

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 21-cv-3069

COMMITTEE SEEKING THE RECALL OF FIRESTONE
TRUSTEES,

Plaintiff,

v.

JESSICA KOENIG, in her official capacity as the Town Clerk
of the Town of Firestone, Colorado,

Defendant.

NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1441(a)

Defendant, Jessica Koenig, in her official capacity as the Town Clerk of the Town of Firestone, Colorado (“Defendant”), through her undersigned counsel, Josh A. Marks, of Berg Hill Greenleaf Ruscitti LLP, and pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1446, and D.C.COLO.LCivR 81.1, submits this notice of removal as follows:

1. Plaintiff Committee Seeking the Recall of Firestone Trustees (“Plaintiff”) initiated this litigation by filing a complaint in the Weld County, Colorado, District Court (“State District Court”) on October 25, 2021 (the “State Court Action”). Defendant accepted service on October 26, 2021. Consequently, this notice of removal, having been filed before November 25, 2021, is timely. 28 U.S.C. § 1446(b). Attached are copies of the October 25, 2021, Complaint, Civil Case Cover Sheet, and Summons (**Exhibit A**); October 26, 2021, Initial Case Management Order (**Exhibit B**);

October 26, 2021, Amended Waiver and Acceptance of Service (**Exhibit C**); and Entry of Appearance (**Exhibit D**).

2. The Complaint asserts two claims for relief against Defendant arising out of the Defendant's rejection of recall petition signatures. The second claim comes under 42 U.S.C. § 1983 for alleged violations of First and Fourteenth Amendment rights. This claim triggers this Court's original jurisdiction under 28 U.S.C. §§ 1331 and 1343 because the resolution of the claim requires resolution of questions of federal constitutional and statutory law. The first claim comes under article XXI, sections 1 and 4, of the Colorado Constitution for alleged violation of the right to recall. This claim triggers the Court's supplemental jurisdiction under 28 U.S.C. § 1367 because it proves so related to the second claim that it forms part of the same case or controversy. As a result, removal of this action from state court under 28 U.S.C. § 1441(a) is appropriate.

3. Pursuant to 28 U.S.C. § 1446(d), Defendant will file a copy of this Notice of Removal with the Clerk for State District Court, and written notice of this filing has been given to all adverse parties to this action. A copy of the notice to all parties (without its attachments) is attached as **Exhibit E**.

4. Similarly, pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, papers or exhibits filed in the State District Court are provided with this Notice of Removal. To date, the following pleadings have been filed in the State Court Action:

October 25, 2021	Complaint, Civil Case Cover Sheet, and Summons
October 26, 2021	Initial Case Management Order

October 26, 2021 Amended Waiver and Acceptance of Service

November 15, 2021 Entry of Appearance

5. Per D.C.COLO.LCivR 81.1(B), the Defendants will file a copy of the current docket sheet in the State Court Action with this Court within fourteen days of the filing of this notice of removal. There are no pending motions, petitions, responses, replies, or briefs in the State Court Action. There are no hearings presently scheduled in the State Court Actions.

WHEREFORE, the Defendants respectfully request that this Court accept this notice of removal pursuant to 28 U.S.C. § 1441(a) and assign this action for all further proceedings to a United States District Court Judge in the District of Colorado.

Respectfully submitted this 16th day of November, 2021.

