

**FINDINGS OF FACT AND CONCLUSION**  
**PETITIONS TO RECALL MAYOR HERB ATCHISON, MAYOR**  
**PRO TEM ANITA SEITZ, AND COUNCILORS KATHRYN**  
**SKULLEY AND JON VOELZ FROM THE CITY COUNCIL OF THE**  
**CITY OF WESTMINSTER, COLORADO**

An administrative hearing on protests to the petitions to recall Mayor Herb Atchison, Mayor Pro Tem Anita Seitz, and Councilors Kathryn Skulley and Jon Voelz from the city council of the City of Westminster, Colorado, was held virtually on Friday, November 20, 2020, at 9:00 a.m. The hearing officer was Karen Goldman, duly appointed by the Westminster City Council.

Administrative notice was taken of the filed recall petitions, identical protests filed by Deborah Mac Master Teter and Jessica True, Bruce Baker and Harlan Bockman, and Mark Kaiser, as well as protests filed by Kim B and David A Wallace, Carol Tillman, Mark Vossler and Jill Giacomini, the city clerk's initial determination of insufficiency, the letter of petition withdrawal and protests (see information below), the relevant portions of the Westminster City Charter and Municipal Code, and the voter registration list.

On November 18, Scott Gessler, Esq., representing Ms. Teter and Ms. True, petitioners, filed a statement with City Clerk Michelle Parker that they were withdrawing the petitions for all four recalls, in accordance with Westminster City Charter Section 3.18, and withdrawing their protests. On November 19, Mr. Baker, on this behalf and that of Mr. Bockman, and Mr. Kaiser notified the city clerk they would be withdrawing their protests as well. Therefore, the hearing was held to consider the remaining filed protests.

No legal representatives for the protesters were present at the hearing.

The hearing officer presented the following timeline regarding the recall petitions and protests (all dates occurred in 2020):

1. Recall petitions were approved as to form by the Westminster City Clerk on September 1.
2. Recall petitions were filed by the recall committee, Westminster for Responsible Government, on October 30.
3. The minimum number of signatures required to be submitted, based on the formula in the Westminster City Charter, was:  
Mayor Atchison – 5,009  
Mayor Pro Tem Seitz – 6,098  
Councilor Skulley – 6,098  
Councilor Voelz – 6,098

4. The number of submitted signatures was as follows:  
Mayor Atchison – 6,690  
Mayor Pro Tem Seitz – 6,726  
Councillor Skulley – 6,714  
Councillor Voelz – 6,763
5. Upon review and verification, the city clerk certified the following number of valid signatures:  
Mayor Atchison – 3,828  
Mayor Pro Tem Seitz – 4,520  
Councillor Skulley – 5,116  
Councillor Voelz – 4,706

Each petition obtained less than the minimum number of signatures needed to move the recall forward to an election and all were initially declared to be insufficient on November 13.

6. In anticipation of a potential need for a protest hearing officer, at the Westminster City Council meeting on October 12, the city council named Karen Goldman as hearing officer.
7. Identical protests were filed between November 6 and November 14 by Jessica True, Deborah Mac Master Teter, Bruce Baker, Harlan Bockman, and Mark Kaiser.
8. On November 18, all four recall petitions were withdrawn by the petitioners as well as their protests. The remaining protests (above) were withdrawn on November 19.
9. On November 14, additional protests were filed by Kim and David Wallace, Carol Tillman, Mark Vossler, and Jill Giacomini.
10. The hearing was scheduled for November 20 as a remote/virtual hearing.

All procedures and actions during the hearing were performed in accordance with statutes regarding municipal recall.

The remaining filed protests, while not identical in nature, contained similar allegations regarding the actions taken by the petition circulators to obtain signatures. These allegations included:

1. The cost to the citizens of a special election.
2. That recalls should be reserved for instances of malfeasance and not because citizens don't like how an elected official voted.
3. That the petitioners told prospective signers that they were signing to lower the water rates in Westminster and that nothing was said about the petitions being about recall.

4. That the petitioners repeated a false statement that Councillor Jon Voelz had voted in favor of the water rate increase, although he did not get appointed to the city council until after that vote was taken.
5. That the petitioners distributed information, in the form of flyers, was placed at individual homes in violation of HOA covenants.

While these allegations were variously listed on each of the three protests, the only persons who attended the meeting to testify were Mr. and Ms. Wallace. Therefore, only their protest and testimony will be considered in these findings.

Testimony on each item was taken and all persons testifying were placed under oath.

#### TESTIMONY FROM KIM B WALLACE

Ms. Wallace stated that the purpose of a recall should be for malfeasance and not for a disagreement over a vote. She said she believed the recall would be a disenfranchisement in that it would override a vote for the elected officials who voted on the water rates. Ms. Wallace further stated that the amount of money already spent on the recall, \$63,000, could be better used by the city during the pandemic. Ms. Wallace also identified several factual misstatements, including the fact that Councillor Voelz was not on the city council when the water rate increase was approved, and that the reasons for the rate increase had been misrepresented by the petitioners.

In response to questions from the hearing officer, Ms. Wallace stated that she did not sign the petition, that she understood the purpose of the petitions was recall, and that she was only recently aware that the city clerk had initially determined that all the petitions were insufficient.

