DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100 **Plaintiff: ERIC SUTHERLAND,** **v.** **Defendant: THE CITY OF FORT COLLINS** **Indispensable Party: Angela Myer, Larimer County Clerk and Recorder**	DATE FILED: September 4, 2017 10:34 AM CASE NUMBER: 2017CV219 COURT USE ONLY
By the Court: The Honorable Thomas R. French	Case Number: 2017 CV 219 Courtroom: 5C

ORDER RE PETITION FOR A CONTEST CONCERNING THE FORM AND CONTENT OF THE CITY OF FORT COLLINS BROADBAND AUTHORIZATION ELECTION BALLOT QUESTION

This matter came before the Court for hearing on September 1, 2017 following the filing of a *Petition for a Contest Concerning the Form and Content of the City of Fort Collins Broadband Authorization Election Ballot Question* (hereinafter referred to as "the Petition") by Plaintiff Eric Sutherland (hereinafter referred to as "Sutherland") against Defendant the City of Fort Collins (hereinafter referred to as "the City").

I. INTRODUCTION

Sutherland filed the Petition pursuant to C.R.S. § 1-11-203.5 to contest the submission clause in a ballot question that the Fort Collins City Council (hereinafter referred to as the "Council") submitted to the City's electorate by its adoption of

Ordinance No. 101, 2017 on August 15, 2017 (the "Ballot Ordinance"). Exhibit A. City Code Section 7-156 provides that challenges to the form or content of a ballot title or submission clause fixed by Council for an initiated or referred ballot measure are to be brought under C.R.S. § 1-11-203.5 and that this is the exclusive manner for such legal challenges. Exhibit B.

The Ballot Ordinance provides that this ballot measure will be submitted to the City's electorate at an upcoming special election on November 7, 2017, which election the Council called in Ordinance No. 096, 2017 on August 15, 2017 (hereinafter referred to as the "Election Ordinance"). Exhibit C. As provided in the Election Ordinance, the City's November 7th election is being conducted as a coordinated election with the Larimer County Clerk and Recorder as authorized in the Colorado Uniform Election Code of 1992, Articles 1 to 13 of Title 1 of the Colorado Revised Statutes (hereinafter referred to as the "UEC").

The Ballot Ordinance is a submission to the electorate of a proposed amendment to the Home Rule Charter of the City of Fort Collins, Colorado (hereinafter referred to as the "Charter") to add a new Section 7 to Charter Article XII. Exhibit D contains a copy of the Charter. If approved by voters, Section 7 will grant to the Council the authority to provide telecommunication facilities and services, including high-speed broadband Internet services, to customers both within and outside of the City through the City's existing electric utility or through a new telecommunications utility. Section 7 also provides details on how the Council might exercise this new power and authority if it chooses to do so in the future. By its express language, the amendment, if approved by the voters in the City, allows the Council to add a telecommunications utility or

telecommunication services, but does not require the Council to do so. The amendment, if approved, is the grant of authority to add the utility or the telecommunication services, but is not the exercise of that authority.

The process for amending the Charter is detailed in Section 8 of Charter Article IV, which provides that the Charter "may be amended at any time in the manner provided by the laws of the State of Colorado." Section 9 of Article XX of the Colorado Constitution states that the "general assembly shall provide by statute procedures under which the registered electors of any . . . existing . . . city . . . may . . . amend . . . a municipal home rule charter." The General Assembly adopted these charter amendment procedures in the Colorado Municipal Home Rule Act of 1971 (the "Home Rule Act"). C.R.S. §§ 31-2-201, et. seq.

The specific procedure for amending a home rule charter under the Home Rule Act, as involved in this case, is found in C.R.S. § 31-2-210(1)(b), which provides that the Council can adopt an ordinance "submitting the proposed amendment to a vote of the registered electors . . . [and] [s]uch ordinance shall also adopt a ballot title for the proposed amendment" (emphasis added). A "ballot title" is defined in C.R.S. 31-2-203(1) of the Home Rule Act as having the same meaning as is given to it in C.R.S. § 31-11-103(1).