BERG HILL GREENLEAF RUSCITTI LLP

s/ Josh A. Marks

Josh A. Marks
1712 Pearl Street
Boulder, CO 80302
Phone: (303) 402-1600
Fax: (303) 402-1601
Email: jam@bhgrlaw.com

Attorney for Defendant Jessica Koenig

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2021, I electronically filed the foregoing **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. § 1441(a)** with the Clerk of the Court using the CM/ECF system which will send notification to such filing to the following e-mail addresses,

Scott E. Gessler
Gessler Blue LLC
7350 E. Progress Place, Suite 100
Greenwood Village, CO 80111
sgessler@gesslerblue.com

s/ Jessica Vecchio

Jessica Vecchio

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 TH Ave. PO Box 2038 Greeley, CO 80631	DATE FILED: October 25, 2021 5:34 PM FILING ID: B65D5BF648A18 CASE NUMBER: 2021CV30649
COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, Plaintiff, v. JESSICA KOENIG , in her official capacity as the Town Clerk of the Town of Firestone, Colorado, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney for Plaintiff:</i> Scott E. Gessler, (28944), sgressler@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Phone: (720) 839-6637	Case No:
COMPLAINT UNDER C.R.S. § 31-4-502(1)(a)(I)	

INTRODUCTION

1. Defendant Jessica Koenig, the Clerk for the Town of Firestone, employed a standard never used before to reject petitions seeking the recall of the Firestone Board of Trustees. Specifically, she found that non-sequential petition signatures on recall petitions were evidence proving that petition sections had been dis-attached from their accompanying affidavits. This standard violates Colorado and Federal law, and this Court should order Koenig to accept the petitions in question and order the recall election to go forward.

PARTIES

2. The Plaintiff is a committee formed to seek the recall of the Firestone Board of Trustees under C.R.S. § 31-4-502(1)(a)(I) (the “Recall Committee”). By law, the Recall Committee represents the signers of the recall petition in all matters affecting the recall petitions. C.R.S. § 31-4-502(1)(a)(I). The Recall Committee submitted petitions seeking the recall of all seven Trustees of the Town of Firestone.

3. Defendant Koenig serves as the Clerk for the Town of Firestone. In that capacity she improperly rejected seventeen petition sections and improperly held that the Committee failed to collect enough signatures to trigger a recall of six of the seven Trustees.

JURISDICTION AND VENUE

4. Jurisdiction is proper under C.R.S. § 31-4-503(3)(d), which states “[t]he finding as to the sufficiency of any petition may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of . . . a majority of the committee, but such review shall be had and determined forthwith.”

5. Venue is proper under C.R.S. § 31-4-503(3)(d) and C.R.C.P. 98(b)(2).

GENERAL ALLEGATIONS

6. The Town of Firestone is governed by a seven-member Board of Trustees.

7. In mid-2021, several citizens in the Town of Firestone sought to recall all seven Trustees. To that end, three citizens formed the Recall Committee to launch the recall effort.

8. The Recall Committee formatted petitions to collect signatures and trigger a recall under C.R.S. §§ 31-4-501 through 31-4-507

9. The Recall Committee submitted formatted petitions to Koenig for approval. After several attempts, on June 24, 2021, Koenig finally approved the format of the recall petitions.

10. On August 23, 2021, two voters in Firestone submitted to Koenig the Recall Committee’s signed petitions seeking recall of the seven Trustees.

11. On August 30, 2021, Koenig issued a Certificate of Insufficiency. In it, she rejected every single petition section and every signature, because the petition sections were held together by paperclips, not staples.

12. This finding was wholly contrary to law. As a result, on September 1, 2021, Linda Haney (a member of the Recall Committee), Lou Ann Matthews, and Drew Peterson all filed protests.

13. Koenig rejected all protests because they were not notarized.

14. On September 3, 2021, Haney, Matthews, and Peterson submitted notarized protests. Koenig accepted the protests and scheduled a hearing to consider them. Prior to

the hearing, Koenig provided notice of the hearing to all protestors, members of the Recall Committee, and the Trustees subject to a potential recall.

15. The protest hearing took place on September 20, 2021. Koenig presided over the protest hearing as the hearing officer.

