District Court, County of Arapahoe, Colorado Court Address: 7325 S. Potomac St. Centennial, Colorado 80112	
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. 1983 CV 105 Division 15
RESPONSE TO DEFENDANT'S MOTION TO DISMISS	

Plaintiffs hereby respond to Defendant's Motion to Dismiss Pursuant to C.R.C.P. 12(B)(1) & (5), (hereinafter "Motion") in the order presented in said motion as follows:

Factual Background

For the purposes of this Response, the relevant facts are that this Court appointed Defendant, A.J. Beckman, as the Designated Election Official (DEO) for the Heather Gardens Metropolitan District (District) and that a recall committee consisting of three electors submitted recall petitions to the DEO for approval on November 16, 2023, for the recall of four newly elected directors: Taylor, O'Meara, Effler and Baldwin (Directors).

The Directors filed objections to the proposed recall petitions based upon C.R.S. §32-1-909(4)(c) which states that the petition must not contain any false statements on February 9, 2024. The Directors objected specifically to the statement that the Directors had created a toxic and hostile work environment that had resulted in the resignation of five Heather Gardens Association (HGA) employees, later revised to six. HGA is the homeowner's association that manages the residential properties as well as the District properties. The Directors attached an article written by the HGA HR Manager for HGA's monthly magazine published throughout the

community which quoted from employee exit interviews and stated that employees had resigned for various reasons, primarily better jobs or family that moved out of state.

On November 27, 2023, Director Taylor received a telephone call from the office of the DEO, in which he was told that the objections must be in the form of a notarized affidavit which must be submitted within 2 hours. The Directors complied with the request, and filed the notarized affidavit objections on November 27, 2023.

On November 27, 2023, the DEO sent letters disapproving the form of the recall petitions submitted stating:

> In accordance with Section 32-1-909(3), C.R.S., I hereby disapprove the form of petition submitted, attached hereto and incorporated herein as Exhibit A, as to form. Pursuant to Section 32-1-909(3)(c), C.R.S., the DEO shall identify the portions of the petition that are not sufficient and the reasons they are not sufficient, which are as follows:
>
> 1. Pursuant to Section 32-1-909(4)(c), C.R.S., the general statement of the grounds on which the recall is sought must not include any false statement. The DEO does not have sufficient information to determine the accuracy of the statements included in such general statement, has not undertaken any independent investigation to determine the accuracy thereof, and does not make any determination as to the accuracy thereof. However, the DEO received the notarized Objection to Recall Petition attached hereto and incorporated herein as Exhibit B asserting that the general statement in the petition submitted includes false statements.

The recall committee filed revised petitions at the end of the day on December 14, 2023. A copy of the revised petitions were emailed to the Directors on December 15, 2023, at approximately 10:30 am. At approximately 3:00 pm that afternoon, the DEO approved the petitions as to Directors, Baldwin, Effler, and Taylor, although Director Taylor did not receive actual notice until after 7 pm that evening.

Director O'Meara's petition was once again disapproved for false statements. The petition alleged that Director O'Meara had not posted minutes of the District board meetings since June 2023. The DEO's letter disapproving the petition stated that he was able to go to the District's website where the minutes were posted and downloaded minutes from the site.

Director O'Meara's petition was again revised and was approved on December 20, 2023. The recall committee began circulating the approved recall petitions which contained false

statements of fact, throughout the Heather Gardens community of almost 3,500 residents. The circulation of these false statements caused considerable damage and harm to the Directors in reputation and in the case of Director Taylor, severed pre-existing attorney-client relationships.

There were several irregularities in the circulation of the petitions, some caused by the unique character of the community in which all the District electors live within the residences controlled by HGA, the homeowners' association. These issues are all fact based, and significantly affected the legitimacy and fairness of the petition circulation, including HGA security intimidating and ordering those opposed to the recall to leave the District's public buildings while allowing petition circulators to remain and solicit signatures.

The recall committee filed the signed petitions on February 6, 2024. Seventeen protest letters were received by the DEO. On February 16, 2024, the DEO sent sixteen letters to protesters stating that "your request to treat your letter as a protest or as a challenge to petition sufficiency is precluded as a matter of law." That same day, Director Taylor filed another protest by letter to the DEO requesting a hearing as required by statute and that the summary denial of protests based upon his lack of authority to make a determination as to the false statements, which he alleged for the first time, ignored the remaining issues stated in the protests. Director Taylor's February 16, 2023, protest and objection letter, attached hereto, pleads the issues complained of in sufficient detail to overcome the Defendant's allegations of failure to state specifically the grounds for the protest.

Legal Background

The Defendant raises the most significant argument of this appeal first under Legal Background, on the last word on the bottom of page 3 of his Motion and the top of page 4, stating "the official cannot review the materiality or even the factual correctness of the content of the statement" referring to the statement of the grounds for recall on the recall petition.

The following citation of the Colorado Constitution art. XXI, sec 2 is not on point. Protesters agree that the DEO cannot determine the sufficiency or the reasonableness of the grounds for recall.

In the middle of page 4 of the Motion, the Defendant, citing C.R.S. §32-1-910(3)(c) states that the designated election official:

> ***shall*** deem the petition sufficient if he or she determines that it was timely filed, has the required attached circulator affidavits, and was signed by the requisite number of eligible electors of the special

> district within sixty days following the date upon which the designated election official approved the form of the petition.

Defendant highlighted the word "**shall**" and argues that he had no choice but to find the petitions sufficient if they contained the requirements stated in that sentence of C.R.S. §32-1-910(3)(c). What of other statutory requirements: that the circulator made no misrepresentation of the purpose of such petition, that each signature was affixed in the affiant's presence, that nothing of value was given in exchange for the signature, etc.? The Defendant is arguing that his authority is so narrowed as to only make a determination based on just those factors. Would that be the case even if the DEO knew of fraud in the petition circulation?

So, the Defendant's argument is that the word "shall" above is mandatory in C.R.S. §32-1-910(3)(c). C.R.S. §32-1-909(4)(c) states that the statement of grounds in a recall petition "**must**" not include any profane or false statement. The words shall and must normally denote mandatory requirements.

The distinction between a "directory" and a "mandatory" provision is, whether noncompliance invalidates the action. The determination turns on the legislative intent. As the DEO stated in his Order of Designated Election Official on Protests to Sufficiency Determination of Recall Petitions for Directors of the Heather Gardens Metropolitan District (hereinafter "Order"), "Directory provisions are not construed to impose conditions that, if they are violated, will invalidate the act in question." City & Cty. of Denver Sch. Dist. No. 1 v. Denver Classroom Teachers Ass'n, 407 P.3d 1220 (Colo. 2017), citing Protest of McKenna, 2015 CO 23, ¶19, 346 P.3d 35, 41.

