

District Court Arapahoe County, State of Colorado 7325 S. Potomac Street Centennial, CO 80112	DATE FILED September 12, 2024 4:49 PM CASE NUMBER: 1983CV105
In the Matter of: Heather Gardens Metropolitan District	
	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 1983CV000105 Div.: 15 Ctrm:
PROPOSED AMENDED ORDER RE: HGMD RECALL ELECTIONS	

The Court having reviewed the Designated Election Official’s Objection to Heather Gardens Metropolitan District Board’s Setting of Recall Elections Date in 2025, the Recall Election Committee’s Joinder in DEO’s Objection to HGMD’s Setting of Recall Election Date in 2025, and the Heather Gardens Metropolitan District’s Response to Objection to Setting of Election Date by DEO and Joinder in DEO’s Objection by the Recall Committee, as well as the other pleadings and filings in the matter, and having received oral argument from the parties during the hearing held on September 5, 2024, the Court hereby makes the following findings of fact, conclusions of law, declarations, and orders:

FINDINGS OF FACT

1. In November 2023, the Recall Committee began the process for recalling Directors Dan Taylor, Robin O’Meara, Rita Effler, and Craig Baldwin of the Board of Directors (“Board”) of the Heather Gardens Metropolitan District (“HGMD”).

2. On November 21, 2023, this Court appointed A.J. Beckman as the Designated Election Official (“DEO”).

3. The DEO deemed the proposed recall petitions sufficient as to form in December 2023, and the Recall Committee thereafter circulated the petitions to the electors of the District.

4. The Recall Committee submitted the signed petitions on February 6, 2024.

5. The DEO found the petitions were sufficient on February 13, 2024.

6. Various protests to the sufficiency determinations were filed with the DEO, who held an evidentiary hearing on the protests.

7. The DEO denied the protests and issued his Order of Sufficiency on March 22, 2024. He issued a corrected Order on March 25, 2024.

8. On March 29, 2024, Directors Taylor and O’Meara filed a complaint for judicial review of the DEO’s sufficiency determinations.

9. Directors Effler and Baldwin did not seek judicial review.

10. The DEO submitted the petitions and the certificates of sufficiency to the Board on April 18, 2024, so the District could schedule recall elections.

11. The Court dismissed Directors Taylor and O’Meara’s complaint for judicial review on August 1, 2024.

12. On August 15, 2024, the Board held a meeting, which the DEO and the DEO’s counsel attended and during which they advised the Board that it must schedule the recall elections within 30 days of the Court’s August 1 order of dismissal.

13. In the Court’s August 1 “Order re Motion to Intervene and Motion to Compel Compliance,” the Court ordered: “The Court hereby GRANTS the motion to compel compliance with the statute, and the Heather Gardens Metropolitan District is ORDERED to fix a date for the

recall election within the time limits and under the conditions specified in C.R.S. 32-1-910(4)(a)(III).”

14. The Board issued a notice on or about August 27, 2024, of a special board meeting to be held on August 29, 2024.

15. The Court takes judicial notice of the provisions of C.R.S. § 32-1-910(4)(a)(II), which provides:

If no request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the expiration of the period within which a protest may be filed, or within thirty days of the date the written determination of sufficiency is issued, whichever is later. If a request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the issuance of a final order finding the petition sufficient.

16. The Court takes further notice of the provisions of C.R.S. § 32-1-910(3)(f), which provides:

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 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.

17. The Court finds that the provision for judicial review under C.R.S. § 32-1-910(3)(f) is a plain, adequate, and speedy remedy provided by law.

18. The Board was required to hold a “regular or special meeting within thirty days following the expiration of the period within which a protest may be filed, or within thirty days of the date the written determination of sufficiency is issued, whichever is later.” C.R.S. § 32-1-910(4)(a)(II).

19. The Court finds that, because the DEO submitted the petitions and the certificates of sufficiency to the Board on April 18, 2024, the Board was required to meet within 30 days to set the date of the recall elections for Directors Baldwin and Effler.

