



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

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### MEMORANDUM

TO: Mayor and City Council

FROM: Joel P. Landeen, City Attorney

DATE: 6-3-13

RE: Legal Validity of Signatures on Petition for Recall of Alderman Clayton

On Friday May 31<sup>st</sup> 467 pages of petitions were turned into the City Finance Office seeking to have Alderman Clayton recalled pursuant to SDCL 9-13-30. Of these petitions, 166 were removed due to the Circulation Verification Notary being filled out incorrectly, or based on the certification being provided by a non-resident of the State of South Dakota. The remaining petition pages contained 4,466 signatures leaving the petitions approximately 1,700 signatures short of the required number to place the recall of Alderman Clayton on the ballot.

Title 12 of the State Code governs elections in South Dakota. SDCL 12-1-2 states that Title 12 governs local elections, unless otherwise provided by a provision specifically governing local elections. SDCL 12-1-3(9) defines a "petition circulator" as "a resident of the State of South Dakota who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot." The Circulation Verification Notary that all petition circulators are legally required to sign has a blank for them to state their residence. Several of the petition circulators indicated their residence was not South Dakota.

The requirement that petition circulators be South Dakota residents was adopted during the 2007 legislative session as a direct response to the "Jail for Judges" initiative which sought to strip judges of their judicial immunity. It is a specific statutory requirement that a petition circulator be a resident of South Dakota. The Council does not have the authority, or discretion, to waive a specific statutory requirement and place the matter on the ballot. Pauline Sumption and I contacted the Secretary of State's Office this morning and confirmed that residency was required and our decision should be based on the information which the petition circulators provided.