

No. 80219-0

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SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE MATTER OF RECALL CHARGES AGAINST
PORT OF SEATTLE COMMISSIONER PAT DAVIS, Appellant

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REPLY BRIEF OF APPELLANT COMMISSIONER DAVIS

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I. INTRODUCTION

Respondent Christopher Clifford's ("Clifford") brief to this Court confirms that he lacks the requisite knowledge of identifiable facts to support the recall charges against Port of Seattle Commissioner Patricia Davis ("the Commissioner"). Moreover, Clifford has failed to establish a violation of the law, let alone an intentional violation of the law. Even assuming *arguendo* that the conduct alleged by Clifford were sufficient to establish a violation of law as required by the recall charges, any potential alleged violation was cured by the Commission's final vote at an open public meeting, an issue Clifford does not address.

Recently, this Court reaffirmed that the Legislature has established safeguards to protect public servants from "the financial and personal burden of a recall election grounded on false or frivolous charges." *In re Recall of Seattle Sch. Dist. No. 1 Dirs.*, 162 Wn.2d 501, 510, 173 P.3d 265 (2007) (internal quotation marks and citations omitted). Application of these safeguards calls for dismissal of this recall petition. Accordingly, the Commissioner respectfully requests that this Court reverse the decision of the superior court holding that certain recall charges were sufficient.

II. REPLY TO CLIFFORD'S STATEMENT OF THE CASE

A. Clifford has not Appealed the Superior Court's Determinations that Several Allegations in the Recall Charges are Factually and Legally Insufficient.

The Statement of the Case in Clifford's Response Brief noticeably omits any reference to the fact that the superior court already has determined that Charge 3 of the Petition for Recall is legally and factually insufficient. CP 98. Clifford has not appealed the superior court's disposition of Charge 3, which was the only charge to allege misfeasance in addition to malfeasance.¹ CP 72-73. As a result, the charges remaining for consideration by this Court (Charges 1-2 and 4-6) allege only malfeasance.

Additionally, Clifford has not appealed the superior court's determination that certain of his factual allegations are factually insufficient. The superior court held that the dollar amount cited by Clifford in the third factual allegation and the entire fourth factual allegation are factually insufficient. CP 98. Accordingly, the recall charges before this Court can be based only on the first three factual allegations in the Petition, as modified by the superior court.

¹ To have preserved this issue, Clifford must have cross appealed the determination that Charge 3 is factually insufficient in order to obtain the affirmative relief of allowing voters to consider that charge as an additional ground for recall. *See* RAP 2.4(a). Thus, Clifford has waived this argument.

B. Clifford's Motion to Dismiss/Strike Section II(C) of the Commissioner's Opening Brief Should Be Denied.

Without citing any authority, Clifford asks this Court "to dismiss or strike" Section II(C) of the Opening Brief because it is "a regurgitation of the Petitioner's [sic] declaration and Brief filed with the Superior Court." Response Br. at 4. The fact that Section II(C) recounts facts included in a declaration filed with the superior court is not a reason to strike the section. RAP 10.3(a)(5) provides for "a fair statement of the facts and procedure relevant to the issues presented for review, without argument" and with citations to the record. Section II(C) complies with this standard.

The Commissioner has provided all of the facts relevant to this Court's *de novo* review of the sufficiency of the recall charges. *See Seattle Sch. Dist. No. 1 Dir.*, 162 Wn.2d at 508. The recall charges on appeal present both the issue of whether the Commissioner violated a statute or rule and whether her mental state reflected the requisite intent to violate that statute or rule. The facts set forth in Section II(C) are relevant to those issues. They are presented without argument and are accompanied by accurate citations to the record, including the Declaration of Patricia Davis in Support of Request to Dismiss Recall Petition, which was signed by the Commissioner under oath and penalty of perjury. *See*

CP at 25-33. Accordingly, Clifford has failed to provide a basis to strike this section of the Opening Brief, and the Commissioner respectfully requests that the Court deny Clifford's request.

