

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into as of the ^{15th April} 6th day of May, 2014 ("Effective Date") notwithstanding the actual date of its execution and is between Larry Sarner (hereinafter referred to as "Sarner") and the City of Loveland, Colorado (hereinafter referred to as "Loveland") and its duly elected City Council Members and its duly appointed City Clerk (collectively referred to as "City Defendants"). Sarner, Loveland and the City Defendants may be collectively referred to as the "Parties."

RECITALS:

WHEREAS, On May 21, 2013, Protect Our Loveland, Inc. ("POL") submitted a letter to the Loveland City Clerk ("Clerk") giving notice that it intended to seek a ballot initiative ("Ballot Initiative") to be submitted to the electors of the Loveland at the next regularly scheduled election.

WHEREAS, On July 8, 2013, POL submitted signatures in support of its Petition to the Clerk and by letter dated July 23, 2013, the Clerk Advised POL that she had examined some, but not all, of the signatures submitted by POL in support of its Petition and had determined POL had submitted a sufficient number of signatures to support its Petition ("Clerk's Statement of Petition Sufficiency").

WHEREAS, on August 16, 2013, Sarner submitted a timely filed protest to the Petition, the Ballot Initiative, and the Clerk's Statement of Petition Sufficiency pursuant to C.R.S. § 31-11-110 ("Protest").

WHEREAS, pursuant to C.R.S. § 31-11-110(1), a hearing on the Protest was noticed, and held as noticed, on August 22, 2013 (the "Hearing").

WHEREAS, on August 27, 2013, the Clerk issued her determination pursuant to C.R.S. Section 31-11-110(3) ("Clerk's Protest Determination") effectively upholding the validity of the Petition.

WHEREAS, on September 3, 2013, Sarner filed a Complaint in the District Court for Larimer County, which challenged the Clerk's Protest Determination and named Loveland, the Clerk, and the members of the Loveland City Council ("Council") as defendants, and thus, initiated Civil Action No. 13CV31071.

WHEREAS, on September 20, 2013, POL sought intervention in Civil Action No. 13CV31071 on behalf of Loveland, and including with its filing a Proposed Answer to Sarner's Complaint filed therein.

WHEREAS, on September 26, 2013, POL filed a Complaint in the District Court for Larimer County challenging a decision of the Council to take no action with respect

to the Ballot Measure, and named the Loveland and Council as defendants, and thus, initiated Civil Action No. 13CV31142.

WHEREAS, on September 27, 2013, Loveland, and the City Defendants filed their Answer to Sarner's Complaint in Civil Action No. 13CV31071.

WHEREAS, on October 7, 2013, Loveland, and the City Defendants filed their Answer to POL's Complaint in Civil Action No. 13CV31142.

WHEREAS, on October 17, 2013, in separate Orders, the District Court granted POL intervention into Civil Action No. 13CV31071, thereby accepting POL's Proposed Answer to Sarner's Complaint as filed, and consolidated Civil Action Nos. 13CV31071 and 13CV31142 as one action under Civil Action No. 13CV31071 ("Consolidated Case").

WHEREAS, on October 23, 2013, Mr. Sarner, filed his Answer to POL's Complaint in the Consolidated Case.

WHEREAS, on November 4, 2013, the District Court issued an Order in the Consolidated Case effectively denying POL's Motion for Preliminary Injunction as filed in Civil Action No. 13CV31142.

WHEREAS, on November 8, 2013, Sarner, filed his Opening Brief in the Consolidated Case.

WHEREAS, on December 3, 2013, Loveland, the City Defendants, and POL filed their respective Answer Briefs in response to Sarner's Opening Brief in the Consolidated Case.

WHEREAS, on December 10, 2013, Sarner filed his Reply Brief in reply to Loveland and the City Defendants' and POL's respective Response Briefs in the Consolidated Case.

WHEREAS, on December 18, 2013, the District Court heard oral arguments on behalf of Sarner, Loveland, the City Defendants and POL.

WHEREAS, on December 23, 2013, POL filed a Notice of Appeal with the Colorado Court of Appeals specifically appealing the District Court's denial of its Motion for Preliminary Injunction, and thus, initiated Colorado Court of Appeals Case No. 13CA2320.

