

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED: August 7, 2020 10:07 AM FILING ID: 1D35454551071 CASE NUMBER: 2005CV3024
<b>IN RE THE ORGANIZATION OF FOSSIL RIDGE          METROPOLITAN DISTRICT NO. 3          CITY OF LAKEWOOD, JEFFERSON COUNTY          COLORADO</b>	<b>▲ COURT USE ONLY ▲</b>
<i>Attorneys for Respondent:</i> Kelley B. Duke, Esq. #35168 Dino A. Ross, Esq. # 20965 Ireland Stapleton Pryor and Pascoe, PC 717 17th Street, Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Facsimile: (303) 623-2062 E-Mail: <a href="mailto:kduke@irelandstapleton.com">kduke@irelandstapleton.com</a> <a href="mailto:dross@irelandstapleton.com">dross@irelandstapleton.com</a>	Case No: 2005CV3024  Division: 1
<b>RESPONSE TO PETITION TO APPOINT DESIGNATED ELECTION OFFICIAL          PURSUANT TO CRS 32-1-909 AND PROPOSED PETITIONS TO RECALL</b>	

Fossil Ridge Metropolitan District No. 3, a political subdivision of the State of Colorado ("District 3"), by and through its undersigned counsel, respectfully submits its Response to the August 4, 2020 *Petition to Appoint Designated Election Official Pursuant to CRS 32-1-909 and Attached Proposed Petitions to Recall and Demand Election of Successor to FRMD Districts 2 and 3 Directors* ("Petition") filed by the Petitioner, John Henderson ("Petitioner").<sup>1</sup>

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<sup>1</sup> Petitioner incorrectly filed the Petition on August 2, 2020 in Case No. 2005CV3044, which is the case number assigned to Fossil Ridge Metropolitan District No. 1 when it was organized in 2005. Petitioner does not seek recall of any of District 1's Directors. When counsel for District 3 advised Petitioner of the error, on August 4, 2020 he filed a separate Petition in Case No.

**A. Certificate of Conferral Pursuant To C.R.C.P § 121 Section 1-15(8)**

Counsel for District 3 certifies that she conferred with Petitioner regarding the actions requested in this Response and Petitioner opposes such relief.

**B. Summary of Actions Requested by District 3**

For the reasons set forth in this Response, District 3 respectfully requests that the Court:

1. Appoint Sue Blair of Community Resource Services as the Designated Election Official (“DEO”) pursuant to C.R.S. § 32-1-909(2); and,
2. Strike the *Petition to Recall Craig Brown from the Office of Director on the Board of Directors For Fossil Ridge Metropolitan District 3* and the *Petition to Recall Daniel Dominic from the Office of Director on the Board of Directors For Fossil Ridge Metropolitan District 3* because Directors Brown and Dominic are not subject to recall at this time.

**C. Appointment of Sue Blair of Community Resource Services as DEO**

Pursuant to C.R.S. § 32-1-909(2), “[w]ithin five business days of receipt of a proposed form of recall petition for a special district director, the court shall issue an order appointing a designated election official who shall perform the duties set forth for the recall. The designated election official shall not be the director sought to be recalled by the petition or the spouse or civil union partner of the director sought to be recalled by the petition.”

Pursuant to C.R.S. § 32-1-915, District 3 is responsible for the costs of the recall election, including the reasonable costs of the DEO; however, because District 3’s revenues are derived

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2005CV3024, which is the case number assigned to District 3 when it was organized in 2005. The parties have stipulated to withdraw his Petitions for Recall in the case number assigned to District 1 (Case No. 2005CV3044).

from property taxes, it is the District's taxpayers who will ultimately foot the bill. Therefore, it is very important that the DEO be an experienced election official who also has specific experience with conducting special district recall elections.

Sue Blair more than satisfies those requirements. A copy of Ms. Blair's biography is attached as Exhibit A. Ms. Blair is the CEO and Director of Elections for Community Resource Services, 7995 E. Prentice Avenue, Suite 103E, Greenwood Village, Colorado 80111. Ms. Blair has over 40 years of administrative, management and paralegal expertise to special districts and municipalities in Colorado. Ms. Blair has served as a designated election official and conducted thousands of elections during her career.

In addition to the more routine election cycles, Ms. Blair's election duties have included appointment by the Adams County District Court to act as an Administrative Hearing Officer for election contests, as well as supervising the verification of thousands of petition signatures in a highly publicized county recall election. Ms. Blair also has served as a municipal clerk and has conducted numerous municipal elections. In May 2020, Ms. Blair and her staff were responsible for processing 640,000 ballots for various entities throughout the State. There is simply no question that Ms. Blair is more than qualified to serve as the DEO in connection with Petitioner's recall election petitions.

The Petitioner's sole basis for opposing Ms. Blair's appointment as DEO is that her firm serves as the District Manager for District Nos. 1 - 3, which Petitioner asserts would compromise her impartiality. However, Petitioner has provided absolutely no evidence to support that assertion. In fact, Ms. Blair's services as District Manager make her and her firm uniquely qualified to handle this recall, as she and her firm are already familiar with the Districts, and Ms.

Blair has served as the Districts' DEO in prior elections. Thus, Ms. Blair and her firm are best positioned to provide the most high-quality, cost-effective and efficient DEO services in connection with the recall.

