
OFFICE OF THE CLERK AND RECORDER
CITY AND COUNTY OF DENVER, COLORADO

ORDER DISMISSING PROTEST

Case No. CRP 2023-001

Protestor: Murray Hawthorne
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Respondents: Committee to Recall Murray Hawthorne
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This case arises from the Protest of Murray Hawthorne against the Recall Petition circulated by a Committee seeking to recall him from his elected post as a Board Member of the Ebert Metro District, a taxing authority in northeast Denver, nearby Denver International Airport, east of Peña Boulevard. The case is not about whether Mr. Hawthorne deserves to be recalled. It is about whether the grounds for recall included in the Recall Petition, Ex. D-1, p. 2, contain a false statement. If the grounds include a false statement, it would render void the sufficiency determination of the Denver Clerk and Recorder, Ex. D-2 that put the issue on track for a recall election. For the reasons set forth below, I find that there were no false statements in the Recall Petition, and therefore dismiss the Protest.

This case has been assigned to me for hearing by the Denver Clerk and Recorder pursuant to a Notice of Protest and Appointment of a Hearing Officer dated December 1, 2023. Ex. D-4. Hearing on the Protest was December 11, 2023 at 1:00 PM in the Grand

Mesa conference room on the second floor of the Denver Elections Division building at 200 West 14th Avenue, Denver, CO 80204. It was an in-person hearing, recorded using the Microsoft Teams platform.

Mr. Murray Hawthorne, the Protestor, represented himself at the Hearing. Ms. Patricia Davis, Chair of the Recall Petition Committee, and Ms. Nanette Stanley, spoke for the Committee.

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EXHIBITS

1. The exhibits listed below were admitted into evidence at the beginning of the hearing. Protestor initially objected to the admission of Exs. C-5, C-6, C-7, C-8, C-9 and C-10, but then withdrew his objections, so all of them were received.

Ex. No.	Item
DESIGNATED ELECTION OFFICIAL EXHIBITS	
D-1	Instructions for Recall Petitions, Petition to Recall and Demand the Election of a Successor, and blank lines for signatures
D-2	November 16, 2023 sufficiency letter from Todd Davidson, Director of Elections

Ex. No.	Item
D-3	November 29, 2023 Protest of Murray Hawthorne to the sufficiency determination and the recall election
D-4	December 1, 2023 Notice of Protest and Appointment of a Hearing Officer
PROTESTOR'S EXHIBITS	
P-1	Image Community (FVCAC) Website
P-2	Community Meeting Minutes 7-8-23
P-3	Letter TCMD Counsel to M Hawthorne
P-4	Email TCMD Counsel
P-5	TCMD Meeting Agenda 9-15-23
P-6	TCMD Contract A Morie
P-7	TCMD Contract B Schmidt
P-8	TCMD Meeting Agenda 3-22-23
P-9	Email TCMD Director to M Hawthorne
P-10	Email thread TCMD Director and M Hawthorne
P-11	TCMD Gen Counsel (Spencer-Fane) Notes 8-10-20
P-12	Fairway Villas Resident Handbook FINAL 1-20-22.pdf
P-13	TCMD Contract TDC

THE COMMITTEE'S EXHIBITS	
C-1	Motion for Summary Judgement
C-2	Recall petition approval 1p
C-3	Appointment of DEO Paul Lopez 1 p
C-4	Oath of Office MH. 1 p
C-5	Denver Police Department report 7 pp
C-6	Resignation letter-Creger 1 p
C-7	Receipts-police officer payments 3pp
C-8	Letter to Residents 1p
C-9	Incident Report-Gaults 1p
C-10	YMCA Letter of Reprimand 1p
C-11	Email from MH to resident 1p
C-12	Email Meglio to TCMD attorney 1p
C-13	Instructions for Circulators 2pp
C-14	SECURITY FOOTAGE - CAMERA 1 -7.8.23
C-15	J. Gault affidavit 1p
C-16	T. Gault Affidavit 2pp

