

Larimer County, Colorado, District Court
Larimer County Justice Center
201 La Porte Avenue, Suite 100
Fort Collins, Colorado 80521-2761
(970) 494-3500

LARRY SARNER, pro se

Plaintiff/Contestor,

v.

Court Use Only

CITY OF LOVELAND,

Defendant/Contestee,

AND

ANGELA MYERS, Larimer County Clerk and Recorder

Jeannine S. Haag, Reg. No. 11995
William G. Ressue, Reg. No. 34110
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Case No. 16 CV 230

Courtroom 5C

**MOTION TO DISMISS LARIMER COUNTY CLERK AND RECORDER
ANGELA MYERS**

Angela Myers, Larimer County Clerk and Recorder ("Clerk"), by and through her undersigned counsel, respectfully moves the Court to dismiss her as a party in this ballot issue contest pursuant to C.R.C.P. Rule 12(b)(5). In support, Clerk states as follows:

1. On August 25, 2016, Plaintiff/Contestor Larry Sarner ("Sarner") filed a "Contest Concerning the Form and Content of an Election Ballot Question, and for Enforcement of C.R.S. §1-45-117 Prohibiting the Use of Public Funds for Electioneering" (the "Complaint"). The Clerk is named as an indispensable party and was served with the Summons and Complaint on August 30, 2016.

2. The Complaint does not state a claim against the Clerk but alleges she is “responsible for placing ballot measures before the electors of Larimer County” and is “an indispensable party to this contest for enforcement of the orders of this Court” (*Complaint, para. 3 and 9*). However, as explained below, ballot title contests are limited proceedings and there is no authority for the joinder of the Clerk as a party.

3. The General Assembly has adopted exclusive statutory procedures for pre-election contests concerning the content of ballot issues (C.R.S. §1-11-203.5; *Cacioppo v. Eagle County School Dist. Re-50J*, 92 P.3d 453, 460 (Colo. 2004)). For contests regarding local ballot issues, the contestee “shall be … the political subdivision that proposed to place the contested ballot issue or ballot question on the ballot…” (C.R.S. §1-11-203.5(2)). If a sufficient bond is filed and jurisdiction is accepted, the Court shall review the contested ballot language. If errors are discovered, the Court shall provide the corrected text in an order, and the ballot issue “shall be certified by the … political subdivision to the county clerk and recorder, to be voted upon at the election....” C.R.S. §1-11-203.5(4), *emphasis added*.

4. Pursuant to the above quoted statute, if the Court changes the text of the contested ballot issue, the corrected text is to be certified to the Clerk by the City of Loveland. This procedure, in addition to being the exclusive statutory procedure, acknowledges that the power to refer the ballot issue in question belongs to the City of Loveland rather than the Court.

5. The relief sought by Sarner with respect to the Clerk is contrary to the exclusive statutory procedure for this election contest and therefore the Clerk is not a proper party and should be dismissed.

WHEREFORE, Clerk respectfully moves the court to dismiss the Clerk from this action.

Dated: September 6, 2016

LARIMER COUNTY ATTORNEY’S OFFICE

By: s/William Ressue
Jeannine S. Haag, Reg. No. 11995
William G. Ressue, Reg. No. 34110
Attorneys for Angela Myers, Larimer County
Clerk and Recorder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO DISMISS LARIMER COUNTY CLERK AND RECORDER ANGELA MYERS was served via Integrated Colorado Courts E-Filing System (“ICCES”), via email and/or via U.S. Mail, first class, postage prepaid on the following on the 6th day of September, 2016:

via email and U.S. Mail

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s/Jennifer D. Pettus