

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 E. 2 nd Ave., Room 106 Durango, CO 81301	DATE FILED: October 25, 2021 4:22 PM FILING ID: 46AA33084B85C CASE NUMBER: 2021CV30148
CHRISTINA MCMUNN , an individual; CAM FORMBY , an individual; CATHY PATTERSON , an individual; and STANLEY PATTERSON , an individual, Plaintiffs, v. DURANGO SCHOOL DISTRICT 9-R BOARD OF EDUCATION ; and JULIE POPP , in her capacity as the Designated Election Official for Durango School District 9-R. Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney for Plaintiffs:</i> Scott E. Gessler, (28944), sessler@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Phone: (720) 839-6637	Case No:
VERIFIED PETITION UNDER C.R.S. § 1-1-113	

INTRODUCTION

1. This Court should order a special election, so voters – rather than the board of education – can choose a director for Durango School District D.

2. Andrea Parmenter, the former incumbent, moved out of the district in May 2021, publicly concealed her move for months, illegally remained a school board director, and did not publicly announce her move until it was too late for interested residents to enter the race as candidates.

3. Meanwhile, the Board failed to timely declare a vacancy, illegally cancelled the election for District D Director, and instead appointed a board member for the next two years.

4. Collectively, these actions prevented school district voters from having the opportunity to vote in a representative for District D.

PARTIES

5. Christina McMunn is an eligible elector who resides at 823 E. 7th Ave., Durango, Colorado 8130. She resides in Durango School District 9-R District D, is eligible to run for District D director, and is eligible to vote for a representative for District D.

6. Plaintiff Cam Formby is an eligible elector in Durango School District 9-R, who resides at 2401 C.R. 220, Durango, Colorado.

7. Plaintiff Cathy Patterson is an eligible elector in Durango School District 9-R, who resides at 2401 C.R. 220, Durango, Colorado.

8. Plaintiff Stanley Patterson is an eligible elector in Durango School District 9-R, who resides at 2401 C.R. 220, Durango, Colorado.

9. Defendant Durango School District 9-R Board of Education is the governing body for Durango School District 9-R.

10. Defendant Julie Popp is the Designated Election Official for Durango School District 9-R, responsible for running the school board elections for the November 2021 odd-year coordinated election.

JURISDICTION AND VENUE

11. Jurisdiction is proper under C.R.S. §§ 1-1-113(1) and 1-5-208(1.5).

12. Venue is proper under C.R.C.P. 98(b)(2).

GENERAL ALLEGATIONS

13. Under Colorado law, a Board director must live in one of five geographical districts within Durango School District 9-R.

14. Durango School District 9-R Board of Education (the “School Board” or “Board”) has adopted a plan of representation, as authorized by C.R.S. § 22-31-105.

15. Under this plan of representation, the School District has five representative districts, lettered A through E.

16. The Board is comprised of one director from each district, for a total of five directors.

17. In order to be eligible to serve on the Board, a director must reside in his or her respective district.

18. Even though directors must reside in their respective districts, each director is elected at large. In other words, all eligible electors living in the School District may vote for candidates in all five districts.

19. Under C.R.S. § 22-31-129, “[a] school director office shall be deemed to be vacant” if a district director “is or becomes during the term of office a nonresident of the director district which the director represents.”

20. Upon assuming office, each director must take an oath of office, in which the director swears to “faithfully perform the duties of the office as required by law” and support Colorado law. C.R.S. § 22-31-125.

21. In December 2019, Andrea Parmenter was appointed by the Board as the District D director.

22. At the time of her appointment, Parmenter represented that she resided in District D. Specifically, she represented that she resided at 2341 Forest Ave., Durango, CO 81301.

23. The residence at 2341 Forest Ave. is located in District D.

24. Sometime in 2020 or 2021 Parmenter moved out of District D.

25. District D director Andrea Parmenter moved out of District D in May 2021 but illegally stayed on as District D director.

26. Specifically, on October 3, 2021, the current resident at 2341 Forest Ave. stated that he had lived at that location for “about a year,” that Parmenter had not lived there during his residency, and that she moved out of that location before he moved into the residence.

27. Furthermore, United States Postal Service records show that Parmenter changed her mailing address to 440 County Road 239, Durango, CO 81301 in May 2021.

