

CAUSE NO. 13-25-00622-CV

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**CITY OF KINGSVILLE, TEXAS; NORMA NELDA ALVAREZ;
HECTOR M. HINOJOSA; and LIONEL "LEO" H. ALARCON,
Appellants,**

v.

**SELINA TIJERINA,
Appellee.**

**ON APPEAL FROM CAUSE NO. 25-377-D
105TH JUDICIAL DISTRICT, KLEBERG COUNTY, TEXAS
HONORABLE JACK PULCHER**

APPELLANTS' BRIEF

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IV. STATEMENT OF THE CASE

This is an appeal from an order granting a writ of mandamus compelling a recall election. Appellants, the City of Kingsville and three of its City Commissioners, Norma Alvarez, Hector Hinojosa, and Lionel “Leo” Alarcon (collectively, “the City”), challenge the trial court’s finding that the recall petition was timely filed, and its ruling ordering the Defendants to fix a date for the recall election for Commissioners Norma Nelda Alvarez, Hector M. Hinojosa, and Lionel "Leo" Alarcon within 10 (ten) days from the signing of the entry of the order. The Appellants contend that the underlying recall petition, initiated by Appellee Selina Tijerina, was legally invalid because it failed to comply with clear, mandatory provisions of the Kingsville City Charter. Specifically, the petition was filed one day late and failed to state the grounds for recall with the required specificity. Because these mandatory preconditions were not met, the Appellants argue that Appellee had no standing to bring the petition for writ of mandamus, the trial court did have not subject matter jurisdiction under the Charter to hear the case, Appellants had no ministerial duty to call an election, and the trial court abused its discretion in finding that Appellee filed the recall petition timely, and in ordering Appellants to fix a date for a recall election.

V. ISSUES PRESENTED

1. Did the Plaintiff Selina Tijerina lack standing to bring the petition for writ of mandamus because she failed to comply with the requirements of the City of Kingsville City Charter when she failed to submit a petition for recall of the Defendants which complied with the requirements of the City Charter?
2. Did the trial court lack subject matter jurisdiction to hear this case because under Article II, Section 24(7) of the Kingsville City Charter all of the requirements of the Charter must be met before a District Judge can order Appellants to call a recall election, and the evidence is undisputed that Appellee failed to comply with the requirement in the Charter that the recall petition be filed within 30 days of the filing of the required affidavit?
3. Did the trial court abuse its discretion when, contrary to the undisputed evidence, it found that the recall petition was filed with the Kingsville City Secretary within 30 days from the filing of the required affidavit, and therefore timely under the Kingsville City Charter?
4. Did the trial court err in granting a writ of mandamus compelling a recall election when the undisputed evidence showed the recall petition was filed outside the mandatory 30-day period prescribed by the Kingsville City Charter?
5. Did the trial court err in granting a writ of mandamus when the grounds for recall stated in the petition were vague and general, failing to meet the Charter's mandatory requirement that grounds be stated "distinctly and specifically" to provide notice to the officers sought to be removed?
6. Did the City Commission have a ministerial duty to call an election when the City Charter expressly conditions such a duty on the petitioner having met "all of the requirements of this

Charter,” and the petition failed to meet the mandatory requirements for timeliness and specificity?

