
**FINDINGS OF FACT AND CONCLUSION
IN A RECALL PETITION PROTEST
REGARDING TWO TRUSTEES IN THE
TOWN OF COLLBRAN**

**Hearing date November 13, 2024
Date of Findings November 18, 2024
Judy A. Egbert, Hearing Officer**

In the Matter of the Hearing Concerning two items:

**The recall petition protest regarding the petition to recall Matilda Evans
from the position of Trustee in the Town of Collbran CO.**

**The recall petition protest regarding the petition to recall Lorraine Zentz
from the position of Trustee in the Town of Collbran CO.**

The petitions are represented by the Petition Committee of: William Ray Bethel II, Norman Authur Stahly, Rolson Ray Maigatter, Penny Jean Maigatter, and Edward Hugh Dalrymple.

Formal protests have been filed by: Matilda Evans, Lorraine Zentz, and Gary Winkleblack. Informal protests have been filed by: Keith Todd, Linda Ayers, and the Plateau Valley School District 50.

I. PROCEDURE

Ms. Egbert noted that this hearing is pursuant to CRS 31-4-503. There are no other procedural standards that apply.

The evidence presented applies to two separate recall petitions as stated above. The Committee representing both petitions consists of the same five persons. Because the elements of protest are identical, both protests are to be heard at this concurrent hearing.

II. BACKGROUND

Separate petitions to recall Lorraine Zentz and Matilda Evans were approved as to form on September 13, 2024 by Town Clerk Melonie Matarozzo. The petition committee was notified by USPS Certified Mail with Return Receipt requested.

The petition committee obtained signatures and submitted the completed petition on October 15, 2024. On October 22, 2024, Ms. Matarozzo notified the petition committee that the petitions were received. Five protests were also received by that date. Ms.

Matarozzo determined that both petitions contained at least the minimum of thirty-two (32) required signatures but delayed issuing a determination of sufficiency pursuant to CRS 31-4-503(3)(b). One additional protest was received after that date but prior to the protest deadline of October 30, 2024.

The officers subject to recall and the petition committee were notified of the hearing and provided with copies of the protests on November 7, 2024.

Judy Egbert, sole member of GovPro Consulting, was appointed by the Town Board to serve as Hearing Officer by Resolution on November 5, 2024.

II. THE HEARING

A. Preliminary Rulings.

- 1) CRS 31-10-507 allows cancellation of an election when there are the same or fewer number of candidates as there are seats available. This was the case in 2022 when these two Trustees were elected. Matilda Evans and Lorraine Zentz were declared elected by Resolution No. 5, Series of 2022. Protests that allege that these Trustees are not officially elected are determined to be of no consideration.
- 2) The grounds for recall as contained in the petition is addressed in CRS 31-4-502(1)(a)(I) which says: *“The electors are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds assigned for recall, and the grounds are not open to review”*. In compliance with this statute, no consideration will be given to protests regarding the content of the grounds.
- 3) The Petition to Recall Matilda Evans is entered into evidence for this hearing. This petition is in two sections and contains six pages per section, and marked as Exhibit A.
- 4) The Petition to Recall Lorraine Zentz is entered into evidence for this hearing. This petition is in two sections and contains six pages per section, and marked as Exhibit B.

B. Testimony and Evidence

Documents considered:

- 1) Protest by Matilda Evans dated October 21, 2024, which was later notarized by acknowledgement on October 29, 2024.
- 2) Protest by Lorraine Zentz dated October 21, 2024, which was later notarized by acknowledgement on October 28, 2024.
- 3) Protest by Gary Winkleblack dated October 30, 2024, notarized by acknowledgement on the same date.

- 4) Unnotarized letters from:
 - a. Plateau Valley School District 50 (undated)
 - b. Linda Ayers dated October 23, 2024
 - c. Keith Todd dated October 20, 2024

Witnesses:

- 1) Matilda Evans was sworn and provided the following testimony:
- 5) Hearing Officer Judy Egbert reviewed the protest letter that Ms. Evans submitted on October 21, 2024, notarized on October 29, 2024, and marked it as Exhibit C.
 - Ms. Egbert pointed out that the letter was notarized after the date of signing, and that the notarization carries acknowledgement language rather than affirmation. Ms. Evans clarified that she did not realize that it needed notarized and obtained it later and re-submitted it. The notary language was chosen by the Notary Public. She confirmed that the content of the letter is sworn by way of testimony at this hearing under oath.
 - The elements within her protest letter that have been ruled on preliminarily were not addressed in her testimony.