C-17	D. Blauser Affidavit 1p
C-18	G. Bell Affidavit 2pp
C-19	T. Rizzo Affidavit 2pp
C-20	K. Nolte Affidavit 1p
C-21	A. Morie Affidavit 2pp
C-22	L. Mayers Affidavit 1p
C-23	D. Meglio Affidavit 10pp
C-24	P. Davis Affidavit 2pp
C-25	T. Creger Affidavit 1p
C-26	A. Mattie Affidavit 2pp

APPLICABLE LAW

2. The right of electors to recall officials was written into the Colorado Constitution in 1913. Colo. Const. art. XXI. Petitions circulated to recall an incumbent

“shall contain a general statement, in not more than two hundred words, of the ground or grounds on which such recall is sought, which statement is intended for the information of the registered electors, and the registered electors shall be the sole and exclusive judges of the legality, reasonableness and sufficiency of such ground or grounds assigned for such recall, and said ground or grounds shall not be open to review.

Colo. Const. art. XXI, § 1

3. **Appointing a designated election official.** The first step in seeking recall of a director of a special district is for the proponents to request that the district court, § 32-

1-103(2), appoint “a designated election official who shall perform the duties set forth for the recall. § 32-1-909(2).

4. When the district court appoints the county clerk and recorder as the designated election official ("DEO"),

“the recall must be conducted in accordance with article 12 of title 1; except that sections 32-1-906 [concerning the number of signatures needed to force a recall election], 32-1-907 [concerning the vacancy created by the resignation of a director subject to recall], 32-1-909(4) to (6) [containing statements that must be included in the petition], 32-1-910(2)(c) [concerning things that must be in the petition circulators' affidavits], 32-1-911(3)(b) [containing the official ballot language], (3)(c) [concerning the form of the ballot in a recall election], and (4) [concerning the qualifications of candidates for the vacancy created by the recall], and 32-1-912 [reimbursement of recall candidate's expenses if recall fails] still apply regardless of who is appointed the designated election official.”

C.R.S. § 32-1-909(2).

5. Where the clerk and recorder is the DEO—as is the case here—the recall procedure to be followed is set forth *partly* in Title 1, Article 12 and *partly* in Title 32, Article 1, Part 9 of the Colorado Revised Statutes. Title 1, Article 12, it should be noted, contains provisions that apply to the recall of public officials in many offices throughout the state, whereas Title 32, Article 1, Part 9 contains provisions that apply only to the recall of directors of special districts.

6. There are strict requirements as to both the process and what must be in the petition. Here are the criteria which, if met, require the DEO to hold a recall election.

- a. The recall petitions cannot be initiated earlier than 6 months following the target's assuming the office. C.R.S. § 32-1-906(1).
- b. The petition demanding recall and the election of a replacement must be signed by the lesser of 300 electors or forty percent of eligible electors in the district. *Id.*

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- c. A request to appoint a designated election official for a recall of a special district director must be filed with the court as defined in section 32-1-103(2) for the special district. § 32-1-909(2).
 - d. The court appoints a DEO within five days of receiving the request. § 32-1-909(2).
 - e. The designated election official shall approve or disapprove a petition as to form by the close of the seventh business day after receiving a printer's proof and on that day shall "submit written notice of the action taken to the committee and to the person whom the petition seeks to recall." § 1-12-108(4)(a)(I).
 - f. The petition must "[d]esignate by name and address at least three, but not more than five, eligible electors of the special district, referred to in this part 9 as the "committee", who represent the signers thereof in all matters affecting the petition." § 32-1-909(4)(a).
 - g. The petition must "[i]nclude the name of only one director to be recalled." § 32-1-909(4)(b).
 - h. The petition must "contain a general statement, in not more than two hundred words, of the grounds on which the recall is sought, which statement is intended for the information of the electors of the special district. § 32-1-909(4)(c).
 - i. The two hundred word general statement must not include any profane or false statement. But "[I]he electors of the special district are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds on which the recall is sought, and said grounds are not subject to a protest or to judicial review." *Id.*
 - j. Several copies of a recall petition can be circulated at once, but "each section must contain a full and accurate copy of the title and text of the petition as described in section 32-1-909(4), and each signature page of each section must include the language set forth in section 32-1-909(5) and (6)." § 32-1-910(1).
 - k. The committee must gather the requisite signatures within sixty days. § 1-12-108(1.5).
 - l. Only eligible electors in the district are qualified to sign a recall petition and have their signatures counted by the DEO in making a sufficiency determination. § 1-12-104(1) and 1-12-108(3)(a).
 - m. There are detailed requirements with which a petition circulator must comply and must certify compliance in an affidavit attached to each copy of the petition. § 32-1-910(2)(c).

