

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

SUSAN E. WALKER,

Plaintiff,

vs.

Case No. BB-2026-CV000048

JAMES CRUX, KYLE R. PARKS, KEVIN
WAGNER & LYLE K. OWENBY,

Defendants.

**DEFENDANT JAMES CRUX’S MOTION FOR JUDGMENT ON THE PLEADINGS
AND SUGGESTIONS IN SUPPORT THEREOF**

COMES NOW Defendant James Crux (hereinafter “Defendant”), by counsel and for his Motion For Judgment on the Pleadings, states and alleges as follows:

INTRODUCTION

We all have heard the words of Abraham Lincoln, which defined our democracy as “government of the people, by the people, for the people.” Of course, Thomas Jefferson also once stated, “The spirit of resistance to government is so valuable on certain occasions, that I wish it always to be kept alive.” Kansas itself recognized the value of its citizens in 1936 through the Kansas Creed which reads in part:

We believe in the Kansas people, in their sturdy faith, and abounding enthusiasm; in their patriotism and their fidelity to the good things of civilization; in their respect for law and their love of justice; in their courage and zeal.

Kansas further cemented these concepts in establishing recall as a fundamental right of the people through the State constitution, and through the state legislature’s establishment and evolution of Chapter 25, Section 43. From its outset in K.S.A. 25-4301, the state ensured that every elected public official could be subject to recall by the electorate. The state also sought to

ensure the voice of the people could not, and would not, be silenced due to procedural or technical maladies. Specifically, the legislature commanded “[n]o recall submitted by the votes shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.” K.S.A. 25-4302.

Kansas courts, too, have long safeguarded the principles of the nation and the state relative to the power of its electorate. Almost uniformly, courts recognize the electorate – and the electorate alone – should be the arbiters concerning the truth and veracity of the allegations underpinning a recall effort. *Unger v. Horn*, 240 Kan. 740, 742 (1987) (Surveying various state’s recall provisions and concluding, “The trial court may not pass upon the truth or falsity of the grounds stated for removal from office, inasmuch as this is the province of the electors.”) Based on this recognition, Kansas courts recognize “[w]hen the power of recall is a fundamental right, statutes governing the exercise of the power are to be liberally construed in favor of the ability to exercise it, and any limitations on that power must be strictly construed.” *Unger*, 240 Kan. at 741

Despite the historical backdrop, Plaintiff here seeks to silence the electorate through challenge against the County Attorney. After swiftly realizing the folly in attempting to silence the electorate by way of direct challenge to the recall committee, Plaintiff seeks to silence them by identifying alleged procedural deficiencies on the part of the County Attorney in hopes that challenge would deprive the voters of their fundamental right to hear the charges against her and decide the merits for themselves. This Court must reject those efforts and let the people make their own determinations. However, before it does so, it must address Plaintiff’s efforts to silence the recall committee members directly, stay the proceedings at bar here, and make its necessary determinations under K.S.A. 60-5320.

Plaintiff's Amended Petition seeks declaratory judgment principally challenging the sufficiency of the Recall Petition. It expressly asserts two counts, each accompanied by argumentative headings, and it is unclear whether the Amended Petition attempts to assert a third count beginning on page 16. In any event, this Court should deny relief on all counts as to County Attorney James Crux because he complied with the applicable requirements, and there has been substantial compliance sufficient to submit the recall matter to the electorate. Moreover, the Recall Petition is sufficiently stated, and the alleged conduct bears a sufficient nexus to Plaintiff's official duties as County Clerk. Before the Court makes this determination, however, it must address the claims of the recall committee, revive them as parties, and conduct the analysis mandated through K.S.A. 60-5320. Not doing so would continue perpetuation of the notion the voice of the recall committee and the electorate at large can be silenced and should be disregarded despite having a clear impact on the fundamental rights granted through the Kansas Constitution and secured by the legislature through Chapter 25, Section 43.

STANDARD OF REVIEW

Under K.S.A. 60-212(c), a motion for judgment on the pleadings may be filed after the pleadings are closed. *See* K.S.A. 60-212(c). The moving party admits the factual allegations in the opposing party's pleadings and the sole question is whether those admitted facts, along with any reasonable inferences, present a legal theory upon which relief may be granted. *See Tillman v. Goodpasture*, 313 Kan. 278, 281, 485 P.3d 656 (2021); *Matson v. State*, 2021 WL 6068711, at *2 (Kan. Ct. App. Dec. 23, 2021); *Mashaney v. Bd. of Indigents' Def. Servs.*, 302 Kan. 625, 638-639, 355 P.3d 667 (2015). Judgment on the pleadings is proper only where the pleadings

themselves frame the issues such that “the disposition of the case is a matter of law ... leaving no real issue to be tried.” *Tillman*, 313 Kan. at 281.

