

District Court Arapahoe County, State of Colorado 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: May 21, 2024 5:23 PM FILING ID: 9BAB5BFD3B12E CASE NUMBER: 1983CV105
<p style="text-align: center;">Plaintiffs:</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;">Defendant:</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 mark@rklawpc.com nate@rklawpc.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 1983CV105</p> <p>Div.: 204 Ctrm:</p>
<p>DEFENDANT’S RENEWED AND EXPANDED MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING</p>	

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:

CONFERRAL

Counsel for Defendant conferred with Plaintiffs’ counsel regarding this motion, and Plaintiffs opposes it. Intervenor’s counsel does not oppose the granting of this motion.

MOTION

1. This action seeks to overturn the decision by Defendant AJ Beckman, the Designated Election Official appointed by order of this Court for Heather Gardens Metropolitan District (“District”), about recall petitions filed against four members of the District’s board of directors.

2. The affected District directors are Robin O’Meara, Daniel Taylor, Rita Effler, and Craig Baldwin.

3. Two of those directors, O’Meara and Taylor, filed this action to overturn the decision of the Designated Election Official.

4. The other two directors, Effler and Baldwin, are not parties to this action and did not independently seek judicial review of the Designated Election Official’s decision

5. Accordingly, there are two groups of directors, and each group is before this Court albeit in different procedural forms.

A. O’Meara and Taylor

6. The Court can dispose of the request for judicial review filed by O’Meara and Taylor through the Designated Election Official’s motion to dismiss. The parties have fully briefed the motion, and it is ripe for determination by the Court.

7. As explained by the Designated Election Official, each claim asserted by O’Meara and Taylor can be dismissed as each is inconsistent with the Colorado Constitution, the Special Districts Act, or pertinent case law. Furthermore, the non-director plaintiffs do not have standing to bring this action.

8. As set forth in the Designated Election Official’s motion for a forthwith hearing, the Court should expeditiously decide O’Meara and Taylor’s request for judicial review of the

Designated Election Official’s sufficiency determination to resolve whether the District’s voters can exercise their fundamental right of recall of elected officials.

B. Effler and Baldwin

9. Effler and Baldwin did not seek judicial review of the Designated Election Official’s petition sufficiency determination in this action or otherwise. As such, the Special Districts Act required that their recall elections be scheduled “within thirty days after the written notice of determination is issued” by the designated election official. C.R.S. § 32-1-910(4)(a)(II). The Designated Election Official issued that notice on March 22, 2024, and presented the petitions and certificates of sufficiency to the Board of Directors on April 18, 2024.

10. The Recall Committee has now moved to intervene in this action, and it also has moved the Court, which maintains jurisdiction over the District, to order the Board of Directors to comply with the Special Districts Act and set the date of the recall election. (*See* Recall Com.’s Mot. to Intervene and Compel (“Recall Comm.’s Mot.”), filed May 17, 2024.)

11. As explained by the Recall Committee, and previously noted by the Designated Election Official, the District Board met on April 18, 2024, but refused to set a recall election date for Effler and Baldwin. (*Id.* at 2; *see also* Def.’s Mot. for Constitutionally Mandated Forthwith Hr’g (“Def.’s Mot. for Hr’g”) at 3 (¶7) and 4 (¶12), filed April 25, 2024). As such, the Board did not “order and fix a date for the recall election to be held no less than seventy-five nor more than ninety days from the date of the meeting.” C.R.S. § 32-1-910(4)(a)(III).

12. As addressed by the Recall Committee, the District Board met again on May 16, 2024. The non-recalled Director moved to set a date for the recall election, but the four members of the Board subject to recall again refused to set a recall election date. (Recall Comm.’s Mot. at 2-3 (¶ II).)

13. The only grounds upon which the Board can decline to set the recall election for Effler and Baldwin is a properly filed request for judicial review. *See* C.R.S. § 32-1-910(4)(a)(II). By not appealing the Designated Election Official’s finding of petition sufficiency, Effler and Baldwin have conceded it is correct, thus removing any legal obstacle to the scheduling of recall elections if the Board had been willing to fulfill its statutory duty to set dates for these recall elections.

