

DISTRICT COURT, LARIMER COUNTY,
STATE OF COLORADO
201 La Porte Ave., Suite 100
Fort Collins, CO 80521
Tel: 970-494-3500

Plaintiff: **LARRY SARNER, an individual, *pro se***

v.

Defendants: **CITY OF LOVELAND; and
ANGELA MYERS, LARIMER COUNTY
CLERK AND RECORDER**

Attorneys for Defendant City of Loveland:

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Case No.: 2016cv230

Division: 5C

**DEFENDANT CITY OF LOVELAND'S RESPONSE TO
PLAINTIFF'S MOTION TO VACATE JUDGMENT**

Defendant City of Loveland (the “City”), by and through its counsel, hereby submits this response to Plaintiff Larry Sarner’s Motion To Vacate Judgment (the “Motion”), filed November 17, 2016, and states as follows:

1. On November 3, 2016, the Court held a trial/hearing on Sarner’s ballot question contest, pursuant to C.R.S. § 1-11-203.5.
2. On November 5, 2016, the Court dismissed the Complaint and entered judgment in favor of the City. *See* Order re Ballot Title Questions (the “Order”) at 13.

3. Sarner now moves, under C.R.C.P. 60(b)(3), to vacate the judgment because, in his view, the Court erred in making alternative holdings that (1) Sarner lacked standing, and (2) even if he had standing, his ballot question contest failed as a matter of law. Mot. ¶¶ 3–4. Sarner disagrees with the result and reasoning of the Court. *Id.* ¶¶ 4–9.

4. Rule 60(b)(3), C.R.C.P., permits a court to “relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (3) the judgment is void . . .” A judgment is void “if the court lacked personal jurisdiction over the parties or subject matter jurisdiction over the cause of action.” *Nickerson v. Network Solutions, LLC*, 339 P.3d 526, 529 (Colo. 2014).

5. A judgment is not void because it contains alternative holdings. There is nothing procedurally improper about a court making alternative, sufficient holdings in an opinion, order, or judgment. Indeed, this is a common practice that promotes efficiency and avoids wasteful remands. *See e.g., Colo. Gen. Assembly v. Owens*, 136 P.3d 262, 264 (Colo. 2006) (“we agree with the court’s alternative holding . . .”); *Cordova v. Pueblo W. Metro. Dist.*, 986 P.2d 976, 979 (Colo. App. 1998) (affirming “the trial court’s alternative holding”); *see also People v. Moore*, 900 P.2d 66, 70 n.6 (Colo. 1995) (“Our alternative holding was that the search of the purse was justified . . .”). The propriety of the practice is underscored by Sarner’s statement that he indeed plans to appeal.

6. Contrary to Sarner’s assertion, the Court did not lack personal or subject matter jurisdiction when it addressed the merits of Sarner’s contest, assuming *arguendo* that he had standing to bring it. Again, this is a common practice. *See Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094, 1100 (Colo. App. 1996) (holding that Colorado Compensation Insurance Authority

lacked standing to bring a challenge, but holding in the alternative that if the Authority had standing, the challenge lacked merit). Here, the Court properly exercised personal jurisdiction over Sarner, as *he initiated this action in this Court*. And the Court properly exercised subject matter jurisdiction over the ballot title challenge under C.R.S. § 1-11-203.5(1)–(2). By making alternative, sufficient holdings, the Court efficiently adjudicated the action and set up all appropriate issues for review on appeal. Because the judgment is not void, Sarner’s Motion must be denied.

7. Sarner’s Motion is, in other respects, a request for reconsideration. Sarner disagrees with the Court’s view of the evidence presented at the November 5th hearing and its view of the legal issues properly contained in a ballot question challenge under C.R.S. § 1-11-203.5. Sarner’s contentions about the nature of the ballot question challenge have been previously raised, considered by the Court, and rejected. The Court correctly analyzed each of Sarner’s arguments regarding the allegedly misleading nature of the ballot title, and properly rejected each argument. *See* Order at 10–14. Sarner has not presented any grounds that warrants reconsideration of the Court’s Order. *See* C.R.C.P. 59(a)–(f).

8. Sarner further contends that he did not withdraw or fail to introduce evidence on the First and Second Grounds for the Contest. Mot. at ¶¶ 5–6. In support, Sarner quotes his pre-trial brief, in which he stated that he would “*show at trial* that my first through third grounds in my verified petition are sustainable.” *Id.* ¶ 6 (emphasis added). The City contends that Sarner did not “*show at trial*” that his First and Second Grounds are sustainable, and therefore agrees with the Court that he withdrew those claims or failed to introduce evidence at trial in support thereof.

9. Defendant City of Loveland requests that the Court deny the Motion.

Respectfully submitted this 6th day of December, 2016.

KUTAK ROCK LLP

s/ Thomas W. Snyder
Thomas W. Snyder, #33106

Attorneys for Defendant City of Loveland

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2016, a true and correct copy of the foregoing **DEFENDANT CITY OF LOVELAND'S RESPONSE TO PLAINTIFF'S MOTION TO VACATE JUDGMENT** was served as indicated below on the following:

Served via electronic mail and U.S. Mail, first class postage prepaid:

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Pro se Plaintiff

s/ Becky Franson _____