20. The Court finds that the Board did not hold a meeting to set the date of those two recall elections within 30 days of the April 18, 2024, meeting.

21. Director Baldwin passed away on or about August 26, 2024.

22. Directors Taylor and O'Meara timely filed a request for judicial review of the DEO's sufficiency determination.

23. The Court finds that the meeting held on August 29, 2024, occurred within 30 days of the Court's August 1, 2024, order of dismissal.

24. The Court finds that the Board could have met sooner to set the recall elections to take place at the same time as the general election to be held on November 5, 2024.

25. The Court takes notice of the provisions of C.R.S. § 32-1-103(21), which provides:

“Special election” means any election called by the board for submission of public questions and other matters. The election shall be held on the first Tuesday after the first Monday in February, May, October, or December, in November of even-numbered years or on the first Tuesday in November of odd-numbered years. Any special district may petition a district court judge who has jurisdiction in such district for permission to hold a special election on a day other than those specified in this subsection (21). The district court judge may grant permission only upon a finding that an election on the days specified would be impossible or impracticable or upon a finding that an unforeseeable emergency would require an election on a day other than those specified.

26. If the Board could not have set the special election to occur with the general election, it could have petitioned the Court for permission to set the special election on a different date.

27. The Board did not petition the Court as Director Taylor admitted during the September 5, 2024, hearing.

28. In an August 5, 2024, email, Senior Assistant County Attorney Monica Kovaci informed the Board that “[p]ursuant to Colorado Revised Statute 32-1-910(6), a recall election may be conducted as part of a coordinated election only if (a) the content of the recall election ballot is determined by the ballot certification deadline, and (b) the county clerk and recorder agrees to conduct the recall election as part of the coordinated election.”

29. Ms. Kovaci further informed the Board “[a]t this time, due to scope of work on the ballot questions that are statutorily required to be included on the November ballot and the lack of resources to take on additional work, the Clerk’s Office respectfully declines to add a potential recall election to the November coordinated election.”

30. The Court held an emergency status conference on August 26, 2024, but because the 30 days after the Court’s August 1 order of dismissal had not lapsed, the Court did not act to allow the Board to meet its obligations under the statute to set the recall elections.

31. The Board met on August 29, 2024, and set the recall elections date to coincide with its May 6, 2025, district regular election. The Court notes that the three directors subject to recall voted in favor of the recall election resolution with one other director voting against it. The Board’s August 29 recall election resolution is incorporated by reference into this Order.

32. By the Court’s calculation, there are 250 days between the date the Board met to set the recall elections date and the date selected by the Board.

CONCLUSIONS OF LAW

33. The Court recognizes several principles of law at the outset.

34. First, “[t]he right of recall is a fundamental right of the People.” *Mirandette v. Pugh*, 934 P.2d 883, 884 (Colo. App. 1997).

35. Second, “[t]he purpose underlying recall of public officials for political reasons is to provide an effective and speedy remedy to remove an official who is unsatisfactory to the public and whom the electors do not want to remain in office, regardless of whether the person is discharging his or her duties consistent with his or her abilities and conscience.” *Groditsky v. Pinckney*, 661 P.2d 279, 283 (Colo. 1983).

36. Finally, under the statute, “[t]he designated election official shall render all interpretations and shall make all initial decisions as to controversies or other matters arising out of the operation of a recall election.” C.R.S. § 32-1-914(1).

37. The issue in dispute focuses on the provisions of C.R.S. § 32-1-910(4), which state in full:

(4)(a)(I) When a recall petition is determined sufficient, the designated election official shall submit the petition, together with a certificate of its sufficiency, to the board of directors of the special district at a regular or special meeting of such board.

(II) If no request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the expiration of the period within which a protest may be filed, or within thirty days of the date the written determination of sufficiency is issued, whichever is later. If a request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the issuance of a final order finding the petition sufficient.

(III) At the meeting, the board shall order and fix a date for the recall election to be held not less than seventy-five days nor more than ninety days from the date of the meeting. The board shall determine whether voting in the recall election is to take place at the polling place or by mail ballot.