VI. STATEMENT OF FACTS

1. The City of Kingsville is a home-rule city governed by a City Charter adopted by its voters. (RR2:14; PX1). Article II, Section 24 of the Charter provides the exclusive procedure for recalling elected officials. (PX1). This procedure requires a petitioner to first file an affidavit with the City Secretary. *Kingsville City Charter, Art. II, § 24(3) (PX 1)*. The Charter then mandates that “[a]ll papers comprising a recall petition shall be returned and filed with the person performing the duties of City Secretary within thirty (30) days after the filing of the affidavit.” *Id. § 24(6)*. The Charter also mandates that the petition “must distinctly and specifically state the ground(s) upon which such petition for removal is predicated” with “such certainty as to give the officer sought to be removed, notice of such matters and things with which he or she is charged.” *Id. § 24(5)*.
2. On May 6, 2025, Appellee Selina Tijerina filed an affidavit with the Kingsville City Secretary, Mary Valenzuela, seeking to recall Commissioners Alvarez, Hinojosa, and Alarcon. (RR2: 27-28). It is undisputed that Tijerina filed the completed recall petitions with the City Secretary on June 6, 2025. (RR2:30-31). Counting from May 6, 2025, the filing on June 6, 2025, occurred on the 31st day. (RR2:41-42).
3. The grounds stated in the affidavit and circulated on the petitions were: “Unprofessional conduct/behavior of a City Commissioner,” “Neglect of fiscal responsibilities,” “Targeting personnel,” and “Neglect of City Government policies and procedures.” (PX6; DX1). No further details or specific instances of conduct were provided. (RR2:46). Commissioner Alvarez testified she did not know what specific conduct these allegations referred to. (RR2:67, 70).

4. Despite the petition's facial defects, the City Secretary certified the number of signatures and presented the petition to the City Commission. (*RR2:24-25*). At the July 14, 2025, meeting, a vote was held on an ordinance to call the recall election. (*RR2:25*). Believing the petition was legally invalid for failing to comply with the Charter's mandatory requirements, the three targeted Commissioners voted against calling the election, and the motion failed. (*RR2:25, 70-71*).
5. On August 13, 2025, Tijerina filed a petition for a writ of mandamus pursuant Article II, § 24(7) of the Kingsville City Charter. (*CR: 5*). On September 5, 2025, Appellants filed their answer to the petition with affirmative defenses asserting that they were not subject to mandamus as alleged by Appellee because the recall petition failed to meet the requirements of Article II, § 24 of the Charter of the City of Kingsville in that: a) the recall petition does not "distinctly and specifically state the ground(s) upon which such petition for removal is predicated" and did specifically state each ground with such certainty as to give Defendants notice of such matters and things with which they were charged; and b) the recall petition was filed with the City Secretary more than 30 days after Tijerina filed her required affidavit, in violation Article II, § 24(6) of the Charter of the City of Kingsville. Appellants further asserted in their answer that because of these deficiencies in Appellee's petition, the City Secretary of the City of Kingsville was without authority to accept the Petition and was required to reject the recall petition as it failed to meet the strict requirements of Article II, § 24 of the Charter of the City of Kingsville.
6. At the trial on Appellee's petition for writ of mandamus, Appellee Tijerina called the City Secretary to testify as to the filing of the recall petition by Appellee. On cross examination, City Secretary testified that recall petition was filed 31 days after the date that Appellee filed

the required affidavit was filed. (RR2:41-42). At the hearing, the Appellants argued that the petition was void for failure to comply with the Charter's mandatory 30-day deadline and specificity requirement. (RR2:17-20). Choosing to ignore the uncontroverted testimony of the Kingsville City Secretary that the petition was filed on the 31st day after the filing by Appellee of the required affidavit, the trial court made the following finding:

“With business and legal in government, when we have a deadline -- this what filed May 6 at 2:23 p.m. That means it starts counting the next day. And if it goes over to a weekend, it goes to that Monday. We don't have the weekend issue here. So I am going to order that the dated started May 7th and continued for 30 days and that this recall petition was filed on time and I am going to issue a writ of mandamus at this time.” (RR2: 101).

7. The trial court did not rule on Appellant's argument that the recall petition did not “distinctly and specifically state the ground(s) upon which such petition for removal is predicated”
8. Pursuant to the Court's finding that the recall petition had been timely filed, the trial court, on October 29, 2025, entered an order granting Appellee Selina Tijerina's Petition for Writ of Mandamus and ordering Appellants to “fix a date for the recall election for Commissioners Norma Nelda Alvarez, Hector M. Hinojosa, and Lionel "Leo" H. Alarcon, . . . within 10 (ten) days from the signing of this Order.” (CR: 253).
9. On November 14, 2025, Appellants filed their Notice of Appeal. (CR:268)

VII. SUMMARY OF THE ARGUMENT

10. Appellee lacked standing to bring her petition for writ of mandamus because she failed to comply with the strict requirements for the filing of a recall petition under Kingsville City Charter. Because she had failed to meet the Charter requirements, her petition was void, as if it have never been filed, and she therefore could not be heard to complain when the Appellants refused to resign or call a recall election at the time that the Kingsville City Secretary presented her fatally flawed petition to the Kingsville City Commission.

