

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 E. 2 <sup>nd</sup> Avenue, Room 106 Durango, Colorado 81301	DATE FILED: November 16, 2021 1:54 PM FILING ID: 458460621756C CASE NUMBER: 2021CV30148
<p><b>Plaintiffs:</b> CHRISTINA MCMUNN, an individual; CAM FORMBY, an individual; CATHY PATTERSON, an individual; and STANLEY PATTERSON, an individual</p> <p>v.</p> <p><b>Defendants:</b> 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</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
Attorneys for Defendants Darryl L. Farrington, #7270 M. Johnathan Koonce, #48797 SEMPLE, FARRINGTON, EVERALL & CASE, P.C. 1120 Lincoln Street, Suite 1308 Denver, Colorado 80203 Phone Number: (303) 595-0941 FAX Number: (303) 861-9608 E-mail: dfarrington@semplelaw.com, jkoonce@semplelaw.com	Case Number: 2021CV030148  Division:            Courtroom:
<b>ANSWER TO VERIFIED COMPLAINT</b>	

Defendants Durango School District 9-R Board of Education and Julie Popp, by and through their undersigned attorneys, hereby answer Verified Petition Under C.R.S. § 1-1-113 (“Complaint”) filed by Plaintiffs Christina McMunn, Cam Formby, and Stanley Patterson, as follows:

**INTRODUCTION**

1. Defendants deny the allegations set forth in paragraph 1 of the Complaint.
2. Defendants deny the allegations set forth in paragraph 2 of the Complaint.
3. Defendants deny the allegations set forth in paragraph 3 of the Complaint.

4. Defendants deny the allegations set forth in paragraph 4 of the Complaint.

### **PARTIES**

5. Defendants are without sufficient information regarding where Christina McMunn resides, and on that basis, Defendants deny the allegations in paragraph 5 of the Complaint.

6. Defendants are without sufficient information regarding where Cam Formby resides, and on that basis, Defendants deny the allegations in paragraph 6 of the Complaint.

7. Defendants are without sufficient information regarding where Cathy Patterson resides, and on that basis, Defendants deny the allegations in paragraph 7 of the Complaint.

8. Defendants are without sufficient information regarding where Stanley Patterson resides, and on that basis, Defendants deny the allegations in paragraph 8 of the Complaint.

9. Defendant admits the allegations set forth in paragraph 9 of the Complaint.

10. Defendant admits the allegations set forth in paragraph 10 of the Complaint.

### **JURISDICTION AND VENUE**

11. Paragraph 11 of the Complaint contains a legal conclusion to which no response is required, and on that basis, Defendants deny the same.

12. Paragraph 12 of the Complaint contains a legal conclusion to which no response is required, and on that basis, Defendants deny the same.

### **GENERAL ALLEGATIONS**

13. Paragraph 13 contains a legal conclusion to which no response is required, and on that basis, Defendants deny the same.

14. Defendants admit the allegations set forth in paragraph 14 of the Complaint.

15. Defendants admit the allegations set forth in paragraph 15 of the Complaint.

16. Defendants admit the allegations set forth in paragraph 16 of the Complaint.

17. Defendants admit the allegations set forth in paragraph 17 of the Complaint.

18. Defendants admit the allegations set forth in paragraph 18 of the Complaint.

19. Defendants admit that Plaintiffs have recited a portion of C.R.S. § 22-31-129. Except as specifically admitted, Defendants deny the remaining allegations set forth in paragraph 19 of the Complaint.

20. Defendants admit that Plaintiffs have recited a portion of C.R.S. § 22-31-125. Except as specifically admitted, Defendants deny the remaining allegations set forth in paragraph 20 of the Complaint.

21. Defendants admit the allegations set forth in paragraph 21 of the Complaint.

22. Defendants admit the allegations set forth in paragraph 22 of the Complaint.

23. Defendants admit the allegations set forth in paragraph 23 of the Complaint.

24. Defendants admit that Parmenter changed her permanent living arrangement in August 2021. Except as specifically admitted, Defendants deny the remaining allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in paragraph 25 of the Complaint.