WHEREAS, on February 11, 2014, the District Court issued its Finding and Order in the Consolidated Case affirming the City Clerk's finding of petition sufficiency. In doing so, the District Court specifically found the City Clerk did not abuse her discretion in determining the number of valid signatures, the number of registered electors in Loveland as of May 21, 2013, and that the single subject requirement was

satisfied. The District Court further found that the issues of state law preemption and retroactivity were not ripe for judicial review;

WHEREAS, on February 13, 2014, Sarner filed his Motion for Entry of Final Judgment Pursuant to C.R.C.P. 54(b).

WHEREAS, on February 19, 2014, Sarner filed a Notice of Appeal to the Consolidated Case, and thus, initiated Colorado Court of Appeals Case No. 14CA249.

WHEREAS, in a Status Conference held on February 25, 2014 in the Consolidated Case, pursuant to the request of the parties, the District Court ordered briefing on the issue of the meaning of “final determination of petition sufficiency” under C.R.S. § 31-11-104(1).

WHEREAS, on March 5, 2014, POL and Sarner filed their Designations of Record in Colorado Court of Appeals Case Nos. 13CA2320 and 14CA249, respectively.

WHEREAS, on March 27, 2014, the District Court issued an Order determining that its Findings and Order issued February 11, 2014, constituted the “final determination of petition sufficiency” under C.R.S. § 31-11-104(1).

WHEREAS, the perfection of an appeal to the Colorado Court of Appeals of the March 27, 2014 Order must be met by the filing of Sarner’s Notice of Appeal on or before May 15, 2014.

WHEREAS, Sarner and Loveland and the City Defendants desire to terminate all pending litigation between them and provide for a release of liability by each of them in favor of the other.

AGREEMENT

NOW, THEREFORE, subject to and upon approval by Loveland, on May 6, 2014, by its Council, of a binding Resolution upon the Loveland scheduling a special election as to the POL Ballot Measure for June 24, 2014 and subject to and upon approval by Loveland, on May 6, 2014, by its Council, of a binding Resolution approving and entering into this Settlement Agreement (the Agreement”) Sarner and Loveland agree as follows:

1. Undertakings of Sarner.

On May 7, 2014 Sarner will:

- A. File with the Colorado Court of Appeals in Case No. 14CA249 a Motion for Dismissal of Appeal Without Prejudice as to all matters raised thereunder and take all other necessary action to achieve such

dismissal. Contemporaneously submitted herewith is a Motion for Dismissal of Appeal, executed by Sarner through his attorneys of record. Loveland agrees that it will file the Motion for Dismissal of Appeal on May 7 if the Special Election is called for and scheduled by Loveland for June 24, 2014 and if this Settlement Agreement is approved by Loveland. In the event either one of these conditions does not occur on or before May 7, 2014, the Motion for Dismissal of Appeal will not be filed by Loveland and will be returned to Sarner. Upon the completion of the Special Election on June 24, 2014, Sarner shall file, at the option of Loveland, a Motion for Dismissal of Appeal With Prejudice;

- B. Take all other actions required to cease all litigation and cease all threats of further litigation related to the POL Ballot Measure, except as otherwise provided herein; and
- C. Abide by and adhere to all of the terms of this Settlement Agreement.

2. Undertakings of Loveland.

On May 6, 2014 Loveland will:

- A. Call for and approve, by resolution or otherwise, the scheduling of the Special Election and, thereafter, begin and undertake all procedures and processes to insure that the Special Election of the POL Ballot Measure take place on June 24, 2014; and
- B. Abide by and adhere to all of the terms of this Settlement Agreement.

