

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: July 2, 2013 3:00 PM
<p><b>Plaintiff:</b> FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation; and STEVE WALDSTEIN, an individual; and ZELDA HAWKINS, an individual</p> <p>v.</p> <p><b>Defendant:</b> CITY AND COUNTY OF DENVER, a municipal corporation; and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, a public entity, and DEBRA JOHNSON, in her capacity as clerk and recorder of the City and County of Denver.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: 2013CV32444</p> <p>Courtroom: 376</p>
<b>ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION: C.R.C.P. 65</b>	

A hearing was held on June 12, 2013, and June 13, 2013, on Plaintiffs' Motion For Preliminary Injunction: C.R.C.P. 65, as amended by Plaintiffs' First Amended Motion For Preliminary And Permanent Injunction Pursuant to C.R.C.P. Rule 65 ("Plaintiffs' Motion"). The Court, having reviewed Plaintiffs' Motion and all filings of the parties related thereto, having received evidence in the form of testimony and exhibits and having heard arguments of counsel, hereby FINDS as follows:

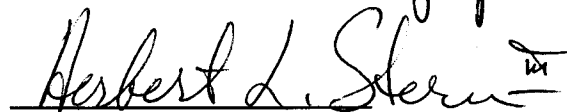
1. To the extent the Plaintiffs sought to enjoin the City from conveying the subject property to DPS on the theory that the conveyance requires voter approval under Denver Charter section 2.4.5, the Plaintiffs have not demonstrated a probability of success on the merits. The Plaintiffs did not establish that the property has ever been designated as a park by ordinance. Furthermore, the Plaintiffs did not demonstrate that the property was a "park belonging to the city as of December 31, 1955" to the extent voter approval would be required prior to conveyance of the property. See: *Hall v. Denver*, 115 Colo. 538, 177 P.2d 234 (Colo. 1946).

2. To the extent the Plaintiffs sought to enjoin the Clerk and Recorder from 'interfering' with their right to circulate referendum petitions, the Plaintiffs have not demonstrated a probability of the success on their claim that the Clerk erred in rejecting their petition forms. In particular, the Plaintiffs did not establish that the City ordinance approving the real estate contract with DPS (Ordinance No. 170, series of 2013) was legislative in nature and thus subject to referendum within the meaning of Art. V, Sec. 1(9) of the Colorado Constitution and the Denver Charter. See: *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013).

3. Because the Plaintiffs have not demonstrated a probability of success on the merits of their claim as required by *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982), it is unnecessary to address the other standards governing preliminary injunctions.

Therefore, the Plaintiffs' Motion is hereby DENIED.

SO ORDERED this 5<sup>th</sup> day of July 2013.

Handwritten signature of Herbert L. Stern III in cursive script, with a horizontal line underneath the signature.

Herbert L. Stern III

District Court Judge