

**IN THE CIRCUIT COURT OF THE
FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA**

CASE NO.: 24-79-CA

**MAYOR MICHELE MILLER,
City of Mexico Beach, Florida,**

Plaintiff,

v.

**DONALD T. WALKER, as
CHAIR OF THE COMMITTEE
TO RECALL MEXICO BEACH
MAYOR MICHELE MILLER,
and MARK ANDERSEN, in his Official Capacity as
BAY COUNTY, SUPERVISOR OF ELECTIONS,**

Defendants.

**ORDER DENYING PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY,
INJUNCTIVE RELIEF AND DAMAGES**

THIS MATTER is before the Court on Plaintiff's Amended Complaint for Declaratory, Injunctive Relief and Damages, filed on March 21, 2024. Having considered the pleadings in this case, court file and records, arguments of counsel and the applicable law, and being otherwise fully advised, this Court finds as follows:

CASE POSTURE

1. This case was initiated on January 30, 2024, when Plaintiff, the elected Mayor of the City of Mexico Beach,¹ filed her initial Complaint for Declaratory, Injunctive Relief and Damages, which was subsequently amended on March 21, 2024. In her operative pleading, Plaintiff asserts that she was the subject of a Petition to Recall filed pursuant to section 100.361, Florida Statutes (the "Petition"). The alleged grounds in said Petition, which was attached to the Complaint, are as follows:

¹ Miller was elected in April of 2023, and her term is scheduled to end in May 2025.

- A. Mayor Michele Miller should be recalled for malfeasance because, on April 30, 2023, she violated the Sunshine Law when she exchanged private electronic communications concerning Springbrook Software with members of the city council to discuss matters which would foreseeably come before the board for action.
- B. Mayor Michele Miller should be recalled for misfeasance because contrary to City of Mexico Beach Ordinance 644, on July 27, 2023, she unilaterally directed a City of Mexico Beach employee to end services with one contractor and to authorize another contractor to access city accounting systems (an official act) and without city council approval, exceeding her authority as Mayor.

2. In the Amended Complaint, Plaintiff claimed that the allegations in the Petition were insufficient as a matter of law for recall under the applicable statute; the purported malfeasance failed to include the necessary facts to demonstrate a violation of the Sunshine Law; the misfeasance allegation was void for failure to specifically identify the alleged misfeasance and even if it was not void, there was no evidence that Plaintiff committed such misfeasance. Finally, Plaintiff took issue that the dates of the alleged incidents, April 30, 2023, and July 30, 2023, predated the first 25% of her term as a mayor and, therefore, she argued that the Petition was procedurally barred under section 100.361(8), Florida Statutes. Accordingly, Plaintiff sought a declaration under section 86.11, Florida Statutes, that the Petition and the process utilized by Defendant Walker and the Recall Committee violated the requirements of section 100.361, Florida Statutes, and asked the Court to enjoin Defendant from proceeding with the recall and to award her compensation for her alleged damages.²

3. Defendant Donald T. Walker, the Chair of the Committee to Recall Mexico Beach Mayor Michele Miller, was served with the initial Complaint on February 13, 2024.

4. On March 4, 2024, Defendant Walker filed his Motion to Dismiss the Complaint. As a basis for his Motion, Defendant alleged that the Petition was legally sufficient and timely filed.

5. On March 7, 2024, Plaintiff filed her Motion for Expedited Hearing on Complaint for Declaratory and Injunctive Relief, asserting that discovery was not appropriate in this case because the issues before the Court were limited to the determination of whether the Petition complied with the applicable statute and whether a vote on the recall election should be held.

² Of note, the record reflects that on December 21, 2023, Plaintiff signed a document confirming that she had received a certified copy of the recall petition on December 22, 2023. See Pl.'s Ex. A, attached to the Complaint.

Plaintiff further alleged that the matters were urgent because the recall election was set for April 16, 2024, approximately a month after the filing of said Motion.

