

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO Court Address: 100 Jefferson County Parkway Golden, CO 80401	DATE FILED: August 21, 2020 5:21 PM CASE NUMBER: 2005CV3035
IN THE MATTER OF ORGANIZATION OF FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1	<p style="text-align: center;">▲ Court Use Only ▲</p> <p>Case No. 05CV3035, 05CV3024</p> <p>Div. 1 Ctrm. 5E</p>
<p style="text-align: center;">ORDER RE: 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</p>	

THIS MATTER comes before the Court on Petitioner’s 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. Fossil Ridge Metropolitan District No. 2, filed a Response on August 7, 2020. The Court, having considered the Petition and Response, and being otherwise fully advised, **HEREBY FINDS** and **ORDERS** as follows:

BACKGROUND

This case was originally filed in 2005 to create Fossil Ridge Metropolitan District 1, 2, 3. On August 4, 2020, Petitioner requested that this Court appoint the Jefferson County Clerk and Recorder as the designated election official for the purpose of reviewing and qualifying petitions to recall and demand the election of a successor for the identified directors of Fossil Ridge Metropolitan Districts 2 and 3 (FRMD). FRMD filed a response requesting that this Court

appoint Sue Blair as the election official and find that directors Daniel Dominic and Craig Brown are not subject to recall.

LEGAL AUTHORITY

Under the C.R.S. § 32-1-909(2), this Court has the authority to appoint a designated election official to perform recall duties.

(2) The proposed form of a recall petition shall be filed with the court as defined in section 32-1-103(2) for the special district. Within 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.

ANALYSIS

The right of recall is a fundamental right of the People. Statutes governing this right are to be liberally construed in favor of exercising such right, and any limitations on this power must be strictly construed. *Mirandette v. Pugh*, 934 P.2d 883, 884 (Colo. App. 1997). Here, Petitioner has properly submitted a recall petition pursuant to C.R.S. § 32-1-909. However, the Court does not find authority to appoint the Jefferson County Clerk and Recorder as the designated election official. The Colorado Constitution and C.R.S.A. § 30-10-401 through 406 define the role and duties of the elected Clerk and Recorder. Neither the Constitution nor the Statutes provide the Court with specific authorization to appoint the Clerk and Recorder as a designated election official. A review of the statutes outlining procedures for recall petitions, also makes it clear that the Legislature anticipated a separate designated election official from the Clerk and Recorder. See C.R.S. 32-1-910. Finally, Petitioner has failed to provide the Court with any information to find that the Clerk and Recorder has agreed to act in this capacity or has even been notified of the Petition.

Lastly, this Court agrees with Petitioner that it is beyond the Court's authority to strike the Dominic and Craig recall petitions. C.R.S. § 32-1-909(2) clearly limits the court's power to the appointment of the designated election official at this stage in the proceeding.

CONCLUSION

The Court therefore **ORDERS** the appointment of Sue Blair as the designated election official and denies FRMD's request to strike the Dominic and Brown Recall Petitions.

SO ORDERED, August 21, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lily W. Oeffler". The signature is written in a cursive, flowing style.

Lily Oeffler
District Court Judge