11. The trial court lacked subject matter jurisdiction to hear Appellee's petition for writ of mandamus because the jurisdiction for the trial court to order Appellants to call a recall election came solely from Article II, § 24(7) of the Kingsville City Charter and the Charter specifically provides that only when all of the requirements of the recall provisions of Kingsville City Charter "*shall*" have been met, then, and only then, can a district court can order city commissioners to call a recall election. It is undisputed that at the time that Appellee filed her petition for writ of mandamus all the requirements of the Kingsville City Charter had *not been met*. Therefore, the trial court did not have jurisdiction to hear this case.
12. Also, the trial court abused its discretion when it found that the recall petition was timely filed because the evidence was legally and factually insufficient to support the trial court's finding.
13. The trial court abused its discretion by issuing a writ of mandamus compelling a recall election based on a legally void petition. The Kingsville City Charter is the constitution of the City, and its provisions are mandatory and binding on all parties, including the City Commission and the courts. The Charter sets forth clear, objective, and non-discretionary requirements that a recall petition *must* meet to be valid. The petition here failed on two separate, fatal grounds.
14. First, it was untimely. The Charter's 30-day filing deadline is absolute. The undisputed evidence shows the petition was filed on the 31st day. Under the long-standing precedent of *Nunn v. New*, this failure is a fatal defect that renders the petition void.
15. Second, the grounds for recall were impermissibly vague. The Charter demands that grounds be stated with specificity and certainty to provide actual notice of the charges. The generic

phrases used here—such as “unprofessional conduct”—provided no such notice and failed this mandatory requirement.

16. Thirdly, the City Commission’s duty to act is expressly conditioned on the petitioner meeting “all” Charter requirements. Because the petition was invalid on its face, no ministerial duty to call an election ever arose. The Commissioners, sworn to uphold the Charter, correctly refused to act on a void petition. This was not a discretionary review of a certified petition, as in the cases cited by Appellee; it was the recognition of a failure to meet objective legal prerequisites. The Commissioners’ vote was not a conflict of interest but a fulfillment of their duty to follow the law. The trial court’s order must be reversed.

VIII. ARGUMENT

A. Standard of Review

17. A writ of mandamus is an extraordinary remedy that will issue only to compel a public official to perform a purely ministerial act. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). An act is ministerial only when the law clearly spells out the duty to be performed with such certainty that nothing is left to the exercise of discretion. *Id.* The interpretation of a city charter is a question of law reviewed de novo. *In re Woodfill*, 470 S.W.3d 473, 478 (Tex. 2015).

B. The Appellee lacked standing to bring her petition for writ of mandamus because her recall petition failed to comply with the strict requirements of the Kingsville Charter, was fatally flawed and was void and as if it had never been filed.

18. A lack of subject-matter jurisdiction is fundamental error that can be raised anytime. *In re Pixler*, 584 S.W.3d 79, 83–84 (Tex. App.—Fort Worth 2018, no pet.). Subject matter jurisdiction is essential to the authority of a court to decide a case; it cannot be waived and may be raised for the first time on appeal. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 94

(Tex. 2012). Standing is a necessary component of subject-matter jurisdiction, without which a court lacks authority to hear a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444–45 (Tex.1993). Because standing is a component of subject-matter jurisdiction, it may be raised for the first time on appeal by the parties or by the court. *Id.* at 445–46.

