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10 SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

11 IN THE MATTER OF:

No. 20-2-01135-39

12 THE RECALL OF JASON WHITE,
13 CITY OF YAKIMA DISTRICT 2
14 COUNCILMAN.

COUNCILMAN JASON WHITE'S
MEMORANDUM IN OPPOSITION
TO PETITION TO DETERMINE
SUFFICIENCY OF RECALL
CHARGES AND FOR APPROVAL
OF BALLOT SYNOPSIS

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18 COMES NOW, Councilman Jason White, by and through his attorney, Zach Stambaugh,
19 and submits his Memorandum in Opposition to Petition to Determine Sufficiency of Recall
20 Charges and for Approval of Ballot Synopsis.
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22 **1. RELIEF REQUESTED**

23 Councilman Jason White respectfully requests that the Petition to Determine Sufficiency
24 of Recall Charges and for Approval of Ballot Synopsis be denied in its entirety. In the alternative,
25 at the minimum, a determination that Petitioner Hallock be excluded from the matter, and a finding
26 of fact about the degree of personal knowledge that Petitioner Briggs has.
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28 Councilman Jason White's Memorandum
in Opposition to Petition to Determine Sufficiency of
Recall Charges and for Approval of Ballot Synopsis - 1

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II. STATEMENT OF FACTS

- (1) Jason White is a Yakima City Council elected to represent District 2.
- (2) Elisabeth Hallock is not a registered voter in Yakima City Council District 2.
- (3) Elisabeth Hallock is the attorney of record in this action.
- (4) Elisabeth Hallock is a witness in this action due to her attestation of service and of facts in this action.
- (5) In addition to his duties as on the Council, Mr. White is involved in numerous civic and business ventures, including a business called Yakima Reclaimed a business which can operate out of a home in compliance with social distancing rules, and food delivery services which are plainly within the "essential category".
- (6) Each of the acts and comments which Petitioner objects to were from Mr. White's personal social media, rather than from any official capacity.
- (7) No factual assertion is made in the Petition that any act done by Mr. White at a public meeting or through his official phone, website, or on City letterhead or any other format which would indicate official capacity.

III. ISSUES PRESENTED

1. Whether Ms. Hallock is a proper petitioner when she is not a registered voter in Yakima City Council District 2, and whether Mr. Briggs has actual personal knowledge of the factual and legal assertions made in the Petition.
2. Whether charges one through four must fail facially since they only allege acts in Mr. White's personal capacity?
3. Whether missing three meetings is sufficient to constitute a vacancy in office.

IV. AUTHORITY AND ARGUMENT

Fundamentally, Article 1 § 33 Washington's constitution establishes a right to recall elected officials when they abuse their office. This is clarified by statute for the purpose of limiting recalls to exclude mere disagreement with the policy or private behavior of the official. Further

1 the statute defines a clear process to ensure that the elected official and voters to know precisely
2 what charge they face by articulating elements of law and the corresponding facts. (See *In re the*
3 *recall of Ackerson* 143 Wn.2d 366 at 371 (Washington Sup. Ct. 2001)). The petition in question
4 squarely fits the sort of policy disagreement and vagueness the law seeks to eliminate. Further it
5 fails at a process level: Mr. White was improperly served, by an improper petitioner and then by a
6 petitioner who lacked actual knowledge.

7 RCW 29A.56.110 defines "malfeasance" and "misfeasance":

8 (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that
9 affects, interrupts, or interferes with the performance of official duty;

10 (a) Additionally, "misfeasance" in office means the performance of a duty
11 in an improper manner; and (b) Additionally, "malfeasance" in office means the
commission of an unlawful act.

12 a. **Ms. Hallock Lacks Standing To Petition**

13 RCW 29A.56.110 restricts standing to file a petition to "any legal voter of the State or any
14 political subdivision thereof"... and authorizes that person to demand a recall of any official "of
15 such subdivision."

16 Ms. Hallock is not a legal voter registered in Yakima City Council District 2 and must be
17 dismissed from this action. She is however an attorney, and filed this action as Attorney of record,
18 while simultaneously acting as a witness by attesting to proof of service. Mr. White disputes that
19 the initial service she attested to occurred at all.