Section 31-11-103(1) defines "ballot title" to mean "the language printed on the ballot that is comprised of the *submission clause* and the *title*" (emphases added). "Submission clause" is defined in Section 31-11-103(4) as "the language that is attached to the title to form a question that can be answered by 'yes' or 'no'." "Title" is defined in Section 31-11-103(5) to mean "a brief statement that fairly and accurately

represents the true intent and meaning of the proposed initiative, referendum, or referred measure."

Sutherland objects only to the submission clause in the Ballot Ordinance, and not the title of the Ballot Ordinance. The Ballot Ordinance states as follows:

CITY-INITIATED
PROPOSED CHARTER AMENDMENT NO. 1
ADDING A NEW SECTION 7 TO CHARTER ARTCLE XII TO AUTHORIZE, BUT NOT REQUIRE, THE CITY'S PROVISION OF TELECOMMUNICATION FACILITIES AND SERVICES AS A PUBLIC UTILITY, INCLUDING BROADBAND INTERNET SERVICES

> Shall Article XII of the City of Fort Collins Charter be amended to allow, but not require, City Council to authorize, by ordinance and without a vote of the electors, the City's electric utility or a separate telecommunications utility to provide telecommunication facilities and services, including the transmission of voice, data, graphics and video using broadband Internet facilities, to customers within and outside Fort Collins, whether directly or in whole or part through one or more third-party providers, and in exercising this authority, to: (1) issue securities and other debt, but in a total amount not to exceed $150,000,000; (2) set the customer charges for these facilities and services subject to the limitations in the Charter required for setting the customer charges of other City utilities; (3) go into executive session to consider matters pertaining to issues of competition in providing these facilities and services; (4) establish and delegate to a Council-appointed board or commission some or all of the Council's governing authority and powers granted in this Charter amendment, but not the power to issue securities and other debt; and (5) delegate to the City Manager some or all of Council's authority to set customer charges for telecommunication facilities and services?
>
> _____Yes/For
>
> _____No/Against

Exhibit A, p. 4.

Sutherland asserts five grounds for his contest, which will later be examined in detail. Sutherland stated in the hearing on September 1, 2017 that the relief he desires is for this Court to reform or edit the submission clause as he requests and submit the

reformed submission clause to the City Clerk and Recorder to be submitted to the electorate in the special election in November, 2017. The City submits that the submission clause is proper, needs no revision, should be found proper, and that judgment should enter in its favor and against Sutherland.

II. APPLICABLE LAW

C.R.S. 1-11-203.5 does not set a specific legal standard by which this Court is to review the ballot title for this ballot question, except to state that the Court is to determine whether the form and content of the ballot title conforms "to the requirements of the state constitution and statutes." C.R.S. 1-11-203.5(3).

As a home rule municipality, the City derives its power to conduct its municipal elections from the Colorado Constitution, which provides that home rule municipalities:

> " . . . shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:
>
> d. *All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including* the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, *the form of ballots*, balloting, *challenging*, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character; . . . . " (Emphasis added.)

Colo. Const., Art. XX, Section 6.d.

Regulation of municipal elections is a matter of local concern and not statewide concern. *People ex rel. Tate v. Prevost,* 134 P. 129, 134 (Colo. 1913); *May v. Town of Mt. Village,* 969 P.2d 790, 794 (Colo. App. 1998). Therefore, if a home rule city's

election law conflicts with a state statute, the city's law is controlling. *Gosliner v. Denver Election Commission,* 552 P.2d 1010, 1011-12 (Colo. 1976).

These constitutional grants of authority to home rule cities may be subject, of course, to provisions of the Colorado Constitution, such as Colo. Const. Art. 10, Section 20, the Taxpayer's Bill of Rights (hereinafter referred to as "TABOR"), and TABOR Section 20(1), which states that applicable TABOR provisions "supersede conflicting state constitutional, state statutory, charter, or other state or local provisions."

The City's Charter states in Article VII, Section 1:

> The Council shall provide by ordinance for the manner of holding city elections. All ordinances regarding elections shall be consistent with the provisions of this Charter and the state Constitution. Any matter regarding elections not covered by the state Constitution, this Charter or ordinance of the Council shall be governed by the laws of the State of Colorado relating to municipal elections.