III. ARGUMENT IN REPLY

A. Standard of Review

Clifford concurs with the Commissioner's articulation of the standard for determining the sufficiency of the recall charges, and thus concedes that the Court must take a searching look at the substance of those charges. *See* Response Br. at 6. In reviewing the sufficiency of recall charges, the Court must "limit the scope of the recall right to recall for cause' as required by the State Constitution." *Teaford v. Howard*, 104 Wn.2d 580, 584, 707 P.2d 1327 (1985) (quoting *Chandler v. Otto*, 103 Wn.2d 268, 271, 693 P.2d 71 (1984)). Thus, the determination that a recall charge is either factually or legally insufficient is fatal to that charge. *Id.*

B. The Recall Charges are Factually Insufficient

1. Clifford has failed to demonstrate personal knowledge of the facts alleged.

Despite conceding that he is required to demonstrate personal knowledge of the facts supporting the recall charges (Response Br. at 6), Clifford has failed to meet that burden. For example, Clifford has failed to

establish any personal knowledge of what transpired during the meetings that form the basis of the recall charges.

In *In re Recall of Beasley*, this Court held that the respondents' failure to establish a basis for their knowledge of what occurred at allegedly private meetings rendered their recall charges insufficient. 128 Wn.2d 419, 429, 908 P.2d 878 (1996) (observing that the respondents' personal knowledge of what transpired in the meeting was insufficient because they did not provide a copy of meeting minutes or "purport to base their knowledge on their own observations or on what someone else told them.").

Here, not only does Clifford lack any personal knowledge of what occurred in the January 10 and June 8, 2006, executive sessions, the only evidence of what transpired at the sessions explicitly contradicts Clifford's allegations. The Commissioner has provided undisputed testimony that no votes occurred during those sessions and that the Commissioners did not obligate the Port to provide additional compensation to Mr. Dinsmore. CP 28-30, ¶¶ 14-19. Clifford has failed to identify a single fact that supports his conjecture that the Commission voted to provide Mr. Dinsmore with additional compensation at one of these sessions.

Moreover, Clifford misapprehends the recall process when he suggests that it is the voters who will decide whether the Commissioner

voted to extend Mr. Dinsmore's compensation in violation of the Open Public Meetings Act. *See* Response Br. at 13. Should this Court determine that the recall charges are sufficient, the voters will decide whether or not to move forward with the recall process, and if so, whether to *recall* the Commissioner. Before a public servant is put to that burden, however, this Court must determine whether the charges are actually sufficient to trigger the recall process. If a recall election served as a basis to conduct fact finding as to the sufficiency of the charges, then this Court's role as a "gatekeeper" would be abrogated. *See Seattle Sch. Dist. No. 1 Dir.*, 162 Wn.2d at 508.

Additionally, Clifford's assertions that he read newspaper articles and watched news stories related to the Commissioner are insufficient to establish the requisite personal knowledge. Clifford fails to identify any specific knowledge reported in or gained from that news coverage. Moreover, unverified information from unnamed sources contained in newspaper articles does not constitute a sufficient factual basis to support a recall election. *See Beasley*, 128 Wn.2d at 429-430 (charge was conjectural and factually insufficient where the recall petitioner testified "that he obtained the comments from a newspaper article, and that their ultimate source was [the school superintendent], but he did not reveal the source of [the superintendent's] knowledge"); *see also In re Recall of*

West, 155 Wn.2d 659, 666 n.3, 121 P.3d 1190 (2005) (observing that newspaper articles are not categorically sufficient to establish personal knowledge, but making an exception because the articles in question contained lengthy transcripts of the conversations at issue). This Court also has held that a recall petitioner's knowledge is inadequate when based solely on something told to him by a third party. *In re Recall of Morrisette*, 110 Wn.2d 933, 936, 756 P.2d 1318 (1988). In light of these rules, the superior court properly struck from the record all of the factual assertions in Clifford's memorandum, because none of the statements were properly sworn or verified. CP 97. Clifford did not appeal this decision.

