

In the Matter of

The Recall Election of Hinsdale County Commissioner

Stanley W. Whinnery, District 3

NOTICE OF DECISION ON PROTESTS & CERTIFICATE OF SUFFICIENCY

This matter was heard at a public hearing on August 2, 2019 conducted by the undersigned Hearing Officer in accordance with C.R.S. 1-12-108(9). Based on the written protests submitted and testimony provided at the hearing, the Hearing Officer makes the following findings of fact and decision.

On June 21, 2019, the Hinsdale County Clerk & Recorder, acting as the designated election official (DEO), verified the recall petitions for the recall of Hinsdale County Commissioner Stanley W. Whinnery, District 3.

The deadline for any eligible elector to submit a protest of the recall petitions was July 8, 2019.

The DEO received seven (7) written protests by this deadline from: Echo Wuest, Kenneth R. Wilson, Robert Keith Chambers, Nora Roper Smith, Burton Earle Smith, Robert G. Quinn, and Michael T. Murphy.

On July 17, 2019 the DEO appointed the undersigned as the Hearing Officer for the hearing on the protests pursuant to C.R.S. 1-12-108(9)(a)(III).

The following parties were present at the hearing on August 2, 2019: Martha Whitmore, Attorney representing Commissioner Whinnery, Protesters Robert Keith Chambers, Nora Roper Smith, Burton Earle Smith, Robert G. Quinn, and Michael Murphy. Also present was Diane Bruce representing the Recall Committee. All witnesses were questioned under oath by the Hearing Officer.

The Hearing Officer read the following Legal Standard statement into the record:

- The burden is on the protesters to prove by a preponderance of the evidence that the recall petition is insufficient, C.R.S. 1-12-108()(b).
- In this case, the protesters will have to prove that at least 24 signatures on the petition were improperly obtained. This is the case because the minimum threshold of signatures needed for the certification of the petition is 145 and there are 168 signatures on the petition. The 145 signatures represent 25% of the entire votes cast at the last preceding general election.

- The grounds for the protesters to prove the recall petition is not sufficient include: (1) failure of any portion of the petition or circulator affidavit to meet the requirements of C.R.S. 1-12-101; or (2) any conduct on the part of the circulators that substantially misleads persons signing the petition, 108(9)(a)(II)
- Either party may appeal the decision of the Hearing Officer to the Hinsdale County District Court.

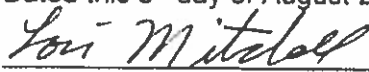
The Hearing Officer heard testimony under oath by the protesters.

- Protester Robert Keith Chambers had his name removed from the recall petition.
- Protester Burton Smith had his name removed from the recall petition.
- Protester Nora Roper Smith did not sign the recall petition and testified that she was never asked to sign the petition.
- Protester Michael Murphy gave testimony about statements made by someone who was not a petition circulator and he did not sign the petition.
- Protester Kenneth Wilson was not in attendance but circulator Frances Yeager gave testimony that contradicted Mr. Wilson's protest statement.
- Protester Echo Wuest was not in attendance. Her statement was read into the record. She stated that she "wasn't told that signing the petition would kick Stan out of office. I thought signing the petition would put him on the ballot to be voted on - yes or no."
- Protester Robert Quinn testified that he didn't support the recall in general. He testified that the circulator "may" have said that Commissioner Whinnery profited from the Courthouse remodeling contract.

The Hearing Officer did not find by a preponderance of the evidence that petition circulators substantially mislead 24 persons who signed the recall petition. The Hearing Officer determines that the recall can proceed and the DEO shall set a date for holding the election under Colorado State Law.

The undersigned Hearing Officer certifies this decision to the Recall Committee pursuant to C R S. 1-12-108(9)(a)(III).

Dated this 5th day of August 2019.



Lori Mitchell, Hearing Officer