Section 6(b) in Charter Article X provides the specific criteria by which the Council is to set the ballot titles for the City's initiative and referendum measures:

> Ballots. Upon ordering an election on any initiative or referendum measure, the Council shall, after public hearing, adopt by resolution a ballot title and submission clause for each measure. The ballot title shall contain information identifying the measure as a city initiated or citizen initiated measure. ***The submission clause shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall unambiguously state the principle of the provision sought to be added.*** The official ballot used when voting upon each proposed or referred measure shall have printed on it the ballot title and submission clause and shall contain the words, "Yes/For" and "No/Against" in response to each measure." (Emphasis added.)

Therefore, under the terms of the Charter, the submission clause "shall be brief", shall not conflict with any petition previously filed for the same election and "shall unambiguously state the principle of the provision sought to be added."

In the Petition and in argument before the Court, Sutherland argues that the Court should apply the criteria in C.R.S. § 31-11-111(3) in determining the propriety of the submission clause. This provision states, in pertinent part, as follows:

> In fixing the ballot title, the legislative body or its designee *shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote would be unclear.* The ballot title shall not conflict with those titles selected for any other measure that will appear on the municipal ballot in the same election. *The ballot title shall correctly and fairly express the true intent and meaning of the measure.*" (Emphasis added.)

The City concluded in its Brief in Opposition to Plaintiff's Contest that the sufficiency of the submission clause should be determined by reference to the Charter, but cases that have interpreted C.R.S. 31-11-111(3) and C.R.S. 1-40-106(3)(b) may provide helpful guidance in determining the propriety of the submission clause.

This Court agrees with the City that the sufficiency of the submission clause should be determined by reference to the Charter based upon the above analysis. However, the Court also agrees that cases that have interpreted C.R.S. 31-11-111(3) and C.R.S. 1-40-106(3)(b) may provide helpful guidance in determining the propriety of the submission clause because those statutes use standards or criteria similar to the Charter and because the Court has not found any other cases which have interpreted whether submission clauses were sufficient under the Charter. For example, C.R.S. 1-40-106(3)(b) provides as follows:

> *In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes/for" or "no/against" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof*, together with the ballot title and submission clause, shall be completed, except as otherwise required by section 1-40-107, within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the designated representatives of the proponents, keeping the copy with a record of the action taken thereon. *Ballot titles shall be brief,* shall not conflict with those selected for any petition previously filed for the same election, and, shall be in the form of a question which may be answered "yes/for" (to vote in favor of the proposed law or constitutional amendment) or "no/against" (to vote against the proposed law or constitutional amendment) and *which shall unambiguously state the principle of the provision sought to be added, amended, or repealed*." (Emphasis added.)

This Court finds that looking to cases which interpret the above language is particularly appropriate considering that the standard of review the Supreme Court applies in reviewing the Title Board's ballot titles essentially contains a combination of the relevant criteria found in C.R.S. Section 31-11-111(3) and Charter Section 6(b). As such, the criteria used to determine propriety of ballot titles in Title Board cases is similar to the criteria in the Charter for determining propriety of ballot titles.

When interpreting C.R.S. 1-40-106(b)(3), and determining the propriety of ballot titles under that statute, the Colorado Supreme Court has stated as follows:

> We have interpreted this statute to impose on the Title Board the job of set[ting] fair, clear, and accurate titles that do not mislead the voters through a material omission or misrepresentation. This requirement, however, does not mean that the Titles need to contain every detail of the proposal. The Titles also are not required to explain every possible effect of enacting the initiative. Furthermore, as noted above, the Title Board has broad discretion in drafting the Titles, and as a result, when we review the Titles, we grant great deference to the Title Board's decisions. As such, we only reverse the Titles where the language is clearly misleading.

. . . .

> Furthermore, the fact that the Titles do not discuss all of the potential impacts of the initiative is not improper, as the Title Board may not speculate on the potential effects of the initiative if enacted. (Cites and internal quotes omitted.)

In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining for 2013-2014 #89, 328 P.3d 172, 179 (Colo. 2014).