3. Mutual Release

A. Sarner does hereby release, acquit and forever discharge Loveland, its past and current elected Councilpersons, its insurers, re-insurers, principals, agents, attorneys, employees, successors and servants, (collectively referred to as "Releasees") and Loveland does hereby release, acquit and forever discharge Sarner, his insurers, re-insurers, principals, agents, attorneys, employees, heirs, executors, attorney-in-fact, successors and assigns (all collectively referred to as "Releasees") of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, fees, interest, compensation, judgment, and any and all consequential and punitive damages, of whatsoever kind and nature, either in law or in equity, which might exist with regard to the factual allegations set forth in Sarner's Complaint and Loveland's Answer, in Larimer County District Court Civil Action 13CV31071 and Sarner's Notice of Appeal in Colorado Court of Appeals Case No. 14CA249 as to all claims which serves as the basis of said Civil Action, and Notice of Appeal which were asserted or could have been asserted in such Civil Action and Notice

of Appeal except as to any claim as to the Fourth and Fifth Claims for Relief of the Complaint in said Civil Action 13CV31071 and/or any other matter pertaining to the legality of the Ballot Measure but only if enacted and not including any act of Loveland as described in Paragraph 3(B) below. This release is further intended to and does release, acquit and forever discharge any and all claims for attorney's fees or other litigation expenses that might exist with regard to the issues that are the subject of the Civil Action and Appeal.

B. Sarner further agrees to waive all claims arising from the acts of Loveland in conducting the special election and stipulates that a special election by mail ballot on the same date as the primary election on June 24, 2014 is a valid procedure.

C. The Parties acknowledge that a portion of the consideration given for this Settlement Agreement is being given for the full and final release of any and all unknown claims, costs, expenses, and damages which either may have occurred in the past and are not yet known, or which may occur in the future and are not presently known as relate to the subject matter of this Settlement Agreement. The Parties agree to voluntarily and knowingly assume the risk of any mistake of fact or law, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages, and the Parties shall not, under any circumstances be precluded to seek to present further claims on behalf of themselves, their agents, attorneys, servants, employers, employees, heirs, executors, administrators, insurers, successors, assigns and subrogees against any persons and entities not hereby released.

D. It is the express agreement of the Parties that each Party is and will continue to be responsible for their own attorney fees and costs incurred in any and all proceedings related to the matter of the Colorado Court of Appeals in Case No. 14CA249 and including, but not limited to, any judicial proceeding upon which such appeal was based.

E. It is further understood and agreed that no promise, inducement or agreement not herein expressed has been made to either Party or their attorneys; that this Full and Final Release and Settlement of Claims contains the entire terms of the agreement between the Parties to settle this dispute; that the terms are contractual and not a mere recital; and that this Full and Final Release and Settlement of Claims shall be construed according to the laws of the State of Colorado.

3. Express Acknowledgement of Condition Precedent.

Each of the Parties agree that this Settlement Agreement, and the terms thereof, shall only be effective and enforceable as against any of the Parties upon the passage of a binding Resolution setting the date of the special election of the Ballot Measure of POL, on June 24, 2014 and the simultaneous passage of a binding Resolution approving this Settlement Agreement. If, by subsequent event, the special election shall not be held on June 24, 2014, this Settlement Agreement shall be deemed of no force or effect and the Parties shall be released from all undertakings arising herein.

4. General Provisions.

A. Amendment or Modification. No modification of this Settlement Agreement, or any of its provisions, and no waiver of the terms and conditions of this Settlement Agreement, shall be binding on any Party unless approved in an additional writing to which each of the affected Parties are signatories.

B. Venue. The Parties agree to submit to the personal jurisdiction and venue of the District Court for the County of Larimer for a resolution of all disputes arising in connection with the interpretation, construction, and enforcement of this Settlement Agreement, and hereby waives any claim or defense therein that this Court constitutes an inconvenient forum.

C. No Severability. If any provision, term or condition of this Settlement Agreement shall be judicially determined to be invalid, unenforceable, or illegal for any reason, including waiver of any particular right, no other portions of this Settlement Agreement shall nevertheless continue in full force and effect.

D. Other Agreements. With respect to its subject matter, this Settlement Agreement supersedes any and all prior or contemporaneous agreements, oral or written between or among the Parties and constitutes a complete and exclusive statement of the terms of the agreement between or among the Parties with respect to its subject matter.

E. Counterparts. This Settlement Agreement may be executed in multiple counterparts with the same effect as if all signing Parties had signed the same document. All counterparts comprising the signatures, collectively of all the Parties, shall be construed together and constitute the same instrument. Originally signed counterparts that are transmitted by facsimile or email shall have the same force and effect as originals only upon the event of the execution of the Settlement Agreement by all the Parties.

