EIGHTH JUDICIAL DISTRICT COURT, STATE OF COLORADO Court Address: Larimer County Justice Center 201 Laporte Avenue Fort Collins, Colorado 80521 Telephone: 970-494-3500	▲ COURT USE ONLY ▲
Contestor: Larry Sarner, *v.* **Contestee:** City of Loveland. **Party without attorney:** Larry Sarner, *pro se* 711 West Ninth Street Loveland, Colorado 80521 Telephone: 970-667-7313 larry.sarner@gmail.com	Case Number: **16 CV 230** Courtroom: **5C**

MOTION TO VACATE JUDGMENT

Comes now the Contestor, Larry Sarner, *pro se*, to move this Court, under CRCP 60(b)(3), to vacate its judgment in favor of the Contestee. In support thereof, he states the following:

1. On the 5th day of November, 2016, this Court dismissed this Case for lack of standing on my part. (Orders re Ballot Title Questions, p. 9) Simultaneously and in the same document, the Court "[i]n the alternative" also entered judgment in favor of the Contestee, based on consideration and findings of some, but not all, of the merits of the case.

2. Standing to bring suit is a threshold issue. If I did not have standing to bring this suit, the Court does not have jurisdiction in this case. By dismissing my Petition for Contest ("Because Mr. Sarner lacks standing, this Court dismisses his Complaint [sic]." *Id*.), the Court was declining jurisdiction.

3. That the Court then went on to make findings of fact and law in the case after dismissal on jurisdictional grounds, is atypical and the Court gave no procedural justification or basis for doing so, except to express an apparent desire to opine on a case in which the judge had the parties uselessly go through an evidentiary hearing. ("Assuming *arguendo* Mr. Sarner has standing to contest the ballot titles, the Court considers his argument that the ballot titles are misleading." Orders, p. 9; see also p. 13.)

4. Utilizing findings made through the questionable process above, the Court then "[i]n the alternative" denied the requests for relief in my Petition and, "[a]s such, judgment enters in favor of Defendant [sic] City of Loveland and against Mr. Sarner." *Id*., p. 13. Entering judgment after declining jurisdiction is a profound error on the part of the Court. *Whitten v. Coit,* 153 Colo. 157, 385 P2d 131 (1963). (There is no question but that in Colorado, as elsewhere, a judgment rendered without jurisdiction is void and may be attacked directly or collaterally.)

Moreover, the judgment entered by the Court is mistaken, under CRCP 60(b)(1), as it is not predicated on findings of fact or law on *all* matters properly brought before the Court in my Petition of Contest, to wit:

5. The very first "finding" of the Court was to mistakenly find against my First and Second Grounds of my Contest in their entirety:

> In the Complaint [sic], Mr. Sarner submits a First Ground for Contest, a Second Ground for Contest, and a Third Ground for Contest. *In essence, these are his claims for relief.* However, at the hearing [sic] he did not present evidence or argument in support of the First Ground for Contest or the Second Ground for Contest. As such, the Court finds that he has either withdrawn those grounds for contest or has failed to prevail on either of those grounds because neither evidence nor argument was introduced as to these grounds. [emphasis added]

6. As the Court has constantly done throughout this case, it has followed the lead of counsel for the Contestor and attempted to shoehorn this *election contest* into the form of an ordinary civil proceeding instead of accepting that the statutory process found in CRS §1-11-203.5 is structured to summarily adjudicate disputes over ballot titles and ballot questions before the election

thereon is held. My *verified* Petition—required by statute—was not a civil *complaint*. My Grounds for the Contest were not, in essence or in fact, *claims* for relief. The exhibits attached to my petition, and re-introduced at trial, were *evidence* referenced in all three Grounds laid out in the Petition; they may or may not have been sufficient, but they were *neither* absent nor unintroduced. In my "pre-trial brief" (¶¶3-4), I stated,

> "I leave my discussions of the law, and the applicability to my challenges made[,] to those in my verified petition … I expect to show at trial that my first through third grounds in my verified petition are sustainable …"

Again, I may or may not have been successful in showing sufficiency for my grounds, but they definitely were not *withdrawn* or *unargued*, as stated by the the Court in its findings.

7. Statute provides that election contests, such as this one, shall be "summarily adjudicated" by the Court. That does allow decisions to be made without perfecting process during the hearing. *Ray v. Mickelson*, 584 P2d 1215, Colo 1978. Thus, strict adherence to procedural requirements is not the rule. So long as due process is afforded and a fair hearing is provided the contestants, the statutory requirements can be deemed satisfied. However, it is not due process for the Court to impose strict adherence to non-statutory *procedural* requirements without notice, especially when I, as a *pro se* contestor, had demonstrably made an effort to litigate the matter as envisioned by the statute.

8. On the third Ground for the Contest—about whether ballot language was misleading and in need of being re-formed—the Court in its findings completely ignored evidence provided at trial by an expert witness, the Larimer County Assessor, that the ballot language of the Second Ballot Question was incorrect, which would mean that the ballot language was facially misleading. Entering judgment for the Contestee without making a finding about such evidence is error justifying vacation of the judgment.

9. As plainly stated in my Petition, and in my opening and closing at trial, this election contest is a TABOR enforcement action in that a determination was sought as to whether the form and content of the ballot questions conformed to Art. X, Sec. 20, of the state Constitution. Yet, not one of the findings in the Court's Order addressed *any* of my Petition's allegations in that regard.

Now, therefore, I move that this Court vacate its judgment in favor of the Contestee and against me.

Respectfully submitted this 17th day of November, 2016.

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Larry Sarner, Contestor

Certificate of Delivery

I hereby certify that on November 17, 2016, I have delivered copies of this **MOTION TO VACATE JUDGMENT**, by email as authorized by the Court, to the following counsel:

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