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- n. Recall petitions cannot be disassembled or have the circulator's affidavit separated from the page containing the signatures of electors. § 1-12-108(8)(b).
 - o. Within twenty-four hours of receiving delivery of the recall petition, the DEO must notify the incumbent of the delivery.

7. The DEO, then, processes the recall petition, any protest thereof and holds an election if the recall petition meets the requirements of C.R.S. Title 1, Article 12 and Title 32, Article 1, Part 9.

8. As to the general statement in the recall petition setting forth in 200 words or less the grounds for the recall, the Colo. Const. limits the review that a hearing officer or a court can perform.

The sufficiency, or the determination of the sufficiency, of the petition referred to in this section shall not be held, or construed, to refer to the ground or grounds assigned in such petition for the recall of the incumbent sought to be recalled from office thereby.

Colo. Const. art. XXI, § 2

9. **Sufficiency determination.** After signatures are gathered, affidavits are signed and the recall petition is presented to the DEO, the DEO has twenty-eight days to make a sufficiency determination. § 1-12-108(8)(c)(I).

10. In reaching a sufficiency determination, the DEO is required by C.R.S. § 1-12-108(8)(c)(I) to do the following:

- a. Review the petition format to ensure that the committee circulated the format that the Clerk approved.
- b. Review each signature block to ensure that the name and address provided by the voter match that voter's information in the statewide voter registration database (SCORE).
- c. Ensure that the voter signed and dated the petition within the 60-day circulation period.

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- d. Compare the voter's signature on the petition with the voter's signature image contained in SCORE to ensure that they match.
 - e. Review the petition circulator's affidavit at the end of each petition section¹ to ensure that the circulator completed the affidavit in front of a notary.

11. "Following verification of the petition by the designated election official, the designated election official shall make a copy of the petition available to the incumbent sought to be recalled." § 1-12-108(8)(a).

12. **Protest.** Within fifteen days after the sufficiency determination, a protest can be filed by eligible electors. § 1-12-108(9)(a)(I).

The protest must set forth specific grounds for the protest. Grounds include failure of any portion of a petition or circulator affidavit to meet the requirements of this article 12 or any conduct on the part of petition circulators that substantially misleads persons signing the petition.

§ 1-12-108(9)(a)(II), C.R.S.

13. Thereafter, the DEO must notify the committee of the protest and set a date and time for a hearing on the protest "not less than five nor more than ten days after the notice" is transmitted to the committee and the protestor. *Id.*

14. "Every hearing shall be heard before the designated election official with whom the protest is filed or a designee of the designated election official appointed as the hearing officer. The testimony in every hearing must be under oath. The hearing must be summary and not subject to delay and must be concluded within thirty days after the protest is filed with the designated election official, and the result shall be certified to the committee." § 1-12-108(9)(a)(III).

¹ A "petition" is considered the sum of all pages of signature blocks and other required information. The petition is generally separated into "petition sections," each containing a certain number of petition pages stapled together with a circulator affidavit on the last page of the section. This allows more than one person to circulate the petition.

