District Court, County of Arapahoe, Colorado Court Address: 7325 S. Potomac St. Centennial, Colorado 80112	DATE FILED: March 29, 2024 4:15 PM FILING ID: E4DA3C51C92EE CASE NUMBER: 2024CV30677
Plaintiff(s): Daniel Taylor, Robin O'Meara, Deborah Parker, John Rasmussen, Gwen Alexander, John Guise and Forrest McClure, as Eligible Electors of Heather Gardens Metropolitan District, Daniel Taylor and Robin O'Meara, as HGMD directors subject to recall**,** **v.** **Defendant(s):** A.J. Beckman, as Designated Election Official.	▲ **COURT USE ONLY** ▲
Daniel J. Taylor, Reg. No. 19493 3900 E. Mexico Ave., Suite 610 Denver, Colorado 80210 Office: 720-707-0087 Fax: 720-707-0429 Cell: 303-552-7660 DanielTaylor@CoTaxAtty.com	Case No. Division
COMPLAINT TO APPEAL ORDER OF DESIGNATED ELECTION OFFICIAL PURSUANT TO C.R.C.P. 106(a)(4) and REQUEST FOR RESTRAINING ORDER	

Plaintiffs are eligible electors of the Heather Gardens Metropolitan District (HGMD) (hereinafter "Protesters"). On November 16, 2023, case number 1983 CV 105, in Division 15 of the Arapahoe County District Court, the Recall Petition Committee (hereinafter "Supporters") was granted authority to circulate recall petitions against four HGMD directors, Daniel Taylor, Robin O'Meara, Rita Effler, and Craig Baldwin (hereinafter "Directors"). Protesters pray for relief pursuant to C.R.C.P. 106(a)(4) as follows:

SUMMARY

The subject of this appeal are the determinations made by the Designated Election Official (DEO), A.J. Beckman, in his official capacity, following his appointment by the District Court on November 21, 2023. Although there are procedural claims and claims concerning the adherence of the Supporters to the statutory recall requirements, this appeal primarily focuses upon the interpretation of C.R.S. §32-1-909(4)(c) which states in part that the recall petition's statement of grounds must not include any profane or false statement.

JURISDICTION

This appeal is filed pursuant to C.R.C.P. Rule 106(4) which allows for judicial review of final decisions by a government officer for abuse of discretion. Review of a DEO order after hearing must be made within 5 days, C.R.S. §32-1-910(3)(f). The recall petition was filed the Arapahoe County District Court on November 16, 2023, case number 1983CV105. The recall petitions

were filed with the DEO on February 6, 2024, and the DEO determined the petitions to be sufficient on February 13, 2024, within five days of filing, C.R.S. §32-1-910(3)(b).
The protest hearings were concluded on March 15, 2024, within 40 days after the petitions were filed, and the DEO's order was issued March 22, 2024, C.R.S. §32-1-910(d)(IV).

GENERAL ALLEGATIONS

1. Heather Gardens is a retirement community located in Aurora, Colorado, County of Arapahoe. The HGMD owns the perimeter landscaping, E. Linvale Place, a clubhouse, restaurant, golf course, maintenance building, RV storage lot, and gardens. The Heather Gardens Association (HGA) is a homeowners' association that maintains the residential buildings and residential concrete parking structures. HGA is completely contained within the outer boundaries of the HGMD. All residents of HGA are HGMD electors. Venue is proper in the Arapahoe District Court.

2. The four directors subject to recall (hereinafter "Directors") were sworn into office on May 15, 2024, as directors of the HGMD. District directors are subject to recall pursuant to C.R.S. §32-1-906(1). On November 16, 2023, Supporters filed their motion to intervene to exercise their right to pursue a recall of Directors.

3. The District Court granted Supporters' motion to intervene including the proposed recall petitions on November 20, 2023. The DEO was appointed on November 21, 2023. All four Directors filed Objections including an exhibit, with the DEO on November 24, 2023, based upon false statements made in the grounds of the recall petitions in violation of C.R.S. §32-1-909(4)(c).

4. There is no express provision in the statute to object, correct or modify a proposed recall petition. In the late afternoon of November 27, 2023, Director Taylor received a telephone call from a DEO staff member stating that the Objections must contain a notarized affidavit, and must be refiled by 4:00 p.m. Director Taylor notified the other Directors. The Objections were converted to an affidavit format, were signed, notarized, and refiled as requested. When asked who determined the notarized affidavit requirement, the DEO staff member stated HGMD's attorney, Jennifer Ivey.