F. Recitals and Headings. The Recitations in this Settlement Agreement are deemed to be substantive, declarative and are made a part of this Settlement Agreement. The headings used in this Settlement Agreement are for the purpose of reference only and will not otherwise affect the meaning or interpretation of any provision of this Settlement Agreement.

G. Drafting of this Agreement. The Parties and their respective counsel have contributed to the drafting of this Settlement Agreement. Furthermore, the Parties and their respective counsel and advisers have reviewed this Settlement Agreement in its entirety and acknowledge that each has had a full opportunity to negotiate the terms of this Settlement Agreement. Therefore, the Parties hereby irrevocably waive any and all applicable common law and statutory rules of construction that any provision of this Settlement Agreement should be construed against the drafter

of the Agreement, and agree and affirm that the Settlement Agreement and all provisions thereof shall in all cases be construed as a whole, according to the fair meaning of the language used.

H. Construction. Whenever the context requires, the gender of all words used in this Settlement Agreement includes the masculine, feminine and neuter, and the singular number includes the plural number and vice versa. Unless expressly provided otherwise or unless the context requires otherwise, all references to Articles and Sections refer to articles and sections of this Settlement Agreement.

I. Assignment. No Party may assign any of its rights or delegate his or her duties or obligations under this Settlement Agreement.

J. Accord and Satisfaction. The Parties hereto expressly understand and agree that the payments, transfers, forgiveness and resolutions made pursuant hereto are in full accord and satisfaction of any and all claims each or any of the Party's might have against any or all of the other Parties at any time as a result of the transactions and relationships between the Parties herein described and that the provisions, transfers, forgiveness and resolutions made pursuant hereto are not to be considered in any way an admission of liability on the part of any one or all of the Parties, but on the contrary the Parties specifically deny liability for the harm suffered by any of them giving rise to any of the claims or otherwise.

K. Waiver. No term or condition of this Settlement Agreement shall be deemed to have been waived, or there be an estoppel against the enforcement of any provisions of this Settlement Agreement, except by written instrument of the Party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein and such waiver shall operate only as to the specific term or condition for the future or as to any act other than that specifically waived.

L. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, their personal representatives, heirs, successors and assigns.

M. Burden of Proof. If any Party should contest the validity, existence, adequacy or terms of this Settlement Agreement, the Party so contesting the Settlement Agreement, or any term hereof, shall have the burden of proof as to fraud, concealment, failure to disclose material information, unconscionability, misrepresentation, mistake of fact or law or any other claim, as provided by law.

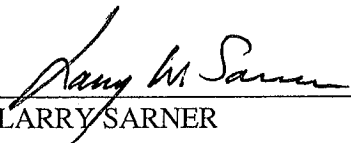
N. No Admission. This Settlement Agreement constitutes a compromise of disputed matters, and has been entered into by the Parties in order to avoid incurring the cost, delay and distraction associated with litigation, and not in acknowledgment of any wrongdoing, liability or responsibility. Neither this Settlement

Agreement, nor any performance to be rendered hereunder, shall constitute or be deemed to constitute an admission or acknowledgment, express or implied, of any wrongdoing, liability or responsibility, and any and all assertions or implications of wrongdoing, liability or responsibility are expressly disputed and denied.

O. Modification and Waiver. No modification of or supplement to any term or provision of this Settlement Agreement shall be effective unless the same is made in writing and signed by the Parties. No waiver respecting any term or provision of this Settlement Agreement shall be effective unless the same is made in writing and signed by the Party benefited by the term or provision. No written and signed modification, waiver or supplement of or relating to this Settlement Agreement shall have any force or effect beyond the specific instance or purpose for which the same is given or made.

P. Additional Accommodations. Each of the Parties agrees to execute such additional documents in the future as may be necessary in order to reasonably carry out the terms and intentions of the Parties.

