

Patrick B. Hughes, #16648  
ADAMS JONES LAW FIRM, P.A.  
1635 N. Waterfront Parkway, Suite 200  
Wichita, KS 67206-6623  
Phone: (316) 265-8591 / Fax: (316) 265-9719  
Email: [phughes@adamsjones.com](mailto:phughes@adamsjones.com)

IN THE SIXTH JUDICIAL DISTRICT  
DISTRICT COURT, BOURBON COUNTY, KANSAS  
CIVIL DEPARTMENT

SUSAN E. WALKER	)	
Bourbon County Clerk,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. BB-2026-CV-000048
	)	
JAMES CRUX	)	
Bourbon County Attorney,	)	
	)	
Defendant.	)	
_____	)	

**KYLE R. PARKS, KEVIN WAGNER AND  
LYLE K. OWENBY'S MOTION TO INTERVENE**

Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby seek to participate as parties in this case for the reasons set forth herein. They were originally made parties but then dismissed in connection with an amended petition. Kevin Wagner has filed a motion seeking to set aside that dismissal.

This motion is in the alternative to that relief. If the order of dismissal is not set aside, or if it is set aside and then later granted, Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby should be made parties by intervention and permitted to file the attached motion to strike the amended petition.

**I. If this case is going to proceed in any capacity, the recall committee members need to be parties.**

Plaintiff appropriately named the recall committee members as defendants in her original petition which sought to adjudicate aspects of their constitutional and statutory rights to recall an elected official. However, when Kevin Wagner responded with a motion to strike under the Kansas anti-SLAPP statute, K.S.A. 60-5320, contesting the petition as lacking proof of a *prima facie* case, Plaintiff filed an amended petition that left them off the caption but still sought to adjudicate aspects of their constitutional and statutory rights. As the members of the recall committee whose fundamental constitutional rights Plaintiff seeks to adjudicate, they need to be parties to the case. Plaintiff's removal of her request for an injunction or restraining order directly against the recall committee does not end the recall committee's appropriate role in the case nor fully dispose of their rights under the anti-SLAPP statute.

Plaintiff's Amended Petition continues to seek to adjudicate the question of whether the recall petition committee members have prematurely circulated a recall petition and whether they failed to satisfy the requirement for a valid recall petition.

By statute, the recall committee "shall represent all sponsors and subscribers in matters relating to the recall. Notice on all matters pertaining to the recall may be served on any member of the recall committee . . . ." K.S.A. 25-4322. K.S.A. 60-219 requires joining parties if: "(A) In that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) As a practical matter, impair or impede the person's ability to protect the interest; or (ii)

leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.”

The recall committee members have a due-process and fundamental interest in the constitutional and statutory recall petition process or, at the very least, claim to. As a result, they are persons who claim, “an interest relating to the subject of the action.” If they are not parties to the court challenge to the ripeness and validity of their recall petition they will have no right to notice and no opportunity to be heard, present evidence, or cross-examine witnesses. Thus, as a practical matter, disposing of the matter in their absence would impair or impede their ability to protect the interest.

In addition, if the recall committee members are not parties to this action, the judgment will not be binding on them. Thus, if the court were to enter judgment in Plaintiff’s favor, the recall committee would be free to bring a mandamus action against defendant Crux, subjecting him to inconsistent obligations if they prevail in that mandamus action. Thus, Plaintiff was correct to have originally made the recall committee member parties. Because they are no longer parties, they have the right to intervene under K.S.A. 60-224(a)(2) as a matter of right, unless existing parties adequately represent their interests.

The existing defendant, County Attorney James Crux, is not a representative of the recall committee or its rights. His role is entirely independent. Nor does he, in his capacity as county attorney, have the constitutional and statutory rights to the recall of local elected officials that the members of the recall committee have. While his interest

might end up having some level of alignment with the interest of the recall committee, their interests are presented unrepresented.

Therefore, in the event recall committee members Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby are not otherwise parties, they should be allowed to intervene and file the motion to strike the amended petition, attached hereto as Exhibit A pursuant to K.S.A. 60-224(c).

Respectfully submitted,

ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes  
Patrick B. Hughes, #16648  
*Attorney for Kyle R. Parks  
Kevin Wagner, and Lyle K. Owenby*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of June, 2026, the above and foregoing was filed via the Kansas Courts e-filing system, which will send notice of electronic filing to counsel of record.