16. A true and authentic transcript of the hearing is attached at **Exhibit 1**.

17. Relevant to this *Complaint*, at the hearing Koenig questioned one of the circulators – Mr. Drew Peterson – about possible disassembly of the petitions. In response to this questioning, Peterson stated under oath that he kept all petition sections bound together while circulating them, and that he personally witnessed every person’s signature on the petition sections. Specifically, Peterson testified that:

- a. While circulating the petitions, he kept the packets of petition sections together (Administrative Hearing Transcript 58:19-20, September 20, 2021), and that the petitions were all paperclipped together and bound by a clipboard. (Hr’g Tr., 60:7-9),
- b. He witnessed every single signature on his petitions (Hr’g Tr. 64:8-9), and
- c. From the time he signed the affidavit attached to the petition sections until the time he submitted his petition sections to the Recall Committee for submission to Koenig, he kept the petition sections paperclipped together. (Hr’g Tr. 59:20-23).

18. On September 27, 2021, Koenig issued her Findings and Decision, attached as **Exhibit 2**.

19. In her ruling, the Clerk accepted all petition sections, except for the seventeen petition sections circulated by Mr. Drew Peterson.

20. Koenig reasoned that the petitions showed evidence of disassembly, because:

- a. Sections bound together with paperclips “call[ed] into question all petitions circulated due to the nature of the assembly. (Findings and Decision, p. 8),
- b. Peterson’s petition sections contained “signature dates that were not sequential despite the petition signature lines serially numbered from one (1) to fifty-four (54)” (Findings and Decision, p. 8),

- c. There was “no reasonable reason” that seventeen signatures appeared out of sequence in the seventeen petition sections Peterson circulated (Findings and Decision, pp. 8-9), and
- d. Peterson could not explain why other petition sections did not contain many signatures out of sequence (Findings and Decision, p. 9).

21. Because Koenig rejected Peterson’s petition sections, six out of the seven petitions failed due to a lack of valid signatures.

22. If Peterson’s petitions sections are accepted and the signatures in the petition sections counted, all of the Trustees except for Mayor Sindelair will be subject to a recall election.

**FIRST CLAIM FOR RELIEF
(Violation of Right to Recall,
Colo. Const. art. XXI, §§ 1 and 4)**

23. Plaintiffs incorporate all previous allegations.

24. Election laws and regulations governing the recall process must be liberally construed to ensure that the citizens can exercise their right to recall without undue hinderance or overly technical rules that ensnare good-faith efforts.

25. The purpose behind recall petitions is to determine whether adequate public support exists to hold a recall election.

26. The collection and submission of signatures to trigger a recall election serves the exact same purpose as the collection and submission of signatures to trigger a vote on a ballot initiative, or to place a candidate’s name on the ballot. They all are used to measure public support for placing the recall, initiative, or candidate on the ballot.

27. The requirements for municipal recall petitions are set forth in C.R.S. 31-4-502 and 503(1) and (2).

28. Under C.R.S. § 31-4-503, “[a]ny disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect.

29. The use of paperclips and a clipboard to fasten petition sections and affidavits together does not, in and of itself, provide evidence of disassembly “which has the effect of separating the affidavits from the signatures.”

30. Furthermore, signature dates that are out of sequence cannot provide evidence of disassembly “which has the effect of separating the affidavits from the signatures.”

31. Finally, Peterson testified under oath – without contradiction or dispute – that he kept all petition sections together while circulating them, that he personally witnessed every signature, and that he kept petition sections together with his completed affidavit.

32. The the petitions submitted by Peterson fully complied with Colorado law, and Koenig improperly rejected them.

33. In reviewing regulations that govern the petition process, Colorado courts have also adopted the substantial compliance test in order to ensure that fundamental constitutional rights “may be facilitated and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.” *See, e.g., Fabec v. Beck*, 922 P.2d 330, 341 (Colo. 1996) (quotations and citations omitted).

34. The Supreme Court has formally adopted the substantial compliance test for both voting rights and the initiative and referendum process.

35. The recall process is a fundamental right guaranteed by the Colorado Constitution, equally as important as initiative and voting rights.

