

District Court
Arapahoe County, State of Colorado
7325 S. Potomac Street
Centennial, CO 80112

DATE FILED: April 29, 2024 10:30 AM
FILING ID: A960AD75854C9
CASE NUMBER: 1983CV105

Plaintiffs:

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,

v.

Defendant:

A.J. BECKMAN, as Designated Election Official.

Attorneys for Defendant:

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▲ COURT USE ONLY ▲

Case Number:
1983CV105

Div.: 204 Ctrm:

DEFENDANT’S UNOPPOSED MOTION TO CONSOLIDATE

Defendant A.J. Beckman, in his capacity as the Designated Election Official, respectfully moves to transfer and consolidate this matter with another case pursuant to Colorado Rule Civil Procedure 42(a), and states in support:

CONFERRAL

Counsel for Defendant has conferred with Plaintiffs’ counsel, and Plaintiffs do not oppose.

MOTION

1. The Heather Gardens Metropolitan District is a special district formed pursuant to and governed by the Colorado Special Districts Act, C.R.S. §§ 32-1-101 *et seq.*

2. The action forming the District in this Court is 1983CV105.

3. On November 16, 2023, a committee of District electors initiated the process to recall four (4) of the District directors. To effectuate that process, these electors filed in the above matter governing the District a request seeking appointment of a designated election official to oversee the recall petition process and a recall election. *See* C.R.S. § 32-1-909(2).

4. On November 21, 2023, the Court appointed Mr. Beckman as the Designated Election Official. *See* Order re Unopposed Mot. for Req. for Appointment of Replacement Designated Election Official, Case No. 1983CV105 (Arapahoe Cnty. Dist. Ct.).

5. Following his appointment, the Designated Election Official approved the recall petitions as to form. Following the timely submission of signed petitions seeking the recall from office for each of the four (4) District electors, the Designated Election Official determined that the petitions were sufficient under Colorado law. *See* C.R.S. §§ 32-1-909(3)-(4), 32-1-910.

6. Several protests were filed with respect to the Designated Election Official's sufficiency determinations, and the Designated Election Official held a consolidated hearing on the protests within the time period provided by statute.

7. The Designated Election Official issued his Order affirming his sufficiency determinations as to the four recall petitions on March 22, 2024, and then filed a corrected sufficiency determination on March 25, 2024. *See* Exs. A and B, Order of Designated Election Official on Protests to Sufficiency Determination of Recall Petitions for Directors of the Heather Gardens Metropolitan District and Order of Designated Election Official on Protests to

Sufficiency Determination of Recall Petitions for Directors of the Heather Gardens Metropolitan District (Corrected).

8. On March 29, 2024, two of the directors and several electors who had protested the Designated Election Official's sufficiency determination filed this new action under Colorado Rule of Civil Procedure 106(4)(a) seeking judicial review of the Designated Election Official's actions.

9. Under the statute, this case was required to have been filed into the proceeding governing the special district. *See* C.R.S. §§ 32-1-910(3)(f) (action "subject to judicial review by the court as defined in section 32-1-103(2)"), 32-1-103(2) ("court" is the court "in which the petition for organization of the special district was originally filed and which entered the order organizing said district"). Thus, consolidation meets the mandates of state law.

10. Further, the Court that entered the order on November 21, 2023, appointing the Designated Election Official retains jurisdiction over its order and the Designated Election Official as a court appointed officer. *Cf. Midland Bank v. Galley Co.*, 971 P.2d 273, 276 (Colo. App. 1998) (explaining that, because a "receiver is an officer of the trial court," the trial court "retains jurisdiction over the receiver until the order discharging the receiver is entered").

11. Finally, consolidating this action into Case No. 1983CV105 promotes efficiency, as the Court that entered the order appointing the Designated Election Official has familiarity with the effort to recall directors of the special district and with the function and authority of Mr. Beckman as the District's Designated Election Official.

12. Under these circumstances, consolidation is appropriate under Colorado Rule of Civil Procedure 42(a), which permits consolidation when there are "common question(s) of law or fact" and to "avoid unnecessary costs or delay."

13. On April 18, 2024, the Designated Election Official filed a motion in 2024CV030677 to consolidate the Rule 106(4)(a) action into Case No. 1983CV105. The Court in 2024CV030677 has granted that motion.

14. Additionally, the parties are currently seeking various extraordinary relief. The Designated Election Official has sought a forthwith hearing pursuant to Colorado Constitution art. XXI, sec. 2, and Plaintiffs have requested a temporary restraining order. Consolidating the cases is thus necessary for the Court to address these requests.

WHEREFORE, the Designated Election Official respectfully requests that this Court enter an order transferring and consolidating Arapahoe County District Court Case No. 2024CV030677 into the Arapahoe County District Court Case No. 1983CV105. *See* C.R.C.P. 121 § 1-8.

Respectfully submitted this 29th day of April, 2024.

s/ Mark G. Grueskin

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2024, a true and correct copy of the foregoing **DEFENDANT'S UNOPPOSED MOTION TO CONSOLIDATE** was served electronically via CCEF to:

Daniel Taylor
3900 E. Mexico Ave., Suite 610
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s/ Erin Mohr _____