/s/ Patrick B. Hughes

Patrick B. Hughes, #16648  
ADAMS JONES LAW FIRM, P.A.  
1635 N. Waterfront Parkway, Suite 200  
Wichita, KS 67206-6623  
Phone: (316) 265-8591 / Fax: (316) 265-9719  
Email: [phughes@adamsjones.com](mailto:phughes@adamsjones.com)

IN THE SIXTH JUDICIAL DISTRICT  
DISTRICT COURT, BOURBON COUNTY, KANSAS  
CIVIL DEPARTMENT

SUSAN E. WALKER	)	
Bourbon County Clerk,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. BB-2026-CV-000048
	)	
JAMES CRUX	)	
Bourbon County Attorney,	)	
	)	
Defendant, and	)	
	)	
KYLE R. PARKS,	)	
KEVIN WAGNER, &	)	
LYLE K. OWENBY	)	
Recall Committee	)	
	)	
Intervenors.	)	
	)	

---

**KYLE R. PARKS, KEVIN WAGNER, AND LYLE K. OWENBY’S MOTION TO STRIKE  
PLAINTIFF’S VERIFIED AMENDED PETITION UNDER K.S.A. 60-5320**

Defendant Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby move to strike Plaintiff Susan E. Walker’s Verified Amended under K.S.A. 60-5320, the Kansas Public Speech Protection Act.

This motion is filed because Plaintiff’s claims are based on, relate to, and are in response to Defendants’ exercise of the right of petition, the right of free speech, and/or

the right of association in connection with a recall petition concerning a public official and a matter of local government. See K.S.A. 60-5320(d). The fact the amended petition no longer seeks injunctive relief directly against these parties does not change the conclusion that the Plaintiff has triggered K.S.A. 60-5320 in her amended pleading.

### **I. Nature of the case**

Plaintiff is the Bourbon County Clerk and County Election Officer. Plaintiff filed this action seeking declaratory and injunctive relief with respect to a recall petition as to which Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby are the recall committee.

Plaintiff alleges that the Recall Committee submitted proposed recall petitions concerning Plaintiff's public office (Am. Petition para. 21), that a recall petition is being circulated (*id.* para. 27), and that the recall petition should be declared invalid and any eventual certification or election should be enjoined.

### **II. K.S.A. 60-5320 is triggered by Plaintiff's claims**

K.S.A. 60-5320(d) provides: "A party may bring a motion to strike the claim if a claim is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association." The statute does not require that the remedy sought by the claim be sought directly against the party bringing the motion to strike. It merely requires a connection between the claim sought to be struck and the exercise of a party's protected rights.

The statute defines "claim" broadly to include any "lawsuit, cause of action, claim, crossclaim, counterclaim or other judicial pleading or filing requesting relief." K.S.A. 60-

5320(c)(1). Plaintiff's *Amended Verified Petition* is a "claim" because it is a lawsuit and judicial pleading requesting declaratory and injunctive relief.

The statute defines "exercise of the right of association" as "a communication between individuals who join together to collectively express, promote, pursue or defend common interests," K.S.A. 60-5320(c)(3); "exercise of the right of free speech" as "a communication made in connection with a public issue or issue of public interest," K.S.A. 60-5320(c)(4); and "exercise of the right to petition" to include "a communication in or pertaining to . . . an official proceeding, other than a judicial proceeding, to administer the law; . . . a communication in connection with an issue under consideration or review by a legislative, executive, judicial or other governmental or official proceeding; . . . and any other communication or conduct that falls within the protection of the right to petition the government under the constitution of the United States or the constitution of the state of Kansas." K.S.A. 60-5320(c)(5).

A "governmental proceeding" includes "a proceeding . . . by an officer, official or body or political subdivision of this state." K.S.A. 60-5320(c)(6). An "official proceeding" includes "any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant." K.S.A. 60-5320(c)(9). "Public servant" includes the county attorney. K.S.A. 60-5320(c)(10)(D).

The Amended Petition is based on, relates to, or responds to the recall committee members' protected exercise of the right of association because the claims arise from, are related to, and respond to their joining together in communication in the form of a recall petition to collectively express, promote, or pursue a common interest in

the recall of Plaintiff. The Amended Petition itself alleges that the Recall Committee formed collectively to submit a recall petition. (See Amended Petition Para. 21). Plaintiff has therefore pleaded the associational nature of the challenged conduct.