Remaining protest points contained in the written protest were reviewed and addressed:

- The petition has two sections, but the petitioners did not indicate on either section the quantity of sections or the number of each section.
 - Ms. Egbert pointed out that this is not required under statute, although the form of petition was approved with allowance for such entries.
- The pages of the petition are inaccurate. One section has pages 1, 2, and 6, while the other section has 1, 2, 3, and 6 of 6.
 - Ms. Egbert noted that the petition section contains six pages which appear to be pre-numbered on the form. In both sections, not all the pages available for signatures were used, and the blank pages were not provided in the copied petition.
- No County is given for any of the signatories on either section of the petition as required by CRS 31-4-503(b).
- The circulators did not initial any of the pages on either section of the petition.
 - Ms. Egbert noted that this is not required under statute, although the form of petition was approved with allowance for such entries.
- The circulators did not indicate the number of signatures on each page of the petition.
 - Ms. Egbert noted that this is not required under statute, although the form of petition allowed for such entries.

- The Circulator Edward Dalrymple was not, as required by CRS 31-4-503(c), physically present when all the people signed the petition section that was in his place of business. He perjured himself by signing the affidavit that he was present when each person affixed their signature to the petition.

Ms. Evans testified that Lorraine Zentz had a conversation with Deborah Pettes on November 1 during which time Ms. Zentz asked Ms. Pettes how she came to sign the petition and whether Mr. Dalrymple was physically in the store when she signed it. Ms. Evans noted that she was present when Ms. Zentz made the phone call to Ms. Pettes, and Ms. Pettes indicated that nobody was there when she signed the petition.

Edward Dalrymple was sworn and provided the following testimony:

Mr. Dalrymple asked Ms. Evans if her testimony was that he was not present for every signature. Ms. Evans responded that her statement is that he was not necessarily present when every signature was obtained, and that she believed that he was present for some.

When asked by Mr. Dalrymple if this person was here, Ms. Evans replied that she had been asked to attend but is not here. Mr. Dalrymple pointed out that this is hearsay.

Ms. Evans continued, acknowledging that Mr. Dalrymple works at the store but does not think that he works every hour that the store is open. She asked whether Mr. Dalrymple was physically present in the sales area of the store during all the hours the petition was available for signature. He responded that he was there as many hours as humanly possible.

Ms. Evans asked if the petition was taken off the counter during times when Mr. Dalrymple was not present. He responded that it was never on the counter. It was in a folder behind the counter and would be brought out for signature when needed.

Ms. Evans continued by asking whether or not someone could ask to sign the petition when Mr. Dalrymple was not there and another person in the store would provide it for signature. Mr. Dalrymple replied that yes it was quite possible. Ms. Evans noted that this means that it is quite possible that he was not physically available to witness every signature as it was obtained. Mr. Dalrymple replied that this did not apply to every signature, and that he was there for almost all that he can remember. When asked again whether he was there for every signature, he stated that that if a signature was obtained when he wasn't there he would not have knowledge of that. He opined that his affirmation saying that he witnessed every signature is true and correct, as it applies only to those that he did witness.

Ms. Egbert then summarized the testimony so far by saying that the petition was kept behind the counter and provided by request to signers; and that if Mr. Dalrymple was not immediately available another person in the store, such as an employee, would be able to provide the petition to a signer. Dalrymple confirmed that this is correct.

Ms. Egbert questioned Mr. Dalrymple regarding the affidavit of circulator. She noted that the petition form contained the elements of the affidavit, but carried acknowledgement notarial language rather than the required affirmation. The committee and circulators completed this as was contained on the approved petition form. She asked Mr. Dalrymple to confirm that his intent was to swear to the statement now under oath, and read the circulator affidavit to him. He stated yes, that was his testimony.

Ms. Egbert asked Mr. Dalrymple to elaborate on what would have happened if he was out of the building or in a back room and someone wanted to sign the petition. He replied that if he was unavailable his employee would have assisted the signer in accessing the petition. In that case, he stated that he would have no knowledge of that person signing. When further questioned about how this relates to his sworn statement that he witnessed each signature made, he replied that he is swearing only to the ones that he did witness. He admitted that there may have been signatures that he was unaware of and did not witness.

Julie Trebler asked to testify on this issue, and was sworn in. Ms. Trebler testified that she has been in Mr. Dalrymple's store on more than one occasion and has seen that the petition was in fact kept behind the counter.

- The Circulator, Penny Maigatter, misrepresented the purpose of the petition to signers by telling them that "There are things happening at Town Hall that need to be cleaned up." I know of an elderly signer who did not know she was signing a recall petition. I believe Penny Maigatter perjured herself by signing the affidavit that she made no misrepresentation of the purpose to any signer of the petition pursuant to CRS 31-4-503(c).