36. Review of petitions for the recall process is also governed by the substantial compliance standard.

37. The substantial compliance standard has three considerations:

- a. the extent of noncompliance;
- b. the purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance; and,
- c. whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to mislead the electorate. *See, e.g., Fabec v. Beck*, 922 P.2d 330, 341 (Colo. 1996).

38. Before rejecting the petition sections that Peterson circulated, Koenig was required to also apply Colorado’s substantial compliance test.

39. Here, Koenig failed to apply the substantial compliance standard, and she failed to accept or review evidence regarding Peterson’s petition sections necessary to make a determination under the substantial compliance standard.

40. The petitions circulated by Peterson met both strict compliance with Colorado statute, as well as substantial compliance.

41. Defendant Koenig improperly rejected Peterson's petition sections, and she alternatively failed to apply the appropriate substantial compliance standard under the Colorado Constitution.

42. Defendant Koenig unconstitutionally hindered and violated the Recall Committees right to initiate a recall election.

SECOND CLAIM FOR RELIEF
(Violation of Right of Association and Free Speech,
Violation of Due Process, 42 U.S.C. § 1983)

43. Plaintiffs incorporate all previous allegations.

44. When determining whether state regulations violate the rights protected by the First and Fourteenth Amendments, a court must "first consider the character and magnitude of the asserted injury to the rights protected." *Anderson v. Celebrezze*, 460 U.S. 780, 789, (1983).

45. A court must then "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Id.*

46. This framework applies to petitions for ballot access. *Id.*

47. This constitutional framework also applies to regulations governing recall elections. *See In re Hickenlooper*, 312 P.3d 153, 159 (Colo. 2013).

48. The right to sign and submit petitions to support a recall election is a fundamental right. *Groditsky v. Pinckney*, 661 P.2d 279, 281 (Colo. 1983).

49. By failing to follow Colorado law and applying a requirement on the recall petition process that petition signatures must be sequential, Koenig improperly rejected voters' signatures collected by Peterson, effectively silencing the voice of those voters, the Recall Committee members, and Peterson.

50. Koenig's sequential-signature requirement did not further any state interest in determining that an adequate number of citizens supported the recall efforts.

51. Koenig's sequential-signature requirement did not help ensure the integrity of the petition collection process.

2. Clerk Koenig has unconstitutionally violated Plaintiffs' rights under the First and Fourteenth Amendment. This violation extends to all Firestone citizens who signed petitions and collected petition signatures.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiff request this Court:

1. Conduct a hearing forthwith to consider all appropriate evidence and legal argument;
2. Order Koenig to accept all of Peterson's petition sections;
3. Declare that, with the addition of signatures collected by Peterson, the Recall Committee obtained adequate signatures to trigger the recall of all Trustees except Mayor Sindelair;
4. Order the recall election to go forward;
5. Hold that Koenig's actions unconstitutionally infringed upon Plaintiffs First and Fourteenth Amendment rights;
6. Award the Recall Committee attorney fees under 42 U.S.C. 1988; and
7. Order all such other relief as just and proper.

Respectfully submitted this 25th day of October 2021,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 TH Ave. PO Box 2038 Greeley, CO 80631	DATE FILED: October 25, 2021 5:34 PM FILING ID: B65D5BF648A18 CASE NUMBER: 2021CV30649
COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, Plaintiff, v. JESSICA KOENIG , in her official capacity as the Town Clerk of the Town of Firestone, Colorado, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney for Plaintiff:</i> Scott E. Gessler, (28944), sessler@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Phone: (720) 839-6637	Case No:
<p style="text-align: center;">DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD-PARTY COMPLAINT AND JURY DEMAND</p>	

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.
2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

☒ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

- ☐ This party is seeking a monetary judgment against another party for more than \$100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000."

Or

- ☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.
3. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Dated: October 25, 2021.