Regardless, none of the limited materials submitted by Clifford with his memorandum, which the Court did not strike, establish sufficient knowledge of facts supporting the malfeasance charges. The October 10, 2006, Memorandum, e-mail string (in which the Commissioner did not participate), and handwritten notes (which refer only to the Commissioner's predecessor's [Bob Edwards] actions as President) do not discuss a vote occurring in executive session or a decision to provide Mr. Dinsmore with additional compensation. *See* CP 75, 86-92.

Clifford argues that the Commissioner did not seek to *voir dire* Clifford regarding his personal knowledge and, therefore, should not be

allowed to argue that his knowledge is insufficient. However, it was not the Commissioner's burden "to test [Clifford's] personal knowledge regarding the facts of the charges put forth in his recall petition." *See* Response Br. at 5. In *Cole v. Webster*, 103 Wn.2d 280, 283, 692 P.2d 799 (1984), this Court considered the argument that school board members should have been allowed to *voir dire* the petitioner who sought their recall. The Court held that the superior court had the option to *voir dire* the recall petitioner as part of its duty to determine the factual sufficiency of the recall charges, but did not hold that that the superior court was obligated to do so or that the school board members themselves could engage in *voir dire* of the petitioner. *Id.* at 288.

The Commissioner does not have the burden of adducing evidence not proffered by Clifford. As even Clifford acknowledges, he has the sole burden to establish his personal knowledge of identifiable facts supporting the recall charges. RCW 29A.56.110 (requiring that "the person . . . making the charge have knowledge of the alleged facts upon which the stated grounds are based."); *see also Cole*, 103 Wn.2d at 288 (observing that the personal knowledge requirement was added to RCW 29A.56.110 "to discourage frivolous, scurrilous and baseless charges against a public officer."). Without personal knowledge of the factual allegations

supporting recall, Clifford's recall charges are based solely on innuendo and conjecture and, thus, are factually insufficient.

2. Clifford's factual allegations are insufficient to support malfeasance charges.

Clifford's assertion that his recall charges are merely "technically" deficient cannot rescue his petition. Response Br. at 8. The requirements to sustain a recall petition are not a technicality – they are grounded in the Washington Constitution and strike an important balance between the right to recall public servants and the protection of public servants in the discharge of their duties. Const. art. I, § 33 (recall limited to charges of misfeasance and malfeasance). Thus, RCW 29A.56.110 requires that recall charges "shall state the act or acts complained of in concise language" and "give a detailed description, including the approximate date, location, and nature of each act complained of[.]"

Although the charges may contain some conclusions, they must "state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of" malfeasance. *Chandler*, 103 Wn.2d at 274. Nor, as Clifford appears to suggest, is the sole purpose of these requirements to provide notice to public servants – it is also to assure that the exercise of recall is limited to "substantial" acts of alleged misconduct. *See Seattle*

Sch. Dist. No. 1 Dirs., 162 Wn.2d at 509 (internal quotation marks and citations omitted). Moreover, the charges must be made with “sufficient precision and detail” to allow the electorate to make informed decisions in the recall process. *In re Recall of Sandhaus*, 134 Wn.2d 662, 669, 953 P.2d 82 (1998).

The Petition includes only four factual allegations, one of which the superior court determined was factually insufficient. CP 98. The remaining three factual allegations, as modified by the superior court, are that:

On or about January 10, 2006, the Port of Seattle Commission met in an executive session.

On or about June 8, 2006, the Port of Seattle Commission met in an executive session.

On or about October 10, 2006, Port of Seattle Commission [sic] signed a memorandum granting Mic Dinsmore, an outgoing employee of the Port of Seattle, [\$239,000.00] of extra compensation outside the original employee contract for that employee.