#### TESTIMONY FROM DAVID A WALLACE

Mr. Wallace stated he first became aware of the issues regarding the water rates in March 2020 and, having met with Mayor Pro Tem Seitz, said he felt comfortable with the rationale behind the increase. He said that during the petition circulation process, he spoke with some petitioners whom he believed to be 'fuzzy' on the facts around the rate increase. He also indicated he had questioned the merits and basis for the recall with members of the Water Warriors, a group supporting the recall effort. He stated that he believed the information on their web page was not true or well-founded in facts.

In response to questions from Councillor Voelz, Mr. Wallace said he had heard Mr. Voelz had not voted in favor of the water rate increase because he was not on the city council, although could not recall when he heard that. He also referred to Exhibit 3, a copy of a flyer placed on his garage door which did not mention recall, only the water rates. He also stated there was no attribution on the flyer, a statement of who had produced it.

## DISCUSSION ON THE TESTIMONY PRESENTED

None of the remaining protests dealt with the recall petitions themselves nor with the Westminster City Clerk's initial determination of insufficiency. Rather, they dealt with the protesters concerns regarding the actions taken by the petition circulators, with which they disagreed. So even though these protests did nothing to change the city clerk's initial determination of insufficiency, a short response to the testimony of the protesters will be provided here.

State law does not restrict the circumstances under which electors can initiate the recall of an elected official. While some people believe a recall should only be used in situations of corruption, malfeasance, or other 'major' wrongful activities, the reality is that a recall can be demanded for any reason whatsoever. Recall petitioners are allowed to include on the recall petition a statement of the reasons for such recall, known as the 'grounds' solely for the purpose of informing the electors why the recall is being sought and to enable them to choose to sign such petition. It is very clear that the basis for the recall, as shown in the grounds for recall on the petitions was 'HIS (HER) FAILURE TO SUPPORT LOWER WATER RATES IN WESTMINSTER'.

Protesters stated that none of the flyers or other information, online and otherwise, only mentioned the water rates and did not mention that the purpose of the petitions was recall. They stated they felt that, by omitting the real purpose of the petitions, the petitioners were misleading the citizens. However, despite flyers, Facebook postings, web pages, etc., predominantly mentioning the water rate increase and not the actual recall, it is clear that without the water rate increase, there would have been no recall petitions circulated and filed by the petitioners, thus the lack of the use of the word 'recall' on flyers or online information was not a defect and would not invalidate the petitions.

Both Ms. And Mr. Wallace indicated neither signed the petitions, so clearly they had not been misled. No further testimony or evidence was presented that other persons who signed were misled to sign the recall petitions.

Statute is also very clear that the grounds are not debatable and their truthfulness or non-truthfulness, as interpreted by the petitioners and protesters, cannot be considered as a basis for declaring recall petitions to be sufficient or insufficient. Persons may either agree or disagree and are eligible to express one of those opinions when voting.

Finally, as to the cost of the election, while it is true that absent the recall, the funds already spent could have been used on other municipal purposes, citizens are guaranteed the right to recall in the Colorado Constitution and state statutes, the Westminster City Charter and Municipal Code, and cost is not a reason to deny those rights or to disallow the use of the recall process by the registered electors of a municipality.

Because the protest did not effectively alter the initial determination of insufficiency by the Westminster City Clerk, the protest that the information provided when asking citizens to sign the recall petitions were misleading and factually false is **denied**.

#### FINAL DETERMINATION AND CONCLUSION

As previously stated, the remaining protests to the recall petitions of Mayor Herb Atchison, Mayor Pro Tem Anita Seitz, Councillors Kathryn Skulley and Jon Voelz were not directed toward any concerns with the petitions themselves nor with the Westminster City Clerk's initial determination of insufficiency.

Therefore, it is the final determination of the hearing officer that the Westminster City Clerk's initial determination of insufficiency stands and that there are not sufficient signatures to bring any of the four recall petitions forward to an election.

/s/ Karen Goldman, Administrative Hearing Officer  
City of Westminster, Colorado  
November 24, 2020

A copy of the Final Determination and Conclusion in the matter of the petitions to recall Mayor Herb Atchison, Mayor Pro Tem Anita Seitz, and Councillors Kathryn Skulley and Jon Voelz from the city council of the City of Westminster, Colorado, shall be sent to the following:

Mayor Herb Atchison  
10705 N Yates Dr.  
Westminster, CO 80031

Mayor Pro Tem Anita Seitz  
3472 W 113<sup>th</sup> Ave.  
Westminster, CO 80031

Councillor Kathryn Skulley  
11854 Chase Ct.  
Westminster, CO 80020

Councillor Jon Voelz  
10233 Meade Ct.  
Westminster, CO 80031

Ms. Michelle Parker  
City Clerk  
City of Westminster  
4800 W. 92<sup>nd</sup> Ave.  
Westminster, CO 80031

Mr. Matthew Munch  
Assistant City Attorney  
City of Westminster  
4800 W. 92<sup>nd</sup> Ave.  
Westminster, CO 80031

Kim B and David A Wallace  
3492 W. 113<sup>th</sup> Ave.  
Westminster, CO 80031-7169