

<p>FIRST JUDICIAL DISTRICT, STATE OF COLORADO JEFFERSON COUNTY DISTRICT COURT</p> <p>100 Jefferson County Parkway Golden, Colorado 80401 (303) 271-6135</p>	<p>DATE FILED: July 24, 2014 CASE NUMBER: 2014CV31089</p>
<p>COLORADO UNION OF TAXPAYERS, ET AL., Plaintiff.</p> <p>v.</p> <p>WEST METRO FIRE PROTECTION DISTRICT, ET AL., Defendant.</p>	<p>COURT USE ONLY</p> <p>Case Number: 2014CV31089</p> <p>Division: 11 Ctrm: 4B</p>
<p style="text-align: center;">JUDGEMENT</p>	

THIS MATTER COMES before the Court following a three day trial to the Court held on July 9 – July 11, 2014 (the “Trial”). Plaintiff-contestors were represented by attorneys Marcus Zarlengo and Michael Davis. Defendant-contestees were represented by Catherine Tellerico and Adele Reester.

I. BACKGROUND

This suit concerns the May 6, 2014 election (“Election”) for the West Metro Fire Protection District (“District”). Pursuant to a District resolution, the Election was an “independent mail ballot election,” conducted pursuant to Part 11 of the Local Government Election Code, C.R.S. § 1-13.5-101, *et seq.* The election sought to decide four contested matters, the election of directors to the District’s Board of Directors for districts 1, 2 and 3, and Ballot Issue 4A, a mill levy increase.

Plaintiffs filed their Complaint on June 2, setting forth seven claims against Defendants regarding the Election: (1) violation of Defendants’ right to secrecy in voting under Section 8, Article VII of the Colorado Constitution and C.R.S. §§ 1-13.5-1102(2) and 1-13.5 1105; (2) malconduct, fraud and/or corruption by election judges and designated election officials sufficient to change the result of the Election, pursuant to C.R.S. § 1-13.5-1401; (3) violation of procedural due process under the Federal and State constitutions; (4) violation of substantive due process under the Federal and State Constitutions; (5) declaratory relief, pursuant to C.R.S. § 13-51-101 *et seq.*; (6) a claim for attorneys’ fees and costs pursuant to C.R.S. § 1-11-218(1); and, (7) a claim for attorneys’ fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

The Complaint focuses on the District’s ballot processing procedure. Plaintiffs allege that the District’s ballot processing procedures allowed for, and resulted in, election judges, designated election officials, election watchers and media observers viewing exposed voted ballots simultaneously with the names of the voters who cast the ballots. This stemmed from

several practices employed by the District, including: improper removal of ballots from the secrecy sleeve; simultaneous access by certain election judges to a voted ballot and the ballot's individual stub number; and, the use of a "sticky note" to highlight ballots from potential duplicate voters. Defendant's Answer states that the procedures employed by the election judges and election officials stemmed from several unanticipated events, including a greater number of ballots received than initially anticipated, as well problems with the voter lists, which included potential underage and duplicate voters which needed to be addressed.

On June 18, Defendants filed the *Motion to Sever the Third, Fourth, a Portion of the Fifth and the Seventh Claims for Relief from the Election Contest Trial* ("Motion to Sever") which – following Plaintiffs withdrawal of their initial objection – was granted by the Court at a telephone conference held on July 2. Pursuant to the Motion to Sever, the Court severed the First and Second claims in their entirety, as well as Claims Five and Six, to the extent that such claims pertained to Plaintiffs' election challenge. Pursuant to C.R.A. § 1-13.5-1401, *et seq.* (the "Election Contest Statute"), the Court proceeded with the Trial on an expedited basis on Plaintiffs' First and Second Claims, in their entirety. With respect to Plaintiffs' Fifth Claim, the Court proceeded on the following claims for declaratory relief: (i) no person was duly elected pursuant to the Election; (ii) the Directors elected pursuant to the Election are enjoined from taking any further action in an official capacity as District Directors; (iii) any and all actions purportedly taken by the District's Board of Directors since the Election was certified are null and void *ab initio*; (iv) the Election results are set-aside and void *ab initio* in its entirety; and (v) the director vacancies resulting from the declaratory relief shall be addressed as permitted by law.