CP 72. The first two allegations do not allege that a vote was taken or that any other decision was made during these executive sessions. The allegations state only that the Commission met in executive sessions on these two dates. Thus, while the recall charges allege that a “vote” occurred during these executive sessions, Clifford does not allege any facts to support this conjecture.

Additionally, the third factual allegation in the Petition alleges that the “Commission” signed a Memorandum granting Mr. Dinsmore additional compensation. CP 72. However, a plain reading of the October 10, 2006, Memorandum, which Clifford cites as additional support for the recall charges, does not support this allegation. CP 75. The Memorandum does not address the issue of compensation and certainly does not promise a specific dollar amount. Thus, Clifford’s claim that the “[M]emorandum reads as a severance package” also is conjecture. *See* Response Br. at 9.

Although Clifford is correct that this Court need not determine whether the recall charges are true, the Court may go outside the petition to determine whether there is a factual basis for the charge. *Beasley*, 128 Wn.2d at 427; *see also, In re Recall of Pearsall-Stipek*, 129 Wn.2d 399, 404, 918 P.2d 493 (1996) (“*Pearsall-Stipek I*”) (court relied on a declaration submitted by the elected official, in which she explained a mistake, to determine that the charges were insufficient). Here, the Commissioner explained in her Declaration that the goal of the October 10, 2006, Memorandum was to confirm Mr. Dinsmore’s willingness to delay his departure from the Port, and that the Memorandum did not promise additional compensation. CP 29, ¶¶ 16-17. Again, this testimony was undisputed in the record. Thus, neither the third factual allegation in the Petition nor the Memorandum itself supports the recall charges.

The Petition also alleges that “the public statements of” the Commissioner provide additional evidence in support of recall. CP 73. Such general allegations are insufficient to support the recall charges. In his Response Brief, Clifford purports to quote a statement that Commissioner Davis allegedly made in a news broadcast. Response Br. at 9-10. This material was not before the superior court and is not properly cited here.² No context is provided for this statement, which does not address any conduct of the Commissioner herself or any decision by the Port of Seattle Commission. As a result, this statement provides no factual support for the recall charges at issue in this case.

Similarly, the alleged “[c]onflicting facts and statements” cited by Clifford in the Response Brief also do not provide factual support for the recall charges. *See* Response Br. at 11. In fact, these statements are consistent with the Declaration the Commissioner filed in support of her request to dismiss the Petition. *See* CP 25-38. Clifford’s statement that “[t]he only way for [the Commission] to have approved [the additional compensation] was through a vote or result, or agreement in an executive session” is again pure conjecture. *See* Response Br. at 11. Clifford has not identified any facts that support the conclusion that the Commission

² The news clip to which Clifford refers is not included in the Clerk’s Papers, nor was it relied on by the superior court in determining the sufficiency of the recall charges. As a result, the Commissioner is, concurrently with this Reply Brief, filing a Motion to Strike Clifford’s references to factual assertions not in the record.

approved anything, let alone that it approved a specific compensation package in a non-public meeting.

Clifford appears to contend that even if his Petition were deficient, the superior court was entitled to fill in the gaps. Response Br. at 8 (citing *West*, 155 Wn.2d at 663). While in *West* this Court used supporting materials to “flesh out the factual details” of otherwise sufficient charges, it did not transform factually insufficient charges into sufficient ones as Clifford seeks to do here. *Id.* at 664-65; *see also Id.* at 668 (Madsen, J., concurring) (observing that although a superior court may consider supplemental material, it cannot breathe life into an infirm charge by correcting the ballot synopsis). The *West* Court cautioned that it is still the burden of the recall petitioner to “reasonably identify” the relevant facts contained in any supplemental materials and that charges still “risk dismissal if courts cannot readily ascertain the factual basis of the charge.” *Id.* at 666.

