior Court granted Sound Transit's motion on April 26, 2013. Based on principles of statutory construction, the Superior Court rejected the argument that a legal voter of King County had the right to seek the recall of an elected official from Snohomish County, and also determined that Knedlik did not comply with RCW 42.17A.765's claim filing requirements. The Superior Court granted the County and Interested Parties Weikel and Reardon's motion on May 31, 2013. CP 36-37.

Knedlik filed a Petition for Direct Review of all decisions. The County opposed direct review in its Answer to Statement of Grounds, filed with this Court on August 13, 2013.

#### **IV. ARGUMENT**

##### **A. Standard of Review.**

All rulings by the trial court in this matter were issued summarily upon separate motions to dismiss and present solely questions of law based upon the undisputed facts in this matter. Similarly, statutory construction is a question of law and is reviewed de novo. Accordingly, the standard of review is de novo. Deveny v. Hadaller, 139 Wn. App. 605, 616, 161 P.3d 1059 (2007).

**B. The Superior Court Correctly Ruled That Knedlik Lacked Standing To Bring A Recall Petition Against The Snohomish County Executive.**

The right to recall elected officials is derived from Article 1, sections 33 and 34 of the Washington Constitution. Article 1, section 33 provides in pertinent part:

Every elective public officer of the state of Washington expect [sic][except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof . . .

(emphasis added).

Article 1, section 34 provides in pertinent part:

The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay . . .

Pursuant to these constitutional provisions, the Legislature adopted chapter 29A.56 RCW to provide the framework for the recall process. See Matter of Recall of Call, 109 Wn. 2d 954, 957, 749 P.2d 674, 676 (1988)(discussing chapter 29.82 RCW, recodified as chapter 29A.56 RCW). RCW 29A.56.110 is the legislatures expression of Article 1, section 33's standing requirement. It provides:

Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall...

(emphasis added). See RCW 29A.56.110

Pursuant to both Article 1, section 33 and RCW 29A.56.110, the right to recall an elected official of a political subdivision, is limited to legal voters of that particular political subdivision. See also Teaford v. Howard, 104 Wn.2d 580, 583, 707 P.2d 1327 (1985) (analyzing RCW 29.82.010, recodified as RCW 29A.56.110, and stating “[u]nder this statute an officer's constituency can initiate recall proceedings by preparing charges ...”). Article 1, section 33 and RCW 29A.56.110 set up similar parallels: any legal voter of the state can demand the recall of any elected official of the state and any legal voter of a political subdivision can demand the recall of any elected official of “such” political subdivision. This reading of the statute is bolstered by the fundamental principal of statutory construction which holds that “courts must not construe statutes so as to nullify, void or render meaningless or

superfluous any section or words of same." Probst v. State Dept. of Retirement Systems, 167 Wn. App. 180, 188, 271 P.3d 966 (2012), citing Taylor v. City of Redmond, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977). If the intent was to allow any legal voter of the state to recall any elected official of the state or of any political subdivision, the addition of the phrase "or of the political subdivision of the state" or "any political subdivision thereof" would have been unnecessary. See Article 1, section 33; RCW 29A.56.110.

The Brief of Appellant fails to provide the court with any legal authority to support his contention that he has the right to seek the recall of the Snohomish County Executive. Such authority does not exist. It is undisputed that Knedlik is a King County legal voter, and not a Snohomish County legal voter. Under Article 1, section 33 and RCW 29A.56.110, an individual may bring a recall action against a statewide officer or of an officer of the political subdivision in which the individual is a legal voter. Since Plaintiff is not a Snohomish County legal voter he cannot demand the recall of a Snohomish County elected official. The Superior Court correctly dismissed Knedlik's recall cause of action for lack of standing.

**C. The Superior Court Correctly Ruled That Knedlik Failed To Comply With RCW 42.17A.765.**

Under the Fair Campaign Practices Act (FCPA), a person may bring a lawsuit in the name of the state (a citizen's action) for violations of the FCPA when three conditions are met. RCW 42.17A.765(4). RCW 42.17A.765(4) provides in relevant part:

A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(emphasis added.)

As set forth above, it is the complainant's responsibility to provide the AG and prosecuting attorney with the "reason to believe that some provision of this chapter is being or has been violated." Requiring some

explanation from the complainant is logical, because once that information is received, the prosecuting attorney and the Attorney General are tasked to “investigate or cause to be investigated the activities” of the accused official. RCW 42.17A.765(2). When the reasons for the investigation or the activities to be investigated are not provided, the prosecuting attorney and the Attorney General cannot fulfill their statutory obligation. For this reason, if a complaint fails to meet his/her responsibility, none of the subsequent duties or remedies are triggered.

In the present case, Knedlik’s first and second letters did not provide any “reason to believe” that some provision of chapter 42.17A RCW had been violated. Both letters alleged that:

...due to: (1) extremely egregious and enormously extensive misuse of government assets paid for with taxpayer dollars by a nominal victor, Aaron Reardon, through his misfeasance in public office (as well as by one-or-more other government-funded employees or agents), and (2) gross abuse of local, regional and state taxpayers (including the undersigned as a payor of sales taxes to the Central Puget Sound Regional Transit Authority), *inter alia*.

CP 14, 15.

These notices merely conveyed general allegations of misuse of government assets and resources, but failed to describe what government assets were involved, when those assets were used, and why their use violated the FRCP. Knedlik’s refusal to provide any details of the alleged

misuses deprived the AG and the Prosecuting Attorney of any meaningful opportunity to evaluate or investigate the merits of Knedlik's claim. Thus, the Superior Court properly found that Knedlik failed to comply with RCW 42.17A.765(4) and dismissed his citizens action.

Knedlik asks this court to waive the statutory requirement imposed on him as the complainant, and presume that that the AG and Prosecuting Attorney knew (or should have known) the contents of his allegations. Statement of Grounds for Direct Review 11. His support for this supposed knowledge is a series of newspaper articles related to the Snohomish County Executive<sup>1</sup>. The existence of newspaper articles related to the Snohomish County Executive, or independent knowledge of the AG or Prosecuting Attorney, however, has no impact on the legal issue of whether Knedlik satisfied RCW 42.17A.765(4). The only documents relevant to that issue are Knedlik's first and second letters. From these letters, it is clear that he failed to provide any reason to believe that the FRCP had been violated. Since he failed to comply with RCW 42.17A.756(4) the trial court properly dismissed his citizens action.

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<sup>1</sup> Newspaper articles referenced in his Appellant Statement of Grounds for Direct Review, Appendix A, and Appellants Brief, Appendix A, were not presented to the Superior Court – likely because they were authored 5 and 7 months, respectively, after the trial court's decision. These appendices are the subject of the County's Motion to Strike, filed simultaneously with this motion.





## OFFICE RECEPTIONIST, CLERK

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**From:** Murray, Kathleen <kmurray@co.snohomish.wa.us>  
**Sent:** Wednesday, January 15, 2014 4:10 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Knedlik v. Sno. Co. #89099-4  
**Attachments:** Motion to Strike.docx; Brief of Respondent.docx

On behalf of Snohomish County, Deputy Prosecutor Lyndsey Downs, WSBA #37453, files the attached Response Brief and Motion to Strike in re:  
Knedlik vs. Snohomish County  
Cause No. 89099-4

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