III. ANALYSIS

The Court now analyzes the five grounds that Sutherland advances to demonstrate that the submission clause in the Ordinance is not proper.

A. "Grounds for the Contest: Part 1".

The Plaintiff contends in his "Grounds for the Contest: Part 1", paragraphs 17 through 20 of the Petition, that a comma is needed in the submission clause immediately after the "and" that is just before the phrase "in exercising this authority." Sutherland alleges the comma should be placed in the phrase highlighted below, between the word "and" and the word "in":

> Shall Article XII of the City of Fort Collins Charter be amended to allow, but not require, City Council to authorize, by ordinance and without a vote of the electors, the City's electric utility or a separate telecommunications utility to provide telecommunication facilities and services, including the transmission of voice, data, graphics and video using broadband Internet facilities, to customers within and outside Fort Collins, whether directly or in whole or part through one or more third-party providers, ***and in exercising this authority***, to: ….

The Plaintiff claims that this alleged "missing" comma will cause public confusion by misleading language, and will make the effect of a "yes" or "no" vote unclear.

The Court finds that the alleged "missing" comma does not cause confusion, is not misleading, and will not make the effect of a "yes" or "no" vote unclear. The court

finds that whether the comma is inserted or not the plain and clear meaning of the clause is the same. Neither the meaning of the entire sentence nor the meaning of the clause "and in exercising this authority" change if a comma is inserted after the word "and". The sentence and the clause are not confusing, with or without the comma. The ability to comprehend the phrase "and in exercising this authority" does not change if a comma is placed after the word "and".

B. "Grounds for the Contest: Part 2".

Sutherland contends in "Grounds for the Contest: Part 2", paragraphs 21 through 24 of the Petition, that the submission clause contains misleading or confusing language because it fails to detail the source of revenues to repay any debt which could be authorized by Council at a later time.

In many Ballot Title cases, the Supreme Court addresses the contention that the submission clause fails to contain salient details which are found in the complete language of the initiative. These contentions are usually found not persuasive except when the omission is significant and material. For example, the Supreme Court has stated:

> The Board need not and often cannot describe every feature of a proposed initiative in a title or ballot title and submission clause and simultaneously heed the mandate that such documents be concise. To require such would be to transform what the General Assembly intended—a relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters—into an item-by-item paraphrase of the proposed constitutional amendment or statutory provision." (Cites and internal quotes omitted.)

In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62, 961 P.2d 1077, 1083 (Colo. 1998).

The submission clause here informs voters that securities and other debt are likely to be

issued to fund the telecommunication facilities and services, that the amount of any such debt is limited to $150,000,000, that there will be charges for the facilities and services provided, and that the city manager may have some of the authority to set customer charges for the telecommunication facilities and services. The submission clause details that any debt will be repaid by "securities and other debt…." A concern about more details could be solved by reading the entire Ballot Ordinance which discusses the source of revenue to pay any debt authorized and incurred.

As such, The Court finds that the submission clause is proper because it is brief, because it unambiguously details the intent of the provision to be added to the Charter, because it discusses the kind of debt which may be authorized to pay for the new services, because it details the limit on any such debt, and because it describes sources for payment of any debt authorized and incurred.

C. "Grounds for the Contest: Part 3".

Sutherland contends in paragraph 26 of the Petition that the following sentence in proposed Section 7(b) of the Charter amendment is being "added or amended in such a way as to create a conflict with or an exemption from current requirements of the Charter":

> The City's payment of and performance of covenants under the securities and other debt obligations issued under this subsection (b) and any other contract obligations of the City relating to the provision of telecommunication facilities and services under this Section, shall not be subject to annual appropriation so long as annual appropriation is not required under Article X, Section 20 of the Colorado Constitution.

He contends that this "conflict" with other provisions in the Charter "must be explicitly approved by including" his proposed language in the submission clause because it is in

conflict with existing Charter provisions Sections 8(b) and 8(c) of Charter Article V.[1]

The Supreme Court has frequently found that arguments such as this one are not grounds to invalidate a submission clause. These contentions often arise in the context of a claim that an initiative proposing an amendment to the Colorado Constitution will amend or otherwise be in conflict with some existing provision in the Constitution or some other state or federal law. The Court has found:

> As we discussed above, however, the potential effect of a proposed initiative on other constitutional or statutory provisions need not be included in the title or submission clause. In performing its title-setting function, the Board may not speculate on how a potential amendment would be interpreted and, if possible, harmonized with other relevant provisions. *Such considerations are far beyond the scope of our review of the titles and summary of an initiative petition*." (Emphasis added.)