The DEO also stated, "This rule of construction is equally applicable when dealing with elections. 'Unless an election regulation expressly declares that strict compliance with its requirements is essential, courts should construe such provisions to be directory in nature and not mandatory.' Bickel v. City of Boulder, 885 P.2d 215, 226 (Colo. 1994)."

There is no such declaration in the sentence in C.R.S. §32-1-910(3)(c) the DEO interprets as mandatory, nor are there any such declarations in any statute in Part 9 recall procedures, just as there is none in C.R.S. §32-1-909(4)(c) that the statement of grounds in a recall petition "**must**" not include any profane or false statement which the DEO interprets as directory.

Bickel, was a case involving Article X, Section 20, of the Colorado Constitution, also referred to as the "Taxpayer's Bill of Rights." This statement by the Court in *Bickel* is preceded

by a lengthy analysis of various factors that should be considered when the statute involves an election regulation. The Defendant is implying that *Bickel* has broad applicability including the statement in C.R.S. §32-1-909(4)(c), that the grounds in recall petitions "must not include any profane or false statements." The words "must" and "shall" are routinely construed as mandatory, and there is no basis to suggest that *Bickel* adopted a different standard for statutory interpretation when the word "must" is used.

Argument

I. The Court should dismiss the complaint because Rule 106(a)(4) does not apply to this action as a matter of law.

C.R.C.P. 106(a)(4) provides an avenue to challenge the decisions of governmental bodies whose decisions are not governed by the Colorado Administrative Procedure Act as is the case with the decision of the Defendant DEO. But if the statute authorizing the review of governmental decisions sets forth deadlines for review, that particular timing controls, superseding the deadlines in Rule 106(a)(4) itself. *Colorado Lawyer January/February 202*3, page 26.

C.R.S. §32-1-910(3)(f) states,

> "A determination that a recall petition is sufficient or not sufficient is subject to review by the court as defined in section 32-1-103 (2) upon the written request of the director sought to be recalled, the director's representative, or a majority of the recall committee as defined in section 32-1-909 (4)(a); except that the statement of the grounds on which the recall is sought provided pursuant to section 32-1-909 (4)(c) is not subject to such review. A request for judicial review must be filed within five business days after the designated election official issues the determination."

The statute provides no other procedure other than to shorten the deadline in which a director or the recall committee may seek judicial review. In C Bar H, Inc., Bd. of Health, 56 P.3d 1189, (Colo.App. 2002), cited by the Defendant, for the proposition that C.R.C.P. 106(a)(4) was inapplicable because the statute in question, C.R.S. §25-1-513, provided a legal remedy. That statute, now C.R.S. §25-1-515, provides that any person aggrieved by a decision of the county or district board of health shall be entitled to judicial review, and sets forth the procedure including venue, filing deadline, providing a nonjury review, that review is upon the record, and

a procedure to allow testimony if there are irregularities in the record. The statute further states bases upon which the reviewing court may reverse or modify the findings of the board of health.

In this case, Rule 106(a)(4) should properly apply with the exception that the request for judicial review by the director or recall committee must be made within five business days. If the Defendant's interpretation is to be adopted, there exists no provision to certify the record, no deadline in which it must be done, no submission of briefs, and no guidance for the reviewing court.

Further, this argument can only apply to Directors Taylor and O'Meara who requested judicial review as directors sought to be recalled. The issue is now moot because Directors Taylor and O'Meara filed an amended complaint including a request for judicial review under C.R.S. §32-1-910(3)(f) as well as C.R.C.P. 106(a)(4).

The Defendant argues that C.R.C.P. 106(a)(4) doesn't apply in this case because Plaintiffs have a "plain, speedy, and adequate remedy" under C.R.S. §32-1-910(3)(f). Yet, the Defendant also argues that only the directors subject to recall or the recall committee may appeal under C.R.S. §32-1-910(3)(f). It cannot be both ways. If the protesters do not have the right to seek judicial review under C.R.S. §32-1-910(3)(f), then they have no other remedy, and C.R.C.P. 106(a)(4) is the proper procedure to appeal the Defendant's decision of petition sufficiency.

R.E.C.A.L.L. v. Sauer, 721 P.2d 154 (Colo.App. 1986), involved a review of a determination of petition insufficiency under the provisions of C.R.S. §30-10-203(2) for the recall of county officers, now C.R.S. §1-12-108(9)(a) & (b), which although the protest provisions are much more detailed than C.R.S. §32-1-910, the request for review is the same, that the request must be made within five days to the district court. The court reviewed *R.E.C.A.L.L.* pursuant to C.R.C.P. 106(a)(4). Mirandette v Pugh, 934 P.2d 883 (Colo.App. 1997), involved the C.R.C.P. 106(a)(4) review of the petition sufficiency for a city councilman, as did Valdez v. Election Commission of City and County of Denver, 521 P.2d 165, 184 Colo. 384 (Colo. 1974). In Hazlewood v Saul, 619 P.2d 499 (Colo. 1980), the court "assumed jurisdiction pursuant to section 30-10-203(2), C.R.S. 1973, and C.R.C.P. 106" for the review of petition insufficiency for the recall of a county commissioner.

In other words, C.R.S. §32-1-910(3)(f) modifies the procedure established by C.R.C.P. 106(a)(4), and therefore "depends upon and does not conflict with the rules of civil procedure." Feign v. Co Nat Bank, 897 P.2d 814 (Colo. 1995).

Next, the Defendant argues that the Plaintiffs' decision not to file for judicial review under C.R.S. §32-1-910(3)(f), deprives the Court of jurisdiction. As previously stated, Plaintiffs have amended their complaint to eliminate a lengthy discussion on this issue, but briefly the Zook v. El Paso Cty., 2021 COA 72, case cited by the Defendant deals with a spouse who was a contingent beneficiary to a pension plan, and State Dept. of Rev., Motor Vehicle Div. v. Borquez, 751 P.2d 639, 644 (Colo. 1988), determined that a statute vesting jurisdiction for judicial review in the county of the licensee's residence removed jurisdiction in another court.

In Seefried v. Hummel, 148 P.3d 184. 188 (Colo. App. 2005), however, cited by Defendant for authority for this Court to determine that it has no jurisdiction upon his motion to dismiss, the court actually said in citing Podboy v. Fraternal Order of Police, Denver Sherrif Lodge 27, 94 P.3d 1226, 1229 Colo.App. 2004), that "If all relevant evidence is presented to the trial court and the underlying facts are undisputed, the trial court may decide the jurisdictional issue as a matter of law without conducting an evidentiary hearing." In this case, the Court does not yet have benefit of all the relevant evidence as the record has not been certified.