19. Texas Courts have long established the law of standing:

“Standing consists of some interest peculiar to the person individually and not as a member of the general public.” *Billy B., Inc. v. Bd. of Trs. of Galveston Wharves*, 717 S.W.2d 156, 158 (Tex. App.—Houston [1st Dist.] 1986, no writ) (citing *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984)). More specifically, a person has standing to sue if: (1) he has sustained, or is immediately in danger of sustaining, some direct injury as a result of the wrongful act of which he complains; (2) he has a direct relationship between the alleged injury and claim sought to be adjudicated; (3) he has a personal stake in the controversy; (4) the challenged action has caused the plaintiff some injury in fact, either economic, recreational, environmental, or otherwise; or (5) he is an appropriate party to assert the public’s interest in the matter, as well as his own interest. *Id.* (citing *Hous. Authority v. State ex rel. Velasquez*, 539 S.W.2d 911, 913–14 (Tex. Civ. App.—Corpus Christi 1976, writ ref’d n.r.e.)).

Standing is a component of subject matter jurisdiction. *Douglas v. Delp*, 987 S.W.2d 879,882 (Tex.1999).” *Harris County Medical Examiner v. Saghian* (Tex.App.- Houston [1st Dist.] Oct. 8, 2009).

20. The test for constitutional standing in Texas "requires that there (a) shall be a real controversy between the parties, which (b) will be actually determined by the judicial declaration sought." *Tex. Ass'n of Bus.*, 852 S.W. 2d at 446 (quoting *Bd. of Water Eng'rs v.*

City of San Antonio, 155 Tex. 111, 283 S.W.2d 722, 724 (1955)). Standing requires the claimant to demonstrate a particularized injury distinct from that suffered by the general public—there must be an actual grievance, not a hypothetical or generalized grievance.

Glover v. Union Pac. R.R., 187 S.W.3d 201, 209 (Tex.App.-Texarkana 2006, pet. denied); see Brown v. Todd, 53 S.W. 3d 297, 302 (Tex.2001); see also In re H.C.S., 219 S.W.3d 33, 34 (Tex. App.-San Antonio 2006, no pet.).

21. The “particularized injury” and “actual grievance” that Appellee claims in her petition for writ of mandamus was that Appellants failed or refused to resign or call for a recall election after the City Secretary presented the Appellants with the recall petition that Appellee had filed with the City Secretary on June 6, 2025. (CR: 5).
22. The uncontroverted testimony of the Kingsville City Secretary was that Appellee filed her recall petition on June 6, 2025, 31 days after the filing of Appellee’s affidavit on May 6, 2025. (RR2: 27-28, 30-31, 41-42). It is undisputed that Article II, §24(5) of the Kingsville City Charter mandates that a recall petition “shall” be filed within 30 days of the filing of the required affidavit. (RR3: PX-1). Therefore, it is undisputed that Appellee’s recall petition did not comply with the strict requirements of the Kingsville City Charter.
23. In an identical set of facts, the Texas Supreme Court ruled that the failure by the recall petitioner to return and file a recall petition within the 30 days after the filing of the required affidavit was fatal and made the recall petition invalid. *Nunn v. New, 148 Tex. 443, 226 S.W.2d 116 (1950)*. In *Nunn*, the Texas City charter provided: "The recall petition to be effective must be returned and filed with the Secretary within thirty days after the filing of the affidavit, * * *." *Id at 117*. Reversing the Court of Appeals, the Supreme Court held that for the recall petition to be effective it must be filed within thirty days after the filing of the

affidavit. The Secretary's duty is to examine the petition for defects which may be corrected. The failure to file in time is not a defect which may be corrected in any manner except by the filing of a new petition under the terms of the charter. We must conclude, therefore, that the recall petition was filed too late . . .” *Id.*