In the Matter of the Title, Ballot Title and Submission Clause, and Summary Approved January 19, 19914 and February 2, 1994, 873 P.2d 718, 721 (Colo. 1994).

See also, In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Initiative on School Pilot Program, 874 P.2d 1066, 1071 (Colo. 1994) ("As we have indicated, it is not our province in this statutory proceeding to address the possible interaction between the proposed amendment and any current or

[1] Sections 8(b) and 8(c) of the Charter read:

> (b) It shall be unlawful for any service area, officer or agent of the city to incur or contract any expense or liability or make any expenditure for or on behalf of the city unless an appropriation therefor shall have been made by the Council. Any authorization of an expenditure or incurring of an obligation by any officer or employee of the city in violation of this provision shall be null and void from its inception.
>
> (c) Nothing herein shall apply to or limit the authority conferred by this Article in relation to bonded indebtedness, or to the collection of moneys by special assessments for local improvements; nor shall it be construed to prevent the making of any contract or lease providing for expenditures beyond the end of the fiscal year in which it is made, so long as such contract or lease is made subject to an appropriation of funds sufficient to meet the requirements of Section 8(b) above.

future provision of the Colorado Constitution"); *In the Matter of the Title, Ballot Title and Submission Clause for 2013-2014 #85,* 328 P.3d 136, 144-45 (Colo. 2014)("However, the legal interpretation or potential effect of the Proposed Initiative is beyond our scope of review here. *See Blake v. King*, 185 P.3d 142, 145 (Colo. 2008) ('At this stage, we do not address the merits of a proposed measure, interpret it *or construe its future legal effects.*')…Moreover, a title is not unclear or misleading simply because it does 'not refer to the initiative's possible interplay with existing state and federal laws.'"(Emphasis in original)).

As such, the Court finds that the alleged conflict between the proposed Charter amendment and the Charter is not grounds to invalidate the submission clause of the proposed Charter amendment.

D. "Grounds for the Contest: Part 4"

Sutherland contends in In paragraphs 29 through 33 of the Petition that the proposed Charter Amendment and its ballot title is a TABOR "ballot issue" subject to the election requirements of TABOR Section 20(3)(c) and, therefore, the submission clause must begin with the phrase: "Shall City of Fort Collins Debt be increased by $150,000,000, with a repayment cost of $200,000,000."

This Court finds that the proposed Charter amendment is not subject to TABOR requirements for three reasons:

1. Chief Financial Officer for the City Michael Beckstead testified at the hearing that the Charter amendment, if approved, will approve creation of "utility enterprises" which are not subject to TABOR requirements. The Court finds this testimony persuasive because an "enterprise" as defined in TABOR is not

considered a “district” under TABOR, and is, therefore not subject to any of TABOR’s requirements when it issues securities or other debt. *TABOR Foundation v. Colorado Bridge Enterprise*, 353 P.3d 896, 898 (Colo. App. 2014)

2. The proposed Charter amendment is not the kind of “ballot issue” that is subject to TABOR because it does not contain a proposal for the “creation of any multiple-year year direct or indirect debt or other financial obligation” as contemplated in TABOR Section 20(4)(b). The Court finds that the intent of the City’s proposed Charter amendment is not to create any debt, but to authorize the Council to approve the City’s electric utility or a new telecommunications utility to begin providing telecommunication facilities and services to the customers in and out of the City. In *Zaner v. City of Brighton,* 917 P.2d 280, 288 (Colo. 1996), the Colorado Supreme Court stated, “We have determined that article X, section 20(3)(a) [TABOR] applies only to issues of government financing, spending, and taxation governed by article X, section 20, and not to all issues regardless of subject matter *nor even to all issues which can be characterized as fiscal.” (*Emphasis supplied). This Court finds that the proposed Charter amendment only seeks voter approval to grant Council limited authority related to telecommunication facilities and services, and is not the kind of government spending, financing or taxation intended to be covered by TABOR.
3. The City persuasively argues that the proposed Charter amendment is not a proposal for a “bonded debt” increase as contemplated in TABOR Section

