<table>
<tr><td>District Court
Arapahoe County, State of Colorado
7325 S. Potomac Street
Centennial, CO 80112

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.</td><td>▲ COURT USE ONLY ▲</td></tr>
<tr><td>Attorneys for Defendant:

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nate@rklawpc.com</td><td>Case Number:

1983CV105

Div.: 204 Ctrm:</td></tr>
<tr><td colspan="2">REPLY IN SUPPORT OF DEFENDANT’S RENEWED AND EXPANDED MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING</td></tr>
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Defendant A.J. Beckman, in his capacity as the Designated Election Official, respectfully submits this Reply in support of his motion for a forthwith hearing to consider and decide this matter:

1. Defendant has twice moved for a forthwith hearing so the Court can quickly resolve Plaintiffs' concerns about the DEO's sufficiency decision as to these recall petitions. Both times, Plaintiffs opposed Defendant's motions for a forthwith hearing. Despite opposing the scheduling of the soonest possible hearing on matters now before the Court, Plaintiffs now suggest that this process is moving too slowly and assert a decision would be imminent but for Defendant's "numerous motions to expedite the proceedings." (Resp. to Def.'s Renewed and Expanded Mot. for Constitutionally Mandated Forthwith Hr'g ("Response") at 2, ¶ 5.)

2. If the Court grants the Defendant's motion for a forthwith hearing, the extent of the Court's review will be addressed by resolving the pending Motion to Dismiss. By that act, the Court can determine and dispense with all issues over which it has no jurisdiction. This will streamline the Court's judicial review of the DEO's sufficiency determination.

3. Plaintiffs also suggest that "it appears the DEO has become an advocate for the recall committee." (*Id.*, ¶ 4.) The DEO was appointed by this Court to interpret and rule on pertinent constitutional and statutory provisions to the recall election process. The DEO is this Court's agent. To the extent he is "an advocate," it is only in furtherance of his duty to ensure there is appropriate application of the laws and judicial precedent that govern the recall process.

4. One of those laws limits eligible plaintiffs in an appeal such as this one to three categories of persons: (1) "the director sought to be recalled;" (2) "the director's representative;" and (3) "a majority of the recall committee as defined in section 32-1-909 (4)(a)." C.R.S. § 32-1-910(3)(f); *see also* Colo. Const., art. XXI, § 1 (authorizing judicial review of DEO's decision only by "the person or a majority of persons representing the signers of the petition"). Where a listed party does not appeal, the district's board of directors must meet "to order and fix a date for the

recall election" at least 75 days but not more than 90 days after the board meeting. C.R.S. § 32-1-910(4)(a).

5. Directors Robin O'Meara and Daniel Taylor both qualify under the first category above.

6. Directors Rita Effler and Craig Baldwin, however, are not plaintiffs here and did not seek review of the DEO's determinations about recall petitions affecting them. In other words, they do not contest the DEO's decision. Thus, recall elections for Effler and Baldwin are required by law to be held without further delay. It is not lost on the DEO that the exercise of the fundamental right of recall must be "effective and speedy." *Bernzen v. Boulder*, 525 P.2d 416, 418 (Colo. 1974) (citation omitted).

7. The fact that the DEO is urging compliance with this statute does not make him a recall advocate. It simply means he is applying relevant law to current facts as he is required to do. C.R.S. § 32-1-914(1) (DEO "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"). The DEO's legal responsibility is to give effect to the fundamental right of recall if enough District voters support holding an election. Based on the review of the petitions and the protests, the DEO found that enough voters support holding a recall election as to the named four directors.