Defendant also cited Barber v. People, 254 P.2d 431, 434 (1953), for the proposition that without seeking judicial review under C.R.S. §32-1-910(3)(f), the court has "no jurisdiction to act." The *Barber* court said, "Generally, one seeking to exercise a statutory right to review must comply with the procedures prescribed. We often have stated that the failure to exercise a statutorily provided right of review within the applicable time limit is a jurisdictional defect, mandating dismissal." Plaintiffs did seek judicial review within the applicable time limit.

II. Each individual claim should be dismissed under Rule 12(b).

A. The First and Sixth Claims for relief impermissibly ask the Court to review the "statement of the grounds on which the recall is on which the recall is sought."

1. Neither the Designated Election Official nor this Court can review the content of the statement of the grounds for recall.

This question turns upon statutory interpretation. In interpreting a statutory provision, a reviewing court has the responsibility to give full meaning to the legislative intent. Conte v. Meyer, 882 P.2d 962 (Colo.1994). To do so, the court first looks at the language of the statute and gives the words and phrases their commonly accepted and understood meaning. If the language is clear, there is no need to resort to other rules of statutory construction. Mirandette v

Pugh, 934 P.2d 883 Colo.App. 1997), citing PDM Molding, Inc. v. Stanberg, 898 P.2d 542 (Colo.1995).

Plaintiffs do not dispute Defendant's statement that the right to recall is a fundamental right of citizens reserved to them by the Colorado Constitution and that statutes which interfere or restrict that right must be strictly construed. But a comparison of the provisions discloses the legislative intent.

The Colorado Constitution, art. XXI, Section 1, states:

> …such petition shall contain a general statement, in not more than two hundred words, of the ground or grounds on which such recall is sought, which statement is intended for the information of the registered electors, and the registered electors shall be the sole and exclusive judges of the legality, reasonableness and sufficiency of such ground or grounds assigned for such recall, and said ground or grounds shall not be open to review.

C.R.S. §32-1-909(4)(c) states:

> Contain a general statement, in not more than two hundred words, of the grounds on which such 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 such grounds on which the recall is sought, and said grounds are not subject to a protest or to judicial review. [Emphasis added]

To discern intent, we interpret statutory terms in accordance with their plain and ordinary meanings. In addition, "we examine the statutory language in the context of the statute as a whole and strive to give consistent, harmonious, and sensible effect to all parts.'" City & Cty of Denver Sch. Dist. No.1 v. Denver Classroom Teachers Ass'n, 407 P.3d 1220 (Colo. 2017), citing Reno v. Marks, 2015 CO 33, ¶20, 349 P.3d 248, 253 (quoting Denver Post Corp. v. Ritter, 255 P.3d 1083, 1089 (Colo. 2011)).

In *Denver Sch Dist No 1*, the court said that "in making this determination, we presume that the General Assembly intended a just and reasonable result, and we consider the consequences of a particular construction. Bd. of Cty. Comm'rs of Cty. of Park v. Park Cty. Sportsmen's Ranch, LLP, 45 P.3d 693, 711 (Colo. 2002)…Additionally, a 'statute should be given the construction and interpretation which will render it effective in accomplishing the purpose for which it was enacted.' Zaba v. Motor Vehicle Div., Dep't of Revenue, 183 Colo.

335, 516 P.2d 634, 637 (1973). We also 'read the statutory design as a whole, giving consistent, harmonious, and sensible effect to all of its parts.' Young v. Brighton Sch. Dist. 27J, 2014 CO 32, ¶ 11, 325 P.3d 571, 576. But we should avoid constructions that lead to illogical or absurd results. Johnson v. People, 2016 CO 59, ¶ 18, 379 P.3d 323, 327."

In this case, the General Assembly specifically added the requirement that the statement must not include any profane or false statement, and the General Assembly must be presumed to have done so intentionally. Evidence of this specific intent can also be found in C.R.S. §1-12-103 which provides for that the statement of grounds in a recall petition to recall a county commissioner "shall not include any profane or false statements." Further, the statute must be given the presumption of constitutionality, and there have been no challenges to its constitutionality. "courts should presume a newly-enacted provision has been 'framed and adopted' in the light and understanding of prior and existing laws with reference to them." Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994). Therefore, we must interpret the statute consistently with these rules of interpretation.

Plaintiffs agree that in the State of Colorado an elected official may be recalled for no reason whatsoever, other than dissatisfaction with their representation. However, Plaintiffs assert that an elected official may not be recalled based upon a lie.

Although Colorado may regulate the petition process to prevent fraud and mistake, Campbell v. Buckley, 203 F.3d 738, 741 (10th Cir.2000), regulatory measures "may not unduly diminish the rights to that process." Comm. for Better Health Care for All Colo. Citizens v. Meyer, 830 P.2d 884, 893 (Colo.1992). Griff v City of Grand Junction, 262 P.3d 906 (Colo.App. 2011).

The State of Colorado certainly has a compelling interest in ensuring that a statement prepared for the information of the electors is true to prevent fraud and mistake. In Lockett v. Garrett, 1 P.3d 206 (Colo.App. 1999), the court considered a defamation action for statements in a recall petition. The court discussed the requirements for defamation of a public official or in matters of a public concern. The court determined that the statements in question couldn't be interpreted as anything more than political opinion, so it did not address the defendants' argument that their statements in the recall petitions are absolutely protected as a matter of law. That is exactly the issue here. The statements are written as statements of fact, not opinion, and they are false. Countless defamation cases have held that there is no constitutional protection for

false statements, and the false statements of the recall committee should not be elevated to absolute protection here.

The U.S. Supreme Court in McDonald v. Smith, 472 U.S. 479 (1985), held that the Petition Clause of the First Amendment does not provide absolute immunity to a defendant charged with expressing libelous and damaging falsehoods concerning a candidate for U.S. Attorney in letters to the President of the United States. The court cited Gray v. Pentland, 2 Serg. & R. 23 (1815) which stated that "an individual, who maliciously, wantonly, and without probable cause, asperses the character of a public officer in a written or printed paper, delivered to those who are invested with the power of removing him from office, is responsible to the party injured in damages, although such paper is masked under the specious cover of investigating the conduct of such officer for the general good. Public policy demands no such sacrifice of the rights of persons in an official capacity, nor will the law endure such a mockery of its justice." The court held that the "Petition Clause does not require the State to expand this privilege into an absolute one. The right to petition is guaranteed; the right to commit libel with impunity is not."