PARTIES



LARRY SARNER

April 15, 2014

CITY OF LOVELAND,
a Colorado home rule municipality

By: _____
Cecil A. Gutierrez, Mayor

Date

ATTEST:

Terry Andrews, City Clerk

Date

APPROVED AS TO FORM:

Judy Schmidt, Acting City Attorney

Date

Court of Appeals, State of Colorado
2 East 14th Ave, Denver, CO 80203

Name and Address of Lower Court:
District Court, Eighth Judicial District, Colorado
Larimer County Justice Center
201 La Porte Ave, Suite 100
Ft. Collins, CO 80521
Tel: (970) 494-3500
Fax: (970) 494-3580
District Court Judge: The Honorable Daniel J. Kaup
Consolidated Case Number: 2013CV31071

▲ COURT USE ONLY ▲

APPELLANT:
Larry Sarner,

v.

APPELLEES:
City of Loveland, etc., et al.; Protect Our Loveland, Inc.

Case Number: 14CA294

Counsel for Appellant:

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MOTION FOR DISMISSAL OF APPEAL WITHOUT PREJUDICE

COMES NOW, the Appellant, Larry Sarner, by and through his undersigned counsel, pursuant to C.A.R. 42 and states as follows:

1. The Appellant seeks the dismissal of the within appellate proceeding without prejudice as a result of a compromise and agreement reached between the Appellant and all the Appellees, with the exception of the Appellee, Protect Our Loveland, Inc. The Appellant seeks dismissal without prejudice as a result of the executory nature of the compromise and agreement, with the right to re-file its Notice of Appeal in the event the executory provisions of the compromise and agreement are not performed.
2. All of the Appellees, with the exception of Protect Our Loveland, Inc. have authorized the Appellant to represent to the Court their express consent to the within Motion and desire that this proceeding be dismissed.
3. The compromise and agreement between the Appellant and all of the Appellees, with the exception of Appellee Protect Our Loveland, Inc., provides that each party pay for and be responsible for its own costs which have arisen in this appeal.
4. No cross-appeal has been filed by any of the Appellees, including the Appellee, POL, Inc.
5. There exists no justifiable reason for the pendency of this proceeding.
6. Pursuant to C.A.R. 39(a) costs are to be taxed against the Appellant upon the dismissal of the appeal, unless otherwise agreed by the parties or as may be ordered by the Court.
7. The Appellant requests the dismissal of this appeal without prejudice, for the reasons set forth above and, further, requests that this Court impose no costs against the Appellant.

WHEREFORE, the Appellant, Larry Sarner, seeks the entry of an Order of this Court in accordance with the foregoing requested relief, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted this 7th day of May, 2014.

HOLSINGER LAW, LLC

Original on file at Holsinger Law, LLC


By: /s/ Jack Silver

Jack Silver (3891)

Kent Holsinger (33907)

Alyson Meyer Gould (42672)

1800 Glenarm Place, Suite 500

Denver, CO 80202

T: 303-722-2828

CERTIFICATE OF SERVICE

I hereby certify that on May ____, 2014, I electronically filed the foregoing with the Clerk of the Court via the Integrated Colorado Courts E-Filing System (“ICCES”), which will serve the foregoing upon the following:

Clerk of the District Court District Court, Larimer County, Colorado 201 La Porte Ave., Suite 100 Fort Collins, CO 80521	Judith Yost Schmidt Acting Loveland City Attorney 500 East Third Street, Suite 330 Loveland, CO 80537	Michael Ray Harris Kelly Deanne Davis Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Ave. Denver, CO 80208
The Clerk of the Court of Appeals Court of Appeals, State of Colorado 2 East 14th Ave Denver, CO 80203	Kimberly B. Schutt Wick & Trautwein, LLC 323 South College Avenue #3 Fort Collins, CO 80524	James Daniel Leftwich, Esq. MindDrive Legal Services, LLC 4730 Walnut Street, Suite 110 (Office 2) Boulder, CO 80301

In addition, the foregoing was emailed to the following:

Lauren Hammond (Student Attorney)
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Christopher Stork (Student Attorney)
cstork14@law.du.edu

Nicholas Lopez (Student Attorney)
nlopez14@law.du.edu

HOLSINGER LAW, LLC

/s/ Luci Stremme
Luci Stremme, Paralegal