15. The protestor has the burden of proof by a preponderance of the evidence and the decision rendered by a hearing officer is subject to review within five days pursuant to § 1-1-113, C.R.S. § 1-12-108(9)(b).

16. Once the protest has been adjudicated in this proceeding, the Clerk and Recorder shall wait five days, and then follow the path laid out in § 1-12-111(1):

“[T]he designated election official shall wait five days to see if the incumbent resigns. If five days have passed and the incumbent has not resigned, the designated election official shall submit the certificate of sufficiency to the governor, or create the certificate and keep a copy, as appropriate, on the sixth day after the time for protest has passed and any such protest has been fully adjudicated. The designated election official shall post the certificate on his or her official website by twelve noon on the day after the day on which he or she submits or creates the certificate of sufficiency.”

Id.

OPENING STATEMENTS

17. Both witnesses at the hearing, Mr. Murray Hawthorne and Ms. Patricia Davis, were placed under oath prior to opening statements: they swore or affirmed that the testimony they give at the hearing will be the truth, the whole truth and nothing but the truth.

18. **Protestor’s Opening.** In his opening statement, Protestor Murray Hawthorne stated that a) he does not challenge the compliance of the recall petition with C.R.S. Title 1, art. 12; b) he does not assert that the general statement exceeds the 200 word limit, and c) he does not assert that there is anything profane in the statement. Rather, he asserts that the Recall Petition fails because it contains a false statement. He recognizes that he has the burden of proof by a preponderance and that the Committee does not have to put on any evidence, they do not have to prove a thing, to sustain the sufficiency of the

recall if he does not meet the burden of proving that there is a false statement within the general statement.

19. **The Committee's Opening.** In her opening statement, Ms. Patricia Davis explained that the Ebert Metropolitan District is the taxing authority for the Green Valley Ranch North area in Northeast Denver. As the Recall Committee Chair, Ms. Davis said that the Committee is prepared to put on evidence to show a) that Mr. Hawthorne has subjected others to verbal abuse and physical intimidation, b) that he has received written warnings about his behavior, c) that he has not adhered to the Ebert Metro District Bylaws, and d) that he did commit the outburst referenced in the general statement which led the board to hire police protection.

SUMMARY OF TESTIMONY

20. Mr. Hawthorne put on his case first. He called Patricia Davis as the only witness to testify in his case. The Committee objected to permitting Protestor to call Ms. Davis as a witness. The Prehearing Order required witnesses to be designated by 5:00 PM Saturday, Dec. 9, 2023 and Mr. Hawthorne failed to provide a witness list at all. As Hearing Officer, I overruled the objection, pointing out that the Prehearing Order did not say that not identifying a witness by the deadline would preclude calling a witness. Using the discretion I have to rule on evidentiary matters and in the interest of providing a fair hearing to both sides, I overruled the objection and permitted Mr. Hawthorne to question Ms. Davis.

21. Patricia Davis, Chair of the Recall Committee, testified that she wrote the General statement of grounds for recall included in the Recall Petition. Ex. D-1, p. 2.

We, the undersigned, ask that Murray Hawthorne be recalled from the Ebert Board as he does not represent or respect Ebert residents. He has

demonstrated a consistent pattern of verbal abuse and physical intimidation toward residents of the District. Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney for the Town Center District. Due to a recent outburst at a community meeting, the Community Advisory Committee (CAC) determined the need to hire an off-duty DPD officer to attend community meetings at cost to residents. Hawthorne has initiated and pursued initiatives contrary to community members' desires and best interests. Hawthorne has not adhered to Ebert Bylaws, specifically, the Code of Conduct, which states, "The constituents of the District are entitled to have a fair, ethical, and accountable local government that has earned the public's full confidence for integrity" and elected representatives must "act with courtesy, impartiality, honesty, and openness in the performance of their duties. [Highlighting supplied.]