6. Upon both counsel's first request for hearing dates,³ the judicial assistant of the undersigned promptly provided several available dates and scheduled a hearing for the date approved by both parties' counsel. The hearing on Defendant's Motion to Dismiss and Plaintiff's Motion for Expedited Hearing on Complaint for Declaratory and Injunctive Relief was thus set for March 21, 2024. Subsequently, upon review of this matter, this Court, *sua sponte*, scheduled a Case Management Conference (the "CMC") to occur on an expedited basis and in conjunction with the March 21 hearing. See Order Setting Case Management Conference, filed March 15, 2024.

7. On March 20, 2024, the day prior to the scheduled hearing and the CMC, Plaintiff filed her Opposition to Defendant's Motion to Dismiss.

8. On March 21, 2024, the date of the initial hearing and the CMC, Plaintiff filed her Amended Complaint and named Mark Anderson, Supervisor of Election, as a Co-Defendant in this action. On the same date, the Clerk of Court issued the appropriate Summons, and Anderson was subsequently served. He filed his Answer to the Amended Complaint on March 25, 2024.

9. At the outset of the March 21 hearing, the Court set an evidentiary hearing for April 8, 2024, as a matter of precaution and based on the limited amount of time that the Court would have to conduct such hearing, if necessary, considering the unique nature of the proceeding and the upcoming election on April 16, 2024. At no point in the hearing did any party indicate that such date would be subsequent to the ballots being received by the Supervisor of Elections.

10. On March 24, 2024, Defendant Walker filed his Request for Judicial Notice of Ordinances 644 & 798.

11. On April 1, 2024, Plaintiff filed her Motion for One Day Extension of Time to File Exhibits and Witness List for the upcoming hearing. The next day, Plaintiff resubmitted her Opposition to Defendant's Motion to Dismiss and filed a Witness and Exhibit List.

12. On April 3, 2024, the Court entered its Order Amending Notice of Hearing Set for April 8, 2024, and Converting the Previously Scheduled In-Person Hearing from Evidentiary to Non-

³ The Court will not entirely re-hash its frustration as it relates to the parties' delay between the filing of the lawsuit and the time the Court received any requests for hearing dates or to schedule a case management conference to discuss the unique procedural nature of the matter.

Evidentiary. The Court also denied Defendant's Motion to Dismiss and instructed him to file an Answer to the Amended Complaint within two (2) days due to the urgent nature of the case.

13. Defendant Walker filed his Answer on April 4, 2024.

14. On April 8, 2024, the parties appeared for the hearing represented by their respective counsel. At said hearing, all parties were allowed ample time to present argument regarding their respective positions in the matter. Of note, at the hearing the Court was first alerted that ballots pertaining to the issue at hand had begun to be received by the Supervisor of Elections. Further, the Court was told that there were several other matters on the ballot other than the recall pending before the Court. Based on such factors, and fearing that the Court's issuance of a ruling prior to 7 PM (CST) on April 16, 2024, would potentially impact voter participation in other matters on the ballot, the Supervisor of Elections argued that the Court should wait to issue its ultimate ruling until *after* April 16, 2024. Ultimately, counsel for the Plaintiff agreed with the Supervisor of Elections that public interest would be best served if the Court waited until *after* April 16, 2024, to issue its final determination. While counsel for Defendant acknowledged that the Court's ruling could indeed impact the various other matters on the ballot, he argued that it would be prudent for the Court to issue its ruling prior to April 16, 2024.

THE LAW

15. Florida's Legislature has provided the polestar regarding the process to recall a municipal elected official. Specifically, section 100.361(1), Florida Statutes, provides that "[a]ny member of the governing body of a municipality . . . may be removed from office by the electors of the municipality." This method of recall mandates the creation of a recall petition, which "shall contain the name of the person sought to be recalled and a statement of grounds for recall." See §100.361(2)(a), Fla. Stat. Importantly, the law does not allow for a recall petition to be based upon an infinite number of grievances. Instead, elected municipal officials can only be removed based upon one of the following grounds: (1) Malfeasance; (2) Misfeasance; (3) Neglect of duty; (4) Drunkenness; (5) Incompetence; (6) Permanent inability to perform official duties; and (7) Conviction of a felony involving moral turpitude. §100.361(2)(d)(1)-(7), Fla. Stat.⁴ Further, the law requires that any alleged misdeed set forth in the recall petition must "have