5. The proposed recall petitions were disallowed, based upon the false statements, by the DEO on November 27, 2023. At the end of the day on December 14, 2023, Supporters submitted revised recall petitions. The revised petitions were emailed by the HGMD's attorney to the Directors on December 15, 2023, at 9:52 a.m.

6. Several of these emails were not received. Director Taylor received Director O'Meara's revised petition at 3:11 pm, but did not receive his own until it was forwarded by another director at 7:00 p.m. The revised petitions had been allowed within hours of filing.

7. Director O'Meara's petition was disallowed a second time based upon false statements. It was alleged that she hadn't posted board meeting minutes on the HGA website since June 8, 2023. The DEO stated that he was able to download meeting minutes from the HGMD

official website, so the petition allegation was false. Supporters revised the petition an additional time and it was allowed by the DEO.

8. Director Taylor objected to the petition approvals on December 16, 2023, based on remaining false statements.

9. Supporters circulated the petitions throughout the community, and held two public meetings in the community's auditorium. The Supporters' January 6, 2024, meeting had about 200 attendees with standing room only. Supporters' January 27, 2024, meeting had a little over 100 attendees.

10. Supporters' attorney, Martha Karnopp, repeated the original petition language allegations at the January 6, 2024, meeting stating that Directors created a toxic and hostile work environment causing the resignation of the six employees listed on the petition along with other false allegations made in the petition.

11. Directors were only given three minutes to respond to the many allegations, and were only allowed to speak a few times during the two-hour meeting. HGA security enforced the three minute time limitation and actually took the microphone out of the hand of a supporter of the Directors trying to finish their statement.

12. The signed petitions were filed on February 6, 2024. The sufficiency of the recall petitions was determined on February 13, 2024, which began the 15-day period for eligible electors to file a protest (C.R.S. §32-1-910(3)(d)). Protesters filed their protests within the 15-day period. Seventeen protests were received by the DEO.

13. All protesters received a letter from the DEO stating that because the false statements allegedly are contained within the petition grounds, "your request to treat your February 9 letter as a protest or as a challenge to petition sufficiency is precluded as a matter of law."

14. On February 16, 2024, Director Taylor objected to the DEO's summary dismissal of the Protesters' protests, asserted additional grounds, and requested a hearing citing C.R.S. §32-1-910(3)(d)(II)'s mandatory language that upon receiving a protest, the DEO "shall promptly email a copy of the protest, together with a notice fixing a time for hearing the protest on a date not less than five nor more than ten business days..."

15. In response to this objection, on February 16, 2024, the DEO set status conferences for thirteen of the protests received including protesters Daniel Taylor, Robin O'Meara, Deborah Parker, Gwen Alexander, and John Rasmussen. Protesters who were not granted a hearing include Arthur Richardson, Mavis Richardson, Victoria Spillane, Michael Thoma, John Guise, and Forrest McClure. Of those not granted a hearing, Daniel Taylor filed an appeal in District Court on behalf of John Guise and Forrest McClure. The status conferences were set for February 29, 2024.

16. The DEO chose to grant John Guise and Forrest McClure a hearing. The DEO granted Protesters' motion to consolidate their hearings for efficiency given the extremely condensed time frame. The protest hearings were required to be completed within 40 days of the filing of the petitions. The DEO's initial denial of the protests and setting of the status conferences

on February 29th condensed the preparation time by 15 days. In order to complete the hearings within the required 40 days, the hearings were set beginning on March 13, 2024, at 1:00 pm and continuing through Friday, March 15, 2024.

17. Subpoenas were issued on March 3, 2024, subsequent to the status conferences. On March 5, 2024, Director Taylor received a Brief in Support of Motion to Quash. Supporters' attorney, Martha Karnopp had filed a Motion to Quash Subpoenas that prior day, but did not serve Protesters' counsel. The DEO had entered a briefing order later that same day, but despite months of emails back and forth, sent the order to the wrong email address.

18. Protesters filed a Brief in Opposition to Motion to Quash on March 7, 2024. Attorney for HGA, representing the subpoenaed HGA HR Manager, filed a Motion to Quash, and Protesters filed a Brief in Opposition to HGA Motion to Quash on March 8, 2024.

19. On March 12, 2024, at 6:24 p.m., Daniel Taylor received an email from Supporters' attorney, Martha Karnopp, to the DEO discussing the weather forecast for Thursday and mentioning "your order on Friday limiting the issues to the petition signing procedures."