Ms. Evans called Jeannie Reeves as a witness. Ms. Reeves was sworn. Ms. Evans noted that she had spoken to Ms. Reeves on November 1 and asked what Ms. Maigatter said when she presented the petition to be signed. Ms. Reeves said that she was reluctant to sign at first. When Ms. Evans asked her to describe why Ms. Maigatter asked her to sign, Ms. Reeves replied because there was stuff going on at Town Hall. Ms. Reeves stated that she was aware that this was a recall petition for both Ms. Evans and Ms. Zentz.

In closing, Ms. Evans stated that she believed that the petition section submitted under Mr. Dalrymple's circulation should be disqualified as he, by his own testimony, has said that he did not witness every signature. Ms. Reeves had previously told her that she did not realize that it was a petition for recall, but has now said differently in her testimony.

Ms. Maigatter was given the opportunity to testify, which she declined.

Jessica Price asked to testify regarding the circumstances of Ms. Pettes' signature. She was sworn and provided the following:

Ms. Price stated that she is a Board Member and citizen. She testified that she spoke to Mr. Dalrymple's wife Terri about the circumstances during the time of Deb Pettes' signature. Terri believed that Mr. Dalrymple was present.

Later, and separate from this testimony, Ms. Price contacted Ms. Pettes by text. She asked that the text conversation be considered, as Ms. Pettes had told Ms. Price that Mr. Dalrymple was present when she signed. Ms. Egbert declined to allow the text conversation into evidence, but acknowledged that Ms. Pettes' signature was not specifically at issue.

2) Lorraine Zentz was excused from the hearing due to a pre-scheduled commitment. Her protest letter dated October 21, 2024, and notarized on October 28, 2024 was entered as Exhibit D.

3) Gary Winkleblack was sworn and provided the following:

Ms. Winkleblack noted that he will not address the portions of his protest letter than have already been ruled upon. His concern is the portion of the grounds that says "...we hope to recall the two board members...", which may give rise to the question of whether or not signers understood that each petition was for a sole Trustee and not for both. For those signers that he knew, he did see that they had signed both petitions.

6) Mr. Winkleblack's protest, dated and notarized on October 30, 2024, is entered as Exhibit E.

Ms. Egbert noted three letters that were submitted without notarization. She offered opportunity to testify, although they are not under subpoena.

- 1) Trevor Long with the Plateau Valley School District has previously contacted Ms. Egbert and declined to attend.
- 2) Keith Todd was present and declined to testify.
- 3) Linda Ayers was present and declined to testify.

These letters are noted but not entered into evidence.

In response to a question from an unidentified citizen, Ms. Egbert clarified the requirements regarding public notice in advance of an election. The citizen concern is that the public did not know that there was opportunity during the 2022 election cycle to run for office, resulting in the Trustees running unopposed. There is no statutory requirement for such a notice, although it is common and considered a “best practice” to do so. In the case of the Town’s 2022 election, there was an information posting, two news articles, and discussion at Town Board meetings. While these actions are customary, and the information helpful, it is not considered relevant to this hearing as evidence.

Petition Committee: Ms. Egbert offered the Committee the opportunity to testify or call witnesses.

- 1) Ed Dalrymple was previously sworn and took the stand. Rather than testify on behalf of the committee, he resumed testimony regarding his role as Circulator. He remembers one individual in question that he does remember saying she would sign the petition regarding Ms. Zentz but not Ms. Evans.

Ms. Egbert asked how the petition was developed. Who wrote it? Mr. Dalrymple said that he did not know. Another committee member from the audience stated that a lawyer wrote it, and the committee submitted it for approval to form.

- 2) Penny Maigatter was sworn and provided the following testimony:
 - a. The petition form was approved prior to circulation and the Committee carried out circulation on that form. She said that she believed any deficiency in the form of petition should not be considered as a disqualifying factor.
 - b. She clarified that the statement that the Trustees were not voted in by the people does not mean that they are not in office legally.

Ms. Egbert offered the opportunity to testify to anyone else in the room who wished. There were none.

Ms. Egbert reviewed the next steps in the process. Findings in this hearing are due by Monday November 18, 2024 to meet the five-day statutory deadline. If the Findings determine that the recall petition(s) is sufficient, then the next step is for the Town Board to set an election date. If determined insufficient, the Committee has fifteen days to cure deficiencies.

Anyone wishing to be notified once a ruling is made may leave their email with the Town Clerk.

