

District Court Arapahoe County, State of Colorado 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: April 25, 2024 10:33 AM FILING ID: F14460EE85EF1 CASE NUMBER: 2024CV30677
<p style="text-align: center;"><b>Plaintiffs:</b></p> <p>DANIEL TAYLOR, ROBIN O’MEARA, DEBORAH PARKER, JOHN RASMUSSEN, GWEN ALEXANDER, JOHN GUISE AND FOREST MCCLURE, as eligible electors of Heather Gardens Metropolitan District, DANIEL TAYLOR AND ROBIN O’MEARA, as HGMD directors subject to recall,</p> <p>v.</p> <p style="text-align: center;"><b>Defendant:</b></p> <p>A.J. BECKMAN, as Designated Election Official.</p> <hr/> <p>Attorneys for Defendant:</p> <p>Mark G. Grueskin, #14621          Nathan A. Bruggeman, #39621          Recht Kornfeld, P.C.          1600 Stout Street, Suite 1400          Denver, CO 80202          (303) 573-1900          Fax: (303) 446-9400  <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a>  <a href="mailto:nate@rklawpc.com">nate@rklawpc.com</a></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: 2024CV030677</p> <p>Div.: 204                  Ctrm:</p>
<b>DEFENDANT’S MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING</b>	

Defendant A.J. Beckman, in his capacity as the Designated Election Official, respectfully moves pursuant to the Constitution of the State of Colorado for a forthwith hearing to consider and decide this matter<sup>1</sup>:

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<sup>1</sup> Plaintiffs filed their complaint as a Rule 106(4)(a) action under case number 2024CV030677. On April 19, 2024, the Court granted Defendant’s motion to transfer and consolidate their complaint into the matter that governs the special district (case 1983CV105). That consolidation has not yet occurred and, therefore, this motion is being filed into the new case.

## CONFERRAL

Counsel for Defendant has conferred with Plaintiffs' counsel, and Plaintiffs oppose.

## MOTION

1. This matter concerns a request for judicial review that contests the Designated Election Official's determination that petitions filed against two directors, Daniel Taylor and Robin O'Meara, of the Heather Gardens Metropolitan District ("District") are sufficient pursuant to the Colorado Special Districts Act, C.R.S. §§ 32-1-101 *et seq.* See C.R.S. § 32-1-910(3)(a) & (c) (establishing grounds for sufficiency review).<sup>1</sup>

2. The right of citizens to seek the recall of elected officials is "fundamental." See *Shroyer v. Sokol*, 550 P.2d 309, 311 (Colo. 1976).

3. To protect this fundamental right, the Constitution requires that, when an election official's decision about recall petitions is challenged, "such review shall be had and determined *forthwith*." Colo. Const. art. XXI, sec. 2 (emphasis added).

4. "Forthwith" means "[i]mmediately; without delay, directly, within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch." *Moreno v. People*, 775 P.2d 1184, 1186 (Colo. 1989) (citing *Black's Law Dictionary* 588 (5th ed. 1979)).

5. Contrary to what has been alleged in Plaintiffs' wide-ranging complaint, the grounds for protest and judicial review of recall petitions are limited by both the Constitution and state statute. See Colo. Const. art. XXI, sec. 2; C.R.S. § 32-1-910(3)(c) (recalls of special district directors). It is within this limited context that a district director subject to a recall petition may

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<sup>1</sup> Voters prepared and circulated petitions to recall two other directors of the District, and the Designated Election Official found those petitions to be sufficient under Colorado law. Those two directors did not file for judicial review of their petitions by the statutory deadline, and, therefore, the Designated Election Official's sufficiency determinations as to the sufficiency of those two recall petitions are final.

seek judicial review of a designated election official's determination that a recall petition is sufficient. *See id.* § 32-1-910(3)(f).