24. As in this case, the Plaintiff in *Nunn* was seeking to exercise a right created by the home-rule city's charter, not a right created by a Texas civil statute. *City of Houston v. Sukhta, No. 01-21-00703-CV, 2022 WL 2203657, at *4 (Tex. App.—Houston [1st Dist.] June 21, 2022, pet. denied)*. “City charters are construed according to general rules of statutory interpretation.” *Powell v. City of Hous., 628 S.W.3d 838, 843 (Tex. 2021)*; see *Jones v. Whitmire, 691 S.W.3d 685, 693 (Tex. App.—Houston [14th Dist.] 2024, no pet. h.)*; *Hunt v. City of Diboll, 574 S.W.3d 406, 422 (Tex. App.—Tyler 2017, pet. denied)*. A Court’s primary objective in reviewing the meaning of a home rule’s city charter is to ascertain and give effect to the enacting body's intent. In doing so, it must look to the plain meaning of the statutory terms, informed by the terms’ context. *Morath v. Lampasas Indep. Sch. Dist., 686 S.W.3d 725, 734 (Tex. 2024)*.
25. The Texas Supreme Court’s interpretation in *Nunn* of the time limitation for the filing of a recall petition in the city charter there is consistent with the mandatory language in the Kingsville City Charter. Here Kingsville City Charter specifically uses the term “shall” when requiring that a recall petition be returned within 30 days of the filing of the required affidavit. As with *Nunn*, the 30 deadline for the filing of a recall petition is mandatory and is jurisdictional as to the *effectiveness* and *legality* of a recall petition. *Nunn v. New, 148 Tex. 443, 226 S.W.2d 116 (1950)*.

26. Here as in *Nunn*, because Tijerina failed to meet the mandatory 30-day deadline, her recall petition was not “effective” and the untimely filing rendered it *void ab initio*. Given that Plaintiff’s petition was a nullity, Plaintiff did not suffer a “particularized injury” and “actual grievance” when Appellant Commissioners refused to resign or set a date for a recall election. *Glover v. Union Pac. R.R.*, 187 S.W.3d 201, 209 (Tex.App.-Texarkana 2006, *pet. denied*); *see Brown v. Todd*, 53 S.W. 3d 297, 302 (Tex.2001). Plaintiff’s lack of a “particularized injury” or “actual grievance” due to her void recall petition deprived her of standing to file a petition for writ of mandamus and deprived the trial court and this court with subject matter jurisdiction to hear this case. Thus, Court must reverse and render a decision finding that the trial court had no jurisdiction to hear the petition for writ of mandamus.

C. The trial court lacked subject matter jurisdiction to hear this case under Section 24(7) of the Kingsville City Charter.

27. A court must have subject-matter jurisdiction to decide a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). The determination as to whether subject matter jurisdiction exists is a question of law, which this court reviews de novo. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex.1998); *See also, Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998).

28. As discussed above, the City of Kingsville is a home rule city. A home rule city derives its powers not from the legislature, but from the Texas Constitution. *See Tex. Const. Art. XI, § 5; Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex.1998). A home rule city has all the powers of the state not inconsistent with the Texas Constitution, the general laws, or the city's charter. *See Proctor*, 972 S.W.2d at 733. In this case, the ability of a citizen of a home

rule city to petition for the recall of a city official is derived from Article II, §24 of the Kingsville City Charter, and not from a statute enacted by the legislature.

29. Courts presume a home-rule city charter provision to be valid, and the courts cannot interfere unless it is unreasonable and arbitrary, amounting to a clear abuse of municipal discretion.

See, City of Brookside Village v. Comeau, 633 S.W.2d 790, 792 (Tex.1982); City of Houston v. Todd, 41 S.W.3d 289, 295 (Tex. App–Houston [1st Dist.] 2001, pet. denied).

30. Article II, §24 of the Kingsville City Charter contains all the provisions which a citizen must follow to successfully file a petition to recall a Kingsville City official. There is no statute, state regulation or constitutional provision which speaks to the requirements regarding the filing of a recall petition in a home rule city. Likewise, the Kingsville City Charter, and the City Charter alone, confers jurisdiction on a Kleberg district judge to take certain action to require city officials to act upon a validly filed recall petition. Appellee can point no state statute which gives a district judge jurisdiction to order city officials in a home rule city to call for a recall election. Only Article II, §24(7) of the Kingsville City Charter provides that jurisdiction. Article II, §24(7) of Kingsville City Charter has *mandatory* language on when a Kleberg County district judge has jurisdiction to order a city commission to call a recall election:

