

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

CITIZEN CENTER, a Colorado nonprofit corporation,

Plaintiff,

v.

SCOTT GESSLER, in his official capacity as Colorado Secretary of State,
SHEILA REINER, in her official capacity as Mesa County Clerk & Recorder,
SCOTT DOYLE, in his official capacity as Larimer County Clerk & Recorder,
PAM ANDERSON, in her official capacity as Jefferson County Clerk & Recorder,
HILLARY HALL, in her official capacity as Boulder County Clerk & Recorder,
JOYCE RENO, in her official capacity as Chaffee County Clerk & Recorder,
TEAK SIMONTON, in her official capacity as Eagle County Clerk & Recorder,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Citizen Center complains and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action for declaratory and injunctive relief brought against seven Colorado elections officials who have unconstitutionally arrogated to the government the authority to create, compile and maintain after an election information that permits voted ballots to be traced to the individual voters who cast those ballots, thereby depriving Colorado citizens on both a random and a systematic basis of constitutional rights exercised through the “secret ballot.”

2. “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” Reynolds v. Sims, 377 U.S. 533, 555 (1964). The secret ballot – “the hard-won right to vote one’s conscience without fear of retaliation” – is a cornerstone of this right to freely vote for one’s electoral choices. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092, 1102 (10th Cir. 1997) (quoting McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 343 (1995)), aff’d sub nom. Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182 (1999).

3. Because “the very purpose of the secret ballot is to protect the individual’s right to cast a vote without explaining to anyone for whom, or for what reason, the vote is cast,” Rogers v. Lodge, 458 U.S. 613, 647 n.30 (1982), any violation of secrecy in voting is necessarily destructive of the secret ballot’s object and burdens those constitutional rights that are furthered by secrecy in voting and that are exercised during the act of voting by means of a secret ballot.

4. The secret ballot exists to guarantee that no one – including especially the government – is ever in a position to know how a particular person voted. When, as here, secrecy in voting has been and will be arbitrarily violated by policies and procedures deliberately adopted and implemented by government officials, not only is the citizen’s fundamental right to vote itself substantially and unconstitutionally infringed, but so too are the citizen’s First and Fourteenth Amendment rights to freedom of speech, to freedom of association, to equal protection of the laws and to substantive and procedural due process.

PARTIES

5. Plaintiff the Citizen Center is a non-profit membership organization with standing to vindicate the interests of its members whose rights, status or other legal relations are affected by the Defendants' actions. Among its organizational purposes, Citizen Center works to protect the constitutional rights of its members and of all American citizens, including the fundamental right to vote, the fundamental right to freedom of speech, the fundamental right to freedom of association and those substantial liberty interests created by state law that warrant federal constitutional protection, such as the right to secrecy in voting under the Colorado Constitution.

6. Citizen Center is an organization composed of members who would have standing to sue in their individual right for the allegations set forth in this Complaint.

7. The interests that the Citizen Center seeks to protect in this action are germane to the organization's purposes.

8. Neither the claims asserted nor the relief requested by Citizen Center in this action requires participation by each of the individual members of Citizen Center.

9. Defendant Scott Gessler is the elected Secretary of State of the State of Colorado. The Secretary is the public officer responsible for supervising the conduct of primary, general, congressional vacancy and statewide ballot issue elections in the State of Colorado. The Secretary is responsible for enforcing the election laws and for promulgating rules necessary for the proper administration and enforcement of those laws. The Secretary is responsible for inspecting and reviewing the practices and procedures of county clerk and recorders. At all times material to this Complaint, the

Secretary has acted or will act under color of state law. The Secretary is sued in his official capacity.

10. Defendant Sheila Reiner is the elected Clerk & Recorder of Mesa County, Colorado. Reiner is the public officer responsible for the conduct of elections in Mesa County. At all times material to this Complaint, Reiner has acted or will act under color of state law. Reiner is sued in her official capacity.

11. Defendant Scott Doyle is the elected Clerk & Recorder of Larimer County, Colorado. Doyle is the public officer responsible for the conduct of elections in Larimer County. At all times material to this Complaint, Doyle has acted or will act under color of state law. Doyle is sued in his official capacity.

12. Defendant Pam Anderson is the elected Clerk & Recorder of Jefferson County, Colorado. Anderson is the public officer responsible for the conduct of elections in Jefferson County. At all times material to this Complaint, Anderson has acted or will act under color of state law. Anderson is sued in her official capacity.

13. Defendant Hillary Hall is the elected Clerk & Recorder of Boulder County, Colorado. Hall is the public officer responsible for the conduct of elections in Boulder County. At all times material to this Complaint, Hall has acted or will act under color of state law. Hall is sued in her official capacity.

14. Defendant Joyce Reno is the elected Clerk & Recorder of Chaffee County, Colorado. Reno is the public officer responsible for the conduct of elections in Chaffee County. At all times material to this Complaint, Reno has acted or will act under color of state law. Reno is sued in her official capacity.

