

IN THE SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Sixth DCA Case No.: **6D2025-2679**
Lower Tribunal Case No.: 25-CA-003383

KAREN WOODSON

Appellant,

vs.

RAYMOND MURPHY, AS CHAIR
OF THE COMMITTEE FOR THE
RECALL OF KAREN WOODSON
Appellee.

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ANSWER BRIEF OF APPELLEE

On Appeal from the Circuit Court of the Twentieth Judicial Circuit In and
For Lee County, Florida

Hon. Kyle S. Cohen

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INTRODUCTION AND RELEVANT FACTS

Karen Woodson was recalled by the voters of her City in a landslide. On November 4th, 2025, according to unofficial results from the Lee County Supervisor of Elections Office, of the 1,652 ballots cast, 63.59% voted to remove Woodson from office. She has now been replaced.

Appellant's central arguments have been universally rejected by Florida Courts and have no factual or legal basis in the record on appeal. To be clear, there were only three grounds for recall, the two Sunshine Law Violations and the improper acceptance of gifts from people currying favor with the City. There were not five separate recall grounds and neither the Court, nor the parties, including Appellant, ever suggested below and the Court never held below that there were anything other than the three grounds stated in the Petition. Both the two Sunshine Law violations and the acceptance of illegal gifts from people lobbying for votes are undisputedly acts of malfeasance and grounds for recall. There is no confusion or risk of confusion. The Appellant's entire brief is grasping at straws, creating their own straw man and tearing it down and making the universally rejected and legally insufficient arguments that a Recall Petition requires a factual trial and that where the officials deny the recall grounds – the recall fails. That is not the Law in this Circuit or in Florida.

The most shocking thing about the Appellant's arguments below and arguments on Appeal is that there is no question that violating the Florida Sunshine Law and improperly accepting gifts and gratuities to curry favor are malfeasance and state valid grounds for a recall. Period. The trial court so found, prior the appellate courts have also found and Appellant offers to factual or legal basis for not upholding and affirming the well-reasoned decision of the trial court.

There were three grounds and they were all properly found to be sufficient and the people voting in a democracy elected someone else.

There were no challenges to the amount of signatures or allegations of fraud. Here, a sufficient number of voters signed petitions asking for the Recall and once the process was complete, the people of the City recalled Commissioner Woodson.

In this instance, the Defendant Recall Committee members did exactly what the Recall Statute required and stated basis within the word limitation provided by Florida law in language no different than language already approved by the Florida appellate courts to be identical to what is required.

1. Florida law affords citizens of Florida the right to recall publicly elected officials under certain enumerated, yet limited circumstances. Florida Statute § 100.361 (the "Recall Statute"). Grounds sufficient to justify

the setting of a recall election under the Recall Statute include:

- a) Malfeasance;
 - b) Misfeasance;
 - c) Neglect of Duty; and
 - d) Incompetence.
2. The Recall Statute requires that a recall petition be brief: A petition shall contain the name of the person who sought to be recalled and a statement of the grounds for recall.
 3. The statement of the grounds may not exceed 200 words.
 4. While Appellants insist that the lack of expansive details as to the purpose of the recall (e.g. “who, what, where, when, why”) render the recall petition deficient, such detail is not required by the Recall Statute and Appellant has cited no case decisions supporting their demand. Moreover, the word limitation imposed by the Florida Legislature (“200 words”) belies Plaintiffs’ contention.
 5. The key question posed Appellant in this case by Plaintiff KAREN WOODSON as to whether the recall petition provided sufficient notice to those signing recall petitions — was answered by already in seminal case that Plaintiffs failed to call to the Court’s attention below and unsuccessfully try to distinguish here, i.e.: Thompson v.

Napotnik, 923 So. 2d 537 (Fla. 5th DCA 2006).