Ex. D-1, p. 2.

22. Ms. Davis asserted that she was very careful to make sure that everything in the statement was truthful. Mr. Hawthorne directed the witness attention to the sentence highlighted above. Ms. Davis admitted that she did not see Mr. Hawthorne actually receive "written warnings from the Fairway Villas District Manager and the attorney for the Town Center District." She testified that she should have said that the written warnings were sent to him. She did not actually see him receive those warnings. Nonetheless, she affirms that the statement is true, that he received written warnings. She assumed that he did receive them.

23. Ms. Davis said that the accuracy of the statement can be seen in Mr. Hawthorne's own exhibits, Ex. P-3 and P-4. Ex. P-3 is his own copy of the written warnings,² sent by the law firm to him.

24. The letter says at the top that it was sent by mail and by email. Ex. P-4 is Mr. Hawthorne's acknowledgement by email to the lawyer who sent the warning to him that he had received it. Ms. Davis testified that the Committee's Exs. C-21 and C-22 also prove that

² In her closing, Ms. Davis forcefully read aloud the entire letter.

he received the warnings. Ex. C-21 is the affidavit of Mr. Al Morie who confirms that a warning was sent to Mr. Hawthorne that his behavior was unacceptable. Ex. C-22 is the affidavit of the lawyer who sent Ex. P-3 sent to Mr. Hawthorne, and to whom Mr. Hawthorne wrote after receiving a copy of the warning.

25. After Ms. Davis' testimony, Mr. Hawthorne said he had no other witnesses and declined to testify in his own behalf, other than what he had already said in opening and would say in closing argument. He asserted that he had met his burden of proof with the admission of Ms. Davis that she should have said that written warnings were sent rather than that "Hawthorne has received written warnings...." He argued that he need only show a single instance of a false statement to meet his burden of proof in showing that the Recall Petition "fails." Mr. Hawthorne concluded his case, saying he was ready for closing argument.

CLOSING ARGUMENT AND ARGUMENT ON MOTION TO DISMISS

26. As Hearing Officer, I took a fifteen minute recess to read the exhibits discussed in testimony. I informed the parties that at the end of the recess, I would hear argument from Mr. Hawthorne that he had met his burden of proof, and argument from Ms. Davis that he had not, as well as hear the argument on her Motion to Dismiss or Motion for Summary Judgment, Ex. C-1. I would then make the decision about whether Protestor had proved a prima facie case. If he failed in his proof, there would be no need to hear evidence from the Committee. Ms. Davis stated that she would like to withdraw the Motion to Dismiss, Ex. C-1, so that she could put on the Committee's evidence. I informed her that I would make the decision about whether to receive the Committee's evidence after I first heard argument from both sides as to whether Mr. Hawthorne had met his burden as Protestor.

27. After the break and after hearing argument from the parties, I ruled from the bench that the Protestor had failed to meet his burden of proving that the General statement of grounds for recall in the Recall Petition contained a false statement. I sustained the finding in the sufficiency letter, Ex. D-2, “that the petition now contains a sufficient number of valid signatures to initiate a recall election.” I said that a written order would follow shortly.

FINDINGS OF FACT

28. The Applicable Law section of this Order sets forth in detail what the Colorado Constitution and statutes require for a recall petition to be sufficient such that it triggers an election. Protestor conceded in his opening statement that the Recall Petition met the requirements of C.R.S. Title 1, Article 12 and Title 32, Article 1, Part 9, and challenged only the truth of a single sentence in the General statement.

29. On September 7, 2023, the Denver district court appointed the Denver Clerk and Recorder as the designated election official (DOE) to perform duties in connection with a recall effort, filed on September 5, 2023. Ex. C-3. It is apparent from various exhibits, but in particular Ex. D-2 and D-4 that the Clerk and Recorder has been acting without objection as the DEO in this matter.

