

DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO Court Address: 100 Jefferson County Parkway Golden, CO 80401	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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	
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*



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