6. Beyond the general meaning of "forthwith," the Colorado Supreme Court has admonished that "limitations on the power of recall must be strictly construed." *Shroyer*, 550 P.2d at 311. Where judicial review is invoked, it suspends the holding of a recall election and thus is a limit on the voters' power of recall. *See* C.R.S. § 32-1-910(4)(a)(II) (during pendency of a timely, properly filed request for judicial review, no recall election is scheduled). Accordingly, an official who is the subject of a valid recall petition continues to serve in that position until judicial review of the complaining officials is complete.

7. Of course, where no properly filed petition for judicial review is filed, a recall election must be scheduled not less than 75 nor more than 90 days from that meeting. C.R.S. § 32-1-910(4)(a)(II), (III). Because Directors Effler and Baldwin, who are the other two directors subject to recall petitions, did not seek judicial review of the sufficiency decision about their recall petitions, they are subject to this provision of the statute, and a recall election must be held pursuant to statute.

8. This matter is ripe for a hearing as the Designated Election Official has set forth in his motion to dismiss the jurisdictional defects in the request for judicial review under Rule 106(4)(a) filed by Plaintiffs. Not only is jurisdiction lacking over the entire Rule 106(4)(a) action for failure to utilize the mandatory statutory procedure for obtaining judicial review of the sufficiency determination, each claim should be lacked for lack of jurisdiction, lack of standing, or failure to state a claim upon which relief can be granted.

9. Delaying a hearing will prevent the voters of the District from being able to consider and decide the recall. Delaying the election unnecessarily deprives voters of the fundamental constitutional right to decide whether to retain their elected representatives in

office. Whether elected officials like it or not, and as the Supreme Court has explicitly recognized, recall is a “political” decision voters are entitled to make. *See Bernzen v. City of Boulder*, 525 P.2d 416, 420 (Colo. 1974).

10. By Plaintiffs’ own admission, their primary claim in this litigation is that the recall petitions contain false statements. (*See* Compl. at 1 (“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 statements”).) In other words, rather than the *voters* being the “sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds on which the recall is sought,” as the law plainly requires, C.R.S. § 32-1-909(4)(c); *see also* Colo. Const. art XXI, sec. 2, Plaintiffs ask this Court to take on “political” power and decide that voters should not exercise their right of recall.

11. Given this is the “primary” issue upon which Plaintiffs seek the Court’s, there is no reason that the Court cannot quickly resolve it as it presents a legal question that can be decided using plain language in the Constitution and Special Districts Act, as well as the carefully considered precedent from Colorado’s appellate courts. The Court can protect the voters’ rights by deciding this issue “forthwith.”

12. The District was required to schedule a recall election within the thirty (30) days after the Designated Election Official announced his determination of petition sufficiency. Defendant transmitted his sufficiency decision to all Directors on March 22 and appeared at the April 18 District Board of Directors meeting to present the recall petitions and certificates of sufficiency so an election could be scheduled. As to the two (2) directors who did not petition the court for judicial review (Rita Effler and Craig Baldwin), the District was required to schedule an election at that April meeting. The one Director who is not being recalled, Eloise Laubach, proposed to set an election date within the statutory range, but her motion was not seconded by

any of the remaining Directors—all of whom are subjects of recall petitions. Thus, a hearing at the soonest possible time is necessary to address claims raised by the complaint, as required by the Constitution which imposes the “forthwith” standard and essential given this Court’s appointment of the Designated Election Official to oversee District compliance with all applicable election laws.

**WHEREFORE**, the Designated Election Official respectfully requests that this Court set a date as soon as possible to hold a hearing on the motion to dismiss.

Respectfully submitted this 25th day of April, 2024.

s/ Mark G. Grueskin  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of April, 2024, a true and correct copy of the foregoing **DEFENDANT’S MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING** was served electronically via CCEF to:

Daniel Taylor  
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Denver, CO 80210  
[DanielTaylor@CoTaxAtty.com](mailto:DanielTaylor@CoTaxAtty.com)

*s/ Erin Mohr* \_\_\_\_\_