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 TH Ave. PO Box 2038 Greeley, CO 80631	DATE FILED: October 25, 2021 5:34 PM FILING ID: B65D5BF648A18 CASE NUMBER: 2021CV30649
COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, Plaintiff, v. JESSICA KOENIG , in her official capacity as the Town Clerk of the Town of Firestone, Colorado, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney for Plaintiff:</i> Scott E. Gessler, (28944), sgressler@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Phone: (720) 839-6637	Case No:
SUMMONS	

TO THE ABOVE-NAMED DEFENDANT:

Jessica Koenig, in her official capacity as the Town Clerk of the Town of
Firestone, Colorado
c/o William P. Hayashi, Esq.
Williamson & Hayashi, LLC
1650 38th Street, Suite 103 W.
Boulder, CO 80301

You are hereby summoned and required to file with the clerk of this court an answer or other response to the attached complaint. If service of the summons and complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the summons and complaint was made upon you outside of the state of Colorado, you are required to file your answer or other response within 35 days after such service upon you.

If you fail to file your answer or other response to the complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the complaint without further notice.

Dated: October 25, 2021.

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

This summons is issued pursuant to Rule 4, C.R.C.P., as amended. **A copy of the complaint must be served with this summons.** This form should not be used where service by publication is desired.

WARNING: A VALID SUMMONS MAY BE ISSUED BY A LAWYER AND IT NEED NOT CONTAIN A COURT CASE NUMBER, THE SIGNATURE OF A COURT OFFICER, OR A COURT SEAL. THE PLAINTIFF HAS 14 DAYS FROM THE DATE THIS SUMMONS WAS SERVED ON YOU TO FILE THE CASE WITH THE COURT. YOU ARE RESPONSIBLE FOR CONTACTING THE COURT TO FIND OUT WHETHER THE CASE HAS BEEN FILED AND OBTAIN THE CASE NUMBER. IF THE PLAINTIFF FILES THE CASE WITHIN THIS TIME, THEN YOU MUST RESPOND AS EXPLAINED IN THIS SUMMONS. IF THE PLAINTIFF FILES MORE THAN 14 DAYS AFTER THE DATE THE SUMMONS WAS SERVED ON YOU, THE CASE MAY BE DISMISSED UPON MOTION AND YOU MAY BE ENTITLED TO SEEK ATTORNEY'S FEES FROM THE PLAINTIFF.

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 th Avenue, P.O. Box 2038, Greeley, CO 80632 (970) 475-2400	DATE FILED: October 26, 2021 8:34 AM CASE NUMBER: 2021CV30649 ▲ COURT USE ONLY ▲
Plaintiffs: COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, v: Defendants: JESSICA KOENIG, in her official capacity as the Town Clerk of the Town of Firestone, Colorado,	
	Case No. 21CV30649 Division: 4
<p style="text-align: center;">Initial Case Management Order (for cases filed on or after July 1, 2015)</p>	

These procedures apply to all civil cases filed in Weld County District Court on or after July 1, 2015. All counsel and unrepresented parties are expected to comply with the deadlines set below. Please read this Order carefully.

1. Case Management Deadlines:

- A. *Service of Process:* Returns of service for all defendants must be filed within 63 days after the date of the filing of the complaint.
- B. *Default Judgment:* Application for default judgment must be filed within 21 days after default has occurred and must comply with C.R.C.P. 55 and 121, §1-14.
- C. *Trial Setting:*
 - (1) **For a case governed by C.R.C.P. 16**, a trial setting must be obtained no later than 42 days after the case is at issue, using the procedures in C.R.C.P. 121, § 1-6. The case management conference must be held no later than 49 days after the case is at issue, as required by

C.R.C.P. 16(d)(1). The responsible attorney must file and serve a notice to set the case management conference no later than 7 days after the case is at issue. The proposed case management order is due no later than 7 days before the conference.