20 Further, when Ms. Hallock started this action, she found that the Prosecuting Attorney
21 would not serve Mr. White due to this problem. The next day, Mr. Briggs signed on as a Petitioner,
22 and the documents were amended to include him and eventually served. This gives rise to a
23 question of whether Mr. Briggs has personal knowledge of the facts alleged. Mr. White asks the
24 court to determine whether or not he is a genuine litigant in this matter. If it is found that he lacks
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1 personal knowledge, then the matter should be stricken on that basis.

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3 **b. The Petition Must Be Dismissed Because The Claims Are Insufficient On Their Face**
4 **as Charged Acts are Not Official Acts.**

5 Petitioners claims of malfeasance fall into two categories: 1) that he chose not to attend
6 several city council meetings as a political tactic and therefore vacated his office and, 2) statements
7 that in is personal behavior and in his personal communications he defied the Governor's Stay-
8 Home Stay-Safe order and encouraged others to as well. Both of these categories have an obvious
9 component of first Amendment activity.

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11 The Prosecuting Attorney was required by law to reduce the petition's charges to a coherent
12 ballot synopsis. His Ballot Synopsis provides the clearest organizational format to consider them.

13 The charge that City of Yakima District 2 Councilman, Jason White, committed
14 misfeasance, malfeasance, and/or violated his oath of office alleges he:

- 15 (1) used his position as an elected official to wrongfully encourage citizens to
16 disobey state and local covid-19 emergency proclamations that ordered everyone
17 to stay at home unless they need to pursue an essential activity;
18 (2) committed malfeasance pursuant to RCW 29A.56.110(1)(b) by disobeying state
19 and local COVID-19 emergency proclamations;
20 (3) violated his oath of office pursuant to RCW 29A.56.110(2) by failing to
21 faithfully obey, and by encouraging the public to disobey emergency orders
22 imposed by the State of Washington and the City of Yakima;
(4) engaged in reckless conduct that endangered and/or put the public at risk;
(5) refused to attend Yakima City Council meetings which interfered with the
performance of his official duties, and unreasonably denied his constituents
representation at Council meetings.

23 The first four charges fail because they provide no factual evidence that any of the
24 complained acts were done in an official capacity. Rather they show they complain of statements
25 on his personal time or on his personal social media accounts. "For purposes of a recall petition,
26 an act by an elected official that is unrelated to official duties does not constitute "misfeasance" in
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1 office, as defined in RCW 29.82.010(1), or a violation of the oath of office as defined in RCW
2 29.82.010(2).” *In re Recall of Hurley*, 120 Wn.2d 378, 379, 841 P.2d 756, 756 (Wa Sup Ct. 1992).

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4 **c. No Factual Sufficiency**

5 “A recall charge is factually sufficient only if the person making the charge has knowledge
6 of the underlying charge, as opposed to simply a belief that the charges are true” *In re DeBruyn*,
7 112 Wn.2d 924 at 926 (quoting *Jenkins v. Stables*, 110 Wn.2d 305, 1998 at 307)(finding charges
8 factually and legally insufficient..

9 As stated above, personal acts on his own time, and personal statements on social media
10 disagreeing with Petitioner, and some other officials are not official acts. Petitioners have not
11 alleged any acts which if proven true would raise to any threshold of incitement to criminal
12 activity, nor have they articulated what that threshold would be by citing elements of law. Instead
13 petition recounts that other public and press officials disagree with Mr. White, and if they are
14 correct, and people follow White’s belief it is possible that harm could ensue. That is far short of
15 facts showing that specific law has been violated. The petition does not record a time and place
16 that Mr. White violated the order, nor does it relate a time and place that someone else violated the
17 order under reliance on his official capacity. Therefore the charges in the Petition must be
18 dismissed as factually insufficient.
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21 **d. No Legal Sufficiency**