In Colorado, the court reversed a contempt of court charge prosecuted under Art. XXI, Section 1 of the Colorado Constitution, previously quoted, which had no specific prohibition of false statements, as does C.R.S §31-1-909(4)(c), the statute in this case. However, the court found:

> That a considerable portion of the statement was intemperate and ill-advised must be conceded; but, if the facts are stated ***truthfully***, though with uncalled-for bitterness, no contempt was committed. What should be the rule in case a petition contains defamatory matter shown to be false need not now be considered, since there is nothing in the record to show that the statements in the petition are not true. This fact renders many of the cases cited by the state of no value, since they ***refer to false statements***. Marins v. People ex rel. Hines, 169 P. 155, 69 Colo. 87 (Colo. 1917).

If the General Assembly intended that the electors were also to be the sole and exclusive judges of the truthfulness or the accuracy of the statements in the grounds, it would have said so. Statutory interpretation should avoid constructions that lead to an illogical result. It is illogical that the legislature would enact a statute that includes the statement that a recall petition must not include false statements and then permit the approval and circulation of a recall petition with false statements, leaving it up to the voters to realize that statements within the petition are false.

2. The Court lacks jurisdiction to review pre-circulation conduct.

The Defendant argues that the statute's failure to state that each of the DEO's determinations required by statute are subject to judicial review, robs this Court of jurisdiction to review his conduct and bestows some sort of unfettered, all encompassing discretion in the DEO. The Defendant's argument is that after the circulation of the petitions containing libelous statements throughout the community, which not only damaged the reputation and effectiveness of the Directors, but are the real and direct cause of the District, the community, incurring thousands of dollars in the cost of a recall election based upon misrepresentation and false statements, the Directors sole remedy is that they too can make libelous statements on the ballot. If the statute does not specifically provide for review of the DEO's pre-circulation determinations in violation of the statute or in procedural infirmities, then the Court has jurisdiction pursuant to C.R.C.P. Rule 106(a)(4).

3. Plaintiffs do not plead a right to support their due process claim.

Plaintiff Taylor filed two protests which are attached hereto as representative of the protests filed by Plaintiffs. The February 9, 2024, protest Article I plead the procedural deficiencies, and specifically alleged a violation of due process in paragraph 5. The February 16, 2024, protest specifically pleads the due process and fundamental fairness violations protected by the U.S. and Colorado Constitutions. The February 16th protest also stated the factual allegations more specifically, and as a result of this second protest, the DEO granted protesters hearings. Plaintiffs filed their complaint within five business days as required by statute. The Plaintiffs' Sixth Claim for Relief is sufficient to inform the Defendant of the claim and the facts upon which to respond.

B. Plaintiffs' second claim for relief fails for several reasons.

HGMD hires HGA to manage and operate the District's properties. HGA accepted the contract to perform these duties as an agent of the District and on behalf of the District. Security's conduct inside the District's property is as an agent for the District, and therefore, represents acts of the District just as the acts of the HGMD DEO are acts in a quasi-governmental capacity.

1. The court does not have jurisdiction over the claim under the statute.

This is the same assertion a stated in Defendant's Motion Art. II.(A)(2) that the court must wear blinders to any violation of law, statutory or constitutional, not contained in one sentence of C.R.S. §32-1-910(3)(c). Plaintiffs refer the court to their response under Legal Background above.

2. Plaintiffs do not have standing to raise this claim.

Plaintiffs are all electors of the District who have a direct connection to the election activities within the District as well direct ties to the District and its operation. The interference of security in the petition circulation had a dramatic effect on every electors' constitutional right to engage in political speech, to have their vote count equally with that of every other voter, secure the purity of elections and prevent abuse of the elective franchise.

In the case cited by the Defendant, Jones v. Samora, 2016 COA 191, the state court had found that no voter identity had been disclosed, so the conduct complained of had no affect on the counting of ballots and that the election was fundamentally untainted.

That is not the situation in this case. There was testimony that recall proponents were assisted in their circulation efforts, while petition opponents were asked to leave. Also, in *Jones,* supra, in which the court in that case did not find that the trustee being removed had standing, it found that Citizen Center had organizational standing because one or more of its members voted. All Plaintiffs are electors in the District, and voted in the election to elect Directors Taylor and O'Meara. Further, the other Protester Plaintiffs, voted for and protested on behalf of all four Directors subject to recall.

3. Plaintiffs have failed to allege a claim for which relief can be granted.

Plaintiffs had testimony from individuals who were asked to leave by security, and testified to the intimidation. A video was admitted into evidence that, toward the end of the video, shows the four armed security officers who were present during the petition signing, dressed in their military type uniforms with bullet proof vests and mace. But to require the testimony on behalf of the Directors from a voter who signed the recall petition to come into the hearing and testify that they were intimidated into signing, before the court can review the conduct, is an unreasonable restriction on the electors right to the elective franchise. "A requirement that a plaintiff allege facts showing that the election results would have been

different had the claimed violations not occurred would make enforcement…effectively impossible." Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994).

C. Plaintiffs have failed to allege any cognizable deficiencies in the recall petitions.

1. Plaintiffs fail to allege they properly asserted these issues in their protests, which is a necessary element of their claim.

Plaintiffs dispute the Defendant's claim that Plaintiffs did not raise the petition deficiencies in their protests with enough specificity to substantially comply with the pleading requirements. The Defendant cites Brownlow v. Wunsch, 103 Colo. 120, 83 P.2d 775 (Colo. 1938) as:

> As to petition protests subject to the mandate that they state 'specifically the grounds of such protest,' the Colorado Supreme Court has held this requirement is jurisdictional, and 'the [election officer who receives a protest] is without power to act in the absence of a substantial compliance with these requirements.'

The prior sentence is instructive, however:

> The section of the protest upon which this contention is based contains not a single name, section number, or line number by means of which either the secretary or sponsors could ascertain the name protested, nor does the protest contain specifically the grounds thereof. Section 6, chapter 86, supra, requires the protest to set forth '***specifically the grounds of such protest*** and the names protested.' In Ramer v. Wright, 62 Colo. 53, 159 P. 1145, 1 A.L.R. 1560, [103 Colo. 135] we held that 'These requirements are clearly jurisdictional, and the secretary of state ***is without power to act in the absence of a substantial compliance with these requirements*** of the statute.'[Page 1146] Emphasis added.

Therefore, in *Brownlow*, the issue was that the protest did not contain enough information to ascertain the grounds of the protest. That is a much different point of view than requiring electors, who are not attorneys, to allege facts and violations of statute with the specificity expected of legal pleadings filed by attorneys, and is not consistent with the legislative scheme taken as a whole, which provides for expedited administrative hearings and summary decisions.

