

<p>District Court, Adams County, State of Colorado</p> <p>Adams County Justice Center 1100 Judicial Center Drive Brighton, Colorado 80601 (303) 659-1161</p> <hr/> <p><b>COMMITTEE TO RECALL MAYOR NATALE; WILLIAM RENE BULLOCK; MISTY WAREMBOURG; AND FRANCINE CRUSAN</b></p> <p>Plaintiff,</p> <p>v.</p> <p><b>LAURA BAUER IN HER OFFICIAL CAPACITY AS CITY CLERK OF THE CITY OF COMMERCE CITY, STATE OF COLORADO</b></p> <p>Defendant.</p>	<p><b>EFILED Document – District Court CO Adams County District Court 17th JD 2008cv1925 Filing Date: Apr 24 2009 11:17AM MDT Transaction ID: 24858373</b></p> <hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 08 CV 1925</p> <p>Division: A</p>
<p><b>ORDER</b></p>	

Plaintiff Committee to Recall Mayor Natale (“Committee”) filed a Complaint and submitted a Brief pursuant to C.R.C.P 106(a)(4) seeking review of the City Clerk’s failure to verify approximately 100 additional signatures on an Amended Petition and the failure to properly verify approximately 11 names against a current voter registration list. An Answer Brief and Reply Brief have been filed. The Court being fully advised FINDS AND ORDERS AS FOLLOWS:

## **Statement of the Case**

On September 9, 2008, the Committee filed a petition (“Original Petition”) with the City Clerk of the City of Commerce City Laura Bauer (“Bauer”), seeking to recall the Commerce City Mayor Natale. *Opening Brief*, p. 2. Bauer sent a letter on September 12, 2008, stating that certain signatures listed on the recall petition were not from properly registered electors or were invalid for other reasons. *Id.* Bauer identified 568 verified signatures on the Original Petition out of the 716 required for a valid recall petition. *Id.* On September 15, 2008, the Committee withdrew the Original Petition. *Id.* On September 29, 2008, the Committee filed an amended petition (“Amended Petition”). *Id.* On October 2, 2008, Bauer issued another written determination. This time, Bauer stated that there were 637 verified signatures in the Amended Petition. Bauer also determined that 100 signatures were added after the Original Petition was withdrawn and did not consider those signatures. *Id.* at 3.

## **Parties’ Arguments**

### **Plaintiffs**

The Committee alleges that Bauer acted arbitrarily and capriciously, or otherwise outside the scope of her authority, in failing or refusing to verify the 100 additional signatures contained in the Amended Petition. The Committee alleges that they are statutorily entitled to add signatures onto the Amended Petition.

The Committee further alleges that Bauer acted arbitrarily and capriciously, or otherwise outside the scope of her authority, when she did not properly verify eleven (11) signatures contained within the Amended Petition. The Committee argues that Bauer referenced an old copy of the

voter registration lists during the height of an election year when citizens were signing up to vote everyday.

### Defendant City of Commerce City

The City argues that Bauer's interpretation of § 31-4-503(3)(c), C.R.S. (2008), was reasonable and that she properly acted within her statutory authority by refusing to verify additional signatures not included on the Original Petition. The City further argues that Bauer attempted to properly verify the eleven (11) signatures at issue in the Committee's Brief.

### Issues

1. Did the City Clerk of Commerce City, Bauer, abuse her discretion?
2. Did the City Clerk of Commerce City, Bauer, exceed her jurisdiction?

### City Clerk's Findings

The City Clerk of Commerce City, Bauer, made the following findings based on the submitted petitions, which the Committee is contesting:

1. The total number of votes cast for Mayoral office on April 3, 2007 was 2,864.
2. The total number of required signatures (25%) on the recall petition was 716.

### Original Petition

1. The total number of signatures submitted for verification was 912.
2. The total number of verified signatures was 568.
3. There were 344 signatures rejected for the following reasons:
  - a. Not registered in Commerce City – 215 signatures

- b. Address information does not match voter information from Adams County – 56 signatures
- c. Affidavit not complete (two petitions affected) – total of 57 signatures
- d. Line not completed – 4 signatures
- e. Not dated properly – 3 signatures
- f. Illegible – 5 signatures
- g. Duplicate – 2 signatures
- h. Appears to be signed by same person – 2 signatures

Amended Petition

1. The total number of signatures submitted for verification was 1012.
2. The total number of verified signatures was 637.
3. There were 375 signatures rejected for the following reasons:
  - a. Not registered in Commerce City – 213 signatures
  - b. Address information does not match voter information from Adams County – 46 signatures
  - c. Line not completed – 2 signatures
  - d. Not dated properly – 3 signatures
  - e. Illegible – 5 signatures
  - f. Duplicate – 6 signatures
  - g. Signatures added after initial determination – 100 signatures

**Principles of Law**

C.R.C.P. 106 (2008). Forms of Writs Abolished

**(a) Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other Remedial Writs in the District Court. . . .** In the

following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law:

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer. . . .