15. Defendant Teak Simonton is the elected Clerk & Recorder of Eagle County, Colorado. Simonton is the public officer responsible for the conduct of elections in Eagle County. At all times material to this Complaint, Simonton has acted or will act under color of state law. Simonton is sued in her official capacity.

16. Plaintiff seeks only prospective declaratory and injunctive relief against each of the Defendants in this action.

JURISDICTION

17. This civil rights lawsuit arises under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

18. This Court has original subject-matter jurisdiction over Plaintiff's federal claims pursuant to U.S. Const. art. III, § 2, cl. 1; 28 U.S.C. §§ 1331, 1343(a)(3)-(4) and 1357; and 42 U.S.C. § 1983.

19. This case also arises under Article II, § 25 and Article VII, § 8 of the Colorado Constitution.

20. This Court has supplemental jurisdiction over Plaintiff's state constitutional claims pursuant to 28 U.S.C. § 1367(a).

21. This Court may grant Plaintiff's requested declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

22. This Court may grant Plaintiff's requested injunctive relief on a preliminary basis pursuant to Fed. R. Civ. P. 65.

VENUE

23. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants perform their official duties in the District of Colorado and the facts that form the basis for this complaint are all based in this district.

GENERAL ALLEGATIONS

Defendants' Conduct

Mesa County

24. Defendant Reiner uses systems, practices, policies and procedures for the conduct of elections in Mesa County that allow voted ballots in her custody and control to be traced to individual voters in Mesa County.

25. Reiner processes and stores mail-in paper ballots in organized, numbered and discrete batches of approximately fifty or fewer ballots.

26. Each batch of ballots is associated with a "batch sheet" (or "batch log" or "audit log") that is created by querying the Statewide Colorado Registration and Election (SCORE) database of registered electors using information contained on the voter-signed mail ballot return envelopes for each ballot included in the batch.

27. The resulting completed and printed batch sheet, which is stored with and attached to the related ballots, lists the names, voter identification numbers, precinct number/ballot styles and other information for the voters whose ballots are included in the batch.

28. Comparison of information contained on the batch sheet (or maintained in the SCORE database) against the associated ballots enables those ballots within that

batch that have a unique precinct number/ballot style to be identified with certainty as the ballot cast by a particular, known voter.

29. In addition, it is Reiner's practice to ensure that the voted ballots within each batch, the list of names on the associated batch sheet and the empty returned mail ballot envelopes, which are separately batched, are all maintained in the same order as the ballots were counted and thus correspond to one another.

30. On information and belief, Reiner's practice of maintaining ballots in an order that corresponds to the order of voter names on an associated batch sheet permits every voted ballot within a batch of mail ballots to be identified as the ballot cast by a particular, identifiable voter.

31. On or before November 22, 2011, Reiner actually used her batching practices to search out and identify the location, within batches of voted ballots in her custody and control, of particular ballots that had been cast by named individual voters in Mesa County at a previous election.

32. On or before November 22, 2011, Reiner or her staff authored a PowerPoint presentation that publicized her ability to locate the individual ballots voted and cast in a recent election by several identifiable Mesa County voters, including Mesa County Commissioner Craig Meis, Mesa County Commissioner Janet Rowland, Mesa County Commissioner Steve Acquafresca, State Senator Steve King, State Representative Laura Bradford and State Representative Ray Scott.

33. Defendant Reiner also records, for all electronic ballots cast by voters on direct recording electronic (DRE) voting machines, information that includes the date of

voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

34. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Reiner in the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, known voter.

Larimer County

35. Defendant Doyle uses systems, practices, policies and procedures for the conduct of elections in Larimer County that allow voted ballots in his custody and control to be traced to individual voters in Larimer County.

36. Doyle processes and stores mail-in paper ballots in organized, numbered and discrete batches of approximately fifty or fewer ballots.

37. Each batch of ballots is associated by Doyle with a "batch sheet" (or "batch log" or "audit log") that is created by querying the SCORE database of registered electors using information contained on the voter-signed mail ballot return envelopes for each ballot included in the batch.

38. The resulting completed batch log, lists the names, voter identification numbers, precinct number/ballot styles and other information for the voters whose ballots are included in the discrete numbered batch.

39. Comparison of information contained on the batch log (or maintained in the SCORE database) against the associated ballots enables those ballots within that batch that have a unique precinct number/ballot style to be identified with certainty as the ballot cast by a particular, known voter.

40. In addition, it is Doyle's practice to ensure that the voted ballots within each batch, the list of names on the associated batch log and the empty returned mail ballot envelopes, which are separately batched, are all maintained in the same order as the ballots were counted and thus correspond to one another.

41. On information and belief, Doyle's practice of maintaining ballots in an order that corresponds to the order of voter names on an associated batch sheet permits every voted ballot within a batch of mail ballots to be identified as the ballot cast by a particular, identifiable voter.

42. On or before January 5, 2012, Doyle actually used his batching practices to search out and identify the location, within batches of voted ballots in her custody and control, of particular ballots that had been cast by named individual voters in Larimer County at a previous election.