6. In Thompson, as in the instant case, the effort to recall Commissioner Thompson was predicated upon a claim that Thompson had violated the terms of Florida's Sunshine Law. The Court affirmed that the language in the recall petition was sufficient to adequately allege a cause of action for recall based upon a claim for malfeasance under the Recall Statute, as a matter of law.
7. The language is so comparable that it is shocking that this case was not brought to the attention of attention of the lower court, to wit:
"COMMISSIONER THOMPSON'S MALFEASANCE IN CONSISTING OF OFFICE MEETING OUTSIDE A PROPERLY NOTICED PUBLIC MEETING OF THE CITY COMMISSION TO DISCUSS WITH OTHER CITY COMMISSIONERS THE CLOSING OF TRAILER CITY IN VIOLATION OF FLORIDA'S SUNSHINE LAW, SECTION 286.011, FLORIDA STATUTES"
8. The Petition being challenged before this court states the following:
 - a) Karen Woodson had a private conversation with Vice Mayor Jim Atterholt regarding rebuilding the Lee County Pier destroyed by Hurricane Ian in violation of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.

- b) Karen Woodson engaged in private conversations to coordinate with John King in soliciting a replacement Town Attorney in violation of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.
 - c) Karen Woodson received unreported gifts of meals and in-kind services from parties who were seeking land use approvals from Town Council in violation of Florida's Code of Ethics for Public Officers, Chapter 112, Florida Statutes; and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.
9. The first two grounds, violating the Florida sunshine law, have already been found to be legally sufficient using the exact language.
10. The only other ground goes beyond merely tracking the statute. It states that Plaintiff Woodson received gifts and meals from parties seeking land use changes by the city and never reported them in violation of Chapter 112.
11. There is no plausible argument that Appellant's make that should cause this Court to reverse a decision just made by the voters.
12. Further, Florida Statute provides as follows:

“Section 112.3148 (4), Fla. Stat.: A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual’s or procurement employee’s agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100.”

13. Appellant’s arguments are utterly baseless.

ARGUMENT

I. THE TRIAL COURT NEVER FOUND ANY OF THE THREE GROUNDS INSUFFICIENT

The Court below stated:

“In its petition, **the Recall Committee describes three incidences of conduct by Woodson that they allege constitute "misfeasance and malfeasance" under Fla. Stat.§ 100.361(2)(d).** Malfeasance is the "performance of a completely illegal or wrongful act" by an elected official. *Moultrie*, 498 So. 2d at 995. While misfeasance is the "performance of a legal act in an improper or illegal manner." *Id.*

The first two allegations relate to violations of Florida's Sunshine law. The third describes the alleged acceptance of gifts. We will address each of these alleged violations in turn.” As grounds for the recall of Woodson, the Recall Petition alleged three grounds (not five):

1. Karen Woodson had a private conversation with Vice Mayor Jim Atterholt regarding rebuilding the Lee County Pier destroyed by Hurricane Ian in violation of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
2. Karen Woodson engaged in private conversations to coordinate with John King in soliciting a replacement Town Attorney in violation of Florida 's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.
3. Karen Woodson received unreported gifts of meals and in-kind services from parties who were seeking land use approvals from Town Council in violation of Florida's Code of Ethics for Public Officers, Chapter 112, Florida Statutes; and in violation of the Town of Fort Myers Beach Town Council Policies and Procedures Manual.

With regard to Ground Two, the operative language in Subsection 4 in the “Code of Ethics” of the Town Council’s Policies and Procedures Manual in effect at the time of the submission of the recall petitions stated: “[M]embers shall refrain from any private discussion of Town Council business with other members per the requirements of Florida’s Government-in-the Sunshine Law, Chapter

286, Florida Statutes” (emphasis added). *Moultrie V. Davis*, 498 So.2d 993, 995-96 (Fla. 4th DCA 1986), citing *Richard v. Tomlinson*, 49 So. 2d 798 (Fla. 1951), states: “To remove an official, it is necessary that the misdeed have some relationship to the duties of his office;” and “[A]n official can only be removed for malfeasance (performance of a completely illegal or wrongful act), misfeasance (performance of a legal act in an improper or illegal manner), neglect of duty, drunkenness, conviction of a felony, incompetence and permanent inability to perform official duties.” *Cite case that states sunshine law violation is grounds for recall.* Therefore, applying the applicable and correct language of the Town Council’s Policies and Procedures Manual set forth in the recall petition, the allegations against Councilperson Woodsen clearly constitute malfeasance under *Moultrie and Richardson*.