The record in this case does not approach the record in *West*, which contained complete transcriptions of incriminating exchanges by Mayor West, exchanges that the Mayor admitted had occurred. *Id.* at 666 n.3. In contrast, this Court has consistently rejected charges that are based on conjecture rather than identifiable facts. *See, e.g., Beasley*, 128 Wn.2d at 430 (charge that school board members made certain comments,

without stating “to whom the comments were made, when they were made, [or] the context in which they were made” was conjectural and factually insufficient); *Morrisette*, 110 Wn.2d at 935 (charge that an official mishandled an unknown item of unknown ownership in an unknown manner found conclusory and factually insufficient). It should do so again here.

3. The recall charges fail to allege specific and intentional violations of the law.

Clifford incorrectly argues that he need not specify the particular laws allegedly violated by the Commissioner. Response Br. at 14. This is incorrect because a charge of malfeasance necessarily requires that a public official has committed an unlawful act. RCW 29A.56.100(1)(b). “Without providing the specific nature of the wrongdoing, the charge on its face does not support the conclusion that the officer acted unlawfully or improperly.” *In re Recall of Ackerson*, 143 Wn.2d 366, 375, 20 P.2d 930 (2001) (citations omitted). Thus, the “[f]ailure to allege another standard, law or rule violated is fatal to a recall charge.” *Id.* at 376 (citing *In re Recall of Zufelt*, 112 Wn.2d 906, 914, 774 P.2d 1223 (1989)); *see also Teaford*, 104 Wn.2d at 587 (holding that a charge was factually insufficient because “[w]ithout providing the specific policies violated,”

the charge “did not support the conclusion that the [officials] acted wrongfully, unlawfully or improperly”).

Thus, Clifford must identify not only the law violated, but also must specifically describe the conduct that allegedly violated the law. Clifford’s vague statements in the Response Brief that he “identified state statutes, and Port Bylaws” are insufficient.³ Response Br. at 14. As a result, Charges 1 and 2 of the Petition, as modified in Paragraph 1 of the Revised Ballot Synopsis, are unquestionably infirm. Although they allege malfeasance, they identify no statute or rule violated by the Commissioner. Although the Washington State Open Public Meetings Act (chapter 42.30 RCW) is identified in Charges 4-6 of the Petition and Paragraphs 2 and 3 of the Revised Ballot Synopsis, the charges only summarily state that a vote occurred without providing any foundation for that conclusion.

Additionally, when a public official is charged with violating the law, the recall charges must show that the official *intended* to violate the law. *In re Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990) (citations omitted); *In re Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d

³ In fact, in communications with the Commissioner’s counsel, Clifford acknowledged that he intended to allege a violation of RCW 53.12.245 “and various provisions of Port of Seattle Bylaws” in relation to Charges 1 and 2 of the Petition. CP 103. However, he failed to identify any such provision in Charges 1 and 2 of the Petition, nor does Paragraph 1 of the Revised Ballot Synopsis identify any statute or rule allegedly violated by the Commissioner.

410 (1997) (must specifically allege intent to violate the Open Public Meetings Act); *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 263, 961 P.2d 343 (1998) (“*Pearsall-Stipek II*”). This requires proof “not only that the official intended to commit the act, but also that the official intended to act unlawfully.” *Pearsall-Stipek II*, 136 Wn.2d at 263; *see also Sandhaus*, 134 Wn.2d at 668.

Here, Charges 1-2 and 4-5 of the Petition, as modified in Paragraphs 1 and 2 of the Revised Ballot Synopsis, fail even to allege an intention to violate the law. As a result, these charges are wholly insufficient. While Charge 6 of the Petition, as modified by Paragraph 3 of the Revised Ballot Synopsis, does allege that the Commissioner “knowingly” exceeded the purposes of the executive session and allegedly violated the Act, Clifford again provides no factual basis for this allegation. Mere conclusions are insufficient to establish an intentional violation of the Open Public Meetings Act, and a recall petitioner must allege specific facts “showing that [the public officials] either knew that they were violating the Open Public Meetings Act of 1971 or that they intended to violate the act.” *Beasley*, 128 Wn.2d at 426 (citation omitted). Thus, this is a *prima facie* requirement for a charge of malfeasance, not an issue for the voters to “weigh,” as contended by Clifford. *See Response Br.* at 14.

