

District Court Boulder County, Colorado Court Address: 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: December 4, 2013 12:10 PM FILING ID: 27D7E163DC994 CASE NUMBER: 2013CV31751 ▲ ▲ COURT USE ONLY
ALAN ROSENFELD, Plaintiff Vs Cynthia Domenico, Jerry Roberts, Hillary Hall, Daniel Gould, George Leing, Ralph Shnelvar, Susan Hall and Kevin Alumbaugh, Defendants	Case Number: Division Courtroom
Attorney : Alan Rosenfeld PO Box 270309 Louisville, Colorado 80027 Phone Number: 303-604-0038 E-mail: adrchildlaw@hotmail.com Atty. Reg. # 30317	VERIFIED PETITION FOR DECLARATORY RELIEF

INTRODUCTION:

1. Plaintiff seeks Declaratory Relief pursuant to C.R.S. 1-1-113 and C.R.C.P 57 to resolve a dispute regarding the rights and responsibilities of Boulder County election officials and Boulder County Commissioner candidates under Colorado's term limit provisions contained in Colorado Constitution Article XVIII section 11.

PARTIES :

2. Plaintiff Alan Rosenfeld is a registered voter in Boulder County, Colorado and a candidate for election as District 2 County Commissioner.

3. Defendant Cynthia Domenico is a registered voter in Boulder County, Colorado and is the incumbent Boulder County Commissioner for District 2.
4. Defendant Jerry Roberts is a registered voter in Boulder County, Colorado and is the incumbent Boulder County Assessor.
5. Defendant Hillary Hall is a registered voter in Boulder County Colorado and is the elected Boulder County Clerk. As County Clerk she is responsible for certifying the Boulder County election ballots and ensuring that only electors eligible to serve in the office in question are listed on the ballot.
6. Defendant Daniel Gould is a registered voter in Boulder County, Colorado and is the Chairman of the Boulder County Democratic Party and thus is a representative of a large group of interested parties.
7. Defendant George Leing is a registered voter in Boulder County Colorado and is the Chairman of the Boulder County Republican Party and thus is a representative of a large group of interested parties.
8. Defendants Susan Hall and Kevin Alumbaugh are co-chairs of the Greater Boulder County Green Party and thus are representatives of a large group of interested parties.
9. Defendant Ralph Shnelvar is a registered voter in Boulder County and is the chair of the Boulder County Libertarian Party and thus is a representative of a large group of interested parties.
10. The four political parties all have a specific interest in the outcome of this dispute as they represent collections of registered voters who will be nominating and voting for candidates for Boulder County Commissioner and Assessor.

FACTS:

11. Defendant Domenico was first elected to serve as Boulder County Commissioner in July, 2007 by a vacancy Committee of the Boulder County Democratic Party following the death of (then) Commissioner Tom Mayer.
12. Ms. Domenico served in office from July, 2007 until January, 2009.
13. Defendant Domenico was then elected in November 2008 to serve the remaining two years of Commissioner Meyer's original term.
14. Ms. Domenico subsequently served in office from January 2009 until January 2011.
15. Ms. Domenico was then elected in November 2010 to serve a complete four year term.
16. Ms. Domenico's current term of office expires in January 2015.
17. Ms Domenico has announced her intent to run for re-election for another term as County Commissioner in the election which will be held in November 2014.
18. Ms. Domenico has filed an affidavit of candidacy with the Colorado Secretary of State.
19. In 1994 the Colorado voters passed Amendment 17 which imposed term limits on non judicial elected officials including County Commissioners.
20. Defendant Jerry Roberts is the Boulder County Assessor.
21. Defendant Roberts was initially appointed by the County Commissioners in July 2007 after Defendant Domenico vacated the Assessor's position to become Commissioner.
22. Defendant Roberts served an initial term of office from his appointment in July, 2007 until January 2009.

23. Defendant Roberts was subsequently elected in November, 2008 elected to serve the remaining two years of Ms. Domenico's original four year term, and served from January, 2009 until January, 2011.
24. In November 2010 Defendant Roberts was re-elected to serve a four year term that began in January 2011 and will end in January, 2015.

