

# STATE OF COLORADO

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John W. Hickenlooper  
Governor

## D 2013-021

### EXECUTIVE ORDER

#### Setting the Date for Special Recall Elections in Senate District 11 and Senate District 3

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article XXI, Section 2 of the Colorado Constitution and relevant portions of C.R.S. § 1-12-111, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order declaring that the date for the special recall elections in Senate District 11 and Senate District 3 be Tuesday, September 10, 2013.

#### I. Background

On April 2, 2013, Colorado Secretary of State Scott Gessler approved the format of a petition to recall Senate District 11 State Senator John Morse. Pursuant to Article XXI, Section 1 of the Colorado Constitution, the petition required 7,178 signatures from registered voters in Senate District 11, equaling twenty-five percent of all the votes cast in the previous election for Senate District 11. On June 3, 2013, the petition was returned to Secretary Gessler with 16,198 signature lines. On June 18, 2013, Secretary Gessler declared 10,137 of the signatures on the petition to be valid and sufficient. On June 18, 2013, Catherine E. Kleinsmith, a registered elector and member of Senate District 11, filed a protest to Secretary Gessler's sufficiency statement. On June 27, 2013, the Deputy Secretary of State held a hearing on the protest. On July 3, 2013, the Deputy Secretary of State determined that the recall petition met all legal requirements and was sufficient. On July 9, 2013, Ms. Kleinsmith filed a motion for preliminary injunction in Denver District Court requesting that the court enjoin the Governor and the Secretary of State from setting the date for the recall election until judicial review of the Secretary of State's decision is complete.

On April 11, 2013, Colorado Secretary of State Scott Gessler approved the format of a petition to recall Senate District 3 State Senator Angela Giron. Pursuant to Article XXI, Section 1 of the Colorado Constitution, the petition required 11,285 signatures from registered voters in Senate District 3, equaling twenty-five percent of all the votes cast in the previous election for Senate District 3. On June 10, 2013, the petition was returned to Secretary Gessler with 13,466 signature lines. On June 24, 2013, Secretary Gessler declared 12,648 of the signatures on the petition to be valid and sufficient. On June 25, 2013, Douglas McMillan, a

registered elector and member of Senate District 3, filed a protest to Secretary Gessler's sufficiency statement. On July 3, 2013, the Deputy Secretary of State held a hearing on the protest where both parties agreed to submit their arguments in writing in place of an oral hearing. On July 9, 2013, the Deputy Secretary of State determined that the recall petition met all legal requirements and was sufficient. On July 10, 2013, Mr. McMillan filed a motion for preliminary injunction in Denver District Court requesting that the court enjoin the Governor and the Secretary of State from setting the date of the recall election until judicial review of the Secretary of State's decision is complete

On July 14, 2013, Colorado Secretary of State Scott Gessler filed a petition for a writ of mandamus to order the Governor to set the date for a recall election. On July 17, 2013, a Denver District Court hearing was held by the honorable Judge Robert Hyatt regarding Ms. Kleinsmith's and Mr. McMillan's requests for a preliminary injunction and Secretary Gessler's petition for a writ of mandamus. On July 18, 2013, the court denied the plaintiffs requests for a preliminary injunction and ruled that the recall petitions met all legal requirements. On July 18, 2013, the court denied the Secretary of State's petition for a writ of mandamus and held that the Governor's responsibility for setting a recall election date as discussed in Article XXI, Section 2 of the Colorado Constitution does not begin to run until judicial review by the district court is complete.

## II. Legal Authority and Purpose

Pursuant to Article XXI, Section 2 of the Colorado Constitution, the Governor, "shall thereupon order and fix the date for holding the election not less than thirty days, nor later than sixty days" after the recall petition has been deemed sufficient. Pursuant to the ruling on July 18, 2013, the court deemed the petition sufficient and that the Governor's responsibility for setting a date for a recall election under Article XXI, Section 2 of the Colorado Constitution has begun.

Pursuant to relevant portions of C.R.S. § 1-12-111, the Governor must set a date for a recall election "not less than forty-five days, nor more than seventy-five days after the petition has been deemed sufficient."

The Clerks and Recorders for El Paso and Pueblo Counties have communicated to the Governor the importance of providing Senate District 11 and Senate District 3 sufficient time to prepare for a recall election and requested that he set September 10, 2013 as the date for holding the recall elections. September 10, 2013, is the last possible Tuesday to schedule a recall election in compliance with both Article XXI, Section 2 of the Colorado Constitution and C.R.S. § 1-12-111.

III. Declaration

Pursuant to Article XXI, Section 2 of the Colorado Constitution, relevant portions of C.R.S. § 1-12-111 and to ensure Senate District 11 and Senate District 3 have sufficient time to prepare for the special recall elections, I, John W. Hickenlooper, Governor of the State of Colorado, declare September 10, 2013, as the date for the special recall elections in Senate District 11 and Senate District 3.



GIVEN under my hand and the  
Executive Seal of the State of  
Colorado this eighteenth day  
of July, 2013.

A handwritten signature in blue ink, which appears to read "John W. Hickenlooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Hickenlooper  
Governor