In *Beasley*, this Court held that the recall petitioners failed “to show that [the public officials] attempted to conceal or otherwise keep secret what they were doing” and cited evidence that the officials later took action at an open public meeting. *Id.* at 427. Similarly, here, Clifford has cited no evidence that the Commissioner tried to conceal any of her actions. For example, the October 10, 2006, Memorandum refers Clifford to Human Resources and Development staff, which undercuts any argument that the Commission attempted to conceal its actions. CP 75. Moreover, it is undisputed that the Commission did take final action on the issue of additional compensation for Mr. Dinsmore at an open, public meeting. CP 26, ¶ 3.

Thus, the recall charges are factually insufficient because Clifford has failed to properly allege that the Commissioner violated the law or that she allegedly intended to violate the law.

C. The Recall Charges are Legally Insufficient

1. The Commissioner acted within her discretion.

In addition to being factually insufficient, the failure of the recall charges to identify the statutes or rules that the Commissioner allegedly violated in committing her alleged unlawful acts also renders those charges legally insufficient. When a petition fails to identify a specific law, rule, or procedure that would make the challenged act unlawful, it

“raises the possibility that the acts in question were discretionary acts” and renders the petition insufficient. *Teaford*, 104 Wn.2d at 587. An elected official cannot commit malfeasance by appropriately exercising the discretion granted to her by law. *Chandler*, 103 Wn.2d at 274 (citations omitted); *Wade*, 115 Wn.2d at 549 (citation omitted). Thus, the presumption in this case must be that the Commissioner’s actions in discussing personnel issues related to Mr. Dinsmore in executive session and signing the October 10, 2006, Memorandum were lawful.

Clifford argues that the Commissioner has failed to establish that she was acting within her discretion, citing to the Port Bylaws. Response Br. at 10. However, Clifford never once identifies any specific Bylaw provision allegedly violated by the Commissioner. To the contrary, Article III of the Bylaws provides that the President of the Port Commission “shall preside at all public meetings of the Commission and at executive sessions of the Commission, and shall sign all resolutions, contracts, and other instruments on behalf of the Commission as authorized by the Commission, and shall perform all such other duties as are incident to the office or are properly required by the Commission.” CP 78. Similarly, the Open Public Meetings Act specifies that a governing body may hold an executive session to “review the performance of a

public employee,” RCW 42.30.110(1)(g), with final action to be taken at a later date in public session. This is exactly what the record reveals here.

2. The charges do not allege wrongful conduct that interfered with the performance of official duties.

In addition to alleging unlawful conduct, charges of malfeasance also must state facts supporting the allegation that the Commissioner engaged in “wrongful conduct that affects, interrupts, or interferes with the performance of official duty.” RCW 29A.56.110. The Petition makes no such allegations and fails to identify any facts supporting the finding of interference with official duties.

In his Response Brief, Clifford argues that the Commissioner interfered with official duties by forcing the Commission to schedule a “special meeting” to vote on whether to provide Mr. Dinsmore with additional benefits. Response Br. at 14. The April 24, 2007, meeting was a regularly scheduled open public meeting. As Clifford himself contends, the Commission is required to hold a public meeting in order to vote on proposals to provide officers with additional compensation, such as the proposal discussed in relation to Mr. Dinsmore. *See* RCW 42.30.110. Thus, the April 24, 2007, meeting at which the Commission voted not to provide Mr. Dinsmore with additional compensation is an example of the Commissioner carrying out her official duties, not interfering with them.