Ms. Blair and her firm are far better positioned to serve as DEO than the Jefferson County Clerk and Recorder ("Clerk & Recorder"), which the Petitioner has asked the Court to appoint as the DEO. First, all of the numerous steps necessary to have the DEO approve the recall ballots will not be completed before the September 4, 2020 statutory deadline for certifying the form and content of the ballots to the Clerk & Recorder for inclusion in the County's coordinated election in November 2020. Instead, the Clerk & Recorder would be required to divert staff and resources to handle this separate recall election at the same time the Clerk & Recorder is trying to conduct the November 2020 coordinated election, which will include the national presidential election ballots. To District 3's knowledge, the Clerk & Recorder has not been notified of, or previously agreed to, Petitioner's request to appoint the Clerk & Recorder as DEO. For these reasons, District 3 requests that Sue Blair with Community Resource Services be appointed as DEO.

**D. Directors Brown and Dominic Are Not Subject to Recall At This Time**

At an election on May 5, 2020 ("May 2020 Election"), Director Brown was re-elected to the District 3 Board of Directors ("Board") for a three-year term. At the May 2020 Election, Director Dominic, who was previously appointed to serve the balance of a term expiring in May 2020, was elected to the District 3 Board for a three-year term. Even though they had both previously held the office to which they were elected, Directors Brown and Dominic were legally required to take and file an Oath of Office within 30 days of the May 2020 Election. C.R.S. § 32-1-901(1). In fact, by law, Directors Brown and Dominic were not even eligible to enter their public office until they

had taken and filed their Oath of Office with the Clerk & Recorder. C.R.S. § 24-12-101(2)(c) (“The oath or affirmation must be \*\*\* taken, signed, administered, and filed...**before the person enters upon the public office** or position.”)(emphasis added). Director Brown’s and Director Dominic’s Oaths of Office were filed with the Clerk & Recorder on May 26, 2020, which commenced their terms of office on the District 3 Board.

C.R.S. § 32-1-906(1) provides, in relevant part, “any director elected or appointed to the board of any special district who has *actually held office for at least six months* may be recalled from office by the eligible electors of the special district; except that a petition shall not be filed to recall a director whose term of office expires in less than six months from the date the petition is presented for filing” (emphasis added).

“Statutes governing the exercise of the power to recall are to be liberally construed in favor of the ability to exercise it, and any limitations on that power must be strictly construed.” *Hazelwood v. Saul*, 619 P.2d 499, 500 (Colo. 1980. **However**, “[t]o liberally construe the statutes governing the exercise of the power to recall is not to ignore entirely the requirements of those statutes.” *Id.* at 501. Here, the plain language of the statutes required Directors Brown and Dominic to have actually held their public offices for six months before they could be subject to recall. C.R.S. § 32-1-906(1). As a matter of law, Directors Brown and Dominic did not hold the office of Director of District 3 until May 26, 2020, when they filed their Oaths of Office with the Clerk & Recorder. C.R.S. §§ 32-1-901(1) and 24-12-101(2)(c).

When counsel for District 3 advised the Petitioner that Directors Brown and Dominic were not subject to recall, the Petitioner simply ignored the plain language of the statutes and argued, without providing any legal authority, that Director Brown’s and Director Dominic’s *prior* terms

of office met the six-month statutory requirement. There is absolutely nothing in the statutes that would support that position. Moreover, Petitioner's position goes against the obvious purpose served by the limitations set forth in the statute – to avoid District 3 and its taxpayers incurring the significant costs of, and the community having to undergo, needless elections. Not only does the statute prohibit a recall within the first six months of a Director's term of office, but it also prohibits a recall within the last six months of a Director's term of office. By prohibiting a recall election within six months of the beginning or end of a Director's term, the legislature clearly was preventing a needless election where the voters had either just elected the Director or the Director will be out of office (or subject to re-election) in a matter of months.

The clear intent of the statute is underscored in the current case. The eligible electors within District 3 voted to elect Directors Brown and Dominic just 90 days ago. It makes no sense whatsoever to ask those very same voters to again vote on whether they should be District 3 Directors 90 days later. That is a misuse of taxpayer funds and an unnecessary burden on the community. Taken to its logical conclusion, Petitioner would have this Court permit a recall election of a Director **the day after they are re-elected to an office – a truly absurd result**. "We avoid interpreting a statute in a way that would lead to an absurd result." *Martinez v. People*, 455 P.3d 752, 757 (Colo. 2020).

WHEREFORE, for all of the reasons set forth in this Response, District 3 respectfully requests that the Court enter an order:

1. Appointing Sue Blair of Community Resource Services as the DEO pursuant to C.R.S. § 32-1-909(2); and,

2. Striking the *Petition to Recall Craig Brown from the Office of Director on the Board of Directors For Fossil Ridge Metropolitan District 3* and the *Petition to Recall Daniel Dominic from the Office of Director on the Board of Directors For Fossil Ridge Metropolitan District 3* because Directors Brown and Dominic are not subject to recall at this time.

A proposed Order is provided for the Court's convenience.

Respectfully submitted this 7th day of August, 2020.

IRELAND STAPLETON PRYOR & PASCOE, PC

By: /s/ Kelley B. Duke

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## CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2020, a true and correct copy of the foregoing **RESPONSE TO PETITION TO APPOINT DESIGNATED ELECTION OFFICIAL PURSUANT TO CRS 32-1-909 AND PROPOSED PETITIONS TO RECALL** was filed and served via CCEF upon the following:

*Petitioner*

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