However, Plaintiffs protested "the validity of the circulator affidavit and their adherence to the requirements of C.R.S. §32-1-909 and C.R.S. §32-1-910 in the circulation of the recall petitions." February 9, 2024, protest by Daniel Taylor.

Further, it is the Defendant who is charged with determining the sufficiency of the signed recall petitions, whether there is a protest or not. It is the Defendant who should have noticed the discrepancies in the date on the notary affidavit and the date of the circulator's signature, and allowed the recall committee to cure the deficiency prior to the finding of the petitions' sufficiency. The recall committee equally had the same copies of the signed petitions as did the Plaintiffs, and had the opportunity to enter testimony at the hearing to bolster as deficiencies. The Defendant cannot shift his burden of accurately determining the sufficiency of the petitions to the Plaintiffs by arguing that Plaintiffs didn't specifically enough plead the deficiencies.

2. The statutes upon which Plaintiffs rely for their notarization date and cost estimate claims do not apply to special district recall.

The Defendant asserts that C.R.S. §1-4-905(2)(b)(III) which states that "If the date signed by a circulator on an affidavit required under subsection (2)(a) of this section is different from the date signed by the notary public, the affidavit is invalid. If a notary public notarizes an affidavit that has not been dated by the circulator, the notarization date does not cure the circulator's failure to date the affidavit and the affidavit is invalid" which applies to candidacy petitions and C.R.S. §1-40-111(2)(b)(III) which contains the identical language which applies to initiatives and referendums, do not apply to special district recalls.

C.R.S. §1-1-102 states that "This code applies to all general, primary, congressional vacancy, school district, special district, ballot issue, and other authorized elections unless otherwise provided by this code." That means that specific provisions of Title 32 take precedence over the general provision of Title 1 cited as the "Uniform Election Code of 1992."

Plaintiffs cited Fabec v. Beck, 922 P.2d 330 (Colo. 1996) and Committee for Better Health Care for All Colorado Citizens by Schrier v. Meyer, 830 P.2d 884, (Colo. 1992) to support the presumption that a discrepancy in the dates between the notary attestation and the circulator signature generally precludes the validation of the petition to avoid fraud, abuse or mistake. In the *Brownlow* case, cited by the Defendant, the court said, "There is nothing in the Constitution or statutes, which distinguishes the protest proceedings in the case of initiated petitions from protests generally, either in administrative or judicial proceedings." The Colorado Supreme Court, in DiManna v. Election Commission of City and County of Denver, 530 P.2d 955, 187 Colo. 270 (Colo. 1975), stated, "What we said in reference to the power of referendum applies equally to the power of recall."

Therefore, the language which applies to the circulator affidavit requirements for initiatives and referendums should be persuasive when considering the consequence of deficiencies in the attestation required for recall petitions.

3. Plaintiffs fail to allege facts sufficient to support their notary disqualification argument.

Neither is C.R.S. §24-21-504(2)(a) recreated in Part 9 of Title 32, but it cannot be denied that it prohibits a notary from notarizing a recall petition if their name appears on its face. In Griff v. City of Grand Junction, 262 P.3d 906 (Colo.App. 2011), the court, in discussing the prior statute, said that being named individually required a proper name or other description as leaves no question of the identity of the party and distinguishes them from others.

The Defendant found that Plaintiffs' evidence of who the only Resident Services Coordinator was, by members of the recall committee and the HGA HR Manager, were insufficient to establish that Michelle Audet, who notarized many of the recall petitions, was the person named on the face of the recall petition as one of the employees that the Directors caused to resign. The DEO's decision that random members of the community should also have been called to testify as to her identity in a short, two-day administrative hearing was an unreasonable abuse of discretion. Two witnesses should have been sufficient.

D. The court lacks jurisdiction over Plaintiffs' fourth claim.

Plaintiffs alleged that the recall petitions were left unattended on several specific instances. This issue had been a source of complaints from community residents that petitions were left unattended in the building lobbies. Plaintiffs were unable to access these lobbies to prove the allegations because the residential buildings are locked. So, Plaintiffs subpoenaed surveillance video of the clubhouse lobby during the times the petitions were witnessed to be left unattended.

The HR Manager, who was also the acting General Manager at the time, testified that she didn't understand which videos had been requested, so they were all deleted. Plaintiffs entered into evidence one of the emails requesting the surveillance video for the clubhouse lobby covering the area from the reception desk to the fireplace on January 6, 2024, between the hours of noon to 5:00 pm. The HR Manager's testimony that she misunderstood what video was requested was not credible, and the inference that the deleted video was prejudicial to the recall committee was appropriate.

The statute requires that the petition circulator must attest "that each signature on the petition was affixed in the affiant's presence." C.R.S. §32-1-910(2)(c). The Defendant found that because the Plaintiffs were unable to prove which petitions were left unattended because of the destruction of the video evidence, and that Plaintiffs were unable to prove which signatures had been affixed while the petitions were unattended, the claim must fail. Testimony that petitions were left unattended in public on two specific dates should void those petitions based upon the falsity of the circulator's affidavit. It is the fact that the petition circulators did not follow the statutory requirements that should be controlling, not the inability to prove which signature of those signed at that time were affixed while the petition was unattended. Plaintiffs again refer to *Bickel*, supra that such a requirement make enforcement effectively impossible."

E. Plaintiffs fail to allege facts necessary to show any circulator misrepresented the grounds of the recall.

Martha Karnopp, attorney for the recall committee, was a petition circulator, Allen Lindeman, of the recall committee, was a petition circulator, as were Betty Bergeron and Estelle Mathus, all of whom attended two public meetings in the auditorium, one on January 6, 2024, with approximately 200 people attending and one on January 27, 2024, with approximately 100 people attending. At each meeting these petition circulators made false allegations against the Directors that had nothing to do with the petition grounds. Al Lindeman did not attend the second meeting. These allegations were pled in the attached February 9, 2024, protest as well as the February 16, 2024, protest. Evidence was presented at the hearing to support these allegations and the transcript will be available within days.

F. Plaintiffs have not alleged any procedural due process violations.

Plaintiff Taylor's protest dated February 9, 2024, Article I, alleges violation of procedural due process in the DEO's approval of the proposed petitions. The DEO asked the Directors to resubmit their objections to the proposed petitions in the form of a notarized affidavit, and they did. He then disapproved the proposed petitions based upon the false statements.

When the revised proposed petitions were refiled with the DEO, he approved the revised petitions for three of the four directors within hours, providing no opportunity for those three directors to object to the revised petitions which basically restated the same allegations by implication rather than direct language.

The DEO disapproved Director O'Meara's revised petition because it stated that she hadn't posted minutes of the board's meeting since June 2023. The DEO downloaded the minutes from the District's website, and therefore determined that allegation to be false. The DEO approved the second revised petition against Director O'Meara containing other false statements.