(b) Notwithstanding subsection (4)(a)(III) of this section, if a regular special district election is to be held within one hundred eighty days after the date the board orders the recall election, the recall election must be held as part of such regular special district election; except that:

(I) If the director sought to be recalled is seeking reelection at the regular special district election, only the question of such director’s reelection appears on the ballot.

(II) If a successor to the director sought to be recalled is to be selected at the regular special district election and the director sought to be recalled is not seeking reelection, only the question of the selection of the successor to the director appears on the ballot.

38. The Court needs to construe these provisions in harmony.

39. The Court recognizes that the next regular election for the District is set for May 6, 2025, which is more than 180 days after the Board met on August 29 to set the dates of the recall elections.

40. The statute is clear and unambiguous on its face that the recall election must occur not less than 75 days after and not more than 90 days after the Board meets to set the recall election date.

41. The Court recognizes the special circumstance in C.R.S. § 32-1-910(4)(b) that “if a regular special district election is to be held within one hundred eighty days after the date the board orders the recall election, the recall election must be held as part of such regular special district election.”

42. The Court finds that C.R.S. § 32-1-910(4)(b) does not apply here. It does not apply where the recall election would be held 250 days after the meeting to set the election date.

43. The Court must reject an interpretation in tension with the principles animating the constitutional right of recall:

“We understand that the 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. If the policies pursued do not meet the approval of a majority of the people, it is the underlying principle of the recall doctrine to permit them to expeditiously recall the official, without form or ceremony, except as provided for in the charter.”

Bernzen v. Boulder, 525 P.2d 416, 418-19 (Colo. 1974) (quoting *Dunham v. Ardery*, 143 P. 331, 333 (Okla. 1914)).

44. The Court has authority under Colo. R. Civ. P. 57 “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” The Court further has continuing jurisdiction over the District pursuant to the Special Districts Act:

The court in and for the county in which the petition for the organization of a special district has been filed, for all purposes of this part 3 except as otherwise provided, shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the special district and of the property proposed to be included in said special district or affected by said special district, without regard to the usual limits of its jurisdiction.

C.R.S. § 32-1-303(1)(a). The Court also “has inherent authority and jurisdiction to make such orders as are necessary to give effect to or enforce its prior decrees.” *EnCana Oil & Gas (USA), Inc. v. Miller*, 2017 COA 112, ¶ 11 (quoting *Mulei v. Jet Courier Serv., Inc.*, 860 P.2d 569, 571 (Colo. App. 1993)).


DECLARATION AND ORDERS

Pursuant to the factual findings and conclusions of law above, the Court hereby:

- a. **DECLARES** that holding the special election for the recall of Directors Taylor, O’Meara, and Effler 250 days after the meeting to set the recall election is in violation of C.R.S. § 32-1-910.
- b. **DECLARES** that the special election for the recall of Directors Taylor, O’Meara, and Effler was required to occur not less than 75 days and not more than 90 days after the Board met to set the recall elections date.
- c. **ORDERS** the recall elections for Directors Taylor, O’Meara, and Effler shall occur on December 3, 2024, which is the first Tuesday after the first Monday in December 2024 and which date is not less than 75 days and not more than 90 days after the date the Court determined the Board violated the statute in setting the date for the recall elections.

- d. **DECLARES** that the Board’s action in setting the director recall elections for May 6, 2025, is invalid;
- e. **DECLARES** that the only further discretion that Board has over the recall election is whether to hold the election at a polling place or by mail ballot, *see* C.R.S. § 32-1-910(4)(a)(III), and that the Board has previously determined, per its August 29, 2024, resolution, to hold the recall elections through mail ballot.
- f. **DECLARES** that, pursuant to the Special Districts Act, all further functions related to the time, place, and manner of the recall elections are delegated to the DEO and the Board cannot dictate the terms of the recall elections to the DEO.
- g. **ORDERS** the DEO to conduct the recall elections pursuant to the provisions of Part 9 of Article 1 of Title 32 of the Colorado Revised Statutes.

SO ORDERED AND DECLARED on this 12th day of September, 2024.



Judge