43. On or before January 5, 2012, Doyle or his staff authored a PowerPoint presentation that publicized his ability to locate the individual ballots voted and cast in a recent election by several identifiable Larimer County voters, including State Senator Bob Bacon, State Senator Kevin Lundberg, State Representative B.J. Nikkel, State Representative Brian DelGrosso, State Representative John Kefalas and State Representative Randy Fischer.

44. Defendant Doyle records, for all electronic ballots cast by voters on DRE voting machines, information that includes the date of voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

45. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Doyle in the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, personally identifiable voter.

Jefferson County

46. Defendant Anderson uses systems, practices, policies and procedures for the conduct of elections in Jefferson County that allow voted ballots in her custody and control to be traced to individual voters in Jefferson County.

47. Anderson uses systems, practices, policies and procedures for the conduct of elections in Jefferson County that allow voted ballots in her custody and control to be traced to individual voters in Jefferson County.

48. Anderson processes and stores mail-in paper ballots in discrete batches.

49. Each batch of ballots is associated by Anderson with a batch report that is created by querying the SCORE database of registered electors using information contained on the voter-signed mail ballot return envelopes for each ballot included in the batch.

50. The resulting batch reports contain the names, voter identification numbers, precinct number/ballot styles and other information for the voters whose ballots are included in the batch.

51. Comparison of information contained on the batch report (or maintained in the SCORE database) against the associated ballots enables those ballots within that batch that have a unique precinct number/ballot style to be identified with certainty as the ballot cast by a particular, known voter.

52. On or before October 16, 2011, Anderson actually used her batching practices to search out and identify the location, within batches of voted ballots in her custody and control, of her own personal ballot that had been cast in Jefferson County at a previous election.

53. Anderson records, for all electronic ballots cast by voters on DRE voting machines, information that includes the date of voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

54. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Anderson in the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, personally identifiable voter.

55. After the 2010 general election, Defendant Anderson actually revealed the personal electoral choices of at least thirty identifiable individual voters who cast votes

by direct recording (DRE) electronic voting machine by exposing their choices on Jefferson County's public election reporting website for nearly a year and a half.

Boulder County

56. Defendant Hall uses systems, practices, policies and procedures for the conduct of elections in Boulder County that allow voted ballots in her custody and control to be traced to individual voters in Boulder County.

57. Hall uses the Hart voting system, which prints a unique distinguishing bar code and unique set of numerals on each paper ballot.

58. Any person who comes into knowledge of the unique identifier printed by Hall on a ballot provided to a particular voter, including the voter himself, can later identify the paper ballot bearing that unique identifier with certainty as the ballot of that particular voter.

59. Hall's election procedures permit elections administration staff, polling place workers and mailing services vendors, among others, occasion to observe the unique identifiers printed on ballots and opportunity to associate those unique identifiers with the identities of voters who are the recipients of those ballots.

60. Simple examination of the unique identifiers on voted ballots of voters in Boulder County after an election then enables ballots cast by particular, known voters to be located and identified with certainty.

61. Hall uses systems, practices, policies and procedures for the conduct of elections in Boulder County that allow voted ballots in her custody and control to be traced to individual voters in Boulder County.

62. Hall processes and stores mail-in paper ballots in discrete batches.

63. Each batch of ballots is associated by Hall with a batch report that is created by querying the SCORE database of registered electors using information contained on the voter-signed mail ballot return envelopes for each ballot included in the batch.

64. The resulting batch reports contain the names, voter identification numbers, precinct number/ballot styles and other information for the voters whose ballots are included in the batch.

65. Comparison of information contained on the batch report (or maintained in the SCORE database) against the associated ballots enables those ballots within that batch that have a unique precinct number/ballot style to be identified with certainty as the ballot cast by a particular, known voter.

66. Hall records, for all electronic ballots cast by voters on DRE voting machines, information that includes the date of voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

67. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Hall in the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, personally identifiable voter.

Chaffee County

68. Defendant Reno uses systems, practices, policies and procedures for the conduct of elections in Chaffee County that allow voted ballots in her custody and control to be traced to individual voters in Chaffee County.

69. Reno uses the Hart voting system, which prints a unique distinguishing bar code and unique set of numerals on each paper ballot.

70. Any person who comes into knowledge of the unique identifier printed by Reno on a ballot provided to a particular voter, including the voter himself, can later identify the paper ballot bearing that unique identifier with certainty as the ballot of that particular voter.

71. Reno's election procedures permit elections administration staff, polling place workers and mailing services vendors, among others, occasion to observe the unique identifiers printed on ballots and opportunity to associate those unique identifiers with the identities of voters who are the recipients of those ballots.

72. Simple examination of the unique identifiers on voted ballots of voters in Chaffee County after an election then enables ballots cast by particular, known voters to be located and identified with certainty.

73. Reno records, for all electronic ballots cast by voters on DRE voting machines, information that includes the date of voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

74. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Reno in

the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, personally identifiable voter.