Following the presentation of Plaintiffs' case-in-chief, Defendants' motioned the Court for a directed verdict as to all claims. The Court granted the motion with respect to Plaintiffs' statutory claims, finding that, considering the evidence presented in the light most favorable to Plaintiffs, no evidence of malconduct, fraud and/or corruption had been presented. In addition, the Court found that, given the results of the canvas, no error, mistake, or misconduct could have changed the result of the Election. The Court however, denied the motion with respect to Defendants' First Claim regarding violation of their Constitutional right to a secret ballot.

II. FINDINGS OF FACT

THE COURT FINDS that, in the Election, more than 34,000 votes were cast. In the previous District board election, that did not include a TABOR question, 515 votes were cast. In the District special election in 2006, which had both directors and a mill levy increase on the ballot, 5,249 votes were cast.

THE COURT FURTHER FINDS that all of the election judges and designated election officials participating in the election took the oath required by C.R.S. § 1-13.5-407.

THE COURT FURTHER FINDS that no election judge, designated election official, or any assistant to an election judge or official attempted to discover or actually did discover how any elector voted.

THE COURT FURTHER FINDS that there is no evidence of any violation or breach of the oaths taken by the election judges and election officials.

THE COURT FURTHER FINDS that the identities of all electors as to the ballots they cast were kept secret with one exception. The only evidence of a violation of voter secrecy came from the testimony of a media watcher. She testified that she attempted to discover, and did discover, the vote of one elector while observing as a media watcher.

III. CONCLUSIONS OF LAW

The Court finds that Plaintiffs have failed to meet their burden of showing by a preponderance of the evidence that there was any denial of, or violation of, any elector's right to a secret ballot.

Article VII, Section 8 of the Colorado Constitution provides, in pertinent part:

All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it. The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted. In all cases of contested election in which paper ballots are required to be used, the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law. Nothing in this section, however, shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting is preserved.

To show a constitutional violation of this provision, Plaintiffs must show that election judges, in fact, affirmatively discovered electors' votes. *Jones v. Samora*, 318 P.3d 462 (Colo. 2014). Voiding an entire election, *ab initio*, is appropriate only where it can be shown that the entire election was conducted without secret ballots. *Id.*, at 471 (citing *Taylor v. Pile*, 391 P.2d 670 (Colo. 1964)). Finding that an entire election was conducted without secret ballots requires a showing that the ballots were not secret at the time electors voted, or that electors were intimidated or were otherwise not free to vote as they wished. *Id.*

Plaintiffs have failed to show that any election judge, designated election official, or any assistant to an election judge or official, affirmatively discovered the vote of any elector; that ballots were not secret at the time electors completed them; or, that electors were not free to vote as they wished. Plaintiffs failed to show that the oath taken by election judges and election officials was breached. Although evidence was presented at trial that ballots were removed from secrecy sleeves and temporary sticky notes were placed on potential duplicate ballots, this did not result in a violation of electors' constitutional right to a secret vote. The Court therefore finds that voiding the Election, *ab initio*, is not appropriate and therefore, Plaintiffs' additional claims for declaratory relief and claim for attorneys' fees and costs pursuant to C.R.S. § 1-11-218(1) are moot.

IV. ORDER

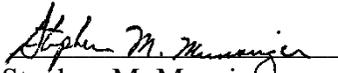
IT IS HEREBY ORDERED that the Election results, as certified by the election judges, is declared **VALID**.

IT IS FURTHER ORDERED that the election of the following District directors is hereby **CONFIRMED**: Cassie Stenstrom for District 1; Marta Murray for District 2; Tony Gonzalez for District 3; and Michael Munden for District 5.

IT IS FURTHER ORDERED that the certified result regarding ballot issue 4A is hereby **CONFIRMED**.

Done in Golden, Colorado this 24th day of July, 2014.

BY THE COURT:


Stephen M. Munsinger
Chief District Court Judge