The DEO took the action he later claimed he had no authority to take. He determined the proposed petitions contained false language, and properly disapproved them. Although the DEO stated that he undertook no investigation, he, in fact, did by searching and downloading the minutes from the District's website.

The notarized affidavits the Directors provided addressed the other false statements in the proposed petitions, in addition to the cause of employee resignations. Those affidavits should have created a presumption that the remaining allegations were false, just as they did regarding the employee resignations, requiring the recall committee to produce evidence of their truth. In Director Taylor's petition, the recall committee made allegations of statements that were made in public. All of the board's public meetings are recorded and posted on the District's website. The recall committee should have been required to point to the date and time such statements were made to support their statements once the truth of those statements had been challenged by notarized affidavit.

The Directors would have, if given more than a couple of hours, provided additional evidence by notarized affidavit against the revised petitions. The DEO should be estopped from now alleging that he has no authority to determine whether the petitions contained false statements after he has done so, and the Plaintiffs reasonably relied that they would have the opportunity to object to the revised petitions if they, in fact, contained false statements.

Further violations of due process were made in Director Taylor's February 16, 2024, against the summary dismissal of all of the protesters' protest letters. After that second protest letter, the DEO allowed some of the protesters hearings, but not all. Significantly missing, were the protests of Directors Effler and Baldwin. They were not granted hearings. Of the protesters who were not granted hearings, Director Taylor filed a C.R.C.P. Rule 106(a)(4) appeal on behalf of Plaintiffs McClure and Guise. The DEO did not allege that Rule 106 didn't apply, but acquiesced and granted them a hearing. Plaintiffs moved to consolidate all the protests into one hearing for efficiency and to reduce costs.

Plaintiffs further alleged violations of due process in the hearing process. Briefly, that recall committee attorney, Martha Karnopp did not serve Director Taylor with her motion to quash subpoenas which resulted in a 24 hour delay; the DEO failed to serve Director Taylor with his Briefing Order which resulted in a 30 hour delay; and the DEO failed to serve Director Taylor with his ruling concerning the subpoenas, production of documents, and admissible evidence resulting in a four day delay due to the weekend. Director Taylor received this Order from the DEO at 7 pm the night before the hearing was to start. Each of these delays caused prejudice to the Protesters and their ability to present their case.

1. Evidence of protest as to form and petition deficiencies.

The DEO sustained every objection by the recall committee attorney regarding evidence of false statements in the recall petitions and regarding the misrepresentation of the purpose of the recall. Plaintiffs had subpoenas issued to several witnesses, as to the false statements made on the recall petitions, as well as at two public meetings held by the recall committee to garner support for the recall and have petition signing take place at the meetings. Plaintiffs were denied the ability to enter this testimony and documents into evidence.

2. Admission of signed petitions.

Plaintiffs did not object to the admission of the signed petitions into evidence. Plaintiffs objected to the failure of the DEO to enter all of the protests and other documents received by the DEO on the exhibit list attached to the DEO's Order.

3. Exhibit List.

Plaintiffs objected to the failure of the DEO to enter all of the protests and other documents received by the DEO on the exhibit list attached to the DEO's Order.

III. At a minimum, the Court must dismiss the "Eligible Electors of Heather Gardens Metropolitan District" plaintiff group.

This issue was discussed above in Argument 1. Concerning the applicability of C.R.C.P. Rule 106 (a)(4). We agree that there are two Plaintiff groups. One is protesters who protested the recall petitions for each of the four directors subject to recall. Not all protesters protested the petitions of all of the directors subject to recall. The second Plaintiff group referred to as

Directors, are Directors O'Meara and Taylor who appealed the DEO's decision as directors subject to recall.

The DEO argues that the Directors must appeal pursuant to C.R.S. §32-1-910(3)(f) in which the only guidance given is that the appeal must be made within 5 business days. As previously argued, Plaintiffs interpret C.R.S. §32-1-910(3)(f) to modify the time in which a director subject to recall may appeal the DEO's decision pursuant to C.R.C.P. Rule 106(a)(4), and that C.R.S. §32-1-910(3)(f) and C.R.C.P. Rule 106(a)(4) are not in conflict and in fact work together.

The DEO argues that because C.R.S. §32-1-910(3)(f) only mentions appeals by the director subject to recall or by the recall committee, when modifying the timing of the appeal, that the statute prohibits all other appeals. If this interpretation is adopted, it would be one of only a very few instances in which an administrative body sitting in a quasi-judicial capacity is given plenary power by removing the right of appeal. If the legislature had intended such a result, it would have specifically said so, and not left its intention dependent on an interpretation in the negative.

Respectfully Submitted,

Daniel J. Taylor

Daniel J. Taylor, Attorney for Plaintiffs
and Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2024, a true and correct copy of this document was served electronically upon the Defendant as follows:

Mark G. Grueskin
Nathan A. Bruggeman
Recht Kornfeld, P.C.
1600 Stout St., Suite 1400
Denver, Colorado 80202
mark@rklawpc.com
nate@rklaw.com

Daniel J. Taylor

PROTEST OF RECALL PETITIONS PURSUANT TO C.R.S. §32-1-910(3)(d)(I)

Designated Election Official: AJ Beckman, Public Alliance

Petition to Recall Daniel Taylor from the Office of Director of the Heather Gardens Metropolitan District

Grounds for Protest of Recall Petitions:

I - APPROVAL OF REVISED RECALL PETITIONS

1. The director subject to recall, Daniel Taylor, objected to the first recall petition filed with the designated election official (DEO) based on false statements contained in the recall petition in violation of C.R.S. §§32-1-909(4)(c) which states that the recall petition may not contain false statements. The recall petition was disapproved based upon affidavit and attached evidence.

2. When the revised recall petition was filed, it too contained false statements, and in fact, contained the same false statement as the original petition, but this time the allegation was by inference. Apparently, notice of the filing of the revised recall petitions was emailed on December 15, 2023, at 9:38 a.m. by the Heather Gardens Metropolitan District's (HGMD) attorney, Jennifer Ivey. I did not receive this email. She sent an email with a link to the revised recall petitions at 9:52 am on December 15, 2023.

3. I received this email at 3:11 pm on December 15th, and downloaded the revised recall petitions. I began working on my objection immediately. At 3:48 pm, I received notice from the DEO that Robin O'Meara's revised recall petition had been disapproved. At 7:55 pm that evening, director Craig Baldwin forwarded an email to me that he had received from the DEO stating that the other revised recall petitions had been approved that afternoon. I did not receive this email. The letter forwarded to me was sent by the DEO at 3:48 pm on December 15th.