⁴ Neither party argued at the Hearing that the statutory recall procedures were not followed. Thus, the Court will not overly indulge in discussing the process of getting the petition on the ballot for the voters' consideration. Further, any prior argument of Plaintiff that the allegations in the Petition are insufficient because they occurred in her first six months in office is rejected. While the statute does not allow for a recall petition during the first six months the

some relationship to the duties of [the official’s] office.” *Moultrie v. Davis*, 498 So. 2d 993, 995 (Fla. 4th DCA 1986). The Legislature has restricted the slate upon which recall allegations can be presented, limiting the allegations in the petition to 200 words.

16. From a macro-perspective, it is important to recognize that the recall of an elected official is an “extraordinary proceeding.” *Garvin v. Jerome*, 767 So. 2d 1190, 1193 (Fla. 2000). Thus, the burden of establishing the propriety of the recall is “on those seeking to overturn the regular elective process to base the petition on lawful grounds or face the invalidation of the proceedings.” *Id.* In accord with our system of due process, “an elected official has the right to challenge the legal sufficiency of a recall petition which has been filed against him.” *Thompson v. Napotnik*, 923 So. 2d 537, 539 (Fla. 5th DCA 2006).

17. A trial court’s role in a recall dispute is somewhat unique. More specifically, while a trial court is generally tasked with reviewing the truth of the allegations asserted in a lawsuit — or assigning such fact-finding role to a jury — trial courts in recall lawsuits are prohibited from “rul[ing] on the truth or falsity of the charges against the official.” *Moultrie v. Davis*, 498 So. 2d at 996; *see also*, *Tolar v. Johns*, 147 So. 2d 196, 198 (Fla. 2d DCA 1962) (“The reasons for recall whether true or false do not affect the proceeding. Their truth or sufficiency is for determination by the **electors alone.**”) (emphasis added); *Bent v. Ballantyne*, 368 So. 2d 351, 352 (Fla. 1979) (“The truth or falsity of a charge is ultimately for the electorate to decide and is not subject to judicial inquiry...”). *State v. Tedder*, 106 Fla. 140, 146 (1932) (“[t]he sufficiency of the charges for the recall of a public officer to cause the voters to require his removal is a political question to be determined by the people.”).

18. Ultimately, any argument by a party pertaining to the truthfulness of the allegations contained in a recall petition is *not* for a trial court to consider. Instead, a trial court’s “sole function in the case . . . is to review the petition to determine whether the facts alleged in the recall petition are sufficient to establish any grounds for recall pursuant to §100.361(1)(b).” *Moultrie*, 498 So. 2d at 996; *see also*, *State v. Tedder*, 106 Fla. at 146 (setting forth that a trial court’s responsibility is limited to ensuring that the proceedings “do not substantially depart from the statutory mode prescribed”). Thus, a trial court is “bound by what is contained within the four corners of the petition” in determining whether it fulfills the statutory threshold. *Moultrie*, 498 So. 2d at 997.

mayor was in office, such restriction does not apply to the time that the alleged prohibited conduct occurred. *Taylor v. Thornber*, 418 So. 2d 1155 (Fla. 1st DCA 1982).

19. “[T]he present legislative scheme protects public officials from being ousted when illegal grounds provide the basis for recall.” *Garvin*, 767 So. 2d at 1193. When a recall petition contains numerous allegations, each separate allegation must satisfy the statutory requirements. Otherwise, “it would be impossible to prove or determine after the fact, in accordance with any legally acceptable standard, how electors would have responded, had a substantial or significant part of a multifaceted petition been eliminated before the qualifying signatures had been obtained.” *Garvin*, 767 So. 2d at 1193. Thus, if any of the allegations for recall in the petition are statutorily insufficient, the entire petition fails.

