

SECRETARY OF STATE
STATE OF MONTANA

Linda McCulloch
Secretary of State



Montana State Capitol
PO Box 202801
Helena, MT 59620-2801

March 23, 2009

Michael Spreadbury
P.O. Box 416
Hamilton, MT 59840

RE: Recall Petition

Dear Mr. Spreadbury:

This office received your revised petition calling for the recall of Attorney General Steve Bullock on March 17, 2009. The following is our legal opinion on whether or not the recall petition submitted by you meets the requirements under the Montana Recall Act, Mont. Code Ann. §§ 2-16-601, *et seq.*

The Montana Recall Act ("The Act") requires that petitions to recall state officers, such as the Attorney General, be filed with the Secretary of State. Mont. Code Ann. § 2-16-615. The Act provides a suggested form, which the recall petition must substantially follow. Mont. Code Ann. § 2-16-616. The sample petition submitted to the Secretary of State must be accompanied by a statement containing the reasons for the desired recall. Mont. Code Ann. § 2-16-617(4). In addition, "the truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths." Mont. Code Ann. § 2-16-617 (4). The Secretary of State must review the petition for sufficiency as to form, and approve or reject the petition within one week of receiving it. Mont. Code Ann. § 2-16-616 (3). If the Secretary of State refuses to approve the petition as to form, an action for mandamus may be pursued in district court. Mont. Code Ann. § 2-16-615.

In general, the form requirements set forth in these statutes are as follows: (1) warning and preamble, (2) size and format, (3) number of pages, and (4) sworn, definite, and specific statement of facts. Mont. Code Ann. §§ 2-16-616 and 617.

The petition must contain the warning and preamble found at section 2-16-616 (1), MCA, which states:

WARNING

A person who knowingly signs a name other than the person's own to this petition, who signs the person's name more than once upon a petition to recall the same officer at one election, or who is not, at the time of signing this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or a fine of \$500 or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable, Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether, holding the office of, should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). Each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

Numbered lines must follow this language and must contain spaces for the signature, post-office address, and printed last name of the signer.

The petition must be no more than 8.5 by 14 inches or a continuous sheet folded in those dimensions. Circulation sheets must be ruled with a horizontal line 1.5 inches from the top of every sheet with the space above that line remaining blank. Mont. Code Ann. § 2-16-617(1). The petition may be divided into sections with each section containing no more than twenty-five circulation sheets. Mont. Code Ann. § 2-16-617(2).

A sample circulation sheet shall be reviewed by the filing officer for sufficiency of form. The sample shall be approved or rejected within one week. Mont. Code Ann. §2-16-617(3).

The question as to what constitutes sufficiency as to form has been addressed by the Montana Supreme Court. See *Steadman v. Halland*, 197 Mont. 45, 641 P.2d 448, (1982). The Court stated “[t]he section [2-16-617(4)] requires that both the petition submitted for approval and the statement attached to the petition explain the basis for the recall. As the grounds for the desired recall specifically constitute part of the form of the petition, the Secretary of State is empowered to reject the petition unless it meets

all of the statutory requirements. 38 Op.Att.Gen. 41 (1979). We agree that the statement of grounds for recall to be included in the petition is 'part of the form of the petition' and find that the filing officer not only is 'empowered to' but is required to reject the petition when it does not comply with statutory requirements." 197 Mont. at 52, 641 P.2d. at 452-53. The filing officer reviewing the petition has a duty to reject a petition if the statement that is the basis of the petition does not meet legal guidelines.

In *Sheehy v. Ferda*, 235 Mont. 63, 765 P.2d 722 (1988), quoting *Steadman*, 197 Mont. at 54, 641 P.2d at 453, the Montana Supreme Court held that:

[I]t is not enough for a recall petition to allege one of the grounds for recall as set forth in section 2-16-603(3), MCA. The recall petition must also include a clear statement of the alleged acts constituting the grounds for recall.

Sheehy, 235 Mont. at 70, 765 P.2d at 726.

Applying the law to the petition to recall Attorney General Steve Bullock, it is apparent that the petition meets some, but not all of the requirements necessary under The Act. The Office of the Attorney General is a statewide elected office and thus the petition is properly before the Secretary of State. The proposed petition substantially complies with the required warning and recall petition language found in section 2-16-616, MCA. The petition also meets the requirements of section 2-16-616(2), MCA in regards to the numbered lines containing spaces for the signature, address and printed last name of the signer.