30. **Sufficiency determination by the DEO.** The DEO made a sufficiency determination, consistent with § 1-12-108(8)(c)(I), C.R.S. on November 16, 2023. Ex. D-2. The DEO notified the committee and the incumbent that there are 464 valid signatures—enough to initiate a recall election.

31. The only issue raised in the Protest, Ex. D-3, filed by Mr. Hawthorne with the Denver Clerk and Recorder is whether the “General statement of grounds for recall” in

the petitions that were circulated to electors of the District contained false statements. The Protest specified the following four false statements:

Whereas, the petitioner has made the following false, and intentionally misleading, statements, to wit:

- 1) He has demonstrated a consistent pattern of verbal abuse and physical intimidation toward residents of the District.
- 2) Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney from the Town Center District.
- 3) Hawthorne has not adhered to Ebert Bylaws, specifically, the Code of Conduct, which states, "The constituents of the District are entitled to have a fair, ethical, and accountable local government that has earned the public's full confidence for integrity" and elected representatives must "act with courtesy, impartiality, honesty, and openness in the performance of their duties".
- 4) The alleged "outburst", the inclusion of and characterization of which is intended to foment negative public sentiment, and by which its inclusion implicates the Director, was in fact the outburst perpetrated by the Chairperson of this petition.

Ex. D-3, pp. 2-3.

32. Mr. Hawthorne narrowed the issue by presenting evidence only on item 2) above. He asserted that this sentence in the General statement is false: "Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney from the Town Center District." Proof of its being false is that Ms. Davis, who wrote the General statement, did not actually see him receive the warnings.

33. It is true that Ms. Davis conceded in her testimony that what she should have said, to be more accurate, is that the written warnings were sent to him. She did not see him receive the warnings, but she does know that they were sent to him. Ms. Davis continued to believe that the sentence "Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney from the Town Center District" is true.

34. I find that the sentence “Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney from the Town Center District” was not false. Mr. Hawthorne offered Ex. P-3 in evidence. It is the very letter, dated July 21, 2023, that contained the warnings that are at issue. *He produced it; it is his evidence.* The document P-3 speaks for itself. It was sent by an attorney at the law firm SpencerFane and it does contain written warnings (plural) from the Fairway Villas District and the Town Center District. The July 23rd letter did the following:

- a. It censured Mr. Hawthorne about his “outburst” at the July 8, 2023 meeting of the Fairway Villas Community Advisory Committee where Mr. Hawthorne made “comments and attacks [that] are unacceptable.”
- b. It warned Mr. Hawthorne that “Misconduct, including profanity, fighting, and/or disruptive behavior is not permitted” and that residents engaging in such conduct “may have their privileges suspended.”
- c. It suspended Mr. Hawthorne’s “privileges and access to the Fairway Villas Clubhouse and the Lodge” for a period of thirty days.
- d. It warned Mr. Hawthorne that he should not “attempt to access the facility through another resident” and that his “physical presence at these facilities during this period is prohibited.”
- e. It warned him that should he “not [] honor this suspension, further discipline may become necessary.”

35. Ex. C-22 is the affidavit of Lisa Mayers, Esq., the partner at the law firm SpencerFane who actually sent the July 21, letter to Mr. Hawthorne. She states:

On July 21, 2023, I emailed and mailed a letter addressed to Murray Hawthorne, 20162 53rd Place, Denver, Colorado 80249, email mhawthorne812@gmail.com. The letter was regarding Fairway Villas Community Advisory Committee Resident Meeting Incident, and addressed Mr. Hawthorne's behavior at a meeting of the Community Advisory Committee held on July 8, 2023.

Ex. C-22, ¶4.

36. Finally, Protestor introduced his email Ex. P-4 that proves conclusively that he received the July 21 letter with the warnings set out above. P-4 is a two part email thread.