The allegation in ground two was that Woodson violated the Florida Sunshine law by having private discussion on matters clearly foreseeable to come in front of the Commission. The policies and procedures manual does nothing more than say that Commissioners must follow the Florida Sunshine Law.

There is no separate ground – it the same ground two – the Sunshine

Law was violated.

With regard to ground three, the Court never stated that there were two separate allegations and/or that ANY portion of Ground three was invalid.

The Court stated as follows:

“§112.3148(4) of the Code of Ethics for Public Officers and Employees prohibits a reporting individual, like Woodson from "knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency ... if he or she knows or reasonably believes that the gift has a value in excess of \$100." Similarly, the Fort Myers Beach Town Council Manual prohibits the acceptance of anything of value if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings." Unlike §112.3148(4), the prohibition contained in the Manual does not contain a dollar threshold.

Here, without determining the truth or falsity of the allegations, the Court finds that the conduct alleged in the petition, which is the

receipt of something of value from parties with business before the town council, is legally sufficient to support recall.

The code provision and Florida Statute both make it illegal for commissioners to accept gifts from people currying favor with Commissioners. That was the only ground that the court appropriately found to constitute a sufficient grounds for recall.

Thus, the court found that the two allegations of violating the Sunshine Law and improperly accepting gifts are valid grounds for a recall petition.

II. THE COURT PROPERLY FOUND THAT PARAGRAPH (1) ONE SUNSHINE LAW VIOLATION FOUND VALID

The first allegation in the recall petition alleges a violation of Fla. Stat. § 286.011 ("Florida's Sunshine Law"). As a public official, Woodson was required to comply with Florida's Sunshine Law and that the failure to do so could constitute an act of malfeasance that is properly presented in a recall petition. *See Burton v. Oats*, 362 So.3d 311, 316 (Fla. 5th DCA 2023). Florida's Sunshine Law requires that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of

any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Fla. Stat. §286.011(1).

Under this statute, discussions between officials are considered "public meetings" if they are meetings "at which official acts are to be taken." *Id.* A Sunshine law violation may also occur "when officials discuss matters on which foreseeable action may be taken by that board or commission." *Transparency for Florida v. City of Port St. Lucie*, 240 So.3d 780, 785 (Fla. 4th DCA 2018) (citing *Hough v. Stembridge*, 278 So.2d 288, 289 (Fla. 3d DCA 1973)). However, "meetings between executive officials of government and others are not covered by the Sunshine Law." *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989) (finding no sunshine act violation where there was no meeting between two or

more public officials); *see also Clewiston Commons, LLC v. City of Clewiston*, 2020 WL 1158703, *5 (M.D. Fla. Mar. 10, 2020).

Appellant's arguments dance on the head of a pin. The Appellant's arguments consistent of having the right to challenge the veracity of the recall allegations (i.e.: this matter was not really City property etc.), which has been universally rejected. Second, Appellant asks this Court, as it did in the lower tribunal, to make ridiculous distinctions with no differences, i.e.: the Court used the language "off the record discussion" versus off the dais discussion. Really?

