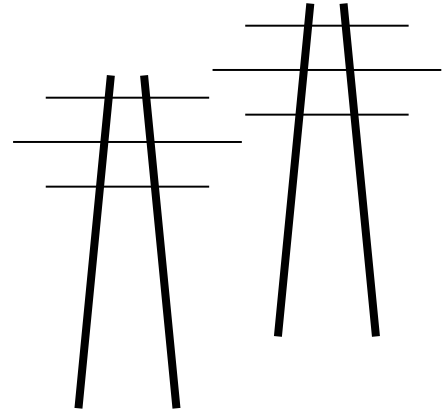


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**RE: Thoughts on Recall Committee’s Petition for Correction of Ballot Error  
M.S.A. §204B.44 or Writ of Mandamus § Minn. Stat. Ch. 586  
Goodhue County Court File 25-CV-21-1564<sup>1</sup>**

This is an odd position for me, recalling the many often heated issues I’ve raised with the City, administration, and individual council members, but here we go! Below are some over-the-weekend thoughts on the Recall Committee’s Petition filed Friday:

## **I. There is no right to a recall election.**

The Committee Petition (Court File 25-CV-21-1564) opens with its claim to be defending a right, as if a recall is an entitlement, in the public interest, and if it does not occur, that the voters of Red Wing are deprived of that right to a recall election. In fact, the opposite is true. This Recall effort is an attempt to disenfranchise the voters of their rights in the 2018 and 2020 elections, and is an attempt to overturn those elections to unseat the duly elected council members who fired Chief Pohlman. The basis for the furor is laid out clearly on the Recall website and in the media. See “Why a Recall” [www.recallcityhall.us](http://www.recallcityhall.us) and Exhibit A, from Recall website page, and Recall flyer, distributed door to door while canvassing.

Regarding legal sufficiency of the claimed rationale for recall, the court should take a hard look at the difference between the stated “reason” or justification for recall in the 250 word statement and the many reasons given by the Recall Committee on its website and in statements to the press. The “250 Word Statement” on the Recall website is so unimportant that in a photo of the initial petition, the full 250 word statement is not fully visible!! Exhibit B, 250 Word Statement, <https://www.recallcityhall.us/250-word-document>. There have been many reports of canvassers encouraging people to sign for reasons other than those in the 250 Word Statement, and some signers have contacted the City and requested their names be removed from the petitions<sup>2</sup>.

<sup>1</sup> Available on state’s MRO page, search for Court File number 25-CV-21-1564 at <https://mncourts.gov/Access-Case-Records/MCRO.aspx>

<sup>2</sup> [https://red-wing.granicus.com/MetaViewer.php?view\\_id=3&clip\\_id=2563&meta\\_id=140332](https://red-wing.granicus.com/MetaViewer.php?view_id=3&clip_id=2563&meta_id=140332)

The “250 word statement” is a nominal attempt to meet the malfeasance and/or nonfeasance standard because “firing Chief Pohlman” and their other complaints on the Recall website do not constitute malfeasance or nonfeasance were recognized as insufficient reason for recall. See 250 word statement. The Committee Petition avoids addressing the legal sufficiency of the Recall Committee’s claims, which makes sense because their claim is not legally sufficient. They have failed. See City Attorney Memoranda attached to Petition. For a recall petition to trigger a recall election, the 250 word statement must be legally sufficient to demonstrate malfeasance or nonfeasance.

The petition is based on the presumption a right to a recall election, focused on having met the **procedural** sufficiency requirements of a recall petition (see e.g. para 10, see also paras. 5, 7, 15, 40, 41, 43), However, procedural sufficiency is only half of the story – the recall petitions and statement must reach the **legal** sufficiency of malfeasance and/or nonfeasance before the “shall” of Charter §6.15 and kicks in. The Petitioners claim that there shall be an election if petitions are procedurally sufficient. Petition, p. 1, para. 1, see also p. 11, para. 45-48. However, it’s more than a matter of procedure – it must be legally sufficient. There is no right to an election.