28. Also in May 2021, Mr. Barney Siegal, a person who cohabitates with Parmenter, also changed his mailing address with the U.S. Postal Service to 440 County Road 239, Durango, CO 81301.

29. The residence at 440 County Road 239 is not located in District D. Rather, it is located in District E.

30. The house at 440 County Road 239 was advertised for rent in March 2021, with a requirement that the lease start May 3, 2021, further corroborating Parmenter's change of residency in May 2021 to 440 County Road 239. The advertisement from the lease was removed in March 2021.

31. In early August 2021, Parmenter began circulating petitions for nomination as a candidate for Board director for District E. The petitions stated that she resided at 440 County Road 239.

32. Parmenter herself collected signatures. She collected her first signature on August 9, 2021.

33. Parmenter attended the Board meeting on August 12, 2021, participated as a Board director, and voted on matters before the Board.

34. On August 19, 2021, Parmenter changed her voter registration from 2341 Forest Ave. to 440 County Road 239.

35. On August 20, 2021, Parmenter submitted her petitions to Julie Popp, the Designated Election Official for the school board election. Her petitions stated that she lived at 440 County Road 239, in District D.

36. These August events took place approximately ten months after Parmenter moved out of 2341 Forest Avenue and approximately three months after she moved to 440 County Road 239.

37. Despite moving outside of District D, Parmenter did not resign as District D director.

38. On September 7, 2021, the Board held a meeting at which it declared a vacancy in District D.

39. Parmenter cast a vote to declare a vacancy. For the remainder of the meeting, the Board stated that she was "not present" for any further votes.

40. Prior to September 7, 2021, Parmenter never made a public statement that she had moved out of District D and was no longer eligible to serve as District D director.

41. During the entirety of 2020, and up until the September 7, 2021, Board meeting, Parmenter continued to serve as a Board director, continued to participate in all Board communications and other matters as a Board director, and continued to vote at Board meetings.

42. During the entirety of 2020, and up until the September 7, 2021, Board meeting, the Board did not declare a vacancy or take any action concerning Parmenter's residency.

FIRST CLAIM FOR RELIEF
(Illegally cancelled election and denial of right to vote, C.R.S. § 1-5-208(1.5))

43. Plaintiffs incorporate all previous allegations.

44. The odd year coordinated election will be held on November 2, 2021.

45. According to the School District's plan of representation, the District D director position is a four-year term, which began in November 2019.

46. Parmenter was appointed to fill the term in December 2019.

47. Under C.R.S. § 22-31-129(3) "an appointee to the office of school director shall serve until the next regular biennial school election when the successor for the remainder of the term is elected and has qualified."

48. Because Parmenter was appointed, the District D director seat required an election in the general election of 2021.

49. Under C.R.S. § 1-5-208(1.5), "if the only matter before the electors in a nonpartisan election is the election of persons to office and if, at the close of business on the sixty-third day before the election, there are not more candidates than offices to be filled at the election."

50. On August 31, 2021 (63 days before the November 2, 2021, election) there was one candidate for District D director, plus three matters on the ballot for the voters in District D voters.

51. Those three matters were – and are – three statewide ballot measures: Amendment 78; Proposition 119; and Proposition 120.

52. The School Board and Popp had duty to hold an election for District D in 2021.

53. Nonetheless, the School Board and Popp breached this duty by canceling the election for District D director.

54. The Board illegally cancelled the election and instead appointed a board director.

55. Plaintiffs were denied the right to vote (or to abstain from voting as an expression of nonsupport) as required under C.R.S. § 1-5-208(1.5).

56. As a resident of District D, Plaintiff McMunn was denied the right to be represented by an elected – rather than an appointed – board director.

**SECOND CLAIM FOR RELIEF
(Failure to declare and fill vacancy, C.R.S. § 22-31-129(3))**

57. Plaintiffs incorporate all previous allegations

58. Under C.R.S. § 22-31-129(3), “[a]t the next board of education meeting immediately following” Parmenter’s move outside of District D, the Board was required to “adopt a resolution declaring a vacancy in the school director office” of District D.

59. Parmenter moved outside of District D no later than May 2021.

60. The Board meeting immediately following Parmenter’s move outside of District D took place either on May 25, 2021, or no later than June 25, 2021.

61. The Board was required to declare a vacancy at either of those meetings.

62. Not until September 7, 2021, did Parmenter, any other Board director, or the Board itself publicly state that Parmenter had become a nonresident of District D and therefore was no longer eligible to serve as a Board director.