22 A charge is only legally sufficient if it articulates a specific crime and its elements, rather
23 than merely naming the crime. Moreover violation of some law if the facts are true is insufficient.
24 Prior rulings indicate that personal acts amounting to civil torts are inadequate. (See *In Re Hurley*
25 *at 4*, in which an alleged trespass was insufficient, and doubt is implied whether a criminal trespass
26 in his personal capacity would have been sufficient.)
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Petition references Governor Inslee's Executive order 20-25, and cites newspaper articles and publicity events concerning the importance of the order, and the possible risks to public health if the wrong public policy is implemented. While that order was valid during some of the events, no part of the petition lays out what the legal threshold would be that would constitute a criminal violation of that order. Like the petitioner in *Hurley*, our petitioner merely names a law and asserts that it was violated, or could be on his behalf. *Id. at 4*. That order is broad, and has numerous exceptions which can excuse almost any non-commercial activity that can be broadly related to an "essential" activity. It is not necessary here to determine what that threshold would be- the fact that the Petition fails to do so is more than sufficient grounds to find the Petition legally insufficient.

Even if the Petition had articulated a legal standard and the facts to demonstrate that White had violated it in an official capacity, it presented no evidence that White "intended to commit the act alleged and ... intended to act unlawfully." *In re Recall of Levine*, 194 Wn.2d (2019)(Holding that even unintentional unlawful acts do not rise to the level of misfeasance).

E. Missing Three Meetings Does Not Establish A Vacancy In Office In Violation Of The Oath Of Office.

Plaintiff Alleges that Mr. White missed three city council meetings. Mr. White does not dispute that fact. He missed them intentionally as a political statement that those particular meetings served no purpose to further the interests of his constituents. He avoided them in protest and gave notice, though that notice was not recorded by the other council members and excused. Other members have missed more meetings, and it is routine to do so. However here, this was a specific strategy to use his first amendment right to call attention to the futility of those meetings, and that simply attending to record a dissenting vote would have no meaningful effect.

1 Plaintiff would be required to show that he had a specific intent to vacate the office, and
2 establish what the threshold would be for actions that rose to such a level. "The *petition* must
3 "identify the "standard, law, or rule that would make the officer's conduct wrongful, improper, or
4 unlawful.""" *In re the recall of Inslee* 194 Wn.2d 85 ; 448 P.3d 755 at 759 (Quoting *In re Recall*
5 *of Bolt*, 177 Wn.2d 168, 181,298 P.3d 710 (2013) (quoting *In re Recall of Ackerson*, 143 Wn.2d
6 366, 377, 20 P.3d 930 (2001))). In that case over 34 trips out of state were not sufficient. Other
7 cases clarify the matter further to show that mere absence from a Council meeting is not sufficient,
8 if the council meeting process as a whole is not disrupted. However, the protected right of
9 representation is the process as a whole. Fatally disruptive acts in such a case included: colluding
10 to have enough simultaneous absences to prevent quorums through several meetings, changing
11 agendas during the meeting in violation of rules, and refusing to record the minutes of meetings in
12 violation of rules. *In re Recall of Pepper*, 189 Wn.2d 546 (2017). Mr. White's protests are perfect
13 exemplars of discretionary acts done as a means of furthering representation by garnering media
14 attention to the state of the Council. "An elected official cannot be recalled for appropriately exercising
15 the discretion granted him or her by law." *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71
16 (1984).

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19 As a matter of law, this court must dismiss the fifth charge, since Mr. White has not violated
20 his oath nor vacated the office.


21 V. CONCLUSION

22 This court must dismiss the Petition. Its principal petitioner has no standing to be in the
23 action, its substitute petitioner may not have personal knowledge. None of the free speech acts Mr.
24 White did are unlawful, nor even in an official capacity. No specific act in violation of the order
25 is even alleged. The only official acts described are minor and of a type which our supreme court
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1 held to be legitimate last year. The whole petition is a hysteric personal vendetta given a thin
2 veneer of law. It fails to meet any of the legal thresholds set forth by law, and the petition should
3 be dismissed. In the alternative, Ms. Hallock should be stricken from the case, and the charges
4 reduced to those which the court may find sufficiently established in law and fact. Thank you.
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6 DATED this 22 day of May, 2020.
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8 Zach Stambaugh
9 Attorney for Councilman Jason White

10 By: 
11 Zach Stambaugh, WSBA #49918
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