20. Once again, despite months of emails, the DEO sent the order dated March 8, 2024, to the wrong email address. Counsel for Protesters received the order which affected witnesses and subpoenaed evidence at 7:00 p.m. on March 12, 2024, less than 18 hours before the start of Protesters case in chief. Counsel had spent all of the time from the filing of the brief by March 8th at noon until March 12th at 7:00 pm preparing the order of witnesses, the order of questioning, and the introduction of exhibits in the order of the questioning. These errors placed the Protesters at a disadvantage, and effected the orderly presentation of their case.

FIRST CLAIM FOR RELIEF
Abuse of Discretion by the DEO

21. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 20 herein.

22. C.R.S. §32-1-909(4)(c) states, that each petition must "Contain a general statement, in not more than two hundred words, of the grounds on which the recall is sought, which statement is intended for the information of the electors of the special district. ***The statement must not include any profane or false statement***. The electors of the special district are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds assigned on which the recall is sought, and said grounds are not subject to a protest or to judicial review." Emphasis added.

23. The DEO's interpretation of this statute finds a conflict between the prohibition of false statements and the admonition that the grounds for the recall are not subject to protest or judicial review, citing the Colorado Constitution in paragraphs 35 – 37, of his order.

24. Statutory interpretation is reviewed de novo. *Town of Erie v. Town of Frederick*, 251 P.3d 500 (Colo.App. 2010). In interpreting a statute, the primary objective is to ascertain and effectuate the intent that the General Assembly, and it is presumed that the General Assembly intended a just and reasonable result. A statute should be given the construction

and interpretation which will render it effective in accomplishing the purpose for which it was enacted, giving consistent, harmonious, and sensible effect to all of its parts. *City & Cnty. Of Denver Sch. Dist. No. 1 v. Denver Classroom Teachers Ass'n*, 407 P.3d 1220 (Colo. 2017).

25. Protesters assert an interpretation which gives all words written equal standing, consistent with rules of statutory interpretation. The statute clearly and unambiguously prohibits false statements in the general statement of grounds which purpose is for the information of the electors.

26. C.R.S. §32-1-909(4)(c) mirrors the language of Section 1, of the Colorado Constitution, as cited by the DEO, except for the relevant sentence, that the general statement for the information of the electors must not include any false statement. The General Assembly added this requirement to the constitution language.

27. The state has a legitimate governmental interest in preserving the integrity and fairness of the recall and election process, and in providing accurate information to electors. Consistent with that compelling state interest the General Assembly added the requirement that the statement of grounds must not include any false statement.

28. In this case, there is no conflict within the language of C.R.S. §32-1-909(4)(c). It's clear that the cause of the recall or the reasonableness of the grounds for the recall are not subject to protest or judicial review. That is quite different from prohibiting false statements within the grounds.

29. To withstand constitutional challenge statutory provisions must, at a minimum, have a reasonable basis in fact and bear a reasonable relationship to a legitimate governmental interest. The people themselves have placed several limitations on the recall process. For example, generally no recall petition may be circulated or filed against an officer who has served less than six months. ***The limitations provide a balance essential to the political process***. *Passarelli*, supra. Emphasis added.

22. The prohibition against false statements provides that balance to the petition process. The state has a legitimate interest in the regulation of elections "if they are to be fair and honest." *Buckley v. Am Constitutional Law Found*., 525 U.S. 182, 119 S.Ct. 636, 142 L.ED2d 599 (1999). While acknowledging that petition circulation is core political speech in which the First Amendment protection is at its zenith, the court upheld restrictions which protect the integrity and reliability of the petition process.

30. The DEO determined that the language prohibiting false statements was directory and not mandatory citing *City & Cnty. Of Denver Sch. Dist. No. 1 v. Denver Classroom Teachers Ass'n*, 407 P.3d 1220 (Colo. 2017). That case determined that a less restrictive reading of the statute in question lead to an illogical construction of the Innovation Schools Act of 2008 as a whole. In this case, determining the prohibition of false statements to be merely directory, disregard's the General Assembly's intentional addition of the prohibition language.

31. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

SECOND CLAIM FOR RELIEF
Intimidation of Recall Opponents

32. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 31 herein.

33. In *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 119 S.Ct 636, 142 L.ED.2d 599 (1999), the Supreme Court held that petition circulation is core political speech "because it involves 'interactive communication concerning political change'" and recognized that petition circulators "must endeavor to persuade electors to sign the petition" which requires a "discussion of the merits."

34. That did not occur with the recall petition circulators as a matter of course. On each occasion in which Linda Savage testified that she was questioned concerning the reason for the recall, her only reply was that "Everyone has a right to their own opinion." If an elector didn't accept her opinion and had further questions, she testified that was intimidation.

