

COUNTY OF SAGINAW

ELECTION COMMISSION

IN RE Petition to Recall Gloria Platko
Buena Vista Township Clerk

DETERMINATION OF ELECTION COMMISSION

A Petition was filed seeking the recall of Buena Vista Township Clerk, Gloria Platko, which was filed with the Saginaw County Clerk. The Election Commission met in public session on Tuesday, December 3, 2013 at 8:15 a.m. and took comments and arguments on the clarity and factual nature of the petition language.

The Commission is charged with determining whether each reason stated in the petition is based upon conduct occurring during the official's current term of office, and whether each reason, "is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall."

The language at issue here is as follows:

"We the residents of Buena Vista Charter Township expect our leaders to display good judgment in their interactions with their constituents and their colleagues. Our Township Clerk, Gloria Platko, has displayed conduct and behaviors unbecoming of her position including calling our Township Supervisor, Dwayne Parker, an "Arrogant N-Word" in January of 2013. For this reason, in pursuant of Michigan Election Law Act 116-1954-XXXVI, we the residents of Buena Vista Charter Township call for the recall of the Buena Vista Township Clerk Gloria Platko."

The Election Commission has considered this language; the respondents have argued that the petition must be rejected because it makes assertions which are not true.

The Election Commission is charged as follows:

"...shall meet and shall determine whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected. MCL 168.952"

"Factual" does not mean "truthful". The Election Commission determines that the reasons for recall alleged in the petition are factual in their nature and of sufficient clarity to enable the official whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. The Commission specifically rejects the proposal that it is to serve as a determiner of the truth of the allegation; indeed; allegations of fact may be true or false, and the Commission does not find that it has

the structure (resources, including procedural authority to investigate, to swear witnesses, subpoena, etc.) to determine whether the allegations are true (and also by what modicum of proof: preponderance, clear and convincing, beyond a reasonable doubt)¹. The Commission has considered only whether the assertions of the petition are stated clearly and factually. An allegation of fact may be true or false, and the test employed by the Election Commission is whether the allegation states facts so that the responding official may defend.

The Election Commission determines unanimously that not every allegation in this petition is factual in nature, i.e. an assertion of fact as opposed to a conclusion. Therefore because portions of this petition do not meet statutory criteria, the petition is rejected.

Appeals to this determination may be made to the Circuit Court of Saginaw County no later than DECEMBER 13, 2013.

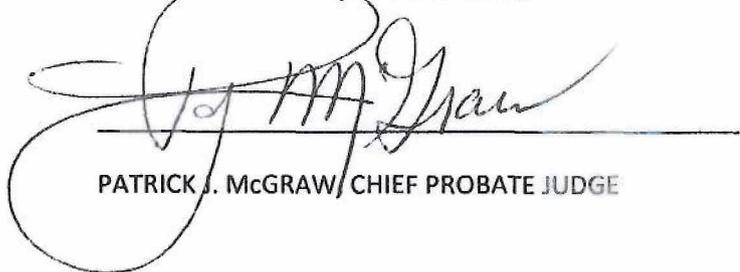
Dated:



TIMOTHY NOVAK, COUNTY TREASURER



SUSAN KALTENBACH, COUNTY CLERK



PATRICK J. MCGRAW, CHIEF PROBATE JUDGE

*MCL 168.952(6) allows "not more than 10 days after the determination of the Board of County Election Commissioners," to file an appeal to Circuit Court. MCRL 1.108 provides that in the event the designated period of time ends on a weekend, then the next following workday applies.

¹ Much of the confusion and discussion of "factual" or "truth" comes from recently enacted amendments to MCL 168.952 which in the authors opinion, were carelessly worded.



Commission rejects petition seeking recall of Buena Vista Township Clerk Gloria Platko over racial slur

Gloria Platko

Buena Vista Township Clerk Gloria Platko at a May 29, 2013, township Board of Trustees meeting reads a letter, written by her attorney, regarding her use of a racial slur to describe township Supervisor Dwayne Parker. (Clay Lomneth | MLive.com)

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on December 04, 2013 at 7:10 AM, updated December 04, 2013 at 7:56 AM

SAGINAW, MI — A petition to recall Buena Vista Township County Clerk Gloria Platko over her use of a racial slur has hit a stumbling block.

The Saginaw County Election Commission, during a hearing on the matter held Tuesday, Dec. 3, voted 3-0 to deny the recall petition because of language that the commission could not determine as "factual."

The **petition to recall Platko from the township office was filed** with Saginaw County Clerk Susan Kaltenbach in November.

Kaltenbach said the Election Commission — which consists of the county clerk, County Treasurer Tim Novak and Chief Probate Judge Patrick McGraw — was primarily concerned with whether or not all statements made in the petition had a factual basis.

New state election laws require petitions to "state factually and clearly each reason for the recall," she explained.

"The whole thing has to be factual," Kaltenbach said.