20(3)(c), the provision Sutherland relies upon in arguing for the wording he proposes be added to the submission clause. In *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), the Supreme Court considered the meaning of "bonded debt" as this term is used in the "anti-consolidation" provision found in TABOR Section 20(3)(a). This provision in TABOR reads: "Except for petitions, *bonded debt*, or charter or constitutional provisions, districts may consolidate ballot issues . . . ." (Emphasis added.) When the Supreme Court in *Bickel* construed the meaning of "bonded debt" in Section 20(3)(a), it stated, "In the case of County Question A, because the district sought approval of 'revenue bonds' as those are defined in subdivision 29–2–112(1), 12A C.R.S. (1986), that ballot issue did not involve 'bonded debt' at all. See § 29–2–112(9) ('The revenue bonds shall not constitute an indebtedness of the county, city or incorporated town within the meaning of constitutional or statutory debt limitation or provision.')." 885 P.2d at 230. TABOR Section 20(3)(c) also uses the term "bonded debt" and it reads in pertinent part, "Ballot titles for . . . bonded debt increases shall begin, . . . **SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH REPAYMENT COST OF (maximum total district cost), ..."** The power to be granted to the Council to issue securities in the proposed Charter amendment, however, is the power to issue revenue securities as authorized in Section 19.3(a) of Charter Article V, not the power to issue bonded debt. As such, revenue securities are not "bonded debt" under TABOR Section 20(3)(a). Therefore, the submission clause is not subject to the language

requirement of Section 20(3)(a) even if it could be construed as a TABOR ballot issue.

E. "Grounds for the Contest: Part 5"

Sutherland contends in paragraphs 34 through 36 of the Petition that the Charter amendment and its ballot title consolidate two different issues in violation of the "anti-consolidation clause" of TABOR Section 20(3)(a), which reads, "Except for petitions, *bonded debt*, or *charter* or constitutional provisions, districts may consolidate ballot issues." (Emphasis added.) Sutherland contends that the Charter amendment presents both a TABOR question for the creation of debt, and a charter amendment, in violation of TABOR Section 20(3)(a).

As detailed above, this Court found that the Charter amendment is not a bond issue which is subject to TABOR because it involves creation of utility "enterprises", and "enterprises are not subject to TABOR requirements.

The Court also finds that the proposed Charter amendment does not impermissibly consolidate two different issues. In *Bickel v. City of Boulder, supra at p. 229*, the Supreme Court addressed this issue and stated, "This Court has long held that more than one topic may be submitted to the voters in a single ballot issue if the topics are 'so connected with or dependent upon the general subject that it might not be desirable that one be adopted with the other.' *People ex.rel. Elder v. Spurs*, 31 Colo. 369, 74 P. 167, 168 (1903)." The Court finds that the topics in the ballot submission are all connected to the general subject of the City's provision of internet services in the City and that it would not be desirable to adopt some of the provisions without the others on this interconnected subject.

Sutherland requests that this Court remedy alleged defects in the submission clause by rewriting it. C.R.S. 1-11-203.5(3) requires this Court to remedy any defects in the ballot title by rewriting them to conform to applicable law. However, the Court has found no defects in the submission clause, and there is, therefore, no authority for rewriting the submission clause.

Sutherland named Angela Myer in his petition as an "indispensable party." She was not a named contestee or defendant, she was not served, she did not appear, and no claim was made against her. As such, the Court dismisses any claim or grounds for proceeding against her with prejudice because she was not a party to this action.

IV. CONCLUSION

For all the reasons stated above, the Court finds that the Council's submission clause is proper, and that there are no legal grounds to cause the submission clause to be rewritten. As such, the Court denies Sutherland's contest as presented in the Petition, and enters judgment in favor of the City and against Sutherland.

SO ORDERED: September 4, 2017.

Thomas R. French
District Court Judge