

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 27, 2016 CASE NUMBER: 2016SA261
Appeal Pursuant to C.R.S. 1-11-203.5 District Court, Larimer County, 2016CV230	
Plaintiff-Appellant: Larry Sarner, v. Defendants-Appellees: Angela Myers, Larimer County Clerk and Recorder and City of Loveland.	Supreme Court Case No: 2016SA261
ORDER OF COURT	

Upon consideration of Appellant Larry Sarner’s Petition for Rule to Show Cause and Opening Brief, and Appellee City of Loveland’s Opening Brief and Answer Brief, and now being sufficiently advised in the premises, the Court states the following:

Appellant brought an action pursuant to section 1-11-203.5, C.R.S. (2016) challenging certain municipal ballot measures appearing on the November 8, 2016 ballot. The trial court set bond pursuant to 1-11-203.5(1) at \$10,000. When Appellant failed to post the \$10,000 bond, the court dismissed the action for failure to post the bond. Appellant filed an original proceeding with this court pursuant to C.A.R. 21 challenging the dismissal. This court treated the filing as an appeal of a final order of dismissal pursuant section 1-11-203.5(4) and ordered briefing.

Contests “concerning the order on the ballot or the form or content of any ballot title” shall be “summarily adjudicated.” §1-11-203.5(1). The summary adjudicative hearing thus narrowly considers “the order on the ballot” and “the form or content of any ballot title,” and is

to be held within 10 days of filing the answer. §1-11-203.5(2). The bond requirement of section 1-11-203.5(1) is “a bond . . . running to the contestee and conditioned to pay all costs, including attorney[’s] fees, in case of failure to maintain the contest.” The bond requirement thus ensures that the contestee “maintains the contest” through the summary adjudicative hearing. The amount of the bond, therefore, should reflect the costs and attorney’s fees that may reasonably be expended through the summary adjudicative hearing.

The district court, however, set the \$10,000 bond in this case based upon the desire to “insure that a groundless action is not maintained.” We conclude that in so ruling, the trial court abused its discretion in two respects.

First, the court used a frivolousness standard, rather than tying the bond to the fees and costs that would result from a failure to maintain the contest. Because the district court applied the wrong standard, it abused its discretion.

Second, in setting a bond amount of \$10,000, the court may have misapprehended the limited scope of a proceeding under section 1-11-203.5. As noted above, a trial court’s review is limited to “the order on the ballot or the form or content of any ballot title.” The trial court here, however, appears to have determined that the hearing in this case would address many of the other issues that the Appellant has raised. Most of those issues would be beyond the scope of the hearing envisioned by section 1-11-203.5.

Accordingly, we reverse the trial court’s order dismissing the action based upon failure to post bond and remand the case for further proceedings.

BY THE COURT, EN BANC, October 27, 2016.