The petition is accompanied by a sworn written statement of facts supporting the reason for the recall. Section 2-16-617(4) states "[t]he truth of purported facts contained in the statement must be sworn to by at least one of the petitioners before a person authorized to administer oaths." The statement of facts attached to the petition states "I, Michael Spreadbury do attest that the following is true and I swear to this with a penalty of perjury if these facts are not true." The Act requires that statements be sworn, not attested. This may mean that the petition is not properly sworn according to statute and while it may withstand judicial scrutiny, I would recommend that the petitioner use the term provided in statute to avoid any issues of validity.

Section 2-16-616, MCA, states that the recall petition must include "a general statement of the reasons for recall" The statement of facts in this petition reads:

INCOMPETENCE

Attorney General Bullock knowingly presides over a justice system that is top to bottom corrupt. It includes the Montana Bar Association, Judicial Commission, Highway Patrol, Department of Justice and local Law Enforcement units. Mr. Bullock does not uphold justice, merely what is expedient to their cause of the moment. The Attorney General is willing to threaten anyone willing to challenge his illegal reign at MT DOJ. Case in point is a 2007 phone conversation where he threatened a decorated FEMA officer and Montana resident with loss of employment, and residence if said person questioned his department. Mr. Bullock is willing to cover illegal activities for local officials when needed. This includes obstructing justice and issuing threats.

OATH OF OFFICE:

Attorney General Bullock violates the state and federal oath of office by not upholding equal protection under the law as described in those documents.

In *Sheehy*, the Montana Supreme Court stated that “[t]he Montana Recall Act requires that the charge of incompetence, when it is used for recall, [must] be based on the ‘truth of purported facts contained in the statement’ sworn to by a petitioner.” 235 Mont. at 69, 765 P.2d at 726.

Likewise, the Montana Supreme Court has held that specificity of the alleged facts is an important part of a recall petition. The second stated ground for recall “violation of state and federal oath of office” simply states that “Attorney General Bullock violates the state and federal oath of office by not upholding equal protection under the law as described in those documents,” without giving any detail or specificity as to the nature of the violation. Also in *Sheehy*, quoting *Steadman*, 197 Mont. at 54, 641 P.2d at 453, the Montana Supreme Court held that:

[I]t is not enough for a recall petition to allege one of the grounds for recall as set forth in section 2-16-603(3), MCA. The recall petition must also include a clear statement of the alleged acts constituting the grounds for recall.

Sheehy, 235 Mont. at 70, 765 P.2d at 726.

Based on the law as described above, the grounds that Attorney General Bullock violates his oath of office does not meet the requirements of specificity required. The charge does not specify how the Attorney General fails to uphold equal protection, but is merely a conclusory and general statement that fails to meet the rule required by *Steadman*.

The petition also alleges that “Attorney General Bullock knowingly *presides over* a justice system that is top to bottom corrupt (emphasis added).” It alleges that this justice system includes “the Montana Bar Association, Judicial Commission, Highway Patrol, Department of Justice and local Law Enforcement units.” The statement that Attorney General Bullock presides over “the Montana Bar Association, Judicial Commission, ... and local Law Enforcement units” is factually incorrect. The State Bar of Montana was created by order of the Montana Supreme Court in January, 1974 and is governed by a Board of Trustees elected by its members. The Montana Judicial Standards Commission was created by amendment to the State Constitution in 1973 and is composed of two district court judges elected by the district court judges, one attorney appointed by the Supreme Court, and two members of the public appointed by the Governor. Local law enforcement units are city police officers and county sheriff’s officers. Attorney General Bullock exercises no supervisory authority over the State Bar of Montana, the Judicial Standards Commission or local law enforcement units.

In addition, the statement alleges that “[t]he Attorney General is willing to threaten anyone to challenge his illegal reign at MT DOJ. Case in point is a 2007 phone conversation where he threatened a decorated FEMA officer and Montana resident with loss of employment, and residence if said person questioned *his department* (emphasis added).” This statement is factually incorrect. Attorney General Bullock took office in January 2009 and, therefore, any allegation having to do with conduct before he took office appears to not be relevant. While this statement may have the specificity required, it is surrounded by statements that fail to meet the *Steadman* rule.

