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| DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO | |
| Court Address: 100 Jefferson County Parkway Golden, Colorado 80401 | |
| Plaintiff: RUSSELL WEISFIELD v. Defendants: THE CITY OF ARVADA, a municipal corporation and political subdivision of the State of Colorado; MARC WILLIAMS, in his official capacity as Mayor of the City of Arvada; BOB DYER, in his official capacity as a councilmember for the City of Arvada; BOB FIFER, in his official capacity as a councilmember for the City of Arvada; DON ALLARD, in his official capacity as a councilmember for the City of Arvada; JOHN MARRIOT, in his official capacity as a councilmember for the City of Arvada; and MARK McGOFF, in his official capacity as a councilmember and Mayor Pro Tem for the City of Arvada; | |
| Attorney For Plaintiff: Elliot Fladen, #36784 TIMMINS LLC 450 East 17 th Avenue, Suite 210 Denver, Colorado 80203 Phone Number: (303) 592-4500 FAX Number: (303) 592-4515 Email: ef@tiomminslaw.com | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2014-CV-30183</p> <p>Division: 8</p> |
| AMENDED DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT | |

1. This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Check one of the following:

☐ This case is governed by Chief Justice Directive ("CJD") 11-02 and the "Colorado Civil Access Pilot Project Rules Applicable to Business Actions in District Court" because:

- The case is filed within the period of January 1, 2012 through December 31, 2014; AND
- The case is filed in a Pilot Project participating jurisdiction (Adams County, Arapahoe County, Denver County, Gilpin County, or Jefferson County); AND
- The case is a "Business Action" as defined in CJD 11-02, Amended Appendix A for inclusion in the Pilot Project.

☒ This case is not governed by the Colorado Civil Access Pilot Project Rules.

NOTE: Cases subject to the Colorado Civil Access Pilot Project must be governed by the Rules in CJD 11-02 (available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm). The presiding judge will review Item 2 for accuracy. The designation on this initial Cover Sheet will control unless the Court orders otherwise.

3. If this case is not governed by the Colorado Civil Access Pilot Project Rules as indicated in Item 2, check the following:

☒ This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; **AND**
- A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

☐ This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

☐ The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

☐ A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).

☐ A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

☐ C.R.C.P. 16.1 applies to this case.

☐ C.R.C.P. 16.1 does not apply to this case.

4. ☐ This party makes a Jury Demand at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

TIMMINS LLC

Duly signed original on file at the offices of TIMMINS LLC

Date: January 28, 2014

/s/ Elliot Fladen
Elliot Fladen

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| DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO Court Address: 100 Jefferson County Parkway Golden, CO 80401 | |
| Plaintiff: RUSSELL WEISFIELD v. Defendants: THE CITY OF ARVADA, A Municipal Corporation And Political Subdivision Of The State Of Colorado; MARC WILLIAMS, In His Official Capacity As Mayor Of The City Of Arvada; BOB DYER, In His Official Capacity As A Councilmember For The City Of Arvada; BOB FIFER, In His Official Capacity As A Councilmember For The City Of Arvada; DON ALLARD, In His Official Capacity As A Councilmember For The City Of Arvada; JOHN MARRIOT, In His Official Capacity As A Councilmember For The City Of Arvada; MARK MCGOFF, In His Official Capacity As A Councilmember And Mayor Pro Tem For The City Of Arvada | ▲ COURT USE ONLY ▲ |
| ATTORNEYS FOR PLAINTIFF Elliot Fladen, #36784 TIMMINS LLC 450 East 17 th Street, Suite 210 Denver, Colorado 80203 Telephone: (303) 592-4500 Facsimile: (303) 592-4515 ef@timminslaw.com | Case Number: Division: |
| COMPLAINT | |

Plaintiff Russell Weisfield, by and through his counsel, Timmins LLC, for his claims against the Defendants, states as follows:

I. PARTIES

1. Weisfield is a resident of District 1 for the City of Arvada in Jefferson County, Colorado.

2. The City of Arvada (referred to alternatively as “Arvada” and the “City”) is a Municipal Corporation and a Political Subdivision of the State of Colorado.

3. Marc Williams is the Mayor of the City of Arvada who attended, and who voted by secret ballot, at the January 10, 2014 special council meeting which selected Jerry Marks for the City of Arvada District 1 vacancy (the “Special Meeting”).