- (a) The *responsible attorney* means plaintiff's counsel, unless the plaintiff is not represented by counsel, in which case it means the defense counsel who first enters an appearance in the case.
- (b) A case is deemed *at issue* when all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed, or when defaults or dismissals have been entered against all non-appearing parties, or at such other time as the Court may direct.

- (2) **For a case governed by Simplified Procedure under C.R.C.P. 16.1**, the responsible attorney must set the case for trial no later than 42 days after the case is at issue, unless otherwise ordered by the Court, using the procedures in C.R.C.P. 121, § 1-6. The same definitions above of *responsible attorney* and *at issue* date apply.
- (3) Unless the parties encounter difficulties in setting trial or other dates, settings are conducted by telephone and do not require a court appearance. To reach the Division in which your case has been assigned, please call during division setting times between the hours of 8:30 a.m. and 10:00 a.m. on Tuesdays and Thursdays:
 - (a) Division 1: (970) 475-2510
 - (b) Division 4: (970) 475-2540
 - (c) Division 5: (970) 475-2550

D. A *District Court Civil Cover Sheet* (JDF 601) **must** be filed with all civil complaints.

2. Settlement Plan Deadlines:

- A. For all civil cases, a plan for settlement, as required by C.R.C.P. 16(b)(7) §§ 13-22-311 & -313, C.R.S., must be submitted using these procedures.
- B. No later than 35 days after the case is at issue, the parties shall explore the possibility of a prompt settlement or resolution of the case.

- C. No later than 42 days after the case is at issue, the parties shall submit a document entitled, “Stipulated Plan Regarding Settlement,” setting forth their plans for future efforts to settle the case. Unless notified otherwise by the Court, the Stipulated Plan Regarding Settlement is automatically adopted as an Order of the Court.
- D. The *Stipulated Plan Regarding Settlement* (ADR Plan) must include the following:
 - (1) Specification of the selected form of ADR. The parties may select any form of ADR defined in § 13-22-302, C.R.S.
 - (2) Designation of a provider who has been contacted and has agreed to provide ADR services to the parties. The parties may select any provider available in the community including Office of Dispute Resolution (ODR). ODR offers moderately priced mediation and other ADR services. ODR can be scheduled at www.ColoradoODR.org or call 720-625-5933.
- E. If no stipulated plan is submitted within 42 days after the case is at issue, the Court-ordered plan shall be that the parties must participate in mediation with ODR no later than 63 days before the trial date.
- F. Failure to comply with these procedures may result in sanctions including, but not limited to, loss of trial date.
- G. The parties must certify in the proposed trial management order (due 28 days before trial) that they have complied with the *Stipulated Plan Regarding Settlement* or with ODR.

3. Discovery Disputes:

- A. Consistent with C.R.C.P. 16(b)(14), the Court requires discovery motions to be presented orally, without written motions or briefs.
- B. Counsel and unrepresented parties are expected to first confer about any discovery dispute—in a meaningful way—by telephone or in person to try to resolve it. An exchange of e-mails does not qualify.
- C. If conferral does not resolve the dispute, then set a telephone hearing with the Division assigned to the case. The Court will set this hearing

as quickly as possible—within a week or less, depending on the Court’s docket.

- D. No later than 3 p.m. on the day before the telephone hearing, the parties may file with the Court (with service on all other parties) a letter of no more than two pages that explains the dispute and provides citations to any critical cases or other legal authority. If necessary to develop the record for any findings the Court might have to make, the parties may also submit exhibits. Multiple-page exhibits must be highlighted so that the pertinent information is easily identified.

4. Page Limits:

- A. The parties must follow the requirements of C.R.C.P. 10(d) and C.R.C.P. 121, § 1-15(1)(a), which the Court strictly enforces unless *prior* permission is obtained to deviate from those requirements.
- B. Depending on the circumstances—including the nature of the violation, the issues involved, and the implications for the parties’ substantive rights—the Court may choose to consider only that portion of a motion or brief that complies with these page limit requirements, and ignore the rest; or the Court may choose to strike the entire motion or brief; or the Court may fashion some other appropriate relief.