The Amended Petition is also based on, related to, or responding to the recall committee members' protected exercise of the right of free speech because the claims relate to communication made in connection with a public issue or issue of public interest. The recall petition concerns a "public issue or issue of public interest" because it relates to "the government" and to "a public official." K.S.A. 60-5320(c)(7)(C)–(D). Plaintiff is the Bourbon County Clerk and County Election Officer. The recall petition concerns her performance in public office. The public issue element is therefore satisfied on the face of Plaintiff's own pleading.

The Amended Petition is further based on, related to, or responding to the recall committee members' protected exercise of the right to petition. This matter involves a governmental and/or official proceeding in which the county attorney has statutory duties. (See Petition Para. 22-26). It also involves rights that fall within the constitutionally protected petition right.

The recall committee members have therefore met their initial burden to make a *prima facie* showing that Plaintiff's claim concerns their exercise of the right of free speech, right to petition, and/or right of association. K.S.A. 60-5320(d).

### **III. The Court must apply the statutory burden-shifting procedure**

K.S.A. 60-5320(d) establishes the procedure for deciding this motion.

First, the recall committee members must make a *prima facie* case showing that the claim concerns the exercise of the right of free speech, right to petition, or right of association. For the reasons stated above, that burden is satisfied by Plaintiff's own allegations, filings, and requested relief.

Second, the burden shifts to Plaintiff to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a *prima facie* case. The statute provides: "If the moving party meets the burden, the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case." K.S.A. 60-5320(d).

The Court must consider the pleadings and supporting and opposing affidavits stating the facts on which liability or defense is based. K.S.A. 60-5320(d).

**A. No statutory exception removes this action from K.S.A. 60-5320**

K.S.A. 60-5320(h) identifies exceptions to the statute. This action is not an enforcement action brought in the name of the State of Kansas or a political subdivision by the Attorney General or a district or county attorney. K.S.A. 60-5320(h)(1).

Plaintiff is the elected official whose recall is at issue. The Bourbon County Attorney is a defendant, not the plaintiff.

This action is not a commercial claim against a person primarily engaged in selling or leasing goods or services. K.S.A. 60-5320(h)(2).

This action is not a claim brought under the Kansas Insurance Code or arising out of an insurance contract. K.S.A. 60-5320(h)(3).

**B. K.S.A. 25-4322(d) does not displace K.S.A. 60-5320**

Plaintiff invokes K.S.A. 25-4322(d), which provides that injunction proceedings to restrain a recall election must be commenced within 30 days after the county or district attorney's decision. The recall committee members do not contend that K.S.A. 25-4322(d) can never authorize an injunction proceeding concerning a recall election. The point is procedural and statutory: when such an injunction proceeding is based on, relates to, or responds to protected petitioning, speech, or association, K.S.A. 60-5320 also applies.

K.S.A. 25-4322(d) is a timing statute for commencing recall-related proceedings. K.S.A. 60-5320 is a later-enacted procedural statute governing claims directed at protected public participation. The two statutes are readily harmonized. Plaintiff may commence a timely recall-related injunction action, but once a party makes a *prima facie* showing under K.S.A. 60-5320(d), Plaintiff must satisfy K.S.A. 60-5320's burden-shifting standard before the litigation may proceed.

The truth of the allegations in a recall petition is determined, under the statutory recall procedure, by the voters, not by the official sought to be recalled, the county attorney, or the court. *Unger v. Horn*, 240 Kan. 740, 742 (1987); *Cline v. Tittel*, 20 Kan.App.2d 695, 703 (1995) ("the truth or falsity of the allegations asserted in a recall petition is a matter properly left to the determination of the electorate"). The question the county attorney was faced with was whether the allegations of the recall petition were technically sufficient, not whether they were true. Similarly, the question this court has jurisdiction over is limited to whether the petition meets statutory requirements, such as

sufficient particularity in stating grounds, proper signatures, and compliance with procedural rules. See *Baker v. Gibson*, 22 Kan.App.2d 36 (1995), *Reynolds v. Figge*, 28 Kan.App.2d 635 (2001). Courts review whether the grounds stated are legally sufficient as a matter of law, not whether they are factually accurate. See *Baker*, 22 Kan.App.2d at 45.