4. Bob Dyer is the Arvada City Council member who attended, and who voted by secret ballot, at the Special Meeting.

5. Bob Fifer is the Arvada City Council member who attended, and who voted by secret ballot, at the Special Meeting.

6. Don Allard is the Arvada City Council member who attended, and who voted by secret ballot, at the Special Meeting.

7. John Marriott is the Arvada City Council member who attended, and who voted by secret ballot, at the Special Meeting.

8. Mark McGoff is the Arvada City Council member and Mayor Pro Tem of Arvada who attended, and who voted by secret ballot, at the Special Meeting (collectively Williams, Dyer, Fifer, Allard, Marriott, and McGoff are the “Individual Defendants”).

II. JURISDICTION AND VENUE

9. This Court has jurisdiction and venue over this action pursuant to Rule 98(b) because it involves allegations, arising in Jefferson County, that public officers failed to comply with the Colorado Sunshine Act of 1972, as amended.

III. GENERAL ALLEGATIONS

10. On or about November 27, 2013, Colorado State Senator for Senate District 19, Evie Hudak, resigned her State Senate seat.

11. On or about December 10, 2013, a Democratic Party Vacancy Committee selected Rachel Zenzinger, Arvada City Council Member for District 1, to fill the vacancy in Colorado Senate District 19 that Hudak’s resignation caused.

12. Upon being selected to succeed Hudak, Zenzinger resigned her Arvada City Council seat, creating a vacancy on that council (the “Vacancy”).

13. On January 10, 2014, the Mayor and City Council conducted the Special Meeting to fill the Vacancy.

14. At the Special Meeting, the Mayor and Council decided between five finalists to fill the Vacancy (the “Finalists”). See Video from the Special Meeting (the “Video”), available for download at <http://katv.arvada.org/vod/204-1CityCouncilMeeting011014.wmv> (last accessed January 21, 2014).

15. The five finalists were Rebecca Anderson (see the Video at 7:15), John Crouse (see the Video at 10:37), Kathleen Drulard (see the Video at 11:50), Jerry Marks (see the Video at 13:17), and Nancy Murray (see the Video at 16:37).

16. During the Special Meeting, Mayor Williams described the procedure the Individual Defendants would use to fill the Vacancy (see the Video from 2:36:05 to 2:38:15). Mayor Williams stated that if there is one Finalist “who receives four or more initial votes, that will be our new council member and then we will entertain a motion from someone on the [inaudible] council to appoint that individual. . . . [I]f we do not have four votes in that initial ballot we will eliminate from further consideration any candidates who did not receive any votes in that first vote. . . . We will continue on through that process until we hopefully get to one candidate having four votes” (see the Video from 2:36:38 to 2:37:36).

17. Mayor Williams made clear, during his explanation of the procedures to fill the Vacancy, that voting was to be by secret ballot. Specifically, Mayor Williams stated that “we will each be marking with a checkmark so that no one will ever know which one of us were X’s or O’s or or [sic] some other form of marking, so we will all use a checkmark designation on the ballots” (see the Video from 2:37:44 to 2:37:59; see also Agenda of City of Arvada “Special” City Council Meeting for January 10, 2014 (the “Agenda”, attached as Exhibit A) Agenda Item 4 (stating “Candidate Forum For District 1 Council Member Vacancy”); and Agenda Item 5 (stating “Voting By Secret Ballot”). After his explanation, one council member and Mayor Williams even discussed, and decided, how the ballots should be folded to hide the identity of which council member cast each specific ballot (see the Video from 2:38:17 to 2:38:40).

18. During the first round of voting (the “First Round”), Crouse received two votes, Drulard received two votes, Anderson received one vote and Marks received one vote (see the Video from 2:57:26 to 2:57:35). As a result, the Individual Defendants eliminated Murray from further consideration in filling the Vacancy upon the First Round’s conclusion (see the Video from 2:57:40 to 2:57:56).

19. During the second round of voting (the “Second Round”), Crouse received two votes, Marks received two votes, Anderson received one vote, and Drulard received one vote (see the Video from 2:59:23 to 2:59:32). As a result, the Individual Defendants decided to have a third round of voting (see the Video from 2:59:42 to 2:59:47).

20. During the third round of voting (the “Third Round”), Crouse received three votes, Marks received two votes, and Anderson received one vote, and Drulard received zero votes (see the Video from 3:01:03 to 3:01:10). As a result, the Individual Defendants eliminated

Drulard from further consideration in filling the Vacancy upon the Third Round's conclusion (see the Video from 3:01:14 to 3:01:24).