5. Court Interpreters:

- A. As discussed in Chief Justice Directive 06-03, the Court will provide an interpreter during court proceedings for a party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party; and the legal guardian or custodian of an adult party, if such person has limited English proficiency. A court proceeding for which an interpreter will be provided includes any hearing, trial or other appearance before the court.
- B. If an interpreter is required for this case, the attorney or unrepresented party shall notify the Court in writing at least 30 days before the court proceeding and specify the language being requested (e.g., Spanish). If a party has requested an interpreter and it turns out an interpreter is not needed (e.g., the case is continued or a settlement is reached) that party

must notify the Court. Notification must be provided to the court at least 72 hours before the scheduled court proceeding.

6. Miscellaneous:

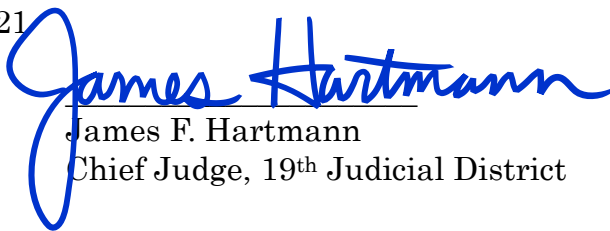
- A. The plaintiff shall send a copy of this Order to all other parties who enter an appearance, and shall file a certificate of mailing within 14 days following the entry of appearance.
- B. Any attorney entering an appearance in this case who is aware of a related case is ordered to complete and file in this case a document entitled, "Information Regarding Case(s)," to inform the Court of the related case(s) and stating whether consolidation is appropriate.

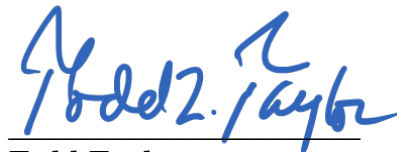
- 7. Sanctions:** If an attorney or unrepresented party fails to comply with this Order, the Court may dismiss the case without prejudice.

So Ordered:

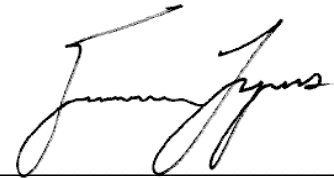
BY THE COURT:

October 26, 2021


James F. Hartmann
Chief Judge, 19th Judicial District



Todd Taylor
District Court Judge



Shannon Lyons
District Court Judge

I certify that the foregoing Initial Case Management Order was dispatched electronically to Plaintiff or Plaintiff counsel via ICCES

Dated: October 26, 2021

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 TH Ave. PO Box 2038 Greeley, CO 80631	DATE FILED: October 26, 2021 12:31 PM FILING ID: CBA8AD54A6844 CASE NUMBER: 2021CV30649
COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, Plaintiff, v. JESSICA KOENIG , in her official capacity as the Town Clerk of the Town of Firestone, Colorado, Defendant.	▲ COURT USE ONLY ▲
<i>Attorney for Plaintiff:</i> Scott E. Gessler, (28944), sessler@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Phone: (720) 839-6637	Case No: 2021CV30649
AMENDED WAIVER AND ACCEPTANCE OF SERVICE	

I, William P. Hayashi, as Attorney for the Town of Firestone, Colorado, accepts services for Jessica Koenig, in her official capacity as the Town Clerk of the Town of Firestone, Colorado hereby accept service and acknowledge receipt of Plaintiffs' (1) Complaint under C.R.S. § 31-4-502(1)(a)(I), (2) Summons, and (3) District Court Civil Case Cover Sheet.

It is agreed that this acceptance shall constitute personal service of process in accordance with Rule 4, C.R.C.P. upon Defendant Jessica Koenig, in her official capacity as the Town Clerk of the Town of Firestone, Colorado.