The Montana Supreme Court has consistently held that the reasons for recall must be sufficiently specific to acquaint the public, whose signatures are sought, with the acts complained of, and to enable the challenged officer to defend the alleged conduct. *Steadman*, 197 Mont. at 54, 641 P.2d at 453; *Foster v. Kovich*, 207 Mont. 139, 149, 673 P.2d 1239, 1245 (1983).

In *Steadman*, a petition to recall the Yellowstone County Sheriff alleged that "Sheriff Shaffer acted in a manner to bring discredit to himself and the Department by OFFICIAL MISCONDUCT stemming from an incident in Sweet Grass County on November 7, 1980." 197 Mont. at 53-54, 641 P.2d at 453. The Montana Supreme Court held that statement to be deficient because it failed to adequately inform the public of the acts constituting the alleged official misconduct, and did not give the sheriff enough information to adequately defend himself. The Court stated: "[t]he 'general statement' required by *section 2-16-616 (1), MCA*, demands more specificity than this." 197 Mont. at 54, 641 P.2d at 453. The proposed petition fails on all of the grounds announced by the Court.

The *Steadman* court also stated "[t]he logic of this policy is peculiarly applicable to the case at bar, because the initial review of recall petitions is intended to save the public and government officials the time and expense of circulating and responding to a petition which is fatally defective." 197 Mont. at 52, 641 P.2d at 452.

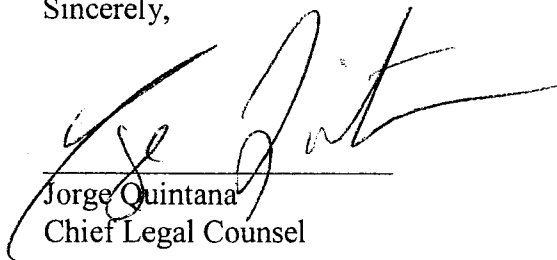
In analyzing the proposed petition, it is readily apparent that it falls short of the legal requirement for a recall petition and is legally insufficient to go forward.

The Montana Supreme Court has stated that "[t]he legal sufficiency of the allegations [in a recall petition] is not left to the electorate. Therefore, a petition may never reach the electorate because it fails to specify acts legally sufficient to constitute grounds for recall under *section 2-16-603(3)* of the Recall Act." *Sheehy*, 235 Mont. at 70, 765 P.2d at 726, *quoting Foster*, 207 Mont. at 150, 637 P.2d at 1246.

Therefore, it is my opinion that your revised recall petition fails to meet the statutory requirements of the Montana Recall Act and must be rejected by this office.

You may correct the identified flaws and resubmit the petition to this office or petition the District Court for a writ of mandamus if you believe the petition meets the statutory requirements.

Sincerely,



Jorge Quintana
Chief Legal Counsel

MCA 2-16-600 Montana Recall Act
Recall of Montana Attorney General

Warning:

A person who knowingly signs a name other than the person's own to this petition, who signs the person's name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition a qualified elector of the State of Montana, entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officer who have the authority to appoint the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison system not to exceed 10 years or both.

Recall Petition:

To the Honorable Linda McCulloch, State Election Administrator:

We the undersigned qualified electors of The State of Montana respectfully petition that an election be held as provided by law on the question of whether Steve Bullock, holding the office of Montana Attorney General should be recalled for the following reasons:

INCOMPETENCE:

Attorney General Bullock knowingly presides over a justice system that is top to bottom corrupt. It includes the Montana Bar Association, Judicial Commission, Highway Patrol, Department of Justice, and local Law Enforcement units. Mr. Bullock does not uphold justice, merely what is expedient to their cause of the moment. The Attorney General is willing to threaten anyone willing to challenge his illegal reign at MT DOJ. Case in point is a 2007 phone conversation where he threatened a decorated FEMA officer and Montana resident with loss of employment, and residence if said person questioned his department. Mr. Bullock is willing to cover illegal activities for local officials when needed. This includes obstructing justice and issuing threats.

OATH OF OFFICE:

Attorney General Bullock violates the state and federal oath of office by not upholding equal protection under the law as described in those documents.

EACH SIGNER CERTIFIES:

I have personally signed this petition; I am a qualified elector of the State of Montana, and my residence address and Post Office address are correctly written after my name to best of my knowledge and belief.

Signature	Printed last name	Post Office Address (Address where registered)	Date
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Ravalli Recall
PO Box 416
Hamilton MT 59840