Eagle County

75. Defendant Simonton uses systems, practices, policies and procedures for the conduct of elections in Eagle County that allow voted ballots in her custody and control to be traced to individual voters in Eagle County.

76. Simonton uses the Hart voting system, which prints a unique distinguishing bar code and unique set of numerals on each paper ballot.

77. Any person who comes into knowledge of the unique identifier printed by Simonton on a ballot provided to a particular voter, including the voter himself, can later identify the paper ballot bearing that unique identifier with certainty as the ballot of that particular voter.

78. Simonton's election procedures permit elections administration staff, polling place workers and mailing services vendors, among others, occasion to observe the unique identifiers printed on ballots and opportunity to associate those unique identifiers with the identities of voters who are the recipients of those ballots.

79. Simple examination of the unique identifiers on voted ballots of voters in Eagle County after an election then enables ballots cast by particular, known voters to be located and identified with certainty.

80. Simonton records, for all electronic ballots cast by voters on DRE voting machines, information that includes the date of voting, the DRE machine's unique identifier and the precinct number/ballot style used by the voter.

81. Comparison of this information against publicly available individual voter participation information for each voter maintained by Defendants Gessler and Simonton in the SCORE database enables any electronic ballots cast on a DRE machine that have a unique precinct number/ballot style out of all electronic ballots cast on that DRE machine to be identified with certainty as the electronic ballot cast by a particular, personally identifiable voter.

Secretary of State

82. All Colorado county clerk and recorders, including Defendant county clerk and recorders, are required by Colorado law to consult with Defendant Secretary of State Gessler and follow the rules and orders promulgated by the Secretary in relation to elections. See § 1-1-110(1), C.R.S. (2011).

83. Defendant Gessler has statutory duties as Colorado's Secretary of State to supervise the conduct of Colorado elections carried out by Colorado county clerk and recorders, including Defendant county clerk and recorders, and to enforce the provisions of the Uniform Election Code of 1992, §§ 1-1-101 to -13-803, C.R.S. (2011). See § 1-1-107(1)(a), (c), C.R.S. (2011);

84. Defendant Gessler also has powers to promulgate such rules as he finds necessary for the proper administration and enforcement of the election laws and to

inspect and review the practices and procedures of Colorado's county clerk and recorders. See § 1-1-107(2)(a)-(b), C.R.S. (2011).

85. Defendant Gessler's specific duties also include prescribing the form of materials to be used in the conduct of mail ballot elections, establishing procedures for conducting mail ballot elections and supervising the conduct of mail ballot elections. See § 1-7.5-106(1)(a)-(c), C.R.S. (2011).

86. Defendant Gessler is aware and has been aware since at least the 2010 election cycle that numerous county clerk and recorders in Colorado, including Defendant county clerk and recorders, are using batching practices and batch tracking reports that allow voted ballots to be traced to individual voters.

87. Gessler stated on November 30, 2011, that his office is considering rules or statutory changes to restrict the public's access to reports that could be used to track a ballot to a specific voter. But Gessler and his office have no publicly announced plans to propose any rules or statutory changes that would prevent Colorado's county clerk and recorders, including Defendant county clerk and recorders, from continuing to compile and maintain information from batching, including tracking reports, that permits the government to trace voted mail ballots to individual voters.

88. Section 1-5-407 of the Uniform Election Code of 1992 requires that "No printing or distinguishing marks shall be on the ballot except as specifically provided by this code." See § 1-5-407(7), C.R.S. (2011).

89. Defendant Gessler is aware that numerous county clerk and recorders in Colorado, including Defendants Hall, Reno and Simonton, are using printing or

distinguishing marks on their ballots that are not specifically provided for by the Uniform Election Code of 1992.

90. Defendant Gessler is responsible for approving all changes to the form of the ballot from the requirements set out in 1-5-407 of the Uniform Election Code of 1992. See § 1-5-407(8), C.R.S. (2011).

91. Defendant Gessler has approved the use by Defendants Hall, Reno and Simonton of printing or distinguishing marks on ballots for past and upcoming elections in Boulder, Chaffee and Eagle counties, respectively.

92. Systems, practices, policies and procedures implemented for the conduct of elections in other Colorado counties, including Pitkin County, show that a lawful Colorado election may be conducted without any need for the government to compile and maintain information that violates secrecy in voting by permitting voted ballots to be traced to individual voters.

93. Voted ballots in the custody and control of Colorado county clerk and recorders, including Defendant county clerk and recorders, are generally accessible to a large number of people, including: the county clerk and recorder (a partisan elected official), county elections staff, official observers from the Secretary of State's office and the U.S. Department of Justice, county election system vendors, the county canvass board (whose members are often designees of county political parties), the county's public resolution and duplication board, county election commissioners, volunteer election judges, student election judges, election watchers (appointed directly by partisan candidates and issue committees), media observers, election contestants and

their experts, lawyers and witnesses, observers of public recounts, court officials, public prosecutors and any others who may from time to time lawfully view unredacted voted ballots. Many of these people are bound by no statutorily prescribed oath of secrecy or confidentiality when acting in the capacities that afford them access to view and potentially inspect and handle unredacted voted ballots.