The Petition is correct in stating that there is no precedent, as there is no caselaw regarding sufficiency of the “250 word statement” or the standard of malfeasance and/or nonfeasance in a recall. Petitioners cannot cite any precedent, helpful to either their cause or the City, and admit there is no precedent. Recall Petition, p. 11, para. 45.. Petitioners note jurisdictional citations in the introduction and paragraph 1 and 17, and the Charter City enabling statutes, but Petitioners do not cite a single statute or case in support of their theory that a recall election is a right.

## **II. The notion that voters determine malfeasance is absurd**

A basic tenet in legal interpretation of statutes, and charters too, is that interpretations should not have an absurd result<sup>3</sup>. The Petition repeatedly infers a “right” to a recall election if procedural requirements are met. See Petition, para. 1, 9 (These required the holding of an election for the potential recall...”), 22, 26, 27, 28, 29, 30, 31, 36, 40, 47, 48. For malfeasance, see Petition, paras. 4, 13, 14, 15, 40 & fn. 7, 43.

Petition argues for deviation from the state’s definition of malfeasance:

45. The term “malfeasance” as applied to the recall of *state* officials must not be read to forbid charter cities from determining for themselves what does and does not meet this standard. This would constitute a huge transfer of authority away from the voters in charter cities and is without precedent.

This paragraph is an admission of the absurdity of their argument. The Charter does not give voters authority to determine malfeasance! Ignoring the requirement of sufficient demonstration of malfeasance and/or nonfeasance in the Charter does not make it go away. The Charter, and

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<sup>3</sup> House Research nutshell on Judicial Interpretation: <https://www.house.leg.state.mn.us/hrd/pubs/judinter.pdf>

specifically the Charter provisions on recall, are to be interpreted in entirety. See *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 749 (Minn. 2015) (quoting *Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 496 (Minn. 2009), from House Research link, p. 2,fn. 8.

There is no authority granted to the voters in charter cities regarding determination of malfeasance, and as stated, there is no precedent supporting Recall Petitioners' theory. Petition, para. 45. It is Petitioners' wishful thinking. Recall Petitioners' go on to argue:

47. Allowing the City to nullify a right under the Charter sends a dangerous signal to the electorate. A conflict of interest like this would present an unthinkable abuse of authority in any other context. Red Wing's use of its bully pulpit in this manner has a chilling effect on future citizen involvement in the direct democracy process.

This Recall effort sends a very different signal than what is claimed above. This Recall attempts to "send a signal" that elections don't matter, that all votes don't matter. This effort is an attempt to disenfranchise the voters of their rights in the 2018 and 2020 elections and to overturn the elections, ejecting the duly elected City Council members, most of whom ran for the first time in those elections.<sup>4</sup> Attempting to overturn elections is not acceptable, nor are lawsuits attempting to facilitate overturning elections. This lawsuit is an abuse of process.

### **III. Attempted Burden shift – para 43**

As above, a basic tenet in law is that the result of interpretations should not be absurd. In a convoluted and absurd reach, the Petition attempts to divert the burden of pleading, production, and proof to the City Councilors they are attempting to recall:

43. Finally, even if all the other procedural protections are satisfied, and the voters opt to remove the elected official at the election, the councilmember in question has at least one remaining avenue of relief – the Courts. If the recalled official feels that his/her conduct does not rise to the level of malfeasance, a lawsuit brought by the member to adjudicate this question would be proper.

In this scenario, where a recall petition does not rise to the standard of malfeasance and/or nonfeasance, the election would be held, and council member(s) could sue! Please, let's see some legal support for that notion!

### **IV. False statement in Petition**

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<sup>4</sup> The most vocal recall proponents (most not signing as one of the 5 Committee members on Petitions) had run for City office and lost, including failed Council Candidates Ernie Stone, George Hintz, Kent Laugen; Shelley Pohlman – School Board; Janie Farrar – Mayor; Peggy Rehder – resigned from Council rather than go to agreed upon mediation.

Attorneys are sworn on oath and pleadings must be truthful. See Minn. Stat. §549.211; see also Acknowledgement, attached to Recall Committee's Petition. The Petition contains a blatantly false statement:

Although Petitioners originally collected more than enough signatures to remove a sixth member, Dean Hove, of Wards 1&2, there was a **typo** on the original certificate filed with the clerk which led to the rejection of their efforts.