4. On December 16, 2023, I sent my objection that the DEO's approval of the revised recall petition before I had the opportunity to object was fundamentally unfair. HGMD's attorney, Jennifer Ivey was fully aware that the directors subject to recall would continue to object to the recall petitions as long as there remained false statements.

5. Additionally, although the letters approving the recall petitions and the letter disapproving Director Robin O'Meara's petition state that the DEO undertook no investigation, that is not true. The DEO consulted the District's webpage and downloaded several meeting minutes to determine that the allegation against Director O'Meara that she hadn't posted meeting minutes was untrue. Undertaking an investigation to disapprove one of the revised recall petition's allegations, against one director, but not the investigating other equally verifiable allegations is a violation of due process.

II - UNATTENDED RECALL PETITIONS

6. Exhibit A of the revised recall petitions contains the instructions. Under paragraph 3(B) "For Petition Circulators" the instructions state, " You must accompany the petition at all times. Do not leave the petition unattended or pass it unaccompanied among potential singers."

7. On January 6, 2024, just before 2:00 pm, the time scheduled for a large meeting conducted by the recall committee in the clubhouse auditorium, an HG resident, Carol Anne Mayne, entered the clubhouse lobby area from the east hallway, and saw a petition circulator get up and leave the table where she had been sitting, and left the clipboard with the recall petitions unattended for a considerable time. The resident went in to the start of the meeting before seeing the petition circulator return.

8. On January 11, 2024, the Heather Gardens Association (HGA) and HGMD boards had a joint meeting from 3pm to 5pm in the clubhouse auditorium. Shortly before the end of the meeting, a petition circulator, Linda Savage, stood up and announced that the recall petitions were in the lobby for signature. A resident, Deborah Parker, saw a HG security officer exit the auditorium, walk over to the recall petitions which were on the floor under a table near the entrance to the auditorium, pick up the petitions, place them on the table, and pull the table out from the wall so the petition circulators could sit behind the table. Linda Savage was in the auditorium for the entire meeting, and had nothing in her hands when she left. Deborah Parker saw the security officer retrieve the petitions from under the table before Linda Savage exited the auditorium.

9. Additionally, Director Robin O'Meara witnessed and photographed residents signing the petitions while the petition circulator had her back turned and was talking with security in violation of the instruction in paragraph 3(C) "You must witness every signature block as the signor completes it."

III - INTIMIDATION

10. After the January 11, 2024, joint board meeting, petition circulators were in the clubhouse lobby. A resident asked a petition circulator, Linda Savage, why she was supporting the recall. She replied that everyone has their own opinions, and HG security manager Dave Marris said we're not going to have any of that, bumped her to push her toward the door, and told her to leave the clubhouse.

11. HG security officers told other supporters of the current HGMD board who asked questions of the petition circulators to leave the clubhouse on January 11, 2024, but allowed the petition circulators to remain and get signatures.

12. On January 16, 2023, petition circulator, Linda Savage, falsely accused a resident, John Guise, of 14000 E. Linvale Place, Unit 106, of approaching her as she entered the main entrance and tried to gain access to a condo where she was taking the recall petitions to be signed. The resident obtained surveillance video of the front entrance disproving that she was approached. The resident and another resident, Kevin Keator, went to the third floor lobby and sat in the lobby chairs. They had written information concerning the recall for anyone who wanted it. The building area representative, Roxane Baxter, came to the third floor

lobby and told the two residents they couldn't be there and had to leave. She became belligerent and was screaming. A third resident, Carol Anne Mayne, arrived to sit with the others, and heard Roxanne Baxter screaming that they were intimidating petition signors who had a "fucking constitutional right to sign the petitions" and continue with profanity.

13. Recall committee member John Harvey told another resident, Thomas Seaman, that he never read the recall petition before it was filed by attorney Martha Karnopp, and that he didn't know what it said.

14. On January 6, 2024, the recall committee held a meeting in the clubhouse auditorium with approximately 200 people attending and had standing room only. At that meeting, recall attorney Martha Karnopp and former HGA President Jill Bacon alleged that the directors subject to recall, and specifically, Daniel Taylor, had created a hostile and toxic work environment causing the upper management to resign. This allegation was disproved in my objection to the original petition which was disapproved for containing a false statement.

15. On January 27, 2024, recall attorney Martha Karnopp said to a crowd of about 100 people in the clubhouse auditorium, that it didn't matter if the HGA and HGMD boards resolved their dispute, that the recall wasn't about the issues, it's about personalities.

16. During both meetings of the recall committee, on January 6, and January 27th, the recall committee members downplayed the grounds as stated on the recall petition because the directors subject to recall had been routinely dispelling those allegations. Rather the recall committee switched to allegations not contained in the petitions, such as Martha Karnopp saying, "It's not about the issues. It's about the personalities" or the HGMD increased the amount spent on attorney fees since their election. These statements and this conduct is contrary to C.R.S. §32-1-910(2)(c) that the affiant made no misrepresentations of the purpose of such petition.

THEREFORE, I, Daniel J. Taylor, as an elector of the Heather Gardens Metropolitan District hereby protests the validity of the circulator affidavit and their adherence to the requirements of C.R.S. §32-1-909 and C.R.S. §32-1-910 in the circulation of the recall petitions. I request that the Designated Election Official find all petitions signed on January 6, 2024, January 11, 2024, January 16, 2024 at 14000 E. Linvale Place. Aurora, Colorado, and on January 27, 2024, is be insufficient. There can be no higher purpose than to guard against abuses of the elective franchise and secure the purity of elections. Intimidation by petition circulators or by armed, uniformed security personnel interferes with the free exercise of the elective franchise.

AFFIDAVIT

I, Daniel Taylor, swear and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Daniel Taylor, President
HGMD Board of Directors

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing document was acknowledged before me by Daniel Taylor, personally known to me or identified by government issued identification, on February 9, 2024

Witness my hand and official seal.
My commission expires: 08/09/2027

CHRISTOPHER JOHNSTON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234030001
MY COMMISSION EXPIRES 08/09/2027

Notary Public

AFFIDAVIT

I, Carol Anne Mayne, swear and affirm, that the following is true and correct to the best of my knowledge and belief.

On January 6, 2024, at approximately 1:50 pm, I entered the lobby area of the Heather Gardens clubhouse, and observed a woman sitting at a round table near the fireplace with a clipboard containing the recall petitions.

I was talking to another resident, John Guise, and when I turned around, the petition circulator was gone, and the petitions were left unattended on the table. I looked at them enough to see that they were the recall petitions. The petition circulator did not return before I went into the auditorium for the 2:00 pm meeting.

Dated February 9, 2024.

