

FINDINGS OF FACT AND CONCLUSION
PETITIONS TO RECALL TRUSTEES DENNIS STERN, SHANA
BALL, AND KEVIN DREHER FROM THE TOWN BOARD OF
THE TOWN OF PALMER LAKE, COLORADO

BACKGROUND INFORMATION

An administrative hearing on protests to the recall of Trustees Dennis Stern, Shana Ball, and Kevin Dreher from the Town Board of the Town of Palmer Lake, Colorado, was held on Thursday, June 19, 2025, at 1:00 p.m. at the Palmer Lake Town Hall. The hearing officer was Karen Goldman, appointed by the Board of Trustees at their meeting on June 12, 2025.

The recall petitions were filed by petition committee members Elizabeth Harris, Dailee Fagnant, and Cody Fouts. Identical protests to all recall petitions were filed by Brian Yavanian.

The hearing officer presented the following timeline regarding the recall petitions and protests:

1. March 24, 2025 – The Town Clerk approved the recall petitions as to form. The minimum number of valid signatures required was 275.
2. May 22, 2025 – Deadline to file recall petitions.
3. May 21, 2025 – Recall petitions timely filed.
4. May 27, 2025 – Town Clerk made an initial determination of sufficiency that the recall petitions were sufficient.
 - a. For Dennis Stern, 333 signatures were submitted; 30 were disqualified; 303 signatures were valid
 - b. For Shana Ball, 330 signatures were submitted; 26 were disqualified; 304 signatures were valid
 - c. For Kevin Dreher, 333 signatures were submitted; 33 were disqualified; 300 signatures were valid.
5. June 6, 2025 - Deadline for filing protests.
6. June 2, 2025 – Protests timely filed.
7. June 12, 2025– Town Board set the administrative hearing date for June 19, 2025, at 1:00 p.m. and appointed Karen Goldman as hearing officer.

The protest filed by Brian Yavanian involved allegations of irregularities as follows:

1. Elizabeth Harris erred when providing a postal address instead of her residential address as a committee member.
2. A postal address is not a legal address as required by state statutes.
3. Anyone, including non-residents, can obtain a postal address.
4. The postal address is misleading.
5. All signature pages where a legal address of all committee members is required should be disallowed.

The hearing officer took administrative notice of the recall petitions, the town clerk's initial determination of sufficiency, the protests, as well as other written testimony and comments. All testimony was made under oath.

TESTIMONY

1. Brian Yavanian stated he filed his protest on June 2 prior to the deadline for doing so.
2. Mr. Yavanian noted that state statute requires the petition committee to be comprised of 3 members and that one of them, Elizabeth Harris, included her post office address instead of her residence address.
3. Mr. Yavanian stated that a post office address doesn't prove residency, it just purports to prove it and is misleading. He stated he feared that persons signing may have done so under false pretenses. However, upon being questioned by the hearing officer, he could not identify any persons who felt they had done that.
4. Dawn A. Collins is the Town Administrator/Town Clerk for Palmer Lake. She described the process she used to approve the recall petitions as to form, as required by law. Ms. Collins enlisted the assistance of Judy Egbert with GovPro, a consultant, and the first step was to ensure the petition representatives were registered electors in Palmer Lake.
5. Ms. Collins stated she logged into the Secretary of State website and confirmed that Ms. Harris was a resident and that the website included both her residence address and her post office address.
6. Grace Foy, representing Elizabeth Harris, one of the petition committee members who was not present at the hearing, noted that Ms. Harris had submitted a notarized declaration that included a statement that she was a resident of Palmer Lake and resided at 750 Second St.
7. Ms. Foy said that the petitions had been returned to the committee a couple of times to correct technical errors and at no time was the use of the post office address one of the items that was requested to be changed nor was that address in question.

8. Ms. Foy also noted that the protest and notice of the hearing was not sent to the El Paso County Clerk and Recorder as required by state statute.

DISCUSSION

Municipal recall procedures are governed by 31-4-501 through 31-4-507, Colorado Revised Statutes. The procedures governing recall protest hearings can be found in 31-4-503 (3)(b through d). Part of this statute states as follows:

'A protest in writing under oath may be filed in the office of the municipal clerk by some registered elector who resides in the municipality within fifteen days after such petition is filed setting forth specifically the grounds of such protest. Grounds for protest may include, but shall not be limited to, the failure of any portion of the petition or circulator affidavit or petition circulator to meet the requirements of this section.'

Inclusion of the language *'...may include, but shall not be limited to...'* thus allows protesters to include any number of elements in their protest in addition to ones specifically called out in statute which deal with the requirements of the petition, the circulator affidavit or petition circulator. In this case, the protest revolved around whether a petition committee could legally list a post office address instead of a residence address because a post office address is not a legal address.

The portion of statute being contested is 31-4-502(1)(a)(I): *Each petition must designate by name and address not less than three nor more than five persons, referred to in this section as the "committee", who shall represent the signers thereof in all matters affecting the petition.* Both Dailee Fagnant and Cody Fouts provided their residential addresses while Elizabeth Harris provided a post office address. Mr. Yavanian stated that the law requires a legal address and that a post office address did not prove that Ms. Harris was an actual resident in Palmer Lake. Mr. Yavanian also stated that most, if not all, residents in Palmer Lake had post office addresses.

It is true that statute does not specify 'legal' or 'residence' address, simply the word 'address'. It is also true that, in most cases when people are asked for their address, they provide a residence address. That is typically the case, although not always, for citizen petitions including recall petitions. They do so to meet another requirement in the same portion of statute to

easily identify themselves as persons eligible to part of the petition committee: *The person designated as a member of the committee must be a registered elector of the municipality.*

Ms. Harris, in the notarized statement she provided, indicated that she was a valid registered elector in Palmer Lake and provided, through Ms. Foy, a copy of her residential address on file on the Secretary of State's voter registration records. She also stated that, to receive a free post office box for mail delivery, she had to provide proof of residency each year.