ARGUMENT:

25. The specific language of the Constitutional Amendment passed in 1994 was as follows :
In order to broaden the opportunities for public service and to assure that elected officials of governments are responsive to the citizens of those governments, no nonjudicial elected official of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado, no member of the state board of education, and no elected member of the governing board of a state institution of higher education shall serve more than two consecutive terms in office, except that with respect to terms of office which are two years or shorter in duration, no such elected official shall serve more than three consecutive terms in office. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1995. For purposes of this Section 11, terms are considered consecutive unless they are at least four years apart.
26. The essence of the uncertainty over Ms. Domenico's eligibility to serve another term as County Commissioner is over whether any of the time that she previously served as Commissioner from July, 2007 until January 2011 constituted a "term in office".
27. "Our state constitution derives its force... from the people who ratified it, and their understanding of it must control. This is to be arrived at by construing the language used in the instrument according to the sense most obvious to the common understanding." People v Rodriguez 112 P.3d 683, 696 (Colorado 2005), citing Alexander v People , 167 2.P. 894, 900 (Colorado 1884)
28. The common understanding of the phrase "term in office" is the period of time that someone serves in a specific position. Anything else is simply sophistry.
29. The court's duty in interpreting a constitutional amendment is to give effect to the electorate's intent in enacting the amendment. *In re Interrogatories Relating to the Great Outdoors Colorado Trust Fund*, **913 P.2d 533**, 538 (Colo.1996).
30. Courts must give words their ordinary and popular meaning in order to ascertain what the voters believed the amendment to mean when they adopted it. *Havens v. Bd. of County Comm'rs*, **924 P.2d 517**, 522 (Colo.1996).
31. Courts should not engage in a narrow or technical construction of the initiated amendment if doing so would contravene the intent of the electorate. *Zaner v. City of Brighton*, **917 P.2d 280**, 283 (Colo.1996).
32. If the intent of the voters cannot be discerned from the language, "courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment." *Id.* Courts may determine this "by considering other relevant materials such as the ballot title and submission clause and

the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislature." *In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549, 554 (Colo.1999).

33. The intent of the voters in passing Amendment 17 was clear and is obvious. They wanted and intended to limit the length of time any incumbent could stay in office through the power of incumbency, and set a maximum length of uninterrupted service of 8 years (2 four year terms).
34. When Ms. Domenico was elected by the vacancy committee of the Boulder County Democratic Party in July, 2007 it was clearly and simply to serve a term of office that was to last until January 2010. Any attempt to define that period as something other than a term of office is sophistry and contrary to the most obvious definition of the phrase.
35. When Ms. Domenico was elected by the Boulder County voters in November 2008, it was clearly and simply for a two year term of office that would run from January 2010 until January 2012. Any attempt to define that period as not a term of office is sophistry and contrary to the most obvious definition of the phrase
36. At the conclusion of her current term of office, Ms. Domenico will have served one term of office of approximately 18 months (July, 2007 – January 2009); a second term of office of two years (January 2009 – January 2011) and a third term of office of four years (January 2011 – January 2015).
37. At the end of Ms. Domenico's current term of office she will have served as County Commissioner for seven and one half years. The clear intent of the voters in passing Amendment 17 was to prevent someone in Ms. Domenico's position from running for election to another term.
38. If Ms. Domenico were allowed to be elected to another four year term, she would eventually serve eleven and one half years. The intent of the voters in passing Amendment 17 was clearly to prevent anyone from serving as County Commissioner for longer than eight years.
39. The Amendment allowed voters in each subdivision the opportunity to lengthen, shorten or eliminate these limitations.
40. On the one occasion when the Boulder County Commissioners put on the ballot a proposal to extend the number of terms that Commissioners could serve, it was defeated.
41. The Boulder County Assessor would have been covered by the same constitutional amendment establishing term limits as the Commissioners, except that in November 2005 the Boulder County Voters passed County Issue 1 B which proposed the following change to term limits for Assessors :

SHALL THE TERM LIMITS IMPOSED BY STATE LAW AND IN ARTICLE XVIII, SECTION 11(2), OF THE COLORADO CONSTITUTION ON THE FOLLOWING ELECTED OFFICIALS OF BOULDER COUNTY, INCLUDING THE OFFICES OF COUNTY ASSESSOR, COUNTY CORONER, COUNTY SURVEYOR, AND COUNTY TREASURER, BE MODIFIED SO AS TO PERMIT ELECTED OFFICEHOLDERS IN THOSE OFFICES TO SEEK AND, IF THE VOTERS OF BOULDER COUNTY CHOOSE TO RE-ELECT THEM TO A THIRD TERM IN OFFICE, TO SERVE A THIRD CONSECUTIVE TERM?

42. The language drafted by the Boulder County Commissioners (and passed by the voters) added to the uncertainty now existing because it simply expanded the County Assessor's

term to allow a third consecutive term in office, without any qualifications as to the length of that term.