The petition reads:

We the residents of Buena Vista Charter Township expect our leaders to display good judgment in their interactions with their constituents and their colleagues. Our Township Clerk, Gloria Platko, has displayed conduct and behaviors unbecoming of her position including calling our Township Supervisor, Dwayne Parker, an 'Arrogant N-word' in January 2013. For this reason, in pursuant of Michigan Election Law Act 116-1954-XXXVI, we the residents of Buena Vista Charter Township call for the recall of the Buena Vista Township Clerk Gloria Platko.

In an opinion drafted by Judge McGraw outlining the Election Commission's decision, McGraw said the commission concluded "that not every allegation in this petition is factual in nature, i.e. an assertion of fact as opposed to a conclusion."

• **Full opinion outlining Election Commission's decision**

Kaltenbach said that the filer of the petition, Kelly Coleman, could appeal the commission's decision with the Saginaw County Circuit Court sometime in the next 10 days. Alternately, she said, he could adjust the language and re-file the petition, or he could drop the matter entirely.

"He has three choices," Kaltenbach said. "At this point, we're back to square one."

Coleman could not be reached for comment.

Kaltenbach said that two township residents spoke during the hearing Tuesday, saying they objected to a recall and questioned the fact that they seemed to be included in the "We the residents of Buena Vista Charter Township" section in the petition language.

The reason for the recall stems from a January 2013 phone call between Platko and Interim Manager Dexter Mitchell, during which Platko called Township Supervisor Dwayne Parker an "arrogant N-word." The conversation was taped.

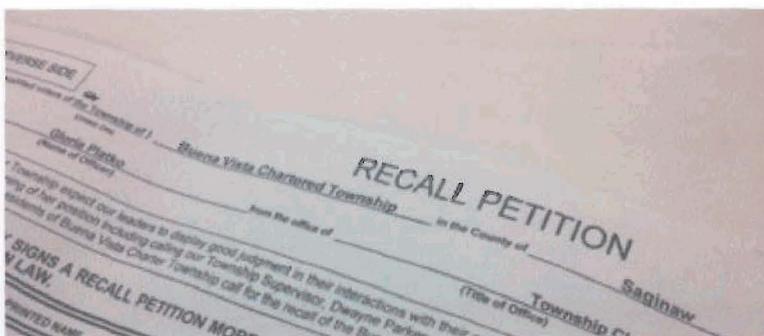
Officials and residents called for Platko's resignation during public meetings. Three days after the April 22 meeting, Platko apologized for her language but declined to resign her position.

"Nobody will understand the regret that I have," Platko said Tuesday. "Nobody will understand the feelings and emotions that I have gone through since April 22 of 2013."

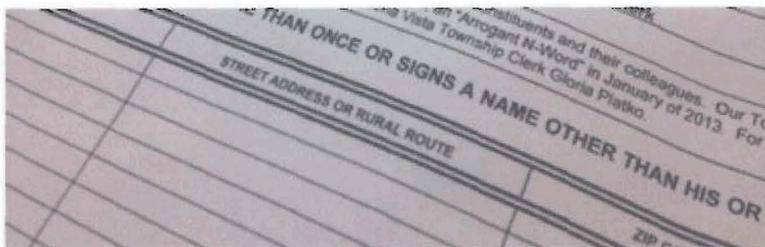
Platko said she does not understand why anyone is still pursuing the recall.

"All I want to do is what the people elected me to do, and that is to run the clerk's office," she said.

Kaltenbach said, under recently-changed state election laws, recalls are no longer true recall elections, but "run-off" elections. She said that means that, if a petition were to be successful, Platko would be placed on a ballot as if she were up for re-election, alongside anyone else interested in running for the office.



To be on the May ballot, Kaltenbach said, the necessary signatures would need to be collected and turned in before the end of January. The number of signatures required, 25 percent of the Buena Vista Township residents voting in the last gubernatorial election, is more than 600,



A copy of the petition to recall Buena Vista Township Clerk Gloria Platko, filed by Kelly Coleman in November, has been rejected by the Saginaw County Elections Commission due to issues with its language.

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she said. The exact total required has not yet been calculated by the county clerk's office.

In August, Platko filed a lawsuit against the township, Mitchell and Parker after Mitchell denied her Freedom of Information Act request for a video Mitchell made of the April 22 meeting. Mitchell denied the request, stating that no

public record of the video recording existed.

Saginaw County Chief Circuit **Judge Fred L. Borchard ruled on the issue on Nov. 25**, ordering Mitchell to give the recording to Platko.

Platko said she has arranged to accept the video from Mitchell on Dec. 13.

Once the recording is provided to Platko, the attorneys can decide whether to re-file their motions for summary disposition.

While the portion of the lawsuit seeking the recording would be moot, Borchard still could decide whether a declaratory judgment against the denial is appropriate and whether Platko could proceed with any punitive damage claims.