Exhibits accepted:

Exhibit A: Petition to Recall Matilda Evans
Exhibit B: Petition to Recall Lorraine Zentz

Exhibit C. Protest filed by Matilda Evans
Exhibit D. Protest filed by Lorraine Zentz
Exhibit E: Protest filed by Gary Winkleblack

Documents not entered as evidence but noted for the record:
Unnotarized letters from:

Plateau Valley School District 50 (undated)
Linda Ayers dated October 23, 2024
Keith Todd dated October 20, 2024

III. APPLICABLE LAW

This hearing is authorized and conducted under CRS 31-4-501 et. sec. Judy Egbert was appointed as Hearing Officer as allowed in CRS 31-4-503(3)(b).

The process and requirements for recall petitions and protests are found in CRS 31-4-501 et. sec.

IV. FINDINGS

Preliminary rulings:

- The preliminary rulings as noted at the start of the hearing stand. This includes:
 1. Matilda Evans and Lorraine Zentz are in fact officially elected and subject to recall. CRS 31-10-507 authorizes cancellation of the election at which they were the sole candidates for the same number of positions available; and Town of Collbran Resolution No. 5, Series 2022 declares them elected under that cancellation.
 2. Protests that objected to the grounds for recall as stated on the petition are not open to review pursuant to CRS 31-4-502(1)(a)(I), and as such were not allowed as evidence at this hearing.

Findings based on evidence provided at the hearing:

Issue:

- The form of the petition included some elements that are not in conformity with CRS 31-4-502. The items include:
 1. The space for petition signers did not include a space for the signer to enter their County. No signer made this entry.
 2. The Circulator Affidavit contained Notary language specifying an acknowledgement rather than an affidavit.
 3. The spaces at the bottom of each page are not required in statute. However, there is no prohibition from including them either, nor is there a statutory requirement for such information to be included.

Finding: The Petition Committee relied on the Town Clerk's approval of the petition form. The Committee circulated, executed, and submitted it in accordance with the Town's expectations and acted in good faith. While this is a technical deficiency, this ruling is that the form of petition was in substantial compliance and is not to be considered a reason for insufficiency.

Issue:

- CRS 31-4-503(3)(b) requires that protests be "in writing under oath". The practical interpretation of that requirement is that the document be notarized under an affirmation. Three of the protests carried notarizations with acknowledgement language rather than affirmation. Three letters of protests were not notarized.

Finding:

1. The protest letters presented by Lorraine Zentz, Matilda Evans, and Gary Winkleblack that carried acknowledgement notarizations are considered valid for this purpose. Ms. Evans and Mr. Winkleblack were present at the hearing and testified that their intent was to swear under oath to the content of their protest. Ms. Zentz was not present, but her protest carries the same issue and will be treated in the same manner.
2. Letters from Linda Ayers, Keith Todd, and the Plateau Valley School District are not considered formal protests and carry no weight in this hearing.

Issue:

- Mr. Dalrymple did not personally witness each and every signature on the petition circulated under his signature.

Finding: By Mr. Dalrymple's own testimony, he admitted that it was "quite possible" that there were signers who signed with the observation of another person present in the business while Mr. Dalrymple was unavailable. It appears that Mr. Dalrymple believes that his oath taken in regard to the Circulators Affidavit only applies to those signatures that he witnessed but admits that there may be those he did not witness. CRS 31-4-503(2)(c) requires that "... each signature on the petition was affixed in the affiant's presence..." Not personally witnessing each and every signature invalidates the petition section circulated under his signature.

Issue:

- The language in the grounds section of the petition specifies that it is hoped to “recall both” Trustees. While the language of the grounds in general is not open to review by statute, it was questioned whether or not signers understood that the petitions were each for a single Trustee.

Finding: There was no testimony to dispute that signers misunderstood this, and in fact there was testimony to support that they did understand this.

Issue:

- Citizens were not made aware that there were seats available at the 2022 regular election.

Finding: This is not a statutory requirement and is not a consideration for this hearing.

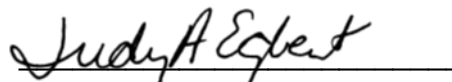
III. CONCLUSION

The Town Clerk previously calculated and made known to petitioners that the required number of signatures was thirty-two (32).

Based on the evidence presented, I find:

- The Petition to Recall Matilda Evans is insufficient. The petition section circulated by Mr. Dalrymple is not sufficient and is not to be considered in calculating the number of signatures needed. The petition section circulated by Penny Maigatter is accepted, but contains twenty (20) valid signatures and does not meet the required threshold alone.
- The Petition to Recall Loretta Zentz is insufficient. The petition section circulated by Mr. Dalrymple is not sufficient and is not to be considered in calculating the number of signatures needed. The petition section circulated by Penny Maigatter is accepted, but contains twenty (20) valid signatures and does not meet the required threshold alone.
- The petition may be cured subject to CRS 31-4-503(3)(c).

Dated this 18th day of November 2024.



Judy A. Egbert,
Hearing Officer