43. The essence of the uncertainty over Mr. Roberts' eligibility to serve another term as County Assessor is over whether any of the time that he previously served as Commissioner from July, 2007 until January 2011 constituted a "term in office".
44. If the period that Mr. Roberts' served as County Assessor from July 2007 until January 2009 counts as a term of office that would be one term.
45. If the period that Mr. Roberts' served as County Assessor from January 2009 until January 2010 counts as a term of office that would be his second term and Mr. Roberts' Current term (January 2010 – January 2014) would be his third and final term.
46. The court's duty in interpreting a constitutional amendment is to give effect to the electorate's intent in enacting the amendment. *In re Interrogatories Relating to the Great Outdoors Colorado Trust Fund*, **913 P.2d 533**, 538 (Colo.1996).
47. Courts must give words their ordinary and popular meaning in order to ascertain what the voters believed the amendment to mean when they adopted it. *Havens v. Bd. of County Comm'rs*, **924 P.2d 517**, 522 (Colo.1996).
48. Courts should not engage in a narrow or technical construction of the initiated amendment if doing so would contravene the intent of the electorate. *Zaner v. City of Brighton*, **917 P.2d 280**, 283 (Colo.1996).
49. If the intent of the voters cannot be discerned from the language, "courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment." *Id.* Courts may determine this "by considering other relevant materials such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislature." *In re Submission of Interrogatories on House Bill 99-1325*, **979 P.2d 549**, 554 (Colo.1999).
50. It is a reasonable and common sense assumption that the Commissioners when they drafted County Issue 1 B, and the voters when they passed it, intended and expected it to allow those officers to serve a maximum of 3 four year terms (12 years)
51. At the end of his current term, Mr. Roberts will only have served 7 and one half years and under this interpretation Mr. Roberts would be eligible to be elected to one more four year term.

NEED FOR DECLARATORY RELIEF:

52. The Boulder County Attorney's office (an employee of the Commissioners) has issued a written opinion that the first two terms to which Ms. Domenico was elected to serve as Commissioner (July, 2007 – January 2009 and January 2009 – January 2011) do not count towards the Constitutional term limits and have advised her that she is eligible to run for yet another term of office.
53. Ms. Domenico has announced her intent to run for re-election to another term of office.
54. Ms. Hall has indicated an intent to follow the opinion of the County Attorney and allow Ms. Domenico to run for another term of office unless directed otherwise by this Court.

55. The election season has begun and Boulder County Democrats will be participating in Precinct Caucuses on March 4, 2014 to begin the selection of their nominee for Commissioner.
56. It is imperative to Boulder County voters (and especially to those Democrats who will be selecting their nominee for Commissioner) that a definitive ruling by this Court be issued as soon as possible as to Ms. Domenico's eligibility to run again.
57. C.R.S.1-4-501 provides that no person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of the state on or before the date the term of that office begins.
58. The Term Limits provision in Colorado Constitution Article XVIII section 11 is a qualification of office.
59. C.R.S. 1-1-113 establishes the procedure for adjudication of controversies regarding Colorado election procedures and authorizes this Court to issue an order which will in effect determine the eligibility of Ms. Domenico to be on the ballot for re-election as County Commisisoner in 2014.
60. Declaratory Relief is the only adequate and appropriate relief available under these circumstances, to ensure that all parties and voters will know as soon as possible whether or not Ms. Domenico is even eligible to serve again as County Commissioner.
61. C.R.S.1-4-501 provides that no person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of the state on or before the date the term of that office begins.
62. The Term Limits provision in Colorado Constitution Article XVIII section 11 (and the amendment to that section created by County Issue 1 B) is a qualification of office.
63. C.R.S. 1-1-113 establishes the procedure for adjudication of controversies regarding Colorado election procedures and authorizes this Court to issue an order which will in effect determine the eligibility of Mr. Roberts to be on the ballot for re-election as County Assessor in 2014.
64. Declaratory Relief is the only adequate and appropriate relief available under these circumstances, to ensure that all parties and voters will know as soon as possible whether or not Mr. Roberts is even eligible to serve again as County Assessor.

REQUEST FOR RELIEF:

WHEREFORE,

This Court is respectfully urged to ensure that all concerned parties are given an opportunity to be heard before rendering a final decision on Ms. Domenico's and Mr. Roberts' eligibility to be candidates for re-election to their respective offices.

Petitioner seeks a ruling that Ms. Domenico is not eligible to run for another term of office and that Mr. Roberts is eligible.

Dated this 4th day of December, 2013.

Respectfully submitted

(s) ALAN ROSNFELD
Alan Rosenfeld

a signed copy of this document is maintained on filed at the
Law Office of Alan Rosenfeld
Box 270309
Louisville, CO 80027
303-604-0038

PO

Verification

I hereby verify that the averments contained in this motion are true and accurate to the best of my information and belief.

(s) ALAN ROSENFELD
Alan Rosenfeld