

Larimer County, Colorado, District Court Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500	<div></div> <div>Court Use Only</div>
<p>LARRY SARNER, pro se</p> <p>Plaintiff/Contestor,</p> <p>v.</p> <p>CITY OF LOVELAND,</p> <p>Defendant/Contestee,</p> <p>AND</p> <p>ANGELA MYERS, Larimer County Clerk and Recorder</p>	
Jeannine S. Haag, Reg. No. 11995 William G. Ressue, Reg. No. 34110 Larimer County Attorney's Office 224 Canyon Ave., Suite 200 Post Office Box 1606 Fort Collins, Colorado 80522 Telephone: (970) 498-7450 Fax: (970) 498-7430 jeanninehaag@larimer.org wressue@larimer.org	<div>Case No. 16 CV 230</div> <div>Courtroom 5C</div>
<p align="center">MOTION TO DISMISS LARIMER COUNTY CLERK AND RECORDER ANGELA MYERS</p>	

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

Larry Sarner
711 West Ninth Street
Loveland, Colorado 80521
larry.sarner@gmail.com
Pro Se Plaintiff/Contestor

via ICCES

Thomas W. Snyder
Thomas A. Isler
KUTAK ROCK LLP
1801 California St., Suite 3000
Denver, CO 80202
thomas.snyder@kutakrock.com
thomas.isler@kutakrock.com
Attorneys for Defendant City of Loveland

Alicia R. Calderón
Assistant City Attorney
City Attorney's Office
Civic Center
500 E. Third St., Suite 330
Loveland, CO 80537
Tel: 970-962-2545
alicia.calderon@cityofloveland.org
Attorneys for Defendant City of Loveland

s/Jennifer D. Pettus