Respectfully submitted,

Carol Anne Mayne

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The forgoing document was acknowledged before me by Carol Anne Mayne, personally known to me or identified by government issued identification, on February 9, 2024.

Witness my hand and official seal.
My commission expires: 08/09/2027.

Notary Public

CHRISTOPHER JOHNSTON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234030001
MY COMMISSION EXPIRES 08/09/2027

AFFIDAVIT

I, Deborah Parker, swear and affirm that the foregoing is true and correct to the best of my knowledge and belief.

On January 11, 2024, I attended a meeting in the auditorium at Heather Gardens, 2888 S. Heather Gardens Way, Aurora, Colorado. Toward the end of the joint board meeting a woman I later learned to be Linda Savage, stood up and announced to the group that she had the recall petitions in the lobby for signature.

I saw her leave the auditorium without the petitions in her hand. I saw a security officer from Heather Gardens leave the auditorium and retrieve the recall petitions which had been sitting under a table outside the auditorium door. He placed the recall petitions on the table, and pulled the table away from the wall so that the petition circulators could sit at the table.

The recall petitions had been unattended while under the table in the clubhouse lobby.

Dated February 2, 2024.

Respectfully submitted,

Deborah Parker

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing document was acknowledged before me by Deborah Parker, personally known to me or identified by government issued identification, on February 2, 2024.

Witness my hand and official seal.
My commission expires June 21, 2025.

Notary Public

STATE OF COLORADO
NOTARY PUBLIC
Notary ID: 19974004852
DANIEL J. TAYLOR
My Commission Expires: 06/21/2025

Colorado Tax Attorney, LLC
Daniel J. Taylor, Attorney at Law
3900 E. Mexico Ave., Suite 610 Denver, Colorado 80210
720-707-0087 Office, 720-707-0429 Fax, 303-552-7660 Cell
DanielTaylor@CoTaxAtty.com

February 16, 2024

VIA ELECTRONIC MAIL

Public Alliance
A.J. Beckman, Designated Election Official
405 Urban St., Suite 310
Lakewood, Colorado 80228

Dear Mr. Beckman,

I am in receipt of your letter dated February 13, 2024, which appears to be a summary dismissal of the protests filed in opposition to the sufficiency of the petition to recall me as a director of the Heather Gardens Metropolitan District (HGMD). Your letter incorrectly categorizes the arguments contained in my protest and in others as relating solely to the grounds for recall stated in the petition.

The only argument related to the grounds for recall in my protest, was my objection to the false statements contained in the grounds. I objected to your procedure in making a determination as to the sufficiency of the petition without allowing even a full day after notice of the revised recall petition for me to object to the new and revised grounds. I objected to your procedure in investigating the grounds stated against Director Robin O'Meara for failing to post minutes to the website, yet refusing to do the same for the allegations against me.

Your letter fails to address the arguments in my protest, supported by sworn affidavit, that the petition circulators left the petitions unattended and therefore, failed to meet the requirements of C.R.S. §32-1-910(2)(c). Your letter fails to address the argument that Director Robin O'Meara witnessed and photographed a resident signing the recall petition while the petition circulator's back was turned and was talking the security officers, and therefore, failed to meet the requirements of C.R.S. §32-1-910(2)(c).

Your letter also fails to address the due process and fundamental fairness allegations implicated by the security interference when recall petitions were being signed. This interference violated interactive communication concerning political speech clearly protected by the U.S. and Colorado Constitutions. It ignores HGMD's interests in fair and honest democratic elections, and fails to protect the integrity and reliability of the elective process.

The First Amendment protects political conversations and the exchange of ideas. Eligible voters had a right to ask questions of the petition circulators, and violated no HGMD rules. Security's interference in asking those eligible electors to leave limited the number of voices who opposed the recall effort and cut down the size of the audience the opponents could reach.

Evidence of this intimidation and use of physical force is documented by the written complaint filed by an 80-year-old resident who was pushed toward the clubhouse door by Security Manager Dave Marris during recall petition signing in the clubhouse lobby. The resident was told to leave.

Other opponents to the recall were told to leave or observed others being told to leave. The U.S. Supreme Court has recognized that an informed public opinion is the most potent of all restraints upon misgovernment.

Colorado law provides that an eligible elector may file a protest within 15 days after such petition is filed which was February 6, 2024. Day 1 was February 7, 2024. That means that eligible electors have until February 21, 2024, to file protests.

The grounds for the protest of a recall petition , include, but are not limited to, the failure of the petition circulator to meet the requirements of section 32-1-909, which has been alleged in my protest.

C.R.S. §32-1-910(3)(d)(II) states that "Upon receiving a protest of a recall petition, the designated election official shall promptly mail 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 after such notice is mailed, to the director sought to be recalled, the committee as defined in section 32-1-909(4)(a), and the board of directors of the special district."

I don't see any provision in the statute for a summary determination by the designated election official that the petition is sufficient without a hearing. The hearing officer has the right to issue subpoenas.

I requested the clubhouse lobby surveillance video for the times in question, which has not been provided by the Heather Gardens Association (HGA) who has control of the surveillance cameras.

I request that the hearing officer subpoena this surveillance video from the custodian of the surveillance video and compel the attendance of the petition circulators, the recall committee members, the attorney representing the recall committee, the acting Heather Gardens General Manager at the time, Holly Shearer, the Security Manager Dave Marris, and any attending security officers during the time in question.

I further request that recall committee attorney, Martha Karnopp, be served with a subpoena duces tecum requesting the substantiation for allegations made during the January 6, 2024, and January 27, 2024, public meetings that I sent "daily disparaging emails to HGA CFO Jerry Counts," that the recall committee had employee exit interviews conducted by HGA staff for all of the employees referred to in the recall petition, evidence that I called an employee insubordinate in a public meeting, evidence that I met with HGA board members in November concerning the budget and gave them a demand at 5:00 p.m., and any evidence that I created a "toxic and hostile work environment" for HGA employees. Attorney Martha Karnopp told the public meeting of approximately 100 people on January 27, 2024, that the recall was not about the issues, but about personalities. This language doesn't not appear on the recall petition, and I

request that she be subpoenaed to explain how her statement is not a misrepresentation of the purpose of such petition.

I request that Estelle Matthis be subpoenaed with the request to produce any evidence that I adopted the revised HGMD Bylaws without any notice as alleged in the January 27, 2024, public meeting.

I request that the DEO set a hearing as required as stated herein, or I will file a request for judicial review of this determination on Monday, February 19, 2024.

Sincerely,

Daniel J. Taylor

Daniel J. Taylor, Esq.
Colorado Atty Reg #19394
US Tax Court #TD0253
IRS CAS#0303-60508R