35. Heather Gardens security participated openly in the repression of this protected political speech by an aggressive show of force in the recall meetings, by taking the microphone out of the hand of a speaker in opposition to the recall, and by telling recall opponents to leave the clubhouse if they questioned circulators.

36. No one could question the credibility of Diane Wachter's testimony. In fact, the petition circulator she was talking to confirmed the dialog that occurred between the two, that Diane was disappointed in Linda's support for the recall. Security Manager Dave Marris stepped in between the two and said he wasn't going to have any of that and ordered Diane Wachter to leave the clubhouse. Can there be an any more poignant demonstration of intimidation than to have a fully armed officer wearing a tactical bullet proof vest, insert himself in front of a petite, senior citizen and usher her toward the door.

37. Diane also testified that she filed a complaint concerning the incident through an HGA Director. In response to the subpoena, the HGA attorney stated in an email that the Association has no record of a written complaint from Diane Watcher.

38. The same email stated that HGA has "approximately 30 minutes of video from January 11, 2024, because someone had previously requested that footage." HGA HR Manager Holly Shearer's testimony disputed the reason they had the 30 minutes of video. But, what we could see in that video, is that it started after the petition signing had begun, but just before Security Manager Dave Marris entered the lobby. This was the limited video that HGA saved, including the time incident in Diane Watcher's complaint. It is a reasonable inference that HGA knew of her complaint.

39. There was testimony about an incident that occurred on January 16th involving the petition circulation. Three residents who opposed the recall went to the lobby on the 3rd floor, during the time petition signers were coming and going to a condo on that floor to sign the petitions. They placed written information on the table, and sat in the chairs closest to the windows away from the corridor. Chris Shott testified that they were sitting at least 20 feet away from the path from the elevator to the condo, and that they never got up from their chairs.

40. The actions of the building area representative screaming profanity at two of the residents and telling them they couldn't be there and had to leave, is an unlawful interference with core political speech and an attempt to intimidate those in opposition to the recall.

41. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

THIRD CLAIM FOR RELIEF
Petition Deficiencies

42. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 41 herein.

43. C.R.S. §1-4-905(2)(III) states that if the date signed by the circulator on an affidavit is different from the date signed by the notary public, the affidavit is invalid. Also stated in C.R.S. §1-40-111(2)(b)(III) regarding initiatives and referendum

44. In *Griff v. City of Grand Junction*, 262 P.3d 906 (Colo.App. 2011), the court discussed requirements that are more than "technical" and stated that "The requirement that circulators complete a notarized affidavit has also been strictly applied, because '***it emphasizes the significance of the personal responsibility circulators must assume to prevent irregularities*** in the initiative process.'"

45. In *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996), the court held that a discrepancy in the circulator's date of signing and the date of notary acknowledgement render the relevant petitions invalid, absent evidence that explains the differences, and that such discrepancies do not provide the necessary safeguards against abuse and fraud. In this case, there was no evidence to explain differences in dates.

46. The petitions in which the notary public signature date is different from the circulator signature date are A1, A2, A4-A7, C4, C5, and C9-C14.

47. C.R.S. §24-21-504(2)(a) states that the notary shall not notarize a record if the notary is named in the record to be notarized.

48. In Griff v. City of Grand Junction, 262 P.3d 906 (Colo.App. 2011), in the prior statute which prohibited a notarial act if "named, individually" in the record, the court stated that being named requires some definitive identification such as a proper name or other description as leaves no question of the identity of the party and distinguishes them from others.

49. Martha Karnopp and Al Lindeman testified that the grounds for recall contained on the face of the petition, naming the Resident Services Coordinator referred to Michelle Audet. Therefore, Michelle Audet was named in the record to be notarized, and she was disqualified to notarize the petitions.

50. Michelle Audet notarized petitions A1, A2, A4-A7, C-4, C5, and C9-C14.

51. C.R.S. §1-12-108(3.5) states that "The DEO's cost estimate must be included in each petition section." There is no cost estimate stated in the filed petitions. The DEO stated that this requirement was removed from Title 32, so that C.R.S. §1-12-108(3.5) doesn't apply.

52. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

FOURTH CLAIM FOR RELIEF
Deficiencies in Petition Circulation

53. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 52 herein.

54. Supporters violated several requirements in the circulation of petitions including leaving the petitions unattended in the crowded clubhouse lobby on the table by the fireplace at approx. 1:50 p.m. on January 6, 2024, and on January 11, 2024, on the floor of the clubhouse lobby underneath the table later used for petition signing.