26. Defendants are without sufficient information to admit or deny the veracity of statements provided by the “current resident” at 2341 Forest Ave, as alleged in paragraph 26 of the Complaint, and on that basis, Defendants deny the same.

27. Defendants are without sufficient information to admit or deny the veracity of the United States Postal Service records referred to in paragraph 27 of the Complaint, and on that basis, Defendants deny the same.

28. Defendants are without sufficient information to admit or deny whether Mr. Barney Siegal changed his mailing address with the U.S. Postal Service in May 2021, and on that basis, Defendants deny the allegations in paragraph 28 of the Complaint.

29. Defendants admit that 440 County Road 239, Durango, CO 81301 is located in District E.

30. Defendants are without sufficient information to admit or deny whether or when the house at 440 County Road 239 was advertised for rent, and on that basis, Defendants deny the allegations in paragraph 30 of the Complaint.

31. Defendants admit that in August 2021, Parmenter circulated petitions for nomination as a candidate for Board director for District E. Except as specifically admitted, Defendants deny the remaining allegations in paragraph 31 of the Complaint.

32. Defendants admit the allegations set forth in paragraph 32 of the Complaint.

33. Defendants admit the allegations set forth in paragraph 33 of the Complaint.
34. Defendants admit the allegations set forth in paragraph 34 of the Complaint.
35. Defendants deny the allegations set forth in paragraph 35 of the Complaint.
36. Defendants deny the allegations set forth in paragraph 36 of the Complaint.
37. Defendants deny the allegations set forth in paragraph 37 of the Complaint.
38. Defendants admit the allegations set forth in paragraph 38 of the Complaint.
39. Defendants admit that the Board stated that Parmenter was “not present” for votes during the September 7, 2021 meeting. Except as specifically admitted, Defendants deny the remaining allegations set in paragraph 39 of the Complaint.
40. Defendants deny the allegations set forth in paragraph 40 of the Complaint.
41. Defendants deny the allegations set forth in paragraph 41 of the Complaint.
42. Defendants admit that the Board did not declare a vacancy until the September 7, 2021 Board meeting. Except as specifically admitted, Defendants deny the remaining allegations set forth in paragraph 42 of the Complaint.

#### **RESPONSES TO FIRST CLAIM FOR RELIEF**

43. Defendants incorporate all previous answers as if fully set forth herein.
44. Defendants admit the allegations set forth in paragraph 44 of the Complaint.
45. Defendants admit the allegations set forth in paragraph 45 of the Complaint.
46. Defendants admit the allegations set forth in paragraph 46 of the Complaint.
47. Defendants admit that paragraph 47 of the Complaint quotes a portion of C.R.S. § 22-31-129(3). Except as specifically admitted, Defendants deny the remaining allegations in paragraph 47.
48. Defendants deny the allegations set forth in paragraph 48 of the Complaint.
49. Defendants admit that paragraph 49 of the Complaint quotes a portion of C.R.S. § 1-5-208(1.5). Except as specifically admitted, Defendants deny the remaining allegations in paragraph 49.

50. Defendants deny the allegations set forth in paragraph 50 of the Complaint.

51. Defendants admit that Amendment 78, Proposition 119, and Proposition 120 were three statewide ballot measures for the November 2, 2021 election. Except as specifically admitted, Defendant denies the remaining allegations in paragraph 51 of the Complaint.

52. Defendants deny the allegations set forth in paragraph 52 of the Complaint.

53. Defendants deny the allegations set forth in paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in paragraph 54 of the Complaint.

55. Defendants deny the allegations set forth in paragraph 55 of the Complaint.

56. Defendants deny the allegations set forth in paragraph 56 of the Complaint.

#### **RESPONSES TO SECOND CLAIM FOR RELIEF**

57. Defendants incorporate all previous answers as if fully set forth herein.

58. Defendants admit that paragraph 58 of the Complaint quotes portions of C.R.S. § 22-31-129(3). Except as specifically admitted, Defendants deny the remaining allegations of paragraph 58.

59. Defendants deny the allegations set forth in paragraph 59 of the Complaint.

60. Defendants deny the allegations set forth in paragraph 60 of the Complaint.

61. Defendants deny the allegations set forth in paragraph 61 of the Complaint.

62. Defendants admit that the Board declared a vacancy on the Board of Directors on September 7, 2021. Except as specifically admitted, Defendants deny the remaining allegations in paragraph 62 of the Complaint.