Injuries to Members of Citizen Center

94. Members of Citizen Center include United States citizens who are Colorado electors registered and eligible to vote in Mesa, Larimer, Jefferson, Boulder, Chaffee and Eagle counties, respectively, and who individually want and intend to freely vote their conscience in the 2012 primary and general, special district, municipal and coordinated elections, and elections held thereafter in their respective counties.

95. Colorado's 2012 primary elections in Mesa, Larimer, Jefferson, Boulder, Chaffee and Eagle counties will be conducted as mail-ballot-only elections.

96. Citizen Center has at least one member who is a registered elector in Mesa County who wants and intends to freely vote his conscience in the 2012 primary, 2012 general and other future elections there. The Mesa County member intends to vote by mail ballot in the 2012 primary election and by mail ballot or by DRE in subsequent elections and thus stands to suffer direct, imminent injury to his rights due to the application of Defendant Reiner's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

97. Citizen Center has at least one member who is a registered elector in Larimer County who wants and intends to freely vote his conscience in the 2012

primary, 2012 general and other future elections there. The Larimer County member intends to vote by mail ballot in the 2012 primary election and by mail ballot or by DRE in subsequent elections and thus stands to suffer direct, imminent injury to his rights due to the application of Defendant Doyle's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

98. Citizen Center has at least one member who is a registered elector in Jefferson County who wants and intends to freely vote her conscience in the 2012 primary, 2012 general and other future elections there. The Jefferson County member intends to vote by mail ballot in the 2012 primary election and by mail ballot or by DRE in subsequent elections and thus stands to suffer direct, imminent injury to her rights due to the application of Defendant Anderson's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

99. Citizen Center has at least one member who is a registered elector in Boulder County who wants and intends to freely vote her conscience in the 2012 primary, 2012 general and other future elections there. The Boulder County member intends to vote by mail ballot in the 2012 primary election and by mail ballot, by DRE or by paper ballot at a polling place in subsequent elections and thus stands to suffer direct, imminent injury to her rights due to the application of Defendant Hall's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

100. Citizen Center has at least one member who is a registered elector in Chaffee County who wants and intends to freely vote her conscience in the 2012

primary, 2012 general and other future elections there. The Chaffee County member intends to vote by mail ballot in the 2012 primary election and by mail ballot, by DRE or by paper ballot at a polling place in subsequent elections and thus stands to suffer direct, imminent injury to her rights due to the application of Defendant Reno's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

101. Citizen Center has at least one member who is a registered elector in Eagle County who wants and intends to freely vote his conscience in the 2012 primary, 2012 general and other future elections there. The Eagle County member intends to vote by mail ballot in the 2012 primary election and by mail ballot, by DRE or by paper ballot at a polling place in subsequent elections and thus stands to suffer direct, imminent injury to his rights due to the application of Defendant Simonton's unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

102. All of the foregoing members of Citizen Center stand to suffer direct, imminent injury due to the failures of Defendant Gessler to perform his statutory duties that, if performed, would prevent Defendants Reiner, Doyle, Anderson, Hall, Reno, Simonton, and other Colorado county clerks & recorders from applying the foregoing unlawful procedures in the 2012 primary election, the 2012 general election and other future elections.

Infringement of the Fundamental Right to Vote

103. The right of all eligible citizens to vote in a public election is a fundamental right protected by the United States Constitution.

104. Members of Citizen Center want and intend to freely exercise their fundamental right to vote in the 2012 primary and general, special district, municipal and coordinated elections, and elections held thereafter in their respective counties and want and intend to do so by voting their conscience for the candidates and issues of their choice without fear of retaliation or fear of ever being called upon to explain to anyone for whom or for what reason their votes were cast.

105. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler expose members of Citizen Center and others to the constant threat that each voter's ballot will not be a secret ballot, but will instead be traceable to the voter personally and will thus remain subject to being identified by government officials and others at any time after an election as the particular ballot cast by that individual voter.

106. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler condition the exercise of the fundamental right to vote by members of Citizen Center upon their acceptance and toleration of the risk that secrecy in voting will be violated and that their voted ballots will not be secret, but will instead be traceable to the voter personally and thus subject to being identified by government officials and others at any time after an election as the particular ballot cast by the individual voter.

107. By conducting elections using systems, practices, policies and procedures that permit voted ballots to be traced to individual voters, Defendant county clerk and recorders compel members of Citizen Center and others to choose between preserving the privacy of their personal electoral preferences, on one hand, and exercising their fundamental right to cast a ballot expressing those preferences, on the other hand.

108. While members of Citizen Center want to freely exercise their fundamental right to vote, some or all of them will not do so because of the fear that their individual voted ballot will not be a secret ballot, but will instead be traceable to them personally and thus will remain subject to being identified by government officials and others at any time after an election as the particular ballot cast by that voter personally.

109. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler severely and substantially burden, infringe and chill members of Citizen Center and others in the exercise of their fundamental right to vote.

110. Members of Citizen Center would like to exercise their fundamental right to vote without being subject to the constant threat that their voted ballot will be traceable to them individually or will be subject to being identified by government officials and others at any time after an election as the particular ballot cast by the voter personally.

Infringement of Fundamental First Amendment Rights

111. The act of voting in a public election is an exercise of an eligible citizen's First Amendment right to freedom of speech and political expression.

112. The act of voting by means of a “secret ballot” in a public election is an exercise of an eligible citizen’s First Amendment right to engage specifically in anonymous speech and political expression.

113. The act of voting in a public election is an exercise of an eligible citizen’s First Amendment right to freedom of political association.

114. The act of voting by means of a “secret ballot” in a public election is an exercise of an eligible citizen’s First Amendment right to engage specifically in anonymous political association.

115. Members of Citizen Center want to use their vote in 2012 primary and general, special district, municipal and coordinated elections, and elections held thereafter in their respective counties to express their political preferences and thereby engage in the exercise of their fundamental First Amendment rights to freedom of speech and political expression, including anonymous speech and political expression, and to freedom of political association, including anonymous political association.

116. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler expose members of Citizen Center and others to the constant threat that each such person’s electoral preferences expressed through the voted ballot will not be secret and anonymous.

117. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler condition Plaintiff’s members’ exercise of their fundamental First Amendment

rights to freedom of speech and political expression, anonymous speech and political expression and political association upon acceptance by members of Citizen Center of the risk that secrecy of their electoral preferences will be violated and that their voted ballots will or may be identifiable to government officials.

118. By conducting elections using systems, practices, policies and procedures that permit voted ballots to be traced to individual voters, Defendant county clerk and recorders compel members of Citizen Center and others to choose between preserving the privacy of their personal electoral preferences, on one hand, and exercising the fundamental First Amendment freedoms of speech and political expression, including anonymous speech and political expression, and freedoms of political association, including anonymous political association, on the other hand.

119. While members of Citizen Center want to use their vote to freely exercise their fundamental First Amendment rights to freedom of speech and political expression, including anonymous speech and political expression, and to freedom of political association, including anonymous political association, some or all of them will not do so because of the fear that their individual voted ballot will not be a secret ballot, but will instead be traceable to the voter personally and will thus remain subject to being identified by government officials and others at any time after an election as the particular ballot cast by that individual voter.

120. The systems, practices, policies and procedures of Defendant county clerk and recorders implemented under the supervision and by the approval of Defendant Gessler severely and substantially burden, infringe and chill members of Citizen Center

and others in the exercise of their fundamental First Amendment rights to freedom of speech and political expression, to anonymous speech and political expression, and to freedom of political association.

121. Members of Citizen Center would like to use their vote in the 2012 primary and general, special district, municipal and coordinated elections, and elections held thereafter in their respective counties to exercise their fundamental First Amendment rights to freedom of speech and political expression, including anonymous speech and political expression, and to freedom of political association, including anonymous political association, without being subject to the constant threat that their voted ballots will be traceable to them and will remain subject to being identified by government officials and others at any time after an election as the particular ballots cast by them personally.

Infringement of the Colorado Constitution's Right to Secrecy in Voting

122. The Colorado Constitution establishes the right of Colorado citizens to preservation of secrecy in voting. See Colo. Const. art. VII, § 8.

123. Members of Citizen Center want to exercise their right to vote in the 2012 primary and general, special district, municipal and coordinated elections, and elections held thereafter in their respective counties secure in the guarantee provided by the Colorado Constitution that their state constitutional right to secrecy in voting will be preserved.

124. By adopting and implementing systems, practices, policies and procedures for the conduct of elections that allow voted ballots to be traced to individual

voters, Defendant county clerk and recorders, with the acquiescence of Defendant Gessler, have directly violated and will directly violate Plaintiff's members' right to secrecy in voting.

FIRST CLAIM FOR RELIEF
Denial of Substantive Due Process –Fourteenth Amendment
Infringement of Fundamental Right to Vote; 42 U.S.C. § 1983
(against all Defendants)

125. Plaintiff realleges paragraphs 1 through 124 as if the same were fully stated here.

126. The Due Process Clause of the Fourteenth Amendment declares that “no State shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

127. The systems, practices, policies and procedures adopted and implemented by Defendant county clerk and recorders for the conduct of elections in their respective counties under the supervision and by the approval of Defendant Gessler severely, substantially and unduly burden, chill and infringe upon the fundamental right to vote.

128. These burdens and infringements are neither justified by, nor necessary to promote, a substantial and compelling state interest that cannot be accomplished by other, less restrictive means.

129. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have deprived and will deprive the members of

Citizen Center of their fundamental constitutional right to vote in violation of the substantive protections of the Due Process Clause of the Fourteenth Amendment.