63. The Board failed to declare a vacancy until September 7, 2021.

64. Under Colorado law, a candidate for board director must file petitions to run for office no later than August 27, 2021.

65. Parmenter did not publicly disclose her ineligibility to serve as District D director until it was too late for any eligible elector to submit nomination papers to run for District D director.

66. Upon information and belief, Parmenter chose to publicly conceal her ineligibility to serve as District D director, in order to dissuade potential candidates from running for the District D director position.

67. Because Parmenter publicly concealed her true residency, any resident of District D who might consider running for District D director was denied information that Parmenter could not be a candidate for District D.

68. Because Parmenter and the Board refused to publicly state that Parmenter had moved outside of District D, any resident of District D who might consider running for board director office was denied information that Parmenter could not be a candidate for District D.

69. Parmenter's refusal to publicly disclose her move, and the Board's failure to timely declare a vacancy in fact dissuaded at least one eligible elector from running as a candidate for District D director.

70. As a teacher and educator, during the summer of 2021, Plaintiff McMunn had a strong interest in running for District D director. In fact, McMunn obtained a copy of the school board petition packet, in order to run.

71. After carefully considering the strong likelihood that that she would have to face Parmenter as the incumbent in the District D director election, McMunn decided not to run for office.

72. After the Board announced a vacancy, it decided to appoint a replacement for District D.

73. Because McMunn remained interested in serving as District D director, she applied for the vacancy. The Board did not appoint McMunn.

74. Parmenter's and the Board's behavior limited the number of potential candidates for the District D director position.

75. Parmenter's and the Board's behavior dissuaded McMunn from running for District D.

76. Under C.R.S. § 22-31-129(3) the Board was required "appoint a person to fill the vacancy within sixty days after the vacancy ha[d] occurred."

77. Accordingly, the Board was required to fill the vacancy no later than the end of July 2021.

78. The Board failed to fill the vacancy until September 20, 2021.

79. The Board failed to declare a vacancy when at least one director, and perhaps more directors, knew that Parmenter had moved outside of District D.

80. Alternatively, the Board had a duty to determine when Parmenter became a nonresident of District D.

81. The Board breached this duty by failing to exercise reasonable diligence to determine that Parmenter no longer resided in District D.

82. By failing to declare a vacancy in a timely manner, the School Board misled residents into believing that District D was represented by an incumbent eligible to stand for election in November 2021.

83. As a remedy, this Court should order a special election, open to nominations from eligible electors interested in running for District D Director.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiffs request that this Court:

1. Order Durango School District 9-R Board of Education and the Designated Election Official to hold a special election forthwith, to elect a District D Director;

2. Order the Durango School District 9-R Board of Education and the Designated Election Official to accept proper nomination petitions from eligible electors seeking to run as candidates for District D Director; and,

3. Order all other such relief as just and proper.

Dated: October 25, 2021.

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

VERIFICATION OF PETITION

I, Christina McMunn declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.



Christina McMunn

VERIFICATION OF PETITION

I, Cathy Patterson declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.


Cathy Patterson

VERIFICATION OF PETITION

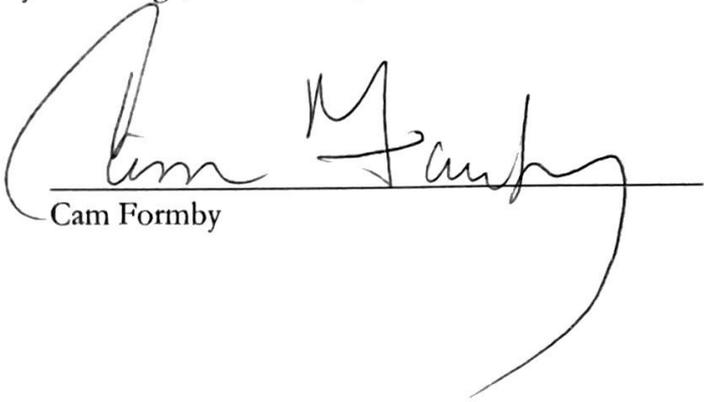
I, Stanley Patterson declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.



Stanley Patterson

VERIFICATION OF PETITION

I, Cam Formby declare under the penalty of perjury to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.



Cam Formby