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COUNTY OF PRESQUE ISLE
ELECTION COMMISSION

IN RE: Petition to Recall Bernie Schmeltzer,
Commissioner, City of Onaway

IN RE: Petition to Recall Ronald Horrocks,
Commissioner, City of Onaway

DETERMINATION OF ELECTION COMMISSION

Petitions seeking recall of elected City of Onaway Commissioners Bernie Schmeltzer and Ronald Horrocks were filed with the Presque Isle County Clerk. The Election Commission met in public session on August 1, 2013 and took comments and arguments on the clarity and factual nature of the petition language.

The Commission is charged with determining whether each reason stated in the petitions is based upon conduct occurring during the officials' current term of office, and whether each reason, "is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall."

The language here at issue has previously been considered by the Elections Commission. It was first reviewed at a hearing April 24, 2013 where it was a portion of a petition which alleged that certain other City of Onaway officials had:

"...failed to make decisions in which the voters have entrusted him to make regarding the safety and security of our community, by refusing to explore or take advantage of offers or options from

*citizens or outside governmental agencies to retain the Onaway police Department and by doing so is putting the community's safety and security at risk. * * * ...has become unresponsive and indignant toward the citizens of Onaway when citizens address him at City commission meetings. The voters of Onaway have lost trust in * * * ability to lead and represent the best interest of the City of Onaway and its citizens.*

At that first review hearing the petitions were not approved as the Election Commission found that not every allegation was factual in nature, i.e., an assertion of fact as opposed to a conclusion. Shortly thereafter revised petitions were filed which no longer included the conclusions that the officials had been “unresponsive and indignant,” and also deleted reference to the conclusion that the voters “have lost trust” in the official.

At the second review hearing (May 9, 2013) the revised language was approved by the Elections Commission. That decision was not appealed.

Recall petitions were thereafter filed as to Commissioners Schmeltzer and Horrocks. The petitions employed the same verbiage as had been considered and approved at the second review hearing discussed above; however, after considering comments and arguments on behalf of the respondents (petitioner was present but did not participate) the Elections Commission was persuaded that the language of the petition actually contained multiple allegations: first, that these commissioners “failed to make decisions in which the voters have entrusted” them; secondly, that they had refused “to explore or take advantage of offers or options to retain the Onaway Police Department;” and, thirdly, that such inactions have put the community’s “safety and security at risk.”

The Elections Commission then determined that upon considering these several distinguishable allegations, it could not approve the first

allegation as it was both vague and a conclusion; that the second allegation was indeed factual and of sufficient clarity; and that the third was but a conclusion rather than an assertion of fact. Because portions of the petitions did not meet the statutory criteria, the petitions were rejected. No appeal was taken from that decision, but shortly thereafter revised petitions were filed which no longer included the first and third allegations, instead simply asserting that the officials had:

“...refused to explore or take advantage of offers or options from citizens or outside governmental agencies to retain the Onaway Police Department.”

At what is now the fourth hearing wherein the Elections Commission has considered this language, the respondents have argued that the petitions must be rejected because they make assertions which are not true. The Elections Commission received written statements from the respondents and the petitioners and has again considered the issue.

The Election Commission is charged as follows:

...shall meet and shall determine whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected. MCL 168.952.

Respondents have argued that “factual” means “truthful” and that the allegations are not truthful and therefore the petition must be rejected. The Election Commission determines that the reasons for recall alleged in the petition *are factual in their nature* and of sufficient clarity to enable the official whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. The Commission specifically rejects

the proposal that it is to serve as a determiner of the truth of allegations; indeed, allegations of fact may be true or false, and the Commission does not find that it has the structure (resources, including procedural authority to investigate, to swear witnesses, subpoena, etc.) to determine whether the allegations are true (and that by what modicum of proof: preponderance, clear and convincing, beyond a reasonable doubt?) The Commission has considered only whether the assertions of the petition are stated clearly and factually. An allegation of fact may be true or false, and the test employed by the Election Commission is whether the allegation states facts so that the responding official may defend.

Much discussion at all of these “factual and clear” hearings has centered on this issue of whether the task of the Elections Commission ought to be to determine whether the allegations are actually true. This results in large part from the careless manner in which the recent (effective December 2012) amendments to the statute are worded. The Michigan Constitution of 1963 protects the right of recall in the people, providing that the “sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.” Art.2, Sec.8. It is a well-established rule of statutory construction that legislative enactments must be construed so as to render them constitutional. The ultimate question when a recall petition is brought is a political one to be decided by the people.

The Election Commission determines unanimously that the reason for recall stated in the petitions here at issue, that is, the alleged failure to act upon options to retain the Onaway police department, is factual in nature and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. No determination of the truth of the allegation is made.

Respondent officials may appeal this determination to the circuit court of Presque Isle County no later than *August 12, 2013.

Dated:

Bridget LaLonde, County Treasurer

Ann Marie Main, County Clerk

Donald J. McLennan, Probate Judge

* MCL 168.952(6) allows “not more than 10 days after the determination of the board of county election commissioners,” to file an appeal to circuit court. MCR 1.108 provides that in the event the designated period of time ends on a weekend, then the next following workday applies.