Municipal clerks are trained to verify that persons designated as members of the recall petition committee are indeed registered to vote when approving the petition as to form, one of the first steps in the recall process. Town Clerk Collins testified that she did that and that she determined all three persons were registered to vote and resided within Palmer Lake. If any of the committee members had not been so registered, the petition would have been rejected and the proponents would have been asked to find persons who were. Listing a post office address, while perhaps atypical, does not rise to the same level as not being properly registered and thus is not enough to reject the petition on its face.

While not a part of the protest, it is in the best interest of all parties involved to include in these findings a discussion of the issue of protest hearing notification as it became a topic of general concern to members of the public and involved the El Paso County Clerk and Recorder's Office staff as well. The concern was around the portion of 31-4-503(3)(b) regarding the notice of the protest hearing:

The municipal clerk shall mail a copy of a protest to the officer named in the petition, to the committee named in the petition as representing the signers of the petition, and to the county clerk and recorder, together with a notice fixing a time for hearing the protest that is not less than five nor more than ten days after the notice is mailed.

No notice was mailed to the county clerk and recorder and the petitioners cited that omission as a reason to invalidate the hearing. Some context needs to be made regarding this statutory provision.

According to source materials for this statute, the original statute was implemented, by a repeal and re-enact piece of legislation, in 1985. (3)(b) was amended in 2004, although the content of that amendment is

unknown. However, in 2023, an amendment was made to (3)(b) and upon review, it is now clear that the amendment was incomplete.

HB23-1185 was proposed by the Colorado Municipal League to answer a situation from the City of Florence which wound up with all elected officials, but for the mayor, having resigned and thus having no way to either appoint or elect replacements. The bill title was broad enough - dealing with recall and vacant positions - to include some changes to the recall statute and one of them dealt with which persons were required to receive notification of a filed protest and a protest hearing.

Prior to HB23-1185, there was a sentence following the one in dispute above as follows: *The county clerk and recorder shall, upon receipt of such notice, prepare a registration list pursuant to 31-10-205 to be utilized in determining whether the petition is sufficient.*

This sentence was deleted in the bill. This requirement was meaningless in that a list of registered voters created after the signatures had been verified is irrelevant in a hearing when signatures are at issue, because signatures added to a registration list AFTER a person signs do not re-qualify the signatures. Thus, notification was an unnecessary requirement for both the municipal clerk and the county clerk. Additionally, signature qualification was not an issue in the Palmer Lake protest.

However, what was not done in HB23-1185 was to also delete '*and to the county clerk and recorder*' from the prior sentence in the bill language. In other words, the bill removed the reason for sending the protest and hearing notice to the county clerk and didn't remove the county clerk him/herself from the need to receive them.

A county clerk has no role in a municipal recall protest hearing, so there is no purpose in sending these items to the county clerk. And the question needs to be asked: What would the county clerk do with the information anyway? Proper notice had been given to those required to be notified, all of whom were essential to the hearing and who had a stake in the recall.

Unfortunately, the Municipal Election Code of 1965 contains examples of requirements that have been rendered obsolete due to changes in other statutes, federal laws and/or updates in operational procedures and amendments to those requirements have not always kept up with these changes. What must be balanced is following the strict language of the law,

even when there is not any purpose or reason for doing so, with operating in such a manner which serves the needs of the situation and the voters. The petition representatives and supporters of the recall did receive both the protest and the hearing notice and had their chance to make their case at the hearing - which they did - and not having the protest and notice of the hearing sent to the county clerk did not impact that opportunity. Substantial compliance with statutes, the basis for all election procedural review, has been met and since the county clerk plays no role in a recall protest, non-notification does not have any bearing on the validity of the proceeding.

Finally, it must be noted that Dennis Stern resigned his position from the Palmer Lake Town Board on June 12. 31-4-504(1) states: *If any officer resigns by submitting a written letter to the clerk at any time prior to the recall election, all recall proceedings shall be terminated, and the vacancy caused by such resignation shall be filled as provided by law.* Since no election will be set until after the final determination of petition sufficiency has been made, no recall action shall be made against Mr. Stern and any action on recalls will only pertain to Trustees Shana Ball and Kevin Dreher.

FINAL DETERMINATION AND CONCLUSION

Based on the original protest and the testimony and evidence presented at the protest hearing on June 19, 2025, it is the final determination of the hearing officer that the recall petitions for Trustees Shana Ball and Kevin Dreher are **sufficient** as initially determined by the Town Clerk.

Therefore, the Town Board of Town of Palmer Lake, Colorado, is instructed to set a date for an election on these recalls.

/s/ Karen Goldman, Administrative Hearing Officer
Town of Palmer Lake, Colorado
June 22, 2025

A copy of this Final Determination and Conclusion in the matter of the petitions to recall Trustees Shana Ball and Kevin Dreher from the Town Board of the Town of Palmer Lake, Colorado, shall be sent to the following:

Trustee Shana Ball
204 Vale St.
Palmer Lake, CO 80133

Trustee Kevin Dreher
303 Sterling, PO Box 1502
Palmer Lake, CO 80133

Elizabeth Harris
750 Second St., PO Box 1665
Palmer Lake, CO 80133

Dailee Fagnant
563 Greeley Blvd.
Palmer Lake, CO 80133

Cody Fouts
563 Greeley Blvd.
Palmer Lake, CO 80133

Brian Yavanian
302 Sterling Ave., PO Box 1567
Palmer Lake, CO 80133

Scott Krob
Krob Law Office LLC
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111