“(7) Failure of city commission to call an election. In case all of the requirements of this Charter shall have been met and the City Commission shall fail or refuse to receive the recall petition, or to order such recall election, or to discharge any other duties imposed upon said City Commission by the provisions of this Charter with reference to such recall, then the District Judge of Kleberg County, Texas, or other judge of competent jurisdiction shall discharge any such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Commission.” City of Kingsville City Charter, Art .II, §24(7) (RR3: PX) (emphasis added).

31. In other words, only when *all* of the requirements of the Charter have been met, does a district court have subject matter jurisdiction to order the City Commission to call a recall

election. It is undisputed that at least one of the requirements of the Charter was not met by Appellee when she filed the recall petition with Kingsville City Secretary – the requirement that “[a]ll papers comprising a recall petition shall be returned and filed with the person performing the duties of City Secretary within thirty (30) days after the filing of the affidavit hereinbefore provided for.” *City of Kingsville City Charter, Art. II, §24(6) (RR3: PX 1.)* (*emphasis added*).

32. Because it is undisputed that not all of the requirements of the Kingsville City Charter were met, under Article II, §24(7) of City of Kingsville City Charter the trial court did not have subject matter jurisdiction to order Appellants to “fix a date for the recall election for Commissioners Norma Nelda Alvarez, Hector M. Hinojosa, and Lionel "Leo" H. Alarcon.”

33. This Court must find that under Article II, § 24(7) of City of Kingsville City Charter the trial court had no subject matter jurisdiction to order Appellants to set a date for a recall election and reverse and render a decision dismissing Appellee Tijerina’s Petition for Writ of Mandamus.

D. The trial court abused its discretion when contrary to the undisputed evidence, it found that the recall petition was filed with the Kingsville City Secretary within 30 days from the filing of the required affidavit, and therefore timely under the Kingsville City Charter.

1. There was no evidence that Appellee’s recall petition was filed within 30 days from the filing of the required affidavit.

34. A legal sufficiency challenge will be sustained if (1) there is a complete absence of evidence of a vital fact; (2) the court is barred by the rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a scintilla; or (4) the evidence conclusively establishes the opposite of a vital fact. *Marathon Corp. v. Pitzner, 106 S.W.3d 724, 727 (Tex. 2003)*. More than a scintilla of

evidence exists when the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004). Evidence does not exceed a scintilla if it is so weak as to do no more than to create a mere surmise or suspicion that the fact exists. *Id.*

35. Article II, §24(3) of the Kingsville City Charter requires a person seeking to file a petition to recall an official of the City of Kingsville to file an affidavit with the Kingsville City Secretary before beginning the process of securing signatures for a petition to recall the official:

“(3) Recall procedure. Any qualified voters of the City may make and file with the person performing the duties of City Secretary an affidavit containing the name or names of the officer(s) whose removal is sought and a statement of the grounds for removal. . .” *City of Kingsville City Charter, Art .II, §24(3) (RR3: PX 1).*

36. It is undisputed that Appellee Tijerina filed the required affidavit with the Kingsville City Secretary on May 6, 2025. (RR2: 27-28).

37. Article II, Section 24(6) of the Kingsville City Charter requires that the person seeking to recall a Kingsville city official must file the recall petition with the required signatures within 30 days of the filing of the required affidavit:

“(6) Presentation of petition; election to be called. All papers comprising a recall petition shall be returned and filed with the person performing the duties of City Secretary within thirty (30) days after the filing of the affidavit hereinbefore provided for. . .” *City of Kingsville City Charter, Art. II, §24(6) (RR3: PX 1).*

38. It is undisputed that Appellee Tijerina filed the completed recall petitions with the City Secretary on June 6, 2025. (RR2:30-31). Counting from May 6, 2025, the filing on June 6, 2025, occurred on the 31st day. (RR2:41-42).