8. Plaintiffs have postured their appeal of the DEO's decision without regard to a number of other laws as well. For instance, Plaintiffs' "primary" argument is that the grounds for recall were untrue and ask this Court to invalidate petitions on that ground. This argument is advanced in the face of clear constitutional and statutory provisions that such grounds ***cannot*** be protested or made the subject of judicial review. Colo. Const. art. XXI, §§ 1, 2; C.R.S. §§ 32-1-909(4)(c), -910(3)(f). Likewise, Plaintiffs contend the Special Districts Act is not specific about

this court process, and for that reason alone, the Court must use C.R.C.P. 106. But the question in invoking C.R.C.P. 106 is not one of process; it is whether there is "a plain, speedy and adequate ***remedy*** otherwise provided by law." C.R.C.P. 106(a)(4) (emphasis added). A remedy is "anything a court can do for a litigant who has been wronged or is about to be wronged." *Remedy*, Black's Law Dictionary (11th ed. 2019) (quoting Douglas Laycock, Modern American Remedies 1 (4th ed. 2010)). Here, to cure an allegedly incorrect DEO decision about petition sufficiency, the statute provides plaintiffs who appeal the DEO's decision the remedy of suspending a recall election until there is "the issuance of a final order finding the petition sufficient." C.R.S. § 32-1-910(4)(a)(II). The Court, of course, has the inherent authority to structure the proceedings to give effect to that remedy.

9. Directors O'Meara and Taylor, having challenged the DEO's decision, have access to that remedy.

10. Directors Baldwin and Effler, having passed up the opportunity to contest the DEO's determination, do not.

11. Moreover, Plaintiffs contend that the key to expedited consideration of this matter is designating the record of the proceedings below for this Court's review. (*See* Response ¶¶ 3, 7. 9.) No record is required to resolve a motion to dismiss, even under C.R.C.P. 106(a)(4). "[T]he plain language of C.R.C.P. 106(a)(4)(III) requires certification of the record only 'after the date upon which an answer to the complaint must be filed.' Here, no answer date was established below because [Defendants] filed C.R.C.P. 12(b) motions to dismiss." *Defend Colo. v. Polis*, 2021 COA 8, ¶ 58, 482 P.3d 531, 543. As such, a district court does "not err by dismissing" claims in a C.R.C.P. 106 action when it does so "without the entire certified administrative record" before it. *Id.*, ¶ 59.

12. Where, as here, "the question of the sufficiency of the claim [in the complaint] was one of law, not one of fact," no record is required to dispose of a motion to dismiss. *Id.*, ¶ 57.

13. Finally, Plaintiffs contend that the Court cannot rule on even threshold issues without conducting these proceedings under the strictures of C.R.C.P. 106. This assertion is inconsistent with governing case law. For instance, whether eligible electors have standing to object to the DEO's sufficiency determination does not require a factual record. "Standing is a threshold jurisdictional question that must be determined before a case may be decided on the merits…. [Plaintiff's] standing turns on the interpretation of various statutes and regulations. Accordingly, the administrative record was unnecessary to resolve whether [Plaintiff] has standing." *Id.*, ¶ 52. As has occurred here, Plaintiffs "provided no authority requiring a court to review the entire administrative record before deciding a threshold standing issue," and thus a district court does not err by dismissing claims "without considering the entire certified administrative record." *Id.*, ¶¶ 53, 54. Nor is the administrative record required to determine whether Plaintiffs have asserted a legally cognizable claim under the Constitution or the Special Districts Act that the DEO erred in his sufficiency determinations.

CONCLUSION

The Constitution requires forthwith resolution of matters such as this one. It is not clear why Plaintiffs oppose a forthwith hearing to expedite a decision in this matter. Whatever the reason, the Court should review the pleadings filed and grant the motions for forthwith hearings to give voters in the Heather Gardens Metropolitan District clarity about whether these four recall petitions seeking recall elections are, as the DEO found, legally sufficient and will be given effect.

Respectfully submitted this 31st day of May, 2024,

RECHT KORNFELD, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2024, a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT'S RENEWED AND EXPANDED MOTION FOR CONSTITUTIONALLY MANDATED FORTHWITH HEARING** was served electronically via CCEF to:

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