April 17, 2023

Via Email
Marisa Stoller, City Clerk
City of Pueblo
clerk@pueblo.us
mstoller@pueblo.us

RE: Request for reconsideration of statement of insufficiency and Resubmittal for November regular election

Dear Ms. Stoller:

The Back to City Manager citizen committee has asked me to represent them regarding the mayor to manager charter amendment. As I understand it, on April 12th you issued your statement that the petition was insufficient. However, the reason for the insufficiency is directly attributable to your determination about the number of signatures. Petitioners are entitled to some relief because of this serious error. As you know, the City Clerk is responsible for making all interpretations and rendering decisions on all matters of controversy related to elections. See § 31-11-118, C.R.S., and Sec. 5-1-5, Pueblo Muni. Code. We are requesting that you render a decision on this controversy with a remedy for petitioners that provides them relief relative to the serious error, and we are requesting that you exercise this statutory duty independent of the mayor or anyone else. The Back to City Manager committee is also requesting that you allow the current petition and signatures to be re-submitted and refiled as a petition to place the issue on the upcoming November regular election, pursuant to Section 31-2-210(3).

By letter dated January 3, 2023, you informed petitioner Judalon Smyth that the petition would require 3768 signatures for a special election in May. However, section 31-2-210(1)(a), C.R.S., states that a petition must be signed by 10 percent of the registered electors on the day of the statement of intent was filed for a special election, or 5 percent if being submitted to the voters at a regular election. From my understanding, there were 78,987 registered electors in November 2022. Assuming this number is very close, the petition would have required approximately 7898 signatures for a special election, or 3949 for 5 percent. After the fact, you have determined that 7260 signatures were necessary.
The Back to City Manager committee is also disputing your determination on the number of valid signatures. From my understanding almost ½ the collected signatures were rejected (2740 out of 4879 total signatures validated – 2319 denied). It appears numerous signatures were invalidated due questionable determinations about the circulator affidavits and notary requirements. Further, it appears an inflated number of signatures were rejected to over-compensate for providing the wrong number of signatures initially. The reasons for the signature rejections are not legally supportable.

Section 31-11-306(3)(e), C.R.S., states that following the signature page or pages is to be a notarized affidavit signed by the person circulating the petition. It sets out the required attestations and states that any disassembly “that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid.”

Therefore, as long as the notary and affidavit contain the required statutory information, those signatures must be accepted. The petitions and signatures here comply with the statute, and the City Clerk should allow this be refiled and resubmitted for the next regular election. The deficiencies identified to invalidate a very large portion of the signatures are inconsequential, and rely on questionable legal conclusions.

For those petitions where signatures were invalidated due to stapling, again, there is no legal support for this reading of the statute. The statute clearly does not require a staple. It requires the signature page be collated and assembled in some manner, so that the circulator affidavit is easily matched to and follows the signatures.

Next, I also understand signatures were rejected because the notary was written on the back page. Again, this determination finds no legal support, as the only requirement for the notary and circulator is that they follow the signature pages. § 31-11-106(3)(e), C.R.S., and otherwise comply with the statute.

In conclusion, we are requesting the signature determinations be reevaluated and that the petition and signatures are allowed to be resubmitted for the next regular election. To the extent, the City Clerk feels that there is no legal authority for this we are confident that a court would afford this remedy in this case. However, it appears that the City Clerk is in a position to make the fastest amends. C.R.S. § 31-2-210(3) specifically allows this to happen after a statement of insufficiency.

Finally, the Back to City Manager committee is requesting reimbursement of its costs and legal fees in the amount of $7500. Again, this appears to be appropriate in this extraordinary case where a group of citizens submitted a petition justifiably relying on a determination from the City Clerk, that you later determined was incorrect.
Sincerely,

Matthew Hobbs

Cc: Client (Via Email)
Bob Jagger, City Attorney (Via Email) (bjagger@pueblo.us)