**IV. Plaintiff can make no *prima facie* showing as to Count I because the materials before the Court already show the county attorney's review was sufficient.**

As Count I, Plaintiff alleges that the county attorney did not review the final draft of the recall petition, did not make a determination that the grounds were sufficient, and did not notify Plaintiff of his determination.

However, Plaintiff's sworn pleadings and exhibits verify that Crux reviewed the first draft of the recall petition and determined that it was "in proper order and contains all statutory required elements." (See Plaintiff's Exhibit 3). He expressly found that "the stated basis of Failure to Perform Required Duties has been alleged with sufficient particularity and contains a nexus to the duties of Election Officer and County Clerk." *Id.* Nevertheless, he also noted that the recall petition draft alleged the additional grounds of misconduct in office, but that the factual allegations did not support that claim and that only sufficient grounds for recall should be contained in the recall petition.

Nothing in the county attorney's determination letter states that it was a rejection of the recall petition under K.S.A. 25-4322 as having insufficient grounds, as opposed to a finding of sufficient grounds, subject to the removal of the conclusory allegation of misconduct in office. The revised draft recall petition removed the part that the county

attorney had determined needed to be removed—the conclusory claim of misconduct for which no facts were alleged. (See Plaintiff’s Exhibit 2; Amended Petition Para. 57 and 58).

It appears the County Attorney did what was required of him under the statute. But at the very least, the plaintiff’s materials show substantial compliance from the County Attorney. The substantial compliance doctrine in Kansas allows compliance with the spirit and intent of a statute even without following its absolute letter. Kansas courts define substantial compliance as "compliance in respect to the essential matters necessary to assure every reasonable objective of the statute." *City of Lenexa v. City of Olathe*, 233 Kan. 159, 164 (1983). This practical approach focuses on whether the challenged act or omission impedes the rights or purposes the statute was designed to protect. See *State v. Martinez*, 290 Kan. 992. 1000 (2010). We know that the Legislature did not mean to require strict compliance: it said in K.S.A. 25-4302 that no recall submitted to voters "shall be held void because of the insufficiency of the grounds, application, or petition." The allegations that were in the final draft of the recall petition had been reviewed by the county attorney and determined to be sufficient. Plaintiff was informed of this. There was, at least, substantial compliance.

**A. Plaintiff can make no *prima facie* showing as to Count II because the grounds stated in the recall petition are legally sufficient.**

As to Count II, Plaintiff alleges that the grounds alleged in the recall petition are legally insufficient.

- 1. Plaintiff fails to show a *prima facie* case that the recall petition is invalid as improperly relying on misconduct in office because her argument is entirely based on the erroneous premise that the**

**recall petition is grounded in an allegation of misconduct which impacts the officer's ability to perform the duties of office. It is not.**

As Plaintiff has recognized, "failure to perform duties prescribed by law" is a statutory ground for recall, K.S.A. 25-4302, and the ground on which the recall petition expressly relies. Nevertheless, Plaintiff alleges that the final draft recall petition is implicitly alleging misconduct which impacts the officer's ability to perform the duties of office. Based on that premise, she then argues that the recall petition should be reviewed on misconduct-in-office grounds and found wanting. (See Petition Para. 60, 61, and 62). As to each allegation of the recall petition, Plaintiff makes the same argument, that it is not "misconduct." (See Amended Petition Para. 72-76).

Plaintiff's position is internally inconsistent. On one hand, she argues that from the factual allegations one should infer that the grounds for recall are misconduct in office, although that is unexpressed. On the other hand, she argues that the factual allegations do show misconduct in office. She does not explain why one would infer that the recall petition intends to rely on grounds that it both (a) does not allege and (b) fails to allege facts to show. She asks the Court to infer a ground for recall from the absence of any support for that ground.

- 2. The recall petition does not seek Plaintiff's recall on the basis of her disenfranchising voters in violation of the United States Constitution and Voting Rights Act, and so a lack of particularity in alleging such violations is not a defect in the recall petition.**

Plaintiff also alleges in Count II that the allegations of the recall petition include "disenfranchising voters, a violation of law under the United States Constitution and the federal Voting Rights Act, codified under 52 USC § 101 *et. seq.*" but that it lacks

required specificity about that allegation. Amended Petition 65 and 66; 77. She is factually wrong. All the recall petition alleged about disenfranchisement was that her delay, in violation of Plaintiff's duties of office, "contributed to confusion and potential disenfranchisement of voters" (See Plaintiff's Exhibit 3). The recall petition does not ground the "failure to perform duties" in claims of disenfranchisement. It merely describes potential disenfranchisement as an impact of Plaintiff's alleged failures to correct errors without delay.

