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ELECTIONS

SECRETARY OF STATE

Before the Colorado Secretary of State
Pursuant to Colo. Const., art. XXI, § 2

**PROTEST OF CATHERINE E. KLEINSMITH TO SECRETARY OF STATE'S
SUFFICIENCY DECISION ON PETITION FILED BY ROBERT HARRIS, PAUL
PARADIS, AND DANIEL MACH TO RECALL SENATOR JOHN MORSE**

Comes now Protestor, Catherine E. Kleinsmith, by and through counsel, Heizer Paul Grueskin LLP, to protest the sufficiency decision, issued by the Colorado Secretary of State, in connection with the recall petitions filed by Robert Harris, Paul Paradis, and Daniel Mach.

1. This protest is filed within fifteen days after the recall petition was filed with the Secretary, as required by law. Const., art. XXI, § 2.
2. This protest sets forth specifically the grounds for challenging the Secretary's sufficiency decision, is in writing, and is being submitted under oath, as required by law. *Id.*
3. Signatures on a recall petition are deemed sufficient unless a protest is filed and are also subject to a determination of sufficiency by the Secretary of State. *Id.*; see C.R.S. § 1-12-108(7.5).
4. Catherine Kleinsmith is a registered elector of the State of Colorado and State Senate District 11.
5. State Senator John Morse was elected to the State Senate in 2010 from State Senate District 11.
6. A petition seeking to recall Sen. Morse was filed with the office of the Secretary of State on June 3, 2013.
7. Robert Harris, Paul Paradis, and Daniel Mach are the three persons named on the face of the petition who are designated to represent the signers in all matters pertaining to the petition.
8. In order to meet the requirements of in Article XXI, § 1 of the Colorado Constitution, the petition was required to contain the signautres of 25% of the votes cast for State Senate in District 11, or 7,178 voters' signatures.
9. When it was filed with the Secretary's office, the petition contained approximately 16,000 entries as signers.
10. On or about June 18, 2013, the Secretary announced that the petition was sufficient, having concluded that the names of registered electors, in excess of the number required by law, were found on the Morse recall petition.

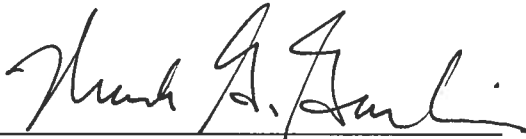
11. The petition that was circulated refers to a recall of Sen. Morse by its reference in the warning to “Petition to recall John Morse from the office of Colorado State Senate – District 11.”
12. The petition that was circulated sets forth the basis for the recall petition in two paragraphs under the heading, “General statement of grounds of recall.”
13. Article XXI, § 1 of the Colorado Constitution requires that the petition demand the election of a successor to the recalled official and states specifically that a recall petition, “demanding an election of the successor to the officer named in said petition,” is to be filed in office where nomination petitions were filed.
14. § 1-12-103 of the Colorado Revised Statutes requires that the petition demand the election of a successor to the recalled official and states specifically, “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.”
15. Colorado courts have affirmed that a sufficiency decision for a recall petition is contingent on whether the petition included a specific demand for the election of a successor to the recalled official. Where the petition does not contain such a demand, the signatures filed as part of the petition are not valid, and the election official’s sufficiency decision without regard to that requirement is error. *Combs v. Nowak*, 43 P.3d 743, 744-45 (Colo. Ct. App. 2002).
16. Grounds for a protest to sufficiency decision issued in connection with a recall petition include the “failure of any portion of a petition... to meet the requirements of this article,” C.R.S. § 1-12-109(9)(a), and Article 12 of Title 1 expressly requires that the petition demand the election of a successor to the recalled official. C.R.S. § 1-12-103.
17. No section of this petition demands the election of a successor to Sen. Morse, if he were to be recalled.
18. The recall proponents’ failure to comply with a constitutional, statutory, and court-approved requirement for recall petitions invalidates the Secretary’s sufficiency decision.
19. Each and every one of the filed signatures, said to have been validated by the Secretary, is hereby challenged, and no allegedly valid signature may be counted as such in determining whether the constitutional prerequisites for a recall election have been met. Colo. Const., art. XXI, §§ 1, 2.
20. The Secretary’s June 18 sufficiency decision as to the signatures on this recall petition is substantively and materially incorrect, as is the presumption of sufficiency that exists until the filing of a protest, Colo. Const., art. XXI, § 2, and thus the proponents of the recall of Sen. Morse filed an insufficient number of signatures, as the petition contained no valid signatures.
21. The Secretary erred by ruling that these petition signatures are sufficient, and he should reverse that decision at the conclusion of a duly noticed protest hearing held pursuant to law.

WHEREFORE, Protestor seeks the following relief:

- (a) a declaration that the purported sufficiency the Morse recall petition is incorrect and without legal basis;
- (b) a declaration that no recall election will be ordered or scheduled by the Secretary for State Senate District 11 for the seat held by Sen. Morse;
- (c) a declaration that no person may be a candidate to be the successor to Sen. Morse except for purposes of the 2014 election or until the office becomes vacant;
- (d) a declaration that no election will be held to recall Sen. Morse;
- (e) a declaration that no election will be held to replace Sen. Morse until the 2014 election or until the office becomes vacant;
- (f) award such other relief as is warranted by amendments to this protest, filed on or before the date of hearing; and
- (g) such other relief as the Secretary deems appropriate and consistent with the claims in this protest.

Respectfully submitted this 18th day of June, 2013.

HEIZER PAUL GRUESKIN LLP

By: 

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ATTORNEYS FOR PROTESTOR

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

Catherine Kleinsmith, of lawful age, being first duly sworn upon oath, alleges and states that I have read the above and foregoing **PROTEST OF CATHERINE E KLEINSMITH TO SECRETARY OF STATE'S SUFFICIENCY DECISION ON PETITION FILED BY ROBERT HARRIS, PAUL PARADIS, AND DANIEL MACH TO RECALL SENATOR JOHN MORSE**, and that the statements and averments made on my behalf are, to the best of my knowledge and belief, true and accurate.


Catherine Kleinsmith
Signature

Print Name: Catherine Kleinsmith

Title: NA

Subscribed and sworn to before me this 17 day of June, 2013.

My commission expires: 11/22/2015.

[SEAL] 
FALISHA WINKEL SPECHT
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 11/22/2015

Falisha Winkel Specht
Notary Public