39. There was no evidence offered by Appellee disputing that the required affidavit by Tijerina was filed on May 6, 2025; nor was there any evidence disputing that the recall petition was filed on June 6, 2025.
40. Notwithstanding the total lack of evidence showing that the Appellee filed the recall petition with the City Secretary “within thirty (30) days after the filing of the affidavit”, the trial judge found “that this recall petition was filed on time.” (RR2:101). It is unclear how the Court concluded that the recall petition was filed on time, but in his ruling, he stated that “the dated started May 7th and continued for 30 days.” However, there was a complete lack evidence that the required affidavit was filed on May 7, 2025. In fact, the evidence conclusively establishes that the affidavit required under Article II, §24(3) was filed on May 6, 2025, that the recall petition was filed on June 6, 2025, and, as a result, the recall petition was filed 31 days after the date of the filing of the required affidavit; hence the recall petition was not timely filed. *Marathon Corp. v. Pitzner, 106 S.W.3d 724, 727 (Tex. 2003)*.
41. Therefore, the trial court erred when it found that the recall petition was timely filed and this Court must reverse and render a decision that the recall petition was not timely filed and that Appellee’s petition writ of mandamus must be dismissed.

2. There was insufficient evidence that Appellee’s recall petition was filed within 30 days from the filing of the required affidavit.

42. When reviewing a challenge to the factual sufficiency of the evidence, the appellate court examines the entire record, considering both the evidence in favor of, and contrary to, the challenged finding. *Cain v. Bain, 709 S.W. 2d 175, 176 (Tex. 1986)*. After considering and weighing all the evidence, the appellate court will set aside the fact finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986)*.

43. As the discussion in Section C1 above shows, not only was there *no* evidence to support the trial court’s finding that the recall petition was timely filed, but at the very least his finding was “so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.” *Id.* This Court must reverse and render the trial court’s decision granting of a Appellee’s petition for a writ of mandamus.

E. The trial court Erred in Granting Mandamus Because the Recall Petition Failed to Comply with Mandatory Charter Provisions.

44. The Kingsville City Charter is the City’s constitution, and its provisions are not mere suggestions. (RR2:14, 52). They impose mandatory duties. The recall petition in this case was fatally defective because it failed to comply with two separate mandatory requirements of the Charter.

1. The Petition Was Fatally Untimely.

45. The Charter provides that a recall petition, to be effective, “shall be returned and filed... within thirty (30) days after the filing of the affidavit.” *City of Kingsville City Charter, Art .II, §24(6) (RR3: PX 1.)* The use of “shall” makes this deadline mandatory. The record is undisputed: the affidavit was filed on May 6, 2025, and the petition was filed on June 6, 2025—the 31st day. (RR2:28, 30, 42).

46. The Texas Supreme Court’s decision in **Nunn v. New, 148 Tex. 443, 226 S.W.2d 116 (1950)**, is directly on point and dispositive. In *Nunn*, the city charter similarly required a recall petition to be filed within 30 days. The petition was filed on the 31st day. The Court held the petition was void. *Id at 444, 226 S.W.2d at 117*. The Court reasoned that charter deadlines must be strictly enforced and that the “failure to file in time is not a defect which may be corrected in any manner except by the filing of a new petition under the terms of the charter.” *Id.* The Court concluded, “the recall petition was filed too late.” *Id.* The same is

true here. Tijerina’s failure to meet the mandatory 30-day deadline rendered her petition void *ab initio*.

