



**Montezuma County Clerk and Recorder**

**KIM PERCELL**

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November 23, 2020

Committee to Recall Cortez School Board Member Lance McDaniel,  
Malynda Nelsen, Deborah McHenry

**RE: Decision to the Petition for Recall of Lance McDaniel**

Per Hearing Officer Mike Green:  
Protests by:

**Cayce Hamerschlag: Denied**

**Mary Dodd: Denied**

**Dana Jensen: Denied**

**Janet Hough: Denied**

See written decision attached:

Kim Percell  
Montezuma County Clerk & Recorder

**Written Decision to the Petition for Recall of Lance McDaniel  
From the Position of School Board Member**

On the 19<sup>th</sup> of November, 2020 starting at 1:30pm, in the Montezuma County Commissioners Meeting Room, a hearing was held on the protests to the petition for recall submitted to the Montezuma County Clerk and Recorder for the recall of Cortez RE-1 School Board Member Lance McDaniel.

Cortez RE-1 School District, pursuant to 22-30-104 C.R.S. contracted with the Montezuma County Clerk and Recorder for the Clerk and Recorder to be the School District's designated election official.

The Montezuma County Clerk and Recorder Kim Percell engaged as her representative and hearing officer Michael F. Green/Michael F. Green, P.C.

Montezuma County Clerk and Recorder Kim Percell attended, recording the proceedings, taking attendance curating the exhibits etc.

The hearing was held in person and via Zoom due to COVID Colorado Department of Public Health and Environment Orders.

The hearing officer started the hearing by welcoming the attendees and setting out the procedure(s) for the hearing.

The original petitions and protests from the clerks file were entered into evidence and are included in the hearing record and were made available at the hearing for inspection by the participants/attendees of the hearing.

The hearing officer read the general statement of grounds for the recall of McDaniel, and summarized each of the protests for the record.

The protesters were given the opportunity to speak, not all the protestors attended the hearing in person some were via Zoom, not all who attended spoke. After the protestors spoke, the recall committee through its designated representatives, responded to the protesters comments and written protest grounds.

The protestors presented their rebuttal.

Next the hearing was opened to comment from other attendees, both via Zoom and in person. Last Mr. McDaniel was asked to comment and did so.

The hearing was closed at 2:40pm.

A recording was made using the Montezuma County Commissioner's recording system.

**Protests**

1. Mary Dodd

Mary Dodd filed a protest, dated October 23, 2020, received by the Clerk and Recorder on October 23, 2020.

The Dodd protest does not appear to under oath as required by C.R.S. 1-12-108(9)(a)(1), however it is notarized.

Ms. Dodd appeared via Zoom and stated her reasons for her protest of the recall.

## 2. Dana L. Jensen

Dana L. Jensen submitted a protest dated October 21, 2020, received by the Clerk and Recorder on October 21, 2020.

The protest does not appear to be under oath as required by C.R.S. 1-12-108(9)(a)(1).

Ms. Jensen appeared at the hearing, via Zoom, and stated her reasons for her protest of the recall.

## 3. Cayce Hammerschlag

Cayce Hammerschlag submitted a protest dated October 23, 2020, received by the Clerk and Recorder on October 23, 2020.

The protest is under oath as required by C.R.S. 1-12-108 (9)(a)(1).

Ms. Hammerschlag appeared at the hearing via Zoom and stated her reasons for the protest of the recall.

## 4. Janet Hough

Janet Hough submitted a protest dated October 23, 2020, received by the Clerk and Recorder on October 23, 2020.

The protest is under oath as required by C.R.S. 1-12-108 (9)(a)(1).

Ms. Hough attended via Zoom but made no statement.

The Committee for Recall's designated representatives Deborah McHenry and Malynda Nelsen, then spoke to the protests in rebuttal.

Over 50 appeared in person or by Zoom. Many had no comment but were simply observing. Many comments were made pro and con about the protests or Mr. McDaniel.

## **Summary**

The protesters questioned the truthfulness of the general statement of grounds for recall and/or the methodology or statements made by the recall petition signature collectors when collecting signatures.

*1-12-103 C.R.S. Petition for recall – statements of grounds. Eligible electors of a political subdivision may initiate the recall of an elected official by signing a petition which demands the election of a successor to the officer named in the petition. The petition shall contain a general statement, consisting of two hundred words or less, stating the ground or grounds on which the recall is sought. The general statement may not include any profane or false statements. The statement is for the information of the electors who are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the ground or grounds assigned for the recall. The ground or grounds are not open to review.*

A full reading of the C.R.S. 1-12-103 indicates that the general statement can only be 200± in length.

“It may not include any profane or false statements.”

The statement is for the “information of the electors who are the sole judges of the legality, reasonableness and sufficiency of the ground or grounds assigned for recall.”

“The ground or grounds are not subject to review.”

1-12-108 (9)(a)(I-III), (b) reads:

*(9) (a) (I) A recall petition that has been verified by the designated election official shall be held to be sufficient unless a protest in writing under oath is filed in the office of the designated election official by an*

*eligible elector within fifteen days after the designated election official has determined the sufficiency of the petition under paragraph (c) of subsection (8) of this section.*

*(II) The protest shall set forth specific ground for the protest. Grounds include failure of any portion of a petition or circulator affidavit to meet the requirements of this article or any conduct on the part of petition circulators that substantially misleads person signing the petition. The designated election official shall forthwith mail a copy of the protest to the committee, togher with a notice fixing a time for hearing the protest not less than five nor more than ten days after the notice is mailed.*

*(III) Every hearing shall be before the designated election official with whom the protest is filed or a designee of the designated election official appointed as the hearing officer or before a district judge sitting in that county if the designated election official is the subject of the recall. The testimony in every hearing shall be under oath. The hearing shall be summary and not subject to delay and shall be concluded within thirty days after the protest is filed with the designated election official, and the result of the recall. The testimony in every hearing shall be under oath. The hearing shall be summary and not subject to delay and shall be concluded within the thirty days after the protest is filed with the designated election official, and the result shall be forthwith certified to the committee.*

*(b) The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt appkication is made, as provided in seciton 1-1-113. the remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.*

The hearing officer can find no requirements in the statutes or case law that the Clerk and Recorder conduct an investigation into the truth or accuracy of a recall petition general statement of grounds for recall. The reasons for recall do not require the accuracy nor exactness of, say, an impeachment or dismissal for cause.

Reading the totality of C.R.S. 1-12-103 the hearing officer finds that the statement of grounds in the petition for recall does not violate the requirements of C.R.S. 1-12-103.

The hearing officer also finds that in any event, regardless of the analysis above – the ground or grounds are not subject to review C.R.S. 1-12-103.

Recalls are a political process, they do not require the precision of an impeachment. Groditsky v Pinkney et al 661 P2d 279 (Colo 1983).

Recall is a fundamental constitutional right of Colorado citizens and the reservation of this power in the People must be liberally construed.

Groditsky supra at 281

The hearing officer finds that the general statements contained in the general petition for recall of Mr. McDaniel meets the requirements of C.R.S. 1-12-103 and the protests are denied for the reasons stated above.

The hearing officer, while deciding the matter as stated above, because of the somewhat confusing language in C.R.S. 1-12-103 also finds that per the requirements of C.R.S. 1-12-103, the ground or grounds of the petition for recall or Mr. McDaniel is not subject to review.

**The protests are denied.**

  
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Michael F. Green, Hearing Officer

11/23/2020  
\_\_\_\_\_  
Date