20. Misfeasance, for purposes of the recall statute, has been defined as “the performance, in an official capacity, of a legal act in an improper or illegal manner.” *Moultrie*, 498 So. 2d at 995-96. Conversely, malfeasance has been interpreted as the “performance of a completely illegal or wrongful act.” *Id.* at 995; *Thompson*, 923 So. 2d at 540 (defining malfeasance, in the context of recall petitions, as “the commission of some act that is unlawful and is related to the elected official’s performance of his duties in office.”); *Bent*, 368 So. 2d at 353 (“Malfeasance is defined as the commission of some act which is positively unlawful.”). Importantly, “[n]o requirement is set forth in Florida’s recall statute mandating that the recall petition allege a claim of malfeasance based on some alleged criminal conduct.” *Thompson*, 923 So. 2d at 540.

ANALYSIS

21. While democracy is the most deeply honorable form of government, it is not always without controversy. Since America’s infancy, the political foundation upon which our democracy is grounded has included dissatisfied electors looking to seek recourse with elected officials.

22. “Electors who become disillusioned with a government official have options: they can speak out and lobby against the official’s actions; they can cajole or pressure the official to resign; they can try to elect someone else next time. They can also seek the removal of the official via a recall election.” *Gibson v. Kesterson*, 188 So. 3d 125, 127 (Fla. 1st DCA 2016) (Makar, J., concurring). Currently, numerous citizens of Mexico Beach, Florida, attempt to recall Plaintiff through Florida’s legislatively created recall process.

Ground One

23. In ground one of the Petition, Defendant alleged that Plaintiff committed malfeasance by “exchanging private electronic communications” with “members of the city council.”

24. Under the Sunshine Law, any two or more public officials who meet in secret to transact public business violate the law, section 286.011(1), Florida Statutes, and an exchange of emails as alleged in ground one is the functional equivalent of a meeting of two or public officials.

25. Plaintiff argues that there was no exchange of emails, and no Sunshine Law violation, because “none of the elected officials responded to [her] email.” In support of her position, she cites to an Attorney General Opinion stating that a one-way email communication does not violate the Sunshine Law. *See Op. Att’y Gen. Fla. 01-20 (2001)* (“[S]uch communication of information, when it does not result in the exchange of council members’ comments or responses on subjects requiring council action, does not constitute a meeting subject to the Government in the Sunshine Law.”).

26. However, under Florida law, the Court may only pass upon the legal sufficiency of the grounds alleged in a recall petition. *Moultrie*, 498 So. 2d at 996. *See also Bent*, 368 So. 2d at 353. The Court is not permitted to “rule on the truth or falsity of the charges against the official,” and is “bound by what is contained within the four corners of the petition.” *Moultrie*, 498 So. 2d at 996-97. As explained in *Bent*, “[t]he truth or falsity of a charge is ultimately for the electorate to decide and is not subject to judicial inquiry.” 368 So. 2d at 353.

27. Here, the Petition alleges that Plaintiff violated Florida’s Sunshine Law, by engaging in an unauthorized “exchange” of communication with members of the city council to discuss matters which would foreseeably come before the board for action. Because the Court is bound by the four corners of the recall petition, it may not rule on the falsity of the charges or whether the “exchange” included responsive e-mails.

28. Therefore, the Court concludes that ground one of the Petition is legally sufficient. *See, Thompson*, 923 So. 2d at 540.

Ground Two

29. In ground two of the Recall Petition, Defendant accused Plaintiff of misfeasance. According to the alleged facts, Plaintiff exceeded her authority as mayor when she “unilaterally directed a City of Mexico Beach employee to end services with one contractor and to authorize

another contractor.” Defendant asserted that the alleged conduct violated the City of Mexico Beach Ordinance 644.

30. In opposition, Plaintiff argued that the alleged conduct did not constitute misfeasance and did not violate Ordinance 644. Plaintiff also claimed that the allegations in the Petition lacked enough specificity because they failed to identify with particularity the employee and the contractor who were the subject of the alleged misconduct.

31. The Court took judicial notice of Ordinance 644 as amended by Ordinance 798, which establishes the City’s Employee Handbook and Personal Policies.