2. The Petition Failed to State Grounds with Required Specificity.

47. The Charter also mandates that the petition “must distinctly and specifically state the ground(s)” for removal with “certainty as to give the officer sought to be removed, notice of such matters and things with which he or she is charged.” *City of Kingsville City Charter, Art .II, §24(5) (RR3: PX 1.)* This is a due process requirement designed to ensure an official is not subjected to a recall effort without fair notice of the accusations.
48. The grounds listed in Tijerina’s petition—“unprofessional conduct,” “neglect of fiscal responsibilities,” “targeting personnel,” and “neglect of... policies”—are the epitome of vagueness. (DX1). They are conclusory labels, not specific statements of fact. As Commissioner Alvarez testified, these phrases gave her no notice of what conduct she was being accused of. (RR2:67, 70).
49. While Texas courts have found general statements sufficient in some cases, the focus is always on whether the grounds provide meaningful notice. *See, e.g., Burns v. Kelly, 658 S.W.2d 731, 735 (Tex. App.—Fort Worth 1983, orig. proceeding)* (finding grounds sufficient where they specified “failure to keep campaign promises” and “disregard of the needs of the citizens”). The grounds here are far more generic and fail to meet the Charter’s heightened requirement of distinct and specific notice. This failure is another independent and fatal defect in the petition.

F. No Ministerial Duty to Call an Election Arose Because Mandatory Preconditions Were Not Met.

50. The trial court’s entire authority to issue a writ of mandamus, and the Commission’s duty to act, is explicitly conditioned by the Charter itself. Section 24(7) provides that a district judge

may act only “[i]n case **all of the requirements of this Charter shall have been met.**” *City of Kingsville City Charter, Art .II, §24(7) (RR3: PX 1.) (emphasis added)*. This language creates a condition precedent. If the charter requirements are not met, no duty arises for the Commission, and no power is vested in the court to compel action.

51. Because the petition was untimely and the grounds were insufficient, “all of the requirements” of the Charter had not been met. Therefore, the Commission’s ministerial duty to call an election never came into existence. Their refusal to order an election based on a void petition was not a discretionary act; it was a recognition that the legal predicate for that duty was absent.

G. Appellee’s Authorities on Ministerial Duty are Distinguishable.

52. Appellee heavily relies on cases like *In re Woodfill, 470 S.W.3d 473 (Tex. 2015)* and *Blanchard v. Fulbright, 633 S.W.2d 617 (Tex. App.—Houston [14th Dist.] 1982, orig. proceeding)* for the proposition that a city council cannot conduct a discretionary review of a certified petition. These cases are inapposite. They involved situations where a city council attempted to second-guess a city secretary’s *discretionary* determinations, such as the validity of individual signatures. *See Woodfill, 470 S.W.3d at 479; Blanchard, 633 S.W.2d at 621.*

53. Here, the defects were not matters of discretion but of objective, non-discretionary fact and law. Determining whether a petition was filed in 30 or 31 days is a matter of simple arithmetic, not judgment. Determining whether phrases like “unprofessional conduct” provide specific notice is a legal question based on the plain language of the Charter. The Commission was not improperly substituting its discretion for the Secretary’s; it was recognizing that the petition failed to meet clear, objective legal requirements that are

prerequisites to any ministerial duty. The Secretary's certification cannot breathe legal life into a petition that is void on its face for failure to comply with mandatory, non-discretionary charter provisions.

H. The Commissioners Fulfilled Their Duty to Uphold the Charter.

54. Appellee's claim that the Commissioners acted under a conflict of interest mischaracterizes their duty. The Commissioners took an oath to uphold the law, including the City Charter. (RR2:66). Faced with a petition that was legally invalid under that Charter, their primary duty was to the law, not to facilitate an election based on a void instrument. Ordering an election under these circumstances would have been a violation of their oath. Their vote was not a self-serving act to avoid accountability, but a legally required act to ensure that the extraordinary power of recall is exercised only in strict compliance with the procedures established by the voters in their Charter.

IX. PRAYER

55. For the reasons stated, Appellants respectfully pray that this Court reverse the trial court's Order Granting Petition for Writ of Mandamus, render judgment that the writ of mandamus be denied, and grant Appellants all other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE

I hereby certify that on this 30th day of December 2025, a true and correct copy of this brief was served upon counsel for Appellee, Mr. Christopher Gale, via electronic service in accordance with the Texas Rules of Appellate Procedure.

I further certify that this brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B), as it contains 5,969 words, excluding the parts of the brief exempted by Rule 9.4(i)(1).

/s/ Gilberto Hinojosa _____

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