**3. A failure to perform duties prescribed by law is sufficiently alleged. Nothing requires a recall petition to provide precise statutory citations.**

The potentially applicable part of Count II is found at paragraphs 84-97 and challenges whether the failure to perform duties prescribed by law is sufficiently alleged in the recall petition. Her complaint is that the recall committee did not use its limited 200 words to provide all the specificity required because, while it described conduct that may have shown a failure to perform prescribed duties, it did not specifically identify each statute she failed to comply with. Such specificity is not required by either the statute or by the Kansas Supreme Court.

Plaintiff claims that she cannot respond without knowing what specific statutes require what conduct. In *Baker v. Gibson*, 22 Kan.App.2d 36 (1995), the court did not require citation to specific statutes; rather, it focused on whether the factual allegations demonstrated a connection to legal duties. Similarly, in *Reynolds v. Figge*, the court examined whether recall petitions stated grounds with sufficient particularity to allow the official to submit a meaningful response statement. 28 Kan.App.2d 635 (2001). The

court's analysis centered on whether the factual allegations were specific enough, not whether particular statutes were cited. The statute itself requires only that the petition state grounds "in not more than two hundred (200) words," K.S.A. 25-4302, with no requirement to cite specific statutory provisions.

A core problem with Plaintiff's argument is that she is presumed to know the law—both by virtue of her oath to uphold it and like every other citizen. See, e.g., *State v. Jones*, 47 Kan.App.2d 512, 521 (2012) ("all persons are presumed to know general public laws of the state where they reside, as well as the legal effects of their acts"). The factual allegations supply all she needs to be informed of to respond. If the alleged facts don't show a failure to perform a legal duty, her response can be simple and complete: "There is no statute that required me to do something different than I did."

In addition, the County Attorney pointed out the statutory basis to her as to the allegation that she printed and distributed incorrect ballots, pointing to K.S.A. 25-604. (See Plaintiff's Exhibit 3).

The real question is not whether the recall petition cites to or quotes from statutes but whether, upon analysis, there is a basis to connect the factual allegations to some legal duty. It is a simple matter to compare the allegations of the recall petition to the statutes: K.S.A. 25-604(a) provides "[t]he county election officer shall have charge of the printing of the ballots for all elections, primary, special and general" and subsection (c) further provides "[i]f any mistakes are discovered they shall be corrected without delay" and "[t]he county election officers shall cause to be delivered to the supervising judges, not less than 12 hours before the time fixed by law for the opening of the polls, a

number of properly printed ballots fully sufficient to meet the demands and needs of all the voters.” K.S.A. 25-2014a requires that “Ballots for primary and general school elections shall be prepared in such manner that each voter is instructed to vote for the same number of candidates as the number of positions to be filled for which the voter is qualified to vote.”

Implicit in these requirements is that the ballots be correct. Plaintiff’s pleadings acknowledge Plaintiff printed erroneous ballots. (See Amended Petition Para. 18). Her pleadings acknowledge that USD 235 voters received ballots that did not include all the school-board seats they were qualified to vote for under the applicable voting plan. Petition Para. 18(b), (e). She further verifies that the properly printed ballots were not available until election day morning. (See Amended Petition Para. 18(g)).

The recall petition alleges Plaintiff, as election officer, “caused to be printed and distributed incorrect ballots,” identifies the election they pertained to, identifies that she is alleged to have failed to promptly correct that issue. From her pleadings is it clear that she understands exactly what these allegations pertain to. She has provided a detailed factual response claiming, in essence, that she acted as promptly as she could under the circumstances. Whether that response is persuasive is a question for the voters, not the court.

The motion to strike should be granted as to Plaintiff’s amended petition because Plaintiff has not pleaded and cannot show a *prima facie* case. Attorney fees and sanctions, as requested in the underlying motion, are also appropriate.

Respectfully submitted,  
ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes  
Patrick B. Hughes, #16648  
*Attorney for Kyle R. Parks  
Kevin Wagner, and Lyle K. Owenby*

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2026, the above and foregoing was filed via the Kansas Courts e-filing system, which will send notice of electronic filing to counsel of record.

/s/ Patrick B. Hughes