Petition, p. 4, para. 12 (emphasis added). **This is a false statement.** SUBSTITUTING A COMPLETELY DIFFERENT SHEET, Ex. D, INSTEAD OF CERTIFIED SHEET, Ex. C, IS NOT A TYPO.

Recall City Hall had attached a materially different Committee Petition opposite the side for signing. Ex. C was the one certified by the City, signed by 5 Committee members. Exhibit D is the different Committee Petition, with all but one signer different from the initial petition. The signed Petitions with this Exhibit D Committee Petition were rejected by letter dated May 16, 2021, attached as Exhibit E. The Committee then submitted Exhibit E to the City and then attached that Committee petition to petitions to be signed. Exhibit E Committee Petition with five different signers, for recall of Dean Hove, which was certified by the City and then attached to the Petitions that were then filed with the City.

- Exhibit C lists five committee members, Certified by City on 4/9/2021
- Exhibit D which was attached to the initial petitions filed by the Recall Committee also lists five committee members, but only ONE of them was on the initial certified recall petition. The Charter requires that the same petition certified by the City be attached.
- Exhibit E is the letter to the Recall Committee rejecting the Hove Petitions with invalid Committee petition attached (Exhibit D is invalid Committee petition).
- Exhibit F is the 3<sup>rd</sup> Committee Petition, with ALL FIVE NEW names, none of which were on the previous two Committee Petitions.

The Charter requires that the certificate attached to the petitions must be IDENTICAL to that filed with the clerical officer. The Committee's error was not a typo, but was an improper substitution of a new and different Committee petition, one that had not been filed with the City, contrary to Charter Section 6.13. The improper Exhibit D was attached to each of the petitions rejected in the May 16, 2021 letter. Exhibit C should have been attached, but instead they attached a completely different document with four different signers. THIS IS NOT A TYPO.

## **V. This suit is an abuse of the legal process**

This suit is an abuse of process and sanctions should be considered under Minn. Stat. §549.211:

- This lawsuit is for an improper purpose, to overturn the elections of 2018 and 2020 and eject the duly elected City Council from office, disenfranchise Red Wing's voters, and

needlessly incur costs of litigation to be paid by taxpayers and the City's insurance. The "250 Word Statement" is legally insufficient to require a recall election, and the reasons stated under "Why a Recall" on the main Recall website page<sup>5</sup> show that the "250 Word Statement" has little to do with fundamental rationale. On the other hand, the claimed examples of violations of Open Meeting Law in the "250 Word Statement" do not constitute Open Meeting Law violations, and Petitioners can cite no cases supporting their position. The City properly followed Open Meeting Law in closing the aforementioned meetings, and has statutory and case law support for its position.

- The claims and other legal contentions made by Petitioners are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Objection to decisions made by duly elected City Council members is no justification for a recall – this suit is frivolous.
- The Petitioners allegations and other factual contentions have no evidentiary support or, if specifically so identified, are unlikely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Petitioners can cite no support for their claims, and have misrepresented evidence. Petitioners have not even included as Exhibits the full Petitions, the invalid Petitions, the letters accompanying the identified invalid signatures, etc.

The Petitioners lost the elections of 2018 and 2020, and lost the 6-1 vote terminating Chief Pohlman, and lost the three votes where the City declined to schedule a special election. The Council members were duly elected in a legitimate election, elected as a part of a democratic republic where we elect our Council members to make the decisions. The City Council has made decisions that some residents don't like. Oh well. That is not a justification for recall, for a recall election, or for this lawsuit. We've seen the 60+ lawsuits regarding the 2020 Presidential election filed, and all but one dismissed out of hand, and we've seen motions for sanctions, and now sanctions for those filing these lawsuits with no basis in law or fact.

This was a quick review, and any errors are mine and mine alone. I hope you'll consider these points above, and to critically consider what this Petition says as this challenge winds its way through District Court. Most crucial, I ask that the City fiercely defend the elections of 2018 and 2020 and the rights of all the City's voters, defend the legitimacy of these City elections, and oppose this effort to invalidate those elections and the actions of the duly elected City Council.

Thank you for your consideration.

Very truly yours,



Carol A. Overland  
Attorney at Law

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<sup>5</sup> Recall City Hall website: [www.recallcityhall.us](http://www.recallcityhall.us)