130. As a direct and proximate result of the continuing toleration, implementation and enforcement of systems, practices, policies and procedures by the Defendants that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their fundamental constitutional right to vote. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from applying and approving systems, practices, policies and procedures that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

131. The foregoing deprivations of federal constitutional rights have been and will be effected by Defendants acting under color of state law.

SECOND CLAIM FOR RELIEF
Denial of Substantive Due Process – Fourteenth Amendment
Infringement of First Amendment Rights to Freedom of Speech and Association;
42 U.S.C. § 1983
(against all Defendants)

132. Plaintiff realleges paragraphs 1 through 131 as if the same were fully stated here.

133. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders for the conduct of elections in their respective counties under the supervision and by the approval of Defendant

Gessler severely, substantially and unduly burden, chill and infringe upon the fundamental First Amendment rights to freedom of speech and association, including the rights to anonymous speech and association.

134. These burdens and infringements are neither justified by, nor necessary to promote, a substantial and compelling state interest that cannot be accomplished by other, less restrictive means.

135. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have deprived and will deprive the members of Citizen Center of their fundamental First Amendment rights in violation of the substantive protections of the Due Process Clause of the Fourteenth Amendment.

136. As a direct and proximate result of the continuing toleration, implementation and enforcement of systems, practices, policies and procedures by the Defendants that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their fundamental First and Fourteenth Amendment rights. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from applying and approving systems, practices, policies and procedures that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

137. The foregoing deprivations of federal constitutional rights have been and will be effected by Defendants acting under color of state law.

THIRD CLAIM FOR RELIEF
Denial of Substantive Due Process – Fourteenth Amendment
Infringement of Fundamental Right to Secret Ballot; 42 U.S.C. § 1983
(against all Defendants)

138. Plaintiff realleges paragraphs 1 through 137 as if the same were fully stated here.

139. The right of citizens to vote using a secret ballot in public elections is a liberty that is now “so deeply rooted in our history and traditions” and “so fundamental to our concept of constitutionally ordered liberty” that it ranks among the fundamental rights and liberty interests that warrant substantive protection under the Due Process Clause of the Fourteenth Amendment. Cf. Washington v. Glucksberg, 521 U.S. 702, 727 (1997).

140. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders for the conduct of elections in their respective counties under the supervision and by the approval of Defendant Gessler severely, substantially and unduly burden, chill and infringe upon the fundamental right to vote using a secret ballot in public elections.

141. These burdens and infringements are neither justified by, nor necessary to promote, a substantial and compelling state interest that cannot be accomplished by other, less restrictive means.

142. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by

the approval of Defendant Gessler have deprived and will deprive the members of Citizen Center of their fundamental right to vote using a secret ballot in public elections in violation of the substantive protections of the Due Process Clause of the Fourteenth Amendment.

143. As a direct and proximate result of the continuing toleration, implementation and enforcement of systems, practices, policies and procedures by the Defendants that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their constitutional right to vote using a secret ballot in public elections. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from applying and approving systems, practices, policies and procedures that make ballots cast by some voters individually identifiable, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

144. The foregoing deprivations of federal constitutional rights have been and will be effected by Defendants acting under color of state law.

FOURTH CLAIM FOR RELIEF
Denial of Procedural Due Process – Fourteenth Amendment
Infringement of State-Created Liberty Interest in Voting by Secret Ballot;
42 U.S.C. § 1983
(against all Defendants)

145. Plaintiff realleges paragraphs 1 through 144 as if the same were fully stated here.

146. The right to secrecy in voting is a substantive liberty interest created by state law in Article VII, § 8 of the Colorado Constitution.

147. This state-created substantive right to secrecy in voting is entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment.

148. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have deprived and will deprive the members of Citizen Center of their substantive state-created liberty interest in secrecy in voting.

149. Defendants have no lawful substantive discretion under Colorado law to deprive voters of their state-created liberty interest in secrecy in voting, as Colorado law provides no procedure whereby such deprivation may lawfully be accomplished.

150. The actual procedures utilized by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler to deprive members of Citizen Center and others of their substantive state constitutional right to secrecy in voting either are non-existent or else are wholly arbitrary and capricious and without rational basis, and in either case such procedures do not afford the degree of constitutionally adequate process required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

151. As a direct and proximate result of the continuing toleration, implementation and enforcement of systems, practices, policies and procedures by the Defendants that make ballots cast by some voters individually identifiable without affording those voters any constitutionally adequate procedure for contesting the

deprivation of their substantive right to secrecy in voting, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their constitutional rights. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from acting without any procedure, or with constitutionally deficient procedures, in the course of depriving members of Citizen Center and others of their state constitutional right to secrecy in voting, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

152. The foregoing deprivations of federal constitutional rights have been and will be effected by Defendants acting under color of state law.