Dated this 26th day of October, 2021.



William P. Hayashi

DISTRICT COURT, WELD COUNTY, COLORADO 901 9TH Ave. PO Box 2038 Greeley, CO 80631		DATE FILED: November 15, 2021 4:27 PM FILING ID: 19CE63EAF5691 CASE NUMBER: 2021CV30649
Plaintiff(s): COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, v. Defendant(s): JESSICA KOENIG, in her official capacity as the Town Clerk of the Town of Firestone, Colorado		▲ COURT USE ONLY ▲
Josh A. Marks, Atty. Reg. # 16953 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 803302 Tel: (303) 402-1600 Fax: (303) 402-1601 jam@bhgrlaw.com		Case Number: 2021CV30649 Div.: 4 Ctrm.:
ENTRY OF APPEARANCE		

Josh A. Marks of Berg Hill Greenleaf Ruscitti LLP hereby enters his appearance as counsel on behalf of the Defendant Jessica Koenig in the above-captioned matter.

Respectfully submitted this 15th day of November, 2021.

BERG HILL GREENLEAF RUSCITTI LLP

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Josh A. Marks

Josh A. Marks

Attorney for Defendant Jessica Koenig

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2021, a true and correct copy of the foregoing **ENTRY OF APPEARANCE** was served electronically via CES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

Scott E. Gessler
Gessler Blue LLC
7350 E. Progress Place, Suite 100
Greenwood Village, CO 80111

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Cheryl Stasiak

Cheryl Stasiak

DISTRICT COURT, WELD COUNTY, COLORADO 901 9TH Ave. PO Box 2038 Greeley, CO 80631	
COMMITTEE SEEKING THE RECALL OF FIRESTONE TRUSTEES, Plaintiff, v. JESSICA KOENIG , in her official capacity as the Town Clerk of the Town of Firestone, Colorado, Defendant.	▲ COURT USE ONLY ▲
Josh A. Marks, Atty. Reg. # 16953 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 80302 Tel: (303) 402-1600 Fax: (303) 402-1601 jam@bhgrlaw.com	Case Number: 2021CV30649 Div.: 4 Ctrm.:
NOTICE OF FILING PETITION FOR REMOVAL	

Defendant, Jessica Koenig, in her official capacity as the Town Clerk of the Town of Firestone, Colorado (“Defendant”), through her undersigned counsel, Josh A. Marks, of BERG HILL GREENLEAF RUSCITTI LLP, and pursuant to 28 U.S.C. § 1446, notifies this Court of her removal of this action to the United States District Court for the District of Colorado as follows:

1. As more fully set forth in the attached Notice of Removal of Action Pursuant to 28 U.S.C. § 1441(a) (“Notice”), and pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 1441, and 1446, Defendants have removed this action to the United States District Court for the District of Colorado pursuant to that court’s federal question and supplemental jurisdictions because Plaintiff

Committee Seeking the Recall of Firestone Trustees bring a claim pursuant to the laws and Constitution of the United States. *See generally*, **Exhibit A**.

2. Pursuant to 28 U.S.C. § 1446(d), upon filing a copy of the attached Notice with the Clerk of this Court, removal of this action is effectuated to the United States District Court for the District of Colorado and this Court shall proceed no further unless and until the case is remanded.

Respectfully submitted this 16th day of November, 2021.

BERG HILL GREENLEAF RUSCITTI LLP

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Josh A. Marks

Josh A. Marks

Attorney for Defendant, Jessica Koenig

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November 2021, a true and correct copy of the foregoing **NOTICE OF FILING PETITION FOR REMOVAL** was served electronically via CES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

Scott E. Gessler
Gessler Blue LLC
7350 E. Progress Place, Suite 100
Greenwood Village, CO 80111
sgessler@gesslerblue.com

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Jessica M. Vecchio

Jessica M. Vecchio, Legal Assistant