The standards governing a motion for judgment on the pleadings under K.S.A. 60-212(c) are the same as those applied to a motion to dismiss under K.S.A. 60-212(b). *Nelson Energy Programs, Inc. v. Oil & Gas Technology Fund, Inc.*, 36 Kan. App. 2d 462, 472, 143 P.3d 50 (2006). This requires the Court to accept as true the factual allegations made in the Petition, then decide whether Plaintiffs have stated a potentially valid claim based on those facts. *Purvis v. Williams*, 276 Kan. 182, 186-187, 73 P.3d 740 (2003). It does not, however, require the court to accept legal conclusions about the events as described by Plaintiffs in the Petition. *Ripley v. Tolbert*, 260 Kan. 491, 493, 921 P.2d 1210 (1996).

ARGUMENTS AND AUTHORITIES

I. Plaintiff cannot establish her claims under Count I because the materials before the Court already show the County Attorney’s review was sufficient.

Under Count I, Plaintiff alleges Defendant James Crux did not review the final version of the Recall Petition, did not determine whether the grounds were sufficient, and did not notify Plaintiff of his determination.

Nevertheless, Plaintiff’s verified pleadings and exhibits verify Defendant Crux reviewed the Recall Petition presented as Exhibit 2 and determined that it was “in proper order and contains all statutory required elements.” (See Plaintiff’s Exhibit 2 & 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.” (Plaintiff’s Exhibit 3). 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. This comports with the state of Kansas law. *See, e.g., Reynolds v. Figge*, 28 Kan. App. 2d 635, 648 (2001).

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 second version of the Recall Petition removed the part that the county attorney had determined needed to be removed—the conclusory two word statement claiming misconduct for which no facts were alleged. (See Plaintiff's Exhibit 2 & 4; Amended Petition Para. 57 and 58).

Simply, Defendant Crux complied with the requirements of the statute. But, at the very least, the Plaintiff's pleadings show substantial compliance from the County Attorney under a statute that is to be liberally construed. 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" and because the Kansas Supreme court told us so in *Unger* with its declaration that the power of recall be liberally construed. The allegations that were in

Exhibit 2 were reviewed by the county attorney and determined to be sufficient. Plaintiff was informed of this.

Accordingly, this Court should determine Defendant Crux's review sufficient and order dismissal of Count I in favor of Defendant Crux.

II. Plaintiff cannot establish her claims under Count II because the grounds stated in the Recall Petition are legally sufficient.

In a myriad of ways, Plaintiff alleges that the grounds alleged in the Recall Petition are legally insufficient. She is incorrect in all respects.

A. Plaintiff cannot establish 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.

As Plaintiff recognized, "failure to perform duties prescribed by law" is a statutory ground for recall, K.S.A. 25-4302, and it is indeed the ground on which the Recall Petition expressly relies. Despite this reality, Plaintiff alleges the Recall Petition is, at a minimum, 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. (Amended Petition Para. 60, 61, & 62). As to each allegation of the Recall Petition, Plaintiff makes the same argument, that it is not "misconduct." (Amended Petition Para. 72-76).

Plaintiff's position is inconsistent. As the proposed intervenors argue, which is incorporated here, 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. Essentially, she asks the Court to contort itself illogically to identify some potential ground to hold the Recall Petition insufficient, and such an endeavor is contrary to the statutory scheme presented by the legislature concerning recall by the electorate.

B. 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.

In Count II, Plaintiff further alleged the stated basis 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. This is simply incorrect.

The only allegation concerning disenfranchisement is 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. The Court should disregard Plaintiff's arguments on this point.

C. A failure to perform duties prescribed by law is sufficiently alleged and there is no requirement 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 protest is the recall committee did not use its limited 200 words to provide all the specificity

required. Relatedly, she alleges that 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 legislature or by the Kansas Supreme Court.

Plaintiff avers she cannot respond without knowing what specific statutes require what conduct. This argument is again misplaced. 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 or use all 200 words.

Of course, the glaring trouble 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 fail to 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." The Recall Petition does not need to be declared invalid for her to do so. Of additional note, Defendant Crux identified 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).

Accordingly, 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. (Amended Petition Para. 18(b), (e)). She further verified that the properly printed ballots were not available until election day morning. (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 and that they bear sufficient nexus to her official duties. 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.