(IX) In the event the court determines that the governmental body, officer or judicial body has failed to make findings of fact or conclusions of law necessary for a review of its action, the court may remand for the making of such findings of fact or conclusions of law. . . .

### **Analysis**

Pursuant to C.R.C.P. 106, this Court must determine whether Bauer has abused or exceeded her discretion, based on the evidence in the record.

#### **Did the City Clerk of Commerce City abuse her discretion?**

“Abuse of discretion means that the decision under review is not reasonably supported by any competent evidence in the record” and is therefore “so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.” *Widder v. Durango School Dist. No. 9-R*, 85 P.3d 518, 526-27 (Colo. 2004).

Arbitrary and capricious administrative action

can arise in only three ways, namely: (a) By neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it. (b) By failing to give candid and honest consideration of evidence before it on which it is authorized to act in exercising its discretion. (c) By exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions.

*Lawley v. Dep't of Higher Educ.*, 36 P.3d 1239, 1252 (Colo. 2001); *see also Van DeVegt v. Board of County Commissioners of Larimer County*, 98 Colo. 161, 55 P.2d 703, 705 (Colo. 1936).

Based on the Court's analysis of the above *Lawley* factors, Bauer did not abuse her discretion. Bauer properly reviewed the signatures on the petition and reasonably interpreted the statute which enumerates her duties. Bauer used "reasonable diligence and care" in considering the evidence presented to her.

The Committee does not allege that Bauer "fail[ed] to give candid and honest consideration of evidence," as required in the second *Lawley* factor. There is nothing in the record that leads the Court to believe that Bauer was not candid and honest in her written determination or review of either the Original or the Amended Petition.

Pursuant to factor (c) in *Lawley*, Bauer's written determination and review of the Amended Petition were not "based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions." The Committee argues that § 31-4-503(3)(c) entitles them to solicit more names for the Amended Petition. However, the plain language of the statute states that the insufficient original

petition “may be amended by the addition of any required information relating to the signers thereof.” § 31-4-503(3)(c) (emphasis added). The meaning is clear; the only amendments allowable under statute include further clarifying information about the unverified signatures contained within the original insufficient petition. Thus, Bauer reasonably came to the conclusion that the additional 100 signatures were presumptively invalid.

The Committee argues that Bauer failed to use an up-to-date voter registration list during the signature verification process. Only after a notice of protest is received pursuant to § 31-4-503(3)(b) is the City Clerk required to prepare an up-to-date registration list. After review of the record, on July 11, 2008, Bauer did request an updated registration list. This request was properly made on the same day the recall petition format was approved. §§ 31-4-503(3)(b), 31-10-205. Thus, Bauer acted reasonably by reviewing the eleven signatures in issue and even verifying some of those eleven.

Therefore, Bauer did not act arbitrarily or capriciously in her duties as City Clerk.

#### Did the City Clerk of Commerce City exceed her jurisdiction?

Pursuant to § 31-4-503(3)(a), C.R.S. (2008), the City Clerk shall issue a written determination of the petition’s contents by the fifth business day after the petition is filed. Thus, Bauer had jurisdiction to issue a written determination and did so within the statutorily required time frame. *See also* § 31-4-507.

#### **Conclusions of Law**

City Clerk Bauer’s written determination finding the petition to recall Commerce City Mayor Natale was insufficient was not arbitrary, capricious,

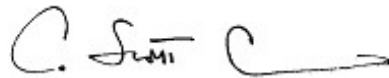
or contrary to law. The record clearly demonstrates that Bauer did not abuse her discretion or exceed her jurisdiction in making her written determination.

**Order**

The Committee's Motion and Brief pursuant to C.R.C.P 106(a)(4) seeking review and reversal of City Clerk Bauer's written determination is DENIED.

Dated this 23rd day of April, 2009.

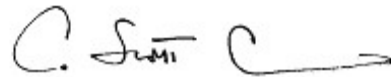
By the Court:



C. Scott Crabtree  
District Court Judge

**CERTIFICATE OF MAILING**

I hereby certify that the foregoing document was sent via LexisNexis (e-file) to all counsel of record and to all *pro se* parties this 23rd day of April, 2009.



Court