FIFTH CLAIM FOR RELIEF
Denial of Equal Protection – Fourteenth Amendment
Infringement of Fundamental Right to Vote and Rights to Freedom of Speech and
Association; 42 U.S.C. § 1983
(against all Defendants)

153. Plaintiff realleges paragraphs 1 through 152 as if the same were fully stated here.

154. The Equal Protection Clause of the Fourteenth Amendment mandates that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV § 1.

155. Members of Citizen Center are, in all material respects, similarly situated to each other and to other persons who have voted and will vote in elections conducted by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler.

156. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler treat members of Citizen Center and other similarly situated persons differently, by exposing voters within counties and in different counties to disparate likelihoods of their ballots being made identifiable, based on such arbitrary and random vagaries as the randomized assortment of voted ballots into tabulation batches, the choice of voting method or machine and time of voting selected by the voter and the physical residence of voters at varying locations within intersecting district boundaries that cause those voters to be assigned to relatively more- or less-unique ballot “styles.”

157. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler severely, substantially and unduly burden, chill and infringe upon both the fundamental right to vote and the fundamental First Amendment rights to freedom of speech and association of members of Citizen Center and others.

158. The burdens and infringements imposed on these fundamental rights are differentially imposed upon members of Citizen Center and others without justification by any substantial or compelling state interest that cannot be accomplished by other, less restrictive means.

159. The systems, practices, policies and procedures adopted and implemented by the Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have deprived and will deprive the members of

Citizen Center of their right to equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment.

160. As a direct and proximate result of the continuing toleration, implementation and enforcement of systems, practices, policies and procedures by the Defendants that expose similarly situated voters to disparate likelihoods of their ballots being individually identifiable, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their constitutional rights in the form of unequal protection of their fundamental right to vote and their fundamental First and Fourteenth Amendment rights. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from applying and approving systems, practices, policies and procedures that deprive members of Citizens Center and others of equal protection of the laws, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

161. The foregoing deprivations of federal constitutional rights have been and will be effected by Defendants acting under color of state law.

SIXTH CLAIM FOR RELIEF
Violation of State Secrecy in Voting – Colo. Const. art VII, § 8
(against all Defendants)

162. Plaintiff realleges paragraphs 1 through 161 as if the same were fully stated here.

163. The Colorado Constitution prohibits the marking of paper ballots “whereby the ballot can be identified as the ballot of the person casting it” and requires

preservation of “secrecy in voting” in all elections in which machines are used to receive and register the votes cast. See Colo. Const. art. VII, § 8.

164. By adopting and implementing systems, practices, policies and procedures for the conduct of elections that allow voted ballots to be traced to individual voters, Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have directly violated and will directly violate the state constitutional right of Plaintiff’s members and others to secrecy in voting.

165. As a direct and proximate result of their conduct that deprives some voters of secrecy in voting, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their state constitutional rights. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined applying and approving systems, practices, policies and procedures that cause these state constitutional violations to occur, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

SEVENTH CLAIM FOR RELIEF
Violation of State Due Process and State Equal Protection –
Colo. Const. art II, § 25
(against all Defendants)

166. Plaintiff realleges paragraphs 1 through 165 as if fully stated here.

167. The Colorado Constitution guarantees rights to due process and equal protection of the laws under state law. See Colo. Const. art. II, § 25.

168. By treating similarly situated persons differently and arbitrarily depriving some voters but not others of the state constitutional right to secrecy in voting,

Defendant county clerk and recorders under the supervision and by the approval of Defendant Gessler have deprived and will deprive members of Citizen Center and others of state constitutional guarantees to due process and equal protection of the laws.

169. The deprivations are without justification by any substantial or compelling state interest that cannot be accomplished by other, less restrictive means.

170. As a direct and proximate result of their conduct that exposes and will expose voters to disparate likelihoods of their ballots being individually identifiable and that deprives and will deprive some voters of secrecy in voting without due process under state law, members of Citizen Center and others similarly situated have suffered and will suffer deprivation of and irreparable harm to their state constitutional rights. Members of Citizen Center have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined applying and approving systems, practices, policies and procedures that cause these state constitutional violations to occur, members of Citizen Center and others similarly situated will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

a. Enter judgment declaring unconstitutional the foregoing described systems, practices, policies and procedures of Defendant clerk and recorders that permit voted ballots to be individually identifiable as the ballots of the persons casting them;

b. Enter preliminary and permanent injunctions against the Defendant county clerk and recorders prohibiting their prospective application of the foregoing described systems, practices, policies and procedures that permit voted ballots to be individually identifiable as the ballots of the persons casting them;

c. Enter preliminary and permanent injunctions against the Defendant Secretary of State prohibiting his prospective approval of the foregoing described systems, practices, policies and procedures that permit voted ballots to be individually identifiable as the ballots of the persons casting them;

d. Grant Plaintiff an award of its reasonable attorney's fees, costs, and expenses incurred in this action pursuant to 42 U.S.C. § 1988; and

e. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 10th, 2012

Respectfully submitted,

ROBERT A. MCGUIRE, ATTORNEY AT LAW, LLC

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non participant's name:

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