The same argument involving an alleged violation of Florida's Sunshine Law was rejected in *Thompson v Napotnik*, 923 So.2d 537, 540 (Fla. 5th DCA 2006). In *Thompson*, the recall petition at issue stated:

COMMISSIONER THOMPSON'S MALFEASANCE IN OFFICE
CONSISTING OF MEETING OUTSIDE A PROPERLY
NOTICED PUBLIC MEETING OF THE CITY COMMISSION TO
DISCUSS WITH OTHER CITY COMMISSIONERS THE
CLOSING OF TRAILER CITY IN VIOLATION OF FLORIDA'S
SUNSHINE LAW, SECTION 286.011, FLORIDA STATUTES.

Id. at 539. *Thompson* argued that this language was "lacking in specifics" necessary to establish a violation of Florida's Sunshine

Law. The Fifth District Court of Appeals disagreed and held that the allegation that Thompson engaged "in an unauthorized meeting with other city commissioners regarding the closing of a local trailer park" was sufficient without more detail. *Id*

In this case, the first claim in the recall petition alleges that a meeting occurred between two public officials (Woodson and Vice Mayor Jim Atterholt), about a matter on which foreseeable action may be taken by the council (rebuilding the Lee County Pier). Similar to the case in *Thompson*, and given the 200-word statutory limitation, this allegation is detailed enough to state a violation of Florida's Sunshine Law and, therefore, the first claim allegation in the recall petition is legally sufficient. The Appellant's argument that they contest the veracity of the allegations has been universally rejected by Florida Law. The Recall statute leaves these political decisions to the voters, the people. The Statute does not require the drafting of indictments or holding trials. The Court below got it right and the people made their decision based on three grounds that could not be more clear.

III. THE COURT PROPERLY FOUND THAT PARAGRAPH (2) TWO SUNSHINE LAW VIOLATION FOUND VALID

The second alleged Florida Sunshine Law violation is also legally sufficient. This allegation alleges communications between two public officials (Woodson and King) about a matter about which foreseeable action may be taken by the council (the replacement of the Town Attorney). Accordingly, given the 200-word limitation and in accordance with the *Thompson* decision, the petition contained the necessary specifics to state a violation of Florida's Sunshine Law.

IV. THE COURT PROPERLY FOUND THAT PARAGRAPH THREE STATED A BASIS OF RECALL STATUTE UNDER F.S. §112.3148(4) AND THE TOWN MANUAL

The final allegation against Woodson relates to the acceptance of gifts from parties that were seeking land use approvals from the Town Counsel. This conduct is alleged to violate the Florida Code of Ethics for Public Officers and the Town of Fort Myers Beach Policies and Procedures Manual.

§112.3148(4) of the Code of Ethics for Public Officers and Employees prohibits a reporting individual, like Woodson from "knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency ... if he or she knows or reasonably believes that the gift has

a value in excess of \$100." Similarly, the Fort Myers Beach Town Council Manual prohibits the acceptance of anything of value "if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings." Unlike §112.3148(4), the prohibition contained in the Manual does not contain a dollar threshold.

Here, without determining the truth or falsity of the allegations, the Court found that the conduct alleged in the petition, which is the receipt of something of value from parties with business before the town council, is legally sufficient to support recall.

Garvin and similar cases relied upon by the Appellant concern cases where there was an entirely separate grounds for recall (i.e.: they voted to raise taxes or didn't build a new park). In these cases, the fact that one of these totally unrelated grounds that clearly are not an act of malfeasance under any definition would invalidate the entire Recall Petition if this entirely separate and unrelated ground had been included.

In the case sub judice, the first two grounds state that Woodson violated the Sunshine law with regard to two issues that were

foreseeable to come in front of the City Commission. The third ground stated that she improperly accepted gifts in violation of the law. It could not be more simple and more clear. Appellants seek to obstruct Florida Statute and Democracy by imposing barriers that do not exist.

Appellant's arguments are legally and factually untenable and would serve the only purpose of gutting the clear statutory right of recall in the State of Florida, which Right is created by Statute and belongs to voters.

CONCLUSION

For these reasons, the trial court decision should be affirmed.

Respectfully submitted,

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