55. The DEO discounted this evidence absent proof that these regularities affected specific signatures.

56. Although evidence established that the surveillance video from HGA for the Jan 6th incident was requested only 20 days later, on January 26th, the testimony of Holly Shearer, who was the acting HGA general manager, was that she did not understand the very specific email (Exhibit 1), and did not save the portion of the video that would have definitively established that the petitions were unattended on that date.

57. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

FIFTH CLAIM FOR RELIEF
Misrepresentation of Purpose

58. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 57 herein.

59. C.R.S. §32-1-910(2)(c) requires the petition circulator to affirm that they made no misrepresentation of the purpose of the recall petition.

60. At the public meetings held by the recall committee, on January 27, 2024, petition circulator Martha Karnopp told the crowd that the issues in the petition were not the reasons for the recall, that it was about the Directors personalities. Other allegations were made during the public meetings that were false and that were not contained in the recall petitions, the primary allegation that Directors were the cause of the increase in attorney fees which was the most volatile issue during the public meetings.

61. In Fabec v. Beck, 922 P.2d 330 (Colo. 1996), the court said that if a circulator is found to have violated any provision of C.R.S. §1-40-132(1) relating to the circulation of a petition or is otherwise shown to have made false or misleading statements relating to his or her section of the petition, such section shall be deemed void.

62. Martha Karnopp circulated petitions A5 and C10.

63. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

SIXTH CLAIM FOR RELIEF
Procedural Due Process in Petition Approval

64. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 63 herein.

65. Protesters objected to the false statements contained in the initial proposed recall petitions. The DEO disallowed those petitions based upon the false statements. The revised petitions were allowed within hours of the notice attempted by the HGMD attorney. Actual notice wasn't received until after the revised petitions had been allowed.

66. Protesters had made it clear to the HGMD attorney who was advising the DEO at that point, that they intended to continue to object as long as there remained false statements in the recall petitions.

67. The DEO determined that the statute contained no right to object to the false statements in the proposed recall petition. A similar question was decided in *Passarelli v. Schoettler*, 742 P.2d 867 (Colo. 1987), when Article XXI, Section 4, of the Colorado Constitution expressly required reimbursement of expenses incurred by a public officer unsuccessfully subjected to a recall election. The state treasurer argued that a specific enabling statute was required. The court held that the article was self-executing, but legislation may be enacted to facilitate its operation.

68. In this case the statute is not vague or ambiguous. It clearly defines the prohibited language – false statements. This is determinable and is not susceptible to unfettered discretion or inconsistent definitions. There is no urgency or potential public harm to justify a summary decision.

69. The harm to the Directors caused by the inability of the Directors to challenge and substantiate the falsity of the allegations in the petitions, however, is self-evident. Supporters were allowed to circulate false and defamatory statements concerning the conduct of the Directors throughout the community. Substantial harm occurred and subjected Directors to anger and volatile confrontations with a few, but very aggressive residents.

70. Refusal to determine the falsity of the allegations prior to the circulation of the petitions containing libelous statements violated the Directors procedural due process rights.

71. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

SEVENTH CLAIM FOR RELIEF
Procedural Due Process in Protest Hearing

72. Protesters hereby incorporate the allegations set forth in paragraphs 1 through 72 herein.

73. In his order, the DEO referenced no evidence admitted into the record concerning Protesters argument concerning the ability to object to the revised petition forms and the petition deficiencies.

74. During the hearing while waiting for a witness to arrive, counsel for Protesters attempted to begin to admit exhibits beginning with the signed petitions. The DEO and his counsel said that the signed petitions were already part of the record. Counsel for Protesters clearly verified that the documents normally considered pleading type documents, were part of the record.

75. The signed petitions do not appear on the DEO's exhibit list. Additionally, Daniel Taylor had two protests, Rita Effler's protest is missing.

76. Protesters will complete a request to designate and certify the record after the DEO's answer is filed.

77. Protesters were prejudiced by the failures of Supporters' attorney and the DEO to serve documents on Protesters violating Protesters of due process of law.

78. Protesters have no other plain, speedy, and adequate remedy provided by law other than the relief hereby requested under C.R.C.P Rule 106(a)(4).

WHEREFORE, Protesters respectfully request that this honorable court reverse grant all the relief as allowed by law.

Respectfully Submitted,

Daniel J. Taylor

Daniel J. Taylor, Attorney for Plaintiffs
and Plaintiff