III. What should the Court ultimately do? The Court should declare the Recall Petition is valid, even with legally insufficient grounds, but only the sufficient grounds should be posted at polling places.

The Recall Petition attached as Plaintiff's Exhibit 2 would be sufficient to submit to the Bourbon County electorate if the Amended Petition is insufficient or otherwise a nullity. Our Court of Appeals addressed the question of whether a Recall Petition is invalid if some of the reasons in the Petition are legally insufficient. *Reynolds v. Figge*. There, the Court recognized that if a potential signer disagreed with one or more of the grounds of the Recall Petition, then he or she would not have signed the petition. *Reynolds*, 28 Kan. App. 2d at 647. Based on this reasoning, the Court of Appeals refused to declare the Recall Petitions void in their entirety. *Id.*

However, the Court also noted that the legislature intended local officials to be subject to recall based only upon legally sufficient grounds. *Id.* at 647-648. Based on recognition, the Court of Appeals effectively split the baby – it determined the Recall Petitions were not invalid by virtue of inclusion of legally insufficient grounds, but it ordered that “the statements for recall posted at the polling places must contain only the legally sufficient grounds for recall.” *Id.* at 648. Thus, the Court of Appeals provided direct guidance as to how situations such as the one at bar should be handled and provided a map for how this Court should address the Petition(s) at issue here. Plainly, this Court should agree with the County Attorney and the Proposed Intervenors that the Recall Petitions are legally sufficient, and direct that, if the requisite number of signatures are

obtained, only the legally sufficient grounds should be posted at polling places and the general “misconduct” allegation omitted. From that point on, the Bourbon County Electorate can do what none of the people involved here, including the Court, can do – determine the truth and veracity of the allegations.

Accordingly, the Court of Appeals dictates the proper outcome in this matter. All the Court has to do is follow the opinion. This Court must declare the Recall Petition valid and allow it to proceed. It could, if inclined, mandate that only the grounds stated in Plaintiff’s Exhibit 4 be submitted to the electorate at polling places.

CONCLUSION

The Recall Petition is sufficiently stated and was properly certified by the County Attorney. This Court should deny relief on all counts as to County Attorney James Crux because he complied with the applicable requirements, and there has been substantial compliance sufficient to submit the recall matter to the electorate. Moreover, the Recall Petition is sufficiently stated, and the alleged conduct bears a sufficient nexus to Plaintiff’s official duties as County Clerk. Before the Court makes this determination, however, it must address the claims of the recall committee, revive them as parties, and conduct the analysis mandated through K.S.A. 60-5320. Not doing so would continue perpetuation of the notion the voice of the recall committee and the electorate at large can be silenced and should be disregarded despite having a clear impact on the fundamental rights granted through the Kansas Constitution and secured by the legislature through Chapter 25, Section 43. Based on the foregoing, Plaintiff’s Amended Petition should be dismissed in its entirety, the Court should declare the Recall Petition valid and allow it to proceed with the only valid basis for recall posted at polling places.

WHEREFORE Defendant James Crux moves this Court for an Order dismissing the Amended Petition in its entirety, declare the Recall Petition valid and allow it to proceed with the only valid basis for recall posted at polling places, and for any further such relief as the Court deems just, fair, and equitable.

Respectfully submitted,

**FISHER, PATTERSON, SAYLER &
SMITH, LLP**

/s/ Jacob D. Bielenberg

Jacob D. Bielenberg KBN 27601
9393 W. 110th, Suite 300
Corporate Woods, Bldg. 51
Overland Park, KS 66210
Telephone: (913) 339-6757
Facsimile: (913) 660-7919
jbielenberg@fpsslaw.com
ATTORNEY FOR DEFENDANT JAMES
CRUX

CERTIFICATE OF SERVICE

I hereby certify the above and foregoing was filed with the Court through its electronic filing system on June 23, 2026, with a copy sent via electronic mail to:

Jonathan L. Ehrlich #28085
Joshua A. Ney #24077
Wyatt Hoaglane #30162
KN LAW GROUP
1050 W. 138th St., Unit 4493
Olathe, KS 66061
Telephone: (913) 303-0639
jonathan@knlawgroup.com
Attorneys for Plaintiff

Patrick B. Hughes #16648
ADAMS JONES LAW FIRM PA
1635 N. Waterfront Parkway, Suite 200
Wichita, KS 67206-6623
Telephone: (316) 265-8591
Facsimile: (316) 265-9719
phughes@adamsjones.com
Attorneys for Defendant Kevin Wagner, Kyle
R. Parks, and Lyle K. Owenby

/s/ Jacob D. Bielenberg
Attorneys for Defendant James Crux