32. Under the heading “CITY ADMINISTRATOR DUTIES AND RESPONSIBILITIES,” the handbook contains the following language:

The Mayor and City Council members shall conduct the business of the city as set forth in the City Charter and Code, including special and regular meetings. However, no elected official shall instruct or direct any city employee in the performance of their daily job tasks but shall act through the City Administrator. The Mayor and City Council may make inquiry to the City Administrator or the appropriate department head regarding the status of a project or activity but shall not individually direct or instruct any employee to take any action.

33. Relevant in the instant matter is also the definition of misfeasance. Indeed, misfeasance is characterized as “the performance of a legal act in an improper or illegal manner.” *Moultrie v. Davis*, 498 So. 2d 993, 995 (Fla. 4th DCA 1986). In contrast, malfeasance is defined as “the performance of a completely illegal or wrongful act[.]” *Id.* at 995.

34. The Court finds that the allegations in the Petition sufficiently state that Plaintiff committed misfeasance because they describe actions, suggesting that she exceeded the power of her office. *See Bent v. Ballantyne*, 368 So. 2d 351, 352 (Fla. 1979) (petition alleging that Commissioner Bent “[i]nterfered with the proper discharge of the duties of the City Manager, exercised powers individually which powers are vested only in the City Commission and acted unilaterally without the consent or action of the City Commission by giving orders to and making requests of city employees, some of whom were subordinates of the City Manager”). Accordingly, because the Recall Petition claims that Plaintiff violated the City’s Personnel and Employee Policy, contrary to Plaintiff’s arguments, the Court determines that such allegations consist of lawful actions conducted in an improper manner, which falls within the definition of misfeasance.

35. Plaintiff also argued that Ordinance 644 was inapplicable in the instant matter because it concerned exclusively *employees* while her alleged actions involved *contractors*. However, the Court finds said argument somewhat misleading because the clear and unambiguous language in the Petition specifically accused Plaintiff of “unilaterally direct[ing] . . . a City of Mexico Beach *employee* to end services with one contractor and to authorize another contractor” (emphasis added).

36. Indeed, the applicability of a city ordinance concerning a policy for employees’ conduct to the mayor depends on the specific language of the ordinance as well as the powers and duties of the mayor that are outlined in the city charter. Moreover, the case law throughout this state confirms that the powers of a mayor could be limited or subjected to some reasonable rules and regulations prescribed by the city council. Indeed, a mayor, as the chief executive officer of the city, is generally expected to ensure compliance not only with the charter but also with the ordinances and the rules of the city. *See, e.g., Lomelo v. City of Sunrise*, 423 So. 2d 974 (Fla. 4th DCA 1982). Here, Plaintiff provided no legal basis suggesting that Ordinance 644 in any manner violated the powers vested to her by the city charter. *See Town of West Miami v. Durrance*, 107 So. 2d 797 (Fla. 1958) (explaining that the validity of a municipal ordinance is generally determined by the authorizations and limitations of the charter).⁵

37. Accordingly, while the Court agrees that the mere recital of statutory ground for recall of a public office without an allegation of particular conduct constituting such ground would be insufficient to justify a recall election, in the instant matter, the language in ground two of the Recall Petition adequately alleged a claim for misfeasance. *Bent v. Ballantyne*, 368 So. 2d 351 (Fla. 1979). Therefore, the issue of whether Plaintiff indeed took such actions or not and exceeded her authority as a mayor is not for the Court to decide but a question for the voters.

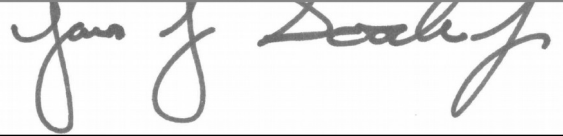
Based on the foregoing, it is

ORDERED AND ADJUDGED that Plaintiff’s Amended Complaint for Declaratory, Injunctive Relief and Damages, filed on March 21, 2024, is **DENIED**.

DONE AND ORDERED this **Wednesday, April 17, 2024**, in Panama City, Bay County, Florida.

⁵ Neither party asked the Court to consider the City Charter.

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James J. Goodman, Judge

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