3. Any alleged wrongful conduct was cured before the filing of the Petition.

Finally, Clifford fails to address in his Response Brief the issue that any alleged malfeasance also was cured. This Court's cases establish that this is an independent ground to dismiss a recall charge.

Any wrongful conduct allegedly committed by the Commissioner was in the form of proposed action that the Commission, including the Commissioner, later rejected. Although the October 10, 2006, Memorandum vaguely references that the Commission considered providing Mr. Dinsmore with "benefits" during his transition into retirement (CP 75), no decision related to additional compensation had been made by that point. CP 28-29, ¶¶ 14-18. The Commission unanimously voted in an April 24, 2007, open public meeting not to provide further compensation to Mr. Dinsmore. CP 26, ¶¶ 3, 19. Thus, even assuming that the Commission considered providing additional compensation prior to the April 24th meeting, any alleged impropriety associated with considering that option was cured by the Commission's final decision not to provide compensation at an open public meeting.

A petition to recall a public officer may not be based on alleged wrongful conduct that is later cured. In *Sandhaus*, this Court considered a recall charge alleging that a prosecuting attorney had failed to obtain a

bond to insure the performance of his duties, as required by law, until nearly three years after he assumed office. 134 Wn.2d at 670. The Court observed that even though Sandhaus admitted that he had failed to obtain the required bond, the fact that he later obtained a bond retroactive to the date he assumed office cured any wrongful conduct. *Id.*

Similarly, in the context of the Open Public Meetings Act, this Court has determined that a later vote at a public meeting may render a charge factually insufficient. In *Beasley*, this Court considered a recall charge based on allegations that school board members conspired to compel a Superintendent to accept modifications to his employment contract, or otherwise the contract would not be extended, in violation of the Open Public Meetings Act. 128 Wn.2d at 421. This Court determined that the allegation was factually insufficient because it was undisputed that the school board later “formally exercised its option not to extend the superintendent’s contract at an open meeting.” *Id.* at 427. The Court concluded that this fact undercut any allegation that the board was attempting to conceal its actions. *Id.*

Here, the end result is no different. The Commission’s vote in an open public meeting not to provide additional compensation to Mr. Dinsmore cures any alleged prior wrongful conduct.

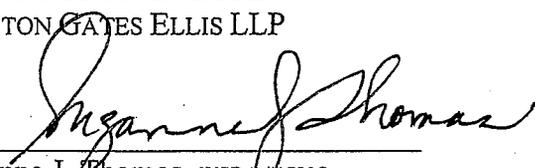
IV. CONCLUSION

The recall charges brought by Clifford are both factually and legally insufficient. The charges are factually insufficient because they are based on mere conjecture rather than personal knowledge of identifiable facts. Additionally, Clifford has failed to allege a basis for unlawful conduct or that the Commissioner allegedly intended to violate the law, as is required for a charge of malfeasance. Finally, the charges are legally insufficient because the Commissioner was acting within her discretion as a Port Commissioner and any potential harm was cured by the Commission's subsequent vote at an open public meeting.

The Commissioner respectfully requests that this Court reverse the determination of the superior court that the recall charges are sufficient.

RESPECTFULLY SUBMITTED this 10th day of March, 2008.

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THE STATE OF WASHINGTON

IN RE THE MATTER OF
RECALL CHARGES AGAINST
PORT OF SEATTLE
COMMISSIONER
PATRICIA DAVIS.

No. 80219-0

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I served the following
pleading:

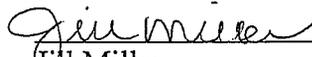
APPELLANT COMMISSIONER DAVIS' REPLY BRIEF

via U.S. mail on the following:

Christopher Clifford
2721 Talbot Road
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I declare under penalty of perjury in accordance with the laws of
the State of Washington that the foregoing is true and correct.

DATED this 10TH day of March, 2008, at Seattle, Washington.


Jill Miller

Legal Secretary to Suzanne Thomas