In the bottom part of the email thread, Lisa Mayers, Esq. sent Mr. Hawthorne a copy of the July 21, 2023 letter at 2:19 PM that day. Three hours later, at 5:07 PM, Mr. Hawthorne responded to Ms. Mayer’s email—the one with Ex. P-3 attached—“Have you viewed the recording of the meeting?” This is an acknowledgement, clear and simple, that he received by email the letter referred to in the General statement contained in the Recall Petition.

37. I want to reiterate that Mr. Hawthorne’s Protest identified four items, quoted above in ¶ 30, in the General statement that he challenged as containing false statements. He presented evidence only on the second item: evidence to support an assertion that a single sentence in the General statement contained a false statement. He abandoned, by not presenting evidence, items 1, 3 and 4 of the Protest. So the only issue remaining of the Protest is whether the single sentence—“Hawthorne has received written warnings from the Fairway Villas District Manager and the attorney from the Town Center District”—contained a false statement. And I have found that it did not.

CONCLUSION

38. C.R.S. § 32-1-909(4)(c) states that the general statement of the grounds for recall in the petition “must not include any profane or false statement.” Mr. Hawthorne conceded in his opening statement that the General statement contained nothing profane. And I have found that the General statement contained no false statements.

39. The right of the people to recall elected representatives is so fundamental to a democracy that it has been part of the Colorado Constitution for more than one hundred years. Colo. Const., art. XXI. Because it is a fundamental constitutional right, it must be liberally construed against challenges that seek to have a court or agency interfere with stated reasons for recalling public officials. *Groditsky v. Pinckney*, 661 P.2d 279, 281 (1983).

40. Recalling public officials through elections where the vote of qualified electors in the district will determine the outcome is inherently a political—not a legal—act. *Bernzen v. City of Boulder*, 186 Colo. 81, 86, 525 P.2d 416 (1974) (“the recall intended by the framers of the Colorado Constitution is purely political in nature”). That is why the Colo. Const. cabins the extent to which courts or designated election officials can review, question or invalidate the reasons for recall stated in the petition.

“[T]he registered electors shall be the sole and exclusive judges of the legality, reasonableness and sufficiency of such ground or grounds assigned for such recall, and said ground or grounds shall not be open to review.”

Colo. Const. art. XXI, § 1

41. By requiring that a recall petition be signed by at least 300 or 40% of the electors in the district, whichever is less, the legislature assures in C.R.S. § 32-1-906(1) that a recall will not be accomplished by a small and unrepresentative minority of voters. Once that threshold is reached, “the constitution reserves the recall power to the will of the electorate. Courts of law are not to intercede into the reasons expressed by the majority.” *Bernzen v. City of Boulder, id.*

42. Nonetheless, C.R.S. § 32-1-909(4)(c) does state that the general statement of the grounds for recall in the petition “must not include any profane or false statement.” I have therefore applied that requirement in reviewing the statement that Mr. Hawthorne has challenged here.

43. As set forth in ¶¶ 31-36 above, there were no false statements in the General statement of grounds for recall. Accordingly, THE PROTEST IS DISMISSED AND THE DENVER CLERK AND RECORDER'S FINDING OF SUFFICIENCY IS SUSTAINED.

SO ORDERED this 12th day of December 2023.



Macon Cowles, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the foregoing Prehearing Order was sent via email on the date above to the following:

Murray Hawthorne Protestor mhawthorne812@gmail.com	Committee to Recall Murray Hawthorne Patricia Davis, Chair patriciadavisphd@yahoo.com Nanette Stanley nanette.stanley@comcast.net Jeffrey Shelton sheltonjeffrey49@gmail.com John Puffer jepuffer@comcast.net Carol A. Schmidt carolinbg@yahoo.com
Nicholas Mahon For the Clerk and Recorder Campaignfinance@denvergov.org	Ben Schler, Esq. Denver Clerk & Recorder, Policy and Compliance Administrator benjamin.schler@denvergov.org



Macon Cowles
Hearing Officer