14. The Designated Election Official informed the Board at the April 18, 2024, meeting that the statute requires the Board to set an election date for Effler and Baldwin as they did not seek judicial review of the sufficiency determination.

15. The District Board has refused, therefore, to set the date of the recall elections for Effler and Baldwin, and this issue is squarely presented to the Court for a “forthwith” determination.

C. Colorado Law Requires a Forthwith Resolution of These Issues

16. On April 25, 2024, the Designated Election Official asked the Court to schedule a “forthwith” hearing to resolve O’Meara and Taylor’s action, as required by law. Colo. Const., art. XXI, sec. 2 (after a determination of petition sufficiency, any judicial “review shall be had and determined forthwith”). (Def.’s Mot. for Hr’g at 4-5.) The Court has not yet ruled on this motion, but in ordering expedited briefing on the Designated Election Official’s motion to dismiss, the Court emphasized the issues in the matter “are of constitutional dimension and require speedy resolution.” (Order for Expedited Br’g and Setting Hr’g, Apr. 30, 2024.)

17. “[T]he principle underlying the recall of public officers means that the people may have an *effective and speedy remedy* to remove an official who is not giving satisfaction – one who they do not want to continue in office, regardless of whether or not he is discharging his

full duty to the best of his ability and as his conscience dictates.” *Bernzen v. Boulder*, 525 P.2d 416, 418 (Colo. 1974) (emphasis added), citing *Dunham v. Ardery*, 143 P. 331, 333 (Okla. 1914).

18. The District Board’s refusal to provide District voters with this “effective and speedy remedy” can be addressed only by this Court, as the Board, though charged with setting a recall election date, has refused to comply with its statutory duties to do so. C.R.S. § 32-1-910(4)(a). Here, because four out of five of those directors are the public officials being recalled, their refusal to set an election date for the two directors who do not contest the Designated Election Official’s decision is inconsistent with both the letter and the spirit of the law.

19. “The power of recall is a fundamental constitutional right of Colorado citizens.” *Groditsky v. Pinckney*, 661 P.3d 279, 281 (Colo. 1983) (holding, the right of recall applies to special district directors).

20. When a fundamental constitutional right is at stake, public officials cannot block the exercise of that right because they disagree with its effect. For example, when a city’s electors seek to repeal a municipal ordinance, elected officials may not prevent the exercise of the fundamental right of initiative by rejecting the legally sufficient petitions. *See McKee v. City of Louisville*, 616 P.2d 969, 973 (Colo. 1980) (city may not prevent initiative dealing with proposed annexation based on assertion it deals with matters of statewide interest); *City of Rocky Ford v. Brown*, 293 P.2d 974, 976 (Colo. 1956) (city cannot prevent initiative that may be ruled to be unconstitutional or otherwise invalid if adopted).

21. Likewise, when the right of recall is being exercised, public officials who have a statutory duty to facilitate the recall process cannot block the exercise of this fundamental right. *See Dodge v. Cnty. Clerk and Recorder*, 768 P.2d. 1271 (Colo. App. 1989) (election official could not refuse to accept recall petitions for filing).

WHEREFORE, the Designated Election Official respectfully requests that this Court:

a. Enter an order compelling the Board of Directors to set a date for the recall election of Directors Effler and Baldwin, who did not seek judicial review of the sufficiency determinations; and,

b. Set a hearing as soon as possible on the Designated Election Official's motion to dismiss or, if the motion to dismiss is denied, to hold a forthwith hearing on the merits of O'Meara and Taylor's claims.

Respectfully submitted this 21st day of May, 2024.

s/ Mark G. Grueskin
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2024, a true and correct copy of the foregoing **DEFENDANT’S RENEWED AND EXPANDED MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING** was served electronically via CCEF to:

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s/ Erin Mohr _____