21. During the fourth round of voting (the "Fourth Round", collectively with the First, Second, and Third Rounds referred to as the "Four Rounds Of Secret Voting"), Marks received five votes and Crouse received one vote (see the Video from 3:02:27 to 3:02:31). As a result, the Individual Defendants eliminated Crouse and Anderson from further consideration.

22. The Fourth Round resulted in the Individual Defendants selecting Marks to fill the Vacancy.

23. After the Fourth Round's conclusion, Mayor Williams entertained a Motion from Council (see the Video from 3:02:38 to 3:02:42; see also the Agenda at Agenda Item 6 (stating "Motion to Appoint District 1 Council Member")). Council Member Dyer then moved that Marks fill the Vacancy (the "Motion") (see the Video from 3:02:43 to 3:02:52).

24. The Individual Defendants voted unanimously, by a non-secret ballot, to approve the Motion and have Marks fill the Vacancy (see the Video at 3:03:07 to 3:03:14).

25. On information and belief, Marks was sworn in to fill the Vacancy on January 13, 2014.

IV. CLAIM FOR RELIEF

Claim For Relief

(Violation of the Colorado Sunshine Act)

26. Plaintiff hereby incorporates and realleges paragraphs 1 through 25 as if fully set forth herein.

27. The City of Arvada is a Political Subdivision of the State of Colorado as set forth in C.R.S. § 24-6-402(1)(c).

28. Special Meeting constituted a Meeting of a Local Public body as set forth in C.R.S. § 24-6-402(1)(a) & (b).

29. The Four Rounds Of Secret Voting and the Motion did not involve a vote, or votes, to elect leadership of a state or local public body by that same public body.

30. The Four Rounds Of Secret Voting involved the adoption of a proposed policy, position, resolution, rule, or regulation or taking of formal action by votes that were solely cast in such a way that the identity of the person voting or the position taken in such vote was withheld from the public.

31. Accordingly, the Four Rounds Of Secret Voting violated C.R.S. § 24-6-402(2)(d)(IV).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

1. For a declaration that the Four Rounds Of Secret Voting violated C.R.S. § 24-6 402(2)(d)(IV).
2. For a declaration that the Four Rounds Of Secret Voting and the Motion are not valid under C.R.S. § 24-6 402(8).
3. For a declaration that Marks is not, and has not been, validly serving as a Council Member since his swearing in and that all of his votes are rendered null and void.
4. For an order enjoining Marks from serving as the Arvada Council Member that is filling the Vacancy unless and until he is selected by a process that complies with Colorado Law.
5. For an order forever enjoining the City of Arvada from violating C.R.S. § 24-6 402(2)(d)(IV) in the event of future City Council vacancies.
6. For an award of Plaintiff's costs and reasonable attorney fees pursuant to C.R.S. § 24-6 402(9).

Dated: January 27, 2014

TIMMINS LLC

*Duly signed original on file at the offices of
Timmins LLC*



Elliot Fladen, #36784
Attorneys for Plaintiff

Address of Plaintiff:
7340 W. 74th Place
Arvada, CO 80003



City of Arvada
“Special” City Council Meeting
JANUARY 10, 2014 (Continued into January 11, 2014 if
necessary)

CITY COUNCIL CHAMBERS
Regular Business

Councilmembers:

Marc Williams, Mayor
Mark McGoff, Mayor Pro-Tem
Don Allard, At large
Bob Dyer, District 4
Bob Fifer, At large
John Marriott, District 3

Staff Members Usually Present:

Mark Deven, City Manager
Bill Ray, Deputy City Manager
Michele Hovet, Deputy City Manager
Chris Daly, City Attorney
Bob Manwaring, Director of Public Works
Jim Sullivan, Director of Utilities
Mike Elms, Director of Community Development
Lisa Yagi, Interim Director of Finance
Christine Koch, City Clerk

Info: 720-898-7500

CITY COUNCIL MEETING – CITY COUNCIL CHAMBERS
8:00 A.M.

1. Call to Order – 8:00 a.m.
2. Pledge of Allegiance
3. Roll Call of Councilmembers
4. Candidate Forum for District 1 Council Member Vacancy
5. Voting by Secret Ballot
6. Motion to Appoint District 1 Council Member
7. Adjournment (Unless Special Meeting is continued to Saturday, January 11)