63. Defendants admit that the Board declared a vacancy on the Board of Directors on September 7, 2021. Except as specifically admitted, Defendants deny the remaining allegations in paragraph 63 of the Complaint.

64. Paragraph 64 of the Complaint contains a legal conclusion to which no response is required, and on that basis, Defendants deny the same.

65. Defendants deny the allegations set forth in paragraph 65 of the Complaint.
66. Defendants deny the allegations set forth in paragraph 66 of the Complaint.
67. Defendants deny the allegations set forth in paragraph 67 of the Complaint.
68. Defendants deny the allegations set forth in paragraph 68 of the Complaint.
69. Defendants deny the allegations set forth in paragraph 69 of the Complaint.
70. Defendants are without sufficient information to admit or deny Plaintiff McMunn's interest in running for District D director, and on that basis, Defendants deny the allegations in paragraph 70 of the Complaint.
71. Defendants are without sufficient information to admit or deny Plaintiff McMunn's motivations in deciding not to run in the District D director election, and on that basis, Defendants deny the allegations in paragraph 71 of the Complaint.
72. Defendants deny the allegations set forth in paragraph 72 of the Complaint.
73. Defendants admit that the Board did not appoint McMunn to serve as District D director. Except as specifically admitted, Defendants deny the remaining allegations in paragraph 73.
74. Defendants deny the allegations set forth in paragraph 74 of the Complaint.
75. Defendants deny the allegations set forth in paragraph 75 of the Complaint.
76. Defendants admit that paragraph 76 of the Complaint quotes a portion of C.R.S. § 22-31-129(3). Except as specifically admitted, Defendants deny the remaining allegations in paragraph 72.
77. Defendants deny the allegations set forth in paragraph 77 of the Complaint.
78. Defendants deny the allegations set forth in paragraph 78 of the Complaint.
79. Defendants deny the allegations set forth in paragraph 79 of the Complaint.
80. Paragraph 80 of the Complaint contains a legal conclusion to which no response is required, and on that basis, Defendants deny the same.

81. Defendants deny the allegations set forth in paragraph 81 of the Complaint.

82. Defendants deny the allegations set forth in paragraph 82 of the Complaint.

83. Defendants deny the allegations set forth in paragraph 83 of the Complaint.

### **ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF**

Defendants deny that Plaintiffs are entitled to judgment in their favor, deny the propriety of each and every prayer for relief, and deny that Plaintiffs are entitled to any relief.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

Defendant asserts the following Defenses and Affirmative Defenses, subject to and without waiving the foregoing, without accepting any burden of proof on the matter, and in the alternative if necessary:

#### **FIRST DEFENSE**

Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

#### **THIRD DEFENSE**

Plaintiffs' claims may be limited or barred by the doctrines of waiver, estoppel, or laches.

#### **FOURTH DEFENSE**

Plaintiffs failed to satisfy the jurisdictional prerequisites to this action.

#### **FIFTH DEFENSE**

Defendants designates all denials of material allegations as defenses to the extent necessary to provide Defendants a complete defense in this matter.

#### **SIXTH DEFENSE**

Defendants reserve the right to assert additional defenses.

WHEREFORE, Defendants Durango School District 9-R Board of Education and Julie Popp respectfully request that Plaintiffs' Complaint be dismissed in its entirety and with prejudice, and for such further relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED this 16th day of November, 2021.

SEMPLER, FARRINGTON, EVERALL & CASE, P.C.

By: s/ M. Johnathan Koonce  
Darryl L. Farrington, #7270  
M. Johnathan Koonce, #48797

ATTORNEY FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of November, 2021, a correct copy of the foregoing **ANSWER TO VERIFIED COMPLAINT** was filed and served via Colorado Courts E-filing system on the following:

Scott E. Gessler  
Gessler Blue LLC  
7350 E. Progress Place, Suite 100  
Greenwood Village, CO 80111  
sgessler@gesslerblue.com

By: s/ Elaine Montoya